

BILL ANALYSIS

C.S.H.B. 2544

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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Alcoholic Beverage Commission regulates all phases of the alcoholic beverage industry. The Legislature created the agency, originally called the Liquor Control Board, in 1935, in response to the repeal of Prohibition. The agency has four primary functions: licensing alcoholic beverage manufacturers, wholesalers, and retailers; enforcing administrative and criminal laws in the Alcoholic Beverage Code; collecting taxes on alcoholic beverages; and providing educational programs to address issues such as underage drinking.

The Texas Alcoholic Beverage Commission is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the Legislature. The Sunset review found that, while the State still has an interest in regulating the alcoholic beverage industry, TABC and the Alcoholic Beverage Code are in clear need of modernization. The Sunset Commission's recommendations, as contained in this bill, are intended to shift the agency's focus away from a number of unnecessary and costly regulatory practices, and place it more squarely on issues of public safety. C.S.H.B. 2544 continues the agency for six years, until September 1, 2011, and contains other recommendations of the Sunset Advisory Commission.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTION 10 (Sec. 5.362, Alcoholic Beverage Code), SECTION 12 (Sec. 5.53, Alcoholic Beverage Code), SECTION 17 (Sec. 11.042, Alcoholic Beverage Code), SECTION 18 (Section 11.09, Alcoholic Beverage Code), SECTION 19 (Section 61.03, Alcoholic Beverage Code), SECTION 20 (Sec. 61.111, Alcoholic Beverage Code), SECTION 21 (Section 101.67, Alcoholic Beverage Code), SECTION 22 (Sec. 101.671, Alcoholic Beverage Code), and SECTION 23 (Sec. 102.21, Alcoholic Beverage Code) of this bill.

ANALYSIS

C.S.H.B. 2544 amends the Alcoholic Beverage Code relating to the continuation and functions of the Texas Alcoholic Beverage Commission, including the regulation of the alcoholic beverage industry. The bill also incorporates several standard across-the-board recommendations of the Sunset Commission.

The bill defines TABC's mission in statute by laying out seven specific responsibilities of the agency.

The bill requires TABC to adopt, by rule, a schedule of sanctions that ensures each sanction the agency imposes is appropriate to the corresponding violation. The schedule must include certain types of information and the agency may deviate from the schedule according to circumstances that are clearly established in policy.

The bill requires TABC to develop a risk-based approach to conducting its enforcement activities. Requires the commission to develop benchmarks and goals to track enforcement activities and their results and to compare the performance of its regional offices to determine the most effective enforcement activities. C.S.H.B. 2544 requires the agency to track specific types of enforcement data and to compile statistics and analyze trends.

C.S.H.B. 2544 requires TABC to adopt rules to clearly define its process for handling complaints from the public about licensed establishments. The agency must prioritize complaints and investigate them according to risk. The bill also requires the agency to compile statistics and analyze trends on specific types of complaint data.

The bill eliminates restrictions on the size of beer containers, including bottles, cans, and barrels. C.S.H.B. 2544 eliminates TABC's label approval and chemical analysis testing requirements for liquor, and instead authorizes the agency to register federal certificates of label approval for liquor, as well as wine. The bill allows beer manufacturers to submit analyses conducted by federally-certified laboratories of their products' alcohol content. If a manufacturer does not submit a laboratory analysis, the manufacturer must provide a sample of the product to TABC for chemical analysis. C.S.H.B. 2544 eliminates fees set in statute for approval of liquor and beer, and instead authorizes the agency to set fees at a level sufficient to administer the regulation.

The bill requires TABC to develop a formal process for making marketing practices and for communicating these decisions to agency staff and the industry. C.S.H.B. 2544 requires TABC to consult with a marketing practices work group in making regulatory decisions and to give consideration to the work group's recommendations. The agency must document its policy decisions relating to marketing practices regulations by using a precedents manual or drafting formal advisories, and make this documentation available to agency staff and the industry.

The bill requires the administrator to establish an office of internal affairs to ensure fair and impartial investigations of alleged employee misconduct. C.S.H.B. 2544 requires the administrator to appoint the head of the office of internal affairs. The office has original jurisdiction over complaints involving personnel and must coordinate and be the central reporting point for all investigations. The bill also requires the agency to track and report personnel complaint information to the Administrator and the Commission on a regular basis.

The bill allows permittees and licensees with no violations in the previous year the option of renewing their permit or license every two years, rather than annually. C.S.H.B. 2544 allows the agency to issue permits and licenses for less than two years and to prorate the fees in order to maintain a reasonable annual distribution of renewal application review work and fee revenue.

The bill requires TABC to reduce delays in the licensing process by providing for online license application, renewal, and payment of fees.

The bill requires TABC to establish rules requiring establishments that sell alcohol for on-premise consumption to display health warning signs on restroom doors to inform and remind the public of the risks of drinking during pregnancy.

The bill authorizes the use of electronic funds transfers for the payment of beer on or before the day of delivery.

The bill entitles the agency to recover from the proceeds of forfeited seized property, all court costs, expenses of the forfeiture sale, and attorney's fees. C.S.H.B. 2544 provides that proceeds from the sale of seized property shall first be applied to reimburse the agency for the costs mentioned above, and any remaining proceeds shall be deposited into the General Revenue Fund, rather than the non-existent Confiscated Liquor Fund.

The bill requires the Legislature to establish a joint interim committee to study revision of the regulatory structure of alcoholic beverages in Texas. C.S.H.B. 2544 defines five areas that the committee shall investigate and requires the committee to report its findings and recommendations to the Governor, Lieutenant Governor, and Speaker by January 1, 2007.

The bill sets out deadlines for the Texas Alcoholic Beverage Commission to implement rules and policies.

The bill provides for application of the Act.

The bill continues the Texas Alcoholic Beverage Commission for six years, until September 1, 2011.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute modifies the original by authorizing the commission to issue permits and licenses for less than two years and to prorate the fees in order to maintain a reasonable annual distribution of renewal application review work and fee revenue.

The substitute adds new language to the bill requiring the commission to authorize payment by electronic funds transfer initiated on or before the day of delivery.