

BILL ANALYSIS

C.S.S.B. 1255

By: Brimer

Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

For many years, breweries in Texas and other jurisdictions have been contract brewing. Contract brewing occurs when a manufacturer brews beer for another beer manufacturer using that manufacturer's recipe. Texas has permitted contract brewing for over 20 years.

In 1998, Texas Attorney General Dan Morales ruled that contract brewing was illegal under the Alcoholic Beverage Code. This ruling affected the permits of over 120 licensed companies. The Texas Alcoholic Beverage Commission granted a stay of enforcement until June 30, 2005, to await a legislative correction.

Current law, Section 61.41, Alcoholic Beverage Code, provides that "[n]o license may be issued for a premises, location or place of business for which a license is in effect."

C.S.S.B. 1255 protects longstanding business relationships within the brewing industry that have been authorized by the Texas Alcoholic Beverage Commission by ratifying all previously adopted licensing decisions made by the TABC and authorizing contract brewing and contract manufacturing agreements between entities which currently hold appropriate manufacturing or brewing licenses. C.S.S.B. 1255 authorizes certain entities to share manufacturing and brewing premises in Texas. It will provide safeguards to prevent abuses from occurring in the future by persons seeking to circumvent statutory requirements for persons making malt beverages to invest in actual production facilities either outside or within the State of Texas.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Chapter 12, Alcoholic Beverage Code, by adding Section 12.06, as follows:

Sec. 12.06. USE OF FACILITIES. (a) Authorizes an entity or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state to contract with the holder of a brewer's permit for the use of the permit holder's brewing facilities or to provide brewing services.

(b) Provides that an entity or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state is not required to own its brewing facilities.

(c) Authorizes more than one brewer's permit to be issued for a single premises if the permit holder for the premises has contracted with an entity or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state for the use of the permit holder's brewing facilities or to provide brewing services.

(d) Provides that this section does not authorize a person acting as an agent for a brewery located outside of this state to contract with the holder of a brewer's permit to brew ale or malt liquor on the person's behalf. Authorizes a contract described by this subsection to only be entered into by the holder of a brewer's permit and another person holding a permit under this code.

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SECTION 2. Amends Chapter 13, Alcoholic Beverage Code, by adding Section 13.04, as follows:

Sec. 13.04. USE OF FACILITIES. (a) Authorizes an entity or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state to contract with the holder of a nonresident brewer's permit for the use of the permit holder's brewing facilities or to provide brewing services.

(b) Provides that an entity or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state is not required to own its brewing facilities.

(c) Authorizes more than one nonresident brewer's permit to be issued for a single premises if the permit holder for the premises has contracted with an entity or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state for the use of the permit holder's brewing facilities or to provide brewing services.

(d) Provides that this section does not authorize a person acting as an agent for a brewery located outside of this state to contract with the holder of a nonresident brewer's permit to brew ale or malt liquor on the person's behalf. Authorizes a contract described by this subsection to only be entered into by the holder of a nonresident brewer's permit and another person holding a permit under this code.

SECTION 3. Amends Section 61.41, Alcoholic Beverage Code, as follows:

Sec. 61.41. SECOND LICENSE AT SAME LOCATION; EFFECT ON EXISTING LICENSE.

(a) Prohibits, except as provided by Subsection (d), a license to be issued for a premises, location, or place of business for which a license is in effect unless the holder of the existing license has shown to the satisfaction of the commission that the license holder, rather than he, will no longer exercise any privilege granted by the existing license at that location. Makes conforming changes.

(d) Authorizes, notwithstanding Subsection (a) and Sections 11.49 and 109.53, more than one manufacturer's or nonresident manufacturer's license to be issued for a single premises if the license holder for the premises has contracted with an entity or successor to an entity that on May 1, 2005, held a manufacturer's or nonresident manufacturer's license or whose brand was legally sold in this state for the use of the license holder's premises for manufacturing purposes or to provide manufacturing services.

SECTION 4. Amends Section 62.03 (a), Alcoholic Beverage Code, as follows:

(a) Provides that Section 62.14 is an exception to this section. Authorizes, rather than requires, the county judge to not approve an application unless it is accompanied by the required sworn statement. Makes nonsubstantive changes.

SECTION 5. Amends Chapter 62, Alcoholic Beverage Code, by adding Section 62.14, as follows:

Sec. 62.14. USE OF FACILITIES. (a) Authorizes an entity or successor to an entity that on May 1, 2005, held a manufacturer's or nonresident manufacturer's license or whose brand was legally sold in this state to contract with the holder of a manufacturer's license for the use of the license holder's manufacturing facilities or to provide manufacturing services.

(b) Provides that an entity or successor to an entity that on May 1, 2005, held a manufacturer's or nonresident manufacturer's license or whose brand was legally sold in this state is not required to own its manufacturing facilities.

(c) Provides that this section does not authorize a person acting as an agent for a manufacture located outside of this state to contract with the holder of a manufacturer's license to manufacture beer on the person's behalf. Authorizes a contract described by this subsection to only be entered

into by the holder of a manufacturer's license and another person holding a license under this code.

SECTION 6. Amends Chapter 63, Alcoholic Beverage Code, by adding Section 63.05, as follows:

Sec. 63.05. USE OF FACILITIES. (a) Authorizes an entity or successor to an entity that on May 1, 2005, held a manufacturer's or nonresident manufacturer's license or whose brand was legally sold in this state to contract with the holder of a nonresident manufacturer's license for the use of the license holder's manufacturing facilities or to provide manufacturing services.

(b) Provides that an entity or successor to an entity that on May 1, 2005, held a manufacturer's or nonresident manufacturer's license or whose brand was legally sold in this state is not required to own its manufacturing facilities.

(c) Provides that this section does not authorized a person acting as an agent for a manufacturer located outside of this state to contract with the holder of a nonresident manufacturer's license to manufacture beer on the person's behalf. Authorizes a contract described by this subsection to only be entered into by the holder of a nonresident manufacturer's license and another person holding a license under this code.

SECTION 7. Effective date: Immediately, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.

EFFECTIVE DATE

Immediately, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute broadens the applicability of the authorization to contract brew or contract manufacture malt beverages by allowing any brewer or manufacturer who legally sells a brand or holds a license to brew or manufacture malt beverages in Texas to enter into a contract brewing or contract manufacturing agreement, rather than limiting it only to license holders.

The substitute modifies the bill by only allowing those who held the appropriate licenses or legally sold malt beverages in Texas as of May 1, 2005 to participate in contract brewing or contract manufacturing. The committee substitute also clarifies that the bill does not authorize an entity which merely acts as an agent of an entity located outside of the state to contract for the brewing or manufacturing of malt beverages.

C.S.S.B. 1255 modifies the bill by providing that Sections 61.41 (a), 11.49 and 109.53, Alcoholic Beverage Code, are exceptions to language in the bill that authorizes more than one manufacturer's or nonresident manufacturer's license to be issued for a single premises.