

## **BILL ANALYSIS**

C.S.H.B. 3676  
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Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under current law, the alcoholic beverage permitting process is extremely complicated. The Texas Alcoholic Beverage Commission collects liquor permitting fees for the state alone. Counties collect beer and wine license fees for both the state and, if so chosen, the county as well. Finally, both counties and municipalities have options on whether or not to collect permit and license fees above and in addition to the state fees. Many restaurant, liquor store, bar, and icehouse owners hire an agent to navigate them through this complex process. For example, in Harris County, approximately 80% of the permittees use an agent to procure a permit or license.

However, no current regulations ensure that these agents are educated on the permitting process or that they will secure the appropriate license or permit for the establishment seeking the permit or license.

C.S.H.B. 3676 creates a process by which an alcoholic beverage permit service and its employees may undertake business. C.S.H.B. 3676 provides bonding for anyone who seeks or receives payment for a permit at the state, county, or municipal level in those counties with populations greater than 500,000 and in which the commissioners court by order has adopted this chapter.

### **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**

C.S.H.B. 3676 amends the Alcoholic Beverage Code by defining "alcoholic beverage permit service" and "permit service runner."

C.S.H.B. 3676 does not apply to an attorney licensed in this state; a person who holds a license or permit issued under Title 3 or an employee of a person who holds a license or permit issued under Title 3 acting on behalf of the license or permit holder; or an applicant for a license or permit issued under Title 3 or an employee of an applicant for a license or permit issued under Title 3 acting on the applicant's own behalf.

C.S.H.B. 3676 requires the commission to establish a training course for individuals required to hold a license under this chapter; sets forth minimum course instruction requirements; requires the commission to teach the training course at least four times each year in different locations throughout the state; and requires the commission to charge a fee for taking the course. Requires the commission to adopt the course fee in an amount that in the aggregate is sufficient to cover the cost of teaching the course.

C.S.H.B. 3676 authorizes the tax assessor-collector, on the tax assessor-collector's motion, and require, on written complaint of a person aggrieved by the action of the holder of a license under this chapter, investigate an alleged violation of this chapter by a license holder or an applicant for a license under this chapter.

C.S.H.B. 3676 prohibits a person from acting as an alcoholic beverage permit service or as an agent of an alcoholic beverage permit service unless the person holds an alcoholic beverage

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permit service license; prohibits a person from acting as a permit service runner unless the person holds an alcoholic beverage permit service runner's license.

C.S.H.B. 3676 sets annual fees for an alcoholic beverage permit service license and an alcoholic beverage permit service runner's license and requires fees to be payable to the tax assessor-collector of the county in which the license holder will engage in business.

C.S.H.B. 3676 sets forth eligibility requirements for a license under this chapter and prohibits a license to be issued to a person who has an interest in any license or permit issued under Title 3 and has been finally convicted of a misdemeanor involving moral turpitude or a felony in the five years preceding the date of the application.

C.S. H.B. 3676 requires an applicant to apply on a form prescribed by and submitted to the county tax assessor-collector of the county in which the license holder will engage in the activity regulated by this chapter. Sets requirements for the application form and, in addition, sets forth application requirements for applicants who intend to engage in business as a corporation and for applicants who intend to engage in business as a partnership.

C.S.H.B. 3676 prohibits certain licenses to be issued to a person under a fictitious name that is similar to or may be confused with the name of a governmental entity or that is deceptive or misleading to the public.

C.S.H.B. 3676 requires an applicant to submit to the commission, in addition to the requirements, a certain information for the purpose of obtaining a criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation; requires the commission to conduct a criminal background check on the applicant and forward the results to the appropriate tax assessor-collector.

C.S.H.B. 3676 does not require an employee of a license holder who only performs administrative duties to hold a license under this chapter.

C.S.H.B. 3676 requires the tax assessor-collector to make a determination of whether to issue the license upon receipt of a complete application, including the criminal history record information; requires the tax assessor-collector to issue a license if the tax assessor-collector determines that the applicant has met the necessary requirements; requires the tax assessor-collector to notify the commission of the determination and provide the commission with any information provided by the applicant.

C.S.H.B. 3676 provides that a license issued under this chapter expires in one year and prohibits the licensee from engaging in activities that require a license until the license is renewed; sets forth provisions in renewing a, unexpired license by requiring the renewal fee to be paid to the county tax assessor-collector before the license expires; sets forth renewal fees for licenses that have been expired for 90 days or less; for more than 90 days but less than one year; and prohibits a license to be renewed for licenses expired for one year or more but authorizes the applicant to comply with the requirements and procedures for obtaining an original license; authorizes a person who was licensed in another state, moved to another state, and who has been doing business in the other state for the two years preceding the application to renew an expired license by paying the required fees to the county tax assessor-collector. Requires the county tax-assessor collector to notify the person, in writing and sent to the person's last known address, of the impending expiration, before the 30th day before the date on which the license expires.

C.S.H.B. 3676 requires all license or permit fees collected by the license holder on behalf of another person to be paid by check made payable to the commission; and requires the license holder to deposit all license and permit fees collected by the license holder with the commission no later than the 20th day after the date the license holder receives the fee.

C.S.H.B. 3676 requires the holder of an alcoholic beverage permit service license to maintain records required on a form prescribed and made available by the county tax assessor-collector for each transaction in which the license holder receives compensation; sets forth the requirements that must be included on the form; requires an alcoholic beverage permit service to maintain two copies of the records, including legible photocopies of any document submitted by a customer

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and to the commission or the county tax assessor-collector, for at least 5 years after the date of the transaction; requires an alcoholic beverage permit service license holder and the license holder's employees to allow an agent of the state or local government, including a peace officer, to inspect the records on the premises of the alcoholic beverage permit service at any reasonable time to verify, check, or audit the records.

C.S.H.B. 3676 authorizes the tax assessor-collector, after notice and a hearing, to deny an application for a license, or suspend or revoke a license issued under this chapter for violating this chapter or a rule; obtaining a license through a false or fraudulent representation; making a substantial misrepresentation in an license application; engaging in a continued and flagrant course of misrepresentation or failing to account for or remit, within a reasonable time, money belonging to another that is in the license holder's possession, commingling money of another person with the license holder's money, or failing to keep the money of another person in an escrow or trust account; provides that a license is automatically revoked if a license holder is convicted of a felony. Requires the tax assessor-collector, before denying an application or suspending or revoking a license, to set the matter for a hearing and before the hearing date, notify the applicant or the license holder in writing of the charges alleged or the question to be determined at the hearing and the date and location of the hearing; authorizes the tax assessor-collector to appoint a person to hold hearings and make findings and recommendation with respect to the matter. Authorizes the applicant or license holder, at a hearing to be present and be heard in person or by counsel and have an opportunity to offer evidence by oral testimony, affidavit, or deposition and authorizes written notice to be served by personal delivery to the applicant or license holder or by certified mail to the last known address.

C.S.H.B. 3676 creates a Class A misdemeanor if a person acts as an alcoholic beverage permit service or a permit service runner without the required license; creates a Class C misdemeanor if the person violates a provision of this chapter or a rule adopted by the commission or the tax assessor-collector under this chapter for which a penalty is not provided; and provides injunctive relief. Authorizes the court to enjoin the person from maintaining or participating in the business of an alcoholic beverage permit service for a period determined by the court or declare the place where the person's business is located to be closed for any use relating to the business of the alcoholic beverage permit service for as long as the person is enjoined from participating in that business, if the court grants relief.

C.S.H.B. 3676 does not require a person to hold a license issued under Chapter 7, Alcoholic Beverage Code, before January 1, 2008, to engage in activity regulated by that chapter.

#### **EFFECTIVE DATE**

September 1, 2007, except Sections 7.101, 7.301, and 7.302, Alcoholic Beverage Code, take effect January 1, 2008.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute bill creates statewide applicability by removing language that applied originally only to counties with populations of 500,000 or greater in which the commissioners court by order had adopted this law. The substitute does not apply to an attorney licensed in this state; a person who holds a license or permit issued under Title 3 or an employee of a person who holds a license or permit issued under Title 3 acting on behalf of the license or permit holder; or an applicant for a license or permit issued under Title 3 or an employee of an applicant for a license or permit issued under Title 3 acting on the applicant's own behalf.

The committee substitute adds certain sections which renumbers other sections, accordingly. The substitute adds language not in the original that explains the duties of the Texas Alcoholic Beverage Commission, including the establishment of a training course, for which the bill details minimum instruction requirements, location requirements, and fees for participants taking the class. The substitute clarifies the investigation of complaints by the tax assessor-collector, that fees collected for licensing purposes are to be made payable to county tax-assessor collectors, and the licensing process. The substitute changes eligibility requirements for license holders under the provisions of the bill. The substitute also adds language pertaining to ineligibility for a

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license. The substitute changes the party to whom the application form is submitted. The substitute removes certain general application requirements included in the original.

The substitute adds language prohibiting certain licenses to be issued to a person under a fictitious name that is similar to or may be confused with the name of a governmental entity or that is deceptive or misleading to the public.

The substitute adds language requiring an applicant to submit to the commission, in addition to the requirements, a certain information for the purpose of obtaining a criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation; requires the commission to conduct a criminal background check on the applicant and forward the results to the appropriate tax assessor-collector.

The substitute also does not require an employee of a license holder who only performs administrative duties to hold a license under this chapter.

The substitute requires the tax assessor-collector to make a determination of whether to issue the license upon receipt of a complete application, including the criminal history record information; requires the tax assessor-collector to issue a license if the tax assessor-collector determines that the applicant has met the necessary requirements; requires the tax assessor-collector to notify the commission of the determination and provide the commission with any information provided by the applicant.

The substitute adds a subchapter that sets license expiration and renewal guidelines.

The substitute adds language related to the collection of license and permit fees and requires a county tax assessor-collector to collect and maintain application information and determination of applications. The substitute also increases the number of parties who may inspect the records of a permit service.

The substitute removes language that requires a commissioner's court by order to adopt the provisions of the bill.

The substitute makes provisions for denial of application; suspension or revocation of license; hearings for suspension or revocation of a license.

The substitute establishes that an offense is committed if a person violates a provision of this chapter or a rule adopted by TABC or the tax-assessor-collector under this chapter for which a penalty is not provided. Further, it changes the classification of the misdemeanor under this section from a Class A misdemeanor to a Class C misdemeanor. The substitute makes conforming changes by adding certain sections to become effective on January 1, 2008.