

BILL ANALYSIS

Senate Research Center

S.B. 904
By: Brimer
Government Organization
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Alcoholic Beverage Commission (TABC) regulates all phases of the alcoholic beverage industry. The legislature created TABC in 1935 in response to the repeal of prohibition. TABC 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.

TABC is subject to the Sunset Act and will be abolished on September 1, 2007, unless continued by the legislature. This legislation continues TABC for 12 years. The Sunset Commission also identified several areas needing improvement. Overall, the Sunset review found that, while Texas still has an interest in regulating the alcoholic beverage industry, TABC and the Alcoholic Beverage Code are in clear need of modernization.

TABC's statutory mission is outdated, and there is a lack of comprehensive process for planning its activities statewide and measuring its progress toward achieving goals. Enforcement efforts are not prioritized to focus on problems posing the greatest risk to public safety, and TABC fails to provide consistent and predictable penalties for violations. TABC also lacks authority to effectively enforce prohibitions against establishments for selling or serving alcohol after hours. The processes for testing and approving labels for new alcoholic beverages duplicates federal requirements, imposes unnecessary costs and delays on the industry, and creates excessive burdens for TABC. There is also no formal approach for making policy decisions or handling complaints against TABC employees.

S.B. 904 enacts the recommendations of the Sunset Advisory Commission regarding TABC and includes several changes in law to modernize the operations of TABC and focus its activities more squarely on public safety issues.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTION 10 (Section 5.362, Alcoholic Beverage Code), SECTION 12 (Section 5.53, Alcoholic Beverage Code), SECTION 16 (Section 11.042, Alcoholic Beverage Code), SECTION 18 (Section 61.111, Alcoholic Beverage Code), SECTION 20 (Section 101.67, Alcoholic Beverage Code), and SECTION 21 (Section 101.671, Alcoholic Beverage Code) of this bill.

Rulemaking authority previously granted to the Texas Alcoholic Beverage Commission is modified in SECTION 11 (Section 5.38, Alcoholic Beverage Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.04, Alcoholic Beverage Code, by adding Subdivision (25), to define "executive management."

SECTION 2. Amends Section 5.01(b), Alcoholic Beverage Code, as follows:

(b) Provides that the Texas Alcoholic Beverage Commission (TABC) is abolished and Subchapter A, Chapter 5, expires September 1, 2019, unless continued in existence as provided by Chapter 325 (Texas Sunset Act), Government Code. Deletes existing text

regarding recommendations required to be reported to the 80th Legislature by the Sunset Advisory Commission.

SECTION 3. Amends Section 5.02(c), Alcoholic Beverage Code, to make a nonsubstantive change.

SECTION 4. Amends Subchapter A, Chapter 5, Alcoholic Beverage Code, by adding Section 5.022, as follows:

Sec. 5.022. TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a member of TABC from voting, deliberating, or being counted as a member in attendance at a commission meeting until the person completes a training program that complies with this section.

(b) Requires the training program to provide the person with certain information.

(c) Entitles a person appointed to TABC to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether attendance at the program occurs before or after the person qualifies for office.

SECTION 5. Amends Section 5.04, Alcoholic Beverage Code, as follows:

Sec. 5.04. New heading: PRESIDING OFFICER. Requires the governor to designate a member of TABC as the presiding officer of TABC to serve in that capacity at the pleasure of the governor.

SECTION 6. Amends Sections 5.05(c) through (f), Alcoholic Beverage Code, as follows:

(c) Makes a nonsubstantive change.

(d) Prohibits certain persons from being a member of TABC or an employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for certain purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (20 U.S.C. Section 201 et seq.), if the person or the person's spouse has certain associations with a Texas trade association.

(e) Redesignates Subsection (f) as (e). Redefines "Texas trade association."

SECTION 7. Amends Section 5.051, Alcoholic Beverage Code, as follows:

Sec. 5.051. GROUNDS FOR REMOVAL FROM THE COMMISSION. (a) Sets forth certain actions that constitute a ground for removal of a member of TABC.

(b) Makes nonsubstantive changes.

(c) Requires the presiding officer, rather than the chairman of TABC, to notify the governor and the attorney general that a potential ground for removal exists. Requires the administrator to notify the next highest ranking officer of TABC if the potential ground for removal involves the presiding officer, and requires the next highest ranking officer to then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 8. Amends Section 5.12, Alcoholic Beverage Code, as follows:

Sec. 5.12. New heading: DUTIES OF ADMINISTRATOR. Requires TABC to develop and implement policies that clearly separate the policy-making, rather than define the respective, responsibilities of TABC and the management responsibilities of the administrator, rather than the assistant administrator, and the staff of TABC.

SECTION 9. Amends Section 5.31, Alcoholic Beverage Code, as follows:

Sec. 5.31. GENERAL POWERS AND DUTIES. (a) Creates this subsection from existing text.

(b) Requires TABC to take certain actions.

SECTION 10. Amends Subchapter B, Chapter 5, Alcoholic Beverage Code, by adding Sections 5.361 and 5.362, as follows:

Sec. 5.361. ENFORCEMENT. (a) Requires TABC to develop a risk-based approach to conducting its enforcement activities that focuses on certain factors regarding violations of this code and other important factors.

(b) Requires TABC to develop benchmarks and goals to track key enforcement activities and the results of those activities. Requires TABC to track the number of violations detected by the enforcement activity, the amount of time spent on the enforcement activity, and any other information TABC considers necessary for each type of enforcement activity. Requires TABC to use the information collected under this subsection and other information to compare the enforcement performance of each region and to determine the most effective enforcement activities.

(c) Requires TABC to track, on a statewide and regional basis, the type of violations detected, the disposition of the violations, and the entities that committed the most serious violations.

(d) Requires TABC to compile detailed statistics and analyze trends related to its enforcement activities. Requires TABC to summarize the statistics and trends in a certain manner and make this summary available to the public, including by posting the information on TABC's Internet website.

Sec. 5.362. SCHEDULE OF SANCTIONS. (a) Requires TABC by rule to adopt a schedule of sanctions that may be imposed on a license or permit holder for violations of this code or rules adopted under this code. Requires TABC to ensure that the severity of the sanction imposed is appropriate to the type of violation that is the basis for disciplinary action.

(b) Requires the schedule of sanctions, for each violation for which a license or permit is suspended, to include the number of days a permit or license would be suspended and the corresponding civil penalty under Section 11.64.

(c) Requires TABC or the TABC administrator to consider certain circumstances regarding the violation in determining the appropriate sanction for a violation under the schedule.

(d) Requires the schedule to include certain information and allow certain deviations for mitigating circumstances.

(e) Requires TABC to develop policies to guide TABC staff in determining the circumstances when it is appropriate to deviate from the schedule of sanctions. Requires the policies to identify the circumstances when approval is required in order to deviate from the schedule.

(f) Requires TABC to make the schedule of sanctions available to the public, including by posting the schedule on TABC's Internet website.

SECTION 11. Amends Section 5.38, Alcoholic Beverage Code, as follows:

Sec. 5.38. QUALITY AND PURITY OF BEVERAGES. (a) Creates this subsection from existing text.

(b) Creates this subsection from existing text.

(c) Authorizes TABC to test the contents of any alcoholic beverage manufactured or sold in Texas to protect the public health and safety and to ensure that the product is accurately represented to the public and complies with state law and TABC rules.

SECTION 12. Amends Section 5.53, Alcoholic Beverage Code, as follows:

Sec. 5.53. New heading: PUBLIC INTEREST INFORMATION AND COMPLAINTS.

(a) Requires TABC to adopt rules that clearly define TABC's complaint process from the time the complaint is received until it is resolved.

(b) Requires TABC to make information describing its procedures for complaint investigation and resolution available to the public and appropriate state agencies, including by posting the information on TABC's Internet website. Deletes existing text requiring TABC to make information of public interest describing the functions of TABC's procedures by which complaints are filed with and resolved by TABC.

(c) Requires TABC by rule to adopt a standardized form for filing complaints against a licensed or permitted entity. Requires TABC to make the complaint form available to the public, including by posting the complaint form on TABC's Internet website.

(d) Redesignated from existing Subsection (b).

SECTION 13. Amends Section 5.54, Alcoholic Beverage Code, by amending Subsection (a) and adding Subsections (a-1) and (c), as follows:

(a) Requires TABC to maintain a system to promptly and efficiently act on complaints filed with TABC, rather than keep an information file about each complaint. Requires TABC to assign priorities to complaint investigations based on risk so that TABC handles the most serious complaints first.

(a-1) Requires TABC to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(c) Requires TABC to compile and report certain information regarding complaints, including making information about the nature and disposition of complaints publicly available and posted on TABC's Internet website.

SECTION 14. Amends Section 5.55, Alcoholic Beverage Code, as follows:

Sec. 5.55. New heading: ELECTRONIC PROCESSING OF LICENSES OR PERMITS.

(a) Requires TABC to expedite the processing for original and renewal applications for licenses and permits by using electronic means, including the Internet.

(b) and (c) Creates these subsections from existing text.

SECTION 15. Amends Subchapter B, Chapter 5, Alcoholic Beverage Code, by adding Sections 5.57, 5.58, 5.59, 5.60, and 5.61, as follows:

Sec. 5.57. MARKETING PRACTICES REGULATORY DECISIONS. (a) Requires TABC to develop a formal process for making policy decisions regarding marketing practices regulations and for communicating those decisions to TABC staff and the alcoholic beverage industry.

(b) Requires TABC to gather input from a diverse group of representatives of the alcoholic beverage industry regarding regulatory issues and interpretations of this code and TABC rules.

(c) Requires TABC to make a reasonable attempt to meet with certain alcoholic beverage industry representatives.

(d) Requires TABC to take into consideration recommendations of the industry representatives consulted under this section, document its policy decisions in a certain manner, and to make those documents available to regional staff and industry members through its Internet website, electronic mail, or TABC publications in making policy decisions regarding marketing practices regulations.

Sec. 5.58. INTERNAL AFFAIRS. (a) Requires the administrator to establish an office of internal affairs (office) to ensure fair and impartial investigations of alleged employee misconduct.

(b) Requires the administrator to appoint and directly oversee the head of the office.

(c) Provides that the office has original departmental jurisdiction over complaints involving TABC personnel.

(d) Requires the office to coordinate and be the central reporting point for all employee investigations. Authorizes the staff to initiate investigations of complaints, but requires staff to obtain the approval of the appropriate division director or higher-level executive management to investigate an employee when no complaint has been made.

(e) Requires the head of the office to report to the administrator, at least once each month, information about the nature and status of each complaint investigated by the office of internal affairs.

(f) Requires the head of the office to submit a quarterly report to the members of TABC. Requires the report to contain certain information.

(g) Requires TABC to inform the public about how to file a complaint against an employee of TABC and the steps TABC takes to address complaints against employees.

Sec. 5.59. USE OF TECHNOLOGY. Requires TABC to implement a policy requiring TABC to use appropriate technological solutions to improve TABC's ability to perform its functions. Requires the policy to ensure that the public is able to interact with TABC on the Internet.

Sec. 5.60. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION PROCEDURES. (a) Requires TABC to develop and implement a policy to encourage the use of certain procedures.

(b) Requires TABC's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires TABC to designate a trained person to perform certain duties.

Sec. 5.61. REPORT TO LEGISLATURE ON CERTAIN ENFORCEMENT EFFORTS.

(a) Requires TABC to report to the legislature, not later than October 31 of each even-numbered year, on TABC's enforcement efforts concerning alcohol sales and consumption during prohibited hours.

(b) Requires the report to specify the number of individuals or establishments found to be engaging in certain actions or violations.

(c) Requires TABC to report the information required by Subsection (b) on a statewide basis and for each region and major metropolitan area.

SECTION 16. Amends Subchapter A, Chapter 11, Alcoholic Beverage Code, by adding Section 11.042, as follows:

Sec. 11.042. HEALTH RISKS WARNING SIGN. (a) Requires TABC by rule to require the holder of a permit authorizing the sale of alcoholic beverages for on-premises consumption to display a warning sign on the door to each restroom on the permitted premises that informs the public of the risks of drinking alcohol during pregnancy.

(b) Requires TABC's rules to specify the language of the warning and the size and graphic design of the sign, including font size and type.

SECTION 17. Amends Section 11.64(a), Alcoholic Beverage Code, to require TABC or its administrator, when authorized to suspend a license or permit under this code, to give the licensee or permittee the opportunity to pay a civil penalty rather than have the permit or license suspended, unless certain violations are the reason for the suspensions, including a violation of Section 32.17(a)(2), 32.17(a)(3), 101.04, the sale or offer for sale of an alcoholic beverage during hour prohibited by Chapter 105, or consumption or the permitting of consumption of an alcoholic beverage on the person's licensed or permitted premises during hours prohibited by Chapter 105 or Section 32.17(a)(7).

SECTION 18. Amends Subchapter A, Chapter 61, Alcoholic Beverage Code, by adding Section 61.111, as follows:

Sec. 61.111. HEALTH RISKS WARNING SIGN. (a) Requires TABC by rule to require the holder of a license authorizing the sale of beer for on-premises consumption to display a warning sign on the door to each restroom on the licensed premises that informs the public of the risks of drinking alcohol during pregnancy.

(b) Requires TABC's rule to specify the language of the warning and the size and graphic design of the sign, including font size and type.

SECTION 19. Amends Section 101.04, Alcoholic Beverage Code, as follows:

Sec. 101.04. New heading: CONSENT TO INSPECTION; PENALTY. (a) Creates this subsection from existing text. Makes nonsubstantive changes.

(b) Provides that a person commits an offense if the person refuses to allow TABC, an authorized representative of TABC, or a peace officer to enter a licensed or permitted premises as required by Subsection (a). Provides that an offense under this section is a Class A misdemeanor.

SECTION 20. Amends Section 101.67, Alcoholic Beverage Code, by amending Subsections (a) and (d) and adding Subsection (e), as follows:

(a) Prohibits shipping, importing, manufacturing, distributing, selling, or storing any beer, ale, or malt liquor in Texas unless certain actions are taken, including a sample of the beverage or a sample of the same type and quality of beverage has been first submitted to an independent, reputable laboratory or TABC for analysis to verify the alcohol content of the beverage. Deletes existing text allowing the sale or distribution of certain beverages if the sample has been found by TABC or a TABC representative to comply with all rules and regulations of TABC relating to quality, purity, and standards of measure.

(d) Requires TABC to issue a certificate of approval upon receipt of a fee in an amount that is sufficient to cover the cost of administering this section, rather than \$25, if it is determined that the product analysis provided by the independent laboratory or the sample, and the label, required by Subsection (a) comply with the provisions of this code and the rules of TABC.

(e) Requires TABC by rule to establish the procedure for accepting analysis of beer, ale, or malt liquor by an independent laboratory under Subsection (a)(1).

SECTION 21. Amends Subchapter D, Chapter 101, Alcoholic Beverage Code, by adding Section 101.671, as follows:

Sec. 101.671. PRIOR APPROVAL OF DISTILLED SPIRITS AND WINE. (a) Requires an authorized permittee to register distilled spirits or wine with TABC before he or she is authorized to ship or sell those beverages into the state. Requires the registration application to include a certificate of label approval issued by the United States Alcohol and Tobacco Tax and Trade Bureau for the product.

(b) Requires TABC to approve the product under this section and issue a letter to that effect to the permittee on registration of a certificate of label approval issued by the United States Alcohol and Tobacco Tax and Trade Bureau. Prohibits TABC from requiring additional approval for the product unless there is a change to the label or product that requires reissuance of the federal certificate of label approval.

(c) Prohibits TABC from registering a product unless the application is accompanied by a fee set by TABC in an amount that is sufficient to cover the cost of administering this section. Requires a copy of the registration to be kept on file in the office of TABC.

(d) Requires TABC by rule to establish procedures for accepting federal certificates of label approval for registration under this section.

SECTION 22. Amends Section 102.32(d), Alcoholic Beverage Code, to require a wholesale dealer to report in writing, including by electronic mail or facsimile transmission, if a retailer becomes delinquent in the payment of an account for liquor. Makes nonsubstantive changes.

SECTION 23. Amends Section 105.06, Alcoholic Beverage Code, by adding Subsection (a-1), to provide that a licensed or permitted premises is a public place for the purposes of this section.

SECTION 24. Amends Chapter 105, Alcoholic Beverage Code, by adding Section 105.10, as follows:

Sec. 105.10. PENALTY. (a) Provides that a person commits an offense if certain violations of this chapter or Section 32.17(a)(7) are committed.

(b) Provides that an offense under this section is a Class A misdemeanor.

SECTION 25. Amends 49.02, Penal Code, by adding Subsection (a-1), to provide that a premises licensed or permitted under the Alcoholic Beverage Code is a public place for the purposes of this section.

SECTION 26. Repealer: Section 37.11 (Submission Of Samples And Labels), Alcoholic Beverage Code.

SECTION 27. (a) Requires TABC to adopt the rules and policies necessary to implement Sections 5.361, 5.362, 11.042, 61.111, and 101.671, Alcoholic Beverage Code, as added by this Act, and Sections 5.53, 5.54, and 101.67, Alcoholic Beverage Code, as amended by this Act, not later than March 1, 2008.

(b) Requires TABC to adopt the rules and policies necessary to implement Sections 5.57, 5.58, 5.59, and 5.60, Alcoholic Beverage Code, as added by this Act, and Section 5.12, Alcoholic Beverage Code, as amended by this Act, not later than March 1, 2008.

SECTION 28. Makes the application of the change in law made by Section 5.022, Alcoholic Beverage Code, as added by this Act, and Sections 5.05 and 5.051, Alcoholic Beverage Code, as amended by this Act, prospective.

SECTION 29. Makes the application of a change in law made by this Act related to the filing or investigation of a complaint under Chapter 5, Alcoholic Beverage Code, as amended by this Act, prospective.

SECTION 30. Makes the application of Section 11.64, Alcoholic Beverage Code, as amended by this Act, prospective.

SECTION 31. Makes the application of Sections 101.04 and 105.06, Alcoholic Beverage Code, and Section 49.02, Penal Code, as amended by this Act, and Section 105.10, Alcoholic Beverage Code, as added by this Act, prospective.

SECTION 32. Effective date: September 1, 2007.