

BILL ANALYSIS

S.B. 904
By: Brimer
Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Alcoholic Beverage Commission (TABC) 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 duties including 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, 2007, 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 place the agency's focus more squarely on issues of public safety. S.B. 904 continues the agency for 12 years, until September 1, 2019, 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, SECTION 12, SECTION 16, SECTION 18, SECTION 20, SECTION 21 and SECTION 27 of this bill.

ANALYSIS

SECTION 1. Amends Section 1.04, Alcoholic Beverage Code, by adding Subdivision (25).

Subdivision (25) defines "executive management" to include the administrator, the assistant administrator, individuals who report directly to the administrator, and the head of each division of the commission.

SECTION 2. Amends Section 5.01(b), Alcoholic Beverage Code, by extending the expiration of the Texas Alcoholic Beverage Commission and Subchapter A, Chapter 5 until September 1, 2019. Deletes language that would have required the sunset commission to limit its review to the appropriateness of recommendations made by the sunset commission to the 79th Legislature and deletes language that authorized the sunset commission to include any recommendations it considers appropriate in its report to the 80th Legislature.

SECTION 3. Amends Section 5.02(c), Alcoholic Beverage Code, to require appointments to the commission be made without regard to race, color, disability, sex, religion, age, or national origin of the appointees.

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

Sec. 5.022. TRAINING. (a) Provides that a person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

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(b) Requires the training program to provide the person with information regarding: (1) the legislation that created the commission and the commission's programs, functions, rules, and budget; (2) the results of the most recent formal audit of the commission; (3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and (4) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

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

SECTION 5. Amends Section 5.04, Alcoholic Beverage Code, by renaming the header to read: PRESIDING OFFICER. Requires the governor to designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

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

(c) Reconstructs the wording of the phrase "A person may not serve as a member of the commission" to the phrase "A person may not be a member of the commission".

(d) Provides that a person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if: (1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of alcoholic beverages; or (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of alcoholic beverages.

(e) In this section, defines "Texas trade association" as a cooperative and voluntarily joined statewide association of businesses or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

SECTION 7. Amends Section 5.051, Alcoholic Beverage Code, by providing (a) it is a ground for removal from the commission that a member: (1) does not have at the time of taking office the qualifications required by Section 5.02; (2) does not maintain during service on the commission the qualifications required by Section 5.02; (3) is ineligible for membership under Section 5.05; (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or (5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.

(b) Provides that the validity of an action of the commission is not affected by the fact that it was taken when a ground for removal of a commission member exists.

(c) Requires the administrator to notify the presiding officer of the commission of the potential ground for removal of the member of the commission, if the administrator has knowledge that a potential ground for removal exists. Requires the presiding officer to then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the administrator shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 8. Amends Section 5.12, Alcoholic Beverage Code, by deleting the word CONCURRENT from the header and by requiring the commission to develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the administrator and the staff of the commission.

SECTION 9. Amends Section 5.31, Alcoholic Beverage Code, by adding subsection (b) requiring the commission to (1) protect the public safety by deterring and detecting violations of this code; (2) promote legal and responsible alcohol consumption; (3) ensure fair competition within the alcoholic beverage industry; (4) ensure consistent, predictable, and timely enforcement of this code; (5) ensure a consistent, predictable, and timely licensing and permitting process; (6) promote and foster voluntary compliance with this code; and (7) communicate the requirements of this code clearly and consistently; makes a conforming change.

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 the commission to develop a risk-based approach to conducting its enforcement activities that focuses on: (1) detecting serious violations that impact public safety; (2) monitoring entities that have a history of complaints and violations of this code; and (3) any other factors the commission considers important.

(b) Requires the commission to develop benchmarks and goals to track key enforcement activities and the results of those activities. Requires the commission, for each type of enforcement activity, to track the number of violations detected by the enforcement activity, the amount of time spent on the enforcement activity, and any other information the commission considers necessary. Requires the commission 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 the commission 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 the commission to compile detailed statistics and analyze trends related to its enforcement activities. Requires the commission to (1) summarize the statistics and trends for executive management on a monthly basis and for the members of the commission on a quarterly basis; and (2) make summary information available to the public, including by posting the information on the commission's Internet website.

Sec. 5.362. SCHEDULE OF SANCTIONS. (a) Requires the commission, 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. In adopting the schedule of sanctions, the commission shall ensure that the severity of the sanction imposed is appropriate to the type of violation that is the basis for disciplinary action.

(b) Provides that the schedule of sanctions must include the number of days a permit or license would be suspended and the corresponding civil penalty under Section 11.64 for each violation for which a license or permit may be suspended.

(c) Requires the commission or administrator to consider the following in determining the appropriate sanction for a violation under the schedule: (1) the type of license or permit held by the person who committed the violation; (2) the type of violation; (3) any aggravating or ameliorating circumstances concerning the violation; and (4) the license or permit holder's previous violations of this code.

(d) Requires the schedule of sanctions to: (1) allow deviations from the schedule for clearly established mitigating circumstances, including circumstances listed in Section 11.64(c), or aggravating circumstances; and (2) include a list of the most common violations by members of the manufacturing, wholesaling, and retailing tiers of the alcoholic beverage industry and the sanctions assessed for those violations.

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

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

SECTION 11. Amends Section 5.38, Alcoholic Beverage Code, by adding subsection (c) authorizing the commission to test the contents of any alcoholic beverage manufactured or sold in the state to protect the public health and safety and to ensure that the product: (1) is accurately represented to the public; and (2) complies with state laws and commission rules; makes conforming changes.

SECTION 12. Amends Section 5.53, Alcoholic Beverage Code, by renaming the header to read: PUBLIC INTEREST INFORMATION AND COMPLAINTS and by (a) requiring the commission to adopt rules that clearly define the agency's complaint process from the time the complaint is received until it is resolved. (b) requiring the commission to make information describing its procedures for complaint investigation and resolution available to the public and appropriate state agencies, including posting the information on the commission's Internet website. (c) requiring the commission, by rule, to adopt a standardized form for filing complaints against a licensed or permitted entity. Requires the commission to make the complaint form available to the public, including by posting the complaint form on the commission's Internet website; redesignates subsection (b) to subsection (d).

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

(a) Requires the commission to maintain a system to promptly and efficiently act on complaints filed with the commission. Requires the commission to assign priorities to complaint investigations based on risk so that the commission handles the most serious complaints first.

(a-1) Requires the commission 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 the commission to (1) compile: (A) detailed statistics and analyze trends on complaint information, including: (i) the nature of the complaints, (ii) their disposition; and (iii) the length of time to resolve complaints; and (B) complaint information on a statewide and regional basis; (2) report the information on a monthly basis to executive management and on a quarterly basis to members of the commission; and (3) make general information about the nature and disposition of complaints available to the public, including by posting the information on the commission's Internet website.

SECTION 14. Amends Section 5.55, Alcoholic Beverage Code, by renaming the header to read: ELECTRONIC PROCESSING OF LICENSES OR PERMITS and (a) requiring the commission to expedite the processing of original and renewal applications for licenses and permits by using electronic means, including the Internet; makes conforming changes.

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

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

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

(c) Requires the commission to make a reasonable attempt to meet with alcoholic beverage industry representatives from: (1) the manufacturing, distribution, and retail tiers of the industry; and (2) the liquor, beer, and wine segments of the industry.

(d) Requires the commission, in making policy decisions regarding marketing practices regulations, to: (1) take into consideration recommendations of the industry representatives consulted under this section; (2) document its policy decisions by: (A) using a precedents manual, or (B) drafting formal advisories; and (3) make those documents available to regional staff and industry members through its Internet website, electronic mail, or commission publications.

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

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

(c) Provides that the office of internal affairs has original departmental jurisdiction over complaints involving commission personnel.

(d) Requires the office of internal affairs staff to coordinate and be the central reporting point for all employee investigations. The staff may initiate investigations of complaints; however, the staff must 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 of internal affairs to report, at least once each month, to the administrator information about the nature and status of each complaint investigated by the office of internal affairs.

(f) Requires the head of the office of internal affairs to submit a quarterly report to the members of the commission. The report must contain a summary of information relating to investigations conducted under this section, including an analysis of the number, type, and outcome of investigations, trends in the investigations, and recommendations to avoid future complaints.

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

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

Sec. 5.60 ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION PROCEDURES.

(a) Requires the commission to develop and implement a policy to encourage the use of: (1) negotiated rulemaking procedure under Chapter 2008, Government Code, for the adoption of commission rules; and (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) Requires the commission's procedure 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 the commission to designate a trained person to: (1) coordinate the implementation of the policy under Subsection (a); (2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and (3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

Sec. 5.61. REPORT TO LEGISLATURE ON CERTAIN ENFORCEMENT EFFORTS. (a) Requires the commission to, no later than October 31 of each even-numbered year, report to the legislature on the commission's enforcement efforts concerning alcohol sales and consumption during prohibited hours.

(b) Provides that the report must specify the number of individuals or establishments found to be: (1) engaging in an activity for which a permit or license is required by this code without the required permit or license; (2) selling, serving, or offering for sale an alcoholic beverage during prohibited hours in violation of Chapter 105 or Section 11.61(b) (23), 32.17(a) (7), or 61.71(a) (7); (3) consuming or permitting consumption of an alcoholic beverage on a permitted or licensed premises during prohibited hours in violation of Chapter 105 or Section 11.61(b) (22), 32.17(a) (7), or 61.71(a) (18); or (4) violating Section 11.61(b) (2), 32.17(a) (2), 32.17(a) (3), 61.71(a) (14), or 101.04 by: (A) refusing to allow entry to a permitted or licensed premises by an inspector, investigator, or law enforcement official, (B) refusing to furnish information to an inspector, investigator, or law enforcement official; or (C) interfering with or refusing to permit an inspection or investigation being conducted by an inspector, investigator, or law enforcement official.

(c) Requires the commission 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:

Section 11.042. HEALTH RISKS WARNING SIGN. (a) Requires the commission, 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 the commission'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, by providing additional violations including Section 32.17(a) (2), 32.17(a) (3), 101.04, the sale or offer for sale of an alcoholic beverage during hours prohibited by Chapter 105, 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) that disqualify a permittee or licensee from paying a civil penalty instead of having their permit or license suspended under this code.

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

Section 61.111. HEALTH RISKS WARNING SIGN. (a) Requires the commission, 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 of each restroom on the licensed premises that informs the public of the risks of drinking alcohol during pregnancy.

(b) Requires the commission's rules 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, by renaming the header to read: CONSENT TO INSPECTION; PENALTY and (a) by providing that accepting a license or permit, the holder consents to the commission, an authorized representative of the commission, or a peace officer entering the licensed premises at any time to conduct an investigation or inspect the premises for purposes of performing any duty imposed by this code.

(b) Creates a Class A misdemeanor offense if the person refuses to allow the commission, an authorized representative of the commission, or a peace officer to enter a licensed or permitted premises as required by Subsection (a).

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

(a) Provides that no person may ship or cause to be shipped into the state, import into the state, manufacture and offer for sale in the state, or distribute, sell, or store in the state any beer, ale, or malt liquor unless: (1) 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 the commission for analysis to verify the alcohol content of the beverage.

(d) Requires the commission 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, if the commission determines 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 the commission.

(e) Requires the commission, by rule, to establish the procedures 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) Provides that before an authorized permittee may ship distilled spirits or wine into the state or sell distilled spirits or wine within the state, the permittee must register the distilled spirits or wine with the commission. The registration application must include a certificate of label approval issued by the United States Alcohol and Tobacco Tax and Trade Bureau for the product.

(b) Provides that on registration of a certificate of label approval issued by the United States Alcohol and Tobacco Tax and Trade Bureau, the commission shall approve the product under this section and issue a letter to that effect to the permittee. The commission may not require 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. The commission shall accept the certificate of label approval as constituting full compliance with any applicable standards adopted under Section 5.38 regarding quality, purity, and identity of distilled spirits or wine.

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

(d) Requires the commission, 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 immediately report, in writing, including by electronic mail or facsimile transmission, to the commission or administrator, if a retailer becomes delinquent in payment of an account for liquor.

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

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

Sec. 105.10. PENALTY. (a) Creates an offense if the person, in violation of this chapter or Section 32.17(a) (7): (1) sells or offers for sale an alcoholic beverage during prohibited hours; or (2) consumes or permits the consumption of an alcoholic beverage on the person's licensed or permitted premises during prohibited hours.

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

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

SECTION 26. Repeals Section 37.11, Alcoholic Beverage Code.

SECTION 27. (a) Provides that not later than March 1, 2008, the Texas Alcoholic Beverage Commission shall 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.

(b) Provides that not later than March 1, 2008, the Texas Alcoholic Beverage Commission shall 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.

SECTION 28. Provides that 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, regarding the prohibitions on, qualifications of, and training for members of the Texas Alcoholic Beverage Commission does not affect the entitlement of a member serving on the commission immediately before September 1, 2007, to continue to serve and function as a member of the commission for the remainder of the member's term. The change in law described by this section applies only to a member appointed on or after September 1, 2007.

SECTION 29. Provides that the 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, applies only to a complaint filed with the Texas Alcoholic Beverage Commission on or after the effective date of this Act. A complaint filed before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 30. Provides that Section 11.64, Alcoholic Beverage Code, as amended by this Act, applies only to conduct that is a basis for suspension of a license or permit that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 31. (a) Provides that 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, apply only to an offense committed on or after the effective date of this Act. For the purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) Provides that an offense committed before the effective date of this Act is covered by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 32. Effective date: September 1, 2007.

EFFECTIVE DATE

September 1, 2007.