

By: Gallegos

S.B. No. 508

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain licensing agents; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 2, Alcoholic Beverage Code, is amended by adding Chapter 7 to read as follows:

CHAPTER 7. LICENSING AGENTS

SUBCHAPTER A. GENERAL REQUIREMENTS

Sec. 7.001. DEFINITION. In this chapter, "licensing agent" means a person who assists another person in obtaining or renewing a license or permit issued under this code or otherwise represents a person before the commission with respect to a license or permit issued under this code.

Sec. 7.002. APPLICABILITY OF CHAPTER. This chapter does not apply to:

(1) an attorney licensed in this state;

(2) a person who holds a license or permit issued under this code or an employee of a person who holds a license or permit issued under this code acting on behalf of the license or permit holder; or

(3) an applicant for a license or permit issued under this code or an employee of an applicant for a license or permit issued under this code acting on the applicant's own behalf.

[Sections 7.003-7.050 reserved for expansion]

1 SUBCHAPTER B. COMMISSION POWERS AND DUTIES

2 Sec. 7.051. LICENSING AGENT TRAINING COURSE. (a) The
3 commission shall establish a licensing agent training course. The
4 course must include, at a minimum, instruction regarding:

5 (1) all permits and licenses issued by the commission
6 and the activities authorized for each permit and license; and

7 (2) the procedures for filing permit and license
8 applications with the commission.

9 (b) The commission shall teach the training course at least
10 four times each year in different locations throughout the state.

11 (c) The commission shall charge a fee to each individual
12 taking the course. The commission shall adopt the course fee in an
13 amount that in the aggregate is sufficient to cover the cost of
14 teaching the course.

15 Sec. 7.052. INVESTIGATION OF COMPLAINTS. The administrator
16 may, on the administrator's motion, and shall, on the written
17 complaint of a person aggrieved by the action of a licensing agent,
18 investigate an alleged violation of this chapter by a licensing
19 agent or an applicant.

20 [Sections 7.053-7.100 reserved for expansion]

21 SUBCHAPTER C. LICENSING

22 Sec. 7.101. LICENSE REQUIRED. A person may not act as a
23 licensing agent unless the person holds a license issued under this
24 chapter.

25 Sec. 7.102. ELIGIBILITY FOR LICENSING AGENT LICENSE. A
26 person is eligible for a licensing agent license if the person:

27 (1) is at least 18 years of age;

1 (2) is a citizen of the United States or a legal alien;
2 (3) holds a high school diploma or a high school
3 equivalency certificate; and
4 (4) has completed a training course approved by the
5 commission under Section 7.051.

6 Sec. 7.103. PERSON INELIGIBLE FOR LICENSE. The commission
7 may not issue a licensing agent license to a person who has an
8 interest in any permit or license issued under Title 3.

9 Sec. 7.104. APPLICATION FOR LICENSE. An applicant for a
10 license under this chapter must:

11 (1) submit an application on a form provided by the
12 commission; and

13 (2) include with the application the application fee
14 set by the commission.

15 Sec. 7.105. CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE
16 APPLICANTS. (a) An applicant for a license under this chapter must
17 submit to the commission, in addition to satisfying the other
18 requirements of this subchapter, a complete and legible set of
19 fingerprints, on a form prescribed by the commission, for the
20 purpose of obtaining criminal history record information from the
21 Department of Public Safety and the Federal Bureau of
22 Investigation.

23 (b) On receipt of an application for a license under this
24 chapter, the commission shall conduct a criminal background check
25 on the applicant.

26 (c) An applicant is not eligible for a license under this
27 chapter if the applicant, in the five years preceding the date of

1 the application, has been finally convicted of a misdemeanor
2 involving moral turpitude or a felony.

3 Sec. 7.106. LICENSE ISSUANCE. The commission shall issue a
4 license under this chapter if the commission determines that the
5 applicant:

6 (1) has paid the license fee set by the commission; and

7 (2) qualifies to be licensed under this chapter.

8 Sec. 7.107. LICENSE NOT REQUIRED FOR CERTAIN EMPLOYEES. An
9 employee of a licensing agent who only performs administrative
10 duties is not required to hold a license under this chapter.

11 [Sections 7.108-7.150 reserved for expansion]

12 SUBCHAPTER D. LICENSE EXPIRATION AND RENEWAL

13 Sec. 7.151. LICENSE EXPIRATION. (a) A license issued under
14 this chapter expires on the second anniversary of the date the
15 license is issued. The commission by rule shall adopt a system
16 under which licenses expire on various dates during the year.

17 (b) A person may not engage in activities that require a
18 license if the person's license has expired and is not renewed as
19 provided by this subchapter.

20 Sec. 7.152. LICENSE RENEWAL. (a) A person may renew an
21 unexpired license by paying the required renewal fee to the
22 commission before the expiration date of the license.

23 (b) At least 30 days before the expiration of a person's
24 license, the commission shall send written notice of the impending
25 license expiration to the person at the person's last known address
26 according to the commission's records.

27 (c) A person whose license has been expired for 90 days or

1 less may renew the license by paying to the commission a renewal fee
2 that is equal to one and one-half times the normally required
3 renewal fee.

4 (d) A person whose license has been expired for more than 90
5 days but less than one year may renew the license by paying to the
6 commission a renewal fee that is equal to two times the normally
7 required renewal fee.

8 (e) A person whose license has been expired for one year or
9 more may not renew the license. The person may obtain a license by
10 complying with the requirements and procedures for obtaining a new
11 license.

12 (f) On receipt of an application to renew a license issued
13 under this chapter, the commission may conduct a criminal
14 background check under Section 7.105.

15 [Sections 7.153-7.200 reserved for expansion]

16 SUBCHAPTER E. PRACTICE OF LICENSING AGENT

17 Sec. 7.201. COLLECTION OF LICENSE AND PERMIT FEES. (a) All
18 permit or license fees collected by a licensing agent on behalf of
19 another person must be paid by check made payable to the commission.

20 (b) A licensing agent shall deposit all license and permit
21 fees collected by the agent with the commission not later than the
22 20th day after the date the licensing agent receives the fee.

23 [Sections 7.202-7.250 reserved for expansion]

24 SUBCHAPTER F. BOND

25 Sec. 7.251. BOND REQUIRED. The holder of a licensing agent
26 license shall file a bond with the commission.

27 Sec. 7.252. BOND TERMS AND CONDITIONS. (a) A bond filed

1 under this subchapter must:

2 (1) be in an amount set by the commission;

3 (2) be conditioned on the licensing agent performing
4 duties required by this chapter; and

5 (3) be payable to the commission as trustee for any
6 person who may be entitled to recover under the bond.

7 (b) The bond must be made with:

8 (1) a solvent surety company doing business in this
9 state; or

10 (2) two or more good and sufficient sureties, each of
11 whom:

12 (A) is a resident of this state; and

13 (B) makes an affidavit stating that the surety
14 has assets, not subject to exemption, that are at least equal to the
15 amount of the bond.

16 Sec. 7.253. BOND APPROVAL. The bond must be approved by the
17 commission.

18 Sec. 7.254. SUIT ON BOND. (a) A person damaged by a breach
19 of a condition of the bond may bring suit and recover under the
20 bond.

21 (b) The suit must be filed in the county in which the
22 licensing agent maintains an office.

23 (c) A bond is not void on first recovery and may be sued on
24 until the total amount is exhausted.

25 (d) The commission may require the licensing agent to file a
26 new bond in an amount set by the commission if the amount of the bond
27 is reduced. The new bond is liable for all future contracts entered

1 into by the licensing agent and a license or permit holder under
2 this code.

3 (e) A licensing agent who does not file a new bond under
4 Subsection (d) may not act as a licensing agent in this state.

5 [Sections 7.255-7.300 reserved for expansion]

6 SUBCHAPTER G. DENIAL OF LICENSE AND DISCIPLINARY PROCEDURES

7 Sec. 7.301. DENIAL OF APPLICATION; SUSPENSION OR
8 REVOCAION OF LICENSE. The commission may deny an application for a
9 license or suspend or revoke the license of a licensing agent for:

10 (1) violating this chapter or a rule adopted under
11 this chapter;

12 (2) obtaining a license through false or fraudulent
13 representation;

14 (3) making a substantial misrepresentation in an
15 application for a licensing agent license;

16 (4) engaging in a continued and flagrant course of
17 misrepresentation; or

18 (5) failing to account for or remit, within a
19 reasonable time, money belonging to another that is in the
20 licensing agent's possession, commingling money of another person
21 with the licensing agent's money, or failing to keep the money of
22 another person in an escrow or trust account.

23 Sec. 7.302. HEARING BY STATE OFFICE OF ADMINISTRATIVE
24 HEARINGS. (a) Before denying an application for a license or
25 suspending or revoking a license, the commission must:

26 (1) set the matter for a hearing to be conducted by the
27 State Office of Administrative Hearings; and

1 (2) before the hearing date, notify the applicant in
2 writing of:

3 (A) the charges alleged or the question to be
4 determined at the hearing; and

5 (B) the date and location of the hearing.

6 (b) At a hearing under this section, the applicant may:

7 (1) be present and be heard in person or by counsel;
8 and

9 (2) have an opportunity to offer evidence by oral
10 testimony, affidavit, or deposition.

11 (c) Written notice may be served by personal delivery to the
12 applicant or by certified mail to the last known mailing address of
13 the applicant.

14 [Sections 7.303-7.350 reserved for expansion]

15 SUBCHAPTER H. CRIMINAL PENALTIES

16 Sec. 7.351. PRACTICING WITHOUT LICENSE; OFFENSE. (a) A
17 person commits an offense if the person acts as a licensing agent
18 without a license.

19 (b) An offense under this section is a Class B misdemeanor.

20 Sec. 7.352. GENERAL CRIMINAL PENALTY. (a) A person commits
21 an offense if the person violates a provision of this chapter or a
22 rule adopted by the commission under this chapter for which a
23 penalty is not provided.

24 (b) An offense under this section is a Class C misdemeanor.

25 SECTION 2. On or before November 1, 2007, the Alcoholic
26 Beverage Commission shall adopt all rules necessary to implement
27 Chapter 7, Alcoholic Beverage Code, as added by this Act.

1 SECTION 3. A person is not required to hold a license under
2 Chapter 7, Alcoholic Beverage Code, as added by this Act, before
3 January 1, 2008, to engage in activity regulated by that chapter.

4 SECTION 4. (a) Except as provided by Subsection (b) of this
5 section, this Act takes effect September 1, 2007.

6 (b) Sections 7.101, 7.351, and 7.352, Alcoholic Beverage
7 Code, as added by this Act, take effect January 1, 2008.