

By: Gallegos

S.B. No. 1219

A BILL TO BE ENTITLED

AN ACT

1
2 relating to citizenship and residency requirements for alcoholic
3 beverage license and permit holders.

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

5 SECTION 1. Section 1.04(20), Alcoholic Beverage Code, is
6 amended to read as follows:

7 (20) "Citizen [~~of Texas~~]" means [~~and "citizen of this~~
8 ~~state" mean~~] a person who is a citizen of [~~both~~] the United States
9 [~~and Texas~~].

10 SECTION 2. Section 1.07(a), Alcoholic Beverage Code, is
11 amended to read as follows:

12 (a) For purposes of any provision of this code that requires
13 an applicant for a license or permit to be a United States citizen
14 [~~or Texas citizen~~], regardless of whether it applies to an
15 individual, a percentage of stockholders of a corporation, or
16 members of a partnership, firm, or association, an individual who
17 is not a United States citizen but who legally resides in the United
18 States [~~state~~] is treated as a United States citizen [~~and a citizen~~
19 ~~of Texas~~].

20 SECTION 3. Section 6.03(a), Alcoholic Beverage Code, is
21 amended to read as follows:

22 (a) It is the public policy of this state and a purpose of
23 this section to require that [~~except as provided in Subsection (k)~~
24 ~~of this section or otherwise in this code,~~] a permit or license may

1 not be issued under this code to a person who is [~~was~~] not a citizen
2 [~~of this state for a one-year period preceding the date of the~~
3 ~~filing of the person's application for a license or permit. In that~~
4 ~~regard, the legislature makes the findings in Subsections (b)~~
5 ~~through (j) of this section]. Notwithstanding any other provision
6 of this code, Texas residency is not required to hold a permit or
7 license under this code.~~

8 SECTION 4. Section 11.46(a), Alcoholic Beverage Code, is
9 amended to read as follows:

10 (a) The commission or administrator may refuse to issue an
11 original or renewal permit with or without a hearing if it has
12 reasonable grounds to believe and finds that any of the following
13 circumstances exists:

14 (1) the applicant has been convicted in a court of
15 competent jurisdiction of the violation of any provision of this
16 code during the two years immediately preceding the filing of the
17 applicant's [~~his~~] application;

18 (2) five years have not elapsed since the termination,
19 by pardon or otherwise, of a sentence imposed on the applicant for
20 the conviction of a felony;

21 (3) within the six-month period immediately preceding
22 the [~~his~~] application the applicant violated or caused to be
23 violated a provision of this code or a rule or regulation of the
24 commission which involves moral turpitude, as distinguished from a
25 technical violation of this code or of the rule;

26 (4) the applicant failed to answer or falsely or
27 incorrectly answered a question in an original or renewal

1 application;

2 (5) the applicant is indebted to the state for any
3 taxes, fees, or payment of penalty imposed by this code or by rule
4 of the commission;

5 (6) the applicant is not of good moral character or the
6 applicant's [~~his~~] reputation for being a peaceable, law-abiding
7 citizen in the community where the applicant [~~he~~] resides is bad;

8 (7) the applicant is a minor;

9 (8) the place or manner in which the applicant may
10 conduct the applicant's [~~his~~] business warrants the refusal of a
11 permit based on the general welfare, health, peace, morals, and
12 safety of the people and on the public sense of decency;

13 (9) the applicant is in the habit of using alcoholic
14 beverages to excess or is physically or mentally incapacitated;

15 (10) the applicant will sell liquor unlawfully in a
16 dry area or in a manner contrary to law or will knowingly permit an
17 agent, servant, or employee to do so;

18 (11) the applicant is not a [~~United States~~] citizen
19 [~~or has not been a citizen of Texas for a period of one year~~
20 ~~immediately preceding the filing of his application~~], unless the
21 applicant [~~he~~] was issued a permit or renewal permit on or before
22 September 1, 1948, and has at some time been a [~~United States~~]
23 citizen;

24 (12) the applicant does not provide an adequate
25 building available at the address for which the permit is sought
26 before conducting any activity authorized by the permit;

27 (13) the applicant is residentially domiciled with a

1 person whose permit or license has been cancelled for cause within
2 the 12 months immediately preceding the date of his present
3 application;

4 (14) the applicant has failed or refused to furnish a
5 true copy of the applicant's [~~his~~] application to the commission's
6 district office in the district in which the premises for which the
7 permit is sought are located; or

8 (15) during the six months immediately preceding the
9 filing of the application the premises for which the permit is
10 sought have been operated, used, or frequented for a purpose or in a
11 manner that is lewd, immoral, or offensive to public decency.

12 SECTION 5. Section 11.61(b), Alcoholic Beverage Code, is
13 amended to read as follows:

14 (b) The commission or administrator may suspend for not more
15 than 60 days or cancel an original or renewal permit if it is found,
16 after notice and hearing, that any of the following is true:

17 (1) the permittee has been finally convicted of a
18 violation of this code;

19 (2) the permittee violated a provision of this code or
20 a rule of the commission;

21 (3) the permittee was finally convicted of a felony
22 while holding an original or renewal permit;

23 (4) the permittee made a false or misleading statement
24 in connection with the permittee's [~~his~~] original or renewal
25 application, either in the formal application itself or in any
26 other written instrument relating to the application submitted to
27 the commission, its officers, or employees;

1 (5) the permittee is indebted to the state for taxes,
2 fees, or payment of penalties imposed by this code, by a rule of the
3 commission, or by Chapter 183, Tax Code;

4 (6) the permittee is not of good moral character or the
5 permittee's [~~his~~] reputation for being a peaceable and law-abiding
6 citizen in the community where the permittee [~~he~~] resides is bad;

7 (7) the place or manner in which the permittee
8 conducts the permittee's [~~his~~] business warrants the cancellation
9 or suspension of the permit based on the general welfare, health,
10 peace, morals, and safety of the people and on the public sense of
11 decency;

12 (8) the permittee is not maintaining an acceptable
13 bond;

14 (9) the permittee maintains a noisy, lewd, disorderly,
15 or unsanitary establishment or has supplied impure or otherwise
16 deleterious beverages;

17 (10) the permittee is insolvent or mentally or
18 physically unable to carry on the management of the permittee's
19 [~~his~~] establishment;

20 (11) the permittee is in the habit of using alcoholic
21 beverages to excess;

22 (12) the permittee knowingly misrepresented to a
23 customer or the public any liquor sold by the permittee [~~him~~];

24 (13) the permittee was intoxicated on the licensed
25 premises;

26 (14) the permittee sold or delivered an alcoholic
27 beverage to an intoxicated person;

1 (15) the permittee possessed on the licensed premises
2 an alcoholic beverage that the permittee [~~he~~] was not authorized by
3 the permittee's [~~his~~] permit to purchase and sell;

4 (16) a package store or wine only package store
5 permittee transported or shipped liquor, or caused it to be
6 transported or shipped, into a dry state or a dry area within this
7 state;

8 (17) the permittee is residentially domiciled with a
9 person who has a financial interest in an establishment engaged in
10 the business of selling beer at retail, other than a mixed beverage
11 establishment, except as authorized by Section 22.06, 24.05, or
12 102.05 [~~of this code~~];

13 (18) the permittee is residentially domiciled with a
14 person whose permit or license was cancelled for cause within the
15 12-month period preceding the permittee's [~~his~~] own application;

16 (19) the permittee is not a citizen [~~of the United~~
17 ~~States or has not been a citizen of Texas for a period of one year~~
18 ~~immediately preceding the filing of his application~~], unless the
19 permittee [~~he~~] was issued an original or renewal permit on or before
20 September 1, 1948, and has been a [~~United States~~] citizen at some
21 time;

22 (20) the permittee permitted a person to open a
23 container of alcoholic beverage or possess an open container of
24 alcoholic beverage on the licensed premises unless a mixed beverage
25 permit has been issued for the premises;

26 (21) the permittee failed to promptly report to the
27 commission a breach of the peace occurring on the permittee's

1 licensed premises;

2 (22) the permittee consumed an alcoholic beverage or
3 permitted one to be consumed on the licensed premises at a time when
4 the consumption of alcoholic beverages is prohibited by this code;
5 or

6 (23) the permittee sold, served, or delivered an
7 alcoholic beverage at a time when its sale is prohibited.

8 SECTION 6. Section 24.01(c), Alcoholic Beverage Code, is
9 amended to read as follows:

10 (c) The qualifications for a wine only package store permit
11 whose premises is in a wet area permitting the legal sale of wine
12 for off-premises consumption only as determined by an election held
13 under Section 251.19 are the same as the qualifications for a permit
14 issued under Chapter 26 [~~of this code, including the citizenship~~
15 ~~requirements prescribed by Section 6.03~~].

16 SECTION 7. Section 28.13(e), Alcoholic Beverage Code, is
17 amended to read as follows:

18 (e) The provisions of Section 109.53 that relate to
19 citizenship [~~residency~~] requirements and compliance with Texas
20 laws of incorporation or registration do not apply to the holders of
21 a mixed beverage permit under this section.

22 SECTION 8. Section 47.05, Alcoholic Beverage Code, is
23 amended to read as follows:

24 Sec. 47.05. PLANT PLAN REQUIREMENTS. Plant [~~If the plant~~]
25 plans submitted by the applicant must establish to the satisfaction
26 of the commission that the plant is not capable of producing alcohol
27 for beverage purposes. A [~~and if no~~] change in the plant may not be

1 [is] made without commission approval[, ~~the permit for which~~
2 ~~application is made shall be considered to be an industrial permit~~
3 ~~as that term is used in Section 109.53 of this code~~].

4 SECTION 9. Section 61.42(a), Alcoholic Beverage Code, is
5 amended to read as follows:

6 (a) The county judge shall refuse to approve an application
7 for a license as a distributor or retailer if the county judge ~~he~~
8 has reasonable grounds to believe and finds that:

9 (1) the applicant is a minor;

10 (2) the applicant is indebted to the state for any
11 taxes, fees, or penalties imposed by this code or by rule of the
12 commission;

13 (3) the place or manner in which the applicant for a
14 retail dealer's license may conduct the applicant's ~~his~~ business
15 warrants a refusal of a license based on the general welfare,
16 health, peace, morals, safety, and sense of decency of the people;

17 (4) the applicant is in the habit of using alcoholic
18 beverages to excess or is mentally or physically incompetent;

19 (5) the applicant is not a ~~[United States]~~ citizen ~~[or~~
20 ~~has not been a citizen of Texas for a period of one year immediately~~
21 ~~preceding the filing of his application]~~, unless the applicant ~~he~~
22 was issued an original or renewal license on or before September 1,
23 1948;

24 (6) the applicant was finally convicted of a felony
25 during the five years immediately preceding the filing of the
26 applicant's ~~his~~ application;

27 (7) the applicant is not of good moral character or the

1 applicant's [~~his~~] reputation for being a peaceable, law-abiding
2 citizen in the community where the applicant [~~he~~] resides is bad;
3 or

4 (8) as to a corporation, it is not incorporated under
5 the laws of this state or another state and properly registered with
6 the secretary of state, or at least 51 percent of the corporate
7 stock is not owned at all times by persons who individually are
8 qualified to obtain a license, except that this subdivision does
9 not apply to a holder of any renewal of a distributor's license
10 which was in effect on January 1, 1953, or to an applicant for a beer
11 retailer's on-premise license for a railway car.

12 SECTION 10. Section 109.53, Alcoholic Beverage Code, is
13 amended to read as follows:

14 Sec. 109.53. CITIZENSHIP OF PERMITTEE; CONTROL OF PREMISES;
15 SUBTERFUGE OWNERSHIP; ETC. A [~~No~~] person who is [~~has~~] not [~~been~~]
16 citizen may not [~~of Texas for a period of one year immediately~~
17 ~~preceding the filing of his application therefor shall be eligible~~
18 ~~to~~] receive a permit under this code. A [~~No~~] permit may not [~~except~~
19 ~~a brewer's permit, and such other licenses and permits as are~~
20 ~~necessary to the operation of a brewer's permit, shall~~] be issued to
21 a corporation unless the same be incorporated under the laws of the
22 state or another state and properly registered with the secretary
23 of state and unless at least 51 percent of the stock of the
24 corporation is owned at all times by citizens [~~who have resided~~
25 ~~within the state for a period of one year and~~] who possess the
26 qualifications required of other applicants for permits; provided,
27 however, that the restrictions contained in the preceding clause do

1 ~~[shall]~~ not apply to domestic or foreign corporations that were
2 engaged in the legal alcoholic beverage business in this state
3 under charter or permit prior to August 24, 1935. Partnerships,
4 firms, and associations applying for permits must ~~[shall]~~ be formed
5 under the laws of this state or another state and properly
6 registered with the secretary of state and must be composed wholly
7 of citizens possessing the qualifications above enumerated. Any
8 corporation (except carrier) holding a permit under this code that
9 violates ~~[which shall violate]~~ any provisions hereof, or any rule
10 or regulation promulgated hereunder, is ~~[shall be]~~ subject to
11 forfeiture of its charter and it shall be the duty of the attorney
12 general, when any such violation is called to the attorney
13 general's ~~[his]~~ attention, to file a suit for such cancellation in a
14 district court of Travis County. A ~~[Such provisions of this section~~
15 ~~as require Texas citizenship or require incorporation in Texas~~
16 ~~shall not apply to the holders of agent's, industrial, and carrier's~~
17 ~~permits. No]~~ person may not ~~[shall]~~ sell, warehouse, store or
18 solicit orders for any liquor in any wet area without first having
19 procured a permit of the class required for such privilege, or
20 consent to the use of or allow the person's ~~[his]~~ permit to be
21 displayed by or used by any person other than the one to whom the
22 permit was issued. It is the intent of the legislature to prevent
23 subterfuge ownership of or unlawful use of a permit or the premises
24 covered by such permit; and all provisions of this code shall be
25 liberally construed to carry out this intent, and it shall be the
26 duty of the commission or the administrator to provide strict
27 adherence to the general policy of preventing subterfuge ownership

1 and related practices hereinafter declared to constitute unlawful
2 trade practices. An [~~No~~] applicant for a package store permit or a
3 renewal of a package store permit may not [~~thereof shall have~~
4 ~~authority to~~] designate as "premise" and the commission or
5 administrator may [~~shall~~] not approve a lesser area than that
6 specifically defined as "premise" in Section 11.49(a) [~~of this~~
7 ~~code~~]. Every permittee shall have and maintain exclusive occupancy
8 and control of the entire licensed premises in every phase of the
9 storage, distribution, possession, and transportation and sale of
10 all alcoholic beverages purchased, stored or sold on the licensed
11 premises. Any device, scheme or plan that [~~which~~] surrenders
12 control of the employees, premises or business of the permittee to
13 persons other than the permittee is [~~shall be~~] unlawful. A [~~No~~]
14 minor, unless accompanied by the minor's [~~his or her~~] parent,
15 guardian, adult husband or adult wife, or other adult person into
16 whose custody the minor [~~he or she~~] has been committed for the time
17 by some court, may not [~~shall~~] knowingly be allowed on the premises
18 of the holder of a package store permit. The prohibition against
19 the presence of a minor on the premises of the holder of a package
20 store permit does not apply to the presence on the premises of the
21 holder or a person lawfully employed by the holder. Any package
22 store permittee who is [~~shall be~~] injured in the permittee's [~~his~~]
23 business or property by another package store permittee by reason
24 of anything prohibited in this section may institute suit in any
25 district court in the county wherein the violation is alleged to
26 have occurred to require enforcement by injunctive procedures
27 and/or to recover threefold the damages [~~by him~~] sustained by the

1 permittee; plus costs of suit including a reasonable attorney's
2 fee. The provisions prohibiting the licensing of only a portion of
3 a building as premise for a package store permit does [~~shall~~] not
4 apply to hotels as already defined in this code.

5 SECTION 11. Sections 1.07(b), 6.03(b) through (1), 6.05,
6 and 109.531, Alcoholic Beverage Code, are repealed.

7 SECTION 12. This Act takes effect September 1, 2007.