

## **BILL ANALYSIS**

C.S.H.B. 2105

By: Geren

Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The necessity of establishing regulations and licensing procedures for agents assisting applicants in applying for permits and licenses under the Texas Alcoholic Beverage Commission is highlighted by a number of complaints that arose several years ago regarding a business in Houston. In this case, one or more licensees were defrauded and suffered losses as a result of that business's practices. A bill was introduced during the 79th Legislature, Regular Session, 2007, to address this incident, but the bill failed to pass.

C.S.H.B. 2105 creates a licensing agency permit, which authorizes the permit holder to assist applicants for licenses and permits issued by the commission. The bill sets out requirements for issuing such a permit and provides that the permit holder is responsible for the acts of its employees. The bill establishes sanctions, including a criminal penalty for violations of the prescribed practices.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTIONS 1 and 2 of this bill.

### **ANALYSIS**

C.S.H.B. 2105 amends the Alcoholic Beverage Code to create a licensing agency permit, which authorizes the permit holder to enter into a written agreement with an applicant for a license or permit issued under the Alcoholic Beverage Code to provide agreed upon services to the applicant with respect to obtaining or renewing such a permit or license. The bill authorizes the permit holder to charge and collect a separate payment for services provided to the applicant; receive and hold in trust for an applicant fees and surcharges required to be submitted with an application for a permit or license and funds to obtain a bond related to a permit or license; and submit the permit or license application and fees, surcharges, and any bond received or obtained on behalf of an applicant. The bill authorizes the Texas Alcoholic Beverage Commission by rule to establish the minimum terms and conditions of the agreement and to adopt a standard form agreement for use by licensing agency permit holders that meets the requirements of these provisions. The bill requires the commission to publish any standard form agreement on the commission's Internet website.

C.S.H.B. 2105 establishes the eligibility requirements for a licensing agency permit and sets forth requirements for a licensing agency employee training course. The bill requires the individual holding the permit or each officer, owner, director, and manager of the entity holding the permit to successfully complete such a course and provides for the issuance of a certificate of completion by the commission. The bill provides that the annual fee for a licensing agency permit is \$1,500 and that no local fee is authorized for the permit.

C.S.H.B. 2105 establishes grounds for which the commission is authorized to refuse or deny an application for an original or renewal permit. The bill provides that existing laws and

commission rules relating to alcoholic beverage permits apply to an application for a licensing agency permit, except as provided by the commission by rule.

C.S.H.B. 2105 requires an applicant for a licensing agency permit to file a bond with the commission in an amount set by the commission in accordance with these provisions and conditioned on the permit holder's compliance with these provisions, and sets forth requirements for the commission relating to rulemaking, claims procedures, and setting the amount of the bond, which may not exceed \$200,000.

C.S.H.B. 2105 authorizes the commission or its administrator to cancel or suspend an original or renewal licensing agency permit and sets forth the grounds for such actions after notice and hearing. The bill makes it a Class B misdemeanor for a person to misrepresent that the person is authorized to engage in activities as a licensing agent when the person is not, and for a person who does not hold and is not exempt from holding a licensing agency permit to engage in or offer to engage in licensing agent activities. The bill makes this provision effective September 1, 2010.

C.S.H.B. 2105 exempts from the requirements for a licensing agency permit an attorney licensed in Texas or another state, a person working under the supervision of a licensed attorney, a person who is engaged in licensing agency activities exclusively on behalf of an applicant for an alcoholic beverage permit or license in which the person holds or has a direct or indirect interest, or an agent or employee of an applicant for such a license or permit who is engaged in a licensing agency activity exclusively on behalf of the applicant.

C.S.H.B. 2105 requires the commission to adopt all rules necessary to implement the bill's provisions on or before July 1, 2010, and establishes that a person is not required to hold a licensing agency permit before September 1, 2010, to engage in activity regulated by these provisions.

#### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 2105 differs from the original by creating a licensing agency permit, issued and administered by the Texas Alcoholic Beverage Commission, whereas the original creates a licensing agent license under the Texas Department of Licensing and Regulation.

C.S.H.B. 2105 adds provisions not in the original specifying the authorized activities for the permit holder and the requirements for the written agreement between the permit holder and an applicant for an alcoholic beverage license or permit.

C.S.H.B. 2105 differs from the original by exempting from licensing agency permit requirements an attorney licensed in another state, a person working under the supervision of a licensed attorney, a person engaged in licensing agency activity exclusively on behalf of an applicant for an alcoholic beverage license or permit in which the person holds or has a direct or indirect interest, and an agent or employee of an applicant for such a license or permit who is engaged in the activity exclusively on behalf of the applicant, whereas the original exempts from licensing agent license requirements a person who holds an alcoholic beverage license or permit or an employee of a person who holds such a license or permit acting on behalf of the license or permit holder, and an applicant for such a license or permit or an employee of the applicant acting on the applicant's own behalf.

C.S.H.B. 2105 differs from the original by setting out requirements for a licensing agency employee training course, rather than a licensing agent training course as in the original, and by specifying that the content for the course includes requirements and procedures for filing permit and license applications, fees, surcharges, and bonds with the commission, whereas the original requires the licensing agent training course to include procedures for filing permit and license applications. The substitute adds a course requirement not included in the original relating to the fiduciary duties owed by a licensing agency to an applicant on whose behalf the licensing agency acts and to the commission.

C.S.H.B. 2105 adds provisions not in the original requiring the commission to issue a certificate of completion for the licensing agency employee training course and specifying that the certificate expires on the second anniversary of the date the certificate is issued. The substitute omits a provision in the original requiring the fee charged for the training course to be in an amount sufficient to cover the cost of teaching the course. The substitute adds provisions not in the original specifying a deadline for the individual holding the licensing agency permit or each officer, owner, director, and manager of the entity that holds the permit to successfully complete the training course and obtain the required certificate of completion, and providing an exemption from the training requirement.

C.S.H.B. 2105 differs from the original by including as conditions for eligibility for a licensing agency permit that the individual, in addition to being a U.S. citizen who is lawfully present in the United States, is authorized to engage in the work authorized under the bill's provisions, and is not disqualified under the provisions of the bill or other provisions of the Alcoholic Beverage Code. The substitute adds a provision not in the original specifying that a legal entity is eligible for a licensing agency permit if each officer, owner, director, and manager meets the permit qualifications. The bill removes a provision in the original making a person ineligible for a licensing agent license if the person has a substantial ownership interest in any alcoholic beverage permit or license.

C.S.H.B. 2105 differs from the original by setting an annual fee of \$1,500 for a licensing agency permit and specifying that no local fee is authorized for such a permit, whereas the original provides for a licensing agent license application fee set by the department. The bill removes a provision requiring an applicant for such a license to submit an application on a form provided by the department, accompanied by the fee.

C.S.H.B. 2105 differs from the original by authorizing the commission or its administrator to refuse an original or renewal application for a licensing agency permit on certain grounds with or without a hearing and to cancel or suspend a permit after notice and hearing, whereas the original authorizes the department to deny an application for a licensing agent license or suspend or revoke a license on certain grounds after a hearing conducted by the State Office of Administrative Hearings.

C.S.H.B. 2105 adds a provision not in the original establishing that, except as provided by the commission by rule, the provisions of the Alcoholic Beverage Code and commission rules generally applicable to alcoholic beverage permits apply to an application for or permit issued under the bill's provisions.

C.S.H.B. 2105 differs from the original by making it a Class B misdemeanor for a person to misrepresent that the person is authorized to engage in licensing agency activities when the person is not or if the person does not hold a license agency permit and is not exempt from the licensing requirements and offers to engage in or engages in licensing agency activities, whereas the original makes it a Class B misdemeanor to act as a licensing agent without a license and makes it a Class C misdemeanor to violate a provision of the bill or a rule adopted by the department under the bill's provisions for which a penalty is not provided.

C.S.H.B. 2105 differs from the original by requiring an applicant for a licensing agency permit to file a bond with the commission in an amount set by the commission and sets out requirements for the bond, whereas the original requires the holder of a licensing agent license to file with the department an errors and omissions insurance policy insuring the applicant against liability for damage to persons occurring as a result of the licensee's actions, and sets out the terms and conditions for such a policy.

C.S.H.B. 2105 omits provisions in the original relating to the deposit of license and permit fees collected by a licensing agent on behalf of another person; requirements for obtaining criminal history record information for license applicants; criteria for issuing a license and renewing a license; the term of the license; the investigation of complaints against a licensing agent; and an exemption from license requirements for a person who only performs administrative duties.

C.S.H.B. 2105 differs from the original by requiring the commission by July 1, 2010, to adopt all rules necessary to implement the bill's provisions, whereas the original requires the department to adopt all necessary rules by November 1, 2009. The substitute differs from the original by establishing that a person is not required to hold a licensing agency permit before September 1, 2010, to engage in activity regulated by the substitute's provisions, whereas the original specifies that a person is not required to hold a licensing agent license before January 1, 2010, to engage in activity regulated by the original's provisions. The substitute differs from the original by making its provision relating to a criminal penalty effective September 1, 2010, whereas the original makes its provisions relating to criminal penalties effective January 1, 2010.