

By: Solomons

H.B. No. 1772

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 Title 3 or otherwise represents a person before the commission with respect to a license or permit issued under Title 3.

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 Title 3 or an employee of a person who holds a license or permit issued under Title 3 acting on behalf of the license or permit holder; or

(3) an applicant for a license or permit issued under Title 3 or an employee of an applicant for a license or permit issued under Title 3 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 licenses and permits issued by the commission  
6 and the activities authorized for each license and permit; and

7           (2) the procedures for filing license and permit  
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 and

3           (3) has completed a training course approved by the  
4 commission under Section 7.051.

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

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

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

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

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

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

25           (c) An applicant is not eligible for a license under this  
26 chapter if the applicant, in the five years preceding the date of  
27 the application, has been finally convicted of a misdemeanor

1 involving moral turpitude or a felony.

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

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

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

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

10 [Sections 7.108-7.150 reserved for expansion]

11 SUBCHAPTER D. LICENSE EXPIRATION AND RENEWAL

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

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

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

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

26 (c) A person whose license has been expired for 90 days or  
27 less may renew the license by paying to the commission a renewal fee

1 that is equal to one and one-half times the normally required  
2 renewal fee.

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

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

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

14 [Sections 7.153-7.200 reserved for expansion]

15 SUBCHAPTER E. PRACTICE OF LICENSING AGENT

16 Sec. 7.201. COLLECTION OF LICENSE AND PERMIT FEES.

17 (a) Each license or permit fee collected by a licensing agent on  
18 behalf of another person must be paid by check made payable to the  
19 commission.

20 (b) A licensing agent shall deposit each license or permit  
21 fee 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 not to exceed  
3 \$200,000;

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

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

8 (b) The bond must be made with:

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

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

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

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

17 (c) The commission may set the amount of the bond according  
18 to a sliding scale adopted by the commission by rule that is based  
19 on the dollar value of the licensing agent's business.

20 Sec. 7.253. BOND APPROVAL. The bond must be approved by the  
21 commission.

22 Sec. 7.254. SUIT ON BOND. (a) A person damaged by a breach  
23 of a condition of the bond may bring suit and recover under the bond  
24 only an amount equal to the fees the person paid to the licensing  
25 agent, including the fee required for the person's license or  
26 permit application.

27 (b) The suit must be filed in the county in which the

1 licensing agent maintains an office.

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

4 (d) The commission may require the licensing agent to file a  
5 new bond in an amount set by the commission if the amount of the bond  
6 is reduced. The new bond is liable for all future contracts entered  
7 into by the licensing agent and a license or permit holder under  
8 this code.

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

11 [Sections 7.255-7.300 reserved for expansion]

12 SUBCHAPTER G. DENIAL OF LICENSE AND DISCIPLINARY PROCEDURES

13 Sec. 7.301. DENIAL OF APPLICATION; SUSPENSION OR REVOCATION  
14 OF LICENSE. The commission may deny an application for a license or  
15 suspend or revoke the license of a licensing agent for:

16 (1) violating this chapter or a rule adopted under  
17 this chapter;

18 (2) obtaining a license through false or fraudulent  
19 representation;

20 (3) making a substantial misrepresentation in an  
21 application for a licensing agent license;

22 (4) engaging in a continued and flagrant course of  
23 misrepresentation; or

24 (5) failing to account for or remit, within a  
25 reasonable time, money belonging to another that is in the  
26 licensing agent's possession, commingling money of another person  
27 with the licensing agent's money, or failing to keep the money of

1 another person in an escrow or trust account.

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

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

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

9 (A) the charges alleged or the question to be  
10 determined at the hearing; and

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

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

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

14 and

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

17 (c) Written notice may be served by personal delivery to the  
18 applicant or by certified mail to the last known mailing address of  
19 the applicant.

20 [Sections 7.303-7.350 reserved for expansion]

21 SUBCHAPTER H. CRIMINAL PENALTIES

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

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

26 Sec. 7.352. GENERAL CRIMINAL PENALTY. (a) A person  
27 commits an offense if the person violates a provision of this



1 chapter or a rule adopted by the commission under this chapter for  
2 which a penalty is not provided.

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

4 SECTION 2. On or before November 1, 2009, the Texas  
5 Alcoholic Beverage Commission shall adopt all rules necessary to  
6 implement Chapter 7, Alcoholic Beverage Code, as added by this Act.

7 SECTION 3. A person is not required to hold a license under  
8 Chapter 7, Alcoholic Beverage Code, as added by this Act, before  
9 January 1, 2010, to engage in activity regulated by that chapter.

10 SECTION 4. (a) Except as provided by Subsection (b) of  
11 this section, this Act takes effect September 1, 2009.

12 (b) Sections 7.101, 7.351, and 7.352, Alcoholic Beverage  
13 Code, as added by this Act, take effect January 1, 2010.