

By: Geren, Solomons

H.B. No. 2105

Substitute the following for H.B. No. 2105:

By: Chisum

C.S.H.B. No. 2105

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain licensing agents; providing a penalty.

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

SECTION 1. Subtitle A, Title 3, Alcoholic Beverage Code, is amended by adding Chapter 39 to read as follows:

CHAPTER 39. LICENSING AGENCY PERMIT

Sec. 39.01. AUTHORIZED ACTIVITIES. The holder of a licensing agency permit may:

(1) subject to Section 39.02, enter into an agreement with an applicant for a license or permit issued under this code to provide agreed upon services to the applicant with respect to obtaining or renewing a permit or license issued under this code;

(2) charge and collect a separate payment for services provided to the applicant;

(3) receive and hold in trust for an applicant:

(A) fees and surcharges required to be submitted with an application for a permit or license; and

(B) funds to obtain a bond related to a permit or license; and

(4) submit to the commission or assessor and collector of taxes the permit or license application and fees, surcharges, and any bond received or obtained on behalf of an applicant.

Sec. 39.02. WRITTEN AGREEMENTS. (a) An agreement

1 described by Section 39.01(1) must be in writing. The commission by
2 rule may establish the minimum terms and conditions of the
3 agreement.

4 (b) The commission may adopt a standard form agreement for
5 use by licensing agency permit holders that meets the requirements
6 of this chapter. The commission shall publish any standard form
7 agreement on the commission's Internet website.

8 Sec. 39.03. ELIGIBILITY FOR PERMIT. (a) An individual is
9 eligible for a licensing agency permit if the individual:

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

11 (2) is a citizen of the United States or is lawfully
12 present in the United States and authorized to engage in the work
13 authorized under this chapter; and

14 (3) is not disqualified under Section 39.07 or another
15 provision of this code.

16 (b) A legal entity is eligible for a licensing agency permit
17 if each officer, owner, director, and manager of the entity meets
18 the qualifications provided by Subsection (a).

19 Sec. 39.04. REQUIRED TRAINING. (a) Not later than the 90th
20 day after the date a licensing agency permit is issued, the
21 individual holding the permit or each officer, owner, director, and
22 manager of the entity that holds the permit must:

23 (1) successfully complete a licensing agency employee
24 training course as provided by Section 39.05; and

25 (2) obtain a licensing agency employee training course
26 certificate of completion issued by the commission.

27 (b) An employee or agent of a licensing agency permit holder

1 who engages in an activity described by Section 39.01 must hold a
2 current licensing agency employee training course certificate of
3 completion issued by the commission.

4 (c) An employee or agent of a licensing agency permit holder
5 who is not engaged in processing permit or license applications is
6 not required to hold a certificate described by Subsection (b).

7 Sec. 39.05. LICENSING AGENCY EMPLOYEE TRAINING COURSE.

8 (a) The commission shall develop and implement a licensing agency
9 employee training course. The course must include instruction
10 regarding:

11 (1) permits and licenses issued by the commission and
12 the activities authorized for each permit and license;

13 (2) the requirements and procedures for filing permit
14 and license applications, fees, surcharges, and bonds with the
15 commission; and

16 (3) the fiduciary duties owed by a licensing agency to
17 an applicant on whose behalf the licensing agency acts and to the
18 commission.

19 (b) The commission by rule shall adopt a fee to be collected
20 from each person enrolled in a licensing agency employee training
21 course.

22 (c) The commission shall issue a certificate of completion
23 to each person who successfully completes the licensing agency
24 employee training course.

25 (d) A certificate of completion issued under this section
26 expires on the second anniversary of the date the certificate is
27 issued.

1 Sec. 39.06. FEE. (a) The annual fee for a licensing agency
2 permit is \$1,500.

3 (b) No local fee is authorized for a permit issued under
4 this chapter.

5 Sec. 39.07. REFUSAL OR DENIAL OF PERMIT. (a) The
6 commission or administrator may refuse an individual's original or
7 renewal application for a permit under this chapter, with or
8 without a hearing, if the commission or administrator has reason to
9 believe and finds that the individual:

10 (1) fails to meet or maintain the minimum
11 qualifications for a permit under this chapter; or

12 (2) holds or held a direct or indirect interest in a
13 permit or license issued by the commission that was canceled for
14 cause during the 12 months preceding the date the application was
15 filed with the commission.

16 (b) The commission or administrator may refuse a legal
17 entity's original or renewal application for a permit under this
18 chapter, with or without a hearing, if the commission or
19 administrator has reason to believe and finds that:

20 (1) the legal entity fails to meet or maintain the
21 minimum qualifications for a permit under this chapter; or

22 (2) any owner, officer, director, shareholder, or
23 manager of the legal entity held or had a direct or indirect
24 interest in a permit or license issued by the commission that was
25 canceled for cause during the 12 months preceding the date the
26 application was filed with the commission.

27 (c) The commission or administrator shall refuse an

1 original or renewal application for a permit under this chapter,
2 with or without a hearing, if the commission or administrator has
3 reason to believe and finds that the applicant:

4 (1) failed to submit the required application, fee, or
5 bond;

6 (2) is an individual and five years have not elapsed
7 since the termination of a sentence, probation, deferred
8 adjudication, or parole of the individual for a misdemeanor
9 involving moral turpitude or a felony; or

10 (3) is a legal entity and five years have not elapsed
11 since the termination of a sentence, probation, deferred
12 adjudication, or parole of any owner, officer, director,
13 shareholder, or manager of the legal entity for a misdemeanor
14 involving moral turpitude or a felony.

15 Sec. 39.08. APPLICABILITY OF OTHER CODE PROVISIONS. Except
16 as provided by the commission by rule, the provisions of this code
17 and commission rules generally applicable to permits apply to an
18 application for or permit issued under this chapter.

19 Sec. 39.09. LICENSING AGENCY BOND. (a) An applicant for a
20 licensing agency permit must file a bond with the commission in an
21 amount set by the commission in accordance with this section and
22 conditioned on the licensing agency permit holder's compliance with
23 this chapter.

24 (b) The commission shall adopt rules to:

25 (1) implement the requirements of this section;

26 (2) establish a claims procedure for persons entitled
27 to make a claim against a bond;

1 (3) establish a procedure for the commission to
2 approve claims and allocate and distribute all or part of a bond to
3 satisfy an approved claim; and

4 (4) establish a procedure to ensure that a bond is
5 restored and maintained in the amount required by the commission
6 following distribution of all or part of a bond.

7 (c) Subject to Subsection (d), the commission shall
8 determine the initial amount of the bond for each licensing agency
9 permit holder based on the applicant's good faith estimate of the
10 licensing agency's gross revenue from engaging in activities under
11 this chapter.

12 (d) The commission may not require a bond in an amount that
13 exceeds \$200,000.

14 (e) Subject to Subsection (d), the commission may adjust the
15 amount of a bond whenever necessary to maintain the bond amount and
16 to reflect a change in condition or risk including:

17 (1) the actual gross revenues of the permit holder;
18 (2) the permit holder's history of claims against a
19 bond; or

20 (3) the permit holder's history of compliance with
21 this code and commission rules.

22 Sec. 39.10. CANCELLATION OR SUSPENSION OF PERMIT. In
23 addition to the grounds for cancellation or suspension of a permit
24 under Section 11.61, the commission or administrator may cancel or
25 suspend an original or renewal licensing agency permit if it is
26 found after notice and hearing that:

27 (1) the permit holder failed to enter into a written

1 agreement with an applicant for an original or renewal license or
2 permit issued by the commission under this code, as required by
3 Section 39.02;

4 (2) the permit holder failed to provide an agreed upon
5 service to an applicant on whose behalf the permit holder agreed to
6 act;

7 (3) the permit holder charged and collected a fee for a
8 service that was not provided or collected a fee in excess of the
9 agreed upon fee;

10 (4) the permit holder failed to hold in trust
11 application fees or surcharges received on behalf of an applicant
12 or any funds received to obtain a bond on behalf of an applicant;

13 (5) the permit holder failed to submit to the
14 commission or assessor and collector of taxes a permit or license
15 application or fees, surcharges, or any bond required to be
16 submitted with an application received or obtained on behalf of an
17 applicant;

18 (6) the permit holder employed or compensated one or
19 more employees who violated a provision of this chapter or a
20 commission rule; or

21 (7) the permit holder employed or compensated a person
22 to engage in activities described by Section 39.01 who did not have
23 a current licensing agency employee certification.

24 Sec. 39.11. OFFENSE. (a) A person commits an offense if
25 the person:

26 (1) misrepresents that the person is authorized to
27 engage in activities under this chapter when the person is not; or

1 (2) does not hold a permit issued under this chapter
2 and is not exempt under Section 39.12 and:

3 (A) offers to engage in activities described by
4 Section 39.01; or

5 (B) engages in activities described by Section
6 39.01.

7 (b) An offense under this section is a Class B misdemeanor.
8 Sec. 39.12. EXEMPTION. The following persons may engage in
9 an activity described by Section 39.01 without obtaining a permit
10 under this chapter:

11 (1) an attorney licensed in this state or another
12 state;

13 (2) a person working under the supervision of a
14 licensed attorney;

15 (3) a person who is engaged in the activity
16 exclusively on behalf of an applicant for a permit or license in
17 which the person holds or has a direct or indirect interest; or

18 (4) an agent or employee of an applicant for a license
19 or permit who is engaged in the activity exclusively on behalf of
20 the applicant.

21 SECTION 2. On or before July 1, 2010, the Texas Alcoholic
22 Beverage Commission shall adopt all rules necessary to implement
23 Chapter 39, Alcoholic Beverage Code, as added by this Act.

24 SECTION 3. A person is not required to hold a permit under
25 Chapter 39, Alcoholic Beverage Code, as added by this Act, before
26 September 1, 2010, to engage in activity regulated by that chapter.

27 SECTION 4. (a) Except as provided by Subsection (b) of this

1 section, this Act takes effect September 1, 2009.

2 (b) Section 39.11, Alcoholic Beverage Code, as added by this
3 Act, takes effect September 1, 2010.