

By: Geren

H.B. No. 2105

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. DEFINITIONS. In this chapter:

(1) "Department" means the Texas Department of Licensing and Regulation.

(2) "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

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

3 [Sections 7.003-7.050 reserved for expansion]

4 SUBCHAPTER B. POWERS AND DUTIES

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

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

10 (2) the procedures for filing permit and license
11 applications with the commission.

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

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

18 Sec. 7.052. INVESTIGATION OF COMPLAINTS. The executive
19 director of the department shall, on the written complaint of a
20 person aggrieved by the action of a licensing agent, investigate an
21 alleged violation of this chapter by a licensing agent or an
22 applicant.

23 [Sections 7.053-7.100 reserved for expansion]

24 SUBCHAPTER C. LICENSING

25 Sec. 7.101. LICENSE REQUIRED. A person may not act as a
26 licensing agent unless the person holds a license issued under this
27 chapter.

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

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

4 (2) is a citizen of the United States or a legal alien;

5 and

6 (3) has completed a training course approved by the
7 department or commission.

8 Sec. 7.103. PERSON INELIGIBLE FOR LICENSE. The department
9 may not issue a licensing agent license to a person who has a
10 substantial ownership interest in any permit or license issued
11 under Title 3.

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

14 (1) submit an application on a form provided by the
15 department; and

16 (2) include with the application the application fee
17 set by the department.

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

26 (b) On receipt of an application for a license under this
27 chapter, the department shall conduct a criminal background check

1 on the applicant.

2 (c) An applicant is not eligible for a license under this
3 chapter if the applicant has not fully completed the terms of the
4 applicant's sentence after having been finally convicted of a
5 misdemeanor involving moral turpitude or a felony.

6 Sec. 7.106. LICENSE ISSUANCE. The department shall issue a
7 license under this chapter if the department determines that the
8 applicant:

- 9 (1) has paid the license fee set by the department; and
10 (2) qualifies to be licensed under this chapter.

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

14 [Sections 7.108-7.150 reserved for expansion]

15 SUBCHAPTER D. LICENSE EXPIRATION AND RENEWAL

16 Sec. 7.151. LICENSE EXPIRATION. (a) A license issued under
17 this chapter expires on the second anniversary of the date the
18 license is issued. The department by rule may adopt a system under
19 which licenses expire on various dates during the year.

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

23 Sec. 7.152. LICENSE RENEWAL. (a) A person may renew an
24 unexpired license by paying the required renewal fee to the
25 department before the expiration date of the license.

26 (b) At least 30 days before the expiration of a person's
27 license, the department shall send written notice of the impending

1 license expiration to the person at the person's last known address
2 according to the department's records.

3 (c) A person whose license has been expired for 90 days or
4 less may renew the license by paying to the department a renewal fee
5 that is equal to one and one-half times the normally required
6 renewal fee.

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

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

15 (f) On receipt of an application to renew a license issued
16 under this chapter, the department may conduct a criminal
17 background check under Section 7.105.

18 [Sections 7.153-7.200 reserved for expansion]

19 SUBCHAPTER E. PRACTICE OF LICENSING AGENT

20 Sec. 7.201. COLLECTION OF LICENSE AND PERMIT FEES. (a) All
21 permit or license fees collected by a licensing agent on behalf of
22 another person must be paid by check made payable to the appropriate
23 state or local governmental authority.

24 (b) A licensing agent shall deposit all license and permit
25 fees collected by the agent with the appropriate state or local
26 governmental authority not later than the 90th day after the date
27 the licensing agent receives the fee.

1 [Sections 7.202-7.250 reserved for expansion]

2 SUBCHAPTER F. INSURANCE REQUIREMENTS

3 Sec. 7.251. ERRORS AND OMISSIONS POLICY REQUIRED. The
4 holder of a licensing agent license shall file with the department
5 an errors and omissions insurance policy insuring the applicant
6 against liability for damage to persons occurring as a result of
7 actions performed in the course of business as a licensing agent.

8 Sec. 7.252. POLICY TERMS AND CONDITIONS. An insurance
9 policy filed under this subchapter must be in an amount set by the
10 department that is not less than \$25,000 for each injury with a
11 minimum total aggregate of \$75,000 for all injuries. The
12 department shall set the amount of insurance required under this
13 section on a sliding scale based on the licensing agent's volume of
14 business.

15 Sec. 7.253. POLICY APPROVAL. The department shall adopt
16 rules governing the requirements for the insurance policy required
17 by this subchapter.

18 [Sections 7.254-7.300 reserved for expansion]

19 SUBCHAPTER G. DENIAL OF LICENSE AND DISCIPLINARY PROCEDURES

20 Sec. 7.301. DENIAL OF APPLICATION; SUSPENSION OR REVOCATION
21 OF LICENSE. The department may deny an application for a license or
22 suspend or revoke the license of a licensing agent for:

23 (1) violating this chapter or a rule adopted under
24 this chapter;

25 (2) obtaining a license through false or fraudulent
26 representation;

27 (3) making a substantial misrepresentation in an

1 application for a licensing agent license;

2 (4) engaging in a continued and flagrant course of
3 misrepresentation; or

4 (5) failing to account for or remit, within a
5 reasonable time, money belonging to another that is in the
6 licensing agent's possession, commingling money of another person
7 with the licensing agent's money, or failing to keep the money of
8 another person in an escrow or trust account.

9 Sec. 7.302. HEARING BY STATE OFFICE OF ADMINISTRATIVE
10 HEARINGS. (a) Before denying an application for a license or
11 suspending or revoking a license, the department must:

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

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

16 (A) the charges alleged or the question to be
17 determined at the hearing; and

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

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

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

21 and

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

24 (c) Written notice may be served by personal delivery to the
25 applicant or by certified mail to the last known mailing address of
26 the applicant.

27 [Sections 7.303-7.350 reserved for expansion]

1 SUBCHAPTER H. CRIMINAL PENALTIES

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

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

6 Sec. 7.352. GENERAL CRIMINAL PENALTY. (a) A person commits
7 an offense if the person violates a provision of this chapter or a
8 rule adopted by the department under this chapter for which a
9 penalty is not provided.

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

11 SECTION 2. On or before November 1, 2009, the Texas
12 Department of Licensing and Regulation shall adopt all rules
13 necessary to implement Chapter 7, Alcoholic Beverage Code, as added
14 by this Act.

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

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

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