

## **BILL ANALYSIS**

C.S.H.B. 34  
By: Menéndez  
Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that certain commercial establishments, such as sexually oriented businesses and establishments that require payment, dues, or a mandatory purchase for admission on its premises, are not prohibited from allowing a customer to bring alcoholic beverages onto the premises for consumption after charging the admittance fee. These parties have expressed concern that such establishments are not adequately regulated by the Texas Alcoholic Beverage Commission (TABC). C.S.H.B. 34 seeks to address this concern by creating a public consumption permit for certain commercial establishments that would bring such an establishment under the regulatory purview of the TABC.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTIONS 2 and 7 of this bill.

### **ANALYSIS**

C.S.H.B. 34 amends the Alcoholic Beverage Code to require a person to obtain a public consumption permit if the person operates a sexually oriented business or a commercial establishment that requires payment, dues, or a mandatory purchase of any kind or amount for admission on the premises, either of which are not covered by or required to be covered by a license or permit authorizing the sale or service of alcoholic beverages; operates during hours when consumption of alcoholic beverages is prohibited; and allows a person to consume alcoholic beverages on the premises or bring or possess alcoholic beverages on the premises for consumption. The bill authorizes the holder of the permit to allow a person to consume alcoholic beverages on the permitted premises and bring or possess alcoholic beverages on the permitted premises for consumption. The bill establishes a \$3,000 annual state fee for the public consumption permit and specifies that a commercial establishment required to hold such a permit is a public place.

C.S.H.B. 34 sets out provisions relating to the issuance of the permit, refusal of the permit, cancellation and suspension of the permit, a required surety bond for the permit applicant, and a summary suspension of the permit. The bill specifies that statutory provisions relating to a common nuisance apply to a permit issued under these provisions.

C.S.H.B. 34, effective January 1, 2014, makes it a Class A misdemeanor for a person who operates a commercial establishment or that person's agent to allow a person to consume alcoholic beverages on the establishment's premises or bring or possess alcoholic beverages on the premises for consumption if the establishment is not covered by a public consumption permit as required by the bill's provisions.

C.S.H.B. 34 adds the holder of a permit authorizing the possession of alcoholic beverages to the permit holders required by TABC rule to display a warning sign on the door to each restroom on the permitted premises that informs the public of the risks of drinking alcohol during pregnancy

and to the permit and license holders required to display a sign relating to human trafficking that meets certain requirements.

C.S.H.B. 34 amends the Government Code to require a business with a public consumption permit to prominently display at each entrance to the business a sign that gives notice in both English and Spanish that it is unlawful for a concealed handgun license holder to carry a handgun on the premises, but excludes the permit holder from the requirement that the sign include on its face the number "51."

C.S.H.B. 34 amends the Penal Code to expand the conduct that constitutes the third degree felony offense of unlawful carrying of weapons to include intentionally, knowingly, or recklessly carrying a weapon on any premises issued a public consumption permit. The bill expands the conduct that constitutes the third degree felony offense of unlawful carrying of a handgun by a concealed handgun license holder to include intentionally, knowingly, or recklessly carrying a handgun, regardless of whether the handgun is concealed, on or about the license holder's person on the premises of a business that has a public consumption permit.

C.S.H.B. 34 requires the Texas Alcoholic Beverage Commission, not later than November 1, 2013, to adopt all rules necessary to implement the bill's provisions.

### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2013.

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

While C.S.H.B. 34 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Subtitle A, Title 3, Alcoholic Beverage Code, is amended by adding Chapter 56 to read as follows:

#### **CHAPTER 56. ON-PREMISES CONSUMPTION ONLY PERMIT**

**Sec. 56.01. AUTHORIZED ACTIVITIES.** The holder of an **on-premises consumption only permit** may allow a person to:

- (1) consume alcoholic beverages on the permitted premises; and**
- (2) bring alcoholic beverages onto or possess alcoholic beverages on the permitted premises for the purpose of consumption by the person on the permitted premises.**

#### **Sec. 56.02. ON-PREMISES CONSUMPTION ONLY PERMIT**

**REQUIRED.** A person is required to obtain a permit under this chapter if the person:

- (1) operates a commercial establishment described by Section 243.002, Local**

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle A, Title 3, Alcoholic Beverage Code, is amended by adding Chapter 56 to read as follows:

#### **CHAPTER 56. PUBLIC CONSUMPTION PERMIT**

**Sec. 56.01. AUTHORIZED ACTIVITIES.** The holder of a **public consumption permit** may allow a person to:

- (1) consume alcoholic beverages on the permitted premises; and**
- (2) bring alcoholic beverages onto or possess alcoholic beverages on the permitted premises for the purpose of consumption by the person on the permitted premises.**

#### **Sec. 56.02. PUBLIC CONSUMPTION PERMIT REQUIRED.**

A person is required to obtain a permit under this chapter if the person:

- (1) operates a commercial establishment:**
  - (A) described by Section 243.002, Local**

Government Code, other than an establishment exempt from regulation under Chapter 243, Local Government Code;

(2) allows persons to:

(A) consume alcoholic beverages on the establishment's premises; or

(B) bring alcoholic beverages onto or possess alcoholic beverages on the establishment's premises for the purpose of consumption on the establishment's premises; and

(3) is not covered by or required to be covered by a license or permit under this code authorizing the sale or service of alcoholic beverages.

Sec. 56.03. FEE. The annual state fee for an on-premises consumption only permit is \$3,000.

No equivalent provision.

No equivalent provision.

Government Code, other than an establishment exempt from regulation under Chapter 243, Local Government Code; or

(B) that requires payment, dues, or a mandatory purchase of any kind or amount to be admitted on the premises;

(2) allows persons to:

(A) consume alcoholic beverages on the establishment's premises; or

(B) bring alcoholic beverages onto or possess alcoholic beverages on the establishment's premises for the purpose of consumption on the establishment's premises;

(3) is not covered by or required to be covered by a license or permit under this code authorizing the sale or service of alcoholic beverages; and

(4) operates during hours when the public consumption of alcoholic beverages is prohibited under Section 105.06.

Sec. 56.03. FEE. The annual state fee for a public consumption permit is \$3,000.

Sec. 56.04. ISSUANCE OF PERMIT. A public consumption permit is issued by the commission or administrator. The qualifications of an applicant and the application for and issuance of the permit are governed by the same provisions that apply to the application for and issuance of a mixed beverage permit.

Sec. 56.05. REFUSAL OF PERMIT. (a) In this section, "applicant" includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock.

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

(1) the applicant has been convicted of the violation of any provision of this code during the two years immediately preceding the filing of the application;

(2) five years have not elapsed since the termination, by pardon or otherwise, of a

sentence imposed on the applicant for the conviction of a felony;

(3) within the six-month period immediately preceding the filing of the application the applicant violated or caused to be violated a provision of this code or a rule or regulation of the commission that involves moral turpitude, as distinguished from a technical violation of this code or of the rule;

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

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

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

(7) the applicant is a minor;

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

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

(10) the applicant is not a United States citizen;

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

(12) the applicant is residentially domiciled with a person whose permit or license has been canceled for cause within the 12 months immediately preceding the date of the applicant's present application;

(13) the applicant has failed or refused to furnish a true copy of the applicant's application to the commission's district office in the district in which the premises for which the permit is sought are located;

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

(15) the applicant does not hold a sales tax

permit, if required, for the place of business for which the public consumption permit is sought; or

(16) the applicant has had a license or permit canceled during the preceding 12 months as a result of a shooting, stabbing, or other violent act, or as a result of an offense involving drugs, prostitution, or trafficking of persons.

No equivalent provision.

Sec. 56.06. CANCELLATION AND SUSPENSION OF PERMIT. (a) In this section, "permittee" includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock.

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

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

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

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

(4) the permittee made a false and misleading statement in connection with the permittee's original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the commission or its officers or employees;

(5) the permittee does not hold a sales tax permit, if required, for the place of business covered by the permit;

(6) the permittee is not of good moral character or the permittee's reputation for being a peaceable, law-abiding citizen in the community where the permittee resides is bad;

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

(8) the permittee maintains a noisy, lewd, disorderly, or unsanitary establishment;

(9) the permittee is insolvent or mentally or physically unable to carry on the management of the permittee's

establishment;

(10) the permittee is in the habit of using alcoholic beverages to excess;

(11) the permittee was intoxicated on the licensed premises;

(12) the permittee allowed an intoxicated person to remain on the premises;

(13) the permittee is residentially domiciled with a person whose permit or license was canceled for cause within the 12-month period preceding the permittee's own application;

(14) the permittee is not a United States citizen;

(15) the permittee failed to promptly report to the commission a breach of the peace occurring on the premises; or

(16) the permittee consumed an alcoholic beverage or permitted one to be consumed on the premises at a time when the consumption of alcoholic beverages is prohibited by this code.

No equivalent provision.

Sec. 56.07. PERFORMANCE BOND. Notwithstanding Section 204.01 or any other provision of this code, a person applying for a permit under this chapter must file with the commission a surety bond, in an amount to be determined by the commission, conditioned on the permittee's conformance with the alcoholic beverage law. The bond is forfeited to the commission on the suspension of the permit for the first time under this chapter. Before the suspended permit may be reinstated, the permittee must furnish a second surety bond, similarly conditioned, in an amount greater than the initial surety bond, the amount to be determined by the commission. If the same permit is suspended under this chapter a second time, the bond is again forfeited to the commission. Before the suspended permit may be reinstated, the permittee shall furnish a third surety bond, similarly conditioned, in an amount greater than the second surety bond, the amount to be determined by the commission. If the same permit is suspended under this chapter a third time, the bond is again forfeited to the commission and the permit shall be canceled by the commission.

No equivalent provision.

Sec. 56.08. SUMMARY SUSPENSION. The commission or administrator without a hearing may for investigative purposes

summarily suspend a permit issued under this chapter for not more than seven days if the commission or administrator finds that a shooting, stabbing, or murder has occurred on the premises that is likely to result in a subsequent act of violence. Notice of the order suspending the permit shall be given to the permittee personally within 24 hours of the time the violent act occurs. If the permittee cannot be located, notice shall be provided by posting a copy of the order on the front door of the permitted premises.

Sec. 56.09. WARNING SIGN. The holder of a permit issued under this chapter shall comply with the requirements of Section 411.204, Government Code.

Sec. 56.10. COMMON NUISANCE. Notwithstanding Section 81.002, Chapter 81 applies to a permit issued under this chapter.

Sec. 56.11. PUBLIC PLACE. A commercial establishment that is required to hold a permit under this chapter is a public place.

Sec. 56.12. PENALTY. (a) A person who operates a commercial establishment or that person's agent commits an offense if:

(1) the person or that person's agent allows a person to:

(A) consume alcoholic beverages on the establishment's premises; or

(B) bring alcoholic beverages onto or possess alcoholic beverages on the establishment's premises for the purpose of consumption on the establishment's premises;

(2) the establishment is required to be covered by a public consumption permit under this chapter; and

(3) the establishment is not covered by a public consumption permit under this chapter.

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

No equivalent provision.

Sec. 56.04. PUBLIC PLACE. A commercial establishment that is required to hold a permit under this chapter is a public place.

Sec. 56.05. PENALTY. (a) A person who operates a commercial establishment or that person's agent commits an offense if:

(1) the person or that person's agent allows a person to:

(A) consume alcoholic beverages on the establishment's premises; or

(B) bring alcoholic beverages onto or possess alcoholic beverages on the establishment's premises for the purpose of consumption on the establishment's premises;

(2) the establishment is required to be covered by an on-premises consumption only permit under this chapter; and

(3) the establishment is not covered by an on-premises consumption only permit under this chapter.

(b) An offense under this section is a Class C misdemeanor, except that the offense is a:

(1) Class B misdemeanor if it is shown on the trial of the offense that the person has previously been convicted of an offense under this section one time; or

(2) Class A misdemeanor if it is shown on the trial of the offense that the person has previously been convicted of an offense

under this section two or more times.

No equivalent provision.

SECTION 2. Section 11.042(a), Alcoholic Beverage Code, is amended to read as follows:

(a) The commission by rule shall require the holder of a permit authorizing the sale or possession of alcoholic beverages for on-premises consumption to display a warning sign on the door to each restroom on the permitted premises that informs the public of the risks of drinking alcohol during pregnancy.

No equivalent provision.

SECTION 3. Section 104.07(a), Alcoholic Beverage Code, is amended to read as follows:

(a) The holder of a permit or license under Chapter 25, 26, 28, 32, 56, 69, or 71, other than the holder of a food and beverage certificate, shall display a sign containing the following notice in English and in Spanish:

WARNING: Obtaining forced labor or services is a crime under Texas law. Call the national human trafficking hotline: 1-888-373-7888. You may remain anonymous.

No equivalent provision.

SECTION 4. Section 411.204, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A business that has a permit issued under Chapter 56, Alcoholic Beverage Code, shall prominently display at each entrance to the business a sign that complies with the requirements of Subsection (c) other than the requirement that the sign include on its face the number "51".

No equivalent provision.

SECTION 5. Section 46.02(c), Penal Code, is amended to read as follows:

(c) An offense under this section is a felony of the third degree if the offense is committed on any premises licensed or issued a permit by this state for the sale or public consumption of alcoholic beverages.

No equivalent provision.

SECTION 6. Section 46.035(b), Penal Code, is amended to read as follows:

(b) A license holder commits an offense if

the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed, on or about the license holder's person:

(1) on the premises of a business that has:  
(A) a permit or license issued under Chapter 25, 28, 32, 69, or 74, Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on-premises consumption, as determined by the Texas Alcoholic Beverage Commission under Section 104.06, Alcoholic Beverage Code;

or

(B) a permit issued under Chapter 56, Alcoholic Beverage Code;

(2) on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the license holder is a participant in the event and a handgun is used in the event;

(3) on the premises of a correctional facility;

(4) on the premises of a hospital licensed under Chapter 241, Health and Safety Code, or on the premises of a nursing home licensed under Chapter 242, Health and Safety Code, unless the license holder has written authorization of the hospital or nursing home administration, as appropriate;

(5) in an amusement park; or

(6) on the premises of a church, synagogue, or other established place of religious worship.

SECTION 2. On or before November 1, 2013, the Texas Alcoholic Beverage Commission shall adopt all rules necessary to implement Chapter 56, Alcoholic Beverage Code, as added by this Act.

SECTION 7. Same as introduced version.

SECTION 3. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2013.

(b) Section 56.05, Alcoholic Beverage Code, as added by this Act, takes effect January 1, 2014.

SECTION 8. Substantially same as introduced version.