

BILL ANALYSIS

Senate Research Center
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H.B. 3307
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2005 the legislature amended the Alcoholic Beverage Code to grandfather the practice of contract brewing for breweries in business prior to 2005. Current law authorizes contracting arrangements for brewers in business prior to 2005, and allows an exception to the manufacturers permit requirement that only one brewery may be licensed at a single location. However, since that time, the Texas Alcoholic Beverage Commission has discovered that it has granted manufacturing permits to entities that engage in contract brewing that were not in business prior to 2005.

In addition, the federal regulatory agency, the Alcohol and Tobacco Tax and Trade Bureau, has authorized a new business arrangement called the alternating brewery proprietorship, in which two breweries agree to contract for a period of time to share a manufacturing premises where each is allowed to manufacture its own beer. This new arrangement, though authorized under federal law, is not currently recognized in Texas law because of the prohibition against operating more than one brewery at a single location.

H.B. 3307 addresses both of these problems by authorizing resident and nonresident manufacturers (producers of beer), and resident and nonresident brewers (producers of ale and malt liquor), to enter into contract brewing arrangements. Additionally the bill allows a holder of a manufacturers license to utilize the shared premises concept as long as the license holders are both licensed under the federal Alternate Brewing Proprietorship law.

Clear authorization of these business arrangements will continue to encourage the development of small businesses by allowing them to start up and become established through contract and shared manufacturing facility arrangements that can help minimize and mitigate the costs associated with owning or constructing a brewery.

H.B. 3307 amends current law relating to the manufacture of malt beverages, including under alternating brewery proprietorship and contract brewing arrangements.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTION 3 (Section 12.06, Alcoholic Beverage Code), SECTION 4 (Section 13.04, Alcoholic Beverage Code), SECTION 7 (Section 62.14, Alcoholic Beverage Code), and SECTION 8 (Section 63.05, Alcoholic Beverage Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.04, Alcoholic Beverage Code, by adding Subdivisions (26) and (27) to define "alternating brewery proprietorship" and "contract brewing arrangement."

SECTION 2. Amends Section 12.01(a), Alcoholic Beverage Code, to authorize the holder of a brewer's permit to fulfill certain duties, including to enter into an alternating brewery proprietorship or contract brewing arrangement as provided by Section 12.06 (Use of Facilities).

SECTION 3. Amends Section 12.06, Alcoholic Beverage Code, by amending Subsections (a), (b), and (c) and adding Subsections (e) and (f), as follows:

(a) Authorizes the holder of a brewer's or nonresident brewer's permit, rather than authorizes an entity or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state, to contract with the holder of a brewer's permit:

(1) to provide brewing services; or

(2) for the use of the permit holder's brewing facilities under an alternating brewery proprietorship if each party to the proprietorship has filed the appropriate Brewer's Notice and Brewer's Bond, as required by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury, and if applicable, has posted with the Texas Alcoholic Beverage Commission (TABC) a bond in an amount determined by TABC under Subsection (e) or (f), rather than for the use of the permit holder's brewing facilities or to provide brewing services.

(b) Provides that an entity is not required to own its brewing facilities if the entity operates under an alternating brewery proprietorship as provided by Subsection (a), rather than provides that an entity or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state is not required to own its brewing facilities.

(c) Requires each entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to hold a permit at the location where brewing services are conducted under the arrangement. Deletes existing text authorizing more than one brewer's permit to be issued for a single premises if the permit holder for the premises has contracted with an entity or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state for the use of the permit holder's brewing facilities or to provide brewing services.

(e) Authorizes TABC by rule, subject to Subsection (f), to require an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with TABC a bond in an amount determined by TABC not to exceed \$200,000.

(f) Requires an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with TABC a bond in an amount determined by TABC of not less than \$30,000 if the entity does not own a fee interest in a brewing facility.

SECTION 4. Amends Section 13.04, Alcoholic Beverage Code, by amending Subsections (a), (b), and (c), and adding Subsections (e) and (f), as follows:

(a) Authorizes the holder of a brewer's or nonresident brewer's permit, rather than authorizes an entity or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state, to contract with the holder of a brewer's permit:

(1) to provide brewing services; or

(2) for the use of the permit holder's brewing facilities under an alternating brewery proprietorship if each party to the proprietorship has filed the appropriate Brewer's Notice and Brewer's Bond as required by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury, and if applicable, has posted with TABC a bond in an amount determined by TABC under Subsection (e) or (f), rather than for the use of the permit holder's brewing facilities or to provide brewing services.

(b) Provides that an entity is not required to own its brewing facilities if the entity operates under an alternating brewery proprietorship as provided by Subsection (a), rather than provides that an entity or successor to an entity that on May 1, 2005, held a brewer's

or nonresident brewer's permit or whose brand was legally sold in this state is not required to own its brewing facilities.

(c) Requires each entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to hold a permit at the location where brewing services are conducted under the arrangement. Deletes existing text authorizing more than one brewer's permit to be issued for a single premises if the permit holder for the premises has contracted with an entity or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state for the use of the permit holder's brewing facilities or to provide brewing services.

(e) Authorizes TABC by rule, subject to Subsection (f), to require an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with TABC a bond in an amount determined by TABC not to exceed \$200,000.

(f) Requires an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with TABC a bond in an amount determined by TABC of not less than \$30,000 if the entity does not own a fee interest in a brewing facility.

SECTION 5. Amends Section 61.41(d), Alcoholic Beverage Code, to authorize more than one manufacturer's or nonresident manufacturer's license, notwithstanding Subsection (a) (relating to providing that no license is authorized to be issued for a premises for which a license is in effect unless the holder of the existing license has shown to TABC that the license holder will no longer exercise any privilege granted by the existing license) and Sections 11.49 (Premises Defined; Designation of Licensed Premises) and 109.53 (Citizenship of Permittee; Control of Premises; Subterfuge Ownership; Etc.), to be issued for a single premises if the license holder for the premises has contracted with an entity under an alternating brewery proprietorship or contract brewing arrangement, rather than to authorize more than one manufacturer's or nonresident manufacturer's license, notwithstanding Subsection (a) and Sections 11.49 and 109.53, to be issued for a single premises if the license holder for the premises has contracted with an entity or successor to an entity that on May 1, 2005, held a manufacturer's or nonresident manufacturer's license or whose brand was legally sold in this state for the use of the license holder's premises for manufacturing purposes or to provide manufacturing services.

SECTION 6. Amends Section 62.01(a), Alcoholic Beverage Code, to authorize the holder of a manufacturer's license to fulfill certain duties, including to enter into an alternating brewery proprietorship or contract brewing arrangement as provided by Section 62.14 (Use of Facilities).

SECTION 7. Amends Section 62.14, Alcoholic Beverage Code, by amending Subsections (a) and (b), and adding Subsections (b-1), (d), and (e), as follows:

(a) Authorizes the holder of a manufacturer's or nonresident manufacturer's license, rather than authorizes an entity or successor to an entity that on May 1, 2005, held a manufacturer's or nonresident manufacturer's license or whose brand was legally sold in this state, to contract with the holder of a manufacturer's license:

(1) to provide manufacturing services; or

(2) for the use of the license holder's manufacturing facilities under an alternating brewery proprietorship if each party to the proprietorship has filed the appropriate Brewer's Notice and Brewer's Bond as required by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury, and if applicable, has posted with TABC a bond in an amount determined by TABC under Subsection (d) or (e), rather than for the use of the license holder's manufacturing facilities or to provide manufacturing services.

(b) Provides that an entity is not required to own its manufacturing facilities if the entity operates under an alternating brewery proprietorship as provided by Subsection (a), rather than provides that an entity or successor to an entity that on May 1, 2005, held a

manufacturer's or nonresident manufacturer's license or whose brand was legally sold in this state is not required to own its manufacturing facilities.

(b-1) Requires each entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to hold a license at the location where manufacturing services are conducted under the arrangement.

(d) Authorizes TABC by rule, subject to Subsection (e), to require an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with TABC a bond in an amount determined by TABC not to exceed \$200,000.

(e) Requires an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with TABC a bond in an amount determined by TABC of not less than \$30,000 if the entity does not own a fee interest in a manufacturing facility.

SECTION 8. Amends Section 63.05, Alcoholic Beverage Code, by amending Subsections (a) and (b), and adding Subsections (b-1), (d), and (e), as follows:

(a) Authorizes the holder of a manufacturer's or nonresident manufacturer's license, rather than authorizes an entity or successor to an entity that on May 1, 2005, held a manufacturer's or nonresident manufacturer's license or whose brand was legally sold in this state, to contract with the holder of a manufacturer's license:

(1) to provide manufacturing services; or

(2) for the use of the license holder's manufacturing facilities under an alternating brewery proprietorship if each party to the proprietorship has filed the appropriate Brewer's Notice and Brewer's Bond as required by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury, and if applicable, has posted with TABC a bond in an amount determined by TABC under Subsection (d) or (e), rather than for the use of the license holder's manufacturing facilities or to provide manufacturing services.

(b) Provides that an entity is not required to own its manufacturing facilities if the entity operates under an alternating brewery proprietorship as provided by Subsection (a), rather than provides that an entity or successor to an entity that on May 1, 2005, held a manufacturer's or nonresident manufacturer's license or whose brand was legally sold in this state is not required to own its manufacturing facilities if the entity operates under an alternating brewery proprietorship as provided by Subsection (a).

(b-1) Requires each entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to hold a license at the location where manufacturing services are conducted under the arrangement.

(d) Authorizes TABC by rule, subject to Subsection (e), to require an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with TABC a bond in an amount determined by TABC not to exceed \$200,000.

(e) Requires an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with TABC a bond in an amount determined by TABC of not less than \$30,000 if the entity does not own a fee interest in a manufacturing facility.

SECTION 9. Amends Subchapter A, Chapter 102, Alcoholic Beverage Code, by adding Section 102.22, as follows:

Sec. 102.22. VERIFICATION OF USE OF FACILITIES. (a) Requires a person who holds a permit issued under Chapter 12 (Brewer's Permit) or 13 (Nonresident Brewer's Permit) or a license issued under Chapter 62 (Manufacturer's License) or 63 (Nonresident Manufacturer's License) to verify to TABC on an annual basis that a brewing or

manufacturing facility owned or controlled by the permit or license holder is not used to produce malt beverages primarily for a specific retailer or the retailer's affiliates.

(b) Requires TABC to adopt a form for the verification required under this section.

SECTION 10. Effective date: September 1, 2013.