

BILL ANALYSIS

Senate Research Center

S.B. 1090
By: Carona
Business & Commerce
7/25/2013
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Alcoholic Beverage Code governs Texas law relating to the regulation and sale of beer, wine, and spirits. S.B. 1090 is intended to clarify various sections of the Alcoholic Beverage Code that have been found to be confusing, outdated, inconsistent, or even unconstitutional.

S.B. 1090 provides for gender-neutral language in sections of the Alcoholic Beverage Code, clarifies that the administrator and assistant administrator of the Texas Alcoholic Beverage Commission are also known as the executive director and deputy assistant director, repeals an exception for marine mammal parks to sell alcohol, explains "first sale" for the purposes of the excise tax, and requires malt beverage taps to have labels. S.B. 1090 makes technical and clarifying changes.

S.B. 1090 amends current law relating to the manufacture, distribution, sale, and provision of alcoholic beverages and the regulation of those activities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.04, Alcoholic Beverage Code, by amending Subdivision (15) to redefine "beer" and adding Subdivision (26) to define "criminal negligence."

SECTION 2. Amends Section 5.11, Alcoholic Beverage Code, as follows:

Sec. 5.11. ADMINISTRATION. (a) Creates this subsection from existing text. Requires the Texas Alcoholic Beverage Commission (TABC) to appoint an administrator to serve at its will and, subject to its supervision, administer this code. Requires the administrator, unless TABC orders otherwise, to be manager, secretary, and custodian of all records. Requires the administrator of TABC (administrator) to devote the administrator's entire time to the office and to receive a salary as appropriated by the legislature.

(b) Provides that the administrator is also known as the executive director.

SECTION 3. Amends Section 5.13, Alcoholic Beverage Code, as follows:

Sec. 5.13. ASSISTANT ADMINISTRATOR. (a) Creates this subsection from existing text. Requires the administrator to appoint an assistant administrator. Requires the assistant administrator to meet the same qualifications as the administrator. Requires the assistant administrator to take the constitutional oath of office. Requires the assistant administrator, in the absence of the administrator, or in case of the administrator's inability to act, to perform the duties conferred on the administrator by law or delegated to the administrator by TABC. Requires the assistant administrator, if there is a vacancy in the office of administrator, to perform the duties of the administrator until an administrator has been appointed by TABC. Requires the assistant administrator, at other times, to perform those duties and have those functions, powers, and authority as may be

delegated to the assistant administrator by the administrator. Makes nonsubstantive changes.

(b) Provides that the assistant administrator is also known as the deputy executive director.

SECTION 4. Amends Section 5.15, Alcoholic Beverage Code, to authorize, rather than require, the attorney general to appoint as many as six assistant attorneys general, as TABC determines necessary, to enable TABC to more efficiently enforce this code.

SECTION 5. Amends Section 5.32, Alcoholic Beverage Code, as follows:

Sec. 5.32. MAY REQUIRE REPORTS. Authorizes TABC to require persons engaged in the alcoholic beverage business to provide information, records, or other documents TABC finds necessary to accomplish the purposes of this code. Deletes existing text authorizing TABC to require the filing of reports and other data by persons engaged in the alcoholic beverage business which TABC finds necessary to accomplish the purpose of this code.

SECTION 6. Amends Section 11.72, Alcoholic Beverage Code, to authorize TABC or the administrator to suspend or revoke the permit of a person who is represented by the holder of an agent's permit as described by Section 35.01 (Use of Permit in Marine Park) or a manufacturer's agent's permit as described by Section 36.01 (Authorized Activity) or otherwise discipline the person based on an act or omission of the holder of an agent's or manufacturer's agent's permit only if an individual employed by the person in a supervisory position was directly involved in the act or omission of the holder of an agent's or manufacturer's agent's permit, had notice or knowledge of the act or omission, or failed to take reasonable steps to prevent the act or omission.

SECTION 7. Amends Section 16.01(a), Alcoholic Beverage Code, to authorize the holder of a winery permit, except as provided by Section 16.011 (Premises in Dry Area), to conduct certain activities, including purchase and import wine from the holder of a nonresidential seller's permit.

SECTION 8. Amends Section 16.03, Alcoholic Beverage Code, to authorize the holder of a winery permit to, for blending purposes, rather than for blending purposes only, import wines or grape brandy.

SECTION 9. Amends Section 26.01(a), Alcoholic Beverage Code, to authorize the holder of a wine and beer retailer's off-premise permit to sell for off-premises consumption only, in unbroken original containers, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent by volume but not more than 17 percent by volume.

SECTION 10. Amends Chapter 35, Alcoholic Beverage Code, by adding Section 35.08, as follows:

Sec. 35.08. GRACE PERIOD. Authorizes a person to engage in the activities specified in Section 35.01 for an initial grace period of five days during which the person is required to procure an agent's permit from TABC.

SECTION 11. Amends Chapter 36, Alcoholic Beverage Code, by adding Section 36.09, as follows:

Sec. 36.09. GRACE PERIOD. Authorizes a person to engage in the activities specified in Section 36.01 for an initial grace period of five days during which the person is required to procure a manufacturer's agent's permit from TABC.

SECTION 12. Amends Section 45.01, Alcoholic Beverage Code, to authorize the holder of a storage permit to store liquor in a public bonded warehouse for which a permit has been issued or in a private warehouse owned or leased by the holder and operated by the holder.

SECTION 13. Amends Section 51.09, Alcoholic Beverage Code, to require that nothing in this chapter to be construed as authorizing nor may TABC or the administrator to authorize the sale of any alcoholic beverage from a coin-operated machine or similar device operated by the consumer.

SECTION 14. Amends Section 61.38, Alcoholic Beverage Code, as follows:

Sec. 61.38. NOTICE OF APPLICATION. (a) Requires every original applicant for a license to manufacture, distribute, or sell beer at retail to give notice of the application by publication at the applicant's own expense in two consecutive issues of a newspaper of general circulation published in a city or town in which the applicant's place of business is located. Requires that the notice, if no newspaper is published in that city or town, be published in a newspaper of general circulation published in the county where the applicant's business is located. Requires that the notice, if no newspaper is published in that county, be published in a qualified newspaper published in the closest neighboring county and circulated in the county where the applicant's business is located.

(b) Requires that the notice be printed in 10-point boldface type and include:

- (1) the type of license applied for;
- (2) the exact location of the business for which the license is sought;
- (3) the name of each owner of the business and, if the business is operated under an assumed name, the trade name together with the name of each owner, rather than the trade name if operating under an assumed name; and
- (4) if the applicant is a corporation, the names and titles of all officers.

(c) Provides that an applicant for a renewal license is not required to publish notice. Deletes existing text requiring the applicant, at the time the application is filed, to deposit with the clerk the cost of publishing notice, which the clerk is required to use to pay for the publication.

Deletes existing text requiring the county clerk, when an application for a license to manufacture or distribute beer is filed, to post at the courthouse door a written notice containing the substance of the application and the date set for hearing.

Deletes existing Subsection (b) requiring the county clerk, when an original application to sell beer at retail at a location previously licensed is filed, to post at the courthouse door a written notice containing the substance of the application and the date set for hearing.

Deletes existing text requiring the county clerk, when an original application to sell beer at retail at a location not previously licensed is filed, to publish notice for two consecutive issues in a newspaper of general circulation published in the city or town in which the applicant's place of business is to be located. Deletes existing text requiring that the notice, if no newspaper of general circulation is in that city or town, be published in a newspaper of general circulation published in the county where the applicant's business is located. Deletes existing text requiring that the notice, if no newspaper of general circulation is published in that county, be published in a newspaper which is published in the closest neighboring county and is circulated in the county where the license is sought.

SECTION 15. Amends Section 102.07(g), Alcoholic Beverage Code, as follows:

(g) Authorizes a permittee, notwithstanding any other provision, to preannounce a promotion to a consumer or preannounce the purchase of wine, distilled spirits, ale, or malt liquor to a consumer. Deletes existing text authorizing a holder of a wholesaler's or

class B wholesaler's permit to prearrange a promotional activity only for distilled spirits or wine.

SECTION 16. Amends Section 102.15, Alcoholic Beverage Code, as follows:

Sec. 102.15. MANUFACTURER OR DISTRIBUTOR: PROHIBITED DEALINGS WITH RETAILER. (a) Creates this subsection from existing text. Provides that, except as provided by Subsection (b), no manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, is authorized to furnish, give, or lend any money or other thing of value to a person engaged or about to be engaged in selling brewery products for on-premises or off-premises consumption, or give the person any money or thing of value for his use, benefit, or relief, or guarantee the repayment of a loan or the fulfillment of a financial obligation of a person engaged in or about to be engaged in selling beer at retail.

(b) Provides that Subsection (a) does not prohibit a manufacturer or distributor from prearranging or preannouncing a promotional activity otherwise permitted by this code with a retailer about a promotional activity to be held on the retailer's premises. Authorizes a manufacturer or distributor, notwithstanding any other provision, to preannounce a promotion to a consumer or preannounce the purchase of beer to a consumer.

SECTION 17. Amends Section 104.04, Alcoholic Beverage Code, as follows:

Sec. 104.04. New heading: DRAFT MALT BEVERAGE DISPENSER: SIGN REQUIRED. Provides that no retail dealer is authorized to dispense draft beer, malt liquor, or ale unless each faucet or other dispensing apparatus is equipped with a sign clearly indicating the name or brand of the product being dispensed through the faucet or apparatus.

SECTION 18. Amends Section 106.09(d), Alcoholic Beverage Code, to provide that the fact that a person is 18, 19, or 20 years of age is not a ground for refusal of an original or renewal permit or license issued under Chapter 35 (Agent's Permit), 36 (Manufacturing Agent's Permit), or 73 (Agent's Beer License), provided that such a person to whom a permit or license is issued is authorized to carry out the activities authorized by those chapters only while in the actual course and scope of the person's employment.

SECTION 19. Amends Section 108.01(a), Alcoholic Beverage Code, as follows:

(a) Deletes existing text providing that no manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, is authorized to publish, disseminate, or cause to be published or disseminated by any medium enumerated in Subsection (b) (relating to providing that the media covered by this section includes certain publication) of this section an advertisement of a brewery product that refers to the alcohol content of the product. Makes nonsubstantive changes.

SECTION 20. Amends Subchapter A, Chapter 108, Alcoholic Beverage Code, by adding Section 108.035, as follows:

Sec. 108.035. PACKAGING OF CERTAIN PROMOTIONAL ITEMS AUTHORIZED. Authorizes a person who holds a brewer's permit, nonresident brewer's permit, manufacturer's license, or nonresident manufacturer's license, or the person's agent or employee, notwithstanding any other provision of this code, to package alcoholic beverages in combination with other items if the package is designed to be delivered intact to the wholesaler or distributor and the additional items are branded and have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales.

SECTION 21. Amends Section 108.09, Alcoholic Beverage Code, as follows:

Sec. 108.09. New heading: ADVERTISING WHERE PRODUCT MAY BE PURCHASED. (a) Authorizes a member of the manufacturing or wholesale tier, rather than a winery, notwithstanding any other provision of this code, rather than notwithstanding Section 102.07 or any other provision of this code, to include information in its advertising that informs the public of where its products are authorized to be purchased. Makes conforming changes.

(b) Prohibits a member of the manufacturing tier, rather than a winery, from giving compensation to or receiving compensation from a licensed or permitted member of the wholesale or retail tier for advertising described by Subsection (a). Prohibits a member of the wholesale tier from giving compensation to or receiving compensation from a licensed or permitted member of the manufacturing or retail tier for advertising described by Subsection (a).

SECTION 22. Amends Subchapter A, Chapter 108, Alcoholic Beverage Code, by adding Section 108.10, as follows:

Sec. 108.10. BRANDED PROMOTIONAL VEHICLES. Authorizes the holder of a manufacturer's or nonresident manufacturer's license or a nonresident seller's permit, notwithstanding any other provision of this code, to display a branded promotional vehicle on the licensed or permitted premises of a retailer, whether outside or inside a structure on the premises, for not more than five hours per day.

SECTION 23. Amends Section 201.02, Alcoholic Beverage Code, to redefine, in this subchapter, "first sale."

SECTION 24. Amends Section 201.41, Alcoholic Beverage Code, to redefine, in this subchapter, "first sale."

SECTION 25. Amends Section 203.02, Alcoholic Beverage Code, to redefine, in this chapter, "first sale."

SECTION 26. Repealer: Section 1.08 (Criminal Negligence Defined), as added by Chapter 437 (S.B. 55), Acts of the 73rd Legislature, Regular Session, 1993, Alcoholic Beverage Code.

Repealer: Section 1.08 (Criminal Negligence Standard for Administrative Action), as added by Chapter 934 (H.B. 1445), Acts of the 73rd Legislature, Regular Session, 1993, Alcoholic Beverage Code.

Repealer: Section 31.05 (Use of Permit in Marine Park), Alcoholic Beverage Code.

SECTION 27. Effective date: September 1, 2013.