

BILL ANALYSIS

S.B. 1090
By: Carona
Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties find that various sections of the Alcoholic Beverage Code are confusing, outdated, inconsistent, and, in some instances, unconstitutional. S.B. 1090 seeks to address these issues by amending current law relating to the manufacture, distribution, sale, and provision of alcoholic beverages and the regulation of those activities.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1090 amends the Alcoholic Beverage Code to redefine "beer" by removing the specification that it does not include a beverage designated by label or otherwise by a name other than beer. The bill clarifies that the Texas Alcoholic Beverage Commission (TABC) administrator and assistant administrator are also known as the executive director and deputy executive director, respectively. The bill authorizes, rather than requires, the attorney general to appoint as many as six assistant attorneys general, as TABC determines necessary, to enable TABC to more efficiently enforce statutory provisions governing alcoholic beverages.

S.B. 1090 makes statutory provisions relating to discipline for certain actions of the holder of an agent's permit applicable to the holder of a manufacturer's agent's permit. The bill expands the authorized activities of the holder of a winery permit to include purchasing and importing wine from the holder of a nonresident seller's permit. The bill, in a provision authorizing the holder of a wine and beer retailer's off-premise permit to sell for off-premises consumption only, specifies that the alcoholic beverages be in unbroken original containers. The bill authorizes a person to engage in the authorized activities for the holder of an agent's permit or a manufacturer's agent's permit for an initial grace period of five days during which the person is required to procure an agent's permit or manufacturer's agent's permit, respectively, from TABC. The bill authorizes the holder of a storage permit to store liquor in a private warehouse leased and operated by the holder.

S.B. 1090 removes language requiring the county clerk to post at the courthouse door a written notice regarding a filed application for a license to manufacture or distribute beer and instead 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 the city or town in which the applicant's place of business is located. The bill establishes that an applicant for a renewal license is not required to publish such notice.

S.B. 1090 removes language limiting a holder of a wholesaler's or class B wholesaler's permit to prearrange a promotional activity only for distilled spirits or wine and authorizes certain permittees to preannounce the purchase of ale and malt liquor to a consumer, in addition to wine

and distilled spirits. The bill specifies that certain statutory provisions setting out prohibited dealings between a manufacturer or distributor and a retailer do not prohibit a manufacturer or distributor from prearranging or preannouncing a promotional activity otherwise permitted with a retailer about a promotional activity to be held on the retailer's premises and authorizes the manufacturer or distributor to preannounce a promotion or the purchase of beer to a consumer. The bill prohibits a retail dealer from dispensing 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.

S.B. 1090 specifies 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 manufacturer's agent's permit. The bill removes an advertisement of a brewery product that refers to the alcohol content of the product from those advertisements prohibited from being published or disseminated or caused to be published or disseminated by a manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member. The bill revises a statutory provision authorizing a winery to include information in its advertising informing the public of where its products may be purchased and instead authorizes a member of the manufacturing or wholesale tier to include such information in its advertising. The bill prohibits a member of the manufacturing tier or the wholesale tier from giving compensation to or receiving compensation from a licensed or permitted member of the wholesale or manufacturing tier, respectively, or the retail tier for such advertising.

S.B. 1090 redefines "first sale," for purposes of tax on liquor other than ale and malt liquor, to specify that the term does not include the first sale by the holder of a distiller's and rectifier's permit to the holder of a wholesaler's permit and expands the definition of "first sale," for purposes of tax on ale and malt liquor and for purposes of the beer tax, to include the first actual sale of ale or malt liquor or beer, as applicable, by a brewpub licensee to a consumer or a permittee or licensee authorized to sell ale or malt liquor or beer, as applicable, to ultimate consumers.

S.B. 1090 repeals certain provisions relating to the definition of criminal negligence, relating to the criminal negligence standard for administrative action, and relating to the authority of certain permit holders to use a caterer's permit in a marine park.

S.B. 1090 repeals the following provisions of the Alcoholic Beverage Code:

- Section 1.08, as added by Chapter 437 (S.B. 55), Acts of the 73rd Legislature, Regular Session, 1993
- Section 1.08, as added by Chapter 934 (H.B. 1445), Acts of the 73rd Legislature, Regular Session, 1993
- Section 31.05

EFFECTIVE DATE

September 1, 2013.