

BILL ANALYSIS

Senate Research Center
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S.B. 1090
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Business & Commerce
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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S.B. 1090 is intended to clarify various sections of the Alcoholic Beverage Code that have been found to be confusing, outdated, inconsistent, or even unconstitutional.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.

As proposed, 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 Subdivisions (26) and (27) to define "criminal negligence" and "intoxicated."

SECTION 2. Amends Section 1.07(a), Alcoholic Beverage Code, to provide that, for purposes of any provision of this code that requires an applicant for a license or permit to be a United States citizen, rather than to be a United States citizen or Texas citizen, regardless of whether it applies to an individual, a percentage of stockholders of a corporation, or members of a partnership, firm, or association, an individual who is not a United States citizen but who legally resides in the state is treated as a United States citizen, rather than treated as a United States citizen and a citizen of Texas.

SECTION 3. Amends Section 5.11, Alcoholic Beverage Code, as follows:

Sec. 5.11. ADMINISTRATION. (a) Requires the administrator of the Texas Alcoholic Beverage Commission (administrator) (TABC) 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 4. 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.

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

SECTION 5. 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 6. 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 7. Amends Section 6.03(l), Alcoholic Beverage Code, to authorize corporations holding a permit or license under Chapters 25-34 (Wine and Beer Retailer's Permit; Wine and Beer Retailer's Off-Premise Permit; Temporary and Special Wine and Beer Retailer's Permit; Mixed Beverage Permit; Mixed Beverage Late Hours Permit; Daily Temporary Mixed Beverage Permit; Caterer's Permit; Private Club Registration Permit; Other Private Club Permits; Airline Beverage Permit), Chapter 44 (Beverage Cartage Permit), Chapters 48-51 (Passenger Train Beverage Permit; Market Research Packager's Permit; Promotional Permit; Minibar Permit), Chapters 69-72 (Retail Dealer's On-Premise License; Retail Dealer's On-Premise Late Hours License; Retail Dealer's Off-Premise License; Temporary Licenses), or Chapter 74 (Brewpub License), rather than subject to Subsection (k) (relating to a requirement under this code that 51 percent or more of the stock of a corporation be owned by a person or persons who were citizens of this state for a one-year period preceding the date of the filing of an application for a license or permit does not apply to a corporation organized under certain laws) that have substantially similar ownership to merge or consolidate.

SECTION 8. Amends Section 6.05, Alcoholic Beverage Code, as follows:

Sec. 6.05. CORPORATE LIABILITY. Provides that a corporation with an ownership interest in a corporation holding a permit or license under Chapters 25-34, Chapter 44, Chapters 48-51, Chapters 69-72, or Chapter 74 and which shares space, employees, business facilities, or services is subject to liability under Chapter 2 (Civil Liabilities for Serving Beverages). Deletes existing text providing that a corporation holding a permit under Section 6.03(k) of this code and which shares space, employees, business facilities, or services is subject to liability under Chapter 2 of this code.

SECTION 9. Amends Chapter 11, Alcoholic Beverage Code, by adding Section 11.14, as follows:

Sec. 11.14. AUTOMATED DISPENSING MACHINES. (a) Defines, in this section, "payment card."

(b) Authorizes a permittee authorized to sell wine for on-premises consumption to use an automated machine that is activated by the use of a payment card to dispense the wine. Authorizes only an employee of the permittee who is authorized to serve alcoholic beverages to dispense wine from an automated machine authorized by this section.

SECTION 10. Amends Section 11.46(a) Alcoholic Beverage Code, as follows:

(a) Authorizes TABC or the administrator to refuse to issue an original or renewal permit with or without a hearing if TABC or the administrator has reasonable grounds to believe and finds that any of the following circumstances exists:

(1) the applicant has been convicted in a court of competent jurisdiction of the violation of any provision of this code during the two years immediately preceding the filing of the applicant's application;

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

(4)-(5) Makes no changes to these subdivisions;

(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) Makes no change to this subdivision;

(8) the place or manner in which the applicant is authorized to 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)-(10) Makes no changes to these subdivisions;

(11) the applicant is not a United States citizen, unless the applicant was issued a permit or renewal permit on or before September 1, 1948, and has at some time been a United States citizen, rather than that the applicant is not a United States citizen or has not been a citizen of Texas for a period of one year immediately preceding the filing of his application, unless he was issued a permit or renewal permit on or before September 1, 1948, and has at some time been a United States citizen;

(12) Makes no change to this subdivision;

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

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

(15) Makes no change to this subdivision.

SECTION 11. Amends Section 11.61(b), Alcoholic Beverage Code, as follows:

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

(1)-(3) Makes no changes to these subdivisions;

(4) the permittee made a false or 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 TABC, its officers, or employees;

(5) Makes no change to this subdivision;

(6) the permittee is not of good moral character or the permittee's reputation for being a peaceable and 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)-(9) Makes no changes to these subdivisions;

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

(11) Makes no change to this subdivision;

(12) the permittee knowingly misrepresented to a customer or the public any liquor sold by the permittee;

(13)-(14) Makes no changes to these subdivisions;

(15) the permittee possessed on the licensed premises an alcoholic beverage that the permittee was not authorized to purchase and sell;

(16) Makes no change to this subdivision;

(17) the permittee is residentially domiciled with a person who has a financial interest in an establishment engaged in the business of selling beer at retail, other than a mixed beverage establishment, except as authorized by Section 22.06 (Prohibited Interests), 24.05 (Prohibited Interests), or 102.05 (Hotel: Multiple Interests Authorized);

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

(19) the permittee is not a citizen of the United States, unless the permittee was issued an original or renewal permit on or before September 1, 1948, and has been a United States citizen at some time, rather than that the permittee is not a citizen of the United States or has not been a citizen of Texas for a period of one year immediately preceding the filing of his application, unless he was issued an original or renewal permit on or before September 1, 1948, and has been a United States citizen at some time; or

(20)-(23) Makes no changes to these subdivisions.

SECTION 12. 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 (Authorized Activity) 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 13. Amends Section 24.01(c), Alcoholic Beverage Code, to provide that the qualifications for a wine only package store permit whose premises is in a wet area permitting the legal sale of wine for off-premises consumption only as determined by an election held under Section 251.19 are the same as the qualifications for a permit issued under Chapter 26 (Wine and Beer Retailer's Off-Premise Permit), rather than issued under Chapter 26 of this code, including the citizenship requirements prescribed by Section 6.03.

SECTION 14. 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 15. Amends Section 28.13(e), Alcoholic Beverage Code, to provide that the provisions of Section 109.53 (Citizenship of Permittee; Control of Premises; Subterfuge Ownership) that relate to citizenship, rather than residency, requirements and compliance with Texas laws of incorporation do not apply to the holders of a mixed beverage permit under Subsection (a) (relating to authorizing a mixed beverage permit to be issued for a boat if certain conditions are met) and do apply to the holder of a mixed beverage permit under Subsection (a-1) (relating to authorizing a mixed beverage permit to be issued for a regular scheduled excursion boat that is licensed by the United States Coast Guard to carry passengers on the navigable waters of the state if certain conditions are met).

SECTION 16. 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 17. 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 18. Amends Section 51.09, Alcoholic Beverage Code, to provide that, except as provided by Section 11.14, nothing in this chapter is required to be construed as authorizing nor may TABC or the administrator authorize the sale of any alcoholic beverage from a coin-operated machine or similar device operated by the consumer.

SECTION 19. 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 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.

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 text 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.

(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.

SECTION 20. Amends Section 61.42(a), Alcoholic Beverage Code, as follows:

(a) Requires the county judge to refuse to approve an application for a license as a distributor or retailer if the county judge has reasonable grounds to believe and finds that:

- (1)-(2) Makes no changes to these subdivisions;
- (3) the place or manner in which the applicant for a retail dealer's license is authorized to conduct the applicant's business warrants a refusal of a license based on the general welfare, health, peace, morals, safety, and sense of decency of the people;
- (4) Makes no change to this subdivision;
- (5) the applicant is not a United States citizen, unless the applicant was issued an original or renewal license on or before September 1, 1948, rather than that an applicant is not a United States citizen or has not been a citizen of Texas for a period of one year immediately preceding the filing of his application, unless he was issued an original or renewal license on or before September 1, 1948;
- (6) the applicant was finally convicted of a felony during the five years immediately preceding the filing of the applicant's application; or
- (7) 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.

SECTION 21. 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 22. 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 23. 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 24. 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 25. 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) an advertisement of a brewery product that refers to the alcohol content of the product. Makes nonsubstantive changes.

SECTION 26. 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.

(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 27. Amends Section 109.53, Alcoholic Beverage Code, as follows:

Sec. 109.53. CITIZENSHIP OF PERMITTEE; CONTROL OF PREMISES; SUBTERFUGE OWNERSHIP; ETC. Deletes existing text requiring that no person who has not been a citizen of Texas for a period of one year immediately preceding the filing of his application therefor be eligible to receive a permit under this code. Makes conforming and nonsubstantive changes.

SECTION 28. Amends Section 201.41, Alcoholic Beverage Code, to redefine, in this subchapter, "first sale."

SECTION 29. Amends Section 203.02, Alcoholic Beverage Code, to redefine, in this chapter, "first sale."

SECTION 30. 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;

Repealers: Sections 6.03(a) (relating to prohibiting a permit or license from being issued to a person who was not a citizen of this state for a certain time period) and (k) (relating to providing that a requirement under this code that 51 percent or more of the stock of a corporation be owned by a person or persons who were citizens of this state for a one-year period preceding the date of the filing of an application for a license or permit does not apply to certain corporations), Alcoholic Beverage Code;

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

Repealer: Section 109.531 (Additional Requirements for Application or Renewal of Permit or License by Out-of-State Residents), Alcoholic Beverage Code; and

Repealer: Section 1.07(b) (relating to providing that an alien legally residing in the state, if it is required that an individual have resided in the state for a specified period of time, satisfies the requirement if he has legally resided in the state for the prescribed period of time), Alcoholic Beverage Code.

SECTION 31. Effective date: September 1, 2013.