

BILL ANALYSIS

C.S.H.B. 409
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties are concerned that persons holding certain alcoholic beverage permits for on-premises consumption are not required to purchase liability insurance or make arrangements for a bond in lieu of that insurance that would pay for damages resulting from the sale of alcoholic beverages. The parties contend that businesses with certain alcoholic beverage permits, commonly called dram shops, should establish certain types of financial responsibility not only to cover damages but also to ensure that businesses and individuals are held responsible for over-serving patrons. The parties note that establishing this financial responsibility protects businesses and patrons alike and assert that, according to certain reporting, the presence of dram shop liability insurance in particular has been proven to lower incidents of alcohol-related injuries and deaths. C.S.H.B. 409 seeks to help ensure that alcohol-related liability cases are resolved and to positively influence business practices.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 409 amends the Alcoholic Beverage Code to prohibit a person, other than the holder of a food and beverage certificate, from holding a permit allowing the person to sell alcoholic beverages for on-premises consumption unless the person establishes financial responsibility by maintaining a liability insurance policy issued by an insurance company authorized to write liability insurance in Texas or an eligible surplus lines insurer and that will pay, on behalf of the permit holder or a person who sells or serves alcoholic beverages under the authority of the permit holder's permit, amounts the permit holder or person becomes obligated to pay as damages arising out of the sale or service of alcoholic beverages. The bill prohibits a person from recovering from the proceeds of such an insurance policy held by the permit holder damages arising out of the sale or service of an alcoholic beverage to the person if, at the time of the sale or service, the person was obviously intoxicated or a minor. The bill requires the Texas Alcoholic Beverage Commission (TABC) to adopt rules relating to the required minimum amounts of coverage, which are specified by the bill, the method for filing proof of insurance and obtaining TABC approval under the bill's provisions, and verification by TABC of a permit holder's continued maintenance of the required insurance coverage. The bill sets out provisions relating to the minimum insurance coverage required for a permit holder that is a specified governmental unit.

C.S.H.B. 409 authorizes a person to establish such financial responsibility without maintaining

an insurance policy by filing with TABC a bond with at least two individual sureties, each of whom owns real property in Texas that is not exempt from execution under the constitution or state law; conditioned for payment in the amounts and under the same circumstances as required of the liability insurance policy; not cancelable before the sixth day after the date TABC receives written notice of the cancellation; accompanied by a fee prescribed by TABC; and approved by TABC. The bill requires the required real property to be described in the bond approved by a judge of a court of record. The bill requires the assessor-collector of the county in which the property is located to certify the property as free of any tax lien. The bill requires the sureties in combination to have equity in the property in an amount equal to at least twice the amount of the bond. The bill establishes that the bond is a lien in favor of the state on the real property described in the bond and that the lien exists in favor of a person who holds a final judgment against the person who filed the bond.

C.S.H.B. 409 requires TABC, on the filing of a bond, to issue to the person who filed the bond a certificate of compliance with the bill's provisions. The bill requires TABC to file notice of the bond in the office of the county clerk of the county in which the real property is located and requires the notice to include a description of the property described in the bond. The bill requires the county clerk or the county clerk's deputy, on receipt of the notice, to acknowledge the notice and record it in the lien records. The bill specifies that the recording of the notice is notice in accordance with statutes governing the recordation of a lien on real property.

C.S.H.B. 409 authorizes the judgment creditor, if a judgment rendered against the person who files such a bond is not satisfied before the 61st day after the date the judgment becomes final, for the judgment creditor's own use and benefit and at the judgment creditor's expense, to bring an action in the name of the state against the sureties on the bond, including an action to foreclose a lien on the real property of a surety. The bill requires the foreclosure action to be brought in the same manner as, and is subject to the law applicable to, an action to foreclose a mortgage on real property. The bill establishes that cancellation of a filed bond does not prevent recovery for a right or cause of action arising before the date of the cancellation.

C.S.H.B. 409 applies to a person who applies for a permit for the sale of alcoholic beverages for on-premises consumption on or after January 1, 2016, and to a person who, on January 1, 2016, holds a permit for the sale of alcoholic beverages for on-premises consumption regardless of when the permit or license was issued. The bill requires TABC to adopt all rules necessary to implement the bill's provisions not later than December 31, 2015.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 409 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter A, Chapter 11, Alcoholic Beverage Code, is amended by adding Section 11.14 to read as follows:

Sec. 11.14. LIABILITY INSURANCE.
(a) This section does not apply to the holder of a food and beverage certificate.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter A, Chapter 11, Alcoholic Beverage Code, is amended by adding Sections 11.14 and 11.15 to read as follows:

Sec. 11.14. LIABILITY INSURANCE REQUIREMENT. (a) This section does not apply to the holder of a food and beverage certificate.

(b) A person may not hold a permit allowing the person to sell alcoholic beverages for on-premises consumption unless the person maintains a liability insurance policy:

(1) issued by an insurance company authorized to write liability insurance in this state or an eligible surplus lines insurer; and

(2) that will pay, on behalf of the permit holder or a person who sells or serves alcoholic beverages under the authority of the permit holder's permit, amounts the permit holder or person becomes obligated to pay as damages arising out of the sale or service of alcoholic beverages.

(c) The commission shall adopt rules relating to:

(1) subject to Subsection (d), minimum amounts of insurance coverage required under this section that are at least:

(A) \$500,000 for each person to whom damages covered by the policy are owed; and

(B) \$1 million for each single occurrence giving rise to damages covered by the policy;

(2) the method for filing proof of insurance and obtaining the commission's approval under this section; and

(3) verification by the commission of a permit holder's continued maintenance of the required insurance coverage.

(d) The minimum amounts of insurance coverage required under this section for a permit holder that is a governmental unit, as defined by Section 101.001, Civil Practice and Remedies Code, are the amounts of the liability limits applicable to the governmental unit under Section 101.023, Civil Practice and Remedies Code. A governmental unit subject to this section may satisfy the insurance requirements of this section through a self-insurance fund or program established under Section 2259.031, Government Code, or Chapter 791, Government Code.

(b) Except as provided by Section 11.15, a person may not hold a permit allowing the person to sell alcoholic beverages for on-premises consumption unless the person establishes financial responsibility by maintaining a liability insurance policy:

(1) issued by an insurance company authorized to write liability insurance in this state or an eligible surplus lines insurer; and

(2) that, subject to Subsection (e), will pay, on behalf of the permit holder or a person who sells or serves alcoholic beverages under the authority of the permit holder's permit, amounts the permit holder or person becomes obligated to pay as damages arising out of the sale or service of alcoholic beverages.

(c) The commission shall adopt rules relating to:

(1) subject to Subsection (d), the minimum amounts of insurance coverage that are required under this section, which must be at least:

(A) \$500,000 for each occurrence; and

(B) \$1 million for any annual aggregate limit;

(2) the method for filing proof of insurance and obtaining the commission's approval under this section; and

(3) verification by the commission of a permit holder's continued maintenance of the required insurance coverage.

(d) The minimum amounts of insurance coverage required under this section for a permit holder that is a governmental unit, as defined by Section 101.001, Civil Practice and Remedies Code, are the amounts of the liability limits applicable to the governmental unit under Section 101.023, Civil Practice and Remedies Code. A governmental unit subject to this section may satisfy the insurance requirements of this section through a self-insurance fund or program established under Section 2259.031, Government Code, or Chapter 791, Government Code.

(e) A person may not recover from the proceeds of an insurance policy held by the permit holder for purposes of this section damages arising out of the sale or service of an alcoholic beverage to the person if, at the time of the sale or service, the person was obviously intoxicated or a minor.

No equivalent provision.

Sec. 11.15. BOND IN LIEU OF INSURANCE. (a) A person may establish financial responsibility for purposes of Section 11.14 without maintaining an insurance policy by filing with the commission a bond:

(1) with at least two individual sureties, each of whom owns real property in this state that is not exempt from execution under the constitution or laws of this state;

(2) conditioned for payment in the amounts and under the same circumstances as required under a liability insurance policy sufficient to meet the requirements of Section 11.14;

(3) that is not cancelable before the sixth day after the date the commission receives written notice of the cancellation;

(4) accompanied by a fee prescribed by the commission; and

(5) approved by the commission.

(b) The real property required by Subsection (a)(1) must be described in the bond approved by a judge of a court of record. The assessor-collector of the county in which the property is located must certify the property as free of any tax lien. The sureties in combination must have equity in the property in an amount equal to at least twice the amount of the bond.

(c) The bond is a lien in favor of the state on the real property described in the bond. The lien exists in favor of a person who holds a final judgment against the person who filed the bond.

(d) On the filing of a bond, the commission shall issue to the person who filed the bond a certificate of compliance with this section.

(e) The commission shall file notice of the bond in the office of the county clerk of the county in which the real property is located. The notice must include a description of the property described in the bond. The county clerk or the county clerk's deputy, on receipt of the notice, shall acknowledge the notice and record it in the lien records. The recording of the notice is notice in accordance with statutes governing the recordation of a lien on real property.

(f) If a judgment rendered against the person who files a bond under this section is not satisfied before the 61st day after the date the judgment becomes final, the judgment creditor, for the judgment creditor's own use and benefit and at the judgment creditor's expense, may bring an action in the name of

the state against the sureties on the bond, including an action to foreclose a lien on the real property of a surety. The foreclosure action must be brought in the same manner as, and is subject to the law applicable to, an action to foreclose a mortgage on real property.

(g) Cancellation of a bond filed under this section does not prevent recovery for a right or cause of action arising before the date of the cancellation.

SECTION 2. (a) The changes in law made by this Act apply to a person who applies for a permit for the sale of alcoholic beverages for on-premises consumption on or after January 1, 2016, and to a person who, on January 1, 2016, holds a permit for the sale of alcoholic beverages for on-premises consumption regardless of when the permit or license was issued.

(b) The Texas Alcoholic Beverage Commission shall adopt all rules necessary to implement the changes made by this Act not later than December 31, 2015.

SECTION 3. This Act takes effect September 1, 2015.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.