

BILL ANALYSIS

C.S.H.B. 3982
By: Romero, Jr.
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to interested parties, there is an ongoing practice at unscrupulous bars where an employee of the bar, typically a woman, is encouraged to solicit alcoholic beverages from a bar patron. When the patron is charged for these beverages, the cost of the beverages consumed by the bar employee is three to four times higher than the beverage's listed price. The parties explain that the bar employee in this situation has an incentive to drink as many beverages as possible because the employee is given a percentage of the tripled or quadrupled cost of the beverage. It is not uncommon, according to the parties, for an employee to induce vomiting in order to maximize the number of drinks the employee is able to consume in a night. The parties contend that this coercive and brutal cycle may continue night after night and that these practices typically happen in establishments where other illegal activities are occurring, including human and drug trafficking. C.S.H.B. 3982 seeks to amend the applicable law in an effort to combat such practices and clean up these communities.

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

ANALYSIS

C.S.H.B. 3982 amends the Alcoholic Beverage Code, for purposes of the prohibition against a person authorized to sell beer at retail or the person's agent, servant, or employee from soliciting any person to buy drinks for consumption by the retailer or any of the retailer's employees, to establish that such solicitation is presumed if an alcoholic beverage is sold or offered for sale for an amount in excess of the retailer's listed, advertised, or customary price. The bill establishes that the presumption may be rebutted only by evidence presented under oath. The bill includes a violation of this prohibition among the bases for suspension of a permit or license issued by the Texas Alcoholic Beverage Commission (TABC) for which TABC or the TABC administrator is not required to give the permittee or licensee the opportunity to pay a civil penalty as an alternative to having the permit or license suspended and instead is required only to determine whether the permittee or licensee may have such an opportunity.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3982 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. Subtitle A, Title 3, Sec. 11.64, Alcoholic Beverage Code, is amended to read as follows:

Sec. 11.64. ALTERNATIVES TO SUSPENSION, CANCELLATION.

(a) When the commission or administrator is authorized to suspend a permit or license under this code, the commission or administrator shall give the permittee or licensee the opportunity to pay a civil penalty rather than have the permit or license suspended, unless the basis for the suspension is a violation of Section 11.61(b)(14), 22.12, 28.11, 32.17(a)(2), 32.17(a)(3), 61.71(a)(5), 61.71(a)(6), 61.74(a)(14), 69.13, 71.09, 101.04, 101.63, 104.01(4), 106.03, 106.06, or 106.15, the sale or offer for sale of an alcoholic beverage during hours prohibited by Chapter 105, consumption or the permitting of consumption of an alcoholic beverage on the person's licensed or permitted premises during hours prohibited by Chapter 105 or Section 32.17(a)(7), or an offense relating to prostitution, controlled substance or drugs, trafficking of persons, or gambling, in which case the commission or administrator shall determine whether the permittee or licensee may have the opportunity to pay a civil penalty rather than have the permit or license suspended. The commission shall adopt rules addressing when suspension may be imposed pursuant to this section without the opportunity to pay a civil penalty. In adopting rules under this subsection, the commission shall consider the type of license or permit held, the type of violation, any aggravating or ameliorating circumstances concerning the violation, and any past violations of this code by the permittee or licensee. In cases in which a civil penalty is assessed, the commission or administrator shall determine the amount of the penalty. The amount of the civil penalty

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 11.64(a), Alcoholic Beverage Code, is amended to read as follows:

(a) When the commission or administrator is authorized to suspend a permit or license under this code, the commission or administrator shall give the permittee or licensee the opportunity to pay a civil penalty rather than have the permit or license suspended, unless the basis for the suspension is a violation of Section 11.61(b)(14), 22.12, 28.11, 32.17(a)(2), 32.17(a)(3), 61.71(a)(5), 61.71(a)(6), 61.74(a)(14), 69.13, 71.09, 101.04, 101.63, 104.01(a)(4), 106.03, 106.06, or 106.15, the sale or offer for sale of an alcoholic beverage during hours prohibited by Chapter 105, consumption or the permitting of consumption of an alcoholic beverage on the person's licensed or permitted premises during hours prohibited by Chapter 105 or Section 32.17(a)(7), or an offense relating to prostitution, trafficking of persons, or gambling, in which case the commission or administrator shall determine whether the permittee or licensee may have the opportunity to pay a civil penalty rather than have the permit or license suspended. The commission shall adopt rules addressing when suspension may be imposed pursuant to this section without the opportunity to pay a civil penalty. In adopting rules under this subsection, the commission shall consider the type of license or permit held, the type of violation, any aggravating or ameliorating circumstances concerning the violation, and any past violations of this code by the permittee or licensee. In cases in which a civil penalty is assessed, the commission or administrator shall determine the amount of the penalty. The amount of the civil penalty may not be less than \$150

may not be less than \$150 or more than \$25,000 for each day the permit or license was to have been suspended. If the licensee or permittee does not pay the penalty ~~as ordered before the sixth day after the commission or administrator and has been notified notifies him of the amount, by the commission or administrator, of the order, the suspension shall be imposed the suspension.~~

(b) In the case of a violation of this code by a permittee or a licensee, the commission or administrator may relax any provision of the code relating to the suspension or cancellation of the permit or license and assess a sanction the commission or administrator finds just under the circumstances, and the commission or administrator may reinstate the license or permit at any time during the period of suspension on payment by the permittee or licensee of a fee of not less than \$75 nor more than \$500, if the commission or administrator finds that any of the circumstances described in Subsection (c) exists.

(c) The following circumstances justify the application of Subsection (b):

(1) that the violation could not reasonably have been prevented by the permittee or licensee by the exercise of due diligence;

(2) that the permittee or licensee was entrapped;

(3) that an agent, servant, or employee of the permittee or licensee violated this code without the knowledge of the permittee or licensee;

(4) that the permittee or licensee did not knowingly violate this code;

(5) that the permittee or licensee has demonstrated good faith, including the taking of actions to rectify the consequences of the violation and to deter future violations; or

(6) that the violation was a technical one.

(d) Fees and civil penalties received by the commission under this section shall be deposited in the general revenue fund.

SECTION 2. Title 4, Sec. 104.01, Alcoholic Beverage Code, is amended by adding subsection (a) to read as follows:

or more than \$25,000 for each day the permit or license was to have been suspended. If the licensee or permittee does not pay the penalty before the sixth day after the commission or administrator notifies him of the amount, the commission or administrator shall impose the suspension.

No equivalent provision.

SECTION 2. Section 104.01, Alcoholic Beverage Code, is amended to read as follows:

Sec. 104.01. LEWD, IMMORAL,

(4) solicitation of any person to buy drinks for consumption by the retailer or any of his employees;

(a) solicitation is presumed if an alcoholic beverage is sold or offered for sale for an amount in excess of the permit holder's listed, advertised, or customary price. The presumption may be rebutted only by evidence presented under oath.

No equivalent provision.

INDECENT CONDUCT. (a) No person authorized to sell beer at retail, nor the person's [~~his~~] agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including, but not limited to, any of the following acts:

(1) the use of loud and vociferous or obscene, vulgar, or indecent language, or permitting its use;

(2) the exposure of a person or permitting a person to expose himself or herself [~~his person~~];

(3) rudely displaying or permitting a person to rudely display a pistol or other deadly weapon in a manner calculated to disturb persons in the retail establishment;

(4) solicitation of any person to buy drinks for consumption by the retailer or any of the retailer's [~~his~~] employees;

(5) being intoxicated on the licensed premises;

(6) permitting lewd or vulgar entertainment or acts;

(7) permitting solicitations of persons for immoral or sexual purposes;

(8) failing or refusing to comply with state or municipal health or sanitary laws or ordinances; or

(9) possession of a narcotic or any equipment used or designed for the administering of a narcotic or permitting a person on the licensed premises to do so.

(b) For purposes of Subsection (a)(4), a solicitation is presumed if an alcoholic beverage is sold or offered for sale for an amount in excess of the retailer's listed, advertised, or customary price. The presumption may be rebutted only by evidence presented under oath.

SECTION 3. (a) Section 11.64(a), Alcoholic Beverage Code, as amended by this Act, applies only to the imposition of a penalty for a violation that occurs on or after the effective date of this Act. The imposition of a penalty for a violation that occurs before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Section 104.01(b), Alcoholic Beverage Code, as added by this Act, applies only to

the sale or offer for sale of an alcoholic beverage on or after the effective date of this Act.

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

SECTION 4. Same as introduced version.