

By: Turner of Tarrant

H.B. No. 409

Substitute the following for H.B. No. 409:

By: Miller of Comal

C.S.H.B. No. 409

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to liability insurance or other proof of financial  
3 responsibility for persons holding certain alcoholic beverage  
4 permits; adding a provision that is subject to a criminal penalty;  
5 authorizing a fee.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

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

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

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

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

1 beverages.

2 (c) The commission shall adopt rules relating to:

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

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

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

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

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

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

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

26 Sec. 11.15. BOND IN LIEU OF INSURANCE. (a) A person may  
27 establish financial responsibility for purposes of Section 11.14

1 without maintaining an insurance policy by filing with the  
2 commission a bond:

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

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

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

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

14 (5) approved by the commission.

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

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

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

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

9       (f) If a judgment rendered against the person who files a  
10 bond under this section is not satisfied before the 61st day after  
11 the date the judgment becomes final, the judgment creditor, for the  
12 judgment creditor's own use and benefit and at the judgment  
13 creditor's expense, may bring an action in the name of the state  
14 against the sureties on the bond, including an action to foreclose a  
15 lien on the real property of a surety. The foreclosure action must  
16 be brought in the same manner as, and is subject to the law  
17 applicable to, an action to foreclose a mortgage on real property.

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

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

27       (b) The Texas Alcoholic Beverage Commission shall adopt all

1 rules necessary to implement the changes made by this Act not later  
2 than December 31, 2015.

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