

SUBJECT: Linking culpable mental states in Alcoholic Beverage Code to Penal Code

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 8 ayes — Kuempel, Chisum, Geren, Gutierrez, Hamilton, Jones, Menendez, Quintanilla

1 present not voting — Thompson

0 nays

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Lou Bright, Texas Alcoholic Beverage Commission (TABC))

BACKGROUND: Penal Code sec. 6.03 defines the culpable mental states that must be required for crimes to be committed. Under Penal Code sec. 6.02 culpable mental states are classified according to relative degrees, from highest to lowest: intentionally; knowingly; recklessly; and criminal negligence.

The Alcoholic Beverage Code contains two sections labeled sec. 1.08, both added in 1993 by the 73rd Legislature. Under one section, criminal negligence is defined by referring to the Penal Code and stating that persons act with criminal negligence under the Alcoholic Beverage Code if they act with a mental state that would constitute criminal negligence under Penal Code, ch. 6. The other states that for the purposes of administrative actions under the Alcoholic Beverage Code, persons act with criminal negligence if they act with a mental state that would constitute criminal negligence under Penal Code, ch. 6.

DIGEST: CSHB 2757 would establish that a culpable mental state was not required to establish an offense under the Alcoholic Beverage Code or a violation of the code or a TABC rule unless the code or rule specifically required proof of a culpable mental state.

The bill would state that if a violation of the code or a commission rule included a culpable mental state as an element, the definitions in Penal Code sec. 6.03 would apply.

The bill also would repeal the second duplicate-numbered section 1.08 of the Alcoholic Beverage Code.

The bill would take effect September 1, 2009, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 2757 would make administration of the Alcoholic Beverage Code easier by clarifying when a culpable mental state was required for Alcoholic Beverage Code offenses and adopting the definitions of culpable mental states in the Penal Code for any references to mental states in the Alcoholic Beverage Code.

CSHB 2757 would consolidate two sections of the current law and clarify what definitions of culpable mental states should be used, without making substantive changes to the culpable mental states required under the Alcoholic Beverage Code. Linking the Alcoholic Beverage Code to the culpable mental states in the Penal Code would make it easier to resolve potential disputes over Alcoholic Beverage Code violations because the large body of interpretive case law relating to the Penal Code could be used.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The committee substitute made minor changes to the original bill, including adding a definition of the word “intoxication,” by referencing the same definition in the Penal Code.