

BILL ANALYSIS

Senate Research Center
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H.B. 2544
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Government Organization
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Texas Alcoholic Beverage Commission regulates all phases of the alcoholic beverage industry. The Legislature created the agency, originally called the Liquor Control Board, in 1935, in response to the repeal of Prohibition. The agency has four primary functions: licensing alcoholic beverage manufacturers, wholesalers, and retailers; enforcing administrative and criminal laws in the Alcoholic Beverage Code; collecting taxes on alcoholic beverages; and providing educational programs to address issues such as underage drinking.

The Texas Alcoholic Beverage Commission is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the Legislature. The Sunset review found that, while the State still has an interest in regulating the alcoholic beverage industry, TABC and the Alcoholic Beverage Code are in clear need of modernization. The Sunset Commission's recommendations, as contained in this bill, are intended to shift the agency's focus away from a number of unnecessary and costly regulatory practices, and place it more squarely on issues of public safety. H.B. 2544 continues the agency for six years, until September 1, 2011, and contains other recommendations of the Sunset Advisory Commission.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTION 10 (Section 5.362, Alcoholic Beverage Code), SECTION 12 (Section 5.53, Alcoholic Beverage Code), SECTION 17 (Section 11.042, Alcoholic Beverage Code), SECTION 18 (Section 11.09, Alcoholic Beverage Code), SECTION 19 (Section 61.03, Alcoholic Beverage Code), SECTION 20 (Section 61.111, Alcoholic Beverage Code), SECTION 21 (Section 101.67, Alcoholic Beverage Code), SECTION 22 (Section 101.671, Alcoholic Beverage Code), and SECTION 23 (Section 102.21, Alcoholic Beverage Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.04, Alcoholic Beverage Code, by amending Subdivision (18) and adding Subdivision (25) to redefine "original package" and define "executive management."

SECTION 2. Amends Section 5.01(b), Alcoholic Beverage Code, to provide that the Texas Alcoholic Beverage Commission (commission) is abolished and Subchapter A (Administrative Provisions), Chapter 5, of this code expires September 1, 2011, rather than 2005.

SECTION 3. Amends Section 5.02(c), Alcoholic Beverage Code, to require appointments to the commission to be made without regard to disability, rather than handicap.

SECTION 4. Amends Subchapter A, Chapter 5, Alcoholic Beverage Code, by adding Section 5.022, as follows:

Sec. 5.022. TRAINING. (a) Prohibits a person appointed to and qualified for office as a member of the commission from performing certain duties until the person completes a training program that complies with this section.

(b) Requires the training program to provide certain information.

(c) Entitles a person appointed to the commission to reimbursement for certain travel expenses incurred in attending the training program.

SECTION 5. Amends Section 5.04, Alcoholic Beverage Code, as follows:

Sec. 5.04. New heading: PRESIDING OFFICER. Requires the governor to designate a member of the commission as the presiding officer to serve at the pleasure of the governor, rather than to designate one member of the commission as chairman.

SECTION 6. Amends Sections 5.05(c)-(f), Alcoholic Beverage Code, as follows:

(c) Makes a nonsubstantive change.

(d) Prohibits certain persons from being members of the commission or certain types of employees of the commission if certain conditions exist. Creates this subsection from existing Subsections (d) and (e).

(e) Redefines "Texas trade association." Makes nonsubstantive changes. Redesignated from existing Subsection (f).

SECTION 7. Amends Section 5.051, Alcoholic Beverage Code, as follows:

Sec. 5.051. GROUND FOR REMOVAL FROM COMMISSION. (a) Sets forth as grounds for removal from the commission if a member does not have the required qualifications at the time of taking office, rather than at the time of appointment, or if a member is ineligible for membership under Section 5.05 (Relationship with Alcoholic Beverage Business Prohibited), rather than violates a prohibition established by Section 5.05. Makes nonsubstantive changes.

(b) Makes nonsubstantive changes.

(c) Requires the presiding officer, upon notification that a potential ground for removal exists, to notify both the governor and the attorney general, rather than just the governor. Requires the administrator of the commission (administrator), if the potential ground for removal involves the presiding officer, to notifying the next highest ranking officer who, in turn, is required to notify the governor and attorney general. Makes conforming changes.

SECTION 8. Amends Section 5.12, Alcoholic Beverage Code, as follows:

Sec. 5.12. New heading: DUTIES OF ADMINISTRATOR. Requires the commission to develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the administrator and the staff of the commission. Deletes the requirement that the commission develop and implement policies that clearly define the respective responsibilities of the administrator, the assistant administrator, and the staff of the commission.

SECTION 9. Amends Section 5.31, Alcoholic Beverage Code, to set forth the required duties of the commission related to compliance with this code. Creates a subsection from existing text.

SECTION 10. Amends Subchapter B, Chapter 5, Alcoholic Beverage Code, by adding Sections 5.361 and 5.362, as follows:

Sec. 5.361. ENFORCEMENT. (a) Requires the commission to develop a risk-based approach to conducting its enforcement activities that focuses on certain factors.

(b) Requires the commission to develop benchmarks and goals to track key enforcement activities and the effectiveness of said enforcement activities and sets forth the information the commission is required to track and collect. Requires the commission to use information collected under this subsection and other information to compare the enforcement performance of each region and to determine the most effective enforcement activities.

(c) Requires the commission to track, on a statewide and regional basis, the type of violations detected, the disposition of the violations, and the entities that committed the most serious violations.

(d) Requires the commission to compile detailed statistics and analyze trends related to enforcement activities. Requires the commission to summarize the statistics and trends periodically and to make the summary information available to the public.

Sec. 5.362. SCHEDULE OF SANCTIONS. (a) Requires the commission by rule to adopt a schedule of sanctions that may be imposed on a license or permit holder for violations of this code or rules adopted under this code. Requires the board, in adopting the schedule of sanctions, to ensure that the severity of the sanction imposed is appropriate to the type of violation.

(b) Requires the schedule of sanctions, for certain violations, to include the number of days a permit or license would be suspended and the corresponding civil penalty.

(c) Sets forth the factors the commission or administrator is required to consider in determining the appropriate sanction for a violation under the schedule.

(d) Requires the schedule to allow deviations from the schedule for clearly established mitigating circumstances or aggravating circumstances, and to include a list of the most common violations by members of the manufacturing, wholesaling, and retailing tiers of the alcoholic beverage industry and the sanctions assessed for those violations.

(e) Requires the commission to develop policies to guide commission staff in determining the circumstances when it is appropriate to deviate from the schedule of sanctions. Requires the policies to identify the circumstances when approval is required to deviate from the schedule.

(f) Requires the commission to make the schedule of sanctions available to the public, including publication on the Internet.

SECTION 11. Amends Section 5.38, Alcoholic Beverage Code, as follows:

Sec. 5.38. QUALITY AND PURITY OF BEVERAGES. (a)-(b) Creates these subsections from existing text.

(c) Authorizes the commission to test the contents of any alcoholic beverage manufactured or sold in the state to protect the public safety and ensure that the product is accurately represented to the public and complies with state law and commission rules.

SECTION 12. Amends Section 5.53, Alcoholic Beverage Code, as follows:

Sec. 5.53. New heading: PUBLIC INTEREST INFORMATION AND COMPLAINTS.

(a) Requires the commission to adopt rules that clearly define the agency's complaint process from the time the complaint is received until it is resolved.

(b) Requires the commission to make information describing its procedures for complaint investigation and resolution available to the public and appropriate state agencies, including by posting the information on the Internet. Deletes the requirement that the information prepared by the commission be of public interest, and deletes the requirement that the commission prepare information describing the functions of the commission. Makes nonsubstantive changes. Redesignated from existing Subsection (a).

(c) Requires the commission, by rule, to adopt a standardized form for filing complaints against a licensed or permitted entity. Requires the commission to make the complaint form available to the public, including by posting it on the Internet.

(d) Redesignated from existing Subsection (b).

SECTION 13. Amends Section 5.54, Alcoholic Beverage Code, by amending Subsection (a) and adding Subsections (a-1) and (c), as follows:

(a) Requires the commission to maintain a system to promptly and efficiently act on complaints filed with the commission, rather than keep an information file about each complaint filed with the commission that the commission has authority to resolve. Requires the commission to assign priorities to complaint investigations based on risk.

(a-1) Requires the commission to maintain certain information about the complaint.

(c) Requires the commission to compile certain information regarding trends in complaints, report the information periodically to certain entities, and to make general information about the nature and disposition of complaints available to the public, including publication on the Internet.

SECTION 14. Amends Section 5.55, Alcoholic Beverage Code, as added by Chapter 1221, Acts of the 78th Legislature, Regular Session, 2003, to require the commission to expedite the processing of original and renewal applications for licenses and permits by using electronic means, including the Internet. Creates subsections from existing text.

SECTION 15. Amends Subchapter B, Chapter 5, Alcoholic Beverage Code, by adding Sections 5.57, 5.58, 5.59, and 5.60, as follows:

Sec. 5.57. **MARKETING PRACTICES REGULATORY DECISIONS.** (a) Requires the commission to develop a formal process for making policy decisions regarding marketing practices regulations and for communicating those decisions to agency staff and the alcoholic beverage industry (industry).

(b) Requires the commission to create and consult with a marketing practices work group to improve and promote effective communication within the commission and between the commission and the industry. Requires the work group to discuss and be consulted with regard to marketing practices issues and certain other issues.

(c) Requires the work group to serve as a forum for discussing interpretations of this code and commission rules to guide agency staff and the industry on acceptable practices.

(d) Requires the commission to make reasonable attempts to have balanced representation on the work group including certain industry and non-industry representatives.

(e) Provides that Subsection (d) does not require the commission to ensure that all representatives to the work group attend a scheduled meeting.

(f) Requires the commission to monitor the activities of the work group by preparing and keeping minutes of each meeting of the work group. Sets forth the required content of the minutes.

(g) Requires the commission, in making policy decisions regarding marketing practices regulations, to take into consideration recommendations of the work group, document its policy decisions in a certain way, and make the documents available to the regional staff and industry members through certain methods.

Sec. 5.58. INTERNAL AFFAIRS. (a) Requires the administrator to establish an office of internal affairs to ensure fair and impartial investigations of alleged employee misconduct.

(b) Requires the administrator to appoint and directly oversee the head of office of internal affairs.

(c) Provides that the office of internal affairs has original departmental jurisdiction over complaints involving commission personnel.

(d) Requires the office of internal affairs staff to coordinate and be the central reporting point for all employee investigations. Sets forth the circumstances under which staff may initiate investigations of complaints.

(e) Requires the head of the office of internal affairs to report at least monthly to the administrator certain information regarding the complaints investigated.

(f) Requires the head of the office of internal affairs to submit a quarterly report to the members of the commission. Requires certain information to be included in the report.

(g) Requires the commission to inform the public about certain information regarding the complaint process.

Sec. 5.59. USE OF TECHNOLOGY. Requires the commission to implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the commission on the internet.

Sec. 5.60. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION PROCEDURES. (a) Requires the commission to develop and implement a policy to encourage the use of negotiated rulemaking procedures and appropriate alternative dispute resolution procedures.

(b) Requires the commission's procedures relating to alternative dispute resolution to conform, to the extent possible, to certain model guidelines.

(c) Requires the commission to designate a trained person to perform certain functions related to implementing the policy of negotiated rulemaking procedures and alternative dispute resolution procedures.

SECTION 16. Amends Section 6.02(c), Alcoholic Beverage Code, to prohibit the commission from authorizing a license or permit period of greater than two years, rather than one year.

SECTION 17. Amends Subchapter A, Chapter 11, Alcoholic Beverage Code, by adding Section 11.042, as follows:

Sec. 11.042. HEALTH RISKS WARNING SIGN. (a) Requires the commission by rule to require the holder of a permit authorizing the sale of alcoholic beverages for on-premises consumption to display a warning sign on the door to each restroom on the permitted premises that informs the public of the risks of drinking alcohol during pregnancy.

(b) Requires the commission's rules to specify the language of the warning and the size and design of the sign.

SECTION 18. Amends Section 11.09, Alcoholic Beverage Code, by amending Subsections (a) and (b) and adding Subsections (d) and (e), as follows:

(a) Provides that a permit issued under this code expires on the second anniversary of the date it is issued, rather than one year after the date of issue. Creates an exception, as

provided by Subsection (d) and (e), to the expiration date of a permit issued under this section. Requires the commission, notwithstanding certain provisions, to double the amount of fees and surcharges otherwise applicable under this code for a permit with a two-year term. Makes nonsubstantive changes.

(b) Deletes the provision relating to the expiration of a permit in less than one year.

(d) Authorizes the commission by rule to require that the expiration date for an individual permit holder's permit is the first anniversary of the date of the date on which the permit is used due to the permit holder's violation history.

(e) Authorizes the commission to issue a permit with an expiration date less than two years after the date the permit is issued in order to maintain a reasonable annual distribution of renewal application review work and permit fees. Requires the commission, if the commission issues a permit with an expiration date less than two years after the date the permit is issued, to prorate the permit fee on a monthly basis so that the permit holder pays only that portion of the permit fee that is allocable to the number of months during which the permit is valid.

SECTION 19. Amends Section 61.03, Alcoholic Beverage Code, by amending Subsections (a) and (b) and adding Subsection (d) and (e), as follows:

(a) Provides that, except as provided by Subsection (d) and (e) or another provision of this code, certain licenses expire on the second anniversary of the date on which it is issued. Requires the commission, notwithstanding certain provisions, to require double the amount of fees and surcharges otherwise applicable under this code for a license with a two-year term. Deletes the references to the license expiring one year after issue, and references to the prohibition on issuing licenses for a term longer than one year.

(b) Deletes the provision relating to the expiration of a permit in less than one year.

(d) Authorizes the commission by rule to require that the expiration date for an individual permit holder's permit is the first anniversary of the date of the date on which the permit is used due to the permit holder's violation history.

(e) Authorizes the commission to issue a permit with an expiration date less than two years after the date the permit is issued in order to maintain a reasonable annual distribution of renewal application review work and permit fees. Requires the commission, if the commission issues a permit with an expiration date less than two years after the date the permit is issued, to prorate the permit fee on a monthly basis so that the permit holder pays only that portion of the permit fee that is allocable to the number of months during which the permit is valid.

SECTION 20. Amends Subchapter A, Chapter 61, Alcoholic Beverage Code, by adding Section 61.111, as follows:

Sec. 61.111. HEALTH RISKS WARNING SIGN. (a) Requires the commission by rule to require the holder of a permit authorizing the sale of alcoholic beverages for on-premises consumption to display a warning sign on the door to each restroom on the permitted premises that informs the public of the risks of drinking alcohol during pregnancy.

(b) Requires the commission's rules to specify the language of the warning and the size and design of the sign.

SECTION 21. Amends Section 101.67, Alcoholic Beverage Code, by amending Subsections (a) and (d) and adding Subsection (e), as follows:

(a) Prohibits a person from shipping, importing, manufacturing, offering for sale, distributing, selling, or storing in the state beer, ale, or malt liquor unless a sample of the beverage or a sample of the same type and quality of beverage has first been submitted to

a laboratory certified by the United States Alcohol and Tobacco Tax and Trade Bureau (bureau) or the commission, rather than just the commission, for analysis to verify the alcohol content. Deletes the requirement that the beverage be found by the commission or its representative to comply with certain rules and regulations of the commission.

(d) Requires the commission, if the sample complies with the provisions of this code and commission rules, to issue a certificate of approval on receipt of a fee sufficient to cover the cost of administering this section, rather than a \$25 fee. Makes conforming and nonsubstantive changes.

(e) Requires the commission by rule to establish the procedures for accepting analysis of beer, ale, or malt liquor by laboratories certified by the bureau.

SECTION 22. Amends Subchapter D, Chapter 101, Alcoholic Beverage Code, by adding Section 101.671, as follows:

Sec. 101.671. PRIOR APPROVAL OF DISTILLED SPIRITS AND WINE. (a) Requires an authorized permittee, before the authorized permittee may ship distilled spirits or wine into the state or sell distilled spirits or wine within the state, to register the distilled spirits or wine with the commission. Requires the registration application to include a certificate of label approval issued by the bureau for the product.

(b) Requires the commission, on registration of a certificate of label approval issued by the bureau, to approve the product under this section and issue a letter to that effect to the permittee. Provides that the permittee is not required to obtain additional approval unless there is a change to the label or product requiring reissuance of the federal certificate of label approval.

(c) Prohibits the commission from registering a product unless the application is accompanied by a fee set by the commission in a certain amount. Requires a copy of the registration to be kept on file in the office of the commission.

(d) Requires the commission by rule to establish procedures for accepting federal certificates of label approval for registration under this section.

SECTION 23. Amends Subchapter A, Chapter 102, Alcoholic Beverage Code, by adding Section 102.21, as follows:

Sec. 102.21. ALTERNATIVE METHODS OF PAYMENT. Requires the commission, by rule, to authorize payment by electronic funds transfer initiated on or before the day of delivery, for the purposes of Sections 61.73 (Retail Dealer: Credit Purchase or Dishonored Check) and 102.31 (Cash Payment Required).

SECTION 24. Amends Section 102.32(d), Alcoholic Beverage Code, to include electronic mail or facsimile transmission as permitted ways for a wholesale dealer to report to the commission or administrator a retailer who is delinquent in the payment of an account for liquor. Makes nonsubstantive changes.

SECTION 25. Amends Section 103.07, Alcoholic Beverage Code, as follows:

Sec. 103.07. BEVERAGE OF ILLICIT MANUFACTURE OR UNFIT FOR CONSUMPTION. (a) Specifies that beverages that are unfit for public consumption or are of illicit manufacture which the commission may are those that have been seized by a peace officer, as provided in Section 103.03 (Seizure of Illicit Beverages, Etc.). Deletes the provision authorizing the commission to destroy alcoholic beverages unfit for public consumption or of illicit manufacture. Creates this subsection from existing text.

(b) Defines which types of alcoholic beverages are unfit for public consumption.

(c) Requires the commission to destroy the seized alcoholic beverages which the commission determines are unfit consumption or of illicit manufacture.

SECTION 26. Amends Section 103.22, Alcoholic Beverage Code, as follows:

Sec. 103.22. COSTS OF FORFEITURE SUITS. Entitles the commission to recover from the proceeds of a forfeiture sale all costs of a forfeiture suit brought under this chapter including certain costs. Deletes the requirement that the commission pay all costs of forfeiture suits out of the confiscated liquor fund or any other fund available to the commission for that purpose.

SECTION 27. Amends Section 103.23, Alcoholic Beverage Code, to require proceeds from a forfeiture sale and proceeds in escrow which are forfeited to the state in a forfeiture suit to be applied first to reimburse the commission for its expenses as provided by Section 103.22. Requires the remaining proceeds to be deposited in the general revenue fund. Deletes the requirement that the funds be deposited in a certain ratio in the confiscated liquor fund and the general revenue fund. Deletes the provision detailing the purposes for which the commission is authorized to appropriate the confiscated liquor fund.

SECTION 28. (a) Requires the legislature to establish a joint interim committee to study the revision of the regulatory structure for the alcoholic beverage industry in the state.

(b) Sets forth the issues that the committee is required to investigate as part of the study.

(c) Requires the committee, not later than January 1, 2007, to report its findings and recommendations to the governor, lieutenant governor, and the speaker of the house of representatives.

(d) Requires the lieutenant governor and speaker to determine the composition of the committee.

(e) Provides that this section expires September 1, 2007.

SECTION 29. Repealer: Sections 37.11 (Submission of Samples and Labels) and 101.44 (Containers of Beer: Capacities), Alcoholic Beverage Code.

SECTION 30. Requires the commission, not later than September 1, 2006, to adopt the rules and policies necessary to implement Sections 5.361, 5.362, 11042, 61.111, and 101.671, Alcoholic Beverage Code, as added by this Act, and Sections 5.53, 5.54, 5.55, and 101.67, Alcoholic Beverage Code, as amended by this Act.

SECTION 31. Provides that the change in law made by Section 5.022, Alcoholic Beverage Code, as added by this Act, and Sections 5.05 and 5.051, Alcoholic Beverage Code, as amended by this Act, regarding the prohibitions on, qualifications of, and training for the commission does not affect the entitlement of a member serving on the commission immediately before September 1, 2005, to continue to serve and function as a member of the commission for the remainder of the member's term. Makes application of the change in law described by this section prospective to members appointed on or after September 1, 2005.

SECTION 32. Makes the change in law made by this Act relating to the filing or investigation of a complaint under Chapter 5, Alcoholic Beverage Code, as amended by this Act, prospective.

SECTION 33. Makes the change in law made by this Act to Sections 6.02, 11.09, and 61.03, Alcoholic Beverage Code, prospective to a license issued or renewed on or after the effective date of this Act.

SECTION 34. Makes the change in law made by Sections 103.22 and 103.23, Alcoholic Beverage Code, as amended by this Act, prospective.

SECTION 35. Effective date: September 1, 2005.