

BILL ANALYSIS

Senate Research Center
80R2255 MCK-D

S.B. 508
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Business & Commerce
4/16/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, no law or statute exists for regulating licensing service agencies that facilitate the permit applications for private businesses. In the fall of 2006, many Houston area bars and restaurants were victimized by a scam that jeopardized their alcoholic beverage licenses and resulted in the temporary shutdown of at least one business. Officials with the Texas Alcoholic Beverage Commission (commission) claim that a Houston-based company that processes alcohol permit applications for restaurants, bars, and other businesses defrauded unsuspecting businesses. The company in question never submitted its clients' alcoholic beverage permit applications to the commission, yet it did cash its clients' checks for renewals on those licenses. Although a majority of such licensing service agencies conduct their business ethically, these types of agencies are not regulated by the state, nor are they required to be bonded or carry insurance.

As proposed, S.B. 508 provides a regulatory structure for the commission to oversee and monitor licensing service agencies that facilitate the permit applications for private businesses. This bill also authorizes the commission to set guidelines to consider certain types of past criminal activity, such as fraud and tax evasion, that would bar one from entering this field of work. This bill requires the commission to offer a "basic knowledge" course before a licensing service agent is permitted to assist others in license and permit applications and requires the alcoholic beverage permit application fee to be made payable only to the commission. Finally, a licensing service agency under this bill is required to post a bond with the commission.

RULEMAKING AUTHORITY

This bill expressly grants rulemaking authority to the Texas Alcoholic Beverage Commission in SECTION 1 (Section 7.151, Alcoholic Beverage Code) and SECTION 2 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 2, Alcoholic Beverage Code, by adding Chapter 7, as follows:

CHAPTER 7. LICENSING AGENTS

SUBCHAPTER A. GENERAL REQUIREMENTS

Sec. 7.001. DEFINITION. Defines "licensing agent."

Sec. 7.002. APPLICABILITY OF CHAPTER. Sets forth the persons to whom this chapter does not apply.

[Reserves Sections 7.003-7.050 for expansion.]

SUBCHAPTER B. COMMISSION POWERS AND DUTIES

Sec. 7.051. LICENSING AGENT TRAINING COURSE. Requires the Texas Alcoholic Beverage Commission (commission) to establish a licensing agent training course and sets forth certain topics that must be covered by the course. Requires the commission to teach the training course at least four times each year in different locations throughout the state. Requires the commission to charge a fee to each individual taking the course in an amount adopted by the commission to cover the cost of teaching the course.

Sec. 7.052. INVESTIGATION OF COMPLAINTS. Authorizes the administrator of the commission, on the administrator's motion, and requires the administrator, on the written complaint of a person aggrieved by the action of a licensing agent, to investigate an alleged violation of this chapter by a licensing agent or an applicant.

[Reserves Sections 7.053-7.100 for expansion.]

SUBCHAPTER C. LICENSING

Sec. 7.101. LICENSE REQUIRED. Prohibits a person from acting as a licensing agent unless the person holds a license issued under this chapter.

Sec. 7.102. ELIGIBILITY FOR LICENSING AGENT LICENSE. Sets forth the requirements for a person to be eligible for a licensing agent license.

Sec. 7.103. PERSON INELIGIBLE FOR LICENSE. Prohibits the commission from issuing a licensing agent license to a person who has an interest in any permit or license issued under Title 3 (Licenses and Permits).

Sec. 7.104. APPLICATION FOR LICENSE. Requires an applicant for a license under this chapter to submit an application on a form provided by the commission and include the application fee set by the commission.

Sec. 7.105. CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE APPLICANTS. Requires an applicant for a license under this chapter to submit to the commission a complete and legible set of fingerprints, on a form prescribed by the commission, for the purpose of obtaining criminal history background information from the Department of Public Safety and the Federal Bureau of Investigation. Requires the commission to conduct a criminal background check of an applicant upon receiving an application for a license under this chapter. Provides that an applicant is not eligible for a license under this chapter if the applicant has been finally convicted of a misdemeanor involving moral turpitude or a felony in the five years preceding the date of the application.

Sec. 7.106. LICENSE ISSUANCE. Requires the commission to issue a license under this chapter once the commission has determined that the applicant has paid the license fee set by the commission and qualifies to be licensed under this chapter.

Sec. 7.107. LICENSE NOT REQUIRED FOR CERTAIN EMPLOYEES. Provides that an employee of a licensing agent who only performs administrative duties is not required to hold a license under this chapter.

[Reserves Sections 7.108-7.150 for expansion.]

SUBCHAPTER D. LICENSE EXPIRATION AND RENEWAL

Sec. 7.151. LICENSE EXPIRATION. Provides that a license issued under this chapter expires on the second anniversary of the date the license is issued and requires the commission by rule to adopt a system under which the licenses expires on various dates during the year. Prohibits a person from engaging in activities that require a license if their license has expired and is not renewed.

Sec. 7.152. LICENSE RENEWAL. (a) Authorizes a person to renew an unexpired license by paying the required renewal fee to the commission before the expiration date of the license.

(b) Requires the commission to send a written notice of the upcoming license expiration to the person at the person's last known address at least 30 days before the expiration of a person's license.

(c) Authorizes a person whose license has been expired for 90 days or less to renew the license by paying to the commission a renewal fee that is equal to one and one-half times the normally required renewal fee.

(d) Authorizes a person whose license has been expired for more than 90 days but less than one year to renew the license by paying to the commission a renewal fee that is equal to two times the normally required renewal fee.

(e) Prohibits a person whose license has been expired for one year or more from renewing the license, but authorizes such a person to obtain a license by complying with the requirements and procedures for obtaining a new license.

(f) Authorizes the commission to conduct a criminal background check under Section 7.105 upon receiving an application to renew a license issued under this chapter.

[Reserves Sections 7.153-7.200 for expansion.]

SUBCHAPTER E. PRACTICE OF LICENSING AGENT

Sec. 7.201. **COLLECTION OF LICENSE AND PERMIT FEES.** Requires all permit or license fees collected by a licensing agent on behalf of another person to be paid by check made payable to the commission. Requires a licensing agent to deposit all license and permit fees collected by the agent with the commission by the 20th day after the date the licensing agent receives the fee.

[Reserves Sections 7.202-7.250 for expansion.]

SUBCHAPTER F. BOND

Sec. 7.251. **BOND REQUIRED.** Requires the holder of a licensing agent license to file a bond with the commission.

Sec. 7.252. **BOND TERMS AND CONDITIONS.** Sets forth the requirements for the filing of a bond under this subchapter.

Sec. 7.253. **BOND APPROVAL.** Requires the bond to be approved by the commission.

Sec. 7.254. **SUIT ON BOND.** (a) Authorizes a person damaged by a breach of condition of the bond to bring suit and recover under the bond.

(b) Requires the suit to be filed in the county in which the licensing agent maintains an office.

(c) Provides that a bond is not void on first recovery and is authorized to be sued on until the total amount is exhausted.

(d) Authorizes the commission to require the licensing agent to file a new bond in an amount set by the commission if the amount of the bond is reduced. Provides that the new bond is liable for all future contracts entered into by the licensing agent and a license or permit holder under this code.

(e) Prohibits a licensing agent who does not file a new bond from acting as a licensing agent in this state.

[Reserves Sections 7.255-7.300 for expansion.]

SUBCHAPTER G. DENIAL OF LICENSE AND DISCIPLINARY PROCEDURES

Sec. 7.301. **DENIAL OF APPLICATION; SUSPENSION OR REVOCATION OF LICENSE.** Authorizes the commission to deny an application for a license or suspend or

revoke the license of a licensing agent if certain violations or actions are committed by the licensing agent.

Sec. 7.302. HEARING BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. Sets forth certain procedures that the commission is required to follow before denying an application for a license or suspending or revoking a license. Authorizes the applicant to be present and be heard in person or by counsel and have an opportunity to offer evidence by oral testimony, affidavit, or deposition during a hearing conducted by the State Office of Administrative Hearings under this section. Authorizes written notice to be served by personal delivery to the applicant or by certified mail to the last known mailing address of the applicant.

[Reserves Sections 7.303-7.350 for expansion.]

SUBCHAPTER H. CRIMINAL PENALTIES

Sec. 7.351. PRACTICING WITHOUT LICENSE; OFFENSE. Establishes that a person commits a Class B misdemeanor if the person acts as a licensing agent without a license.

Sec. 7.352. GENERAL CRIMINAL PENALTY. Establishes that a person commits a Class C misdemeanor if the person violates a provision of this chapter or a rule adopted by the commission under this chapter for which a penalty is not provided.

SECTION 2. Requires the Texas Alcoholic Beverage Commission to adopt all rules necessary to implement Chapter 7, Alcoholic Beverage Code, as added by this Act, on or before November 1, 2007.

SECTION 3. Provides that a person is not required to hold a license under Chapter 7, Alcoholic Beverage Code, as added by this Act, before January 1, 2008, to engage in activity regulated by that chapter.

SECTION 4. (a) Effective date: September 1, 2007, except as provided by Subsection (b).

(b) Effective date for Sections 7.101, 7.351, and 7.352, Alcoholic Beverage Code, as added by this Act: January 1, 2008.