

BILL ANALYSIS

Senate Research Center
83R6899 MCK-F

S.B. 1035
By: Carona
Business & Commerce
3/22/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Alcoholic Beverage Code is divided into two parts, beer and liquor. Beer and liquor are treated differently throughout the code because beer, with a lower alcohol content, was legalized before liquor and regulated at the county level before the creation of the Texas Alcoholic Beverage Commission (TABC). Thus, many statutory provisions pertaining to beer reflect regulation at a more local level. One of the differences found under the Alcoholic Beverage Code is that permits are issued for liquor, while licenses are issued for beer.

Currently, applications for licenses must be heard before a county judge, while applications for permits do not have the same requirement. Once a license is granted, the place of business must pay the licensing fees to the local tax assessor-collector. The tax assessor-collector retains five percent of this fee and submits the rest to TABC. Permit applicants, on the other hand, send the licensing fee directly to TABC.

S.B. 1035 requires that the county judge only hear protested license applications, rather than hearing all license applications. S.B. 1035 also requires licensing fees to be paid directly to TABC, thus streamlining the payment process. Finally, S.B. 1035 returns five percent of the licensing fee to the tax assessor-collector so they will not lose this source of revenue.

As proposed, S.B. 1035 amends current law relating to alcoholic beverage license applications and fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTION 5 (Section 61.35, Alcoholic Beverage Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 61.31(a) and (b), Alcoholic Beverage Code, as follows:

(a) Authorizes a person to file an application for a license to manufacture, distribute, or sell beer with the Texas Alcoholic Beverage Commission (TABC) forms prescribed by TABC, rather than authorizing a person to file an application for a license to manufacture, distribute, store, or sell beer in termtime or vacation with the county judge of the county in which he desires to conduct business. Deletes existing text requiring that he file the application in duplicate.

(b) Requires the county judge to set a protested application for a hearing to be held not less than 15, nor more than 20, rather than not less than 5 nor more than 10, days after the date TABC submits the application to the county judge for a hearing, rather than after the application is filed.

SECTION 2. Amends Section 61.32(b), Alcoholic Beverage Code, to read as follows:

(b) Requires the applicant, if the county judge enters an order favorable to the applicant, to present a copy of the order to TABC, rather than requiring the applicant, if the county judge enters an order favorable to the applicant, to present a copy of the order to the

assessor and collector of taxes of the county and pay that officer the appropriate license fee. Deletes existing text requiring the assessor and collector of taxes to then report to TABC on a form prescribed by TABC, certifying that the application was approved and that all required fees have been paid and furnishing any other information TABC requires. Deletes existing text requiring the assessor and collector of taxes to attach a copy of the original application to the report.

SECTION 3. Amends Section 61.33, Alcoholic Beverage Code, as follows:

(a) Requires TABC or the administrator, on receiving an order, rather than a report, from the county judge, rather than assessor and collector of taxes under Section 61.32(b), to issue the appropriate license if TABC or the administrator finds that the applicant is entitled to a license.

(b) Authorizes TABC or the administrator to refuse to issue a license after receiving the order from the county judge, rather than the report of the assessor and collector of taxes, if TABC or the administrator possesses information from which it is determined that any statement in the license application is false or misleading or that there is other legal reason why a license should not be issued. Requires TABC or the administrator, if TABC or the administrator refuses to issue a license, to enter an order accordingly and entitles the applicant to a refund of any license fee the applicant paid in connection with the application. Makes conforming changes.

SECTION 4. Amends Section 61.34(b), Alcoholic Beverage Code, as follows:

(b) Requires the applicant, if the judgment of the district court is in favor of the applicant, regardless of whether an appeal is taken, to present a copy of the judgment to TABC, rather than requiring a copy of the judgment, if the judgment of the district court is in favor of the applicant, regardless of whether an appeal is taken, to be presented to the assessor and collector of taxes of the county where the application was made. Deletes existing text requiring the assessor and collector of taxes to accept the fees required by this code and proceed as provided under Section 61.32 (Hearing by County Judge) of this code as if the county judge had approved the application.

SECTION 5. Amends Section 61.35, Alcoholic Beverage Code, by amending Subsections (b) and (d) and adding Subsection (e), as follows:

(b) Requires each license application to be accompanied by a cashier's check, a teller's check, a check drawn on the account of a corporation applying for a permit, a money order, or payment by credit card, charge card, or other electronic form of payment approved by TABC rule for the amount of the state fee, payable to the order of the comptroller of public accounts. Deletes existing text requiring the assessor and collector of taxes to make statements of the amounts collected by him under this code to the commission at the times and in the manner required by TABC or the administrator. Makes a nonsubstantive change.

(d) Prohibits the commissioner of TABC from refunding a license fee except when the licensee is prevented from continuing in business by a local option election or when an application for a license is rejected by TABC or the administrator. Authorizes as much of the proceeds from license fees, rather than derived under the provisions of this subtitle, as is necessary to be appropriated for that purpose. Deletes existing text providing that if a licensee engaged in selling beer is prevented from continuing in business by a local option election, he is entitled to a refund of a proportionate amount of the license fees he has paid covering the unexpired term of his license.

(e) Authorizes TABC by rule to establish a method for transmitting five percent of the license fee to the assessor and collector of taxes of the county in which the applicant's business is located.

SECTION 6. Amends Section 61.38, Alcoholic Beverage Code, as follows:

Sec. 61.38. NOTICE OF APPLICATION. (a) Requires every original applicant for a license to manufacture, distribute, or sell beer at retail to give notice of the application by electronic or nonelectronic publication at the applicant's own expense in two consecutive issues of a newspaper of general circulation published in the city or town in which the applicant's place of business is located. Requires the notice, if no newspaper is published in that city or town, to be published in a newspaper of general circulation published in the county where the applicant's business is located. Requires the notice, if no newspaper, rather than a newspaper of general circulation, is published in that county, to be published in a qualified newspaper published in the closest neighboring county and circulated where the applicant's business is located. Deletes existing text requiring the county clerk, when an application for a license to manufacture or distribute beer is filed, to post at the courthouse door a written notice containing the substance of the application and the date set for hearing. Deletes existing Subsection (b) requiring the county clerk, when an original application to sell beer at retail at a location previously licensed is filed, to post at the courthouse door a written notice containing the substance of the application and the date set for hearing. Deletes existing Subsection (c) requiring the county clerk, when an original application to sell beer at retail at a location not previously licensed is filed, to publish notice for two consecutive issues in a newspaper of general circulation published in the city or town in which the applicant's place of business is to be located. Makes nonsubstantive changes.

(b) Creates this subsection from existing text. Requires the notice to be printed in 10-point boldface type and include the type of license applied for; the exact location of the business for which the license is sought; the name of each owner of the business and, if the business is operated under an assumed name, the trade name together with the name of each owner; and if the applicant is a corporation, the names and titles of all officers. Makes conforming and nonsubstantive changes.

(c) Provides that an applicant for a renewal license is not required to publish notice. Deletes existing text requiring the applicant, at the time the application is filed, to deposit with the clerk the cost of publishing notice, which the clerk is required to use to pay for the publication.

SECTION 7. Amends Section 61.41(c), Alcoholic Beverage Code, to authorize the holder of an existing license to apply to TABC, rather than the county judge, for the reinstatement of the license in the same manner and according to the same procedure as in the case of an original license application.

SECTION 8. Amends Section 61.48, Alcoholic Beverage Code, as follows:

Sec. 61.48. RENEWAL APPLICATION. Requires an application to renew a license to be filed with TABC no earlier than 30 days before the license expires but not after it expires, rather than requiring an application to renew a license to be filed in writing with the assessor and collector of taxes of the county in which the licensed premises are located no earlier than 30 days before the license expires but not after it expires. Requires that the application be accompanied by the appropriate license fee, rather than requiring that the application be accompanied by the appropriate license fee plus a filing fee of \$2. Deletes existing text requiring that the assessor and collector of taxes to deposit the \$2 filing fee in the county treasury and is required to account for it as a fee of office. Makes a nonsubstantive change.

SECTION 9. Amends Section 61.49, Alcoholic Beverage Code, as follows:

Sec. 61.49. New heading: ACTION ON RENEWAL APPLICATION BY COMMISSION; REFUND OF FEE. Deletes existing text requiring the assessor and collector of taxes, when the renewal application has been filed in accordance with Section 61.48 of this code, to transmit to TABC the original copy of the application plus a certification that all required fees have been paid for the ensuing license period.

Authorizes TABC or the administrator, when the renewal application has been filed in accordance with Section 61.48, to, in its discretion, issue a renewal license or reject the application and require the applicant to file an application with the county judge and submit to a hearing as is required in the case of an original application. Deletes existing text providing that when an application for renewal is rejected, the applicant is entitled to a refund of any license fee that was paid to the assessor and collector of taxes at the time the renewal application was filed.

SECTION 10. Makes application of this Act prospective.

SECTION 11. Effective date: September 1, 2013.