

BILL ANALYSIS

Senate Research Center
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S.B. 828
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, out-of-state distilleries are allowed to designate agents who may conduct samplings of their products and also solicit and take orders from wholesalers. These agents are important as they help promote a distillers brand and product. Unfortunately, in-state distilleries are at a disadvantage because they are not afforded the same rights under the current law.

S.B. 828 creates parity between in-state and out-of-state distilleries by creating a distiller's agent's permit for in-state distilleries. A holder of a distiller's agent's permit will be permitted under S.B. 828 to solicit and take orders from wholesalers and be allowed to conduct product samplings at package stores.

As proposed, S.B. 828 amends current law relating to the marketing of certain alcoholic beverages by manufacturers and their agents and provides for a permitting fee.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.72, Alcoholic Beverage Code, as follows:

Sec. 11.72. DISCIPLINE FOR ACTIONS OF AGENT. Authorizes the Texas Alcoholic Beverage Commission (TABC) or administrator to suspend or revoke the permit of a person who is represented by the holder of an agent's permit under Section 15.01, 35.01 (Authorized Activities), or 36.01 (Authorized Activities), rather than as described by Section 35.01, or otherwise discipline the person based on an act or omission of the holder of the agent's permit only under certain circumstances. Makes nonsubstantive changes.

SECTION 2. Amends Subtitle A, Title 3, Alcoholic Beverage Code, by adding Chapter 15, as follows:

CHAPTER 15. DISTILLER'S AGENT'S PERMIT

Sec. 15.01. AUTHORIZED ACTIVITIES. Authorizes the holder of a distiller's agent's permit to:

- (1) represent the holder of a distiller's and rectifier's permit;
- (2) solicit and take orders from authorized permit holders for the sale of distilled spirits manufactured by the permit holder represented by the agent; and
- (3) conduct free distilled spirits tastings on the premises of the holder of a package store permit.

Sec. 15.02. FEE. Provides that the annual state fee for a distiller's agent's permit is \$10.

Sec. 15.03. EVIDENCE OF AGENCY OR EMPLOYMENT REQUIRED. Prohibits a distiller's agent's permit from being issued to a person until the person shows to the satisfaction of TABC that the person has been employed by or authorized to act as the agent of the permit holder the person proposes to represent.

Sec. 15.04. PROVIDING SAMPLES TO RETAILER. (a) Authorizes the holder of a distiller's agent's permit, notwithstanding any other provision of this code, to furnish or give a sample of a distilled spirit to a holder of a permit authorizing the sale of distilled spirits at retail if the retail permittee has not previously purchased that brand. Prohibits a sample of a distilled spirit from being furnished or given under this section unless the product's label complies with the labeling requirements of this code.

(b) Authorizes the distiller's agent to give the retail permittee not more than 750 milliliters of any brand of distilled spirits.

(c) Authorizes the retail permittee or the permittee's agent, servant, or employee to sample the product on the licensed premises only if the distiller's agent is present.

Sec. 15.05. SOLICITATION FROM HOLDER OF MIXED BEVERAGE OR PRIVATE CLUB PERMIT. Prohibits a holder of a distiller's agent's permit from soliciting business directly or indirectly from a holder of a mixed beverage permit or a private club registration permit unless the distiller's agent is accompanied by the holder of a wholesaler's permit or the wholesaler's agent.

Sec. 15.06. UNAUTHORIZED REPRESENTATION. Prohibits a holder of a distiller's agent's permit in soliciting or taking orders for the sale of liquor from representing that the permit holder is an agent of any person other than the person designated in the permit holder's application.

Sec. 15.07. GRACE PERIOD. Authorizes a person to engage in the activities specified in Section 15.01 for an initial grace period of five days during which the person is required to procure a distiller's agent's permit from TABC.

SECTION 3. Amends Section 36.05, Alcoholic Beverage Code, as follows:

Sec. 36.05. New heading: PROVIDING SAMPLES TO RETAILER. (a) Authorizes the holder of a manufacturer's agent's permit, notwithstanding any other provision of this code, to furnish or give a sample of a distilled spirit to a holder of a permit authorizing the sale of distilled spirits at retail if the retail permittee has not previously purchased that brand. Prohibits a sample of a distilled spirit from being furnished or given under this section unless the product's label complies with the labeling requirements of this code.

(b) Authorizes the holder of a manufacturer's agent's permit to give the retail permittee not more than 750 milliliters of any brand of distilled spirits.

(c) Authorizes the retail permittee or the permittee's agent, servant, or employee to sample the product on the licensed premises only if the holder of the manufacturer's agent's permit is present.

(d) Creates this subsection from existing text. Requires that any distilled spirit provided to a retail permittee under this section be obtained by the holder of a manufacturer's agent's permit from the holder of a wholesaler's permit, rather than providing that the holder of a manufacturer's agent's permit is prohibited from transporting or carrying liquor as samples, but is authorized to carry or display empty sample containers.

SECTION 4. Amends Chapter 36, Alcoholic Beverage Code, by adding Section 36.09, as follows:

Sec. 36.09. GRACE PERIOD. Authorizes a person to engage in the activities specified in Section 36.01 for an initial grace period of five days during which the person is required to procure a manufacturer's agent's permit from TABC.

SECTION 5. Amends Section 52.01(m), Alcoholic Beverage Code, as follows:

(m) Authorizes the holder of a distiller's or rectifier's permit, distiller's agent's permit, nonresident seller's permit, or manufacturer's agent's permit or that permit holder's agent or employee to participate in and conduct product tastings of alcoholic beverages at a retailer's premises and may open, touch, or pour alcoholic beverages, make a presentation, or answer questions at the tasting. Provides that this section does not authorize the holder of a distiller's or rectifier's permit, distiller's agent's permit, nonresident seller's permit, or manufacturer's agent's permit to withdraw or purchase an alcoholic beverage from the holder of a wholesaler's permit or provide an alcoholic beverage for tasting on a retailer's premises that is not purchased from the retailer.

SECTION 6. Amends Section 106.09(d), Alcoholic Beverage Code, to provide that the fact that a person is 18, 19, or 20 years of age is not a ground for refusal of an original or renewal permit or license issued under Chapter 15, 35 (Agent's Permit), 36 (Manufacturer's Agent's Permit), or 73 (Agent's Beer License), rather than Chapter 35 or 73, of this code, provided that such a person to whom a permit or license is issued is authorized to carry out the activities authorized by those chapters only while in the actual course and scope of the person's employment.

SECTION 7. Effective date: September 1, 2013.