

BILL ANALYSIS

C.S.H.B. 1545
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Alcoholic Beverage Commission (TABC) regulates all aspects of the alcoholic beverage industry in Texas and is periodically subject to abolishment under the Texas Sunset Act if it is not continued by the legislature. During its review of the agency, the Texas Sunset Commission identified several desirable improvements to the laws authorizing TABC and governing the alcoholic beverage industry, including streamlining the state's licensing system. C.S.H.B. 1545 seeks to continue TABC and adopt those recommended reforms.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTIONS 9, 11, 12, 34, 49, 69, 105, 115, 117, 121, 142, 165, 206, 238, 268, 337 and 400 of this bill.

ANALYSIS

C.S.H.B. 1545 amends the Alcoholic Beverage Code to provide for the continuation of the Texas Alcoholic Beverage Commission (TABC) and to revise and set out provisions relating to TABC functions, including the consolidation, repeal, and creation of certain licenses and permits and the changing of certain fees.

Provisions Effective September 1, 2019

C.S.H.B. 1545 postpones from September 1, 2019, to September 1, 2031, the date on which TABC is abolished and certain related statutory provisions expire unless continued in existence as provided by the Texas Sunset Act.

C.S.H.B. 1545 eliminates the agent's permit, the distiller's agent's permit, the manufacturer's agent's permit, and the agent's beer license and repeals related provisions. The bill retains provisions relating to the activities of those agents and revises those provisions to account for the elimination of the permits and license, including by replacing references to a manufacturer's agent with references to a nonresident seller's agent. The bill requires the holder of a permit or license who is represented by an agent to maintain records relating to the agent's activities for not less than four years from the date the record is created.

C.S.H.B. 1545 eliminates the following licenses and permits and revises and sets out related provisions:

- the industrial permit;

- the permit for certain billboards;
- the wine bottler's permit;
- the local class B wholesaler's permit;
- the local industrial alcohol manufacturer's permit;
- the market research packager's permit;
- the local distributor's license;
- the storage license;
- the wine and beer retailer's permit for railway dining, buffet, or club cars; and
- the license for a certain warehouse for the importation of beer.

The bill authorizes a person who holds a wine bottler's permit or a local class B wholesaler's permit on August 31, 2019, to continue to operate under that permit until the date the permit expires.

C.S.H.B. 1545 does the following with respect to TABC:

- increases from three to five the number of TABC members and provides for the appointment and terms of the two additional members;
- revises the training required for TABC members and provides for the development of a related training manual which members must annually attest to receiving and reviewing;
- provides for the transition to the new training requirements for sitting TABC members who have completed the existing training requirements;
- revises and modernizes certain conflict of interest provisions for TABC members;
- authorizes TABC, by rule, to establish advisory committees it considers necessary to accomplish the purposes of the Alcoholic Beverage Code and subjects such an advisory committee to Government Code provisions governing state agency advisory committees;
- requires TABC, as part of its enforcement activities, to develop by rule a plan for inspecting permittees and licensees using a risk-based approach that prioritizes public safety; sets out provisions relating to the contents of the plan; and requires TABC to adopt rules to implement the bill's provisions relating to the development of the plan not later than January 31, 2020;
- requires TABC, with the assistance of the Legislative Budget Board, to develop target goals for the percentage of licensed and permitted facilities TABC inspects each year;
- authorizes TABC by rule to delegate to the TABC executive director the authority to take disciplinary and enforcement actions against a person subject to TABC regulation under the Alcoholic Beverage Code, except that TABC must make the final decision in any disciplinary action in a contested case that had an administrative hearing, and requires TABC to specify a threshold for the types of actions that are delegated; and
- authorizes TABC to receive market data that is voluntarily provided by a licensee or permittee for TABC law enforcement purposes but prohibits TABC from using the data to create a database of information containing individually identifying information.

C.S.H.B. 1545 requires the local certification of wet or dry status required as part of the permit or license application process to be issued within 30 days of receipt of the application for certification.

C.S.H.B. 1545 prohibits the personnel records of a commissioned TABC peace officer from being disclosed under state public information law or otherwise made available to the public while there is a pending internal investigation for alleged employee misconduct, with certain

exceptions set out by the bill. The bill provides that an authorized release of information under such an exception does not waive the right to assert in the future that the information is excepted from required disclosure under the law.

C.S.H.B. 1545, in a provision relating to the exercise of authority under a permit, removes the specification that an act done by a person which is not permitted by the Alcoholic Beverage Code is unlawful.

C.S.H.B. 1545 authorizes TABC or the executive director to issue an emergency order, without a hearing, suspending for not more than 90 days the permit or license of a business whose continued operation TABC or the executive director has determined would constitute a continuing threat to the public welfare. The bill sets out related provisions, including an authorization for TABC to prescribe by rule certain procedures. The bill authorizes TABC to deny an application for an original or renewal permit or license or take other disciplinary action against a permit or license holder who violates an order of TABC or the executive director. The bill requires TABC or the executive director, in determining the amount of the civil penalty to impose for a violation committed by a permittee or licensee who has previously violated the Alcoholic Beverage Code, to consider whether the permittee or licensee profited from the violation and, if so, the amount of that profit.

C.S.H.B. 1545 requires the holder of a manufacturer's or distributor's license to register with TABC each warehouse used by the manufacturer or distributor to store beer and requires TABC to determine by rule the information that is required to register a warehouse.

C.S.H.B. 1545 removes the authorization for retail licensees and permittees to erect or maintain one certain outdoor advertising sign at each place of business and certain provisions regulating the usage of billboards and electric signs. The bill requires TABC instead to adopt, not later than December 31, 2019, reasonable rules relating to the type of outdoor advertising such licensees and permittees may erect or maintain on the retailer's premises. A violation of any such rule is a violation of the Alcoholic Beverage Code.

C.S.H.B. 1545 revises certain of the grounds for refusing to issue an original or renewal permit, for suspending or canceling an original or renewal permit, for refusing to approve an application for a license as a distributor or retailer, and for suspending or canceling certain licenses to provide for the use of person first respectful language.

C.S.H.B. 1545 requires the Texas Sunset Commission staff, with assistance from the Texas Legislative Council (TLC) and TABC, to review the Alcoholic Beverage Code and make recommendations to the sunset commission for both a modernization and a nonsubstantive technical revision of the code. The bill prohibits sunset commission staff and TLC from considering changes to the overall three-tier regulatory system. The bill requires TLC, not later than September 1, 2022, to prepare a nonsubstantive revision of the code to implement the nonsubstantive recommendations and requires sunset commission staff, not later than that date, to make substantive recommendations to the sunset commission to address any recommended changes to modernize the code that TLC determines cannot be included in a nonsubstantive code revision.

C.S.H.B. 1545 repeals the requirement for TABC to periodically report to the legislature on TABC enforcement efforts concerning alcohol sales and consumption during prohibited hours.

C.S.H.B. 1545 repeals the following provisions of the Alcoholic Beverage Code effective September 1, 2019:

- Chapters 18, 21, 47, 49, 65, and 75
- Section 5.05(b)
- Section 5.61

- Section 15.02
- Section 15.03
- Section 15.06
- Section 25.03
- Section 35.02
- Section 35.03
- Section 35.04
- Section 35.08
- Section 36.02
- Section 36.03
- Section 36.09
- Section 38.02
- Section 38.03
- Section 62.13
- Section 73.02
- Section 73.03
- Section 73.04
- Section 73.05
- Section 73.06
- Section 73.07
- Section 73.08
- Section 73.09
- Section 73.10
- Section 73.11
- Section 74.10
- Sections 108.52(d), (f), and (h)
- Section 204.06

Provisions Effective December 31, 2020

C.S.H.B. 1545 restructures the TABC permit application and protest process by repealing certain provisions relating to the existing application and protest process, including provisions relating to the involvement of county judges in the process, and:

- removing the executive director's discretionary authority to grant or refuse to issue an original or renewal permit;
- removing TABC's discretionary authority to refuse to issue such a permit and granting TABC discretionary authority instead to deny an application for such a permit;
- requiring the executive director to evaluate a permit application on receipt of the application and setting out provisions relating to the application review process, including provisions providing for a hearing in front of the State Office of Administrative Hearings (SOAH) if the executive director recommends that the application be approved but TABC does not issue the permit, if the executive director recommends the

application be denied, or if a protest is filed against the application and the executive director finds that reasonable grounds exist for the protest; and

- authorizing an applicant to appeal an application denial to a Travis County district court after exhausting all administrative remedies.

C.S.H.B. 1545 subjects a license application to the same review and protest process and removes the authority for county judges to hold hearings on or refuse to approve license applications. The bill requires TABC to adopt rules to implement the permit and license application review and protest process, including reasonable timelines, identifying the roles and responsibilities of all parties involved in the process, and identifying potential avenues for mediation or informal dispute resolution. The bill, in a provision effective September 1, 2019, requires TABC to adopt these rules by December 31, 2020. The bill repeals provisions providing for public participation in licensing or permitting hearings, revises and sets out provisions relating to the authority of a member of the public to protest certain specified permit and license applications, and authorizes TABC by rule to authorize a member of the public to protest other permit and license applications TABC considers appropriate. The bill sets out provisions relating to the authority of certain government officials to protest an application for an alcoholic beverage permit or license and the authority of TABC to give due consideration to the recommendations of such an official when evaluating a permit or license application.

C.S.H.B. 1545 revises provisions relating to the requisite prior approval of malt beverages before such beverages may be shipped or caused to be shipped into, imported into, manufactured and offered for sale in, or distributed, sold, or stored in Texas and the requisite prior approval of distilled spirits and wine before such spirits and wine may be shipped into or sold within Texas to provide for a uniform, streamlined labeling and registration process whereby:

- the applicable alcoholic beverages must be registered with TABC before the licensee or permittee may take any applicable action with regard to the beverages;
- the registration application must include a certificate of label approval issued by the U.S. Alcohol and Tobacco Tax and Trade Bureau for the product; and
- TABC must approve the product and issue a letter to that effect to the licensee or permittee on registration of a certificate of label approval issued by that federal bureau, unless certain determinations are made.

The bill sets a deadline for the approval or denial of a registration application by TABC and provides for a hearing before SOAH if TABC denies the application for a product with a valid federal certificate of label approval or fails to act on the application within the required time. The bill requires TABC to establish by rule certain procedures for the registration process, including procedures for registering products not eligible to receive a federal certificate of label approval or, for malt beverages, during periods when the federal bureau has ceased processing applications for a certificate of label approval. The bill, in a provision effective September 1, 2019, requires TABC to adopt rules not later than December 31, 2020, to implement these changes in law. The rules may not require testing for alcohol content as part of the process for registering a beverage.

C.S.H.B. 1545 repeals Sections 101.121 and 411.120, Government Code, and the following provisions of the Alcoholic Beverage Code relating to the permit and license application and protest process, effective December 31, 2020:

- Section 5.435
- Section 5.46
- Section 11.41
- Section 25.051

- Section 25.052
- Section 26.06
- Section 26.07
- Section 61.311
- Section 61.312
- Section 61.32
- Section 61.33
- Sections 61.34(a) and (b)
- Section 61.39
- Section 61.47
- Section 69.05

Provisions Effective September 1, 2021

C.S.H.B. 1545 eliminates the following subordinate licenses and permits and revises related provisions to provide for the absorption of the authority granted under those licenses and permits by related primary licenses and permits, including, as applicable, authority regarding the transportation and storage of alcoholic beverages, product tastings, sales at temporary locations, malt beverage importation, and hotel minibars:

- the private carrier permit;
- the local cartage permit for the holder of a package store, wine only package store, or local distributor's permit;
- the beverage cartage permit;
- the permit for public or private storage;
- the winery storage permit;
- the minibar permit;
- the package store tasting permit;
- the importer's license;
- the importer's carrier's license;
- the winery festival permit;
- the temporary wine and beer retailer's permit;
- the daily temporary mixed beverage permit;
- the daily temporary private club permit;
- the caterer's permit; and
- the temporary license to sell beer to ultimate consumers in a given county.

C.S.H.B. 1545 provides for the consolidation of certain existing licenses and permits into new licenses, permits, and certificates as follows:

- the following permits are consolidated into a new passenger transportation permit, as established by the bill:
 - the wine and beer retailer's permit for excursion boats;

- the mixed beverage permit for certain boats;
- the airline beverage permit;
- the passenger train beverage permit; and
- the passenger bus beverage permit;
- the following are consolidated into a new retailer late hours certificate, as established by the bill:
 - the mixed beverage late hours permit;
 - the private club late hours permit; and
 - the retail dealer's on-premise late hours license;
- the following permits are consolidated into a new nonprofit entity temporary event permit, as established by the bill:
 - the temporary wine and beer retailer's permit;
 - the special three-day wine and beer permit;
 - the daily temporary mixed beverage permit;
 - the daily temporary private club permit; and
 - the temporary auction permit;
- the nonresident brewer's permit and the nonresident manufacturer's license are consolidated into a new nonresident brewer's license, as established by the bill;
- the brewer's permit and the manufacturer's license are consolidated into a new brewer's license, as established by the bill; and
- the brewer's self-distribution permit and the manufacturer's self-distribution license are consolidated into a new brewer's self-distribution license, as established by the bill.

C.S.H.B. 1545 requires TABC, on September 1, 2021, to convert any existing brewer's permits, brewer's self-distribution permits, or nonresident brewer's permits to the corresponding license, which has the same expiration date as the permit it is replacing.

C.S.H.B. 1545 provides for the uniform regulation of malt beverages by eliminating distinctions between beer and ale/malt liquor. The bill defines "malt beverage" as a fermented beverage of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, in whole or in part, or from any malt substitute. The bill redefines "liquor" as any alcoholic beverage, other than a malt beverage, containing alcohol in excess of five percent by volume, unless otherwise indicated. The bill makes related revisions, including:

- applying the current beer excise tax rate of six dollars per barrel to all malt beverages;
- applying the application protest process for ale, which is handled through SOAH, to all malt beverages;
- applying current beer marketing regulations to all malt beverages;
- applying the cash payment requirement for a retailer's purchase of beer to all malt beverages;
- applying the current beer importation, delivery, storage, and transportation authority to all malt beverages;
- applying the current hours of delivery and sale for beer to all malt beverages;
- applying the current requirements for beer containers and packaging to all malt beverage products and requiring the label of a container of malt beverages to state the alcohol content by volume;

- authorizing the holder of a package store permit, a local distributor's permit, or a wine only package store permit to purchase and sell malt beverages;
- removing the authorization for the holder of a wholesaler's permit or general class B wholesaler's permit to purchase, import, and sell ale and malt liquors;
- providing the holder of a general distributor's license with the authority to receive, distribute or sell, and serve for free all malt beverages; and
- specifying that a warehouse or railway car in which malt beverages are served, orders for the sale of malt beverages are taken, or money from the sale of malt beverages is collected is a separate place of business for which a license is required.

C.S.H.B. 1545 provides that, if before September 1, 2021, the sale of beer was approved in an area by a local option election that approved the sale of beer only, an alcoholic beverage license or permit holder may not sell in that area malt beverages containing more than five percent alcohol by volume unless a subsequent local option election approves the sale of malt beverages or malt beverages and other alcoholic beverages. The bill requires TABC, on the face of each retail license, to indicate whether the holder may only sell malt beverages that do not exceed five percent alcohol by volume. The bill's changes relating to the regulation of malt beverages result in the removal of ale and malt liquor from the scope of certain permits, but the bill grandfathered in existing permits that otherwise would lose the authority to purchase, sell, transport, or store ale and malt liquor by authorizing the holder of such a permit to continue to exercise that authority under the applicable permit until the date the permit expires.

C.S.H.B. 1545 authorizes the holder of a local distributor's permit to sell and distribute distilled spirits to the holder of a nonprofit entity temporary event permit.

C.S.H.B. 1545 declares it a duty and priority of TABC to adhere to a zero tolerance policy of preventing human trafficking and related practices and sets out related legislative intent.

C.S.H.B. 1545, for purposes of TABC regulation, includes saké among the products considered to be "wine and vinous liquor."

Fee Changes Taking Effect September 1, 2021

C.S.H.B. 1545 changes the manner in which fees are set under the Alcoholic Beverage Code by replacing permit and license fees set by statute with a requirement for TABC to establish by rule reasonable fees for the issuance of certificates, licenses, and permits. The bill requires TABC to develop a process for setting fees that satisfies certain requirements and ensures the amount of the fees for an original or renewal certificate, permit, or license is sufficient to cover the costs incurred by TABC in administering the Alcoholic Beverage Code. The bill requires TABC to review the amount of each fee collected under that code and adjust the amount of each fee to ensure that TABC regulatory costs are fairly allocated among all certificate, permit, and license holders. The bill's provisions relating to the setting of fees by rule take effect September 1, 2019, and the bill requires TABC to adopt rules setting a fee for each original or renewal certificate, permit, and license not later than September 1, 2021. Those fees apply only to an original or renewal certificate, permit, or license issued on or after that date and the repeal and removal of the statutory fees takes effect on that date.

C.S.H.B. 1545 repeals the following provisions of the Alcoholic Beverage Code establishing fee amounts, effective September 1, 2021:

- Section 14.02
- Section 16.02

- Section 19.02
- Section 20.02
- Section 22.02
- Section 23.02
- Section 24.02
- Section 25.02
- Section 26.02
- Section 28.02
- Section 32.02
- Section 37.02
- Section 38.04
- Section 41.02
- Section 43.02
- Section 46.02
- Section 50.002
- Section 51.05
- Section 54.04
- Section 55.02
- Section 56.03
- Section 62.02
- Section 62A.03
- Section 63.02
- Section 64.02
- Section 66.02
- Section 69.02
- Section 69.03
- Section 71.02
- Section 74.02

C.S.H.B. 1545 repeals Section 151.461(3), Tax Code, and the following provisions of the Alcoholic Beverage Code, effective September 1, 2021:

- Chapters 12, 12A, 13, 17, 27, 31, 33, 34, 42, 44, 45, 48A, 52, 53, 67, 68, 70, and 72
- Subchapter B, Chapter 201
- Section 1.04(12)
- Section 19.05
- Section 20.03
- Section 22.06(b)
- Section 22.07

- Section 24.05(b)
- Section 24.06
- Section 28.13
- Section 37.04
- Section 43.07
- Section 51.01
- Section 62.06
- Section 71.03
- Section 107.07(d)

Conforming Amendments to Other Codes

Effective September 1, 2019, C.S.H.B. 1545 amends the Health and Safety Code, Occupations Code, and Tax Code to make conforming changes.

Effective September 1, 2021, C.S.H.B. 1545 amends the Code of Criminal Procedure, Election Code, Government Code, Health and Safety Code, Occupations Code, Tax Code, and Transportation Code to make conforming changes.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1545 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The introduced version contained only the following provisions, all of which were retained by the substitute:

- the postponement of the abolishment of TABC and the expiration of the related provisions until 2031;
- the revisions with respect to the training required for TABC members and the development of the related training manual;
- the transition to the new training requirements for sitting TABC members;
- the revision of certain grounds for refusal to issue an original or renewed permit and for cancellation or suspension of certain licenses to reflect person first respectful language; and
- the repeal of a report to the legislature on certain TABC enforcement efforts.