

SUBJECT: Permits for agents helping others with alcoholic beverage licenses, permits

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — Kuempel, Chisum, Gutierrez, Hamilton, Jones, Menendez, Quintanilla

0 nays

2 absent — Thompson, Geren

WITNESSES: For — *(Registered, but did not testify: A.R. Schwartz, Texas Association of Licensing Agents)*

Against — *(Registered, but did not testify: Dan Lindsey)*

On — *(Registered, but did not testify: Alan Steen and Lou Bright, Texas Alcohol Beverage Commission; William Kuntz, Texas Department of Licensing and Regulation)*

DIGEST: CSHB 2105 would require the Texas Alcoholic Beverage Commission to issue permits to licensing agents who provide services to others for obtaining or renewing permits and licenses for alcoholic beverages. Holders of licensing agency permits would be able to enter into agreements with applicants for TABC licenses or permits to provide agreed upon services to obtaining alcoholic beverage licenses or permits. They could:

- charge and collect a separate payment for their services;
- receive and hold in trust for the applicant fees and surcharges required to be submitted to TABC and funds to obtain a bond related to a TABC license or permit; and
- submit to the commission or assessor and collector of taxes these fees, surcharges, or bonds.

CSHB 2105 would establish eligibility criteria for the permits, including authorizing TABC to refuse a permit under certain circumstances. The commission would have to refuse an application for a permit if it found

that an applicant failed to submit the required fee or bond or if at least five years had not elapsed since the termination of any sentence, probation, deferred adjudication, or parole for a misdemeanor involving moral turpitude or a felony given to the person or an official of an entity applying for a permit.

CSHB 2105 would authorize the commission to cancel or suspend a permit for certain specified reasons, including if the permit holder failed to provide an agreed upon service or failed to submit to the TABC or assessor and collector of taxes a fee, surcharge, or bond on behalf of a client.

The bill would require training for the license applicants, and TABC would have to develop a training course that met requirements in CSHB 2105.

Applicants for licensing agency permits would be required to file a compliance bond with the commission in an amount to be set by the commission, but not to exceed \$200,000

CSHB 2105 would exempt from licensing requirements:

- licensed attorneys;
- those working under the supervision of licensed attorneys;
- those who had a direct or indirect interest in an application or permit and were working for the applicant for that permit or license; and
- an agent or employee of an applicant who was engaged in the activity exclusively for the applicant.

It would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) for persons to:

- engage in license agent activities or to offer to do those activities and not have a permit when required to do so; and
- misrepresent that they were authorized to engage in activities as a licensing agent if they were not.

The bill would take effect September 1, 2009, and persons would not be required to hold a permit to engage in licensing agent activities before September 1, 2010. The new offenses created by the bill would not take

effect until September 1, 2010. By July 1, 2010, TABC would be required to adopt rules necessary to implement the bill.

**SUPPORTERS
SAY:**

CSHB 2105 is necessary to give the TABC regulatory authority over agents who are hired to help others obtain or renew alcoholic beverage licenses or permits. Many of these agents do a good job but recent problems with some agents have highlighted the need for oversight.

Many restaurants and other establishments use these agents to help them fill out and file the necessary paperwork and fees to obtain or renew alcoholic beverage licenses. Problems occurred in Houston when agents took money from alcoholic beverage licensees but never followed through on their agreement to renew or obtain a license or permit. This resulted in restaurants being notified that their licensees had expired when they thought they had been renewed. It costs the restaurants time and money to straighten out the affair and obtain the authorization necessary to stay in business.

CSHB 2105 would address this problem by requiring TABC to oversee and permit licensing agents. The commission would issue permits to the agents and establish a training program for them, and the agents would be required to post a reasonable bond to protect their clients' money. The regulations that would be imposed under CSHB 2105 would be sensible and limited to only those things necessary to ensure proper oversight of the agents and their handling of alcoholic beverage licensees' money. The level of oversight created by CSHB 2105 would be appropriate given that alcoholic beverage licenses and permits could be at stake depending on the work of licensing agents.

TABC would be the appropriate agency to oversee licensing agents. It is the only agency with expertise in alcoholic beverage licensing and permitting and would understand the needs of both the licensing agents and their clients. The agency performs a similar function in its oversight of schools that provide training for sellers and servers of alcoholic beverages. Checks and balances on TABC would come through the due process rights that licensing agents would have as well as their input into the rulemaking process and provisions in CSHB 2105.

The bill would exempt licensed attorneys because they are overseen by the State Bar and already have a fiduciary responsibility to their clients.

OPPONENTS
SAY:

CSHB 2105 would go too far in placing oversight of licensing agents under TABC. Having the agents regulated by the agency before which they will advocate for their clients would present a conflict of interest for the TABC and the licensing agents. The agency would have too much power to be involved in the affairs of licensing agents, including their records. TABC's oversight duties should be confined to those selling alcoholic beverages. If the agents need to be regulated, the Texas Department of Licensing and Regulation would be a better choice.

NOTES:

The committee substitute made numerous changes to the original bill, including, moving oversight of the licensing agents from the Texas Department of Licensing and Regulation to TABC.

According to the fiscal note, CSHB 2105 would cost \$39,122 in fiscal 2010-11, and be a gain to the state of \$22,516 in fiscal 2012-13.