

BILL ANALYSIS

Senate Research Center

S.B. 1380
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Business & Commerce
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DIGEST AND PURPOSE

Currently, Texas Alcoholic Beverage Commission rules permit public entertainment facilities to allow members of the manufacturing and wholesale tiers of the alcoholic beverage industry to advertise, promote, and sponsor entertainment events without establishing unlawful relations with members of the retail tiers operating in those facilities. As proposed, S.B. 1380 amends the Alcoholic Beverage Code to govern advertising, sponsorship, promotion, and marketing activities by the alcoholic beverage industry in public entertainment facilities.

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 Chapter 108, Alcoholic Beverage Code, by adding Subchapter C, as follows:

SUBCHAPTER C. INDUSTRY PUBLIC ENTERTAINMENT FACILITIES ACT

Sec. 108.71. **PURPOSE.** Provides that this subchapter governs the statutory duties, rights, and relations among licensees and permittees operating under this code, including their relations with the owners and operators of public entertainment facilities. Provides that this subchapter expressly authorizes alcoholic beverage distillers, manufacturers, and wholesale distributors to promote and sponsor events and advertise alcoholic beverage brands and products at public entertainment facilities provided the distillers, manufacturers, or wholesale distributors do not establish unlawful relations with retail permittees operating at such facilities.

Sec. 108.72. **SHORT TITLE.** Authorizes this subchapter to be cited as the "Industry Public Entertainment Facilities Act."

Sec. 108.73. **DEFINITIONS.** Defines "independent concessionaire," "public entertainment facility," "public entertainment facility property," and "sponsorship signs."

Sec. 108.74. **ADVERTISING AND PROMOTION IN PUBLIC ENTERTAINMENT FACILITY.** (a) Authorizes a member of the manufacturing and wholesale distributors tiers to promote and sponsor an entertainment event or advertise and promote an alcoholic beverage brand or product at a public entertainment facility, if the alcoholic beverage promoted, sold, or served at such event or facility is furnished by an independent concessionaire.

(b) Prohibits the independent concessionaire from receiving direct monetary benefit from advertising, promotional, or sponsorship revenues generated by operation of the public entertainment facility. Prohibits the public entertainment facility owner, operator, or upper tier members from directly or indirectly controlling the quantity or brand of alcoholic beverages bought or sold by the independent concessionaire. Requires the independent concessionaire to enter

into a written concession agreement with the owner, lessee, or operator of the public entertainment facility.

(c) Authorizes a member of the manufacturing and wholesale tiers who has entered into an advertising, promotional or sponsorship agreement to provide, and a concessionaire who has entered into a concessionaire agreement under this subchapter to place sponsorship signs at, in, within, and on a public entertainment facility property, notwithstanding any provision in this code or Texas Alcoholic Beverage Commission (TABC) rules to the contrary. Provides that to the extent of any conflict between this subchapter and any other provision of this code or other state law, or of TABC rules, this subchapter controls.

Sec. 108.75. VIOLATION. Authorizes excess percentage sales, if an alcoholic beverage brand or product is the subject of an advertising, promotional, or sponsorship event or agreement concerning a brand or product sold during a public entertainment event or at a public entertainment facility and the aggregate percentage of such alcoholic beverage product or brand sold at the entire public entertainment facility exceeds by more than five percent the aggregate percentage share of the same brand or product sold during the prior calendar year within the county in which the public entertainment facility is located, to constitute prima facie but rebuttable evidence of a violation of Sections 102.01, 102.04, and 102.07, Alcoholic Beverage Code; provided, however, that the computation of excess percentage sales authorizes exclusion of sales made on those occasions when a private party uses such facility and orders specific alcoholic beverages.

Sec. 108.76. COST OF ADVERTISEMENT, SPONSORSHIP, OR PROMOTION. Prohibits a part of the cost of an advertisement, sponsorship, or promotion authorized by this subchapter from being charged to or paid, directly or indirectly, by the holder of a wholesale permit, general class B wholesaler's permit, local class B wholesaler's permit, local distributor's permit, general distributor's license, or local distributor's license, except through the price paid by the holder of the permit or license for products purchased from the permit or license holder's supplier, notwithstanding any provision of this subchapter or any other provision of this code.

Sec. 108.77. SUBMISSION OF AGREEMENT; CONFIDENTIALITY. (a) Requires an advertising, promotional, sponsorship, or concession agreement made on or after September 1, 2003, by a member of the alcoholic beverage industry under this subchapter to be filed with the office of TABC or administrator not later than the 60th day after the execution of the agreement, or any amendments to the agreement.

(b) Requires an advertising, promotional, sponsorship, or concession agreement as described by this subchapter that is in effect on September 1, 2003, to be filed with TABC or the administrator not later than the 180th day after that date; provided, however, that a failure to file the agreement within the 180-day period for good cause shown will not subject the parties to such agreement to legal liability.

(c) Provides that an agreement filed under this subchapter is confidential under Section 5.48(b).

Sec. 108.78. APPROVAL OR DENIAL OF AGREEMENT; JUDICIAL REVIEW. (a) Requires that not later than the 10th business day after a party applies for approval by filing with TABC or administrator under Section 108.77(a), the proposed or final concession, sponsorship, promotion, or advertising agreement, TABC or the administrator notify the applicant in writing of the approval, disapproval, or conditional approval of all tendered agreements. Provides that if TABC or administrator does not provide a written response within the 10-day period, the agreement is deemed approved for all purposes.

(b) Requires TABC or the administrator, not later than the 10th business day after

the disapproval or conditional approval, to specify in writing the basis for its determination, referencing specific code provisions or TABC rules violated and any necessary deletions or amendments required to effect compliance, if an agreement is disapproved or conditionally approved under Subsection (a).

(c) Provides that if on the applicant's resubmission to TABC or the administrator, the approval is directly or indirectly denied or withheld or the applicant contests TABC's or the administrator's determinations, acts, or omissions concerning this subchapter, then notwithstanding anything to the contrary in this code, the TABC rules, or Chapter 2001, Government Code, the applicant or any party to the agreements at issue desiring a declaration of rights, or alleging threatened or actual damage or injury by violation of this subchapter, this code, TABC rules, or at law or in equity, requires all administrative and other requirements to be deemed exhausted and authorizes suit to be brought in any district court in any county in which the rights in this subchapter are at issue, or a threatened or actual violation is alleged to have occurred, to require, contest, or suspend enforcement, including by injunctive relief, or authorizes bringing an action for declaratory relief. Authorizes the court in its discretion to allow the prevailing party to recover its court costs and reasonable attorney's fees incurred in the defense or prosecution of such action.

SECTION 2. Effective date: September 1, 2003.