

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1380
By: Armbrister
Business & Commerce
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Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, Texas Alcoholic Beverage Commission rules permit public entertainment facilities to allow members of the manufacturing and wholesaler 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. C.S.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 subchapter, including their relations with the owners and operators of public entertainment facilities. Provides that this subchapter expressly authorizes alcoholic beverage distillers, manufacturers, distributors, and wholesalers, except as provided by Section 108.74, to promote and sponsor events and advertise alcoholic beverage brands and products at public entertainment facilities without establishing unlawful intertier relations including with retail permittees operating at those 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. **EXCEPTION OF CERTAIN WHOLESALER FROM APPLICATION OF THIS SUBCHAPTER.** Prohibits a person who holds a permit under Chapter 19 and whose revenues from the sale of alcoholic beverages are predominately obtained from the sale of distilled spirits and wine from entering into advertising, sponsorship, or promotional agreements as authorized by Section 108.75.

Sec. 108.75. **ADVERTISING AND PROMOTION IN PUBLIC ENTERTAINMENT FACILITY.** (a) Authorizes a member of the distiller, manufacturing, distributor, or wholesaler tier to promote, sponsor or advertise an entertainment event or venue or promote or advertise an alcoholic beverage brand or product at a public entertainment facility, if the alcoholic beverage promoted, sold, or served at the event, venue, 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 a public entertainment facility. Prohibits a member of the manufacturing or distributing tier from directly or indirectly through the owner or operator of a public entertainment facility, furnish, give, rent, lend, or sell any equipment, fixtures, or supplies to an independent concessionaire. Prohibits a public entertainment facility owner or operator or a member of the distiller, manufacturing, distributor, or wholesale tier 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 a public entertainment facility.

(c) Authorizes a member of the distiller, manufacturing, distributor, or wholesaler tier who has entered into an advertising, promotional or sponsorship agreement to provide sponsorship signs at a public entertainment facility property and as otherwise authorized in this code and Texas Alcoholic Beverage Commission (TABC) rules.

(d) Authorizes an independent concessionaire who has entered into a concessionaire agreement under this subchapter to place sponsorship signs at, in, or on public entertainment facility property.

(e) Requires that the owner or operator of a public entertainment facility who has entered into a concessionaire agreement and a sponsorship agreement under this subchapter not be precluded from placing and displaying sponsorship signs provided by sponsoring members of the distiller, manufacturing, distributor, or wholesale tier, at, in, or on an independent concessionaire's venues at a public entertainment facility property, including the area where alcoholic beverages are displayed, served, or poured.

(f) Requires that nothing in this subchapter limit the independent concessionaire's right to place and display sponsorship and other signs authorized under this code and TABC rules.

(g) Requires all advertising, promotional, sponsorship, and concession agreements authorized by this subchapter to contain an affirmative provision disavowing the right of any party to engage in conduct prohibited by this subchapter.

Sec. 108.76. VIOLATION. Provides that the provision, placement, and use of sponsorship signs as authorized by and in compliance with this subchapter by members of the distiller, manufacturing, distributor, or wholesaler tier, independent concessionaires, and public entertainment facility owners and operators does not constitute an illegal inducement, subterfuge, or a surrender of exclusive control.

Sec. 108.77. COST OF ADVERTISEMENT, SPONSORSHIP, OR PROMOTION. Provides that no part of the cost of an advertisement, sponsorship, or promotion authorized by this subchapter may be charged to or paid, by a distributor or wholesaler, except as provided by Section 108.74, unless the distributor meets certain conditions.

Sec. 108.78. CONFIDENTIALITY. Provides that any concessionaire, sponsorship, advertisement, or promotional agreement, or related agreement and exhibits to such an agreement, entered into, submitted, filed, or requested by the administrator or TABC is deemed confidential under Section 5.48(b).

Sec. 108.79. OPTIONAL PREAPPROVAL PROCESS. (a) Authorizes a permittee or licensee to submit by certified mail, return receipt requested, the original or amended agreement relating to a public entertainment facility, requesting the administrator's

approval.

(b) Requires the administrator, not later than the 30th day after the date the administrator receives the request for preapproval under this section to notify the permittee or licensee in writing, by certified mail, return receipt requested, whether the administrator approves, conditionally approves, or disapproves the submission. Provides that if the administrator does not provide the notification in that time and the permittee or licensee does not agree to a timely and reasonable written request for an extension by the administrator giving the reason for the request, the agreement is considered approved as submitted.

(c) Requires that if the administrator conditionally approves or disapproves a submission under Subsection (b), the administrator is to specify in the notice provided under that subsection the basis for the administrator's determination, referencing any specific provisions of this code or other law involved in the determination and any necessary and reasonable actions the permittee or licensee is authorized to take to obtain approval of the submission.

(d) Authorizes the permittee or licensee, on receipt of the administrator's conditional approval or disapproval, to perform specific acts.

(e) Provides that a submission under Subsection (d)(1) is subject to the approval period prescribed by Subsection(b) unless the administrator and the permittee or licensee agree otherwise.

Sec. 108.80. JUDICIAL REVIEW. (a) Authorizes the aggrieved party to bring certain suits in a district court in Travis County, if a permittee, licensee, or other party to an agreement under this subchapter alleges that the administrator is or has been in any wrongful manner exercising or withholding the exercise of the administrators authority, desires a declaration of rights under this subchapter, or alleges threatened or actual damage or injury arising out of a violation of this subchapter or and other related law.

(b) Authorizes the court in its discretion to allow the permittee, licensee, or other party to an agreement to recover court costs and reasonable attorney's fees incurred in the defense or prosecution of the action.

SECTION 2. (a) Provides that except as provided by Subsection (b) of this section:

(1) this Act supersedes 16 T.A.C. Section 45.100(b) in its entirety as it existed on the effective date of this Act; and

(2) to the extent any conflict between 16 T.A.C. Section 45.100 and the provisions of Subchapter C, Chapter 108, Alcoholic Beverages Code, as added by this Act, the provisions of Subchapter C shall prevail.

(b) Requires an agreement entered into before April 15, 2003, that is in compliance with 16 T.A.C. Section 45.100, as that section existed on January 1, 2003, to be deemed in compliance with 16 T.A.C. Section 45.100 and Subchapter C, Chapter 108, Alcoholic Beverages Code, as added by this Act. Prohibits an agreement entered into before April 15, 2003, that is authorized under the provisions of Subchapter C, Chapter 108, Alcoholic Beverages Code as added by this Act, from being deemed to violate 16 T.A.C. Section 45.100 to the extent that section conflicts with or is superseded by Subchapter C.

SECTION 3. Effective date: September 1, 2003.