

CHAPTER 303

H.B. No. 1652

AN ACT

relating to the state and local regulation of the sale, use, production, and consumption of, and other commercial and noncommercial activities relating to, alcoholic beverages, to permits and licenses for sales and possession of alcoholic beverages, and to civil liability and civil and criminal penalties relating to alcoholic beverages.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Title 2, Alcoholic Beverage Code, is amended by adding Chapter 6 to read as follows:

CHAPTER 6. ACTIVITIES SUBJECT TO REGULATION

*Sec. 6.01. RIGHTS AND PRIVILEGES; REVOCATION. (a) A person may manufacture, distill, brew, sell, import, export, transport, distribute, warehouse, store, possess, possess for the purpose of sale, bottle, rectify, blend, treat, fortify, mix, or process alcoholic beverages or possess equipment or material designed for or capable of use for manufacturing alcoholic beverages, if the right or privilege of doing so is granted by this code and the person has first obtained a license or permit of the proper type as required by this code.*

*(b) A license or permit issued under this code is a purely personal privilege and is subject to revocation if the holder is found to have violated a provision of this code or a rule of the commission.*

SECTION 2. Section 71.03(a), Alcoholic Beverage Code, is amended to read as follows:

(a) The holder of a retail dealer's off-premise license who also holds a package store permit may sell beer directly to consumers by the container, but not for resale and not to be opened or consumed on or near the premises where sold. ~~Beer in containers holding 32 ounces or less may be sold only as follows:~~

~~[(1) 12, 24, and 32-ounce containers may be sold only in the following lots or full multiples thereof:~~

~~[(A) 6 containers holding 12 ounces each;~~

~~[(B) 3 containers holding 24 ounces each; or~~

~~[(C) 3 containers holding 32 ounces each; and~~

~~[(2) 7, 8, and 16-ounce containers may be sold only in lots or full multiples of the number of containers in a retail package for that size container; for purposes of this section "retail package" shall mean original packages as defined in Section 1.04(18) of~~

~~this code including 6-packs, 8-packs, or other packages containing at least 3 containers which are packaged for purposes of retail sales.]~~

SECTION 3. Title 1, Alcoholic Beverage Code, is amended by adding Chapter 2 to read as follows:

**CHAPTER 2. CIVIL LIABILITIES FOR SERVING BEVERAGES**

*Sec. 2.01. DEFINITIONS. In this chapter:*

(1) "Provider" means a person who sells or serves an alcoholic beverage under authority of a license or permit issued under the terms of this code or who otherwise sells an alcoholic beverage to an individual.

(2) "Provision" includes, but is not limited to, the sale or service of an alcoholic beverage.

*Sec. 2.02. CAUSES OF ACTION. (a) This chapter does not affect the right of any person to bring a common law cause of action against any individual whose consumption of an alcoholic beverage allegedly resulted in causing the person bringing the suit to suffer personal injury or property damage.*

*(b) Providing, selling, or serving an alcoholic beverage may be made the basis of a statutory cause of action under this chapter and may be made the basis of a revocation proceeding under Section 6.01(b) of this code upon proof that:*

*(1) at the time the provision occurred it was apparent to the provider that the individual being sold, served, or provided with an alcoholic beverage was obviously intoxicated to the extent that he presented a clear danger to himself and others; and*

*(2) the intoxication of the recipient of the alcoholic beverage was a proximate cause of the damages suffered.*

*Sec. 2.03. STATUTORY REMEDY. The liability of providers under this chapter for the actions of their customers, members, or guests who are or become intoxicated is in lieu of common law or other statutory law warranties and duties of providers of alcoholic beverages. This chapter does not impose obligations on a provider of alcoholic beverages other than those expressly stated in this chapter. This chapter provides the exclusive cause of action for providing an alcoholic beverage to a person 18 years of age or older.*

SECTION 4. Subchapter D, Chapter 102, Alcoholic Beverage Code, is amended by adding Section 102.81 to read as follows:

*Sec. 102.81. ALE AND MALT LIQUOR. This subchapter and Subchapter C of this chapter apply to agreements concerning ale and malt liquor in the same manner as they apply to agreements concerning beer, and each particular class of permittee dealing with ale and malt liquor is subject to those provisions that apply to functionally corresponding licensees within the beer industry.*

SECTION 5. Section 5.01(b), Alcoholic Beverage Code, is amended to read as follows:

(b) The Texas Alcoholic Beverage Commission is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the commission is abolished and *Subchapter A of this chapter* [code] expires September 1, 1991.

SECTION 6. Section 28.04(d), Alcoholic Beverage Code, is amended to read as follows:

(d) This section does not apply to a change in corporate control:

(1) brought about by the death of a shareholder if his surviving spouse or descendants are his successors in interest; or

(2) brought about when legal or beneficial ownership of over 50 percent of the stock of the corporation has been transferred to a person who possesses the qualifications required of other applicants for permits and is *currently* an officer of the corporation and [or] has been an officer of the corporation *ever since the date* the original permit was issued.

SECTION 7. Section 104.01, Alcoholic Beverage Code, is amended to read as follows:

Sec. 104.01. LEWD, IMMORAL, INDECENT CONDUCT. No person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including, but not limited to, any of the following acts:

- (1) the use of loud and vociferous or obscene, vulgar, or indecent language, or permitting its use;
- (2) the exposure of person or permitting a person to expose his person;
- (3) rudely displaying or permitting a person to rudely display a pistol or other deadly weapon in a manner calculated to disturb persons in the retail establishment;
- (4) solicitation of any person to buy drinks for consumption by the retailer or any of his employees;
- (5) *being* [~~becoming~~] intoxicated on the licensed premises or permitting an intoxicated person to remain on the licensed premises;
- (6) permitting lewd or vulgar entertainment or acts;
- (7) permitting solicitations of persons for immoral or sexual purposes;
- (8) failing or refusing to comply with state or municipal health or sanitary laws or ordinances; or
- (9) possession of a narcotic or any equipment used or designed for the administering of a narcotic or permitting a person on the licensed premises to do so.

SECTION 8. Subchapter D, Chapter 109, Alcoholic Beverage Code, is amended by adding Sections 109.56 and 109.57 to read as follows:

*Sec. 109.56. CONVICTION OF OFFENSE RELATING TO DISCRIMINATION; POLICY OF NONDISCRIMINATION. The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing that:*

- (1) *the permittee has been finally convicted of any offense under state or federal law or a municipal ordinance prohibiting the violation of an individual's civil rights or the discrimination against an individual on the basis of the individual's race, color, creed, sex, or religion; and*
- (2) *the offense was committed on the licensed premises or in connection with the operation of the permittee's business.*

*Sec. 109.57. APPLICATION OF CODE; OTHER JURISDICTIONS. (a) Except as is expressly authorized by this code, a regulation, charter, or ordinance promulgated by a governmental entity of this state may not impose stricter standards on premises or businesses required to have a license or permit under this code than are imposed on similar premises or businesses that are not required to have such a license or permit.*

*(b) It is the intent of the legislature that this code shall exclusively govern the regulation of alcoholic beverages in this state, and that except as permitted by this code, a governmental entity of this state may not discriminate against a business holding a license or permit under this code.*

*(c) This section does not affect the validity or invalidity of a regulation, charter, or ordinance that was finally enacted before the effective date of the Act adding this section to this code and that is otherwise valid.*

*(d) This section does not affect the authority of a governmental entity to regulate, in a manner as otherwise permitted by law, the location of:*

- (1) *a massage parlor, nude modeling studio, or other sexually oriented business; or*
- (2) *an establishment that derives 75 percent or more of the establishment's gross revenue from the on-premise sale of alcoholic beverages.*

SECTION 9. Section 3 of this Act applies only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect only for this purpose.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 23, 1987, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 1652 on May 30, 1987, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1652 on June 1, 1987, by the following vote: Yeas 142, Nays 1, 1 present, not voting. Passed by the Senate, with amendments, on May 27, 1987, by the following vote: Yeas 29, Nays 1; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1652 on June 1, 1987, by the following vote: Yeas 29, Nays 2.

Approved June 11, 1987.

Effective June 11, 1987.