

- SUBJECT:** Requiring alcoholic beverage providers to carry liability insurance
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 6 ayes — Smith, Gutierrez, Goldman, Kuempel, Miles, D. Miller
- 0 nays
- 3 absent — Geren, Guillen, S. Thompson
- WITNESSES:** For — Bill Lewis, Mothers Against Drunk Driving; Angela Ward;  
(*Registered, but did not testify*: Lee Loftis, Independent Insurance Agents of Texas; Ware Wendell, Texas Watch; Greg Vanek)
- Against — None
- On — Amy Harrison, Texas Alcoholic Beverage Commission
- BACKGROUND:** Alcoholic Beverage Code, sec. 2.02 creates a statutory cause of action against a provider of alcoholic beverages on proof that:
- at the time the provider sold or served the alcohol, it was apparent to the provider that the recipient was obviously intoxicated to the extent that he presented a clear danger to himself and others; and
  - the intoxication of the recipient proximately caused the damages suffered.
- Under sec. 106.14, owners of businesses that provide alcoholic beverages can avoid liability for their employees' actions if:
- the employer required its employees to attend a seller training program approved by the Texas Alcoholic Beverage Commission (TABC);
  - the employee actually attended the program; and
  - the employer did not directly or indirectly encourage the employee to violate the law.

Civil Practice and Remedies Code, sec. 101.023 establishes a limitation of liability for governmental units. These include:

- for the state government or a municipality, liability limitations of \$250,000 for each person, \$500,000 for each single occurrence of bodily injury or death, and \$100,000 for each single occurrence of injury to or destruction of property; and
- for a unit of local government or an emergency service organization (except a volunteer fire department), liability limitations of \$100,000 for each person, \$300,000 for each single occurrence of bodily injury or death, and \$100,000 for each single occurrence of injury to or destruction of property.

**DIGEST:**

CSHB 409 would prohibit a person from holding a permit to sell alcoholic beverages for on-premises consumption unless the person established financial responsibility by either maintaining a liability insurance policy or filing a bond with the Texas Alcoholic Beverage Commission (TABC).

A liability insurance policy under this bill would have to be issued by an insurance company that was authorized to write liability insurance in Texas or was an eligible surplus lines insurer and that would pay for damages arising out of the sale or service of alcoholic beverages. The commission would be required to adopt rules that established:

- minimum amounts of required insurance coverage at \$500,000 for each occurrence and \$1 million for any annual aggregate limit;
- the method for filing proof of insurance with and obtaining approval of the commission; and
- the method for verification of a permit holder's continued maintenance of the required insurance coverage.

The minimum amount of insurance coverage required for governmental units would be the amounts of the liability limits applicable to the government unit under Civil Practice and Remedies Code, sec. 101.023.

A person who bought or consumed an alcoholic beverage from a permit holder could not recover damages arising out of the sale or service of the

beverage from the proceeds of a permit holder's insurance policy if, at the time of sale or service, the person was obviously intoxicated or a minor.

In lieu of maintaining an insurance policy, permit holders and applicants for permits could file with the TABC a bond that:

- had at least two individual sureties, each of whom owned real property in the state that was not exempt from execution;
- was conditioned for payment in the same amounts as the liability insurance policy;
- was not cancelable before the sixth day after the date the commission received written notice of the cancellation;
- was accompanied by a fee prescribed by the commission; and
- was approved by the commission.

The real property required for the bond would be required to be certified by an assessor-collector to be free of any tax lien, and the sureties' equity in the property would be required to be at least twice the amount of the bond. The bond would be a lien in favor of the state and in favor of a person who held final judgment against the person who filed the bond. The commission would issue a certificate of compliance with the requirements of this bill upon filing of the bond and would file notice with the county clerk of the county where the property was located.

A judgment creditor could bring an action for foreclosure against the sureties if a judgment was not satisfied within 61 days after final judgment. Cancellation of the bond would not prevent recovery for a right or cause of action arising before cancellation.

The TABC would be required to adopt any rules necessary to implement the changes made by this bill by December 31, 2015.

The bill would take effect September 1, 2015, and would apply to people who held or applied for permits to sell alcoholic beverages on or after January 1, 2016.

SUPPORTERS  
SAY:

CSHB 409 would help ensure that victims of drunk-driving accidents were properly compensated for their losses. Under current law, victims are able to sue bars that serve alcohol to overly intoxicated people who go on to injure others, but if the bars are not properly insured, the victims might be unable to adequately recover their damages. This bill will ensure that all bar owners carried sufficient insurance to reimburse any potential victims for damages they could sustain.

This bill would help reduce the number of motor vehicle accidents related to driving under the influence (DUI). Bars that were required to buy insurance would have an incentive to reduce insurance premiums by adequately training their employees not to over-serve patrons and by implementing measures to ensure that patrons did not drive after consuming alcohol.

The minimum amount of insurance coverage required by this bill would not be excessive, given the tremendous potential for loss from drunk-driving incidents. The required coverage also would protect bar owners from being shut down by bankruptcy in the event of a lawsuit. The cost of the insurance premiums would be minor when compared to the massive costs of a drunk-driving accident.

It is unlikely that the prohibition against intoxicated persons or minors recovering damages from insurance policies under this bill would create increased uncovered liability for bar owners. Under Civil Practice and Remedies Code, ch. 33, a claimant may not recover damages if his percentage of responsibility is greater than 50 percent. The recipient of alcohol under such circumstances generally would be found to have borne more than 50 percent of the responsibility for any incident, in which case the patron would be barred from recovery and probably could not sustain a lawsuit against a bar for its negligence in over-serving the drunk or underage patron.

OPPONENTS  
SAY:

CSHB 409 could create a gap in insurance coverage for bar owners. Under current law, bar owners can purchase insurance policies that protect them against lawsuits by patrons who are injured as a result of being served too

much alcohol. This bill would prevent patrons in those incidents from recovering damages from insurance policies, so they instead could seek to recover damages directly from the bar owner. This issue could be remedied by either allowing patrons to recover from insurance or by creating a corresponding limitation of liability for bar owners against intoxicated persons and minors who were injured as a result of their overconsumption at the bar.

The insurance premiums that bars would be required to pay would be excessively high for many to stay in business, particularly small bars. Under the bill, small bars that had never had a problem with DUI-related incidents could have to pay excessive insurance premiums when a lower amount of coverage probably would suit their needs.