SUBJECT: Issuing TABC food and beverage certificates

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 9 ayes — Wilson, Kubiak, Brimer, Dear, Goolsby, D. Jones, Pickett, Torres, Yarbrough

0 nays

WITNESSES: For — Richie Jackson, Texas Restaurant Association

Against — None

On — Randy Yarbrough, TABC

DIGEST: CSHB 1419 would allow the Texas Alcoholic Beverage Commission (TABC) to issue a food and beverage certificate. The certificates could be issued to holders of mixed beverage permits or private club registration permits whose gross receipts from the sale of mixed beverages were no more than 75 percent of the total gross receipts from the premises.

The bill would require TABC to formulate rules adopting a method for reporting a permit holder's gross receipts from mixed beverages and total gross receipts. The annual fee for the certificate would have to cover the cost of certifying and issuing the certificate.

A certificate would expire one year after issuance. Upon application for renewal of a certificate, the bill would require TABC to request certification by the comptroller that the holder does not exceed the 75 percent limit. If the comptroller found that the holder exceeded the 75 percent limit, the TABC could not renew the certificate. A holder denied renewal could not apply for a new certificate until the day after the first anniversary of the comptroller's determination of non-compliance.

All of the relevant provisions of the Alcoholic Beverage Code that apply to holders of private club registration permits or mixed beverage permits would also apply to holders of a food and beverage certificate, except the provision requiring a conduct surety bond.

The bill would take effect September 1, 1995.

SUPPORTERS SAY:

By authorizing TABC to issue certain businesses a second permit, CSHB 1419 would create a necessary regulatory distinction between bars, whose primary purpose is to sell alcohol, and restaurants, which sell alcohol only as a complement to the food offered. Current law makes no distinction between two widely disparate types of businesses: bars and restaurants that serve alcohol only incidentally. The Texas Alcoholic Beverage Code requires a restaurant or a bar to have either a mixed beverage permit, in a wet area, or a private club permit, in a dry area, to sell or serve liquor.

The bill would allow TABC to create a distinction by issuing to a restaurant whose gross receipts from alcohol were 75 percent or less of total gross receipts a food and beverage certificate only if the restaurant already held a mixed beverage or private club permit. Those establishments not able to qualify for the certificate would most likely be bars that focus on serving alcohol rather than food. This would allow the state to regulate bars, which tend to generate more criminal activity and disturbances, more stringently than restaurants.

Creation of the new type of certificate eventfully might allow the state to pass a law prohibiting people under the age of 21 from working in a business without a food and beverage certificate. It seems logical that if an establishment is geared mostly toward serving alcohol, it is not an appropriate place for an under-21 server. If the law distinguished between two types of alcohol-serving establishments, the state could continue to allow younger people to work in restaurants that sold alcohol, while prohibiting their employment in other establishments. At present the state could not enact a law setting different restrictions on a bar than on a restaurant, and the state would likely not want to prevent anyone under age 21 from working in a restaurant that sold alcohol along with food.

The bill would also enable municipalities to easily determine which establishments derive 75 percent or more of their gross revenue from the sale of alcohol. This would be helpful since municipalities have the authority to regulate those businesses under sec. 109.57 of the Alcoholic Beverage Code but have no way of identifying them now.

OPPONENTS SAY:

CSHB 1419 lacks any requirement that the 25 percent of non-alcohol gross receipts come from *food* sales. The situation could arise in which a club imposes a cover charge for music that could equal 25 percent of non-alcohol gross receipts. Such a club could get a food and beverage certificate and circumvent the intent of the bill — to establish a foundation for stricter regulation of clubs and bars that do not sell food.

NOTES:

The original version would have allowed a business to be eligible for either a new food and beverage permit or a new private club food and beverage permit.

The companion bill, SB 1005 by Cain, has been referred to the Senate State Affairs Committee.