SUBJECT: Limiting the number of package store permits per county

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

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

0 nays

0 absent

WITNESSES: For — Fred Niemann, Jr., Texas Package Stores Association, Inc.

Against — None

DIGEST: **Per County Limit on Permits.** HB 2451 would limit a county with a population of 30,000 or less to no more than three package store permits and would limit counties with greater populations to one permit for each 10,000 inhabitants or fraction thereof. The limitations would not affect eligibility for renewal of existing permits would not prevent a package store owner from selling or transferring a package store. If a transfer occurred by operation of law, such as through death, the bill would require a report of such transfer within 180 days of the occurrence. A permit could only be transferred to a location in the same county.

The bill would require the Texas Alcoholic Beverage Commission (TABC) to publish a listing of permits issued compared to the number authorized in each county every September 1. If the number of authorized permits exceeded the actual permits issued (including dormant permits), new permits would be issued to qualified applicants through an annual lottery held by the TABC with the advice of the Texas Lottery Commission. A fee of $1,000 would be required for each permit application. If an ineligible applicant is selected, a new lottery drawing would automatically enter the non-selected applicants.

A permit in a wet area would become dormant if the applicable area were voted dry, although a dormant permit could be transferred within the same county to a wet location and renewed for a $1,000 fee. A dormant permit in a newly elected wet area could apply to the TABC for reactivation.

Package Store Special Permits. HB 2451 would also delete language that allowed related individuals to consolidate package store businesses into a single legal entity if they had majority ownership of the businesses. HB 2451 would instead require a permittee to file a notification of intent and qualification to receive grandfather protection by December 31, 1995 if they have an interest in more than five package store permits as of August 31, 1995.

If the TABC determined that grandfather protection was appropriate, it would issue a new permit — a package store special permit — to replace the existing package store permit, for a $500 fee. A package store special permit would be considered a package store permit for all other purposes of the Alcoholic Beverage Code. This section would not affect renewal eligibility and would not prevent a package store owner from selling or transferring the package store. If the transfer occurred by operation of law, such as through death, the bill would require a report of such transfer within 180 days of the occurrence. A package store special permit could only be transferred to a location in the same county.

A holder of package store special permits could never have more package store special permits than were originally issued or acquired through sale or transfer under this section. If the person's special permits by grandfather or by transfer or sale dropped below the original number held, the lower number would become the new maximum number of package store special permits that the person could hold.

Permit Fee. The bill would raise the package store permit fee from $300 to $500.

The bill would take immediate effect if approved by two thirds of the membership of each house.

SUPPORTERS SAY:

Limiting the number of package store permits in a county, and prohibiting a person from having an interest in more than five package stores through family consolidation, would curb the ill effects of highly concentrated package liquor stores in inner city neighborhoods and prevent the problem from occurring elsewhere. In 34 other states package store permits are limited in some manner, successfully curbing the excessive proliferation of liquor stores.

Our inner cities are plagued with an over-abundance of package liquor stores that are difficult to monitor and attract derelicts and prostitutes to a neighborhood. The number of alcohol permittees should be held to a manageable level to allow effective regulation by the Texas Alcoholic Beverage Commission and other law enforcement agencies.

The bill would not encourage monopoly situations because even though the number of permits would be limited per county, only five permits per person would be allowed. In even a moderate sized city, five stores could not create a monopoly. Some counties with an excessive number of permits already exceed the cap, but many do not. In those that do not exceed the cap, applicants for new permits would be subject to a lottery process that would fairly and randomly allocate available permits.

Current law prohibits any person from owning an interest in more than five package stores, but owners may get around this if they consolidate their businesses with family members. HB 2451 would properly delete this loophole in the law, but at the same time would allow those already owning more than 5 permits through family consolidation to keep their stores if they apply for a package store special permit.

OPPONENTS SAY:

This bill would encourage a monopoly situation by placing an arbitrary cap on the number of allowable permits. A liquor store owner might buy out existing competitors who have all of the authorized permits for a county, thereby preventing any other competition from entering the market. This would be especially likely in a rural town in a county with a population of less than 30,000 where one package store owner could acquire all three of the authorized permits. In smaller counties, the five permits per person provision would not prevent a monopoly situation.

Even in a larger city, the grandfathering of existing monopolies seems likely to strengthen the monopolies since no future competitors would be able to acquire more than five permits.

In addition, putting a cap on the number of permits would cause the value of the permits to artificially inflate. Dallas County already exceeds the one permit per 10,000 population ratio by 78 stores. Thus, the only way to open a new package liquor store would be to buy out an existing permit-holder, at a very high price. The number of permits Harris, Travis and Nueces counties also already exceed the permit limit, and Tarrant, Bexar and El Paso counties are near the limit.

OTHER OPPONENTS SAY:

The effects of this bill would not be seen for many years. Allowing owners to transfer a package store special permit assures that the same concentration of stores would be able to stay in the inner city for many years to come. Inner cities need a solution to this problem now, not in 20 years.

NOTES:

The companion bill, SB 1066 by Armbrister, is pending in the Senate State Affairs Committee.

HB 2451 was withdrawn from the Local and Consent Calendar on April 28.