

SUBJECT: Regulating certain alcohol permit applications in large counties

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 8 ayes — Flores, Geren, Chisum, Goolsby, Hamilton, Homer, Morrison, Quintanilla
0 nays
1 absent — D. Jones

WITNESSES: For — Armando Bermudez, Near Northside B.O.N.D.; Patrick Castillo; Virginia Lee Duke, Northside Village Weed and Seed Program; Kevin J. Hoffman, Lindale Park Civic Club; Paul Meza, Second Ward Resident’s Civic Club; Rebecca C. Reyna, City of Houston Council Member Adrian Garcia - District H; Victor Trevino, Elected Constable for Harris County Precinct 6
Against — None
On — Rick Donley, The Beer Alliance of Texas; Alan Steen, TABC

BACKGROUND: A wine and beer retailer’s permit issued by the Texas Alcoholic Beverage Commission (TABC) allows the holder to sell wine, beer, ale, and malt liquor for on- and off-premise consumption. A retail dealer’s on-premise license allows the holder to sell beer for on- and off-premise consumption. These beverage permit holders also may hold a food and beverage certificate if food service is the primary business on the premises and if the hours of operation for alcohol service overlap with the hours of operation for food service.

Under Alcoholic Beverage Code, sec. 11.61 and sec. 61.71., there are a number of actions that could cause the cancellation or suspension of a license or permit, which include code violation, felony conviction, and neglecting bond maintenance.

A person related to another within the fourth degree of sanguinity or

affinity would be a first cousin, or a closer relative, by blood or marriage.

DIGEST: CSHB 273 would change provisions governing certain alcoholic beverage permits and licenses in Harris, Dallas, and Tarrant counties.

While a proceeding was pending against the holder of a wine and beer retailer's permit, other than a permit held with a food and beverage certificate, the bill would forbid a close relative (within the fourth degree of sanguinity or affinity) of the permit holder to apply for any type alcoholic beverage license that pertained to the permit holder's premises. Following the suspension or cancellation of a permit, a close relative of the permit holder would have to wait two years to apply for a new license that pertained to the suspended permit holder's premises.

This provision would apply equally to an application made by the close relative of a person whose retail dealer's on-premise license, other than a license held with a food and beverage certificate, was pending or suspended.

A hearing regarding the suspension of a permit or license would have to be concluded not later than the 60th day after the date that a hearing notice was provided. TABC also could impose an administrative penalty of \$4,000 or less upon a person who made a false or misleading statement on an original or renewal application for such a permit or license.

An applicant for such a permit or license would be required to file a surety bond with the commission. The bond would be forfeited to the commission on the first suspension of the permit or license. The suspended permit/license could be reinstated upon the filing of a second surety bond. If the permit/license was suspended a second time, the bond filed would be forfeited. Before the permit/license could be reinstated, the permit holder would have to file a third surety bond. Each bond would be set in an amount determined by the commission, conditioned on the permit or license holder's compliance with the alcoholic beverage law. If the permit/license were suspended a third time, the final bond would be forfeited and the commission would cancel the permit/license.

The bill would take effect September 1, 2005. It would apply to applications for permits or licenses suspended or cancelled on or after the

effective date, as well as hearings commenced on or after that date.

**SUPPORTERS
SAY:**

CSHB 273 would discourage the continued operation of disreputable bars that have been shut down for TABC violations. Houston especially has a problem with so-called “beer joints” opening in residential areas and near schools. These run-down establishments are not of the same caliber as legitimate bars and usually exhibit a variety of problems ranging from inadequate plumbing to illegally serving alcohol after hours. They are the sites of frequent brawls and they strain the city’s law enforcement resources. The presence of these dives also does economic damage to surrounding neighborhoods by chasing reputable businesses away.

A common ploy among the owners of beer joints shut down for violations is to file for a new license under the name of a cousin or other relative. This bill would close that loophole and make it much more difficult for the owners of disreputable bars to continue reopening under the guise of different ownership. Establishing an administrative penalty for lying during the application process would deter the beer joint owner’s relative from participating in any scheme to reopen the establishment. Such a penalty would be more practical and have greater deterrent value than requiring TABC to file perjury suits in an attempt to punish false or misleading statements.

The wait for TABC hearings currently can be longer than a year. Requiring a 60-day turnaround on hearings would ensure that action was taken quickly to shut down these disreputable bars and the negative consequences associated with them.

**OPPONENTS
SAY:**

The Legislature should not have to change state law at taxpayer expense over a local problem that civic leaders and voters in Houston could deal with themselves by adopting sensible zoning ordinances. According to the fiscal note, this bill would cost the state more than \$300,000 per biennium, money that could be put to use funding programs that benefit all Texans, not just the residents of certain big-city neighborhoods.

The bill would establish no time period in which the three violations would have to take place in order for an establishment to lose the permit or license once and for all. Nor would the bill treat a technical violation with more leniency than a severe violation. For example, a bar owner could be required to forfeit his third bond and lose his license for a technical violation that occurred 20 years after his second violation. This would be

unfair.

NOTES:

The original bill simply would have prohibited a close relative from obtaining a TABC permit or license for an establishment that recently had lost its permit or license. In addition, the original would have allowed for an immediate effective date. All other provisions were added in the committee substitute.

A related bill in the Senate, SB 1850 by Gallegos, which contains a provision that would prohibit alcoholic beverages license applications under certain circumstances in the state's three largest counties, passed the Senate by 28-1 (Wentworth) and April 29 and was reported favorably, without amendment, by the House Licensing and Administrative Procedure Committee on May 5.

According to the fiscal note, the increased number of TABC administrative hearings would cost nearly \$333,000 in fiscal 2006-07.