

SUBJECT: Regulating common nuisances at premises that serve alcohol

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 6 ayes — Flores, Geren, Hamilton, Miles, Quintanilla, Thompson
0 nays
3 absent — Isett, Goolsby, D. Jones

WITNESSES: For — Nirja Aiyer, City of Houston; Adrian Garcia, Council Member for City of Houston; (*Registered, but did not testify:* Steve Lyons, Houston Police Department)

Against — None

BACKGROUND: Civil Practice and Remedies Code, sec. 125.0015 establishes the elements of a claim against another person for maintaining a common nuisance. A person who knowingly tolerates a multi-unit residential property or other place people habitually go for the following purposes maintains a common nuisance:

- discharge or reckless discharge of a firearm in a public place;
- engaging in organized criminal activity;
- delivery, possession, manufacture, or use of a controlled substance;
- gambling;
- prostitution or compelling of prostitution;
- commercial manufacture, distribution, or exhibition of obscene material;
- aggravated assault;
- sexual assault or aggravated sexual assault;
- robbery or aggravated robbery;
- unlawfully carrying a weapon; or
- murder or capital murder.

Sec. 125.002 authorizes an individual, the attorney general, or the attorney of a district, county, or city to file suit to abate a common nuisance. Suit

may be filed against any person who maintains, owns, or uses a place that is a common nuisance as described in sec. 125.0015.

Alcoholic Beverage Code, ch. 11 governs issuance of permits and licenses authorizing the retail sale or service of alcoholic beverages for on-premises consumption. Under sec. 11.41, when a person applies for a permit, the TABC may give consideration to the recommendations of the mayor, a city council member or commissioner, the chief of police, the city marshal, or the city attorney of the city or town in which the premises sought to be licensed are located and of the county judge, the county commissioner, the sheriff, or the county or district attorney of the county in which the premises sought to be licensed are located.

Alcoholic Beverage Code, secs. 11.61 and 61.71 provide for the cancellation or suspension of a license or permit under certain circumstances, including code violations, felony convictions, and refusal of an inspection. If a permit or license holder is found to be in violation, TABC may suspend a permit or license for up to 60 days or cancel an original or renewal permit. Under sec. 11.64, the holder has an opportunity under certain circumstances to pay a civil penalty rather than have the license or permit suspended.

DIGEST:

CSHB 2605 would amend Title 3 of the Alcoholic Beverage Code by adding ch. 81 to apply common nuisance provisions to permits or licenses that authorized the retail sale or service of alcoholic beverages for on-premises consumption. Permits or licenses held with a food and beverage certificate would be exempt.

The bill would allow the TABC, administrator, or county judge, with or without a hearing, to refuse to issue an original or renewal permit or license if, at any time during the 12 months preceding an application, a common nuisance existed on the premises for which the permit was sought. Permit or license holders maintaining a common nuisance on permitted or licensed property, after notice and hearing, could have the permit or license suspended for up to 60 days or cancelled.

The TABC or administrator would be required to consider information from the appropriate district or county attorney, city attorney, or state senator or representative indicating that an applicant had used, was reasonably expected to use, or would allow others to use permitted or licensed premises in a manner that constituted a nuisance. If the

information were sufficient to indicate suspension or cancellation was appropriate, notice and hearing would be held to determine whether to suspend the license or permit. A permit or license holder could not pay a civil penalty to avoid suspension.

After a hearing for renewal, suspension, or cancellation, TABC or a county judge could impose any reasonably necessary condition on a permit or license holder to abate a common nuisance. If the license holder failed to comply with the conditions, the permit or license could be suspended for up to 60 days or cancelled. The commission or administrator could allow a license or permit holder to pay a civil penalty rather than have the license or permit suspended.

Before a hearing, if evidence demonstrated a reasonable likelihood that a common nuisance existed on the premises for which a permit or license was sought, the TABC, administrator, or county judge could issue a temporary order imposing any condition reasonably necessary to abate the common nuisance until a determination was made to renew, suspend, or cancel the permit or license. The order would remain in effect until appeals were exhausted. Hearing officers or county judges could issue an order on their own motion or the motion of a designated official, or for original or renewal applications, on the motion of any individual entitled to protest the issuance of the permit or license. A hearing officer or county judge also could impose sanctions on a person violating an order.

Hearings would be held no later than 10 days after notice was served to all interested parties. Failure to hold a hearing in that time would not invalidate an order. A person requesting an order would not have to post security for costs related to a permit or license application or any hearing conducted on the application.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 2605 would help provide TABC with clear authority to require a permit or license holder to take reasonable actions to abate a common nuisance. Evidence collected by law enforcement that demonstrates activities considered to be common nuisances often is not sufficient to order the suspension or cancellation of a alcohol permit or license. If a resident wanted to petition an establishment, the resident in some cases

might have to wait until the permit or license was up for renewal. This could force a neighborhood to endure a local establishment with loud music, illegal gambling, and occasional gunshots for months, for example. Establishments with common nuisances compromise the welfare and safety of nearby neighborhoods. CSHB 2605 would provide TABC and county judges with the latitude to investigate common nuisances as soon as they arose, and when necessary, to close down an establishment threatening the welfare of a community by suspending or canceling their permit to sell alcohol.

Nuisance abatement laws are in some cases the only recourse against common nuisances. Zoning laws provide some areas of the state with the authority to close down businesses or multi-unit residences that produce common nuisances. Areas lacking zoning laws, including counties or cities such as Houston, must rely on nuisance abatement laws. It is important to provide counties and municipalities with the proper authority to address these issues and make neighborhoods safer.

OPPONENTS
SAY:

HB 2605 would provide changes in state law to address essentially local problems. Civic leaders and voters should be able to address these issues by adopting sensible zoning laws, properly enforcing laws, and, if necessary, adopting new ordinances at the local level that narrowly target the problems associated with disreputable establishments that sell or serve alcohol.

NOTES:

The committee substitute would add chapter 81, Common Nuisance, to the Alcoholic Beverage Code and remove language identifying possible sanctions to include the imposition of civil fines or cancellation or suspension of a permit or license.