

SUBJECT: Requiring a TABC permit for certain BYOB establishments

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — Kuempel, S. Thompson, Geren, Gutierrez, Hamilton, Jones, Quintanilla

0 nays

2 absent — Chisum, Menendez

WITNESSES: For — Michael Blake, Texas Police Chiefs Association; Tom Gaylor, Texas Municipal Police Association; Yolanda Woods, City of Houston; (*Registered, but did not testify*, Bill Elkin, Houston Police Retired Officers Association; Jason Sabo)

Against — None

On — (*Registered, but did not testify*: Lou Bright, Texas Alcoholic Beverage Commission (TABC))

DIGEST: CSHB 206 would require businesses that allow patrons to bring their own alcoholic beverages for consumption on the premises and that provided entertainment or charged admission fees to hold an on-premises only consumption permit issued by TABC. The bill also would allow local governments to prohibit the location of such a businesses near a school, church, or hospital.

The bill would establish an offense punishable as a class C misdemeanor (maximum fine of \$500) for failing to obtain an on-premises only consumption permit. The offense would be punishable as a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) on a second offense and a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) on a third or subsequent offense.

The following types of businesses would not be required to obtain an on-premises only consumption permit:

- restaurants that had food service permits;
- fraternal or veterans organizations; and
- businesses that had another TABC permit.

Permit applications would be filed with a local county judge and permits would be issued in the same way as other TABC licenses.

The judge would have to deny a permit or renewal if the applicant or the applicant's spouse had been convicted of a felony or one of the following offenses in the preceding five years:

- prostitution;
- vagrancy involving moral turpitude;
- bookmaking;
- gambling or gaming;
- drug related offenses;
- violations of TABC rules resulting in a license cancellation or fine greater than \$500;
- more than three violations of TABC rules related to minors,
- bootlegging; or
- an offense involving a firearm or deadly weapon.

A permit also would have to be denied if five years had not elapsed since the termination of a sentence, parole, or probation served by the applicant or the applicant's spouse because of conviction of a felony or one of the above offenses.

TABC would be required to adopt rules for establishing the on-premises consumption only permitting process by November 1, 2009. Offenses created by this bill would be punishable beginning on January 1, 2010.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 206 would prevent bars and strip clubs whose TABC licenses had been revoked from re-opening as BYOB establishments. A number of businesses have lost their liquor licenses for employing underage dancers or committing other crimes, only to subsequently reopen as establishments that allowed patrons to bring their own alcoholic beverages for consumption on the premises. Businesses that violate TABC rules to the extent that their liquor license has been revoked should not be able to

operate with patrons consuming alcohol on the premises. The bill would give TABC and law enforcement officers a tool to prevent illegal operators from skirting the law.

The bill would expressly exempt restaurants, private clubs, and bars with liquor licenses from the new permitting requirement. Establishments that are unable to obtain liquor or food licenses through the state should not be allowed to operate as BYOB nightclubs. While alcohol is not served at BYOB establishments, it is still consumed and therefore needs to be regulated by TABC.

**OPPONENTS
SAY:**

Not all BYOB establishments allow illegal activities to take place on the premises, and those that do engage in illegal activities should be investigated and prosecuted for those specific offenses. Requiring all BYOB businesses that are not restaurants or veterans organizations to obtain permits would not address the problem of illegal activity in nightclubs. The regulations imposed by CSHB 206 could encompass some legitimate businesses that may not be able to afford or qualify for a TABC permit.

NOTES:

The companion bill, SB 1308 by Carona, has been referred to the Senate Business and Commerce Committee.