

- SUBJECT:** Requiring a TABC license for certain BYOB establishments
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 9 ayes — Hamilton, Quintanilla, Driver, Geren, Gutierrez, Harless, Kuempel, Menendez, Thompson
0 nays
- WITNESSES:** For — Andy Acord, Dallas Police Department and Chief of Police David Brown; Napoleon Gonzalez, Brownsville Police Officers Association; Chris Jones, Combined Law Enforcement Associations of Texas; Jason Sabo, Children at Risk; (*Registered, but did not testify*: Bill Elkin, Houston Police Retired Officers Association; Eduardo Garces; James Jones, San Antonio Police Department; Christopher Kaiser, Texas Association Against Sexual Assault; Donald Lee, Texas Conference of Urban Counties; James McLaughlin, Texas Police Chiefs Association; Harold Nanos, Texas Alcoholic Beverage Commission Officers Association; Jessica Sloman, Houston Police Department; Carlos Zamorano)
Against — None
On — Alan Steen, Texas Alcoholic Beverage Commission (TABC)
- BACKGROUND:** Commercial establishments that serve alcoholic beverages, including those offering sexually oriented entertainment, must apply for TABC licenses. However, businesses that allow patrons to bring their own alcoholic beverages for on-premise consumption (Bring Your Own Bottle or BYOB clubs) are not required to obtain TABC licenses. Like establishments with TABC licenses, some BYOB establishments allow persons over the age of 18 rather than 21 to enter. But unlike bars and clubs with TABC licenses that allow topless dancers, some BYOB establishments can feature all-nude dancers.
- DIGEST:** CSHB 175 would require businesses that allowed patrons to bring their own alcoholic beverages for consumption on the premises and that provided entertainment or charged admission fees to obtain an on-premise consumption-only license from TABC. The bill also would allow local

governments to prohibit the location of such a business near a school, church, or hospital.

The annual fee for an on-premise consumption-only license would be \$1,000. The issuance, cancellation, or suspension of the license would be governed by provisions of the Alcoholic Beverage Code regulating retailers that sell alcoholic beverages.

The following types of businesses would be exempt from the required on-premise consumption-only license:

- restaurants that had a food service permit, prepared and served at least eight entrees, had a health department permit, and served food during regular operating hours;
- fraternal or veterans' organizations;
- religious or charitable organizations or a government entity; and
- businesses that had another TABC license.

TABC would have to adopt rules to implement the bill's requirements by January 1, 2012, at which point a failure to obtain a license would be considered an offense. TABC also could suspend or cancel an on-premise consumption-only license because of a breach of the peace at the establishment after giving notice and an opportunity to show compliance with state law and TABC regulations.

The bill would take effect on September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 175 would enable TABC and law enforcement officers to prevent illegal operators from skirting the law by setting up BYOB establishments that do not require TABC review and licensing. Many businesses have lost their liquor licenses for employing underage dancers or for other infractions, only to reopen later as establishments that allow patrons to bring their own alcoholic beverages for consumption on the premises. A business whose liquor license has been revoked should not be able to operate with patrons consuming alcohol on the premises. In some cases, those who could not pass a TABC criminal background check just open a new BYOB establishment.

The bill would exempt restaurants, charitable and religious organizations, private clubs, and bars with liquor licenses from the new licensing 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 should be regulated by TABC.

CSHB 175 would ensure that only the truly problematic after-hours establishments would be targeted. The bill would authorize law enforcement to suspend or cancel an on-premise consumption-only license for a breach of the peace on the premises. TABC would have the authority to adopt rules and procedures to ensure that the restrictions did not apply to restaurants allowing patrons to bring their own beer or wine or to neighborhood block parties. Also, CSHB 175 would mirror existing statutes and rules for TABC license applications and provide a streamlined way to apply and change those standards.

After initial start-up costs, the new fee would raise additional revenue to help fund TABC and other state operations during tight budgetary times. In many cases, the establishments that would apply for the new license already would have TABC licenses, and the bill would allow the state to recapture those fees that already had been collected. The bill also would help make TABC more efficient because improving its enforcement tools would reduce the problems now caused by BYOB establishments.

OPPONENTS
SAY:

Not all BYOB establishments allow illegal activities to take place on the premises. Those that 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 licenses would not address the problem of illegal activity in nightclubs. The regulations imposed by CSHB 175 could affect some legitimate businesses that may not be able to afford or qualify for a TABC license.

The Legislature should not try to change the way that many Texans live and infringe on their personal choices just to stop a few undesirable businesses. Enough laws exist to control establishments that permit after-hours drinking, and those laws should be better enforced. CSHB 175 could lead to the requirement that neighborhood block parties get licenses or that patrons not bring their own beer and wine to restaurants that lack TABC licenses.

Even though it may be called a license fee, CSHB 175 would add what is essentially a "sin tax." It would be contrary to the principle of truth in taxation.

OTHER
OPPONENTS
SAY:

CSHB 175 should have retained the penalties and offenses named for denial of a license that were included in the original bill.

NOTES:

CSHB 175 differs from the original bill by deleting provisions that would have required a county judge to deny an on-premise consumption-only license if the applicant or applicant's spouse had been convicted in the past five years of a felony or certain other offenses. The original bill would have made it a class C misdemeanor (maximum fine of \$500) to operate a commercial BYOB establishment without a license and would have increased the penalties for subsequent offenses.

The Legislative Budget Board estimates that the bill would increase general revenue by \$162,757 through the biennium ending August 31, 2013, by requiring licensing fees. Since TABC now collects licensing fees on a biennial basis, TABC would collect \$2,000 every other year from each of the 70 businesses estimated by TABC to be affected by the bill.

During the 2009 regular session, a similar bill, HB 206 by Jackson, passed the House by 140-0 and was referred to the Senate Business and Commerce Committee, but no further action was taken.