

SUBJECT: Prohibiting rules against food and drinks in privately owned public pools

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Oliveira, Simmons, Collier, Fletcher, Rinaldi, Romero, Villalba
0 nays

WITNESSES: For — Justin Bragiel, Texas Hotel and Lodging Association; (*Registered, but did not testify*: Kenneth Besserman, Texas Restaurant Association; Homero Lucero, Texas Travel Industry Association)

Against — (*Registered, but did not testify*: Jon Weist, City of Irving)

BACKGROUND: Rules adopted under 25 Texas Administrative Code, Part 1, ch. 265, subch. L, sec. 265.202(a) prohibit a person from eating, drinking, or smoking while in pool or spa water. According to sec. 265.208, a violation of this rule could result in civil or criminal penalties against the violator.

Health and Safety Code, sec. 341.064 provides the statutory authority for rules adopted under 25 Texas Administrative Code, Part 1, ch. 265, subch. L.

DIGEST: HB 2430 would prohibit rules adopted under Health and Safety Code, ch. 341 from forbidding the consumption of food or beverages in a public swimming pool that was privately owned and operated.

This 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, 2015.

SUPPORTERS SAY: HB 2430 would align state regulations with current practice and protect the rights of private property owners by prohibiting rules that ban eating and drinking at privately owned public pools.

Many establishments such as hotels and resorts operate swim-up bars and

currently are violating the rule by providing food and drinks to their guests while in the pool water. This rule generally has not been enforced, but it could be under current state regulations. If the rule were enforced, many establishments could face civil or criminal penalties. The rule likely has kept new businesses that wish to operate a pool bar or restaurant from opening for fear of legal consequences. The bill would ensure that private property owners were able to control what they serve in their pools without risking civil or criminal penalties.

Regulations prohibiting eating and drinking in privately owned public pools could be amended without legislation, but HB 2430 would send a clear message that this rule must be repealed.

**OPPONENTS
SAY:**

HB 2430 is unnecessary because the rule could be repealed without legislation. The Department of State Health Services could amend or repeal the rule in the same manner that it was adopted under existing statutory authority.

NOTES:

The companion bill, SB 1324 by Menéndez, was approved by the Senate Health and Human Services Committee on April 9 and recommended for the local and uncontested calendar.