

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2605
By: Hochberg et al. (Whitmire)
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

When a bar becomes a nuisance to its neighbors, it can sometimes take up to several years to address problems of illegal activity occurring when the responsible party is not taking steps to prevent it. Current law does not clearly allow for the Texas Alcoholic Beverage Commission (TABC) to require that the license or permit hold of the bar take reasonable actions to abate a nuisance.

C.S.H.B. 2605 creates a new chapter entitled "Common Nuisance" in the Alcoholic Beverage Code, authorizing the district, county, or city attorneys or the state senator or state representative for the area in which a applicant or permit or license holder is located to provide information to TABC regarding allegations that the permit or license holder or applicant has engaged in activity that constitutes a common nuisance. The bill authorizes TABC or other applicable authority to deny a renewal application or cancel or suspend an original license or permit if the permit or license holder or applicant has engaged in such activity and sets forth the procedures necessary to bring about the cessation of such activity.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 3, Alcoholic Beverage Code, by adding Subtitle C, as follows:

SUBTITLE C. PROVISIONS APPLICABLE TO PERMITS AND LICENSES

CHAPTER 81. COMMON NUISANCE

Sec. 81.001. DEFINITION. Defines "common nuisance."

Sec. 81.002. APPLICABILITY OF CHAPTER. Provides that this chapter applies only to a permit or license that authorizes the retail sale or service of alcoholic beverages for on-premises consumption of alcoholic beverages, other than a permit or license held with a food and beverage certificate.

Sec. 81.003. SUBMISSION OF INFORMATION BY CERTAIN OFFICIALS. Authorizes, for the purposes of Section 81.004 or 81.005, the district or county attorney of the county, the city attorney of the city, or the state senator or state representative representing the district in which the premises are located to provide information to the Texas Alcoholic Beverage Commission (TABC), an administrator appointed by TABC to be manager, secretary, and custodian of all records (administrator), or county judge, as appropriate, indicating that the holder of, or applicant for, a permit or license covering the premises has used or can be reasonably be expected to use or allow others to use the premises in a manner that constitutes a common nuisance.

Sec. 81.004. APPLICATION FOR ORIGINAL OR RENEWAL PERMIT OR LICENSE. Authorizes TABC, the administrator, or the county judge, as applicable, to refuse to issue an original or renewal permit or license, after notice and an opportunity for a hearing, if TABC, the administrator, or the county judge finds that, at any time during

the 12 months preceding the permit or license application, a common nuisance existed on the premises for which the permit or license is sought, regardless of whether the acts constituting the common nuisance were engaged in by the applicant or whether the applicant controlled the premises at the time the common nuisance existed. Authorizes TABC, the administrator, or the county judge, as applicable to issue an original or renewal permit or license if, at the hearing, it is found that the applicant did not control the premises at the time the common nuisance existed and the applicant has taken reasonable measures to abate the common nuisance.

Sec. 81.005. CANCELLATION OR SUSPENSION OF PERMIT OR LICENSE. (a) Authorizes TABC or the administrator to suspend for not more than 60 days or cancel a permit or license if it is found, after notice and hearing, that the permit or license holder used or allowed others to use the permitted or licensed premises in a manner that constitutes a common nuisance.

(b) Requires TABC or the administrator to consider information received under Section 81.003 and provides that TABC and the administrator will provide notice and hold a hearing under Subsection (a) to determine whether to suspend or cancel the permit or license if the information is found to be sufficient to indicate that those actions are appropriate.

(c) Prohibits TABC or the administrator from giving a permit or license holder the opportunity to pay a civil penalty rather than have the permit or license suspended, notwithstanding Section 11.64 (Alternatives to Suspension, Cancellation).

Sec. 81.006. ORDER IMPOSING ADDITIONAL CONDITIONS ON PERMIT OR LICENSE HOLDER. (a) Authorizes TABC, the administrator, or county judge, as applicable, to issue an order, after notice and hearing under Section 81.004 or 81.005, imposing any condition on a permit or license holder that is reasonably necessary to abate a common nuisance on the premises.

(b) Authorizes TABC or the administrator to suspend for not more than 60 days or cancel the permit or license of a permit or license holder who violates an order issued under this section. Authorizes TABC or the administrator to offer the permit or license holder the opportunity to pay a civil penalty rather than have the permit or license suspended.

Sec. 81.007. TEMPORARY ORDER DURING PENDENCY OF PROCEEDING. (a) Authorizes TABC, the administrator, or county judge, as applicable, to issue an order imposing any condition on the permit or license holder or the applicant for the permit or license that is reasonably necessary to abate a common nuisance on the premises if there is evidence showing a reasonable likelihood that one exists on the premises for which the permit or license is held or sought. Provides that an order issued under this section is effective until the expiration of the time for appealing the determination under Section 81.004 or 81.005 or if the determination is appealed, until all appeals are finally decided.

(b) Authorizes a hearings officer or county judge to issue an order under this section on the hearings officer's or county judge's own motion or the motion of a person listed in Section 81.003 or, for an original or renewal permit or license application, any individual entitled to protest the issuance of the original or renewal permit or license.

(b-1) Prohibits TABC, the administrator, or the county judge, as applicable, if an individual other than a person described in Subsection (b) who is entitled to protest the issuance of the original or renewal permit or license files a motion for a temporary order under this section, from issuing a temporary order without conducting a hearing.

(c) Authorizes the hearings officer or county judge to impose any sanction on a person who violates an order issued under Subsection (a) that is necessary to secure compliance with the order.

(d) Requires a hearing under this section to be held not later than 10 days after the date notice is served on all interested parties. Provides that failure to hold a hearing in the time prescribed by this subsection does not invalidate an order issued under this section.

(e) Prohibits a person who requests an order under this section from being required to post security for costs in connection with the application or any hearing conducted as a result of the application.

SECTION 2. Makes application of Chapter 81, Alcoholic Beverage Code, as added by this Act, prospective.

SECTION 3. Effective date: upon passage or September 1, 2007.