

SUBJECT: Restricting the sale of alcoholic beverages near private schools

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — Wilson, Yarbrough, Flores, Goolsby, Haggerty, Moreno, Wise  
0 nays  
2 absent — D. Jones, A. Reyna

WITNESSES: For — Cindy Arispe, Shalonvia Atkins, Sister Lauren Beck, Carol Cronin, Cora Sue Mach, Harry Mach, Carmen Nadolney, Frank Nadolney, Sister Mary Brendan O'Donnell, and Sister Rosalia Purcell, Incarnate Word Academy; Robert Eckels; Mark Ellis, City of Houston; Bill Lewis, Mothers Against Drunk Driving; George Solana, Texas Catholic Conference;  
*Registered but did not testify:* John W. Gottlob, Texas Municipal Association; Lonnie Hollingsworth, Jr., Texas Classroom Teachers Association; Jeff Ward, Texas Association of School District Police  
  
Against — Rick Donley, Beer Alliance of Texas; Fred Niemann, Texas Package Stores Association; *Registered but did not testify:* Glen Garey, Texas Restaurant Association; Robert Sparks, Licensed Beverage Distributors  
  
On — Ellen Ward, Texans Standing Tall; Randy Yarbrough, Texas Alcoholic Beverage Commission; *Registered but did not testify:* Lou Bright, Texas Alcoholic Beverage Commission

BACKGROUND: Alcoholic Beverage Code, sec. 101.75(a) makes it an offense to possess an open container or consume an alcoholic beverage in a public place within 1,000 feet of the property line of a public or private school that provides any part of kindergarten through twelfth grade.  
  
Sec. 109.33 authorizes a commissioners court to enact regulations in unincorporated areas of a county, and a municipal governing body to enact regulations in incorporated areas, prohibiting the sale of alcoholic beverages

within 300 feet of a church, public school, or public hospital, or within 1,000 feet of a public school, if the school district's board of trustees so requests. An applicant for an alcohol permit must provide notice to a public school within 1,000 feet.

**DIGEST:**

CSHB 688 would amend the open-container provision of the Alcoholic Beverage Code by adding "parochial school" as a subcategory of "private school" and by including schools that provide prekindergarten classes.

The bill also would amend the list of places in which a county or city could prohibit the sale of alcoholic beverages to include within 300 feet of a private school and within 1,000 feet of a private school if the governing body of the school so requested. The bill would define "private school" as a private school, including a parochial school, that offered one or more grades from kindergarten through twelfth grade and had more than 100 students enrolled and attending courses at a single location.

CSHB 688 would amend the applicability of the sections of the statute that authorize the commissioners court or municipal governing body to prohibit the sale of alcoholic beverages. The sections allowing prohibition within 1,000 feet of a school upon request would not apply to a permit holder operating on the premises of a private school or to a package store located within 1,000 feet of a private school. The sections of the statute allowing prohibition within 300 feet of a public or private school would not apply to a restaurant (or other permit holder also holding a food and beverage certificate) located within 300 feet of a private school or to a package store located within 300 feet of a private school.

The bill also would amend the measurement rules to include private schools and would add a vertical measurement option. If a business selling alcoholic beverages was located on or above the fifth story of a multistory building, the measurement of the distance between the business and the public or private school would be from the property line of the school, in a direct line across intersections, and vertically up the building, at the property line, to the base of the floor where the business was located.

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, 2001.

**SUPPORTERS  
SAY:**

CSHB 688 would define more clearly the restrictions on the location of businesses selling alcoholic beverages near private schools. For example, a house with children who are home-schooled would not fall within the definition of “private school.” The private-school location restrictions would not apply to restaurants or package stores.

The bill would continue to leave decisions regarding location of businesses selling alcoholic beverages to the commissioners court or municipal governing body, as a matter of local control. The commissioners court or municipal governing body still could make the best decision as to whether to enact regulations restricting the sale of alcohol for each area or location on a case-by-case basis.

Current law already allows a county or city to restrict businesses that sell alcoholic beverages from locating near public schools. Private schools serve the same function as public schools, educating students. Public and private schools should be treated the same when it comes to sale of alcohol, because public and private school students equally are likely to be affected by advertising or alcohol-related accidents.

CSHB 688 would assist businesses that sell alcoholic beverages by restricting measurement provisions. The addition of the vertical measurement option actually would reduce the area in which a business selling alcoholic beverages could not locate, particularly in urban areas.

**OPPONENTS  
SAY:**

Current laws regarding the location of establishments that sell alcoholic beverages already are too restrictive. This is particularly true in small towns and in downtown areas of larger cities. Businesses are hurt by fewer potential locations and often must pay higher rents in available locations. These restrictions also harm real estate developers and commercial landlords by limiting their potential tenants.

CSHB 688 represents an overreaction to a single high-profile incident in which a business that planned to sell alcoholic beverages wanted to locate

across the street from a private parochial school. Current law provided an adequate solution to the problem by allowing a contested hearing upon application for the alcoholic beverage permit. In this case, the school opposed the application, and the commissioners court refused to issue the permit.

OTHER  
OPPONENTS  
SAY:

CSHB 688 could wind up harming private schools. Real estate developers and landowners might be unwilling to sell land to private schools because of the additional restrictions imposed on neighboring land. Private schools might find themselves unwelcome in business districts and the downtown areas of small towns, and they might find it difficult to find suitable rental space.

NOTES:

The bill as filed would have added facilities that provide child-care programs to the open-container prohibition. The committee substitute added the provision that a county or city could prohibit alcohol sales at a place of business within 1,000 feet of a private school if the governing body of the school so requested. The committee substitute also added the provisions on vertical measurement and added private schools to other measurement provisions.