

SUBJECT: Regulating certain alcohol permits in large counties

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 7 ayes — Flores, Geren, Chisum, Goolsby, Hamilton, D. Jones, Quintanilla
0 nays
2 absent — Homer, Morrison

SENATE VOTE: On final passage, April 29 — 28-1 (Wentworth)

WITNESSES: No public hearing

BACKGROUND: A wine and beer retailer’s permit issued by the Texas Alcoholic Beverage Commission (TABC) allows the holder to sell wine, beer, ale, and malt liquor for on- and off-premise consumption. A retail dealer’s on-premise license allows the holder to sell beer for on- and off-premise consumption. These beverage permit holders also may hold a food and beverage certificate if food service is the primary business on the premises and if the hours of operation for alcohol service overlap with the hours of operation for food service. The annual fee for a beer and wine retailer’s permit is \$175. The annual fee for a retail dealer’s on-premise license is \$150.

Under Alcoholic Beverage Code, sec. 11.61(b) and sec. 61.71., there are a number of actions that could cause the cancellation or suspension of a license or permit, which include code violation, felony conviction, and neglecting bond maintenance.

A person related to another within the fourth degree of sanguinity or affinity would be a first cousin, or a closer relative, by blood or marriage.

DIGEST: SB 1850 would stipulate that a TABC hearing regarding a permit suspension related to a code violation, felony conviction, neglect of bond maintenance, and other actions described in sec. 11.61(b) would have to be concluded not later than the 60th day after the date that a hearing notice

was provided.

Provisions that apply only to certain large counties. SB 1850 also would change the following provisions that govern certain alcoholic beverage permits and licenses in Harris, Dallas, and Tarrant counties.

While a holder's permit was suspended or while a proceeding was pending against the holder of a wine and beer retailer's permit, other than a permit held with a food and beverage certificate, the bill would forbid a close relative (within the fourth degree of sanguinity or affinity) of the permit holder to apply for any type of alcoholic beverage license that pertained to the permit holder's premises. Following the cancellation of a permit, a close relative of the permit holder would have to wait two years to apply for a new license that pertained to the suspended permit holder's premises.

This provision would apply equally to an application made by the close relative of a person whose retail dealer's on-premise license, other than a license held with a food and beverage certificate, was pending, suspended, or canceled.

TABC also could impose an administrative penalty of \$4,000 or less upon a permittee who made a false or misleading statement on an original or renewal application for a retail dealer's on-premise license or a wine and beer retailer's permit, other than a permit or license held with a food and beverage certificate.

An applicant for such a permit or license would be required to file a surety bond with the commission. The bond would be forfeited to the commission on the first suspension of the permit or license. The suspended permit/license could be reinstated upon the filing of a second surety bond. If the permit/license was suspended a second time, the bond filed would be forfeited. Before the permit/license could be reinstated, the permit holder would have to file a third surety bond. Each subsequent bond would be set in an increasing dollar amount determined by the commission, conditioned on the permit or license holder's compliance with the alcoholic beverage law. If the permit/license were suspended a third time, the final bond would be forfeited, and the commission would have to cancel the permit/license.

SB 1850 would raise the cost of obtaining and renewing a wine and beer retailer's permit and a retail dealer's on-premise license. An original permit or license would cost \$1,000, and a renewal would cost \$750.

The bill would take effect September 1, 2005, and would apply to hearings commenced, fees due, and applications filed or pending on or after that date.

**SUPPORTERS
SAY:**

SB 1850 would make it financially difficult for disreputable bars that plague many neighborhoods in the state's largest counties to remain in business. Houston especially has a problem with so-called "beer joints" opening in residential areas and near schools. These run-down establishments are not of the same caliber as legitimate bars and usually exhibit a variety of problems ranging from inadequate plumbing to illegally serving alcohol after hours. They strain the city's law enforcement resources, and many of these establishments have been the subject of numerous TABC violations. The presence of these dives also does economic damage to surrounding neighborhoods by chasing reputable businesses away.

The bill would help cities create a climate that makes it difficult for disreputable bars to exist at the expense of nearby legitimate businesses, not to mention general public health and safety. Raising the fee for these sorts of permits would bring these fees closer to those charged for a mixed beverage retailer's permit, which is a similar license issued by TABC that initially costs \$3,000.

A common ploy among the owners of beer joints shut down for violations is to file for a new license under the name of a cousin or other relative. This bill would close that loophole and make it much more difficult for the owners of disreputable bars to continue reopening under the guise of different ownership. Establishing an administrative penalty for lying during the application process would deter the beer joint owner's relative from participating in any scheme to reopen the establishment. Such a penalty would be more practical and have greater deterrent value than requiring TABC to file perjury suits in an attempt to punish false or misleading statements.

The wait for TABC hearings currently can be longer than a year. Requiring a 60-day turnaround on hearings would ensure that action was

taken quickly to shut down these disreputable bars and the negative consequences associated with them.

OPPONENTS
SAY:

The high fees this bill proposes would harm a large number of legitimate businesses in an effort to rid certain neighborhoods of undesirable beer joints. Many reputable pizza parlors and sandwich shops operate under the same licenses addressed by this bill. They are not causing any of the problems this bill seeks to address, yet they would pay TABC license fees that were dramatically higher than those of similar businesses in other counties. Not only would this be unfair, it could drive many desirable establishments out of business along with the beer joints.

The bill would establish no time period in which the three violations would have to take place in order for an establishment to lose the permit or license once and for all. Nor would the bill treat a technical violation with more leniency than a severe violation. For example, a bar owner could be required to forfeit his third bond and lose his license for a technical violation that occurred 20 years after his second violation. This would be unfair.

The Legislature should not have to change state law at taxpayer expense over a local problem that civic leaders and voters in Houston could deal with themselves. A far better solution would be for Houston civic leaders and voters to deal with the problem themselves by adopting sensible zoning ordinances, properly enforcing existing laws, and passing new laws at the local level, if necessary, that narrowly target the problems associated with disreputable bars.

The wait for TABC hearings currently can be longer than a year. Requiring a 60-day turnaround on hearings related to all alleged permit violations would put a nearly impossible burden on the administrative hearing system. It would be unreasonable to expect that all permit hearings across the state could be heard within 60 days after notice was provided. This provision may even lead to the invalidation of charges because of the inability to hear cases within the proposed time limit.

OTHER
OPPONENTS
SAY:

It is a good idea to increase the fees for these permits, but the fees should be raised statewide. This would gain more state revenue, treat similar businesses equitably across Texas, and make it more difficult for disreputable beer joints to operate in other communities.

NOTES:

HB 273 and HB 275, both by Farrar et al., contain provisions similar to those in SB 1850. Both bills passed the House on May 15 and have been referred to the Senate Intergovernmental Relations Committee.

The fiscal note projects a positive impact to general revenue-related funds of nearly \$3.5 million through fiscal 2006-07. The Legislative Budget Board estimates that the bill would result in an increase of between 600 and 900 administrative hearings per year, and its revenue projections account for costs associated with the addition of 2.5 FTEs at TABC.