

SUBJECT: Creating a public consumption permit for BYOB establishments

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — Smith, Kuempel, Geren, Gooden, Guillen, Gutierrez, Price
0 nays
2 absent — Miles, S. Thompson

WITNESSES: For — Bryan Klevens, Steve Rabago, Houston Police Department;
(*Registered, but did not testify:* Daniel Earnest, Washington Moscoso, Jimmy Rodriguez, San Antonio Police Officers Association; Gary Tittle, Dallas Police Department)

Against — None

On — (*Registered, but did not testify:* Carolyn Beck, Texas Alcoholic Beverage Commission)

DIGEST: HB 34 would create a public consumption permit that would be issued by the Texas Alcoholic Beverage Commission (ABC) to regulate “bring your own beverage” (BYOB) establishments.

Where required. A person would be required to obtain a public consumption permit if the person operated a commercial establishment that was a sexually oriented business or that required a cover charge or dues; or

- allowed persons to consume alcoholic beverages on premises;
- was not covered by or required to be covered by a license or permit under the Texas Alcoholic Beverage Code; and
- operated during hours when the public consumption of alcohol was prohibited.

Permitting process. ABC would be allowed to refuse a permit application or renewal if the ABC had reasonable grounds to believe, among other reasons, the applicant had been convicted of certain crimes or violations

involving moral turpitude, finished serving a sentence for a felony in the past five years, incorrectly completed or filed the application, was a minor, not a U.S. citizen, did not hold a sales tax permit if appropriate, the facility for the permit was inappropriate or had been used for immoral purposes in the past six months.

Cancellation of permit. The ABC would be allowed to suspend, after notice and hearing, a permit for not more than 60 days. The ABC would be allowed to do this after making certain findings, including: that the permittee had been convicted of a violation of the Alcoholic Beverage Code, the permittee made a false or misleading statement on an application, the permittee did not hold a sales tax permit where necessary, the place of business or manner of its operation warranted the cancellation or suspension of the permit based on the general welfare or health, or the permittee was insolvent or mentally or physically unable to carry on the management of the permittee's establishment.

Performance bond. Applicants for permits or renewal would be required to post a performance bond.

Summary suspension. The ABC could summarily suspend a permit for up to seven days if the commission found that a shooting, stabbing, or murder had occurred on the premises that was likely to result in a subsequent act of violence.

Offense and penalty. A person who operated a commercial establishment and who allowed the consumption of alcohol on its premises would be guilty of a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the establishment were required to be permitted under the Alcoholic Beverage Code and the operator did not have the applicable permit.

Other provisions. HB 34 would make conforming changes to require that certain signs required for bars would need to be displayed in permitted BYOB establishments as well. These requirements would include warnings concerning bans on firearms and human trafficking.

The bill would take effect on September 1, 2013. ABC would be required to adopt appropriate rules by November 1, 2013. The criminal penalty for not having a required permit would take effect on November 1, 2014.

**SUPPORTERS
SAY:**

HB 34 would create a public consumption permit to allow ABC and local law enforcement to regulate BYOB establishments in order to protect the public from the risks they pose. Under the bill, these establishments would require a permit to operate. The bill would base the permit requirements on the applicable portions of the mixed beverage permit that regulates bars. That permit has proven very successful. The public consumption permit would not have the rules and regulations for sales, since they would not be allowed to sell alcohol under the BYOB permit.

These BYOB establishments need be regulated because many operate all night long, frequently being a nuisance to the neighborhood as well as creating public safety issues. Many of them do not advertise as sexually oriented businesses but operate as such. Law enforcement officials report that some of the illegal activity occurring at these premises involves gambling, prostitution, narcotics, public consumption after hours, and illegal sale of alcoholic beverages.

HB 34 would grant ABC and local law enforcement the power to inspect these BYOBs establishments at any time. Under current law peace officers have authority to inspect the premises of ABC-licensed establishments at any time. They do not need a warrant. This prevents the destruction of evidence and encourages compliance with laws and regulations. The lack of a warrant requirement is important because most Texas counties do not have judges on evening shifts to grant warrants to search bars and BYOB establishments in the early hours of the morning.

Further, the bill would allow ABC to pull a permit from an establishment that violated applicable Alcoholic Beverage Code laws and regulations. Under current law, these BYOB establishments can be cited for infractions, but ABC cannot shut them down. The bill would subject them to nuisance standards to better protect their surrounding neighborhoods. Too many of these BYOB establishments had been regulated as bars but then subsequently lost their permits; HB 34 would allow law enforcement to continue proper oversight.

HB 34 is narrowly tailored to only apply to those businesses that need regulation to prevent them from beginning dens of criminal activity and threats to their neighborhoods. The bill made it out of the House last session, but was too broad and may have applied to businesses that it was not meant to cover. HB 34 would not expand government because it would not create any more laws or regulations than are on the books for

licensed bars and other establishments. It would not create or empower additional police officers or TABC agents.

OPPONENTS
SAY:

HB 34 would expand government regulation over business by creating an entirely new permit to regulate a set of businesses that ABC did not have permit jurisdiction over before. Further, the Legislature should create yet another situation where law enforcement could enter private property without a warrant. The warrant requirement should not be removed. It is not asking too much to require law enforcement to show probable cause before conducting a search.