

BILL ANALYSIS

C.S.H.B. 206
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law allows the owner of a commercial establishment, including a sexually oriented business, that charges customers an admittance fee and does not have a mixed beverage or private club registration permit to allow patrons to bring alcoholic beverages onto the premises for consumption. These establishments are not regulated by the Texas Alcoholic Beverage Commission.

C.S.H.B. 206 creates an on-premises consumption only permit that a commercial establishment that charges customers an admittance fee must obtain to allow patrons to bring alcoholic beverages onto the premises for consumption.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 206 amends the Alcoholic Beverage Code to create an on-premises consumption only permit, which authorizes the permit holder to allow a person to consume alcoholic beverages on the permitted premises and to bring alcoholic beverages onto or possess alcoholic beverages on the permitted premises for the purpose of consumption by the person on the permitted premises. The bill requires a person to obtain a permit if the person operates a commercial establishment that provides entertainment or social activities or requires payment, dues, or mandatory purchase of any kind or amount to be admitted onto the premises and allows persons to possess, consume, or bring alcoholic beverages onto the premises for consumption. The bill exempts from the permit requirement an establishment that prepares and serves food primarily for on-premises human consumption and operates under a food service establishment permit issued by a local or state health authority and a fraternal or veterans organization. The bill prohibits the issuance of such a permit for a premise covered by a license or permit authorizing the sale or service of alcoholic beverages. The bill provides that the annual state fee for an on-premises consumption only permit is \$1,000.

C.S.H.B. 206 requires an application for an on-premises consumption only permit to be filed with the county judge of the county in which the premises is located, and prescribes that the requirements for issuing a license to manufacture, brew, import, or possess beer for the purpose of sale apply to the issuance of an on-premises consumption only permit, including the notice and hearing requirements. The bill requires the county judge to deny an original application for an on-premises consumption only permit if the judge finds that the applicant or the applicant's spouse, during the five years immediately preceding the date of application, was finally convicted of a felony or certain offenses specified in the bill, or if the judge finds that five years have not elapsed since the termination of a sentence, parole, or probation served because of the conviction. The bill requires the Texas Alcoholic Beverage Commission to refuse to issue a renewal of a permit if it makes such findings relating to the conviction of a felony or certain offenses. The bill defines "applicant" for the purposes of applying for an on-premises consumption only permit.

C.S.H.B. 206 authorizes a municipality or a county to enact regulations prohibiting the consumption of alcoholic beverages on the premises of a commercial establishment near a church, public or private school, or public hospital in the same manner as the municipality or county is authorized to prohibit the sale of alcoholic beverages near a church, public or private school, or public hospital. The bill establishes that a premises, other than a private residence, where a person is allowed to consume alcoholic beverages or to bring alcoholic beverages or possess alcoholic beverages for the purpose of consumption by the person is a public place.

C.S.H.B. 206 requires the commission, on or before November 1, 2009, to adopt all rules necessary to implement the above provisions.

C.S.H.B. 206 makes it an offense for a person who operates a commercial establishment or that person's agent to allow a person to consume alcoholic beverages on the establishment's premises or to bring alcoholic beverages onto or possesses alcoholic beverages on the establishment's premises for the purpose of consumption on the premises when the establishment is required to but does not hold an on-premises consumption only permit. The bill provides that the penalties for such an offense range from a Class C misdemeanor to a Class A misdemeanor, depending on whether the offender has been previously convicted of this offense.

EFFECTIVE DATE

September 1, 2009, except that the penalty provisions take effect January 1, 2010.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 206 adds provisions not in the original to specify that an on-premises consumption only permit holder has the authority to allow a person to possess and consume the alcoholic beverages they bring on the permitted premises. The substitute adds provisions not in the original specifying the persons required to obtain a permit and exempting certain establishments and organizations from the requirement. The substitute differs from the original by prohibiting the issuance of a permit for a premise covered by a license or permit authorizing the sale or service of alcoholic beverages, rather than for a premises covered by a mixed beverage or private club registration permit as in the original. The substitute sets the annual state fee for an on-premises consumption only permit at \$1,000, rather than \$500 as in the original.

C.S.H.B. 206 omits a provision in the original authorizing the Texas Alcoholic Beverage Commission or its administrator to suspend or cancel a permit if a breach of the peace occurs on a covered premises that resulted from the holder's improper supervision of a person allowed on the premises.

C.S.H.B. 206 adds provisions not in the original relating to the application procedures for an on-premises consumption only permit, including procedures for filing an application, requirements for the issuance of a permit, and grounds for denial of an original application or for reissuance of a permit. The substitute adds provisions not in the original relating to the enactment of municipal or county regulations prohibiting consumption near churches, schools, or public hospitals, and what constitutes a public place for the purpose of the substitute's provisions.

C.S.H.B. 206 differs from the original by applying certain offenses to a person who operates a commercial establishment or that person's agent, rather than to the owner of a commercial establishment that charges customers a fee to be admitted to the establishment as in the original. The substitute differs from the original by specifying that certain offenses apply to the consumption or possession of alcoholic beverages allowed to be brought onto a commercial establishment's premises by a person who operates the establishment or the person's agent if the establishment is required to but does not hold an on-premises consumption only permit.