

BILL ANALYSIS

C.S.H.B. 3489
By: Quintanilla
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, the Texas Alcoholic Beverage Commission (TABC) has rules relating to the manner in which complaints by residents living near a business that sells alcoholic beverages may be resolved. In many cases, the resolution process may be slow. A neighborhood association in El Paso, on behalf of residents living close to a controversial bar, brought a complaint to TABC alleging that the bar was a nuisance. During the four-year period that the complaint was pending, there was little incentive for the license owner to negotiate a settlement with the residents and the neighborhood association. The license owner ignored pleas by the residents to make necessary changes in the business to accommodate the concerns of those who were most affected by the nuisance.

C.S.H.B. 3489 provides neighborhood residents who are adversely affected by common nuisances with the tools to put their complaints quickly before TABC. The bill provides incentives for a permit or license holder to reach a settlement and avoid suspension of the permit or license through arbitration or by having an off-duty police officer provide security and prevent unlawful behavior by patrons who may be at the root of neighborhood complaints.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3489 amends the Alcoholic Beverage Code to require the Texas Alcoholic Beverage Commission (TABC) or its administrator, on receipt by TABC of a petition or resolution requesting action on a permit or license in accordance with these provisions to notify a person permitted or licensed to sell alcoholic beverages for on-premises consumption of TABC's intent to initiate a hearing with the State Office of Administrative Hearings (SOAH) concerning possible action on the person's permit or license. The bill requires a petition for a hearing to be signed by at least 15 homeowners or tenants who reside on property located within 200 feet of the property line of the permitted or licensed premises, and authorizes a resolution requesting a hearing to be adopted by majority vote of a neighborhood association of a neighborhood having boundaries within 200 feet of the property line of the permitted or licensed premises and containing property primarily used for residential purposes within 200 feet of the property line of those premises. The bill requires the petition or resolution to be submitted to TABC with a statement from the individuals submitting the petition or from the neighborhood association that adopted the resolution alleging that the permit or license holder is using or allowing others to use the permitted premises in a manner that constitutes a common nuisance, as defined by state law, and that repeated acts of public lewdness, indecent exposure, public intoxication, or other repeated criminal acts have occurred outdoors on the permitted or licensed premises in view of the public; and is supported by evidence showing a history of police responses to the permitted premises because of the criminal activity.

C.S.H.B. 3489 requires SOAH, after TABC has received such a petition or resolution, to attempt to mediate a resolution between the residents and the permit or license holder, and if no resolution is achieved, requires SOAH to determine whether to take further action on the petition or resolution, including issuing a temporary injunction or requiring the permit or license holder to employ an off-duty peace officer to provide security for the permitted premises for a period of six months. The bill authorizes TABC or its administrator to suspend or cancel the permit or license if the permit or license holder violates a temporary injunction issued under provisions of the bill. The bill exempts from its provisions a permit or license issued to the holder of a food and beverage certificate.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3489 differs from the original by requiring the Texas Alcoholic Beverage Commission (TABC) or its administrator to notify the permit or license holder of TABC's intent to initiate a hearing with the State Office of Administrative Hearings (SOAH) concerning possible action on the person's permit or license, whereas the original requires TABC or its administrator to suspend temporarily the permit or license. The substitute differs from the original by requiring a petition for a hearing to be signed by at least 15 homeowners or tenants who reside on property located within 200 feet of the property line of the permitted premises, whereas the original requires a petition requesting suspension of a permit or license to be signed by 25 individuals who reside on property located within 100 feet of the property line of the permitted premises or who reside in an area served by an established neighborhood association whose boundaries lie within 100 feet of the property line of the permitted premises. The substitute adds a provision not in the original authorizing, as an option to a petition, a resolution requesting a hearing that is adopted by majority vote of a neighborhood association of a neighborhood having boundaries within 200 feet of the property line of the permitted premises and containing property primarily used for residential purposes within 200 feet of the property line of those premises.

C.S.H.B. 3489 differs from the original by requiring the petition or resolution to be submitted to TABC with a statement alleging, among other information, that repeated acts of public lewdness, indecent exposure, public intoxication, or other repeated criminal acts have occurred outdoors on the permitted premises in view of the public, whereas the original requires the petition itself to allege, among other information, that continuous acts of lewd behavior or other criminal activity have occurred on the permitted premises.

C.S.H.B. 3489 differs from the original by requiring SOAH to attempt to mediate a resolution between the residents and the permit or license holder, whereas the original requires TABC or its administrator to attempt such a mediation.

C.S.H.B. 3489 differs from the original by requiring SOAH, if it is unable to resolve the dispute, to determine whether to take further action on the petition or resolution and including in those actions the issuance of a temporary injunction or the requirement that the permit or license holder employ an off-duty peace officer to provide security for the permitted or licensed premises for a period of six months, whereas the original requires TABC or its administrator, if no resolution is achieved, to hold a hearing to determine whether to end the suspension, continue the suspension, or cancel the permit. The substitute removes provisions in the original setting out the requirements for the hearing and prohibiting TABC from suspending the permit or license if the holder employs a licensed security guard or an off-duty peace officer to provide security for the permitted or licensed premises.

C.S.H.B. 3489 adds provisions not in the original authorizing TABC or its administrator to suspend or cancel the permit or license holder's permit or license, respectively, if the holder

violates a temporary injunction issued under the bill's provisions and exempting from its provisions a permit or license issued to the holder of a food and beverage certificate.