

BILL ANALYSIS

Senate Research Center
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S.B. 853
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This legislation seeks to give the Texas Alcoholic Beverage Commission the ability to suspend the permit or license of establishments that are proven to the State Office of Administrative Hearings (SOAH) to be operating in violation of certain state criminal laws.

The bill authorizes violations of an SOAH injunction to be punished with the cancellation of a permit, a suspension of a permit, or a civil fine. The bill provides that temporary injunctions can be ordered by SOAH for a period not exceeding 10 days. The bill also authorizes SOAH to put permanent conditions on the continued operation of licensees if necessary to avoid the recurrence of criminal activity.

As proposed, S.B. 853 amends current law relating to authorizing injunctive relief during proceedings to cancel or suspend certain alcoholic beverage permits and licenses.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 11, Alcoholic Beverage Code, by adding Section 11.614, as follows:

Sec. 11.614. INJUNCTIVE RELIEF. (a) Provides that this section applies to a proceeding to cancel or suspend a permit that authorizes the permit holder to sell alcoholic beverages for on-premises consumption.

(b) Authorizes the Texas Alcoholic Beverage Commission (TABC) or administrator to file a motion with the State Office of Administrative Hearings (SOAH) for injunctive relief while the proceeding to cancel or suspend the permit is pending.

(c) Authorizes the administrative law judge, if the administrator or TABC establishes that there are ongoing criminal acts on the permitted premises that constitute a threat to the public health, safety, or welfare, including offenses under Chapter 22 (Assaultive Offenses), 42 (Disorderly Conduct and Related Offenses), 43 (Public Indecency), or 46 (Weapons), Penal Code, or Chapter 481 (Texas Controlled Substances Act), Health and Safety Code, to enter an order to stop the criminal activity from occurring on the permitted premises while the contested case is pending, including an order prohibiting the sale or consumption of alcoholic beverages on the premises or the possession of alcoholic beverages with intent to consume the alcoholic beverages on the permitted premises.

(d) Requires the administrative law judge, if a permit holder violates an order issued under this section, to cancel the permit holder's permit, suspend the permit holder's permit, or impose a civil fine on the permit holder.

(e) Authorizes TABC or the administrator to file a motion with the administrative law judge requesting a hearing on the issue of whether the permit holder violated

an order issued under this section. Requires the administrative law judge to hold the hearing after the 10th day after the date the motion for a hearing is filed and before the 21st day after the date the motion for a hearing is filed.

(f) Authorizes the administrative law judge, on application by the administrator or TABC, to enter a temporary order without notice to the permit holder. Requires that a temporary order expire not later than the 10th day after the date the order is entered. Requires the administrative law judge, before the temporary order expires, to hold a hearing on the question of whether the temporary order should be extended for the duration of the contested case or whether other orders should be issued.

(g) Requires the administrative law judge to give priority to a hearing for temporary relief over all other matters pending before the administrative law judge.

(h) Authorizes the administrative law judge, at the close of the contested case, if the permit holder continues to operate, to issue a permanent order imposing conditions on the permit holder to prevent the reoccurrence of the criminal activity on the permit holder's premises.

SECTION 2. Amends Subchapter C, Chapter 61, Alcoholic Beverage Code, by adding Section 61.722, as follows:

Sec. 61.722. INJUNCTIVE RELIEF. (a) Provides that this section applies to a proceeding to cancel or suspend a license that authorizes the license holder to sell alcoholic beverages for on-premises consumption.

(b) Authorizes TABC or the administrator to file a motion with SOAH for injunctive relief while the proceeding to cancel or suspend the license is pending.

(c) Authorizes the administrative law judge, if the administrator or TABC establishes that there are ongoing criminal acts on the licensed premises that constitute a threat to the public health, safety, or welfare, including offenses under Chapter 22, 42, 43, or 46, Penal Code, or Chapter 481, Health and Safety Code, to enter an order to stop the criminal activity from occurring on the licensed premises while the contested case is pending, including an order prohibiting the sale or consumption of alcoholic beverages on the premises or the possession of alcoholic beverages with intent to consume the alcoholic beverages on the licensed premises.

(d) Requires the administrative law judge, if a license holder violates an order issued under this section, to cancel the license holder's permit, suspend the license holder's permit, or impose a civil fine on the license holder.

(e) Authorizes TABC or the administrator to file a motion with the administrative law judge requesting a hearing on the issue of whether the license holder violated an order issued under this section. Requires the administrative law judge to hold the hearing after the 10th day after the date the motion for a hearing is filed and before the 21st day after the date the motion for a hearing is filed.

(f) Authorizes the administrative law judge, on application by the administrator or TABC, to enter a temporary order without notice to the license holder. Requires that a temporary order expire not later than the 10th day after the date the order is entered. Requires the administrative law judge, before the temporary order expires, to hold a hearing on the question of whether the temporary order should be extended for the duration of the contested case or whether other orders should be issued.

(g) Requires the administrative law judge to give priority to a hearing for temporary relief over all other matters pending before the administrative law judge.

(h) Authorizes the administrative law judge, at the close of the contested case, if the license holder continues to operate, to issue a permanent order imposing conditions on the license holder to prevent the reoccurrence of the criminal activity on the license holder's premises.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.