

BILL ANALYSIS

C.S.H.B. 175
By: Jackson, Jim
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law authorizes the owner of a commercial establishment, including a sexually oriented business, that charges a customer an admittance fee and does not have a mixed beverage or private club registration license to allow a patron to bring alcoholic beverages onto the premises for consumption. There is concern that these establishments are not adequately regulated by the Texas Alcoholic Beverage Commission. C.S.H.B. 175 seeks to address this concern by creating an on-premises consumption only license for a commercial establishment that charges a customer an admittance fee required for such an establishment to allow a patron 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 2 of this bill.

ANALYSIS

C.S.H.B. 175 amends the Alcoholic Beverage Code to create an on-premises consumption only license, authorizing the license holder to allow a person to consume alcoholic beverages on the licensed premises and bring alcoholic beverages onto or possess alcoholic beverages on the licensed premises for the purpose of consumption by the person on those premises. The bill requires a person to obtain such a license 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 that allows persons to possess, consume, or bring alcoholic beverages onto the premises for the purpose of consumption.

C.S.H.B. 175 exempts from the license requirement an establishment that operates primarily as a food service establishment; a fraternal or veterans organization; an establishment operated by a religious organization, governmental entity, or charitable organization; a premises that is covered by a license or permit authorizing the sale or service of alcoholic beverages; or other types of establishments as determined by the Texas Alcoholic Beverage Commission (TABC) where the consumption of alcohol does not pose a threat to the public health or safety. The bill establishes that, for the purposes of the bill's provisions, an establishment operates primarily as a food service establishment only if the establishment has food service facilities for the preparation and service of a minimum of eight entrees, the establishment operates under a food service establishment permit issued by a local or state health authority, and the hours of operation for the sale and service of food are the same as the hours of operation for the establishment. The bill sets the annual state fee for an on-premises consumption only license at \$1,000.

C.S.H.B. 175 establishes that the provisions of the Alcoholic Beverage Code relating to the application for and issuance, cancellation, and suspension of a retail dealer's on-premise license apply to an application for and issuance, cancellation, and suspension of a retail dealer's on-premises consumption only license. The bill makes the provisions generally applicable to a license under the Alcoholic Beverage Code applicable to an on-premises consumption only

license.

C.S.H.B. 175 authorizes the TABC or administrator to suspend or cancel an on-premises consumption only license after giving the licensee notice and the opportunity to show compliance with all requirements of law for retention of the license if the TABC or administrator finds that a breach of the peace has occurred on the licensed premises or on premises under the licensee's control and that the breach of the peace was not beyond the control of the licensee and resulted from the licensee's improper supervision of persons permitted to be on the licensed premises or the premises under the licensee's control.

C.S.H.B. 175 authorizes a municipality or a county to enact regulations prohibiting the consumption of alcoholic beverages on the premises of a commercial establishment as described by the bill's provisions that is 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 those facilities. The bill, effective January 1, 2012, makes it an offense for a person to fail to obtain a license as required by the bill.

C.S.H.B. 175 requires the TABC, on or before January 1, 2012, to adopt all rules necessary to implement the bill's provisions.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 175 differs from the original by making its provisions applicable to an on-premises consumption only license, rather than an on-premises consumption only permit, as in the original, and a licensed premises, rather than permitted premises, as in the original. The substitute makes nonsubstantive changes to reflect the issuance of a license under the bill's provisions as opposed to the attainment of a permit as in the original.

C.S.H.B. 175 exempts from the requirement for an on-premises consumption only license an establishment that operates primarily as a food service establishment and sets out as a qualification for operating primarily as a food service establishment the fact that the establishment operates under a food service establishment permit issued by a local or state health authority, whereas the original specifies that an establishment that meets substantially the same conditions and that prepares and serves food primarily for on-premises human consumption is exempt from obtaining a permit. The substitute contains provisions not included in the original to further require such an establishment to qualify as an establishment operating primarily as a food service establishment to have food service facilities for the preparation and service of a minimum of eight entrees and to have hours of operation for the sale and service of food that are the same as the hours and operation for the establishment.

C.S.H.B. 175 contains provisions not included in the original to exempt from the on-premises consumption only license requirement an establishment operated by a religious organization, governmental entity, or charitable organization, or other types of establishments as determined by the Texas Alcoholic Beverage Commission (TABC) where the consumption of alcohol does not pose a threat to the public health or safety. The substitute exempts from the on-premises consumption only license requirement a premises that is covered by a license or permit under state law authorizing the sale or service of alcoholic beverages, whereas the original prohibits an on-premises consumption only permit from being issued for such a premises.

C.S.H.B. 175 omits provisions included in the original requiring 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 prescribing that the requirements for issuing a license to manufacture,

brew, or possess beer for the purpose of sale, or import beer into Texas, or distribute or sell beer apply to the issuance of an on-premises consumption only permit, including the notice and hearing requirements. The substitute omits provisions included in the original requiring 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 one of certain offenses or violations. The substitute omits provisions in the original requiring the county judge to deny an original application for such a permit if the judge finds that five years have not elapsed since the termination of a sentence, parole, or probation served by the applicant or the applicant's spouse because of a conviction of a felony or any of certain specified offenses or violations and prohibiting the TABC from issuing a permit renewal on making related findings regarding such a conviction. The substitute omits a provision included in the original defining "applicant."

C.S.H.B. 175 contains provisions not included in the original relating to the issuance, cancellation, and suspension of a retail dealer's on-premise license, provisions of law generally applicable to that license and the suspension or cancellation of an on-premises consumption only license on a finding relating to a breach of peace that has occurred on certain premises and under certain conditions.

C.S.H.B. 175 omits a provision included in the original establishing the premises considered a public place.

C.S.H.B. 175 omits a provision included in the original making it a Class C misdemeanor 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 possess alcoholic beverages on the establishment's premises for the purpose of consumption on the premises if the establishment is required to be covered by an on-premises consumption only permit and is not covered by such a permit. The substitute omits a provision included in the original enhancing the penalty to a Class B misdemeanor for a subsequent conviction of that offense and to a Class A misdemeanor if it is shown on the trial of the offense that the person has previously been convicted of that offense two or more times. The substitute differs from the original by making it an offense to fail to obtain a license required by the substitute's provisions and establishing an effective date for such provision, whereas the original applies that same effective date to the offense created under its provisions.

C.S.H.B. 175 differs from the original by requiring the TABC, on or before January 1, 2012, to adopt all rules necessary to implement the bill's provisions, whereas the original requires the TABC, on or before November 1, 2011, to adopt all rules necessary to implement the bill's provisions, except for provisions relating to the offense.