

BILL ANALYSIS

C.S.H.B. 407
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, a resident living near a business that sells alcoholic beverages for on-premises consumption who is adversely affected by certain activities at the permitted or licensed premises may file a complaint with the Texas Alcoholic Beverage Commission (TABC). According to some people, the resolution of such complaints may be slow, and while a complaint is pending there is little incentive for the permit or license holder to negotiate a settlement with the residents. C.S.H.B. 407 seeks to address this situation by providing residents who are adversely affected by certain actions at a permitted or licensed premises with the means to have their complaints resolved more quickly.

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. 407 amends the Alcoholic Beverage Code to establish procedures for the submission of a petition by a group of homeowners or tenants or a resolution by a neighborhood association for a hearing with the State Office of Administrative Hearings (SOAH) concerning an action on a permit or license to sell alcoholic beverages for on-premises consumption. The bill requires the petition or resolution to be submitted to the Texas Alcoholic Beverage Commission (TABC) with a statement from the individuals submitting the petition, or from the neighborhood association that adopted the resolution, that alleges that the permit or license holder is using or allowing others to use the permitted or licensed premises in a manner that constitutes a common nuisance as defined by the Civil Practice and Remedies Code or the Alcoholic Beverages Code.

C.S.H.B. 407 requires a petition for a hearing under the bill's provisions to be signed by at least 15 homeowners or tenants who reside on property having boundaries within 200 feet of the property line of the permitted or licensed premises. The bill 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 having boundaries within 200 feet of the property line of the premises.

C.S.H.B. 407 requires the TABC or its administrator, on the TABC's receipt of such a petition or resolution, to notify the holder of the permit or license of the TABC's intent to initiate a hearing with the SOAH concerning possible action on the permit or license, in accordance with the bill's provisions. The bill requires the SOAH, after the TABC receives the petition or resolution, to attempt to mediate a resolution between the residents and the permit or license holder and, if the SOAH is not able to resolve the dispute, 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 or licensed premises for a period of six months. The bill authorizes the TABC or its administrator to

suspend or cancel the holder's permit or license if the holder violates a temporary injunction issued under the bill's provisions. The bill specifies that its provisions do not apply to a permit or license issued to the holder of a food and beverage certificate.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 407 omits provisions included in the original that require the statement submitted to the TABC with the petition or resolution to allege 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 that require the statement to be supported by evidence showing a history of police responses to the premises because of such criminal activity.