

AN ACT

relating to the existence of a common nuisance on premises for which certain alcoholic beverage permits or licenses are held or sought.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 3, Alcoholic Beverage Code, is amended by adding Subtitle C to read as follows:

SUBTITLE C. PROVISIONS APPLICABLE TO PERMITS AND LICENSES

CHAPTER 81. COMMON NUISANCE

Sec. 81.001. DEFINITION. In this chapter, "common nuisance" means a common nuisance as defined by Section 125.001, Civil Practice and Remedies Code, or by Section 101.70(a) of this code.

Sec. 81.002. APPLICABILITY OF CHAPTER. This chapter applies only to a permit or license that authorizes the retail sale or service of alcoholic beverages for on-premises consumption of alcoholic beverages, other than a permit or license held with a food and beverage certificate.

Sec. 81.003. SUBMISSION OF INFORMATION BY CERTAIN OFFICIALS. For the purposes of Section 81.004 or 81.005, the district or county attorney of the county or the city attorney of the city in which the premises are located may provide information to the commission, administrator, or county judge, as appropriate, indicating that the holder of, or applicant for, a permit or license covering the premises has used or can reasonably be expected to use

1 or allow others to use the premises in a manner that constitutes a
2 common nuisance.

3 Sec. 81.004. APPLICATION FOR ORIGINAL OR RENEWAL PERMIT OR
4 LICENSE. The commission, administrator, or county judge, as
5 applicable, may refuse to issue an original or renewal permit or
6 license, after notice and an opportunity for a hearing, if the
7 commission, administrator, or county judge finds that, at any time
8 during the 12 months preceding the permit or license application, a
9 common nuisance existed on the premises for which the permit or
10 license is sought, regardless of whether the acts constituting the
11 common nuisance were engaged in by the applicant or whether the
12 applicant controlled the premises at the time the common nuisance
13 existed. The commission, administrator, or county judge, as
14 applicable, may issue an original or renewal permit or license if,
15 at the hearing, it is found that the applicant did not control the
16 premises at the time the common nuisance existed and the applicant
17 has taken reasonable measures to abate the common nuisance.

18 Sec. 81.005. CANCELLATION OR SUSPENSION OF PERMIT OR
19 LICENSE. (a) The commission or administrator may suspend for not
20 more than 60 days or cancel a permit or license if the commission or
21 administrator finds, after notice and hearing, that the permit or
22 license holder used or allowed others to use the permitted or
23 licensed premises in a manner that constitutes a common nuisance.

24 (b) If the commission or administrator receives information
25 from an official under Section 81.003, the commission or
26 administrator shall consider the information and, if the commission
27 or administrator finds the information sufficient to indicate that

1 cancellation or suspension under Subsection (a) may be appropriate,
2 provide notice and hold a hearing under that subsection to
3 determine whether to suspend or cancel the permit or license.

4 (c) Notwithstanding Section 11.64, the commission or
5 administrator may not give a permit or license holder the
6 opportunity to pay a civil penalty rather than have the permit or
7 license suspended.

8 Sec. 81.006. ORDER IMPOSING ADDITIONAL CONDITIONS ON PERMIT
9 OR LICENSE HOLDER. (a) The commission, administrator, or county
10 judge, as applicable, may, after notice and hearing under Section
11 81.004 or 81.005, issue an order imposing any condition on a permit
12 or license holder that is reasonably necessary to abate a common
13 nuisance on the premises.

14 (b) The commission or administrator may suspend for not more
15 than 60 days or cancel the permit or license of a permit or license
16 holder who violates an order issued under this section. The
17 commission or administrator may offer the permit or license holder
18 the opportunity to pay a civil penalty rather than have the permit
19 or license suspended.

20 Sec. 81.007. TEMPORARY ORDER DURING PENDENCY OF PROCEEDING.
21 (a) Before holding a hearing and making a determination under
22 Section 81.004 or 81.005, the commission, administrator, or county
23 judge, as applicable, may, if there is evidence showing a
24 reasonable likelihood that a common nuisance exists on the premises
25 for which the permit or license is held or sought, issue an order
26 imposing any condition on the permit or license holder or the
27 applicant for the permit or license that is reasonably necessary to

1 abate a common nuisance on the premises. An order issued under this
2 section is effective until:

3 (1) the expiration of the time for appealing the
4 determination under Section 81.004 or 81.005; or

5 (2) if the determination is appealed, until all
6 appeals are finally decided.

7 (b) A hearings officer or county judge may issue an order
8 under this section on the hearings officer's or county judge's own
9 motion or the motion of a person listed in Section 81.003 or, for an
10 original or renewal permit or license application, any individual
11 entitled to protest the issuance of the original or renewal permit
12 or license.

13 (b-1) If an individual other than a person described in
14 Subsection (b) who is entitled to protest the issuance of the
15 original or renewal permit or license files a motion for a temporary
16 order under this section, the commission, administrator, or county
17 judge, as applicable, may not issue a temporary order without
18 conducting a hearing.

19 (c) The hearings officer or county judge may impose any
20 sanction on a person who violates an order issued under Subsection
21 (a) that is necessary to secure compliance with the order.

22 (d) A hearing under this section must be held not later than
23 the 10th day after the date notice is served on all interested
24 parties. Failure to hold a hearing in the time prescribed by this
25 subsection does not invalidate an order issued under this section.

26 (e) A person who requests an order under this section may
27 not be required to post security for costs in connection with the

1 application or any hearing conducted as a result of the
2 application.

3 SECTION 2. The change in law made by Chapter 81, Alcoholic
4 Beverage Code, as added by this Act, with respect to original or
5 renewal license applications, applies only to an application filed
6 on or after the effective date of this Act. An application filed
7 before the effective date of this Act is governed by the law in
8 effect immediately before the effective date of this Act, and that
9 law is continued in effect for that purpose.

10 SECTION 3. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2007.

David Bushurst

President of the Senate

Jim Caddick

Speaker of the House

I certify that H.B. No. 2605 was passed by the House on April 25, 2007, by the following vote: Yeas 143, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2605 on May 25, 2007, by the following vote: Yeas 136, Nays 0, 2 present, not voting; and that the House adopted H.C.R. No. 283 authorizing certain corrections in H.B. No. 2605 on May 28, 2007, by a non-record vote.

Robert Haney
Chief Clerk of the House

I certify that H.B. No. 2605 was passed by the Senate, with amendments, on May 23, 2007, by the following vote: Yeas 27, Nays 4; and that the Senate adopted H.C.R. No. 283 authorizing certain corrections in H.B. No. 2605 on May 28, 2007, by a viva-voce vote.

Letsy Spaw
Secretary of the Senate

APPROVED: 15 JUN 07

Date

RICK PERRY
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
6 PM O'CLOCK

Roger Williams
Secretary of State