

HOUSE
RESEARCH

ORGANIZATION bill analysis

4/27/87

HP 2262
Toomey
(CSHB 2262 by Watson)

SUBJECT: Liquor license refusals to sexually oriented businesses

COMMITTEE: Liquor Regulation: committee substitute recommended

VOTE: 8 ayes--Wilson, G. Thompson, A. Moreno, Barton,
H. Cuellar, Patronella, Repp, Watson

0 nays

1 absent--Willis

WITNESSES: For--None

Against--None

On--Joe Darnall, General Counsel, Texas Alcoholic
Beverage Commission

BACKGROUND: Texas Alcoholic Beverage Commission orders
that refuse, cancel or suspend a permit or license may
be appealed to district court. Local officials or
other persons on record as protesting the issuance or
renewal of a permit or license at the commission
hearing are entitled to notice of an appeal filed by an
applicant, licensee or permit- holder. However, they
are not entitled to appear and testify in the district
court appeal.

DIGEST: CSHB 2262 would permit any person to appear at a
district-court appeal of an Alcoholic Beverage
Commission order refusing the issuance or renewal of a
license or permit for a business that is sexually
oriented. The district court could grant a motion to
strike a person's appearance if it were shown that the
person had no real interest at stake in the proceeding.

SUPPORTERS
SAY: CSHB 2262 is carefully and narrowly drawn to give
interested persons specific statutory standing to
testify when a sexually oriented business appeals to
district court after the TABC refuses to issue it an
alcohol license or permit or to renew its license or
permit.

If neighboring property owners or local officials
object to the issuance or renewal of a license or
permit to a sexually oriented business, based on
suspected activities such as prostitution, drug

dealing, disorderly conduct or lewdness in or about the business, they now are allowed to protest at only the commission hearing. But they are not given the same right when the business appeals the commission's refusal order, because courts have ruled they have no legal standing in the case. CSHB 2262 would give these interested persons the legal mechanism to follow through with their protests and to let their views be known to the district court judge.

CSHB 2262 is narrowly drawn to apply only when the commission refuses to issue or renew a license or permit to sexually oriented businesses. The United States Supreme Court has ruled that it is permissible for states to regulate sexually oriented businesses differently than other businesses. The bill would not apply to persons objecting, for whatever reasons, to licenses or permits for other businesses, restaurants, bars or clubs.

As a protection against persons appearing in district court for reasons other than to seek justice and protect their interests, CSHB 2262 would give the district court judge the flexibility to exclude these persons from the appeal proceedings. CSHB 2262 would allow the judge to grant a motion to strike a person's appearance if the moving party shows that this person has no real, determinable interest in the case. As a practical matter, hiring an attorney and taking the time to go to district court would keep most persons with no real interest in a sexually oriented business's appeal from appearing.

OPPONENTS
SAY:

Certain businesses would be unfairly singled out by CSHB 2262. If third parties are to be allowed to appear in an appeal of what is essentially a matter between a business and the Alcoholic Beverage Commission, then they should be allowed to appear at the appeals of any types of businesses or groups as well. There is no logically defensible reason for allowing interested persons to be heard in the district court when a "sexually oriented" business appeals the TABC's refusal to issue or renew a license or permit and not be heard for the same reasons when any bar or club, sexually oriented or not, appeals such an order.

Furthermore, since there is no definition of "sexually oriented business" either in statute or in TABC regulations, the bill is unreasonably vague. Before determining if a party could testify, a judge would be

forced to wrestle with determinations of just what constitutes "sexually oriented."

OTHER
OPPONENTS
SAY:

CSHB 2262 should apply not only to the situation in which the commission refuses to issue or renew a license or permit for a sexually oriented business, but also to cancellation or suspension of a license or permit to that type of business. Neighboring property owners may have just as much an interest in the commission's cancellation or suspension proceedings as in issuance or renewal proceedings. In fact, they may have even more of an interest when there is a real concern with a particular business in seeing that it is shut down as soon as possible.

NOTES:

The original version of HB 2262 would have allowed interested persons to appeal commission decisions granting or renewing a license or permit of a sexually oriented business. The committee substitute would apply to commission orders refusing issuance or renewal of a license or permit and would give interested parties standing to appear in court when the sexually oriented business appeals the refusal.