

SUBJECT: Creating penalties for unlawful use of alcoholic beverage permit, license

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 9 ayes — Smith, Gutierrez, Geren, Goldman, Guillen, Kuempel, Miles, D. Miller, S. Thompson
0 nays

SENATE VOTE: On final passage, April 27 — 26-4 (Birdwell, Hancock, Huffines, Perry)

WITNESSES: For — None
Against — None
On — (*Registered, but did not testify*: Dexter Jones, Texas Alcoholic Beverage Commission)

BACKGROUND: Alcoholic Beverage Code, sec. 11.05 prohibits holders of a permit issued by the Texas Alcoholic Beverage Commission from allowing another person to use or display their permit.

DIGEST: SB 367 would create criminal offenses and penalties related to the unauthorized use of an alcoholic beverage license or permit.

Holders of licenses issued by the Texas Alcoholic Beverage Commission (TABC) would be prohibited from allowing another person to use or display their license, similar to the prohibition for permit holders under current law. It would be an offense for a person knowingly to allow another person to unlawfully display or use a permit or license issued by TABC. It also would be an offense for a person to unlawfully display or use a permit or license issued to another person by TABC.

The offenses would be class B misdemeanors (up to 180 days in jail and/or a maximum fine of \$2,000). If it were shown at trial that the person

previously had been convicted of an offense under the bill, it would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

TABC would have to cancel an original or renewal license or permit if it was found, after notice and a hearing, that a permit or license holder was convicted of an offense under the bill. TABC and certain officials would have to refuse to issue an original permit or license to a person for five years after the person was convicted of such an offense.

The bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

SB 367 would penalize all bad actors in cases of subterfuge, which occurs when individuals without a valid alcoholic beverage permit or license use another person's permit or license to operate their business.

Currently, only the conduct of the legal permit holder is prohibited, limiting law enforcement's ability to punish the owner of the business who inappropriately uses the permit. These business owners often are engaged in other illegal activities as well. The bill would give law enforcement officers the tools they need to punish everyone involved in subterfuge and would provide harsher penalties to deter such activity.

The bill would not punish innocent actors for technical violations because TABC and criminal prosecutors have discretion about what penalties to assess and which cases to pursue. The goal is to stop criminals from avoiding prosecution because of a loophole in the law, not to punish otherwise law-abiding citizens.

**OPPONENTS
SAY:**

SB 367 would be unnecessary to punish people involved in subterfuge because current law already prohibits permit holders from allowing someone else to use their permits. A separate offense for the one using the permit is not needed. The bill also could be too broad with the unintended consequence of punishing people for technical but innocent violations. For example, if a father obtained a license but then his children ran his business, both could have committed a criminal offense under the bill and

be ineligible to hold a permit or license for five years.