

SUBJECT: Allowing city attorneys to sue for alcohol-related common nuisances

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Smithee, Gutierrez, Hernandez, Laubenberg, Murr, Neave,
Schofield

1 nay — Rinaldi

1 absent — Farrar

WITNESSES: For — Heather Cook, Mayor's Office, City of Houston; (*Registered, but did not testify*: Jessica Anderson, Houston Police Department; Monty Wynn, Texas Municipal League)

Against — None

On — Dexter Jones, Texas Alcoholic Beverage Commission

BACKGROUND: Under Alcoholic Beverage Code, sec. 101.70, a common nuisance is a room, building, boat, structure, or other place where alcoholic beverages are sold, bartered, manufactured, stored, possessed, or consumed in violation of the code. The attorney general or the county or district attorney where the nuisance exists may sue for an injunction to abate and temporarily or permanently enjoin it.

Civil Practice and Remedies Code, ch. 125 defines common nuisance as a place where certain crimes, such as gambling or prostitution, occurs and where people habitually go because of those crimes. A suit to enjoin and abate a common nuisance under ch. 125 may be brought by an individual, the attorney general, or a district, county, or city attorney.

DIGEST: CSHB 256 would allow a city attorney to bring a claim on the city's behalf for a common nuisance under Alcoholic Beverage Code, sec. 101.70 and receive injunctive relief.

The bill would take effect September 1, 2017.

**SUPPORTERS
SAY:**

CSHB 256 would offer a straightforward way for city attorneys to address Texas Alcoholic Beverage Commission (TABC) violations that create common nuisances. While city attorneys may bring nuisance suits under Civil Practice and Remedies Code, ch. 125, they currently must rely on county, state, and district attorney's offices to bring suit for common nuisances under the Alcoholic Beverage Code.

The inability of city attorneys to bring suit for these nuisances hinders them in certain situations. If an establishment has a TABC violation but no violation under Civil Practice and Remedies Code, ch. 125, the city attorney is unable to act. If both a TABC violation and a ch. 125 common nuisance violation are present, the city attorney may bring a claim only for the ch. 125 violation, which impairs the city's ability to present a full picture of the situation in court. Ch. 125 violations may be discovered as a result of a TABC abatement action. When this occurs, allowing city attorneys to also bring TABC nuisance actions would provide more opportunities to address serious and potentially violent situations.

In cities with no formal land use zoning, such as Houston, common nuisances under the Alcoholic Beverage Code can negatively affect residential areas. Cities are best situated to know about these violations, and city law enforcement officers are often the first to identify them.

This bill would not increase the scope of government, as it would allow city attorneys to use an existing civil remedy. Allowing city attorneys to bring suit for TABC-related common nuisances would reduce the bureaucratic burden for county and state attorneys and could help identify cases involving prostitution or sex trafficking, which place a person's safety at immediate risk.

OPPONENTS
SAY:

CSHB 256 would expand government authority unnecessarily. Nuisance claims already are handled adequately through county, state, and district attorney offices. The bill could encourage government overreach and needlessly would add another entity to an already thorough list of those who may bring suit against individuals for common nuisance violations.

NOTES:

The committee substitute differs from the bill as filed by allowing a city attorney to file suit in the name of the city, rather than in the name of the state.