

- SUBJECT:** Distances between schools and businesses selling alcoholic beverages
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 8 ayes — Kuempel, Thompson, Chisum, Geren, Gutierrez, Hamilton, Menendez, Quintanilla
- 0 nays
- 1 absent — Jones
- WITNESSES:** For — (*Registered, but did not testify:* Amy Beneski, Texas Association of School Administrators; Dominic Giarratani, Texas Association of School Boards)
- Against — None
- On — Lou Bright, Alcoholic Beverage Commission; (*Registered, but did not testify:* Fred Marosko, Texas Package Stores Association)
- BACKGROUND:** Under Alcoholic Beverage Code , sec. 109.33, a county commissioners court or a city council may create “alcohol-free zones” around churches, public and private schools, and public hospitals. These zones prohibit a retail dealer that receives more than 50 percent of its gross receipts from the sale of alcoholic beverages from selling these beverages within a certain distance of the property protected by the zone. A county or municipality may prohibit these businesses from selling alcoholic beverages within 1,000 feet of a private school if the school requests, or within 300 feet of a public school. The zone may increase to 1,000 feet around a public school in a municipality with a population of 900,000 or more if the school board of the school district requests it under Education Code, sec. 38.007(b).
- Distance measurements.*** Distances between properties are measured differently, depending on whether the property is a church, public hospital, or school. For churches and public hospitals, distances are measured along the property lines of the street fronts and from the front door of the

business to the front door of the church or public hospital, and in a direct line across intersections. For public and private schools, distances are measured in a direct line from the property line of the school to the property line of the business. For businesses with a license or permit to sell alcoholic beverages on September 1, 1983, distances are measured along the property lines of the street fronts and from the front door of the business to the front door of the other property, regardless of whether the other property is a church, public hospital, or school.

**“Grandfathered” businesses.** When a new distance requirement is established, a business currently operating with a license or permit is “grandfathered in” and may continue to operate. If a business within 1,000 feet of a private school, public hospital, or church is sold or transferred, the new license or permit holder also is grandfathered in, with the distance requirement deemed satisfied as though the license or permit was renewed. A new owner of a location subject to a 1,000-foot distance requirement from a public school in a municipality of more than 900,000 is *not* grandfathered in, unless the new owner is the original owner’s surviving spouse or child who acquired an interest in the permit or license upon the death of the original holder.

If a county or municipality determines that a distance requirement is too onerous, or is otherwise not in the best interest of the community, it may allow a variance for the business or businesses under sec. 109.33(e).

Before applying for an original alcoholic beverage license or permit, an applicant who operates a business that is open to the public and located within 1,000 feet of a public or private school must give written notice of the application to school officials.

DIGEST:

CSHB 1161 would amend the Alcoholic Beverage Code and the Education Code to establish the same alcohol zoning distance requirements for public and private schools, establish a single method of measuring distances for alcohol sale-ban zones, and modify the grandfather clause to apply to all new owners within 1,000 feet of a public school, as long as the new owner applied for the same type of license or permit held by the previous owner.

A county or municipality of any size, if it were requested to do so by the school board of a public school district, could prohibit the sale of alcoholic

beverages by a business or premises within 1,000 feet of a public school if the business or premises received more than 50 percent of its gross receipts from alcoholic beverage sales. A county or municipality still could impose distance requirements of up to 300 feet, even if it were not requested.

Distances between properties would be measured from the property line of the business where alcoholic beverages were sold to the nearest property line upon which the distance requirement was imposed. Distances would be measured along the property lines of the properties' street fronts and in a direct line across intersections. The same requirements would apply to a business on or above the fifth story of a multistory building, except that the measurement would run from the property line of the property protected by the distance requirement to the nearest property line of the affected business, then run vertically up the building from the property line to the base of the floor on which the permit or license holder was located. These measurements would apply to:

- distances from public and private schools; and
- distances from churches, public hospitals, day care centers, child care facilities, and homeless shelters.

Businesses or premises currently operating with a license or permit within 1,000 feet of a public school still would be grandfathered in if a county or municipality enacted a new distance requirement, as long as the business continued to operate under the same type of license or permit that was in effect at the time the distance requirement was imposed. In addition, an existing location near a public school that was sold or transferred to a new owner would be "grandfathered in," provided the new owner sought the same type of permit or license held by the previous owner.

The bill would take immediate effect if passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

CSHB 1161 would simplify the Alcoholic Beverage Code and apply its provisions in a more consistent, understandable way. The current distance requirement regulations are a confusing and convoluted patchwork spread over multiple statutes that contain numerous and inconsistent exceptions. For example, the code requires that distances between schools and

businesses that sell alcoholic beverages be measured from property line to property line, but that distances between businesses and public hospitals or churches be measured from front door to door. The bill would eliminate this discrepancy and establish a uniform standard of measurement for all distance requirements in the Alcoholic Beverage Code that would be easier to understand and apply.

CSHB 1161 also would amend the grandfather clause so that everything would be grandfathered in the same way. Under existing law, a new business owner located near a public school is treated differently from a current business owner if the business is subject to an alcohol-free zone of 1,000 feet in a municipality with a population of 900,000 or more. The reasons for this variance are less than clear, but CSHB 1161 would ensure that new owners were grandfathered in the same way as current owners, so long as the new owners sought the same type of license or permit as the previous owner and there were no gaps in ownership.

Counties and municipalities with populations less than 900,000 currently lack the authority to establish alcohol-free zones of 1,000 feet around public schools, even though they may do so around private schools if school officials request. This robs the state's small and mid-size areas of an important regulatory tool to address problems that arise from having businesses that sell primarily alcoholic beverages located near public schools. CSHB 1161 would correct this discrepancy and give these areas the same regulatory powers as larger cities. While it would impose new restrictions on businesses that otherwise might have opened more than 300 feet but less than 1,000 feet from a public school, these restrictions are necessary to provide a safe, alcohol-free environment to students going to or from school. Also, a business owner still could request a waiver from a distance requirement under Alcoholic Beverage Code, sec. 109.33(e).

CSHB 1161 would have no impact on most retailers because it would apply only to businesses that receive more than 50 percent of their gross receipts from the sale of alcoholic beverages. In most cases, the affected businesses would be limited to liquor stores or beer and wine retailers. This bill would not affect gas stations, grocery stores, or "big box" retailers if their sales of alcoholic beverages did not exceed 50 percent of their gross receipts.

## OPPONENTS

This bill potentially could harm businesses in small towns or cities with

**SAY:** only a single, small commercial district by allowing those towns to impose restrictions up to 1,000 feet from public schools. If the commercial district were located near a public school, a new business might be forced to open in an untenable location outside the commercial district. In addition, CSHB 1161 would not distinguish between responsible, successful businesses that serve their communities and those that cause problems. The bill should recognize these good businesses by providing them with a more effective way to seek variances from distance requirements.

**OTHER  
OPPONENTS  
SAY:** This bill should strengthen protections for small business owners subject to the grandfather clause by exempting these businesses from losing their license or permit for minor, technical violations. Under current law, a conviction for any violation in the Alcoholic Beverage Code could result in license suspension or loss of grandfathered status. Examples of technical violations include having a bathroom that is not compliant with the Americans with Disabilities Act and completing a check-out with a customer after 9 p.m. For a small business owner, a single violation could result in the loss of the owner's business and livelihood.

**NOTES:** The committee substitute differs from the bill as filed by adding a uniform measurement standard for distance requirements and repealing provisions that specify different methods for measuring distances, which were not repealed in the bill as filed.