

BILL ANALYSIS

Senate Research Center

C.S.H.B. 1161
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Alcoholic Beverage Code states that 1,000 feet of distance is required between a private school and a business that receives more than 50 percent of its gross receipts from the sale or service of alcoholic beverages, while only 300 feet of distance is required between a public school and a business that receives more than 50 percent of its gross receipts from the sale or service of alcoholic beverages.

This bill amends the Alcoholic Beverage Code and Education Code to correct the discrepancy between private and public schools. The bill establishes a uniform measurement of distance and removes the population bracket from current law and applies the law equally across Texas. The bill also does not prohibit the sale of alcoholic beverages at a location covered by a license or permit holder who is not the person who held the license or permit covering the location on the effective date of the zone's adoption. The bill clarifies that this change in law is not retroactive and does not affect businesses currently operating. The bill ensures that each location is grandfathered for individuals in the future who may own the business as long as the new license is of the same type as the previously held license and there are no gaps in the ownership or the license.

C.S.H.B. 1161 amends current law relating to local regulation of distance requirements for the sale and consumption of alcoholic beverages near certain establishments.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 109.33(f), Alcoholic Beverage Code, to provide that Subsections (a)(2) (relating to prohibiting the sale of alcohol within 1,000 feet of a public school) and (a)(3) (relating to prohibiting the sale of alcohol within 1,000 feet of a private school) do not apply to the holder of:

- (1) Makes no changes to this subdivision;
- (2) a retail off-premises consumption permit or license if less than 50 percent of the gross receipts for the premises is from the sale or service of alcoholic beverages, excluding the sale of items subject to the motor fuels tax, and, for a premises located in a city with a population of less than 900,000, including receipts from additional retail buildings owned by the off-premises consumption permit or license holder that are located on the same property as the permitted or licensed premises. Makes a nonsubstantive change; or
- (3) Makes no changes to this subdivision.

SECTION 2. Amends Section 109.33, Alcoholic Beverage Code, by adding Subsection (j), as follows:

- (j) Provides that a regulation adopted under Sec. (a)(3) of this section is not effective until it is adopted by the commissioners court or the governing board of a city or town after a

public hearing at which the parties in interest and citizens have an opportunity to be heard, and the commissioners court or governing board has determined that the regulation is in the public interest based on the circumstances related to the school or schools. Provides that the determination of the commissioners court or governing board is not subject to appeal. Provides that this subsection does not apply to a city or town with a population of more than 900,000.

SECTION 3. Amends Subchapter C, Chapter 109, Alcoholic Beverage Code, by adding Section 109.332, as follows:

Sec. 109.332. MEASUREMENT OF DISTANCE. (a) Requires distance, notwithstanding any other provision of this code, in a city or town with a population of less than 900,000, for the purposes of any distance requirement imposed by this code, to be measured:

(1) from the property line of the place of business where alcoholic beverages are sold to the nearest property line of the property in relation to which a distance requirement is imposed along the property lines of the street fronts and in a direct line across intersections; or

(2) if the permit or license holder is located on or above the fifth story of a multistory building, from the property line of the property in relation to which a distance requirement is imposed to the nearest property line of the place of business where alcoholic beverages are sold along the property lines of the street fronts, in a direct line across intersections, and vertically up the building at the property line to the base of floor on which the permit or license holder is located.

(b) Requires that the distance, if the permit or license holder also holds a food or beverage certificate in a city or town with a population of less than 900,000, be measured as provided for in Sec. 109.33.

SECTION 4. Amends Subchapter C, Chapter 109, Alcoholic Beverage Code, by adding Section 109.37, as follows:

Sec. 109.37. CONSUMPTION OF ALCOHOLIC BEVERAGES NEAR PLASMA CENTER. (a) Defines in this section "central business district," "plasma center," and "open container."

(b) Authorizes the commissioners court of a county to enact regulations applicable in areas in the county outside an incorporated city or town, and the governing board of an incorporated city or town to enact regulations applicable in the city or town, prohibiting the possession of an open container or the consumption of an alcoholic beverage on a public street, public alley, or public sidewalk within 1,000 feet of the property line of a plasma center that is not located in a central business district.

(c) Authorizes the commissioners court or the governing board, if the commissioners court of a county or the governing board of an incorporated city or town enacts a prohibition under Subsection (b), to enact regulations allowing special temporary events for which Subsection (b) is authorized to be suspended.

SECTION 5. Amends Section 109.59(b), Alcoholic Beverage Code, to require that in a city or town with a population of less than 900,000 the new permit or license to be of the same type as the previously held permit or license.

SECTION 6. Amends Section 109.59(c) and (d), Alcoholic Beverage Code, as follows:

(c) Provides that this subsection does not apply to a city or town with a population of less than 900,000.

(d) Provides that Subsection (a) does not apply to the satisfaction of the distance requirement prescribed by Section 109.33(a)(2) for a public school if the holder's license or permit has been suspended for certain violations.

SECTION 7. Amends Section 38.007(b), Education Code, to delete existing text authorizing that if a majority of the area of a district is located in a municipality with a population of 900,000 or more, the board may petition the commissioners court of the county in which the district is located or the governing board of an incorporated city or town in which the district is located to adopt a 1,000-foot zone under Section 109.33, Alcoholic Beverage Code.

SECTION 8. Effective date: upon passage or September 1, 2009.