

BILL ANALYSIS

C.S.S.B. 1273
By: Armbrister
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, Texas law allows a person holding a Texas Alcoholic Beverage Commission (TABC) license (licensee) or permit (permittee) to pay a civil penalty rather than have the license or permit suspended. Current law also requires TABC to consider the economic impact a suspension would have on a licensee or permittee when assessing civil penalties. Currently, a licensee or permittee that has committed a violation could be charged a higher fine than a permittee that has committed the same violation and has a lower volume of sales. C.S.S.B. 1273 deletes the requirement that TABC consider a suspension's economic impact on the permittee or licensee when determining a civil penalty and includes the criteria that should be considered. This bill also deletes expired text referring to the confiscated liquor fund.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Amends Section 11.61, Alcoholic Beverage Code, by adding Subsections (g) and (h) to read as follows:

Sec. 11.61. (g) The length of a suspension must be appropriate for the nature and seriousness of the violation. In determining the length of a suspension, the commission or administrator shall consider: (1) the type of license or permit held; (2) the type of violation; (3) any aggravating or ameliorating circumstances concerning the violation, including those enumerated in Section 11.64(c); and (4) the permittee's or licensee's previous violations.

(h) The length of suspension may not be based on: (1) the volume of alcoholic beverages sold; (2) the receipts of the business; (3) the taxes paid; or (4) the financial condition of the permittee or licensee.

Amends Section 11.64, Alcoholic Beverage Code, as follows:

Sec. 11.64. ALTERNATIVES TO SUSPENSION, CANCELLATION.

(a) Deletes text referring to considering a suspension's economic impact on the permittee or licensee. Prohibits a civil penalty from being imposed on the basis of criminal prosecution in which the defendant was found not guilty, the criminal charges were dismissed, or there has not been final adjudication. Requires the Texas Alcoholic Beverage Commission (TABC) or administrator to determine the amount of the civil penalty based on certain criteria, but prohibits determination based on certain financial criteria. Requires the amount of the civil penalty to be appropriate for the nature and seriousness of the violation.

(b) Deletes a reference to a retail dealer's off-premise licensee and a reference specifying Subsection (c) as being of this section.

(c) Deletes the specification that Subsection (b), to which this subsection refers, is of this section.

(d) Requires fees and civil penalties received by TABC under this section to be deposited in the general

revenue fund. Deletes expired text referring to the confiscated liquor fund.

Amends Subchapter C, Chapter 11, Alcoholic Beverage Code by adding Section 11.641. AMOUNT OF CIVIL PENALTY.

(a) The amount of civil penalty under Section 11.641 must be appropriate for the nature and seriousness of the violation. In determining the amount of civil penalty, the commission or administrator shall consider: (1) the type of license or permit held; (2) the type of violation; (3) any aggravating or ameliorating circumstances concerning the violation, including those enumerated in Section 11.64(c); and (4) the permittee's or licensee's previous violations.

(b) The amount of civil penalty may not be based on: (1) the volume of alcoholic beverages sold; (2) the receipts of the business; (3) the taxes paid; or (4) the financial condition of the permittee or licensee.

(c) A civil penalty may not be imposed on the basis of a criminal prosecution in which the defendant was found not guilty, the criminal charges were dismissed, or there has not been final adjudication.

Amends Section 61.71, Alcoholic Beverage Code by adding Subsections (h) and (i) to read as follows:

(h) The length of a suspension must be appropriate for the nature and seriousness of the violation. In determining the length of a suspension, the commission or administrator shall consider: (1) the type of license or permit held; (2) the type of violation; (3) any aggravating or ameliorating circumstances concerning the violation, including those enumerated in Section 11.64(c); and (4) the permittee's or licensee's previous violations.

(i) The length of suspension may not be based on: (1) the volume of alcoholic beverages sold; (2) the receipts of the business; (3) the taxes paid; or (4) the financial condition of the permittee or licensee.

EFFECTIVE DATE

September 1, 2003

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds language to the Alcoholic Beverage Code which makes clear that the TABC shall determine the number of days suspension and the civil penalty shall be based on the type of license or permit held, the type of violation, and any aggravating or ameliorating circumstances (including those already enumerated in the law), and shall not be determined on the basis of sales volumes, sales receipts, taxes paid, or the financial condition of the business, and that the penalties must be appropriate for the nature and seriousness of the violation.

In addition, a newly-added Sec. 11.64 (c) (5) specifies that the TABC may consider, in determining punishment or penalties, action by the permittee or licensee demonstrating good faith, including actions to rectify the consequences of the violation and to deter future violations.