

By: Armbrister

S.B. No. 1273

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to alternatives to suspension of alcoholic beverage  
3 licenses and permits.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 11.64, Alcoholic Beverage Code, is  
6 amended to read as follows:

7 Sec. 11.64. ALTERNATIVES TO SUSPENSION, CANCELLATION.

8 (a) When the commission or administrator is authorized to suspend  
9 a permit or license under this code, the commission or  
10 administrator shall give the permittee or licensee the opportunity  
11 to pay a civil penalty rather than have the permit or license  
12 suspended, unless the basis for the suspension is a violation of  
13 Section 11.61(b)(14), 22.12, 28.11, 61.71(a)(5), 61.71(a)(6),  
14 61.74(a)(14), 69.13, 71.09, 101.63, 106.03, 106.06, or 106.15 or an  
15 offense relating to prostitution or gambling, in which case the  
16 commission or administrator shall determine whether the permittee  
17 or licensee may have the opportunity to pay a civil penalty rather  
18 than have the permit or license suspended. The commission shall  
19 adopt rules addressing when suspension may be imposed pursuant to  
20 this section without the opportunity to pay a civil penalty. In  
21 adopting rules under this subsection, the commission shall consider  
22 the type of license or permit held, the type of violation, any  
23 aggravating or ameliorating circumstances concerning the  
24 violation, and any past violations of this code by the permittee or

1 licensee. In cases in which a civil penalty is assessed, the  
2 commission or administrator shall determine the amount of the  
3 penalty [~~and in doing so shall consider the economic impact a~~  
4 ~~suspension would have on the permittee or licensee~~]. The amount of  
5 the civil penalty may not be less than \$150 or more than \$25,000 for  
6 each day the permit or license was to have been suspended. If the  
7 licensee or permittee does not pay the penalty before the sixth day  
8 after the commission or administrator notifies him of the amount,  
9 the commission or administrator shall impose the suspension. The  
10 commission or administrator shall determine the amount of the civil  
11 penalty based on the type of license or permit held, the type of  
12 violation, any aggravating or ameliorating circumstances  
13 concerning the violation including those enumerated in Subsection  
14 (c), and any past violations of this code by the permittee or  
15 licensee but shall not determine the amount of the civil penalty on  
16 the basis of the volume of alcoholic beverages sold, the receipts of  
17 the business, the taxes paid, or the financial condition of the  
18 permittee or licensee. The amount of the civil penalty must be  
19 appropriate for the nature and seriousness of the violation. No  
20 civil penalty shall be imposed on the basis of a criminal  
21 prosecution in which the defendant was found not guilty, the  
22 criminal charges were dismissed, or there has not been final  
23 adjudication.

24 (b) In the case of a violation of this code by a permittee or  
25 a [~~retail dealer's off-premise~~] licensee, the commission or  
26 administrator may relax any provision of the code relating to the  
27 suspension or cancellation of the permit or license and assess a

1 sanction the commission or administrator finds just under the  
2 circumstances, and the commission or administrator may reinstate  
3 the license or permit at any time during the period of suspension on  
4 payment by the permittee or licensee of a fee of not less than \$75  
5 nor more than \$500, if the commission or administrator finds that  
6 any of the circumstances described in Subsection (c) [~~of this~~  
7 ~~section~~] exists.

8 (c) The following circumstances justify the application of  
9 Subsection (b) [~~of this section~~]:

10 (1) that the violation could not reasonably have been  
11 prevented by the permittee or licensee by the exercise of due  
12 diligence;

13 (2) that the permittee or licensee was entrapped;

14 (3) that an agent, servant, or employee of the  
15 permittee or licensee violated this code without the knowledge of  
16 the permittee or licensee;

17 (4) that the permittee or licensee did not knowingly  
18 violate this code; or

19 (5) that the violation was a technical one.

20 (d) Fees and civil penalties received by the commission  
21 under this section shall be deposited in the [~~confiscated liquor~~  
22 ~~fund until the unexpended and unencumbered balance contained in the~~  
23 ~~confiscated liquor fund on September 1, 1983, and the amount~~  
24 ~~deposited in the fund from all sources on or after September 1,~~  
25 ~~1983, totals \$2.4 million. Thereafter, fees and civil penalties~~  
26 ~~received by the commission under this section shall be deposited in~~  
27 ~~the~~] general revenue fund.

1 SECTION 2. This Act takes effect September 1, 2003.