

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 not determine the amount of the
11 civil penalty on the basis of the volume of alcoholic beverage sold,
12 the receipts of the business, the taxes paid, or the financial
13 condition of the permittee or licensee.

14 (b) In the case of a violation of this code by a permittee or
15 a [~~retail dealer's off-premise~~] licensee, the commission or
16 administrator may relax any provision of the code relating to the
17 suspension or cancellation of the permit or license and assess a
18 sanction the commission or administrator finds just under the
19 circumstances, and the commission or administrator may reinstate
20 the license or permit at any time during the period of suspension on
21 payment by the permittee or licensee of a fee of not less than \$75
22 nor more than \$500, if the commission or administrator finds that
23 any of the circumstances described in Subsection (c) [~~of this~~
24 ~~section~~] exist.

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

27 (1) That the violation could not reasonably have been

1 prevented by the permittee or licensee by the exercise of due
2 diligence;

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

4 (3) that an agent, servant, or employee of the
5 permittee or licensee violated this code without the knowledge of
6 the permittee or licensee;

7 (4) that the permittee or licensee did not knowingly
8 violate this code; or

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

10 (d) Fees and civil penalties received by the commission
11 under this section shall be deposited in the [~~confiscated liquor
12 fund until the unexpended and unencumbered balance contained in the
13 confiscated liquor fund on September 1, 1983, and the amount
14 deposited in the fund from all sources on or after September 1,
15 1983, totals \$2.4 million. Thereafter, fees and civil penalties
16 received by the commission under this section shall be deposited in
17 the~~] general revenue fund.

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