

1-1 By: Armbrister S.B. No. 1273
1-2 (In the Senate - Filed March 12, 2003; March 19, 2003, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 24, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 24, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1273 By: Brimer

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to alternatives to suspension of alcoholic beverage
1-11 licenses and permits.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 11.64, Alcoholic Beverage Code, is
1-14 amended to read as follows:

1-15 Sec. 11.64. ALTERNATIVES TO SUSPENSION, CANCELLATION.

1-16 (a) When the commission or administrator is authorized to suspend
1-17 a permit or license under this code, the commission or
1-18 administrator shall give the permittee or licensee the opportunity
1-19 to pay a civil penalty rather than have the permit or license
1-20 suspended, unless the basis for the suspension is a violation of
1-21 Section 11.61(b)(14), 22.12, 28.11, 61.71(a)(5), 61.71(a)(6),
1-22 61.74(a)(14), 69.13, 71.09, 101.63, 106.03, 106.06, or 106.15 or an
1-23 offense relating to prostitution or gambling, in which case the
1-24 commission or administrator shall determine whether the permittee
1-25 or licensee may have the opportunity to pay a civil penalty rather
1-26 than have the permit or license suspended. The commission shall
1-27 adopt rules addressing when suspension may be imposed pursuant to
1-28 this section without the opportunity to pay a civil penalty. In
1-29 adopting rules under this subsection, the commission shall consider
1-30 the type of license or permit held, the type of violation, any
1-31 aggravating or ameliorating circumstances concerning the
1-32 violation, and any past violations of this code by the permittee or
1-33 licensee. In cases in which a civil penalty is assessed, the
1-34 commission or administrator shall determine the amount of the
1-35 penalty ~~and in doing so shall consider the economic impact a~~
1-36 ~~suspension would have on the permittee or licensee].~~ The amount of
1-37 the civil penalty may not be less than \$150 or more than \$25,000 for
1-38 each day the permit or license was to have been suspended. If the
1-39 licensee or permittee does not pay the penalty before the sixth day
1-40 after the commission or administrator notifies him of the amount,
1-41 the commission or administrator shall impose the suspension. The
1-42 commission or administrator shall determine the amount of the civil
1-43 penalty based on the type of license or permit held, the type of
1-44 violation, any aggravating or ameliorating circumstances
1-45 concerning the violation including those enumerated in Subsection
1-46 (c), and any past violations of this code by the permittee or
1-47 licensee but shall not determine the amount of the civil penalty on
1-48 the basis of the volume of alcoholic beverages sold, the receipts of
1-49 the business, the taxes paid, or the financial condition of the
1-50 permittee or licensee. The amount of the civil penalty must be
1-51 appropriate for the nature and seriousness of the violation. No
1-52 civil penalty shall be imposed on the basis of a criminal
1-53 prosecution in which the defendant was found not guilty, the
1-54 criminal charges were dismissed, or there has not been final
1-55 adjudication.

1-56 (b) In the case of a violation of this code by a permittee or
1-57 a ~~retail dealer's off-premise~~ licensee, the commission or
1-58 administrator may relax any provision of the code relating to the
1-59 suspension or cancellation of the permit or license and assess a
1-60 sanction the commission or administrator finds just under the
1-61 circumstances, and the commission or administrator may reinstate
1-62 the license or permit at any time during the period of suspension on
1-63 payment by the permittee or licensee of a fee of not less than \$75

2-1 nor more than \$500, if the commission or administrator finds that
2-2 any of the circumstances described in Subsection (c) [~~of this~~
2-3 ~~section~~] exists.

2-4 (c) The following circumstances justify the application of
2-5 Subsection (b) [~~of this section~~]:

2-6 (1) that the violation could not reasonably have been
2-7 prevented by the permittee or licensee by the exercise of due
2-8 diligence;

2-9 (2) that the permittee or licensee was entrapped;

2-10 (3) that an agent, servant, or employee of the
2-11 permittee or licensee violated this code without the knowledge of
2-12 the permittee or licensee;

2-13 (4) that the permittee or licensee did not knowingly
2-14 violate this code; or

2-15 (5) that the violation was a technical one.

2-16 (d) Fees and civil penalties received by the commission
2-17 under this section shall be deposited in the [~~confiscated liquor~~
2-18 ~~fund until the unexpended and unencumbered balance contained in the~~
2-19 ~~confiscated liquor fund on September 1, 1983, and the amount~~
2-20 ~~deposited in the fund from all sources on or after September 1,~~
2-21 ~~1983, totals \$2.4 million. Thereafter, fees and civil penalties~~
2-22 ~~received by the commission under this section shall be deposited in~~
2-23 ~~the~~] general revenue fund.

2-24 SECTION 2. This Act takes effect September 1, 2003.

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