

1-1 By: Geren (Senate Sponsor - Harris) H.B. No. 1161
1-2 (In the Senate - Received from the House April 6, 2009;
1-3 April 27, 2009, read first time and referred to Committee on
1-4 Business and Commerce; May 14, 2009, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 8,
1-6 Nays 0; May 14, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1161 By: Harris

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

1-10 relating to local regulation of distance requirements for the
1-11 sale and consumption of alcoholic beverages near certain
1-12 establishments.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 109.33(f), Alcoholic Beverage Code, is
1-15 amended to read as follows:

1-16 (f) Subsections (a)(2) and (3) do not apply to the holder
1-17 of:

1-18 (1) a retail on-premises consumption permit or license
1-19 if less than 50 percent of the gross receipts for the premises is
1-20 from the sale or service of alcoholic beverages;

1-21 (2) a retail off-premises consumption permit or
1-22 license if less than 50 percent of the gross receipts for the
1-23 premises ~~excluding the sale of items subject to the motor fuels~~
1-24 ~~tax,~~ is from the sale or service of alcoholic beverages;

1-25 (A) excluding the sale of items subject to the
1-26 motor fuels tax; and

1-27 (B) for a premises located in a city with a
1-28 population of less than 900,000, including receipts from additional
1-29 retail buildings owned by the off-premises consumption permit or
1-30 license holder that are located on the same property as the
1-31 permitted or licensed premises; or

1-32 (3) a wholesaler's, distributor's, brewer's,
1-33 distiller's and rectifier's, winery, wine bottler's or
1-34 manufacturer's permit or license, or any other license or permit
1-35 held by a wholesaler or manufacturer as those words are ordinarily
1-36 used and understood in Chapter 102.

1-37 SECTION 2. Section 109.33, Alcoholic Beverage Code is
1-38 amended by adding Subsection (j) to read as follows:

1-39 (j) A regulation adopted under Sec. (a)(3) of this section
1-40 is not effective until it is adopted by the commissioners court or
1-41 the governing board of a city or town after a public hearing at
1-42 which the parties in interest and citizens have an opportunity to be
1-43 heard, and the commissioners court or governing board has
1-44 determined that the regulation is in the public interest based on
1-45 the circumstances related to the school or schools. The
1-46 determination of the commissioners court or governing board is not
1-47 subject to appeal. This subsection does not apply to a city or town
1-48 with a population of more than 900,000.

1-49 SECTION 3. Subchapter C, Chapter 109, Alcoholic Beverage
1-50 Code, is amended by adding Section 109.332 to read as follows:

1-51 Sec. 109.332. MEASUREMENT OF DISTANCE.

1-52 (a) Notwithstanding any other provision of this code, in a
1-53 city or town with a population of less than 900,000, for the
1-54 purposes of any distance requirement imposed by this code, distance
1-55 shall be measured:

1-56 (1) from the property line of the place of business
1-57 where alcoholic beverages are sold to the nearest property line of
1-58 the property in relation to which a distance requirement is imposed
1-59 along the property lines of the street fronts and in a direct line
1-60 across intersections; or

1-61 (2) if the permit or license holder is located on or
1-62 above the fifth story of a multistory building, from the property
1-63 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 the floor on which the permit or license holder is located.

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

SECTION 4. Subchapter C, Chapter 109, Alcoholic Beverage Code, is amended by adding Section 109.37 to read as follows:

Sec. 109.37. CONSUMPTION OF ALCOHOLIC BEVERAGES NEAR PLASMA CENTER. (a) In this section:

(1) "Central business district" has the meaning assigned by Section 109.36.

(2) "Plasma center" means a publicly or privately operated facility at which individuals may donate blood plasma.

(3) "Open container" has the meaning assigned by Section 109.35.

(b) The commissioners court of a county may enact regulations applicable in areas in the county outside an incorporated city or town, and the governing board of an incorporated city or town may 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) If the commissioners court of a county or the governing board of an incorporated city or town enacts a prohibition under Subsection (b), the commissioners court or the governing board may enact regulations allowing special temporary events for which Subsection (b) may be suspended.

SECTION 5. Section 109.59(b), Alcoholic Beverage Code, is amended to read as follows:

(b) On the sale or transfer of the premises or the business on the premises in which a new original license or permit is required for the premises, the premises shall be deemed to satisfy any distance requirements as if the issuance of the new original permit or license were a renewal of a previously held permit or license. In a city or town with a population of less than 900,000, the new permit or license must be of the same type as the previously held permit or license.

SECTION 6. Section 109.59(c) and (d), Alcoholic Beverage Code, is amended to read as follows:

(c) Subsection (b) does not apply to the satisfaction of the distance requirement prescribed by Section 109.33(a)(2) for a public school, except that on the death of a permit or license holder or a person having an interest in a permit or license Subsection (b) does apply to the holder's surviving spouse or child of the holder or person if the spouse or child qualifies as a successor in interest to the permit or license. This subsection does not apply to a city or town with a population of less than 900,000.

(d) 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:

(1) sale or service to an intoxicated person;
(2) any minor related violation as described in Sections 106.09, 106.13 or 106.15;

(3) selling or serving alcoholic beverages, or permitting possession or consumption of alcoholic beverages on the licensed premises during prohibited hours;

(4) a violation related to an aggravated breach of the peace;

(5) a violation related to unlawful possession or sale of narcotics;

(6) a violation related to prostitution or any other sexual offense;

3-1 (7) any violation resulting in a suspension of more
3-2 than 30 days.

3-3 SECTION 7. Section 38.007(b), Education Code, is amended to
3-4 read as follows:

3-5 (b) The board of trustees of a school district shall attempt
3-6 to provide a safe alcohol-free environment to students coming to or
3-7 going from school. The board of trustees may cooperate with local
3-8 law enforcement officials and the Texas Alcoholic Beverage
3-9 Commission in attempting to provide this environment and in
3-10 enforcing Sections 101.75, 109.33, and 109.59, Alcoholic Beverage
3-11 Code. Additionally, the board, ~~[if a majority of the area of a~~
3-12 ~~district is located in a municipality with a population of 900,000~~
3-13 ~~or more,]~~ may petition the commissioners court of the county in
3-14 which the district is located or the governing board of an
3-15 incorporated city or town in which the district is located to adopt
3-16 a 1,000-foot zone under Section 109.33, Alcoholic Beverage Code.

3-17 SECTION 8. This Act takes effect immediately if it receives
3-18 a vote of two-thirds of all the members elected to each house, as
3-19 provided by Section 39, Article III, Texas Constitution. If this
3-20 Act does not receive the vote necessary for immediate effect, this
3-21 Act takes effect September 1, 2009.

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