

Suspending limitations on conference committee  
jurisdiction, H.B. No. 1161 (Geren/Harris)

By: Geren

H.R. No. 2898

R E S O L U T I O N

1 BE IT RESOLVED by the House of Representatives of the State of  
2 Texas, 81st Legislature, Regular Session, 2009, That House Rule 13,  
3 Section 9(a), be suspended as provided by House Rule 13, Section  
4 9(f), to enable the conference committee appointed to resolve the  
5 differences on House Bill 1161 (local regulation of distance  
6 requirements for the sale and consumption of alcoholic beverages  
7 near certain establishments) to consider and take action on the  
8 following matters:

9 (1) House Rule 13, Section 9(a) is suspended to permit the  
10 committee to add the following:

11 SECTION 1. Section 109.33, Alcoholic Beverage Code, is  
12 amended by amending Subsections (c) and (f) and adding Subsection  
13 (j) to read as follows:

14 (c) Every applicant for an original alcoholic beverage  
15 license or permit for a location [~~with a door by which the public~~  
16 ~~may enter the place of business of the applicant~~] that is within  
17 1,000 feet of [~~the nearest property line of~~] a public or private  
18 school [~~, measured along street lines and directly across~~  
19 ~~intersections,~~] must give written notice of the application to  
20 officials of the public or private school before filing the  
21 application with the commission. A copy of the notice must be  
22 submitted to the commission with the application. This subsection  
23 does not apply to a permit or license covering a premise where  
24 minors are prohibited from entering the premises under Section

1 109.53.

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

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

7 (2) a retail off-premises consumption permit or  
8 license if less than 50 percent of the gross receipts for the  
9 premises [~~excluding the sale of items subject to the motor fuels~~  
10 ~~tax,~~] is from the sale or service of alcoholic beverages:

11 (A) excluding the sale of items subject to the  
12 motor fuels tax; and

13 (B) for a premises located in a city or town with  
14 a population of less than 900,000, including receipts from  
15 additional retail buildings owned by the off-premises consumption  
16 permit or license holder that are located on the same property as  
17 the permitted or licensed premises; or

18 (3) a wholesaler's, distributor's, brewer's,  
19 distiller's and rectifier's, winery, wine bottler's or  
20 manufacturer's permit or license, or any other license or permit  
21 held by a wholesaler or manufacturer as those words are ordinarily  
22 used and understood in Chapter 102.

23 (j) A regulation under Subsection (a)(2) or (a)(3) may be  
24 adopted by the commissioners court or the governing board of a city  
25 or town only after a public hearing at which the parties in interest  
26 and citizens have an opportunity to be heard and only if the  
27 commissioners court or governing board has determined that the

1 regulation is in the public interest based on the circumstances  
2 related to each school to which the regulation relates. The  
3 determination of a commissioners court or governing board of a city  
4 or town under this subsection is not subject to appeal. This  
5 subsection does not apply to a city or town with a population of  
6 more than 900,000.

7 Explanation: This change is necessary to provide for  
8 regulation of the distance requirement for the sale and consumption  
9 of alcoholic beverages near certain establishments.

10 (2) House Rule 13, Section 9(a) is suspended to permit the  
11 committee to add the following:

12 SECTION 2. Subchapter C, Chapter 109, Alcoholic Beverage  
13 Code, is amended by adding Sections 109.332 and 109.37 to read as  
14 follows:

15 Sec. 109.332. MEASUREMENT OF DISTANCE. (a) Except as  
16 provided by Subsection (b), notwithstanding any other provision of  
17 this code, for the purposes of any distance requirement imposed by  
18 this code, distance shall be measured along the property lines of  
19 the street fronts and from front door to front door, and in a direct  
20 line across intersections.

21 (b) The measurement of distance between the place of  
22 business where alcoholic beverages are sold and a public or private  
23 school or a day-care center or child-care facility shall be:

24 (1) from the property line of the place of business  
25 where alcoholic beverages are sold to the nearest property line of  
26 the public or private school, day-care center, or child-care  
27 facility along the property lines of the street fronts and in a

1 direct line across intersections; or

2 (2) if the permit or license holder is located on or  
3 above the fifth story of a multistory building, from the property  
4 line of the public or private school, day-care center, or  
5 child-care facility to the nearest property line of the place of  
6 business where alcoholic beverages are sold along the property  
7 lines of the street fronts, in a direct line across intersections,  
8 and vertically up the building at the property line to the base of  
9 the floor on which the permit or license holder is located.

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

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

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

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

18 (b) The commissioners court of a county may enact  
19 regulations applicable in areas in the county outside an  
20 incorporated city or town, and the governing board of an  
21 incorporated city or town may enact regulations applicable in the  
22 city or town, prohibiting the possession of an open container or the  
23 consumption of an alcoholic beverage on a public street, public  
24 alley, or public sidewalk within 1,000 feet of a plasma center that  
25 is not located in a central business district.

26 (c) If the commissioners court of a county or the governing  
27 board of an incorporated city or town enacts a prohibition under

1 Subsection (b), the commissioners court or the governing board may  
2 enact regulations allowing special temporary events for which  
3 Subsection (b) may be suspended.

4 Explanation: This change is necessary to provide for  
5 regulation of the distance requirement for the sale and consumption  
6 of alcoholic beverages near certain establishments.

7 (3) House Rule 13, Section 9(a) is suspended to permit the  
8 committee to add the following:

9 SECTION 3. Sections 109.59(b), (c), and (d), Alcoholic  
10 Beverage Code, are amended to read as follows:

11 (b) On the sale or transfer of the premises or the business  
12 on the premises in which a new original license or permit is  
13 required for the premises, the premises shall be deemed to satisfy  
14 any distance requirements as if the issuance of the new original  
15 permit or license were a renewal of a previously held permit or  
16 license if the new permit or license is of the same type as the  
17 previously held permit or license.

18 (c) In an incorporated city or town with a population of  
19 more than 900,000, Subsection (b) does not apply to the  
20 satisfaction of the distance requirement prescribed by Section  
21 109.33(a)(2) for a public school, except that on the death of a  
22 permit or license holder or a person having an interest in a permit  
23 or license Subsection (b) does apply to the holder's surviving  
24 spouse or child of the holder or person if the spouse or child  
25 qualifies as a successor in interest to the permit or license. The  
26 new permit or license must be of the same type as the previously  
27 held permit or license.

1 (d) Subsection (a) does not apply to the satisfaction of the  
2 distance requirement prescribed by Section 109.33(a)(2) for a  
3 public school if the holder's permit or license has been suspended  
4 for a violation occurring after September 1, 1995, of a provision  
5 ~~[any of the following provisions]:~~

6 (1) involving:

7 (A) selling or serving an alcoholic beverage to  
8 an intoxicated person;

9 (B) selling or serving an alcoholic beverage or  
10 permitting possession or consumption of an alcoholic beverage on  
11 the licensed or permitted premises during prohibited hours;

12 (C) employment of a minor in violation of Section  
13 106.09;

14 (D) the sale, service, dispensation, or delivery  
15 of an alcoholic beverage to a minor, as described by Section 106.13;

16 (E) permitting a minor to violate Section 106.04  
17 or 106.05, as described by Section 106.13;

18 (F) the commission of an offense under Section  
19 106.15;

20 (G) an aggravated breach of the peace;

21 (H) an unlawful possession or sale of narcotics;

22 or

23 (I) prostitution or any other sexual offense; or

24 (2) resulting in a suspension of the permit or license  
25 for more than 30 days.

26 ~~[(1) Section 11.61(b)(1), (6)(11), (13), (14), or~~  
27 ~~(20), or~~

1           ~~[(2) Section 61.71(a)(5)(8), (11), (12), (14), (17),~~  
2 ~~(18), (22), or (24)].~~

3           Explanation: This change is necessary to provide for  
4 regulation of the distance requirement for the sale and consumption  
5 of alcoholic beverages near certain establishments.

6           (4) House Rule 13, Section 9(a) is suspended to permit the  
7 committee to add the following:

8           SECTION 4. Section 38.007(b), Education Code, is amended to  
9 read as follows:

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

22           Explanation: This change is necessary to provide for  
23 regulation of the distance requirement for the sale and consumption  
24 of alcoholic beverages near certain establishments.

25           (5) House Rule 13, Section 9(a) is suspended to permit the  
26 committee to add the following:

27           SECTION 5. Sections 109.33(b) and (d), Alcoholic Beverage

1 Code, are repealed.

2 Explanation: This change is necessary to provide for  
3 regulation of the distance requirement for the sale and consumption  
4 of alcoholic beverages near certain establishments.

5 (6) House Rule 13, Section 9(a) is suspended to permit the  
6 committee to add the following:

7 SECTION 6. This Act takes effect September 1, 2009.

8 Explanation: The change is necessary to reflect the addition  
9 and amending of SECTIONS 1, 2, 3, 4, and 5 to the conference  
10 committee report and to make the effectiveness of those SECTIONS.