

Suspending limitations on conference committee
jurisdiction, H.B. No. 1161

By: Harris

S.R. No. 1081

SENATE RESOLUTION

BE IT RESOLVED by the Senate of the State of Texas, 81st Legislature, Regular Session, 2009, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on House Bill No. 1161 (local regulation of distance requirements for the sale and consumption of alcoholic beverages near certain establishments) to consider and take action on the following matter:

(1) Senate Rule 12.03(4) is suspended to allow the conference committee, in SECTION 1 of the bill, to add text not included in either the House or Senate version of the bill that amends Subsection (c), Section 109.33, Alcoholic Beverage Code, to read as follows:

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

under Section 109.53.

Explanation: The addition of the text is necessary to strike from existing law language prescribing the method for measuring the distance between an alcoholic beverage establishment and a school to allow the general rules for measuring distance established by the bill to control.

(2) Senate Rule 12.03(1) is suspended to allow the conference committee, in SECTION 1 of the bill, to change text not in disagreement in Subsection (f), Section 109.33, Alcoholic Beverage Code, amended by the proposed bill, so that the amended section reads as follows:

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

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

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

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

(B) including receipts from additional retail buildings owned by the off-premises consumption permit or license holder that are located on the same property as the permitted or licensed premises; or

(3) a wholesaler's, distributor's, brewer's,

distiller's and rectifier's, winery, wine bottler's or manufacturer's permit or license, or any other license or permit held by a wholesaler or manufacturer as those words are ordinarily used and understood in Chapter 102.

Explanation: The change is necessary to apply to retailers in all areas of the state the provision added by the proposed bill to require the inclusion of certain retail receipts in the total receipts used to determine whether an off-premises alcoholic beverage retailer is exempt from certain distance requirements in relation to public and private schools.

(3) Senate Rule 12.03(1) is suspended to allow the conference committee, in SECTION 2 of the bill, to change text not in disagreement in Subsection (b), Section 109.37, Alcoholic Beverage Code, added by the proposed bill, so that the added provision reads as follows:

(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 a plasma center that is not located in a central business district.

Explanation: The change is necessary to remove language prescribing the point from which the distance from a plasma center is measured for the purpose of determining the area within which the consumption of alcoholic beverages is prohibited to

allow the general rules for measuring distance established by the proposed bill to control.

(4) Senate Rule 12.03(1) is suspended to allow the conference committee, in SECTION 3 of the bill, to change text not in disagreement in Subsections (b) and (c), Section 109.59, Alcoholic Beverage Code, amended by the proposed bill, so that the amended sections 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 if the new permit or license is of the same type as the previously held permit or license.

(c) In an incorporated city or town with a population of more than 900,000, 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. The new permit or license must be of the same type as the previously held permit or license.

Explanation: The changes are necessary to provide that the amended provision grandfathering certain alcoholic beverage establishments from the application of certain distance

requirements applies to establishments in all areas of the state. The changes are also necessary to provide that the amended provision grandfathering only certain alcoholic beverage establishments from the requirements governing the distance of an alcoholic beverage establishment from a public school applies only to an establishment in a city or town with a population of more than 900,000 and only if the permit or license for the establishment is of the same type as the permit or license previously held for the location.

(5) Senate Rule 12.03(4) is suspended to allow the conference committee, in SECTION 5 of the bill, to add text not included in either the House or Senate version of the bill to repeal certain provisions of the Alcoholic Beverage Code to read as follows:

SECTION 5. Sections 109.33(b) and (d), Alcoholic Beverage Code, are repealed.

Explanation: The added language is necessary to repeal provisions prescribing the method for measuring the distance between certain alcoholic beverage establishments and certain other establishments for certain purposes so that the general rules for measuring distance provided by the proposed bill control.

(6) Senate Rule 12.03(1) is suspended to allow the conference committee, in SECTION 6 of the bill, to change text not in disagreement regarding the effective date of the Act, so that the effective date provision reads as follows:

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

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Explanation: The change is necessary so that the Act takes effect September 1, 2009.

President of the Senate

I hereby certify that the above Resolution was adopted by the Senate on May 31, 2009.

Secretary of the Senate