

SENATE AMENDMENTS

2nd Printing

By: Geren

H.B. No. 1161

A BILL TO BE ENTITLED

AN ACT

relating to local regulation of distance requirements for the sale and consumption of alcoholic beverages near certain establishments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 109.33(f), Alcoholic Beverage Code, is amended to read 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) for a premises located in a city with a population of less than 900,000, 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,

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

5 SECTION 2. Subchapter C, Chapter 109, Alcoholic Beverage
6 Code, is amended by adding Section 109.332 to read as follows:

7 Sec. 109.332. MEASUREMENT OF DISTANCE. Notwithstanding any
8 other provision of this code, in a city or town with a population of
9 less than 900,000, for the purposes of any distance requirement
10 imposed by this code, distance shall be measured:

11 (1) from the property line of the place of business
12 where alcoholic beverages are sold to the nearest property line of
13 the property in relation to which a distance requirement is imposed
14 along the property lines of the street fronts and in a direct line
15 across intersections; or

16 (2) if the permit or license holder is located on or
17 above the fifth story of a multistory building, from the property
18 line of the property in relation to which a distance requirement is
19 imposed to the nearest property line of the place of business where
20 alcoholic beverages are sold along the property lines of the street
21 fronts, in a direct line across intersections, and vertically up
22 the building at the property line to the base of the floor on which
23 the permit or license holder is located.

24 SECTION 3. Subchapter C, Chapter 109, Alcoholic Beverage
25 Code, is amended by adding Section 109.37 to read as follows:

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

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

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

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

7 (b) The commissioners court of a county may enact
8 regulations applicable in areas in the county outside an
9 incorporated city or town, and the governing board of an
10 incorporated city or town may enact regulations applicable in the
11 city or town, prohibiting the possession of an open container or the
12 consumption of an alcoholic beverage on a public street, public
13 alley, or public sidewalk within 1,000 feet of the property line of
14 a plasma center that is not located in a central business district.

15 (c) If the commissioners court of a county or the governing
16 board of an incorporated city or town enacts a prohibition under
17 Subsection (b), the commissioners court or the governing board may
18 enact regulations allowing special temporary events for which
19 Subsection (b) may be suspended.

20 SECTION 4. Section 109.59(b), Alcoholic Beverage Code, is
21 amended to read as follows:

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

1 the new permit or license must be of the same type as the previously
2 held permit or license.

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

5 (c) Subsection (b) does not apply to the satisfaction of the
6 distance requirement prescribed by Section 109.33(a)(2) for a
7 public school, except that on the death of a permit or license
8 holder or a person having an interest in a permit or license
9 Subsection (b) does apply to the holder's surviving spouse or child
10 of the holder or person if the spouse or child qualifies as a
11 successor in interest to the permit or license. This subsection
12 does not apply to a city or town with a population of less than
13 900,000.

14 SECTION 6. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2009.

ADOPTED

MAY 21 2009

Atty Gen
Secretary of the Senate

By: *Gerard Harris*

H.B. No. *1161*

Substitute the following for H.B. No. *1161*:

By: *Chris Harris*

C.S. H.B. No. *1161*

1 A BILL TO BE ENTITLED

2 AN ACT

3 relating to local regulation of distance requirements for
4 the sale and consumption of alcoholic beverages near certain
5 establishments.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 109.33(f), Alcoholic Beverage Code, is
8 amended to read as follows:

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

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

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

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

20 (B) for a premises located in a city with a

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1 population of less than 900,000, including receipts from
2 additional retail buildings owned by the off-premises
3 consumption permit or license holder that are located on the
4 same property as the permitted or licensed premises; or

5 (3) a wholesaler's, distributor's, brewer's,
6 distiller's and rectifier's, winery, wine bottler's or
7 manufacturer's permit or license, or any other license or permit
8 held by a wholesaler or manufacturer as those words are
9 ordinarily used and understood in Chapter 102.

10 SECTION 2. Section 109.33, Alcoholic Beverage Code is
11 amended by adding Subsection (j) to read as follows:

12 (j) A regulation adopted under Sec. (a)(3) of this section
13 is not effective until it is adopted by the commissioners court
14 or the governing board of a city or town after a public hearing
15 at which the parties in interest and citizens have an
16 opportunity to be heard, and the commissioners court or
17 governing board has determined that the regulation is in the
18 public interest based on the circumstances related to the
19 school or schools. The determination of the commissioners court
20 or governing board is not subject to appeal. This subsection
21 does not apply to a city or town with a population of more than
22 900,000.

23 SECTION 3. Subchapter C, Chapter 109, Alcoholic Beverage
24 Code, is amended by adding Section 109.332 to read as follows:

26

1 Sec. 109.332. MEASUREMENT OF DISTANCE.

2 (a) Notwithstanding any other provision of this code, in a
3 city or town with a population of less than 900,000, for the
4 purposes of any distance requirement imposed by this code,
5 distance shall be measured:

6 (1) from the property line of the place of business
7 where alcoholic beverages are sold to the nearest property line
8 of the property in relation to which a distance requirement is
9 imposed along the property lines of the street fronts and in a
10 direct line across intersections; or

11 (2) if the permit or license holder is located on or
12 above the fifth story of a multistory building, from the
13 property line of the property in relation to which a distance
14 requirement is imposed to the nearest property line of the place
15 of business where alcoholic beverages are sold along the
16 property lines of the street fronts, in a direct line across
17 intersections, and vertically up the building at the property
18 line to the base of the floor on which the permit or license
19 holder is located.

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

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

37

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

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

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

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

9 (b) The commissioners court of a county may enact
10 regulations applicable in areas in the county outside an
11 incorporated city or town, and the governing board of an
12 incorporated city or town may enact regulations applicable in
13 the city or town, prohibiting the possession of an open
14 container or the consumption of an alcoholic beverage on a
15 public street, public alley, or public sidewalk within 1,000
16 feet of the property line of a plasma center that is not located
17 in a central business district.

18 (c) If the commissioners court of a county or the
19 governing board of an incorporated city or town enacts a
20 prohibition under Subsection (b), the commissioners court or the
21 governing board may enact regulations allowing special temporary
22 events for which Subsection (b) may be suspended.

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

4 B

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

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

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

20 (d) Subsection (a) does not apply to the satisfaction of
21 the distance requirement prescribed by Section 109.33(a)(2) for
22 a public school if the holder's license or permit has been
23 suspended for:

24 (1) sale or service to an intoxicated person;

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1 (2) any minor related violation as described in
2 Sections 106.09, 106.13 or 106.15;

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

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

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

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

12 (7) any violation resulting in a suspension of more
13 than 30 days.

14 SECTION 7. Section 38.007(b), Education Code, is amended to
15 read as follows:

16 (b) The board of trustees of a school district shall
17 attempt to provide a safe alcohol-free environment to students
18 coming to or going from school. The board of trustees may
19 cooperate with local law enforcement officials and the Texas
20 Alcoholic Beverage Commission in attempting to provide this
21 environment and in enforcing Sections 101.75, 109.33, and
22 109.59, Alcoholic Beverage Code. Additionally, the board, [~~if a~~
23 ~~majority of the area of a district is located in a municipality~~
24 ~~with a population of 900,000 or more,~~] may petition the

1 commissioners court of the county in which the district is
2 located or the governing board of an incorporated city or town
3 in which the district is located to adopt a 1,000-foot zone
4 under Section 109.33, Alcoholic Beverage Code.

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

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LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 21, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1161 by Geren (Relating to local regulation of distance requirements for the sale and consumption of alcoholic beverages near certain establishments.), **As Passed 2nd House**

No fiscal implication to the State is anticipated.

The bill would amend the Alcoholic Beverage Code regarding distances required between locations where alcoholic beverages are sold and consumed and certain establishments. A county commissioners court would be authorized to enact regulations applicable in areas in the county outside an incorporated city or town, and the governing board of an incorporated city or town would be authorized to enact regulations applicable in the city or town prohibiting the possession of an open container or consumption of an alcoholic beverage within 1,000 feet of certain establishments. In so doing, the county, city, or town would be authorized to allow special temporary events for which the prohibition would otherwise apply. Certain requirements would be established in a city or town with a population of less than 9,000.

The bill would amend the Education Code to remove the population requirement so that the board of trustees of any school district would be authorized to petition the county commissioners court or the governing board of an incorporated city or town in which the district is located to adopt a 1,000-foot zone under Section 109.33, Alcoholic Beverage Code.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 458 Alcoholic Beverage Commission

LBB Staff: JOB, SD, DB, JRO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 13, 2009

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1161 by Geren (Relating to local regulation of distance requirements for the sale and consumption of alcoholic beverages near certain establishments.), **Committee Report 2nd House, Substituted**

No fiscal implication to the State is anticipated.

The bill would amend the Alcoholic Beverage Code regarding distances required between locations where alcoholic beverages are sold and consumed and certain establishments. A county commissioners court would be authorized to enact regulations applicable in areas in the county outside an incorporated city or town, and the governing board of an incorporated city or town would be authorized to enact regulations applicable in the city or town prohibiting the possession of an open container or consumption of an alcoholic beverage within 1,000 feet of certain establishments. In so doing, the county, city, or town would be authorized to allow special temporary events for which the prohibition would otherwise apply. Certain requirements would be established in a city or town with a population of less than 9,000.

The bill would amend the Education Code to remove the population requirement so that the board of trustees of any school district would be authorized to petition the county commissioners court or the governing board of an incorporated city or town in which the district is located to adopt a 1,000-foot zone under Section 109.33, Alcoholic Beverage Code.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 458 Alcoholic Beverage Commission

LBB Staff: JOB, DB, JRO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 11, 2009

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1161 by Geren (Relating to local regulation of distance requirements for the sale and consumption of alcoholic beverages near certain establishments.), **As Engrossed**

No fiscal implication to the State is anticipated.

The bill would amend the Alcoholic Beverage Code regarding distances required between locations where alcoholic beverages are sold and consumed and certain establishments. A county commissioners court would be authorized to enact regulations applicable in areas in the county outside an incorporated city or town, and the governing board of an incorporated city or town would be authorized to enact regulations applicable in the city or town prohibiting the possession of an open container or consumption of an alcoholic beverage within 1,000 feet of certain establishments. In so doing, the county, city, or town would be authorized to allow special temporary events for which the prohibition would otherwise apply.

Certain requirements would be established in a city or town with a population of less than 9,000.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 458 Alcoholic Beverage Commission

LBB Staff: JOB, JRO, DB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 20, 2009

TO: Honorable Edmund Kuempel, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1161 by Geren (Relating to local regulation of distance requirements for businesses selling alcoholic beverages near certain establishments.), **Committee Report 1st House, Substituted**

No fiscal implication to the State is anticipated.

The bill would authorize a school board to petition the county commissioners court or the governing board of an incorporated city or town in which the school district is located to adopt a 1,000-foot zone in which the sale of alcohol is prohibited.

Local Government Impact

A school board, county commissioners court, or incorporated city or town would incur administrative costs related to actions necessary to establish an alcohol sales-free zone; however, those costs could be absorbed within existing resources. No significant fiscal implication to units of local government is anticipated.

Source Agencies: 458 Alcoholic Beverage Commission

LBB Staff: JOB, JRO, DB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 12, 2009

TO: Honorable Edmund Kuempel, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1161 by Geren (Relating to local regulation of distance requirements for businesses selling alcoholic beverages near certain establishments.), **As Introduced**

No fiscal implication to the State is anticipated.

The bill would authorize a school board to petition the county commissioners court or the governing board of an incorporated city or town in which the school district is located to adopt a 1,000-foot zone in which the sale of alcohol is prohibited.

Local Government Impact

A school board, county commissioners court, or incorporated city or town would incur administrative costs related to actions necessary to establish an alcohol sales-free zone; however, those costs could be absorbed within existing resources. No significant fiscal implication to units of local government is anticipated.

Source Agencies: 458 Alcoholic Beverage Commission

LBB Staff: JOB, JRO, DB

