

AN ACT

relating to suspension and alternatives to suspension of alcoholic beverage licenses and permits.

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

SECTION 1. Section 11.61, Alcoholic Beverage Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) The length of a suspension must be appropriate for the nature and seriousness of the violation. In determining the length of a suspension, the commission or administrator shall consider:

(1) the type of license or permit held;

(2) the type of violation;

(3) any aggravating or ameliorating circumstances concerning the violation, including those enumerated in Section 11.64(c); and

(4) the permittee's or licensee's previous violations.

(h) The length of a suspension may not be based on:

(1) the volume of alcoholic beverages sold;

(2) the receipts of the business;

(3) the taxes paid; or

(4) the financial condition of the permittee or licensee.

SECTION 2. Section 11.64, Alcoholic Beverage Code, is amended to read as follows:

Sec. 11.64. ALTERNATIVES TO SUSPENSION, CANCELLATION.

1 (a) When the commission or administrator is authorized to suspend
2 a permit or license under this code, the commission or
3 administrator shall give the permittee or licensee the opportunity
4 to pay a civil penalty rather than have the permit or license
5 suspended, unless the basis for the suspension is a violation of
6 Section 11.61(b)(14), 22.12, 28.11, 61.71(a)(5), 61.71(a)(6),
7 61.74(a)(14), 69.13, 71.09, 101.63, 106.03, 106.06, or 106.15 or an
8 offense relating to prostitution or gambling, in which case the
9 commission or administrator shall determine whether the permittee
10 or licensee may have the opportunity to pay a civil penalty rather
11 than have the permit or license suspended. The commission shall
12 adopt rules addressing when suspension may be imposed pursuant to
13 this section without the opportunity to pay a civil penalty. In
14 adopting rules under this subsection, the commission shall consider
15 the type of license or permit held, the type of violation, any
16 aggravating or ameliorating circumstances concerning the
17 violation, and any past violations of this code by the permittee or
18 licensee. In cases in which a civil penalty is assessed, the
19 commission or administrator shall determine the amount of the
20 penalty [~~and in doing so shall consider the economic impact a~~
21 ~~suspension would have on the permittee or licensee~~]. The amount of
22 the civil penalty may not be less than \$150 or more than \$25,000 for
23 each day the permit or license was to have been suspended. If the
24 licensee or permittee does not pay the penalty before the sixth day
25 after the commission or administrator notifies him of the amount,
26 the commission or administrator shall impose the suspension.

27 (b) In the case of a violation of this code by a permittee or

1 a [~~retail dealer's off-premise~~] licensee, the commission or
2 administrator may relax any provision of the code relating to the
3 suspension or cancellation of the permit or license and assess a
4 sanction the commission or administrator finds just under the
5 circumstances, and the commission or administrator may reinstate
6 the license or permit at any time during the period of suspension on
7 payment by the permittee or licensee of a fee of not less than \$75
8 nor more than \$500, if the commission or administrator finds that
9 any of the circumstances described in Subsection (c) [~~of this~~
10 ~~section~~] exists.

11 (c) The following circumstances justify the application of
12 Subsection (b) [~~of this section~~]:

13 (1) that the violation could not reasonably have been
14 prevented by the permittee or licensee by the exercise of due
15 diligence;

16 (2) that the permittee or licensee was entrapped;

17 (3) that an agent, servant, or employee of the
18 permittee or licensee violated this code without the knowledge of
19 the permittee or licensee;

20 (4) that the permittee or licensee did not knowingly
21 violate this code; [~~ex~~]

22 (5) that the permittee or licensee has demonstrated
23 good faith, including the taking of actions to rectify the
24 consequences of the violation and to deter future violations; or

25 (6) that the violation was a technical one.

26 (d) Fees and civil penalties received by the commission
27 under this section shall be deposited in the [~~confiscated liquor~~

1 ~~fund until the unexpended and unencumbered balance contained in the~~
2 ~~confiscated liquor fund on September 1, 1983, and the amount~~
3 ~~deposited in the fund from all sources on or after September 1,~~
4 ~~1983, totals \$2.4 million. Thereafter, fees and civil penalties~~
5 ~~received by the commission under this section shall be deposited in~~
6 ~~the] general revenue fund.~~

7 SECTION 3. Subchapter C, Chapter 11, Alcoholic Beverage
8 Code, is amended by adding Section 11.641 to read as follows:

9 Sec. 11.641. AMOUNT OF CIVIL PENALTY. (a) The amount of
10 the civil penalty under Section 11.64 must be appropriate for the
11 nature and seriousness of the violation. In determining the amount
12 of the civil penalty, the commission or administrator shall
13 consider:

14 (1) the type of license or permit held;
15 (2) the type of violation;
16 (3) any aggravating or ameliorating circumstances
17 concerning the violation, including those enumerated in Section
18 11.64(c); and

19 (4) the permittee's or licensee's previous violations.

20 (b) The amount of the civil penalty may not be based on:

21 (1) the volume of alcoholic beverages sold;
22 (2) the receipts of the business;
23 (3) the taxes paid; or
24 (4) the financial condition of the permittee or
25 licensee.

26 (c) A civil penalty may not be imposed on the basis of a
27 criminal prosecution in which the defendant was found not guilty,

1 the criminal charges were dismissed, or there has not been final
2 adjudication.

3 SECTION 4. Section 61.71, Alcoholic Beverage Code, is
4 amended by adding Subsections (h) and (i) to read as follows:

5 (h) The length of a suspension must be appropriate for the
6 nature and seriousness of the violation. In determining the length
7 of a suspension, the commission or administrator shall consider:

- 8 (1) the type of license or permit held;
9 (2) the type of violation;
10 (3) any aggravating or ameliorating circumstances
11 concerning the violation, including those enumerated in Section
12 11.64(c); and
13 (4) the permittee's or licensee's previous violations.

14 (i) The length of a suspension may not be based on:
15 (1) the volume of alcoholic beverages sold;
16 (2) the receipts of the business;
17 (3) the taxes paid; or
18 (4) the financial condition of the permittee or
19 licensee.

20 SECTION 5. This Act takes effect September 1, 2003.

David Bushurst
President of the Senate

Tom Caslick
Speaker of the House

I hereby certify that S.B. No. 1273 passed the Senate on April 30, 2003, by a viva-voce vote; and that the Senate concurred in House amendment on May 30, 2003, by a viva-voce vote. _____

Patricia Spaw
Secretary of the Senate

I hereby certify that S.B. No. 1273 passed the House, with amendment, on May 28, 2003, by a non-record vote. _____

Robert Haney
Chief Clerk of the House

Approved:

20 JUN '03
Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
8:30 P. O'CLOCK

Ann Shea
Secretary of State
JUN 20 2003