

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/30/09

Date

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 1161 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Harris

Senjonia Thompson

Rep. Thompson

Lucie Lucio

Mike Hamilton

Rep. Hamilton

Nancy Pette

VAN DE PUTE

Wanen Chisum

Rep. Chisum

Elife

Biddings

Rep. Giddings

Watson

Watson the part of the Senate

Geren

On the part of the House  
Rep. Geren

## Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

# CONFERENCE COMMITTEE REPORT

3<sup>rd</sup> Printing

H.B. No. 1161

A BILL TO BE ENTITLED

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

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

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

9 (c) Every applicant for an original alcoholic beverage  
10 license or permit for a location [~~with a door by which the public~~  
11 ~~may enter the place of business of the applicant~~] that is within  
12 1,000 feet of [~~the nearest property line of~~] a public or private  
13 school[~~, measured along street lines and directly across~~  
14 ~~intersections,~~] must give written notice of the application to  
15 officials of the public or private school before filing the  
16 application with the commission. A copy of the notice must be  
17 submitted to the commission with the application. This subsection  
18 does not apply to a permit or license covering a premise where  
19 minors are prohibited from entering the premises under Section  
20 109.53.

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

23 (1) a retail on-premises consumption permit or license  
24 if less than 50 percent of the gross receipts for the premises is

1 from the sale or service of alcoholic beverages;

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

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

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

13 (3) a wholesaler's, distributor's, brewer's,  
14 distiller's and rectifier's, winery, wine bottler's or  
15 manufacturer's permit or license, or any other license or permit  
16 held by a wholesaler or manufacturer as those words are ordinarily  
17 used and understood in Chapter 102.

18 (j) A regulation under Subsection (a)(2) or (a)(3) may be  
19 adopted by the commissioners court or the governing board of a city  
20 or town only after a public hearing at which the parties in interest  
21 and citizens have an opportunity to be heard and only if the  
22 commissioners court or governing board has determined that the  
23 regulation is in the public interest based on the circumstances  
24 related to each school to which the regulation relates. The  
25 determination of a commissioners court or governing board of a city  
26 or town under this subsection is not subject to appeal. This  
27 subsection does not apply to a city or town with a population of

1 more than 900,000.

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

5 Sec. 109.332. MEASUREMENT OF DISTANCE. (a) Except as  
6 provided by Subsection (b), notwithstanding any other provision of  
7 this code, for the purposes of any distance requirement imposed by  
8 this code, distance shall be measured along the property lines of  
9 the street fronts and from front door to front door, and in a direct  
10 line across intersections.

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

14 (1) from the property line of the place of business  
15 where alcoholic beverages are sold to the nearest property line of  
16 the public or private school, day-care center, or child-care  
17 facility along the property lines of the street fronts and in a  
18 direct line across intersections; or

19 (2) if the permit or license holder is located on or  
20 above the fifth story of a multistory building, from the property  
21 line of the public or private school, day-care center, or  
22 child-care facility to the nearest property line of the place of  
23 business where alcoholic beverages are sold along the property  
24 lines of the street fronts, in a direct line across intersections,  
25 and vertically up the building at the property line to the base of  
26 the floor on which the permit or license holder is located.

27 Sec. 109.37. CONSUMPTION OF ALCOHOLIC BEVERAGES NEAR PLASMA

1 CENTER. (a) In this section:

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

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

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

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

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

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

23 (b) On the sale or transfer of the premises or the business  
24 on the premises in which a new original license or permit is  
25 required for the premises, the premises shall be deemed to satisfy  
26 any distance requirements as if the issuance of the new original  
27 permit or license were a renewal of a previously held permit or

1 license if the new permit or license is of the same type as the  
2 previously held permit or license.

3 (c) In an incorporated city or town with a population of  
4 more than 900,000, Subsection (b) does not apply to the  
5 satisfaction of the distance requirement prescribed by Section  
6 109.33(a)(2) for a public school, except that on the death of a  
7 permit or license holder or a person having an interest in a permit  
8 or license Subsection (b) does apply to the holder's surviving  
9 spouse or child of the holder or person if the spouse or child  
10 qualifies as a successor in interest to the permit or license. The  
11 new permit or license must be of the same type as the previously  
12 held permit or license.

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

18 (1) involving:

19 (A) selling or serving an alcoholic beverage to  
20 an intoxicated person;

21 (B) selling or serving an alcoholic beverage or  
22 permitting possession or consumption of an alcoholic beverage on  
23 the licensed or permitted premises during prohibited hours;

24 (C) employment of a minor in violation of Section  
25 106.09;

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

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

3                   (F) the commission of an offense under Section  
4 106.15;

5                   (G) an aggravated breach of the peace;

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

7 or

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

9                   (2) resulting in a suspension of the permit or license  
10 for more than 30 days

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

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

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

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

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1 a 1,000-foot zone under Section 109.33, Alcoholic Beverage Code.

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

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



**House Bill 1161**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Amends Section 109.33(f), Alcoholic Beverage Code, as follows:

No equivalent provision.

(f) Clarifies the exception from county regulations enacted by a commissioners court prohibiting the sale of alcoholic beverages within 1,000 feet of a public or private school by the holder of a retail off-premises consumption permit or license to specify that receipts from additional retail buildings owned by the permit or license holder that are located on the same property as the permitted or licensed premises are included in the determination of the amount of gross receipts from the sale or service of alcohol if the premises is located in a city with a population of less than 900,000.

No equivalent provision.

SENATE VERSION

SECTION 1. Same as House version.

Same as House version.

Same as House version.

SECTION 2. Adds Section 109.33(j), Alcoholic

CONFERENCE

SECTION 1. [part] Same as House version, except as follows:

(c) Removes language making distance requirements for a place of business for which an applicant is applying for an original alcoholic beverage license or permit apply to the distance from a door by which the public may enter that place of business to the nearest property line of a public or private school. Removes language specifying that the measurement of that distance is made along street lines and directly across intersections.

*(The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.)*

Same as House version.

SECTION 1. [part] Substantially the same as Senate

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HOUSE VERSION

SECTION 2. Adds Section 109.332 to Subchapter C, Chapter 109, Alcoholic Beverage Code, MEASUREMENT OF DISTANCE, as follows:

For purposes of any distance requirement imposed by the Alcoholic Beverage Code, requires the distance to be measured from the property line of the place of business where alcoholic beverages are sold to the nearest property line of the property in relation to which a distance requirement is imposed along the property lines of the street fronts and in a direct line across intersections, or if the permit or license holder is located on or above the fifth story of a multistory building, from the property 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. Makes its

SENATE VERSION

Beverage Code, making a regulation adopted by a commissioners court or governing body of a city or town prohibiting the sale of alcoholic beverages within 1,000 feet of a private school on request of the governing body of the school contingent on a public hearing at which the prohibition is determined to be in the public interest. Exempts from the hearing requirement a city or town with a population of more than 900,000.

SECTION 3. Same as House version, except as follows:

(a) Same as House version.

CONFERENCE

version, except also applies the provision to a regulation prohibiting the sale of alcoholic beverages within 1,000 feet of a public school.

SECTION 2. [part] Same as House version, except as follows:

(a) Requires the distance to be measured along the property lines of the street fronts and from front door to front door, and in a direct line across intersections. Removes the condition that the provisions apply to a city or town with a population of less than 900,000. (b) Provides an exception to the method of measurement prescribed in Subsection (a) for the distance between a place of business where alcoholic beverages are sold that is located on or above the fifth story of a multistory building and a public or private school or a day-care center or child-care facility, applying the method prescribed in the House version to the measurement of such a distance.

*(The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on*

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HOUSE VERSION

provisions apply to a city or town with a population of less than 900,000.

No equivalent provision.

SECTION 3. Adds Section 109.37 to Subchapter C, Chapter 109, Alcoholic Beverage Code, CONSUMPTION OF ALCOHOLIC BEVERAGES NEAR PLASMA CENTER.

SECTION 4. Amends Section 109.59(b), Alcoholic Beverage Code, to provide that 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 is 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. Requires the new permit or license to be of the same type as the previously held permit or license in a city or town with a population of less than 900,000.

SECTION 5. Amends Section 109.59(c), Alcoholic

SENATE VERSION

(b) Requires the distance from the alcoholic beverage dealer to the property for which a distance requirement is imposed to be measured as provided in existing law 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.

SECTION 4. Same as House version.

SECTION 5. Same as House version.

SECTION 6. [part] Same as House version.

CONFERENCE

*this issue.)*

Same as House version.

SECTION 2. [part] Substantially the same as House version.

SECTION 3. [part] Substantially the same as House version, except omits the condition applying the requirement that the permit be of the same type in a city or town with a population of less than 900,000. *(The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.)*

SECTION 3. [part] Substantially the same as House

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HOUSE VERSION

Beverage Code. Provides an exception to conditions under which a premises is deemed to satisfy certain distance requirements for a public school on the sale or transfer of the premises or the business on the premises for city or town with a population of less than 900,000.

No equivalent provision.

No equivalent provision.

No equivalent provision.

SENATE VERSION

SECTION 6. [part] Amends Section 109.59(d), Alcoholic Beverage Code, to provide that certain provisions relating to the application of distance requirements for all subsequent permit or license renewals do not apply if the holder's license or permit has been suspended for certain actions and violations of law.

SECTION 7. Amends Section 38.007(b), Education Code, to remove the condition that the majority of the area of a district being located in a municipality with a population of 900,000 or more for the board of trustees of a school district to be authorized to petition the commissioners court or the governing board of an incorporated city or town in which the district is located to adopt a 1,000 foot alcohol-free zone.

No equivalent provision.

CONFERENCE

version, except clarifies that a new permit is required to be of the same type as the previously held permit or license.

*(The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.)*

SECTION 3. [part] Substantially the same as Senate version, except applies to a suspension for a violation occurring after September 1, 1995.

SECTION 4. Same as Senate version.

SECTION 5. Repeals Sections 109.33(b) and (d), Alcoholic Beverage Code, to conform to added Section 109.332.

*(The conference committee may have exceeded the*

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HOUSE VERSION

SECTION 6. Provides for the act to take immediate effect on a two-thirds vote.

SENATE VERSION

SECTION 8. Same as House version.

CONFERENCE

*limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.)*

SECTION 6. Provides for the act to take effect September 1, 2009.

*(The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.)*

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 30, 2009**

**TO: Honorable David Dewhurst , Lieutenant Governor, Senate  
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.), Conference Committee Report**

**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 900,000.

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, SD, JRO**