

SUBJECT: Increased penalty for direct shipment of alcoholic beverages

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 7 ayes — Wilson, Yarbrough, Flores, Goolsby, Haggerty, J. Moreno, Palmer
0 nays
2 absent — D. Jones, A. Reyna

SENATE VOTE: On final passage, March 15 — voice vote (Bernsen, Madla, Moncrief, Nelson, Wentworth recorded nay)

WITNESSES: For — Alan Gray, Licensed Beverage Distributors; Bill Lewis, Mothers Against Drunk Driving; Fred Marosko, Texas Package Stores Association
Against — None

BACKGROUND: Alcoholic Beverage Code, sec. 107.07(f) makes it a violation of the code for any person in the business of selling alcoholic beverages in another state or country to ship or cause to be shipped any alcoholic beverage directly to any Texas resident.

Sec. 1.05 of the Alcoholic Beverage Code makes any violation of the code with no penalty specifically listed a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than one year or by both.

DIGEST: SB 427 would make it a Class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000, for any person in the business of selling alcoholic beverages in another state or country to ship or cause to be shipped any alcoholic beverage directly to any Texas resident. The penalty would increase to a state-jail felony, punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000, if the person committed an offense after receiving written notice from the Texas Alcoholic Beverage Commission (TABC) that the person was violating the law.

SB 427 would take effect September 1, 1999, and apply to an offense committed on or after that date.

SUPPORTERS
SAY:

Internet sales have greatly increased the ability of minors to order alcoholic beverages by direct shipment. Minors can borrow or steal a credit card and have nearly unlimited access to alcoholic beverages. Even though some Internet companies might have taken measures to prevent minors from ordering alcoholic beverages, less reputable companies are not deterred from selling to minors. Minors as young as 14 years old have been able to order alcoholic beverages over the Internet even while using their actual birthdate.

SB 427 would prevent out-of-state companies from selling alcohol to minors. Underage drinking is a major problem that threatens the health and safety of children. While some Texas wineries and other manufacturers may suffer from the retaliatory statutes of other states, the safety of children must come first.

Direct shipment of alcoholic beverages by out-of-state companies to Texas residents circumvents the state regulatory system. The regulation of alcoholic beverages in Texas depends on a three-tiered system: manufacturers sell to distributors, distributors sell to retailers, and retailers sell to consumers. Direct shipment allows out-of-state companies to evade alcoholic beverage taxes and circumvent local option ordinances prohibiting liquor sales.

Licensed companies that comply with Texas regulations are put at a competitive disadvantage by unregulated companies. SB 427 would allow TABC to defend the Texas system of regulation from out-of-state interference.

Texans looking for rare or speciality wines would be able to order those wines through their neighborhood liquor store without significant added delay or expense. This process is similar to federal gun regulations that require gun purchasers to order their firearms through a licensed local gun shop. Liquor stores are eager to offer ordering services to increase their customer base, and this also allows licensees to determine directly if a minor is making the order.

A direct shipment permit would be too difficult to administer. TABC would have little control over companies that are located in other states or countries, and tax collection would become almost impossible. It would be much

simpler to use the existing permit system and require an out-of-state company to ship to a Texas retailer. A new category of permit should not be created if there is a solution available through the existing regulatory scheme.

The “small” amounts of wine available through a wine-of-the-month club can be several bottles or more. This amount would be enough to create a tragedy if this wine got into the hands of a minor. Just because a wine is rare or collectible does not mean that it lacks intoxicating power.

Increasing the penalty to a state jail felony for violators who ignore TABC warnings is necessary since a felony conviction disqualifies a person from holding a liquor license in most states. Texas would be able to strike at a violator’s livelihood with a conviction even if the person did not serve jail time.

OPPONENTS
SAY:

SB 427 would reinforce special privileges for Texas alcoholic beverage distributors and retailers at the expense of consumers. The penalty for direct shipment should be repealed rather than increased to allow adult consumers in this state the freedom to purchase alcoholic beverages from out of state and have them delivered to their homes.

Reports of minors ordering alcoholic beverages on the Internet are exaggerated. Sadly, it is far easier for a minor to get a fake ID or ask an adult to buy liquor for them than it is for a minor to find a credit card and wait several days for the delivery of a bottle of wine at a time the parent is not home.

Most reputable Internet services require both a credit card and proof of age when the product is delivered. Many of these Internet services can be blocked with software limiting children’s access to certain web pages.

Connoisseurs of fine wine and other rare alcoholic beverages would be unfairly punished by the prohibition on direct shipment. Local liquor stores cannot stock all of the thousands of different types of wine. Many liquor stores, especially those in rural areas, are not interested in ordering speciality items and either do not provide an ordering service or charge exorbitant fees.

The result of this bill is that Texas wineries and other alcoholic beverage manufacturers would be prohibited from directly shipping their products to

out-of-state residents. Many states like California have retaliatory laws against wineries and manufacturers from states that limit access to their markets. The burgeoning wine industry in Texas would be severely hampered by the increased penalties in SB 427.

OTHER
OPPONENTS
SAY:

Rather than prohibit the direct shipment of alcoholic beverages altogether, Texas should establish a direct shipment permit so that tax money would not be lost and state regulation would be preserved. At a minimum, this direct shipment permit should be allowed for “wine of the month” clubs that ship a limited amount of wine directly to members each month.

Imposing a state jail felony would be a draconian measure reminiscent of prohibition days. It would be too costly to bring violators to Texas to stand trial, and few juries would agree to such a harsh punishment for this type of crime.

NOTES:

HB 3555 by Wilson, the omnibus alcoholic beverage regulation bill, contains provisions that are identical to SB 427. HB 3555 passed the House, but died in the Senate Administration Committee after being tagged.