

SUBJECT: Allowing wineries to sell and ship wine to ultimate consumers

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 5 ayes — Wilson, Flores, D. Jones, J. Moreno, Wise
1 nay — Goolsby
3 present, not voting — Yarbrough, Haggerty, A. Reyna

WITNESSES: For — Gil L. Bledsoe; Gary W. Elliot; Alphonse Dotson, Certenberg Vineyard, Inc.; Edward Manigold; Cord Switzer, Fredericksburg Winery; Bobby G. Smith, Texas Wine and Grape Growers Association; Bobby Cox; Karen Johnson; Les Constable; *Registered but did not testify:* Franklin D. Houser; Ben M. Valentino; Bill Clayton, Texas Wine and Grape Growers Association

Against — Fred Niemann, Texas Package Store Association; Rick Donley, Beer Alliance of Texas; *Registered but did not testify:* Alan Gray and Robert H. Sparks, Licensed Beverage Distributors; Chris Newton, Guinness

On — Susan Combs, Texas Department of Agriculture; Randy Yarbrough, Texas Alcoholic Beverage Commission; *Registered but did not testify:* Tim Dodd, Texas Tech University

BACKGROUND: Alcoholic Beverage Code, sec. 16.01 specifies activities authorized for holders of winery permits. Winery permit holders may sell wine in Texas to holders of wholesaler's permits, winery permits, and bottler's permits; to ultimate consumers for on- and off-premises consumption under certain conditions; and to qualified buyers outside the state.

Under sec. 16.05, winery permit holders in "dry" areas may sell wine to permit holders authorized to sell wine to the ultimate consumer for off-premises consumption; to holders of wholesaler's permits, winery permits, and bottler's permits; and, under certain conditions, to ultimate consumers for off-premises consumption.

DIGEST: CSHB 892 would allow holders of winery permits to sell and ship up to two cases of wine in a 30-day period to ultimate consumers in Texas. The shipment would have to be made by a carrier that held a permit under the Alcoholic Beverage Code.

Wineries in dry areas could sell up to 25,000 gallons of wine per year to in-state ultimate consumers in unbroken packages for off-premise consumption. These wineries also could sell and ship wine to ultimate consumers under the same conditions provided for other holders of winery permits.

CSHB 892 would delete the restrictions that now apply to holders of winery permits in dry areas who wish to sell wine to ultimate consumers for off-premise consumption.

The bill also would allow carriers to deliver wine to addresses in dry areas. The Alcoholic Beverage Commission would have to adopt rules to ensure that wine shipped under this provision was labeled clearly as an alcoholic beverage and was delivered only to a person 21 years of age or older.

This bill would take effect September 1, 2001, and would apply only to sales of wine on or after that date.

SUPPORTERS SAY: CSHB 892 would benefit rural Texas by helping to enable it to emulate California's billion-dollar wine industry. California produces 400 times the amount of wine that Texas does but consumes only three times as much. Although many Texans drink wine, most of it comes from out of state. Allowing Texas wineries to sell their wine directly to consumers, subject to reasonable limitations, would boost Texas' economy, create jobs, and enable Texans to support their own wine industry.

The bill would increase Texas wineries' access to the in-state market by allowing wineries in both wet and dry areas to sell a limited amount of unbroken packages of wine to ultimate consumers for off-premise consumption. The biggest barrier for Texas' wine industry is the inability to distribute its products widely. Because Texas is such a large state, tourists who wish to buy a winery's product after they have returned home have no way to obtain the wine without making a lengthy trip to visit the winery again. Under CSHB 892, wineries could sell more wine to these customers,

who could recommend it or serve it to their friends, further promoting these products.

Texas now has about 46 wineries, but only four are large enough to have a market. Although smaller wineries can sell to wholesalers, the wholesalers are not willing to buy the wine and sell it for these wineries.

The bill would require the Alcoholic Beverage Commission to ensure the legitimacy of the wineries' sales by adopting shipping rules to make sure that alcohol did not get into minors' hands. Minors do not have the patience to order wine and wait for it to be delivered. They would rather go to the nearby store and try to fool the clerk for immediate access to alcohol, or else persuade an older friend or willing adult to buy wine for them.

OPPONENTS
SAY:

CSHB 892 would not contain sufficient enforcement mechanisms to prevent alcohol from getting into the hands of minors. Retailers invest much time and money to ensure that alcohol is not sold to minors. For example, they hire off-duty police officers to deter minors from attempting to buy alcohol. Under this bill, minors could order wine ahead of special events such as a prom, spring break, or graduation.

Allowing wineries in dry areas to sell wine would defeat the will of the people who elected for the county to be dry. Wineries would be the only entities allowed to sell alcohol in these areas, except for private clubs that only sell liquor by the drink. Only 28 Texas counties allow the sale of alcohol countywide. Eighty-nine percent of the state is either dry or a patchwork of small precincts where alcohol can be sold.

CSHB 892 would make collecting taxes on wine too cumbersome and would undermine the three-tiered system of alcohol distribution. Manufacturers sell to wholesalers, who sell to retailers, who sell to the consumers. Selling wine directly to consumers from wineries would harm the business of wholesalers and retailers. The current system ensures that taxes are paid, dry areas remain alcohol-free, and minors are prevented from buying alcohol.

The bill would place improper responsibility on package delivery companies. Retail clerks are trained to identify underage drinkers and false identification cards. Package carriers, on the other hand, are not trained to

recognize false identification, nor would they be likely to take the extra time to check identification.

CSHB 892 would favor wineries over liquor stores because wineries would not be held to the same strict rules and penalties. Texas retailers can face significant fines, loss of their annual licenses, and even jail time for selling alcohol to minors. If special exceptions are applied to allow direct shipment of wine, hard liquor could be next.

CSHB 892 might violate the interstate commerce clause because it would favor Texas wineries over out-of-state wineries that cannot ship directly to Texas consumers. In *Bacchus Imports, Ltd. v. Dias*, the U.S. Supreme Court held that a Hawaii liquor tax imposed on liquor sales at wholesale but exempting from the tax locally produced alcoholic beverages violated the commerce clause.

OTHER
OPPONENTS
SAY:

The Legislature could find better ways to help the Texas wine industry that would protect dry areas, prevent minors from obtaining alcohol, and ensure collection of taxes. Instead of allowing orders to be shipped directly to consumers' homes, the bill could require wine to be shipped to a nearby alcohol retailer, where consumers could pick up their orders for a small fee. This system would protect the three-tiered system and would ensure that taxes were paid on the wine. The retailers, who are trained to spot false identifications, would prevent wine shipments from getting into minors' hands. The person who ordered the wine could be required to be present at his or her residence at the time of delivery.

The Legislature could establish a direct wine shipper's permit to allow its holder to ship wine directly to a Texas resident at his or her home address. The wine would have to be shipped using a carrier who held an alcoholic beverage carrier permit, and the permit holder would have to ensure that the shipment was labeled conspicuously and would be held accountable if the shipment was received by a minor.

NOTES: The committee substitute added the provision authorizing a carrier to deliver to a dry area in accordance with rules adopted by the Alcoholic Beverage Commission that would ensure that the shipment was labeled clearly as an alcoholic beverage and delivered only to a person 21 years of age or older.