

SUBJECT: Consumption of wine for sale at wineries

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 5 ayes — Hamilton, Driver, Eissler, Homer, Raymond
0 nays
4 absent — Flores, Goolsby, D. Jones, Wise

WITNESSES: For — Gary Elliott; Gabe Parker; Gina Puente-Brancato, Texas Wine and Grape Growers Association; Cord Switzer
Against — None

BACKGROUND: The Texas Alcoholic Beverage Commission (TABC) regulates the distribution of alcohol in the state through permitting and enforcement.

Regulation. Wineries must apply to TABC for a permit to operate and must present a winemaker’s and blender’s federal alcohol tax unit permit. Under Alcoholic Beverage Code, sec. 16.01(a)(7), the holder of an TABC winery permit is allowed to dispense free wine for consumption on the winery premises. Sec. 16.01(c) authorizes a winery permit holder to host wine samplings, including tastings, on a retailer’s premises. A winery employee may open and pour wine, make a presentation, or answer questions at a wine sampling. A winery may operate in a “dry” area or location, but no sale or sampling of wine may take place there.

With few exceptions, a winery permit does not allow the holder to sell wine for consumption on the premises.

Exceptions. Sec. 16.01(d) authorizes the holder of a winery permit to sell wine for consumption on or off the winery premises and host samplings and dispense free wine for consumption on or off the winery premises if:

- the winery is in a city located in three or more counties, at least one of

- which has a population of 500,000 or more, and has within its boundaries all or part of an international airport;
- the winery is in a county with a population of 240,000 or more and borders both the Gulf of Mexico and a county that has within its boundaries all or part of an international airport; or
 - the winery is in a county with a population of 20,000 or more, has within its boundaries all or part of three or more American viticultural areas, as recognized and defined by the United States Bureau of Alcohol, Tobacco and Firearms.

Also, sec. 16.05 authorizes TABC to issue a winery permit for a licensed premises in a dry area but the winery may sell wine only to:

- permit-holders authorized to sell wine to ultimate consumers in unbroken packages for off-premises consumption in an amount not to exceed 25,000 gallons annually;
- holders of wholesaler's permits, winery permits, and wine bottler's permits; or
- ultimate consumers in unbroken packages for consumption off winery premises in an amount not to exceed 25,000 gallons annually.

Wineries in certain dry counties with populations less than 30,000 also may sell wine on their premises, for seven consecutive days each year, to ultimate consumers for consumption elsewhere if the:

- grapes used in manufacturing the wine are grown and harvested in the dry area;
- wine is manufactured, bottled, and sold on the winery premises; and
- winery provides 14-day notice to TABC before selling wine under the authority of this statute.

DIGEST:

CSHB 2593 would amend Alcoholic Beverage Code, sec. 16.01(a) to specifically authorize the holder of a winery permit to sell wine for consumption on winery premises. It would repeal 16.01(d) and 16.05 to end special conditions under which wine currently can be sold and consumed at some wineries, including some in dry counties.

The bill also would add a provision specifically to authorize TABC to issue a winery permit for a premises in a dry area. A holder of a permit under this provision could manufacture wine or dispense wine to an ultimate consumer that was manufactured in the state and was at least 75 percent by volume fermented juice of grapes or fruit grown in Texas.

CSHB 2593 would take effect on the effective date of a constitutional amendment proposed by the 78th Legislature (HJR 85 by Homer), authorizing the holder of a winery permit to manufacture and sell certain wine on the winery premises and to dispense certain wine without charge for tasting on the winery premises.

**SUPPORTERS
SAY:**

CSHB 2593 would bring consistency to the law and help clear away legal obstacles that have limited the growth of wineries. Current law contains a confusing patchwork of exceptions that already allows some wineries to sell wine for consumption on the premises, and wineries in a few dry counties to sell wine, but only under certain conditions. Most wineries require initial investments of \$300,000 to \$800,000 and at least five years of planting and cultivation before they can begin yielding revenue for investors. This bill would provide an incentive to invest in wineries by allowing them to sell wine for consumption on the premises, thus helping them to profit.

By allowing wineries to serve wine for sale, the bill would help to increase the popularity of such establishments, which would yield broad economic benefits for the state. Under the proper circumstances, wineries can become weekend destinations for nearby residents and tourist destinations for people in other regions or states, which benefits other local businesses, such as restaurants and hotels. Wineries also pay excise, property, and sales taxes and locate in rural areas, which need new agriculture and businesses to counteract years of economic stagnation.

Other states with nascent wine producing industries provide evidence of the economic growth that wineries can produce. For example, 20 years ago, Texas and Washington State each contained 12 wineries and 2,500 acres of planted grapes. Today, Washington cultivates some 29,000 acres under the ownership of more than 200 wineries having an economic impact of \$2.5 billion. By contrast, Texas still cultivates only about 2,500 acres with an economic impact of just \$133 million. CSHB 2593 would reform state law to

encourage similar growth in Texas.

This bill also would build upon a successful initiative of the 77th Legislature, which created the Texas Wine Marketing Assistance Program under HB 892 by Swinford. The program has helped increase the number of TABC winery permits to more than 70 from fewer than 40 just four years ago.

This bill is necessary to improve the competitive position of Texas wineries, especially as they face growing competition from out-state producers who already sell wine in the state. Under a bill currently in committee, HB 768 by Mowery, these producers would gain approval to ship wine directly to Texas consumers.

It is unlikely that this bill would encourage drinking among people who did not partake of alcohol before its passage. Nor is it likely that this bill would grant access to alcohol to significant numbers of Texans who did not have access before, particularly among existing problem drinkers. Criminal and civil laws already address illegal and wrongful conduct that sometimes result from alcohol abuse.

**OPPONENTS
SAY:**

CSHB 2593 would usurp local decision-making power about alcohol and encourage behavior known to compromise human health. In deference to the cultural and religious persuasions of local communities, Texas Constitution, art. 16, sec. 20(b) puts authority in local hands regarding the availability of alcohol in a community. The bill, and the proposed constitutional amendment that would enable it, improperly would take away this right granted to local communities, and would allow the operation of establishments that served alcohol in areas where previously none had existed.

CSHB 2593 could exacerbate the Texas' serious problem of driving while intoxicated. In 2001, Texas led the nation in alcohol-related traffic fatalities. Of the 3,724 total traffic fatalities that year, more than 1,700 involved alcohol. The bill would encourage visitors at wineries to drink and allow them to drink more than they otherwise could have when only tastings were permitted. Afterwards, these visitors would attempt to drive home on unfamiliar and sometimes dangerous rural roads, which inevitably would lead to additional alcohol-related car crashes and possibly fatalities.

NOTES:

The committee substitute differs from the bill as introduced by specifically authorizing the holder of a winery permit in a dry area to manufacture wine. The committee substitute also added a reference to “other fruit” in regard to the commodities used to make wine, and to “ultimate consumer” as to who can obtain wine from a winery in a dry county.

CSHJR 85 by Homer, the proposed constitutional amendment that would amend Texas Constitution, Art. 16, sec. 20 to allow the enactment of this bill, is on today’s Constitutional Amendments Calendar.

A related bill, HB 1620 by Swinford, which would require transfer of \$250,000 from the Alcoholic Beverage Commission to the Department of Agriculture for the continuation of the Texas Wine Marketing Assistance Program, is on today’s Local, Consent, and Resolution Calendar.