

SUBJECT: Allowing package stores deliveries within a county

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 5 ayes — Flores, Isett, Hamilton, Jones, Quintanilla  
0 nays  
4 absent — Geren, Goolsby, Miles, Thompson

WITNESSES: For — (*Registered, but did not testify*: Rick Donley, The Beer Alliance of Texas; Alan Gray, Licensed Beverage Distributors; Fred Niemann, Texas Package Stores Association; Tom Spilman, Wholesale Beer Distributors of Texas)  
  
Against — None

BACKGROUND: In 1977, the 65th Legislature enacted HB 815 by Bock, which repealed the Texas Liquor Control Act and created the Alcoholic Beverage Code.  
  
HB 815 added Alcoholic Beverage Code, sec. 22.03(a), which allows the holder of a package store or wine-only package store permit who also has a cartage permit to make deliveries of and collections for alcoholic beverages off premises as long as such sales are allowed in the area and a bona fide order has been placed. The deliveries must be made by the most direct route within the city or town or within two miles of its corporate limits, measured  
  
Alcoholic Beverage Code, sec. 22.03(a) does not prohibit the delivery of alcoholic beverages to a common carrier for transportation to persons authorized to purchase these beverages.

DIGEST: CSHB 3148 would amend Alcoholic Beverage Code, sec. 22.03(a) to remove the two-mile restriction and allow alcoholic beverage deliveries by package store or wine-only package store permit holders with cartage permits to make deliveries within county in which the package store was located.

The bill also would allow such package store or wine-only package store permit holders to make a delivery of alcoholic beverages to a common carrier for transportation within the county where the package store was located or outside the state.

The bill would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

CSHB 3148 would update an old section of the Alcoholic Beverage Code and would clarify that a package store or wine-only package store can deliver only within its own county. Since the advent of mail order and Internet sales, the statute has been interpreted by the Texas Alcoholic Beverage Commission to allow package stores to deliver liquor or wine to a common carrier so it could be shipped elsewhere in Texas. CSHB 3148 would close a loophole not contemplated when the statute was written in 1977.

Regulation of alcohol remains a jigsaw pattern of “wet” and “dry” areas in the state. Although package store owners are familiar with the restrictions in their immediate vicinity, they may not be familiar with local laws in other areas. A Houston package store should not be allowed to ship to a fraternity in Lubbock, and an out-of-town store might not know whether a particular Dallas County address was in an area where alcohol sales were restricted. The bill would clarify the prohibition against out-of-county alcoholic beverage delivery and provide for local and more effective enforcement of alcoholic beverage laws.

CSHB 3148 would not impede current laws and regulations that allow Texas wineries to ship their products out of state. It only would give package stores the same options as wineries to expand their markets to customers outside the Lone Star State.

The federal lawsuit brought by a California package store seeking to have the same rights as Texas package stores offers two forks in the road for public policy. Either all package stores, whether in the state or elsewhere, should have the right to sell in every square inch of Texas where alcoholic beverage sales are allowed, or no one should be able to sell outside their immediate neighborhood. CSHB 3148 would allow the Legislature, not a federal judge, to make the decision to restrict alcoholic beverage sales within the state.

OPPONENTS  
SAY:

Package stores should be treated equally whether they have a location in the state or not. CSHB 3148 could create the perverse situation where a San Antonio package store could ship its product by common carrier to Abilene, Kansas, but not to Abilene, Texas. The bill represents another example of the state's archaic liquor laws that shelter the industry from competition.

CSHB 3148 would short-circuit the legal process and unfairly intervene in the federal lawsuit brought by a California package store owner seeking equitable treatment of in-state and out-of-state businesses.

NOTES:

The companion bill, SB 1229 by Gallegos, passed the Senate by 30-1 (Estes) on May 8 and was reported favorably, without amendment, by the House Licensing and Administrative Procedures Committee on May 9, making it eligible to be considered in lieu of HB 3148.