

SUBJECT: Raising monthly limit for wine shipments to individual consumers

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 5 ayes — Kuempel, Geren, Gutierrez, Hamilton, Quintanilla

0 nays

1 present not voting — Jones

3 absent — Thompson, Chisum, Menendez

WITNESSES: (*On original bill:*)
For — None

Against — (*Registered, but did not testify:* Alan Gray, Licensed Beverage Distributors; Fred Marosko, Texas Package Stores Association; Rick Donley, The Beer Alliance of Texas; Ralph Townes, Licensed Beverage Distributors)

On — (*Registered, but did not testify:* Alan Steen, Texas Alcoholic Beverage Commission)

BACKGROUND: In 2005, the 79th Legislature enacted SB 877 by Madla, which allows holders of winery permits and out-of-state direct shipper's permits, issued by the Texas Alcoholic Beverage Commission, to ship wine directly to Texas consumers, including consumers in dry counties.

Alcoholic Beverage Code sec. 16.09 (e)(3) sets a limit of three gallons of wine shipped to the same Texas consumer within a 30-day period. The same restriction is included in Alcoholic Beverage Code, sec. 54.02 as part of the list of prohibited activities by an out-of-state shipper's permit holder.

DIGEST: HB 1084 would amend Alcoholic Beverage Code, sec. 16.09 (e)(3) and sec. 54.02 to permit shipment to the same Texas consumer of up to nine gallons of wine within a 30-day period, with a yearly limit of 36 gallons. The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 1084 would retain and codify the current cap of 36 gallons of wine per year that a consumer could order from a winery or out-of-state shipper in one year under current law, but would allow more flexibility in the monthly limit. Increasing from three to nine gallons the maximum amount of shipments to the same consumer within a month would acknowledge the unique seasonal requirements of wineries as well as the realities of Texas summers. Wine is a perishable product that spoils at temperatures above 75 degrees Fahrenheit, so many out-of-state wineries are reluctant to ship to Texas, especially during July and August.

CSHB 1084 would not increase the overall amount of wine that a winery or out-of-state shipper could ship to the same consumer per year. In fact, it would codify in statute the current limit of 36 gallons per year, which is based on the existing restriction of no more than three gallons per month. It simply would allow wineries to ship somewhat larger quantities of wine to Texas consumers during the cooler seasons of the year.

CSHB 1084 would help eliminate potential losses in state revenues from taxes on wine shipments. Consumer preferences and winery practices not to ship wine during warmer months effectively reduce the yearly allocation to less than 36 gallons a year. Texas collects sales tax on those out-of-state purchases, and any reduction represents a loss of potential tax revenue.

Limiting the amount of purchases to nine gallons per month would help prevent out-of-state wine purchased by a single consumer being resold on the "gray market." Such transactions could involve sales to restaurants or to other consumers in which the ultimate buyer would not pay sales or other taxes due to the state.

**OPPONENTS
SAY:**

The current restrictions on direct sales by wineries and out-of-state shippers to consumers provide clear and sufficient guidance for enforcement. There is no need to change the current statute, which allows a limited exception to the three-tier — producer, distributor, retailer — system of alcohol sales.

**OTHER
OPPONENTS
SAY:**

HB 1084 should allow for the purchase of up to 18 gallons in a single shipment with a yearly cap of no more than 36 gallons for a single customer from the same winery or out-of-state shipper. Consumers who would purchase that quantity of wine are more likely to be oenophiles or

wine connoisseurs than someone who might seek to resell wine. In most incidences, they are purchasing wine from small wineries or seeking vintages with very limited seasonal availability. Shipping costs, particularly temperature-controlled shipping, are very expensive. Anyone willing to pay that much would be more likely to store the wine in their own private wine racks or cellars rather than try to undercut local retailers or wholesalers.

NOTES:

The committee substitute would limit monthly shipments to no more than nine gallons of wine, while the original bill would have limited monthly shipments to no more than 18 gallons of wine.