

BILL ANALYSIS

Senate Research Center

H.B. 892
By: Swinford (Duncan)
Natural Resources
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Engrossed

DIGEST AND PURPOSE

The growth of the Texas wine industry has had a positive impact on the Texas economy. California produces many times the amount of wine Texas produces, but consumes only a fraction more than Texas consumes. Texas is a significant consumer of wine, but demand is not being supplied by Texas wineries. H.B. 892 allows Texas wineries increased access to the Texas market and provides consumers with better access to Texas wines.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of agriculture in SECTION 1.01 (Sections 110.002 and 110.052, Alcoholic Beverage Code), to members of the advisory committee in SECTION 1.01 (Section 110.003, Alcoholic Beverage Code), and to the Agriculture Commission in SECTION 1.01 (Sections 110.052 and 110.055, Alcoholic Beverage Code).

SECTION BY SECTION ANALYSIS

ARTICLE 1. TEXAS WINE MARKETING ASSISTANCE PROGRAM

SECTION 1.01. Amends Title 4, Alcoholic Beverage Code, by adding Chapter 110, as follows:

CHAPTER 110. TEXAS WINE MARKETING ASSISTANCE PROGRAM IN DEPARTMENT OF AGRICULTURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 110.001. DEFINITIONS. Defines "commissioner" and "program."

Sec. 110.002. PROGRAM ESTABLISHED. (a) Establishes the Texas Wine Marketing Assistance Program in the Department of Agriculture to assist the Texas wine industry in promoting and marketing Texas wines and educating the public about the Texas wine industry.

(b) Requires the commissioner of agriculture (commissioner), in consultation with the advisory committee established under Section 110.003, to adopt rules as necessary to implement the program.

Sec. 110.003. ADVISORY COMMITTEE. (a) Requires the commissioner to appoint an advisory committee to assist the commissioner in establishing and implementing the program. Sets forth the composition of the committee.

(b) Provides that the members of the advisory committee serve without compensation or reimbursement of expenses.

(c) Provides that a member of the advisory committee serves at the pleasure of the commissioner for a term of two years. Authorizes the commissioner to reappoint a

member to the advisory committee.

(d) Requires the members of the advisory committee to select a presiding officer from among the members and adopt rules governing the operation of the committee. Requires the rules to specify that four members of the committee constitute a quorum sufficient to conduct the meetings and business of the committee.

(e) Requires the advisory committee to meet as necessary to provide guidance to the commissioner in establishing and implementing the program.

[Sections 110.004-110.050 reserved for expansion]

SUBCHAPTER B. TEXAS WINE MARKETING ASSISTANCE PROGRAM

Sec. 110.051. PROMOTION, MARKETING, AND EDUCATION. Requires the Texas Wine Marketing Assistance Program (program) to carry out certain duties.

Sec. 110.052. PARTICIPATION OF PACKAGE STORES. (a) Provides that except as provided by this section, participation in the program by a package store is voluntary.

(b) Authorizes the commissioner, if, after the program has been operating for at least 12 months, the commissioner determines after a hearing that package stores in the state are not participating in the program on a reasonably distributed geographic basis, to request that the commission require all package stores in the state to participate in the program. Requires that on receiving the commissioner's request, the commission hold a hearing and authorizes the commission to adopt rules as necessary to implement this subsection.

(c) Authorizes the commissioner by rule to establish standards that a package store that participates in the program must meet.

Sec. 110.053. SALE AND SHIPMENT OF WINE THROUGH PROGRAM. (a) Authorizes a person who purchases wine from a winery in this state to ship the wine in accordance with:

- (1) Section 107.12, if the person is physically present at the winery; or
- (2) this section, if the person is not physically present at the winery.

(b) Authorizes the winery, if a person who purchases wine from a winery in this state is not physically present at the winery, to ship the wine to a package store that participates in the program. Requires that on receipt of the wine, the package store notify the purchaser that the wine is available to be picked up by the purchaser at the package store or shipped to the purchaser by the package store.

(c) Authorizes a package store that participates in the program to charge a purchaser a handling fee of not more than \$3.50 for each order of wine that the purchaser picks up at the package store. Provides that the handling fee is not subject to state or local sales tax.

(d) Requires that if a purchaser elects to have the package store ship the wine to the purchaser, the package store and the purchaser agree on the shipping arrangements.

(e) Authorizes the package store to return a wine order to the winery if the purchaser does not pick up wine or make arrangements to have the wine shipped to the purchaser before the 30th day after the date the purchaser is notified under Subsection (b). Requires the winery to accept return of the wine from the package store.

(f) Provides that for the purposes of this code, a purchase of wine under this section is considered to have occurred on the premises of the winery.

(g) Provides that a package store that ships wine under this section is not liable for the actions of the carrier that delivers the wine.

Sec. 110.054. DELIVERY OF WINE IN A DRY AREA. Authorizes a package store that participates in the program to ship wine under Section 110.053 to a person who resides in a dry area if:

- (1) the delivery is made by the holder of a carrier permit; and
- (2) the package is clearly labeled as requiring the signature of a person 21 years of age or older for delivery.

Sec. 110.055. SHIPPING FORM. Requires the commission by rule to adopt a standard invoice for shipping wine under Section 110.053 from a winery to a package store and from a package store to a purchaser that allows the commission to monitor the sale and delivery of wine through the program, including the amount of wine sold through the program and the payment of taxes on that wine.

SECTION 1.02. (a) Requires that notwithstanding the General Appropriations Act or any other law, on or before October 1 of each fiscal year of the biennium ending August 31, 2003, the Texas Alcoholic Beverage Commission transfer from funds appropriated to the commission \$250,000 to the Department of Agriculture to be used by the department to implement the Texas Wine Marketing Assistance Program established by Chapter 110, Alcoholic Beverage Code, as added by this Act.

(b) Authorizes the Texas Alcoholic Beverage Commission in accordance with this subsection to recover the amount transferred under Subsection (a) of this section by imposing a surcharge on licenses and permits, other than an Agent's Permit or an Agent's Beer License, issued or renewed by the commission on or after September 1, 2001, and before August 31, 2003. Requires the surcharge to be an amount equal to the amount transferred under Subsection (a) of this section divided by the number of licenses and permits the commission anticipates issuing during that period, rounded down to the next lowest whole dollar.

(c) Prohibits the governing body of an incorporated city or town or the commissioners court of a county from levying and collecting a fee under Section 11.38 or 61.36, Alcoholic Beverage Code, based on a surcharge imposed under this section.

(d) Provides that this section expires August 31, 2003.

ARTICLE 2. SALE OF WINE ON WINERY PREMISES

SECTION 2.01. Amends Section 16.05, Alcoholic Beverage Code, as follows:

Sec. 16.05. LOCATION OF PREMISES. (a) Makes a conforming change.

(b) Adds language relating to the permittee selling wine in this state under certain circumstances. Deletes language relating to the location of the winery.

SECTION 2.02. Chapter 16, Alcoholic Beverage Code, is amended by adding Section 16.08, as follows:

Sec. 16.08. WINE FESTIVALS. (a) Authorizes the permit holder to carry out certain actions at an event that is approved by the commission, organized to celebrate and promote the wine industry in this state, and held in whole or in part on the premises of the holder of a winery permit.

(b) Authorizes the holder of a winery permit to sell wine to the holder of a temporary permit issued under Chapter 27, 30, or 33 for an event that is approved by the commission and organized to celebrate and promote the wine industry in this state.

(c) Prohibits the holder of a winery permit from holding more than four events described by Subsection (a) each year.

ARTICLE 3. SHIPMENT OF WINE BY CONSUMER

SECTION 3.01. Amends Chapter 107, Alcoholic Beverage Code, by adding Section 107.12, as follows:

Sec. 107.12. DIRECT SHIPMENT OF WINE. Authorizes a person who purchases wine while at a winery located in this state, notwithstanding Section 107.07, to ship or cause to be shipped the wine to the person's residence if the winery verifies that the person purchasing the wine is 21 years of age or older. Requires the person to be present when the wine is delivered to the person's residence.

ARTICLE 4. LOCAL OPTION ELECTION

SECTION 4.01. Amends Section 251.11, Alcoholic Beverage Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Makes a conforming change.

(c) Requires a petition for a local option election related to the legal sale of wine on the premises of the holder of a winery permit to have the actual signatures, residence addresses, and voter registration certificate numbers of a number of qualified voters of the political subdivision equal to 25 percent of the registered voters in the subdivision who voted in the most recent general election.

SECTION 4.02. Amends Sections 251.14(b), (c), (d), and (e), Alcoholic Beverage Code, as follows:

(b) Adds language relating to the legal sale of wine on the premises of a holder of a winery permit.

(c)-(e) Make conforming changes.

ARTICLE 5. EFFECTIVE DATE

SECTION 5.01. Effective date: September 1, 2001.