

## **BILL ANALYSIS**

Senate Research Center  
83R6067 AJA-F

S.B. 451  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Alcoholic Beverage Code authorizes a Texas winery permit holder to sell and ship wine directly to a Texas consumer; however, there is no requirement that permit holders actually grow and produce the wine to be sold or shipped. At the same time, the code does not allow out-of-state wineries to ship wine directly to Texas consumers if the wine is not blended or produced by the winery, nor does it allow out-of-state retailers to ship wine directly to a consumer in Texas.

This disparate treatment of out-of-state and in-state wineries has been viewed by some as economic protectionism benefiting in-state economic interests by burdening out-of-state competitors. This leaves Texas vulnerable to legal challenges based on allegations that the practice violates the United States Constitution's Commerce Clause, which grants Congress exclusive authority to regulate interstate commerce. Lawsuits such as these can be costly for taxpayers and should be avoided.

In order to make Texas law less vulnerable to legal challenges, S.B. 451 requires the holder of a winery permit to produce or blend wine in sufficient quantities so as to make the winery a bona fide wine producer. Existing winery permit holders must meet the requirements of the bill by September 1, 2016.

As proposed, S.B. 451 amends current law relating to production requirements for holders of winery permits.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 16, Alcoholic Beverage Code, by adding Section 16.012, as follows:

Sec. 16.012. PRODUCTION REQUIREMENTS. (a) Requires the holder of a winery permit to produce or blend wine in sufficient quantities as to make the winery a bona fide manufacturing operation before the third anniversary of the date the winery's original permit is issued.

(a-1) Requires, notwithstanding Subsection (a), the holder of a winery permit issued before September 1, 2013, to produce or blend wine in sufficient quantities as to make the winery a bona fide manufacturing operation before September 1, 2016. Provides that this subsection expires September 1, 2017.

(b) Provides that proof that the winery has sold wine that it has produced or blended, bottled, and labeled is prima facie evidence that the winery is a bona fide manufacturing operation.

(c) Authorizes the winery activities required by this section to be done through an agreement authorized by Section 16.05 (Operating Agreements Between Permit Holders) or through an agreement with another winery in this state for a bottling brand under an Alcohol and Tobacco Tax and Trade Bureau Basic Permit trade name application.

(d) Provides that failure to comply with this section constitutes grounds to cancel or suspend a winery permit or deny an application for renewal of a winery permit.

SECTION 2. Effective date: September 1, 2013.