

BILL ANALYSIS

Senate Research Center

S.B. 1450
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Background

In 2018, Texas Alcoholic Beverage Commission (TABC) worked with digital delivery service companies to obtain various permits in order for these companies to deliver beer, ale, and wine to consumers. TABC has authorized the delivery of alcohol by digital delivery service companies by rule. Currently, there is no clear permitting or certification process for the delivery of alcohol by a digital delivery service company in law.

Bill Analysis

S.B. 1450 creates a consumer delivery permit. A consumer delivery permit holder will be allowed to contract with or employ a person to deliver alcoholic beverages from a retailer to the ultimate consumer. The consumer delivery permit holder must contract with or employ a person who is 21 years of age or older and holds a valid driver's license. The alcoholic beverage can only be delivered to a person who is 21 years of age and has valid proof of identity and age.

S.B. 1450 directs TABC to establish an annual state fee for a consumer delivery permit. TABC will be required to adopt and administer a seller training program for the purpose of training delivery drivers. TABC must also develop and implement a program that allows the holder of a retail permit or a consumer delivery permit to verify, in real time, that the delivery driver has completed the seller training program. (Original Author's/Sponsor's Statement of Intent)

S.B. 1450 amends current law relating to the delivery of alcoholic beverages from certain premises to ultimate consumers; authorizes a fee; and creates an offense.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTION 3 (Sections 57.03 and 57.09, Alcoholic Beverage Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 28.10(a), Alcoholic Beverage Code, to include Section 28.1001 among the sections that create an exception to the prohibition against a mixed beverage permittee selling an alcoholic beverage to another mixed beverage permittee or to any other person except for consumption on the seller's licensed premises.

SECTION 2. Amends Chapter 28, Alcoholic Beverage Code, by adding Section 28.1001, as follows:

Sec. 28.1001. OFF-PREMISES DELIVERY OF ALCOHOLIC BEVERAGES. (a) Authorizes the holder of a mixed beverage permit, notwithstanding any other provision of this code, to deliver, or have delivered by a third party, including an independent contractor acting under Chapter 57, an alcoholic beverage from the permitted premises to an ultimate consumer located off-premises and in an area where the sale of the beverage is legal if:

(1) the holder of the mixed beverage permit holds a food and beverage certificate for the permitted premises;

(2) the delivery of the alcoholic beverage is made as part of the delivery of food prepared at the permitted premises;

(3) the alcoholic beverage is beer, ale, or wine delivered in an original container sealed by the manufacturer or an alcoholic beverage other than beer, ale, or wine, delivered in an original, single-serving container sealed by the manufacturer and not larger than 375 milliliters; and

(4) the delivery is not made to a premises that is permitted or licensed under this code.

(b) Authorizes an alcoholic beverage to be delivered under this section only by a person who is 21 years of age or older.

(c) Authorizes an alcoholic beverage to be delivered under this section only to a person who is 21 years of age or older after the person accepting the delivery presents valid proof of identity and age and:

(1) the person accepting the delivery personally signs a receipt, which may be electronic, acknowledging the delivery; or

(2) the person making the delivery acknowledges the completion of the delivery through a software application.

(d) Provides that this section does not authorize the holder of a brewpub license who also holds a wine and beer retailer's permit to deliver alcoholic beverages directly to ultimate consumers for off-premise consumption at a location other than the licensed premises.

SECTION 3. Amends Subtitle A, Title 3, Alcoholic Beverage Code, by adding Chapter 57, as follows:

CHAPTER 57. CONSUMER DELIVERY PERMIT

Sec. 57.01. AUTHORIZED ACTIVITIES. (a) Authorizes the holder of a consumer delivery permit to contract with or employ a driver for the delivery of an alcoholic beverage from the premises of the holder of a retailer's permit described by Subsection (b) to an ultimate consumer located in an area where the sale of the beverage is legal.

(b) Authorizes an alcoholic beverage to be delivered under this section only if the alcoholic beverage is sold to the ultimate consumer by the holder of a certain permit.

Sec. 57.02. DETERMINATION OF DELIVERY AREA. (a) Requires a person who sells or delivers an alcoholic beverage under Section 57.01, in determining whether the sale of an alcoholic beverage is legal in an area for purposes of that section, to consult a map or other publicly available information produced by the Texas Alcoholic Beverage Commission (TABC) for the purpose of establishing where the sale of alcoholic beverages is legal.

(b) Authorizes the holder of a consumer delivery permit to make deliveries of alcoholic beverages:

(1) only in response to bona fide orders placed by the consumer under Section 57.01; and

(2) only in areas where the sale of the beverages is legal in certain counties, cities, towns, or areas.

(c) Provides that it is a defense to a prosecution alleging that an individual delivered an alcoholic beverage under this chapter to an address located in an area that is dry for the type of beverage delivered that:

(1) the individual or the holder of a consumer delivery permit relied on publicly available information produced by TABC relating to the wet or dry classification of the address; and

(2) the information indicated that the address to which the beverage was delivered was classified as wet for the type of beverage delivered on the date of the delivery.

Sec. 57.03. FEE. Requires TABC by rule to establish the annual state fee for a consumer delivery permit.

Sec. 57.04. ELIGIBILITY FOR PERMIT. Authorizes a consumer delivery permit to be issued to:

(1) a person who contracts with or employs individuals for the delivery of retail goods to consumers, other than the holder of a permit or license in the manufacturing or wholesale tier of the alcoholic beverage industry; or

(2) the holder of a permit or license described by Section 57.01(b).

Sec. 57.05. DELIVERY DRIVER REQUIREMENTS. Prohibits a consumer delivery permit holder under this chapter from contracting with or employing a person to make a delivery under this chapter unless the person is 21 years of age or older and holds a valid driver's license.

Sec. 57.06. DELIVERY OF ALCOHOLIC BEVERAGES TO CONSUMER. (a) Authorizes an alcoholic beverage to be delivered under this chapter only to a person who is 21 years of age or older after the person accepting the delivery presents valid proof of identity and age.

(b) Prohibits an alcoholic beverage from being delivered under this chapter to any person other than the person who purchased the beverage, a recipient designated in advance by the purchaser, or a person at the delivery address who is 21 years of age or older.

(c) Authorizes an alcoholic beverage to be delivered under this chapter outside the hours of operation of the retailer from which the delivery is being made only if the delivery driver receives the beverage from the retailer during the retailer's hours of legal sale and completes the delivery to the consumer in a reasonable amount of time after leaving the retailer's premises.

Sec. 57.07. RETAILER RESPONSIBILITY. (a) Provides that a retailer's responsibilities under this code regarding delivery of an alcoholic beverage to an ultimate consumer are considered satisfied at the time the retailer transfers possession of an alcoholic beverage to the consumer delivery permittee or a delivery driver employed by, contracted with, or acting on behalf of the holder of a consumer delivery permit.

(b) Provides that an action by a consumer delivery permittee or by a delivery driver is not attributable to the retailer with regard to:

(1) providing, selling, or serving alcohol to a minor or to an intoxicated individual;

(2) the delivery of alcohol in a dry or otherwise illegal area, unless the retailer has contractually agreed to retain responsibility for ensuring that deliveries are not directed to a dry or otherwise illegal area; or

(3) any other provision of this code.

(c) Provides that a retailer:

(1) is not required to verify that the consumer delivery permittee or the delivery driver has received delivery driver training under Section 57.09(a)(1); and

(2) is prohibited from being held responsible for any reason under statutory or common law for the actions of a consumer delivery permittee or a delivery driver acting on behalf of a consumer delivery permittee.

Sec. 57.08. RESPONSIBILITY OF HOLDER OF CONSUMER DELIVERY PERMIT.

(a) Provides that the actions of a delivery driver acting on behalf of a holder of a consumer delivery permit are not attributable to a holder of a consumer delivery permit if the permit holder has not directly or indirectly encouraged the delivery driver to violate the law and the delivery driver:

(1) has a valid certification from the training program adopted under Section 57.09(a)(1); or

(2) completed the delivery using an alcohol delivery compliance software application that meets the requirements established under Section 57.09(a)(2).

(b) Authorizes TABC or the administrator appointed by TABC, notwithstanding Subsection (a), if it is found, after notice and hearing, that the permittee, an agent or employee of the permittee, or a person acting on behalf of the permittee delivered with criminal negligence an alcoholic beverage to a minor or an intoxicated person, to:

(1) suspend the permit for not more than 90 days for the first violation;

(2) suspend the permit for not more than six months for the second violation; and

(3) suspend the permit for not more than 12 months for a third violation within a period of 36 consecutive months.

(c) Provides that it is rebuttable presumption that a sale or delivery of an alcoholic beverage to a minor or an intoxicated person was not made with criminal negligence if the delivery driver:

(1) at the time of the delivery held a valid certification from the training program adopted under Section 57.09(a)(1); and

(2) completed the delivery as a result of a technical malfunction of an alcohol delivery compliance software application that otherwise meets the requirements established under Section 57.09(a)(2).

Sec. 57.09. DELIVERY TRAINING PROGRAM AND VERIFICATION SYSTEMS. (a)
Requires TABC by rule to:

(1) adopt and administer an alcohol delivery training program for the purpose of training and certifying delivery drivers contracting with or

employed by the holder of a permit under Section 28.1001 or this chapter;
and

(2) establish minimum requirements for alcohol delivery compliance software applications.

(b) Requires TABC to implement a system that allows the holder of a retail permit or a consumer delivery permit to verify in real time whether a delivery driver has a valid certification from the training program adopted under Subsection (a)(1).

SECTION 4. Amends the heading to Section 101.63, Alcoholic Beverage Code, to read as follows:

Sec. 101.63. SALE OR DELIVERY TO CERTAIN PERSONS.

SECTION 5. Amends Section 101.63, Alcoholic Beverage Code, by adding Subsection (a-1) to provide that a person commits an offense if the person with criminal negligence delivers for commercial purposes an alcoholic beverage to an intoxicated person.

SECTION 6. Requires TABC, not later than September 1, 2020, to adopt rules to implement Section 57.09(a), Alcoholic Beverage Code, as added by this Act.

SECTION 7. Effective date: September 1, 2019.