

By: Schwertner

S.B. No. 757

A BILL TO BE ENTITLED

AN ACT

relating to the delivery and direct shipment of certain alcoholic beverages to ultimate consumers; creating criminal offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 14, Alcoholic Beverage Code, is amended by adding Section 14.09 to read as follows:

Sec. 14.09. DIRECT SHIPMENT TO CONSUMERS. (a) The holder of a distiller's and rectifier's permit may ship to an ultimate consumer, including an ultimate consumer located in a dry area, distilled spirits sold by the permit holder to the ultimate consumer under Section 14.05. Delivery must be by the holder of a carrier or consumer delivery permit.

(b) All distilled spirits shipped to an ultimate consumer by the holder of a distiller's and rectifier's permit must be in a package that is clearly and conspicuously labeled showing that:

(1) the package contains distilled spirits; and

(2) the package may be delivered only to a person described by Subsection (c).

(c) Distilled spirits shipped by the holder of a distiller's and rectifier's permit may not be delivered to any person other than:

(1) the person who purchased the distilled spirits;

(2) a recipient designated in advance by the purchaser; or

1 (3) a person at the delivery address who is 21 years of
2 age or older.

3 (d) Distilled spirits may be delivered only to a person who
4 is 21 years of age or older and only after the person accepting the
5 package:

6 (1) presents valid proof of identity and age; and

7 (2) personally signs a receipt acknowledging delivery
8 of the package.

9 (e) The holder of a distiller's and rectifier's permit may
10 not:

11 (1) sell or ship distilled spirits to a minor;

12 (2) deliver distilled spirits to a consumer using a
13 carrier that does not hold a carrier's permit or a consumer delivery
14 permit under this code; or

15 (3) deliver to a consumer in this state more than the
16 amount of distilled spirits allowed to be sold to the consumer under
17 Section 14.05(c).

18 SECTION 2. Section 16.09(a), Alcoholic Beverage Code, is
19 amended to read as follows:

20 (a) The holder of a winery permit may ship wine to the
21 ultimate consumer, including ultimate consumers located in dry
22 areas. Delivery must be by the holder of a carrier or consumer
23 delivery permit.

24 SECTION 3. Section 41.01, Alcoholic Beverage Code, is
25 amended to read as follows:

26 Sec. 41.01. AUTHORIZED ACTIVITIES. (a) The holder of a
27 carrier permit may transport malt beverages and liquor into and out

1 of this state and between points within the state.

2 (b) The holder may transport malt beverages and liquor from
3 one wet area to another wet area across a dry area if that course of
4 transportation is necessary or convenient.

5 (c) The holder of a carrier permit who transports malt
6 beverages or liquor to the premises of a wholesaler, including to a
7 location from which the wholesaler is temporarily conducting
8 business under Section 109.62, shall provide to the consignee a
9 shipping invoice that clearly states:

10 (1) the name and address of the consignor and
11 consignee;

12 (2) the origin and destination of the shipment; and

13 (3) any other information required by this code or
14 commission rule, including the brands, sizes of containers, types,
15 and quantities of malt beverages and liquor contained in the
16 shipment.

17 SECTION 4. Section 41.04, Alcoholic Beverage Code, is
18 amended to read as follows:

19 Sec. 41.04. REQUIRED INFORMATION. The holder of a carrier
20 permit shall furnish information required by the commission
21 concerning the transportation of malt beverages and liquor.

22 SECTION 5. Subtitle A, Title 3, Alcoholic Beverage Code, is
23 amended by adding Chapter 54A to read as follows:

24 CHAPTER 54A. OUT-OF-STATE DISTILLERY DIRECT SHIPPER'S PERMIT

25 Sec. 54A.01. AUTHORIZED ACTIVITIES. The holder of an
26 out-of-state distillery direct shipper's permit may sell and
27 deliver distilled spirits that are produced or bottled by the

1 permittee to an ultimate consumer located in the State of Texas.

2 Delivery must be by the holder of a carrier permit.

3 Sec. 54A.02. PROHIBITED ACTIVITIES. The holder of an
4 out-of-state distillery direct shipper's permit may not:

5 (1) sell or ship distilled spirits to a minor;

6 (2) deliver distilled spirits to a consumer using a
7 carrier that does not hold a carrier's permit under this code;

8 (3) deliver distilled spirits within a 30-day period
9 to the same consumer in this state in an amount that exceeds the
10 individual authorization under Section 14.05(c); or

11 (4) sell distilled spirits to ultimate consumers for
12 off-premises consumption in an annual amount that exceeds the
13 annual authorization under Section 14.05(b).

14 Sec. 54A.03. QUALIFICATIONS FOR PERMIT. An out-of-state
15 distillery direct shipper's permit may only be issued to a person
16 who:

17 (1) does not hold a distiller's and rectifier's permit
18 in the State of Texas;

19 (2) operates a distillery located in the United States
20 and holds all state and federal permits necessary to operate the
21 distillery;

22 (3) holds a Texas sales tax permit;

23 (4) expressly submits to personal jurisdiction in
24 Texas state and federal courts and expressly submits to venue in
25 Travis County, Texas, as proper venue for any proceedings that may
26 be initiated by or against the commission; and

27 (5) does not directly or indirectly have any financial

1 interest in a Texas wholesaler or retailer as those terms are used
2 in Section 102.01.

3 Sec. 54A.04. IDENTIFICATION REQUIREMENTS. (a) All
4 distilled spirits sold or shipped by the holder of an out-of-state
5 distillery direct shipper's permit must be in a package that is
6 clearly and conspicuously labeled showing that:

- 7 (1) the package contains distilled spirits; and
8 (2) the package may only be delivered to a person
9 described by Subsection (b).

10 (b) Distilled spirits sold or shipped by a holder of an
11 out-of-state distillery direct shipper's permit may not be
12 delivered to any person other than:

- 13 (1) the person who purchased the distilled spirits;
14 (2) a recipient designated in advance by the
15 purchaser; or
16 (3) a person at the delivery address who is 21 years of
17 age or older.

18 (c) Distilled spirits may be delivered only to a person who
19 is 21 years of age or older and only after the person accepting the
20 package:

- 21 (1) presents valid proof of identity and age; and
22 (2) personally signs a receipt acknowledging delivery
23 of the package.

24 Sec. 54A.05. REPORTS AND RECORDKEEPING. (a) The holder of
25 an out-of-state distillery direct shipper's permit shall maintain
26 records of all sales and deliveries made under the permit.

27 (b) The holder of an out-of-state distillery direct

1 shipper's permit shall maintain complete sales and delivery records
2 for all sales and deliveries made under the permit for at least five
3 years from the date of sale. These records shall be made available
4 on request for inspection by the commission or any other
5 appropriate state agency.

6 (c) The commission shall establish rules requiring the
7 holder of an out-of-state distillery direct shipper's permit to
8 periodically file reports providing the commission with such
9 information as the commission may determine is needed to more
10 efficiently and effectively enforce the state laws applicable to
11 the permit holder.

12 Sec. 54A.06. LIABILITY FOR AND PAYMENT OF TAXES. (a) Sales
13 made by the holder of an out-of-state distillery direct shipper's
14 permit shall be considered to have been made in the State of Texas
15 for delivery in the State of Texas.

16 (b) The holder of an out-of-state distillery direct
17 shipper's permit shall be responsible for paying the following
18 state taxes related to sales and deliveries made under this
19 chapter:

20 (1) excise taxes on the distilled spirits sold,
21 payable at the same rate and in the same manner as if the permittee
22 were a Texas distiller or rectifier located in Texas; and

23 (2) state sales and use taxes all payable at the same
24 rate and in the same manner as if the permittee were a Texas
25 distiller or rectifier located in Texas.

26 (c) An ultimate consumer who purchases distilled spirits
27 from the holder of an out-of-state distillery direct shipper's

1 permit under this chapter shall be considered to be purchasing the
2 distilled spirits from a Texas permittee and shall not be charged
3 the administrative fee for personal imports set forth in Section
4 107.07.

5 Sec. 54A.07. RESALE PROHIBITED. A consumer purchasing
6 distilled spirits from the holder of an out-of-state distillery
7 direct shipper's permit may not resell the distilled spirits, and
8 any such distilled spirit that is resold is an illicit beverage.

9 Sec. 54A.08. DELIVERY AREAS. Distilled spirits shipped
10 under this chapter may be delivered to persons located in a dry
11 area.

12 Sec. 54A.09. LABEL APPROVAL NOT REQUIRED. If the holder of
13 an out-of-state distillery direct shipper's permit has satisfied
14 all federal label approval requirements for a particular brand of
15 distilled spirits, then no further label approval shall be required
16 by the commission.

17 Sec. 54A.10. RULES. The commission shall adopt rules and
18 forms necessary to implement this chapter.

19 Sec. 54A.11. PENALTY FOR SHIPPING WITHOUT PERMIT. Any
20 person who does not hold an out-of-state distillery direct
21 shipper's permit who sells and ships alcohol from outside of Texas
22 to an ultimate consumer in Texas commits on first offense a Class B
23 misdemeanor, on second offense a Class A misdemeanor, and on third
24 offense a state jail felony.

25 SECTION 6. Section 57.01, Alcoholic Beverage Code, as added
26 by Chapter 441 (S.B. 1450), Acts of the 86th Legislature, Regular
27 Session, 2019, is amended to read as follows:

1 Sec. 57.01. AUTHORIZED ACTIVITIES. (a) The holder of a
2 consumer delivery permit may contract with or employ a driver for
3 the delivery of an alcoholic beverage from the premises of the
4 holder of a retailer's or manufacturer's permit or license
5 described by Subsection (b) to an ultimate consumer located in an
6 area where the sale of the beverage is legal.

7 (b) An alcoholic beverage may be delivered under this
8 section only if the alcoholic beverage is sold to the ultimate
9 consumer by the holder of a:

- 10 (1) package store permit;
- 11 (2) wine only package store permit;
- 12 (3) wine and beer retailer's permit;
- 13 (4) wine and beer retailer's off-premise permit;
- 14 (5) retail dealer's on-premise license;
- 15 (6) retail dealer's off-premise license; [~~or~~]
- 16 (7) mixed beverage permit authorized to deliver
17 alcoholic beverages under Section 28.1001;
- 18 (8) distiller's and rectifier's permit;
- 19 (9) winery permit; or
- 20 (10) brewer's license.

21 SECTION 7. Section 57.02(b), Alcoholic Beverage Code, as
22 added by Chapter 441 (S.B. 1450), Acts of the 86th Legislature,
23 Regular Session, 2019, is amended to read as follows:

24 (b) The holder of a consumer delivery permit may make
25 deliveries of alcoholic beverages:

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

1 (2) only in areas where the sale of the beverages is
2 legal in:

3 (A) the county in which the premises of the
4 retailer or manufacturer making the sale is located;

5 (B) the city or town in which the premises of the
6 retailer or manufacturer making the sale is located, if the
7 retailer or manufacturer is located in a city or town; or

8 (C) an area not further than two miles beyond the
9 municipal boundary of the city or town in which the premises of the
10 retailer or manufacturer is located, if applicable.

11 SECTION 8. Section 57.04, Alcoholic Beverage Code, as added
12 by Chapter 441 (S.B. 1450), Acts of the 86th Legislature, Regular
13 Session, 2019, is amended to read as follows:

14 Sec. 57.04. ELIGIBILITY FOR PERMIT. A consumer delivery
15 permit may be issued to:

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

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

22 SECTION 9. Section 57.06(c), Alcoholic Beverage Code, as
23 added by Chapter 441 (S.B. 1450), Acts of the 86th Legislature,
24 Regular Session, 2019, is amended to read as follows:

25 (c) An alcoholic beverage may be delivered under this
26 chapter outside the hours of operation of the retailer or
27 manufacturer from which the delivery is being made only if the

1 delivery driver:

2 (1) receives the beverage from the retailer or
3 manufacturer during the retailer's or manufacturer's hours of legal
4 sale; and

5 (2) completes the delivery to the consumer in a
6 reasonable amount of time after leaving the retailer's or
7 manufacturer's premises.

8 SECTION 10. Section 57.07, Alcoholic Beverage Code, as
9 added by Chapter 441 (S.B. 1450), Acts of the 86th Legislature,
10 Regular Session, 2019, is amended to read as follows:

11 Sec. 57.07. RETAILER AND MANUFACTURER RESPONSIBILITY. (a)
12 A retailer's or manufacturer's responsibilities under this code
13 regarding delivery of an alcoholic beverage to an ultimate consumer
14 are considered satisfied at the time the retailer or manufacturer
15 transfers possession of an alcoholic beverage to the consumer
16 delivery permittee or a delivery driver employed by, contracted
17 with, or acting on behalf of the holder of a consumer delivery
18 permit.

19 (b) An action by a consumer delivery permittee or by a
20 delivery driver is not attributable to the retailer or manufacturer
21 with regard to:

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

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

1 (3) any other provision of this code.

2 (c) A retailer or manufacturer:

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

6 (2) may not be held responsible for any reason under
7 statutory or common law for the actions of a consumer delivery
8 permittee or a delivery driver acting on behalf of a consumer
9 delivery permittee.

10 SECTION 11. Chapter 62, Alcoholic Beverage Code, as
11 effective September 1, 2021, is amended by adding Section 62.123 to
12 read as follows:

13 Sec. 62.123. DIRECT SHIPMENT TO CONSUMERS. (a) The holder
14 of a brewer's license may ship to an ultimate consumer, including an
15 ultimate consumer located in a dry area, malt beverages sold by the
16 license holder to the ultimate consumer under Section 62.122(a)(2).
17 Delivery must be by the holder of a carrier or consumer delivery
18 permit.

19 (b) All malt beverages shipped to an ultimate consumer by
20 the holder of a brewer's license must be in a package that is
21 clearly and conspicuously labeled showing that:

22 (1) the package contains malt beverages; and

23 (2) the package may be delivered only to a person
24 described by Subsection (c).

25 (c) Malt beverages shipped by the holder of a brewer's
26 license may not be delivered to any person other than:

27 (1) the person who purchased the malt beverages;

1 (2) a recipient designated in advance by the
2 purchaser; or

3 (3) a person at the delivery address who is 21 years of
4 age or older.

5 (d) Malt beverages may be delivered only to a person who is
6 21 years of age or older and only after the person accepting the
7 package:

8 (1) presents valid proof of identity and age; and

9 (2) personally signs a receipt acknowledging delivery
10 of the package.

11 (e) The holder of a brewer's license may not:

12 (1) sell or ship malt beverages to a minor;

13 (2) deliver malt beverages to a consumer using a
14 carrier that does not hold a carrier's permit or a consumer delivery
15 permit under this code; or

16 (3) deliver to the same consumer in this state more
17 than 288 fluid ounces of malt beverages per calendar day.

18 SECTION 12. Subtitle B, Title 3, Alcoholic Beverage Code,
19 is amended by adding Chapter 63A to read as follows:

20 CHAPTER 63A. OUT-OF-STATE BREWERY DIRECT SHIPPER'S LICENSE

21 Sec. 63A.01. AUTHORIZED ACTIVITIES. The holder of an
22 out-of-state brewery direct shipper's license may sell and deliver
23 malt beverages that are produced or bottled by the licensee to an
24 ultimate consumer located in the State of Texas. Delivery must be
25 by the holder of a carrier permit.

26 Sec. 63A.02. PROHIBITED ACTIVITIES. The holder of an
27 out-of-state brewery direct shipper's license may not:

1 (1) sell or ship malt beverages to a minor;

2 (2) deliver malt beverages to a consumer using a
3 carrier that does not hold a carrier's permit under this code;

4 (3) deliver malt beverages to the same consumer in the
5 same calendar day in an amount that exceeds the daily authorization
6 under Section 62.122(a-1); or

7 (4) sell malt beverages to ultimate consumers in this
8 state in an annual amount that exceeds the annual authorization
9 under Section 62.122(b).

10 Sec. 63A.03. QUALIFICATIONS FOR LICENSE. An out-of-state
11 brewery direct shipper's license may only be issued to a person who:

12 (1) does not hold a brewer's license in the State of
13 Texas;

14 (2) operates a brewery located in the United States
15 and holds all state and federal permits necessary to operate the
16 brewery;

17 (3) holds a Texas sales tax permit;

18 (4) expressly submits to personal jurisdiction in
19 Texas state and federal courts and expressly submits to venue in
20 Travis County, Texas, as proper venue for any proceedings that may
21 be initiated by or against the commission; and

22 (5) does not directly or indirectly have any financial
23 interest in a Texas wholesaler or retailer as those terms are used
24 in Section 102.01.

25 Sec. 63A.04. IDENTIFICATION REQUIREMENTS. (a) All malt
26 beverages sold or shipped by the holder of an out-of-state brewery
27 direct shipper's license must be in a package that is clearly and

1 conspicuously labeled showing that:

2 (1) the package contains malt beverages; and

3 (2) the package may only be delivered to a person
4 described by Subsection (b).

5 (b) Malt beverages sold or shipped by a holder of an
6 out-of-state brewery direct shipper's license may not be delivered
7 to any person other than:

8 (1) the person who purchased the malt beverages;

9 (2) a recipient designated in advance by the
10 purchaser; or

11 (3) a person at the delivery address who is 21 years of
12 age or older.

13 (c) Malt beverages may be delivered only to a person who is
14 21 years of age or older and only after the person accepting the
15 package:

16 (1) presents valid proof of identity and age; and

17 (2) personally signs a receipt acknowledging delivery
18 of the package.

19 Sec. 63A.05. REPORTS AND RECORDKEEPING. (a) The holder of
20 an out-of-state brewery direct shipper's license shall maintain
21 records of all sales and deliveries made under the license.

22 (b) The holder of an out-of-state brewery direct shipper's
23 license shall maintain complete sales and delivery records for all
24 sales and deliveries made under the license for at least five years
25 from the date of sale. These records shall be made available on
26 request for inspection by the commission or any other appropriate
27 state agency.

1 (c) The commission shall establish rules requiring the
2 holder of an out-of-state brewery direct shipper's license to
3 periodically file reports providing the commission with such
4 information as the commission may determine is needed to more
5 efficiently and effectively enforce the state laws applicable to
6 the license holder.

7 Sec. 63A.06. LIABILITY FOR AND PAYMENT OF TAXES. (a) Sales
8 made by the holder of an out-of-state brewery direct shipper's
9 license shall be considered to have been made in the State of Texas
10 for delivery in the State of Texas.

11 (b) The holder of an out-of-state brewery direct shipper's
12 license shall be responsible for paying the following state taxes
13 related to sales and deliveries made under this chapter:

14 (1) excise taxes on the malt beverages sold, payable
15 at the same rate and in the same manner as if the licensee were a
16 Texas brewer located in Texas; and

17 (2) state sales and use taxes all payable at the same
18 rate and in the same manner as if the licensee were a Texas brewer
19 located in Texas.

20 (c) An ultimate consumer who purchases malt beverages from
21 the holder of an out-of-state brewery direct shipper's license
22 under this chapter shall be considered to be purchasing the malt
23 beverages from a Texas licensee and shall not be charged the
24 administrative fee for personal imports set forth in Section
25 107.07.

26 Sec. 63A.07. RESALE PROHIBITED. A consumer purchasing malt
27 beverages from the holder of an out-of-state brewery direct

1 shipper's license may not resell the malt beverages, and any such
2 malt beverage that is resold is an illicit beverage.

3 Sec. 63A.08. DELIVERY AREAS. Malt beverages shipped under
4 this chapter may be delivered to persons located in a dry area.

5 Sec. 63A.09. LABEL APPROVAL NOT REQUIRED. If the holder of
6 an out-of-state brewery direct shipper's license has satisfied all
7 federal label approval requirements for a particular brand of malt
8 beverages, then no further label approval shall be required by the
9 commission.

10 Sec. 63A.10. RULES. The commission shall adopt rules and
11 forms necessary to implement this chapter.

12 Sec. 63A.11. PENALTY FOR SHIPPING WITHOUT LICENSE. Any
13 person who does not hold an out-of-state brewery direct shipper's
14 license who sells and ships alcohol from outside of Texas to an
15 ultimate consumer in Texas commits on first offense a Class B
16 misdemeanor, on second offense a Class A misdemeanor, and on third
17 offense a state jail felony.

18 SECTION 13. Chapter 74, Alcoholic Beverage Code, is amended
19 by adding Section 74.12 to read as follows:

20 Sec. 74.12. DIRECT SHIPMENT TO CONSUMERS. (a) The holder
21 of a brewpub license may ship to an ultimate consumer, including an
22 ultimate consumer located in a dry area, malt beverages sold by the
23 license holder to the ultimate consumer under Section 74.01(a)(2).
24 Delivery must be by the holder of a carrier or consumer delivery
25 permit.

26 (b) All malt beverages shipped to an ultimate consumer by
27 the holder of a brewpub license must be in a package that is clearly

1 and conspicuously labeled showing that:

2 (1) the package contains malt beverages; and

3 (2) the package may be delivered only to a person
4 described by Subsection (c).

5 (c) Malt beverages shipped by the holder of a brewpub
6 license may not be delivered to any person other than:

7 (1) the person who purchased the malt beverages;

8 (2) a recipient designated in advance by the
9 purchaser; or

10 (3) a person at the delivery address who is 21 years of
11 age or older.

12 (d) Malt beverages may be delivered only to a person who is
13 21 years of age or older and only after the person accepting the
14 package:

15 (1) presents valid proof of identity and age; and

16 (2) personally signs a receipt acknowledging delivery
17 of the package.

18 (e) The holder of a brewpub license may not:

19 (1) sell or ship malt beverages to a minor; or

20 (2) deliver malt beverages to a consumer using a
21 carrier that does not hold a carrier's permit or a consumer delivery
22 permit under this code.

23 SECTION 14. Section 107.05(b), Alcoholic Beverage Code, is
24 amended to read as follows:

25 (b) This section does not apply to the transportation of
26 liquor into the state as authorized by Chapter 54A or Section 107.07
27 [of this code].

1 SECTION 15. Section [14.05\(d\)](#), Alcoholic Beverage Code, is
2 repealed.

3 SECTION 16. This Act takes effect September 1, 2021.