

By: Patterson

H.B. No. 3339

A BILL TO BE ENTITLED

AN ACT

relating to the sale and regulation of alcoholic beverages by certain retailers.

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

SECTION 1. The Alcoholic Beverage Code is amended by adding Chapter 27 as follows:

Sec. 27.01. AUTHORIZED ACTIVITIES. The holder of a liquor and malt beverage retailer's permit may:

(1) purchase liquor in this state from the holder of a winery, wholesaler's, or class B wholesaler's permit;

(2) purchase malt beverages in this state from the holder of a general or branch distributor's license;

(3) sell liquor and malt beverages in unbroken original containers on or from the holder's licensed premises at retail to consumers for off-premises consumption only and not for the purpose of resale;

(4) sell vinous liquors in original containers of not less than six ounces; and

(5) sell wine and malt liquors on the permitted premises in a separate location from liquor, in the same manner provided in Section 105.05.

Sec. 27.03. DELIVERIES TO CUSTOMERS. (a) The holder of a liquor and malt beverage retailer's permit issued for a location within a city or town or within two miles of the corporate limits of

a city or town may make deliveries of and collections for alcoholic beverages off the premises in areas where the sale of the beverages is legal. The permittee must travel by the most direct route and may make deliveries and collections only within the county or the city or town or within two miles of its corporate limits, and only in response to bona fide orders placed by the customer, either in person at the premises, in writing, by mail, or by telegraph or telephone. This section shall not be construed as preventing a holder of a liquor and malt beverage retailer's permit from delivering alcoholic beverages to the holder of a carrier's permit for transportation to persons who have placed bona fide orders and who are located in an area that the holder of a liquor and malt beverage retailer's permit is authorized to directly deliver to under this section. The holder of a liquor and malt beverage retailer's permit may also deliver alcoholic beverages to the holder of a carrier's permit for transportation outside of this state in response to bona fide orders placed by persons authorized to purchase the beverages.

Sec. 27.04. LIMITATION ON PERMITTED STORE INTERESTS. (a) A person may not hold or have an interest, directly or indirectly, in more than 250 liquor and malt beverage retailer's permitted stores or in their business or permit.

(b) For the purpose of this section:

(1) a person has an interest in any permit in which his spouse has an interest; and

(2) as to a corporate permittee, the stockholders, managers, officers, agents, servants, and employees of the

corporation have an interest in the permit, business, and stores of the corporation.

(c) Except as provided by Sections 22.041 and 22.042, the commission may not issue more than 15 original liquor and malt beverage retailer's permits to a person in a calendar year.

Sec. 27.041. ACQUISITION OF EXISTING PERMIT. (a) The commission may issue an original liquor and malt beverage retailer's permit to a person for an existing liquor and malt beverage retailer's permit business if:

(1) the person acquired by purchase or otherwise the existing liquor and malt beverage retailer's permit business, or other permit type which may be reclassified to a liquor and malt beverage retailer's permit; and

(2) the existing liquor and malt beverage retailer's permit business has been operating in the same county for more than one year before the date the person acquired the liquor and malt beverage retailer's permitted business, regardless of which license type it has previously operated under.

(b) A liquor and malt beverage retailer's permit issued under this section is not subject to the permit limit under Section 27.04(c).

Sec. 27.042. RECLASSIFICATION OF EXISTING PERMITS. (a) Subject to Section 27.04(a), an existing permit holder of a

(1) Wine and Malt Beverage Retailer's Permit

(2) Wine and Malt Beverage Retailer's Off-Premise Permit, or

(3) Wine Only Package Store Permit

1 may reclassify their existing permit to a liquor and malt beverage  
2 retailer's permit.

3 (b) A Permit issued under this section is not subject to the  
4 permit limit under Section 27.04(c).

5 Sec. 27.05. TRANSFER OF PERMITS. The holder of a liquor and  
6 malt beverage retailer's permit may not transfer the permit to  
7 another county.

8 Sec. 27.06. PROHIBITED INTERESTS. (a) No person who holds  
9 a liquor and malt beverage retailer's permit or owns an interest in  
10 a liquor and malt beverage retailer's permitted store may have a  
11 direct or indirect interest in any of the following:

12 (1) a brewer's, retail dealer's on-premise, or general  
13 or branch distributor's license;

14 (2) a local distributors permit or package store  
15 permit; or

16 (3) the business of any of the permits or licenses  
17 listed in Subdivisions (1) and (2) of this subsection.

18 Sec. 27.08. TRANSFER OF BEVERAGES. (a) The owner of more  
19 than one liquor and malt beverage retailer's permitted store may  
20 transfer alcoholic beverages between any of the owner's licensed  
21 premises in the same county between the hours of 7 a.m. and 9 p.m. on  
22 any day when the sale of those beverages is legal, subject to rules  
23 prescribed by the commission.

24 (b) The holder of a liquor and malt beverage retailer's  
25 permit may not transport alcoholic beverages under Subsection (a)  
26 unless:

27 (1) the permit holder provides the commission with a

1 description, as required by the commission, of each motor vehicle  
2 used by the permit holder to transport alcoholic beverages; and

3 (2) each motor vehicle is plainly marked or lettered  
4 to indicate that it is being used by the permit holder to transport  
5 alcoholic beverages.

6 (c) When transporting alcoholic beverages under this  
7 section, the holder of a liquor and malt beverage retailer's permit  
8 may not violate the motor carrier laws of this state.

9 Sec. 27.10. OPENING CONTAINERS PROHIBITED. Except as  
10 authorized under Section 14.07, 22.18, or 37.01(d), a person may  
11 not break or open a container containing liquor or a malt beverage  
12 or possess an opened container of liquor or a malt beverage on the  
13 premises of a liquor and malt beverage retailer's permitted store.

14 Sec. 27.11. CONSUMPTION ON PREMISES PROHIBITED. Except as  
15 authorized under Section 14.07, 27.18, or 37.01(d), a person may  
16 not sell, barter, exchange, deliver, or give away any drink or  
17 drinks of alcoholic beverages from a container that has been opened  
18 or broken on the premises of a liquor and malt beverage retailer's  
19 permitted store.

20 Sec. 27.12. BREACH OF PEACE. The commission or  
21 administrator may suspend or cancel a liquor and malt beverage  
22 retailer's permit after giving the permittee notice and the  
23 opportunity to show compliance with all requirements of law for the  
24 retention of the permit if it finds that a breach of the peace has  
25 occurred on the licensed premises or on premises under the control  
26 of the permittee and that the breach of the peace was not beyond the  
27 control of the permittee and resulted from his improper supervision

1 of persons permitted to be on the licensed premises or on premises  
2 under his control.

3 Sec. 27.13. AGE OF EMPLOYEES. (a) A liquor and malt  
4 beverage retailer's permittee may not knowingly utilize or employ  
5 any person under the age of 21 to work on the premises of a liquor  
6 and malt beverage retailer's permitted store, in the separate  
7 premises selling liquor, any capacity or to deliver liquor off the  
8 premises of liquor and malt beverage retailer's permitted store.

9 (c) This section shall not apply to a person who is employed  
10 by the person's parent or legal guardian to work in a liquor and  
11 malt beverage retailer's permitted store that is owned by the  
12 parent or legal guardian.

13 Sec. 27.14. SEPARATE PREMISES REQUIRED. (a) The premises  
14 of a liquor and malt beverage retailer's permitted store shall be  
15 completely separated from the premises of other businesses by a  
16 solid, opaque wall from floor to ceiling, without connecting doors,  
17 shared bathroom facilities, or shared entry foyers.

18 (b) A liquor and malt beverage retailer's permitted store  
19 may have a separate space on the same premises in which it can sell  
20 malt beverages and wine under the rules applicable to a Wine and  
21 Malt Beverage Retailer's Permit or Wine and Malt Beverage  
22 Retailer's Off-Premise Permit.

23 (c) The premises of a liquor and malt beverage retailer's  
24 permitted store shall have a front door through which the public may  
25 enter which opens onto a street, parking lot, public sidewalk, or  
26 the public area of a mall or shopping center.

27 (d) The premises of a liquor and malt beverage retailer's

permitted store shall include:

(1) a rear or side entrance which opens onto a street, parking lot, public sidewalk, or the public area or common area of a mall or shopping center, which may be used for receipt and processing of merchandise but which shall in any event serve as an emergency exit from the premises; and

(2) a bathroom which complies with Title III of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Section 12101 et seq.).

(e) The holder of a liquor and malt beverage retailer's permit may sell nonalcoholic products and may conduct other lawful business on the premises of a liquor and malt beverage retailer's permitted store, but the premises containing liquor must be closed to entry by the general public during all hours in which the sale of liquor by a liquor and malt beverage retailer's permitted store is prohibited by law. For purposes of this subsection, "the general public" shall mean retail customers and shall not include vendors, service personnel, and other persons entering the premises for purposes other than the purchase of goods sold on the premises.

(f) A liquor and malt beverage retailer's permit may not be issued to an applicant for a premises consisting of less than 75,000 square feet, inclusive of the separate liquor premises and the other enclosed areas of the permitted premises.

Sec. 27.15. CONDUCTING SEPARATE BUSINESSES AS A COMMON OPERATION. (a) No liquor and malt beverage retailer's permittee, except for permittees wholly owned by the same persons, may conduct business in a manner so as to directly or indirectly coordinate

operations with another liquor and malt beverage retailer's permitted store as if they shared common ownership. For purposes of this section, "coordinate operations as if they shared common ownership" includes engaging in any of the following practices:

(1) cooperatively setting prices or credit policies or allowing any third party to do so on their behalf;

(2) sharing advertising;

(3) utilizing the same trade name, trademark, or slogan as another wine, malt beverage, and distilled spirits permittee in the same county;

(4) sharing or utilizing the same bookkeeping or computer-processing service, unless the bookkeeping or computer-processing service is in the business of providing such services to the general public;

(5) transferring funds, merchandise, or equipment from one wine, malt beverage, and distilled spirits permitted business to another;

(6) utilizing the same person as an employee or independent contractor for two or more liquor and malt beverage retailer's permitted store businesses in any capacity, unless, in the case of an independent contractor, the independent contractor is in the business of providing similar services to the general public; and

(7) negotiating, or allowing a third party to negotiate, quantity discounts for alcoholic beverages to be purchased by the liquor and malt beverage retailer's permitted store business utilizing the sales volume of another liquor and



1 malt beverage retailer's permitted store business to increase the  
2 discount.

3 (b) The prohibition set forth in Subsection (a)(3)  
4 regarding trade names, trademarks, and slogans shall not prevent  
5 any liquor and malt beverage retailer's permittee business from  
6 utilizing a trade name, trademark, or slogan which the business was  
7 using on September 1, 2023.

8 (c) Before the commission may renew a liquor and malt  
9 beverage retailer's permit, an individual who is an owner or  
10 officer of the permittee must file with the commission a sworn  
11 affidavit stating that the permittee fully complies with the  
12 requirements of this section.

13 (d) Any liquor and malt beverage retailer's permittee who is  
14 injured in his business or property by liquor and malt beverage  
15 retailer's permittee by reason of anything prohibited in this  
16 section may institute suit in any district court in the county where  
17 the violation is alleged to have occurred to require enforcement by  
18 injunctive procedures and to recover triple damages plus costs of  
19 suit including reasonable attorney's fees.

20 Sec. 27.16. OWNERSHIP BY PUBLIC CORPORATIONS. (a) A liquor  
21 and malt beverage retailer's permit may be owned or held by a public  
22 corporation, or by any entity which is directly or indirectly owned  
23 or controlled, in whole or in part, by a public corporation, or by  
24 any entity which would hold the liquor and malt beverage retailer's  
25 permit for the benefit of a public corporation.

26 Sec. 27.17. SALE TO CUSTOMER IN STORE AT CLOSING.  
27 Notwithstanding any other provision of this code, if a customer has

1 entered a liquor and malt beverage retailer's permitted store  
2 during hours in which the store may sell alcohol and is still in the  
3 store at the time the hours of legal sale end, the permittee may  
4 allow the customer to remain in the store for a reasonable amount of  
5 time to finish shopping, and the permittee may sell an alcoholic  
6 beverage to that customer even though the sale occurs after the  
7 designated end of the hours of legal sale.

8 Sec. 27.18. TASTINGS. (a) The holder of a liquor and malt  
9 beverage retailer's permit may conduct product tastings of  
10 distilled spirits, wine, malt beverages, or spirit-based coolers on  
11 the permitted premises during regular business hours as provided by  
12 this section.

13 (b) Written notification of a product tasting must be posted  
14 on the premises of the liquor and malt beverage retailer's  
15 permitted store permit holder not later than 48 hours before the  
16 tasting event. The notification shall clearly state:

17 (1) the type and brand of alcoholic beverage to be  
18 tasted;

19 (2) the date and hours the tasting is to take place;  
20 and

21 (3) the address of the premises where the tasting is to  
22 occur.

23 (c) A copy of the notification shall be kept on file and  
24 available for inspection on the premises during all tasting hours.

25 (d) Sample portions at a product tasting shall be limited to  
26 not more than:

27 (1) one-half ounce for distilled spirits;

1           (2) one ounce for wine; and

2           (3) one ounce for malt beverages and coolers.

3           (e) Not more than 20 different products may be made  
4 available for tasting at any one time.

5           (f) No charge of any sort may be made for a sample serving.

6           (g) A person may be served more than one sample. Samples may  
7 not be served to a minor or to an obviously intoxicated person. A  
8 sample may not be removed from the permitted premises.

9           (h) During the tasting, not more than two containers of each  
10 brand or type of product being tasted may be open on the premises at  
11 one time.

12           (i) At the conclusion of the tasting, all empty or open  
13 containers of alcoholic beverages used in the tasting shall be  
14 removed from the premises or stored in a locked, secure area on the  
15 permitted premises.

16           (j) A tasting event authorized by this section may not be  
17 advertised except by on-site communications, by direct mail, by  
18 electronic mail, or on the permit holder's Internet website.

19           (k) Except as provided by Subsection (l) or elsewhere in  
20 this code, a person other than the liquor and malt beverage  
21 retailer's permittee or the permittee's agent or employee may not  
22 dispense or participate in the dispensing of alcoholic beverages  
23 under this section.

24           (l) The holder of a distiller's or rectifier's permit or  
25 nonresident seller's permit or that permit holder's agent or  
26 employee may participate in and conduct product tastings of  
27 alcoholic beverages at a retailer's premises and may open, touch,

1 or pour alcoholic beverages, make a presentation, or answer  
2 questions at the tasting. Any alcoholic beverage tasted under this  
3 subsection must be purchased from the liquor and malt beverage  
4 retailer's permit holder on whose premises the tasting is held. The  
5 permit holder may not require the purchase of more alcoholic  
6 beverages than are necessary for the tasting. This section does not  
7 authorize the holder of a distiller's or rectifier's permit or  
8 nonresident seller's permit or that permit holder's agent or  
9 employee to withdraw or purchase an alcoholic beverage from the  
10 holder of a wholesaler's permit or provide an alcoholic beverage  
11 for tasting on a retailer's premises that is not purchased from the  
12 retailer.

13 (m) For the purposes of this code and any other law or  
14 ordinance, a liquor and malt beverage retailer's permit does not  
15 authorize the sale of alcoholic beverages for on-premise  
16 consumption within the portion of the premises selling liquor.

17 SECTION 2. This Act takes effect September 1, 2023.