

## **BILL ANALYSIS**

S.B. 877  
By: Madla  
Licensing & Administrative Procedures  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

In August of 2002, a ruling on *Dickerson v. Bailey*, 212 F. Supp.2d 673,695 (S.D. Tex. 2002) found that Texas' ban on direct shipment of wine from other states was unconstitutional. On July 26, 2003, the Fifth Circuit Court of Appeals upheld the ruling. Under the court's opinion, the State of Texas is currently enjoined from enforcing these laws which, effectively, allow Texas consumers to order wine from out-of-state suppliers and to have that wine shipped directly to them with only basic limitations restricting the sale to minors and restricting deliveries in dry areas. Conversely, Section 110.053, Alcoholic Beverage Code, requires a Texas winery to route purchases by a Texas resident through a package store that participates in the Texas Wine Marketing Assistance Program if the purchaser is not physically present at the winery at the time of the sale and allows those package stores to deliver in dry areas.

The United States Supreme Court is currently considering a case relating to the ability of states to enact legislation to regulate direct-to-consumer shipment of wine, and that places different restrictions on in-state and out-of-state consumers.

S.B. 877 seeks to address issues relating to the direct-to-consumer shipment of wine for both Texas-based wineries and out-of-state wineries in a manner that will meet constitutional standards.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTION 2 (Section 54.06 (c) and Section 54.11, Alcoholic Beverage Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 16, Alcoholic Beverage Code, by adding Section 16.09, as follows:

Sec. 16.09. DIRECT SHIPMENT TO CONSUMERS. (a) Authorizes the holder of a winery permit to ship wine to the ultimate consumer, including ultimate consumers located in dry areas. Requires delivery to be by the holder of a carrier permit.

(b) Requires all wine shipped to an ultimate consumer by the holder of a winery permit to be in a package that is clearly and conspicuously labeled showing certain information.

(c) Prohibits wine shipped by the holder of a winery permit from being shipped to certain persons.

(d) Authorizes wine to be delivered only to a person who is age 21 or over after the person who accepts the package takes certain actions.

(e) Prohibits the holder of a winery permit from taking certain actions relating to the delivery and sale of wine.

SECTION 2. Amends Subtitle A, Title 3, Alcoholic Beverage Code, by adding Chapter 54, as follows:

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## CHAPTER 54. OUT-OF-STATE WINERY DIRECT SHIPPER'S PERMIT

Sec. 54.01. **AUTHORIZED ACTIVITIES.** Authorizes the holder of an out-of-state winery direct shipper's permit to sell and deliver wine that is produced or bottled by the permittee to an ultimate consumer located in the State of Texas. Requires the delivery to be made by the holder of a carrier permit.

Sec. 54.02. **PROHIBITED ACTIVITIES.** Prohibits the holder of an out-of-state winery direct shipper's permit from taking certain actions relating to the sale and delivery of wine.

Sec. 54.03. **QUALIFICATIONS FOR PERMIT.** Authorizes an out-of-state winery direct shipper's permit to be issued only to a person who meets certain qualifications.

Sec. 54.04. **PERMIT FEE.** Provides that the annual state fee for an out-of-state winery direct shipper's permit is \$75.

Sec. 54.05. **IDENTIFICATION REQUIREMENTS.** (a) Requires all wine sold or shipped by the holder of an out-of-state winery direct shipper's permit to be in a package that is clearly and conspicuously labeled showing certain information.

(b) Prohibits wine sold or shipped by the holder of an out-of-state winery direct shipper's permit from being shipped to certain persons.

(c) Authorizes wine to be delivered only to a person who is age 21 or over after the person who accepts the package takes certain actions.

Sec. 54.06. **REPORTS AND RECORDKEEPING.** (a) Requires the holder of an out-of-state winery direct shipper's permit to maintain records of all sales and deliveries made under the permit.

(b) Requires the holder of an out-of-state winery direct shipper's permit to maintain complete sales and delivery records for all sales and deliveries made under the permit for at least five years from the date of sale. Requires these records to be made available upon request for inspection by the commission or any other appropriate state agency.

(c) Requires the commission to establish rules requiring the holder of an out-of-state winery direct shipper's permit to periodically file reports providing the commission with such information as the commission may determine is needed to more efficiently and effectively enforce the state laws applicable to the permit holder.

Sec. 54.07. **LIABILITY FOR AND PAYMENT OF TAXES.** (a) Requires sales made by the holder of an out-of-state winery direct shipper's permit to be deemed to have been made in the State of Texas for delivery in the State of Texas.

(b) Requires the holder of an out-of-state winery direct shipper's permit to be responsible for paying certain state taxes related to sales and deliveries made under this chapter.

(c) Requires an ultimate consumer who purchases wine from the holder of an out-of-state winery direct shipper's permit under this chapter to be considered to be purchasing the wine from a Texas permittee and exempt from the administrative fee for personal imports set forth in Section 107.07 (Importation For Personal Use; Importation By Railroad Companies), Alcoholic Beverage Code.

Sec. 54.08. **RESALE PROHIBITED.** Prohibits a consumer purchasing wine from the holder of an out-of-state winery direct shipper's permit from reselling the wine, and

provides that any such wine that is resold is an illicit beverage as defined in Section 1.04(4) (Definitions), Alcoholic Beverages Code.

Sec. 54.09. DELIVERY AREAS. Authorizes wine shipped under this chapter to be delivered to persons located in a dry area.

Sec. 54.10. WINE LABEL APPROVAL NOT REQUIRED. Provides that if the holder of an out-of-state winery direct shipper's permit has satisfied all federal label approval requirements for a particular brand of wine, then no further label approval is required by the commission.

Sec. 54.11. RULES. Requires the commission to adopt rules and forms necessary to implement this chapter.

Sec. 54.12. PENALTY FOR SHIPPING WITHOUT A PERMIT. Provides that a person who does not hold an out-of-state winery direct shipper's permit who sells and ships alcohol from outside Texas to an ultimate consumer in Texas commits on first offense a Class B misdemeanor, on second offense a Class A misdemeanor, and on third offense a state jail felony.

SECTION 3. Amends Subsection (f), Section 107.07, Alcoholic Beverage Code, to provide that any person, except as provided by Chapter 54, in the business of selling alcoholic beverages in another state or country who ships or causes to be shipped any alcoholic beverage directly to any Texas resident under this section is in violation of this code.

SECTION 4. Amends Section 110.052, Alcoholic Beverage Code, to provide that participation in the Texas Wine Marketing Assistance Program (program) is voluntary. Deletes existing text relating to participation in the program.

SECTION 5. Amends Subsection (a), Section 110.053, Alcoholic Beverage Code, to authorize a person who purchases wine in this state to ship the wine in accordance with Section 16.09, rather than Section 107.12, if the person is physically present at the winery; or this section.

SECTION 6. Makes application of this Act prospective.

SECTION 7. (a) Effective date: Immediately, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005, except as provided by Subsection (b) of SECTION 7.

(b) Provides that if this Act takes immediate effect, the requirement for a permit and the penalty for shipping without a permit take effect on the date 90 days after the date of immediate effect; otherwise, the requirement and penalty take effect on January 1, 2006.

#### **EFFECTIVE DATE**

Immediately, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005, except as provided by Subsection (b) of SECTION 7.