

## **BILL ANALYSIS**

Senate Research Center  
79R3974 MCK-D

S.B. 877  
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As Filed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

In August of 2002, a ruling on *Dickerson v. Bailey*, 212 F. Supp.2d 673,695 (S.D. Tex. 2002) found that Texas's 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, allows 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.

As proposed, 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**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 41.01, Alcoholic Beverage Code, by adding Subsection (c), to authorize the holder to transport wine anywhere in this state if the wine is purchased by a person for the person's own consumption from a place where its sale is legal and delivered to a place where its possession is legal.

SECTION 2. Amends Section 107.03, Alcoholic Beverage Code, to authorize a carrier to transport and deliver wine for personal consumption to a consumer in any location in the state.

SECTION 3. Amends Section 107.12, Alcoholic Beverage Code, to authorize a person who purchases wine from a winery, rather than while at a winery, to ship or cause to be shipped the wine to the person's residence.

SECTION 4. Amends Section 110.053(a), Alcoholic Beverage Code, to authorize a person who purchases wine from a winery in this state to ship the wine to a package store that participates in the Texas Wine Marketing Assistance Program (program). Requires the package store, on receipt of the wine, to notify the purchaser that the wine is available to be picked up by the purchaser at the package store or shipped to the purchaser by the package store. Deletes existing text relating to shipping wine.

SECTION 5. Amends Section 110.054, Alcoholic Beverage Code, as follows:

Sec. 110.054. DELIVERY OF WINE IN A DRY AREA. Authorizes a winery in this state or package store that participates in the program to ship wine under Section 107.12,

to a person who resides in a dry area if certain qualifications are met. Makes a conforming change.

SECTION 6. Repealer: Section 110.053(b) (Sale and Shipment of Wine Through Program), Alcoholic Beverage Code.

SECTION 7. Effective date: upon passage or September 1, 2005.