

1-1 By: Madla S.B. No. 877  
1-2 (In the Senate - Filed March 2, 2005; March 10, 2005, read  
1-3 first time and referred to Committee on Intergovernmental  
1-4 Relations; March 21, 2005, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;  
1-6 March 21, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 877 By: Madla

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the direct shipment of wine to consumers; providing a  
1-11 criminal penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 16, Alcoholic Beverage Code, is amended  
1-14 by adding Section 16.09 to read as follows:

1-15 Sec. 16.09. DIRECT SHIPMENT TO CONSUMERS. (a) The holder  
1-16 of a winery permit may ship wine to the ultimate consumer, including  
1-17 ultimate consumers located in dry areas. Delivery must be by the  
1-18 holder of a carrier permit.

1-19 (b) All wine shipped to an ultimate consumer by the holder  
1-20 of a winery permit must be in a package that is clearly and  
1-21 conspicuously labeled showing that:

1-22 (1) the package contains wine; and

1-23 (2) the package may be delivered only to a person  
1-24 described in Subsection (c).

1-25 (c) Wine shipped by the holder of a winery permit may not be  
1-26 delivered to any person other than:

1-27 (1) the person who purchased the wine;

1-28 (2) a recipient designated in advance by such  
1-29 purchaser; or

1-30 (3) a person at the delivery address who is age 21 or  
1-31 over.

1-32 (d) Wine may be delivered only to a person who is age 21 or  
1-33 over after the person accepting the package:

1-34 (1) presents valid proof of identity and age; and

1-35 (2) personally signs a receipt acknowledging delivery  
1-36 of the package.

1-37 (e) The holder of a winery permit may not:

1-38 (1) sell or ship wine to a minor;

1-39 (2) deliver wine to a consumer using a carrier that  
1-40 does not hold a carrier's permit under this code; or

1-41 (3) deliver more than three gallons of wine within any  
1-42 30-day period to the same consumer in this state.

1-43 SECTION 2. Subtitle A, Title 3, Alcoholic Beverage Code, is  
1-44 amended by adding Chapter 54 to read as follows:

1-45 CHAPTER 54. OUT-OF-STATE WINERY DIRECT SHIPPER'S PERMIT

1-46 Sec. 54.01. AUTHORIZED ACTIVITIES. The holder of an  
1-47 out-of-state winery direct shipper's permit may sell and deliver  
1-48 wine that is produced or bottled by the permittee to an ultimate  
1-49 consumer located in the State of Texas. Delivery must be by the  
1-50 holder of a carrier permit.

1-51 Sec. 54.02. PROHIBITED ACTIVITIES. The holder of an  
1-52 out-of-state winery direct shipper's permit may not:

1-53 (1) sell or ship wine to a minor;

1-54 (2) deliver wine to a consumer using a carrier that  
1-55 does not hold a carrier's permit under this code;

1-56 (3) deliver more than three gallons of wine within any  
1-57 30-day period to the same consumer in this state; or

1-58 (4) sell to ultimate consumers more than 35,000  
1-59 gallons of wine annually.

1-60 Sec. 54.03. QUALIFICATIONS FOR PERMIT. An out-of-state  
1-61 winery direct shipper's permit may only be issued to a person who:

1-62 (1) does not hold a winery permit in the State of  
1-63 Texas;

2-1                   (2) operates a winery located in the United States and  
 2-2 holds all state and federal permits necessary to operate the  
 2-3 winery, including the federal winemaker's and blender's basic  
 2-4 permit;

2-5                   (3) holds a Texas sales tax permit;

2-6                   (4) expressly submits to personal jurisdiction in  
 2-7 Texas state and federal courts and expressly submits to venue in  
 2-8 Travis County, Texas, as proper venue for any proceedings that may  
 2-9 be initiated by or against the commission; and

2-10                  (5) does not directly or indirectly have any financial  
 2-11 interest in a Texas wholesaler or retailer as those terms are used  
 2-12 in Section 102.01.

2-13                  Sec. 54.04. PERMIT FEE. The annual state fee for an  
 2-14 out-of-state winery direct shipper's permit is \$75.

2-15                  Sec. 54.05. IDENTIFICATION REQUIREMENTS. (a) All wine  
 2-16 sold or shipped by the holder of an out-of-state winery direct  
 2-17 shipper's permit must be in a package that is clearly and  
 2-18 conspicuously labeled showing that:

2-19                   (1) the package contains wine; and

2-20                   (2) the package may only be delivered to a person  
 2-21 described in Subsection (b).

2-22                  (b) Wine sold or shipped by a holder of an out-of-state  
 2-23 winery direct shipper's permit may not be delivered to any person  
 2-24 other than:

2-25                   (1) the person who purchased the wine;

2-26                   (2) a recipient designated in advance by such  
 2-27 purchaser; or

2-28                   (3) a person at the delivery address who is age 21 or  
 2-29 over.

2-30                  (c) Wine may be delivered only to a person who is age 21 or  
 2-31 over after the person accepting the package:

2-32                   (1) presents valid proof of identity and age; and

2-33                   (2) personally signs a receipt acknowledging delivery  
 2-34 of the package.

2-35                  Sec. 54.06. REPORTS AND RECORDKEEPING. (a) The holder of  
 2-36 an out-of-state winery direct shipper's permit shall maintain  
 2-37 records of all sales and deliveries made under the permit.

2-38                  (b) The holder of an out-of-state winery direct shipper's  
 2-39 permit shall maintain complete sales and delivery records for all  
 2-40 sales and deliveries made under the permit for at least five years  
 2-41 from the date of sale. These records shall be made available upon  
 2-42 request for inspection by the commission or any other appropriate  
 2-43 state agency.

2-44                  (c) The commission shall establish rules requiring the  
 2-45 holder of an out-of-state winery direct shipper's permit to  
 2-46 periodically file reports providing the commission with such  
 2-47 information as the commission may determine is needed to more  
 2-48 efficiently and effectively enforce the state laws applicable to  
 2-49 the permit holder.

2-50                  Sec. 54.07. LIABILITY FOR AND PAYMENT OF TAXES. (a) Sales  
 2-51 made by the holder of an out-of-state winery direct shipper's  
 2-52 permit shall be deemed to have been made in the State of Texas for  
 2-53 delivery in the State of Texas.

2-54                  (b) The holder of an out-of-state winery direct shipper's  
 2-55 permit shall be responsible for paying the following state taxes  
 2-56 related to sales and deliveries made under this chapter:

2-57                   (1) excise taxes on the wine sold, payable at the same  
 2-58 rate and in the same manner as if the permittee were a Texas winery  
 2-59 located in Texas; and

2-60                   (2) state sales and use taxes all payable at the same  
 2-61 rate and in the same manner as if the permittee were a Texas winery  
 2-62 located in Texas.

2-63                  (c) An ultimate consumer who purchases wine from the holder  
 2-64 of an out-of-state winery direct shipper's permit under this  
 2-65 chapter shall be considered to be purchasing the wine from a Texas  
 2-66 permittee and shall not be charged the administrative fee for  
 2-67 personal imports set forth in Section 107.07.

2-68                  Sec. 54.08. RESALE PROHIBITED. A consumer purchasing wine  
 2-69 from the holder of an out-of-state winery direct shipper's permit

3-1 may not resell the wine, and any such wine that is resold is an  
3-2 illicit beverage as defined in Section 1.04(4).

3-3 Sec. 54.09. DELIVERY AREAS. Wine shipped under this  
3-4 chapter may be delivered to persons located in a dry area.

3-5 Sec. 54.10. WINE LABEL APPROVAL NOT REQUIRED. If the holder  
3-6 of an out-of-state winery direct shipper's permit has satisfied all  
3-7 federal label approval requirements for a particular brand of wine,  
3-8 then no further label approval shall be required by the commission.

3-9 Sec. 54.11. RULES. The commission shall adopt rules and  
3-10 forms necessary to implement this chapter.

3-11 Sec. 54.12. PENALTY FOR SHIPPING WITHOUT A PERMIT. Any  
3-12 person who does not hold an out-of-state winery direct shipper's  
3-13 permit who sells and ships alcohol from outside of Texas to an  
3-14 ultimate consumer in Texas commits on first offense a Class B  
3-15 misdemeanor, on second offense a Class A misdemeanor, and on third  
3-16 offense a state jail felony.

3-17 SECTION 3. Subsection (f), Section 107.07, Alcoholic  
3-18 Beverage Code, is amended to read as follows:

3-19 (f) Except as provided by Chapter 54, any [Any] person in  
3-20 the business of selling alcoholic beverages in another state or  
3-21 country who ships or causes to be shipped any alcoholic beverage  
3-22 directly to any Texas resident under this section is in violation of  
3-23 this code.

3-24 SECTION 4. Section 110.052, Alcoholic Beverage Code, is  
3-25 amended to read as follows:

3-26 Sec. 110.052. PARTICIPATION OF PACKAGE STORES. (a)  
3-27 Participation [Except as provided by this section, participation]  
3-28 in the program by a package store is voluntary.

3-29 ~~(b) [If, after the program has been operating for at least~~  
3-30 ~~12 months, the commissioner determines after a hearing that package~~  
3-31 ~~stores in the state are not participating in the program on a~~  
3-32 ~~reasonably distributed geographic basis, the commissioner may~~  
3-33 ~~request that the commission require all package stores in the state~~  
3-34 ~~to participate in the program. On receiving the commissioner's~~  
3-35 ~~request, the commission shall hold a hearing and may adopt rules as~~  
3-36 ~~necessary to implement this subsection.~~

3-37 ~~[(c)]~~ The commissioner by rule may establish standards that a  
3-38 package store that participates in the program must meet.

3-39 SECTION 5. Subsection (a), Section 110.053, Alcoholic  
3-40 Beverage Code, is amended to read as follows:

3-41 (a) A person who purchases wine from a winery in this state  
3-42 may ship the wine in accordance with:

3-43 (1) Section 16.09 [107.12, if the person is physically  
3-44 present at the winery]; or

3-45 (2) this section[, if the person is not physically  
3-46 present at the winery].

3-47 SECTION 6. This Act applies only to sales and shipments  
3-48 occurring on or after the effective date of this Act. Sales or  
3-49 shipments occurring before the effective date of this Act are  
3-50 governed by the law in effect immediately before that date, and that  
3-51 law is continued in effect for that purpose.

3-52 SECTION 7. (a) Except as provided by Subsection (b) of  
3-53 this section, this Act takes effect immediately if it receives a  
3-54 vote of two-thirds of all the members elected to each house, as  
3-55 provided by Section 39, Article III, Texas Constitution. If this  
3-56 Act does not receive the vote necessary for immediate effect, this  
3-57 Act takes effect September 1, 2005.

3-58 (b) If this Act takes immediate effect, the requirement for  
3-59 a permit and the penalty imposed for shipping without a permit under  
3-60 Chapter 54, Alcoholic Beverage Code, as added by this Act, take  
3-61 effect on the date 90 days after the date of immediate effect,  
3-62 otherwise the requirement for a permit and the penalty imposed for  
3-63 shipping without a permit under Chapter 54, Alcoholic Beverage  
3-64 Code, as added by this Act, take effect January 1, 2006.

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