

By: Madla, Deuell, Estes S.B. No. 1137
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COMMITTEE SUBSTITUTE FOR S.B. No. 1137 By: Madla

A BILL TO BE ENTITLED
AN ACT

relating to the development of the wine industry and other businesses related to agriculture or tourism in this state.

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

SECTION 1. Chapter 12, Agriculture Code, is amended by adding Section 12.039 to read as follows:

Sec. 12.039. CERTAIN WINE PRODUCED OR BOTTLED IN THIS STATE.

(a) The Texas Wine Marketing Research Institute or other qualified entity shall, as funding is available, conduct an annual study relating to the quantities and varieties of grapes and other fruit grown in this state that are used for wine making.

(b) Not later than October 15 of the study year, the Texas Wine Marketing Research Institute or other qualified entity shall submit a report to the commissioner. The report must:

(1) include:

(A) the quantities and varieties of grapes and other fruit grown in this state that are available on September 30 of the study year for use in wine making;

(B) the needs of wineries in this state for those grapes and other fruit to meet the wineries' projected production estimates for the following calendar year; and

(C) recommendations regarding the varieties of grapes and other fruit grown in this state for which a reduction in the percentage by volume of Texas grapes used should be granted under Subsection (d); or

(2) state that funding was not available to complete the study required by this section.

(c) If a statement is provided in accordance with Subsection (b)(2), the reporting entity shall include in the report:

(1) any information that has been routinely collected or developed by the reporting entity and that might be useful in determining the quantities and varieties of grapes and other fruit grown in this state that are available for use in wine making the following calendar year; and

(2) recommendations regarding the varieties of grapes and other fruit grown in this state for which a reduction in the percentage by volume of Texas grapes used should be granted under Subsection (d).

(d) The commissioner shall review the report and, if the commissioner determines that the quantity of a variety of grapes or other fruit grown in this state is insufficient for the wineries in this state to produce their projected production estimates during the following calendar year, the commissioner may reduce the percentage by volume of fermented juice of grapes or other fruit grown in this state that wine containing that particular variety of grape or other fruit must contain under Section 16.011, Alcoholic Beverage Code. The percentage established under this subsection must ensure that the use of that variety of grape or other fruit grown in this state is maximized while allowing for the acquisition of grapes or other fruit grown outside of this state in a quantity sufficient to meet the needs of wineries in this state.

(e) The commissioner shall submit the commissioner's determination to the Texas Alcoholic Beverage Commission in writing and publish the commissioner's determination in the Texas Register and on the department's Internet website not later than December 31

of the study year.

(f) A percentage requirement established under Subsection (d) applies to wine bottled under Section 16.011, Alcoholic Beverage Code, during the calendar year following the study year.

(g) If a winery in this state finds that the determination made by the commissioner under Subsection (d) does not reduce the percentage requirement with respect to a particular variety of grape or other fruit to a level sufficient for the winery to meet the winery's planned production for the relevant year, the winery may submit documentation or other information to the commissioner substantiating that the winery has not been able to acquire those grapes or other fruit grown in this state in an amount sufficient to meet the winery's production needs. If the commissioner determines that there is not a sufficient quantity of that variety of grapes or other fruit grown in this state to meet the needs of that winery, the commissioner may reduce the percentage requirement for wine bottled during the remainder of the calendar year that contains that variety of fruit.

(h) The commissioner may:

(1) establish a voluntary registry for vineyards and other fruit growers in this state to assist in the determination of the availability of grapes and other fruit grown in this state and facilitate communication between the wineries and fruit growers in this state regarding the availability of and need for grapes and other fruit for wine making; and

(2) assess a fee to cover the cost of administering the registry.

(i) Information gathered through a registry established under Subsection (h) shall be posted on the department's Internet website and may be made available in any other format agreed on by the commissioner and a requestor who pays the appropriate fee for reproducing the record.

(j) The vineyard and fruit growers registry fund is an account in the general revenue fund. Fees collected under Subsection (h) shall be deposited to the credit of that account. Money in the account may be appropriated only to the department and may be used only to cover administrative and personnel costs of the department associated with administering a registry established under Subsection (h).

SECTION 2. Title 3, Agriculture Code, is amended by adding Chapter 50B to read as follows:

CHAPTER 50B. TEXAS WINE INDUSTRY
DEVELOPMENT ACT

Sec. 50B.001. FINDINGS AND PURPOSE. The legislature finds that:

(1) it is in the public interest to encourage the orderly growth and development of sustainable labor-intensive, value-added agricultural industries such as the wine grape growing and wine making industries;

(2) the production and distribution of wine and wine-related products constitute an important industry of this state that stimulates tourism and provides substantial and necessary revenues for the state and employment for the state's residents and provides an important food that benefits the public health and welfare; and

(3) it is vital to the continued economic well-being and general welfare of the citizens of this state that the state's wine grapes and wine be properly promoted by:

(A) enabling the wine industry in this state to help itself in establishing orderly, fair, sound, efficient, and unhampered marketing of wine grapes and the wines they produce; and

(B) working to stabilize the wine industry in the state by increasing markets for wine grapes and wine within the state and the nation and internationally.

Sec. 50B.002. WINE INDUSTRY DEVELOPMENT; ADVISORY COMMITTEE. The commissioner may appoint a wine industry development advisory committee to develop a long-term vision and marketable identity for the wine industry in the state that take into consideration future industry development, funding, research,

educational programming, risk management, and marketing.

Sec. 50B.003. WINE INDUSTRY DEVELOPMENT FUND. (a) The wine industry development fund is an account in the general revenue fund and consists of funds deposited to the account under this section.

(b) Money in the account may be appropriated only to the department and may be used only for the purpose of:

(1) providing funding to public or private entities to conduct surveys, research, and other projects related to:

(A) developing the Texas wine industry;

(B) developing viticulture and enology-related education programs;

(C) eliminating and eradicating Pierce's disease, the glassy-winged sharpshooter, and other diseases and pests that negatively impact the production of grapes and wine in the United States; and

(D) developing technologies or practices that could benefit the production of grapes and wine; and

(2) any administrative costs the department incurs in fulfilling the purposes described by Subdivision (1).

(c) The account is exempt from the application of Section 403.095, Government Code.

(d) The department may accept grants, gifts, or gratuities from any source, including a governmental entity, a private or public corporation, or any other person, that are made for the purpose of furthering the Texas wine industry. Any funds received under this subsection shall be deposited in the wine industry development fund.

SECTION 3. Section 16.01, Alcoholic Beverage Code, is amended by adding Subsections (f), (g), and (h) to read as follows:

(f) Notwithstanding any other provision of this code, the holder of a winery permit may sell and serve beer if:

(1) the winery is in an area that is wet for beer; and

(2) the beer is provided only during the service of food to the customer.

(g) For the purposes of provisions of this code governing the sale or purchase of beer, the purchase by a winery of beer for service under Subsection (f) is considered to be a purchase by a holder of a retail dealer's on-premise license.

(h) The holder of a winery permit may contract with the holder of a caterer's permit for service by the caterer of mixed beverages and food at an event on the winery premises.

SECTION 4. Section 16.011, Alcoholic Beverage Code, is amended to read as follows:

Sec. 16.011. PREMISES IN DRY AREA. A winery permit may be issued for premises in an area in which the sale of wine has not been authorized by a local option election. A holder of a permit under this section may engage in any activity authorized under Section 16.01 except that the permit holder may sell or dispense wine under that section only if the wine is:

(1) bottled ~~manufactured~~ in this state; and

(2) at least 75 percent by volume fermented juice of grapes or other fruit grown in this state or a lesser percentage established by the commissioner of agriculture under Section 12.039, Agriculture Code.

SECTION 5. Chapter 16, Alcoholic Beverage Code, is amended by adding Section 16.05 to read as follows:

Sec. 16.05. OPERATING AGREEMENTS BETWEEN PERMIT HOLDERS.

(a) The holder of a winery permit may engage in any activity authorized by that permit on the permitted premises of another winery permit holder under an agreement between the permit holders that is approved by the commission and that describes with specificity the nature, duration, and extent of the activities authorized by the agreement.

(b) The commission shall adopt rules regulating the shared use of winery premises under this section to ensure administrative accountability of each permit holder and a strict separation between the businesses and operations of the permit holders.

SECTION 6. Subchapter A, Chapter 108, Alcoholic Beverage

Code, is amended by adding Section 108.09 to read as follows:

Sec. 108.09. CERTAIN ADVERTISING BY WINERY.

(a) Notwithstanding Section 102.07 or any other provision of this code, a winery may include information in the winery's advertising that informs the public of where the winery's products may be purchased.

(b) A winery may not give compensation to or receive compensation from a permitted member of the wholesale or retail tier for advertising described by Subsection (a).

SECTION 7. Subsection (a), Section 391.091, Transportation Code, as amended by Chapters 713 and 743, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(a) The department [~~commission~~] shall contract with an individual, firm, group, or association in this state to erect and maintain specific information logo signs and [~~7~~] major shopping area guide signs[~~, and major agricultural interest signs~~] at appropriate locations along an eligible highway.

SECTION 8. Subsection (a), Section 391.098, Transportation Code, is amended to read as follows:

(a) The commission shall authorize the director to grant variances, on a case-by-case basis, to the eligibility, location, or placement of specific logo signs[~~, major agricultural interest signs~~], and major shopping area guide signs, including the highways along which a sign may be located. The commission may adopt rules prescribing conditions or guidelines the director should or must consider when determining whether to grant a variance.

SECTION 9. Subchapter D, Chapter 391, Transportation Code, is amended by adding Section 391.099 to read as follows:

Sec. 391.099. TOURIST-ORIENTED DIRECTIONAL SIGN PROGRAM.

(a) In this section:

(1) "Eligible facility" means a winery or a business related to agriculture or tourism, including a farm, ranch, or other tourist activity, that:

(A) derives a major portion of its income or visitors during the normal business season from highway users not residing in the area of the facility;

(B) complies with state and federal laws relating to:

(i) provision of public accommodation without regard to race, religion, color, age, sex, or national origin; and

(ii) licensing and approval of service facilities; and

(C) is located within the mile limitations established under the Texas Manual on Uniform Traffic Control Devices and the Manual on Uniform Traffic Control Devices issued by the United States Department of Transportation, Federal Highway Administration.

(2) "Eligible highway" means a highway that:

(A) has noncontrolled access; and

(B) is outside the corporate limits of a municipality with a population of 5,000 or more.

(3) "Tourist-oriented directional sign" means a sign that identifies a particular winery or business related to agriculture or tourism, including a farm, ranch, or other tourist activity, and identifies the type or nature of the winery or business by use of an icon, symbol, or other identifying device.

(4) "Trailblazing" means placing multiple signs along a route or routes directing the public to a specific location.

(b) The commission shall administer the tourist-oriented directional sign program created under this section to erect and maintain tourist-oriented directional signs on eligible highways.

(c) Except as provided by Subsection (f), the commission shall:

(1) regulate the content, composition, design, placement, erection, and maintenance of tourist-oriented directional signs and supports on eligible highway rights-of-way; and

(2) adopt rules necessary to administer and enforce this section.

(d) The commission shall enter into one or more contracts with an individual, firm, group, or association in this state to erect and maintain tourist-oriented directional signs at locations along eligible highways.

(e) A contract under this section shall provide for:

(1) the assessment of fees to be paid to a contractor by an eligible facility; and

(2) remittance to the department of the greater of:

(A) 10 percent of the fees collected by the contractor; or

(B) an amount sufficient to recover the department's costs of administering the program.

(f) The commission may not adopt rules under this section that:

(1) violate the Texas Manual on Uniform Traffic Control Devices or the Manual on Uniform Traffic Control Devices issued by the United States Department of Transportation, Federal Highway Administration; or

(2) prohibit an eligible facility from receiving a tourist-oriented directional sign based on trailblazing off of the state highway system.

(g) The department shall:

(1) before the 31st day after the date the eligible facility submits an application under this section, notify the facility that:

(A) the application has been received; and

(B) the application is complete or that additional information is required to complete the application; and

(2) approve or disapprove the application:

(A) before the 61st day after the date the eligible facility submits the application if no additional information is required under Subdivision (1); or

(B) before the 31st day after the date the eligible facility submits all of the additional information required under Subdivision (1).

SECTION 10. The following laws are repealed:

(1) Subsection (c), Section 16.08, Alcoholic Beverage Code; and

(2) Section 391.097, Transportation Code.

SECTION 11. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

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