

1-1 By: Carona S.B. No. 1090
 1-2 (In the Senate - Filed March 5, 2013; March 12, 2013, read
 1-3 first time and referred to Committee on Business and Commerce;
 1-4 April 4, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; April 4, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|-----|-----|--------|-----|
| 1-8 | | | | |
| 1-9 | X | | | |
| 1-10 | X | | | |
| 1-11 | | | X | |
| 1-12 | X | | | |
| 1-13 | X | | | |
| 1-14 | X | | | |
| 1-15 | X | | | |
| 1-16 | X | | | |
| 1-17 | X | | | |

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1090 By: Carona

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the manufacture, distribution, sale, and provision of
 1-22 alcoholic beverages and the regulation of those activities.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 1.04, Alcoholic Beverage Code, is
 1-25 amended by amending Subdivision (15) and adding Subdivision (26) to
 1-26 read as follows:

1-27 (15) "Beer" means a malt beverage containing one-half
 1-28 of one percent or more of alcohol by volume and not more than four
 1-29 percent of alcohol by weight [~~and does not include a beverage~~
 1-30 ~~designated by label or otherwise by a name other than beer~~].

1-31 (26) "Criminal negligence" has the meaning assigned by
 1-32 Section 6.03, Penal Code.

1-33 SECTION 2. Section 5.11, Alcoholic Beverage Code, is
 1-34 amended to read as follows:

1-35 Sec. 5.11. ADMINISTRATOR. (a) The commission shall
 1-36 appoint an administrator to serve at its will and, subject to its
 1-37 supervision, administer this code. Unless the commission orders
 1-38 otherwise, the administrator shall be manager, secretary, and
 1-39 custodian of all records. The administrator shall devote the
 1-40 administrator's [his] entire time to the office and shall receive a
 1-41 salary as appropriated by the legislature.

1-42 (b) The administrator is also known as the executive
 1-43 director.

1-44 SECTION 3. Section 5.13, Alcoholic Beverage Code, is
 1-45 amended to read as follows:

1-46 Sec. 5.13. ASSISTANT ADMINISTRATOR. (a) The
 1-47 administrator shall appoint an assistant administrator. The
 1-48 assistant administrator must meet the same qualifications as the
 1-49 administrator. The assistant administrator shall take the
 1-50 constitutional oath of office. In the absence of the
 1-51 administrator, or in case of the administrator's [his] inability to
 1-52 act, the assistant administrator shall perform the duties conferred
 1-53 on the administrator by law or delegated to the administrator by the
 1-54 commission. If there is a vacancy in the office of administrator,
 1-55 the assistant administrator shall perform the duties of the
 1-56 administrator until an administrator has been appointed by the
 1-57 commission. At other times the assistant administrator [he] shall
 1-58 perform those duties and have those functions, powers, and
 1-59 authority as may be delegated to the assistant administrator [him]
 1-60 by the administrator.

2-1 (b) The assistant administrator is also known as the deputy
2-2 executive director.

2-3 SECTION 4. Section 5.15, Alcoholic Beverage Code, is
2-4 amended to read as follows:

2-5 Sec. 5.15. ASSISTANT ATTORNEYS GENERAL. The attorney
2-6 general may [~~shall~~] appoint as many as six assistant attorneys
2-7 general, as the commission determines necessary, to enable the
2-8 commission to more efficiently enforce this code. The attorney
2-9 general and the assistant attorneys general shall prosecute all
2-10 suits requested by the commission and defend all suits against the
2-11 commission. The commission shall provide the assistant attorneys
2-12 general with necessary stenographers and office space. The
2-13 assistant attorneys general shall be paid by the commission out of
2-14 funds appropriated to it for the administration of this code. Their
2-15 compensation shall be on the same basis as assistant attorneys
2-16 general devoting their time to general state business.

2-17 SECTION 5. Section 5.32, Alcoholic Beverage Code, is
2-18 amended to read as follows:

2-19 Sec. 5.32. MAY REQUIRE REPORTS. The commission may require
2-20 [~~the filing of reports and other data by~~] persons engaged in the
2-21 alcoholic beverage business to provide information, records, or
2-22 other documents [~~which~~] the commission finds necessary to
2-23 accomplish the purposes of this code.

2-24 SECTION 6. Section 11.72, Alcoholic Beverage Code, is
2-25 amended to read as follows:

2-26 Sec. 11.72. DISCIPLINE FOR ACTIONS OF AGENT. The
2-27 commission or administrator may suspend or revoke the permit of a
2-28 person who is represented by the holder of an agent's permit as
2-29 described by Section 35.01 or a manufacturer's agent's permit as
2-30 described by Section 36.01 or otherwise discipline the person based
2-31 on an act or omission of the holder of an agent's or manufacturer's
2-32 agent's permit only if an individual employed by the person in a
2-33 supervisory position:

- 2-34 (1) was directly involved in the act or omission of the
2-35 holder of an agent's or manufacturer's agent's permit;
- 2-36 (2) had notice or knowledge of the act or omission; or
- 2-37 (3) failed to take reasonable steps to prevent the act
2-38 or omission.

2-39 SECTION 7. Subsection (a), Section 16.01, Alcoholic
2-40 Beverage Code, is amended to read as follows:

2-41 (a) Except as provided by Section 16.011, the holder of a
2-42 winery permit may:

- 2-43 (1) manufacture, bottle, label, and package wine
2-44 containing not more than 24 percent alcohol by volume;
- 2-45 (2) manufacture fruit brandy and:
 - 2-46 (A) use that brandy on the winery permit holder's
2-47 permitted premises for fortifying purposes only; or
 - 2-48 (B) sell that brandy to other winery permit
2-49 holders;
- 2-50 (3) import or buy fruit brandy from a permit holder
2-51 authorized to manufacture fruit brandy and use that brandy on the
2-52 winery permit holder's permitted premises for fortifying purposes
2-53 only;
- 2-54 (4) sell wine in this state to or buy wine from permit
2-55 holders authorized to purchase and sell wine, including holders of
2-56 wholesaler's permits, winery permits, and wine bottler's permits;
- 2-57 (5) sell wine to ultimate consumers:
 - 2-58 (A) for consumption on the winery premises; or
 - 2-59 (B) in unbroken packages for off-premises
2-60 consumption in an amount not to exceed 35,000 gallons annually;
- 2-61 (6) sell the wine outside this state to qualified
2-62 persons;
- 2-63 (7) blend wines; [~~and~~]
- 2-64 (8) dispense free wine for consumption on the winery
2-65 premises; and
- 2-66 (9) purchase and import wine from the holder of a
2-67 nonresident seller's permit.

2-68 SECTION 8. Section 16.03, Alcoholic Beverage Code, is
2-69 amended to read as follows:

3-1 Sec. 16.03. IMPORTATION FOR BLENDING. The holder of a
 3-2 winery permit may, for blending purposes [~~only~~], import wines or
 3-3 grape brandy. The wine or grape brandy may be purchased only from
 3-4 the holders of nonresident seller's permits. The state tax on wines
 3-5 imported for blending purposes does not accrue until the wine has
 3-6 been used for blending purposes and the resultant product placed in
 3-7 containers for sale.

3-8 SECTION 9. Subsection (a), Section 26.01, Alcoholic
 3-9 Beverage Code, is amended to read as follows:

3-10 (a) The holder of a wine and beer retailer's off-premise
 3-11 permit may sell for off-premises consumption only, in unbroken
 3-12 original containers, but not for resale, wine, beer, and malt
 3-13 liquors containing alcohol in excess of one-half of one percent by
 3-14 volume but not more than 17 percent by volume.

3-15 SECTION 10. Chapter 35, Alcoholic Beverage Code, is amended
 3-16 by adding Section 35.08 to read as follows:

3-17 Sec. 35.08. GRACE PERIOD. A person may engage in the
 3-18 activities specified in Section 35.01 for an initial grace period
 3-19 of five days during which the person shall procure an agent's permit
 3-20 from the commission.

3-21 SECTION 11. Chapter 36, Alcoholic Beverage Code, is amended
 3-22 by adding Section 36.09 to read as follows:

3-23 Sec. 36.09. GRACE PERIOD. A person may engage in the
 3-24 activities specified in Section 36.01 for an initial grace period
 3-25 of five days during which the person shall procure a manufacturer's
 3-26 agent's permit from the commission.

3-27 SECTION 12. Section 45.01, Alcoholic Beverage Code, is
 3-28 amended to read as follows:

3-29 Sec. 45.01. AUTHORIZED ACTIVITIES. The holder of a storage
 3-30 permit may store liquor in a public bonded warehouse for which a
 3-31 permit has been issued or in a private warehouse owned or leased by
 3-32 the holder and operated by the holder.

3-33 SECTION 13. Section 51.09, Alcoholic Beverage Code, is
 3-34 amended to read as follows:

3-35 Sec. 51.09. COIN-OPERATED MACHINES PROHIBITED. Nothing in
 3-36 this chapter shall be construed as authorizing nor may the
 3-37 commission or administrator authorize the sale of any alcoholic
 3-38 beverage from a coin-operated machine or similar device operated by
 3-39 the consumer.

3-40 SECTION 14. Section 61.38, Alcoholic Beverage Code, is
 3-41 amended to read as follows:

3-42 Sec. 61.38. NOTICE OF APPLICATION. (a) Every original
 3-43 applicant [~~When an application~~] for a license to manufacture, [~~or~~]
 3-44 distribute, or [~~beer is filed, the county clerk shall post at the~~
 3-45 ~~courthouse door a written notice containing the substance of the~~
 3-46 ~~application and the date set for hearing.~~

3-47 [~~(b) When an original application to sell beer at retail at~~
 3-48 ~~a location previously licensed is filed, the county clerk shall~~
 3-49 ~~post at the courthouse door a written notice containing the~~
 3-50 ~~substance of the application and the date set for hearing.~~

3-51 [~~(c) When an original application to~~] sell beer at retail
 3-52 shall give notice of the application by publication at the
 3-53 applicant's own expense in [~~at a location not previously licensed~~
 3-54 ~~is filed, the county clerk shall publish notice for~~] two
 3-55 consecutive issues of [~~in~~] a newspaper of general circulation
 3-56 published in the city or town in which the applicant's place of
 3-57 business is [~~to be~~] located. If no newspaper [~~of general~~
 3-58 ~~circulation~~] is published in that city or town, the notice must
 3-59 [~~shall~~] be published in a newspaper of general circulation
 3-60 published in the county where the applicant's business is [~~to be~~]
 3-61 located. If no newspaper [~~of general circulation~~] is published in
 3-62 that county, the notice must [~~shall~~] be published in a qualified
 3-63 newspaper [~~which is~~] published in the closest neighboring county
 3-64 and [~~is~~] circulated in the county where the applicant's business is
 3-65 located [~~license is sought~~].

3-66 (b) The notice must [~~shall~~] be printed in 10-point boldface
 3-67 type and must include:

3-68 (1) [~~shall set forth~~] the type of license applied for;

3-69 (2) the exact location of the business for which the

4-1 license is sought;
 4-2 (3) the name of each [the] owner of the business and,
 4-3 if the business is operated under an assumed name, [or owners,] the
 4-4 trade name together with the name of each owner [, if operating under
 4-5 an assumed name]; and

4-6 (4) if [in] the [case of a corporate] applicant is a
 4-7 corporation, the names and titles of all officers [of the
 4-8 corporation].

4-9 (c) An applicant for a renewal license is not required to
 4-10 publish notice. [At the time the application is filed, the
 4-11 applicant shall deposit with the clerk the cost of publishing
 4-12 notice, which the clerk shall use to pay for the publication.]

4-13 SECTION 15. Subsection (g), Section 102.07, Alcoholic
 4-14 Beverage Code, is amended to read as follows:

4-15 (g) Subsection (a) does not prohibit a permittee covered
 4-16 under Subsection (a) from prearranging or preannouncing a
 4-17 promotional activity otherwise permitted by this code with a
 4-18 retailer about a promotional activity to be held on the retailer's
 4-19 premises. ~~[A holder of a wholesaler's or class B wholesaler's permit~~
 4-20 ~~may prearrange a promotional activity only for distilled spirits or~~
 4-21 ~~wine.]~~ Notwithstanding any other provision, a permittee may:

- 4-22 (1) preannounce a promotion to a consumer; or
- 4-23 (2) preannounce the purchase of wine, ~~or~~ distilled
- 4-24 spirits, ale, or malt liquor to a consumer.

4-25 SECTION 16. Section 102.15, Alcoholic Beverage Code, is
 4-26 amended to read as follows:

4-27 Sec. 102.15. MANUFACTURER OR DISTRIBUTOR: PROHIBITED
 4-28 DEALINGS WITH RETAILER. (a) Except as provided by Subsection (b),
 4-29 no [No] manufacturer or distributor directly or indirectly, or
 4-30 through a subsidiary, affiliate, agent, employee, officer,
 4-31 director, or firm member, may:

- 4-32 (1) furnish, give, or lend any money or other thing of
- 4-33 value to a person engaged or about to be engaged in selling brewery
- 4-34 products for on-premises or off-premises consumption, or give the
- 4-35 person any money or thing of value for his use, benefit, or relief;
- 4-36 or
- 4-37 (2) guarantee the repayment of a loan or the
- 4-38 fulfillment of a financial obligation of a person engaged in or
- 4-39 about to be engaged in selling beer at retail.

4-40 (b) Subsection (a) does not prohibit a manufacturer or
 4-41 distributor from prearranging or preannouncing a promotional
 4-42 activity otherwise permitted by this code with a retailer about a
 4-43 promotional activity to be held on the retailer's premises.
 4-44 Notwithstanding any other provision, a manufacturer or distributor
 4-45 may:

- 4-46 (1) preannounce a promotion to a consumer; or
- 4-47 (2) preannounce the purchase of beer to a consumer.

4-48 SECTION 17. Section 104.04, Alcoholic Beverage Code, is
 4-49 amended to read as follows:

4-50 Sec. 104.04. DRAFT MALT BEVERAGE [BEER] DISPENSER: SIGN
 4-51 REQUIRED. No retail dealer may dispense draft beer, malt liquor, or
 4-52 ale unless each faucet or other dispensing apparatus is equipped
 4-53 with a sign clearly indicating the name or brand of the product
 4-54 being dispensed through the faucet or apparatus. The sign must be
 4-55 in full sight of the purchaser, and the letters on it must be
 4-56 legible.

4-57 SECTION 18. Subsection (d), Section 106.09, Alcoholic
 4-58 Beverage Code, is amended to read as follows:

4-59 (d) The fact that a person is 18, 19, or 20 years of age is
 4-60 not a ground for refusal of an original or renewal permit or license
 4-61 issued under Chapter 35, 36, or 73 ~~[of this code]~~, provided that
 4-62 such a person to whom a permit or license is issued may carry out the
 4-63 activities authorized by those chapters only while in the actual
 4-64 course and scope of the person's employment.

4-65 SECTION 19. Subsection (a), Section 108.01, Alcoholic
 4-66 Beverage Code, is amended to read as follows:

4-67 (a) No manufacturer or distributor directly or indirectly,
 4-68 or through a subsidiary, affiliate, agent, employee, officer,
 4-69 director, or firm member, may publish, disseminate, or cause to be

5-1 published or disseminated by any medium enumerated in Subsection
 5-2 (b) ~~[of this section]~~ an advertisement of a brewery product that:
 5-3 (1) causes or is reasonably calculated to cause
 5-4 deception of the consumer with respect to the product advertised;
 5-5 (2) directly or by ambiguity, omission, or inference
 5-6 tends to create a misleading impression;
 5-7 (3) is untrue in any particular;
 5-8 (4) ~~[refers to the alcohol content of the product;~~
 5-9 ~~[-5-]]~~ disparages a competitor's product; or
 5-10 (5) ~~[-6-]]~~ is obscene or indecent.

5-11 SECTION 20. Section 108.09, Alcoholic Beverage Code, is
 5-12 amended to read as follows:

5-13 Sec. 108.09. ~~[CERTAIN]~~ ADVERTISING WHERE PRODUCT MAY BE
 5-14 PURCHASED ~~[BY WINERY]~~. (a) Notwithstanding ~~[Section 102.07 or]~~
 5-15 any other provision of this code, a member of the manufacturing or
 5-16 wholesale tier ~~[winery]~~ may include information in its ~~[the~~
 5-17 ~~winery's]~~ advertising that informs the public of where its ~~[the~~
 5-18 ~~winery's]~~ products may be purchased.

5-19 (b) A member of the manufacturing tier ~~[winery]~~ may not give
 5-20 compensation to or receive compensation from a licensed or
 5-21 permitted member of the wholesale or retail tier for advertising
 5-22 described by Subsection (a). A member of the wholesale tier may not
 5-23 give compensation to or receive compensation from a licensed or
 5-24 permitted member of the manufacturing or retail tier for
 5-25 advertising described by Subsection (a).

5-26 SECTION 21. Section 201.02, Alcoholic Beverage Code, is
 5-27 amended to read as follows:

5-28 Sec. 201.02. "FIRST SALE" DEFINED. In this subchapter,
 5-29 "first sale":

5-30 (1) as applied to liquor imported into this state by
 5-31 the holder of a wholesaler's permit authorizing importation, means
 5-32 the first actual sale by the permittee to the holder of any other
 5-33 permit authorizing the retail sale of the beverage or to the holder
 5-34 of a local distributor's permit; and

5-35 (2) as applied to all other liquor, means the first
 5-36 sale, possession, distribution, or use in this state, except that
 5-37 the term does not include the first sale by:

- 5-38 (A) the holder of a winery permit to another
- 5-39 holder of a winery permit or the holder of a wholesaler's permit; or
- 5-40 (B) the holder of a distiller's and rectifier's
- 5-41 permit to the holder of a wholesaler's permit.

5-42 SECTION 22. Section 201.41, Alcoholic Beverage Code, is
 5-43 amended to read as follows:

5-44 Sec. 201.41. FIRST SALE. In this subchapter, "first sale"
 5-45 means:

5-46 (1) the first actual sale of ale or malt liquor by:
 5-47 (A) the holder of a wholesaler's, general class B
 5-48 wholesaler's, or local class B wholesaler's permit to:

- 5-49 (i) ~~[-A-]]~~ a permittee authorized to sell to
- 5-50 ultimate consumers;
- 5-51 (ii) ~~[-B-]]~~ a local distributor permittee;
- 5-52 or
- 5-53 (iii) ~~[-C-]]~~ a private club registration
- 5-54 permittee; or

5-55 (B) a brewpub licensee to a consumer or a
 5-56 permittee or licensee authorized to sell ale or malt liquor to
 5-57 ultimate consumers; or

5-58 (2) the importation of ale or malt liquor under
 5-59 Section 107.07 ~~[of this code]~~.

5-60 SECTION 23. Section 203.02, Alcoholic Beverage Code, is
 5-61 amended to read as follows:

5-62 Sec. 203.02. "FIRST SALE". In this chapter, "first sale"
 5-63 means:

5-64 (1) the first actual sale of beer:
 5-65 (A) by the holder of a distributor's license or
 5-66 by the holder of a manufacturer's license acting under the
 5-67 authority of Section 62.12 ~~[of this code]~~, to:

- 5-68 (i) ~~[-A-]]~~ a permittee or licensee
- 5-69 authorized to sell to ultimate consumers;

6-1 (ii) [~~(B)~~] a local distributor permittee;
 6-2 or
 6-3 (iii) [~~(C)~~] a private club registration
 6-4 permittee; or
 6-5 (B) by a brewpub licensee to a consumer or a
 6-6 permittee or licensee authorized to sell beer to ultimate
 6-7 consumers; or
 6-8 (2) the importation of beer under Section 107.07 [~~of~~
 6-9 ~~this code~~].

6-10 SECTION 24. The following provisions of the Alcoholic
 6-11 Beverage Code are repealed:

6-12 (1) Section 1.08, as added by Chapter 437 (Senate Bill
 6-13 No. 55), Acts of the 73rd Legislature, Regular Session, 1993;
 6-14 (2) Section 1.08, as added by Chapter 934 (House Bill
 6-15 No. 1445), Acts of the 73rd Legislature, Regular Session, 1993; and
 6-16 (3) Section 31.05.
 6-17 SECTION 25. This Act takes effect September 1, 2013.

6-18 * * * * *