

By: Burton

S.B. No. 719

A BILL TO BE ENTITLED

AN ACT

relating to the direct shipment of certain alcoholic beverages to ultimate consumers; authorizing a fee.

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

SECTION 1. Chapter 12, Alcoholic Beverage Code, is amended by adding Section 12.07 to read as follows:

Sec. 12.07. DIRECT SHIPMENT TO CONSUMERS. (a) The holder of a brewer's permit may ship ale or malt liquor produced or bottled by the permit holder to the ultimate consumer, including ultimate consumers located in dry areas. Delivery must be by the holder of a carrier permit.

(b) All ale or malt liquor shipped to an ultimate consumer by the holder of a brewer's permit must be in a package that is clearly and conspicuously labeled showing that:

(1) the package contains ale or malt liquor; and

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

(c) Ale or malt liquor shipped by the holder of a brewer's permit may not be delivered to any person other than:

(1) the person who purchased the ale or malt liquor;

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

(3) a person at the delivery address who is 21 years of age or older.

1 (d) Ale or malt liquor may be delivered only to a person who
2 is 21 years of age or older after the person accepting the package:

- 3 (1) presents valid proof of identity and age; and
4 (2) personally signs a receipt acknowledging delivery
5 of the package.

6 (e) The holder of a brewer's permit may not:

- 7 (1) sell or ship ale or malt liquor to a minor; or
8 (2) deliver ale or malt liquor to a consumer using a
9 carrier that does not hold a carrier's permit under this code.

10 SECTION 2. Section 14.05, Alcoholic Beverage Code, as added
11 by Chapter 106 (S.B. 905), Acts of the 83rd Legislature, Regular
12 Session, 2013, is amended by adding Subsection (h) to read as
13 follows:

14 (h) Nothing in this section applies to the sale and shipment
15 of distilled spirits under Section 14.07.

16 SECTION 3. Chapter 14, Alcoholic Beverage Code, is amended
17 by adding Section 14.07 to read as follows:

18 Sec. 14.07. DIRECT SHIPMENT TO CONSUMERS. (a) The holder
19 of a distiller's and rectifier's permit may ship distilled spirits
20 produced or bottled by the permit holder to the ultimate consumer,
21 including ultimate consumers located in dry areas. Delivery must
22 be by the holder of a carrier permit.

23 (b) All distilled spirits shipped to an ultimate consumer by
24 the holder of a distiller's and rectifier's permit must be in a
25 package that is clearly and conspicuously labeled showing that:

- 26 (1) the package contains distilled spirits; and
27 (2) the package may be delivered only to a person

1 described in Subsection (c).

2 (c) Distilled spirits shipped by the holder of a distiller's
3 and rectifier's permit may not be delivered to any person other
4 than:

5 (1) the person who purchased the distilled spirits;

6 (2) a recipient designated in advance by such
7 purchaser; or

8 (3) a person at the delivery address who is 21 years of
9 age or older.

10 (d) Distilled spirits may be delivered only to a person who
11 is 21 years of age or older after the person accepting the package:

12 (1) presents valid proof of identity and age; and

13 (2) personally signs a receipt acknowledging delivery
14 of the package.

15 (e) The holder of a distiller's and rectifier's permit may
16 not:

17 (1) sell or ship distilled spirits to a minor; or

18 (2) deliver distilled spirits to a consumer using a
19 carrier that does not hold a carrier's permit under this code.

20 SECTION 4. Section 16.09(e), Alcoholic Beverage Code, is
21 amended to read as follows:

22 (e) The holder of a winery permit may not:

23 (1) sell or ship wine to a minor; or

24 (2) deliver wine to a consumer using a carrier that
25 does not hold a carrier's permit under this code[~~, or~~

26 [~~(3) deliver to the same consumer in this state more~~
27 ~~than nine gallons of wine within any calendar month or more than 36~~

1 ~~gallons of wine within any 12-month period~~].

2 SECTION 5. Chapter 54, Alcoholic Beverage Code, is amended
3 to read as follows:

4 CHAPTER 54. OUT-OF-STATE [~~WINERY~~] DIRECT SHIPPER'S PERMIT

5 Sec. 54.01. AUTHORIZED ACTIVITIES. The holder of an
6 out-of-state [~~winery~~] direct shipper's permit may sell and deliver
7 an alcoholic beverage [wine] that is produced or bottled by the
8 permittee to an ultimate consumer located in the State of Texas.
9 Delivery must be by the holder of a carrier permit.

10 Sec. 54.02. PROHIBITED ACTIVITIES. The holder of an
11 out-of-state [~~winery~~] direct shipper's permit may not:

12 (1) sell or ship an alcoholic beverage [wine] to a
13 minor; or

14 (2) deliver an alcoholic beverage [wine] to a consumer
15 using a carrier that does not hold a carrier's permit under this
16 code[~~+~~

17 [~~(3) deliver to the same consumer in this state more
18 than nine gallons of wine within any calendar month or more than 36
19 gallons of wine within any 12-month period; or~~

20 [~~(4) sell to ultimate consumers more than 35,000
21 gallons of wine annually~~].

22 Sec. 54.03. QUALIFICATIONS FOR PERMIT. An out-of-state
23 [~~winery~~] direct shipper's permit may only be issued to a person who:

24 (1) does not hold a [~~winery~~] permit or license
25 authorizing the production or bottling of alcoholic beverages in
26 the State of Texas;

27 (2) operates a facility for the production or bottling

1 of alcoholic beverages [~~winery~~] located in the United States and
2 holds all state and federal permits necessary to operate the
3 facility [~~winery, including the federal winemaker's and blender's~~
4 ~~basic permit~~];

5 (3) holds a Texas sales tax permit;

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

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

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

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

19 (1) the package contains an alcoholic beverage [~~wine~~];
20 and

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

23 (b) An alcoholic beverage [~~wine~~] sold or shipped by a holder
24 of an out-of-state [~~winery~~] direct shipper's permit may not be
25 delivered to any person other than:

26 (1) the person who purchased the alcoholic beverage
27 [~~wine~~];

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

3 (3) a person at the delivery address who is [~~age~~] 21
4 years of age or older [~~over~~].

5 (c) An alcoholic beverage [~~Wine~~] may be delivered only to a
6 person who is [~~age~~] 21 years of age or older [~~over~~] after the person
7 accepting the package:

8 (1) presents valid proof of identity and age; and

9 (2) personally signs a receipt acknowledging delivery
10 of the package.

11 Sec. 54.06. REPORTS AND RECORDKEEPING. (a) The holder of
12 an out-of-state [~~winery~~] direct shipper's permit shall maintain
13 records of all sales and deliveries made under the permit.

14 (b) The holder of an out-of-state [~~winery~~] direct shipper's
15 permit shall maintain complete sales and delivery records for all
16 sales and deliveries made under the permit for at least five years
17 from the date of sale. These records shall be made available upon
18 request for inspection by the commission or any other appropriate
19 state agency.

20 (c) The commission shall establish rules requiring the
21 holder of an out-of-state [~~winery~~] direct shipper's permit to
22 periodically file reports providing the commission with such
23 information as the commission may determine is needed to more
24 efficiently and effectively enforce the state laws applicable to
25 the permit holder.

26 Sec. 54.07. LIABILITY FOR AND PAYMENT OF TAXES. (a) Sales
27 made by the holder of an out-of-state [~~winery~~] direct shipper's

1 permit shall be deemed to have been made in the State of Texas for
2 delivery in the State of Texas.

3 (b) The holder of an out-of-state [~~winery~~] direct shipper's
4 permit shall be responsible for paying the following state taxes
5 related to sales and deliveries made under this chapter:

6 (1) excise taxes on the alcoholic beverages [~~wine~~]
7 sold, payable at the same rate and in the same manner as if the
8 permittee were a Texas brewery, winery, distiller or rectifier,
9 beer manufacturer, or brewpub located in Texas; and

10 (2) state sales and use taxes all payable at the same
11 rate and in the same manner as if the permittee were a Texas
12 brewery, winery, distiller or rectifier, beer manufacturer, or
13 brewpub located in Texas.

14 (c) An ultimate consumer who purchases an alcoholic
15 beverage [~~wine~~] from the holder of an out-of-state [~~winery~~] direct
16 shipper's permit under this chapter shall be considered to be
17 purchasing the alcoholic beverage [~~wine~~] from a Texas permittee or
18 licensee and shall not be charged the administrative fee for
19 personal imports set forth in Section 107.07.

20 Sec. 54.08. RESALE PROHIBITED. A consumer purchasing an
21 alcoholic beverage [~~wine~~] from the holder of an out-of-state
22 [~~winery~~] direct shipper's permit may not resell the alcoholic
23 beverage [~~wine~~], and any such alcoholic beverage [~~wine~~] that is
24 resold is an illicit beverage as defined in Section 1.04(4).

25 Sec. 54.09. DELIVERY AREAS. An alcoholic beverage [~~wine~~]
26 shipped under this chapter may be delivered to persons located in a
27 dry area.

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

6 Sec. 54.11. RULES. The commission shall adopt rules and
7 forms necessary to implement this chapter.

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

14 SECTION 6. Chapter 62, Alcoholic Beverage Code, is amended
15 by adding Section 62.15 to read as follows:

16 Sec. 62.15. DIRECT SHIPMENT TO CONSUMERS. (a) The holder
17 of a manufacturer's license may ship beer produced, bottled, or
18 canned by the license holder to the ultimate consumer, including
19 ultimate consumers located in dry areas. Delivery must be by the
20 holder of a carrier permit.

21 (b) All beer shipped to an ultimate consumer by the holder
22 of a manufacturer's license must be in a package that is clearly and
23 conspicuously labeled showing that:

24 (1) the package contains beer; and

25 (2) the package may be delivered only to a person
26 described in Subsection (c).

27 (c) Beer shipped by the holder of a manufacturer's license

1 may not be delivered to any person other than:

2 (1) the person who purchased the beer;

3 (2) a recipient designated in advance by such
4 purchaser; or

5 (3) a person at the delivery address who is 21 years of
6 age or older.

7 (d) Beer may be delivered only to a person who is 21 years of
8 age or older after the person accepting the package:

9 (1) presents valid proof of identity and age; and

10 (2) personally signs a receipt acknowledging delivery
11 of the package.

12 (e) The holder of a manufacturer's license may not:

13 (1) sell or ship beer to a minor; or

14 (2) deliver beer to a consumer using a carrier that
15 does not hold a carrier's permit under this code.

16 SECTION 7. Chapter 74, Alcoholic Beverage Code, is amended
17 by adding Section 74.12 to read as follows:

18 Sec. 74.12. DIRECT SHIPMENT TO CONSUMERS. (a) The holder
19 of a brewpub license may ship malt liquor, ale, or beer produced,
20 bottled, or canned by the license holder to the ultimate consumer,
21 including ultimate consumers located in dry areas. Delivery must
22 be by the holder of a carrier permit.

23 (b) All malt liquor, ale, or beer shipped to an ultimate
24 consumer by the holder of a brewpub license must be in a package
25 that is clearly and conspicuously labeled showing that:

26 (1) the package contains malt liquor, ale, or beer;

27 and

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

3 (c) Malt liquor, ale, or beer shipped by the holder of a
4 brewpub license may not be delivered to any person other than:

5 (1) the person who purchased the malt liquor, ale, or
6 beer;

7 (2) a recipient designated in advance by such
8 purchaser; or

9 (3) a person at the delivery address who is 21 years of
10 age or older.

11 (d) Malt liquor, ale, or beer may be delivered only to a
12 person who is 21 years of age or older after the person accepting
13 the package:

14 (1) presents valid proof of identity and age; and

15 (2) personally signs a receipt acknowledging delivery
16 of the package.

17 (e) The holder of a brewpub license may not:

18 (1) sell or ship malt liquor, ale, or beer to a minor;
19 or

20 (2) deliver malt liquor, ale, or beer to a consumer
21 using a carrier that does not hold a carrier's permit under this
22 code.

23 SECTION 8. Section 101.46(c), Alcoholic Beverage Code, is
24 amended to read as follows:

25 (c) Subsection (a) of this section does not apply to liquor
26 imported under Section 107.07 or sold and delivered to an ultimate
27 consumer by the holder of an out-of-state direct shipper's permit

1 ~~[of this code]~~.

2 SECTION 9. Section 107.05(b), Alcoholic Beverage Code, is
3 amended to read as follows:

4 (b) This section does not apply to the transportation of
5 liquor into the state as authorized by Chapter 54 or Section 107.07
6 ~~[of this code]~~.

7 SECTION 10. Section 107.06(c), Alcoholic Beverage Code, is
8 amended to read as follows:

9 (c) This section does not apply to the importation or
10 transportation of military beer consigned to a military
11 installation or to the importation or direct shipment of beer as
12 authorized under Chapter 54 or Section 107.07 ~~[of this code]~~.

13 SECTION 11. Section 201.41, Alcoholic Beverage Code, is
14 amended to read as follows:

15 Sec. 201.41. FIRST SALE. In this subchapter, "first sale"
16 means:

17 (1) the first actual sale of ale or malt liquor by:

18 (A) the holder of a wholesaler's, general class B
19 wholesaler's, or local class B wholesaler's permit to:

20 (i) a permittee authorized to sell to
21 ultimate consumers;

22 (ii) a local distributor permittee; or

23 (iii) a private club registration
24 permittee; ~~[or]~~

25 (B) a brewpub licensee to a consumer, including a
26 sale under Section 74.12, or a permittee or licensee authorized to
27 sell ale or malt liquor to ultimate consumers; or

1 (C) a holder of a brewer's permit to an ultimate
2 consumer under Section 12.07;

3 (2) the importation of ale or malt liquor under
4 Section 107.07; or

5 (3) the sale of ale or malt liquor by a holder of an
6 out-of-state direct shipper's permit to an ultimate consumer in
7 this state.

8 SECTION 12. Section 203.02, Alcoholic Beverage Code, is
9 amended to read as follows:

10 Sec. 203.02. "FIRST SALE". In this chapter, "first sale"
11 means:

12 (1) the first actual sale of beer by:

13 (A) [~~by~~] the holder of a distributor's license or
14 by the holder of a manufacturer's license acting under the
15 authority of Section 62.12, to:

16 (i) a permittee or licensee authorized to
17 sell to ultimate consumers;

18 (ii) a local distributor permittee; or

19 (iii) a private club registration
20 permittee; [~~or~~]

21 (B) [~~by~~] a brewpub licensee to a consumer,
22 including a sale under Section 74.12, or a permittee or licensee
23 authorized to sell beer to ultimate consumers; or

24 (C) a holder of a manufacturer's license to an
25 ultimate consumer under Section 62.15;

26 (2) the importation of beer under Section 107.07; or

27 (3) the sale of beer by a holder of an out-of-state

1 direct shipper's permit to an ultimate consumer in this state.

2 SECTION 13. This Act takes effect September 1, 2015.