

## **BILL ANALYSIS**

C.S.H.B. 2165  
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Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Reports indicate that a large number of states prohibit retailers of alcoholic beverages from selling alcohol below the cost of what the retailer paid the wholesaler if the sale is for off-premise consumption. Concerns have been raised regarding the lack of statutory guidance on whether these below-cost alcohol sales are permissible in Texas. Regardless, it has been suggested that these below-cost sales are occurring in Texas, which could have negative consequences for consumers, such as overspending and overconsumption, and for other retailers. C.S.H.B. 2165 seeks to address this issue by prohibiting below-cost alcohol sales, with certain exceptions.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 2165 amends the Alcoholic Beverage Code to prohibit the holder of a permit or license authorizing the retail sale of alcoholic beverages for off-premise consumption from selling an alcoholic beverage at retail for off-premise consumption at a cost less than the retailer's cost. The bill requires proof of the retailer's cost for alcoholic beverages to become a part of the permanent records of each such permit or license holder and to be available for a period of two years for inspection by the Texas Alcoholic Beverage Commission (TABC). The bill exempts the sale of a specific alcoholic beverage product from this prohibition if the product manufacturer has discontinued the production, importation, special packaging, or market availability of the product. The bill requires TABC to adopt rules to implement the bill's provisions.

### **EFFECTIVE DATE**

September 1, 2019.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2165 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute specifies that the prohibition against selling an alcoholic beverage at retail at a

cost less than the retailer's cost relates to the sale of an alcoholic beverage sold for off-premise consumption.

The substitute does not include the following:

- an exemption from that prohibition if the retailer liquidates, by sale or destruction, all of the retailer's inventory of the product the retailer has on the date the retailer begins to sell the product at a cost less than the retailer's cost; or
- a prohibition against a retailer who liquidates a specific alcoholic beverage product in that manner selling the product at a cost less than the retailer's cost before the second anniversary of the date the retailer completes the liquidation of the product.

The substitute includes a requirement for TABC to adopt rules to implement the bill's provisions.