

BILL ANALYSIS

Senate Research Center
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S.B. 645
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently in Texas, no single individual may legally hold more than five Texas Alcoholic Beverage Commission (TABC) package store permits (a.k.a. liquor store permits) unless that individual falls into one of two special categories.

1. Section 22.04 <<http://www.statutes.legis.state.tx.us/Docs/AL/htm/AL.22.htm>> of the Alcoholic Beverage Code states that an individual may hold more than five permits if those permits were issued prior to May 1st, 1949. (Note: Of the approximately 2,500 active package store permits in Texas, just four were issued prior to 5/1/49.)

2. Section 22.05 <<http://www.statutes.legis.state.tx.us/Docs/AL/htm/AL.22.htm>> of the Alcoholic Beverage Code states that two persons related within the first degree of consanguinity may consolidate two or more permits into a single legal entity, after which may then be issued an unlimited number of permits. (Note: The first degree of consanguinity is defined in Texas law a parent-child relationship, though TABC utilizes a definition that also applies to a brother-sister relationship. Additionally, of the 72 different types of permits issued by TABC, only the package store permit is limited by consanguinity.)

As such, if an individual does not hold a package store permit that is nearly 70 years old and/or does not have a parent/child/sibling with whom they are able to pool their permits, that individual's ability to grow their business is legally suppressed.

At best, an argument could be made that placing a limit on the number of permits a business may hold is fair, but only if it is applied equally to all individuals. Unfortunately, Sections 22.04 and 22.05 of the Alcoholic Beverage Code create a protected class of individuals and prohibit small business growth in Texas.

In 2018, a United States district court judge ruled the consanguinity exemption to violate the Equal Protection clause as it permitted unchecked consolidation through this exemption far in excess of Texas's stated five permit store limit. The court concluded that the consanguinity exception imposes an arbitrary classification that is not rationally related to any legitimate state purpose. This statute thus fails rational basis review. As a result, the judge struck the consanguinity exemption. Moreover, he went further and struck the five store limit by extending the right to have more than five stores to everyone, but stayed enforcement during the appeals process.

S.B. 645 deletes these two sections of code and ensures that all businesses and individuals are treated equally, regardless of their industry tenure or familial makeup.

Three things that S.B. 645 does not do:

S.B. 645 does not modify a package store permit-holder's ability to hold any other type of alcohol-related permit, such as a beer and wine permit, an on premise use permit, etc.

S.B. 645 does not change who can acquire a package store permit. Additionally, it does not allow for publicly-traded companies to acquire package store permits.

S.B. 645 does not alter or impact the manufacturer-distributor-retailer hierarchy, otherwise known as the "three-tier system."

As proposed, S.B. 645 amends current law relating to restrictions on holders of package store permits.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Repealer: Section 22.04 (Limitation on Package Store Interests), Alcoholic Beverage Code.

Repealer: Section 22.05 (Consolidation of Permits), Alcoholic Beverage Code.

SECTION 2. Effective date: September 1, 2019.