

BILL ANALYSIS

S.B. 1450
By: Hancock
Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

It has been noted that although the Texas Alcoholic Beverage Commission has authorized the delivery of alcoholic beverages by certain delivery service companies by rule there currently is no clear permitting or certification process in place for alcoholic beverage delivery to the ultimate consumer. S.B. 1450 seeks to address this issue by establishing a consumer delivery permit and authorizing certain mixed beverage permit holders to deliver or have alcoholic beverages delivered by a third party under certain circumstances.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes 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 3 of this bill.

ANALYSIS

S.B. 1450 amends the Alcoholic Beverage Code to authorize the holder of a mixed beverage permit to deliver, or have delivered by a third party, an alcoholic beverage from the permitted premises to an ultimate consumer located off-premises and in an area where the sale of the beverage is legal if:

- the permit holder also holds a food and beverage certificate for the permitted premises;
- the delivery of the beverage is made as part of the delivery of food prepared at the permitted premises;
- the beverage is:
 - beer, ale, or wine delivered in an original container sealed by the manufacturer; or
 - another alcoholic beverage delivered in an original, single-serving container sealed by the manufacturer and not larger than 375 milliliters; and
- the delivery is not made to a premises that is permitted or licensed under the Alcoholic Beverage Code.

S.B. 1450 provides that such a delivery may only be made by a person who is 21 years of age or older and only to a person who is 21 years of age or older after the person accepting the delivery presents valid proof of identity and age and the person accepting the delivery personally signs a receipt, which may be electronic, acknowledging the delivery or the person making the delivery acknowledges the completion of the delivery through a software application. These provisions authorizing the off-premises delivery of certain alcoholic beverages do not authorize the holder

of a brewpub license who also holds a wine and beer retailer's permit to deliver alcoholic beverages directly to ultimate consumers for off-premise consumption at a location other than the licensed premises.

S.B. 1450 establishes the consumer delivery permit and authorizes such a permit to be issued to the holder of an applicable permit or license or to a person who contracts with or employs individuals for the delivery of retail goods to consumers, other than the holder of a permit or license in the manufacturing or wholesale tier of the alcoholic beverage industry. The bill authorizes a consumer delivery permit holder to contract with or employ a driver for the delivery of an alcoholic beverage from the premises of the holder of an applicable retailer's permit to an ultimate consumer located in an area where the sale of the beverage is legal. Such a delivery may occur only if the alcoholic beverage is sold to the ultimate consumer by the holder of a specified permit or license.

S.B. 1450 authorizes a person who sells or delivers an alcoholic beverage under the authority of a consumer delivery permit, in determining whether the sale of an alcoholic beverage is legal in an area, to consult applicable maps or other publicly available information produced by the Texas Alcoholic Beverage Commission (TABC) for that purpose. A consumer delivery permit holder may only make deliveries of alcoholic beverages in response to bona fide orders placed by the consumer and only in certain limited areas where the sale of the beverages is legal. The bill establishes as a defense to a prosecution alleging that an individual delivered an alcoholic beverage to an address located in an area that is dry for the type of beverage delivered that:

- the individual or the holder of a consumer delivery permit relied on publicly available information produced by TABC relating to the wet or dry classification of the address; and
- the information indicated that the address to which the beverage was delivered was classified as wet for the type of beverage delivered on the date of the delivery.

S.B. 1450 requires TABC to establish by rule the annual state fee for a consumer delivery permit and prohibits a permit holder from contracting with or employing a person to make a delivery under the authority of that permit unless the person is 21 years of age or older and holds a valid driver's license. The bill sets out provisions regarding the delivery of alcoholic beverages to consumers under the authority of the permit and requires TABC by rule to adopt and administer an alcohol delivery training program for the purpose of training and certifying delivery drivers contracting with or employed by a mixed beverage permit or consumer delivery permit holder and establish minimum requirements for alcohol delivery compliance software applications. The bill requires TABC to adopt those rules not later than September 1, 2020, and requires TABC to implement a system that allows the holder of a retail permit or a consumer delivery permit to verify in real time whether a delivery driver has a valid certification from the training program.

S.B. 1450 sets out provisions regarding the responsibility of a consumer delivery permit holder for the actions of a delivery driver and provides for the suspension of the permit if it is found, after notice and hearing, that the permittee, an agent or employee of the permittee, or a person acting on behalf of the permittee delivered with criminal negligence an alcoholic beverage to a minor or an intoxicated person. It is a rebuttable presumption that the sale or delivery of the alcoholic beverage was not made with criminal negligence if the delivery driver at the time of the delivery held a valid training certification and completed the delivery as a result of a technical malfunction of an applicable software application.

S.B. 1450 creates an offense for a person who, with criminal negligence, delivers for commercial purposes an alcoholic beverage to an intoxicated person.

EFFECTIVE DATE

September 1, 2019.