

By: Hancock

S.B. No. 1450

A BILL TO BE ENTITLED

AN ACT

relating to the delivery of alcoholic beverages from certain premises to ultimate consumers; authorizing a fee; creating an offense.

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

SECTION 1. Section 28.10(a), Alcoholic Beverage Code, is amended to read as follows:

(a) Except as provided by this section or Sections ~~[Section]~~ 28.01(b) and 28.1001, a mixed beverage permittee may not sell an alcoholic beverage to another mixed beverage permittee or to any other person except for consumption on the seller's licensed premises.

SECTION 2. Chapter 28, Alcoholic Beverage Code, is amended by adding Section 28.1001 to read as follows:

Sec. 28.1001. OFF-PREMISES DELIVERY OF ALCOHOLIC BEVERAGES. (a) Notwithstanding any other provision of this code, the holder of a mixed beverage permit may deliver, or have delivered by a third party, including an independent contractor acting under Chapter 57, 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:

(1) the holder of the mixed beverage permit holds a food and beverage certificate for the permitted premises;

(2) the delivery of the alcoholic beverage is made as

1 part of the delivery of food prepared at the permitted premises;

2 (3) the alcoholic beverage is:

3 (A) beer, ale, or wine delivered in an original
4 container sealed by the manufacturer; or

5 (B) an alcoholic beverage other than beer, ale,
6 or wine, delivered in an original, single-serving container sealed
7 by the manufacturer and not larger than 375 milliliters; and

8 (4) the delivery is not made to a premises that is
9 permitted or licensed under this code.

10 (b) An alcoholic beverage may be delivered under this
11 section only by a person who is 21 years of age or older.

12 (c) An alcoholic beverage may be delivered under this
13 section only to a person who is 21 years of age or older after the
14 person accepting the delivery presents valid proof of identity and
15 age and:

16 (1) the person accepting the delivery personally signs
17 a receipt, which may be electronic, acknowledging the delivery; or

18 (2) the person making the delivery acknowledges the
19 completion of the delivery through a software application.

20 (d) This section does not authorize the holder of a brewpub
21 license who also holds a wine and beer retailer's permit to deliver
22 alcoholic beverages directly to ultimate consumers for off-premise
23 consumption at a location other than the licensed premises.

24 SECTION 3. Subtitle A, Title 3, Alcoholic Beverage Code, is
25 amended by adding Chapter 57 to read as follows:

26 CHAPTER 57. CONSUMER DELIVERY PERMIT

27 Sec. 57.01. AUTHORIZED ACTIVITIES. (a) The holder of a

1 consumer delivery permit may contract with or employ a driver for
2 the delivery of an alcoholic beverage from the premises of the
3 holder of a retailer's permit described by Subsection (b) to an
4 ultimate consumer located in an area where the sale of the beverage
5 is legal.

6 (b) An alcoholic beverage may be delivered under this
7 section only if the alcoholic beverage is sold to the ultimate
8 consumer by the holder of a:

- 9 (1) package store permit;
- 10 (2) wine only package store permit;
- 11 (3) wine and beer retailer's permit;
- 12 (4) wine and beer retailer's off-premise permit;
- 13 (5) retail dealer's on-premise license;
- 14 (6) retail dealer's off-premise license; or
- 15 (7) mixed beverage permit authorized to deliver
16 alcoholic beverages under Section 28.1001.

17 Sec. 57.02. DETERMINATION OF DELIVERY AREA. (a) In
18 determining whether the sale of an alcoholic beverage is legal in an
19 area for purposes of Section 57.01, a person who sells or delivers
20 an alcoholic beverage under that section may consult a map or other
21 publicly available information produced by the commission for the
22 purpose of establishing where the sale of alcoholic beverages is
23 legal.

24 (b) The holder of a consumer delivery permit may make
25 deliveries of alcoholic beverages:

- 26 (1) only in response to bona fide orders placed by the
27 consumer under Section 57.01; and

1 (2) only in areas where the sale of the beverages is
2 legal in:

3 (A) the county in which the premises of the
4 retailer making the sale is located;

5 (B) the city or town in which the premises of the
6 retailer making the sale is located, if the retailer is located in a
7 city or town; or

8 (C) an area not further than two miles beyond the
9 municipal boundary of the city or town in which the premises of the
10 retailer is located, if applicable.

11 (c) It is a defense to a prosecution alleging that an
12 individual delivered an alcoholic beverage under this chapter to an
13 address located in an area that is dry for the type of beverage
14 delivered that:

15 (1) the individual or the holder of a consumer
16 delivery permit relied on publicly available information produced
17 by the commission relating to the wet or dry classification of the
18 address; and

19 (2) the information indicated that the address to
20 which the beverage was delivered was classified as wet for the type
21 of beverage delivered on the date of the delivery.

22 Sec. 57.03. FEE. The commission by rule shall establish the
23 annual state fee for a consumer delivery permit.

24 Sec. 57.04. ELIGIBILITY FOR PERMIT. A consumer delivery
25 permit may be issued to:

26 (1) a person who contracts with or employs individuals
27 for the delivery of retail goods to consumers, other than the holder

1 of a permit or license in the manufacturing or wholesale tier of the
2 alcoholic beverage industry; or

3 (2) the holder of a permit or license described by
4 Section 57.01(b).

5 Sec. 57.05. DELIVERY DRIVER REQUIREMENTS. A consumer
6 delivery permit holder under this chapter may not contract with or
7 employ a person to make a delivery under this chapter unless the
8 person:

9 (1) is 21 years of age or older; and

10 (2) holds a valid driver's license.

11 Sec. 57.06. DELIVERY OF ALCOHOLIC BEVERAGES TO CONSUMER.

12 (a) An alcoholic beverage may be delivered under this chapter only
13 to a person who is 21 years of age or older after the person
14 accepting the delivery presents valid proof of identity and age.

15 (b) An alcoholic beverage may not be delivered under this
16 chapter to any person other than:

17 (1) the person who purchased the beverage;

18 (2) a recipient designated in advance by the
19 purchaser; or

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

22 (c) An alcoholic beverage may be delivered under this
23 chapter outside the hours of operation of the retailer from which
24 the delivery is being made only if the delivery driver:

25 (1) receives the beverage from the retailer during the
26 retailer's hours of legal sale; and

27 (2) completes the delivery to the consumer in a

1 reasonable amount of time after leaving the retailer's premises.

2 Sec. 57.07. RETAILER RESPONSIBILITY. (a) A retailer's
3 responsibilities under this code regarding delivery of an alcoholic
4 beverage to an ultimate consumer are considered satisfied at the
5 time the retailer transfers possession of an alcoholic beverage to
6 the consumer delivery permittee or a delivery driver employed by,
7 contracted with, or acting on behalf of the holder of a consumer
8 delivery permit.

9 (b) An action by a consumer delivery permittee or by a
10 delivery driver is not attributable to the retailer with regard to:

11 (1) providing, selling, or serving alcohol to a minor
12 or to an intoxicated individual;

13 (2) the delivery of alcohol in a dry or otherwise
14 illegal area, unless the retailer has contractually agreed to
15 retain responsibility for ensuring that deliveries are not directed
16 to a dry or otherwise illegal area; or

17 (3) any other provision of this code.

18 (c) A retailer:

19 (1) is not required to verify that the consumer
20 delivery permittee or the delivery driver has received delivery
21 driver training under Section 57.09(a)(1); and

22 (2) may not be held responsible for any reason under
23 statutory or common law for the actions of a consumer delivery
24 permittee or a delivery driver acting on behalf of a consumer
25 delivery permittee.

26 Sec. 57.08. RESPONSIBILITY OF HOLDER OF CONSUMER DELIVERY
27 PERMIT. (a) The actions of a delivery driver acting on behalf of a

1 holder of a consumer delivery permit are not attributable to a
2 holder of a consumer delivery permit if the permit holder has not
3 directly or indirectly encouraged the delivery driver to violate
4 the law and the delivery driver:

5 (1) has a valid certification from the training
6 program adopted under Section 57.09(a)(1); or

7 (2) completed the delivery using an alcohol delivery
8 compliance software application that meets the requirements
9 established under Section 57.09(a)(2).

10 (b) Notwithstanding Subsection (a), if it is found, after
11 notice and hearing, that the permittee, an agent or employee of the
12 permittee, or a person acting on behalf of the permittee delivered
13 with criminal negligence an alcoholic beverage to a minor or an
14 intoxicated person, the commission or administrator may:

15 (1) suspend the permit for not more than 90 days for
16 the first violation;

17 (2) suspend the permit for not more than six months for
18 the second violation; and

19 (3) suspend the permit for not more than 12 months for
20 a third violation within a period of 36 consecutive months.

21 (c) It is a rebuttable presumption that a sale or delivery
22 of an alcoholic beverage to a minor or an intoxicated person was not
23 made with criminal negligence if the delivery driver:

24 (1) at the time of the delivery held a valid
25 certification from the training program adopted under Section
26 57.09(a)(1); and

27 (2) completed the delivery as a result of a technical

1 malfunction of an alcohol delivery compliance software application
2 that otherwise meets the requirements established under Section
3 57.09(a)(2).

4 Sec. 57.09. DELIVERY TRAINING PROGRAM AND VERIFICATION
5 SYSTEMS. (a) The commission by rule shall:

6 (1) adopt and administer an alcohol delivery training
7 program for the purpose of training and certifying delivery drivers
8 contracting with or employed by the holder of a permit under Section
9 28.1001 or this chapter; and

10 (2) establish minimum requirements for alcohol
11 delivery compliance software applications.

12 (b) The commission shall implement a system that allows the
13 holder of a retail permit or a consumer delivery permit to verify in
14 real time whether a delivery driver has a valid certification from
15 the training program adopted under Subsection (a)(1).

16 SECTION 4. The heading to Section 101.63, Alcoholic
17 Beverage Code, is amended to read as follows:

18 Sec. 101.63. SALE OR DELIVERY TO CERTAIN PERSONS.

19 SECTION 5. Section 101.63, Alcoholic Beverage Code, is
20 amended by adding Subsection (a-1) to read as follows:

21 (a-1) A person commits an offense if the person with
22 criminal negligence delivers for commercial purposes an alcoholic
23 beverage to an intoxicated person.

24 SECTION 6. Not later than September 1, 2020, the Texas
25 Alcoholic Beverage Commission shall adopt rules to implement
26 Section 57.09(a), Alcoholic Beverage Code, as added by this Act.

27 SECTION 7. This Act takes effect September 1, 2019.