

1-1 By: Hancock S.B. No. 1450
 1-2 (In the Senate - Filed March 4, 2019; March 14, 2019, read
 1-3 first time and referred to Committee on Business & Commerce;
 1-4 April 8, 2019, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 9, Nays 0; April 8, 2019,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1450 By: Hancock

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the delivery of alcoholic beverages from certain
 1-22 premises to ultimate consumers; authorizing a fee; creating an
 1-23 offense.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 28.10(a), Alcoholic Beverage Code, is
 1-26 amended to read as follows:

1-27 (a) Except as provided by this section or Sections [Section]
 1-28 28.01(b) and 28.1001, a mixed beverage permittee may not sell an
 1-29 alcoholic beverage to another mixed beverage permittee or to any
 1-30 other person except for consumption on the seller's licensed
 1-31 premises.

1-32 SECTION 2. Chapter 28, Alcoholic Beverage Code, is amended
 1-33 by adding Section 28.1001 to read as follows:

1-34 Sec. 28.1001. OFF-PREMISES DELIVERY OF ALCOHOLIC
 1-35 BEVERAGES. (a) Notwithstanding any other provision of this code,
 1-36 the holder of a mixed beverage permit may deliver, or have delivered
 1-37 by a third party, including an independent contractor acting under
 1-38 Chapter 57, an alcoholic beverage from the permitted premises to an
 1-39 ultimate consumer located off-premises and in an area where the
 1-40 sale of the beverage is legal if:

1-41 (1) the holder of the mixed beverage permit holds a
 1-42 food and beverage certificate for the permitted premises;

1-43 (2) the delivery of the alcoholic beverage is made as
 1-44 part of the delivery of food prepared at the permitted premises;

1-45 (3) the alcoholic beverage is:
 1-46 (A) beer, ale, or wine delivered in an original
 1-47 container sealed by the manufacturer; or

1-48 (B) an alcoholic beverage other than beer, ale,
 1-49 or wine, delivered in an original, single-serving container sealed
 1-50 by the manufacturer and not larger than 375 milliliters; and

1-51 (4) the delivery is not made to a premises that is
 1-52 permitted or licensed under this code.

1-53 (b) An alcoholic beverage may be delivered under this
 1-54 section only by a person who is 21 years of age or older.

1-55 (c) An alcoholic beverage may be delivered under this
 1-56 section only to a person who is 21 years of age or older after the
 1-57 person accepting the delivery presents valid proof of identity and
 1-58 age and:

1-59 (1) the person accepting the delivery personally signs
 1-60 a receipt, which may be electronic, acknowledging the delivery; or

2-1 (2) the person making the delivery acknowledges the
2-2 completion of the delivery through a software application.

2-3 (d) This section does not authorize the holder of a brewpub
2-4 license who also holds a wine and beer retailer's permit to deliver
2-5 alcoholic beverages directly to ultimate consumers for off-premise
2-6 consumption at a location other than the licensed premises.

2-7 SECTION 3. Subtitle A, Title 3, Alcoholic Beverage Code, is
2-8 amended by adding Chapter 57 to read as follows:

2-9 CHAPTER 57. CONSUMER DELIVERY PERMIT

2-10 Sec. 57.01. AUTHORIZED ACTIVITIES. (a) The holder of a
2-11 consumer delivery permit may contract with or employ a driver for
2-12 the delivery of an alcoholic beverage from the premises of the
2-13 holder of a retailer's permit described by Subsection (b) to an
2-14 ultimate consumer located in an area where the sale of the beverage
2-15 is legal.

2-16 (b) An alcoholic beverage may be delivered under this
2-17 section only if the alcoholic beverage is sold to the ultimate
2-18 consumer by the holder of a:

- 2-19 (1) package store permit;
 - 2-20 (2) wine only package store permit;
 - 2-21 (3) wine and beer retailer's permit;
 - 2-22 (4) wine and beer retailer's off-premise permit;
 - 2-23 (5) retail dealer's on-premise license;
 - 2-24 (6) retail dealer's off-premise license; or
 - 2-25 (7) mixed beverage permit authorized to deliver
- 2-26 alcoholic beverages under Section 28.1001.

2-27 Sec. 57.02. DETERMINATION OF DELIVERY AREA. (a) In
2-28 determining whether the sale of an alcoholic beverage is legal in an
2-29 area for purposes of Section 57.01, a person who sells or delivers
2-30 an alcoholic beverage under that section may consult a map or other
2-31 publicly available information produced by the commission for the
2-32 purpose of establishing where the sale of alcoholic beverages is
2-33 legal.

2-34 (b) The holder of a consumer delivery permit may make
2-35 deliveries of alcoholic beverages:

- 2-36 (1) only in response to bona fide orders placed by the
 - 2-37 consumer under Section 57.01; and
 - 2-38 (2) only in areas where the sale of the beverages is
- 2-39 legal in:

2-40 (A) the county in which the premises of the
2-41 retailer making the sale is located;

2-42 (B) the city or town in which the premises of the
2-43 retailer making the sale is located, if the retailer is located in a
2-44 city or town; or

2-45 (C) an area not further than two miles beyond the
2-46 municipal boundary of the city or town in which the premises of the
2-47 retailer is located, if applicable.

2-48 (c) It is a defense to a prosecution alleging that an
2-49 individual delivered an alcoholic beverage under this chapter to an
2-50 address located in an area that is dry for the type of beverage
2-51 delivered that:

2-52 (1) the individual or the holder of a consumer
2-53 delivery permit relied on publicly available information produced
2-54 by the commission relating to the wet or dry classification of the
2-55 address; and

2-56 (2) the information indicated that the address to
2-57 which the beverage was delivered was classified as wet for the type
2-58 of beverage delivered on the date of the delivery.

2-59 Sec. 57.03. FEE. The commission by rule shall establish the
2-60 annual state fee for a consumer delivery permit.

2-61 Sec. 57.04. ELIGIBILITY FOR PERMIT. A consumer delivery
2-62 permit may be issued to:

2-63 (1) a person who contracts with or employs individuals
2-64 for the delivery of retail goods to consumers, other than the holder
2-65 of a permit or license in the manufacturing or wholesale tier of the
2-66 alcoholic beverage industry; or

2-67 (2) the holder of a permit or license described by
2-68 Section 57.01(b).

2-69 Sec. 57.05. DELIVERY DRIVER REQUIREMENTS. A consumer

3-1 delivery permit holder under this chapter may not contract with or
3-2 employ a person to make a delivery under this chapter unless the
3-3 person:
3-4 (1) is 21 years of age or older; and
3-5 (2) holds a valid driver's license.
3-6 Sec. 57.06. DELIVERY OF ALCOHOLIC BEVERAGES TO CONSUMER.
3-7 (a) An alcoholic beverage may be delivered under this chapter only
3-8 to a person who is 21 years of age or older after the person
3-9 accepting the delivery presents valid proof of identity and age.
3-10 (b) An alcoholic beverage may not be delivered under this
3-11 chapter to any person other than:
3-12 (1) the person who purchased the beverage;
3-13 (2) a recipient designated in advance by the
3-14 purchaser; or
3-15 (3) a person at the delivery address who is 21 years of
3-16 age or older.
3-17 (c) An alcoholic beverage may be delivered under this
3-18 chapter outside the hours of operation of the retailer from which
3-19 the delivery is being made only if the delivery driver:
3-20 (1) receives the beverage from the retailer during the
3-21 retailer's hours of legal sale; and
3-22 (2) completes the delivery to the consumer in a
3-23 reasonable amount of time after leaving the retailer's premises.
3-24 Sec. 57.07. RETAILER RESPONSIBILITY. (a) A retailer's
3-25 responsibilities under this code regarding delivery of an alcoholic
3-26 beverage to an ultimate consumer are considered satisfied at the
3-27 time the retailer transfers possession of an alcoholic beverage to
3-28 the consumer delivery permittee or a delivery driver employed by,
3-29 contracted with, or acting on behalf of the holder of a consumer
3-30 delivery permit.
3-31 (b) An action by a consumer delivery permittee or by a
3-32 delivery driver is not attributable to the retailer with regard to:
3-33 (1) providing, selling, or serving alcohol to a minor
3-34 or to an intoxicated individual;
3-35 (2) the delivery of alcohol in a dry or otherwise
3-36 illegal area, unless the retailer has contractually agreed to
3-37 retain responsibility for ensuring that deliveries are not directed
3-38 to a dry or otherwise illegal area; or
3-39 (3) any other provision of this code.
3-40 (c) A retailer:
3-41 (1) is not required to verify that the consumer
3-42 delivery permittee or the delivery driver has received delivery
3-43 driver training under Section 57.09(a)(1); and
3-44 (2) may not be held responsible for any reason under
3-45 statutory or common law for the actions of a consumer delivery
3-46 permittee or a delivery driver acting on behalf of a consumer
3-47 delivery permittee.
3-48 Sec. 57.08. RESPONSIBILITY OF HOLDER OF CONSUMER DELIVERY
3-49 PERMIT. (a) The actions of a delivery driver acting on behalf of a
3-50 holder of a consumer delivery permit are not attributable to a
3-51 holder of a consumer delivery permit if the permit holder has not
3-52 directly or indirectly encouraged the delivery driver to violate
3-53 the law and the delivery driver:
3-54 (1) has a valid certification from the training
3-55 program adopted under Section 57.09(a)(1); or
3-56 (2) completed the delivery using an alcohol delivery
3-57 compliance software application that meets the requirements
3-58 established under Section 57.09(a)(2).
3-59 (b) Notwithstanding Subsection (a), if it is found, after
3-60 notice and hearing, that the permittee, an agent or employee of the
3-61 permittee, or a person acting on behalf of the permittee delivered
3-62 with criminal negligence an alcoholic beverage to a minor or an
3-63 intoxicated person, the commission or administrator may:
3-64 (1) suspend the permit for not more than 90 days for
3-65 the first violation;
3-66 (2) suspend the permit for not more than six months for
3-67 the second violation; and
3-68 (3) suspend the permit for not more than 12 months for
3-69 a third violation within a period of 36 consecutive months.

4-1 (c) It is a rebuttable presumption that a sale or delivery
4-2 of an alcoholic beverage to a minor or an intoxicated person was not
4-3 made with criminal negligence if the delivery driver:

4-4 (1) at the time of the delivery held a valid
4-5 certification from the training program adopted under Section
4-6 57.09(a)(1); and

4-7 (2) completed the delivery as a result of a technical
4-8 malfunction of an alcohol delivery compliance software application
4-9 that otherwise meets the requirements established under Section
4-10 57.09(a)(2).

4-11 Sec. 57.09. DELIVERY TRAINING PROGRAM AND VERIFICATION
4-12 SYSTEMS. (a) The commission by rule shall:

4-13 (1) adopt and administer an alcohol delivery training
4-14 program for the purpose of training and certifying delivery drivers
4-15 contracting with or employed by the holder of a permit under Section
4-16 28.1001 or this chapter; and

4-17 (2) establish minimum requirements for alcohol
4-18 delivery compliance software applications.

4-19 (b) The commission shall implement a system that allows the
4-20 holder of a retail permit or a consumer delivery permit to verify in
4-21 real time whether a delivery driver has a valid certification from
4-22 the training program adopted under Subsection (a)(1).

4-23 SECTION 4. The heading to Section 101.63, Alcoholic
4-24 Beverage Code, is amended to read as follows:

4-25 Sec. 101.63. SALE OR DELIVERY TO CERTAIN PERSONS.

4-26 SECTION 5. Section 101.63, Alcoholic Beverage Code, is
4-27 amended by adding Subsection (a-1) to read as follows:

4-28 (a-1) A person commits an offense if the person with
4-29 criminal negligence delivers for commercial purposes an alcoholic
4-30 beverage to an intoxicated person.

4-31 SECTION 6. Not later than September 1, 2020, the Texas
4-32 Alcoholic Beverage Commission shall adopt rules to implement
4-33 Section 57.09(a), Alcoholic Beverage Code, as added by this Act.

4-34 SECTION 7. This Act takes effect September 1, 2019.

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