

By: Hancock

S.B. No. 2225

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a spirit cooler certificate;
authorizing a fee.

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

SECTION 1. Section 1.04, Alcoholic Beverage Code, is
amended by amending Subdivisions (3) and (5) and adding Subdivision
(32) to read as follows:

(3) "Distilled spirits" means alcohol, spirits of
wine, whiskey, rum, brandy, gin, or any liquor produced in whole or
in part by the process of distillation, including all dilutions or
mixtures of them, and includes spirit coolers ~~[that may have an
alcoholic content as low as four percent alcohol by volume and that
contain plain, sparkling, or carbonated water and may also contain
one or more natural or artificial blending or flavoring
ingredients]~~.

(5) "Liquor" means any alcoholic beverage, other than
a malt beverage, containing alcohol in excess of five percent by
volume, unless otherwise indicated, and any spirit coolers. Proof
that an alcoholic beverage is alcohol, spirits of wine, whiskey,
liquor, wine, brandy, gin, rum, tequila, mescal, habanero, or
barreteago, is prima facie evidence that it is liquor.

(32) "Spirit cooler" means an alcoholic beverage that:

(A) consists of:

(i) alcohol, spirits of wine, whiskey, rum,

brandy, gin, or any liquor produced wholly or partly by the process of distillation; and

(ii) plain, sparkling, or carbonated water, or juices, and may also contain one or more natural or artificial blending or flavoring ingredients; and

(B) has an alcoholic content of less than 17 percent by volume.

SECTION 2. Subtitle A, Title 3, Alcoholic Beverage Code, is amended by adding Chapter 39 to read as follows:

CHAPTER 39. SPIRIT COOLER CERTIFICATE

Sec. 39.01. ELIGIBLE PERMIT AND LICENSE HOLDER. A spirit cooler certificate may be issued to the holder of a wine only package store permit, wine and malt beverage retailer's permit, wine and malt beverage retailer's off-premise permit, or retail dealer's off-premise license whose premises are located in an area where the sale of alcoholic beverages is legal as provided by a ballot issue approved by the voters under Section 501.035(b)(5), (6), or (7), Election Code.

Sec. 39.02. AUTHORIZED ACTIVITIES. The holder of a spirit cooler certificate may:

(1) purchase spirit coolers from the holder of a wholesaler's permit or general class B wholesaler's permit;

(2) if the certificate holder is a wine only package store permittee, wine and malt beverage retailer's off-premise permittee, or retail dealer's off-premise licensee, sell spirit coolers at retail for consumption off the premises where sold but not for resale; and

1 (3) if the certificate holder is a wine and malt
2 beverage retailer's permittee, sell spirit coolers at retail for
3 consumption on or off the premises where sold but not for resale.

4 Sec. 39.03. FEE. The fee for a spirit cooler certificate
5 shall be set at a level sufficient to recover the cost of issuing
6 the certificate and administering this chapter.

7 Sec. 39.04. HOURS OF SALE. The holder of a spirit cooler
8 certificate issued under this chapter may remain open and sell
9 spirit coolers as provided under this chapter on any day and during
10 the same hours as those prescribed for the sale of malt beverages
11 under Section 105.05.

12 SECTION 3. Section 102.31(a), Alcoholic Beverage Code, is
13 amended to read as follows:

14 (a) This section applies to:

15 (1) the sale of malt beverages or malt beverage
16 containers or the original packages in which malt beverages are
17 received, packaged, or contained by a distributor's licensee to a
18 retail dealer's on-premise or off-premise licensee, a wine and malt
19 beverage retailer's permittee, or a wine and malt beverage
20 retailer's off-premise permittee; ~~and~~

21 (2) the sale of malt beverages by a local distributor's
22 permittee, or by any licensee authorized to sell those beverages
23 for resale, to a mixed beverage permittee; and

24 (3) the sale of spirit coolers by a wholesaler's or
25 general class B wholesaler's permittee to a wine only package store
26 permittee, wine and malt beverage retailer's permittee, wine and
27 malt beverage retailer's off-premise permittee, or retail dealer's

1 off-premise licensee.

2 SECTION 4. Section 102.32, Alcoholic Beverage Code, is
3 amended by adding Subsection (a-1) to read as follows:

4 (a-1) This section does not apply to the sale of a spirit
5 cooler by a wholesale dealer to a retailer.

6 SECTION 5. Chapter 102, Alcoholic Beverage Code, is amended
7 by adding Subchapters E and F to read as follows:

8 SUBCHAPTER E. TERRITORIAL LIMITS ON SALE OF SPIRIT COOLERS

9 Sec. 102.101. DEFINITIONS. In this subchapter:

10 (1) "Brand" means any word, name, group of letters,
11 symbol, or trademark or a combination of any word, name, group of
12 letters, symbol, or trademark adopted and used by a manufacturer or
13 nonresident seller's permittee on a label or on packaging to
14 identify a specific spirit cooler and distinguish the spirit cooler
15 from the label or packaging of another spirit cooler produced or
16 marketed by any manufacturer or nonresident seller's permittee.
17 The term does not include the name of the manufacturer or
18 nonresident seller's permittee unless that name is included in the
19 name of the brand.

20 (2) "Brand extension" means a brand that incorporates
21 a brand name or brand logo, or a substantial part of an existing
22 brand name or brand logo, of the same manufacturer or nonresident
23 seller's permittee.

24 (3) "Manufacturer" means a person licensed under
25 Chapter 14 or 16.

26 (4) "Retailer" means a person who holds a certificate
27 issued under Chapter 39.

1 (5) "Wholesaler" means a person licensed under Chapter
2 19 or 20.

3 Sec. 102.102. SETTING TERRITORIAL LIMITS. (a) Each
4 manufacturer or nonresident seller's permittee shall designate
5 territorial limits in this state within which the brands of spirit
6 coolers the manufacturer or nonresident seller's permittee
7 manufactures may be sold by a wholesaler.

8 (b) Each wholesaler shall enter into a written agreement
9 with each manufacturer or nonresident seller's permittee from which
10 the wholesaler purchases spirit coolers for distribution and sale
11 in this state. The contract shall set forth the sales territory
12 within which the wholesaler may distribute and sell each brand of
13 spirit coolers. A wholesaler may not sell any brand of spirit
14 coolers outside of the sales territory specified in the contract.
15 The contract does not interfere with the rights of a retailer to
16 purchase spirit coolers as provided by Section 102.104.

17 (c) A manufacturer or nonresident seller's permittee may
18 not assign all or any part of the same sales territory to more than
19 one wholesaler.

20 (d) A copy of a contract entered into under Subsection (b)
21 shall be filed with the administrator.

22 Sec. 102.103. RIGHTS OF WHOLESALERS. Nothing in Section
23 102.102 limits or alters a wholesaler's right to sell spirit
24 coolers to any other wholesaler, except that a wholesaler who
25 purchases spirit coolers from another wholesaler may distribute and
26 sell the spirit coolers only in the sales territory designated by
27 contract for the wholesaler making the purchase.

1 Sec. 102.104. RIGHTS OF RETAILERS. Nothing in Section
2 102.102 or 102.103 limits or alters a retailer's right to purchase
3 spirit coolers on the permitted premises of any wholesaler in this
4 state and transport those spirit coolers to the retailer's
5 permitted or licensed premises, except that the retailer may sell
6 the spirit coolers only within a territory for which the
7 manufacturer or nonresident seller's permittee of the brand has
8 designated that the spirit coolers may be sold by a wholesaler.

9 Sec. 102.105. TERRITORIAL ASSIGNMENTS. (a) A brand
10 extension is not a new or different brand.

11 (b) A manufacturer or nonresident seller shall assign a
12 brand extension to a wholesaler to whom the brand was originally
13 assigned if the wholesaler elects to distribute and sell the brand
14 extension.

15 SUBCHAPTER F. SPIRIT COOLER INDUSTRY FAIR DEALING LAW

16 Sec. 102.131. DEFINITIONS. In this subchapter:

17 (1) "Agreement" means a contract, agreement, or
18 arrangement, whether expressed or implied, whether oral or written,
19 for a definite or indefinite period between a manufacturer or
20 nonresident seller's permittee and a wholesaler under which the
21 wholesaler has the right to purchase, resell, and distribute any
22 brand of spirit cooler offered by the manufacturer or nonresident
23 seller's permittee.

24 (2) "Brand" has the meaning assigned by Section
25 102.101.

26 (3) "Brand extension" has the meaning assigned by
27 Section 102.101.

1 (4) "Good cause" means the failure by any party to an
2 agreement, without reasonable excuse or justification, to comply
3 substantially with an essential, reasonable, and commercially
4 acceptable requirement imposed by the other party under the terms
5 of the agreement.

6 (5) "Manufacturer" has the meaning assigned by Section
7 102.101.

8 (6) "Retailer" has the meaning assigned by Section
9 102.101.

10 (7) "Territory" or "sales territory" means the
11 geographic territory of distribution and sale responsibility
12 designated by an agreement between a manufacturer or nonresident
13 seller's permittee and a wholesaler, as provided in Section
14 102.102, for any brand of spirit cooler offered by the manufacturer
15 or nonresident seller's permittee.

16 (8) "Wholesaler" has the meaning assigned by Section
17 102.101.

18 Sec. 102.132. PURPOSE. (a) This subchapter is enacted
19 pursuant to authority of the state under the provisions of the
20 Twenty-first Amendment to the United States Constitution to promote
21 the public's interest in the fair, efficient, and competitive
22 distribution of liquor within this state by requiring manufacturers
23 or nonresident seller's permittees and wholesalers to conduct their
24 business relations so as to assure that:

25 (1) the wholesaler is free to manage its business
26 enterprise, including having the right to independently establish
27 its selling prices; and

1 (2) the public, retailers, and manufacturers or
2 nonresident seller's permittees are served by wholesalers who will
3 devote their reasonable efforts and resources to the sales and
4 distribution of all the manufacturer's or nonresident seller's
5 permittee's products that the wholesaler has the right to sell and
6 distribute and maintain satisfactory sales levels in the sales
7 territory assigned the wholesaler.

8 (b) This subchapter governs all relations between
9 manufacturers or nonresident seller's permittees and their
10 wholesalers, including any renewals or amendments to agreements
11 between them, to the full extent consistent with the constitutions
12 and laws of this state and the United States.

13 Sec. 102.133. WAIVER PROHIBITED. The provisions of this
14 subchapter may not be waived, voided, or nullified by agreement.

15 Sec. 102.134. TERMINATION AND NOTICE OF CANCELLATION. (a)
16 Except as provided by Subsection (c) and as otherwise specifically
17 agreed upon by the parties to an agreement, a manufacturer,
18 nonresident seller's permittee, or wholesaler may not cancel, fail
19 to renew, or otherwise terminate an agreement unless the
20 manufacturer, nonresident seller's permittee, or wholesaler
21 provides prior notice in accordance with Subsection (b) to the
22 other party to the agreement.

23 (b) The notice provided under Subsection (a) must be in
24 writing and received by the affected party not later than the 90th
25 day before the date on which the agreement will be canceled, not
26 renewed, or otherwise terminated. The notice must contain:

27 (1) a statement of the party's intention to cancel, not

1 renew, or otherwise terminate the agreement;

2 (2) a statement of reasons for the cancellation,
3 nonrenewal, or termination; and

4 (3) the date on which the cancellation, nonrenewal, or
5 termination takes effect.

6 (c) A manufacturer, nonresident seller's permittee, or
7 wholesaler may cancel, fail to renew, or otherwise terminate an
8 agreement without providing prior notice to the other party to the
9 agreement for the following reasons:

10 (1) the other party is insolvent, files for
11 bankruptcy, or is dissolved or liquidated;

12 (2) the other party assigns for the benefit of
13 creditors or otherwise disposes of substantially all of the assets
14 of the party's business;

15 (3) the party's ability to continue in business is
16 materially and adversely affected because:

17 (A) the party is convicted of or pleads guilty or
18 no contest to a charge of violating a law or regulation; or

19 (B) the party's permit is revoked or suspended
20 for a period of 30 or more days; or

21 (4) the party fails to pay an amount owed to the other
22 party when due, on demand for the payment, in accordance with the
23 agreement.

24 Sec. 102.135. CANCELLATION. A manufacturer, nonresident
25 seller's permittee, or wholesaler selling spirit coolers may not
26 cancel, fail to renew, or otherwise terminate an agreement under
27 this subchapter unless:

1 (1) the manufacturer, nonresident seller's permittee,
2 or wholesaler has good cause for the cancellation, failure to
3 renew, or termination; and

4 (2) if required to provide prior notice under Section
5 102.134:

6 (A) the manufacturer or nonresident seller's
7 permittee has provided the notice; and

8 (B) the other party has not eliminated the
9 reasons specified in the notice as the reasons for cancellation,
10 nonrenewal, or termination on or before the 90th day after the
11 receipt of the notice.

12 Sec. 102.136. PROHIBITED CONDUCT. (a) A manufacturer or
13 nonresident seller's permittee may not:

14 (1) induce or coerce, or attempt to induce or coerce, a
15 wholesaler to engage in any illegal act or course of conduct;

16 (2) require a wholesaler to assent to any unreasonable
17 requirement, condition, understanding, or term of an agreement
18 prohibiting a wholesaler from selling the product of another
19 manufacturer or nonresident seller's permittee;

20 (3) fix or maintain the price at which a wholesaler may
21 resell spirit coolers;

22 (4) fail to provide each wholesaler of its brands a
23 written contract embodying the manufacturer's or nonresident
24 seller's permittee's agreement with the wholesaler;

25 (5) require a wholesaler to accept delivery of any
26 spirit coolers or any other item or commodity that is not ordered by
27 the wholesaler;

(6) adjust the price at which the manufacturer or nonresident seller's permittee sells spirit coolers to a wholesaler based on the price at which a wholesaler resells spirit coolers to a retailer, but a manufacturer or nonresident seller's permittee may set its own price if the price adjustment is based on factors other than a wholesaler's increase in the price it charges to a retailer and the adjustment is not intended to otherwise coerce illegal behavior under this section; or

(7) accept payment in exchange for an agreement providing for territorial rights.

(b) Nothing in this section shall interfere with the rights of a manufacturer, nonresident seller's permittee, or wholesaler to enter into contractual agreements that could be construed as governing ordinary business transactions, including agreements concerning allowances, rebates, refunds, services, capacity, advertising funds, promotional funds, or sports marketing funds.

Sec. 102.137. TRANSFER OF BUSINESS ASSETS OR STOCK. (a) A manufacturer or nonresident seller's permittee may not unreasonably withhold or delay its approval of any assignment, sale, or transfer of a wholesaler's stock or all or any portion of a wholesaler's assets, a wholesaler's voting stock, the voting stock of any parent corporation, or the beneficial ownership or control of any other entity owning or controlling the wholesaler, including the wholesaler's rights and obligations under the terms of an agreement whenever the person to be substituted meets reasonable standards imposed on the wholesaler and all other wholesalers of that manufacturer or nonresident seller's permittee of the same

1 general class, taking into account the size and location of the
2 sales territory and market to be served.

3 (b) On the death of one of the partners of a partnership
4 operating the business of a wholesaler, a manufacturer or
5 nonresident seller's permittee may not deny the surviving partner
6 of the partnership the right to become a successor-in-interest to
7 the agreement between the manufacturer or nonresident seller's
8 permittee and the partnership provided the surviving partner has
9 been active in the management of the partnership or is otherwise
10 capable of carrying on the business of the partnership.

11 (c) Notwithstanding Subsection (a), on the death of an owner
12 of a wholesaler, a manufacturer or nonresident seller's permittee
13 may not deny approval for a transfer of ownership to a surviving
14 spouse or adult child of the owner. A subsequent transfer of
15 ownership by the surviving spouse or adult child is subject to
16 Subsection (a).

17 Sec. 102.138. REASONABLE COMPENSATION. (a) A manufacturer
18 or nonresident seller's permittee who, without good cause, cancels,
19 fails to renew, or otherwise terminates an agreement or unlawfully
20 denies approval of or unreasonably withholds consent to an
21 assignment, transfer, or sale of a wholesaler's business assets or
22 voting stock or other equity securities shall pay the wholesaler
23 with whom it has an agreement the fair market value of the
24 wholesaler's business with relation to the affected brand. In
25 determining fair market value, consideration shall be given to all
26 elements of value, including goodwill and going concern value.

27 (b) If the manufacturer or nonresident seller's permittee

and wholesaler are unable to mutually agree on whether or not good cause exists for cancellation under Section 102.134 or on the reasonable compensation to be paid for the value of the wholesaler's business as provided by Subsection (a), the matter may, at the option of either the wholesaler or the manufacturer or nonresident seller's permittee, be submitted to three arbitrators, one of whom shall be named in writing by each party and the third of whom shall be chosen by the two arbitrators selected by the parties. If the arbitrators selected fail to choose a third arbitrator on or before the 10th day after the date the arbitrators were selected, a judge of a district court in the county in which the wholesaler's principal place of business is located shall select the third arbitrator. Arbitration shall be conducted in accordance with Chapter 171, Civil Practice and Remedies Code. Arbitration costs shall be paid one-half by the wholesaler and one-half by the manufacturer or nonresident seller's permittee. The award of the arbitrators is binding on the parties unless appealed not later than the 10th day after the date of the award. All proceedings on appeal shall be in accordance with and governed by Chapter 171, Civil Practice and Remedies Code.

Sec. 102.139. RIGHT OF FREE ASSOCIATION. A manufacturer or nonresident seller's permittee or wholesaler may not restrict or inhibit, directly or indirectly, the right of free association among manufacturers, nonresident sellers, or wholesalers for any lawful purpose.

Sec. 102.140. JUDICIAL REMEDIES. (a) If a manufacturer or nonresident seller's permittee or wholesaler who is a party to an

1 agreement fails to comply with this subchapter or engages in
2 conduct prohibited under this subchapter, or if a manufacturer or
3 nonresident seller's permittee and wholesaler are not able to
4 mutually agree on reasonable compensation under Section 102.138 and
5 the matter will not be submitted to arbitration, the aggrieved
6 manufacturer, nonresident seller's permittee, or wholesaler may
7 maintain a civil action in an appropriate court in the county in
8 which the wholesaler's principal place of business is located.

9 **(b) In any action under Subsection (a), the court may grant**
10 **such relief the court determines necessary or appropriate**
11 **considering the purposes of this subchapter.**

12 **(c) The prevailing party in an action under Subsection (a)**
13 **is entitled to actual damages, including the value of the**
14 **wholesaler's business, as specified in Section 102.138, reasonable**
15 **attorney's fees, and court costs.**

16 **Sec. 102.141. STATUTE OF LIMITATIONS. A person must bring a**
17 **cause of action arising under this subchapter not later than the**
18 **fourth anniversary of the date the cause of action accrues. If a**
19 **termination related to a change in ownership of the brand occurs,**
20 **the cause of action accrues when either the new brand owner or the**
21 **transferring or selling brand owner provides notice of termination**
22 **to the wholesaler.**

23 **Sec. 102.142. APPLICABILITY. (a) This subchapter applies**
24 **to an agreement entered into before, on, or after September 1, 2025.**

25 **(b) This subchapter does not apply to an agreement**
26 **concerning malt beverages to which Subchapter C applies by**
27 **operation of Section [102.81](#).**

SECTION 6. Section 105.01(a), Alcoholic Beverage Code, is amended to read as follows:

(a) Except as provided in Sections 39.04, 105.02, 105.03, 105.04, 105.08, and 105.091, no person may sell, offer for sale, or deliver any liquor:

(1) on New Year's Day, Thanksgiving Day, or Christmas Day;

(2) on Sunday; or

(3) before 10 a.m. or after 9 p.m. on any other day.

SECTION 7. This Act takes effect September 1, 2025.