By: Flores S.B. No. 301

A BILL TO BE ENTITLED

AN ACT

relating to the delivery and direct shipment of certain alcoholic beverages to ultimate consumers; creating criminal offenses.

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

SECTION 1. Chapter 14, Alcoholic Beverage Code, is amended by adding Section 14.051 to read as follows:

Sec. 14.051. DIRECT SHIPMENT TO CONSUMERS. (a) The holder of a distiller's and rectifier's permit may ship to an ultimate consumer, including an ultimate consumer located in a dry area, distilled spirits sold by the permit holder to the ultimate consumer under Section 14.05. Delivery must be by the holder of a carrier or consumer delivery permit.

(b) All distilled spirits shipped to an ultimate consumer by the holder of a distiller's and rectifier's permit must be in a package that is clearly and conspicuously labeled showing that:

(1) the package contains distilled spirits; and

(2) the package may be delivered only to a person described by Subsection (c).

(c) Distilled spirits shipped by the holder of a distiller's and rectifier's permit may not be delivered to any person other than:

(1) the person who purchased the distilled spirits;

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

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

(d) Distilled spirits may be delivered only to a person who is 21 years of age or older and only after the person accepting the package:

(1) presents valid proof of identity and age; and

(2) personally signs a receipt acknowledging delivery of the package.

(e) The holder of a distiller's and rectifier's permit may not:

(1) sell or ship distilled spirits to a minor;

(2) deliver distilled spirits to a consumer using a carrier that does not hold a carrier permit or a consumer delivery permit under this code; or

(3) deliver to a consumer in this state more than the amount of distilled spirits allowed to be sold to the consumer under Section 14.05(c).

SECTION 2. Section 16.09(a), Alcoholic Beverage Code, is amended to read as follows:

(a) The holder of a winery permit may ship wine to the ultimate consumer, including ultimate consumers located in dry areas. Delivery must be by the holder of a carrier or consumer delivery permit.

SECTION 3. Section 41.01, Alcoholic Beverage Code, is amended to read as follows:

Sec. 41.01. AUTHORIZED ACTIVITIES. (a) The holder of a carrier permit may transport malt beverages and liquor into and out

of this state and between points within the state.

(b) The holder may transport malt beverages and liquor from one wet area to another wet area across a dry area if that course of transportation is necessary or convenient.

(c) The holder of a carrier permit who transports malt beverages or liquor to the premises of a wholesaler, including to a location from which the wholesaler is temporarily conducting business under Section 109.62, shall provide to the consignee a shipping invoice that clearly states:

(1) the name and address of the consignor and consignee;

(2) the origin and destination of the shipment; and

(3) any other information required by this code or commission rule, including the brands, sizes of containers, types, and quantities of malt beverages and liquor contained in the shipment.

SECTION 4. Section 41.04, Alcoholic Beverage Code, is amended to read as follows:

Sec. 41.04. REQUIRED INFORMATION. The holder of a carrier permit shall furnish information required by the commission concerning the transportation of malt beverages and liquor.

SECTION 5. Section 54.12, Alcoholic Beverage Code, is amended to read as follows:

Sec. 54.12. PENALTY FOR SHIPPING WITHOUT A PERMIT. (a) Any person who does not hold an out-of-state winery direct shipper's permit who sells and ships wine [~~alcohol~~] from outside of Texas to an ultimate consumer in Texas commits an offense.

(b) An offense under this section is [~~on first offense~~] a Class B misdemeanor, except that:

(1) the offense is [~~, on second offense~~] a Class A misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this section, Section 54A.11, Section 63A.11, or another section under which the sale and shipment of an alcoholic beverage from outside of Texas to an ultimate consumer in Texas is an offense; and

(2) the offense is [~~, and on third offense~~] a state jail felony if it is shown on the trial of the offense that the defendant has previously been convicted two or more times of an offense under this section, Section 54A.11, Section 63A.11, or another section under which the sale and shipment of an alcoholic beverage from outside of Texas to an ultimate consumer in Texas is an offense.

SECTION 6. Subtitle A, Title 3, Alcoholic Beverage Code, is amended by adding Chapter 54A to read as follows:

CHAPTER 54A. OUT-OF-STATE DISTILLERY DIRECT SHIPPER'S PERMIT

Sec. 54A.01. AUTHORIZED ACTIVITIES. The holder of an out-of-state distillery direct shipper's permit may sell and deliver distilled spirits that are produced or bottled by the permittee to an ultimate consumer located in the State of Texas. Delivery must be by the holder of a carrier permit.

Sec. 54A.02. PROHIBITED ACTIVITIES. The holder of an out-of-state distillery direct shipper's permit may not:

(1) sell or ship distilled spirits to a minor;

(2) deliver distilled spirits to a consumer using a

carrier that does not hold a carrier permit under this code;

(3) deliver distilled spirits within a 30-day period to the same consumer in this state in an amount that exceeds the individual authorization under Section 14.05(c); or

(4) sell distilled spirits to ultimate consumers in this state for off-premises consumption in an annual amount that exceeds the annual authorization under Section 14.05(b).

Sec. 54A.03. QUALIFICATIONS FOR PERMIT. An out-of-state distillery direct shipper's permit may only be issued to a person who:

(1) does not hold a distiller's and rectifier's permit in the State of Texas;

(2) operates a distillery located in the United States and holds all state and federal permits necessary to operate the distillery;

(3) holds a Texas sales tax permit;

(4) expressly submits to personal jurisdiction in Texas state and federal courts and expressly submits to venue in Travis County, Texas, as proper venue for any proceedings that may be initiated by or against the commission; and

(5) does not directly or indirectly have any financial interest in a Texas wholesaler or retailer as those terms are used in Section 102.01.

Sec. 54A.04. IDENTIFICATION REQUIREMENTS. (a) All distilled spirits sold or shipped by the holder of an out-of-state distillery direct shipper's permit must be in a package that is clearly and conspicuously labeled showing that:

(1) the package contains distilled spirits; and

(2) the package may only be delivered to a person described by Subsection (b).

(b) Distilled spirits sold or shipped by a holder of an out-of-state distillery direct shipper's permit may not be delivered to any person other than:

(1) the person who purchased the distilled spirits;

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

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

(c) Distilled spirits may be delivered only to a person who is 21 years of age or older and only after the person accepting the package:

(1) presents valid proof of identity and age; and

(2) personally signs a receipt acknowledging delivery of the package.

Sec. 54A.05. REPORTS AND RECORDKEEPING. (a) The holder of an out-of-state distillery direct shipper's permit shall maintain records of all sales and deliveries made under the permit.

(b) The holder of an out-of-state distillery direct shipper's permit shall maintain complete sales and delivery records for all sales and deliveries made under the permit for at least five years from the date of sale. These records shall be made available on request for inspection by the commission or any other appropriate state agency.

(c) The commission shall establish rules requiring the

holder of an out-of-state distillery direct shipper's permit to periodically file reports providing the commission with such information as the commission may determine is needed to more efficiently and effectively enforce the state laws applicable to the permit holder.

Sec. 54A.06. LIABILITY FOR AND PAYMENT OF TAXES. (a) Sales made by the holder of an out-of-state distillery direct shipper's permit shall be considered to have been made in the State of Texas for delivery in the State of Texas.

(b) The holder of an out-of-state distillery direct shipper's permit shall be responsible for paying the following state taxes related to sales and deliveries made under this chapter:

(1) excise taxes on the distilled spirits sold, payable at the same rate and in the same manner as if the permittee were a Texas distiller or rectifier located in Texas; and

(2) state sales and use taxes all payable at the same rate and in the same manner as if the permittee were a Texas distiller or rectifier located in Texas.

(c) An ultimate consumer who purchases distilled spirits from the holder of an out-of-state distillery direct shipper's permit under this chapter shall be considered to be purchasing the distilled spirits from a Texas permittee and shall not be charged the administrative fee for personal imports set forth in Section 107.07.

Sec. 54A.07. RESALE PROHIBITED. A consumer purchasing distilled spirits from the holder of an out-of-state distillery

direct shipper's permit may not resell the distilled spirits, and any such distilled spirit that is resold is an illicit beverage as defined by Section 1.04.

Sec. 54A.08. DELIVERY AREAS. Distilled spirits shipped under this chapter may be delivered to persons located in a dry area.

Sec. 54A.09. LABEL APPROVAL NOT REQUIRED. If the holder of an out-of-state distillery direct shipper's permit has satisfied all federal label approval requirements for a particular brand of distilled spirits, then no further label approval shall be required by the commission.

Sec. 54A.10. RULES. The commission shall adopt rules and forms necessary to implement this chapter.

Sec. 54A.11. PENALTY FOR SHIPPING WITHOUT PERMIT. (a) Any person who does not hold an out-of-state distillery direct shipper's permit who sells and ships distilled spirits from outside of Texas to an ultimate consumer in Texas commits an offense.

(b) An offense under this section is a Class B misdemeanor, except that:

(1) the offense is a Class A misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this section, Section 54.12, Section 63A.11, or another section under which the sale and shipment of an alcoholic beverage from outside of Texas to an ultimate consumer in Texas is an offense; and

(2) the offense is a state jail felony if it is shown on the trial of the offense that the defendant has previously been

convicted two or more times of an offense under this section, Section 54.12, Section 63A.11, or another section under which the sale and shipment of an alcoholic beverage from outside of Texas to an ultimate consumer in Texas is an offense.

SECTION 7. Section 57.01, Alcoholic Beverage Code, is amended to read as follows:

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

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

(1) package store permit;

(2) wine only package store permit;

(3) wine and malt beverage [~~beer~~] retailer's permit;

(4) wine and malt beverage [~~beer~~] retailer's off-premise permit;

(5) retail dealer's on-premise license;

(6) retail dealer's off-premise license;

(7) mixed beverage permit authorized to deliver alcoholic beverages under Section 28.1001; [~~or~~]

(8) private club permit authorized to deliver alcoholic beverages under Section 32.155;

(9) distiller's and rectifier's permit;

(10) winery permit;

(11) brewer's license; or

(12) brewpub license.

SECTION 8. Section 57.02(b), Alcoholic Beverage Code, is amended to read as follows:

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

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

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

(A) the county in which the premises of the retailer or manufacturer making the sale is located;

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

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

SECTION 9. Section 57.04, Alcoholic Beverage Code, is amended to read as follows:

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

(1) 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; or

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

SECTION 10. Section 57.06(c), Alcoholic Beverage Code, is amended to read as follows:

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

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

(2) completes the delivery to the consumer in a reasonable amount of time after leaving the retailer's or manufacturer's premises.

SECTION 11. Section 57.07, Alcoholic Beverage Code, is amended to read as follows:

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

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

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

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

(3) any other provision of this code.

(c) A retailer or manufacturer:

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

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

SECTION 12. Chapter 62, Alcoholic Beverage Code, is amended by adding Section 62.123 to read as follows:

Sec. 62.123. DIRECT SHIPMENT TO CONSUMERS. (a) The holder of a brewer's license may ship to an ultimate consumer, including an ultimate consumer located in a dry area, malt beverages sold by the license holder to the ultimate consumer under Section 62.122(a)(2). Delivery must be by the holder of a carrier or consumer delivery permit.

(b) All malt beverages shipped to an ultimate consumer by the holder of a brewer's license must be in a package that is clearly and conspicuously labeled showing that:

(1) the package contains malt beverages; and

(2) the package may be delivered only to a person described by Subsection (c).

(c) Malt beverages shipped by the holder of a brewer's license may not be delivered to any person other than:

(1) the person who purchased the malt beverages;

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

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

(d) Malt beverages may be delivered only to a person who is 21 years of age or older and only after the person accepting the package:

(1) presents valid proof of identity and age; and

(2) personally signs a receipt acknowledging delivery of the package.

(e) The holder of a brewer's license may not:

(1) sell or ship malt beverages to a minor;

(2) deliver malt beverages to a consumer using a carrier that does not hold a carrier permit or a consumer delivery permit under this code; or

(3) deliver to the same consumer in this state more than 288 fluid ounces of malt beverages per calendar day.

SECTION 13. Subtitle B, Title 3, Alcoholic Beverage Code, is amended by adding Chapter 63A to read as follows:

CHAPTER 63A. OUT-OF-STATE BREWERY DIRECT SHIPPER'S LICENSE

Sec. 63A.01. AUTHORIZED ACTIVITIES. The holder of an out-of-state brewery direct shipper's license may sell and deliver

malt beverages that are produced or bottled by the licensee to an ultimate consumer located in the State of Texas. Delivery must be by the holder of a carrier permit.

Sec. 63A.02. PROHIBITED ACTIVITIES. The holder of an out-of-state brewery direct shipper's license may not:

(1) sell or ship malt beverages to a minor;

(2) deliver malt beverages to a consumer using a carrier that does not hold a carrier permit under this code;

(3) deliver malt beverages to the same consumer in this state on the same calendar day in an amount that exceeds the daily authorization under Section 62.122(a-1); or

(4) sell malt beverages to ultimate consumers in this state in an annual amount that exceeds the annual authorization under Section 62.122(b).

Sec. 63A.03. QUALIFICATIONS FOR LICENSE. An out-of-state brewery direct shipper's license may only be issued to a person who:

(1) does not hold a brewer's license in the State of Texas;

(2) operates a brewery located in the United States and holds all state and federal permits necessary to operate the brewery;

(3) holds a Texas sales tax permit;

(4) expressly submits to personal jurisdiction in Texas state and federal courts and expressly submits to venue in Travis County, Texas, as proper venue for any proceedings that may be initiated by or against the commission; and

(5) does not directly or indirectly have any financial

interest in a Texas wholesaler or retailer as those terms are used in Section 102.01.

Sec. 63A.04. IDENTIFICATION REQUIREMENTS. (a) All malt beverages sold or shipped by the holder of an out-of-state brewery direct shipper's license must be in a package that is clearly and conspicuously labeled showing that:

(1) the package contains malt beverages; and

(2) the package may only be delivered to a person described by Subsection (b).

(b) Malt beverages sold or shipped by a holder of an out-of-state brewery direct shipper's license may not be delivered to any person other than:

(1) the person who purchased the malt beverages;

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

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

(c) Malt beverages may be delivered only to a person who is 21 years of age or older and only after the person accepting the package:

(1) presents valid proof of identity and age; and

(2) personally signs a receipt acknowledging delivery of the package.

Sec. 63A.05. REPORTS AND RECORDKEEPING. (a) The holder of an out-of-state brewery direct shipper's license shall maintain records of all sales and deliveries made under the license.

(b) The holder of an out-of-state brewery direct shipper's

license shall maintain complete sales and delivery records for all sales and deliveries made under the license for at least five years from the date of sale. These records shall be made available on request for inspection by the commission or any other appropriate state agency.

(c) The commission shall establish rules requiring the holder of an out-of-state brewery direct shipper's license to periodically file reports providing the commission with such information as the commission may determine is needed to more efficiently and effectively enforce the state laws applicable to the license holder.

Sec. 63A.06. LIABILITY FOR AND PAYMENT OF TAXES. (a) Sales made by the holder of an out-of-state brewery direct shipper's license shall be considered to have been made in the State of Texas for delivery in the State of Texas.

(b) The holder of an out-of-state brewery direct shipper's license shall be responsible for paying the following state taxes related to sales and deliveries made under this chapter:

(1) excise taxes on the malt beverages sold, payable at the same rate and in the same manner as if the licensee were a Texas brewer located in Texas; and

(2) state sales and use taxes all payable at the same rate and in the same manner as if the licensee were a Texas brewer located in Texas.

(c) An ultimate consumer who purchases malt beverages from the holder of an out-of-state brewery direct shipper's license under this chapter shall be considered to be purchasing the malt

beverages from a Texas licensee and shall not be charged the administrative fee for personal imports set forth in Section 107.07.

Sec. 63A.07. RESALE PROHIBITED. A consumer purchasing malt beverages from the holder of an out-of-state brewery direct shipper's license may not resell the malt beverages, and any such malt beverage that is resold is an illicit beverage as defined by Section 1.04.

Sec. 63A.08. DELIVERY AREAS. Malt beverages shipped under this chapter may be delivered to persons located in a dry area.

Sec. 63A.09. LABEL APPROVAL NOT REQUIRED. If the holder of an out-of-state brewery direct shipper's license has satisfied all federal label approval requirements for a particular brand of malt beverages, then no further label approval shall be required by the commission.

Sec. 63A.10. RULES. The commission shall adopt rules and forms necessary to implement this chapter.

Sec. 63A.11. PENALTY FOR SHIPPING WITHOUT LICENSE. (a) Any person who does not hold an out-of-state brewery direct shipper's license who sells and ships a malt beverage from outside of Texas to an ultimate consumer in Texas commits an offense.

(b) An offense under this section is a Class B misdemeanor, except that:

(1) the offense is a Class A misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this section, Section 54.12, Section 54A.11, or another section under which the sale and shipment of an

alcoholic beverage from outside of Texas to an ultimate consumer in Texas is an offense; and

(2) the offense is a state jail felony if it is shown on the trial of the offense that the defendant has previously been convicted two or more times of an offense under this section, Section 54.12, Section 54A.11, or another section under which the sale and shipment of an alcoholic beverage from outside of Texas to an ultimate consumer in Texas is an offense.

SECTION 14. Chapter 74, Alcoholic Beverage Code, is amended by adding Section 74.12 to read as follows:

Sec. 74.12. DIRECT SHIPMENT TO CONSUMERS. (a) The holder of a brewpub license may ship to an ultimate consumer, including an ultimate consumer located in a dry area, malt beverages sold by the license holder to the ultimate consumer under Section 74.01(a)(2). Delivery must be by the holder of a carrier or consumer delivery permit.

(b) All malt beverages shipped to an ultimate consumer by the holder of a brewpub license must be in a package that is clearly and conspicuously labeled showing that:

(1) the package contains malt beverages; and

(2) the package may be delivered only to a person described by Subsection (c).

(c) Malt beverages shipped by the holder of a brewpub license may not be delivered to any person other than:

(1) the person who purchased the malt beverages;

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

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

(d) Malt beverages may be delivered only to a person who is 21 years of age or older and only after the person accepting the package:

(1) presents valid proof of identity and age; and

(2) personally signs a receipt acknowledging delivery of the package.

(e) The holder of a brewpub license may not:

(1) sell or ship malt beverages to a minor; or

(2) deliver malt beverages to a consumer using a carrier that does not hold a carrier permit or a consumer delivery permit under this code.

SECTION 15. Section 107.04, Alcoholic Beverage Code, is amended to read as follows:

Sec. 107.04. DELIVERY OF MALT BEVERAGES IN DRY AREA. (a) Except as provided by Subsection (b), a [~~A~~] common carrier may not deliver malt beverages in a dry area unless the malt beverages are consigned to a general distributor's licensee who has previously stated that the licensee intends to transport the malt beverages to a licensed place of business in a wet area. A common carrier who transports malt beverages to a distributor in a dry area shall comply strictly with this section and Section 107.02.

(b) A common carrier may deliver malt beverages to an ultimate consumer located in a dry area as authorized by Section 62.123, 63A.08, or 74.12.

SECTION 16. Section 107.05(b), Alcoholic Beverage Code, is

amended to read as follows:

(b) This section does not apply to the transportation of liquor into the state as authorized by Chapter 54, Chapter 54A, or Section 107.07 [~~of this code~~].

SECTION 17. Section 107.06(c), Alcoholic Beverage Code, is amended to read as follows:

(c) This section does not apply to:

(1) the importation or transportation of military malt beverages consigned to a military installation; or

(2) [~~to~~] the importation of malt beverages as authorized under Chapter 63A or Section 107.07.

SECTION 18. Section 107.07(f), Alcoholic Beverage Code, is amended to read as follows:

(f) Except as provided by Chapter 54, Chapter 54A, or Chapter 63A, any person in the business of selling alcoholic beverages in another state or country who ships or causes to be shipped any alcoholic beverage directly to any Texas resident under this section is in violation of this code.

SECTION 19. Section 14.05(d), Alcoholic Beverage Code, is repealed.

SECTION 20. This Act takes effect September 1, 2027.