

SUBJECT: Regulation of package liquor stores

COMMITTEE: Licensing and Administrative Procedures — favorable, with amendment

VOTE: 7 ayes — Wilson, Kubiak, Goolsby, D. Jones, Pickett, Torres, Yarbrough
0 nays
2 absent — Brimer, Dear

SENATE VOTE: On final passage, March 28 — 28-0 (Barrientos recorded present, not voting)

WITNESSES: None

DIGEST: SB 1063, as amended, would make various changes in the statutory requirements for package stores that sell alcoholic beverages and would raise the annual fee for a package store permit from \$300 to \$500. Other changes would include:

Underage employees prohibited. SB 1063 would prohibit a package store from having an employee under age 21 work on the premises or deliver alcohol, unless the person was employed on September 1, 1995, or was the son or daughter of the owner.

Separation of premises. The bill would also require that a package store be completely separated from other businesses by an opaque wall from floor to ceiling, without connecting doors, shared bathrooms or shared entry foyers. In addition, the package store would have to have a public front door that enters onto a street, parking lot, public sidewalk or public area of a mall or shopping center.

Emergency exit and ADA restroom. All package stores built or first occupied after September 1, 1995, would have to include a rear or side entrance opening onto a street, parking lot, public sidewalk or public or common area of a mall or shopping center, which could be used for receipt and processing of merchandise but would serve as an emergency exit. In

addition, the store would have to have a restroom that complies with Title 3 of the Americans with Disabilities Act of 1990, as amended.

Exceptions. Complete separation, emergency exit and ADA bathroom would not be required if the package store qualified for exemption under sec. 11.50 of the Alcoholic Beverage Code, which states that a package store may occupy only a portion of a building if by November 28, 1971, the licensed premise is accessible from the remainder of the building only through a door or archway, eight feet or less in width, which must be kept closed during the hours in which it is not legal to sell liquor. A package store in a hotel would be exempt from the requirements if kept segregated from other businesses in the hotel.

Store hours. A package store permittee would be able to sell nonalcoholic products or conduct other lawful business, but the premises would have to be closed to the general public, not including vendors and service personnel, during all hours in which the sale of liquor is prohibited by law.

Coordination of operations prohibited. Package store permittees could not directly or indirectly coordinate operations with another package store as if they shared common ownership, unless the package stores were wholly owned by the same person. The package stores could not do the following:

- set prices or credit policies;
- share advertising;
- use the same trade name, trademark or slogan (unless already using on September 1, 1995);
- share the same bookkeeping or computer-processing service, unless the service is provided to the general public;
- transfer funds, merchandise or equipment from one package store to another;
- use the same employee or independent contractor for different package store businesses, unless the independent contractor provides the service to the public, or
- negotiate quantity discounts using the sales volume of another package store to increase the discount.

A package store permittee would have to file with the Texas Alcoholic Beverage Commission (TABC) a sworn affidavit stating that the permittee fully complied with the requirements of this section. The bill would create a cause of action for a package store permittee injured by another permittee's violation of any of these prohibitions in this section and would be able to recover triple damages plus costs, attorney's fees and injunctive relief.

Public corporation permit ownership prohibited. SB 1063 would also prohibit a public corporation, or an entity controlled or holding for a public corporation, from owning a package store permit, unless the corporation already held a package store permit or had an application pending by April 28, 1995, and provided a sworn statement to that effect by December 31, 1995. A public corporation would mean a corporation whose shares are listed on the public stock exchange, or any corporation with more than 35 persons holding an ownership interest. This prohibition would not apply to a package store in a hotel.

A package store permittee would need to file with the TABC a sworn affidavit stating that the permittee fully complies with the requirements of this section. The bill would create a cause of action for a package store permittee injured by another permittee's violation of the prohibition against public corporation ownership and would allow the injured permittee to recover triple damages plus costs, attorney's fees and injunctive relief.

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

SB 1063 would make a number of changes to ease the TABC's regulatory tasks and prohibit monopolistic practices by package liquor stores. First, the bill would prevent a package liquor store from employing people under the age of 21. This prohibition would allow the TABC to better determine when an underage person enters a package liquor store to illegally buy alcohol, because they would know that the underage person could not be there for any legal purpose unless he or she was employed by September 1, 1995, or was the son or daughter of the owner. It seems logical that if it is illegal for an underage person to enter liquor store premises, it should be illegal for that person to work there as well.

The provisions of the bill that would require a package liquor store to be in completely separate premises from other businesses are already TABC regulations that should be codified. Package liquor stores are subject to more stringent closing time rules and other rules that can only be monitored if the store keeps completely separate premises.

In addition, requiring separate premises also keeps marketing giants such as Sam's or Walgreens from monopolizing the package liquor store market. Without strict prohibitions, those stores could have a section of their store dedicated to liquor. The prohibition against public corporation ownership would also prevent the take over of the package liquor store market by large corporations. By preventing corporate and chain store takeover, the bill would foster competition in the package liquor store market to keep prices reasonable.

Along the same lines, preventing package liquor stores from coordinating pricing and advertising operations would prevent package stores from charging higher prices by acting as chain stores. Once again, the bill would foster competition. To encourage compliance with the prohibitions against corporate ownership and coordination of operations, a package liquor store injured by another store's violation of these prohibitions could bring suit against the offender to recover triple damages.

In addition to the benefits outlined above, the bill would increase the annual permit fee for package stores from \$300 to \$500 a year, resulting in an estimated general revenue fund gain of \$502,800 for each fiscal year 1996 through 2000.

**OPPONENTS
SAY:**

This bill would allow the established monopolies to keep their market share by preventing the up-and-coming package stores from forming alliances or coordinating operations to compete with the big package store chains.

Moreover, if the Legislature enacts HB 2451, which would close the loophole that allows family members to consolidate to own more than the five-permit limit, the monopolies created through that loophole would be the only monopolies that could ever exist. SB 1063 would exacerbate the problem by not allowing the remaining smaller stores to coordinate competition against those monopolies.

NOTES: The committee amendment would delete a provision in the Senate-passed version that regulated comparative price advertising and would clarify that the prohibition against public corporation ownership of a permit would not apply to public corporation already holding or applying for a permit as of April 28, 1995.