

SUBJECT: Alcoholic beverage regulation revisions

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — Wilson, Yarbrough, Goolsby, Haggerty, J. Moreno, Palmer, A. Reyna
0 nays
2 absent — Flores, D. Jones

WITNESSES: None

DIGEST: CSHB 3555 would revise the Alcoholic Beverage Code concerning open beverage containers, direct shipments of alcohol from out of state, protections for wholesalers and distributors, and other provisions.

Open container law for driver and passenger. CSHB 3555 would make it a criminal offense to have an open container of alcohol in a car located on a public highway. It would be a Class C misdemeanor, punishable by a maximum fine of \$500, if an occupant of a motor vehicle located on a public highway or a right-of-way of a public highway, including a rest area, comfort station, picnic area, roadside park, or scenic overlook situated on a highway right-of-way, consumed an alcoholic beverage or possessed in the passenger area of the motor vehicle a bottle, can, or other receptacle that contained an alcoholic beverage and had been opened, had a broken seal, or had its contents partially removed.

It would be an affirmative defense to prosecution if the person consuming the alcohol was, or the receptacle containing the alcohol was in the possession of, a passenger in the living quarters of a house coach or house trailer or a passenger in a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation.

Increased penalties for direct shipment of alcohol. CSHB 3555 would increase the penalty for the direct shipment of alcoholic beverages to Texas residents by out-of-state people in the business of liquor sales. The bill would

raise the penalty from a Class C misdemeanor to a Class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000. If it were shown at trial that the person committed the offense after receiving written notice of the violation from the Texas Alcoholic Beverage Commission (TABC), the penalty would be a state jail felony, punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000.

Limitations on classifying data as drug- or alcohol-related. CSHB 3555 would prohibit state agencies and political subdivisions working with crime or traffic-offense data from categorizing or classifying an accident, crime, offense, incident, or activity as being caused or otherwise related to the use of drugs, consumption of alcohol, or mental impairment unless the use, consumption, or impairment was determined to be the proximate cause of the accident, crime, offense, incident, or activity.

Greater protections for wholesalers and distributors. CSHB 3555 would give wholesalers and distributors immunity from administrative sanctions for selling or delivering to unauthorized retailers if the wholesaler or distributor reasonably believed that the retailer was authorized to buy and receive that type of alcohol and obtained a written affirmation from the retailer that the retailer was authorized to buy and receive the alcohol.

TABC could not suspend or revoke the permit of a distributor or wholesaler based on an act or omission by the wholesaler's agent unless a supervisory employee of the wholesaler or distributor:

- ! was directly involved in the act or omission;
- ! had notice or knowledge of the act or omission; and
- ! failed to take reasonable steps to prevent the act or omission.

Creation of an alcohol awareness program. CSHB 3555 would create a seven-member advisory committee appointed by the governor to develop a recommended curriculum for raising alcohol awareness among students. The governor would have to appoint the education commissioner as the presiding officer and make other appointments resulting in a geographically diverse committee that represented the entire population of the state. The committee

would have to recommend a curriculum and funding options no later than 90 days before the Legislature convened, and committee members' terms would expire on the day the recommendations were submitted.

Raising the alcohol percentage limit for wine sales by beer and wine permit holders. CSHB 3555 would raise from 14 percent to 17 percent the alcohol percentage of wine that could be sold by holders of wine-only or wine-and-beer-only permits.

The bill would require all subsequent local-option elections for the sale of wine to include wine of up to 17 percent alcohol. It would require local-option elections for the sale of wine up to 17 percent alcohol if the area had approved only the sale of wine up to 14 percent alcohol. TABC would have to note on the face of all licenses and permits for wine sales whether the permit allowed sale of wine up to 14 percent or 17 percent.

CSHB 3555 would not change existing provisions in the code that tax wine at a higher rate if its alcohol content is more than 14 percent.

Promotional events. CSHB 3555 specifically would allow a wholesaler or manufacturer to prearrange and preannounce with a retailer promotional events for distilled spirits or wine to be held on the retailer's premises. The wholesaler or manufacturer could not notify consumers of an event or any offer of free distilled spirits or wine until the event or offer actually occurred.

Miscellaneous provisions. CSHB 3555 also would:

- ! exclude appropriated funds for litigation and non-enforcement personnel from the funds used to calculate the annual surcharge on permit and license holders;
- ! specify that secondary permits and licenses (after-hours permits, etc.) are subject to the same expiration date and suspension actions that apply to primary permits and licenses;
- ! require TABC to notify wholesalers of the names of retailers who hold suspended and expired permits and licenses;
- ! allow the transport of liquor in a vehicle owned or leased by a holder of an agent's permit issued by the TABC;
- ! require arbitration between a manufacturer and a distributor to be

conducted in the county of the distributor's principal place of business unless the parties agree to another location; and

- ! repeal laws that prohibit a package store from selling more than five gallons of wine or ale in a single transaction.

CSHB 3555 would take effect September 1, 1999, and would apply only to offenses, acts, omissions, alcohol sales, or alcohol delivery occurring on or after that date.

SUPPORTERS
SAY:

Open container law for driver and passenger. If Texas does not have an open container law in place and enforced by October 1, 2000, federal highway funds will have to be diverted from construction to traffic safety. About \$20 million in federal highway funds would have to be transferred annually in fiscal 2000 and 2001 to the highway safety or hazard elimination program. After that, the amount would increase to about \$41 million annually.

Transportation money is scarce, and Texas cannot afford to lose money that could be spent on needed road projects. The state now addresses only about 40 percent of its needed construction projects. Transferring this money to highway safety programs would result in overfunding of these programs, which do things such as pay for increased law enforcement efforts on holidays and alcohol-awareness publicity programs. As a result, construction programs that relieve congestion and improve traffic mobility would be underfunded.

Increased penalties for direct shipment of alcohol. Out-of-state businesses that ship alcohol directly to Texas residents escape all Texas regulation and tax liability. The comptroller estimates that \$300,000 of tax money is lost annually through direct shipments of alcohol. The rise of Internet commerce will make this amount larger if CSHB 3555 is not enacted.

In addition to tax and regulatory concerns, there is no way to prevent an out-of-state business from shipping alcohol to minors. Currently, TABC only could charge an out-of-state business with a \$500 fine even if the liquor the company shipped to a Texas minor caused a fatal car accident. The penalty for an offense after receiving a warning from TABC should be a state jail felony, because a felony conviction results in the revocation of a liquor license or permit in most states. This harsh penalty would make out-of-state businesses obey the law.

People always can order obscure or hard-to-find alcoholic beverages through their neighborhood liquor store. Shipments of wine or other alcoholic beverages by individuals as gifts would not be covered by the offense since an ordinary person would not be considered “in the business of selling alcoholic beverages.”

Limitations on classifying data as drug- or alcohol-related. Currently, there are no uniform standards for reporting crime and traffic offenses as drug- or alcohol-related. The presence of drugs or alcohol does not necessarily mean that an accident or crime was caused by drugs or alcohol. Unreliable data do not provide the state with an accurate picture of the problems that arise from drug and alcohol abuse. It has not been conclusively shown that this section of CSHB 3555 would endanger federal funding.

Protections for wholesalers and distributors. It would be unfair to hold wholesalers and distributors responsible for knowing the legal status of every retailer that bought alcohol from them. The driver on the delivery route should not have to check the permit of every retailer where the driver stops every day. A wholesaler or distributor also should not be held responsible for the acts or omissions of its low-level employees who might violate TABC rules. CSHB 3555 would add common-sense protections and would shift the responsibility for enforcement to TABC.

Raising the alcohol percentage limit for wine sales by beer and wine permit holders. Some brands of white zinfandel and other wines now contain as much as 16.2 percent alcohol by volume. An increase of 3 percent does not affect the intoxicating power of the wine substantially. CSHB 3555 would update the law to keep pace with modern wine-making techniques. Areas where wine sales are permitted by a local-option election under current law would not be affected by CSHB 3555, since a second local-option election would be required before wines with greater than 14 percent alcohol could be sold.

OPPONENTS
SAY:

Open container law for driver and passenger. Texas already has strict laws that prohibit persons from driving while intoxicated and to punish severely those who do. Those who do not break these laws — especially passengers — should not have their freedom restricted. Restricting all open containers would be an unwarranted intrusion of the government on individual behavior.

It would go too far to allow law enforcement officers to ticket or arrest a passenger in a vehicle merely for drinking a beer when the focus should be on whether the driver is impaired.

Texas will not lose federal highway dollars if CSHB 3555 is not enacted. The funds simply would be redirected to highway safety and other safety-related programs.

Increased penalties for direct shipment of alcohol. CSHB 3555 would inhibit interstate commerce and restrict Texans' access to popular Internet sites offering wine and other alcoholic beverages. The prohibition against direct shipment is a protectionist measure benefitting the Texas alcoholic beverage industry. Reports of Internet alcohol sales to minors are exaggerated and most reputable Internet businesses require proof of age.

Limitations on classifying data as drug- or alcohol-related. CSHB 3555 would jeopardize federal funding for highway safety programs in Texas. Federal law requires the states to establish highway safety programs in compliance with the rules established by the secretary of transportation. The restrictions on data classification in CSHB 3555 would violate these rules and Texas no longer would qualify for \$9 million in federal funds.

OTHER
OPPONENTS
SAY:

Open container law for driver and passenger. The definition of "passenger area" in CSHB 3555 might create confusion when applied to sport-utility vehicles and vans that do not have distinct cargo areas or trunks. The U.S. Department of Transportation has approved laws in other states that exclude the area behind the last row of seats in a vehicle from the definition of passenger area. The bill should clarify this to provide guidance to law enforcement.

Protections for wholesalers and distributors. CSHB 3555 would go too far in protecting wholesalers and distributors. TABC would have to prove a conspiracy between the agent and the company before it could penalize a wholesaler or retailer. Requiring either knowledge, notice, or failure to act by a supervisory employee would provide enough protection, and TABC should not have to prove all three elements.

NOTES: CSHB 3555 contains provisions from several House and Senate bills. The bills that have passed at least one chamber are listed below.

- ! HB 2450 by Haggerty, containing similar protections for wholesalers and distributors, has passed both houses and been sent to governor.
- ! SB 1102 by Cain, which would raise the limit on the alcohol content of wine, passed the Senate on April 8. The House Licensing and Administrative Procedures Committee reported SB 1102 favorably as substituted on April 28 and sent it to the Local and Consent Calendar Committee.
- ! SB 1121 by Armbrister, which would clarify promotional activities, passed the Senate on April 21. The House Licensing and Administrative Procedures Committee reported SB 1121 favorably on April 28 and sent it to the Local and Consent Calendar Committee.
- ! SB 1640 by Carona, concerning the transportation of alcoholic beverages in an agent's vehicle, passed the Senate on April 8. The House Licensing and Administrative Procedures Committee reported SB 1640 favorably on April 28 and sent it to the Local and Consent Calendar Committee.
- ! HB 2856 by Yarbrough, which would repeal the five-gallon limit on wine and ale sales in a single transaction, passed the House on May 2 on the Local, Consent, and Resolutions Calendar and has been referred to the Senate Economic Development Committee.

HB 487 by Hill et al., which also would prohibit open containers of alcoholic beverages in motor vehicles and toughen repeat driving while intoxicated penalties, also is on today's calendar.