HOUSE
RESEARCH
ORGANIZATION bill analysis | 5/27/2003 | SB 770 Madla (Mowery, et al.)

SUBJECT:	Permitting direct shipment of wine to consumers
COMMITTEE:	Economic Development — favorable, without amendment
VOTE:	4 ayes — J. Keffer, Hughes, Isett, Rodriguez 0 nays 3 absent — Homer, Thompson, Wong
SENATE VOTE:	On final passage, May 20 — 28-3 (Barrientos, Ellis, Gallegos)
WITNESSES:	*(On House companion bill, HB 768:)* For — Rick Naber, Flat Creek Estate; Delia Cuellar; Alphonse Dotson; Gary Elliot; Kenneth Maxwell; Cord Switzer; *(Registered, but did not testify:)* Bill Clayton, Texas Wine and Grape Grower Association; Sharon Hull and Charles E. McGrigg, The Wine Institute Against — Alan Gray, Licensed Beverage Distributors, Inc.; Mike McKinney, Wholesale Beer Distributors, Inc; Charles Sims, Texas Package Store Association and Spirits Liquor Stores; *(Registered, but did not testify:)* Rick Donley, The Beer Alliance of Texas, LLC; Bill Lewis, Mothers Against Drunk Driving; Roberty H. Sparks, Licensed Beverage Distributers, Inc.
BACKGROUND:	Alcoholic Beverage Code, ch. 107 governs the transportation and importation of liquor in the state of Texas. Sec. 107.07 allows an individual to import a certain amount of wine or liquor for personal consumption into the state only if that individual personally accompanies these beverages into the state. Sec. 107.12 creates an exception that allows a purchaser to buy wine at a Texas winery for shipment to the purchaser if the winery verifies that purchaser is 21 years of age or older. The purchaser must be present when the wine is delivered. In addition, ch. 110, subch. B governs the Texas Wine Marketing Assistance Program, under which package stores can ship wine to purchasers under certain circumstances.
DIGEST:	SB 768 would add Alcoholic Beverage Code, sec. 107.13, allowing a purchaser to buy wine and have it shipped directly to the purchaser by a

retailer holding a direct wine shipper's permit. Wine shipped under this bill would have to be for the purchaser's exclusive personal use. No more than three gallons of wine could be shipped to a purchaser in any 30-day period, nor could wine be shipped into a dry area or to a minor.

The holder of a direct wine shipper's permit would have to ensure that each package of wine was labeled as containing alcohol and require for delivery the signature of a person 21 years of age or older. A permit holder could not ship wine through a carrier who did not hold a carrier's permit.

A permit holder would have to pay annually all taxes, including sales and use taxes, that would have been due on shipped wine if it had been sold in the location where the wine was delivered. The permit holder also would have to pay an administrative fee of 50 cents shipment as well as an initial permit fee of $100, and a $25 renewal fee annually thereafter. To obtain or renew a permit, a person would have to hold a license or permit authorizing the person to sell wine directly to a customer in the state or country from which the wine was shipped.

A permit holder would have to file a report with TABC by January 15 of each year showing the amounts and sale prices of wine shipped into or within the state during the preceding calendar year, as well as any other information required by the commission. TABC would adopt rules on the manner in which taxes and fees would be computed and collected, records that a permit holder would have to maintain, and the auditing of records maintained by the permit holder. Statutes allowing a permit holder whose permit was threatened with revocation to pay a civil penalty would apply to this section.

The bill also would repeal sec. 107.12 and update the Texas Wine Marketing Assistance Program to reflect the existence of sec. 107.13.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

SUPPORTERS SAY:

By facilitating the direct shipment of wine to and from Texas, SB 770 would take advantage of an important economic development opportunity by allowing Texas wineries to sell their products directly to consumers. Current law makes it difficult for small wineries in the state to expand their markets because they can ship wine only to consumers who visit in person. This bill infinitely would expand the possible market for Texas wineries by allowing them to take orders over the Internet and ship wine anywhere in the world.

The potential economic benefit of an expanded wine market for Texas vineyards is great. Many small wineries are isolated from urban markets, so being able to sell wine over the Internet would be a boon to their business. Wine holds substantial promise for Texas farmers searching for new crops as subsidies decline and traditional products become less profitable. Many areas of Texas are suitable for the establishment of vineyards, so expansion of the state's wine market could also serve as a vital tool for rural economic development. In addition, suppliers, shippers, and the tourism industry, among others, would benefit from a growing wine industry in Texas.

Many states allow their residents to receive direct wine shipments only from states that authorize their own residents to receive such shipments. Because of reciprocity agreements in states such as California, Colorado, and Washington, Texas wineries can not take advantage of markets in these states. By allowing direct interstate shipping, SB 770 would open many markets for small, Texas vineyards.

By requiring shippers to remit the sales tax to the state that would be due at the delivery location, SB 770 would generate substantial revenue. Further, the initial and renewal permit fees would more than cover the costs of the bill's administration. Out-of-state vendors would be compelled to remit the sales tax in order to retain their permit and ability to sell to markets in the state.

SB 770 also would benefit consumers of fine wine in the state who could enjoy vintages unavailable through normal distribution. Texans have a right to purchase and enjoy wine without unnecessary government regulation.

The bill would establish a reasonable regulatory system that has proven effective at protecting minors in other states. It would require that any direct shipment of wine be clearly and conspicuously marked, and delivery could be made only with the signature of an individual over the age of 21. The bill similarly would prohibit shipments into dry areas of the state where liquor sales are prohibited, and shippers could use computer databases compiling data on dry counties to comply with the bill. Several Internet retailers currently ship products into the state without any of the safeguards that would be created under this bill, even though those shipments are prohibited. With SB 770, the Legislature has an opportunity to establish a specific regulatory system for direct shipments and protect the public safety of Texans.

Minors who wished to purchase alcohol illegally could find quicker, easier, and cheaper ways than waiting for a wine shipment through the mail. Further, underage drinkers generally consume beer or liquor rather than wine. These facts, along with the requirement of a signature by an adult, would prevent direct wine shipments from ending up in the hands of minors.

SB 770 would remedy problems with current law governing transportation of wine that were ruled unconstitutional in *Dickerson v. Bailey*, 202 F. Supp. 673 (S.D. Tex. 2002), which held that Alcoholic Beverage Code sec. 107.07 discriminates against out-of-state wine producers and shippers by compelling them to go through Texas wholesalers and retailers, creating a system of economic protectionism. SB 770 would allow the Legislature to address this unconstitutional prohibition in current law and protect the state from a lengthy and costly appeals process.

OPPONENTS SAY:

This bill could create a serious public safety problem by making it easier for minors to purchase alcohol through the mail. There would be no way to prevent a person under 21 years of age from ordering wine on the Internet, and it would be very difficult to enforce the signature requirement. Sale of an alcoholic beverage to a minor is a Class A misdemeanor, for which Texas would not extradite, so it would be nearly impossible to prevent an out-of-state wine shipper from illegally selling alcohol to minors. In addition, no comprehensive list of dry areas in the state exists, and it would be very difficult to ensure that a shipment of wine was not headed for a dry area.

SB 770 would undermine the established three-tier alcohol retail system that is easily regulated by TABC and successfully prevents minors from purchasing alcohol. Currently, a producer sells wine to a distributor, who in turn sells it to a retailer, who finally provides it to consumers. By allowing direct shipments of wine from out-of-state businesses, SB 770 would undercut the ability of the state to regulate the liquor industry.

Texas has no authority to require out-of-state businesses to remit sales tax to the state, and this requirement in SB 770 would be unenforceable. In *Quill Corporation v. North Dakota*, 504 U.S. 298, the U.S. Supreme Court in 1992 upheld an earlier decision that a state cannot impose a sales tax on an out-of-state business shipping product to citizens in the state. This bill could not ensure that out-of-state wine shippers would remit taxes to the state, and the bill likely would reduce state tax revenue for that reason.

Texas has appealed the decision in *Dickerson v. Bailey*, and conflicting judgments on direct shipment law have been rendered by different courts across the country. Laws governing direct wine shipments vary greatly from state to state, and it is likely that the U.S. Supreme Court will have to finally settle the issue. Texas should not establish a radical new regulatory system at this juncture, and should wait for additional guidance from the federal court regarding issues of interstate commerce regulation before establishing any new system.

OTHER OPPONENTS SAY:

In order to preempt potential problems that SB 770 could create, the bill should require a purchaser of wine to apply for a permit in order to obtain wine from a shipper. Such registration would allow a shipper to ensure that wine was being sent to an individual over 21 who lived in a "wet" area. The consumer could be required to pay a small fee for this permit and pay all sales and liquor taxes on a purchase, making tax collection much easier. Consumer licensing for direct shipment is used in some states, including Montana and Washington.

In order sufficiently to deter minors from ordering wine shipments online, SB 770 should establish a baseline minimum that an individual would have to order. Minors would be less likely to order from the Internet if they had to purchase several cases for $100 instead of just one $15 bottle.

SB 770 should eliminate the distinction between dry and wet areas, a provision that would be unfair and difficult to enforce. While a community should have the right to prohibit liquor stores in its jurisdictional area, it would be unreasonable to prevent an individual living in a dry area from ordering wine from outside that community.

NOTES: The companion bill, HB 768 by Mowery et al., was considered in the Licensing and Administrative Procedures Committee on March 18 and left pending.