

BILL ANALYSIS

Senate Research Center

H.B. 3413
By: Thompson (Averitt)
Business & Commerce
5/1/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the law regarding the sale of certain nonalcoholic beverages and other nonalcoholic items by wholesale tier members has been described by some as confusing and should be clarified to allow alcoholic beverage wholesalers to better service the needs of alcoholic beverage retailers.

The holder of a wholesaler's permit is prohibited from selling any form of glassware to a retailer. However, other members of the wholesale tier are authorized to sell glassware to retailers that carry the brand or logo of the manufacturer of the product. Certain retail level permittees are allowed to sell certain types of glassware and equipment used for the making and dispensing of mixed beverages to other retailers, but the law prohibits this activity by wholesalers. Extending the ability to sell certain nonalcoholic beverage items by all members of the wholesale tier, while putting in place protections to safeguard the three-tier system and protect the independence of retailers, would better serve the needs of distributors and retailers in today's marketplace.

This bill authorizes the holder of a wholesaler's permit to sell to any other permit holder nonalcoholic beverages, including any equipment, fixtures, glassware, or supplies, provided that those items are not sold or marketed in a manner to influence a permit holder to purchase any quantity of alcoholic beverages or affect the terms by which a retailer is authorized to purchase alcoholic beverages.

H.B. 3413 authorizes the holder of a wholesaler's permit to sell to any other permit holder nonalcoholic beverages, including any equipment, fixtures, glassware, or supplies, provided that those items are not sold or marketed in a manner to influence a permit holder to purchase any quantity of alcoholic beverages or affect the terms by which a retailer is authorized to purchase alcoholic beverages.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 102, Alcoholic Beverage Code, by adding Section 102.071, as follows:

Sec. 102.071. SALE OF GLASSWARE AND NONALCOHOLIC BEVERAGES. (a) Defines "branded glassware" and "unbranded glassware."

(b) Authorizes the holder of a wholesaler's permit who is primarily engaged in the wholesale sale of distilled spirits and wine, notwithstanding Sections 102.04 (Persons Barred from Interest in Mixed Beverage Business) and 102.07 (Prohibited Dealings with Retailer or Consumer) or any other provision of this code, to sell branded or unbranded glassware to retailers, provided that the glassware is not marketed or sold in a manner to influence a retailer to purchase any quantity of alcoholic beverages, to affect the terms by which a retailer is authorized to purchase alcoholic beverages, or that threatens the independence of a retailer.

(c) Provides that Section 102.32 (Sale of Liquor: Credit Restrictions) applies to payment for unbranded glassware or glassware bearing the name, emblem, or logo of a brand of distilled spirits or wine by the holder of a wholesaler's permit under Subsection (b).

(d) Provides that Sections 61.73 (Retail Dealer: Credit Purchase or Dishonored Check) and 102.31 (Cash Payment Required) apply to payment for glassware bearing the name, emblem, or logo of a brand of malt beverage by the holder of a wholesaler's permit or a distributor's license.

(e) Provides that Section 102.32 applies to payment for a nonalcoholic beverage sold by the holder of a wholesaler's permit or a distributor's license if the nonalcoholic beverage is produced or sold by a manufacturer of alcoholic beverages other than malt beverages; or the name, emblem, logo, or brand of a manufacturer of alcoholic beverages other than malt beverages appears on the label of the nonalcoholic beverage.

(f) Provides that Sections 61.73 and 102.31 apply to payment for a nonalcoholic beverage sold by the holder of a wholesaler's permit or a distributor's license to a retailer if the nonalcoholic beverage is produced or sold by a manufacturer of malt beverages; or the name, emblem, logo, or brand of a manufacturer of malt beverages appears on the label of the nonalcoholic beverage.

(g) Provides that for the purposes of Subchapters C (Territorial Limits on Sale of Beer) and D (Beer Industry Fair Dealing Law), the sale, by the holder of a distributor's license, of a nonalcoholic beverage produced or sold by a manufacturer of malt beverages or that bears the name, emblem, logo or brand of a manufacturer of malt beverages is the same as a sale of beer.

SECTION 2. Effective date: September 1, 2009.