

AN ACT

relating to the direct shipment of wine to consumers; providing a criminal penalty.

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

SECTION 1. Chapter 16, Alcoholic Beverage Code, is amended by adding Section 16.09 to read as follows:

Sec. 16.09. DIRECT SHIPMENT TO CONSUMERS. (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 permit.

(b) All wine shipped to an ultimate consumer by the holder of a winery permit must be in a package that is clearly and conspicuously labeled showing that:

(1) the package contains wine; and

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

(c) Wine shipped by the holder of a winery permit may not be delivered to any person other than:

(1) the person who purchased the wine;

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

(3) a person at the delivery address who is age 21 or

over.

(d) Wine may be delivered only to a person who is age 21 or over 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 winery permit may not:

(1) sell or ship wine to a minor;

(2) deliver wine to a consumer using a carrier that does not hold a carrier's permit under this code; or

(3) deliver more than three gallons of wine within any 30-day period to the same consumer in this state.

SECTION 2. Subtitle A, Title 3, Alcoholic Beverage Code, is amended by adding Chapter 54 to read as follows:

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

Sec. 54.01. AUTHORIZED ACTIVITIES. The holder of an out-of-state winery direct shipper's permit may sell and deliver wine that is 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. 54.02. PROHIBITED ACTIVITIES. The holder of an out-of-state winery direct shipper's permit may not:

(1) sell or ship wine to a minor;

(2) deliver wine to a consumer using a carrier that does not hold a carrier's permit under this code;

(3) deliver more than three gallons of wine within any

30-day period to the same consumer in this state; or

(4) sell to ultimate consumers more than 35,000 gallons of wine annually.

Sec. 54.03. QUALIFICATIONS FOR PERMIT. An out-of-state winery direct shipper's permit may only be issued to a person who:

(1) does not hold a winery permit in the State of Texas;

(2) operates a winery located in the United States and holds all state and federal permits necessary to operate the winery, including the federal winemaker's and blender's basic permit;

(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. 54.04. PERMIT FEE. The annual state fee for an out-of-state winery direct shipper's permit is \$75.

Sec. 54.05. IDENTIFICATION REQUIREMENTS. (a) All wine sold or shipped by the holder of an out-of-state winery direct shipper's permit must be in a package that is clearly and conspicuously labeled showing that:

(1) the package contains wine; and

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

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

(1) the person who purchased the wine;

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

(3) a person at the delivery address who is age 21 or over.

(c) Wine may be delivered only to a person who is age 21 or over 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. 54.06. REPORTS AND RECORDKEEPING. (a) The holder of an out-of-state winery direct shipper's permit shall maintain records of all sales and deliveries made under the permit.

(b) The holder of an out-of-state winery 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 upon 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 winery 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. 54.07. LIABILITY FOR AND PAYMENT OF TAXES. (a) Sales made by the holder of an out-of-state winery direct shipper's permit shall be deemed to have been made in the State of Texas for delivery in the State of Texas.

(b) The holder of an out-of-state winery 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 wine sold, payable at the same rate and in the same manner as if the permittee were a Texas winery 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 winery located in Texas.

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

Sec. 54.08. RESALE PROHIBITED. A consumer purchasing wine from the holder of an out-of-state winery direct shipper's permit may not resell the wine, and any such wine that is resold is an illicit beverage as defined in Section 1.04(4).

Sec. 54.09. DELIVERY AREAS. Wine shipped under this chapter may be delivered to persons located in a dry area.

Sec. 54.10. WINE LABEL APPROVAL NOT REQUIRED. If the holder of an out-of-state winery direct shipper's permit has satisfied all federal label approval requirements for a particular brand of wine, then no further label approval shall be required by the commission.

Sec. 54.11. RULES. The commission shall adopt rules and forms necessary to implement this chapter.

Sec. 54.12. PENALTY FOR SHIPPING WITHOUT A PERMIT. Any person who does not hold an out-of-state winery direct shipper's permit who sells and ships alcohol from outside of Texas to an ultimate consumer in Texas commits on first offense a Class B misdemeanor, on second offense a Class A misdemeanor, and on third offense a state jail felony.

SECTION 3. Subsection (f), Section 107.07, Alcoholic Beverage Code, is amended to read as follows:

(f) Except as provided by Chapter 54, any ~~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 4. Section 110.052, Alcoholic Beverage Code, is amended to read as follows:

Sec. 110.052. PARTICIPATION OF PACKAGE STORES. (a) Participation ~~[Except as provided by this section, participation]~~

in the program by a package store is voluntary.

~~(b) [If, after the program has been operating for at least 12 months, the commissioner determines after a hearing that package stores in the state are not participating in the program on a reasonably distributed geographic basis, the commissioner may request that the commission require all package stores in the state to participate in the program. On receiving the commissioner's request, the commission shall hold a hearing and may adopt rules as necessary to implement this subsection.~~

~~[(e)]~~ The commissioner by rule may establish standards that a package store that participates in the program must meet.

SECTION 5. Subsection (a), Section 110.053, Alcoholic Beverage Code, is amended to read as follows:

(a) A person who purchases wine from a winery in this state may ship the wine in accordance with:

(1) Section 16.09 ~~[107.12, if the person is physically present at the winery];~~ or

(2) this section~~[, if the person is not physically present at the winery].~~

SECTION 6. This Act applies only to sales and shipments occurring on or after the effective date of this Act. Sales or shipments occurring before the effective date of this Act are governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 7. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately if it receives a vote

of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

(b) If this Act takes immediate effect, the requirement for a permit and the penalty imposed for shipping without a permit under Chapter 54, Alcoholic Beverage Code, as added by this Act, take effect on the date 90 days after the date of immediate effect, otherwise the requirement for a permit and the penalty imposed for shipping without a permit under Chapter 54, Alcoholic Beverage Code, as added by this Act, take effect January 1, 2006.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 877 passed the Senate on March 29, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 877 passed the House on April 27, 2005, by the following vote: Yeas 147, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor