HOUSE RESEARCH ORGANIZATION bill analysis | 5/14/97 | HB 2011 Patterson, Hilderbran, Keel (CSHB 2011 by B. Turner)

SUBJECT: New alcoholic beverage permit for farm wineries

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 7 ayes — Patterson, Swinford, Cook, Flores, Rabuck, Roman, B. Turner

0 nays

2 absent — Hupp, Oakley

WITNESSES: For — Spencer Switzer, Fredericksburg Winery and the Switzer Family; Bill Clayton, Texas Wine and Grape Growers Association; Gabriel N. Parker, Bobby G. Smith

Against — Robert H. Sparks, Jr., Licensed Beverage Distributors, Inc; Fred Niemann, Texas Package Stores Association; Mike McKinney, Wholesale Beer Distributors of Texas; Glen Gary, Texas Restaurant Association; Ed Auler, Associated Wineries of Texas

On — Larry R. Soward, Texas Department of Agriculture; Brian L. Guenthner, Texas Alcoholic Beverage Commission

DIGEST: CSHB 2011 would create a new type of alcoholic beverage permit for farm wineries, impose a new tax on sales of wine, and make changes in bonding requirements for wineries and farm wineries.

Farm winery permit. CSHB 2011 would create a new type of alcoholic beverage permit for farm wineries. The holders of these permits would be authorized to perform the same activities currently authorized for holders of wineries and wine bottlers permits, including:

- manufacturing, bottling, labeling and packaging wine;
- selling wine to wholesalers;
- selling up to 25,000 gallons of wine to consumers for off-premises consumption;
- dispensing free wine for on-premise consumption; and

- bottling, rebottling, labeling, packaging and selling wine to permit holders who can purchase and sell wine.

In addition, farm wineries would be able to sell wine manufactured and bottled on their premises to consumers for on-premise consumption and could manufacture and label up to 50 gallons of wine annually for the personal use of adults. The annual fee for a winery permit would be $300.

Farm winery permits could be issued for premises in a dry area, but the farm winery could not sell wine in a dry area. Local areas would be able to hold elections to allow “the legal sale of wine on the premises of a holder of a winery permit or farm winery permit.” However, even in dry areas, farm wineries would be allowed wine sales under three circumstances: (1) sales of up to 25,000 gallons of wine annually to permit holders for sale to consumers for off-premises consumption; (2) sales to wholesalers, wineries and wine bottlers; and (3) sales of wine bottled, rebottled, labeled and packaged to permit holders authorized to purchase and sell wine.

CSHB 2201 also would allow for a vote on allowing the sale of wine on the premises of a winery for off-premise consumption.

Farm wineries could have wine samplings, including wine tastings at a retailer's premises. Wine samplings could not be held in locations where they were otherwise prohibited.

Farm wineries could deliver their wine to unlicensed locations for organized wine tasting competitions if there were no charge for the wine and the Texas Alcoholic Beverage Commission (TABC) consented to the delivery. Farm wineries could dispense wine to persons attending the competition.

CSHB 2011 would allow wineries and farm wineries to participate in wine festivals organized to celebrate and promote the Texas wine industry and approved by the TABC.

Wineries and farm wineries would be able to deliver their wine to wine festivals and to dispense wine to persons attending the festival if no charge were made for the wine, delivery or attendance at the event. Wineries and farm wineries could sell and dispense wine to consumers if the wine festival were held on their premises. Wineries and farm wineries would be able to sell wine to persons who held temporary alcoholic beverage permits for events approved by the commission and organized to celebrate and promote the Texas wine industry.

Wine tax. CSHB 2011 would impose a tax of five cents per gallon on each gallon of wine sold for resale in Texas to be paid by permit holders authorized to sell wine for resale. The tax revenue, which would be paid to the comptroller, could be appropriated only to the Texas Department of Agriculture (TDA) and used only for the promotion of wine research and marketing.

The agriculture commissioner would be required to appoint an advisory council to advise the commissioner and TDA on the use of the tax revenue. Unless the advisory council advised otherwise, 70 percent of the tax revenue would have to be used for viticulture and enology research and 30 percent for marketing and promotion, including educating consumers about wine.

The agriculture commissioner would have to appoint to the council members representing the general public, permit holders authorized to sell wine, owners of vineyards, owners of small and large wineries, and each geographic region of the state with a vineyard or winery. The council also would have to include as nonvoting members one representative each of the TABC, Texas A&M University, University of Texas and Texas Tech University.

Required bonds. CSHB 2011 would include wineries, farm wineries and wine bottlers among the alcoholic beverage permit holders and licensees allowed to furnish certificates of deposits, savings assigned to the state or letters of credit in lieu of a required bond. They also would be included among those not required to furnish a bond if they paid all taxes and fees for the preceding 36 months by their due date and those exempt from bond requirements if they also held certain other licensees or permits. In addition, entities holding winery, wine bottler and farm wineries permits would be able to execute a single bond in an amount determined by the alcoholic beverage commission.

SUPPORTERS SAY:

CSHB 2011 would help boost Texas agriculture, tourism and exports by helping the Texas wine industry — especially small operations — to grow. Texas has about 150 vineyards in over 50 counties, and this industry should be given the necessary tools to grow and expand.

CSHB 2011 would create an alcoholic beverage permit that would combine the activities currently done separately under winery and wine bottlers' permits. This is needed so that businesses could be fully involved in all facets of bringing their agricultural product to market, including making, bottling and selling wine to consumers. The bill would allow sales of wine to consumers at wineries, for off-premises consumption, and farm wineries, for on or off-premises consumption, if local voters approved a proposition to allow sales of wine on the premises of wineries or farm wineries. This would give areas another option for allowing liquor sales. CSHB 2011 would not usurp the authority of localities to regulate alcohol sales and would not allow wine to be sold to consumers in dry areas of the state, unless voters approved. Even then, wine sales would be allowed only on the winery's premises, not throughout a dry area. CSHB 2011 also would help the wine industry and tourism by creating a mechanism for wine festivals.

CSHB 2011 would create a small, five-cent-per-gallon tax on wine that to help fund industry research and marketing efforts. This would be similar to other industries' efforts to help themselves through a self-imposed tax. The tax would be paid only once by permit holders who sold wine for resale, ensuring that it would be paid on all wine sold in the state, not just Texas wine. This is appropriate since the research and marketing would benefit all wine. This money should go only for efforts to help the wine industry, not into general revenue, since the wine industry would be the one paying the tax. CSHB 2011 would give responsibility for the research and marketing efforts to the Department of Agriculture because it is involved in promotion and research concerning other agricultural commodities. The council created by CSHB 2011 would be advisory only, with the agriculture commissioner and the agriculture department having authority over the use of funds.

OPPONENTS SAY:

CSHB 2011 could be an usurpation of local authority to regulate alcohol by allowing farm wineries selling alcohol to consumers to be located in otherwise dry areas. Even if a locality was dry, CSHB 2011 would allow individual farm wineries to try and gain approval to sell alcohol to consumers. This could set an unwise precedent for other individual establishments to attempt to carve out exceptions for themselves to a locality's already determined alcohol policy.

It would create a new, burdensome tax on the wine industry. CSHB 2011 is unclear about whether this tax would be paid every time wine was sold between the winery and the consumers and could result in a tax of 10 to 20 cents per gallon. In addition, CSHB 2011 would dedicate this tax revenue to research and marketing effort instead of placing it in the general revenue fund. Earmarked state revenue restricts the ability of the Legislature to spend tax dollars and to fund programs as it wishes.

CSHB 2011 also would give too much authority to a new advisory council that would be created. It would be inappropriate for the advisory council to designate how tax dollars would be spent since it would lack direct legislative oversight. In addition, this policy could lead to other commodities and industries wanting similar taxes and research and marketing programs.

OTHER OPPONENTS SAY:

It is unclear if CSHB 2011 would require an election before a farm winery could sell alcohol to consumers or before a wine festival could be held in a dry area. The bill could be unconstitutional if it circumvented local option elections by allowing farm wineries and wine festivals in dry areas.

NOTES:

The committee substitute made numerous changes to the original version of the bill, including changing the new permit from a vintner's permit to a farm winery permit, changing the tax from one collected by the agriculture commissioner on bottles of wine at the retail level, and adding provisions concerning bonding.