

SUBJECT: Authorizing out-of-state wineries to conduct wine samplings

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 6 ayes — Flores, Geren, Goolsby, Homer, D. Jones, Morrison
0 nays
3 absent — Chisum, Hamilton, Quintanilla

WITNESSES: None

BACKGROUND: The Texas Alcoholic Beverage Commission (TABC) regulates the distribution of alcohol in the state through permitting and enforcement. Regulations maintain a separation of the three tiers of the alcoholic beverage industry — manufacturers, wholesalers, and retailers.

Texas wineries must apply to TABC for a permit to operate. Alcoholic Beverage Code, sec. 16.01(c) authorizes a winery permit holder to host wine samplings, including tastings, on a retailer's premises. A winery employee may open and pour wine, make a presentation, or answer questions at a wine sampling.

TABC offers a nonresident seller's permit under section 37.01 that gives out-of-state wineries the authority to conduct business with authorized permittees in Texas. Sec 107.07, however, forbids the sale of wine from an out-of-state business directly to a consumer in Texas, while sec. 16.01 allows permitted in-state wineries to sell wine to ultimate consumers.

A 2003 ruling by the 5th U.S. Circuit Court of Appeals upheld a Houston judge's decision to strike down Texas law against the direct sale of out-of-state wine to consumers. In *Dickerson v. Bailey*, 336 F.3d 388 (5th Cir. 2003), the court held that sections of the Alcoholic Beverage Code, including sec. 107.07, discriminate against out-of-state interests in violation of the of the U.S. Constitution's commerce clause. The U.S. Supreme Court is now considering the issue.

DIGEST: CSHB 937 would allow out-of-state wineries that hold nonresident sellers' permits to conduct wine samplings and wine tastings on the premises of Texas retailers.

The bill would require that wine used in a sampling activity be purchased from the retailer where the event took place. The amount of wine purchased from the retailer could not exceed the amount of wine used at the sampling event.

The bill would take effect September 1, 2005.

SUPPORTERS SAY: CSHB 937 would help ensure that Texas law does not discriminate against out-of-state wineries, in compliance with the *Dickerson v. Bailey* ruling, by allowing them to conduct wine samplings and tastings. This would create a level playing field regarding the activities that wineries located in Texas and out-of-state could engage in to promote their products.

CSHB 937 would require that wine used in a wine sampling under this section be purchased from the retailer that was hosting the sampling event. This language supports the Alcoholic Beverage Code's three-tier system. It would ensure that bottles of wine used in such samplings had gone through the authorized channels.

OPPONENTS SAY: CSHB 937 would not allow the amount of wine purchased from the retailer to exceed the amount of wine used in the sampling. However, a nonresident seller who purchased a bottle for sampling should be able to take the bottle away after the event, even if the bottle had been opened.

NOTES: The committee substitute differs from the bill as introduced by specifying that any wine used in a wine sampling would have to be purchased from the retailer where the sampling took place. The original bill would have allowed the winery's agent to bring wine from outside the retailer's store for use in a wine sampling.