SUBJECT: Prohibiting the sale of certain alcoholic beverages below retail cost

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — T. King, Geren, Guillen, Hernandez, Kuempel, Paddie, S. Thompson

1 nay — Harless

3 absent — Goldman, Herrero, K. King

WITNESSES: For — Tyler Rudd, Wine Institute; (*Registered, but did not testify*: Dya Campos, H-E-B; Annie Spilman, NFIB; David Jabour and Lance Lively, Texas Package Stores Association)

Against — (*Registered, but did not testify*: Drew Campbell, Total Wine and More)

BACKGROUND: 16 TAC sec. 45.101(b) prohibits sellers of alcoholic beverages from issuing any rebate or coupon redeemable by the public for the purchase or a discount on the purchase of alcoholic beverages.

DIGEST: CSHB 2165 would prohibit a person who held a permit or license authorizing the retail sale of any alcoholic beverage for off-premise consumption from selling such a beverage at a cost less than the retailer's cost. The bill would define "retailer's cost" to include applicable freight, taxes, and duties.

The bill would require proof of the retailer's cost for alcoholic beverages to become a part of the permanent records of each person who holds a permit or license for the sale of any alcoholic beverage for off-premise consumption. The proof would have to be available for a period of two years for inspection by the Texas Alcoholic Beverage Commission (TABC).

TABC would adopt rules to implement the provisions of the bill.

The bill would not apply to the sale of certain products if the manufacturer of the product had discontinued the production, importation, special packaging, or market availability of the product.

The bill would take effect on September 1, 2019.

SUPPORTERS SAY:

CSHB 2165 would eliminate a pricing strategy in the retail alcohol sector that promotes uncompetitive business practices and encourages unhealthy alcohol consumption habits.

Currently, some retailers employ a "loss leader" strategy in which they sell a product for a sharply reduced price, hoping to attract customers who may then purchase additional products or, if the loss leader is sold out, replacement products. However, the loss leader's low price could encourage excessive alcohol consumption, and the legislatures of 33 states have prohibited selling alcohol below retail cost on these grounds.

CSHB 2165 also would increase competition in the retail alcohol sector. The loss leader strategy creates a consumer expectation of lower prices for some products, which could harm other retailers who may have to meet that price. Larger chains are able to use loss leader strategies much more effectively than small businesses, so reducing this practice would actually encourage market competition.

Similarly, wineries, distilleries, and breweries whose products are used as a loss leader can see their brands devalued across the entire market. In prohibiting the sale of alcohol below the retailer’s cost, the bill would prevent this from happening and create a more level playing field.

OPPONENTS SAY:

CSHB 2165 inappropriately would expand the government's control over personal property and the free market. Once a retailer has purchased an item from a wholesaler, it is the retailer’s property, and the retailer should be able to sell it at any price. Forcing a retailer to sell an item at a price higher than the retailer would wish distorts the market price of the good and limits the retailer's economic freedom.