

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1137
By: Madla
Intergovernmental Relations
4/12/2005
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

During the 78th interim, the Senate Intergovernmental Relations Committee was charged to examine the Texas wine producing industry and make recommendations to increase the impact of that industry on the state's economy.

Current provisions in the Alcoholic Beverage Code limit the number of wine festivals to four per year; indirectly prohibit the advertisement of where a Texas winery's products may be purchased; do not allow for the placement of directional signs on state highways if the winery is not located with driveway access to an eligible rural highway or intersecting crossroad; prevent the establishment of cooperative working relationships between wineries; and establishes a 75 percent requirement for Texas fruit in wines made by wineries in dry areas, even if the required fruit is not available in sufficient quantities to meet the demand.

C.S.S.B. 1137 includes provisions that specifically respond to the Intergovernmental Relations Committee's recommendations.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTION 4 (Section 16.05, Alcoholic Beverage Code) of this bill.

Rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 9 (Section 391.099, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 12, Agriculture Code, by adding Section 12.039, as follows:

Sec. 12.039. CERTAIN WINE PRODUCED OR BOTTLED IN THIS STATE. (a) Requires the Texas Wine Marketing Research Institute (institute) or other qualified entity to conduct an annual study relating to the quantities and varieties of grapes and other fruit grown in this state that are used for wine making.

(b) Requires the institute or other qualified entity, not later than October 15 of the study year, to report certain information to the commissioner of agriculture (commissioner).

(c) Requires the reporting entity, if a statement is provided in accordance with Subsection (b)(2), to include certain information in the report.

(d) Requires the commissioner to review the report and, if the commissioner determines that the quantity of a variety of grapes or other fruit grown in this state is insufficient for the wineries in this state to produce their projected production estimates during the following calendar year, authorizes the commissioner to reduce the percentage by volume of fermented juice of grapes or other fruit grown in this state that wine containing that particular variety of grape or other fruit must contain under Section 16.011 (Premises in Dry Area), Alcoholic Beverage Code. Requires the percentage established under this subsection to ensure that the use of that variety of grape or other fruit grown in this state is maximized while allowing

for the acquisition of grapes or other fruit grown outside of this state in a quantity sufficient to meet the needs of wineries in this state.

(e) Requires the commissioner to submit the commissioner's determination to the Texas Alcoholic Beverage Commission (TABC) in writing and publish the commissioner's determination in the Texas Register and on the Texas Department of Agriculture (TDA) website not later than December 31 of the study year.

(f) Provides that a percentage requirement established under Subsection (c) applies to wine bottled under Section 16.011, Alcoholic Beverage Code, during the calendar year following the study year.

(g) Authorizes a winery, if a winery in this state finds that the determination made by the commissioner under Subsection (c) does not reduce the percentage requirement with respect to a particular variety of grape or other fruit to a level sufficient for the winery to meet the winery's planned production for the relevant year, to submit documentation or other information to the commissioner substantiating that the winery has not been able to acquire those grapes or other fruit grown in this state in an amount sufficient to meet the winery's production needs. Authorizes the commissioner, if the commissioner determines that there is not a sufficient quantity of that variety of grapes or other fruit grown in this state to meet the needs of that winery, to reduce the percentage requirement for wine bottled during the remainder of the calendar year that contains that variety of fruit.

(h) Authorizes the commissioner to take certain actions regarding a voluntary registry for vineyards and other fruit growers in this state, including assessing a fee to cover the cost of administering the registry.

(i) Requires information gathered through a registry established under Subsection (h) to be posted on TDA's website and may be made available in any other format agreed upon by the commissioner and requestor who pays the appropriate fee for reproducing the record.

(j) Provides that the vineyard and fruit growers registry fund is an account in the general revenue fund. Provides that fees collected under Subsection (h) are to be deposited to the credit of that account. Authorizes money to only be appropriated to TDA to cover administrative and personnel costs of TDA associated with administering the registry.

SECTION 2. Amends Title 3, Agriculture Code, by adding Chapter 50B, as follows:

CHAPTER 50B. TEXAS WINE INDUSTRY DEVELOPMENT ACT

Sec. 50B.001. FINDINGS AND PURPOSE. Sets forth the legislative findings relating to the wine industry in this state.

Sec. 50B.002. WINE INDUSTRY DEVELOPMENT; ADVISORY COMMITTEE. Authorizes the commissioner to appoint a wine industry development committee to develop a long-term vision and marketable identity for the wine industry in the state which considers certain factors.

Sec. 50B.003. WINE INDUSTRY DEVELOPMENT FUND. (a) Provides that the wine industry development fund is an account in the general revenue fund and consists of funds deposited to the account under this section.

(b) Authorizes money to be appropriated only to TDA and used only for certain purposes.

(c) Provides that the account is exempt from the application of Section 403.095 (Use of Dedicated Revenue), Government Code.

(d) Authorizes the department to accept grants, gifts, or gratuities from any source, including a governmental entity, a private or public corporation, or any other person, that are made for the purpose of furthering the Texas wine industry. Requires any funds received under this subsection to be deposited in the wine industry development fund.

SECTION 3. Amends Section 16.01, Alcoholic Beverage Code, by adding Subsections (f), (g), and (h), as follows:

(f) Authorizes a holder of a winery permit, notwithstanding any other provision of this code, to sell and serve beer in certain circumstances.

(g) Provides that, for the purposes of provisions of this code governing the sale or purchase of beer, the purchase by a winery of beer for service under Subsection (f) is considered to be a purchase by a holder of a retail dealer's on-premise license.

(h) Authorizes the holder of a winery permit to contract with the holder of a caterer's permit for service by the caterer of mixed beverages and food at an event on the winery premises.

SECTION 4. Amends Section 16.011, Alcoholic Beverage Code, to authorize a holder of a permit under this section to engage in any activity authorized under Section 16.01 except that the permit holder is authorized to sell or dispense wine under that section only if the wine is bottled, rather than manufactured, in this state; and is at least 75 percent by volume fermented juice of grapes or other fruit grown in this state or a lesser percentage established by the commissioner of agriculture under Section 12.039, Agriculture Code.

SECTION 5. Amends Chapter 16, Alcoholic Beverage Code, by adding Section 16.05, as follows:

Sec. 16.05 OPERATING AGREEMENTS BETWEEN PERMIT HOLDERS. (a) Authorizes the holder of a winery permit to engage in any activity authorized by that permit on the permitted premises of another winery permit holder under an agreement between the permit holders that is approved by the TABC and that describes with specificity the nature, duration, and extent of the activities authorized by the agreement.

(b) Requires TABC to adopt rules regulating the shared use of winery premises under this section to ensure administrative accountability of each permit holder and a strict separation between businesses and operations of the permit holders.

SECTION 6. Amends Subchapter A, Chapter 108, Alcoholic Beverage Code, by adding Section 108.09, as follows:

Sec. 108.09. CERTAIN ADVERTISING BY WINERY. (a) Authorizes a winery, notwithstanding Section 102.07 (Prohibited Dealings With Retailer or Consumer), or any other provision of this code, to include information in the winery's advertising that informs the public of where the winery's products may be purchased.

(b) Prohibits a winery from giving compensation to or receiving compensation from a permitted member of the wholesale or retail tier for advertising described by Subsection (a).

SECTION 7. Reenacts and amends Section 391.091(a), Transportation Code, as amended by Chapters 713 and 743, Acts of the 78th Legislature, Regular Session, 2003, as follows:

(a) Requires the Texas Department of Transportation to contract with an individual, firm, group, or association in this state to erect and maintain specific information logo signs and major shopping area guide signs at appropriate locations along an eligible highway. Deletes existing text relating to major agricultural interest signs.

SECTION 8. Amends Section 391.098(a), Transportation Code, to delete existing text relating to major agricultural interest signs.

SECTION 9 Amends Subchapter D, Chapter 391, Transportation Code, by adding Section 391.099, as follows:

Sec. 391.099. TOURIST-ORIENTED DIRECTIONAL SIGN PROGRAM. (a) Defines "eligible facility," "eligible highway," "tourist-oriented directional sign," and "trailblazing."

(b) Requires the Texas Transportation Commission (commission) to administer the tourist-oriented directional sign program created under this section to erect and maintain tourist-oriented directional signs on eligible highways.

(c) Requires the commission, except as provided by Subsection (f), to take certain actions relating to the tourist-oriented directional signs program; adopt rules necessary to administer and enforce this section; and approve an application submitted under this section before the 61st day after the date the eligible facility submitted the application.

(d) Requires the commission to enter into one or more contracts with an [sic] individual, firm, group, or association in this state to erect and maintain tourist-oriented directional signs at locations along eligible highways.

(e) Requires a contract under this section to provide for assessment and remittance of certain fees.

(f) Prohibits the commission from adopting rules under this section that contain certain limits and prohibitions.

(g) Requires the department to take certain actions relating to an application.

SECTION 10. Repealer: (1) Section 16.08(c) (Wine Festivals), Alcoholic Beverage Code.

(2) Section 391.097 (Major Agricultural Interest Sign), Transportation Code.

SECTION 11. Effective date: upon passage or September 1, 2005.