

## **BILL ANALYSIS**

Senate Research Center  
83R28799 AJA-F

C.S.H.B. 2537  
By: Geren (Carona)  
Business & Commerce  
5/14/2013  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

While Texas wineries are included in the manufacturing tier of the Texas three-tiered distribution system, they are not currently obligated to manufacture wine. Furthermore, the Alcoholic Beverage Code authorizes a Texas winery permit holder to sell and ship wine directly to a Texas consumer; however, there is no requirement that permit holders actually grow and produce the wine to be sold or shipped. At the same time, the code does not allow out-of-state wineries to ship wine directly to Texas consumers if the wine is not blended or produced by the winery nor does it allow out-of-state retailers to ship wine directly to a consumer in Texas.

This disparate treatment of out-of-state and in-state wineries has been viewed by some as economic protectionism benefiting in-state economic interests by burdening out-of-state competitors. This leaves Texas vulnerable to legal challenges based on allegations that the practice violates the United States Constitution's Commerce Clause, which grants Congress exclusive authority to regulate interstate commerce. Lawsuits such as these can be costly for taxpayers and should be avoided.

C.S.H.B. 2537 imposes a manufacturing obligation on Texas wineries as a condition of holding a winery permit, similar to that imposed on manufacturers of beer. It also requires that 51 percent of wine shipped be wine produced by the winery either: through an alternating proprietorship; by the permittee at the permitted location or at a permitted location owned and operated by the permittee; or under an agreement with another winery permit holder for a bottling brand under the Department of Treasury Tax and Trade Bureau Basic Permit trade name application. Additionally, the committee substitute requires wineries to maintain records of sales and deliveries of the wine they ship and whether that wine was wine they produced or wine from another manufacturer.

C.S.H.B. 2537 amends current law relating to production requirements for holders of winery permits.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 16, Alcoholic Beverage Code, by adding Section 16.012, as follows:

Sec. 16.012. PRODUCTION REQUIREMENTS. (a) Provides that this section does not apply to a holder of a winery permit described by Section 16.09(i).

(b) Requires the holder of a winery permit to produce, bottle, or blend at least 200 gallons of wine or fruit brandy annually beginning in the 12-month period preceding the first anniversary of the date the winery's original permit is issued.

(b-1) Requires the holder of a winery permit issued before September 1, 2014, notwithstanding Subsection (b), to produce or bottle and offer for sale at least 200 gallons of wine or fruit brandy annually beginning in the 12-month period preceding September 1, 2015. Provides that this subsection expires September 1, 2016.

(c) Requires the production required by this section to be done at the permitted location or at a Texas winery owned and operated by the same permit holder.

(d) Provides that failure to comply with this section constitutes grounds to cancel or suspend a winery permit or deny an application for renewal of a winery permit.

SECTION 2. Amends Section 16.09, Alcoholic Beverage Code, by adding Subsections (f), (g), (h), and (i), as follows:

(f) Requires that at least 51 percent by volume of the wine shipped under this section be produced or bottled in this state by the holder of a winery permit on the winery's premises or at another permitted location owned and operated by the permit holder; under an operating agreement authorized by Section 16.05 (Operating Agreements Between Permit Holders); or under an agreement with another winery permit holder for a bottling brand under an Alcohol and Tobacco Tax and Trade Bureau Basic Permit trade name application.

(g) Requires the holder of a winery permit to maintain complete records of each sale and delivery made under this section for at least five years from the date of the sale. Requires that the records be made available on request for inspection by the Texas Alcoholic Beverage Commission (TABC) or any other appropriate state agency.

(h) Requires TABC to adopt rules requiring the holder of a winery permit to periodically file reports providing TABC with any information TABC determines is necessary to more efficiently and effectively enforce this section. Requires that the reports, at a minimum, specify:

(1) whether wine sold and delivered by the permit holder under this section was produced or bottled in this state; and

(2) whether the wine was:

(A) produced or bottled by the holder of the winery permit on the winery's premises or at another permitted location owned and operated by the permit holder; under an operating agreement authorized by Section 16.05; or under an agreements with another winery permit holder for a bottling brand under an Alcohol and Tobacco Tax and Trade Bureau Basic Permit trade name application; or

(B) purchased from an authorized source.

(i) Provides that Subsection (f) does not apply to the holder of a winery permit issued on or before June 1, 2012, if at least 95 percent by volume of the wine shipped under that permit during 2012 had a personalized label that contained a personal message, picture, or other artwork that was specific to the consumer who purchased the product and was designed by the consumer and affixed by the permit holder at the licensed premises.

SECTION 3. Effective date: September 1, 2014.