

- SUBJECT:** Allowing the delivery of alcoholic beverages to consumers
- COMMITTEE:** Licensing and Administrative Procedures — favorable, without amendment
- VOTE:** 7 ayes — T. King, Goldman, Geren, Guillen, Harless, Hernandez, S. Thompson
- 0 nays
- 4 absent — Herrero, K. King, Kuempel, Paddie
- SENATE VOTE:** On final passage, April 17 — 30-1 (Perry), on Local and Uncontested Calendar
- WITNESSES:** For — David Edmonson, TechNet; (*Registered, but did not testify:* Ray Sullivan, Amazon; Dya Campos, H-E-B; Price Ashley, Instacart; James Mathis, Landrys Inc.; Lance Lively, Texas Package Stores Association; Rebecca Robinson, Texas Restaurant Association; Rick Donley, The Beer Alliance of Texas; Tom Spilman, Wholesale Beer Distributors of Texas; Tyler Rudd, Wine Institute)
- Against — None
- DIGEST:** SB 1450 would establish the consumer delivery permit and allow a permit holder to contract with or employ a driver to deliver an alcoholic beverage from a retailer's premises to an ultimate consumer located in an area where the sale of the beverage was legal. The bill also would allow the holder of a mixed beverage permit to deliver or have delivered an alcoholic beverage from the permitted premises to an ultimate consumer.
- Consumer delivery permit.** A consumer delivery permit would authorize the delivery of an alcoholic beverage only if the alcoholic beverage was sold to the ultimate consumer by the holder of certain package store, wine or beer retailer, retail dealer, or mixed beverage permits.

SB 1450 would allow a consumer delivery permit to be issued to:

- a person who contracted with or employed individuals for the delivery of retail goods to consumers, and who was not licensed or permitted in the manufacturing or wholesale tier of the alcoholic beverage industry; or
- the holder of certain package store, wine or beer retailer, retail dealer, or mixed beverage permits.

The Texas Alcoholic Beverages Commission (TABC) would have to establish the annual state fee for the consumer delivery permit.

*Areas and hours of delivery.* The holder of a consumer delivery permit could make deliveries of alcoholic beverages only in response to bona fide orders placed by a consumer. Deliveries could be made only in counties, cities, or towns in which the retailer's premises was located, or in an area not further than two miles beyond the boundary of the city or town in which the retailer's premises was located, if applicable, and in which the sale of the beverages was legal.

In determining whether the sale of an alcoholic beverage was legal in an area, a person who sold or delivered alcohol under a consumer delivery permit could consult a map or other publicly available information produced by the Texas Alcoholic Beverage Commission (TABC) for the purpose of establishing where the sale of such beverages was legal.

The bill would establish as a defense to a prosecution alleging that an alcoholic beverage was delivered to an address that was dry for that type of beverage that the driver or the permit holder relied on publicly available information produced by TABC that misclassified the relevant area as wet for that particular beverage.

An alcoholic beverage could be delivered outside the retailer's hours of operation only if the delivery driver received the beverage from the retailer during the retailer's hours of legal sale and completed the delivery to the consumer in a reasonable amount of time after leaving the retailer's

premises.

*Delivery requirements.* A delivery driver employed by or contracted with a consumer delivery permit holder would have to be at least 21 years old and hold a valid driver's license.

A driver could deliver alcoholic beverages only to a person who was at least 21 years old and presented valid proof of identity and age. An alcoholic beverage could be delivered only to the person who purchased the beverage, a recipient designated in advance by the purchaser, or a person at the delivery address who was at least 21 years old.

*Delivery training program and software verification system.* TABC by rule would have to adopt and administer an alcohol delivery training program for training and certifying delivery drivers contracting with or employed by the holder of a consumer delivery permit. TABC also would have to establish minimum requirements for alcohol delivery compliance software applications. The commission would be required to implement a system that allowed the holder of a retail permit or a consumer delivery permit to verify in real time whether a delivery driver has a valid certification from the training program.

*Retailer responsibility.* A retailer's responsibilities regarding delivery of an alcoholic beverage to an ultimate consumer would be considered satisfied at the time the retailer transferred possession of the beverage to the consumer delivery permittee or a delivery driver employed by, contracted with, or acting on behalf of the permit holder.

Actions performed by a consumer delivery permittee or by a delivery driver would not be attributable to the retailer with regard to:

- providing, selling, or serving alcohol to a minor or an intoxicated individual;
- delivering alcohol in a dry or otherwise illegal area; or
- engaging in other actions that violated the provisions of the Texas Alcoholic Beverage Code.

A retailer would not be required to verify that the consumer delivery permittee or the delivery driver had received delivery driver training under the bill's provisions and could not be held responsible for the actions of a consumer delivery permittee or a delivery driver acting on behalf of a consumer delivery permittee.

*Consumer delivery permit responsibility.* The actions of a delivery driver acting on behalf of the holder of a consumer delivery permit would not be attributable to the permit holder unless:

- the permit holder had directly or indirectly encouraged the delivery driver to violate the law; and
- the delivery driver had a valid certification from the training program described in the provisions of this bill or completed the delivery using an alcohol delivery compliance software application that met the bill's requirements.

If it was found that the permittee or the permittee's agent or employee delivered with criminal negligence an alcoholic beverage to a minor or an intoxicated person, TABC could:

- suspend the permit for up to 90 days for the first violation;
- suspend the permit for up to six months for the second violation; and
- suspend the permit for up to 12 months for a third violation within a period of 36 consecutive months.

SB 1450 would make it a rebuttable presumption that a sale or delivery of an alcoholic beverage to a minor or intoxicated person was not made with criminal negligence if the delivery driver at the time of the delivery held a valid certification from the training program described by the bill and completed the delivery as a result of a technical malfunction of an alcohol delivery compliance software application that otherwise met the requirements described under the provisions of this bill.

**Off-premises delivery of alcoholic beverages.** SB 1450 would authorize the holder of a mixed beverage permit to deliver, or have delivered by a third party, an alcoholic beverage from the permitted premises to an ultimate consumer located off-premises and in an area where the sale of the beverage was legal if:

- the holder of the mixed beverage permit held a food and beverage certificate for the permitted premises;
- the delivery of the alcoholic beverage was made as part of the delivery of food prepared at the permitted premises;
- the alcoholic beverage was beer, ale, or wine, delivered in an original container sealed by the manufacturer, or another alcoholic beverage delivered in an original, single-serving container sealed by the manufacturer and not larger than 375 milliliters; and
- the delivery was not made to a premises that was permitted or licensed under the Alcoholic Beverage Code.

An alcoholic beverage could be delivered under these circumstances only by a person who was at least 21 years old. The beverage could be delivered only to a person who was at least 21 years old, presented valid proof of identity and age, and signed a receipt or acknowledged the completion of the delivery through a software application.

The bill would not authorize the holder of a brewpub license who also held a wine and beer retailer's permit to deliver alcoholic beverages directly to ultimate consumers for off-premises consumption at a location other than the licensed premises.

**Offense.** The bill would make it an offense if a person with criminal negligence delivered for commercial purposes an alcoholic beverage to an intoxicated person.

**Rules.** TABC would be required to adopt rules to implement the consumer delivery permit by September 1, 2020.

The bill would take effect September 1, 2019.

**SUPPORTERS SAY:** SB 1450 would allow the Texas Alcoholic Beverage Commission (TABC) to better regulate the delivery of alcohol to consumers. Delivery of groceries and prepared foods, including alcohol, has increased significantly in recent years with the advent of online ordering apps, but currently alcohol delivery is regulated only by a few TABC rules. SB 1450 would provide the commission with the authority and statutory consistency needed to regulate this growing retail sector.

The bill would require delivery drivers to undergo training developed by TABC and to ensure that delivery recipients were of legal age and were not intoxicated, which would address concerns about underage drinking and driving under the influence.

**OPPONENTS SAY:** SB 1450 would increase the total retail opportunities to purchase alcohol, which could result in a corresponding increase in drinking and driving under the influence. The bill could result in an increase of alcohol sales to underage persons, who may be able to illegally purchase alcohol through app-based delivery services more easily than through other methods. SB 1450 also would allow for more off-premise alcohol sales, which could lead consumers to drink more alcohol and could increase the risk of alcohol-related problems, such as DUIs.

**NOTES:** According to the Legislative Budget Board, the fiscal implications of the bill cannot be determined at this time as there may be an unknown amount of revenue generated from the new fee authorized by the bill.