

## **BILL ANALYSIS**

C.S.H.B. 3307  
By: Geren  
Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties have raised concerns regarding the current situation of new brewers only being able to contract to have another brewer make their malt beverages for them if they meet certain conditions under a grandfather clause. C.S.H.B. 3307 seeks to create new opportunities for small or startup businesses wanting to enter into the craft brewing industry in the state by amending current law relating to the manufacturer's licenses and the brewer's permits.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTIONS 3, 4, 7, and 8 of this bill.

### **ANALYSIS**

C.S.H.B. 3307 amends the Alcoholic Beverage Code to define "alternating brewery proprietorship" as an arrangement in which two or more parties take turns using the physical premises of a brewery as permitted by state and federal law and "contract brewing arrangement" as an arrangement in which two breweries, each of which has a separate facility, contract for one brewery to manufacture malt beverages on behalf of the other brewery due to limited capacity or other reasonable business necessity of one party to the arrangement.

C.S.H.B. 3307 authorizes the holder of a brewer's permit or a manufacturer's license to enter into an alternating brewery proprietorship or contract brewing agreement, respectively. The bill removes provisions relating to certain entities contracting for the use of brewing or manufacturing facilities, respectively, and sets out provisions authorizing the holder of a brewer's or nonresident brewer's permit and the holder of a manufacturer's or nonresident manufacturer's license to contract with another holder of such a brewer's permit or manufacturer's license, respectively, to provide brewing services or for the use of the permit or license holder's facilities under an alternating brewery proprietorship under certain conditions. The bill requires each entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to hold a permit or license, as applicable, at the location where brewing or manufacturing services, respectively, are conducted under the arrangement. The bill authorizes the Texas Alcoholic Beverage Commission (TABC) by rule to require an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post a bond with TABC in an amount determined by TABC not to exceed \$200,000 and requires such an entity to post a bond with TABC in an amount determined by TABC of not less than \$30,000, if the entity does not own a fee interest in a brewing facility or manufacturing facility.

C.S.H.B. 3307 authorizes more than one manufacturer's or nonresident manufacturer's license to be issued for a single premises if the license holder for the premises has contracted with an entity under an alternating brewery proprietorship or contract brewing arrangement.

C.S.H.B. 3307 requires a person who holds a brewer's or nonresident brewer's permit or a manufacturer's or nonresident manufacturer's license to verify to TABC on an annual basis that a

brewing or manufacturing facility owned or controlled by the permit or license holder, respectively, is not used to produce malt beverages primarily for a specific retailer or the retailer's affiliates and requires TABC to adopt a form for the required verification.

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3307 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Section 1.04, Alcoholic Beverage Code, is amended by adding Subdivisions (26) and (27) to read as follows:

(26) "Alternating brewery proprietorship" means an arrangement in which two or more parties take turns using the physical premises of a brewery as permitted under this code and federal law.

(27) "Contract brewing" means an arrangement in which two or more breweries, both of which have physical premises, contract for one to brew malt beverages on behalf of the other due to limited capacity or other business reason of one and available capacity of the other.

SECTION 2. Section 12.01(a), Alcoholic Beverage Code, is amended to read as follows:

- (a) The holder of a brewer's permit may:
- (1) manufacture, bottle, package, and label malt liquor;
  - (2) import ale and malt liquor acquired from a holder of a nonresident brewer's permit;
  - (3) sell the ale and malt liquor only to wholesale permit holders in this state or to qualified persons outside the state;
  - (4) dispense ale and malt liquor for consumption on the premises; ~~and~~
  - (5) conduct samplings of ale or malt liquor, including tastings, at a retailer's premises;

(6) enter into an alternating brewery proprietorship as provided by Section 12.06; and

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 1.04, Alcoholic Beverage Code, is amended by adding Subdivisions (26) and (27) to read as follows:

(26) "Alternating brewery proprietorship" means an arrangement in which two or more parties take turns using the physical premises of a brewery as permitted under this code and federal law.

(27) "Contract brewing arrangement" means an arrangement in which two breweries, each of which has a separate facility, contract for one brewery to manufacture malt beverages on behalf of the other brewery due to the limited capacity or other reasonable business necessity of one party to the arrangement.

SECTION 2. Section 12.01(a), Alcoholic Beverage Code, is amended to read as follows:

- (a) The holder of a brewer's permit may:
- (1) manufacture, bottle, package, and label malt liquor;
  - (2) import ale and malt liquor acquired from a holder of a nonresident brewer's permit;
  - (3) sell the ale and malt liquor only to wholesale permit holders in this state or to qualified persons outside the state;
  - (4) dispense ale and malt liquor for consumption on the premises; ~~and~~
  - (5) conduct samplings of ale or malt liquor, including tastings, at a retailer's premises; and
  - (6) enter into an alternating brewery proprietorship or contract brewing arrangement as provided by Section 12.06.

(7) enter into an agreement to contract brew with the holder of another brewer's permit or nonresident brewer's permit.

SECTION 3. The heading to Section 12.06, Alcoholic Beverage Code, is amended to read as follows:

Sec. 12.06. ALTERNATING BREWERY PROPRIETORSHIP [~~USE~~ ~~OF FACILITIES~~].

SECTION 4. Sections 12.06(a), (b), and (c), Alcoholic Beverage Code, are amended to read as follows:

(a) The holder of [An entity or successor to an entity that on May 1, 2005, held] a brewer's or nonresident brewer's permit [or whose brand was legally sold in this state] may contract with the holder of a brewer's permit

for the use of the permit holder's brewing facilities or to provide brewing services under an alternating brewery proprietorship if each party to the proprietorship:

(1) has filed the appropriate Brewer's Notice and Brewer's Bond, as required by the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau; and

(2) has posted with the commission a bond in an amount determined by the commission not to exceed \$200,000.

(b) An entity [or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state] is not required to own its brewing facilities if the entity operates under an alternating brewery proprietorship as provided by Subsection (a).

(c) More than one brewer's permit may be issued for a single premises [if the permit holder for the premises has contracted with an entity or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state] for the use of the permit holder's brewing facilities or to provide

*(See Subdiv. (6) above.)*

**No equivalent provision.**

SECTION 3. Section 12.06, Alcoholic Beverage Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (e) and (f) to read as follows:

(a) The holder of [An entity or successor to an entity that on May 1, 2005, held] a brewer's or nonresident brewer's permit [or whose brand was legally sold in this state] may contract with the holder of a brewer's permit;

(1) to provide brewing services; or  
(2) for the use of the permit holder's brewing facilities under an alternating brewery proprietorship if each party to the proprietorship:

(A) has filed the appropriate Brewer's Notice and Brewer's Bond, as required by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury; and

(B) if applicable, has posted with the commission a bond in an amount determined by the commission under Subsection (e) or (f) [or to provide brewing services].

(b) An entity [or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state] is not required to own its brewing facilities if the entity operates under an alternating brewery proprietorship as provided by Subsection (a).

(c) Each entity that is a party to an alternating brewery proprietorship or contract brewing arrangement must hold a permit at the location where brewing services are conducted under the arrangement [More than one brewer's permit may be issued for a single premises if the permit holder for the premises has

brewing services if the premises is operated under an alternating brewery proprietorship as provided by Subsection (a).

No equivalent provision.

No equivalent provision.

SECTION 5. The heading to Section 13.04, Alcoholic Beverage Code, is amended to read as follows:

Sec. 13.04. ALTERNATING BREWERY PROPRIETORSHIP [~~USE OF FACILITIES~~].

SECTION 6. Sections 13.04(a), (b), and (c), Alcoholic Beverage Code, are amended to read as follows:

(a) The holder of [~~An entity or successor to an entity that on May 1, 2005, held~~] a brewer's or nonresident brewer's permit [~~or whose brand was legally sold in this state~~] may contract with the holder of a nonresident brewer's permit

for the use of the permit holder's brewing facilities or to provide brewing services under an alternating brewery proprietorship if each party to the proprietorship:

(1) has filed the appropriate Brewer's Notice and Brewer's Bond as required by the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau; and

(2) has posted with the commission a bond in an amount determined by the commission not to exceed \$200,000.

~~contracted with an entity or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state for the use of the permit holder's brewing facilities or to provide brewing services].~~

(e) Subject to Subsection (f), the commission by rule may require an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with the commission a bond in an amount determined by the commission not to exceed \$200,000.

(f) An entity that is a party to an alternating brewery proprietorship or contract brewing arrangement must post with the commission a bond in an amount determined by the commission of not less than \$30,000 if the entity does not own a fee interest in a brewing facility.

No equivalent provision.

SECTION 4. Section 13.04, Alcoholic Beverage Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (e) and (f) to read as follows:

(a) The holder of [~~An entity or successor to an entity that on May 1, 2005, held~~] a brewer's or nonresident brewer's permit [~~or whose brand was legally sold in this state~~] may contract with the holder of a nonresident brewer's permit:

(1) to provide brewing services; or  
(2) for the use of the permit holder's brewing facilities  
under an alternating brewery proprietorship if each party to the proprietorship:

(A) has filed the appropriate Brewer's Notice and Brewer's Bond as required by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury; and

(B) if applicable, has posted with the commission a bond in an amount determined by the commission under Subsection (e) or (f) [~~or to provide brewing services~~].

(b) An entity [~~or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state~~] is not required to own its brewing facilities if the entity operates under an alternating brewery proprietorship as provided by Subsection (a).

(c) ~~More than one nonresident brewer's permit may be issued for a single premises [if the permit holder for the premises has contracted with an entity or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state] for the use of the permit holder's brewing facilities or to provide brewing services if the premises is operated under an alternating brewery proprietorship as provided by Subsection (a).~~

No equivalent provision.

No equivalent provision.

*(See Subdiv. (b-1) in SECTION 9 below and see Subdiv. (b-1) in SECTION 11 below.)*

(b) An entity [~~or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state~~] is not required to own its brewing facilities if the entity operates under an alternating brewery proprietorship as provided by Subsection (a).

(c) Each entity that is a party to an alternating brewery proprietorship or contract brewing arrangement must hold a permit at the location where brewing services are conducted under the arrangement [~~More than one nonresident brewer's permit may be issued for a single premises if the permit holder for the premises has contracted with an entity or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state for the use of the permit holder's brewing facilities or to provide brewing services].~~

(e) Subject to Subsection (f), the commission by rule may require an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with the commission a bond in an amount determined by the commission not to exceed \$200,000.

(f) An entity that is a party to an alternating brewery proprietorship or contract brewing arrangement must post with the commission a bond in an amount determined by the commission of not less than \$30,000 if the entity does not own a fee interest in a brewing facility.

SECTION 5. Section 61.41(d), Alcoholic Beverage Code, is amended to read as follows:

(d) Notwithstanding Subsection (a) and Sections 11.49 and 109.53, more than one manufacturer's or nonresident manufacturer's license may be issued for a single premises if the license holder for the premises has contracted with an entity under an alternating brewery proprietorship or contract brewing arrangement [~~or successor to an entity that on May 1, 2005, held a manufacturer's or nonresident~~

~~manufacturer's license or whose brand was legally sold in this state for the use of the license holder's premises for manufacturing purposes or to provide manufacturing services].~~

SECTION 7. Section 62.01(a), Alcoholic Beverage Code, is amended to read as follows:

(a) The holder of a manufacturer's license may:

(1) manufacture or brew beer and distribute and sell it in this state to the holders of general, local, and branch distributor's licenses and to qualified persons outside the state;

(2) dispense beer for consumption on the premises;

(3) bottle and can beer and pack it into containers for resale in this state, regardless of whether the beer is manufactured or brewed in this state or in another state and imported into Texas; ~~and]~~

(4) conduct samplings of beer, including tastings, at a retailer's premises;

(5) enter into an alternating brewery proprietorship as provided by Section 62.14; and

(6) enter into an agreement to contract brew with the holder of another manufacturer's or nonresident manufacturer's license.

SECTION 8. The heading to Section 62.14, Alcoholic Beverage Code, is amended to read as follows:

Sec. 62.14. ALTERNATING BREWERY PROPRIETORSHIP ~~[USE OF FACILITIES]~~.

SECTION 9. Section 62.14, Alcoholic Beverage Code, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

(a) ~~The holder of [An entity or successor to an entity that on May 1, 2005, held] a manufacturer's or nonresident manufacturer's license [or whose brand was legally sold in this state] may contract with the holder of a manufacturer's license~~

~~for the use of the license holder's manufacturing facilities or to provide~~

SECTION 6. Section 62.01(a), Alcoholic Beverage Code, is amended to read as follows:

(a) The holder of a manufacturer's license may:

(1) manufacture or brew beer and distribute and sell it in this state to the holders of general, local, and branch distributor's licenses and to qualified persons outside the state;

(2) dispense beer for consumption on the premises;

(3) bottle and can beer and pack it into containers for resale in this state, regardless of whether the beer is manufactured or brewed in this state or in another state and imported into Texas; ~~and]~~

(4) conduct samplings of beer, including tastings, at a retailer's premises; and

(5) enter into an alternating brewery proprietorship or contract brewing arrangement as provided by Section 62.14.

*(See Subdiv. (5) above.)*

No equivalent provision.

SECTION 7. Section 62.14, Alcoholic Beverage Code, is amended by amending Subsections (a) and (b) and adding Subsections (b-1), (d), and (e) to read as follows:

(a) ~~The holder of [An entity or successor to an entity that on May 1, 2005, held] a manufacturer's or nonresident manufacturer's license [or whose brand was legally sold in this state] may contract with the holder of a manufacturer's license;~~

(1) to provide manufacturing services; or  
(2) for the use of the license holder's manufacturing facilities under an

manufacturing services under an alternating brewery proprietorship if each party to the proprietorship:

(1) has filed the appropriate Brewer's Notice and Brewer's Bond as required by the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau; and

(2) has posted with the commission a bond in an amount determined by the commission not to exceed \$200,000.

(b) An entity [~~or successor to an entity that on May 1, 2005, held a manufacturer's or nonresident manufacturer's license or whose brand was legally sold in this state~~] is not required to own its manufacturing facilities if the entity operates under an alternating brewery proprietorship as provided by Subsection (a).

(b-1) More than one manufacturer's license may be issued for a single premises for the use of the license holder's manufacturing facilities or to provide manufacturing services if the premises is operated under an alternating brewery proprietorship as provided by Subsection (a).

No equivalent provision.

No equivalent provision.

No equivalent provision.

SECTION 10. The heading to Section 63.05,

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alternating brewery proprietorship if each party to the proprietorship:

(A) has filed the appropriate Brewer's Notice and Brewer's Bond as required by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury; and

(B) if applicable, has posted with the commission a bond in an amount determined by the commission under Subsection (d) or (e) [~~or to provide manufacturing services~~].

(b) An entity [~~or successor to an entity that on May 1, 2005, held a manufacturer's or nonresident manufacturer's license or whose brand was legally sold in this state~~] is not required to own its manufacturing facilities if the entity operates under an alternating brewery proprietorship as provided by Subsection (a).

*(See SECTION 5 above.)*

(b-1) Each entity that is a party to an alternating brewery proprietorship or contract brewing arrangement must hold a license at the location where manufacturing services are conducted under the arrangement.

(d) Subject to Subsection (e), the commission by rule may require an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with the commission a bond in an amount determined by the commission not to exceed \$200,000.

(e) An entity that is a party to an alternating brewery proprietorship or contract brewing arrangement must post with the commission a bond in an amount determined by the commission of not less than \$30,000 if the entity does not own a fee interest in a manufacturing facility.

No equivalent provision.

13.116.6

Alcoholic Beverage Code, is amended to read as follows:

Sec. 63.05. ALTERNATING BREWERY PROPRIETORSHIP [~~USE OF FACILITIES~~].

SECTION 11. Section 63.05, Alcoholic Beverage Code, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

(a) ~~The holder of [An entity or successor to an entity that on May 1, 2005, held] a manufacturer's or nonresident manufacturer's license [or whose brand was legally sold in this state]~~ may contract with the holder of a nonresident manufacturer's license

for the use of the license holder's manufacturing facilities or to provide manufacturing services under an alternating brewery proprietorship if each party to the proprietorship:

(1) has filed the appropriate Brewer's Notice and Brewer's Bond as required by the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau; and

(2) has posted with the commission a bond in an amount determined by the commission not to exceed \$200,000.

(b) ~~An entity [or successor to an entity that on May 1, 2005, held a manufacturer's or nonresident manufacturer's license or whose brand was legally sold in this state]~~ is not required to own its manufacturing facilities if the entity operates under an alternating brewery proprietorship as provided by Subsection (a).

(b-1) More than one nonresident manufacturer's license may be issued for a single premises for the use of the license holder's manufacturing facilities or to provide manufacturing services if the premises is operated under an alternating brewery

SECTION 8. Section 63.05, Alcoholic Beverage Code, is amended by amending Subsections (a) and (b) and adding Subsections (b-1), (d), and (e) to read as follows:

(a) ~~The holder of [An entity or successor to an entity that on May 1, 2005, held] a manufacturer's or nonresident manufacturer's license [or whose brand was legally sold in this state]~~ may contract with the holder of a nonresident manufacturer's license:

(1) to provide manufacturing services; or  
(2) for the use of the license holder's manufacturing facilities under an alternating brewery proprietorship if each party to the proprietorship:

(A) has filed the appropriate Brewer's Notice and Brewer's Bond as required by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury; and

(B) if applicable, has posted with the commission a bond in an amount determined by the commission under Subsection (d) or (e) [or to provide manufacturing services].

(b) ~~An entity [or successor to an entity that on May 1, 2005, held a manufacturer's or nonresident manufacturer's license or whose brand was legally sold in this state]~~ is not required to own its manufacturing facilities if the entity operates under an alternating brewery proprietorship as provided by Subsection (a).

*(See SECTION 5 above.)*

(b-1) Each entity that is a party to an alternating brewery proprietorship or contract brewing arrangement must hold a



proprietorship as provided by Subsection (a).

No equivalent provision.

No equivalent provision.

No equivalent provision.

No equivalent provision.

SECTION 12. This Act takes effect September 1, 2013.

license at the location where manufacturing services are conducted under the arrangement.

(d) Subject to Subsection (e), the commission by rule may require an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with the commission a bond in an amount determined by the commission not to exceed \$200,000.

(e) An entity that is a party to an alternating brewery proprietorship or contract brewing arrangement must post with the commission a bond in an amount determined by the commission of not less than \$30,000 if the entity does not own a fee interest in a manufacturing facility.

SECTION 9. Subchapter A, Chapter 102, Alcoholic Beverage Code, is amended by adding Section 102.22 to read as follows:  
Sec. 102.22. VERIFICATION OF USE OF FACILITIES. (a) A person who holds a permit issued under Chapter 12 or 13 or a license issued under Chapter 62 or 63 shall verify to the commission on an annual basis that a brewing or manufacturing facility owned or controlled by the permit or license holder is not used to produce malt beverages primarily for a specific retailer or the retailer's affiliates.  
(b) The commission shall adopt a form for the verification required under this section.

SECTION 10. Same as introduced version.