

BILL ANALYSIS

Senate Research Center

S.B. 516
By: Eltife et al.
Business & Commerce
7/10/2013
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The only segment of the American beer market that has shown any substantial increase in production volume and retail sales in recent years is the craft brew segment. In Texas, however, industry growth has not kept pace with other states due to regulatory obstacles that impede the craft brewers' access to markets and limit their ability to expose consumers to new and innovative products. These obstacles have been compounded by the pronouncements issued by federal courts concerning attempts made by certain states to establish preferences for in-state producers that unduly burden or hinder out-of-state producers. This type of deference to in-state market participants has consistently been struck down as a violation of the Commerce Clause by the lower federal courts, as well as the United States Supreme Court. Currently, Section 12.05 (Sales by Certain Brewers) of the Texas Alcoholic Beverage Code allows holders of a brewer's permit license to self-distribute ale up to 75,000 barrels annually; however, this right only applies to ale produced in Texas and does not extend to out-of-state brewers.

S.B. 516 addresses this discriminatory practice by setting a new annual production limit of 125,000 barrels and extending the rights afforded to in-state brewers permit holders to their out-of-state counterparts. S.B. 516 also limits the amount of ale that a manufacturer/brewer can self-distribute to no more than 40,000 barrels annually. This total annual production limit includes both beer and ale.

This change in the Alcoholic Beverage Code demonstrates how a minor revision can make Texas's three-tier system more reflective of a modern and changing market dynamic and corrects provisions that have been found to be discriminatory.

S.B. 516 amends current law relating to the distribution of ale by certain brewers.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTION 2 (Section 12A.04, Alcoholic Beverage Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Sets forth legislative findings that:

- (1) the state is authorized under the Twenty-first Amendment of the United States Constitution to promote the public's interest in the fair, efficient, and competitive marketing of ale in this state;
- (2) the United States Supreme Court in *Granholm v. Heald*, 544 U.S. 460 (2005), has recognized that the three-tier system of regulating the alcoholic beverage industry is unquestionably legitimate;
- (3) in *Granholm*, the United States Supreme Court further recognized that while the states are entitled to regulate the production and sales of liquor within their borders, the right is nonetheless subject to the provisions of the Constitution of the United States, including the Interstate Commerce Clause, and laws regulating the alcoholic beverage industry may not discriminate against out-of-state participants or give undue deference to local

participants and may not ignore other provisions of the constitution, including the Supremacy Clause, Commerce Clause, and the Privileges and Immunities Clause with its nondiscriminatory principles;

(4) the state is authorized to promote, market, and educate consumers about the emerging small brewing industry;

(5) it is in the state's interest to encourage entrepreneurial and small business development opportunities in the state that will lead to new capital investment in the state, create new jobs in the state, and expand the state and local tax base; and

(6) it is the public policy of the state to exercise the police power of the state to protect the welfare, health, peace, temperance, and safety of the people of Texas.

SECTION 2. Amends Subtitle A, Title 3, Alcoholic Beverage Code, by adding Chapter 12A, as follows:

CHAPTER 12A. BREWER'S SELF-DISTRIBUTION PERMIT

Sec. 12A.01. ELIGIBILITY FOR PERMIT. Authorizes a brewer's self-distribution permit to be issued only to the holder of a brewer's permit under Chapter 12 (Brewer's Permit) or the holder of a nonresident brewer's permit under Chapter 13 (Nonresident Brewer's Permit).

Sec. 12A.02. AUTHORIZED ACTIVITIES. (a) Authorizes a holder of a brewer's self-distribution permit whose annual production of ale under the brewer's or nonresident brewer's permit, together with the annual production of beer by the holder of a manufacturer's or nonresident manufacturer's license at the same premises, does not exceed 125,000 barrels to sell ale produced under the brewer's or nonresident brewer's permit to those persons to whom the holder of a general class B wholesaler's permit are authorized to sell ale under Section 20.01(3) (relating to authorizing the holder of a general class B wholesaler's permit to sell the malt and vinous liquors in the original containers in which they are received to certain authorized sellers).

(b) Prohibits the total combined sales of ale under this section, together with the sales of beer by the holder of a manufacturer's self-distribution license under Section 62A.02 (Fee) at the same premises, from exceeding 40,000 barrels annually.

(c) Provides that, with regard to a sale under this section, the holder of a brewer's self-distribution permit has the same authority and is subject to the same requirements that apply to a sale made by the holder of a general class B wholesaler's permit.

(d) Authorizes ale sold under this section to be shipped only from a brewery in this state.

Sec. 12A.03. FEE. Provides that the annual state fee for a brewer's self-distribution permit is \$250.

Sec. 12A.04. REPORT OF SALES TO RETAILERS. (a) Requires the holder of a brewer's self-distribution permit, not later than the 15th day of each month, to file a report with the Texas Alcoholic Beverage Commission (TABC) that contains information relating to the sales made by the permit holder to a retailer during the preceding calendar month.

(b) Requires TABC to by rule determine the information that is required to be reported under this section and the manner in which the report is to be submitted to TABC. Authorizes TABC to require that the report contain the same information reported to the comptroller of public accounts of the State of Texas

under Section 151.462 (Reports by Brewers, Manufacturers, Wholesalers, and Distributors), Tax Code.

SECTION 3. Amends Section 151.465, Tax Code, as follows:

Sec. 151.465. APPLICABILITY TO CERTAIN BREWERS. Provides that this subchapter (Reports by Persons Involved in the Manufacture and Distribution of Alcoholic Beverages) applies only to a brewer permitted under Chapter 12A, Alcoholic Beverage Code. Deletes existing text providing that this subchapter applies only to a brewer whose annual production of malt liquor in this state, together with the annual production of beer at the same premises by the holder of a manufacturer's license under Section 62.12 (Sales by Certain Manufacturers), Alcoholic Beverage Code, does not exceed 75,000 barrels.

SECTION 4. Repealer: Section 12.05 (Sales by Certain Brewers), Alcoholic Beverage Code.

SECTION 5. (a) Effective date, subject to Subsection (b) of this section: upon passage or September 1, 2013.

(b) Makes application of this Act contingent upon passage of:

- (1) S.B. 515, H.B. 1763, or another similar bill of the 83rd Legislature, Regular Session, 2013, that allows holders of brewpub licenses to self-distribute beer, malt liquor, or ale produced under the license to retailers;
- (2) S.B. 517, H.B. 1765, or another similar bill of the 83rd Legislature, Regular Session, 2013, that allows small beer manufacturers to sell beer to retailers;
- (3) S.B. 518, H.B. 1766, or another similar bill of the 83rd Legislature, Regular Session, 2013, that allows small brewers and beer manufacturers to sell beer and ale to ultimate consumers; and
- (4) S.B. 639, H.B. 1538, or another similar bill of the 83rd Legislature, Regular Session, 2013, relating to sales of beer by a manufacturer to a distributor and certain agreements between a manufacturer and distributor.