

BILL ANALYSIS

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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' three-tier system more reflective of a modern and changing market dynamic and corrects provisions that have been found to be discriminatory.

As proposed, 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 3 (Section 12.051, 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 Section 12.05, Alcoholic Beverage Code, as follows:

Sec. 12.05. SALES BY CERTAIN BREWERS. (a) Creates this subsection from existing text. Authorizes the holder of a brewer's permit whose annual production of ale together with the annual production of beer by the holder of a manufacturer's license at the same premises does not exceed 125,000 barrels to sell ale produced under the permit to those persons to whom the holder of a general class B wholesaler's permit is authorized to sell malt liquor under Section 20.01(3) (relating to the authorization of class B wholesalers to sell malt and vinous liquors), rather than authorizing the holder of a brewer's permit whose annual production of ale in this state does not exceed, together with the annual production of beer by the holder of a manufacturer's license acting under the authority of Section 62.12 (Sales by Certain Manufacturers) of this code at the same premises, a total of 75,000 barrels, to sell ale produced under the permit to those persons to whom the holder of a general class B wholesaler's permit is authorized to sell malt liquor under Section 20.01(3) of this code.

(b) Prohibits the total combined sales of ale under this section, together with the sales of beer by the holder of a manufacturer's license under Section 62.12 at the same premises, from exceeding 40,000 barrels annually.

(c) Creates this subsection from existing text. Provides that the brewer, with regard to a sale under this section, rather than with regard to such a sale, 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.

SECTION 3. Amends Chapter 12, Alcoholic Beverage Code, by adding Section 12.051, as follows:

Sec. 12.051. REPORT OF SALES TO RETAILER. (a) Requires the holder of a brewer's permit, not later than the 25th 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 brewer to a retailer during the preceding calendar month.

(b) Requires TABC by rule to determine the information that is required to be reported under this section and the manner in which the report must be submitted to TABC. Authorizes TABC to require the report to contain the same information reported to the comptroller of public accounts under Section 151.462 (Reports by Brewers, Manufacturers, Wholesalers, and Distributors), Tax Code.

SECTION 4. Effective date: September 1, 2013, contingent upon the enactment of legislation by the 83rd Legislature, Regular Session, 2013, that becomes law and that amends the Alcoholic Beverage Code to allow small brewers to sell beer to retailers.