

BILL ANALYSIS

Senate Research Center

S.B. 517
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Business & Commerce
7/15/2013
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 62.12 (Sales by Certain Manufacturers), Alcoholic Beverage Code, allows manufacturer licensees to self-distribute beer up to 75,000 barrels annually. This right extends only to beer manufactured in Texas, however, and does not extend to out-of-state manufacturers.

S.B. 517 addresses this discriminatory practice by setting a new annual production limit of 125,000 barrels and extending the rights afforded to in-state manufacturers to their out-of-state counterparts. S.B. 517 also reduces the amount of beer that a manufacturer 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-tiered system more reflective of a modern and changing market dynamic and correct provisions that have been found to be discriminatory.

S.B. 517 amends current law relating to the distribution of beer by certain manufacturers.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTION 2 (Section 62A.04, Alcoholic Beverage Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Sets forth certain legislative findings relating to the regulation of the alcoholic beverage industry and the U.S. Supreme Court's decision in *Granholm v. Heald*, 544 U.S. 460 (2005).

SECTION 2. Amends Subtitle B, Title 3, Alcoholic Beverage Code, by adding Chapter 62A, as follows:

CHAPTER 62A. MANUFACTURER'S SELF-DISTRIBUTION LICENSE

Sec. 62A.01. **ELIGIBILITY FOR LICENSE.** Authorizes a manufacturer's self-distribution license to be issued only to the holder of a manufacturer's license under Chapter 62 (Manufacturer's License) or to the holder of a nonresident manufacturer's license under Chapter 63 (Nonresident Manufacturer's License).

Sec. 62A.02. **AUTHORIZED ACTIVITIES.** (a) Authorizes a holder of a manufacturer's self-distribution license whose annual production of beer under the manufacturer's or

nonresident manufacturer's license, together with the annual production of ale by the holder of a brewer's or nonresident brewer's permit at the same premises, does not exceed 125,000 barrels to sell beer produced under the manufacturer's or nonresident manufacturer's license to those persons to whom the holder of a general distributor's license is authorized to sell beer under Section 64.01(a)(2) (relating to authorizing the holder of a general distributor's license to distribute or sell beer in the unbroken original packages in which it is received to certain permittees, licensees, establishments, or persons).

(b) Prohibits the total combined sales of beer under this section, together with the sales of ale by the holder of a brewer's self-distribution permit under Section 12A.02 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 manufacturer's self-distribution license has the same authority and is subject to the same requirements that apply to a sale made by the holder of a general distributor's license.

(d) Authorizes beer sold under this section to be shipped only from a manufacturing facility in this state.

Sec. 62A.03. FEE. Provides that the annual state fee for a manufacturer's self-distribution license is \$250.

Sec. 62A.04. REPORT OF SALES TO RETAILERS. (a) Requires the holder of a manufacturer's self-distribution license, 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 license holder 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 is required 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 151.466, Tax Code, as follows:

Sec. 151.466. APPLICABILITY TO CERTAIN MANUFACTURERS. Provides that this subchapter (Reports by Persons Involved in the Manufacture and Distribution of Alcoholic Beverages) applies only to a manufacturer licensed under Chapter 62A, Alcoholic Beverage Code, rather than providing that this subchapter applies only to a manufacturer whose annual production of beer in this state does not exceed 75,000 barrels.

SECTION 4. Repealer: Section 62.12 (Sales by Certain Manufacturers), Alcoholic Beverage Code.

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

(b) Provides that the changes in law made by this Act take effect only if each of the following bills is enacted and becomes law:

(1) Senate Bill No. 515, House Bill No. 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) Senate Bill No. 516, House Bill No. 1764, or another similar bill of the 83rd Legislature, Regular Session, 2013, that allows small brewers to sell ale to retailers;

(3) Senate Bill No. 518, House Bill No. 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) Senate Bill No. 639, House Bill No. 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.