

By: Eltife, et al.

S.B. No. 516

A BILL TO BE ENTITLED

AN ACT

relating to the distribution of ale by certain brewers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds 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 sale 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

1 educate consumers about the emerging small brewing industry;

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

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

10 SECTION 2. Subtitle A, Title 3, Alcoholic Beverage Code, is  
11 amended by adding Chapter 12A to read as follows:

12 CHAPTER 12A. BREWER'S SELF-DISTRIBUTION PERMIT

13 Sec. 12A.01. ELIGIBILITY FOR PERMIT. A brewer's  
14 self-distribution permit may be issued only to the holder of a  
15 brewer's permit under Chapter 12 or the holder of a nonresident  
16 brewer's permit under Chapter 13.

17 Sec. 12A.02. AUTHORIZED ACTIVITIES. (a) A holder of a  
18 brewer's self-distribution permit whose annual production of ale  
19 under the brewer's or nonresident brewer's permit, together with  
20 the annual production of beer by the holder of a manufacturer's or  
21 nonresident manufacturer's license at the same premises, does not  
22 exceed 125,000 barrels may sell ale produced under the brewer's or  
23 nonresident brewer's permit to those persons to whom the holder of a  
24 general class B wholesaler's permit may sell ale under Section  
25 20.01(3).

26 (b) The total combined sales of ale under this section,  
27 together with the sales of beer by the holder of a manufacturer's

1 self-distribution license under Section 62A.02 at the same  
2 premises, may not exceed 40,000 barrels annually.

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

7 (d) Ale sold under this section may be shipped only from a  
8 brewery in this state.

9 Sec. 12A.03. FEE. The annual state fee for a brewer's  
10 self-distribution permit is \$250.

11 Sec. 12A.04. REPORT OF SALES TO RETAILERS. (a) Not later  
12 than the 15th day of each month, the holder of a brewer's  
13 self-distribution permit shall file a report with the commission  
14 that contains information relating to the sales made by the permit  
15 holder to a retailer during the preceding calendar month.

16 (b) The commission shall by rule determine the information  
17 that is required to be reported under this section and the manner in  
18 which the report must be submitted to the commission. The  
19 commission may require the report to contain the same information  
20 reported to the comptroller under Section 151.462, Tax Code.

21 SECTION 3. Section 151.465, Tax Code, is amended to read as  
22 follows:

23 Sec. 151.465. APPLICABILITY TO CERTAIN BREWERS. This  
24 subchapter applies only to a brewer permitted under Chapter 12A  
25 ~~[whose annual production of malt liquor in this state, together~~  
26 ~~with the annual production of beer at the same premises by the~~  
27 ~~holder of a manufacturer's license under Section 62.12]~~, Alcoholic

1 Beverage Code [~~7, does not exceed 75,000 barrels~~].

2 SECTION 4. Section 12.05, Alcoholic Beverage Code, is  
3 repealed.

4 SECTION 5. (a) Subject to Subsection (b) of this section,  
5 this Act takes effect immediately if it receives a vote of  
6 two-thirds of all the members elected to each house, as provided by  
7 Section 39, Article III, Texas Constitution. If this Act does not  
8 receive the vote necessary for immediate effect, this Act takes  
9 effect September 1, 2013.

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

12 (1) Senate Bill No. 515, House Bill No. 1763, or  
13 another similar bill of the 83rd Legislature, Regular Session,  
14 2013, that allows holders of brewpub licenses to self-distribute  
15 beer, malt liquor, or ale produced under the license to retailers;

16 (2) Senate Bill No. 517, House Bill No. 1765, or  
17 another similar bill of the 83rd Legislature, Regular Session,  
18 2013, that allows small beer manufacturers to sell beer to  
19 retailers;

20 (3) Senate Bill No. 518, House Bill No. 1766, or  
21 another similar bill of the 83rd Legislature, Regular Session,  
22 2013, that allows small brewers and beer manufacturers to sell beer  
23 and ale to ultimate consumers; and

24 (4) Senate Bill No. 639, House Bill No. 1538, or  
25 another similar bill of the 83rd Legislature, Regular Session,  
26 2013, relating to sales of beer by a manufacturer to a distributor  
27 and certain agreements between a manufacturer and distributor.