

BILL ANALYSIS

C.S.H.B. 3287
By: Goldman
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties assert that, in order to address recent acquisitions of craft breweries by mega-breweries, clarification is needed in regard to the sale of ale and beer by certain brewers and manufacturers. C.S.H.B. 3287 seeks to provide that clarification.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3287 amends the Alcoholic Beverage Code to change the premises at which the combined annual production of ale and beer by a brewer's permit holder and a manufacturer's license holder, respectively, must not exceed 225,000 barrels for such a permit holder or license holder to be authorized, respectively, to sell ale or beer produced on the permit holder's or license holder's premises under the permit or license to ultimate consumers for responsible on-premises consumption from the same premises on which the ale and beer are produced to all premises wholly or partly owned, directly or indirectly, by the permit holder or license holder or an affiliate or subsidiary of the permit holder or license holder. The bill changes the premises at which the total annual combined sales of ale and beer to ultimate consumers by a brewer's permit holder and a manufacturer's license holder, respectively, are capped at 5,000 barrels from the same premises on which the ale and beer are sold to all premises.

C.S.H.B. 3287 authorizes a brewer's permit holder and a manufacturer's license holder to sell ale or beer produced on the brewer's premises or manufacturer's premises under the permit or license to ultimate consumers on the premises for responsible on-premises consumption, respectively, even if the prescribed annual production limit is exceeded if the respective permit holder or license holder was legally operating a manufacturing facility with on-premise sales on January 1, 2017, or purchased an ownership interest in, or was purchased by the holder of, a brewer's permit, nonresident brewer's permit, manufacturer's license, or a nonresident manufacturer's license and if the permit holder or license holder has annual production capped at 175,000 barrels at the existing brewer's or manufacturer's premises or the purchased brewer's or manufacturer's premises, as applicable. The bill requires a brewer's permit holder or manufacturer's permit holder who sells ale or beer under those bill provisions, respectively, to file a territorial agreement with the Texas Alcoholic Beverage Commission under statutory provisions relating to territorial limits on the sale of beer and under the Beer Industry Fair Dealing Law, to purchase any ale the permit holder sells on the brewer's premises or any beer the

license holder sells on the manufacturer's premises from specified applicable permit holders or license holders, and to comply, with respect to those purchases, with the Alcoholic Beverage Code requirements governing dealings between a distributor or wholesaler and a member of the retail tier.

C.S.H.B. 3287 changes the premises at which the combined annual production of ale and beer by a brewer's self-distribution permit holder and a manufacturer's self-distribution license holder, respectively and under an applicable permit or license, must not exceed 125,000 barrels for such a permit holder to be authorized to sell ale produced under the applicable permit to certain persons to whom the holder of a general class B wholesaler's permit may sell ale and for such a license holder to sell beer produced under the applicable license to certain persons to whom the holder of a general distributor's license may sell beer from the same premises on which the ale and beer are produced, respectively, to all premises owned directly or indirectly by the brewer's self-distribution permit holder or manufacturer's self-distribution license holder or an affiliate or subsidiary of the permit holder or license holder.

C.S.H.B. 3287 changes the premises at which the total combined annual sales of ale and beer by a brewer's self-distribution permit holder and a manufacturer's self-distribution license holder, respectively, are capped at 40,000 barrels from the same premises on which the ale and beer are sold to all premises owned directly or indirectly by the permit holder or license holder or an affiliate or subsidiary or the permit holder or license holder.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3287 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

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 and beer 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 1. Section 12.052, Alcoholic Beverage Code, is amended to read as follows:

Sec. 12.052. SALES BY CERTAIN BREWERS TO CONSUMERS. (a) In addition to the activities authorized by Section 12.01, 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 all [the same] premises owned directly or indirectly by the license holder or an affiliate or subsidiary does not exceed a total of 225,000 barrels may sell ale produced on the brewer's premises under the permit to ultimate consumers on the brewer's premises for responsible consumption on the brewer's premises.

(b) The total combined sales of ale to ultimate consumers under this section, together with the sales of beer to ultimate consumers by the holder of a manufacturer's license under Section 62.122 at the same premises, may not exceed 5,000 barrels annually.

SECTION 2. Section 12.052, Alcoholic Beverage Code, is amended to read as follows:

Sec. 12.052. SALES BY CERTAIN BREWERS TO CONSUMERS. (a) In addition to the activities authorized by Section 12.01, 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 all [the same] premises wholly or partly owned, directly or indirectly, by the permit holder or an affiliate or subsidiary of the permit holder, does not exceed a total of 225,000 barrels may sell ale produced on the brewer's premises under the permit to ultimate consumers on the brewer's premises for responsible consumption on the brewer's premises.

(b) The total combined sales of ale to ultimate consumers under this section, together with the sales of beer to ultimate consumers by the holder of a manufacturer's license under Section 62.122 at all [the same] premises, may not exceed 5,000 barrels annually.

(c) Subject to Subsections (b) and (d), the holder of a brewer's permit may sell ale produced on the brewer's premises under the permit to ultimate consumers on the brewer's premises for responsible consumption on the brewer's premises even if the annual production limit prescribed by Subsection (a) is exceeded if:

(1) the permit holder:
(A) was legally operating a manufacturing facility with on-premise sales under Subsection (a) on January 1, 2017; or
(B) purchased an ownership interest in, or was purchased by the holder of, a permit or license issued under Chapter 12, 13, 62, or 63; and
(2) the permit holder has annual production that does not exceed 175,000 barrels at the existing brewer's premises or the purchased brewer's premises, as applicable.
(d) A holder of a brewer's permit who under Subsection (c) sells ale produced on the brewer's premises under the permit to ultimate consumers on the brewer's premises for responsible consumption on the brewer's premises:
(1) shall file a territorial agreement with the commission under Subchapters C and D, Chapter 102;
(2) must purchase any ale the permit holder sells on the brewer's premises from the holder of a permit issued under Chapter 19, 20, or 21; and
(3) with respect to those purchases, must comply with the requirements of this code governing dealings between a distributor or wholesaler and a member of the retail tier, including Section 102.31.

SECTION 3. Section 12A.02, Alcoholic Beverage Code, is amended to read as follows:

Sec. 12A.02. AUTHORIZED ACTIVITIES.

(a) 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~~ all premises owned directly or indirectly by the license holder or an affiliate or subsidiary, does not exceed 125,000 barrels may 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 may sell ale under Section 20.01(3).

(b) 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 at all ~~the same~~ premises owned directly or

SECTION 3. Sections 12A.02(a) and (b), Alcoholic Beverage Code, are amended to read as follows:

(a) 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 all ~~the same~~ premises owned directly or indirectly by the permit holder or an affiliate or subsidiary of the permit holder, does not exceed 125,000 barrels may 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 may sell ale under Section 20.01(3).

(b) 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 at all ~~the same~~ premises owned directly or

indirectly by the license holder or an affiliate or subsidiary, may not exceed 40,000 barrels annually.

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

SECTION 2. Section 62.122, Alcoholic Beverage Code, is amended to read as follows:

Sec. 62.122. SALES BY CERTAIN MANUFACTURERS TO CONSUMERS.

(a) A manufacturer's licensee whose annual production of beer together with the annual production of ale by the holder of a brewer's permit at ~~[the same]~~ all premises owned directly or indirectly by the license holder or an affiliate or subsidiary does not exceed 225,000 barrels may sell beer produced on the manufacturer's premises under the license to ultimate consumers on the manufacturer's premises for responsible consumption on the manufacturer's premises.

(b) The total combined sales of beer to ultimate consumers under this section, together with the sales of ale to ultimate consumers by the holder of a brewer's permit under Section 12.052 at the same premises, may not exceed 5,000 barrels annually.

indirectly by the permit holder or an affiliate or subsidiary of the permit holder, may not exceed 40,000 barrels annually.

SECTION 4. Section 62.122, Alcoholic Beverage Code, is amended to read as follows:

Sec. 62.122. SALES BY CERTAIN MANUFACTURERS TO CONSUMERS.

(a) A manufacturer's licensee whose annual production of beer, together with the annual production of ale by the holder of a brewer's permit at all [the same] premises wholly or partly owned, directly or indirectly, by the license holder or an affiliate or subsidiary of the license holder, does not exceed 225,000 barrels may sell beer produced on the manufacturer's premises under the license to ultimate consumers on the manufacturer's premises for responsible consumption on the manufacturer's premises.

(b) The total combined sales of beer to ultimate consumers under this section, together with the sales of ale to ultimate consumers by the holder of a brewer's permit under Section 12.052 at all [the same] premises, may not exceed 5,000 barrels annually.

(c) Subject to Subsections (b) and (d), the holder of a manufacturer's license may sell beer produced on the manufacturer's premises under the license to ultimate consumers on the manufacturer's premises for responsible consumption on the manufacturer's premises even if the annual production limit prescribed by Subsection (a) is exceeded if:

(1) the license holder:

(A) was legally operating a manufacturing facility with on-premise sales under Subsection (a) on January 1, 2017; or

(B) purchased an ownership interest in, or was purchased by the holder of, a permit or license issued under Chapter 12, 13, 62, or 63; and

(2) the license holder has annual production that does not exceed 175,000 barrels at the

existing manufacturer's premises or the purchased manufacturer's premises, as applicable.

(d) A holder of a manufacturer's license who under Subsection (c) sells beer produced on the manufacturer's premises under the license to ultimate consumers on the manufacturer's premises for responsible consumption on the manufacturer's premises:

(1) shall file a territorial agreement with the commission under Subchapters C and D, Chapter 102;

(2) must purchase any beer the license holder sells on the manufacturer's premises from the holder of a license issued under Chapter 64, 65, or 66; and

(3) with respect to those purchases, must comply with the requirements of this code governing dealings between a distributor or wholesaler and a member of the retail tier, including Sections 61.73 and 102.31.

SECTION 4. Section 62A.02, Alcoholic Beverage Code, is amended to read as follows:

Sec. 62A.02. AUTHORIZED ACTIVITIES.

(a) 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~~ all premises owned directly or indirectly by the license holder or an affiliate or subsidiary, does not exceed 125,000 barrels may 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 may sell beer under Section 64.01(a)(2).

(b) 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 all ~~the same~~ premises owned directly or indirectly by the license holder or an affiliate or subsidiary, may not exceed 40,000 barrels annually.

(c) With regard to a sale under this section, the holder of a manufacturer's self-distribution license has the same authority

SECTION 5. Sections 62A.02(a) and (b), Alcoholic Beverage Code, are amended to read as follows:

(a) 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 all ~~the same~~ premises owned directly or indirectly by the license holder or an affiliate or subsidiary of the license holder, does not exceed 125,000 barrels may 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 may sell beer under Section 64.01(a)(2).

(b) 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 all ~~the same~~ premises owned directly or indirectly by the license holder or an affiliate or subsidiary of the license holder, may not exceed 40,000 barrels annually.

and is subject to the same requirements that apply to a sale made by the holder of a general distributor's license.

(d) Beer sold under this section may be shipped only from a manufacturing facility in this state.

SECTION 5. This Act take effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

SECTION 6. Substantially the same as introduced version.