

## **BILL ANALYSIS**

Senate Research Center

C.S.H.B. 3287  
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Business & Commerce  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In the 83rd Session, the legislative leadership engaged alcoholic beverage stakeholders, leading to the passage of a tightly-negotiated compromise known as the "craft beer bill package."

In the package of bills, the legislature modified regulations related to small brewers, including a limited allowance for retail on premise consumption (S.B. 518 tap rooms) and a reformed license/permitting system for self-distribution (S.B. 516 and S.B. 517). The self-distribution provisions were modified to apply to breweries whose annual production was limited to 125,000 barrels of beer/ale combined. The retail tap room provision was limited to those breweries whose combined production of beer/ale was below 225,000 barrels. In both instances, the production caps were the legislature's mechanism for defining small brewers. It was always the legislature's intention for brewers above 225,000 barrels of production to remain prohibited from retailing and/or distributing their beer/ale directly to consumers and retailers. This bill preserves the original intent of the 2013 legislation. Recent acquisitions of craft breweries by mega-brewers necessitate clarification of the legislature's stated goal of helping the "emerging small brewing industry."

H.B. 3287 clarifies that the retail tap room and self-distribution privileges extended in the 2013 craft beer bill package are available only to small brewers as an additional tool for gaining access to their local markets in furtherance of the legislature's stated prerogative of assisting small businesses and entrepreneurs. (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 3287 amends current law relating to the sale of ale and beer by certain brewers and manufacturers.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Sets forth legislative findings.

SECTION 2. Amends Section 12.052, Alcoholic Beverage Code, as follows:

Sec. 12.052. SALES BY CERTAIN BREWERS TO CONSUMERS. (a) 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 all 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, rather than 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 a total of 225,000 barrels, in addition to the activities authorized by Section 12.01 (Authorized Activities) to 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) Makes no changes to this subsection.

(c) Authorizes the holder of a brewer's permit, subject to Subsections (b), (d), and (e), to 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 certain conditions are met.

(d) Prohibits a permit holder, for purposes of Subsection (c)(1)(B) (relating to authorizing the holder of a brewer's permit to sell ale produced on the brewer's premises even if annual production limit is exceeded if the permit holder purchased an ownership interest in, or was purchased by the holder of, a permit or license), from selling to a permit or license holder whose annual production exceeds the limit prescribed by Subsection (a) an ownership interest of more than 25 percent in the permitted location or that provides the purchaser with the ability to control the operations at the permitted location.

(e) Provides that 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) is required to file a territorial agreement with the Texas Alcoholic Beverage Commission (TABC) under Subchapters C (Territorial Limits on Sale of Beer) and D (Beer Industry Fair Dealing Law), Chapter 102 (Intra-Industry Relationships);

(2) is required to purchase any ale the permit holder sells on the brewer's premises from the holder of a permit issued under Chapter 19 (Wholesaler's Permit), 20 (General Class B Wholesaler's Permit), or 21 (Local Class B Wholesaler's Permit); and

(3) with respect to those purchases, is required to 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 (Cash Payment Required).

(f) Requires TABC by rule or order to annually adjust the production limit prescribed by Subsection (c)(2) (relating to authorizing the holder of a brewer's permit to sell ale produced on the brewer's premises even if the annual production limit is exceeded if the permit holder has annual production that does not exceed 175,000 barrels at the brewer's premises) in an amount that is equal to the percentage of the state's population growth for the previous year as determined by the state demographer under Chapter 468 (State Demographer), Government Code.

SECTION 3. Amends Section 12A.02 (a) and (b), Alcoholic Beverage Code, as follows:

(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 all premises owned directly or indirectly by the permit holder or an affiliate or subsidiary of the permit holder, does not exceed 125,000 barrels, rather than whose 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 certain persons.

(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 at all premises owned directly or indirectly by the permit holder or an affiliate or subsidiary of the permit holder, rather than together with the sales of beer by the holder of a

manufacturer's self-distribution license under Section 62A.02 at the same premises, from exceeding 40,000 barrels annually.

SECTION 4. Amends Section 62.122, Alcoholic Beverage Code, as follows:

Sec. 62.122. SALES BY CERTAIN MANUFACTURERS TO CONSUMERS. (a) Authorizes 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 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, rather than whose annual production of beer together with the annual production of ale by the holder of a brewer's permit at the same premises does not exceed 225,000 barrels, to 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) Makes no change to this subsection.

(c) Authorizes the holder of a manufacturer's license, subject to Subsections (b), (d), and (e) to 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 certain conditions are met.

(d) Prohibits a license holder, for purposes of Subsection (c)(1)(B) (relating to authorizing the holder of a brewer's permit to sell ale produced on the brewer's premises even if annual production limit is exceeded if the permit holder purchased an ownership interest in, or was purchased by the holder of, a permit or license), from selling to a permit or license holder whose annual production exceeds the limit prescribed by Subsection (a) an ownership interest of more than 25 percent in the permitted location or that provides the purchaser with the ability to control the operations at the permitted location.

(e) Provides that 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) is required to file a territorial agreement with TABC under Subchapters C and D, Chapter 102;

(2) is required to purchase any beer the license holder sells on the manufacturer's premises from the holder of a license issued under Chapter 64 (General Distributor's License), 65 (Local Distributor's License), or 66 (Branch Distributor's License); and

(3) with respect to those purchases, is required to 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 (Retail Dealer: Credit Purchase or Dishonored Check) and 102.31.

(f) Requires TABC by rule or order to annually adjust the production limit prescribed by Subsection (c)(2) (relating to authorizing the holder of a brewer's permit to sell ale produced on the brewer's premises even if the annual production limit is exceeded if the permit holder has annual production that does not exceed 175,000 barrels at the brewer's premises) in an amount that is equal to the percentage of the state's population growth for the previous year as determined by the state demographer under Chapter 468, Government Code.

SECTION 5. Amends Sections 62A.02(a) and (b), Alcoholic Beverage Code, as follows:

(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 all premises owned directly or indirectly by the license holder or an affiliate or subsidiary of the license holder, does not exceed 125,000 barrels, rather than 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 certain 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 all premises owned directly or indirectly by the license holder or an affiliate or subsidiary of the license holder, rather than 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.

**SECTION 6. APPLICABILITY.** (a) Requires that, notwithstanding any provision under Chapters 12 and 62, any manufacturer's license or a holder of a brewer's permit, whose combined annual production exceeds the 225,000 barrel threshold in Sections 12.052(a) or 62.122(a) by the license or permit holder or an affiliate or subsidiary of the license or permit holder as revised by this Act, that operates a premise purchased on or before February 1, 2017, that is licensed or permitted to manufacture or brew beer or ale purchased and on which the total production of beer and ale is less than 225,000 barrels, be granted the right to sell beer and ale to the ultimate consumer at the purchased premise under the law as it existed prior to the passage of this Act.

(b) Authorizes a manufacturer's licensee or a holder of a brewer's permit, whose combined annual production exceeds the 225,000 barrel threshold in Sections 12.052(a) or 62.122(a) as revised by this Act who operates a premise which legally sells beer or ale to the ultimate consumer at a premise purchased prior to February 1, 2017, pursuant to Subsection (a), notwithstanding any provision under Chapters 12 (Brewer's Permit) and 62 (Manufacturer's License), to establish no more than two additional facilities which sell beer or ale to the ultimate consumer provided those facilities each produce less than 225,000 barrels of beer and ale and comply with the provisions in Sections 12.052(b) and (e) and 62.122 (b) and (e).

**SECTION 7.** Effective date: upon passage or September 1, 2017.