

AN ACT

relating to the sale of ale and beer by certain brewers and manufacturers.

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 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;

1 (4) the state is authorized to promote, market, and
2 educate consumers about the emerging small brewing industry;

3 (5) it is the state's interest that nothing in this Act
4 be construed to conflict with Article 1, Sections 16 and 17 of the
5 Texas Constitution, with regard to the impairment of contract,
6 retroactive application of law, or taking of property;

7 (6) it is in the state's interest to encourage
8 entrepreneurial and small business development opportunities in
9 the state that will lead to new capital investment in the state,
10 create new jobs in the state, and expand the state and local tax
11 base; and

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

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

17 Sec. 12.052. SALES BY CERTAIN BREWERS TO CONSUMERS. (a) In
18 addition to the activities authorized by Section 12.01, the holder
19 of a brewer's permit whose annual production of ale, together with
20 the annual production of beer by the holder of a manufacturer's
21 license at all [the same] premises wholly or partly owned, directly
22 or indirectly, by the permit holder or an affiliate or subsidiary of
23 the permit holder, does not exceed a total of 225,000 barrels may
24 sell ale produced on the brewer's premises under the permit to
25 ultimate consumers on the brewer's premises for responsible
26 consumption on the brewer's premises.

27 (b) The total combined sales of ale to ultimate consumers

1 under this section, together with the sales of beer to ultimate
2 consumers by the holder of a manufacturer's license under Section
3 [62.122](#) at the same premises, may not exceed 5,000 barrels annually.

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

9 (1) the permit holder:

10 (A) was legally operating a manufacturing
11 facility with on-premise sales under Subsection (a) on February 1,
12 2017; or

13 (B) purchased an ownership interest in, or was
14 purchased by the holder of, a permit or license issued under Chapter
15 [12](#), [13](#), [62](#), or [63](#); and

16 (2) the permit holder has annual production that does
17 not exceed 175,000 barrels at the brewer's premises.

18 (d) For purposes of Subsection (c)(1)(B), a permit holder
19 may not sell to a permit or license holder whose annual production
20 exceeds the limit prescribed by Subsection (a) an ownership
21 interest:

22 (1) of more than 25 percent in the permitted location;
23 or

24 (2) that provides the purchaser with the ability to
25 control the operations at the permitted location.

26 (e) A holder of a brewer's permit who under Subsection (c)
27 sells ale produced on the brewer's premises under the permit to

1 ultimate consumers on the brewer's premises for responsible
2 consumption on the brewer's premises:

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

5 (2) must purchase any ale the permit holder sells on
6 the brewer's premises from the holder of a permit issued under
7 Chapter 19, 20, or 21; and

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

12 (f) The commission by rule or order shall annually adjust
13 the production limit prescribed by Subsection (c)(2) in an amount
14 that is equal to the percentage of the state's population growth for
15 the previous year as determined by the state demographer under
16 Chapter 468, Government Code.

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

19 (a) A holder of a brewer's self-distribution permit whose
20 annual production of ale under the brewer's or nonresident brewer's
21 permit, together with the annual production of beer by the holder of
22 a manufacturer's or nonresident manufacturer's license at all [the
23 same] premises owned directly or indirectly by the permit holder or
24 an affiliate or subsidiary of the permit holder, does not exceed
25 125,000 barrels may sell ale produced under the brewer's or
26 nonresident brewer's permit to those persons to whom the holder of a
27 general class B wholesaler's permit may sell ale under Section

1 20.01(3).

2 (b) The total combined sales of ale under this section,
3 together with the sales of beer by the holder of a manufacturer's
4 self-distribution license under Section 62A.02 at all [~~the same~~]
5 premises owned directly or indirectly by the permit holder or an
6 affiliate or subsidiary of the permit holder, may not exceed 40,000
7 barrels annually.

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

10 Sec. 62.122. SALES BY CERTAIN MANUFACTURERS TO CONSUMERS.

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

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

23 (c) Subject to Subsections (b), (d), and (e), the holder of
24 a manufacturer's license may sell beer produced on the
25 manufacturer's premises under the license to ultimate consumers on
26 the manufacturer's premises for responsible consumption on the
27 manufacturer's premises even if the annual production limit

1 prescribed by Subsection (a) is exceeded if:

2 (1) the license holder:

3 (A) was legally operating a manufacturing
4 facility with on-premise sales under Subsection (a) on February 1,
5 2017; or

6 (B) purchased an ownership interest in, or was
7 purchased by the holder of, a permit or license issued under Chapter
8 12, 13, 62, or 63; and

9 (2) the license holder has annual production that does
10 not exceed 175,000 barrels at the manufacturer's premises.

11 (d) For purposes of Subsection (c)(1)(B), a license holder
12 may not sell to a permit or license holder whose annual production
13 exceeds the limit prescribed by Subsection (a) an ownership
14 interest:

15 (1) of more than 25 percent in the permitted location;
16 or

17 (2) that provides the purchaser with the ability to
18 control the operations at the permitted location.

19 (e) A holder of a manufacturer's license who under
20 Subsection (c) sells beer produced on the manufacturer's premises
21 under the license to ultimate consumers on the manufacturer's
22 premises for responsible consumption on the manufacturer's
23 premises:

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

26 (2) must purchase any beer the license holder sells on
27 the manufacturer's premises from the holder of a license issued

1 under Chapter 64, 65, or 66; and

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

6 (f) The commission by rule or order shall annually adjust
7 the production limit prescribed by Subsection (c)(2) in an amount
8 that is equal to the percentage of the state's population growth for
9 the previous year as determined by the state demographer under
10 Chapter 468, Government Code.

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

13 (a) A holder of a manufacturer's self-distribution license
14 whose annual production of beer under the manufacturer's or
15 nonresident manufacturer's license, together with the annual
16 production of ale by the holder of a brewer's or nonresident
17 brewer's permit at all [~~the same~~] premises owned directly or
18 indirectly by the license holder or an affiliate or subsidiary of
19 the license holder, does not exceed 125,000 barrels may sell beer
20 produced under the manufacturer's or nonresident manufacturer's
21 license to those persons to whom the holder of a general
22 distributor's license may sell beer under Section 64.01(a)(2).

23 (b) The total combined sales of beer under this section,
24 together with the sales of ale by the holder of a brewer's
25 self-distribution permit under Section 12A.02 at all [~~the same~~]
26 premises owned directly or indirectly by the license holder or an
27 affiliate or subsidiary of the license holder, may not exceed

1 40,000 barrels annually.

2 SECTION 6. APPLICABILITY. (a) Notwithstanding any
3 provision under Chapters 12 and 62, Alcoholic Beverage Code, any
4 manufacturer's licensee or a holder of a brewer's permit, whose
5 combined annual production exceeds the 225,000 barrel threshold in
6 Section 12.052(a) or 62.122(a), Alcoholic Beverage Code, by the
7 license or permit holder or an affiliate or subsidiary of the
8 license or permit holder as revised by this Act, that operates a
9 premise purchased on or before February 1, 2017, that is licensed or
10 permitted to manufacture or brew beer or ale and on which the total
11 production of beer and ale is less than 225,000 barrels, shall be
12 granted the right to sell beer and ale to the ultimate consumer at
13 the purchased premise under the law as it existed prior to the
14 passage of this Act.

15 (b) Notwithstanding any provision under Chapters 12 and 62,
16 Alcoholic Beverage Code, a manufacturer's licensee or a holder of a
17 brewer's permit, whose combined annual production exceeds the
18 225,000 barrel threshold in Section 12.052(a) or 62.122(a),
19 Alcoholic Beverage Code, as revised by this Act who operates a
20 premise which legally sells beer or ale to the ultimate consumer at
21 a premise purchased prior to February 1, 2017, pursuant to
22 Subsection (a) may establish no more than two additional facilities
23 which sell beer or ale to the ultimate consumer provided those
24 facilities each produce less than 225,000 barrels of beer and ale
25 and comply with the provisions in Sections 12.052(b) and (e) and
26 62.122(b) and (e), Alcoholic Beverage Code.

27 SECTION 7. This Act takes effect immediately if it receives

H.B. No. 3287

1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I certify that H.B. No. 3287 was passed by the House on May 8, 2017, by the following vote: Yeas 111, Nays 33, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3287 on May 24, 2017, by the following vote: Yeas 115, Nays 30, 2 present, not voting, and that the House adopted H.C.R. No. 153 authorizing certain corrections in H.B. No. 3287 on May 28, 2017, by the following vote: Yeas 136, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3287 was passed by the Senate, with amendments, on May 22, 2017, by the following vote: Yeas 21, Nays 10, and that the Senate adopted H.C.R. No. 153 authorizing certain corrections in H.B. No. 3287 on May 28, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor