

By: Goldman, Geren, Guillen, et al.

H.B. No. 3287

Substitute the following for H.B. No. 3287:

By: Kuempel

C.S.H.B. No. 3287

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the sale of ale and beer by certain brewers and  
3 manufacturers.

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

5 SECTION 1. The legislature finds that:

6 (1) the state is authorized under the Twenty-first  
7 Amendment of the United States Constitution to promote the public's  
8 interest in the fair, efficient, and competitive marketing of ale  
9 and beer in this state;

10 (2) the United States Supreme Court in Granholm v.  
11 Heald, 544 U.S. 460 (2005), has recognized that the three-tier  
12 system of regulating the alcoholic beverage industry is  
13 unquestionably legitimate;

14 (3) in Granholm, the United States Supreme Court  
15 further recognized that while the states are entitled to regulate  
16 the production and sales of liquor within their borders, the right  
17 is nonetheless subject to the provisions of the Constitution of the  
18 United States, including the Interstate Commerce Clause, and laws  
19 regulating the alcoholic beverage industry may not discriminate  
20 against out-of-state participants or give undue deference to local  
21 participants and may not ignore other provisions of the  
22 Constitution, including the Supremacy Clause, Commerce Clause, and  
23 the Privileges and Immunities Clause with its nondiscriminatory  
24 principles;

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

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

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

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

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

23           (b) The total combined sales of ale to ultimate consumers  
24 under this section, together with the sales of beer to ultimate  
25 consumers by the holder of a manufacturer's license under Section  
26 62.122 at all [the same] premises, may not exceed 5,000 barrels  
27 annually.

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

6 (1) the permit holder:

7 (A) was legally operating a manufacturing  
8 facility with on-premise sales under Subsection (a) on January 1,  
9 2017; or

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

13 (2) the permit holder has annual production that does  
14 not exceed 175,000 barrels at the existing brewer's premises or the  
15 purchased brewer's premises, as applicable.

16 (d) A holder of a brewer's permit who under Subsection (c)  
17 sells ale produced on the brewer's premises under the permit to  
18 ultimate consumers on the brewer's premises for responsible  
19 consumption on the brewer's premises:

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

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

25 (3) with respect to those purchases, must comply with  
26 the requirements of this code governing dealings between a  
27 distributor or wholesaler and a member of the retail tier,

1 including Section 102.31.

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

4 (a) A holder of a brewer's self-distribution permit whose  
5 annual production of ale under the brewer's or nonresident brewer's  
6 permit, together with the annual production of beer by the holder of  
7 a manufacturer's or nonresident manufacturer's license at all [~~the~~  
8 ~~same~~] premises owned directly or indirectly by the permit holder or  
9 an affiliate or subsidiary of the permit holder, does not exceed  
10 125,000 barrels may sell ale produced under the brewer's or  
11 nonresident brewer's permit to those persons to whom the holder of a  
12 general class B wholesaler's permit may sell ale under Section  
13 20.01(3).

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

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

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

23 (a) A manufacturer's licensee whose annual production of beer,  
24 together with the annual production of ale by the holder of a  
25 brewer's permit at all [~~the same~~] premises wholly or partly owned,  
26 directly or indirectly, by the license holder or an affiliate or  
27 subsidiary of the license holder, does not exceed 225,000 barrels

1 may sell beer produced on the manufacturer's premises under the  
2 license to ultimate consumers on the manufacturer's premises for  
3 responsible consumption on the manufacturer's premises.

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

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

14 (1) the license holder:

15 (A) was legally operating a manufacturing  
16 facility with on-premise sales under Subsection (a) on January 1,  
17 2017; or

18 (B) purchased an ownership interest in, or was  
19 purchased by the holder of, a permit or license issued under Chapter  
20 12, 13, 62, or 63; and

21 (2) the license holder has annual production that does  
22 not exceed 175,000 barrels at the existing manufacturer's premises  
23 or the purchased manufacturer's premises, as applicable.

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

1 premises:

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

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

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

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