

1-1 By: Goldman, et al. (Senate Sponsor - Seliger) H.B. No. 3287
 1-2 (In the Senate - Received from the House May 8, 2017;
 1-3 May 8, 2017, read first time and referred to Committee on Business
 1-4 & Commerce; May 19, 2017, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 7, Nays 1;
 1-6 May 19, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13			X	
1-14		X		
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 3287 By: Campbell

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the sale of ale and beer by certain brewers and
 1-22 manufacturers.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. The legislature finds that:

1-25 (1) the state is authorized under the Twenty-first
 1-26 Amendment of the United States Constitution to promote the public's
 1-27 interest in the fair, efficient, and competitive marketing of ale
 1-28 and beer in this state;

1-29 (2) the United States Supreme Court in *Granholm v.*
 1-30 *Heald*, 544 U.S. 460 (2005), has recognized that the three-tier
 1-31 system of regulating the alcoholic beverage industry is
 1-32 unquestionably legitimate;

1-33 (3) in *Granholm*, the United States Supreme Court
 1-34 further recognized that while the states are entitled to regulate
 1-35 the production and sales of liquor within their borders, the right
 1-36 is nonetheless subject to the provisions of the Constitution of the
 1-37 United States, including the Interstate Commerce Clause, and laws
 1-38 regulating the alcoholic beverage industry may not discriminate
 1-39 against out-of-state participants or give undue deference to local
 1-40 participants and may not ignore other provisions of the
 1-41 Constitution, including the Supremacy Clause, Commerce Clause, and
 1-42 the Privileges and Immunities Clause with its nondiscriminatory
 1-43 principles;

1-44 (4) the state is authorized to promote, market, and
 1-45 educate consumers about the emerging small brewing industry;

1-46 (5) it is the state's interest that nothing in this Act
 1-47 be construed to conflict with Article 1, Sections 16 and 17 of the
 1-48 Texas Constitution, with regard to the impairment of contract,
 1-49 retroactive application of law, or taking of property;

1-50 (6) it is in the state's interest to encourage
 1-51 entrepreneurial and small business development opportunities in
 1-52 the state that will lead to new capital investment in the state,
 1-53 create new jobs in the state, and expand the state and local tax
 1-54 base; and

1-55 (7) it is the public policy of the state to exercise
 1-56 the police power of the state to protect the welfare, health, peace,
 1-57 temperance, and safety of the people of Texas.

1-58 SECTION 2. Section 12.052, Alcoholic Beverage Code, is
 1-59 amended to read as follows:

1-60 Sec. 12.052. SALES BY CERTAIN BREWERS TO CONSUMERS. (a) In

2-1 addition to the activities authorized by Section 12.01, the holder
 2-2 of a brewer's permit whose annual production of ale, together with
 2-3 the annual production of beer by the holder of a manufacturer's
 2-4 license at all [~~the same~~] premises wholly or partly owned, directly
 2-5 or indirectly, by the permit holder or an affiliate or subsidiary of
 2-6 the permit holder, does not exceed a total of 225,000 barrels may
 2-7 sell ale produced on the brewer's premises under the permit to
 2-8 ultimate consumers on the brewer's premises for responsible
 2-9 consumption on the brewer's premises.

2-10 (b) The total combined sales of ale to ultimate consumers
 2-11 under this section, together with the sales of beer to ultimate
 2-12 consumers by the holder of a manufacturer's license under Section
 2-13 62.122 at the same premises, may not exceed 5,000 barrels annually.

2-14 (c) Subject to Subsections (b), (d), and (e), the holder of
 2-15 a brewer's permit may sell ale produced on the brewer's premises
 2-16 under the permit to ultimate consumers on the brewer's premises for
 2-17 responsible consumption on the brewer's premises even if the annual
 2-18 production limit prescribed by Subsection (a) is exceeded if:

2-19 (1) the permit holder:

2-20 (A) was legally operating a manufacturing
 2-21 facility with on-premise sales under Subsection (a) on February 1,
 2-22 2017; or

2-23 (B) purchased an ownership interest in, or was
 2-24 purchased by the holder of, a permit or license issued under Chapter
 2-25 12, 13, 62, or 63; and

2-26 (2) the permit holder has annual production that does
 2-27 not exceed 175,000 barrels at the brewer's premises.

2-28 (d) For purposes of Subsection (c)(1)(B), a permit holder
 2-29 may not sell to a permit or license holder whose annual production
 2-30 exceeds the limit prescribed by Subsection (a) an ownership
 2-31 interest:

2-32 (1) of more than 25 percent in the permitted location;
 2-33 or

2-34 (2) that provides the purchaser with the ability to
 2-35 control the operations at the permitted location.

2-36 (e) A holder of a brewer's permit who under Subsection (c)
 2-37 sells ale produced on the brewer's premises under the permit to
 2-38 ultimate consumers on the brewer's premises for responsible
 2-39 consumption on the brewer's premises:

2-40 (1) shall file a territorial agreement with the
 2-41 commission under Subchapters C and D, Chapter 102;

2-42 (2) must purchase any ale the permit holder sells on
 2-43 the brewer's premises from the holder of a permit issued under
 2-44 Chapter 19, 20, or 21; and

2-45 (3) with respect to those purchases, must comply with
 2-46 the requirements of this code governing dealings between a
 2-47 distributor or wholesaler and a member of the retail tier,
 2-48 including Section 102.31.

2-49 (f) The commission by rule or order shall annually adjust
 2-50 the production limit prescribed by Subsection (c)(2) in an amount
 2-51 that is equal to the percentage of the state's population growth for
 2-52 the previous year as determined by the state demographer under
 2-53 Chapter 468, Government Code.

2-54 SECTION 3. Sections 12A.02(a) and (b), Alcoholic Beverage
 2-55 Code, are amended to read as follows:

2-56 (a) A holder of a brewer's self-distribution permit whose
 2-57 annual production of ale under the brewer's or nonresident brewer's
 2-58 permit, together with the annual production of beer by the holder of
 2-59 a manufacturer's or nonresident manufacturer's license at all [~~the~~
 2-60 same] premises owned directly or indirectly by the permit holder or
 2-61 an affiliate or subsidiary of the permit holder, does not exceed
 2-62 125,000 barrels may sell ale produced under the brewer's or
 2-63 nonresident brewer's permit to those persons to whom the holder of a
 2-64 general class B wholesaler's permit may sell ale under Section
 2-65 20.01(3).

2-66 (b) The total combined sales of ale under this section,
 2-67 together with the sales of beer by the holder of a manufacturer's
 2-68 self-distribution license under Section 62A.02 at all [~~the same~~]
 2-69 premises owned directly or indirectly by the permit holder or an

3-1 affiliate or subsidiary of the permit holder, may not exceed 40,000
 3-2 barrels annually.

3-3 SECTION 4. Section 62.122, Alcoholic Beverage Code, is
 3-4 amended to read as follows:

3-5 Sec. 62.122. SALES BY CERTAIN MANUFACTURERS TO CONSUMERS.

3-6 (a) A manufacturer's licensee whose annual production of beer,
 3-7 together with the annual production of ale by the holder of a
 3-8 brewer's permit at all [~~the same~~] premises wholly or partly owned,
 3-9 directly or indirectly, by the license holder or an affiliate or
 3-10 subsidiary of the license holder, does not exceed 225,000 barrels
 3-11 may sell beer produced on the manufacturer's premises under the
 3-12 license to ultimate consumers on the manufacturer's premises for
 3-13 responsible consumption on the manufacturer's premises.

3-14 (b) The total combined sales of beer to ultimate consumers
 3-15 under this section, together with the sales of ale to ultimate
 3-16 consumers by the holder of a brewer's permit under Section 12.052 at
 3-17 the same premises, may not exceed 5,000 barrels annually.

3-18 (c) Subject to Subsections (b), (d), and (e), the holder of
 3-19 a manufacturer's license may sell beer produced on the
 3-20 manufacturer's premises under the license to ultimate consumers on
 3-21 the manufacturer's premises for responsible consumption on the
 3-22 manufacturer's premises even if the annual production limit
 3-23 prescribed by Subsection (a) is exceeded if:

3-24 (1) the license holder:

3-25 (A) was legally operating a manufacturing
 3-26 facility with on-premise sales under Subsection (a) on February 1,
 3-27 2017; or

3-28 (B) purchased an ownership interest in, or was
 3-29 purchased by the holder of, a permit or license issued under Chapter
 3-30 12, 13, 62, or 63; and

3-31 (2) the license holder has annual production that does
 3-32 not exceed 175,000 barrels at the manufacturer's premises.

3-33 (d) For purposes of Subsection (c)(1)(B), a license holder
 3-34 may not sell to a permit or license holder whose annual production
 3-35 exceeds the limit prescribed by Subsection (a) an ownership
 3-36 interest:

3-37 (1) of more than 25 percent in the permitted location;
 3-38 or

3-39 (2) that provides the purchaser with the ability to
 3-40 control the operations at the permitted location.

3-41 (e) A holder of a manufacturer's license who under
 3-42 Subsection (c) sells beer produced on the manufacturer's premises
 3-43 under the license to ultimate consumers on the manufacturer's
 3-44 premises for responsible consumption on the manufacturer's
 3-45 premises:

3-46 (1) shall file a territorial agreement with the
 3-47 commission under Subchapters C and D, Chapter 102;

3-48 (2) must purchase any beer the license holder sells on
 3-49 the manufacturer's premises from the holder of a license issued
 3-50 under Chapter 64, 65, or 66; and

3-51 (3) with respect to those purchases, must comply with
 3-52 the requirements of this code governing dealings between a
 3-53 distributor or wholesaler and a member of the retail tier,
 3-54 including Sections 61.73 and 102.31.

3-55 (f) The commission by rule or order shall annually adjust
 3-56 the production limit prescribed by Subsection (c)(2) in an amount
 3-57 that is equal to the percentage of the state's population growth for
 3-58 the previous year as determined by the state demographer under
 3-59 Chapter 468, Government Code.

3-60 SECTION 5. Sections 62A.02(a) and (b), Alcoholic Beverage
 3-61 Code, are amended to read as follows:

3-62 (a) A holder of a manufacturer's self-distribution license
 3-63 whose annual production of beer under the manufacturer's or
 3-64 nonresident manufacturer's license, together with the annual
 3-65 production of ale by the holder of a brewer's or nonresident
 3-66 brewer's permit at all [~~the same~~] premises owned directly or
 3-67 indirectly by the license holder or an affiliate or subsidiary of
 3-68 the license holder, does not exceed 125,000 barrels may sell beer
 3-69 produced under the manufacturer's or nonresident manufacturer's

4-1 license to those persons to whom the holder of a general
4-2 distributor's license may sell beer under Section 64.01(a)(2).

4-3 (b) The total combined sales of beer under this section,
4-4 together with the sales of ale by the holder of a brewer's
4-5 self-distribution permit under Section 12A.02 at all ~~[the same]~~
4-6 premises owned directly or indirectly by the license holder or an
4-7 affiliate or subsidiary of the license holder, may not exceed
4-8 40,000 barrels annually.

4-9 SECTION 6. APPLICABILITY. (a) Notwithstanding any
4-10 provision under Chapters 12 and 62, any manufacturer's licensee or
4-11 a holder of a brewer's permit, whose combined annual production
4-12 exceeds the 225,000 barrel threshold in sections 12.052(a) or
4-13 62.122(a) by the license or permit holder or an affiliate or
4-14 subsidiary of the license or permit holder as revised by this Act,
4-15 that operates a premise purchased on or before February 1, 2017 that
4-16 is licensed or permitted to manufacture or brew beer or ale
4-17 purchased and on which the total production of beer and ale is less
4-18 than 225,000 barrels, shall be granted the right to sell beer and
4-19 ale to the ultimate consumer at the purchased premise under the law
4-20 as it existed prior to the passage of this Act.

4-21 (b) Notwithstanding any provision under Chapters 12 and 62,
4-22 a manufacturer's licensee or a holder of a brewer's permit, whose
4-23 combined annual production exceeds the 225,000 barrel threshold in
4-24 sections 12.052(a) or 62.122(a) as revised by this Act who operates
4-25 a premise which legally sells beer or ale to the ultimate consumer
4-26 at a premise purchased prior to February 1, 2017 pursuant to
4-27 subsection (a) may establish no more than two additional facilities
4-28 which sell beer or ale to the ultimate consumer provided those
4-29 facilities each produce less than 225,000 barrels of beer and ale
4-30 and comply with the provisions in Sections 12.052 (b) and (e) and
4-31 62.122 (b) and (e).

4-32 SECTION 7. This Act takes effect immediately if it receives
4-33 a vote of two-thirds of all the members elected to each house, as
4-34 provided by Section 39, Article III, Texas Constitution. If this
4-35 Act does not receive the vote necessary for immediate effect, this
4-36 Act takes effect September 1, 2017.

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