

**House Bill 3287**  
Senate Amendments  
Section-by-Section Analysis

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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 the state's interest that nothing in this Act be construed to conflict with Article I, Sections 16 and 17 of the Texas Constitution, with regard to the impairment of contract, retroactive application of law, or taking of property;
- (6) 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
- (7) it is the public policy of the state to exercise the police power of the state to protect the welfare, health, peace,

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SECTION 1. Substantially the same as House version.

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temperance, and safety of the people of Texas.

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

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 the same premises, may not exceed 5,000 barrels annually.

(c) Subject to Subsections (b), (d), and (e), 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 February 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

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(2) the permit holder has annual production that does not exceed 225,000 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. 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

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

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

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

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

(e) 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.

(f) The commission by rule or order shall annually adjust the production limit prescribed by Subsection (c)(2) 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 3. Same as House version.

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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 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

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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

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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 225,000 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

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12.052 at the same premises, may not exceed 5,000 barrels annually.

(c) Subject to Subsections (b), (d), and (e), 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 February 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 manufacturer's premises.

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

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

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

(e) 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

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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 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.

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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.

(f) The commission by rule or order shall annually adjust the production limit prescribed by Subsection (c)(2) 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. Same as House version.

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No equivalent provision.

SECTION 6. This Act takes 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.

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SECTION 6. APPLICABILITY. (a) Notwithstanding any provision under Chapters 12 and 62, any 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) 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 and on which the total production of beer and ale is less than 225,000 barrels, shall 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. [FA1]

(b) Notwithstanding any provision under Chapters 12 and 62, 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) may 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. Same as House version.

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