

BILL ANALYSIS

Senate Research Center

S.B. 515
By: Eltife et al.
Business & Commerce
7/10/2013
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas brewpub industry is increasing in the Texas economy, but like many new and emerging businesses, fledgling brewpub start-ups are not necessarily well-suited to fill traditional roles in longstanding business and regulatory models. The state has a vested interest in the expansion of capital investment, job creation, and the expansion of the local and state tax bases.

Texas brewpubs are currently allowed to brew beer, malt liquor, and ale for consumption on their premises in the amount of 5,000 barrels annually. These limitations are stifling the ability to attract a broader market for their products. As a result, the industry's entrepreneurs in Texas are asking for the option to either distribute themselves, on limited terms, the products they produce or otherwise enter into an agreement with a distributor that will allow them to operate in the traditional three-tier system.

S.B. 515 raises a brewpub's annual production limit to 10,000 barrels while restricting the amount that a brewpub may self-distribute to holders of retail licenses and permits to 1,000 barrels per year or 2,500 barrels annually for all brewpubs operated by the same licensee. Under S.B. 515 there will be no limit to how much of the 10,000 annual production can be sold through a beer distributor in the traditional three-tier system.

S.B. 515 amends current law relating to the sale and production of malt liquor, ale, and beer by the holder of a brewpub license.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTION 5 (Section 74.11, Alcoholic Beverage Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Sets forth legislative findings relating to the regulation of the alcoholic beverage industry and the U.S. Supreme Court's decision in *Granholm v. Heald*, 544 U.S. 460 (2005).

SECTION 2. Amends Section 20.01, Alcoholic Beverage Code, to authorize the holder of a general class B wholesaler's permit to purchase malt and vinous liquors from holders of brewer's permits, holders of brewpub licenses, or other wholesalers in this state.

SECTION 3. Amends Section 64.01(a), Alcoholic Beverage Code, to authorize the holder of a general distributor's license to receive beer in unbroken original packages from manufacturers and brewpubs and from general, local, or branch distributors.

SECTION 4. Amends Section 74.03, Alcoholic Beverage Code, to prohibit the total annual production of malt liquor, ale, and beer by a holder of a brewpub license from exceeding 10,000, rather than 5,000, barrels for each licensed brewpub, rather than for each licensed brewpub established, operated, or maintained by the holder in this state.

SECTION 5. Amends Chapter 74, Alcoholic Beverage Code, by adding Sections 74.08, 74.09, 74.10, and 74.11, as follows:

Sec. 74.08. SALES BY BREWPUB LICENSE HOLDERS TO RETAILERS. (a) Authorizes the holder of a brewpub license who holds a wine and beer retailer's permit and who sells alcoholic beverages manufactured only on the brewpub's premises, in addition to the activities authorized by Section 74.01 (Authorized Activities), to:

(1) sell malt liquor or ale produced under the license to those retailers or qualified persons to whom the holder of a general class B wholesaler's permit are authorized to sell malt liquor or ale under Section 20.01; and

(2) sell beer produced under the license to those retailers to whom the holder of a general distributor's license are authorized to sell beer under Section 64.01 (Authorized Activities) or qualified persons to whom the holder of a general distributor's license may sell beer for shipment and consumption outside the state under Section 64.01.

(b) Provides that, with regard to a sale under Subsection (a)(1), the holder of a brewpub license has the same authority and is subject to the same requirements that apply to a sale made by the holder of a general class B wholesaler's permit.

(c) Provides that, with regard to a sale under Subsection (a)(2), the holder of a brewpub license has the same authority and is subject to the same requirements that apply to a sale made by the holder of a general distributor's license.

(d) Prohibits the total amount of malt liquor, ale, and beer sold under this section to persons in this state from exceeding 1,000 barrels annually for each licensed brewpub location or 2,500 barrels annually for all brewpubs operated by the same licensee.

Sec. 74.09. SALES TO DISTRIBUTORS. (a) Authorizes the holder of a brewpub license, in addition to the activities authorized by Section 74.01, to sell beer produced under the license to the holder of a general, local, or branch distributor's license.

(b) Requires the holder of a brewpub license who sells beer under Subsection (a) to comply with the requirements of Section 102.51 (Setting of Territorial Limits).

Sec. 74.10. SALES TO WHOLESALERS. (a) Authorizes the holder of a brewpub license, in addition to the activities authorized by Section 74.01, to sell ale and malt liquor to the holder of a local class B wholesaler's permit.

(b) Requires the holder of a brewpub license who sells ale or malt liquor under Subsection (a) to comply with the requirements of Section 102.81 (Ale and Malt Liquor).

Sec. 74.11. REPORT OF SALES TO RETAILERS. (a) Requires the holder of a brewpub license, not later than the 15th day of each month, to file a report with the Texas Alcoholic Beverage Commission (TABC) that contains information relation to the sales made by the brewpub to a retailer during the preceding calendar month.

(b) Requires TABC by rule to determine the information that is required to be reported under this section and the manner in which the report must be submitted to TABC. Authorizes TABC to require that the report contain the same information reported to the comptroller of public accounts under Section 151.462 (Reports by Brewers, Manufacturers, Wholesalers, and Distributors), Tax Code.

SECTION 6. Amends Section 102.54(d)(2), Alcoholic Beverage Code, to redefine "manufacturer."

SECTION 7. Amends Section 102.55(a), Alcoholic Beverage Code, to define "manufacturer" in this subchapter and Subchapter D (Beer Industry Fair Dealing Law), as the term relates to an

agreement between a manufacturer and a distributor describing the sales territory in which a distributor may sell the beer of a manufacturer.

SECTION 8. Amends Section 102.71(4), Alcoholic Beverage Code, to redefine "manufacturer."

SECTION 9. Repealer: Section 74.01(f) (relating to prohibiting a holder of a brewpub license from selling an alcoholic beverage for resale), Alcoholic Beverage Code.

SECTION 10. (a) Effective date, subject to Subsection (b) of this section: upon passage or September 1, 2013.

(b) Provides that the changes in law made by this Act take effect only if each of the following bills is enacted and becomes law:

(1) Senate Bill No. 516, House Bill No. 1764, or another similar bill of the 83rd Legislature, Regular Session, 2013, that allows small brewers to sell ale to retailers;

(2) Senate Bill No. 517, House Bill No. 1765, or another similar bill of the 83rd Legislature, Regular Session, 2013, that allows small beer manufacturers to sell beer to retailers;

(3) Senate Bill No. 518, House Bill No. 1766, or another similar bill of the 83rd Legislature, Regular Session, 2013, that allows small brewers and beer manufacturers to sell beer and ale to ultimate consumers; and

(4) Senate Bill No. 639, House Bill No. 1538, or another similar bill of the 83rd Legislature, Regular Session, 2013, relating to sales of beer by a manufacturer to a distributor and certain agreements between a manufacturer and distributor.