

BILL ANALYSIS

S.B. 639
By: Carona
Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties contend that there are several issues related to the manufacture, distribution, and sale of alcoholic beverages found in the Alcoholic Beverage Code, including a possible conflict with the commerce clause of the United States Constitution and silence on the practice of reach-back pricing and the ability of a manufacturer to sell its brand to a distributor for exclusive territorial distribution. S.B. 639 seeks to address these issues by revising the applicable laws relating to the manufacture, distribution, and sale of alcoholic beverages.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 639 amends the Alcoholic Beverage Code to prohibit a manufacturer from adjusting the price at which the manufacturer sells beer to a distributor based on the price at which a distributor resells beer to a retailer and specifies that a manufacturer is free to set its own price so long as any price adjustment is based on factors other than the distributor's increase in the price it charges to a retailer and not intended to otherwise coerce illegal behavior. The bill prohibits a manufacturer from accepting payment in exchange for an agreement setting forth territorial rights.

S.B. 639 prohibits statutory provisions governing prohibited manufacturer conduct from interfering with the rights of a manufacturer or distributor to enter into contractual agreements that could be construed as governing ordinary business transactions. The bill specifies that it is the public policy and in the interest of Texas to assure the independence of members of the three-tier system, but that nothing in Alcoholic Beverage Code may be construed to prohibit contractual agreements between members of the same tier who hold the same licenses and permits.

S.B. 639 makes its provisions contingent on passage by the 83rd Legislature, Regular Session, 2013, of legislation authorizing the holder of a brewpub license to self-distribute beer, malt liquor, or ale produced under the license to retailers; authorizing small brewers to sell ale to retailers; authorizing small beer manufactures to sell beer to retailers; and authorizing small brewers and beer manufacturers to sell beer and ale to ultimate consumers.

EFFECTIVE DATE

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, September 1, 2013.