

By: Eltife, et al.

S.B. No. 515

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the sale and production of malt liquor, ale, and beer by
3 the holder of a brewpub license.

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 malt
9 liquor, ale, 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 sale of liquor within their borders, the right is
17 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 20.01, Alcoholic Beverage Code, is
12 amended to read as follows:

13 Sec. 20.01. AUTHORIZED ACTIVITIES. The holder of a general
14 class B wholesaler's permit may:

15 (1) purchase and import malt and vinous liquors from
16 brewers, wineries, rectifiers, and wine manufacturers and wine
17 bottlers who are the holders of nonresident seller's permits or
18 their agents who are holders of manufacturer's agent permits;

19 (2) purchase malt and vinous liquors from holders of
20 brewer's permits, holders of brewpub licenses, or other wholesalers
21 in the state;

22 (3) sell the malt and vinous liquors in the original
23 containers in which they are received to retailers and wholesalers
24 authorized to sell them in this state, including holders of local
25 distributor's permits, mixed beverage permits, and daily temporary
26 mixed beverage permits;

27 (4) sell the malt and vinous liquors to qualified

1 persons outside the state; and

2 (5) sell ale and malt liquor to a holder of a private
3 club registration permit.

4 SECTION 3. Subsection (a), Section 64.01, Alcoholic
5 Beverage Code, is amended to read as follows:

6 (a) The holder of a general distributor's license may:

7 (1) receive beer in unbroken original packages from
8 manufacturers and brewpubs and from general, local, or branch
9 distributors;

10 (2) distribute or sell beer in the unbroken original
11 packages in which it is received to general, branch, or local
12 distributors, to local distributor permittees, to permittees or
13 licensees authorized to sell to ultimate consumers, to private club
14 registration permittees, to authorized outlets located on any
15 installation of the national military establishment, or to
16 qualified persons for shipment and consumption outside the state;
17 and

18 (3) serve free beer for consumption on the licensed
19 premises.

20 SECTION 4. Section 74.03, Alcoholic Beverage Code, is
21 amended to read as follows:

22 Sec. 74.03. PRODUCTION LIMIT. The total annual production
23 of malt liquor, ale, and beer by a holder of a brewpub license may
24 not exceed 10,000 ~~[5,000]~~ barrels for each licensed brewpub
25 ~~[established, operated, or maintained by the holder in this state]~~.

26 SECTION 5. Chapter 74, Alcoholic Beverage Code, is amended
27 by adding Sections 74.08, 74.09, 74.10, and 74.11 to read as

1 follows:

2 Sec. 74.08. SALES BY BREWPUB LICENSE HOLDERS TO RETAILERS.

3 (a) In addition to the activities authorized by Section 74.01, the
4 holder of a brewpub license who holds a wine and beer retailer's
5 permit and who sells alcoholic beverages manufactured only on the
6 brewpub's premises may:

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

11 (2) sell beer produced under the license to:

12 (A) those retailers to whom the holder of a
13 general distributor's license may sell beer under Section 64.01; or

14 (B) qualified persons to whom the holder of a
15 general distributor's license may sell beer for shipment and
16 consumption outside the state under Section 64.01.

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

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

25 (d) The total amount of malt liquor, ale, and beer sold
26 under this section to persons in this state may not exceed 1,000
27 barrels annually for each licensed brewpub location or 2,500

1 barrels annually for all brewpubs operated by the same licensee.

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

6 (b) The holder of a brewpub license who sells beer under
7 Subsection (a) shall comply with the requirements of Section
8 102.51.

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

13 (b) The holder of a brewpub license who sells ale or malt
14 liquor under Subsection (a) shall comply with the requirements of
15 Section 102.81.

16 Sec. 74.11. REPORT OF SALES TO RETAILERS. (a) Not later
17 than the 15th day of each month, the holder of a brewpub license
18 shall file a report with the commission that contains information
19 relating to the sales made by the brewpub to a retailer during the
20 preceding calendar month.

21 (b) The commission shall by rule determine the information
22 that is required to be reported under this section and the manner in
23 which the report must be submitted to the commission. The
24 commission may require the report to contain the same information
25 reported to the comptroller under Section 151.462, Tax Code.

26 SECTION 6. Subdivision (2), Subsection (d), Section 102.54,
27 Alcoholic Beverage Code, is amended to read as follows:

1 (2) "Manufacturer" means a person who holds a license
2 issued under Chapter 62, ~~[or]~~ 63, or 74.

3 SECTION 7. Subsection (a), Section 102.55, Alcoholic
4 Beverage Code, is amended to read as follows:

5 (a) In this subchapter and Subchapter D, and as the terms
6 relate to an agreement between a manufacturer and a distributor
7 describing the sales territory in which a distributor may sell the
8 beer of a manufacturer:

9 (1) "Brand" means any word, name, group of letters,
10 symbol, or trademark or a combination of any word, name, group of
11 letters, symbol, or trademark that is adopted and used by a
12 manufacturer on a label or on packaging to identify a specific beer
13 or malt beverage and to distinguish the beer or malt beverage
14 product from the label or packaging of another beer or malt beverage
15 produced or marketed by any manufacturer. The term does not include
16 the name of the manufacturer unless the name of the manufacturer is
17 included in the name of the brand.

18 (2) "Brand extension" means a brand that incorporates
19 a brand name or brand logo, or a substantial part of an existing
20 brand name or brand logo, of the same manufacturer.

21 (3) "Manufacturer" means a person who holds a license
22 issued under Chapter 62, 63, or 74.

23 SECTION 8. Subdivision (4), Section 102.71, Alcoholic
24 Beverage Code, is amended to read as follows:

25 (4) "Manufacturer" means those persons licensed under
26 Section 62.01, ~~[or]~~ 63.01, or 74.01 ~~[of this code]~~.

27 SECTION 9. Subsection (f), Section 74.01, Alcoholic

1 Beverage Code, is repealed.

2 SECTION 10. (a) Subject to Subsection (b) of this section,
3 this Act takes effect immediately if it receives a vote of
4 two-thirds of all the members elected to each house, as provided by
5 Section 39, Article III, Texas Constitution. If this Act does not
6 receive the vote necessary for immediate effect, this Act takes
7 effect September 1, 2013.

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

10 (1) Senate Bill No. 516, House Bill No. 1764, or
11 another similar bill of the 83rd Legislature, Regular Session,
12 2013, that allows small brewers to sell ale to retailers;

13 (2) Senate Bill No. 517, House Bill No. 1765, or
14 another similar bill of the 83rd Legislature, Regular Session,
15 2013, that allows small beer manufacturers to sell beer to
16 retailers;

17 (3) Senate Bill No. 518, House Bill No. 1766, or
18 another similar bill of the 83rd Legislature, Regular Session,
19 2013, that allows small brewers and beer manufacturers to sell beer
20 and ale to ultimate consumers; and

21 (4) Senate Bill No. 639, House Bill No. 1538, or
22 another similar bill of the 83rd Legislature, Regular Session,
23 2013, relating to sales of beer by a manufacturer to a distributor
24 and certain agreements between a manufacturer and distributor.