

1-1 By: Eltife, et al. S.B. No. 515  
 1-2 (In the Senate - Filed February 12, 2013; February 20, 2013,  
 1-3 read first time and referred to Committee on Business and Commerce;  
 1-4 March 18, 2013, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 8, Nays 0; March 18, 2013,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
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 S.B. No. 515 By: Eltife

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

1-21 relating to the sale and production of malt liquor, ale, and beer by  
 1-22 the holder of a brewpub license.

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 malt  
 1-28 liquor, ale, 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 sale of liquor within their borders, the right is  
 1-36 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 in the state's interest to encourage  
 1-47 entrepreneurial and small business development opportunities in  
 1-48 the state that will lead to new capital investment in the state,  
 1-49 create new jobs in the state, and expand the state and local tax  
 1-50 base; and

1-51 (6) it is the public policy of the state to exercise  
 1-52 the police power of the state to protect the welfare, health, peace,  
 1-53 temperance, and safety of the people of Texas.

1-54 SECTION 2. Section 20.01, Alcoholic Beverage Code, is  
 1-55 amended to read as follows:

1-56 Sec. 20.01. AUTHORIZED ACTIVITIES. The holder of a general  
 1-57 class B wholesaler's permit may:

1-58 (1) purchase and import malt and vinous liquors from  
 1-59 brewers, wineries, rectifiers, and wine manufacturers and wine  
 1-60 bottlers who are the holders of nonresident seller's permits or

2-1 their agents who are holders of manufacturer's agent permits;  
2-2 (2) purchase malt and vinous liquors from holders of  
2-3 brewer's permits, holders of brewpub licenses, or other wholesalers  
2-4 in the state;

2-5 (3) sell the malt and vinous liquors in the original  
2-6 containers in which they are received to retailers and wholesalers  
2-7 authorized to sell them in this state, including holders of local  
2-8 distributor's permits, mixed beverage permits, and daily temporary  
2-9 mixed beverage permits;

2-10 (4) sell the malt and vinous liquors to qualified  
2-11 persons outside the state; and

2-12 (5) sell ale and malt liquor to a holder of a private  
2-13 club registration permit.

2-14 SECTION 3. Subsection (a), Section 64.01, Alcoholic  
2-15 Beverage Code, is amended to read as follows:

2-16 (a) The holder of a general distributor's license may:

2-17 (1) receive beer in unbroken original packages from  
2-18 manufacturers and brewpubs and from general, local, or branch  
2-19 distributors;

2-20 (2) distribute or sell beer in the unbroken original  
2-21 packages in which it is received to general, branch, or local  
2-22 distributors, to local distributor permittees, to permittees or  
2-23 licensees authorized to sell to ultimate consumers, to private club  
2-24 registration permittees, to authorized outlets located on any  
2-25 installation of the national military establishment, or to  
2-26 qualified persons for shipment and consumption outside the state;  
2-27 and

2-28 (3) serve free beer for consumption on the licensed  
2-29 premises.

2-30 SECTION 4. Section 74.03, Alcoholic Beverage Code, is  
2-31 amended to read as follows:

2-32 Sec. 74.03. PRODUCTION LIMIT. The total annual production  
2-33 of malt liquor, ale, and beer by a holder of a brewpub license may  
2-34 not exceed 10,000 [~~5,000~~] barrels for each licensed brewpub  
2-35 [~~established, operated, or maintained by the holder in this state~~].

2-36 SECTION 5. Chapter 74, Alcoholic Beverage Code, is amended  
2-37 by adding Sections 74.08, 74.09, 74.10, and 74.11 to read as  
2-38 follows:

2-39 Sec. 74.08. SALES BY BREWPUB LICENSE HOLDERS TO RETAILERS.

2-40 (a) In addition to the activities authorized by Section 74.01, the  
2-41 holder of a brewpub license who holds a wine and beer retailer's  
2-42 permit and who sells alcoholic beverages manufactured only on the  
2-43 brewpub's premises may:

2-44 (1) sell malt liquor or ale produced under the license  
2-45 to those retailers or qualified persons to whom the holder of a  
2-46 general class B wholesaler's permit may sell malt liquor or ale  
2-47 under Section 20.01; and

2-48 (2) sell beer produced under the license to:

2-49 (A) those retailers to whom the holder of a  
2-50 general distributor's license may sell beer under Section 64.01; or

2-51 (B) qualified persons to whom the holder of a  
2-52 general distributor's license may sell beer for shipment and  
2-53 consumption outside the state under Section 64.01.

2-54 (b) With regard to a sale under Subsection (a)(1), the  
2-55 holder of a brewpub license has the same authority and is subject to  
2-56 the same requirements that apply to a sale made by the holder of a  
2-57 general class B wholesaler's permit.

2-58 (c) With regard to a sale under Subsection (a)(2), the  
2-59 holder of a brewpub license has the same authority and is subject to  
2-60 the same requirements that apply to a sale made by the holder of a  
2-61 general distributor's license.

2-62 (d) The total amount of malt liquor, ale, and beer sold  
2-63 under this section to persons in this state may not exceed 1,000  
2-64 barrels annually for each licensed brewpub location or 2,500  
2-65 barrels annually for all brewpubs operated by the same licensee.

2-66 Sec. 74.09. SALES TO DISTRIBUTORS. (a) In addition to the  
2-67 activities authorized by Section 74.01, the holder of a brewpub  
2-68 license may sell beer produced under the license to the holder of a  
2-69 general, local, or branch distributor's license.

3-1 (b) The holder of a brewpub license who sells beer under  
3-2 Subsection (a) shall comply with the requirements of Section  
3-3 102.51.

3-4 Sec. 74.10. SALES TO WHOLESALERS. (a) In addition to the  
3-5 activities authorized by Section 74.01, the holder of a brewpub  
3-6 license may sell ale and malt liquor to the holder of a local class B  
3-7 wholesaler's permit.

3-8 (b) The holder of a brewpub license who sells ale or malt  
3-9 liquor under Subsection (a) shall comply with the requirements of  
3-10 Section 102.81.

3-11 Sec. 74.11. REPORT OF SALES TO RETAILERS. (a) Not later  
3-12 than the 15th day of each month, the holder of a brewpub license  
3-13 shall file a report with the commission that contains information  
3-14 relating to the sales made by the brewpub to a retailer during the  
3-15 preceding calendar month.

3-16 (b) The commission shall by rule determine the information  
3-17 that is required to be reported under this section and the manner in  
3-18 which the report must be submitted to the commission. The  
3-19 commission may require the report to contain the same information  
3-20 reported to the comptroller under Section 151.462, Tax Code.

3-21 SECTION 6. Subdivision (2), Subsection (d), Section 102.54,  
3-22 Alcoholic Beverage Code, is amended to read as follows:

3-23 (2) "Manufacturer" means a person who holds a license  
3-24 issued under Chapter 62, ~~or~~ 63, or 74.

3-25 SECTION 7. Subsection (a), Section 102.55, Alcoholic  
3-26 Beverage Code, is amended to read as follows:

3-27 (a) In this subchapter and Subchapter D, and as the terms  
3-28 relate to an agreement between a manufacturer and a distributor  
3-29 describing the sales territory in which a distributor may sell the  
3-30 beer of a manufacturer:

3-31 (1) "Brand" means any word, name, group of letters,  
3-32 symbol, or trademark or a combination of any word, name, group of  
3-33 letters, symbol, or trademark that is adopted and used by a  
3-34 manufacturer on a label or on packaging to identify a specific beer  
3-35 or malt beverage and to distinguish the beer or malt beverage  
3-36 product from the label or packaging of another beer or malt beverage  
3-37 produced or marketed by any manufacturer. The term does not include  
3-38 the name of the manufacturer unless the name of the manufacturer is  
3-39 included in the name of the brand.

3-40 (2) "Brand extension" means a brand that incorporates  
3-41 a brand name or brand logo, or a substantial part of an existing  
3-42 brand name or brand logo, of the same manufacturer.

3-43 (3) "Manufacturer" means a person who holds a license  
3-44 issued under Chapter 62, 63, or 74.

3-45 SECTION 8. Subdivision (4), Section 102.71, Alcoholic  
3-46 Beverage Code, is amended to read as follows:

3-47 (4) "Manufacturer" means those persons licensed under  
3-48 Section 62.01, ~~or~~ 63.01, or 74.01 ~~[of this code]~~.

3-49 SECTION 9. Subsection (f), Section 74.01, Alcoholic  
3-50 Beverage Code, is repealed.

3-51 SECTION 10. This Act takes effect immediately if it  
3-52 receives a vote of two-thirds of all the members elected to each  
3-53 house, as provided by Section 39, Article III, Texas Constitution.  
3-54 If this Act does not receive the vote necessary for immediate  
3-55 effect, this Act takes effect September 1, 2013.

3-56 \* \* \* \* \*