

By: Carona, et al.
(Geren, N. Gonzalez of El Paso, Guerra, Gooden,
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S.B. No. 639

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the sale of beer, ale, and malt liquor by a brewer or
3 beer manufacturer to a wholesaler or distributor and contractual
4 agreements between those entities.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 102.75, Alcoholic Beverage Code, is
7 amended to read as follows:

8 Sec. 102.75. PROHIBITED CONDUCT. (a) No manufacturer
9 shall:

10 (1) induce or coerce, or attempt to induce or coerce,
11 any distributor to engage in any illegal act or course of conduct;

12 (2) require a distributor to assent to any
13 unreasonable requirement, condition, understanding, or term of an
14 agreement prohibiting a distributor from selling the product of any
15 other manufacturer or manufacturers;

16 (3) fix or maintain the price at which a distributor
17 may resell beer;

18 (4) fail to provide to each distributor of its brands a
19 written contract which embodies the manufacturer's agreement with
20 its distributor;

21 (5) require any distributor to accept delivery of any
22 beer or any other item or commodity which shall not have been
23 ordered by the distributor;

24 (6) adjust the price at which the manufacturer sells

1 beer to a distributor based on the price at which a distributor
2 resells beer to a retailer, but a manufacturer is free to set its
3 own price so long as any price adjustment is based on factors other
4 than a distributor's increase in the price it charges to a retailer
5 and not intended to otherwise coerce illegal behavior under this
6 section; or

7 (7) accept payment in exchange for an agreement
8 setting forth territorial rights.

9 (b) Nothing in this section shall interfere with the rights
10 of a manufacturer or distributor to enter into contractual
11 agreements that could be construed as governing ordinary business
12 transactions, including, but not limited to, agreements concerning
13 allowances, rebates, refunds, services, capacity, advertising
14 funds, promotional funds, or sports marketing funds.

15 (c) It is the public policy and in the interest of this state
16 to assure the independence of members of the three-tier system, but
17 nothing in this code may be construed to prohibit contractual
18 agreements between members of the same tier who hold the same
19 licenses and permits.

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

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

1 (1) Senate Bill No. 515, House Bill No. 1763, or
2 another similar bill of the 83rd Legislature, Regular Session,
3 2013, that allows holders of brewpub licenses to self-distribute
4 beer, malt liquor, or ale produced under the license to retailers;

5 (2) Senate Bill No. 516, House Bill No. 1764, or
6 another similar bill of the 83rd Legislature, Regular Session,
7 2013, that allows small brewers to sell ale to retailers;

8 (3) Senate Bill No. 517, House Bill No. 1765, or
9 another similar bill of the 83rd Legislature, Regular Session,
10 2013, that allows small beer manufacturers to sell beer to
11 retailers; and

12 (4) Senate Bill No. 518, House Bill No. 1766, or
13 another similar bill of the 83rd Legislature, Regular Session,
14 2013, that allows small brewers and beer manufacturers to sell beer
15 and ale to ultimate consumers.