

## **BILL ANALYSIS**

Senate Research Center

S.B. 639  
By: Carona  
Business & Commerce  
3/1/2013  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 639 addresses several issues related to the distribution of beer as found under the Texas Alcoholic Beverage Code. The commerce clause of the United States Constitution grants Congress exclusive authority to regulate interstate commerce, and has been interpreted to prohibit states from engaging in economic protectionism that benefits in-state economic interests by burdening out-of-state competitors. Currently, the Texas Alcoholic Beverage Code treats in-state and out-of-state entities differently for certain purposes, leaving the state vulnerable to lawsuits. S.B. 639 provides that, in the event any provision of the Texas Alcoholic Beverage Code is found unconstitutional under the Texas Constitution or the United States Constitution, the regulatory system affected by the unconstitutional provision will remain in place as far as constitutionally permissible. Additionally, S.B. 639 provides that if a court finds self-distribution rules for Texas breweries places an impermissible burden on out-of-state breweries, the appropriate remedy is to put in-state entities under the same self-distribution rules as out-of-state entities.

S.B. 639 also addresses the practice of “reach-back pricing.” Reach-back pricing occurs when manufacturers, after the fact, alter the price charged to distributors based on the price a distributor has charged a retailer. S.B. 639 amends the Alcoholic Beverage Code to prohibit a manufacturer from engaging in this pricing practice. S.B. 639 further addresses a manufacturer’s ability to sell its brand to a distributor for exclusive territorial distribution.

As proposed, S.B. 639 amends current law relating to the manufacture, distribution, and sale of alcoholic beverages.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 1, Alcoholic Beverage Code, by adding Section 1.09, as follows:

Sec. 1.09. SEVERABILITY. Requires that, if a court holds that any provision of the Alcoholic Beverage Code violates the constitution of this state or of the United States, the regulatory system affected by the unconstitutional provision stay in place to be as consistent with the original regulatory construct of the provision and this code as is constitutionally permissible. Requires that, if a court rules that Section 12.05 (Sales by Certain Brewers) or 62.12 (Sales by Certain Manufacturers) impermissibly prohibits an out-of-state entity from engaging in activity or receiving a benefit that is permissible or granted to an in-state entity, as a remedy to the court's ruling, the activity be prohibited as to both in-state and out-of-state entities.

SECTION 2. Amends Section 102.75, Alcoholic Beverage Code, as follows:

Sec. 102.75. PROHIBITED CONDUCT. Prohibits any manufacturer from:

(1)-(3) Makes no changes to these subdivisions;

(4) discriminating in price, allowance, rebate, refund, commission, discount, or service between wholesalers licensed in Texas. Defines, as used in this subsection, "discriminate;"

(5) accepting payment or agreement to bear any costs in exchange for the territorial assignment of a brand to a distributor. Makes conforming changes to this section;

(6)-(7) Makes nonsubstantive changes.

SECTION 3. Effective date: upon passage or September 1, 2013.