

By: Smith

H.B. No. 1763

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. The legislature finds that:

(1) the state is authorized under the Twenty-first
Amendment of the United States Constitution to promote the public's
interest in the fair, efficient, and competitive marketing of malt
liquor, ale, and beer in this state;

(2) the United States Supreme Court in Granholm v.
Heald, 544 U.S. 460 (2005), has recognized that the three-tier
system of regulating the alcoholic beverage industry is
unquestionably legitimate;

(3) in Granholm, the United States Supreme Court
further recognized that while the states are entitled to regulate
the production and sales of liquor within their borders, the right
is nonetheless subject to the provisions of the Constitution of the
United States, including the Interstate Commerce Clause, and laws
regulating the alcoholic beverage industry may not discriminate
against out-of-state participants or give undue deference to local
participants and may not ignore other provisions of the
Constitution, including the Supremacy Clause, Commerce Clause, and
the Privileges and Immunities Clause with its nondiscriminatory
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. Section 64.01(a), Alcoholic Beverage Code, is
5 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 12,500 ~~[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 may:

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

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

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

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

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

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

23 (d) The total amount of malt liquor, ale, and beer sold
24 under this section may not exceed 1,000 barrels annually.

25 Sec. 74.09. SALES TO DISTRIBUTORS. (a) In addition to the
26 activities authorized by Section 74.01, the holder of a brewpub
27 license may sell beer produced under the license to the holder of a

1 general, local, or branch distributor's license.

2 (b) The holder of a brewpub license who sells beer under
3 Subsection (a) shall comply with the requirements of Section
4 102.51.

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

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

12 Sec. 74.11. REPORT OF SALES TO RETAILERS. (a) Not later
13 than the 25th day of each month, the holder of a brewpub license
14 shall file a report with the commission that contains information
15 relating to the sales made by the brewpub to a retailer during the
16 preceding calendar month.

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

22 SECTION 6. Section 102.54(d)(2), Alcoholic Beverage Code,
23 is amended to read as follows:

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

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

1 (a) In this subchapter and Subchapter D, and as the terms
2 relate to an agreement between a manufacturer and a distributor
3 describing the sales territory in which a distributor may sell the
4 beer of a manufacturer:

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

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

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

19 SECTION 8. Section 102.71(4), Alcoholic Beverage Code, is
20 amended to read as follows:

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

23 SECTION 9. Section 74.01(f), Alcoholic Beverage Code, is
24 repealed.

25 SECTION 10. This Act takes effect immediately if it
26 receives a vote of two-thirds of all the members elected to each
27 house, as provided by Section 39, Article III, Texas Constitution.

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1 If this Act does not receive the vote necessary for immediate
2 effect, this Act takes effect September 1, 2013.