

- SUBJECT:** Establishing a brewer's self-distribution permit
- COMMITTEE:** Licensing and Administrative Procedures — favorable, without amendment
- VOTE:** 7 ayes — Smith, Kuempel, Geren, Gooden, Guillen, Gutierrez, Miles  
0 nays  
2 absent — Price, S. Thompson
- SENATE VOTE:** On final passage, March 27 — 30 - 0
- WITNESSES:** *(On House companion bill, HB 1764)*  
For — Scott Metzger and Brock Wagner, Texas Craft Brewers Guild; Leslie Sprague, Open the Taps; *(Registered, but did not testify:* Doug Davis, Tom Spilman, and Keith Strama, Wholesale Beer Distributors of Texas; Adam Debower, Austin Beerworks; Rick Donley and JP Urrabazo, The Beer Alliance of Texas; Jim Dow, Vickie Jones, Davis Tucker, and Charles Vallhonrat, Texas Craft Brewers Guild; Rick Engel; Courtney Forsell; Jim Grace, Anheuser-Busch; Michael Graham; Alan Gray, Marc Hoskins, and Ralph Townes, Licensed Beverage Distributors; Mike Hamilton, Beer Alliance; Rhett Keisler and Grant Wood, Revolver Brewing; Alfred Nemecek, Black Star Coop Brewpub; Walt Powell, Flix Brewhouse; Tim Schauer, Open the Taps)  
  
Against — None  
  
On — *(Registered, but did not testify:* Carolyn Beck, Texas Alcoholic Beverage Commission)
- BACKGROUND:** Alcoholic Beverage Code, ch. 12 allows a holder of a brewer's permit to:
- manufacture ale and malt liquor;
  - import ale and malt liquor from a nonresident brewer's permittee;
  - sell ale and malt liquor to wholesale permit holders;
  - dispense ale and malt liquor for on-premises consumption; and
  - conduct on-premises samplings of ale or malt liquor.

Under Alcoholic Beverage Code, sec. 12.05, a brewer's permit holder whose production of ale, along with other on-site production of beer, does not exceed 75,000 barrels annually may sell ale to the same entities as a class B wholesaler's permit holder, and has the same authority and is subject to the same requirements as a class B permit holder with regard to such a sale.

Alcoholic Beverage Code, ch. 13 requires an out-of-state brewer to obtain a nonresident brewer's permit before that brewer can sell ale or malt liquor in Texas.

Alcoholic Beverage Code, ch. 20 allows a general class B wholesaler's permit holder to sell malt and vinous liquors to retailers and authorized wholesalers, qualified persons outside the state, and holders of private club registration permits.

A U.S. Supreme Court Ruling, *Granholm v. Heald*, 544 US 460 (2005), holds that the Interstate Commerce Clause prohibits state-level alcoholic beverage licensing laws from discriminating against out-of-state alcoholic beverage producers. The decision still allows a state to maintain a three-tier system of alcohol distribution, which separates the production, distribution, and manufacturing aspects of the alcoholic beverage industry.

**DIGEST:**

SB 516 would establish a brewer's self-distribution permit and allow the permit to be issued only to brewer's permit holders and nonresident brewer's permit holders. A brewer's self-distribution permit would enable a brewer whose annual production of ale — together with other on-site production of beer under a different license — did not exceed 125,000 barrels to sell to the same entities as could a general class B wholesaler's permit holder.

Such a brewer would have the same authority and be subject to the same requirements as a general class B wholesaler's permit holder. The combined sale of ale and beer produced on-site under a different license for self-distribution could not exceed 40,000 barrels annually for a holder of a brewer's self-distribution permit. This permit would only cover ale sold from a brewery in this state. The annual fee for a brewer's self-distribution permit would be \$250.

By the 15th day of each month, a brewer's self-distribution permit holder would file a report to the Texas Alcoholic Beverage Commission (TABC)

with information on sales made during the preceding calendar month. TABC would adopt rules on the content and submission of these reports and could model these requirements on the information reported monthly to the comptroller by brewers, manufacturers, wholesalers, and distributors.

The bill would apply Tax Code, subch. I-1, which details how brewers, manufacturers, wholesalers, and distributors should report sales information to the comptroller, to holders of a brewer's self-distribution permit.

The bill would repeal Alcoholic Beverage Code, sec. 12.05, which currently allows brewer's permit holders to sell to the same people as can a class B wholesaler's permit holder, if the brewer does not sell more than 75,000 barrels of ale annually.

SB 516 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise it would take effect September 1, 2013, but only if SB 515, SB 517, SB 518, and SB 639 were also enacted by the 83rd Legislature. If any of these bills were not enacted, SB 516 would have no effect.

**SUPPORTERS  
SAY:**

SB 516 would develop small breweries in the state of Texas, help them add more employees, and increase the volume they could sell directly. The annual production cap for self-distribution would increase from 75,000 barrels of combined ale and beer for a brewer to 125,000, which would allow growing breweries to continue to sell to retailers, authorized wholesalers, qualified out-of-state entities, and private club permittees as their production volumes increased. The bill would give breweries some flexibility and a wider potential client base for their products for a longer time as they transitioned into maturity in a very competitive market.

The bill would help bring the state in compliance with *Granholm v. Heald*, which holds that states may not discriminate against out-of-state producers of alcoholic beverages or favor in-state producers of alcoholic beverages under the Interstate Commerce Clause. In this spirit, both resident brewer's permit holders and nonresident brewer's permit holders could apply for a brewer's self-distribution permit. Also, the bill would repeal Alcoholic Beverage Code sec. 12.05, which currently allows only those brewer's permit holders who manufacture a total of 75,000 barrels of ale and beer in the state of Texas to self-distribute. These changes would help

the state avoid lawsuits challenging the constitutionality of its alcohol regulations.

The bill would not dismantle the three-tier structure. The Legislature has already authorized limited exceptions to this system, allowing breweries selling fewer than 75,000 barrels to self-distribute and wineries to manufacture, distribute, and sell their products. These limited exceptions are justified to promote the growth of small companies contributing to the vitality and variety of the market. The breweries would only be able to distribute 40,000 barrels annually, and this self-distribution permit would be cut off once the breweries reached full maturity and began producing more than 125,000 barrels.

The bill would not lower the amount small breweries may self-distribute today because none of these breweries currently produces — let alone distributes — 40,000 barrels of ale or malt liquor. Instead, the bill would ensure that breweries had enough room to grow once they began producing more than 75,000 barrels annually, which is the current limitation for self-distributing breweries.

The bill would include complete reporting requirements for the brewers who self-distribute. This is important, because tax collection is normally conducted at the distributor or wholesaler tier of the three-tier system, a step that would be bypassed under SB 516.

Tying SB 516 to the enactment of four additional craft-beer bills would ensure that the entire coalition of stakeholders remained engaged and supportive of the entire bill package.

**OPPONENTS  
SAY:**

By expanding the production cap for these small brewers to qualify to self-distribute, the bill would contribute to the erosion of the three-tier system. This system formally separates producers, distributors and wholesalers, and retailers of alcoholic beverages. Maintaining this system is important for regulatory oversight of the alcoholic beverage industry, and allows the state to collect taxes and exert control over a consumer product with important social consequences. This bill would expand the small brewers' ability to straddle two tiers of the three-tier system, both manufacturing and distributing their products.

**OTHER  
OPPONENTS**

The bill would increase the fees paid by brewers to the state by adding a new \$250 permit that self-distributing brewers would need to obtain.

SAY:

In addition, the bill could have the effect of reducing the amount breweries could self-distribute. Current law enables brewers whose ale and beer production is no more than 75,000 barrels combined to distribute the whole of their production, while the bill would cap the amount breweries could sell under this self-distribution permit at 40,000 barrels annually.

NOTES:

SB 516 would not take effect unless the Legislature also enacted the following bills, which also are set on today's General State Calendar for second-reading consideration:

- SB 515 by Eltife, et al., which would allow brewpubs to sell to retailers, wholesalers, distributors, and any qualified person outside of Texas;
- SB 517 by Eltife, et al., which would establish a manufacturer's self-distribution permit;
- SB 518 by Eltife, et al., which would allow brewers and manufacturers to sell directly to consumers; and
- SB 639 by Carona, et al., which would prohibit beer manufacturers from requiring reach-back pricing and territorial agreements in contracts with distributors.

According to the fiscal note, SB 516 would contribute \$40,500 to the general revenue fund every other year, due to the new \$250 brewer's self-distribution permit fee, which brewers would obtain and renew on a two-year cycle.

The House companion bill, HB 1764 by Smith, et al., was left pending in the Licensing and Administrative Procedures Committee on March 19.