

- SUBJECT:** Establishing a manufacturer'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 1765:)*
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. 62 allows a holder of a manufacturer's license to:
- manufacture or brew beer;
 - distribute or sell beer to holders of distributor's licenses or qualified persons outside the state;
 - dispense beer for on-premises consumption;

- bottle and can beer brewed in Texas or out of state for resale in Texas; and
- conduct beer samplings at a retailer's premises.

Alcoholic Beverage Code, sec. 62.12 allows manufacturers whose annual production of beer in Texas does not exceed 75,000 barrels to sell to the same entities as a general distributor's license holder. This manufacturer has the same authority and is subject to the same requirements as a general distributor's license holder with regard to such a sale.

Alcoholic Beverage Code, ch. 63 requires out-of-state manufacturers to hold a nonresident manufacturer's license to transport beer into the state only to holders of importer's licenses.

Alcoholic Beverage Code, ch. 64 allows a general distributor's license holder to distribute or sell beer in the unbroken original packages to:

- general, branch, or local distributors;
- distributor permittees,
- private club registration permittees,
- authorized outlets on military establishments; or
- qualified persons outside the state.

A U.S. Supreme Court Ruling, *Granholm v. Heald*, 544 U.S. 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 517 would establish a manufacturer's self-distribution license and allow the license to be issued only to manufacturer's license holders and nonresident manufacturer's license holders.

A manufacturer's self-distribution permit would enable a brewer whose annual production of beer — together with other on-site production of ale under a different permit — did not exceed 125,000 barrels to sell to the same entities as could a general distributor's license holder. The manufacturer would have the same authority and be subject to the same requirements as a general distributor's license holder. The combined sale of beer and ale produced on-site under a different permit 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 beer sold from a manufacturing facility in this state.

The annual fee for a manufacturer's self-distribution license would be \$250.

By the 15th day of each month, a manufacturer'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 report sales information to the comptroller, to holders of manufacturer's self-distribution permits.

The bill would repeal Alcoholic Beverage Code, sec. 62.12, which currently permits a manufacturer's license holder to sell to the same entities as can a general distributor's license holder, if the manufacturer does not produce more than 75,000 barrels of beer annually.

SB 517 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 516, SB 518, and SB 639 were also enacted by the 83rd Legislature. If any of these bills were not enacted, SB 517 would have no effect.

**SUPPORTERS
SAY:**

This bill would develop small manufacturers 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 beer for a manufacturer to 125,000, allowing growing manufacturers to continue to sell to other distributors, permittees or licensees authorized to sell to ultimate consumers, private club permittees, military outlets, and qualified out-of-state persons as their production volume increased. This bill would give manufacturers 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.

SB 517 would help bring the state into 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. Both resident manufacturer's license holders and nonresident manufacturer's license holders would be able to apply for a manufacturer's self-distribution permit. Also, the bill would repeal Alcoholic Beverage Code sec. 62.12, which allows only those manufacturer's licensees who manufacture a total of 75,000 barrels of beer in 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 the three-tier system, letting manufacturers 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 these small companies, which contribute to the vitality and variety of the market. The manufacturers would only be able to distribute 40,000 barrels annually, and this self-distribution permit would be cut off once the manufacturers reached full maturity and began producing more than 125,000 barrels.

SB 517 would not lower the amount manufacturers may self-distribute today because none of these manufacturers currently produces — let alone distributes — 40,000 barrels of beer. Instead, the bill would ensure that manufacturers had enough room to grow once they began producing more than 75,000 barrels annually, which is the current limitation for self-distributing manufacturers.

The bill would include complete reporting requirements for the manufacturers 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 517.

Tying SB 517 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 manufacturers 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. The bill would expand the manufacturers' ability to straddle two tiers of the three-tier system by both manufacturing and distributing their products.

OTHER
OPPONENTS
SAY:

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

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

NOTES:

SB 517 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 516 by Eltife, et al., which would establish a brewer'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 517 would contribute \$17,250 to the General Revenue Fund every other year, due to the new \$250 manufacturer's self-distribution permit fee, which manufacturers would obtain and renew on a two-year cycle.

The House companion bill, HB 1765 by Smith, et al., was left pending in the Licensing and Administrative Procedures Committee on March 19.