

SUBJECT: Allowing brewers and manufacturers to sell for on-premises consumption

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 6 ayes — Smith, Kuempel, Geren, Gooden, Guillen, Gutierrez

0 nays

3 absent — Miles, Price, S. Thompson

SENATE VOTE: On final passage, March 25 — 31-0

WITNESSES: *(On House companion bill, HB 1766:)*

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; Dustin Matocha, Texans for Fiscal Responsibility; 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.

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.

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 518 would allow holders of a brewer's permit and/or a manufacturer's license, whose combined annual production of ale and beer did not exceed 225,0000 barrels, to sell ale or beer to a consumer for the purposes of responsible consumption on-premises. The combined amount of ale and beer sold directly to consumers could not exceed 5,000 barrels annually.

Beer, ale, or malt liquor could be consumed on the premises of such a permit or license holder from 8 a.m. to midnight on any day but Sunday, when such beverages could be consumed from 10 a.m. to midnight.

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

**SUPPORTERS
SAY:**

SB 518 would enable small breweries and manufacturers to sell directly to consumers for on-premises consumption, providing these companies with an opportunity to enhance the experience of their customers. Far from encouraging irresponsible consumption, this would cater to those discerning consumers interested in sampling a variety of quality Texas

beer, ale, or malt liquor. Current law allows brewers to dispense ale and malt liquor for on-premises consumption, but not to charge for it. If brewers or manufacturers decide to offer their product to customers who visit the brewery for a tour, they must give it away. Charging for the ale or malt liquor consumed on their premises could allow breweries to invest in more staff or expanded tour opportunities for visitors.

The bill would limit the ability to sell directly to consumers to brewers and manufacturers who produce fewer than 225,000 barrels a year, and would allow the sale of only 5,000 barrels directly to consumers. This would keep direct sale to consumers from becoming the primary focus of such businesses, which would allay concerns that these businesses might develop into tied houses.

The Legislature already has authorized limited exceptions to the three-tier system, giving Texas wineries a dispensation to manufacture and sell wine to ultimate consumers on the same premises. SB 518 would allow manufacturers and brewers to offer the same experience to malt beverage connoisseurs that wine enthusiasts currently enjoy. The bill also acknowledges the importance of the three-tier system by referring to the Supreme Court decision *Granholm v. Heald* in its legislative intent.

The hours during which brewers and manufacturers could sell directly to consumers would be clearly established in the bill, ensuring that these retailers could not stay open later than others.

Tying SB 518 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:

Brewers already have been granted the ability to dispense ale and malt liquor for on-premises consumption. This should be enough to satisfy those consumers who visit the breweries and manufacturers and want to sample the products without crossing the strict separation between manufacturers and retailers of alcoholic beverages.

The bill would weaken the three-tier system of alcohol regulation in which manufacturers, distributors and wholesalers, and retailers are formally separated. The state should work to maintain the three tiers because this system is important for regulatory oversight of the alcoholic beverage industry, allowing the state to collect taxes and exert control over a

consumer product with important social consequences. The bill would lead to the rise of tied houses in which manufacturers sell products directly to consumers, which are currently prohibited by law because they lead to excessive stimulation of demand for alcohol.

NOTES:

SB 518 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 517 by Eltife, et al., which would establish a manufacturer's self-distribution permit; and
- SB 639 by Carona, et al., which would prohibit beer manufacturers from requiring reach-back pricing and territorial agreements in contracts with distributors.

The House companion bill, HB 1766 by Smith, et al., was left pending in the Licensing and Administrative Procedures Committee on March 19.