

**SUBJECT:** Prohibiting certain practices of beer manufacturers

**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 25 — 31-0

**WITNESSES:** *(On House companion bill, HB 1538)*  
For — Rick Donley, The Beer Alliance of Texas; *(Registered, but did not testify:* Doug Davis, Tom Spilman, and Keith Strama, Wholesale Beer Distributors of Texas; Jim Dow, Texas Craft Brewers Guild; Jim Grace, Anheuser-Busch; Alan Gray and Ralph Townes, Licensed Beverage Distributors; JP Urrabazo, The Beer Alliance of Texas)  
  
Against — *(Registered, but did not testify:* Robert Hunt; Leslie Pardue, Miller Coors; Dustin Matocha, Texans for Fiscal Responsibility)  
  
On — *(Registered, but did not testify:* Carolyn Beck, Texas Alcoholic Beverage Commission)

**DIGEST:** SB 639 would prohibit beer manufacturers from adjusting the price at which beer was sold to a distributor based on the price at which the distributor then resold the beer to a retailer. Manufacturers would be free to adjust price, but only if the adjustment were based on factors other than an increase in the distributor's resale price.

The bill also would prohibit manufacturers from accepting payment for territorial rights agreements.

Statutory prohibitions on certain practices would not prevent manufacturers or distributors from entering into ordinary business contracts, including agreements about allowances, rebates, refunds,

services, capacity, advertising funds, promotional funds, or sports marketing funds. Nothing in the code would prohibit contractual agreements between members of the same tier with the same licenses and permits.

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

**SUPPORTERS  
SAY:**

SB 639 would maintain the integrity of the three-tier system of alcohol regulation in which manufacturers, wholesalers and distributors, and retailers are kept formally, legally separate. This regulatory framework is important to the state and to the industry, as it guarantees the state's ability to exercise oversight over the alcohol industry and collect taxes while providing large and small manufacturers access to multiple markets.

The bill would prohibit the practice of reach-back pricing, in which a manufacturer charges the distributor more for product in response to changes in the prices distributors charge to retailers. This unfair practice has been prohibited already by the Texas Alcoholic Beverage Commission (TABC) in a Marketing Practices Bulletin issued June 3, 2010. This bill would codify the existing prohibition in law. Distributors cannot maintain the independence necessary to uphold the three-tier system of alcohol regulation if they come under pressure from manufacturers in this way. The bill also would protect the independence of distributors by prohibiting manufacturers from selling off their territorial rights.

SB 639 would not prohibit practices that are part of the ordinary functioning of the alcohol beverage industry. The bill would allow manufacturers and distributors to enter into contracts on a number of common interests — for example, an agreement on how a product should be advertised and how much each party would pay. Nor would the bill prohibit contracts and agreements between members of the same tier.

Tying SB 639 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**

The bill would effectively coerce manufacturers into giving away an

SAY: extremely valuable commodity — territorial rights — to distributors, who then would be at liberty to sell these rights to other distributors at a profit. Manufacturers have a justified interest in how their products are marketed to the general public and ought to have some way to provide input on pricing. This bill would take away an important tool used by manufacturers to create promotional price agreements with retailers.

SB 639 would be impossible to enforce and would place TABC in a difficult position. Neither distributors nor manufacturers have an interest in disclosing to regulators when confidential agreements or contracts violated these laws because each party has a close, dependent relationship with the other and would not be eager to jeopardize it. The bill would place no limitations on the types of contractual agreements the manufacturers and distributors could otherwise enter into, which could result in manufacturers continuing reach-back pricing and the sale of territorial rights through a back-door contract.

The bill also would be detrimental to retailers and consumers. It would allow distributors to increase profit margins and pass on the price increase to retailers, who in turn would have to raise prices for consumers. Retailers no longer could bargain directly with the manufacturer about pricing and would be subject to the distributors alone. SB 639 would remove an important check in the three-tier system ensuring that no single tier grew too powerful.

NOTES: SB 639 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 518 by Eltife, et al., which would allow brewers and manufacturers to sell directly to consumers.

The House companion bill, HB 1538 by Geren, et al., was left pending in the Licensing and Administrative Procedures Committee on March 19.