

BILL ANALYSIS

Senate Research Center
83R7352 MCK-F

S.B. 517
By: Eltife et al.
Business & Commerce
3/1/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The only segment of the American beer market that has shown any substantial increase in production volume and retail sales in recent years is the craft brew segment. In Texas, however, industry growth has not kept pace with other states due to regulatory obstacles that impede the craft brewers' access to markets and limit their ability to expose consumers to new and innovative products. These obstacles have been compounded by the pronouncements issued by federal courts concerning attempts made by certain states to establish preferences for in-state producers that unduly burden or hinder out-of-state producers. This type of deference to in-state market participants has consistently been struck down as a violation of the Commerce Clause by the lower federal courts, as well as the United States Supreme Court. Currently, Section 62.12 (Sales by Certain Manufacturers), Alcoholic Beverage Code, allows manufacturer licensees to self-distribute beer up to 75,000 barrels annually. This right extends only to beer manufactured in Texas, however, and does not extend to out-of-state manufacturers.

S.B. 517 addresses this discriminatory practice by setting a new annual production limit of 125,000 barrels and extending the rights afforded to in-state manufacturers to their out-of-state counterparts. S.B. 517 also reduces the amount of beer that a manufacturer can self-distribute to no more than 40,000 barrels annually. This total annual production limit includes both beer and ale.

This change in the Alcoholic Beverage Code demonstrates how a minor revision can make Texas' three-tiered system more reflective of a modern and changing market dynamic and correct provisions that have been found to be discriminatory.

As proposed, S.B. 517 amends current law relating to the distribution of beer by certain manufacturers.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTION 3 (Section 62.121, Alcoholic Beverage Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Sets forth certain legislative findings relating to the regulation of the alcoholic beverage industry and the U.S. Supreme Court's decision in *Granholm v. Heald*, 544 U.S. 460 (2005).

SECTION 2. Amends Section 62.12, Alcoholic Beverage Code, as follows:

Sec. 62.12. SALES BY CERTAIN MANUFACTURERS. (a) Authorizes a manufacturer's licensee whose annual production of beer together with the annual production of ale by the holder of a brewer's permit at the same premises does not exceed 125,000 barrels to sell beer produced under the license to those permittees, licensees, and persons to whom a general distributor's licensee may sell beer under Section 64.01(2) (relating to authorizing the holder of a general distributor's license to distribute or sell beer in the unbroken original packages in which it is received to certain entities), rather than authorizes a manufacturer's licensee whose annual production of beer in this state does not exceed 75,000 barrels to sell beer produced under the license to those

permittees, licensees, and persons to whom a general distributor's licensee may sell beer under Section 64.01(2) of this code.

(b) Prohibits the total combined sales of beer under this section, together with the sales of ale by the holder of a brewer's permit under Section 12.05 (Sales by Certain Brewers) at the same premises, from exceeding 40,000 barrels annually.

(c) Creates this subsection from existing text. Provides that the manufacturer, with regard to a sale under this section, rather than with regard to such a sale, has the same authority and is subject to the same requirements as apply to a sale made by a general distributor's licensee.

(d) Redesignates existing Subsection (b) as Subsection (d). Makes a nonsubstantive change.

SECTION 3. Amends Chapter 62, Alcoholic Beverage Code, by adding Section 62.121, as follows:

Sec. 62.121. REPORT OF SALES TO RETAILERS. (a) Requires the holder of a manufacturer's license, not later than the 25th day of each month, to file a report with the Texas Alcoholic Beverage Commission (TABC) that contains information relating to the sales made by the manufacturer to a retailer during the preceding calendar month.

(b) Requires TABC by rule to determine the information that is required to be reported under this section and the manner in which the report is required to be submitted to TABC. Authorizes TABC to require the report to contain the same information reported to the comptroller of public accounts of the State of Texas under Section 151.462 (Reports by Brewers, Manufacturers, Wholesalers, and Distributors), Tax Code.

SECTION 4. Effective date: September 1, 2013, contingent upon the 83rd Legislature, Regular Session, 2013, enacting legislation that becomes law and that amends the Alcoholic Beverage Code to allow small brewers to sell ale and malt liquor to retailers.