

BILL ANALYSIS

Senate Research Center

C.S.S.B. 639
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 639 addresses several issues related to the manufacturing and distribution of beer as found under the Texas Alcoholic Beverage Code. Specifically, C.S.S.B. 639 addresses the practice of "reach-back pricing" and brand purchasing.

Reach-back pricing occurs when manufacturers—after the fact—alter the price charged to distributors based on the price a distributor has charged a retailer. C.S.S.B. 639 amends the Alcoholic Beverage Code to prohibit a manufacturer from engaging in this practice. Furthermore, C.S.S.B. 639 reinforces the importance of the independence of the members of the three-tier system. It prohibits a manufacturer from accepting a payment for a territorial agreement setting forth territorial rights. However, C.S.S.B. 639 does not prohibit a manufacturer or distributor from entering into contractual agreements concerning allowances, rebates, refunds, services, capacity, advertising funds, promotional funds, or sports marketing funds.

C.S.S.B. 639 amends current law relating to the sale of beer, ale, and malt liquor by a brewer or beer manufacturer to a wholesaler or distributor and contractual agreements between those entities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 102.75, Alcoholic Beverage Code, as follows:

Sec. 102.75. PROHIBITED CONDUCT. (a) Creates this subsection from existing text. Prohibits any manufacturer from:

(1)-(5) Makes no changes to these subdivisions;

(6) adjusting the price at which the manufacturer sells beer to a distributor based on the price at which a distributor resells the beer to a retailer, but provides that a manufacturer is free to set its own price so long as any price adjustment is based on factors other than a distributor's increase in the price it charges to a retailer and not intended to otherwise coerce illegal behavior under this subsection; or

(7) accepting payment in exchange for an agreement setting forth territorial rights.

(b) Requires that nothing in this section interfere with the rights of a manufacturer or distributor to enter into contractual agreements that could be construed as governing ordinary business transactions, including, but not limited to, agreements concerning allowances, rebates, refunds, services, capacity, advertising funds, promotional funds, or sports marketing funds.

(c) Provides that it is the public policy and in the interest of this state to assure the independence of members of the three-tier system, but prohibits anything in this code from being construed to prohibit contractual agreements between members of the same tier who hold the same licenses and permits.

SECTION 2. Provides that the change in law made by this Act to Section 102.75, Alcoholic Beverage Code, takes effect only if each of the following bills is enacted and becomes law:

(1) S.B. 515, H.B. 1763, or another similar bill of the 83rd Legislature, Regular Session, 2013, that allows holders of brewpub licenses to self-distribute beer, malt liquor, or ale produced under the license to retailers;

(2) S.B. 516, H.B. 1764, or another similar bill of the 83rd Legislature, Regular Session, 2013, that allows small brewers to sell ale to retailers;

(3) S.B. 517, H.B. 1765, or another similar bill of the 83rd Legislature, Regular Session, 2013, that allows small beer manufacturers to sell beer to retailers; and

(4) S.B. 518, H.B. 1766, or another similar bill of the 83rd Legislature, Regular Session, 2013, that allows small brewers and beer manufacturers to sell beer and ale to ultimate consumers.

SECTION 3. Provides that a change in law made by any of the following bills takes effect only if this Act or a similar bill of the 83rd Legislature, Regular Session, 2013, is enacted and becomes law:

(1) S.B. 515, H.B. 1763, or another similar bill of the 83rd Legislature, Regular Session, 2013, that allows holders of brewpub licenses to self-distribute beer, malt liquor, or ale produced under the license to retailers;

(2) S.B. 516, H.B. 1764, or another similar bill of the 83rd Legislature, Regular Session, 2013, that allows small brewers to sell ale to retailers;

(3) S.B. 517, H.B. 1765, or another similar bill of the 83rd Legislature, Regular Session, 2013, that allows small beer manufacturers to sell beer to retailers; and

(4) S.B. 518, H.B. 1766, or another similar bill of the 83rd Legislature, Regular Session, 2013, that allows small brewers and beer manufacturers to sell beer and ale to ultimate consumers.

SECTION 4. Effective date: upon passage or September 1, 2013.