

## **BILL ANALYSIS**

Senate Research Center

S.B. 1198  
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Business & Commerce  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Since the repeal of Prohibition, Texas has maintained a policy supporting a three-tier system of distribution for alcoholic beverages, separating the manufacturing, wholesale, and retail tiers. Texas law has long banned a "tied house" relationship between tiers, so that a licensee in one tier cannot have a prohibited ownership relationship with a licensee in another tier. This system was created decades ago, before the Securities and Exchange Commission was created and before economic activity at the state, national, and international levels became as sophisticated and complex as it is today.

In Texas law, the regulation of cross-tier ownership interests is expressed by a patchwork of statutes referring to "affiliated" or "ownership interest" or "direct or indirect interest" or "financial interest." The Texas Alcoholic Beverage Commission (TABC) has concluded that even one common share between tiers violates Texas law.

This interpretation is unworkable, unreasonable, and ignores the realities of business and commerce in the modern world. A system that does not allow for reasonable, non-threatening levels of cross-tier ownership threatens every licensee under the Alcoholic Beverage Code, and will subject the state to numerous lawsuits.

To protect the stability of the three-tier system, to protect businesses in Texas, and to encourage economic development, it makes sense to allow:

- A five percent direct ownership interest between tiers; and
- A greater percentage interest only if the interest in the other tier is indirect, not controlling, and allows no decision-making authority.

There is no harm to the public interest, the alcoholic beverage industry, TABC, or the three-tier system if de minimis and non-controlling cross-tier ownership exceptions are allowed. These common sense measures present no risk of unfair competition or unlawful trade practices. Instead, they respect the spirit of the three-tier system and protect liberty in our state. Texas should be a place where a citizen or a company that wants to pay taxes, invest money, and create jobs is not prohibited from doing so by antiquated liquor laws.

As proposed, S.B. 1198 amends current law relating to intra-industry relationships between alcoholic beverage manufacturers, wholesalers, and retailers.

### **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 Subchapter A, Chapter 102, Alcoholic Beverage Code, as follows:

Sec. 102.011. EXCEPTION: CERTAIN INTERESTS NOT PROHIBITED. (a) Defines "affiliate" and "controlling interest."

(b) Provides that, notwithstanding Section 102.01 (Tied House Prohibited) or any other provision of this code, a person or their affiliate having an interest in a license or permit

issued under this code does not have an unlawful tied house interest as a result of the person's or affiliate's ownership interest in the business of another license or permit at a different level if:

(1) the person or affiliate directly or indirectly owns five percent or less of the other license or permit holder's business, assets, property, or equity; or

(2) the person or affiliate indirectly owns more than five percent of the other license or permit holder's business, assets, property, or equity and:

(A) the interest does not represent a controlling interest in the other business;

(B) the interest does not provide the person with any ability to control the purchase or sale of alcoholic beverages by the other business.

SECTION 2. Repealer: Section 102.11 (Manufacturer or Distributor: Prohibited Interests), Alcoholic Beverage Code.

SECTION 3. Effective date: September 1, 2015.