

**SUBJECT:** Allowing brewpubs to sell to retailers, wholesalers, and distributors

**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 1763)*  
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; Glen Garey, Texas Restaurant Association; 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. 74 governs the licensing of brewpubs, defined as locations where malt liquor, ale, and beer may be manufactured and sold or offered without charge on-premises, as well as food.  
  
Alcoholic Beverage Code, ch. 20 allows a general class B wholesaler's permit holder to sell malt and vinous liquors to retailers and authorized

wholesalers, qualified persons outside the state, and holders of private club registration permits.

Alcoholic Beverage Code, ch. 64 allows a general distributor's license holder to distribute or sell beer in the unbroken original packages to:

- general, branch, or local distributors;
- distributor permittees,
- private club registration permittees,
- authorized outlets on military establishments; or
- qualified persons outside the state.

Alcoholic Beverage Code, sec. 102.51 allows a distributor to have a written agreement with a beer manufacturer specifying where each brand of the manufacturer's beer may be sold. Sec. 102.81 applies such territorial restriction agreements to ale and malt liquor.

A U.S. Supreme Court Ruling, *Granholm v. Heald*, 544 US 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 515 would raise the total malt liquor, ale, or beer production limit for a brewpub license holder from 5,000 barrels to 10,000 barrels annually, and no longer would require those brewpubs to be established, operated, or maintained by a Texas license holder.

The bill would allow a brewpub license holder to sell malt and vinous liquors to a holder of a class B wholesaler's permit and beer to general distributor's license holders.

SB 515 also would allow brewpub license holders to make sales to the same retailers or qualified persons to which a general class B permit holder or a general distributor's license holder may sell. Brewpubs would be subject to the same authority and requirements as holders of a general class B wholesaler's permit or general distributor's license.

Each licensed brewpub could sell no more than 1,000 barrels annually, and all brewpubs operated by the same license holder could not exceed 2,500

barrels annually.

Brewpubs also would be able to sell to distributor's license holders and class B wholesaler's permit holders. Brewpub license holders would be subject to Alcoholic Beverage Code sections 102.51 and 102.81, governing territorial restriction agreements.

By the 15th day of each month, a brewpub license holder would be required to file a report with the Texas Alcoholic Beverage Commission (TABC) containing information on sales made to retailers during the preceding calendar month. TABC would adopt rules on the content and submission of these reports and could model these requirements on the information reported monthly to the comptroller by brewers, manufacturers, wholesalers, and distributors.

SB 515 would add brewpubs to the definition of "manufacturer" in other chapters of the Alcoholic Beverage Code.

The bill would repeal Alcoholic Beverage Code, sec. 74.01(f), which currently prohibits brewpubs from selling alcoholic beverages for resale.

SB 515 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 516, SB 517, SB 518, and SB 639 were enacted by the 83rd Legislature. If any of these bills were not enacted, SB 515 would have no effect.

**SUPPORTERS  
SAY:**

SB 515 would create an avenue for the growth of brewpubs in Texas. While brewpubs may currently sell their product to consumers on-premises, they may not sell to distributors, wholesalers, or retailers, which prevents brewpubs from distributing their products more widely. The bill would eliminate barriers to brewpub growth in two key ways — first, by raising the cap of annual production for a brewpub license holder to 10,000 barrels from 5,000; and second, by allowing brewpubs to sell their products to distributors, wholesalers, and retailers.

Encouraging brewpub growth would create new jobs and expand the variety and quality of beer, malt liquor, and ale available to Texas consumers. The bill also would level the playing field in the market. While Texans currently may purchase beers produced by out-of-state brewpubs with ease in the nearest grocery store, they must travel to the domestic

brewpub itself if they wish to buy Texas-made beer for personal consumption. By placing Texas brewpubs on equal footing with out-of-state competitors, SB 515 would help domestic brewpubs build consumer loyalty to their products across the state, not just in the immediate area.

The bill recognizes the importance of the three-tier system and would preserve it. SB 515 would honor *Granholm v. Heald*, which affirms the state's right to maintain a three-tier system, and the bill would not dismantle the current system of distribution for alcoholic beverages and the accompanying regulatory structures. It would lift the requirements of the three-tier system only for a very small portion of the overall alcoholic beverage market, which would further the state's interest in providing avenues for economic development by fostering room for brewpubs to grow, a principle which is also in harmony with the Supreme Court ruling.

Tying SB 515 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:

By expanding the allowances made to brewpubs, the bill would erode the state's three-tier system regulating alcoholic beverages. The three-tier system formally separates the producers of alcoholic beverages, the intermediate distributors and wholesalers who resell the alcoholic beverages, and the retailers who deliver the alcoholic beverage to the ultimate consumer. Maintaining this system is important for regulatory oversight of the alcoholic beverage industry, and allows the state to collect taxes and exert control over a consumer product with important social consequences.

Brewpubs undermine the system by both manufacturing and retailing their own products. Under SB 515, brewpubs would undermine the three-tier system even further by expanding into self-distribution. Not only that, the bill would pave the way for more brewpubs to cross the three tiers by raising the cap of barrels produced from 5,000 to 10,000.

NOTES:

SB 515 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 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;
- SB 518 by Eltife, et al., which would allow brewers and manufacturers to sell directly to consumers; and
- SB 639 by Carona, et al., which would prohibit beer manufacturers from requiring reach-back pricing and territorial agreements in agreements with distributors.

The House companion bill, HB 1763 by Smith, et al., was left pending in the Licensing and Administrative Procedures Committee on March 19.