

SENATE AMENDMENTS

2nd Printing

By: Goldman, Geren, Guillen, et al.

H.B. No. 3287

A BILL TO BE ENTITLED

AN ACT

relating to the sale of ale and beer by certain brewers and manufacturers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that:

(1) the state is authorized under the Twenty-first Amendment of the United States Constitution to promote the public's interest in the fair, efficient, and competitive marketing of ale and beer in this state;

(2) the United States Supreme Court in Granholm v. Heald, 544 U.S. 460 (2005), has recognized that the three-tier system of regulating the alcoholic beverage industry is unquestionably legitimate;

(3) in Granholm, the United States Supreme Court further recognized that while the states are entitled to regulate the production and sales of liquor within their borders, the right is nonetheless subject to the provisions of the Constitution of the United States, including the Interstate Commerce Clause, and laws regulating the alcoholic beverage industry may not discriminate against out-of-state participants or give undue deference to local participants and may not ignore other provisions of the Constitution, including the Supremacy Clause, Commerce Clause, and the Privileges and Immunities Clause with its nondiscriminatory principles;

1 (4) the state is authorized to promote, market, and
2 educate consumers about the emerging small brewing industry;

3 (5) it is the state's interest that nothing in this Act
4 be construed to conflict with Article I, Sections 16 and 17 of the
5 Texas Constitution, with regard to the impairment of contract,
6 retroactive application of law, or taking of property;

7 (6) it is in the state's interest to encourage
8 entrepreneurial and small business development opportunities in
9 the state that will lead to new capital investment in the state,
10 create new jobs in the state, and expand the state and local tax
11 base; and

12 (7) it is the public policy of the state to exercise
13 the police power of the state to protect the welfare, health, peace,
14 temperance, and safety of the people of Texas.

15 SECTION 2. Section 12.052, Alcoholic Beverage Code, is
16 amended to read as follows:

17 Sec. 12.052. SALES BY CERTAIN BREWERS TO CONSUMERS. (a) In
18 addition to the activities authorized by Section 12.01, the holder
19 of a brewer's permit whose annual production of ale, together with
20 the annual production of beer by the holder of a manufacturer's
21 license at all ~~[the same]~~ premises wholly or partly owned, directly
22 or indirectly, by the permit holder or an affiliate or subsidiary of
23 the permit holder, does not exceed a total of 225,000 barrels may
24 sell ale produced on the brewer's premises under the permit to
25 ultimate consumers on the brewer's premises for responsible
26 consumption on the brewer's premises.

27 (b) The total combined sales of ale to ultimate consumers

under this section, together with the sales of beer to ultimate consumers by the holder of a manufacturer's license under Section 62.122 at all ~~[the same]~~ premises, may not exceed 5,000 barrels annually.

(c) Subject to Subsections (b) and (d), the holder of a brewer's permit may sell ale produced on the brewer's premises under the permit to ultimate consumers on the brewer's premises for responsible consumption on the brewer's premises even if the annual production limit prescribed by Subsection (a) is exceeded if:

(1) the permit holder:

(A) was legally operating a manufacturing facility with on-premise sales under Subsection (a) on January 1, 2017; or

(B) purchased an ownership interest in, or was purchased by the holder of, a permit or license issued under Chapter 12, 13, 62, or 63; and

(2) the permit holder has annual production that does not exceed 225,000 barrels at the existing brewer's premises or the purchased brewer's premises, as applicable.

(d) A holder of a brewer's permit who under Subsection (c) sells ale produced on the brewer's premises under the permit to ultimate consumers on the brewer's premises for responsible consumption on the brewer's premises:

(1) shall file a territorial agreement with the commission under Subchapters C and D, Chapter 102;

(2) must purchase any ale the permit holder sells on the brewer's premises from the holder of a permit issued under

1 Chapter 19, 20, or 21; and

2 (3) with respect to those purchases, must comply with
3 the requirements of this code governing dealings between a
4 distributor or wholesaler and a member of the retail tier,
5 including Section 102.31.

6 SECTION 3. Sections 12A.02(a) and (b), Alcoholic Beverage
7 Code, are amended to read as follows:

8 (a) A holder of a brewer's self-distribution permit whose
9 annual production of ale under the brewer's or nonresident brewer's
10 permit, together with the annual production of beer by the holder of
11 a manufacturer's or nonresident manufacturer's license at all [~~the~~
12 ~~same~~] premises owned directly or indirectly by the permit holder or
13 an affiliate or subsidiary of the permit holder, does not exceed
14 125,000 barrels may sell ale produced under the brewer's or
15 nonresident brewer's permit to those persons to whom the holder of a
16 general class B wholesaler's permit may sell ale under Section
17 20.01(3).

18 (b) The total combined sales of ale under this section,
19 together with the sales of beer by the holder of a manufacturer's
20 self-distribution license under Section 62A.02 at all [~~the same~~]
21 premises owned directly or indirectly by the permit holder or an
22 affiliate or subsidiary of the permit holder, may not exceed 40,000
23 barrels annually.

24 SECTION 4. Section 62.122, Alcoholic Beverage Code, is
25 amended to read as follows:

26 Sec. 62.122. SALES BY CERTAIN MANUFACTURERS TO CONSUMERS.

27 (a) A manufacturer's licensee whose annual production of beer,

1 together with the annual production of ale by the holder of a
2 brewer's permit at all ~~[the same]~~ premises wholly or partly owned,
3 directly or indirectly, by the license holder or an affiliate or
4 subsidiary of the license holder, does not exceed 225,000 barrels
5 may sell beer produced on the manufacturer's premises under the
6 license to ultimate consumers on the manufacturer's premises for
7 responsible consumption on the manufacturer's premises.

8 (b) The total combined sales of beer to ultimate consumers
9 under this section, together with the sales of ale to ultimate
10 consumers by the holder of a brewer's permit under Section 12.052 at
11 all ~~[the same]~~ premises, may not exceed 5,000 barrels annually.

12 (c) Subject to Subsections (b) and (d), the holder of a
13 manufacturer's license may sell beer produced on the manufacturer's
14 premises under the license to ultimate consumers on the
15 manufacturer's premises for responsible consumption on the
16 manufacturer's premises even if the annual production limit
17 prescribed by Subsection (a) is exceeded if:

18 (1) the license holder:

19 (A) was legally operating a manufacturing
20 facility with on-premise sales under Subsection (a) on January 1,
21 2017; or

22 (B) purchased an ownership interest in, or was
23 purchased by the holder of, a permit or license issued under Chapter
24 12, 13, 62, or 63; and

25 (2) the license holder has annual production that does
26 not exceed 225,000 barrels at the existing manufacturer's premises
27 or the purchased manufacturer's premises, as applicable.

1 (d) A holder of a manufacturer's license who under
2 Subsection (c) sells beer produced on the manufacturer's premises
3 under the license to ultimate consumers on the manufacturer's
4 premises for responsible consumption on the manufacturer's
5 premises:

6 (1) shall file a territorial agreement with the
7 commission under Subchapters C and D, Chapter 102;

8 (2) must purchase any beer the license holder sells on
9 the manufacturer's premises from the holder of a license issued
10 under Chapter 64, 65, or 66; and

11 (3) with respect to those purchases, must comply with
12 the requirements of this code governing dealings between a
13 distributor or wholesaler and a member of the retail tier,
14 including Sections 61.73 and 102.31.

15 SECTION 5. Sections 62A.02(a) and (b), Alcoholic Beverage
16 Code, are amended to read as follows:

17 (a) A holder of a manufacturer's self-distribution license
18 whose annual production of beer under the manufacturer's or
19 nonresident manufacturer's license, together with the annual
20 production of ale by the holder of a brewer's or nonresident
21 brewer's permit at all ~~[the same]~~ premises owned directly or
22 indirectly by the license holder or an affiliate or subsidiary of
23 the license holder, does not exceed 125,000 barrels may sell beer
24 produced under the manufacturer's or nonresident manufacturer's
25 license to those persons to whom the holder of a general
26 distributor's license may sell beer under Section 64.01(a)(2).

27 (b) The total combined sales of beer under this section,

1 together with the sales of ale by the holder of a brewer's
2 self-distribution permit under Section 12A.02 at all [~~the same~~]
3 premises owned directly or indirectly by the license holder or an
4 affiliate or subsidiary of the license holder, may not exceed
5 40,000 barrels annually.

6 SECTION 6. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2017.

ADOPTED

MAY 22 2017

Lataj Spaw
Secretary of the Senate

By: *Seliger*

____.B. No. 3287

Substitute the following for ____B. No. ____:

By: *Cumpleman*

C.S. ____B. No. ____

A BILL TO BE ENTITLED

AN ACT

relating to the sale of ale and beer by certain brewers and manufacturers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that:

(1) the state is authorized under the Twenty-first Amendment of the United States Constitution to promote the public's interest in the fair, efficient, and competitive marketing of ale and beer in this state;

(2) the United States Supreme Court in *Granholm v. Heald*, 544 U.S. 460 (2005), has recognized that the three-tier system of regulating the alcoholic beverage industry is unquestionably legitimate;

(3) in *Granholm*, the United States Supreme Court further recognized that while the states are entitled to regulate the production and sales of liquor within their borders, the right is nonetheless subject to the provisions of the Constitution of the United States, including the Interstate Commerce Clause, and laws regulating the alcoholic beverage industry may not discriminate against out-of-state participants or give undue deference to local participants and may not ignore other provisions of the Constitution, including the Supremacy Clause, Commerce Clause, and

the Privileges and Immunities Clause with its nondiscriminatory principles;

(4) the state is authorized to promote, market, and educate consumers about the emerging small brewing industry;

(5) it is the state's interest that nothing in this Act be construed to conflict with Article 1, Sections 16 and 17 of the Texas Constitution, with regard to the impairment of contract, retroactive application of law, or taking of property;

(6) it is in the state's interest to encourage entrepreneurial and small business development opportunities in the state that will lead to new capital investment in the state, create new jobs in the state, and expand the state and local tax base; and

(7) it is the public policy of the state to exercise the police power of the state to protect the welfare, health, peace, temperance, and safety of the people of Texas.

SECTION 2. Section 12.052, Alcoholic Beverage Code, is amended to read as follows:

Sec. 12.052. SALES BY CERTAIN BREWERS TO CONSUMERS. (a) In addition to the activities authorized by Section 12.01, the holder of a brewer's permit whose annual production of ale, together with the annual production of beer by the holder of a manufacturer's license at all [the same] premises wholly or partly owned, directly or indirectly, by the permit holder or an affiliate or subsidiary of the permit holder, does not exceed a total of 225,000 barrels may sell ale produced on the brewer's premises under the permit to

ultimate consumers on the brewer's premises for responsible consumption on the brewer's premises.

(b) The total combined sales of ale to ultimate consumers under this section, together with the sales of beer to ultimate consumers by the holder of a manufacturer's license under Section 62.122 at the same premises, may not exceed 5,000 barrels annually.

(c) Subject to Subsections (b), (d), and (e), the holder of a brewer's permit may sell ale produced on the brewer's premises under the permit to ultimate consumers on the brewer's premises for responsible consumption on the brewer's premises even if the annual production limit prescribed by Subsection (a) is exceeded if:

(1) the permit holder:

(A) was legally operating a manufacturing facility with on-premise sales under Subsection (a) on February 1, 2017; or

(B) purchased an ownership interest in, or was purchased by the holder of, a permit or license issued under Chapter 12, 13, 62, or 63; and

(2) the permit holder has annual production that does not exceed 175,000 barrels at the brewer's premises.

(d) For purposes of Subsection (c)(1)(B), a permit holder may not sell to a permit or license holder whose annual production exceeds the limit prescribed by Subsection (a) an ownership interest:

(1) of more than 25 percent in the permitted location;

or

(2) that provides the purchaser with the ability to control the operations at the permitted location.

(e) A holder of a brewer's permit who under Subsection (c) sells ale produced on the brewer's premises under the permit to ultimate consumers on the brewer's premises for responsible consumption on the brewer's premises:

(1) shall file a territorial agreement with the commission under Subchapters C and D, Chapter 102;

(2) must purchase any ale the permit holder sells on the brewer's premises from the holder of a permit issued under Chapter 19, 20, or 21; and

(3) with respect to those purchases, must comply with the requirements of this code governing dealings between a distributor or wholesaler and a member of the retail tier, including Section 102.31.

(f) The commission by rule or order shall annually adjust the production limit prescribed by Subsection (c)(2) in an amount that is equal to the percentage of the state's population growth for the previous year as determined by the state demographer under Chapter 468, Government Code.

SECTION 3. Sections 12A.02(a) and (b), Alcoholic Beverage Code, are amended to read as follows:

(a) A holder of a brewer's self-distribution permit whose annual production of ale under the brewer's or nonresident brewer's permit, together with the annual production of beer by the holder

of a manufacturer's or nonresident manufacturer's license at all ~~[the same]~~ premises owned directly or indirectly by the permit holder or an affiliate or subsidiary of the permit holder, does not exceed 125,000 barrels may sell ale produced under the brewer's or nonresident brewer's permit to those persons to whom the holder of a general class B wholesaler's permit may sell ale under Section 20.01(3).

(b) The total combined sales of ale under this section, together with the sales of beer by the holder of a manufacturer's self-distribution license under Section 62A.02 at all ~~[the same]~~ premises owned directly or indirectly by the permit holder or an affiliate or subsidiary of the permit holder, may not exceed 40,000 barrels annually.

SECTION 4. Section 62.122, Alcoholic Beverage Code, is amended to read as follows:

Sec. 62.122. SALES BY CERTAIN MANUFACTURERS TO CONSUMERS.

(a) 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 all ~~[the same]~~ premises wholly or partly owned, directly or indirectly, by the license holder or an affiliate or subsidiary of the license holder, does not exceed 225,000 barrels may sell beer produced on the manufacturer's premises under the license to ultimate consumers on the manufacturer's premises for responsible consumption on the manufacturer's premises.

(b) The total combined sales of beer to ultimate consumers

under this section, together with the sales of ale to ultimate consumers by the holder of a brewer's permit under Section 12.052 at the same premises, may not exceed 5,000 barrels annually.

(c) Subject to Subsections (b), (d), and (e), the holder of a manufacturer's license may sell beer produced on the manufacturer's premises under the license to ultimate consumers on the manufacturer's premises for responsible consumption on the manufacturer's premises even if the annual production limit prescribed by Subsection (a) is exceeded if:

(1) the license holder:

(A) was legally operating a manufacturing facility with on-premise sales under Subsection (a) on February 1, 2017; or

(B) purchased an ownership interest in, or was purchased by the holder of, a permit or license issued under Chapter 12, 13, 62, or 63; and

(2) the license holder has annual production that does not exceed 175,000 barrels at the manufacturer's premises.

(d) For purposes of Subsection (c)(1)(B), a license holder may not sell to a permit or license holder whose annual production exceeds the limit prescribed by Subsection (a) an ownership interest:

(1) of more than 25 percent in the permitted location;
or

(2) that provides the purchaser with the ability to control the operations at the permitted location.

(e) A holder of a manufacturer's license who under Subsection (c) sells beer produced on the manufacturer's premises under the license to ultimate consumers on the manufacturer's premises for responsible consumption on the manufacturer's premises:

(1) shall file a territorial agreement with the commission under Subchapters C and D, Chapter 102;

(2) must purchase any beer the license holder sells on the manufacturer's premises from the holder of a license issued under Chapter 64, 65, or 66; and

(3) with respect to those purchases, must comply with the requirements of this code governing dealings between a distributor or wholesaler and a member of the retail tier, including Sections 61.73 and 102.31.

(f) The commission by rule or order shall annually adjust the production limit prescribed by Subsection (c)(2) in an amount that is equal to the percentage of the state's population growth for the previous year as determined by the state demographer under Chapter 468, Government Code.

SECTION 5. Sections 62A.02(a) and (b), Alcoholic Beverage Code, are amended to read as follows:

(a) A holder of a manufacturer's self-distribution license whose annual production of beer under the manufacturer's or nonresident manufacturer's license, together with the annual production of ale by the holder of a brewer's or nonresident brewer's permit at all ~~[the same]~~ premises owned directly or

indirectly by the license holder or an affiliate or subsidiary of the license holder, does not exceed 125,000 barrels may sell beer produced under the manufacturer's or nonresident manufacturer's license to those persons to whom the holder of a general distributor's license may sell beer under Section 64.01(a)(2).

(b) The total combined sales of beer under this section, together with the sales of ale by the holder of a brewer's self-distribution permit under Section 12A.02 at all ~~[the same]~~ premises owned directly or indirectly by the license holder or an affiliate or subsidiary of the license holder, may not exceed 40,000 barrels annually.

SECTION 6. APPLICABILITY. (a) Notwithstanding any provision under Chapters 12 and 62, any manufacturer's licensee or a holder of a brewer's permit, whose combined annual production exceeds the 225,000 barrel threshold in sections 12.052(a) or 62.122(a) by the license or permit holder or an affiliate or subsidiary of the license or permit holder as revised by this Act, that operates a premise purchased on or before February 1, 2017 that is licensed or permitted to manufacture or brew beer or ale purchased and on which the total production of beer and ale is less than 225,000 barrels, shall be granted the right to sell beer and ale to the ultimate consumer at the purchased premise under the law as it existed prior to the passage of this Act.

(b) Notwithstanding any provision under Chapters 12 and 62, a manufacturer's licensee or a holder of a brewer's permit, whose

combined annual production exceeds the 225,000 barrel threshold in sections 12.052(a) or 62.122(a) as revised by this Act who operates a premise which legally sells beer or ale to the ultimate consumer at a premise purchased prior to February 1, 2017 pursuant to subsection (a) may establish no more than two additional facilities which sell beer or ale to the ultimate consumer provided those facilities each produce less than 225,000 barrels of beer and ale and comply with the provisions in Sections 12.052 (b) and (e) and 62.122 (b) and (e).

SECTION 7. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

ADOPTED

MAY 22 2017

FLOOR AMENDMENT NO. 1

BY:

Seligson

Lotay Spaw
Secretary of the Senate

- 1 Amend C.S.H.B. No. 3287 (senate committee report) as follows:
- 2 In SECTION 6 of the bill, strike the word "purchased" (page 4,
- 3 line 17).

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 23, 2017

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3287 by Goldman (Relating to the sale of ale and beer by certain brewers and manufacturers.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Alcoholic Beverage Code to limit the sale of beer and ale by the holder of a manufacturer's license or a brewer's permit to ultimate consumers at certain premises. The Texas Alcoholic Beverage Commission reports the costs to administer the provisions of the bill can be absorbed within existing resources.

The bill would take effect immediately if it receives a vote of two-thirds of all the members elected to each house. Otherwise, the bill would take effect September 1, 2017.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 458 Alcoholic Beverage Commission

LBB Staff: UP, FR, JGA, CL, AI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 19, 2017

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB3287** by Goldman (Relating to the sale of ale and beer by certain brewers and manufacturers.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Alcoholic Beverage Code to limit the sale of beer and ale by the holder of a manufacturer's license or a brewer's permit to ultimate consumers at certain premises. The Texas Alcoholic Beverage Commission reports the costs to administer the provisions of the bill can be absorbed within existing resources.

The bill would take effect immediately if it receives a vote of two-thirds of all the members elected to each house. Otherwise, the bill would take effect September 1, 2017.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 458 Alcoholic Beverage Commission

LBB Staff: UP, FR, JGA, CL, AI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 9, 2017

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB3287** by Goldman (Relating to the sale of ale and beer by certain brewers and manufacturers.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Alcoholic Beverage Code to limit the sale of beer and ale by the holder of a manufacturer's license or a brewer's permit to ultimate consumers at certain premises. The Texas Alcoholic Beverage Commission reports the costs to administer the provisions of the bill can be absorbed within existing resources.

The bill would take effect immediately if it receives a vote of two-thirds of all the members elected to each house. Otherwise, the bill would take effect September 1, 2017.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 458 Alcoholic Beverage Commission

LBB Staff: UP, FR, JGA, CL, AI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 1, 2017

TO: Honorable John Kuempel, Chair, House Committee on Licensing & Administrative Procedures

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3287 by Goldman (Relating to the sale of ale and beer by certain brewers and manufacturers.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Alcoholic Beverage Code to limit the sale of beer and ale by the holder of a manufacturer's license or a brewer's permit to ultimate consumers at certain premises. The Texas Alcoholic Beverage Commission reports the costs to administer the provisions of the bill can be absorbed within existing resources.

The bill would take effect immediately if it receives a vote of two-thirds of all the members elected to each house. Otherwise, the bill would take effect September 1, 2017.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 458 Alcoholic Beverage Commission

LBB Staff: UP, CL, AI, FR

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 14, 2017

TO: Honorable John Kuempel, Chair, House Committee on Licensing & Administrative Procedures

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3287 by Goldman (Relating to the sale of beer and ale by the holders of Manufacturer's Licenses and Brewer's permits.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Alcoholic Beverage Code to limit the sale of beer and ale by the holder of a manufacturer's license or a brewer's permit to ultimate consumers at certain premises. The Texas Alcoholic Beverage Commission reports the costs to administer the provisions of the bill can be absorbed within existing resources.

The bill would take effect immediately if it receives a vote of two-thirds of all the members elected to each house. Otherwise, the bill would take effect September 1, 2017.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 458 Alcoholic Beverage Commission

LBB Staff: UP, CL, AI, FR