

In the Supreme Court of Texas

LIVE OAK BREWING CO., LLC; REVOLVER BREWING, LLC;
AND PETICOLAS BREWING CO., LLC,

Petitioners,

v.

TEXAS ALCOHOLIC BEVERAGE COMMISSION, ET AL.,

Respondents.

On Petition for Review
from the Third Court of Appeals, Austin

RESPONSE TO PETITION FOR REVIEW

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STATEMENT OF THE CASE

Nature of the Case: Plaintiffs sued Defendants to challenge the constitutionality of Texas Alcoholic Beverage Code section 102.75(a)(7), which prohibits brewers from accepting payment from distributors for the right to distribute the brewer's beer within a specified geographic territory.¹ Seeking declaratory and injunctive relief and attorney's fees, Plaintiffs alleged violations of the Takings and Due Course of Law clauses of the Texas Constitution. Tex. Const. art. I, §§ 17, 19.

Trial Court: The Honorable Karin Crump, 98th Judicial District Court, Travis County, Texas

Disposition: The trial court partially granted and partially denied both parties' summary-judgment motions. It concluded that section 102.75(a)(7) does not effect a taking of property under article I, section 17 and dismissed Plaintiffs' claim for attorney's fees. CR.577. But the court declared that section 102.75(a)(7) violates the Due Course of Law clause of article I, section 19 and enjoined Defendants from enforcing it against Plaintiffs and other brewers. CR.576-77.

Court of Appeals: Third Court of Appeals, Austin

Disposition: In a decision authored by Justice Goodwin and joined by Chief Justice Rose and Justice Pemberton, the court of appeals held that section 102.75(a)(7) does not violate article I, section 19, either facially or as applied to Plaintiffs. *Live Oak Brewing*, 537 S.W.3d at 654-59.

¹ Like the court of appeals, Defendants herein refer to beer, ale, and malt liquor collectively as "beer" unless otherwise stated because the distinctions among these terms are irrelevant for purposes of this appeal. *Tex. Alco. Bev. Comm'n v. Live Oak Brewing Co., LLC*, 537 S.W.3d 647, 651 n.2 (Tex. App.—Austin 2017, pet. filed).

ISSUES PRESENTED

Senate Bill 639’s prohibition against accepting payment for beer-distribution rights was part of a five-bill legislative package enacted in 2013, with the passage of each bill contingent on the passage of all five. Senate Bill 639 primarily benefitted distributors; the other four bills benefitted small brewers. Trade groups representing craft brewers, distributors, and retailers agreed to support all five bills because each group believed that the total package advanced its members’ interests. Applying the standards set forth in *Patel v. Texas Department of Licensing & Regulation*, 469 S.W.3d 69 (Tex. 2015), the court of appeals held that the prohibition against selling distribution rights does not violate Plaintiffs’ rights under the Due Course of Law clause of article I, section 19 of the Texas Constitution. The issues presented are:

1. Whether, in deciding whether Senate Bill 639’s distribution-rights-sales prohibition has an improper purpose or is unconstitutionally oppressive, it was appropriate for the court of appeals to consider the benefits craft brewers receive under four bills passed concurrently with Senate Bill 639 as a five-bill legislative package (Plaintiffs’ second issue restated).
2. Whether the court of appeals correctly distinguished *Patel* in holding that the ban on selling distribution rights does not violate Plaintiffs’ substantive rights under the Due Course of Law clause (Plaintiffs’ first issue restated).
3. Whether limited-liability companies have a right to occupational freedom under the Due Course of Law clause, which “protect[s] individual rights.” *Patel*, 469 S.W.3d at 87 (unbriefed issue).

TO THE HONORABLE SUPREME COURT OF TEXAS:

Plaintiffs' petition for review misstates both the circumstances surrounding the 2013 passage of Senate Bill 639, which bans the sale of brewers' distribution rights, and the decision below upholding that ban. Plaintiffs omit to mention that Senate Bill 639 was enacted together with four bills that benefit small brewers by allowing them to self-distribute beer and sell it for on-site consumption—acts previously prohibited under the traditional three-tier system. In a compromise with distributors and retailers, two craft-brewer groups agreed to the five-bill package because they perceived that those benefits outweighed the loss of potential payments for distribution rights. Given the rarity of such payments—the record identifies only *one* sale of a Texas brewer's distribution rights—it is unsurprising craft brewers accepted that bargain.

Plaintiffs are now attempting to eliminate the sole provision in the five-bill package that limits craft brewers' privileges while retaining several provisions that expand their privileges. Instead of using the Due Course of Law clause to defend economic freedom, Plaintiffs are weaponizing it to rewrite the terms of a hard-won legislative compromise. As the court of appeals recognized, allowing Plaintiffs to reshape that bargain would upset the balance of power—vital to the three-tier system—that the stakeholders agreed to and the Legislature carefully preserved.

Plaintiffs wrongly accuse the court of appeals of failing to apply the due-course standards articulated in *Patel*. The court of appeals properly applied the *Patel* standards and reached a different result because the facts of this case are fundamentally different from those of *Patel*. While the statutory regime at issue in *Patel* deprived eyebrow threaders of their constitutional freedom to pursue a lawful occupation, the

provision at issue here imposes no burden on craft brewers that comes anywhere near that imposed on the threaders in *Patel*.

Selling distribution rights is not crucial to the enterprise of brewing beer. Texas craft brewers thrived for decades without selling distribution rights, and they have continued to flourish even after the ban on that largely hypothetical activity was implemented. Under the statutory regime at issue in *Patel*, by contrast, threaders could not practice their chosen occupation without completing a lengthy course of study unrelated to eyebrow-threading. Moreover, the threaders did not willingly accept that restriction in order to secure other privileges, as the craft brewers did here.

Five years ago, the Legislature loosened the three-tier system in ways that primarily helped craft brewers. Craft brewers gladly paid the sole price for those changes—a ban on selling distribution rights. That bargain, designed to maintain balance in the modernized three-tier system, neither reflects an improper purpose nor imposes an oppressive burden. The Court should deny the petition for review.

STATEMENT OF FACTS

I. The Three-Tier System

A. The three-tier system was created to prevent the return of vertical integration in the alcohol industry and its attendant evils.

It has long been “the public policy of this state . . . to maintain and enforce the three-tier system,” defined as “strict separation between the manufacturing, wholesaling, and retailing levels of the industry.” Tex. Alco. Bev. Code § 6.03(i). The purpose of Texas’s three-tier system is to “prevent the creation or maintenance of a ‘tied house,’” *id.*—a pre-Prohibition scheme in which retailers were either owned

by, or under contract to sell only alcohol produced by, a particular manufacturer. *See S.A. Disc. Liquor, Inc. v. Tex. Alco. Bev. Comm'n*, 709 F.2d 291, 293 (5th Cir. 1983). Before Prohibition, manufacturers “exercise[d] tremendous influence over those retailers that they did not directly control through ownership by extending credit and other financial incentives.” Evan T. Lawson, *The Future of the Three-Tiered System as a Control of Marketing Alcoholic Beverages, in Social and Economic Control of Alcohol: The 21st Amendment in the 21st Century* 32 (Carole L. Jurkiewicz & Murphy J. Painter, eds., 2007). Fierce competition led to “drastic increases in consumption, which led to drunkenness and financial ruin, impoverishing the working man and his family.” *Id.*

Under the three-tier system, brewers, distributors, and retailers are all required to be licensed by the TABC, and brewers generally must sell beer through distributors. Tex. Alco. Bev. Code §§ 12.01(a)(3), 62.01(a)(1). The business relationship between a brewer and a distributor includes a territorial agreement and a distribution agreement. *Id.* §§ 102.51(a), 102.71(2), 102.71(5). The territorial agreement, a designation of territorial limits within which a distributor is the sole wholesaler of a brewer’s beer, is filed with the TABC. *Id.* § 102.51(b).

The distribution agreement is the contract between the brewer and distributor “pursuant to which a distributor has the right to purchase, resell, and distribute any brand or brands of beer offered by a manufacturer.” *Id.* § 102.71(2). In general, the Code does not dictate the terms of distribution agreements. Important considerations in the negotiation of such agreements include the distributor’s quality and quantity of storage, geographic reach, commitment to the brewer’s beer, capacity for

growth, and number and type of other beers distributed. CR.132-33, 293. Distribution agreements are not required to be filed with or disclosed to the TABC.

B. Preserving balance within the three-tier system

There is an inherent tension in the three-tier system: it must ensure strict separation between, but also accommodate business among, the tiers. These dueling interests create challenges to maintaining the integrity of the system. *See, e.g., Carter v. Virginia*, 321 U.S. 131, 137 (1944) (acknowledging “the exceptional problems involved in successfully regulating trade in intoxicating liquors”). Imbalances among the tiers also threaten the system. In the beer business, “power in beer distribution relationships tends to be unbalanced, tipping heavily in favor of brewers.” Barry Kurtz & Bryan H. Clements, *Beer Distribution Law as Compared to Traditional Franchise Law*, 33 Franchise L.J. 397, 399 (2014).

Texas has long sought to maintain balance among brewers, distributors, and retailers of beer, as reflected in the Beer Industry Fair Dealing Law (“Fair-Dealing Law”), which was enacted in 1981 and codified in chapter 102, subchapter D, of the Texas Alcoholic Beverage Code. Its purpose is to “promote the public’s interest in the fair, efficient, and competitive distribution of beer within this state” by ensuring distributors’ independence from brewers. Tex. Alco. Bev. Code § 102.72(a). To that end, the Fair-Dealing Law forbids manufacturers and distributors to “restrict or inhibit, directly or indirectly, the right of free association among manufacturers or distributors for any lawful purpose.” *Id.* § 102.78. It also prohibits brewers from engaging in certain conduct, including:

- unreasonably prohibiting a distributor from selling other brewers' beer, *id.* § 102.75(a)(2);
- fixing the price at which distributors may sell beer to retailers, *id.* § 102.75(a)(3);
- forcing distributors to accept delivery of unordered beer, *id.* § 102.75(a)(5);
- adjusting the price for beer that brewers charge distributors based on the price distributors receive from retailers (“reach-back pricing”), *id.* § 102.75(a)(6); and
- accepting payment for the assignment of territorial rights, *id.* § 102.75(a)(7).

Only the last provision—added in 2013 under Senate Bill 639—is at issue here.

II. Senate Bill 639 Is Enacted as Part of a Legislative Package Designed to Advance Texas’s Growing Craft-Beer Industry.

In the 2013 legislative session, five bills that revised the Fair-Dealing Law were introduced. Four included provisions expanding the privileges of small brewers:

- Senate Bill 515 allowed holders of brewpub licenses to self-distribute beer to distributors and retailers and doubled the annual production limit for brewpub licensees. Act of May 20, 2013, 83d Leg., R.S., ch. 750, § 5, 2013 Tex. Gen. Laws 1896, 1897 (introduced Feb. 12, 2013).
- Senate Bill 516 authorized small brewers of ale or malt liquor (up to 125,000 barrels annually) to self-distribute up to 40,000 barrels directly to retailers. Act of May 20, 2013, 83d Leg., R.S., ch. 533, § 2, 2013 Tex. Gen. Laws 1443, 1443 (introduced Feb. 12, 2013).
- Senate Bill 517 authorized small brewers of beer (up to 125,000 barrels annually) to self-distribute up to 40,000 barrels directly to retailers. Act of May 20, 2013, 83d Leg., R.S., ch. 534, § 2, 2013 Tex. Gen. Laws 1444, 1445 (introduced Feb. 12, 2013);
- Senate Bill 518 permitted small brewers (up to 225,000 barrels annually) to annually sell up to 5,000 barrels of beer for on-site consumption. Act

of May 20, 2013, 83d Leg., R.S., ch. 535, § 2, 2013 Tex. Gen. Laws 1446, 1447 (introduced Feb. 12, 2013).

The fifth—Senate Bill 639—barred brewers from using reach-back pricing or accepting payment for territorial distribution rights. Act of May 20, 2013, 83d Leg., R.S., ch. 555, § 1, 2013 Tex. Gen. Laws 1494, 1494 (introduced Feb. 18, 2013).

The sale of distribution rights was neither a common practice in Texas nor clearly authorized under Texas law. Austin-based Live Oak Brewing had sold its Houston-area distribution rights in 2012. CR.166, 176. But that is the only completed sale of a Texas brewer’s distribution rights that the parties have identified.

The TABC was asked about the legality of the practice in a February 2013 email exchange between Steve Greiner, TABC’s Director of Tax and Marketing Practices, and Robert Armstrong, Representative Charlie Geren’s legislative director and general counsel. Armstrong asked Greiner to confirm “that payment for territorial assignments of brands by a distributor to a manufacturer are not allowed by Texas law.” CR.337. Greiner responded that “[t]here is nothing in the alcoholic beverage code authorizing a manufacturer or brewer to seek payment for territorial rights,” and noted that “[t]his type of activity could be tied to a prohibited conduct.” CR.336. After Greiner forwarded his response to Carolyn Beck, TABC’s Director of Communications and Governmental Relations, Beck clarified that “[t]he Code does not address whether the designation may or may not be acquired through payment of money for the designation,” and added: “TABC has never been involved with the ‘terms and conditions’ of these types of agreements.” CR.335. Beck further noted

that, due to uncertainty in the industry “and the fact that the Code doesn’t specifically address this issue,” industry stakeholders “could benefit from legislation that specifically authorizes or prohibits payments for distribution rights.” *Id.*

That clarification arrived via Senate Bill 639, which two craft-brewing organizations—respectively representing brewers and consumers of craft beer—supported. The Texas Craft Brewers Guild is a 200-member organization that “represents the interests of Texas craft brewers” and “exists for the purpose of promoting Texas craft beer, educating the public about the qualities and attributes of craft beer and advancing the common interest of Texas craft brewers.” TEXAS CRAFT BREWERS GUILD, <https://texascraftbrewersguild.org/about> (last visited June 19, 2018). Open the Taps, founded in 2011, is “a grassroots, non-profit consumer advocacy group for craft beer enthusiasts.” *Open the Taps*, FACEBOOK, https://www.facebook.com/pg/OpenTheTaps/about/?ref=page_internal (last visited June 19, 2018).

Lacking broad stakeholder support, Senate Bills 515, 516, 517, 518, and 639 initially stalled in the Senate Committee on Business and Commerce. But on March 12, 2013, groups representing craft-beer brewers (Texas Craft Brewers Guild) and consumers (Open the Taps), large brewers (Anheuser-Busch and Guinness-Diageo N.A.), distributors (the Beer Alliance of Texas and the Wholesale Beer Distributors of Texas), and retailers (Texas Association of Business) reached an agreement to support all five bills as an all-or-nothing package. CR.134-35, 169-70; *see* App. A.²

² Appendix A is a copy of the stakeholder agreement. The agreement is not in the appellate record, but its existence and contents are undisputed. CR.134-35.

Following that agreement, language making the passage of each bill contingent on the passage of the others was added to each bill, appearing in the Senate Committee Report (SCR) or engrossed version. *See* Apps. B-C (introduced and engrossed versions of S.B. 515), D-E (introduced and SCR versions of S.B. 516), F-G (introduced and engrossed versions of S.B. 517); H-I (introduced and engrossed versions of S.B. 518), J-K (introduced and SCR versions of S.B. 639).

The compromise yielded net benefits to craft brewers, distributors, and retailers. Ronnie Crocker, *Debate over SB 639 continues among craft brewers*, HOUS. CHRON. (Mar. 14, 2013), <http://blog.chron.com/beertx/2013/03/debate-over-sb-639-continues-among-craft-brewers/> (noting that “representatives on both sides acknowledged they’d had to give something up to strike a deal”). Significantly, the lead negotiator for the Texas Craft Brewer’s Guild described the compromise as “a victory for Texas craft brewers.” *Id.* Some craft brewers, such as Austin’s Jester King Brewery, continued to oppose Senate Bill 639. *Id.* But Jester King acknowledged that Senate Bill 639 was “part of a package deal” and stated that, “if all five bills pass, we’ll have a lot more to celebrate than we will to lament.” *Id.*

Consistent with the stakeholder agreement, all five bills were approved together by both houses of the Texas Legislature, signed by the Governor on June 14, 2013, and took effect that day. *See* Act of May 20, 2013, 83d Leg., R.S., ch. 750, 2013 Tex. Gen. Laws 1896 (codified in relevant part at Tex. Alco. Bev. Code § 74.08(a)(1)-(2)) (S.B. 515); Act of May 20, 2013, 83d Leg., R.S., ch. 533, 2013 Tex. Gen. Laws 1443 (codified in relevant part at Tex. Alco. Bev. Code § 12A.02(a)-(b)) (S.B. 516); Act of

May 20, 2013, 83d Leg., R.S., ch. 534, 2013 Tex. Gen. Laws 1444 (codified in relevant part at Tex. Alco. Bev. Code § 62A.02(a)(b)) (S.B. 517); Act of May 20, 2013, 83d Leg., R.S., ch. 535, 2013 Tex. Gen. Laws 1446 (codified in relevant part at Tex. Alco. Bev. Code § 12.052(a)-(b)) (S.B. 518); Act of May 20, 2013, 83d Leg., R.S., ch. 555, 2013 Tex. Gen. Laws 1494 (codified in relevant part at Tex. Alco. Bev. Code § 102.75(a)(7)) (S.B. 639).

III. Plaintiffs Challenge Senate Bill 639's Constitutionality.

Plaintiffs are Texas-based craft brewers. Austin's Live Oak Brewing sells about 10,000 barrels annually, self-distributing about 90%, CR.165-66. Granbury-based Revolver Brewing sells about 15,000 barrels annually and self-distributes about 94%. CR.201. Dallas-based Peticolas Brewing distributes 100% of its beer. CR.128. Plaintiffs all belong to the Texas Craft Brewers Guild and are members of its legislative committee. CR.126, 169, 201.

Notwithstanding the stakeholder agreement, Plaintiffs challenged SB 639's sale-of-distribution-rights restriction under article I, section 19 of the Texas Constitution. The trial court sustained that challenge and declared section 102.75(a)(7) unconstitutional. CR.576-77. But the court of appeals reversed, holding that Plaintiffs failed to prove that it effects either a facial or as-applied violation of the due-course-of-law clause. *Live Oak Brewing*, 537 S.W.3d at 655-59.

SUMMARY OF THE ARGUMENT

In *Patel*, this Court held unconstitutionally oppressive a licensing scheme that forbade eyebrow threaders to practice their chosen profession without first completing a lengthy and expensive course of study that was almost completely unrelated to eyebrow threading and thus failed to serve any legitimate governmental interest in protecting public health. Contrary to Plaintiffs' assertions, this case is nothing like *Patel*. Texas unquestionably has a legitimate interest in maintaining a balanced three-tier system regulating the alcoholic-beverage industry. Unlike the licensing scheme struck down in *Patel*, the prohibition against sales of brewers' distribution rights at issue here is not oppressively burdensome in light of Texas's legitimate interest. And it was proper for the court of appeals to consider the significant benefits that craft brewers received through legislation passed simultaneously with the challenged provision in Senate Bill 639.

ARGUMENT

I. The Court of Appeals Properly Recognized the Benefits Craft Brewers Receive Under the Five-Bill Legislative Package.

The court of appeals recognized that, to prove that a statute violates his substantive due-course-of-law rights, a plaintiff

must demonstrate that either (1) the statute's purpose could not arguably be rationally related to a legitimate governmental interest; or (2) when considered as a whole, the statute's actual, real-world effect as applied to the challenging party could not arguably be rationally related to, or is so burdensome as to be oppressive in light of, the governmental interest.

Live Oak Brewing, 537 S.W.3d at 655-56 (quoting *Patel*, 469 S.W.3d at 87). Those standards were correctly applied below.

1. The court of appeals properly rejected Plaintiffs’ argument that section 102.75(a)(7)’s only purpose was “‘naked economic protectionism’ of the distributors.” *Id.* at 657 (quoting Plaintiffs’ brief). Accepting *arguendo* that section 102.75(a)(7) benefits distributors at the expense of brewers and that territorial rights are valuable, the court recognized that other provisions in the five-bill legislative package “benefit appellees at the expense of distributors and retailers”; that “the provisions as a whole—providing offsetting benefits between the different tiers—conform with the statutory framework of the three-tier system that seeks to maintain balance between the tiers and preserve the viability and independence of each tier”; and that this distribution of benefits was “the result of the type of commonplace compromise among various stakeholders that takes place as part of the legislative process.” *Id.* at 658.

Plaintiffs do not challenge Texas’s policy of maintaining a three-tier system, which the United States Supreme Court has described as “unquestionably legitimate.” *Granholm v. Heald*, 544 U.S. 460, 489 (2005) (quoting *N. Dakota v. United States*, 495 U.S. 423,432 (1990)); *see* Tex. Alco. Bev. Code § 6.03(i) (proclaiming that it is Texas’s “public policy . . . to maintain and enforce the three-tier system”). The three-tier system “‘aid[s] Texas in the regulation and control of alcohol consumption, and ‘prevents companies with monopolistic tendencies from dominating all levels of the alcoholic beverage community.’”” *Cadena Comercial USA Corp. v. Tex. Alco. Bev. Comm’n*, 449 S.W.3d 154, 163 (Tex. 2014) (quoting *Dickerson v. Bailey*, 336 F.3d 388, 397 (5th Cir. 2003); *S.A. Disc. Liquor*, 709 F.2d at 293); *see Neel v. Tex. Liquor Control Bd.*, 259 S.W.2d 312, 316 (Tex. Civ. App.—Austin 1953, writ

ref'd n.r.e.) (discussing “the evils of the ‘tied house’”). Section 102.75(a)(7) serves this interest by ensuring that distributors do not effectively become investors in craft brewers, which are members of a different tier.

Relatedly, section 102.75(a)(7) serves to “assure the independence of members of the three-tier system.” Act of May 20, 2013, 83d Leg., R.S., ch. 555, § 3 (codified as Tex. Alco. Bev. Code § 102.75(c)), by maintaining a balance of power among brewers, distributors, and retailers. While Plaintiffs urge that it was improper for the court of appeals to consider the significant benefits that craft brewers received under the 2013 legislative package, Pet. 15, it would be impossible to meaningfully consider the purpose of maintaining inter-tier balance *without* recognizing those benefits. This Court’s precedents implicitly reject the myopic review Plaintiffs demand. *See, e.g., Hegar v. Tex. Small Tobacco Coal.*, 496 S.W.3d 778, 789-90 (Tex. 2016) (discussing the landmark tobacco settlements and other circumstances preceding passage of tax on cigarettes made by non-settling manufacturers in upholding tax against Equal-and-Uniform challenge); *see also Ex parte Flake*, 149 S.W. 146, 147 (Tex. Crim. App. 1911) (considering purpose of challenged statute “together with other laws and regulations passed at that session of the Legislature”).

2. In analyzing the “effect” prong, the court of appeals began by observing that, following section 102.75(a)(7)’s enactment, Plaintiffs “have continued to operate their breweries and distribute their beer.” 537 S.W.3d at 656. It further noted that Plaintiffs self-distribute most or all of their beer and that, if they choose to assign territorial rights to a distributor, they can demand favorable provisions in the distribution agreement. *Id.* at 656-57. Accordingly, it concluded that Plaintiffs “have not

demonstrated that section 102.75(a)(7) has deprived them of occupational freedom, i.e., that it has prevented them from operating within their chosen trade—brewing and selling beer—within the confines of the unchallenged three-tier system.” *Id.* at 657. That narrow holding is both unremarkable and correct.

Plaintiffs did not come close to showing that the actual effect of section 102.75(a)(7) is so burdensome as to be oppressive in light of Texas’s interest in maintaining a balanced three-tier system. Brewers have no constitutionally protected liberty interest in brewing beer (a brewer’s permit is a privilege, Tex. Alco. Bev. Code § 6.01(b))—much less in receiving remuneration for distribution rights. Plaintiffs do not argue that section 102.75(a)(7) hinders them other than by potentially limiting the degree to which they can raise capital to expand their operations. Nor do Plaintiffs deny that they can obtain capital through other means, including borrowing money and reinvesting the proceeds of beer sales.

Simply because a statutory restriction has some financial impact on a regulated entity does not make it unconstitutionally oppressive. Adopting Plaintiffs’ view would threaten countless provisions in the Alcoholic Beverage Code that could limit a regulated entity’s growth or profitability in some way. Neither *Patel* nor any other Texas precedent supports that result.

3. Plaintiffs argue that the narrow holding below creates a rule that even an “unconstitutionally arbitrary, irrational, or oppressive” law will “be upheld if it was passed at the same time as an unchallenged law that supposedly offers ‘offsetting benefits.’” Pet. 15. But it was not arbitrary, irrational, or oppressive for the Legislature to maintain balance among the tiers when it loosened the three-tier system to

benefit craft brewers. Moreover, the court of appeals applied no such categorical test; it merely recognized the benefits craft brewers receive under the five-bill legislative package in concluding that the ban on selling distribution rights is not unconstitutionally oppressive. 537 S.W.3d at 658 (noting that provisions authorizing small brewers to self-distribute their beer and sell it for on-site consumption were “[a]mong the provisions that were enacted as part of the 2013 legislation package”). Finally, as discussed below, the benefits to craft brewers are real, not hypothetical.

4. Plaintiffs argue that the court of appeals erred in considering the four bills enacted together with Senate Bill 639 because, in their view, those bills provide only “theoretical benefits” to craft brewers. Pet. 5. Observing that it was already legal for craft brewers to distribute their beer before “the ‘2013 legislative package’” was enacted, Plaintiffs suggest that the package as a whole harmed craft brewers because it “*reduced* self-distribution to 40,000 barrels and restricted even that option to breweries that make fewer than 125,000 barrels.” Pet. 17 n.8 (emphasis in original). Their argument is flawed in several respects.

First, Plaintiffs omit that, before 2013, the statutory self-distribution privilege was limited to brewers making no more than 75,000 barrels of beer annually. While Senate Bill 517 reduced the amount of beer small brewers can self-distribute, it simultaneously expanded self-distribution eligibility. And whether the self-distribution limit is 40,000 or 75,000 barrels does not affect Plaintiffs, who brew less than 40,000 barrels annually and self-distribute all or most of their annual production. CR.128, 165-66, 201.

Second, Plaintiffs' attempt to minimize the self-distribution benefits ignores the privilege (conferred by Senate Bill 518) of small brewers to sell their beer for on-site consumption. Because such sales were previously unlawful under the traditional three-tier system, legalizing them provided a significant benefit to craft brewers. Plaintiffs' claim that those four bills provided only theoretical benefits to craft brewers is undermined by the fact that the Texas Craft Brewers Guild agreed to support the entire five-bill legislative package—including Senate Bill 639—to ensure that craft brewers received those benefits. *See also* Crocker, *supra* (noting that the self-distribution and on-site-sales provisions were “goals that Texas brewers have been fighting for since well before we started Jester King, but upon which no real headway had been made until [the March 12, 2013 stakeholder agreement was reached]”) (quoting statement of Jester King Brewery).

In an effort to obfuscate that support, Plaintiffs claim that a distributor trade group was Senate Bill 639's “sole supporter,” citing the witness list from a committee hearing on Senate Bill 639 held March 5, 2013. Pet. 4 (citing CR.475-76). At that early stage of the legislative process, both the Texas Craft Brewers Guild and Open the Taps opposed Senate Bill 639. CR.475-76. But Plaintiffs fail to mention that both craft-brewer groups *supported* Senate Bill 639 in a landmark compromise among craft brewers, distributors, retailers, and consumers. CR.134-35, 169-70; App. A. Contrary to Plaintiffs' representation, Senate Bill 639 ultimately enjoyed broad support from industry stakeholders—including craft brewers.

II. The Court of Appeals Correctly Distinguished *Patel*.

A. The facts of this case are nothing like those of *Patel*.

The plaintiffs in *Patel* were individuals who practiced commercial eyebrow threading and salon owners employing eyebrow threaders. 469 S.W.3d at 73. They challenged licensing statutes and regulations that required 750 hours of cosmetology training, the vast majority of which was unrelated to eyebrow threading, to obtain a threading license. *Id.* at 73-74. The fact that “threaders are required to undergo the equivalent of eight 40-hour weeks of training unrelated to health and safety as applied to threading” in schools costing from \$3500 to \$9000, while simultaneously “los[ing] the opportunity to make money actively practicing their trade” led this Court to determine that the licensing requirement was “not just unreasonable or harsh, but . . . so oppressive that it violates Article I, § 19.” *Id.* at 90.

Section 102.75(a)(7) imposes no comparable burden on craft brewers. Unlike the onerous and largely irrelevant training required to obtain the license necessary to practice commercial eyebrow threading, selling distribution rights is not necessary or vital to brewing beer. Craft brewers have thrived in Texas without selling distribution rights, both before and after section 102.75(a)(7)’s enactment. In short, this case is nothing like *Patel*.

B. Plaintiffs misstate the court of appeals’ narrow holding.

1. Plaintiffs’ assertion that the holding below “conflicts with *Patel*,” Pet. 16, is unpersuasive. The reason the *Patel* Court “*did not* look at other cosmetology statutes,” *id.*, is that the statutory scheme challenged in *Patel* was not part of an all-or-nothing legislative package that dispersed benefits among industry stakeholders—

much less one in which those stakeholders represented the three tiers of a closely-regulated system designed to safeguard the public from dangerous intoxicants. The fact that *Patel* did not discuss a legislative procedure that was not at issue in that case is hardly surprising—much less a basis for claiming that the decision below “conflicts with *Patel*,” Pet. 16, or “threaten[s] to eviscerate *Patel*,” Pet. 6.

2. Plaintiffs complain that, under the court of appeals’ holding, no plaintiff can “receive *any* constitutional review under *Patel* without first establishing: (1) total exclusion from an occupation; and (2) the absence of *any* supposed ‘offsetting benefits’ in some larger bill or administrative rulemaking.” Pet. 17 (emphasis in original); *see also* Pet. 15 (arguing that “a challenged law that is part of a legislative package requires no constitutional analysis whenever some unchallenged provision in the legislative package is, at least theoretically, good for the plaintiff”). But the court of appeals did not refuse to evaluate Plaintiffs’ constitutional claims; it found those claims meritless. 537 S.W.3d at 657. Plaintiffs are conflating receiving constitutional review with prevailing on their constitutional claims. Similarly, because the court of appeals did not “hold[] that the liberty interest in a chosen occupation is triggered only when one is wholly excluded from [his chosen] occupation,” Pet. 10-11, the decision below does not create a “split[] from the rest of the country,” “tak[e] Texas in the wrong direction,” or “undermine[] a vital constitutional right,” *id.* at 11.

PRAYER

The Court should deny the petition for review.

Respectfully submitted.

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Attorney General of Texas

SCOTT A. KELLER
Solicitor General

JEFFREY C. MATEER
First Assistant Attorney General

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CERTIFICATE OF SERVICE

On June 20, 2018, this document was served electronically on Arif Panju, Jeff Rowes, and Paul Sherman, all of whom jointly are counsel for petitioners Live Oak Brewing, Peticolas Brewing, and Revolver Brewing, via email at apanju@ij.org, jrowes@ij.org, and psherman@ij.org.

/s/ Joseph D. Hughes
JOSEPH D. HUGHES

CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this response contains 4,479 words, excluding the portions exempted by Texas Rule of Appellate Procedure 9.4(i)(1).

/s/ Joseph D. Hughes
JOSEPH D. HUGHES

In the Supreme Court of Texas

LIVE OAK BREWING CO., LLC; REVOLVER BREWING, LLC;
AND PETICOLAS BREWING CO., LLC,
Petitioners,

v.

TEXAS ALCOHOLIC BEVERAGE COMMISSION, ET AL.,
Respondents.

On Petition for Review
from the Third Court of Appeals, Austin, Texas

APPENDIX

	Tab
1. Stakeholder Agreement (Mar. 12, 2013)	A
2. Act of May 20, 2013, 83d Leg., R.S., S.B. 515, ch. 750, 2013 Tex. Gen. Law 1896, 1896 (codified at Tex. Alco. Bev. Code §§ 20.01, 64.01(a), 74.03, 74.08, 74.09, 74.10, 74.11, 102.54(2)(d), 102.55(a), 102.71(4)) (introduced Feb. 12, 2013)	B
3. Act of May 20, 2013, 83d Leg., R.S., S.B. 515, ch. 750, 2013 Tex. Gen. Law 1896, 1896 (codified at Tex. Alco. Bev. Code §§ 20.01, 64.01(a), 74.03, 74.08, 74.09, 74.10, 74.11, 102.54(2)(d), 102.55(a), 102.71(4)) (engrossed Mar. 25, 2013)	C
4. Act of May 20, 2013, 83d Leg., R.S., ch. 533, S.B. 516, 2013 Tex. Gen. Laws 1443, 1443 (codified at Tex. Alco. Bev. Code § 12A, Tex. Tax Code § 151.465) (introduced Feb. 12, 2013)	D
5. Act of May 20, 2013, 83d Leg., R.S., ch. 533, S.B. 516, 2013 Tex. Gen. Laws 1443, 1443 (codified at Tex. Alco. Bev. Code § 12A, Tex. Tax Code § 151.465) (committee report printed and distributed Mar. 18, 2013)	E

6. Act of May 20, 2013, 83d Leg., R.S., ch. 534, S.B. 517, 2013 Tex. Gen. Laws 1444, 1444 (codified at Tex. Alco. Bev. Code §§ 62A, 62.12; Tex. Tax Code § 151.466) (introduced Feb. 12, 2013)F

7. Act of May 20, 2013, 83d Leg., R.S., ch. 534, S.B. 517, 2013 Tex. Gen. Laws 1444, 1444 (codified at Tex. Alco. Bev. Code §§ 62A, 62.12; Tex. Tax Code § 151.466) (engrossed Mar. 27, 2013)..... G

8. Act of May 20, 2013, 83d Leg., R.S., ch. 535, S.B. 518, 2013 Tex. Gen. Laws 1446, 1446 (codified at Tex. Alco. Bev. Code §§ 12.052, 62.122, 105.081) (introduced Feb. 12, 2013)..... H

9. Act of May 20, 2013, 83d Leg., R.S., ch. 535, S.B. 518, 2013 Tex. Gen. Laws 1446, 1446 (codified at Tex. Alco. Bev. Code §§ 12.052, 62.122, 105.081) (engrossed Mar. 25, 2013).....I

10. Act of May 20, 2013, 83d Leg., R.S., ch. 555, S.B. 639, 2013 Tex. Gen. Laws 1494, 1494 (codified at Tex. Alco. Bev. Code § 102.75) (introduced Feb. 18, 2013)J

11. Act of May 20, 2013, 83d Leg., R.S., ch. 555, S.B. 639, 2013 Tex. Gen. Laws 1494, 1494 (codified at Tex. Alco. Bev. Code § 102.75) (committee report printed and distributed Mar. 18, 2013) K

**TAB A: STAKEHOLDER AGREEMENT
(MAR. 12, 2013)**

**AGREEMENT REGARDING SENATE BILL Nos
515, 516, 517, 518 and 639; and
HOUSE BILL Nos 1538, 1763, 1764, 1765, and 1766
83rd Legislative Regular Session**

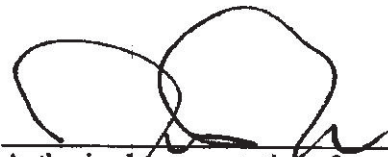
The undersigned parties make the following agreement among themselves and as a commitment to Senator John Carona regarding Senate Bill 515, Senate Bill 516, Senate Bill 517, Senate Bill 518, Senate Bill 639, House Bill 1538, House Bill 1763, House Bill 1764, House Bill 1765, and House Bill 1766 (the "Bills").

The parties agree to support the Bills through the legislative process, including their passage in the Texas Senate and the Texas House of Representatives. The parties further agree that they will not advocate for or support amendments to or substitutes of the Bills and will oppose any proposed amendments or substitutes to the Bills. The parties additionally agree that they will not advocate, directly or indirectly, for a veto of the Bills by the Governor. This commitment is made regarding the Bills collectively, meaning that the parties will support all of the Bills and will not work against, either directly or indirectly, the passage of any one or combination of the Bills.


Executed on March 12, 2013



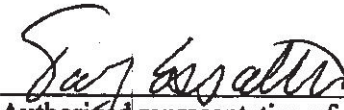
Authorized representative of
The Beer Alliance of Texas



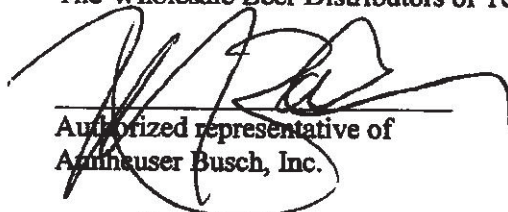
Authorized representative of
The Texas Craft Brewers Guild



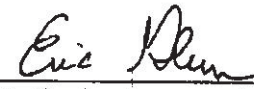
Authorized representative of
The Wholesale Beer Distributors of Texas




Authorized representative of
Open the Taps



Authorized representative of
Anheuser Busch, Inc.



Authorized representative of
Guinness, Diageo N.A.



Authorized representative of
The Texas Association of Business

**TAB B: ACT OF MAY 20, 2013, 83D LEG., R.S., S.B.
515, CH. 750, 2013 TEX. GEN. LAW 1896, 1896
(CODIFIED AT TEX. ALCO. BEV. CODE §§ 20.01,
64.01(A), 74.03, 74.08, 74.09, 74.10, 74.11,
102.54(2)(D), 102.55(A), 102.71(4))
(INTRODUCED FEB. 12, 2013)**

By: Eltife, et al.

S.B. No. 515

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the sale of malt liquor, ale, and beer by the holder of a
3 brewpub license.

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

5 SECTION 1. The legislature finds that:

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

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

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

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

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

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

11 SECTION 2. Section 20.01, Alcoholic Beverage Code, is
12 amended to read as follows:

13 Sec. 20.01. AUTHORIZED ACTIVITIES. The holder of a general
14 class B wholesaler's permit may:

15 (1) purchase and import malt and vinous liquors from
16 brewers, wineries, rectifiers, and wine manufacturers and wine
17 bottlers who are the holders of nonresident seller's permits or
18 their agents who are holders of manufacturer's agent permits;

19 (2) purchase malt and vinous liquors from holders of
20 brewer's permits, holders of brewpub licenses, or other wholesalers
21 in the state;

22 (3) sell the malt and vinous liquors in the original
23 containers in which they are received to retailers and wholesalers
24 authorized to sell them in this state, including holders of local
25 distributor's permits, mixed beverage permits, and daily temporary
26 mixed beverage permits;

27 (4) sell the malt and vinous liquors to qualified

1 persons outside the state; and

2 (5) sell ale and malt liquor to a holder of a private
3 club registration permit.

4 SECTION 3. Section 64.01(a), Alcoholic Beverage Code, is
5 amended to read as follows:

6 (a) The holder of a general distributor's license may:

7 (1) receive beer in unbroken original packages from
8 manufacturers and brewpubs and from general, local, or branch
9 distributors;

10 (2) distribute or sell beer in the unbroken original
11 packages in which it is received to general, branch, or local
12 distributors, to local distributor permittees, to permittees or
13 licensees authorized to sell to ultimate consumers, to private club
14 registration permittees, to authorized outlets located on any
15 installation of the national military establishment, or to
16 qualified persons for shipment and consumption outside the state;
17 and

18 (3) serve free beer for consumption on the licensed
19 premises.

20 SECTION 4. Section 74.03, Alcoholic Beverage Code, is
21 amended to read as follows:

22 Sec. 74.03. PRODUCTION LIMIT. The total annual production
23 of malt liquor, ale, and beer by a holder of a brewpub license may
24 not exceed 12,500 [~~5,000~~] barrels for each licensed brewpub
25 [~~established, operated, or maintained by the holder in this state~~].

26 SECTION 5. Chapter 74, Alcoholic Beverage Code, is amended
27 by adding Sections 74.08, 74.09, 74.10, and 74.11 to read as

1 follows:

2 Sec. 74.08. SALES BY BREWPUB LICENSE HOLDERS TO RETAILERS.

3 (a) In addition to the activities authorized by Section 74.01, the
4 holder of a brewpub license may:

5 (1) sell malt liquor or ale produced under the license
6 to those retailers or qualified persons outside the state to whom
7 the holder of a general class B wholesaler's permit may sell malt
8 liquor or ale under Section 20.01; and

9 (2) sell beer produced under the license to:

10 (A) those retailers to whom the holder of a
11 general distributor's license may sell beer under Section 64.01; or

12 (B) qualified persons to whom the holder of a
13 general distributor's license may sell beer for shipment and
14 consumption outside the state under Section 64.01.

15 (b) With regard to a sale under Subsection (a)(1), the
16 holder of a brewpub license has the same authority and is subject to
17 the same requirements that apply to a sale made by the holder of a
18 general class B wholesaler's permit.

19 (c) With regard to a sale under Subsection (a)(2), the
20 holder of a brewpub license has the same authority and is subject to
21 the same requirements that apply to a sale made by the holder of a
22 general distributor's license.

23 (d) The total amount of malt liquor, ale, and beer sold
24 under this section may not exceed 1,000 barrels annually.

25 Sec. 74.09. SALES TO DISTRIBUTORS. (a) In addition to the
26 activities authorized by Section 74.01, the holder of a brewpub
27 license may sell beer produced under the license to the holder of a

1 general, local, or branch distributor's license.

2 (b) The holder of a brewpub license who sells beer under
3 Subsection (a) shall comply with the requirements of Section
4 102.51.

5 Sec. 74.10. SALES TO WHOLESALERS. (a) In addition to the
6 activities authorized by Section 74.01, the holder of a brewpub
7 license may sell ale and malt liquor to the holder of a local class B
8 wholesaler's permit.

9 (b) The holder of a brewpub license who sells ale or malt
10 liquor under Subsection (a) shall comply with the requirements of
11 Section 102.81.

12 Sec. 74.11. REPORT OF SALES TO RETAILERS. (a) Not later
13 than the 25th day of each month, the holder of a brewpub license
14 shall file a report with the commission that contains information
15 relating to the sales made by the brewpub to a retailer during the
16 preceding calendar month.

17 (b) The commission shall by rule determine the information
18 that is required to be reported under this section and the manner in
19 which the report must be submitted to the commission. The
20 commission may require the report to contain the same information
21 reported to the comptroller under Section 151.462, Tax Code.

22 SECTION 6. Section 102.54(d)(2), Alcoholic Beverage Code,
23 is amended to read as follows:

24 (2) "Manufacturer" means a person who holds a license
25 issued under Chapter 62, ~~or~~ 63, or 74.

26 SECTION 7. Section 102.55(a), Alcoholic Beverage Code, is
27 amended to read as follows:

1 (a) In this subchapter and Subchapter D, and as the terms
2 relate to an agreement between a manufacturer and a distributor
3 describing the sales territory in which a distributor may sell the
4 beer of a manufacturer:

5 (1) "Brand" means any word, name, group of letters,
6 symbol, or trademark or a combination of any word, name, group of
7 letters, symbol, or trademark that is adopted and used by a
8 manufacturer on a label or on packaging to identify a specific beer
9 or malt beverage and to distinguish the beer or malt beverage
10 product from the label or packaging of another beer or malt beverage
11 produced or marketed by any manufacturer. The term does not include
12 the name of the manufacturer unless the name of the manufacturer is
13 included in the name of the brand.

14 (2) "Brand extension" means a brand that incorporates
15 a brand name or brand logo, or a substantial part of an existing
16 brand name or brand logo, of the same manufacturer.

17 (3) "Manufacturer" means a person who holds a license
18 issued under Chapter 62, 63, or 74.

19 SECTION 8. Section 102.71(4), Alcoholic Beverage Code, is
20 amended to read as follows:

21 (4) "Manufacturer" means those persons licensed under
22 Section 62.01, ~~or~~ 63.01, or 74.01 ~~[of this code]~~.

23 SECTION 9. Section 74.01(f), Alcoholic Beverage Code, is
24 repealed.

25 SECTION 10. This Act takes effect immediately if it
26 receives a vote of two-thirds of all the members elected to each
27 house, as provided by Section 39, Article III, Texas Constitution.

S.B. No. 515

1 If this Act does not receive the vote necessary for immediate
2 effect, this Act takes effect September 1, 2013.

**TAB C: ACT OF MAY 20, 2013, 83D LEG., R.S., S.B.
515, CH. 750, 2013 TEX. GEN. LAW 1896, 1896
(CODIFIED AT TEX. ALCO. BEV. CODE §§ 20.01,
64.01(A), 74.03, 74.08, 74.09, 74.10, 74.11,
102.54(2)(D), 102.55(A), 102.71(4))
(ENGROSSED MAR. 25, 2013)**

By: Eltife, et al.

S.B. No. 515

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the sale and production of malt liquor, ale, and beer by
3 the holder of a brewpub license.

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

5 SECTION 1. The legislature finds that:

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

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

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

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

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

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

11 SECTION 2. Section 20.01, Alcoholic Beverage Code, is
12 amended to read as follows:

13 Sec. 20.01. AUTHORIZED ACTIVITIES. The holder of a general
14 class B wholesaler's permit may:

15 (1) purchase and import malt and vinous liquors from
16 brewers, wineries, rectifiers, and wine manufacturers and wine
17 bottlers who are the holders of nonresident seller's permits or
18 their agents who are holders of manufacturer's agent permits;

19 (2) purchase malt and vinous liquors from holders of
20 brewer's permits, holders of brewpub licenses, or other wholesalers
21 in the state;

22 (3) sell the malt and vinous liquors in the original
23 containers in which they are received to retailers and wholesalers
24 authorized to sell them in this state, including holders of local
25 distributor's permits, mixed beverage permits, and daily temporary
26 mixed beverage permits;

27 (4) sell the malt and vinous liquors to qualified

1 persons outside the state; and

2 (5) sell ale and malt liquor to a holder of a private
3 club registration permit.

4 SECTION 3. Subsection (a), Section 64.01, Alcoholic
5 Beverage Code, is amended to read as follows:

6 (a) The holder of a general distributor's license may:

7 (1) receive beer in unbroken original packages from
8 manufacturers and brewpubs and from general, local, or branch
9 distributors;

10 (2) distribute or sell beer in the unbroken original
11 packages in which it is received to general, branch, or local
12 distributors, to local distributor permittees, to permittees or
13 licensees authorized to sell to ultimate consumers, to private club
14 registration permittees, to authorized outlets located on any
15 installation of the national military establishment, or to
16 qualified persons for shipment and consumption outside the state;
17 and

18 (3) serve free beer for consumption on the licensed
19 premises.

20 SECTION 4. Section 74.03, Alcoholic Beverage Code, is
21 amended to read as follows:

22 Sec. 74.03. PRODUCTION LIMIT. The total annual production
23 of malt liquor, ale, and beer by a holder of a brewpub license may
24 not exceed 10,000 [5,000] barrels for each licensed brewpub
25 [~~established, operated, or maintained by the holder in this state~~].

26 SECTION 5. Chapter 74, Alcoholic Beverage Code, is amended
27 by adding Sections 74.08, 74.09, 74.10, and 74.11 to read as

1 follows:

2 Sec. 74.08. SALES BY BREWPUB LICENSE HOLDERS TO RETAILERS.

3 (a) In addition to the activities authorized by Section 74.01, the
4 holder of a brewpub license who holds a wine and beer retailer's
5 permit and who sells alcoholic beverages manufactured only on the
6 brewpub's premises may:

7 (1) sell malt liquor or ale produced under the license
8 to those retailers or qualified persons to whom the holder of a
9 general class B wholesaler's permit may sell malt liquor or ale
10 under Section 20.01; and

11 (2) sell beer produced under the license to:

12 (A) those retailers to whom the holder of a
13 general distributor's license may sell beer under Section 64.01; or

14 (B) qualified persons to whom the holder of a
15 general distributor's license may sell beer for shipment and
16 consumption outside the state under Section 64.01.

17 (b) With regard to a sale under Subsection (a)(1), the
18 holder of a brewpub license has the same authority and is subject to
19 the same requirements that apply to a sale made by the holder of a
20 general class B wholesaler's permit.

21 (c) With regard to a sale under Subsection (a)(2), the
22 holder of a brewpub license has the same authority and is subject to
23 the same requirements that apply to a sale made by the holder of a
24 general distributor's license.

25 (d) The total amount of malt liquor, ale, and beer sold
26 under this section to persons in this state may not exceed 1,000
27 barrels annually for each licensed brewpub location or 2,500

1 barrels annually for all brewpubs operated by the same licensee.

2 Sec. 74.09. SALES TO DISTRIBUTORS. (a) In addition to the
3 activities authorized by Section 74.01, the holder of a brewpub
4 license may sell beer produced under the license to the holder of a
5 general, local, or branch distributor's license.

6 (b) The holder of a brewpub license who sells beer under
7 Subsection (a) shall comply with the requirements of Section
8 102.51.

9 Sec. 74.10. SALES TO WHOLESALERS. (a) In addition to the
10 activities authorized by Section 74.01, the holder of a brewpub
11 license may sell ale and malt liquor to the holder of a local class B
12 wholesaler's permit.

13 (b) The holder of a brewpub license who sells ale or malt
14 liquor under Subsection (a) shall comply with the requirements of
15 Section 102.81.

16 Sec. 74.11. REPORT OF SALES TO RETAILERS. (a) Not later
17 than the 15th day of each month, the holder of a brewpub license
18 shall file a report with the commission that contains information
19 relating to the sales made by the brewpub to a retailer during the
20 preceding calendar month.

21 (b) The commission shall by rule determine the information
22 that is required to be reported under this section and the manner in
23 which the report must be submitted to the commission. The
24 commission may require the report to contain the same information
25 reported to the comptroller under Section 151.462, Tax Code.

26 SECTION 6. Subdivision (2), Subsection (d), Section 102.54,
27 Alcoholic Beverage Code, is amended to read as follows:

1 (2) "Manufacturer" means a person who holds a license
2 issued under Chapter 62, ~~[or]~~ 63, or 74.

3 SECTION 7. Subsection (a), Section 102.55, Alcoholic
4 Beverage Code, is amended to read as follows:

5 (a) In this subchapter and Subchapter D, and as the terms
6 relate to an agreement between a manufacturer and a distributor
7 describing the sales territory in which a distributor may sell the
8 beer of a manufacturer:

9 (1) "Brand" means any word, name, group of letters,
10 symbol, or trademark or a combination of any word, name, group of
11 letters, symbol, or trademark that is adopted and used by a
12 manufacturer on a label or on packaging to identify a specific beer
13 or malt beverage and to distinguish the beer or malt beverage
14 product from the label or packaging of another beer or malt beverage
15 produced or marketed by any manufacturer. The term does not include
16 the name of the manufacturer unless the name of the manufacturer is
17 included in the name of the brand.

18 (2) "Brand extension" means a brand that incorporates
19 a brand name or brand logo, or a substantial part of an existing
20 brand name or brand logo, of the same manufacturer.

21 (3) "Manufacturer" means a person who holds a license
22 issued under Chapter 62, 63, or 74.

23 SECTION 8. Subdivision (4), Section 102.71, Alcoholic
24 Beverage Code, is amended to read as follows:

25 (4) "Manufacturer" means those persons licensed under
26 Section 62.01, ~~[or]~~ 63.01, or 74.01 ~~[of this code]~~.

27 SECTION 9. Subsection (f), Section 74.01, Alcoholic

1 Beverage Code, is repealed.

2 SECTION 10. (a) Subject to Subsection (b) of this section,
3 this Act takes effect immediately if it receives a vote of
4 two-thirds of all the members elected to each house, as provided by
5 Section 39, Article III, Texas Constitution. If this Act does not
6 receive the vote necessary for immediate effect, this Act takes
7 effect September 1, 2013.

8 (b) The changes in law made by this Act take effect only if
9 each of the following bills is enacted and becomes law:

10 (1) Senate Bill No. 516, House Bill No. 1764, or
11 another similar bill of the 83rd Legislature, Regular Session,
12 2013, that allows small brewers to sell ale to retailers;

13 (2) Senate Bill No. 517, House Bill No. 1765, or
14 another similar bill of the 83rd Legislature, Regular Session,
15 2013, that allows small beer manufacturers to sell beer to
16 retailers;

17 (3) Senate Bill No. 518, House Bill No. 1766, or
18 another similar bill of the 83rd Legislature, Regular Session,
19 2013, that allows small brewers and beer manufacturers to sell beer
20 and ale to ultimate consumers; and

21 (4) Senate Bill No. 639, House Bill No. 1538, or
22 another similar bill of the 83rd Legislature, Regular Session,
23 2013, relating to sales of beer by a manufacturer to a distributor
24 and certain agreements between a manufacturer and distributor.

**TAB D: ACT OF MAY 20, 2013, 83D LEG., R.S., CH.
533, S.B. 516, 2013 TEX. GEN. LAWS 1443, 1443
(CODIFIED AT TEX. ALCO. BEV. CODE § 12A, TEX.
TAX CODE § 151.465) (INTRODUCED FEB. 12, 2013)**

By: Eltife, et al.

S.B. No. 516

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the distribution of ale by certain brewers.

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

4 SECTION 1. The legislature finds that:

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

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

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

24 (4) the state is authorized to promote, market, and

1 educate consumers about the emerging small brewing industry;

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

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

10 SECTION 2. Section 12.05, Alcoholic Beverage Code, is
11 amended to read as follows:

12 Sec. 12.05. SALES BY CERTAIN BREWERS. (a) The holder of a
13 brewer's permit whose annual production of ale [~~in this state does~~
14 ~~not exceed,~~] together with the annual production of beer by the
15 holder of a manufacturer's license [~~acting under the authority of~~
16 ~~Section 62.12 of this code~~] at the same premises does not exceed
17 125,000[~~, a total of 75,000~~] barrels[~~,~~] may sell ale produced under
18 the permit to those persons to whom the holder of a general class B
19 wholesaler's permit may sell malt liquor under Section 20.01(3) [~~of~~
20 ~~this code~~].

21 (b) The total combined sales of ale under this section,
22 together with the sales of beer by the holder of a manufacturer's
23 license under Section 62.12 at the same premises, may not exceed
24 40,000 barrels annually.

25 (c) With regard to [~~such~~] a sale under this section, the
26 brewer has the same authority and is subject to the same
27 requirements that apply to a sale made by the holder of a general

1 class B wholesaler's permit.

2 SECTION 3. Chapter 12, Alcoholic Beverage Code, is amended
3 by adding Section 12.051 to read as follows:

4 Sec. 12.051. REPORT OF SALES TO RETAILER. (a) Not later
5 than the 25th day of each month, the holder of a brewer's permit
6 shall file a report with the commission that contains information
7 relating to the sales made by the brewer to a retailer during the
8 preceding calendar month.

9 (b) The commission shall by rule determine the information
10 that is required to be reported under this section and the manner in
11 which the report must be submitted to the commission. The
12 commission may require the report to contain the same information
13 reported to the comptroller under Section 151.462, Tax Code.

14 SECTION 4. This Act takes effect September 1, 2013, but only
15 if the 83rd Legislature, Regular Session, 2013, enacts legislation
16 that becomes law and that amends the Alcoholic Beverage Code to
17 allow small brewers to sell beer to retailers. If the 83rd
18 Legislature, Regular Session, 2013, does not enact such legislation
19 that becomes law, this Act has no effect.

**TAB E: ACT OF MAY 20, 2013, 83D LEG., R.S., CH.
533, S.B. 516, 2013 TEX. GEN. LAWS 1443, 1443
(CODIFIED AT TEX. ALCO. BEV. CODE § 12A, TEX.
TAX CODE § 151.465) (COMMITTEE REPORT PRINTED
AND DISTRIBUTED MAR. 18, 2013)**

1-1 By: Eltife, et al. S.B. No. 516
 1-2 (In the Senate - Filed February 12, 2013; February 20, 2013,
 1-3 read first time and referred to Committee on Business and Commerce;
 1-4 March 18, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; March 18, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 516 By: Eltife

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the distribution of ale by certain brewers.
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-23 SECTION 1. The legislature finds that:
 1-24 (1) the state is authorized under the Twenty-first
 1-25 Amendment of the United States Constitution to promote the public's
 1-26 interest in the fair, efficient, and competitive marketing of ale
 1-27 in this state;
 1-28 (2) the United States Supreme Court in Granholm v.
 1-29 Heald, 544 U.S. 460 (2005), has recognized that the three-tier
 1-30 system of regulating the alcoholic beverage industry is
 1-31 unquestionably legitimate;
 1-32 (3) in Granholm, the United States Supreme Court
 1-33 further recognized that while the states are entitled to regulate
 1-34 the production and sale of liquor within their borders, the right is
 1-35 nonetheless subject to the provisions of the Constitution of the
 1-36 United States, including the Interstate Commerce Clause, and laws
 1-37 regulating the alcoholic beverage industry may not discriminate
 1-38 against out-of-state participants or give undue deference to local
 1-39 participants and may not ignore other provisions of the
 1-40 constitution, including the Supremacy Clause, Commerce Clause, and
 1-41 the Privileges and Immunities Clause with its nondiscriminatory
 1-42 principles;
 1-43 (4) the state is authorized to promote, market, and
 1-44 educate consumers about the emerging small brewing industry;
 1-45 (5) it is in the state's interest to encourage
 1-46 entrepreneurial and small business development opportunities in
 1-47 the state that will lead to new capital investment in the state,
 1-48 create new jobs in the state, and expand the state and local tax
 1-49 base; and
 1-50 (6) it is the public policy of the state to exercise
 1-51 the police power of the state to protect the welfare, health, peace,
 1-52 temperance, and safety of the people of Texas.
 1-53 SECTION 2. Subtitle A, Title 3, Alcoholic Beverage Code, is
 1-54 amended by adding Chapter 12A to read as follows:
 1-55 CHAPTER 12A. BREWER'S SELF-DISTRIBUTION PERMIT
 1-56 Sec. 12A.01. ELIGIBILITY FOR PERMIT. A brewer's
 1-57 self-distribution permit may be issued only to the holder of a
 1-58 brewer's permit under Chapter 12 or the holder of a nonresident
 1-59 brewer's permit under Chapter 13.
 1-60 Sec. 12A.02. AUTHORIZED ACTIVITIES. (a) A holder of a

2-1 brewer's self-distribution permit whose annual production of ale
2-2 under the brewer's or nonresident brewer's permit, together with
2-3 the annual production of beer by the holder of a manufacturer's or
2-4 nonresident manufacturer's license at the same premises, does not
2-5 exceed 125,000 barrels may sell ale produced under the brewer's or
2-6 nonresident brewer's permit to those persons to whom the holder of a
2-7 general class B wholesaler's permit may sell malt liquor under
2-8 Section 20.01(3).

2-9 (b) The total combined sales of ale under this section,
2-10 together with the sales of beer by the holder of a manufacturer's
2-11 self-distribution license under Section 62A.02 at the same
2-12 premises, may not exceed 40,000 barrels annually.

2-13 (c) With regard to a sale under this section, the holder of a
2-14 brewer's self-distribution permit has the same authority and is
2-15 subject to the same requirements that apply to a sale made by the
2-16 holder of a general class B wholesaler's permit.

2-17 (d) Ale sold under this section may be shipped only from a
2-18 brewery in this state.

2-19 Sec. 12A.03. FEE. The annual state fee for a brewer's
2-20 self-distribution permit is \$250.

2-21 Sec. 12A.04. REPORT OF SALES TO RETAILERS. (a) Not later
2-22 than the 15th day of each month, the holder of a brewer's
2-23 self-distribution permit shall file a report with the commission
2-24 that contains information relating to the sales made by the permit
2-25 holder to a retailer during the preceding calendar month.

2-26 (b) The commission shall by rule determine the information
2-27 that is required to be reported under this section and the manner in
2-28 which the report must be submitted to the commission. The
2-29 commission may require the report to contain the same information
2-30 reported to the comptroller under Section 151.462, Tax Code.

2-31 SECTION 3. Section 151.465, Tax Code, is amended to read as
2-32 follows:

2-33 Sec. 151.465. APPLICABILITY TO CERTAIN BREWERS. This
2-34 subchapter applies only to a brewer permitted under Chapter 12A
2-35 [whose annual production of malt liquor in this state, together
2-36 with the annual production of beer at the same premises by the
2-37 holder of a manufacturer's license under Section 62.12], Alcoholic
2-38 Beverage Code[, does not exceed 75,000 barrels].

2-39 SECTION 4. Section 12.05, Alcoholic Beverage Code, is
2-40 repealed.

2-41 SECTION 5. (a) This Act takes effect September 1, 2013,
2-42 but only if:

2-43 (1) Senate Bill No. 517, House Bill No. 1765, or
2-44 another similar bill of the Regular Session of the 83rd
2-45 Legislature, 2013, that allows small brewers to sell beer to
2-46 retailers is enacted and becomes law; and

2-47 (2) Senate Bill No. 518, House Bill No. 1766, or
2-48 another similar bill of the Regular Session of the 83rd
2-49 Legislature, 2013, that allows small brewers to sell beer and ale to
2-50 ultimate consumers is enacted and becomes law.

2-51 (b) This Act does not take effect if:

2-52 (1) Senate Bill No. 517, House Bill No. 1765, or
2-53 another similar bill of the Regular Session of the 83rd
2-54 Legislature, 2013, that allows small brewers to sell beer to
2-55 retailers does not become law; or

2-56 (2) Senate Bill No. 518, House Bill No. 1766, or
2-57 another similar bill of the Regular Session of the 83rd
2-58 Legislature, 2013, that allows small brewers to sell beer and ale to
2-59 ultimate consumers does not become law.

**TAB F: ACT OF MAY 20, 2013, 83D LEG., R.S.,
CH. 534, S.B. 517, 2013 TEX. GEN. LAWS 1444, 1444
(CODIFIED AT TEX. ALCO. BEV. CODE §§ 62A,
62.12; TEX. TAX CODE § 151.466)
(INTRODUCED FEB. 12, 2013)**

By: Eltife, et al.

S.B. No. 517

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the distribution of beer by certain manufacturers.

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

4 SECTION 1. The legislature finds that:

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

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

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

24 (4) the state is authorized to promote, market, and

1 educate consumers about the emerging small brewing industry;

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

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

10 SECTION 2. Section 62.12, Alcoholic Beverage Code, is
11 amended to read as follows:

12 Sec. 62.12. SALES BY CERTAIN MANUFACTURERS. (a) A
13 manufacturer's licensee whose annual production of beer together
14 with the annual production of ale by the holder of a brewer's permit
15 at the same premises [~~in this state~~] does not exceed 125,000
16 [~~75,000~~] barrels may sell beer produced under the license to those
17 permittees, licensees, and persons to whom a general distributor's
18 licensee may sell beer under Section 64.01(2) [~~of this code~~].

19 (b) The total combined sales of beer under this section,
20 together with the sales of ale by the holder of a brewer's permit
21 under Section 12.05 at the same premises, may not exceed 40,000
22 barrels annually.

23 (c) With regard to [~~such~~] a sale under this section, the
24 manufacturer has the same authority and is subject to the same
25 requirements as apply to a sale made by a general distributor's
26 licensee.

27 (d) [~~(b)~~] The authority granted by this section is

1 additional to that granted by Section 62.01 [~~of this code~~].

2 SECTION 3. Chapter 62, Alcoholic Beverage Code, is amended
3 by adding Section 62.121 to read as follows:

4 Sec. 62.121. REPORT OF SALES TO RETAILERS. (a) Not later
5 than the 25th day of each month, the holder of a manufacturer's
6 license shall file a report with the commission that contains
7 information relating to the sales made by the manufacturer to a
8 retailer during the preceding calendar month.

9 (b) The commission shall by rule determine the information
10 that is required to be reported under this section and the manner in
11 which the report must be submitted to the commission. The
12 commission may require the report to contain the same information
13 reported to the comptroller under Section 151.462, Tax Code.

14 SECTION 4. This Act takes effect September 1, 2013, but only
15 if the 83rd Legislature, Regular Session, 2013, enacts legislation
16 that becomes law and that amends the Alcoholic Beverage Code to
17 allow small brewers to sell ale and malt liquor to retailers. If
18 the 83rd Legislature, Regular Session, 2013, does not enact such
19 legislation that becomes law, this Act has no effect.

**TAB G: ACT OF MAY 20, 2013, 83D LEG., R.S., CH.
534, S.B. 517, 2013 TEX. GEN. LAWS 1444, 1444
(CODIFIED AT TEX. ALCO. BEV. CODE §§ 62A,
62.12; TEX. TAX CODE § 151.466)
(ENGROSSED MAR. 27, 2013)**

By: Eltife, et al.

S.B. No. 517

A BILL TO BE ENTITLED

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AN ACT

relating to the distribution of beer by certain 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 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 sale 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

1 educate consumers about the emerging small brewing industry;

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

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

10 SECTION 2. Subtitle B, Title 3, Alcoholic Beverage Code, is
11 amended by adding Chapter 62A to read as follows:

12 CHAPTER 62A. MANUFACTURER'S SELF-DISTRIBUTION LICENSE

13 Sec. 62A.01. ELIGIBILITY FOR LICENSE. A manufacturer's
14 self-distribution license may be issued only to the holder of a
15 manufacturer's license under Chapter 62 or the holder of a
16 nonresident manufacturer's license under Chapter 63.

17 Sec. 62A.02. AUTHORIZED ACTIVITIES. (a) A holder of a
18 manufacturer's self-distribution license whose annual production
19 of beer under the manufacturer's or nonresident manufacturer's
20 license, together with the annual production of ale by the holder of
21 a brewer's or nonresident brewer's permit at the same premises, does
22 not exceed 125,000 barrels may sell beer produced under the
23 manufacturer's or nonresident manufacturer's license to those
24 persons to whom the holder of a general distributor's license may
25 sell beer under Section 64.01(a)(2).

26 (b) The total combined sales of beer under this section,
27 together with the sales of ale by the holder of a brewer's

1 self-distribution permit under Section 12A.02 at the same premises,
2 may not exceed 40,000 barrels annually.

3 (c) With regard to a sale under this section, the holder of a
4 manufacturer's self-distribution license has the same authority
5 and is subject to the same requirements that apply to a sale made by
6 the holder of a general distributor's license.

7 (d) Beer sold under this section may be shipped only from a
8 manufacturing facility in this state.

9 Sec. 62A.03. FEE. The annual state fee for a manufacturer's
10 self-distribution license is \$250.

11 Sec. 62A.04. REPORT OF SALES TO RETAILERS. (a) Not later
12 than the 15th day of each month, the holder of a manufacturer's
13 self-distribution license shall file a report with the commission
14 that contains information relating to the sales made by the license
15 holder to a retailer during the preceding calendar month.

16 (b) The commission shall by rule determine the information
17 that is required to be reported under this section and the manner in
18 which the report must be submitted to the commission. The
19 commission may require the report to contain the same information
20 reported to the comptroller under Section 151.462, Tax Code.

21 SECTION 3. Section 151.466, Tax Code, is amended to read as
22 follows:

23 Sec. 151.466. APPLICABILITY TO CERTAIN MANUFACTURERS. This
24 subchapter applies only to a manufacturer licensed under Chapter
25 62A, Alcoholic Beverage Code [~~whose annual production of beer in~~
26 ~~this state does not exceed 75,000 barrels~~].

27 SECTION 4. Section 62.12, Alcoholic Beverage Code, is

1 repealed.

2 SECTION 5. (a) Subject to Subsection (b) of this section,
3 this Act takes effect immediately if it receives a vote of
4 two-thirds of all the members elected to each house, as provided by
5 Section 39, Article III, Texas Constitution. If this Act does not
6 receive the vote necessary for immediate effect, this Act takes
7 effect September 1, 2013.

8 (b) The changes in law made by this Act take effect only if
9 each of the following bills is enacted and becomes law:

10 (1) Senate Bill No. 515, House Bill No. 1763, or
11 another similar bill of the 83rd Legislature, Regular Session,
12 2013, that allows holders of brewpub licenses to self-distribute
13 beer, malt liquor, or ale produced under the license to retailers;

14 (2) Senate Bill No. 516, House Bill No. 1764, or
15 another similar bill of the 83rd Legislature, Regular Session,
16 2013, that allows small brewers to sell ale to retailers;

17 (3) Senate Bill No. 518, House Bill No. 1766, or
18 another similar bill of the 83rd Legislature, Regular Session,
19 2013, that allows small brewers and beer manufacturers to sell beer
20 and ale to ultimate consumers; and

21 (4) Senate Bill No. 639, House Bill No. 1538, or
22 another similar bill of the 83rd Legislature, Regular Session,
23 2013, relating to sales of beer by a manufacturer to a distributor
24 and certain agreements between a manufacturer and distributor.

**TAB H: ACT OF MAY 20, 2013, 83D LEG., R.S., CH.
535, S.B. 518, 2013 TEX. GEN. LAWS 1446, 1446
(CODIFIED AT TEX. ALCO. BEV. CODE §§ 12.052,
62.122, 105.081) (INTRODUCED FEB. 12, 2013)**

By: Eltife, et al.

S.B. No. 518

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the authority of certain brewers and manufacturers to
3 sell beer and ale to ultimate consumers.

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

5 SECTION 1. The legislature finds that:

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

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

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

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

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

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

11 SECTION 2. Chapter 12, Alcoholic Beverage Code, is amended
12 by adding Section 12.052 to read as follows:

13 Sec. 12.052. SALES BY CERTAIN BREWERS TO CONSUMERS. (a) In
14 addition to the activities authorized by Section 12.01, the holder
15 of a brewer's permit whose annual production of ale together with
16 the annual production of beer by the holder of a manufacturer's
17 license at the same premises does not exceed a total of 225,000
18 barrels may sell ale produced under the permit to ultimate
19 consumers on the brewer's premises for responsible consumption on
20 the brewer's premises.

21 (b) The total combined sales of ale to ultimate consumers
22 under this section, together with the sales of beer to ultimate
23 consumers by the holder of a manufacturer's license under Section
24 62.122 at the same premises, may not exceed 5,000 barrels annually.

25 SECTION 3. Chapter 62, Alcoholic Beverage Code, is amended
26 by adding Section 62.122 to read as follows:

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

1 (a) A manufacturer's licensee whose annual production of beer
2 together with the annual production of ale by the holder of a
3 brewer's permit at the same premises does not exceed 225,000
4 barrels may sell beer produced under the license to ultimate
5 consumers on the manufacturer's premises for responsible
6 consumption on the manufacturer's premises.

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

11 SECTION 4. This Act takes effect September 1, 2013.

**TAB I: ACT OF MAY 20, 2013, 83D LEG., R.S., CH.
535, S.B. 518, 2013 TEX. GEN. LAWS 1446, 1446
(CODIFIED AT TEX. ALCO. BEV. CODE §§ 12.052,
62.122, 105.081) (ENGROSSED MAR. 25, 2013)**

By: Eltife, et al.

S.B. No. 518

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the authority of certain brewers and manufacturers to
3 sell beer and ale to ultimate consumers.

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

5 SECTION 1. The legislature finds that:

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

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

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

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

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

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

11 SECTION 2. Chapter 12, Alcoholic Beverage Code, is amended
12 by adding Section 12.052 to read as follows:

13 Sec. 12.052. SALES BY CERTAIN BREWERS TO CONSUMERS.

14 (a) In addition to the activities authorized by Section 12.01, the
15 holder of a brewer's permit whose annual production of ale together
16 with the annual production of beer by the holder of a manufacturer's
17 license at the same premises does not exceed a total of 225,000
18 barrels may sell ale produced on the brewer's premises under the
19 permit to ultimate consumers on the brewer's premises for
20 responsible consumption on the brewer's premises.

21 (b) The total combined sales of ale to ultimate consumers
22 under this section, together with the sales of beer to ultimate
23 consumers by the holder of a manufacturer's license under Section
24 62.122 at the same premises, may not exceed 5,000 barrels annually.

25 SECTION 3. Chapter 62, Alcoholic Beverage Code, is amended
26 by adding Section 62.122 to read as follows:

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

1 (a) A manufacturer's licensee whose annual production of beer
2 together with the annual production of ale by the holder of a
3 brewer's permit at the same premises does not exceed 225,000
4 barrels may sell beer produced on the manufacturer's premises under
5 the license to ultimate consumers on the manufacturer's premises
6 for responsible consumption on the manufacturer's premises.

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

11 SECTION 4. Chapter 105, Alcoholic Beverage Code, is amended
12 by adding Section 105.081 to read as follows:

13 Sec. 105.081. HOURS OF SALE AND CONSUMPTION: BREWER OR
14 MANUFACTURER. (a) The holder of a brewer's permit may sell, offer
15 for sale, and deliver ale or malt liquor and a person may consume
16 ale or malt liquor on the brewer's premises:

17 (1) between 8 a.m. and midnight on any day except
18 Sunday; and

19 (2) between 10 a.m. and midnight on Sunday.

20 (b) The holder of a manufacturer's license may sell, offer
21 for sale, and deliver beer and a person may consume beer on the
22 manufacturer's premises:

23 (1) between 8 a.m. and midnight on any day except
24 Sunday; and

25 (2) between 10 a.m. and midnight on Sunday.

26 SECTION 5. (a) Subject to Subsection (b) of this section,
27 this Act takes effect immediately if it receives a vote of

1 two-thirds of all the members elected to each house, as provided by
2 Section 39, Article III, Texas Constitution. If this Act does not
3 receive the vote necessary for immediate effect, this Act takes
4 effect September 1, 2013.

5 (b) The changes in law made by this Act take effect only if
6 each of the following bills is enacted and becomes law:

7 (1) Senate Bill No. 515, House Bill No. 1763, or
8 another similar bill of the 83rd Legislature, Regular Session,
9 2013, that allows holders of brewpub licenses to self-distribute
10 beer, malt liquor, or ale produced under the license to retailers;

11 (2) Senate Bill No. 516, House Bill No. 1764, or
12 another similar bill of the 83rd Legislature, Regular Session,
13 2013, that allows small brewers to sell ale to retailers;

14 (3) Senate Bill No. 517, House Bill No. 1765, or
15 another similar bill of the 83rd Legislature, Regular Session,
16 2013, that allows small beer manufacturers to sell beer to
17 retailers; and

18 (4) Senate Bill No. 639, House Bill No. 1538, or
19 another similar bill of the 83rd Legislature, Regular Session,
20 2013, relating to sales of beer by a manufacturer to a distributor
21 and certain agreements between a manufacturer and distributor.

**TAB J: ACT OF MAY 20, 2013, 83D LEG., R.S., CH.
555, S.B. 639, 2013 TEX. GEN. LAWS 1494, 1494
(CODIFIED AT TEX. ALCO. BEV. CODE § 102.75)
(INTRODUCED FEB. 18, 2013)**

By: Carona

S.B. No. 639

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the manufacture, distribution, and sale of alcoholic
3 beverages.

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

5 SECTION 1. Chapter 1, Alcoholic Beverage Code, is amended
6 by adding new Section 1.09 to read as follows:

7 Sec. 1.09. SEVERABILITY. If a court holds that any
8 provision of the Alcoholic Beverage Code violates the constitution
9 of this state or of the United States, the regulatory system
10 affected by the unconstitutional provision shall stay in place to
11 be as consistent with the original regulatory construct of the
12 provision and this code as is constitutionally permissible. If a
13 court rules that Section 12.05 or 62.12 impermissibly prohibits an
14 out-of-state entity from engaging in activity or receiving a
15 benefit that is permissible or granted to an in-state entity, as a
16 remedy to the court's ruling the activity shall be prohibited as to
17 both in-state and out-of-state entities.

18 SECTION 2. Section 102.75, Alcoholic Beverage Code, is
19 amended to read as follows:

20 Sec. 102.75. PROHIBITED CONDUCT. No manufacturer shall:

21 (1) induce or coerce, or attempt to induce or coerce,
22 any distributor to engage in any illegal act or course of conduct;

23 (2) require a distributor to assent to any
24 unreasonable requirement, condition, understanding, or term of an

1 agreement prohibiting a distributor from selling the product of any
2 other manufacturer or manufacturers;

3 (3) fix or maintain the price at which a distributor
4 may resell beer;

5 (4) discriminate in price, allowance, rebate, refund,
6 commission, discount, or service between wholesalers licensed in
7 Texas. As used in this subsection, "discriminate" means the
8 granting of a more favorable price, allowance, rebate, refund,
9 commission, discount, advertising funds, promotional funds,
10 service, or actual net freight cost of delivery from the closest
11 geographical brewery to the wholesaler's designated delivery
12 warehouse to one Texas wholesaler than to another Texas wholesaler;

13 (5) accept payment or agreement to bear any costs in
14 exchange for the territorial assignment of a brand to a
15 distributor;

16 (6) fail to provide to each distributor of its brands a
17 written contract which embodies the manufacturer's agreement with
18 its distributor;

19 ~~(5)~~(7) require any distributor to accept delivery of
20 any beer or any other item or commodity which shall not have been
21 ordered by the distributor.

22 SECTION 3. This Act takes effect immediately if it receives
23 a vote of two-thirds of all the members elected to each house, as
24 provided by Section 39, Article III, Texas Constitution. If this
25 Act does not receive the vote necessary for immediate effect, this
26 Act takes effect September 1, 2013.

**TAB K: ACT OF MAY 20, 2013, 83D LEG., R.S.,
CH. 555, S.B. 639, 2013 TEX. GEN. LAWS 1494, 1494
(CODIFIED AT TEX. ALCO. BEV. CODE § 102.75)
(COMMITTEE REPORT PRINTED AND DISTRIBUTED
MAR. 18, 2013)**

1-1 By: Carona, Lucio, Watson S.B. No. 639
 1-2 (In the Senate - Filed February 18, 2013; February 25, 2013,
 1-3 read first time and referred to Committee on Business and Commerce;
 1-4 March 18, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; March 18, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 639 By: Carona

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the sale of beer, ale, and malt liquor by a brewer or
 1-22 beer manufacturer to a wholesaler or distributor and contractual
 1-23 agreements between those entities.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 102.75, Alcoholic Beverage Code, is
 1-26 amended to read as follows:

1-27 Sec. 102.75. PROHIBITED CONDUCT. (a) No manufacturer
 1-28 shall:

1-29 (1) induce or coerce, or attempt to induce or coerce,
 1-30 any distributor to engage in any illegal act or course of conduct;

1-31 (2) require a distributor to assent to any
 1-32 unreasonable requirement, condition, understanding, or term of an
 1-33 agreement prohibiting a distributor from selling the product of any
 1-34 other manufacturer or manufacturers;

1-35 (3) fix or maintain the price at which a distributor
 1-36 may resell beer;

1-37 (4) fail to provide to each distributor of its brands a
 1-38 written contract which embodies the manufacturer's agreement with
 1-39 its distributor;

1-40 (5) require any distributor to accept delivery of any
 1-41 beer or any other item or commodity which shall not have been
 1-42 ordered by the distributor;

1-43 (6) adjust the price at which the manufacturer sells
 1-44 beer to a distributor based on the price at which a distributor
 1-45 resells beer to a retailer, but a manufacturer is free to set its
 1-46 own price so long as any price adjustment is based on factors other
 1-47 than a distributor's increase in the price it charges to a retailer
 1-48 and not intended to otherwise coerce illegal behavior under this
 1-49 section; or

1-50 (7) accept payment in exchange for an agreement
 1-51 setting forth territorial rights.

1-52 (b) Nothing in this section shall interfere with the rights
 1-53 of a manufacturer or distributor to enter into contractual
 1-54 agreements that could be construed as governing ordinary business
 1-55 transactions, including, but not limited to, agreements concerning
 1-56 allowances, rebates, refunds, services, capacity, advertising
 1-57 funds, promotional funds, or sports marketing funds.

1-58 (c) It is the public policy and in the interest of this state
 1-59 to assure the independence of members of the three-tier system, but
 1-60 nothing in this code may be construed to prohibit contractual

2-1 agreements between members of the same tier who hold the same
2-2 licenses and permits.

2-3 SECTION 2. The change in law made by this Act to Section
2-4 102.75, Alcoholic Beverage Code, takes effect only if each of the
2-5 following bills is enacted and becomes law:

2-6 (1) Senate Bill No. 515, House Bill No. 1763, or
2-7 another similar bill of the 83rd Legislature, Regular Session,
2-8 2013, that allows holders of brewpub licenses to self-distribute
2-9 beer, malt liquor, or ale produced under the license to retailers;

2-10 (2) Senate Bill No. 516, House Bill No. 1764, or
2-11 another similar bill of the 83rd Legislature, Regular Session,
2-12 2013, that allows small brewers to sell ale to retailers;

2-13 (3) Senate Bill No. 517, House Bill No. 1765, or
2-14 another similar bill of the 83rd Legislature, Regular Session,
2-15 2013, that allows small beer manufacturers to sell beer to
2-16 retailers; and

2-17 (4) Senate Bill No. 518, House Bill No. 1766, or
2-18 another similar bill of the 83rd Legislature, Regular Session,
2-19 2013, that allows small brewers and beer manufacturers to sell beer
2-20 and ale to ultimate consumers.

2-21 SECTION 3. A change in law made by any of the following
2-22 bills takes effect only if this Act or another similar bill of the
2-23 83rd Legislature, Regular Session, 2013, is enacted and becomes
2-24 law:

2-25 (1) Senate Bill No. 515, House Bill No. 1763, or
2-26 another similar bill of the 83rd Legislature, Regular Session,
2-27 2013, that allows holders of brewpub licenses to self-distribute
2-28 beer, malt liquor, or ale produced under the license to retailers;

2-29 (2) Senate Bill No. 516, House Bill No. 1764, or
2-30 another similar bill of the 83rd Legislature, Regular Session,
2-31 2013, that allows small brewers to sell ale to retailers;

2-32 (3) Senate Bill No. 517, House Bill No. 1765, or
2-33 another similar bill of the 83rd Legislature, Regular Session,
2-34 2013, that allows small beer manufacturers to sell beer to
2-35 retailers; and

2-36 (4) Senate Bill No. 518, House Bill No. 1766, or
2-37 another similar bill of the 83rd Legislature, Regular Session,
2-38 2013, that allows small brewers and beer manufacturers to sell beer
2-39 and ale to ultimate consumers.

2-40 SECTION 4. This Act takes effect September 1, 2013.

2-41

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