

**SUBJECT:** Allowing contract brewing of certain alcoholic beverages

**COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended

**VOTE:** 8 ayes — Flores, Geren, Chisum, Goolsby, Hamilton, Homer, D. Jones, Quintanilla  
0 nays  
1 absent — Morrison

**SENATE VOTE:** On final passage, April 28 — 31-0, on Local and Uncontested Calendar

**WITNESSES:** No public hearing

**BACKGROUND:** The Texas Alcoholic Beverage Commission (TABC) regulates the distribution of alcohol in the state through permitting and enforcement. Regulations maintain a separation of the three tiers of the alcoholic beverage industry — manufacturers, wholesalers, and retailers.

A holder of a manufacturer’s license may manufacture, package, dispense, distribute, and sell beer to qualified entities. A holder of a nonresident manufacturer’s license may transport beer via authorized methods into Texas only to holders of importer’s licenses.

A holder of a brewer’s permit may manufacture, bottle, package, and label malt liquor and may import, sell to wholesalers, and dispense ale and malt liquor under authorized circumstances. A nonresident brewer’s permit is required for any brewer located outside the state to export ale or malt liquor or sell those products in Texas.

Alcoholic Beverage Code, sec. 61.41 states that no second license may be issued for a premises, location, or place of business that has a license in effect.

DIGEST:

CSSB 1255 would allow the following entities, or successors, to contract with certain permit or license holders for the use of brewing or manufacturing facilities and/or to provide brewing or manufacturing services:

- a holder of a brewer's permit on May 1, 2005;
- a holder of a nonresident brewer's permit on May 1, 2005;
- a holder of a manufacturer's license on May 1, 2005;
- a holder of a nonresident manufacturer's license on May 1, 2005; or
- an entity whose brand was legally sold in this state on May 1, 2005.

These entities would not be required to own a brewing facility and would be allowed to enter into such contracts with the holder of a brewer's permit, a nonresident brewer's permit, a manufacturer's license, or a nonresident manufacturer's license.

The bill would allow more than one permit or license to be issued for a single premises if the permit or license holder for the premises had contracted with another licensed or permitted entity or with an entity whose brand was legally sold in this state on May 1, 2005.

A person acting as an agent for a brewery located outside Texas could not contract with a permit or license holder to brew alcoholic beverages on the person's behalf. Both parties described in the contract above would be required to hold a permit or license under the Alcoholic Beverage Code.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS  
SAY:

CSSB 1255 would clear up any questions about the legality of contract brewing, which has been practiced in Texas for more than 20 years. Contract brewing is the act of one company brewing beer for a second company using the second company's recipe. The practice can involve simply the rental of facilities and equipment, or it may involve the subcontracting of labor. Beer makers traditionally have shared resources in this way because business investments in additional capital equipment can be financially restrictive. Contract brewing facilitates the efficient use of capital, time, and equipment, which in turn generates economic growth, profit, and increased state revenues.

Only recently has the legality of contract brewing come into question. In Opinion No. 98-032, Texas Attorney General Dan Morales ruled in 1998 that the practice is forbidden under Alcoholic Beverage Code, sec. 61.41, which holds that two licenses may not be issued and exercised at the same location. TABC granted a stay of enforcement until the summer of 2005 to wait for possible legislative action on this matter. This bill would have no effect on the TABC's three-tier system. It simply would place into statute authorization for the decades-old practice of contract brewing.

It is important to restrict the bill to current permit and license holders. The language in the bill properly would allow historical relationships between businesses to continue. However, allowing new and potentially unstable businesses to contract brew would create too much uncertainty in the industry.

**OPPONENTS  
SAY:**

The word "product" should replace the word "brand" as it appears in the bill. The statute has a very narrow definition of the word brand that relates to varieties of beer — the difference between Miller Light or Miller Genuine Draft for example. This language could create confusion if an eligible brewer wished to brew a brand of beer under contract that did not exist in 2005.

**NOTES:**

The committee substitute would allow a successor to an entity to enter into a contract brewing agreement. It also specified that a permit or license holder on May 1, 2005, or an entity whose brand legally was sold in this state on that date, could enter into a contract brewing agreement. The substitute would prohibit a person acting as an agent for an out-of-state entity from contracting with an authorized entity to brew alcoholic beverages.