SECTION 2. This Act takes effect July 1, 2013, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this Act takes effect September 1, 2013.

Passed the Senate on March 13, 2013: Yeas 31, Nays 0; passed the House on May 20, 2013: Yeas 147, Nays 0, two present not voting.

Approved June 14, 2013.

Effective July 1, 2013.

CHAPTER 750

S.B. No. 515

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

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 malt liquor, ale, and beer in this state;

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

(3) in 
Granholm, the United States Supreme Court further recognized that while the states are entitled to regulate the production and 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 educate consumers about the emerging small brewing industry;

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

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

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

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

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

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

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

(4) sell the malt and vinous liquors to qualified persons outside the state; and
(5) sell ale and malt liquor to a holder of a private club registration permit.

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

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

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

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

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

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

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

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

Sec. 74.08. SALES BY BREWPUB LICENSE HOLDERS TO RETAILERS. (a) In addition to the activities authorized by Section 74.01, the holder of a brewpub license who holds a wine and beer retailer's permit and who sells alcoholic beverages manufactured only on the brewpub's premises may:

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

(2) sell beer produced under the license to:

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

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

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

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

(d) The total amount of malt liquor, ale, and beer sold under this section to persons in this state may not exceed 1,000 barrels annually for each licensed brewpub location or 2,500 barrels annually for all brewpubs operated by the same licensee.

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

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

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

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

Sec. 74.11. REPORT OF SALES TO RETAILERS. (a) Not later than the 15th day of each month, the holder of a brewpub license shall file a report with the commission that contains information relating to the sales made by the brewpub to a retailer during the preceding calendar month.
(b) The commission shall by rule determine the information that is required to be reported
under this section and the manner in which the report must be submitted to the commission.
The commission may require the report to contain the same information reported to the
comptroller under Section 151.462, Tax Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed the Senate on March 25, 2013: Yeas 31, Nays 0; passed the House on May 20,
2013: Yeas 139, Nays 5, one present not voting.

Approved June 14, 2013.

Effective June 14, 2013.