



Trouble Is Brewing in the Texas Beer Market

HB 3287 & SB 2083

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Key Points

- Certain breweries can currently sell their products to ultimate consumers on their premises.
- New legislation introduced in the 85th Legislature would tighten the restrictions on such sales, leading to lost opportunities for breweries.
- The new restrictions would also reinforce a system that over time, tended to favor one tier of the three-tier system.

Texas owes its economic performance in large part to an environment that allows small and large businesses to thrive. Lower barriers to entry, lower taxes, low regulation, and, in general, a freer market are some key components as to why many companies continue to move their business within Texas borders.

In 2013, for example, the Texas Legislature passed legislation that allowed certain breweries to sell ale to ultimate consumers on a brewer's premises. The statement of intent for the bill, SB 518, noted that letting small craft brewers sell a small portion of their production directly to consumers would help them gain access for their products to these consumers ([SB 518 Bill Analysis](#); [Jeffrey](#)). These sales were prohibited before the passage of the bill under a regulatory regime known as the "three-tier system."

Since the repeal of Prohibition, the market for alcoholic beverages in Texas functions under the three-tier system, in which the different levels of the industry—manufacturing, distribution, and retail—are clearly separated from one another. Except for a few exceptions, manufacturers must contract with a licensed distributor in order to sell their products. Established because of an unjustified fear that vertical integration of the industry would lead to reduced competition, over time the system has actually brought about the very thing it was designed to prevent—reduced competition. The three-tier system tends to benefit distributors; in Texas, not only does a distributor get an exclusive right to a sales territory in an agreement with a manufacturer, but more recently, manufacturers lost their ability to sell their territorial rights at all. Manufacturers must relinquish these rights to distributors free of charge, while distributors are allowed to transfer their contract with a manufacturer to competitors—for a profit ([Hunker et al., 68-69](#)).

Over the past decade, the market has also become increasingly competitive, both for ale on tap and on shelves. It is crucially important for manufacturers to get consumers' attention for their products. For small breweries, opening taprooms is a way to engage directly with consumers and to spread the word about their products ([Notte](#)).

The opportunity created by the 83rd Legislature is now in jeopardy though.

Current statute allows sale to ultimate consumers up to a certain number of barrels annually at the facility of a manufacturer, provided each premises' production of beer does not exceed a certain amount of barrels annually. The caps depend on the type of permits the premises hold. The cap currently applies only to each individual facility owned by the manufacturer. HB 3287 and SB 2083 seek to change the law so that the holder of certain brewery licenses at "all premises owned directly or indirectly by the license holder or an affiliate or subsidiary" must count toward the same cap ([HB 3287](#); [SB 2083](#)). License holders would have all their production across various facilities aggregated to count toward a single cap limit. The consequences will be that some facilities will have to stop operating a taproom, and certain manufacturers will in the future be prohibited from opening any.

This prohibition will harm both entrepreneurs, workers, and consumers in the alcoholic beverage market. Taprooms serve as a source of income for breweries, a way for craft

brewers to put their products in front of consumers, and as a way to expand their business. Taprooms constitute an investment that brewers can monetize, whether to sell the brewery in the future, or simply as an asset to help facilitate growth. Instead of allowing facilities to operate freely, HB 3287 and SB 2083 would unnecessarily restrict economic activity and reduce jobs. Breweries will be hesitant to expend capital if they know the laws governing their business can be changed overnight.

By limiting breweries' opportunity to introduce their products to consumers on their premises, HB 3287 and SB 2083 would reinforce the three-tier system which has shown over time to consistently favor the middleman—the distributor—in the alcoholic beverage market, ultimately artificially limiting a producer's access to the market. Craft breweries should be able to have a taproom if they want to make such an investment. This legislation reduces options for consumers and considerably limits opportunity for investment and job creation in the market targeted for increased regulation. Texas should know better and raise its glass to the benefits of more economic freedom, not less.

References

[HB 3287](#). 2017. Introduced. 85th Texas Legislature (R).

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