



## More Trouble Is Brewing in the Texas Beer Market

HB 3287

by  
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### Key Points

- Certain breweries can currently sell their products to ultimate consumers on their premises.
- HB 3287 would tighten the restrictions on such sales, leading to lost opportunities for breweries.
- Certain brewers would also have to sell their beer to a distributor to buy it back immediately for cash in order to sell it in their taproom and on their brewery's premises.
- The new restrictions would also reinforce a system that over time, tended to favor one tier of the three-tier system.

Over the past few decades, Texas chose to liberalize several markets, allowing more competitive markets, a better quality of life for Texans, and greater economic growth. However, legislation currently moving forward in the 85th Legislature would reverse this trend. HB 3287 would increase regulation in an already tightly regulated market—alcoholic beverages—resulting in constrained growth in the craft beer market and price increases for consumers.

In 2013, the Texas Legislature passed legislation that allowed certain small 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 83rd Legislature 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 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 breweries, opening taprooms is a way to engage directly with consumers and to spread the word about their products ([Notte](#)). As the Brewers Association put it, “Direct to customer sales . . . provide that close connection to the production process that makes craft beer resonate with beer lovers” ([Watson](#)). The past four years, many breweries seized the opportunity to open taprooms for their customers to buy and enjoy their beer on their premises.

But now the opportunity created two sessions ago may be taken away from breweries.

Under current law, a brewery must produce no more than a certain number of barrels annually—depending on the permit—at a specific location in order to be allowed to open a taproom and sell to consumers. There is also a cap on the number of barrels they can sell to consumers annually in their taprooms.

HB 3287 would count toward these caps the cumulative production and sales at all of the locations owned by a permit holder, significantly limiting the brewers that could open taprooms. Brewers with a production in excess of the production cap under the new legislation would still be allowed to sell to final consumers under certain conditions, including having

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to sell their own beer to a distributor and then immediately buying it back from the distributor for cash in order to sell the beer in their own taprooms on the same premises as their brewery ([HB 3287](#)).

The new restrictions will harm entrepreneurs, workers, and consumers in the beer 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 would unnecessarily restrict economic activity. 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 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 the connection of producers with consumers. Craft breweries should be able to have a taproom if they want to make such 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

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