

Date of Hearing: April 18, 2018

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 2573 (Low) – As Amended April 2, 2018

**SUBJECT:** Beer: premiums, gifts, and free goods

**SUMMARY:** With regard to beer, would authorize a beer manufacturer, as defined, to give advertising specialties to an on-sale retail licensee, subject to specified conditions. The advertising specialties shall exceed fifty dollars (\$50) per brand in any one calendar year per retail premises, determined as the actual costs of the item to the supplier who initially purchased it, excluding transportation, shipping, and installation costs. The giving of any advertising specialty shall not be conditioned upon the purchase of the beer manufacturer's product. Specifically, **this bill:**

1) Provides with respect to beer, a beer manufacturer may give advertising specialties to an on-sale retail licensee, subject to the following conditions:

(a) The advertising specialties bear conspicuous advertising required of a sign.

(b) The advertising specialties, if given to an on-sale retail licensee, do not exceed fifty dollars (\$50) per brand in any one calendar year per retail premises, determined as the actual costs of the item to the supplier who initially purchased it, excluding transportation, shipping, and installation costs.

(c) The giving of any advertising specialty is not conditioned upon the purchase of the beer manufacturer's product.

(d) Except as provided, a beer wholesaler shall not directly or indirectly underwrite, share in, or contribute to, the costs of advertising specialties, any costs of transportation, shipping, or installation, or serve as the agent of the beer manufacturer to deliver, stock, store, or install advertising specialties for an on-sale retailer.

(2) Provides advertising specialties given free of charge shall not be sold by the on-sale retail licensee.

(3) Specifies that a licensee authorized to give advertising specialties, as defined, shall not be precluded from doing so on the basis of having an interest in any other type of alcoholic beverage license within or without the state.

(4) States that "beer manufacturer" includes a holder of a beer manufacturer's license, a holder of an out-of-state beer manufacturer's certificate, an out-of-state vendor that holds a certificate of compliance, or a holder of a beer and wine importer's general license.

**EXISTING LAW:**

1) Establishes the Department of Alcoholic Beverage Control (ABC) and grants it exclusive authority to administer the provisions of the Alcoholic Beverage Control Act (Act) in accordance with laws enacted by the Legislature. This involves licensing individuals and businesses

associated with the manufacture, importation and sale of alcoholic beverages in this state and the collection of license fees or occupation taxes for this purpose.

- 2) States that "Tied-house" law separates the alcoholic beverage industry into three component parts of manufacturer, wholesaler, and retailer. The original policy rationale for this body of law was to prohibit the vertical integration of the alcohol industry and to protect the public from predatory marketing practices. Generally, other than exemptions granted by the Legislature, the holder of one type of license is not permitted to do business as another type of licensee within the "three-tier" system.
- 3) Provides no licensee shall, directly or indirectly, give any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage, except as provided by rules that shall be adopted by ABC, as defined.
- 4) Specifies that no rule of ABC may permit a licensee to give any premium, gift, or free goods of greater than inconsequential value in connection with the sale or distribution of beer. With respect to beer, premiums, gifts, or free goods, including advertising specialties that have no significant utilitarian value other than advertising, shall be deemed to have greater than inconsequential value if they cost more than \$0.25 per unit, or cost more than \$15 in the aggregate for all those items given by a single supplier to a single retail premises per calendar year.
- 5) Provides that no rule of ABC may impose a dollar limit for consumer advertising specialties furnished by a beer manufacturer to the general public other than \$3 per unit original cost to the beer manufacturer who purchased it. The consumer advertising specialties furnished by a beer manufacturer are intended only for adults of legal drinking age. Coin banks, toys, balloons, magic tricks, miniature bottles or cans, confections, dolls, or other items that appeal to minors or underage drinkers may not be used in connection with the merchandising of beer.
- 6) Prohibits the ABC from imposing a dollar limit of less than \$5 for consumer advertising specialties furnished by a distilled spirits supplier to a retailer or the general public, as specified.
- 7) Provides with respect to distilled spirits and wines, a licensee may furnish, give, rent, loan, or sell advertising specialties to a retailer, provided those items bear conspicuous advertising required of a sign and the total value of all retailer advertising specialties furnished by a supplier, directly or indirectly, to a retailer do not exceed fifty dollars (\$50) per brand in any one calendar year per retail premises. The value of a retailer advertising specialty is the actual cost of that item to the supplier who initially purchased it, excluding transportation and installation costs. The furnishing or giving of any retailer advertising specialty shall not be conditioned upon the purchase of the supplier's product. Retail advertising specialties given or furnished free of charge may not be sold by the retail licensee.
- 8) Allows a beer manufacturer, as defined, to provide directly to consumers free or discounted rides through taxicabs, transportation network companies, or any other ride service for the purpose of furthering public safety.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

Tied-house laws. As noted above, Tied-house laws separate the alcoholic beverage industry into a three-tier license system (manufacturer, wholesaler, and retailers) and generally prohibit alcoholic beverage licensees from giving any gift in connection with the sale or distribution of an alcoholic beverage (free goods, services, or advertising).

The original policy rationale for this body of law was to (a) promote the state's interest in an orderly market; (b) prohibit the vertical integration and dominance by a single producer in the market place; (c) prohibit commercial bribery and to protect the public from predatory marketing practices; and, (d) discourage and/or prevent the intemperate use of alcoholic beverages.

Numerous exceptions to these restrictions have been enacted throughout the years in those specific instances where the Legislature determined that the public's interests were protected.

With respect to beer, existing law provides that premiums, gifts, or free goods, including advertising specialties that have no significant utilitarian value other than advertising, shall be deemed to have greater than inconsequential value if they cost more than \$0.25 per unit, or cost more than \$15 in the aggregate for all those items given by a single supplier to a single retail premises per calendar year. ABC Rule 106(e)(2) provides the following examples of the kinds of consumer giveaway items with "inconsequential" value: ash trays, bottle or can openers, litter or shopping bags, matches, recipe cards, pamphlets, pencils, post cards, hats, posters, bottle or can stoppers, etc.

Purpose of the bill. According to the author's office, "Tied-house laws are in California's statutes for a reason. In general, they were enacted to prohibit the alcohol industry from vertically integrating and to protect the public from predatory marketing practices. However, since 1988, the wine and distilled spirits industries have been able to provide up to \$50 per brand in advertising specialties in any one calendar year to an on-sale retail licensee. AB 2573 will create parity between beer manufacturers and wine and spirits manufacturers by allowing beer manufacturers to provide up to fifty dollars (\$50) in advertising specialties per brand directly to an on-sale retailer in a calendar year."

The author points out that the State of New York allows beer manufacturers to provide up to \$100 per brand per retail establishment in a calendar year. In North Carolina, the limit is \$78 per brand per year. Maine permits up to \$300 per retailer overall. In an analysis of all 50 states, plus Washington D.C.: 11 states permit the giving of glassware, napkins, coasters, etc. with no restrictions and 30 states permit the giving of glassware, napkins, coasters, etc. is legal with some restrictions.

In April 2017, Florida Governor Rick Scott signed HB 961 which provides guidelines for a licensed malt beverage vendor to accept glassware from a distributor, at no charge. The distributor shall not give the vendor more than 10 cases per calendar year per licensed premises. The bill provides definitions as follows: a "case" means a box containing up to 24 pieces of glassware; "glassware" means a glass container that holds up to 23 fluid ounces.

In support. In support, Anheuser-Busch (AB) writes, "Since 1988, wine and spirits manufacturers have enjoyed an advertising privilege not available to beer manufacturers. Current law allows wine and spirits manufacturers to provide retailer-advertising specialties, up to fifty dollars (\$50) per brand in any one calendar year per on-sale retail premises. Retailer advertising specialties include, but are not limited to, branded trays, napkins, towels, glassware

and other similar items approved by ABC. This bill aims to level the playing field by allowing beer manufacturers the same privilege."

AB emphasizes that "Elevating the customers' drinking experience by allowing beer to be served in glasses the beer manufacturer intended is a priority for Anheuser-Busch. AB 2573 would offer all beer manufacturers the opportunity to provide branded glassware (in addition to other retailer advertising specialties), directly to retailers where beer is served for on-premise consumption. Having the appropriate style of branded glass (tulip, pilsner, snifter, and chalice) available to consumers at on-premises retail locations enhances the overall image of beer while helping retailers provide the best beer drinking experience to customers. With reasonable restrictions, this bill will help get such glassware into the market."

In opposition. In opposition, the California Craft Brewers Association (CCBA) writes, "AB 2573 will allow beer manufacturers to furnish fifty dollars (\$50) in advertising specialties per brand to an on-sale retail licensee in any one calendar year per retail premises. Adding further uncertainty to the bill, the term "brand" is not defined in the Act. Although ABC has stated their interpretation of a "brand" is each product (style/flavor) of beer marketed by a manufacturer, there is no clear definition of this term making this bill difficult for the ABC to enforce. Under ABC's current interpretation of the term "brand," Anheuser-Busch InBev (ABI) markets approximately 100 different brands of beer in California. Under this bill, ABI would be able to giveaway upwards of \$5,000 in free goods to each premise of an on-sale retail licensee. To a restaurant chain with 100 units, the amounts could exceed \$500,000 in "gifts." This would violate the primary intent of our state's tied-house laws. In addition, it is not consistent with federal statutes or regulations nor our state's goal to prevent abusive marketing practices."

CCBA further states, "current law prohibits any beer manufacturer licensee from directly, indirectly giving any premium, gift, or free goods of greater than inconsequential value in connection with the sale or distribution of beer. Premiums, gifts or free goods, including advertising specialties that have no utilitarian value other than advertising are deemed to be inconsequential if their value does not exceed \$.25 per unit or \$15 in the aggregate for all those items given by a single supplier to a single retail premise per calendar year. These existing limits were established in 1988. If the 1988 limits were adjusted by the Consumer Price Index to 2018 dollars, the new limits would be \$.54/unit and \$32.28 in the aggregate."

CCBA would support "a reasonable increase to the existing limits established in current law. CCBA writes, under the bill "gifts" will be used to induce retailers to replace local California craft brands on menus and tap-handles with the "craft brands" marketed by ABI. AB 2573 will severely disrupt the marketplace and place at a distinct disadvantage the independent craft brewers which today provide over 50,000 jobs and a \$7.3 billion economic impact to the State of California."

Support if Amended. MillerCoors has taken the position of support, if amended. MillerCoors requests an amendment that specifically limits the free items to branded glassware or cups. MillerCoors believes "that branded glassware and cups highlight the consumers' experience when enjoying a beer. Appropriate and specialized glassware or cups for different styles of beer enhance the overall experience for our consumers in an ever-competing environment. Furthermore, a reasonable capped amount per retailer/per year is important but would still allow brewers an option currently only available to other segments of the alcohol industry but not beer manufacturers."

Prior legislation. AB 711 (Low), Chapter 226, Statutes of 2017. Allows a beer manufacturer, as defined, to provide consumers free or discounted rides through taxicabs, transportation network companies, or any other ride service for the purpose of furthering public safety.

AB 609 (Santiago), Chapter 295, Statutes of 2017. Would extend the sunset date for five years, from 2018 to 2023, on a specific provision in the Act, which permits specified licensees (distilled spirits manufacturers and winegrowers) or an authorized agent, to provide, free of charge, entertainment, food, and distilled spirits, wine, or nonalcoholic beverages to consumers at an invitation-only event. Additionally, the bill would allow the person authorized to conduct a hosted event to provide attendees at the event with a free ride home.

AB 1116 (Hall), Chapter 461, Statutes of 2013. Expanded an existing provision of law that permits certain alcoholic beverage producers to hold private, free of charge, invitational-only promotional events, to allow these events to be held on the premises of a “hotel,” as defined; and extended the sunset on this provision of law from January 1, 2014 to January 1, 2018.

AB 1282 (Hall), Chapter 521, Statutes of 2009. Extended to out-of-state domestic and overseas brewers, as well as importers, the same privileges as California brewers have with respect to the dollar value of advertising specialty items that may be given away to adult consumers.

AB 2293 (De leon), Chapter 638, Statutes of 2008. First authorized distilled spirits manufacturers and winegrowers to host invitation-only promotional events on premises for which a caterer’s permit authorization has been issued and allowed the person authorized to hold such an event to provide attendees with a free ride home or to a hotel or motel where the attendee is staying.

AB 1245 (Torrico), Chapter 629, Statutes of 2008. Modified an existing provision of the Act to allow beer manufacturers to give adult consumers promotional advertising items valued up to \$3.

SB 993 (Burton), Chapter 544, Statutes of 1997. Among other things, provided that no rule of ABC may impose a dollar limit for consumer advertising specialties furnished by a distilled spirits supplier to a retailer or to the general public of less than \$5 per unit original cost to the supplier who purchased it.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Anheuser-Busch  
California Teamsters

### **Opposition**

Alcohol Justice  
California Craft Brewers Association

**Analysis Prepared by:** Eric Johnson / G.O. / (916) 319-2531