

Date of Hearing: April 19, 2017

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 522 (Cunningham) – As Introduced February 13, 2017

SUBJECT: Alcoholic beverages: charitable organizations: raffles

SUMMARY: Clarifies that a charitable organization, as defined, that has obtained a raffle registration from the Department of Justice (DOJ) and to which has been issued a special temporary on-sale or off-sale beer or wine license, may hold a raffle involving a prize of alcoholic beverages without violating the Alcoholic Beverage Control Act (Act).

EXISTING LAW:

- 1) Establishes the Department of Alcoholic Beverage Control (ABC) and grants it exclusive authority to administer the provisions of the 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) Existing law, known as the "tied-house" law or "three-tier" system, separates the alcoholic beverage industry into three component parts of manufacturer (the first tier), wholesaler (the second tier), and retailer (the third tier). 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. Tied-house laws generally prohibit suppliers and retailers from sharing common owners and legally restrict alcohol beverage suppliers' ability to gain control over retailers through indirect means. 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) Prohibits any licensee from giving any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage, but permits alcoholic beverages to be provided in consumer contests and sweepstakes subject to specified conditions.
- 4) Permits ABC to issue a special temporary on-sale or off-sale beer or wine license to certain nonprofit corporations that entitles the licensee to sell beer or wine, as specified. Wine is an allowable raffle item, but a non-profit would need to register with ABC for a daily special temporary license (cost \$100). This would allow the nonprofit organization to serve and accept wine donations as well as allowing patrons to take wine away from the fundraising activity.
- 5) Authorizes, under the California Constitution, to permit private, nonprofit, eligible organizations to conduct raffles as a funding mechanism to support beneficial and charitable works if at least 90% of the gross receipts from the raffle go directly to beneficial or charitable purposes in California.
- 6) Generally makes it a misdemeanor for a person to sell chances in a lottery, but excepts from this prohibition a charitable organization that has been registered with the Department of Justice that conducts a raffle pursuant to certain requirements. Defines a "raffle" as a scheme for the

distribution of prizes by chance among persons who have paid money for paper tickets that provide the opportunity to win these prizes and where specified conditions are met.

7) Prohibits any raffle to be conducted by means of, or otherwise utilize any gaming machine, apparatus, or device, whether or not that machine, apparatus, or device meets the definition of a slot machine as currently defined in California law.

8) Authorizes, under the California Constitution, for the Legislature to amend the percentage of gross receipts required to be dedicated to beneficial or charitable purposes by a statute passed by a 2/3 vote of each house of the Legislature.

FISCAL EFFECT: Unknown

COMMENTS:

Background. California Penal Code Section 320.5, adopted pursuant to a constitutional amendment approved by voters in 2000, permits qualified charities to conduct raffles to raise funds for beneficial or charitable purposes in the state. Only eligible private, tax-exempt nonprofit organizations qualified to conduct business in California for at least one year prior to conducting the raffle may conduct raffles to raise funds for the organization and charitable or beneficial purposes in California.

Unless specifically exempted, a nonprofit organization must register with the Attorney General's Registry of Charitable Trusts prior to conducting the raffle and file an aggregate financial disclosure report for all raffles held during the reporting year.

A raffle is a type of lottery in which prizes are awarded to people who pay for a chance to win. Each person enters the game of chance by submitting a detachable coupon or stub from the paper ticket purchased. At least 90 percent of the gross receipts from raffle ticket sales must be used by the eligible tax-exempt organization to benefit or support beneficial or charitable purposes in California.

Penal Code section 320.5 does not prohibit individuals affiliated with an organization from participating in a raffle held by the organization. Awarding raffle prizes by use of a gaming machine, apparatus, or device such as a slot machine is prohibited. Operating or conducting a raffle via the Internet is also prohibited. However, the organization conducting the raffle may advertise the raffle on the Internet.

Under current law, a silent auction is not considered a raffle so a charity is not required to register with the Registry of Charitable Trusts before conducting silent auction activities. A silent auction is not a game of chance. Unlike a raffle where multiple participants pay for a chance to win a prize based on a random draw, a silent auction is a sale of an item to the highest bidder

According to the author's office, there is an absence of clear guidance and a lack of uniform enforcement regarding whether non-profit organizations may include alcoholic beverages as prizes in fundraising raffles. On the one hand, the Registry of Charitable Trusts is responsible for licensing raffles, but does not have the authority to issue a license that includes alcoholic beverages. While ABC grants single-day licenses for non-profits to "auction" wine, having alcohol as a prize violates Business and Professions Code 25600.1 (raffle) or 25600.2

(sweepstakes). Further complicating things, ABC states that it does not have the authority to control the conduct of raffles, since such authority is vested with the Registry.

Purpose of the bill. According to the author's office, many non-profits include wine (and other alcoholic beverages) in fundraising raffles without the approval of either the Registry of Charitable Trusts or ABC, and are thus within ambiguity in current law. Under ABC statutes and regulations, "free goods" are not allowed to be given away, including as prizes for contests, sweepstakes, raffles, etc., in conjunction with the sale or advertisement of alcohol (some exceptions exist for novelty items).

The author states this bill is a common-sense measure that would allow non-profits to raise money with raffle prizes of alcohol donated by a winegrower, beer manufacturer, distilled spirits manufacturer, distilled spirits manufacturer's agent or an importer.

The author believes that a raffle participant and/or nonprofit should not be punished for mistakenly purchasing or offering alcoholic beverages at a charitable event. AB 522 will clarify existing law and allow non-profits to engage in fundraising without the fear of running afoul of the law and specified regulations.

Proponents contend this bill would allow nonprofits to raise more money than if they conducted a "wine auction" where individuals bid on single bottles of alcohol.

In support. In support, the Conference of California Bar Associations states there is an absence of clear guidance and a lack of uniform enforcement regarding whether non-profit organizations may include donated alcoholic beverages (e.g., bottles of wine) as prizes in fundraising raffles. AB 522 would address this issue by specifying in statute that a nonprofit issued a special temporary on-sale or off-sale beer or wine license that obtains a raffle registration from DOJ may hold a raffle involving a prize of alcoholic beverages. This will eliminate the uncertainty surrounding current law and permit California nonprofits to conduct wine raffles as part of their fundraisers, without fear that they will run afoul of the law.

Prior legislation. SB 549 (Hall), Chapter 509, Statutes of 2015. Authorized an eligible organization, as defined, to conduct a 50/50 raffle for the purpose of directly supporting a specified beneficial or charitable purpose in California, or financially supporting another private, nonprofit, eligible organization.

SB 200 (Correa), Chapter 38, Statutes of 2009. Authorized eligible organizations to advertise raffles over the Internet.

AB 1964 (Evans), Chapter 71, Statutes of 2008. This bill (1) allowed a nonprofit organization to store donated wine on their premises while they are waiting for a license to sell the wine at a later event, and (2) increases the number of times that a special temporary on-sale and off-sale license can be issued from once per year to three times per year.

AB 323 (Evans), Chapter 131, Statutes of 2007. Among other things, modified the Act to enable custom crush wine producers (boutique wineries) to donate and pour their wine at wine tasting events conducted by nonprofit organizations.

SB 88 (Chesbro), Chapter 588, Statutes of 2003. Created a new “wine sales event” permit within the Act to enable licensed winegrowers to sell bottled wine at certain events held by qualified nonprofit organizations if approved by the ABC.

AB 2927 (Wiggins), Chapter 523, Statutes of 2004. Specifies that a special temporary license shall be issued only once in a calendar year, and would allow alcohol to be sold at less than the minimum retail price by a nonprofit charitable corporation, as specified.

AB 1505 (Wiggins), Chapter 270, Statutes of 2003. Provided that wine may be sold or orders solicited, when a wine tasting is held off the winegrower’s premises at an event sponsored by a private nonprofit organization, except that the winegrower would be permitted to accept orders for the sale of wine when the sales transaction is completed at the winegrower’s premises.

SB 639 (McPherson), Chapter 778, Statutes of 2000. Permitted raffles to be conducted by private, nonprofit organizations, for the purposes of providing financial support for beneficial charitable works if, among other criteria, at least 90% of the gross receipts from the sale of raffle tickets are used to benefit or provide support for the charitable or beneficial purposes of the conducting nonprofit.

SCA 4 (McPherson), Resolution Chapter 123, Statutes of 1999. Placed Proposition 17 on the March 2000 ballot, which was approved by the voters to authorize charitable raffles in California, provided that at least 90% of the Gross receipts from the raffle go directly to beneficial or charitable purposes, as defined.

REGISTERED SUPPORT / OPPOSITION:

Support

Conference of California Bar Associations
Family Winemakers of California

Opposition

Alcohol Justice

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