

Date of Hearing: April 19, 2017

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 711 (Low) – As Amended March 21, 2017

SUBJECT: Beer manufacturers: free or discounted rides

SUMMARY: Would allow a beer manufacturer, as defined, to provide directly to consumers free or discounted rides through taxicabs, transportation network companies, or any other ride service. The free or discounted rides may be provided by vouchers, codes, or any other method to deliver the free or discounted ride.

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) 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.
- 3) 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.
- 4) 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.
- 5) Authorizes until January 1, 2018, a manufacturer of distilled spirits, distilled spirits manufacturer's agent, out-of-state distilled spirits shipper's certificate holder, winegrower, rectifier, or distiller, or its authorized unlicensed agent, to provide consumers at an invitation-only event in connection with the sale or distribution of wine or distilled spirits free ground transportation home, as described. The person authorized to conduct these events may provide attendees at the event with a free ride home. The free rides shall only constitute free ground transportation to attendees' homes or to hotels or motels where attendees are staying.

6) States that the "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.

FISCAL EFFECT: Unknown

COMMENTS:

Under existing provisions of the Act, alcoholic beverage manufacturers are precluded from promoting or operating a designated driver program that provides such service to patrons of a facility selling alcohol to the public. This prohibition exists as part of California's long standing three-tier policy of alcoholic beverage laws that will not allow a particular entity (manufacturer) to give something of value (such as a designated driver program) to a member of another tier (retailer).

Numerous exceptions to this restriction have been enacted through the years in specific instances where the Legislature determined that the public's interests were protected. However, the Legislature traditionally does not grant exemptions that favors the products of the entity seeking the exemption, or exemptions that unfairly compromise the role of the distributors.

This bill provides a narrow exception to this policy by allowing a beer manufacturer to provide directly to consumers free or discounted rides through taxicabs, transportation network companies, or any other ride service. The free or discounted rides may be provided by vouchers, codes, or any other method to deliver the free or discounted ride.

Purpose of the bill. According to the author's office, free or discounted rides are permissible in over 44 states, plus the District of Columbia. The offer is altered to conform to state laws, which all vary. For instance, from September to December last year, New York, Colorado, Illinois, and Florida collaborated with a beer manufacturer and transportation network company on a designated driver program. The program provided 5,000 \$10 credits every weekend. Massachusetts, Pennsylvania, and Washington, DC, joined the other states in the designated driver program to offer 10,000 \$10 credits over the holidays. Credits are redeemable on Friday and Saturday, between 10 p.m. and 2 a.m. local time. The program is designed to be accessed when people are returning home after a night out. Under the provisions of AB 711, California could potentially join these states by participating in the designated driver program or similar type programs.

According to the author, current law prohibits alcoholic beverage licensees from giving a gift or any free good in connection with the sale of alcohol. However, an existing tied-house exception does allow certain alcoholic beverage producers to provide consumers free ground transportation (safe rides) to homes, hotels or motels where attendees are staying, as long as the event is by invitation-only. Beer manufacturers are not included in this exception.

The author points out that in 2016; Super Bowl 50 was hosted in Silicon Valley. The entire Bay Area community came together to ensure it was a successful, family-friendly, and safe event. Beer manufacturers wanted to play their part in this community success by providing attendees with a ride home via vouchers or discount codes. Unfortunately, they were unable to provide

this service for safe modes of post-alcohol consumption transportation because of the \$3 limit under current law.

In support. Anheuser-Busch states, "It is important to note that this bill is based on the premise that it is a responsible approach for sellers of alcoholic beverages, in conjunction with alcoholic beverage manufacturers and their agents, to offer and promote alternative transportation to patrons. For more than 30 years, Anheuser-Busch has invested in efforts to promote responsible drinking and discourage harmful use of alcohol, including drunk driving and underage drinking. To help ensure that our products continue to be consumed as intended and help bring about even more positive behavior change, Anheuser-Busch has partnered with transportation companies around the country to promote safe rides for consumers. This campaign marks the largest partnership of its kind between a beverage and ridesharing company aimed at reducing drunk driving."

Double-referral. This measure is double-referred to the Assembly Committee Communications and Conveyance.

Author amendment. The author will offer the following amendment in committee to clarify that a beer and wine wholesaler shall not be liable for the cost of providing transportation services to a consumer: *"A beer and wine wholesaler shall not directly or indirectly underwrite, share in, or contribute to, the costs of free or discounted rides or serve as an agent of a beer manufacturer to provide free or discounted rides to consumers."*

Policy consideration. The author might consider amending the bill to clarify that "free or discounted ride" shall be for the purpose of a "safe ride" and not to another licensed establishment (excluding hotels, motels, or lodging place) where alcohol may be consumed. This would be consistent with a provision contained in AB 1116 (Hall), Chapter 461, Statutes of 2013, which stated, *"the free rides shall only constitute free ground transportation to attendees' homes or to hotels or motels where attendees are staying."*

Prior legislation. 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, with entertainment, food and beverages, for a limited number of consumers over 21 years of age and subject to specified conditions, to also allow such events to be held on the premises of a "hotel," as defined; and extends the sunset 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 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: 1) 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; and, 2) authorized a licensed distilled spirits manufacturer to conduct tastings of distilled spirits on the licensed premises under specified conditions.

REGISTERED SUPPORT / OPPOSITION:

Support

Anheuser-Busch

Opposition

Alcohol Justice

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