

CONCURRENCE IN SENATE AMENDMENTS  
AB 1722 (Committee on Governmental Organization)  
As Amended September 7, 2017  
Majority vote

ASSEMBLY: 76-0 May 4, 2017 SENATE: 40-0 September 14, 2017

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Original Committee Reference: **G.O.**

**SUMMARY:** Modifies an existing provision of the Alcoholic Beverage Control Act (Act), that prohibits a nonretail licensee, as defined, from offering, funding, producing, sponsoring, promoting, furnishing, or redeeming certain consumer coupons, by revising the definition of a “coupon” to remove the requirement that the discount be instantly provided and that an alcoholic beverage be purchased. In addition, this bill includes a mail-in rebate or mail-in discount, except as otherwise provided, as a “coupon.” In addition, the bill makes minor code maintenance changes to the Act.

**The Senate amendments:**

- 1) Modify an existing provision of law that prohibits a nonretail licensee, as defined, from offering, funding, producing, sponsoring, promoting, furnishing, or redeeming certain consumer by revising the definition of “coupon” to remove the requirement that the discount be instantly provided and that an alcoholic beverage be purchased. Additionally, this bill includes a mail-in rebate or mail-in discount, except as otherwise provided, as a “coupon.”
- 2) Revise the mail-in rebate exception to the definition of a coupon to among other things, to include “electronic or digital rebate.” Additionally, revises the definition of “nonretail licensee” and “vendor” for purposes of the discount exception to the definition of a coupon.
- 3) Revise the discount exception to the definition of a coupon to include rebates, and to also ensure that the exception may be applied broadly to all discounts or rebates offered by specified distilled spirits licensees, that offer a discount or rebate on the purchase of any item, so long as no nonalcoholic beer, beer, malt beverages, or wine products are advertised or promoted by these licensees in connection with the discount or rebate.

**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 for this purpose.
- 2) Prohibits a nonretail licensee, as defined, from offering, funding, producing, sponsoring, promoting, furnishing, or redeeming any type of coupon and a licensee authorized to sell alcoholic beverages at retail from accepting, redeeming, possessing, or utilizing any type of coupon that is funded, produced, sponsored, promoted, or furnished by a nonretail licensee.
- 3) Defines “nonretail licensee” to mean any person who owns or holds any interest, directly or indirectly, in any license, authorization, or permit issued pursuant to this division that authorizes

the manufacture, production, rectification, importation, or wholesaling of alcoholic beverages, except as specified.

4) Defines “coupon” to mean any method by which a consumer receives an instant discount at the time of a purchase of any item if an alcoholic beverage purchase is required in connection with such purchase that is funded, produced, sponsored, promoted, or furnished, either directly or indirectly, by a nonretail licensee, including, but not limited to, a paper coupon, a digital coupon, an instant redeemable coupon (IRC), or an electronic coupon commonly referred to as a scan or scanback.

5) Provides that a “coupon” does not include:

a) A mail-in rebate by which the consumer purchases an item and submits required information in order to receive a rebate or discount from the nonretail licensee.

b) A discount that is offered and funded by a distilled spirits manufacturer, distilled manufacturer’s agent, brandy manufacturer, brandy importer, distilled spirits rectifier general, holder of an out-of-state distilled spirits shipper certificate, distilled spirits importer general, distilled spirits importer, rectifier, brandy wholesaler, distilled spirits wholesaler, or a holder of a craft distiller’s license, regardless of other licenses held, that offers a discount on the purchase of a distilled spirits product if beer, malt beverages, or wine products are not advertised in connection with the coupon.

c) A discount that is offered and funded by a beer manufacturer on the purchase of beer, malt beverages, cider, or perry at the licensed premises of production or other licensed premises owned or leased and operated by the beer manufacturer.

d) A discount that is offered and funded by a winegrower on the purchase of wine sold directly by the winegrower to a consumer at or from the licensed premises of production or other licensed premises owned or leased and operated by the winegrower or through the Internet where a consumer buys directly from a winegrower.

6) A discount offered and funded by a beer and wine wholesaler, a beer and wine importer, a wine importer general, or a wine broker that offers a discount on the purchase of a nonalcoholic beverage item if beer, malt beverages, or wine products are not advertised in connection with the discount.

7) Prohibits the issuance of a license, other than an on-sale beer license, for premises situated more than one mile outside the limits of an incorporated city and within two miles of any camp or establishment of men, numbering 25 or more, engaged upon or in connection with the construction, repair, or operation of any work, improvement, or utility of a public or quasi-public character.

8) Provides that the aforementioned provision does not apply to the renewal of any licenses for any premises which have been established and licensed at least six months prior to the establishment of the camp or establishment of men, and such licenses, shall be subject to transfer as to person and premises, or either, in the same manner as any other license of the same type and character issued by ABC.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

**COMMENTS:** This bill, as amended in the Senate is inconsistent with Assembly actions.

Purpose of the bill: According to the Assembly Governmental Organization Committee, this bill is simply intended to repeal an obsolete provision of law and clean-up the Act. The provisions of AB 1722 related to the use of IRCs and mail-in rebates are intended to close a loophole identified after the passage of SB 1032 (Galgiani, Chapter 194, Statutes of 2016). SB 1032 expanded the existing coupon ban applicable to beer manufacturers to include winemakers, winegrowers, amongst others. The bill also prohibited retail licensees from redeeming such coupons.

In the past, proponents of the supplier-funded IRC bans have stated that these couponing practices had the potential to create competitive imbalances between large and small wineries and breweries. Unlike the major conglomerates, many smaller operations cannot afford to offer their own coupons. At the time, it was noted that these bans would also create parity between retailers by ensuring that coupons were not simply made available to a select number of retailers. Lastly, proponents noted that IRCs are a type of discount that offer an instant reduction in the price of a product when purchased at a retail facility, and can easily lend themselves to fraudulent practices like counterfeiting with little checks or balances.

Existing law still permits discounts on alcoholic beverages in other forms, including mail-in rebates by wine and beer suppliers, all retailer-funded coupons, and instant coupons funded by distilled spirits suppliers for distilled spirits (provided the coupon does not also discount beer or wine). Furthermore, beer manufacturers and winegrowers can still offer instant rebates at their premises, and can offer rebates directly to consumers on internet sales.

Since the passage of SB 1032 last year, concerns have been raised that existing law would allow beer and wine suppliers to fund IRCs in retail establishment for nonalcoholic products. According to the Wine Institute, the intent of SB 1032 was to ban all supplier-funded IRCs in retail establishments. This bill would amend the law to effectuate this ban on all supplier-funded IRCs.

The bill also clarifies that all supplier-funded mail-in coupons are still allowable, in both mail and electronic form, so long as specified concerns are met. These coupon types have a system for checks and balances, and have not been otherwise problematic. However, existing law does not explicitly include electronic or digital rebates in the mail-in rebate exception. AB 1722 updates this section of law to do so.

In addition, the bill repeals a provision of the Act, which prohibits the issuance of a license, other than an on-sale beer license, for any premise situated near a work camp area containing men engaged in construction or repair work of a public or quasi-public nature. The Assembly Governmental Organization Committee notes that at the time this statute was enacted in 1935, the Legislature's sentiment was that the sale of liquor and wine near work camp areas should not be allowed. It was believed that allowing such sales would invite public drunkenness and lewd behavior in the vicinity of these camps and contribute to diminished productivity by workers.

In support: Wine Institute states that they believe this bill “will provide clarity in existing law with regard to the use of IRCs and mail-in rebates, consistent with the intent of current law, and they are proud to sponsor these provisions.”

In opposition: Opponents argue that, “if AB 1722 is passed and signed into law it will negatively impact public health and safety and increase the potential of alcohol-related problems. Expanding the number of locations where licenses may be issued, no matter how minimal, will increase availability and therefore impact public health.”

Prior Legislation: SB 1105 (Mendoza, 2016). Would have repealed a provision of the Act, which prohibits the issuance of a license, other than an on-sale beer license, for any premise situated near a work camp area containing men engaged in construction or repair work of a public or quasi-public nature. (Amended to address an issue related to sports entertainment facilities)

SB 1032 (Galgiani, Chapter 194, Statutes of 2016). Expanded the prohibition on beer manufacturers and beer wholesalers from offering consumer coupons, as defined, to include those involved in the production of wine. This bill also prohibited licensed retailers from accepting or redeeming such coupons from these nonretail licensees.

AB 1928 (Bocanegra, Chapter 145, Statutes of 2014). Prohibited beer manufacturers and beer wholesalers, from offering, funding, producing, sponsoring, promoting, furnishing, or redeeming any type of coupon, as defined, and exempted from the definition of coupon certain rebates, coupons, and discounts.

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