

Date of Hearing: June 30, 2016

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

SB 1032 (Galgiani) – As Amended May 19, 2016

SENATE VOTE: 38-0

SUBJECT: Alcoholic beverages: coupons

SUMMARY: Expands a provision of the Alcoholic Beverage Control (ABC) Act that currently prohibits beer manufacturers and beer wholesalers from offering consumer coupons, as defined, that can be redeemed at the point of sale by licensed retailers and also prohibits licensed retailers from accepting or redeeming such coupons from beer manufacturers and beer wholesalers, to include a broader range of nonretail licensees, as defined. Specifically, **this bill:**

- 1) Modifies an existing provision of law that prohibits beer manufacturers and wholesalers from offering, funding, producing, sponsoring, promoting, furnishing, or redeeming certain consumer coupons by expanding the type of “nonretail licensees” that will be prohibited from offering consumer coupons that can be redeemed at the point of sale by licensed retailers.
- 2) Makes an identical change to the companion provision in law that prohibits 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 beer manufacturers and wholesalers by substituting the term “nonretail licensee” for beer manufacturers and wholesalers.
- 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 for a brewpub restaurant license issued pursuant to the ABC Act.
- 4) Revises the definition of coupon, as specified, and clarifies that wineries are not precluded from offering discounts directly to their consumers through wine clubs or purchases made over the Internet.
- 5) Permits a nonretail licensee, until and including March 31, 2017, to reimburse a licensee authorized to sell alcoholic beverages at retail for any coupon providing a consumer with an instant discount at the time of purchase of wine, if beer, malt beverages, cider or perry are not advertised in connection with such coupon, that is otherwise prohibited by this section of law, that was received, accepted, or possessed by such licensee authorized to sell alcoholic beverages at retail on or before December 31, 2016.
- 6) Makes it explicit that these provisions are not intended to preclude or prevent or restrict an on-sale or off-sale retail licensee that is not also a nonretail licensee from offering, funding, producing, sponsoring, promoting, furnishing, or redeeming a discount to consumers on the purchase of alcoholic beverages that is not otherwise prohibited by this section of law or any other provision of law.

7) Makes other conforming, clarifying and technical changes.

EXISTING LAW:

1) The enactment of the 21st Amendment to the United States (U.S.) Constitution in 1933 repealed the 18th Amendment and ended the era of Prohibition. Accordingly, states were granted the authority to establish alcoholic beverage laws and administrative structures to regulate the sale and distribution of alcoholic beverages.

2) Establishes the Department of Alcohol Beverage Control (ABC) and grants it exclusive authority to administer the provisions of the Alcoholic Beverage Control Act (Act). 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.

3) 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. Separates the alcoholic beverage industry into three component parts of manufacturer, wholesaler, and retailer.

4) Prohibits a beer manufacturer or a beer wholesaler from offering, funding, producing, sponsoring, promoting, furnishing, or redeeming any type of coupon, as specified. Also, prohibits licensed retailers from accepting, redeeming, possessing, or utilizing any type of coupon that is funded, produced, sponsored, promoted, or furnished by a beer manufacturer or beer wholesaler. 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 beer manufacturer; (b) a coupon offered and funded by a winegrower, a wine rectifier, a wine blender, 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 wine product if beer, malt beverages, cider, or perry are not advertised in connection with the coupon; (c) a coupon that is offered and funded by a distilled spirits manufacturer, distilled spirits importer general, distilled spirits importer, or distilled spirits wholesaler that offers a discount on the purchase of a distilled spirits product if beer, malt beverages, cider, or perry are not advertised in connection with the coupon; and, (d) 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 and operated by the beer manufacturer.

5) Prohibits any licensee from giving any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage, except as specifically authorized.

6) Defines an "on-sale" license as authorizing the sale of all types of alcoholic beverages: namely, beer, wine and distilled spirits, *for consumption on the premises* (such as at a restaurant or bar). An "off-sale" license authorizes the sale of all types of alcoholic beverages for consumption *off the premises* in original, sealed containers.

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the bill: According to the author, there is a lack of transparency in the beer market as it relates to beer manufacturer coupons. Additionally, there is a high level of inequity between the major beer conglomerates and the craft breweries in the marketplace.

Instant redeemable coupons (IRCs) offered by beer manufacturers are one type of discount that offers an instant reduction in the price of a product when purchased at a retail licensee. However, these beer manufacturer coupons could easily lend themselves to fraudulent practices, such as counterfeiting.

The author states, brewers and retailers are losing revenues and are being exposed to unnecessary liability due to fake coupons, which are often hard to distinguish from coupons that are produced by the manufacturer.

The author further states that the elimination of coupons will level the playing field between the major brewing conglomerates and the craft breweries that are quickly becoming a sizeable part of our state economy. Unlike the major conglomerates, most craft breweries, which are much smaller operations, cannot afford to offer their own beer coupons. The author points out that a number of states, including New York, Massachusetts, and Texas, already ban manufacturer beer coupons.

Background: This bill expands the above-referenced coupon ban applicable to beer manufacturers and wholesalers to include winemakers, winegrowers, wine blenders, amongst others, and also prohibits alcoholic beverage retail licensees from redeeming such coupons. This bill will prohibit winery-funded IRCs on direct wine purchases, as well as cross-merchandizing coupons where a consumer purchases bottle(s) of wine and receives a discount off of food and non-food items. This bill, however, does not ban winery funded, mail-in coupons and does not preclude any coupons or discounts offered and funded by licensed retailers. Additionally, this bill allows wineries to offer discounts directly to their consumers through wine clubs or purchases made over the Internet.

In support: Proponents of this bill believe that “the evolution of instant redeemable coupons has led to a number of adverse impacts. Specifically, current coupon practices can create competitive imbalances between large and small wineries as well as large grocery chains and smaller independent retailers. The deep discounting nature of IRC’s reduces brand equity of California wine brands, which the state’s wineries strive to maintain. In addition to not being as effective as other promotional activities, some couponing programs potentially damage the wine industry’s social responsibility ethic as a beverage of moderation to be enjoyed with family and friends. For example, some coupon programs observed in the marketplace would require consumers to purchase six bottles of wine in order to receive \$25-\$30 off groceries.”

Proponents state that such programs raise social responsibility issues, do little to help build California wine brands, and are cost prohibitive for smaller and mid-sized wineries. Proponents emphasize that “eliminating winery-funded instant redeemable coupons will further provide regulatory certainty and if signed into law, California would follow similar laws prohibiting IRCs already in place in nearly half of the nation’s states.”

In opposition: Writing in opposition, the California Grocers Association states, “While we appreciate the efforts to increase transparency, reduce fraudulent activity, and reduce waste by eliminating paper coupons, we utilize electronic discount programs to help drive innovation and bring new products to consumers. These programs are important to many retailers and to our consumers. They are viable options to paper coupons and by their very nature help prevent fraud and eliminate waste.”

Additionally, opponents argue that “this bill is unnecessary and that product manufacturers to whom SB 1032 would apply are not required by law to offer or fund discounts on their products. A statute is not required to eliminate manufacturer coupons – manufacturers can simply stop offering them. In the retail food industry, for example, some grocery companies have decided to stop honoring double coupons to help address fraud. They did not need a statute to do that. And in fact, some very successful manufacturers do not include coupons in their business model at all.”

Opponents believe that this bill is overly broad, creates a dangerous precedent, and in reality is not needed to accomplish the goal articulated by supporters.

Prior legislation: 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. Also, prohibited alcoholic beverage retail licensees from accepting, redeeming, possessing, or utilizing any type of coupon that is funded, produced, sponsored, promoted, or furnished by a beer manufacturer or beer wholesaler. In addition, this bill exempted from the definition of coupon certain rebates, coupons, and discounts.

AB 2184 (Hall), Chapter 480, Statutes of 2012. Authorized, until January 1, 2016, wine, beer and spirits producers to participate in promotional events held at an off-sale retail licensed location for the purpose of providing autographs on bottles or other items to consumers.

AB 778 (Padilla), Chapter 489, Statutes of 2012. Added a new section of law to the Act that authorizes wine, beer and spirits producers to conduct consumer “contests” or “sweepstakes.”

AB 1245 (Torrico), Chapter 629, Statutes of 2008. Allowed beer manufacturers to give adult consumers promotional advertising items valued at \$3 per unit original cost to the beer manufacturer who purchased it.

AB 2293 (De León), Chapter 638, Statutes of 2008. Added a new provision to the Act that permits a manufacturer of distilled spirits, winegrower, rectifier, or distiller, or its authorized agent to provide their product, as well as entertainment and food to consumers over 21 years of age during invitation-only events (free of charge), as specified. The events must occur on premises for which a caterer's permit authorization has been issued.

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

Alcohol Justice
Family Winemakers of California
Wine Institute

Opposition

California Grocers Association
California Retailers Association

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