

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Miguel Santiago, Chair

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

SUBJECT: Beer manufacturers: free or discounted rides

SUMMARY: Authorizes a beer manufacturer to provide consumers free or discounted rides. Specifically, **this bill:**

- 1) Authorizes a beer manufacturer to provide directly to consumers free or discounted rides through taxicabs, transportation network companies (TNC), or any other ride service.
- 2) Specifies that the specified free or discounted rides may be provided by vouchers, codes, or any other method to deliver the free or discounted ride.

EXISTING LAW:

- 1) Prohibits a licensee from, 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 specified rules. (Business and Profession Code (BPC) Section 25600)
- 2) Prohibit any rule of the Department of Alcoholic Beverage Control from permitting 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. (BPC Section 25600)
- 3) Authorizes, with respect to beer, a beer manufacturer to give consumer advertising specialties to the general public that do not exceed three dollars per unit original cost to the beer manufacturer who purchased it. (BPC Section 25600)
- 4) Authorizes 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, free of charge, entertainment, food, and distilled spirits, wine, or nonalcoholic beverages to consumers at an invitation-only event in connection with the sale or distribution of wine or distilled spirits, under specified conditions, including authorizing the person authorized to conduct the event to provide attendees at the event with a free ride home. Specifies that only free ground transportation to attendees' homes or to hotels or motels where attendees are staying constitute as a free ride. (BP 25600.5)
- 5) Establishes California's "Tied-House" Restrictions, which separates the alcoholic beverage industry into a three-tier license system (manufacturer, wholesaler, and retailers) and prohibits the holder of one type of license from doing business with a holder of another license within the three-tier system. (BPC Section 25500 et seq.)

- 6) Defines “transportation network company” to mean an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle. (Public Utilities Code Section 5431)

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Authors Statement:** According to the author, “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. AB 711 would allow beer manufacturers to provide a free or discounted ride via taxi or [TNC].”
- 2) **Background:** California law regulates different modes of passenger transportation for compensation including taxi services, which are regulated by cities and/or counties; and Passenger Stage Corporations (PSCs) and Charter Party Carriers (CPCs), which are regulated by the California Public Utilities Commission (CPUC). PSCs are services that provide transportation to the general public on an individual fare basis, such as scheduled bus operators, which are buses that operate on a fixed route and scheduled services, or airport shuttles, which operate on an on-call door-to-door share the ride service. CPCs are services that charter a vehicle, on a prearranged basis, for the exclusive use of an individual or group. Charges are based on the mileage or time of use, or a combination of both. The CPUC does not regulate the fees charged by CPCs. Types of CPCs include limousines, tour buses, sightseeing services, and charter and party buses. TNCs provide patrons prearranged transportation services through an online application on their smartphone or computer. The CPUC classifies TNCs as CPCs, therefore, falling under CPUC’s existing jurisdiction over such services.
- 3) **Tied House Restrictions:** Under current law, California’s “Tied-House” restrictions, separates the alcoholic beverage industry into a three-tier license system (manufacturer, wholesaler, and retailers) and prohibits the holder of one type of license from doing business with a holder of another license within the three-tier system. Hence, alcoholic beverage manufacturers are prohibited from promoting or operating a designed driver program that provides such services to retail patrons. However, there have been numerous exceptions that have been enacted through the years in situation deemed to be in the safety and protection of the public’s interest. For example, although current law prohibits alcoholic beverage licensees from given any gift in connection with the sale or distribution of beer, an existing tied-house exception allows certain alcoholic beverage producers at invitation-only events, to provide consumers free ground transportation to homes, hotels or motels where attendees are staying. Beer manufactures are not included in this exception.
- 4) **Super Bowl 50:** In 2016, the National Football League held Super Bowl 50 in Levi’s Stadium in Santa Clara, California. According to the author, 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 by providing attendees with a safe ride home through vouchers of discount codes for participants who may have consumed alcohol. Unfortunately, they were unable to do so due to the states prohibition on beer manufactures to offer advertising specialties, such as rides, over three dollars.

According to the author, over 44 states, including the District of Columbia, allow beer manufacturers to offer free or discounted rides. For example, in 2016, New York, Colorado, Illinois, and Florida collaborated with a beer manufacturer and TNCs on a designated driver program. The program provided 5,000 \$10 credits every weekend. In addition, Massachusetts, Pennsylvania, and Washington, DC, also joined in the designated driver program by offering 10,000 \$10 credits over the holidays. Credits were redeemable on Friday and Saturday, between 10 p.m. and 2 a.m. local time. The program was designed to be accessed when people are returning home after a night out.

This bill authorizes a beer manufacturer to provide directly to consumers free or discounted rides through taxicabs, TNCs, or any other ride service, as specified.

It is unclear if beer and wine wholesalers would be required to contribute to any cost of providing transportation services to a consumer. In addition, it is also unclear whether or not a consumer must be intoxicated in order to receive a free or discounted ride or if anyone can access the service. The effectiveness of the program to reduce drunk driving, will be depended on the ability of consumers who have consumed alcohol to access such free or discounted rides at certain times and locations.

Furthermore, it is unclear for what purposes can a beer manufacturer offer free or discounted rides to consumers. Arguably, the purpose of offering free or discounted rides should be to provide a safe ride back home, rather than to a location where alcohol may be consumed. Potentially any program established to offer such rides could be susceptible to abuse by allowing beer manufacturers to offer free rides to any location, not just rides home, which could incentive greater alcohol consumption.

The author may wish to consider an amendment to clarify that a beer and wine wholesaler shall not be liable for the cost of providing transportation services to a consumer.

5) **Suggested Amendments:**

25600 (x) “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.”

- 6) **Arguments in Support:** According to Anheuser-Bush, “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. The most recent effort in our long outstanding commitment to promote alcohol responsibility, has been a partnership with a ridesharing company in six states and the District of Columbia to provide free or discounted rides to consumers. This campaign marks the largest partnership of its kind between a beverage and ridesharing company aimed at reducing drunk driving. California law largely prohibits

alcoholic beverage licensees from giving a free or discounted ride in connection with the sale or marketing of alcohol. Assembly Bill 711 would allow California to join over 44 other states in which this type of drunk driving prevention is legal.”

- 7) **Double-referral:** This bill is double referred, having been previously heard by the Assembly Committee on Governmental Organization on April 19, 2017 and approved on a 20-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Anheuser-Busch

Opposition

None on file.

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