

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

AB 1088 (Blanca Rubio) – As Amended March 9, 2023

Policy Committee: Governmental Organization

Vote: 20 - 0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill extends, by one year to January 1, 2025, the authorization for a licensed craft distiller to directly ship distilled spirits to a consumer.

FISCAL EFFECT:

Minor and absorbable costs to the Department of Alcoholic Beverage Control (ABC) for enforcement if this business model first authorized during the COVID-19 pandemic is continued for one more year.

However, ABC notes it could incur significant legal costs of an unknown amount if the bill is challenged in court given the decision in *Granholm v. Heald* (2005) 544 U.S. 460, which ruled laws in New York and Michigan allowing in-state wineries, but not out-of-state wineries, to ship wine directly to consumers were unconstitutional.

COMMENTS:

1) **Purpose.** According to the author:

On average, online sales and direct-to-consumer shipping now account for 30% of craft distillers' revenue. Most of California's family-owned craft distilleries are slowly recovering from the COVID-19 pandemic. AB 1088 simply extends the flexibility afforded to the aforementioned small distillers for an additional year, providing the proper opportunity for in-person tasting rooms to recover the revenue and foot traffic lost during the pandemic. Additionally, it will allow for future conversations regarding the development of a permanent direct-to-consumer shipping solution that will appease the industry as a whole.

2) **Support and Opposition.** This bill is supported by the California Artisanal Distillers Guild, which argues "If this bill doesn't pass, craft distillers will continue to lose employees and some will go out of business due to lost revenue combined with reduced tourism numbers and the tough economy." This bill is also supported by numerous distillery businesses.

This bill is opposed by Alcohol Justice, which argues "Direct shipping promotes reflexive – instead of planned – consumption" and that "The bill fundamentally undermines the three-tier system, allowing all producers to also be distributors and retailers."

- 3) **Tied House.** California's tied-house law prevents the vertical integration of the alcohol industry by keeping the manufacturer, wholesaler and retailer separated. Generally, one type of license holder is not permitted to do business as another type of licensee, absent an exemption to tied-house law.
- 4) **Craft Distillers.** AB 1295 (Levine), Chapter 640, Statutes of 2015, created the craft distillers license (Type 74), which allowed a licensee to manufacture and sell specified amounts of distilled spirits per year directly to a consumer attending an on-premises tasting. ABC currently licenses over 160 craft distilleries in California, more than any other state. Although a consumer is no longer required to participate in a tasting prior to making a purchase, existing law specifies the sale must be made directly to a consumer at the licensed premises, thus prohibiting a licensee from shipping distilled spirits to the consumer.

After the Governor issued a statewide stay-at-home order during the COVID-19 pandemic, ABC issued the first of many regulatory relief notices to help the food and beverage industry. Amongst other provisions, the first notice temporarily allowed a craft distiller to ship up to 2.25 liters of spirits per day to consumers. The temporary relief was subsequently extended numerous times, until finally expiring on March 31, 2022.

As a result, AB 920 (Aguiar-Curry), Chapter 729, Statutes of 2022, codified the direct shipping privilege through January 1, 2024, with the following requirements: (a) the amount shipped cannot exceed the equivalent of 2.25 liters in any combination of prepackaged containers per consumer, per day, (b) the spirits must solely be for the consumer's personal use and not for resale, and (c) the distiller must require the common carrier to obtain the signature of an individual 21 years of age or older upon delivery. This bill extends the authorization provided by AB 920 to January 1, 2025.

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