

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 870  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

According to the latest edition of the *Beer Institute Brewer's Almanac*, beer consumption comprised 65.5 percent of the total amount of alcoholic drinks consumed in Texas in 2011. This number was down from the previous year, while distilled spirits and wine increased in their share of consumption. Beer manufacturers in Texas argue that inconsistencies in the state's marketing practices are a contributing factor as to why Texans are choosing to drink beer less often, and are instead choosing to drink wine and distilled spirits.

Under Texas's current regulatory system, manufacturers and wholesalers of distilled spirits, wine, and malt beverages/ale are allowed to give consumers novelty items of "limited value," while manufacturers and distributors of beer are limited to \$1.00 per wholesale cost. Those in the beer industry are also currently prohibited from co-packaging their products with other branded items, while manufacturers of wine and distilled spirits are free to co-package. Finally, those who sell liquor and wine are able to provide advertising specialties to retailers, while beer manufacturers are prohibited from such action.

S.B. 870 seeks to establish greater parity with regard to marketing practices for Texas's alcohol industry by increasing the amount that beer manufacturers and distributors can spend on novelty items, allowing for the co-packaging of beer and branded items, and granting beer manufacturers the authority to provide advertising specialties to retailers.

As proposed, S.B. 870 amends current law relating to marketing items provided by manufacturers, wholesalers, and distributors of alcoholic beverages to retailers or consumers.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTION 3 (Section 108.035, Alcoholic Beverage Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 102.04(b), Alcoholic Beverage Code, as follows:

(b) Provides that, except as permitted in Section 23.01 (Authorized Activities) or 108.035, no person to whom this section applies is authorized to make certain modifications. Deletes existing text providing that, except as permitted in Section 23.01 of this code, no person to whom this section applies is authorized to offer to a mixed beverage permittee a prize, premium, or other inducement, except as permitted by Section 102.07(b) of this code.

SECTION 2. Amends Sections 102.07(a) and (d), Alcoholic Beverage Code, as follows:

(a) Prohibits a person who owns or has an interest in the business of a distiller, brewer, rectifier, wholesaler, class B wholesaler, winery, or wine bottler, nor the agent, servant, or employee of such a person, except as provided in Subsections (d) (relating to authorizing a permittee to offer prizes, premiums, or gifts to a consumer) and (g) (relating to prohibiting a permittee from prearranging or preannouncing a promotional activity) and Section 108.035, from fulfilling certain criteria. Deletes existing text prohibiting a

person who owns or has an interest in the business of a distiller, brewer, rectifier, wholesaler, class B wholesaler, winery, or wine bottler, nor the agent, servant, or employee of such a person, except as provided in Subsections (b) (relating to a permittee is authorized to furnish to a retailer without cost advertising specialties showing the name of the product advertised), (d), and (g), from furnishing, giving, renting, lending, or selling to a retail dealer any equipment, fixtures, or supplies to be used in selling or dispensing alcoholic beverages, except that alcoholic beverages are authorized to be packaged in combination with other items if the package is designed to be delivered intact to the ultimate consumer and the additional items have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales.

(d) Deletes existing text authorizing a permittee covered under Subsection (a) to offer prizes, premiums, or gifts to a consumer.

SECTION 3. Amends Subchapter A, Chapter 108, Alcoholic Beverage Code, by adding Section 108.035, as follows:

Sec. 108.035. CERTAIN MARKETING ITEMS OF LIMITED VALUE AUTHORIZED. (a) Authorizes a person who holds a brewer's permit, nonresident brewer's permit, distiller's and rectifier's permit, winery permit, wine bottler's permit, wholesaler's permit, general class B wholesaler's permit, manufacturer's license, nonresident manufacturer's license, or general distributor's license, or the agent or employee of the person, notwithstanding any other provision of this code, to:

(1) offer to consumers branded prizes, premiums, or gifts, including novelty items that are designed to advertise or promote a specific product or brand, have a limited value, which the Texas Alcoholic Beverage Commission may establish by rule, and are not prohibited by Section 102.07(d);

(2) package alcoholic beverages in combination with other items if the package is designed to be delivered intact to the ultimate consumer and the additional items are branded and have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales; and

(3) provide a retailer with branded advertising specialties designed to advertise or promote a specific product or brand, the value of which may not exceed \$101 per retailer, per brand, per calendar year.

(b) Prohibits persons authorized to provide advertising specialties under Subsection (a)(3) from pooling or combining their dollar limitations to provide a retailer with advertising specialties valued in excess of the maximum permitted by that subdivision.

(c) Authorizes the administrator of TABC on the administrator's own motion or on the motion of a permittee or licensee, to increase or decrease the total amount of advertising specialties permitted under Subsection (a)(3) by not more than six percent based on the consumer price index and previous adjustments, if any. Provides that, for purposes of this subsection, "consumer price index" means the annual average over a calendar year of the consumer price index (all items, United States city average) published monthly by the Bureau of Labor Statistics, United States Department of Labor, or its successor in function.

SECTION 4. Amends Section 108.06, Alcoholic Beverage Code, to prohibit a manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, from offering a prize, premium, gift, or other inducement to a retailer, rather than to a dealer in or consumer of brewery products.

SECTION 5. Repealer: Section 102.07(b) (relating to authorizing a permittee to furnish to a retailer without cost advertising specialties showing the name of the product advertised), Alcoholic Beverage Code.

SECTION 6. Effective date: September 1, 2013.