

CONCURRENCE IN SENATE AMENDMENTS

AB 3139 (Gray and Chiu)

As Amended August 20, 2020

2/3 vote. Urgency

SUMMARY:

Makes changes to existing provisions of the Alcoholic Beverage Control Act (Act) relating to licensees and the operation of destroyed premises following a fire or other act of God, as well as the transfer of a license back to the location of the destroyed premises. The bill also provides a Tied-house exception to a for-profit theater with specified characteristics located in the City and County of San Francisco (the Orpheum and Golden Gate Theaters). In addition, this bill extends a current Tied-house exception that allows specified licensees to serve on the board of trustees, as specified, to a nonprofit theater company operating a theater in the City of Modesto.

The Senate Amendments:

- 1) Extend a current exception in law that allows specified licensees to serve on the board of trustees or as an officer, director, or employee or a nonprofit theater company operating in the county of Napa and in the City of Livermore to also include a similar exception to a nonprofit theater company operating a theater in the City of Modesto.
- 2) Extend a current Tied-house exception to allow specified licensees (*a beer manufacturer, winegrower, rectifier, distilled spirits manufacturer, craft distiller, or a distilled spirits manufacturer's agent*) to purchase advertising space and time, from special on-sale retail licensed premises, if all of the following conditions are met:
 - a) The on-sale retail licensed premises is a for-profit theater licensed with a special on-sale general license, as specified.
 - b) The on-sale retail licensed premises is configured with theatrical seating of at least 2,100 seats but no more than 2,400 seats.
 - c) The on-sale retail licensed premises is a historic theater that is located in the City and County of San Francisco, that was built prior to 1927, and that is either within a historic district as designated by the National Register of Historic Places or is designated as a Landmark by the San Francisco Historic Preservation Commission (the Orpheum and Golden Gate Theaters).
 - d) All payments for the purchase of advertising space and time shall be made pursuant to a written contract with the owner of the theater, the licensee, or the long-term tenant, as appropriate.
- 3) Make other minor code maintenance changes.

COMMENTS:**BACKGROUND:**

Tied-house laws. Tied-house laws generally prohibit suppliers and retailers from sharing common owners and legally restrict alcohol beverage suppliers' ability to gain control over

retailers through indirect means. The original policy rationale for this body of law was to: 1) promote the state's interest in an orderly market; 2) prohibit the vertical integration and dominance by a single producer in the marketplace; 3) prohibit commercial bribery and to protect the public from predatory marketing practices; and 4) discourage and/or prevent the intemperate use of alcoholic beverages.

These provisions prohibit a manufacturer from paying for advertising space at a stadium or sports arena where the facility is licensed to sell alcoholic beverages at events held at the stadium or arena.

Over the years numerous exceptions to this prohibition have been added to the ABC Act e.g. Levi's Stadium in Santa Clara, Oakland Coliseum in Oakland, Arrowhead Pond Arena in Anaheim, Kern County Arena in Bakersfield, the National Orange Show Events Center in San Bernardino, Auto Club Speedway, (formerly California Speedway) in Fontana, Grizzly Stadium in Fresno, Raley Field in West Sacramento, HP Pavilion in San Jose, StubHub Center (formerly the Home Depot Center) in Carson, and numerous other venues.

According to the Author:

According to the author's office, "this bill is the result of recent wildfires in California that destroyed ABC licensed establishments. After the fire, licensees were able to reopen their business at a temporary location while the original building was being rebuilt. But for some licensees the estimated construction period was more than six months. Under current law, however, an on-sale or off-sale alcoholic beverage licensee is only allowed to operate at a temporary location for six months without losing their liquor license."

This bill allows the Director of ABC, in his or her discretion, to extend the time period by an additional 60 days, so the business owner can rebuild their facilities in the event of a catastrophic fire or any act of God or other force beyond the control of the licensee. The bill also expands, the distance from 500 feet to 1,000 feet that a specified alcoholic beverage licensee can conduct business in an alternate location, of the licensees destroyed premises, while the licensed premises are being repaired or rebuilt. This change will give a business owner more discretion to secure a location to conduct related operations.

In addition, this bill would allow the Gallo Center for the Arts Board to apply for an annual on-sale general license with ABC. The Board directs operations for the Gallo Center for the Arts in downtown Modesto which sells beer and wine in the lobby before performances and during intermission. Revenue from these sales helps underwrite the costs of operating the theater. The Gallo Center was recently informed that it might be possible to qualify for an annual on-sale "theater" license for these sales, subject to specified exceptions. The only catch is that a member of the Gallo Center for the Arts Board is a licensed winegrower and existing law prohibits any winegrower from serving on the licensee's Board of Directors, except for a nonprofit theater company operating in the County of Napa or City of Livermore. AB 3139 would permit a licensed winegrower, to serve on the board of trustees of a nonprofit theater company operating a theater in the City of Modesto, as specified.

Lastly, the bill would allow beer manufacturers, winegrowers, distilled spirits rectifiers, craft distillers, distilled spirits manufacturers, or distilled spirits manufacturer's agents to purchase advertising space and time, in connection with described events, from, or on behalf of, on-sale retail licensees, at a for-profit theater with specified characteristics located in the City and County of San Francisco. AB 3139 would require all payments for the purchase of advertising

space and time to be made pursuant to a written contract with the owner of the theater, the licensee, or the long-term tenant, as appropriate.

Arguments in Support:

According to Broadway San Francisco, "our theaters have been shuttered since March 11th and will be amongst the last businesses to open under the state's phased re-opening plan. The economic pain caused by the closure is immeasurable and the slow climb out will be unpredictable and difficult. When we can re-open safely, AB 3139 will provide a modest allowance for relationships that will mutually benefit the Orpheum and Golden Gate theaters and alcohol manufacturers."

Arguments in Opposition:

None on file.

FISCAL COMMENTS:

According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

VOTES:

ASM GOVERNMENTAL ORGANIZATION: 20-0-1

YES: Gray, Bigelow, Aguiar-Curry, Berman, Bonta, Brough, Cooley, Daly, Gallagher, Eduardo Garcia, Gipson, Jones-Sawyer, Lackey, Low, Mathis, Melendez, Quirk-Silva, Robert Rivas, Blanca Rubio, Salas

ABS, ABST OR NV: Cooper

ASM APPROPRIATIONS: 18-0-0

YES: Gonzalez, Bigelow, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Megan Dahle, Diep, Eggman, Fong, Gabriel, Eduardo Garcia, Petrie-Norris, McCarty, Robert Rivas, Voepel

ASSEMBLY FLOOR: 76-0-3

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Lackey, Levine, Limón, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Nazarian, O'Donnell, Obernolte, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood, Rendon

ABS, ABST OR NV: Low, Muratsuchi, Quirk

SENATE FLOOR: 30-0-10

YES: Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Mitchell, Monning, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

ABS, ABST OR NV: Bates, Borgeas, Chang, Dahle, Grove, Jones, Melendez, Moorlach, Morrell, Wilk

UPDATED:

VERSION: August 20, 2020

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FN: 0003437