
SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

Senator Bill Dodd

Chair

2019 - 2020 Regular

Bill No: SB 58 **Hearing Date:** 3/12/2019
Author: Wiener, et al.
Version: 3/6/19 Amended
Urgency: No **Fiscal:** Yes
Consultant: Brian Duke

SUBJECT: Alcoholic beverages: hours of sale

DIGEST: This bill requires the Department of Alcoholic Beverage Control (ABC) to create a pilot program, beginning January 1, 2021, to issue an additional hours license to an on-sale licensee in a qualified city that would allow the selling, giving, or purchasing of alcoholic beverages between the hours of 2 a.m. and 4 a.m., upon completion of specified requirements.

ANALYSIS:

Existing law:

- 1) Establishes the Department of ABC and grants it exclusive authority to administer the provisions of the ABC Act in accordance with laws enacted by the Legislature. 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.
- 2) Provides that any on-sale or off-sale licensee, or agent or employee of the licensee, who sells, gives or delivers to any person any alcoholic beverage between the hours of 2 a.m. and 6 a.m. of the same day, and any person who knowingly purchases any alcoholic beverages between those hours, is guilty of a misdemeanor.
- 3) 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.

- 4) Caps the number of new on and off-sale general licenses issued by ABC at one for every 2,500 inhabitants of the county where the establishment is located for off-sale licenses, and 2,000:1 for on-sale licenses. If no licenses are available from the state due to the population restrictions, those people interested in obtaining a liquor license may purchase one from an existing licensee, for whatever price the market bears.

This bill:

- 1) Requires the Department of ABC, beginning January 1, 2021, to conduct a pilot program whereby the Department of ABC may issue an additional hours license that would authorize, the selling, giving, or purchasing of alcoholic beverages at an individual on-sale licensed premises between the hours of 2 a.m. and 4 a.m. within a qualified city.
- 2) Defines “qualified city” to mean the Cities of Cathedral City, Coachella, Fresno, Long Beach, Los Angeles, Oakland, Palm Springs, Sacramento, San Francisco, and West Hollywood.
- 3) Provides that in a city that has additional serving hours, any on-sale licensee, or agent or employee of the licensee, who sells or gives to any person any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of 4 a.m. and 6 a.m. of the same day, is guilty of a misdemeanor.
- 4) Requires the local governing body of a qualified city to designate a task force comprised of members, including at least one member of law enforcement and one additional member of the Department of the California Highway Patrol (CHP), to develop a recommended local plan that meets all of the following requirements:
 - a) Shows that the public convenience or necessity will be served by the additional hours.
 - b) Identifies the service area in which an on-sale licensed premises would be eligible for an additional hours license, and further identifies the area that will be affected by the additional hours and demonstrates how that area will benefit from the additional hours.
 - c) Shows significant support by residents and businesses within the additional hours service area for the additional hours, pursuant to a determination by the local governing body.
 - d) Includes an assessment by the local governing body, prepared in consultation with local law enforcement, regarding the potential impact of an

- additional hours service area and the public safety plan, created by local law enforcement, for managing those impacts that has been approved by the local governing body.
- e) The assessment shall include crime statistics, data derived from police reports, emergency medical response data, sanitation reports, and public health reports related to the additional hours service area.
 - f) Shows that transportation services are readily accessible in the additional hours service area during the additional service hours.
 - g) Includes programs to increase public awareness of the transportation services available and unavailable in the additional hours service area and the impacts of alcohol consumption.
 - h) Includes an assessment of the potential impact of an additional hours service area on adjacent cities, counties, and cities and counties, including, but not limited to, nearby law enforcement agencies.
 - i) Indicates that the qualified city chooses to participate in the pilot program.
- 5) Requires the local governing body of a qualified city, based upon its independent assessment, to adopt an ordinance that satisfies the elements of the local plan, and to submit the ordinance to the Department of ABC.
 - 6) Defines “local governing body” to mean the city council or the board of supervisors, as may be applicable, of a qualified city.
 - 7) Requires the Department of ABC, upon receipt of an ordinance adopted pursuant to this bill, to review the ordinance to ensure that the ordinance contains the information required by this the bill.
 - 8) Provides that an on-sale licensee issued an additional hours license shall require that all persons engaged in the sale or service of alcohol during the additional hours period complete a responsible beverage training course.
 - 9) Provides that off-sale privileges shall not be exercised during the additional hours period, and prohibits the transfer of an additional hours license between on-sale licensed premises, as specified.
 - 10) Authorizes the local governing body of a qualified city to charge an additional hours licensee a fee to fund local law enforcement; and, provides that the determination of the necessity for, and types of, local licensing and local permitting shall be made by the local governing body.
 - 11) Requires the Department of ABC, upon receipt of an application by an on-sale licensee for an additional hours license, to make a thorough investigation,

including whether the additional hours license sought by the applicant would unreasonable interfere with the quiet enjoyment of their property by the residents of the local community.

- 12) Requires the applicant to notify the law enforcement agencies of the city, the residents of the city located within 500 feet of the premises for which an additional hours license is sought, and any other interested parties as determined by the local governing body, of the application for an additional hours license within 30 consecutive days of the filing of the application, as specified.
- 13) Specifies that protests may be filed at any office of the Department of ABC within 30 days from the first date of notice of the filing of an application for an additional hours license.
- 14) Authorizes the Department of ABC to reject protests, as specified.
- 15) Requires the Department of ABC to notify a public agency or public official in writing who submitted a protest, if the Department of ABC recommends that an additional hours license be issued, as specified.
- 16) Authorizes a person whose protest has been rejected to file an accusation with the Department of ABC, within 10 days, and requires the Department of ABC to hold a hearing, as specified.
- 17) Authorizes any person who has filed a verified protest in a timely fashion that has been accepted, to request that the Department of ABC conduct a hearing on the issue or issues raised in the protest.
- 18) Provides that if a request for a hearing is filed with the Department of ABC pursuant to this bill, the Department of ABC shall schedule a hearing on the protest. The issues to be determined at the hearing shall be limited to those issues raised in the protest or protests of the person or persons requesting the hearing.
- 19) Provides that if a request for a hearing is not filed with the Department of ABC pursuant to this bill, any protest or protests shall be deemed withdrawn and the Department of ABC may approve the on-sale licensee's application for an additional hours license without any further proceedings. If the person filing the request for a hearing fails to appear at the hearing, the protest shall be deemed withdrawn.

- 20) Restricts access to premises with an additional hours license to patrons 21 years of age or older during the additional hours period. Any person under 21 years of age who enters and remains in the licensed premises during the additional hours period without lawful business is guilty of a misdemeanor punishable by a fine of not less than \$200. This provision does not prohibit the presence on the licensed premises of a person under 21 years of age that is otherwise authorized by law.
- 21) Requires the applicant for an additional hours license to pay a nonrefundable fee of \$2,500 at the time of application. An original and annual fee for an additional hours license shall be \$2,500.
- 22) Requires the Department of ABC to adopt rules and regulations to enforce the provisions of this bill, and provides that an additional hours license may be suspended or revoked separately from the on-sale license, as specified.
- 23) Requires the CHP, on or before January 1, 2025, to provide the Legislature and the Senate and Assembly Committees on Governmental Organization, with a report on the regional impact of the additional hours service areas, as specified.
- 24) Requires a qualified city that chooses to participate in the pilot program to provide the Legislature and the Senate and Assembly Committees on Governmental Organization with a report on the regional impact of the additional hours licenses within one year of the first additional hours license being issued in that city, and then once each year thereafter, as specified.
- 25) Includes a sunset date of January 2, 2025.
- 26) Makes various legislative findings and declarations.

Background

Purpose of the bill. According to the author's office, "social and nightlife venues are an economic driver in many communities, and the State's food service and entertainment industries generate billions of dollars in consumer spending and employ well over a million Californians. This optional tool for local control over nightlife will increase tax revenue and tourism as well as revitalize business districts. No city would be required to allow alcohol service past 2 a.m. Rather, the bill allows these nine cities to opt in: pure local control."

The Department of ABC and alcohol in California. The enactment of the 21st Amendment to the United States 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. In California, this responsibility was originally entrusted to the State Board of Equalization. In 1955, however, the State Constitution was amended to shift this responsibility to the then newly established Department of ABC. The intent in establishing the Department of ABC was to create a governmental organization, which would ensure strict, honest, impartial, and uniform administration and enforcement of the state's liquor laws. The Department of ABC is vested with the exclusive authority to license and regulate the manufacture, distribution and sale of alcoholic beverages within California. The Department of ABC is a special fund department that receives funding from fees imposed upon alcoholic beverage licensees.

There are more than 92,000 ABC licenses throughout the state. Retail licenses are the most common type of license encountered by the public – this includes on-sale licensees that are authorized to sell alcoholic beverages for consumption on the premises such as restaurants and bars, and off-sale licensees that are authorized to sell alcoholic beverages for consumption off of the premises such as grocery and liquor stores. There are approximately 9,000 on-sale licenses located within “qualified cities” which potentially could be impacted by this bill. The vast majority of these on-sale licenses include Types 40, 41, 42, 47, and 48, which are generally restaurants, bars, taverns, and night clubs. Since 1935, California alcohol licensed businesses have been prohibited from selling, serving and allowing open containers of beverage alcohol to remain in the public portion of the business from 2 a.m. to 6 a.m. All ABC licenses are renewed annually.

The Department of ABC is required to investigate both the applicant and the premises for which a license is applied to determine if the public would be adversely affected by the license issuance. These investigations include an evaluation of the moral character of the applicant and the suitability of the proposed premises. The Department of ABC must deny an application for a license if issuance would create a law enforcement problem or if issuance would result in, or add to, an undue concentration of licenses in the area where the license is desired.

Under the ABC Act, the Department of ABC has the sole authority to suspend, revoke or deny a license if it determines that granting or continuance of the license would be contrary to public welfare or morals. The Department of ABC has a clearly delineated disciplinary process for its licensees. The process usually begins with a reported violation then proceeds through an investigation after which an accusation can be filed. The Department of ABC conducts administrative hearings with decisions generally proposed by administrative law judges. The process can

also include appeals to the ABC Appeals Board and, if necessary and requested, an appeal directly to the California Appellate Courts. However, there is wide variance in the period from the discovery of a violation to a final order of suspension or revocation.

State vs. local control of alcohol policy. The Department of ABC is vested with the exclusive authority to license and regulate the manufacture, distribution, and sale of alcoholic beverages within California. Currently, the Department of ABC must notify specified local officials of an application for the issuance or transfer of a liquor license, and existing law prohibits the Department of ABC from issuing or transferring a license until at least 30 days after these notices are provided. Local officials are also allowed to file a protest against the issuing of the license.

Over the years, local governments have often petitioned the Legislature for greater authority to directly regulate establishments that sell alcohol in respective communities. Much of this activity has been centered on local government's use of zoning laws and conditional use permits that place operating conditions on new businesses that sell alcohol. In 1995, the ABC Act was amended to allow a local government to comment on a pending alcohol license application, raising the standard for an on-sale or off-sale licensee in an area of high crime or an over-concentrated census tract. Historically, the alcohol industry and retailers have opposed ceding to local government any measure of the state's exclusive authority to regulate alcohol.

Under this bill, the local governing body of a qualified city must establish a task force, including at least one member of law enforcement and one additional member of the CHP, which will be responsible for developing a recommended local plan. The local plan must, among other things, show that the public convenience or necessity will be served by the additional service hours, identify the service area in which licensed premises would be eligible for additional service hours and further identify the area that would be affected by additional service hours, show significant support by residents and businesses within the additional hours service area, include a public safety plan created by local law enforcement including crime statistics and data derived from various public safety agencies, and show that transportation services are readily available during additional service hours.

Based on the assessment, the local governing body must adopt an ordinance that satisfies the local plan and submit that ordinance to the Department of ABC. The on-sale licensee, wishing to obtain an additional hours license, must submit an application for the additional hours privilege, as well as a nonrefundable application fee of \$2,500.

Upon receipt of the ordinance, the Department of ABC is required to review the ordinance to ensure compliance with the provisions of this bill. The Department of ABC is prohibited from issuing an additional hours license to an applicant within a qualified city if the ordinance from that qualified city does not meet all of the local plan requirements of this bill.

Each qualified city that chooses to participate in this pilot program is required to provide the Legislature with a report on the regional impact of the additional hours licenses within one year of the first additional hours license being issued in that city, and then once each year thereafter. The report is required to include information on any impact the additional service hours had on crime rates in the city, including arrests for driving under the influence and domestic violence. Additionally, the CHP is required to provide the Legislature with a report on the regional impact of the additional service areas including information on any additional costs incurred by adjacent cities, counties, and law enforcement as a result of the additional service hours within five years of implementation of this bill.

Last call in other states. The end of alcohol service at on-sale establishments, commonly referred to as “last call,” can vary dramatically from state to state. The State of Utah for example has last call at 12 a.m., in restaurants and 1 a.m. in bars and taverns, while the State of Nevada allows for the sale of alcohol 24-hours a day. The states of Louisiana and New Jersey additionally allow for the sale of alcohol 24-hours a day, however these two states have authorized counties and local municipalities to set or restrict opening and closing times for on-sale establishments. Alabama also allows for the service of alcohol 24-hours a day unless restricted by local ordinances, however 26 of Alabama’s 67 counties do not allow for the sale of alcohol at any time, though possession and consumption remain legal.

A number of large states, including states with high rates of tourism, tend to allow for extended service in densely populated urban centers. Examples include the state of New York, which authorizes establishments to serve until 4 a.m., however the actual closing time is left up to each of New York’s 62 counties. The 4 a.m. last call applies in New York City, Saratoga Springs, Buffalo, and Albany. In Florida, the county or municipality in which the business is located regulates the operating hours, and most cities stop serving alcohol at 2 a.m., however, some cities have exemptions to the law, notably Tampa (3 a.m.), Broward County and Key West (4 a.m.), and Miami-Dade County (5 a.m.).

Some states have a patchwork system dependent upon the day of the week. In Illinois, closing times depend on municipality, however businesses may not serve

alcohol later than 2 a.m., Sunday through Friday, or later than 3 a.m. on Saturday without first obtaining an extended hour's permit from the respective city. In Chicago, a late hour license allows for the sale of alcohol until 4 a.m., Monday through Saturday, and until 5 a.m. on Sunday. Wisconsin also allows for additional hours during the weekend compared to weekday closing times, and Washington D.C. allows for the on-sale service of alcohol until 3 a.m. the day of a federal or district holiday, and until 4 a.m. on January 1.

Potential public safety impacts. Opponents of SB 58, and previous bills seeking to extend service hours of alcohol, outline numerous health and safety concerns leading to negative impacts on a community's quality of life. Specifically, opponents argue that this bill will lead to drinkers driving from areas where bars close earlier to bars with later last calls, late night drinkers sharing the road with early morning commuters, and increased alcohol-related harm, including driving under the influence (DUI) accidents and fatalities.

Additionally, opponents point to the lack of resources and enforcement capacity to deal effectively with the extra service hours and to mitigate the additional harms of late night drinking, arguing that law enforcement is already over extended trying to cover existing closing times. Furthermore, opponents state that this bill will have consequences beyond the qualified cities, especially for municipalities within driving distance of one of the qualified cities who adopt a later closing time forcing neighboring cities to absorb increased financial and societal burden related to alcohol consumption.

Previous attempts. Last year, Governor Jerry Brown vetoed a similar measure, SB 905 (Wiener, 2018). In the veto message Governor Brown wrote, “[w]ithout question, these two extra hours will result in more drinking. The businesses and cities in support of this bill see that as a good source of revenue. The California Highway Patrol, however, strongly believes that this increased drinking will lead to more drunk driving.”

“California’s laws regulating late night drinking have been on the books since 1913. I believe we have enough mischief from midnight to 2 without adding two more hours of mayhem.”

Author’s amendment. To correct a drafting error, the author has agreed to accept an amendment which would change the sunset date of the pilot program from January 2, 2025, to January 2, 2026.

Prior/Related Legislation

AB 475 (Kiley, 2019) would authorize the Department of ABC to issue an on-sale beer and wine permit and sip license to a person that has premises for the primary purpose of art events or art classes, as specified. (Pending in the Assembly Governmental Organization Committee)

SB 352 (Dodd, 2019) would require the Department of ABC to issue up to 10 additional new original on-sale general licenses for bona fide public eating places within a county which has reached the current limit on on-sale general licenses, as specified. (Pending in the Senate Governmental Organization Committee)

SB 905 (Weiner, 2018) was substantially similar to SB 58, and would have authorized the Department of ABC, beginning January 1, 2020, to issue an additional hours license to an on-sale licensee in a qualified city that would allow the selling, giving, or purchasing of alcoholic beverages at the licensed premises between the hours of 2 a.m. and 4 a.m., upon completion of specified requirements. (Vetoed by Governor Brown)

SB 973 (Dodd, Chapter 689, Statutes of 2018) doubled the annual surcharge that the Department of ABC collects from each type of alcoholic beverage licensee for the California Highway Patrol's Designated Driver Program from \$5 to \$10, and authorized a distilled spirits manufacturer to provide consumers a free or discounted ride, as specified.

AB 711 (Low, Chapter 226, Statutes of 2017) authorized a beer manufacturer, as defined, to provide consumers free or discounted rides through taxicabs, transportation network companies, or any other ride service to further public safety.

SB 384 (Weiner, 2017) would have established a process whereby an on-sale licensee would have been able to apply to the Department of ABC for the privilege of extending hours of alcohol sales from 2 a.m. to 4 a.m., in any city where the local government approved and certified a local plan, and submitted the plan to the Department of ABC. (Gutted and amended to an unrelated issue)

SB 635 (Leno, 2013) would have allowed an on-sale alcohol licensee to apply to the Department of ABC to authorize, with or without conditions, the selling, giving, delivering, or purchasing of alcoholic beverages at the licensed premises between the hours of 2 a.m. and 4 a.m., upon completion of specified requirements by the local jurisdiction in which the licensee is located. (Held in Senate Governmental Organization Committee)

AB 1739 (Committee on Governmental Organization, Chapter 744, Statutes of 2007) among other thing, modified an existing provision of the ABC Act relative to hours of sale and delivery of alcoholic beverages to clarify that, during a change from Pacific Standard Time to Pacific Daylight Time, or back again to Pacific Standard Time, 2 a.m. means two hours after “midnight.”

AB 2433 (Leno, 2004) would have extended the hours of alcohol sales for on-sale licensees in the City and County of San Francisco from 2 a.m. to 4 a.m. (Held in Assembly Governmental Organization Committee)

AB 701 (Horton, 2003) would have provided that an on-sale license that is open for business and sells or offers for sale alcoholic beverages past 1 a.m. may not sell or serve more than one alcoholic beverage to a person less than 15 minutes prior to closing time. (Gut and amended to an unrelated issue)

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT:

213 Hospitality
California Hotel & Lodging Association
California Music & Culture Association
Central City Association of Los Angeles
City of Coachella
City of West Hollywood
San Francisco Bar Owner Alliance
San Francisco Chamber of Commerce
San Francisco Travel Association
Teamsters
Valley Industry and Commerce Association

OPPOSITION:

Alcohol Justice
Alcohol & Drug Abuse Prevention Team
Alcohol Policy Panel of San Diego County
Asian American Drug Abuse Program, Inc.
Barbary Coast Neighborhood Association
Boyle Heights Stakeholders Association
California Alcohol Policy Alliance
California Alliance for Retired Americans
California Council on Alcohol Problems

Coalition to Ban Billboard Blight
County Behavioral Health Directors Association of California
DogPAC San Francisco
Institute for Public Strategies
Koreatown Youth & Community Center
Los Angeles Drug & Alcohol Policy Alliance
Monument Youth Drug and Alcohol Coalition
P3 Partnership for a Positive Pomona
Paso Por Paso, Inc.
Public Health Institute
Pueblo Y Salud, Inc.
San Fernando Valley Partnership
San Marcos Prevention Coalition
Saving Lives Coalition
Spa-2 Communities in Action
Tarzana Treatment Centers
United Coalition East Prevention Project
The Wall Las Memorias Project
West County Alcohol Marijuana and Prescription Drug Coalition
Women Against Gun Violence
Women's Christian Temperance Union

ARGUMENTS IN SUPPORT: In support of the bill, the California Hotel & Lodging Association writes that, “California must compete with Chicago, Washington D.C., New York City, Las Vegas, Atlanta, Miami Beach, and New Orleans, all of which have late-night service hours beyond 2 a.m. SB 58 would align California with at least 15 other states where local jurisdictions have the authority to decide alcohol beverage service hours.”

ARGUMENTS IN OPPOSITION: The California Alcohol Policy Alliance, and Alcohol Justice, jointly write that SB 58 “[i]n 2018, Senator Wiener introduced SB 905, which would have allowed nine cities to decide for themselves in a half-baked, so-called ‘pilot project’ to extend sales from 2 a.m. to 4 a.m. The legislature ignored the overwhelming evidence that 76% of the state’s population would be turned into unwitting ‘Splash Zone’ lab rats suffering increased public health and safety harms. They passed the bill, but Governor Brown, heeding the advice of the CHP, wisely vetoed the bill with these words: ‘I believe we have enough mischief from midnight to 2 without adding two more hours of mayhem.’”

Additionally, the County Behavioral Health Directors Association of California writes in opposition to SB 58 that, “[e]very year approximately 10,000 people in California die from alcohol-related, preventable harm. Alcohol-related harm costs

the state \$32 billion annually, an amount which includes the costs of alcohol-fueled crime and violence, injuries, traffic accidents, loss of work hours, and illness related to the abuse of alcohol. Adding more hours of alcohol sales will only increase these problems and costs.”