
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

SB 58 (Wiener) - Alcoholic beverages: hours of sale

Version: March 25, 2019

Policy Vote: G.O. 10 - 4

Urgency: No

Mandate: Yes

Hearing Date: April 22, 2019

Consultant: Debra Cooper

Bill Summary: SB 58 would require the Department of Alcoholic Beverage Control (ABC) to create a pilot program, beginning January 1, 2022, 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.

Fiscal Impact:

- Estimated costs of approximately \$600,000 to ABC for FY 2020-21 and ongoing costs ranging from \$2 million to \$3 million annually thereafter for developing the program, reviewing local plans, processing licenses, and enforcement. This includes staffing and resources necessary for:
 - Legal, licensing, and enforcement resources to develop the program
 - Data entry and processing of new license applications
 - Investigating new licenses
 - Reviewing and processing protests in response to license applications
 - Administering approved protest hearings
 - Enforcement coverage during additional hours
- One-time, significant costs up to \$500,000 to the California Highway Patrol (CHP) for involvement in task forces. This assumes all ten cities will choose to create a task force and subsequently require a member of law enforcement to participate.
- One-time costs of approximately \$45,000 to CHP for increased workload to complete the required report to the Legislature.
- Estimated costs to the Department of Justice (DOJ) of about \$8,000 in FY 2021-22 and ongoing costs of \$4,000 per year thereafter for advising ABC when actions are taken against a licensee and for record management (Legal Services Revolving Fund, General Fund)
- Ongoing revenue, ranging from approximately \$1.65 million in FY 2021-22 to over \$3 million in subsequent years, from fees generated from the additional hours licenses. The amount of revenue depends on the volume of license applications and renewals in subsequent years. (ABCF)

Background: California ABC has the exclusive authority to license and regulate the manufacturing, distribution, and sale of alcoholic beverages within the state. Currently, approximately 50,000 on-sale licensees exist in the state. Over the years, local governments have requested to have increased authority to directly regulate establishments that sell alcohol in respective communities, especially concerning zoning laws and conditional use permits.

The service times for on-sale licensees to sell, give, deliver, or purchase alcoholic beverages vary across the nation. At least 15 states across the country delegate complete or partial authority for setting or extending service hours to the local jurisdictions, subject to state approval. A number of U.S. cities and towns have late-night services hours including Chicago, Washington, D.C., New York City, Buffalo, Las Vegas, Louisville, Atlanta, Indianapolis, Miami Beach, New Orleans, and Albany, N.Y.

There are over 9,000 on-sale licenses located within “qualified cities” which could potentially be impacted by this bill.

Proposed Law: This bill would:

- Make various findings and declarations related to allowing local jurisdictions to extend the hours of alcoholic beverage service in their respective communities, subject to state approval;
- Require ABC, beginning January 1, 2022, to conduct a pilot program that may issue an additional hours license that would authorize the selling, giving, or purchasing of alcoholic beverages at an individual on-sale licensed premise between the hours of 2 a.m. and 4 a.m. within a qualified city (defined as the Cities of Cathedral City, Coachella, Fresno, Long Beach, Los Angeles, Oakland, Palm Springs, Sacramento, San Francisco, and West Hollywood) if the local governing body of that qualified city designates a task force composed of at least one member of law enforcement and one additional member of the California Highway Patrol, to develop a recommended local plan, as defined, including an assessment by the local governing body, and adopts an ordinance that satisfies the elements of the local plan;
- Require ABC, upon receipt of an adopted local ordinance, to review the ordinance to ensure compliance with the local plan and existing law;
- Prohibit an on-sale licensee from applying for an additional hours license until ABC has received the adopted ordinance;
- Require ABC to review ordinances beginning January 1, 2020, which, if issued before January 1, 2022, will become effective on January 1, 2022;
- Prohibit an on-sale licensee that has conditions on the license that restrict the hours of sale, service, or consumption of alcohol to a time earlier than 2 a.m. from applying for an additional hours license for any day or days of the week during which a restriction exists;
- Require that an on-sale licensee that is issued an additional hours permit requires all persons engaged in the sale or service of alcohol during the additional hours period complete a responsible beverage training course;
- Prohibit off-sale privileges during the additional hours period;
- Require ABC, upon receipt of an application by an on-sale licensee for an additional hours license, to make a thorough investigation to determine whether the applicant and premises are qualified for the license and whether the provisions have been complied with and permit ABC to deny an application;
- Require 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;

- Permit protests to be filed at any office of ABC within 30 days from the first date of notice of the filing of an application by an on-sale licensee for an additional hours license;
- Permit ABC to reject protests if it determines the protests are false, vexatious, frivolous, or without reasonable or probable cause at any time before hearing. If ABC rejects a protest, a protestant whose protest has been rejected may, within 10 days, file an accusation with ABC alleging the grounds of protest as a cause for revocation of the additional hours license and the department shall hold a hearing. If, after investigation, ABC recommends that an additional hours license be issued notwithstanding a protest by a public agency or a public official, ABC shall notify the agency, official local governing body and/or all protesting parties in writing of its determination and the related reasons;
- Require ABC to schedule a hearing on the protest if a request for a hearing is filed with the department;
- Require ABC to notify the applicant of the outcome of the application for an additional hours license;
- Require the premises for an additional hours license to be restricted 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 therein is guilty of a misdemeanor and shall be punished by a fine of not less than \$200, no part of which shall be suspended;
- Require the applicant to pay a nonrefundable \$2,500 fee (to be deposited in the Alcohol Beverage Control Fund) at the time of application for an additional hours license;
- Require an original and annual \$2,500 fee for an additional hours license;
- Require ABC to adopt rules and regulations to enforce these provisions;
- Require the Department of the California Highway Patrol by January 1, 2024, to provide the Legislature with a report on the regional impact of the additional hours service areas, which shall include information on any additional costs incurred by adjacent cities, counties, and cities and counties and law enforcement as a result of an additional service area, including the impact an additional hours service area had on arrests for driving under the influence in adjacent cities, counties, and cities and counties;
- Require a qualified city that chooses to participate in the pilot program, by January 1, 2020, to provide the Legislature with a report on the regional impact of the additional hours licenses, which shall include information on the overall costs of providing policing during the additional service hours and any impact the additional service hours had on crime rates in the city, including arrests for driving under the influence, a detailed description of the number of licensees that applied for additional hours licenses, the number of additional hours licenses issued, and any conditions placed on those licenses;
- Sunset on January 1, 2027.

Related Legislation:

SB 905 (Wiener, 2018), similar to this bill, would have allowed an on-sale licensee in a qualified city to apply to ABC for authorization to sell, give, or purchase alcoholic beverages at licensed premises between the hours of 2 a.m. to 4 a.m. The measure was vetoed by Governor Brown with the veto message, *“Without 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.”*

SB 384 (Wiener, 2017) would have allowed an on-sale alcohol licensee to apply to ABC to authorize the selling, giving, delivering, or purchasing of alcoholic beverages between the hours of 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 ABC. That measure was gutted and amended to an unrelated issue.

SB 635 (Leno, 2013) similar SB 384, would have allowed an on-sale alcohol licensee to apply to ABC to authorize, with or without condition, 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. That measure was held in the Senate Governmental Organization Committee.

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

AB 701 (Horton, 2003) would have prohibited an on-sale licensee that sells alcoholic beverages past 1 a.m. from serving more than one alcoholic beverage to a person during the last 15 minutes prior to closing time. That measure was amended to address a horse racing issue.

Staff Comments: DOJ would need extra staffing to advise ABC when action is taken against a licensee, to process additional criminal arrest prints received as a result from the expansion of existing crimes, and for record management. Though the costs for advising ABC would initially come from the Legal Services Revolving Fund, ABC would be required to reimburse DOJ for those costs.

The Department of ABC would need to develop and approve regulations to establish the pilot program. Considering the department is authorized to begin reviewing ordinances from local governing bodies on January 1, 2020, ABC would be pressured to develop and approve regulations quickly in order to review the ordinances as they are received. As such, first year costs would be dedicated to program development.

The department is required to review local plans from the qualified cities; however, the bill does not state the extent to which ABC must review the plans, nor what steps would be in place for situations where ABC finds plans to not be in compliance. Should ABC simply verify that a plan was completed, the costs for reviewing the local plan would be minor. However, if ABC performs more in-depth reviews or if ABC is subject to legal

concerns because a plan is denied, the costs for reviewing the plans could be significant. These are expected to be one-time costs that would not recur once a plan is approved.

There are 9,220 on-sale licenses across the ten qualified cities included in the bill. It is unlikely that all current licensees will apply for an additional hours license. ABC expects an estimated 330 new licenses in FY 2021-22, 440 in FY 2022-23, and 330 in FY 2023-24. Additional workload would be necessary to review and approve the new applications. The amount of hours could increase if an application is protested and if the matter goes to hearing as a result of the protest.

Using the assumptions for the number of new applications, application and original fees in the initial year would create approximately \$1.65 million in revenue, and new application and original fees plus renewal fees would create approximately \$3.57 million in revenue by FY 2023-24. Revenue from new applications would eventually subside as the initial adoption of the program would be completed in the qualified cities. However, licensing workload and associated costs would also decrease as a result of fewer new applications.

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