

Date of Hearing: April 22, 2021

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Jim Frazier, Chair

AB 1242 (Bauer-Kahan) – As Introduced February 19, 2021

SUBJECT: Alcoholic beverages: bona fide public eating place: off-sale privileges

SUMMARY: This bill would authorize a bona fide public eating place holding an on-sale general license or a bona fide public eating place holding an on-sale license for beer and wine to exercise additional off-sale rights and privileges, subject to specified requirements. Specifically, **this bill:**

1) Provides that a bona fide public eating place holding an on-sale general license or a bona fide public eating place holding an on-sale license for beer and wine may exercise the following rights and privileges:

a) The licensee may sell the alcoholic beverages for off-sale consumption for which their license permits on-sale consumption provided the beverages are in manufacturer prepackaged containers.

b) The licensee may sell the alcoholic beverages for off-sale consumption for which their license permits on-sale consumption when the beverages are not in manufacturer prepackaged containers if all of the following conditions are met:

- The alcoholic beverages are sold in conjunction with meals prepared for pickup or delivery either by the licensee or by a meal provider.
- The alcoholic beverages are packaged in a container with a secure lid or cap in a manner designed to prevent consumption without removal of the lid or cap.

2) Provides that warning signs shall be posted in a manner that notifies consumers of restrictions regarding open container laws as follows:

a) "Alcoholic beverages that are packaged by this establishment are open containers and shall not be transported in a motor vehicle except in the vehicle's trunk or, if there is no trunk, the containers shall be kept in some other area of the vehicle that is not normally occupied by the driver or passengers. This does not include a utility compartment or glove compartment, as specified in current law. Additionally, these beverages shall not be consumed in public or in any other area where open containers are prohibited by law."

EXISTING LAW:

1) Establishes 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) Separates the alcoholic beverage industry into three component parts, or tiers, of the manufacturer (including breweries, wineries, and distilleries), wholesaler, and retailer (both on-sale and off-sale). This is referred to as the "Tied-house" law or "three-tier" system. Generally,

other than exceptions granted by the Legislature, the holder of one type of license is not permitted to do business as another type of licensee within the “three-tier” system.

3) Prohibits a person from exercising the privilege which a licensee may exercise or performing under the authority of a license unless the person is authorized to do so by a license.

4) Provides for various on-sale retail licenses in the Act: a) An “on-sale general license” authorizes the sale of all types of alcoholic beverages: namely, beer, wine and distilled spirits, for consumption on the premises, and the sale of beer and wine for consumption off the premises; b) An “on-sale beer and wine license” authorizes the sale of all types of wine and malt beverages (e.g., beer, porter, ale, stout and malt liquor) for consumption on and off the premises; and c) An “on-sale beer license” authorizes the sale of malt beverages for consumption on and off the premises.

5) Defines “bona fide public eating place” to mean a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local Department of Health.

6) Allows a person who has purchased and partially consumed a bottle of wine to remove the partially consumed bottle from the premises of an on-sale beer and wine public premises licensee.

7) Provides that every person who sells, furnishes, gives, or causes to be sold, or given away any alcoholic beverage to any person under 21 years of age is guilty of a misdemeanor.

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the bill. According to the author, “due to the immediate shutdown of our state from the COVID-19 pandemic, our businesses were thrown into chaos and uncertainty. Restaurants were hit hard, many laying off staff and shutting down. To ease the financial pain, Governor Newsom, through an executive order, directed the ABC to implement regulatory relief measures to allow businesses that operate kitchens to sell alcoholic beverages and cocktails to go in conjunction with meals. This temporary relief measure has proven to work, increasing sales for restaurants and providing safe delivery to legal adults.”

The author’s office further states that “with takeout wine and beer already legal, takeout cocktails are a common sense and profitable venture. However, after the pandemic, such sales will likely be prohibited once again. The economic impacts from the pandemic will last months if not and years, especially to the hardest-hit businesses like restaurants. Safely selling for takeout what they already offer for in-restaurant dining is a common-sense way to help the industry recover and adapt to economic trends.”

The author states that “AB 1242 simply codifies the Governor’s executive order allowing the sale of alcoholic drinks for to-go or delivery, with food purchase, to be permanent.”

Background:

ABC regulatory relief. On March 19, 2020, after Governor Gavin Newsom issued a statewide stay-at-home order that restricted restaurants to takeout or delivery meals only, ABC issued its first regulatory relief measure to help small and large businesses facing severe economic challenges due to the COVID-19 pandemic.

Among various exemptions, the first regulatory relief allows licensees with on-sale privileges the right to sell those alcoholic beverages for off-sale consumption in manufacturer pre-packaged containers to the degree that their license permits on-sale consumption. For example, a Type 47 restaurant is allowed to sell beer, wine, and distilled spirits for off-sale consumption, regardless of any condition on its license to the contrary and regardless of the statutory prohibition against on-sale licensees selling distilled spirits for off-sale consumption. Similarly, a Type 41 beer and wine restaurant licensee is allowed to sell beer and wine, but not distilled spirits, for consumption off the premises regardless of any conditions on its license that prohibit such sales. The regulatory relief was put in place when COVID-19 kept people at home and restaurants were relying heavily on takeout and delivery orders. The to-go alcohol drinks helped businesses maintain a revenue source while only being allowed to do takeout orders.

In addition to selling manufacturer pre-packaged containers, the first regulatory relief allows licensees to sell beer, wine, and pre-mixed drinks or cocktails not in manufacturer's containers for consumption off the licensed premises when sold in conjunction with meals prepared for pick-up or delivery either by the licensee or by a meal provider. Any such alcoholic beverages must be packaged in a container with a secure lid or cap and in a manner designed to prevent consumption without removal of the lid or cap (e.g., no lids with sipping holes or openings for straws). Any licensee selling such beverages for off-sale consumption is required to prominently post a warning in a manner that puts consumers on notice of limitations regarding open container laws.

While the regulatory relief allows restaurants the ability to sell both prepackaged alcoholic beverages and cocktails for consumption off the licensed premises, it does not diminish, in any way, the responsibility of the licensee to ensure that alcoholic drinks are being sold and delivered to persons over the age of 21. Restaurants are still fully responsible for ensuring that any customer who purchases alcoholic beverages are of legal age regardless of whether that customer purchases the alcohol in person or through any other means and regardless of whether the customer picks up the alcoholic drinks at the restaurant or if the alcohol is delivered to their home.

AB 1242 would allow restaurants who hold an on-sale general license to continue selling to-go cocktails and/or alcoholic beverages that are in manufacturer prepackaged containers as part of their takeout or delivery food orders after ABC rescinds current regulatory relief measures.

A Growing and Popular Trend. Like California, most other state alcohol laws limit restaurants' sales of adult beverages to on-premises consumption. However, when business owners suspended their dine-in business to stop the transmission of the COVID-19, many states suspended laws relating to alcohol sales with carryout and delivery meals. Currently, 33 states and the District of Columbia allow to-go sales of alcohol, including spirits and cocktails or

cocktail kits. Other states allow for bottled beer and wine to be sold for consumption off-premises, but not mixed drinks or spirits.

According to the National Restaurant Association's, *2021 State of the Restaurant Industry Report*, approximately 7 out of 10 full-service restaurants and half of the fast-casual eateries offer alcohol for carryout or delivery. Approximately 20 percent of adult customers, and about 30 percent of millennials, have added alcoholic drinks to a takeout or delivery order since the pandemic began. Furthermore, according to Technomic, a leading foodservice research firm, 58 percent of consumers surveyed said the ability to purchase alcoholic beverages with their takeout orders has a major impact on their choice of restaurants. Technomic also found that restaurant operators expect alcohol to-go sales to settle in at an average of 21 percent of total alcohol sales once the pandemic subsides.

Iowa, Kentucky, Michigan, Ohio, Wisconsin, and the District of Columbia have passed legislation to permit alcohol sales (to-go cocktails) for off-premise consumption beyond the pandemic and more than 30 other state legislatures are currently considering similar legislation.

If the Act is violated. It is the stated policy of ABC to impose administrative, non-punitive penalties in a consistent and uniform manner to encourage and reinforce voluntary compliance with the law. Any person licensed by ABC, and their employees, must abide by all California laws. If ABC has evidence of a violation involving a licensee or a licensed premise, it will file an administrative complaint, called an accusation. An accusation, if proven, will lead to the suspension or revocation of the license. An accusation is in addition to, and not a substitute for, possible criminal and civil penalties that local city and district attorneys may bring against the licensee or employee who committed the violation.

ABC also has defined penalties for selling an alcoholic beverage to a minor or permitting a minor to consume an alcoholic beverage on the premises. The law authorizes the revocation of a license for a third violation within 36 months. Under the law, a licensee may petition ABC for an offer in compromise when a decision by the department to suspend a license becomes final, but not for a third or subsequent violation. In 2020, ABC issued 1,709 citations for sales to minors.

ABC licensees and their employees are encouraged to take ABC's free four-hour LEAD training classes to help achieve higher compliance with alcoholic beverage laws.

On-Sale and Off-Sale Licenses. ABC issues a number of alcohol licenses that are available to individuals seeking to operate businesses that sell alcoholic beverages. Each license establishes specific responsibilities and privileges especially when it comes to "on-sale" and "off-sale" privileges. Alcohol licenses are deemed "on-sale" if the license authorizes the sale of alcoholic beverages but requires that they are consumed on the premises. Some examples of "on-sale" businesses include bars and restaurants although restaurants do have some "off-sale" privileges. For example, under existing law restaurants are authorized to sell both wine and beer to customers for "off-sale" consumption. On the other hand, alcohol licenses are deemed "off-sale" if the business sells alcoholic beverages sold at the establishment but are required to be consumed offsite. Some examples of "off-sale" businesses include liquor stores or grocery stores that sell alcoholic beverages. Also, some licenses include both "on-sale" and "off-sale" privileges. Some examples are wineries and craft distilleries.

In support. In support of this measure the California Chamber of Commerce writes 'the restaurant industry has suffered an estimated \$165 billion in losses since March of 2020 because

of lockdowns and social distancing requirements. A survey conducted by the California Restaurant Association (CRA) indicates that between 900,000 to 1 million restaurant employees have been laid off or furloughed. Restaurants struggle to pay their bills and keep employees when they operate under strict capacity limits or are limited to only “to go” service. The CRA found that 60% of California restaurants are owned by minorities and 50% are owned or partly owned by women. The National Restaurant Association found that 78% of restaurant owners who began selling takeout alcohol rehired laid-off employees. AB 1242 will make permanent the ABC allowance for take-out cocktails with food. Food businesses, already licensed to sell alcohol on the premises, would be able to sell cocktails in secure containers for takeout and delivery.”

In opposition. The California Alcohol Policy Alliance writes in opposition, “cocktails-to-go are a bad idea that benefit a licensee’s bottom line while threatening public health and safety. Cocktails-to-go have been wisely prohibited since the link to death and injury from drinking and driving became evident. The alcohol industry, constantly seeking opportunities to relax restrictions, have used the COVID-19 pandemic as an excuse to demand this change. It will always be a bad idea and should never become a permanent privilege. We need to maintain public health and safety ahead of profits.”

Committee amendments. To be consistent and further the intent of ABC’s temporary relief measures regarding the spread of COVID-19, while not jeopardizing public health, safety, or welfare, the author should consider the following amendments to the bill: 1) The provisions of the bill shall be in effect for a period of two years following the end of the state of emergency proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic; 2) Limit the number of beverages which are not in manufacturer prepackaged containers to two per each bona-fide meal ordered; 3) The cap or lid, and any seal, of the sealed container must be affixed to the container in a manner that makes it obvious when the cap or lid, and any seal, has been removed or broken; 4) A container of mixed drinks or cocktails must not exceed 4½ ounces of distilled spirits; and 5) A licensee shall notify the ABC that it is selling pre-mixed drinks or cocktails not in manufacturers containers for consumption off the licensed premises.

Related legislation. AB 61 (Gabriel) of 2020. Among various provisions, would authorize the ABC to issue a third-party delivery license to a third-party delivery service for delivery to a consumer of alcoholic beverages from a restaurant licensed under the Act, as specified. Additionally, would authorize the ABC, for a period of 365 days following the end of the state of emergency proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic, to permit licensees to exercise license privileges in an expanded license area authorized pursuant to a COVID-19 Temporary Catering Permit approved in accordance with the Fourth Notice of Regulatory Relief issued by the ABC, as specified. (Pending in the Assembly Governmental Organization Committee)

SB 389 (Dodd) of 2020. Would authorize the holder of a retail on-sale license to sell the alcoholic beverages for off-sale consumption for which their license permits on-sale consumption when the beverages are not in manufacturer prepackaged containers if the alcoholic beverages are packaged in a container with a secure lid or cap sealed in a manner designed to prevent consumption without removal of the lid or cap by breaking the seal. (Pending in the Senate Governmental Organization Committee)

SB 314 (Wiener) of 2021. The bill allows a licensed manufacturer to share a common licensed area with multiple licensed retailers, as specified. Further, the bill extends from 30 to 90 days by which a licensee must apply to the ABC for specified event which permits specified licensees to provide their own alcohol free of charge at an invitation only event. In addition, the bill increases the number of times, from 24 to 52 in a calendar year, that the ABC can issue a caterer's permit for use at any one location. Lastly, authorizes the ABC to, for 365 days from the date the Covid-19 state of emergency is lifted, allow licensees to continue to exercise license privileges in an expanded licensed area authorized pursuant to a Covid-19 temporary catering permit, as provided. (Pending in the Senate Governmental Organization Committee)

SB 561 (Dodd) of 2021. Would authorize an alcohol manufacturer to share a common licensed area with multiple retailers, subject to various requirements. (Pending in the Senate Governmental Organization Committee)

Prior legislation. SB 254 (Portantino) of the 2017-2018 Legislative Session. Would have prohibited a certified delivery network, as defined, from delivering alcoholic beverages sold by an off-sale retail licensee to persons within this state without first obtaining a license issued by the ABC. (Never heard by the Assembly Governmental Organization Committee)

AB 1470 (Evans), Chapter 535, Statutes of 2009. Allowed a person who has purchased and partially consumed a bottle of wine to remove the partially consumed bottle from the premises of an on-sale beer and wine public premises licensee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Chamber of Commerce
California Restaurant Association

Opposition

Alcohol Justice
California Alcohol Policy Alliance

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