
CONSENT

Bill No: AB 1323
Author: Haney (D)
Amended: 6/21/22 in Senate
Vote: 21

SENATE GOVERNMENTAL ORG. COMMITTEE: 13-0, 6/28/22
AYES: Dodd, Nielsen, Allen, Archuleta, Becker, Bradford, Hueso, Jones,
Kamlager, Melendez, Portantino, Rubio, Wilk
NO VOTE RECORDED: Borgeas, Glazer

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: Not relevant

SUBJECT: Alcoholic beverage control: tied-house exceptions

SOURCE: Author

DIGEST: This bill authorizes specified licensees to purchase advertising space and time from, or on behalf of, an on-sale licensee that is the owner, manager, or major tenant of an on-sale retail licensed premises configured with theatrical seating of at least 1,600 seats but no more than 2,400 seats in the city and County of San Francisco (Curran Theater), as specified.

ANALYSIS:

Existing law:

- 1) Establishes the Department of Alcoholic Beverage Control (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 and the collection of license fees for this purpose.

- 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, in general, a manufacturer, winegrower, manufacturer's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director or agent of any such person from owning, directly or indirectly, any interest in any on-sale license.
- 4) Prohibits, in general, a manufacturer, winegrower, distiller, bottler, or wholesaler, among other licensees, or agents of these licensees, from paying a retailer for advertising.
- 5) Provides a variety of exceptions from the advertising prohibition, including permitting specified licensees to purchase advertising space and time from, or on behalf of, an on-sale retail licensee that is an owner, manager, or major tenant of certain stadiums, parks, entertainment complexes, and arenas, subject to specified conditions.

This bill:

- 1) Authorizes specified licensees to purchase advertising space and time from, or on behalf of, an on-sale licensee that is the owner, manager, or major tenant of an on-sale retail licensed premises configured with theatrical seating of at least 1,600 seats but no more than 2,400 seats in the City and County of San Francisco. A similar authorization already exist for such a theater that has seating capacity of at least 2,100 seats. This bill decreases the seating capacity to 1,600 seats to include the Curran Theatre in San Francisco.
- 2) Requires any purchase of advertising space or time to be conducted by a written contract, as specified.
- 3) Requires the on-sale licensee to serve other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced by the winegrower, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured by the rectifier, the craft distiller, the

distilled spirits manufacturer, or the distilled spirits manufacturer's agent that purchased the advertising space or time.

4) Contains an urgency clause.

Comments

Purpose of the Bill. According to the author's office, "San Francisco's historic theaters were immeasurably harmed by the pandemic and the resulting shut down of the city's theater district. In 2020 the Legislature passed AB 3139 (Chiu) which gave the Orpheum and Golden Gate Theaters a tied-house exception allowing specified licensees to purchase advertising space and time, from on-sale, alcohol retail licenses at the two theaters. AB 3139 (Chiu) allowed the historic theaters to offset some of the harm of the pandemic by creating a modest allowance for relationships that would mutually benefit the Orpheum and Golden Gate theaters as well as alcohol manufacturers."

The author's office, further argues that, "in 2022 the Ambassador Theatre Group purchased the Orpheum and Golden Gate Theaters as well as a third historic theater the Curran Theater. AB 1323 (Haney) will extend the benefit granted by AB 3139 (Chiu) to this additional theater by giving the Curran the same tied-house exception allowing it the same benefits afforded to the Orpheum and Golden Gate Theater."

Curran Theatre. The Curran Theatre is a historical theatre in San Francisco that opened in February 1922 with a seating of approximately 1,600 seats. In 2015, the theatre closed for renovations. The Curran reopened on January 25, 2017, with the musical Fun Home. Currently the theatre is hosting Harry Potter and the Cursed Child. In 2020, AB 3139 (Gray, Chapter 175, Statutes of 2020) extended a current tied-house exception to an on-sale retail licensed premises with theatrical seating of at least 2,100 seats but no more than 2,400 seats. The bill required that the historic theater be located in the City and County of San Francisco and that the theatre was built prior to 1927. With such language, the Orpheum and Golden Gate Theater were captured under the bill. Unfortunately, because of the 2,100-seat minimum, the language in AB 3139 does not include the Curran Theater even though the theatre meets all of the other criteria. This bill decreases the seating capacity to 1,600 seats to include the Curran Theatre in San Francisco.

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 any facility where the facility is licensed to sell alcoholic beverages. Over the years, numerous exceptions to this prohibition have been added to a number of stadiums, parks, entertainment complexes, and arenas. Some examples are Levi's Stadium in Santa Clara, Oakland Coliseum in Oakland, Honda Center 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, Sutter Health Park in West Sacramento, SAP Center in San Jose, Dignity health in Carson, and numerous other venues.

Related/Prior Legislation

SB 1280 (Hueso, 2022) authorizes specified licensees to purchase advertising space and time from, or on behalf of, an on-sale licensee that is the owner, manager, or major tenant at specified facilities on the campus of San Diego State University (SDSU). (Pending on the Assembly Floor)

AB 98 (Kalra, 2022) authorizes specified licensees to purchase advertising space and time from, or on behalf of, an on-sale licensee that is the owner, manager, or major tenant of a fully enclosed arena with a fixed capacity in excess of 4,000 seats located in the City of San Jose (Tech CU Arena). (Pending on the Senate Floor)

AB 1330 (Mayes, 2022) authorizes specified licensees to purchase advertising space and time from, or on behalf of, an on-sale licensee that is the owner, manager, or major tenant at a fully enclosed arena with a fixed capacity in excess of 10,000 seats located in the County of Riverside (Acrisure Arena). (Pending on the Senate Floor)

SB 386 (Umberg, Chapter 309, Statutes of 2021) authorized specified alcohol licensees to sponsor events promoted by, and to purchase advertising space and time from, or on behalf, an on-sale licensee that is the owner, operator agent of the operator, or sole assignee or the operator's advertising rights of a mixed-use district located in the County of Orange (ocV!BE), as specified.

AB 3139 (Gray, Chapter 175, Statutes of 2020), among other things, extended a current tied-house exception to the Orpheum and Golden Gate Theater in the City and County of San Francisco.

AB 2000 (Kalra, Chapter 483, Statutes of 2018) extended an existing exception in the ABC Act pertaining to the general prohibition against advertising arrangements between retail, wholesale, and manufacturer licensees to include an outdoor professional sports stadium with a fixed seating capacity of at least 3,000 seats located in the City of San Jose (San Jose Municipal Stadium – minor league baseball San Jose Giants), and an outdoor professional sports stadium with a fixed seating capacity of at least 15,000 seats located in the City of San Jose (Avaya Stadium – San Jose Earthquakes).

AB 2146 (Gloria, Chapter 487, Statutes of 2018) extended an existing exception in the ABC Act pertaining to the general prohibition against advertising arrangements between retail, wholesale, and manufacturer licensees to include an outdoor stadium with a fixed seating capacity of at least 43,000 seats located in the City of San Diego (Petco Park – San Diego Padres).

SB 664 (Dodd, Chapter 486, Statutes of 2017) extended an existing exception in the ABC Act pertaining to the general prohibition against advertising arrangements between retail, wholesale, and manufacturer licensees to include an outdoor stadium (AT&T Park – the home of the San Francisco Giants) and an indoor arena (Chase Center – the home of the Golden State Warriors) with specified seating capacities located in the City and County of San Francisco.

AB 1724 (Jones-Sawyer, Chapter 478, Statutes of 2017), among other things, extended an existing exception in the ABC Act pertaining to the general prohibition against advertising arrangements between retail, wholesale, and manufacturer licensees to include a specified outdoor stadium located in the City of Los Angeles (Banc of California Stadium, the future home of the Los Angeles Football Club).

SB 582 (Bradford, Chapter 672, Statutes of 2017) allowed beer manufacturers, winegrowers, distilled spirits rectifiers, distilled spirits manufacturers, or distilled spirits manufacturer's agents to purchase advertising space and time from, or on behalf of, on-sale retail licensees at a specified stadium (The Los Angeles Stadium at Hollywood Park) and performance venue located in the City of Inglewood.

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

According to the Senate Appropriations Committee, the Department of ABC's activities are funded by regulatory and license fees and generally the department does not receive support from the General Fund. New legislative mandates, although modest in scope, may in totality create new cost pressures and impact the department's operating costs and future budget requests.

SUPPORT: (Verified 8/1/22)

None received

OPPOSITION: (Verified 8/1/22)

None received

Prepared by: Felipe Lopez / G.O. / (916) 651-1530
8/3/22 14:25:01

**** **END** ****