
SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

Senator Bill Dodd

Chair

2021 - 2022 Regular

Bill No:	AB 495	Hearing Date:	6/28/2022
Author:	Bigelow		
Version:	6/16/2022 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Felipe Lopez		

SUBJECT: Alcoholic beverage control: licensure

DIGEST: This bill allows a distilled spirits manufacturer with at least two beer manufacturing licenses and at least two beer and wine wholesale licenses to distribute distilled spirits they own, hold an interest in, or have a license to manufacture.

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) Provides, under the ABC Act, for the issuance of various alcoholic beverage licenses, including the imposition of fees, conditions, and restrictions in connection with the issuance of those licenses.
- 3) Separates the alcoholic beverage industry into three separate component parts, or tiers, of the manufacturer (including, breweries, and distilleries), wholesaler/distributor, and retailer. This is referred to as the “tied-house” law or “three-tier” system.
- 4) Prohibits the issuance of a distilled spirits license, except a distilled spirits manufacturer’s, a craft distiller’s, or a distilled spirits manufacturer’s agent’s license, to any person, or to any officer, director, employee, or agent of a person, that manufactures distilled spirits within or without this state.

- 5) Prohibits a person that holds any ownership or interest, as specified, in a craft distiller's license, distilled spirits wholesaler's license, rectifier's license, or retailer's license from also holding a distilled spirits manufacturer's license or a distilled spirits manufacturer's agent's license.
- 6) Creates the beer manufacturer's license, which, among other things, allows a licensee to manufacture, produce, package, and ship unlimited amounts of beer to consumers in California.
- 7) Creates the small beer manufacturer's license, which is identical to the beer manufacturer's license except that a small beer manufacturer is prohibited from producing more than 60,000 barrels and has smaller licensing fees. Like the beer manufacturer's license, the small beer manufacturer's license allows the licensee to ship unlimited amounts of beer to consumers in California.
- 8) Authorizes a beer manufacturer and a small beer manufacturer to sell beer to any person holding a license authorizing the sale of beer. This privilege allows a beer manufacturer and a small beer manufacture to "self-distribute," meaning that they can sell and deliver straight to a retailer without the use of a distributor.
- 9) Creates the craft distillers license which, among other things, authorizes the licensee to produce up to 150,000 gallons of distilled spirits per year and sell up to 2.25 gallons of distilled spirits directly to a consumer at the licensee's licensed premises.
- 10) Creates the distilled spirits manufacturer's license, which allows a licensee to manufacture, produce, package, mix, flavor, color, label, and export distilled spirits.

This bill:

- 1) Authorizes a distilled spirits manufacturer to distribute distilled spirits they own, hold an interest in or have a license to manufacture if the license has all of the following characteristics.
 - a) They are a beer manufacturer with at least two manufacturing locations in this state.
 - b) They hold at least two beer and wine wholesale licenses in this state.
 - c) They have a direct or indirect ownership interest in both an in-state and out-of-state distilled spirits manufacturer.

- d) They import and distribute only distilled spirits products that meet any of the following criteria:
 - i) The distilled spirits are manufactured or produced either within or without this state by an entity in which the licensee holds a direct or indirect interest.
 - ii) The distilled spirits are manufactured or produced under a written contract with another manufacturer within or without this state for an entity in which the licensee holds a direct or indirect interest.
 - iii) The distilled spirits are produced and bottled under a written contract with another manufacturer within or without this state for an entity in which the licensee holds a direct or indirect interest.
- 2) Prohibits a person that holds a specified ownership or interest in an importer's license from holding a distilled spirits manufacturer's license or a distilled spirits manufacturer's agent's license.

Background

Purpose of the Bill. According to the author's office, "AB 495 will help make sure there is a pathway to market for all distiller spirits products in the state. This bill is needed to refine who can distribute certain products. As the distilled spirits category has grown, beer, wine and distilled spirits manufacturers have become more diverse. Additional flexibility is needed within the distribution tier to ensure that all products have the opportunity to get in front of all California consumers."

Tied-House Laws. The "tied-house" or "three-tier" system, separates the alcoholic beverage industry into three component parts of the manufacturer (the first tier), wholesaler (the second tier), and retailer (the third tier). In its simplest of forms, this set of laws is designed to separate manufacturers, distributors, and retailers of alcoholic beverages.

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 protect the public from predatory marketing practices; and, (4) discourage and/or prevent the intemperate use of alcoholic beverages.

Thus, under a strict "three-tier" system, manufacturers would have no privilege to sell alcoholic beverages directly to consumers. Over the years however, the Legislature has expanded the privileges of manufacturers to include, among other things, the ability to sell alcoholic beverages directly to consumers. Some, like winegrowers enjoy not only the ability to sell alcoholic beverages directly to

consumers at their licensed premises, but also the ability to ship directly to consumers. Others like craft distillers, are currently only statutorily allowed to sell directly to consumers at their licensed premises.

For beer manufacturers, current law allows both a beer manufacturer and small beer manufacture to sell directly to consumers in California and ship beer directly to a consumer. In addition, current law allows both a beer manufacturer and small beer manufacturer the ability to sell directly to any licensee whose license allows the sale of beer. This means that both a beer manufacturer and small beer manufacturer can sell and deliver straight to a retailer without the use of a distributor/wholesaler. Generally, beer manufacturers use this privilege to deliver beer to retailers that are in close proximity to the manufacturer as there is no need for a large number of trucks and drivers. However, most beer manufacturers use a wholesaler/distributor given the logistical complexity of deliveries and the significant capital that is required to successfully deliver beer throughout the State of California.

Anheuser-Busch. Like every beer manufacture in California, Anhesuer-Busch is currently permitted and does own their own distribution companies in California. Since they hold a distilled spirits manufactures license, their company-owned distribution locations are not permitted to distribute distilled spirits, even when they own those distilled spirits.

The author's office argues "that when a brand is in its infancy, or just being launched and it has no distribution, wholesalers will not always take the brands for distribution. As a result, manufactures have turned to their independent wholesaler network to partner on and build brands. Despite the work of the independent wholesaler network, the areas of the state where Anheuser-Busch owns their own distribution have become very challenging to cover, and the brands have struggled to gain traction because of the inability to offer a statewide distribution solution to retailers."

In order to solve the issue of an alternate statewide distribution network for only spirits products in which Anheuser-Bush owns or manufacturers, the California Family Beer Distributors and Anheuser-Busch are sponsoring this bill to allow for a beer manufacturer which at least two manufacturing facilities and at least two beer and wine wholesale licenses to be able to distribute products they own. According to the author's office, "this would allow independent wholesalers in conjunction with Anheuser-Busch company-owned distribution locations to offer a statewide distribution footprint for a select few distilled spirits products that meet the requirements laid out in the bill. This will offer a route to market for products that other wholesalers decline to bring to market, allowing consumers to have a

choice and access to a diverse set of products at retail and allowing local independent wholesalers to grow their business and grow jobs in their territories.”

Prior/Related Legislation

SB 517 (McGuire, 2021) would have created the beer direct shipper permit which would authorize beer manufacturers, regardless of specific type of license, who obtain a beer direct shipper permit, to sell and ship beer directly to a resident of California, who is 21 years of age or older, for the resident’s personal use and not for resale. (Never Heard in the Senate Governmental Organization Committee)

SB 1198 (McGuire, 2021) creates the beer direct shipper permit which would authorize beer manufacturers, regardless of specific type of license, who obtain a beer direct shipper permit, to sell and ship beer directly to a resident of California, who is 21 years of age or older, for the resident’s personal use and not for resale. (Pending in the Assembly Governmental Organization Committee)

SB 620 (Allen, 2021) authorizes, among other things, specified distilled spirits licensees, who obtain a distilled spirits direct shipper permit, to sell and ship specified amounts of distilled spirits directly to a resident of California, who is 21 years of age or older, for the resident’s personal use and not for resale. (Pending in the Assembly Governmental Organization Committee)

SB 1164 (Skinner, Chapter 695, Statutes of 2018) made various changes to the craft distiller’s license, including eliminating the requirement that a person must attend a tasting before being able to purchase prepackaged containers of the licensee’s spirits directly from the craft distiller and increasing the maximum amount of distilled spirits that a craft distiller is permitted to manufacture from 100,000 gallons to 150,000 gallons.

AB 1295 (Levine, Chapter 640, Statutes of 2015) created the craft distiller’s license which, among other things, allows a licensee to manufacture up to 100,000 gallons of distilled spirits annually. Additionally, the licensee is authorized to sell to a consumer participating in a distilled spirits tasting, on the distiller’s licensed premises, up to 2.25 liters of distilled spirits in any combination of prepackaged containers per day.

AB 933 (Skinner, Chapter 366, Statutes of 2013) granted licensed distilled spirits manufacturers and licensed brandy manufacturers the privilege to conduct consumer tastings on their licensed premises and to charge for those tastings.

AB 949 (Quirk, 2013) would have authorized licensed distilled spirits manufacturers to charge consumers for tastings and would have imposed additional

conditions on the provision of tastings by the licensee, including limiting the size and number of tastes. Also, would have provided that a distilled spirits manufacturer's license authorizes the licensee to serve and sell food, general merchandise, and nonalcoholic beverages for consumption on or off the licensed premises. (Held in the Assembly Rules Committee)

SB 118 (Chesbro, Chapter 157, Statutes of 2005) allows a licensed winegrower who obtains a wine direct shipper permit, as described, may sell and ship unlimited quantities of wine directly to consumers, for personal use, under specific conditions.

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

SUPPORT:

Anheuser-Busch (Co-Source)
California Family Beer Distributors (Co-Source)
Alford Distributing
Advance Beverage
Blach Beverage, LLC
Bottomley Distributing Company
Bueno Beverage Company
Donaghy Sales
Eagle Distributing Company
Matagrano, Inc.
Straub Distributing
Pacific Beverage Company
Markstein Beverage Co.
Markstein Sales Company
Superior Products Company

OPPOSITION:

California Beer and Beverage Distributors
Wine & Spirits Wholesalers of California

ARGUMENTS IN SUPPORT: According to supporters of the bill, "this legislation will ultimately benefit independent wholesalers based in California who want to distribute some of the country's fastest growing products across the state and will give California beer wholesalers the ability to evolve with the rapidly growing market, This change in the law will also benefit smaller, local retailers, which helps support and grow the local economy."

ARGUMENTS IN OPPOSITION: According to opponents of the bill, “it is our understanding the proponents of this legislation claim that is necessary because the existing wholesaling distribution system precludes them from getting their distilled spirits products to market in California and thus does not meet their present business needs. This is simply untrue. Anheuser Busch currently has more than twenty independently owned and operated wholesale distributors located throughout California who have for decades successfully and profitably distributed and provides services for Anheuser Busch products to retailers in every corner of this state. Those independent wholesalers have recently obtained distilled spirits products to California retailers along with beer and wine products. Speaking for the wholesaler industry in California, [we] can assure you unequivocally that any distribution needs that Anheuser Busch may have can be met by California wholesalers. Therefore, this bill is unnecessary and potentially very detrimental to our industry.”