
THIRD READING

Bill No: AB 495
Author: Bigelow (R)
Amended: 8/11/22 in Senate
Vote: 21

SENATE GOVERNMENTAL ORG. COMMITTEE: 11-0, 6/28/22
AYES: Dodd, Allen, Archuleta, Becker, Bradford, Hueso, Jones, Kamlager,
Portantino, Rubio, Wilk
NO VOTE RECORDED: Nielsen, Borgeas, Glazer, Melendez

SENATE APPROPRIATIONS COMMITTEE: 6-0, 8/11/22
AYES: Portantino, Bates, Bradford, Laird, McGuire, Wieckowski
NO VOTE RECORDED: Jones

ASSEMBLY FLOOR: Not relevant

SUBJECT: Alcoholic beverage control: distilled spirits: licensure

SOURCE: Anheuser-Busch
California Family Beer Distributors

DIGEST: This bill any person that manufacturers or produces distilled spirits within or without this state to hold a distilled spirits importer or wholesaler's license if the person meets specified criteria.

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 manufacturers 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 any person that manufactures or produces distilled spirits within or without this state to hold a distilled spirits importer or wholesaler's license if the person meets all of the following:
 - a) They are a beer manufacturer with at least two manufacturing locations in this state or another state.
 - b) They hold at least two beer and wine wholesale licenses in this state.
 - c) They have a direct ownership interest in a distilled spirits manufacturer in this state or another state.
 - d) As of July 1, 2022, they meet the above descriptions.
- 2) Provides that a person holding a distilled spirits importer or wholesaler's license as described above may import and distribute only distilled spirits products that meet any of the following criteria:
 - a) The distilled spirits are manufactured or produced either within or without this state by an entity in which the license holds a direct interest.
 - b) 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 interest.
 - c) 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 direct interests.

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 manufactures, the California Family Beer Distributors and Anheuser-Busch are sponsoring this bill to allow any person that manufactures or produces distilled spirits within or without this state to hold a distilled spirits importer or wholesaler’s license if the person meets specified requirements.

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.”

Related/Prior Legislation

SB 1198 (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 Assembly Governmental Organization Committee)

SB 620 (Allen, 2021) would have authorized, 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. (Never heard in the Assembly Governmental Organization Committee)

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

According to the Senate Appropriations Committee, unknown, potentially significant legal costs to the Department of ABC. The Department of ABC notes it would need to review all of its distilled spirits (DS) licensees and importers to ensure there are no conflicts with the new allowances for a DS license. For those

licensees that do have conflicts, the Department of ABC would need to request the licensee to cancel their DS manufacturer or importer license, and if the licensee does not, the Department of ABC would need to initiate administrative action seeking to revoke one of the licenses.

SUPPORT: (Verified 8/12/22)

Anheuser-Busch (co-source)
California Family Beer Distributors (co-source)
California Asian Pacific Chamber of Commerce
Advance Beverage
Alford Distributing
Anheuser Bush Sales & Distribution Co. AB One – Inland Empire
Anheuser Bush Sales & Distribution Co. AB One – Los Angeles
Anheuser Bush Sales & Distribution Co. AB One – Oakland
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: (Verified 8/12/22)

California Beer and Beverage Distributors
California Teamsters Public Affairs Council
Wine & Spirits Wholesalers of California

ARGUMENTS IN SUPPORT: According to supporters of this 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 the California Teamsters Public Affairs Council, “for decades, Teamster members have worked under a

highly regulated liquor distribution industry that has resulted in career-sustaining middle class jobs. This bill would necessarily upend such an industry. In discussing with our locals, the overwhelming consensus was that this proposed change to law is unnecessary and risks “trading” some Teamster jobs for others. It is a bedrock principle of our union not to threaten the work of current members for the promise of future members.”

According to opponents of this 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.”

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8/15/22 13:05:02

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