SENATE RULES COMMITTEE
Office of Senate Floor Analyses
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THIRD READING

Bill No: SB 386
Author: Umberg (D)
Introduced: 2/11/21
Vote: 21

SENATE GOVERNMENTAL ORG. COMMITTEE: 12-0, 3/9/21
AYES: Dodd, Nielsen, Allen, Archuleta, Becker, Borgeas, Bradford, Hueso, Jones, Portantino, Rubio, Wilk
NO VOTE RECORDED: Glazer, Melendez

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Tied-house restrictions: advertising: mixed-use district

SOURCE: ocV!BE Sports & Entertainment

DIGEST: This bill authorizes specified alcohol licensees to sponsor events, and to purchase advertising space and time from, or on behalf of, an on-sale licensee that is the owner or operator of a mixed-use district located in Orange county (ocV!BE).

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) Deletes the current tied-house exception for the Honda Center and instead authorizes specified licensees to sponsor events, and to purchase advertising space and time from, or on behalf of, an on-sale licensee that is the owner or operator of a mixed-use district located in Orange county (ocV!BE).

2) Requires that the owner of the operator’s advertising rights of ocV!BE to have its principal place of business in Orange County.

3) Provides that the advertising space or time is purchased only in connection with daily activities, retail, dining, entertainment, and events conducted on the grounds of the ocV!BE.

4) Requires any on-sale licensee, operating at a venue on the grounds of ocV!BE to serve other brands of alcohol in addition to any brand being advertised.

5) Provides that an agreement for the sponsorship, of for the purchase of advertising space and time shall not be conditioned, in any way, on the purchase, sale, or distribution of any alcoholic beverage manufactured or distributed by the sponsoring or advertising licensee.

6) Requires any sponsorship of events or purchase of advertising space or time to be conducted pursuant to a written contract.

7) Provides that any licensee who, through coercion or other illegal means, induces, directly or indirectly, a holder of a wholesaler's license to fulfill those contractual obligations entered into pursuant to the provisions of this bill, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time, plus $10,000, or both. The licensee is also subject to the revocation of their license.

8) Makes legislative findings and declarations as to the necessity of a special statute for Orange County.

Background

Purpose of the bill. According to the author's office, "SB 386 will allow the owners of the master- planned, mixed use development in Anaheim, to expand the existing sponsorship tied-house exemption they have at the Honda Center to the full 95-acre development. These additional opportunities for advertising and sponsorship throughout this development will provide vital revenue and a financing for the mixed-used development. The bill does not change the type of advertising or sponsorship the owners of the development, and the Honda Center may do, but rather it simply expands the privileges throughout the new development. This expanded revenue opportunity is important because the development is privately funded and will not use any taxpayer dollars."

According to the author's office, "the new mixed-use development is valuable to Orange County and will provide a variety of amenities such as hotels, entertainment venues, restaurants, affordable housing, office space, and open space for tourists and locals. Additionally, this is an opportunity to combat our states housing crisis by dedicating affordable housing units on the mixed-use district. SB 386 is an important part of bringing this development to fruition in my community."

ocV!BE. ocV!BE is a proposed 95-acre, mixed use development set to be completed in 2024 in the City of Anaheim. The development will include two hotels, office space, multiple live entertainment venues, residential (including affordable housing), and 20 acres of parks and open space. The site will surround the existing Honda Center, home of to the Anaheim Ducks.

According to the ocV!BE website, the first phase of the project will create over 10,000 construction jobs and over 3,000 permanent jobs upon completion. Prior to completion, the project will result in more than $2 billion in one-time economic impact and more than $400 million in annual recurring economic impact.

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, Arrowhead Pond Arena 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, Raley Field in West Sacramento, HP Pavilion in San Jose, StubHub Center (formerly the Home Depot Center) in Carson, and numerous other venues.

Currently, the Honda Center enjoys one of these exceptions. This bill would delete that exception and instead allow for a similar privilege for the entire ocV!BE development. This bill also expands on the current exception for the Honda Center which requires that the advertising space or time be purchased only in connection with events being held at the arena. Under SB 386 the purchase of advertising space or time would be allowed to be purchased in connections with daily activities, retail, dining entertainment, and events conducted on the grounds of ocV!BE. The author's office states that an expansion of the tied-house exception is "needed because the project is privately financed and is counting on the revenue from the sale of this advertising and sponsorship."

Related/Prior Legislation

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) allows 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: Yes

SUPPORT: (Verified 4/5/21)

ocV!BE Sports & Entertainment (source)
Garden Grove Chamber of Commerce
Orange County Business Council
Straub Distributing Company

OPPOSITION: (Verified 4/5/21)

Alcohol Justice
California Beer and Beverage Distributors
California State Outdoor Advertising Association

ARGUMENTS IN SUPPORT: According to ocV!BE Sports & Entertainment, "SB 386 will expand the sponsorship and advertising rights that the operators of Honda Center currently have to include the entire new development area. The advertising and sponsorship revenue are important to the financing of this major new development in Anaheim. SB 386 is a narrowly crafted measure to only apply to the owners of ocV!BE."

ARGUMENTS IN OPPOSITION: According to the California Beer and Beverage Distributors, "California, like other states, has allowed for narrowly crafted exceptions for sports stadiums, arenas, and large performing arts venues that are often publicly funded. Unlike these, SB 386 would enact a sweeping exception that would tap the alcohol industry for the purchase of advertising for such things as 'daily activities, retail, and dining' to name a few of the questionable categories eligible for advertising payments listed in the bill. The bill does not even define 'daily activities.' Under the bill, alcohol beverage signage could become ubiquitous throughout the community. Will there be alcohol advertising placed on everything from elevator doors to park equipment?"

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4/5/21 9:38:32

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