Date of Hearing: July 12, 2021

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION
Jim Frazier, Chair
SB 386 (Umberg) – As Amended July 6, 2021

SENATE VOTE: 37-1

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

SUMMARY: This bill authorizes specified alcohol licensees to sponsor events promoted by, and to purchase advertising space and time from, or on behalf of, an on-sale licensee that is the owner, operator, agent of the operator, or sole assignee of the operator's advertising rights of a mixed-use district located in the County of Orange (ocV!BE), as specified. Specifically, **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 the County of Orange (ocV!BE).

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

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. This bill shall not authorize advertising or promoting of any retail licensee or premises other than an on-sale licensee or premises owned by the person, as described. The placement of advertising space or time outside of the mixed-use district is not authorized.

4) Requires any on-sale licensee, including any on-sale licensee owned by the person, as described, 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 this Tied-house exemption shall not authorize the placement of advertising space or time directly in, or on the exterior of, the premises of any on-sale licensee in the mixed-use district except as follows:

a) An on-sale licensee owned by the person, as described.

b) Subject to defined limitations, the lobby areas of hotels, performing arts venues, and entertainment venues, that are not owned by the person, as described.

c) Placement of advertising space or time is not authorized in parts of a lobby area that contain a bar or restaurant.

d) Placement of advertising space or time that is customized to the particular lobby area is not authorized.

e) Placement of advertising space or time in more than one location in a lobby area is not authorized.

f) Placement of advertising space or time on a sign or other display that is not owned by the person, as described.

g) The common area-facing exteriors of hotels, performing art venues, entertainment venues, and buildings with multiple tenants including an on-sale licensed premises that is not owned by the person, as described.

6) 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.

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

8) 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.

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

EXISTING LAW:

1) Establishes the Department of Alcoholic Beverage Control (ABC) and grants it exclusive authority to administer the provisions of the 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.

FISCAL EFFECT: Unknown

COMMENTS:

Background:

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.

Various Tied-house exemptions have been enacted through the years in specific instances where the Legislature determined that the public's interests were protected. Generally, the business community is interested in removing unnecessary business regulations and creating conditions that facilitate investment and expansion opportunities for companies that have some degree of ownership in multiple segments of the industry. The Legislature traditionally does not grant exemptions that favor the products of the entity seeking the exemption, or exemptions that unfairly compromise the role of the distributors.

Tied-house law exceptions have been granted for several stadiums, parks, entertainment complexes, and arenas. Some examples are Levi's Stadium in Santa Clara, Oakland Coliseum in Oakland, Arrowhead Pond Arena in Anaheim, Petco Park in San Diego, 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.

Presently, the Honda Center enjoys one of the above-described exceptions. SB 386 would delete that exception and instead allow for a similar privilege for the entire ocV!BE development. This bill 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. SB 386 would authorize the advertising space or time to be purchased in connection with daily activities, retail, dining, entertainment, and events conducted on the grounds of ocV!BE and would regulate the location of the advertising that is authorized.

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."

ocV!BE will consist of a $3 billion, 95-acre, mixed-use development set in the City of Anaheim. The first phase of ocV!BE is scheduled to open in 2024. The goal is for the project to be completed in 2028 and be a showcase for the Summer Olympics when Honda Center hosts indoor volleyball. The site will surround the existing Honda Center, home of the Anaheim Ducks. The Ducks are a professional ice hockey team who play in the National Hockey League as a member of the West Division.

The development will include two hotels, office space, multiple live entertainment venues, a commercial retail area with shops, 30 restaurants, residential (including affordable housing), and 20 acres of parks and open space. The developers plan to build a brand new pedestrian walkway over Katella Avenue that will link ocV!BE to the Anaheim Regional Transportation Intermodal Center (ARTIC), the city's regional transportation center across the street.

The proposal for ocV!BE follows a 2018 agreement between the city of Anaheim and Anaheim Arena Management LLC, the company that owns the Anaheim Ducks and operator of Honda Center. In summary, the agreement involved the sale of city-owned parking lots as well as Anaheim Arena Management taking over management of the ARTIC. The project is privately funded with no city subsidies or rebates. This project also ensures that the Anaheim Ducks will continue to play in Anaheim for an additional 25-plus years.

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. Before 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.

<u>Purpose of the bill</u>. According to the author's office, "this bill 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 financing for the mixed-use development. SB 386 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."

The author's office further states that "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. Moreover, this is an opportunity to combat our state's housing crisis by dedicating affordable housing units in the mixed-use district. SB 386 is an important part of bringing this development to fruition in my community."

<u>In support</u>. 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."

The Orange County Business Council (OCBC), writes in support that "the ocV!BE project will serve as a catalyst for the Anaheim Platinum Triangle, an 820-acre, master planned area anchored by Honda Center and Angel Stadium with access to transit and an emphasis on mixed-use developments. The ocV!BE project is crucial for the continued development of this bustling commerce and tourism center. It will also assist Anaheim and Orange County in their economic rebound coming out of the pandemic by generating significant tax revenue as well as creating over 10,000 construction jobs and over 3,000 permanent jobs upon completion."

In opposition. Alcohol Justice writes in opposition to SB 386 "because it extends an existing degradation of Tied-house restrictions on advertising at a specific 18,000 seat arena in Orange County to the entire mixed-use 90-acre neighborhood surrounding the arena. If passed, SB 314 will expose an unknown number of people, including underage youth, who live, work and shop in this community to alcohol branding and advertisements that many would find objectionable. It is well-known that the more alcohol ads seen by young people, the sooner they begin to drink and the greater their chances of developing a substance use disorder. It's bad enough that state government methodically buckles to alcohol industry influence by relaxing prohibitions against harmful producer-provided alcohol ads inside arenas and other large venues throughout the state."

Prior Legislation. AB 2000 (Kalra), Chapter 483, Statutes of 2018. Extended an existing exception in the 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 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 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 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.

REGISTERED SUPPORT / OPPOSITION:

Support

H & S Ventures
Orange County Business Council

Oppose

Alcohol Justice

Analysis Prepared by: Eric Johnson / G.O. / (916) 319-2531