

SENATE THIRD READING
SB 930 (Wiener)
As Amended August 18, 2022
Majority vote

SUMMARY

This bill, beginning January 1, 2025, and before January 2, 2028, would require the Department of Alcoholic Beverage Control (ABC or department) to conduct a pilot program that issues an additional hours license to an on-sale licensee located in a qualified city (cities of Palm Springs, West Hollywood and the City and County of San Francisco), authorizing the licensee to serve alcoholic beverages at the licensed premises between the hours of 2 a.m. and 4 a.m. on Saturdays and Sundays and specified holidays, and between the hours of 2 a.m. and 3 a.m. on all other days, upon completion of specified requirements.

Major Provisions

- 1) Requires ABC, beginning January 1, 2025, and before January 2, 2028, to conduct a pilot program whereby the department may issue a non-transferable "additional hours license" that would authorize, the selling, giving, or purchasing of alcoholic beverages at an individual on-sale licensed premises between the hours of 2 a.m. and 4 a.m. on Saturdays and Sundays, and on January 1, the last Monday in May known as "Memorial Day," July 4, the first Monday in September known as "Labor Day," and the day before that Thursday in November proclaimed by the President as "Thanksgiving Day," and between the hours of 2 a.m. and 3 a.m. on all other days, within a qualified city, as defined.
- 2) Defines a "qualified city" to mean means Cities of Palm Springs, West Hollywood, and the City and County of San Francisco.
- 3) Defines a "Local governing body" to mean the city council or the board of supervisors, as may be applicable, of a qualified city.
- 4) Requires the local governing body, as defined, of a qualified city to designate a task force that includes at least one member of law enforcement and one additional member of the Department of the California Highway Patrol (CHP), to develop a recommended local plan that meets detailed requirements.
- 5) Requires the local governing body, upon its independent assessment, to adopt an ordinance that satisfies the elements of the local plan, and submits the ordinance to the department.
- 6) Upon receipt of an adopted ordinance, as specified, including documentation regarding protests to the ordinance, ABC shall review the ordinance to ensure that the ordinance contains the required information, as specified. ABC shall not issue an additional hours license to an applicant if the ordinance from the qualified city does not meet the requirements, as specified. ABC may review ordinances beginning January 1, 2023.
- 7) Provides a local governing body may comply with this section and approve a local plan and submit an ordinance to the ABC beginning January 1, 2023.
- 8) Provides that an on-sale licensee may apply for an additional hours license beginning January 1, 2023. ABC may issue additional hours licenses pursuant to this bill beginning

January 1, 2023. An additional hours license issued on or after January 1, 2023, and before January 1, 2025, shall become effective on January 1, 2025. An additional hours license issued on or after January 1, 2025, shall become effective on its effective date.

- 9) Authorizes a local governing body to charge an additional hours licensee a fee to fund local law enforcement.
- 10) Specifies that an on-sale licensee that has conditions on the license that restrict the hours of sale, service, or consumption of alcohol, to a time earlier than 2 a.m. shall not be eligible for an additional hours license.
- 11) Requires that all persons engaged in the sale or service of alcohol during the additional hours period complete a responsible beverage-training course.
- 12) Prohibits the additional hours license is not transferable between on-sale licensed premises.
- 13) States the determination of the necessity for, and types of, local licensing and local permitting shall be made by the local governing body.
- 14) Requires ABC, upon receipt of an application, to make a thorough investigation, including whether the additional hours would unreasonably interfere with the quiet enjoyment of their property by the residents of the local community, as specified. Authorizes ABC to deny an application if the issuance of that license would tend to create a law enforcement problem or if issuance would result in or add to an undue concentration of licenses, as specified.
- 15) Requires the applicant to notify the law enforcement agencies of the city, the residents of the city located within 500 feet of the premises for which an additional hours license is sought, and any other interested parties, as determined by the local governing body, within 30 consecutive days of the filing of the application, in a manner determined by the local governing body.
- 16) Requires ABC to notify the local governing body and all protesting parties who protests have been accepted of its determination to grant the additional hours license. Authorizes any person who has filed a verified protest in a timely fashion that has been accepted to request ABC to conduct a hearing on the issue raised in the protest. The request shall be in writing and filed within 15 business days of the date ABC notifies the protesting party of its determination.
- 17) Restricts access to premises with an additional hours license to patrons 21 years of age or older during the additional hours period, as specified.
- 18) Requires the applicant to pay a nonrefundable fee of \$2,500 at the time of applying for an additional hours license. An original and annual fee for an additional hours license shall be \$2,500. Fees collected shall be deposited into the ABC Fund.
- 19) Requires the ABC to adopt rules and regulations, as specified.
- 20) On or before January 1, 2027, the CHP shall provide the Legislature and the Senate and Assembly Committees on Governmental Organization with a report on the regional impact of the additional hours service areas, as defined.

- 21) Includes a sunset date of January 2, 2028, and makes various legislative findings and declarations.

COMMENTS

Background.

ABC oversight in California. The enactment of the 21st Amendment to the United States Constitution in 1933 repealed the 18th Amendment and ended the era of Prohibition. Accordingly, states were granted the authority to establish alcoholic beverage laws and administrative structures to regulate the sale and distribution of alcoholic beverages. In California, this responsibility was originally entrusted to the State Board of Equalization. In 1955, however, the State Constitution was amended to shift this responsibility to the newly established ABC. The intent in establishing the ABC was to create a governmental organization, which would ensure strict, honest, impartial, and uniform administration and enforcement of the state's liquor laws. The ABC is vested with the exclusive authority to license and regulate the manufacture, distribution and sale of alcoholic beverages within California. ABC is a special fund department that receives funding from fees imposed upon alcoholic beverage licensees.

Currently, there are more than 92,000 ABC licenses throughout the state. Retail licenses are the most common type of license encountered by the public – this includes on-sale licensees that are authorized to sell alcoholic beverages for consumption on the premises such as restaurants and bars, and off-sale licensees that are authorized to sell alcoholic beverages for consumption off of the premises such as grocery and liquor stores.

Since 1935, California alcohol licensed businesses have been prohibited from selling, serving and allowing open containers of beverage alcohol to remain in the public portion of the business from 2 a.m. to 6 a.m. All ABC licenses are renewed annually.

The ABC is required to investigate both the applicant and the premises for which a license is applied to determine if the public would be adversely affected by the license issuance. These investigations include an evaluation of the moral character of the applicant and the suitability of the proposed premises. The ABC must deny an application for a license if issuance would create a law enforcement problem or if issuance would result in, or add to, an undue concentration of licenses in the area where the license is desired.

Under the ABC Act, the department has the sole authority to suspend, revoke or deny a license if it determines that granting or continuance of the license would be contrary to public welfare or morals. ABC has a clearly delineated disciplinary process for its licensees. The process usually begins with a reported violation then proceeds through an investigation after which an accusation can be filed. ABC conducts administrative hearings with decisions generally proposed by administrative law judges. The process can also include appeals to the ABC Appeals Board and, if necessary and requested, an appeal directly to the California Appellate Courts. However, there is wide variance in the period from the discovery of a violation to a final order of suspension or revocation.

ABC guesstimate on potential applications to extend hours. According to ABC, there are approximately 4,240 on-sale licenses across the three pilot cities and one county included in the bill. It is unlikely that all current licensees will apply for an additional hours license, though the specific amount is unknown. ABC estimates that there will be 152 applications in FY 2024-25,

205 in FY 2025-26, and 152 in FY 2026-27. The vast majority of these on-sale licenses include Types 40, 41, 42, 47, and 48, which are generally restaurants, bars, taverns, and nightclubs. This would equate to about 12% of total eligible licensees.

Last call in other states. The end of alcohol service at on-sale establishments, commonly referred to as "last call," can vary dramatically from state to state. The State of Maine for example has last call at 1:00 a.m., while the State of Nevada allows for the sale of alcohol 24-hours a day. The states of Louisiana and New Jersey also allow for the sale of alcohol 24-hours a day; however these two states have authorized counties and local municipalities to set or restrict opening and closing times for on-sale establishments. For instance, bars in cities like New Orleans can serve alcohol for 24-hours a day but in Baton Rouge, last call is at 2 a.m. In New Jersey, most municipalities set their last call at 2 a.m. but Atlantic City serves 24-hours a day.

Some larger states, including states with high rates of tourism, have allowed for extended service in densely populated urban centers. Examples include the state of New York, which authorizes establishments to serve until 4 a.m., however the actual closing time is left up to each of New York's 62 counties. In Florida, last call is set statewide at 2 a.m. However, some cities have passed exemptions to the law, notably Tampa, St. Petersburg, and Pinellas County who can stay open to 3 a.m., Fort Lauderdale can sell till 4 a.m., and the City of Miami Beach in the South Beach Entertainment District allows some establishments to stay open and serve alcohol until 5 a.m.

Previous Legislative Attempts. Since the early 2000s, there have been numerous attempts to extend the time period for alcohol sales past 2:00 a.m. for on-sale establishments (bars, nightclubs and restaurants). Each bill either failed in a policy committee, by a Floor vote, or governor veto. The most recent attempt was SB 58 (Wiener) of 2019. The bill which was substantially similar to this bill in oversight, by authorizing ABC, to establish a pilot program between January 1, 2022 and January 2, 2027, to allow certain on-sale licensees (bars, nightclubs and restaurants) in ten qualifying cities (Cathedral City, Coachella, Fresno, Long Beach, Los Angeles, Oakland, Palm Springs, Sacramento, San Francisco, and West Hollywood) to sell, give or purchase alcoholic beverages between the hours of 2:00 a.m. and 3:00 a.m., subject to specified requirements and approvals. The bill failed passage (29-35) on the Assembly floor.

SB 905 (Wiener), of the 2017-18 Legislative Session, would have extended the hours of alcohol sales to 4:00 a.m. for on-sale licensed premises, under specified conditions. Beginning January 1, 2021, and before January 2, 2026, ABC would have conducted a pilot program in the cities of Cathedral City, Coachella, Long Beach, Los Angeles, Oakland, Palm Springs, Sacramento, San Francisco, and West Hollywood. The bill was vetoed by Governor Brown, whose veto message stated: "*Without question, these two extra hours will result in more drinking. The businesses and cities in support of this bill see that as a good source of revenue. The California Highway Patrol, however, strongly believes that this increased drinking will lead to more drunk driving. California's laws regulating late night drinking have been on the books since 1913. I believe we have enough mischief from midnight to 2 without adding two more hours of mayhem.*"

According to the Author

According to the author, "many of the state's food service and entertainment establishments, including social and nightlife venues, are still struggling from the effects of the COVID-19 pandemic. The author further notes, currently our California destination cities are at a disadvantage when competing with cities both nationally and internationally for tourists,

conventions, and conferences. Additionally, the [2 a.m.] mandatory closure time creates stress on public services, transportation, and local law enforcement when patrons are simultaneously pushed out onto the street at the exact same time. SB 930 seeks to solve these issues in a safe and manageable way, while ensuring California's nightlife is provided the tools needed to aid in its recovery."

Arguments in Support

The City of Palm Springs writes, "Currently, our California destination cities are at a disadvantage when competing with cities both nationally and internationally for tourists, conventions, and conferences. California must compete with Chicago, Washington D.C., New York City, Las Vegas, Atlanta, Miami Beach, and New Orleans, all of whom have late-night service hours beyond 2 a.m. SB 930 would align California with at least 15 other states where local jurisdictions have the authority to decide alcoholic beverage service hours. Furthermore, this pilot program applies to only seven cities. Social and nightlife venues are an economic driver in these communities, and the state's food service and entertainment industries generate billions of dollars in consumer spending, and employ well over a million Californians. SB 930 provides an optional tool for local control over nightlife that will increase tax revenue and tourism as well as revitalize business districts."

This bill is supported by some of the qualified cities that could participate in the pilot program, as well as those cities' tourism boards and the California Travel Association, which states, "SB 930 is a reasonable solution that provides certain cities the ability to participate in a pilot program that will give them additional tools to enhance their local economies and help entice more visitors to California."

Arguments in Opposition

Opponents outline numerous health and safety concerns and state SB 930 will lead to quality of life deterioration, drinkers driving from areas where bars close earlier to bars with later last calls, late night drinkers sharing the road with early morning commuters, and increased alcohol-related harm, including DUI accidents and fatalities. They further note the lack of resources and enforcement capacity to deal effectively with the extra service hours and mitigate the additional harms of late night drinking. Law enforcement is already over extended trying to cover existing closing times. Extending the hours to 4:00 a.m. creates the opportunity for customers to become more intoxicated and more fatigued. Public transportation options are already limited at 2:00 a.m. and will be even more at 4:00 a.m. Furthermore, it will have regional consequences, especially for municipalities within driving distance of cities who adopt a later closing time forcing neighboring cities to absorb increased financial and societal burden related to DUI. Opponents further note that SB 930 lacks any evidence to support claims that extending hours of sale would not increase alcohol-related harm. Forty years of peer-reviewed, public health research finds that two or more hours of increased alcohol sales will produce increases in alcohol consumption and related problems including violence, emergency room admissions, injuries, alcohol-impaired driving, and motor vehicle crashes.

The California Association of Highway Patrolmen, states, "With bars closing near the commute hour, there will be more drivers on the road and the likelihood of drunk driving accidents will increase substantially."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, "1) One-time costs of approximately \$700,000 in the first year to ABC to develop the pilot program, including adopting regulations, followed by ongoing annual costs of approximately \$2 million for continued program development, licensing and enforcement. Direct costs should be covered by the application and annual fees over time. In contrast to ABC's general fee authority, however, ABC is not authorized to adjust these fees for inflation. (ABC Fund). 2) Significant one-time costs, likely in the hundreds of thousands of dollars, for CHP to participate in local task forces and complete the required report (Motor Vehicle Account)."

VOTES

SENATE FLOOR: Vote Not Relevant

YES:

ABS, ABST OR NV:

ASM GOVERNMENTAL ORGANIZATION: 12-4-6

YES: Santiago, Aguiar-Curry, Berman, Bryan, Wood, Gipson, Jones-Sawyer, Low, Mathis, Robert Rivas, Blanca Rubio, Lee

NO: Bigelow, Lackey, Ramos, Smith

ABS, ABST OR NV: Cooper, Megan Dahle, Daly, Davies, Eduardo Garcia, Quirk-Silva

ASM APPROPRIATIONS: 9-2-5

YES: Holden, Bryan, Arambula, Mike Fong, Eduardo Garcia, Quirk, Robert Rivas, Akilah Weber, McCarty

NO: Bigelow, Levine

ABS, ABST OR NV: Calderon, Megan Dahle, Davies, Fong, Gabriel

UPDATED

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CONSULTANT: Eric Johnson / G.O. / (916) 319-2531

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