

beverages. 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) Permits a winegrower, a winegrower's agent, wine importer, or other specified parties to conduct or participate in, and serve wine at, an instructional event for consumers held at a retailer's premises featuring wines produced by or for the winegrower or, imported by the wine importer if specified conditions are met. In this regard, these licensees may list certain information in advertisements for the event, but those advertisements are prohibited from including any video.
- 4) Prohibits a premium, gift, free goods, or anything of value from being given away in connection with the instructional event by the winegrower, California winegrower's agent, wine importer, or retailer, except as authorized.
- 5) Provides that no alcoholic beverages may be sold at the instructional event, except that orders for the sale of wine may be accepted by the winegrower if the sales transaction is completed at the winegrower's premises.
- 6) Provides that the name, address, telephone number, email address, internet website address, and any other electronic media of a winegrower, wine importer, or winegrower's agent licensee, the brand names of wine being featured, and the time, date, location, and other identifying information of a wine promotional lecture at a retail premises may be listed in advance of the event in an advertisement of the off-sale or on-sale retail licensee.

This bill:

- 1) Expands on current provisions in the ABC Act related to advertisements by a winegrower, winegrower's agent, or wine importer for instructional events for consumers held at a retailer's premises by allowing that advertisement to contain videos that are up to 60 seconds long.
- 2) Removes the requirement that the specified information and any pictures, illustrations, or depictions in that advertisement be relatively inconspicuous in relation to the advertisement as a whole.
- 3) Provides that the advertisement may contain pictures, illustrations, videos, or depictions of the winegrower, wine importer, or winegrowers' agent.

Background

Author Statement. According to the author’s office, “SB 1273 provides a targeted modernization to California’s tied-house laws, building on the Legislature’s prior work in AB 2452 (2018) and SB 788 (2019) by allowing winegrowers and wine importers to use short-term video in advertisements promoting legally permitted consumer events like winemaker dinners and tastings. Social media has changed dramatically since the Legislature last addressed this issue, and platforms like Instagram, TikTok, and Facebook now overwhelmingly favor video content, leaving California vintners at a growing disadvantage in reaching their own customers. At a time when the industry is facing serious headwinds, with well-known wineries downsizing or closing in recent months, this bill gives vintners a more authentic way to meet consumers where they are, at no cost to the state.”

Tied-House Laws/Three-Tier System. Existing law, known as the “tied-house” law or “three-tier” system, separates the alcoholic beverage industry into three component parts: manufacturer/supplier (the first tier), wholesaler (the second tier), and retailer (the third tier). 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. 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. Generally, other than exemptions 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.

Current Authorization. Current law authorizes winegrowers, winegrower’s agents, and wine importers to conduct and/or participate in instructional consumer tastings at a retailer’s premises, subject to a number of conditions. Specifically, current law is clear that no premium, gift, free goods, or other things of value may be given away in connection with the instructional event, and no alcoholic beverages may be given away except for limited samples. Limited samples include minimal amounts of wine, taken from barrels or tanks and up to three one-ounce tastes per consumer from bottles of wine provided by the licensee.

Alcohol cannot be sold at the event itself, though licensees may take orders if the sale is completed at their own premises. Current law also allows limited advertising of the event by the licensee, including basic identifying information

and still images, but prohibits listing retail prices, making laudatory references to the retailer, using video, or making the retailer's information overly prominent. This bill allows the advertisement to contain videos up to 60 seconds long and removes the requirement that the specified information and any pictures, illustrations, or depictions be relatively inconspicuous in relation to the advertisement as a whole. The bill would also authorize the advertisement to contain pictures, illustrations, videos, or depictions of the winegrower, wine importer or winegrower's agent.

These changes all seek to modernize these provisions of the ABC Act when it comes to advertisements by specified licensees for instructional events held at a retailer's premises. According to the author's office, "platforms like Instagram, Facebook, and TikTok have restructured their algorithms to heavily prioritize video content particularly short-term video. Research indicates that social video generates approximately 1,200% more shares than text and images combined. For practical purposes, this means that a winery attempting to promote a legally permitted consumer event through static images and text is operating at a severe and growing disadvantage compared to what the platforms' own design rewards."

Prior/Related Legislation

AB 2452 (Aguiar-Curry, Chapter 705, Statutes of 2018) revised various advertising prohibitions for alcohol licensees when conducting instructional events at a retailer's location to, among other things, allow for pictures, illustrations, and depictions of the retailer's premises and for the name, address, telephone number, email address, Internet Web site address, and any other electronic media of the licensee upon whose licensed premises the event will be held.

AB 1891 (Levine, Chapter 273, Statutes of 2018) allows a licensed craft distiller to instruct consumers and conduct tastings on the premises of an on-sale and off-sale retailer, as long as certain specified conditions are met

AB 780 (Williams, Chapter 408, Statutes of 2015) made clarifying and conforming changes relating to the listing of on-sale and off-sale retailers as a thing of value in order to enable licensees to connect with each other for normal commercial purposes.

AB 636 (Hall, Chapter 329, Statutes of 2013) permitted a winegrower, California winegrower's agent, importer, or other specified parties appearing at an instructional event, as specified, to provide autographs to consumers or consumer advertising specialties given by the person to a consumer or on any item provided

by a consumer; and prohibited a requirement of the purchase of any alcoholic beverage in connection with such autographing.

AB 2184 (Hall, Chapter 480, Statutes of 2012) created a new tied-house exception in the Act that authorizes, until January 1, 2016, wine, beer and spirits producers to participate in promotional events held at an off-sale retail licensed location for the purpose of providing autographs on bottles or other items to consumers.

SB 1101 (Wolk, Chapter 177, Statutes of 2010) clarified that winemakers who participate in instructional events or “meet the winemaker dinners,” held at a retailer’s licensed premises for consumers, may offer minimal samples, no more than three one-ounce tastes, of wine from “bottles.”

AB 605 (Portantino, Chapter 230, Statutes of 2010) added new provisions to the Act authorizing the Department of ABC to issue to the holder of an “off-sale” retail license an “instructional tasting license” for the purpose of furnishing tastings of alcoholic beverages to consumers, subject to certain limitations.

AB 2134 (Chesbro, Chapter 149, Statutes of 2010) created a new tied-house exception in the Act that allows licensed brewers to conduct and participate in events called “Beer Maker Dinners” for consumers held at an on-sale retail licensed premise.

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

SUPPORT:

Napa Valley Vintners (Source)

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: According to the Napa Valley Vintners, “SB 1273 further updates the changes to the Business & Professions Code that were made in 2018 through AB 2452 to allow for a winery event promotion using social media. The 2018 amendments represented a good-faith effort to align California’s tied-house advertising rules with the realities of social media promotion at that time by allowing for photos and social media handles to be used in promotions. However, the digital landscape has shifted dramatically in the intervening seven years in ways that the Legislature could not have fully anticipated. SB 1273 is a common-sense fix that modernizes tied-house restrictions to allow video content in

supplier advertisements, while maintaining protections against undue retailer promotion.”