

Date of Hearing: April 20, 2016

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 1971 (Cooper) – As Introduced February 16, 2016

SUBJECT: Alcoholic beverages: tied-house restrictions: advertising

SUMMARY: Creates a new section in the Alcoholic Beverage Control Act (Act) to allow holders of manufacturer's licenses, as defined, to purchase advertising and space from, retail licensees at indoor arenas and outdoor stadiums with fixed seating capacities in excess of 1,500, subject to specified conditions. Specifically, **this bill:**

1) Specifies that a beer manufacturer, the holder of a winegrowers license, a distilled spirits rectifier, a distilled spirits manufacturer, or distilled spirits manufacturer's agent may purchase advertising time and space from, or on behalf of, an on-sale retail licensee subject to all of the following conditions:

(a) The on-sale licensee is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or the major tenant of the owner of any outdoor stadium or fully enclosed arena with a fixed seating capacity in excess of 1,500. This subdivision includes all stadiums and arenas licensed prior to the effective date of the measure adding this section.

(b) The outdoor stadium or fully enclosed arena, as described, is not owned by a community college district.

(c) The advertising space or time is purchased only in connection with events to be held on the premises of the outdoor stadium or fully enclosed arena.

(d) The on-sale licensee serves other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marked by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced by the winegrower, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the distilled spirits rectifier, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent that purchased the advertising space or time.

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 in this state and the collection of license fees for this purpose.
- 2) Separates the alcoholic beverage industry into three component parts, or tiers (referred to as the "tied-house" law or "three-tier" system), of manufacturer (including breweries, wineries and distilleries), wholesaler, and retailer (both on-sale and off-sale). The original policy rationale for this body of law was to: a) promote the state's interest in an orderly market; b) prohibit the vertical integration and dominance by a single producer in the market place; c)

prohibit commercial bribery and to protect the public from predatory marketing practices; and, d) discourage and/or prevent the intemperate use of alcoholic 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) Prohibits, in general, an alcohol manufacturer, wholesaler, or any officer, director, or agent of any such person from owning, directly, or indirectly, any interest in any on-sale license, or from providing anything of value to retailers, be it free goods, services, or advertising.
- 4) Prohibits paid advertising by winegrowers, beer manufacturers and distilled spirits producers in cases where a retail licensee also owns a sports or entertainment venue. Over the years numerous exceptions to this prohibition have been added to the ABC Act [e.g., Sleep Train Arena (formerly known as ARCO Arena) in Sacramento, Oakland Coliseum in Oakland, Arrowhead Pond Arena in Anaheim, Kern County Arena in Bakersfield, the National Orange Show Event Center in San Bernardino, California Speedway in Fontana, Grizzly Stadium in downtown Fresno, Raley Field in West Sacramento, HP Pavilion in San Jose, the Home Depot Center in the City of Carson, Levi's Stadium in the City of Santa Clara, and other venues].
- 5) Provides a narrow tied-house exception that expressly authorizes, under specified conditions, a beer manufacturer, holder of a winegrower's license, California winegrower's agent, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer's agent to purchase advertising space or time from a fully enclosed venue (ClubNokia) with box office sales and attendance by the public on a ticket basis only, with a patronage capacity in excess of 2,000, but not more than 3,000, located in Los Angeles County within the area subject to the Los Angeles Sports and Entertainment District Specific Plan adopted by the City on September 6, 2001, where the owner of the venue is not the on-sale retail licensee. (Business and Professions Code Section 25503.42)

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of this bill: As noted above, existing tied-house laws prohibit an alcoholic beverage supplier, or any officer, director or agent of an alcoholic beverage supplier, from providing anything of value to an on-sale retailer licensee, be it free goods, money, services or advertising. Over the years, numerous exceptions to this prohibition have been added to the Act encompassing various venues throughout the state.

This bill will create a stand-alone tied-house exception applicable to the general prohibition against advertising arrangements between retail, wholesale and manufacturer licensees at any stadium or fully enclosed arena in the state. This exception would include current stadiums and arenas licensed prior to the effective date of this measure and any future enclosed arena or outdoor stadium with a fixed seating capacity in excess of 1,500.

According to the author's office, at many arenas and stadiums, the owner of the facility is also the alcoholic beverage retail licensee or leases the alcoholic beverage concessions to a third party. Alcoholic beverage manufacturers are prohibited from purchasing advertising from retail licensees and are prohibited from paying for placing advertising in licensed retail premises. Over the years, numerous exceptions to these tied-house laws have been enacted to allow

manufacturers or suppliers to pay for advertising or become sponsors of these facilities (outdoor stadium or fully enclosed arena). Numerous facilities throughout the state have specifically been exempt from this prohibition within Business and Professions Code Section 25503.6. Each facility has been the subject of legislation to obtain its specific exemption. Moreover, similarly situated facilities must seek legislation to obtain an exemption specific to the particular facility and their proposed business models. During the 2014 legislative session two pieces of legislation (AB 600 Bonta and AB 1424 (G.O. Committee) were required to address the advertising arrangement desired for Levi Stadium in Santa Clara, California. The author states this bill will create consistency in the privileges afforded to similarly situated licensees throughout the state.

Currently, there are two major professional sporting venues, AT&T Park in San Francisco and Petco Park in San Diego, with retail ABC licenses where alcohol manufacturers or suppliers are advertising without this specific statutory authorization since their opening in 2000 and 2004 respectively. Each of these venues seat over 41,000 spectators and hold hundreds of events annually without this exception with no apparent detriment to the attending public, the three-tier system, or public interest.

The author further states although this proposal will add more exceptions to the ABC Act, this addition does not harm the public interest, grants the same privileges to similarly situated licensees, and facilitates business investments in local communities.

In support: Writing in support, ABC states, "Numerous exceptions to the tied-house laws have been enacted to allow manufacturers or suppliers to pay for advertising or become sponsors of entertainment venues. In recent years, advertising arrangements between cities, stadiums, arenas, major tenants, and owners have become more fluid and ever changing. Making legislative changes to address every advertising arrangement is not necessary as ABC continues to have the authority to investigate any complaints of alcohol related violations at these stadiums." ABC has the 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.

Prior legislation: AB 1320 (Maienschein), Chapter 527, Statutes of 2015. Creates a new tied-house exception in the ABC Act that authorizes certain alcoholic beverage licensees to sponsor a limited number of events promoted by or to purchase advertising space and time from, or on behalf of, a live entertainment marketing company that conducts live artistic, musical, sports, or cultural entertainment events solely at the San Diego County Fairgrounds in Del Mar, under specified conditions.

SB 600 (Bonta), Chapter 139, Statutes of 2014. Extended a tied-house exception in the ABC Act pertaining to the general prohibition against advertising arrangements between retail, wholesale and manufacturer licensees to include an outdoor stadium (Levi's Stadium) with a fixed seating capacity of at least 68,000 seats located in the City of Santa Clara.

SB 324 (Wright), Chapter 164, Statutes of 2013. Provided a tied-house exception to the ABC Act pertaining to the general prohibition against advertising arrangements between retail, wholesale and manufacturer licensees and the Los Angeles Forum in the City of Inglewood.

AB 813 (John A. Pérez), Chapter 647, Statutes of 2009. Created a tied-house exception by allowing the owner of a venue (Club Nokia) in Los Angeles to engage in a sponsorship

agreement with an alcoholic beverage supplier for the privilege of placing advertising in the on-sale licensee's premises.

SB 520 (Governmental Organization Committee), Chapter 349, Statutes of 2007. Provided a tied-house exception allowing certain alcohol manufacturers and distributors to sponsor events or purchase advertising space from a live entertainment company that has its principal place of business in the County of Los Angeles.

AB 776 (Aghazarian) Chapter 221, Statutes of 2007. Created a tied-house exception by authorizing a beer manufacturer to sponsor or purchase advertising space and time from, or on behalf of, an off-sale retail licensee that is an owner or co-owner of a professional sports team (California Cougars indoor soccer team) that plays its home games, in an arena with a fixed seating capacity of 10,000 seats (Stockton Arena) located in San Joaquin County.

AB 663 (Galgiani) Chapter 745, Statutes of 2007. Extended a tied-house exception pertaining to the general prohibition against advertising arrangements between retail, wholesale and manufacturer licensees to include an outdoor professional sports facility with a fixed seating capacity of at least 4,200 (Banner Island Ballpark) located in San Joaquin County.

AB 3046 (Chavez) Chapter 587, Statutes of 2006. Extended a tied-house exception pertaining to the general prohibition against advertising arrangements between retail, wholesale and manufacturer licensees to the HP Pavilion in Santa Clara County.

AB 1442 (Horton) Chapter 617, Statutes of 2005. Extended a tied-house exception pertaining to the general prohibition against advertising arrangements between retail, wholesale and manufacturer licensees to the Home Depot Center, a sports and athletic complex within the City of Carson in Los Angeles and the Nokia Theater, located within the Los Angeles Sports and Entertainment District, adjacent to Staples Center.

SB 1647 (Perata) Chapter 275, Statutes of 2004. Extended a tied-house exception pertaining to the general prohibition against advertising arrangements between retail, wholesale and manufacturer licenses to the Oakland Coliseum in Alameda County.

SB 1189 (Costa) Chapter 47, Statutes of 2002. Extended a tied-house exception pertaining to the general prohibition against advertising arrangements between retail, wholesale and manufacturer licenses to the Visalia Oaks Stadium in Visalia and the California Speedway in Fontana.

REGISTERED SUPPORT / OPPOSITION:

Support

Department of Alcoholic Beverage Control

Opposition

None on file

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