

Date of Hearing: April 20, 2016

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 2135 (Levine) – As Amended April 11, 2016

SUBJECT: Alcoholic beverages: revenue sharing

SUMMARY: Would specify that a written agreement regarding the sharing or splitting of gross revenue from the sale of alcoholic beverages between a licensee and a California fair, as defined, in connection with the sale of alcoholic beverages fair time activities is not the exercise of a license privilege or performance of an act for which a license is required. Specifically, this bill:

1) Provides that a written agreement regarding the sharing or splitting of gross revenue from the sale of alcoholic beverages between a licensee and a district agricultural association, the California Exposition and State Fair, a county fair, or a citrus fruit fair, in connection with the sale of alcoholic beverages during a state or county fair is not the exercise of a license privilege or performance of an act for which a license is required, unless the agreement, or any other related agreement or understanding, results in an unlicensed person exercising control or undue influence over a licensee or the operation of a licensed business.

EXISTING LAW:

1) Article XX Section 22 of the California Constitution: The State of California, subject to the internal revenue laws of the United States, shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the State, and subject to the laws of the United States regulating commerce between foreign nations and among the states shall have the exclusive right and power to regulate the importation into and exportation from the State, of alcoholic beverages. In the exercise of these rights and powers, the Legislature shall not constitute the State or any agency thereof a manufacturer or seller of alcoholic beverages.

2) Establishes the Department of Alcoholic Beverage Control (ABC) and grants it exclusive authority to administer the provisions of the Alcoholic Beverage Control Act (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 in this state and the collection of license fees.

3) Existing law, known as the "Tied-house" law or "three-tier" system, separates the alcoholic beverage industry into three component parts of manufacturer (the first tier), wholesaler (the second tier), and retailer (the third tier). The original policy rationale for this body of law was to prohibit the vertical integration of the alcohol industry and to protect the public from predatory marketing practices. 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.

4) Prohibits an alcoholic beverage supplier from paying money, or giving or furnishing anything of value, for the privilege of placing or painting a sign or advertisement, or window display, on or in premises selling alcoholic beverages at retail.

5) States in order to offer and/or profit from retail sell of alcohol in California you must have a liquor license. There are many types of liquor licenses that can be obtained and they each serve their own purpose. On-Sale General-authorizes the sale of all types of alcoholic beverages (namely, beer, wine and distilled spirits), for consumption on the premises, and the sale of beer and wine for consumption off the premises; Off-Sale General-authorizes the sale of all types of alcoholic beverages for consumption off the premises in original, sealed containers; On-Sale Beer and Wine-authorizes the sale of all types of wine and malt beverages (e.g., beer, porter, ale, stout and malt liquor) for consumption on and off the premises; Off-Sale Beer and Wine-authorizes the sale of all types of wine and malt beverages for consumption off the premises in original, sealed containers; and On-Sale Beer-authorizes the sale of malt beverages for consumption on and off the premises.

6) Defines a state-supported fair organization as any fair that conducts an annual fair and submits an annual statement of operations to the California Department of Food and Agriculture (CDFA). The generic term of "fairs" refers to District Agricultural Associations (DAA's), county fairs, citrus fairs, and the California State Fair. The network of California fairs includes 77 fair organizations. California's fairs are located throughout the Golden State from early spring to the fall of each year.

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the bill: Existing law defines a state-supported fair organization as any fair that conducts an annual fair and submits an annual statement of operations to the California Department of Food and Agriculture. The generic term of "fair" refers to a District Agricultural Association (DAA), county fair, citrus fair, and the California State Fair. According to the author's office, this bill would permit a fair to share in the revenue from the sale of alcoholic beverages pursuant to a concessionaire agreement.

The author's office notes that it has become commonplace for fair operators to seek to enhance revenues by entering into concession agreements that include a sharing of revenue from the sale of alcoholic beverages on the fairgrounds. Revenue sharing is common with respect to non-alcohol products, but under the comprehensive licensing scheme in the ABC Act, such activities can result in the exercising of license privileges by non-licensees, which is prohibited.

An Attorney General Opinion in 1966 (47 Ops. Cal. Atty. Gen. 182) determined that it would be a violation of the ABC Act for a licensee to share revenue from the sale of alcoholic beverages with a non-licensee, or otherwise allow a non-licensee to exercise control over the licensed business. Additionally, the State Constitution prohibits any agency of the state from being established as a licensed seller of alcohol, which means that an individual fair cannot hold an ABC license. AB 2135 would clarify such revenue sharing agreements is not considered the exercising of license privileges, as defined in the ABC Act.

REGISTERED SUPPORT / OPPOSITION:

Support

Department of Alcoholic Beverage Control

Opposition

None on file

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