

Date of Hearing: April 27, 2017

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 1221 (Gonzalez Fletcher) – As Amended March 28, 2017

SUBJECT: Alcoholic beverage control: Responsible Beverage Service Training Program Act of 2017

SUMMARY: Would establish the Responsible Beverage Service (RBS) Training Program Act of 2017. Beginning July 1, 2021, the bill would require an alcohol server, as defined, to successfully complete an RBS training course offered by the Department of Alcoholic Beverage Control (ABC), which may charge a fee, not to exceed \$15, to be deposited in the Alcohol Beverage Control Fund. Specifically, **this bill:**

- 1) Provides that on or before January 1, 2021, ABC shall develop, implement, and administer an RBS training program that will make RBS training courses available to all persons required to obtain an alcohol server certification pursuant to this article. RBS training courses shall, at a minimum, be offered in English and Spanish.
- 2) Provides ABC shall be a provider of RBS training courses and only the department shall issue, or authorize the issuance of, alcohol server certifications to persons having successfully completed an RBS training course.
- 3) Defines “RBS training course” as a course administered by ABC, designed to instruct and educate alcohol servers on responsible practices regarding the sale and service of alcoholic beverages that includes, but is not limited to, instruction on the following subjects:
 - (a) The social impact of alcohol.
 - (b) The impact of alcohol on the body.
 - (c) State laws and regulations relating to alcoholic beverage control, including laws and regulations related to driving under the influence.
 - (d) Intervention techniques to prevent the service or sale of alcoholic beverages to underage persons or intoxicated patrons.
 - (e) The development of management policies that support the prevention of service or sale of alcoholic beverages to underage persons or intoxicated patrons.
- 4) Provides that an alcohol server certification shall be valid for a period of three years from the date of issuance and shall be valid for any person employed by a licensee that is subject to RBS training.
- 5) Provides beginning July 1, 2021, a licensee that is subject to RBS training shall not employ or continue to employ any alcohol server without a valid alcohol server certification.

- 6) Maintains an alcohol server who was employed by the licensee prior to July 1, 2021, shall obtain an alcohol server certification by August 31, 2021.
- 7) Provides an alcohol server employed by the licensee on or after July 1, 2021, shall obtain an alcohol server certification within 60 calendar days of employment. Provides a licensee shall ensure that each alcohol server it employs has a valid alcohol server certification. The licensee shall maintain records of certifications for inspection, upon request, by ABC.
- 8) Affirms a person shall not perform duties that include the sale or service of alcoholic beverages for consumption on licensed premises, and shall not manage that person, without a valid alcohol server certification.
- 9) States a nonprofit organization shall designate each alcohol server when applying for a temporary daily on-sale license. The organization shall ensure that each named alcohol server has a valid alcohol server certification for the period identified on the application.
- 10) Defines “Alcohol server” as a person who sells or serves alcoholic beverages for consumption, or a person who manages or supervises that person, on premises licensed pursuant to this division, including a designee for alcoholic beverage sales and service pursuant to temporary license.
- 11) States “alcohol server certification” means a certification issued by ABC to a person who has successfully completed an RBS training course.
- 12) Defines “RBS training program” as a statewide Responsible Beverage Service training program administered by ABC that provides RBS training courses to licensees and their agents and employees.
- 13) Provides the failure of a licensee to comply with this Act, shall be grounds for disciplinary action. A violation shall not be grounds for any criminal action, as specified, against a licensee or an agent or employee of a licensee.
- 14) Provides ABC may charge a fee, not to exceed fifteen dollars (\$15) per person, for any RBS training course provided by the department. Any moneys collected shall be deposited in the Alcohol Beverage Control Fund. ABC may adopt rules that it determines necessary for the administration of RBS.

EXISTING LAW:

- 1) The Alcoholic Beverage Control Act (Act), administered by ABC, regulates the granting of licenses for the manufacture, distribution, and sale of alcoholic beverages within the state.
- 2) Defines an “on-sale” license as authorizing the sale of all types of alcoholic beverages: namely, beer, wine and distilled spirits, for consumption on the premises (such as at a restaurant or bar). An “off-sale” license authorizes the sale of all types of alcoholic beverages for consumption off the premises in original, sealed containers.
- 3) Provides that every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor.

- 4) States no person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage shall be civilly liable to any injured person or the estate of such person for injuries inflicted on that person as a result of intoxication by the consumer of such alcoholic beverage.
- 5) Allows ABC to issue licenses and authorizations for the retail sale of beer, wine and distilled spirits on a temporary basis for special events (Special Daily Beer and/or Wine License, Daily On-Sale General License).
- 6) States a cause of action may be brought by or on behalf of any person who has suffered injury or death against any person licensed, or required to be licensed, as specified, or any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave, who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic beverage, and any other person who sells, or causes to be sold, any alcoholic beverage, to any obviously intoxicated minor where the furnishing, sale or giving of that beverage to the minor is the proximate cause of the personal injury or death sustained by that person.

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the bill. According to the author, "unlike 18 other states and the District of Columbia, California does not require responsible beverage server training for bartenders and restaurant servers who are providing alcohol to customers and are in a unique position to assess and intervene if customers pose a potential threat. While law enforcement does its best with checkpoints and other enforcement, these approaches only help after a patron has already made the choice to get behind the wheel when they perhaps they shouldn't. That is not good enough."

The author states this bill "seeks to help individuals who serve alcohol to meet their statutory requirement to not serve obviously intoxicated patrons and minors by requiring participation in a mandatory RBS training course. Establishing a uniform, standard education requirement for all alcohol servers in California will improve the likelihood that an alcohol server will intervene upfront before a patron endangers the public. And that saves lives."

The author additionally notes that according to "the National Highway Traffic Safety Administration, more than 10,000 people die on our streets every year – the equivalent of one fatality every 51 minutes due to drunk driving. While we cannot entirely stop every individual from making bad decisions that put innocent people at risk, we do have a responsibility to intervene when we can."

Data provided by the author's office from Ventura County indicates that significant improvements could be made in addressing drunk driving from licensed facilities. Ventura County has collected Place of Last Drink (POLD) surveys for over 12 years (2001-2011) from over 25,000 arrestees convicted of impaired driving offenses. The data results were as follows:

- At a bar, club, or restaurant: 42%
- At someone else's residence: 41%
- At your own residence: 6%
- Other location: 4%

- At a park, beach or campground: 3%
- In a car/vehicle: 2%
- In a hotel room: 1%
- At work: 1%

The author contends this bill "will ensure that all servers learn the necessary skills to protect the patron, public, server and business. We know drunk driving ruins lives and kills too many innocent people. That is why we need to make sure those on the front line are equipped to help."

In support. The California Medical Association states, "This legislation establishes a reasonable training requirement. Eighteen other states and the District of Columbia already require this training. RBS training provides bartenders and servers with tools to effectively identify when a patron has had too much to drink and how to safely intervene if the patron attempts to get into their car. RBS training has been found to increase appropriate server practices, increase refusal to serve obviously intoxicated patrons, and decrease the percentage of intoxicated patrons leaving an establishment. Three years after Oregon mandated RBS training, fatal single vehicle nighttime crashes decreased by an estimated 23%."

Alcohol Justice states, "requiring those that sell and serve alcohol for on-sale consumption to complete RBS training will help to reduce the over service of alcohol and supplement enforcement of laws which prohibit the sell. Drinking drivers commonly start their journey from licensed establishments, while serving intoxicated people can result in other risky behavior and criminal outcomes."

In opposition. The California Restaurant Association writes in opposition, "We believe that AB 1221 has two fundamental flaws, which were not present in last year's compromise measure. First, the bill tasks the ABC with the responsibility to educate, test and certify approximately 500,000 restaurant employees on safe alcohol handling requirements. This would be an extremely complicated and costly undertaking, which would quickly overwhelm ABC's resources. Second, if the intent (not reflected in the bill) is to allow ABC to accredit private training providers, the department has no experience accrediting course providers, and the bill offers little guidance as to how such providers would be approved and monitored. We believe the better approach would be to set standards in the legislation for what must be included in training courses, and to allow that training to be provided by accredited training providers. This is the approach the Legislature took in 2011, when it enacted food handler training. It leaves accreditation of providers to American National Standards Institute (ANSI) using the globally recognized American Society for Testing and Materials International (ASTM) standards. ANSI is the official U.S. representative to the International Organization for Standardization (ISO)."

Author amendments. The author will offer the following amendments in committee: 1) Allow for online RBS training and assessment; 2) Allow other training providers to administer the training and assessment, if approved by ABC; and, 3) a nonprofit organization that has obtained a temporary daily on-sale license or temporary daily off-sale license from ABC must designate a person or persons to receive RBS training before the event and that designated person or those designated persons must remain on site for the duration of the event.

Background:

Dram Shop Law. A dram shop law is a type of statute that holds any business establishment strictly liable for selling alcoholic beverages to a person who is obviously intoxicated. The purpose of dram shop laws is to increase the responsibility of those who make profits by tendering alcoholic beverages to guests. The word "dram" refers to a British unit of measurement for serving alcohol. Dram shop laws usually deal with prohibiting alcohol sales to intoxicated persons, but sometimes they may also cover the sale of alcohol to minors, as well as issues with licenses and identification. Most states have some form of these types of laws, but they vary widely between jurisdictions.

California's Dram Shop Law specifies that a vendor who provides alcohol to a person 21 years of age or older cannot be held liable for damages if the person then injures someone else, even if the person was obviously intoxicated at the time. The law states that the consumption of alcohol, not the furnishing of the beverages, is the proximate cause of injuries that an intoxicated person inflicts on another individual, a position that largely eliminates dram shop liability. Thus, the sale of alcohol by bars, liquor stores and restaurants in California is not considered to be the cause of an automobile accident.

RBS Training Programs. RBS training is not mandatory in California although some cities and counties do require RBS training in order to sell or serve alcoholic beverages at licensed establishments within their jurisdictions.

Currently, ABC oversees the Licensee Education on Alcohol and Drugs Program (LEAD) – a free, voluntary prevention and education program for retail licensees, their employees and applicants. The mission of the LEAD program is to provide high quality, effective and educationally sound training on alcohol responsibility and the law to California retail licensees and their employees. The Program was initiated in 1991 with a grant from the California Office of Traffic Safety. The training classes are offered at a variety of locations throughout the state and include instruction on checking various forms of identification, detecting and preventing illegal activity, reducing liability and much more. Each training class lasts four hours. At the conclusion of the class, there is an exam on the material that was covered and each person that fulfills all of the training requirements receives a certificate, via email, certifying that they successfully completed a LEAD training course.

ABC penalties. It is the stated policy of ABC to impose administrative, non-punitive penalties in a consistent and uniform manner with the goal of encouraging and reinforcing voluntary compliance with the law. Any person licensed by ABC, and his/her employees, must abide by all California laws. If ABC has evidence of a violation involving a licensee or a licensed premise, it will file an administrative complaint, called an accusation. An accusation, if proven, will lead to the suspension or revocation of the license. An accusation is in addition to, and not a substitute for, possible criminal and civil penalties that local city and district attorneys may bring against the licensee or employee who committed the violation. Criminal penalties can result from violations that are criminal offenses. For example, the sale or service of alcoholic beverages to a minor, is not only grounds for an accusation, but constitutes a criminal offense. Thus, the seller could be arrested, charged with a crime, and face a fine, community service work or imprisonment in county jail.

Licensee penalties for sales to minors. Authorizes ABC to issue a 15-day suspension to a licensee for a first violation of provisions relating to the sale or furnishing of alcoholic beverages to a person under the age of 21. A second violation within 36 months may result in a 25-day

suspension and a third violation within 36 months may result in license revocation. Additionally, current law allows a licensee to pay a fine in lieu of serving the suspension. If ABC finds that public welfare and morals would not be impaired by the substitution of a fine for the actual suspension of the licensed business, the retail licensee may pay a sum of money equal to 50% of the estimated gross receipts from the sale of alcoholic beverages during the period of suspension, subject to various limits. However, a licensee may not petition ABC for an offer in compromise for a third or any subsequent violation that occurs within 36 months of the initial violation.

Prior legislation. AB 2121 (Gonzalez) of 2016, vetoed by Governor Brown. Would have established an RBS Training Program that will require alcohol servers, beginning July 1, 2020, to obtain certification that they have successfully completed an RBS training course from an accredited training provider within three months of employment and every three years thereafter.

Governor Brown in his veto message stated, ... *"The goal of the program is to teach alcohol servers how to recognize who has consumed too much alcohol by using courses approved by the American National Standards Institute, a for-profit accrediting body. I would prefer to have the Department of Alcohol Beverage Control determine the steps needed to beef up our training programs where necessary."*

SB 602 (Padilla), Chapter 309, Statutes of 2010. Requires a food handler, as defined, to obtain a food handler card within 30 days after his/her hire date at a food facility, with specified exceptions, beginning June 1, 2011, and mandates at least one of the accredited food safety certification examinations required under current law to be offered online.

Related legislation. SB 271 (Mendoza) of 2017. Would authorize ABC to not aggregate a first violation of those provisions pertaining to minors as the first violation for the purposes of determining penalties, suspension, or an offer in compromise if the licensee or designee has completed or agrees to complete a Responsible Retailer Course within 6 months of the date of settlement or final decision. The bill would prescribe the requirements of the course and would require the licensee to submit to ABC a certificate of completion of the course. The bill would authorize ABC to accept a certificate of completion only if the department previously had received from the training provider an attestation under penalty of perjury that the course meets the prescribed requirements.

REGISTERED SUPPORT / OPPOSITION:

Support

California Medical Association (Sponsor)
Alcohol Justice

Opposition

California Restaurant Association

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