

Date of Hearing: April 18, 2018

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 1891 (Levine) – As Introduced January 18, 2018

SUBJECT: Alcoholic beverage licensees: instructional tastings: craft distillers

SUMMARY: Would include a craft distiller license to the definition of licensees who are allowed under current law to instruct consumers and conduct tastings at an on-sale and off-sale retail licensed premises, subject to limitations on the amounts that may be provided to the consumers, as specified.

EXISTING LAW:

- 1) Establishes Department of Alcoholic Beverage Control (ABC) and grants it exclusive authority to administer the provisions of the Alcoholic Beverage Control Act (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.
- 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 marketplace; c) prohibit commercial bribery and 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) Authorizes ABC to issue a craft distiller's license to a person that has facilities and equipment for the purposes of, and is engaged in, the commercial manufacture of distilled spirits. The craft distiller's license authorizes the licensee to do all of the following:
 - a) Manufacture up to 100,000 gallons of distilled spirits per fiscal year (July 1 through June 30), exclusive of brandy production.
 - b) Package, rectify, mix, flavor, color, label, and export only those distilled spirits manufactured by the licensee.
 - c) Only sell distilled spirits that are manufactured and packaged by the licensee solely to a wholesaler, manufacturer, winegrower, manufacturer's agent, or rectifier that holds a license authorizing the sale of distilled spirits or to persons that take delivery of those distilled spirits within this state for delivery or use outside the state, as specified.
 - d) Allows a licensed craft distiller to sell to a consumer participating in a distilled spirits tasting, on the distiller's licensed premises, up to the equivalent of 2.25 liters of distilled spirits in any combination of prepackaged containers per day.

- 4) Authorizes ABC to issue an instructional tasting license to the holder of an off-sale retail license at the premises of the off-sale retail license. Provides that the instructional tasting license authorizes the holder to allow alcoholic beverage manufacturers, wholesalers, or their designated representatives to conduct instructional tasting events for consumers on the subject of wine, beer, or distilled spirits limited to not more than three tastings per person per day. A single tasting of distilled spirits shall not exceed one-fourth of one ounce and a single tasting of wine shall not exceed one ounce. A single tasting of beer shall not exceed 8 ounces. This mirrors existing law for tastings at on-sale premises.
- 5) Permits an on sale retail licensee of wine or distilled spirits to conduct "instructional" consumer tastings on the licensed retail premises provided the following conditions are met: a) no more than one-quarter ounce of distilled spirits is offered in one tasting; b) no more than one ounce of wine is offered in one tasting; and, c) no more than three tastings are offered to an individual in one day.
- 6) Authorizes beer manufacturers and wholesalers to offer beer samples (not to exceed eight ounces per person, per day) to individuals of legal drinking age at on-sale retail licensed premises under specified conditions.
- 7) Permits a licensed winegrower or brandy manufacturer to be issued an off-sale general license. Existing law also permits wineries to sell their products to consumers on their licensed premises and directly to licensed, on-sale and off-sale retailers (e.g., restaurants and liquor stores). Additionally, existing law provides for a brewpub-restaurant license, issued to a bona fide public eating-place, which authorizes the sale of beer, wine, and distilled spirits for consumption on the premises and the sale of beer produced by the brewpub-restaurant licensee for consumption on the premises. The license also authorizes the sale of beer produced by the licensed brewpub-restaurant licensee to a licensed beer and wine wholesaler.
- 8) 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.

FISCAL EFFECT: Unknown

COMMENTS:

Tied-house law separates the alcoholic beverage industry into three component parts of manufacturer, wholesaler, and retailer. 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. 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 law provides several promotional, instructional, and tasting options to the consumer relating to on-sale and off-sale retail establishments.

AB 2285 (Valerie Brown), Chapter 248, Statutes of 1998, authorized a winegrower or distilled spirits manufacturer, or its authorized agent, or an on-sale licensee authorized to sell wine or distilled spirits, to provide tastings of wine or distilled spirits on the premises of the on-sale

establishment, provided the following conditions are met: a) No more than 1/4 ounce of distilled spirits may be offered in one tasting; b) No more than one ounce of wine may be offered in one tasting; and c) No more than three tastings may be offered to an individual in one day.

AB 605 (Portantino), Chapter 230, Statutes of 2010, allowed a licensed off-sale retailer to apply to the ABC for an annual instructional tasting license to permit suppliers and wholesalers to conduct instructional events, including tastes of beer, wine, or distilled spirits, in conjunction with the retailer, at the retailer's off-sale licensed premises. The samples of wine, beer, or distilled spirits may be part of the instructional event, but must be limited to not more than three tastings to any individual of legal drinking age in one day. In terms of quantity, a single tasting of distilled spirits shall not exceed one-fourth of one ounce and a single tasting of wine shall not exceed one ounce. A beer tasting shall be limited to not more than the tasting of eight ounces of beer per person per day. No product can be sold as part of the tasting to any consumer for immediate consumption on the off-sale retail premises.

In 2015, Governor Brown signed AB 1295 (Levine), which created a new type of alcohol license for craft distilleries (ABC Type 74). Craft distilleries are small distilleries permitted to produce less than 100,000 gallons of distilled spirits a year, among other privileges and restrictions. According to the author's office, "craft distilleries have seen exceptional growth since the passage of AB 1295. This growth has boosted California's economy and created a new venue for tourism."

AB 605 (Portantino) of 2010 and SB 1548 (Murray) of 2006 did not include a craft distiller's license, as that specific license did not come into existence until 2015 (AB 1295 (Levine)). Consequently, the need for this bill.

According to the Distilled Spirits Council of the United States, the distilled spirits industry has had steady growth in the United States. Consumer interest in industry innovations and premium products from distilled spirits producers of all sizes contributed to steady growth. The craft spirits industry holds economic development opportunities in tourism, manufacturing, revitalization, exporting and more.

Purpose of the bill: According to the author's office, "tastings are a traditional means of allowing responsible adult consumers to sample and learn about the wide variety of alcoholic beverage products available in the marketplace."

The author points out that prior tastings bills in 2006 and 2010 preceded the creation of the craft distillers license type. This prevents craft distillers from being able to participate in instructional tastings at on-sale and off-sale retail establishments. This puts these local, small businesses at a disadvantage compared to other alcoholic beverage manufacturers.

The author's office states, "By granting these California-based small businesses the same privileges as other alcoholic beverage manufacturers, it will help create and maintain jobs in the state and keep our economy strong by promoting products created in local businesses. In the same way California has led the country with many high quality craft breweries and wineries, craft spirits manufacturers will assist in growing our economy and support the tourism many of our communities depend on."

According to the author's office, this measure is intended to give adult consumers who enjoy distilled spirits the opportunity to sample new products, in modest quantities, and in a

responsible environment. AB 1891 will give craft distillers a marketing tool to educate current and future consumers while taking into consideration California's three-tier system.

According to ABC, there are currently 88 craft distiller's licenses (Type-74) that under this bill would be eligible to conduct an instructional tasting event at which tastes of alcoholic beverages may be served to consumers at a licensed on-sale and/or off-sale premises, as specified.

In support. The California Retailers Association writes in support, "Craft distillers have grown in popularity in recent years, particularly in California. Further, allowing our retailers the ability to allow these tastings, as they do with other distilled spirits, will have significant economic impacts on otherwise small distiller businesses."

In opposition. Alcohol Justice writes in opposition, "This bill grants yet another regulatory exemption for a segment of the alcohol industry, which will further erode fair and effective alcohol regulation in California."

Prior legislation. AB 1295 (Levine), Chapter 640, Statutes of 2015. Created a new "craft distiller's license" in the Act with specified privileges and limited to persons who manufacture less than 100,000 gallons of distilled spirits annually, exclusive of brandy production. This bill also modifies an existing provision of law that currently allows distillers to offer six, one-quarter ounce tastings, per individual/per day, to instead permit distillers to combine the current limitation into one single 1.5 ounce tasting that may also include a non-alcoholic mixer.

AB 933 (Skinner), Chapter 366, Statutes of 2013. Granted licensed distilled spirits manufacturers and licensed brandy manufacturers the privilege to conduct consumer tastings on their licensed premises and to charge for those tastings.

AB 2184 (Hall), Chapter 480, Statutes of 2012. Permits, until January 1, 2016, the appearance of a person employed or engaged by an "authorized licensee," as defined, at a promotional event held at the premises of an off-sale retail licensee for the purpose of providing autographs under specified conditions.

AB 605 (Portantino) Chapter 230, Statutes of 2010. Added provisions to the Act authorizing 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 2293 (De Leon), Chapter 638, Statutes of 2008. Permits a manufacturer of distilled spirits, winegrower, rectifier, or distiller, or its authorized agent to provide their product, as well as entertainment and food to consumers over 21 years of age during invitation-only events (free of charge), as specified. The events must occur on premises for which a caterer's permit authorization has been issued. The bill sunsets on January 1, 2014.

SB 1548 (Murray), Chapter 670, Statutes of 2006. Permits a beer manufacturer, a licensed beer and wine importer general, or a licensed beer and wine wholesaler to instruct consumers regarding beer and allows for the furnishing of a tasting at a retail on-sale licensee authorized to sell beer, under specified conditions.

AB 2285 (Valerie Brown), Chapter 248, Statutes of 1998. Allows on-sale retail licensees to offer limited tastings of wine or distilled spirits at the licensed establishment.

SB 993 (Burton) Chapter 544, Statutes of 1997. Among other things, authorized a licensed distilled spirits manufacturer to conduct tastings of distilled spirits on the licensed premises under specified conditions.

REGISTERED SUPPORT / OPPOSITION:

Support

California Retailers Association

Opposition

Alcohol Justice

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