

Date of Hearing: April 4, 2018

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 2000 (Kalra) – As Amended March 14, 2018

SUBJECT: Alcoholic beverages: tied-house restrictions: advertising

SUMMARY: Would extend an existing exception in the Alcoholic Beverage Control Act (Act) pertaining to the general prohibition against advertising arrangements between retail, wholesale, and manufacturer licensees to include an outdoor professional sports stadium with a fixed seating capacity of at least 3,000 seats located in the City of San Jose (San Jose Municipal Stadium – minor league baseball San Jose Giants), and an outdoor professional sports stadium with a fixed seating capacity of at least 15,000 seats located in the City of San Jose (Avaya Stadium – San Jose Earthquakes). Specifically, **this bill:**

- 1) Allows beer manufacturers, winegrowers, distilled spirits rectifiers, distilled spirits manufacturers, or distilled spirits manufacturer’s agents to purchase advertising space and time from, or on behalf of, on-sale retail licensees at:
 - a) An outdoor professional sports stadium with a fixed seating capacity of at least 3,000 seats located in the City of San Jose.
 - b) An outdoor professional sports stadium with a fixed seating capacity of at least 15,000 seats located in the City of San Jose.
- 2) Makes legislative findings and declarations as to the necessity of a special statute for the City of San Jose.

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, of the manufacturer (including breweries, wineries, and distilleries), wholesaler, and retailer (both on-sale and off-sale). This is referred to as the “tied-house” law or “three-tier” system. 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, a manufacturer, winegrower, manufacturer's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director or agent of any such person from owning, directly or indirectly, any interest in any on-sale license.
- 4) Prohibits, in general, a manufacturer, winegrower, distiller, bottler, or wholesaler, among other licensees, or agents of these licensees, from paying a retailer for advertising.

- 5) Provides a variety of exceptions from the advertising prohibition, including permitting specified licensees to purchase advertising space and time from, or on behalf of, an on-sale retail licensee that is an owner, manager, or major tenant of certain stadiums, parks, entertainment complexes, and arenas, subject to specified conditions.

FISCAL EFFECT: Unknown

COMMENTS:

Tied-house law: Tied-house law refers to the statutory scheme restricting any cross-ownership among the three independent tiers of the alcohol industry: 1) manufacturers; 2) distributors/wholesalers; and, 3) retailers. The term "Tied-house" refers to a practice which was common in this country prior to prohibition, and is still occurring in England today, where a bar or "public house" is tied to the products of a particular manufacturer.

The original rationale for Tied-house restrictions are in place to promote the state's interest in maintaining an orderly market, to prohibit the vertical integration of the alcohol industry, to protect the public from predatory marketing practices, and to prevent the intemperate consumption of alcoholic beverages. In order to further these policy goals, the Legislature has generally prohibited forms of cross-ownership between manufacturers and retailers, and discouraged manufacturers from providing anything of value to distributors or retailers, be it free goods, services or advertising.

Numerous exceptions to these restrictions have been enacted through the years in those specific instances where the Legislature determined that the public's interests were protected. Generally, the business community is interested in removing unnecessary business regulations and creating conditions that facilitate investment and expansion opportunities for companies that have some degree of ownership in multiple segments of the industry. However, the Legislature traditionally does not grant exemptions that favors the products of the entity seeking the exemption, or exemptions that unfairly compromise the role of the distributors.

Over the years numerous exceptions to this prohibition have been added to the ABC Act e.g. Levi's Stadium in Santa Clara, Oakland Coliseum in Oakland, Arrowhead Pond Arena in Anaheim, Kern County Arena in Bakersfield, the National Orange Show Events Center in San Bernardino, Auto Club Speedway, (formerly California Speedway) in Fontana, Grizzly Stadium in Fresno, Raley Field in West Sacramento, HP Pavilion in San Jose, StubHub Center (formerly the Home Depot Center) in Carson, and many other venues.

Purpose of the bill. The author's office notes that this measure would amend ABC tied-house provisions to include Avaya Stadium, home of the San Jose Earthquakes and San Jose Municipal Stadium, who's primary tenant is the minor league baseball San Jose Giants (Advanced A league affiliate of the San Francisco Giants) to the list of exemptions in the law, thereby allowing the teams to develop certain alcoholic beverage sponsorships with specified alcohol manufacturers and distributors.

The author's office points out that existing law prohibits an alcohol supplier or wholesaler from directly or indirectly paying a retailer to advertise (signage) the supplier's brands unless a Tied-house exemption is granted. The author's office notes that existing ABC laws contain numerous exceptions to the general prohibition against advertising arrangements between retail, wholesale

and manufacturer licensees. The author's office emphasizes this bill would put Avaya Stadium and San Jose Municipal Stadium on an even playing field with other arenas and stadiums in California.

Additional background:

Avaya Stadium. The Avaya Stadium is a large open-air soccer stadium located just outside of the downtown area of San Jose, immediately west of San Jose International Airport. The stadium officially opened for business on February 27, 2015, has a seating capacity of 18,000 and is the home the San Jose Earthquakes, a Major League Soccer (MLS) team. The stadium also hosts other sport events including rugby and football. The stadium has an architecturally forward design that provides fans an excellent soccer viewing experience. The stadium was constructed privately with no public money.

San Jose Municipal Stadium. The Historic Municipal Stadium was built as a Works Progress Administration project in 1941-42 at a cost of \$80,000. It was one of the first stadiums to be built entirely of reinforced concrete. The first game featured the San Francisco Seals as the home team.

The current San Jose Municipal Stadium has a seating capacity of 4,200 and is the home of the minor league baseball San Jose Giants, the Advanced A league affiliate of the San Francisco Giants. The San Jose Giants play in the northern division of the California League. The stadium is also home to the San Jose State University Spartans college baseball team for some regular season games. The stadium also hosts concerts, weddings, dog shows, and many other local events.

Related legislation. AB 2146 (Gloria) of 2018. Would extend an existing exception in the Act pertaining to the general prohibition against advertising arrangements between retail, wholesale and manufacturer licensees to include an outdoor stadium (Petco Park – San Diego Padres) with a fixed seating capacity of at least 43,000 seats located in the City of San Diego. (Pending in Assembly G.O. Committee)

Prior legislation. SB 582 (Bradford), Chapter 672, Statutes of 2017. Extends an existing exception in the Act pertaining to the general prohibition against advertising arrangements between retail, wholesale, and manufacturer licensees to include a specified stadium (The Los Angeles Stadium at Hollywood Park), and venue located in the City of Inglewood, and a specified outdoor stadium of at least 70,000 seats in Los Angeles County (The Los Angeles Memorial Coliseum).

SB 664 (Dodd), Chapter 486, Statutes of 2017. Extends an existing exception in the Act pertaining to the general prohibition against advertising arrangements between retail, wholesale and manufacturer licensees to include an outdoor stadium (AT&T Park – San Francisco Giants) and an indoor arena (Chase Center – Golden State Warriors) with specified seating capacities located in the City and County of San Francisco.

AB 1724 (Jones-Sawyer), Chapter 478, Statutes of 2017. Extends an existing exception in the Act pertaining to the general prohibition against advertising arrangements between retail, wholesale, and manufacturer licensees to include a specified outdoor stadium located in the City of Los Angeles (Banc of California Stadium, the future home of the Los Angeles Football Club).

REGISTERED SUPPORT / OPPOSITION:

Support

San Jose Earthquakes

San Jose Giants

Opposition

Alcohol Justice

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