

Date of Hearing: April 4, 2018

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 2452 (Aguiar-Curry) – As Amended April 2, 2018

SUBJECT: Alcoholic beverages: tied-house restrictions

SUMMARY: Would eliminate the prohibition on the presence of pictures or illustrations of the retailer's premises in advertisements for an instructional event for consumers held at a retailer's premises featuring wines produced by or for the winegrower or, imported by the wine importer, as specified.

EXISTING LAW:

- 1) Establishes the Department of Alcoholic Beverage Control (ABC) and grants it the 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 and the collection of license fees for this purpose.
- 2) Current law, known as the "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.
- 3) Permits a winegrower, California winegrower's agent, wine importer, or other specified parties to conduct or participate in, and serve wine at, an instructional event for consumers held at a retailer's premises featuring wines produced by or for the winegrower or, imported by the wine importer if specified conditions are met. In this regard, these parties may list certain information in advertisements for the event, but those advertisements are prohibited from containing pictures or illustrations of the retailer premises.
- 4) Prohibits a premium, gift, free goods, or anything of value from being given away in connection with the instructional event by the winegrower, California winegrower's agent, wine importer, or retailer, except as authorized.
- 5) Specifies that no alcoholic beverages may be given away in connection with the instructional event except that minimal amounts of wine, taken from the barrels or from tanks, may be supplied and provided as samples at the instructional event. Specifies that an authorized person may provide no more than three one-ounce tastes of wine per consumer at the instructional event from the bottles of wine provided by the authorized person. Minimal amounts of the samples or tastes provided at the instructional event do not constitute a thing of value. Following the instructional event, the authorized person shall remove any unused wine provided by the authorized person from the retailer's premises.

6) Provides that no alcoholic beverages may be sold at the instructional event, except that orders for the sale of wine may be accepted by the winegrower if the sales transaction is completed at the winegrower's premises.

FISCAL EFFECT: Unknown

COMMENTS:

Winemakers are currently allowed to conduct and participate in, and serve wine at, instructional events and "meet the winemaker dinners" held at a retailer's premises featuring wines produced by or for the winegrower or, imported by the wine importer, provided the wine samples are taken from "barrels" or from "tanks." Winemakers participating in such events may also offer samples of wine (three one-ounce tastes per customer) from bottles provided by the winemaker.

An authorized licensee in advance of an instructional event for consumers being held at a retailer's premises, may list in an advertisement the name and address of the retailer, the names of the wines being featured at the instructional event, and the time, date, and location of, and other information about, the instructional event, under specified conditions. For instance, the listing of the retailer's name and address is the only reference to the retailer in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole. Pictures or illustrations of the retailer's premises and laudatory references to the retailer in these advertisements are also prohibited.

According to the author's office, "online searching and social media use is extensive. Communication is fast-paced; social media apps allow users to quickly, easily, and often visually, express information about their products, where they are sold, as well as when and where there are special events. This user-friendly information sharing is critical in today's competitive business and marketing climate. The sharing of pictures and graphics is a much more eye-catching and engaging means of communication information, in comparison to text alone. Many social media and online platforms rely on photographs, images, and videos as the sole means of interaction. Current "tied-house" restrictions relating social media advertising puts the wine industry at a competitive disadvantage when competing for free social media advertisement and promotion."

The author's office states, this bill would eliminate the prohibition on the presence of pictures or illustrations of the retailer's premises in advertisements for instructional events. "Posting a picture of the location where a tasting would be held will be more descriptive than strictly the name of the venue. When there are limitations and requirements on what can be posted, it takes away from a business' ability to use the resource. This bill will help to modernize advertising restrictions under current law in the direction of today's realm of social media and communication while building brand awareness and loyalty."

Prior legislation. AB 636 (Hall), Chapter 329, Statutes of 2013. Permits a winegrower, California winegrower's agent, importer, or other specified parties appearing at an instructional event, as specified, to provide autographs to consumers or consumer advertising specialties given by the person to a consumer or on any item provided by a consumer; and prohibits a requirement of the purchase of any alcoholic beverage in connection with such autographing.

AB 2184 (Hall), Chapter 480, Statutes of 2012. Created a new tied-house exception in the Act that authorizes, until January 1, 2016, wine, beer and spirits producers to participate in promotional events held at an off-sale retail licensed location for the purpose of providing autographs on bottles or other items to consumers.

SB 1101 (Wolk), Chapter 177, Statutes of 2010. Clarified that winemakers who participate in instructional events or “meet the winemaker dinners,” held at a retailer’s licensed premises for consumers, may offer minimal samples (no more than three one-ounce tastes) of wine from “bottles.”

AB 605 (Portantino), Chapter 230, Statutes of 2010. Added new provisions to the Act authorizing the department 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 2134 (Chesbro), Chapter 149, Statutes of 2010. Created a new tied-house exception in the ABC Act that allows licensed brewers to conduct and participate in events called “Beer Maker Dinners” for consumers held at an on-sale retail licensed premise.

SB 1548 (Murray), Chapter 670, Statutes of 2006. Authorized beer manufacturers and wholesalers to offer beer samples (not to exceed 8 ounces per person, per day) to individuals of legal drinking age at on-sale retail licensed premises under specified conditions.

AB 2868 (Floyd), Chapter 471, Statutes of 1992. Authorized a winegrower, California winegrower’s agent, importer, or their specified representatives, to participate in an instructional event for consumers held at a retailer’s premises featuring wines produced by or for the winegrower or imported by the importer, under specified conditions.

REGISTERED SUPPORT / OPPOSITION:

Support

Family Winemakers of California

Opposition

Alcohol Justice

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