

Date of Hearing: April 6, 2016

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 1670 (Dodd) – As Introduced January 15, 2016

SUBJECT: Alcoholic beverages: licenses

SUMMARY: Authorizes the Department of Alcoholic Beverage Control (ABC) to issue a maximum of 25 new original on-sale general licenses, over a five-year period, for bona fide public eating-places in the County of Napa. Specifically, **this bill:**

- 1) Provides that in Napa County (29th class), commencing January 1, 2017, ABC, in addition to those licenses currently issued under the law may issue five additional new original on-sale general licenses for bona fide public eating places per year, for a period of five years. Any premises to qualify for a license under this section shall have a seating capacity for 25 or more diner. In no event shall more than 25 on-sale general licenses for bona fide eating-places be issued under this provision.
- 2) Authorizes ABC to issue a special on-sale general license to the operator of any for-profit theater located within the County of Napa, configured with theatrical seating of at least 800 seats and primarily devoted to live theatrical performances under the following conditions:
 - a) The special on-sale general license shall not be issued until any existing licenses issued by ABC to the operator for the premises of the for-profit theater are canceled.
 - b) The special on-sale general license shall permit sales, service, and consumption of alcoholic beverages in the lobbies and seating areas of the for-profit theater for the period beginning two consecutive hours prior to a live theatrical performance and ending three hours after the live theatrical performance is completed, as specified.
 - c) Any special on-sale general license issued shall not be required to be operated as a bona fide public eating-place.
 - d) The “for-profit theater” shall not include an adult or sexually oriented business, as defined.
- 3) Contains an urgency clause.

EXISTING LAW:

- 1) The enactment of the 21st Amendment to the U.S. Constitution in 1933 repealed the 18th Amendment and ended the era of Prohibition. Accordingly, states were granted the authority to establish alcoholic beverage laws and administrative structures to regulate the sale and distribution of alcoholic beverages.
- 2) Establishes ABC and grants it exclusive authority to administer the provisions of the Alcoholic Beverage Control 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 or occupation taxes for this purpose.

3) Provides that ABC must deny an application for a license if issuance would create a law enforcement problem, or if issuance would result in, or add to, an undue concentration of licenses in the area where the license is desired. For liquor stores and other specified retail license, however, the ABC is authorized to issue a license if the respective local government determines that public convenience or necessity would be served by granting the license.

Caps the number of new on and off-sale general licenses issued by the ABC at one for every 2,500 inhabitants of the county where the establishment is located (2,000:1 for on sale licenses). If no licenses are available from the state due to the population restrictions, those people interested in obtaining a liquor license may purchase one from an existing licensee, for whatever price the market bears. In 1994, the Legislature approved a 3-year moratorium on the issuance of new off-sale beer and wine licenses, which at the time was not bound by any population to license restriction. In 1997, this moratorium was made permanent.

4) Defines “bona fide public eating place” to mean a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local Department of Health.

5) 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.

6) Provides for 58 counties and 58 "classes" of counties – one county to each class based on their 1970 Census populations.

7) Authorizes ABC to issue a special on-sale general license to any nonprofit theater company, subject to specified requirements.

FISCAL EFFECT: Unknown

COMMENTS:

Background: Existing law provides for a limitation on the number of new on-sale general licenses that may be issued in a given year by ABC based on the population growth of the county in which the licensed premises are located (one licensee for every 2,000 residents). Thus, if a county grows by 10,000 people in a given year, ABC will sell five new licenses in that county. ABC holds a drawing if there are more buyers than licenses available. The cost of these new licenses is \$13,800 each. According to ABC, currently there are approximately 15,360 (Type 47) licenses statewide. Individuals seeking to open a full-service restaurant with a bar or cocktail menu who fail to obtain a liquor license through this process typically must locate an existing licensed owner willing to sell his/her license. Usually, that is done by contacting a liquor license broker. The cost of obtaining a license on the secondary market is driven by supply and demand and potential sellers may ask for \$150,000 to \$200,000.

Purpose of the bill: According to the author, Napa County has become immensely popular over the past few years as a tourist location. According to Destination Analysts Inc., the number of

tourists that visited Napa increased from 2.94 million people in 2012 to 3.3 million people in 2014. While a majority of the visitors to Napa take day trips, nearly 950,000 of these visitors spend at least one night in local lodgings. Tourism has therefore become one of the major economic drivers in the region, generating \$1.6 billion in 2014 in the Napa Valley.

AB 1670 would authorize ABC to issue a maximum of 25 new original on-sale general licenses, over a five-year period, for bona fide public eating-places in the County of Napa.

According to proponents, existing ABC regulations limit the number of Type 47 licenses to just one license for each 2,000 inhabitants in Napa County. What used to be an adequate number of Type 47 licenses has now become a significant burden on new business owners, or those wishing to expand their operations, forcing them to compete with established businesses. This is not the intent of the ABC Act but this unintended consequence prohibits restaurants, especially smaller restaurants with fewer seats, from being able to obtain a license and inherently increases barriers to fair competition.

The number of visitors to Napa continues to increase while the population of the county has not grown. The limited number of licenses in Napa County does not reflect the tourist population that includes more than three million visitors to the Napa Valley each year who enjoy food service as an integral part of the Napa experience and contribute to the economy.

The author points out that Napa has a year-round population of 140,362, as of the last census, which translates into 94 Type 47 alcohol retail licenses; however, millions of visitors come to Napa each year due to its international reputation for producing fine wines. In August 2015, Napa was granted only one new off-sale license, and no new on-sale licenses. The author and proponents believe this bill will lead to an increase in full service restaurants in the area and provide visitors to Napa County more restaurant options.

Another provision of the bill would create and authorize ABC to issue a special on-sale general license to the operator of any for-profit theater located within the County of Napa, configured with theatrical seating of at least 800 seats and primarily devoted to live theatrical performances. AB 1670 would not require the licensee to operate as a bona fide public eating-place. Currently, there is only one for-profit theater that would be eligible. The Uptown Theater is located in downtown Napa, hosts a variety of live music and comedy shows. In 2013, a similar type of exemption was granted for the City and County of San Francisco to the operator of any for-profit theater, configured with theatrical seating of at least 1,000 seats and primarily devoted to live theatrical performances.

The author states that the movie theater industry has been facing increasing hardships with the expansion of online media streaming. Box-office revenues reflect this trend, with ticket sales in 2015 at their lowest level in seventeen years. One solution to this issue might be to serve alcohol inside theaters that are devoted to live theatrical performances. Serving alcohol could offer financial relief to theaters and allow customers to fully experience the theater, its amenities, and the live performance. However, strict limits on ABC licenses and regulatory barriers have become major obstacles for local businesses who wish to offer this type of amenity and service.

Related legislation: SB 1285 (Leno) of 2016. This bill would, beginning January 1, 2017, provide an exception to this limitation for a county of the 6th class, as specified, for 28 new original special on-sale general licenses for bona fide eating places for premises located within

specified census tracts in that county, subject to specified requirements. (Pending in Senate G.O. Committee)

AB 1558 (Mathis) of 2016. Would authorize ABC to issue no more than a total of 5 new original on-sale general licenses, over a 2-year period, for bona fide public eating places, public premises, or both in the County of Inyo. (Pending in the Assembly G.O. Committee)

Prior legislation: AB 525 (Ting), Chapter 235, Statutes of 2013. Created a new special on-sale general license in the ABC Act that enables the operator of any for-profit theater, as specified, located within the City and County of San Francisco, to serve alcoholic beverages during certain hours in specified areas of the theater.

AB 461 (Achadjian), Chapter 110, Statutes of 2013. Authorized ABC to issue no more than a total of five new original on-sale general licenses, over a three-year period, for bona fide public eating-places in the County of San Luis Obispo.

AB 1320 (Allen), Chapter 467, Statutes of 2012. Authorized ABC to issue a maximum of 15 new original on-sale general licenses, over a 3-year period, for bona fide public eating-places in the County of Marin.

AB 2266 (Evans), Chapter 130, Statutes of 2008. Authorized ABC to issue a maximum of 15 new original on-sale general licenses, over a three-year period, for bona fide public eating-places in the County of Napa.

SB 762 (Cox), Chapter 193, Statutes of 2007. Authorized ABC to issue 10 new original on-sale general licenses for bona fide public eating-places in the County of Mono.

SB 1092 (Berryhill), Chapter 571, Statutes of 1975. Authorized ABC to issue five additional new original on-sale general licenses for bona fide public eating places (seating for 100 or more diners) in any county where the inhabitants number less than 5,000 but more than 3,000 (Mono County) according to the 1970 federal census and where the major economy of that county is dependent upon the year-round use of that county's recreational facilities.

SB 784 (Berryhill), Chapter 407, Statutes of 1975. Authorized ABC to issue three additional original off-sale general licenses in a county of the 58th class (Alpine County).

REGISTERED SUPPORT / OPPOSITION:

Support

Napa County Board of Supervisors
City of American Canyon
City of Napa
City of Calistoga
Family Winemakers of California
Napa Downtown Association
Napa Chamber of Commerce
Napa Property Based Improvement District
Town of Yountville

Opposition

None on file

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