

Date of Hearing: June 28, 2018

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

SB 1283 (Bradford) – As Amended May 23, 2018

SENATE VOTE: 34-4

SUBJECT: Brewpub-restaurant licensees: beer sales

SUMMARY: Would authorize a brewpub-restaurant licensee to label, bottle, package, or refill any container with beer produced on their licensed premises and to sell that beer for consumption off the premises. In addition, the bill makes various changes to the brewpub-restaurant license to allow for greater enforcement by the Department of Alcoholic Beverage Control (ABC).

Specifically, **this bill:**

- 1) Authorizes a brewpub-restaurant licensee to label, bottle, package, or refill any container with beer produced on their licensed premises and may, at the licensed premises, sell beer produced and packaged by the licensee to consumers for consumption off the premises.
- 2) Authorizes a brewpub-restaurant licensee to donate or sell beer produced by the licensee to a nonprofit.
- 3) Specifies that the beer donated to the nonprofit shall not count in the calculation of minimum amounts of beer required to be produced by a brewpub-restaurant licensee.
- 4) Requires a brewpub-restaurant licensee to have a minimum seven-barrel commercial brewing system located permanently onsite that is capable of producing at least seven barrels of beer per brewing cycle.
- 5) Increases the minimum amount to be manufactured by the licensee from 100 to 200 barrels.
- 6) Requires that beer produced on the premises be offered for sale to consumers for consumption on or off the premises in a bona fide manner. In determining whether the licensee is offering beer produced on the premises for sale in a bona fide manner, ABC is authorized to consider whether, and the extent to which, the licensee actually sells beer manufactured on the licensed premises to consumers.
- 7) Specifies that a brewpub-restaurant license does not authorize any of the following:
 - a) The sale, furnishing or exchange of any alcoholic beverages with any other brewpub-restaurant licensee, any licensed beer manufacturer regardless of any other licenses held by the licensed beer manufacturer, or any retail license in California.
 - b) The sale, furnishing, or exchange of any beer produced on the licensed premises bearing the same trademark as any beer produced by a licensed beer manufacturer.
 - c) A brewpub-restaurant licensee to engage a licensed beer manufacturer to produce beer for sale by the brewpub-restaurant licensee.

- 8) Requires a licensee to maintain records on a monthly or quarterly basis that are adequate to establish compliance with the requirements of a brewpub-restaurant license and to enable ABC to identify which beer sold by a licensee was produced on the premises in order to establish the licensee's compliance with the provisions of this bill. These records shall be maintained for a period of at least three years and shall be provided to the ABC within 30 days of receipt of the department's written request.

EXISTING LAW:

- 1) Establishes 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 and the collection of license fees.
- 2) Authorizes the issuance of a brewpub-restaurant license, as a form of an on-sale retail license, to persons or entities who manufacture no less than 100 barrels and not more than 5,000 barrels of beer annually on the licensed premises, subject to specific conditions and restrictions, and authorizes the sale of beer produced by the licensee for consumption on the premises.
- 3) Authorizes a brewpub-restaurant licensee to sell for consumption on its licensed premises beer, wine, and distilled spirits at a bona fide public eating place, as defined.
- 4) Creates a license (Type-47) which allows the sale of beer, wine and distilled spirits for consumption on the licenses premises. Authorizes the sale of beer and wine for consumption off the licenses premises. Must operate and maintain the licensed premises as a bona fide eating-place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
- 5) Creates a license (Type-01) which allows the sale of beer to any person holding a license authorizing the sale of beer, and to consumers for consumption on or off the manufacturer's licensed premises. Without any additional licenses, may sell beer and wine, regardless of source, to consumers for consumption at a bona fide public eating-place on the manufacturer's licensed premises or at a bona fide eating-place contiguous to the manufacturer's licensed premises. May conduct beer tastings under specified conditions (B&P section 23357.3). Minors are allowed on the premises.
- 6) Defines a "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 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.
- 7) Prescribes requirements for licenses for the manufacture, distribution, and sale of beer, and allows beer manufacturers to refill containers supplied by consumers, as provided.
- 8) State law caps the number of new "on and off-sale" general licenses issued by 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."

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the bill. According to the author's office, "as the burgeoning craft beer industry has matured, consumers are becoming increasingly sophisticated and beer tasting has evolved into an experience similar to wine tasting. Beer consumers are looking for a wider array of experiences, which brewpub restaurants may offer. However, the one-consumer expectation Type-75 brewpubs licenses cannot meet, is when customers taste beers on-site and naturally, inquire about purchasing beer to share with others or for personal enjoyment at home. SB 1283 will meet this consumer demand and allow for the sale for off-site consumption."

The author's office also states, "This bill not only fosters the continual growth of craft breweries in our state, but it also ensures that brewpubs are not abusing the rules, and in fact, adhering to the guidelines and goals of ABC."

Type-75 license. Type-75 licenses, also known as brewpub-restaurant licenses (AB 684, Tucker of 1996), authorize the sale of beer, wine, and distilled spirits for consumption at a bona fide eating-place, in essence requiring the facility to be a restaurant. The licensee is required to produce no less than 100 barrels (a barrel contains 31 gallons) of beer, but is restricted to a maximum of 5,000 barrels of beer per year. In addition, the licensee is required to have brewing equipment that has at least a seven-barrel brewing capacity.

The license also authorizes the sale of beer produced by the licensee to a licensed beer and wine wholesaler. The license does not authorize the sale of alcoholic beverages for consumption off the premises where sold. The initial fee for a brewpub license is currently \$15,384. It should also be noted that there is no cap on the number of Type-75 licenses that can be issued.

In recent years, concerns have been raised by alcohol industry stakeholders and regulators that Type-75 licensees are using loopholes in the license to, in essence, obtain the privileges of a Type-47 license, without fulfilling the intended requirements of a Type-75 license.

In short, Type-47 licenses, also known as on sale general restaurant licenses, allow for the sale of beer, wine, and distilled spirits for consumption on the licensed premises. Unlike Type-75 licenses, Type-47 licenses are allotted at the rate of one for every 2,000 residents in a county, and the cap triggers fierce bidding for permits that re-enter the market when a restaurateur closes shop and sells his or her rights. In Napa and around the Bay Area, those rights can cost upwards of \$300,000 – many times California's original selling price.

One of the concerns that have been raised is that while a Type-75 license is required to have a minimum seven-barrel brewing capacity, it's unclear what exactly a seven-barrel brewing capacity actually is. In addition, concerns have been raised that licensees are simply brewing the minimum 100-barrels of beer with no intention of actually selling the product or producing high quality beer. There have been reports of licensees simply throwing beer away after meeting the minimum 100-barrel production requirement.

Type-75 Statewide License Counts - On-Sale General Brew-PubAs of June 30, 2017

- 137 On-Sale General Brew-Pub
19 Duplicate licenses - not included in total

As of June 30, 2016

- 127 On-Sale General Brew-Pub
13 Duplicate licenses - not included in total

As of June 30, 2015

- 123 On-Sale General Brew-Pub
11 Duplicate licenses - not included in total

What does SB 1283 do? This bill seeks to find a balance between providing brewpub-restaurant licenses the privilege of selling their product for off-sale consumption while solving some of the concerns that have been raised. In terms of additional privileges, this bill authorizes a brewpub-restaurant licensee to sell their beer for consumption off the premises. In addition, this bill authorizes the licensee to give or sell their beer produced by the licensee to a nonprofit.

This bill also clarifies that the licensee is required to have a seven-barrel commercial brewing system located permanently on-site, which is capable of producing at least seven barrels of beer per brewing cycle. This new language clarifies that the system must be a commercial system, be permanently located on-site and capable of brewing at least seven barrels per brewing cycle.

Additionally, this bill clarifies that a brewpub-restaurant licensee is not allowed to sale, furnish or exchange any alcoholic beverages with any other licensed beer manufacturer regardless of any other license held by the licensed beer manufacturer.

SB 1283 also includes language that increases the minimum amount of beer that a licensee is required to produce from 100-barrels to 200-barrels. By increasing the minimum amount that a licensee produces, it makes it more likely that the licensee is committed to brewing a good product; due to the added cost of production.

In addition, this bill requires that the beer produced on the premises be offered for sale to consumers in a bona fide manner. Finally, the licensee is required to maintain records on a monthly or quarterly basis that are adequate to establish compliance with the requirements of a brewpub-restaurant license and requires those records to be maintained for a period of at least three years. The licensee is also required to provide those records to ABC within 30 days of the department's written request.

In support. According to the Artisanal Brewers Collective, "SB 1283 will help support the growth of craft breweries and the success of the California beer industry by providing consumers greater access to well-made beer in a greater variety of settings. Moreover, the bill will help provide ABC the tools necessary to ensure that Type-75 licensees have a true interest in brewing beer and are no longer using this license as a loophole to sell distilled spirits in their restaurants."

In opposition. Writing in opposition, the California Beer and Beverages Distributors, Anheuser-Busch, and MillerCoors states, "While the stated intent of the SB 1283 is to promote the on-site production of beer, ensure that beer produced on the premises is available for consumption on

the licensed premises as well as for off-sale consumption (including refilling of growlers), we share a number of concerns with the continued expansion – and possible misuse – of the specialty retail license (Type-75), also known as the brewpub license. Currently, there is currently no limit on the number of Type-75 licenses that can be issued, and in recent years, the alcohol industry has seen a dramatic increase in the utilization of this type of specialty license. Of great concern is the potential for Type-75 licensees to use loopholes in current law to essentially gain the privileges of an “on sale general restaurant license” (Type-47) – which are significantly more expensive, harder to obtain, and limited in number by local jurisdictions. In essence, the bill grants the ability for a license holder to be a manufacturer, a distributor, and a retailer, which is in glaring conflict with California’s three-tier system.

Policy consideration. To address concerns which have been raised by alcohol industry stakeholders and regulators that Type-75 licensees (brewpub restaurant) are using loopholes in the license to obtain the privileges of a Type-47 license, the author might consider the following amendments: 1) After December 31, 2019, any application request to ABC for a Type-75 (brewpub-restaurant licensee) will be subject to the limitations provided in B&P Section 23816 (State law which caps the number of new "on-sale" general licenses, at one for every 2,000 inhabitants of the county where the establishment is located); 2) Type-75 license applications submitted to ABC before December 31, 2019 will not be subject to the population ratio; and 3) A Type-75 license, issued pursuant to an application filed prior to December 31, 2019, and any existing Type 75 license shall not be sold or transferred for a price greater than the original license fee paid.

Prior/related legislation. SB 1164 (Skinner, 2018) makes various changes to the craft distillers license including the requirement to attend a tasting before being able to purchase directly from the licensee, and increasing the maximum amount that a craft distillers license can produce per year. (Pending in Assembly G.O. Committee)

SB 1430 (Glazer, 2018) authorizes a licensed winegrower or brandy manufacturer to operate two off-site tasting rooms under its existing winegrower license. (Pending in Assembly G.O. Committee)

AB 471 (Ting), Chapter 442, Statutes of 2017. Revised an existing exception in law by authorizing ABC to issue no more than five new original neighborhood-restricted special on-sale general licenses per year, until a total of 30 licenses are issued, to premises located in any of the census tracts, as specified, within the City and County of San Francisco. Additionally, this bill authorizes ABC to issue a maximum of 20 new original on-sale general licenses, over a four-year period, in the County of Napa, as specified.

SB 1285 (Leno), Chapter 790, Statutes of 2016. Authorized, beginning January 1, 2017, the Department of ABC to issue no more than a total of five new original "neighborhood-restricted" special on-sale general licenses, for premises located within specified City and County of San Francisco neighborhoods, subject to certain requirements and restrictions.

AB 1670 (Dodd), Chapter 347, Statutes of 2016. Authorized ABC to issue a maximum of five new original on-sale general licenses, over a one-year period, for bona fide public eating-places in the County of Napa, as specified.

AB 1295 (Levine, Chapter 640, Statutes of 2015). Created the craft distillers license with specific privileges and limited to persons who manufacture less than 100,000 gallons of distilled spirits annually, exclusive of brandy production.

AB 2266 (Evans), Chapter 130, Statutes of 2008. Authorized the 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.

AB 684 (Tucker, Chapter 1098, Statutes of 1996). Established the brewpub-restaurant license.

REGISTERED SUPPORT / OPPOSITION:

Support

Artisanal Brewers Collective

Opposition

California Beer and Beverages Distributors
Anheuser-Busch
MillerCoors

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