

Date of Hearing: June 30, 2016

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

SB 1285 (Leno) – As Amended April 6, 2016

**SENATE VOTE:** 38-0

**SUBJECT:** Alcoholic beverages: licenses

**SUMMARY:** Would authorize the Department of Alcoholic Beverage Control (ABC), beginning January 1, 2017 to issue no more than a total of 28 new original “neighborhood-restricted” special on-sale general licenses for a bona fide eating place, for premises located within specified City and County of San Francisco neighborhoods, subject to specific requirements and restrictions. Specifically, **this bill:**

- 1) Allows, beginning January 1, 2017, ABC to issue no more than a total of 28 new original neighborhood-restricted special on-sale general licenses for premises located within the City and County of San Francisco. In addition, makes it explicit that an application for a neighborhood-restricted special on-sale general license shall be subject to all the requirements that apply to an on-sale general license for a bona fide eating place and that license fees shall be the same as those for an on-sale general license for a bona fide eating place.
- 2) Maintains these neighborhood-restricted special on-sale general licenses to premises located within seven specified census tracts and provides for no more than a total of four such licenses within each of the seven designated census tracts (neighborhoods). Also, provides that a neighborhood-restricted special on-sale general license may exercise all of the privileges, and be subject to all the restrictions, of an on-sale general license for a bona fide eating place.
- 3) Prohibits the issuance of a neighborhood-restricted special on-sale general license until any existing on-sale licenses issued to the applicant for the same premises are canceled. Also, prohibits any person who currently holds an on-sale general license for a premises from applying for a license issued pursuant to this bill for that licensed premises.
- 4) Provides the applicant for one of these new licenses to conduct a minimum of one pre-application meeting either on the premises of the business or within a one-mile radius of the premises to discuss the application with neighbors and members of the community. Also, requires the applicant to mail notification of the pre-application meeting to residents, neighborhood associations and law enforcement entities, as specified. In addition, requires the applicant to obtain signed verification from the local governing body that he/she has completed the pre-application meeting.
- 5) States that a license issued pursuant to this bill shall not be:
  - a) transferred between counties;

- b) transferred to any person, partnership, limited partnership, limited liability company, or corporation, except as specified; and,
  - c) transferred to any other premises with the exception of any licensee whose premises have been destroyed as a result of fire or any act of God or other force beyond the control of the licensee.
- 6) Stipulates that, upon the cancellation of any license issued pursuant to this bill, the license shall be returned to ABC for issuance to a new applicant following procedures established in existing law.
  - 7) Provides any person that holds a neighborhood-restricted special on-sale general license issued pursuant to this bill from exchanging his or her license for an on-sale license for public premises.
  - 8) States that a neighborhood-restricted special on-sale general license issued pursuant to this bill shall not, with respect to beer and wine, authorize the exercise of the rights and privileges granted by an off-sale beer and wine license.
  - 9) Requires ABC to adopt rules and regulations to enforce the provisions of this bill.

**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.
- 3) Provides 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 licenses, 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.
- 4) 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.
- 5) 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.

6) 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.

7) Provides for 58 counties and 58 "classes" of counties – one county to each class based on their 1970 Census populations – the City and County of San Francisco is a county of the 6th class.

**FISCAL EFFECT:** Unknown

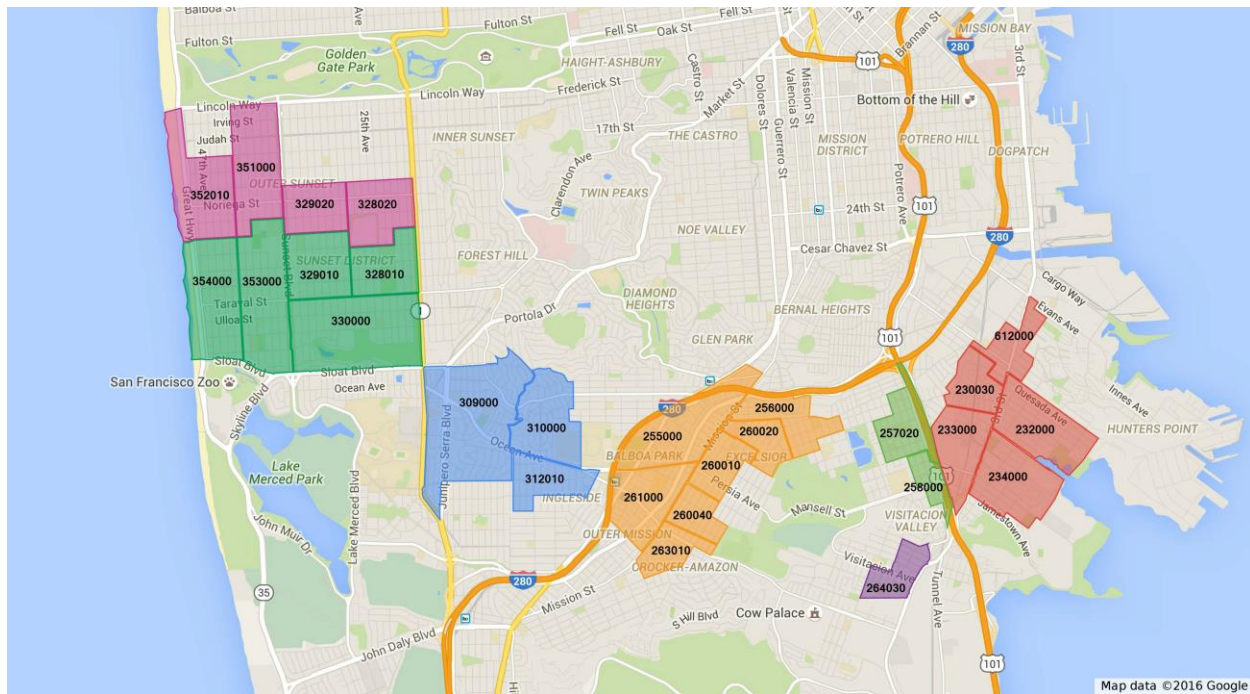
**COMMENTS:**

Purpose of the bill: According to the author, this bill is intended to create a new type of neighborhood-restricted, non-transferable liquor license for restaurants in order to promote economic development, job growth, and increased vitality in San Francisco’s underdeveloped commercial corridors. The author states that successful restaurants help to activate neighborhood commercial corridors by reducing vacancies, adding to the variety of neighborhood-serving small businesses, creating good jobs for residents, providing important spaces for neighbors to meet and socialize, and boosting foot traffic that helps increase community safety. The author states this bill will create an incentive for entrepreneurs to launch new restaurants in currently vacant storefronts.

The author states that because state law has capped the number of full liquor licenses available in San Francisco, licenses can only be purchased from existing licensed business owners, unless of course an applicant gets lucky in the annual ABC liquor license drawing. Due to the scarcity of available licenses, full liquor licenses are currently being sold on the secondary market in San Francisco for around \$300,000 with prices expected to increase as the City’s population continues to grow. The author maintains that these extraordinary prices make full liquor licenses inaccessible for small business owners in the City’s outer neighborhoods. Simply put, a small restaurant owner cannot charge the prices needed to recoup such an investment. As a result, licensed establishments tend to concentrate in – and continue to migrate to – the City’s most active and bustling areas, even though many out-lying neighborhood and commercial corridors would significantly benefit from the increased vitality that successful nightlife businesses could bring.

Under this bill, 28 new neighborhood-restricted special on-sale general licenses, for bona fide eating places, would be authorized to be issued by ABC exclusively within specific San Francisco census tracts (neighborhoods). The author’s office notes that these neighborhoods were selected in line with the City’s Invest in Neighborhoods strategy, which is an interagency partnership to strengthen and revitalize certain neighborhood commercial districts around San Francisco. Specifically, the census tracts were selected by comparing the map of current type 47 licenses scattered across the City with the Invest in Neighborhood corridors and identifying the areas with few or no such licenses.

This bill provides for a maximum of four such restricted licenses that may be issued by ABC in each of the seven census tracts containing a target neighborhood commercial corridor. The author's office has identified these census tracts as follows: (1) Third Street in Bayview; (2) San Bruno Avenue in Portola; (3) Leland Street and Bayshore in Visitacion Valley; (4) Mission Street in the Excelsior; (5) Ocean Avenue; (6) Taraval Street in the Sunset; and, (7) Noriega Street in the Sunset.



The author's office emphasizes that the neighborhood-specific limits attached to these new licenses will prevent any overconcentration of alcohol licenses in corridors that already have a substantial amount of nightlife. The author maintains this bill is structured to ensure that the applicants who pursue these licenses will engage with the local community through a pre-application vetting process, as specified. Additionally, this bill will not diminish the value of any existing liquor license because these new licenses would not be transferrable to a new business owner or a new location. In addition, the author asserts that owners of existing full liquor licenses across San Francisco would remain able to sell or transfer their licenses citywide and reap the value of their investment on the private market.

**Background:** As noted above, 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 license for every 2,000 residents). Thus, if a county grows by 10,000 people in a given year, ABC will issue five new licenses in that county. ABC holds a drawing if there are more buyers than licenses available.

The cost of an original on-sale general eating place license (type 47) is \$13,800. 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. Typically, 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 upwards of \$150,000. According to ABC, currently there are approximately 13,360 Type 47 licenses statewide.

Policy consideration: The bill is not clear relating to which local governing body will be empowered to approve the application at the local level before being forwarded to ABC for approval. To provide checks and balances within the application process, the author should consider an amendment, which would require the San Francisco Board of Supervisors to approve by vote an application before it is forwarded to ABC for approval.

The bill requires the applicant to conduct a minimum of one pre-application meeting to discuss the application with neighbors and members of the community within the census tract in which the premises are located, however, it does not outline the specific goals of this meeting. Who would be empowered to make the final determination of gauging the success, or lack thereof, relating to the meeting? The intent of the bill is somewhat unclear why the new 28 special on-sale general licenses would be divided evenly among census tracts in the county. Might it be more prudent to disburse the licenses to address the true need and demand within the specified census tracts?

The committee might consider the precedent this bill could set by allowing a total of 28 on-sale general licenses for a bona fide eating place at one given time in a specific county. Does this mean that Los Angeles County might be eligible for up to 364 licenses since its population is approximately 13 times greater than San Francisco County? Since 2008, the Assembly Governmental Organization Committee has not passed out a bill, which granted more than five new on-sale general licenses for a bona fide eating place in a given year for a specific county. To further examine how to best deal with the perception that there is a lack of licenses available in various counties throughout the state, the committee may want to consider holding an informational hearing on this matter in the fall.

Related Legislation: 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 in the County of Inyo. (Pending in Senate Appropriations G.O. Committee)

AB 1670 (Dodd) of 2016. Would authorize ABC to issue a **total of 5** new original on-sale general licenses **per year** to a bona fide public eating place with a seating capacity of 25 or more diners, for a period of 3 years in the County of Napa. The bill would prohibit more than 15 of those licenses from being issued. (Pending in the Senate Appropriations Committee)

Prior legislation: 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 **total of 5** new original on-sale general licenses for bona fide public eating places **per year**, for three years in the County of Marin. The bill would prohibit more than 15 of those licenses from being issued.

AB 2266 (Evans), Chapter 130, Statutes of 2008. Authorizes ABC to issue a **total of 5** new original on-sale licenses, **per year** for a period of three years, for bona fide public eating places having a seating capacity of 50 or more diners in Napa County.

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 5 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 3 additional original off-sale general licenses in a county of the 58th class (Alpine County).

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

San Francisco Chamber of Commerce  
Family Winemakers of California  
Golden Gate Restaurant Association  
San Francisco Office of Economic and Workforce Development

**Opposition**

None on file

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