

Date of Hearing: July 5, 2017

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

SB 384 (Wiener) – As Amended June 29, 2017

SENATE VOTE: 27-9

SUBJECT: Alcoholic beverages: hours of sale

SUMMARY: Establishes a process, as described, whereby an on-sale licensee may apply to the Department of Alcoholic Beverage Control (ABC) for authorization to sell, give, or purchase alcoholic beverages at on-sale licensed premises (such as bars, restaurants and nightclubs) between the hours of 2 a.m. to 4 a.m. Specifically, **this bill:**

1) States ABC may issue an "additional hours permit" which would authorize, with or without conditions, the selling, giving, or purchasing of alcoholic beverages at an individual on-sale licensed premises between the hours of 2 a.m. and 4 a.m. within a city, county, or a city and county if the local governing body of that city, county, or city and county, or its designated subordinate officer or body does the following:

a) Develops and approves a local plan, relative to the additional hours of service, that:

(1) Shows the public convenience or necessity will be served.

(2) Identifies the area that will be affected and indicates how the area will benefit.

(3) Exhibits resident and business support.

(4) Includes an assessment by local law enforcement regarding the potential impact on the area and a public safety plan, created by local law enforcement, for managing those impacts;

(5) Shows that transportation services are readily accessible in the area during the additional service hours.

(6) Includes programs to increase public awareness of the transportation services available and the impacts of alcohol consumption.

b) Resolves and certifies the local plan and submits it to the ABC.

2) Provides ABC may review the local plan, to ensure compliance with existing law.

3) States an on-sale licensee shall not apply for an additional hours permit until ABC has received the local plan of the city, county, or city and county in which the licensed premises is located.

4) States upon receipt of an application by an on-sale licensee for an additional hours permit, ABC shall make a thorough investigation to determine whether the additional hours permit sought by the applicant would unreasonably interfere with the quiet enjoyment of their property

by the residents of the city, county, or city and county in which the applicant's licensed premises are located.

5) States the applicant shall notify the law enforcement agencies of the city, county, or city and county, the residents of the city, county, or city and county located within 500 feet of the premises for which an additional hours permit is sought, and any other interested parties, as determined by the local governing body, of the application by an on-sale licensee for an additional hours permit within 30 consecutive days of the filing of the application, in a manner determined by the local governing body.

6) Provides that protests may be filed within 30 days from the first date of notice of the filing of an application for additional hours. Also, permits ABC to extend the 30-day period by an additional 20 days.

7) Provides ABC may reject protests, except protests made by a public agency or public official, if it determines the protests are false, vexatious, frivolous, or without reasonable or probable cause at any time before hearing thereon. If, after investigation, ABC recommends that additional hours permit be authorized notwithstanding a public protest by a public agency or a public official, ABC must notify the agency or official in writing of its determination and the reasons therefor. In addition, provides that the if ABC rejects a protest, a protestant whose protest has been rejected may, within 10 days, file an accusation with ABC alleging the grounds of the protest as cause for revocation of the additional hours permit and ABC shall hold a hearing, as specified.

8) Provides nothing shall not be construed as prohibiting or restricting any right that the individual making the protest might have to a judicial proceeding.

9) Provides if, after investigation, ABC recommends that an additional hours permit be issued, with or without conditions, notwithstanding that one or more protests have been accepted by ABC, the department shall notify the local governing body and all protesting parties whose protests have been accepted in writing of its determination.

10) Provides that any person who has filed a verified protest in a timely fashion that has been accepted by ABC may request a hearing on the issue or issues raised in the protest. The request must be in writing and filed with ABC within 15 business days of the date the department notifies the protesting party of its determination. At any time prior to the issuance of a permit, ABC may accept a late request for a hearing upon a showing of good cause. Any determination of ABC shall not be an issue at the hearing nor grounds for appeal or review.

11) Provides if a request for a hearing is filed with ABC, as specified, the department shall schedule a hearing on the protest. The issues to be determined at the hearing shall be limited to those issues raised in the protest or protests of the person or persons requesting the hearing. Notwithstanding that a hearing is held, as defined, the protest or protests of any person or persons who did not request a hearing as authorized in this section shall be deemed withdrawn.

12) States if a request for a hearing is not filed with ABC, any protest or protests shall be deemed withdrawn and the department may approve the on-sale licensee's application for an additional hours permit without any further proceeding. If the person filing the request for a hearing fails to appear at the hearing, the protest shall be deemed withdrawn.

13) Requires ABC to notify the applicant of the outcome of the application and provides that any conditions placed upon the permit shall be subject to existing provisions of the Alcoholic Beverage Control Act (ABC Act) pertaining to conditional licenses.

14) States the applicant shall, at the time of application for an additional hours permit, to include a \$2,500 fee, which shall be deposited in the Alcohol Beverage Control Fund (ABC Fund).

15) Provides in a city, county, or city and county that has additional serving hours pursuant to this bill, any on-sale licensee, or agent or employee of the licensee, who sells or gives to any person any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of 4 a.m. and 6 a.m. of the same day, is guilty of a misdemeanor.

16) Provides for the purposes of an additional hours permit, on the day that a time change occurs from Pacific standard time to Pacific daylight savings time, or back again, to Pacific standard time, "4 a.m." means four hours after 12 midnight of the day preceding the day the change occurs.

17) Makes various findings and declarations related to the responsible consumption of alcoholic beverages through making multiple planning options available to local communities and entertainment areas of the state, including the option of extended services hours up to a limit of 4 a.m. in communities and areas of the state where those extended hours are found by the governing body of the responsible community to be proper and appropriate.

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 ABC 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 that the ABC Act is intended to protect the safety, welfare and morals of the residents of this state, eliminate the unlawful selling and disposing of alcoholic beverages, and to promote temperance in the use and consumption of alcoholic beverages.

4) Provides that any on-sale or off-sale licensee, or agent or employee of the licensee, who sells, gives or delivers to any person any alcoholic beverage between the hours of 2 a.m. and 6 a.m. of the same day, and any person who knowingly purchases any alcoholic beverages between those hours, is guilty of a misdemeanor. (Business and Professions Code Section 25632)

5) 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.

6) 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. In 1994, the Legislature approved a three-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.

7) 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):

- On-Sale General: Authorizes the sale of all types of alcoholic beverages: namely, beer, wine and distilled spirits, for consumption on the premises, and the sale of beer and wine for consumption off the premises.
- On-Sale Beer and Wine: Authorizes the sale of all types of wine and malt beverages (e.g., beer, porter, ale, stout and malt liquor) for consumption on and off the premises.
- On-Sale Beer: Authorizes the sale of malt beverages for consumption on and off the premises. (B & P Sections 23393, 23394, 23396 and 23399)

8) Defines “bona fide public eating place” as a licensed premises that are maintained in good faith and used for the regular service of meals to patrons. The premises must have suitable kitchen facilities and supply an assortment of foods commonly ordered at various hours of the day. There are no restrictions regarding minors entering or remaining on premises licensed and maintained and operated as a bona fide public eating-place.

9) States an “off-sale” license authorizes the sale of all types of alcoholic beverages for consumption off the premises in original, sealed containers.

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the bill: The author notes, this bill will provide local governments and communities an optional tool in their nightlife regulations. SB 384 would not allow extended hours at off-sale establishments such as liquor stores. A provision in the bill would allow for conditional extended service hours permits, including hours only on holidays or specific days of the week.

The author states, “California is a diverse state, with cities and neighborhoods that have different needs when it comes to nightlife. By granting local control to our cities to extend their late night hours, we can support areas that benefit economically and culturally from a strong nightlife presence, while ensuring that other cities and neighborhoods retain their current rules. This nuanced approach has been successful in other cities across the country, and California cities should have the same options as places like Chicago, New York, and Washington D.C.”

The author's office states, "social and nightlife venues are an economic driver in many communities, and the State's food service and entertainment industries generate billions of

dollars in consumer spending and employ well over a million Californians. Currently, our California destination cities are at a disadvantage when competing with cities both nationally and internationally for tourists, conventions, and conferences. Cities with late-night service hours include: Chicago, Washington D.C., New York City, Buffalo, Las Vegas, Louisville, Atlanta, Miami Beach, New Orleans, and Albany. In addition, many cities across the globe have extended or flexible service times, including Barcelona, Tokyo, Berlin, Rio de Janeiro, and Sydney.”

The author's office states, "The current uniform closing hour of 2 a.m. creates stress on public services, transportation, and local law enforcement when patrons are simultaneously pushed out onto the street at that hour.” Based on data compiled from a report done by the U.S. National Highway Traffic Safety Administration on state alcohol-impaired-driving estimates, the author's office maintains there is no evidence to suggest that places with flexible or extended sales hours have experienced higher rates of alcohol-related traffic fatalities compared to states with sales hours of 2 a.m. or earlier.

Lastly, the author's office points out that SB 384 would align California with at least 15 other states where local jurisdictions have the authority to decide alcoholic beverage service hours.

Background: 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. In California, this responsibility was originally entrusted to the State Board of Equalization. In 1955, however, the State Constitution was amended to shift this responsibility to the newly established ABC. The intent in establishing the ABC was to create a governmental organization, which would ensure strict, honest, impartial, and uniform administration and enforcement of the state's liquor laws. The ABC is vested with the exclusive authority to license and regulate the manufacture, distribution and sale of alcoholic beverages within California. ABC is a special fund department that receives funding from fees imposed upon alcoholic beverage licensees.

There are more than 87,000 ABC licenses throughout the state – this includes both on-sale and off-sale establishments that sell beer and wine, and on-sale and off-sale general licensees that are authorized to sell distilled spirits, including beer and wine. More than 40,000 ABC on-sale licenses (Types 40, 41, 42, 47, and 48) could be impacted by the authorization of this bill. Since 1935, California alcohol licensed businesses have been prohibited from selling, serving and allowing open containers of beverage alcohol to remain in the public portion of the business from 2 a.m. to 6 a.m. All ABC licenses are renewed on a 12-month basis.

The ABC is required to investigate both the applicant and the premises for which a license is applied to determine if the public would be adversely affected by the license issuance. These investigations include an evaluation of the moral character of the applicant and the suitability of the proposed premises. The 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.

Under the ABC Act, ABC has the authority to suspend, revoke or deny a license if it determines that granting or continuance of the license would be contrary to public welfare or morals. ABC has a clearly delineated disciplinary process for its licensees. The process usually begins with a reported violation then proceeds through an investigation after which an accusation can be filed. ABC conducts administrative hearings with decisions generally proposed by administrative law judges. The process can also include appeals to the ABC Appeals Board and, if necessary and requested, an appeal directly to the California Appellate Courts. However, there is wide variance in the period from the discovery of a violation to a final order of suspension or revocation.

State v. Local Control of Alcohol Policy: Much to local government's frustration, both the state Constitution and the ABC Act generally prohibit local governments from regulating the sale of alcoholic beverages within their jurisdictions. Exacerbating this sentiment is the perception that ABC is under-funded and understaffed with less than 200 enforcement agents available to police the almost 87,000 retail licenses in the state.

Over the years, local governments have often petitioned the Legislature for greater authority to directly regulate establishments that sell alcohol (e.g., restricting the hours of operation of problem premises, or limiting the sale of certain products such as fortified wines or high alcohol content malt beverages). Much of this activity has been centered on local government's use of zoning laws and conditional use permits that place operating conditions on new businesses that sell alcohol. While current law prohibits the ABC from issuing a new license in an area not locally zoned for that type of business activity, those establishments in existence prior to any local zoning action are "grandfathered" and therefore beyond the reach of the local government – a source of contention for local governments.

In 1995, the ABC Act was amended to allow a local government to comment on a pending alcohol license application. This raised the standard for an on-sale or off-sale licensee in an area of high crime or an over-concentrated census tract to get their license application approved. ABC license applicants need to have the local government indicate that the pending license is a "public convenience or necessity" (PCN). Before a license can be issued, ABC requires an applicant to obtain any zoning permits that may be required by a local municipality. These zoning permits are most often called "conditional use permits" (CUP) and, the CUP process may occur concurrently with the state process.

Historically, the alcohol industry and retailers have opposed ceding to local government any measure of the state's exclusive authority to regulate alcohol. The industry has advocated that matters relating to the regulation of alcohol should be determined at the state level, as opposed to an assortment of local regulations, which may vary from local jurisdiction to local jurisdiction.

Disorderly house law: A disorderly house is a licensed premises that disturbs the neighborhood or is maintained for purposes that are injurious to the public morals, health, convenience or safety. For example, a licensed outlet that 1) disturbs the neighborhood with noise, loud music, loitering, littering, vandalism, urination or defecation by patrons, graffiti, etc.; or 2) has many crimes ongoing inside, such as drunks, fights, assaults, prostitution, narcotics, etc. The licensed premise includes the parking lot. Any licensee, or employee of any licensee, who keeps or permits such a disorderly house is guilty of a misdemeanor, and the license is subject to disciplinary action. (B&P Code Sections 25601 and 24200)

What is a "public premises"? No person under 21 years of age is allowed on public premises. There are two classes of public premises: 1) As to on-sale general and on-sale beer and wine licenses, this means premises maintained and operated for the sale and service of alcoholic beverages to the public for consumption on the premises, and in which food is not sold or served to the public as in a bona fide eating place, although food products may be sold or served incidentally to the sale or service of alcoholic beverages; and 2) As to on-sale beer licenses, this means premises maintained and operated for sale or service of beer to the public for consumption on the premises, and in which no food is sold or served. (B&P Section 23029 and Rule 67.1)

In support: San Francisco Mayor Edwin M. Lee states that, "SB 384 provides local communities the opportunity to determine for themselves when, how and if they would like to extend hours of service. This legislation in no way circumvents a full public approvals process for such a determination. Should this legislation become law, San Francisco would need to begin an exhaustive process to collect input from bar owners, public safety officials, neighborhood leaders, and many others who might be interested in whether or not we should offer extended service hours permits, including instituting a review by local law enforcement for every extended hours permit we would potentially issue."

According to the San Francisco Chamber of Commerce, "California statute permits the legal sale of alcohol until 2:00 a.m. at on- and off-sale establishments. This makes it challenging for San Francisco to compete for tourists, conventions, and conferences attracted to late-night cultural offerings of other cities across the country and around the world that allow alcohol sales after that time. And it may not meet the growing demand of local residents who work non-traditional hours and would enjoy more options for late-night entertainment."

UNITE-HERE, AFL-CIO and the California Teamsters Public Affairs Council note that, "This bill would establish procedures for local jurisdictions to opt into this extension where appropriate. In our view, this makes sense for those areas where tourists and others are coming to a locale to enjoy our state's restaurants, music venues, clubs, etc. This type of actively creates jobs and is an important part of the economy in many cities."

The California Restaurant Association writes, this bill "Will give eating and drinking establishments the opportunity to work with local governing bodies and local law enforcement to design a plan that works for a specific jurisdiction. Social and nightlife venues are an economic driver in many communities, and the State's food service and entertainment industries generate billions of dollars in consumer spending and employ well over a million Californians. SB 384 provides an optional tool for local control over nightlife that will increase tax revenue and tourism as well as revitalize business districts."

The City of Oakland writes, "Our California destination cities are at a disadvantage when competing cities both nationally and internationally for tourists, conventions and conferences. California must compete with Chicago, Washington D.C., New York City, Las Vegas, Atlanta, Miami Beach, and New Orleans, all of whom have late-night service hours beyond 2 a.m. The current California one-size-fits all model for late-night closing times does not take into account our diverse communities and varying needs. Our local communities should be allowed to develop transparent local plans that bring the public, local government, law enforcement, and transportation all to the table. SB 384 is a well-balanced solution that provides local control over night-life while helping to grow our travel and tourism industry."

In opposition: Opponents outline numerous health and safety concerns and state SB 384 will lead to quality of life deterioration, drinkers driving from areas where bars close earlier to bars with later last calls, late night drinkers sharing the road with early morning commuters, and increased alcohol-related harm, including DUI accidents and fatalities. They further note the lack of resources and enforcement capacity to deal effectively with the extra service hours and mitigate the additional harms of late night drinking.

Additionally, the California College and University Police Chiefs Association states that, “SB 384 will result in many smaller jurisdictions adjacent to a 22-hour bar having to make significant deployment adjustments. These deployment adjustments amount to an unfunded mandate for many departments and will result in slower response times for other important calls for service.”

Several of the groups and organizations in opposition also cite that, “In 2010 the U.S. Community Prevention Services Task Force conducted a review of available studies and recommended against extending hours of alcohol sales/service. The Task Force repeated peer-reviewed evidence showing that increasing hours of sale by two or more hours found increases in vehicle crash injuries, emergency room admissions, and alcohol-related assault and injury.”

The Sonoma County Board of Supervisors states, "In Sonoma County, approximately 41 percent of people arrested for driving under the influence reported having their last drink at a bar or restaurant. In addition, approximately 60 percent were arrested between the hours of 1):00 p.m. and 2:00 a.m. Limiting the hours of sales is an evidence-based strategy shown to reduce excessive alcohol use. This limitation helps communities create social and physical environments that maintain quality of life by discouraging excessive alcohol consumption, including reducing alcohol-related fatalities, costs, and other harms."

Opponents also note that, “SB 384 lacks any evidence to support the bill author’s claim that extending hours of sale would not increase alcohol-related harm. Extending alcohol service hours at bar and nightclubs would bring associated public safety risks and increased law enforcement costs according to recent research.”

The Barbary Coast Neighborhood Association, based in San Francisco writes, “This bill will simply extend the noise and negative impacts on surrounding residents for two more hours. There are a number of areas throughout the state where entertainment activities are adjacent to residential neighborhoods. Our organization represents a neighborhood directly affected by the traffic, noise and unruly behavior caused by nightlife on the Broadway corridor. We experience a great deal of noise generated by loud intoxicated crowds, car horns, and music from open club doors. On many nights, patrons of Broadway businesses have spilled into surrounding residential areas with behavior that makes some residents apprehensive and uncomfortable. Two more hours of alcohol sales will not lessen those impacts. The argument that extending hours of operation to 4:00 AM will somehow reduce the negative impacts on cities and neighborhoods is simply unfounded. It merely extends the time for disruptive behavior.”

Closing times in various states: Alcohol last call laws for on-sale consumption vary widely from state to state:

Midnight: Mississippi*

1:00AM-1:30 a.m. - Delaware, Idaho*, Maine, Massachusetts (until 2a.m. in Boston), Missouri*, Nebraska*, New Hampshire, Rhode Island, and Utah.

2:00-2:30 a.m. - Alabama, Arizona, Arkansas, California, Colorado, Connecticut D.C., Florida* (cities have passed exemptions to the law which vary from 3:00 a.m. to 5:00 a.m.) Georgia*, Hawaii*, Iowa, Kansas, Kentucky (4 a.m. in Louisville), Maryland*, Massachusetts, Michigan, Minnesota, Montana, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Vermont, Virginia, Washington*, Wisconsin (no closing time on New Year's Day), and Wyoming.

3:00-3:30 a.m. – District of Columbia*, Indiana, and Tennessee, West Virginia.

4:00-5:00 a.m. - Alaska, Illinois* (closing hours are up to the decision of counties or towns), New York*.

24 hours – Louisiana * (2 a.m. in some municipalities), Nevada, and New Jersey*

*** Varies by state law or local ordinance - Counties and local municipalities may set/restrict opening and closing times for establishments that sell alcoholic beverages.** (See sample of states below)

Alabama: Alcohol can be served 24-hrs unless restricted by local ordinances, 26 of Alabama's 67 counties allow no alcohol to be sold, though possession and consumption remains legal. On and off-premise liquor sales are limited to 2 A.M on Sundays.

District of Columbia: The day before a federal or district holiday, on-premises retailers may sell until 3 a.m. On New Year's Eve, on-premises retailers may sell until 4 a.m. on January 1.

Florida: The county or municipality in which the business is located regulates the operating hours. Most cities stop serving alcohol at 2:00 a.m. However, some cities have passed exemptions to the law, notably Tampa, St. Petersburg, Tallahassee, and Pinellas County (3 a.m.), Broward County (4 a.m.), Key West (4 a.m.), and Miami-Dade County (5:00 a.m.).

Georgia: Hours of sale determined by local jurisdiction. In Atlanta, most bars are allowed to close at 2:30 a.m.

Hawaii: In Honolulu County only, bars stop serving alcohol at 2 a.m., unless they have a "cabaret license", which gives them until 4 a.m.

Idaho: A county or city may, however, by ordinance, allow the sale of alcohol by the drink on a Sunday, Memorial Day and Thanksgiving, and may also extend until 2 o'clock a.m. the hours of the sale of alcoholic beverages by the drink.

Illinois: Closing times depend on municipality. Businesses may not serve alcoholic beverages later than 2:00 a.m., Sunday through Friday, or later than 3:00 a.m. on Saturday without first obtaining an extended hours permit from the city. In Chicago, a late hour license allows the sale of alcohol until 4 a.m. Monday-Saturday and until 5 a.m. on Sunday.

Louisiana: No state imposed restrictions on on-premises hours. "24 hour" bars are common in New Orleans and in Jefferson Parish. Some municipalities and parishes (including Baton Rouge and East Baton Rouge Parish) require on-premises service to stop at 2:00 a.m.

Mississippi: Last call statewide is midnight, but municipal or county governments may, by ordinance, extend those hours. In certain specified areas, the hours for sale are extended or restricted. Most cities and counties close between Midnight and 2:00 a.m. but some are open until 3:00 a.m. On New Year's Eve, all on-premises permittees may remain open until 1:00 a.m. Most casinos do not have a last call. Currently, 34 (of 82 total) counties in Mississippi do not sell distilled spirits to customers.

Missouri: Special licenses available for bars and nightclubs that allow selling alcohol until 3 a.m. in Kansas City, Jackson County, North Kansas City, St. Louis, and St. Louis County.

Nebraska: State law sets the standard closing time at 1 a.m. but allows local governments to reduce or extend their hours as late as 2 a.m. with a super-majority vote of the city council, village board or county board. Lincoln and Omaha both adopted 2 a.m. closing times in 2010, the first year it was allowed by the Legislature.

New Jersey: Each municipality can control hours by local ordinance. Most municipalities have a last call of 2 or 3 a.m. Atlantic City, Brigantine, Absecon, Elwood, Pomona, Smithville, Galloway, and Mullica (all in Atlantic County) serve 24 hours.

New York: Under state law, establishments must stop serving alcohol by 4 a.m., however the actual closing time is left up to each of New York's 62 counties. The 4 a.m. time applies in New York City, Saratoga Springs, Buffalo, and Albany. Binghamton is 3 a.m. Syracuse and Rochester are at 2 a.m. Elmira, Geneva, and Ithaca have a time of 1 a.m.

South Carolina: Has no statewide restriction on beer and wine sales past 2 a.m., but does not allow sales of distilled spirits after 2 a.m.

Washington: A local government subdivision may fix later opening hours or earlier closing hours than those specified, so long as the hours apply to all licensed premises in the local government subdivision's jurisdiction.

Policy considerations: 1) The bill is unclear relating to who or whom would be authorized to certify the plan. Should a local authority (city council or board of supervisors) be required to pass an enabling ordinance to sanction the extended hours?

2) Should ABC be "required" to review the local extended hours plan, as defined in the bill, to ensure compliance with existing law? As currently written, ABC has no mandated requirement to review or approve the plan. *B&P 25634 (2) (b) Upon receipt of a local plan developed pursuant to paragraph (1) of subdivision (a), the department may review the local plan to ensure compliance with existing law.*

3) Should ABC be required to adopt rules and regulations to enforce the provisions of this bill?

4) The bill is unclear of what would happen, if the local plan does not "meet" all of the stated requirements, as specified in Section 25634 (1) (A-F). Would the plan still be able to be

resolved and certified by the local governing body or its designated subordinate officer or body, as stated in the bill?

5) Should this measure require the local governing authority to include available or unavailable public transportation systems in the plan? This would give ABC added information on all of the available and unavailable options. For instance, Bay Area Rapid Transit (BART) does not begin operating until 6:00 a.m. on Saturdays and 8:00 a.m. on Sundays.

6) Should an extension of additional hours be subject to a local ballot measure?

7) Should an extended hours permit holder be mandated to provide additional responsible beverage service and security training for employees?

8) Will on-premises establishments with settlement agreements that restrict closing hours be eligible to apply for an extended hours permit?

9) Will ABC be able to deny an application for a permit if issuance of that permit would create a law enforcement problem or be a public nuisance under the ABC Act? Currently, under the bill, an ABC investigation is limited to determining whether the additional hours permit by the applicant *"would unreasonably interfere with the quiet enjoyment of their property by the residents of the city, county, or city and county in which the applicant's licensed premises are located."* The reference of "quiet enjoyment" is somewhat ambiguous, and is not defined in the ABC Act. Since the term is not defined, it might limit the scope of ABC's investigation and authority to deny an application.

The bill might be further amended to incorporate applicable language contained in B&P Section 23958 in the ABC Act (Investigation of application; Grounds for denial). *"Upon receipt of an application for a license or for a transfer of a license and the applicable fee, the department shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied qualify for a license and whether the provisions of this division have been complied with, and shall investigate all matters connected therewith which may affect the public welfare and morals. The department shall deny an application for a license or for a transfer of a license if either the applicant or the premises for which a license is applied do not qualify for a license under this division. The department further shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4."*

10) Should the local plan be required to include: crime statistics, police reports, emergency medical response data, sanitation reports, public health records, and all correspondence in support or opposition to the extended hours proposal?

11) Should the bill state that additional hours permits would need to be renewed annually and is not transferable to a new location?

12) Should monies collected from permit fees (application and renewal) imposed pursuant to this bill, be set aside in a separate fund within the ABC Fund? Should the monies be allocated, on a percentage basis to offset costs for local police departments (based on the number of permits issued within each city for the enforcement of this bill) and to the ABC for the administration

and enforcement of the provisions of this bill? Furthermore, is the fee (\$2,500) established in the bill enough to cover those costs?

13) Should the plan include the creation of a commission or local agency to coordinate communication among key agencies, potential extended hour permittees, and the public?

14) Under current law, there are no restrictions regarding minors between 18 and 21 years of age from entering or remaining on premises licensed, maintained, and operated as a bona fide public eating-place (restaurants, brew pubs, etc.). Under this bill, minors would be able to remain and be in a licensed bona fide public eating establishment during the time period when additional hours have been permitted. Is this the clear intent of the bill?

15) Could this bill potentially open up Pandora's Box, as it relates to the alcohol oversight power of the state versus local governments?

16) Should a sunset clause be added to the bill to evaluate the implementation and general impact of authorizing additional hours of alcohol service in California?

Related legislation: AB 471 (Ting of 2017). Would allow ABC to issue up to five new special on-sale general licenses per year, until a total of 30 is reached, for premises located in certain neighborhoods in San Francisco, as defined. Each neighborhood is allowed a specified number of new licenses.

Prior legislation: SB 635 (Leno of 2013). Would have allowed an on-sale alcohol licensee to apply to ABC to authorize, with or without conditions, the selling, giving, delivering, or purchasing of alcoholic beverages at the licensed premises between the hours of 2 a.m. and 4 a.m., upon completion of specified requirements by the local jurisdiction in which the licensee is located. (Held in Senate Governmental Organization Committee)

AB 1739 (Committee on Governmental Organization, Chapter 744, Statutes of 2007). Among other thing, modified an existing provision of the ABC Act relative to hours of sale and delivery of alcoholic beverages to clarify that, during a change from Pacific standard time to Pacific daylight time, or back again to Pacific standard time, 2 a.m. means two hours after "midnight."

AB 2433 (Leno of 2004). Would have extended the hours of alcohol sales for on-sale licensees in the City and County of San Francisco from 2 a.m. to 4 a.m. (Held in Assembly Governmental Organization Committee)

AB 701 (Horton of 2003) Would have provided that an on-sale license that is open for business and sells or offers for sale alcoholic beverages past 1 a.m. may not sell or serve more than one alcoholic beverage to a person less than 15 minutes prior to closing time. (Amended to address a horse racing issue)

Chapter 152 of 1953. Codified Chapter 330 of the Statutes of 1935, of the Act. In part, prohibited the sale of alcoholic beverages by an on-sale licensee between the hours of 2:00 a.m. and 6:00 a.m.

REGISTERED SUPPORT / OPPOSITION:

Support

Anaheim Chamber of Commerce
California Hotel & Lodging Association
California Music & Culture Association
California Restaurant Association
California Teamsters Public Affairs Council
California Travel Association
City and County of San Francisco
City of Oakland
Council on Alcoholism and Drug Abuse
Elizabeth Peterson Group
Hotel Council of San Francisco
LAX Coastal Chamber of Commerce
Los Angeles Area Chamber of Commerce
Lyft
Mayor Edwin Lee, San Francisco
San Francisco Bar Owner Alliance
San Francisco Chamber of Commerce
San Francisco Taxi Workers Alliance
San Francisco Travel Association
Uber Technologies
UNITE-HERE, AFL-CIO
Valley Industry and Commerce Association
West Hollywood Chamber of Commerce

Opposition

A Sobering Choice Coalition
AADAP, Inc.
ADAPT Lamorinda
ADAPT San Ramon Valley
Alcohol Justice
Alcohol Policy Panel of San Diego County
Barbary Coast Neighborhood Association
California Alcohol Policy Alliance
California College and University Police Chiefs Association
California Council for Alcohol Problems
Coalition for Drug Free Escondido
Coalition to Prevent Alcohol-Related Harms in LA Metro
Council on Alcoholism and Drug Abuse
County Behavioral Health Directors Association of California
County of Marin Board of Supervisors
Friday Night Live Partnership
Health Officers Association of California
Hollywood Hills Recovery
Los Angeles Drug and Alcohol Policy Alliance
Lutheran Office of Public Policy-California
Mothers Against Drunk Driving
Mountain Communities Coalition Against Substance Abuse
National Council on Alcoholism and Drug Dependence – Orange County

National Council on Alcoholism and Drug Dependence – San Fernando Valley
North Coastal Prevention Coalition
Partnership for Positive Pomona
Project SAFER Educational Foundation
Pueblo y Salud, Inc.
Rethinking Alcohol and other Drugs
San Diego Police Chiefs' and Sheriff's Association
San Marcos Prevention Coalition
Santee Collaborative
Santee Solutions Coalition
SF Prevention Coalition
Sonoma County Board of Supervisors
Tarzana Treatment Centers
The Wall Las Memorias Project
United Methodist Church
United Neighborhoods for Los Angeles
Wellness & Prevention Center
West Hollywood Project
Westside Impact Coalition
Numerous letters from the public

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