

Date of Hearing: June 21, 2017

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

SB 461 (Allen) – As Introduced February 16, 2017

SENATE VOTE: 37-0

SUBJECT: Alcoholic beverage control: tied house restrictions

SUMMARY: Would reduce the minimum number of guestroom accommodations from 100 to 50 for an existing provision in the Alcoholic Beverage Control Act (Act) that enables specified licensees, or any authorized agent of those persons to hold an ownership interest in a hotel or motel. Specifically, **this bill:**

- 1) Reduces the minimum number of guestroom accommodations a hotel or motel is required to have, from 100 to 50, in order for specified licensees (winegrower, rectifier, distiller, bottler, importer, or wholesaler) or any authorized agent of those persons, to hold an ownership in the premises, the retail license, or the retail licensee.
- 2) Adds “out-of-state distilled spirits shipper” to the list of specified licensees authorized to hold an ownership interest in a hotel, motel, or marine park, as specified.

EXISTING LAW:

- 1) The enactment of the 21st Amendment to the United States (U.S.) Constitution in 1933 repealed the 18th Amendment and ended the era of Prohibition.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 the Department of Alcoholic Beverage Control (ABC) and grants it exclusive authority to administer the provisions of the 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.
- 3) Existing 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.
- 4) Prohibits, in general, a manufacturer, winegrower, manufacturer’s agent, California winegrower’s agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person, from owning, directly, or indirectly, any interest in any on-sale license or off-sale license. Over the years, exceptions to this prohibition have been added to the Act.

- 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) Exempts, from Tied-house restrictions, the issuance or transfer of a retail on-sale or off-sale license with respect to premises that are an integral part of the operations of a hotel, motel, or marine park, notwithstanding that a manufacturer, winegrower, manufacturer’s agent, California winegrower’s agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person, has an interest in the premises, the retail license, or the retail licensee, provided certain conditions are met:
 - a) In the case of a hotel or motel, the hotel or motel consists of not less than 100 guestroom accommodations.
 - b) No more than one-quarter of the total gross annual revenues of the hotel, motel, or marine park is derived from the sale of alcoholic beverages.
 - c) The retail licensee purchases beer or distilled spirits for sale from a wholesale licensee.
 - d) The retail licensee, except as otherwise provided for a marine park, shall purchase no alcoholic beverages for sale from any wholesale licensee that has any interest, in the premises, in the retail license, or in the retail licensee.
 - e) The retail licensee serves other brands of beer, wine, and distilled spirits in addition to the brands manufactured by the beer or distilled spirits manufacturer or produced by the winegrower holding an interest in the retail license.
 - d) No marine park sells any distilled spirits, except during private events or private functions held at the premises.

FISCAL EFFECT: Unknown

COMMENTS:

Background:

Existing law, separates the alcoholic beverage industry into three component parts, or tiers (referred to as the "Tied-house" law or "three-tier" system), of manufacturer (including breweries, wineries and distilleries), wholesaler, and retailer (both on-sale and off-sale). The original policy rationale for this body of law was to: a) promote the state’s interest in an orderly market; b) prohibit the vertical integration and dominance by a single producer in the market place; c) prohibit commercial bribery and to protect the public from predatory marketing practices; and, d) discourage and/or prevent the intemperate use of alcoholic beverages. Generally, other than exceptions 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.

The first Tied-house exception allowing an alcohol manufacturer or wholesaler to own or operate a hotel or motel was enacted in the early 1980’s to permit Grand Metropolitan, a British

alcoholic beverage supplier, to own the Intercontinental Hotel group, which in turn owned and operated the Mark Hopkins Hotel in San Francisco. At that time, the size of the hotel or motel allowed under the exception was a minimum of 150 rooms.

Over the years, there has been a global increase in tourism and hospitality both in tourist arrivals and tourism expenditures. Developers of boutique hotels have sought to distinguish this new tourism product in terms of its experiential qualities with strong emphasis placed upon the production of high levels of design, ambience, and offerings of personalized service. Boutique hotel owners are increasing their investments to improve service quality and the perceived value for guests, to achieve better customer satisfaction and loyalty, thus resulting in better relationships with each customer.

In 1988, Bass Brewery began to acquire ownership of the Holiday Inn hotel chain worldwide, including, at the time, 77 hotels in California. Of the 77 hotels, 10 had between 100 and 150 guestrooms. In 1990, the statute was amended to lower the number of required guestroom from 150 to 100, which allowed Bass Brewery to own and operate the 10 smaller establishments in the same fashion that the law permitted them to operate the 67 larger hotels. The exception was later modified to also allow an alcohol manufacturer (Anheuser-Busch) or wholesaler to own marine parks (SeaWorld in San Diego).

Purpose of the bill: The author's office makes reference to the emergence and development of boutique hotels within the hospitality industry. Boutique hotels are usually classified by the fact that they are small, usually less than 100 rooms. Consequently, the current room minimum prohibits alcohol suppliers from owning most boutique hotels.

The author states, “this bill seeks to change the minimum amount of allowable hotel/motel rooms of a single property under the exception from 100 to 50, while at the same time leaving all existing conditions in the law that protect the essence of the Tied-house system.”

Supporters argue that this bill would simply allow all types of hotels or motels in California to be owned and operated by an alcohol manufacturer, provided that no more than one-quarter of the total gross annual revenues are derived from alcoholic beverage sales and that the retail licensee purchases their alcohol from a wholesale licensee.

The California Hotel & Lodging Association states, “amending the Tied-house exemption to 50 rooms will allow these boutique hotels to compete on a level playing field and it will lead to the development of more boutique properties around the state.”

In opposition: Alcohol Justice is concerned that “while out-of-state distilled spirits shippers may need to be treated equally with in-state shippers under the federal interstate commerce clause, this bill also extends exceptions to tied house restrictions for many more hotels in the 50-100 guest range.”

Prior Legislation: AB 1429 (Committee on Governmental Organization), Chapter 567, Statutes of 2001. Among other things, modified an existing Tied-house exemption pertaining to ownership of a marine park to provide that beer and malt beverages may be purchased from a wholesale licensee regardless of whether the person has an ownership interest in the retail license.

AB 2711 (Floyd), Chapter 277, Statutes of 1992. Authorized specified alcoholic beverage licensees to hold ownership in a general on-sale retail license that is an integral part of a defined marine park.

AB 645 (Floyd), Chapter 135, Statutes of 1990. Among other things, permitted an alcoholic beverage manufacturer or wholesaler to hold ownership in a retail on-sale or off-sale license at a hotel or motel of not less than 100 guestrooms, rather than 150 guestrooms.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Hotel & Lodging Association
Louis Vuitton Hotel Management
The Distilled Spirits Council
Wine Institute

Opposition

Alcohol Justice

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