

Date of Hearing: April 22, 2021

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Jim Frazier, Chair

AB 1589 (Committee on Governmental Organization) – As Introduced March 17, 2021

**SUBJECT:** Alcoholic beverages: tied-house restrictions

**SUMMARY:** This bill clarifies that a licensed retailer is not obligated to buy or sell the alcoholic beverage products of a distilled spirits wholesaler when selling marketing data to that wholesaler.

**EXISTING LAW:**

- 1) Establishes the Department of Alcoholic Beverage Control (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 or occupation taxes for this purpose.
- 2) Separates the alcoholic beverage industry into three component parts, or tiers, of the manufacturer (including breweries, wineries, and distilleries), wholesaler, and retailer (both on-sale and off-sale). This is referred to as the “Tied-house” law or “three-tier” system.
- 3) Prohibits, in general, an alcohol manufacturer, wholesaler, or any officer, director, or agent of any such person from owning, directly or indirectly, any interest in any on-sale license, or from providing anything of value to retailers, be it free goods, services, or advertising.
- 4) Provides an exception, from tied-house restrictions, that permits certain licensees, or any agents of those licensees, to conduct market research and, in connection with that research, to purchase specific data from off-sale licensed retailers, subject to the specified limitations, including that no licensed retailer shall be obligated to purchase or sell the alcoholic beverage products of the purchasing licensee.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

**BACKGROUND:**

Tied-house laws. State and federal law prohibit certain relations between those engaged in the production, distribution, and retail sale of alcoholic beverages. The term “tied-house” is derived from a common practice in England whereby a bar or public house was “tied”—by ownership, contractual obligations, or other influences—to a specific manufacturer. In some instances, that model encouraged intemperance in alcohol consumption, as retailers would offer to manufacturers generous favors, such as expensive business meals and gifts, which added costs that needed be recouped through aggressive product promotion. Tied houses were also subject to undue influence from manufacturers, who sometimes used their influence to force tied houses to sell their products and exclude of other manufacturers’ products.

As a result, after the repeal of prohibition in 1933, California's current "three-tier" system was introduced. 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 marketplace; (c) prohibit commercial bribery and protect the public from predatory marketing practices; and, (d) discourage and/or prevent the intemperate use of alcoholic beverages.

Exceptions to tied-house restrictions have been enacted throughout the years in those specific instances where the Legislature determined that the public's interests are protected.

Distilled spirits wholesaler license. Distilled spirits wholesaler licensees hold a Type 18 license. This license is issued to those who conduct wholesale distribution of distilled spirits only. The requirements to qualify for this type of license are outlined in the California Code of Regulations. Qualifications include, among others, maintaining warehouse space either owned or leased by the licensee or dedicated to his or her use in a public warehouse, and that such space is sufficient to store at one time either a stock of distilled spirits equal to 10 % or more of his annual case volume of distilled spirits sales to retailers, or a stock of distilled spirits whose cost of acquisition is one hundred thousand dollars or more.

According to ABC's license summary count for FY 2019/20, 919 (Type-18) licenses were issued.

Purpose of the bill. Under existing law, certain alcoholic beverage licensees, such as alcohol manufacturers, winegrowers, rectifiers, and distillers, can conduct market research, which can involve buying data on sales and purchases of alcoholic beverage products from off-sale licensed retailers. However, there are limitations on these licensees buying such data from these retailers. One such limitation is that a retailer is not obligated to buy the alcohol of the buyer of the marketing data.

A distilled spirits wholesaler is currently one of the licensees exempt from the general prohibition but is not one of the entities prohibited from obligating the licensed retailer to purchase or sell the products of the licensee conducting the market research.

According to the author's office, "AB 1589 aims to fix this oversight in current law by including a "distilled spirits wholesaler" in the provision prohibiting a licensed retailer from being obligated to purchase or sell alcoholic beverages of the licensee conducting the research."

Prior legislation. AB 1429 (Assembly Governmental Organization Committee), Chapter 567, Statutes of 2001. Among other things, authorized various licensed entities to conduct market research and, in connection with that research, to purchase from licensed on-sale retailers data, regarding purchases and sales of alcoholic beverage products, at the customary rates that those retailers sell similar data for nonalcoholic beverage products

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

None on file

### **Opposition**

None on file

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