

SENATE THIRD READING
SB 298 (Dodd)
As Amended August 15, 2022
Majority vote

SUMMARY

This bill would authorize any person that has a brewpub-restaurant license to exchange that license for a bona fide public eating place license subject to the approval of the Department of Alcoholic Beverage Control (ABC), as specified.

Major Provisions

- 1) Authorizes any person that has a brewpub-restaurant license to exchange that license for a bona fide public eating place license subject to the approval of ABC.
- 2) Prohibits a license issued under this bill from being sold or transferred for a price greater than the fee paid by the seller or transferor.
- 3) Provides that the exchange may be made at any time upon the approval of ABC.
- 4) Establishes an exchange fee of \$100. The fee may be adjusted by ABC pursuant to current law.
- 5) Provides that the provisions of this bill only applies to a person that has held a brewpub-restaurant license since on or before December 31, 2019.
- 6) Requires the owner of a brewpub-restaurant license who exchanges a license shall be required to pay the fee required for a new permanent license.
- 7) Authorizes ABC to designate a licenses issued pursuant to this bill as an on-sale general license for special use and provides that such a designation shall not alter any license privileges or restrictions otherwise established under this bill.
- 8) Provides that the exchange of a brewpub-restaurant license for bona fide public eating place license shall not count towards the county's alcohol license limit.

COMMENTS

Background.

Brewpub-restaurant license. The brewpub-restaurant license, also known as a Type 75 license, authorizes the sale of beer, wine, and distilled spirits for consumption at a bona fide eating-place, in essence requiring the establishment 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 2018, SB 1283 (Bradford), Chapter 736, Statutes of 2018, changed the brewpub-restaurant license after concerns were raised by some in the alcohol industry and regulators that some Type 75 licensees were using loopholes in the license to obtain privileges of a Type 47 license, without fulfilling the intended requirements of a Type 75 license. The bill made several changes

to the Type 75 license to provide ABC with the adequate tools needed to enforce state law and ensure that the license was not being used simply for the privilege of operating a restaurant. SB 1283 specified that the current limitations that limit the number of licensed premises to one per 2,000 residents shall apply to a brewpub-restaurant license. This stipulation meant that brewpub-restaurant licenses would not be used as a loophole to circumvent state law.

Additionally, the bill required that the beer produced by the licensee be offered to consumers in a bona fide manner after concerns were raised that some licensees were simply pouring their product down the drain. Currently, there are 151 brewpub-restaurant licenses in California. This includes 22 in Napa County, 21 in the County of San Francisco and 19 in Sonoma County.

Type 47 alcohol license. A Type 47 license is specifically designated for businesses that primarily serve food ("bona fide eating place"). The license is meant for those who seek to serve beer, wine, and distilled spirits for consumption on the licensee's premises. The license holder must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Generally, this means that the business must generate at least 51% of all gross sales from food. Minors are allowed on the premises.

A Type 47 license is one of the most common types of liquor licenses for restaurants in California. Some common businesses that use the Type 47 license include full-service restaurants, hotels and resorts, bowling alleys, golf courses, and other eating establishments. There are 17,097 on-sale general (Type 47) licenses statewide.

Alcohol license limitation. Existing law provides for a limit on the number of new on-sale general licenses that may be issued each year by ABC based on the population growth of the county in which the licensed premises are located. The ratio is one on-sale general license for each 2,000 residents. For example, if a county grows by 10,000 people in a given year, the department will issue five new licenses in that county.

If ABC receives more applications than there are licenses available, a public drawing is held. To take part in such a drawing, an applicant must have been a resident of California for at least 90 days prior to the scheduled drawing. ABC notifies successful drawing participants that they have 90 days to complete a formal application for their specific premises. The cost of these new licenses is \$17,335 each.

Individuals seeking to open a full-service restaurant with a bar or cocktail menu who cannot obtain a liquor license through this process must locate an existing licensed owner willing to sell their license. Usually, 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 can reach upwards of \$400,000.

According to the Author

According to the author's office, "Over the years, the brewpub-restaurant license has resulted in confusion and frustration among many in the alcohol industry because of the belief that some owners of the license are simply brewing the minimum amount of beer in order to obtain an alcohol restaurant license. As a result, in 2018 Governor Brown signed SB 1283 that ensured that moving forward a holder of a brewpub-restaurant license would not be used to simply open up a restaurant without having an interest in brewing beer. Unfortunately, there's still a number of

brewpub-restaurant licensees that obtained their license prior to the changes made by SB 1283 that have no interest in brewing beer."

The author's office further states that, "Having these licensees operate under a brewpub-restaurant license rather than an alcohol restaurant makes little sense. Not only are these business owners required to waste valuable time and resources but ABC is also wasting limited resources ensuring that these licensees remain complaint. This bill allows the holder of a brewpub-restaurant license the opportunity to exchange their license for an alcohol restaurant license. This bill represents a fair compromise. It allows these businesses, who have invested heavily in our communities, the ability to finally operate under the appropriate license, while also ensuring that they do not profit from the sale of their alcohol restaurant license in the future."

Arguments in Support

The Alcohol Policy Panel of San Diego County writes, "Many brewpub license holders have not been abiding by the terms of their license. ABC investigated half of all licensees before the pandemic and found that one third were not operating legitimately. The vast majority of violations were related to failing to produce the required amount of beer on-site. For these particular brewpubs - those that either fail to produce the required amount of beer on site and/or those who are dumping their brewed product - it makes sense to allow them to exchange their license for one designed for a bona fide public eating place. They are already running a restaurant in practice. Their license should reflect this reality."

Arguments in Opposition

Alcohol Justice, which opposes overconcentration of alcohol outlets and argues brewpub licensees "profited by having the equivalent of a full-service liquor license for a fraction of the normal costs" and this bill "does nothing but make that illegal operation legal."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, "Likely absorbable costs to ABC to exchange brewpub licenses (Type 75) for eating place licenses (Type 47), since the licensee must pay an exchange fee and the application fee for a new permanent Type 47 license, which will be \$17,335 in 2023. ABC notes there are approximately 150 brewpub licensees and it is unknown how many would seek an exchange."

VOTES

SENATE FLOOR: 38-0-2

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Limón, Stern

ASM RULES: 7-0-4

YES: Cooley, Waldron, Mike Fong, Gipson, Lee, Maienschein, Mathis

ABS, ABST OR NV: Bennett, Flora, Blanca Rubio, Villapudua

ASM GOVERNMENTAL ORGANIZATION: 20-0-2

YES: Santiago, Bigelow, Aguiar-Curry, Berman, Bryan, Wood, Cooper, Megan Dahle, Davies, Gipson, Jones-Sawyer, Lackey, Low, Mathis, Quirk-Silva, Ramos, Robert Rivas, Blanca Rubio, Lee, Smith

ABS, ABST OR NV: Daly, Eduardo Garcia

ASM APPROPRIATIONS: 12-0-4

YES: Holden, Bryan, Calderon, Arambula, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, McCarty

ABS, ABST OR NV: Bigelow, Megan Dahle, Davies, Fong

UPDATED

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