

Date of Hearing: June 22, 2022

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Miguel Santiago, Chair

SB 298 (Dodd) – As Amended June 6, 2022

SENATE VOTE: 38-0

SUBJECT: On-sale general licenses: Brewpub-restaurant licenses: bona fide public eating place license

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. Additionally, would authorize ABC, in counties that have reached its limit of on-sale general licenses, to issue up to 10 additional new original on-sale general licenses for bona fide eating places following the year the limit is reached. Specifically, **this bill:**

- 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 licenses as of 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.
- 9) Provides that in any county that has reached its limit of on-sale general licenses for bona fide public eating places, as specified, ABC may issue up to 10 additional new original on-sale general licenses for bona fide public eating places in the first calendar year following the year the limit is reached.
- 10) Provides that a county board of supervisors, by resolution, may specify the maximum number of licenses to be issued under this section in any year, not to exceed 10. The resolution shall be effective for one year and shall be adopted and submitted to the department no later than July 1 of the year to which the resolution applies. In the event that the board of supervisors fails

to submit a resolution under this subdivision by July 1 of any year, the department may issue any licenses that have not been issued under this section during that year.

11) Provides that a person who currently holds a valid on-sale general license for seasonal business shall not be prohibited from applying for an original on-sale general license pursuant to this bill.

12) States that ABC may designate licenses issued pursuant to this bill as on-sale general for special use. A designation pursuant to this bill shall not alter any license privileges or restrictions established by this section.

13) Provides a license issued under this bill shall not be transferred from one county to another and shall not be sold or transferred for a price greater than the original fee paid by the seller or transferor.

14) Provides in issuing the licenses provided for in this bill, the department shall follow the procedures set forth in current law relating to the priority drawing lottery.

15) Provides that following the cancellation or revocation of a license issued under this bill, the department shall issue one additional license following the procedures, as defined.

EXISTING LAW:

1) Establishes ABC and grants it exclusive authority to administer the provisions of the Alcoholic Beverage Control Act (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.

2) Authorizes the issuance of a brewpub-restaurant license, also known as a Type 75 license, as a form of an on-sale retail license, to persons or entities who manufacture no less than 100 barrels and not more than 5,000 barrels of beer annually on the licensed premises, subject to specific conditions.

3) Authorizes the issuance of an on-sale general eating-place license, or Type 47 license, which authorizes the consumption of beer, wine, and distilled spirits for consumption on the licensed premise. The licensee is required to operate and maintain the license premises as a bona fide eating place, which must include suitable kitchen facilities.

4) Authorizes a person who has an on-sale license issued for a bona fide public eating place, typically a restaurant, to exchange their license for a public premises license, typically a bar. Any person who has a license issued for a public premise is similarly allowed to exchange their license for a license for an on-sale bona fide public eating place license.

5) Authorizes a person who has any on-sale general license to exchange his or her license for a special on-sale general license and any person who has a special on-sale general license to exchange his or her license for an on-sale general license.

6) Requires a brewpub-restaurant licensee to offer for sale beer brewed by the licensee to consumers for consumption on the premise or off-premises in a bona fide manner.

- 7) Defines a “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 and which has suitable kitchen facilities connected therewith. The facility must contain conveniences for cooking and assortment of foods, which may be required for ordinary meals, the kitchen of which must be kept in sanitary condition with the proper amount of refrigeration for the keeping of food on said premise and must comply with all the regulations of the local department of health.
- 8) Provides that 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. However, for liquor stores and other specified retail licenses, 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.
- 9) Caps the number of new on-sale and off-sale general licenses issued by ABC. The ratios are one on-sale general license for each 2,000 persons in the county in which the premises are situated and one off-sale general license for each 2,500 persons.
- 10) 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) and an “off-sale” license as authorizing the sale of all types of alcoholic beverages for consumption off the premises in original, sealed containers.
- 11) Authorizes, beginning January 1, 2017, ABC to issue no more than five new original neighborhood-restricted special on-sale general licenses, for premises located within specified City and County of San Francisco neighborhoods, subject to certain requirements and restrictions.
- 12) Provides that in Napa County, from January 1, 2017, to December 31, 2017, ABC, in addition to those licenses currently issued under the law may issue no more than five additional new original on-sale general licenses for bona fide public eating places. Any premises to qualify for a license shall have a seating capacity for 25 or more diners.
- 13) Authorizes, beginning January 1, 2018, ABC to issue no more than five new original neighborhood-restricted special on-sale general licenses per year, until a total of 30 licenses are issued, to premises located in any of the census tracts, as specified, within the City and County of San Francisco.
- 14) Authorizes, beginning on January 1, 2018, ABC, to issue a maximum of 20 new original on-sale general licenses, over a four-year period, in the County of Napa, as specified.

FISCAL EFFECT: This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

Purpose of the bill. 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.”

Relating to the provisions in the bill that allow ABC to issue up to 10 additional new original on-sale general licenses for bona fide public eating places, as specified, the author's office states that “Under current law, the number of alcohol licenses issued in a given county is tied to the population of that county. Unfortunately, this creates a problem for restaurants and other similar businesses in several counties that would like to cater to the large number of visitors in the area but cannot because they do not have a license to serve alcohol. In addition, because of the current limits, many of these licenses are being sold on the open market for hundreds of thousands of dollars. These prices restrict the ability of many individuals from opening restaurants and results in millions of dollars of lost revenue to our local and state governments.”

Lastly, the author's office further argues that “by allowing ABC to issue up to 10 new Type 47 licenses per year, it might allow individuals to obtain a liquor license in those counties where there are no more available licenses. By doing so, we would allow demand to dictate where these businesses can open rather than by an arbitrary population ratio.”

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 license 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.

Impact on counties. As previously noted, when a county experiences a population growth, ABC issues additional licenses based on the population growth; currently 2,000 residents per one on-sale general license. While this system tends to work for most counties, there are a substantial number of counties where the demand for alcohol licenses far outweighs the current number of alcohol licenses in those counties. The reasons for the lack of licenses are generally a lack of population growth or because of the amount of tourism in the particular county, which results in higher demand for these types of businesses.

For example, in Napa County the number of visitors to Napa continues to increase while the population of the county has not grown. While the majority of visitors to Napa take day trips, more than one million of these visitors spend at least one night in local lodgings. Tourism has thus become one of the major economic drivers in the region. While legislation in 2017 authorized the issuance of five additional license over a four-year span, demand far outweighs the availability of these licenses. In 2018, for instance, while the department issued five new licenses to Napa, there were a total of 38 applications for those five licenses.

Policy consideration. The committee may wish to consider that following amendments relating to provisions in the bill that allow ABC to issue up to 10 additional new original on-sale general licenses for bona fide public eating places: 1) In the event that the board of supervisors fails to submit a resolution under this bill by July 1 of any year, ABC may not issue any licenses that

would have otherwise been available for issuance during that year; 2) The bill would prohibit the department from issuing more than 4 of the newly created bona fide eating places licenses in the bill per year.

Related legislation. SB 1452 (Dahle) of 2022. This bill would authorize the issuance of up to 10 additional new original on-sale general licenses for bona fide public eating places in the Counties of El Dorado and Shasta, as specified. The bill would prohibit the department from issuing more than 4 of these licenses per year. (Pending in the Assembly Appropriations Committee)

Prior legislation. AB 2459 (Bigelow), Chapter 53, Statutes of 2020. Authorized ABC to issue up to 10 additional new original on-sale general licenses in Mariposa County and up to 10 additional new original on-sale general licenses per year in Napa County for a period of five years.

SB 21 (Dodd), Chapter 362, Statutes of 2019. Lowered the required minimum brewing production of a brewpub-restaurant licensee from 200 barrels per year to 100 barrels per year.

SB 352 (Dodd) of 2019. Would have authorized ABC, in counties that have reached its limit of on-sale general licenses, to issue up to 10 additional new original on-sale general licenses for bona fide eating places following the year the limit is reached. (Held in the Assembly Appropriations Committee Suspense File)

SB 1283 (Bradford), Chapter 736, Statutes of 2018. Authorized a brewpub-restaurant licensee to label, bottle package, or refill any container with beer produced on their licensed premises and to sell that beer for consumption off the premises. Additionally, the bill increased the minimum brewing production from 100 barrels of beer annually to 200 barrels of beer annually.

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.”

In opposition. According to Alcohol Justice, “When brewpub licenses were created the regulatory bar was lowered and the result as reported by ABC was flagrant violation by a majority of the Type 75 licensees investigated. They were not making the beer they were required to make yet profited by having the equivalent of a full-service liquor license for a fraction of the normal costs. This bill does nothing but make that illegal operation legal by removing the requirement to produce beer for a simple \$100 dollar fee.”

REGISTERED SUPPORT / OPPOSITION:

Support

Alcohol Policy Panel of San Diego County

Opposition

Alcohol Justice

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