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UNFINISHED BUSINESS

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Bill No: SB 298  
Author: Dodd (D)  
Amended: 8/15/22  
Vote: 21

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SENATE GOVERNMENTAL ORG. COMMITTEE: 13-0, 3/9/21

AYES: Dodd, Nielsen, Allen, Archuleta, Borgeas, Bradford, Glazer, Hueso, Jones, Melendez, Portantino, Rubio, Wilk

NO VOTE RECORDED: Becker

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 38-0, 4/26/21

AYES: 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

NO VOTE RECORDED: Limón, Stern

ASSEMBLY FLOOR: 76-0, 8/18/22 - See last page for vote

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**SUBJECT:** Brewpub-restaurant licenses: bona fide public eating place license

**SOURCE:** Author

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**DIGEST:** This bill 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 the Department of Alcoholic Beverage Control (ABC), as specified.

*Assembly Amendments* clarify that the provisions of this bill only apply to a person that has held a brewpub-restaurant license since on or before December 31, 2019.

**ANALYSIS:**

## Existing law:

- 1) Establishes the Department of 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.
- 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.

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 the Department 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 the department.
- 4) Establishes an exchange fee of \$100. The fee may be adjusted by the department 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 the Department of 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.

## **Background**

*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 which 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 the Department of ABC is also wasting limited resources ensuring that these licensees remain compliant. SB 298 allows the holder of a brewpub-restaurant license the opportunity to exchange their license for an alcohol restaurant license. This would allow these businesses, who have invested heavily in our communities, the ability to finally operate under the appropriate license and continue to provide jobs during these tough economic times."

*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 facility 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) made several changes to the brewpub-restaurant license after concerns were raised by some in the alcohol industry as well as regulators that some Type 75 licensees were using loopholes in the license to, in essence, obtain privileges of a Type 47 license, without fulfilling the intended requirements of a Type 75 license.

As such, SB 1283 made a number of changes to the Type 75 license to provide the Department of 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. Specifically, 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 meant that moving forward, 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 throwing their product down the drain. There are currently 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.* An on-sale general eating-place license, or Type 47 license, authorizes the consumption of beer, wine, and distilled spirits for consumption on the licensed premise. The licensee is required to operate and maintain the licensed premises as a bona fide eating place, which must include suitable kitchen facilities. The licensee 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. As such, a Type 47 license is one of the most common types of liquor licenses for restaurants in California.

Existing law provides for a limitation on the number of new on-sale general licenses that may be issued in a given year by the Department of 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 ABC will issue five new licenses in that county.

If the Department of ABC receives more applications than there are licenses available, a public drawing is held. To participate in such a drawing, an applicant must have been a resident of California for at least 90 days prior to the date of the scheduled drawing. Successful drawing participants are notified that they have 90 days to complete a formal application for their specific premises. The cost of these licenses is currently \$15,835.

Individuals seeking to open a full-service restaurant with a bar or cocktail menu who fail to obtain a liquor license through this process typically 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 in certain counties.

### **Related/Prior Legislation**

SB 1452 (Dahle, 2022) authorizes the Department of ABC to issue no more than a total of 10 new original on-sale general licenses for bona fide public eating places in both the County of El Dorado and in the County of Shasta, as specified.  
(Pending on the Senate Floor)

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: Yes    Local: No

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. The Department of ABC notes there are approximately 150 brewpub licenses and it is unknown how many would seek an exchange.

**SUPPORT:** (Verified 8/16/22)

Alcohol Policy Panel of San Diego County

**OPPOSITION:** (Verified 8/16/22)

Alcohol Justice

**ARGUMENTS IN SUPPORT:** According to the Alcohol Policy Panel of San Diego County, “we believe allowing brewpubs to change their license to a restaurant one is appropriate. We strongly support SB 298 as a way to protect the public health and safety concerns of communities.”

**ARGUMENTS 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.”

**ASSEMBLY FLOOR:** 76-0, 8/18/22

**AYES:** Aguiar-Curry, Alvarez, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Chen, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Rendon

**NO VOTE RECORDED:** Arambula, Cervantes, Choi, Wood

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8/19/22 13:08:49

\*\*\*\* END \*\*\*\*