

Date of Hearing: August 26, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

SB 389 (Dodd) – As Amended August 16, 2021

Policy Committee: Governmental Organization

Vote: 21 - 0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill codifies the Department of Alcoholic Beverage Control's (ABC) notice of regulatory relief authorizing a specified licensee with a bona fide public eating place to sell alcoholic beverages for off-sale consumption and specifies how delivery of alcoholic beverages to a consumer away from the licensed premises must occur. Specifically, this bill:

- 1) Requires the delivery to be made by a licensee with off-sale retail privileges or the holder of a consumer delivery service permit and by a person at least 21 years old who has completed an ABC-approved responsible beverage service (RBS) training course for delivery personnel.
- 2) Requires ABC to issue a consumer delivery service permit to a service that pays the required application and annual fee, whose owners and officers have not been convicted of any crimes of moral turpitude.
- 3) Provides that a licensee is not subject to discipline for selling, delivering or furnishing an alcoholic beverage to an obviously intoxicated person or a minor, if the purchaser affirmed to the licensee that the purchaser is of age and the licensee informs the consumer delivery service that the order contains alcoholic beverages.
- 4) Allows ABC to impose specified administrative penalties against the holder of a consumer delivery service permit for violations.
- 5) Allows, until December 31, 2026, an on-sale, beer manufacturer, wine manufacturer or craft distiller licensee operating a bona fide public eating place to sell alcoholic beverages for off-sale consumption under specified conditions. The licensee must notify ABC of intent to sell drinks for off-sale consumption.

FISCAL EFFECT:

Costs of an unknown, but likely substantial, amount ranging from the hundreds of thousands to millions of dollars to ABC, depending on the scope of permitting consumer delivery services. For example, this bill requires issuance of permits to an undefined "consumer delivery service" and does not specify an application or annual fee for the permit. This bill also requires a person making the delivery to complete an RBS training course for delivery personnel. Although ABC has an RBS training course for alcohol servers, curriculum modifications and a new database would be needed to cover delivery personnel and track compliance.

One-time costs of \$40,000 to ABC to build a new webpage for licensees to notify ABC of intent to sell alcoholic beverages for off-sale consumption.

ABC would also incur costs to promulgate regulations and provide enforcement for creation of the consumer delivery service permit and formalizing the allowance of alcohol to-go. Although ABC estimates these costs to be minor and absorbable, over 40,000 on-sale licensees qualify as bona fide public eating places, so even a modest increase in complaints could generate significant workload for ABC. For example, complaints involving just 1% of these licenses could lead to 400 new investigations and cost approximately \$279,000, even before enforcement costs related to the number of new delivery personnel are taken into account.

COMMENTS:

- 1) **Purpose.** The author notes including alcoholic drinks with to-go food orders has helped restaurants survive the COVID-19 pandemic and benefitted consumers who prefer delivery over gathering in an enclosed space, even as restrictions loosen. According to the author, this bill provides an opportunity for such practices to continue and requires third party delivery companies to obtain a permit from ABC to deliver alcoholic beverages to consumers. The author believes “this is a common sense measure to protect against underage drinking and ensure that ABC has the appropriate tools to ensure that third party delivery companies are following similar laws compared to alcohol licensees.” This bill is supported by the food and beverage industry and opposed by labor organizations and groups seeking to limit the prevalence of alcohol.
- 2) **ABC’s First Notice of Regulatory Relief.** After the Governor issued a statewide stay-at-home order on March 19, 2020, ABC issued the first of many regulatory relief notices to help restaurants crippled by serving only takeout or delivery meals. The first notice allows licensees with on-sale privileges the right to sell alcoholic beverages for off-sale consumption in manufacturer pre-packaged containers, or if not in manufacturer’s containers, in a container with a fully sealed and secured lid or cap sold in conjunction with a meal. This policy was intended to be temporary, providing immediate relief during the crisis, and is set to expire at the end of the year. This bill continues the policy until December 31, 2026.
- 3) **Third-Party Provider (TPP) Alcohol Delivery.** This bill also allows restaurants to continue providing alcohol for off-sale consumption through pick-up and delivery, including delivery through TPPs. While there are no laws or regulations specific to TPPs, ABC issued advisories in 2009 and 2011 (before the prevalence of app-based on-demand alcohol delivery), defining a TPP as an unlicensed entity involved with the promotion, marketing and facilitation of sales of alcoholic beverages by licensees over the internet. Because existing law states that only licensees may engage in activities for which a license is required, all sales transactions involving TPPs are ultimately conducted by the licensee.

ABC has defined penalties for violations involving a licensee, including selling an alcoholic beverage to a minor. In 2020, ABC issued 1,709 citations for sales to minors. Additionally, existing law provides that giving alcohol to a minor is a misdemeanor and could result in jail time if the minor subsequently causes great bodily injury or death to themselves or another person. ABC cannot sanction TPPs, so the responsibility, and any potential criminal liability, is with the licensee and TPP driver.

ABC's industry advisory, dated April 30, 2020, revealed significant violations of ABC's First Notice of Regulatory Relief, noting, "Most concerning is that minors are routinely able to purchase alcohol through delivery from restaurants. There have been instances in which the licensee's own employees have done so, but a far greater rate has been evident among third-party delivery services." While the number of violations stemming from delivery has significantly decreased since the beginning of the pandemic, enforcement efforts show the violation rate for delivery transactions is still higher than in-person transactions.

This bill requires delivery of alcoholic beverages to be completed by a licensee or the holder of a consumer delivery service permit issued by ABC. If the delivery is made by a permit holder, the licensee would no longer be subject to discipline if the delivery service provided alcohol to a minor, as long as the licensee obtains affirmation of the purchaser's age prior to accepting the order and informs the delivery service that the order contains alcohol. While this bill authorizes administrative penalties against the delivery service for violating permit provisions, the implications for a delivery service's drivers are not clear, since existing TPPs generally utilize thousands of drivers who are not classified as employees. Opponents of this bill argue "there needs to be a robust licensing structure so that companies licensed as 'consumer delivery services' in the state actually carry the liability," as penalties should "not fall onto the backs of vulnerable workers who are relatively powerless in disputes with both customers and delivery companies and who can least afford to pay the fines."

- 4) **Expanding ABC Workload.** Each year, this committee sees a wide array of bills that propose to expand access to alcohol through additional licenses or a loosening of restrictions. Generally, these proposals are modest in scope and do not generate significant new workload for ABC. However, taken together, these bills could lead to significant new costs and future budget requests. Two years ago, the Legislature acted to address ABC's persistent structural deficit. SB 82 (Committee on Budget and Fiscal Review), Chapter 29, Statutes of 2019, included fee increases that went into effect on October 1, 2019.
- 5) **Related Legislation.** SB 314 (Wiener) continues ABC's regulatory relief allowing a licensee to serve alcoholic beverages on property adjacent to the licensed premises, increases the number of events for which ABC may issue a caterer's permit and allows licensees to share common areas. SB 314 is pending on this committee's Suspense File.

AB 61 (Gabriel) also continues the same ABC regulatory relief as SB 314 and helps a restaurant expand outdoor dining service and operate as a temporary satellite food service. AB 61 is pending on the Senate Appropriations Committee's Suspense File.

- 6) **Prior Legislation.** AB 1242 (Bauer-Kahan), of this Legislative Session, would have continued ABC's regulatory relief allowing alcohol to-go, as specified. After approval by this committee, AB 1242 was amended to address an entirely different issue.

SB 254 (Portantino), of the 2017-18 Legislative Session, would have prohibited a certified delivery network from delivering alcoholic beverages without first obtaining a license issued by ABC. SB 254 was referred to, but not heard by, the Assembly Governmental Organization Committee.