
UNFINISHED BUSINESS

Bill No: SB 389
Author: Dodd (D), et al.
Amended: 9/3/21
Vote: 21

SENATE GOVERNMENTAL ORG. COMMITTEE: 15-0, 4/20/21
AYES: Dodd, Nielsen, Allen, Archuleta, Becker, Borgeas, Bradford, Glazer,
Hueso, Jones, Kamlager, Melendez, Portantino, Rubio, Wilk

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 36-0, 5/10/21
AYES: Allen, Archuleta, Atkins, Bates, Becker, Bradford, 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: Borgeas, Caballero, Limón, Stern

ASSEMBLY FLOOR: 80-0, 9/8/21 - See last page for vote

SUBJECT: Alcoholic beverages: retail on-sale license: off-sale privileges

SOURCE: Author

DIGEST: This bill authorizes, until December 31, 2026, specified on-sale licensees that operate a bona fide public eating place to sell distilled spirits for off-sale consumption for which their license permits on-sale consumption if the beverages are in manufacturer-prepackaged containers, and ordered and picked up by the consumer. This bill authorizes a licensee to sell the alcoholic beverages, except beer, for off-sale consumption for which their license permits on-sale consumption when the beverages are not in manufacturer-prepackaged containers if specified conditions are met.

Assembly Amendments narrow the scope of this bill, add additional requirements, and add a five-year sunset.

ANALYSIS:

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 and the collection of license fees for this purpose.
- 2) Provides, under the ABC Act, for the issuance of various alcoholic beverage licenses, including the imposition of fees, conditions, and restrictions in connection with the issuance of those licenses.
- 3) Prohibits a person from exercising the privilege which a licensee may exercise or performing under the authority of a license unless the person is authorized to do so by a license.
- 4) Authorizes a person holding an on-sale general license, with respect to beer and wine, and any on-sale license, with respect to the particular beverage or beverages mentioned in the license, to exercise the rights and privileges granted by an off-sale beer and wine license.
- 5) Allows a person who has purchased and partially consumed a bottle of wine to remove the partially consumed bottle from the premises of an on-sale beer and wine public premises licensee.
- 6) Provides that any person under 21 years of age who purchases any alcoholic beverage, who consumes any alcoholic beverage in any on-sale premises, or who possesses any alcoholic beverage on any street or highway or in any public place or any place open to the public is guilty of a misdemeanor.
- 7) Provides that every person who sells, furnishes, gives, or causes to be sold, or given away any alcoholic beverage to any person under 21 years of age is guilty of a misdemeanor.
- 8) 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). An “off-sale” license authorizes the sale of all types of alcoholic beverages for consumption off the premises in original, sealed containers.

This bill:

- 1) Authorizes specified on-sale licensees to sell distilled spirits for off-sale consumption for which their license permits on-sale consumption provided the beverages are in manufacturer prepackaged containers and ordered and picked up by the consumer, as specified.
- 2) Authorizes specified on-sale licensees to sell alcoholic beverages for off-sale consumption for which their license permits on-sale consumption , except beer, when the beverages are not in manufacturer prepackaged containers if the following conditions are met:
 - a) The alcoholic beverages are packaged in a container with a secure lid or cap sealed in a manner designed to prevent consumption without removal of the lid or cap by breaking the seal.
 - b) Wine is sold only in single-serve containers, as specified.
 - c) Mixed drinks and cocktails sold for off-sale consumption does not exceed four and one-half ounces of distilled spirits.
 - d) Alcoholic beverages are sold in conjunction with a bona fide meal and shall be limited to two drinks per bona fide meal, as specified.
 - e) The container is clearly and conspicuously labeled or otherwise identified as containing an alcoholic beverage.
 - f) The alcoholic beverages are ordered and picked up by the consumer, as specified.
- 3) Requires any licensee who sells alcoholic beverages for off-sale consumption to “post” the following warning sign in a manner that notifies consumers of restrictions regarding open container laws:

Alcoholic beverages that are packaged by this establishment are open containers and shall not be transported in a motor vehicle except in the vehicle’s trunk or, if there is no trunk, the containers shall be kept in some other area of the vehicle that is not normally occupied by the driver or passengers. This does not include a utility compartment or glove compartment (See Vehicle Code Section 23225).
- 4) Defines “post” for purpose of this bill to mean prominently display on the premises, post online, or present in whatever manner is necessary to ensure that

the consumer purchasing, or delivery person transporting, the beverages to which this bill applies is given notice of the warning in this bill.

- 5) Provides that nothing in this bill requires a licensee to sell alcoholic beverages for off-sale consumption whether or not the alcoholic beverage is in a manufacturer-sealed prepackaged container or otherwise.
- 6) Requires a licensee, prior to exercising the privileges of this bill, to notify the Department of ABC in writing of its intent to do so.
- 7) Authorizes the Department of ABC to impose conditions on a license restricting or prohibiting the licensee from selling or furnishing any alcoholic beverage pursuant to this section, as specified.
- 8) Includes a sunset date of December 31, 2026.

Background

ABC Regulatory Relief. On March 19, 2020, the Department of ABC issued its first regulatory relief designed to support the restaurant industry in its efforts to assist California in slowing the spread of the Covid-19 virus. Among other things, the first regulatory relief allows licensees with on-sale privileges the privilege of selling those alcoholic beverages for off-sale consumption in manufacturer pre-packaged containers as to which their license permits on-sale consumption.

For example, a Type 47 restaurant is allowed to sell beer, wine, and distilled spirits for off-sale consumption, regardless of any condition on its license to the contrary and regardless of the statutory prohibition against on-sale licensees selling distilled spirits for off-sale consumption. Similarly, a Type 41 beer and wine restaurant licensee is allowed to sell beer and wine, but not distilled spirits, for consumption off the premises regardless of any conditions on its license that prohibit such sales.

In addition to selling manufacturer pre-packaged containers, the first regulatory relief allows licensees selling beer, wine, and pre-mixed drinks or cocktails not in manufacturers containers for consumption off the licensed premises when sold in conjunction with meals prepared for pick-up or delivery either by the licensee or by a meal provider. Any such alcoholic beverages need to be packaged in a container with a secure lid or cap and in a manner designed to prevent consumption without removal of the lid or cap. Containers with lids with sipping holes or openings for straws are not considered to be an appropriate container.

Any licensee selling such beverages for off-sale consumption are required to prominently post warning in a manner that puts consumers on notice of limitations regarding open container laws.

While the regulatory relief allows restaurants the ability to sell both prepackaged alcoholic beverages and cocktails for consumption off the licensed premises, it did not diminish in any way the responsibility of the licensee to ensure that alcoholic drinks are being sold and delivered to persons under the age of 21. Restaurants are still fully responsible for ensuring that any customer who purchases alcoholic beverages are of legal age regardless of whether that customer purchases the alcohol in person or through any other means and regardless of whether the customer picks up the alcoholic drinks at the restaurant or if the alcohol is delivered to their home. This regulatory relief is set to expire on December 31, 2021.

On-Sale and Off-Sale Licenses. The Department of ABC issues a number of alcohol licenses that are available to individuals seeking to operate businesses that sell alcoholic beverages. Each license establishes specific responsibilities and privileges especially when it comes to “on-sale” and “off-sale” privileges.

Alcohol licenses are deemed “on-sale” if the license authorizes the sale of alcoholic beverages but requires that they are consumed on the premises. Some examples of “on-sale” businesses include bars and restaurants although restaurants do have some “off-sale” privileges. For example, under existing law restaurants are authorized to sell both wine and beer to customers for “off-sale” consumption.

On the other hand, alcohol licenses are deemed “off-sale” if the business sells alcoholic beverages sold at the establishment but are required to be consumed offsite. Some examples of “off-sale” businesses include liquor stores or grocery stores that sell alcoholic beverages. In addition, some licenses include both “on-sale” and “off-sale” privileges. Some examples are wineries and craft distilleries.

Comments

Purpose of this bill. According to the author’s office, “the ability to include alcoholic drinks with to-go orders has been helpful for many restaurants during the Covid-19 Pandemic. In addition, it is very likely that even when consumers are allowed to dine in restaurants, there will be those individuals who will still prefer to get their cocktails delivered rather than having to gather in an enclosed space. This bill will provide that opportunity.”

The author's office further argues that, "nothing in this bill changes any laws related to drinking and driving or drinking in public. In addition, nothing in this bill changes any current privileges enjoyed by wine and beer."

Related/Prior Legislation

SB 314 (Wiener, 2021), among other things, authorizes the Department of ABC for 365 days from the date the Covid-19 state of emergency order is lifted, or longer if the licensee has a pending application for permanent expansion of their premises, allow licensees to continue to exercise license privileges in an expanded licensed area authorized pursuant to a Covid-19 temporary catering permit, as provided. (Pending on the Governor's Desk)

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

According to the Assembly Appropriations Committee, 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.

In addition, 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.

SUPPORT: (Verified 9/7/21)

California Chamber of Commerce
California Restaurant Association

City of San Diego
City of San Jose
Diageo
Distilled Spirits Council of the United States
Family Winemakers of California
San Jose Downtown Association
Wine Institute

OPPOSITION: (Verified 9/7/21)

Alcohol Justice
Asian American Drug Abuse Program, Inc.
Beach Cities Prevention Community Council
Behavioral Health Services, Inc.
California Alcohol Policy Alliance
California Council on Alcohol Problems
Future Leaders of America
Paso Por Paso, the Language of Recovery
Pueblo Y Salud, Inc.
San Diego County Alcohol Policy Panel
The Women's Christian Temperance Union of Southern California

ARGUMENTS IN SUPPORT: According to the California Restaurant Association, “California restaurants remain on serious lock-down, as they are only allowed to utilize extremely limited on-site space due to current state-imposed capacity restrictions and requirements for physically distanced tables. Those continued restrictions for on-site dining have left many, many restaurants barely able to hang on. SB 389 modernizes alcohol laws to better accommodate the current operating restrictions imposed upon restaurants and provides them with the *option* to use this, as one of several, economic lifelines, and ways to serve their customers with proper conditions and protections for public safety.”

ARGUMENTS IN OPPOSITION: Alcohol Justice is opposed to the bill because “cocktails-to-go are a bad idea that benefit a licensee’s bottom line while threatening public health and safety. Cocktails-to-go have been wisely prohibited since the link to death and injury from drinking and driving became evident. The alcohol industry, constantly seeking opportunities to relax restrictions, have used the COVID-19 pandemic as an excuse to demand this change. It will always be a bad idea and should never become a permanent privilege.”

ASSEMBLY FLOOR: 80-0, 9/8/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, 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, Wood, Rendon

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