



REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2671

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CONSENT
September 21, 2010

Honorable Members of the
Law and Legislation Committee

Title: Legislative Position: Support AB 1060 (De La Torre) Regarding Alcoholic
Beverage Licenses: Self-service Checkouts

Location/Council District: Citywide

Recommendation:

1) Adopt a support position on AB 1060 (De La Torre) relating to requiring live cashiers and identification for alcoholic beverage purchases and regulating those purchases at self-service checkouts, and 2) approve a letter to Governor Schwarzenegger asking for his signature on the bill.

Contact: Michelle Heppner, Special Projects Manager, (916) 808-1226

Presenters: N/a

Department: Office of the City Manager

Division: Legislative Affairs

Organization No: 09200

Description/Analysis

Issue: California Assembly Bill 1060 (De La Torre) would close a loophole and prevent minors and intoxicated persons from purchasing alcohol at stores that use self-service checkout systems.

According to research by the UC Davis Health System Trauma and Prevention Outreach program, 90% of 11th graders acknowledge frequent use of alcohol is harmful, yet 62% acknowledge using it. UC Davis regional trauma center data from 2004 to 2008 show an increase in the number of intoxicated youth being treated, and an increase in average blood alcohol level. Additionally, between 2006 and 2007, 414 persons were injured and 18 killed by underage drinking drivers drinking in Sacramento County. Finally, the cost of alcohol involved medical care for 12 to 20 year olds at one Sacramento hospital during the month of April exceeded \$345,000.

This bill has already been sent to the Governor for signature. Staff is requesting the Law & Legislation Committee approve the letter to the Governor requesting his signature on AB 1060.

Policy Considerations: This position is consistent with the City Manager's operational principle to promote public safety and livability in Sacramento, the City's stated mission to protect, preserve, and enhance the quality of life for present and future generations, and the Sacramento Youth and Alcohol Coalition (SYAC) and the Sacramento Youth Commission's recommendations while researching and drafting a Social Host Ordinance (SHO).


Environmental Considerations: None.

Sustainability Considerations: None.

Rationale for Recommendation: Self-service checkouts create unsupervised opportunities for underage drinkers or intoxicated persons to make unlawful alcohol purchases. Underage drinking remains a major problem in Sacramento, and we can prevent these sorts of alcohol purchases by requiring a live cashier present to check and verify the age and sobriety of the purchaser.

Financial Considerations: N/a.

Emerging Small Business Development (ESBD): N/a.

Respectfully Submitted by: 
Michelle Heppner, Special Projects Manager

Approved by: 
Patti Bisharat
Interim Assistant City Manager

Recommendation Approved:

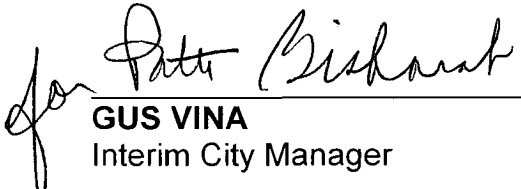


for 
GUS VINA
Interim City Manager

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Attachment 1

September 21, 2010

The Honorable Arnold Schwarzenegger
Governor, State of California
State Capitol
Sacramento, CA 95814

Dear Governor Schwarzenegger:

The City of Sacramento respectfully requests your signature on California Assembly Bill 1060 (De La Torre), a measure that would close a loophole and prevent minors and intoxicated persons from purchasing alcohol at stores that use self-service checkout systems.

Self-service checkouts create unsupervised opportunities for underage drinkers or intoxicated persons to make unlawful alcohol purchases. Underage drinking remains a major problem in California, and we can prevent these sorts of alcohol purchases by requiring a live cashier present to check and verify the age and sobriety of the purchaser.

According to research by the UC Davis Health System Trauma and Prevention Outreach program, 90% of 11th graders acknowledge frequent use of alcohol is harmful, yet 62% acknowledge using it. UC Davis regional trauma center data from 2004 to 2008 show an increase in the number of intoxicated youth being treated, and an increase in average blood alcohol level. Additionally, between 2006 and 2007, 414 persons were injured and 18 killed by underage drinking drivers drinking in Sacramento County. Finally, the cost of alcohol involved medical care for 12 to 20 year olds at one Sacramento hospital during the month of April exceeded \$345,000.

The City of Sacramento is in the process of looking into a possible Social Host Ordinance as another way to create additional accountability and prevent underage access to alcoholic beverages. For these reasons, we respectfully request that you sign AB 1060.

Sincerely,

LAUREN HAMMOND, Chair
Law & Legislation Committee

cc: Senator Darrell Steinberg
Assembly Member Hector De La Torre
Assembly Member Dave Jones
Assembly Member Alyson Huber
Assembly Member Roger Niello
Mayor Johnson and Members of the City Council
David Jones, Emanuels, Jones and Associates

Attachment 2

Assembly Bill No. 1060

Passed the Assembly May 28, 2009

Chief Clerk of the Assembly

Passed the Senate August 23, 2010

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 2010, at ____ o'clock ____M.

Private Secretary of the Governor

AB 1060

— 2 —

CHAPTER _____

An act to add Section 23394.7 to the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1060, De La Torre. Alcoholic beverage licenses: self-service checkouts.

The Alcoholic Beverage Control Act, administered by the Department of Alcoholic Beverage Control, regulates the sale and distribution of alcoholic beverages and the granting of licenses for the manufacture, distribution, and sale of alcoholic beverages within the state.

This bill would prohibit off-sale licensees from selling alcoholic beverages using a self-service checkout system. This bill makes findings and declarations regarding the effects of allowing alcoholic beverages to be sold using self-service checkouts.

The Alcoholic Beverage Control Act provides that a violation of any of its provisions for which another penalty or punishment is not specifically provided is a misdemeanor. This bill would expand existing crimes by imposing additional duties on a licensee under the act, thus, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that allowing customers to purchase alcoholic beverages through self-service checkouts:

- (a) Facilitates the purchase of alcoholic beverages by minors.

(b) Permits customers who are in an advanced state of intoxication to purchase additional alcoholic beverages, in violation of state law.

(c) Allows for greater theft of alcoholic beverages, thereby depriving the state of tax revenues.

SEC. 2. Section 23394.7 is added to the Business and Professions Code, to read:

23394.7. (a) No privileges under an off-sale license shall be exercised by the licensee at any checkstand, where the customer is able to scan and purchase alcoholic beverages using a point-of-sale system with limited or no assistance from an employee of the licensee.

(b) For purposes of this section, "point-of-sale" system means any computer or electronic system used by a retail establishment such as, but not limited to, Universal Product Code scanners, price lookup codes, or an electronic price lookup system as a means for determining the price of the item being purchased by a consumer.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2010

Governor

BILL ANALYSIS

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| SENATE RULES COMMITTEE | AB 1060 |
| Office of Senate Floor Analyses |
| 1020 N Street, Suite 524 |
| (916) 651-1520 Fax: (916) |
| 327-4478 |
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THIRD READING

Bill No: AB 1060
 Author: De La Torre (D)
 Amended: As introduced
 Vote: 21

SENATE GOVERNMENTAL ORG. COMMITTEE : 8-0, 7/14/09
 AYES: Wright, Florez, Negrete McLeod, Oropeza, Padilla,
 Price, Wiggins, Yee
 NO VOTE RECORDED: Harman, Benoit, Calderon, Denham, Wyland

SENATE APPROPRIATIONS COMMITTEE : 7-4, 8/17/09
 AYES: Kehoe, Corbett, Hancock, Leno, Oropeza, Price, Yee
 NOES: Cox, Denham, Walters, Wyland
 NO VOTE RECORDED: Runner, Wolk

ASSEMBLY FLOOR : 50-27, 5/28/09 - See last page for vote

SUBJECT : Alcoholic beverage licenses: self-service
 checkouts

SOURCE : Author

DIGEST : This bill prohibits off-sale licensees from
 selling alcoholic beverages using a self-service checkout
 system.

ANALYSIS : Existing law 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

CONTINUED

involves licensing individuals and businesses associated with the manufacture, importation and sale of alcoholic beverages in this state and the collection of license fees or occupation taxes for this purpose.

Existing law provides that the ABC may place reasonable conditions upon any licensee in certain situations, including, but not limited to, the following: where grounds exist for the denial of an application for a license or where a protest against the issuance of a license has been filed; where findings are made by the ABC which would justify suspension or revocation of the license, and imposition of the conditions is reasonably related to those findings; where findings are made by the ABC that the licensee has failed to correct objectionable conditions within a reasonable period of time. Furthermore, existing law provides that the ABC may suspend or revoke a license for failure to take reasonable steps to correct objectionable conditions, as described.

Existing law states that every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

Existing law provides that except as provided by law, any person who violates existing law by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of \$1000, no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.

Existing law 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. Finds and declares that allowing customers to purchase alcoholic beverages through self-service checkouts facilitates the purchase of alcoholic beverages by minors; permits intoxicated customers to purchase additional alcoholic beverages; and, allows for greater theft of alcoholic beverages, thereby depriving the state of tax revenues.
2. Prohibits off-sale licensees from selling alcoholic beverages using a point-of-sale system with limited or no assistance from an employee of the licensee.
3. Defines "point-of-sale" system to mean any computer or electronic system used by a retail establishment such as, but not limited to, Universal Product Code scanners, price lookup codes, or an electronic price lookup system as a means for determining the price of the item being purchased by a consumer.

Comments

According to the author's office, this bill takes a precautionary step and precludes the possibility of underage drinking abuses occurring due to the usage of a self-service checkout kiosk, the passive supervision associated with these stations makes them vulnerable to manipulation. By forcing alcohol purchases to be made through a face-to-face transaction from beginning to end, the state of California can ensure that the necessary age verification steps are being taken to keep alcohol out of the hands of minors. The author's office emphasizes that requiring retailers to conduct all of their alcohol sales in a face-to-face transaction with a cashier is not difficult and points out that it is currently required for cigarettes, spray paints, and some over the counter drugs.

Additionally, the author's office references a recent study on the self-checkout system conducted by law students in the Community Economic Development Clinic at UCLA, as proof of the problems associated with selling alcohol through a self-checkout system. The study grew out of the Clinic's work with the Los Angeles Alliance for a New Economy which focuses on researching trends in the grocery industry and

their impact on economic development in low-income communities. This particular study was conducted over two weeks in April with participants ranging in age from 21 to 41. Participants visited five different grocery store chains with self-checkout machines: Albertsons, Ralph's, Fresh & Easy, Superior, and the Market by Vons. In total, participants conducted 97 visits to 34 grocery stores with self-checkout machines in Los Angeles and Orange counties. The study drew the falling conclusion: "evidence of inadequate staffing, inconsistent monitoring, and technological failures documented in the study suggest that self-checkout machines may increase the risk of illegal purchases of alcohol, thereby harming public health."

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

According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

| <u>Major Provisions</u> | <u>2009-10</u> | <u>2010-11</u> |
|-------------------------|----------------|----------------|
| <u>2011-12 Fund</u> | | |

Enforcement
-----likely less than \$150-----
Special*

*Alcoholic Beverage Control Fund

SUPPORT : (Verified 9/10/09)

- California Council on Alcohol Policy
- Consumer Federation of California
- Los Angeles, City of
- Marin Institute
- Mothers Against Drunk Driving
- Peace Officers Research Association of California
- Peace Officers Research Association of California
- Pueblo Y Salud, Inc.
- Sutter/Yuba Friday Night Live - Youth Development Organization

OPPOSITION : (Verified 9/10/09)

California Grocers Association
California Retailers Association
Department of Finance
NCR

ARGUMENTS IN SUPPORT : Proponents note that the predominant problem among youth is alcohol consumption and that sound alcohol policies such as this bill can prevent and reduce alcohol-related problems.

Proponents reference the California State Attorney General's "California Student Survey" which found that 36 percent of 9th grade and nearly half (48 percent) of 11th grade students report that alcohol is very easy to obtain. The survey also discovered that teens who binge drink (consume five or more drinks in a row within the past 30 days) constitute almost half of 9th graders who report any drinking. Additionally, the survey found that by 11th grade nearly two-thirds of the teens who drink report binge drinking.

Proponents emphasize that the state has a responsibility to regulate the retail sale of alcohol and as a society we must do everything we can to prevent youth access to alcohol. Proponents believe that preventing youth access by restricting alcohol sales through unsupervised self-service retail sales is good public policy.

ARGUMENTS IN OPPOSITION : Opponents disagree with the findings of this bill and argue that self-service checkout stations have a lock-out or "freeze" mechanism to preclude any customer from purchasing alcoholic beverages without clerk intervention to verify age and finalize the purchase.

Opponents state that "assisted checkout stations are overseen by clerks who must abide by California state law governing the sale of alcoholic beverages. The clerks must either ask for identification from individuals seeking to purchase alcoholic beverages or make a determination that the customer is above the age of 21 and 'override' the system by keying in their clerk or other code in order to complete the transaction."

Opponents note that studies consistently show that most of the time, minors obtain alcohol from persons of legal age, not by purchasing or stealing it themselves. Opponents report that findings of the latest U.S. Substance Abuse & Mental Health Services Administration National Survey on Drug Use & Health show that:

Among underage drinkers, just 8.2 percent purchased the alcohol themselves while nearly 22 percent gave money to someone of legal age to purchase it.

Among underage drinkers who did not pay for the alcohol, the most common source was an unrelated person aged 21 or older (37.2 percent). In addition, adult family members provided it 19.5 percent of the time.

ASSEMBLY FLOOR :

AYES: Ammiano, Arambula, Beall, Block, Blumenfield, Brownley, Buchanan, Caballero, Charles Calderon, Carter, Chesbro, Coto, Davis, De La Torre, De Leon, Eng, Evans, Feuer, Fuentes, Furutani, Galgiani, Hall, Hayashi, Hernandez, Hill, Huffman, Jones, Krekorian, Lieu, Bonnie Lowenthal, Ma, Mendoza, Monning, Nava, Nielsen, John A. Perez, V. Manuel Perez, Portantino, Price, Ruskin, Salas, Saldana, Skinner, Solorio, Swanson, Torlakson, Torres, Torrico, Yamada, Bass

NOES: Adams, Anderson, Blakeslee, Conway, Cook, DeVore, Duvall, Emmerson, Fletcher, Fuller, Gaines, Garrick, Gilmore, Hagman, Harkey, Huber, Jeffries, Knight, Logue, Miller, Nestande, Niello, Silva, Smyth, Audra Strickland, Tran, Villines

NO VOTE RECORDED: Bill Berryhill, Tom Berryhill, Fong

TSM:do 9/10/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****