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REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2671

STAFF REPORT
May 20, 2008

Honorable Members of the
Law and Legislation Committee

Title: Legislation Position: Support AB 2151 and AB 2893 Relating to Alcoholic Beverages, Licenses

Location/Council District: Citywide

Recommendation: Adopt a support position on AB 2151 and AB 2893.

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

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

Department: City Manager's Office.

Division: Governmental Affairs.

Organization No: 0320.

Description/Analysis

Issue: Assembly Bill 2151, authored by Assembly Member Dave Jones, proposes two changes to existing law governing alcoholic beverage licensing. First, it provides that the State Department of Alcoholic Beverage Control (ABC) may deny the issuance or transfer of a license if to do so would contribute to "blight," as defined; second, it would provide that, where a redevelopment agency acquires property in a redevelopment project area, the ABC shall not issue or transfer a license within the project area without the approval of the redevelopment agency.

AB 2893 is narrowly designed to address problem liquor storeowners or repeat offenders to the ABC Act. AB 2893 will allow ABC to prevent liquor storeowners who have had multiple violations of the ABC Act from being on the premises of the liquor store after that owner has transferred their liquor license.

The goal of the bill is to prevent transfers from being used as a ruse in order to allow unacceptable individuals to continue to operate a licensed establishment that sells alcohol. Additionally, AB 2893 gives cities another tool to crack down on problem liquor stores, including those establishments that were in existence prior to any local zoning action and that were "grandfathered" into the system.

Staff recommends that the City adopt a support position on these two bills. AB 2151 provides local governments with greater control over the issuance and transfer of off-sale licenses within their jurisdictions. An important change AB 2151 proposes is that ABC will give deference to the factual findings of the local governing body in determining blight. Local governments need this authority in order to combat the array of social and law enforcement problems that are often associated with an overconcentration of liquor stores, such as vandalism, littering, loitering, graffiti, excessive loud noise, public drunkenness and lewd conduct, to name a few. Additionally, local governments are in a much better position than ABC to identify problem areas, and must deal with the problems created by, the presence of too many liquor stores in an area. Prompted by recent experiences of the Sacramento Housing and Rehabilitation Agency (SHRA), AB 2151 has gained the support of the League of California Cities, the California Council on Alcohol Problems, the California Police Chiefs Association, the California Peace Officers Association and the California Grocers Association. AB 2893 gives ABC an additional tool to address substitutions that aren't real transfers.

Policy Considerations: These bills are consistent with City's operational principles of promoting public safety and livability and creating economic vitality. They are also consistent with fostering the goal of economic and community renewal via redevelopment.

Environmental Considerations: None.

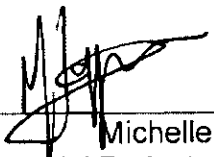
Committee/Commission Action: None.

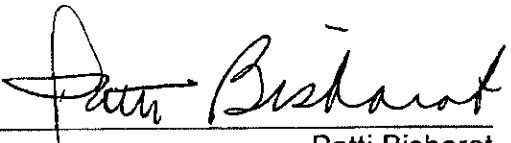
Rationale for Recommendation: AB 2151 siphons the determining power surrounding alcoholic beverage licensing down from the State level to where it needs to be: ground zero, in the communities where we live and strive to prosper, in the neighborhoods where we see what is happening and what needs to happen every day. AB 2893 addresses the problem of license transfers that do not change the on-site operators of "problem" liquor stores.

Financial Considerations: None.

Emerging Small Business Development (ESBD): None.

Respectfully Submitted by: _____


Michelle Heppner
Special Projects Manager

Approved by: 
Patti Bisharat
Director of Governmental Affairs

Recommendation Approved:

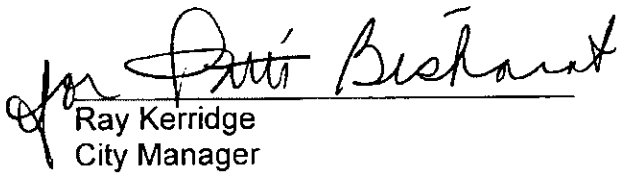

Ray Kerridge
City Manager

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Attachment 1 - Draft Letter of Support

May 20, 2008

Assembly Member Jones
State Capitol, Room 3146
Sacramento, CA 95814

**RE: AB 2151 (Jones) Alcoholic Beverages. Licenses.
NOTICE OF SUPPORT**

Dear Assembly Member Jones:

The City of Sacramento is pleased to support AB 2151.

On behalf of the City of Sacramento, I am pleased to express the City's support for Assembly Bill 2151, relating to Alcoholic Beverage Licensing. This bill would provide local governments with greater control over the issuance and transfer of off-sale licenses within their jurisdictions. This bill is consistent with City's operational principles of promoting public safety and livability and creating economic vitality. It will also help us foster the goal of economic and community renewal via redevelopment.

An important change this bill proposes is that the State Department of Alcoholic Beverage Control (ABC) would give deference to the factual findings of the local governing body in determining blight. Local governments need this authority in order to combat the array of social and law enforcement problems that are often associated with an overconcentration of liquor stores, such as vandalism, littering, loitering, graffiti, excessive loud noise, public drunkenness and lewd conduct, to name a few. Additionally, local governments are in a much better position than ABC to identify problem areas, and must deal with the problems created by, the presence of too many liquor stores in a given area.

Thank you for introducing this important piece of legislation.

Sincerely,

SANDY SHEEDY, CHAIR
Law and Legislation Committee

cc: Senator Dave Cox
Senator Darrell Steinberg
Assembly Member Alan Nakanishi
Assembly Member Roger Niello
Mayor Fargo and Members of the City Council
David Jones, Emanuels and Jones and Associates

Attachment 2 - Draft Letter of Support

May 20, 2008

Assembly Member Hancock
State Capitol, Room 4126
Sacramento, CA 95814

**RE: AB 2893 (Hancock) Alcoholic beverages: license transfers: conditions.
NOTICE OF SUPPORT**

Dear Assembly Member Hancock:

The City of Sacramento is pleased to support AB 2893.

On behalf of the City of Sacramento, I am pleased to express the City's support for Assembly Bill 2893, relating to alcoholic beverage license transfer conditions. This bill would address problem liquor storeowners or repeat offenders to the ABC Act. AB 2893 will allow ABC to prevent liquor storeowners who have had multiple violations of the ABC Act from being on the premises of the liquor store after that owner has transferred their liquor license.

The bill will prevent transfers from being used as a ruse in order to allow unacceptable individuals to continue to operate a licensed establishment that sells alcohol. Additionally, AB 2893 gives cities another tool to crack down on problem liquor stores, including those establishments that were in existence prior to any local zoning action and that were "grandfathered" into the system.

Thank you for introducing this important piece of legislation.

Sincerely,

SANDY SHEEDY, CHAIR
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cc: Senator Dave Cox
Senator Darrell Steinberg
Assembly Member Dave Jones
Assembly Member Alan Nakanishi
Assembly Member Roger Niello
Mayor Fargo and Members of the City Council
David Jones, Emanuels and Jones and Associates

AMENDED IN ASSEMBLY MAY 1, 2008

AMENDED IN ASSEMBLY APRIL 23, 2008

AMENDED IN ASSEMBLY APRIL 8, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2151

Introduced by Assembly Member Jones

February 20, 2008

An act to add Sections 23958.3 and 24070.3 to the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2151, as amended, Jones. Alcoholic beverages: licenses.

The Alcoholic Beverage Control Act requires the Department of Alcoholic Beverage Control to deny an application for a license if issuance would tend to create a law enforcement problem, or would result in or add to an undue concentration of licenses. Existing law defines "undue concentration" and provides that, notwithstanding the requirement that the department deny an application that would result in or add to an undue concentration of licenses, certain licenses may be issued if the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application, as specified, that public convenience or necessity would be served by the issuance. Existing law also provides that if the local governing body, or its designated subordinate officer or body, does not make a determination within 90 days, the department may issue the license if the applicant shows that public convenience or necessity would be served by the issuance.

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The bill would provide that the Department of Alcoholic Beverage Control may deny the issuance or transfer of an off-sale retail license where the issuance or transfer of the license will contribute to conditions of blight, as provided.

This bill would provide that, where a redevelopment agency has acquired a redevelopment project area, as defined, ~~under eminent domain~~; the Department of Alcoholic Beverage Control may transfer an off-sale retail license for licensed premises that are located within the area to another premises located within the area if the local governing body, or its designated subordinate officer of that area, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the transfer. This bill would also provide that if the local governing body, or its designated subordinate officer or body, does not make a determination within the 90-day period, then the department may transfer the license if the applicant shows the department that public convenience or necessity would be served by the transfer.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1 Section 23958.3 is added to the Business and
2 Professions Code, to read:
3 23958.3 (a) The department may deny any application for an
4 off-sale retail license or for a transfer of an off-sale retail license
5 if the local governing body of the area in which the applicant
6 premises are located determines within 90 days of notification of
7 a completed application that the issuance or transfer of the license
8 will contribute to conditions of blight, as described in Section
9 33030 of the Health and Safety Code. In making its determination,
10 the department shall give consideration to the factual findings of
11 the local governing body.
12 (b) For purposes of this section, "off-sale retail license" means
13 a Type 20 or Type 21 license. For purposes of this section, an
14 "off-sale retail license" does not include a Type 20 license that is
15 held in combination with a Type 17 license.
16 SEC. 2. Section 24070.3 is added to the Business and
17 Professions Code, to read:

1 24070.3. (a) In any situation in which a redevelopment agency
2 has acquired, ~~pursuant to eminent domain,~~ a property located within
3 a redevelopment project area, as defined by Section 33753 of the
4 Health and Safety Code, upon which a business licensed by the
5 department with an off-sale retail license is located and the licensee
6 or any other person applies to transfer the license to another
7 premise located within the same redevelopment project area, the
8 local governing body or its designated subordinate officer or body
9 shall have the authority to make a determination of public
10 convenience or necessity in the same manner as authorized by
11 paragraph (2) of subdivision (b) of Section 23958.4 (b)(2).

12 (b) For purposes of this section, "off-sale retail license" means
13 a Type 20 or Type 21 license. For purposes of this section, an
14 off-sale license does not include a Type 20 license that is held in
15 combination with a Type 17 license.

AMENDED IN ASSEMBLY APRIL 23, 2008

AMENDED IN ASSEMBLY APRIL 10, 2008

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2893

Introduced by Assembly Member Hancock

February 22, 2008

An act to amend Sections 23800 and 23801 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2893, as amended, Hancock. Alcoholic beverages: license transfers: conditions.

The Alcoholic Beverage Control Act authorizes the Department of Alcoholic Beverage Control to impose reasonable conditions on the exercise of retail privileges under the act. The department may impose conditions on certain license transfers at the request of a local governing body in whose jurisdiction a license is located.

This bill would authorize the department to also impose conditions that it determines reasonable on license transfers regarding the ~~presence~~ *business activities* of the license transferor on the licensed premises, if that license transferor was cited with multiple violations of the Alcoholic Beverage Control Act when in possession of the license.

The Alcoholic Beverage Control Act provides that a violation of specified provisions of the act is a misdemeanor.

This bill, by including provisions that would be subject to those existing criminal sanctions, 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 23800 of the Business and Professions
2 Code is amended to read:

3 23800. The department may place reasonable conditions upon
4 retail licensees or upon any licensee in the exercise of retail
5 privileges in the following situations:

6 (a) If grounds exist for the denial of an application for a license
7 or where a protest against the issuance of a license is filed and if
8 the department finds that those grounds may be removed by the
9 imposition of those conditions.

10 (b) Where findings are made by the department which would
11 justify a suspension or revocation of a license, and where the
12 imposition of a condition is reasonably related to those findings.
13 In the case of a suspension, the conditions may be in lieu of or in
14 addition to the suspension.

15 (c) Where the department issues an order suspending or revoking
16 only a portion of the privileges to be exercised under the license.

17 (d) Where findings are made by the department that the licensee
18 has failed to correct objectionable conditions within a reasonable
19 time after receipt of notice to make corrections given pursuant to
20 subdivision (e) of Section 24200, or subdivision (a) or (b) of
21 Section 24200.1.

22 (e) (1) At the time of transfer of a license pursuant to Section
23 24071.1, 24071.2, or 24072 and upon written notice to the licensee,
24 the department may adopt conditions that the department
25 determines are reasonable pursuant to its investigation or that are
26 requested by the local governing body, or its designated subordinate
27 officer or agency, in whose jurisdiction the license is located. The
28 request for conditions shall be supported by substantial evidence
29 that the problems either on the premises or in the immediate
30 vicinity identified by the local governing body or its designated

1 subordinate officer or agency will be mitigated by the conditions.
2 Upon receipt of the request for conditions, the department shall
3 either adopt the conditions requested or notify the local governing
4 body, or its designated subordinate officer or agency, in writing
5 of its determination that there is not substantial evidence that the
6 problem exists or that the conditions would not mitigate the
7 problems identified. The department may adopt conditions only
8 when the request is filed. Any request for conditions from the local
9 governing body or its designated subordinate officer or agency
10 pursuant to this provision shall be filed with the department within
11 the time authorized for a local law enforcement agency to file a
12 protest or proposed conditions pursuant to Section 23987.

13 (2) If the license to be transferred subject to paragraph (1) is
14 located in an area of undue concentration as defined in Section
15 23958.4, the period within which the local governing body or its
16 designated subordinate officer or agency may submit a written
17 request for conditions shall be 40 days after the mailing of the
18 notices required by Section 23987. For purposes of this provision
19 only, undue concentration shall be established when the
20 requirements of both paragraph (1) of subdivision (a) and either
21 paragraph (2) or paragraph (3) of subdivision (a) of Section 23958.4
22 exist. Pursuant to Section 23987, the department may extend the
23 40-day period for a period not to exceed an additional 20 days
24 upon the written request of any local law enforcement agency or
25 local government entity with jurisdiction. Nothing in this paragraph
26 is intended to reduce the burden of the local governing body or its
27 designated subordinate officer or agency to support any request
28 for conditions as required by paragraph (1). Notwithstanding
29 Section 23987, the department may not transfer any license subject
30 to this paragraph until after the time period permitted to request
31 conditions as specified in this paragraph.

32 (f) At the time of a transfer of a license pursuant to Article 5
33 (commencing with Section 24070) of Chapter 6.

34 SEC. 2. Section 23801 of the Business and Professions Code
35 is amended to read:

36 23801. The conditions authorized by Section 23800 may cover
37 any matter relating to the privileges to be exercised under the
38 license, the personal qualifications of the licensee, the conduct of
39 the business or the condition of the premises, which will protect

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1 the public welfare and morals, including, but not limited to, the
2 following:

3 (a) Restrictions as to hours of sale.

4 (b) Display of signs.

5 (c) Employment of designated persons.

6 (d) Types and strengths of alcoholic beverages to be served
7 where such types or strengths are otherwise limited by law.

8 (e) In cases under subdivision (c) of Section 23800, the portion
9 of the privileges to be exercised under the license.

10 (f) The personal conduct of the licensee.

11 (g) In cases under subdivision (f) of Section 23800, restrictions
12 on the ~~presence~~ *business activities* of the license transferor on the
13 licensed premises if that license transferor has multiple violations
14 of this division when in possession of the license.

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

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BILL ANALYSIS

AB 2151
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Date of Hearing: May 7, 2008

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Mark Leno, Chair

AB 2151 (Jones) - As Amended: May 1, 2008

Policy Committee:	Governmental
Organization Vote:	8 - 3
Judiciary	7 - 2

Urgency: No
 State Mandated Local Program: No
 Reimbursable:

SUMMARY

The bill provides local governments with greater control over the issuance and transfer of off-sale retail licenses within their jurisdiction. Specifically, this bill:

- 1) Allows the Department of Alcoholic Beverage Control (ABC) to deny an application for an off-sale retail license if the local governing body in the area determines within 90 days of notification that the license will contribute to conditions of blight.
- 2) Provides that when a redevelopment agency has acquired a property within a project area, and an existing off-sale retail licensee applies to transfer the license to another location within the area, the local governing body has the authority to make a determination about whether public convenience or necessity would be served by the transfer.

FISCAL EFFECT

Costs in excess of \$175,000 from the ABC Fund associated with increased administrative hearings and staff training and policy changes related to defining the standards of blight.

COMMENTS

- 1) Rationale. This bill seeks to provide local governments more control over the issuance and transfer of liquor store licenses within their community.

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The legislation was prompted, in part, by the recent experience of the Sacramento Housing and Redevelopment Agency (SHRA). SHRA acquired two liquor stores as part of a redevelopment project. The agency wanted to retire the use of the license but found that they had no authority to do so and could not stop their transfer to another location within the project area.

According to the author, local governments need this authority in order to combat the array of social and law enforcement problems that are often associated with an over-concentration of liquor stores.

2)Related Legislation. SB 148 (Scott; Chapter 625, Statutes of 2006) provided additional bases for the suspension or revocation of an alcoholic beverage license, when a licensee fails to take reasonable steps to correct objectionable conditions on the licensed premises or on any public sidewalk abutting a licensed premises, as provided, after specified notice from the district attorney, city attorney, or a county counsel.

Analysis Prepared by: Julie Salley-Gray / APPR. / (916) 319-2081

BILL ANALYSIS

AB 2893

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ASSEMBLY THIRD READING
 AB 2893 (Hancock)
 As Amended April 23, 2008
 Majority vote

GOVERNMENTAL ORGANIZATION 10-0APPROPRIATIONS 17-0

Ayes: Torrico, Plescia, Davis,	Ayes: Leno, Walters, Caballero,
De Leon, Evans, Garcia,	Davis, DeSaulnier,
Levine, Mendoza,	Emmerson, Furutani,
Portantino, Price,	Huffman, Karnette, Berg,
	La Malfa, Mullin, Ma,
	Nakanishi, Nava,
	Sharon Runner, Solorio

SUMMARY: Authorizes the Department of Alcoholic Beverage Control (ABC) to impose restrictions on an off-sale license transfer in instances where the license transferor has had multiple violations. Specifically, this bill:

- 1) Authorizes ABC to impose conditions that it determines reasonable on license transfers regarding the business activities of the license transferor on the licensed premises, if that license transferor has multiple violations of the Alcoholic Beverage Control Act (Act) when in possession of the license.
- 2) Codifies current law relating to the ability of ABC to place conditions on a license upon transfer of licensed premises for the purpose of avoiding aggravated disciplinary action.

EXISTING LAW :

- 1) Constitutionally provides that "the State of California shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession, and transportation of alcoholic beverages within the State..." (Article XX, Section 22, State Constitution).
- 2) Establishes ABC and grants it exclusive authority to administer the provisions of the Act in accordance with laws

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enacted by the Legislature.

3) Provides that ABC shall license individuals and businesses associated with the manufacture, importation and sale of alcoholic beverages in this state.

4) Prohibits the issuance of any retail license for the sale of alcoholic beverages for any premises that are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city.

5) Authorizes local governments to impose zoning ordinances that restrict the sale of alcoholic beverages. For instance, cities and counties can restrict the hours of operation of problem premises, or limit the sale of certain products. However, under current law, any premises which had been used prior to the effective date of any local zoning ordinance is allowed to continue its operation (grandfathered).

6) Provides that premise which had been used in the exercise of those rights and privileges at a time prior to the effective date of the zoning ordinance may continue operation under the following conditions: a) the premises retain the same type of retail liquor license within a license classification; and, b) the licensed premises are operated continuously without substantial change in mode or character of operation.

7) Restricts ABC from issuing an off-sale beer and wine license if the applicant premise is located in a city or county where the number of retail off-sale beer and wine licenses exceeds one license for each 2,500 inhabitants. If the applicant premise is located in a city and county, the ratio is one license for every 1,250 inhabitants. If no licenses are available due to the population restrictions, anyone interested in obtaining a liquor license must purchase one from an existing licensee.

8) Requires ABC to deny an application for a license if issuance of the license would result in or add to an undue concentration of licenses in a particular area; unless the local governing body finds that it would serve the public convenience or necessity.

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9) Defines undue concentration as an area where:

a) There is a crime reporting district that has a 20% greater number of reported crimes than the average of all crime reporting districts in the jurisdiction; or,
b) The ratio of the type of retail licenses applied for, to the population in the census tract or census division exceeds the ratio for the county in which the applicant premises are located.

1) Provides ABC may revoke a license for a third violation of selling to and consumption by a person under 21 years of age, which occurs within any 36-month period. This provision shall not be construed to limit the department's authority and discretion to revoke a license prior to a third violation when the circumstances warrant that penalty.

2) Provides that ABC is specifically authorized to refuse the issuance, other than renewal or ownership transfer, of any retail license for premises located within at least 600 feet of schools and public playgrounds or nonprofit youth facilities.

3) Provides for the suspension or revocation of an alcoholic beverage license, when a licensee fails to take reasonable steps to correct objectionable conditions on the licensed premises or on any public sidewalk abutting a licensed premises, as provided, after specified notice from the district attorney, city attorney, or a county counsel. Specifies that a hearing for a violation, as specified, shall be held within 60 days of an accusation being filed.

4) Imposes a continuing obligation on the licensee, after correcting the objectionable conditions that constitute a nuisance, as provided. Failure to do so shall constitute grounds for disciplinary action, as specified.

5) Provides at the time of transfer of a license as defined, and upon written notice to the licensee, ABC may adopt conditions that ABC determines are reasonable pursuant to its investigation or that are requested by the local governing body, or its designated subordinate officer or agency, in whose jurisdiction the license is located.

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FISCAL EFFECT: According to the Assembly Appropriations Committee, minor, if any, nonreimbursable local incarceration costs as this bill expands an existing crime.

COMMENTS:

Purpose of the bill: According to the author, this bill is narrowly designed to address problem liquor storeowners or repeat offenders of the Act. AB 2893 will allow ABC to prevent liquor storeowners who have had multiple violations of the Act from being on the premises of the liquor store after that owner has transferred their liquor license.

The author states, this bill will, in effect, prevent liquor store licensees from using the liquor store license transfer process to prevent further enforcement action by ABC. In a real world example, a previous liquor license owner who has several violations for sales to minors is at risk of losing their liquor license. If a licensed premise chooses to transfer their license to avoid revocation of that license by the department - ABC under this bill would have the authority to place conditions on the license to restrict the previous licensee from being on the premises.

The goal of this bill is to prevent transfers from being used as a ruse in order to allow objectionable individuals to continue to operate a licensed establishment that sells alcohol. AB 2893 will give cities an additional tool to crack down on problem liquor stores in their community.

Alcohol oversight: Per the State Constitution, ABC is vested with the exclusive authority to license and regulate the manufacture, distribution and sale of alcoholic beverages within California. The intent in establishing ABC was to create a governmental organization that would ensure strict, honest, impartial, and uniform administration and enforcement of the state's liquor laws. ABC has the authority to suspend, revoke or deny a license if it determines that granting or continuance of the license would be contrary to public welfare or morals.

All ABC decisions may be appealed to the ABC Appeals Board, a three-member body appointed by the Governor, subject to Senate confirmation.

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Alcohol licenses: There are currently more than 75,000 alcoholic beverage licenses throughout the state. This includes both "on-sale" and "off-sale" establishments that sell beer and wine, and "on-sale" and "off-sale" general licensees that also sell distilled spirits. ABC is required to investigate both the applicant and the premises for, which a license is applied, to determine if the public would be adversely affected by the license issuance. These investigations include an evaluation of the moral character of the applicant and the suitability of the proposed premises.

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. Current law defines undue concentration as an area where there is a crime reporting district that has a 20% greater number of reported crimes than the average of all crime reporting districts in the jurisdiction; or the ratio of the type of retail licenses applied for, to the population in the census tract or census division exceeds the ratio for the county in which the applicant premises are located. For specified retail licenses, however, 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.

State law caps the number of new "on and off-sale" general licenses issued by ABC, at one for every 2,500 inhabitants of the county where the establishment is located (2,000:1 for on-sale licenses). If no licenses are available from the state due to the population restrictions, those people interested in obtaining a liquor license may purchase one from an existing licensee, for "whatever price the market bears."

State v. local control of alcohol policy: Over the years, local governments have often petitioned the Legislature for greater authority to directly regulate establishments that sell alcohol (e.g., restricting the hours of operation of problem premises, or limiting the sale of certain products such as fortified wines or high alcohol content malt beverages). Much of this activity has been centered on local government's use of zoning laws and conditional use permits that place operating conditions on new businesses that sell alcohol. While current law prohibits ABC

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from issuing a new license in an area not locally zoned for that type of business activity, those establishments in existence prior to any local zoning action are "grandfathered" and therefore beyond the reach of the local government, a source of contention for local governments.

Historically, the alcohol industry and retailers have opposed ceding to local government any measure of the state's exclusive authority to regulate alcohol. The industry has advocated that matters relating to the regulation of alcohol should be determined at the state level, as opposed to an assortment of local regulations, which may vary from local jurisdiction to local jurisdiction.

Retail operating standards for Type 20 or Type 21 off-sale retail licenses: Under the Act, a Type 20 and Type 21 license are required to: post "No Loitering" signs; post "No Open Container" signs; prohibit consumption of alcoholic beverages on the premises; illuminate the exterior of the premises during all hours of darkness when open for business; remove litter daily from the premises, adjacent sidewalks and parking lots under the licensee's control and sweep/clean these areas weekly; remove graffiti from the premises and parking lot within 120 hours of application; have no more than 33% of windows covered with advertising or signs; have incoming calls blocked at pay phones upon request of local law enforcement or ABC; and, have a copy of the operating standards available during normal business hours for viewing by the general public.

In support: Supporters believe this bill addresses a serious problem that is being experienced by a number of cities in California today. The bill will help rid the community of the ills associated with these retail establishments who are licensed to sell alcohol and are selling their license to sell alcohol to a new recipient. The California Council on Alcohol Problems (CCAP), states this bill will provide another means for ABC to exercise reasonable control over problem alcohol outlets in which the transferring licensee has multiple, past violations in the past.

Related legislation: AB 2151 (Jones) of 2008, provides that ABC may deny any application for any off-sale retail license if the relevant local governing body determines that the issuance or transfer of the license will contribute to conditions of blight, as defined. Provides that in making its determination the ABC shall give deference to the factual findings of the local governing body.

Analysis Prepared by: Eric Johnson / G. O. / (916) 319-2531

FN: 0004634