

AMENDED IN SENATE MAY 25, 2018

AMENDED IN SENATE MARCH 19, 2018

SENATE BILL

No. 905

Introduced by Senator Wiener

(Principal coauthor: Assembly Member Santiago)

(Coauthors: Senators Allen and Lara)

(Coauthors: Assembly Members Jones-Sawyer and Obernolte)

January 17, 2018

An act to amend, repeal, and add Section 25631 of, and to add and repeal Section 25634 of, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 905, as amended, Wiener. Alcoholic beverages: hours of sale.

The Alcoholic Beverage Control Act provides that any on- or off-sale licensee, or agent or employee of the licensee, who sells, gives, or delivers to any person any alcoholic beverage between the hours of 2 a.m. and 6 a.m. of the same day, and any person who knowingly purchases any alcoholic beverages between those hours, is guilty of a misdemeanor. Existing law provides for moneys collected as fees pursuant to the act to be deposited in the Alcohol Beverage Control Fund, with those moneys generally allocated to the Department of Alcoholic Beverage Control upon appropriation by the Legislature.

This bill, beginning January 1, ~~2020~~, 2021, and before January ~~1~~, 2025; 2, 2026, would require the Department of Alcoholic Beverage Control to conduct a pilot program that would authorize the department to issue an additional hours license to an on-sale licensee located in a qualified city which would authorize, with or without conditions, the selling, giving, or purchasing of alcoholic beverages at the licensed

premises between the hours of 2 a.m. and 4 a.m., upon completion of specified requirements by the qualified city in which the licensee is located. The bill would impose specified fees related to the license to be deposited in the Alcohol Beverage Control Fund. The bill would require the applicant to notify specified persons of the application for an additional hours license and would provide a procedure for protest and hearing regarding the application. The bill would require the Department of the California Highway Patrol and the qualified city to submit reports to the Legislature regarding the regional impact of the additional service hours areas. The bill would provide that any person under 21 years of age who enters and remains in the licensed public premises during the additional serving hours without lawful business therein is guilty of a misdemeanor, as provided. *The pilot program would apply to Long Beach, Los Angeles, Oakland, Palm Springs, Sacramento, San Francisco, and West Hollywood.*

This bill would impose a state-mandated local program by creating new crimes.

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.

This bill would make legislative findings and declarations as to the necessity of a special statute for the qualified cities.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) It is the policy of the state to promote the responsible
- 4 consumption of alcoholic beverages through making multiple
- 5 planning options available to local communities and entertainment
- 6 areas of the state, including the option of extended services hours
- 7 up to a limit of 4 a.m. in communities and areas of the state where
- 8 those extended hours are found by the governing body of the
- 9 responsible community to be proper and appropriate.
- 10 (b) At least 15 states across the country delegate complete or
- 11 partial authority for setting service hours to local jurisdictions or

1 allow local jurisdictions to extend the hours of service, subject to
2 state approval.

3 (c) The Legislature supports a well-planned and managed
4 nightlife that can have a profound positive impact on a local
5 economy, generating direct tax revenues, and growing public funds
6 through revitalized business districts, and increased tourism.

7 (d) The Legislature supports the world-renowned California
8 licensed restaurant, venue, and entertainment industry, which
9 generates more than \$50 billion every year in consumer spending
10 in California communities on jobs, goods and services, and related
11 industries, and that attracts world-class acts as well as tourists to
12 visit and enjoy California.

13 (e) The Legislature has determined that it is in the best interest
14 of the State of California for extended hours of operation policies
15 to be administered by the Department of Alcoholic Beverage
16 Control in connection with applications for additional hour
17 privileges, with the fees for those applications to be determined
18 and assessed by the department at a rate that will fully reimburse
19 the department for administrative expenses.

20 SEC. 2. Section 25631 of the Business and Professions Code
21 is amended to read:

22 25631. (a) (1) Except as provided in subdivision (b), any on-
23 or off-sale licensee, or agent or employee of that licensee, who
24 sells, gives, or delivers to any persons any alcoholic beverage or
25 any person who knowingly purchases any alcoholic beverage
26 between the hours of 2 a.m. and 6 a.m. of the same day, is guilty
27 of a misdemeanor.

28 (2) For the purposes of this subdivision, on the day that a time
29 change occurs from Pacific standard time to Pacific daylight saving
30 time, or back again to Pacific standard time, “2 a.m.” means two
31 hours after midnight of the day preceding the day such change
32 occurs.

33 (b) (1) Beginning January 1, ~~2020~~, 2021, and before January
34 ~~1, 2025~~, 2, 2026, in a city that has additional serving hours pursuant
35 to Section 25634, any on-sale licensee, or agent or employee of
36 the licensee, who sells or gives to any person any alcoholic
37 beverage or any person who knowingly purchases any alcoholic
38 beverage between the hours of 4 a.m. and 6 a.m. of the same day,
39 is guilty of a misdemeanor.

1 (2) For the purposes of this subdivision, on the day that a time
2 change occurs from Pacific standard time to Pacific daylight saving
3 time, or back again to Pacific standard time, “4 a.m.” means four
4 hours after 12 midnight of the day preceding the day the change
5 occurs.

6 (c) This section shall remain in effect only until ~~December 31,~~
7 ~~2024,~~ *January 2, 2026*, and as of that date is repealed, unless a
8 later enacted statute that is enacted before ~~December 31, 2024,~~
9 *January 2, 2026*, deletes or extends that date.

10 SEC. 3. Section 25631 is added to the Business and Professions
11 Code, to read:

12 25631. (a) (1) Any on- or off-sale licensee, or agent or
13 employee of that licensee, who sells, gives, or delivers to any
14 persons any alcoholic beverage or any person who knowingly
15 purchases any alcoholic beverage between the hours of 2 a.m. and
16 6 a.m. of the same day, is guilty of a misdemeanor.

17 (2) For the purposes of this section, on the day that a time change
18 occurs from Pacific standard time to Pacific daylight saving time,
19 or back again to Pacific standard time, “2 a.m.” means two hours
20 after midnight of the day preceding the day such change occurs.

21 (b) This section shall be operative ~~January 1, 2025,~~ *2, 2026*.

22 SEC. 4. Section 25634 is added to the Business and Professions
23 Code, to read:

24 25634. (a) Beginning ~~January 1, 2020,~~ *2021*, notwithstanding
25 Section 25631, the department shall conduct a pilot program and,
26 pursuant to that pilot program, may issue an additional hours
27 license that would authorize, with or without conditions, the selling,
28 giving, or purchasing of alcoholic beverages at an individual
29 on-sale licensed premises between the hours of 2 a.m. and 4 a.m.
30 within a qualified city if the local governing body of that qualified
31 city does the following:

32 (1) Designates a task force comprised of members, including
33 at least one member of law enforcement and one additional member
34 of the California Highway Patrol, to develop a recommended local
35 plan that meets all of the following requirements:

36 (A) Shows that the public convenience or necessity will be
37 served by the additional hours.

38 (B) Identifies the area that will be affected by the additional
39 hours and demonstrates how that area will benefit from the
40 additional hours.

1 (C) Shows significant support by residents and businesses within
2 the additional hours service area for the additional hours, pursuant
3 to a determination by the local governing body.

4 (D) Includes an assessment by local law enforcement regarding
5 the potential impact of an additional hours service area and the
6 public safety plan, created by local law enforcement, for managing
7 those impacts that has been approved by the local governing body.
8 The assessment shall include crime statistics, data derived from
9 police reports, emergency medical response data, sanitation reports,
10 and public health reports related to the additional hours service
11 area.

12 (E) Shows that transportation services are readily accessible in
13 the additional hours service area during the additional service
14 hours.

15 (F) Includes programs to increase public awareness of the
16 transportation services available and unavailable in the additional
17 hours service area and the impacts of alcohol consumption.

18 (G) Includes an assessment of the potential impact of an
19 additional hours service area on adjacent cities, counties, and cities
20 and counties, including, but not limited to, nearby law enforcement
21 agencies.

22 (H) Indicates that the qualified city chooses to participate in the
23 pilot program.

24 (2) Based upon its independent assessment, adopts an ordinance
25 that satisfies the elements of the local plan, including the
26 requirements of subparagraphs (A) to (F), inclusive, of paragraph
27 (1), and submits the ordinance to the department.

28 (3) For purposes of this section, a “qualified section:

29 (A) “Local governing body” means the city council or the board
30 of supervisors, as may applicable, of a qualified city.

31 (B) “Qualified city” means the Cities of ~~Sacramento, Oakland,~~
32 ~~San Francisco, Los Angeles, West Hollywood, and Long Beach.~~
33 *Long Beach, Los Angeles, Oakland, Palm Springs, Sacramento,*
34 *San Francisco, and West Hollywood.*

35 (b) Upon receipt of an ordinance adopted pursuant to paragraph
36 (2) of subdivision (a), including documentation regarding protests
37 to the ordinance, the department shall review the ordinance to
38 ensure compliance with paragraph (1) of subdivision (a) and
39 ~~existing~~ *other applicable law.*

1 (c) (1) An on-sale licensee shall not apply for an additional
2 hours license pursuant to this section until the department has
3 received the ordinance adopted pursuant to paragraph (2) of
4 subdivision (a).

5 (2) An on-sale licensee that has conditions on the license that
6 restrict the hours of sale, service, or consumption of alcohol to a
7 time earlier than 2 a.m. shall not be eligible for an additional hours
8 license authorizing the sale, service, or consumption of alcoholic
9 beverages after 2 a.m. for any day or days of the week during
10 which a restriction exists.

11 (3) An on-sale licensee issued an additional hours ~~permit~~ *license*
12 pursuant to this section shall require that all persons engaged in
13 the sale or service of alcohol during the additional hours period
14 complete a responsible beverage training course.

15 (4) Notwithstanding Section 23401, off-sale privileges shall not
16 be exercised during the additional hours period allowed pursuant
17 to the additional hours license.

18 (5) An additional hours license is not transferable between
19 on-sale licensed premises.

20 (6) All new, existing, and previously legally nonconforming
21 on-sale licensees, including previous person-to-person transferee
22 licensees, will be subject to the local governing body's
23 requirements for an additional hours license. *The local governing*
24 *body may charge an additional hours licensee a fee to fund local*
25 *law enforcement.*

26 (d) (1) Upon receipt of an application by an on-sale licensee
27 for an additional hours license pursuant to this section, the
28 department shall make a thorough investigation, including whether
29 the additional hours license sought by the applicant would
30 unreasonably interfere with the quiet enjoyment of their property
31 by the residents of the city, county, or city and county in which
32 the applicant's licensed premises are located, and may deny an
33 application in the same manner as provided in Section 23958.

34 (2) The applicant shall notify the law enforcement agencies of
35 the city, the residents of the city located within 500 feet of the
36 premises for which an additional hours license is sought, and any
37 other interested parties, as determined by the local governing body,
38 of the application by an on-sale licensee for an additional hours
39 license pursuant to this section within 30 consecutive days of the

1 filing of the application, in a manner determined by the local
2 governing body.

3 (3) Protests may be filed at any office of the department within
4 30 days from the first date of notice of the filing of an application
5 by an on-sale licensee for an additional hours license. The time
6 within which a local law enforcement agency may file a protest
7 shall be extended by the period prescribed in Section 23987.

8 (4) The department may reject protests, except protests made
9 by a public agency or public official, if it determines the protests
10 are false, vexatious, frivolous, or without reasonable or probable
11 cause at any time before hearing thereon, notwithstanding Section
12 24300. If, after investigation, the department recommends that an
13 additional hours license be issued notwithstanding a protest by a
14 public agency or a public official, the department shall notify the
15 agency or official in writing of its determination and the reasons
16 therefor, in conjunction with the notice of hearing provided to the
17 protestant pursuant to Section 11509 of the Government Code. If
18 the department rejects a protest as provided in this section, a
19 protestant whose protest has been rejected may, within 10 days,
20 file an accusation with the department alleging the grounds of
21 protest as a cause for revocation of the additional hours license
22 and the department shall hold a hearing as provided in Chapter 5
23 (commencing with Section 11500) of Part 1 of Division 3 of Title
24 2 of the Government Code.

25 (5) This section shall not be construed as prohibiting or
26 restricting any right that the individual making the protest might
27 have to a judicial proceeding.

28 (e) (1) If, after investigation, the department recommends that
29 an additional hours license be issued, with or without conditions,
30 notwithstanding that one or more protests have been accepted by
31 the department, the department shall notify the local governing
32 body and all protesting parties whose protests have been accepted
33 in writing of its determination.

34 (2) Any person who has filed a verified protest in a timely
35 fashion pursuant to subdivision (d) that has been accepted pursuant
36 to this section may request that the department conduct a hearing
37 on the issue or issues raised in the protest. The request shall be in
38 writing and shall be filed with the department within 15 business
39 days of the date the department notifies the protesting party of its
40 determination as required under paragraph (1).

1 (3) At any time prior to the issuance of the additional hours
2 license, the department may, in its discretion, accept a late request
3 for a hearing upon a showing of good cause. Any determination
4 of the department pursuant to this subdivision shall not be an issue
5 at the hearing nor grounds for appeal or review.

6 (4) If a request for a hearing is filed with the department
7 pursuant to paragraph (2), the department shall schedule a hearing
8 on the protest. The issues to be determined at the hearing shall be
9 limited to those issues raised in the protest or protests of the person
10 or persons requesting the hearing.

11 (5) Notwithstanding that a hearing is held pursuant to paragraph
12 (4), the protest or protests of any person or persons who did not
13 request a hearing as authorized in this section shall be deemed
14 withdrawn.

15 (6) If a request for a hearing is not filed with the department
16 pursuant to this section, any protest or protests shall be deemed
17 withdrawn and the department may approve the on-sale licensee's
18 application for an additional hours license without any further
19 proceeding.

20 (7) If the person filing the request for a hearing fails to appear
21 at the hearing, the protest shall be deemed withdrawn.

22 (f) (1) The department shall notify the applicant of the outcome
23 of the application for an additional hours license. Any conditions
24 placed on the on-sale license shall apply to the additional hours
25 license. Any additional conditions placed upon the additional hours
26 license pursuant to this section shall be subject to Article 1.5
27 (commencing with Section 23800).

28 (2) The premises for which an additional hours license is issued
29 shall be restricted to patrons 21 years of age or older during the
30 additional hours period. Any person under 21 years of age who
31 enters and remains in the licensed premises during the additional
32 hours period without lawful business therein is guilty of a
33 misdemeanor and shall be punished by a fine of not less than two
34 hundred dollars (\$200), no part of which shall be suspended. This
35 provision does not prohibit the presence on the licensed premises
36 of a person under 21 years of age that is otherwise authorized by
37 law.

38 (3) Section 24203 applies to an additional hours license issued
39 pursuant to this section. An additional hours license may be
40 suspended or revoked separately from the on-sale license.

1 (g) (1) The applicant shall, at the time of application for an
2 additional hours license pursuant to this section, accompany the
3 application with a nonrefundable fee of two thousand five hundred
4 dollars (\$2,500). Fees collected pursuant to this section shall be
5 deposited in the Alcohol Beverage Control Fund.

6 (2) An original and annual fee for an additional hours license
7 issued pursuant to this section shall be two thousand five hundred
8 dollars (\$2,500).

9 (3) If the department approves a local plan that allows for 40
10 or fewer hours of additional service hours per calendar year, the
11 department may prorate the annual license fee to an amount that
12 reflects the reasonable regulatory costs of regulating additional
13 service hours licensees in those areas.

14 (h) The department shall adopt rules and regulations to enforce
15 the provisions of this section.

16 (i) (1) On or before January 1, ~~2024~~, 2025, the Department of
17 the California Highway Patrol shall provide the Legislature with
18 a report on the regional impact of the additional hours service
19 areas, which shall include information on any additional costs
20 incurred by adjacent cities, counties, and cities and counties and
21 law enforcement as a result of an additional service area, including
22 the impact an additional hours service area had on arrests for
23 driving under the influence in adjacent cities, counties, and cities
24 and counties. The report to be submitted pursuant to this section
25 shall be submitted in compliance with Section 9795 of the
26 Government Code.

27 (2) On or before January 1, ~~2024~~, 2025, a qualified city that
28 chose to participate in the pilot program shall provide the
29 Legislature with a report on the regional impact of the additional
30 hours licenses, which shall include information on the overall costs
31 of providing policing during the additional service hours and any
32 impact the additional service hours had on crime rates in the city,
33 including arrests for driving under the influence. The report shall
34 also include a detailed description of the number of licensees that
35 applied for additional hours licenses, the number of additional
36 hours licenses issued, and conditions placed on those licenses, if
37 any, by the department. The report to be submitted pursuant to this
38 section shall be submitted in compliance with Section 9795 of the
39 Government Code.

1 (j) This section shall remain in effect only until January 1, 2025,
2 2, 2026. and as of that date is repealed.

3 SEC. 5. It is the intent of the Legislature to provide moneys to
4 law enforcement in areas in which additional hours licenses are
5 issued to contribute to reducing the costs of additional law
6 enforcement activities related to those licenses.

7 SEC. 6. The Legislature finds and declares that a special statute
8 is necessary and that a general statute cannot be made applicable
9 within the meaning of Section 16 of Article IV of the California
10 Constitution because of the unique abilities of the Cities of
11 ~~Sacramento, Oakland, San Francisco, Los Angeles, West~~
12 ~~Hollywood, and Long Beach~~ *Long Beach, Los Angeles, Oakland,*
13 *Palm Springs, Sacramento, San Francisco, and West Hollywood*
14 to provide the infrastructure needed to implement an additional
15 service hours pilot program and the interest of those cities in this
16 type of pilot program.

17 SEC. 7. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.