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**Date Published: 03/25/2019 09:00 PM**

AMENDED IN SENATE MARCH 25, 2019

AMENDED IN SENATE MARCH 18, 2019

AMENDED IN SENATE MARCH 06, 2019

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

SENATE BILL**No. 58**

Introduced by Senator Wiener
(Principal coauthor: Assembly Member Santiago)
(Coauthors: Assembly Members Carrillo, Jones-Sawyer, *Mayes*, and Obernolte)

December 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 58, 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, ~~2021~~, 2022, and before January 2, ~~2026~~, 2027, 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 that 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 each qualified city that has elected to participate in the program to submit reports to the Legislature and specified committees regarding the regional impact of the additional hours licenses, as specified. 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 Cathedral City, Coachella, Fresno, 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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is the policy of the state to promote the responsible consumption of alcoholic beverages through making multiple planning options available to local communities and entertainment areas of the state, including the option of extended services hours up to a limit of 4 a.m. in communities and areas of the state where those extended hours are found by the governing body of the responsible community to be proper and appropriate.

(b) At least 15 states across the country delegate complete or partial authority for setting service hours to local jurisdictions or allow local jurisdictions to extend the hours of service, subject to state approval.

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

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

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

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

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

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

(b) (1) Beginning January 1, ~~2021~~, 2022, and before January 2, ~~2026~~, 2027, in a city that has additional serving hours pursuant to Section 25634, any on-sale licensee, or agent or employee of the licensee, who sells or gives to any person any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of 4 a.m. and 6 a.m. of the same day, is guilty of a misdemeanor.

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

(c) This section shall remain in effect only until January 2, ~~2026~~, 2027, and as of that date is repealed, unless a later enacted statute that is enacted before January 2, ~~2026~~, 2027, deletes or extends that date.

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

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

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

(b) This section shall be operative January 2, ~~2026~~ 2027.

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

25634. (a) Beginning January 1, ~~2021~~, 2022, notwithstanding Section 25631, the department shall conduct a pilot program and, pursuant to that pilot program, may issue an additional hours license that would authorize, with or without conditions, the selling, giving, or purchasing of alcoholic beverages at an individual on-sale licensed premises between the hours of 2 a.m. and 4 a.m. within a qualified city if the local governing body of that qualified city does the following:

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

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

(B) Identifies the service area in which an on-sale licensed premises would be eligible for an additional hours license and further identifies the area that will be affected by the additional hours and demonstrates how that area will benefit from the additional hours.

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

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

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

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

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

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

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

(3) For purposes of this section:

(A) "Local governing body" means the city council or the board of supervisors, as may be applicable, of a qualified city.

(B) "Qualified city" means the Cities of Cathedral City, Coachella, Fresno, Long Beach, Los Angeles, Oakland, Palm Springs, Sacramento, San Francisco, and West Hollywood.

(4) A local governing body may comply with this section and approve a local plan and submit an ordinance to the department beginning January 1, 2020.

(b) (1) Upon receipt of an ordinance adopted pursuant to paragraph (2) of subdivision (a), including documentation regarding protests to the ordinance, the department shall review the ordinance to ensure that the ordinance contains the information required by paragraph (1) of subdivision (a). The department shall not issue

an additional hours license to an applicant if the ordinance from the qualified city does not meet the requirements of paragraph (2) of subdivision (a).

(2) The department ~~shall~~ *may* review ordinances beginning January 1, 2020.

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

(B) Subject to subparagraph (A), an on-sale licensee may apply for an additional hours license beginning January 1, 2020. The department may issue additional hours licenses pursuant to this section beginning January 1, 2020. An additional hours license issued on or after January 1, 2020, and before January 1, ~~2021~~, *2022*, shall become effective on January 1, ~~2021~~, *2022*. An additional hours license issued on or after January 1, ~~2021~~, *2022*, shall become effective on its effective date.

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

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

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

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

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

(7) The determination of the necessity for, and types of, local licensing and local permitting shall be made by the local governing body.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) (1) On or before January 1, ~~2025~~, 2026, the Department of the California Highway Patrol shall provide the Legislature and the Senate and Assembly Committees on Governmental Organization with a report on the regional impact of the additional hours service areas, which shall include information on any additional costs incurred by adjacent cities, counties, and cities and counties and law enforcement as a result of an additional service area, including the impact an additional hours service area had on arrests for driving under the influence in adjacent cities, counties, and cities and counties. The report to be submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

(2) Each qualified city that chooses to participate in the pilot program shall provide the Legislature and the Senate and Assembly Committees on Governmental Organization with a report on the regional impact of the additional hours licenses within one year of the first additional hours license being issued in that city, and then once each year thereafter. The report shall include information on any impact the additional service hours had on crime rates in the city, including arrests for driving under the influence and domestic violence. The report shall

also include a detailed description of the number of licensees that applied for additional hours licenses, the number of additional hours licenses issued, and conditions placed on those licenses, if any, by the department. The report to be submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

(j) This section shall remain in effect only until January 2, ~~2026~~, 2027, and as of that date is repealed.

SEC. 5. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique abilities of the Cities of Cathedral City, Coachella, Fresno, Long Beach, Los Angeles, Oakland, Palm Springs, Sacramento, San Francisco, and West Hollywood to provide the infrastructure needed to implement an additional service hours pilot program and the interest of those cities in this type of pilot program.

SEC. 6. 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.