



Tearing Down California's Alcohol Regulations

The Alcohol Industry Lobby's Success in 2012

Executive Summary

The alcohol industry spends millions of dollars each year lobbying the California Legislature. This report of alcohol-related legislation introduced, passed and/or signed during the second half of the 2011-2012 California Legislative Session illustrates the effectiveness of alcohol industry lobbying on government. Although the Legislature passed three alcohol-related bills with minor public health benefits, the prevailing legislative tide (six bills passed and signed) clearly pushes the alcohol industry's bottom line higher than ever.

The biggest beneficiaries are alcohol producers: global alcohol conglomerates like the big three based in Belgium and London: Anheuser-Busch InBev, MillerCoors, and Diageo. Whether large or small, the legislative victories won by the alcohol industry serve to further erode the foundation of effective alcohol regulation: strong and separate tiers, and limits on access, availability and exposure.

As long as the California Legislature continues to cater to the interests of the alcohol industry over the public, the cost of alcohol-related harm will only continue to increase.

California 2012: Alcohol-Related Bills

The alcohol industry spends several million dollars each year lobbying California legislators for policies that benefit its bottom line. Alcohol Justice documented more than \$3 million lobbying by the industry in 2010.¹ For an industry with \$22 billion in sales in California in 2011, this expenditure is next to nothing: less than 0.02% of sales.

In January 2012, Alcohol Justice (AJ) expanded its monitoring of alcohol-related legislation² to include California bills outside its four major campaign areas.³ Our intent was to gauge whether the Legislature was passing alcohol policies that improved or undermined public health and safety. With the sheer amount of alcohol-related legislation introduced and passed in California that benefits the industry, in a state known for its less restrictive alcohol laws, this kind of review was sorely needed. We found that alcohol corporations receive an excellent return on their investment.

Significance of Legislative Activity

The alcohol industry actively pursues legislative change in order to decrease government regulation. Public health and safety demands a strong regulatory system that limits access, availability, and exposure to alcoholic beverages. As a result of these restrictions, alcohol sales are not as high as they might be in a market free of regulation. Recognizing that overturning state regulatory systems can be achieved a little at a time, the alcohol industry continually pressures legislatures across the country to “modernize” their laws. State by state, one legislative session after the next, alcohol corporations and trade groups systematically chip away at the regulatory structures surrounding them. While any single policy victory for the industry may appear small in a given year, those victories snowball over time, ultimately creating an environment where increased alcohol sales and industry consolidation are increasingly allowed at public expense.

¹ In 2011, the alcohol industry spent approximately \$3 million dollars on lobbying efforts. See *Drunk with Power: Industry Kills Alcohol Mitigation Fees in California in 2010*. Available at: <http://alcoholjustice.org/images/stories/DrunkwithPowerCA2010FINAL2.pdf>.

² “Legislation” refers to all types of activity engaged in by the legislature, including bills and resolutions. Terms such as “bill” and “resolution” are used to describe those specific types of legislative activity.

³ Since 2009, Alcohol Justice has tracked alcohol legislation at the federal and state levels on Taxes, Alcopops, Advertising, and Deregulation. Available at: <http://alcoholjustice.org/resources/legislative-activity.html>.

State alcohol legislation with harmful public health implications can be grouped into two general categories: (1) bills that erode the regulatory tiers, and (2) bills that expand access to alcoholic beverages and exposure to advertising and marketing. In California, the state regulates the production and sale of alcohol through a licensing system that divides the alcohol industry into one of three tiers: producer, wholesaler or retailer. These tiers were originally constructed to be separate and distinct. The purpose of dividing the licenses into tiers is to ensure that taxes are properly applied, and that wholesalers and retailers have a vested interest and accountability in the communities within which they sell alcohol. When the tiers are eroded, it generally shifts power in favor of the producers. Consolidating power in this tier has contributed to many of the problems that were evident before Prohibition –cheaper alcohol is increasingly and more widely available, and advertising is unrelenting at both community and societal levels.

In addition to a system of three separate tiers, California imposes restrictions on the sale and marketing of alcohol in order to limit access and exposure to the product. The evidence is clear: alcohol-related harm increases when access to alcohol increases. Increased exposure to alcohol promotion is strongly related to earlier initiation of drinking, increased consumption, and increased positive perceptions of alcohol brands. Laws restricting access or exposure to alcohol are necessary to protect public health and safety.

Legislative Process⁴

The California Legislature consists of a lower house, the State Assembly, and an upper house, the State Senate. Each legislative session is convened for a two-year period. The 2011-2012 Legislative Session convened on January 3, 2011 and adjourned on November 30, 2012. For a bill to become law, both houses must pass it before it is presented to the governor. When presented with a bill, the governor shall either: (1) sign the bill into law; (2) allow the bill to become law without a signature; or (3) veto the bill. The Legislature may override a veto with a two-thirds vote.

⁴ <http://www.leginfo.ca.gov/bil2lawx.html>

Research Process

In January 2012, we identified active bills and resolutions in California that might impact alcohol-related harm, or an organizer’s ability to advocate for policies that promote public health. We monitored a total of 27 bills from the 2011-2012 Legislative Session that were active at some point during 2012. Through “gut and amend” processes, two bills that were originally alcohol-related ended up covering non-alcohol topics. A complete summary of the bills follows in the Appendix.

Positive Public Health Implications - Legislation AJ supported

Although 2012 did not produce any significant alcohol-related public health victories, the California Legislature introduced five bills with positive implications, three of which passed and were signed into law:

Assembly Bill 45 (Passed/Signed)	Senate Bill 937 (Passed/Signed)
Assembly Bill 1148	Senate Bill 1393 (Passed/Signed)
	Senate Bill 566

The bill with the most positive public health implications was not specific to alcohol. Assembly Bill 1148 would have required disclosure of those who pay for campaign and initiative advertisements, which would have made it more difficult for corporate interests to hide behind political action committees. AB 1148 would have helped public health advocacy groups counter deceitful claims made by political campaigns by demonstrating that the financial sponsors were more about corporate profits than the public good. While AB 1148 died in committee, its introduction demonstrates some concern in the Legislature about the effect that hidden political financing has on the political process.

Senate Bill 937 (Passed/Signed) requires the Alcoholic Beverage Control Appeals Board to establish a surcharge of up to 3% of the annual license fees to pay for the Board’s administrative costs. All businesses that are in the business of selling alcohol in California (producers, wholesalers and retailers) must receive a license from the ABC.

The annual costs for licenses vary between types of businesses and range between \$62⁵ and \$846⁶ per year. Given the overall low cost of annual licenses, the 3% surcharge will only generate approximately \$1.5 million in additional revenue for the ABC.⁷ Moreover, the cost to licensees will be rather minimal. For example, the surcharge will add \$7.26 to an off-sale beer and wine license that currently costs \$242, and \$10.05 to a beer and wine license for a restaurant that currently costs \$335.

Senate Bill 1393 (Passed/Signed) allows retailers to return or exchange beer that is recalled or considered to present a health and safety issue. When alcoholic energy drinks (AEDs) became presumptively illegal in 2010;⁸ retailers in California were slow to pull offending products from their shelves because they could not return the AEDs to the wholesalers. Retailers then faced the decision of whether to destroy AEDs at a financial loss, or to sell the remaining stock. With the passage of SB 1393, retailers can now return beer products that are recalled.

Finally, Assembly Bill 45 (Passed/Signed) requires a designated adult chaperone if alcohol is to be present in a chartered vehicle, and requires the vehicle to return to its place of origin if any person younger than 21 is caught drinking. While AB 45 could go further and require drivers of limousines and party buses to be proactive in preventing underage consumption of alcohol in their vehicles, the new law ensures that these restrictions apply across all types of chartered vehicles. Unlike much of the legislation described below, AB 45 sought to strengthen regulation, control and public safety.

⁵ Winegrowers that produce 5,000 gallons of wine or less per year.

⁶ On-sale general license in cities of 40,000 population or over.

⁷ In 2010 the ABC collected approximately \$50 million in fees from licensees that will be subject to the surcharge. See <http://www.abc.ca.gov/Annualreports/Annual%20Workload%20Summary%202010.pdf>.

⁸ In November 2010, the U.S. Federal Trade Commission and the U.S. Food and Drug Administration issued warnings to AED producers, questioning the safety of their products' combination of alcohol and caffeine. Although these letters did not make AEDs outright illegal, they had the practical effect of stopping production because producers wanted to avoid litigation.

Threats to Regulation, Control & Public Safety

In contrast to the minor policy gains described above, the California Legislature introduced 12 bills during the 2011-2012 Session that had negative implications for public health and safety. Of these bills, 6 were passed and signed into law.

Assembly Bill 573 (Passed/Signed)	Senate Bill 778 (Passed/Signed)
Assembly Bill 1320 (Passed/Signed)	Senate Bill 1531 (Passed/Signed)
Assembly Bill 2184 (Passed/Signed)	Senate Bill 346
Assembly Bill 2349 (Passed/Signed)	Senate Bill 765
Assembly Bill 2047	
Assembly Bill 2229	
Assembly Bill 2560	
Assembly Bill 2694	

In order to keep the tiers both separate and distinct, California law strictly limits the types of interactions that could occur between the tiers. Assembly Bill 573 and 2349 are industry victories that erode the tiers by expanding the list of allowed interactions. AB 573 allows alcohol producers to (1) occasionally inspect and clean taps and tapping equipment installed in retail on-sale premises, and (2) give, lend or sell equipment, fixtures or supplies to a retailer whose equipment was damaged in a natural disaster. Assembly Bill 2349 allows for producers and wholesalers to list retailer information.

Although these exemptions are limited in scope, their examples can be cited later by the alcohol industry as to why separate tiers are unnecessary. Previously the services in AB 573 were solely in the purview of the wholesale tier. However, by allowing producers to offer these specific services directly to retailers, the Legislature has weakened the role of the wholesaler. Allowing a tier to provide services for another creates a situation in which one tier may be able to assert undue influence over the other. As a result, one tier may be willing to engage in business practices that undermine public health and safety.

In addition to eroding the tiers, the alcohol industry seeks to remove restrictions that limit access and exposure to alcohol. Assembly Bill 1320, which passed, allows the ABC to issue more on-sale licenses in certain size counties. The Legislature caps the number of new licenses that may be issued throughout the state. The alcohol industry

has an incentive to increase the availability of alcohol, and increasing the number of retail licenses makes this possible. The industry also argues that the state will benefit economically from the increased number of licenses. From the public health perspective, however, more licenses mean increases in alcohol-related harm and business benefiting at the expense of the public's health.

Finally, the California Legislature passed Senate Bill 778, which allows alcohol licensees to conduct consumer contests and sweepstakes. Although California is generally known for having permissive alcohol laws, this specific area of regulation was one that had remained strongly protected. Prior to SB 778, the state strictly limited the types and value of gifts that licensees could offer to consumers. In addition to being able to provide high value prizes, SB 778 allows for increased advertising and marketing around such giveaways. As increased exposure is correlated with higher rates of consumption, SB 778 proves even more problematic if giveaways appeal to underage and problem drinkers, two groups that experience the greatest amounts of alcohol-related harm.

Promoting the Alcohol Industry

During 2012, each house introduced two resolutions proclaiming support for alcohol producers. Although intended as “merely” promotional, these resolutions also highlight the closeness between the Legislature and the industry.

Assembly Concurrent Resolution 118 (Passed by both houses)
House Resolution 28 (Passed by Assembly)
Senate Concurrent Resolution 66 (Passed by both houses)
Senate Concurrent Resolution 89 (Passed by Senate)

For example, when the Senate unanimously proclaimed February 2012 California Craft Brewery Month, and the Assembly unanimously proclaimed April 2012 the month to celebrate the California wineries and winegrape growers, it sent the message that the Legislature puts business interests ahead of health and safety.

CONCLUSION

Although the 2011-2012 Legislature passed a few alcohol-related bills with minor public health benefits, the prevailing legislative tide clearly intends to push the alcohol industry's bottom line higher than ever. Whether large or small, the legislative victories won by the alcohol industry serve to further erode effective alcohol regulation by muddying the distinctions between the tiers and reducing limits on access, availability and exposure. As long as the California Legislature continues to cater to the interests of alcohol industry over the public, the cost of alcohol-related harm will only continue to increase.

APPENDIX: Alcohol-Related California Legislation in 2012

Alcohol Justice Position	Legislation	
	Introduced	Passed
Support	5	3
Oppose	16	10
Watch	4	1
Amended to be non-alcohol	2	--
Total	27	13

Legislation	AJ Position	Status	Topic	Author(s)
HR 28	Oppose	Passed	Beer distributor month	Hall (D-Compton)
AB 45	Support	Passed	Charter vehicles	Hill (D-San Mateo)
ACR 118	Oppose	Passed	Wineries, winegrape growers	Chesbro (D-Mendocino)
AB 351	--	Amended	--	--
AB 573	Oppose	Passed	Unsold wine	Chesbro (D-Mendocino)
AB 1148	Support	Died	Political campaign ads	Brownley (D-Malibu)
AB 1320	Oppose	Passed	Increase on-sale licenses	Allen (D-Napa)
AB 1812	Watch	Passed	Beer definition	Chesbro (D-Mendocino)
AB 2047	Oppose	Died	Alcohol ad purchasing	Beall (D-San Jose)
AB 2184	Oppose	Passed	Promotional events	Hall (D-Compton)
AB 2229	Oppose	Died	Spirits tastings	Williams (D-Santa Barbara)
AB 2349	Oppose	Passed	Retailer contact listings	Nestande (R-Riverside)
AB 2560	Oppose	Died	Increase on-sale licenses	Allen (D-Napa)
AB 2694	Oppose	Held in Senate	Advertising relationships	Assembly Committee on Gov. Organization
SB 12	--	Amended	--	Corbett (D-San Leandro)
SCR 66	Oppose	Passed	Craft brewery month	Corbett (D-San Leandro)
SCR 89	Oppose	Held in Assembly	Beer distributor month	Wright (D-Los Angeles)
SB 346	Oppose	Died	Alcohol service in gondolas	Harman (R-Orange County)
SB 487	Watch	Died	Unsold beer	McLeod (D-Pomona)
SB 566	Support	Died	Licensees market research	Price (D-Los Angeles)

Legislation	AJ Position	Status	Topic	Author(s)
SB 765	Oppose	Died	Ad space in San Bernardino	Anderson (R-San Diego/Riverside)
SB 768	Watch	Died	Electronic data service	Hernandez (D-Los Angeles)
SB 778	Oppose	Passed	Contests and sweepstakes	Padilla (D-San Fernando Valley)
SB 937	Support	Passed	License surcharge of up to 3%	Senate Committee on Gov. Organization
SB 1393	Support	Passed	Return recalled beer	McLeod (D-Pomona)
SB 1429	Watch	Died	Unfinished product at tastings	Evans (D-Santa Rosa)
SB 1531	Oppose	Passed	Method of counting licenses	Wolk (D-Vacaville)

[House Resolution 28](#) (Oppose)

Summary: Proclaims the month of May 2012 as California Beer Distributor Month.

Status: 5/30/12 – Adopted

[Assembly Bill 45](#) (Support)

Summary: Requires a designee be designated if there are passengers under 21 and other conditions.

Status: 9/23/12 – Signed into law

[Assembly Concurrent Resolution 118](#) (Oppose)

Summary: Proclaims April 2012 as the month to celebrate the sustainable leadership of California wineries and winegrape growers.

Status: 5/10/12 – Adopted

[Assembly Bill 351](#)

Status: 8/24/12 – Amended; no longer alcohol-related

[Assembly Bill 573](#) (Oppose)

Summary: Allows California beer and wine wholesalers that only sell wine to bring unsold wine back into the state. Currently only winegrowers that sell wine to another state are allowed to bring unsold wine back into California.

Status: 9/19/12 – Signed into law

[Assembly Bill 1148](#) (Support)

Summary: Requires full disclosure of who is actually paying for campaign and initiative advertisements. The requirements apply to a wide range of communication methods including radio, television, and mailings.

Status: Died in Assembly Committee on Appropriations

[Assembly Bill 1320](#) (Oppose)

Summary: Allows ABC to increase number of on-sale general licenses in counties of the 18th class by 15. Qualifying premises must have a seating capacity for 50 or more diners.

Status: 9/23/12 – Signed into law

[Assembly Bill 1812](#) (Watch)

Summary: Specifies that “beer” can be bottle conditioned, keg conditioned, cask conditioned, or barrel aged.

Status: 7/13/12 – Signed into law.

[Assembly Bill 2047](#) (Oppose)

Summary: Expand the limited exception to allow alcohol producers in to purchase advertising from or on behalf of on-sale retail licenses in certain locations to include specified facilities located in the City of San Jose.

Status: Died in Assembly Committee on Governmental Organization

[Assembly Bill 2184](#) (Oppose)

Summary: Allow for an employee appear at a promotional event at a licensee and sign autographs.

Status: 9/23/12 – Signed into law.

[Assembly Bill 2229](#) (Oppose)

Summary: Allows distilled spirits producers to charge consumers for tastings. Currently, distilled spirits producers can provide tastings free of charge.

Status: Died in Assembly Committee on Governmental Organization

[Assembly Bill 2349](#) (Oppose)

Summary: “Tied-house” restrictions, which generally prohibit producers and wholesalers from furnishing, giving, or lending any money or other thing of value to any person engaged in operating any off-sale licensed premises. For purposes of these provisions, the listing of contact information, of 2 or more unaffiliated on-sale retailers selling beer, wine, or distilled spirits, and operating and licensed as bona fide public eating places selling the beer, wine, or distilled spirits produced, distributed, or imported by a nonretail industry member in response to a direct inquiry from a consumer, as specified, does not constitute a thing of value or prohibited inducement to the listed onsale retailer, if specified conditions are met.

Status: 9/19/12 – Signed into law

[Assembly Bill 2560](#) (Oppose)

Summary: Allows ABC to increase number of on-sale general licenses in counties of the 18th class by 15. Qualifying premises must have a seating capacity for 50 or more diners.

Status: Died in Assembly Committee on Governmental Organization.

[Assembly Bill 2694](#) (Oppose)

Summary: Bill strikes language controlling advertising relationships between the tiers.

Status: Held in Senate – Passed both houses but not delivered to Governor

[Senate Bill 12](#)

Status: 8/23/12 – Amended; no longer alcohol-related

[Senate Concurrent Resolution 66](#) (Oppose)

Summary: Proclaims the month of February 2012 as California Craft Brewery Month.

Status: 3/19/12 – Approved

[Senate Concurrent Resolution 89](#) (Oppose)

Summary: Proclaims the month of May 2012 as California Beer Distributor Month.

Status: Held in Assembly after adoption by Senate

[Senate Bill 346](#) (Oppose)

Summary: Allows for alcoholic beverages to be served without a license as part of a gondola ride so long as there is no additional charge or fee for the alcoholic beverage. Existing law allows the serving of alcohol without a license or permit in a limousine or as part of a hot air balloon ride service, provided there is no extra charge or fee for the alcoholic beverages.

Status: Died in Assembly Committee on Appropriations

[SB 487](#) (Watch)

Summary: Allows for wholesalers to accept the return of unsold beer and unopened beer from organizations that obtained temporary licenses to sell alcoholic beverages for on-sale consumption. The bill also mandates specific periods of time before discontinued and seasonal brands of beer can be reintroduced.

Status: Died in Assembly Committee on Governmental Organization

[Senate Bill 566](#) (Support)

Summary: Adds distilled spirits wholesalers to those types of licensees that are prohibited from being obligated to purchase or sell the alcoholic beverages of a licensee conducting market research. Existing law permits a range of producers and wholesale licensees to conduct market research regarding the purchase and sale of alcoholic beverage products.

Status: Died in Assembly Committee on Governmental Organization

[Senate Bill 765](#) (Oppose)

Summary: Decreases the attendance capacity of fully enclosed arenas located in San Bernardino County in which alcohol producers can purchase advertising space from 4,500 to 4,000 people.

Status: Died in Senate Committee on Governmental Organization

[Senate Bill 768](#) (Watch)

Summary: Expands the definition of “electronic data service” to include “internet, or other wireless.” Currently producers are allowed to furnish licensed retailers with electronic data services for monitoring brand sales performance, invoices and fund transfers, however these services are limited to telephone, microwave and other electronic means.

Status: Died in Assembly Committee on Governmental Organization.

[Senate Bill 778](#) (Oppose)

Summary: Allows alcohol licensees to conduct, sponsor, or participate in a consumer contest or sweepstakes that offers the chance to win prizes. Currently licensees are generally prohibited from offering a giveaway in connection with the sale or distribution of any alcoholic beverage.

Status: 9/23/12 – Signed into law

[Senate Bill 937](#) (Support)

Summary: Requires the Alcoholic Beverage Control Appeals Board to establish a surcharge of up to 3 percent of the annual license fees to pay for the board’s administrative costs. Limits price that a license transfer can be sold for.

Status: 9/14/12 – Signed into law

[Senate Bill 1393](#) (Support)

Summary: Allows retailers to return or exchange beer that is recalled or is conserved to present a health and safety issue by the manufacturer, importer, or government.

Status: 7/23/12 – Signed into law

[Senate Bill 1429](#) (Watch)

Summary: The Alcoholic Beverage Control Act permits a winegrower or distilled spirits manufacturer, or its authorized agent, to instruct consumers on the subject of wine or distilled spirits subject to specified provisions, including that the winegrower or distilled spirits manufacturer remove any unfinished alcoholic beverages. This bill would revise the provision requiring the removal of unfinished alcoholic beverages by the winegrower or distilled spirits manufacturer.

Status: Died in Assembly Committee on Governmental Organization.

[Senate Bill 1531](#) (Watch)

Summary: Modifies how licenses are to be counted. Currently the number is to be determined using the most recent yearly report. The bill will have the count conducted on a yearly basis.

Status: 9/14/12 - Signed into law.



Vision Alcohol Justice envisions healthy communities free of the alcohol industry's negative impact.

Mission Alcohol Justice, the industry watchdog, promotes evidence-based public health policies and organizes campaigns with diverse communities and youth against the alcohol industry's harmful practices.

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