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## Who Stands to Benefit From Chapter 623's Exception to California's Tied-House Laws?

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# Who Stands to Benefit From Chapter 623’s Exception to California’s Tied-House Laws?

Colin Nystrom\*

## Code Section Affected

Business and Professions Code § 25600.05 (new).  
AB 1133 (Low); 2019 STAT. CH. 623.

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## I. INTRODUCTION

“Dilly Dilly!”<sup>1</sup> The sound of exultation echoed throughout the halls of Anheuser-Busch as the California Senate passed AB 2573 in the autumn of 2018.<sup>2</sup> Before the bill traveled to the Governor’s desk, it appeared the national

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\* J.D. Candidate, University of the Pacific, McGeorge School of Law, to be conferred May 2021; B.A., Enterprise Regulation, St. John’s University, 2016. First, I want to thank my friends and family for the encouragement and love that cannot be taken for granted throughout this process. I would also like to thank the entire Law Review staff for their time and energy, my article would have been nothing without the hours spent editing and providing feedback. A special thanks to both Professor Daniel Croxall and Thomas Gerhart, a willingness to share your extensive knowledge and ideas were instrumental to the development of this article. Lastly, I want to thank all the mentors whose advice has guided me to this point in my life.

1. Bud Light, *Bud Light: Dilly Dilly!*, <https://www.youtube.com/watch?v=9mGNhvkVT8Q> (last visited Sept. 7, 2019) (on file with *The University of the Pacific Law Review*).

2. See Daniel Croxall, *The Glassware Bill is Dead: Good News for California Independent Craft Beer*,

Goliath of beer succeeded in lobbying for another exception to California's tied-house laws.<sup>3</sup> A tied-house is a retailer who is bound to a specific alcohol manufacturer for any reason.<sup>4</sup> One argument the Temperance Movement made in their push for the prohibition of alcohol was the unbridled drinking that resulted from the proliferation of tied-houses.<sup>5</sup> Following the repeal of Prohibition, new state laws sought to eliminate tied houses by creating separation between the tiers—manufacturing, distribution, and retail—of the alcohol industry.<sup>6</sup> In contrast to the spirit of California's three-tier system, AB 2573 would have allowed manufacturers to give branded glassware to retail outlets.<sup>7</sup> However, Anheuser-Busch's excitement was short-lived; Governor Jerry Brown vetoed AB 2573.<sup>8</sup> Governor Brown voiced concern for the economic disadvantage “small beer manufactures [sic]” would face because of an inability “to provide free glassware in the same manner as larger manufacturers.”<sup>9</sup>

With a new governor in office, Assembly Member Evan Low introduced AB 1133, a bill that was nearly identical to AB 2573.<sup>10</sup> The law could greatly impact the growth of California's independent, craft beer community by providing a

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CRAFT BEER LAW PROF (Sept. 11, 2018), <https://www.craftbeerprofessor.com/2018/09/glassware-bill-dead-good-news-california-independent-craft-beer/> (on file with *The University of the Pacific Law Review*) (noting the bill sponsors—including Anheuser-Busch—and motivations which stem from both marketing and relationship building with the retail channels).

3. See Daniel Croxall, *Ever Played Jenga? Too Many Exceptions to Tied-House Laws Render the Whole System Vulnerable*, CRAFT BEER LAW PROF (Feb. 9, 2017), <https://www.craftbeerprofessor.com/2017/02/ever-played-jenga-many-exceptions-tied-house-laws-render-whole-system-vulnerable/> (on file with *The University of the Pacific Law Review*) (explaining the “concerted effort out there to get rid of or to minimize tied-house laws [to] benefit big beer manufacturers [at] the detriment of craft breweries.”).

4. See Daniel Croxall, *Let's Make Sure We Are Talking About the Same Things: Tied-House Laws and the Three-Tier System*, CRAFT BEER LAW PROF (Feb. 6, 2017), <https://www.craftbeerprofessor.com/2017/02/lets-make-sure-talking-things-tied-house-laws-three-tier-system/> (on file with *The University of the Pacific Law Review*) (defining a tied-house establishment as “any retail outlet that is beholden to a particular alcohol manufacturer for any reason”).

5. Bureau of Planning and Zoning Historic Pres. Div., City of Chicago, *Landmark Designation Report: Five Schlitz Brewery Tied-Houses and One Schlitz Brewery Stable Building* (Apr. 7, 2011), available at [https://www.chicago.gov/content/dam/city/depts/zlup/Historic\\_Preservation/Publications/Five\\_Brewery\\_Tied\\_Houses\\_and\\_One\\_Brewery\\_Stable.pdf](https://www.chicago.gov/content/dam/city/depts/zlup/Historic_Preservation/Publications/Five_Brewery_Tied_Houses_and_One_Brewery_Stable.pdf) (on file with *The University of Pacific Law Review*).

6. See Croxall, *supra* note 4 (describing the tied-house laws passed throughout the U.S. following prohibition that created the modern three-tier system).

7. See *Cal. Beer Wholesalers Ass'n v. Alcoholic Beverage Control Appeals Bd.*, 5 Cal. 3d 402, 409 (Cal. 1971) (en banc) (California's establishment of a triple-tiered distribution and licensing scheme was the primary tool used to combat “evils and excesses as intemperance and disorderly marketing conditions that had plagued the public and the alcoholic beverage industry prior to prohibition”); AB 2573, 2018 Leg., 2017–2018 Sess. (Cal. 2018) (as passed on Aug. 21, 2018, but not enacted).

8. Letter from Jerry Brown, Governor, Cal. State to Cal. State Assembly (Sept. 6, 2018) [hereinafter Brown Letter] (on file with *The University of the Pacific Law Review*).

9. *Id.*

10. CAL. BUS. & PROF. CODE §25600.05 (enacted by Chapter 623); Phil Willon, Taryn Luna & Melanie Mason, *Gavin Newsom sworn in as California's 40th governor*, L.A. Times (Jan. 7, 2019), <https://www.latimes.com/politics/la-pol-ca-governor-gavin-newsom-inauguration-20190107-story.html> (on file with *The University of the Pacific Law Review*).

benefit to large manufacturers who dominated the beer market for decades.<sup>11</sup> Manufacturers like Anheuser Busch and Coors—known as “Big Beer”—experienced a loss in both market share and total volume since the rise of the craft brew sensation.<sup>12</sup> To recapture what they lost, Big Beer companies diversified their portfolios to match changing consumer preferences and secure their place in this new and largely independent “craft” market.<sup>13</sup> The efforts of the domestic Big Beer duopoly are beginning to pay off; studies show the growth rate of craft brewing is slowing down.<sup>14</sup> The guaranteed success many independent brewers enjoyed due to tremendous market growth over the course of the last decade has passed.<sup>15</sup> The industry is starting to experience market saturation because an ever growing number of independent breweries coupled with the large, efficient distribution channels of established manufacturers who are infiltrating the community.<sup>16</sup> Chapter 623 should not have created another exception to California tied-house laws which allows Big Beer to use their financial strength overcome competition within the craft beer market.<sup>17</sup> In

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11. See ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1133, at 3-4 (Apr. 3, 2019) (detailing concerns expressed by the California Craft Brewers Association over ability to maintain a fair marketplace in light of the proposed legislation); and Beth Newhart, *US craft beer has settled into a 'more mature growth pattern'*, BEVERAGE DAILY, (Apr. 5, 2019) <https://www.beveragedaily.com/Article/2019/04/05/US-craft-beer-market-has-settled-into-a-more-mature-growth-pattern> (on file with *The University of the Pacific Law Review*).

12. Compare Christopher Doering, *Molson Coors Hurt by Weak US Demand, Softness in Beer Industry*, FOOD DIVE (May 2, 2018) <https://www.fooddive.com/news/molson-coors-hurt-by-weak-us-demand-softness-in-beer-industry/522643/> (on file with *The University of the Pacific Law Review*) (AB InBev, the international parent company of Anheuser Busch, and Molson Coors have lost a combined 13.4% share of the U.S. market since 2009), with *Beer Volume Declines Continue, Despite Gains in Craft And Imported Brews*, BEVERAGE INFO. GROUP (Oct. 10, 2018) <https://www.prnewswire.com/news-releases/beer-volume-declines-continue-despite-gains-in-craft-and-imported-brews-300727917.html> (on file with *The University of the Pacific Law Review*) (providing that American's have consumed 1.1% less total beer volume in 2017 than 2016, the fifth consecutive year of decline).

13. See *Crafty vs. Crafty: A Statement From the Brewers Association*, BREWER'S ASS'N (Dec. 6, 2012) <https://www.brewersassociation.org/press-releases/craft-vs-crafty-a-statement-from-the-brewers-association/> (on file with *The University of the Pacific Law Review*) (“[C]raft brewer is defined as small and independent. Their annual production is six million barrels of beer or less. . .if a large brewer has a controlling share of a smaller producing brewery, the brewer is, by definition, not craft.”).

14. See Newhart, *supra* note 11 (noting the growth of craft beer has slowed and led to more competition amongst brewers targeting this market.), and MARIN INSTITUTE, *BIG BEER DUOPOLY 5* (2009), available at [https://alcoholjustice.org/images/reports/big\\_beer\\_duopoly.pdf](https://alcoholjustice.org/images/reports/big_beer_duopoly.pdf) (on file with *The University of the Pacific Law Review*) (AB InBev and Molson Coors now have combined control of more 80% of the United States beer market).

15. See Zach Fowle, *This is Why My Brewery Shut Down*, DRAFT MAG., <https://draftmag.com/this-is-why-my-brewery-shut-down/> (on file with *The University of the Pacific Law Review*) (detailing studies which show that since 2014 the number of new breweries that open annually is decreasing, while the number of closures is increasing).

16. Rachel Siegel, *The Craft Beer Industry's Buzz is Wearing Off*, WASH. POST (Apr. 10, 2018) <https://www.washingtonpost.com/news/business/wp/2018/04/10/the-craft-beer-industrys-buzz-is-wearing-off/?noredirect=on> (on file with *The University of the Pacific Law Review*).

17. See Rachel Arthur, *AB InBev on Craft and Specialty Beer: 'The High End is the #1 Growth Engine of Our Company,'* BEVERAGEDAILY.COM (MAR. 5, 2019), <https://www.beveragedaily.com/Article/2019/03/05/AB-InBev-on-craft-and-specialty-beer-The-High-End-is->

comparison to macro breweries, independent breweries cannot afford to provide equivalent value to retailers, which leaves Big Beer free to flood the market with their branding.<sup>18</sup> Worse yet, this “pay-to-play” law will cost California taxpayers approximately one million dollars annually.<sup>19</sup>

## II. LEGAL BACKGROUND

In order to better understand the impacts of Chapter 623, it is important to understand the history of California's tied-house laws.<sup>20</sup> Section A details why these laws were first enacted.<sup>21</sup> Following, Section B offers other examples of erosion to the general law through previously adopted exceptions.<sup>22</sup>

### A. California's Tied-House: General Rules

In his 1932 campaign, Franklin D. Roosevelt promised to repeal the Eighteenth Amendment, a national ban on the sale and consumption of alcohol.<sup>23</sup> After his convincing victory, the end of America's experiment with Prohibition was clear.<sup>24</sup> In response, California started to draft preliminary laws that would govern the reemerging alcohol industry.<sup>25</sup> The work resulted in California's enactment of the State Liquor Control Act in June of 1933; the laws would become effective once Prohibition ended.<sup>26</sup> Shortly before Roosevelt took office in the Spring of 1933, Congress proposed the Twenty-First Amendment.<sup>27</sup> By December, Utah delivered the thirty-sixth and final vote necessary to ratify a constitutional amendment.<sup>28</sup> The amendment allowed individual states to establish their own laws to govern the production and sale of alcohol.<sup>29</sup> With

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our-growth-engine (on file with *The University of the Pacific Law Review*) (acknowledging that AB InBev is pointed in their pursuit to continue to grow and maintain a position as “number one craft beer brewer in the world”).

18. Interview with Evan Rosatelli, Head Brewer, Union Brewing Company, in Sacramento, Cal. (Aug. 4, 2019).

19. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1133, at 1 (Feb. 21, 2019); Brown Letter, *supra* note 8.

20. See *Prohibition*, HIST. (Oct. 29, 2009), <https://www.history.com/topics/roaring-twenties/prohibition> (on file with *The University of Pacific Law Review*) (explaining that individual states were responsible for the production and sales of alcohol which California achieved through enactment of statutes which prevented tied houses, amongst other things).

21. *Infra* Section II.A.

22. *Infra* Section II.B.

23. *Prohibition*, HIST., *supra* note 20.

24. *Id.*

25. See 1933 Cal. Stat. ch. 658, § 39 at 1707 (effective “when it shall become lawful under the Constitution and the laws of the United States to manufacture, sell, . . . intoxicating liquors”).

26. See 1933 Cal. Stat. ch. 658, § 39 at 1707. (obtaining governor's authorization in June of 1933).

27. *Prohibition*, HIST., *supra* note 20.

28. *Id.*

29. See U.S. CONST. amend. X (establishing that powers that are not federally held are reserved to the

preliminary legislation already in place, the California Legislature began drafting a more comprehensive body of law that would become the Alcohol Beverage Control Act.<sup>30</sup>

Within two years of the Twenty-Frist Amendment's ratification, the California Legislature passed a complete set of laws to govern the alcohol industry—the Alcohol Beverage Control Act.<sup>31</sup> Its words remain the heart of California's modern tied-house laws.<sup>32</sup> Provisions which expressly prohibit the vertical and horizontal integration limit relationships within industry to protect against the danger of tied-houses that existed prior to their enactment.<sup>33</sup> The law requires distributors, manufacturers, and retailers do not have any ownership interest in one another.<sup>34</sup> Further, tied-house laws forbid any one of the tiers from inducing decisions of a company in a different tier through the giving of things of value.<sup>35</sup>

Eighteen years after its creation, the Alcohol Beverage Control Act transitioned into its current position within the Business and Professional Code.<sup>36</sup> This move was due to a major reorganization all of California's laws.<sup>37</sup> The law remained substantively the same when it shifted into the newly organized statutory scheme.<sup>38</sup> Chapter 623 will add and repeal a section of this body of law.<sup>39</sup>

### *B. Exceptions to the Rule*

Although the Business and Professions Code created a distinct three-tier

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states) and U.S. CONST. amend. XXI (providing transportation or importation of alcohol into any state “in violation of the laws thereof, is hereby prohibited”).

30. See Thomas A. Gerhart, *Undermining the Law: How Uninformed Legislating Helps Big Beer Erode California's Tied-House Laws*, 51 U. PAC. L. REV. 26, 31, (2019).

31. 1935 Cal. Stat. ch. 330, § 1.

32. See *id.* (establishing laws which create a three-tier system to regulate the manufacture and sale of alcohol), and CAL. BUS. & PROF. CODE §§ 25500–25600 (West 2018) (adopting the language of California's original tied-house law within a new statutory construct).

33. *Actmedia, Inc. v. Stroh*, 830 F.2d 957, 959 (9th Cir. 1986) (Noting that “(t)he provision was enacted . . . as part of California's “tied-house” statutes . . . to prevent large-scale manufacturers and wholesalers of alcoholic beverages from dominating local markets for their products through vertical and horizontal integration”).

34. 1935 Cal. Stat. ch. 330, § 54(a) at 1148.

35. *Id.*

36. See CAL. BUS. & PROF. CODE § 25500 (West 2018) (noting that California codified its general tied-house restrictions in the Business and Professional Code in 1953).

37. Ralph N. Kleps, *The Revision and Codification of California Statutes 1849-1953*, 42 CALIF. L. REV. 766, 793 (1954).

38. Compare 1935 Cal. Stat. ch. 330, § 54(a)–(b) at 1148 (The earliest example of California law that expressly prohibits a manufacturer from holding ownership or providing money or things of value to a retailer), with CAL. BUS. & PROF. CODE §25500(a)(2) (West 2018) (The modern equivalent of California's original statute which creates independent tiers and prohibits ownership or influence over one another).

39. BUS. & PROF. §25600.05 (enacted by Chapter 623).

system, tied-house laws now contain nearly forty exceptions to the general rule.<sup>40</sup> Individual, fact-based situations led to a number of narrowly-applied exceptions.<sup>41</sup> For example, a manufacturer may provide courses of instruction for licensees and their employees and instructional tastings for consumers at no cost.<sup>42</sup> Another exception within the statute allows a manufacturer to directly provide support to retailers following a government-declared natural disaster.<sup>43</sup> Additionally, numerous exceptions to the general rule allow a manufacturer to purchase advertising space from a retailer.<sup>44</sup> Each one of these exceptions are an example of the erosion to California's tied-house laws that benefit beer manufacturers by strengthening their relationship with retailers.<sup>45</sup> Other exceptions to California's tied-house laws not only dictate a manufacturer's actions but can also affect the activities of retailers.<sup>46</sup> One example allows a retailer to hold diminutive ownership in a manufacturer's company, so long as it is publicly traded.<sup>47</sup> Likewise, a manufacturer can also own stock in a retailer, but the exception goes beyond passive ownership and permits a manufacturer to serve on a retailer's board of directors.<sup>48</sup> In both cases, the owner must report their position or stock interest to California Department of Alcoholic Beverage Control ("ABC").<sup>49</sup> These and many more of exceptions to California's tied-house laws are the results of private lobbying efforts of corporations looking to benefit by decreasing competition via consolidation.<sup>50</sup>

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40. James M. Seff & Carrie L. Bonnington, *A General Introduction to Alcohol Beverage Laws and Regulations*, ASPATORE (Dec. 2015) (West).

41. *California Tied-House Restrictions and Exceptions*, WINE LAW DECANTED (Feb. 8, 2012), <http://winelawdecanted.com/?p=399> (on file with *The University of Pacific Law Review*).

42. See CAL. BUS. & PROF. CODE § 25503.5 (West 2018) ("A winegrower, beer manufacturer . . . may, without charge . . . conduct courses of instruction for licensees and their employees, on the subject of wine or beer."); CAL. BUS. & PROF. CODE § 25503.55(a)–(b) (West 2018) ("A beer manufacturer . . . may instruct consumers or conduct courses of instruction for consumers . . . instruction of consumers regarding beer may include the furnishing of tastes.").

43. See CAL. BUS. & PROF. CODE § 25511 (West 2018) (suspending the inducement ban on manufacturers to allow them to provide equipment and supplies other than alcoholic beverages to a retailer whose equipment was damaged during a government-declared natural disaster).

44. See generally CAL. BUS. & PROF. CODE §§ 25503.6, 25503.8, 25503.23, 25503.26 (creating fact specific situations in which manufacturers can sponsor or publicly advertise at an event on location of a retailer provided products from other manufacturers are also available for purchase at the event).

45. See Croxall, *supra* note 3 (hypothesizing that a "multitude of exceptions tends to lessen the government's ability to argue that the law must be upheld because the interests it serves are so important").

46. See CAL. BUS. & PROF. CODE § 25503.12 (West 2018) (providing that a retailer can have ownership interest in other tiers of the alcohol industry).

47. *Id.*

48. CAL. BUS. & PROF. CODE § 25503.11 (West 2018).

49. CAL. BUS. & PROF. CODE §§ 25503.11–12 (West 2018).

50. See Croxall, *supra* note 4 (commenting that tied-house laws were put in place to prevent the anti-competitive nature of tied houses but the laws are "under attack through sophisticated lobbying efforts" of large manufacturers).

IV. CHAPTER 623

Chapter 623 changes prior tied-house law by adding and repealing language within the Business and Professions Code.<sup>51</sup> Chapter 623 creates a new exception to California’s laws that prohibit a manufacturer from giving items of value to a licensee.<sup>52</sup> The new law provides a beer manufacturer the opportunity to furnish up to five cases of glassware to retail outlets.<sup>53</sup> The narrow exception limits a retailer’s use by only permitting a retailer to accept up to ten cases of glassware annually.<sup>54</sup> Further, a retailer may not attempt to otherwise benefit from the acceptance of glassware because its utilization is strictly limited to onsite commercial use.<sup>55</sup> A case of glassware is defined as “twenty-four individual pieces of glassware intended for beer consumption.”<sup>56</sup>

The new law also provides a procedural framework overseeing a manufacturer’s giving of glassware to retailers.<sup>57</sup> A manufacturer may not give cases of glassware under conditions which suggest a tacit agreement to start or continue to purchase product.<sup>58</sup> Additionally, Chapter 623 requires retail licensees to keep three years of records of all glassware they receive from a manufacturer.<sup>59</sup> It also requires manufacturers to file similar records with California Department of Alcoholic Beverage Control (ABC) within thirty days of delivery.<sup>60</sup>

Apart from manufacturers and retailers, Chapter 623 requires distributors—the middle tier of California’s three-tier system—to play no role in utilizing the narrow exception.<sup>61</sup> Distributors shall not, directly or indirectly, contribute to the cost of glassware manufacturers provide to a retailer—including transportation, delivery, or storing the glassware.<sup>62</sup> Lastly, Chapter 623 includes a sunset provision which automatically repeals the law on January 1, 2023 unless the

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51. BUS. & PROF. CODE §25600.05 (enacted by Chapter 623).

52. *Compare id* (providing an opportunity for manufacturers to give a limited number of glassware to retailers); *with* CAL. BUS. & PROF. CODE ANN. § 25600(a)(1) (West 2019) (prohibiting a manufacturer from giving “any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage”).

53. BUS. & PROF. §25600.05 (enacted by Chapter 623).

54. *Id.*

55. *Id.*

56. *See* ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION ANALYSIS OF AB 1133, at 1 (Apr. 3 2019) (defining “‘case’ to mean a box containing up to twenty-four pieces of glassware and ‘glassware’ to mean a single-service glass container or non-glass container capable of holding no more than twenty-three ounces of liquid volume”).

57. *See* ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION ANALYSIS OF AB 1133, at 1 (Apr. 3, 2019) (summarizing the procedural requirements of utilizing the substantive exception to the general tied-house laws which prohibit transfer of value amongst the tiers of the alcohol industry).

58. BUS. & PROF. CODE §25600.05 (enacted by Chapter 623).

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

legislature takes action to extend the law.<sup>63</sup>

## V. ANALYSIS

Criticism of Chapter 623 largely stemmed from concern over further erosion of California's tied-house laws because the creation of another exception to the general rule.<sup>64</sup> The motivation for the change is concerning; a major goal of tied-house laws is to prevent aggressive marketing by large manufacturers, yet Chapter 623's primary sponsor is Anheuser-Busch, one of the largest beer producers in the world.<sup>65</sup> An analysis of Big Beer's contemporary business practices sheds light on their intention in supporting this bill and the desired effect it could have on California's independent brewers.<sup>66</sup> Section A details the current efforts Big Beer employs to retain their place at the top of the beer industry.<sup>67</sup> Section B explores the reality of whether manufacturers big and small will benefit from the new law.<sup>68</sup> Section C will cover the cost of implementation and management of the exception in light of the limited budget provided to ABC.<sup>69</sup>

### A. Pay-to-Play: Big Beer's Response to the Growth of the Craft Beer Market

The total consumption of beer has declined in the U.S. for the previous five years.<sup>70</sup> While the alcohol industry as a whole experienced a drop in total volume, beer continues to suffer the greatest loss.<sup>71</sup> Throughout the same period,

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63. *Id.*

64. See Brown Letter, *supra* note 8; and ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1133, at 4 (Apr. 3, 2019) (demonstrating concern over the ability to maintain a fair marketplace for beer in accord with the purpose of tied-house laws).

65. See *Cal. Beer Wholesalers Ass'n* 5 Cal. at 407 (finding a major purpose of tied-house law to be the prevention of negative influence of overly aggressive marketing techniques by large alcohol manufacturers); see also ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1133, at 4 (Apr. 3, 2019) (listing Anheuser-Busch, a subsidiary of AB InBev, as only group in support of proposed legislation).

66. See Arthur, *supra* note 17 (detailing the growth opportunities targeted by Anheuser-Busch's parent company, AB InBev); see also Oishimaya Sen Nag *Which State Has The Most Craft Breweries?*, WORLDATLAS (Mar. 13, 2019), <https://www.worldatlas.com/articles/top-us-craft-beer-producing-states.html> (on file with *The University of the Pacific Law Review*) (identifying California as the state with the most breweries at 764, double that of Washington, with the second most at 369).

67. *Infra* Section IV.A.

68. *Infra* Section IV.B.

69. *Infra* Section IV.C.

70. See *Beer Volume Declines Continue*, BEVERAGE INFO. GROUP *supra* note 12 (providing that American's have consumed 1.1% less beer by total volume in 2017 than 2016, the fifth consecutive year of decline).

71. See Sharon Bailey, *Why is Beer Losing Ground to Wine and Spirits?* (Mar. 27, 2015), <https://marketrealist.com/2015/03/beer-losing-ground-wine-spirits/> (on file with *The University of the Pacific Law Review*) (explaining that beer's total market share has decreased from 56% in 1999 to 48% in 2014 with the largest changes taking place within the light beer category).

the craft beer industry continues to grow, albeit at a slower pace than years past.<sup>72</sup> In 2008, the United States had nearly 1,500 brewers, growing to 5,000 by the end of 2016, and surpassing 7,000 breweries by 2019.<sup>73</sup> This consistent economic growth within craft beer supports an astonishing number of breweries opening annually with minimal closings each year.<sup>74</sup> Over the same period of time, the Big Beer's volume of flagship products has greatly diminished.<sup>75</sup> In its mid-year 2017 earnings, Anheuser Busch acknowledged that Budweiser lost 0.4% and Bud Light lost 0.9% of its stock value in the second quarter of 2017.<sup>76</sup> The changing tastes of American consumers provided craft beer the opportunity to claim a significant share of the domestic beer market.<sup>77</sup> As consumers continue to trade-up to high-end brands, America's biggest brewers are changing their course to protect stakeholder's interests.<sup>78</sup> This trend has put immense pressure on companies like Anheuser-Busch to make changes to their business to retain their

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72. See *Beer Volume Declines Continue*, BEVERAGE INFO. GROUP *supra* note 12 (noting that the craft beer segment grew 4.9% in 2017; less than the 6.0% recorded for the two years prior).

73. See Brad Tuttle, *America Now Has a Record-High 5,000 Breweries and Counting*, FORTUNE (Dec. 10, 2016), <https://fortune.com/2016/12/10/america-record-number-breweries/> (on file with *The University of the Pacific Law Review*) (detailing that the number of breweries in operation near the end of 2016 had grown to over 5,000); see also Justin Kendall, *7,000 Breweries to Operate in U.S. in 2018*, BREWBOUND (Sept. 7, 2018), <https://www.brewbound.com/news/7000-breweries-operate-u-s-2018> (on file with *The University of the Pacific Law Review*) (reporting that the number of breweries has continued to grow to over 7,000 in 2018).

74. *Brewers Association Releases Annual Growth Report*, BREWERS ASS'N (Apr. 2, 2019), <https://www.brewersassociation.org/press-releases/brewers-association-releases-annual-growth-report/> (on file with *The University of the Pacific Law Review*) (reporting that craft beer growth has remained relatively consistent, showcased by 1,049 new breweries opening with only 219 closures in 2018).

75. See Christopher Doering, *Big Beer Struggles to Tap into Shifting Consumer Trends*, FOOD DIVE (Apr. 26, 2018), <https://www.foooddive.com/news/big-beer-struggles-to-tap-into-shifting-consumer-trends/522213/> (on file with *The University of the Pacific Law Review*) (reporting that overall sales have declined, but are "led by sharp drops among flagship products including Budweiser (-6.8%), Coors Light (-4.1%), Miller Lite (-2.8%) and the most popular U.S. brand, Bud Light (-5.7%)").

76. See Dave Eisenberg & Bryan Roth, *Anheuser-Busch InBev Lays Off Hundreds of "High End" Employees*, GOOD BEER HUNTING (Sept. 7, 2017), <https://www.goodbeerhunting.com/sightlines/2017/9/7/anheuser-busch-inbev-the-high-end-layoffs> (on file with *The University of the Pacific Law Review*) (considering the challenges which face Anheuser-Busch in balancing a market which has massive, yet declining sales in the core products with the growing portfolio of high-end beverages) and Chad Langager, *What Is a Basis Point (BPS)?* INVESTOPEDIA.COM (May 22, 2019) <https://www.investopedia.com/ask/answers/what-basis-point-bps/> (on file with *The University of the Pacific Law Review*) (explaining 1 basis point is the equivalent of 0.01% percentage change in the value of a financial instrument.)

77. See Cathy Siegner, *Report: U.S. Beer Volume Has Declined for 5 Years Straight*, FOOD DIVE (Oct. 11, 2018), <https://www.foooddive.com/news/report-us-beer-volume-has-declined-for-5-years-straight/539395/> (on file with *The University of the Pacific Law Review*) (noting that U.S. beer drinkers have been moving away from domestic lagers and turning to craft beers, Mexican imports and wine and spirits); see also *Brewers Association Releases Annual Growth Report*, BREWERS ASS'N, *supra* note 74 (noting that both percentage of market volume and market sales have increased for craft beer to 13.2% and 24.1% respectively).

78. See *Third Quarter 2018 Results*, AB INBEV (Oct. 25, 2018), available at <https://www.ab-inbev.com/content/dam/universaltemplate/ab-inbev/investors/reports-and-filings/quarterly-reports/2018/10/AB%20InBev%20Q18%20Results%20Presentation%20-%20FINAL.pdf> (on file with *The University of the Pacific Law Review*) (explaining AB InBev's success in increasing revenue by 1.8% even though total volume decreased 0.5% due to a focus on premiumization of the market).

place atop a multi-billion-dollar market.<sup>79</sup>

To tap into the growing craft brew market, Big Beer diversified its products.<sup>80</sup> Their approach is twofold; by creating brands that consumers associate with craft beer and acquiring already successful, previously independent breweries.<sup>81</sup> Both Anheuser-Busch and Molson Coors have successfully leveraged their distribution and production capabilities to deliver “craft” beer to consumers with greater efficiency.<sup>82</sup> This increased efficiency allows large manufacturers to sell at prices below market value or take a larger profit margin than would be available to an independent brewer.<sup>83</sup>

Anheuser-Busch provides an example of the different ways Big Beer seeks to protect its dominance in both the traditional and growing craft beer market for years to come.<sup>84</sup> Since 2011, they have purchased ten independent breweries.<sup>85</sup> Although those involved in the beer industry may know, the general public is often unaware because consumers would have no obvious way to recognize the change.<sup>86</sup> This practice allows the parent company to purchase a reputation within the niche market and capitalize on the growth of an industry which would otherwise threaten Big Beer’s products.<sup>87</sup> In addition to buying companies, large

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79. See Arthur, *supra* note 17 (AB InBev recognizing that the craft and specialty divisions are essential to their growth plans).

80. See Dave Roysse, ‘They’ve Got To Diversify’: Anheuser-Busch Buys Liquor, Canned Cocktail Company Cutwater, BENZINGA (Feb. 26, 2019, 10:48am), <https://www.benzinga.com/analyst-ratings/analyst-color/19/02/13237755/theyve-got-to-diversify-anheuser-busch-buys-liquor-cann> (on file with *The University of Pacific Law Review*) (explaining that Anheuser-Busch recognizes that due to premiumization, current growth opportunity is in the high end, craft beer market).

81. See Matt Phillips, *America’s Fastest-growing “Craft” Beer is Made by the World’s Biggest Brewer*, QUARTZ (Feb. 28, 2014), <https://qz.com/182269/americas-fastest-growing-craft-beer-is-made-by-the-largest-beer-entity-on-earth/> (on file with *The University of Pacific Law Review*) (observing Shocktop was created by AB InBev in 2006 as a response to Coors’ Blue Moon); see also Dave Infante, *Biggest Brewer Killed the Craft Beer Buzz*, MEDIUM (Mar. 21, 2019), <https://medium.com/s/story/how-the-worlds-biggest-brewer-killed-the-craft-beer-buzz-e205a28ff632> (on file with *The University of the Pacific Law Review*) (stating that AB InBev has purchased ten independent breweries over the course of six years, making them the biggest “craft beer” company in the world).

82. See Infante, *supra* note 81 (noting that AB InBev can still make the same beer for a subsidiary company but will greatly increase profit margins because their extensive resources related to packaging, advertising, and shipping).

83. See Daniel Croxall, *The Starve Out*, CRAFT BEER LAW PROF (Nov. 14, 2018), <https://www.craftbeerprofessor.com/2018/11/the-starve-out/> (on file with *The University of the Pacific Law Review*) (estimating that big beer is able to produce the “same beer” for up to twenty dollars less than an independent brewer).

84. See generally Adam Oakley, *Welcome to the High End*, AB INBEV (2013), available at [https://www.ab-inbev.com/content/dam/universaltemplate/ab-inbev/investors/presentations-pdf-archive/presentations/2013/13\\_Adam\\_Oakley-HighEnd.pdf](https://www.ab-inbev.com/content/dam/universaltemplate/ab-inbev/investors/presentations-pdf-archive/presentations/2013/13_Adam_Oakley-HighEnd.pdf) (on file with *The University of the Pacific Law Review*) (showcasing the opportunity AB InBev saw over 5 years ago for the growth of a market which threatened their profits).

85. See Infante, *supra* note 81 (pointing to the multiple purchases AB InBev has made since 2011 including Goose Island, 10 Barrel, and Wicked Weed).

86. See *id.* (exposing AB InBev’s practice of using newly acquired companies as proxies to access the local, craft beer market).

87. See *id.* (explaining how acquisitions allow AB InBev to “compete directly with craft brewers on all

manufacturers are using the concept of “brewpubs” to exploit direct to consumer sales, a channel traditionally reserved for independent brewers.<sup>88</sup> While these adopted techniques allow large manufacturers to infiltrate the “craft brew” market, they fail to meet the definition of craft brewer because of their large production volume.<sup>89</sup>

Lobbying is another essential aspect of the U.S. duopoly’s commitment to maintain their status atop the beer industry.<sup>90</sup> Large manufacturers seek changes in the law that create profitable opportunities, typically by adding exceptions to California’s tied-house laws.<sup>91</sup> There are numerous exceptions that are directly attributable to Anheuser-Busch.<sup>92</sup> Chapter 623 was the product of lobbying efforts for the same exception in two consecutive legislative cycles.<sup>93</sup> Anheuser-Busch’s ability to spend outrageous amounts of money to impact legislation illustrates the unfair playing field within the beer industry.<sup>94</sup> Chapter 623 will provide another opportunity for Big Beer to use extensive capital to further its agenda and ultimately assist in the takeover of the craft beer industry.<sup>95</sup>

### *B. Can Big Beer and Craft Manufacturers Both Benefit from Chapter 623?*

Chapter 623 provides that a manufacturer can give up to five cases of glassware to an individual retailer each year.<sup>96</sup> While the limitation appears to

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the things that had brought drinkers to those breweries in the first place: from founders’ funky backstories, to community ties and grassroots aesthetics”).

88. See Nick Hines, *Hop Take: AB InBev Is Done Buying Craft Breweries. Is That a Good Thing?*, VINEPAIR (Sept. 14, 2017), <https://vinepair.com/articles/ab-inbev-brewery-purchases/> (on file with *The University of the Pacific Law Review*) (detailing the plans for both 10 Barrel and Goldenroad, whom are both owned by AB InBev, to open brew pubs in Miami and Oakland respectively).

89. *Craft vs. Crafty*, BREWER’S ASS’N *supra* note 13.

90. See MARIN INSTITUTE, BIG BEER DUOPOLY, *supra* note 14 at 8 (showcasing that in 2008, A-B spent \$3.46 million and MillerCoors spent over \$2.5 million on lobbying expenditures on issues related to alcohol taxes, employment, and trade).

91. See generally Cal. Bus. Prof. Code §§25500-25600 (West 2018) (observing the vast number and types of exceptions to California’s tied-house laws).

92. See MARIN INSTITUTE, BIG BEER DUOPOLY, *supra* note 14 at 10 (examining the previous success Anheuser-Busch has seen when lobbying topics such as alcohol taxes, employment, and trade).

93. Compare ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATIONS, COMMITTEE ANALYSIS OF AB 1133, at 4 (Apr. 3, 2019), with SENATE RULES COMMITTEE, THIRD READING OF AB 2573, at 4 (Aug. 16, 2018) (observing Anheuser-Busch was a sponsor on the submitted bill in both 2018 and 2019).

94. Compare See MARIN INSTITUTE, BIG BEER DUOPOLY, *supra* note 14 at 3 (presenting evidence of AB InBev using aggressive lobbying and political donations to expedite a potentially unfavorable merger and extorting governments by threatening jobs via closure if they experience tax increases) with Katie Green, *Politics and Pale Ales: How Grassroots Activism, Lobbying, and Legislation Impacts the Craft Beer Industry*, CRAFT BEER LAW PROF <https://www.craftbeerprofessor.com/2018/11/craft-beer-law-student-article-katie-green/> (on file with *The University of the Pacific Law Review*) (detailing the “grassroots” mentality pervasive throughout craft beer and general unwillingness to engage in the same “pay to play” that Big Beer engage in).

95. See Croxall, *supra* note 2 (theorizing that Big Beer will be the only company capable of utilizing such an exception and have strongly advocated because they have a history of bullying their way to a desired result).

96. BUS. & PROF. CODE §25600.05 (enacted by Chapter 623).

prevent the aggressive marketing tied-house seeks to eliminate, there are more than 47,000 retailers throughout the state who would be eligible to receive the glassware.<sup>97</sup> Chapter 623 provides manufacturers an opportunity to flood consumer marketplaces with their branding and is against the spirit of California's tied-house laws.<sup>98</sup> Beyond a potential conflict with law and its effect on consumers, Chapter 623 also disadvantages less-established manufacturers who cannot afford to purchase glassware for a prospective retailer.<sup>99</sup> Chapter 623 gives Big Beer manufacturers a chance to use their capital to dominate the advertising in a forum which has been closely regulated.<sup>100</sup> This opportunity is beneficial in multiple ways—it provides a marketing opportunity to consumers and a chance to give value to its retailer.<sup>101</sup> Many retailers, namely bars, operate on tight margins given the high overhead and revolving costs of owning such an establishment.<sup>102</sup> As a result, many bar owners support changes to tied-house laws if they allow manufacturers provide obvious value to their business.<sup>103</sup> Although Chapter 623 prohibits such, bars may still choose to conduct business with the manufacturer who provides them with the greatest bottom-line value.<sup>104</sup> Big Beer can provide this material benefit to retailers they work with, but independent brewers will likely lose business unless they provide the same value.<sup>105</sup> The added service will almost certainly influence a bar owner's

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97. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1133, at 1 (Feb. 21, 2019).

98. *Compare Actmedia, Inc.*, 830 F.2d at 959 (tied-house laws were passed in part “to limit overly aggressive marketing techniques”) with Croxall, *supra* note 2 (hypothesizing that California retailers would be flooded with glassware from manufacturers with the deepest pockets).

99. See Croxall, *supra* note 2 (stating the ability of a manufacturer to shoulder the cost of glassware for a retailer would induce business toward those providing this value; as such, the converse is also true for those who cannot afford to provide the value).

100. See generally CAL. BUS. & PROF. CODE §§ 25500–25512 (West 2018) (creating numerous exceptions to the standard three-tier tied-house system California since 1953).

101. See generally CAL. BUS. & PROF. CODE §25600.05 (enacted by Chapter 623) (providing an exception to the laws which prevent a manufacturer giving a thing of value to a retailer specifically for branded, advertising items which must be used in a commercial setting).

102. See Evan Tarvar, *The Economics of Owning a Bar*, INVESTOPEDIA (Aug. 11, 2019), <https://www.investopedia.com/articles/personal-finance/011216/economics-owning-bar.asp> (on file with *The University of the Pacific Law Review*) (reporting an average bar can expect to profit approximately \$5,000 a month if properly managed).

103. See Jeffrey Schweers, *Bar Owners Cheer New Law Letting Them Receive Free Branded Glassware From Distributors*, TALLAHASSEE DEMOCRAT (Oct. 3, 2018), <https://www.tallahassee.com/story/news/2018/10/03/gov-scott-signs-law-letting-bar-owners-get-free-glassware-finally/1501520002/> (on file with *The University of the Pacific Law Review*) (explaining that a similar bill passed in Florida had a petition of support with over 650 signatures across 200 cities because the law “helps keep [retail] overhead low and is good for business”).

104. See BUS. & PROF. CODE §25600.05 (enacted by Chapter 623) (prohibiting conditional giving of glassware); see also The News Service of Florida, *Legislative Battle Brews Over Beer Glasses*, TALLAHASSEE DEMOCRAT (Mar. 21, 2017) <https://www.tallahassee.com/story/news/politics/2017/03/21/legislative-battle-brews-over-beer-glasses/99477770/> (on file with *The University of the Pacific Law Review*) (noting similar legislation in Florida is likely to leave bar owners beholden to those manufacturers who provide the benefit of free glassware).

105. Croxall, *supra* note 2 (describing the new set of challenges small manufacturers will face when they

decisions regarding the products they carry and may lead to tacit agreements.<sup>106</sup> It is inconsistent with our anti-tied-house system to provide an opportunity to establish a relationship between two tiers based on value provided instead of a preference in product.<sup>107</sup>

Not only is Big Beer more likely to use Chapter 623's exception, they can do so more efficiently than independent breweries.<sup>108</sup> Chapter 623's supporters claim the primary reason for the legislation is to "serve beer in their intended glassware."<sup>109</sup> In theory, both large and small manufacturers should be able to benefit from this opportunity.<sup>110</sup> Yet, complications are evident when exploring the practical application for a great number of less-established breweries.<sup>111</sup> Big Beer typically serves many of its traditional products in pint glasses, most notably American lagers.<sup>112</sup> The pint glass—known for its universality—is also one of the most commonly used pieces of glassware in bars.<sup>113</sup> Further, a pint glass is one of the cheapest pieces a company can purchase as branded glassware.<sup>114</sup> If recent history applies, Big Beer will choose a pint glass as the standard glassware they provide retailers.<sup>115</sup> In contrast, craft breweries prefer various styles of glassware which allow for various shapes and pour sizes which complement their wide range of beers.<sup>116</sup> Thus, smaller manufacturers face higher

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cannot give the same value to a retailer as those with much stronger financial backing).

106. *See id.* (anticipating a likely formation of informal agreements to continue to purchase a manufacturer's beer based on ability to provide glassware).

107. *Compare Actmedia, Inc.*, 830 F.2d at 959 (tied-house laws were passed in part to create distinct tiers within the alcohol industry), with Croxall, *supra* note 2 (reasoning some retailers will be induced to conducting business based on the value provided by a manufacturer).

108. *See* Jeffrey Schweers, *Local Bar Owners Support Free Alcohol Glassware Bill*, TALLAHASSEE DEMOCRAT (Apr 3, 2017), <https://www.tallahassee.com/story/news/2018/10/03/gov-scott-signs-law-letting-bar-owners-get-free-glassware> (on file with *The University of the Pacific Law Review*) (explaining large manufacturers ability to more efficiently produce a greater volume of glassware compared to independent brewers).

109. ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATIONS, COMMITTEE ANALYSIS OF AB 1133, at 4 (Apr. 3, 2019).

110. ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATIONS, COMMITTEE ANALYSIS OF AB 1133, at 4 (Apr. 3, 2019) (implying each and every manufacturer, not "brand" is afforded the right to use such an opportunity limiting large manufacturers with multiple brands).

111. Croxall, *supra* note 2 (demonstrating some craft brewers would welcome the opportunity to provide glassware to a retailer while this practice could put others out of business).

112. *See* Zack Mack *You're Drinking Beer Wrong: 7 Reasons Basic Pint Glasses Suck*, THRILLIST (May 28, 2015), <https://www.thrillist.com/drink/nation/pint-glasses-are-bad-for-beer-proper-beer-glassware> (on file with *The University of Pacific Law Review*) (examining why pint glasses are popular in bars, they are cheap marketing compared to proper glassware).

113. Caitlin Hartney, *Beer Glassware Guide: Beer Glass Types and Uses*, KEGWORKS (May 11, 2017), <https://www.kegworks.com/blog/beer-glassware-guide-beer-glass-types-uses/> (on file with *The University of Pacific Law Review*).

114. *Id.*

115. *Id.*

116. *See* Mack, *supra* note 112 (each beer is suggested to be served in a different glass at different temperatures to ensure proper taste profile).

costs because their glassware selection tends to be larger.<sup>117</sup> Manufacturing these varieties of craft beer glassware costs at least twice as much as manufacturing standard pint glasses.<sup>118</sup> To benefit from Chapter 623's exception, a manufacturer will want to distribute as much branded glassware as possible and independent brewers simply cannot keep up with their larger counterparts.<sup>119</sup> Additionally, bulk pricing allows Big Beer to pay a significantly lower price per unit for the exact same product because the enormous volume they order compared to an independent brewery.<sup>120</sup> The California Craft Brewers Association voiced concern that these simple realities will result in an inability for California's independent breweries to make use of the exception.<sup>121</sup>

### C. Cost of Enforcement

The authority responsible for enforcing Chapter 623 is ABC, a California state department tasked with the regulation and enforcement of the alcohol industry.<sup>122</sup> To regulate compliance with the provisions in Chapter 623, ABC estimates they will open over 1,400 investigations annually at a cost of nearly one million dollars.<sup>123</sup>

Last year, the department operated at a deficiency exceeding ten million dollars.<sup>124</sup> California's 2019 budget earmarks over fifty million dollars for ABC compliance—a significant increase from last year's allotment of thirty-six—to help reduce the deficit.<sup>125</sup> Yet this increase in funds will not completely erase the deficit because new provisions in the budget require ABC to overhaul the state licensing system.<sup>126</sup> Of the fourteen-million-dollar increase in this year's

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117. See Schweers *supra* note 108 (explaining that bar owners consider the expense of purchasing specific glasses for different types of beer prohibitively expensive.) and Hartney, *supra* note 113 (detailing the variety of glassware beer experts would recommend for the specific style of beer which is consumed).

118. See DISCOUNT MUGS, <https://www.discountmugs.com/category/custom-beer-mugs-and-glasses/> (last visited Aug. 11, 2019) (on file with *The University of the Pacific Law Review*) (noticing pint glasses start at \$0.52 while tulip and mugs each cost over \$2.00 a piece).

119. Schweers *supra* note 108.

120. See *Pint Glass*, DISCOUNT MUGS, <https://www.discountmugs.com/product/16-oz.-custom-pint-glasses/?mode=printed> (last visited Aug. 11, 2019) (on file with *The University of the Pacific Law Review*) (listing prices for 576-or-more pint glasses at \$0.98 each while 10,000 or more is reduced to \$0.55 each).

121. ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1133, at 3 (Apr. 3, 2019).

122. See CAL. CONST. art. XX, § 22 (amended 1955) (creating an independent department of the executive branch of the state government for the regulation of alcoholic beverage by constitutional amendment).

123. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1133, at 1 (Feb. 21, 2019).

124. *Brewer's Brief: Multi-Year Plan Proposed to Modernize the Department of Alcoholic Beverage Control (ABC)*, CALIFORNIA CRAFT BREWERS ASS'N (2019), available at <https://www.californiacraftbeer.com/wp-content/uploads/2019/04/Brewer-Brief-ABC-Budget-FINAL.pdf> (on file with *The University of the Pacific Law Review*).

125. Cal. Legis. Serv. ch. 23 (2019) at 137; Cal. Legis. Serv. ch. 29 (2018) at 111

126. See Cal. Legis. Serv. ch. 23 at 137 (noting the text of the annual budget includes provisions addressing ABC's digitization of their process was included in the text of the annual budget).

compliance budget, over eight million has been designated for Program Performance Improvement Initiative, leaving less than six million to make up for a ten-million-dollar deficit.<sup>127</sup>

With the government not budgeting for the expense of Chapter 623, it is likely that ABC will remain in deficit.<sup>128</sup> This budget deficit will either pull funding from other essential aspects of the department or require taxpayers to make up the difference for the benefit of beer manufacturers.<sup>129</sup> This measure needlessly complicates matters and fails to create an orderly marketplace free from predatory marketing.<sup>130</sup>

## VI. CONCLUSION

Chapter 623 blurs the traditional lines of tied-house laws.<sup>131</sup> High volume manufacturers, like Anheuser-Busch, support the law as a mechanism to maximize their market.<sup>132</sup> The new law is a clear deviation from the general rule which limits a manufacturer to providing a retailer gifts or benefits of inconsequential value.<sup>133</sup> Governor Jerry Brown articulated a concise and pointed rationale for his veto of AB 2573; those words hold true today.<sup>134</sup> He warned of the effect of providing an opportunity for a limited number of manufacturers who could afford to use such a provision.<sup>135</sup> He expressed further concern over the influence of large manufacturers on retailer business decisions.<sup>136</sup> The language

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127. *Program Performance Improvement Initiative 2019-20 Budget*, CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL <https://www.abc.ca.gov/licensing/license-fees/program-performance-improvement-initiative-2019-20-budget/> (last visited Aug. 11, 2018) (on file with *The University of the Pacific Law Review*).

128. *Cf.* Cal. Legis. Serv. ch. 23 (detailing the annual budget for ABC with special directive for new expenses stemming from digitization project); *and* ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1133, at 1 (Feb. 21, 2019) (notably missing discussion regarding the means by which the estimated cost of \$977,000 will be handled), with *Brewer's Brief*, CALIFORNIA CRAFT BREWERS, *supra* note 124 (reasoning that an increase of \$6 million in funding will not satisfy the \$10 million deficit while simultaneously beginning a digitization project).

129. *See* Bill Whalen, *A California Budget That Reflects Plenty Of Dollars—But Less Sense*, FORBES (Jun. 30, 2018), <https://www.forbes.com/sites/billwhalen/2018/06/30/a-california-budget-that-reflects-plenty-of-dollars-but-less-sense/#1d8d685a4057> (on file with *The University of McGeorge Law Review*) (noting the 2017 budget was passed at \$183 billion and increased an additional \$5 billion within 6 months).

130. *See* ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1133, at 3 (Apr. 3, 2019) (stating that one of the original rationales of the adoption of California tied-house laws was to create an orderly marketplace free of aggressive marketing).

131. *See* ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1133, at 3 (Apr. 3, 2019) (detailing how tied-house law promotes four aims through clear division of tiers within the alcohol industry and how the proposed exception allows for the possibility of both inducement and aggressive marketing).

132. Croxall, *supra* note 2.

133. *See* CAL. BUS. & PROF. CODE § 25600 (West 2018) (forbidding licensees from giving “any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage”).

134. Brown Letter, *supra* note 8.

135. *Id.*

136. *Id.*

in Chapter 623 has not addressed either of these concerns.<sup>137</sup> By vetoing a bill that all but ensures aggressive marketing by large scale manufacturers, Governor Brown showcased a respect for the original intentions of California's tied-house law.<sup>138</sup>

Chapter 623 sets another dangerous precedent in the erosion of laws which regulate an important, yet problematic industry.<sup>139</sup> The author and sponsors of Chapter 623 demonstrated a lack of regard for tied-house law—echoed in Brown's veto—by submitting a nearly identical bill the following year.<sup>140</sup> Chapter 623 is confirmation that America's largest beer manufacturers can buy the means required to dominate a market which threatens them.<sup>141</sup> The fact Chapter 623 uses taxpayer dollars to promote the interests of few at the expense of independent brewers exacerbates the problem with this newly enacted legislation.<sup>142</sup> Tied-house laws sought to create a simple framework which eliminated the dangers of vertical and horizontal integration and leaves consumers free of aggressive marketing previously utilized by manufacturers.<sup>143</sup> Although unsuccessful last year, the 2019 legislative session saw Chapter 623 enacted despite it seeming to remain in opposition to both of these purposes.<sup>144</sup>

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137. See BUS. & PROF. CODE §25600.05 (enacted by Chapter 623) (asking for the same substantive law with limited additional procedural elements including a sunset date and a requirement to maintain 3 records).

138. *Actmedia, Inc.*, 830 F.2d at 959.

139. See Croxall, *supra* note 4 (noticing the complexities of an industry with so much monetary value that demands stringent regulation because the potential to greatly affect the lives of its consumers).

140. See ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1133, at 3 (Apr. 3, 2019) (remarking that last year, the California State Legislature passed a similar bill but Governor Brown vetoed the bill, citing concerns regarding the preservation of tied-house laws).

141. See MARIN INSTITUTE, BIG BEER DUOPOLY, *supra* note 14 at 3 (asserting that the “power of the duopoly poses great threats to . . . three-tier alcohol regulatory system . . . [Big Beer has] spent tens of millions of dollars lobbying” for governmental benefits).

142. See ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1133, at 1 (Feb. 21, 2019) (explaining the conservative estimate of one million dollars in annual expense from the increase in investigations related to Chapter 623), and Croxall, *supra* note 2 (explaining that a majority of independent brewers would be “simply priced out” of a “legalized pay-to-play.”).

143. Compare *Cal. Beer Wholesalers Ass'n* 5 Cal. at 409 (detailing the dual aims of California's tied-house laws: eliminate aggressive advertising and prevent industry dominance by creating three distinct and independent tiers of manufacturing, distribution, and retail), with Croxall, *supra* note 2 (explaining the high likelihood of business inducement dependent on the furnishing of glassware from a manufacturer to a retailer).

144. Compare AB 2573, 2018 Leg., 2017–2018 Sess. (Cal. 2018) (as passed on Aug. 21, 2018, but not enacted) (bearing evidence of the similar substance of AB 2573 with later proposed AB 1133) and Brown Letter, *supra* note 8. (explaining the reasons why Governor Brown chose to veto AB 1133); with Complete Bill History of AB 1133, [https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=201920200AB1133](https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201920200AB1133) (last visited Dec. 18, 2019) (*on file with The University of the Pacific Law Review*) (contrasting the Governor Newsom's approval of AB 1133 with Governor Brown's veto of AB 2573).