

AMENDED IN SENATE AUGUST 18, 2010

AMENDED IN ASSEMBLY APRIL 14, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2793**

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**Introduced by Committee on Governmental Organization (Coto  
(Chair), Bradford, Chesbro, Evans, Galgiani, Hall, Hill, Lieu,  
Mendoza, V. Manuel Perez, and Portantino)**

March 17, 2010

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An act to amend ~~Section~~ *Sections 24045.7 and 25503.42* of, and to add Section 23433.5 to, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2793, as amended, Committee on Governmental Organization. Alcoholic beverage control: advertising: club ~~licenses~~: *licenses*: *tied-house restrictions*: *nonprofit theaters*: *venues*.

**Existing**

(1) *Existing* law provides for the issuance of a club license for the sale of alcoholic beverages to specified organizations.

This bill would authorize the Department of Alcoholic Beverage Control to issue a club license to nonprofit lawn bowls clubs, that do not discriminate or restrict membership, as specified.

The Alcoholic Beverage Control Act provides that a violation of its provisions is a misdemeanor, unless otherwise specified.

This bill, by including provisions that would be subject to those existing criminal sanctions, would impose a state-mandated local program.

(2) *Under the Alcoholic Beverage Control Act, the Department of Alcoholic Beverage Control may issue a special on-sale general license to any nonprofit theater company, subject to specified requirements. Existing law permits a licensed manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, employee, or agent of that person, to serve on the board of trustees of a nonprofit theater company operating a theater in Napa County licensed pursuant to these provisions.*

*This bill would additionally permit a licensed manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, employee, or agent of that person, to serve on the board of trustees of a nonprofit theater company operating a theater in the City of Livermore licensed pursuant to these provisions.*

*This bill would make legislative findings and declarations as to the necessity of a special statute for the City of Livermore.*

**Existing**

(3) *Existing law generally restricts certain alcoholic beverage licensees, including manufacturers and winegrowers, from paying, crediting, or compensating a retailer for advertising in connection with the advertising and sale of alcoholic beverages but expressly authorizes specified licensees to purchase advertising space or time from specified fully enclosed venues located in Los Angeles County that have a patronage capacity in excess of 2,000, as described, under specified conditions.*

*This bill would limit the patronage capacity allowed in the described venues to at least 2,000, but not more than 3,000.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

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

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

- 1 SECTION 1. Section 23433.5 is added to the Business and
- 2 Professions Code, to read:

1 23433.5. (a) For the purposes of this article, “club” also means  
2 any nonprofit lawn bowls club.

3 (b) No license shall be issued to any nonprofit lawn bowls club  
4 qualifying as a club pursuant to this section if the nonprofit lawn  
5 bowls club in any manner restricts membership or the use of its  
6 facilities on the basis of age or any characteristic listed or defined  
7 in subdivision (b) or (e) of Section 51 of the Civil Code.

8 *SEC. 2. Section 24045.7 of the Business and Professions Code*  
9 *is amended to read:*

10 24045.7. (a) (1) The department may issue a special on-sale  
11 general license to any nonprofit theater company that is exempt  
12 from the payment of income taxes under Section 23701d of the  
13 Revenue and Taxation Code and Section 501(c)(3) of the Internal  
14 Revenue Code of the United States. Any special on-sale general  
15 license issued to a nonprofit theater company pursuant to this  
16 subdivision shall be for a single specified premises only.

17 (2) Theater companies holding a license under this subdivision  
18 may, subject to Section 25631, sell and serve alcoholic beverages  
19 to ticketholders only during, and two hours prior to and one hour  
20 after, a bona fide theater performance of the company.

21 (3) Notwithstanding any other provision in this division, a  
22 licensed manufacturer, winegrower, manufacturer’s agent,  
23 California winegrower’s agent, rectifier, distiller, bottler, importer,  
24 or wholesaler, or any officer, director, employee, or agent of that  
25 person, may serve on the board of trustees or as an officer, director,  
26 or employee of a nonprofit theater company operating a theater in  
27 Napa County *or the City of Livermore* licensed pursuant to this  
28 subdivision.

29 (4) An applicant for such a license shall accompany the  
30 application with an original issuance fee of one thousand dollars  
31 (\$1,000) and shall pay an annual renewal fee as provided in Section  
32 23320.

33 (5) The Legislature finds that it is necessary and proper to  
34 require a separation between manufacturing interests, wholesale  
35 interests, and retail interests in the production and distribution of  
36 alcoholic beverages in order to prevent suppliers from dominating  
37 local markets through vertical integration and to prevent excessive  
38 sales of alcoholic beverages produced by overly aggressive  
39 marketing techniques. The Legislature further finds that the  
40 exceptions established by this subdivision to the general prohibition

1 against tied interests must be limited to their express terms so as  
2 not to undermine the general prohibition, and intends that this  
3 section be construed accordingly.

4 (b) (1) The department may issue a special on-sale beer and  
5 wine license to any nonprofit theater company which has been in  
6 existence for at least eight years, which for at least six years has  
7 performed in facilities leased or rented from a local county fair  
8 association, and which is exempt from the payment of income  
9 taxes under Section 23701d of the Revenue and Taxation Code  
10 and Section 501(c)(3) of the Internal Revenue Code of the United  
11 States.

12 (2) Theater companies holding a license under this subdivision  
13 may, subject to Section 25631, sell and serve beer and wine to  
14 ticketholders only during, and two hours prior to, a bona fide  
15 theater performance of the company. Beer and wine may be sold  
16 from an open-air concession stand which is not attached to the  
17 theater building itself, if the concession stand is located on fair  
18 association property within 30 feet of the theater building and the  
19 alcoholic beverages sold are consumed only in the theater building  
20 itself, or within a designated outdoor area in front of and between  
21 the concession stand and the main public entrance to the theater  
22 building. Nothing in this section permits a theater company to sell  
23 beer or wine during the run of a county fair.

24 (3) An applicant for a license under this subdivision shall  
25 accompany the application with an original issuance fee equal to  
26 the annual renewal fee and shall pay an annual renewal fee as  
27 provided in Section 23320.

28 ~~SEC. 2.~~

29 *SEC. 3.* Section 25503.42 of the Business and Professions Code  
30 is amended to read:

31 25503.42. (a) Notwithstanding any other provision of this  
32 chapter, a beer manufacturer, the holder of a winegrower’s license,  
33 a California winegrower’s agent, a holder of a distilled spirits  
34 rectifiers general license, a distilled spirits manufacturer, or a  
35 distilled spirits manufacturer’s agent may purchase indoor  
36 advertising space or time at a fully enclosed venue with box office  
37 sales and attendance by the public on a ticketed basis only, with  
38 a patronage capacity in excess of 2,000, but not more than 3,000,  
39 located in Los Angeles County within the area subject to the Los  
40 Angeles Sports and Entertainment District Specific Plan adopted

1 by the City of Los Angeles pursuant to ordinance number 174225,  
2 as approved on September 6, 2001, where the owner of the venue  
3 is not the on-sale retail licensee. The purchase of the indoor  
4 advertising space or time shall be subject to all of the following  
5 conditions:

6 (1) The indoor advertising space or time is purchased only at  
7 the venue specified in this subdivision.

8 (2) The purchase of indoor advertising space or time shall be  
9 conducted pursuant to a written agreement entered into by the beer  
10 manufacturer, holder of a winegrower's license, California  
11 winegrower's agent, holder of a distilled spirits rectifiers general  
12 license, distilled spirits manufacturer, or a distilled spirits  
13 manufacturer's agent and the owner of the venue described in this  
14 subdivision. A holder of a wholesale license shall not be a party  
15 to the written agreement or otherwise have any direct or indirect  
16 obligations under the agreement, including an obligation to share  
17 in the costs or contribute to the costs of the indoor advertising  
18 space or time purchased pursuant to this section.

19 (3) An agreement for the purchase of indoor advertising space  
20 or time pursuant to this section shall not be conditioned directly  
21 or indirectly, in any way, on the purchase, sale, or distribution of  
22 any alcoholic beverage manufactured or distributed by the  
23 advertising beer manufacturer, holder of a winegrower's license,  
24 California winegrower's agent, holder of a distilled spirits rectifiers  
25 general license, distilled spirits manufacturer, or a distilled spirits  
26 manufacturer's agent by any on-sale retail licensee.

27 (4) An on-sale licensee operating at a venue described in this  
28 subdivision where indoor advertising space or time is purchased  
29 shall serve other brands of beer distributed by a competing beer  
30 wholesaler in addition to the brands manufactured or marketed by  
31 the advertising beer manufacturer, other brands of wine distributed  
32 by a competing wine wholesaler in addition to the brands produced  
33 or marketed by the advertising winegrower or California  
34 winegrower's agent, and other brands of distilled spirits distributed  
35 by a competing distilled spirits wholesaler in addition to the brands  
36 manufactured or marketed by the advertising distilled spirits  
37 manufacturer, the distilled spirits manufacturer's agent, or a holder  
38 of a distilled spirits rectifiers general license.

39 (5) No more than 15 percent of the retail licensee's monetary  
40 expenditures for distilled spirits and wine for sale on its licensed

1 premises in any calendar year shall be for products manufactured,  
2 produced, or distributed by the holder of a winegrower's license,  
3 California winegrower's agent, distilled spirits manufacturer, holder  
4 of a distilled spirits rectifiers general license, or a distilled spirits  
5 manufacturer's agent that has purchased indoor advertising space.

6 (b) A beer manufacturer, holder of a winegrower's license,  
7 California winegrower's agent, holder of a distilled spirits rectifiers  
8 general license, distilled spirits manufacturer, or a distilled spirits  
9 manufacturer's agent who, through coercion or other illegal means,  
10 induces, directly or indirectly, a holder of a wholesaler's license  
11 to fulfill those contractual obligations entered into pursuant to  
12 subdivision (a) shall be guilty of a misdemeanor and shall be  
13 punished by imprisonment in the county jail not exceeding six  
14 months, or by a fine equal to the greater of an amount equal to the  
15 entire value of the advertising space or time involved in the contract  
16 or ten thousand dollars (\$10,000), or by both imprisonment and  
17 fine. The person shall also be subject to license revocation pursuant  
18 to Section 24200.

19 (c) An on-sale retail licensee who, directly or indirectly, solicits  
20 or coerces a holder of a wholesaler's license to solicit a beer  
21 manufacturer, holder of a winegrower's license, California  
22 winegrower's agent, holder of a distilled spirits rectifiers general  
23 license, distilled spirits manufacturer, or a distilled spirits  
24 manufacturer's agent to purchase indoor advertising time or space  
25 pursuant to subdivision (a) shall be guilty of a misdemeanor and  
26 shall be punished by imprisonment in the county jail not exceeding  
27 six months, or by a fine equal to the greater of an amount equal to  
28 the entire value of the advertising space or time involved in the  
29 contract or ten thousand dollars (\$10,000), or by both imprisonment  
30 and fine. The person shall also be subject to license revocation  
31 pursuant to Section 24200.

32 (d) For purposes of this section, "beer manufacturer" includes  
33 a holder of a beer manufacturer's license, a holder of an out-of-state  
34 beer manufacturer's certificate, or a holder of a beer and wine  
35 importer's general license.

36 (e) Nothing in this section shall authorize the purchasing of  
37 indoor advertising space or time pursuant to subdivision (a) by  
38 any beer manufacturer, holder of a winegrower's license, a  
39 California winegrower's agent, a distilled spirits manufacturer,  
40 holder of a distilled spirits rectifiers general license, or a distilled

1 spirits manufacturer’s agent directly or indirectly from any on-sale  
2 licensee.

3 (f) A venue owner that meets the description provided in  
4 subdivision (a) and that enters into a written agreement pursuant  
5 to this section shall obtain an annual certificate from the  
6 department. The director shall prepare, as part of the annual report  
7 required by Section 23055 for submission to the Legislature, a  
8 listing of the number of certifications made pursuant to this section  
9 or the absence of any certifications. Where there have been no  
10 certifications made pursuant to this section for two consecutive  
11 years, this information shall be included in the report.

12 (g) The Legislature finds that it is necessary and proper to  
13 require a separation among manufacturing interests, wholesale  
14 interests, and retail interests in the production and distribution of  
15 alcoholic beverages in order to prevent suppliers from dominating  
16 local markets through vertical integration and to prevent excessive  
17 sales of alcoholic beverages produced by overly aggressive  
18 marketing techniques. The Legislature further finds that the  
19 exception established by this section to the general prohibition  
20 against tied interests shall be limited to its express terms so as not  
21 to undermine the general prohibition, and intends that this section  
22 be construed accordingly.

23 *SEC. 4. The Legislature finds and declares that a special law*  
24 *is necessary and that a general law cannot be made applicable*  
25 *within the meaning of Section 16 of Article IV of the California*  
26 *Constitution because of the conditions unique to the City of*  
27 *Livermore.*

28 ~~SEC. 3.~~

29 *SEC. 5.* No reimbursement is required by this act pursuant to  
30 Section 6 of Article XIII B of the California Constitution because  
31 the only costs that may be incurred by a local agency or school  
32 district will be incurred because this act creates a new crime or  
33 infraction, eliminates a crime or infraction, or changes the penalty  
34 for a crime or infraction, within the meaning of Section 17556 of  
35 the Government Code, or changes the definition of a crime within  
36 the meaning of Section 6 of Article XIII B of the California  
37 Constitution.

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