

AMENDED IN SENATE MARCH 25, 2010

SENATE BILL

No. 1323

Introduced by Senator Walters

February 19, 2010

An act to amend ~~Section 25503~~ *Sections 25503 and 25600.5* of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1323, as amended, Walters. Alcoholic beverage control: *licensees*: tied-house restrictions.

Existing law, known as tied-house restrictions, prohibits a manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, and wholesaler, and any officer, director, or agent of any of those persons, from having specified relationships or conducting specified business with alcoholic beverages licensees of specified types.

This bill would revise the prohibition to require that the manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, and wholesaler, and any officer, director, or agent of any of those persons, knowingly engage in the specified prohibited behavior.

Existing provisions of the Alcoholic Beverage Control Act generally prohibit manufacturers, winegrowers, bottlers, importers, wholesalers, and others from performing certain activities, with specified exceptions. Existing law, until January 1, 2014, permits a manufacturer, winegrower, rectifier, or distiller, or any authorized agent of that person to provide, free of charge, entertainment, food, and distilled spirits, wine, or nonalcoholic beverages to consumers over 21 years of age at

an invitation-only event in connection with the sale or distribution of wine or distilled spirits, as specified.

This bill would additionally permit a distilled spirits manufacturing agent, holder of a distilled spirits importer’s general license, holder of a distilled spirits rectifier’s general license, or a holder of an out-of-state distilled spirits shipper’s certificate, or any authorized agent of that licenseholder, to provide entertainment, food, and distilled spirits, wine, and nonalcoholic beverages at an event described above.

The Alcoholic Beverage Control Act provides that a violation of specified provisions of the act is punishable as a misdemeanor. This bill, by expanding the definition of an existing crime, would impose a state-mandated local program.

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: ~~no~~-yes.

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

- 1 SECTION 1. Section 25503 of the Business and Professions
- 2 Code is amended to read:
- 3 25503. No manufacturer, winegrower, manufacturer’s agent,
- 4 California winegrower’s agent, rectifier, distiller, bottler, importer,
- 5 or wholesaler, or any officer, director, or agent of any such person,
- 6 shall knowingly do any of the following:
- 7 (a) Directly or indirectly, deliver the possession of any alcoholic
- 8 beverages to any on- or off-sale licensee under an agreement of
- 9 consignment whereby title to the alcoholic beverages is retained
- 10 by the seller or whereby the licensee receiving the alcoholic
- 11 beverages has the right at any time prior to sale to relinquish
- 12 possession to or return them to the original seller.
- 13 (b) Directly or indirectly, give any licensee or any person any
- 14 alcoholic beverages as free goods as a part of any sale or
- 15 transaction involving alcoholic beverages.
- 16 (c) Give secret rebates or make any secret concessions to any
- 17 licensee or the employees or agents of any licensee, and no licensee

1 shall request or knowingly accept from another licensee secret
2 rebates or secret concessions.

3 (d) Give or furnish, directly or indirectly, to any employee of
4 any holder of a retail on-sale or off-sale license only anything of
5 value for the purpose or with the intent to solicit, acquire, or obtain
6 the help or assistance of the employee to encourage or promote
7 either the purchase or the sale of the alcoholic beverage sold or
8 manufactured by the licensee giving or furnishing anything of
9 value, and any employee who accepts or acquires anything of value
10 contrary to the provisions of this subdivision is guilty of a
11 misdemeanor.

12 (e) Willfully or knowingly discriminate, in the same trading
13 area, either directly or indirectly, in the price of any brand of
14 distilled spirits sold to different retail licensees purchasing under
15 like terms and conditions.

16 (f) Pay, credit, or compensate a retailer or retailers for
17 advertising, display, or distribution service in connection with the
18 advertising and sale of distilled spirits.

19 (g) Furnish, give, lend, or rent, directly or indirectly, to any
20 person any decorations, paintings, or signs, other than signs
21 advertising their own products as permitted by Section 25611.1.

22 (h) Pay money or give or furnish anything of value for the
23 privilege of placing or painting a sign or advertisement, or window
24 display, on or in any premises selling alcoholic beverages at retail.

25 *SEC. 2. Section 25600.5 of the Business and Professions Code*
26 *is amended to read:*

27 25600.5. Notwithstanding any other provision of this division,
28 a manufacturer of distilled spirits, *distilled spirits manufacturer's*
29 *agent, holder of a distilled spirits importer's general license, holder*
30 *of a distilled spirits rectifier's general license, holder of an*
31 *out-of-state distilled spirits shipper's certificate, winegrower,*
32 *rectifier, or distiller, or its authorized unlicensed agent, may*
33 *provide, free of charge, entertainment, food, and distilled spirits,*
34 *wine, or nonalcoholic beverages to consumers at an invitation-only*
35 *event in connection with the sale or distribution of wine or distilled*
36 *spirits, subject to the following conditions:*

37 (a) No licensee, other than those specified in this section, may
38 conduct or participate in any portion of an event authorized by this
39 section. A licensee authorized to conduct an event pursuant to this

1 section shall not be precluded from doing so on the basis of holding
2 any other type of alcoholic beverage license.

3 (b) An event authorized by this section shall be conducted on
4 premises for which a caterer's permit authorization has been issued,
5 except that any event held on the premises of a licensed winegrower
6 shall not be authorized to provide any distilled spirits other than
7 brandy.

8 (c) No event authorized by this section shall be conducted on
9 premises for which a permanent retail license has been issued.

10 (d) Except for fair market value payments authorized pursuant
11 to this section, a licensed caterer shall not receive any other item
12 of value or benefit in connection with events authorized by this
13 section.

14 (e) The person authorized by this section to provide, free of
15 charge, entertainment, food, and beverages shall be present during
16 the event.

17 (f) The person authorized by this section to provide, free of
18 charge, entertainment, food, and beverages shall have sole
19 responsibility for providing payment for the entertainment, food,
20 beverages, and rental fees at the event. Payments for entertainment,
21 food, beverages, and rental fees shall not exceed fair market value.
22 No other licensed person shall be authorized, under this section,
23 to provide any portion of these payments.

24 (g) Requests for attendance at the event shall be by invitation
25 sent to consumers over 21 years of age at a specific address via
26 mail or e-mail, by telephone, or presented in person. Invitations
27 or other advertisements of the event shall not be disseminated by
28 any other means. Invitations shall not be sent by the authorized
29 person or their authorized unlicensed agent inviting all of the
30 employees of a retail licensee or a chain of retail licensees under
31 common ownership to an authorized event.

32 (h) Attendance at the event shall be limited to consumers who
33 receive and accept an invitation to the event. Invited consumers
34 may each invite one guest. All attendees shall be over 21 years of
35 age. The total number of consumers and their guests allowed at
36 any event authorized by this section shall not exceed 400 people.
37 Admittance to the event shall be controlled by a list containing the
38 names of consumers who accepted the invitation and their guests.
39 The persons identified in this section shall be responsible for
40 compliance.

1 (i) No premium, gift, free goods, or other thing of value may
2 be given away in connection with the event, except as authorized
3 by this division.

4 (j) The duration of any event authorized by this section shall
5 not exceed four hours.

6 (k) (1) A person authorized to conduct events pursuant to this
7 section shall not conduct more than 12 events in a calendar year
8 where the consumers and guests in attendance exceed 100 people,
9 and not more than 24 events in a calendar year where the
10 consumers and guests in attendance is 100 people or fewer.

11 (2) The limitation on events authorized by this section shall be
12 by person, whether that person holds a single license or multiple
13 licenses. If a person holds multiple licenses, the limitation shall
14 be applied to the person holding the license, not by type of license.

15 (l) When applying for a caterer's permit authorization, the person
16 authorized to conduct an event pursuant to this section shall
17 include, in addition to any information required by the department,
18 all of the following information:

19 (1) The name of the company authorized to conduct the event.

20 (2) The number of people planned to be in attendance.

21 (3) The start and end times for the event.

22 (4) The location of the event.

23 (m) All alcoholic beverages provided pursuant to this section
24 shall be purchased from the holder of the caterer's permit.

25 (n) All alcoholic beverages served at an event authorized by
26 this section shall be served in accordance with Sections 25631 and
27 25632.

28 (o) No person authorized to conduct an event pursuant to this
29 section shall hold such an event at the same location more than
30 eight times in a calendar year.

31 (p) The person authorized to conduct an event under this section
32 may provide attendees at the event with a free ride home. The free
33 rides shall only constitute free ground transportation to attendees'
34 homes or to hotels or motels where attendees are staying.

35 (q) In addition to the prescribed fee imposed upon a licensed
36 caterer to conduct an event authorized by this section, the
37 department may also impose a fee upon a licensee authorized by
38 this section to provide, free of charge, entertainment, food, and
39 beverages at an authorized event. The fee shall be representative

1 of the cost of administering and enforcing the provisions of this
2 section, but shall not exceed two hundred dollars (\$200) per event.

3 (r) The Legislature finds and declares both of the following:

4 (1) That it is necessary and proper to require a separation
5 between manufacturing interests, wholesale interests, and retail
6 interests in the production and distribution of alcoholic beverages
7 in order to prevent suppliers from dominating local markets through
8 vertical integration and to prevent excessive sales of alcoholic
9 beverages produced by overly aggressive marketing techniques.

10 (2) Any exception established by the Legislature to the general
11 prohibition against tied interests must be limited to the express
12 terms of the exception so as to not undermine the general
13 prohibitions.

14 (s) This section shall remain in effect until January 1, 2014, and
15 as of that date is repealed, unless a later enacted statute that is
16 enacted before January 1, 2014, deletes or extends that date.

17 *SEC. 3. No reimbursement is required by this act pursuant to*
18 *Section 6 of Article XIII B of the California Constitution because*
19 *the only costs that may be incurred by a local agency or school*
20 *district will be incurred because this act creates a new crime or*
21 *infraction, eliminates a crime or infraction, or changes the penalty*
22 *for a crime or infraction, within the meaning of Section 17556 of*
23 *the Government Code, or changes the definition of a crime within*
24 *the meaning of Section 6 of Article XIII B of the California*
25 *Constitution.*