

AMENDED IN ASSEMBLY JUNE 2, 2010

SENATE BILL

No. 1480

Introduced by Committee on Governmental Organization (Senators Wright (Chair), Calderon, Denham, Florez, Harman, Negrete McLeod, Oropeza, Padilla, Price, Wyland, and Yee)

March 8, 2010

An act to amend ~~Section 25503.15~~ Sections 23055, 23357.2, 23358.3, 23366.3, 23399, 23399.4, 24045.11, 25503.15, and 25505 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1480, as amended, Committee on Governmental Organization. Alcoholic beverages: tied-house restrictions.

(1) Under existing law, the Alcoholic Beverage Control Act is administered by the Department of Alcoholic Beverage Control. Existing law requires the director of the department to make an annual report to the Legislature on the department's activities, which includes recommendations for legislation to improve the department's abilities to administer the act.

This bill would revise the report requirements to no longer include legislative recommendations.

(2) The Alcoholic Beverage Control Act provides for the issuance of licenses for which various annual fees are charged depending upon the type of license issued. Existing law authorizes the Department of Alcoholic Beverage Control to annually adjust the fees charged commencing with the 2010 calendar year by an amount not to exceed an inflation factor based on the Consumer Price Index.

This bill would make technical, nonsubstantive changes to reflect existing law.

Existing

(3) Existing provisions of the Alcoholic Beverage Control Act, known as “tied-house” restrictions, generally prohibit a winegrower from having an ownership interest in an on-sale alcoholic beverage license, with limited exceptions. Among other exemptions, existing law exempts from the tied-house restrictions any licensed winegrower who meets specified conditions *and any on-sale licensee that holds any ownership or interest in a winegrower*, including that the winegrower *or on-sale licensee*, or his or her officer, director, or agent, enters into an undertaking, approved by the Department of Alcoholic Beverage Control, that makes specified statements regarding the sale or furnishing of wine by the winegrower, or any officer, director, or agent of the winegrower.

This bill would retain the requirement that the winegrower *or on-sale licensee*, or officer, director, or agent meet the specified conditions regarding the sale or furnishing of wine under the circumstances described above, but would eliminate the requirement that statements describing these conditions be made pursuant to an undertaking approved by the department.

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

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

1 SECTION 1. Section 23055 of the Business and Professions
2 Code is amended to read:

3 23055. On or before March 1 of each year, the director shall
4 prepare and submit to the Legislature an annual report on the
5 department’s activities. The report shall include, but not be limited
6 to, the following information for the previous calendar year:

7 (a) The amount of funds allocated and spent by the department
8 for licensing, enforcement, and administration.

9 (b) The number of licenses issued, renewed, denied, suspended,
10 and revoked, by license category.

11 (c) The average time for processing license applications, by
12 license category.

13 (d) The number and type of enforcement activities conducted
14 by the department and by local law enforcement agencies in
15 conjunction with the department.

1 (e) The number, type, and amount of penalties, fines, and other
2 disciplinary actions taken by the department.

3 ~~(f) Recommendations for legislation to improve the ability of~~
4 ~~the department to expeditiously and effectively administer this~~
5 ~~division.~~

6 *SEC. 2. Section 23357.2 of the Business and Professions Code*
7 *is amended to read:*

8 23357.2. (a) An out-of-state beer manufacturer's certificate
9 may be issued by the department upon the written undertaking and
10 agreement by the applicant:

11 (1) That it and its agents and all agencies within this state
12 controlled by it shall comply with all laws of this state and all rules
13 of the department with respect to the sale of alcoholic beverages,
14 including, but not limited to, Chapter 12 (commencing with Section
15 25000) of Division 9, and Section 25509, to the same extent as
16 licensees.

17 (2) That it shall make available, both in California and outside
18 the state, for inspection and copying by the department, all books,
19 documents, and records, located both within and without this state,
20 which are pertinent to the activities of the applicant, its agents and
21 agencies within this state controlled by it, in connection with the
22 sale and distribution of its products within this state.

23 (b) The department may suspend or revoke an out-of-state beer
24 manufacturer's certificate for cause in the manner provided for
25 the suspension or revocation of licenses, and after a hearing which
26 shall be held in the City of Sacramento or in any other county seat
27 in this state as the department determines to be convenient to the
28 holder of an out-of-state certificate.

29 (c) The annual fees for an out-of-state beer manufacturer's
30 certificate shall be fifty-four dollars (\$54) for certificates issued
31 during the 2002 calendar year, fifty-seven dollars (\$57) for
32 certificates issued during the 2003 calendar year, sixty dollars
33 (\$60) for certificates issued during the 2004 calendar year, and for
34 certificates issued during the years thereafter, the annual fee shall
35 be calculated pursuant to subdivisions ~~(b)~~ and (c) and (d) of Section
36 23320.

37 (d) All money collected from the fees provided for in this section
38 shall be deposited in the Alcohol Beverage Control Fund as
39 provided by Section 25761.

1 *SEC. 3. Section 23358.3 of the Business and Professions Code*
2 *is amended to read:*

3 23358.3. A wine grape grower's storage license authorizes the
4 holder to store bulk wine, made from grapes produced by the
5 holder, on the premises of a licensed winegrower and to sell that
6 wine, within this state, to winegrowers, distilled spirits
7 manufacturers, brandy manufacturers, wine blenders, and vinegar
8 producers.

9 The annual fee for a wine grape grower's storage license shall
10 be sixty dollars (\$60) for licenses issued during the 2002 calendar
11 year, sixty-four dollars (\$64) for licenses issued during the 2003
12 calendar year, sixty-seven dollars (\$67) for licenses issued during
13 the 2004 calendar year, and for licenses issued during the years
14 thereafter, the annual fee shall be calculated pursuant to
15 subdivisions ~~(b)~~ and (c) and (d) of Section 23320.

16 *SEC. 4. Section 23366.3 of the Business and Professions Code*
17 *is amended to read:*

18 23366.3. (a) An out-of-state distilled spirits shipper's certificate
19 may be issued by the department upon the written undertaking and
20 agreement by the applicant:

21 (1) That it and its agents and all agencies within this state
22 controlled by it shall comply with all laws of this state and all rules
23 of the department with respect to the sale of alcoholic beverages;

24 (2) That it shall make available, both in California and outside
25 the state, for inspection and copying by the department, all books,
26 documents, and records, located both within and without the state,
27 which are pertinent to the activities of the applicant, its agents and
28 agencies within this state controlled by it, in connection with the
29 sale and distribution of its products within this state.

30 (b) The department may suspend or revoke an out-of-state
31 distilled spirits shipper's certificate for cause in the manner
32 provided for the suspension and revocation of licenses, and after
33 a hearing which shall be held in the City of Sacramento or in such
34 other county seat in the state as the department determines to be
35 convenient to the holder of an out-of-state distilled spirits shipper's
36 certificate.

37 (c) The annual fees for an out-of-state distilled spirits shipper's
38 certificate shall be fifty-four dollars (\$54) for certificates issued
39 during the 2002 calendar year, fifty-seven dollars (\$57) for
40 certificates issued during the 2003 calendar year, sixty dollars

1 (\$60) for certificates issued during the 2004 calendar year, and for
2 certificates issued during the years thereafter, the annual fee shall
3 be calculated pursuant to subdivisions ~~(b)~~ and (c) and (d) of Section
4 23320.

5 (d) All money collected from the fees provided for in this section
6 shall be deposited in the Alcohol Beverage Control Fund, as
7 provided by Section 25761.

8 *SEC. 5. Section 23399 of the Business and Professions Code*
9 *is amended to read:*

10 23399. (a) An on-sale general license authorizes the sale of
11 beer, wine, and distilled spirits for consumption on the premises
12 where sold. Any licensee under an on-sale general license, an
13 on-sale beer and wine license, a club license, or a veterans' club
14 license may apply to the department for a caterer's permit. A
15 caterer's permit under an on-sale general license shall authorize
16 the sale of beer, wine, and distilled spirits for consumption at
17 conventions, sporting events, trade exhibits, picnics, social
18 gatherings, or similar events held any place in the state approved
19 by the department. A caterer's permit under an on-sale beer and
20 wine license shall authorize the sale of beer and wine for
21 consumption at conventions, sporting events, trade exhibits,
22 picnics, social gatherings, or similar events held any place in the
23 state approved by the department. A caterer's permit under a club
24 license or a veterans' club license shall authorize sales at these
25 events only upon the licensed club premises.

26 (b) Any licensee under an on-sale general license or an on-sale
27 beer and wine license may apply to the department for an event
28 permit. An event permit under an on-sale general license or an
29 on-sale beer and wine license shall authorize, ~~at events held~~ no
30 more ~~frequently~~ than four days in any single calendar year, the
31 sale of beer, wine, and distilled spirits only under an on-sale general
32 license or beer and wine only under an on-sale beer and wine
33 license for consumption on property adjacent to the licensed
34 premises and owned or under the control of the licensee. This
35 property shall be secured and controlled by the licensee and not
36 visible to the general public.

37 (c) This section shall in no way limit the power of the
38 department to issue special licenses under the provisions of Section
39 24045 or to issue daily on-sale general licenses under the provisions
40 of Section 24045.1. Consent for sales at each event shall be first

1 obtained from the department in the form of a catering or event
 2 authorization issued pursuant to rules prescribed by it. Any event
 3 authorization shall be subject to approval by the appropriate local
 4 law enforcement agency. Each catering or event authorization shall
 5 be issued at a fee not to exceed ten dollars (\$10) and this fee shall
 6 be deposited in the Alcohol Beverage Control Fund as provided
 7 in Section 25761.

8 (d) At all approved events, the licensee may exercise only those
 9 privileges authorized by the licensee’s license and shall comply
 10 with all provisions of the act pertaining to the conduct of on-sale
 11 premises and violation of those provisions may be grounds for
 12 suspension or revocation of the licensee’s license or permit, or
 13 both, as though the violation occurred on the licensed premises.

14 (e) The fee for a caterer’s permit for a licensee under an on-sale
 15 general license, a caterer’s permit for a licensee under an on-sale
 16 beer and wine license, or an event permit for a licensee under an
 17 on-sale general license or an on-sale beer and wine license shall
 18 be one hundred four dollars (\$104) for permits issued during the
 19 2002 calendar year, one hundred seven dollars (\$107) for permits
 20 issued during the 2003 calendar year, one hundred ten dollars
 21 (\$110) for permits issued during the 2004 calendar year, and for
 22 permits issued during the years thereafter, the annual fee shall be
 23 calculated pursuant to subdivisions ~~(b) and (c)~~ and (d) of Section
 24 23320, and the fee for a caterer’s permit for a licensee under a club
 25 license or a veterans’ club license shall be as specified in Section
 26 23320, and the permit may be renewable annually at the same time
 27 as the licensee’s license. A caterer’s or event permit shall be
 28 transferable as a part of the license.

29 *SEC. 6. Section 23399.4 of the Business and Professions Code*
 30 *is amended to read:*

31 23399.4. (a) A licensee under a winegrower’s license may
 32 apply to the department for a certified farmers’ market sales permit.
 33 A certified farmers’ market sales permit shall authorize the
 34 licensee, a member of the licensee’s family, or an employee of the
 35 licensee to sell wine produced and bottled by the winegrower
 36 entirely from grapes grown by the winegrower at a certified
 37 farmers’ market at any place in the state approved by the
 38 department. The permit may be issued for up to 12 months but
 39 shall not be valid for more than one day a week at any single
 40 specified certified farmers’ market location. A winegrower may

1 hold more than one certified farmers' market sales permit. The
2 department shall notify the city, county, or city and county and
3 applicable law enforcement agency where the certified farmers'
4 market is to be held of the issuance of the permit. A "certified
5 farmers' market" means a location operated in accordance with
6 Chapter 10.5 (commencing with Section 47000) of Division 17 of
7 the Food and Agricultural Code, and the regulations adopted
8 pursuant thereto.

9 (b) The licensed winegrower eligible for the certified farmers'
10 market sales permit shall not sell more than 5,000 gallons of wine
11 annually pursuant to all certified farmers' market sales permits
12 held by any single winegrower. The licensed winegrower shall
13 report total certified farmers' market wine sales to the department
14 on an annual basis. The report may be included within the annual
15 report of production submitted to the department, or pursuant to
16 any regulation as may be prescribed by the department.

17 (c) The fee for any permit issued pursuant to this section shall
18 be forty-four dollars (\$44) for permits issued during the 2002
19 calendar year, forty-seven dollars (\$47) for permits issued during
20 the 2003 calendar year, fifty dollars (\$50) for permits issued during
21 the 2004 calendar year, and for permits issued during the years
22 thereafter, the annual fee shall be calculated pursuant to
23 subdivisions ~~(b)~~ and (c) and (d) of Section 23320.

24 (d) All money collected as fees pursuant to this section shall be
25 deposited in the Alcohol Beverage Control Fund as provided in
26 Section 25761.

27 *SEC. 7. Section 24045.11 of the Business and Professions Code*
28 *is amended to read:*

29 24045.11. The department may issue a special on-sale wine
30 license to an establishment licensed to do business as a bed and
31 breakfast inn.

32 "Bed and breakfast inn," as used in this section, means an
33 establishment of 20 guestrooms or less, which provides overnight
34 transient occupancy accommodations, which serves food only to
35 its registered guests, which serves only a breakfast or similar early
36 morning meal, and with respect to which the price of the food is
37 included in the price of the overnight transient occupancy
38 accommodation. For purposes of this section, "bed and breakfast
39 inn" refers to an establishment as to which the predominant
40 relationship between the occupants thereof and the owner or

1 operator of the establishment is that of innkeeper and guest. For
2 purposes of this section, the existence of some other legal
3 relationships as between some occupants and the owner or operator
4 is immaterial.

5 An establishment holding a license under this section is
6 authorized to serve wine purchased from a licensed winegrower
7 or wine wholesaler only to registered guests of the establishment.
8 Wine shall not be given away to guests but the price of the wine
9 shall be included in the price of the overnight transient occupancy
10 accommodation. Guests shall not be permitted to remove wine
11 served in the establishment from the grounds.

12 The applicant for a license shall accompany the application with
13 an original fee of fifty dollars (\$50) and shall pay an annual renewal
14 fee of six dollars (\$6) for each guestroom in the establishment until
15 December 31, 2004, and for each year thereafter the annual fee
16 shall be calculated pursuant to subdivisions ~~(b)~~ and (c) and (d) of
17 Section 23320.

18 **SECTION 1.**

19 *SEC. 8.* Section 25503.15 of the Business and Professions Code
20 is amended to read:

21 25503.15. (a) Notwithstanding any other provision of this
22 division, a winegrower who manufactures, produces, bottles,
23 processes, imports, or sells wine only, or any officer, director, or
24 agent of that person, may hold the ownership of any interest in
25 any on-sale license, if both of the following conditions exist:

26 (1) Neither that person, nor any officer, director, or agent of
27 that person, sells or furnishes to the holder of the license any wine,
28 or permits the sale pursuant to that license of any wine,
29 manufactured, produced, wholesaled, bottled, processed, imported,
30 or sold by that person or that person's principal for as long as that
31 ownership continues.

32 (2) Neither that person, nor any officer, director, or agent of
33 that person, enters into any collusive scheme, whereby he or she
34 unfairly sells or promotes, in his or her on-sale businesses, the
35 wine of another winegrower who manufactures, produces, bottles,
36 processes, imports, or sells wine only, in return for his or her wine
37 being unfairly sold or promoted in the on-sale businesses of that
38 winegrower.

39 (b) Notwithstanding any other provision of this division, any
40 licensed winegrower or any winegrower who has a wholesale

1 license, or any officer, director, or agent of that person, may hold,
2 directly or indirectly, the ownership of any interest in an on-sale
3 license, provided that each of the following conditions is met:

4 (1) The on-sale licensed premises are licensed as a bona fide
5 public eating place as defined in Section 23038, or as a bona fide
6 bed and breakfast inn as defined in Section 24045.11.

7 (2) The on-sale licensed premises purchases all alcoholic
8 beverages sold and served at the on-sale licensed premises only
9 from California wholesale licensees, other than the licensed
10 winegrower who has a wholesale license and an interest in an
11 on-sale license, unless one of the following conditions is met:

12 (A) The wine purchased is produced or bottled by, or produced
13 and packaged for, the same licensed winegrower that holds an
14 interest in the on-sale license.

15 (B) The wine is produced or bottled by, and is purchased from,
16 a licensed winegrower who sells no more than 125,000 gallons of
17 wine per year for distribution in this state under all brands or trade
18 names owned by that winegrower.

19 (C) The wine is purchased by an on-sale licensee in whose
20 on-sale license a licensed winegrower holds an interest, provided
21 that the winegrower sells no more than 125,000 gallons of wine
22 per year for distribution in this state under all brands or trade names
23 owned by that winegrower.

24 (3) The licensed winegrower and any officer, director, or agent
25 of that person, whether individually or in the aggregate, do not sell
26 and serve the wine products produced or bottled under any brand
27 or trade name owned by that winegrower through more than two
28 on-sale licensed premises in which any of them holds an ownership
29 interest.

30 (4) The number of wine items by brand offered for sale by the
31 on-sale licensed premises that are produced, bottled, processed,
32 imported, or sold by the licensed winegrower or by any person
33 holding any interest in the winegrower does not exceed 15 percent
34 of the total wine items by brand listed and offered for sale in the
35 licensed bona fide public eating place selling and serving that wine.
36 This paragraph does not apply to a bona fide bed and breakfast
37 inn.

38 (c) The Legislature finds that it is necessary and proper to
39 require a separation between manufacturing interests, wholesale
40 interests, and retail interests in the production and distribution of

1 alcoholic beverages in order to prevent suppliers from dominating
2 local markets through vertical integration and to prevent excessive
3 sales of alcoholic beverages produced by overly aggressive
4 marketing techniques. The Legislature further finds that the
5 exceptions established by this section to the general prohibition
6 against tied interests must be limited to their express terms so as
7 not to undermine the general prohibition, and intends that this
8 section be construed accordingly.

9 *SEC. 9. Section 25505 of the Business and Professions Code*
10 *is amended to read:*

11 25505. No on-sale licensee, or any officer, director, employee,
12 or agent of that licensee, shall hold any ownership or interest,
13 directly or indirectly, in any manufacturer's, winegrower's,
14 rectifier's, importer's, or wholesaler's license, the business
15 conducted under that license, or the property used in the business.

16 The provisions of this section shall not apply to the holding by
17 one person of a wholesaler's license and an on-sale license in a
18 county with a population that does not exceed 15,000.

19 The provisions of this section shall not apply to the financial or
20 representative relationship between a manufacturer, winegrower,
21 manufacturer's agent, rectifier, distiller, bottler, importer, or
22 wholesaler, or any officer, director, or agent of that person, and,
23 except as otherwise specified, a person holding only one of the
24 following types of licenses:

25 (a) On-sale general license for a bona fide club.

26 (b) Club license (issued under Article 4 (commencing with
27 Section 23425) of Chapter 3 of this division).

28 (c) Veterans' club license (issued under Article 5 (commencing
29 with Section 23450) of Chapter 3 of this division).

30 (d) On-sale license for boats, trains, sleeping cars or airplanes,
31 except as provided in subdivision (e), where the alcoholic
32 beverages produced or sold by that manufacturer, winegrower,
33 manufacturer's agent, rectifier, bottler, importer, or wholesaler or
34 any officer, director, or agent of that person are not sold, furnished
35 or given, directly or indirectly to the on-sale licensee.

36 The provisions of this section shall not prohibit the leasing of
37 property by an on-sale licensee to a manufacturer, winegrower,
38 rectifier, importer or wholesaler provided that the lease agreement
39 is first approved by the department. The department shall approve
40 the lease agreement unless it finds that the rent payable is not the

1 fair rental value of the property or that the purpose of the lease is
2 to violate any of the provisions of this chapter.

3 The provisions of this section shall not prohibit the holding of
4 any ownership or interest by an on-sale licensee, or any officer,
5 director, employee, or agent of any on-sale licensee, in any
6 winegrower's license, which winegrower manufactures, produces,
7 bottles, processes, imports, or sells wine only, or in the business
8 conducted under any winegrower's license, provided the on-sale
9 licensee, or the officer, director, employee, or agent thereof ~~shall~~
10 ~~have entered into an undertaking approved by the department~~
11 ~~stating that the on-sale licensee, or any such officer, director,~~
12 ~~employee, or agent of that on-sale licensee, will~~ *does* not sell
13 pursuant to that on-sale license any wine manufactured, produced,
14 processed, imported, or sold by the licensed winegrower for so
15 long as the holding of the ownership or interest continues.

16 (e) Any and all of the licenses specifically enumerated,
17 mentioned, or described in Section 25503.30, either singly or in
18 combination.