

AMENDED IN ASSEMBLY APRIL 6, 2011  
AMENDED IN ASSEMBLY MARCH 24, 2011  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 623**

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**Introduced by Assembly Member Williams**  
*(Coauthor: Assembly Member Chesbro)*

February 16, 2011

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An act to amend Sections 23661.7, 24045.18, 25503.56, and 25503.9 of, and to add Section 23393.5 to, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 623, as amended, Williams. Alcoholic beverage licensees: limited off-sale retail wine license.

The Alcoholic Beverage Control Act contains various provisions regulating the application for, the issuance of, the suspension of, and the conditions imposed upon, alcoholic beverage licenses by the Department of Alcoholic Beverage Control. Existing law provides for various annual fees for the issuance of alcoholic beverage licenses depending upon the type of license issued. The Alcoholic Beverage Control Act provides that a violation of its provisions is a misdemeanor, unless otherwise specified.

This bill would authorize the department to issue a limited off-sale retail wine license that would allow the licenseholder to sell wine if certain conditions are met and would grant specified privileges to the licenseholder, as provided. The bill would impose an original fee and an annual renewal fee for the license, which would be deposited in the Alcohol Beverage Control Fund. Because the violation of a provision

of the license is punishable as a misdemeanor, the bill expands the definition of an existing crime, thereby creating 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: yes.

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

1 SECTION 1. Section 23393.5 is added to the Business and  
2 Professions Code, to read:

3 23393.5. (a) The department may issue a limited off-sale retail  
4 wine license which authorizes the sale of wine by the licensee if  
5 all of the following conditions are met:

6 (1) Sales are restricted to those solicited and accepted via direct  
7 mail, telephone, or the Internet.

8 (2) Sales are not conducted from a retail premises open to the  
9 public.

10 (3) The licensee takes possession of and title to all ~~alcoholic~~  
11 ~~beverages~~ wine sold by the licensee.

12 (4) All ~~alcoholic beverages~~ wine sold by the licensee are  
13 delivered to the purchaser from the licensee's licensed premises  
14 or from a licensed public warehouse.

15 (b) *The sale of wine shall only be to consumers and not for*  
16 *resale in packages or quantities of 52 gallons or less per sale, for*  
17 *consumption off the premise where sold.*

18 ~~(b)~~

19 (c) The licensee shall comply with Section 23985, but is  
20 exempted from Sections 23985.5 and 23986.

21 ~~(c)~~

22 (d) The department may impose reasonable conditions upon the  
23 licensee as may be needed in the interest of public health, safety,  
24 and welfare.

25 ~~(d)~~

26 (e) The application for the license shall be accompanied by an  
27 original fee in an amount equivalent to that of an original off-sale

1 beer and wine license pursuant to Section 23954.5. The annual fee  
2 for the license shall be an amount equivalent to that of a retail  
3 package off-sale beer and wine license pursuant to Section 23320.  
4 All moneys collected from the fees shall be deposited in the  
5 Alcoholic Beverage Control Fund, pursuant to Section 25761.

6 SEC. 2. Section 23661.7 of the Business and Professions Code  
7 is amended to read:

8 23661.7. (a) A person who has purchased wine from a licensed  
9 winegrower, the holder of a beer and wine wholesaler's license  
10 and an off-sale retail license that only sells wine, or the holder of  
11 a limited off-sale retail wine license, has taken delivery of that  
12 wine within this state for delivery or use without the state, and has  
13 removed that wine from the state, may return all or any portion of  
14 that wine to the premises of the licensee from whom the wine was  
15 purchased. To make a return the purchaser need not obtain any  
16 license in this state, and may return the wine in a vehicle owned  
17 or controlled by the purchaser.

18 (b) The provisions of Section 32175 of the Revenue and  
19 Taxation Code shall apply to any wine so returned.

20 SEC. 3. Section 24045.18 of the Business and Professions  
21 Code is amended to read:

22 24045.18. Notwithstanding any other provision of this division,  
23 a beer and wine wholesaler that also holds an off-sale beer and  
24 wine retail license and only sells wine or the holder of a limited  
25 off-sale retail wine license may assist a nonprofit organization  
26 holding a temporary wine license in conducting a winetasting. The  
27 privilege granted under this section for a beer and wine wholesaler  
28 that also holds an off-sale beer and wine retail license and only  
29 sells wine *or the holder of a limited off-sale retail wine license*  
30 shall apply only to wine produced for the donating licensee that  
31 is labeled with a brand owned exclusively by the donating licensee  
32 and shall include in the tasting only wine donated by the licensee  
33 to the event.

34 SEC. 4. Section 25503.56 of the Business and Professions Code  
35 is amended to read:

36 25503.56. (a) An authorized licensee, or a designated  
37 representative of an authorized licensee acting as an agent of the  
38 authorized licensee, may conduct, on the area specified by  
39 paragraph (1) of subdivision (c) of Section 23396.6, an instructional  
40 tasting event for consumers on the subject of wine, beer, or distilled

1 spirits, including, but not limited to, the history, nature, values,  
2 and characteristics of wine, beer, or distilled spirits, and the  
3 methods of presenting and serving wine, beer, or distilled spirits.

4 (1) (A) Except as provided in subparagraph (B), the  
5 instructional tasting event may include the serving of alcoholic  
6 beverages to an attendee of legal drinking age. An instructional  
7 tasting event on the subject of wine or distilled spirits shall be  
8 limited to not more than three tastings per person per day. A single  
9 tasting of distilled spirits shall not exceed one-fourth of one ounce  
10 and a single tasting of wine shall not exceed one ounce. An  
11 instructional tasting event on the subject of beer shall be limited  
12 to not more than the tasting of eight ounces of beer per person per  
13 day. The wine, beer, or distilled spirits tasted shall be limited to  
14 the products that are authorized to be sold by the authorized  
15 licensee and the licenseholder under its off-sale license.

16 (B) A beer and wine wholesaler may conduct an instructional  
17 tasting event but shall not serve tastes of beer unless the beer and  
18 wine wholesaler also holds a beer manufacturer's license, an  
19 out-of-state beer manufacturer's certificate, or more than six  
20 distilled spirits wholesaler's licenses.

21 (C) No charge of any sort shall be made for the tastings. Except  
22 for the purposes of Section 23985, the serving of tastings shall not  
23 be deemed a sale of products pursuant to this division.

24 (D) A person under 21 years of age shall not serve wine, beer,  
25 or distilled spirits at the instructional tasting event.

26 (E) All tastes shall be served by an employee of the authorized  
27 licensee, the designated representative of the authorized licensee,  
28 or by an employee of the designated representative of the  
29 authorized licensee.

30 (F) An authorized licensee, or a designated representative of an  
31 authorized licensee, shall either supply the wine or distilled spirits  
32 to be tasted during the instructional tasting event or purchase the  
33 wine or distilled spirits from the licenseholder at the original  
34 invoiced cost. An authorized licensee, or a designated  
35 representative of an authorized licensee, shall purchase beer to be  
36 tasted during the instructional tasting event from the licenseholder  
37 at the original invoiced cost.

38 (G) Any unused wine, beer, or distilled spirits remaining from  
39 the tasting shall be removed from the off-sale licensed premises  
40 by the authorized licensee or its designated representative.

1 (2) If the instructional tasting event is conducted by a designated  
2 representative of an authorized licensee, the designated  
3 representative shall not be owned, controlled, or employed directly  
4 or indirectly by the licenseholder on whose premises the  
5 instructional tasting event is held.

6 (3) An instructional tasting event shall be limited to a single  
7 type of alcoholic beverage. For purposes of this paragraph, “type  
8 of alcoholic beverage” means distilled spirits, wine, or beer.

9 (b) For purposes of this section:

10 (1) “Authorized licensee” means a winegrower, California  
11 winegrower’s agent, beer and wine importer general, beer and  
12 wine wholesaler, wine rectifier, distilled spirits manufacturer,  
13 distilled spirits manufacturer’s agent, distilled spirits importer  
14 general, distilled spirits rectifier, distilled spirits general rectifier,  
15 rectifier, out-of-state distilled spirits shipper’s certificate holder,  
16 distilled spirits wholesaler, brandy manufacturer, brandy importer,  
17 California brandy wholesaler, beer manufacturer, or an out-of-state  
18 beer manufacturer certificate holder. “Authorized licensee” shall  
19 not include an entity that solely holds a combination of a beer and  
20 wine wholesale license and an off-sale beer and wine retail license  
21 or holds those ~~licensees~~ *licenses* solely in combination with any  
22 license not listed in this paragraph, *or holds a limited off-sale retail*  
23 *wine license.*

24 (2) “Licenseholder” means an off-sale retail licensee issued an  
25 instructional tasting license pursuant to Section 23396.6.

26 (3) “Location” means the total contiguous area encompassed  
27 by the off-sale and on-sale licenses.

28 (c) Notwithstanding subparagraph (E) of paragraph (1) of  
29 subdivision (a), a licenseholder may conduct an instructional tasting  
30 event that includes the serving of tastings only when an authorized  
31 licensee or its designated representative are unable to conduct an  
32 instructional tasting event previously advertised pursuant to this  
33 section and scheduled by the authorized licensee or its designated  
34 representative, provided the licenseholder supplies the wine, beer,  
35 or distilled spirits used in the instructional tasting event and  
36 provides or pays for a person to serve the wine, beer, or distilled  
37 spirits. Instructional tasting events conducted by a licenseholder  
38 pursuant to this subdivision are subject to the provisions of this  
39 section and Section 23396.6.

1 (d) No more than one authorized licensee, or its designated  
2 representative, may conduct an instructional tasting event that  
3 includes the serving of tastes of wine, beer, or distilled spirits at  
4 any one individual licensed premises of a licenseholder per day.

5 (e) A licenseholder that also holds an on-sale beer and wine  
6 license, an on-sale beer and wine eating place license, or an on-sale  
7 general license shall not allow an authorized licensee, or its  
8 designated representative, to conduct an instructional tasting event  
9 on the same day and at the same location as any instructional  
10 tasting event held pursuant to subdivision (b) of Section 23386,  
11 Section 25503.4, subdivision (c) of Section 25503.5, or Section  
12 25503.55.

13 (f) A licenseholder shall not condition the allowance of an  
14 instructional tasting event upon the use of a particular designated  
15 representative of an authorized licensee.

16 (g) (1) In addition to any point of sale advertising or other  
17 advertising items allowed under this division or under rules of the  
18 department, an authorized licensee or its designated representative,  
19 in his or her absolute discretion and with permission of the  
20 licenseholder upon whose premises the instructional tasting event  
21 will be held, may list in an advertisement to the general public the  
22 name and address of the licenseholder, the names of the alcoholic  
23 beverages being featured at the instructional tasting event, and the  
24 time, date, and location of, and other information about, the  
25 instructional tasting event, provided that both of the following  
26 apply:

27 (A) The advertisement does not contain the retail price of the  
28 alcoholic beverages.

29 (B) The listing of the licenseholder's name and address is the  
30 only reference to the licenseholder in the advertisement.

31 (2) Pictures or illustrations of the licenseholder's licensed  
32 premises and laudatory references to the licenseholder in these  
33 advertisements are not authorized. Nothing in this section shall  
34 authorize an authorized licensee or its designated representative  
35 to share in the costs, if any, of the licenseholder.

36 (h) A licenseholder may advertise an instructional tasting event  
37 to the general public. The costs of this advertising shall be borne  
38 solely by the licenseholder. Advertising permitted by this  
39 subdivision includes flyers, newspaper ads, Internet  
40 communications, and interior signage.

1 (i) Except as otherwise provided in this division or rules of the  
2 department, no premium, gift, free goods, or other thing of value  
3 shall be given away by an authorized licensee or its designated  
4 representative in connection with an instructional tasting event  
5 that includes tastings of an alcoholic beverage.

6 (j) The licenseholder or the authorized licensee or its designated  
7 representative are authorized to perform set up and break down of  
8 the instructional tasting event area. The authorized licensee or its  
9 designated representative may provide, free of charge to the  
10 licenseholder, the equipment, materials, and utensils as may be  
11 required for use in connection with the instructional tasting event.

12 (k) (1) A licenseholder shall not require, or enter into a collusive  
13 scheme with an authorized licensee or its designated representative  
14 to conduct one or more instructional tasting events as a condition  
15 of the licenseholder carrying or continuing to carry a brand or  
16 brands of the authorized licensee or as a condition for display or  
17 other merchandising plan which is based on an agreement to  
18 provide shelf space. An authorized licensee or its designated  
19 representative shall not require any preferential treatment or benefit  
20 from, or enter into a collusive scheme with, a licenseholder as a  
21 condition of conducting one or more instructional tasting events,  
22 require a licenseholder to carry or continue to carry a brand or  
23 brands of the authorized licensee as a condition of conducting one  
24 or more instructional tasting events, or condition display or other  
25 merchandising plans that are based on agreements for the provision  
26 of shelf space on the conducting of one or more instructional tasting  
27 events. Any agreement, whether written or oral, entered into by  
28 and between a licenseholder and an authorized licensee or its  
29 designated representative that precludes the conducting of  
30 instructional tasting events on the premises of the licenseholder  
31 by any other authorized licensee is prohibited. A licenseholder or  
32 authorized licensee, or its designated representative, shall not use  
33 an instructional tasting event to circumvent any other requirements  
34 of this division.

35 (2) In addition to any other remedies available under this  
36 division, upon a finding by the department of a failure to comply  
37 with this subdivision, the department shall suspend the instructional  
38 tasting license of the licenseholder and the privilege of the  
39 authorized licensee to conduct instructional events for not less than  
40 six months but for no more than one year.

1 (l) The Legislature finds that it is necessary and proper to require  
2 a separation between manufacturing interests, wholesale interests,  
3 and retail interests in the production and distribution of alcoholic  
4 beverages in order to prevent suppliers from dominating local  
5 markets through vertical integration and to prevent excessive sales  
6 of alcoholic beverages produced by overly aggressive marketing  
7 techniques. The Legislature further finds that the exception  
8 established by this section to the general prohibition against tied  
9 interests must be limited to its express terms so as not to undermine  
10 the general prohibition, and intends that this section be construed  
11 accordingly.

12 ~~SEC. 4.~~

13 SEC. 5. Section 25503.9 of the Business and Professions Code  
14 is amended to read:

15 25503.9. (a) Nothing in this division prohibits a winegrower,  
16 a beer and wine wholesaler that also holds an off-sale beer and  
17 wine retail license and only sells wine, or the holder of a limited  
18 off-sale retail wine license from giving or selling wine, a beer  
19 manufacturer from giving or selling beer, a distilled spirits  
20 manufacturer, rectifier, or a distilled spirits manufacturer's agent  
21 from giving or selling distilled spirits, or an importer general  
22 licensee from giving or selling beer, wine, or distilled spirits at  
23 prices other than those contained in schedules filed with the  
24 department, to any of the following:

25 (1) A nonprofit charitable corporation or association exempt  
26 from payment of income taxes under the provisions of the Internal  
27 Revenue Code of the United States and Chapter 4 (commencing  
28 with Section 23701) of Part 11 of Division 2 of the Revenue and  
29 Taxation Code.

30 (2) A nonprofit incorporated trade association that is exempt  
31 from payment of income taxes under the provisions of the Internal  
32 Revenue Code of the United States and Chapter 4 (commencing  
33 with Section 23701) of Part 11 of Division 2 of the Revenue and  
34 Taxation Code, and the members of which trade association are  
35 licensed under this division. However, the wine, beer, and distilled  
36 spirits shall be used solely for a convention or meeting of the  
37 nonprofit incorporated trade association.

38 (3) A nonprofit corporation or association that is exempt from  
39 payment of income taxes under the provisions of the Internal  
40 Revenue Code of the United States and is defined as a tax exempt

1 organization under Section 23701a, 23701b, 23701d, 23701e,  
2 23701f, 23701g, 23701i, 23701k, 23701l, 23701r, or 23701w of  
3 the Revenue and Taxation Code. Wine, beer, and distilled spirits  
4 given or sold by a winegrower, beer manufacturer, distilled spirits  
5 manufacturer, distilled spirits manufacturer's agent, or importer  
6 general licensee pursuant to this subdivision may be furnished  
7 only in connection with public service or fundraising activities  
8 including picnics, parades, fairs, amateur sporting events,  
9 agricultural exhibitions, or similar events.

10 (b) Nothing in this division prohibits a winegrower, a beer and  
11 wine wholesaler that also holds an off-sale beer and wine retail  
12 license and only sells wine, or the holder of a limited off-sale retail  
13 wine license from giving or selling wine, a beer manufacturer from  
14 giving or selling beer, a distilled spirits manufacturer, rectifier, or  
15 a distilled spirits manufacturer's agent from giving or selling  
16 distilled spirits, or a beer and wine wholesaler that also holds an  
17 importer's license from giving or selling beer, wine, or distilled  
18 spirits at prices other than those contained in schedules filed with  
19 the department, to any of the following:

20 (1) A nonprofit charitable corporation or association exempt  
21 from payment of income taxes under the provisions of the Internal  
22 Revenue Code of the United States and Chapter 4 (commencing  
23 with Section 23701) of Part 11 of Division 2 of the Revenue and  
24 Taxation Code.

25 (2) A nonprofit incorporated trade association that is exempt  
26 from payment of income taxes under the provisions of the Internal  
27 Revenue Code of the United States and Chapter 4 (commencing  
28 with Section 23701) of Part 11 of Division 2 of the Revenue and  
29 Taxation Code, and the members of which trade association are  
30 licensed under this division. However, the wine, beer, and distilled  
31 spirits shall be used solely for a convention or meeting of the  
32 nonprofit incorporated trade association.

33 (3) A nonprofit corporation or association that is exempt from  
34 payment of income taxes under the provisions of the Internal  
35 Revenue Code of the United States and is defined as a tax exempt  
36 organization under Section 23701a, 23701d, 23701e, 23701f, or  
37 23701r of the Revenue and Taxation Code. Wine, beer, and  
38 distilled spirits given or sold by a winegrower, beer manufacturer,  
39 distilled spirits manufacturer, distilled spirits manufacturer's agent,  
40 or licensed importer pursuant to this subdivision may be furnished

1 only in connection with public service or fundraising activities  
2 including picnics, parades, fairs, amateur sporting events,  
3 agricultural exhibitions, or similar events.

4 ~~SEC. 5.~~

5 *SEC. 6.* No reimbursement is required by this act pursuant to  
6 Section 6 of Article XIII B of the California Constitution because  
7 the only costs that may be incurred by a local agency or school  
8 district will be incurred because this act creates a new crime or  
9 infraction, eliminates a crime or infraction, or changes the penalty  
10 for a crime or infraction, within the meaning of Section 17556 of  
11 the Government Code, or changes the definition of a crime within  
12 the meaning of Section 6 of Article XIII B of the California  
13 Constitution.