

AMENDED IN ASSEMBLY APRIL 12, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2694**

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**Introduced by Committee on Governmental Organization (Hall (Chair), Nestande (Vice Chair), Atkins, Block, Blumenfield, Chesbro, Cook, Galgiani, Gatto, Hill, Jeffries, Ma, Perea, V. Manuel Pérez, Silva, and Torres)**

March 15, 2012

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An act to amend Sections 23355, 23393.5, and 23958.4, ~~25503.8, and 25503.85~~ of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2694, as amended, Committee on Governmental Organization. Alcoholic beverages.

(1) Existing law provides that licenses provided for in a specified article within the Alcoholic Beverage Control Act authorize the license holder to exercise the rights and privileges specified in that article.

This bill would provide that the licenses provided for in the Alcoholic Beverage Control Act authorize the license holder to exercise the rights and privileges specified in that act.

~~(2) Existing law prohibits specified holders of alcoholic beverage licenses, including wholesalers, from having specified relationships with an on-sale alcoholic beverage licensee, but allows those licensees to purchase advertising space and time from, or on behalf of, on-sale retail licensees under specified conditions, including, in some cases, a requirement that the on-sale licensee serve other brands of beer, wine, and distilled spirits from competing wholesalers.~~

~~This bill would remove the competing wholesalers requirement under 2 specified circumstances and instead require the on-sale licensee to serve brands of beer, wine, and distilled spirits other than those produced by the wholesaler with whom the on-sale retail licensee has a relationship.~~

~~(3)~~

(2) This bill would also make technical and conforming changes.

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 23355 of the Business and Professions  
2 Code is amended to read:

3 23355. Except as otherwise provided in this division and subject  
4 to the provisions of Section 22 of Article XX of the Constitution,  
5 the licenses provided for in this division authorize the person to  
6 whom issued to exercise the rights and privileges specified in this  
7 division and no others at the premises for which issued during the  
8 year for which issued.

9 SEC. 2. Section 23393.5 of the Business and Professions Code  
10 is amended to read:

11 23393.5. (a) The department may issue a limited off-sale retail  
12 wine license which authorizes the sale of wine by the licensee if  
13 all of the following conditions are met:

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

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

18 (3) The licensee takes possession of and title to all wine sold  
19 by the licensee.

20 (4) All wine sold by the licensee are delivered to the purchaser  
21 from the licensee’s licensed premises or from a licensed public  
22 warehouse.

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

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

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

4 (e) The application for the license shall be accompanied by an  
5 original fee in an amount equivalent to that of an original off-sale  
6 beer and wine license pursuant to Section 23954.5. The annual fee  
7 for the license shall be an amount equivalent to that of a retail  
8 package off-sale beer and wine license pursuant to Section 23320.  
9 All moneys collected from the fees shall be deposited in the  
10 Alcohol Beverage Control Fund, pursuant to Section 25761.

11 SEC. 3. Section 23958.4 of the Business and Professions Code  
12 is amended to read:

13 23958.4. (a) For purposes of Section 23958, “undue  
14 concentration” means the case in which the applicant premises for  
15 an original or premises-to-premises transfer of any retail license  
16 are located in an area where any of the following conditions exist:

17 (1) The applicant premises are located in a crime reporting  
18 district that has a 20 percent greater number of reported crimes,  
19 as defined in subdivision (c), than the average number of reported  
20 crimes as determined from all crime reporting districts within the  
21 jurisdiction of the local law enforcement agency.

22 (2) As to on-sale retail license applications, the ratio of on-sale  
23 retail licenses to population in the census tract or census division  
24 in which the applicant premises are located exceeds the ratio of  
25 on-sale retail licenses to population in the county in which the  
26 applicant premises are located.

27 (3) As to off-sale retail license applications, the ratio of off-sale  
28 retail licenses to population in the census tract or census division  
29 in which the applicant premises are located exceeds the ratio of  
30 off-sale retail licenses to population in the county in which the  
31 applicant premises are located.

32 (b) Notwithstanding Section 23958, the department may issue  
33 a license as follows:

34 (1) With respect to a nonretail license, a retail on-sale bona fide  
35 eating place license, a retail license issued for a hotel, motel, or  
36 other lodging establishment, as defined in subdivision (b) of  
37 Section 25503.16, a retail license issued in conjunction with a beer  
38 manufacturer’s license, or a winegrower’s license, if the applicant  
39 shows that public convenience or necessity would be served by  
40 the issuance.

1 (2) With respect to any other license, if the local governing body  
2 of the area in which the applicant premises are located, or its  
3 designated subordinate officer or body, determines within 90 days  
4 of notification of a completed application that public convenience  
5 or necessity would be served by the issuance. The 90-day period  
6 shall commence upon receipt by the local governing body of (A)  
7 notification by the department of an application for licensure, or  
8 (B) a completed application according to local requirements, if  
9 any, whichever is later.

10 If the local governing body, or its designated subordinate officer  
11 or body, does not make a determination within the 90-day period,  
12 then the department may issue a license if the applicant shows the  
13 department that public convenience or necessity would be served  
14 by the issuance. In making its determination, the department shall  
15 not attribute any weight to the failure of the local governing body,  
16 or its designated subordinate officer or body, to make a  
17 determination regarding public convenience or necessity within  
18 the 90-day period.

19 (c) For purposes of this section, the following definitions shall  
20 apply:

21 (1) “Reporting districts” means geographical areas within the  
22 boundaries of a single governmental entity (city or the  
23 unincorporated area of a county) that are identified by the local  
24 law enforcement agency in the compilation and maintenance of  
25 statistical information on reported crimes and arrests.

26 (2) “Reported crimes” means the most recent yearly compilation  
27 by the local law enforcement agency of reported offenses of  
28 criminal homicide, forcible rape, robbery, aggravated assault,  
29 burglary, larceny theft, and motor vehicle theft, combined with all  
30 arrests for other crimes, both felonies and misdemeanors, except  
31 traffic citations.

32 (3) “Population within the census tract or census division” means  
33 the population as determined by the most recent United States  
34 decennial or special census. The population determination shall  
35 not operate to prevent an applicant from establishing that an  
36 increase of resident population has occurred within the census tract  
37 or census division.

38 (4) “Population in the county” shall be determined by the annual  
39 population estimate for California counties published by the  
40 Population Research Unit of the Department of Finance.

1 (5) “Retail licenses” shall include the following:  
2 (A) Off-sale retail licenses: Type 20 (off-sale beer and wine)  
3 and Type 21 (off-sale general).

4 (B) On-sale retail licenses: All retail on-sale licenses, except  
5 Type 43 (on-sale beer and wine for train), Type 44 (on-sale beer  
6 and wine for fishing party boat), Type 45 (on-sale beer and wine  
7 for boat), Type 46 (on-sale beer and wine for airplane), Type 53  
8 (on-sale general for train and sleeping car), Type 54 (on-sale  
9 general for boat), Type 55 (on-sale general for airplane), Type 56  
10 (on-sale general for vessels of more than 1,000 tons burden), and  
11 Type 62 (on-sale general bona fide public eating place intermittent  
12 dockside license for vessels of more than 15,000 tons  
13 displacement).

14 (6) A “premises to premises transfer” refers to each license  
15 being separate and distinct, and transferable upon approval of the  
16 department.

17 (d) For purposes of this section, the number of retail licenses  
18 in the county shall be established by the department on an annual  
19 basis.

20 (e) The enactment of this section shall not affect any existing  
21 rights of any holder of a retail license issued prior to April 29,  
22 1992, whose premises were destroyed or rendered unusable as a  
23 result of the civil disturbances occurring in Los Angeles from April  
24 29 to May 2, 1992, to reopen and operate those licensed premises.

25 (f) This section shall not apply if the premises have been  
26 licensed and operated with the same type license within 90 days  
27 of the application.

28 ~~SEC. 4. Section 25503.8 of the Business and Professions Code~~  
29 ~~is amended to read:~~

30 ~~25503.8.—(a) Notwithstanding any other provision of this~~  
31 ~~chapter, a beer manufacturer, the holder of a winegrower’s license,~~  
32 ~~a California winegrower’s agent, a distilled spirits rectifier, a~~  
33 ~~distilled spirits manufacturer, or a distilled spirits manufacturer’s~~  
34 ~~agent may purchase advertising space and time from, or on behalf~~  
35 ~~of, an on-sale retail licensee if all of the following conditions are~~  
36 ~~met:~~

37 ~~(1) The on-sale licensee is the owner of any of the following:~~

38 ~~(A) A fully enclosed auditorium or theater with a fixed seating~~  
39 ~~capacity in excess of 6,000 seats, at least 60 percent of the use of~~

1 which is for plays or musical concerts, not including sporting  
2 events.

3 (B) A motion picture studio facility at which public tours are  
4 conducted for at least four million people per year.

5 (C) A retail, entertainment development adjacent to, and under  
6 common ownership with, a theme park, amphitheater, and motion  
7 picture production studio.

8 (D) A theme or amusement park and the adjacent retail, dining,  
9 and entertainment area located in the City of Los Angeles, Los  
10 Angeles County, or Orange County.

11 (E) A fully enclosed theater, with box office sales and attendance  
12 by the public on a ticketed basis only, with a fixed seating capacity  
13 in excess of 6,000 seats, located in Los Angeles County within the  
14 area subject to the Los Angeles Sports and Entertainment District  
15 Specific Plan adopted by the City of Los Angeles pursuant to  
16 ordinance number 174225, as approved on September 6, 2001.

17 (F) A fully enclosed arena with a fixed seating capacity in excess  
18 of 15,000 seats located in Santa Clara County. With respect to the  
19 arena described in this subparagraph, advertising space may also  
20 be purchased from, or on behalf of, a lessee or manager of the  
21 arena.

22 (2) The advertising space or time is purchased only in connection  
23 with one of the following:

24 (A) In the case of a fully enclosed auditorium or theater, in  
25 connection with sponsorship of plays or musical concerts to be  
26 held on the premises of the auditorium or theater owned by the  
27 on-sale licensee.

28 (B) In the case of a motion picture studio facility, in connection  
29 with sponsorship of the public tours or special events conducted  
30 at the studio facility.

31 (C) In the case of a retail, entertainment development, in  
32 connection with sponsorship of public tours or special events  
33 conducted at the development.

34 (D) In the case of a theme or amusement park and the adjacent  
35 retail, dining, and entertainment area, located in the City of Los  
36 Angeles, Los Angeles County, or Orange County, in connection  
37 with daily activities and events at the theme or amusement park  
38 and the adjacent retail, dining, and entertainment area.

1 ~~(E) In the case of the fully enclosed theater described in~~  
2 ~~subparagraph (E) of paragraph (1) of subdivision (a), in connection~~  
3 ~~with events conducted at the theater.~~

4 ~~(F) In the case of a fully enclosed arena described in~~  
5 ~~subparagraph (F) of paragraph (1) of subdivision (a), interior~~  
6 ~~advertising in connection with events conducted within the arena.~~

7 ~~(3) The on-sale licensee serves other brands of beer in addition~~  
8 ~~to the brand manufactured or marketed by the beer manufacturer,~~  
9 ~~other brands of wine in addition to the brand produced or marketed~~  
10 ~~by the winegrower or California winegrower's agent, and other~~  
11 ~~brands of distilled spirits in addition to the brand manufactured or~~  
12 ~~marketed by the distilled spirits manufacturer or distilled spirits~~  
13 ~~manufacturer's agent purchasing the advertising space or time.~~

14 ~~(b) Any purchase of advertising space or time conducted~~  
15 ~~pursuant to subdivision (a) shall be conducted pursuant to a written~~  
16 ~~contract entered into by the beer manufacturer, the holder of the~~  
17 ~~winegrower's license, the California winegrower's agent, the~~  
18 ~~distilled spirits manufacturer, or the distilled spirits manufacturer's~~  
19 ~~agent, and the on-sale licensee, which contract shall not in any~~  
20 ~~way involve the holder of a wholesaler's license.~~

21 ~~(c) Any beer manufacturer, distilled spirits manufacturer,~~  
22 ~~distilled spirits manufacturer's agent, holder of a winegrower's~~  
23 ~~license, or California winegrower's agent, who, through coercion~~  
24 ~~or other illegal means, induces, directly or indirectly, a holder of~~  
25 ~~a wholesaler's license to fulfill those contractual obligations entered~~  
26 ~~into pursuant to subdivision (a) or (b) shall be guilty of a~~  
27 ~~misdemeanor and shall be punished by imprisonment in the county~~  
28 ~~jail not exceeding six months, or by a fine in an amount equal to~~  
29 ~~the entire value of the advertising space or time involved in the~~  
30 ~~contract, whichever is greater, plus ten thousand dollars (\$10,000),~~  
31 ~~or by both imprisonment and fine. The person shall also be subject~~  
32 ~~to license revocation pursuant to Section 24200.~~

33 ~~(d) Any on-sale retail licensee, as described in subdivision (a),~~  
34 ~~who solicits or coerces, directly or indirectly, a holder of a~~  
35 ~~wholesaler's license to solicit a beer manufacturer, distilled spirits~~  
36 ~~manufacturer, or distilled spirits manufacturer's agent, holder of~~  
37 ~~a winegrower's license, or California winegrower's agent to~~  
38 ~~purchase advertising space or time pursuant to subdivision (a) or~~  
39 ~~(b) shall be guilty of a misdemeanor and shall be punished by~~  
40 ~~imprisonment in the county jail not exceeding six months, or by~~

1 a fine in an amount equal to the entire value of the advertising  
 2 space or time involved in the contract, whichever is greater, plus  
 3 ten thousand dollars (\$10,000), or by both imprisonment and fine.  
 4 The person shall also be subject to license revocation pursuant to  
 5 Section 24200.

6 (e) ~~For the purposes of this section, “beer manufacturer” includes~~  
 7 ~~any holder of a beer manufacturer’s license, any holder of an~~  
 8 ~~out-of-state beer manufacturer’s certificate, or any holder of a beer~~  
 9 ~~and wine importer’s general license.~~

10 SEC. 5. ~~Section 25503.85 of the Business and Professions~~  
 11 ~~Code is amended to read:~~

12 ~~25503.85.—(a) Notwithstanding any other provision of this~~  
 13 ~~chapter, a beer manufacturer, distilled spirits manufacturer, distilled~~  
 14 ~~spirits manufacturer’s agent, holder of a winegrower’s license, or~~  
 15 ~~California winegrower’s agent may purchase advertising space~~  
 16 ~~and time from, or on behalf of, an on-sale retail licensee, that shall~~  
 17 ~~be limited to small notices, plaques, or signs that portray partial~~  
 18 ~~or full sponsorship or funding of educational programs, special~~  
 19 ~~fundraising and promotional events, improvements in capital~~  
 20 ~~projects, and the development of exhibits or facilities, if all of the~~  
 21 ~~following conditions are met:~~

22 (1) ~~The on-sale licensee is a zoo or aquarium operated by a~~  
 23 ~~nonprofit organization that is accredited by the American~~  
 24 ~~Association of Zoological Parks and Aquariums.~~

25 (2) ~~The advertising space or time is purchased only in connection~~  
 26 ~~with the sponsorship of activities that are held on the premises or~~  
 27 ~~grounds owned, leased, or controlled by the on-sale licensee.~~

28 (3) ~~The on-sale licensee serves other brands of beer in addition~~  
 29 ~~to the brand manufactured or marketed by the beer manufacturer,~~  
 30 ~~other brands of wine in addition to the brand produced or marketed~~  
 31 ~~by the winegrower or California winegrower’s agent, and other~~  
 32 ~~brands of distilled spirits in addition to the brand manufactured or~~  
 33 ~~marketed by the distilled spirits manufacturer or distilled spirits~~  
 34 ~~manufacturer’s agent purchasing the advertising space or time.~~

35 (b) ~~Nothing in this section shall be construed to permit the~~  
 36 ~~purchase of billboards or bench advertisements as “advertising~~  
 37 ~~space.”~~

38 (e) ~~Any purchase of advertising space or time pursuant to~~  
 39 ~~subdivision (a) shall be accomplished by a written contract entered~~  
 40 ~~into by the beer manufacturer, the distilled spirits manufacturer,~~

1 ~~the distilled spirits manufacturer’s agent, a holder of the~~  
2 ~~winegrower’s license, or the California winegrower’s agent, and~~  
3 ~~the on-sale licensee. That contract shall not in any way involve~~  
4 ~~the holder of a wholesaler’s license.~~

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

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

29 (f) ~~For the purposes of this section, “beer manufacturer” includes~~  
30 ~~any holder of a beer manufacturer’s license, any holder of an~~  
31 ~~out-of-state beer manufacturer’s certificate, or any holder of a beer~~  
32 ~~and wine importer’s general license.~~

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