

AMENDED IN ASSEMBLY JUNE 14, 2012

AMENDED IN ASSEMBLY MAY 21, 2012

AMENDED IN SENATE JANUARY 5, 2012

AMENDED IN SENATE JANUARY 4, 2012

SENATE BILL

No. 778

Introduced by Senator Padilla

February 18, 2011

An act to add ~~Section~~ *Sections 25600.1 and 25600.2* to the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 778, as amended, Padilla. Alcoholic beverages licensees: contests and sweepstakes.

The Alcoholic Beverage Control Act prohibits any licensee from giving any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage, except as provided.

This bill would permit an authorized licensee, as defined, to ~~conduct, sponsor, or participate in~~ *conduct* a consumer contest or sweepstakes, as defined, offering the chance to win prizes, if specified conditions are met.

The Alcoholic Beverage Control Act provides that a violation of any of its provisions for which another penalty or punishment is not specifically provided is a misdemeanor. This bill would expand existing crimes by imposing additional duties on a licensee under the act, thus, the bill 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: yes.

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

1 SECTION 1. Section 25600.1 is added to the Business and
2 Professions Code, to read:
3 25600.1. (a) An authorized licensee may conduct consumer
4 contests, subject to the following conditions:
5 (1) (A) No entry fee may be charged to participate in a contest
6 authorized by this subdivision. Entry or extra chances in a contest
7 shall not be made available via the purchase of an alcoholic
8 beverage.
9 (B) Entry into or participation in a contest shall be limited to
10 persons 21 years of age or older.
11 (C) No contest shall require consumption of alcoholic beverages
12 by a participant.
13 (D) A contest may not be conducted for the benefit of any
14 permanent retail licensee.
15 (2) (A) Closures, caps, cap liners, corks, labels, cartons, cases,
16 packaging, or other similar material shall not be used as an entry
17 to a contest or as a means of determining the amount or size of
18 the prize or the winner in a contest, except as provided in
19 subparagraphs (D) and (F).
20 (B) The authorized licensee shall provide an alternative means
21 of entry that does not require a visit to a licensed premises.
22 (C) Except as provided in subparagraph (D), removable entry
23 forms shall not be used on alcoholic beverage labels, containers,
24 packaging, cases, or cartons.
25 (D) Removable entry forms that are neck hangers shall be used
26 only on bottles of wine or distilled spirits, and shall not require
27 purchase of the product. Removable neck hangers shall be used
28 only if other entry forms are available at the point of sale or if an
29 alternative means of entry is also available.
30 (E) Entry forms may be provided through electronic or other
31 media, including point of sale.
32 (F) Codes that may be scanned or electronically entered by a
33 consumer where the authorized licensee has permanently affixed

1 *the codes as part of the original alcoholic beverage label,*
2 *container, packaging, case, or carton, and where the codes are*
3 *not removable and not required to be removed are permitted as a*
4 *form of entry.*

5 *(G) All permitted means of entry, including the use of electronic*
6 *or scanner codes, shall clearly indicate that no purchase is*
7 *required to enter.*

8 *(3) A contest shall not provide for the instant or immediate*
9 *awarding of a prize or prizes. Instant or immediate notification to*
10 *the consumer that he or she is a winner is permissible.*

11 *(4) A contest authorized by this section shall not be conducted*
12 *at the premises of a retail licensee or the premises of a winegrower*
13 *or beer manufacturer operating under a duplicate license for a*
14 *branch office.*

15 *(5) Alcoholic beverages or anything redeemable for alcoholic*
16 *beverages shall not be awarded as a contest prize. This paragraph*
17 *shall not prohibit a contest in which the prize is cash or cash*
18 *equivalent or the awarding of cash or cash equivalent in lieu of a*
19 *prize that is tangible personal property or real property.*

20 *(6) A retail licensee shall not serve as the agent of an authorized*
21 *licensee by collecting or forwarding entries or awarding prizes to*
22 *a contest winner.*

23 *(7) A licensee that is not an authorized licensee shall not directly*
24 *or indirectly underwrite, share in, or contribute to, the costs of a*
25 *contest authorized by this section or serve as the agent of an*
26 *authorized licensee to collect or forward entries or to furnish any*
27 *prize to a contest winner.*

28 *(8) (A) Advertising of a contest shall comply with the signage*
29 *and advertising restrictions contained in this chapter, Chapter 15*
30 *(commencing with Section 25500), and any regulations issued by*
31 *the department.*

32 *(B) Advertising or promotion of a contest shall not identify or*
33 *refer to any retail licensee.*

34 *(C) A retail licensee shall only advertise or promote a contest*
35 *authorized by this section in the manner specified in subparagraph*
36 *(A).*

37 *(D) Advertising or promotion of a contest shall only be*
38 *conducted on the premises of a retail licensee when such*
39 *advertisement or promotion involves a minimum of three*
40 *unaffiliated retail licensees. For purposes of this subparagraph,*

1 “unaffiliated retail licensees” shall not include any retail licensee
2 owned or controlled in whole or in part by an authorized licensee
3 or any officer, director, or agent of that licensee.

4 (E) Placement of signs or other advertising of a contest in a
5 licensed retail premises shall not be conditioned upon the
6 following:

7 (i) The placement of any product within the licensed premises
8 or the restriction, in any way, of the purchase of a product by a
9 licensee, the removal of a product from the sales area of a licensed
10 premises, or the resetting or repositioning of a product within the
11 licensed premises.

12 (ii) The purchase or sale of any product produced, imported,
13 distributed, represented, or promoted by an authorized licensee
14 or its agent.

15 (F) An agreement, whether written or oral, entered into, by,
16 and between a retail licensee and an authorized licensee or its
17 agent that precludes the advertisement or promotion of a contest
18 on the premises of the retail licensee by another authorized licensee
19 is prohibited.

20 (9) Contest prizes shall not be awarded to an authorized
21 licensee, retail licensee, or wholesale licensee or agent, officer,
22 employee, or family member of an authorized licensee, retail
23 licensee, or wholesale licensee. For purpose of this paragraph,
24 “family member” means a spouse, parent, sibling, child,
25 son-in-law, daughter-in-law, and lineal descendants, including
26 those by adoption. An authorized licensee shall maintain all
27 records pertaining to a contest for three years following the
28 completion of a contest. This section shall not apply to contests
29 conducted by an authorized licensee as part of a sales incentive
30 program for wholesale licensees or their employees or an
31 authorized licensee’s employees.

32 (b) Nothing in this section shall preclude licensees from
33 sponsoring contests as permitted by regulations of the department.

34 (c) For purposes of this section:

35 (1) (A) “Authorized licensee” means a winegrower, beer and
36 wine importer general, beer manufacturer, out-of-state beer
37 manufacturer certificate holder, distilled spirits manufacturer,
38 distilled spirits manufacturer’s agent, distilled spirits importer
39 general, distilled spirits general rectifier, rectifier, out-of-state
40 distilled spirits shipper’s certificate holder, brandy manufacturer,

1 *and brandy importer. An authorized licensee may conduct, sponsor,*
2 *or participate in a consumer contest pursuant to this section if the*
3 *licensee holds any additional license not included in this*
4 *paragraph.*

5 (B) *An “authorized licensee” shall not include a beer and wine*
6 *wholesaler, a beer and wine importer general, or distilled spirits*
7 *importer general that only holds a wholesaler’s or retailer’s license*
8 *as an additional license.*

9 (2) *“Contest” means a game, contest, puzzle, or similar activity*
10 *that holds out or offers to participants the opportunity to receive*
11 *or compete for gifts, prizes, gratuities, or other things of value as*
12 *determined by skill, knowledge, or ability rather than upon random*
13 *selection. Skill, knowledge, or ability does not include the*
14 *consumption or use of alcoholic beverages.*

15 (d) *Nothing in this section authorizes conducting any contest*
16 *where consumers are entitled to an allotment or accumulation of*
17 *points based on purchases made over a period of time that can be*
18 *redeemed for prizes, things of value, or additional contest entries.*

19 (e) *An authorized licensee that violates this section, in addition*
20 *to any other penalty imposed by this division, may be prohibited*
21 *by the department from offering a contest to California residents*
22 *for a period of 12 months.*

23 SEC. 2. *Section 25600.2 is added to the Business and*
24 *Professions Code, to read:*

25 25600.2. (a) *An authorized licensee may conduct consumer*
26 *sweepstakes, subject to the following conditions:*

27 (1) (A) *No entry fee may be charged to participate in a*
28 *sweepstakes authorized by this subdivision. Entry or extra chances*
29 *in a sweepstakes shall not be made available via the purchase of*
30 *an alcoholic beverage.*

31 (B) *Entry into or participation in a sweepstakes shall be limited*
32 *to persons 21 years of age or older.*

33 (C) *No sweepstakes shall require consumption of alcoholic*
34 *beverages by a participant.*

35 (D) *Subject to subparagraph (B), any sweepstakes offered in*
36 *California shall be open to all residents of California.*

37 (E) *A sweepstakes may not be conducted for the benefit of any*
38 *permanent retail license.*

39 (2) (A) *Closures, caps, cap liners, corks, labels, cartons, cases,*
40 *packaging, or other similar material shall not be used as an entry*

1 to a sweepstakes or as a means of determining the amount or size
2 of the prize or the winner in a sweepstakes, except as provided in
3 subparagraphs (D) and (F).

4 (B) The authorized licensee shall provide an alternative means
5 of entry that does not require a visit to a licensed premises.

6 (C) Except as provided in subparagraph (D), removable entry
7 forms shall not be used on alcoholic beverage labels, containers,
8 packaging, cases, or cartons.

9 (D) Removable entry forms that are neck hangers shall be used
10 only on bottles of wine or distilled spirits, and shall not require
11 purchase of the product. Removable neck hangers shall be used
12 only if other entry forms are available at the point of sale or if an
13 alternative means of entry is also available.

14 (E) Entry forms may be provided through electronic or other
15 media, including point of sale.

16 (F) Codes that may be scanned or electronically entered by a
17 consumer where the authorized licensee has permanently affixed
18 the codes as part of the original alcoholic beverage label,
19 container, packaging, case, or carton, and where the codes are
20 not removable and not required to be removed are permitted as a
21 form of entry.

22 (G) All permitted means of entry, including the use of electronic
23 or scanner codes, shall clearly indicate that no purchase is
24 required to enter.

25 (H) All sweepstakes entry forms shall provide an entrant with
26 an equal odds of winning.

27 (3) A sweepstakes shall not provide for the instant or immediate
28 awarding of a prize or prizes. Instant or immediate notification to
29 the consumer that he or she is a winner is permissible.

30 (4) A sweepstakes authorized by this section shall not be
31 conducted at the premises of a retail licensee or the premises of
32 a winegrower or beer manufacturer operating under a duplicate
33 license for a branch office.

34 (5) Alcoholic beverages or anything redeemable for alcoholic
35 beverages shall not be awarded as a sweepstakes prize. This
36 paragraph shall not prohibit a sweepstakes in which the prize is
37 cash or cash equivalent or the awarding of cash or cash equivalent
38 in lieu of a prize that is tangible personal property or real property.

39 (6) A retail licensee shall not serve as the agent of an authorized
40 licensee by collecting or forwarding entries or awarding prizes to

1 a sweepstakes winner. The matching of entries with numbers or
2 pictures on the point-of-sale materials at retail licensed premises
3 is permitted only if entrants are also offered the opportunity to use
4 an alternative means to determine prize-winning status.

5 (7) A licensee that is not an authorized licensee shall not directly
6 or indirectly underwrite, share in, or contribute to, the costs of a
7 sweepstakes authorized by this section or serve as the agent of an
8 authorized licensee to collect or forward entries or to furnish any
9 prize to a sweepstakes winner.

10 (8) (A) Advertising of a sweepstakes shall comply with the
11 signage and advertising restrictions contained in this chapter,
12 Chapter 15 (commencing with Section 25500), and any regulations
13 issued by the department.

14 (B) Advertising or promotion of a sweepstakes shall not identify
15 or refer to any retail licensee.

16 (C) A retail licensee shall only advertise or promote a
17 sweepstakes authorized by this section in the manner specified in
18 subparagraph (A).

19 (D) Advertising or promotion of a sweepstakes shall only be
20 conducted on the premises of a retail licensee when such
21 advertisement or promotion involves a minimum of three
22 unaffiliated retail licensees. For purposes of this subparagraph,
23 “unaffiliated retail licensees” shall not include any retail licensee
24 owned or controlled in whole or in part by an authorized licensee
25 or any officer, director, or agent of that licensee.

26 (E) Placement of signs or other advertising of a sweepstakes in
27 a licensed retail premises shall not be conditioned upon the
28 following:

29 (i) The placement of any product within the licensed premises
30 or the restriction, in any way, of the purchase of a product by a
31 licensee, the removal of a product from the sales area of a licensed
32 premises, or the resetting or repositioning of a product within the
33 licensed premises.

34 (ii) The purchase or sale of any product produced, imported,
35 distributed, represented, or promoted by an authorized licensee
36 or its agent.

37 (F) An agreement, whether written or oral, entered into, by,
38 and between a retail licensee and an authorized licensee that
39 precludes the advertisement or promotion of a sweepstakes on the

1 *premises of the retail licensee by another authorized licensee or*
2 *its agent is prohibited.*

3 (9) *Sweepstakes prizes shall not be awarded to an authorized*
4 *licensee, retail licensee, or wholesale licensee or agent, officer,*
5 *employee, or family member of an authorized licensee, retail*
6 *licensee, or wholesale licensee. For purpose of this paragraph,*
7 *“family member” means a spouse, parent, sibling, child,*
8 *son-in-law, daughter-in-law, and lineal descendants, including*
9 *those by adoption. An authorized licensee shall maintain all*
10 *records pertaining to a sweepstakes for three years following the*
11 *completion of a sweepstakes.*

12 (b) *For purposes of this section:*

13 (1) (A) *“Authorized licensee” means a winegrower, beer and*
14 *wine importer general, beer manufacturer, out-of-state beer*
15 *manufacturer certificate holder, distilled spirits manufacturer,*
16 *distilled spirits manufacturer’s agent, distilled spirits importer*
17 *general, distilled spirits general rectifier, rectifier, out-of-state*
18 *distilled spirits shipper’s certificate holder, brandy manufacturer,*
19 *and brandy importer. An authorized licensee may conduct or*
20 *participate in a sweepstakes pursuant to this section if the licensee*
21 *holds any additional license not included in this paragraph.*

22 (B) *An “authorized licensee” shall not include a beer and wine*
23 *wholesaler, a beer and wine importer general, or distilled spirits*
24 *importer general that only holds a wholesaler’s or retailer’s license*
25 *as an additional license.*

26 (2) *“Sweepstakes” means a procedure, activity, or event for the*
27 *distribution of anything of value by lot, chance, or random selection*
28 *where the odds for winning a prize are equal for each entry.*

29 (c) *Nothing in this section authorizes conducting sweepstakes*
30 *where consumers are entitled to an allotment or accumulation of*
31 *points based on purchases made over a period of time that can be*
32 *redeemed for prizes, things of value, or additional sweepstakes*
33 *entries.*

34 (d) *An authorized licensee that violates this section, in addition*
35 *to any other penalty imposed by this division, may be prohibited*
36 *by the department from offering a sweepstakes to California*
37 *residents for a period of 12 months.*

38 SEC. 3. *No reimbursement is required by this act pursuant to*
39 *Section 6 of Article XIII B of the California Constitution because*
40 *the only costs that may be incurred by a local agency or school*

1 *district will be incurred because this act creates a new crime or*
2 *infraction, eliminates a crime or infraction, or changes the penalty*
3 *for a crime or infraction, within the meaning of Section 17556 of*
4 *the Government Code, or changes the definition of a crime within*
5 *the meaning of Section 6 of Article XIII B of the California*
6 *Constitution.*

7 SECTION 1. ~~Section 25600.1 is added to the Business and~~
8 ~~Professions Code, to read:~~

9 25600.1. (a) ~~Notwithstanding any other provision of law, an~~
10 ~~authorized licensee may conduct, sponsor, or participate in~~
11 ~~consumer contests and sweepstakes, subject to the following~~
12 ~~conditions:~~

13 (1) (A) ~~Except as provided in subparagraph (B), a purchase or~~
14 ~~entry fee shall not be required to enter a contest or sweepstakes.~~
15 ~~Entry or extra chances in a contest or sweepstakes shall not be~~
16 ~~made available via the purchase of an alcoholic beverage. Entrance~~
17 ~~into a sweepstakes shall be limited to persons 21 years of age or~~
18 ~~older.~~

19 (B) ~~A purchase or entry fee may be required to enter a contest~~
20 ~~or sweepstakes if the principal sponsor of the contest or~~
21 ~~sweepstakes is a bona fide amateur or professional organization~~
22 ~~established for the encouragement and promotion of an activity.~~
23 ~~Entrance into a contest where the principal sponsor of the contest~~
24 ~~or sweepstakes is a bona fide amateur or professional organization~~
25 ~~established for the encouragement and promotion of an activity~~
26 ~~shall be limited to persons 21 years of age or older.~~

27 (2) (A) ~~Caps, cap liners, corks, labels, cartons, cases, or other~~
28 ~~material attached to an alcoholic beverage shall not be used as an~~
29 ~~entry to a contest or sweepstakes or as a means of determining the~~
30 ~~amount or size of the prize or the winner in a contest or~~
31 ~~sweepstakes.~~

32 (B) ~~Entry forms may be provided via neck hangers or other~~
33 ~~printed materials that are easily removable from alcoholic beverage~~
34 ~~containers or packaging only if similar entry forms are available~~
35 ~~at the point of sale or an alternative means of entry is available.~~

36 (C) ~~Entry forms may be in the form of codes printed on alcoholic~~
37 ~~beverage containers or packaging that may be scanned or~~
38 ~~electronically entered by a consumer without requiring the purchase~~
39 ~~of any product. All entry forms or codes attached to, printed on,~~
40 ~~or in any way connected to or with an alcoholic beverage container~~

1 or package shall clearly indicate that the entry form may be
2 removed or the code scanned or electronically entered without the
3 purchase of any alcoholic beverage or other product.

4 (D) All sweepstakes entry forms shall provide an entrant with
5 equal odds of winning.

6 (3) A contest or sweepstakes shall not provide for the instant
7 or immediate awarding of a prize or prizes.

8 (4) (A) A visit to a retail premises shall not be required to enter
9 a contest or sweepstakes.

10 (B) Except as provided in subparagraph (C), a contest shall not
11 be held at the premises of a retail licensee or the premises of a
12 winegrower or beer manufacturer operating under a duplicate
13 license for a branch office.

14 (C) A contest in which the principal sponsor is a bona fide
15 amateur or professional organization established for the
16 encouragement and promotion of an activity may be held on the
17 premises of a retail licensee. Authorized licensees may sponsor or
18 participate in this type of contest only by making monetary
19 payments to the bona fide amateur or professional organization
20 acting as the principal sponsor.

21 (5) Alcoholic beverages or anything redeemable for alcoholic
22 beverages shall not be awarded as a contest or sweepstakes prize.
23 This paragraph shall not prohibit a contest or sweepstakes in which
24 the prize is cash or the awarding of cash in lieu of a prize that is
25 tangible personal property or real property.

26 (6) A retail licensee shall not serve as the agent of an authorized
27 licensee by collecting or forwarding entries or awarding prizes to
28 a contest or sweepstakes winner. The matching of entries with
29 numbers or pictures on the point-of-sale materials at retail licensed
30 premises is permitted only if entrants are also offered the
31 opportunity to use an alternative means to determine prize-winning
32 status.

33 (7) A licensee that is not an authorized licensee shall not share
34 in, or contribute to, the costs of a contest or sweepstakes authorized
35 by this section or serve as the agent of an authorized licensee to
36 collect or forward entries or to furnish any prize to a contest or
37 sweepstakes winner.

38 (8) (A) Advertising of a contest or sweepstakes shall comply
39 with the signage and advertising restrictions contained in this

1 chapter, Chapter 15 (commencing with Section 25500), and any
2 regulations issued by the department.

3 (B) Advertising or promotion of a contest or sweepstakes shall
4 not identify or refer to any retail licensee.

5 (C) A retail licensee shall only advertise or promote a contest
6 or sweepstakes authorized by this section in the manner specified
7 in subparagraph (A).

8 (D) Advertising or promotion of a contest or sweepstakes shall
9 only be conducted on the premises of a retail licensee when such
10 advertisement or promotion involves a minimum of three
11 unaffiliated retail licensees. For purposes of this subparagraph,
12 “unaffiliated retail licensees” shall not include any retail licensee
13 owned in whole or in part by an authorized licensee or any officer,
14 director, or agent of that licensee.

15 (E) Placement of signs or other advertising of a contest or
16 sweepstakes in a licensed retail premises shall not be conditioned
17 upon the following:

18 (i) The placement of any product within the licensed premises
19 or the exclusion of a product from the licensed premises.

20 (ii) The purchase or sale of any product produced, imported,
21 distributed, represented, or promoted by an authorized licensee.

22 (F) An agreement, whether written or oral, entered into, by, and
23 between a retail licensee and an authorized licensee that precludes
24 the advertisement or promotion of a contest or sweepstakes on the
25 premises of the retail licensee by another authorized licensee is
26 prohibited.

27 (9) Contest or sweepstakes prizes shall not be awarded to an
28 authorized licensee, retail licensee, or wholesale licensee or agent,
29 officer, employee, or family member of an authorized licensee,
30 retail licensee, or wholesale licensee. An authorized licensee shall
31 maintain all records pertaining to a contest or sweepstakes for three
32 years following the completion of a contest or sweepstakes.

33 (b) For purposes of this section:

34 (1) (A) “Authorized licensee” means a winegrower, beer and
35 wine importer general, beer manufacturer, out-of-state beer
36 manufacturer certificate holder, distilled spirits manufacturer,
37 distilled spirits manufacturer’s agent, distilled spirits importer
38 general, distilled spirits general rectifier, rectifier, out-of-state
39 distilled spirits shipper’s certificate holder, brandy manufacturer,
40 and brandy importer. An authorized licensee may conduct, sponsor,

1 or participate in consumer contest and sweepstakes pursuant to
2 this section if the licensee holds an additional license not included
3 in this paragraph.

4 (B) An “authorized licensee” shall not include a beer and wine
5 importer general or distilled spirits importer general that only holds
6 a wholesaler’s or retailer’s license as an additional license.

7 (2) “Contest” means a game, contest, puzzle, scheme, plan, or
8 similar activity that holds out or offers to participants the
9 opportunity to receive or compete for gifts, prizes, gratuities, or
10 other things of value as determined by skill, knowledge, or ability
11 rather than upon random selection. Skill, knowledge, or ability
12 does not include the consumption or use of alcoholic beverages.

13 (3) “Principal sponsor” means the person or organization that
14 is identified as a primary or major sponsor of the event or activity
15 or for which the event or activity is named.

16 (4) “Sweepstakes” means a procedure, activity, or event for the
17 distribution of anything of value by lot, chance, or random selection
18 where the odds for winning a prize are equal for each entry.

19 (e) A contest or sweepstakes conducted pursuant to this section
20 shall not offer or award more than five prizes that exceed the
21 monetary limits for premiums, gifts, or free goods specified in this
22 division or a regulation of the department.

23 (d) Nothing in this section authorizes marketing schemes where
24 consumers are entitled to an allotment of points based on purchases
25 made over a period of time that can be redeemed for prizes, things
26 of value, or additional contest or sweepstakes entries.

27 (e) An authorized licensee that violates this section, in addition
28 to any other penalty imposed by this division, may be prohibited
29 by the department from offering a contest or sweepstakes to
30 California residents for a period of 12 months.

31 SEC. 2.—No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

1 ~~the meaning of Section 6 of Article XIII B of the California~~
2 ~~Constitution.~~

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