

Senate Bill No. 778

CHAPTER 489

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

[Approved by Governor September 23, 2012. Filed with
Secretary of State September 23, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 778, 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 a consumer contest, as defined, and conduct or sponsor consumer 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.

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

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

25600.1. (a) An authorized licensee may conduct consumer contests, subject to the following conditions:

(1) (A) Entry or extra chances in a contest shall not be made available via the purchase of an alcoholic beverage.

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

(C) No contest shall involve consumption of alcoholic beverages by a participant.

(D) A contest may not be conducted for the benefit of any permanent retail licensee.

(2) (A) Closures, caps, cap liners, corks, labels, cartons, cases, packaging, or other similar material shall not be used as an entry to a contest or as a means of determining the amount or size of the prize or the winner in a contest, except as provided in subparagraphs (D) and (F).

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

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

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

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

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

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

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

(4) Except for providing a means of entry, a contest authorized by this section shall not be conducted at the premises of a retail licensee or the premises of a winegrower or beer manufacturer operating under a duplicate license for a branch office.

(5) Alcoholic beverages or anything redeemable for alcoholic beverages shall not be awarded as a contest prize. This paragraph shall not prohibit a contest in which the prize is cash or cash equivalent or the awarding of cash or cash equivalent.

(6) A retail licensee shall not serve as the agent of an authorized licensee by collecting or forwarding entries or awarding prizes to, or redeeming prizes for, a contest winner.

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

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

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

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

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

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

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

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

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

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

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

(c) For purposes of this section:

(1) (A) “Authorized licensee” means a winegrower, beer and wine importer general, beer manufacturer, out-of-state beer manufacturer certificate holder, distilled spirits manufacturer, distilled spirits manufacturer’s agent, distilled spirits importer general, distilled spirits general rectifier, rectifier, out-of-state distilled spirits shipper’s certificate holder, brandy manufacturer, and brandy importer. An authorized licensee may conduct a consumer contest pursuant to this section regardless of whether the licensee holds any additional license not included in this paragraph.

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

(2) “Contest” means a game, contest, puzzle, or similar activity that holds out or offers to participants the opportunity to receive or compete for gifts,

prizes, gratuities, or other things of value as determined by skill, knowledge, or ability rather than upon random selection. Skill, knowledge, or ability does not include the consumption or use of alcoholic beverages.

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

(e) A prize awarded for a contest conducted pursuant to this section shall not be subject to the monetary limitation imposed by Section 25600 or a regulation of the department.

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

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

25600.2. (a) An authorized licensee may conduct or sponsor consumer sweepstakes, subject to the following conditions:

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

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

(C) No sweepstakes shall involve consumption of alcoholic beverages by a participant.

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

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

(2) (A) Closures, caps, cap liners, corks, labels, cartons, cases, packaging, or other similar material shall not be used as an entry to a sweepstakes or as a means of determining the amount or size of the prize or the winner in a sweepstakes, except as provided in subparagraphs (D) and (F).

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

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

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

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

(F) Codes that may be scanned or electronically entered by a consumer where the authorized licensee has permanently affixed the codes as part of the original alcoholic beverage label, container, packaging, case, or carton,

and where the codes are not removable and not required to be removed are permitted as a form of entry.

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

(H) All sweepstakes entries shall provide the entrant with an equal odds of winning.

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

(4) Except for providing a means of entry, a sweepstakes authorized by this section shall not be conducted at the premises of a retail licensee or the premises of a winegrower or beer manufacturer operating under a duplicate license for a branch office.

(5) Alcoholic beverages or anything redeemable for alcoholic beverages shall not be awarded as a sweepstakes prize. This paragraph shall not prohibit a sweepstakes in which the prize is cash or cash equivalent or the awarding of cash or cash equivalent .

(6) A retail licensee shall not serve as the agent of an authorized licensee by collecting or forwarding entries or awarding prizes to, or redeeming prizes for, a sweepstakes winner. The matching of entries with numbers or pictures on the point-of-sale materials at retail licensed premises is permitted only if entrants are also offered the opportunity to use an alternative means to determine prize-winning status. An authorized licensee may furnish and maintain a deposit box on a retail licensed premises for the collection and forwarding of sweepstakes entry forms.

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

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

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

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

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

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

(i) The placement of any product within the licensed premises or the restriction, in any way, of the purchase of a product by a licensee, the

removal of a product from the sales area of a licensed premises, or the resetting or repositioning of a product within the licensed premises.

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

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

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

(b) For purposes of this section:

(1) (A) “Authorized licensee” means a winegrower, beer and wine importer general, beer manufacturer, out-of-state beer manufacturer certificate holder, distilled spirits manufacturer, distilled spirits manufacturer’s agent, distilled spirits importer general, distilled spirits general rectifier, rectifier, out-of-state distilled spirits shipper’s certificate holder, brandy manufacturer, and brandy importer. An authorized licensee may conduct, sponsor, or participate in a sweepstakes pursuant to this section regardless of whether the licensee holds any additional license not included in this paragraph.

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

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

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

(d) A prize awarded for a sweepstakes conducted pursuant to this section shall not be subject to the monetary limitation imposed by Section 25600 or a regulation of the department.

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

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of

Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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