

AMENDED IN SENATE JUNE 12, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2010**

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**Introduced by Assembly Member Gray**

February 20, 2014

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An act to amend Section 23104.2 of, *and to repeal and add Section 23389 of*, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2010, as amended, Gray. Alcoholic beverages: beer returns: product ~~quality~~: *quality: beer manufacturers: duplicate licenses.*

Existing law, the Alcoholic Beverage Control Act, generally permits a wholesaler or manufacturer to accept the return of beer from a retailer only if the beer is returned in exchange for the identical quantity and brand of beer. Existing law permits a credit memorandum to be issued when a package is broken or damaged when the return and corrections are completed within 15 days, as specified. Existing law provides exceptions from this limitation, including permitting the return of beer by a retailer to a seller, and by a seller to a manufacturer or importer, if the beer is recalled or presents a health or safety issue, as provided.

This bill would extend the exception provided for beer that is recalled or presents a health and safety issue, as described above, to beer that has product quality issues, *subject to Department of Alcoholic Beverage Control approval.*

*The Alcoholic Beverage Control Act is administered by the Department of Alcoholic Beverage Control. Existing law requires a license or permit to manufacture beer, unless the beer is manufactured for personal or family use, under specified conditions. A licensed beer*

*manufacturer may sell beer to consumers at a branch location. Existing law requires the department to issue a duplicate license to a beer manufacturer if the beer manufacturer applies for a duplicate license. Under existing law, for 30 days from the date of the issuance of a duplicate license, retail sales of beer are prohibited at a branch office for which the duplicate license was issued. The act provides that a violation of its provisions is a misdemeanor, unless otherwise specified.*

*This bill would, instead, allow the department to issue a duplicate license at its discretion where specified privileges are to be exercised at the branch office. The bill would prohibit the sale or tasting of alcoholic beverages to consumers at more than 6 branch office locations, and allow 2 of the branch office locations to be bona fide eating places owned and operated by and for the beer manufacturer, as provided. The bill would require the department to issue a temporary permit upon request and would also authorize the department to issue a duplicate license when specified privileges are not going to be exercised at a branch office. The bill would eliminate the 30-day prohibition on retail sales of beer for a branch office with a duplicate license. Because the violation of a provision of a 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: ~~no~~-yes.

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

- 1 SECTION 1. Section 23104.2 of the Business and Professions
- 2 Code is amended to read:
- 3 23104.2. (a) Subject to the exceptions specified in subdivision
- 4 (b), a retail licensee may return beer to the wholesaler or
- 5 manufacturer from whom the retail licensee purchased the beer,
- 6 or any successor thereto, and the wholesaler, manufacturer, or
- 7 successor thereto may accept that return if the beer is returned in
- 8 exchange for the identical quantity and brand of beer. No

1 wholesaler or manufacturer, or any successor thereto, shall accept  
2 the return of any beer from a retail licensee except when the beer  
3 delivered was not the brand or size container ordered by the retail  
4 licensee or the amount delivered was other than the amount  
5 ordered, in which case the order may be corrected by the wholesaler  
6 or manufacturer who sold the beer, or any successor thereto. If a  
7 package had been broken or otherwise damaged prior to or at the  
8 time of actual delivery, a credit memorandum may be issued for  
9 the returned package by the wholesaler or manufacturer who sold  
10 the beer, or any successor thereto, in lieu of exchange for an  
11 identical package when the return and corrections are completed  
12 within 15 days from the date the beer was delivered to the retail  
13 licensee.

14 (b) Notwithstanding subdivision (a), a wholesaler or  
15 manufacturer, or any successor thereto, may accept the return of  
16 beer purchased from that wholesaler, manufacturer, or successor  
17 thereto, as follows:

18 (1) (A) From a seasonal or temporary licensee if at the  
19 termination of the period of the license the seasonal or temporary  
20 licensee has beer remaining unsold, or from an annual licensee  
21 operating on a temporary basis if at the termination of the  
22 temporary period the annual licensee has beer remaining unsold.

23 (B) For purposes of subparagraph (A), an annual licensee shall  
24 be considered to be operating on a temporary basis if he or she  
25 operates at seasonal resorts, including summer and winter resorts,  
26 or at sporting or entertainment facilities, including racetracks,  
27 arenas, concert halls, and convention centers. Temporary status  
28 shall be deemed terminated when operations cease for 15 days or  
29 more. No wholesaler or manufacturer, or successor thereto, shall  
30 accept the return of beer from an annual licensee considered to be  
31 operating on a temporary basis unless the licensee notifies that  
32 wholesaler or manufacturer, or successor thereto, within 15 days  
33 of the date the licensee's operations ceased.

34 (2) (A) Subject to subparagraph (B), a wholesaler or  
35 manufacturer, or any successor thereto, may, with department  
36 approval, accept the return of a brand of beer discontinued in a  
37 California market area or a seasonal brand of beer from a retail  
38 licensee, provided that the beer is exchanged for a quantity of beer  
39 of a brand produced or sold by the same manufacturer with a value  
40 no greater than the original sales price to the retail licensee of the

1 returned beer. For purposes of this subparagraph, “seasonal brand  
2 of beer” means a brand of beer, as defined in Section 23006, that  
3 is brewed by a manufacturer to commemorate a specific holiday  
4 season and is so identified by appropriate product packaging and  
5 labeling.

6 (B) A discontinued brand of beer may not be reintroduced for  
7 a period of 12 months in the same California market area in which  
8 a return and exchange of that beer as described in subparagraph  
9 (A) has taken place. A seasonal brand of beer may not be  
10 reintroduced for a period of six months in the same California  
11 market area in which a return and exchange of that beer as  
12 described in subparagraph (A) has taken place.

13 (c) Notwithstanding subdivision (a), a wholesaler or  
14 manufacturer, or any successor thereto, may accept the return of  
15 beer purchased from that wholesaler or manufacturer, or any  
16 successor thereto, by the holder of a retail license following the  
17 revocation of, suspension of, voluntary surrender of, or failure to  
18 renew the retail license.

19 (d) A wholesaler or manufacturer, or any successor thereto, may  
20 credit the account of the retailer identified in subdivision (c) in an  
21 amount not to exceed the original sales price to the retailer of the  
22 returned beer, provided that the beer has been paid for in full.

23 (e) (1) Notwithstanding the 15-day time limit for the return of  
24 beer described in subdivision (a), beer that is recalled or that is  
25 considered by a manufacturer, importer, or governmental entity  
26 to present health, safety, or product quality issues if distributed,  
27 offered for sale, or sold in the state may be accepted for return at  
28 anytime from a retailer and be picked up by the seller of beer. The  
29 seller of beer may exchange the returned beer for identical product,  
30 if safe inventory or quality-controlled product inventory is  
31 available, issue a deferred exchange memorandum showing the  
32 beer was picked up and is to be replaced when inventory is  
33 available, or issue a credit memorandum to the retailer for the  
34 returned beer. The seller of beer may exchange with the  
35 manufacturer or importer the returned beer and the seller of beer’s  
36 inventory that was recalled or considered to present health, safety,  
37 or product quality issues. The returned beer may be exchanged for  
38 identical product, if safe inventory or quality-controlled product  
39 inventory is available, or the seller of beer may elect to receive  
40 either a refund from or be issued a credit memorandum by the

1 manufacturer or importer for the returned beer and seller of beer's  
2 inventory that was recalled or considered to present health, safety,  
3 or product quality issues.

4 (2) *Returns for manufacturer or importer product quality issues*  
5 *pursuant to this subdivision are subject to department approval,*  
6 *and shall not include the return of beer due to the aging of beer.*

7 (f) Notwithstanding subdivision (a), a licensee may accept the  
8 return of unsold and unopened beer from an organization that  
9 obtained a temporary license pursuant to Section 24045 or 24045.1.  
10 The licensee may credit the account of the organization in an  
11 amount not to exceed the original sales price of the returned beer,  
12 provided that the beer has been paid for in full.

13 (g) (1) Notwithstanding subdivision (a), an on-sale retail  
14 licensee that purchases beer for sale at an event for which a catering  
15 authorization is issued by the department pursuant to Section 23399  
16 may return the unused and unopened beer to the original selling  
17 licensee at the conclusion of the catered event or upon expiration  
18 of the catering authorization, provided the beer was purchased for  
19 use or sale only at that event and the on-sale retail licensee does  
20 not also provide any beer for use or sale at the event from its  
21 permanent licensed premises. The on-sale retail licensee holding  
22 the catering authorization shall record and maintain a record of  
23 the inventory of all unused and unopened beer to be returned at  
24 the conclusion of the catering event. The original selling licensee  
25 shall prepare an invoice to reflect the returned beer that shall  
26 reference the original sales invoice and shall provide the on-sale  
27 retail licensee holding the catering authorization with a copy of  
28 the invoice.

29 (2) Any beer returned pursuant to this subdivision must be  
30 returned to the original selling licensee at the conclusion of the  
31 catered event or upon expiration of the catering authorization. The  
32 original selling licensee may credit the account of the on-sale retail  
33 licensee in an amount not to exceed the original sales price of the  
34 returned beer, provided the beer has been paid for in full.

35 *SEC. 2. Section 23389 of the Business and Professions Code*  
36 *is repealed.*

37 ~~23389. A licensed beer manufacturer may sell and deliver beer~~  
38 ~~from branch offices located away from his or her place of~~  
39 ~~manufacture and exercise all his or her license privileges, other~~  
40 ~~than manufacture, at or from the branch offices. The department~~

1 shall upon request issue to a beer manufacturer a duplicate of his  
2 or her original license which shall authorize the maintenance and  
3 operation of each branch declared and designated by him or her,  
4 upon the payment for each duplicate of the fee specified in Section  
5 23320.

6 ~~Notwithstanding the provisions of any other section of this~~  
7 ~~division, the duplicate license shall be issued forthwith upon the~~  
8 ~~application therefor. In the event any protest is received by the~~  
9 ~~department concerning the issuance of the duplicate license, the~~  
10 ~~protest shall be considered as an accusation against the licensee~~  
11 ~~and a hearing had thereon as if an accusation had been filed.~~

12 ~~For 30 days from the date of the issuance of the duplicate license,~~  
13 ~~no retail sales of beer shall be made at any branch office for which~~  
14 ~~a duplicate license is issued pursuant to this section.~~

15 *SEC. 3. Section 23389 is added to the Business and Professions*  
16 *Code, to read:*

17 *23389. (a) The department may issue to a beer manufacturer*  
18 *a duplicate of its original license for a location or locations other*  
19 *than its licensed premises of production or manufacture. A*  
20 *duplicate license issued by the department authorizes the*  
21 *maintenance and operation of each branch office by the beer*  
22 *manufacturer and shall only have the license privileges set forth*  
23 *in this section. The fee for each duplicate license, regardless of*  
24 *type, shall be as specified in Section 23320.*

25 *(b) Subject to the limitations set forth in this section, a licensed*  
26 *beer manufacturer may exercise all of the privileges under its*  
27 *manufacturer's license at branch offices licensed by the*  
28 *department, except for production or manufacture; sales to*  
29 *consumers for consumption on or off the branch office premises,*  
30 *except as provided for in subdivision (c); and the sale of beer and*  
31 *wine to consumers for consumption on the branch office premises*  
32 *where a bona fide public eating place is owned and operated by*  
33 *and for the beer manufacturer, except as provided for in*  
34 *subdivision (c).*

35 *(c) (1) A beer manufacturer shall not sell any alcoholic*  
36 *beverages to consumers for consumption on or off the licensed*  
37 *premises, or provide authorized tastings to consumers, at more*  
38 *than six branch office locations, regardless of how many beer*  
39 *manufacturer licenses are held by the beer manufacturer either*  
40 *alone or under common ownership with any other licensed beer*

1 *manufacturer, and no more than two of the six branch locations*  
2 *may be bona fide eating places owned and operated by and for*  
3 *the beer manufacturer. A branch office location authorized to sell*  
4 *an alcoholic beverage or provide a tasting to consumers for*  
5 *consumption on or off the licensed premises or is a bona fide eating*  
6 *place owned and operated by and for the beer manufacturer before*  
7 *January 1, 2015, shall be counted against the limit imposed by*  
8 *this subdivision.*

9 (2) *A branch office location where consumer tastings or sales*  
10 *for on or off premises consumption are authorized shall not sell*  
11 *or serve any alcoholic beverages other than beer that is produced*  
12 *and bottled by, or produced and packaged for, the beer*  
13 *manufacturer.*

14 (3) *A branch office location where the sale of beer and wine to*  
15 *consumers for consumption on the premises of a bona fide public*  
16 *eating place is authorized shall not sell or serve alcoholic*  
17 *beverages other than the following:*

18 (A) *Beer and wine that is produced and bottled by, or produced*  
19 *and packaged for, the beer manufacturer.*

20 (B) *Beer and wine that is purchased by the beer manufacturer*  
21 *from a licensed wholesaler that is not owned, either alone or under*  
22 *common ownership, by the beer manufacturer.*

23 (d) *In order to obtain a duplicate license for a branch location*  
24 *or produced and packaged for, locations with the privileges*  
25 *described in subdivision (c), a beer manufacturer shall submit any*  
26 *application forms as the department may require. Upon request,*  
27 *the department shall issue to a beer manufacturer a temporary*  
28 *permit for use at a branch office location during the period the*  
29 *application for a duplicate license with privileges pursuant to*  
30 *subdivision (c) is pending. The temporary permit shall authorize*  
31 *the beer manufacturer to exercise all of the privileges under the*  
32 *duplicate license except for those privileges described in*  
33 *subdivision (c).*

34 (e) *In order to obtain a duplicate license for a branch office*  
35 *location or locations without the privileges described in subdivision*  
36 *(c), a beer manufacturer shall submit all application forms as the*  
37 *department may require, and the department shall issue that*  
38 *duplicate license forthwith; provided, however, that any duplicate*  
39 *license issued forthwith by the department shall be contingent on*  
40 *the beer manufacturer consenting to the imposition of a condition*

1 *that the beer manufacturer shall make no changes in the character*  
2 *or mode of operation of the branch office premises that would*  
3 *directly or indirectly expand the privileges under the duplicate*  
4 *license, such as to include those privileges described in subdivision*  
5 *(c), without notice to and approval by the department. Any*  
6 *proposed changes in the character or mode of operation of the*  
7 *branch office premises that would directly or indirectly expand*  
8 *the privileges under the duplicate license, such as to include those*  
9 *privileges described in subdivision (c), shall require reapplication*  
10 *and reissuance of the duplicate license pursuant to subdivision*  
11 *(d). In the event any protest is received by the department*  
12 *concerning the issuance of the duplicate license forthwith under*  
13 *this subdivision, the protest shall be considered as an accusation*  
14 *against the licensee and a hearing had thereon as if an accusation*  
15 *had been filed.*

16 *(f) Notwithstanding the provisions of any other section of this*  
17 *division, a beer manufacturer may continue to exercise privileges*  
18 *at all of its licensed branch offices that were in existence and*  
19 *authorized by the department prior to the effective date of the act*  
20 *adding this section, including any privileges resulting from any*  
21 *renewal or transfer of the duplicate licenses for the branch*  
22 *locations, that it was authorized to exercise prior to that date.*

23 *SEC. 4. No reimbursement is required by this act pursuant to*  
24 *Section 6 of Article XIII B of the California Constitution because*  
25 *the only costs that may be incurred by a local agency or school*  
26 *district will be incurred because this act creates a new crime or*  
27 *infraction, eliminates a crime or infraction, or changes the penalty*  
28 *for a crime or infraction, within the meaning of Section 17556 of*  
29 *the Government Code, or changes the definition of a crime within*  
30 *the meaning of Section 6 of Article XIII B of the California*  
31 *Constitution.*