

AMENDED IN SENATE AUGUST 11, 2014

AMENDED IN SENATE JUNE 12, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2010

Introduced by Assembly Member Gray

February 20, 2014

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, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2010, as amended, Gray. Alcoholic beverages: beer returns: product 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 *beer manufacturer* temporary permit upon request *and payment of a \$100 fee* 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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. 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 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

1 manufacturer from whom the retail licensee purchased the beer,
2 or any successor thereto, and the wholesaler, manufacturer, or
3 successor thereto may accept that return if the beer is returned in
4 exchange for the identical quantity and brand of beer. No
5 wholesaler or manufacturer, or any successor thereto, shall accept
6 the return of any beer from a retail licensee except when the beer
7 delivered was not the brand or size container ordered by the retail
8 licensee or the amount delivered was other than the amount
9 ordered, in which case the order may be corrected by the wholesaler
10 or manufacturer who sold the beer, or any successor thereto. If a
11 package had been broken or otherwise damaged prior to or at the
12 time of actual delivery, a credit memorandum may be issued for
13 the returned package by the wholesaler or manufacturer who sold
14 the beer, or any successor thereto, in lieu of exchange for an
15 identical package when the return and corrections are completed
16 within 15 days from the date the beer was delivered to the retail
17 licensee.

18 (b) Notwithstanding subdivision (a), a wholesaler or
19 manufacturer, or any successor thereto, may accept the return of
20 beer purchased from that wholesaler, manufacturer, or successor
21 thereto, as follows:

22 (1) (A) From a seasonal or temporary licensee if at the
23 termination of the period of the license the seasonal or temporary
24 licensee has beer remaining unsold, or from an annual licensee
25 operating on a temporary basis if at the termination of the
26 temporary period the annual licensee has beer remaining unsold.

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

38 (2) (A) Subject to subparagraph (B), a wholesaler or
39 manufacturer, or any successor thereto, may, with department
40 approval, accept the return of a brand of beer discontinued in a

1 California market area or a seasonal brand of beer from a retail
2 licensee, provided that the beer is exchanged for a quantity of beer
3 of a brand produced or sold by the same manufacturer with a value
4 no greater than the original sales price to the retail licensee of the
5 returned beer. For purposes of this subparagraph, “seasonal brand
6 of beer” means a brand of beer, as defined in Section 23006, that
7 is brewed by a manufacturer to commemorate a specific holiday
8 season and is so identified by appropriate product packaging and
9 labeling.

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

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

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

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

1 or product quality issues. The returned beer may be exchanged for
2 identical product, if safe inventory or quality-controlled product
3 inventory is available, or the seller of beer may elect to receive
4 either a refund from or be issued a credit memorandum by the
5 manufacturer or importer for the returned beer and seller of beer's
6 inventory that was recalled or considered to present health, safety,
7 or product quality issues.

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

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

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

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

39 SEC. 2. Section 23389 of the Business and Professions Code
40 is repealed.

1 SEC. 3. Section 23389 is added to the Business and Professions
 2 Code, to read:

3 23389. (a) The department may issue to a beer manufacturer
 4 a duplicate of its original license for a location or locations other
 5 than its licensed premises of production or manufacture. A
 6 duplicate license issued by the department authorizes the
 7 maintenance and operation of each branch office by the beer
 8 manufacturer and shall only have the license privileges set forth
 9 in this section. The fee for each duplicate license, regardless of
 10 type, shall be as specified in Section 23320.

11 (b) Subject to the limitations set forth in this section, a licensed
 12 beer manufacturer may exercise all of the privileges under its
 13 manufacturer’s license at branch offices licensed by the department,
 14 except for production or manufacture; sales to consumers for
 15 consumption on or off the branch office premises, except as
 16 provided for in subdivision (c); and the sale of beer and wine to
 17 consumers for consumption on the branch office premises where
 18 a bona fide public eating place is owned and operated by and for
 19 the beer manufacturer, except as provided for in subdivision (c).

20 (c) (1) A beer manufacturer shall not sell any alcoholic
 21 beverages to consumers for consumption on or off the licensed
 22 premises, or provide authorized tastings to consumers, at more
 23 than six branch office locations, regardless of how many beer
 24 manufacturer licenses are held by the beer manufacturer either
 25 alone or under common ownership with any other licensed beer
 26 manufacturer, and no more than two of the six branch locations
 27 may be bona fide *public* eating places owned and operated by and
 28 for the beer manufacturer. A branch office location authorized to
 29 sell an alcoholic beverage or provide a tasting to consumers for
 30 consumption on or off the licensed premises or *that* is a bona fide
 31 *public* eating place owned and operated by and for the beer
 32 manufacturer before ~~January 1, 2015~~, *the effective date of the act*
 33 *adding this section*, shall be counted against the limit imposed by
 34 this subdivision.

35 (2) A branch office location where consumer tastings or sales
 36 for ~~on or off~~ *on- or off-* premises consumption are authorized shall
 37 not sell or serve any alcoholic beverages other than beer that is
 38 produced and bottled by, or produced and packaged for, the beer
 39 manufacturer.

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

5 (A) Beer and wine that is produced and bottled by, or produced
6 and packaged for, the beer manufacturer.

7 (B) Beer and wine that is purchased by the beer manufacturer
8 from a licensed wholesaler that is not owned, either alone or under
9 common ownership, by the beer manufacturer.

10 (d) In order to obtain a duplicate license for a branch location
11 ~~or produced and packaged for~~, locations with the privileges
12 described in subdivision (c), a beer manufacturer shall submit any
13 application forms as the department may require. Upon request,
14 *and upon payment by the beer manufacturer of a fee of one hundred*
15 *dollars (\$100)*, the department shall issue to a beer manufacturer
16 a *beer manufacturer* temporary permit for use at a branch office
17 location during the period the application for a duplicate license
18 with privileges pursuant to subdivision (c) is pending. The *beer*
19 *manufacturer* temporary permit shall authorize the beer
20 manufacturer to exercise all of the privileges under the duplicate
21 license except for those privileges described in subdivision (c).

22 (e) *A beer manufacturer temporary permit shall be effective for*
23 *a period of 120 days and may be extended at the discretion of the*
24 *department for additional 120-day periods as necessary and upon*
25 *payment of an additional fee of one hundred dollars (\$100).*

26 (e)

27 (f) In order to obtain a duplicate license for a branch office
28 location or locations without the privileges described in subdivision
29 (c), a beer manufacturer shall submit all application forms as the
30 department may require, and the department shall issue that
31 duplicate license forthwith; provided, however, that any duplicate
32 license issued forthwith by the department shall be contingent on
33 the beer manufacturer consenting to the imposition of a condition
34 that the beer manufacturer shall make no changes in the character
35 or mode of operation of the branch office premises that would
36 directly or indirectly expand the privileges under the duplicate
37 license, such as to include those privileges described in subdivision
38 (c), without notice to and approval by the department. *If the*
39 *department receives any protest concerning the issuance of the*
40 *duplicate license forthwith under this subdivision, the protest shall*

1 *be considered as an accusation against the licensee and a hearing*
 2 *had thereon as if an accusation had been filed.* Any proposed
 3 changes in the character or mode of operation of the branch office
 4 premises that would directly or indirectly expand the privileges
 5 under the duplicate license, such as to include those privileges
 6 described in subdivision (c), shall require reapplication and
 7 reissuance of the duplicate license pursuant to subdivision (d). ~~In~~
 8 ~~the event any protest is received by the department concerning the~~
 9 ~~issuance of the duplicate license forthwith under this subdivision,~~
 10 ~~the protest shall be considered as an accusation against the licensee~~
 11 ~~and a hearing had thereon as if an accusation had been filed.~~

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

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

29 SEC. 5. *This act is an urgency statute necessary for the*
 30 *immediate preservation of the public peace, health, or safety within*
 31 *the meaning of Article IV of the Constitution and shall go into*
 32 *immediate effect. The facts constituting the necessity are:*

33 *In order to bolster California's economy and to aid struggling*
 34 *businesses in this economically stagnant time, it is necessary for*
 35 *this act to take effect immediately.*