

AMENDED IN SENATE SEPTEMBER 4, 2015

AMENDED IN SENATE AUGUST 17, 2015

AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 776

Introduced by Assembly Member Cooper

February 25, 2015

An act to amend ~~Section 25500~~ Sections 25500 and 25666 of, and to add Sections ~~23355.3 and 23399.65~~ 23355.3, 23399.65, and 23402.5 to, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 776, as amended, Cooper. Alcoholic beverage ~~control~~: licenses and tied-house restrictions: *control*.

(1) The Alcoholic Beverage Control Act regulates the application for, the issuance of, the suspension of, and the conditions imposed upon, various alcoholic beverage licenses pursuant to which the licensees may exercise specified privileges in the state.

This bill would authorize licensees to sponsor or otherwise participate in an event conducted by, and for the benefit of, a nonprofit organization ~~that has acquired a specified alcoholic beverages license~~, subject to specified conditions, including that ~~sponsorship or participation opportunities for the event be made available to any retail or nonretail licensee: a nonretail or retail licensee may choose to participate in any level of sponsorship~~.

(2) The Alcoholic Beverage Control Act authorizes a licensed winegrower to apply to the Department of Alcoholic Beverage Control for a wine sales event permit that allows the sale of bottled wine

produced by that winegrower at specified events approved by the department. The act prohibits a wine sales event permit from being used more than 2 times a month at a particular location, and requires the winegrower to pay a fee of \$50 for the permit. The act provides that moneys collected as fees pursuant to the act are to be deposited in the Alcohol Beverage Control Fund. These moneys are generally allocated to the Department of Alcoholic Beverage Control upon appropriation by the Legislature.

This bill would authorize a licensed beer manufacturer to apply to the department for a brewery event permit that allows the sale of beer produced by that beer manufacturer for consumption on property contiguous and adjacent to the licensed premises of the manufacturer, as provided. The bill would authorize a fee for a brewery event permit of \$110 *for the 2016 calendar year, and thereafter as provided*, and an event authorization fee of not more than \$25 for each approved event. The bill would allow up to 4 authorized events each calendar year.

(3) Existing law, known as tied-house restrictions, generally prohibits a manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, and wholesaler, and any officer, director, or agent of any of those persons, from having specified relationships with an on-sale alcoholic beverage licensee, with limited exceptions. Existing law specifies that the Alcoholic Beverage Control Act does not prohibit holders of retail on-sale or off-sale licenses from purchasing advertising in any publication by specified alcoholic beverage licensees.

This bill would specify that the act does not prohibit purchasing advertising in a publication published by a nonretail licensee, as defined, and would include Internet Web sites and social media feeds as types of publications for these purposes.

(4) *The Alcoholic Beverage Control Act authorizes specified licensees to purchase alcoholic beverages for resale under specified circumstances. The act provides that a person convicted of a violation of its provisions is guilty of a misdemeanor unless another penalty or punishment is specifically provided.*

This bill would prohibit a retail licensee from purchasing beer from any beer manufacturer for the purpose of selling or offering to sell that beer under specified circumstances, including where the beer container contains the statement or is marked "Not Packaged for Resale".

By expanding the scope of a crime, this 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.

(5) Existing law requires the Department of Alcoholic Beverage Control, in any hearing on an accusation charging a licensee with a violation of specified provisions relating to minors, to produce the alleged minor for examination at the hearing unless he or she is unavailable as a witness because he or she is dead or unable to attend the hearing because of a then-existing physical or mental illness or infirmity, or unless the licensee has waived, in writing, the appearance of the minor. Existing law provides that when a minor is absent because of a then-existing physical or mental illness or infirmity, a reasonable continuance shall be granted to allow for the appearance of the minor if the administrative law judge finds that it is reasonably likely that the minor can be produced within a reasonable amount of time.

This bill would state that the above provisions are not intended to preclude the continuance of a hearing because of the unavailability of a minor for any other reason pursuant to a specified provision.

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 23355.3 is added to the Business and
2 Professions Code, to read:
3 23355.3. (a) A licensee may sponsor or otherwise participate
4 in an event conducted by, and for the benefit of, a nonprofit
5 organization ~~that has obtained a temporary daily on-sale license~~
6 ~~or a temporary daily off-sale license under this division,~~ in which
7 retail ~~or~~ and nonretail licensees are involved as sponsors or
8 participants, subject to all of the following conditions:
9 ~~(1) Sponsorship or participation shall be pursuant to a written~~
10 ~~agreement.~~
11 ~~(2)~~
12 ~~(1) Except as otherwise provided, provided in this section, any~~
13 ~~payment of money or other consideration for sponsorship or~~
14 ~~participation in the event shall be as moneys paid made only to the~~

1 nonprofit organization holding the temporary license. *conducting*
2 *the event.*

3 (2) *Except as otherwise provided in this section, a nonretail*
4 *licensee shall not, directly or indirectly, pay money or provide any*
5 *other thing of value to a permanent retail licensee that is also a*
6 *sponsor of, or participant in, the event.*

7 (3) A nonretail licensee may donate alcoholic beverages to a
8 nonprofit only as otherwise authorized by Section 25503.9.

9 (4) Except as otherwise provided by this division, a retail
10 licensee shall not give, sell, or furnish any alcoholic beverages to
11 the temporary licensee.

12 (5) ~~This subdivision shall not prohibit the establishment by the~~
13 ~~temporary daily licensee of different levels of sponsorship, where~~
14 ~~each sponsorship level provides different promotional benefits to~~
15 ~~a sponsor. All sponsorship agreements for the event shall be on~~
16 ~~identical terms. A nonretail or retail licensee may choose to~~
17 ~~participate in any level of sponsorship, including at the name or~~
18 ~~principal sponsor level. A nonprofit organization may choose to~~
19 ~~have one, or multiple, name or principal sponsors. Sponsorship or~~
20 ~~participation opportunities shall be made available to any retail~~
21 ~~and nonretail licensee wishing to sponsor or participate.~~

22 (6) (A) ~~Except as otherwise specified in this subdivision, any~~
23 ~~advertising or promotion of the event by the temporary daily~~
24 ~~licensee shall identify all sponsors. Sponsorship levels may specify~~
25 ~~how prominent the identification of each sponsor shall be, provided~~
26 ~~that all sponsors within each level are treated equally in the~~
27 ~~advertising or promotion.~~

28 (B)

29 (6) (A) ~~A nonretail licensee may communicate sponsorship,~~
30 ~~or participation, and share, repost, or otherwise forward a social~~
31 ~~media post by a retail licensee or nonretail licensee if the~~
32 ~~communication, sharing, reposting, or forwarding of the social~~
33 ~~media post advertise or communicate sponsorship or participation~~
34 ~~in the event. This advertising or communication may include, but~~
35 ~~is not limited to, initiating, sharing, reposting, or otherwise~~
36 ~~forwarding a social media post by a permanent retail licensee or~~
37 ~~a nonretail licensee if the advertisement or communication does~~
38 ~~not contain the retail price of any alcoholic beverage. A nonretail~~
39 ~~licensee shall not pay or reimburse a retail licensee, directly or~~
40 ~~indirectly, for any social media advertising services. A retail~~

1 licensee shall not accept any payment or reimbursement, directly
2 or indirectly, for any social media advertising services offered by
3 a nonretail licensee. For the purposes of this paragraph, “social
4 media” means a service, platform, or site where users communicate
5 with one another and share media, such as pictures, videos, music,
6 and blogs, with other users free of charge. ~~beverage or otherwise~~
7 *promotes a retail licensee beyond its sponsorship or participation*
8 *in the event.*

9 (7) ~~A retail licensee shall conspicuously offer for sale alcoholic~~
10 ~~beverages other than the products produced, distributed, bottled,~~
11 ~~or otherwise offered for sale by any of the sponsors of the event.~~
12 ~~The retail licensee shall serve other brands of alcoholic beverages~~
13 ~~distributed by a competing wholesaler in addition to the brands~~
14 ~~manufactured or marketed by the nonretail licensee sponsoring or~~
15 ~~participating in the event.~~

16 (B) *A nonretail licensee shall not pay or reimburse a permanent*
17 *licensee, directly or indirectly, for any advertising services,*
18 *including by way of social media. Except as otherwise permitted*
19 *by this section, a permanent retail licensee shall not accept any*
20 *payment or reimbursement, directly or indirectly, for any*
21 *advertising services offered by a nonretail licensee.*

22 (C) *For the purposes of this subdivision, “social media” means*
23 *a service, platform, application, or site where users communicate*
24 *and share media, such as pictures, videos, music, and blogs, with*
25 *other users.*

26 (7) *A nonretail licensee shall not require, directly or indirectly,*
27 *as a condition of sponsorship or participation in any event under*
28 *this section, that its products be sold or served exclusively at the*
29 *event. A retail licensee shall not receive, directly or indirectly, any*
30 *advertising, sale, or promotional benefit from any permanent retail*
31 *licensee in connection with the sponsorship or participation. A*
32 *permanent retail licensee shall not offer or provide a nonretail*
33 *licensee any advertising, sale, or promotional benefit in connection*
34 *with the sponsorship or participation.*

35 (b) ~~The~~ *This section does not authorize a nonretail licensee to*
36 *pay, in whole or in part, any costs, including the cost of*
37 *sponsorship, of any retail licensee that is sponsoring or participating*
38 *in a nonprofit event.*

39 (c) *A licensee that sponsors or participates in a nonprofit event*
40 *under this section shall keep detailed records of its sponsorship or*

1 participation and shall maintain those records for a period of at
2 least three years. These records shall be provided to the department
3 upon request.

4 *(d) Nothing in this section shall be deemed to exempt the*
5 *nonprofit organization from obtaining any licenses or permits as*
6 *may be required to conduct the event.*

7 SEC. 2. Section 23399.65 is added to the Business and
8 Professions Code, to read:

9 23399.65. (a) A licensed beer manufacturer may apply to the
10 department for a brewery event permit. A brewery event permit
11 shall authorize the sale of beer produced by the licensee pursuant
12 to Section 23357 for consumption on property contiguous and
13 adjacent to the licensed premises owned or under the control of
14 the licensee. The property shall be secured and controlled by the
15 licensee.

16 (b) (1) The fee for a brewery event permit for a licensed beer
17 manufacturer shall be one hundred ten dollars (\$110) for a permit
18 issued during the 2016 calendar year, and for a permit issued during
19 the years thereafter, the annual fee shall be calculated pursuant to
20 subdivisions (b) and (c) of Section 23320. The permit may be
21 renewed annually at the same time as the licensee's license. A
22 brewery event permit shall be transferable as a part of the license.

23 (2) For each brewery event, consent for the sale of beer pursuant
24 to subdivision (a) at the brewery event shall be first obtained by
25 the licensee from the department in the form of an event
26 authorization issued by the department. An event authorization
27 shall be subject to approval by the appropriate local law
28 enforcement agency. The fee for each event authorization shall
29 not exceed twenty-five dollars (\$25). The number of events
30 authorized by a brewery event permit shall not exceed four in any
31 calendar year.

32 (3) All moneys collected as fees pursuant to this subdivision
33 shall be deposited in the Alcohol Beverage Control Fund, as
34 described in Section 25761, for allocation, upon appropriation by
35 the Legislature, as provided in subdivision (d) of that section.

36 (c) At all approved events, the licensee may exercise only those
37 privileges authorized by the licensee's license and shall comply
38 with all provisions of the act pertaining to the conduct of on-sale
39 ~~premises~~ *premises*, and violation of those provisions may be
40 grounds for suspension or revocation of the licensee's license or

1 permit, or both, as though the violation occurred on the licensed
2 premises.

3 (d) The department may adopt any regulations it determines to
4 be necessary for the administration of this section.

5 *SEC. 3. Section 23402.5 is added to the Business and*
6 *Professions Code, to read:*

7 *23402.5. (a) A retail licensee shall not sell or offer for sale*
8 *any beer that is purchased from a beer manufacturer at the beer*
9 *manufacturer's licensed premises under any of the following*
10 *circumstances:*

11 *(1) The beer manufacturer from which the beer is purchased*
12 *has not filed a price schedule pursuant to Chapter 12 (commencing*
13 *with Section 25000) for the sale of that beer in the county in which*
14 *the retail licensee's premises at which the beer is being sold or*
15 *offered for sale is located.*

16 *(2) The price at which the retailer purchases the beer is different*
17 *from the price in the price schedule filed by the beer manufacturer*
18 *pursuant to Chapter 12 (commencing with Section 25000) from*
19 *which the beer is purchased.*

20 *(3) The beer container contains the statement or is marked "Not*
21 *Packaged for Resale".*

22 *(b) Nothing in this section creates any exception to the*
23 *requirements of Chapter 12 (commencing with Section 25000).*

24 ~~SEC. 3.~~

25 *SEC. 4. Section 25500 of the Business and Professions Code*
26 *is amended to read:*

27 *25500. (a) No manufacturer, winegrower, manufacturer's*
28 *agent, rectifier, California winegrower's agent, distiller, bottler,*
29 *importer, or wholesaler, or any officer, director, or agent of any*
30 *such person shall:*

31 *(1) Hold the ownership, directly or indirectly, of any interest in*
32 *any on-sale license.*

33 *(2) Furnish, give, or lend any money or other thing of value,*
34 *directly or indirectly, to, or guarantee the repayment of any loan*
35 *or the fulfillment of any financial obligation of, any person engaged*
36 *in operating, owning, or maintaining any on-sale premises where*
37 *alcoholic beverages are sold for consumption on the premises.*

38 *(3) Own any interest, directly or indirectly, in the business,*
39 *furniture, fixtures, refrigeration equipment, signs, except signs for*
40 *interior use mentioned in subdivision (g) of Section 25503, or lease*

1 in or of any premises operated or maintained under any on-sale
2 license for the sale of alcoholic beverages for consumption on the
3 premises where sold; or own any interest, directly or indirectly, in
4 realty acquired after June 13, 1935, upon which on-sale premises
5 are maintained unless the holding of the interest is permitted in
6 accordance with rules of the department.

7 (b) This section does not apply to the holding by one person of
8 a wholesaler's license and an on-sale license in counties not to
9 exceed 15,000 population.

10 (c) This section does not apply to the financial or representative
11 relationship between a manufacturer, winegrower, manufacturer's
12 agent, rectifier, California winegrower's agent, distiller, bottler,
13 importer, or wholesaler, or any officer, director, or agent of such
14 person, and a person holding only one of the following types of
15 licenses:

16 (1) On-sale general license for a bona fide club.

17 (2) Club license issued under Article 4 (commencing with
18 Section 23425) of Chapter 3.

19 (3) Veterans' club license issued under Article 5 (commencing
20 with Section 23450) of Chapter 3.

21 (4) On-sale license for boats, trains, sleeping cars, or airplanes
22 where the alcoholic beverages produced or sold by the
23 manufacturer, winegrower, manufacturer's agent, rectifier,
24 California winegrower's agent, bottler, importer, or wholesaler or
25 any officer, director, or agent of the person are not sold, furnished,
26 or given, directly or indirectly to the on-sale licensee.

27 (d) This section does not apply to an employee of a licensee
28 referred to in subdivision (a) who is a nonadministrative and
29 nonsupervisory employee.

30 (e) Notwithstanding any other provision of this division or
31 regulation of the department, this section does not apply to an
32 employee of a licensee referred to in subdivision (a) who is the
33 spouse of an on-sale licensee, so long as the on-sale licensee does
34 not purchase, offer for sale, or promote, regardless of source, any
35 of the brands of alcoholic beverages that are produced, bottled,
36 processed, imported, rectified, distributed, represented, or sold by
37 any licensee referred to in subdivision (a) that employs the spouse
38 of the on-sale licensee.

1 (f) (1) Nothing in this division prohibits the holder of any retail
2 on-sale or off-sale license from purchasing advertising in any
3 publication published by a nonretail licensee.

4 (2) For purposes of this subdivision:

5 (A) “Nonretail licensee” means any manufacturer, winegrower,
6 manufacturer’s agent, rectifier, California winegrower’s agent,
7 distiller, bottler, importer, or wholesaler, or any person who does
8 not directly or indirectly hold the ownership of any interest in a
9 retail license.

10 (B) “Publication published by a nonretail licensee” includes
11 Internet Web sites and social media feeds operated and maintained
12 by or for a nonretail licensee under an account or Internet Web
13 site address owned by the nonretail licensee.

14 *SEC. 5. Section 25666 of the Business and Professions Code*
15 *is amended to read:*

16 25666. (a) In any hearing on an accusation charging a licensee
17 with a violation of Sections 25658, 25663, and 25665, the
18 department shall produce the alleged minor for examination at the
19 hearing unless he or she is unavailable as a witness because he or
20 she is dead or unable to attend the hearing because of a
21 then-existing physical or mental illness or infirmity, or unless the
22 licensee has waived, in writing, the appearance of the minor. When
23 a minor is absent because of a then-existing physical or mental
24 illness or infirmity, a reasonable continuance shall be granted to
25 allow for the appearance of the minor if the administrative law
26 judge finds that it is reasonably likely that the minor can be
27 produced within a reasonable amount of time. ~~Nothing in this~~
28 ~~section shall prevent the department from taking testimony of the~~
29 ~~minor as provided in Section 11511 of the Government Code.~~

30 (b) (1) *Nothing in this section shall prevent the department*
31 *from taking testimony of the minor as provided in Section 11511*
32 *of the Government Code.*

33 (2) *This section is not intended to preclude the continuance of*
34 *a hearing because of the unavailability of a minor for any other*
35 *reason pursuant to Section 11524 of the Government Code.*

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

- 1 *for a crime or infraction, within the meaning of Section 17556 of*
- 2 *the Government Code, or changes the definition of a crime within*
- 3 *the meaning of Section 6 of Article XIII B of the California*
- 4 *Constitution.*

O