

AMENDED IN ASSEMBLY JUNE 29, 2015

SENATE BILL

No. 796

Introduced by Committee on Governmental Organization (Senators Hall (Chair), Berryhill, Block, Gaines, Galgiani, Hernandez, Hill, Hueso, Lara, McGuire, and Vidak)

March 12, 2015

An act to *amend Sections 25502.2, 25503.28, 25600.1, and 25600.2 of, and to add Section 23405.4 to* the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Committee on Governmental Organization. ~~Alcoholic beverage licenses: private equity funds: beverages: licenses: advertising: contests and sweepstakes.~~

The

(1) *The* Alcoholic Beverage Control Act specifies the rules and procedures for the issuance and transfer of alcoholic beverage licenses by the Department of Alcoholic Beverage Control. The act requires the department to make a thorough investigation to determine whether the applicant for a license and the premises for which a license is applied qualify for a license.

This bill would provide that the Department of Alcoholic Beverage Control is not required to qualify for a license a person who is an investor in a private equity fund that holds an interest in an alcoholic beverage license, subject to specified conditions, and would authorize the department to require the manager of the private equity fund to execute an affidavit confirming compliance with the requirements of this provision.

(2) *The Alcoholic Beverage Control Act includes tied-house restrictions, which prohibit specified licensees from furnishing, giving, or lending money or other thing of value, directly or indirectly, to a person engaged in operating, owning, or maintaining an off-sale licensed premises. Existing law authorizes, until January 1, 2016, the appearance of a person employed or engaged by an authorized licensee at a promotional event held at the premises of an off-sale retail licensee for the purposes of providing autographs, subject to specified conditions.*

This bill would delete the sunset date of the above provision, thereby extending the provision indefinitely.

(3) *Existing law authorizes a beer manufacturer to sell, at the licensed premises of production, specified beer and wine to consumers under described conditions, and limits the beer manufacturer to six branch locations that may be used for the sale of alcoholic beverages to consumers for consumption off the licensed premises.*

This bill would prohibit a beer manufacturer, regardless of the number of beer manufacturer licenses that are held by the beer manufacturer alone, under common ownership with any other licensed beer manufacturer, or under common ownership with any officer, director, employee, or agent of that beer manufacturer that is operating as an on-sale retailer, from exercising, alone or in common, any combination of specified described retail privileges that would result in that beer manufacturer exercising retail privileges at more than six locations.

(4) *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. Existing law permits 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, including that alcoholic beverages or anything redeemable are not awarded as a prize.*

This bill would authorize the inclusion of alcoholic beverages as part of a prize in a consumer contest or sweepstakes where the inclusion is an incidental part of a prize package.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 23405.4 is added to the Business and
2 Professions Code, to read:

3 23405.4. (a) The department is not required to qualify for a
4 license a person who is an investor in a private equity fund that
5 holds an interest in a license, provided all of the following
6 conditions are satisfied:

7 (1) The private equity fund's interest in the license is limited to
8 a passive investment, so that neither the private equity fund nor
9 any manager, employee, or agent of the private equity fund has
10 any involvement in, or control over, the management of the
11 licensed business or of the licensee.

12 (2) The private equity fund advisors are registered under the
13 federal Investment Advisors Act of 1940, and the private equity
14 fund advisors are subject to, and comply with, Section 275.204(b)-1
15 of Title 17 of the Code of Federal Regulations.

16 (3) An investor shall not, directly or indirectly, hold more than
17 10-percent interest in the private equity fund.

18 (4) An investor in the private equity fund shall not have any
19 control, directly or indirectly, over the investment decisions of the
20 private equity fund.

21 (b) For purposes of this section, private equity fund means an
22 investment company that makes investments in equity or debt
23 securities of another company that does not provide investors with
24 redemption rights in the ordinary course. A private equity fund
25 does not include a hedge fund, liquidity fund, real estate fund,
26 securitized asset fund, or venture capital fund.

27 (c) The department may require the manager of the private
28 equity fund to execute an affidavit confirming compliance with
29 the requirements of this section. If the manager does not have
30 personal knowledge of any of the facts necessary to execute the
31 affidavit, the manager shall make a diligent inquiry and may
32 thereafter execute the affidavit upon information and belief. The
33 manager of the private equity fund shall promptly notify the
34 department in writing if any of the facts attested to change.

35 (d) This section is not intended to allow a person, by reason of
36 his or her investment in a private equity fund, to hold an interest
37 in a license issued by the department if that interest is not otherwise
38 permitted under this division.

1 *SEC. 2. Section 25502.2 of the Business and Professions Code*
2 *is amended to read:*

3 25502.2. (a) A person employed or engaged by an authorized
4 licensee may appear at a promotional event at the premises of an
5 off-sale retail licensee for the purposes of providing autographs
6 to consumers at the promotional event only under the following
7 conditions:

8 (1) A purchase from the off-sale retail licensee is not required.

9 (2) A fee is not charged to attend the promotional event.

10 (3) Autographing may only be provided on consumer advertising
11 specialities given by the authorized licensee to a consumer or on
12 any item provided by the consumer.

13 (4) The promotional event does not exceed four hours in
14 duration.

15 (5) There are no more than two promotional events per calendar
16 year involving the same authorized licensee at a single premises
17 of an off-sale retail licensee.

18 (6) The off-sale retail licensee may advertise the promotional
19 event to be held at its licensed premises.

20 (7) An authorized licensee may advertise in advance of the
21 promotional event only in publications of the authorized licensee,
22 subject to the following conditions:

23 (A) The advertising only lists the name and address of the
24 off-sale retail licensee, the name of the alcoholic beverage product
25 being featured at the promotional event, and the time, date, and
26 location of the off-sale retail licensee location where the
27 promotional event is being held.

28 (B) The listing of the off-sale retail licensee’s name and address
29 is the only reference to the off-sale retail licensee in the
30 advertisement and is relatively inconspicuous in relation to the
31 advertisement as a whole, and the advertisement does not contain
32 any pictures or illustrations of the off-sale retail licensee’s premises
33 or laudatory references to the off-sale retail licensee.

34 (8) A wholesaler does not directly or indirectly underwrite,
35 share in, or contribute to any costs related to the promotional event,
36 except that a beer and wine wholesaler that holds at least six
37 distilled spirits wholesaler licenses may directly or indirectly
38 underwrite, share in, or contribute to any costs related to a
39 promotional event for which the wholesaler employs or engages

1 the person providing autographs to consumers at the promotional
2 event.

3 (9) The authorized licensee notifies the department in writing
4 of the promotional event at least 30 days in advance of the
5 promotional event.

6 (10) The authorized licensee maintains records necessary to
7 establish its compliance with this section.

8 (b) For purposes of this section, “authorized licensee” means a
9 manufacturer, winegrower, manufacturer’s agent, California
10 winegrower’s agent, rectifier, importer, brandy manufacturer,
11 brandy importer, or wholesaler.

12 ~~(e) This section shall remain in effect only until January 1, 2016,~~
13 ~~and as of that date is repealed, unless a later enacted statute, that~~
14 ~~is enacted before January 1, 2016, deletes or extends that date.~~

15 *SEC. 3. Section 25503.28 of the Business and Professions Code*
16 *is amended to read:*

17 25503.28. (a) (1) Notwithstanding any other provision of this
18 division, the holder of no more than six on-sale licenses, or any
19 officer, director, employee, or agent of that licensee, may own a
20 licensed beer manufacturer holding a license pursuant to paragraph
21 ~~(a) of subdivision (1) of Section 23320, that exercises retail~~
22 *privileges pursuant to Section 23357 and may serve on the board*
23 *of directors and as an officer or employee of a licensed beer*
24 *manufacturer.*

25 (2) *A beer manufacturer, regardless of the number of beer*
26 *manufacturer licenses that are held by the beer manufacturer*
27 *alone, under common ownership with any other licensed beer*
28 *manufacturer, or under common ownership with any officer,*
29 *director, employee, or agent of that beer manufacturer that is*
30 *operating as an on-sale retailer as described by this section, shall*
31 *not exercise, alone or in common, any combination of retail*
32 *privileges described in this section or subdivision (c) of Section*
33 *23389 that would result in that beer manufacturer exercising retail*
34 *privileges at more than six locations, regardless of whether the*
35 *retail privileges are exercised pursuant to this section, to*
36 *subdivision (c) of Section 23389, or to any combination of retail*
37 *privileges described under both of those sections. This section*
38 *shall not limit the number of licensed beer manufacturer branch*
39 *locations or the exercise of retail privileges at those branch*
40 *locations as authorized by Section 23357.*

1 (b) An on-sale licensee specified in subdivision (a) shall
2 purchase no alcoholic beverages for sale in this state other than
3 from a wholesale or winegrower licensee, except for any alcoholic
4 beverages manufactured by the licensed beer manufacturer at a
5 single location contiguous or adjacent to the premises of the on-sale
6 licensee.

7 (c) The Legislature finds that it is necessary and proper to
8 require a separation between manufacturing interests, wholesale
9 interests, and retail interests in the production and distribution of
10 alcoholic beverages in order to prevent suppliers from dominating
11 local markets through vertical integration and to prevent excessive
12 sales of alcoholic beverages produced by overly aggressive
13 marketing techniques. The Legislature further finds that the
14 exception established by this section to the general prohibition
15 against tied interests must be limited to its expressed terms so as
16 not to undermine the general prohibition, and intends that this
17 section be construed accordingly.

18 ~~(d) This section shall become operative on January 1, 1998.~~

19 *SEC. 4. Section 25600.1 of the Business and Professions Code*
20 *is amended to read:*

21 25600.1. (a) An authorized licensee may conduct consumer
22 contests, subject to the following conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (5) Alcoholic beverages or anything redeemable for alcoholic
24 beverages shall not be awarded as a contest prize. This paragraph
25 shall not prohibit a contest in which the prize is cash or cash
26 ~~equivalent or equivalent~~, the awarding of cash or cash ~~equivalent~~
27 *equivalent, or the inclusion of alcoholic beverages as an incidental*
28 *part of a prize package.*

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

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

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

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

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

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

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

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

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

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

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

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

3 (c) For purposes of this section:

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

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

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

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

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

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

35 *SEC. 5. Section 25600.2 of the Business and Professions Code*
36 *is amended to read:*

37 25600.2. (a) An authorized licensee may conduct or sponsor
38 consumer sweepstakes, subject to the following conditions:

39 (1) (A) No entry fee may be charged to participate in a
40 sweepstakes authorized by this subdivision. Entry or extra chances

1 in a sweepstakes shall not be made available via the purchase of
2 an alcoholic beverage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (5) Alcoholic beverages or anything redeemable for alcoholic
7 beverages shall not be awarded as a sweepstakes prize. This
8 paragraph shall not prohibit a sweepstakes in which the prize is
9 cash or cash ~~equivalent~~ or *equivalent*, the awarding of cash or cash
10 ~~equivalent~~. *equivalent, or the inclusion of alcoholic beverages as*
11 *an incidental part of a prize package.*

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

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

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

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

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

35 (D) Advertising or promotion of a sweepstakes shall only be
36 conducted on the premises of a retail licensee when such
37 advertisement or promotion involves a minimum of three
38 unaffiliated retail licensees. For purposes of this subparagraph,
39 “unaffiliated retail licensees” shall not include a retail licensee

1 owned or controlled in whole or in part by an authorized licensee
2 or any officer, director, or agent of that licensee.

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

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

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

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

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

28 (b) For purposes of this section:

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

39 (B) An “authorized licensee” shall not include a beer and wine
40 wholesaler, a beer and wine importer general, or distilled spirits

1 importer general that only holds a wholesaler’s or retailer’s license
2 as an additional license.

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

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

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

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