

AMENDED IN SENATE JUNE 30, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1082

**Introduced by Committee on Governmental Organization
(Brown (Chair), Baca, Bordonaro, Floyd, Hertzberg,
Honda, Margett, Perata, Vincent, Wayne, and Wright)**

February 27, 1997

~~An act to amend and repeal Section 25658.4 of the Business~~
An act to amend Section 23355.1 of, to amend and repeal
Section 25658.4 of, and to add Section 25758.5 to, the Business
and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1082, as amended, Committee on Governmental Organization. Alcoholic beverages.

(1) The Alcoholic Beverage Control Act provides that certain licensees may, among other things, store and deliver distilled spirits from certain locations under specified conditions.

This bill would allow a retail off-sale licensee to sell wine at an auction and deliver that wine to any purchaser at the auction from the vendor's licensed premises or any other storage facility under specified conditions.

(2) The Alcoholic Beverage Control Act prohibits a clerk from making an off sale of alcoholic beverages unless the clerk executes, under penalty of perjury, on the first day he or she makes that sale, an application and acknowledgment, on a form prepared by the department, that includes at a

minimum a summary of certain requirements and prohibitions in the act, as specified.

This bill would additionally require inclusion of information as to sales of keg beer for consumption off licensed premises.

The act provides that a violation of any of its provisions for which another penalty or punishment is not specifically provided is ~~guilty~~ of 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.

This bill would repeal a substantially duplicative provision.

(3) The Alcoholic Beverage Control Act authorizes the Department of Alcoholic Beverage Control to pay witness fees and necessary expenses or mileage to a person who attends as a witness any criminal proceeding involving certain violations of the act, as specified.

This bill would authorize the department to pay certain expenses to a person subpoenaed by the department to appear as a witness at a hearing on a protest, accusation, or petition for a license, as specified.

(4) This bill would incorporate additional changes in Section 25658.4 of the Business and Professions Code, proposed by SB 805, to be operative only if SB 805 and this bill are both chaptered and become effective on or before January 1, 1998, and this bill is chaptered last.

(5) 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: yes.

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

1 SECTION 1. *Section 23355.1 of the Business and*
2 *Professions Code is amended to read:*

3 23355.1. Notwithstanding any other provision of this
4 division, the following acts are authorized:



1 (a) Deliveries of distilled spirits by a licensee to a retail
2 licensee may be made from the vendor's licensed
3 premises or from a warehouse located within the county
4 in which the vendor's licensed premises are located
5 except as permitted by Section 23383. Deliveries to a
6 licensed importer may also be made from any point
7 outside the state.

8 (b) A distilled spirits manufacturer, distilled spirits
9 manufacturer's agent, distilled spirits rectifier general, or
10 rectifier may store, bottle, cut, blend, mix, flavor, color,
11 label, and package distilled spirits owned by another
12 distilled spirits manufacturer, distilled spirits
13 manufacturer's agent, distilled spirits rectifier general,
14 rectifier, or a distilled spirits wholesaler, and may deliver
15 ~~such~~ those distilled spirits from the premises where
16 stored, bottled, cut, blended, mixed, flavored, colored,
17 labeled, or packaged, or from a warehouse located in the
18 same county as ~~such~~ that premises for the account of the
19 owner of ~~such~~ those distilled spirits to any licensee—~~such~~
20 that owner would be authorized to deliver to under his *or*
21 *her* own license, except to a retail licensee.

22 (c) A distilled spirits manufacturer, distilled spirits
23 manufacturer's agent, distilled spirits rectifier general,
24 rectifier, or distilled spirits wholesaler may store and
25 deliver distilled spirits for the account of another licensee
26 who would be authorized to make the delivery under his
27 *or her* own license, except that ~~such~~ licensee shall not
28 make a delivery to a retail licensee on behalf of another
29 licensee.

30 (d) *A retail off-sale licensee with annual United States*
31 *auction sales revenues of at least five hundred million*
32 *dollars (\$500,000,000) may sell wine at any auction held*
33 *in compliance with Section 2328 of the Commercial Code*
34 *to consumers and retail licensees and may deliver wines*
35 *sold to any purchaser at that auction from the vendor's*
36 *licensed premises or from any other storage facility.*

37 SEC. 2. Section 25658.4 of the Business and
38 Professions Code, as added by Section 4 of Chapter 726 of
39 the Statutes of 1991, is amended to read:



1 25658.4. (a) On and after January 1, 1992, no clerk
2 shall make an off sale of alcoholic beverages unless the
3 clerk executes under penalty of perjury on the first day
4 he or she makes that sale an application and
5 acknowledgment. The application and acknowledgment
6 shall be in a form understandable to the clerk.

7 (1) The department shall specify the form of the
8 application and acknowledgment, which shall include at
9 a minimum a summary of this division pertaining to the
10 following:

11 (A) The prohibitions contained in Sections 25658 and
12 25658.5 pertaining to the sale to, and purchase of,
13 alcoholic beverages by persons under 21 years of age.

14 (B) Bona fide evidence of majority as provided in
15 Section 25660.

16 (C) Hours of operation as provided in Article 2
17 (commencing with Section 25630) of Chapter 16.

18 (D) The prohibitions contained in subdivision (a) of
19 Section 25602 and Section 25602.1 pertaining to sales to an
20 intoxicated person.

21 (E) Sections 23393 and 23394 as they pertain to
22 on-premises consumption of alcoholic beverages in an
23 off-sale premises.

24 (F) The requirements and prohibitions contained in
25 Section 25659.5 pertaining to sales of keg beer for
26 consumption off licensed premises.

27 (2) The application and acknowledgment shall also
28 include a statement that the clerk has read and
29 understands the summary, a statement that the clerk has
30 never been convicted of violating this division or, if
31 convicted, an explanation of the circumstances of each
32 conviction, and a statement that the application and
33 acknowledgment is executed under penalty of perjury.

34 (3) The licensee shall keep the executed application
35 and acknowledgment on the premises at all times and
36 available for inspection by the department. A licensee
37 with more than one licensed off-sale premises in the state
38 may comply with this subdivision by maintaining an
39 executed application and acknowledgment at a
40 designated licensed premises, regional office, or



1 headquarters office in the state. An executed application
2 and acknowledgment maintained at the designated
3 locations shall be valid for all licensed off-sale premises
4 owned by the licensee. Any licensee maintaining an
5 application and acknowledgment at a designated site
6 other than the individual licensed off-sale premises shall
7 notify the department in advance and in writing of the
8 site where the application and acknowledgment shall be
9 maintained and available for inspection. A licensee
10 electing to maintain application and acknowledgments at
11 a designated site other than the licensed premises shall
12 maintain at each licensed premises a notice of where the
13 executed application and acknowledgments are located.
14 Any licensee with more than one licensed off-sale
15 premises who elects to maintain the application and
16 acknowledgments at a designated site other than each
17 licensed premises shall provide the department, upon
18 written demand, a copy of any employee's executed
19 application and acknowledgment within 10 business days.
20 A violation of this subdivision by a licensee constitutes
21 grounds for discipline by the department.

22 (b) On and after January 1, 1992, the licensee shall post
23 a notice that contains and describes, in concise terms,
24 prohibited sales of alcoholic beverages, a statement that
25 the off-sale seller will refuse to make a sale if the seller
26 reasonably suspects that the Alcoholic Beverage Control
27 Act may be violated, and a statement that a minor who
28 purchases or attempts to purchase alcoholic beverages is
29 subject to suspension or delay in the issuance of his or her
30 driver's license pursuant to Section 13202.5 of the Vehicle
31 Code. The notice shall be posted at an entrance or at a
32 point of sale in the licensed premises or in any other
33 location that is visible to purchasers of alcoholic
34 beverages and to the off-sale seller.

35 (c) As used in this section:

36 (1) "Off-sale seller" means any person holding a retail
37 off-sale license issued by the department and any person
38 employed by that licensee who in the course of that
39 employment sells alcoholic beverages.



1 (2) "Clerk" means an off-sale seller who is not a
2 licensee.

3 ~~SEC. 2.—~~

4 *SEC. 2.5. Section 25658.4 of the Business and*
5 *Professions Code, as added by Section 4 of Chapter 726 of*
6 *the Statutes of 1991, is amended to read:*

7 25658.4. (a) On and after January 1, 1992, no clerk
8 shall make an ~~off-sale~~ *off sale* of alcoholic beverages unless
9 the clerk executes under penalty of perjury on the first
10 day he or she makes ~~such a~~ *that* sale an application and
11 acknowledgment. The application and acknowledgment
12 shall be in a form understandable to the clerk.

13 (1) The department shall specify the form of the
14 application and acknowledgment which shall include at
15 a minimum a summary of this division pertaining to the
16 following:

17 (A) The prohibitions contained in Sections 25658 and
18 25658.5 pertaining to the sale to, and purchase of,
19 alcoholic beverages by persons under 21 years of age.

20 (B) Bona fide evidence of majority as provided in
21 Section 25660.

22 (C) Hours of operation as provided in Article 2
23 (commencing with Section 25630) of Chapter 16.

24 (D) The prohibitions contained in subdivision (a) of
25 ~~Sections~~ *Section 25602 and Section 25602.1* pertaining to
26 sales to *an* intoxicated person.

27 (E) Sections 23393 and 23394 as they pertain to
28 on-premises consumption of alcoholic beverages in an
29 off-sale premises.

30 (F) *The requirements and prohibitions contained in*
31 *Section 25659.5 pertaining to sales of keg beer for*
32 *consumption off licensed premises.*

33 (2) The application and acknowledgment shall also
34 include a statement that the clerk has read and
35 understands the summary, a statement that the clerk has
36 never been convicted of violating this division or, if
37 convicted, an explanation of the circumstances of each
38 conviction, and a statement that the application and
39 acknowledgment is executed under penalty of perjury.



1 (3) The licensee shall keep the executed application
2 and acknowledgment on the premises at all times and
3 available for inspection by the department. A licensee
4 with more than one licensed off-sale premises in the state
5 may comply with this subdivision by maintaining an
6 executed application and acknowledgment at a
7 designated licensed premises, regional office, or
8 headquarters office in the state. An executed application
9 and acknowledgment maintained at the designated
10 locations shall be valid for all licensed off-sale premises
11 owned by the licensee. Any licensee maintaining an
12 application and acknowledgment at a designated site
13 other than the individual licensed off-sale premises shall
14 notify the department in advance and in writing of the
15 site where the application and acknowledgment shall be
16 maintained and available for inspection. A licensee
17 electing to maintain application and acknowledgments at
18 a designated site other than the licensed premises shall
19 maintain at each licensed premises a notice of where the
20 executed application and acknowledgments are located.
21 Any licensee with more than one licensed off-sale
22 premises who elects to maintain the application and
23 acknowledgments at a designated site other than each
24 licensed premises shall provide the department, upon
25 written demand, a copy of any employee's executed
26 application and acknowledgment within 10 business days.
27 A violation of this subdivision by a licensee constitutes
28 grounds for discipline by the department.

29 (b) On and after January 1, 1992, the licensee shall post
30 a notice ~~which~~ *that* contains and describes, in concise
31 terms, prohibited sales of alcoholic beverages, a
32 statement that the off-sale seller will refuse to make a sale
33 if the seller reasonably suspects that the Alcoholic
34 Beverage Control Act may be violated, and a statement
35 that a minor who purchases or attempts to purchase
36 alcoholic beverages is subject to suspension or delay in the
37 issuance of his or her driver's license pursuant to Section
38 13202.5 of the Vehicle Code. The notice shall be posted at
39 an entrance or at a point of sale in the licensed premises



1 or in any other location that is visible to purchasers of
2 alcoholic beverages and to the off-sale seller.

3 (c) *On and after January 1, 1998, a retail licensee shall*
4 *post a notice that contains and describes, in concise terms,*
5 *the fines and penalties for any violation of Section 25658,*
6 *relating to the sale of alcoholic beverages to, or the*
7 *purchase of alcoholic beverages by, any person under the*
8 *age of 21 years.*

9 (d) As used in this section:

10 (1) "Off-sale seller" means any person holding a retail
11 off-sale license issued by the department and any person
12 employed by that licensee who in the course of that
13 employment sells alcoholic beverages.

14 (2) "Clerk" means an off-sale seller who is not a
15 licensee.

16 (e) *The department may adopt rules and appropriate*
17 *fees for licensees that it determines necessary for the*
18 *administration of this section.*

19 SEC. 3. Section 25658.4 of the Business and
20 Professions Code, as added by Section 3 of Chapter 695 of
21 the Statutes of 1990, is repealed.

22 ~~SEC. 3.—~~

23 SEC. 4. *Section 25758.5 is added to the Business and*
24 *Professions Code, to read:*

25 *25758.5. In any hearing before the department*
26 *pursuant to Section 24300, the department may pay any*
27 *person appearing as a witness at the hearing at the*
28 *request of the department pursuant to a subpoena, his or*
29 *her actual, necessary, and reasonable travel, food, and*
30 *lodging expenses, not to exceed the amount authorized*
31 *for state employees.*

32 SEC. 5. *Section 2.5 of this bill incorporates*
33 *amendments to Section 25658.4 of the Business and*
34 *Professions Code, as added by Section 4 of Chapter 726 of*
35 *the Statutes of 1991, proposed by both this bill and SB 805.*
36 *It shall only become operative if (1) both bills are enacted*
37 *and become effective on or before January 1, 1998, (2)*
38 *each bill amends Section 25658.4 of the Business and*
39 *Professions Code, as added by Section 4 of Chapter 726 of*
40 *the Statutes of 1991, and (3) this bill is enacted after SB*



1 805, in which case Section 2 of this bill shall not become
2 operative.

3 SEC. 6. No reimbursement is required by this act
4 pursuant to Section 6 of Article XIII B of the California
5 Constitution because the only costs that may be incurred
6 by a local agency or school district will be incurred
7 because this act creates a new crime or infraction,
8 eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section
10 17556 of the Government Code, or changes the definition
11 of a crime within the meaning of Section 6 of Article
12 XIII B of the California Constitution.

13 Notwithstanding Section 17580 of the Government
14 Code, unless otherwise specified, the provisions of this act
15 shall become operative on the same date that the act
16 takes effect pursuant to the California Constitution.

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