

Assembly Bill No. 1082

Passed the Assembly September 12, 1997

Chief Clerk of the Assembly

Passed the Senate September 9, 1997

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1997, at ____ o'clock __M.

Private Secretary of the Governor



CHAPTER ____

An act to amend Sections 23355.1, 24045.15, and 25501 of, to amend and repeal Section 25658.4 of, and to add Section 25758.5 to, the Business and Professions Code, and to add Section 172p to the Penal Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1082, 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 authorizes the issuance of a special temporary on-sale or off-sale wine license to certain nonprofit corporations having an agricultural purpose to sell wine, donated or sold to the nonprofit corporation by the member winegrowers, to consumers for the purpose of fundraising, as specified.

This bill would require that wine for sale under this special license bear the brand name of the producing winery. This bill would also require any advertising or solicitation for sale of wine under that license to disclose certain information concerning members of the nonprofit corporation.

(3) The Alcoholic Beverage Control Act prohibits a manufacturer, bottler, importer, or wholesaler of products of the brewing industry from furnishing, giving, renting, lending, or selling, directly or indirectly, any equipment, fixtures, or supplies, other than alcoholic beverages, to any person engaged in operating, owning, or maintaining any on-sale premises, as specified. Existing law provides, for purposes of that prohibition, that



supplies do not include paper beverage coasters, as specified.

This bill would revise that provision to provide that notwithstanding any other provision of that act, a manufacturer, bottler, importer, or wholesaler of products of the brewing industry may furnish, give, rent, lend, or sell, directly or indirectly, those specified paper coasters or brand-identified acrylic table tent holders to any person engaged in operating, owning, or maintaining any on-sale premises where alcoholic beverages are sold for consumption on the premises.

(4) 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 Alcoholic Beverage Control Act provides that a violation of any of its provisions for which another penalty or punishment is not specifically provided is 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.

(5) 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.



(6) Existing law makes it a crime punishable as a misdemeanor to sell or expose for sale alcoholic beverages within 1 1/2 miles of any university grounds or campus except in specified instances.

This bill would exempt from that criminal provision the sale or exposing or offering for sale of beer or wine by any on-sale alcoholic beverage licensee where the premises are situated more than 1,200 feet from the boundaries of Whittier College.

(7) 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.

(8) 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.

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

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

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

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

(b) A distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits rectifier general, or rectifier may store, bottle, cut, blend, mix, flavor, color, label, and package distilled spirits owned by another distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits rectifier general,



rectifier, or a distilled spirits wholesaler, and may deliver those distilled spirits from the premises where stored, bottled, cut, blended, mixed, flavored, colored, labeled, or packaged, or from a warehouse located in the same county as that premises for the account of the owner of those distilled spirits to any licensee that owner would be authorized to deliver to under his or her own license, except to a retail licensee.

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

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

SEC. 2. Section 24045.15 of the Business and Professions Code, as added by Section 1 of Chapter 383 of the Statutes of 1997, is amended to read:

24045.15. (a) Notwithstanding any other provision of this division, the department may issue a special temporary on-sale or off-sale wine license to any nonprofit corporation having an agricultural purpose that is exempt from the payment of income taxes under Section 501(c)(5) of the Internal Revenue Code of 1986. If the nonprofit corporation's name, or any name under which the nonprofit corporation does business, includes the designation of an American viticultural area (AVA) recognized by the United States Bureau of Alcohol, Tobacco and Firearms (BATF), as set forth in Part 9 (commencing with Section 9.1) of Title 27 of the Code of Federal Regulations (27 C.F.R. 9.1 et seq.), the membership of the nonprofit corporation shall include a majority of the winegrowers located in the named AVA



in order to obtain a license under this section. No more than one nonprofit corporation located in an AVA is entitled to obtain a license under this section. The applicant shall accompany the application with a fee of one hundred dollars (\$100).

(b) This special license shall only entitle the licensee to sell wine donated or sold to the nonprofit corporation by the member winegrowers to consumers for the purpose of fundraising. The wine shall bear the brand name of the producing winery. Off-sale privileges shall be limited to direct mail, telephone, and on-line computer. No member winegrower shall donate or sell more than 75 cases of wine per year to the nonprofit corporation and the nonprofit corporation shall sell no more than 1,000 cases of wine per year under the license. If the nonprofit corporation's name or any name under which the nonprofit corporation does business includes the designation of an American viticultural area (AVA) recognized by the United States Bureau of Alcohol, Tobacco and Firearms (BATF), as set forth in Part 9 (commencing with Section 9.1) of Title 27 of the Code of Federal Regulations (27 C.F.R. 9.1 et seq.), the wines sold by the nonprofit corporation must be entitled to use the named AVA as the appellation of origin. In order to avoid confusion between the corporation and any winery whose name also includes the designation of the named AVA, any advertising or solicitation for the sale of wine under this license by the corporation shall include a statement disclosing that the corporation is a nonprofit agricultural organization whose members include individual winegrowers or grapegrowers and whose purpose is to promote its agricultural region and improve its grapes and wines. This advertising or solicitation shall also include a complete roster of the corporation's members and a list of the brand names, varieties, and vintages of the wines offered for sale. The wine shall not be sold at less than its minimum retail price.

(c) This special license shall be for a period not exceeding 60 days. Only one special license authorized by



this section shall be issued to any nonprofit corporation in any 12-month period.

SEC. 2.3. Section 25501 of the Business and Professions Code is amended to read:

25501. No manufacturer, bottler, importer, or wholesaler of products of the brewing industry shall:

(a) Furnish, give, rent, lend, or sell, directly or indirectly, any equipment, fixtures, or supplies, other than alcoholic beverages, to any person engaged in operating, owning, or maintaining any on-sale premises where alcoholic beverages are sold for consumption on the premises. This subdivision shall not prohibit the furnishing of draft beer pumps and iceboxes to those persons who operate on a temporary basis. Notwithstanding any other provision of this division, a manufacturer, bottler, importer, or wholesaler of products of the brewing industry may furnish, give, rent, lend, or sell, directly or indirectly, paper beverage coasters less than 25 square inches in size and having a value of less than five cents (\$0.05) per coaster or brand-identified acrylic table tent holders to any person engaged in operating, owning, or maintaining any on-sale premises where alcoholic beverages are sold for consumption on the premises.

(b) Directly or indirectly, hold the ownership or any interest, by stock ownership or otherwise, in any firm, corporation, partnership, or business, furnishing, supplying, or dealing in any office, store, or restaurant furnishings or equipment, other than signs for interior use or supplies authorized to be given under this division to any person engaged in operating, owning, or maintaining any on-sale premises.

(c) Notwithstanding any provision of this section, the holder of a beer and wine wholesaler's license may manufacture, distribute, and sell any lawful product to any person engaged in operating, owning, or maintaining any on-sale premises where alcoholic beverages are sold for consumption on the premises, provided that these products are sold by the holder of the beer and wine



wholesaler's license to the on-sale licensee at a price not less than the current market price for the product.

SEC. 3. Section 25658.4 of the Business and Professions Code, as added by Section 4 of Chapter 726 of the Statutes of 1991, is amended to read:

25658.4. (a) On and after January 1, 1992, no clerk shall make 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. The application and acknowledgment shall be in a form understandable to the clerk.

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

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

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

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

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

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

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

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

(3) The licensee shall keep the executed application and acknowledgment on the premises at all times and



available for inspection by the department. A licensee with more than one licensed off-sale premises in the state may comply with this subdivision by maintaining an executed application and acknowledgment at a designated licensed premises, regional office, or headquarters office in the state. An executed application and acknowledgment maintained at the designated locations shall be valid for all licensed off-sale premises owned by the licensee. Any licensee maintaining an application and acknowledgment at a designated site other than the individual licensed off-sale premises shall notify the department in advance and in writing of the site where the application and acknowledgment shall be maintained and available for inspection. A licensee electing to maintain application and acknowledgments at a designated site other than the licensed premises shall maintain at each licensed premises a notice of where the executed application and acknowledgments are located. Any licensee with more than one licensed off-sale premises who elects to maintain the application and acknowledgments at a designated site other than each licensed premises shall provide the department, upon written demand, a copy of any employee's executed application and acknowledgment within 10 business days. A violation of this subdivision by a licensee constitutes grounds for discipline by the department.

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

(c) As used in this section:



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

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

SEC. 3.5. Section 25658.4 of the Business and Professions Code, as added by Section 4 of Chapter 726 of the Statutes of 1991, is amended to read:

25658.4. (a) On and after January 1, 1992, no clerk shall make 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. The application and acknowledgment shall be in a form understandable to the clerk.

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

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

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

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

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

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

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

(2) The application and acknowledgment shall also include a statement that the clerk has read and understands the summary, a statement that the clerk has never been convicted of violating this division or, if convicted, an explanation of the circumstances of each



conviction, and a statement that the application and acknowledgment is executed under penalty of perjury.

(3) The licensee shall keep the executed application and acknowledgment on the premises at all times and available for inspection by the department. A licensee with more than one licensed off-sale premises in the state may comply with this subdivision by maintaining an executed application and acknowledgment at a designated licensed premises, regional office, or headquarters office in the state. An executed application and acknowledgment maintained at the designated locations shall be valid for all licensed off-sale premises owned by the licensee. Any licensee maintaining an application and acknowledgment at a designated site other than the individual licensed off-sale premises shall notify the department in advance and in writing of the site where the application and acknowledgment shall be maintained and available for inspection. A licensee electing to maintain application and acknowledgments at a designated site other than the licensed premises shall maintain at each licensed premises a notice of where the executed application and acknowledgments are located. Any licensee with more than one licensed off-sale premises who elects to maintain the application and acknowledgments at a designated site other than each licensed premises shall provide the department, upon written demand, a copy of any employee's executed application and acknowledgment within 10 business days. A violation of this subdivision by a licensee constitutes grounds for discipline by the department.

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



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

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

(d) As used in this section:

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

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

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

SEC. 4. Section 25658.4 of the Business and Professions Code, as added by Section 3 of Chapter 695 of the Statutes of 1990, is repealed.

SEC. 5. Section 25758.5 is added to the Business and Professions Code, to read:

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

SEC. 6. Section 172p is added to the Penal Code, to read:

172p. The provisions of Section 172a shall not apply to the sale or exposing or offering for sale of beer or wine by any on-sale licensee under the Alcoholic Beverage Control Act whose licensed premises are situated more than 1,200 feet from the boundaries of Whittier College in the City of Whittier.



SEC. 7. Section 3.5 of this bill incorporates amendments to Section 25658.4 of the Business and Professions Code, as added by Section 4 of Chapter 726 of the Statutes of 1991, proposed by both this bill and SB 805. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 25658.4 of the Business and Professions Code, as added by Section 4 of Chapter 726 of the Statutes of 1991, and (3) this bill is enacted after SB 805, in which case Section 3 of this bill shall not become operative.

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

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



Approved _____, 1997

Governor

