

AMENDED IN SENATE MARCH 31, 1998

AMENDED IN SENATE MARCH 23, 1998

**SENATE BILL**

**No. 1696**

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**Introduced by Senator Alpert**

February 17, 1998

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An act to amend Sections ~~24210, 25658,~~ 25658 and 25658.1 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1696, as amended, Alpert. Alcoholic beverages.

~~Under existing law, the Department of Alcoholic Beverage Control may delegate the power to hear and decide with regard to suspension and revocation of licenses to an administrative law judge appointed by the Director of Alcoholic Beverage Control.~~

~~This bill would instead authorize the department to delegate the power to hear and decide with regard to suspension and revocation of licenses to an administrative law judge appointed by the Director of the Office of Administrative Hearings.~~

The Alcoholic Beverage Control Act prohibits the sale of alcoholic beverages to, or the purchase of alcoholic beverages by, persons under the age of 21 years, and imposes penalties in that regard, but permits minors to be used as decoys in the enforcement of these provisions.

This bill would require that, after the completion of each minor decoy program, the law enforcement agency using the decoy notify licensees of the results of the program.

The bill would permit a licensee to avoid the effect of a penalty for selling alcoholic beverages to a minor if the licensee takes specified steps to prevent the sale of alcoholic beverages to a minor.

The bill would state findings and declarations by the Legislature and state the intent of the Legislature in providing for the methods of enforcement of the prohibited sales of alcoholic beverages to minors.

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. This act shall be known and may be cited  
2 as the "Licensee Education and Training Act of 1998."

3 ~~SEC. 2. Section 24210 of the Business and Professions~~  
4 ~~Code is amended to read:~~

5 ~~24210. (a) The department may delegate the power~~  
6 ~~to hear and decide to an administrative law judge~~  
7 ~~appointed by the director of the Office of Administrative~~  
8 ~~Hearings. Any hearing before an administrative law~~  
9 ~~judge shall be pursuant to the procedures, rules, and~~  
10 ~~limitations prescribed in Chapter 5 (commencing with~~  
11 ~~Section 11500) of Part 1 of Division 3 of Title 2 of the~~  
12 ~~Government Code.~~

13 ~~(b) The amendments to this section made by the act~~  
14 ~~adding this subdivision shall become operative on July 1,~~  
15 ~~1995.~~

16 ~~SEC. 3.—~~

17 ~~SEC. 2. Section 25658 of the Business and Professions~~  
18 ~~Code is amended to read:~~

19 ~~25658. (a) Every person who sells, furnishes, gives, or~~  
20 ~~causes to be sold, furnished, or given away, any alcoholic~~  
21 ~~beverage to any person under the age of 21 years is guilty~~  
22 ~~of a misdemeanor.~~

23 ~~(b) Any person under the age of 21 years who~~  
24 ~~purchases any alcoholic beverage, or any person under~~



1 the age of 21 years who consumes any alcoholic beverage  
2 in any on-sale premises, is guilty of a misdemeanor.

3 (c) Any on-sale licensee who knowingly permits a  
4 person under the age of 21 years to consume any alcoholic  
5 beverage in the on-sale premises, whether or not the  
6 licensee has knowledge that the person is under the age  
7 of 21 years, is guilty of a misdemeanor.

8 (d) (1) Except as otherwise provided in paragraph  
9 (2), any person who violates this section shall be punished  
10 by a fine of two hundred fifty dollars (\$250), no part of  
11 which shall be suspended, or the person shall be required  
12 to perform not less than 24 hours or more than 32 hours  
13 of community service during hours when the person is  
14 not employed and is not attending school, or a  
15 combination of fine and community service as  
16 determined by the court.

17 (2) Any person who violates subdivision (a) by  
18 furnishing an alcoholic beverage, or causing an alcoholic  
19 beverage to be furnished, to a minor shall be punished by  
20 a fine of one thousand dollars (\$1,000), no part of which  
21 shall be suspended, and the person shall be required to  
22 perform not less than 24 hours of community service  
23 during hours when the person is not employed and is not  
24 attending school.

25 (e) Persons under the age of 21 years may be used by  
26 peace officers in the enforcement of this section to  
27 apprehend licensees, or employees or agents of licensees,  
28 who sell alcoholic beverages to minors. Notwithstanding  
29 subdivision (b), any person under the age of 21 years who  
30 purchases or attempts to purchase any alcoholic beverage  
31 while under the direction of a peace officer is immune  
32 from prosecution for that purchase or attempt to  
33 purchase an alcoholic beverage. Guidelines with respect  
34 to the use of persons under the age of 21 years as decoys  
35 shall be adopted and published by the department in  
36 accordance with the rulemaking portion of the  
37 Administrative Procedure Act (Chapter 3.5  
38 commencing with Section 11340) of Part 1 of Division 3  
39 of Title 2 of the Government Code). Law  
40 enforcement-initiated minor decoy programs in



1 operation prior to the effective date of regulatory  
2 guidelines adopted by the department shall be  
3 authorized as long as the minor decoy displays to the  
4 seller of alcoholic beverages the appearance of a person  
5 under the age of 21 years. This subdivision shall not be  
6 construed to prevent the department from taking  
7 disciplinary action against a licensee who sells alcoholic  
8 beverages to a minor decoy prior to the department's  
9 final adoption of regulatory guidelines. After the  
10 completion of every minor decoy program performed  
11 under this subdivision, the law enforcement agency using  
12 the decoy shall notify licensees of the results of the  
13 program.

14 (f) It is the intention of the Legislature in enacting this  
15 chapter that while permitting law enforcement to use  
16 underage decoys, this should not be the exclusive  
17 enforcement program and that equal emphasis and  
18 resources should be put on apprehending and  
19 prosecuting underage minors who attempt to purchase  
20 alcohol. To that end, the Director of Alcoholic Beverage  
21 Control shall require that all local law enforcement grants  
22 include equal components of underage decoys and  
23 undercover law enforcement stings, such as  
24 "Cops-In-Shop", targeted at underage minors who  
25 attempt to purchase alcohol. To qualify for a local grant,  
26 a local jurisdiction must also demonstrate a record of  
27 enforcing and prosecuting violations of liquor laws  
28 against both minors and adults.

29 ~~SEC. 4.—~~

30 *SEC. 3.* Section 25658.1 of the Business and  
31 Professions Code is amended to read:

32 25658.1. (a) Notwithstanding any other provision of  
33 this division, no licensee may petition the department for  
34 an offer in compromise pursuant to Section 23095 for a  
35 second or any subsequent violation of Section 25658 that  
36 occurs within 36 months of the initial violation.

37 (b) Notwithstanding Section 24200, the department  
38 may revoke a license for a third violation of Section 25658  
39 that occurs within any 36-month period. This provision  
40 shall not be construed to limit the department's authority



1 and discretion to revoke a license prior to a third violation  
2 when the circumstances warrant that penalty.

3 (c) A licensee may, for purposes of the penalties  
4 described in subdivisions (a) and (b), eliminate the effect  
5 of a sale of an alcoholic beverage to a minor, if the licensee  
6 does all of the following activities to prevent the sale of  
7 alcoholic beverages to a minor:

8 (1) Trains all employees who may sell or serve  
9 alcoholic beverages at the licensed premises in a clerk or  
10 server training program approved by the department.

11 (2) Installs electronic equipment to scan or read  
12 California drivers' licenses or official identification cards  
13 to determine the date of birth of the customer and  
14 whether the customer is a minor, and implement  
15 employee training and policies to utilize the equipment  
16 to check the identification of any alcoholic beverage  
17 customer who appears to be under 30 years of age.

18 (3) Implements a procedure to periodically test  
19 employees of the premises by using persons posing as  
20 customers who are over the age of 21 years old but under  
21 the age of 25 years old to purchase alcoholic beverages in  
22 order to determine if clerks or servers are properly  
23 checking identification.

24 (d) The department shall allow a licensee to avoid the  
25 effect, for penalty purposes, of one sale to a minor, if the  
26 licensee satisfies these requirements at the licensed  
27 premises where a violation occurred within 90 days of a  
28 final determination that the licensee has violated  
29 subdivision (a) of Section 25658, or a longer time that the  
30 department finds reasonable under the circumstances.  
31 Within a 36-month period, a licensee shall be able to avoid  
32 the effect of any penalty for one sale to a minor that has  
33 not become final as of the effective date of the act adding  
34 this subdivision. Any penalty that has not become final as  
35 of that date, shall be stayed to allow the licensee to satisfy  
36 the above requirements within 90 days of that date or a  
37 longer time that the department finds reasonable under  
38 the circumstances.

39 (e) The Legislature finds and declares as follows:



1 (1) That the intent of subdivision (e) of Section 25658,  
2 permitting law enforcement to use underage decoys, and  
3 this section, imposing mandatory suspension for a second  
4 sale to a minor within 36 months, is to motivate alcoholic  
5 beverage licensees to implement procedures that  
6 effectively prevent sales of alcoholic beverages to minors.

7 (2) That certain policies, procedures, and equipment  
8 have been demonstrated to be effective in preventing  
9 sales to minors, and that licensees should be motivated to  
10 implement these policies and procedures and use the  
11 equipment.

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