

ASSEMBLY BILL

No. 2694

Introduced by Committee on Governmental Organization (Hall (Chair), Nestande (Vice Chair), Atkins, Block, Blumenfield, Chesbro, Cook, Galgiani, Gatto, Hill, Jeffries, Ma, Perea, V. Manuel Pérez, Silva, and Torres)

March 15, 2012

An act to amend Sections 23355, 23393.5, 23958.4, 25503.8, and 25503.85 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2694, as introduced, Committee on Governmental Organization. Alcoholic beverages.

(1) Existing law provides that licenses provided for in a specified article within the Alcoholic Beverage Control Act authorize the license holder to exercise the rights and privileges specified in that article.

This bill would provide that the licenses provided for in the Alcoholic Beverage Control Act authorize the license holder to exercise the rights and privileges specified in that act.

(2) Existing law prohibits specified holders of alcoholic beverage licenses, including wholesalers, from having specified relationships with an on-sale alcoholic beverage licensee, but allows those licensees to purchase advertising space and time from, or on behalf of, on-sale retail licensees under specified conditions, including, in some cases, a requirement that the on-sale licensee serve other brands of beer, wine, and distilled spirits from competing wholesalers.

This bill would remove the competing wholesalers requirement under 2 specified circumstances and instead require the on-sale licensee to

serve brands of beer, wine, and distilled spirits other than those produced by the wholesaler with whom the on-sale retail licensee has a relationship.

(3) This bill would also make technical and conforming changes.

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 23355 of the Business and Professions
2 Code is amended to read:

3 23355. Except as otherwise provided in this division and subject
4 to the provisions of Section 22 of Article XX of the Constitution,
5 the licenses provided for in ~~Article 2 of this chapter~~ *this division*
6 authorize the person to whom issued to exercise the rights and
7 privileges specified in this ~~article~~ *division* and no others at the
8 premises for which issued during the year for which issued.

9 SEC. 2. Section 23393.5 of the Business and Professions Code
10 is amended to read:

11 23393.5. (a) The department may issue a limited off-sale retail
12 wine license which authorizes the sale of wine by the licensee if
13 all of the following conditions are met:

14 (1) Sales are restricted to those solicited and accepted via direct
15 mail, telephone, or the Internet.

16 (2) Sales are not conducted from a retail premises open to the
17 public.

18 (3) The licensee takes possession of and title to all wine sold
19 by the licensee.

20 (4) All wine sold by the licensee are delivered to the purchaser
21 from the licensee's licensed premises or from a licensed public
22 warehouse.

23 (b) The sale of wine shall only be to consumers and not for
24 resale, in packages or quantities of 52 gallons or less per sale, for
25 consumption off the premise where sold.

26 (c) The licensee shall comply with Section 23985, but is
27 exempted from Sections 23985.5 and 23986.

28 (d) The department may impose reasonable conditions upon the
29 licensee as may be needed in the interest of public health, safety,
30 and welfare.

(e) The application for the license shall be accompanied by an original fee in an amount equivalent to that of an original off-sale beer and wine license pursuant to Section 23954.5. The annual fee for the license shall be an amount equivalent to that of a retail package off-sale beer and wine license pursuant to Section 23320. All moneys collected from the fees shall be deposited in the ~~Alcoholic~~ Alcohol Beverage Control Fund, pursuant to Section 25761.

SEC. 3. Section 23958.4 of the Business and Professions Code is amended to read:

23958.4. (a) For purposes of Section 23958, “undue concentration” means the case in which the applicant premises for an original or premises-to-premises transfer of any retail license are located in an area where any of the following conditions exist:

(1) The applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes, as defined in subdivision (c), than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency.

(2) As to on-sale retail license applications, the ratio of on-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

(3) As to off-sale retail license applications, the ratio of off-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

(b) Notwithstanding Section 23958, the department may issue a license as follows:

(1) With respect to a nonretail license, a retail on-sale bona fide eating place license, a retail license issued for a hotel, motel, or other lodging establishment, as defined in subdivision (b) of Section 25503.16, a retail license issued in conjunction with a beer manufacturer’s license, or a winegrower’s license, if the applicant shows that public convenience or necessity would be served by the issuance.

(2) With respect to any other license, if the local governing body of the area in which the applicant premises are located, or its

1 designated subordinate officer or body, determines within 90 days
2 of notification of a completed application that public convenience
3 or necessity would be served by the issuance. The 90-day period
4 shall commence upon receipt by the local governing body of (A)
5 notification by the department of an application for licensure, or
6 (B) a completed application according to local requirements, if
7 any, whichever is later.

8 If the local governing body, or its designated subordinate officer
9 or body, does not make a determination within the 90-day period,
10 then the department may issue a license if the applicant shows the
11 department that public convenience or necessity would be served
12 by the issuance. In making its determination, the department shall
13 not attribute any weight to the failure of the local governing body,
14 or its designated subordinate officer or body, to make a
15 determination regarding public convenience or necessity within
16 the 90-day period.

17 (c) For purposes of this section, the following definitions shall
18 apply:

19 (1) "Reporting districts" means geographical areas within the
20 boundaries of a single governmental entity (city or the
21 unincorporated area of a county) that are identified by the local
22 law enforcement agency in the compilation and maintenance of
23 statistical information on reported crimes and arrests.

24 (2) "Reported crimes" means the most recent yearly compilation
25 by the local law enforcement agency of reported offenses of
26 criminal homicide, forcible rape, robbery, aggravated assault,
27 burglary, larceny theft, and motor vehicle theft, combined with all
28 arrests for other crimes, both felonies and misdemeanors, except
29 traffic citations.

30 (3) "Population within the census tract or census division" means
31 the population as determined by the most recent United States
32 decennial or special census. The population determination shall
33 not operate to prevent an applicant from establishing that an
34 increase of resident population has occurred within the census tract
35 or census division.

36 (4) "Population in the county" shall be determined by the annual
37 population estimate for California counties published by the
38 Population Research Unit of the Department of Finance.

39 (5) "Retail licenses" shall include the following:

1 (A) Off-sale retail licenses: Type 20 (off-sale beer and wine)
2 and Type 21 (off-sale general).

3 (B) On-sale retail licenses: All retail on-sale licenses, except
4 Type 43 (on-sale beer and wine for train), Type 44 (on-sale beer
5 and wine for fishing party boat), Type 45 (on-sale beer and wine
6 for boat), Type 46 (on-sale beer and wine for airplane), Type 53
7 (on-sale general for train and sleeping car), Type 54 (on-sale
8 general for boat), Type 55 (on-sale general for airplane), Type 56
9 (on-sale general for vessels of more than 1,000 tons burden), and
10 Type 62 (on-sale general bona fide public eating place intermittent
11 dockside license for vessels of more than 15,000 tons
12 displacement).

13 (6) A “premises to premises transfer” refers to each license
14 being separate and distinct, and transferable upon approval of the
15 department.

16 (d) For purposes of this section, the number of retail licenses
17 in the county shall be ~~determined by the most recent yearly retail~~
18 ~~license count published~~ *established* by the department ~~in its~~
19 ~~Procedure Manual~~ *on an annual basis*.

20 (e) The enactment of this section shall not affect any existing
21 rights of any holder of a retail license issued prior to April 29,
22 1992, whose premises were destroyed or rendered unusable as a
23 result of the civil disturbances occurring in Los Angeles from April
24 29 to May 2, 1992, to reopen and operate those licensed premises.

25 (f) This section shall not apply if the premises have been
26 licensed and operated with the same type license within 90 days
27 of the application.

28 SEC. 4. Section 25503.8 of the Business and Professions Code
29 is amended to read:

30 25503.8. (a) Notwithstanding any other provision of this
31 chapter, a beer manufacturer, the holder of a winegrower’s license,
32 a California winegrower’s agent, a distilled spirits rectifier, a
33 distilled spirits manufacturer, or a distilled spirits manufacturer’s
34 agent may purchase advertising space and time from, or on behalf
35 of, an on-sale retail licensee if all of the following conditions are
36 met:

37 (1) The on-sale licensee is the owner of any of the following:

38 (A) A fully enclosed auditorium or theater with a fixed seating
39 capacity in excess of 6,000 seats, at least 60 percent of the use of

1 which is for plays or musical concerts, not including sporting
2 events.

3 (B) A motion picture studio facility at which public tours are
4 conducted for at least four million people per year.

5 (C) A retail, entertainment development adjacent to, and under
6 common ownership with, a theme park, amphitheater, and motion
7 picture production studio.

8 (D) A theme or amusement park and the adjacent retail, dining,
9 and entertainment area located in the City of Los Angeles, Los
10 Angeles County, or Orange County.

11 (E) A fully enclosed theater, with box office sales and attendance
12 by the public on a ticketed basis only, with a fixed seating capacity
13 in excess of 6,000 seats, located in Los Angeles County within the
14 area subject to the Los Angeles Sports and Entertainment District
15 Specific Plan adopted by the City of Los Angeles pursuant to
16 ordinance number 174225, as approved on September 6, 2001.

17 (F) A fully enclosed arena with a fixed seating capacity in excess
18 of 15,000 seats located in Santa Clara County. With respect to the
19 arena described in this subparagraph, advertising space may also
20 be purchased from, or on behalf of, a lessee or manager of the
21 arena.

22 (2) The advertising space or time is purchased only in connection
23 with one of the following:

24 (A) In the case of a fully enclosed auditorium or theater, in
25 connection with sponsorship of plays or musical concerts to be
26 held on the premises of the auditorium or theater owned by the
27 on-sale licensee.

28 (B) In the case of a motion picture studio facility, in connection
29 with sponsorship of the public tours or special events conducted
30 at the studio facility.

31 (C) In the case of a retail, entertainment development, in
32 connection with sponsorship of public tours or special events
33 conducted at the development.

34 (D) In the case of a theme or amusement park and the adjacent
35 retail, dining, and entertainment area, located in the City of Los
36 Angeles, Los Angeles County, or Orange County, in connection
37 with daily activities and events at the theme or amusement park
38 and the adjacent retail, dining, and entertainment area.

1 (E) In the case of the fully enclosed theater described in
2 subparagraph (E) of paragraph (1) of subdivision (a), in connection
3 with events conducted at the theater.

4 (F) In the case of a fully enclosed arena described in
5 subparagraph (F) of paragraph (1) of subdivision (a), interior
6 advertising in connection with events conducted within the arena.

7 (3) The on-sale licensee serves other brands of beer ~~distributed~~
8 ~~by a competing beer wholesaler~~ in addition to the brand
9 manufactured or marketed by the beer manufacturer, other brands
10 of wine ~~distributed by a competing wine wholesaler~~ in addition to
11 the brand produced or marketed by the winegrower or California
12 winegrower's agent, and other brands of distilled spirits ~~distributed~~
13 ~~by a competing distilled spirits wholesaler~~ in addition to the brand
14 manufactured or marketed by the distilled spirits manufacturer or
15 distilled spirits manufacturer's agent purchasing the advertising
16 space or time.

17 (b) Any purchase of advertising space or time conducted
18 pursuant to subdivision (a) shall be conducted pursuant to a written
19 contract entered into by the beer manufacturer, the holder of the
20 winegrower's license, the California winegrower's agent, the
21 distilled spirits manufacturer, or the distilled spirits manufacturer's
22 agent, and the on-sale licensee, which contract shall not in any
23 way involve the holder of a wholesaler's license.

24 (c) Any beer manufacturer, distilled spirits manufacturer,
25 distilled spirits manufacturer's agent, holder of a winegrower's
26 license, or California winegrower's agent, who, through coercion
27 or other illegal means, induces, directly or indirectly, a holder of
28 a wholesaler's license to fulfill those contractual obligations entered
29 into pursuant to subdivision (a) or (b) shall be guilty of a
30 misdemeanor and shall be punished by imprisonment in the county
31 jail not exceeding six months, or by a fine in an amount equal to
32 the entire value of the advertising space or time involved in the
33 contract, whichever is greater, plus ten thousand dollars (\$10,000),
34 or by both imprisonment and fine. The person shall also be subject
35 to license revocation pursuant to Section 24200.

36 (d) Any on-sale retail licensee, as described in subdivision (a),
37 who solicits or coerces, directly or indirectly, a holder of a
38 wholesaler's license to solicit a beer manufacturer, distilled spirits
39 manufacturer, or distilled spirits manufacturer's agent, holder of a
40 winegrower's license, or California winegrower's agent to

1 purchase advertising space or time pursuant to subdivision (a) or
2 (b) shall be guilty of a misdemeanor and shall be punished by
3 imprisonment in the county jail not exceeding six months, or by
4 a fine in an amount equal to the entire value of the advertising
5 space or time involved in the contract, whichever is greater, plus
6 ten thousand dollars (\$10,000), or by both imprisonment and fine.
7 The person shall also be subject to license revocation pursuant to
8 Section 24200.

9 (e) For the purposes of this section, “beer manufacturer” includes
10 any holder of a beer manufacturer’s license, any holder of an
11 out-of-state beer manufacturer’s certificate, or any holder of a beer
12 and wine importer’s general license.

13 SEC. 5. Section 25503.85 of the Business and Professions
14 Code is amended to read:

15 25503.85. (a) Notwithstanding any other provision of this
16 chapter, a beer manufacturer, distilled spirits manufacturer, distilled
17 spirits manufacturer’s agent, holder of a winegrower’s license, or
18 California winegrower’s agent may purchase advertising space
19 and time from, or on behalf of, an on-sale retail licensee, that shall
20 be limited to small notices, plaques, or signs that portray partial
21 or full sponsorship or funding of educational programs, special
22 fundraising and promotional events, improvements in capital
23 projects, and the development of exhibits or facilities, if all of the
24 following conditions are met:

25 (1) The on-sale licensee is a zoo or aquarium operated by a
26 nonprofit organization that is accredited by the American
27 Association of Zoological Parks and Aquariums.

28 (2) The advertising space or time is purchased only in connection
29 with the sponsorship of activities that are held on the premises or
30 grounds owned, leased, or controlled by the on-sale licensee.

31 (3) The on-sale licensee serves other brands of beer ~~distributed~~
32 ~~by a competing beer wholesaler~~ in addition to the brand
33 manufactured or marketed by the beer manufacturer, other brands
34 of wine ~~distributed by a competing wine wholesaler~~ in addition to
35 the brand produced or marketed by the winegrower or California
36 winegrower’s agent, and other brands of distilled spirits ~~distributed~~
37 ~~by a competing distilled spirits wholesaler~~ in addition to the brand
38 manufactured or marketed by the distilled spirits manufacturer or
39 distilled spirits manufacturer’s agent purchasing the advertising
40 space or time.

1 (b) Nothing in this section shall be construed to permit the
2 purchase of billboards or bench advertisements as “advertising
3 space.”

4 (c) Any purchase of advertising space or time pursuant to
5 subdivision (a) shall be accomplished by a written contract entered
6 into by the beer manufacturer, the distilled spirits manufacturer,
7 the distilled spirits manufacturer’s agent, a holder of the
8 winegrower’s license, or the California winegrower’s agent, and
9 the on-sale licensee. That contract shall not in any way involve
10 the holder of a wholesaler’s license.

11 (d) Any beer manufacturer, distilled spirits manufacturer,
12 distilled spirits manufacturer’s agent, holder of a winegrower’s
13 license, or California winegrower’s agent who, through coercion
14 or other illegal means, induces, directly or indirectly, a holder of
15 a wholesaler’s license to fulfill those contractual obligations entered
16 into pursuant to subdivision (a) or (c) is guilty of a misdemeanor
17 and shall be punished by imprisonment in the county jail for a
18 period not to exceed six months, or by a fine in an amount equal
19 to the entire value of the advertising space or time involved in the
20 contract, whichever is greater, plus ten thousand dollars (\$10,000),
21 or by both imprisonment and fine. The person shall also be subject
22 to license revocation pursuant to Section 24200.

23 (e) Any on-sale licensee who, directly or indirectly, solicits or
24 coerces a holder of a wholesaler’s license to solicit a beer
25 manufacturer, distilled spirits manufacturer, distilled spirits
26 manufacturer’s agent, holder of a winegrower’s license, or a
27 California winegrower’s agent to purchase advertising space or
28 time shall be guilty of a misdemeanor and shall be punished by
29 imprisonment in the county jail not exceeding six months, or by
30 a fine in an amount equal to the entire value of the advertising
31 space or time involved in the contract, whichever is greater, plus
32 ten thousand dollars (\$10,000), or by both imprisonment and fine.
33 The person shall also be subject to license revocation pursuant to
34 Section 24200.

35 (f) For the purposes of this section, “beer manufacturer” includes
36 any holder of a beer manufacturer’s license, any holder of an
37 out-of-state beer manufacturer’s certificate, or any holder of a beer
38 and wine importer’s general license.

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