

Assembly Bill No. 2694

Passed the Assembly May 10, 2012

Chief Clerk of the Assembly

Passed the Senate August 9, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2694, 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) This bill would also make technical and conforming changes.

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

SECTION 1. Section 23355 of the Business and Professions Code is amended to read:

23355. Except as otherwise provided in this division and subject to the provisions of Section 22 of Article XX of the Constitution, the licenses provided for in this division authorize the person to whom issued to exercise the rights and privileges specified in this division and no others at the premises for which issued during the year for which issued.

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

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

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

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

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

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

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

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

(d) The department may impose reasonable conditions upon the licensee as may be needed in the interest of public health, safety, 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 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 designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance. The 90-day period shall commence upon receipt by the local governing body of (A) notification by the department of an application for licensure, or (B) a completed application according to local requirements, if any, whichever is later.

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

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

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

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

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

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

(5) “Retail licenses” shall include the following:

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

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

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

(d) For purposes of this section, the number of retail licenses in the county shall be established by the department on an annual basis.

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

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

Approved _____, 2012

Governor