

STATE OF CALIFORNIA  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

# Alcoholic Beverage Control Act

Business and Professions Code  
Division 9

## and Related Statutes



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UNITED STATES CONSTITUTION AMENDMENT No. XXI  
REPEAL OF EIGHTEENTH AMENDMENT

§ 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

§ 2. The transportation or importation into any state, territory or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

§ 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by convention in the several states, as provided in the Constitution within seven years from the date of the submission hereof to the states by the Congress.

**History.—This amendment to the Federal Constitution became effective December 5, 1933.**

**Imposition of Importer's license fee constitutional.**—The provision of the Alcoholic Beverage Control Act imposing a license fee of five hundred dollars (\$500) for the privilege of importing beer within the State does not violate the Federal Constitution. The provision is valid under Section 2 of the Twenty-first Amendment. *State Board of Equalization v. Young's Market Company*, 299 U.S. 59.

**Shipments through state.**—The Twenty-first Amendment has no application to the transportation of liquor through a state; hence liquor purchased for shipment to Hawaii, but temporarily stored in San Francisco warehouses because of shortage of shipping space, is not subject to local property taxation. *Von Hamm-Young Co. v. San Francisco*, 29 Cal.2d 798.

**Foreign Imports.**—Liquor imported into California from outside the United States, unconsigned, unsold, and still in the importer's hands on tax assessment day, is not subject to an ad valorem tax by a subdivision of the State. *Parrot and Co. v. City and County of San Francisco*, 131 Cal.App.2d 332, 280 Pac.2d 881.

**Discrimination.**—State legislation favoring California production of alcoholic beverages over out-of-state production is authorized by this section. *American Distilling Co. v. State Board of Equalization*, 144 Cal. App.2d 457, 301 Pac.2d 495.

**Authority under 21st Amendment.**—While the states, vested as they are with general police power, require no specific grant of authority in the Federal Constitution to legislate with respect to matters traditionally within the scope of the police power, the broad sweep of the Twenty-first Amendment confers something more than the normal state authority over public health, welfare, and morals. *California v. LaRue*, 409 U.S. 109 (1972).

**Departmental control under 21st Amendment.**—In context, not of censoring dramatic performances in theater but of licensing bars and nightclubs to sell liquor by the drink, the California Department of Alcoholic Beverage Control had broad latitude under the Twenty-first Amendment to control the manner and circumstances under which liquor might be dispensed, and the conclusion that the sale of liquor by the drink and lewd or naked entertainment should not take place simultaneously in licensed establishments was not irrational nor unreasonable. *California v. LaRue*, 409 U.S. 109 (1972).

**Presumption of validity.**—There is a presumption in favor of the validity of state regulation in the area of licensing of the sale of alcoholic beverages by the drink. *California v. LaRue*, 409 U.S. 109 (1972).

**Twenty-first Amendment v. Sherman Antitrust Act.**—The 21st Amendment, providing that the transportation or importation into any state for delivery or use therein of intoxicating liquors in violation of the laws thereof is prohibited, does not permit California to fix retail prices of distilled spirits contrary to the provisions of the Sherman Antitrust Act prohibiting contracts in restraint of trade. In balancing California's interest in promoting temperance and orderly market conditions by resale price maintenance against the policies underlying the Sherman Act, the policies underlying the Sherman Act must prevail, and the price maintenance provisions were therefore invalid, where it appeared the policies underlying the Sherman Act were clearly violated by the liquor price maintenance laws, where there was doubt whether such laws promoted temperance, where there was a clear national trend against fair trade laws, and where there existed means other than mandatory price fixing to achieve ends which those laws seek to attain. *Rice v. ABC Appeals Board (Corsetti, et al.)*, 21 Cal.3d 431.

**Interstate winery direct shipments to consumers.**—The prohibition against out-of-state wineries making shipments of wine directly to consumers when such shipments are permitted by in-state wineries violates the dormant interstate commerce clause and is not protected by the 21st Amendment. *Granholt v. Heald* 125 S.Ct. 1885 (2005).

CALIFORNIA CONSTITUTION ARTICLE XX  
STATE CONTROL OF LIQUOR SALES

SEC. 22. The State of California, subject to the internal revenue laws of the United States, shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the State, and subject to the laws of the United States regulating commerce between foreign nations and among the states shall have the exclusive right and power to regulate the importation into and exportation from the State, of alcoholic beverages. In the exercise of these rights and powers, the Legislature shall not constitute the State or any agency thereof a manufacturer or seller of alcoholic beverages.

All alcoholic beverages may be bought, sold, served, consumed, and otherwise disposed of in premises which shall be licensed as provided by the Legislature. In

providing for the licensing of premises, the Legislature may provide for the issuance of, among other licenses, licenses for the following types of premises where the alcoholic beverages specified in the licenses may be sold and served for consumption upon the premises:

(a) For bona fide public eating places, as defined by the Legislature.

(b) For public premises in which food shall not be sold or served as in a bona fide public eating place, but upon which premises the Legislature may permit the sale or service of food products incidental to the sale and service of alcoholic beverages. No person under the age of 21 years shall be permitted to enter and remain in any such premises without lawful business therein.

(c) For public premises for the sale and service of beers alone.

(d) Under such conditions as the Legislature may impose, for railroad dining or club cars, passenger ships, common carriers by air, and bona fide clubs after such clubs have been lawfully operated for not less than one year.

The sale, furnishing, giving, or causing to be sold, furnished, or giving away of any alcoholic beverage to any person under the age of 21 years is hereby prohibited, and no person shall sell, furnish, give, or cause to be sold, furnished, or given away any alcoholic beverage to any person under the age of 21 years, and no person under the age of 21 years shall purchase any alcoholic beverage.

The Director of Alcoholic Beverage Control shall be the head of the Department of Alcoholic Beverage Control, shall be appointed by the Governor subject to confirmation by a majority vote of all of the members elected to the Senate, and shall serve at the pleasure of the Governor. The director may be removed from office by the Governor, and the Legislature shall have the power, by a majority vote of all members elected to each house, to remove the director from office for dereliction of duty or corruption or incompetency. The director may appoint three persons who shall be exempt from civil service, in addition to the person he is authorized to appoint by Section 4 of Article XXIV.

The Department of Alcoholic Beverage Control shall have the exclusive power, except as herein provided and in accordance with laws enacted by the Legislature, to license the manufacture, importation and sale of alcoholic beverages in this State, and to collect license fees or occupation taxes on account thereof. The department shall have the power, in its discretion, to deny, suspend or revoke any specific alcoholic beverages license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals, or that a person seeking or holding a license has violated any law prohibiting conduct involving moral turpitude. It shall be unlawful for any person other than a licensee of said department to manufacture, import or sell alcoholic beverages in this State.

The Alcoholic Beverage Control Appeals Board shall consist of three members appointed by the Governor, subject to confirmation by a majority vote of all of the members elected to the Senate. Each member, at the time of his initial appointment, shall be a resident of a different county from the one in which either of the other members resides. The members of the board may be removed from office by the Governor, and the Legislature shall have the power, by a majority vote of all members elected to each house, to remove any member from office for dereliction of duty or corruption or incompetency.

When any person aggrieved thereby appeals from a decision of the department ordering any penalty assessment, issuing, denying, transferring, suspending or revoking any license for the manufacture, importation, or sale of alcoholic beverages, the board shall review the decision subject to such limitations as may be imposed by the

Legislature. In such cases, the board shall not receive evidence in addition to that considered by the department. Review by the board of a decision of the department shall be limited to the questions whether the department has proceeded without or in excess of its jurisdiction, whether the department has proceeded in the manner required by law, whether the decision is supported by the findings, and whether the findings are supported by substantial evidence in the light of the whole record. In appeals where the board finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the department it may enter an order remanding the matter to the department for reconsideration in the light of such evidence. In all other appeals the board shall enter an order either affirming or reversing the decision of the department. When the order reverses the decision of the department, the board may direct the reconsideration of the matter in the light of its order and may direct the department to take such further action as is specially enjoined upon it by law, but the order shall not limit or control in any way the discretion vested by law in the department. Orders of the board shall be subject to judicial review upon petition of the director or any party aggrieved by such order.

A concurrent resolution for the removal of either the director or any member of the board may be introduced in the Legislature only if five Members of the Senate, or 10 Members of the Assembly, join as authors.

Until the Legislature shall otherwise provide, the privilege of keeping, buying, selling, serving, and otherwise disposing of alcoholic beverages in bona fide hotels, restaurants, cafes, cafeterias, railroad dining or club cars, passenger ships, and other public eating places, and in bona fide clubs after such clubs have been lawfully operated for not less than one year, and the privilege of keeping, buying, selling, serving, and otherwise disposing of beers on any premises open to the general public shall be licensed and regulated under the applicable provisions of the Alcoholic Beverage Control Act, insofar as the same are not inconsistent with the provisions hereof, and excepting that the license fee to be charged bona fide hotels, restaurants, cafes, cafeterias, railroad dining or club cars, passenger ships, and other public eating places and any bona fide clubs after such clubs have been lawfully operated for not less than one year, for the privilege of keeping, buying, selling, or otherwise disposing of alcoholic beverages, shall be the amounts prescribed as of the operative date hereof, subject to the power of the Legislature to change such fees.

The State Board of Equalization shall assess and collect such excise taxes as are or may be imposed by the Legislature on account of the manufacture, importation and sale of alcoholic beverages in this State.

The Legislature may authorize, subject to reasonable restrictions, the sale in retail stores of alcoholic beverages contained in the original packages, where such alcoholic beverages are not to be consumed on the premises where sold; and may provide for the issuance of all types of licenses necessary to carry on the activities referred to in the first paragraph of this section, including, but not limited to, licenses necessary for the manufacture, production, processing, importation, exportation, transportation, wholesaling, distribution, and sale of any and all kinds of alcoholic beverages.

The Legislature shall provide for apportioning the amounts collected for license fees or occupation taxes under the provisions hereof between the State and the cities, counties and cities and counties of the State, in such manner as the Legislature may deem proper.

All constitutional provisions and laws inconsistent with the provisions hereof are hereby repealed.

The provisions of this section shall be self-executing, but nothing herein shall prohibit the Legislature from enacting laws implementing and not inconsistent with such provisions.

This amendment shall become operative on January 1, 1957.

**History.—Original section adopted November 8, 1932, granting State exclusive right to regulate sale, etc., of intoxicating liquor within State when lawful under Constitution and laws of State and of United States and providing that no public drinking place should ever be established in the State but that wine and beer could be served with meals in hotels, restaurants and other public eating places, and that the Legislature could authorize the sale of liquor in retail stores where such liquor was not to be consumed on the premises where sold. The amendment of 1954 transferred the licensing functions from the State Board of Equalization to the Department of Alcoholic Beverage Control and created the Alcoholic Beverage Control Appeals Board. Cases cited below referring to the Board of Equalization's licensing, disciplinary and rule making authority are applicable to the department. The amendment of 1957 changed the section to read as above.**

**Who may license.**—Subsequent to April 6, 1933, and prior to December 5, 1933 (the operative date of this section), a municipal corporation, as well as the State, had the right to license, for revenue, dealers in liquor. *Los Angeles Brewing Co. v. City of Los Angeles*, 8 Cal. 2d 379. After December 5, 1933, the right of a municipal corporation to impose a license tax for the purpose of revenue upon such dealers was removed. *Los Angeles Brewing Co. v. City of Los Angeles*, 8 Cal. App. 2d 391. Payments made after December 5, 1933, for liquor license tax stamps were made involuntarily when the payment was required by a city ordinance imposing severe civil and criminal penalties for failure to pay the tax and the payment was accompanied by a written protest. *Vitale v. City of Los Angeles*, 13 Cal. App. 2d 704.

**Property taxation not affected.**—This section does not deprive the political subdivisions of the State of the power to levy a property tax upon intoxicating liquors. *Three G Distillery Corporation v. Los Angeles County*, 46 Cal. App. 2d 498.

**Construction.**—This section (prior to its amendment November 6, 1934) provided no limitation on the power given to the Legislature to regulate the sale of wines and beer when meals are furnished. A reasonable construction of the acts of the Legislature and the rules and regulations of the State Board of Equalization made in pursuance thereof, gave the board the power to determine the suitability and fitness of the premises, including the nature of the location, and to consider questions affecting the peace, safety and good order of the surroundings where the sale was to be made. *Parente v. State Board of Equalization*, 1 Cal. App. 2d 238.

The Unlawful Liquor Sales Abatement Act of 1915 is not repugnant to nor inconsistent with, and therefore was not impliedly repealed by, the adoption of this section or of the Alcoholic Beverage Control Act. *Hammond v. McDonald*, 32 Cal. App. 2d 187.

**License may not be revoked without notice and hearing.**—This section does not give the State Board of Equalization the power to revoke a license without notice to the licensee and an opportunity for him to be heard. Sections 40 and 41 of the Alcoholic Beverage Control Act, providing for notice and hearing, regulate the procedure for the exercise of the board's jurisdiction and are not in conflict with the powers granted the board by the Constitution. *Irvine v. State Board of Equalization*, 40 Cal. App. 2d 280.

**Board has broad discretionary powers.**—The State Board of Equalization is given broad discretionary powers by this section, and its discretion was not abused by the denial of a license in a purely residential center where deeds contained restrictive covenants against the sale of liquor. Whether or not there exists good cause for the denial of a license is a matter for determination by the board and not by the courts. *Hansen v. State Board of Equalization*, 43 Cal. App. 2d 176.

**Determination of boundaries of Stanford University.**—The department may determine that the boundaries of Leland Stanford Junior University are within one and one-half miles of certain licensed premises on the basis of the university trustees' determination of the boundaries of the campus, even though such determination results in the mandatory revocation of such licenses. *Vanoli v. Munro*, 147 Cal. App. 2d 179.

**Judicial Review.**—The department's decision after an administrative hearing will not be upset on appeal when supported by substantial evidence even though contradicted. *Molina v. Munro*, 145 Cal. App. 2d 601, 302 Pac. 2d 819; *Maxwell Cafe v. Department of Alcoholic Beverage Control*, 142 Cal. App. 2d 73, 298 Pac. 2d 64; *Dethlefsen v. State Board of Equalization*, 145 Cal. App. 2d 561, 303 Pac. 2d 7; *Kirchhubel v. Munro*, 149 Cal. App. 2d 243, 308 Pac. 2d 433.

Findings made by the department in an administrative hearing must be sustained on appeal if the department has committed no error of law and if the evidence, although conflicting, is sufficient to support such finding. *Griswold v. Department of Alcoholic Beverage Control*, 141 Cal. App. 2d 807, 297 Pac. 2d 762; *Molina v. Munro*, 145 Cal. App. 2d 601, 302 Pac. 2d 818; *Marcucci v. Board of Equalization*, 138 Cal. App. 2d 605, 292 Pac. 2d 264; *Kirchhubel v. Munro*, 149 Cal. App. 2d 243; *Covert v. State Board of Equalization*, 29 Cal. 2d 125.

The department is an agency on which the Constitution has conferred limited judicial powers, and thus its decisions on factual matters must be affirmed if there is substantial evidence to support them. A trial court is not permitted to exercise an independent judgment of the facts in reviewing the department's suspension of a license, but must give the department's factual determinations the same deference that an appellate court must give to the findings of a trial court. *Brice v. Department of Alcoholic Beverage Control*, 153 Cal. App. 2d 315; *Oxman v. Department of Alcoholic Beverage Control*, 153 Cal. App. 2d 740; *Hasselbach v. Department of Alcoholic Beverage Control and Von's Grocery*, 167 Cal. App. 2d 662; *Coleman v. Harris, et al.*, 218 Cal. App. 2d 401.

**Transfer of functions to department.**—Alcoholic beverage control regulations adopted by the State Board of Equalization prior to January 1, 1955, become on that date the regulations of the Department of Alcoholic Beverage Control. 25 Ops. Atty. Gen. 158, 55/33 2-24-55.

The department is not estopped to revoke a license issued by the State Board of Equalization under an erroneous construction of its own rules and the Alcoholic Beverage Control Act. *Joseph George, Distributor v. Department of Alcoholic Beverage Control*, 149 Cal. App. 2d 702.

The Department of Alcoholic Beverage Control should issue interstate transporter's permits although the Board of Equalization may require reports from permittees. 26 Ops. Atty. Gen. 3, 55/36 7-8-55.

**1954 amendment not limitation on authority of department.**—The 1954 amendment authorizing the revocation of a license of a person who has violated any law prohibiting conduct involving moral turpitude did not limit the authority of the department to revoke for other causes. *Mercurio v. Department of Alcoholic Beverage Control*, 144 Cal. App. 2d 626.

**Power of department coextensive with that of Legislature.**—The Department of Alcoholic Beverage Control has broad powers to determine what conduct makes continuance of a license contrary to public welfare and morals and may adopt rules prohibiting B-girl solicitation although Legislature has enacted numerous laws on the same subject. *Mercurio v. Department of Alcoholic Beverage Control*, 144 Cal. App. 2d 626, 301 Pac. 2d 474.

**County may not exclude sale of alcoholic beverages from county beach.**—A concessionaire may be licensed to sell alcoholic beverages on a county beach by the department notwithstanding the existence of a county ordinance prohibiting the sale of alcoholic beverages on such county beach. *Malibu Enterprises Inc. v. County of Los Angeles*, Los Angeles Superior Court No. 609, 209, reported in *Los Angeles Daily Journal Reports Section*, April 1, 1954, page 103.

**Sale to minor.**—The department did not abuse its discretion in suspending an alcoholic beverage license for selling liquor to a minor, notwithstanding the fact that the minor was 20 years and 4 months of age at the time of the sale, that the sale was not deliberate, and the offense was the licensee's first. *Griswold v. Department of Alcoholic Beverage Control*, 141 Cal. App. 2d 807, 297 Pac. 2d 762.

**Narcotics sales contrary to welfare and morals.**—Successive sales of narcotics by the licensee's bartender render continuance of the license contrary to public welfare and morals. *Endo v. State Board of Equalization*, 143 Cal. App. 2d 395, 300 Pac. 2d 366.

**Female employees accepting drinks.**—Permitting female employees to accept alcoholic drinks purchased by patrons of on-sale premises is contrary to public welfare and morals. *Mercurio v. Department of Alcoholic Beverage Control*, 144 Cal. App. 2d 626, 301 Pac. 2d 474.

**Violation of Section 303 of the Penal Code is good cause for revocation of on-sale license.**—Violation of Section 303 of the Penal Code, prohibiting the employment of persons to encourage the sale of drinks, constitutes good cause for revocation of an on-sale general liquor license by the State Board of Equalization. A finding of violation is supported by testimony of liquor control officers that girls on the premises of the licensee encouraged them to buy drinks; that diluted, excessively priced drinks bought for each girl were separately identified as to the girl on the cash register and that the licensee and the girls made statements admitting the employment, even though the testimony is contradicted by the girls and the licensee. *Chosick v. Reilly*, 125 Cal. App. 2d 334.

Evidence that on-sale general licensee's female employees drank alcoholic beverages with patrons, solicited patrons to purchase drinks for them, and that bartender kept a tally of drinks purchased for these female employees, although there was no evidence of payment of a commission to these female employees, was sufficient to support a finding in a revocation proceeding that the solicitation of drinks was an integral part of the employment of these females in violation of Penal Code § 303. *Hobson v. Reilly*, 132 Cal. App. 2d 275, 281 Pac. 2d 877.

**Power to revoke includes power to suspend.**—Under this constitutional provision, which endows the State Board of Equalization with exclusive power to license the sale of intoxicating liquor, including discretionary power to deny or revoke a liquor license, the board has the power to suspend, as well as to revoke a license. *Reynolds v. State Board of Equalization*, 29 Cal. 2d 137.

**Grounds for license revocation.**—Under this section, the State Board of Equalization is not restricted to the grounds for revoking a license stated in the Alcoholic Beverage Control Act, but it may take disciplinary action on other grounds within the power conferred by this constitutional provision; and in this respect the board did not abuse its discretion in revoking a liquor license of a licensee who was convicted of violating a federal law relating to ceiling prices for alcoholic beverages. *Moore v. State Board of Equalization*, 29 Cal. App. 2d 758.

Acquittal of manager of bar employed by holder of on-sale general license on charge of employing girls to procure or encourage purchase of alcoholic beverages in violation of Penal Code § 303 was not res judicata on the question of whether such offense had been committed in subsequent disciplinary proceedings based on the same fact. The standards to be applied in a proceeding for revocation of a liquor license were not those applicable to criminal trials. Evidence taken in revocation proceeding sustained finding of violation of Penal Code § 303. The Constitution conferred on the Board of Equalization power to revoke an on-sale general liquor license if the evidence shows a situation contrary to public welfare and morals, regardless of whether there has been any criminal violation. *Cornell v. Reilly* (1954), 127 Cal. App. 178, 273 Pac. 2d 572.

Revocation of an on-sale general license for violation of § 25601 is supported by evidence that fights occurred on and about the premises; that intoxicated persons and narcotics users frequented the premises; and that prostitutes were arrested and convicted for solicitation on the premises. To "permit" acts constituting a violation does not involve affirmative action or intent and acts permitted by employees are considered permitted by the licensee. *Swegle v. State Board of Equalization*, 125 Cal. App. 2d 432.

**Conditions of privilege.**—The Legislature may impose on a grant of the privilege to sell alcoholic beverages a condition that the licensee must be vigilant to see that sales of narcotics do not take place on his premises and that if they do take place successively he will be presumed to know of them. *Kirchhubel v. Munro*, 149 Cal. App. 2d 243, 308 Pac. 2d 433.

**Local revenue affected by state centralization of liquor control.**—The provision in this section for apportioning license fees or occupation taxes is recognition of the fact that centralization of liquor control in the State Government would deprive local subdivisions of the State of a potential source of revenue. *Roehm v. County of Orange*, 32 Cal. 2d 280.

**Local option.**—Section 38f of the Alcoholic Beverage Control Act providing for license limitation does not give to cities or counties any right to make a general protest against the policy of issuing additional licenses, for such a right would be entirely different from anything otherwise given to cities and counties and would be contrary to the purpose expressed in this constitutional provision, which vests matters exclusively in the State Government. *San Diego v. State Board of Equalization*, 82 Cal. App. 2d 453.

**Municipal excise tax validly applied to purchases of intoxicating liquors.**—Section 22 of Article XX of the State Constitution, reserving to the State the "exclusive . . . power to . . . regulate" the "sale" and "purchase" of intoxicating liquor is not violated by application to the sale of intoxicating liquors of a municipal ordinance imposing an excise tax on the purchase at retail of tangible personal property and requiring collection of the tax from the purchaser by the retailer. *Ainsworth v. Bryant*, 34 Cal. 2d 465.

**What constitutes a seasonal business.**—A "seasonal" business, referred to in this section, means a business located in a seasonal area where consumer demand fluctuates during different periods of the year. *Johnstone v. Richardson*, 103 Cal. App. 2d 41.

**Premises near a church.**—Whether the State Board of Equalization abuses its discretion in issuing a license for the sale of alcoholic beverages can be determined only by examining all the facts and circumstances, and the mere fact that churches are in the immediate vicinity of the applicant's premises does not establish an abuse of discretion by the board in granting the license. *Altadena Community Church v. State Board of Equalization*, 109 Cal. App. 2d 99.

The department's denial of an on-sale beer and wine license on the ground of proximity to a church was overruled because "mere proximity" to a church is not in itself good cause to deny a license. The record must contain some evidence demonstrating a good cause for denial. *Martin v. Alcoholic Beverage Control Appeals Board and Hayes*, 55 Cal. 2d 867.

**Denial of off-sale license near school.**—While the State Board of Equalization is authorized under the Alcoholic Beverage Control Act to refuse an on-sale liquor license for premises in the immediate vicinity of a school, the absence of such a provision as to off-sale licenses does not preclude the board from making proximity of the premises to a school an adequate basis for denying an off-sale license as being inimical to public welfare and morals. The denial of an off-sale beer and wine license at a grocery store across the street from high school grounds is not arbitrary because there are other liquor licensees operating in the vicinity of the school. *Weiss v. State Board of Equalization*, 40 Cal. 2d 772, 256 Pac. 2d.

**Discretion to deny on grounds of overconcentration.**—It was not an abuse of discretion for the department to deny an on-sale beer license where the evidence showed that the premises were located in an area where there were 88 licensed premises, 26 of which were within a radius of 500 feet of the proposed premises, as it is not unreasonable to effect the removal of objectionable concentration through the process resulting from expiration and refusal to grant replacement. *Torres v. Department of Alcoholic Beverage Control*, 192 Cal. App. 2d 541.

**Patronage of on-sale premises by homosexuals is insufficient for revocation of license.**—Proof of patronage of a public restaurant with an on-sale general license by homosexuals without proof of illegal or immoral acts on the premises is insufficient to establish "good cause" for the suspension or revocation of the license under this constitutional provision. *Stoumen v. Reilly*, 37 Cal. 2d 713.

**Administrative proceedings not criminal in nature.**—The requirement of corroboration of accomplices in criminal proceedings does not apply to an administrative proceeding to revoke a liquor license. *Oxman v. Department of Alcoholic Beverage Control*, 153 Cal. App. 2d 740.

There is no merit to the contention that a misdemeanor should be tried in court and not before the department. *Nelson v. Department of Alcoholic Beverage Control*, 166 Cal. App. 2d 783, 333 Pac. 2d 771.

**Decision by department on record alone.**—The department may reject the proposed decision of a hearing officer and decide the case on the record without taking additional evidence. *Schaub's, Inc., v. Department of Alcoholic Beverage Control*, 153 Cal. App. 2d 858.

**Penalty, discretion of department.**—The propriety of the penalty imposed by an administrative agency is within the discretion of the agency, and the decision will not be disturbed unless there has been a clear abuse of discretion. *Martin v. Alcoholic Beverage Control Appeals Board and Haley*, 52 Cal. 2d 287; *Munro v. Alcoholic Beverage Control Appeals Board and Moss*, 154 Cal. App. 2d 326.

The Constitution expressly authorizes license revocation in the discretion of the department, and the Supreme Court is not free to substitute its own discretion even if it were inclined to do so. A determination that revocation, rather than suspension, of a liquor license for taking bets on the licensed premises is too harsh is not within the proper function of the Supreme Court, since such conduct constitutes a crime and at least technically is contrary to public welfare and morals. *Macfarlane v. Department of Alcoholic Beverage Control*, 51 Cal. 2d 84, 330 Pac. 2d 769.

**Estoppel and res judicata.**—The estoppel of a judgment extends only to the facts in issue as they existed at the time the judgment was rendered, and does not prevent re-examination of the same question between the same parties where in the interval the facts have changed. Res judicata was not applicable to preclude the department from granting a license in changed conditions because the department had previously denied the same applicant a license under different conditions. The department is a constitutional created tribunal with fact-finding power and is given the exclusive right, in its discretion, to grant or deny a license to sell intoxicating liquors. *Hasselbach v. Department of Alcoholic Beverage Control and Von's Grocery*, 167 Cal. App. 2d 662.

**Repeated violations.**—A finding of the department that a licensee has repeatedly violated §§ 23300, 23355, 23951 and 23953 was tantamount to a finding that continuance of the license would be "contrary to public welfare." *Martin v. Alcoholic Beverage Control Appeals Board and Haley*, 52 Cal. 2d 287.

**Private agreements not binding on department.**—An alleged agreement between parties not to protest issuance of a license is not binding on the department since the Constitution has designated the department as the agency charged with the duty of investigating applications for licenses, and such investigations must be made with a view to the protection of public welfare and morals. *Schaub's, Inc., v. Department of Alcoholic Beverage Control*, 153 Cal. App. 2d 858.

**Good cause.**—The denial of a license for "good cause" must be based on sufficient evidence. The department's discretion in such a determination may not be arbitrary but must be in accordance with law. *Bailey v. Department of Alcoholic Beverage Control and Dutton*, 201 Cal. App. 2d 348.

**Finding on ultimate issues.**—A finding on the issue of public welfare and morals includes a finding of all special facts necessary to sustain it which are supported by substantial evidence, and constitutes an adverse finding on every evidentiary fact in conflict with it. *Koss v. Department of Alcoholic Beverage Control*, 215 Cal. App. 2d 489.

**Factual considerations affecting public welfare and morals.**—In determining the effect on public welfare and morals the department may consider an applicant's integrity, his previous business experience, the manner in which the proposed business will probably be conducted, the type of guests and their probable conduct, and the nature of any protest to issuance of the license. Unless that decision is reached without reason under the evidence, the department is exercising a valid discretion and neither the Appeals Board nor the court may interfere with it. *Koss v. Department of Alcoholic Beverage Control*, 215 Cal. App. 2d 489.

The statute makes sales below posted minimum prices a misdemeanor or a conspiracy to commit a crime. *Peck's Liquors, Inc., v. Superior Court*, 221 Cal. App. 2d 772.

Administrative regulations in conflict with the Constitution or statutes are void, though rule-making authority derives directly from the Constitution. *Harris v. Alcoholic Beverage Control Appeals Board and Levin*, 228 Cal. App. 2d 1.

The department may adopt the proposed decision of the Hearing Officer without reading the record, (A.P.A. 11517(b)). This is not a violation of due process. *Stoumen v. Munro, et al.*, 219 Cal. App. 2d 302.

The propriety of a penalty for misuse of a liquor license is a matter vested in the discretion of the Department of Alcoholic Beverage Control; its determination may not be disturbed unless there is a clear abuse of discretion. This discretion is not a mental discretion to be exercised ex gratia, but a legal discretion, to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice. *Harris v. Alcoholic Beverage Control Appeals Board and Belfiore*, 62 Cal. 2d 589.

A criminal proceeding has, for its purpose, punishment of the accused if he is found guilty; whereas a disciplinary proceeding against an attorney (licensee) is not intended for his punishment, but is for the protection of the public. *Yapp v. State Bar*, 62 Cal. 2d 809.

Statutes fixing fair trade prices do not violate due process of law clause of the 14th Amendment of the U.S. Constitution on the theory it was an impairment of property right to prohibit a retailer from selling at whatever price it chooses to fix. *Dave's Market, Inc., v. Department of Alcoholic Beverage Control*, 222 Cal. App. 2d 671.

Sufficient standards for administrative action may be found by implication from general purposes of a statute and from reasons which must have led to its adoption. *Gore v. Harris*, 229 Cal. App. 2d 821.

**Preemption.**—Article XX, Section 22, gives the State the right and power to regulate manufacture, sale, purchase, possession and transportation of alcoholic beverages within California. *People v. Butler*, 252 C.A. 2d Supp. 1053.

**Alcoholic beverage taxation.**—The application of a payroll expense tax ordinance adopted by a chartered city and county to wholesale liquor and beer distributors doing business in the city was not precluded by the provision of California Constitution, Article XX, § 22, giving the Department of Alcoholic Beverage Control the exclusive power to collect license fees or occupation taxes on account of the manufacture, importation, and sale of alcoholic beverages. *A.B.C. Distributing Company, Inc., v. City and County of San Francisco*, 15 Cal. 3d 566.

**Abuse of discretion.**—Abuse of discretion in the legal sense is defined as discretion exercised to an end or purpose not justified by and clearly against reason, all of the facts and circumstances being considered. *Brown v. Savage*, 240 Cal. App. 2d 659.

**Cancellation of off-sale liquor license.**—The cancellation of an off-sale general liquor license under Rule 65(d) was not unconstitutional and not in excess of the department's jurisdiction where the power to adopt and interpret the rule was derived from the California Constitution, Article XX, Section 22, and § 25750. *Samson Market Company v. Kirby*, 261 C.A. 2d 577.

**Topless dancing protected by First Amendment.**—“Topless dancing” as a form of entertainment before an audience is a form of free speech which is protected under the First Amendment of the U.S. Constitution in the absence of connected obscenity. *In re Giannini and Iser*, 69 Cal. 2d 563.

**Statewide standards required.**—Whether or not a “topless dancer's” performance is obscene must be determined by contemporary community standards on a statewide basis rather than on a local community basis. *In re Giannini and Iser*, 69 Cal. 2d 563.

**Intemperate use of alcoholic beverages.**—In a proceeding by the department to revoke a corporate liquor license, good cause for the revocation was not shown, where, though it appeared that the licensees' president and sole stockholder had an arrest record involving the intemperate use of alcoholic beverages, there was no evidence that his offenses had an actual effect on the conduct of the licensed business; nor was there any rational relationship between the offenses and the operation of the licensed business in a manner inconsistent with public welfare and morals, and where there was no substantial evidence that the continuation of the license would be contrary to the public welfare and morals. *H. D. Wallace & Associates, Inc., v. Department of Alcoholic Beverage Control*, 271 Cal. App. 2d 589.

**Actions of a licensee in other premises.**—Findings that a licensee assaulted department representatives acting in the scope of their employment and so recognized by the licensee, on licensed premises under the department's jurisdiction, though not on the premises of the disciplined licensee, necessarily implied the required rational relationship with the operation of a licensed business in a manner consistent with public welfare and morals, so as to permit disciplinary action by the department. *Kirby v. Alcoholic Beverage Controls Appeals Board (Dan Kane, Inc.)*, 7 Cal. App. 3d 126.

**Public morals v. private morals.**—In examining the power invested by Article XX, Section 22 of the State Constitution in the Department of Alcoholic Beverage Control to revoke a specific alcoholic beverage license when it determined for good cause that the continuance of such license would be contrary to public morals, the Supreme Court is required to observe the distinction between private morality and public morality; therefore, public morals, as distinguished, must be the criteria applied. *Boreta Enterprises, Inc., v. Department of Alcoholic Beverage Control*, 2 Cal. 3d 85.

**Public morals.**—The term public morals means the moral practices or modes of conduct pertaining to a whole community. *Boreta Enterprises, Inc., v. Department of Alcoholic Beverage Control*, 2 Cal. 3d 85.

**Topless waitresses not per se contrary to public welfare and morals.**—The action of the department in revoking an on-sale general bona fide public eating place license could not be approved on the basis that “topless” waitresses are per se contrary to public welfare or morals, and such an action was an abuse of discretion. *Boreta Enterprises, Inc., v. Department of Alcoholic Beverage Control*, 2 Cal. 3d 85.

**Constitutionality of monetary penalties.**—Business and Professions Code § 24755.1, providing that punishment for retail sale of distilled spirits at less than the minimum price shown in schedules filed with the department shall consist solely of monetary penalties in amounts as set forth, is not unconstitutional as an infringement by the Legislature on the power vested in the department by Article XX, Section 22 of the California Constitution to deny, suspend, or revoke liquor licenses; such power of the department is subject to reasonable legislative enactment, including the addition of monetary fines as penalty assessments. *Kirby v. Alcoholic Beverage Control Appeals Board (Corsetti)*, 71 Cal. 2d 1200. Also *Big Boy Liquors, Ltd., v. Alcoholic Beverage Control Appeals Board and Kirby*, 71 Cal. 2d 1226.

**Board's review of Department's discretion.**—The discretion exercised by the Department under Article XX, Section 22 of the Constitution and subject to review by the Appeals Board is not absolute, but must be exercised in accordance with the law.

Revocation or suspension of a license for good cause implies a decision based on sufficient evidence and the absence of an arbitrary finding as to what is contrary to public welfare and morals.

In evaluating an application for a license, the Department must assure itself that public welfare and morals are preserved from probable impairment. In appraising possible future harm to the public, the Department must be guided by past experience and the opinions of experts. *Kirby v. Alcoholic Beverage Control Appeals Board (Schaeffer)*, 7 Cal. 3d 433.

**Constitutionality of topless waitress regulation.**—The portion of California Administrative Code, Title 4, Rule 143.2, prohibiting licensees of the Department of Alcoholic Beverage Control from employing or using topless waitresses on premises where liquor is sold, is constitutional on its face and does not violate any rights of topless waitresses or their employers under the First Amendment. *Locker v. Kirby*, 31 C.A. 3d 520.

The agents of the Department of Alcoholic Beverage Control of the State of California may properly seize erotic films deemed contrary to its regulation pursuant to a search warrant even though no adversary hearing has been held prior to the seizure. *Kuzinich v. Kirby, et al.*, U.S. Court of Appeals No. 26602 (1973).

**Department's “topless” and “bottomless” rule not in conflict with Penal Code.**—A rule promulgated by the department pursuant to its exclusive power to license and regulate the sale of alcoholic beverages in the state under Cal. Const., Art. XX, § 22, which regulated “topless” and “bottomless” exposure on licensed premises, was valid and did not conflict with Penal Code §§ 318.5 and 318.6, which permit cities and counties to adopt penal ordinances regulating “topless” and “bottomless” exposure in establishments serving food or beverages, and other public places. Furthermore, the rule did not nullify the effect of the legislative enactment, since the rule was promulgated pursuant to the department's constitutional authority to regulate the sale of drinks in premises with licenses, and thus no issue of preemption was involved. *Kirby v. Alcoholic Beverage Control Appeals Board (552 Broadway, et al.)*, 47 C.A. 3d 360.

**Alcoholic beverage taxation.**—The application of a payroll expense tax ordinance adopted by a chartered city and county to wholesale liquor and beer distributors doing business in the city was not precluded by the provision of California Constitution, Article XX, § 22, giving the Department of Alcoholic Beverage Control the exclusive power to collect license fees or occupation taxes on account of the manufacture, importation, and sale of alcoholic beverages. *A.B.C. Distributing Company, Inc., v. City and County of San Francisco*, 15 Cal. 3d 566.

**Ownership by law enforcement officers and spouses.**—The evident objective of the Department of Alcoholic Beverage Control in promulgating rules disqualifying law enforcement officers and spouses from holding liquor licenses is to prevent a conflict of interest between liquor licensees and those involved in the enforcement of liquor laws. *Reece v. Alcoholic Beverage Control Appeals Board (Scheffel)*, 64 Cal. App. 3d 675.

The liquor industry is one whose regulation is recognized as instinctively related to the public interest, indicating deference to legislative judgment; there is undeniably no right, either explicitly or implicitly guaranteed by the Constitution, to engage in the liquor business. Accordingly, no fundamental interest is abridged by rules of the Department disqualifying law enforcement officials and spouses from holding liquor licenses. *Reece v. Alcoholic Beverage Control Appeals Board (Scheffel)*, 64 Cal. App. 3d 675.

**Parties who may seek judicial review.**—The right of review of a decision of the Alcoholic Beverage Control Appeals Board holding resale price maintenance provisions invalid under the Sherman Antitrust Act was limited to parties who appeared in proceedings before that board. *Rice v. ABC Appeals Board (Corsetti, et al.)*, 21 Cal. 3d 431.

**Conviction of crimes involving moral turpitude.**—Conviction of crimes of possessing cocaine or marijuana for purposes of sale, crimes whose elements include a specific intent to sell the proscribed substances, constitute moral turpitude as a matter of law within the meaning of California Constitution, Article XX, Section 22 and Section 24200 of the Business and Professions Code. *Rice v. Alcoholic Beverage Control Appeals Board (Martinez)*, 89 Cal. App. 3d 30.

**Sale of wine at less than minimum price.**—An order of the Alcoholic Beverage Control Appeals Board affirming a decision of the Department of Alcoholic Beverage Control, enforcing wine price maintenance provisions as provided in Business and Professions Code Section 24862, prohibiting an off-sale retail licensee from selling at less than the prescribed price, against the holder of an off-sale general licensee who had sold wine at retail for less than the posted minimum price, and imposing a 10-day license suspension, was annulled, where the wine price maintenance provisions contained in the statute could not be distinguished from the price maintenance provisions for distilled spirits in Section 24755 of the Business and Professions Code that had been invalidated by the California Supreme Court. *Capiscean Corporation v. Alcoholic Beverage Control Appeals Board*, 87 Cal. App. 3d 996.

**Wine pricing.**—Where, under California statutes governing wine pricing, no state-licensed wine merchant could sell wine to a retailer other than for price set either in an effective price schedule or in an effective fair trade contract, where licensees selling below established prices faced fines, license suspension, or outright license revocation, and where wine producers held power to prevent price competition by dictating prices charged by wholesalers, California's system for wine pricing constituted resale price maintenance in violation of the Sherman Anti-Trust Act. *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.*, 100 S. Ct. 937.

**21st Amendment application.**—The 21st Amendment did not bar application of Sherman Act to California's wine pricing system. *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.*, 100 S. Ct. 937.

**Discretion of the Department of Alcoholic Beverage Control.**—Determination of whether good cause exists for the granting, denying, suspending or revoking of a liquor license is a matter for discretion of the Department of Alcoholic Beverage Control and not the Alcoholic Beverage Control Appeals Board or the courts. *Department of Alcoholic Beverage Control Appeals Board (ALQ Corporation)*, 118 Cal. App. 3d 723.

**County a government agency.**—A "county" is a governmental agency or political subdivision of state exercising some functions of state government. *Wilkinson v. Lund*, 102 Cal. App. 767.

Counties are governmental agencies of state, whose property is public property. *Tulare County v. City of Dinuba*, 205 Cal. 111. California Constitution, Article XI, Section 1.

**City a government agency.**—A "municipal corporation" is but a branch of state government and is established for the purpose of aiding the Legislature in making provisions for the wants and welfare of the public within the territory for which it is organized. *Akerman v. Moody*, 38 Cal. App. 461. California Constitution, Article XI, Section 6.

**Director required to comply with Ex Parte provisions of the Administrative Procedures Act despite unitary nature of Department.**—Report of Hearing filed by department counsel which is available or reviewed by the Director constitutes an Ex Parte communication under the APA which must be disclosed to licensee who must be given an opportunity to respond. *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board, Daniel Beceril Quintanar, real party in interest*, 40 Cal.4th 1.

## DIVISION 9. ALCOHOLIC BEVERAGES \*

**Enacted Statutes 1953.**

- Chapter 1. General Provisions and Definitions. §§ 23000–23047.
- 1.5. Administration. §§ 23049–23098.
  2. Authorized Unlicensed Transactions and Exemptions. §§ 23100–23113.
  3. Licenses and Fees. §§ 23300–23455.
  4. Imports. §§ 23660–23673.
  5. Restrictions on Issuance of Licenses. §§ 23770–23827.
  6. Issuance and Transfer of Licenses. §§ 23950–24082.
  7. Suspension and Revocation of Licenses. §§ 24200–24211.
  8. Hearings. §§ 24300–24310.
  9. Group Purchase. § 24400.
  10. Alcoholic Beverages Fair Trade Contracts and Price Posting. §§ 24749–24757.5.
  11. Wine Fair Trade Contracts and Price Posting. §§ 24850–24881. [Repealed]
  12. Beer Price Posting and Marketing Regulations. §§ 25000–25010.
  13. Labels and Containers. §§ 25170–25243.
  14. Seizure and Forfeiture of Property. §§ 25350–25375.
  15. Tied-House Restrictions. §§ 25500–25512.
  16. Regulatory Provisions. §§ 25600–25667.
  17. Administrative Provisions. §§ 25750–25763.

## CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

- § 23000. Title.
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- § 23003. “Alcohol.”
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- § 23017. “Importer.”
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- § 23019. “Customs broker.”
- § 23020. “Wine broker.”
- § 23021. “Wholesaler.”
- § 23022. “Industrial alcohol dealer.”
- § 23023. “Retailer.”
- § 23024. “Retailer’s on-sale license.”
- § 23025. “Sell” or “sale.”
- § 23026. “Retail sale.”
- § 23027. “Wholesale sale.”
- § 23028. “Package.”
- § 23029. “Case.”
- § 23030. “To bottle” or “to package.”
- § 23031. “Gallon” or “wine gallon.”
- § 23032. “Proof spirits.”
- § 23033. “Proof gallon.”
- § 23034. “Still.”
- § 23035. “Private warehouse.”
- § 23036. “Public warehouse.”
- § 23037. “Club,” “guest.”

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\* The provisions of this division, except as otherwise noted, became effective September 9, 1953.

- § 23038. “Bona fide public eating place,” “meals.”
- § 23038.1. Convention center, exhibit hall or auditorium.
- § 23038.2. Ball park, stadium or coliseum.
- § 23039. “Public premises.”
- § 23039.1. “Sunday matinees.”
- § 23040. “Within this State.”
- § 23041. “Without the State.”
- § 23042. “Board.”
- § 23043. “Department”; “director.”
- § 23044. “License.”
- § 23045. “Appeals board.”
- § 23046. “Air common carrier.”
- § 23047. “Scheduled flight.”

**23000. Title.** This division shall be known and may be cited as the “Alcoholic Beverage Control Act.”

**Validity.**—The selling of liquor was not a privilege which inhered in a citizen of the State; hence the prohibition of such sales except in a manner prescribed by statute was within the police power of the State. *Crowley v. Christensen* (1890), 11 S. Ct. 13, 137 U. S. 86, 34 L. Ed. 620; *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 104 S.Ct. 2694.

See also: *Wylie v. State Board of Equalization of California* (D. C. 1938), 21 F. Supp. 604; *Tokaji v. State Board of Equalization* (1937), 20 Cal. App. 2d 612, 67 Pac. 2d 1082.

**23001. Purposes of act.** This division is an exercise of the police powers of the State for the protection of the safety, welfare, health, peace, and morals of the people of the State, to eliminate the evils of unlicensed and unlawful manufacture, selling, and disposing of alcoholic beverages, and to promote temperance in the use and consumption of alcoholic beverages. It is hereby declared that the subject matter of this division involves in the highest degree the economic, social, and moral well-being and the safety of the State and of all its people. All provisions of this division shall be liberally construed for the accomplishment of these purposes.

**Interpretation of purpose.**—The Alcoholic Beverage Control Act, relating to the licensing of importers of liquor into California, does not, as respects United States citizens possessing liquor of Mexican origin in California without importer’s licenses, violate commerce clause. *Wylie v. State Board of Equalization*, (D. C. 1938) 21 F. Supp. 604.

Provisions of the Alcoholic Beverage Control Act (now § 25602) making it a misdemeanor to sell alcoholic beverages to an “obviously intoxicated person” were not adopted for the protection of the obviously intoxicated person, in view of the declaration of purpose in the act. The primary purpose of act involved in the highest degree the economic, social, and moral well-being and safety of State and all its people. *Hitson v. Dwyer*, (1944) 61 Cal. App. 2d 803, 143 Pac. 2d 952.

The economic welfare of the people, protected by this division is that achieved by strict regulation and curtailment of the use of liquor, the economic benefits resulting to the people from the promotion of temperance, rather than those resulting from the promotion of the liquor industry. *American Distilling Co. v. State Board of Equalization*, 144 Cal. App. 2d 457, 301 Pac. 2d 495.

**Public welfare.**—It is the duty of the department to take into consideration the welfare of the public as a whole and to exercise its discretion in the light of conditions that exist at the time of hearing. *Hasselbach v. Department of Alcoholic Beverage Control and Von’s Grocery*, 167 Cal. App. 2d 662.

The Alcoholic Beverage Control Act was enacted for the purpose of protecting the safety, welfare, health, peace and morals of the people of this State, and a violation of any of the regulatory provisions relating to prohibited sales constitutes a misdemeanor. Elimination of price wars which unduly stimulate the sale and consumption of alcoholic beverages and disrupt the orderly sale and distribution thereof are declared the policy of the State, and the sale of alcoholic beverages should be subjected to restrictions and regulations as a proper use of the police power of this State under Article XX, Section 22 of the State Constitution. *Peck’s Liquors, Inc., v. Superior Court*, 221 Cal. App. 2d 772.

**23001.5. Severability Clause.** If any provision of this division or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this division that can be given effect without the invalid portion or application, and to this end the provisions of this division are severable. It is the intent of the Legislature that this division would have been adopted regardless if such invalid provision had not been included or any invalid application had not been made.

**History.**—Added by Stats. 2006, Ch. 910, AB 3065, in effect January 1, 2007.

**23002. Construction.** Unless the context otherwise requires, the definitions and general provisions set forth in this chapter govern the construction of this division.

**23003. “Alcohol.”** “Alcohol” means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

23004. **“Alcoholic beverage.”** “Alcoholic beverage” includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of 1 percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

**Grain alcohol.**—Grain alcohol imported in tank cars and unfit for beverage purposes until redistilled is not an alcoholic beverage within the meaning of this section. *American Distilling Co. v. State Board of Equalization*, 144 Cal. App. 2d 457, 301 Pac. 2d 495.

**Evidence.**—In a liquor case the presumption that liquor is served when requested is not overcome by the presumption of innocence. This presumption may support a finding, and it prevails until controverted. Laboratory analysis and expert testimony as to the contents of a glass seized in evidence are not indispensable items of proof. *Griswold v. Department of Alcoholic Beverage Control*, 141 Cal. App. 2d 807, 297 Pac. 2d 762.

Unopened bottle sold by defendant which was labeled whiskey, and whose contents did not look unlike whiskey, was admissible in prosecution for selling whiskey without a license. *People v. Minter*, 73 Cal. App. 2d Supp. 994, 167 Pac. 2d 11.

Evidence that a drink solicited by a B-girl was poured from a bottle labeled “vermouth” and that \$1 was charged for it is sufficient to support finding that drink was alcoholic. *Wright v. Munro*, 144 Cal. App. 2d 843, 301 Pac. 2d 997.

**Presumption of alcoholic nature of drinks poured from certain bottles.**—Sections 25176 and 25177 together with CCP 1963 (subd. 33) raise a presumption that drinks poured in an on-sale premises from whiskey and vodka bottles contained whiskey and vodka. *Mercurio v. Department of Alcoholic Beverage Control*, 144 Cal. App. 2d 626, 301 Pac. 2d 474.

23005. **“Distilled spirits.”** “Distilled spirits” means an alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof.

**Construction.**—The definition of distilled spirits in this section controls the construction of that term as it is used throughout this division. *American Distilling Co. v. State Board of Equalization*, 144 Cal. App. 2d 457, 301 Pac. 2d 495.

23006. **“Beer.”** “Beer” means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer but does not include sake, known as Japanese rice wine.

**Cross reference.**—California Pure Food Act, Health and Safety Code section 26500.

**Intoxicating nature.**—Whenever merchandise is sold as “beer” it must be assumed to be an intoxicating beverage. *Molina v. Munro*, 145 Cal. App. 2d 601, 302 Pac. 2d 819.

23007. **“Wine.”** “Wine” means the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made and other rectified wine products and by whatever name and which does not contain more than 15 percent added flavoring, coloring, and blending material and which contains not more than 24 percent of alcohol by volume, and includes vermouth and sake, known as Japanese rice wine.

Nothing contained in this section affects or limits the power, authority, or duty of the State Department of Health Services in the enforcement of the laws directed toward preventing the manufacture, production, sale, or transportation of adulterated, misbranded, or mislabeled alcoholic beverages, and the definition of “wine” contained in this section is limited strictly to the purposes of this division and does not extend to, or repeal by implication, any law preventing the production, manufacture, sale, or transportation of adulterated, misbranded, or mislabeled alcoholic beverages.

**History.**—Stats. 1971, Ch. 1593, in effect March 4, 1972, substituted “State Department of Health” for “Department of Public Health.” Stats. 1977, Ch. 1252, in effect July 1, 1978, inserted “Public Health. Stats. 1978, Ch. 429, in effect July 1, 1978, substituted “Health Services” for “Public Health.”

**Cross reference.**—California Pure Food Act, Health and Safety Code section 26012.

**Wine definition.**—Mixtures containing wine, alcohol, flavoring and water, with the added alcohol being three times as much as the wine are not wines within the meaning of the Alcoholic Beverage Control Act. *Tux Ginger Ale Co., Ltd. v. Davis*, 12 Cal. App. 2d 73.

23008. **“Person.”** “Person” includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular number.

**Construction.**—A license held by a corporation may be revoked after transfer of all of the stock of the corporation for violations occurring prior to such transfer. When a license is issued to a corporation it retains the same and is responsible for the license until it is suspended or revoked. *Maxwell Cafe v. Department of Alcoholic Beverage Control*, 142 Cal. App. 2d 73, 298 Pac. 2d 64.

This section recognizes the “alter ego” theory of corporate control and applies to extend privileges granted by Section 23774 to a corporation, 80 percent of the stock of which is owned by a corporation qualified under Section 23774. 25 Ops. Atty. Gen. 288, 55/61 4-29-55.

23009. **“Licensee.”** “Licensee” means any person holding a license, a permit, a certification, or any other authorization issued by the department.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.” Amended by AB 3085, Ch. 437, Stats. 2004, Urgency bill in effect September 9, 2004, added permit, certificate or other authorization language.

23010. **“Taxpayer.”** “Taxpayer” means a person liable for the payment of a tax pursuant to Part 14 of Division 2 of the Revenue and Taxation Code.

**History.**—Stats. 1955, Ch. 1842, in effect September 7, 1955, substituted “Part 14 of Division 2 of the Revenue and Taxation Code” for “this division.”

23011. **“Salesman.”** “Salesman” means any individual who solicits or receives an order for alcoholic beverages from any licensee.

23012. **“Beer manufacturer.”** “Beer manufacturer” means any person engaged in the manufacture of beer.

23013. **“Winegrower.”** “Winegrower” means any person who has facilities and equipment for the conversion of grapes, berries or other fruit into wine and is engaged in the production of wine, except that any person who produces not to exceed 200 gallons of wine per year for his own consumption shall not, because of such production, be considered a winegrower within the meaning of this division.

**History.**—Stats. 1965, Ch. 499, in effect September 17, 1965, added reference to facilities and equipment.

23013.5. **“Wine blender.”** A “wine blender” is a person authorized to operate a bonded wine cellar pursuant to a permit issued for that purpose under the Internal Revenue Laws of the United States but who does not have facilities or equipment for the conversion of grapes, berries or other fruit into wine and does not engage in the production of wine in commercial quantities, provided that any person who produces or blends not to exceed 200 gallons of wine per year shall not, because of such production or blending, be considered a wine blender within the meaning of this division.

**History.**—Added by Stats. 1965, Ch. 499, in effect September 17, 1965.

23014. **“Brandy manufacturer.”** “Brandy manufacturer” means any person engaged in the manufacture of brandy only and not in the manufacture of any other distilled spirits.

23015. **“Distilled spirits manufacturer.”** “Distilled spirits manufacturer” means any person who produces distilled spirits from naturally fermented materials or in any other manner.

This section recognizes that distilled spirits may be manufactured other than by the distillation of fermented agricultural products, such as by redistillation. *American Distilling Co. v. State Board of Equalization*, 144 Cal. App. 2d 457, 301 Pac. 2d 495.

23016. **“Rectifier.”** “Rectifier” means every person who colors, flavors, or otherwise processes distilled spirits by distillation, blending, percolating, or other processes.

Manufacture of gin, vodka and whiskey by redistilling grain alcohol unfit for beverage use before such redistillation is not rectification. *American Distilling Co. v. State Board of Equalization*, 144 Cal. App. 2d 457, 301 Pac. 2d 495.

23017. **“Importer.”** “Importer” means:

(a) Any consignee of alcoholic beverages brought into the State from without this State, when the alcoholic beverages are for delivery or use within this State.

(b) Any person, except a public warehouse licensed under this division, to whom delivery is first made in this State of alcoholic beverages brought into this State from without this State for delivery or use within this State.

(c) Any person, licensed as an importer, selling alcoholic beverages to nonlicensees within an area over which the United States Government exercises jurisdiction, when delivery of the alcoholic beverages is made to the nonlicensees by a common carrier transporting the alcoholic beverages from a point outside this State.

(d) Any person bringing alcoholic beverages into this State from without this State which are not consigned to any person and which are for delivery or use within this State.

A person licensed as a customs broker who is acting as an agent for a licensed importer or for another person whose place of business is without the State shall not be deemed to be the importer of alcoholic beverages consigned in United States internal revenue bond or in United States customs bond to the licensed customs broker.

23018. **“Exporter.”** “Exporter” means any person who sells, delivers, or consigns alcoholic beverages located within this State for delivery, use, or sale without the State.

23019. **“Customs broker.”** “Customs broker” means every person who is authorized to act as agent or broker for a person licensed as an importer or for a person whose place of business is without the State, in regard to the importing of alcoholic beverages into the State in United States internal revenue bond or in United States customs bond.

23020. **“Wine broker.”** “Wine broker” means every person, other than a salesman who is regularly employed by a licensee, who engages as an agent in the sale or purchase of wine for or on behalf of another or others for a fee or commission.

23021. **“Wholesaler.”** “Wholesaler” means every person other than a manufacturer, winegrower or rectifier who is engaged in business as a jobber or wholesale merchant, dealing in alcoholic beverages, in an area within the United States other than a territory or possession of the United States, or within a foreign country having common boundaries with any state of the United States.

*History.—Stats. 1973, Ch. 453, in effect January 1, 1974, excluded persons in wholesale business in a territory or possession of the United States. Stats. 1975, Ch. 597, in effect January 1, 1976, added “or within a foreign country having common boundaries with any state of the United States.”*

23022. **“Industrial alcohol dealer.”** “Industrial alcohol dealer” means a person who sells alcohol or distilled spirits in packages of more than one gallon for use in the trades, professions, or industries, but not for beverage use.

23023. **“Retailer.”** “Retailer” means any on- or off-sale licensee.

23024. **“Retailer’s on-sale license.”** “Retailer’s on-sale license” means on-sale beer licenses, on-sale beer and wine licenses, on-sale general licenses, and on-sale general licenses for seasonal businesses.

23025. **“Sell” or “sale.”** “Sell” or “sale” and “to sell” includes any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another, and includes the delivery of alcoholic beverages pursuant to an order placed for the purchase of such beverages and soliciting or receiving an order for such

beverages, but does not include the return of alcoholic beverages by a licensee to the licensee from whom such beverages were purchased.

**“Sale” includes giving samples.**—Where distilled spirits are given away as samples, apparently for the purpose of encouraging the sale of the product, such distributions are not in the true sense gratuitous and hence they are taxable. *Tonkin Distributing Company, Inc. v. Collins*, 50 Cal. App. 2d 790; *Sauers Wholesale Company v. Collins*, 50 Cal. App. 2d 786; *Rathjen Bros., Inc. v. Collins*, 50 Cal. App. 2d 774.

**“Sale” includes delivery.**—There was a delivery of alcoholic beverages in this State and, hence, a sale within the definition when distilled spirits were shipped from a point outside of California to the United States Army on a military reservation in California under a bill of lading designating the shipper as consignor. *National Distillers Products Corporation v. State Board of Equalization*, 83 Cal. App. 2d 35.

23026. **“Retail sale.”** “Retail sale” or “sale at retail” means the sale by an on- or off-sale licensee for consumption and not for resale.

23027. **“Wholesale sale.”** “Wholesale sale” or “sale at wholesale” means a sale to any licensee for purposes of resale.

23028. **“Package.”** “Package” means any container or receptacle used for holding alcoholic beverages which is corked or sealed with a stub, stopper, cap, or in any other manner.

23029. **“Case.”** “Case” or “original case” means a standard box or carton as packed by the manufacturer or wine grower in which packages of alcoholic beverages are shipped or transferred.

23030. **“To bottle” or “to package.”** “To bottle” or “to package” means to bottle, barrel, or otherwise place alcoholic beverages in a container.

23031. **“Gallon” or “wine gallon.”** “Gallon” or “wine gallon” means that liquid measure containing 231 cubic inches.

23032. **“Proof spirits.”** “Proof spirits” means that alcoholic liquor which contains one-half of its volume of pure ethyl alcohol of a specific gravity of 0.7939 at 60 degrees Fahrenheit, referred to water at 60 degrees Fahrenheit as unity.

23033. **“Proof gallon.”** “Proof gallon” means a gallon of proof spirits or an equivalent amount of alcohol.

23034. **“Still.”** “Still” means any apparatus capable of being used for separating alcohol, or alcoholic vapors or solutions from alcohol or alcoholic solutions or mixtures, but does not include stills or apparatus used for laboratory purposes or solely in the production of distilled water or substances other than alcoholic beverages.

**History.—Stats. 1959, Ch. 547. In effect September 18, 1959, redefined still.**

23035. **“Private warehouse.”** “Private warehouse” means any place maintained by a licensee, other than his licensed premises, for the storage but not for the sale of alcohol or alcoholic beverages owned by the licensee.

**Cross reference.**—Rule 76.

23036. **“Public warehouse.”** “Public warehouse” means any place licensed for the storage of, but not the sale of, alcohol or alcoholic beverages for the account of other licensees and includes United States custom bonded warehouses and United States internal revenue bonded warehouses when the bonded warehouses are used for storage of alcoholic beverages for the account of another licensee.

**Cross references.**—Custom bonded warehouses, see 19 U.S.C.A. § 1555, Internal revenue bonded warehouse, see 26 U.S.C.A. § 2872, et seq.

23037. **“Club,” “guest.”** “Club” means a corporation or association which is the owner, lessee, or occupant of an establishment operated solely for objects of a social or athletic nature but not for pecuniary gain, having a bona fide membership list, and the majority of the members of which pay dues at least once in every year, and the property as well as the advantages of which belong to the members, and which sells alcoholic beverages only to its members and its bona fide guests. A guest is defined as a person who is actually a houseguest, or a person whose presence as a guest is in response to a specific invitation for the special occasion.

**History.—Stats. 1957, Ch. 618, in effect September 11, 1957, added “and which sells alcoholic beverages only to its members and its bona fide guests,” and second sentence.**

23038. **“Bona fide public eating place,” “meals.”** “Bona fide public eating place” means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local department of health. “Meals” means the usual assortment of foods commonly ordered at various hours of the day; the service of such food and victuals only as sandwiches or salads shall not be deemed a compliance with this requirement. “Guests” shall mean persons who, during the hours when meals are regularly served therein, come to a bona fide public eating place for the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein. Nothing in this section, however, shall be construed to require that any food be sold or purchased with any beverage.

**History.—Stats. 1955, Ch. 1779, operative January 1, 1957, amended section to read as above.**

**Concession agreement.**—Except as permitted by Section 23787, a licensee under a bona fide public eating place on-sale general license may not lease or make a concession agreement under which he would in effect sublet the restaurant operations on his premises. 29 Ops. Atty. Gen. 95, 57/25 3-27-57.

**Ownership of license as evidence of ownership of connected restaurant.**—The appearance of a persons’ name on a liquor license of a type which required him to serve food is evidence that he is the owner and operator of a restaurant adjoining the licensed premises. *Farmer Brothers Company v. Kiernan*, 149 Cal. App. 2d 867.

**A club as a bona fide eating place.**—A club license and a bona fide eating place license are separate and distinct types of licenses even though a club might qualify as a bona fide eating place. The exception expressed in Penal Code § 172e does not extend to club licenses. *Harris v. Alcoholic Beverage Control Appeals Board (Berkeley City Women’s Club)*, 201 Cal. App. 2d 567.

23038.1. **Convention center, exhibit hall or auditorium.** Notwithstanding the provisions of Section 23038, “bona fide public eating place” also means a convention center, exhibit hall, or auditorium, which shall hereinafter be referred to as “premises,” owned by or leased to the State of California, any incorporated city, county, city and county, or public corporation of the State of California which is regularly and in a bona fide manner used and kept open for the attendance of groups of guests, and in connection with such use serves meals to such groups of guests for compensation, and which has suitable kitchen facilities in connection therewith, such kitchen containing conveniences for preparation of ordinary meals and maintained in a sanitary condition with proper refrigeration for the keeping of food on the premises in compliance with all regulations of the local department of health.

“Meals,” as used in this section, means foods commonly ordered at a lunch or dinner; provided, however, that the service of food such as sandwiches or salads only shall not be deemed compliance with this requirement.

“Groups of guests,” as used in this section, means persons who come to the premises owned or leased as provided herein, to make use of such premises for the purpose or purposes for which it was designed, and in connection with such use may, as a group, order in advance and obtain or be served a meal therein.

“Convention center” as used in this section, means a building or group of buildings in close physical proximity consisting of, but not necessarily limited to, a convention hall, exhibit hall, auditorium, or theater, or any combination thereof, and used for the purpose, among other things, of providing facilities for conventions, theatrical productions, shows, sporting centers, exhibits, displays, conferences or meetings.

Nothing in this section shall be construed to require that meals be served every day that use is made of the premises or any part thereof. However, meals shall actually be available to groups of guests in good faith upon adequate notice and request to the operators of such premises on any day of any year that such premises are used by such groups of guests, and shall be served to groups of guests as heretofore provided on at least 25 percent of the total days each year that the premises are used by said groups of guests.

Nothing in this section shall be construed to require that any food be sold or purchased with any alcoholic beverage.

**History.**—Added by Stats. 1968, Ch. 860, in effect November 13, 1968.

**Cross reference.**—Rule 57.8.

**23038.2. Ball park, stadium or coliseum.** Notwithstanding the provisions of Section 23038, for purposes of issuing an on-sale beer and wine license only, “bona fide public eating place” also means a ball park, stadium, or coliseum featuring professional sporting events which maintains suitable kitchen facilities for the preparation of food which is offered for sale to persons attending such professional sporting events.

The Department of Alcoholic Beverage Control may prescribe specific types and sizes of beer and wine containers which may be sold pursuant to the provisions of this section.

**History.**—Added by Stats. 1976, Ch. 561, in effect January 1, 1977. Stats. 1978, Ch. 270, in effect January 1, 1979, deleted seating capacity requirement of 40,000.

**23039. “Public premises.”** (a) “Public premises” means:

(1) Premises licensed with any type of license other than an on-sale beer license, and maintained and operated for the selling or serving of alcoholic beverages to the public for consumption on the premises, and in which food shall not be sold or served to the public as in a bona fide public eating place, but upon which premises food products may be sold or served incidentally to the sale or service of alcoholic beverages, in accordance with rules prescribed by the department.

(2) Premises licensed with an on-sale beer license, in which food shall not be sold or served to the public as in a bona fide public eating place, and in which sandwiches, salads, desserts, and similar short orders shall not be sold and served, in accordance with rules prescribed by the department.

(b) “Public premises” does not include railroad dining or club cars, passenger ships, airplanes, or bona fide clubs after the clubs have been lawfully operated for not less than one year; nor does it include historic units of the state park system, premises being operated under a temporary on-sale beer license other than permitted pursuant to Section 24045.5, or on-sale beer licensed stadia, auditoria, fairgrounds, or racetracks; nor does it include nonprofit theater companies licensed pursuant to Section 24045.7.

**History.**—Stats. 1955, Ch. 1779, in effect January 1, 1957, recast the section. Stats. 1967, Ch. 1296, in effect November 8, 1967, inserted “licensed with any type of license other than an on-sale beer license, and” in (1); added (2); deleted on-sale beer premises and added stadia, auditoria, fairgrounds, racetracks, and temporary on-sale beer premises in (b). Stats. 1968, Ch. 1040, in effect November 13, 1968, added historic units of the state park system and “on-sale beer licensed” premises in subd. (b). Stats. 1979, Ch. 487, in effect January 1, 1980, added exemption for nonprofit theatre companies in subd. (b). Stats. 1984, Ch. 399, in effect July 11, 1984, repealed and rewrote section.

23039.1. **“Sunday matinees.”** Notwithstanding any other provision of law, any on-sale beer and wine public premises licensee who has been licensed at premises operated as a cabaret theater for at least 10 years and which has a seating capacity for at least 375 patrons may admit persons under the age of 21 years to matinee theater performances on Sundays provided that alcoholic beverages are not sold, served, or consumed on the premises during those performances.

*History.—Added by Stats. 1987, Ch. 869, in effect September 21, 1987.*

23040. **“Within this State.”** “Within this State” means all territory within the boundaries of this State.

23041. **“Without the State.”** “Without the State” means all territory without the boundaries of this State.

23042. **“Board.”** “Board” means the State Board of Equalization, in the exercise of the powers and duties with respect to excise taxes reserved to it by Section 22 of Article XX of the Constitution.

*History.—Stats. 1955, Ch. 447, in effect September 7, 1955, added “in the exercise of the powers and duties with respect to excise taxes reserved to it by Section 22 of Article XX of the Constitution.”*

23043. **“Department”; “director.”** “Department” means the Department of Alcoholic Beverage Control, and “director” means the Director of Alcoholic Beverage Control.

*History.—Stats. 1955, Ch. 447, in effect September 7, 1955, recast the section to read as above.*

23044. **“License.”** “License” means a license authorized to be issued by the department pursuant to this division.

*History.—Stats. 1955, Ch. 447, substituted “department” for “board.”*

23045. **“Appeals board.”** “Appeals board” means the Alcoholic Beverage Control Appeals Board.

*History.—Added by Stats. 1955, Ch. 447, in effect September 7, 1955.*

23046. **“Air common carrier.”** “Air common carrier” means a person engaged in regularly scheduled air transportation between fixed termini under a certificate of public convenience and necessity issued by the Civil Aeronautics Board, or its successor, or the Public Utilities Commission, or its successor, and “airplane” or “common carrier airplane” means an airplane operated in air transportation by an air common carrier.

*History.—Added by Stats. 1955, Ch. 954, in effect September 7, 1955. Renumbered from Section 23045 by Stats. 1957, Ch. 37, in effect September 11, 1957. Stats. 1968, Ch. 607, in effect November 13, 1968, included Public Utilities Commission.*

23047. **“Scheduled flight.”** “Scheduled flight” means a regularly scheduled and advertised flight of an air common carrier but does not mean each daily operation of airplanes upon such flight.

*History.—Added by Stats. 1955, Ch. 954, in effect September 7, 1955. Renumbered from Section 23046 by Stats. 1957, Ch. 37, in effect September 11, 1957.*

## CHAPTER 1.5. ADMINISTRATION

(Added by Stats. 1st Ex. Sess. 1954, Ch. 20, operative January 1, 1955.)

- Article 1. The Department of Alcoholic Beverage Control. §§ 23049–23058.
2. Prohibited Activity. § 23060.
3. The Alcoholic Beverage Control Appeals Board. §§ 23075–23078.
4. Appeals From Decision of the Department. §§ 23080–23089.
5. Judicial Review. §§ 23090–23090.7.
6. Stay of Suspension. §§ 23095–23098.

## Article 1. The Department of Alcoholic Beverage Control

- § 23049. Legislative intent.
- § 23050. Establishment of department.
- § 23051. Succession to powers, etc., of State Board of Equalization.
- § 23052. Application of Government Code.
- § 23053. Power of director.
- § 23053.1. Injunctive action.
- § 23053.5. Business practices.
- § 23054. Transfer of employees.
- § 23055. Annual reports.
- § 23056. Designated driver sheet.
- § 23057. Decoy notice.
- § 23058. Reporting to Board of Equalization.

**23049. Legislative intent.** It is the intention of the Legislature in enacting this chapter to provide a governmental organization which will ensure a strict, honest, impartial, and uniform administration and enforcement of the liquor laws throughout the State.

**23050. Establishment of department.** There is in the State Government a Department of Alcoholic Beverage Control. The department shall be administered through a civil executive officer who shall be known as the Director of Alcoholic Beverage Control. The director shall be appointed and shall serve as provided in Section 22 of Article XX of the Constitution and shall receive an annual salary as provided for by Chapter 6 of Part 1 of Division 3 of Title 2 of the Government Code.

**History.—Stats. 2000, Ch. 979, effective January 1, 2001, eliminated requirement that the director post a bond.**

**23051. Succession to powers, etc., of State Board of Equalization.** On and after January 1, 1955, the department shall succeed to all of the powers, duties, purposes, responsibilities, and jurisdiction now conferred on the State Board of Equalization under Section 22 of Article XX of the Constitution and this division, except the power to assess and collect such excise taxes as are or may be imposed by law on account of the manufacture, importation, and sale of alcoholic beverages in this State, which shall remain the exclusive power of the State Board of Equalization.

All other laws heretofore or hereafter applicable to the State Board of Equalization with respect to alcoholic beverages, except as to excise taxes, shall hereafter be construed to apply to the department.

Any license issued by the board and in effect on December 31, 1954, shall be deemed on and after January 1, 1955, to be a license of the department.

**Construction and application.**—The function of issuing an interstate alcoholic beverage transporter's permit is that of the Department of Alcoholic Beverage Control. The Board of Equalization, however, has power to require from such transporter such reports as may be necessary for the administration of revenue provisions within its jurisdiction. 26 Ops. Atty. Gen. 3, 55/36 7-8-55.

**Department not bound by erroneous construction of rules by Board of Equalization.**—The department was not estopped to revoke a license issued by the State Board of Equalization under an erroneous construction of its own rules and this division. *Joseph George v. Department of Alcoholic Beverage Control*, 149 Cal. App. 2d 702.

Alcoholic beverage control rules and regulations duly adopted by the State Board of Equalization prior to January 1, 1955, become on that date the rules and regulations of the Department of Alcoholic Beverage Control. 25 Ops. Atty. Gen. 158, 55/23 2-24-55.

**23052. Application of Government Code.** The provisions of Chapter 2, Part 1, Division 3, Title 2 of the Government Code shall govern and apply to the conduct of the department in every respect the same as if such provisions were herein set forth at length, and wherever in that chapter the term "head of the department" or similar designation occurs, for the purposes of this section it shall mean the director.

**Cross reference.**—Section 25751.

23053. **Power of director.** The director shall be the appointing power of all employees within the department, and all heads of divisions, bureaus and other employees in the department shall be responsible to the director for the proper carrying out of the duties and responsibilities of their respective positions.

23053.1. **Injunctive action.** The director may bring an action to enjoin a violation or the threatened violation of any provision of this division, including, but not limited to, subdivision (e) of Section 24200 regarding a licensee's failure to correct objectionable conditions following notice, or any rule promulgated pursuant to the provisions of this division. The action may be brought in the county in which the violation occurred or is threatened to occur. Any proceeding brought hereunder shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

**History.—**Added by Stats. 1984, Ch. 56, in effect March 28, 1984. Stats. 1994, Ch. 627, in effect January 1, 1995, revised requirements.

23053.5. **Business practices.** The department shall have the function of investigation of violations of Chapters 10, 11 and 15 of this division and rules of the department relating thereto. To the end that such provisions are more adequately and strictly enforced, funds for support of this program shall be derived as follows: In addition to fees otherwise provided for in this division, the following amounts shall be paid to the department by holders of the following types of licenses:

(a) Retail package off-sale general license.....	\$24 per year
(b) Rectifier's license.....	\$52 per year
(c) Distilled spirits wholesaler's license.....	\$52 per year
(d) Distilled spirits manufacturer's agent's license .....	\$52 per year
(e) Distilled spirits manufacturer's license.....	\$52 per year
(f) Distilled spirits importer's general license.....	\$52 per year
(g) California winegrower's agent's license.....	\$52 per year

Payment of such amounts shall be made upon issuance or transfer of said types of licenses, and shall be made by the holders of said types of licenses at the time specified in this division for payment of annual renewal fees therefor.

The provisions of Section 23322 shall apply to the amounts to be paid under this section. All money collected from the fees provided for in this section shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

**History.—**Added by Stats. 1963, Ch. 1026, in effect June 25, 1963. Stats. 1973, Ch. 783, in effect January 1, 1974, added California winegrower's agent's license. Stats. 1992, Ch. 900, in effect September 25, 1992, provided funds be deposited in ABC Fund.

23054. **Transfer of employees.** All persons in the state civil service employed on the operative date hereof in the State Board of Equalization in carrying out functions transferred to the Department of Alcoholic Beverage Control by this article are transferred to the department and retain their respective positions in the state civil service, subject to the provisions of Article XXIV of the Constitution and laws continued in force thereby or adopted pursuant thereto.

The transfer of personnel made by this section shall be subject to the power of the director, in accordance with the State Civil Service Act, to reorganize the department, to discipline employees transferred for incompetency, inefficiency, inexcusable neglect of duty, prior or subsequent to the transfer, or for any other cause for discipline provided by law, and to lay off and demote employees for lack of funds, in accordance with the State Civil Service Act.

23055. **Annual reports.** On or before March 1 of each year, the director shall prepare and submit to the Legislature an annual report on the department's activities. The report shall include, but not be limited to, the following information for the previous calendar year:

(a) The amount of funds allocated and spent by the department for licensing, enforcement, and administration.

(b) The number of licenses issued, renewed, denied, suspended, and revoked, by license category.

(c) The average time for processing license applications, by license category.

(d) The number and type of enforcement activities conducted by the department and by local law enforcement agencies in conjunction with the department.

(e) The number, type, and amount of penalties, fines, and other disciplinary actions taken by the department.

(f) Recommendations for legislation to improve the ability of the department to expeditiously and effectively administer this division.

**History.**—Stats. 1992, Ch. 900, in effect September 25, 1992, repealed section relating to transfer of funds and enacted existing language. Stats. 2002, Ch. 579, in effect January 1, 2003, added reporting of joint activities with local law enforcement in subd. (d).

23056. **Designated driver sheets.** The department shall send a copy of the information sheet prepared by the Department of the California Highway Patrol pursuant to Section 2426 of the Vehicle Code with each renewal notice to any on-sale licensee.

**History.**—Added by Stats. of 1990, Ch. 1337, in effect January 1, 1991. Stats. of 1992, Ch. 838, in effect January 1, 1993, deleted the reference to annual renewal notices.

23057. **Decoy notice.** The department shall send, with each renewal notice to any on-sale or off-sale licensee, information regarding the use of persons under the age of 21 years by peace officers to apprehend licensees, or the employees or agents of licensees, who sell alcoholic beverages to persons under the age of 21 years.

**History.**—Added by Stats. 1995, Ch. 743, in effect October 10, 1995. Stats. 1996, Ch. 124, in effect January 1, 1997, made technical non-substantive changes.

23058. **Reporting to Board of Equalization.** In order to facilitate the board's administration of the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), the department shall, each quarter at no cost to the board, electronically transmit to the board a report on the licenses issued or transferred pursuant to this division. The report shall include the names and addresses of all persons to whom the license is issued or transferred, the type of license issued or transferred, and the effective date of the license or transfer. With respect to transfers, the report shall additionally include the names and addresses of the transferors. The information shall be transmitted to the board in a format agreed upon by both the board and the department.

**History.**—Added by Stats. 2005, Ch. 172, SB 322.

## Article 2. Prohibited Activity

23060. **Prohibited activity.** Neither the Director of Alcoholic Beverage Control nor any member of the Alcoholic Beverage Control Appeals Board shall have or do any of the following:

(a) Receive any commission or profit whatsoever, directly or indirectly, from any person applying for or receiving any license or permit under the Alcoholic Beverage Control Act.

(b) Engage or have any interest in the sale or any insurance covering a licensee's business or premises.

(c) Engage or have any interest in the sale of equipment for use upon licensed premises.

(d) Knowingly solicit any licensee for the purchase of tickets for benefits or contributions for benefits.

(e) Knowingly request any licensee to donate or receive money, or any other thing of value, for the benefit of any person whatsoever.

Any person who violates any provision of this section shall be removed from office.

**Cross reference.**—Rule 62.

### Article 3. The Alcoholic Beverage Control Appeals Board

- § 23075. Creation of board.
- § 23076. Personnel of board.
- § 23077. Powers of board.
- § 23078. Public meetings. [Repealed.]

**23075. Creation of board.** There is in the State Government an Alcoholic Beverage Control Appeals Board the members of which shall be appointed and shall serve as provided in Section 22 of Article XX of the Constitution, and shall receive an annual salary as provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

**History.**—Amended by Stats. 1983, Ch. 803, in effective January 1, 1984; Stats. 1988, Ch. 1335, in effect January 1, 1989, authorized annual salary.

**23076. Personnel of board.** All personnel of the Alcoholic Beverage Control Appeals Board shall be appointed, directed and controlled by the board. The director shall furnish the equipment, supplies, and housing necessary to the operation of the board and shall perform such other mechanics of administration as the board and the director may agree upon.

**23077. Powers of board.** The Alcoholic Beverage Control Appeals Board shall exercise such powers as are vested in it by Section 22 of Article XX of the Constitution and may adopt such rules pertaining to appeals and other matters within its jurisdiction as may be required. The board and its duly authorized representatives in the performance of its duties under this chapter shall have the powers of a head of a department as set forth in Sections 11180 to 11191, inclusive, of the Government Code.

**23078. Public meetings.** *Repealed by Stats. 1967, Ch. 1656.*

### Article 4. Appeals From Decisions of the Department

- § 23080. “Decision.”
- § 23081. Time for filing appeal.
- § 23081.5. Date filed with board.
- § 23082. When decision effective.
- § 23083. Determination of appeal by board.
- § 23083.5. Surcharge for Appeals Board.
- § 23084. Questions to be considered by board.
- § 23085. Order of remand, reversal.
- § 23086. Time for entering order.
- § 23087. Remand upon stipulation.
- § 23088. Final order.
- § 23089. Review by courts.

**23080. “Decision.”** As used in this article “decision” means any determination of the department imposing a penalty assessment or affecting a license which may be appealed to the board under Section 22 of Article XX of the Constitution.

**23081. Time for filing appeal.** On or before the tenth day after the last day on which reconsideration of a final decision of the department can be ordered, any

party aggrieved by a final decision of the department may file an appeal with the board from such decision. The appeal shall be in writing and shall state the grounds upon which a review is sought. A copy of the appeal shall be mailed by the appellant to each party who appeared in the proceeding before the department, including the department which shall thereafter be treated in all respects as a party to the appeal. The right to appeal shall not be affected by failure to seek reconsideration before the department.

**History.—Stats. 1959, Ch. 549, in effect September 18, 1959, substituted ten-day period after the last day on which reconsideration can be ordered for 40-day appeal period.**

**Cross reference.—**Rules 179, 183–184.

**Appeal to board essential.—**There can be no appeal directly to the courts from a decision of the department. To obtain judicial review a licensee must first appeal to the Appeals Board and thereafter may seek judicial review of the board's decision. *Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control*, 153 Cal. App. 2d 523; *Miller v. Department of Alcoholic Beverage Control*, 160 Cal. App. 2d 658; *Fiscus v. Department of Alcoholic Beverage Control*, 155 Cal. App. 2d 234; *Cardoso v. Department of Alcoholic Beverage Control*, 162 Cal. App. 2d 277.

**Sufficiency of appeal.—**A notice of appeal is to be construed liberally so as to preserve the right of appeal. Where a document asked for reconsideration and also stated that "notice of appeal filed herewith," a valid appeal was taken. Policy of the law favors preservation of the right of appeal and the hearing of appeals on their merits. *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board and Hallwell Company*, 169 Cal. App. 2d 785, 338 Pac. 2d 50.

**Time for appeal.—**Notice of appeal to the Appeals Board from a final decision of the department was not timely filed within Government Code Section 11521 imposing a 30-day limit on the department's power to order reconsideration of its final decision, even though the 30th day was a Saturday where the appeal had to be filed with the board before the 10th day after the last day in which reconsideration could be ordered by the department. The 30-day limitation was not extended by reason of Section 6707 of the Government Code or Section 1013 of the Code of Civil Procedure. *Harris v. Alcoholic Beverage Control Appeals Board (Ward)*, 223 Cal. App. 2d 563.

**Time for appeal.—**Government Code Section 11521 and Business and Professions Code Section 23081 lead to the conclusion that where the department does not grant a stay, notice of appeal must be filed on or before the tenth day following the 30th day after the delivery or mailing of the decision, or on or before the tenth day following the date set by the department as the effective date of the decision, if such occurs prior to expiration of the 30-day period. *Reimel v. Alcoholic Beverage Control Appeals Board (Delguidice and Merboth)*, 254 C.A. 2d 340; *Reimel v. House, et al. (Martinez)*, 264 Cal. App. 2d 264.

**23081.5. Date filed with board.** An appeal to the board shall be deemed filed on the date it is received in the principal office of the board; provided, however, an appeal mailed to the board by means of registered mail shall be deemed filed with the board on the date of the registry with the United States Post Office.

**History.—Added by Stats. 1959, Ch. 549, in effect September 18, 1959.**

**23082. When decision effective.** No decision of the department shall become effective during the period in which an appeal may be filed and the filing of an appeal shall stay the effect of the decision until such time as a final order is made by the board.

This section governs over Government Code Section 11521 with regard to the minimum time in which a decision of the department may be put into effect, but does not alter the time within which reconsideration may be ordered by the department. 25 Ops. Atty. Gen. 125, 55/7 2-10-55.

**23083. Determination of appeal by board.** (a) The board shall determine the appeal upon the record of the department and upon any briefs which may be filed by the parties. If any party to the appeal requests the right to appear before the board, the board shall fix a time and place for argument. The board shall not receive any evidence other than that contained in the record of the proceedings of the department.

(b) Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the determination.

**History.—Stats. 1995, Ch. 938, in effect July 1, 1997, added subd. (b).**

**Cross reference.—**Rules 193–197.

**23083.5. Surcharge for Appeals Board.** (a) The board shall establish a surcharge applicable to the annual fees provided for in Section 23320.

(b) The surcharge set by the board shall be proportionate to the fee charged to each licensee pursuant to Section 23320 and shall provide an amount which is sufficient to pay the actual costs of the board in carrying out its duties commencing July 1, 1982.

The surcharge shall not exceed 3 percent applied to the annual fees provided for in Section 23320, but shall otherwise be adjusted periodically to ensure that sufficient amounts are collected to pay these costs. The surcharge shall be collected on behalf of the board by the Department of Alcoholic Beverage Control at the same time the department makes its regular collections of annual fees pursuant to Sections 23320 and 23320.2.

(c) All surcharges collected by the Department of Alcoholic Beverage Control on behalf of the board pursuant to this section shall be deposited in the Alcoholic Beverage Control Appeals Fund, which is hereby created. All moneys in the Alcoholic Beverage Control Appeals Fund shall be available to the board, when appropriated by the Legislature, to pay the actual costs of the board in carrying out its duties, commencing July 1, 1982, under this chapter.

**History.—**Added by Stats. 1982, Ch. 327, in effect July 1, 1982. Amended by Stats. 1983, Ch. 4, effective March 10, 1983.

**23084. Questions to be considered by board.** The review by the board of a decision of the department shall be limited to the questions:

- (a) Whether the department has proceeded without, or in excess of, its jurisdiction.
- (b) Whether the department has proceeded in the manner required by law.
- (c) Whether the decision is supported by the findings.
- (d) Whether the findings are supported by substantial evidence in the light of the whole record.
- (e) Whether there is relevant evidence, which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the department.

**Powers of Appeals Board limited.**—The department is an agency on which the Constitution has conferred limited judicial powers, and thus its decisions on factual matters must be affirmed if there is substantial evidence to support them. A trial court is not permitted to exercise an independent judgment of the facts in reviewing the department's suspension of a license, but must give the department's factual determinations the same deference that an appellate court must give to the findings of a trial court. *Brice v. Department of Alcoholic Beverage Control*, 153 Cal. App. 2d 315; *Oxman v. Department of Alcoholic Beverage Control*, 153 Cal. App. 2d 740; *Hasselbach v. Department of Alcoholic Beverage Control and Von's Grocery*, 167 Cal. App. 2d 662.

Neither the Appeals Board nor the courts may disregard or overturn a finding of fact of the department for the reason that a contrary finding would have been equally or more reasonable. *Bowman v. Alcoholic Beverage Control Appeals Board and Sousa*, 171 Cal. App. 2d 467; *Harris v. Alcoholic Beverage Control Appeals Board (Keene and Richardson)*, 212 Cal. App. 2d 106; *Coleman v. Harris, et al.*, 218 Cal. App. 2d 401.

Despite its limited powers the Appeals Board serves an important purpose in that applicants and the department, in a large majority of cases, have been willing to accept the board's decision without resort to the courts. *Martin v. Alcoholic Beverage Control Appeals Board and Richards*, 52 Cal. 2d 238, 340 Pac. 2d 1.

Finding by the department that issuance of a license would be contrary to public welfare is unassailable on appeal to the Appeals Board if there is substantial evidence to show that such determination was made for "good cause." Power of the Appeals Board in reviewing a decision of the department is limited, and the board is not empowered to exercise full discretion and independent judgment on conflicting evidence. *Martin v. Alcoholic Beverage Control Appeals Board and Richards*, 52 Cal. 2d 238, 340 Pac. 2d 1.

**Weight of hearsay not objected to.**—Counsel for respondent on appeal could not complain of hearsay, conclusions and the like when no objection was made at the hearing. *Fromberg v. Department of Alcoholic Beverage Control*, 169 Cal. App. 2d 230.

**Administrative Interpretation.**—The administrative interpretation of a statute made by an agency charged with carrying out a particular statute will be accorded great respect by the courts, and will be followed if not clearly erroneous. *Cohon and Sirbu v. Department of Alcoholic Beverage Control*, 218 Cal. App. 2d 332.

**Judicial review.**—A constitutionally created agency's factual determinations are not subject to re-examination in a trial de novo, but are to be upheld by a reviewing court if they are supported by substantial evidence. *Neely v. California State Personnel Board*, 237 Cal. App. 2d 487.

**Substantial evidence rule.**—The reviewing court must regard the evidence in the light most favorable to the findings of fact made by the agency, and all legitimate and reasonable inferences must be drawn in their support. *Neely v. California State Personnel Board*, 237 Cal. App. 2d 487.

**23085. Order of remand, reversal.** In appeals where the board finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the department, it may enter an order remanding the matter to the department for reconsideration in the light of such evidence. In all other appeals the board shall enter an order either affirming or reversing the decision of the department. When the order reverses the

decision of the department, the board may direct the reconsideration of the matter in the light of its order and may direct the department to take such further action as is specially enjoined upon it by law, but the order shall not limit or control in any way the discretion vested by law in the department.

**Exclusive power to license.**—The department is a constitutional created tribunal with fact-finding power and is given the exclusive right, in its discretion, to grant or deny a license to sell intoxicating liquors. *Hasselbach v. Department of Alcoholic Beverage Control and Von's Grocery*, 167 Cal. App. 2d 662.

**No control of discretion.**—Courts may not direct the department to modify an order of revocation to an order permitting the licensee to sell his license. *Joseph George v. Department of Alcoholic Beverage Control*, 149 Cal. App. 2d 702.

**Penalty, discretion of department.**—Merely because a penalty imposed after a hearing is more severe than an earlier one imposed in the same case, based upon a stipulation and waiver of a hearing does not give the Appeals Board authority to reverse the decision of the department as imposing an arbitrary penalty. *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board and Hershorn*, Los Angeles Superior Court No. 668,085 reported in *Los Angeles Daily Journal Reports Section*, April 29, 1957, page 13.

The propriety of the penalty imposed by an administrative agency is within the discretion of the agency, and the decision will not be disturbed unless there has been a clear abuse of discretion. *Martin v. Alcoholic Beverage Control Appeals Board and Haley*, 52 Cal. 2d 287; *Munro v. Alcoholic Beverage Control Appeals Board and Moss*, 154 Cal. App. 2d 326.

The penalty against a licensee is solely within the discretion of the department. It is beyond the jurisdiction of the Appeals Board to order the department to reconsider a specific penalty imposed by it, such action amounting to an attempt to limit and control the department's discretion. *Munro v. Alcoholic Beverage Control Appeals Board and Young and Chinn*, 169 Cal. App. 2d 294.

**Where remand proper.**—A decision of the department involving a liquor license is final, except for review for excess of jurisdiction, errors of law, abuse of discretion and insufficiency of evidence. Where there is error, the matter ordinarily should be remanded to the department. *Macfarlane v. Department of Alcoholic Beverage Control*, 51 Cal. 2d 84, 330 Pac. 2d 769.

**Effect of Appeals Board affirmance.**—Upon an Appeals Board order affirming the decision of the department, the department's decision becomes the effective order and mandate proceedings should be directed against the department rather than the Appeals Board. *Heidkamp v. Department of Alcoholic Beverage Control*, 212 Cal. App. 2d 516.

**23086. Time for entering order.** In all cases, the board shall enter its order within 60 days after the filing of an appeal.

**Note.**—Stats. 1975, Ch. 782, in effect January 1, 1976, requested the board to comply with the provisions of § 23086.

**23087. Remand upon stipulation.** Whenever any matter is pending before the board or a court of record involving a dispute between the department and a licensee, petitioner or protestant and the parties to such a dispute agree upon a settlement or adjustment thereof, the tribunal shall upon the stipulation by the parties that such an agreement has been reached, remand the matter to the department.

**History.**—Added by Stats. 1959, Ch. 545, in effect September 18, 1959.

**23088. Final order.** Each order of the board on appeal from a decision of the department shall be in writing and shall be filed by delivering copies to the parties personally or by mailing copies to them by certified mail. Each such order shall become final upon being filed as provided herein, and there shall be no reconsideration or rehearing by the board.

**History.**—Added by Stats. 1967, Ch. 1525, in effect November 8, 1967.

**23089. Review by courts.** Final orders of the board may be reviewed by the courts specified in Article 5 (commencing with Section 23090) of this chapter within the time and in the manner therein specified and not otherwise.

**History.**—Added by Stats. 1967, Ch. 1525, in effect November 8, 1967.

## Article 5. Judicial Review

(Stats. 1967, Ch. 1525, in effect November 8, 1967, repealed former Article 5 and added present Article 5)

- § 23090. Time for filing action.
- § 23090.1. Certifying record.
- § 23090.2. Determination of questions by court.
- § 23090.3. Questions of fact.
- § 23090.4. Procedure for review.
- § 23090.5. Courts of jurisdiction.
- § 23090.6. Stay of decision.
- § 23090.7. When final order effective.

**23090. Time for filing action.** Any person affected by a final order of the board, including the department, may, within the time limit specified in this section, apply to the Supreme Court or to the court of appeal for the appellate district in which the proceeding arose, for a writ of review of such final order. The application for writ of review shall be made within 30 days after filing of the final order of the board.

**Appeals Board as aggrieved party.**—When the jurisdiction of a tribunal (Appeals Board) is involved and the granting of a writ directed to the tribunal would limit or control that jurisdiction, the tribunal is an aggrieved party and entitled to appeal. *Koehn v. State Board of Equalization and Ledger*, 50 Cal. 2d 432.

**Venue in mandate proceedings.**—A proceeding in mandate against the Appeals Board is one which, under ordinary venue rules, may be tried or removed to the County of Sacramento and thus, under Code of Civil Procedure § 401(1), may be tried in any other city in which the Attorney General has an office. *Harris v. Alcoholic Beverage Control Appeals Board (Ward)*, 197 Cal. App. 2d 759.

**Reconsideration limited.**—The department may not reconsider its decision after a final order of the Appeals Board affirming that decision. Judicial review of a final order of the Appeals Board must be requested within 30 days of that order under the provisions of Government Code § 11523. *Heidkamp v. Department of Alcoholic Beverage Control*, 212 Cal. App. 2d 516.

Where a licensee fails to seek judicial review of the Appeals Board final decision within the time specified in § 23090, the decision must stand. *Department of Alcoholic Beverage Control v. Superior Court (Munford)*, 268 Cal. App. 2d 67.

**Parties who may seek judicial review.**—The right of review of a decision of the Alcoholic Beverage Control Appeals Board holding resale price maintenance provisions invalid under the Sherman Antitrust Act was limited to parties who appeared in proceedings before that board. *Rice v. ABC Appeals Board (Corsetti, et al.)*, 21 Cal. 3d 431.

**Judicial review limited exclusively to this article.**—Sections 23090 through 23090.7 providing for availability and scope of judicial review provides the exclusive method for judicial review of a final order of the Alcoholic Beverage Control Appeals Board. *Top Hat Liquors, Inc. v. Department of Alcoholic Beverage Control*, 13 Cal. 3d 107, 118 Cal. Rptr. 10.

**23090.1. Certifying record.** The writ of review shall be made returnable at a time and place then or thereafter specified by court order and shall direct the board to certify the whole record of the department in the case to the court within the time specified. No new or additional evidence shall be introduced in such court, but the cause shall be heard on the whole record of the department as certified to by the board.

**23090.2. Determination of questions by court.** The review by the court shall not extend further than to determine, based on the whole record of the department as certified by the board, whether:

- (a) The department has proceeded without or in excess of its jurisdiction.
- (b) The department has proceeded in the manner required by law.
- (c) The decision of the department is supported by the findings.
- (d) The findings in the department's decision are supported by substantial evidence in the light of the whole record.
- (e) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the department.

Nothing in this article shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence.

**Exclusive grounds for review.**—Judicial review pursuant to this section is limited to the enumerated grounds of the statute. *Walsh v. Kirby*, 13 Cal. 3d 39, 118 Cal. Rptr. 1.

**23090.3. Questions of fact.** The findings and conclusions of the department on questions of fact are conclusive and final and are not subject to review. Such questions of fact shall include ultimate facts and the findings and conclusions of the department. The board, the department, and each party to the action or proceeding before the board shall have the right to appear in the review proceeding. Following the hearing, the court shall enter judgment either affirming or reversing the decision of the department, or the court may remand the case for further proceedings before or reconsideration by the department.

**Court will not make findings of fact.**—Where there is a substantial conflict in the evidence before the State Board of Equalization as to the measurement of the distance of one and one-half miles under Section 172 of the Penal Code, it is incumbent on the board to resolve this conflict one way or the other and, on failure to do so, the court should not annul an order granting the license nor make findings on the issue, but should refer the matter back to the board for a redetermination of the controlling fact, namely, the distance between the two points in question. *Western Los Angeles Citizens' Committee v. State Board of Equalization and Lasher*, 111 Cal. App. 2d 843.

**Limited power of review.**—The Department of Alcoholic Beverage Control is an agency on which the Constitution has conferred limited judicial powers, and thus its decisions on factual matters must be affirmed if there is substantial evidence to support them. A trial court is not permitted to exercise an independent judgment of the facts in reviewing the department's suspension of a license, but must give the department's factual determinations the same deference that an appellate court must give to the findings of a trial court. *Brice v. Department of Alcoholic Beverage Control*, 153 Cal. App. 2d 315; *Ozman v. Department of Alcoholic Beverage Control*, 153 Cal. App. 2d 740; *Hasselbach v. Department of Alcoholic Beverage Control and Von's Grocery*, 167 Cal. App. 2d 662.

**Penalty, discretion of department.**—The propriety of the penalty imposed by an administrative agency is within the discretion of the agency, and the decision will not be disturbed unless there has been a clear abuse of discretion. *Martin v. Alcoholic Beverage Control Appeals Board and Haley*, 52 Cal. 2d 287; *Munro v. Alcoholic Beverage Control Appeals Board and Moss*, 154 Cal. App. 2d 326; *Rosales v. Department of Alcoholic Beverage Control*, 171 Cal. App. 2d 624.

**One of several counts sufficient.**—When the penalty of revocation of a license is imposed on each of several counts, the court need only find that one of the counts is sufficient. *Nelson v. Department of Alcoholic Beverage Control*, 166 Cal. App. 2d 783, 333 Pac. 2d 771.

**No trial de novo.**—On reviewing the decision of the department, there is to be no trial de novo in the reviewing court. *Board of Trustees v. Munro and Raley*, 163 Cal. App. 2d 440.

**Court may not reweigh evidence.**—The department's decision after an administrative hearing will be sustained by the courts if the department has committed no error of law and if the evidence, although conflicting, is sufficient to support its findings. *Griswold v. Department of Alcoholic Beverage Control*, 141 Cal. App. 2d 807, 297 Pac. 2d 762; *Molina v. Munro*, 145 Cal. App. 2d 601, 302 Pac. 2d 818; *Maxwell Cafe v. Department of Alcoholic Beverage Control*, 142 Cal. App. 2d 73, 298 Pac. 2d 64; *Marcucci v. Board of Equalization*, 138 Cal. App. 2d 605, 292 Pac. 2d 264; *Dethlefsen v. State Board of Equalization*, 145 Cal. App. 2d 561, 303 Pac. 2d 7; *Covert v. State Board of Equalization*, 29 Cal. 2d 125; *Kirchhubel v. Munro*, 149 Cal. App. 2d 243, 308 Pac. 2d 433; *Bowman v. Alcoholic Beverage Control Appeals Board and Sousa*, 171 Cal. App. 2d 467; *Adler v. Department of Alcoholic Beverage Control*, 174 Cal. App. 2d 256.

The function of an appellate court reviewing a decision of the department is to determine whether the findings are supported by substantial evidence, and the court will, in making that determination, resolve all conflicts in evidence in favor of the department's decision and indulge in all legitimate and reasonable inferences to support the decision. *Gore v. Harris*, 229 Cal. App. 2d 821.

**No control of discretion.**—Courts may not direct the department to modify an order of revocation to an order permitting the licensee to sell his license. *Joseph George, Distributor v. Department of Alcoholic Beverage Control*, 149 Cal. App. 2d 702.

**Time to file.**—Judicial review of a final order of the Appeals Board must be requested within 30 days of that order under the provisions of Government Code § 11523. *Heidkamp v. Department of Alcoholic Beverage Control*, 212 Cal. App. 2d 516.

**Judicial review.**—A constitutionally created agency's factual determinations are not subject to re-examination in a trial de novo, but are to be upheld by a reviewing court if they are supported by substantial evidence. *Neely v. California State Personnel Board*, 237 Cal. App. 2d 487.

**Substantial evidence rule.**—The reviewing court must regard the evidence in the light most favorable to the findings of fact made by the agency, and all legitimate and reasonable inferences must be drawn in support of the agency. *Neely v. California State Personnel Board*, 237 Cal. App. 2d 487.

**23090.4. Procedure for review.** The provisions of the Code of Civil Procedure relating to writs of review shall, insofar as applicable, apply to proceedings in the courts as provided by this article. A copy of every pleading filed pursuant to this article shall be served on the board, the department, and on each party who entered an appearance before the board.

**23090.5. Courts of jurisdiction.** No court of this state, except the Supreme Court and the courts of appeal to the extent specified in this article, shall have jurisdiction to review, affirm, reverse, correct, or annul any order, rule, or decision of the department or to suspend, stay, or delay the operation or execution thereof, or to restrain, enjoin, or interfere with the department in the performance of its duties, but a writ of mandate shall lie from the Supreme Court or the courts of appeal in any proper case.

**Jurisdiction of courts.**—Article 5 of Chapter 1.5 is based on provisions of Sections 5950 through 5956 of the Labor Code relating to judicial review of orders, decisions, etc., of the Workmen's Compensation Appeals Board. The limitation on jurisdiction in Labor Code Section 5955 is similar to provisions of Section 23090.5. Thus, decisions interpreting Labor Code Section 5955 are applicable in interpreting Section 23090.5. Under such interpretation, an order of the department even though erroneous may not be reviewed or annulled by the superior court and must stand until reversed by the California Supreme Court or Court of Appeal. Thus, the superior court has no jurisdiction to grant a writ of mandate to compel the department to extend the time under Rule 65 within which a license may remain surrendered. The jurisdictional provisions of Section 23090.5 apply to writs of mandate as well as writs of review. *Samson Market Company v. Kirby*, 261 C.A. 2d 577; hearing denied by California Supreme Court June 19, 1968.

**Jurisdiction to review in Supreme Court and Courts of Appeal.**—Only the Supreme Court and Courts of Appeal have jurisdiction to review decisions of the department, and, in a mandamus proceeding attacking the revocation of a liquor license filed in a superior court after the effective date of the statute, the superior court should have sustained the department's demurrer based on lack of jurisdiction, even though the departmental hearing on the license revocation was held prior to the effective date of the statute. *Department of Alcoholic Beverage Control v. Biggs*, 268 Cal. App. 2d 7; and *Department of Alcoholic Beverage Control v. Mumford*, 268 Cal. App. 2d 67.

**Restriction of judicial review.**—Business and Professions Code Section 23090.5, restricting judicial review of the actions of the Department of Alcoholic Beverage Control to only the Supreme Court and courts of appeal, is not limited in application to only the review of adversary (quasi-judicial) proceedings in which a transcript of an administrative hearing is compiled as a basis for judicial review; the section also applies to a rule-making (quasi-legislative) action. *Schenley Affiliated Brands Corp. v. Kirby*, 21 Cal. App. 3d 177.

**Mandamus for review of administrative actions.**—A writ of mandate does not lie for judicial actions but rather for administrative actions. This section does not provide an alternative avenue of judicial review to that authorized by statutes (§ 23090 to 23090.7). *Top Hat Liquors, Inc. v. Department of Alcoholic Beverage Control*, 13 Cal. 3d 107, 118 Cal. Rptr. 10.

23090.6. **Stay of decision.** The filing of a petition for, or the pendency of, a writ of review shall not of itself stay or suspend the operation of any order, rule, or decision of the department, but the court before which the petition is filed may stay or suspend, in whole or in part, the operation of the order, rule, or decision of the department subject to review, upon the terms and conditions which it by order directs.

23090.7. **When final order effective.** No decision of the department which has been appealed to the board and no final order of the board shall become effective during the period in which application may be made for a writ of review, as provided by Section 23090.

## Article 6. Stay of Suspension

(Added by Stats. 1957, Ch. 2298, in effect September 11, 1957)

§ 23095.	Petition for offer in compromise.
§ 23096.	Deposit in Alcohol Beverage Control Fund.
§ 23097.	Granting stays.
§ 23098.	Operative date.

23095. **Petition for offer in compromise.** (a) Whenever a decision of the department suspending a license becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension, petition the department for permission to make an offer in compromise, to be paid into the Alcohol Beverage Control Fund, consisting of a sum of money in lieu of serving the suspension.

(b) No licensee may petition the department for an offer in compromise in any case in which the proposed suspension is for a period in excess of 15 days.

(c) Upon the receipt of the petition, the department may stay the proposed suspension and cause any investigation to be made which it deems desirable and may grant the petition if it is satisfied that the following conditions are met:

(1) The public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the sum of money will achieve the desired disciplinary purposes.

(2) The books and records of the licensee are kept in such a manner that the loss of sales of alcoholic beverages that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom.

(d) The offer in compromise for retail licensees shall be the equivalent of 50 percent of the estimated gross sales of alcoholic beverages for each day of a proposed suspension, subject to the following limits:

(1) The offer in compromise may be not less than seven hundred fifty dollars (\$750) nor more than three thousand dollars (\$3,000).

(2) If the petitioning retailer has had any other accusation filed against him or her by the department during the three years prior to the date of the petition that has resulted in a final decision to suspend or revoke the retail license concerned, the offer in compromise may not be less than one thousand five hundred dollars (\$1,500) nor more than six thousand dollars (\$6,000).

(e) Notwithstanding subdivision (b), a licensee may petition the department for an offer in compromise for a second violation of Section 25658 that occurs within 36 months of the initial violation without regard to the period of suspension. In these cases, the offer in compromise shall be the equivalent of 50 percent of the estimated gross sales of alcoholic beverages for each day of the proposed suspension, and the

offer in compromise may not be less than two thousand five hundred dollars (\$2,500) nor more than twenty thousand dollars (\$20,000).

(f) (1) The offer in compromise for nonretail licensees shall be the equivalent of 50 percent of the estimated gross sales of alcoholic beverages for each day of the proposed suspension, and the offer in compromise may not be less than seven hundred fifty dollars (\$750) and may not exceed ten thousand dollars (\$10,000) unless the nonretail licensee has violated Section 25500, 25502, 25503, or 25600 by giving to any licensee illegal inducements, secret rebates, or free goods amounting to more than ten thousand dollars (\$10,000) in value, in which case the offer in compromise shall be equal to the value of the illegal inducements, secret rebates, or free goods given.

(2) Notwithstanding paragraph (1), any nonretail licensee who pays an offer in compromise based upon a violation in the exercise of any retail privileges of that license shall have the offer in compromise computed on estimated retail gross sales only pursuant to subdivision (d).

(3) All moneys collected as a result of penalties imposed under this subdivision shall be deposited directly in the General Fund in the State Treasury, rather than the Alcohol Beverage Control Fund as provided for in Section 25761.

*History.—Stats. 1959, Ch. 548, in effect September 18, 1959, deleted requirement that public convenience and necessity would be better served; and deleted condition that 18 months elapse between penalties. Stats. 1967, Ch. 1669, in effect November 8, 1967, added subd. (b). Stats. 1971, Ch. 1319, in effect March 4, 1972, deleted “pending a final decision” in subd. (b). Stats. 1979, Ch. 642, in effect January 1, 1980, added subd. (c). Stats. 1983, Ch. 323, in effect July 21, 1983, increases the minimum and maximum compromise offer amounts. Stats. 1988, Ch. 1335, in effect January 1, 1989, deleted obsolete reference and imposed minimum compromise in subd. (c). Stats. 1994, Ch. 627, in effect January 1, 1995, increases minimum fines and limits authority from 30 to 15 days for accepting fines. Stats. 2004, Ch. 227, SB 1102. Urgency bill effective August 16, 2004. Restructured section and added new fine between \$2,500 and \$20,000 for second violation of Section 25658.*

**23096. Deposit in Alcohol Beverage Control Fund.** The moneys derived from a payment in compromise under Section 23095 shall be paid to the State Treasury for deposit in the Alcohol Beverage Control Fund. Upon such payment, the department shall enter its further order permanently staying the imposition of the suspension.

**23097. Granting stays.** In connection with any such petition, the authority of the department is limited to the granting of such stays as are necessary for it to complete its investigation and make its findings and, if it makes such findings, to the granting of an order permanently staying the imposition of the entire suspension or of that portion of the suspension not otherwise conditionally stayed by the decision of the department. If the suspension was imposed as a result of an accusation filed by another public officer acting in his official capacity, the department shall not order such permanent stay of suspension without the written concurrence of such other public officer.

*History.—Stats. 1961, Ch. 775, in effect September 15, 1961, Inserted “entire suspension or of that portion of the suspension not otherwise conditionally stayed by the decision of the department.”*

**23098. Operative date.** If the department does not make the findings required in Section 23095, and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the department.

## CHAPTER 2. AUTHORIZED UNLICENSED TRANSACTIONS AND EXEMPTIONS

- § 23100. Former licensee.
- § 23101. Warehouse receipts or alcoholic beverages owned by banks.
- § 23102. Administrators, etc., of licensees.
- § 23103. Administrators, etc., of licensees other than retailers. [Repealed.]
- § 23104. Insurer; common carriers.
- § 23104.1. Returns and exchanges of wine.
- § 23104.2. Returns and exchanges of beer.
- § 23104.3. Returns and exchanges of distilled spirits.

- § 23104.4. Administrators, etc., of estate of unlicensed person.
- § 23104.5. Satisfaction of judgments.
- § 23104.6. Permitted to sell wine.
- § 23105. Warehouseman.
- § 23106. Warehouse storage.
- § 23107. Out-of-state purchasers.
- § 23108. Brandy warehouse receipts.
- § 23109. Continuous transit through State.
- § 23110. Denatured alcohol.
- § 23111. Tax-free alcohol.
- § 23112. Non-beverage products.
- § 23113. Alcohol package sizes.

**23100. Former licensee.** Any person in possession of a stock of lawfully acquired alcoholic beverages following the revocation of, suspension of, voluntary surrender of, or failure to renew, the license may sell the stock, under supervision of the department in the manner as the department by rule provides, to licensees authorized to sell the alcoholic beverages.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.” Amended by Stats. 2000, Ch. 979, effective January 1, 2001. Former section repealed and present section added by Stats. 2001, Ch. 657. Former section permitted return of beer only. This section permits the return of all alcoholic beverages as specified.

**Cross reference.**—Rule 79(c).

**23101. Warehouse receipts or alcoholic beverages owned by banks.** Any bank, trust company, or financial institution owning or possessing alcoholic beverages or warehouse receipts therefor as security for an obligation or as a result of enforcement of a security interest may, after permission has been given by the department, sell the alcoholic beverages or warehouse receipts to a licensee authorized to sell for resale such alcoholic beverages or such warehouse receipts.

**History.**—Stats. 1955, Ch. 447, in effect September 7, 1955, substituted “department” for “board.” Stats. 1965, Ch. 865, in effect September 17, 1965, authorized sale of alcoholic beverages to non-retail licensees.

**Cross reference.**—Rule 79(d).

**23102. Administrators, etc., of licensees.** (a) On the death, insolvency or incompetency to act of a natural person who is a licensee, the privileges of the license may be exercised by a competent surviving colicensee for thirty (30) days or until an administrator, executor, guardian, conservator, receiver, trustee or assignee for the benefit of creditors of the estate of the deceased, incompetent or insolvent licensee has been appointed, whichever first occurs. If there is no competent surviving colicensee, the privileges of the license may be exercised by any person acting on behalf of the deceased or incompetent licensee or his estate.

(b) At the end of the period permitted by subsection (a) of this section the privileges of the license may be exercised for sixty (60) days without transfer and thereafter upon transfer by the administrator, executor, guardian, conservator, receiver, trustee or assignee for the benefit of creditors of the estate of the deceased, incompetent or insolvent licensee, acting jointly with any competent surviving colicensee if such joint action is required by law. The sixty (60) day period provided for in this subsection may be extended by the department for good cause.

(c) If prior to the expiration of the period permitted by subsection (b) and any extension thereof there has been filed and is pending an application to transfer the license pursuant to Section 24071 or otherwise, the persons exercising the privilege of the license under subsection (b) may continue to do so until such application is finally granted or denied.

(d) If the license was issued to a taxpayer as defined in Section 32005 of the Revenue and Taxation Code, the person exercising the privileges of the license hereunder shall

be deemed to be a taxpayer and shall file an appropriate bond for the purposes of Part 14 (commencing at Section 32001) of Division 2 of the Revenue and Taxation Code.

**History.**—Former section repealed and present section added by Stats. 1959, Ch. 1576, in effect September 18, 1959. Stats. 1977, Ch. 338, in effect January 1, 1978, permitted receiver of insolvent licensee to exercise privileges for 60 days.

**Cross reference.**—Rule 79(a) and (b).

**23103. Administrators, etc., of licensees other than retailers.** *Repealed by Stats. 1959, Ch. 1576.*

**23104. Insurer; common carriers.** Any insurer may, or any common carrier acting as an insurer for losses to persons shipping alcoholic beverages may, after permission has been granted by the department, take possession of and sell any alcoholic beverages the containers of which have been damaged by fire or otherwise to licensees who are authorized to sell the alcoholic beverages. Any licensee so qualified may purchase and accept delivery of the alcoholic beverages from the insurer or common carrier so authorized to sell. This permission extends only to alcoholic beverages owned by a licensee and insured against loss or damage by the insurer or common carrier applying for the permission. Alcoholic beverages so sold shall be labeled or otherwise identified, prior to and at the time of sale, as distress merchandise, salvaged from fire, wreck, or similar catastrophe, and such label or other identification shall be affixed over the regular label of the merchandise, and shall provide thereon that it was not affixed by the manufacturer.

**History.**—Stats. 1955, Ch. 447, in effect September 7, 1955, substituted “department” for “State Liquor Administrator.” Stats. 1957, Ch. 1410, in effect September 11, 1957, added last sentence up to word “catastrophe.” Stats. 1959, Ch. 819, in effect September 18, 1959, substituted “insurer” for “insurance company”; and added balance of last sentence after word “catastrophe.”

**Cross reference.**—Rules 79(f) and 80.

**23104.1. Returns and exchanges of wine.** A retailer may return wine to the seller or to the successor of the seller and the seller or his or her successor may accept the return thereof, but the seller or his or her successor may not sell wine to the retailer for a period of one year after the date the returned wine is accepted or received unless any of the following exist:

(a) The wine is returned in exchange for the identical quantity, brand, and item of wine.

(b) The wine is returned pursuant to court order.

(c) The returned wine is a brand or item of wine which has been discontinued by the seller or his or her successor, and the wine is exchanged for the identical quantity of a brand or item of similar quality.

(d) The wine delivered was other than that ordered by a retailer or was in a quantity other than that ordered. In these cases, the retailer may, within 15 days after delivery, return the wine to the seller or his or her successor for exchange for the wine actually ordered, or may return the wine delivered in excess of the wine actually ordered. Returns under this subdivision may also be made after 15 days from the date of delivery upon written approval of the department.

(e) The wine has deteriorated in quality or the container thereof has been damaged, or the label or container for the wine has been changed, and the wine is returned and exchanged for the identical quantity of the same brand and type of wine and size of container. For the purpose of this subdivision, “wines of the same type” means wines which are within the same class as provided in Article 14 (commencing with Section 17001) of Title 17 of the California Code of Regulations, and which bear the same rate of state wine excise tax.

If wine or the container thereof is damaged or deteriorated, and the seller thereof has ceased to carry on a business licensed under this division and there is no successor to the business, the wine may be returned by a retailer to a winegrower or wholesaler who handles the same brand or item of wine, upon the same terms and conditions provided in this section for the return of wine to a seller or his or her successor, after receiving approval from the department.

The approval of the department shall only be required for returns made after 15 days from the date of delivery under the provisions of subdivision (d), or returns made under the provisions of the immediately preceding paragraph.

(f) As used in subdivisions (a), (c), and (e), the term “identical quantity” includes wine in metric measure containers and wine in United States standard measure containers which contain substantially the same amount of wine.

(g) Notwithstanding the above provisions, a seller may accept the return of wine from a seasonal or temporary licensee if at the termination of the period of the license the seasonal or temporary licensee has wine remaining unsold, or from an annual licensee operating on a temporary basis if at the termination of the temporary period the annual licensee has wine remaining unsold.

**History.**—Added by Stats. 1980, Ch. 1368, in effect January 1, 1981. Stats. 1995, Ch. 139, in effect January 1, 1996, amended to permit return of wine from licensees operating on a temporary basis. Stats 1996, Ch. 124, in effect January 1, 1997, made technical, non-substantive changes.

**23104.2. Returns and exchanges of beer.** (a) Subject to the exceptions specified in subdivision (b), a retail licensee may return beer to the wholesaler or manufacturer from whom the retail licensee purchased the beer, or any successor thereto, and the wholesaler, manufacturer, or successor thereto may accept that return if the beer is returned in exchange for the identical quantity and brand of beer. No wholesaler or manufacturer, or any successor thereto, shall accept the return of any beer from a retail licensee except when the beer delivered was not the brand or size container ordered by the retail licensee or the amount delivered was other than the amount ordered, in which case the order may be corrected by the wholesaler or manufacturer who sold the beer, or any successor thereto. If a package had been broken or otherwise damaged prior to or at the time of actual delivery, a credit memorandum may be issued for the returned package by the wholesaler or manufacturer who sold the beer, or any successor thereto, in lieu of exchange for an identical package when the return and corrections are completed within 15 days from the date the beer was delivered to the retail licensee.

(b) Notwithstanding subdivision (a), a wholesaler or manufacturer, or any successor thereto, may accept the return of beer purchased from that wholesaler, manufacturer, or successor thereto, as follows:

(1) (A) From a seasonal or temporary licensee if at the termination of the period of the license the seasonal or temporary licensee has beer remaining unsold, or from an annual licensee operating on a temporary basis if at the termination of the temporary period the annual licensee has beer remaining unsold.

(B) For purposes of subparagraph (A), an annual licensee shall be considered to be operating on a temporary basis if he or she operates at seasonal resorts, including summer and winter resorts, or at sporting or entertainment facilities, including racetracks, arenas, concert halls, and convention centers. Temporary status shall be deemed terminated when operations cease for 15 days or more. No wholesaler or manufacturer, or successor thereto, shall accept the return of beer from an annual licensee considered to be operating on a temporary basis unless the licensee notifies that wholesaler or manufacturer, or successor thereto, within 15 days of the date the licensee’s operations ceased.

(2) (A) Subject to subparagraph (B), a wholesaler or manufacturer, or any successor thereto, may, with department approval, accept the return of a brand of beer discontinued in a California market area or a seasonal brand of beer from a retail licensee, provided that the beer is exchanged for a quantity of beer of a brand produced or sold by the same manufacturer with a value no greater than the original sales price to the retail licensee of the returned beer. For purposes of this subparagraph, “seasonal brand of beer” means a brand of beer, as defined in Section 23006, that is brewed by a manufacturer to commemorate a specific holiday season and is so identified by appropriate product packaging and labeling.

(B) A discontinued brand of beer may not be reintroduced for a period of 12 months in the same California market area in which a return and exchange of that beer as described in subparagraph (A) has taken place. A seasonal brand of beer may not be reintroduced for a period of six months in the same California market area in which a return and exchange of that beer as described in subparagraph (A) has taken place.

(c) Notwithstanding subdivision (a), a wholesaler or manufacturer, or any successor thereto, may accept the return of beer purchased from that wholesaler or manufacturer, or any successor thereto, by the holder of a retail license following the revocation of, suspension of, voluntary surrender of, or failure to renew the retail license.

(d) A wholesaler or manufacturer, or any successor thereto, may credit the account of the retailer identified in subdivision (c) in an amount not to exceed the original sales price to the retailer of the returned beer, provided that the beer has been paid for in full.

**History.**—Added by Stats. 1957, Ch. 1409, in effect September 11, 1957. Stats. 1965, Ch. 1128, in effect September 17, 1965, added annual licensee operating on a temporary basis. Stats. 1974, Ch. 270, in effect January 1, 1975, added second sentence. Stats. 1995, Ch. 245, in effect January 1, 1996, amended to permit return of beer by licensees operating on a temporary basis. Stats. 1998, Ch. 273, in effect January 1, 1999, added subd. 2. Stats. 1999, Ch. 86, in effect January 1, 2000, made technical, non-substantive changes. Stats. 2001, Ch. 657, SB 1035, in effect January 1, 2002, added (c) and (d).

**23104.3. Returns and exchanges of distilled spirits.** A retail licensee may make a return of distilled spirits to the wholesaler, rectifier or manufacturer from whom he purchased the distilled spirits or to the successor of such wholesaler, rectifier or manufacturer, or in the event that such wholesaler, rectifier or manufacturer has ceased carrying on a business licensed under this division and there is no successor to such business, the return may be made to some other wholesaler, rectifier or manufacturer after the retail licensee has obtained from the department approval to make such return. A retail licensee may exchange a package of distilled spirits for a similar package of the same brand with any manufacturer, rectifier or wholesaler whether or not the retail licensee had purchased the package from the manufacturer, rectifier or wholesaler with whom he is exchanging it for a similar package of the same brand.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

**23104.4. Administrators, etc., of estate of unlicensed person.** An executor or administrator of the estate of a deceased person who was not a licensee at the time of his death but in whose estate there is included an inventory of alcoholic beverages, or the guardian or conservator of the estate of an incompetent person in whose estate there is included an inventory of alcoholic beverages, is authorized to sell such alcoholic beverages to a licensee authorized to sell the same in accordance with regulations prescribed by the department. Nothing in this division prevents or restricts the sale to a nonlicensee of bottled wine included among such inventory of alcoholic beverages by such executor, administrator, guardian, conservator, or an auctioneer acting as an agent of any of the foregoing when the sale is in compliance with Section 24045.8.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board”. Stats. 1959, Ch. 1576, in effect September 18, 1959, inserted “or conservator”. Stats. 1981, Ch. 212, in effect January 1, 1982, added last sentence.

**Cross reference.**—Rule 79(g).

**23104.5. Satisfaction of judgments.** A sheriff or any other person appointed by a court of competent jurisdiction may sell alcoholic beverages pursuant to a writ of execution to satisfy a judgment, or to execute a court order, to licensees authorized to sell such alcoholic beverages. Nothing in this division prevents or restricts the sale to a nonlicensee of bottled wine included among such alcoholic beverages by such sheriff or court appointee, when such sale is in compliance with Section 24045.8.

**History.**—Added by Stats. 1957, Ch. 1273, in effect September 11, 1957. Stats. 1981, Ch. 212, in effect January 1, 1982, added last sentence.

**23104.6. Permitted to sell wine.** (a) Any nonlicensed person owning bottled vintage wine purchased by that person at retail, is authorized to sell that wine to a licensee authorized to sell that wine if each bottle has a permanently affixed label stating that the wine was acquired from a private collection.

(b) “Vintage wine,” as used in this section, means bottled white, rose, or sparkling wine which is not less than five years old or bottled red wine which is not less than 10 years old.

**History.**—Added by Stats. 1985, Ch. 421, in effect January 1, 1986.

**23105. Warehouseman.** In accordance with rules prescribed by the department, a warehouseman may sell alcoholic beverages to enforce the lien provided for by the Warehouse Receipts Act only to licensees authorized to sell the alcoholic beverages. Notice of the time and place of the sale shall be given to the department prior to the sale.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

**Cross reference.**—Rule 79(d).

**23106. Warehouse storage.** (a) Wine stored in a winery or wine cellar bonded under the internal revenue laws of the United States and brandy in bulk stored in an internal revenue bonded warehouse may be stored by or for any licensee without the necessity of any license by the person furnishing or providing the storage space.

(b) Beer and wine upon which excise taxes have been paid to the State at the rate fixed under Part 14 of Division 2 of the Revenue and Taxation Code may be stored by or for any licensee in any private or public warehouse or elsewhere in this State without the necessity of any license by the person furnishing or providing the storage space or any special additional license by the licensee.

(c) Any other alcoholic beverage may, without the necessity of any additional license, be stored by or for a licensee in private warehouses approved by the department, if within the limits of the county in which the licensee’s licensed premises are located, or in a public warehouse within that county, or may be stored in bond in a public warehouse outside that county if the public warehouse is also a United States customs bonded warehouse, a United States internal revenue bonded warehouse, or a United States bonded wine cellar. An application for the approval of a private warehouse shall be accompanied by a fee of fifty dollars (\$50).

**History.**—Stats. 1955, Ch. 1842, in effect September 7, 1955, substituted “or wine cellar” for “wine storeroom, or field warehouse” in subd. (a); “Part 14 of Division 2 of the Revenue and Taxation Code” for “this division” in subd. (b); “department” for “board” in subd. (c); and “wine cellar” for “storeroom” in subd. (c). Stats. 1984, Ch. 357, adding provisions or \$50 fee in effect January 1, 1985.

**Cross reference.**—Rule 76.

23107. **Out-of-state purchasers.** Any person may, in accordance with rules and regulations to be prescribed by the department, purchase and take delivery of alcoholic beverages within this State for delivery or use without the State and may, without obtaining any license in this State, export the same from this State within 90 days from the date of such purchase.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

23108. **Brandy warehouse receipts.** Licensees of other states may purchase bulk brandy produced in this State and stored in an internal revenue bonded warehouse in this State or may purchase warehouse receipts covering the brandy for storage in this State, and may subsequently, without obtaining any license therefor in this state, export the brandy in accordance with the rules prescribed by the department. The sale of brandy or warehouse receipts pursuant to this section by a taxpayer to the purchasing licensee of another state shall be exempt from the excise tax levied by Section 32201 of the Revenue and Taxation Code.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1963, Ch. 1040, substituted “32201 of the Revenue and Taxation Code” for “24465.”

23109. **Continuous transit through State.** Alcoholic beverages in continuous transit through this State are exempt from the provisions of this division only while in continuous transit through this State in the possession or custody of common carriers. The department may require affidavits of any person on forms prescribed by the department and may require any such shipments to be checked in and checked out at the boundaries of the State. Any person refusing to make the affidavits required or refusing to check in or check out the alcoholic beverages is guilty of a misdemeanor.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

Policy behind requirement of section is to permit state authorities to maintain a continual check upon the location of alcoholic beverages passing into and through the State. 26 Ops. Atty. Gen. 191, 55/135 10-21-55.

23110. **Denatured alcohol.** This division does not apply to the manufacture, sale, or use of completely denatured ethyl alcohol or special denatured ethyl alcohol, as these substances are defined in the various statutes and regulations of the United States Government relating thereto.

**Cross reference.**—Industrial alcohol, see 26 U.S.C.A. § 3070, et seq.

23111. **Tax-free alcohol.** Nothing in this division prevents or restricts the use of tax-free ethyl alcohol under regulation of the Treasury Department of the United States Government by any governmental agency, state or federal, or by any scientific university or college of learning or any laboratory for use exclusively in scientific research, or by any hospital or sanitarium.

23112. **Nonbeverage products.** Nothing in this division prevents or restricts the use of tax-free alcohol or of industrial alcohol or other distilled spirits or wine under regulation of the United States Government in the manufacture of any of the following products, if the products are unfit for beverage use:

- (a) Medicinal, pharmaceutical, or antiseptic products, including prescriptions compounded by registered pharmacists.
- (b) Toilet products.
- (c) Flavoring extracts.
- (d) Sirups.
- (e) Food products.
- (f) Scientific, chemical, or industrial products.

**Industrial alcohol not taxable.**—Ethyl alcohol to be used in the manufacture of nonbeverage products, is not subject to tax under the provisions of the act. *Commercial Solvents Corporation v. Riley*, 7 Cal. 2d 731.

23113. **Alcohol package sizes.** Alcohol sold for the uses mentioned in Section 23111 may be sold tax-free in packages of not less than one-half pint capacity. Alcohol sold to a registered pharmacist for use in compounding prescriptions as provided in Section 23112 may be sold to the pharmacist in packages of not less than one-half pint capacity if the distilled spirits excise tax is reported and paid by the licensee selling the alcohol to the pharmacist.

The sales of alcohol authorized to be made by this section may be made by those licensees who are authorized to sell alcohol for use in the trades, professions, or industries.

## CHAPTER 3. LICENSES AND FEES

- Article 1. In General. §§ 23300–23301.  
 2. Fees. §§ 23320–23334.  
 3. Rights and Obligations of Licensees. §§ 23355–23405.2.  
 4. Club Licenses. §§ 23425–23438.  
 5. Veterans' Club Licenses. §§ 23450–23455.

### Article 1. In General

- § 23300. When license required.  
 § 23301. Criminal punishment.

23300. **When license required.** No person shall exercise the privilege or perform any act which a licensee may exercise or perform under the authority of a license unless the person is authorized to do so by a license issued pursuant to this division.

**Licensing provisions of act not applicable in Yosemite National Park.**—The licensing requirements of the Alcoholic Beverage Control Act are regulatory rather than taxing provisions, since the regulatory provisions of the act are conditions which must be satisfied before a license is granted. The licensing, as distinguished from the taxing provisions of the Alcoholic Beverage Control Act are, accordingly, not applicable within the park. *Collins v. Yosemite Park & Curry Company*, 304 U. S. 518.

**Nonlicensee may not sell during restricted hours.**—One who sells whiskey at a time, or in a manner, or to a person, other than as prescribed for licensees is nevertheless guilty of selling without a license even though he is not a licensee. *People v. Minter*, 73 Cal. App. 2d Supp. 994.

**Private lands surrounded by federal enclave.**—Where California ceded to the United States exclusive jurisdiction over privately owned lands within a national park, the United States has exclusive jurisdiction to regulate the sale of liquor in the park by private individuals owning land therein, and the State has no jurisdiction to issue a liquor license for an establishment on such private lands. *Petersen v. United States*, 191 Fed. 2d 154.

**Liquor license is privilege.**—A liquor license was a privilege rather than a strict right, such as a right to deal in ordinary commodities. *Saso v. Furtado* (1951), 104 Cal. App. 2d 759; *Three G Distillery Corp. v. Johnson* (1940), 39 Cal. App. 2d 431, 103 Pac. 2d 429; *Empire Vintage Co. v. Collins* (1940), 40 Cal. App. 2d 612. A liquor license was but a permit to do what would otherwise be unlawful. *Moore v. State Board of Equalization* (1946), 76 Cal. App. 2d 758, 174 Pac. 2d 323.

A liquor license is a permit to do what would, without such license, be unlawful; hence the department need not define in precise regulations what conduct constitutes use of the license which will place that license in jeopardy. *Gore v. Harris*, 229 Cal. App. 2d 821.

There is no inherent right in a citizen to sell intoxicating liquors; since it is a business attended with danger to the community, it may be entirely prohibited or permitted under conditions as will limit its evils, and the manner and extent of regulation rests in the discretion of the governing authority. *Schaub's, Inc. v. Department of Alcoholic Beverage Control*, 153 Cal. App. 2d 858.

**Repeated violations.**—A finding of the department that a licensee has repeatedly violated §§ 23300, 23355, 23951 and 23953 was tantamount to a finding that continuance of the license would be “contrary to public welfare.” *Martin v. Alcoholic Beverage Control Appeals Board and Haley*, 52 Cal. 2d 287.

23301. **Criminal punishment.** Any person violating Section 23300 is guilty of a misdemeanor, except that any person, without having a still license, exercising the privileges or performing any act which a still licensee may exercise or perform is guilty of a felony.

### Article 2. Fees

- § 23320. Schedule of fees.  
 § 23320.1. Special on-sale general license fee.  
 § 23320.2. Renewal fee.  
 § 23320.25. Automation surcharge.  
 § 23320.3. Surcharge for administrative hearings.  
 § 23320.5. Designated driver sheet surcharge.  
 § 23320.6. Wine Safety Fund.

- § 23320.7. Wine Safety Fund Surcharge. [Repealed.]
- § 23321. Trains and airplanes.
- § 23321.5. Airplanes. [Repealed.]
- § 23321.6. Vessels.
- § 23321.7. Intermittent dockside license.
- § 23322. Quarterly reduction. [Repealed.]
- § 23323. Refunds not affected. [Repealed.]
- § 23324. Off-sale general fee reduction. [Repealed.]
- § 23325. Wine grower's fee reduction.
- § 23326. Off-sale general report. [Repealed.]
- § 23327. Wine grower's annual report.
- § 23328. Estimated assessment.
- § 23329. Additional assessment.
- § 23330. Petition for reassessment.
- § 23331. Hearing.
- § 23332. Due date of assessment.
- § 23333. Off-sale general report prior to July 1, 1955. [Repealed.]
- § 23334. Records of retail general licensees.

23320. **Schedule of fees.** (a) The following are the types of licenses and the annual fees to be charged therefor:

Name & License Type Number:	Fee Effective 1/1/02	Fee Effective 1/1/03	Fee Effective 1/1/04
(1) Beer manufacturer:			
(a) Beer manufacturers that produce 60,000 barrels or less a year (Type 23) .....	\$127.00	\$134.00	\$140.00
(b) All other beer manufacturers (Type 1).....	\$1,043.00	\$1,098.00	\$1,153.00
(c) Branch Office			
—Small Beer Manufacturers (Type 23D) .....	\$69.00	\$71.00	\$73.00
—Beer Manufacturers (Type 1D) .....	\$69.00	\$71.00	\$73.00
(2) Winegrower or wine blender (to be computed only on the gallonage produced or blended)			
(Type 2 & Type 22):			
—5,000 gallons or less .....	\$34.00	\$44.00	\$54.00
—Over 5,000 gallons to 20,000 gallons per year .....	\$65.00	\$80.00	\$99.00
—Over 20,000 to 100,000 gallons per year .....	\$130.00	\$155.00	\$180.00
—Over 100,000 to 200,000 gallons per year .....	\$180.00	\$205.00	\$237.00
—Over 200,000 to 1,000,000 gallons per year .....	\$250.00	\$300.00	\$351.00
—For each 1,000,000 gallons or fraction thereof over 1,000,000 gallons, an additional .....	\$170.00	\$200.00	\$229.00
Winegrower (Branch Office) (Type 2D).....	\$69.00	\$71.00	\$73.00

Name & License Type Number:	Fee Effective 1/1/02	Fee Effective 1/1/03	Fee Effective 1/1/04
(3) Brandy manufacturer (Type 3).....	\$212.00	\$223.00	\$234.00
Brandy manufacturer (Branch Office) (Type 3D).....	\$204.00	\$210.00	\$215.00
(4) Distilled spirits manufacturer (Type 4).....	\$348.00	\$366.00	\$384.00
(5) Distilled spirits manufacturers agent (Type 5).....	\$348.00	\$366.00	\$384.00
(5a) California wine-growers agent (Type 27) .....	\$348.00	\$366.00	\$384.00
(6) Still (Type 6).....	\$33.00	\$46.00	\$58.00
(7) Rectifier (Type 7).....	\$348.00	\$366.00	\$384.00
(7a) Distilled spirits rectifiers general license (Type 24) .....	\$348.00	\$366.00	\$384.00
(8) Wine rectifier (Type 8).....	\$348.00	\$366.00	\$384.00
(9) Beer & Wine importer (Type 9).....	\$25.00	\$42.00	\$58.00
(10) Beer and wine importers general license (Type 10) .....	\$147.00	\$202.00	\$256.00
(11) Brandy importer (Type 11) .....	\$25.00	\$42.00	\$58.00
(12) Distilled spirits importer (Type 12) .....	\$25.00	\$42.00	\$58.00
(13) Distilled spirits importers general license (Type 13) .....	\$348.00	\$366.00	\$384.00
(14) Public warehouse (Type 14) .....	\$33.00	\$46.00	\$58.00
(15) Customs broker (Type 15) .....	\$33.00	\$46.00	\$58.00
(16) Wine broker (Type 16) .....	\$71.00	\$75.00	\$78.00
(17) Beer and wine wholesaler (Type 17) .....	\$147.00	\$202.00	\$256.00
(18) Distilled spirits wholesaler (Type 18) .....	\$348.00	\$366.00	\$384.00
(18a) California brandy wholesaler (Type 25) .....	\$348.00	\$366.00	\$384.00
(19) Industrial alcohol dealer (Type 19) .....	\$71.00	\$75.00	\$78.00
(20) Retail package off-sale beer and wine (Type 20) .....	\$105.00	\$157.00	\$209.00

Name & License Type Number:	Fee Effective 1/1/02	Fee Effective 1/1/03	Fee Effective 1/1/04
(21) Retail package off-sale general license (Type 21) and controlled access cabinet permit (Type 66) .....	\$431.00	\$448.00	\$464.00
(22) On-sale beer (Type 40 & Type 61); On-sale beer & wine (Type 42); Special on-sale beer & wine (Theater) (Type 69); and Special on-sale beer & wine (Symphony) (Type 65) .....	\$204.00	\$210.00	\$215.00
(23) On-sale beer and wine eating place (Type 41) .....	\$236.00	\$263.00	\$290.00
(24) On-sale beer and wine license for trains (per train) (Type 43) .....	\$48.00	\$68.00	\$87.00
(25) On-sale beer license for fishing party boats (per boat) (Type 44) .....	\$59.00	\$73.00	\$87.00
(26) On-sale beer and wine license for boats (per boat) (Type 45) .....	\$75.00	\$81.00	\$87.00
(27) On-sale beer and wine license for airplanes (per scheduled flight) (Type 46) .....	\$48.00	\$68.00	\$87.00
(28) On-sale general license (Types 47, 48, 57, 70, 75, 78, 78D (for 78D see Section 23396.2)) and club caterers permit (Type 58):			
—In cities of 40,000 population or over .....	\$698.00	\$715.00	\$731.00
—In cities of less than 40,000 but more than 20,000 population .....	\$503.00	\$520.00	\$536.00
—In all other localities .....	\$443.00	\$460.00	\$476.00
Duplicate on-sale general license (Types 47D, 48D, 57D) and portable bar license (Type 68):			
—In cities of 40,000 population or over .....	\$499.00	\$513.00	\$526.00
—In cities of less than 40,000 but more than 20,000 population .....	\$295.00	\$303.00	\$311.00
—In all other localities .....	\$233.00	\$239.00	\$245.00

Name & License Type Number:	Fee Effective 1/1/02	Fee Effective 1/1/03	Fee Effective 1/1/04
(29) On-sale general license for seasonal business (Type 49):			
—In cities of 40,000 population or over (per quarter) .....	\$176.00	\$181.00	\$186.00
—In cities of less than 40,000 but more than 20,000 population (per quarter).	\$126.00	\$129.00	\$132.00
—In all other localities (per quarter).	\$109.00	\$112.00	\$115.00
Duplicate on-sale general license for seasonal business (Type 49D):			
—In cities of 40,000 population or over (per quarter) .....	\$126.00	\$129.00	\$132.00
—In cities of less than 40,000 but more than 20,000 population (per quarter).	\$74.00	\$76.00	\$78.00
—In all other localities (per quarter).	\$59.00	\$61.00	\$62.00
(30)(a) On-sale general license for bona fide clubs, (b) Club license (issued under Article 4 of this chapter), or (c) Veterans club license (issued under Article 5 (commencing with Section 23450) of this chapter) (Types 50, 51, 52, & 64):			
—In cities of 40,000 population or over .....	\$400.00	\$411.00	\$422.00
—In cities of less than 40,000 but more than 20,000 population .....	\$301.00	\$309.00	\$317.00
—In all other localities .....	\$267.00	\$274.00	\$281.00
(31) On-sale general license for trains and sleeping cars (Type 53) .....	\$156.00	\$160.00	\$164.00
—Duplicate on-sale general license for trains and sleeping car companies (Type 53D) .....	\$46.00	\$52.00	\$58.00
(32) On-sale general license for boats (Type 54) .....	\$402.00	\$413.00	\$424.00
(33) On-sale general license for airplanes (Type 55) .....	\$402.00	\$413.00	\$424.00
—Duplicate on-sale general license for air common carriers (Type 55D) .....	\$32.00	\$45.00	\$58.00

Name & License Type Number:	Fee Effective 1/1/02	Fee Effective 1/1/03	Fee Effective 1/1/04
(34) On-sale general license for vessels of more than 1,000 tons burden (Type 56) and for Maritime Museum (Type 76) .....	\$156.00	\$160.00	\$164.00
—Duplicate on-sale general license for vessels of more than 1,000 tons burden (Type 56D) and for Maritime Museum (Type 76D) .....	\$46.00	\$52.00	\$58.00
(35) On-sale general bona fide public eating place intermittent dockside license for vessels of more than 7,000 tons displacement (Type 62) .....	\$435.00	\$447.00	\$459.00
(36) On-sale special beer and wine license for hospitals, convalescent homes, and rest homes (Type 63) .....	\$68.00	\$70.00	\$72.00
(37) On-Sale beer & wine seasonal (Type 59) and on-sale beer seasonal (Type 60)			
—Operating period 3-9 months .....	\$161.00	\$171.00	\$180.00
—Operating period 3-6 months .....	\$108.00	\$115.00	\$122.00

(b) Beginning January 1, 2005, and each January 1 thereafter, the department may adjust each of the fees specified in the foregoing section by increasing each fee by an amount not to exceed the percentage that the Consumer Price Index (United States Bureau of Labor Statistics, West Region, All Urban Consumers, All Items, Base Period 1982-84=100) for the preceding April 2003, and each April annually thereafter, has increased under the same index over the month of April 2002, which shall be the base period. No fee shall be decreased pursuant to this adjustment below the fee currently in effect on each December 31.

In the event that this index is discontinued, the department shall consult with the Department of Finance to convert the increase calculations to an index then available. When approved by the Department of Finance, the new index shall replace the discontinued index.

(c) The department shall calculate the percentage increase as specified in subdivision (b) and shall apply this increase to each fee. The increase to each fee shall be rounded to the nearest whole dollar. The adjusted fee list shall be published by the department and transmitted to the Legislature for approval as part of the department's budget submission for the fiscal year in which the adjusted fees would be implemented. This adjustment of fees and publication of the adjusted fee list is not subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

**History.**—Stats. 1st Ex. Sess. 1954, Ch. 22, in effect July 1, 1954, increased each fee, added 10 percent to other fees, and added next-to-last paragraph. Stats. 1955, Ch. 954, operative July 1, 1955, revised the schedule of fees. Stats. 1957, Ch. 2307, in effect July 1, 1957 for fiscal year licenses and January 1, 1958 for calendar year licenses, reduced customs broker's license from \$56 to \$12 and increased on-sale beer license from \$28 to \$84. Stats. 1959, Ch. 2192, in effect September 18, 1959, added distilled spirits importer's general license, on-sale beer license for fishing party boats, on-sale general license for vessels, and last paragraph. Stats. 1961, Ch. 1687, in effect September 15, 1961, added beer and wine importer's general license and deleted last two paragraphs. Stats. 1965, Ch. 499, in effect September 17, 1965, added wine blender's license. Stats. 1967, Ch. 1559, operative April 1, 1968, added steam beer manufacturer's license and distilled spirits rectifier's general license; and increased fees of off-sale beer and wine license, on-sale beer license, on-sale beer and wine license; and on-sale general license for airplanes. Stats. 1969, Ch. 1466, in effect November 10, 1969, established single annual fee of \$350 for off-sale general license, and added intermittent dockside license for vessels of more than 15,000 tons. Stats. 1970, Ch. 1518, in effect November 23, 1970, added California brandy wholesaler's license, included "(commencing with Section 23450)" after Veterans' club license, and deleted intermittent dockside license for vessels of more than 15,000 tons. Stats. 1971, Ch. 831, in effect March 4, 1972, added intermittent dockside license for vessels of more than 15,000 tons. Stats. 1972, Ch. 970, in effect August 16, 1972, substituted "10,000" for "15,000" tons displacement. Stats. 1972, Ch. 1280, in effect March 7, 1973, added on-sale special beer and wine license for hospitals, convalescent homes, and rest homes. Stats. 1973, Ch. 783, in effect January 1, 1974, added California winegrower's agent's license and substituted "15,000" for "10,000" tons displacement. Stats. 1978, Ch. 971, in effect January 1, 1978, provided a fee of \$100 for beer manufacturers that produce 60,000 barrels or less a year. Stats. 1980, Ch. 676, in effect January 1, 1981, substituted "10,000" for "15,000" tons. Stats. 1985, Ch. 519, in effect January 1, 1986, substituted 7,000 for 15,000 tons displacement for an on-sale general bona fide public eating place intermittent dockside license for vessels. Stats. 2001, Ch. 488 in effect January 1, 2002, established new fee schedule through 2004 and permits inflationary adjustments commencing in 2005.

**Cross Reference.**—Effect of 1954 amendment increasing liquor license fees by 10 percent, see 23 Ops. Atty. Gen. 256, 54/100 6-9-54.

**Importer's license fee constitutional.**—The provision of the act (as it read prior to 1937) imposing a license fee of five hundred dollars (\$500) for the privilege of importing beer within the State does not violate the Federal Constitution. *State Board of Equalization v. Young's Market Company*, 299 U.S. 59.

**Person licensed without fee pending injunction is liable for fee.**—The fact that the license of a beer importer was issued without payment of the fee provided therefor by the Alcoholic Beverage Control Act (as it read prior to 1937) during a time when the collection of such fee was restrained by a Federal District Court cannot affect the right of the people to bring an action, after reversal of the decree, to collect such fee, since the temporary suspension of the powers of the public officials cannot be held to have resulted in rendering invalid the licenses issued pending ultimate determination of the validity of the act. Such an action is based upon an obligation implied in law by the provisions of the act. *People v. Schmidt*, 48 Cal. App. 2d 255.

**23320.1. Special on-sale general license fee.** In addition to the licenses specified in Section 23320, the department may issue special onsale general licenses. The annual fee for such licenses shall be the same as the fee prescribed for onsale general licenses in Section 23320.

**History.**—Added by Stats. 1961, Ch. 1914, in effect September 15, 1961.

**23320.2. Renewal fee.** *Repealed by Stats. 2001, Ch. 488.*

**History.**—Added by Stats. 1977, Ch. 245, in effect January 1, 1978. Stats. 1992, Ch. 900, in effect September 25, 1992, provided that fee be deposited in ABC Fund. Stats. 2001, Ch. 488, in effect January 1, 2002, repealed section.

**23320.25. Automation surcharge.** In addition to the fees provided for in Sections 23320, 23320.2, and 23320.3, there shall be an additional annual surcharge of seventy dollars (\$70). The additional surcharge shall be imposed on all annual fees due and payable on or after July 1, 1992, and before July 1, 1993. All money collected from the fees provided for in this section shall be deposited in the Alcohol Beverage Control Fund and is appropriated for the following purposes:

(1) Sixty percent of the surcharge shall be deposited into the Alcoholic Beverage Control Fund and is appropriated to the Department of Alcoholic Beverage Control for a one-time operational expense and equipment acquisition for the design, programming, and acquisition of a turnkey system of automation in telecommunication and computer equipment to implement a year-round license renewal program and other modernization as required and as the director authorizes.

(2) Forty percent of the surcharge shall be transferred to the General Fund to pay for the department's unfunded deficit.

This section shall become inoperative on July 1, 1993, and, as of January 1, 1994, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1994, deletes or extends the dates on which it becomes inoperative and is repealed.

**History.**—Added by Stats. 1992, Ch. 900, in effect September 25, 1992.

**23320.3. Surcharge for administrative hearings.** *Repealed by Stats. 2001, Ch. 488.*

**History.**—Added by Stats. 1983, Ch. 1034, in effect September 22, 1983. Stats. 1992, Ch. 900, amended subd. (c) to provide that fee be deposited in ABC Fund. Stats. 2001, Ch. 488, in effect January 1, 2002, repealed section.

**23320.5. Designated driver sheet surcharge.** (a) In addition to the annual fees provided for in Section 23320, the department shall collect a surcharge of five dollars (\$5).

(b) All money collected from the surcharge shall be deposited in the Motor Vehicle Account in the State Transportation Fund, and shall be used for the Department of the California Highway Patrol's Designated Driver Program, when appropriated to the Department of the California Highway Patrol for that purpose.

**History.**—Added by Stats. 1990, Ch. 1337, in effect January 1, 1991.

**23320.6. Wine Safety Fund.** (a) The Wine Safety Fund is hereby created as a special fund in the State Treasury, in trust, to the State Department of Health Services for the purpose of providing funds to better enable its Food and Drug Branch to carry out and supervise a statistically valid testing program to ensure that levels of lead in wine sold in this state remain safe and within tolerances established by applicable laws and regulations, for the health and safety of the consuming public upon appropriation by the Legislature in the annual Budget Act. The fees collected pursuant to Section 23320.7 shall be sufficient to cover, but shall not exceed, the costs of administering the testing program, including the reimbursement of any importer or retailer for the wholesale cost of any wine tested, conducted pursuant to this section. All moneys collected under Section 23320.7, including any interest accrued thereon, shall be deposited in the Wine Safety Fund.

(b) It is the intent of the Legislature to appropriate moneys in the Wine Safety Fund in equal amounts of fifty-five thousand three hundred dollars (\$55,300) over five years to the State Department of Health Services for expenditure exclusively for the purposes set forth in subdivision (a).

**History.**—Added by Stats. 1993, Ch. 1025, in effect January 1, 1994. Amended by Stats. 1999, Ch. 288, in effect January 1, 2000.

**23320.7. Wine Safety Fund Surcharge.** *Repealed by Sunset provision; effective January 1, 2000.*

**23321. Trains and airplanes.** The license for trains shall be issued to a railroad company or other person selling distilled spirits on board trains operating in this State, and a duplicate thereof shall be obtained for each train on which distilled spirits are sold. The license for cars of sleeping car companies shall be issued to a sleeping car company operating sleeping cars in this State, and a duplicate thereof shall be obtained for each train in which distilled spirits are sold by such companies. The license for airplanes shall be issued to an air common carrier selling distilled spirits on board airplanes operating in this State, and a duplicate thereof shall be obtained for each scheduled flight on which distilled spirits are sold.

**History.**—Stats. 1955, Ch. 954, in effect July 1, 1955, amended the section to read as at present.

23321.5. **Airplanes.** *Repealed by Stats. 1963, Ch. 1040.*

23321.6. **Vessels.** The license for vessels of more than 1,000 tons burden engaged in interstate and foreign commerce shall be issued to a common carrier by water selling distilled spirits on board vessels operating in this State, and a duplicate thereof shall be obtained for each vessel on which distilled spirits are sold.

*History.—Added by Stats. 1959, Ch. 2192, in effect September 18, 1959.*

23321.7. **Intermittent dockside license.** The on-sale general bona fide public eating place intermittent dockside license for vessels of more than 7,000 tons displacement may be issued for any vessel of more than 7,000 tons displacement with cabin berth capacity for at least 75 passengers. Each license issuable under this section shall be used only in the county where issued, but a vessel qualified under this section may be issued such a license in more than one county. Notwithstanding the provisions of Section 23397, the licensee under each such license shall be authorized to sell alcoholic beverages to the general public aboard the vessel respecting which the license is issued when the vessel is securely lashed on berth in the county for which the license is issued, provided that such sales are incidental to the passenger operations of such vessel and such beverages are purchased from persons licensed to sell alcoholic beverages for resale in this state. In no event shall the rights under any such license be exercised in any county during more than 100 calendar days in any calendar year. Notwithstanding the provisions of Article 2 (commencing with Section 23815) of Chapter 5 of this division, there shall be no limitation, other than provided in this section, on the number of licenses that may be issued under this section to applicants who meet its requirements. Except as otherwise specifically provided in this section, all provisions of this division shall apply to any license issued under this section in the same manner as such provisions apply to an on-sale general license issued for a bona fide public eating place, provided that no caterer's permit may be issued pursuant to Section 23399 with respect to any license issued hereunder, and provided further that any duplicate license issued pursuant to Section 24042 respecting such vessel shall bear the same fee specified by subdivision (35) of Section 23320.

*History.—Added by Stats. 1969, Ch. 1466, in effect November 1, 1969. Stats. 1972, Ch. 1970, in effect August 16, 1972, substituted "10,000" for "15,000" tons displacement. Stats. 1981, Ch. 170, in effect January 1, 1982, substituted "100" for "45" days. Stats. 1985, Ch. 519, in effect January 1, 1986, substituted 7,000 for 10,000 tons displacement.*

23322. **Quarterly reduction.** *Repealed by Stats. 1992, Ch. 838.*

23323. **Refunds not affected.** *Repealed by Stats. 2004, Ch. 437, AB 3085.*

23324. **Off-sale general fee reduction.** *Repealed by Stats. 1971, Ch. 831.*

23325. **Wine grower's fee reduction.** When the fee for any license is graduated according to the amount of alcoholic beverages produced under the license, the license fee shall be determined solely upon the gallonage produced, even though the license is applied for after the beginning of the license year.

23326. **Off-sale general report.** *Repealed by Stats. 1971, Ch. 831.*

23327. **Wine grower's annual report.** Persons holding wine growers' licenses shall report annually at the end of each fiscal year, at such time and in such manner as the department may prescribe, the amount of wine produced by them during the fiscal year.

If the total amount of wine produced during the year exceeds the amount permitted annually by the license fee already paid the department, the licensee shall pay such additional license fee as may be unpaid in accordance with the schedule provided in Section 23320.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

**23328. Estimated assessment.** If a licensee neglects or refuses to make a report as required by Section 23327, the department shall make an estimate based upon any information in its possession, or that may come into its possession, of the amount of wine produced by the delinquent licensee for the periods with respect to which he failed to make a report and, upon the basis of the estimated amount, compute and assess the additional license fees payable by the delinquent licensee. An assessment may be made of the amount of license fees due for more than one period. The department shall give the delinquent licensee written notice of the estimated license fee.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1971, Ch. 831, in effect March 4, 1972, deleted Section 23326 and estimate of retail sales of distilled spirits.

**23329. Additional assessment.** If the department is not satisfied with a report required to be filed by Section 23327, it may make an additional assessment of license fees due based upon the facts contained in the report or upon any information within its possession, or that comes into its possession. An additional assessment may be made of the license fees for more than one period. In making an additional assessment the department may offset overpayments for periods against underpayments for other periods. The department shall give the licensee written notice of the additional assessment.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1971, Ch. 831, in effect March 4, 1972, deleted Section 23326.

**23330. Petition for reassessment.** Any licensee against whom an assessment is made by the department pursuant to Section 23328 or 23329 may petition for reassessment within 15 days after service upon the licensee of notice of the assessment. If a petition for reassessment is not filed within the 15-day period, the amount of the assessment becomes final at the expiration thereof.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

**23331. Hearing.** If a petition for reassessment is filed within 15 days, the department shall reconsider the assessment and, if the licensee has so requested in his petition, shall grant the licensee an oral hearing and give the licensee 10 days’ notice of the time and place of hearing. The department may continue the hearing from time to time as may be necessary. The department may decrease or increase the amount of the assessment. The amount of the assessment may be increased, however, only if a claim for the increase is asserted by the department at or before the hearing.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

**23332. Due date of assessment.** The order or decision of the department upon a petition for reassessment becomes final upon service upon the licensee of notice of the order or decision. All assessments made by the department in regard to license fees become due and payable at the time they become final.

**History.**—Stats. 1955, Ch. 447, in effect September 7, 1955, substituted “department” for “board.”

**23333. Off-sale general report prior to July 1, 1955.** *Repealed by Stats. 1961, Ch. 811.*

**23334. Records of retail general licensees.** On- or off-sale general licensees shall keep books of accounts in which shall be kept records of all distilled spirits acquired by them, or in lieu thereof shall preserve all original bills and invoices for distilled spirits acquired. The record shall be in the form prescribed by the department and shall show at all times all purchases of distilled spirits made during the previous three years.

**History.—Stats. 1955, Ch. 1842, in effect September 7, 1955, renumbered Section 24402 to Section 23333. Stats. 1957, Ch. 37, in effect September 11, 1957, renumbered 23333 to 23334.**

### Article 3. Rights and Obligations of Licensees

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- § 23400. On-sale general, package sizes.
- § 23401. Off-sale privileges under on-sale licenses.
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- § 23403. Retail sale of undenatured alcohol.
- § 23404. Salesman violating act.
- § 23405. Transfer of corporate stock.
- § 23405.1. Limited partnership report.
- § 23405.2. Limited partnership application. [Repealed.]
- § 23405.2. Limited liability company report. (Renumbered from 23405.3.)

**23355. License privileges.** 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 Article 2 of this chapter authorize the person to whom issued to exercise the rights and privileges specified in this article and no others at the premises for which issued during the year for which issued.

**History.**—Stats. 1955, Ch. 2191, in effect September 18, 1959, added second and third sentences. Stats. 1974, Ch. 823, in effect January 1, 1975, transferred second and third sentences to Section 23355.1.

**Licensee and managerial contracts.**—A contract which gave a manager complete and exclusive authority and an option to buy the license and premises was violative of § 23355 and unenforceable. *March Rose Restaurant v. Chapin*, San Francisco Municipal Court No. 352003, memorandum opinion dated March 5, 1957.

**Undisclosed ownership, insufficiency of evidence.**—A determination that a liquor business was partially owned by a husband was not supported by substantial evidence where both the realty and license were purchased in the wife's name as sole owner; that both spouses joined in executing mortgages, and that improvements were from community funds, or that the husband performed incidental acts of management did not alter the status of the property. *Ciambetti v. Department of Alcoholic Beverage Control*, 161 Cal. App. 2d 340.

**Repeated violations.**—A finding of the department that a licensee has repeatedly violated Sections 23300, 23355, 23951 and 23953 was tantamount to a finding that continuance of the license would be “contrary to public welfare.” *Martin v. Alcoholic Beverage Control Appeals Board and Haley*, 52 Cal. 2d 287.

**Ownership by law enforcement officers and spouses.**—The evident objective of the Department of Alcoholic Beverage Control in promulgating rules disqualifying law enforcement officers and spouses from holding liquor licenses is to prevent a conflict of interest between liquor licensees and those involved in the enforcement of liquor laws. *Reece v. Alcoholic Beverage Control Appeals Board (Scheffel)*, 64 Cal. App. 3d 675.

The liquor industry is one whose regulation is recognized as instinctively related to the public interest, indicating deference to legislative judgment; there is undeniably no right, either explicitly or implicitly guaranteed by the Constitution, to engage in the liquor business. Accordingly, no fundamental interest is abridged by rules of the Department disqualifying law enforcement officials and spouses from holding liquor licenses. *Reece v. Alcoholic Beverage Control Appeals Board (Scheffel)*, 64 Cal. App. 3d 675.

**23355.1. Storage and delivery.** 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) or annual wine auction sales revenues of at least five million dollars (\$5,000,000), may sell wine consigned by any person, whether or not the auctioned wine is “vintage wine” as defined in Section 23104.6, 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.

**History.**—Added by Stats. 1974, Ch. 823, in effect January 1, 1975. Stats. 1997, Ch. 774, in effect January 1, 1998, added subd. (d). Stats. 1998, Ch. 639, in effect January 1, 1999, added reference to vintage wine. Stats. 1999, Ch. 288, in effect January 1, 2000, permitted qualified auction houses to sell privately held wines which do not qualify as “vintage” wines.

**23355.2. Controlled access cabinets.** (a) For purposes of this section, “controlled access alcoholic beverage cabinet” means a closed container, either refrigerated, in whole or in part, or nonrefrigerated, and access to the interior of which is (1) restricted by means of a locking device which requires the use of a key, magnetic card, or similar device, or (2) controlled at all times by the licensee.

(b) Notwithstanding any other provision of this division, a hotel or motel having an on-sale license may sell alcoholic beverages to its registered guests by means of a controlled access alcoholic beverage cabinet located in the guestrooms of those registered guests, provided that each of the following conditions is met:

(1) Access to a controlled access alcoholic beverage cabinet in a particular guestroom is provided, whether by furnishing a key, magnetic card, or similar device, or otherwise, only to the adult registered guest, if any, registered to stay in the guestroom.

(2) Prior to providing a key, magnetic card, or other similar device required to attain access to the controlled access alcoholic beverage cabinet in a particular guestroom to the registered guest thereof, or prior to otherwise providing access thereto to the registered guest, the licensee shall verify, in accordance with Article 3 (commencing with Section 25657), of Chapter 16 of this division, that each registered guest to whom a key, magnetic card, or similar device is provided, or to whom access is otherwise provided, is not a minor.

(3) All employees handling the alcoholic beverages to be placed in the controlled access alcoholic beverage cabinet in any guestroom, including, but not limited to, any employee who inventories or restocks and replenishes the alcoholic beverages in the controlled access alcoholic beverage cabinet, shall be at least 21 years of age.

(4) There is no replenishing or restocking of the alcoholic beverages in any controlled access alcoholic beverage cabinet between the hours of 2 a.m. and 6 a.m. of the same day.

(c) Notwithstanding any other provision of this division, a hotel or motel having an on-sale general license or an on-sale general license for restricted service lodging establishments may, upon issuance of a permit from the department, sell from its controlled access alcoholic beverage cabinets distilled spirits in containers of 50 milliliters or less, or in containers of comparable size. The department shall charge an annual fee for a permit issued pursuant to this subdivision equal to the annual renewal fee applicable to an off-sale general license pursuant to Section 23320.

(d) Notwithstanding any other provision of this division, a hotel or motel having an on-sale general license or an on-sale general license for restricted service lodging establishments and an off-sale general license may sell from its controlled access alcoholic beverage cabinets distilled spirits in containers of 50 milliliters or less, or in containers of comparable size, without having to obtain the permit specified in subdivision (c).

(e) A controlled access alcoholic beverage cabinet may be part of another cabinet or similar device, whether refrigerated, in whole or in part, or nonrefrigerated, from which nonalcoholic beverages or food may be purchased by the guests in hotel or motel guestrooms. However, in that event, the portion of the cabinet or similar device in which alcoholic beverages are stored shall be a controlled access alcoholic beverage cabinet, as defined in this section.

(f) For purposes of this section, "hotel" or "motel" shall mean an establishment which is licensed to sell alcoholic beverages and which contains guestroom accommodations with respect to which the predominant relationship existing between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this subdivision, the existence of other legal relationships as between some occupants and the owner or operator thereof shall be immaterial.

*History.—Added by Stats 1985, Ch. 280, in effect January 1, 1986. Stats. 1986, Ch. 458, in effect January 1, 1987, made section applicable to hotels and motels with an on-sale general license, relettered subs. (c) to (e) and (d) to (f) and added subs. (c) and (d). Stats. 1991, Ch. 726, in effect January 1, 1992, amended subd. (c) to include "on-sale general restricted service lodging establishment" licenses.*

**23356. Manufacturers or wine growers.** Any manufacturer's or wine grower's license authorizes the person to whom it is issued to become a manufacturer or producer of the alcoholic beverage specified in the license, and to do any of the following:

(a) Whether manufactured or produced by him or her or any other person, to package, rectify, mix, flavor, color, label, and export the alcoholic beverage specified in the license.

(b) To sell only those alcoholic beverages as are packaged by or for him or her only to persons holding wholesaler's, manufacturer's, wine grower's, manufacturer's agent's, or rectifier's licenses authorizing the sale of those alcoholic beverages and to persons who take delivery of those alcoholic beverages within this state for delivery or use without the state.

(c) To deal in warehouse receipts for the alcoholic beverage specified in the license.

**History.**—Amended by Stats. 2004, Ch. 437, AB 3085. Urgency bill in effect September 9, 2004, restructured section to specify the responsibilities of the manufacturer's or winegrower's license to actually make or produce alcoholic beverages.

**23356.1. Winetastings by winegrowers.** (a) A winegrower's license also authorizes the person to whom issued to conduct winetastings of wine produced or bottled by, or produced and packaged for, the licensee, either on or off the winegrower's premises. When a winetasting is held off the winegrower's premises at an event sponsored by a private nonprofit organization, no wine may be sold, and no sales or orders solicited, except that orders for the sale of wine may be accepted by the winegrower if the sales transaction is completed at the winegrower's premises. For purposes of this subdivision, "private nonprofit organization" means an organization described in Section 23701a, 23701b, 23701d, 23701e, 23701k, 23701l, 23701r, or 23701w of the Revenue and Taxation Code.

(b) Notwithstanding any other provisions of this division, a winegrower who, prior to July 1, 1970, had, at his or her premises of production, sold to consumers for consumption off the premises domestic wine other than wine which was produced or bottled by, or produced and packaged for, the licensee, and which was not sold under a brand or trade name owned by the licensee, and who had, prior to July 1, 1970, conducted winetastings of the domestic wine at his or her licensed premises, is authorized to continue to conduct the winetasting and selling activities at the licensed premises.

(c) A winegrower who was licensed as such prior to July 1, 1954, and who prior to July 1, 1970, had, at his or her licensed premises, sold to consumers for consumption off the premises, wine packaged for and imported by him or her, and who conducted winetastings of the wines at his or her licensed premises, may continue to conduct the winetasting and selling activities at the licensed premises.

(d) The department may adopt the rules as it determines to be necessary for the administration of this section.

**History.**—Added by Stats. 1972, Ch. 673, in effect March 7, 1973. Stats. 1973, Ch. 809, in effect January 1, 1974, relettered subd. (c) to (d) and added subd. (e). Stats. 2003, Ch. 270, AB 1505, in effect January 1, 2004, amended subd. (a), added language to supersede restrictions in departmental Rule 53(b)(5), and permitted orders to be taken as specified winetastings.

**23356.2. Home brew.** No license or permit shall be required for the brewing of beer for personal or family use, and not for sale, by a person over the age of 21 years. The aggregate amount of beer with respect to any household shall not exceed (a) 200 gallons per calendar year if there are two or more adults in such household, or (b) 100 gallons per calendar year if there is only one adult in such household.

Any beer brewed pursuant to this section may be removed from the premises where brewed for use in competition at organized affairs, exhibitions or competitions, including homemakers' contests, tastings, or judgments.

**History.**—Added by Stats. 1978, Ch. 458, in effect January 1, 1979. Stats. 1984, Ch. 334, in effect January 1, 1985, added last paragraph.

**23356.3. Reciprocal wine tasting privileges.** Notwithstanding any other provision of this division, an out-of-state winegrower, after notification to, and approved by, the department, may furnish American wine which the winegrower produces and bottles for wine tastings sponsored by a private nonprofit organization. This privilege shall be extended to winegrowers in those states which accord California winegrowers a substantially equal reciprocal wine tasting privilege. Certification by an appropriate state official of his or her state's reciprocal wine tasting privilege shall be included with the required notification.

**History.—**Added by Stats. 1982, Ch. 393, in effect January 1, 1983.

**23356.5. Wine blender's privileges.** A wine blender's license authorizes the person to whom issued to exercise all of the privileges of a winegrower's license except:

(a) To crush and ferment and produce wine from grapes, berries or other fruits.

(b) To obtain or be issued a duplicate winegrower's license as provided for in Section 23390.

(c) To buy, sell, receive or deliver wine from persons other than authorized licensees.

(d) To sell and deliver wine to consumers for consumption off the premises where sold.

(e) To exercise on-sale privileges as provided in Section 23358 of this code.

**History.—**Added by Stats. 1965, Ch. 499, in effect September 17, 1965. Stats. 1967, Ch. 1067, in effect November 8, 1967, added subd. (e).

**23356.6. Winegrowers or wine blenders.** Except as otherwise provided in this act, all provisions in this division pertaining to winegrowers, or to directors, officers, agents and employees of winegrowers, shall apply to wine blenders and to directors, officers, agents and employees of wine blenders.

**History.—**Added by Stats. 1965, Ch. 499, in effect September 17, 1965.

**23356.7. Winegrower's rights.** Nothing in this division shall be or be construed to be retroactive or to affect the rights of a person holding a winegrower's license or licenses or winegrower's duplicate license or licenses at the time this section becomes effective, or to prohibit the renewal or transfer of such existing license or licenses from one person to another person or from one premise to another premise.

**History.—**Added by Stats. 1965, Ch. 499, in effect September 17, 1965.

**23356.8. Wine blender holding retailer's license.** A licensed wine blender shall not be issued and shall not own or hold, directly or indirectly, any retailer's license, nor shall the holder of a retailer's license be issued or own or hold, directly or indirectly, a wine blender's license, or own or hold any interest in a wine blender's license.

This section shall not apply to a wine blender with respect to a retailer's license held by him on or before February 2, 1968, or to the holder of a retailer's license with respect to a wine blender's license for which an application for transfer to the holder of the retailer's license was on file with the department on or before February 2, 1968.

**History.—**Added by Stats. 1968, Ch. 1056, in effect November 13, 1968.

**23356.9. Wine blender conducting wine tastings.** A wine blender's license does not authorize wine-tasting activities or the conducting or sponsoring of wine tastings either on or off the wine blender's licensed premises.

This section shall not apply to a wine blender who was licensed as such on or before February 2, 1968, or with respect to a wine blender's license for which an application for transfer to the holder of a retailer's license was on file with the department on or before February 2, 1968.

**History.—**Added by Stats. 1968, Ch. 1056, in effect November 13, 1968.

**23357. Beer manufacturers.** A licensed beer manufacturer may, at the licensed premises of production, sell to consumers for consumption off the premises beer which is produced and bottled by, or produced and packaged for that manufacturer. Licensed beer manufacturers may also sell beer to any person holding a license authorizing the sale of beer and may sell beer to consumers for consumption on the manufacturer's licensed premises or on premises owned by the manufacturer which are contiguous to the licensed premises and which are operated by and for the manufacturer. Licensed beer manufacturers may also sell beer and wine, regardless of source, to consumers for consumption at a bona fide public eating place on the manufacturer's licensed premises or at a bona fide public eating place on premises owned by the manufacturer which are contiguous to the licensed premises and which are operated by and for the manufacturer. Notwithstanding any other provision of this division, licensed beer manufacturers and holders of out-of-state beer manufacturer's certificates may be issued and may hold retail package off-sale beer and wine licenses. Alcoholic beverage products sold at or from the off-sale premises which are not produced and bottled by or produced and packaged for, the beer manufacturer shall be purchased by the beer manufacturer only from a licensed wholesaler.

**History.**—Stats. 1977, Ch. 294 in effect January 1, 1978, authorized sale for consumption on the premises. Stats. 1982, Ch. 1019, in effect January 1, 1983, authorized sales at bona fide public eating place. Stats. 1988, Ch. 116, in effect May 25, 1988, authorized ownership of off-sale beer and wine license. Stats. 1991, Ch. 726, in effect January 1, 1992, authorized off-sale sales to consumers at the production premises.

**23357.1. Privileges of out-of-state beer manufacturer's certificate.** An out-of-state beer manufacturer's certificate authorizes the shipment of beer manufactured without this state to licensed importers within this state. Beer manufactured without this state, but not beer manufactured without the United States, may only be obtained by a licensed importer within this state from the holder of an active out-of-state beer manufacturer's certificate. Only one out-of-state beer manufacturer's certificate may be issued to any one beer manufacturer.

A California beer manufacturer with a license in good standing in this state may ship into this state beer which was manufactured at plants out of this state without holding an out-of-state beer manufacturer's certificate.

**History.**—Added by Stats. 1971, Ch. 1457, in effect March 4, 1972.

**Cross reference.**—Rule 132.

**23357.2. Issuance of out-of-state beer manufacturer's certificate.** (a) An out-of-state beer manufacturer's certificate may be issued by the department upon the written undertaking and agreement by the applicant:

(1) That it and its agents and all agencies within this state controlled by it shall comply with all laws of this state and all rules of the department with respect to the sale of alcoholic beverages, including, but not limited to, Chapter 12 (commencing with Section 25000) of Division 9, and Section 25509, to the same extent as licensees.

(2) That it shall make available, both in California and outside the state, for inspection and copying by the department, all books, documents, and records, located both within and without this state, which are pertinent to the activities of the applicant, its agents and agencies within this state controlled by it, in connection with the sale and distribution of its products within this state.

(b) The department may suspend or revoke an out-of-state beer manufacturer's certificate for cause in the manner provided for the suspension or revocation of licenses, and after a hearing which shall be held in the City of Sacramento or in any other county seat in this state as the department determines to be convenient to the holder of an out-of-state certificate.

(c) The annual fees for an out-of-state beer manufacturer's certificate shall be fifty-four dollars (\$54) for certificates issued during the 2002 calendar year, fifty-seven dollars (\$57) for certificates issued during the 2003 calendar year, sixty dollars (\$60) for certificates issued during the 2004 calendar year, and for certificates issued during the years thereafter, the annual fee shall be calculated pursuant to subdivisions (b) and (c) of Section 23320.

(d) All money collected from the fees provided for in this section shall be deposited in the Alcohol Beverage Control Fund as provided by Section 25761.

**History.**—Added by Stats. 1971, Ch. 1457, in effect March 4, 1972. Stats. 1992, Ch. 900, in effect September 25, 1992, recast subd. (d) to deposit monies in ABC Fund. Stats. 1993, Ch. 49, in effect January 1, 1994, amended subd. (1). Stats. 1998, Ch. 639, in effect January 1, 1999, deleted reference to investigation. Stats. 2001, Ch. 488 in effect January 1, 2002, established new fee schedule.

**Cross reference.**—Rule 132.

**23357.3. Beer tastings.** (a) A beer manufacturer's license or out-of-state beer manufacturer's certificate issued to a manufacturer located within the United States authorizes the licensee to conduct tastings of beer produced or bottled by, or produced or bottled for, the licensee, on or off the licensee's premises. Beer tastings may be conducted by the licensee off the licensee's premises only for an event sponsored by a nonprofit organization and only if persons attending the event are affiliated with the sponsor. No beer shall be sold or solicited for sale in that portion of the premises where the beer tasting is being conducted. Notwithstanding Section 25600, the manufacturer may provide beer without charge for any tastings conducted pursuant to this section.

(b) (1) For purposes of this section, "nonprofit organization" does not include any community college or other institution of higher learning, as defined in the Education Code, nor does it include any officially recognized club, fraternity, or sorority whether or not that entity is located on or off the institution's campus.

(2) For purposes of this section, "affiliated with the sponsor" means directors, officers, members, employees and volunteers of bona fide charitable, fraternal, political, religious, trade, service, or similar nonprofit organizations and their invited guests.

(3) For purposes of this section, persons "affiliated with the sponsor" also includes up to three guests invited by persons described in paragraph (2).

(c) The sponsoring organization shall first obtain a permit from the department at a fee equal to the actual cost of issuing the permit but not to exceed twenty-five dollars (\$25) per day.

(d) The department may adopt rules and regulations as it determines to be necessary for the administration of this section.

**History.**—Added by Stats. 1988, Ch. 533, in effect January 1, 1989.

**23357.4. Beer trade association tastings.** (a) Notwithstanding any other provision of this division, an incorporated beer manufacturer's trade association may conduct beer tastings on behalf of one or more licensed beer manufacturers for public educational purposes. Beer tastings conducted by an incorporated beer manufacturer's trade association may be conducted for groups of individuals unaffiliated with a sponsoring nonprofit organization, provided that the participants do not exceed 100 in number at any beer tasting event.

No beer shall be sold or solicited for sale in that portion of the premises where the beer tasting is being conducted.

Notwithstanding Section 25600, a licensed beer manufacturer may provide beer without charge to an incorporated beer manufacturer's trade association for any tastings conducted pursuant to this section.

(b) (1) For purposes of this section, “nonprofit organization” does not include any community college or other institution of higher learning, as defined in the Education Code, nor does it include any officially recognized club, fraternity, or sorority whether or not that entity is located on or off the institution’s campus.

(2) For purposes of this section, “affiliated with the sponsor” means directors, officers, members, employees, and volunteers of bona fide charitable, fraternal, political, religious, trade, service, or similar nonprofit organizations and their invited guests.

(c) The incorporated beer manufacturer’s trade association shall first obtain a permit from the department for each tasting event at a fee equal to the actual cost of issuing the permit but not to exceed twenty-five dollars (\$25) per day.

(d) The department may adopt rules and regulations as it determines to be necessary for the administration of this section.

**History.**—Added by Stats. 1995, Ch. 216, in effect January 1, 1996.

**23358. Sales by winegrowers.** Licensed winegrowers, notwithstanding any other provisions of this division, may also sell wine and brandy to any person holding a license authorizing the sale of wine or brandy, and to consumers for consumption off the premises where sold, and may also sell all beers, wines and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place as defined in Section 23038 of this code, which is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and which is operated by and for the licensee. At such bona fide public eating place beer, wine, and brandy may be used in the preparation of food and beverages to be consumed on the premises. A winegrower may also have upon the premises all beers, wines, and brandies, regardless of source, for sale or service only to guests during private events or private functions not open to the general public. Alcoholic beverage products sold at the premises that are not produced and bottled by, or produced and packaged for, the winegrower shall be purchased by the winegrower only from a licensed wholesaler. A winegrower shall actually produce on his licensed premises by conversion of grapes, berries or other fruit, into wine, not less than 50 percent of all wines sold to consumers on his licensed premise or premises and any licensed branch premise or premises. The department may, if it shall determine for good cause that the granting of such privilege would be contrary to public welfare or morals, deny the right to exercise the on-sale privilege authorized by this section in any bona fide eating place the main entrance to which is within 200 feet of a school or church.

**History.**—Stats. 1959, Ch. 750, in effect September 18, 1959 added brandy and deleted 52 gallon restriction. Stats. 1965, Ch. 499, in effect September 17, 1965, added second sentence. Stats. 1967, Ch. 1067, in effect November 8, 1967, added provision for on-sale privileges in conjunction with bona fide eating place in first sentence, and added second paragraph. Stats. 1970, Ch. 631, in effect November 23, 1970, authorized consumption of brandy in bona fide eating place, and added second sentence. Stats. 1978, Ch. 16, in effect January 1, 1979, authorized sale of “all wines and brandies, regardless of source.” Stats. 1993, Ch. 49, in effect January 1, 1994, added “beer” and allows winegrowers to sell for consumption in bona fide eating place and at private functions at winery.

**23358.1. San Diego County winegrowers.** *Repealed by Stats. 1994, Ch. 318.*

**23358.2. Restrictions on winegrower’s and brandy manufacturer’s sales.** Notwithstanding any other provision of this division, a winegrower or brandy manufacturer, at his licensed premises where the sale of wine or brandy for consumption off the premises is authorized or permitted, when selling to consumers for consumption off the premises may sell only wine or brandy which is produced or bottled by such licensee, or wine or brandy which is produced for or is produced and packaged for such licensee, and which is sold under a brand name owned by such licensee. The

rights and privileges of a winegrower or brandy manufacturer to be issued and to hold an off-sale beer and wine license for any of his licensed premises, or for other premises, shall not in any way be changed or affected, or be construed to be changed or affected, by the provisions of this section. This section shall become operative on July 1, 1970.

**History.**—Added by Stats. 1969, Ch. 1277, in effect November 10, 1969. Stats. 1970, Ch. 100, in effect May 7, 1970, inserted “when selling to consumers for consumption off the premises,” and second sentence.

**23358.3. Winegrape grower’s storage license.** A wine grape grower’s storage license authorizes the holder to store bulk wine, made from grapes produced by the holder, on the premises of a licensed winegrower and to sell that wine, within this state, to winegrowers, distilled spirits manufacturers, brandy manufacturers, wine blenders, and vinegar producers. The annual fee for a wine grape grower’s storage license shall be sixty dollars (\$60) for licenses issued during the 2002 calendar year, sixty-four dollars (\$64) for licenses issued during the 2003 calendar year, sixty-seven dollars (\$67) for licenses issued during the 2004 calendar year, and for licenses issued during the years thereafter, the annual fee shall be calculated pursuant to subdivisions (b) and (c) of Section 23320.

**History.**—Added by Stats. 1982, Ch. 562, in effect January 1, 1983. Stats. 1985, Ch. 458, in effect January 1, 1986. Expanded the list of persons to whom a wine grape grower could sell his or her wine to include brandy manufacturers and blenders. This bill also deleted the provisions that would have repealed the existing law on January 1, 1986. Stats. 2001, Ch. 488, in effect January 1, 2002, established new fee schedule.

**23358.5. Orange County, Santa Clara County winegrowers.** *Repealed by Stats. 1994, Ch. 318.*

**23358.6. Napa County winegrowers.** *Repealed by Stats. 1994, Ch. 318.*

**23359. Fortifying brandy.** A wine grower’s license also authorizes the manufacture of grape brandy to be used exclusively in the production of wine by its holder on the premises for which issued and also the sale of grape brandy to licensed wine growers to be used exclusively in the production of wine.

**23360. Sales by brandy manufacturers.** Licensed brandy manufacturers, notwithstanding any other provisions of this division, may also sell brandy and wine to consumers for consumption off the premises where sold, and to any person holding a license authorizing the sale of brandy and wine.

**History.**—Stats. 1959, Ch. 750, in effect September 18, 1959, added wine and provision for sales to consumers.

**23361. Fortifying brandy; alcohol for government.** A person holding a brandy manufacturer’s license may also sell grape brandy, fruit brandy, or spirits of wine to licensed wine growers for use by the latter in the production of wine and the production or manufacturing of alcohol for the United States Government, and beverage brandy for sale to consumers for consumption off the premises.

**History.**—Stats. 1959, Ch. 750, in effect September 18, 1959, deleted “and not for beverage purposes,” and added “and beverage brandy for sale to consumers for consumption off the premises.”

**23362. Winegrower’s or brandy manufacturer’s off-sale license.** Notwithstanding any other provisions of this division, a licensed winegrower or brandy manufacturer may be issued and may hold an off-sale general license or a retail package off-sale beer and wine license. The issuance of these off-sale general licenses shall be subject to the pertinent provisions of Article 2 (commencing with Section 23815) of Chapter 5 of this division. Nothing in this division shall be construed to be retroactive or to affect the right of a licensed winegrower or brandy manufacturer to hold, renew or transfer any off-sale general license held by such licensed winegrower or brandy manufacturer on the thirtieth day of September, 1959.

**History.**—Stats. 1959, Ch. 750, in effect September 18, 1959, deleted “for the premises for which he holds a winegrower’s or brandy manufacturer’s license and for any branch office maintained by the winegrower or brandy manufacturer;” and added second and third sentence. Stats. 1988, Ch. 116, in effect May 25, 1988, permitted ownership of retail off-sale beer and wine license.

**23363. Spirits distilled in California.** Any licensed manufacturer of distilled spirits originally distilled in this State may sell them to any person holding a license authorizing the sale of distilled spirits.

This section shall not apply to distilled spirits manufacturer licenses issued after the effective date of the amendment of this section enacted at the 1959 Regular Session of the Legislature, and this section shall not apply to manufacturers of distilled spirits who have not regularly and continuously exercised the privileges of this section by sales to retail licensees.

In addition to the rights and privileges granted by this section, any person holding a distilled spirits manufacturer license may sell brandy to any person holding a license authorizing the sale of brandy.

**History.**—Stats. 1959, Ch. 1588, in effect September 18, 1959, added second and third paragraphs.

**Construction.**—This section is valid and constitutional. *American Distilling Co. v. State Board of Equalization*, 144 Cal. App. 2d 457, 301 Pac. 2d 495.

Gin, vodka and whiskey made in California partly from grain alcohol imported into California while unfit for beverage use and redistilled in California are “distilled spirits originally distilled in this State” within the meaning of this section. *American Distilling Co. v. State Board of Equalization*, 144 Cal. App. 2d 457, 301 Pac. 2d 495.

**23363.1. Distilled spirits manufacturers, product tastings.** (a) A distilled spirits manufacturer’s license authorizes the licensee to conduct tastings of distilled spirits produced or bottled by, or produced or bottled for, the licensee, on or off the licensee’s premises. Distilled spirits tastings may be conducted by the licensee off the licensee’s premises only for an event sponsored by a nonprofit organization and only if persons attending the event are affiliated with the sponsor. No distilled spirits shall be sold or solicited for sale in that portion of the premises where the distilled spirits tasting is being conducted. Notwithstanding Section 25600, the licensee may provide distilled spirits without charge for any tastings conducted pursuant to this section.

(b) For purposes of this section:

(1) “Nonprofit organization” does not include any community college or other institution of higher learning, as defined in the Education Code, nor does it include any officially recognized club, fraternity, or sorority, whether or not that entity is located on or off the institution’s campus.

(2) “Affiliated with the sponsor” means directors, officers, members, employees, and volunteers of bona fide charitable, fraternal, political, religious, trade, service, or similar nonprofit organizations and their invited guests. Persons “affiliated with the sponsor” also includes up to three guests invited by persons described in this paragraph.

(c) The sponsoring organization shall first obtain a permit from the department.

(d) The department may adopt rules and regulations as it determines to be necessary for the administration of this section.

**History.**—Added by Stats. 1997, Ch. 544, in effect January 1, 1998.

**23363.2. Out-of-state distilled spirits manufacturer, product tastings.** (a) A distilled spirits manufacturer not licensed in California may designate in writing a California licensee, other than the holder of any retail license, to conduct tastings of distilled spirits produced or bottled by, or produced or bottled for, the manufacturer, off the designated licensee’s premises only for an event sponsored by a nonprofit organization and only if persons attending the event are affiliated with the sponsor. No distilled spirits shall be sold or solicited for sale in that portion of the premises

where the distilled spirits tasting is being conducted. Notwithstanding Section 25600, the designated licensee may provide distilled spirits without charge for any tastings conducted pursuant to this section.

(b) For purposes of this section:

(1) “Nonprofit organization” does not include any community college or other institution of higher learning, as defined in the Education Code, nor does it include any officially recognized club, fraternity, or sorority whether or not that entity is located on or off the institution’s campus.

(2) “Affiliated with the sponsor” means directors, officers, members, employees, and volunteers of bona fide charitable, fraternal, political, religious, trade, service, or similar nonprofit organizations and their invited guests. Persons “affiliated with the sponsor” also includes up to three guests invited by persons described in this paragraph.

(c) the sponsoring organization shall first obtain a permit from the department.

(d) The department may adopt rules and regulations as it determines to be necessary for the administration of this section.

**History.—**Added by Stats. 1997, Ch. 544, in effect January 1, 1998.

**23364. Sales by spirits manufacturers to retailers.** All provisions of this division relating to the sale and delivery of distilled spirits from distilled spirits wholesalers or rectifiers to on- or off-sale licensees, all provisions of Part 14 of Division 2 of the Revenue and Taxation Code imposing an excise tax upon the sale of distilled spirits, and all provisions of Part 14 of Division 2 of the Revenue and Taxation Code relating to distilled spirits excise tax procedure applies to distilled spirits manufacturers when making sales, authorized by this division, of distilled spirits produced in this State to on-or off-sale licensees.

**History.—**Stats. 1955, Ch. 1842, in effect September 7, 1955, substituted “Part 14 of Division 2 of the Revenue and Taxation Code” for “this division.”

**23365. Distilled spirits dividends.** Neither a corporation nor a limited partnership required to maintain a register under Section 23405.1 or licensed under Section 23405.2 engaged in the manufacture of distilled spirits shall, directly or indirectly, through affiliates, subsidiaries, or otherwise, distribute distilled spirits to its stockholders by dividend, or to its limited partners by return of capital contribution or share of profits, either by distribution in kind or the granting of purchase privileges. This section does not restrict the sale of alcoholic beverages to persons holding manufacturer’s, distilled spirits manufacturer’s agent’s, rectifier’s, or wholesaler’s licenses.

**History.—**Stats. 1973, Ch. 47, in effect May 15, 1973, prohibited limited partnerships under Section 23405.1 from distributing to limited partners. Stats. 1973, Ch. 680, in effect September 21, 1973, included licensees under Section 23405.2.

**23366. Distilled spirits manufacturer’s agents.** A distilled spirits manufacturer’s agent’s license authorizes any of the following:

(a) The possession of distilled spirits in public or private warehouses.

(b) The exportation of distilled spirits.

(c) The cutting, blending, mixing, flavoring, and coloring of distilled spirits for his own account or for the account of a distilled spirits manufacturer, manufacturer’s agent, rectifier, or wholesaler.

(d) Whether cut, blended, mixed, flavored, or colored by him, or any other person, the packaging and the sale or delivery of distilled spirits only to holders of distilled spirits manufacturer’s, rectifier’s or distilled spirits wholesaler’s licenses.

A person need not actually engage in the cutting, blending, or bottling of distilled spirits in order to qualify for a distilled spirits manufacturer’s agent’s license.

**23366.1. Manufacturer soliciting for retailer.** No distilled spirits manufacturer or any agent thereof shall solicit a consumer to purchase amounts or lots of distilled spirits through a specific retailer.

This section shall not prevent any distilled spirits manufacturer or the agent thereof who holds any license or licenses authorizing sales to consumers from making sales of alcoholic beverages to consumers as permitted by such license or licenses.

*History.—Added by Stats. 1961, Ch. 2025, in effect September 15, 1961.*

**23366.2. Privileges of out-of-state distilled spirits shipper's certificate.** An out-of-state distilled spirits shipper's certificate authorizes the shipment of distilled spirits manufactured without this state to licensed importers within this state. Distilled spirits manufactured without this state may only be obtained by a licensed importer from the holder of an active out-of-state distilled spirits shipper's certificate. Only one out-of-state distilled spirits shipper's certificate may be issued to any one distilled spirits shipper.

*History.—Added by Stats. 1979, Ch. 413, in effect January 1, 1980.*

**23366.3. Issuance of out-of-state distilled spirits shipper's certificate.** (a) An out-of-state distilled spirits shipper's certificate may be issued by the department upon the written undertaking and agreement by the applicant:

(1) That it and its agents and all agencies within this state controlled by it shall comply with all laws of this state and all rules of the department with respect to the sale of alcoholic beverages;

(2) That it shall make available, both in California and outside the state, for inspection and copying by the department, all books, documents, and records, located both within and without the state, which are pertinent to the activities of the applicant, its agents and agencies within this state controlled by it, in connection with the sale and distribution of its products within this state.

(b) The department may suspend or revoke an out-of-state distilled spirits shipper's certificate for cause in the manner provided for the suspension and revocation of licenses, and after a hearing which shall be held in the City of Sacramento or in such other county seat in the state as the department determines to be convenient to the holder of an out-of-state distilled spirits shipper's certificate.

(c) The annual fees for an out-of-state distilled spirits shipper's certificate shall be fifty-four dollars (\$54) for certificates issued during the 2002 calendar year, fifty-seven dollars (\$57) for certificates issued during the 2003 calendar year, sixty dollars (\$60) for certificates issued during the 2004 calendar year, and for certificates issued during the years thereafter, the annual fee shall be calculated pursuant to subdivisions (b) and (c) of Section 23320.

(d) All money collected from the fees provided for in this section shall be deposited in the Alcohol Beverage Control Fund, as provided by Section 25761.

*History.—Added by Stats. 1979, Ch. 413, in effect January 1, 1980. Stats. 2001, Ch. 488 in effect January 1, 2002, established new fee schedule.*

**23366.5. Solicitation of orders.** A winegrower's license, brandy manufacturer's license, California winegrower's agent's license, beer and wine wholesaler's license or a distilled spirits manufacturer's agent's license also authorizes the solicitation of orders for wine or brandy, or both, which are produced or manufactured in this state and which the licensee is authorized to sell by his license for and on behalf of any licensee for the sale to other licensees of such wine or brandy.

*History.—Added by Stats. 1957, Ch. 2259, in effect September 11, 1957, Stats. 1968, Ch. 212, in effect November 13, 1968, included beer and wine wholesaler's license. Stats. 1973, Ch. 783, in effect January 1, 1974, included California winegrower's agent's license.*

23367. **Still.** A still license authorizes the person to whom issued to own or possess the number of stills indicated in the license upon the premises for which issued.

**Unauthorized still.**—*People v. Dal Porto*, 62 Pac. 2d 1061, rehearing denied, 63 Pac. 2d 1199, 17 Cal. App. 2d 755, held operation of a still was a special privilege and not a right.

23368. **Rectifier.** A rectifier's license authorizes the person to whom issued to cut, blend, rectify, mix, flavor, and color distilled spirits and wine upon which the excise tax imposed by Part 14 of Division 2 of the Revenue and Taxation Code has been paid, and, whether so cut, blended, mixed, flavored, or colored by him or any other person, to package, label, export, and sell the products to persons holding licenses authorizing the sale of distilled spirits.

**History.**—Stats. 1955, Ch. 1842, In effect September 7, 1955, substituted "Part 14 of Division 2 of the Revenue and Taxation Code" for "this division."

The redistillation of grain alcohol imported into California in tank cars while unfit for beverage use, and the making of gin, vodka and whiskey from such redistilled alcohol, is not rectification. *American Distilling Co. v. State Board of Equalization*, 144 Cal. App. 2d 457, 301 Pac. 2d 495.

23368.1. **Distilled spirits rectifier's general.** A distilled spirits rectifier's general license authorizes the person to whom issued to cut, blend, rectify, mix, flavor, and color distilled spirits, and whether so cut, blended, mixed, flavored, or colored by him or any other person to package, label, export, and sell the distilled spirits to distilled spirits manufacturers, distilled spirits manufacturer's agents, distilled spirits wholesalers, distilled spirits general importers, rectifiers, and distilled spirits general rectifiers.

No distilled spirits rectifier's general license shall be issued to any person who holds an interest, directly or indirectly, in an on-sale or off-sale general license. The number of distilled spirits rectifier's general licenses which may be issued shall not be limited by the provisions of Section 23820.

A distilled spirits rectifier's general license may be issued to the same premises for which a manufacturer's, manufacturer's agent, importer's, rectifier's or wholesaler's license has been issued and is in effect whether issued to the same person or another person.

The fee for a distilled spirits rectifier's general license shall be two hundred seventy-six dollars (\$276), which shall be deposited in the Alcoholic Beverage Control Fund.

**History.**—Added by Stats. 1967, Ch. 1559, in effect November 8, 1967.

23369. **Bottling by rectifier.** In order to qualify for a rectifier's license, a person shall actually be engaged at the time the license is issued or renewed, or within 30 days thereafter, in the bottling of distilled spirits owned by him. The distilled spirits owned by him shall comprise at least 50 percent of the total distilled spirits bottled by him.

23370. **Bottling by manufacturer's agent.** Nothing in Sections 23368 and 23369 prohibits the issuance of a distilled spirits manufacturer's agent's license to any person who is engaged in the bottling of distilled spirits owned solely by other manufacturer's agents, rectifiers, wholesalers, or manufacturers.

23371. **Rectifier as wholesaler.** A rectifier who also performs the functions of a distilled spirits wholesaler shall comply with all the provisions of this division applicable to a holder of a distilled spirits wholesaler's license.

23372. **Wine rectifier.** A wine rectifier's license authorizes the person to whom issued to cut, blend, rectify, mix, flavor, or color wine upon which the excise tax imposed by Part 14 of Division 2 of the Revenue and Taxation Code has been paid, and whether so cut, blended, rectified, mixed, flavored, or colored by him, or any other person, to package, label, export, and sell the products to persons holding licenses issued by

the department authorizing the sale of wine. The holder of a wine rectifier's license may apply for and hold a wine importer's license, a distilled spirits manufacturer's license, or a distilled spirits manufacturer's agent's license. A wine rectifier's license shall not be issued to or held by the holder of a retail off-sale or retail on-sale license.

**History.**—Stats. 1955, Ch. 1842, in effect September 7, 1955, substituted “Part 14 of Division 2 of the Revenue and Taxation Code” for “this division,” and “department” for “board.”

**23373. California winegrower's agent's license.** A California winegrower's agent's license authorizes any of the following:

(a) The possession of wine produced in California and brandy distilled in California in public or private warehouses.

(b) The sale to wholesalers for his or her own account or the solicitation of and sale to wholesalers for the account of a licensed winegrower of wine that was produced in this state and brandy that was distilled in this state.

(c) The invoicing and collection on behalf of a winegrower of payments for orders solicited by the agent.

(d) Performance or furnishing on behalf of the winegrower for which he or she is an agent, of the services which the winegrower is authorized to perform or furnish under the provisions of Sections 23356.1, 25503.1, 25503.2, 25503.3, 25503.5, 25503.8, 25503.9, 25503.26, and 25503.85.

**History.**—Added by Stats. 1973, Ch. 783, in effect January 1, 1974. Stats. 2001, Ch. 567 in effect October 5, 2001, amended subd. (d) and added authorization for a winegrower's agent to purchase advertising space or time from certain on-sale retail licensees.

**23373.1. Wholesaler holding winegrower's agent's license.** Neither the holder of any wholesaler's license nor the holder of any retail license may hold a California winegrower's agent's license, except that the holder of a wholesaler's license who has been a primary distributor for a winegrower for more than 20 years immediately prior to the effective date of this section may continue to be issued and to hold a beer and wine wholesaler's license and a distilled spirits wholesaler's license as well as a California winegrower's agent's license.

**History.**—Added by Stats. 1973, Ch. 783, in effect January 1, 1974.

**23373.2. Agent for winegrower or brandy manufacturer.** A winegrower or brandy manufacturer may be represented by only one California winegrower's agent.

**History.**—Added by Stats. 1973, Ch. 783, in effect January 1, 1974.

**23373.3. Price posting by winegrower's agent.** *Repealed by Stats. 1994, Ch. 50, operative May 20, 1994.*

**23373.4. Privileges of winegrower's agent.** A California winegrower's agent's license authorizes the holder to furnish samples, to produce and distribute wine lists, to produce and furnish advertising material, retailers' advertising specialties and consumer advertising specialties, with respect to the wine or brandy he distributes as an agent for a winegrower or brandy manufacturer so authorized.

**History.**—Added by Stats. 1973, Ch. 783, in effect January 1, 1974.

**23373.5. Violation by winegrower's agent.** Nothing in this division shall preclude the department from taking disciplinary action against a winegrower or brandy manufacturer for any violation of this division when such violation was committed by the holder of a California winegrower's agent's license while acting on behalf of the winegrower or brandy manufacturer.

**History.**—Added by Stats. 1973, Ch. 783, in effect January 1, 1974.

23374. **Importer.** Any importer's license authorizes the person to whom issued to become an importer of alcoholic beverages specified in the license, to export the alcoholic beverages, and to transfer the beverages to himself under another license.

23374.5. **Distilled spirits importer's general license.** A distilled spirits importer's general license authorizes the person to whom issued to become an importer of distilled spirits and to sell distilled spirits to distilled spirits manufacturers, distilled spirits manufacturer's agents, distilled spirits wholesalers, rectifiers and distilled spirits general importers.

*History.—Added by Stats. 1959, Ch. 2192, in effect September 18, 1959.*

23374.6. **Beer and wine importer's general license.** A beer and wine importer's general license authorizes the person to whom issued to become an importer of beer or wine and to sell state tax paid beer or wine to beer manufacturer's, wine grower's, beer and wine wholesaler's, wine rectifier's and beer and wine importer's general licensees.

*History.—Added by Stats. 1961, Ch. 1687, in effect September 15, 1961.*

23375. **Public warehouse.** A public warehouse license authorizes the storage of alcoholic beverages for the account of another licensee, including storage in a United States customs bonded warehouse, a United States internal revenue bonded warehouse, and a United States bonded wine cellar.

*History.—Stats. 1955, Ch. 1600, in effect September 7, 1955, substituted "wine cellar" for "storeroom."*

23375.5. **Distilled spirits importer's general restrictions.** No distilled spirits importer's general license shall be issued to any person who holds an interest, directly or indirectly, in an on-sale or off-sale general license.

*History.—Added by Stats. 1959, Ch. 2192, in effect September 18, 1959.*

23375.6. **Beer and wine importer's general restrictions.** No beer and wine importer's general license shall be issued to any person who holds an interest, directly or indirectly, in any retail license. No retail license shall be issued to any beer and wine importer's general licensee.

*History.—Added by Stats. 1961, Ch. 1687, in effect September 15, 1961.*

23376. **Customs broker.** A customs broker's license authorizes the transfer to licensed importers of alcoholic beverages brought into the State in United States internal revenue bond or in United States customs bond and the exportation of the alcoholic beverages. The holder of a customs broker's license may receive delivery of, possess, export, and transfer to licensed importers such alcoholic beverages as are brought into this State in United States internal revenue bond or customs bond. Such a license also authorizes the possession and exportation of alcoholic beverages acquired from licensed manufacturers or wine growers for export.

23377. **Wine broker.** A wine broker's license authorizes the person to whom issued to act as a wine broker, for a fee or commission, in the purchase of wine for or on behalf of a person within or without this State authorized to buy wine for purposes of resale and in the sale of wine for or on behalf of a person, other than a retail licensee, licensed to sell wine within the State. A wine broker shall not buy or sell any wine for his own account, take or deliver title to wine, or receive or store any wine in his own name in this State. A wine broker shall not offer to sell, agree to offer to sell, or sell any wine unless he first has a bona fide authorization to do so from a person, other than a retail licensee, licensed to sell wine in this State. A wine broker shall not offer to buy, agree to buy, agree to offer to buy, or buy any wine unless he first

has a bona fide authorization to do so from a person within or without this State authorized to buy wine for purposes of resale. The exercise of the privileges granted by the wine broker's license are subject to such rules and conditions as the department deems necessary and proper.

**History.—Stats. 1955, Ch. 447, substituted “department” for “board.”**

**23378. Wholesaler.** Any wholesaler's license authorizes the sale of the alcoholic beverage specified in the license only to persons holding licenses issued by the department authorizing the sale of the alcoholic beverage, and authorizes the exportation of the alcoholic beverage.

**History.—Stats. 1955, Ch. 447, substituted “department” for “board.”**

**Federal military reservations.**—This section does not authorize a holder of a wholesaler's license to make sales of alcoholic beverages to nonlicensees; this is true even though the nonlicensee is located on a military reservation over which the Federal Government has exclusive jurisdiction. *McKesson and Robbins, Inc. v. Collins*, 118 Cal. App. 2d 648.

**23378.1. California brandy wholesalers.** (a) A California brandy wholesaler's license may be issued only to the holder of a beer and wine wholesaler's license, and authorizes the person to whom it is issued (hereafter in this section called “licensee”) to sell only brandy produced in California to persons holding licenses authorizing the sale of brandy, and to export such brandy, subject to all of the following conditions:

(1) Such licensee shall:

(i) Maintain warehouse space either owned or leased by him or dedicated to his use in a public warehouse which space is sufficient to store at one time a stock of California brandy whose cost of acquisition is one hundred thousand dollars (\$100,000) or more.

(ii) Maintain at all times in his warehouse either owned or leased by him or in space dedicated to his use in a public warehouse a stock of California brandy whose cost of acquisition is one hundred thousand dollars (\$100,000) or more. If a licensee has more than one licensed premise, he shall be required to maintain warehouse space for and a stock of California brandy whose cost of acquisition is one hundred thousand dollars (\$100,000) or more only in connection with one licensed premise. For each of the remaining licensed premises, the licensee shall be required to maintain warehouse space for and a stock of California brandy whose cost of acquisition is thirty thousand dollars (\$30,000) or more. The stock of California brandy required by this paragraph shall be owned by the licensee, not held on consignment, and not acquired pursuant to a prior agreement to sell it to a specific licensee or licensees.

(2) Such licensee shall sell California brandy to retailers generally, rather than a few selected retailers. A licensee who sells to 25 percent of the retailers in the county where his California brandy wholesale licensed premises are located, or a licensee whose total volume of sales of California brandy to retailers during any 12-month period consists of 50 percent or more of individual sales in quantities of 10 cases or less shall be conclusively presumed to be selling to retailers generally.

(3) Such licensee may sell only one California brandy of one winegrower, which brandy is produced or bottled by such winegrower, or which is produced for, or is produced and packaged for, such winegrower, and is sold under a brand name owned or controlled by such winegrower.

(4) Such licensee, under the authority of his beer and wine wholesaler's license, shall stock and offer to sell to retailers a complete product line of California wines of the winegrower whose brandy the licensee handles. A “complete product line” for the purposes of this paragraph means all of the types of wines sold under a particular label.

(b) The number of California brandy wholesaler's licenses which may be issued shall not be limited by any rule of the department relating to the number which may be issued in any county, nor shall such licenses be included in any formula used by the department in determining the number of distilled spirits wholesaler's licenses which may be issued in a county.

(c) The fee for a California brandy wholesaler's license shall be two hundred seventy-six dollars (\$276) per year, which shall be deposited in the Alcoholic Beverage Control Fund.

**History.**—Added by Stats. 1970, Ch. 1518, in effect November 23, 1970.

**23378.2. Beer and wine wholesaler holding retail package license.** Notwithstanding any other provision of this division, a licensed wholesaler or importer may be issued and may hold retail package off-sale beer and wine licenses if the wholesaler or importer sells wine and no other alcoholic beverages at or from the retail premises.

**History.**—Added by Stats. 1988, Ch. 116, in effect May 25, 1988; amended by Stats. 1988, Ch. 284, in effect July 7, 1988.

**Cross reference.**—§ 23776(2).

**23379. Beer and wine wholesaler.** A beer and wine wholesaler's license also authorizes the labeling, bottling, or packaging of wine in accordance with and subject to the rules of the State Department of Public Health. A beer and wine wholesaler's license shall not permit the sale or delivery of wine to consumers in containers supplied, furnished, or sold by the consumer.

**23380. Industrial alcohol dealer.** An industrial alcohol dealer's license authorizes the sale of undenatured ethyl alcohol in packages of more than one gallon for use in the trades, professions, or industries and not for beverage consumption and also authorizes the importation and exportation of undenatured ethyl alcohol.

**History.**—Stats. 1957, Ch. 554, in effect September 11, 1957, added "and also authorizes the importation and exportation of undenatured ethyl alcohol."

**23381. Warehouse receipts.** Any manufacturer's, wine grower's, manufacturer's agent's, rectifier's or wholesaler's license authorizes the licensee to:

(a) Deal in warehouse receipts, for the kind of alcoholic beverages which the licensee is authorized to sell, with other licensed manufacturer's, wine growers, distilled spirits manufacturer's agents, rectifiers, or wholesalers who are authorized to sell the kind of alcoholic beverages covered by the warehouse receipt.

(b) Sell warehouse receipts for brandy produced in this State to licensees of other states who are authorized to deal in brandy, for the purpose of storage of the brandy covered by the warehouse receipts in internal revenue bonded warehouses in this State for subsequent export to another state.

Nothing in this division prohibits the sale of a warehouse receipt for alcoholic beverages by any other person, in accordance with rules adopted by the department, to manufacturers, wine growers, manufacturer's agents, rectifiers, and wholesalers licensed to sell the kind of alcoholic beverages covered by the warehouse receipt when the warehouse receipt was acquired by the person prior to May 1, 1941.

**History.**—Stats. 1955, Ch. 447, substituted "department" for "board."

**23382. Sale of bulk spirits.** An offer or agreement to sell distilled spirits, which at the time of the offer or agreement are stored in containers larger than one gallon capacity and the ownership of which is represented by a warehouse receipt, shall be deemed a sale of a warehouse receipt.

**23383. Transfers in warehouse; delivery for use outside State.** Any manufacturer's, wine grower's, manufacturer's agent's, importer's, rectifier's, or wholesaler's license also authorizes the transfer of title to the alcoholic beverages specified in the license to other licensed manufacturers, wine growers, manufacturer's agents, importers, rectifiers, and wholesalers when the alcoholic beverages are in storage in a licensed public warehouse, United States customs bonded warehouse, United States internal revenue bonded warehouse, or United States bonded wine cellars located at any place within the State without any additional or other license therefor. Such licensees also authorize the sale of alcoholic beverages specified in the license to persons who, under such procedure as shall be established by the department, take delivery of the alcoholic beverages in this State for delivery or use without the State.

**History.**—Stats. 1955, Ch. 1600, in effect September 7, 1955, substituted "wine cellars" for "storerooms" and "department" for "board."

**23384. Sales to federal areas, veterans homes and Indian lands.** Any licensed beer manufacturer, wine grower, brandy manufacturer, rectifier, or wholesaler may, in addition to the other privileges exercised under his or her license and in accordance with rules prescribed by the department sell tax-paid alcoholic beverages mentioned in the license of the licensee to nonlicensees having a fixed place of business or residence upon territory within this State which is maintained by the United States Government as a military or naval reservation or national park or veterans homes, and veterans homes maintained by the State of California, and Indian country or land dedicated for use by the Indians.

**History.**—Stats. 1955, Ch. 447, substituted "department" for "board". Stats. 1959, Ch. 1538, in effect September 18, 1959, added federal and state veterans homes. Stats. 1982, Ch. 906, in effect January 1, 1983, added and Indian country or land dedicated for use by the Indians.

**23385. Industrial spirits.** Any distilled spirits manufacturer's or brandy manufacturer's license and any rectifier's license authorizes the sale, in conformity with United States internal revenue laws and regulations, of the distilled spirits authorized to be sold by the license in packages larger than one gallon for use in the trades, professions, or industries and not for beverage use.

**Cross reference.**—§ 25173.

**23386. Samples.** (a) Any manufacturer's, wine grower's, manufacturer's agent's, rectifier's, importer's, or wholesaler's license also authorizes the giving away of samples of the alcoholic beverages that are authorized to be sold by the license under the rules that may be prescribed by the department. A retail license does not authorize the furnishing or giving away of any free samples of alcoholic beverages.

(b) Notwithstanding subdivision (a), an on-sale retail licensee authorized to sell wine may instruct consumers at the on-sale retail licensed premises regarding wines sold by the retail licensee. Notwithstanding subdivision (a), an on-sale retail licensee authorized to sell distilled spirits may instruct consumers at the on-sale retail licensed premises regarding distilled spirits. The instruction may include, without limitation, the history, nature, values, and characteristics of the product, and the methods of presenting and serving the product. The instruction of consumers may include the furnishing of not more than three tastings to any individual in one day. A single tasting of distilled spirits may not exceed one-fourth of one ounce and a single tasting of wine may not exceed one ounce. Nothing in this subdivision shall limit the giving away of samples pursuant to subdivision (a).

**History.**—Stats. 1955, Ch. 447, substituted "department" for "board." Stats. 1998, Ch. 248, in effect January 1, 1999, amended subd. (a) and added subd. (b).

**Cross reference.**—Rule 52.

**23387. Delivery for use outside of State.** In addition to the other privileges exercised under a wholesaler's or rectifier's license, a wholesaler or rectifier may sell the alcoholic beverages mentioned in his license to persons who take delivery of such alcoholic beverages within this State for delivery or use without the State within 90 days from the date of such sale in accordance with rules and regulations prescribed by the department.

**History.**—Stats. 1955, Ch. 447, substituted "department" for "board." Stats. 2006, Ch. 910, AB 3065, amended technical and non-substantive changes.

**23388. Beer on trucks.** A licensed beer manufacturer or a licensed beer wholesaler, in addition to selling beer at his licensed premises, may sell beer from wagons or trucks operated by him to licensees authorized to sell beer.

**23389. Beer manufacturer's branch office.** A licensed beer manufacturer may sell and deliver beer from branch offices located away from his or her place of manufacture and exercise all his or her license privileges, other than manufacture, at or from the branch offices. The department shall upon request issue to a beer manufacturer a duplicate of his or her original license which shall authorize the maintenance and operation of each branch declared and designated by him or her, upon the payment for each duplicate of the fee specified in Section 23320. Notwithstanding the provisions of any other section of this division, the duplicate license shall be issued forthwith upon the application therefor. In the event any protest is received by the department concerning the issuance of the duplicate license, the protest shall be considered as an accusation against the licensee and a hearing had thereon as if an accusation had been filed. For 30 days from the date of the issuance of the duplicate license, no retail sales of beer shall be made at any branch office for which a duplicate license is issued pursuant to this section.

**History.**—Stats. 1955, Ch. 447, substituted "department" for "board." Stats. 1957, Ch. 630, in effect September 11, 1957, added the second and third paragraphs. Stats. 2001, Ch. 488 in effect January 1, 2002, established a new fee schedule.

**23390. Winegrower's or brandy manufacturer's branch offices.** A licensed winegrower or brandy manufacturer, in addition to exercising all the privileges of his or her license at his or her licensed premises, may exercise all his or her license privileges at or from branch offices or warehouses, or United States bonded wine cellars located away from his or her place of production or manufacture, other than production or manufacture, the sale of wine or brandy to consumers for consumption on the premises in a bona fide eating place, and the sale or delivery of wine to consumers in containers supplied, furnished, or sold by the consumer. The department shall, upon request, issue to a winegrower or brandy manufacturer a duplicate of his or her original license for a location or locations other than his or her wine production or brandy manufacture premises. The duplicate license authorizes the maintenance and operation of each branch or warehouse or United States bonded wine cellar declared and designated by the winegrower or brandy manufacturer at the location for which the duplicate license is issued. The fee for each duplicate winegrower's license and for each duplicate brandy manufacturer's license is as specified in Section 23320. Notwithstanding the provisions of any other section of this division, a duplicate winegrower's license or duplicate brandy manufacturer's license shall be issued forthwith upon the application therefor. In the event any protest is received by the department concerning the issuance of the duplicate license, the protest shall be considered as an accusation against the licensee and a hearing had thereon as if an accusation had been filed. For 30 days from the date of the issuance of the duplicate license, no retail sales of wine or brandy shall

be made at any branch office for which a duplicate winegrower's license or duplicate brandy manufacturer's license is issued pursuant to this section. Notwithstanding any other provision of law, the department may allow any person who held more than one original winegrower's license, on or before January 1, 1981, to transfer any duplicate license which has been issued, on or before January 1, 1981, on any of the original winegrower's licenses to any other original winegrower's license held by that person, on or before January 1, 1981, provided that the licensee cancels the original winegrower's license from which any duplicate license is transferred. This subdivision shall not authorize any person to acquire any additional duplicate licenses other than those held by that licensee on or before January 1, 1981.

**History.**—Stats. 1955, Ch. 1600, in effect September 7, 1955, substituted “wine cellars” for “storerooms,” “department” for “board” and “wine cellar” for “storeroom.” Stats. 1957, Ch. 630, in effect September 11, 1957, added the second and third paragraphs. Stats. 1967, Ch. 1067, in effect November 8, 1967, added provision for on-sale privileges in bona fide eating place in first sentence. Stats. 1970, Ch. 631, in effect November 23, 1970, authorized consumption of brandy in bona fide eating place. Stats. 1981, Ch. 450, in effect January 1, 1982, added last paragraph. Stats. 2001, Ch. 488 in effect January 1, 2002, established a new fee schedule.

**23390.5. Licensed branch office.** (a) As used in this section, “licensed branch office” means any branch office or warehouse, or United States bonded wine cellar located away from the licensed winegrower's or brandy manufacturer's place of production, or manufacture, for which a duplicate license has been issued.

(b) Notwithstanding the provisions of Section 23358, 23360, and 23390, no licensed winegrower or brandy manufacturer shall sell wine or brandy to consumers for consumption off the premises where sold or engage in winetasting activities at more than one licensed branch premise. This section is not and shall not be construed to be retroactive and notwithstanding any other provisions of this division shall not prohibit such sales or limit the quantity thereof or prohibit winetasting activities at any licensed branch office or branch offices under the existing duplicate license or licenses therefor in existence on the effective date of this section or any renewal or transfer thereof or at any licensed branch office opened by the licensee in place of such licensed branch office.

**History.**—Added by Stats. 1965, Ch. 499, in effect September 17, 1965.

**Cross reference.**—Atty. Gen. Op. 5-11-67, Rule 53.

**23391. Violation at branch office.** If a violation of any provision of this division or of any rule of the department is committed in the exercise of the license privileges authorized to be exercised at any branch office, and the violation becomes a matter of investigation, hearing, or decision by the department with relation to the license of the licensee, the department in making its ruling or decision, if the violation is found to be one committed in connection with the operation of the branch office and not a violation in connection with manufacturing or production or the manufacturing or production premises, shall not suspend, revoke, or interfere with the manufacturer's or wine grower's license privileges or license at his place of manufacture or production but shall limit the application of its decision, permissible under this division, to and in connection with the particular duplicate license and the premises in the operation of which the violation occurred.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

**23392. Violation at production premises.** If a violation of any provision of this division or of any rule of the department is committed in connection with the premises where the act of manufacturing beer or producing wine is performed, the department in making its ruling or decision in connection with the violation shall limit its decision, permissible under this division, to and in connection with the license upon

the premises of manufacture or production and to the particular function exercised by the licensee wherein a violation occurred, such as manufacturing, production, importing, exporting, packaging, labeling, selling to wholesalers, or selling to retailers, and any existing duplicate license for any branch office, unless the branch office actually participated in the commission of the violation, shall not be affected or interfered with by the decision or by reason of the violation.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

**23393. Off-sale beer and wine.** A retail package off-sale beer and wine license authorizes the sale, to consumers only and not for resale, of beer in containers, and wine in packages and in quantities of 52 gallons or less per sale, for consumption off the premises where sold.

**History.**—Stats. 1965, Ch. 721, in effect September 17, 1965, deleted 31-gallon beer limitation.

**23394. Off-sale general privileges.** An off-sale general license includes the privileges specified in Section 23393 and authorizes the sale, to consumers only and not for resale, except to holders of daily on-sale general licenses issued pursuant to Section 24045.1, of distilled spirits for consumption off the premises where sold. Standards of fill for distilled spirits authorized for sale pursuant to this section shall conform in all respects to the standards established pursuant to regulations issued under the Federal Alcohol Administration Act (27 U.S.C. Secs. 201 et seq.) and any amendments thereto.

**History.**—Added by Stats. 1977, Ch. 1044, in effect January 1, 1980. Stats. 1980, Ch. 24, in effect January 1, 1981, deleted restrictions on miniature bottles.

**23394.5. Off-sale general premises.** No privileges under an off-sale general license, except as provided in Section 23106, shall be exercised by the licensee in more than one room or building unless the rooms or buildings are contiguous and the access between such rooms or buildings is adequate and available for general public use without the necessity of using any public or private street, alley or sidewalk.

**Note.**—The provisions of this act shall not be retroactive in their application.

**History.**—Added by Stats. 1959, Ch. 198, in effect September 18, 1959.

**23395. Bitters, off-sale.** Nothing in this division prevents the sale, in packages of less than one-half pint, of bitters or other aromatic or flavoring or medicinal preparations, which are classed for taxing purposes as distilled spirits, by off-sale general licensees.

**23396. On-sale.** Any on-sale license authorizes the sale of the alcoholic beverage specified in the license for consumption on the premises where sold. No alcoholic beverages, other than beers, may be sold or served in any bona fide public eating place for which an on-sale license has been issued unless the premises comply with the requirements prescribed in Section 23038, 23038.1, or 24045.1.

**History.**—Stats. 1955, Ch. 1779, in effect January 1, 1957, added the second sentence. Stats. 1967, Ch. 1296, in effect November 8, 1967, deleted “other than beers” in second sentence. Stats. 1968, Ch. 860, in effect November 13, 1968, added “other than beers” and section 23038.1. Stats. 1969, Ch. 1123, in effect November 10, 1969, added section 24045.1.

**23396.1. Restricted service lodging establishments.** (a) An on-sale general license for restricted service lodging establishments authorizes those hotels and motels described in subdivision (b) to sell or furnish alcoholic beverages for consumption on the premises by means of:

(1) Controlled access alcoholic beverage cabinets located in guestrooms, subject to the conditions specified in Section 23355.2.

(2) Furnishing alcoholic beverages only to their transient guests and their invitees under circumstances where the uniform cost of the alcoholic beverages is included in the price of the overnight transient occupancy accommodation, whether or not separately stated.

(b) For purposes of this division, a “restricted service lodging establishment” is a hotel or motel, within the meaning of subdivision (f) of Section 23355.2, which meets all of the following conditions:

(1) It does not operate a bona fide eating place or other public premise.

(2) It has at least 10 guestroom accommodations.

(3) It does not derive more than 5 percent of its total gross annual revenues from sales of alcoholic beverages.

(c) A premises licensed pursuant to this section shall not be authorized to sell or furnish alcoholic beverages to the general public, shall not be entitled to a caterer’s permit pursuant to Section 23399, and shall not be entitled to exercise any off-sale privileges pursuant to Section 23401. The provisions of Article 2 (commencing with Section 23815) of Chapter 5 do not apply to the issuance of on-sale general licenses for restricted service lodging establishments. An on-sale general restricted service lodging establishment license may be transferred to another person but not to another location. A licensee specified in this section shall purchase no alcoholic beverages for sale in this state other than from a wholesaler or winegrower licensee.

(d) An applicant for an original on-sale general license for restricted service lodging establishments shall, at the time of filing the application for the license, accompany the application with a fee of six thousand dollars (\$6,000). The annual renewal fee for a license issued pursuant to this section shall be the same as the applicable annual renewal fee for an on-sale general license.

**History.—Added by Stats. 1991, Ch. 726, in effect January 1, 1992.**

**23396.2. Wine, Food and Art Cultural Museum.** (a) An on-sale general license for a wine, food and art cultural museum, and educational center authorizes those persons described in subdivision (b) to sell, furnish, or give alcoholic beverages for consumption on the premises and off-sale privileges, as further qualified herein.

(b) For purposes of this division, “a wine, food and art cultural museum, and educational center” is a person which meets all the following conditions:

(1) The retail premises shall include an auditorium, concert terrace, exhibition gallery, teaching kitchen, and library and may be adjacent to a bona fide eating place as defined in Section 23038.

(2) The premises is located in Napa County, operated by a nonprofit entity that is exempt from payment of income taxes under Section 501(c)(3) of the Internal Revenue Code, and includes real estate improvements of a value of at least forty-five million dollars (\$45,000,000).

(c) The department shall upon request and qualification issue an on-sale general wine, food and art cultural museum, and educational center licensee a duplicate of the original license for a premises located on commonly owned property contiguous to, or in close proximity to the original licensed premises. As used in this section, “close proximity” shall mean the original licensed premises is no further than 900 feet from the premises issued the duplicate license regardless of whether the two premises are separated by a public or private street, alley, or sidewalk.

(d) There shall be no limit as to the number of events held on an on-sale general wine, food and art cultural museum, and educational center premises or duplicate premises at which a person or persons issued caterer’s permits under Section 23399

may sell alcoholic beverages so long as the on-sale general license for a wine, food and art cultural museum, and educational center surrenders its license privileges for any portion of the premises at which a catered event is held for the duration of the event.

(e) A wine, food and art cultural museum, and educational center licensed under this section shall not be included in the definition of “public premises” under Section 23039.

(f) The provisions of Article 2 (commencing with Section 23815) of Chapter 5 do not apply to the issuance of on-sale general licenses for a wine, food and art cultural museum, and educational center. An on-sale wine, food and art cultural museum, and educational center license may be transferred to another person, qualified pursuant to subdivision (b), but not to another location. A licensee specified in this section shall purchase no alcoholic beverages for sale in this state other than from a wholesaler or winegrower licensee. Notwithstanding any other provision of this division, licensees may donate wine to a person licensed under this section.

(g) Notwithstanding any other provision of this division, a manufacturer, winegrower, manufacturer’s agent, California winegrower’s agent, rectifier, distiller, bottler, importer, or wholesaler may hold the ownership of any interest, directly or indirectly, in the premises and in the license of a wine, food and art cultural museum, and educational center, may serve as an officer, director, employee, or agent of a wine, food and art cultural museum, and educational center licensee, and may sponsor or fund educational programs, special fundraising and promotional events, improvements in capital projects, and the development of exhibits or facilities of and for a wine, food and art cultural museum, and educational center licensee provided the number of items of beer, wine, or distilled spirits by brand, exclusive of wine labeled for the wine, food and cultural museum, and educational center licensee authorized in subdivision (a) of this section, offered for sale by the wine, food and art cultural museum, and educational center licensee, which are produced, bottled, rectified, distilled, processed, imported, or sold by an individual licensee holding an interest in, serving as an officer, director, employee or agent of, or sponsoring or funding the programs and projects of the retail licensee, does not exceed 15 percent of the total items of beer, wine, or distilled spirits by brand listed and offered for sale in the retail licensed premises.

(h) An applicant for an original on-sale general license for a wine, food and art cultural museum, and educational center shall, at the time of filing the application for the license, accompany the application with a fee of twelve thousand dollars (\$12,000). The annual renewal fee for a license issued pursuant to this section shall be the same as the applicable renewal fee for an on-sale general license.

(i) An applicant for a duplicate on-sale general license for a wine, food and art cultural museum, and educational center shall, at the time of filing the application for the license, accompany the application with a fee equal to the license fee for an on-sale general license. The annual renewal fee for a duplicate license issued pursuant to this section shall be the same as the applicable renewal fee for an on-sale general license.

**History.—**Added by Stats. 2000, Ch. 231, in effect January 1, 2001. Stats. 2005, Ch. 171, SB 127, in effect January 1, 2006, amended language to delete limitations of off-sale cases of wine.

**23396.3. Brewpub-restaurant license.** (a) A brewpub-restaurant license is an on-sale retail license which may be issued to a bona fide public eating place, as defined in Section 23038. The licensed premises shall have a minimum seven-barrel brewing capacity, and the licensee shall produce not less than 100 barrels nor more than 5,000

barrels of beer annually on the licensed premises. The license authorizes the sale of beer, wine, and distilled spirits for consumption on the premises, and the sale of beer produced by the brewpub-restaurant licensee for consumption on the premises. The license also authorizes the sale of beer produced by the licensed brewpub-restaurant licensee to a licensed beer and wine wholesaler, subject to the requirements of Chapter 12 (commencing with Section 25000). A brewpub-restaurant license does not authorize the sale, furnishing, or exchange of any alcoholic beverages with any other brewpub-restaurant licensee or any retail licensee in California.

(b) A brewpub-restaurant licensee shall purchase all beer, wine, or distilled spirits for sale on the licensed premises from a licensed wholesaler or winegrower, except for the beer produced by the brewpub-restaurant licensee on the licensed premises.

(c) A brewpub-restaurant licensee shall offer for sale on the licensed premises canned, bottled, or draft beer commercially available from licensed wholesalers.

(d) The fee for an original brewpub-restaurant license shall be the same as that specified in Section 23954.5 for an original on-sale general license.

(e) The annual license fee for a brewpub-restaurant license shall be the same as that for an on-sale general license.

(f) The limitations provided in Section 23816 on the number of licensed premises shall not apply to a brewpub-restaurant licensee.

*History.—Added by Stats. 1996, Ch. 1098, in effect January 1, 1997.*

**23396.5. Removal of opened wine bottle.** Notwithstanding any other provision of law, any on-sale licensee, which maintains a bona fide eating place in conjunction with such license, may allow any person who has purchased and partially consumed a bottle of wine to remove such partially consumed bottle from the premises upon departure.

*History.—Added by Stats. 1980, Ch. 72, in effect January 1, 1981.*

**23397. Trains, boats and airplanes.** Alcoholic beverages may be served on trains, boats, and airplanes under onsale licenses issued for trains, boats, and airplanes, only to passengers or employees not on duty.

Beer may be served on boats under an onsale beer license for fishing party boats except during the time such boats are at a dock.

*History.—Stats. 1955, Ch. 954, in effect September 7, 1955, added reference to airplanes. Stats. 1959, Ch. 2192, in effect September 18, 1959, added last paragraph. Stats. 1963, Ch. 1218, in effect September 20, 1963, deleted second paragraph.*

**23398. Bitters, On-sale.** Nothing in this division prevents the purchase or possession in packages of less than one-half pint capacity of bitters or other aromatic or flavoring or medicinal preparations, which are classed for taxing purposes as distilled spirits, by on-sale licensees.

**23398.5. Soju, on-sale.** Any on-sale license, issued pursuant to this division that authorizes the sale of wine, also authorizes the sale of soju, an imported Korean alcoholic beverage that contains not more than 24 percent of alcohol by volume and is derived from agricultural products.

*History.—Added by Stats. 1998, Ch. 204, in effect January 1, 1999.*

**23399. On-sale general; caterer's permit.** (a) An on-sale general license authorizes the sale of beer, wine, and distilled spirits for consumption on the premises where sold. Any licensee under an on-sale general license, a club license, or a veterans' club license may apply to the department for a caterer's permit. A caterer's permit under an on-sale general license shall authorize the sale of beer, wine, and distilled spirits for consumption at conventions, sporting events, trade exhibits, picnics, social

gatherings, or similar events held any place in the state approved by the department. A caterer's permit under a club license or a veterans' club license shall authorize sales at these events only upon the licensed club premises.

(b) Any licensee under an on-sale general license or an on-sale beer and wine license may apply to the department for an event permit. An event permit under an on-sale general license or an on-sale beer and wine license shall authorize, at events held no more frequently than four days in any single calendar year, the sale of beer, wine, and distilled spirits only under an on-sale general license or beer and wine only under an on-sale beer and wine license for consumption on property adjacent to the licensed premises and owned or under the control of the licensee. This property shall be secured and controlled by the licensee and not visible to the general public.

(c) This section shall in no way limit the power of the department to issue special licenses under the provisions of Section 24045 or to issue daily on-sale general licenses under the provisions of Section 24045.1. Consent for sales at each event shall be first obtained from the department in the form of a catering or event authorization issued pursuant to rules prescribed by it. Any event authorization shall be subject to approval by the appropriate local law enforcement agency. Each catering or event authorization shall be issued at a fee not to exceed ten dollars (\$10) and this fee shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

(d) At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the act pertaining to the conduct of on-sale premises and violation of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises.

(e) The fee for a caterer's permit for a licensee under an on-sale general license or an event permit for a licensee under an on-sale general license or an on-sale beer and wine license shall be one hundred four dollars (\$104) for permits issued during the 2002 calendar year, one hundred seven dollars (\$107) for permits issued during the 2003 calendar year, one hundred ten dollars (\$110) for permits issued during the 2004 calendar year, and for permits issued during the years thereafter, the annual fee shall be calculated pursuant to subdivisions (b) and (c) of Section 23320, and the fee for a caterer's permit for a licensee under a club license or a veterans' club license shall be as specified in Section 23320, and the permit may be renewable annually at the same time as the licensee's license. A caterer's or event permit shall be transferable as a part of the license.

**History.**—Stats. 1955, Ch. 1801, in effect September 7, 1955, added all of section after first sentence. Stats. 1957, Ch. 488, in effect September 11, 1957, added reference to veterans' club licenses, added the fifth sentence, and set separate fees for permits under club licenses and on-sale general licenses. Stats. 1959, Ch. 1123, in effect November 10, 1959, included issuance of daily on-sale general licenses. Stats. 1978, Ch. 656, in effect January 1, 1979, added fee for catering authorization. Stats. 1992, Ch. 900, in effect September 25, 1992, provided that fees be deposited in ABC Fund. Stats. 1997, Ch. 103, in effect July 21, 1997, amended language and added event permit to be issued to qualified licensees on property adjacent to licensed premises. Stats. 1999, Ch. 699, in effect January 1, 2000, amended to permit on-sale beer and wine licensees to obtain event permit. Stats. 2001, Ch. 1149, in effect January 1, 2002, established a new fee schedule. Stats. 2005, Ch. 63, AB 111, in effect January 1, 2006, amended number of days for an event permit from 1 day to 4 days in subd. (b), and amended calendar quarter to calendar year.

**Caterer's permit dependent on on-sale general license.** Nightclub owner's caterer's permit to sell or serve alcoholic beverages was dependent upon existence of a valid and unrevoked on-sale general license, and upon revocation of owner's on-sale general license, caterer's permit also became invalid and revoked. *Department of Alcoholic Beverage Control v. Locker*, 129 Cal. App. 3d 388.

**Cross reference.**—Rule 60.5.

**23399.1. When license not required.** No license or permit shall be required for the serving and otherwise disposing of alcoholic beverages where all of the following conditions prevail:

1. That there is no sale of an alcoholic beverage.

2. That the premises are not open to the general public during the time alcoholic beverages are served, consumed or otherwise disposed of.

3. That the premises are not maintained for the purpose of keeping, serving, consuming or otherwise disposing of alcoholic beverages.

Provided, however, that nothing in this section shall be construed to permit any person to violate any provision of the Alcoholic Beverage Control Act.

**History.**—Added by Stats. 1955, Ch. 1801, in effect September 7, 1955.

**23399.2. Special on-sale general license defined.** Premises for which a special on-sale general license is issued may be operated only as a club by an organization which meets all the requirements of Section 23037, or by an organization which meets all of such requirements except that it is operated for pecuniary gain, or its property is not owned by its members, or both.

**History.**—Added by Stats. 1961, Ch. 1914, in effect September 15, 1961.

**23399.3. On-sale special beer and wine license.** (a) An on-sale special beer and wine license for hospitals, convalescent homes, and rest homes, authorizes the sale or service of beer and wine purchased from a licensed winegrower or beer and wine wholesaler only to patients or residents of the licensed hospital, convalescent home, or rest home. Such a license shall not be transferable from person to person and no off-sale privileges shall be exercised under such a license. Nothing in this section shall be construed to require a license for the service of beer and wine purchased at retail.

(b) As used in this section, “rest home” includes an apartment building, whether licensed or unlicensed, which rents exclusively to persons age 62 and older, and provides one to three meals daily for tenants.

**History.**—Added by Stats. 1972, Ch. 1280, in effect March 7, 1973. Stats. 1986, Ch. 701, in effect January 1, 1987, added subd. (b).

**23399.4. Farmers’ Market.** (a) A licensee under a winegrower’s license may apply to the department for a certified farmers’ market sales permit. A certified farmers’ market sales permit shall authorize the licensee, a member of the licensee’s family, or an employee of the licensee to sell wine produced and bottled by the winegrower entirely from grapes grown by the winegrower at a certified farmers’ market at any place in the state approved by the department. The permit may be issued for up to 12 months but shall not be valid for more than one day a week at any single specified certified farmers’ market location. A winegrower may hold more than one certified farmers’ market sales permit. The department shall notify the city, county, or city and county and applicable law enforcement agency where the certified farmers’ market is to be held of the issuance of the permit. A “certified farmers’ market” means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code, and the regulations adopted pursuant thereto.

(b) The licensed winegrower eligible for the certified farmers’ market sales permit shall not sell more than 5,000 gallons of wine annually pursuant to all certified farmers’ market sales permits held by any single winegrower. The licensed winegrower shall report total certified farmers’ market wine sales to the department on an annual basis. The report may be included within the annual report of production submitted to the department, or pursuant to any regulation as may be prescribed by the department.

(c) The fee for any permit issued pursuant to this section shall be forty-four dollars (\$44) for permits issued during the 2002 calendar year, forty-seven dollars (\$47) for permits issued during the 2003 calendar year, fifty dollars (\$50) for permits issued

during the 2004 calendar year, and for permits issued during the years thereafter, the annual fee shall be calculated pursuant to subdivisions (b) and (c) of Section 23320.

(d) All money collected as fees pursuant to this section shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

**History.—**Added by Stats. 2000, Ch. 384, effective January 1, 2001. Stats. 2001, Ch. 488 in effect January 1, 2002, established a new fee schedule.

**23399.5. Limousine, hot air balloon ride services serving alcoholic beverages.** (a) No license or permit is required for the serving of alcoholic beverages in a limousine by any person operating a limousine service regulated by the Public Utilities Commission; provided there is no extra charge or fee for the alcoholic beverages.

For purposes of this subdivision, there is no extra charge or fee for the alcoholic beverages when the fee charged for the limousine service is the same regardless of whether alcoholic beverages are served.

(b) No license or permit is required for the serving of alcoholic beverages as part of a hot air balloon ride service, provided there is no extra charge or fee for the alcoholic beverages.

For purposes of this subdivision, there is no extra charge or fee for the alcoholic beverages when the fee charged for the hot air balloon ride service is the same regardless of whether alcoholic beverages are served.

**History.—**Added by Stats. 1986, Ch. 1354, in effect January 1, 1987. Stats. 1998, Ch. 639, in effect January 1, 1999, added sub. (b) hot air balloon ride service.

**23399.6. Wine Sales Event Permit.** (a) Any licensee under a winegrower's license may apply to the department for a wine sales event permit. The wine sales event permit shall authorize the sale of bottled wine produced by the winegrower at festivals, state, county, district, or citrus fruit fairs, civic or cultural celebrations, or similar events approved by the department. The sale of the wine shall not be the primary purpose of the event, and the sale shall be for consumption off the premises where sold. The permit shall be valid for a maximum of five consecutive days during the event period. The event shall be sponsored by an organization that is exempt from taxation under Section 23701a of the Revenue and Taxation Code, including state designated fairs as specified in Section 19418 of the Revenue and Taxation Code, or exempt from taxation under Section 23701b, 23701d, 23701e, 23701k, 23701l, 23701r, or 23701w of the Revenue and Taxation Code.

(b) A wine sales event permit may not be used more than two times a month at a particular location.

(c) Consent for sales at each event shall first be obtained by an annual authorization issued by the department. The applicant for the wine sales permit is required to notify the city, county, or city and county where the event is being held at least five days prior to the event. At all events, a copy of the wine sales permit shall be maintained. The licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the act pertaining to that license, and any violation of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises.

(d) (1) A licensee may not sell more than 5,000 gallons of wine annually pursuant to wine sales event permits issued under this section to that licensee.

(2) A licensee holding a wine sales event permit may not sell more than 1,250 gallons of wine per event.

(3) A licensee that is eligible to receive a certified farmers' market sales permit under Section 23399.4 and a wine sales event permit may not, under both permits collectively, sell more than a total of 5,000 gallons of wine annually.

(4) The licensee shall annually report to the department the total gallons of wine sold by that licensee under permits issued under this section to that licensee. The report may be included within the annual report of production submitted by the licensee to the department, or may be made in another manner as prescribed by the department in regulation.

(e) The sponsoring tax-exempt organization may charge a fee of the licensee for the licensee's use of display booth space. The fee, if paid, shall be comparable with, or less than, fees, or goods or services of equivalent value, paid by other vendors at the event for a similar booth size and location.

(f) The sponsoring tax-exempt organization shall allow the participation of more than one winegrower under a wine sales event permit at an event if public attendance at the event is expected to reach or exceed 1,000 attendees. The prior year's stated attendance for the event shall be used to determine the expected attendance.

(g) (1) The fee for the authorization to utilize a wine sales permit shall be fifty dollars (\$50) per year, and the authorization may be renewable annually at the time of the licensee's license. The wine sales permit authorization shall be transferable as part of the license.

(2) All money collected as fees pursuant to this subdivision shall be deposited in the Alcohol Beverage Control Fund, as described in Section 25761, for allocation, upon appropriation by the Legislature, as provided in subdivision (d) of that section.

(h) The department may adopt any regulations as it determines to be necessary for the administration of this section.

SEC. 2. The department shall, 24 months after the effective date of this act, report to the Legislature on whether the fifty dollar (\$50) wine event sales permit fee imposed pursuant to subdivision (g) of Section 23399.6 provides sufficient funds to compensate the department for any additional administrative and enforcement duties it is required to perform pursuant to this act.

*History.—Added by Stats. 2003, Ch. 588, in effect January 1, 2004.*

23399.7. **Golf cart sales.** Any license issued to any golf course facility, or any license issued to a licensee that operates at any golf course facility, entitles the licensee to make sales of alcoholic beverages from any golf cart, as defined in Section 345 of the Vehicle Code, that the licensee operates on the golf course premises.

*History.—Added by Stats. 1997, Ch. 21, in effect June 6, 1997.*

23400. **On-sale general, package sizes.** An on-sale general license authorizes the purchase and possession of distilled spirits in packages which packages shall conform with standards of fill for distilled spirits in all respects to the regulations issued pursuant to Federal Alcohol Administration Act (27 U.S.C. Secs. 201 et seq.) and any amendments thereto. An on-sale general license shall not authorize the purchase of distilled spirits in packages containing less than six ounces or whiskey, gin, or vodka in packages containing one-tenth gallon.

*History.—Stats. 1975, Ch. 167, in effect January 1, 1976, deleted package quantity limitations and added requirements for conformity in size with federal regulations and second sentence.*

23401. **Off-sale privileges under on-sale licenses.** An on-sale general license, with respect to beer and wine, and any on-sale license, with respect to the particular beverage or beverages mentioned in the license, also authorizes the exercise of the rights and privileges granted by an off-sale beer and wine license; provided, however,

that a daily on-sale general license issued pursuant to Section 24045.1 shall not authorize the foregoing rights and privileges. None of the licensees mentioned in this section may, by reason of any license mentioned in this section, label, bottle, package, or refill any package with any alcoholic beverage.

**History.—Stats. 1969, Ch. 1123, in effect November 10, 1969, included provision restricting privileges of daily on-sale general license.**

**23402. Purchases by retail licensees.** No retail on- or off-sale licensee, except a daily on-sale general licensee holding a license issued pursuant to Section 24045.1, shall purchase alcoholic beverages for resale from any person except a person holding a beer manufacturer's, wine grower's, rectifier's, brandy manufacturer's, or wholesaler's license.

**History.—Stats. 1957, Ch. 148, in effect September 11, 1957, added "brandy manufacturer's." Stats. 1969, Ch. 1123, in effect November 10, 1969, added exception for daily on-sale general licensee.**

**23403. Retail sale of undenatured alcohol.** No retail licensee, except a pharmacy or drug store registered with the California State Board of Pharmacy, shall sell or possess on his licensed premises any undenatured alcohol of any proof or compound thereof which is an alcoholic beverage as defined in Section 23004 containing more than 60 percent of alcohol by volume. Undenatured alcohol shall be sold at retail only upon the prescription or order of the holder of a physician's and surgeon's certificate or a dentist's or veterinarian's license. Any person who violates any of the provisions of this section is guilty of a misdemeanor.

**23404. Salesman violating act.** It is unlawful for any salesman to aid or abet in the violation of any of the provisions of this division or knowingly to become a party, either directly or indirectly, in the violation of any of the provisions of this division.

**23405. Transfer of corporate stock.** (a) Any corporation holding a license under this division shall maintain a record of its shareholders at the principal office of the corporation in California and the record of its shareholders shall be available to the department for inspection. The corporation shall report to the department in writing any of the following:

(1) Issuance or transfer of any shares of stock to any person where the issuance or transfer results in the person owning 10 percent or more of the corporate stock.

(2) Change in any of the corporate officers which are required by Section 312 of the Corporations Code.

(3) Change of the members of its board of directors.

The report shall be filed with the department within 30 days after the issuance or transfer of corporate stock, change in corporate officers, or change in members of the board of directors, as the case may be.

(b) Any licensee within the purview of this section who is required by federal law to report to the federal government under the provisions of the Federal Alcohol Administration Act or the Internal Revenue Code the information required by this section may send to the department a copy of the report at the same time as it is sent to the federal government, and the copy of the report sent to the department by the licensee shall be deemed sufficient compliance with the provisions of this section.

(c) The provisions of this section shall not apply to any of the following:

(1) A corporation the stock of which is listed on a stock exchange in this state or in the City of New York, State of New York.

(2) A bank, trust company, financial institution or title company to which a license is issued in a fiduciary capacity.

(3) A corporation which is required by law to file periodic reports with the Securities and Exchange Commission.

(d) The department may deny any application or suspend or revoke any license of a corporation subject to the provisions of this section where conditions exist in relation to any officer, director, or person holding 10 percent or more of the corporate stock of that corporation which would constitute grounds for disciplinary action against that person if the person was a licensee.

**History.**—Added by Stats. 1961, Ch. 544, in effect September 15, 1961. Stats. 1975, Ch. 682, in effect January 1, 1977, substituted "record of its shareholders" for "stock register" and Section "312" for "821." Stats. 1998, Ch. 639, in effect January 1, 1999, added 'deny any application' to subd. (d).

**Cross reference.**—Rule 68.5.

**23405.1. Limited partnership report.** (a) Any limited partnership holding a license under this division shall maintain a register at the principal office of the limited partnership in California and the register shall be available to the department for inspection. The limited partnership shall report to the department in writing the assignment or transfer of the interest of any limited partner of the limited partnership where the assignment or transfer results in a person owning as a limited partner 10 percent or more of the capital or profits of the limited partnership. The limited partnership shall report to the department in writing any change in the general partners of the limited partnership.

The report shall be filed with the department within 30 days after the assignment or transfer of the limited partnership interest.

(b) Any licensee within the purview of this section who is required by federal law to report to the federal government under the provisions of the Federal Alcohol Administration Act or the Internal Revenue Code the information required by this section shall send to the department a copy of the report at the same time as it is sent to the federal government. The copy of the report sent to the department by the licensee shall be deemed sufficient compliance with the provisions of this section.

(c) The department may deny any application or suspend or revoke any license of a limited partnership subject to the provisions of this section where conditions exist in relation to any general partner or any limited partner holding 10 percent or more of the capital or profits of the limited partnership that would constitute grounds for disciplinary action against that person if he or she were a licensee.

(d) The register referred to in subdivision (a) of this section shall consist of a register showing the names of the current limited partners (whether original limited partners or substituted limited partners), the current assignees of limited partnership interests, and their addresses, the interest in the capital and profits of the limited partnership owned by each limited partner and each assignee of a limited partnership interest, the number and date of certificates, if any, issued for limited partnership interests, and the number and date of cancellation of every certificate surrendered for cancellation. The above information may be kept by the limited partnership on punch cards, magnetic tape, or other information storage device related to electronic data-processing equipment provided that the card, tape, or other equipment is capable of reproducing the information in clearly legible form for the purposes of inspection as provided in this section.

**History.**—Added by Stats. 1973, Ch. 47, in effect May 15, 1973. Stats. 1998, Ch. 639, in effect January 1, 1999, amended subds. (a) and (c).

**23405.2. Limited partnership application.** *Repealed by Stats. 1998, Ch. 639.*

**History.**—Added by Stats. 1973, Ch. 680, in effect September 21, 1973. Stats. 1981, Ch. 553, in effect January 1, 1982, deleted section referring to Securities and Exchange Commission from first paragraph.

23405.2. **Limited liability company report.** (a) Any limited liability company holding a license under this division shall maintain a record of its members at the principal office of the company in California and the record of its members shall be available to the department for inspection. The company shall report to the department in writing any of the following:

(1) Issuance or transfer of memberships to any person where the issuance or transfer results in the person owning 10 percent or more of the voting interests of the company.

(2) If the limited liability company is managed by a manager or managers, any change in the manager or managers of the company.

(3) If any officer has been appointed, any change in the officers of the company.

The report shall be filed with the department within 30 days after the issuance or transfer of membership voting interests, or any change in members, managers, or officers.

(b) Any limited liability company within the purview of this section that is required under the provisions of the Federal Alcohol Administration Act or the Internal Revenue Code to report to the federal government the information required by this section may send to the department a copy of the report at the same time as it is sent to the federal government. The copy of the report sent to the department by the company shall be deemed sufficient compliance with the provisions of this section.

(c) The reporting requirements of subdivision (b) shall not apply to a limited liability company that is required by law to file periodic reports with the Securities and Exchange Commission.

(d) The person or persons who are required to sign the application shall certify to the department on forms prescribed by the department whether or not any member, manager, or officer holds an ownership interest, directly or indirectly, in any license within or without this state to manufacture, import, distribute, rectify, or sell alcoholic beverages. The department may deny any application or suspend or revoke any license under this section in the event any member, manager, or officer holds or acquires any prohibited ownership interest, directly or indirectly, in any licensed business in violation of the tied-house provisions of Chapter 15 (commencing with Section 25500).

(e) The department may deny any application and suspend or revoke any license of a limited liability company subject to the provisions of this section where conditions exist in relation to any manager, officer, or person holding 10 percent or more of the voting interests of the limited liability company that would constitute grounds for disciplinary action against the person if he or she was a licensee.

(f) All articles of organization and operating agreements of a limited liability company or certificates or amendments thereto shall be filed with the department at the time of filing the application for the license. All articles of organization, operating agreements, certificates, or amendments executed after the issuance of the license shall be filed with the department within 30 days after execution.

(g) The requirements of this section are in addition to the requirements set forth in the Beverly-Killea Limited Liability Company Act, Title 2.5 (commencing with Section 17000) of the Corporations Code.

**History.—**Added by Stats. 1996, Ch. 44, in effect May 15, 1996. Stats. 1998, Ch. 639 in effect January 1, 1999, amended subds. (e) and (f), and renumbered Section from 23405.3.

#### Article 4. Club Licenses

- § 23425. National fraternal orders.
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- § 23429. Constitutional definition.
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- § 23434. Nonprofit organization, volunteer work.
- § 23435. Membership and duration.
- § 23437. Restriction of off-sale privileges.
- § 23438. Deductibility of club expenses.

**23425. National fraternal orders.** For the purposes of this article "club" means:

(a) Any chapter, aerie, parlor, lodge, or other local unit of an American national fraternal organization which has as the owner, lessee, or occupant thereof operated an establishment for fraternal purposes. An American national fraternal organization as used in this subdivision shall actively operate in not less than 20 states of the Union and have not less than 175 local units in those 20 states, and shall have been in active continuous existence for not less than 20 years.

(b) Any hall or building association of a local unit mentioned in subdivision (a), all of the capital stock of which is owned by the local unit or the members thereof, and which operates the clubroom facilities of the local unit.

*History.—Stats. 1965, Ch. 492, in effect September 17, 1965, substituted "31" for "36" and "300" for "500". Stats. 1975, Ch. 496, in effect January 1, 1976, substituted "20" for "31" states and "200" for "300." Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted one-year operation requirement. Stats. 1979, Ch. 470, in effect January 1, 1980, substituted "175" for "200" local units.*

**23426. Golf clubs, swimming and tennis clubs.** For the purposes of this article "club" also means any golf club which owns, maintains, or operates a regular golf links together with a clubhouse thereon; or any swimming and tennis club which maintains a standard AAU swimming pool and not less than two regulation tennis courts, together with the necessary facilities and clubhouse, which has members paying regular monthly dues; or any swimming club which maintains a standard AAU swimming pool and not less than two regulation tennis courts, together with the necessary facilities and clubhouse, or any tennis club which maintains not less than five regulation

tennis courts, together with the necessary facilities and clubhouse, and which swimming club or tennis club has members paying regular monthly dues.

**History.**—Stats. 1955, Ch. 1377, in effect September 7, 1955, substituted “two” for “five” before “regulation tennis courts.” Stats. 1963, Ch. 808, in effect September 20, 1963, added last clause pertaining to swimming or tennis clubs. Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted membership, operation and existence requirements.

**23426.5. Tennis club.** For purposes of this article, “club” also means any tennis club which maintains not less than four regulation tennis courts, together with the necessary facilities and clubhouse, and which has members paying regular monthly dues and which has been in existence for not less than 45 years and is not associated with a real estate development as defined in Section 11003.1 of this code, a community apartment project as defined in Section 11004 of this code, a project consisting of condominiums as defined in Section 783 of the Civil Code or a mobilehome park as defined in Section 18214 of the Health and Safety Code.

It shall be unlawful for any club licensed pursuant to this section to make any discrimination, distinction, or restriction against any person on account of such person’s color, race, religion, ancestry, national origin, sex, or age.

**History.**—Added by Stats. 1976, Ch. 457, in effect January 1, 1977. Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted 90-member requirement.

**23427. Yacht clubs.** For the purposes of this article “club” also means any yacht club which is a nonprofit organization and is a regular member of a recognized national nonprofit yachting organization having a membership of not less than 200 member yacht clubs, which owns, maintains, or operates a clubhouse.

**History.**—Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted 100-member and one-year operation requirement.

**23428. Bar associations.** For the purposes of this article “club” also means any bar association having an authorized delegate to the American Bar Association and composed entirely of attorneys at law, duly admitted, licensed, and qualified to practice within the State, which has a bona fide membership of more than 1,000 members and has been in existence for a period of more than 20 years, and which owns, leases, operates, or maintains, a club room or rooms for its membership.

**History.**—Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted five-year operation requirement.

**23428.1. County medical associations.** For the purposes of this article “club” also means any county medical association having an authorized delegate to the California Medical Association and composed entirely of doctors of medicine duly admitted, licensed and qualified to practice medicine and surgery within the State, which has a bona fide membership of more than 1,000 members and has been in existence for a period of more than 20 years and which owns, leases, operates or maintains a club room or rooms for its members, and has operated the club room or rooms for a period of not less than three years.

**History.**—Added by Stats. 1955, Ch. 1377, in effect September 7, 1955.

**23428.2. Rod and gun clubs.** For the purposes of this article “club” also means any rod and gun club which is a nonprofit organization belonging to a recognized national association of rod or gun clubs, and which has more than 100 bona fide regular members, each of whom is required to pay regular membership dues of not less than five dollars (\$5) each year, and which owns, maintains, or operates a clubhouse and has continuously operated a clubhouse for not less than three years.

**History.**—Added by Stats. 1955, Ch. 1377, in effect September 7, 1955. Stats. 1957, Ch. 345, in effect September 11, 1957, substituted “100” for “500” and “five dollars (\$5)” for “ten dollars (\$10).”

**23428.5. Press clubs.** For the purpose of this article “club” also means any press club which is a nonprofit organization and whose members are entitled to exchange

privileges with similar organizations in at least 12 other states, and which has a bona fide membership and which owns, leases, and operates or maintains a clubhouse or clubroom or any nonprofit incorporated press club having a membership and which owns, or leases, and operates, a club room or rooms for its members.

No license shall be issued to any press club qualifying as a club pursuant to this section if the press club in any manner restricts membership or the use of its facilities on the basis of race, religion, national origin, or sex.

**History.**—Stats. 1955, Ch. 1377, in effect September 7, 1955, substituted “100” for “500”; added “or clubroom” after “clubhouse”; and substituted “three years” for “six and a half (6½) years.” Stats. 1973, Ch. 961, in effect September 30, 1973, added nonprofit incorporated press club of more than 100 members in existence more than one year, and second paragraph. Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted membership, operation and existence requirements.

**23428.6. Livestock association.** For the purposes of this article, “club” also means any association of livestock, or livestock-allied businessmen, joined together as a nonprofit corporation, registered as such in the State of California. The organization of the group shall be for the sole purpose of social activity.

Such a group shall own, lease, or maintain a clubroom or rooms for its membership. Such a club may sell and serve alcoholic beverages only to its bona fide members and their bona fide guests.

**History.**—Added by Stats. 1976, Ch. 460, in effect January 1, 1977. Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted three-year existence and 225-member requirements.

**23428.7. Riding club.** For the purposes of this article “club” also means any bona fide nonprofit corporation, which is a bona fide horse riding club, which is a member of a statewide organization or association, which owns, maintains, or operates premises upon which a regular riding club together with a clubhouse is maintained.

**History.**—Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted 50-member and five-member year operation requirement.

**Note.**—There is another section with this number. See next section.

**23428.7. Mobilehome park.** For the purpose of this article, “club” also means any nonprofit social club with at least 100 members, which members are mobilehome owners within a private mobilehome park and have participated as social club members with a designated club house for not less than one year.

**History.**—Added by Stats. 1979, Ch. 623, in effect January 1, 1980.

**Note.**—There is another section with this number. See preceding section.

**23428.8. Native Sons of the Golden West.** For the purposes of this article “club” also means any parlor of the Native Sons of the Golden West which has as the owner, lessee or occupant thereof operated an establishment for fraternal purposes.

**History.**—Added by Stats. 1955, Ch. 1377, in effect September 7, 1955. Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted three-year operation requirement.

**23428.9. Club.** For the purpose of this article “club” also means any nonprofit social club which serves daily meals to its members and guests, owns or leases, operates and maintains a club room or rooms for its membership and has operated the club room or rooms for a period of not less than two years and has regular membership dues of not less than fifty dollars (\$50) per year per member.

**History.**—Added by Stats. 1959, Ch. 453, in effect September 18, 1959. Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted 100-member requirement. Stats. 1978, Ch. 336, in effect January 1, 1979, substituted “two” for “10” years.

**23428.10. Peace officers association.** For the purposes of this article “club” also means any peace officers association which is composed entirely of active and retired peace officers, which holds regular meetings and has regular dues, and which owns, leases, operates, or maintains an establishment for association purposes.

**History.**—Added by Stats. 1961, Ch. 423, in effect September 15, 1961. Stats. 1972, Ch. 1190, in effect March 7, 1973, substituted “75” for “250” bona fide members. Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted membership, existence and operation requirements.

**Cross reference.**—Rule 62.

**23428.11. Firemen’s association.** For the purposes of this article “club” also means any firemen’s association which is composed entirely of active and retired firemen, which holds regular meetings and has regular dues, and which owns, leases, operates, or maintains an establishment for association purposes.

**History.**—Added by Stats. 1963, Ch. 291, in effect September 20, 1963. Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted membership, existence and operation requirements.

**23428.12. Religious club.** For purposes of this article “club” also means any nonprofit social and religious club which owns or leases, operates and maintains a club room or rooms for its membership, and has operated the club room or rooms for a period of not less than eight years, and has regular membership dues of not less than twenty-five dollars (\$25) per year per member.

**History.**—Added by Stats. 1965, Ch. 1790, in effect September 17, 1965. Stats. 1967, Ch. 541, in effect November 8, 1967, substituted “eight” for “10” years. Stats. 1970, Ch. 377, in effect November 23, 1970, deleted last sentence. Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted 50-member requirement.

**23428.13. Airlines club.** For purposes of this article “club” also means any club operated by a common carrier by air at an airport terminal. Such club shall qualify for a license under this article notwithstanding the provisions of Section 23037. The provisions of Section 23399 and the numerical limitation of Section 23430 shall not apply to such a club.

Nothing contained in Section 23434 shall be deemed to preclude the issuance of a license to the acquiring or surviving corporation when a corporation holding a license pursuant to this section is an acquired or constituent corporation in a corporate reorganization.

**History.**—Added by Stats. 1968, Ch. 607, in effect November 13, 1968. Stats. 1971, Ch. 1512, in effect March 4, 1972, added exception of numerical limitation of Section 23430. Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted 50-member and one-year operation requirement. Stats. 1980, Ch. 827, in effect January 1, 1981, added second paragraph.

**23428.14. National Guard club.** For purposes of this article, “club” also means any club operated by commissioned or noncommissioned officers of the National Guard or Air National Guard which owns or leases, operates and maintains a clubroom or rooms for its membership. Such a club, if issued a club license pursuant to Section 23430, may sell and serve alcoholic beverages for consumption within the licensed establishment only to bona fide members of the club and their bona fide guests.

**History.**—Added by Stats. 1970, Ch. 455, in effect November 23, 1970.

**23428.15. American Citizens Club.** For the purposes of this article, “club” also means any parlor of the American Citizens Club in existence on the effective date of this chapter which the club has as the owner, lessee, or occupant thereof operated as an establishment for fraternal purposes and in which alcoholic beverages are sold only to members of the club whose membership dues in the club have been paid.

**History.**—Added by Stats. 1970, Ch. 975, in effect November 23, 1970. Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted three-year operation requirement.

**23428.16. Social luncheon club.** For purposes of this article, “club” also means any nonprofit social luncheon club which is composed entirely of active and retired professional men and businessmen, which holds regular meetings and has regular annual membership dues in excess of two hundred dollars (\$200), which owns, leases, operates or maintains such establishment for the serving of regular meals to its members and their guests.

**History.**—Added by Stats. 1970, Ch. 1442, in effect November 23, 1970. Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted membership, existence and operation requirements.

23428.17. **American GI Forum.** For purposes of this article, “club” also means any department or local forum of the American GI Forum of the U.S. which owns or leases, operates and maintains a clubroom or rooms for its membership. Such a club, if issued a club license pursuant to Section 23430, may sell and serve alcoholic beverages for consumption within the licensed establishment only to bona fide members of the club and their bona fide guests.

**History.**—Added by Stats. 1971, Ch. 1482, in effect March 4, 1972. Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted two-year existence requirement.

23428.18. **Labor council.** For purposes of this article, “club” also means any labor council which is chartered by a national labor organization having affiliates in each state of the United States, consists of delegates from not less than 20 separately chartered affiliated labor organizations, as defined by the National Labor Relations Act, the combined membership of which is not less than 7,000 persons, and owns or leases a building of not less than 3,000 square feet which is used by the delegates, or members of affiliated labor organizations, or both, for their social activities. No labor council which makes any discrimination, distinction, or restriction against any person on account of such person’s age, sex, color, race, religion, ancestry, or national origin shall be licensed pursuant to this section.

**History.**—Added by Stats. 1972, Ch. 1186, in effect March 7, 1973. Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted five-year existence and 100-delegate requirements.

23428.19. **Handball club.** For purposes of this article, “club” also means any private club organized to play handball or racquetball, which owns, maintains, or operates a building containing not less than four regulation-size handball or racquetball courts, which has members, and the members of which each pay regular monthly dues. As used in this section, a “regulation-size handball or racquetball court” is a court meeting the standards for such regulation courts promulgated by the United States Handball Association or an equivalent organization.

It shall be unlawful for any club licensed pursuant to this section to make any discrimination, distinction, or restriction against any person on account of such person’s color, race, religion, ancestry, or national origin.

**History.**—Added by Stats. 1972, Ch. 848, in effect August 14, 1972.

23428.20. **Condominiums and stock cooperatives.** (a) For the purposes of this article “club” also means any bona fide nonprofit corporation which has been in existence for not less than nine years, which has more than 8,500 memberships issued and outstanding to owners of condominiums and owners of memberships in stock cooperatives, and which owns, leases, operates or maintains recreational facilities for its members.

(b) For the purposes of this article, “club” also means any bona fide nonprofit corporation which was formed as a condominium homeowner’s association, has at least 250 members, has served daily meals to its members and guests for a period of not less than 12 years, owns or leases, operates, and maintains a clubroom or rooms for its membership, has an annual fee of not less than nine hundred dollars (\$900) per year per member, and has as a condition of membership that one member of each household be at least 54 years old.

(c) The provisions of Section 23399 and the numerical limitation of Section 23430 shall not apply to a club defined in this section.

(d) No license shall be issued pursuant to this section to any club which withholds membership or denies facilities or services to any person on account of race, color, creed, religion, national origin, or sex.

*History.*—Added by Stats. 1972, Ch. 1241, in effect March 7, 1973. Stats. 1976, Ch. 1086, in effect January 1, 1977, added subd. (b).

23428.21. **Dental society.** For the purposes of this article, “club” also means any local dental society having an authorized delegate to the California Dental Association and composed entirely of dentists duly admitted, licensed and qualified to practice dentistry within the state, which has at least 250 members and has been in existence for a period of more than 20 years and which owns, leases, operates or maintains a club room or rooms for its members, and has operated the club room or rooms for a period of not less than three years.

No license shall be issued pursuant to this section to any club which restricts membership or in any other way discriminates against any person in the use of any of its facilities, on the basis of race, religion, national origin, sex, or age.

*History.*—Added by Stats. 1983, Ch. 1008, in effect January 1, 1984.

23428.22. **Foreign citizens.** For purposes of this article, “club” also means any nonprofit corporation whose principal purpose is to promote cultural ties and understanding between citizens of a foreign country or commonwealth and citizens of the United States, which has a bona fide membership of more than 10,000 members each of whom pay regular membership dues, which owns, leases, operates or maintains an establishment for fraternal purposes. Such a club, if issued a license pursuant to Section 23430, may sell and serve alcoholic beverages for consumption within the licensed establishment only to bona fide members of the club and their bona fide guests.

No license shall be issued pursuant to this section to any club which restricts membership or the use of any of its facilities on the basis of race, religion, national origin, or sex.

*History.*—Added by Stats. 1974, Ch. 533, in effect August 27, 1974. Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted two-year existence and one-year operation requirements.

23428.23. **Letter carriers local.** For the purposes of this article “club” also means any letter carriers local which is chartered by a national labor organization having affiliates in each state of the United States, which consists of not less than 1,500 members as defined by the National Labor Relations Act, and which owns or leases a building of not less than 5,000 square feet that is used by the members, or by the members of other labor organizations, or both, for their social activities. No letter carriers local which makes any discrimination, distinction, or restriction against any person on account of such person’s age, sex, color, race, religion, ancestry, or national origin shall be licensed pursuant to this section. No club licensed under this section shall engage in the sale of alcoholic beverages for consumption outside of the licensed premises.

*History.*—Added by Stats. 1974, Ch. 640, in effect September 5, 1974. Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted five-year existence requirement.

23428.24. **National origin.** For the purposes of this article “club” also means any bona fide nonprofit social organization which has more than 350 members and which has as the owner, lessee, or occupant thereof operated an establishment for its members and which has been in existence for more than five years and whose purpose is to foster and develop social relations among its members and to foster pride in the national origin of its members by promoting appreciation of such national origin and its contribution to the American social order.

It shall be unlawful for any club licensed pursuant to this section to make any discrimination, distinction, or restriction against any person on account of such person's color, race, religion, ancestry, national origin, sex, or age.

*History.—Added by Stats 1976, Ch. 1446, in effect January 1, 1977.*

**23428.25. Hidalgo Society.** For the purposes of this article, “club” also means any Hidalgo Society the purpose of which is to operate for the advancement of education for the improvement of social and economic conditions, to help lessen neighborhood tension, lessen the burden on welfare systems, to help eliminate prejudice and discrimination and for other charitable causes that might be present in the community. Such a group shall be located in a county of the 32nd class, have members who pay dues, and shall own, lease, or maintain a clubroom or rooms for its membership.

It shall be unlawful for any club licensed pursuant to this section to make any discrimination, distinction, or restriction against any person on account of such person's color, race, religion, ancestry, national origin, sex, or age.

*History.—Added by Stats. 1976, Ch. 1013, in effect January 1, 1977. Stats. 1977, Ch. 1070, in effect January 1, 1978, deleted 200-member and three-year existence requirements.*

**23428.26. Property owners' association.** For the purposes of this article, “club” also means any nonprofit property owners' association having at least 2,500 members. Such an association must have been in existence for at least five years as of October 1, 1975, and must engage in some volunteer action for the community of which it is a part.

It shall be unlawful for any club licensed pursuant to this section to make any discrimination, distinction, or restriction against any person on account of such person's color, race, religion, ancestry, national origin, sex, or age.

*History.—Added by Stats. 1978, Ch. 540, in effect January 1, 1979.*

**23428.27. Peace officers' employees' association.** For the purposes of this article, “club” also means any peace officers' and employees' association which is composed entirely of active and retired peace officers and employees of a law enforcement agency which holds regular meetings, is located in a county of the first class, and the members of which pay regular dues.

No license shall be issued pursuant to this section to any club which restricts membership or in any other way discriminates against any person in the use of any of its facilities because of that person's color, race, religion, ancestry, national origin, sex, or age.

*History.—Added by Stats. 1985, Ch. 460, in effect September 3, 1985.*

**23428.28. Beach and athletic club.** For the purposes of this article, “club” also means any beach and athletic club that owns, maintains, or operates a standard Amateur Athletic Union (AAU) swimming pool together with the necessary facilities and clubhouse, has a minimum of 500 members paying regular monthly dues, and has continuously operated for not less than one year.

No license shall be issued to any beach and athletic club qualifying as a club pursuant to this section if the beach and athletic club in any manner restricts membership or the use of its facilities on the basis of race, religion, national origin, sex, or age.

*History.—Added by Stats. 1995, Ch. 173, in effect July 24, 1995.*

**23429. Constitutional definition.** A club as defined in this article is a bona fide club within the meaning of Section 22 of Article XX of the Constitution.

23430. **Club license.** The department may issue one club license to any club as defined in this article.

**History.**—Stats. 1955, Ch. 1221, in effect June 23, 1955, substituted “department” for “board,” and deleted all of section following first sentence.

23431. **License privileges.** The holder of a club license may exercise all of the rights and privileges permitted by an on-sale general license but may sell and serve alcoholic beverages for consumption within the licensed establishment only to bona fide members of the club and their bona fide guests. A club license is not transferable from person to person. The provisions of Article 2 of Chapter 5 of this division do not apply to the issuance of club licenses.

23432. **Transfer of on-sale general.** Any club which holds an onsale general license which was originally issued to it prior to April 1, 1947, and which transfers its onsale general license to another person shall not be eligible to apply for a club license for a period of at least one year following the date of the transfer of its onsale general license.

**History.**—Stats. 1963, Ch. 1066, in effect September 20, 1963, inserted “which was originally issued to it prior to April 1, 1947.”

23433. **Off-sale licenses for golf clubs.** The department may issue an off-sale license to any golf club which has more than 400 bona fide members, which owns, maintains, or operates a regular golf links together with a clubhouse thereon, and which has operated the establishment for not less than 60 years, which license authorizes the sale, to consumers only and not for resale, of alcoholic beverages which an off-sale general licensee may sell, but only to bona fide members of the club and their bona fide guests. A license issued to a golf club pursuant to this section is not transferable. The provisions of Article 2 of Chapter 5 of this division do not apply to the issuance of a license pursuant to this section. The fee for a license issued pursuant to this section shall be the same as the fee for a retail package off-sale general license as provided in Section 23320.

**History.**—Added by Stats. 1955, Ch. 1377, in effect September 7, 1955. Stats. 1957, Ch. 619, in effect September 11, 1957, changed fee from amount equal to club license fee to retail package off-sale general license fee.

23433.5. **Sales from golf carts.** *Repealed by Stats. 1997, Ch. 21.*

**History.**—Added by Stats. 1996, Ch. 82, in effect January 1, 1997.

23434. **Nonprofit organization, volunteer work.** (a) Notwithstanding any other provision of this division, on and after the effective date of this section, no new club license shall be issued to any club which is not a nonprofit organization.

(b) On and after the effective date of this section, no club license shall be issued to a nonprofit corporation pursuant to a law enacted after the effective date of this section unless the nonprofit corporation engages in at least some volunteer action for the community of which it is a part.

**History.**—Added by Stats. 1977, Ch. 1070, in effect January 1, 1978.

23435. **Membership and duration.** On and after January 1, 1980, no new club license shall be issued for any club, organization, or association which does not have at least 100 members and which has not been in existence for at least one year.

**History.**—Added by Stats. 1977, Ch. 1070, in effect January 1, 1978. Stats. 1979, Ch. 128, in effect January 1, 1980, substituted one year for two years after January 1, 1980.

23437. **Restriction of off-sale privileges.** Notwithstanding any other provision of this division, no club license issued under this article shall entitle the holder to any off-sale privileges.

**History.**—Added by Stats. 1977, Ch. 1070, in effect January 1, 1978.

23438. **Deductibility of club expenses.** (a) Any alcoholic beverage club licensee which restricts membership or the use of its services or facilities on the basis of age, sex, race, religion, color, ancestry, or national origin shall, when issuing a receipt for expenses which may otherwise be used by taxpayers for deduction purposes pursuant to Section 162(a) of the Internal Revenue Code, for purposes of the Personal Income Tax Law, or Section 24343 of the Revenue and Taxation Code, for purposes of the Bank and Corporation Tax Law, incorporate a printed statement on the receipt as follows:

“The expenditures covered by this receipt are nondeductible for state income tax purposes or franchise tax purposes.”

(b) For purposes of this section, the following terms have the following meanings:

(1) “Expenses” means expenses, as defined in Section 17269 or 24343.2 of the Revenue and Taxation Code.

(2) “Club” means a club holding an alcoholic beverage license pursuant to the provisions of this division, except a club holding an alcoholic beverage license pursuant to Section 23425.

**History.—**Added by Stats. 1987, Ch. 1139 and 1463 (identical), in effect September 25, 1987, and September 30, 1987, to apply to tax years commencing on or after January 1, 1990.

#### Article 5. Veterans' Club Licenses

- § 23450. “Veteran” defined.
- § 23451. Charter by Congress.
- § 23452. Veterans' club license.
- § 23452.5. Veterans' memorial association.
- § 23453. License privileges.
- § 23454. Fixed salary of employees.
- § 23455. Revocation.

23450. **“Veteran” defined.** As used in this article, “veteran” means any person who has served in the United States Army, Navy, Marine Corps, Revenue Marine Service, or as an active nurse in the service of the American Red Cross, or in the Army and Navy Nurse Corps in time of war, or in any expedition of the armed forces of the United States, or who served in one of such services during the period September 16, 1940, to December 7, 1941, and received a discharge under conditions other than dishonorable.

23451. **Charter by Congress.** Any post, chapter, camp, or other local unit, composed solely of veterans, of an organization composed solely of veterans which has been chartered by the Congress of the United States for patriotic, fraternal, or benevolent purposes, and which post, chapter, camp, or other local unit has, as the owner, lessee, or occupant thereof, operated an establishment for any such purpose for not less than one year, is a bona fide club within the meaning of Section 22 of Article XX of the Constitution and of this division.

23452. **Veterans' club license.** The department may issue one veterans' club license to any post, chapter, camp or other local unit described in Section 23451 for the establishment, if otherwise satisfactory, where the post, chapter, camp, or other local unit maintains its club.

**History.—**Stats. 1955, Ch. 1221, in effect June 23, 1955, substituted “department” for “board,” and deleted second sentence.

23452.5. **Veterans' memorial association.** The department may also issue one veterans' club license to any veterans' memorial association which is a nonprofit private corporation organized for patriotic, fraternal, or benevolent purposes, composed solely

of veterans, and which has more than 18,000 bona fide regular members, and which owns, leases, maintains, or operates a clubhouse and has continuously operated a clubhouse for not less than three years.

**History.**—Added by Stats. 1957, Ch. 597, in effect September 11, 1957.

23453. **License privileges.** The holder of a veteran's club license may exercise all of the rights and privileges permitted by an on-sale general license but may sell and serve alcoholic beverages for consumption within the licensed establishment only to bona fide members of the veterans' organization and their bona fide guests. A veterans' club license is not transferable to another person from the person to whom issued or by whom renewed. The provisions of Article 2 of Chapter 5 of this division do not apply to the issuance of veterans' club licenses.

23454. **Fixed salary of employees.** No member and no officer, agent, or employee of a veterans' club licensee shall be paid or shall directly or indirectly receive, in the form of salary or other compensation, any of the profits from the distribution or sale of alcoholic beverages to the licensee or to the members of the licensee or its guests, beyond the amount of such salary as may be fixed and voted at any regular meeting by the members of the licensee or by its governing body out of the general revenue of the local unit.

23455. **Revocation.** The department may revoke any license issued pursuant to this article whenever, in the judgment of the department, the licensee ceases to operate as a bona fide club.

**History.**—Stats. 1955, Ch. 447, substituted "department" for "board."

#### CHAPTER 4. IMPORTS

- § 23660. Postal shipments.
- § 23661. Manner of consignment.
- § 23661.1. Airplane within United States.
- § 23661.2. Shipment of wine.
- § 23661.3. Direct shipments of wine into California.
- § 23661.5. Wine or beer transportation.
- § 23661.6. Returned wine.
- § 23661.7. Return by purchaser.
- § 23662. Reconsignment.
- § 23663. Presumption for delivery in State.
- § 23664. Passenger trains, boats, and airplanes.
- § 23665. Trucking carriers. [Repealed.]
- § 23666. Seizure.
- § 23667. Importer's receipt to carrier.
- § 23668. Consignee's refusal to give receipt.
- § 23669. Carrier's unpaid charges.
- § 23670. Penalty for violation.
- § 23671. Out-of-state beer vendor.
- § 23672. Authorized importer.
- § 23673. Distilled spirits affirmation.

23660. **Postal shipments.** Postal authorities may refuse delivery of any shipment of alcoholic beverages originating outside this State. Postal authorities may turn alcoholic beverages over to the department. The alcoholic beverage when received shall be forfeited to the State.

**History.**—Stats. 1955, Ch. 447, substituted "department" for "board."

**Cross reference.**—18 U. S. C. 1716, punishment for mailing alcoholic beverages.

23661. **Manner of consignment.** Except as otherwise provided in this section, alcoholic beverages may be brought into this state from without this state for delivery or use within the state only by common carriers and only when the alcoholic beverages

are consigned to a licensed importer, and only when consigned to the premises of the licensed importer or to a licensed importer or customs broker at the premises of a public warehouse licensed under this division.

The provisions of this chapter are not applicable in the case of alcoholic beverages which are sold and delivered by a licensee in this state to another licensee in this state, and which in the course of delivery are taken without this state through another state without any storage thereof in such other state.

The provisions of this section are not applicable in the case of a reasonable amount of alcoholic beverages brought into this state by an adult from without the United States for personal or household use; except that a California resident returning to the United States by a vehicle which is not a common carrier, or any adult entering the United States as a pedestrian, shall be restricted to the amount of alcoholic beverages which are exempt from payment of duty in accordance with the existing provisions of federal law. Such alcoholic beverages shall be exempt from state licensing restrictions.

The provisions of this section are not applicable in the case of alcoholic beverages shipped into this state from without the United States by an adult member of the armed forces of the United States, serving outside the confines of the United States, for his personal or household use within the state in such quantity of alcoholic beverages as is exempt from the payment of duty under existing provisions of the Federal Tariff Act or regulations. Such alcoholic beverages may be brought into this state only by common carrier and consigned to the premises of a licensed importer or customs broker, or to a licensed importer or customs broker at the premises of a public warehouse licensed under this division. Notwithstanding any other provisions of this division, the holder of an importer's license, a customs broker's license, or a public warehouse license, may make delivery of such alcoholic beverages as may be brought into this state under the provisions of this paragraph directly to the owner thereof upon satisfactory proof of identity. Such delivery shall not be deemed to constitute a sale in this state.

A manufacturer of distilled spirits may transport such distilled spirits into this state in motor vehicles owned by or leased to the manufacturer, and operated by employees of the manufacturer, if:

- (a) Such distilled spirits are transported into this state from a place of manufacture within the United States; and
- (b) The manufacturer holds a California distilled spirits manufacturer's license; and
- (c) Delivery is made to the licensed premises of such distilled spirits manufacturer.

**History.**—Stats. 1955, Ch. 1747, in effect September 7, 1955, added third paragraph. Stats. 1957, Ch. 147, in effect September 11, 1957, added second paragraph. Stats. 1959, Ch. 1398, in effect September 18, 1959, added fourth paragraph. Stats. 1973, Ch. 563, in effect January 1, 1974, added fifth paragraph. Stats. 1977, Ch. 1042, in effect January 1, 1978, deleted requirement that duty-free alcoholic beverages be brought into this state by common carrier. Stats. 1980, Ch. 523, in effect January 1, 1981, permitted importation of a reasonable amount of alcoholic beverages by common carrier.

**Cross reference.**—1955 amendment is not illegally discriminatory because it permits importation of alcoholic beverages for personal use by common carrier only, and not by other means of travel. 26 Ops. Atty. Gen. 191, 55/135 10-21-55.

**Federal law.**—Effective October 1, 1965, the amount of exempt liquor allowance is one quart per adult 21 years of age or older; the liquor must accompany the returning resident; and one gallon of liquor is exempt for adult residents, 21 years of age or older, returning from visits to U.S. Virgin Islands, Guam, and American Samoa, not more than one quart of which may be acquired elsewhere than in those islands (Public Law 89-62, signed June 30, 1965, 79 Stats. 208.)

Effective March 1, 1966, returning servicemen may import one gallon, three quarts of which are of American origin (Bureau of Customs Regulations, item 915.20 and § 54.2 (c)).

**Federal law.**—The U.S. Customs Service deems not more than 60 liters (approximately 5 cases) to be a reasonable amount brought in to the United States for personal or household use.

**23661.1. Airplane within United States.** Notwithstanding any other provision of law, an adult passenger on board a chartered airplane on a flight which commences and terminates in the continental United States and which does not land outside the

continental United States, may bring not to exceed one quart of alcoholic beverages into this State for household or personal use. Such alcoholic beverages shall be exempt from state licensing restrictions. No person shall bring in more than one quart of alcoholic beverages during any calendar year pursuant to the authority granted in this section.

**History.**—Added by Stats. 1961, Ch. 1683, in effect September 15, 1961.

**23661.2. Shipment of wine.** Notwithstanding any other law, an individual or retail licensee in a state that affords California retail licensees or individuals an equal reciprocal shipping privilege, may ship, for personal use and not for resale, no more than two cases of wine (no more than nine liters each case) per month to any adult resident in this state. Delivery of a shipment pursuant to his subdivision shall not be deemed to constitute a sale in this state.

The shipping container of any wine sent into or out of this state under this section shall be clearly labeled to indicate that the container cannot be delivered to a minor or an intoxicated person.

**History.**—Added by Stats. 1963, Ch. 1635, in effect September 20, 1963. Stats. 1986, Ch. 735, in effect January 1, 1987, added subd.(b). Amended by Stats. 1994, Ch. 394, in effect January 1, 1995, to limit unlicensed importation of wine only from states with equal reciprocal shipping privilege. Stats. 2005, Ch. 157, SB 118, in effect January 1, 2006. Amended language of shipping requirements.

**23661.3. Direct shipments of wine into California.** (a) Notwithstanding any law, rule, or regulation to the contrary, any person currently licensed in this state or any other state as a winegrower who obtains a wine direct shipper permit pursuant to this section may sell and ship wine directly to a resident of California, who is at least 21 years of age, for the resident's personal use and not for resale.

Before sending any shipment to a resident of California, the wine direct shipper permitholder must:

- (1) File an application with the department.
- (2) Pay a ten-dollar (\$10) annual registration fee if the winegrower is not currently licensed by the department.
- (3) Provide the department its California alcoholic beverage license number or a true copy of its current alcoholic beverage license issued by another state.
- (4) Obtain from the department a wine direct shipper permit.
- (5) Obtain a seller's permit or register with the State Board of Equalization pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(b) A wine direct shipper permit authorizes the permitholder to do all of the following:

- (1) Sell and ship wine to any person 21 years of age or older for his or her personal use and not for resale.
- (2) Ship wine directly to a resident in this state only in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY."
- (3) Ship wine only if the permitholder requires the carrier to obtain the signature of any individual 21 years of age or older before delivering any wine shipped to an individual in this state.
- (4) If the permitholder is located outside of this state, report to the department no later than January 31 of each year, the total amount of wine shipped into the state during the preceding calendar year under the wine direct shipper permit.
- (5) If the permitholder is located outside of this state, pay to the State Board of Equalization all sales and use taxes, and excise taxes on sales to residents of California under the wine direct shipper permit. For excise tax purposes, all wine sold pursuant to a direct shipper permit shall be deemed to be wine sold in this state.

(6) If located within this state, provide the department any necessary additional information not currently provided to ensure compliance with this section.

(7) Permit the department or the State Board of Equalization to perform an audit of the wine direct shipper permitholder's records upon request.

(8) Be deemed to have consented to the jurisdiction of the department or any other state agency and the California courts concerning enforcement of this section any related laws, rules, or regulations.

(d) A wine direct shipper permitholder located outside of the state may annually renew its permit with the department by paying a ten-dollar (\$10) renewal registration fee and providing the department with a true copy of its current alcoholic beverage license issued by another state. A wine direct shipper permitholder located in California shall renew its wine direct shipper permit in conjunction with its master license. For purposes of this section, "master license" means a winegrower's license issued by the department.

(e) The department and the State Board of Equalization may promulgate rules and regulations to effectuate the purposes of this law.

(f) The department may enforce the requirements of this section by administrative proceedings to suspend or revoke the wine direct shipper permit, and the department may accept payment of an offer in compromise in lieu of suspension as provided by this division. Any hearing held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code against a permitholder outside of California shall be held in Sacramento.

(g) Sales and shipments of wine direct to consumers in California from winegrowers who do not possess a current wine direct shipper permit from the department are prohibited. Any person who knowingly makes, participates in, transports, imports, or receives such a shipment is guilty of a misdemeanor pursuant to Section 25617.

**History.—**Added by Stats. 2005, Ch. 157, SB 118, in effect January 1, 2006.

**23661.5. Wine or beer transportation.** A person who manufactures or produces wine or beer outside of this state, but within the United States, in accordance with the requirements of the laws of the United States, may transport such wine or beer into this state, in a vehicle owned and operated by the manufacturer or producer or operated by him pursuant to a lease the term of which is not less than 30 days, or by contract carrier, for delivery to a licensee who is authorized under this division to import the wine or beer into this state, if:

(a) The delivery is made at the premises of the licensee or to a licensee or a licensed customs broker at the premises of a public warehouse licensed under this division; and

(b) The manufacturer or producer holds a manufacturer's interstate alcoholic beverage transporter's permit under Section 32110 of the Revenue and Taxation Code.

**History.—**Added by Stats. 1959, Ch. 903, in effect September 18, 1959. Stats. 1967, Ch. 876, in effect November 8, 1967, inserted "or beer." Stats. 1971, Ch. 1075, in effect March 4, 1972, included contract carrier.

**23661.6. Returned wine.** A licensed winegrower who in the course of business exports wine from this State to another state, may subsequently return to his licensed premises in this State all or any portion of such wine in private vehicles owned or under the control of the winegrower. Any wine so returned shall be subject to the provisions of Section 32175 of the Revenue and Taxation Code.

**History.—**Added by Stats. 1959, Ch. 903, in effect September 18, 1959.

**23661.7. Return by purchaser.** A person who has purchased wine from a licensed winegrower, has taken delivery of such wine within this state for delivery or use without

the state, and has removed such wine from the state, may return all or any portion of such wine to the licensed premises of the winegrower in this state from whom the wine was purchased. To make such return the purchaser need not obtain any license in this state, and may return the wine in a vehicle owned or controlled by such purchaser.

The provisions of Section 32175 of the Revenue and Taxation Code shall apply to any wine so returned.

*History.*—Added by Stats. 1970, Ch. 355, in effect November 23, 1970.

**23662. Reconsignment.** A shipment shall be deemed to be consigned to a licensed importer, although originally consigned to a person not so licensed, when the shipment is, before delivery and without leaving the possession of the common carrier transporting it, reconsigned or diverted in transit by either the consignor or consignee to a licensed importer to whom final delivery by the common carrier is made.

**23663. Presumption for delivery in State.** Alcoholic beverages which are consigned to a destination within this State shall be presumed to be for delivery or use within this State.

**23664. Passenger trains, boats and airplanes.** A railroad, sleeping car, dining car, boat, or steamship company or air common carrier carrying interstate or foreign passengers on trains, boats, or airplanes shall not be deemed to be an importer or subject to an importer's license for bringing into this State alcoholic beverages for the purpose of sale within this State on the trains, cars, boats, or airplanes on which the alcoholic beverages are brought into this State exclusively to passengers or employees not on duty, and for carrying the same alcoholic beverages or any unsold portion thereof out of this State in due course of operation.

*History.*—Stats. 1955, Ch. 954, in effect September 7, 1955, added reference to airplanes, and "not on duty" after "employees."

**23665. Trucking carriers.** *Repealed by Stats. 1955, Ch. 1842 (Rev. & Tax. Code § 50018).*

**23666. Seizure.** Alcoholic beverages imported into this State contrary to the provisions of Sections 23661 to 23664, inclusive, shall be seized by the department.

*History.*—Stats. 1955, Ch. 1842, substituted "23664" for "23665"; and "department" for "board."

**23667. Importer's receipt to carrier.** Common carriers transporting alcoholic beverages into this State for delivery or use within this State or common carriers making delivery of alcoholic beverages so transported shall obtain from the licensed importer or customs broker a receipt on a form prescribed by the department for the alcoholic beverages so transported and delivered. If the consignee refuses to give the receipt and show his license to the carrier, the carrier is relieved of all responsibility for delivery of the alcoholic beverages.

*History.*—Stats. 1955, Ch. 447, substituted "department" for "board."

**23668. Consignee's refusal to give receipt.** Subject to the provisions of Section 23662, whenever the consignee is not a licensed importer or customs broker or whenever the consignee refuses to give his receipt and show his license, the carrier shall immediately notify the department at Sacramento giving full details as to the character of shipment, point of origin, destination, and address of the consignor and consignee, and within 10 days the alcoholic beverages shall be delivered to the department and shall be forfeited to the State.

*History.*—Stats. 1955, Ch. 447, substituted "department" for "board."

23669. **Carrier's unpaid charges.** If any alcoholic beverages seized under Section 23666 or forfeited under Section 23668 are sold by or under the direction of the department, the common carrier's unpaid freight and storage charges accruing on the shipments of the alcoholic beverages shall be satisfied out of the proceeds of any sale made by the State after deducting the cost of the sale and any excise taxes accruing thereon.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

23670. **Penalty for violation.** Every person violating the provisions of this article is guilty of a misdemeanor.

23671. **Out-of-state beer vendor.** No beer importer shall purchase any beer not manufactured within the state or cause any beer to be transported into the state for sale in the state, unless the out-of-state vendor making shipment of the beer into the state holds a certificate of compliance issued by the department. A certificate of compliance shall be granted when the out-of-state vendor makes a written agreement with the department to furnish to the board, on or before the 10th day of each month, a report on a form prescribed by the board, showing the quantity of beer shipped by the out-of-state vendor to each licensed beer importer in this state during the preceding month. The out-of-state vendor shall further agree that it and its agents and all agencies within this state controlled by it will comply with all laws of this state and all rules of the department with respect to the sale of alcoholic beverages, including, but not limited to, Chapter 12 (commencing with Section 25000) of Division 9, and Section 25509, to the same extent as licensees.

If any out-of-state vendor, after obtaining the certificate, fails to submit the report or to comply with Section 14575 of the Public Resources Code, the department may suspend or revoke the certificate of compliance in the manner provided for the suspension or revocation of licenses, and after a hearing which shall be held in the City of Sacramento or in any other county seat in this state which the department determines to be convenient to the holder of the certificate. No fee shall be charged for the certificate of compliance which shall remain in effect until revoked by the department.

**History.**—Added by Stats. 1957, Ch. 750, in effect September 11, 1957. Stats. 1965, Ch. 78, in effect September 17, 1965, substituted “10th” for “twenty-fifth.” Stats. 1988, Ch. 320, in effect July 8, 1988, added requirement to comply with Recycling Act. Stats. 1993, Ch. 49, in effect January 1, 1994, amended paragraph 1.

**Validity of rule requiring certificate of compliance.**—Prior to the enactment of this section, there was no authority for the promulgation of a rule requiring out-of-state beer vendors to obtain a certificate of compliance and requiring beer importers to purchase beer only from vendors holding such certificate. *Blatz Brewing Co. v. Collins*, 69 Cal. App. 2d 639; *Blatz Brewing Co. v. Collins*, 88 Cal. App. 2d 438.

**Cross reference.**—Public Resources Code section 14575.

23672. **Authorized importer.** A licensed importer shall not purchase or accept delivery of any brand of distilled spirits unless he is designated as an authorized importer of such brand by the brand owner or his authorized agent. Such distilled spirits imported into California shall come to rest at the warehouse of the licensed importer or an authorized warehouse for the account of such licensed importer, before sale and delivery to a retail licensee.

**History.**—Added by Stats. 1973, Ch. 707, in effect January 1, 1974. Stats. 1979, Ch. 280, in effect January 1, 1980, required a licensed importer to be designated by the brand owner or his authorized agent.

23673. **Distilled spirits affirmation.** No brand owner of distilled spirits or his agent shall sell any brand of distilled spirits to a wholesaler or rectifier in this state at a price higher than the lowest price at which such brand of distilled spirits is sold by such brand owner or his agent to any wholesaler or rectifier during any calendar month anywhere in any other state or in the District of Columbia or to any state or state agency which owns or operates retail distilled spirits stores.

In determining the lowest price for which any brand of distilled spirits is sold in any other state or the District of Columbia or to any state or state agency which owns and operates retail distilled spirits stores, appropriate reduction shall be made to reflect all discounts, all rebates, allowances, and other inducements of any kind whatsoever offered or given to any such wholesaler or state, or state agency, as the case may be, purchasing such brand of distilled spirits in such other state or in the District of Columbia or to the state or state agency which owns or operates retail distilled spirits stores; provided that nothing in this section shall prevent differentials in price which make only due allowance for differences in state excise taxes and fees and the actual cost of delivery. As used in this section, the term “excise taxes and license fees” shall mean the excise taxes imposed or the fees required by any state or the District of Columbia.

A violation of this section shall be remedial only by a civil action for damages of an action to enjoin a brand owner or his agent from continued violation brought by any person suffering loss as a result of such violation. A judgment in any such action rendered against a licensee shall be deemed grounds for the suspension or revocation of the violator’s license pursuant to Chapter 7 (commencing with Section 24200) of this division.

For the purposes of this section, “distilled spirits” does not include brandy produced in California. No California brandy manufacturer or his agent shall be required to file an affidavit pursuant to this section for California brandy.

**History.—Added by Stats. 1979, Ch. 407, in effect January 1, 1980.**

**Validity of section.**—Designation statute does not violate equal protection laws and legitimately limits intrabrand competition in order to promote interbrand competition without being contrary to antitrust laws. *Rice v. Norman Williams Co.*, 458 U.S. 654, 102.

CHAPTER 5. RESTRICTIONS ON ISSUANCE OF LICENSES

- Article 1. In General. §§ 23770–23793.
  - 1.5. Conditional Licenses. §§ 23800–23805.
  - 2. Limitation on Number of Licensed Premises. §§ 23815–23827.

Article 1. In General

- § 23770. Winegrower or wine blender; bonded winery.
- § 23771. Distilled spirits manufacturer and manufacturer’s agent.
- § 23772. Same; exceptions.
- § 23773. Agents soliciting orders.
- § 23774. Merchandising other than liquor.
- § 23775. Importer.
- § 23776. Wholesaler.
- § 23777. Same; cities of 50,000.
- § 23778. Same; stock of spirits.
- § 23779. Same; good faith.
- § 23780. Deposits for future delivery of spirits.
- § 23781. Distilled spirits wholesaler’s, etc., licenses, one to a city. [Repealed.]
- § 23782. Industrial alcohol dealer. [Repealed.]
- § 23783. Premises where license revoked. [Repealed.]
- § 23784. On-sale.
- § 23785. Off-sale.
- § 23786. On-sale other than beer. [Repealed.]
- § 23787. Bona fide public eating place.
- § 23788. Citizenship. [Repealed.]
- § 23788.5. Manager; qualifications.
- § 23789. Churches, schools, etc.
- § 23790. Zoning ordinances.
- § 23790.5. Concurrent sales.
- § 23791. Zoning regulations.
- § 23792. Public works camps.
- § 23793. Intercounty restriction.

**23770. Winegrower or wine blender; bonded winery.** A winegrower's license, or a wine blender's license, whichever is appropriate to the operations to be conducted on the licensed premises, shall be issued only to, or held by, a person qualified to operate or operating a winery or wine cellar bonded under the internal revenue laws of the United States. Every person operating, or authorized under the internal revenue laws of the United States to operate, a winery or wine cellar bonded under the internal revenue laws of the United States shall apply for, and hold, a winegrower's or wine blender's license, as may be appropriate for operations conducted on the licensed premises.

**History.—Stats. 1955, Ch. 1600, in effect September 7, 1955, substituted “or wine cellar” for “wine storeroom or field warehouse”; and “wine cellar” for “wine storeroom.” Stats. 1965, Ch. 499, in effect September 17, 1965, added reference to wine blender's license.**

**23771. Distilled spirits manufacturer and manufacturer's agent.** No distilled spirits license of any kind, except a distilled spirits manufacturer's or a distilled spirits manufacturer's agent's license, shall be issued to any person, or to any officer, director, employee, or agent of any person, who manufactures distilled spirits within or without this State.

**23772. Same; exceptions.** No distilled spirits manufacturer's or distilled spirits manufacturer's agent's license shall be held by any person who holds any ownership or interest, directly or indirectly, by stock ownership, interlocking directors, trusteeship, loan, mortgage, or lien on any personal or real property, or otherwise, in any distilled spirits wholesaler's, rectifier's, or retailer's license.

The provisions of this section shall not apply to the financial or representative relationship between a manufacturer, wine grower, manufacturer's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of such person, and a person holding only one of the following types of licenses:

- (a) On-sale general license for a bona fide club.
- (b) Club license (issued under Article 4 (commencing at Section 23425) of Chapter 3 of this division).
- (c) Veterans' club license (issued under Article 5 (commencing at Section 23450) of Chapter 3 of this division).
- (d) On-sale license for boats, trains, sleeping cars or airplanes where the alcoholic beverages produced or sold by such manufacturer, wine grower, manufacturer's agent, rectifier, bottler, importer, or wholesaler or any officer, director, or agent of such person are not sold, furnished or given, directly or indirectly to the on-sale licensee.

**History.—Stats. 1957, Ch. 1790, in effect September 11, 1957, added second paragraph.**

A corporate manufacturer of distilled spirits which acquired the assets of another distilled spirits manufacturer by merger did not acquire the right to possess wholesaling and importing licenses which had been issued to the merged corporation under a savings clause for certain established business. *Harris v. Alcoholic Beverage Control Appeals Board, Schenley Industries, Inc., et al.*, 61 Cal. 2d 305.

**23773. Agents soliciting orders.** The provisions of Sections 23771 and 23772 do not prevent agents or employees of a distilled spirits manufacturer located without this State from soliciting orders for distilled spirits within the State.

**23774. Merchandising other than liquor.** The provisions of Sections 23771 and 23772 do not prevent the issuance of a distilled spirits wholesale license to any person who, on July 1, 1937, owned or operated a business which for five years immediately preceding that date had maintained and operated in this State a bona fide jobbing and distributing establishment for the sale to retail dealers of goods, wares, and merchandise, the major portion of which business at a time five years preceding July 1, 1937, was goods, wares, and merchandise other than alcoholic beverages.

Exemption of this section extends to corporation formed in 1955, 80 percent of stock of which is owned by corporation qualified under this section. The exemption of this section applies to the limitations of Sections 23771 and 23772 and permits issuance of distilled spirits importer's and wholesaler's licenses to such corporation. 25 Ops. Atty. Gen. 288, 55/61 4-29-55.

**23775. Importer.** An importer's license shall be issued only to a person or manufacturer who holds a license authorizing the sale for resale of the types of alcoholic beverages mentioned in the importer's license.

**23776. Wholesaler.** A wholesaler's license shall not be issued or renewed to any on-sale or off-sale licensee, except that:

(1) A wholesaler's license restricted to sales to on-sale licensees may be issued or renewed to an on-sale licensee in counties not to exceed 15,000 population, or

(2) If restricted to the wholesaler's sale of wine, a beer and wine wholesaler's license may be renewed for the holder of an off-sale beer and wine licensee who on December 31, 1987, held an off-sale beer and wine license and a beer and wine wholesaler's license, provided that the beer and wine wholesaler's license restricted to the wholesaler's sale of wine can only be transferred to the holder of a beer and wine wholesaler's license restricted to the wholesaler's sale of wine on the date of transfer.

**History.**—Stats. 1961, Ch. 246, in effect September 15, 1961, added exception for counties under 15,000 population. Stats. 1986, Ch. 735, made applicable to off-sale licenses. Stats. 1988, Ch. 284, in effect July 7, 1988, added. subd. (2).

**Cross reference.**—Section 23378.2, Rule 61.

**23777. Same; cities of 50,000.** No off-sale general license shall be renewed or issued to a distilled spirits wholesaler whose premises are located in a city having a population of 50,000 or more, as shown by the 1940 federal census, or to a distilled spirits wholesaler who sells distilled spirits to licensees whose premises are located in any city having a population of 50,000 or more, as shown by the 1940 federal census.

**23778. Same; stock of spirits.** A distilled spirits wholesaler's license shall not be held by any person unless at all times throughout the license year he has on his wholesale premises a reasonable stock of distilled spirits, as determined by the department, for which he has fully paid lawful money or its equivalent.

**History.**—Stats. 1955, Ch. 447, substituted "department" for "board."

**Validity of Rule 28.**—Rule 28 provides minimum requirements which all wholesalers must meet, and there can be no legitimate claim that there is any discrimination or unequal application in the rule. One of the purposes of the Alcoholic Beverage Control Act is to bring into being a class of true wholesalers. Rule 28, requiring wholesalers to sell to retailers generally rather than to a selected few retailers, is valid. The purpose of this is to provide that each wholesaler will be available to all retailers, thereby giving every retailer the right to buy from anyone in the licensed class with whom he must deal, and thereby preventing the recurrence of the "tied-house" which promoted restraints of trade during preprohibition times. The department is well within its rights to require a high standard of economic stability for those who are to hold wholesaler's licenses. *Molner v. Martin*, 180 Cal. App. 2d 873.

**23779. Same; good faith.** No wholesale license shall be issued to any person who does not in good faith actually carry on or intend to carry on a bona fide wholesale business by sale to retail licensees of the alcoholic beverage designated in the wholesale license, and the department may revoke any wholesale license when the licensee fails for a period of 45 days actively and in good faith to engage in the wholesale business and shall revoke any distilled spirits wholesaler's license held by any person who fails to comply with applicable provisions of Sections 23378, 23379, 23776, 23777, and 23778. Sale by a wholesale licensee to himself as a retail licensee is not the transaction of a bona fide wholesale business.

**History.**—Stats. 1955, Ch. 447, substituted "department" for "board."

**Cross reference.**—Discretionary character of quantum of discipline. 20 Ops. Atty. Gen. 217, 51/214 11-5-52.

**Evidence.**—Section is violated by issuance of license "for record" to one already holding a wholesaler's license in the same city, where the license is immediately surrendered under rule permitting surrender of inactive licenses. *Joseph George, Distributor v. Department of Alcoholic Beverage Control*, 149 Cal. App. 2d 702.

**Effect on public welfare and morals.**—Revocation is not dependent upon evidence that failure to make sales to retail licensees generally is contrary to general welfare, the Legislature in enacting § 23779 having provided that such conduct is contrary to public welfare and morals. *Borun Bros. v. Department of Alcoholic Beverage Control*, 215 Cal. App. 2d 503; *Louis Stores v. Department of Alcoholic Beverage Control*, 57 Cal. 2d 740.

**Res Adjudicata.**—While the department has power to make decisions which are res adjudicata, the doctrine should not be applied to those proceedings where its application would result in an adverse effect upon third persons not parties to the original litigation or where the public interest requires that re-litigation not be foreclosed. *Louis Stores v. Department of Alcoholic Beverage Control*, 57 Cal. 2d 749.

**Common ownership.**—Evidence that a wholly-owned subsidiary corporation whose officers and directors were to a substantial extent the officers and directors of the parent, was sufficient to justify disregarding the corporate entity and finding a violation of § 23779 where the subsidiary, as a wholesaler, was making sales only to the parent, a retail outlet. *Borun Bros. v. Department of Alcoholic Beverage Control*, 215 Cal. App. 2d 503.

**23780. Deposits for future delivery of spirits.** No distilled spirits wholesaler's license or rectifier's license shall be issued or renewed to any person who holds on deposit funds obtained from any retailer, which funds were obtained for the purpose of applying them, either in whole or in part, toward the payment of any future delivery of distilled spirits to the retailer.

**23781. Distilled spirits wholesaler's, etc., licenses, one to a city.** *Repealed by Stats. 1961, Ch. 1474.*

**23782. Industrial alcohol dealer.** *Repealed by Stats. 1957, Ch. 554.*

**23783. Premises where licensed revoked.** *Repealed by Stats. 1959, Ch. 935.*

**23784. On-sale.** No retailer's on-sale license shall be issued to any person to whom, or for any premises for which, a manufacturer's, wine grower's, importer's, wholesaler's, or rectifier's license is issued; and no manufacturer's, wine grower's, importer's, wholesaler's, or rectifier's license shall be issued to any person to whom, or for any premises for which, a retailer's on-sale license is issued, except that a retailer's on-sale license may be issued to a wholesaler in counties not to exceed 15,000 population.

**History.**—Stats. 1961, Ch. 246, in effect September 15, 1961, added "except that a retailer's on-sale license may be issued to a wholesaler in counties not to exceed 15,000 population."

**23785. Off-sale.** A retail package off-sale general license, when issued to the holder of a rectifier's or distilled spirits wholesaler's license, shall be issued only for the same premises for which the rectifier's or distilled spirits wholesaler's license is issued, except as otherwise provided or permitted in this division.

**23786. On-sale other than beer.** *Repealed by Stats. 1955, Ch. 1779, operative January 1, 1957.*

**23787. Bona fide public eating place.** The department shall, before issuing any on-sale license for the sale of alcoholic beverages to be consumed or otherwise disposed of in any bona fide public eating place, determine whether the public eating place is equipped and maintained in good faith for sales to and consumption by the public of meals upon the premises. A hotel or motel of 75 rooms or more or a bowling center of 12 lanes or more, or any other bona fide public eating place, which hotel, motel, bowling center or bona fide public eating place is licensed and so equipped and maintained may sublet the sale and service of the meals required by Section 23038 upon notification to the department. Provided, however, that the licensee shall be responsible for any violations of this division caused or permitted by the lessee on the licensed premises. The licensee shall not sublet to a person who does not have the qualifications of a holder of a license.

Nothing in this section shall preclude the renewal, transfer, or issuance of an on-sale general license to any premises equipped and maintained in good faith for sales to and consumption by members of the public of meals upon the premises even though

the operation of such premises is limited solely to the service of meals and beverages at prearranged events of a social or business nature and where admission is by ticket only.

**History.**—Stats. 1955, Ch. 1779, in effect January 1, 1957, deleted hotel, restaurant, cafe and cafeteria. Stats. 1957, Ch. 1922, in effect September 11, 1957, added second and third sentences. Stats. 1961, Ch. 1686, in effect September 15, 1961, added second paragraph. Stats. 1967, Ch. 1296, in effect November 8, 1967, deleted “other than beers” in first sentence, and included bowling center of 32 lanes or more in second sentence. Stats. 1968, Ch. 1196, in effect November 13, 1968, substituted “12” for “32” lanes. Stats. 1971, Ch. 1184, in effect March 4, 1972, permitted leasing of restaurant to qualified person upon notification to department.

**Cross reference.**—Except as permitted by this section, a licensee under a bona fide public eating place license may not lease or make a concession agreement under which he would in effect sublet the restaurant operation in his premises. 29 Ops. Atty. Gen. 95, 57/25 3-27-57.

**23788. Citizenship.** *Repealed by Stats. 1967, Ch. 567.*

**23788.5. Manager; qualifications.** No on-sale licensee shall knowingly employ any person to manage, direct, or conduct the business who does not have the qualifications required of a holder of the license. Any on-sale licensee requesting the department to make a determination of qualifications of a proposed manager shall submit with an application for such services a fee of one hundred dollars (\$100) which shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

**History.**—Added by Stats. 1957, Ch. 1267, in effect September 11, 1957, formerly last sentence of Section 23788. Stats. 1963, Ch. 1000, in effect September 20, 1963, deleted restriction to “general” licensee. Stats. 1978, Ch. 656, in effect January 1, 1979, added second sentence. Stats. 1992, Ch. 900, in effect September 25, 1992, provided that fees be deposited in ABC Fund.

**Cross reference.**—Rule. 57.6.

One who has authority to sign contracts and checks for a corporate licensee and who has power to exercise rights of a stockholder is a manager within the meaning of this section. *Ciro’s of San Francisco v. State Board of Equalization*, 142 Cal. App. 2d 636, 299 Pac. 2d 703.

**23789. Churches, schools, etc.** (a) The department is specifically authorized to refuse the issuance, other than renewal or ownership transfer, of any retail license for premises located within the immediate vicinity of churches and hospitals.

(b) The department is specifically authorized to refuse the issuance, other than renewal or ownership transfer, of any retail license for premises located within at least 600 feet of schools and public playgrounds or nonprofit youth facilities, including, but not limited to, facilities serving girl scouts, boy scouts, or campfire girls. This distance shall be measured pursuant to rules of the department.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1959, Ch. 803, in effect September 18, 1959, inserted “other than renewal or ownership transfer” and deleted “schools, and children’s public playgrounds” in first paragraph; and added second paragraph. Stats. 1984, Ch. 273, in effect July 3, 1984, added reference to youth facilities. Stats. 1992, Ch. 678, in effect January 1, 1993, recast and made section apply to any retail license.

**Cross references.**—Penal Code Sections 172, 172a, 172b, 172d, 172.5. Statutes prohibiting sale of liquor within certain distances of designated institutions.

**Effect of Alcoholic Beverage Control Act on Penal Code provisions.**—Statutes denouncing as crime sale of alcohol within certain distances of designated institutions were not repealed by Alcoholic Beverage Control Act. *People v. Zadro*, (1937) 20 Cal. App. 2d 320, 66 Pac. 2d 1204.

**Off-sale license near school.**—While the State Board of Equalization is authorized under the Alcoholic Beverage Control Act to refuse an on-sale liquor license for premises in the immediate vicinity of a school, the absence of such a provision as to off-sale licenses does not preclude the board from making proximity of the premises to a school an adequate basis for denying an off-sale license as being inimical to public welfare and morals. The denial of an off-sale beer and wine license at a grocery store across the street from high school grounds is not arbitrary because there are other liquor licensees operating in the vicinity of the school. *Weiss v. State Board of Equalization*, 40 Cal. 2d 772.

**Off-sale license near church.**—Although there is no provision for refusing an “off-sale” license under § 23789 for proximity to a church, nevertheless such proximity may supply an adequate basis for denial of an “off-sale” license as being inimical to public welfare and morals. *Schaub’s Inc. v. Department of Alcoholic Beverage Control*, 153 Cal. App. 2d 858.

**On-sale license near churches.**—The mere fact that churches are in the immediate vicinity of the premises does not establish abusive discretion in granting an application for an on-sale general license, nor is such action prohibited by the provisions which authorize refusal of a license in such a case. Prior denial of a similar application is not res judicata and does not compel denial in a subsequent proceeding. *Aladana Community Church v. State Board of Equalization*, 109 Cal. App. 2d 99.

The location of a church near the premises for which an on-sale liquor license is proposed does not, as a matter of law, require a finding that issuance of the license would be contrary to public welfare and morals. *Koss v. Department of Alcoholic Beverage Control*, 215 Cal. App. 2d 489.

**Religious retreats.**—The department could properly deny a license for an area dedicated as a retreat for religious, cultural and youth groups. *Bowman v. Alcoholic Beverage Control Appeals Board and Sousa*, 171 Cal. App. 2d 467.

**Residential area.**—Finding that premises are in a residential area upon conflicting evidence constitutes good cause for denial of a license. Evidence that a traffic hazard would be created by parked cars at a premises also constitutes “good cause” for denial of a license. *Martin v. Alcoholic Beverage Control Appeals Board and Richards*, 52 Cal. 2d 238, 340 Pac. 2d 1.

**Off-sale license near playground.**—The proximity of a school or playground, public or private, may be considered in determining the propriety of issuing either an on- or an off-sale license regardless of any legislative expression of policy on the subject. *Bailey v. Department of Alcoholic Beverage Control and Dutton*, 201 Cal. App. 2d 348.

**Off-sale license near school.**—The department did not act arbitrarily, nor abuse its discretion, in finding that the issuance of an off-sale beer and wine license would be contrary to public welfare and morals based on evidence as to which there could be a reasonable difference of opinion. Since the power to determine the facts in licensing matters is vested in the department and not in the Appeals Board or the courts, a review of the department’s action is governed by the rule that where there is room for reasonable difference of opinion with respect to the correctness of a finding of fact it will not be disturbed by the reviewing tribunal. *Reimel v. Alcoholic Beverage Control Appeals Board (Piccirilli)*, 250 C.A. 2d 673.

**Mere proximity to school insufficient.**—Mere proximity of a school to a proposed licensed premises is insufficient cause, standing alone, for denial of a license. Each such instance must be determined on a case-by-case basis, looking to such factors as the nature of the business to be licensed, proximity to the school, ages of children attending the school, patronage of the business by school children, and other elements concerning the school, its functions and its students. *Reimel v. Alcoholic Beverage Control Appeals Board and Safeway*, 255 C.A. 2d 40. See also *Kirby v. Alcoholic Beverage Control Appeals Board and Circle K Corporation*, 261 C.A. 2d 119.

**23790. Zoning ordinances.** No retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city. Premises which had been used in the exercise of those rights and privileges at a time prior to the effective date of the zoning ordinance may continue operation under the following conditions:

(a) The premises retain the same type of retail liquor license within a license classification.

(b) The licensed premises are operated continuously without substantial change in mode or character of operation.

For purposes of this subdivision, a break in continuous operation does not include:

(1) A closure for not more than 30 days for purposes of repair, if that repair does not change the nature of the licensed premises and does not increase the square footage of the business used for the sale of alcoholic beverages.

(2) The closure for restoration of premises rendered totally or partially inaccessible by an act of God or a toxic accident, if the restoration does not increase the square footage of the business used for the sale of alcoholic beverages.

**History.**—Stats. 1982, Ch. 474, in effect January 1, 1983, recast section. Stats. 1989, Ch. 95, in effect January 1, 1990, added subs. (1) and (2).

**Construction.**—The department may determine the propriety of granting a liquor license in a district in which a zoning ordinance permits other retail businesses but excludes the sale of liquor. *Town of Los Gatos v. State Board of Equalization*, 141 C.A. 2d 344, 296 Pac. 2d 909.

An on-sale premises authorized to sell beer and wine at the time a zoning ordinance was adopted limiting retail businesses to those existing on the effective date of the ordinance may not thereafter be licensed to sell distilled spirits. *Town of Los Gatos v. State Board of Equalization*, 141 C.A. 2d 344, 296 Pac. 2d 909.

**Valid zoning ordinance.**—A zoning ordinance is valid which prohibits a cocktail lounge in a shopping center closer than 200 feet to the boundary of a residential district without a use permit from the Board of Zoning Adjustment, which board may determine that such an operation will not be detrimental to the health, morals and welfare of the adjoining residents. *Floresta, Inc. v. City of San Leandro*, 190 Cal. App. 2d 599.

A city ordinance providing that no person could operate any public place where food or beverages were sold without a written permit did not conflict with state statutes regulating the sale of liquor, since the ordinance applied to any establishment, regardless of whether it was in the liquor business, and denial of a liquor licensee’s application for a permit to have live entertainment in his liquor establishment would not affect his right under his liquor license to sell liquor. *Daniel v. Board of Police Commissioners*, 190 Cal. App. 2d 566.

A State license authorizing the sale of liquor will not prevail over the prohibition of a valid zoning ordinance, the Legislature having expressly negated any intention to extend State control to zoning matters through an exercise of its liquor licensing authority. *Jon-Mar Company v. City of Anaheim*, 201 Cal. App. 2d 832.

**Invalid zoning ordinances.**—A zoning ordinance which prohibits the sale of alcoholic beverages in any and all zones of the city is invalid. *South Pasadena v. Department of Alcoholic Beverage Control*, Los Angeles Superior Court No. 673,137, reported in *Los Angeles Daily Journal Reports Section*, April 29, 1957, page 13.

**Restrictive covenants not binding.**—Restrictive covenants are private contracts as opposed to public zoning ordinances. *Board of Trustees v. Munro and Raley*, 163 Cal. App. 2d 440.

**Concurrent sales of gasoline and alcoholic beverages.**—Local ordinance prohibiting all future sales of gasoline and alcoholic beverages from single premises is contrary to this section and preempted by California Constitution Article xx, Section 22. *Mussali v. City of Glendale*, 252 Cal. Rptr. 299.

23790.5. **Concurrent sales.** (a) It is the intent of the Legislature in enacting this section to ensure that local government shall not be preempted in the valid exercise of its land use authority pursuant to Section 23790, including, but not limited to, enacting an ordinance requiring a conditional use permit. It is also the intent of the Legislature to prevent the legislated prohibition of the concurrent retailing of beer and wine for off-premises consumption and motor vehicle fuel where the retailing of each is otherwise allowable.

(b) (1) No city, county, or city and county shall, by ordinance or resolution adopted on or after January 1, 1988, legislatively prohibit the concurrent retailing of motor vehicle fuel and beer and wine for off-sale consumption in zoning districts where the zoning ordinance allows motor vehicle fuel and off-sale beer and wine to be retailed on separate sites.

(2) On and after January 1, 1989, no city, county, or city and county ordinance or resolution adopted prior to May 5, 1987, shall have legal effect if it legislatively prohibits the concurrent retailing of motor vehicle fuel with beer and wine for off-sale consumption in zoning districts where the zoning ordinance allows beer and wine and motor vehicle fuel to be retailed on separate sites.

(3) On and after July 1, 1988, no city, county, or city and county ordinance or resolution adopted on or after May 5, 1987, shall have legal effect if it legislatively prohibits the concurrent retailing of motor vehicle fuel with beer and wine for off-sale consumption in zoning districts where the zoning ordinance allows beer and wine and motor vehicle fuel to be retailed on separate sites.

(4) This section shall not apply to a prohibition by a city, county, or city and county of the sale of beer and wine in conjunction with the sale of motor vehicle fuel if that prohibition occurs as a result of the prohibition of the combining of the sale of motor vehicle fuel with a broader class of products or uses which includes alcoholic beverages or beer and wine as a named or unnamed part of that larger class, if that prohibition was enacted before August 1, 1985.

(c) Subject to the restrictions and limitations of subdivision (b), this section shall not prevent a city, county, or city and county from denying permission, or granting conditional permission, to an individual applicant to engage in the concurrent retailing of motor vehicle fuel with beer and wine for off-premises consumption pursuant to a valid conditional use permit ordinance based on appropriate health, safety, or general welfare standards contained in the ordinance if that conditional use permit ordinance contains all of the following:

- (1) A requirement for written findings.
- (2) A provision for an administrative appeal if the governing body has delegated its power to issue or deny a conditional use permit.
- (3) Procedures for notice of a hearing, conduct of a hearing, and an opportunity for all parties to present testimony.
- (4) A requirement that the findings be based on substantial evidence in view of the whole record to justify the ultimate decision.

(d) Notwithstanding any other provision of law, establishments engaged in the concurrent sale of motor vehicle fuel with beer and wine for off-premises consumption shall abide by the following conditions:

- (1) No beer or wine shall be displayed within five feet of the cash register or the front door unless it is in a permanently affixed cooler as of January 1, 1988.

- (2) No advertisement of alcoholic beverages shall be displayed at motor fuel islands.
- (3) No sale of alcoholic beverages shall be made from a drive-in window.
- (4) No display or sale of beer or wine shall be made from an ice tub.
- (5) No beer or wine advertising shall be located on motor fuel islands and no self-illuminated advertising for beer or wine shall be located on buildings or windows.
- (6) Employees on duty between the hours of 10 p.m. and 2 a.m. who sell beer or wine shall be at least 21 years of age to sell beer and wine.

The standards contained in this subdivision are minimum state standards which do not limit local regulation otherwise permitted under this section.

(e) If there is a finding that a licensee or his or her employee has sold any alcoholic beverages to a minor at an establishment engaged in the concurrent sale of motor vehicle fuel with beer and wine for off-premises consumption, the alcoholic beverage license at the establishment shall be suspended for a minimum period of 72 hours. For purposes of Section 23790, the effect of such a license suspension shall not constitute a break in the continuous operation of the establishment nor a substantial change in the mode or character of operation.

(f) The provisions of this section apply to charter cities.

**History.**—Added by Stats. 1987, Ch. 176, in effect January 1, 1988. Stats. 1991, Ch. 108, in effect July 11, 1991, amended subd. (d) to make it apply to 1994. Stats. 1994, Ch. 627, in effect January 1, 1995, revised and made permanent subd. (d).

**Construction.**—The prohibitions on advertising in paragraph (d) apply to both beer and wine retail off-sale licensees and off-sale general licensees. Letter of legislative intent from the author to the Director of the Alcoholic Beverage Control, March 29, 1988.

**23791. Zoning regulations.** Nothing in this division interferes with the powers of cities conferred upon them by Sections 65850 to 65861, inclusive, of the Government Code.

**History.**—Stats. 1961, Ch. 252, in effect September 15, 1961, substituted “65800 to 65808” for “38690 to 38706” and deleted “Zoning Law of 1917.” Stats. 1967, Ch. 232, in effect November 8, 1967, substituted “65850 to 65861” for “65800 to 65808.”

**23792. Public works camps.** No license, other than an on-sale beer license, shall be issued to any applicant for any premises situated more than one mile outside the limits of an incorporated city and within two miles of any camp or establishment of men, numbering 25 or more, engaged upon or in connection with the construction, repair, or operation of any work, improvement, or utility of a public or quasi-public character. This section does not apply to the renewal of any licenses for any premises which have been established and licensed under this division at least six months prior to the establishment of the camp or establishment of men, and such licenses, whether held by the original licensee to whom first issued or a subsequent holder thereof, shall be subject to transfer as to person and premises, or either, in the same manner as any other license of the same type and character issued by the department.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

**23793. Intercounty restriction.** No new original public premises licenses shall be issued except for beer, or beer and wine, and no public premises licenses shall be transferred from county to county, unless the applicant can show that substantial public demand cannot otherwise be satisfied.

**History.**—Added by Stats. 1961, Ch. 783, in effect June 10, 1961. Stats. 1965, Ch. 1546, in effect September 17, 1965, deleted first paragraph. Stats. 1967, Ch. 1296, in effect November 8, 1967, inserted “except for beer.” Stats. 1973, Ch. 425, in effect January 1, 1974, included beer and wine license.

## Article 1.5. Conditional Licenses

(Added by Stats. 1959, Ch. 1351, in effect September 18, 1959)

§ 23800.	Conditions.
§ 23801.	Restrictions.
§ 23802.	Conditions on license.
§ 23803.	Removal of conditions.
§ 23804.	Violations.
§ 23805.	Right of appeal.

23800. **Conditions.** The department may place reasonable conditions upon retail licensees or upon any licensee in the exercise of retail privileges in the following situations:

(a) If grounds exist for the denial of an application for a license or where a protest against the issuance of a license is filed and if the department finds that those grounds may be removed by the imposition of those conditions.

(b) Where findings are made by the department which would justify a suspension or revocation of a license, and where the imposition of a condition is reasonably related to those findings. In the case of a suspension, the conditions may be in lieu of or in addition to the suspension.

(c) Where the department issues an order suspending or revoking only a portion of the privileges to be exercised under the license.

(d) Where findings are made by the department that the licensee has failed to correct objectionable conditions within a reasonable time after receipt of notice to make corrections given pursuant to subdivision (e) of Section 24200, or subdivision (a) or (b) of Section 24200.1.

(e) (1) At the time of transfer of a license pursuant to Section 24071.1, 24071.2, or 24072 and upon written notice to the licensee, the department may adopt conditions that the department determines are reasonable pursuant to its investigation or that are requested by the local governing body, or its designated subordinate officer or agency, in whose jurisdiction the license is located. The request for conditions shall be supported by substantial evidence that the problems either on the premises or in the immediate vicinity identified by the local governing body or its designated subordinate officer or agency will be mitigated by the conditions. Upon receipt of the request for conditions, the department shall either adopt the conditions requested or notify the local governing body, or its designated subordinate officer or agency, in writing of its determination that there is not substantial evidence that the problem exists or that the conditions would not mitigate the problems identified. The department may adopt conditions only when the request is filed. Any request for conditions from the local governing body or its designated subordinate officer or agency pursuant to this provision shall be filed with the department within the time authorized for a local law enforcement agency to file a protest or proposed conditions pursuant to Section 23987.

(2) If the license to be transferred subject to paragraph (1) is located in an area of undue concentration as defined in Section 23958.4, the period within which the local governing body or its designated subordinate officer or agency may submit a written request for conditions shall be 40 days after the mailing of the notices required by Section 23987. For purposes of this provision only, undue concentration shall be established when the requirements of both paragraph (1) of subdivision (a) and either paragraph (2) or paragraph (3) of subdivision (a) of Section 23958.4 exist. Pursuant to Section 23987, the department may extend the 40-day period for a period not to exceed an additional 20 days upon the written request of any local law enforcement agency or local government entity with jurisdiction. Nothing in this paragraph is intended

to reduce the burden of the local governing body or its designated subordinate officer or agency to support any request for conditions as required by paragraph (1). Notwithstanding Section 23987, the department may not transfer any license subject to this paragraph until after the time period permitted to request conditions as specified in this paragraph.

**History.**—Stats. 1969, Ch. 502, in effect November 10, 1969, deleted requirement for proceedings and reworded situations. Stats. 1989, Ch. 903, in effect January 1, 1990, permitted conditions on non-retail licenses. Stats. 1994, Ch. 627, in effect January 1, 1995, added subd. (d). Stats. 1999, Ch. 499, in effect January 1, 2000, added subd. (e). Stats. 2000, Ch. 979, in effect January 1, 2001, amended subd. (e) to specify when conditions may be requested. Stats. 2001, Ch. 931, in effect January 1, 2002, added 10 days to the time period a local governing body has to request conditions. Specifies this extension only applies to premises located in both high crime and overconcentrated districts. Stats. 2006, Ch. 625, SB 148, in effect January 1, 2007, amended subd. (e) to authorize the department to impose reasonable conditions at time of transfer.

**23801. Restrictions.** The conditions authorized by Section 23800 may cover any matter relating to the privileges to be exercised under the license, the personal qualifications of the licensee, the conduct of the business or the condition of the premises, which will protect the public welfare and morals, including, but not limited to, the following:

- (a) Restrictions as to hours of sale.
- (b) Display of signs.
- (c) Employment of designated persons.
- (d) Types and strengths of alcoholic beverages to be served where such types or strengths are otherwise limited by law.
- (e) In cases under Section 23800(c), the portion of the privileges to be exercised under the license.
- (f) The personal conduct of the licensee.

**History.**—Stats. 1969, Ch. 502, in effect November 10, 1969, added the personal qualifications of the licensee in first sentence and subd. (f).

**23802. Conditions on license.** Such conditions shall be endorsed upon the license and any renewal thereof and shall be binding upon all persons to whom the license is transferred.

**23803. Removal of conditions.** The department, upon its own motion or upon the petition of a licensee or a transferee who has filed an application for the transfer of the license, if it is satisfied that the grounds which caused the imposition of the conditions no longer exist, shall order their removal or modification, provided written notice is given to the local governing body of the area in which the premises are located. The local governing body has 30 days to file written objections to the removal or modification of any condition. The department may not remove or modify any condition to which an objection has been filed without holding a hearing as provided in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Any petition for the removal or modification of a condition pursuant to this section shall be accompanied by a fee of one hundred dollars (\$100).

**History.**—Stats. 1983, Ch. 587, in effect January 1, 1984, added the last paragraph. Stats. 1997, Ch. 454, in effect January 1, 1998, amended to require notification of local governing body.

**23804. Violations.** A violation of a condition placed upon a license pursuant to this article shall constitute the exercising of a privilege or the performing of an act for which a license is required without the authority thereof and shall be grounds for the suspension or revocation of such license.

**Violation of conditions vs. violation of rule.**—The penalty of consecutive periods of suspension of a license for violation of a rule of the Department of Alcoholic Beverage Control, and for violation of a condition of the license duplicating the rule, constituted multiple penalties for a single act and was improper. *Cohan v. Department of Alcoholic Beverage Control*, 76 Cal. App. 3d 905.

**23805. Right to appeal.** The proceedings specified in Section 23800(a), (b), (c), (d), and (e) shall be conducted in the same manner as is required for other proceedings involving petitions, protests or accusations, and the right of a respondent in the proceedings to appeal shall include the right to appeal from an order imposing conditions upon the licenses involved in the proceedings. If the department gives notice of conditions pursuant to subdivision (e) of Section 23800 or denies a petition filed under Section 23803, the licensee or transferee may, within 10 days after the mailing of the denial, make a written request for a hearing. The proceedings at the hearing shall be conducted as provided in Section 24300, and the respondent shall have the same rights of appeal therefrom as in disciplinary actions.

**History.—Stats. 1999, Ch. 499, in effect January 1, 2000, added reference to Section 23800(e).**

## Article 2. Limitation on Number of Licensed Premises

- § 23815. Declaration of limitation policy.
- § 23816. On-sale general ratio.
- § 23817. Off-sale general ratio.
- § 23817.4. Limitation on/off-sale beer and wine licenses.
- § 23817.5. Off-sale beer and wine ratio.
- § 23817.7. Off-sale licenses moratorium exceptions.
- § 23817.8. Moratorium exception; beer and wine wholesaler.
- § 23817.9. Computation of licenses authorized.
- § 23817.10. Population increase.
- § 23818. Census.
- § 23819. License cancellation or issuance not required.
- § 23820. Rules.
- § 23821. Population increase.
- § 23822. Application for additional license. [Repealed.]
- § 23823. Investigation of application. [Repealed.]
- § 23824. Premises owned by State, city, etc.
- § 23824.1. Convention centers; independent agency.
- § 23825. Exchange of special on-sale general license.
- § 23826. Additional original general license.
- § 23826.2. Beer and wine limitations.
- § 23826.5. Additional original off-sale general license.
- § 23826.7. Additional original on-sale general license.
- § 23826.8. Conversion of on-sale general license for seasonal business.
- § 23826.9. Conversion fee and transfer restriction. [Repealed.]
- § 23827. Additional on-sale general for bona fide eating place.

**23815. Declaration of limitation policy.** It is hereby determined that the public welfare and morals require that there be a limitation on the number of premises licensed for the sale of distilled spirits.

**Cross references.**—Exemptions from provisions of this article:

- § 23431. Club license.
- § 23453. Veterans' club license.
- § 23824. State, county or city premises.

**23816. On-sale general ratio.** The number of premises for which an on-sale general license is issued shall be limited to one for each 2,000, or fraction thereof, inhabitants of the county in which the premises are situated. No additional on-sale general licenses, other than a renewal or transfer or as permitted by Section 23821, shall be issued in any county where the number of all premises for which on-sale general licenses are issued is more than one for each 2,000, or fraction thereof, inhabitants of the county. No on-sale general license shall be issued in lieu of or upon the cancellation or surrender of an on-sale beer and wine license.

**History.—Stats. 1961, Ch. 783, in effect June 10, 1961, substituted "2,000" for "1,000," deleted "or 23822" and "other than on-sale beer licenses," and inserted second "general" licenses in second sentence.**

**Power to limit on-sale licenses.**—The fact that the Legislature has excluded on-sale beer licenses from license limitation does not make the department's attempt to limit the number of on-sale beer licenses contrary to law, because the authority of the department to deny the granting of a license upon the ground that its issuance would be contrary to public welfare or morals is derived from self-executing provisions of the Constitution, exists independently of any legislation, and may not be restricted by statute. *Torres v. Department of Alcoholic Beverage Control*, 192 Cal. App. 2d 541.

**Seasonal on-sale licenses.**—The limitations of this section do not apply to seasonal licenses. *Johnstone v. State Board of Equalization*, 95 Cal. App. 2d 527, 213 Pac. 2d 429.

**Application for reinstatement of revoked license.**—Although under Government Code § 11522 a former licensee could apply for reinstatement after revocation, Government Code § 11522 does not apply if the ratio provided in this section or § 23817 would be exceeded by such issuance, 12 Ops. Atty. Gen. 57, 47/176 8-10-48.

**23817. Off-sale general ratio.** Until July 1, 1963, the number of premises for which an off-sale general license is issued shall be limited to one for each 2,000, or fraction thereof, inhabitants of the county in which the premises are situated; and no additional off-sale general license, other than a renewal or transfer or as permitted by Section 23821, shall be issued in any county where the number of premises for which all off-sale general licenses are issued is more than one for each 2,000, or fraction thereof, inhabitants of the county.

On and after July 1, 1963, the number of premises for which an off-sale general license is issued shall be limited to one for each 2,500, or fraction thereof, inhabitants of the county in which the premises are situated; and no additional off-sale general license, other than a renewal or transfer or as permitted by Section 23821, shall be issued in any county where the number of premises for which all off-sale general licenses are issued is more than one for each 2,500, or fraction thereof, inhabitants of the county.

**History.**—Stats. 1961, Ch. 783, in effect June 10, 1961, substituted "2,000" for "1,000"; deleted "and 23822"; and added "Until July 1, 1963", reference to "general" licenses, and second paragraph.

**23817.4. Limitation on/off-sale beer and wine licenses.** The Legislature finds and declares that the public welfare and morals require that there be a limitation on the number of premises licensed for the off sale of beer and wine.

**History.**—Added by Stats. 1997, Ch. 564, in effect January 1, 1998.

**23817.5. Off-sale beer and wine license ratio.** (a) (1) The number of premises for which an off-sale beer and wine license is issued shall be limited to one for each 2,500, or fraction thereof, inhabitants of the city or county in which the premises are situated. No additional off-sale beer and wine license, other than a renewal or transfer or as permitted by Section 23821, shall be issued in any city or county where the number of premises for which all off-sale beer and wine licenses are issued is more than one for each 2,500, or fraction thereof, inhabitants of the city or county.

(2) The number of premises for which an off-sale beer and wine license is issued in a city and county, in combination with the number of premises for which an off-sale general license is issued in a city and county, shall be limited to one for each 1,250, or fraction thereof, inhabitants of the city and county in which the premises are situated. No additional off-sale beer and wine license, other than a renewal or transfer or as permitted by Section 23821, shall be issued in any city and county where the number of premises for which all off-sale beer and wine licenses in combination with off-sale general licenses are issued is more than one for each 1,250, or fraction thereof, inhabitants of the city and county.

(b) Notwithstanding subdivision (a), a retail off-sale beer and wine replacement license shall be issued upon application when all of the following conditions exist:

(1) The replacement license is only for use at a premises which was licensed and operated within the past 90 days.

(2) The prior licensee abandoned the premises or the original license is subject to a bankruptcy proceeding and the prior licensee has no right to operate at that location. For purposes of this paragraph, "abandoned" means that the prior license has not been

transferred to a new location and the prior licensee is not exercising dominion or control over the premises. “Abandoned” does not mean a license which has been voluntarily surrendered pursuant to department rule.

(3) The application for a replacement license shall be accompanied by a fee of one hundred dollars (\$100).

(c) The following limitations shall apply to the issuance of a replacement license:

(1) The replacement license shall not be transferred to another premises.

(2) All conditions imposed on the original license shall apply to the replacement license.

(3) The original license shall be canceled by operation of law upon the issuance of the replacement license.

**History.**—Added by Stats. 1994, Ch. 627, in effect January 1, 1995 until January 1, 1998. Stats. 1995, Ch. 834, in effect January 1, 1996, added subs. (b), (c), and (d). Stats. 1997, Ch. 564, in effect January 1, 1998, amended subd. (a) and deleted subd. (3)(d). Stats. 1998, Ch. 485, in effect January 1, 1999, amended. Stats. 2000, Ch. 979, in effect January 1, 2001, amended to define and limit replacement licensees and allow cancellation of license upon replacement.

**23817.7. Off-sale licenses; moratorium exceptions.** (a) Notwithstanding Section 23817.5, the department may approve an application for an off-sale beer and wine license in areas covered by Section 23817.5, if the applicant shows that public convenience or necessity would be served by the issuance, and where all of the following conditions are found to exist:

(1) The applicant premises are located in a crime reporting district that is below that specified pursuant to paragraph (1) of subdivision (a) of Section 23958.4. In considering an application, the department may take into account adjacent crime reporting districts, if the applicant premises are located within 100 feet of the boundaries of any adjacent district. The department shall use an average of reported crimes in the crime reporting district in which the premises are located and reported crimes in any adjacent crime reporting district, if the total of crimes reported in the adjacent district or districts is greater than the crime reporting district in which the premises are located.

(2) The applicant premises are located in an area that falls below the concentration level provided in paragraph (3) of subdivision (a) of Section 23958.4.

(3) The local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines that public convenience or necessity would be served by the issuance.

(b) The department may impose reasonable conditions on a licensee as may be needed in the interest of the public health, safety, and welfare regarding signing, training for responsible beverage sales and hours, and mode of sale.

**History.**—Added by Stats. 1995, Ch. 245, in effect January 1, 1996. Stats. 1997, Ch. 564, in effect January 1, 1998, made technical, non-substantive changes and deleted sunset provision. Stats. 2001, Ch. 931 in effect January 1, 2002, allowed the department to take into account adjacent crime reporting districts if the premises are located within 100 feet of the boundaries of any adjacent district.

**23817.8. Moratorium exception; beer and wine wholesaler.** (a) Notwithstanding Section 23817.5, the department may approve an application for an off-sale beer and wine license by a licensed beer and wine wholesaler, even though the applicant premises will be located in an area having an undue concentration of off-sale beer and wine licenses, as provided in paragraph (3) of subdivision (a) of Section 23958.4, provided each of the following conditions are met:

(1) The off-sale beer and wine license shall be held at the same location as the beer and wine wholesaler license.

(2) The off-sale beer and wine license shall be restricted to sales solicited and accepted by direct mail, telephone, or on-line computer. The off-sale beer and wine license shall not be used for operations conducted from a retail store open to the public.

(b) The department may impose reasonable conditions on a licensee as may be needed in the interest of the public health, safety, and welfare regarding signing, training for responsible beverage sales, hours, and mode of sale.

**History.**—Added by Stats. 1996, Ch. 900, in effect January 1, 1997 until January 1, 1998. Stats. 1997, Ch. 564, in effect January 1, 1998, made technical non-substantive changes and deleted sunset provision.

**23817.9. Computation of licenses authorized.** For the purposes of Section 23817.5, beginning with the year 2000, population shall be determined by the most recent United States decennial census or a single subsequent census between United States decennial censuses validated by the Population Research Unit of the Department of Finance five years after a United States decennial census.

**History.**—Added by Stats. 1997, Ch. 564, in effect January 1, 1998.

**23817.10. Population increase.** Whenever it is made to appear to the department by satisfactory evidence that the population in any city or county has increased by more than 2,500 or multiples of 2,500 inhabitants or the population in a city and county has increased by more than 1,250 or multiples of 1,250 inhabitants since the most recent United States decennial census and if the total number of off-sale beer and wine licenses in that city, county, or city and county does not then exceed the maximum specified in Section 23817.5, the department may issue additional licenses, not to exceed one off-sale beer and wine license for each increase of 2,500 inhabitants in the city and county since the taking of the census.

**History.**—Added by Stats. 1997, Ch. 564, in effect January 1, 1998.

**23818. Census.** Population, for the purpose of Sections 23816 and 23817, shall be determined by the most recent United States decennial or special census or a subsequent census validated by the Population Research Unit of the Department of Finance.

**History.**—Stats. 1973, Ch. 806, in effect January 1, 1974, added census validated by the Population Research Unit of the Department of Finance.

**23819. License cancellation or issuance not required.** Nothing in this article authorizes the cancellation of any license which may be outstanding in any county in excess of the number authorized by the ratio established in this article, nor shall anything in this article require the issuance of any license in any county because the number of the licenses does not equal the authorized ratio.

**23820. Rules.** The department may make all rules consistent with the provisions of Section 22 of Article XX of the Constitution, or the provisions of this division, necessary to carry into effect the provisions of this article, and to restrict the issuance of alcoholic beverage licenses, including seasonal licenses, but not including beer, beer and wine wholesaler's, and winegrower's licenses, to a number in any county as the department shall determine is in the interest of public welfare and morals, convenience, or necessity.

**History.**—Stats. 1955, Ch. 447, substituted "department" for "board." Amended by Stats. 1963, Ch. 1642, with no change. Stats. 1997, Ch. 564, in effect January 1, 1998, made technical, non-substantive changes.

**Seasonal licenses.**—A seasonal license may be issued for any business located in an area where the consumer demand fluctuates during different periods of the year. *Johnstone v. Richardson*, 103 Cal. App. 2d 41.

**23821. Population increase.** Whenever it is made to appear to the department by satisfactory evidence that the population in any county has increased by more than 2,000 or multiples of 2,000 inhabitants since the most recent United States decennial

or special census, and it appears to the department that by reason thereof the inhabitants of the county are unjustly and unfairly discriminated against, and if the total number of on-sale general licenses in such county do not then exceed the maximum specified in Section 23816, the department, subject to the limitation contained in Section 24070, may issue not to exceed one on-sale general license for each increase of 2,000 inhabitants in the county since the taking of the census.

Whenever it is made to appear to the department by satisfactory evidence that the population in any county has increased by more than 2,500 or multiples of 2,500 inhabitants since the most recent United States decennial or special census and it appears to the department that by reason thereof the inhabitants of the county are unjustly and unfairly discriminated against, and if the total number of off-sale general licenses in such county do not then exceed the maximum specified in Section 23817, the department, subject to the limitation contained in Section 24070, may issue not to exceed one off-sale general license for each increase of 2,500 inhabitants in the county since the taking of the census.

Before any applications for new original on-sale general or new original off-sale general or intercounty transfer of off-sale general or on-sale general licenses are accepted, the department shall publish pursuant to Section 6061 of the Government Code in the county where such new original licenses may be issued or into which off-sale general or on-sale general licenses may be transferred, notice of the department's intention to receive applications for the issuance of such new original licenses or for the intercounty transfer of off-sale general or on-sale general licenses, setting forth the date, time, manner and place of acceptance of such applications within the county. In all other respects the limitation hereinbefore provided for shall continue in effect.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1961, Ch. 783, in effect June 10, 1961, substituted “2,000” for “1,000”; and added “subject to the limitation contained in Section 24070,” and second and third paragraphs. Stats. 1967, Ch. 1222, in effect August 17, 1967, deleted reference to off-sale general license in first paragraph, deleted reference to 1963 effective date and added reference to Section 24070 in second paragraph, and included provision for intercounty transfer of off-sale general licenses in third paragraph. Stats. 1969, Ch. 1466, in effect November 10, 1969, included intercounty transfer of on-sale general licenses in third paragraph.

**Issuance of licenses where county's population increases.**—The provision for additional licenses when a county increases in population, requires only satisfactory evidence of such increase, which may be shown by relevant documentary evidence. The provision that the total number of licenses shall not then exceed the maximum specified in the ratios refers to the total number after issuance of the new licenses, and not to whether an excess number of licenses previously had been issued. *San Diego v. State Board of Equalization*, 82 Cal.App. 2d 453, 186 Pac. 2d 166.

**Cross reference.**—Atty. Gen. Op. 67/226 2-16-68.

**23822. Application for additional license.** *Repealed by Stats. 1961, Ch. 783.*

**23823. Investigation of application.** *Repealed by Stats. 1961, Ch. 783.*

**23824. Premises owned by State, city, etc.** Limitations provided by Section 23816 on the number of licensed premises shall not apply to premises located on land owned by and leased from the State of California, or to premises owned by the State of California, any incorporated city, county, city and county, airport district, or other district or public corporation of the State of California or to premises leased to the State of California or to any city or county, so long as the premises are operated as a bona fide public eating place, provided, however, that civic auditoriums owned by any incorporated city, county, city and county, or other district or any premises leased to the State of California or to any county or city for use as a civic auditorium and directly operated by a public entity shall be subject to the limitations provided by Section 23816, but shall not be required to be operated as a bona fide public eating place. The civic auditorium shall further not be subject to the provisions of Section 23793.

Licenses issued on premises owned by the state, incorporated city, county, city and county, airport district, or other district or public corporation of the State of California, or issued on premises leased to the State of California or to any county or city, shall be renewable as set forth in Section 24048. These licenses shall be excluded from the number of premises used in determining application of the limitations provided by this article. These licenses shall be subject to an original fee of six thousand dollars (\$6,000) and shall be only transferable from person to person at the same premises. Prior to the issuance of these licenses, the governmental agency owning or leasing the premises shall file with the department a written request that the license be issued and a written statement setting forth the reasons why issuance of the license would be in the public interest.

A written request filed with the department by the governmental agency owning or the city or county leasing premises used as a civic auditorium and directly operated as a public entity that the license be issued need not contain a written statement setting forth the reasons why issuance of the license would be in the public interest.

Funds derived from fees collected pursuant to the amendments made to this section at the 1975–76 Regular Session of the Legislature shall be deposited in the General Fund.

**History.**—Added by Stats. 1955, Ch. 1801, in effect September 7, 1955. Stats. 1957, Ch. 1149, in effect September 11, 1957, added second sentence in second paragraph. Stats. 1961, Ch. 533, in effect September 15, 1961, substituted “Section 23816” for “this article,” and “subject to” for “exempt from”; and added provisions relating to bona fide public eating place, renewability and transferability, and last sentence. Stats. 1967, Ch. 809, in effect November 8, 1967, included premises leased to any county. Stats. 1976, Ch. 1021, in effect January 1, 1977, added provisions relating to civic auditoriums in first paragraph and last two paragraphs. Stats. 1983, Ch. 966, in effect September 21, 1983, inserted “city or” preceding “county”. Stats. 1993, Ch. 85, in effect July 9, 1993, revised fees. Stats. 2000, Ch. 979, in effect January 1, 2001, amended to specify circumstances under which a license may be issued.

License may be issued to premises “owned by governmental agency.” 34 Ops. Atty. Gen. 208, 59/166 11-6-59.

**23824.1. Convention centers; independent agency.** (a) The provisions of Section 23824 shall apply to convention centers and event centers which are operated by municipal, independent nonprofit agencies for the purpose of providing meeting rooms, exhibit space, or event and theatrical seating, or all of these.

(b) Any license issued pursuant to this section shall be issued only upon condition that all revenues generated from the license shall be segregated and allocated for the operations and capital requirements of the convention center or event center only.

(c) For purposes of this section, “event center” means a community center, activity center, auditorium, convention center, arena, or other building, collection of buildings, or facility which is used exclusively or primarily for the holding of exhibitions, conventions, meetings, spectacles, concerts, or shows.

**History.**—Added by Stats. 1996, Ch. 254, in effect January 1, 1997.

**23825. Exchange of special on-sale general license.** As used in this article, “on-sale general license” includes a special on-sale general license; provided, that the limitation prescribed in Section 23816 shall not prohibit the exchange of an on-sale general license for a special on-sale general license, or the exchange of a special on-sale general license for an on-sale general license.

**History.**—Added by Stats. 1961, Ch. 1914, in effect September 15, 1961. Stats. 1963, Ch. 785, in effect September 20, 1963, added “or the exchange of a special on-sale general license for an on-sale general license.”

**Cross reference.**—Sections 23954.6 and 24072.5.

**23826. Additional original general license.** Notwithstanding any other provision of this chapter, in any county where the inhabitants number less than 2,500 and where on July 1 of any calendar year there exists in any such county none or only one on-sale general license and none or only one off-sale general license the department may

issue one additional original on-sale general license and one additional original off-sale general license during the following 12-month period.

In issuing the licenses provided for in this section, the department shall follow the procedure set forth in Section 23961.

A license issued pursuant to this section shall not be transferred from one county to another.

**History.**—Added by Stats. 1967, Ch. 889, in effect November 8, 1967.

**23826.2. Beer and wine limitations.** No new off-sale beer and wine license shall be issued in a county of the first class, as specified in Section 28022 of the Government Code, unless it is issued with conditions, pursuant to Sections 23800 and 23801, which provide that the sale of products other than beer and wine on an annual basis, measured by gross receipts, shall exceed the annual sales of beer and wine products measured by the same basis.

**History.**—Added by Stats. 1984, Ch. 793, in effect January 1, 1985.

**23826.5. Additional original off-sale general license.** Notwithstanding any other provision of this chapter, in any county of the 58th class, the department may issue three additional original off-sale general licenses.

In issuing the licenses provided for in this section, the department shall follow the procedure set forth in Section 23961.

A license issued pursuant to this section shall not be transferred from one county to another.

**History.**—Added by Stats. 1975, Ch. 407, in effect January 1, 1976.

**23826.7. Additional original on-sale general license.** Notwithstanding any other provision of this chapter, in any county where the inhabitants number less than 5,000 but more than 3,000 according to the 1970 federal census and where the major economy of that county is dependent upon the year-round use of that county's recreational facilities the department may issue five additional new original on-sale general licenses for bona fide public eating places. Any premises to qualify for a license under this section shall have a seating capacity for 100 or more diners. In no event shall more than five such licenses be issued under this section.

In issuing the licenses provided for in this section, the department shall follow the procedure set forth in Section 23961.

Nothing in this chapter shall prohibit a person who currently holds a valid on-sale general license for seasonal business from applying for an original on-sale general license pursuant to this section.

A license issued under this section shall not be transferred from one county to another nor shall it be transferred to any premises not qualifying under this section.

**History.**—Added by Stats. 1975, Ch. 571, in effect January 1, 1976.

**23826.8. Conversion of on-sale general license for seasonal business.** Notwithstanding any other provision of law, the director may authorize the conversion of any on-sale general license for seasonal business to an on-sale general license if the on-sale general license for seasonal business was originally issued before May 1, 1982, or if an application for original issuance of that license was filed before May 1, 1982, or, in the case of any county of the 34th class, if the on-sale general license for seasonal business was originally issued before October 1, 1982, or if an application for original issuance of that license was filed before October 1, 1982. An application for conversion shall be accompanied by the fee required by Section 23954.5 for an

on-sale general license. The department shall not accept any applications for original issuance of an on-sale general license for seasonal business on or after January 1, 1983.

An on-sale general license for seasonal business which is converted to an on-sale general license under this section may not be transferred for a period of two years from the date of issuance, except as provided in Section 24071, and except when the department determines that the transfer is necessary to prevent undue hardship. The purchase price or consideration that may be paid by a transferee or received by a transferor of an on-sale general license created by conversion under this section shall not exceed six thousand dollars (\$6,000), except that after a period of five years from the date of issuance of the license there shall be no restriction as to the purchase price or consideration that may be paid by a transferee or received by a transferor.

**History.—**Added by Stats. 1977, Ch. 753, in effect January 1, 1978. Stats. 1978, Ch. 216, in effect January 1, 1979, repealed former section and added present section. Stats. 1982, in effect January 1, 1983, recast section. Stats. 1985, Ch. 166, in effect January 1, 1986, restructured conversion process for Mendocino County.

**23826.9. Conversion fee and transfer restriction.** *Repealed by Stats. 1978, Ch. 216.*

**23827. Additional on-sale general for bona fide eating place.** Notwithstanding any other provision of this chapter, in any county where the inhabitants number less than 7,000 and where the major economy of that county is dependent upon the continual use of that county's recreational facilities the department may issue four additional new original on-sale general licenses for bona fide public eating places. Any premises to qualify for a license under this section shall have a seating capacity for 100 or more diners. In no event shall more than four such licenses be issued under this section.

In issuing the licenses provided for in this section, the department shall follow the procedure set forth in Section 23961.

A license issued pursuant to this section shall not be transferred from one county to another.

**History.—**Added by Stats. 1969, Ch. 1078, in effect November 10, 1969.

## CHAPTER 6. ISSUANCE AND TRANSFER OF LICENSES

- Article 1. Applications for licenses. §§ 23950–23962.
2. Notices. §§ 23985–23988.
  3. Denial and Protest. §§ 24010–24016.
  4. Issuance and Renewal of Licenses. §§ 24040–24052.
  5. Transfer of licenses. §§ 24070–24082.

### Article 1. Applications for Licenses

- § 23950. Form.
- § 23951. Contents.
- § 23952. Felony and law violation.
- § 23953. Signatures.
- § 23954. Verification and fee.
- § 23954.5. Original on-sale and off-sale fee.
- § 23954.6. Original special on-sale general license.
- § 23954.7. Original intermittent dockside license fee.
- § 23955. Wine grower's fee.
- § 23956. Off-sale general fee.
- § 23957. Premises under construction.
- § 23958. Investigation; denial.
- § 23958.1. Investigation exception.
- § 23958.2. Transfer between partners.
- § 23958.3. Investigation of off-sale beer and wine applications. [Repealed.]
- § 23958.4. Undue concentration; public convenience and necessity.
- § 23959. Fee refund.

- § 23960. Partial fee refund. [Repealed.]
- § 23961. Drawing for priority.
- § 23962. Priority applications for on-sale general licenses.

23950. **Form.** Application for a license shall be made to the department upon a form prescribed by the department and shall be accompanied by such other information as the department may require to assist it in determining whether the applicant and the premises qualify for a license.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1957, Ch. 1270, in effect September 11, 1957, added balance of sentence after second “department.”

23951. **Contents.** The application shall contain the following information:

- (a) The name of the applicant.
- (b) For a general partnership, the names of the individual partners.
- (c) For a limited partnership, limited liability company, or a corporation, the name of the entity.
- (d) The location of the premises for which the license is applied.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1957, Ch. 1270, in effect September 11, 1957, deleted subd. (e). Stats. 1973, Ch. 47, in effect May 15, 1973, added provision for limited partnership under Section 23405.1. Stats. 1973, Ch. 680, in effect September 21, 1973, included application under Section 23405.2. Stats. 1996, Ch. 44, in effect May 15, 1996, revised subd. (c) and recasts. Stats. 1998, Ch. 639, in effect January 1, 1999, amended simplifying and consolidating information required.

**Cross reference.**—Rules 57–59.

**Partnership license.**—Where one purports to be the sole owner but in reality is a partner, he has misrepresented a material fact. A finding of the department that a licensee has repeatedly violated §§ 23300, 23355, 23951 and 23953 was tantamount to a finding that continuance of the license would be “contrary to public welfare.” *Martin v. Alcoholic Beverage Control Appeals Board and Haley*, 52 Cal. 2d 287.

23952. **Felony and law violation.** The application shall also contain a statement to the effect that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this division or any rule of the department applicable to the applicant or pertaining to the manufacture, sale, or distribution of alcoholic beverages, particularly any of the provisions of Sections 25500 to 25504, inclusive, or Sections 25611 to 25615, inclusive. If the applicant cannot make this statement the application shall contain a statement of the violation, if any, or reasons which will prevent the applicant from being able to comply with the requirements with respect to the statement.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

**Failure to disclose conviction.**—Evidence that an applicant failed to reveal a larceny arrest and conviction, when required to list “any and all arrests” in his affidavit, supported a finding that the applicant “misrepresented a material fact on his application.” *Martin v. Alcoholic Beverage Control Appeals Board and Chaney*, 52 Cal. 2d 259, 341 Pac. 2d 291.

23953. **Signatures.** (a) The application shall be signed by the applicant.

(b) For a general partnership, the application shall be signed by each of the partners, and for the purposes of this division the partners shall be deemed the applicant for any license and the licensees under any license issued pursuant to that application.

(c) For a limited partnership, the application for any license shall be signed by each of the general partners.

(d) For a limited liability company that has elected to be managed by its members, the application shall be signed by each member or by an officer authorized by the articles of organization or the operating agreement to bind the company. In the case of a limited liability company that has elected to be managed by a manager or managers, the application shall be signed by the manager or managers or by an officer authorized by the articles of organization or the operating agreement to bind the company.

(e) For a corporation, the application shall be signed by two officers of the corporation, one from each of the following categories:

- (1) The chairperson of the board, the president, or a vice president.
- (2) The secretary, assistant secretary, chief financial officer, or assistant treasurer.

**History.**—Stats. 1973, Ch. 47, in effect May 15, 1973, provided that general partners shall be considered applicants and licensees. Stats. 1973, Ch. 680, in effect September 21, 1973, added provision for application under Section 23405.2. Stats. 1996, Ch. 44, in effect May 15, 1996, added subd. (d). Stats. 1998, Ch. 639, in effect January 1, 1999, amended subd. (c) and (e).

**Where one of the partners not qualified.**—A partnership license should be denied if one of the partners is unable to qualify. *Coletti v. State Board of Equalization*, 94 Cal. App. 2d 61.

**Partnership license.**—Where a partnership operates a liquor business all partners are required to have the license issued in their names. *Denning v. Tabor*, 70 Cal. App. 2d 253.

Appearing as a partner on a liquor license is evidence of partnership. *Ribaro v. Calloway*, 87 Cal. App. 2d 135.

Where one purports to be the sole owner but in reality is a partner, he has misrepresented a material fact. A finding of the department that a licensee has repeatedly violated §§ 23300, 23355, 23951 and 23953 was tantamount to a finding that continuance of the license would be “contrary to public welfare.” *Martin v. Alcoholic Beverage Control Appeals Board and Haley*, 52 Cal. 2d 287.

**23954. Verification and fee.** The application shall be verified under oath and accompanied by the license fee.

**Cross reference.**—Rule 60(c).

**23954.5. Original on-sale and off-sale fee.** (a) An applicant for an original on-sale general license shall, at the time of filing the application for the license, accompany the application with a fee as determined by the department pursuant to subdivision (b) of this section. At the time of filing an application for a license, an applicant for an original on-sale general license for seasonal business shall accompany the application with a fee as determined by the department pursuant to subdivision (b) of this section. An applicant for an original on-sale beer and wine license shall accompany the application with a fee of three hundred dollars (\$300). An applicant for an original on-sale beer license shall accompany the application with a fee of two hundred dollars (\$200). An applicant for an original off-sale general license shall, at the time of filing the application for the license, accompany the application with a fee as determined by the department pursuant to subdivision (b) of this section. An applicant for an original off-sale beer and wine license or an original license not specified in this section, shall accompany the application with a fee of one hundred dollars (\$100).

“Original on-sale general license,” “original on-sale general license for seasonal business,” “original on-sale beer and wine license,” “original on-sale beer license,” “original off-sale general license,” and “original off-sale beer and wine license,” as used in this division, do not include a license issued upon renewal or transfer of a license.

(b) The fee for an original on-sale general license or an original off-sale general license shall be twelve thousand dollars (\$12,000).

(c) All money collected from the fees provided for in this section shall be in the Alcohol Beverage Control Fund as provided in Section 25761.

**History.**—Added by Stats. 1955, Ch. 1748, in effect September 7, 1955. Stats. 1957, Ch. 1820, in effect September 11, 1957, added second sentence, and included seasonal and beer and wine licenses in second paragraph. Stats. 1961, Ch. 783, in effect June 10, 1961, deleted “on or after January 1, 1956,” and reference to effective date of 1957 amendments; increased off-sale general license from \$3,000 to \$6,000; and substituted “division” for “section” in second paragraph. Stats. 1967, Ch. 1559, in effect April 1, 1968, increased on-sale general seasonal license from \$2,000 to \$4,500, on-sale beer and wine license from \$150 to \$300, on-sale beer license from \$100 to \$200, and off-sale beer and wine license from \$25 to \$50. Stats. 1983, Ch. 323, in effect July 21, 1983, increased the fee for off-sale beer and wine license and other nonspecific licenses to \$100. Stats. 1992, Ch. 900, in effect September 25, 1992, recast, revised fee schedule and provided that fees be deposited in ABC Fund. Stats. 1994, Ch. 1028, in effect January 1, 1995, set original fee for general licenses at \$12,000.

**23954.6. Original special on-sale general license.** As used in Section 23954.5, “original on-sale general license” includes an original special on-sale general license; provided, that the fee prescribed in Section 23954.5 shall not be required in connection with the exchange of an on-sale general license for a special on-sale general license, or for the exchange of a special on-sale general license for an on-sale general license.

**History.**—Added by Stats. 1961, Ch. 1914, in effect September 15, 1961. Stats. 1963, Ch. 785, in effect September 20, 1963, added “or for the exchange of a special on-sale general license for an on-sale general license.”

**Cross reference.**—§§ 23825 and 24072.5.

**23954.7. Original intermittent dockside license fee.** An applicant for an original on-sale general bona fide public eating place intermittent dockside license for vessels of more than 7,000 tons displacement shall, at the time of filing the application for the license, accompany the application with a fee of two thousand dollars (\$2,000), but such fee shall not be payable upon the renewal or transfer of such license.

**History.**—Added by Stats. 1969, Ch. 1466, in effect November 10, 1969. Stats. 1972, Ch. 970, in effect August 16, 1972, substituted “10,000” for “15,000” tons displacement. Stats. 1985, Ch. 519, in effect January 1, 1986. Substituted 7,000 for 10,000 tons displacement.

**23955. Wine grower’s fee.** Any applicant for a wine grower’s license shall, at the time of filing application for license, accompany the application with a license fee based upon a reasonable estimate of the amount of wine gallonage to be produced by the applicant.

**23956. Off-sale general fee.** Any applicant for an off-sale general license shall, at the time of filing application for such license, accompany the application with the minimum license fee required or such larger fee as the applicant elects.

**History.**—Stats. 1963, Ch. 1040, in effect September 20, 1963, inserted “such” before “license.”

**23957. Premises under construction.** Applications for licenses for the retail sale of alcoholic beverages for premises which are to be constructed or which are in the process of construction shall contain the information required by this article and such other information concerning the proposed premises as the department may require to assist it in determining whether the proposed premises will qualify for a license.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

**Cross reference.**—Rule 64.

**23958. Investigation; denial.** Upon receipt of an application for a license or for a transfer of a license and the applicable fee, the department shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied qualify for a license and whether the provisions of this division have been complied with, and shall investigate all matters connected therewith which may affect the public welfare and morals. The department shall deny an application for a license or for a transfer of a license if either the applicant or the premises for which a license is applied do not qualify for a license under this division.

The department further shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4.

**History.**—Added by Stats. 1980, Ch. 1194, in effect January 1, 1983. Stats. 1982, Ch. 1189, in effect January 1, 1983, substituted “1984” for “1983”. Amended by Stats. 1994, Ch. 630, in effect January 1, 1995, amended to reference Section 23958.4.

**Police problem considerations.**—Evidence that State Board of Equalization in passing on application for “on-sale” beer and wine license acted on police report that operation of places in such location increased police problems or criminal conditions, which was not denied at hearing, justified denial of licenses. *Parente v. State Board of Equalization* (1934), 1 Cal. App. 2d 238, 36 Pac. 2d 437.

**Moral turpitude defined.**—Criminal acts involving intentional dishonesty for the purpose of personal gain involve moral turpitude. *In re Hallinan*, 48 Cal. 2d 52.

**Fingerprinting requirement reasonable.**—Requirement that a licensee’s spouse, if working or to work on the premises, be fingerprinted as required by the department’s Rule 57 is constitutional. *Sibert v. Department of Alcoholic Beverage Control*, 169 Cal. App. 2d 563.

**Private agreements not binding on department.**—An alleged agreement between parties not to protest issuance of a license is not binding on the department since the Constitution has designated the department as the agency charged with the duty of investigating applications for licenses, and such investigations must be made with a view to the protection of public welfare and morals. *Schaub’s, Inc., v. Department of Alcoholic Beverage Control*, 153 Cal. App. 2d 858.

**Residential areas.**—Finding that premises are in a residential area upon conflicting evidence constitutes good cause for denial of a license. Evidence that a traffic hazard would be created by parked cars at a premises also constitutes “good cause” for denial of a license. *Martin v. Alcoholic Beverage Control Appeals Board and Richards*, 52 Cal. 2d 238, 340 Pac. 2d 1.

**Automatic denial of application.**—The purpose of California Administrative Code, Title 4, Section 66, authorizing automatic denial by the Department of Alcoholic Beverage Control of an application for licensing where an application has been denied within one year, is to permit the department to protect against having to devote resources to handling unreasonably early applications, and the exception provided by the section for granting such an application where the reasons for the original denial no longer exist, permits, but does not require, the exercise of discretion to consider such an application. *Rice v. Alcoholic Beverage Control Appeals Board (Machiano)*, 79 Cal. App. 3d 372.

**23958.1. Investigation exception.** Notwithstanding the provisions of Section 23958, the department is not required to investigate the personal qualifications of a licensed beer and wine wholesaler who applies for additional beer and wine wholesaler licenses.

**History.**—Added by Stats. 1959, Ch. 1887, in effect September 18, 1959.

**23958.2. Transfer between partners.** Notwithstanding the provisions of Section 23958, the department is not required to investigate the personal qualifications or premises of a currently licensed person when a license is being transferred between partners and no new partner is being licensed.

**History.**—Added by Stats. 1978, Ch. 477, in effect January 1, 1979.

**23958.3. Investigation of off-sale beer and wine applications.** *Repealed by Stats. 1982, Ch. 1189, in effect January 1, 1984.*

**23958.4. Undue concentration; public convenience or necessity.** (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 determined by the most recent yearly retail license count published by the department in its Procedure Manual.

(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.

**History.**—Added by Stats. 1994, Ch. 630, in effect January 1, 1995. Stats. 1996, Ch. 811 and 869, in effect January 1, 1997, amended to require governing bodies to make determination of public convenience and necessity within 90 days. Stats. 1995, Ch. 91, in effect January 1, 1996, made technical, non-substantive changes.

**23959. Fee refund.** If an application is denied or withdrawn, one-fourth of the license fee paid, or not more than one hundred dollars (\$100), shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761. The balance of this amount shall be credited on any taxes then due from the applicant under Part 14

(commencing with Section 32001) of Division 2 of the Revenue and Taxation Code or the Sales and Use Tax Law, and the remaining portion shall be returned to the applicant.

**History.**—Stats. 1955, Ch. 1842, in effect September 7, 1955, substituted “Part 14 of Division 2 of the Revenue and Taxation Code” for “this division.” Stats. 1957, Ch. 2307, in effect July 16, 1957, revised refund fee. Stats. 1978, Ch. 656, in effect January 1, 1979, substituted \$50 for \$25. Stats. 1992, Ch. 900, in effect September 25, 1992, increased amount to \$100 and provided that it be deposited in ABC Fund.

**23960. Partial fee refund.** *Repealed by Stats. 1992, Ch. 838.*

**23961. Drawing for priority.** (a) If, at the conclusion of the period prescribed by the department for the filing of applications for issuance or transfer of on-sale general licenses or off-sale general licenses in any county in its notice of intention to receive applications therefor published pursuant to Sections 23821 and 24070, the department finds that there are more applicants for the particular type of license than there are licenses available for issuance or transfer under Sections 23821 and 24070, the department shall, within 60 days following the conclusion of said period, conduct a drawing to determine the priority in which all of such applications filed with it shall be considered. No more than one such drawing shall be made in any county in any one year, and no person will be entitled to more than one opportunity to participate in such a drawing in any county with respect to an application for issuance or transfer of any one type of license. The number drawn by any applicant shall indicate the priority to be given to the consideration of his application but shall not insure the issuance of a license by the department.

(b) If a drawing is not conducted as provided in subdivision (a) of this section, applications for issuance of original on-sale general licenses and off-sale general licenses in a county or transfer of such licenses into such county shall be made and considered as otherwise provided in this article.

(c) No person shall be qualified to participate in such a drawing unless such applicant is a resident of California for at least 90 days prior to the drawing. Prior to the issuance of any license, pursuant to such a drawing, the applicant shall present proof of such residency status. A corporation incorporated in a state other than California, but registered with the Secretary of State to do business in California for 90 days, shall be deemed to have satisfied the residency requirement for the purpose of this section.

(d) The department shall advertise, in connection with a drawing conducted pursuant to this section, that participation in such a drawing is available only to California residents.

**History.**—Added by Stats. 1961, Ch. 783, in effect June 10, 1961. Stats. 1977, Ch. 1092, in effect January 1, 1978, added subs. (c) and (d).

**23962. Priority applications for on-sale general licenses.** Notwithstanding the provisions of subdivision (b) of Section 23961, if at the conclusion of the period prescribed by the department for the filing of applications for issuance or transfer of on-sale general licenses in any county in its notice of intention to receive applications therefor published pursuant to Sections 23821 and 24070, the department finds there are less applicants than there are on-sale general licenses available for issuance or transfer under Sections 23821 and 24070, the department may, within 90 days of the conclusion of the period, publish pursuant to Section 6061 of the Government Code in the county where such new original on-sale general licenses may be issued or into which on-sale general licenses may be transferred, notice of the department’s intention to receive applications for the issuance of such new original licenses or for the intercounty transfer of such licenses, setting forth the date, time, manner, and place of acceptance of such applications within the county.

If at the conclusion of the period prescribed by the department pursuant to this section, the department finds there are more applicants for such licenses than there are licenses available for issuance or transfer under Sections 23821 and 24070, the provisions of subdivision (a) of Section 23961 requiring priority drawings shall apply.

No person who has applied in any county for a new original on-sale general license or for intercounty transfer of an on-sale general license during the period prescribed by the department in its notice of intention to receive applications therefor published pursuant to Sections 23821 and 24070, shall be permitted to file application for such new original license or for the intercounty transfer of such license in that county during the period prescribed for receiving applications pursuant to this section.

**History.**—Added by Stats. 1969, Ch. 1466, in effect November 10, 1969.

## Article 2. Notices

- § 23985. Posting notice.
- § 23985.5. 500-foot notification.
- § 23986. Publication.
- § 23987. Local officials.
- § 23988. Hearing on official protest. [Repealed.]

**23985. Posting notice.** After filing an application to engage in the sale of any alcoholic beverage at any premises, notice of intention to so commence shall be posted in a conspicuous place at the entrance to the premises. The applicant shall notify the department of the date when such notice is first posted. No license shall be issued for the premises until the notice has been so posted for at least 30 consecutive days. The notice shall be in such form as the department shall prescribe.

Notice of the application for a license pursuant to Section 24044 shall be posted at the proposed premises after the application is filed and shall remain so posted for at least 30 consecutive days. The applicant shall notify the department of the date when such notice is first posted.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1957, Ch. 2358, in effect September 11, 1957, rewrote section and increased 15 days to 30. Stats. 1963, Ch. 784, in effect September 20, 1963, deleted five-day posting requirement after filing application.

**Cross reference.**—Rules 64 and 109.

**23985.5. 500-foot notification.** (a) Notwithstanding any other provision of this article, in any instance affecting the issuance of any retail license at a premises that is not currently licensed or for a different retail license, the department shall require that the applicant mail notification of the application to every resident of real property within a 500-foot radius of the premises for which the license is to be issued.

(b) The department shall require the applicant to provide notification to the owners of real property, as required in subdivision (a), only if the local jurisdiction in which the license is to be issued provides, free of charge, a list of the names and addresses of the owners to the applicant.

(c) For the notification required by subdivision (a), the department shall develop bilingual notices in English and Spanish. The notice shall include information on how to obtain the notice information in a minimum of three of the predominant languages other than English or Spanish in the state, according to the most recent United States decennial or special census information.

**History.**—Added by Stats. 1984, Ch. 614, in effect January 1, 1985. Stats. 1990, Ch. 612, in effect January 1, 1991, required mailing for unlicensed premises or in the case of a different license. Stats. 2001, Ch. 931, in effect January 1, 2002, added requirement for applicant to notice OWNERS of real property within 500 feet if the names and addresses of the owners are provided FREE by the local jurisdiction. Also requires the department to provide the notice in English and Spanish and include multilingual information on the notice.

**23986. Publication.** (a) Any applicant for an on-sale license shall cause a notice of the application, giving the name or names of the applicant and the premises where the business is to be conducted, to be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation, other than a legal or professional trade publication, in the city in which the premises are situated, or if the premises are not in a city, the publication shall be made in a newspaper of general circulation nearest the premises where the business is to be conducted. The form of the notice shall be prescribed by the department. Affidavit of publication shall be filed with the department prior to the issuance of any license. The department shall adopt rules and regulations to enforce the provisions of this section.

(b) Any applicant for an on-sale or off-sale license at a premises which is located in a census tract which has an undue concentration of licenses, as defined in paragraph (2) or (3) of subdivision (a) of Section 23958.4, shall cause a notice of the application to be published pursuant to Section 6063 of the Government Code in a newspaper of general circulation other than a legal or trade publication. Publication shall be made in the city in which the premises are situated, or if the premises are not in a city, the publication shall be made in a newspaper of general circulation nearest the premises where the business is to be conducted. The form of the notice shall be prescribed by the department. Affidavit of publication shall be filed with the department prior to the issuance of any license. The department shall adopt rules and regulations to enforce the provisions of this subdivision.

*History.*—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1957, Ch. 262, in effect September 11, 1957, added reference to Government Code Section 6061. Stats. 1971, Ch. 269, in effect March 4, 1972, deleted requirement of publication within 10 days, and added last sentence. Stats. 1978, Ch. 1060, in effect January 1, 1979, inserted “other than a legal or professional trade publication” in (a), and added subd. (b). Stats. 2000, Ch. 979, in effect January 1, 2001, amended to reference Section 23958.4 rather than department rule in subd. (b).

**23987. Local officials.** Upon the receipt by the department of an original application for any license or an application for transfer of any license, written notice thereof, consisting of a copy of the application, shall immediately be mailed by the department to the sheriff, chief of police, and district attorney of the locality in which the premises are situated, to the city or county planning director, whoever has jurisdiction, the board of supervisors of the county in which the premises are situated, if in unincorporated territory, and to the city council or other governing body of the city in which the premises are situated, if within an incorporated area.

Except as specified in paragraph (2) of subdivision (e) of Section 23800, no license shall be issued or transferred by the department until at least 30 days after the mailing by the department of the notices required by this section. The department may extend the 30-day period specified in the preceding sentence for a period not to exceed an additional 20 days, upon the written request of any local law enforcement agency that states proper grounds for extension. Proper grounds for extension are limited to the requesting agency or official being in the process of preparing either a protest or proposed conditions with respect to the issuance or transfer of a license.

*History.*—Stats. 1st Ex. Sess. 1954, Ch. 21, in effect July 1, 1954, added reference to transfer applications; inserted “which shall consist of a copy of the application”; and substituted “30” for “15.” Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1963, Ch. 1040, substituted “department” for “board.” Stats. 1994, Ch. 629, in effect January 1, 1995, added paragraph 2. Stats. 2001, Ch. 931 in effect January 1, 2002, included new time frames for local governing bodies to request conditions.

**23988. Hearing on official protest.** *Repealed by Stats. 1971, Ch. 1344.*

## Article 3. Denial and Protest

- § 24010. Denial report. [Repealed.]
- § 24011. Notice.
- § 24012. Hearing on petition.
- § 24013. Protests.
- § 24013.1. Refiling after withdrawal.
- § 24013.2. Protests against subsequent applications.
- § 24013.5. Premises where license denied, revoked.
- § 24014. Verification of protest.
- § 24015. Hearing on protest.
- § 24015.5. Scheduling of hearings. [Repealed]
- § 24016. Administrative procedure.

24010. **Denial report.** *Repealed by Stats. 1957, Ch. 1271.*

24011. **Notice.** Immediately upon the denial of any application for a license, the department shall notify the applicant in writing. Within 10 days after the department mails the notice, the applicant may present his written petition for a license to the department.

**History.—Stats. 1955, Ch. 447, substituted “department” for “board.”**

**Burden of proof.**—An applicant for liquor license has the burden of proving his right thereto under §§ 24010–24016 whether the hearing is held on his petition for license or after filing of protests by citizens. 23 Ops. Atty. Gen. 290, 53/41 6-24-54.

**Board has broad discretionary powers.**—The State Board of Equalization is given broad discretionary powers and its discretion was not abused by the denial of a license in a purely residential center where deeds contained restrictive covenants against the sale of liquor. Whether or not there exists good cause for the denial of a license is a matter for determination by the board and not by the courts. *Hansen v. State Board of Equalization*, (1941) 43 Cal. App. 2d 176, 110 Pac. 2d 453.

**Police reports.**—See *Parente v. State Board of Equalization*, 1 Cal. App. 2d 238, 36 Pac. 2d 437.

24012. **Hearing on petition.** Upon receipt by the department of a petition for a license in proper form, such petition shall be set for hearing.

**History.—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1963, Ch. 1040, amended with no substantial change.**

**Proceedings on denial of application.**—There is a clear distinction between proceedings involving the revocation of an existing license and proceedings involving the denial of an application for a license. *Martin v. Alcoholic Beverage Control Appeals Board and Chaney*, 52 Cal. 2d 259.

**Burden of proof on applicant.**—The burden of proof may properly be placed on the applicant in proceedings for a license, but not in revocation proceedings. *Martin v. Alcoholic Beverage Control Appeals Board and Chaney*, 52 Cal. 2d 259.

24013. **Protests.** (a) Protests may be filed at any office of the department at any time within 30 days from the first date of posting the notice of intention to engage in the sale of alcoholic beverages at the premises, or within 30 days of the mailing of the notification pursuant to Section 23985.5, whichever is later.

(b) The department may reject protests, except protests made by a public agency or public official or protests made by the governing body of a city or county, if it determines the protests are false, vexatious, frivolous, or without reasonable or probable cause at any time before hearing thereon, notwithstanding Section 24016 or 24300. If, after investigation, the department recommends that a license be issued notwithstanding a protest by a public agency, a public official, or the governing body of a city or county, the department shall notify the agency, official, or governing body in writing of its determination and the reasons therefor, in conjunction with the notice of hearing provided to the protestant pursuant to Section 11509 of the Government Code. If the department rejects a protest as provided in this section and issues a license, a protestant whose protest has been rejected may, within 10 days after the issuance of the license, file an accusation with the department alleging the grounds of protest as a cause for revocation of the license and the department shall hold a hearing as provided in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Nothing in this section shall be construed as prohibiting or restricting any right that the individual making the protest might have to a judicial proceeding.

**History.—**Added by Stats. 1980, Ch. 1194, in effect January 1, 1983. Stats. 1982, Ch. 1189, in effect January 1, 1983, substituted “1984” for “1983”. Stats. 1990, Ch. 612, in effect January 1, 1991, permitted protests within 30 days of section 23985.5 mailing. Stats. 1994, Ch. 629, in effect January 1, 1995, revised subd. (b) regarding official protests. Stats. 2004, Ch. 345, AB 2296, frivolous was added to the grounds for rejection of protests.

**Protests.**—One result of the elimination of local control by Section 22 of Article XX of the State Constitution is that the only rights of protest existing in connection with issuance of licenses are those specifically given by the provisions of the statute. The provision for issuance of additional licenses after population increases could not give to cities or counties any right to make a general protest against the policy of issuance of additional licenses. *San Diego v. State Board of Equalization*, 82 Cal. App. 2d 453.

**Religious retreats.**—The department could properly deny a license for an area dedicated as a retreat for religious, cultural and youth groups. *Bowman v. Alcoholic Beverage Control Appeals Board and Sousa*, 171 Cal. App. 2d 467.

**Rejection of protest not appealable.**—The Legislature by adopting the 1965 amendment to § 24013, has given the department an alternative method which it may pursue in licensing applicants. Under the section as amended, the department may now accept protests and conduct a hearing thereon before issuing the license, or the department may reject protests, issue the license and then conduct the hearing required by § 24013. In either case a hearing is provided for and the department’s final decision after such hearing is subject to review by the Appeals Board. However, the determination by the department to pursue one or the other of such alternative methods is not a decision which is subject to review by the Appeals Board, and therefore no appeal lies from such determination. *Reimel v. Alcoholic Beverage Control Appeals Board (Protest of Katz v. Safeway Stores, Inc.)* 263 Cal. App. 2d 706; hearing denied by California Supreme Court September 5, 1968.

**24013.1. Refiling after withdrawal.** If an application for a license is voluntarily withdrawn as a result of any protest being filed opposing the issuance of such license, such applicant may not refile an application for the same location for a period of one year from the date of such withdrawal.

**History.—**Added by Stats. 1978, Ch. 454, in effect January 1, 1979.

**24013.2. Protests against subsequent applications.** If an application for issuance of a license at a premises is withdrawn pursuant to Section 24013.1, all verified protests filed against the issuance of the license at the premises in such application shall remain valid against any subsequent applications filed for that premises for a period of one year from the date of withdrawal.

**History.—**Added by Stats. 1978, Ch. 454, in effect January 1, 1979.

**24013.5. Premises where license denied, revoked.** (a) No license shall be issued for any premises for which a license has been denied or revoked, for reasons pertaining to the premises, unless one year has elapsed from the date the order becomes final.

(b) No license shall be issued for any premises for which a license has been denied, for reasons pertaining to the premises, twice within a 36-month period, unless two years have elapsed from the date that the last order becomes final.

**History.—**Added by Stats. 1996, Ch. 538, in effect January 1, 1997.

**24014. Verification of protest.** A protest made by any person other than an employee of the department or a public officer shall be verified. Verification may be on information and belief.

**History.—**Stats. 1955, Ch. 447, in effect September 7, 1955, substituted “department” for “board.”

**24015. Hearing on protest.** (a) If, after investigation, the department recommends that a license be issued, with or without conditions, notwithstanding that one or more protests have been accepted by the department, the department shall notify the applicant and all protesting parties whose protests have been accepted in writing of its determination.

(b) Any person who has filed a verified protest in a timely fashion pursuant to subdivision (a) of Section 24013, that has been accepted pursuant to this article may request that the department conduct a hearing on the issue or issues raised in the protest. The request shall be in writing and shall be filed with the department within 15 business days of the date the department notifies the protesting party of its determination as required under subdivision (a).

(c) At any time prior to the issuance of the license, the department may, in its discretion, accept a late request for a hearing upon a showing of good cause. Any determination of the department pursuant to this subdivision shall not be an issue at the hearing nor grounds for appeal or review.

(d) If a request for a hearing is filed with the department pursuant to subdivision (b), the department shall schedule a hearing on the protest. The issues to be determined at the hearing shall be limited to those issues raised in the protest or protests of the person or persons requesting the hearing.

(e) Notwithstanding that a hearing is held pursuant to subdivision (d), the protest or protests of any person or persons who did not request a hearing as authorized in this section shall be deemed withdrawn.

(f) If no request for a hearing is filed with the department pursuant to this section, any protest or protests shall be deemed withdrawn and the department may issue the license without any further proceeding.

(g) If the person filing the request for a hearing fails to appear at the hearing, the protest shall be deemed withdrawn.

**History.—**Added by Stats. 1975, Ch. 782, in effect January 1, 1976. Stats. 2004, Ch. 345, AB 2296, section completely rewritten and new hearing requirements established.

**Burden of proof always on applicant.**—In a protest hearing, the burden of proof for the license always remains with the applicant/respondent against whom the Statement of Issues has been filed. *Coffin v. Alcoholic Beverage Control Appeals Board, Barona Tribal Gaming Authority real party in interest.* 139 Cal.App.4th 471.

24015.5. **Scheduling of hearings.** *Repealed by Stats. 1995, Ch. 743.*

24016. **Administrative procedure.** The proceedings under this article shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the department has all the powers granted therein.

**History.—**Stats. 1955, Ch. 447, substituted “department” for “board.”

**Service of proposed decision.**—It is not necessary to serve a copy of a proposed decision on the parties prior to its adoption by the department. Where the hearing officer acts alone, the department may adopt his decision without reading or otherwise familiarizing itself with the record. *Dami v. Department of Alcoholic Beverage Control,* 176 Cal. App. 2d 144.

**Resolution of issues raised by protest.**—Absent a positive showing to the contrary, the court on review must assume the department considered protests against granting of liquor licenses, and that its finding on the ultimate fact resolved all protests made. *Bailey v. Department of Alcoholic Beverage Control and Dutton,* 201 Cal. App. 2d 348.

## Article 4. Issuance and Renewal of Licenses

- § 24040. Person and location; use within 30 days.
- § 24041. Separate licenses.
- § 24041.5. Off-sale general license on off-sale beer and wine premises.
- § 24042. Duplicate on-sale general for additional rooms.
- § 24042.5. Portable bar license.
- § 24043. Trains and boats.
- § 24044. Premises under construction.
- § 24044.5. Interim operating permit.
- § 24045. Annual license periods.
- § 24045.1. Daily on-sale general license.
- § 24045.2. Television station.
- § 24045.3. Women’s educational and charitable organization.
- § 24045.4. Special temporary off-sale general license.
- § 24045.5. Temporary license.
- § 24045.6. Special temporary on- or off-sale wine license.
- § 24045.7. Theater company.
- § 24045.8. Estate wine sales.
- § 24045.85. Symphony association.
- § 24045.9. Television stations.
- § 24045.10. San Diego County vessel daily on-sale general.
- § 24045.11. Bed and breakfast inn license.
- § 24045.12. Bed and breakfast inn general license.
- § 24045.12. Caterers.
- § 24045.13. Special temporary off-sale license.
- § 24045.14. Maritime museum license.

- § 24045.15. Viticultural area association license.
- § 24045.16. Charitable arts trust license.
- § 24046. Posting license.
- § 24047. Lost license.
- § 24048. License renewals.
- § 24048.1. Renewability of retailer's on-sale license. [Repealed.]
- § 24048.2. Issuance or transfer of retailer's on-sale license. [Repealed.]
- § 24048.3. Renewability of fiscal year license. [Repealed.]
- § 24048.4. Issuance or transfer of fiscal year license. [Repealed.]
- § 24049. Tax delinquency.
- § 24049.5. Seizure and sale.
- § 24050. Extension of seasonal license. [Repealed.]
- § 24051. Fishing party boats.
- § 24052. University and prison boundaries. [Repealed.]

**24040. Person and location; use within 30 days.** Each license shall be issued to a specific person and, except in the case of licenses authorizing the sale of alcoholic beverages on trains or boats, or the service of alcoholic beverages on airplanes shall be issued for a specific location, the principal address of which shall be indicated on the license. Except as provided in Section 24044, any license issued for a specific location shall be placed in use at that location within 30 days of the date of issuance.

**History.—Stats. 1955, Ch. 1323, in effect September 7, 1955, added “or the service of alcoholic beverages on airplanes”; and the second sentence. Stats. 1963, Ch. 1040, in effect September 20, 1963, deleted “or become null and void” at end of second sentence.**

**Issuance, what constitutes.—**The preparation of a license certificate, the charging of the appropriate fee, the recording of the license against the local quota, if any, and the acceptance of a concurrent surrender of the license under a rule permitting surrender of inactive licenses, constitutes “issuance” of a license, although the license is never physically delivered. *Joseph George, Distributor v. Department of Alcoholic Beverage Control*, 149 Cal. App. 2d 702.

Failure of licensees to put off-sale general liquor license to use within 30 days after issuance thereof rendered license void, particularly since department had further found that continuation of license would be contrary to public welfare and morals, notwithstanding subsequent amendment of this section whereby failure to put license in use within 30 days of issuance no longer results in automatic revocation. *Gore v. Harris*, 229 Cal. App. 2d 821.

**24041. Separate licenses.** Separate licenses shall be issued for each of the premises of any business establishment having more than one location, except as provided for in Sections 23355.1, 23388, 23389, and 23390, except that any manufacturer, importer, or wholesaler may receive, store, and deliver wine as specified in its license, at and from a public warehouse licensed by the department, without holding an additional license at the warehouse. A license at a public warehouse shall be required by an out-of-state business whose alcoholic beverages come to rest, are stored, and shipped from a public warehouse in California. The holder of a public warehouse license maintaining or operating more than one public warehouse in this state shall be required to obtain but one license for all of his or her public warehouse establishments. A copy of the original public warehouse license issued to a public warehouseman maintaining or operating more than one public warehouse in this state shall be posted in each of his or her public warehouse establishments. A charge of one dollar (\$1) shall be made by the department for each copy of a public warehouse license issued to a public warehouseman.

**History.—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 2001, (Ch. 413) in effect January 1, 2002, deleted requirement for separate licenses if wine is received, stored or delivered at public warehouse.**

**24041.5. Off-sale general license on off-sale beer and wine premises.** The provisions of this division do not prohibit the issuance of an off-sale general license for use on part of the same premises for which an off-sale beer and wine license has been issued and is in force, when the two licenses would be held by different persons, provided that such issuance shall be pursuant to rules adopted by the department.

**History.—Added by Stats. 1965, Ch. 826, in effect September 17, 1965.**

**Cross reference.—**Rule 60.4.

**24042. Duplicate on-sale general for additional rooms.** Any licensee under an on-sale general license or an on-sale general license for seasonal business who

maintains upon or within the premises for which the license is issued more than one room in which there is regularly maintained a fixed counter or service bar at which distilled spirits are served to members of the public for consumption within the licensed premises shall obtain from the department, and the department may upon request issue, a duplicate of his or her original license for each room, in excess of one, containing a fixed counter or service bar and shall post a duplicate of his or her original license in each room. Failure to obtain the duplicate licenses and to pay the fees and renewal fees, as specified in Section 23320, shall subject the licensee to the penalties imposed by this division for failure to obtain an original license or to pay the renewal fees therefor.

The duplicate license may be issued to a room reserved for the exclusive use of designated patrons, provided that the department shall, in the event the license is issued, endorse upon the license the terms and conditions under which the privileges conferred by the said license may be exercised, and provided further that upon the receipt by the department of the request for the duplicate license written notice thereof which shall consist of a copy of the request shall immediately be mailed by the department to the sheriff or chief of police within whose jurisdiction the premises are situated and no duplicate license shall be issued by the department until at least 30 days after such mailing. Upon receipt by the department within 30 days of a protest by the sheriff or chief of police within whose jurisdiction the premises are situated, the department shall not issue the duplicate license until after a hearing is held by the department within the county or city affected and said hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code and the department shall have all the powers granted therein.

A licensee under an on-sale general license, or an on-sale general license for seasonal business, issued for a bona fide public eating place may obtain a duplicate license or licenses under this section for rooms which constitute public premises, as defined in Section 23039, and a licensee under the license issued for public premises may obtain a duplicate license or licenses under this section for rooms which constitute bona fide public eating places, except that a duplicate license or licenses for rooms which constitute bona fide public eating places shall only be issued after the department has made the investigation and determination required by Section 23787. Rooms which constitute bona fide public eating places shall not be considered public premises, as defined in Section 23039, and the provisions of this division applicable solely to these public premises shall not be applicable to these rooms.

History.—Stats. 1955, Ch. 1779, in effect January 1, 1957, added last paragraph. Stats. 1957, Ch. 1250, in effect September 11, 1957, inserted “to members of the public.” Stats. 1961, Ch. 1686, in effect September 15, 1961, substituted “may” for “shall” in first paragraph; added second paragraph; and deleted “Notwithstanding the foregoing provisions” in the last paragraph. Stats. 2001, Ch. 488 in effect January 1, 2002, established new fee schedule.

**24042.5. Portable bar license.** Notwithstanding any other provision of this division, any licensee under an on-sale general or on-sale general license for seasonal business who has a premises with a fixed counter or service bar in one room of the premises for the service of distilled spirits to members of the public for consumption on the premises and who has other rooms on the premises which can be utilized for the same purposes by means of a portable bar counter may elect to request the department to license the portable bar counter itself rather than the additional rooms as provided in Section 24042. However, if two or more portable bar counters are utilized at the same time, in the same room, only one portable bar shall be required to be licensed. The licensee shall pay to the department at the time of the application for each portable bar counter an amount equal to the license fee payable for a like period

for the distilled spirits privileges of the original on-sale general license or on-sale general license for seasonal business. Failure to obtain the portable bar counter license and to pay the fees and renewal fees, as specified in Section 23320, shall subject the licensee to the penalties imposed by this division for failure to obtain an original license or pay the renewal fees therefor.

**History.—**Added by Stats. 1987, Ch. 517, in effect January 1, 1988. Stats. 2001, Ch. 488 in effect January 1, 2002, established new fee schedule.

**24043. Trains and boats.** Licenses for trains and boats shall be based on the average number in actual operation during the license year of each class of operating units, namely, trains and boats upon which the license privileges are exercised. The average number in actual operation shall be determined as the department may prescribe.

**History.—**Stats. 1955, Ch. 447, substituted “department” for “board.”

**24044. Premises under construction.** Licenses for the retail sale of alcoholic beverages may be issued for or transferred to premises which are to be constructed or which are in the process of construction. No alcoholic beverages shall be sold pursuant to the license until the premises have been completed.

**Cross reference.—**Rule 64.

**Construction.—**Issuance of on-sale liquor license pursuant to this section for record purposes only without reference to specific location is unlawful. 23 Ops. Atty. Gen. 262, 54/103 6-17-54.

Licenses may not be issued or delivered as perfected until premises are completed and approved in view of Const. Art. XX § 22 and A.B.C. §23787.

**24044.5. Interim operating permits.** (a) The department, in its discretion, may issue an interim retail permit to an applicant for any retail license to operate the premises during the period an application for a license at the premises is pending and when all of the following conditions exist:

(1) The application has been protested pursuant to Article 3 (commencing with Section 24011).

(2) The department has made a determination based upon its investigation that the license should be issued.

(3) The applicant for the interim retail permit has filed with the department an application for issuance of a license at the premises to himself or herself.

(4) The application for the interim retail permit is accompanied by a fee of one hundred dollars (\$100).

(b) An interim retail permit issued by the department pursuant to this section shall be for a period not to exceed 120 days. An interim retail permit may be extended at the discretion of the department for additional 120-day periods as necessary upon payment of an additional fee of one hundred dollars (\$100) and upon compliance with all conditions required by this section. Any interim retail permit issued by the department shall be automatically canceled when a final determination made by the department regarding the protests becomes effective or when the application for the retail license is withdrawn, whichever occurs first. An interim retail permit is a conditional permit and authorizes the holder thereof to sell alcoholic beverages as would be permitted to be sold under the privileges of the license for which the application has been filed with the department. Any conditions for which the applicant has petitioned pursuant to Article 1.5 (commencing with Section 23800) shall apply to any interim retail permit issued by the department.

(c) Purchase of beer and wine by the holder of an interim retail permit shall be made only upon payment before or at the time of delivery in currency or by check. Purchase of distilled spirits by the holder of an interim retail permit shall be made only upon payment before or at the time of delivery in currency or by certified check.

However, the holder of an interim retail permit, who also holds one or more retail licenses and is operating under the retail license or licenses in addition to the interim retail permit, and who is not delinquent under the provisions of Section 25509 as to any retail license under which he or she operates, may purchase alcoholic beverages on credit under the interim retail permit.

(d) All checks received by a seller for beer or wine purchased by the holder of an interim retail permit shall be deposited not later than the second business day following the date the beer or wine is delivered.

A check dishonored on presentation shall not be deemed payment. The receipt by the seller or his or her agent in good faith from a holder of a temporary permit of a check dishonored on presentation shall not be cause for disciplinary action against the seller.

(e) Issuance of the license for which the holder of an interim retail permit has filed an application shall not be approved by the department until the holder of the interim retail permit has filed with the department a statement executed under penalty of perjury that all current obligations have been discharged, and that all outstanding checks issued by him or her in payment for alcoholic beverages will be honored on presentation.

(f) It shall not be a violation of this section or grounds for disciplinary action for any licensee to extend credit to the holder of an interim retail permit or to receive payment from the permittee in a manner other than authorized herein unless the seller has knowledge of the fact that the purchaser was operating under an interim retail permit. Knowledge of the fact may be established by evidence, including, but not limited to, evidence that, at the time of receipt of payment or the extension of credit, the premises operated under an interim retail permit were posted with the notice required by Section 23985, or the holder of the interim retail permit has recorded notice as required by Section 24073, or the holder of the interim retail permit has published notice as required by Section 23986, or the holder of the interim retail permit has recorded and published notice pursuant to Division 6 (commencing with Section 6101) of the Commercial Code.

(g) Refusal by the department to issue or extend an interim retail permit shall not entitle the applicant to petition for the permit pursuant to Section 24011, or to a hearing pursuant to Section 24012. Articles 2 (commencing with Section 23985) and 3 (commencing with Section 24011) shall not apply to interim retail permits.

(h) Notwithstanding any other provision of law, the department may, in its discretion, cancel or suspend summarily at any time an interim retail permit if the department determines that good cause for the cancellation or suspension exists. Chapter 8 (commencing with Section 24300) shall not apply to interim retail permits.

(i) Application for an interim retail permit shall be on any form the department shall prescribe. If an application for an interim retail permit is withdrawn before issuance or is refused by the department, the fee which accompanied the application shall be refunded in full, and Section 23959 shall not apply. Fees received by the department for issuance of interim retail permits shall be deposited in the Alcoholic Beverage Control Fund as provided in Section 25761.

**History.—**Added by Stats. 1992, Ch. 838, in effect January 1, 1993. Stats. 1994, Ch. 1028, in effect January 1, 1995, deleted reference to subd. (i) to Section 23960.

**24045. Annual license periods.** (a) All licenses, except on-sale general licenses for seasonal businesses and daily on-sale general licenses issued pursuant to Section 24045.1, shall be issued on an annual basis. However, the department may issue special licenses for the sale of beer or wine on a temporary basis for premises temporarily

occupied by the licensee for a picnic, social gathering, or similar occasion at a fee equal to the actual cost of issuing the license but not to exceed twenty-five dollars (\$25) per day.

(b) Notwithstanding subdivision (a), a license transferred pursuant to Section 24071 or 24071.1 shall be issued for the unexpired term remaining on the license of the transferor.

(c) The director may assign or reassign dates for the expiration of licenses issued pursuant to this section. The director may establish a registration year for any license issued pursuant to subdivision (a) consisting of any period from six months to 18 months, inclusive, and shall prorate related annual fees to the extent the registration year is greater or less than 12 months, with subsequent renewals being required at yearly intervals.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board”. Stats. 1957, Ch. 2307, in effect July 16, 1957, added reference to on-sale beer and on-sale beer and wine licenses; and increased fee from \$5 to \$5.50. Stats. 1969, Ch. 1123, in effect November 10, 1969, added exception for daily on-sale general licenses. Stats. 1983, Ch. 607, in effect January 1, 1984, increased the fees for special temporary beer and wine license to a maximum of \$25 per day. Stats. 1992, Ch. 838, in effect January 1, 1993, recast making license periods annual and added subd. (b). Stats. 1994, Ch. 123, in effect June 30, 1994, added subd. (b).

**Cross reference.**—Rule 59.

**24045.1. Daily on-sale general license.** The department, in its discretion, may issue on a temporary basis a daily on-sale general license and the fee for such license shall be twenty-five dollars (\$25) per day. Such license authorizes the sale of distilled spirits, wine, and beer for consumption on the premises where sold, and no off-sale privileges shall be exercised under such license. A daily on-sale general license may only be issued to a political party or affiliate supporting a candidate for public office or a ballot measure, an organization formed for a specific charitable or civic purpose, a fraternal organization in existence for over five years with a regular membership, or a religious organization. Distilled spirits sold under a daily on-sale general license shall have been purchased at retail from the holder of an off-sale general license.

The department may adopt such rules as it determines to be necessary to implement and administer the provisions of this section, including, but not limited to, limitations on the number of times during any calendar year a qualified organization may be issued a license provided for by this section.

The provisions of Article 2 (commencing with Section 23815) of Chapter 5 and Article 2 (commencing with Section 23985) of Chapter 6 of this division shall not be applicable to the licenses provided for by this section.

**History.**—Added by Stats. 1969, Ch. 1123, in effect November 10, 1969.

**Cross reference.**—Rule 59.5.

**24045.2. Television station.** (a) The department may issue a special temporary retail package off-sale beer and wine license to: (1) a television station, supported wholly or in part by public membership subscription, which is a nonprofit, charitable corporation exempt from payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States, or (2) a nonprofit, charitable corporation exempt from payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States that receives and administers donations for a noncommercial, educational television station or public broadcasting station supported wholly or in part by public membership subscription. An applicant for this license shall accompany the application with a fee of one hundred dollars (\$100).

(b) This license shall only entitle the licensee to sell at auction beer and wine donated to it. Notwithstanding any other provision of this division, a licensee may donate beer,

wine, or both beer and wine, to a corporation licensed under this section, provided donations are not made in connection with a sale of an alcoholic beverage.

(c) This license shall be for a period not exceeding 30 days. Only one license shall be issued to any corporation in a calendar year.

*History.—Added by Stats. 1972, Ch. 66, in effect May 5, 1972. Stats. 1975, Ch. 405, in effect January 1, 1976, added clause (2). Stats. 2004, Ch. 523, AB 2927 amended. Urgency bill in effect September 14, 2004, changed limitation for issuance of a license from one in any 12 month period to one in a calendar year.*

**24045.3. Women’s educational and charitable organization.** (a) The department may issue a special temporary retail package off-sale beer and wine license to a women’s educational and charitable organization that is a part of a national organization having at least 10 chapters in California at least one of which has been incorporated since 1928, whose purpose is to foster interest among its members in the social, economic, and civic conditions of their community and to give effective volunteer service. An applicant for this license shall accompany the application with a fee of one hundred dollars (\$100).

(b) This license shall only entitle the licensee to sell at auction for charitable purposes wine donated to it. None of the funds realized from this auction shall be used for the administrative expenses of the auction and all funds shall be placed in trust for a charitable purpose. Notwithstanding any other provision of this division, a licensee may donate wine, to an organization licensed under this section, provided that donations are not made in connection with a sale of an alcoholic beverage.

(c) This license shall be for a period not exceeding one day. Only one license shall be issued to any organization in a calendar year.

*History.—Added by Stats. 1974, Ch. 688, in effect January 1, 1975. Amended by AB 2927, Stats. 2004, Ch. 523. Urgency bill in effect September 14, 2004, changed limitation for issuance of a license from one in any 12 month period to one in a calendar year.*

**24045.4. Special temporary off-sale general license.** (a) The department may issue a special temporary off-sale general license to any nonprofit corporation which is exempt from payment of income taxes under the provisions of Section 23701d of the Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue Code of 1954 of the United States. An applicant for this license shall accompany the application with a fee of one hundred dollars (\$100).

(b) This license shall only entitle the licensee to sell at auction alcoholic beverages donated to it. Notwithstanding any other provision of this division, a licensee may donate alcoholic beverages to a corporation licensed under this section, provided that donations are not made in connection with a sale of an alcoholic beverage.

(c) This license shall be for a period not exceeding 30 days. Only one license shall be issued to any corporation in a calendar year.

*History.—Added as section 24045.3 by Stats. 1975, Ch. 400, in effect January 1, 1976. Stats. 1979, Ch. 373, in effect January 1, 1980, renumbered section 24045.4. Amended by Stats. 2004, Ch. 523, AB 2927. Urgency bill in effect September 14, 2004, changed limitation for issuance of a license from one in any 12-month period to one in a calendar year.*

**24045.5. Temporary permits.** The department in its discretion may issue a temporary permit to the transferee of any license to continue the operation of the premises during the period a transfer application for the license from person to person at the same premises is pending and when all the following conditions exist:

(a) The premises shall have been operated under a license within 30 days of the date of filing the application for a temporary permit.

(b) The license for the premises shall have been surrendered pursuant to rules of the department.

(c) The applicant for the temporary permit shall have filed with the department an application for transfer of the license at the premises to himself or herself.

(d) The application for the temporary permit shall be accompanied by a temporary permit fee of one hundred dollars (\$100).

A temporary permit issued by the department pursuant to this section shall be for a period not to exceed four calendar months. A temporary permit may be extended at the discretion of the department for an additional four calendar months upon payment of an additional fee of one hundred dollars (\$100) and upon compliance with all conditions required herein. A temporary permit is a conditional permit and authorizes the holder thereof to sell the alcoholic beverages as would be permitted to be sold under the privileges of the license for which the transfer application has been filed with the department.

Purchase of beer, wine, and distilled spirits by the holder of a temporary permit shall be made only upon payment before or at the time of delivery in currency or by check. However, the holder of a temporary retail permit who also holds one or more retail licenses and is operating under the retail license or licenses in addition to the temporary permit, and who is not delinquent under the provisions of Section 25509 as to any retail license under which he or she operates, may purchase alcoholic beverages on credit under the temporary permit.

All checks received by a seller for alcoholic beverages purchased by the holder of a temporary retail permit shall be deposited not later than the second business day following the date the alcoholic beverages are delivered.

A check dishonored on presentation shall not be deemed payment. The receipt by the seller or his or her agent in good faith from a holder of a temporary permit of a check dishonored on presentation shall not be cause for disciplinary action against the seller.

Transfer of the license for which the holder of a temporary permit has filed an application shall not be approved by the department until the holder of the temporary permit has filed with the department a statement executed under penalty of perjury that all current obligations have been discharged, and that all outstanding checks issued by him or her in payment for alcoholic beverages will be honored on presentation.

It shall not be a violation of this section or otherwise grounds for disciplinary action for any licensee to extend credit to the holder of a temporary permit or to receive payment from the permittee in a manner other than authorized herein unless the seller had knowledge of the fact that the purchaser was operating under a temporary permit. Knowledge of the fact may be established by evidence, including, but not limited to, evidence that, at the time of receipt of payment or the extension of credit, the premises operated under a temporary permit were posted with the notice required by Section 23985, or the holder of the temporary permit had recorded notice as required by Section 24073, or the holder of the temporary permit had published notice as required by Section 23986, or the holder of the temporary permit had recorded and published notice pursuant to Division 6 (commencing with Section 6101) of the Commercial Code.

Refusal by the department to issue or extend a temporary permit shall not entitle the applicant to petition for the permit pursuant to Section 24011, or to a hearing pursuant to Section 24012. Articles 2 (commencing with Section 23985) and 3 (commencing with Section 24011) shall not apply to temporary permits.

Notwithstanding any other provision of law, a temporary permit may be canceled or suspended summarily at anytime if the department determines that good cause for the cancellation or suspension exists. Chapter 8 (commencing with Section 24300) shall not apply to temporary permits.

Application for a temporary permit shall be on any form the department shall prescribe. If an application for temporary permit is withdrawn before issuance or is refused by the department, the fee which accompanied the application shall be refunded in full, and Section 23959 shall not apply. Fees received by the department for issuance of temporary permits shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

**History.**—Added by Stats. 1965, Ch. 1490, in effect September 17, 1965. Stats. 1968, Ch. 206, in effect November 13, 1968, added reference to transferee in first paragraph; substituted “permit” for “license”; deleted “of the same type”; deleted authorization and manner of payment for purchase of alcoholic beverages and inserted authorization to sell in second paragraph; and inserted third, fourth, fifth, sixth and seventh paragraphs. Stats. 1988, Ch. 289, in effect January 1, 1989, made permits operative for 120 days and authorized them for non-retail licensees. Stats. 1989, Ch. 1360, in effect January 1, 1990, made non-substantive code changes. Amended by Stats. 1999, Ch. 699, in effect January 1, 2000, to make technical, non-substantive changes. Amended by Stats. 2002, Ch. 246 in effect January 1, 2003. Deleted requirement for certified check to be used by temporary permit holders if purchasing distilled spirits. Stats. 2004, Ch. 335, in effect January 1, 2005. Amended term of temporary permit from 120 days to four months.

**24045.6. Special temporary on-or off-sale wine license.** (a) The department may issue a special temporary on-sale or off-sale wine license to any nonprofit corporation that is exempt from payment of income taxes under Section 23701d or 23701e of the Revenue and Taxation Code and Section 501(c)(3) or 501(c)(6) of the Internal Revenue Code of 1986. An applicant for this license shall accompany the application with a fee of one hundred dollars (\$100).

(b) This special license shall only entitle the licensee to sell wine bought by, or donated to, the licensee to a consumer and to any person holding a license authorizing the sale of wine. Notwithstanding any other provision of this division, a licensee may donate or sell wine to a nonprofit corporation that obtains a special temporary on-sale or off-sale license under this section, provided the donation is not made in connection with a sale of an alcoholic beverage.

(c) This special license shall be for a period not exceeding 15 days. In the event the license under this section is issued for a period exceeding two days, it shall be used solely for retail sales in conjunction with an identifiable fundraising event sponsored or conducted by the licensee and all bottles of wine sold under this license shall bear a label prominently identifying the event. Only one special license authorized by this section shall be issued to any corporation in a calendar year.

**History.**—Added by Stats. 1978, Ch. 106, in effect April 21, 1978. Stats. 1984, Ch. 920, in effect September 7, 1984, added reference to off-sale licenses. In paragraph (c) changed one day to two days. Stats. 1996, Ch. 900, in effect January 1, 1997, in (a) added 23701e, (c) changed 2 days to 15. Amended by Stats. 2004, Ch. 523, AB 2927. Urgency bill in effect September 14, 2004, changed limitation for issuance of a license from one in any 12 month period to one in a calendar year.

**24045.7. Theater company.** (a) (1) The department may issue a special on-sale general license to any nonprofit theater company that is exempt from the payment of income taxes under Section 23701d of the Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue Code of the United States. Any special on-sale general license issued to a nonprofit theater company pursuant to this subdivision shall be for a single specified premises only.

(2) Theater companies holding a license under this subdivision may, subject to Section 25631, sell and serve alcoholic beverages to ticketholders only during, and two hours prior to and one hour after, a bona fide theater performance of the company.

(3) Notwithstanding any other provision in this division, a licensed manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, employee, or agent of that person, may serve on the board of trustees or as an officer, director or employee of a nonprofit theater company operating a theater in Napa County licensed pursuant to this subdivision.

(4) An applicant for such a license shall accompany the application with an original issuance fee of one thousand dollars (\$1,000) and shall pay an annual renewal fee as provided in Section 23320.

(5) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exceptions established by this subdivision to the general prohibition against tied interests must be limited to their express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

(b) (1) The department may issue a special on-sale beer and wine license to any nonprofit theater company which has been in existence for at least eight years, which for at least six years has performed in facilities leased or rented from a local county fair association, and which is exempt from the payment of income taxes under Section 23701d of the Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue Code of the United States.

(2) Theater companies holding a license under this subdivision may, subject to Section 25631, sell and serve beer and wine to ticketholders only during, and two hours prior to, a bona fide theater performance of the company. Beer and wine may be sold from an open-air concession stand which is not attached to the theater building itself, if the concession stand is located on fair association property within 30 feet of the theater building and the alcoholic beverages sold are consumed only in the theater building itself, or within a designated outdoor area in front of and between the concession stand and the main public entrance to the theater building. Nothing in this section permits a theater company to sell beer or wine during the run of a county fair.

(3) An applicant for a license under this subdivision shall accompany the application with an original issuance fee equal to the annual renewal fee and shall pay an annual renewal fee as provided in Section 23320.

*History.—Added by Stats. 1979, Ch. 487, in effect January 1, 1980. Stats. 1984, Ch. 399, repealed "Sunset" clause, in effect July 11, 1984. Stats. 1987, Ch. 1104, in effect January 1, 1988, added subd. (b). Stats. 1990, Ch. 238, in effect January 1, 1991, permitted sales 2 hours prior to performances. Stats. 2001, Ch. 488 & Ch. 567 in effect January 1, 2002, both amended this section and added requirement that license be for a single specified premise and removed the requirement that the theater company have been in existence for at least 10 years. by Stats. 2002, Ch. 579 in effect January 1, 2003, amended to allow under subd. (a)(3) licensees to serve as officer, director or employee of the Napa Valley Opera House.*

**24045.8. Estate wine sales.** (a) The department may issue a special temporary off-sale wine license (1) to an executor, administrator, guardian or conservator of an estate, or to an auctioneer acting as an agent of any of the foregoing for the purpose of conducting a sale or auction of bottled wine to nonlicensees pursuant to Section 23104.4, or (2) to a sheriff or a person appointed by the court to execute a court order or writ of execution, for the purpose of conducting a sale of bottled wine to nonlicensees pursuant to Section 23104.5. An applicant for such a license shall accompany the application with a fee of one hundred dollars (\$100).

(b) Such a license shall only entitle the licensee to sell or auction bottled wine included in the inventory of alcoholic beverages.

(c) Such a license shall be for the period required to dispose of the bottled wine to be sold or auctioned, or until the closing of the estate or execution of the court order or writ of execution, whichever occurs first.

(d) The department shall adopt such rules as it determines to be necessary to implement and administer the provisions of this section.

**History.**—Added by Stats. 1981, Ch. 212, in effect January 1, 1982.

**24045.85. Symphony Association.** The department may issue a special on-sale beer, wine, or distilled spirits license to any symphony association organized as a nonprofit corporation more than 30 years before the date of application and which is exempt from the payment of income taxes under Section 23701d of the Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue Code of 1954 of the United States.

A symphony association holding a license under this section may sell and serve alcoholic beverages only to persons attending concerts on the licensed premises. Sales of alcoholic beverages shall only be permitted, subject to Section 25631, during the period commencing two hours before the performance and ending one hour after the performance.

The applicant for a license shall accompany the application with an original fee of three hundred dollars (\$300) and shall pay an annual renewal fee as provided in Section 23320.

Original licenses may be issued pursuant to this section until January 1, 1987; thereafter no new licenses shall be issued. Licenses originally issued pursuant to this section prior to January 1, 1987, may continue to be renewed annually by the holder thereof.

**History.**—Added by Stats. 1984, Ch. 399, in effect July 11, 1984. Stats. 1986, Ch. 248, in effect January 1, 1987, renumbered from 24045.9 to 24045.85. Stats. 1988, Ch. 155, in effect January 1, 1989, permitted license for any concert on licensed premises. Stats. 2001, Ch. 488 in effect January 1, 2002, established new fee schedule. Stats. 2002, Ch. 246, in effect January 1, 2003. Permits a symphony association to hold a distilled spirits license.

**24045.9. Television stations.** (a) The department may issue a special temporary on-sale beer and wine license to: (1) a television station, supported wholly or in part by public membership subscription, which is a nonprofit, charitable corporation exempt from payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States, or (2) a nonprofit, charitable corporation exempt from payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States which receives and administers donations for a noncommercial, educational television station or public broadcasting station supported wholly or in part by public membership subscription. An applicant for this license shall accompany the application with a fee of one hundred dollars (\$100).

(b) This license shall only entitle the licensee to sell and serve beer and wine donated to it. Notwithstanding any other provision of this division, a licensee may donate beer to a corporation licensed under this section, provided such donations are not made in connection with a sale of an alcoholic beverage.

(c) This license shall be for a period not exceeding 30 days. Only one license shall be issued to any corporation in a calendar year.

(d) For purposes of this section, any licensee may also serve that beer donated by him or her at any event for which the license has been issued.

(e) The department shall adopt rules as it determines necessary to implement and administer this section.

**History.**—Added by Stats. 1984, Ch. 969, in effect January 1, 1985. Amended by Stats. 2004, Ch. 2927, AB 2927. Urgency bill in effect September 14, 2004, changed limitation for issuance of a license from one in any 12 month period to one in a calendar year.

24045.10. **San Diego County vessel daily on-sale general.** (a) The department in its discretion may issue, on a temporary basis, a daily on-sale general license for a vessel of 7,000 tons or more displacement engaged in interstate or foreign commerce, which is located in a county of the third class.

(b) The license shall be issued to the operator of the vessel and shall entitle the licensee to sell only alcoholic beverages on which all applicable excise taxes have been paid only to passengers, bona fide guests of passengers, bonafide guests of the vessel operator, and employees not on duty and only while the vessel is berthed at a dock in port in this state which is on the vessel's regularly scheduled interstate or international cruise itinerary.

(c) The license shall be issued for a period not to exceed two consecutive days. No license shall be issued for use on the same vessel more than 24 times per calendar year.

(d) For the purpose of this section, a "bona fide guest of a passenger" or a "bona fide guest of the operator" means an individual whose presence as a guest on the vessel is in response to a specific invitation by a passenger or the operator.

(e) The fee for the license shall be fifty dollars (\$50) per day.

(f) Application for the license may be made by the vessel's agent on behalf on the vessel's operator upon written authorization by the vessel's operator.

(g) All alcoholic beverages dispensed under authority of the license shall have been purchased from a licensed wholesaler or winegrower in this state.

**History.**—Added by Stats. 1986, Ch. 723, in effect January 1, 1987.

24045.11. **Bed and breakfast inn license.** The department may issue a special on-sale wine license to an establishment licensed to do business as a bed and breakfast inn.

"Bed and breakfast inn," as used in this section, means an establishment of 20 guestrooms or less, which provides overnight transient occupancy accommodations, which serves food only to its registered guests, which serves only a breakfast or similar early morning meal, and with respect to which the price of the food is included in the price of the overnight transient occupancy accommodation. For purposes of this section, "bed and breakfast inn" refers to an establishment as to which the predominant relationship between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this section, the existence of some other legal relationships as between some occupants and the owner or operator is immaterial.

An establishment holding a license under this section is authorized to serve wine purchased from a licensed winegrower or wine wholesaler only to registered guests of the establishment. Wine shall not be given away to guests but the price of the wine shall be included in the price of the overnight transient occupancy accommodation. Guests shall not be permitted to remove wine served in the establishment from the grounds.

The applicant for a license shall accompany the application with an original fee of fifty dollars (\$50) and shall pay an annual renewal fee of six dollars (\$6) for each guestroom in the establishment until December 31, 2004, and for each year thereafter the annual fee shall be calculated pursuant to subdivisions (b) and (c) of Section 23320.

**History.**—Added by Stats. 1987, Ch. 615, in effect January 1, 1988. Stats. 2001, Ch. 488 effective, January 1, 2002, established new fee schedule.

24045.12. **Bed and breakfast inn general license.** (a) The department may issue a special on-sale general license to an establishment licensed to do business as a bed and breakfast inn.

(b) “Bed and breakfast inn,” as used in this section, means an establishment of 20 guestrooms or fewer, which provides overnight transient occupancy accommodations, that serves food only to its registered guests, that serves only a breakfast or similar early morning meal, and with respect to which the price of the food is included in the price of the overnight transient occupancy accommodation. For purposes of this section, “bed and breakfast inn” refers to an establishment as to which the predominant relationship between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this section, the existence of some other legal relationship as between some occupants and the owner or operator is immaterial.

(c) An establishment holding a license under this section is authorized to serve any alcoholic beverage, as defined in Section 23004, only to registered guests of the establishment. The alcoholic beverage may not be given away to guests, but the price of the beverage shall be included in the price of the overnight transient occupancy accommodation. Guests may not be permitted to remove any alcoholic beverage served in the establishment from the grounds.

(d) An establishment holding a license under this section shall purchase all beer, wine, or distilled spirits for sale on the licensed premises from a licensed wholesaler or winegrower.

(e) The applicant for a license shall accompany the application with an original fee of two hundred dollars (\$200) and shall pay an annual renewal fee of fifteen dollars (\$15) for each guestroom in the establishment, not to exceed a total of two hundred dollars (\$200).

(f) A special on-sale general bed and breakfast inn license may be transferred to another person but not to another location.

*History.—Added as Section 24045.10 by Stats. 1987, Ch. 869, in effect January 1, 1988, Ch. 160, in effect January 1, 1989, renumbered section. Stats. 1998, Ch. 639, in effect January 1, 1999, amended subd. (b) to require minimum 1 year bona fide eating place operation. Stats. 2001, Ch. 53, in effect January 1, 2002, added a new type of license and authorized a special on-sale general license to operators of bed and breakfast inns.*

24045.12. **Caterers.** Notwithstanding any other provision of law, the department may issue a general on-sale license to a person who does not operate a bona fide eating place or other public premises who meets all of the following:

(a) Has operated a catering business for not less than five years.

(b) Has operated or owned for not less than one year a bona fide eating place that had a general on-sale license.

(c) Caters over 500 events annually.

(d) Serves alcoholic beverages at no more than 25 percent of the events catered annually and has revenues from the sale of alcoholic beverages which do not constitute more than 25 percent of his or her total annual revenues.

(e) Obtains an annual permit to serve alcoholic beverages at events and obtains an authorization for each event, as specified in Section 23399.

*History.—Added by Stats. 1998, Ch. 639, in effect January 1, 1999.*

24045.13. **Special temporary off-sale license.** (a) The department may issue a special temporary off-sale license to a former licensee for the limited purpose of selling any stock of collectible beer, wine, or distilled spirits decanters acquired when previously licensed.

(b) The fee for this license shall be one hundred dollars (\$100).

(c) The license shall be issued for a period not to exceed 120 days. The license may be renewed for up to two additional 120-day periods upon payment of an additional one hundred dollar (\$100) fee for each additional period.

(d) All money collected as fees pursuant to this section shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

(e) The department may adopt rules as it determines necessary to implement and administer this section.

**History.—**Added by Stats. 1995, Ch. 139, in effect January 1, 1996.

**24045.14. Maritime museum license.** (a) Notwithstanding any other provision of this division, the department may issue an on-sale general license to any maritime museum association that has been organized as a nonprofit corporation more than 40 years before the date of application, that owns in its museum inventory not less than three vessels, each of which is 100 feet or more in length, and that is exempt from the payment of income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986.

(b) A maritime museum association holding a license under this section may sell and serve alcoholic beverages only to persons attending prearranged events held on board its vessels while those vessels are underway or while moored at their home port dock.

(c) A duplicate license shall be required for each vessel in excess of one if alcoholic beverages are sold on the vessel more than 24 times each year.

(d) The original application shall be accompanied by a fee of five hundred dollars (\$500) and the applicant shall pay an annual renewal fee and a renewal fee for each duplicate as provided for in subdivision (34) of Section 23320.

(e) Original licenses may be issued pursuant to this section until January 1, 1998.

**History.—**Added by Stats. 1996, Ch. 372, in effect January 1, 1997. Stats. 1998, Ch. 485, in effect January 1, 1999, made technical, non-substantive changes.

**24045.15. Viticultural area association license.** (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 online computer services. 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 a calendar year.

**History.**—Added by Stats. 1997, Ch. 383, in effect August 26, 1997. Amended by Stats. 1997, Ch. 774, in effect January 1, 1998. Stats. 1998, Ch. 485, in effect January 1, 1999, made technical, non-substantive changes. Amended by Stats. 2004, Ch. 523. Urgency bill in effect September 14, 2004, changed limitation for issuance of a license from one in any 12 month period to one in a calendar year.

**24045.16. Charitable arts trust license.** Notwithstanding any other provision of this division, the department may issue an on-sale general bona fide public eating place license as defined by Section 23038 to any nonprofit charitable arts trust that is exempt from the payment of income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. For the purposes of this section, “arts trust” means an entity devoted to the arts and humanities which operates two or more museums, one of which is located on a site of at least 100 acres, and is within a facility of not less than 450,000 square feet in the County of Los Angeles.

An arts trust holding a license under this section may, subject to Section 25631, sell and serve alcoholic beverages to the public. In addition, a licensee under this section may, subject to Section 25631, directly or indirectly, give or furnish alcoholic beverages to persons at events for consumption on the premises. A premises licensed pursuant to this section shall not be entitled to a caterer's permit pursuant to Section 23399, and shall not be entitled to exercise any off-sale privileges pursuant to Section 23401.

**History.**—Added by Stats. 1997, Ch. 20, in effect June 6, 1997.

**24046. Posting license.** Upon receipt of any license, the licensee shall post it in a conspicuous place upon the licensed premises. Licenses issued for trains, boats or airplanes may, in lieu of being posted upon the train, boat, or airplane for which issued, be posted in such other place in this State as the department shall designate.

**History.**—Stats. 1955, Ch. 954, in effect September 7, 1955, added reference to airplanes. Stats. 1957, Ch. 1271, substituted “department” for “board”. Stats. 1959, Ch. 1529, in effect September 18, 1959, deleted “sign it and” before “post.”

**24047. Lost license.** Whenever a license certificate is in effect and is lost or destroyed, the department shall issue a duplicate license upon the payment of a fee of five dollars and fifty cents (\$5.50).

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1957, Ch. 2307, in effect July 16, 1957, increased fee from \$5 to \$5.50.

**24048. License renewals.** Every license, other than a temporary license or a daily on-sale general license issued pursuant to Section 24045.1, is renewable unless the license has been revoked if the renewal application is made and the fee therefor

is paid. All licenses expire at 12 midnight on the last day of the month posted on the license. All licenses issued shall be renewed as follows:

(a) On or before the first of the month preceding the month posted on the license, the department shall mail to each licensee at his or her licensed premises, or at any other mailing address that the licensee has designated, an application to renew the license.

(b) The application to renew the license may be filed before the license expires upon payment of the annual fee set forth in Section 23320, 23358.3, or 23399.

(c) For 60 days after the license expires, such license may be renewed upon payment of the annual renewal fee as set forth in Section 23320, 23358.3, or 23399, plus a penalty fee that shall be equal to 50 percent of the annual fee.

(d) Unless otherwise terminated, or unless renewed pursuant to subdivision (b) or (c) of this section, a license that is in effect on the month posted on the license continues in effect through 2 a.m. on the 60th day following the month posted on the license, at which time it is automatically canceled.

(e) On or before the 10th day preceding the cancellation of a license, the department shall mail a notice of cancellation to each licensee who has not either filed an application to renew his or her license or notified the department of his or her intent not to do so. Failure to mail the renewal application in accordance with subdivision (a) or to mail the notice provided in this subdivision shall not continue the right to a license.

(f) A license which has been canceled pursuant to subdivision (d) of this section may be reinstated during the 30 days immediately following cancellation upon payment by cashier's check or money order of the annual renewal fee as set forth in Section 23320, 23358.3, or 23399, plus a penalty fee that shall be equal to 100 percent of the annual fee. A license that has been canceled pursuant to subdivision (d) of this section and that has not been reinstated within 30 days pursuant to this subdivision is automatically revoked on the 31st day after the license has been canceled.

(g) No renewal application shall be deemed filed within the meaning of this section unless the document itself has been actually delivered to, and the required renewal fee has been paid at, any office of the department during office hours, or unless both the document and fee have been filed and remitted pursuant to Section 11003 of the Government Code.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1957, Ch. 1822, in effect September 11, 1957, added “in accordance with Sections 24048.1 to 24048.4”; and deleted balance of section. Stats. 1969, Ch. 1123, in effect November 10, 1969, added exception for daily on-sale general license. Stats. 992, Ch. 838, in effect January 1, 1993, repealed prior section and enacted in this form. Stats. 1994, Ch. 1028, in effect January 1, 1995, corrected reference from Section 23300 to Section 23320 and made other technical, nonsubstantive changes. Stats. 2001, Ch. 488, AB 1298, established new fee schedule.

**24048.1. Renewability of retailer’s on-sale license.** *Repealed by Stats. 1992, Ch. 838, effective January 1, 1993.*

**24048.2. Issuance or transfer of retailer’s on-sale license.** *Repealed by Stats. 1992, Ch. 838, effective January 1, 1994.*

**24048.3. Renewability of fiscal year license.** *Repealed by Stats. 1992, Ch. 838, effective January 1, 1993.*

**24048.4. Issuance or transfer of fiscal year license.** *Repealed by Stats. 1992, Ch. 838, effective July 1, 1993.*

**24049. Tax delinquency.** The department may refuse to transfer any license when the applicant is delinquent in the payment of any taxes due under the Alcoholic Beverage Tax Law, the Sales and Use Tax Law, the Personal Income Tax Law, or the

Bank and Corporation Tax Law, or on unsecured property as defined in Section 134 of the Revenue and Taxation Code, when such tax liability arises in full or in part out of the exercise of the privilege of an alcoholic beverage license, or any amount due under the Unemployment Insurance Code when such liability arises out of the conduct of a business licensed by the Department of Alcoholic Beverage Control.

**History.**—Stats. 1955, Ch. 1848, in effect September 7, 1955, substituted “department” for “board”; inserted “or transfer”; and added “or any amounts due under the Unemployment Insurance Code, the Personal Income Tax Law, or the Bank and Corporation Tax Law.” Stats. 1957, Ch. 553, in effect September 11, 1957, rewrote the section and added reference to source of liability. Stats. 1963, Ch. 965, in effect September 20, 1963, deleted reference to renewal. Stats. 1967, Ch. 1034, in effect November 8, 1967, inserted “or on unsecured property as defined in Section 134 of the Revenue and Taxation Code.”

**Priority of tax claims.**—Section 24049 providing for a refusal to renew or transfer a license where the licensee is delinquent in certain State tax obligations, constitutes a limitation on the value of the license. A federal tax or a wage claimant’s lien attaches to the value of the license thus reduced and not to the unconditional value thereof. *U.S. v. State of California*, 281 Fed. 2d 726; and *Meyer v. Bass*, 281 Fed. 2d 728.

**24049.5. Seizure and sale.** (a) The State Board of Equalization or the Franchise Tax Board may seize and sell the license of any off-sale or on-sale general licensee who, upon termination of business is delinquent in the payment of any taxes due under the Sales and Use Tax Law, Personal Income Tax Law, or Bank and Corporation Tax Law, respectively. In order for a seizure and sale of a license to be accomplished under this section, the licensee shall have either surrendered the license to the department or failed to pay the annual renewal fee to the department. Immediately upon seizure the State Board of Equalization or Franchise Tax Board shall give written notice by first-class mail to the department and to the licensee of the seizure and of the intention of the board to sell the license. The seizure and sale shall be in accordance with the provisions of Article 6 (commencing with Section 6796) of Chapter 6 of Part 1 of Division 2 of the Revenue and Taxation Code or Article 4 (commencing with Section 26221) of Chapter 23 of Part 11 of Division 2 of the Revenue and Taxation Code, respectively, and with the provisions of this division. Nothing within these provisions shall be construed to permit the State Board of Equalization or Franchise Tax Board to sell alcoholic beverages.

(b) For the purposes of this section “termination of business” means the licensee has ceased business operations and has either surrendered the license to the department or the license has expired pursuant to Section 24048.

(c) The licensee may redeem the license at any time prior to the date of sale of the license by the board or the appropriate reinstatement deadline, whichever occurs first, by conforming to the requirements for reinstatement of a license pursuant to subdivision (f) of Section 24048.

The person who purchases the license at the sale may reinstate the license by paying the applicable fees, but the transfer shall be effective only on approval of the department after the purchaser has complied with the requirements for transfer provided in this division.

(d) Paragraph (1) of subdivision (a) of Section 699.720 of the Code of Civil Procedure shall not be construed to limit the authority of the State Board of Equalization or the Franchise Tax Board to seize and sell licenses pursuant to this section.

**History.**—Added by Stats. 1980, Ch. 1194, in effect January 1, 1981. Stats. 1983, Ch. 337, effective January 1, 1984, added primarily technical and reference changes. Stats. 1992, Ch. 838, in effect January 1, 1993, made section conform to annual renewal provisions of § 24048.

**24050. Extension of seasonal license.** *Repealed by Stats. 1978, Ch. 104.*

**24051. Fishing party boats.** The department may issue and renew on-sale beer licenses for fishing party boats on payment of the fees without regard to the provisions of Sections 23985, 23986, 23987, 23988, 24013, 24014, or 24043.

**History.—**Added as Section 24052 by Stats. 1959, Ch. 2192, in effect September 18, 1959. Stats. 1961, Ch. 73, in effect September 15, 1961, renumbered Section 24051.

**24052. University and prison boundaries.** *Repealed by Stats. 1961, Ch. 1617.*

#### Article 5. Transfer of Licenses

- § 24070. Person to person; premises to premises; intercounty.
- § 24070.1. On-sale license from person to person.
- § 24070.2. Special intercounty transfer from Los Angeles County.
- § 24070.5. Transfer of winegrower's license.
- § 24071. Surviving spouse; corporations; fiduciaries.
- § 24071.1. Stock ownership.
- § 24071.2. Limited liability company ownership.
- § 24072. Transfer fee.
- § 24072.1. On-sale license from premises to premises.
- § 24072.2. Exchange of on-sale license.
- § 24072.5. Exchange fee of special on-sale general license.
- § 24073. Recording notice of intention.
- § 24074. Escrow.
- § 24074.1. Escrow holder.
- § 24074.2. Funds in escrow.
- § 24074.3. Statement of deposit with escrowholder.
- § 24074.4. Guarantor.
- § 24075. Exceptions for notice and escrow.
- § 24076. Security agreements.
- § 24077. County population.
- § 24078. Transfer of special on-sale general license.
- § 24079. Purchase price.
- § 24080. Consideration indicated in application.
- § 24081. Operation of destroyed premises.
- § 24082. Transfer of destroyed premises.

**24070. Person to person; premises to premises; intercounty.** Each license is separate and distinct and is transferable upon approval by the department from the licensee to another person and from one premises to another premises.

(a) All off-sale general licenses may be transferred from one county to another county, subject to the following provisions:

1. The number of off-sale general licenses in existence in any county on June 1 of any year shall not be increased by more than 25 new original off-sale general licenses during the following 12-month period, provided further that the number of new original off-sale general licenses that may be issued in any county during any 12-month period shall not increase by more than 10 percent the number of off-sale general licenses in existence in such county on the June 1 with which that 12-month period began.

2. After the department computes the number of new original off-sale licenses that may be issued in any county during any 12-month period as provided by the foregoing paragraph, if the department determines that the ratio established by Section 23817 will permit, during such 12-month period, additional off-sale general licenses in any county, off-sale general licenses may be transferred into such county in a number not to exceed by more than 10 percent the number of off-sale general licenses in existence in such county on the June 1 with which that 12-month period began, but in no event to exceed 25 such transfers during that 12-month period.

3. Under no circumstances shall the combined total number of new original off-sale general licenses that may be issued in any county during any 12-month period and the number of off-sale general licenses that may be transferred into such county during that 12-month period, exceed the limitation set forth in Section 23817.

(b) All on-sale general licenses may be transferred from one county to another county, subject to the following provisions:

1. The number of on-sale general licenses in existence in any county on June 1 of any year shall not be increased by more than 10 percent by the issuance of new original on-sale general licenses, but in no event to exceed 25 such licenses, during any 12-month period. The number of on-sale general licenses shall be limited by the provisions of Section 23816.

2. After the department computes the number of new original on-sale licenses that may be issued in any county during any 12-month period as provided by the foregoing paragraph, if the department determines that the ratio established by Section 23816 will permit, during such 12-month period, additional on-sale general licenses in any county, on-sale general licenses may be transferred into such county in a number not to exceed by more than 10 percent the number of on-sale general licenses in existence in such county on the June with which that 12-month period began, but in no event to exceed 25 such transfers during that 12-month period.

3. Under no circumstances shall the combined total number of new original on-sale general licenses that may be issued in any county during any 12-month period and the number of on-sale general licenses that may be transferred into such county during that 12-month period, exceed the limitation set forth in Section 23816.

4. The transfer fee for transfer of an on-sale general license from one county to another county shall be the same as the fee prescribed in subdivision (d) of Section 24072 for transfer of an off-sale general license from one county to another county.

(c) No retail license subject to the provisions of Section 23816 or 23817 issued as a new original license on or after June 1, 1961, and no off-sale general license or on-sale general license transferred from one county to another county on or after August 17, 1967, shall be transferable from the licensee to another person, or if the licensee is a corporation a controlling interest in the stock ownership of the licensee shall not be, directly or indirectly, sold, transferred, or hypothecated unless the licensee be a corporation the stock of which is listed on a stock exchange in this state or in the City of New York, State of New York, or which is required by law to file periodic reports with the Security Exchange Commission, for a period of two years from date of issuance of the license, except as provided in Section 24071, and except when the department determines that the transfer is necessary to prevent undue hardship.

(d) No off-sale general license or on-sale general license that is transferred from one county to another county pursuant to this section shall be transferred thereafter for a purchase price or consideration to the transferor or from the transferee in excess of ten thousand dollars (\$10,000), except that if the off-sale general license or on-sale general license was originally issued on or after June 1, 1961, the purchase price or consideration to the transferor or from the transferee shall not exceed six thousand dollars (\$6,000), as provided by Section 24079.

(e) Notwithstanding the provisions of subdivision (d) of this section any off-sale general license or on-sale general license transferred from one county to another county pursuant to this section may be transferred with no restrictions as to the purchase price or consideration to the transferor or from the transferee after a period of five years from the date of the intercounty transfer of the license.

**History.**—Stats. 1961, Ch. 783, in effect June 10, 1961, repealed former section and added present section. Stats. 1967, Ch. 1222, in effect August 17, 1967, recast section. Stats. 1968, Ch. 1382, in effect November 13, 1968, added subd. (b); substituted “1” for “(b)”; added paragraphs 2, 3, and 4; included on-sale general license in (c) and (d); and added exception of \$6,000 for licenses issued after June 1, 1961, in subd. (d). Stats. 1971, Ch. 1072, in effect March 4, 1972, added subd. (e).

**Corporate stock transfer.**—The transfer of the stock of a corporation does not result in the transfer of the license from the corporation to the transferee of the stock. *Maxwell Cafe v. Department of Alcoholic Beverage Control*, 142 Cal. App. 2d 73, 298 Pac. 2d 64.

**Liability of corporation.**—A license held by a corporation may be revoked after transfer of all the stock of a corporation for violations occurring prior to transfer. When a license is issued to a corporation it retains the license and is responsible for it until suspended or revoked. *Maxwell Cafe v. Department of Alcoholic Beverage Control*, 142 Cal. App. 2d 73, 298 Pac. 2d 64.

**Sale of licensed business.**—Without a transfer of the liquor license, there can be no transfer of the licensed business. *Lenchuer v. Chase*, 98 Cal. App. 2d 794.

**Partnership license.**—Where a partnership operates a liquor business all partners are required to have the license issued in their names. *Denning v. Tabor*, 70 Cal. App. 2d 253.

**Board approval of transfer.**—An agreement for the transfer of a liquor license is to be construed as subject to the board's approval for transfer. *Leboire v. Black*, 84 Cal. App. 2d 260.

**Licenses not property.**—Although alcoholic beverage licenses are not "property" for the purposes of property taxation (*Roehm v. County of Orange*, 32 Cal. 2d 280), they constitute "property" within the meaning of the Bankruptcy Act. *In Re Quaker Room*, 90 Fed. Supp. 758.

**Judgment cannot make innocent partner sole licensee.**—A judgment establishing the misconduct of one partner cannot properly make the innocent partner the sole licensee in view of provisions of act regarding transfer of licenses. *Coletti v. State Board of Equalization*, 94 Cal. App. 2d 61.

**Corporate merger.**—The transfer of a corporation's priority liquor licenses to a corporation owning all of the licensee's stock and into which it had been merged, was not precluded by the provision of § 24070, subd. (c), generally prohibiting the transfer of such licenses within two years after issuance, "except as provided in Section 24071, and except when the department determines that the transfer is necessary to prevent undue hardship." Under a provision of § 24071, "a license may be transferred from a corporation to a person who owns, or whose spouse owns, the entire stock of the corporation," and, under §§ 23002 and 23008, the word "person" includes a corporation unless the context otherwise requires. The Legislature's use of the adjective "natural" to modify "person" in another clause of § 24071, also relating to transfers to or by corporations, indicates that the unmodified noun "person" in the clause in question is not necessarily confined to natural persons. *Foodmaker, Inc., v. Alcoholic Beverage Control Appeals Board*, 10 Cal. 3d 605.

**24070.1. On-sale license from person to person.** An on-sale license issued for a bona fide public eating place may be transferred from the licensee to another person, as provided in Section 24070, for a bona fide public eating place or for public premises, as defined in Section 23039. An on-sale license issued for public premises may be transferred from the licensee to another person, as provided in Section 24070, for public premises or for a bona fide public eating place.

**History.**—Added by Stats. 1955, Ch. 1779, in effect January 1, 1957.

**24070.2. Special Intercounty transfer from Los Angeles County.** Notwithstanding subdivision (a) of Section 24070, any off-sale general license issued prior to April 29, 1992, and located within the boundaries of the United States Bureau of the Census census tracts 234000, 234200, 234300, 234500, 234600, 234700, 234800, 234900, 235100, 235201, 235202, 236100, 236201, 236202, 236400, 231100, 231500, 231600, 231700, 231800, 231900, 232100, 232200, 232300, 232400, 232500, 232600, 232700, 232800, 237100, 237200, 237300, 237400, 237500, 237600, 237700, 237800, 237900, 238000, 238100, 238200, 238300, 238400, 240300, 240400, 241200, 241300, 600100, 600201, 600202, 600301, 600302, 600400, 602700, 602800, 602900, 603002, 228100, 228200, 228300, 228400, 228500, 228600, 228700, 228800, 228900, 229100, 229200, 229300, 229400, 239200, 239300, 239500, 239600, 239700, 239800, 242000, 242100, 242200, 242300, 242600, 242700, 243000, 243100, 535400, 240000, 240200, 240500, 240600, 240700, 240800, 240900, 241000, 241100, 241400, 532700, 532800, 532900, 533000, 534900, 535000, 535101, 535102, 535200, 535300, 535400, 541100, 541200, 541300, 541400, 541601, 541602, 541800, 542000, 542101, 542102, 542200, 542401, 542402, 542500, 542600, 542700, 542800, 542900, 543000, 543100, 543200, 543301, 543321, and 570400 located within Los Angeles County may be transferred from that county to another county without regard to the limitations imposed by Section 24070. Notwithstanding the fee provisions of Section 24072, the fee for a transfer of a license pursuant to this section shall be one hundred dollars (\$100).

**History.**—Added by Stats. 1993, Ch. 1285, in effect January 1, 1994.

**24070.5 Transfer of winegrower's license.** When a winegrower has failed to carry on business actively, pursuant to a winegrower's license, for a period of one

year, such winegrower's license, without regard to when it was originally issued, may be transferred only to a person who qualifies as a winegrower, as defined in Sections 23013 and 23358 of this code.

**History.**—Added by Stats. 1969, Ch. 1277, in effect November 10, 1969.

**24071. Surviving spouse; corporations; fiduciaries.** The license of one spouse may be transferred to the other spouse when the application for transfer is made prior to the entry of a final decree of divorce, and the license of a decedent, minor ward, incompetent person, conservatee, bankrupt person, person for whose estate a receiver is appointed, or assignor for the benefit of creditors may be transferred by or to the surviving partners of a deceased licensee, the executor, administrator, conservator or guardian of an estate of a licensee, the surviving spouse of a deceased licensee in the event that the deceased licensee leaves no estate to be administered, the trustee of a bankrupt estate of a licensee, a receiver of the estate of a licensee, or an assignee for the benefit of creditors of a licensee with the consent of the assignor, or a license may be transferred by or to a receiver appointed for a judgment debtor as provided by Section 708.630 of the Code of Civil Procedure, or a license may be transferred to a revocable living trust when the licensee is also the trustee, or a license may be transferred between partners where no new partner is being licensed, or a license may be transferred between corporations whose outstanding shares of stock are owned by the same natural persons, or a licensee may transfer upon compliance with Section 24073 any license to a corporation whose entire stock is owned by the licensee, or his or her spouse, or a licensee may transfer upon compliance with Section 24073 any license to a limited liability company whose entire membership consists of the licensee, or his or her spouse, or a license may be transferred from a corporation to a person who owns, or whose spouse owns, the entire stock of the corporation, and the fee for transfer of each license is fifty dollars (\$50). The regular transfer fee provided in Section 24072 shall be due and payable upon the subsequent transfer of 25 percent of the stock in a corporation to which a license has been transferred by a licensee or his or her spouse pursuant to this section, except if the transfer of stock is from a parent to his or her child or grandchild, in which case the fee shall be one-half of the regular transfer fee. In no case shall a fee be charged for the transfer of an importer's license. All money collected from the fees provided for in this section shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

Nothing in this section shall be deemed to authorize the formation of a limited liability company composed of only one member in violation of subdivision (b) of Section 17050 of the Corporations Code.

**History.**—Stats. 1957, Ch. 2307, in effect July 16, 1957, added "or licenses may be transferred between corporations whose outstanding shares of stock are owned by the same natural persons"; and increased fee from \$25 to \$27.50. Stats. 1959, Ch. 1576, in effect September 18, 1959, added "conservatee"; "conservator"; "or a licensee may transfer upon compliance with Section 24073 any license to a corporation whose entire stock is owned by the licensee, or his spouse"; and second sentence. Stats. 1963, Ch. 1040, in effect September 20, 1963, substituted "24072" for "24070." Stats. 1965, Ch. 1243, in effect September 17, 1965, added "or a license may be transferred from a corporation to a person who owns, or whose spouse owns, the entire stock of the corporation." Stats. 1967, Ch. 1559, operative April 1, 1968, increased transfer fee from \$27.50 to \$50, deleted last sentence referring to annual fee, and added present last sentence. Stats. 1971, Ch. 1378, in effect March 4, 1972, included stock transfer from parent to child or grandchild for one-half regular transfer fee. Stats. 1982, Ch. 497, in effect January 1, 1983, added reference to transfer by or to receiver appointed for judgement debtor. Stats. 1985, Ch. 793, in effect January 1, 1986, provided for a \$50. fee for the transfer of a license to a revocable living trust when the licensee is the trustee of that trust. Stats. 1992, Ch. 900, in effect September 25, 1992, provided that fees be deposited in ABC Fund. Stats. 1996, Ch. 44, in effect May 19, 1996, permitted creation of LLC with no new members.

**Cross reference.**—Rule 60, Section 23008.

**Corporate merger.**—The transfer of a corporation's priority liquor licenses to a corporation owning all of the licensee's stock and into which it had been merged, was not precluded by the provision of § 24070, subd. (c), generally prohibiting the transfer of such licenses within two years after issuance, "except as provided in Section 24071, and except when the department determines that the transfer is necessary to prevent undue hardship." Under a provision of § 24071, "a license may be transferred from a corporation to a person who owns, or whose spouse owns, the entire stock of the corporation," and, under §§ 23002 and 23008, the word "person" includes a corporation unless the context otherwise requires. The Legislature's use of the adjective "natural" to modify "person" in another clause of § 24071, also relating to transfers to or by corporations, indicates that the unmodified noun "person" in the clause in question is not necessarily confined to natural persons. *Foodmaker, Inc., v. Alcoholic Beverage Control Appeals Board*, 10 Cal. 3d 605.

**24071.1. Stock ownership.** (a) When the ownership of 50 percent or more of the shares of stock of a corporation, which is required to report the issuance or transfer of those shares of stock under Section 23405, is acquired by or transferred to a person or persons who did not hold the ownership of 50 percent of those shares of stock on the date the license was issued to the corporation, the license of the corporation shall be transferred to the corporation as newly constituted. When there is a new general partner or when the ownership of 50 percent or more of the capital or profits of a limited partnership, which is required to maintain a register under Section 23405.1, is acquired by or transferred to a person or persons as general or limited partners and who did not hold ownership of 50 percent or more of the capital or profits of the limited partnership on the date the license was issued to the limited partnership, the license of the limited partnership shall be transferred to the limited partnership as newly constituted. The fee for the transfer shall be equal to 50 percent of the original fee for the license, except that the minimum fee shall be one hundred dollars (\$100) and the maximum fee shall be eight hundred dollars (\$800). In situations involving the multiple and simultaneous transfer of licenses under this section, the regular transfer fee shall only be required for one of the licenses being transferred and the remainder of the licenses shall be transferred for a fee of one hundred dollars (\$100) each. All of the transfer fees collected pursuant to this section shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761. Before the license is transferred, the department shall conduct an investigation pursuant to the provisions of Section 23958. Any person or persons who own 50 percent or more of the shares of stock of the corporation or who own as limited partners 50 percent or more of the capital or profits of the limited partnership, as the case may be, shall have all the qualifications required of a person holding the same type of license.

(b) No retail license shall be transferred by a corporation or a limited partnership under this section unless, before the filing of the transfer application with the department, the corporation or limited partnership initiating the transfer records in the office of the county recorder of the county or counties in which the premises to which the license has been issued are situated a notice of the intended transfer, stating all of the following:

- (1) The name and address of the corporation or limited partnership.
- (2) The name and address of the person or persons acquiring ownership of 50 percent or more of the stock of the corporation or capital or profits of the limited partnership.
- (3) The amount of the consideration paid for the stock or limited partnership interests.
- (4) The kind of license or licenses intended to be transferred.
- (5) The address or addresses of the premises to which the license or licenses have been issued.

A copy of the notice of the intended transfer, certified by the county recorder, shall be filed with the department together with the transfer application.

(c) Notwithstanding any other provision of this division to the contrary, a corporation or limited partnership as newly constituted by transfer under this section, is not eligible for any new credit from any person named in Section 25509 until all delinquent payments owed by the entity as formerly constituted, are made, nor shall any entity retail licensee,

by transferring its license under this section, avoid the provisions of Section 25509 with regard to 42-day or 30-day periods, percentage charges for unpaid balances, or cash-on-delivery basis.

**History.**—Added by Stats. 1967, Ch. 1494, in effect November 8, 1967. Stats. 1969, Ch. 654, in effect November 10, 1969, deleted former second paragraph and added all of section after first paragraph. Stats. 1973, Ch. 47, in effect May 15, 1973, added second sentence and provision for limited partners owning 50 percent or more in fifth sentence. Stats. 1978, Ch. 725, in effect January 1, 1979, revised transfer fee. Stats. 1992, Ch. 900, in effect September 25, 1992, provided that fees be deposited in ABC Fund. Stats. 1996, Ch. 44, in effect May 15, 1996, made technical, conforming changes. Stats. 1998, Ch. 639, in effect January 1, 1999, added reference to limited partnership.

**24071.2. Limited liability company ownership.** (a) When the ownership of 50 percent or more of the membership interests in a limited liability company required to report the issuance or transfer of memberships under Section 23405.2 is acquired by or transferred to a person or persons who did not hold the ownership of 50 percent of the membership interests on the date the license was issued to the limited liability company, the license of the limited liability company shall be transferred to the limited liability company as newly constituted. The fee for the transfer shall be equal to 50 percent of the original fee for the license, except that the minimum fee shall be one hundred dollars (\$100) and the maximum fee shall be eight hundred dollars (\$800). In situations involving the multiple and simultaneous transfer of licenses under this section, the regular transfer fee shall be required for only one of the licenses being transferred and the remainder of the licenses shall be transferred for a fee of one hundred dollars (\$100) each. All of the transfer fees collected pursuant to this section shall be deposited in the Alcohol Beverage Control Fund, as provided in Section 25761. Before the license is transferred, the department shall conduct an investigation pursuant to Section 23958. Any person or persons who own 50 percent or more of the membership interests of the limited liability company shall have all the qualifications required of a person holding the same type of license.

(b) No retail license shall be transferred by a limited liability company under this section unless, before the filing of the transfer application with the department, the company initiating the transfer records, in the office of the county recorder of the county or counties in which the premises to which the license has been issued are situated, a notice of the intended transfer, stating all of the following:

- (1) The name and address of the limited liability company.
- (2) The name and address of the person or persons acquiring ownership of 50 percent or more of the membership interests of the limited liability company.
- (3) The amount of the consideration paid for the membership interests.
- (4) The kind of license or licenses intended to be transferred.
- (5) The address or addresses of the premises to which the license or licenses have been issued.

A copy of the notice of the intended transfer, certified by the county recorder, shall be filed with the department together with the transfer application.

(c) Notwithstanding any other provision of this division to the contrary, a limited liability company as newly constituted by transfer under this section shall not be eligible for any new credit from any person named in Section 25509 until all delinquent payments owed by the limited liability company as formerly constituted are made, nor shall any retail licensee, by transferring its license under this section, avoid the provisions of Section 25509 with regard to 42-day or 30-day periods, percentage charges for unpaid balances, or cash-on-delivery basis.

(d) Nothing in this section shall be deemed to authorize the formation of a limited liability company composed of only one member in violation of subdivision (b) of Section 17050 of the Corporations Code.

**History.**—Added by Stats. 1996, Ch. 44, in effect May 15, 1996. Stats. 1997, Ch. 17, in effect January 1, 1998, made technical, non-substantive changes. Stats. 1999, Ch. 699, in effect January 1, 2000, made technical, non-substantive changes.

**24072. Transfer fee.** The following transfer fees shall be charged by the department:

(a) The fee for transfer of a license other than a retail license from a licensee to another person is a fee equal to 70 percent of the annual fee for the license, except as provided in Section 24071. Section 23322 shall not apply to this transfer fee.

(b) The fee for transfer of a retail license from a licensee to another person is a fee equal to 50 percent of the original fee for the license, but not to exceed one thousand two hundred fifty dollars (\$1,250), or if no original fee is provided for by law, one hundred dollars (\$100).

(c) Except as provided in Section 24082, the fee for transfer of a license from one premises to another premises is one hundred dollars (\$100).

(d) Notwithstanding the other fee provisions of this section, the fee for a transfer of an off-sale general license from one county to another county shall be six thousand dollars (\$6,000).

(e) The fee for transfer of an on-sale or off-sale retail license to include the mother, father, son, or daughter of a licensee, when no consideration is given for such transfer, shall be one-half of the regular fee for transfer of a license from a licensee to another person, as provided by this section.

All money collected from the fees provided for in this section shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

**History.**—Stats. 1961, Ch. 783, in effect June 10, 1961, repealed former section and added present section. Stats. 1967, Ch. 1559, in effect April 1, 1968, inserted “other than a retail license” and deleted “but not including additional fees for gross retail sales” in subd. (a); added subd. (b); relettered subd. (b) to (c) and increased transfer fee from \$27.50 to \$100; lettered subd. (d), and deleted on-sale general license. Stats. 1968, Ch. 1016, in effect November 13, 1968, inserted “Except as provided in Section 24082” in (c). Stats. 1971, Ch. 1417, in effect March 4, 1972, added subd. (e). Stats. 1992, Ch. 900, in effect September 25, 1992, provided that fees be deposited in ABC Fund.

**24072.1. On-sale license from premises to premises.** An on-sale license issued for a bona fide public eating place may be transferred from the premises for which issued to other premises, as provided in Section 24072, for a bona fide public eating place or for public premises, as defined in Section 23039. An on-sale license issued for public premises may be transferred from the premises for which issued to other premises, as provided in Section 24072, for public premises or for a bona fide public eating place.

**History.**—Added by Stats. 1955, Ch. 1779, in effect January 1, 1957.

**24072.2. Exchange of on-sale license.** Any person who has an on-sale license issued for a bona fide public eating place may exchange his or her license for a similar license for public premises, as defined in Section 23039, and any person who has such a license issued for public premises may exchange his or her license for a similar license for a bona fide public eating place. The exchange may be made at the time of renewal of the license sought to be exchanged, and not more than once between renewal periods, upon the approval of the department, the payment of an exchange fee of one hundred dollars (\$100), and compliance with the provisions of this division relating to the issuance of an original license. All money collected from the fee provided for in this section shall be deposited directly in the Alcohol Beverage Control Fund as provided in Section 25761.

**History.**—Added by Stats. 1955, Ch. 1779, in effect January 1, 1957. Stats. 1957, Ch. 33, in effect February 4, 1957, inserted “not more than once between renewal periods”; increased fee from \$25 to \$27.50; and added third sentence. Stats. 1959, Ch. 1797, in effect September 18, 1959, deleted third sentence. Stats. 1967, Ch. 1559, in effect April 1, 1968, increased fee from \$27.50 to \$100 and added last sentence. Stats. 1994, Ch. 1028, in effect January 1, 1995, amended to require monies to be deposited in Alcohol Beverage Control Fund.

**24072.5. Exchange fee of special on-sale general license.** Any person who has any on-sale general license may exchange his or her license for a special on-sale general license and any person who has a special on-sale general license may exchange his or her license for an on-sale general license. The exchange may be made at any time upon the approval of the department, the payment of an exchange fee of one hundred dollars (\$100), and compliance with the provisions of this division relating to the issuance of an original license. However, Sections 23985, 23985.5, and 23986 shall not apply to the exchange of an on-sale general license for a special on-sale general license. All money collected from the fee provided for in this section shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

**History.**—Added by Stats. 1961, Ch. 1914, in effect September 15, 1961. Stats. 1963, Ch. 785, in effect September 20, 1963, inserted “and any person who has a special on-sale general license may exchange his license for an on-sale general license”; and added provision that Sections 23985 and 23986 shall not apply. Stats. 1967, Ch. 1559, in effect April 1, 1968, increased fee from \$27.50 to \$100 and added last sentence. Stats. 1990, Ch. 612, in effect January 1, 1991, exempted exchanges from provisions of Section 23985.5. Stats. 1992, Ch. 900, in effect September 25, 1992, provided that fees be deposited in ABC Fund.

**Cross reference.**—Sections 23825 and 23954.6.

**24073. Recording notice of intention.** No retail license limited in numbers, off-sale beer and wine license, on-sale beer and wine license, on-sale beer and wine public premises license, on-sale beer license, on-sale beer public premises license, or on-sale general license for seasonal business, shall be transferred unless before the filing of the transfer application with the department the licensee or the intended transferee records in the office of the county recorder of the county or counties in which the premises to which the license has been issued are situated a notice of the intended transfer, stating all of the following:

- (a) The name and address of the licensee.
- (b) The name and address of the intended transferee.
- (c) The kind of license or licenses intended to be transferred.
- (d) The address or addresses of the premises to which the license or licenses have been issued.
- (e) An agreement between the parties to the transfer that the consideration for the transfer of the business and license or licenses, if any there be, is to be paid only after the transfer is approved by the department.
- (f) The place where the purchase price or consideration for the transfer of the business and license or licenses is to be paid, the amount of such purchase price or consideration, and a description of the entire consideration, including a designation of cash, checks, promissory notes, and tangible and intangible property, and the amount of each thereof.
- (g) The name and address of the escrow holder referred to in Section 24074, or of the guarantor referred to in Section 24074.4, as the case may be.

A copy of the notice of intended transfer, certified by the county recorder, shall be filed with the department together with a transfer application.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1957, Ch. 1272, in effect September 11, 1957, recast subd. (e); relettered subd. (f) to be subd. (g); and added a new subd. (f). Stats. 1961, Ch. 1002, in effect September 15, 1961, inserted “or on-sale general license for seasonal business.” Stats. 1970, Ch. 750, in effect November 23, 1970, added description of entire consideration in subd. (f). Stats. 1972, Ch. 1047, in effect March 7, 1973, included on-sale beer and off-sale and on-sale beer and wine licenses. Stats. 1973, Ch. 816, in effect January 1, 1974, added reference to guarantor in subd. (g).

**Judgment cannot make innocent partner sole licensee.**—A judgment establishing the misconduct of one partner cannot properly make the innocent partner the sole licensee in view of provisions of act regarding transfer of licenses. *Coletti v. State Board of Equalization*, 94 Cal. App. 2d 61.

**Transfer ineffective.**—The mere transfer of the stock of a corporate licensee cannot be used as a device to enable the licensee to escape responsibility for its violations of this division. *Maxwell Cafe v. Department of Alcoholic Beverage Control*, 142 Cal. App. 2d 73, 298 Pac. 2d 64.

**Validity of agreement to sell.**—Since the Department of Alcoholic Beverage Control accomplishes the transfer of liquor licenses rather than the buyer or the seller thereof, the restriction of § 24073 is directed to the department. A contract between a transferor and transferee specifying payments of consideration before completion of the transfer is not void as between the parties. *Harriman v. Tetik*, 56 Cal. 2d 805, 366 Pac. 2d 486.

**24074. Escrow.** Before the filing of such a transfer application with the department, if the intended transfer of the business or license involves a purchase price or consideration, the licensee and the intended transferee shall establish an escrow with some person, corporation, or association not a party to the transfer acting as escrow holder, and the intended transferee shall deposit with the escrow holder the full amount of the purchase price or consideration. The transfer application shall be accompanied by a description of the entire consideration. The description shall include a designation of cash, checks, promissory notes, and tangible and intangible property, and the amount of each thereof. The licensee and intended transferee shall also enter into an agreement, which agreement shall be deposited with the escrow holder, directing the escrow holder, after the requirements for transfer as provided in Section 24049 are satisfied, to pay out the purchase price or consideration, whether the consideration takes the form of cash, checks, promissory notes, or tangible or intangible property, the claims of the bona fide creditors of the licensee who file their claims with the escrow holder before the escrow holder is notified by the department of its approval of the transfer of the license or if the purchase price or consideration is not sufficient to pay the claims in full, to distribute the consideration as follows:

First, to the United States for claims based on income or withholding taxes; and thereafter for claims based on any tax other than specified in Section 24049.

Second, to the payment of claims for wages, salaries, or fringe benefits of employees of the seller or transferor earned or accruing prior to the sale, transfer, or opening of an escrow for the sale thereof.

Third, to the payment of claims of secured creditors to the extent of the proceeds which arise from the sale of the security.

Fourth, to the payment of claims on mechanics' liens.

Fifth, to the payment of escrow fees and the payment of claims for prevailing brokerage fees for services rendered and claims for reasonable attorney's fees for services rendered.

Sixth, to the payment of claims for goods sold and delivered to the transferor for resale at his licensed premises and the payment of claims for services rendered, performed, or supplied in connection with the operation of the licensed business, and to the payment of claims of a landlord, to the extent of proceeds on past due rent.

Seventh, to the payment of other claims which have been reduced to court-ordered judgments, including claims for court-ordered support of a minor child.

Eighth, to the payment of all other claims. The payment of these claims if sufficient assets are not available for the payment of the claim in full shall be paid pro rata.

If the transferor licensee disputes any claim, the escrow holder shall notify the claimant, and the amount or pro rata amount thereof shall be retained by the escrow holder for a period of 25 days, and if not attached shall be paid to the transferor licensee. The agreement shall also provide that the escrow holder shall make the payment or distribution within a reasonable time after the completion of the transfer of the license.

**History.**—Stats. 1955, Ch. 447, substituted "department" for "board." Stats. 1957, Ch. 1272, in effect September 11, 1957, added "if the intended transfer of the business or license involves a purchase price or consideration," and deleted "if any there be, to be paid in connection with the transfer" in the first sentence. Stats. 1959, Ch. 524, in effect September 18, 1959, substituted "before the escrow holder is notified by the department of its approval of the transfer of the license" for "on or before the date when the purchase price or consideration

is to be paid for the transfer of the license as fixed in the recorded notice of intended transfer.” Stats. 1967, Ch. 753, in effect November 8, 1967, inserted reference to Section 24049, and established priority for creditors. Stats. 1968, Ch. 459, in effect November 13, 1968, added claims based on any taxes other than specified in Section 24049. Stats. 1969, Ch. 1083, in effect November 10, 1969, added requirement for description of entire consideration in first paragraph, renumbered priorities, added reference to fringe benefits of employees and opening of escrow for sale, and added requirement that escrow holder notify claimant in last paragraph. Stats. 1970, Ch. 492, in effect November 23, 1970, added payment of claims for services and reworded second sentence in seventh priority. Stats. 1972, Ch. 1000, in effect March 7, 1973, deleted 90-day period prior to escrow. Stats. 1977, Ch. 266, in effect January 1, 1978, provided for technical changes as to disbursement, rearranged the priority of creditors, and added payment of claims of a landlord. Stats. 1984, Ch. 1570, in effect January 1, 1985, restructured priority of claim.

**Cross reference.**—Interest of judgment debtor in license, Code of Civil Procedure Section 708.630; nonpossessory security interest in inventory, Civil Code § 9102(4) and § 9107.

**Tax lien of United States.**—When purchase price money is paid into escrow it becomes subject to the lien of taxes owing to the United States, which have priority over claims of general creditors. The United States is not required to file its claim with the escrow holder. *Golden v. State of California*, 133 Cal. App 2d. 640, 285 Pac. 2d 49.

**Creditors rights.**—A purchaser of a licensed business who has not yet received the license has no title to the money taken in by the business, and a creditor of the transferor may levy execution on such money. *Interstate Credit v. Blackmer Inc.*, Los Angeles Municipal Ct., 337,334, reported in *Los Angeles Daily Journal Report Section*, March 25, 1957, page 19.

The State may regulate the manner in which creditors seek protection in the collection of their debts from the proceeds of the sale of a liquor license. The provision of a cutoff date for the filing of claims does not deprive creditors of their claims. *Pacific Firestone Escrow Company v. Food Giant Markets, Inc.*, 202 Cal. App. 2d 155.

**Priority of tax claims.**—See annotation to § 24049.

The requirements of this section are not satisfied if escrow holder is not qualified under § 17000 et seq., Financial Code, and department shall not process application. Atty. Gen. Op. 8-18-65.

**Exclusive scheme of payment.**—Section 24074, governing transfers in escrow of liquor licenses and establishing rights of the transferor’s creditors in escrow proceeds, represents a mandatory and exclusive scheme for payment of creditors of liquor license transferors, giving creditors who comply with that section priority over those who employ any form of levy on the proceeds. *Grover Escrow Corp. v. Gole*, 71 Cal. 2d 61.

**Distribution of bankrupt’s assets.**—In the course of the transfer of the liquor license of a bankrupt, the distribution of the assets of the bankrupt are governed by the Bankruptcy Act and not by the different priorities established in the escrow provisions of § 24074. *Gough v. Finale*, 39 C.A. 3d 777.

**Federal tax lien priorities.**—Federal law rather than state law determines the priority of competing liens where one of them is a tax lien asserted by the United States. However, state law determines whether the taxpayer has “property and rights to property” to which the federal lien can attach. *Business Title Corporation v. Division of Labor Law Enforcement*, 17 Cal. 3d 878.

**Transfer of license, priorities.**—In an interpleader action concerning priorities between a federal tax lien and wage claims with respect to funds in an escrow account set up pursuant to Business and Professions Code §24074, for the transfer of a liquor license, the trial court properly determined that once the transfer had been approved prior to the close of escrow, title to the proceeds passed to the seller subject to applicable lien priorities, the seller held property in the escrow to which a federal tax lien could attach, and that, pursuant to federal law, the tax lien constituted a priority lien claim for unpaid taxes that was entitled to be paid from the fund before the claims of other defendants for unpaid wages. *Business Title Corporation v. Division of Labor Law Enforcement*, 17 Cal. 3d 878.

**Transfer of licenses affecting federal tax liens.**—In an interpleader action brought by an escrow holder to determine conflicting claims as to the proceeds from the sale of a liquor license as between a federal tax lien and wage claims, the trial court properly entered judgment for the wage claimant and determined that at the time of the federal tax assessment and later filing of a notice of tax lien, there was no property or rights to property belonging to the seller taxpayer then being held by the escrow holder to which the federal tax lien could attach, where the escrow had been opened, notice to creditors had been recorded and published, all claims had been received, requisite state taxes had been paid, transfer of the license had occurred, and notice to claimant creditors of the amount proposed to be paid to each had been sent all before the federal tax assessment had occurred and the federal lien had been perfected. Whatever “property” or “rights to property” the seller may have had in the proceeds because of his power to dispute claims of creditors filed prior to transfer were extinguished when he did not dispute any claim so filed, and the assets remaining in escrow at the time of transfer were insufficient to pay the claims in full. *Business Title Corp. v. United States*, 21 Cal. 3d 710.

**Property to which federal tax lien attaches.**—Where a federal tax lien had not come into existence at the time of the transfer of a liquor license, from that moment forward the seller had no property or rights to property in the license to which a federal lien could attach. *Business title Corp. v. United States*, 21 Cal. 3d 710.

**State law governs property to which federal tax lien attaches.**—Whether or not a taxpayer has property or rights to property in a liquor license or the proceeds of the sale thereof to which a federal tax lien may attach, is to be decided according to state, not federal law. *Business Title Corp. v. United States*, 21 Cal. 3d 710.

**24074.1. Escrow holder.** Any person desiring to act as an escrow holder under Section 24074 shall:

1. Comply with all the applicable provisions of Chapter 1 (commencing with Section 17000) of Division 6 of the Financial Code.
2. Not more than 10 days after receiving a claim from a creditor, said escrow holder shall acknowledge receipt of each claim; and
3. Not more than 10 days after the license has been transferred and prior to the distribution of the assets held by said escrow holder he shall advise each creditor who filed a claim against the escrow whether or not there are sufficient assets in the escrow to pay all creditors in full. If the assets in the escrow are sufficient to pay all creditors

in full, said escrow holder shall also advise each creditor of the date on or before which payment will be made. If there are not sufficient assets to pay all creditors in full, he shall then advise each creditor who filed a claim of the following: (a) the total assets placed in escrow with him and the nature of each asset; (b) the name of each creditor who filed a claim against the escrow and the amount of said claim; (c) the amount he proposes to pay each creditor; and (d) the date on or before which said amount will be paid to the creditors.

**History.—Added by Stats. 1965, Ch. 1426, in effect September 17, 1965.**

The department does not assume any responsibility for the actions of a qualified escrow holder. Where a qualified escrow holder absconds at any stage of the transfer process the department shall, nonetheless, complete the transfer unless all parties to the transaction agree otherwise. Atty. Gen. Op 8-18-65.

**24074.2. Funds in escrow.** Any person desiring to act as an escrow holder under Section 24074 shall not release any funds in the escrow in exchange for a promissory note or in exchange for any other consideration of less value to the creditors than the funds exchanged.

**History.—Added by Stats. 1967, Ch. 1494, in effect November 8, 1967.**

**24074.3. Statement of deposit with escrowholder.** (a) Within 30 days after the filing of an application for transfer of a license referred to in Section 24073, the intended transferee shall file with the department a statement executed under penalty of perjury that the purchase price or consideration as set forth in the escrow agreement required by Section 24074 has been deposited with the escrowholder. At the time such statement is filed with the department copies thereof shall be submitted by the intended transferee to the transferor and the escrowholder concerned. The 30-day period specified by this section may be extended by the department for good cause; however, the license shall not be transferred until the statement required by this section is received by the department.

(b) This section shall not apply in the case of transfers for which a guaranty of payment has been filed pursuant to Section 24074.4.

**History.—Added by Stats. 1972, Ch. 1047, in effect March 7, 1973. Stats. 1973, Ch. 816, in effect January 1, 1974, added subd. (b).**

**24074.4. Guarantor.** (a) Notwithstanding the provisions of Section 24074, no escrow shall be required to be established in connection with the transfer of a business or license if a corporate person files with the department a guaranty of full, prompt, and faithful payment of all claims of bona fide creditors of the licensee, and such guaranty is acceptable to the creditors. The department shall not transfer the license until the guarantor has paid all the creditors' claims in full and the guarantor has filed with the department a statement executed under penalty of perjury that all conditions of the transfer have been satisfied. Payment of such claims by the guarantor shall be made in United States currency or by certified check in a manner acceptable to the creditors.

(b) This section shall apply only in the case of a transfer involving an off-sale beer and wine license, and in which the guarantor corporation has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars (\$5,000,000).

**History.—Added by Stats. 1973, Ch. 816, in effect January 1, 1974.**

**24075. Exceptions for notice and escrow.** The provisions of Sections 24073 and 24074 do not apply to any transfer of a license made by an executor, administrator, guardian, conservator, trustee, receiver, except a receiver appointed under the provisions of Section 708.630 of the Code of Civil Procedure, or other person acting in the legal or proper discharge of official duty, or in the discharge of any trust imposed upon

the person by law, nor to any transfer or assignment made for the benefit of creditors, nor to a surviving spouse or fiduciary or other person within the meaning of Section 24071.

**History.**—Stats. 1957, Ch. 1272, in effect September 11, 1957, added “nor to a surviving spouse or fiduciary or other person within the meaning of Section 24071.” Stats. 1959, Ch. 1576, in effect September 18, 1959, inserted “conservator.” Stats. 1982, Ch. 497, in effect January 1, 1983, added reference to transfer to a receiver under provisions of Code of Civil Procedure, Section 708.630.

**Construction.**—The United States has a lien for unpaid taxes on money received from the sale of a license pursuant to court order. *United States v. Blackett*, 220 Fed. 2d 21.

**24076. Security agreements.** No licensee shall enter into any agreement wherein he pledges the transfer of his license as security for a loan or as security for the fulfillment of any agreement. No license shall be transferred if the transfer is to satisfy a loan or to fulfill an agreement entered into more than 90 days preceding the date on which the transfer application is filed, or to gain or establish a preference to or for any creditor of the transferor, except as provided by Section 24074, or to defraud or injure any creditor of the transferor.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1963, Ch. 295, in effect September 20, 1963, deleted requirement that verified statement accompany application. Stats. 1967, Ch. 753, in effect November 8, 1967, inserted “except as provided by Section 24074.”

A contract to transfer an on-sale liquor license, subject to the approval of a State licensing agency and other conditions and restrictions imposed by law, is valid. *Golden v. State of California*, 133 Cal. App. 2d 640.

Where a person was an unsecured creditor at the time of the enactment of this section, and had no right to pledge of license and did not obtain same until after enactment of this section, application of this section was not retroactive in the constitutional sense, and this section was applicable. *Holt v. Morgan*, (1954) 128 Cal. App. 2d 113, 274 Pac. 2d 915.

**Not retroactive as to agreements entered into prior to October 1, 1949.**—Former Section 7.3 of the Alcoholic Beverage Control Act, which became the above statutory provision, does not apply retroactively to deny a transfer to a person whose right to such transfer, at least as between him and the other party to the agreement, accrued prior to the effective date of the section. Prior to the enactment of Section 7.3, an agreement requiring a lessee to retransfer liquor licenses to the lessor upon termination of the lease was not contrary to public policy or in violation of the act, the transfers, of course, being subject to the approval of the State Board of Equalization. *Saso v. Furtado*, 104 Cal. App. 2d 759.

Similarly, Section 7.3 does not apply to prevent specific performance of an agreement to transfer a liquor license pledged as security for the payment of a loan, pursuant to the terms of a limited partnership agreement, where the right to transfer accrued, as between the parties, prior to the effective date of the section. Prior to the enactment of that section, neither public policy nor the act prohibited use of a liquor license as security. *Campbell v. Bauer*, 104 Cal. App. 2d 740.

A provision in a lease requiring the lessee to retransfer a liquor license to the lessor on termination of the lease is not illegal or contrary to public policy, provided such transfer is made by the method prescribed by the Alcoholic Beverage Control Act and subject to the approval of the State Board of Equalization. Section 7.3 of the act, prohibiting a licensee from entering into any agreement wherein he pledges a transfer of his license as security for a loan or as security for the fulfillment of any agreement, does not apply retroactively to deny specific performance of a license-retransfer provision in a lease which had terminated prior to the effective date of the section. *Eichart v. Pyles*, 106 Cal. App. 2d 549.

Similarly, a retransfer provision in a lease entered into prior to, but terminated after, the effective date of Section 7.3 is enforceable. *Pehau v. Stewart*, 112 Cal. App. 2d 90; *Huffman v. Farros*, 275 Fed. 2d 350.

The section is not retroactive as to rights accrued prior to October 1, 1949, whether such rights were adjudicated prior to that date or not. *Tognoli v. Taroli*, 127 Cal. App. 2d 273, Pac 2d 914.

A clause in a lease executed before 1949, and extended by the parties, for retransfer of a license by lessees to lessor is not violative of Section 24076 because the lease was executed before the effective date of the section. Such section is not retroactive. *Cavalli v. Maccaire*, 159 Cal. App. 2d 714.

**Retroactive effect of legislation.**—While a liquor license is property in any relationship between the licensee and a third party, the granting of such a license does not deprive the State of its reserve power to enact laws pursuant to public policy which restrict the conditions under which property rights in the license may be dealt with. Private contracts entered into after the effective date of such a restrictive statute are subject to the terms thereof despite the fact that the license was originally issued before the restrictive statute was enacted. *Belle' Isle v. Hemy*, 206 Cal. App. 2d 14.

**Licensee and managerial contracts.**—A contract which gave a manager complete and exclusive authority and an option to buy the license and premises was violative of Section 23355 and unenforceable. *Marsh Rose Restaurant v. Chapin*, San Francisco Municipal Court No. 352003, Memorandum Opinion dated March 5, 1957.

**Agreement restricting transfer of license.**—An agreement restricting transfer of a license to third parties and providing for retransfer to original owner was invalid and unenforceable. *Citrigno v. Williams*, 255 Fed. 2d 675.

**Option to purchase.**—The word “pledge” is not to be construed in its strict or limited sense, but rather to connote any agreement whereby the transfer of a license would represent the satisfaction of an agreement entered into more than 90 days preceding the submission of the transfer application. Granting an option to repurchase a license is such a pledge. *Hammond v. Pasquini*, 211 Cal. App. 2d 540.

**Limited partnership.**—The section does not prohibit a limited partner from contributing a liquor license to the partnership whose articles provide that on its dissolution the license will be retransferred to the limited partner, so long as the partnership is bona fide and not a security arrangement or means whereby the limited partner permits others to use his license so that he may realize income from it. 27 Ops. Atty. Gen. 394, 56/83 6-26-56.

**Security agreement.**—An agreement for the sale of a restaurant and liquor license, providing that, on payment of half the total purchase price, the seller would do all things necessary to remove his name from the license so that it could be wholly owned by the buyer, and that, if the buyer should be in default, he would take the steps necessary to have his name removed from the license so that it would be transferred by the seller alone, was null and void as constituting a pledge of the license as security for his performance of the sale contract in violation of § 24076. *Elmquist v. Lock*, 194 Cal. App. 2d 372.

**Damages.**—The 90-day provision of § 24076 precludes specific enforcement of an option agreement entered into more than 90 days previously, but does not render that agreement illegal and affords no defense to an action for damages. *Greve v. Leger, Ltd.*, 64 Cal. 2d 853.

**24077. County population.** Notwithstanding any other provision of law, no license shall be transferred into any county having a population of 35,000 or less.

**History.**—Added by Stats. 1961, Ch. 783, in effect June 10, 1961.

**24078. Transfer of special on-sale general license.** A special on-sale general license may be transferred from person to person or from premises to premises, as provided in this article, but only for the operation of the licensed premises as required by Section 23399.2.

**History.**—Added by Stats. 1961, Ch. 1914, in effect September 15, 1961.

**24079. Purchase price.** (a) The purchase price or consideration that may be paid by a transferee or received by a transferor of an on-sale general license or off-sale general license originally issued on or after June 1, 1961, shall not exceed six thousand dollars (\$6,000), except that after a period of five years from the date of the original issuance of the license there shall be no restriction as to the purchase price or consideration that may be paid by a transferee or received by a transferor.

(b) Notwithstanding subdivision (a), any original on-sale general license or any original off-sale general license for which a fee in excess of twelve thousand dollars (\$12,000) has been paid pursuant to subdivision (b) of Section 23954.5 may not be transferred for one year following its initial issuance. After one year, this license may be transferred and there shall be no restriction as to the purchase price or consideration that may be paid by a transferee or received by a transferor.

(c) Any original on-sale general license or any original off-sale general license for which an original fee of twelve thousand dollars (\$12,000) was paid shall not be transferred for a purchase price in excess of twelve thousand dollars (\$12,000) for two years following its initial issuance. After two years, this license may be transferred and there shall be no restriction as to the purchase price or consideration that may be paid by a transferee or received by a transferor.

**History.**—Added by Stats. 1963, Ch. 1696, in effect September 20, 1963. Stats. 1971, Ch. 1072, in effect March 4, 1972, added exception for purchase price after five years. Stats. 1992, Ch. 900, in effect September 25, 1992, added subd. (b). Stats. 1994, Ch. 1028, in effect January 1, 1995, provided for licenses with original fee of \$12,000 to not be transferred during first two years for purchase price in excess of \$12,000.

**Cross reference.**—Rule 68.

**24080. Consideration indicated in application.** Every application filed by the intended transferee with the department for the transfer of an on-sale or off-sale general license shall indicate whether the consideration, if any, to be paid to the transferor includes payment for any or all of the following:

- (a) Inventory.
- (b) Fixtures.
- (c) Transfer of the license.

The actual amount of the consideration, if any, to be paid for items (a), (b) and (c) is to be indicated in the application.

**History.**—Added by Stats. 1963, Ch. 1689, in effect September 20, 1963.

**24081. Operation of destroyed premises.** (a) Notwithstanding any other provision of law in this division including, but not limited to, requirements relating to the issuance or transfer of a license, any licensee whose premises, for which a license, other than an off-sale license, has been issued, have been destroyed as a result of fire or any

act of God or other force beyond the control of such licensee may carry on his business for a period of not more than 60 days at a location within 500 feet of the premises for which the license was issued and while such premises are being repaired or rebuilt and he shall be entitled to carry on his business under his existing license upon the former premises when they have been repaired or rebuilt.

(b) Notwithstanding any other provisions of law in this division, including, but not limited to, requirements relating to the issuance or transfer of a license, any licensee whose premises, for which an off-sale license has been issued, have been destroyed as a result of fire or any act of God or other force beyond the control of such licensee, may carry on his business for a period of not more than six months at a location within 500 feet of the premises for which the license was issued and while such premises are being repaired or rebuilt and he shall be entitled to carry on his business under his existing license upon the former premises when they have been repaired or rebuilt.

**History.**—Added by Stats. 1967, Ch. 1494, in effect November 8, 1967. Stats. 1974, Ch. 699, in effect January 1, 1975, inserted “other than an off-sale license” in subd. (a), and added subd. (b).

**24082. Transfer of destroyed premises.** The license of a licensee whose licensed premises have been destroyed as the result of fire or act of God, or have been taken under the power of eminent domain, may be transferred to another location within the same county without payment of the fee for transfer of a license from one premises to another premises. Within six months of the fire or act of God, if the destroyed premises have been reconstructed and the license has not been transferred to another person, the license may be transferred back to the location of the destroyed premises without payment of the fee for transfer of a license from one premises to another premises.

**History.**—Added by Stats. 1968, Ch. 1016, in effect November 13, 1968.

## CHAPTER 7. SUSPENSION AND REVOCATION OF LICENSES

- § 24200. Grounds.
- § 24200.1. Additional grounds.
- § 24200.5. Selling narcotics or soliciting drinks on premises.
- § 24200.6. Drug paraphernalia, notice.
- § 24201. Accusations.
- § 24202. Report of arrest; controlled substance investigation.
- § 24203. Local legislative body accusations.
- § 24204. Food and drug offenses.
- § 24205. Suspension of taxpayer's license.
- § 24206. Accusations to be filed within one year.
- § 24207. Same; within three years.
- § 24208. When period begins to run.
- § 24209. Citations.
- § 24210. Delegation of power.
- § 24211. Review of penalty.

**24200. Grounds.** The following are the grounds that constitute a basis for the suspension or revocation of licenses:

(a) When the continuance of a license would be contrary to public welfare or morals. However, proceedings under this subdivision are not a limitation upon the department's authority to proceed under Section 22 of Article XX of the California Constitution.

(b) Except as limited by Chapter 12 (commencing with Section 25000), the violation or the causing or permitting of a violation by a licensee of this division, any rules of the board adopted pursuant to Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code, any rules of the department adopted pursuant to the provisions of this division, or any other penal provisions of law of this state

prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding, or mislabeling of alcoholic beverages or intoxicating liquors.

(c) The misrepresentation of a material fact by an applicant in obtaining a license.

(d) The plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude or under any federal law prohibiting or regulating the sale, exposing for sale, use, possession, or giving away of alcoholic beverages or intoxicating liquors or prohibiting the refilling or reuse of distilled spirits containers charged against the licensee.

(e) Failure to take reasonable steps to correct objectionable conditions on the licensed premises, including the immediately adjacent area that is owned, leased, or rented by the licensee, that constitute a nuisance, within a reasonable time after receipt of notice to make those corrections from the department, under Section 373a of the Penal Code. For the purpose of this subdivision only, "property or premises" as used in Section 373a of the Penal Code includes the area immediately adjacent to the licensed premises which is owned, leased, or rented by the licensee.

(f) Failure to take reasonable steps to correct objectionable conditions that occur during business hours on any public sidewalk abutting a licensed premises and constitute a nuisance, within a reasonable time after receipt of notice to correct those conditions from the department. This subdivision shall apply to a licensee only upon written notice to the licensee from the department. The department shall issue this written notice upon its own determination, or upon a request from the local law enforcement agency in whose jurisdiction the premises are located, that is supported by substantial evidence that persistent objectionable conditions are occurring on the public sidewalk abutting the licensed premises. For purposes of this subdivision:

(1) "Any public sidewalk abutting a licensed premises" means the publicly owned, pedestrian-traveled way, not more than 20 feet from the premises, that is located between a licensed premises, including any immediately adjacent area that is owned, leased, or rented by the licensee, and a public street.

(2) "Objectionable conditions that constitute a nuisance" means disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking, or excessive loud noise.

(3) "Reasonable steps" means all of the following:

(A) Calling the local law enforcement agency. Timely calls to the local law enforcement agency that are placed by the licensee, or his or her agents or employees, shall not be construed by the department as evidence of objectionable conditions that constitute a nuisance.

(B) Requesting those persons engaging in activities causing objectionable conditions to cease those activities, unless the licensee, or his or her agents or employees, feel that their personal safety would be threatened in making that request.

(C) Making good faith efforts to remove items that facilitate loitering, such as furniture, except those structures approved or permitted by the local jurisdiction. The licensee shall not be liable for the removal of those items that facilitate loitering.

(4) When determining what constitutes "reasonable steps," the department shall consider site configuration constraints related to the unique circumstances of the nature of the business.

(g) Subdivision (f) does not apply to a bona fide public eating place, as defined in Sections 23038, 23038.1 or 23038.2, that is so operated by a retail on-sale licensee

or on-sale beer and wine licensee; a hotel, motel, or similar lodging establishment, as defined in subdivision (b) of Section 25503.16; a winegrowers license; a licensed beer manufacturer, as defined in Section 23357; those same or contiguous premises for which a retail licensee concurrently holds an off-sale retail beer and wine license and a beer manufacturer's license; or those same or contiguous premises at which an on-sale licensee who is licensed as a bona fide public eating place as defined in Sections 23038, 23038.1, or 23038.2, a hotel, motel, or similar lodging establishment as defined in subdivision (b) of Section 25503.16, a licensed beer manufacturer, as defined in Section 23357, or a winegrowers license, sells off-sale beer and wine under the licensee's on sale license.

**History.**—Stats. 1955, Ch. 1842, in effect September 7, 1955, substituted “department” for “board” in subd. (a); inserted “adopted pursuant to Part 14 of Division 2, of the Revenue and Taxation Code or any rules of the department” in subd. (b); and added subds. (e) and (f). Stats. 1963, Ch. 1040, in effect September 20, 1963, deleted former subd. (e). Stats. 1977, Ch. 238, in effect January 1, 1978, added the plea of *nolo contendere* in subd. (d). Stats. 1984, Ch. 790, restructured subd. (e). Stats. 1994, Ch. 629, in effect, January 1, 1995, amended and added failure to correct objectionable conditions on public sidewalk in subd. (f) and defined exceptions to (f) in subd. (g). Stats. 1995, Ch. 743, in effect October 10, 1995, amended to make minor nonsubstantive changes. Stats. 2006, Ch. 625, SB 148, in effect January 1, 2007, amended subd. (e).

**Cross reference.**—Supplier coercion and/or illegal inducements, Sections 25503.6 and 25503.8.

**Conviction of public offense.**—Revocation of a liquor license solely because of licensee's conviction of sale over ceiling price was not an abuse of discretion. *Moore v. State Board of Equalization* (1946), 76 Cal. App. 2d 758, 174 Pac. 2d 323.

**Bookmaking.**—Revocation in a case where licensee and his employees engaged in bookmaking was not an abuse of discretion, as taking of unlawful bets on horse races is a crime under state laws and contrary to public welfare or morals. *Maloney v. Department of Alcoholic Beverage Control*, 172 Cal. App. 2d 104.

A finding that a single act of bookmaking by a bartender has taken place on the licensed premises is sufficient to support revocation. *Mack v. Department of Alcoholic Beverage Control*, 178 Cal. App. 2d 149; *Munro v. Alcoholic Beverage Control Appeals Board and Weiss*, 181 Cal. App. 2d 162.

**Acquittal of criminal offense.**—The acquittal of a liquor licensee on a criminal charge is not *res judicata* on question of commission of offense charged in subsequent disciplinary proceedings based on the same facts. Under the standards required in disciplinary proceedings the evidence sustained finding of Board of Equalization that the licensee in operation of restaurant-bar employed two girls for the purpose of procuring or encouraging purchase of alcoholic beverages in violation of Penal Code. *Cornell v. Reilly* (1954), 127 Cal. App. 2d 178, 273 Pac. 2d 572.

**Revocation of licenses within certain distances of universities.**—In determining whether there has been a violation of Penal Code § 172a distance must be measured by straight line rather than by shortest road or roads connecting the points in question. *Gunn v. State Board of Equalization* (1954), 123 Cal. App. 2d 283, 266 Pac. 2d 840; *Board of Trustees of Leland Stanford University v. State Board of Equalization* (1934), 1 Cal. 2d 784, 37 Pac. 2d 84, 96 A. L. R. 775.

**Power to revoke includes power to suspend.**—Under the constitutional provision, which endows the State Board of Equalization with exclusive power to license the sale of intoxicating liquor, including discretionary power to deny or revoke a liquor license, the board has the power to suspend, as well as revoke, a license. *Reynolds v. State Board of Equalization*, 29 Cal. 2d 137.

**Contributing to delinquency of minors.**—On evidence of sale of liquor to minors in an on-sale licensed premises jury could properly find the bartender and his employer guilty of violating Welfare and Institutions Code § 702. *People v. Diebert* (1954), 117 Cal. App. 2d 410, 256 Pac. 2d 355.

**“Permitting” under subd. (b).**—Permitting a violation need not be through personal knowledge of the licensee. *Mercurio v. Department of Alcoholic Beverage Control*, 144 Cal. App. 2d 626, 301 Pac. 2d 474. Knowledge of successive sales of narcotics is presumed. *Endo v. State Board of Equalization*, 143 Cal. App. 2d 395, 300 Pac. 2d 366.

A licensee has an active duty to prevent minors from drinking alcoholic beverages on his licensed premises, and a failure to prevent it is a permitting of such unlawful consumption. *Mercurio v. Department of Alcoholic Beverage Control*, 144 Cal. App. 2d 626.

Passive conduct on the part of a licensee or his employee will constitute a “permitting” of the objectionable conditions to exist where those conditions are, or should be, reasonably apparent. *Mundell v. Department of Alcoholic Beverage Control*, 211 Cal. App. 2d 231.

**Narcotics sales contrary to welfare and morals.**—Successive sales of marijuana by the licensee's bartender makes the continuance of the license contrary to public welfare and morals. *Endo v. State Board of Equalization*, 143 Cal. App. 2d 395, 300 Pac. 2d 366.

**Violation of Penal Code § 303.**—The administrative record contained evidence that on-sale general licensee's female employees were permitted to mingle and drink with patrons, solicit drinks from patrons, and that licensee devised and used a method of keeping tally of the drinks bought for these female employees. Although there was no evidence that this tally was used for the purpose of computing a commission, an inference was reasonably drawn to the effect that solicitation of drinks was an integral part of these girls' employment and contrary to Penal Code § 303. *Hobson v. Reilly*, 132 Cal. App. 2d 275, 281 Pac. 2d 877.

**Permitting females to accept drinks.**—Permitting female employees of an on-sale liquor premises to accept alcoholic drinks purchased for their consumption by patrons is contrary to public welfare and morals. *Mercurio v. Department of Alcoholic Beverage Control*, 144 Cal. App. 2d 626, 301 Pac. 2d 474.

**Patronage of on-sale premises by homosexuals is insufficient for revocation of license.**—Proof of patronage of a public restaurant with an on-sale general license by homosexuals without proof of illegal or immoral acts on the premises is insufficient to establish “good cause” for the suspension or revocation of the license. *Stoumen v. Reilly*, 37 Cal. 2d 713.

§ 24200 subd. (e), providing that liquor license may be revoked where premises are “resort” for illegal possessors or users of narcotics, prostitutes, pimps, panders or sexual perverts, and that character of premises “as a resort” by such prohibited classes may be proved by general reputation, is unconstitutional. *Vallerga v. Department of Alcoholic Beverage Control*, 53 Cal. 2d 313.

**Sufficiency of evidence.**—A liquor license revocation under § 24200 was sustained by evidence that, to the licensee's knowledge, sexual perversers met at the premises and there engaged in sexual perversion without opposition from her and in more than isolated instances. A determination that premises constituted a resort for sexual perversers under subd. (e) was sustained by evidence that the place was regularly used by persons who engaged in aberrant sexual conduct, and was likewise used as a haunt for mutual stimulation and assignation. § 24200(e) is not unconstitutional on the ground that the term "sexual perverser," as therein used, is too vague to be meaningful. *Kershaw v. Department of Alcoholic Beverage Control*, 155 Cal. App. 2d 544.

A license revocation for permitting the premises to become a resort for sexual perversers was sustained by evidence that, to the licensee's knowledge, the patrons committed acts that should have informed the licensee that they were sex perversers, and the fact that such acts may not have been punishable under the Penal Code is immaterial. *Nickola v. Munro*, 162 Cal. App. 2d 449.

The repeated acts of the employee over a period of a month (taking bets on horse races) establish that the licensee permitted the use of the premises for violation of the penal statutes and thus warranted the suspension ordered by the department. *Quilici v. Department of Alcoholic Beverage Control*, 178 Cal. App. 2d 549.

**Licensee responsible for his employees' acts.**—A person licensed under the Alcoholic Beverage Control Act is subject to disciplinary action by the board for violations of the act by his employees. *Mantzoros v. State Board of Equalization*, 87 Cal. App. 2d 140.

**Liability for acts of bartender.**—A licensee is responsible for his bartender's employment of girls to solicit drinks from patrons. *Cooper v. State Board of Equalization*, 137 Cal. App. 2d 672, 290 Pac. 2d 914.

The knowledge of an employee acquired during the transaction of his employer's business is imputed to the employer with the same effect as if he actually participated in the transaction. *Mack v. Department of Alcoholic Beverage Control*, 178 Cal. App. 2d 149.

**Imputed knowledge.**—The knowledge of an employee acquired during the transaction of his employer's business is imputed to the latter with the same effect as if he had actually participated. Revocation was proper where a licensee allowed a bartender to operate the business without supervision and numerous sales of narcotics by the bartender and others ensued. *Fromberg v. Department of Alcoholic Beverage Control*, 169 Cal. App. 2d 230.

**Liability not dependent on knowledge.**—In order to find a violation of § 24200(b) it is not necessary for the accused to have knowledge of the violation or that he was negligent in not discovering the violation; the licensee can be held to have permitted the violation by a showing that the acts themselves took place. *Munro v. Alcoholic Beverage Control Appeals Board and Moss*, 154 Cal. App. 2d 326; *Coleman v. Harris, et al.*, 218 Cal. App. 2d 401.

A liquor licensee operating his business through his employees is responsible to the licensing authority for their conduct in the exercise of his license, such as permitting prostitutes to solicit, though there may be no direct evidence that he was personally aware of such activities. *Nelson v. Department of Alcoholic Beverage Control*, 166 Cal. App. 2d 783, 333 Pac. 2d 771.

**Misrepresentation of material fact.**—Where one purports to be the sole owner but in reality is a partner, he has misrepresented a material fact. A finding of the department that a licensee has repeatedly violated §§ 23300, 23355, 23951 and 23953 was tantamount to a finding that continuance of the license would be "contrary to public welfare." *Martin v. Alcoholic Beverage Control Appeals Board and Haley*, 52 Cal. 2d 287.

**Failure to disclose conviction.**—Evidence that an applicant failed to reveal a larceny arrest and conviction, when required to list "any and all arrests" in his affidavit, supported a finding that the applicant "misrepresented a material fact on his application." *Martin v. Alcoholic Beverage Control Appeals Board and Chaney*, 52 Cal. 2d 259.

**Undisclosed ownership, insufficiency of evidence.**—A determination that a liquor business was partially owned by a husband was not supported by substantial evidence where both the realty and license were purchased in the wife's name as sole owner; that both spouses joined in executing mortgages, and that improvements were from community funds, or that the husband performed incidental acts of management did not alter the status of the property. *Ciambetti v. Department of Alcoholic Beverage Control*, 161 Cal. App. 2d 340.

**Moral turpitude defined.**—Criminal acts involving intentional dishonesty for the purpose of personal gain involve moral turpitude. *In re Hallinan*, 48 Cal. 2d 52.

Moral turpitude is inherent in crimes involving fraudulent intent, intentional dishonesty for personal gain or other corrupt purposes; licensee possessing cocaine and marijuana for sale is moral turpitude justifying revocation of license without any further showing of unfitness or unsuitability. *Rice v. Alcoholic Beverage Control Appeals Board (Martinez)*, 89 Cal. App. 3d 30, 152 Cal. Rptr. 285.

**Accusations, defenses.**—One incident may give rise to several included violations, each of which may be proven. The doctrine of included offenses is not a defense in administrative actions as they are not penal in nature. The defense of the statute of limitations may not be raised for the first time at the appellate level in administrative proceedings. *Harris v. Alcoholic Beverage Control Appeals Board (Swann)*, 197 Cal. App. 2d 182.

**Res adjudicata.**—See annotation to § 23779.

**Purpose of proceeding.**—A criminal proceeding has, for its purpose, punishment of the accused if he is found guilty; whereas a disciplinary proceeding against an attorney (licensee) is not intended for his punishment, but is for the protection of the public. *Yapp v. State Bar*, 62 Cal. 2d 809.

Although the facts upon which the disciplinary proceedings are founded may constitute a crime, nonetheless the agency proceeding is civil in nature. *Neely v. California State Personnel Board*, 237 Cal. App. 2d 487.

**Permitting.**—Evidence licensee's employee committed a single, isolated act of bookmaking on the licensed premises is substantial evidence that the licensee "permitted and suffered" its employee to commit that act. *Reimel v. Alcoholic Beverage Control Appeals Board (El Dorado Center, Inc.)*, 252 C.A. 2d 520.

**Preemption.**—Ordinance requiring permit for live entertainment, including topless waitresses, is provided in public place where food or beverages are sold, does not regulate the criminal aspect of sexual activity (which field has been preempted by the State), but merely licenses live entertainment (which has not been preempted by the state). *People v. Kukkanen*, 248 C.A. 2d 899; *Robbins v. County of Los Angeles*, 248 C.A. 2d 1.

**Expungement proceedings.**—§ 1203.4 of the Penal Code, releasing a criminal from all penalties and disabilities resulting from the offense, has reference to criminal penalties or disabilities. Proceedings to revoke or suspend licenses are not included among the penalties or disabilities that are released by a dismissal pursuant to § 1203.4. *Copeland v. Department of Alcoholic Beverage Control*, 241 Cal. App. 2d 186.

**Civil res judicata.**—Exoneration in a prior civil action or acquittal in a criminal proceeding is not res adjudicata in subsequent administrative license proceedings; the doctrines of res judicata and collateral estoppel do not fit into the purpose of license revocation proceedings. *Lundborg v. Director of Professional and Vocational Standards*, 257 C.A. 2d 141.

**Intemperate use of alcoholic beverages.**—In a proceeding by the department to revoke a corporate liquor license, good cause for the revocation was not shown where, though it appeared that the licensee’s president and sole stockholder had an arrest record involving the intemperate use of alcoholic beverages, there was no evidence that his offenses had an actual effect on the conduct of the licensed business; nor was there any rational relationship between the offenses and the operation of the licensed business in a manner inconsistent with public welfare and morals, and where there was no substantial evidence that the continuation of the license would be contrary to the public welfare and morals. *H. D. Wallace & Associates, Inc., v. Department of Alcoholic Beverage Control*, 271 C.A. 2d 589.

**Topless dancing protected by First Amendment.**—“Topless dancing” as a form of entertainment before an audience is a form of free speech which is protected under the First Amendment of the U.S. Constitution in the absence of connected obscenity. *In re Giannini and Iser*, 69 Cal. 2d 563.

**Statewide standards required.**—Whether or not a “topless dancer’s” performance is obscene must be determined by contemporary community standards on a statewide basis rather than on a local community basis. *In re Giannini and Iser*, 69 Cal. 2d 563.

**Income tax fraud as moral turpitude.**—The department correctly decided that a licensee’s license should be suspended pursuant to § 24200(d), providing for suspension of a license upon conviction of a public offense involving moral turpitude, where the department properly found after a formal hearing that the licensee’s conviction in the United States District Court of defrauding the government through the filing of knowingly false income tax returns involved moral turpitude, and the judgment of conviction had become final after appeal in the federal courts. *Kirby v. Alcoholic Beverage Control Appeals Board (Whitfield)*, 270 C.A., 2d 535.

**Actions of a licensee in other premises.**—Findings that a licensee assaulted department representatives acting in the scope of their employment and so recognized by the licensee, on licensed premises under the department’s jurisdiction, though not on the premises of the disciplined licensee, necessarily implied the required rational relationship with the operation of a licensed business in a manner consistent with public welfare and morals, so as to permit disciplinary action by the department. *Kirby v. Alcoholic Beverage Control Appeals Board (Dan Kane, Inc.)*, 7 Cal. App. 3d 126.

**Public morals v. private morals.**—In examining the power invested by Article XX, Section 22 of the State Constitution in the Department of Alcoholic Beverage Control to revoke a specific alcoholic beverage license when it determined for good cause that the continuance of such license would be contrary to public morals, the Supreme Court is required to observe the distinction between private morality and public morality; therefore, public morals, as distinguished, must be the criteria applied. *Boreta Enterprises, Inc., v. Department of Alcoholic Beverage Control*, 2 Cal. 3d 85.

**Public morals.**—The term public morals means the moral practices or modes of conduct pertaining to a whole community. *Boreta Enterprises, Inc., v. Department of Alcoholic Beverage Control*, 2 Cal. 3d 85.

**Topless waitresses not per se contrary to public welfare and morals.**—The action of the department in revoking an on-sale general bona fide public eating place license could not be approved on the basis that “topless” waitresses are per se contrary to public welfare or morals, and such an action was an abuse of discretion. *Boreta Enterprises, Inc., v. Department of Alcoholic Beverage Control*, 2 Cal. 3d 85.

**Plea of nolo contendere.**—A liquor licensee’s entry of a plea of nolo contendere in a criminal prosecution for receiving stolen property does not constitute a plea, verdict, or judgment of guilty to a public offense involving moral turpitude within the meaning of § 24200(d). *Kirby v. Alcoholic Beverage Control Appeals Board (Lopez)*, 3 Cal. App. 3d 209.

**Conviction of crimes involving moral turpitude.**—Conviction of crimes of possessing cocaine or marijuana for purposes of sale, crimes whose elements include a specific intent to sell the proscribed substances, constitute moral turpitude as a matter of law within the meaning of California Constitution, Article XX, Section 22, § 24200 of the Business and Professions Code. *Rice v. Alcoholic Beverage Control Appeals Board (Martinez)*, 89 Cal. App. 3d 30.

**Discriminatory membership clubs.**—The department is authorized to revoke a private club license based upon discriminatory membership practices upon an independent determination for good cause that the continuance of such license would be contrary to public welfare or morals. Opinion of the Attorney General N. 85–905.

**“Stacking” disciplinary actions.**—Accumulating evidence of recurring different but essentially identical violations before filing accusation charging a series of violations with concomitant cumulative penalties arbitrary unconstitutional exercise of authority in violation of due process. *Walsh v. Kirby*, 13 Cal.3d 1.

**24200.1. Additional grounds.** The following are additional bases upon which the department may suspend or revoke a license:

(a) Failure to take reasonable steps to correct objectionable conditions on the licensed premises, including the immediately adjacent area that is owned, leased, or rented by the licensee, that constitute a nuisance within a reasonable time after receipt of notice to make those corrections from a district attorney, city attorney, or a county counsel, under Section 373a of the Penal Code. For the purpose of this subdivision only, “property or premises” as used in Section 373a of the Penal Code includes the area immediately adjacent to the licensed premises that is owned, leased, or rented by the licensee.

(b) Failure to take reasonable steps to correct objectionable conditions that occur during business hours on any public sidewalk abutting a licensed premises and constitute a nuisance within a reasonable time after receipt of notice to correct those conditions from a district attorney, city attorney, or a county counsel. This subdivision shall apply to a licensee only upon written notice to the licensee from a district attorney, city attorney, or a county counsel.

(c) Notwithstanding that the licensee corrects the objectionable conditions that constitute a nuisance, the licensee has a continuing obligation to meet the requirements of subdivisions (a) and (b), and failure to do so shall constitute grounds for disciplinary action pursuant to this section.

(d) For purposes of this section:

(1) “Any public sidewalk abutting a licensed premises” means the publicly owned, pedestrian-traveled way, not more than 20 feet from the premises, that is located between a licensed premises, including any immediately adjacent area that is owned, leased, or rented by the licensee, and a public street.

(2) “Objectionable conditions that constitute a nuisance” means disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking, excessive loud noise, or failure to comply with the minimum operating standards required by Section 25612.5.

(3) “Reasonable steps” means all of the following:

(A) Calling the local law enforcement agency. Timely calls to the local law enforcement agency that are placed by the licensee, or his or her agents or employees, shall not be construed by the department as evidence of objectionable conditions that constitute a nuisance.

(B) Requesting those persons engaging in activities causing objectionable conditions to cease those activities, unless the licensee, or his or her agents or employees, feel that their personal safety would be threatened in making that request.

(C) Making good faith efforts to remove items that facilitate loitering, such as furniture, except those structures approved or permitted by the local jurisdiction. The licensee shall not be liable for the removal of those items that facilitate loitering.

(4) When determining what constitutes “reasonable steps,” the department shall consider site configuration constraints related to the unique circumstances of the nature of the business.

(5) “Reasonable time” shall mean 30 days following service of notice pursuant to either subdivision (a) or subdivision (b) upon a licensee that objectionable conditions exist.

(e) Subdivision (b) does not apply to a bona fide public eating place, as defined in Section 23038, 23038.1, or 23038.2, that is so operated by a retail on-sale licensee or on-sale beer and wine licensee; a hotel, motel, or similar lodging establishment, as defined in subdivision (b) of Section 25503.16; a winegrowers license; a licensed beer manufacturer, as defined in Section 23357; those same or contiguous premises for which a retail licensee concurrently holds an off-sale retail beer and wine license and a beer manufacturer’s license; or those same or contiguous premises at which a retail on-sale licensee or on-sale beer and wine licensee who is licensed as a bona fide public eating place as defined in Section 23038, 23038.1, or 23038.2, a hotel, motel, or similar lodging establishment as defined in subdivision (b) of Section 25503.16, a licensed beer manufacturer, as defined in Section 23357, or a winegrowers license, sells off-sale beer and wine under the licensee’s on-sale license.

(f) A hearing for a violation of this section shall be held within 60 days of an accusation being filed.

**History.—Added by Stats. 2006, Ch. 625, SB 148, in effect January 1, 2007.**

24200.5. **Selling narcotics or soliciting drinks on premises.** Notwithstanding the provisions of Section 24200, the department shall revoke a license upon any of the following grounds:

(a) If a retail licensee has knowingly permitted the illegal sale, or negotiations for such sales, of narcotics or dangerous drugs upon his licensed premises. Successive sales, or negotiations for such sales, over any continuous period of time shall be deemed evidence of such permission. As used in this section, “narcotics” shall have the same meaning as is given that term in Article 1 (commencing with Section 11000) of Chapter 1 of Division 10 of the Health and Safety Code, and “dangerous drugs” shall have the same meaning as is given that term in Article 8 (commencing with Section 4210) of Chapter 9 of Division 2 of this code.

(b) If the licensee has employed or permitted any persons to solicit or encourage others, directly or indirectly, to buy them drinks in the licensed premises under any commission, percentage, salary, or other profit-sharing plan, scheme, or conspiracy.

**History.**—Added by Stats. 1st Ex. Sess. 1954, Ch. 23, in effect July 1, 1954. Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1957, Ch. 1248, in effect September 11, 1957, added “or negotiations for such sales” in subd. (a). Stats. 1963, Ch. 399, in effect September 20, 1963, inserted “or dangerous drugs” after “narcotics” in first sentence, and added second sentence, in subd. (a).

**Cross reference.**—Section 25657, Rule 143, 23 Ops. Atty. Gen. 199, 53/278 5-19-54. Penal Code section 303.

**Violation of Section 303 of the Penal Code is good cause for revocation of on-sale license.**—Violation of Section 303 of the Penal Code, prohibiting the employment of persons to encourage the sale of drinks, constitutes good cause for revocation of an on-sale general liquor license by the State Board of Equalization. A finding of violation is supported by testimony of liquor control officers that girls on the premises of the licensee encouraged them to buy drinks; that diluted, excessively priced drinks bought for each girl were separately identified as to the girl on the cash register and that the licensee and the girls made statements admitting the employment, even though the testimony is contradicted by the girls and the licensee. *Chosick v. Reilly*, 125 C.A. 2d 334, 270 Pac. 2d 547.

**Violation of Section 25657.**—Revocation is not an excessive penalty for permitting B-girls to solicit drinks from patrons. *Cooper v. State Board of Equalization*, 137 Cal. App. 2d 672, 290 Pac. 2d 914.

**Department rule.**—The enactment of this section, Section 25657 and Penal Code Section 303 did not deprive the department of authority to adopt a rule against on-sale licensees permitting female employees from soliciting or accepting drinks for their own consumption. *Mercurio v. Department of Alcoholic Beverage Control*, 144 Cal. App. 2d 626, 301 Pac. 2d 474.

**Presumption of knowledge.**—The presumption of knowledge from successive sales of narcotics is constitutional and valid. It is not dispelled by evidence to the contrary produced by the licensee. Three sales of marijuana on three successive days supports a finding that the licensee “knowingly permitted” such sales, although the licensee denied such knowledge. *Endo v. State Board of Equalization*, 143 Cal. App. 2d 395, 300 Pac. 2d 366; *Kirchhubel v. Munro*, 149 Cal. App. 2d 243, 308 Pac. 2d 433.

The presumption is a condition imposed by the Legislature, on grant of license privilege. It is rebuttable on proper showing, but is not made inapplicable by the employment of a special policeman to prevent narcotics sales. *Kirchhubel v. Munro*, 149 Cal. App. 2d 243, 308 Pac. 2d 433.

**Liability not dependent on knowledge.**—Actual knowledge by a licensee is not necessary in order to revoke a license for permitting the solicitation of others to buy drinks under any sort of profit-sharing agreement. *Karides v. Department of Alcoholic Beverage Control*, 164 Cal. App. 2d 549.

**Solicitation of “drinks.”**—The department may revoke a license when an employee solicits drinks from a patron even though the drink solicited is orange juice. The law prohibits the solicitation of “drinks” whether alcoholic or otherwise. When the licensee pays a salary to a female employee and permits her to solicit drinks for herself from patrons, he has committed the described offense. *Greenblatt v. Martin*, 177 Cal. App. 2d 738.

The proof of salary is sufficient to bring the case under § 24200.5 without evidence of any additional compensation based upon the number of drinks solicited, or some similar arrangement. *Garcia v. Martin*, 192 Cal. App. 2d 786.

**“Permitting” patron drug activity violations.**—Licensee must have actual or constructive knowledge of illegal drug activity involving only patrons before discipline may be imposed. *Laube v. Stroh*, 2 Cal.App.4th 364.

**Administrative inspection.**—Administrative inspection provisions of §§ 25753 and 25755 in conjunction with § 24200.5 sufficiently limited time, place and scope of authorized inspections, including those for controlled substances, to be permitted without a warrant without violating constitutional safeguards. *People v. Paulson*, 216 Cal.App.3d 1480.

**24200.6. Drug paraphernalia, notice.** The department may revoke or suspend any license if the licensee or the agent or employee of the licensee violates any provision of Section 11364.7 of the Health and Safety Code. For purposes of this provision, a licensee, or the agent or employee of the licensee, is deemed to have knowledge that the item or items delivered, furnished, transferred, or possessed will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, if the department or any other state or local law enforcement agency notifies the licensee in writing that the items, individually or in combination, are commonly sold or marketed for that purpose.

**History.**—Added by Stats. 2002, Ch. 1027 in effect January 1, 2003.

24201. **Accusations.** Accusations may be made to the department by any person against any licensee. Accusations shall be in writing and shall state one or more grounds which would authorize the department to suspend or revoke the license or licenses of the licensee against whom the accusation is made.

**History.—Stats. 1955, Ch. 447, substituted “department” for “board.”**

**Sufficiency of accusations.—**An accusation properly stated a charge against a liquor licensee where it stated in clear and concise language that he permitted two named minors to consume beer on his licensed premises. *Munro v. Alcoholic Beverage Control Appeals Board and Moss*, 154 Cal. App. 2d 326.

In a proceeding to suspend a license because licensee made a sale of liquor at premises other than the one in which his licensed premises were located, accusation was not defective because it did not state that the licensee was not authorized to make the sale by a valid license. *Dami v. Department of Alcoholic Beverage Control*, 176 Cal. App. 2d 144.

**Amended accusation.—**An accusation was amended several times and stated that the illegal sale was made by “a male clerk, name not known.” The pleading was not indefinite and uncertain, and the respondents had a reasonable opportunity to prepare their defense as the accusation in its final form was served 18 days before the hearing. *Raab v. Department of Alcoholic Beverage Control*, 177 Cal. App. 2d 333.

**Fair notice of charge sufficient.—**In administrative proceedings, courts are more interested in fair notice to the accused than in adherence to the technical rules of pleading. A loosely drawn accusation in the language of the statutes involved did not comply with Government Code § 11503 but was nevertheless sufficiently clear to inform the licensees of the charges against them. It was error for the Department of Alcoholic Beverage Control not to rule on objections to the accusations, but such error was not prejudicial where the licensees made no point of the failure, expressed no surprise at evidence adduced, did not request a continuance, and went to trial on the merits. *Rolfe v. Munro*, 165 Cal. App. 2d 726.

A charge that “On or about [a certain date the licensee], at his above-mentioned licensed premises, did employ or permit a woman known only as Brownie to solicit or encourage other persons to buy her alcoholic beverages, to-wit, beer, on the above-mentioned premises,” was sufficient to state an offense, since it gave the licensee fair notice of the acts or omissions with which he was charged so that he could prepare his defense. *Garcia v. Martin*, 192 Cal. App. 2d 786.

**Civil proceeding.—**A proceeding before an administrative agency to determine whether a license should be revoked is not a criminal or quasi-criminal prosecution. *Skipitar v. Munro*, 175 Cal. App. 2d 1, 345 Pac. 2d 508.

Adherence to technical rules of pleading is not required. *Stoumen v. Munro, et al.*, 219 Cal. App. 2d 302.

24202. **Report of arrest; controlled substance investigations.** (a) All state and local law enforcement agencies shall immediately notify the department of any arrests made by them for violations over which the department has jurisdiction which involve a licensee or licensed premises. Notice shall be given within 10 days of the arrest. The department shall promptly cause an investigation to be made as to whether grounds exist for suspension or revocation of the license or licenses of the licensee.

(b) The department may not open or add an entry to a file or initiate an investigation of a licensee or suspend or revoke a license (1) solely because the licensee or an agent acting on behalf of the licensee has reported to a state or local law enforcement agency that suspected controlled substance violations have taken place on the licensed premises or (2) solely based on activities constituting violations described in such a report, unless the violations reported occurred with the actual knowledge and willful consent of the licensee.

**History.—Added as Section 24206 by Stats. 1957, Ch. 1275, in effect September 11, 1957. Stats. 1959, Ch. 621, in effect September 18, 1959, renumbered Section 24202. Stats. 1989, Ch. 1995, in effect January 1, 1990, recast and added subd. (b). Stats. 1990, Ch. 695, in effect January 1, 1991, required notices to be given within 10 days.**

24203. **Local legislative body accusations.** Accusations against any on-sale or off-sale license may be filed with the department by the legislative body, or chief of police, of any city in which the premises in question are located, or if the premises are in unincorporated territory, then by the board of supervisors, or the sheriff, of the county, requesting the suspension or revocation of any retail license. Upon the filing of the accusation, the department shall provide for a public hearing thereon within the county in which the premises are located and determine whether or not the license should be revoked or suspended. Whenever the local legislative body, the chief of police, or the sheriff, certifies that the public safety, health, or welfare requires an immediate hearing of the accusation, the public hearing shall be held within 60 days after the filing of the accusation with the department.

**History.—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1957, Ch. 2358, in effect September 11, 1957, added reference to chief of police and sheriff; and substituted “20” for “five (5).” Stats. 1980, Ch. 457, in effect January 1, 1981, substituted “60” for “20” days.**

**24204. Food and drug offenses.** The Chief of the Bureau of Food and Drug Inspection shall immediately notify the department of the conviction of any licensee of any violation of the California Pure Foods Act in connection with alcoholic beverages. The department shall promptly cause an investigation to be made as to whether grounds exist for suspension or revocation of the license of such licensee.

**History.**—Stats. 1955, Ch. 447, in effect September 7, 1955, substituted “department” for “State Liquor Administrator” and “respective officers”; and deleted reference to the copy of the notice and report to the board.

**Cross reference.**—16 Ops. Atty. Gen. 185, 50/120 11-27-50.

**24205. Suspension of taxpayer’s license.** The license of any taxpayer shall be automatically suspended upon cancellation of his or her bond, or if the bond becomes void or unenforceable for any reason, or if the taxpayer fails to pay any taxes or penalties due under the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code), when that tax liability arises in whole or in part from the exercise of the privilege of an alcoholic beverage license, or under the Alcoholic Beverage Tax Law (Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code). The license shall be automatically reinstated if the taxpayer files a valid bond, or pays his or her delinquent taxes, as the case may be. A suspension under this section for a tax delinquency may only be imposed if the taxpayer is at least three months delinquent.

Upon the petition of any taxpayer whose license has been suspended under this section, a hearing shall be afforded him or her after five days’ notice of the time and place of hearing.

**History.**—Stats. 1955, Ch. 1842, in effect September 7, 1955, renumbered from Section 24523 and substituted “Part 14 of Division 2 of the Revenue and Taxation Code” for “this division.” Stats. 1996, Ch. 409, in effect January 1, 1997, authorized automatic license suspension for delinquent sales-excise taxes.

**24206. Accusations to be filed within one year.** All accusations against licensees for violating or permitting the violation of Sections 24750 to 24757, inclusive, 24850 to 24881, inclusive, 25000 to 25010, inclusive, 25170 to 25238, inclusive, 25600, 25602, 25607, 25609, 25610, 25611, 25612, 25615, 25630, 25631, 25632, 25633, 25656, 25658, 25663, 25664, or 25665, shall be filed within one year.

**History.**—Added by Stats. 1957, Ch. 1962, in effect September 11, 1957. Stats. 1963, Ch. 1040, in effect September 20, 1963, deleted “25655” and added “25665.”

**24207. Same; within three years.** All accusations against licensees for violating or permitting the violation of Sections 23300, 23355, 23431, 23453, 24200.5, 25500 to 25508, inclusive, 25601, 25616, or 25657, shall be filed within three years.

**History.**—Added by Stats. 1957, Ch. 1962, in effect September 11, 1957.

**24208. When period begins to run.** The periods of one year and three years referred to in Sections 24206 and 24207 shall commence to run as follows:

(a) If the act or omission alleged as the basis for the suspension or revocation of the license constituted a single transaction, then from the date of the transaction.

(b) If the act or omission alleged as the basis for the suspension or revocation of the license is of a continuing nature, relating to a condition, or if the occurrence of several acts or omissions is necessary for the institution of disciplinary proceedings, then from the date of the last act or omission.

(c) If the act or omission alleged as the basis for the suspension or revocation of the license involved fraud, misrepresentation, or concealment, then from the date of the discovery thereof.

(d) If the basis for the suspension or revocation of the license is a criminal conviction, then from the date such criminal conviction becomes final.

**History.—Added by Stats. 1957, Ch. 1962, in effect September 11, 1957.**

**Raising defense.**—The defense of the statute of limitations may not be raised for the first time at the appellate level in administrative proceedings. *Harris v. Alcoholic Beverage Control Appeals Board (Swann)*, 197 Cal. App. 2d 182.

**24209. Citations.** When an arrest is made of any person, for a violation of this division, the arresting officer may release such person without taking such person before a magistrate upon such person's signing an agreement to appear in court or before a magistrate at a place and time designated by the arresting officer; provided, that when an arrest is made of a licensee or employee of a licensee the arresting officer shall release such licensee or employee without taking such licensee or employee before a magistrate upon such licensee or employee signing an agreement to appear in court or before a magistrate at a place and time designated by an arresting officer.

**History.—Added by Stats. 1959, Ch. 199, in effect September 18, 1959.**

**24210. Delegation of power.** The department may delegate the power to hear and decide to an administrative law judge appointed by the director. Any hearing before an administrative law judge shall be pursuant to the procedures, rules, and limitations prescribed in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

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

**History.—Added as § 24209 by Stats. 1959, Ch. 544, in effect September 18, 1959. Renumbered § 24210 by Stats. 1961, Ch. 73. Stats. 1961, Ch. 1737, in effect September 15, 1961, added reference to delegation of power. Stats. 1963, Ch. 778, in effect September 20, 1963, deleted reference to reconsideration of penalty. Amended by Stats. 1994, Ch. 627, in effect January 1, 1995, revised subd. (a) and added subd. (b).**

**Director required to comply with Ex Parte provisions of the Administrative Procedures Act despite unitary nature of Department.**—Report of Hearing filed by department counsel which is available or reviewed by the Director constitutes an Ex Parte communication under the APA which must be disclosed to licensee who must be given an opportunity to respond. *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board, Daniel Beceril Quintanar, real party in interest*, 40 Cal.4th 1.

**24211. Review of penalty.** The department may on its own motion at any time before a penalty assessment is placed into effect and without any further proceedings, review the penalty, but such review shall be limited to its reduction.

**History.—Added by Stats. 1963, Ch. 777, in effect September 20 1963. Origin in Section 24210.**

**Compromise offer.**—Section 24211, which limits the Department of Alcoholic Beverage Control's review of a penalty assessment on its own motion to reduction of the penalty, did not prevent the department's imposition of a penalty greater than that provided by a compromise settlement it had allegedly offered a licensee prior to hearing; the section refers only to a reduction of a penalty at a time after the penalty is set by administrative action and before it is actually placed in effect by the department. *Kirby v. Alcoholic Beverage Control Appeals Board (Kraker)*, 17 Cal. App. 3d 255.

## CHAPTER 8. HEARINGS

- § 24300. Place and procedure.
- § 24301. Judicial review. [Repealed.]
- § 24310. Transcript cost.

**24300. Place and procedure.** (a) Any hearings held on a protest, accusation, or petition for a license shall be held in the county in which the premises or licensee is located; provided, that hearings before the department itself on reconsideration or under subdivision (c) of Section 11517 of the Government Code may be held at any place in the state where the department is meeting. Except as provided in Section 24203 and in this section, the proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and in all cases the department shall have all the powers granted therein. The

department, in its exclusive discretion, shall consider scheduling the hearing at a time, including evening hours, and at a place convenient to all parties to a proceeding, including those witnesses required to be present, and the public affected.

(b) Notwithstanding the provisions of subdivision (a), if a protest is filed against an application for a license and the proposed premises are located within a city, the department may, in its discretion, hold the hearing within that city, unless the protest is filed by the governing body of the city, in which case the department shall hold the hearing within that city.

**History.—**Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1971, Ch. 1344, in effect March 4, 1972, added subd. (b). Stats. 1995, Ch. 743, in effect October 10, 1995, amended to require all hearing matters to be held in the county where the premises is located.

A hearing under the Administrative Procedure Act (Government Code Title 2, Div. 3, Part 1, Ch. 5) must be held to cancel a license surrendered under Rule 65 of the department. 25 Ops. Cal. Atty. Gen. 158, 55/23 2-4-55.

**Proceedings on rehearing.**—Upon rejection of a proposed decision and referral back to the Hearing Officer to take further evidence, the agency need not read the record of proceedings prior to adopting the proposed decision, nor is it required to afford an opportunity to present oral or written argument prior to adoption of that decision. The agency is not required to serve the proposed decision prior to adoption or rejection thereof. *Strode v. Board of Medical Examiners*, 195 Cal. App. 2d 291.

24301. **Judicial review.** *Repealed by Stats. 1967, Ch. 1525.*

24310. **Transcript cost.** (a) Any person requesting a transcript from the department in a case on appeal to the Alcoholic Beverage Control Appeals Board, shall pay the transcript cost specified in Section 69950 of the Government Code. Any actual cost in excess thereof shall be paid by the Appeals Board from the Alcoholic Beverage Control Appeals Fund.

(b) A party in a case on appeal to the Appeals Board who, in 1983 or 1984, has paid that portion of the transcript fee in excess of the fee specified in Section 69950 of the Government Code shall be refunded that excess by payment from the Alcoholic Beverage Control Appeals Fund, providing the Appeals Board has not issued a dismissal or other final decision in the case on appeal.

**History.—**Added by Stats. 1984, Ch. 273, in effect July 3, 1984.

## CHAPTER 9. GROUP PURCHASE

§ 24400. Pool Buying.

24400. **Pool buying.** Notwithstanding any other provision of law, two or more retail licensees of the same type may agree to group purchase distilled spirits and wine from a licensed wholesaler or rectifier through a designated agent, subject to the following restrictions:

(a) The designated agent shall hold a retail license of the same type operating a premises in the same county or counties as the purchasing group.

(b) No retailer shall have more than one designated agent nor shall an agent make purchases for more than one group.

(c) The merchandise purchased for each group shall be delivered to and stored in either a single licensed premises or a single warehouse located in the same county as the premises of the purchasing group and such delivery shall be a single delivery within two consecutive business days at the discount in effect on the day the delivery was commenced. Saturday, Sunday, and holidays shall not be deemed business days.

(d) A record of purchase shall be made by the agent on a master purchase order. Each purchasing retailer shall furnish the designated agent with a signed order setting forth such licensee’s purchase, to be attached to and become a part of the master order. Master and individual orders shall be maintained in compliance with Section 25752 and fiscal liability shall extend in so far as the amount of the purchase designated and delivered for each individual retailer of the purchasing group is subject to the provisions of Section 25509.

(e) The merchandise shall be deemed to have been received by each retailer member of the purchasing group when delivered to the designated premises.

(f) When a group buying member has not made payment in full by the expiration of the 30th day from date of delivery or has not paid the one percent charge at the expiration of the 30th day from the date the charge became due, such group buying member shall be expelled from the buying group and prohibited from rejoining that group or joining any other such group until such time that all payments have been received for the merchandise sold and delivered to such retailer more than 30 days previously.

**History.**—Added by Stats. 1979, Ch. 455, in effect January 1, 1980. Stats. 1980, Ch. 1194, in effect January 1, 1981, included wine.

#### CHAPTER 10. ALCOHOLIC BEVERAGES FAIR TRADE CONTRACTS AND PRICE POSTING

- § 24749. Policy. [Repealed.]
- § 24750. Contracts lawful. [Repealed.]
- § 24750.5. Wine fair trade contracts. [Repealed.]
- § 24751. Close-outs. [Repealed.]
- § 24752. Selling below fair trade price. [Repealed.]
- § 24753. Contracts between producers. [Repealed.]
- § 24754. Containers. [Repealed.]
- § 24755. Price schedule; “Loss leader.” [Repealed.]
- § 24755.1. Penalties. [Repealed.]
- § 24756. Distilled spirits price posting. [Repealed.]
- § 24757. Rules. [Repealed.]
- § 24757.5. Trade association injunctions. [Repealed.]

24749. **Policy.** *Repealed by Stats. 1994, Ch. 10.*

*Lewis-Westco & Co. v. ABCAB*, (1982) 186 Cal.Rptr. 552, 136 CA.3d 829.  
*Rice v. ABCAB (Corsetti)*, (1978) 21 Cal.3d 431, 146 Cal.Rptr. 585.

24750. **Contracts lawful.** *Repealed by Stats. 1994, Ch. 10.*

24750.5. **Wine fair trade contracts.** *Repealed by Stats. 1994, Ch. 10.*

24751. **Close-outs.** *Repealed by Stats. 1994, Ch. 80, in effect May 20, 1994.*

24752. **Selling below fair trade price.** *Repealed by Stats. 1980, Ch. 1368.*

24753. **Contracts between producers.** *Repealed by Stats. 1994, Ch. 80, in effect May 20, 1994.*

24754. **Containers.** *Repealed by Stats. 1994, Ch. 80, in effect May 20, 1994.*

24755. **Price schedule; “Loss leader.”** *Repealed by Stats. 1980, Ch. 1368.*

24755.1. **Penalties.** *Repealed by Stats. 1980, Ch. 1368.*

24756. **Distilled spirits price posting.** *Repealed by Stats. 1994, Ch. 80, in effect May 20, 1994.*

24757. **Rules.** *Repealed by Stats. 1994, Ch. 80, in effect May 20, 1994.*

24757.5. **Trade association injunctions.** *Repealed by Stats. 1994, Ch. 80, in effect May 20, 1994.*

#### CHAPTER 11. WINE FAIR TRADE CONTRACTS AND PRICE POSTING

- §§ 24850–24881. **Repealed by Stats. 1980, Ch. 1368.**

## CHAPTER 12. BEER PRICE POSTING AND MARKETING REGULATIONS

- § 25000. Price schedule.
- § 25000.5. Territorial limits.
- § 25000.6. Venue Limitations.
- § 25000.7. Limits on termination of agreement.
- § 25000.9. Withholding of consent; damages.
- § 25001. Change in prices.
- § 25002. Effective date.
- § 25003. Public inspection.
- § 25004. Violation.
- § 25005. Aiding violation.
- § 25006. Orderly marketing rules.
- § 25007. Choice of customers.
- § 25008. Enjoining violation.
- § 25009. Defendant's books.
- § 25010. License suspension.

25000. **Price schedule.** (a) Each manufacturer, importer, and wholesaler of beer shall file and thereafter maintain on file with the department, in such form as the department may provide, a written schedule of selling prices charged by the licensee for beer sold and distributed by the licensee to customers in California, except that the transfer, including the sale, of beer between wholesalers who sell the same brand in package is permitted without filing the schedule of selling prices, and the transfer, including the sale, of beer made under contract from a contract beer manufacturer making the beer to a beer manufacturer receiving the beer is permitted without filing the schedule of selling prices. All prices filed shall be for immediate delivery. Each manufacturer, importer, and wholesaler of beer shall file a price schedule for each county in which his or her customers have their premises, whether the price that is posted is f.o.b. or delivered, or both. Different prices for different trading areas within a county shall be based upon natural geographical differences justifying the different prices, and shall not be established for special customers. This section shall not affect or alter any provisions of law concerning quantity discounts on beer.

(b) For purposes of this section, a "contract beer manufacturer" is a beer manufacturer that does all of the following:

(1) Makes beer pursuant to a written contract with another beer manufacturer, and neither entity has a controlling interest in the other entity.

(2) Makes beer in accordance with a recipe that is a trade secret of the beer manufacturer having its beer made under contract.

(3) Has no right to sell the beer to any other beer manufacturer, importer, or wholesaler other than the beer manufacturer who contracted for the beer.

(c) For purposes if this section, "beer manufacturer" includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

**History.**—Stats. 1955, substituted "department" for "board." Stats. 1957, Ch. 1685, in effect September 11, 1957, deleted "within the State for delivery and use therein" and added "to licensees." Stats. 1967, Ch. 1080, in effect November 8, 1967, added provision for transfer of beer between wholesalers who sell the same brand without filing price schedules. Stats. 1976, Ch. 74, in effect January 1, 1977, substituted "his customers in California" for "licensees." Stats 1978, Ch. 49, in effect January 1, 1979, exempted the sale of beer between wholesalers. Stats. 1981, Ch. 696, in effect January 1, 1982, added last three sentences. Stats. 2001, Ch. 567 in effect October 5, 2001, added exception to price posting requirements for contract beer manufacturer as defined.

**Cross reference.**—Attorney General's letter opinion dated June 30, 1977.

25000.5. **Territorial limits.** (a) Every beer manufacturer, whether located within or without the state, who sells and distributes beer in this state shall designate territorial limits in the state within which the brands of beer manufactured by him may be sold by wholesalers of beer to customers.

(b) A wholesaler of beer shall not sell any brand of beer unless the following conditions are met:

(1) The wholesaler has first entered into a written agreement, with the manufacturer of that brand, which sets forth the territorial limits within which the brand shall be distributed by the wholesaler.

(2) A copy of the agreement, and any amendments thereto, has been filed with the department.

**History.**—Added by Stats. 1972, Ch. 760, in effect March 7, 1973. Stats. 1984, Ch. 348, in effect January 1, 1985, made technical changes.

**25000.6. Manufacturer venue limitations.** (a) A provision in an agreement between a beer manufacturer and a beer wholesaler for the sale and distribution of beer in this state, which restricts venue to a forum outside this state, is void with respect to any claim arising under or relating to the agreement involving a beer wholesaler operating within this state.

(b) This section shall apply to any transaction or conduct pursuant to an agreement described in subdivision (a) on or after the effective date of this section.

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

**History.**—Added by Stats. 1999, Ch. 860, in effect January 1, 2000. Stats. 2001, Ch. 567 in effect October 5, 2001, added definition of beer manufacturer for purposes of this section.

**25000.7. Limits on termination of agreement.** (a) Notwithstanding the provisions of any agreement for the sale or distribution of beer between a beer manufacturer and beer wholesaler, no sale or distribution agreement shall be terminated solely for a beer wholesaler’s failure to meet a sales goal or quota that is not commercially reasonable under the prevailing market conditions.

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

**History.**—Added by Stats. 2000, Ch. 1083, in effect January 1, 2001.

**25000.9. Withholding of consent; damages.** (a) Any beer manufacturer who unreasonably withholds consent or unreasonably denies approval of a sale, transfer, or assignment of any ownership interest in a beer wholesaler’s business with respect to that manufacturer’s brand or brands, shall be liable in damages to the beer wholesaler. Recoverable damages under this section shall not exceed the compensatory damages sustained by the wholesaler and the wholesaler’s costs of suit. The fair market value of the beer wholesaler’s business shall include, but is not limited to, its goodwill, if any.

(b) If a beer wholesaler has been paid a consideration by a successor wholesaler for the sale, transfer, or assignment of the beer wholesaler’s interest in the sale or distribution of the affected brand or brands, the beer manufacturer shall be liable only for compensatory damages in an amount reflecting the difference in the amount already paid to the beer wholesaler, and the fair market value of the beer wholesaler’s business with respect to the affected brand or brands.

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

**History.**—Added by Stats. 2000, Ch. 1083, in effect January 1, 2001.

25001. **Change in prices.** The schedule of prices filed may be changed or modified from time to time by the licensee filing it by filing with the department either a new and complete schedule of prices or an amendment thereto of changed or modified prices, as the department may by rule require.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

25002. **Effective date.** The first schedule of prices filed by a licensee shall be effective immediately upon filing, but an amendatory schedule or amendments to prior filed schedule is not effective until ten (10) days after the filing date thereof, except that if any licensee has filed a new schedule or amendments to a prior filed schedule to meet lower posted and filed competing prices in a trade area, and the prices thus posted are not lower than the competing prices sought to be met, the new schedule or amendments shall go into effect immediately if the competing prices are already effective, or at the same time as the competing prices become effective.

25003. **Public inspection.** Filed price schedules are subject to public inspection only after they take effect. Each filing licensee shall retain in the licensed premises a copy of his or her effective posted and filed schedule.

**History.**—Stats. 1991, Ch. 161, in effect January 1, 1992, eliminated requirement that premises copy of schedule be available for public inspection.

25004. **Violation.** Upon the filing of an original schedule of prices and after the effective date of any schedule of amendatory prices, all prices therein stated shall be strictly adhered to by the filing licensee, and any departure or variance therefrom by a licensee is a misdemeanor, except that the transfer of beer between wholesalers who sell the same brand in package is permitted without filing the schedule of selling prices. Each sale or transaction involving a violation of posted prices under this chapter is but a single offense or violation of this chapter regardless of the number of articles covered by the sale or transaction.

**History.**—Stats. 1967, Ch. 1080, in effect November 8, 1967, added provision for transfer of beer between wholesalers who sell the same brand without filing price schedules.

**Patronage dividends by co-operative.**—The payment of patronage dividends by a licensed co-operative does not constitute a violation of price posting. *Certified Grocers of California, Ltd. v. State Board of Equalization*, 100 Cal. App. 2d 289.

25005. **Aiding violation.** Any director, officer, agent, or employee of any licensee who knowingly assists or aids in the violation of this chapter or any effective posted price or any rule of the department passed to carry out the provisions of this chapter is guilty of the violation equally with the licensee.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

25006. **Orderly marketing rules.** The department may adopt such rules, including but not limited to rules respecting beer price posting, as will foster and encourage the orderly wholesale marketing and wholesale distribution of beer, but no such action shall be taken by the department except after public hearing and ten (10) days’ notice to all licensed manufacturers of beer in California of the time and place of the hearing and of the character of the action intended to be taken by the department.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

**Certificate of compliance.**—In over-ruling a demurrer to an injunction and declaratory relief, it was held that the beer price posting provisions do not authorize the State Board of Equalization to adopt a rule prohibiting California beer importers from purchasing or importing beer produced by out-of-state producers, unless the latter obtain a certificate of compliance from the board. *Blatz Brewing Co. v. Collins*, 69 Cal. App. 2d 639.

A State Board of Equalization rule requiring out-of-state beer manufacturers and vendors to obtain certificates of compliance, declared invalid in a former appeal of this case, was not ratified by 1945 amendments to the Alcoholic Beverage Control Act. The portions of the rule which required the filing of reports of shipments into California were not separable from the remainder of the rule and, therefore, were also invalid. *Blatz Brewing Co. v. Collins*, 88 Cal. App. 2d 438.

**Prohibition against quantity discounts not “price fixing.”**—Prohibition of quantity discounts under Rule 105 constitutes not “price fixing” requiring explicit legislative authorization, but merely a prohibition against price discrimination, for which no explicit legislative authorization is required. *Ralph’s Grocery Company v. Reimel*, 69 Cal. 2d 172.

**Rule within authority granted by Section 25006.**—Rule 105(a) lies within the authority delegated to the department by Section 25006 and reasonably effectuates the purposes of the statute. *Ralph's Grocery Company v. Reimel*, 69 Cal. 2d 172.

**25007. Choice of customers.** Except as provided in Section 25000.5, no manufacturer, importer, or wholesaler mentioned in this chapter is prohibited the right of choice of customers.

**History.**—Stats. 1957, Ch. 1685, in effect September 11, 1957, deleted reference to functional classes of customers. Stats. 1972, Ch. 760, in effect March 7, 1973, added "Except as provided in Section 25000.5."

**25008. Enjoining violation.** (a) Any trade association having as members licensed beer manufacturers or licensed beer wholesalers representing more than half of the volume of beer sold in California for three months prior to the date of a filing of any suit authorized in this chapter may maintain an action to enjoin a continuance of any act or acts in violation of this chapter or any rule adopted pursuant thereto and, if injured thereby, for the recovery of damages. If in the action the court finds the defendant is violating or has violated any of the provisions of this chapter or any rule adopted pursuant thereto, the court shall enjoin the defendant from a continuance or further violation thereof. It shall not be necessary that actual damages to the plaintiff be alleged or proved in the action, and proof of a violation of this chapter or any rule adopted pursuant thereto shall be presumptive evidence of an intention to continue to violate this chapter or any such rule.

(b) Any trade association having as members licensed beer manufacturers or licensed beer wholesalers representing more than half of the volume of beer sold in California for three months prior to the date of a filing of a petition to intervene shall, upon the filing of the petition, be permitted to intervene as a party in any proceeding, whether before the department, any other administrative agency, or any court, which involves, in whole or part, the validity of any portion of the Alcoholic Beverage Control Act or of any rule adopted pursuant thereto. Intervention shall be permitted, upon petition, at any time before a final determination or adjudication has been rendered in the proceeding. In the case of an adjudicatory proceeding, an intervening trade association shall have the same right to participate in discovery and trial as any other party.

**History.**—Stats. 1984, Ch. 131, in effect May 21, 1984, added "licensed beer wholesaler" in subd. (a) and added subd. (b).

**25009. Defendant's books.** Any defendant in any action brought under this chapter or any person who may be a witness therein under Sections 2016, 2018, and 2019 of the Code of Civil Procedure or Section 776 of the Evidence Code, and the books and records of any such defendant or witness, may be brought into court and the books and records may be introduced by reference into evidence, but no information so obtained may be used against the defendant or any such witness as a basis for a misdemeanor prosecution under this chapter.

**History.**—Stats. 1965, Ch. 299, in effect September 17, 1965, substituted "2016, 2018, and 2019" for "2021, 2031 or 2055"; and inserted "or Section 776 of the Evidence Code."

**25010. License suspension.** The department shall not suspend or revoke the license of any licensee for a violation of the provisions of this chapter or a rule adopted pursuant thereto unless he has committed, within a period of one year, at least three separate violations of the provisions of this chapter or of any rule adopted pursuant thereto, and the violations have been proved by any of the following methods:

- (a) A conviction for misdemeanor.
- (b) A judgment in a civil suit for injunction as provided in this chapter.
- (c) A finding of the department, if a hearing is held in accordance with Chapters 7 and 8 of this division.

**History.**—Stats. 1955, Ch. 447, substituted "department" for "board."

## CHAPTER 13. LABELS AND CONTAINERS

- Article 1. Distilled Spirits. §§ 25170–25181.  
 2. Beer. §§ 25200–25212.  
 3. Wine. §§ 25235–25243.

## Article 1. Distilled Spirits

- § 25170. Quantity and proof.  
 § 25171. Restrictions on package size.  
 § 25171.1. Miniatures on boats.  
 § 25172. Larger than gallon containers.  
 § 25173. Industrial spirits.  
 § 25174. Seizure.  
 § 25175. Age of whiskey.  
 § 25176. Refilling.  
 § 25177. Selling refilled spirits.  
 § 25178. Selling empty bottles.  
 § 25179. Bottle destroying facilities. [Repealed.]  
 § 25180. Possession of unbroken bottles. [Repealed.]  
 § 25181. Bottle with locked dispenser. [Repealed.]

**25170. Quantity and proof.** Any person who delivers to the premises of any on- or off-sale general licensee, or any on- or off-sale general licensee who has upon his licensed premises, or any person who possesses any distilled spirits the container of which does not bear a label plainly indicating the quantity and proof strength of the contents and the name of the manufacturer, rectifier, importer, or wholesaler thereof is guilty of a misdemeanor. To the extent that such information is blown into the glass of the container, it constitutes a compliance with this section.

**25171. Restrictions on package size.** Any rectifier or wholesaler of distilled spirits who delivers to the premises of any on- or off-sale general licensee or any on- or off-sale general licensee who sells or has in his possession at the licensed premises distilled spirits in packages containing standards of fill for distilled spirits which do not conform in all respects to the federal standards established pursuant to the regulations issued under the Federal Alcohol Administration Act (27 U.S.C. Secs. 201 et seq.) and any amendments thereto is guilty of a misdemeanor.

**History.**—Added by Stats. 1977, Ch. 1044, in effect January 1, 1980. Stats. 1980, Ch. 24, in effect January 1, 1981, deleted restriction on miniature packages.

**25171.1. Miniatures on boats.** The provisions of Section 25171 shall not apply to any sightseeing, tourist or charter vessels holding on-sale general licenses for boats and regularly operated for the convenience of the general public and which have a capacity of carrying 100 or more passengers.

**History.**—Added by Stats. 1975, Ch. 647, in effect January 1, 1976.

**25172. Larger than gallon containers.** Any unlicensed person or any on- or off-sale general licensee who has in his possession any distilled spirits in packages or containers larger than one gallon is guilty of a misdemeanor, unless the distilled spirits have been sold and delivered to the person or licensee by the holder of an industrial alcohol dealer's, distilled spirits manufacturer's, brandy manufacturer's, or rectifier's license for use in the trades, professions, or industries.

**25173. Industrial spirits.** Any industrial alcohol dealer, distilled spirits manufacturer, brandy manufacturer, or rectifier who delivers undenatured ethyl alcohol or other distilled spirits in packages of more than one gallon for use in the trades, professions, or industries is guilty of a misdemeanor, unless the packages bear a label

plainly stating the true and correct name and address of the industrial alcohol dealer, distilled spirits manufacturer, brandy manufacturer, or rectifier.

**Cross reference.**—§ 23385.

**25174. Seizure.** The department may seize any distilled spirits sold, served, removed, possessed, delivered, or held in any manner in violation of Sections 25170 to 25173, inclusive.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

**25175. Age of whiskey.** Any person who sells at retail any potable spirituous liquor product labeled as whiskey, including blended whiskey and blends of straight whiskeys, except products containing 20 or more percent of straight whiskey or whiskeys which have been aged in charred oak containers for three or more years after distillation and before bottling is guilty of a misdemeanor, except that this section does not prohibit the sale at retail of unaged corn whiskey, when so labeled, or the sale at retail of gins, brandies, rums, cordials, liqueurs, bitters, or other distilled liquor products or products compounded of distilled spirits and other materials, when in no wise labeled as whiskey or blended whiskey or blends of straight whiskeys, or the sale at retail of Scotch whiskeys, or spirit whiskeys containing not less than 5 percent straight whiskey, three years old or older.

**History.**—Stats. 1970, Ch. 534, in effect November 23, 1970, added last clause concerning spirit whiskeys. Stats. 1984, Ch. 921, in effect January 1, 1985, substituted “three” for “four”.

**Cross reference.**—Health and Safety Code section 26550, et seq., Misbranding of foods.

**25176. Refilling.** Every person who refills or causes to be refilled with distilled spirits any distilled spirits package to which has been affixed a stamp evidencing the payment of United States internal revenue taxes levied on the distilled spirits is guilty of a misdemeanor.

**Presumption.**—This and the following section together with Code Civ. Proc. Section 1963, subd. 33, raise a presumption that drinks poured from whiskey and vodka bottles in an on-sale premise contained whiskey and vodka. *Mercurio v. Department of Alcoholic Beverage Control*, 144 Cal.App.2d 626, 301 P.2d 474.

**25177. Selling refilled spirits.** Every person who sells, offers for sale, or keeps for sale distilled spirits in any package which has been refilled or partly refilled is guilty of a misdemeanor.

**Liability for possession of refilled bottles.**—If bottles have been refilled by someone, it is immaterial that the licensee in possession had no part in, or knowledge of, such refilling in a criminal proceeding under Health and Safety Code § 26517. The offense is the fact of refilling, not that the contents of the bottles are impure. *People v. Circus Room, Inc.*, 213 Cal. App. 2d 685.

**Presumption.**—This and the following section together with Code Civ. Proc. Section 1963, subd. 33, raise a presumption that drinks poured from whiskey and vodka bottles in an on-sale premise contained whiskey and vodka. *Mercurio v. Department of Alcoholic Beverage Control*, 144 Cal.App.2d 626, 301 P.2d 474.

**25178. Selling empty bottles.** No on-sale general licensee or any person employed by such licensee shall sell, offer for sale, or keep for sale an empty distilled spirits bottle. No criminal penalty shall be imposed for a violation of this section. For such a violation the department may impose a monetary penalty of not more than one hundred dollars (\$100) or suspend or revoke a license.

**History.**—Former section repealed and present section added by Stats. 1973, Ch. 177, in effect January 1, 1974.

**25179. Bottle destroying facilities.** *Repealed by Stats. 1973, Ch. 177.*

**25180. Possession of unbroken bottles.** *Repealed by Stats. 1973, Ch. 177.*

**25181. Bottle with locked dispenser.** *Repealed by Stats. 1973, Ch. 177.*

## Article 2. Beer

- § 25200. Name and address of manufacturer.
- § 25201. Single-trip cartons. [Repealed.]
- § 25202. Obliteration of brand.
- § 25203. Draught beer names; filing.
- § 25204. Beer alcohol content labeling.
- § 25205. Tap signs. [Repealed.]
- § 25206. Retailer dispensing without tap sign.
- § 25207. Selling beer without filing name. [Repealed.]
- § 25208. Container sizes. [Repealed.]
- § 25209. Empty single trip bottles. [Repealed.]
- § 25210. "Single trip bottles" defined. [Repealed.]
- § 25211. Design of single trip bottles. [Repealed.]
- § 25212. Ale bottles not single trip. [Repealed.]

**25200. Name and address of manufacturer.** All beer sold in this State shall have a label affixed to the package or container thereof, upon which shall appear the true and correct name and address of the manufacturer of the beer, and also the true and correct name of the bottler of the beer if other than the manufacturer. No manufacturer, importer, or wholesaler of beer shall use a container or carton as a package or container of a beer other than such beer as is manufactured by the manufacturer whose name or brand of beer appears upon the container or carton, or use as a package or container of a beer a container or carton which bears the name of a manufacturer of beer or the brand of any beer other than those of the manufacturer of the beer contained in the container or carton.

**25201. Single-trip cartons.** *Repealed by Stats. 1963, Ch. 1040.*

**25202. Obliteration of brand.** Manufacturers' names, brand names, print, or markings first placed on returnable beer containers or cartons made of wood or fiber board shall not be obliterated, mutilated, or marked out without the written consent of the manufacturer whose name, brand, or printed markings is to be obliterated, mutilated, or marked out. This section does not apply to wood or fiber board containers or cartons of a beer manufacturer who has discontinued business and production and is no longer a licensed beer manufacturer.

**25203. Draught beer names; filing.** Every manufacturer or bottler of beer in this State or elsewhere whose beer is sold within the State shall file with the department the brand name or names under which he sells or labels his draught beer sold in the State.

**History.**—Stats. 1955, Ch. 447, substituted "department" for "board."

**25204. Beer alcohol content labeling.** (a) Any beer container sold within this state shall bear a label that conforms with the alcohol content labeling requirements prescribed in Section 7.71 of Part 7 of Title 27 of the Code of Federal Regulations, as adopted pursuant to the Federal Alcohol Administration Act (27 U.S.C. Sec. 201 et seq.).

(b) Any beer container sold within this state that contains more than 5.7 percent alcohol by volume shall include a statement of alcoholic content.

(c) This section shall become operative on July 1, 1997.

**History.**—Added by Stats. 1996, Ch. 900, in effect July 1, 1997.

**25205. Tap signs.** *Repealed by Stats. 1965, Ch. 78.*

**25206. Retailer dispensing without tap sign.** No retailer shall dispense any draught beer upon which the proper tap sign or draught beer sign is not displayed or the manufacturer or bottler of which has not complied with this article. The department

may seize any draught beer displayed to the public in violation of this section and may dispose of the beer pursuant to Section 25355.

**History.**—Stats. 1990, Ch. 135, in effect January 1, 1991, added last sentence.

25207. **Selling beer without filing name.** *Repealed by Stats. 1965, Ch. 78.*

25208. **Container sizes.** *Repealed by Stats. 1965, Ch. 78.*

25209. **Empty single trip bottles.** *Repealed by Stats. 1963, Ch. 1040.*

25210. **“Single trip bottles” defined.** *Repealed by Stats. 1963, Ch. 1040.*

25211. **Design of single trip bottles.** *Repealed by Stats. 1963, Ch. 1040.*

25212. **Ale bottles not single trip.** *Repealed by Stats. 1963, Ch. 1040.*

### Article 3. Wine

- § 25235. Pocket flasks.
- § 25236. Labels.
- § 25237. Misrepresentation of grapes.
- § 25238. Record of wine produced from certain grapes.
- § 25239. Counterfeit wine labels.
- § 25240. “Napa Valley” wine labels.
- § 25241. Limits on “Napa” appellations.
- § 25242. “Sonoma” wine labels.
- § 25243. Federal regulations.

25235. **Pocket flasks.** It is unlawful for any person to sell to any on- or off-sale licensee or to deliver to the premises of any on- or off-sale licensee, or for any on- or off-sale licensee to sell or to have upon his or her licensed premises, wine packaged or bottled in any pocket flask container of less than 750 milliliters, the face of which is substantially rectangular and the minimum thickness of which is less than two-thirds of its maximum width, the measurements to be made on the cross-sectional axes, excluding the neck portion of the container. This section does not apply to the possession of wine in such containers on the premises of a licensed wine grower or at the branch office or warehouse or United States bonded storeroom of the wine grower located away from his place of production or manufacture.

**History.**—Stats. 1989, Ch. 87, in effect January 1, 1990, made section apply to metric measures.

25236. **Labels.** Only dry wine produced entirely from grapes grown within the Counties of Sonoma, Napa, Mendocino, Lake, Santa Clara, Santa Cruz, Alameda, San Benito, Solano, San Luis Obispo, Contra Costa, Monterey, and Marin may be labeled with the words “California central coast counties dry wine.” It is unlawful to label any other wine with a label containing the words “California central coast counties dry wine.”

The department may seize wine labeled in violation of this section, regardless of where found and may dispose of the wine pursuant to Section 25355.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1990, Ch. 135, in effect January 1, 1991, recast last sentence.

25237. **Misrepresentation of grapes.** It is unlawful to make any representation that a wine is produced entirely from grapes grown in the counties mentioned in Section 25236 unless the representation is true. This section applies to representations made on labels, advertising matter, letterheads, invoices, tags, signs, business cards, and all other representations of any kind whether oral, written, or printed.

25238. **Record of wine produced from certain grapes.** Every wine grower or bottler of wine of any kind within the counties specified in Section 25236 shall

keep a record of all wine not produced by him and obtained and used by him for any purpose. The record shall show the date the wine is obtained, the amount thereof, the source from which obtained, the kind or type of wine, and, in detail, the purpose or purposes for which it is used. Each wine grower or bottler of wine shall keep a complete record showing the total amount of wine produced by him, or bottled by him, made entirely from grapes grown within the counties mentioned in Section 25236.

**25239. Counterfeit wine labels.** Every person who, with intent to defraud, either falsely makes, alters, forges, or counterfeits the label for any wine or uses the label or bottle of any wine belonging to another, without his or her consent, is guilty of a misdemeanor. The department may seize wine labeled in violation of this section, regardless of where found and may dispose of the wine pursuant to Section 25355.

**History.—**Added by Stats 1985, Ch. 458, in effect January 1, 1986. Stats. 1990, Ch. 135, in effect January 1, 1991, added last sentence.

**25240. “Napa Valley” wine labels.** Any wine labeled with a viticultural area appellation of origin established pursuant to Part 9 (commencing with Section 9.1) of Title 27 of the Code of Federal Regulations, other than the viticultural area “Napa Valley” and which is located entirely within a county of the 29th class, shall bear the designation “Napa Valley” on the label in direct conjunction therewith in a type size not smaller than 1mm less than that of the viticultural area designation provided neither designation is smaller than 2mm on containers of more than 187ml or smaller than 1mm on containers of 187ml or less. This requirement shall apply to all wines bottled on or after January 1, 1990.

The department may suspend or revoke the license of any person who violates this section.

**History.—**Added by Stats. 1989, Ch. 558, in effect January 1, 1990.

**25241. Limits on “Napa” appellations.** (a) (1) The Legislature finds and declares that for more than a century, Napa Valley and Napa County have been widely recognized for producing grapes and wine of the highest quality. Both consumers and the wine industry understand the name Napa County and the viticultural area appellations of origin contained within Napa County (collectively “Napa appellations”) as denoting that the wine was created with the distinctive grapes grown in Napa County.

(2) The Legislature finds, however, that certain producers are using Napa appellations on labels, on packaging materials, and in advertising for wines that are not made from grapes grown in Napa County, and that consumers are confused and deceived by these practices.

(3) The Legislature further finds that legislation is necessary to eliminate these misleading practices. It is the intent of the Legislature to assure consumers that the wines produced or sold in the state with brand names, packaging materials, or advertising referring to Napa appellations in fact qualify for the Napa County appellation of origin.

(b) No wine produced, bottled, labeled, offered for sale or sold in California shall use, in a brand name or otherwise, on any label, packaging material, or advertising, any of the names of viticultural significance listed in subdivision (c), unless that wine qualifies under Section 4.25a of Title 27 of the Code of Federal Regulations for the appellation of origin Napa County and includes on the label, packaging material, and advertising that appellation or a viticultural area appellation of origin that is located entirely within Napa County, subject to compliance with Section 25240.

Notwithstanding the above, this subdivision shall not grant any labeling, packaging, or advertising rights that are prohibited under federal law or regulations.

(c) The following are names of viticultural significance for purposes of this section:

(1) Napa.

(2) Any viticultural area appellation of origin established pursuant to Part 9 (commencing with Section 9.1) of Title 27 of the Code of Federal Regulations that is located entirely within Napa County.

(3) Any similar name to those in paragraph (1) or (2) that is likely to cause confusion as to the origin of the wine.

(d) The appellation of origin required by this section shall meet the legibility and size-of-type requirements set forth in either Section 4.38 or Section 4.63 of Title 27 of the Code of Federal Regulations, whichever is applicable.

(e) Notwithstanding subdivision (b), any name of viticultural significance may appear either as part of the address required by Sections 4.35 and 4.62 of Title 27 of the Code of Federal Regulations, if it is also the post office address of the bottling or producing winery or of the permittee responsible for the advertising, or as part of any factual, nonmisleading statement as to the history or location of the winery.

(f) The department may suspend or revoke the license of any person who produces or bottles wine who violates this section. Following notice of violation to the person in possession of the wine and a hearing to be held within 15 days thereafter, if requested by any interested party within five days following the notice, the department may seize wine labeled or packaged in violation of this section regardless of where found, and may dispose of the wine upon order of the department. From the time of notice until the departmental determination, the wine shall not be sold or transferred.

(g) This section applies only to wine which is produced, bottled, or labeled after January 1, 2001.

**History.—Added by Stats. 2000, Ch. 831, in effect January 1, 2001.**

**Section valid.**—The section is a valid exercise of the state police power which is not preempted by federal law and does not constitute the taking of a property right by the State. *Bronco Wine Co. v. Jolly* (2004) 33 Cal. 4th, 17 Cal. Rptr. 3rd 180 and, on remand, 129 Cal. App. 4th 988, 29 Cal. Rptr. 3rd 462 (2005).

**Section Constitutionally Valid.**—Section is valid exercise of state police power, is not preempted by federal wine labeling regulations and is not a state taking of a property right requiring compensation. *Bronco v. Jolly* (2004) 33 Cal.4th 943.

25242. **“Sonoma” wine labels.** (a) (1) The Legislature finds and declares that for more than a century, certain California counties have been widely recognized for producing grapes and wine of the highest quality. Both consumers and the wine industry associate the names of those counties with the distinctive wine produced from grapes grown within those counties. If producers were to use the names of these counties on labels, for packaging materials, and in advertising for wines that are not made from grapes grown in the designated counties, consumers may be confused or deceived by these practices.

(2) It is the intent of the Legislature to assure consumers that the wines produced or sold in the state with brand names, packaging materials, or advertising that mention or refer to these California counties, in fact accurately reflect the origin of the grapes used to make the referenced wine.

(b) (1) No wine produced, bottled, labeled, offered for sale or sold in California shall use, in a brand name or otherwise, on any label, packaging material, or advertising, the name of viticultural significance listed in subdivision (c), unless that wine qualifies under Section 4.25 of Title 27 of the Code of Federal Regulations for an appellation of origin that is either Sonoma County or a viticultural area lying entirely within Sonoma County and includes that appellation of origin on the label, packaging material, and advertising for the wine.

(2) Notwithstanding paragraph (1), this subdivision shall not grant any labeling, packaging, or advertising rights that are prohibited under federal law or regulations.

(c) The following name is of viticultural significance for purposes of this section:

(1) Sonoma.

(2) Any similar name to that in paragraph (1) that is likely to cause confusion as to the origin of the wine.

(d) The appellation of origin required by this section shall meet the legibility and size-of-type requirements set forth in either Section 4.38 or Section 4.63 of Title 27 of the Code of Federal Regulations, whichever is applicable.

(e) Notwithstanding subdivision (b), any name of viticultural significance may appear either as part of the address required by Sections 4.35 and 4.62 of Title 27 of the Code of Federal Regulations, if it is also the post office address of the bottling or producing winery or of the permittee responsible for the advertising, or as part of any factual, nonmisleading statement as to the history or location of the winery.

(f) The department may suspend or revoke the license of any person who produces or bottles wine who violates this section. Following notice of violation to the person in possession of the wine and a hearing to be held within 15 days thereafter, if requested by any interested party within five days following the notice, the department may seize wine labeled or packaged in violation of this section regardless of where found, and may dispose of the wine upon order of the department. From the time of notice until the departmental determination, the wine shall not be sold or transferred.

(g) This section applies only to wine which is produced, bottled, or labeled after December 31, 2008.

(h) This section does not pertain to the use of a brand name, or otherwise, which was the name of the winery owner as established prior to 1950.

**History.—**Added by Stats. 2006, Ch. 879, SB 1380, in effect January 1, 2007.

**25243. Federal regulations.** No provision of this article shall preclude a wine from using, on any label, packaging material, or advertising, either (a) a truthful, nonmisleading appellation of origin that complies with Section 4.25(c) of Title 27 of the Code of Federal Regulations governing multicounty appellations, or (b) a truthful, nonmisleading statement as to the geographic location of the wine's stated appellation or appellations of origin which is located in not more than two counties, for which the wine qualifies under applicable federal law, or both the appellation of origin and the statement of geographic location; provided that the label, packaging material, of advertising contains no other use of a name of viticultural significance, in a brand name or otherwise, that is prohibited by Section 25241 or 25242.

**History.—**Added by Stats. 2006, Ch. 879, SB 1380, in effect January 1, 2007.

#### CHAPTER 14. SEIZURE AND FORFEITURE OF PROPERTY

§ 25350.	Alcoholic beverages subject to seizure.
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§ 25371.	Seizure records.
§ 25372.	Unlawful disposition.
§ 25373.	Peace Officers.
§ 25374.	Common carriers and employees.
§ 25375.	Asset forfeiture of license.

**25350. Alcoholic beverages subject to seizure.** The department may seize the following alcoholic beverages:

(a) Alcoholic beverages manufactured or produced in this State by any person other than licensed manufacturer or wine grower, regardless of where found.

(b) Beer and wine upon the sale of which the excise tax imposed by Part 14 of Division 2 of the Revenue and Taxation Code has not been paid, regardless of where found.

(c) Distilled spirits except (1) distilled spirits located upon premises for which licenses authorizing the sale of the distilled spirits have been issued; (2) distilled spirits consigned to and in the course of transportation to a licensee holding licenses authorizing the sale of the distilled spirits or for delivery without this State; (3) distilled spirits upon the sale of which the excise tax imposed by Part 14 of Division 2 of the Revenue and Taxation Code has been paid; (4) alcohol or distilled spirits in the possession of a person who has lawfully purchased it for use in the trades, professions, or industries and not for beverage use.

(d) Any alcoholic beverage possessed, kept, stored, or owned with the intent to sell it without a license in violation of this division.

(e) Notwithstanding any other provision of this section, any alcoholic beverage acquired, exchanged, purchased, sold, delivered, or possessed in violation of Sections 23104.2, 23104.3, 23394, 23402, or 24879, or Chapter 10 (commencing with Section 24749), 11 (commencing with Section 24850), or 12 (commencing with Section 25000) of this division, except that seizures under this subdivision shall be limited to the actual package or case of alcoholic beverage acquired, exchanged, purchased, sold, delivered, or possessed in violation of the foregoing provisions. Any seizure under this subdivision shall not exceed one hundred dollars (\$100) of alcoholic beverages at retail price.

**History.**—Stats. 1955, Ch. 1842, in effect September 7, 1955, substituted “department” for “board”; and “Part 14 of Division 2 of the Revenue and Taxation Code” for “this division.” Stats. 1963, Ch. 774, in effect September 20, 1963, added subd. (e).

**25351. Unlawful possession.** Any person who possesses alcoholic beverages which are subject to seizure under Section 25350 is guilty of a misdemeanor.

**25352. Unlicensed stills.** The department or its employees may seize any unlicensed still, whether in actual operation or not and whether assembled for operation or dismantled, any parts of such stills, and any materials or supplies capable of being used for the manufacture of alcoholic beverages which are found on or about the premises where any unlicensed still or parts thereof are found. The department or its employees may also seize any implements, instruments, vehicles, and personal property in the place or building, or within any yard or enclosure, where any unlicensed still or parts thereof are found.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

25353. **Forfeiture.** When alcoholic beverages or any other property are seized pursuant to this division, the alcoholic beverages or other property shall be forfeited to the State, and all such forfeitures are hereby declared to be statutory forfeitures.

**No forfeiture without seizure.**—An unlicensed still is not forfeited to the State until it is seized. Hence, the bankruptcy court may properly restrain state liquor officers from seizing a still in a bankrupt's estate until action is taken by the State Board of Equalization on the application of the bankruptcy trustee for a still license. *Stout v. Green*, 131 Fed. 2d 995.

**Nature of proceeding.**—This section calls for a statutory forfeiture as distinguished from a common law or judicial forfeiture, in that it requires no act of any litigant, but only the ministerial act of the court. *People v. Burton*, 146 Cal. App. 2d 878, 305 Pac. 2d 302.

25354. **Summary destruction.** Alcoholic beverages manufactured or produced in this state by any person other than a licensed manufacturer or winegrower, when seized for forfeiture under this division, may be disposed of by the department, its officers, or employees by summary destruction. Controlled substances, instruments, or paraphernalia seized by the department may only be disposed of pursuant to a court order for destruction.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.” Stats. 1999, Ch. 787, in effect January 1, 2000, amended to permit department to destroy controlled substances or paraphernalia pursuant to court order.

25355. **Disposition.** Any alcoholic beverages or other property seized for forfeiture under this division, except automobiles or other vehicles, may be disposed of by the department, its officers, or employees by destruction or otherwise as provided in this division, upon order of the department made not less than 15 days after the date of seizure.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

25356. **Petition for return.** Any person whose alcoholic beverages or other property, except automobiles or other vehicles, have been seized for forfeiture under this division, may, within 10 days after such seizure, petition the department to return the alcoholic beverages or other property upon the grounds that the alcoholic beverages or other property were illegally or erroneously seized.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

25357. **Hearing.** Any petition filed pursuant to Section 25356 shall be considered by the department within 60 days after filing, and an oral hearing shall be granted the petitioner if requested. The department shall serve notice of its decision upon the petitioner.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

25358. **Order.** The department may order the alcoholic beverages or other property seized disposed of, or returned to the petitioner if illegally or erroneously seized.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

25359. **Delivery to state departments.** Any beverage or other property seized by the department may be turned over to any state department or institution. The person in charge of any state department or institution may file with the department a request that beverages or other property of a kind specified in the request be turned over to the department or institution. No beverage or property for which a request has been made by a state department or institution shall be destroyed until all requests of state departments and institutions for the type or kind of beverage or property have been complied with.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

25360. **Superior court forfeiture.** When alcoholic beverages or other property are seized or forfeited under this division and are not disposed of pursuant to Sections 25354 to 25359, inclusive, the alcoholic beverages or other property shall be subjected to a forfeiture proceeding in the superior court as provided in this chapter.

25361. **Service of notice of forfeiture.** Notice of the seizure and intended forfeiture proceeding shall be filed with the county clerk and shall be served on all persons, firms or corporations having any right, title or interest in the alcoholic beverages or other property seized. If the owner or owners are unknown or cannot be found, notice of the seizure and intended forfeiture proceedings shall be made upon such owners by publication pursuant to Section 6061 of the Government Code in the county where the seizure was made.

**History.**—Stats. 1957, Ch. 357, in effect September 11, 1957, substituted “pursuant to Section 6061 of the Government Code” for “In a newspaper of general circulation.”

25362. **Answer.** Within 20 days after service of the notice of seizure and intended forfeiture proceedings, or within 20 days after the date of publication, the owner or owners of the alcoholic beverages or other property seized may file a verified answer to the fact of the alleged unlawful use of the alcoholic beverages or other property. The claimant of any right, title, or interest in the alcoholic beverages or other property seized may make a verified answer to establish his claim as provided in Section 25367. No extensions of time shall be granted for the purpose of making the verified answer.

25363. **Default hearing.** If at the end of 20 days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of unlawful use and shall, upon proof thereof, order the alcoholic beverages or other property forfeited to the State.

**Guilty plea admissible in evidence.**—In forfeiture proceedings a certified copy of the court record showing a plea of guilty to violations of illegal selling of alcoholic beverages from an automobile is admissible in evidence as an admission of the defendant in a civil action for forfeiture of an automobile. *People v. One 1940 Oldsmobile Coupe*, 80 Cal. App. 2d 372.

25364. **Contested hearing.** If a verified answer has been filed, the forfeiture proceeding may be set for hearing on a day within 30 days from the date of filing, and notice of this proceeding shall be given to the owner or owners filing verified answers.

25365. **Defense.** At the time set for the hearing, any of the owners who have verified answers on file may show by competent evidence that the alcoholic beverages or other property were not in fact used contrary to the provisions of this division.

25366. **Order for release.** If the fact is determined that the alcoholic beverages or other property were not used contrary to the provisions of this division, the court shall order the alcoholic beverages or other property released to the owner or owners thereof.

25367. **Investigation of moral responsibility.** At the time set for the hearing the claimant of any right, title, or interest in the alcoholic beverages or other property under a lien, mortgage, or conditional sales contract which is officially of record may prove that the lien, mortgage, or conditional sales contract is bona fide and was created after a reasonable investigation of the moral responsibility, character, and reputation of the lienor, mortgagor, or vendee and without any knowledge that the alcoholic beverages or other property was being, or was to be, used contrary to the provisions of this division.

Under former Health and Safety Code § 11620, it was reversible error to allow a conditional sales lien on an automobile where the only investigation made of the purchaser was a credit investigation, despite the fact that if an investigation of the purchaser's moral reputation had been made it would have been found to be good. *People v. One 1953 Mercury Sedan*, 174 Cal. App. 2d 435.

In a proceeding for forfeiture of an automobile used to transport narcotics, the burden of proving that a reasonable investigation was made of the automobile purchase, as required by Health and Safety Code § 11620, rests on the party claiming it. *People v. One 1956 Porsche Convertible*, 175 Cal. App. 2d 251.

25368. **Release to lienholder.** If the lienholder, mortgagee, or vendor proves the facts set forth in Section 25367, the court shall order the alcoholic beverages or

other property released to him if the amount due to him is equal to, or in excess of, the value of the alcoholic beverages or other property. If the amount due to him is less than the value of the alcoholic beverages or other property, the alcoholic beverages or other property shall be sold at public auction by the department, and the remainder of the proceeds of the sale, after payment of the balance due on the purchase price, mortgage, or lien, shall be deposited in the State Treasury.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

**25369. Purchase of lienholder’s interest by State.** In any case the Department of Finance may, within 30 days after judgment, pay the balance due to the bona fide or innocent purchaser, lienholder, mortgagee, or vendor and purchase the alcoholic beverages or other property for the State.

**25370. Judgment of forfeiture.** Upon a judgment in favor of the forfeiture, the alcoholic beverages or other property shall be ordered turned over to the Department of General Services for disposition as follows:

(a) Delivery to the Department of Alcoholic Beverage Control for use in the needs of the department as may be requested by it.

(b) Delivery to any other state department, board, commission, officer, hospital, or institution.

(c) Sale at public auction, and when alcoholic beverages are sold at public auction they shall be sold only to licensees authorized to sell them.

**History.**—Stats. 1955, Ch. 447, substituted reference to “department” for “board.” Stats. 1965, Ch. 371, in effect September 17, 1965, substituted “General Services” for “Finance.”

The State is entitled to ordinary costs in the forfeiture proceeding against the owner of a motor vehicle seized under this article, but is not entitled to the expenses or storage of the motor vehicle. *People v. 1950 Ford Sedan*, 140 Cal. App. 2d 647, 295 Pac. 2d 486.

The state may sell at public auction to licensees alcoholic beverages upon which a judgment of forfeiture has been rendered. Atty. Gen. Op. 67/95 6-20-67.

**25371. Seizure records.** When alcoholic beverages or other property are seized under this division, a record of the seizure and disposition shall be kept by the Department of Alcoholic Beverage Control.

**History.**—Stats. 1955, Ch. 447, substituted “Department of Alcoholic Beverage Control” for “board.”

**25372. Unlawful disposition.** Any officer, employee, or agent of the Department of Alcoholic Beverage Control who disposes of any alcoholic beverages or other property seized under this division in any manner other than as directed by order of the court or the provisions of this division is liable to the State in a civil action and is guilty of a felony.

**History.**—Stats. 1955, Ch. 447, in effect September 7, 1955, substituted “Any officer, employee, or agent of the Department of Alcoholic Beverage Control” for “Any member of the board, or officer, employee, or agent of the board.”

**25373. Peace officers.** Any peace officer of this State upon seizing any alcoholic beverages or other property may hold them as evidence until a forfeiture has been declared, a release ordered as provided in this chapter, or other disposition has been made pursuant to this division.

**25374. Common carriers and employees.** Nothing contained in this chapter applies to common carriers or to an employee acting within the scope of his employment under this division.

**Taxicabs not subject to forfeiture.**—The exemption of common carriers from forfeiture applies to an owner of a taxicab which he had no knowledge was being illegally used by the driver to transport or sell liquor while operating a taxicab for the owner. *People v. One 1937 Lincoln Zephyr Sedan*, 26 Cal. 736.

The owner of a taxicab business carrying passengers for hire is a common carrier. An automobile which is used in the business of a common carrier at the time it is also used to transport intoxicating liquor unlawfully may not be forfeited. The exemption as to common carriage is not limited to a situation where the vehicle is being used for the exclusive purpose of conducting such business. *People v. 1941 Buick 8*, 63 Cal. App. 2d 661.

25375. **Asset forfeiture of license.** (a) Upon 10 days notice to a person who holds a license described in this division, the Attorney General or a district attorney shall seek an order from the superior court for the seizure of a license described in this division for purposes of seeking forfeiture of the license pursuant to Sections 11470 to 11492, inclusive, of the Health and Safety Code. From the time of notice until the hearing to establish probable cause, as provided by this section, the license may not be sold or transferred. The 10-day period may be extended by the court for good cause or upon the stipulation of the parties.

(b) A petition for forfeiture pursuant to Section 11488.4 of the Health and Safety Code shall be filed within 10 days of the service of notice pursuant to this section.

(c) At the hearing, the Attorney General or district attorney shall establish probable cause that the license is subject to forfeiture pursuant to Section 11470 of the Health and Safety Code. The showing of probable cause may be established by deposition, affidavit, declaration, prior judicial testimony, or other evidence. The licensee may produce evidence to refute the showing of probable cause.

(d) If the court determines there is probable cause that the license is subject to forfeiture, it shall issue an order for its seizure by any peace officer within its jurisdiction.

(e) If probable cause is not established at the hearing, or if the hearing is neither held within the 10-day period nor continued for good cause or by stipulation of the parties, the prohibition against the sale or transfer of the license shall immediately cease and the petition for forfeiture shall be dismissed.

(f) Immediately upon seizure of the license, the peace officer shall surrender the license to the department by certified mail, along with written notice to the department of the seizure and intention to seek the initiation of forfeiture proceedings. No person who holds any interest in a license shall exercise any privileges of that license after it has been seized and during the time it is surrendered to the department pursuant to this subdivision.

However, if the licensee appears and in any manner contest the showing of probable cause required by this subdivision, the licensee shall be barred from bringing a motion pursuant to paragraph (2) of subdivision (g) of Section 11488.4 of the Health and Safety Code.

(g) Notwithstanding Article 5 (commencing with Section 23090) of Chapter 1.5 of this division, the Attorney General or a district attorney may seek a pendente lite order as provided in Section 11492 of the Health and Safety Code or Section 186.6 of the Penal Code relating to the custody, right, title, interest, and exercise of rights and privileges as related to a license described in this division which is the subject of a forfeiture proceeding pursuant to Section 11488.4 of the Health and Safety Code or Section 186.4 of the Penal Code.

(h) Rights and privileges related to any license which is the subject of a forfeiture proceeding and which has been seized and surrendered to the department pursuant to this section may be exercised solely by a receiver appointed pursuant to Section 11492 of the Health and Safety Code or Section 186.6 of the Penal Code. No license, rights, or privileges of a license may be exercised by a receiver until that person has been found qualified to hold a license in his or her own right by the department pursuant to this division and the license has been issued to the custody of the receiver. Chapter 6 (commencing with Section 23950) of this division does not apply to a receiver appointed pursuant to this paragraph. Any receiver appointed pursuant to Section 11492 of the Health and Safety Code or Section 186.6 of the Penal Code who exercises privileges of a license issued to his or her custody shall be subject to disciplinary

proceedings and may have the license suspended or revoked in the same manner as if he or she were licensed directly pursuant to this division.

(i) Upon the entry of a judgment of forfeiture pursuant to Section 11488.5 of the Health and Safety Code or Section 186.6 of the Penal Code, or a declaration of forfeiture pursuant to subdivision (j) of Section 11488.5 of the Health and Safety Code forfeiting a license described in this division, the state or local government entity shall sell and transfer the license in accordance with Chapter 6 (commencing with Section 23950) of this division. The proceeds of that sale and transfer shall be allocated as specified in Section 11489 of the Health and Safety Code or Section 186.8 of the Penal Code, as appropriate.

(j) Any alcoholic beverage which is the subject of a judgment of forfeiture pursuant to Section 11488.5 of the Health and Safety Code or Section 186.7 of the Penal Code, or a declaration of forfeiture pursuant to subdivision (i) of Section 11488.4 of the Health and Safety Code may be sold, transferred, and delivered by the state or local governmental entity, as specified in Section 11489 of the Health and Safety Code or Section 186.8 of the Penal Code, to a person licensed to sell that type of alcoholic beverage pursuant to this division.

**History.—Added by Stats. 1989, Ch. 1195, in effect January 1, 1990.**

#### CHAPTER 15. TIED-HOUSE RESTRICTIONS

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**25500. On-sale; exceptions.** (a) No manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person shall:

(1) Hold the ownership, directly or indirectly, of any interest in any on-sale license.

(2) Furnish, give, or lend any money or other thing of value, directly or indirectly, to, or guarantee the repayment of any loan or the fulfillment of any financial obligation of, any person engaged in operating, owning, or maintaining any on-sale premises where alcoholic beverages are sold for consumption on the premises.

(3) Own any interest, directly or indirectly, in the business, furniture, fixtures, refrigeration equipment, signs, except signs for interior use mentioned in subdivision (g) of Section 25503, or lease in or of any premises operated or maintained under any on-sale license for the sale of alcoholic beverages for consumption on the premises where sold; or own any interest, directly or indirectly in realty acquired after June 13, 1935, upon which on-sale premises are maintained unless the holding of the interest is permitted in accordance with rules of the department.

(b) This section does not apply to the holding by one person of a wholesaler's license and an on-sale license in counties not to exceed 15,000 population.

(c) This section does not apply to the financial or representative relationship between a manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of such person, and a person holding only one of the following types of licenses:

(1) On-sale general license for bona fide club.

(2) Club license issued under Article 4 (commencing with Section 23425) of Chapter 3.

(3) Veteran's club license issued under Article 5 (commencing with Section 23450) of Chapter 3.

(4) On-sale license for boats, trains, sleeping cars, or airplanes where the alcoholic beverages produced or sold by the manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, bottler, importer, or wholesaler, or any officer, director, or agent of the person are not sold, furnished, or given, directly or indirectly to the on-sale licensee.

(d) This section does not apply to an employee of a licensee referred to in subdivision (a) who is a nonadministrative and nonsupervisory employee.

(e) Nothing in this division prohibits the holder of any retail on-sale or off-sale license from purchasing, for fair consideration, advertising in any publication published by any manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, or wholesaler, or any person who directly or indirectly holds the ownership of any interest in the premises of the retail licensee.

**History.**—Stats. 1955, Ch. 447, substituted "department" for "board." Stats. 1957, Ch. 1790, in effect September 11, 1957, added third paragraph. Stats. 1961, Ch. 246, in effect September 15, 1961, added second paragraph. Stats. 1965, Ch. 78, in effect September 17, 1965, relocated "refrigeration equipment." Stats. 1973, Ch. 783, in effect January 1, 1974, included California winegrower's agent. Stats. 1987, Ch. 1121, in effect January 1, 1988 added subd. (d). Stats. 1991, Ch. 347, in effect January 1, 1992, added subd. (e).

**25500.1. On-sale wine/brandy public eating place retailer information.** Notwithstanding Section 25500, the listing of the names, addresses, telephone numbers and/or e-mail addresses, or web site addresses, of two or more unaffiliated on-sale retailers selling wine and/or brandy and operating and licensed as bona fide public eating places pursuant to Section 23038 selling the wine and/or brandy produced, distributed and/or imported by a nonretail industry member in response to a direct inquiry from a consumer received by telephone, by mail, by electronic Internet inquiry or in person does not constitute a thing of value or prohibited inducement to the listed on-sale retailer, provided:

- (a) The listing does not also contain the retail price of the product, and
- (b) The listing is the only reference to the on-sale retailers in the direct communication, and
- (c) The listing does not refer only to one on-sale retailer or only to on-sale retail establishments controlled directly or indirectly by the same on-sale retailer, and
- (d) The listing is made by, and/or produced by, and/or paid for, exclusively by the nonretail industry member making the response.

For the purposes of this section, “nonretail industry member” is defined as a manufacturer, winegrower, distiller of wine and/or brandy, regardless of any other licenses held directly or indirectly by such person. Except as specifically provided above, any payment for, making or production, either directly or indirectly, listing the names, addresses, telephone numbers and/or e-mail addresses, or web site addresses, of on-sale retailers otherwise authorized by this section by a wholesaler or by a wholesaler that also holds an importer’s license shall constitute the furnishing of a thing of value or inducement to the listed on-sale retailers in violation of this division.

*History.—Added by Stats. 2000, Ch. 205, in effect January 1, 2001.*

**25500.2. On-sale beer/wine/distilled spirits public eating place retailer information.** (a) Notwithstanding Section 25500, the listing of the names, addresses, telephone numbers, e-mail addresses, or Web site addresses, of two or more unaffiliated on-sale retailers selling beer, wine, or distilled spirits, and operating and licensed as bona fide public eating places pursuant to Section 23038 selling the beer, wine, or distilled spirits produced, distributed, or imported by a nonretail industry member in response to a direct inquiry from a consumer received by telephone, by mail, by electronic Internet inquiry, or in person does not constitute a thing of value or prohibited inducement to the listed on-sale retailer, provided all of the following conditions are met:

- (1) The listing does not also contain the retail price of the product.
- (2) The listing is the only reference to the on-sale retailers in the direct communication.
- (3) The listing does not refer only to one on-sale retailer or only to on-sale retail establishments controlled directly or indirectly by the same on-sale retailer.
- (4) The listing is made by, or produced by, or paid for, exclusively by the nonretail industry member making the response.

(b) For the purposes of this section, “nonretail industry member” is defined as a manufacturer, including, but not limited to, a beer manufacturer, winegrower, or distiller of alcoholic beverages or an agent of that entity, or a wholesaler, regardless of any other licenses held directly or indirectly by that person.

*History.—Added by Stats. 2000, Ch. 980, in effect January 1, 2001. Stats. 2001, Ch. 567, AB 1429, repealed former section and extended these provisions to ALL wholesalers by including them in the definition of nonretail industry member and removing specific exclusions. Urgency statute in effect October 5, 2001.*

25501. **Brewing industry.** 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.

*History.—Stats. 1965, Ch. 1128, in effect September 17, 1965, added provision for furnishing draft beer pumps and iceboxes to temporary licensees. Stats. 1968, Ch. 567, in effect November 13, 1968, added subd. (c). Stats. 1996, Ch. 85, in effect January 1, 1997, made technical, nonsubstantive changes to permit suppliers of malt beverages to furnish paper beverage coasters. Stats. 1997, Ch. 774, in effect January 1, 1998, made technical, non-substantive changes.*

25502. **Off-sale; exceptions.** (a) No manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person, shall, except as authorized by this division:

(1) Hold the ownership, directly or indirectly, of any interest in an off-sale license.

(2) Furnish, give, or lend any money or other thing of value, directly or indirectly, to, or guarantee the repayment of any loan or the fulfillment of any financial obligation of, any person engaged in operating, owning, or maintaining any off-sale licensed premises.

(3) Own or control any interest, directly or indirectly, by stock ownership, interlocking directors, or trusteeship, in the business, furniture, fixtures, refrigeration equipment, signs, except signs for interior use mentioned in subdivision (g) of Section 25503, or lease in premises licensed with an off-sale license.

(4) Own or control any interest, directly or indirectly, by stock ownership, interlocking directors, trusteeship, or mortgage of the realty upon which an off-sale licensed premises is maintained.

(b) Any wholesaler in counties not to exceed 15,000 population who holds both a beer and wine wholesaler's license and an off-sale general license and who held such licenses prior to September 19, 1947, may continue to hold such licenses but may not transfer the beer and wine wholesaler's license to another individual, individuals, partnership, corporation or other legal entity. Where the off-sale general license is

transferred to an individual, individuals, partnership, corporation or other legal entity, the transfer shall be a person-to-person transfer only.

(c) Nothing in this section prohibits any holder of a distilled spirits manufacturer's, manufacturer's agent's, California winegrower's agent, rectifier's, or wholesaler's license, or any officer, employee, or representative of any such licensee, from acting as a trustee for any off-sale general licensee in any bankruptcy or other proceedings for the benefit of the creditors of the off-sale general licensee.

(d) Nothing in this section shall alter, change, or otherwise affect, retroactively or prospectively, any of the rights or privileges granted to a winegrower or brandy manufacturer by Section 23362, or by any other provision of this division.

(e) This section does not apply to an employee of a licensee referred to in subdivision (a) who is a nonadministrative and nonsupervisory employee.

**History.**—Stats. 1959, Ch. 1375, in effect September 18, 1959, added second paragraph. Stats. 1969, Ch. 759, in effect November 10, 1969, lettered subds., added (b), reworded (c) and (d), and added last paragraph. Stats. 1973, Ch. 783, in effect January 1, 1974, included California winegrower's agent. Stats. 1987, Ch. 68 and 1121, in effect January 1, 1988, added subd. (e) and prohibited transfer of wholesale license under subd. (c).

**Incidents of ownership.**—Ownership of stock constitutes an indirect ownership interest in the property of a corporation which, in the case of a licensee, includes the license. Under § 25502 a wholesaler is prohibited from holding an interest in the premises or fixtures of an off-sale general licensee. *Borun Bros. v. Department of Alcoholic Beverage Control*, 215 Cal. App. 2d 503.

**Segregation of wholesale and retail interests.**—Section 25506 was not drawn to limit in any way the more general policy of segregation between wholesale and retail alcoholic beverage interests as expressed in Section 25502. *California Beer Wholesalers Association, Inc., (Kirby) v. Alcoholic Beverage Control Appeals Board (Thriftmart)*, 5 Cal. 3d 402.

**Beer and wine importer's license prohibition.**—While a winegrower may hold an off-sale general license, and nothing in the Alcoholic Beverage Control Act specifically prohibits a winegrower from obtaining a beer and wine importer's license, the Alcoholic Beverage Control Appeals Board properly construed § 25502, providing that no importer shall have any interest in an off-sale general license, as prohibiting issuance of a beer and wine importer's license to a winegrower who already held an off-sale general license. *Pronto Market No. 1, Inc., v. Alcoholic Beverage Control Appeals Board*, 61 Cal. App. 3d 545.

**25502.1. Consumer information.** (a) Notwithstanding Section 25502, the listing of the names, addresses, telephone numbers, e-mail addresses, or Web site addresses, of two or more unaffiliated off-sale retailers selling the products produced, distributed or imported by a nonretail industry member in response to a direct inquiry from a consumer received by telephone, by mail, by electronic Internet inquiry or in person does not constitute a thing of value or prohibited inducement to the listed off-sale retailer, provided all of the following conditions are met:

(1) The listing does not also contain the retail price of the product.

(2) The listing is the only reference to the off-sale retailers in the direct communication.

(3) The listing does not refer only to one off-sale retailer or only to off-sale retail establishments controlled directly or indirectly by the same off-sale retailer.

(4) The listing is made by, or produced by, or paid for, exclusively by the nonretail industry member making the response.

(b) For the purposes of this section, "nonretail industry member" is defined as a manufacturer, including, but not limited to, a beer manufacturer, winegrower, or distiller of alcoholic beverages, or an agent of those entities, or a wholesaler, regardless of any other licenses held directly or indirectly by that person.

**History.**—Added by Stats. 1999, Ch. 666, in effect January 1, 2000. Amended by Stats. 2000, Ch. 980, in effect January 1, 2001. Stats. 2001, Ch. 567 in effect October 5, 2001, further defined beer manufacturer for these provisions.

**25503. Consignment sales; commercial bribery; signs; advertisements.** No manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person, shall do any of the following:

(a) Directly or indirectly, deliver the possession of any alcoholic beverages to any on- or off-sale licensee under an agreement of consignment whereby title to the alcoholic

beverages is retained by the seller or whereby the licensee receiving the alcoholic beverages has the right at any time prior to sale to relinquish possession to or return them to the original seller.

(b) Directly or indirectly, give any licensee or any person any alcoholic beverages as free goods as a part of any sale or transaction involving alcoholic beverages.

(c) Give secret rebates or make any secret concessions to any licensee or the employees or agents of any licensee, and no licensee shall request or knowingly accept from another licensee secret rebates or secret concessions.

(d) Give or furnish, directly or indirectly, to any employee of any holder of a retail on-sale or off-sale license only anything of value for the purpose or with the intent to solicit, acquire, or obtain the help or assistance of the employee to encourage or promote either the purchase or the sale of the alcoholic beverage sold or manufactured by the licensee giving or furnishing anything of value, and any employee who accepts or acquires anything of value contrary to the provisions of this subdivision is guilty of a misdemeanor.

(e) Willfully or knowingly discriminate, in the same trading area, either directly or indirectly, in the price of any brand of distilled spirits sold to different retail licensees purchasing under like terms and conditions.

(f) Pay, credit, or compensate a retailer or retailers for advertising, display, or distribution service in connection with the advertising and sale of distilled spirits.

(g) Furnish, give, lend, or rent, directly or indirectly, to any person any decorations, paintings, or signs, other than signs advertising their own products as permitted by Section 25611.1.

(h) Pay money or give or furnish anything of value for the privilege of placing or painting a sign or advertisement, or window display, on or in any premises selling alcoholic beverages at retail.

**History.**—Stats. 1957, Ch. 1987, in effect September 11, 1957, amended subd. (g) and added subd. (h). Stats. 1973, Ch. 783, in effect January 1, 1974, included California winegrower's agent.

**Validity.**—Subdivision (h) does not violate supplier corporation's free speech rights since subdivision furthers state's interest of limiting vertical and horizontal integration of industry while promoting temperance. *Actmedia, Inc. v. Stroh*, 830 F. 2d 957.

**25503.1. Exceptions; displays.** (a) Anything in this division to the contrary notwithstanding, any manufacturer, winegrower, manufacturer's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person is authorized:

(1) Only in connection with alcoholic beverages manufactured, produced or sold by such licensee, to install, service and set up window displays, promotional materials, and temporary floor displays holding merchandise in the premises of an off-sale retail licensee.

(2) Only in connection with alcoholic beverages manufactured, produced or sold by such licensee, to furnish, give, lend, rent or sell decorations and decorative materials, including holiday decorations, paintings and pictures, to an off-sale retail licensee for use in the windows and elsewhere in the interior of the retail premises in connection with advertising and promotional material or displays in the premises of such retailer; provided, that the advertising and promotional material shall have no intrinsic value other than as advertising and that the total original cost of all such decorations and decorative materials, including holiday decorations, paintings and pictures furnished by any licensee and in use at any one time in any one off-sale retail premise shall not exceed the amount established by rules of the department; and provided, that the licensee or any officer, director or agent of such licensee shall not directly or indirectly

pay or credit the retailer for the display of such decorations or decorative materials or for any expense incidental to their operation.

(3) To furnish, give, lend, rent or sell to an off-sale retailer who sells the alcoholic beverages of such licensee, newspaper cuts, mats, or engraved blocks for use in the retailer's advertisements relating to such alcoholic beverages.

(b) Anything in this chapter to the contrary notwithstanding, any holder of a wholesaler's license may manufacture, and distribute, sell, or rent any lawful product to any person engaged in operating, owning, or maintaining any retail premises where alcoholic beverages are sold; provided, however, that such products are sold or rented by the holder of the wholesaler's license to the licensee at a price not less than the current market price for such product; and provided, further, that the manufacturer and importer of alcoholic beverages shall be controlled by the other applicable provisions of this division.

*History.—Added by Stats. 1957, Ch. 1768, in effect September 11, 1957. Stats. 1976, Ch. 41, in effect January 1, 1977, added subd. (b). Stats 1983, Ch. 215, in effect July 13, 1983, added reference to "Rules of the Department".*

*Cross reference.—Rule 106.*

**25503.2. Stocking and shelving.** (a) Notwithstanding any other provision in this division, any winegrower, wine blender, beer manufacturer, brandy manufacturer, distilled spirits manufacturer, distilled spirits manufacturer's agent, rectifier, distilled spirits wholesaler, and beer and wine wholesaler, or the authorized agent or agents or representative or representatives of that licensee, may perform any of the following services for off-sale retail licensees at or on the premises of the off-sale retail licensee with the retail licensee's permission:

(1) Stack or arrange cases of the brand or brands of alcoholic beverages owned or sold by the licensee performing the service in the storeroom or warehouse where the off-sale retail licensee stores the brand or brands.

(2) Rotate the brand or brands owned or sold by the licensee performing the service on shelves and in refrigerated boxes, and rearrange bottles or packages of the brand or brands by moving the bottles or packages horizontally or vertically from shelf to shelf in the space and shelves allocated to the brand or brands. This paragraph does not permit the removal of any brand or brands of alcoholic beverages, except beer, which are owned or sold by the licensee performing the service, from the storeroom or other place belonging to an off-sale retailer for the purpose of replacing alcoholic beverages on or restocking shelves or refrigerated boxes.

(3) Take an inventory of an off-sale retailer's stock of a brand or brands of alcoholic beverages which are owned or sold by the licensee performing the service and which are in the stockroom or other place belonging to the off-sale retailer.

(4) Service the brand or brands of alcoholic beverages owned or sold by the licensee performing the service which are on shelves, fixtures, or other display pieces at the off-sale retail premises, including, but not limited to dusting bottles and shelves and refrigerated boxes allocated to the brand or brands at the retail premises. The licensees authorized to render services by this section and their agents and representatives may not price-mark individual containers of the brand of alcoholic beverages, except beer, owned or sold by the licensee performing the service, except for individual bottles used on floor displays.

(5) Rotate or rearrange the brand or brands of wine or distilled spirits owned or sold by the licensee on, in, or among permanent shelves, permanent fixtures, refrigerated boxes, or floor or other displays or display pieces; stock the brand or brands onto or into floor or other displays or display pieces; and stock the brand or brands onto or

into permanent shelves, permanent fixtures, or refrigerated boxes for the sole purposes of the introduction of new products, the resetting or rearrangement of existing products, or the setting or arranging of new stores. Incidental touching or rearrangement of the brand or brands of another licensee by a licensee performing any of the services authorized by this paragraph for the sole purpose of accessing permanent shelves, permanent fixtures, and other spaces allocated to the licensee performing the service shall not be deemed to be a violation of any provision of this division provided the other licensee's brands are not removed from spaces allocated to that licensee. Nothing in this paragraph permits stocking permanent shelves, permanent fixtures, or refrigerated boxes for regular inventory replenishment.

(b) Notwithstanding any other provision in this division, any beer manufacturer or beer and wine wholesaler, or the authorized agent or agents or representative or representatives of that licensee, may perform any of the services specified in paragraphs (1) to (4), inclusive, of subdivision (a), with respect to beer, for on-sale retail licensees at or on the premises of the on-sale retail licensee with the retail licensee's permission.

**History.**—Added by Stats. 1968, Ch. 204, in effect May 28, 1968. Stats. 1997, Ch. 40, in effect January 1, 1998, made technical non-substantive changes. Stats. 1999, Ch. 699, in effect January 1, 2000, expanded stocking and shelving privileges at off-sale retail premises.

The practice of "ribbonizing," action by a wholesaler of beer rearranging displays of its own product and that of its competitors on the self-service shelves of retailers with the consent of retailers involved, constitutes a violation of the Department's Rule 106(b) and goes beyond the permissible activities provided for in Section 25503.2 of the Business and Professions Code. *Markstein Distributing Co. v. Rice*, 65 Cal. App. 3d 333.

**25503.3. Service at conventions; advertising; food retailer.** (a) Anything in this division to the contrary notwithstanding, any winegrower, beer manufacturer, brandy manufacturer, distilled spirits manufacturer, or distilled spirits manufacturer's agent may, at parties held, or in hospitality rooms maintained, in conjunction with meetings, conventions, or combined conventions and trade shows of bona fide trade associations of retail licensees, serve and provide free of charge, food, alcoholic and nonalcoholic beverages, entertainment, and recreational activities to the retail licensees and their guests while attending those meetings, conventions, or combined conventions and trade shows. Additionally, any person specified in this section may pay a fee to the bona fide trade association for the privilege of providing food, alcoholic or nonalcoholic beverages, entertainment, or recreational activities, or for display booth space, as long as the fee is at the same rate charged all suppliers.

(b) Any person specified in this section may advertise in any regular publication of a bona fide trade association the members of which are food or alcoholic beverage retailers, if that publication does not advertise on behalf of, or directly benefit, any individual retail licensee. The advertising fee paid to the bona fide trade association or its agent shall be at the same rate charged all advertisers.

(c) Any person specified in this section may pay membership dues to a bona fide trade association as long as the dues are at the same rate charged all nonretail members of the association.

**History.**—Added by Stats. 1968, Ch. 1030, in effect November 13, 1968. Stats. 1969, Ch. 508, in effect November 10, 1969, included beer manufacturer in second paragraph. Stats. 1985, Ch. 481, in effect January 1, 1986, restructured section. Stats. 1990, Ch. 78, in effect January 1, 1991, permitted advertising in publications issued at least quarterly. Stats. 1995, Ch. 127, in effect January 1, 1996, added authorization for trade show fees in subd. (a).

**25503.4. "Meet the Winemaker" dinners.** (a) Notwithstanding any other provision of this division, a winegrower, California winegrower's agent, wine importer, or any director, partner, officer, agent, or representative of that person, may conduct or participate in, and serve wine at, an instructional event for consumers held at a

retailer's premises featuring wines produced by or for the winegrower or, imported by the wine importer, subject to the following conditions:

(1) No premium, gift, free goods, or other thing of value may be given away in connection with the instructional event by the winegrower, California winegrower's agent, wine importer, or retailer, except as authorized by this division.

(2) No alcoholic beverages may be given away in connection with the instructional event, except that wine, taken from barrels or from tanks, may be sampled at the instructional event. For the purposes of this section, minimal amounts of the samples provided for tasting at the instructional event in addition to the wines being featured do not constitute a thing of value.

(3) No alcoholic beverages may be sold at the instructional event, except that orders for the sale of wine may be accepted by the winegrower if the sales transaction is completed at the winegrower's premises.

(b) Notwithstanding any other provision of this division, a winegrower, California winegrower's agent, or wine importer, in advance of an instructional event for consumers being held at a retailer's premises, may list in an advertisement the name and address of the retailer, the names of the wines being featured at the instructional event, and the time, date, and location of, and other information about, the instructional event, provided:

(1) The advertisement does not also contain the retail price of the wines.

(2) The listing of the retailer's name and address is the only reference to the retailer in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole. Pictures or illustrations of the retailer's premises and laudatory references to the retailer in such advertisements are not hereby authorized.

(c) Notwithstanding any other provision of this division, the name and address of a winegrower, wine importer, or winegrower's agent licensee, the brand names of wine being featured, and the time, date, location, and other identifying information of a wine promotional lecture at retail premises may be listed in advance of the event in an advertisement of the off-sale or on-sale retail licensee.

(d) Nothing in this section authorizes a winegrower, wine importer, or winegrower's agent licensee to share in the costs, if any, of the retailer licensee's advertisement.

(e) Nothing in this section authorizes any person to consume any alcoholic beverage on any premises licensed with an off-sale retail license.

**History.**—Added by Stats. 1992, Ch. 471, in effect January 1, 1993. Stats. 1994, Ch. 394, in effect January 1, 1995, authorized general barrel tasting. Stats. 2003, Ch. 270, in effect January 1, 2004, added subd. (a)(3) to permit orders to be taken at specified winetastings.

**25503.5. Instruction on wine, beer and distilled spirits.** (a) A winegrower, beer manufacturer, or a beer and wine wholesaler may, without charge, instruct licensees and their employees, or conduct courses of instruction for licensees and their employees, on the subject of wine or beer, including but not limited to the history, nature, values, and characteristics of wine or beer, the use of wine lists, and the methods of presenting and serving wine or beer. The winegrower, beer manufacturer, or beer and wine wholesaler may furnish wine or beer and the equipment, materials and utensils as may be required for use in connection with the instruction or courses of instruction.

(b) A distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits general rectifier, or distilled spirits general importer may, without charge, instruct licensees and their employees, or conduct courses of instruction for licensees and their employees, on the subject of distilled spirits, including, but not limited to, the history, nature, values, and characteristics of distilled spirits, and the methods of presenting and serving distilled spirits. The distilled spirits manufacturer or distilled spirits

manufacturer's agent may furnish distilled spirits and the equipment, materials, and utensils as may be required for use in connection with the instruction or courses of instruction.

(c) A winegrower or distilled spirits manufacturer, or its authorized agent may instruct consumers at an on-sale retail licensed premises authorized to sell its product with the permission of the retail on-sale licensee. The instruction may include, without limitation, the history, nature, values, and characteristics of the product and the methods of presenting and serving the product. The instruction of consumers may include the furnishing of not more than three tastings to any individual in one day. A single tasting of distilled spirits may not exceed one-fourth of one ounce and a single tasting of wine may not exceed one ounce. The winegrower or distilled spirits manufacturer, or its authorized agent shall remove any unfinished alcoholic beverages that he or she provided following the instruction. Nothing in this subdivision shall limit the giving away of samples pursuant to subdivision (a) of Section 23386.

(d) The instruction or courses of instruction, authorized in subdivision (a) or (b), may be given at the premises of the winegrower, beer manufacturer, beer and wine wholesaler, distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits general rectifier, distilled spirits general importer or of a licensee, including an on-sale retail licensee, or elsewhere.

**History.**—Stats. 1968, Ch. 213, in effect November 13, 1968. Stats. 1969, Ch. 1155, in effect November 10, 1969, lettered subds., added (b), and included distilled spirits manufacturer, manufacturer's agent, general rectifier and general importer in subd. (c). Stats. 1998, Ch. 248, in effect January 1, 1999, added subd. (c).

**25503.55. Instruction on beer.** (a) A beer manufacturer, a licensed beer and wine importer general, or a licensed beer and wine wholesaler may instruct consumers or conduct courses of instruction for consumers, on the subject of beer, including, but not limited to, the history, nature, values, and characteristics of beer, and the methods of presenting and serving beer. A beer manufacturer, a licensed beer and wine importer general, or a licensed beer and wine wholesaler may conduct such instructions at the premises of a retail on-sale licensee authorized to sell beer.

(b) The instruction of consumers regarding beer may include the furnishing of tastes of beer to an individual of legal drinking age. Beer tastes at any individual course of instruction shall not exceed eight ounces of beer per person, per day. The tasting portion of a course of instruction shall not exceed one hour at any individual licensed retail premises. Tastes of beer may not be served to a consumer in their original container but must be served in an individual glass or cup.

(c) All tastes of beer served to a consumer as authorized in subdivision (b) shall be served only as part of the course of instruction and shall be served to the consumer by an employee of the on-sale retail licensee.

(d) A beer manufacturer, a licensed beer and wine importer general, or a licensed beer and wine wholesaler may not hold more than six courses of instruction per calendar year at any individual on-sale retail licensed premises if the courses of instruction includes consumer tastes of beer.

(e) (1) A representative of a beer manufacturer, a licensed beer and wine importer general, or a licensed beer and wine wholesaler, except as provided in paragraph (2), must be present and authorize any tastes of beer conducted at an on-sale retail licensed premises pursuant to this section. The representative shall be responsible for paying the retailer for the tastes of beer served at any course of instruction. Such payment shall not exceed the retail price of the beer.

(2) For purposes of this subdivision, a licensed beer and wine wholesaler shall not be a representative of a beer manufacturer or a licensed beer and wine importer general.

(f) No on-sale retail licensee shall require one or more courses of instruction pursuant to this section as a requirement to carry a brand or brands of any beer manufacturer, licensed beer and wine importer general, or licensed beer and wine wholesaler.

(g) No premium, gift, free goods, or other thing of value may be given away in connection with an authorized course of instruction that includes beer tastes, except as authorized by this division. Failure to comply with the provisions of this section shall be presumed to be a violation of Section 25500.

(h) A retail licensee may advertise the instructional tasting event using interior signs visible only within the establishment.

(i) (1) A beer manufacturer, a licensed beer and wine importer general, and a licensed beer and wine wholesaler shall maintain an individual record of each course of instruction involving tastes of beer for three years.

(2) Records shall include the date of the tasting, the name and address of the retail licensee, and the brand, quantity, and payment made for the beer furnished by the beer manufacturer, the licensed beer and wine importer general, or the licensed beer and wine wholesaler.

**History.—Added by Stats. 2006, Ch. 670, SB 1548, in effect January 1, 2007.**

**25503.6. Sacramento and Orange County arenas/stadium advertising.**

(a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a winegrower's license, a distilled spirits rectifier, or a distilled spirits manufacturer, or distilled spirits manufacturer's agent may purchase advertising space and time from, or on behalf of, an on-sale retail licensee subject to all of the following conditions:

(1) The on-sale licensee is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or the major tenant of the owner of any of the following:

(A) An outdoor stadium or a fully enclosed arena with a fixed seating capacity in excess of 10,000 seats located in Sacramento County or Alameda County.

(B) A fully enclosed arena with a fixed seating capacity in excess of 18,000 seats located in Orange County or Los Angeles County.

(C) An outdoor stadium or fully enclosed arena with a fixed seating capacity in excess of 8,500 seats located in Kern County.

(D) An exposition park of not less than 50 acres that includes an outdoor stadium with a fixed seating capacity in excess of 8,000 seats and a fully enclosed arena with an attendance capacity in excess of 4,500 people, located in San Bernardino County.

(E) An outdoor stadium with a fixed seating capacity in excess of 10,000 seats located in Yolo County.

(F) An outdoor stadium and a fully enclosed arena with fixed seating capacities in excess of 10,000 seats located in Fresno County.

(G) An athletic and entertainment complex of not less than 50 acres that includes within its boundaries an outdoor stadium with a fixed seating capacity of at least 8,000 seats and a second outdoor stadium with a fixed seating capacity of at least 3,500 seats located within Riverside County.

(H) An outdoor stadium with a fixed seating capacity in excess of 1,500 seats located in Tulare County.

(I) A motorsports entertainment complex of not less than 50 acres that includes within its boundaries an outdoor speedway with a fixed seating capacity of at least 50,000 seats, located within San Bernardino County.

(J) An exposition park, owned or operated by a bona fide nonprofit organization, of not less than 400 acres with facilities including a grandstand with a seating capacity of at least 8,000 people, at least one exhibition hall greater than 100,000 square feet,

and at least four exhibition halls, each greater than 30,000 square feet, located in the City of Pomona or the City of La Verne in Los Angeles County.

(K) An outdoor soccer stadium with a fixed seating capacity of at least 25,000 seats, an outdoor tennis stadium with a fixed capacity of at least 7,000 seats, an outdoor track and field facility with a fixed seating capacity of at least 7,000 seats, and an indoor velodrome with a fixed seating capacity of at least 2,000 seats, all located within a sports and athletic complex built before January 1, 2005, within the City of Carson in Los Angeles County.

(2) The outdoor stadium or fully enclosed arena described in paragraph (1) is not owned by a community college district.

(3) The advertising space or time is purchased only in connection with the events to be held on the premises of the exposition park, stadium, or arena owned by the on-sale licensee. With respect to an exposition park as described in subparagraph (J) of paragraph (1) that includes at least one hotel, the advertising space or time shall not be displayed on or in any hotel located in the exposition park, or purchased in connection with the operation of any hotel located in the exposition park.

(4) The on-sale licensee serves other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced by the winegrower, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the distilled spirits rectifier, the distilled spirits manufacturer or the distilled spirits manufacturer's agent that purchased the advertising space or time.

(b) Any purchase of advertising space or time pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the beer manufacturer, the holder of the winegrower's license, the distilled spirits rectifier, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent and the on-sale licensee.

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

(d) Any on-sale retail licensee, as described in subdivision (a), who, directly or indirectly, solicits or coerces a holder of a wholesaler's license to solicit a beer manufacturer, a holder of a winegrower's license, a distilled spirits rectifier, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent to purchase advertising space or time pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

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

**History.**—Added by Stats. 1986, Ch. 38, in effect March 31, 1986. Stats. 1991, Ch. 396, in effect January 1, 1992, made section apply to an outdoor stadium. Stats. 1993, Ch. 33, in effect June 16, 1993, amended subd. (l). Stats. 1994, Ch. 67, in effect May 9, 1994, made technical amendments. Stats. 1999, Ch. 937, in effect January 1, 2000, added subds. (a)(1)(C), (a)(1)(D), and (d). Stats. 2000, Ch. 980, in effect January 1, 2001; amended subd. (a)(1)(A) to read Sacramento County, and Los Angeles County in subd.(a)(1)(B); added subd. (a)(1)(E); amended to authorize advertising by distilled spirits manufacturers. Stats. 2001, Ch. 582, in effect October 5, 2001, extended authorized tied-house exceptions to beer manufacturers, as defined; an outdoor stadium and arena in Fresno County, an athletic complex in Riverside County, and an exposition park in San Bernardino County; clarifies conditions for exception to apply. Stats. 2002, Ch. 47, in effect January 1, 2003, added new tied-house exception for Visalia Oaks Stadium in subd. (l) (H), and California Speedway, subd. (l)(I). Stats. 2004, Ch. 437, AB 3085, in effect September 9, 2004, added distilled spirits rectifier to list of licenses listed in subds. (a), (b), (c) and (d), and added new tied-house exemptions for Oakland Area in subd. (a)(1)(A), and LA County Fair in subd. (a)(1)(J). Stats. 2005, Ch. 617, AB 1442, in effect January 1, 2006, subd. (k) added to authorize additional advertising purchases by a distilled spirits rectifier.

**25503.7. Service at premises.** A winegrower, beer manufacturer, or beer and wine wholesaler may serve food and alcoholic beverages to any person, including a person licensed under this division and his or her employees and representatives, who is attending a meeting held upon or who is visiting the premises of the winegrower, beer manufacturer, or beer and wine wholesaler.

**History.**—Added by Stats. 1968, Ch. 296, in effect November 13, 1968. Stats. 1998, Ch. 216, in effect January 1, 1999, made technical, non-substantive changes and permits beer and wine wholesaler to serve food.

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

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

(A) A fully enclosed auditorium or theater with a fixed seating capacity in excess of 6,000 seats, at least 60 percent of the use of which is for plays or musical concerts, not including sporting events.

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

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

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

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

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

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

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

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

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

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

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

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

(3) The on-sale licensee serves other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced or marketed by the winegrower or California winegrower's agent, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the distilled spirits manufacturer or distilled spirits manufacturer's agent purchasing the advertising space or time.

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

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

(d) Any on-sale retail licensee, as described in subdivision (a), who solicits or coerces, directly or indirectly, a holder of a wholesaler's license to solicit a beer manufacturer, distilled spirits manufacturer, or distilled spirits manufacturer's agent, holder of a winegrower's license, or California winegrower's agent to purchase advertising space or time pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(e) For the purposes of this section, "beer manufacturer" includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

SEC. 2. The Legislature hereby finds and declares, with respect to Section 1 of this act, that a special statute is necessary and that a statute of general applicability cannot be enacted within the meaning of Section 16 of Article IV of the California Constitution, because of unique circumstances and concerns applicable to certain facilities in Santa Clara County.

**History.**—Stats. 1985, Ch. 616, in effect September 17, 1985. Stats. 1991, Ch. 580, in effect January 1, 1992, made section apply to movie studios. Stats. 1994, Ch. 80, in effect May 20, 1995, amended to permit advertising in defined economic developments. Stats. 1999, Ch. 937, in effect October 10, 1999, to permit wine and beer advertising at defined and qualified arenas in Kern and Riverside Counties. Stats. 1999, Ch. 787, in effect October 10, 1999, amended to add subds. (a)(1)(D) and (a)(2)(D). Stats. 2000, Ch. 424, in effect January 1, 2001, amended to include amusement parks, etc., in City and County of Los Angeles, and to extend advertising to distilled spirits manufacturer' licensees and distilled spirits manufacturers agents and licensees. Stats. 2001, Ch. 567, AB 1429, added winegrower's agent, clarified conditions, and defined beer manufacturer for purposes of these tied-house exceptions. Urgency statute effective October 5, 2001. Stats. 2005, Ch. 617, AB 1442, in effect January 1, 2006, changed wording of specified to specific. Stats. 2006, Ch. 587, AB 3046, added subd. (f), expanded exceptions for advertising at on-sale retail premises.

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

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

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

(3) The on-sale licensee serves other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced or marketed by the winegrower or California winegrower's agent, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the distilled spirits manufacturer or distilled spirits manufacturer's agent purchasing the advertising space or time.

(b) Nothing in this section shall be construed to permit the purchase of billboards or bench advertisements as "advertising space."

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

(d) Any beer manufacturer, distilled spirits manufacturer, distilled spirits manufacturer's agent, holder of a winegrower's license, or California winegrower's agent who, through coercion or other illegal means, induces, directly or indirectly, a holder of a wholesaler's license to fulfill those contractual obligations entered into pursuant to subdivision (a) or (c) is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater,

plus ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

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

(f) For the purposes of this section, "beer manufacturer" includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

*History.—Added by Stats. 1991, Ch. 580 in effect January 1, 1992. Stats. 2000, Ch. 979, in effect January 1, 2001, extended advertising to all beer manufacturers. Stats. 2001, Ch. 567, (AB 1429), added winegrower's agent and defined beer manufacturer for purposes of these tied-house exceptions. Expanded the licensees subject to criminal provisions. Urgency statute effective October 5, 2001.*

**25503.9. Donations of wine and beer.** Nothing in this division prohibits a winegrower from giving or selling wine, a beer manufacturer from giving or selling beer, a distilled spirits manufacturer or a distilled spirits manufacturer's agent from giving or selling distilled spirits, or a licensed importer from giving or selling beer, wine, or distilled spirits at prices other than those contained in schedules filed with the department to any of the following:

(a) A nonprofit charitable corporation or association exempt from payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States and Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code.

(b) A nonprofit incorporated trade association that is exempt from payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States and Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code, and the members of which trade association are licensed under this division. However, the wine, beer, and distilled spirits shall be used solely for a convention or meeting of the nonprofit incorporated trade association.

(c) A nonprofit corporation or association that is exempt from payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States and is defined as a tax exempt organization under Section 23701a, 23701d, 23701e, 23701f, or 23701r of the Revenue and Taxation Code. Wine, beer, and distilled spirits given or sold by a winegrower, beer manufacturer, distilled spirits manufacturer, distilled spirits manufacturer's agent, or licensed importer pursuant to this subdivision may be furnished only in connection with public service or fundraising activities including picnics, parades, fairs, amateur sporting events, agricultural exhibitions, or similar events.

*History.—Added by Stats. 1968, Ch. 350, in effect November 13, 1968. Stats. 1993, Ch. 400, in effect January 1, 1994, amended paragraph 1 and subd. (a) and (b) and added subd. (c). Stats. 1994, Ch. 266 and Ch. 1028, in effect January 1, 1995, added "distilled spirits", and "imported" beer and wine.*

**25503.10. Lease.** (a) Notwithstanding any other provision of this division, the department may approve a lease or sublease, or amendments to such lease or sublease, where a manufacturer, manufacturer's agent, winegrower, California winegrower's

agent, rectifier, importer, or wholesaler is the lessor and a retailer is the lessee when each of the following conditions are incorporated in the lease:

(1) The lease is confined to real property and improvements thereon which have become part of the real property.

(2) No trade fixtures or other personal property are included in the lease.

(3) The rent to be paid by the lessee is not less than the current value for such a lease, which the lessor shall establish by submission of competent proof to the department.

(4) The rent is due and payable monthly beginning with the first month of occupancy.

(5) Any money received by the lessor from the lessee when the rent is due shall be first applied by the lessor to the payment of the rent.

(6) The lessee shall purchase from the lessor no more than 10 percent of his yearly supply of the type of alcoholic beverages sold on his licensed premises. The percentage shall be computed on a calendar-year basis.

(b) The original lease and any amendments to the original lease or to an amended lease shall be submitted to the department for its approval.

(c) The department may suspend or revoke the license of the lessor or the lessee for violations of any of the above conditions or for any misrepresentation in the terms of the lease.

(d) The ownership of shares of stock in a corporation licensed as a retailer under the provisions of this division, when such shares of stock are sold to the general public on any national or local stock exchange, shall not be deemed to be the ownership, either in whole or in part, of the land upon which a retail license issued to such corporation is located. The person who holds such shares of stock shall not be held to be a lessor under the provisions of this section.

**History.**—Added by Stats. 1971, Ch. 296, in effect March 4, 1972. Stats. 1974, Ch. 699, in effect January 1, 1975, included California winegrower's agent as lessor.

**25503.11. Stock ownership in corporate retail licensee.** Notwithstanding any other provision of this division, a manufacturer, manufacturer's agent, winegrower, rectifier, importer, or wholesaler may hold a diminutive amount of stock in a corporate retail licensee or serve on the board of directors of a corporate off-sale retail licensee, provided the stock ownership or service on the board of directors, as determined by the department, does not result in the exercise of control over the retail licensee's business and does not result in the exclusion of any competitor's brand of alcoholic beverages, and provided further that the stock is listed on the New York Stock Exchange, the American Stock Exchange, or NASDAQ, and the department is notified of the stock ownership or service on the board of directors.

**History.**—Added by Stats. 1971, Ch. 296, in effect March 4, 1972. Stats. 1979, Ch. 570, in effect September 12, 1979, added exemption for service on board of directors. Stats 1998, Ch. 639, in effect January 1, 1999, added reference to NASDAQ.

**25503.12. Stock ownership by retail licensee.** Notwithstanding any other provision of this division, a retail licensee may hold a diminutive amount of stock in a corporate licensed manufacturer, manufacturer's agent, winegrower, rectifier, importer, or wholesaler, provided that the purpose of the stock ownership by the retail licensee, as determined by the department, is not to violate any of the provisions of this chapter, and provided further that the stock is listed on the New York Stock Exchange, the American Stock Exchange, or on NASDAQ, and the department is notified of such stock ownership.

**History.**—Added by Stats. 1971, Ch. 296, in effect March 4, 1972. Stats 1998, Ch. 639, in effect January 1, 1999, added reference to NASDAQ and made technical, non-substantive changes.

25503.13. **Out-of-country winegrower.** (a) In order to alleviate the adverse economic and social consequences of high unemployment in identifiable urban and rural areas of California, the Legislature finds it in the public interest to encourage the private sector to create new employment and job-training opportunities for low-income persons and establish business enterprises owned and managed by such person. To provide such opportunities it is necessary for companies with sufficient financial resources, management experience and marketing strength to establish as a principal operating objective the creation of definitive programs for obtaining these goals.

(b) Notwithstanding any other provision of this division, a manufacturer, rectifier, distiller, winegrower or bottler of wine who produces and sells only wine in an area outside of the United States, its territories or possessions and outside of foreign countries having common boundaries with any state of the United States, and who is not licensed in the United States, its territories or possessions, or any officer, director or agent of any such person or a person holding the ownership, directly or indirectly, of any interest in any such manufacturer, rectifier, distiller, winegrower or bottler of wine may have an interest in a person holding an on-sale license, provided, that the wine produced or sold by such manufacturer, rectifier, distiller, winegrower or bottler of wine is not sold, furnished or given, directly or indirectly to such on-sale licensee, provided further, that food shall also be sold at the on-sale premises, and, provided further, that any on-sale license that may be granted under this section shall be conditioned so as to promote, where feasible, the following objectives in accordance with the public policy set forth in subdivision (a) above:

(1) The location of a significant number of on-sale premises in or accessible to areas of high unemployment,

(2) The employment and management training of low-income individuals, particularly those who, because of race, sex, age or national origin, suffer a rate of unemployment significantly higher than the statewide average and

(3) The minority ownership of licensed businesses operating on-sale premises pursuant to a franchise agreement.

The department, after consultation with the Secretary of Business and Transportation, the Department of Business and Economic Development, the Chief of the Division of Fair Employment Practices, and the Director of the Employment Development Department, shall adopt such rules as it determines to be necessary for the administration of this section.

*History.—Added by Stats. 1977, Ch. 1044, in effect January 1, 1978.*

25503.14. **Out-of-state beer and wine wholesaler.** Notwithstanding any provision of this division, any retail off-sale general licensee who holds at least 30 such licenses in this state and who also operates at least 50 wholesale grocery warehouses not licensed under this division may hold a beer and wine wholesale license in a state with a population not exceeding 700,000, provided that such licensed wholesale operation does not sell or transfer any alcoholic beverages to licensees of this state.

*History.—Added by Stats. 1978, Ch. 407, in effect January 1, 1979.*

25503.15. **Winegrower's on-sale interests.** (a) Notwithstanding any other provision of this division, a winegrower who manufactures, produces, bottles, processes, imports, or sells wine only, or any officer, director, or agent of that person, may hold the ownership of any interest in any on-sale license, or the business conducted under

that license, provided that the person or the officer, director, or agent of that person, shall have entered into an undertaking approved by the department stating both of the following:

(1) That neither that person nor any officer, director, or agent of that person shall sell or furnish to the holder of the license any wine, or permit the sale pursuant to that license of any wine, manufactured, produced, wholesaled, bottled, processed, imported, or sold by that person or that person's principal for as long as that ownership continues.

(2) That neither that person nor any officer, director, or agent of that person shall enter into any collusive scheme whereby he or she unfairly sells or promotes, in his or her on-sale businesses, the wine of another winegrower who manufactures, produces, bottles, processes, imports, or sells wine only, in return for his or her wine being unfairly sold or promoted in the on-sale businesses of that winegrower.

(b) Notwithstanding any other provision of this division, any licensed winegrower or any winegrower who has a wholesale license, or any officer, director, or agent of that person, may hold, directly or indirectly, the ownership of any interest in an on-sale license, provided that each of the following conditions is met:

(1) The on-sale licensed premises are licensed as a bona fide public eating place as defined in Section 23038, or as a bona fide bed and breakfast inn as defined in Section 24045.11.

(2) The on-sale licensed premises purchases all alcoholic beverages sold and served at the on-sale licensed premises only from California wholesale licensees, other than the licensed winegrower who has a wholesale license and an interest in an on-sale license, unless one of the following conditions is met:

(A) The wine purchased is produced or bottled by, or produced and packaged for, the same licensed winegrower that holds an interest in the on-sale license.

(B) The wine is produced or bottled by, and is purchased from, a licensed winegrower who sells no more than 125,000 gallons of wine per year for distribution in this state under all brands or trade names owned by that winegrower.

(C) The wine is purchased by an on-sale licensee in whose on-sale license a licensed winegrower holds an interest, provided that the winegrower sells no more than 125,000 gallons of wine per year for distribution in this state under all brands or trade names owned by that winegrower.

(3) The licensed winegrower and any officer, director, or agent of that person, whether individually or in the aggregate, do not sell and serve the wine products produced or bottled under any brand or trade name owned by that winegrower through more than two on-sale licensed premises in which any of them holds an ownership interest.

(4) The number of wine items by brand offered for sale by the on-sale licensed premises that are produced, bottled, processed, imported, or sold by the licensed winegrower or by any person holding any interest in the winegrower does not exceed 15 percent of the total wine items by brand listed and offered for sale in the licensed bona fide public eating place selling and serving that wine. This paragraph does not apply to a bona fide bed and breakfast inn.

(c) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exceptions established by this section to the general prohibition against tied interests

must be limited to their express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

**History.**—Added by Stats. 1981, Ch. 696, in effect January 1, 1982. Stats. 1988, Ch. 69, in effect April 5, 1988, made section apply to any retail license. Stats. 1988, Ch. 284, in effect July 7, 1988, made section apply only to on-sale licenses. Stats. 1994, Ch. 318, in effect January 1, 1995, added subs. (b) and (c). Stats. 1995, Ch. 91, in effect January 1, 1995, made technical non-substantive changes. Stats. 1997, Ch. 529, in effect January 1, 1998, made technical non-substantive changes, and permits winegrower to hold wholesale license and on-sale license in limited circumstances.

**25503.16. Hotel, motel and marine park interests.** (a) Nothing in this division shall prohibit the issuance or transfer of any retail on-sale or off-sale license to any person with respect to premises which are an integral part of the operations of a hotel, motel, or marine park owned by, or operated by or on behalf of, the licensee notwithstanding that a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler has any interest, directly or indirectly, in the premises, in the retail license, or in the retail licensee, and notwithstanding that the issuance or transfer would otherwise result in a violation of subdivision (a) of Section 25500, subdivision (a) or (b) of Section 25501, or Section 25502, if each of the following conditions is met:

(1) In the case of a hotel or motel, the hotel or motel consists of not less than 100 guestroom accommodations.

(2) No more than one-quarter of the total gross annual revenues of the hotel, motel, or marine park is derived from the sale by the hotel, motel, or marine park of alcoholic beverages.

(3) (A) The retail licensee shall purchase no beer or distilled spirits for sale in this state other than from a wholesale licensee, and the retail licensee, except as otherwise provided in subparagraph (B), shall purchase no alcoholic beverages for sale in this state from any wholesale licensee that has any interest, directly or indirectly, in the premises, in the retail license, or in the retail licensee.

(B) Notwithstanding subparagraph (A), a marine park may purchase beer or malt beverages for sale in this state from a wholesale licensee regardless of whether the wholesale licensee has any interest, directly or indirectly, in the premises, in the retail license, or in the retail licensee.

(4) The retail licensee serves other brands of beer, wine, and distilled spirits in addition to the brands manufactured by the beer or distilled spirits manufacturer or produced by the winegrower holding an interest in the retail license.

(5) No marine park shall sell or offer for sale any distilled spirits, except during private events or private functions held at the marine park.

(b) For purposes of this section, "hotel" and "motel" shall mean an establishment containing guestroom accommodations with respect to which the predominant relationship existing between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest; for purposes of this subdivision, the existence of other legal relationships as between some occupants and the owner or operator thereof shall be immaterial.

(c) For purposes of this section, "marine park" means an establishment with not less than 125 contiguous acres, located in San Diego County, the predominant purpose of which is the education or entertainment of the public through the display of marine animals and related aquatic, food service, and amusement activities, which holds permits issued by state and federal regulatory agencies authorizing the keeping of marine animals or endangered species or both, and which has an annual paid attendance of at least 2,000,000 people.

(d) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests shall be limited to its express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

**History.**—Added by Stats. 1982, Ch. 575, in effect January 1, 1983. Stats. 1986, Ch. 292, in effect January 1, 1987, authorized holding interest in license. Stats. 1990, Ch. 645, in effect January 1, 1991, made section apply to hotels with 100 guestrooms. Stats. 1992, Ch. 277, in effect July 21, 1992, made section apply to marine parks. Stats. 2001, Ch. 567 in effect October 5, 2001, revised requirements with respect to a marine park and allows the purchase of beer or malt beverages from any wholesale licensee.

**25503.17. Exceptions; on-sale chef's school.** Nothing in this division shall prohibit the issuance or transfer of any retail on-sale general license to any person with respect to premises which are an integral part of the operations of a school for professional chefs owned by, or operated by or on behalf of, the licensee, notwithstanding that a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler holds the ownership of any interest, directly or indirectly, in the premises or in the retail licensee, provided that each of the following conditions is met:

(a) The school is operated in conjunction with a bona fide eating place open to the public.

(b) The school has been in operation in a city with a population of less than one million for at least five years prior to the effective date of this section.

(c) The retail licensee shall purchase no beer or distilled spirits for sale in this state other than from a wholesale licensee, and the retail licensee shall purchase no alcoholic beverages for sale in this state from any wholesale licensee holding the ownership of any interest, directly or indirectly, in the premises or in the retail licensee.

The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests must be limited to its express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

**History.**—Added by Stats. 1983, Ch. 314, in effect January 1, 1984.

**25503.18. Exceptions; off-sale chef's school.** Nothing in this division shall prohibit the issuance or transfer of any retail off-sale beer and wine license to any person with respect to premises which are an integral part of the operations of a school for professional chefs owned by, or operated by or on behalf of, the licensee notwithstanding that a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler holds the ownership of any interest, directly or indirectly, in the premises or in the retail licensee, provided that each of the following conditions is met:

(a) The school is operated in conjunction with a bona fide eating place open to the public.

(b) The school has been in operation in a city with a population of less than one million for at least five years prior to the effective date of this section.

(c) The retail licensee shall purchase no beer or distilled spirits for sale in this state other than from a wholesale licensee, and the retail licensee shall purchase no alcoholic beverages for sale in this state from any wholesale licensee holding the ownership of any interest, directly or indirectly, in the premises or in the retail licensee.

The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests must be limited to its express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

**History.—**Added by Stats. 1983, Ch. 313, in effect January 1, 1984.

**25503.19. Exceptions; cruise ships.** (a) Nothing in this division shall prohibit the issuance or transfer of any retail on-sale general license to any person with respect to passenger cruise ships or lines owned by, or operated by or on behalf of, the licensee, notwithstanding that a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler holds the ownership of any interest, directly or indirectly, in the cruise ships or lines or in the retail licensee, subject to the following conditions:

(1) Not more than 10 percent of the total gross annual revenues of the cruise ships or lines is derived from the sale of alcoholic beverages.

(2) The manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler shall not influence or attempt to influence decisions concerning the purchase and sale of alcoholic beverages by the retail licensee and those decisions are made solely by the retail licensee.

(3) The retail licensee is not required, by agreement or otherwise, to exclude from sale on board its vessels competitive alcoholic beverage products.

(4) The retail licensee shall purchase no beer, wine, or distilled spirits for sale in this state other than from a wholesale licensee, and the retail licensee shall purchase no alcoholic beverages for sale in this state from any wholesale licensee holding the ownership of any interest, directly or indirectly, in the cruise ships or lines or in the retail licensee.

(b) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interest in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests must be limited to its express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

**History.—**Added by Stats. 1986, Ch. 804, in effect January 1, 1987.

**25503.20. Exception: Napa County Culinary Institute.** Notwithstanding any other provision of this division, a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler may hold the ownership of any interest, directly or indirectly in the premises or in the retail licensee, may serve as an officer, director, employee, or agent of that licensee, and may sponsor or fund educational programs, special fundraising and promotional events,

improvements in capital projects, and the development of exhibits or facilities of and for the licensee, provided that each of the following conditions is met:

(a) The retail license is for a nonprofit school for professional chefs located in Napa County which is operated in conjunction with a bona fide eating place open to the public.

(b) The school's educational program has been accredited by the Board of Regents of the University of California, the State Department of Education, or the Council for Private Postsecondary and Vocational Education or other state-authorized accrediting commission.

(c) The number of items of beer, wine, or distilled spirits by brand offered for sale by the retail licensee, which are produced, bottled, rectified, distilled, processed, imported, or sold by the licensees holding an interest in, serving as an officer or director of, or sponsoring or funding the programs and projects of the retail licensee, does not exceed 15 percent of the total items of beer, wine, or distilled spirits by brand listed and offered for sale in the bona fide public eating place.

**History.**—Added by Stats. 1995, Ch. 245, in effect January 1, 1996.

25503.21. **Exception; retail lease.** Notwithstanding any other provision of this division, a licensed manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person, who prior to July 1, 1987, has entered into an active lease of premises to any holder of an off-sale license, may continue to lease premises or renew or otherwise modify such lease with any holder of an off-sale license so long as the lessor holds no financial interest other than such lease in the business of the lessee.

**History.**—Added by Stats. 1988, Ch. 116, in effect May 25, 1988.

25503.22. **Exception; Out-of-state wholesaler.** (a) Nothing in this division shall prohibit the issuance or transfer of any retail on-sale license to any person with respect to premises which are an integral part of a restaurant owned by, or operated by or on behalf of, the licensee, notwithstanding that a wholesaler licensed to sell alcoholic beverages in states other than California has an interest, directly or indirectly, in the premises, in the retail license or in the retail licensee, provided that each of the following conditions are met:

(1) The retail licensee shall purchase no alcoholic beverages for sale in this state other than from a California wholesale licensee, and the retail licensee shall purchase no alcoholic beverages from any manufacturer or wholesale licensee holding the ownership of any interest, directly or indirectly, in the premises, in the retail license or in the retail licensee.

(2) Not more than 30 percent of the gross annual revenues of the restaurant are derived from the sale of alcoholic beverages.

(b) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests must be limited to its expressed terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

**History.**—Added by Stats. 1988, Ch. 69, in effect April 5, 1988. Stats. 1995, Ch. 76, in effect July 6, 1995, made exception uniform statewide.

25503.23. **Water ski show arena advertising.** Notwithstanding any other provision of this chapter, a beer manufacturer or winegrower may purchase advertising space and time from, or on behalf of, an on-sale retail licensee who is the owner of a stadium with a seating capacity in excess of 3,000 seats during the use of the stadium for an annual water ski show.

**History.—**Added by Stats. 1990, Ch. 124, in effect June 7, 1990.

25503.24. **Market research.** (a) Notwithstanding any other provision of this chapter, any manufacturer, winegrower, rectifier, distiller, distilled spirits wholesaler, or any officer, director, agent, or representative of any of those entities, may conduct market research and, in connection with that research, the entity conducting the market research may purchase from licensed off-sale retailers data regarding purchases and sales of alcoholic beverage products at the customary rates that those retailers sell similar data for nonalcoholic beverage products subject to the following limitations:

(1) No licensed retailer shall be obligated to purchase or sell the alcoholic beverage products of that manufacturer, winegrower, rectifier or distiller.

(2) No retail premises shall participate in more than one research project conducted by any single manufacturer, winegrower, rectifier, distiller, or distilled spirits wholesaler during a calendar year. A research project may involve multiple onsite surveys.

(3) Nothing in this section shall allow a licensed retailer to require a manufacturer, winegrower, rectifier, distiller, or distilled spirits wholesaler to conduct any market research as a condition for selling alcoholic beverage products to that licensed retailer.

(b) Any holder of a beer manufacturer's license or winegrower's license who, through coercion or other illegal means, induces, directly or indirectly, a holder of a beer or wine wholesaler's license to fulfill obligations entered into pursuant to subdivision (a) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the market research or time involved in the project, whichever is greater, plus ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(c) Any retail licensee who, directly or indirectly, solicits or coerces a holder of a beer or wine wholesaler's license to solicit a beer manufacturer, or holder of a winegrower's license to fulfill obligations entered into pursuant to subdivision (a) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the market research or time involved in the project, whichever is greater, plus ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) For the purposes of this section, "beer manufacturer" includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

**History.—**Added by Stats. 1991, Ch. 347, in effect January 1, 1992. Stats. 2001, Ch. 567 in effect October 5, 2001, defined beer manufacturer for purposes of these tied-house exceptions.

25503.26. **Horseracing track advertising.** (a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a winegrower's license, a California winegrower's agent, a manufacturer of distilled spirits, or distilled spirits manufacturer's agent, may purchase advertising space and time from, or on behalf of, an on-sale retail licensee subject to all of the following conditions:

(1) The on-sale licensee is the owner, or is the lessee, or is a wholly owned subsidiary of the lessee, of an arena with a fixed seating capacity in excess of 10,000 seats, at

least 60 percent of the use of which is for horseracing events, and which is located within Los Angeles County, Alameda County, or San Mateo County.

(2) The advertising space or time is purchased only in connection with events to be held on the premises of the arena owned or leased by the on-sale licensee.

(3) The on-sale licensee serves other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced or marketed by the winegrower or California winegrower's agent and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the distilled spirits manufacturer or distilled spirits manufacturer's agent purchasing the advertising space or time.

(b) Any purchase of advertising space or time pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the beer manufacturer, the holder of the winegrower's license, the California winegrower's agent, the manufacturer of distilled spirits, or distilled spirits manufacturer's agent, and the on-sale licensee.

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

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

(e) For the purposes of this section, "beer manufacturer" includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

**History.**—Added by Stats. 1989, Ch. 134, in effect January 1, 1990. Stats. 1990, Ch. 206, in effect January 1, 1991, permitted advertising at qualified tracks in Alameda or San Mateo Counties. Stats. 1991, Ch. 1091, in effect January 1, 1992, made nonsubstantive changes. Stats. 1994, Ch. 60, in effect May 3, 1994, added "distilled spirits manufacturer." Stats. 2000, Ch. 979, added "distilled spirits manufacturer's agent" and extended advertising to all beer manufacturers. Stats. 2001, Ch. 567 in effect October 5, 2001, added winegrower's agent and defined beer manufacturer for purposes of these tied-house exceptions. Expanded the licensees subject to criminal provisions.

**25503.27. Entertainment expenses.** (a) Anything in this division to the contrary notwithstanding, any manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, wholesaler, or any officer, director,

agent, or representative of any such person, may provide to licensed retailers and the employees of those retailers who are involved in the business decisions of those retailers, both of the following:

(1) Food and beverages for consumption at a meeting at which the primary purpose is the discussion of business, and local ground transportation to and from those meetings.

(2) Tickets or admission to athletic activities or to other forms of entertainment, food and beverages for consumption at those activities, and local ground transportation to and from those activities.

(b) For purposes of this section, any allowable expenditure shall be for an activity for which some portion of the expenditure is deductible as a business entertainment expense under the Internal Revenue Code. The value of any food, beverage, local ground transportation, or tickets or admission to activities or other forms of entertainment provided under subdivision (a) shall not be considered the advancement of moneys or other things of value within the meaning of Sections 25500, 25502, and 25600.

*History.—Added by Stats. 1990, Ch. 425, in effect July 26, 1990.*

**25503.28. Exceptions: Small beer manufacturer/on-sale licenses.**

(a) Notwithstanding any other provision of this division, the holder of no more than six on-sale licenses, or any officer, director, employee, or agent of that licensee, may own a licensed beer manufacturer holding a license pursuant to paragraph (a) of subdivision (1) of Section 23320, and may serve on the board of directors and as an officer or employee of a licensed beer manufacturer.

(b) An on-sale licensee specified in subdivision (a) shall purchase no alcoholic beverages for sale in this state other than from a wholesale or winegrower licensee, except for any alcoholic beverages manufactured by the licensed beer manufacturer at a single location contiguous or adjacent to the premises of the on-sale licensee.

(c) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests must be limited to its expressed terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

(d) This section shall become operative on January 1, 1998.

*History.—Added by Stats. 1993, Ch. 362. Stats. 1994, Ch. 1028, in effect January 1, 1995, deleted reference to corporate small beer manufacturers, authorized direct sales to a single adjacent license.*

**25503.29. Exception: movie or TV production facility, theme park, LA County.**

(a) Nothing in this division shall prohibit the issuance, transfer, or renewal of any retail on-sale license to any person with respect to premises that are either an integral part of, or adjacent to, the operations of a motion picture or television production facility or an affiliated motion picture or television theme park, which premises are owned by, or operated by or on behalf of, the licensee, notwithstanding that a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler has any interest, directly or indirectly, in the premises, in the retail license, or in the retail licensee, if all of the following conditions are met:

(1) No more than 10 percent of the total gross annual revenues of the motion picture or television production facility and any affiliated theme park is derived from the sale of alcoholic beverages.

(2) The retail licensee shall purchase no beer, wine, or distilled spirits for sale in this state other than from a wholesale licensee, and the retail licensee shall purchase no alcoholic beverages for sale in this state from any wholesale licensee that has any interest, directly or indirectly, in the premises, in the retail licensee, or in the retail license.

(3) The retail licensee serves other brands of beer, wine, and distilled spirits in addition to the brands manufactured or distributed by the beer or distilled spirits manufacturer or produced or distributed by the winegrower which has any interest, directly or indirectly, in the premises, in the retail licensee, or in the retail license.

(4) No more than 15 percent of the retail licensee's purchases of alcoholic beverages for sale on its licensed premises shall be products manufactured or distributed by the beer or distilled spirits manufacturer or produced or distributed by the winegrower which has any interest, directly or indirectly, in the premises, in the retail licensee, or in the retail license.

(b) For purposes of this section:

(1) "Motion picture or television production facility" means an establishment where motion pictures or television programs are produced.

(2) "Motion picture or television theme park" means an establishment with not less than 25 contiguous acres, located in Los Angeles County, the predominant purpose of which is the entertainment of the public through activities related to motion pictures and television programs, that has an annual paid attendance of at least three million people.

(3) "Adjacent to" means located on commonly owned property, or contiguous to, or in close proximity.

(c) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques.

The Legislature further finds that the exception established by this section to the general prohibition against tied interests must be limited to its express terms so as not to undermine the general prohibition, and intends that this section shall be construed accordingly.

**History.—**Added by Stats. 1995, Ch. 232, in effect August 1, 1995.

**25503.30. Exceptions; on-sale license.** (a) Notwithstanding any other provision of this division, a winegrower or one or more of its direct or indirect subsidiaries of which the winegrower owns not less than a 51-percent interest, who manufactures, produces, bottles, processes, imports, or sells wine and distilled spirits made from grape wine or other grape products only, under a winegrower's license or any other license issued pursuant to this division, or any officer or director of, or any person holding any interest in, those persons may serve as an officer or director of, and may hold the ownership of any interest or any financial or representative relationship in, any on-sale license, or the business conducted under that license, provided that, except in the case of a holder of on-sale general licenses for airplanes and duplicate on-sale general licenses for air common carriers, all of the following conditions are met:

(1) The on-sale licensee purchases all alcoholic beverages sold and served only from California wholesale licensees.

(2) The number of wine items by brand offered for sale by the on-sale licensee that are produced, bottled, processed, imported, or sold by the licensed winegrower or by the subsidiary of which the winegrower owns not less than 51 percent, or by any officer or director of, or by any person holding any interest in, those persons does not exceed 15 percent of the total wine items by brand listed and offered for sale by the on-sale licensee selling and serving that wine. Notwithstanding paragraph (1), wine sold pursuant to this provision may be purchased from a California winegrower so long as the wine purchased is produced or bottled by, or produced and packaged for, the same licensed winegrower that holds an interest in the on-sale license and such direct sales do not involve more than two on-sale licenses in which the winegrower or any person holding an interest in the winegrower holds any interest, directly or indirectly, either individually or in combination or together with each other in the aggregate.

(3) None of the persons specified in this section may have any of the interests specified in this section in more than two on-sale licenses.

(b) The Legislature finds that, while this section provides a limited exception for licensed winegrowers, that limited exception is granted for specific purposes, and that it is also necessary and proper that licensed winegrowers maintain the authority granted under this division to sell wine and brandy to any individual consumer or any person holding a license authorizing the sale of wine or brandy.

(c) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exceptions established by this section to the general prohibition against tied interests must be limited to their express terms so as not to undermine the general prohibition, and the Legislature intends that this section be construed accordingly.

*History.*—Added by Stats. 1996, Ch. 900, in effect January 1, 1997. Stats 1997, Ch. 535, in effect January 1, 1998, deleted subd. (1) and added subd. (d). Stats 1998, Ch. 485, in effect January 1, 1999, made technical, non-substantive changes. Stats. 2000, Ch. 162, in effect January 1, 2001, added second sentence (beginning with “Notwithstanding”) to subd. (a)(2).

**25503.33. Supplier sponsorship; outdoor history based fairs.** (a) Notwithstanding any other provision of this division, a beer manufacturer or winegrower may provide sponsorship funds for or on behalf of a retail on-sale licensee provided each of the following conditions are met:

(1) The on-sale licensee is the owner and manager of outdoor fairs in northern and southern California which have a history-based theme and operate for 6 to 12 weekends in either or both venues and, excluding rain-outs, have an average daily attendance exceeding 10,000 persons.

(2) The sponsorship funds will be provided and used only in connection with specific programs or activities at the outdoor fairs described in paragraph (1).

(3) The sponsorship funds are to sponsor the following programs or activities only:

- (i) Signing program for the deaf.
- (ii) Docent program for the disabled.
- (iii) Public school history program.

(iv) Scholarships and honoraria for the students of the College of Performing Arts.  
(v) Contests involving sports, cooking, brewing, costumes, and other skills related to arts and sciences.

(vi) Equestrian exhibits and tournaments.

(4) The on-sale licensee serves other brands of beer or wine in addition to the brand manufactured by the beer manufacturer or produced by the winegrower providing sponsorship funds.

(b) Any provision of sponsorship funds pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the beer manufacturer or winegrower and the on-sale licensee.

(c) Any beer manufacturer or winegrower who, through coercion or other illegal means, induces a beer or wine wholesaler to fulfill those contractual obligations entered into pursuant to subdivision (a), is guilty of a misdemeanor and is punishable by imprisonment in a county jail not exceeding six months, or by a fine in an amount equal to the entire value of the sponsorship funds involved in the contract, plus ten thousand dollars (\$10,000), or by both that imprisonment and fine. This person shall also be subject to license revocation pursuant to Section 24200.

(d) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests must be limited to its express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

**History.—**Added by Stats. 1996, Ch. 638, in effect January 1, 1997.

**25503.37. Interactive entertainment facility.** (a) Nothing in this division shall prohibit the issuance, transfer, or renewal of any retail on-sale license to any person with respect to premises that are an integral part of an interactive entertainment facility and are owned directly or indirectly, in whole or in part, by, or operated by or on behalf of, the licensee, notwithstanding that a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottle, importer, or wholesaler has any interest, directly or indirectly, in the premises, in the retail license, or in the retail licensee, if all of the following conditions are met:

(1) The principal business conducted within the facility is providing interactive entertainment, not the sale of alcoholic beverages.

(2) Other than as permitted in Sections 23358 and 23360 with respect to wine and brandy, the retail licensee shall purchase no beer, wine, or distilled spirits for sale in this state other than from a wholesale licensee, and the retail licensee shall purchase no alcoholic beverages for sale in this state from any wholesale licensee that has any interest, directly or indirectly, in the premises, in the retail licensee, or in the retail license.

(3) The retail licensee shall serve other brands of beer, wine, and distilled spirits in addition to the brands manufactured, produced, or distributed by any manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler which has any interest, directly or indirectly, in the premises, in the retail licensee, or in the retail license.

(4) No more than 15 percent of the retail licensee's purchases of alcoholic beverages for sale on its licensed premises shall be products manufactured, produced, or distributed

by any manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler which has any interest, directly or indirectly, in the premises, in the retail licensee or in the retail license.

(b) For purposes of this section, "interactive entertainment facility" means premises which feature interactive computer and video entertainment attractions, themed merchandise, and food and beverages.

(c) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. Notwithstanding the foregoing, having considered the public welfare, the economic impact on the state, and the entirety of the circumstances involved, the Legislature further finds that the purpose and intent of the general prohibition against tied interests is not violated by granting the exception established by this section.

**History.**—Added by Stats. 1997, Ch. 75, in effect January 1, 1998.

**25504. Violations; tapping accessories.** Any person violating any provision of Sections 25500 to 25503, inclusive, is guilty of a misdemeanor, and any holder of any retail on-sale or retail off-sale license who solicits any such violation or accepts or permits to be accepted on his behalf and with his consent any of the prohibited matters, articles, or acts is guilty of a misdemeanor.

The provisions of Sections 25500 to 25503, inclusive, do not apply to any equipment, fixtures, or supplies furnished, given, lent, or sold prior to June 13, 1935, so long as the equipment, fixtures, or supplies remain in the premises in which installed prior to that time, nor do they apply to carbonic acid gas or tapping accessories furnished to any one on-sale licensee to a limit of not exceeding a value of five dollars (\$5) per tap in any one calendar year.

**History.**—Stats. 1953, Ch. 1149, in effect September 9, 1953, corrected typographical error in section reference to 25500.

**25504.5. Exception; tapping equipment.** The provisions of Sections 25500 to 25503, inclusive, and of Section 25600 do not apply to the occasional inspection and cleaning by beer manufacturers and wholesalers of beer taps and tapping equipment installed in retail on-sale premises.

This section does not constitute a change in, but is declaratory of, the pre-existing law.

**History.**—Added by Stats. 1957, Ch. 258, in effect September 11, 1957.

**25505. Ownership by on-sale licensee; exceptions.** No on-sale licensee, or any officer, director, employee, or agent of that licensee, shall hold any ownership or interest, directly or indirectly, in any manufacturer's, winegrower's, rectifier's, importer's, or wholesaler's license, the business conducted under that license, or the property used in the business.

The provisions of this section shall not apply to the holding by one person of a wholesaler's license and an on-sale license in a county with a population that does not exceed 15,000.

The provisions of this section shall not apply to the financial or representative relationship between a manufacturer, winegrower, manufacturer's agent, rectifier, distiller,

bottler, importer, or wholesaler, or any officer, director, or agent of that person, and, except as otherwise specified, a person holding only one of the following types of licenses:

- (a) On-sale general license for a bona fide club.
- (b) Club license (issued under Article 4 (commencing with Section 23425) of Chapter 3 of this division).
- (c) Veterans' club license (issued under Article 5 (commencing with Section 23450) of Chapter 3 of this division).
- (d) On-sale license for boats, trains, sleeping cars or airplanes, except as provided in subdivision (e), where the alcoholic beverages produced or sold by that manufacturer, winegrower, manufacturer's agent, rectifier, bottler, importer, or wholesaler or any officer, director, or agent of that person are not sold, furnished or given, directly or indirectly to the on-sale licensee.

The provisions of this section shall not prohibit the leasing of property by an on-sale licensee to a manufacturer, winegrower, rectifier, importer or wholesaler provided that the lease agreement is first approved by the department. The department shall approve the lease agreement unless it finds that the rent payable is not the fair rental value of the property or that the purpose of the lease is to violate any of the provisions of this chapter.

The provisions of this section shall not prohibit the holding of any ownership or interest by an on-sale licensee, or any officer, director, employee, or agent of any on-sale licensee, in any winegrower's license, which winegrower manufactures, produces, bottles, processes, imports, or sells wine only, or in the business conducted under winegrower's license, provided the on-sale licensee, or the officer, director, employee, or agent thereof shall have entered into an undertaking approved by the department stating that the on-sale licensee, or any such officer, director, employee, or agent of that on-sale licensee, will not sell pursuant to that on-sale license any wine manufactured, produced, processed, imported, or sold by the licensed winegrower for so long as the holding of the ownership or interest continues.

(e) Any and all of the licenses specifically enumerated, mentioned, or described in Section 25503.30, either singly or in combination.

**History.**—Stats. 1957, Ch. 1790, in effect September 11, 1957, added third paragraph. Stats. 1961, Ch. 2093, in effect September 15, 1961, added second and last paragraphs. Stats. 1981, in effect January 1, 1982, Ch. 696, added last paragraph. Stats. 1996, Ch. 900, in effect January 1, 1997, permitted up to 2 directors to hold interest in licenses otherwise prohibited by tied-house laws.

**25506. Ownership by off-sale general licensee.** Except as authorized by this division, no off-sale general licensee, or any officer, director, employee, or agent of such licensee, shall hold any ownership or interest, directly or indirectly, in the business, property, or license of any distilled spirits wholesaler, rectifier, distilled spirits manufacturer, or distilled spirits manufacturer's agent.

A corporation which meets all of the conditions in § 23774, under which an exemption from the prohibition against the holding of certain combinations of licenses by one entity is granted, may secure licenses for a subsidiary corporation which could not itself meet the conditions, and such subsidiary may be granted distilled spirits wholesaler's or importer's license or beer and wine wholesaler's or importer's license or any of them. 25 Ops. Atty. Gen. 288, 55/61 4-29-55.

The mere fact that § 25506 does not specifically prohibit a retailer from possessing an interest in a beer and wine wholesale license does not create an inference that the statute permits a retailer to possess an interest in such a license. *California Beer Wholesalers Association, Inc.*, (Kirby) v. *Alcoholic Beverage Control Appeals Board (ThriftyMart)*, 5 Cal. 3d 402.

**25507. Wine grower.** The provisions of Section 25506 do not prohibit a licensed wine grower or brandy manufacturer holding an off-sale general license permitted by Section 23362, or any officer, director, or employee of such licensee, from holding

any ownership or interest in any distilled spirits manufacturer's, distilled spirits manufacturer's agent's, rectifier's, or distilled spirits wholesaler's license, business, or property.

25508. **Grocery cooperatives.** Any person who held an interest in, or was a member of, a cooperative wholesale grocery company on May 1, 1947, which cooperative holds a distilled spirits wholesaler's license, may hold and renew his off-sale general license and may acquire an off-sale general license or licenses for bona fide retail grocery store or stores. Any person who is admitted to membership, or acquires an interest, in such a cooperative after May 1, 1947, may hold or acquire off-sale general licenses and shall operate a bona fide retail grocery store at each location at which he holds or acquires an off-sale general license. Any cooperative wholesale grocery company which held a distilled spirits wholesale license on May 1, 1937, may hold and renew the license, notwithstanding its members or some of them hold off-sale general licenses pursuant to this section.

25509. **Credit regulations.** (a) A distilled spirits manufacturer, a brandy manufacturer, a beer manufacturer, a winegrower, a wine blender, a distilled spirits rectifier, a wine rectifier, a distilled spirits wholesaler or a beer and wine wholesaler who sold and delivered beer, wine, or distilled spirits to a retailer and who did not receive payment for such beer, wine, or distilled spirits by the expiration of the 42nd day from date of delivery shall charge the retailer 1 percent of the unpaid balance for such beer, wine, and distilled spirits on the 43rd day from date of delivery and an additional 1 percent for each 30 days thereafter.

(b) A distilled spirits manufacturer, a brandy manufacturer, a beer manufacturer, a winegrower, a wine blender, distilled spirits rectifier, a wine rectifier, distilled spirits wholesaler or beer and wine wholesaler who sold and delivered beer, wine, or distilled spirits to a retailer and who did not receive payment in full by the expiration of the 30th day from date of delivery or who has not received payment of the 1 percent charge at the expiration of the 30th day from the day the charge became due shall thereafter sell beer, wine, or distilled spirits to said retailer either for cash or by receiving payment in advance of delivery until such time as all payments are received for the beer, wine, or distilled spirits sold and delivered to the said retailer more than 30 days previously.

(c) The 42-day period and the 30-day period provided for in this section shall commence with the day immediately following the date of invoice and shall include all successive days including Sundays and holidays to and including the 42nd or 30th day as the case may be. When the 42nd day from date of invoice or the expiration of each additional 30-day period falls on Saturday, Sunday or legal holiday, the next business day shall be deemed to be the expiration day.

(d) All moneys received from a retailer in payment for any beer, wine, or distilled spirits sold and delivered to him shall be first applied to the payment of the oldest balance on beer, wine, or distilled spirits. All checks received for such payments shall be deposited for collection not later than the second business day following receipt of said check. A promissory note, postdated check or check dishonored on presentation shall not be deemed payment.

(e) In enacting the act that amends this section by adding this subdivision, the Legislature finds that it is necessary and proper to remove the retailer from financial or business obligations to suppliers or wholesalers by the extension of credit beyond the terms contained in this section. The Legislature further finds that the exception established by this section to the general prohibition against tied interests shall be limited

to its express terms so as not to undermine the general prohibition, and intends that this section shall be construed accordingly.

**History.**—Stats. 1963, Ch. 1891, in effect September 20, 1963. Stats. 1967, Ch. 860, in effect November 8, 1967, included brandy manufacturer, winegrower, wine blender, and wine rectifier. Stats. 1969, Ch. 549, in effect November 10, 1969, included beer manufacturer. Stats. 2006, Ch. 910, AB 3065, in effect January 1, 2007, added subd. (e) providing legislative findings in effort to protect and preserve the tied-house exception on credit regulations.

**25510. Furnishing tapping equipment.** Notwithstanding any other provision of this chapter, a manufacturer may furnish to a licensed wholesaler, and a licensed wholesaler or manufacturer may furnish to an on-sale licensee, only the following specified items of alcoholic beverage tapping equipment: kegs, tapping heads, air lines, alcoholic beverage lines, clamps, washers, coupling devices, rods, vents, valves, keg spacers, and filters for an initial installation in a new on-sale licensed account or for a changeover of equipment from one tapping system to another. A supplier may service, repair, and replace the above-specified items of alcoholic beverage tapping equipment as necessary. This section shall not permit a supplier to furnish or repair alcoholic beverage equipment not specified in this section to an on-sale licensee. Alcoholic beverage tapping equipment furnished by a supplier shall remain the property of the supplier.

**History.**—Added by Stats. 1963, Ch. 1001, in effect September 20, 1963. Stats. 1998, Ch. 277, in effect January 1, 1999, authorized tapping equipment for all alcoholic beverages. Stats. 2004, Ch. 604, AB 2878, filters were added to the authorized list of tapping equipment.

**Cross reference.**—Rule 131.

**25511. Beer equipment, supplies; disasters.** Notwithstanding any other provision of this division, a beer manufacturer or beer wholesaler, or any officer, director, or agent of any of those persons may furnish, give, rent, lend, or sell, directly or indirectly, any equipment, fixtures, or supplies, other than alcoholic beverages, to a retailer whose equipment, fixtures, or supplies were lost or damaged as a result of a natural disaster and whose premises are located in an area proclaimed to be in a state of disaster by the Governor.

This section does not apply to transactions which occur three months or more after the Governor proclaims an area to be in a state of disaster.

Nothing in this section is intended to affect or otherwise limit Section 23104.1, 23104.2, or 23104.3.

**History.**—Stats. 1st Ex. Sess. 1964, Ch. 86, in effect May 18, 1964. Stats. 1990, Ch. 425, in effect July 26, 1990, added last 2 sentences. Stats. 2006, Ch. 910, AB 3065, extended authorization period from six weeks to three months.

**25512. Exceptions: Small beer manufacturer licenses.** (a) Notwithstanding any other provision of this division, any licensee or officer, director, employee, or agent of a licensee that holds no more than eight on-sale licenses may also hold not more than 16.67 percent of the stock of a corporation that holds beer manufacturer licenses issued pursuant to paragraph (1) of subdivision (a) of Section 23320 that are located in Sacramento, Placer, Contra Costa, San Joaquin, or Napa County, and may serve on the board of directors and as an officer or employee of that corporate licensed beer manufacturer.

(b) An on-sale licensee specified in subdivision (a) shall purchase no alcoholic beverages for sale in this state other than from a licensed wholesaler or winegrower.

(c) In enacting this section, the Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing

techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied-house interests must be limited to its expressed terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

**History.—Added by Stats. 1993, Ch. 907, in effect January 1, 1994. Renumbered by Stats. 1994, Ch. 1028, in effect January 1, 1995. Stats. 2000, Ch. 979, in effect January 1, 2001, change in identified counties to which exception applies.**

## CHAPTER 16. REGULATORY PROVISIONS

- Article 1. In General. §§ 25600–25621.  
 2. Hours of Sale and Delivery of Alcoholic Beverages. §§ 25630–25633.  
 3. Women and Minors. §§ 25655–25667.

### Article 1. In General

- § 25600. Free goods.  
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 § 25602.1. Civil liability.  
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 § 25609. Substitution of brands.  
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 § 25611. Exterior signs. [Repealed.]  
 § 25611.1. Signs furnished to retailers.  
 § 25611.2. Electronic data services furnished to retailers.  
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 § 25612. Obnoxious signs.  
 § 25612.5. Retail off-sale operating standards.  
 § 25613. Spigot markers.  
 § 25614. Misdemeanor.  
 § 25615. Alcoholic content of beer.  
 § 25616. False returns and records.  
 § 25617. Punishment for misdemeanor.  
 § 25618. Punishment for felony.  
 § 25619. Enforcement by local authorities.  
 § 25620. Public parks.  
 § 25621. Alcohol vaporizing devices.

**25600. Free goods.** (a) (1) No licensee shall, directly or indirectly, give any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage, except as provided by rules which shall be adopted by the department to implement this section or as authorized by this division.

(2) (A) Notwithstanding paragraph (1), for purposes of this section, a refund to, or exchange of products for, a dissatisfied consumer by a licensee authorized to sell to consumers shall not be deemed a premium, gift, or free goods given in connection with the sale or distribution of an alcoholic beverage.

(B) A winegrower may advertise or otherwise offer consumers a guarantee of product satisfaction only in newsletters or other publications of the winegrower or at the winegrower's premises. A winegrower may refund to a dissatisfied consumer the entire purchase price of wine produced by that winegrower and sold to that consumer, regardless of where the wine was purchased.

(b) No rule of the department may permit a licensee to give any premium, gift, or free goods of greater than inconsequential value in connection with the sale or

distribution of beer. With respect to beer, premiums, gifts, or free goods, including advertising specialties that have no significant utilitarian value other than advertising, shall be deemed to have greater than inconsequential value if they cost more than twenty-five cents (\$0.25) per unit, or cost more than fifteen dollars (\$15) in the aggregate for all those items given by a single supplier to a single retail premises per calendar year.

(c) With respect to distilled spirits and wines, a licensee may furnish, give, rent, loan, or sell advertising specialties to a retailer provided those items bear conspicuous advertising required of a sign and the total value of all retailer advertising specialties furnished by a supplier, directly or indirectly, to a retailer do not exceed fifty dollars (\$50) per brand in any one calendar year per retail premises. The value of a retailer advertising specialty is the actual cost of that item to the supplier who initially purchased it, excluding transportation and installation costs. The furnishing or giving of any retailer advertising specialty shall not be conditioned upon the purchase of the suppliers' product. Retail advertising specialties given or furnished free of charge may not be sold by the retail licensee. No rule of the department may impose a dollar limit for consumer advertising specialties furnished by a distilled spirits supplier to a retailer or to the general public of less than five dollars (\$5) per unit original cost to the supplier who purchased it.

**History.**—Stats. 1985, Ch. 803, restructured section; Stats. 1988, Ch. 1080, added monetary limits in second paragraph and added third paragraph. Stats. 1994, Ch. 392, in effect January 1, 1995, added subd. (a)(2). Stats. 1995, Ch. 91, in effect January 1, 1996, made technical, nonsubstantive changes. Stats. 1997, Ch. 544, in effect January 1, 1998, authorized furnishing of distilled spirits consumer advertising specialties costing not more than \$5.00.

**Patronage dividends by cooperative.**—The payment of patronage dividends by a licensed cooperative does not constitute a violation of this law. *Certified Growers of California, Ltd. v. State Board of Equalization*, 100 Cal. App. 2d 289.

**Rebate not free goods.**—Rebate (return of a portion of the purchase price) on alcoholic beverages is not a premium, gift or free goods prohibited by this section. *Gonzales & Co. v. Department of Alcoholic Beverage Control*, 151 C.A. 3d 172, 198 Cal. Rptr. 479.

**Sale or distribution.**—The legislature, by adding the phrase distribution, intended to authorize the Department to enforce its Rule 106 and the inclusive definition of "sale" contained therein. Department has the authority to prohibit the giving of gifts, premiums and free goods in connection with the sale, advertising and merchandising including the comprehensive sales promotion functions of market research, product development and advertising of alcoholic beverages. *Miller Brewing Company v. Department of Alcoholic Beverage Control*, 250 Cal. Rptr. 845.

**25601. Disorderly house.** Every licensee, or agent or employee of a licensee, who keeps, permits to be used, or suffers to be used, in conjunction with a licensed premises, any disorderly house or place in which people abide or to which people resort, to the disturbance of the neighborhood, or in which people abide or to which people resort for purposes which are injurious to the public morals, health, convenience, or safety, is guilty of a misdemeanor.

**Patronage of licensed premises by homosexuals is insufficient to show violation of act.**—Proof of patronage of an on-sale establishment by homosexuals without proof of the commission of illegal or immoral acts is insufficient to show a disorderly house contrary to the provisions of the Alcoholic Beverage Control Act. *Stoumen v. Reilly*, 37 Cal. 2d 713.

**Evidence showing violation and supporting revocation of license.**—Revocation of an on-sale general license for violation of this section is supported by evidence that fights occurred on and about the premises; that intoxicated persons and narcotics users frequented the premises; and that prostitutes were arrested and convicted for solicitation on the premises. To "permit" acts constituting a violation does not involve affirmative action or intent and acts permitted by employees are considered permitted by the licensee. *Swegle v. State Board of Equalization*, 125 Cal. App. 2d 432, 270 Pac. 2d 518.

A revocation for permitting premises to be used as a disorderly house was sustained by evidence that prostitutes solicited acts of prostitution on the premises under circumstances clearly supporting the inference that they were knowingly permitted to do so by the licensees or their employees, that drinks were served to obviously intoxicated persons, and that lewd and lascivious acts were performed there with the knowledge and cooperation of employees. *Rosales v. Department of Alcoholic Beverage Control*, 171 Cal. App. 2d 624; *Benedetti v. Department of Alcoholic Beverage Control*, 187 Cal. App. 2d 213.

**Licensee's responsibility.**—In a disorderly house accusation, evidence that the licensee made affirmative but ineffective efforts to control the situation is not inconsistent with a finding that he "suffered" his premises to be operated in a disorderly fashion, as it appeared that he was unable to keep order among his patrons and did not seek the help of the police department. A licensee has an affirmative duty to maintain properly operated premises. The law demands more than some colorable efforts toward maintenance of lawfully conducted premises; it demands that the business be so conducted that it meets the minimum requirements of decency and morality. *Givens v. Department of Alcoholic Beverage Control*, 176 Cal. App. 2d 529.

**Sufficiency of evidence.**—A liquor license revocation was sustained by evidence that, to the licensee's knowledge, sexual perversities met at the premises and there engaged in sexual perversion without opposition from her and in more than isolated instances. *Kershaw v. Department of Alcoholic Beverage Control*, 155 Cal. App. 2d 544.

Conversations between bartender and agents and between prostitutes and agents were not inadmissible as hearsay since the fact in controversy was whether solicitation took place on the premises, and the words of the bartender and the prostitutes were admissible as original evidence. *Presto v. Alcoholic Beverage Control Appeals Board*, 179 Cal. App. 2d 262.

**Acts of evidencing violations.**—It is sufficient to show that the proscribed acts took place on the licensed premises to invoke the sanction of § 25601, and no proof of knowledge by the licensee or his agent is necessary. Where homosexual activity is of a continuous nature and not merely an accidental or isolated occurrence, it may be concluded that the condition was permitted by the licensee. *Morell v. Department of Alcoholic Beverage Control*, 204 Cal. App. 2d 504.

The record contains substantial evidence that activity proscribed by this section occurred on the premises. Conscious presence of licensee or his employees is not necessary. *Stoumen v. Munro, et al.*, 219 Cal. App. 2d 302.

**Frequent intoxication of patrons as evidence.**—Evidence of the necessity of police surveillance and frequent and regular arrests of intoxicants upon the premises supports a finding that the premises were permitted to be kept and used as a disorderly house. Intoxication of patrons alone is sufficient and it is not necessary that additional improper, illegal or immoral acts be committed. Where evidence shows that the premises are in fact a disorderly house, the conclusion follows that the condition was suffered or permitted by the licensee, and it need not be demonstrated that such conditions were knowingly or affirmatively permitted. *Harris v. Alcoholic Beverage Control Appeals Board (Keene and Richardson)*, 212 Cal. App. 2d 106.

**Vagueness.**—Definition of disorderly house in § 25601 is not vague or uncertain in view of the specific meaning given in the section. *Los Robles Motor Lodge, Inc., v. Department of Alcoholic Beverage Control*, 246 Cal. App. 2d 198.

**Pandering; Responsibility of licensee.**—District Court of Appeal upheld Department in revoking a license under Business and Professions Code Section 25601 (disorderly house) where employees were shown to be involved in pandering on the licensed premises as well as conspiring to operate a house of prostitution, combined with the commission of immoral acts on the premises. Licensee had responsibility to see its employees committed no illegal or immoral acts on premises. *Kirby v. Alcoholic Beverage Control Appeals Board (Normeth, Inc.)*, 25 Cal. App. 3d 331.

**25602. Habitual drunkard; obviously intoxicated person.** (a) Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor.

(b) No person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage pursuant to subdivision (a) of this section shall be civilly liable to any injured person or the estate of such person for injuries inflicted on that person as a result of intoxication by the consumer of such alcoholic beverage.

(c) The Legislature hereby declares that this section shall be interpreted so that the holdings in cases such as *Vesely v. Sager* (5 Cal. 3d 153), *Bernhard v. Harrah's Club* (16 Cal. 3d 313) and *Coulter v. Superior Court* (21 Cal. 3d 144) be abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages rather than the serving of alcoholic beverages as the proximate cause of injuries inflicted upon another by an intoxicated person.

**History.**—Stats. 1978, Ch. 929, in effect January 1, 1979, added subds. (b) and (c).

**Cross reference.**—Penal Code § 397.

**Evidence as to obviousness of intoxication.**—Evidence that the person served walked in an unsteady manner and was unshaven, that his face was flushed and his eyes watery, that at times he slumped over the bar as if asleep, that he would jerk and yell out at no one in particular and, on occasion, would laugh almost hysterically, and that he would spit on the floor and on himself, was sufficient to support a finding that he was obviously intoxicated. *Samaras v. Department of Alcoholic Beverage Control*, 180 Cal. App. 2d 842.

**Evidence of alcoholic content.**—A person who has tasted alcoholic beverages may testify as to the nature of a drink and such testimony is enough to support a finding of the alcoholic content thereof. *Oxman v. Department of Alcoholic Beverage Control*, 153 Cal. App. 2d 740.

**Common knowledge.**—It is common knowledge that the intoxicating effect of alcohol diminishes with the passage of time. *In re Newbern*, 175 Cal. App. 2d 862.

**Civil liability.**—On proof that a tavern keeper violated § 25602, that the violation proximately caused injuries to plaintiff, that the injuries resulted from an occurrence which the statute was designed to prevent, and that plaintiff is within the class of persons for whose protection the statute was enacted, it will be presumed that the tavern keeper, in violating the statute, was negligent. *Vesely v. Sager*, 5 Cal. 3d 153.

**Extent of liability.**—The rule that a seller of alcoholic beverages who makes a sale to an obviously intoxicated person in violation of Section 25602 may be liable to members of the general public suffering personal injuries or property damage as a proximate cause of the sale does not extend protection to the person to whom the liquor was sold. *Sargent v. Goldberg*, 25 Cal. App. 3d 940.

**Contributory negligence.**—The negligent sale of intoxicating liquor to a drinker whose resulting intoxication and negligence lead to an injury to an innocent third party constitutes a cause of action for that person even though drinker's consumption is a contributing cause. If the drinker's negligence is a contributory cause of an injury to the drinker himself, such contributory negligence bars recovery on his behalf. *Carlisle v. Kanaywer*, 24 Cal. App. 3d 587.

**Application of statute eliminating civil liability.**—The 1978 amendment to Business and Professions Code Section 25602, abrogating the judicial rule that a commercial vendor of alcoholic beverages will be held liable for injuries proximately caused by the sale of liquor to an obviously intoxicated customer, operates prospectively from its effective date of January 1, 1979. *Sissle v. Stefanoni*, 88 Cal. App. 3d 633.

**Opinion testimony of nonexpert witness.**—Nonexpert witnesses could offer opinion testimony in proceedings before Department of Alcoholic Beverage Control concerning alleged sale of alcoholic beverages to an obviously intoxicated person, based upon witness' observations as to person's intoxication. *Rice v. Alcoholic Beverage Control Appeals Board (Strassburger)*, 118 Cal. App. 3d 30.

**Intoxicated condition.**—Section 25602 of the Business and Professions Code making it a misdemeanor to sell alcoholic beverages to any "obviously intoxicated person" forbids sale to any such person regardless of substance or combination of substances which brought on such condition. *Rice v. Alcoholic Beverage Control Appeals Board (Strassburger)*, 118 Cal. App. 3d 30.

**Purpose of law.**—Legislature intended to create a broad statutory immunity against civil liability for social hosts furnishing alcoholic beverages. *Bass v. Pratt*, 222 Cal. Rptr. 723, 177 C.A. 3d 124.

**Agreement by licensee to retain keys.**—The establishment of an agreement that a licensee or its bartender, employee would retain the keys of a patron if the patron became intoxicated so that the patron would not drive could establish liability of a licensed restaurant despite the statute. Such an agreement is not a simple bailment [*Knighen v. Sam's Parking Valet*, 253 Cal.Rptr. 365] protected by the section. *Williams v. Saga Enterprises, Inc.*, 225 Cal.App.3d, 274 Cal.Rptr. 901.

**25602.1. Civil liability.** Notwithstanding subdivision (b) of Section 25602, a cause of action may be brought by or on behalf of any person who has suffered injury or death against any person licensed, or required to be licensed, pursuant to Section 23300, or any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave, who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic beverage, and any other person who sells, or causes to be sold, any alcoholic beverage, to any obviously intoxicated minor where the furnishing, sale or giving of that beverage to the minor is the proximate cause of the personal injury or death sustained by that person.

**History.**—Added by Stats. 1978, Ch. 930, in effect January 1, 1979. Stats. 1986, Ch. 284, in effect January 1, 1987, made section apply to persons required to be licensed or selling on federal enclave.

**Minor.**—"Minor" as used in this section refers to persons under the age of 21. *Chalup v. Aspen Mine Co.*, 221 Cal. Rptr. 97, 175 C.A. 3d 1141.

**Single exception.**—The Legislature abolished tort liability against the furnisher of alcoholic beverages except in only one situation, providing alcohol to an obviously intoxicated minor. No other exceptions to this immunity exist. *Strong v. Cabrol*, 37 C.3d 1124, 244 Cal. Rptr. 823.

**25602.2. Injunctive relief.** The director may bring an action to enjoin a violation or the threatened violation of subdivision (a) of Section 25602. Such action may be brought in the county in which the violation occurred or is threatened to occur. Any proceeding brought hereunder shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that it shall be presumed that there is no adequate remedy at law, and that irreparable damage will occur if the continued or threatened violation is not restrained or enjoined.

**History.**—Added by Stats. 1978, Ch. 930, in effect January 1, 1979.

**25602.3. Mandatory suspension.** Notwithstanding any other provision of this division, no licensee may petition the department for an offer in compromise pursuant to Section 23095 for a second or any subsequent violation of subdivision (a) of Section 25602 which occurs within 36 months of the initial violation.

**History.**—Added by Stats. 1978, Ch. 930, in effect January 1, 1979.

**25603. Bringing liquor into jails.** Every person, not authorized by law, who brings into any state prison, city or county jail, city and county jail, or reformatory in this State, or within the grounds belonging to any such institution, any alcoholic beverage is guilty of a felony.

**25604. Bottle clubs.** It is a public nuisance for any person to maintain any club room in which any alcoholic beverage is received or kept, or to which any alcoholic beverage is brought, for consumption on the premises by members of the public or of any club, corporation, or association, unless the person and premises are licensed under this division. It is a public nuisance for any person to keep, maintain, operate or lease any premises for the purpose of providing therein for a consideration a place for the drinking of alcoholic beverages by members of the public or other persons,

unless the person and premises are licensed under this division. As used herein "consideration" includes cover charge, the sale of food, ice, mixers or other liquids used with alcoholic beverage drinks, or the furnishing of glassware or other containers for use in the consumption of alcoholic beverage drinks.

The Attorney General or any district attorney may bring an action in the name of the people to abate the nuisance, and the Attorney General shall, upon request of the department, bring the action.

**History.**—Stats. 1955, Ch. 447, substituted "department" for "board."

**25605. Telephone orders.** No off-sale licensee shall deliver any alcoholic beverages pursuant to orders received for such alcoholic beverage by telephone unless upon delivery the recipient shall be able to furnish proof of age and identity to indicate that he or she is 21 years of age or over.

**History.**—Added by Stats. 1963, Ch. 1410, in effect September 20, 1963.

**25606. Vehicles; unlawful use.** It is unlawful for any person to use any automobile or other vehicle to conceal, convey, carry or transport any alcoholic beverages which are subject to seizure under this division, or any stills or parts thereof subject to seizure under this division, or any materials or supplies capable of and intended for use in the manufacture or production of alcoholic beverages with the design to evade the excise taxes or license fees imposed by this division. This section does not apply to any person who uses an automobile or other vehicle to transport distilled spirits for lawful use in the trades, professions, or industries. Any person violating the provisions of this section is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

The department may seize any automobile or other vehicle used contrary to the provisions of this section.

**History.**—Stats. 1955, Ch. 447, substituted "department" for "board". Stats. 1983, Ch. 1092, in effect September 27, 1983, increased the maximum fine from \$500. to \$1,000.

**Concealment of illicit liquor.**—Either concealment or transportation is sufficient to justify a forfeiture of a vehicle. A finding of concealment is supported by evidence showing that a package which contained bottles of liquor was kept on the back seat of a parked automobile, the doors of which were locked, and from which an unlicensed defendant obtained a bottle of liquor which he sold in an unlicensed cafe. *People v. One 1940 Oldsmobile Coupe*, 80 Cal. App. 2d 372.

**25607. Unlawful possession on licensed premises.** (a) Except as provided in subdivision (b), it is unlawful for any person or licensee to have upon any premises for which a license has been issued any alcoholic beverages other than the alcoholic beverage which the licensee is authorized to sell at the premises under his or her license. It shall be presumed that all alcoholic beverages found or located upon premises for which licenses have been issued belong to the person or persons to whom the licenses were issued. Every person violating the provisions of this section is guilty of a misdemeanor. The department may seize any alcoholic beverages found in violation of this section.

(b) A bona fide public eating place for which an on-sale beer and wine license has been issued may have upon the premises brandy, rum, or liqueurs for use solely for cooking purposes.

**History.**—Stats. 1955, Ch. 447, substituted "department" for "board". Stats. 1984, Ch. 382, added subd. (b).

**25608. Sales on public school grounds.** (a) Every person who possesses, consumes, sells, gives, or delivers to any other person, any alcoholic beverage in or on any public schoolhouse or any of the grounds thereof, is guilty of a misdemeanor.

This section does not, however, make it unlawful for any person to acquire, possess, or use any alcoholic beverage in or on any public schoolhouse, or on any grounds thereof, if any of the following applies:

(1) The alcoholic beverage possessed, consumed, or sold, pursuant to a license obtained under this division, is wine that is produced by a bonded winery owned or operated as part of an instructional program in viticulture and enology.

(2) The alcoholic beverage is acquired, possessed, or used in connection with a course of instruction given at the school and the person has been authorized to acquire, possess, or use it by the governing body or other administrative head of the school.

(3) The public schoolhouse is surplus school property and the grounds thereof are leased to a lessee which is a general law city with a population of less than 50,000, or the public schoolhouse is surplus school property and the grounds thereof are located in an unincorporated area and are leased to a lessee which is a civic organization, and the property is to be used for community center purposes and no public school education is to be conducted thereon by either the lessor or the lessee and the property is not being used by persons under the age of 21 years for recreational purposes at any time during which alcoholic beverages are being sold or consumed on the premises.

(4) The alcoholic beverages are acquired, possessed, or used during events at a college-owned or college-operated veterans stadium with a capacity of over 12,000 people, located in a county with a population of over six million people. As used in this subdivision, "events" mean football games sponsored by a college, other than a public community college, or other events sponsored by noncollege groups.

(5) The alcoholic beverages are acquired, possessed, or used during an event not sponsored by any college at a performing arts facility built on property owned by a community college district and leased to a nonprofit organization which is a public benefit corporation formed under Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code. As used in this subdivision, "performing arts facility" means an auditorium with more than 300 permanent seats.

(6) The alcoholic beverage is wine for sacramental or other religious purposes and is used only during authorized religious services held on or before January 1, 1995.

(7) The alcoholic beverages are acquired, possessed, or used during an event at a community center owned by a community services district and the event is not held at a time when students are attending a public school-sponsored activity at the center.

(8) The alcoholic beverage is wine which is acquired, possessed, or used during an event sponsored by a community college district or an organization operated for the benefit of the community college district where the college district maintains both an instructional program in viticulture on no less than five acres of land owned by the district and an instructional program in enology, which includes sales and marketing.

(9) The alcoholic beverage is acquired, possessed, or used at a professional minor league baseball game conducted at the stadium of a community college located in a county with a population of less than 250,000 inhabitants, and the baseball game is conducted pursuant to a contract between the community college district and a professional sports organization.

(10) The alcoholic beverages are acquired, possessed, or used during events at a college-owned or college-operated stadium or other facility. As used in this subdivision, "events" means fundraisers held to benefit a nonprofit corporation that has obtained a license pursuant to this division for the event. "Events" does not include football games or other athletic contests sponsored by any college or public community college.

This subdivision shall not apply to any public education facility in which any grade from kindergarten to grade 12, inclusive, is schooled.

(11) The alcoholic beverages are possessed, consumed, or sold, pursuant to a license obtained under this division, for an event during the weekend or at other times when pupils are not on the grounds of an overnight retreat facility owned and operated by a county office of education in a county of the 18th class.

(12) The grounds of the public schoolhouse on which the alcoholic beverage is acquired, possessed, used, or consumed is property that has been developed and is used for residential facilities or housing that is offered for rent, lease, or sale exclusively to faculty or staff of a public school or community college.

(13) The grounds of a public schoolhouse on which the alcoholic beverage is acquired, possessed, used, or consumed is property of a community college that is leased, licensed, or otherwise provided for use as a water conservation demonstration garden and community passive recreation resource by a joint powers agency comprised of public agencies, including the community college, and the event at which the alcoholic beverage is acquired, possessed, used, or consumed is conducted pursuant to a written policy adopted by the governing body of the joint powers agency and no public funds are used for the purchase or provision of the alcoholic beverage.

(b) Any person convicted of a violation of this section shall, in addition to the penalty imposed for the misdemeanor, be barred from having or receiving any privilege of the use of public school property which is accorded by Article 2 (commencing with Section 82537) of Chapter 8 of Part 49 of the Education Code.

**History.**—Stats. 1963, Ch. 1557, in effect September 20, 1963, inserted “possesses” in first sentence and all of second sentence; and substituted “Chapter 4 (commencing with Section 16551) of Division 12” for “Chapter 9 of Division 9.” Stats. 1981, Ch. 605, in effect January 1, 1982, recast §. Stats. 1985, Ch. 188, in effect January 1, 1986, recast §. Stats. 1986, Chps. 248 and 1123, in effect January 1, 1988, added subd. (d) and recast. Stats. 1987, Ch. 685, in effect January 1, 1988, added subds. (e) and (f), and recast subd. (d). Stats. 1989, Chps. 112 and 543, in effect January 1, 1990, added subd. (g) and made subd. (d) apply to an auditorium with 300 seats. Stats. 1993, Ch. 238, in effect January 1, 1994, added “community college” and amended subd. (b), (g) and (h). Stats. 1997, Ch. 90, in effect January 21, 1997, added subd. (i). Stats 1998, Ch. 639, in effect January 1, 1999, amended subd. (i), added subd. (j). Stats. 2005, Ch. 203, SB 200, in effect January 1, 2006, amended subds. (a) through (j). Stats. 2006, Ch. 72, SB 1486, added subd. (13) another exception allowing alcoholic beverages on grounds of a public schoolhouse.

**Cross Reference.**—General Law, Stats. 1976, Ch. 398. The state has adopted a general scheme for regulation of criminal aspects of being intoxicated in both public and private places and has preempted the field. *People v. DeYoung*, 228 Cal. App. 2d 331.

**25609. Substitution of brands.** Every person who, in response to an inquiry or request for any brand, type, or character of alcoholic beverages, sells or offers for sale under an on-sale license a different brand, type, or character without first informing the purchaser of the difference is guilty of a misdemeanor.

**25610. Destroying serial numbers.** (a) Any person who erases, removes, obliterates, destroys, or renders illegible in any manner any serial numbers, stamps marks, brands, legends, or other information required by federal or state law to be attached or placed upon any packages or original cases containing alcoholic beverages, before the contents of such packages or cases have been entirely removed, is guilty of a misdemeanor.

(b) Any licensee who possesses any original unopened package or case containing alcoholic beverages on which or from which any serial number required by federal or state law to be attached or placed has been erased, removed, obliterated, destroyed, or rendered illegible in any manner, is guilty of a misdemeanor.

**History.**—Stats. 1963, Ch. 775, in effect September 20, 1963, added subd. (b).

**25611. Exterior signs.** *Repealed by Stats. 1975, Ch. 812.*

**25611.1. Signs furnished to retailers.** Any manufacturer, winegrower, manufacturer's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any of these persons may furnish, give, lend, sell, or rent:

(a) Interior signs, advertising either wine or distilled spirits, for use in on-sale retail premises, each of which shall not exceed 630 square inches in size. This limitation on the size of interior signs, advertising either wine or distilled spirits, shall not be applicable to off-sale retail premises.

(b) Interior signs advertising beer in on-sale or off-sale retail premises which shall bear conspicuous notice of the beer manufacturer's name, brand name, trade name, slogans, markings, trademarks, or other symbols commonly associated with and generally used by the beer manufacturer in identifying the beer manufacturer's name or product, and which may bear graphic or pictorial advertising representations. These signs shall include, but are not limited to, posters, placards, stickers, decals, shelf strips, wall panels, plaques, shadow boxes, mobiles, dummy bottles, bottle toppers, case wrappers, brand-identifying statuettes, tap markers, and table tents. These interior signs advertising beer shall not be deemed of intrinsic or utilitarian value and shall remain the property of the beer wholesaler who authorized and furnished them, unless given or sold to the retail licensee.

(c) Interior signs advertising beer for use in on-sale or off-sale retail premises, which are illuminated or mechanized, and which shall principally bear a conspicuous notice of the beer manufacturer's name, brand name, trade name, slogans, markings, trademarks, or other symbols commonly associated with and generally used by the beer manufacturer in identifying the beer manufacturer's name or product, and which may bear graphic or pictorial advertising representations. These illuminated or mechanized interior signs advertising beer shall not be deemed of intrinsic or utilitarian value and shall remain the property of the beer wholesaler who authorized and furnished them, unless given or sold to the retail licensee.

(d) Signs or other advertising matter for exterior use at any on-sale or off-sale retail premises as may be permitted by this division and rules of the department adopted pursuant thereto.

**History.**—Added by Stats. 1957, Ch. 1987, in effect September 11, 1957. Stats. 1965, Ch. 721, in effect September 17, 1965, removed size restriction on interior on-sale beer signs. Stats. 1968, Ch. 653, in effect November 13, 1968, added second and third sentences in subd. (b). Stats. 1996, Ch. 99, in effect January 1, 1997, permitted beer suppliers to furnish acrylic table tent holders. Stats. 1997, Ch. 26, in effect July 21, 1997, deleted reference to acrylic table tents for beer. Stats. 2001, Ch. 207 in effect January 1, 2002, added language in subds. (b) and (c) to clarify that specified signs remain property of beer wholesaler unless expressly given or sold to the retail licensee.

**No preemption of local health warnings.**—This section (and Section 25612) do not preempt local ordinance requiring health warning signs where alcoholic beverages sold. *California Restaurant Assn. v. City of L.A.*, 237 Cal. Rptr. 415, 192 C.A. 3d 405.

**25611.2. Electronic data services furnished to retailers.** Nothing in this chapter shall prohibit any alcoholic beverage manufacturer, manufacturer's agent, winegrower, or wholesaler from furnishing or giving electronic data services to a licensed retail premises. For purposes of this section, "electronic data services" are limited to the transmission by telephone line, microwave, or other electronic means of data relating to retailer inventory of the manufacturer's, winegrower's, or wholesaler's brands, monitoring of brand sales performance, electronic invoice transmissions, and electronic funds transfer.

**History.**—Added by Stats. 1994, Ch. 171, in effect January 1, 1995. Stats. 1996, Ch. 99, in effect January 1, 1997, permitted beer suppliers to use electronic invoices.

**25611.5. Signs in state parks.** *Repealed by Stats. 1975, Ch. 812.*

25612. **Obnoxious signs.** Signs or other advertising matter used in connection with the licensed premises of any retailer of alcoholic beverages shall not be of any obnoxious, gaudy, blatant, or offensive nature and shall in no manner contrary to the rules of the department obstruct the view of the interior of the premises from the street.

**History.—Stats. 1955, Ch. 447, substituted “department” for “board.”**

25612.5. **Retail off-sale operating standards.** (a) This section shall apply to licensees other than a retail on-sale licensee or on-sale beer and wine licensee who is licensed and operates as a bona fide public eating place, as defined in Section 23038, 23038.1, or 23038.2, or as a hotel, motel, or similar lodging establishment, as defined in subdivision (b) of Section 25503.16; a winegrowers license; a licensed beer manufacturer, as defined in Section 23357; a retail licensee who concurrently holds an off-sale retail beer and wine license and a beer manufacturer’s license for those same or contiguous premises; and a retail on-sale licensee or on-sale beer and wine licensee who is licensed and operates as a bona fide public eating place, as defined in Section 23038, 23038.1, or 23038.2, or as a hotel, motel, or similar lodging establishment, as defined in subdivision (b) of Section 25503.16, a licensed beer manufacturer, as defined in Section 23357, or a winegrowers license, who sells off-sale beer and wine under the on-sale license on those same or contiguous premises.

(b) The Legislature finds and declares that it is in the interest of the public health, safety, and welfare to adopt operating standards as set forth in this section for specified retail premises licensed by the department. The standards set forth in this section are state standards that do not preclude the adoption and implementation of more stringent local regulations that are otherwise authorized by law.

(c) Other than as provided in subdivision (a), each retail licensee shall comply with all of the following:

(1) A prominent, permanent sign or signs stating “NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES” shall be posted in a place that is clearly visible to patrons of the licensee. The size, format, form, placement, and languages of the sign or signs shall be determined by the department. This paragraph shall apply to a licensee only upon written notice to the licensee from the department. The department shall issue this written notice only upon a request, from the local law enforcement agency in whose jurisdiction the premises are located, that is supported by substantial evidence that there is loitering adjacent to the premises.

(2) A prominent, permanent sign or signs stating “NO OPEN ALCOHOLIC BEVERAGE CONTAINERS ARE ALLOWED ON THESE PREMISES” shall be posted in a place that is clearly visible to patrons of the licensee. The size, format, form, placement, and languages of the sign or signs shall be determined by the department. This paragraph shall apply to a licensee only upon written notice to the licensee from the department. The department shall issue this written notice only upon a request, from the local law enforcement agency in whose jurisdiction the premises are located, that is supported by substantial evidence that there is drinking in public adjacent to the premises.

(3) No alcoholic beverages shall be consumed on the premises of an off-sale retail establishment, and no alcoholic beverages shall be consumed outside the edifice of an on-sale retail establishment.

(4) The exterior of the premises, including adjacent public sidewalks and all parking lots under the control of the licensee, shall be illuminated during all hours of darkness during which the premises are open for business in a manner so that persons standing in those areas at night are identifiable by law enforcement personnel. However, the

required illumination shall be placed so as to minimize interference with the quiet enjoyment of nearby residents of their property.

(5) Litter shall be removed daily from the premises, including adjacent public sidewalks and all parking lots under the control of the licensee. These areas shall be swept or cleaned, either mechanically or manually, on a weekly basis to control debris.

(6) Graffiti shall be removed from the premises and all parking lots under the control of the licensee within 72 hours of application. If the graffiti occurs on a Friday or weekend day, or on a holiday, the licensee shall remove the graffiti 72 hours following the beginning of the next weekday.

(7) No more than 33 percent of the square footage of the windows and clear doors of an off-sale premises shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. However, this latter requirement shall not apply to premises where there are no windows, or where existing windows are located at a height that precludes a view of the interior of the premises to a person standing outside the premises.

(8) Upon request of the local law enforcement agency in whose jurisdiction the licensed premises are located or at the discretion of the department, each public telephone located on off-sale premises (or located in an adjacent area under the control of the off-sale licensee) shall be equipped with devices or mechanisms that prevent persons from calling into that public telephone.

(9) Every licensed retailer who sells or rents video recordings of harmful matter, as defined by Section 313 of the Penal Code, shall create an area within his or her business establishment for the placement of video recordings of harmful matter and for any material that advertises the sale or rental of these video recordings. This area shall be labeled "adults only." The licensed retailer shall make reasonable efforts to arrange the video recordings in this area in such a way that minors may not readily access the video recordings or view the video box covers. The failure to create and label the "adults only" area is an infraction punishable by a fine of not more than one hundred dollars (\$100). The failure to place a video recording or advertisement, regardless of its content, in this area shall not constitute an infraction.

(10) A copy of the applicable operating standards shall be available during normal business hours for viewing by the general public.

*History.—Added by Stats. 1994, Ch. 629, in effect January 1, 1995. Stats. 1995, Ch. 743, in effect October 10, 1995, added reference to Sections 23038.1 and 23038.2 in subd. (a). Stats. 1999, Ch. 787, in effect January 1, 2000, require graffiti to be removed within 72 hours and to require "adults only" sign in area where videos of harmful matter are held.*

**25613. Spigot markers.** Every holder of an on-sale retail license who gives, sells, or otherwise dispenses any draught beer shall, upon the faucet, spigot, or outlet from which the beer is drawn, attach and keep posted a clear and legible notice, placard, or marker which shall in the English language indicate and declare the name or brand adopted by the manufacturer of the draught beer so given, sold, or dispensed by the licensee. If the faucet, spigot, or other drawing device is in a location not within the room of the place of service and consumption of the beer, there shall also be kept posted a similar notice, placard, or marker in the place of service and consumption of the beer which shall truthfully state and indicate only the kinds and brands of draught beer actually on sale in the premises of the on-sale licensee.

*History.—Stats. 1965, Ch. 78, in effect September 17, 1965, deleted second sentence.*

25614. **Misdemeanor.** Any person who violates any of the provisions of Sections 25611 to 25613, inclusive, or substitutes another or different brand of draught beer from that indicated by any of the required notices, placards, or markers, or substitutes one brand of beer for another, or misrepresents the brand or kind of beer served to a consumer is guilty of a misdemeanor.

25615. **Alcoholic content of beer.** (a) Any person who sells or otherwise disposes of, except for export, any draught or bottled beer containing more than 5.7 percent of alcohol by volume is guilty of a misdemeanor. This section shall not apply to the sale of ale, porter, brown, malt liquor, and stout in bottles bearing labels properly describing the contents or to draught ale, porter, brown, malt liquor, and stout, served from spigots bearing a notice properly describing the contents under any licenses, other than on-sale beer licenses.

(b) This section shall remain in effect only until July 1, 1997, and as of that date is repealed.

**History.**—Stats. 1955, Ch. 158, in effect September 7, 1955, substituted “4 percent” for “3 and two-tenths percent.” Stats. 1965, Ch. 78, in effect September 17, 1965, inserted “malt liquor.” Stats. 1978, Ch. 971, in effect January 1, 1979, authorized sale from spigots bearing notice of contents. Stats. 1996, Ch. 900, in effect January 1, 1997, until June 30, 1997, amended to permit malt beverages of up to 5.7% alcohol by volume to be labeled “beer”; repealed effective July 1, 1997.

25616. **False returns and records.** Any person who knowingly or wilfully files a false license fee report with the department, and any person who refuses to permit the department or any of its representatives to make any inspection or examination for which provision is made in this division, or who fails to keep books of account as prescribed by the department, or who fails to preserve such books for the inspection of the department for such time as the department deems necessary, or who alters, cancels, or obliterates entries in such books of account for the purpose of falsifying the records of sales of alcoholic beverages made under this division is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment.

**History.**—Stats. 1955, Ch. 1842, in effect September 7, 1955, deleted “a false tax return or”; and substituted “department” for “board.”

25617. **Punishment for misdemeanor.** Every person convicted for a violation of any of the provisions of this division for which another penalty or punishment is not specifically provided for in this division is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

**History.**—Stats. 1983, Ch. 1092, in effect September 27, 1983, increased the maximum fine from \$500 to \$1,000.

25618. **Punishment for felony.** Every person convicted of a felony for a violation of any of the provisions of this division for which another punishment is not specifically provided for in this division shall be punished by a fine of not more than ten thousand dollars (\$10,000) or by imprisonment in the state penitentiary for not less than one year nor more than five years, or by both such fine and imprisonment.

**History.**—Stats. 1983, Ch. 1092, in effect September 27, 1983, increased the maximum fine from \$5,000 to \$10,000.

25619. **Enforcement by local authorities.** Every peace officer and every district attorney in this State shall enforce the provisions of this division and shall inform against and diligently prosecute persons whom they have reasonable cause to believe offenders against the provisions of this division. Every such officer refusing or neglecting to do so is guilty of a misdemeanor.

25620. **Public parks.** (a) Any person possessing any can, bottle, or other receptacle containing any alcoholic beverage that has been opened, or a seal broken, or the contents of which have been partially removed, in any city, county, or city and county owned park or other city, county, or city and county owned public place, or any recreation and park district, or any regional park or open-space district shall be guilty of an infraction if the city, county, or city and county has enacted an ordinance that prohibits the possession of those containers in those areas or the consumption of alcoholic beverages in those areas.

(b) This section does not apply where the possession is within premises located in a park or other public place for which a license has been issued pursuant to this division.

(c) This section does not apply when an individual is in possession of an alcoholic beverage container for the purpose of recycling or other related activity.

**History.**—Added by Stats. 1980, Ch. 255, in effect June 27, 1980. Stats. 2000, Ch. 381, in effect January 1, 2001, added “the possession of those containers in those areas or”; added subd. (c).

25621. **Alcohol vaporizing devices.** (a) No person shall purchase, offer for sale, or use any vaporized form of alcohol produced by an alcohol vaporizing device.

(b) For purposes of this section, “alcohol vaporizing device” means any device, machine, or process that mixes spirits, liquor, or other alcohol product with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.

(c) (1) Any person who sells or offers for sale any vaporized form of alcohol produced by an alcohol vaporizing device is guilty of a misdemeanor that shall be punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than six months, or by both.

(2) Any person who purchases or uses any vaporized form of alcohol produced by an alcohol vaporizing device is subject to a fine of two hundred fifty dollars (\$250).

(d) Any person who possesses, sells, or offers for sale any alcohol vaporizing device shall be guilty of a misdemeanor.

**History.**—Added by Stats. 2006, Ch. 29, AB 273, in effect January 1, 2007.

## Article 2. Hours of Sale and Delivery of Alcoholic Beverages

§ 25630.	Election days. [Repealed.]
§ 25631.	Retail hours of sale.
§ 25632.	Permitting consumption during restricted hours.
§ 25633.	Wholesale deliveries.

25630. **Election days.** *Repealed by Stats. 1969, Ch. 614.*

25631. **Retail hours of sale.** Any on- or off-sale licensee, or agent or employee of such licensee, who sells, gives, or delivers to any persons any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of 2 o’clock a.m. and 6 o’clock a.m. of the same day, is guilty of a misdemeanor.

For the purposes of this section, on the day that a time change occurs from Pacific Standard time to Pacific Daylight time, or back again to Pacific Standard time, “2 o’clock a.m.” means two hours after 12 o’clock p.m. of the day preceding the day such change occurs.

**History.**—Stats. 1953, Ch. 1331, in effect September 9, 1953, added “or agent or employee of such licensee.” Stats. 1957, Ch. 569, in effect September 11, 1957, added the second paragraph. Stats. 1978, Ch. 420, in effect January 1, 1979, included any person who knowingly purchases alcoholic beverages.

**Cross reference.**—Penal Code Section 398.

**Ignorance of correct time no excuse.**—The fact that an interruption of electricity caused the clock in an on-sale premises to run late affords no defense where sale in fact occurred during restricted hours. *People v. Friedman*, App. Dept., Los Angeles Superior Court, C. R. A. 3098, Jan. 7, 1957.

**Sale without license unlawful during restricted hours.**—The fact that a person is not licensed to sell alcoholic beverages does not permit him to sell alcoholic beverages during hours when it is unlawful for a licensee to make such sale. *People v. Minter*, 73 Cal. App. 2d Supp. 994.

**25632. Permitting consumption during restricted hours.** Any retail licensee, or agent or employee of such licensee, who permits any alcoholic beverage to be consumed by any person on the licensee's licensed premises during any hours in which it is unlawful to sell, give, or deliver any alcoholic beverage for consumption on the premises is guilty of a misdemeanor.

**Cross reference.**—Atty. Gen. Op. No. 65/152, 9-14-65.

**25633. Wholesale deliveries.** Except as otherwise provided in this section, no person licensed as a manufacturer, winegrower, distilled spirits manufacturer's agent, rectifier, or wholesaler of any alcoholic beverage shall deliver or cause to be delivered any alcoholic beverage to or for any person holding an on-sale or off-sale license on Sunday or except between the hours of 3 a.m. and 8 p.m. of any day other than Sunday. Any alcoholic beverage may be delivered at the platform of the manufacturing, producing, or distributing plant at any time. Nothing contained in this section prohibits the transportation or the carriage and delivery in transit at any time of any alcoholic beverage between the premises of a manufacturer, winegrower, wholesaler, distiller, importer, or any of them. Every person violating the provisions of this section is guilty of a misdemeanor.

**History.**—Stats. 1953, Ch. 1490, in effect September 9, 1953, removed prohibition against delivery of distilled spirits at wholesale during election hours. Stats. 1987, Ch. 509, in effect January 1, 1988, changed delivery hour from 6 a.m. to 4 a.m. Amended by Stats. 1996, Ch. 334, in effect August 8, 1996, changed delivery hour from 4 a.m. to 3 a.m.

**Application.**—Delivery to a temporary beer licensee on Sunday is prohibited by this section. 21 Ops. Atty. Gen. 87, 53/6 3-4-53.

### Article 3. Women and Minors

- § 25655. Females dispensing beer and wine. [Repealed.]
- § 25656. Female bartenders. [Repealed.]
- § 25657. Person soliciting drinks.
- § 25658. Sales to minors.
- § 25658.1. Mandatory suspension: sale to minor.
- § 25658.4. Retail off-sale clerk acknowledgment.
- § 25658.5. Attempt to purchase by minor.
- § 25659. Right to refuse service to minors.
- § 25659.5. Beer keg registration.
- § 25660. Documentary evidence of age and identity.
- § 25660.5. Furnishing identification.
- § 25661. Minor presenting false evidence of age.
- § 25662. Possession by minors.
- § 25663. Employment of minors.
- § 25663.5. Minor musicians.
- § 25664. Advertising encouraging minors to drink.
- § 25665. Minors in public premises.
- § 25666. Minors at hearings.
- § 25667. Service by minors.

**25655. Females dispensing beer and wine.** *Repealed by Stats. 1976, Ch. 1171.*

**25656. Female bartenders.** *Repealed by Stats. 1971, Ch. 152.*

**25657. Person soliciting drinks.** It is unlawful:

(a) For any person to employ, upon any licensed on-sale premises, any person for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, or to pay any such person a percentage or commission on the sale of alcoholic beverages for procuring or encouraging the purchase or sale of alcoholic beverages on such premises.

(b) In any place of business where alcoholic beverages are sold to be consumed upon the premises, to employ or knowingly permit anyone to loiter in or about said premises for the purpose of begging or soliciting any patron or customer of, or visitor in, such premises to purchase any alcoholic beverages for the one begging or soliciting.

Every person who violates the provisions of this section is guilty of a misdemeanor.

**History.**—Stats. 1953, Ch. 1591, in effect September 9, 1953, added subd. (b) and provisions concerning loitering in subd. (a). Stats. 1971, Ch. 151, in effect March 4, 1972, substituted “person” for “hostess or entertainer.”

**Cross references.**—Penal Code § 303; 23 Ops. Atty. Gen. 199, 53/278 5-19-54; Rule 143; § 24200.5.

See *Chosick v. Reilly* (1954), 125 Cal. App. 2d 334, 270 Pac. 2d 547.

*Hobson v. Reilly* (1955), 132 Cal. App. 2d 275, 281 Pac. 2d 377.

*Cornell v. Reilly* (1954) 127 Cal. App. 2d 178, 273 Pac. 2d 572.

**Construction.**—This section and Penal Code Section 303 prohibit only direct solicitation of drinks and do not prohibit purchase of drinks by patrons while watching entertainment or when asked by a waitress if they desire service. *Cooper v. State Board of Equalization*, 137 Cal. App. 2d 672, 290 Pac. 2d 914.

The term “loiter” as used in this section means “to linger idly by the way, to idle,” “to loaf,” or “to idle.” *Wright v. Munro*, 144 Cal. App. 2d 843, 301 Pac. 2d 475.

This section and Penal Code Section 303 are not void for want of certainty, and are within the power of the Legislature to enact. *Cooper v. State Board of Equalization*, 137 Cal. App. 2d 672, 290 Pac. 2d 914.

An accusation charging that the licensee employed a female or permitted her to loiter is sufficient to enable him to prepare his defense. *Wright v. Munro*, 144 Cal. App. 2d 843.

Evidence that a female asked a male patron, “Do you want a drinking companion” supports a finding that she “solicited” or “begged” a drink. *Wright v. Munro*, 144, Cal. App. 2d 843, 301 Pac. 2d 475.

The section is not unconstitutional for vagueness, the word “loiter” and “soliciting” being clear and certain in meaning. *Wright v. Munro*, 144 Cal. App. 2d 843, 301 Pac. 2d 475.

**Solicitation and loitering.**—Consideration of soliciting and loitering as set out in Rule 143 and § 303(a) of Penal Code. Case also distinguishes between hearsay and solicitation of drinks or the verbal acts which constitute an offense. *Greenblatt v. Munro*, 161 Cal. App. 2d 596, 326 Pac. 2d 929.

A finding that the licensee violated § 25657(a) was supported by substantial evidence where the record showed that an agent was solicited to purchase a drink by a female in the immediate presence of the bartender and did receive two drinks from the bartender which were paid for by the agent. *Greenblatt v. Martin*, 189 Cal. App. 2d 787; *Garcia v. Martin*, 192 Cal. App. 2d 786.

**Employed to loiter.**—Where a woman is employed as a waitress and works in that capacity, any solicitation of drinks by her is not a violation of § 25657 because she was not “employed to loiter for the purpose of soliciting.” *Garcia v. Munro*, 161 Cal. App. 2d 425.

**Liability for acts of bartender.**—A licensee is responsible for his bartender’s employment of girls to solicit drinks from patrons. *Cooper v. State Board of Equalization*, 137 Cal. App. 2d 672, 290 Pac. 2d 914.

**Liability not dependent on knowledge.**—Actual knowledge by a licensee is not necessary in order to revoke a license for permitting the solicitation of others to buy drinks under any sort of profit-sharing agreement. *Karides v. Department of Alcoholic Beverage Control*, 164 Cal App. 2d 549.

**Department rule.**—The enactment of this section, Section 24200.5, and Penal Code Section 303 did not deprive the department of authority to adopt a rule against on-sale licensees permitting female employees from soliciting or accepting drinks for their own consumption. *Mercurio v. Department of Alcoholic Beverage Control*, 144 Cal. App. 2d 626, 301 Pac. 2d 474.

**25658. Sales to minors.** (a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any person who violates subdivision (a) by purchasing any alcoholic beverage for, or furnishing, giving, or giving away any alcoholic beverage to, a person under the age of 21 years, and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor.

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

(e) (1) Except as otherwise provided in paragraph (2) or (3), any person who violates this section shall be punished by a fine of two hundred fifty dollars (\$250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community

service as determined by the court. A second or subsequent violation of subdivision (b) shall be punished by a fine of not more than five hundred dollars (\$500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community service as determined by the court. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

(2) Except as provided in paragraph (3), any person who violates subdivision (a) by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of one thousand dollars (\$1,000), no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.

(3) Any person who violates subdivision (c) shall be punished by imprisonment in a county jail for a minimum term of six months not to exceed one year, by a fine not exceeding one thousand dollars (\$1,000), or by both imprisonment and fine.

(f) Persons under the age of 21 years may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, who sell alcoholic beverages to minors. Notwithstanding subdivision (b), any person under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase an alcoholic beverage. Guidelines with respect to the use of persons under the age of 21 years as decoys shall be adopted and published by the department in accordance with the rulemaking portion of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy displays to the seller of alcoholic beverages the appearance of a person under the age of 21 years. This subdivision shall not be construed to prevent the department from taking disciplinary action against a licensee who sells alcoholic beverages to a minor decoy prior to the department's final adoption of regulatory guidelines. After the completion of every minor decoy program performed under this subdivision, the law enforcement agency using the decoy shall notify licensees within 72 hours of the results of the program. When the use of a minor decoy results in the issuance of a citation, the notification required shall be given within 72 hours of the issuance of the citation. A law enforcement agency may comply with this requirement by leaving a written notice at the licensed premises addressed to the licensee, or by mailing a notice addressed to the licensee.

(g) The penalties imposed by this section do not preclude prosecution under any other provision of law, including, but not limited to, Section 272 of the Penal Code.

**History.**—Stats. 1957, Ch. 2152, in effect September 11, 1957, added \$100 fine to subd. (b), added subd. (c). Stats. 1959, Ch. 866, in effect September 18, 1959, added "no part of which shall be suspended" in subd. (b). Stats. 1984, Ch. 403, in effect January 1, 1985, added reference to community service penalties. Stats. 1990, Ch. 695, in effect January 1, 1991, recast and added subd. (d) to make penalties uniform. Stats. 1994, Ch. 1208, in effect September 30, 1994, recast and added subd. (e). Stats. 1997, Ch. 357, in effect January 1, 1998, increased penalty for "furnishing" to minor. Stats. 1998, Chps. 441 and 565, in effect January 1, 1999, amended subds. (a), (c), and (f). Stats. 1999, Ch. 787, in effect January 1, 2000, required law enforcement agencies using minor decoys to notify licensees of any violation within 72 hours of issuance of citation. Stats. 2004, Ch. 291, AB 2037, subd. (c) added "furnishing, giving or giving away" and enhanced penalties for such activities to include imprisonment.

**Decoys.**—Law enforcement use of minor decoys not unconstitutional or entrapment. *Proviso*, 28 Cal Rptr. 2d 638.

**Active duty to prevent consumption by minors.**—A licensee has an active duty to prevent minors violating subsection (b) on his licensed premises, and a failure to prevent violation is a “permitting” of it within the meaning of subd. (b) of Section 24200. *Mercurio v. Department of Alcoholic Beverage Control*, 144 Cal. App. 2d 626.

**Discretion.**—The department did not abuse its discretion in suspending an alcoholic beverage license for 15 days for violation of this section, notwithstanding the fact the minor was 20 years and 4 months of age at the time of the sale, the sale was not deliberate and the offense was the licensee’s first. *Griswold v. Department of Alcoholic Beverage Control*, 141 Cal. App. 2d 807, 297 Pac. 2d 762.

**Proof of age.**—A person’s age may be proved by his own testimony. *People v. Ratz*, 115 Cal. 132.

**Licensee to act as reasonable and prudent man.**—Although a licensee in making sales of intoxicating liquors is not required to act at his peril, he must exercise the caution which would be shown by a reasonable and prudent man in the same circumstances *5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control*, 155 Cal. App. 2d 748.

**Sufficiency of evidence.**—It is no defense that an alcoholic beverage was served through a misunderstanding to a minor who had ordered a nonalcoholic drink. *Nickola v. Munro*, 162 Cal. App. 2d 449.

**Evidence of alcoholic content.**—A person who has tasted alcoholic beverages may testify as to the nature of a drink and such testimony is enough to support a finding of the alcoholic content thereof. *Oxman v. Department of Alcoholic Beverage Control*, 153 Cal. App. 2d 740.

**Civil cause of action.**—In a personal injury action resulting from an automobile accident a complaint which stated that an employer’s furnishing of alcoholic beverages to a minor employee at a Christmas party in violation of Section 25658 of the Business and Professions Code, when the employer knew that the employee was about to drive an automobile on public highways, was sufficient to state a cause of action. *Brockett v. Kitchen Boyd Motor Co.*, 24 Cal. App. 3d 87.

**Intent, Mistake of Fact.**—Knowledge is not an element required to prove violation of either subsection (a) or (c). Mistake of fact (honest and reasonable belief that person as 21 years of age or older) may be asserted as an affirmative defense to a violation of subdivision (c). *In Re Jennings*, (2004) 34 Cal.4th 254.

**25658.1. Mandatory suspension: sale to minor.** (a) Notwithstanding any other provision of this division, no licensee may petition the department for an offer in compromise pursuant to Section 23095 for a third or any subsequent violation of Section 25658 that occurs within 36 months of the initial violation.

(b) Notwithstanding Section 24200, the department may revoke a license for a third violation of Section 25658 that occurs within any 36-month period. This provision shall not be construed to limit the department’s authority and discretion to revoke a license prior to a third violation when the circumstances warrant that penalty.

(c) For purposes of this section, no violation may be considered for purposes of determination of the penalty until it has become final.

**History.**—Added by Stats. 1994, Ch. 627, in effect January 1, 1995. Stats. 1999, Ch. 786, in effect January 1, 2000, amended to clarify constitutional mandate that prior disciplinary violations may not be considered by penalty purposes until final. Stats. 2004, Ch. 227, Urgency bill in effect August 16, 2004, allowed a licensee to petition the department on a second violation of Section 25658, but prohibits such a petition on a third violation.

**25658.2. Minors consuming at home: penalties for parents or guardians.** (a) A parent or legal guardian who knowingly permits his or her child, or a person in the company of the child, or both, who are under the age of 18 years, to consume an alcoholic beverage or use a controlled substance at the home of the parent or legal guardian is guilty of misdemeanor if all of the following occur:

(1) As the result of the consumption of an alcoholic beverage or use of a controlled substance at the home of the parent or legal guardian, the child or other underage person has a blood-alcohol concentration of 0.05 percent or greater, as measured by a chemical test, or is under the influence of a controlled substance.

(2) The parent knowingly permits that child or other underage person, after leaving the parent’s or legal guardian’s home, to drive a vehicle.

(3) That child or underage person is found to have caused a traffic collision while driving the vehicle.

(b) A person who violates subdivision (a) shall be punished by imprisonment in a county jail for a term not to exceed one year, by a fine not exceeding one thousand dollars (\$1,000), or by both imprisonment and fine.

**History.**—Added by Stats. 2003, Ch. 625, AB 1301, in effect January 1, 2004.

**25658.4. Retail off-sale clerk acknowledgment.** (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) Nonprofit organizations or licensees may obtain videotapes and other training materials from the department on the Licensee Education on Alcohol and Drugs (LEAD) program. The videotapes and training materials may be updated periodically and may be provided in English and other languages, and when made available by the department, shall be provided at cost.

(e) 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.

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

*History.—Added by Stats. 1990, Ch. 695, in effect January 1, 1991. Stats. 1991, Ch. 726, in effect January 1, 1992, permitted multiple outlet retailers to maintain all acknowledgments at a single, designated location subject to providing it to the department within 10 days. Stats. 1997, Ch. 357 and 774, in effect January 1, 1998, amended to require retail clerk acknowledgement to contain information on beer keg registration and retail licensees posting signs regarding penalties imposed for violating section 25658. Stats. 1999, Ch. 786, in effect January 1, 2000, amended to permit department training material and videotapes to be provided to non-profit organizations and licensees.*

**25658.5. Attempt to purchase by minor.** Any person under the age of 21 years who attempts to purchase any alcoholic beverage from a licensee, or the licensee's agent or employee, is guilty of an infraction and shall be punished by a fine of not more than one hundred dollars (\$100), or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed or is not attending school, or a combination of fine and community service as determined by the court. A second or subsequent violation of this section shall be punished by a fine of not more than two hundred fifty dollars (\$250), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed or is not attending school, or a combination of fine and community service, as the court deems just. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

*History.—Added by Stats. 1987, Ch. 583, in effect January 1, 1988. Stats. 1999, Ch. 787, in effect January 1, 2000, enhanced penalties for second or subsequent violations involving a minor attempting to purchase alcoholic beverages.*

**25659. Right to refuse service to minors.** For the purpose of preventing the violation of Section 25658, any licensee, or his or her agent or employee, may refuse to sell or serve alcoholic beverages to any person who is unable to produce adequate written evidence that he or she is over the age of 21 years. A licensee, or his or her agent or employee, may seize any identification presented by a person that shows the person to be under the age of 21 years or that is false, so long as a receipt is given to the person from whom the identification is seized and the seized identification is given within 24 hours of seizure to the local law enforcement agency that has jurisdiction over the licensed premises. A licensee, his or her agent or employees decision to not seize a license shall not create any civil or criminal liability.

**History.**—Added by Stats 1953, Ch. 152. Stats. 1998, Ch. 565, in effect January 1, 1999, authorized seizure of identification.

**Cross reference.**—Controlled access alcoholic beverage cabinets, Section 23355.2.

**25659.5. Beer keg registration.** (a) Retail licensees selling keg beer for consumption off licensed premises shall place an identification tag on all kegs of beer at the time of sale and shall require the signing of a receipt for the keg of beer by the purchaser in order to allow kegs to be traced if the contents are used in violation of this article. The keg identification shall be in the form of a numbered label prescribed and supplied by the department that identifies the seller. The receipt shall be on a form prescribed and supplied by the department and shall include the name and address of the purchaser and the purchaser's driver's license number or equivalent form of identification number. A retailer shall not return any deposit upon the return of any keg that does not have the identification label required pursuant to subdivision (a).

(b) Any licensee selling keg beer for off premise consumption who fails to require the signing of a receipt at the time of sale and fails to place a numbered identification label on the keg shall be subject to disciplinary action pursuant to this division. The licensee shall retain a copy of the receipt, which shall be retained on the licensed premise for a period of six months. The receipt records shall be available for inspection and copying by the department or other authorized law enforcement agency.

(c) Possession of a keg containing beer with knowledge that the keg is not identified as required by subdivision (a) is a misdemeanor.

(d) Any purchaser of keg beer who knowingly provides false information as required by subdivision (a) is guilty of a misdemeanor.

(e) The identification label required pursuant to subdivision (a) shall be constructed of material and made attachable in such a manner as to make the label easily removable for the purpose of cleaning and reusing the keg by a beer manufacturer.

(f) The department is authorized to charge a fee not to exceed the actual cost of supplying receipt forms and identification labels required pursuant to subdivision (a). Fees collected pursuant to this subdivision shall be deposited in the Alcohol Beverage Control Fund.

(g) As used in this section, "keg" means any brewery-sealed, individual container of beer having a liquid capacity of six gallons or more.

**History.**—Added by Stats. 1993, Ch. 270, in effect January 1, 1994.

**25660. Documentary evidence of age and identity.** (a) Bona fide evidence of majority and identity of the person is a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license or an identification card issued to a member of the Armed Forces, that contains the name, date of birth, description, and picture of the person.

(b) In the event an identification card issued to a member of the Armed Forces is provided as proof of majority and lacks a physical description, proof of majority may be further substantiated if a motor vehicle operator's license or other valid bona fide identification issued by any government jurisdiction is also provided.

(c) Proof that the defendant-licensee, or his employee or agent, demanded, was shown and acted in reliance upon such bona fide evidence in any transaction, employment, use or permission forbidden by Section 25658, 25663 or 25665 shall be a defense to any criminal prosecution there for or to any proceedings for the suspension or revocation of any license based thereon.

**History.**—Stats. 1955, Ch. 627, in effect September 7, 1955, inserted “immediately prior” and included identification issued by federal, state, county, or municipal government. Stats. 1959, Ch. 550, in effect September 18, 1959, reworded section. Stats. 1987, Ch. 67, in effect January 1, 1988, deleted Selective Service registration certificate and specified contents required for armed services card. Stats. 2005, Ch. 68, AB 764, in effect January 1, 2006, changed bona fide language in subd. (b).

**Evidence of majority and identity.**—The board having made an order suspending a license because of a sale of whisky to a minor, in mandate proceedings the court on appeal will not disturb a finding by the lower court that the board’s decision was not supported by substantial evidence where it appeared that the licensee’s clerk acted in good faith, requested the minor to show identification as to his age, the minor exhibited a selective service registration card issued to another person, the minor signed a piece of paper with the name of the other person, the clerk compared the signatures and thought there was a fair resemblance. *Young v. State Board of Equalization*, 90 Cal. App. 2d 256.

It is essential to a successful defense under § 25660 that evidence of majority be presented by one whose appearance indicates that he or she could be 21 years of age, and a reasonable inspection of the document must be made. *5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control*, 155 Cal. App. 2d 748.

A birth certificate alone does not establish a defense under § 25660 in that it does not establish identity of the holder. *Pastime Cafe v. Department of Alcoholic Beverage Control*, 159 Cal. App. 2d 114.

**Presumption of genuineness of document.**—A liquor licensee does not have the duty of determining at his peril whether a motor vehicle operator’s license is a bona fide license of the party presenting it, since the liquor licensee has the right to assume the validity of such driver’s license and to accept the holder as the legal owner, unless his personal appearance demonstrates the contrary above mere suspicion. *Conti v. State Board of Equalization*, 113 Cal. App. 2d 465.

**Accepting Identification of minor.**—Where minor purchaser submitted to licensee’s bartender documentary evidence of majority bearing minor’s picture and description, and licensee’s bartender testified that he believed this was official identification, Board of Equalization was without authority to suspend license in the absence of a supporting finding that the bartender acted in bad faith and without due diligence. *Keane v. Reilly*, 130 Cal. App. 2d 407, 279 Pac. 2d 152.

**Computing age.**—A person becomes 21 years of age on the day of his twenty-first birthday. *Johnson v. Superior Court*, 256 Cal. Rptr. 651.

**Burden of proof on licensee.**—In an action for the revocation or suspension of a liquor license for serving alcoholic beverages to minors the defense of this section must be raised and proved by the licensee. 27 Ops. Atty. Gen. 233, 236, 56/16 4-19-56.

**What constitutes bona fide documentary evidence of majority and identity.**—Selective service registration certificate issued to minor presenting it, which he had altered to reflect a birth date which would make him over 21, which alteration was difficult to detect, accepted in good faith by licensee’s bartender establishes defense. *Dethlefsen v. State Board of Equalization*, 145 Cal. App. 2d 561, 303 Pac. 2d 7.

**Self-made card.**—A laminated identification card printed by a photo studio and signed only by the person presenting it is not bona fide documentary evidence of majority and identity. *People v. Mintzer*, App. Dept., Los Angeles Superior Court, C.R.A. 3111, Feb. 5, 1954.

**Finding of good faith.**—Although there was no express finding by the Department as to good faith or lack of good faith as to each count, there was an express finding by the Department that the defendants had failed to establish any defense, and in each finding there was set forth the failure to demand or receive documentary proof. The finding of good faith is essential only in those cases where there is exhibited by the minor documents which purport to meet the requirements of § 25660. *Raab v. Department of Alcoholic Beverage Control*, 177 Cal. App. 2d 333.

**Acts of employees.**—A licensee is barred by the acts of his employees, but he also has the benefit of their collective conduct, knowledge and reliance in determining whether there has been compliance with this section. *Lacabanne Properties, Inc. v. Alcoholic Beverage Control Appeals Board, et al.*, 261 C.A. 2d 181.

**Reliance on previous check of identification.**—Where a minor has exhibited bona fide evidence of majority and identity upon entrance, the licensee may assert reliance on the original demand and exhibition even though a second employee pursued an inadequate inquiry prior to selling to the minor. *Lacabanne Properties, Inc., v. Alcoholic Beverage Control Appeals Board, et al.*, 261 C.A. 2d 181.

**Reliance on unauthorized documents.**—The department did not abuse its discretion in suspending a liquor license because of the licensee’s employment of a minor in violation of § 25663 where, although the licensee acted in good faith, the evidence of the employee’s majority relied upon by him did not consist of documents issued by a government entity. A licensee in such a case has the dual burden of showing not only that he acted in good faith, free from intent to violate the law, but also that he exercised such good faith in reliance upon a document delineated by § 25660, and he may not meet his burden by a showing of good faith in relying on other evidence. *Kirby v. Alcoholic Beverage Control Appeals Board (Boyajian)*, 267 Cal. App. 2d 895.

**25660.5. Furnishing identification.** Any person who sells, gives, or furnishes to any person under the age of 21 years any false or fraudulent written, printed, or photostatic evidence of the majority and identity of such person or who sells, gives or furnishes to any person under the age of 21 years evidence of majority and identification of any other person is guilty of a misdemeanor.

**History.**—Added by Stats. 1957, Ch. 1274, in effect September 11, 1957. Stats. 1965, Ch. 1216, in effect September 17, 1965, added reference to furnishing identification of any other person.

**25661. Minor presenting false evidence of age.** Any person under the age of 21 years who presents or offers to any licensee, his or her agent or employee, any written, printed, or photostatic evidence of age and identity which is false, fraudulent or not actually his or her own for the purpose of ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure, the serving of any alcoholic beverage, or who has in his or her possession any false or fraudulent written, printed, or photostatic evidence of age and identity, is guilty of a misdemeanor and shall be punished by a fine of at least two hundred fifty dollars (\$250), no part of which shall

be suspended; or the person shall be required to perform not less than 24 hours nor more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community service as determined by the court. A second or subsequent violation of this section shall be punished by a fine of not more than five hundred dollars (\$500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed or is not attending school, or a combination of fine and community service, as the court deems just. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

**History.**—Stats. 1957, Ch. 1274, in effect September 11, 1957, added “printed, or photostatic” before, and “and identity” after, “evidence of age”; added “or who has in his possession any false or fraudulent written, printed, or photostatic evidence of age and identity”; and added “and shall be punished by a fine of at least one hundred dollars (\$100).” Stats. 1959, Ch. 868, in effect September 18, 1959, added “no part of which shall be suspended.” Stats. 1983, Ch. 1092, in effect September 27, 1983, increased the minimum fine from \$100 to \$200. Stats. 1990, Ch. 110, in effect January 1, 1991, increased fine to \$250 and authorized community service. Stats. 1999, Ch. 787, in effect January 1, 2000, enhanced penalties for second or subsequent violations involving a minor using a false or fraudulent identification in attempting to purchase alcoholic beverages.

**Cross reference.**—Fraudulently altered, borrowed, loaned, misrepresented motor vehicle operators' licenses and unlawful use thereof, penalty; Vehicle Code Sec. 338.

**25662. Possession by minors.** (a) Any person under the age of 21 years who has any alcoholic beverage in his or her possession on any street or highway or in any public place or in any place open to the public is guilty of a misdemeanor and shall be punished by a fine of two hundred fifty dollars (\$250) or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed or is not attending school. A second or subsequent violation shall be punishable as a misdemeanor and the person shall be fined not more than five hundred dollars (\$500), or required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed or is not attending school, or a combination of fine and community service as the court deems just. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides. This section does not apply to possession by a person under the age of 21 years making a delivery of an alcoholic beverage in pursuance of the order of his or her parent, responsible adult relative, or any other adult designated by the parent or legal guardian, or in pursuance of his or her employment. That person shall have a complete defense if he or she was following, in a timely manner, the reasonable instructions of his or her parent, legal guardian, responsible adult relative, or adult designee relating to disposition of the alcoholic beverage.

(b) Unless otherwise provided by law, where a peace officer has lawfully entered the premises, the peace officer may seize any alcoholic beverage in plain view that is in the possession of, or provided to, a person under the age of 21 years at social gatherings, when those gatherings are open to the public, 10 or more persons under the age of 21 years are participating, persons under the age of 21 years are consuming alcoholic beverages, and there is no supervision of the social gathering by a parent or guardian of one or more of the participants.

Where a peace officer has seized alcoholic beverages pursuant to this subdivision, the officer may destroy any alcoholic beverage contained in an opened container and in the possession of, or provided to, a person under the age of 21 years, and, with

respect to alcoholic beverages in unopened containers, the officer shall impound those beverages for a period not to exceed seven working days pending a request for the release of those beverages by a person 21 years of age or older who is the lawful owner or resident of the property upon which the alcoholic beverages were seized. If no one requests release of the seized alcoholic beverages within that period, those beverages may be destroyed.

**History.**—Stats. 1963, Ch. 396, in effect September 20, 1963, inserted “or in any place open to the public” in first sentence; Stats. 1988, Ch. 680, in effect January 1, 1989, added paragraph (b). Stats. 1991, Ch. 1697, in effect January 1, 1992, permitted possession under authority of responsible adult relative or adult designee. Amended by Stats. 1996, Ch. 124, to make technical nonsubstantive changes. Amended by Stats. 1997, Ch. 947, in effect January 1, 1998, made technical, non-substantive changes. Amended by Stats. 1999, Ch. 787, in effect January 1, 2000, to specify penalty for minor possessing alcoholic beverage in public and creates an enhanced penalty for second or subsequent violations.

**Contributing to delinquency of minor.**—An adult companion walking on the street with a minor in possession of liquor in violation of this section does not thereby violate Welfare and Institutions Code Section 702. *People v. Simon*, 45 Cal. 2d 645, 290 Pac. 2d 531.

**State law preempts possession.**—State law occupies the field and preempts local regulation of the possession of alcoholic beverages. Consumption of alcoholic beverages is not preempted and is subject to local regulation. *People v. Butler*, 59 Cal. Rptr. 924, 252 Cal. App. 2d Supp. 1053.

**25663. Employment of minors.** (a) Every person who employs or uses the services of any person under the age of 21 years in or on that portion of any premises, during business hours, which are primarily designed and used for the sale and service of alcoholic beverages for consumption on the premises is guilty of a misdemeanor.

(b) Any off-sale licensee who employs or uses the services of any person under the age of 18 years for the sale of alcoholic beverages shall be subject to suspension or revocation of his or her license, except that a person under the age of 18 years may be employed or used for those purposes if that person is under the continuous supervision of a person 21 years of age or older.

**History.**—Stats. 1955, Ch. 1258, in effect September 7, 1955, inserted “during business hours,” and “primarily designed and.” Stats. 1959, Ch. 543, in effect September 18, 1959, substituted “any person under the age of 21 years” for “minors.” Stats. 1984, Ch. 770, in effect January 1, 1985, added subd. (b).

**25663.5. Minor musicians.** Notwithstanding Section 25663 or any other provision of law, persons 18 to 21 years of age may be employed as musicians, for entertainment purposes only, during business hours on premises which are primarily designed and used for the sale and service of alcoholic beverages for consumption on the premises, if live acts, demonstrations, or exhibitions which involve the exposure of the private parts or buttocks of any participant or the breasts of any female participant are not allowed on such premises. However, the area of such employment shall be limited to a portion of the premises that is restricted to use exclusively of musicians or entertainers in the performance of their functions, and no alcoholic beverages shall be sold, served, consumed, or taken into that area.

**History.**—Added by Stats. 1971, Ch. 1761, in effect March 4, 1972.

**25664. Advertising encouraging minors to drink.** (a) (1) The use, in any advertisement of alcoholic beverages, of any subject matter, language, or slogan addressed to and intended to encourage minors to drink the alcoholic beverages, is prohibited.

(2) Signage or flyers advertising an establishment that serves alcoholic beverages to individuals under the age of 21 years are prohibited under paragraph (1) if one of the establishment’s principal business activities is the selling of alcoholic beverages, and the advertisement expressly states that the jurisdiction in which the establishment is located has a legal drinking age of under 21 years or that individuals under the age of 21 years may patronize the establishment.

(3) Nothing in this section shall be deemed to restrict or prohibit any advertisement of alcoholic beverages to those persons of legal drinking age.

(b) The department may adopt rules as it determines to be necessary for the administration of this section.

**History.**—Stats. 1985, Ch. 803, in effect July 1, 1986, recast section. Amended by Stats 2003, Ch. 771 in effect January 1, 2004. Added (a) (2) to prohibit signs and flyers as specified.

**25665. Minors in public premises.** Any licensee under an on-sale license issued for public premises, as defined in Section 23039, who permits a person under the age of 21 years to enter and remain in the licensed premises without lawful business therein is guilty of a misdemeanor. Any person under the age of 21 years who enters and remains in the licensed public premises without lawful business therein is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars (\$200), no part of which shall be suspended.

**History.**—Added by Stats. 1955, Ch. 1779, in effect January 1, 1957. Stats. 1957, Ch. 2152, in effect September 11, 1957, added second sentence. Stats. 1959, Ch. 867, in effect September 18, 1959, added “no part of which shall be suspended.” Stats. 1983, Ch. 1092, in effect September 27, 1983, increased the minimum from \$100 to \$200.

An on-sale licensee has an affirmative duty to maintain properly operated premises. The action or passivity on the part of a bartender with respect to his affirmative duty to ascertain the age of patrons amounts to “permitting.”

Where the husband is in the barroom merely as a patron of the licensee, it cannot properly be concluded that his minor wife accompanying him is there on a matter of “lawful business” or any business within the meaning of § 25665. *Ballesteros v. Alcoholic Beverage Control Appeals Board*, 234 Cal. App. 2d 694.

**25666. Minors at hearings.** In any hearing on an accusation charging a licensee with a violation of Sections 25658, 25663, and 25665, the department shall produce the alleged minor for examination at the hearing unless he or she is unavailable as a witness because he or she is dead or unable to attend the hearing because of a then-existing physical or mental illness or infirmity, or unless the licensee has waived, in writing, the appearance of the minor. When a minor is absent because of a then-existing physical or mental illness or infirmity, a reasonable continuance shall be granted to allow for the appearance of the minor if the administrative law judge finds that it is reasonably likely that the minor can be produced within a reasonable amount of time. Nothing in this section shall prevent the department from taking testimony of the minor as provided in Section 11511 of the Government Code.

**History.**—Added by Stats. 1963, Ch. 1562, in effect September 20, 1963. Stats. 1987, Ch. 67, in effect January 1, 1988, specified when unavailable minor need not appear.

**25667. Service by minors.** Nothing in this division shall be construed to prohibit the service of any alcoholic beverage by any person between 18 and 21 years of age in any bona fide public eating place, as defined in Sections 23038 and 23038.1, which is licensed for the on-sale of alcoholic beverages, where such person is not acting in the capacity of a bartender and the service occurs in an area primarily designed and used for the sale and service of food for consumption on the premises.

**History.**—Added by Stats. 1976, Ch. 486, in effect January 1, 1977.

## CHAPTER 17. ADMINISTRATIVE PROVISIONS

- § 25750. Rules and regulations.
- § 25751. Investigative powers.
- § 25752. Records.
- § 25753. Examining books; inspecting premises.
- § 25754. Administering oaths.
- § 25755. Peace officers' powers.
- § 25756. Enforcement vehicles. [Repealed.]
- § 25757. National associations.
- § 25758. Witness fees in criminal cases.
- § 25758.5. Subpoenaed witness fees.
- § 25759. When license fees deemed paid.
- § 25760. Service of notice.
- § 25761. Alcohol Beverage Control Fund; expenditures.
- § 25762. Disposition of fines.
- § 25763. Venereal disease information. [Repealed.]

**25750. Rules and regulations.** (a) The department shall make and prescribe those reasonable rules as may be necessary or proper to carry out the purposes and intent of Section 22 of Article XX of the California Constitution and to enable it to exercise the powers and perform the duties conferred upon it by that section or by this division, not inconsistent with any statute of this state, including particularly this division and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Any regulation which excludes nude persons from licensed premises shall not apply to a nude person at licensed premises located at a nudist resort or nudist campground which was in existence prior to January 1, 1977, and whose operation is in conformance with local land regulations.

(c) Subdivision (b) is applicable only in a county where the board of supervisors of the county in which the licensed premises is located adopts an ordinance or resolution making subdivision (b) applicable in that county, and the sheriff of that county certifies that no extraordinary police problem would be created thereby.

**History.—Stats. 1955, Ch. 1842, substituted “department” for “board.” Stats. 1987, Ch. 636, in effect January 1, 1988, added subs. (b) and (c).**

**Board’s constitutional rule-making power.**—Section 22 of Article XX of the State Constitution confers power to revoke licenses on grounds other than those stated in the Alcoholic Beverage Control Act, but does not require the board to prescribe by rule what misconduct will put a license in jeopardy; and the fact that a rule was adopted with respect to violation of federal laws relating to ceiling prices for alcoholic beverages cannot weaken the board’s position. *Moore v. State Board of Equalization*, 76 Cal. App. 2d 758.

Alcoholic beverage control rules and regulations duly adopted by the State Board of Equalization prior to January 1, 1955, become on that date the rules and regulations of the Department of Alcoholic Beverage Control. 25 Ops. Cal. Atty. Gen. 158, 55/23 2-24-55.

**Department not bound by erroneous construction of rules by Board of Equalization.**—The department was not estopped to revoke a license issued by the Board of Equalization under an erroneous construction of its own rules and this division. *Joseph George, Distributor v. Department of Alcoholic Beverage Control*, 149 Cal. App. 2d 702.

**Legislature does not preempt field.**—The department has broad powers to determine what is contrary to public welfare and morals and may adopt rules prohibiting solicitation of drinks by B-girls although Legislature has enacted numerous laws on the same subject. *Mercurio v. Department of Alcoholic Beverage Control*, 144 Cal. App. 2d 626, 301 Pac. 2d 474.

**Validity of rules.**—In determining whether an administrative rule constitutes a proper exercise of the police power, the questions are whether the object of the rule is one for which the police power may be invoked and, if so, whether the rule bears a reasonable relationship to the objects sought. A rule providing for the suspension of license privileges without a proceeding under which an arbitrary determination is prevented, is in excess of the rule-making power. *Harris v. Alcoholic Beverage Control Appeals Board (Payseno)*, 204 Cal. App. 2d 729.

**Administrative Interpretation.**—The contemporaneous interpretation of a statute by an administrative agency may be proved as a relevant fact and is entitled to great weight, and will not be departed from unless clearly erroneous. *Walsh v. Department of Alcoholic Beverage Control and Navone*, 59 Cal. 2d 757; *Louis Stores v. Department of Alcoholic Beverage Control*, 57 Cal. 2d 749.

Standards for an administrative interpretation need not be set out in detail, but may be found by implication from the general purposes of the statute and the reasons which must have led to its adoption. *Louis Stores v. Department of Alcoholic Beverage Control*, 57 Cal. 2d 749.

Administrative regulations in conflict with the Constitution or statutes are void, though rule-making authority derives directly from the Constitution. *Harris v. Alcoholic Beverage Control Appeals Board and Levin*, 228 Cal. App. 2d 1.

**Correction of erroneous interpretation.** An erroneous administrative interpretation of a statute will not prevail over a later, correct interpretation even though the statute may, in the interim, have been re-enacted without change. *Louis Stores v. Department of Alcoholic Beverage Control*, 57 Cal. 2d 749.

**25751. Investigative powers.** For the performance of its duties the department has the power conferred by Sections 11180 to 11191, inclusive, of the Government Code.

**History.—Stats. 1955, Ch. 1842, substituted “department” for “board.”**

**Cross reference.**—§ 23052.

**25752. Records.** No licensee may manufacture, import, sell or distribute alcoholic beverages, except wine, in the State of California unless he keeps records at his licensed premises of such manufacture, importation, sale or distribution of alcoholic beverages manufactured, imported, sold or distributed by the licensee in this State. Such records shall include all expenditures incurred by the licensee in the manufacture, importation, sale or distribution of alcoholic beverages, except wine, in this State. Provided, however, that any licensee licensed at more than one premises may keep all said records at one of his licensed premises. Records herein required to be kept shall be kept for a period of three years from the date of the transaction.

**History.**—Stats. 1955, Ch. 1842, substituted “department” for “board.” Stats. 1959, Ch. 1357, in effect September 18, 1959, recast section.

**25753. Examining books; inspecting premises.** The department may make any examination of the books and records of any licensee or other person and may visit and inspect the premises of any licensee it may deem necessary to perform its duties under this division.

**History.**—Stats. 1955, Ch. 1842, substituted “department” for “board.”

**Public place.**—A barroom on licensed premises is a public place, and agents of the department have the right to enter without a search warrant. *Thorp v. Department of Alcoholic Beverage Control*, 175 Cal. App. 2d 489.

**Search.**—The entry, the examination of the records, and the subsequent search of the premises were statutorily authorized by §§ 25753 and 25755 of the Business and Professions Code, giving agents and local police officers wide powers to visit and to inspect the premises of liquor licensees. *People v. Lisner*, 249 C.A. 2d 637.

**25754. Administering oaths.** The director and the persons employed by the department for the administration and enforcement of the provisions of this division may administer and certify oaths in the administration and enforcement of this division.

**History.**—Stats. 1955, Ch. 447, in effect September 7, 1955, substituted “director” for “members of the board,” and “department” for “board.”

**25755. Peace officers’ powers.** (a) The director and the persons employed by the department for the administration and enforcement of this division are peace officers in the enforcement of the penal provisions of this division, the rules of the department adopted under the provisions of this division, and any other penal provisions of law of this state prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding, or mislabeling of alcoholic beverages or intoxicating liquors, and these persons are authorized, while acting as peace officers, to enforce any penal provisions of law while in the course of their employment.

(b) The director, the persons employed by the department for the administration and enforcement of this division, peace officers listed in Section 830.1 of the Penal Code, and those officers listed in Section 830.6 of the Penal Code while acting in the course and scope of their employment as peace officers may, in enforcing the provisions of this division, visit and inspect the premises of any licensee at any time during which the licensee is exercising the privileges authorized by his or her license on the premises.

(c) Peace officers of the Department of the California Highway Patrol, members of the University of California and California State University police departments, and peace officers of the Department of Parks and Recreation, as defined in subdivisions (a), (b), (c), and (f) of Section 830.2 of the Penal Code, may, in enforcing this division, visit and inspect the premises of any licensee located on state property at any time during which the licensee is exercising the privileges authorized by his or her license on the premises.

(d) Any agents assigned to the Drug Enforcement Narcotics Team by the director shall have successfully completed a four-week course on narcotics enforcement approved by the Commission on Peace Officer Standards and Training. In addition, all other agents of the department shall successfully complete the four-week course on narcotics enforcement approved by the Commission on Peace Officer Standards and Training by June 1, 1995.

**History.**—Stats. 1955, Ch. 1516, in effect September 7, 1955, substituted “director” for “member of the board”; “department” for “board”; deleted power to serve warrants; and added powers of peace officers while on licensed premises. Stats. 1957, Ch. 39, in effect September 11, 1957, substituted “department” for “board” after “rules of the.” Stats. 1961, Ch. 1914, in effect September 15, 1961, added second paragraph. Stats. 1968, Ch. 1222, in effect November 13, 1968, substituted “are” and “are authorized, while acting as” for “have all the powers of” peace officers in first paragraph; and deleted “local” and inserted “listed in Section 830.1 of the Penal Code” in second paragraph. Stats. 1983, Ch. 572, in effect January 1, 1984, added the third paragraph. Stats. 1989, Chs. 1165 and 1166, in effect January 1, 1990, added subd. (d). Stats. 1990, Ch. 1695, in effect January 1, 1991, included Penal Code Section 830.6 officers in section. Stats. 1993, Ch. 353, in effect January 1, 1994, amended subd. (d).

Stats. 1994, Ch. 742, in effect January 1, 1995, added University of California and California State University police. Stats. 1996, Ch. 305, in effect January 1, 1997, made technical, conforming changes to other changes in peace officer statutory references.

25756. **Enforcement vehicles.** *Repealed by Stats. 1961, Ch. 653, operative January 1, 1962.*

25757. **National associations.** The department may authorize any of its executive officers to join or subscribe to any national association or service having as its purpose the gathering and supply of information relative to the technique of liquor regulation, control, or administration.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

25758. **Witness fees in criminal cases.** When a person attends as a witness in any criminal case in which a person is charged with a violation of any penal provisions of the law prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding, or mislabeling of an alcoholic beverage or intoxicating liquor, and the court in the exercise of its discretion does not authorize the payment of the witness from county funds under Section 1329 of the Penal Code, the department may expend any money available to it to pay him witness fees at the rate of three dollars (\$3) for each day’s actual attendance and a reasonable sum for the necessary expenses of the witness, or, in the case of a witness attending from outside the State, to pay the witness the sum of ten cents (\$0.10) for each mile and five dollars (\$5) for each day that he is required to travel and attend as a witness.

**History.**—Stats. 1955, Ch. 447, substituted “department” for “board.”

**Cross reference.**—Government Code §§ 11510(c) and 68093.

25758.5. **Subpoenaed witness fees.** 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.

**History.**—Added by Stats. 1997, Ch. 774, in effect January 1, 1998.

25759. **When license fees deemed paid.** When license fees are required to be paid on or by specified dates, they shall be deemed to have been paid at the time they are filed with or paid to the department or other proper official or, if sent by mail, on the date shown by the United States postmark on the envelope containing the payment.

**History.**—Stats. 1955, Ch 1842, in effect September 7, 1955, deleted “tax reports or payment of excise taxes or”; and substituted “department” for “board.” Stats. 1963, Ch. 1040, in effect September 20, 1963, substituted “paid” for “made,” and deleted “report or” before “payment.”

25760. **Service of notice.** Notice of any act of the department required by this division to be given may be signed and given by the director or an authorized employee of the department and may be made personally or by mail. If made by mail, service shall be in the manner prescribed by Section 1013 of the Code of Civil Procedure. In case of service by mail, the service is complete at the time of deposit in the United States Post Office.

**History.**—Stats. 1955, Ch 1842, in effect September 7, 1955, substituted “department” for “board,” and “director” for “board, its secretary.”

25761. **Alcohol Beverage Control Fund; expenditures.** All money collected as fees pursuant to this division, as payments under Section 23096, and under the excise tax provisions of this division or Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code shall be deposited in the State Treasury to the credit of the Alcohol Beverage Control Fund, which fund is continued in existence.

The money in the Alcohol Beverage Control Fund shall be expended as follows:

(a) The amount necessary for the allowance of the refunds provided for in this division or Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code is hereby appropriated, without regard to fiscal years, to the Controller for payment of these refunds.

(b) All money derived as payment under Section 23096 and from excise taxes under Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code remaining after compliance with subdivision (a) shall be transferred to the General Fund on the order of the Controller.

(c) All original license fees paid on or after July 1, 1998, pursuant to Section 23954.5 shall remain in the Alcohol Beverage Control Fund.

(d) All other money collected as fees and deposited in the Alcohol Beverage Control Fund shall be allocated, upon appropriation by the Legislature, to the Department of Alcoholic Beverage Control for the enforcement and administration of the Alcoholic Beverage Control Act.

(e) Money transferred to the General Fund pursuant to subdivision (b) shall be in lieu of any assessment that would be made on the Department of Alcoholic Beverage Control pursuant to Section 11270 and following of the Government Code.

(f) Upon appropriation by the Legislature, the amount necessary for the support of the Department of Alcoholic Beverage Control's grant assistance program. This amount shall be sufficient to cover the salaries and benefits of the Alcoholic Beverage Control peace officer positions dedicated to this program. However, based on the available revenue in the Alcohol Beverage Control Fund, the amount shall not be less than one million five hundred thousand dollars (\$1,500,000) and not more than three million dollars (\$3,000,000).

**History.**—Stats 1st Ex. Sess. 1954, Ch. 22, in effect July 1, 1954, amended subd. (a). Stats. 1955, Ch. 1221, in effect June 23, 1955, amended subd. (a) and added subd. (d). Stats. 1955, Ch. 1842, in effect September 7, 1955, added in subd. (b) "or Part 14 of Division 2 of the Revenue and Taxation Code." Stats. 1957, Ch. 2298, in effect September 11, 1957, added reference to payments under Section 23096; inserted "Ninety percent of" at beginning of subd. (a); deleted "except an amount equal to the amount by which the revenue produced by the rate of fees fixed by statute and board rule and in effect on and after July 1, 1954, and as thereafter modified, exceeds the revenue which would be produced by the rate of fees fixed by statute and board rule and in effect immediately prior to that date" from subd. (a); and deleted subd. (d). Stats. 1981, Ch. 101, in effect July 1, 1981, transferred all money not refunded to the General Fund. Stats. 1992, Ch. 900, in effect September 25, 1992, recast and added subds. (b), (c), (d) and (e). Stats. 1996, Ch. 339, in effect August 19, 1996, provided surcharges imposed by Sections 23320.2 and 23320.3 be retained in ABC Fund. Stats. 1998, Ch. 328, in effect January 1, 1999, amended subd. (c). Stats. 2005, Ch. 120, AB 428, in effect January 1, 2006, added subd. (f).

This fund feeds the General Fund, and proposed appropriations from it are subject to the voting requirements of California Constitution Article IV, Section 34(a). Ops. Atty Gen. 283.

**Purpose of license fee allocation.**—This section was enacted pursuant to the provision in Section 22 of Article XX of the State Constitution which provides for apportioning to cities and counties of license fees, and which is recognition of the fact that state centralization of liquor control would deprive local subdivisions of a potential source of revenue. *Roehm v. County of Orange*, 32 Cal. 2d 280.

**Cities and counties not entitled to all license fees for 1947.**—A 1947 statute allocating to cities and counties all moneys collected from license fees instead of 50 percent of such amounts, as theretofore, did not apply to fees paid into the Alcoholic Beverage Control Fund before September 19, 1947, the effective date of the statute. *San Francisco v. Kuchel*, 32 Cal. 2d 364.

**25762. Disposition of fines.** All fines and forfeitures of bail imposed for a violation of this division and collected in any court other than a municipal court or a justice court shall be paid to the county treasurer of the county in which the court is held.

All fines and forfeitures of bail imposed for violation of this division and collected upon conviction or upon forfeiture of bail, together with money deposited as bail, in any municipal court or justice court shall be deposited with the county treasurer of the county in which such court is situated and the money deposited shall be distributed and disposed of pursuant to Penal Code Section 1463.

**History.**—Stats. 1st Ex. Sess. 1954, Ch. 24, inserted "other than a municipal court or a justice court"; and added second paragraph.

**25763. Venereal disease information.** [*Repealed by Stats. 1977, Ch. 191.*]

**Note.—Repeal of former statute.** Section 2 of Chapter 152, Statutes of 1953, by which the provisions of the Alcoholic Beverage Control Act were placed into the Business and Professions Code, repealed Ch. 330, Stats. of 1935, the former Alcoholic Beverage Control Act, effective on September 9, 1953.

## CASES ARISING UNDER PROVISIONS OF LIQUOR CONTROL AND BEVERAGE TAX ACTS OF 1933

**Tax imposed on wine.**—The definition of wine as contained in the State Liquor Control Act (Stats. 1933, p. 1697) should be considered in construing beverage tax acts passed earlier in the same year (Stats. 1933, pp. 340 and 626). Thus a person who operated a winery, and manufactured and sold wine within the meaning of the control act, was obliged to pay the excise tax of two cents (\$0.02) per gallon imposed by the taxing statutes, notwithstanding the fact that such wine exceeded the alcoholic content specified in those statutes. He was not entitled to engage in business merely by paying the fee of ten dollars (\$10) imposed upon a winery by the provisions of the State Liquor Control Act. *Lucchesi v. State Board of Equalization*, 137 Cal. App. 478.

**Penal Code provision applicable.**—A license issued by the State Board of Equalization to sell intoxicating liquor within a mile and a half of Stanford University was annulled by the Supreme Court inasmuch as Section 172a of the Penal Code makes such sales a misdemeanor. The court determined that the area within which liquor sales are to be prohibited shall be measured by a straight and direct line from the campus limits and not from university buildings within such limits. *Leland Stanford Junior University v. State Board of Equalization*, 1 Cal. 2d 784.

**Allegations in criminal complaint.**—No public offense was stated in a complaint for violation of the State Liquor Control Act, alleging that a sale of intoxicating liquor was unlawfully made, but omitting to allege that such sale was of a “broken package” or “to be consumed on the premises,” where the sale was made. In the absence of such averments, the transaction was as consistent with innocence as with guilt. *In re Ferrari*, 3 Cal. App. 2d 53.

**License not a property right.**—Where the State Board of Equalization, upon an independent investigation, is in possession of facts sufficient to support the conclusion that a licensee has been guilty of acts or omissions which are grounds for revocation or suspension of the license, it may make an appropriate order without notice or hearing. There is no inherent right in a citizen to sell intoxicants. *State Board of Equalization v. Superior Court of San Francisco*, 5 Cal. App. 2d 374. To the extent that this decision held that a liquor license may be revoked without notice or hearing, it was overruled by *Irvine v. State Board of Equalization*, 40 Cal. App. 2d 280.

**Power of board to determine fitness of premises.**—Section 22 of Article XX of the Constitution (prior to its amendment November 6, 1934) provided no limitation on the power given to the Legislature to regulate the sale of wines and beer when meals are furnished. A reasonable construction of the acts of the Legislature and the rules and regulations of the State Board of Equalization made in pursuance thereof, gives the board the power to determine the suitability and fitness of the premises, including the nature of the location, and to consider questions affecting the peace, safety and good order of the surroundings where the sale is to be made. *Parente v. State Board of Equalization*, 1 Cal. App. 2d 238.

**“Public drinking place.”**—A dining room of a hotel would become a “public drinking place” within the meaning of Section 22 of Article XX of the Constitution (prior to amendment on November 6, 1934) and the State Liquor Control Act (Chapter 658, Statutes of 1933) if liquor other than beer and wine should be consumed therein. This would be true whether such liquor was brought into the dining room by a patron of the hotel, or was purchased by the hotel employees for the patron at a retail liquor store and served to him in the dining room. A sandwich served to a patron along with wine or beer could constitute a meal within the meaning of the Constitution and statute, whether or not such sandwich is consumed. *Sandelin v. Collins*, 1 Cal. 2d 147.

**Involuntary payments.**—Payments made after December 5, 1933, for liquor license tax stamps were made involuntarily when the payment was required by a city ordinance imposing severe civil and criminal penalties for failure to pay the tax and the payment was accompanied by a written protest. *Vitale v. City of Los Angeles*, 13 Cal. App. 2d 704.

**Buyer of imports at auction for customs duties subject to beverage tax.**—The vendee of beer and ale imported by a stranger, seized by the United States, and then sold at public auction for import duties was subject to the 1933 beverage tax as “the first in possession within the State after completion of the act of importation,” since the sovereign is not included within the general language of a statute and the unknown importer never had physical possession because he could not pay the customs duties. *Associated Brewers Distributing Company v. Riley*, 39 Cal. App. 2d 235.

**Liability of surety for bankrupt licensee.**—The surety of a brewery company is liable for the tax under the Beverage Tax Act upon beer on hand at the time of bankruptcy proceedings and sold by the liquidating receiver, since the receiver in making the sale was acting on behalf of both the company and its creditors, and was exercising the rights conferred by the license to the company. *People v. United States Fidelity and Guaranty Company*, 45 Cal. App. 2d 474.

## OTHER STATUTES AFFECTING REGULATION OF THE ALCOHOLIC BEVERAGE INDUSTRY

### GENERAL LAW

**Wine on school property in Napa County.** (a) The governing board of a school district under the jurisdiction of a county superintendent of schools of a county of the 29th class, determined pursuant to Section 28050 of the Government Code, may lease any building of the district which was constructed prior to 1913, together with the site upon which such building is located, without complying with the provisions

of Article 2 (commencing with Section 16051) of Chapter 2 of Division 12 of the Education Code, provided that all of the following conditions exist:

(1) The lease is to be made to an incorporated nonprofit tax-exempt community or civic organization with a membership comprised predominantly of persons residing in the community in which the building and site are situated.

(2) The building has been found by the school district governing board not to be suitable for school purposes.

(3) The building has an historic value and its preservation and utilization for the benefit of the community will best be ensured by lease to an organization specified in paragraph (1) of this subdivision.

(4) The lease is to be executed for a consideration to enure to the school district reflecting its fair rental value.

(5) The lease instrument requires the lessee to indemnify the district against all civil liabilities of the district, its officers, or employees which might arise in connection with any use of the building and site.

(6) No consumption or retail sale of wine on the premises of the leased facility shall occur during any schoolday during regular school hours.

(b) The provisions of Section 25608 of the Business and Professions Code shall not apply to the sale, possession, consumption, or delivery of wine on the premises of a school which has been leased to a nonprofit organization pursuant to subdivision (a). [*Added by Stats. 1976, Ch. 398.*]

## BUSINESS AND PROFESSIONS CODE SECTIONS

119. **Use of license.** Any person who does any of the following is guilty of a misdemeanor:

(a) Displays or causes or permits to be displayed or has in his or her possession either of the following:

(1) A canceled, revoked, suspended, or fraudulently altered license.

(2) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.

(b) Lends his or her license to any other person or knowingly permits the use thereof by another.

(c) Displays or represents any license not issued to him or her as being his or her license.

(d) Fails or refuses to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.

(e) Permits any unlawful use of a license issued to him or her.

(f) Photographs, photostats, duplicates, or in any way reproduces any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displays or has in his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code or referred to in Sections 1000 and 3600. [*Amended by Stats. 1994, Ch. 1206.*]

125.6. **Discrimination.** Every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this

code applicable to such person if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she refuses to perform the licensed activity or aids or incites the refusal to perform such licensed activity by another licensee, or if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she makes any discrimination, or restriction in the performance of the licensed activity. Nothing in this section shall be interpreted to apply to discrimination by employers with regard to employees or prospective employees, nor shall this section authorize action against any club license issued pursuant to Article 4 (commencing with Section 23425) of Chapter 3 of Division 9 because of discriminatory membership policy. The presence of architectural barriers to an individual with physical disabilities which conform to applicable state or local building codes and regulations shall not constitute discrimination under this section. Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to permit an individual to participate in, or benefit from, the licensed activity of the licensee where that individual poses a direct threat to the health or safety of others. For this purpose, the term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

"License," as used in this section, includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code.

"Applicant," as used in this section means a person applying for licensed services provided by a person licensed under this code.

"Disability" means any of the following with respect to an individual:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of the individual.

(b) A record of such an impairment.

(c) Being regarded as having such an impairment. [*Amended by Stats. 1992, Ch. 913.*]

17026. "**Cost.**" "Cost" as applied to production includes the cost of raw materials, labor and all overhead expenses of the producer.

"Cost" as applied to distribution means the invoice or replacement cost, whichever is lower, of the article or product to the distributor and vendor, plus the cost of doing business by the distributor and vendor and in the absence of proof of cost of doing business a markup of 6 percent on such invoice or replacement cost shall be prima facie proof of such cost of doing business.

"Cost" as applied to warranty service agreements includes the cost of parts, transporting the parts, labor, and all overhead expenses of the service agency.

Discounts granted for cash payments shall not be used to reduce costs. [*Amended by Stats. 1977, Ch. 787.*]

17027. **Purchases at forced or bankrupt sales: Advertising of conditions of purchase.** In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of the article or product purchased at a forced, bankrupt, closeout sale, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of the date of the sale of the article or product replaced through the ordinary channels of trade, unless the article or product is kept separate from goods purchased in the

ordinary channels of trade and unless the article or product is advertised and sold as merchandise purchased at a forced, bankrupt, closeout sale, or by means other than through the ordinary channels of trade.

Such advertising shall state the conditions under which the goods were purchased, and the quantity of the merchandise to be sold or offered for sale.

17028. **“Ordinary channels of trade.”** “Ordinary channels of trade” means those ordinary, regular and daily transactions in the mercantile trade whereby title to an article or product, in no way damaged or deteriorated, is transferred from one person to another.

“Ordinary channels of trade” does not include sales of bankrupt stocks, closeout goods, sales of goods bought from a business or merchant retiring from business, fire sales and sales of damaged or deteriorated goods, which damage or deterioration results from any cause whatsoever. This listing is not all inclusive but as example only.

17029. **“Cost of doing business” or “overhead expense.”** “Cost of doing business” or “overhead expense” means all costs of doing business incurred in the conduct of the business and shall include without limitation the following items of expense: labor (including salaries of executives and officers), rent, interest on borrowed capital, depreciation, selling cost, maintenance of equipment, delivery costs, credit losses, all types of licenses, taxes, insurance and advertising.

17050. **Permissible locality discriminations, sales below cost, and loss leaders: Sufficiency of notice.** The prohibitions of this chapter against locality discriminations, sales below cost, and loss leaders do not apply to any sale made:

(a) In closing out in good faith the owner’s stock or any part thereof for the purpose of discontinuing his trade in any such article or product and in the case of the sale of seasonal goods or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation; provided, notice is given to the public thereof.

(b) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof.

(c) By an officer acting under the orders of any court.

(d) In an endeavor made in good faith to meet the legal prices of a competitor selling the same article or product, in the same locality or trade area and in the ordinary channels of trade.

(e) In an endeavor made in good faith by a manufacturer, selling an article or product of his own manufacturer, in a transaction and sale to a wholesaler or retailer for resale to meet the legal prices of a competitor selling the same or a similar or comparable article or product, in the same locality or trade area and in the ordinary channels of trade.

The notice required to be given under this section shall not be sufficient unless the subject of such sales is kept separate from other stocks and clearly and legibly marked with the reason for such sales, and any advertisement of such goods must indicate the same facts and the number of items to be sold.

22430. **Deceptive identification cards.** (a) No deceptive identification document shall be manufactured, sold, offered for sale, furnished, offered to be furnished, transported, offered to be transported, or imported or offered to be imported into this state unless there is diagonally across the face of the document, in not less than 14-point type and printed conspicuously on the document in permanent ink, the following statement:

## NOT A GOVERNMENT DOCUMENT

and, also printed conspicuously on the document, the name of the manufacturer.

(b) As used in this section, “deceptive identification document” means any document not issued by a governmental agency of this state, another state, or the federal government, which purports to be, or which might deceive an ordinary reasonable person into believing that it is, a document issued by such an agency, including, but not limited to, a driver’s license, identification card, birth certificate, passport, or social security card.

(c) Any person who violates or proposes to violate this section may be enjoined by any court of competent jurisdiction. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any person.

(d) Any person who violates the provisions of subdivision (a) who knows or reasonably should know that the deceptive identification document will be used for fraudulent purposes is guilty of a crime, and upon conviction therefor, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison. [*Amended by Stats. 1995, Ch. 133, Sec. 1.*]

## CIVIL CODE SECTIONS

10. **Computation of time.** The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last is a holiday, and it is also excluded.

1714. **Civil liability.** (a) Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the Title on Compensatory Relief.

(b) It is the intent of the Legislature to abrogate the holdings in cases such as *Vesely v. Sager* (5 Cal. 3d 153), *Bernhard v. Harrah’s Club* (16 Cal. 3d 313), and *Coulter v. Superior Court* (21 Cal. 3d. 144) and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person.

(c) No social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by such person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of such beverages. [*Amended by Stats. 1978, Ch. 929.*]

## CODE OF CIVIL PROCEDURE SECTIONS

595. **Postponement of Administrative Proceedings.** The trial of any civil action, or proceeding in a court, or of any administrative proceeding before a state board or commission or officer, irrespective of the date of the filing thereof or when it became at issue, or the hearing of any motion, demurrer, or other proceeding, shall be postponed to a date certain when it appears to the court, board, commission, or officer before which such action or proceeding is pending that either a party thereto, or any attorney

of record therein (whether he became an attorney of record before or after the commencement of a legislative session or before or after his appointment to a legislative committee), or a principal witness, is a Member of the Legislature of this state and that the Legislature is in session or in recess (not exceeding a recess of forty (40) days) or that a legislative interim committee of which he is a duly appointed member is meeting, or is to meet within a period which the court finds does not exceed the time reasonably necessary to enable the member to reach the committee meeting by the ordinary mode of travel. When the Legislature is in session or in recess such action or proceeding shall not, without the consent of the attorney of record therein, be brought on for trial or hearing before the expiration of thirty (30) days next following final adjournment of the Legislature or the commencement of a recess of more than forty (40) days. If a date is available during recess, continuance shall be given if possible to such earlier date. When a legislative committee is meeting or is to meet within a period which the court finds does not exceed the time reasonably necessary to enable the member to reach the committee meeting by the ordinary mode of travel, such action or proceeding shall not, without the consent of the attorney of record therein, be brought on for trial or hearing before the expiration of such period necessary following the adjournment or recess of the committee meeting as the court finds is reasonably necessary to enable the member to reach the place of trial or hearing by the ordinary mode of travel from the place of the committee meeting, unless at the expiration of that period the Legislature is to be in session; and in that case the action or proceeding shall not, without such consent, be brought on for trial or hearing before the expiration of thirty (30) days next following final adjournment or the commencement of a recess of more than forty (40) days. If a date is available during the recess, continuance shall be given to such earlier date. However, any postponement granted under the provisions of this paragraph shall suspend for the same period of time as the postponement, the running of any period of time for any ruling or proceeding by a court, board, commission, or officer, or for the performance by any party of any act affected by said postponement.

Granting of a continuance pursuant to this section is mandatory unless the court determines that such continuance would defeat or abridge a right to relief pendente lite in a paternity action or a right to invoke a provisional remedy such as pendente lite support in a domestic relations controversy, attachment and sale of perishable goods, receivership of a failing business, and temporary restraining order or preliminary injunction, and that the continuance should not be granted. [*Amended by Stats. 1968, Ch. 698.*]

**688. Levy and sale of liquor license prohibited.** [*Repealed by Stats. 1982, Ch. 1364.*]

**695.060. License to engage in business.** Except as provided in Section 708.630, a license issued by a public entity to engage in any business, profession, or activity is not subject to enforcement of a money judgment. [*Added by Stats. 1982, Ch. 1364.*]

**699.720. Property not subject to execution.** (a) The following types of property are not subject to execution: (1) An alcoholic beverage license that is transferable under Article 5 (commencing with Section 24070) of Chapter 6 of Division 9 of the Business and Professions Code. [*Amended by Stats. 1996, Ch. 57.*]

**708.630. Interest of judgment debtor in alcoholic beverage license.** (a) The judgment debtor's interest in an alcoholic beverage license may be applied to the satisfaction of a money judgment only as provided in this section.

(b) The court may appoint a receiver for the purpose of transferring the judgment debtor's interest in an alcoholic beverage license that is transferable under Article 5 (commencing with Section 24070) of Chapter 6 of Division 9 of the Business and Professions Code, unless the judgment debtor shows in the proceeding to appoint a receiver that the amount of delinquent taxes described in Section 24049 of the Business and Professions Code and claims of creditors with priority over the judgment creditor pursuant to Section 24074 of the Business and Professions Code exceed the probable sale price of the license.

(c) The receiver may exercise the powers of the licensee as necessary and in exercising such powers shall comply with the applicable provisions of Division 9 (commencing with Section 23000) of the Business and Professions Code and applicable regulations of the Department of Alcoholic Beverage Control. An application shall be filed to transfer the license to the receiver and a temporary retail permit shall be obtained during the pendency of the transfer.

*History.—Added by Stats. 1982, Ch. 1364, p. 5203, Section 2, in effect July 1, 1983.*

1012. **Service by mail: When may be made.** Service by mail may be made where the person on whom it is to be made resides or has his office at a place where there is a delivery service by mail, or where the person making the service and the person on whom it is to be made reside or have their offices in different places between which there is a regular communication by mail.

### COMMERCIAL CODE SECTIONS

9102. **Secured transaction application.** (1) Except as otherwise provided in Section 9104 on excluded transactions, this division applies

(a) To any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper or accounts; \*\*\*\*\*[Amended Stats. 1984, Ch. 1197, in eff. July 1, 1985.]

9107. **“Purchase Money Security Interest.”** A security interest is a “purchase money security interest” to the extent that it is

(a) Taken or retained by the seller of the collateral to secure all or part of its price; or

(b) Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used. [Stats. 1963, Ch. 819.]

### FINANCIAL CODE SECTIONS

17005. **Licensee.** “Licensee” means any person holding a valid, unrevoked license as an escrow agent. [Amended by Stats. 1951.]

17006. **Exempt persons and transactions.** (a) This division does not apply to:

(1) Any person doing business under any law of this state or the United States relating to banks, trust companies, building and loan or savings and loan associations, or insurance companies.

(2) Any person licensed to practice law in California who is not actively engaged in conducting an escrow agency.

(3) Any person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of a policy of title insurance by a company doing business under any law of this state relating to insurance companies.

(4) Any broker licensed by the Real Estate Commissioner while performing acts in the course of or incidental to a real estate transaction in which the broker is an agent or a party to the transaction and in which the broker is performing an act for which a real estate license is required.

(b) The exemptions provided for in paragraphs (2) and (4) of subdivision (a) are personal to the persons listed, and those persons shall not delegate any duties other than duties performed under the direct supervision of those persons. Notwithstanding the provisions of this subdivision, the exemptions provided for in paragraphs (2) and (4) of subdivision (a) are not available for any arrangement entered into for the purpose of performing escrows for more than one business. [*Amended by Stats. 1992, Ch. 861.*]

17200. **Requirement of license.** It shall be unlawful for any person to engage in business as an escrow agent within this State except by means of a corporation duly organized for that purpose licensed by the commissioner as an escrow agent. [*Amended by Stats. 1961.*]

## GOVERNMENT CODE SECTIONS

6800. **Computation of Time.** The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded. [*Added, Statutes 1951, Chapter 655.*]

8311. **Certified Mail.** Wherever any notice or other communication is required by any law to be mailed by registered mail to or by the state, or any officer or agency thereof, the mailing of such notice or other communication by certified mail shall be deemed to be a sufficient compliance with the requirements of such law. [*Renumbered from Section 8401 by Stats. 1965, Ch. 1157.*]

11000.7. **License Renewals.** Notwithstanding any other provision of law, every state agency shall establish the license periods and renewal dates for all licenses issued by such agencies in the manner as best to distribute the renewal work of all agencies throughout each year and permit the most efficient and economical use of personnel and equipment. To the extent practicable, provision shall be made for the proration or other adjustment of fees in such manner that no person shall be required to pay a greater or lesser fee than he or she would have been required to pay if the change in license periods or renewal dates had not occurred.

Nothing in this section shall authorize any state agency to vary the period of any license which is issued other than as authorized by law. [*Amended by Stats. 1994, Ch. 287.*]

11003. **Applications.** If an application, tax return or claim for credit or refund required by law to be filed with the State or state agency on or before a specified date is filed with a state agency through the United States mail, properly addressed with postage prepaid, it shall be deemed filed on the date shown by the post office cancellation mark stamped on the envelope containing it, or on the date it was mailed if proof satisfactory to the state agency establishes that the mailing occurred on an earlier date.

If an application, tax return or claim for credit or refund required by law to be filed with the State or state agency on or before a specified time on a specified date is sent

through the United States mail, properly addressed with postage prepaid, and the cancellation mark is placed on the envelope after it is deposited in the mail:

(a) Where the cancellation mark shows both date and time, the application, tax return or claim for credit or refund shall be deemed filed on the date shown by the cancellation mark and by the time specified by law for that date.

(b) Where the cancellation mark shows only the date, the application, tax return or claim for credit or refund shall be deemed filed within the time and date specified when the cancellation mark bears a date on or before the specified date of filing. [*Amended by Stats. 1959, Ch. 53.*]

## HEALTH AND SAFETY CODE SECTIONS

Chapter 6.6 (commencing with Section 25249.5) added by Initiative Measure November 4, 1986.

11474. **Court order for destruction.** A court order for the destruction of controlled substances, instruments, or paraphernalia pursuant to the provisions of Section 11473 or 11473.5 may be carried out by a police or sheriff's department, the Department of Justice, the Department of the California Highway Patrol, or the Department of Alcoholic Beverage Control. The court order shall specify the agency responsible for the destruction. Controlled substances, instruments, or paraphernalia not in the possession of the designated agency at the time the order of the court is issued shall be delivered to the designated agency for destruction in compliance with the order. [*Amended by Stats. 1999, Ch. 787.*]

25249.5. **Contamination prohibition.** No person in the course of doing business shall knowingly discharge or release a chemical known to the state to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water, notwithstanding any other provision or authorization of law except as provided in Section 25249.9.

25249.6. **Warnings.** No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

## PENAL CODE SECTIONS

172. (a) Every person who, within one-half mile of the land belonging to this state upon which any state prison, or within 1,900 feet of the land belonging to this state upon which any Youth Authority institution is situated, or within one mile of the grounds belonging to the University of California, at Berkeley, or within one mile of the grounds belonging to the University of California at Santa Barbara, as such grounds existed as of January 1, 1961, or within one mile of the grounds belonging to Fresno State College, as such grounds existed as of January 1, 1959, or within three miles of the University Farm at Davis, or within 1½ miles of any building actually occupied as a home, retreat, or asylum for ex-soldiers, sailors, and marines of the Army and Navy of the United States, established or to be established by this state, or by the United States within this state, or within the State Capitol, or within the limits of the grounds adjacent and belonging thereto, sells or exposes for sale, any intoxicating liquor, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100), or by imprisonment for not less than 50 days or by both such fine and imprisonment, in the discretion of the court.

(b) The provision of subdivision (a) of this section prohibiting the sale or exposure for sale of any intoxicating liquor within 1,900 feet of the land belonging to this state upon which any Youth Authority institution is situated shall not apply with respect to the Fred C. Nelles School for Boys.

(c) Except within the State Capitol or the limits of the grounds adjacent and belonging thereto, as mentioned in subdivision (a) of this section, the provisions of this section shall not apply to the sale or exposing or offering for sale of ale, porter, wine, similar fermented malt or vinous liquor or fruit juice containing one-half of 1 percent or more of alcohol by volume and not more than 3.2 percent of alcohol by weight nor the sale or exposing or offering for sale of beer.

(d) Distances provided in this section shall be measured not by airline but by following the shortest highway or highways as defined in Section 360 of the Vehicle Code connecting the points in question. In measuring distances from the Folsom State Prison and the eastern facilities of the California Institution for Men at Chino and Youth Training School, the measurement shall start at the entrance gate.

(e) The provision of subdivision (a) of this section prohibiting the sale or exposure for sale of any intoxicating liquor within 1½ miles of any building actually occupied as a home, retreat, or asylum for ex-soldiers, sailors, and marines of the Army and Navy of the United States shall not apply to the Veterans' Home at Yountville, Napa County, California. [*Stats. 1983, Ch. 121, in effect August 22, 1983, restructured measurements distances of the California Institution for Men at Chino and Youth Training School.*]

**Interpretation of boundaries.**—When language used in a penal statute is reasonably susceptible of two interpretations, ordinarily that construction which is more favorable to an offender will be adopted. In applying § 172, the term “grounds belonging to the University of California, at Berkeley,” is held to mean those grounds constituting the traditional “main” campus of the university. *Walsh v. Department of Alcoholic Beverage Control and Navone*, 59 Cal. 2d 757.

172a. Every person who, within one and one-half miles of the university grounds or campus, upon which are located the principal administrative offices of any university having an enrollment of more than 1,000 students, more than 500 of whom reside or lodge upon such university grounds or campus, sells or exposes for sale, any intoxicating liquor, is guilty of a misdemeanor; provided, however, that the provisions of this section shall not apply to nor prohibit the sale of any of said liquors by any regularly licensed pharmacist who shall maintain a fixed place of business in said territory, upon the written prescription of a physician regularly licensed to practice medicine under the laws of the State of California when such prescription is dated by the physician issuing it, contains the name of the person for whom the prescription is written, and is filled for such person only and within 48 hours of its date; provided further, that the provisions of this section shall not apply to nor prohibit the sale of any of said liquors for chemical or mechanical purposes; provided further, that the provisions of this section shall not apply to nor prohibit the sale or exposing or offering for sale of ale, porter, wine, similar fermented malt, or vinous liquor or fruit juice containing one-half of 1 percent or more of alcohol by volume and not more than 3.2 percent of alcohol by weight nor the sale or exposing or offering for sale of beer.

In measuring distances from the university grounds or campus of any such university, such distances shall not be measured by airline but by following the shortest road or roads connecting the points in question. With respect to Leland Stanford Junior University measurements from the university grounds or campus shall be by airline measurement.

Any license issued and in effect in the City and County of San Francisco on the effective date of the amendment of this section enacted at the 1961 Regular Session

of the Legislature may be transferred to any location in the City and County of San Francisco. [*Amended by Stats. 1965, Ch. 1588.*]

172b. 1. Every person who, within one and one-half miles of the boundaries of the grounds belonging to the University of California at Los Angeles on which the principal administrative offices of the university are located, as such boundaries were established as of July 1, 1959, sells or exposes for sale any intoxicating liquor, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100), or by imprisonment for not less than 50 days, or by both such fine and imprisonment, in the discretion of the court.

2. The provisions of this section shall not apply to the sale or exposing or offering for sale of ale, porter, wine, similar fermented malt or vinous liquor or fruit juice containing one-half of 1 percent or more of alcohol by volume and not more than 3.2 percent of alcohol by weight nor the sale or exposing or offering for sale of beer.

3. Distances provided in this section shall be measured not by airline but by following the shortest road or roads connecting the points in question. [*Amended by Stats. 1965, Ch. 1588.*]

172c. The provisions of Section 172a shall not apply to the sale at auction of alcoholic beverages by a nonprofit organization at the California Museum of Science and Industry premises located at Exposition Park, Los Angeles, California. [*Added by Stats. 1977, Ch. 1118.*]

172d. 1. Every person who, within one mile of that portion of the grounds at Riverside (hereinafter described) belonging to the University of California, that will be used by the College of Letters and Sciences, sells, or exposes for sale, any intoxicating liquor, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100), or by imprisonment for not less than 50 days or by both such fine and imprisonment in the discretion of the court.

2. The provisions of this section shall not apply to the sale or exposing or offering for sale of ale, porter, wine, similar fermented malt or vinous liquor or fruit juice containing one-half of 1 percent or more of alcohol by volume and not more than 3.2 percent of alcohol by weight nor the sale or exposing or offering for sale of beer.

3. Distances provided in this section shall be measured not by airline but by following the shortest vehicular road or roads connecting the points in question.

4. The portion of the grounds of the University of California referred to in paragraph 1 are situated in the County of Riverside and more particularly described as follows: beginning at the intersection of Canyon Crest Drive and U.S. Highway 60, thence southeasterly along said highway to a point opposite the intersection of said U.S. Highway 60 and Pennsylvania Avenue, thence northeasterly following centerline of present drive into University campus, thence continuing north along said centerline of drive on west side of Citrus Experiment Station buildings to a point intersecting the present east-west road running east from intersection of Canyon Crest Drive and U.S. Highway 60, thence east 500 feet more or less, thence north 1,300 feet more or less, thence east to intersection of east boundary of the Regents of the University of California property (Valencia Hill Drive), thence north along said east boundary to the north boundary of the Regents of the University of California property (Linden Street), thence west along said north boundary to the west boundary of the Regents of the University of California property (Canyon Crest Drive) thence south along said west boundary to the point of beginning. [*Amended by Stats. 1972, Ch. 1241.*]

172e. The provisions of Sections 172, 172a, 172b, 172d, and 172g of this code shall not apply to the sale or the exposing or offering for sale of alcoholic beverages by an on-sale licensee under the Alcoholic Beverage Control Act within premises licensed as a bona fide public eating place as provided in the Constitution and as defined in the Alcoholic Beverage Control Act (commencing at Section 23000, Business and Professions Code), or within premises licensed as a club as defined in Articles 4 and 5 of Chapter 3 of the Alcoholic Beverage Control Act, provided that such club shall have been in existence for not less than 5 years, have a membership of 300 or more, and serves meals daily to its members, or by the holder of a caterer's permit under the provisions of Section 23399 of the Business and Professions Code in connection with the serving of bona fide meals as defined in Section 23038 of the Business and Professions Code, and the provisions of such sections shall not be construed so as to preclude the Department of Alcoholic Beverage Control from issuing licenses for bona fide public eating places within the areas prescribed by the sections. The provisions of this section shall not permit the issuance of licenses to fraternities, sororities, or other student organizations. [*Amended by Stats. 1973, Ch. 599.*]

172f. The provisions of Sections 172, 172a, 172b, 172d, and 172g of this code shall not apply to the sale or the exposing or offering for sale of any intoxicating liquor in any premises within the areas prescribed by said sections for which a license was issued under the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000), Business and Professions Code) and is in effect on the effective date of this section or on the effective date of any amendment to Section 172g specifying an additional institution, or in any licensed premises which may become included in such a prescribed area because of the extension of the boundaries of any of the institutions mentioned in said sections or because of the increased enrollment or number of resident students at any of such institutions.

Any such licenses may be transferred from person to person, and may be transferred from premises to premises if the premises to which the license is transferred are not located nearer to the boundaries of the institution, as they exist on the date of the transfer, than the premises from which the license is transferred, except that such license may be transferred once from premises to premises located nearer by not more than 300 feet to the boundaries of the institution as they exist on the date of transfer than the premises from which the license is transferred. If a license is transferred pursuant to this section from premises to premises located nearer by not more than 300 feet to the boundaries of the institution as they exist on the date of the transfer than the premises from which the license is transferred, such license shall not be thereafter transferred to any other premises located nearer to the boundaries of the institution as they exist on the date of the transfer than the premises from which the license is transferred. [*Amended by Stats. 1976, Ch. 778.*]

172g. 1. Every person who, within one mile by air line from the intersection of Sierra Vista, Pierce, and Campus Drive streets at the entrance to La Sierra College in the City of Riverside, or within one mile of the grounds or campus of Loma Linda University in the County of San Bernardino, or within one mile of the grounds of the University of Santa Clara in the City of Santa Clara, sells, or exposes for sale, any intoxicating liquor, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100), or by imprisonment in the county jail of not less than 50 days nor more than one year, or by both such fine and imprisonment in the discretion of the court.

2. The provisions of this section shall not apply to the sale or exposing or offering for sale of ale, porter, wine, similar fermented malt or vinous liquor or fruit juice containing one-half of 1 percent or more of alcohol by volume and not more than 3.2 percent of alcohol by weight nor the sale or exposing or offering for sale of beer.

3. Distances provided in this section shall be measured not by air line but by following the shortest road or roads connecting the points in question except those applying to La Sierra College. [*Amended by Stats. 1970, Ch. 945. Stats. 1984, Ch. 140, in effect May 31, 1984, removed LaVerne College from the prohibitions of the Sections.*]

172h. The provisions of Sections 172, 172a, 172b, 172d and 172g of this code shall not be applied to prohibit the sale or the exposing or offering for sale of any intoxicating liquor in, or the issuance of an alcoholic beverage license for, any premises because a university has constructed and occupied since January 1, 1960, or in the future constructs, dormitories for its students which has resulted or results in the premises being prohibited by the foregoing sections from selling, exposing or offering such liquor for sale because the premises are or become thereby within the area prescribed by these sections. [*Added by Stats. 1965, Ch. 1309.*]

**Enrollment increase exemption.**—Section 172h would apply so as to cause the provisions of §§ 172 through 172g to be inapplicable to any university which did not have 500 or more students living on campus as of January 1, 1960, or at any time prior thereto. *Scott-Memorial Baptist Church v. Department of Alcoholic Beverage Control (Farres)*, 260 C.A. 2d 100.

172j. The provisions of Section 172, 172a, 172b, 172d, and 172g shall not apply to the sale or exposing for sale of any intoxicating liquor on the premises of, and by the holder or agent of, a holder of a retail package off-sale general license or retail package off-sale beer and wine license issued under the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000), Business and Professions Code). [*Added by Stats. 1973, Ch. 210, in effect January 1, 1979.*]

172k. [*Repealed by Stats. 1973, Ch. 210, in effect January 1, 1979.*]

172l. The provisions of Section 172a shall not apply to the sale or offering for sale of any intoxicating liquor on the premises of, and by the holder or agent of a holder of, a retail off-sale license, as defined in Section 23394 of the Business and Professions Code, outside one mile of the closest building of the Claremont Colleges to these premises; nor shall the provisions of Section 172a apply to the sale or offering for sale of any beer, or wine, or both, on the premises of, and by the holder or agent of a holder of, a retail package off-sale beer and wine license, as defined in Section 23393 of the Business and Professions Code, outside 2,000 feet of the closest building of the Claremont Colleges to these premises.

Distance provided in this section shall be measured not by airline but by following the shortest road or roads connecting the points in question. [*Amended by Stats. 1973, Ch. 224.*]

172m. The provisions of Section 172a shall not apply to the sale or the exposing or offering for sale of alcoholic beverages at premises licensed under any type of on-sale license issued pursuant to Division 9 (commencing with Section 23000) of the Business and Professions Code, which premises are located off of the grounds or campus of Leland Stanford Junior University near the City of Palo Alto. [*Added by Stats. 1970, Ch. 1442.*]

172n. The provisions of Sections 172a and 172b shall not apply to the sale or exposing or offering for sale of alcoholic beverages by any off-sale licensee under the Alcoholic Beverage Control Act situated more than 2,000 feet from the boundaries of the grounds belonging to the University of California at Los Angeles on which the

principal administrative offices of the university are located, as such boundaries were established as of July 1, 1959, provided the licensee has conducted a retail grocery business and has held an off-sale beer and wine license at the same location for at least 15 years.

Distances provided in this section shall be measured not by airline but by following the shortest road or roads connecting the points in question. [*Added by Stats. 1973, Ch. 210.*]

172o. The provisions of Sections 172, 172a, 172b, 172d, and 172g shall not apply to the sale of wine for consumption off the premises where sold when the wine is sold at a bona fide public eating place by the holder of an on-sale general alcoholic beverage license or an on-sale beer and wine license issued under the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000) of the Business and Professions Code). [*Added by Stats. 1985, Ch. 838, in effect January 1, 1986.*]

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. [*Added by Stats. 1997, Ch. 774, in effect January 1, 1998.*]

172.1. No provision of law shall prevent the possession or use of wine on any state university, state college or community college premises solely for use in experimentation in or instruction of viticulture, enology, domestic science or home economics. [*Amended by Stats. 1970, Ch. 102.*]

172.3. The provisions of Section 172a shall not apply to the sale or exposing or offering for sale of any alcoholic beverages on the premises of, and by the holder or agent of a holder of, any off-sale license situated within 1½ miles from the grounds of the University of Redlands. [*Added by Stats. 1977, Ch. 760.*]

172.5. The provisions of Sections 172 and 172a of this code shall not apply to the sale or exposing or offering for sale of alcoholic beverages by a licensee under the Alcoholic Beverage Control Act within the premises occupied by any bona fide club which is situated within one mile of the grounds belonging to the University of California at Berkeley, if the club meets all of the following requirements:

(a) The membership in the club shall be limited to male American citizens over the age of 21 years.

(b) The club shall have been organized and have existed in the City of Berkeley for not less than 35 years continuously.

(c) The club shall have a bona fide membership of not less than 500 members.

(d) The premises occupied by the club are owned by the club, or by a corporation, at least 75 percent of whose capital stock is owned by the club, and have a value of not less than one hundred thousand dollars (\$100,000). [*Amended by Stats. 1967, Ch. 138.*]

172.6. The provisions of Section 172 of this code shall not apply to the sale, gift, or exposing or offering for sale of alcoholic beverages by a licensee under the Alcoholic Beverage Control Act within the premises occupied by any bona fide club which is situated within 2,000 feet of San Quentin Prison in Marin County, provided the club meets all the following requirements:

(a) The club shall have been organized and have existed in the County of Marin for not less than 25 years continuously.

(b) The club shall have a bona fide membership of not less than 1,000 persons.

(c) The premises occupied by the club are owned by the club or by club members. [Added by Stats. 1965, Ch. 1452.]

172.7. The provisions of Section 172a shall not apply to the sale, gift, or exposing or offering for sale of alcoholic beverages by a licensee under the Alcoholic Beverage Control Act within the premises occupied by any bona fide club which is situated within one mile of the campus of Whittier College in the City of Whittier, or one mile or more from the campus of Leland Stanford Junior University near the City of Palo Alto, provided the club meets all the following requirements:

(a) The club shall have been organized and have existed for not less than 10 years continuously.

(b) The club shall have a bona fide membership of not less than 350 persons.

(c) The club shall own the building which it occupies. [Amended by Stats. 1970, Ch. 1285.]

172.8. The provisions of Section 172a shall not apply to the sale of alcoholic beverages for consumption on the premises, by a nonprofit organization at a municipally owned conference center located more than one but less than 1½ miles from the California Institute of Technology in Pasadena. [Added by Stats. 1975, Ch. 88, in effect May 19, 1975.]

172.85. [Repealed by Stats. 1978, Ch. 90.]

172.9. The word “university” when used in this chapter with reference to the sale, exposing or offering for sale, of alcoholic beverages, means an institution which has the authority to grant an academic graduate degree. [Amended by Stats. 1965, Ch. 1588.]

172.95. Sections 172 to 172.9, inclusive, do not apply to sales to wholesalers or retailers by licensed winegrowers, brandy manufacturers, beer manufacturers, distilled spirits manufacturers’ agents, distilled spirits manufacturers, or wholesalers. [Added by Stats. 1965, Ch. 710, in effect June 18, 1965.]

**Cross reference.**—Atty. Gen. Op. 65/66 4-27-65.

**303. When employment of person to procure sale of alcoholic beverages unlawful: Payment of percentage of sales.** It shall be unlawful for any person engaged in the sale of alcoholic beverages, other than in the original package, to employ upon the premises where the alcoholic beverages are sold any person for the purpose of procuring or encouraging the purchase or sale of such beverages, or to pay any person a percentage or commission on the sale of such beverages for procuring or encouraging such purchase or sale. Violation of this section shall be a misdemeanor. [Added by Stats. 1935.]

**303a. Begging or soliciting customer to purchase alcoholic beverage for one begging or soliciting.** It shall be unlawful, in any place of business where alcoholic beverages are sold to be consumed upon the premises, for any person to loiter in or about said premises for the purpose of begging or soliciting any patron or customer of, or visitor in, such premises to purchase any alcoholic beverage for the one begging or soliciting. Violation of this section shall be a misdemeanor. [Added by Stats. 1953, Ch. 1591.]

**304. Selling liquors [or merchandise] at [or near] campmeeting.** [Repealed Stats. 1984, Ch. 438.]

**305. Limitation of preceding section.** [Repealed by Stats. 1984, Ch. 438.]

307. Every person, firm, or corporation which sells or gives or in any way furnishes to another person, who is in fact under the age of 21 years, any candy, cake, cookie or chewing gum which contains alcohol in excess of  $\frac{1}{2}$  of 1 percent by weight is guilty of a misdemeanor. [Added by Stats. 1977, Ch. 795, Stats. 1985, Ch. 503, in effect January 1, 1986, recast section.]

313.1. **Harmful Material.** (a) Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly sells, rents, distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including, but not limited to, live or recorded telephone messages, any harmful matter to the minor shall be punished as specified in Section 313.4. . . .

(b) Every person who misrepresents himself or herself to be the parent or guardian of a minor and thereby causes the minor to be admitted to an exhibition of any harmful matter shall be punished as specified in Section 313.4.

(c) (1) Any person who knowingly displays, sells, or offers to sell in any coin-operated or slug-operated vending machine or mechanically or electronically controlled vending machine that is located in a public place, other than a public place from which minors are excluded, any harmful matter displaying to the public view photographs or pictorial representations of the commission of any of the following acts shall be punished as specified in Section 313.4: sodomy, oral copulation, sexual intercourse, masturbation, bestiality, or a photograph of an exposed penis in an erect and turgid state.

(2) Any person who knowingly displays, sells, or offers to sell in any coin-operated vending machine that is not supervised by an adult and that is located in a public place, other than a public place from which minors are excluded, any harmful matter, as defined in subdivision (a) of Section 313, shall be punished as specified in Section 313.4.

(d) Nothing in this section invalidates or prohibits the adoption of an ordinance by a city, county, or city and county that restricts the display of material that is harmful to minors, as defined in this chapter, in a public place, other than a public place from which minors are excluded, by requiring the placement of devices commonly known as blinder racks in front of the material, so that the lower two-thirds of the material is not exposed to view.

(e) Any person who sells or rents video recordings of harmful matter shall create an area within his or her business establishment for the placement of video recordings of harmful matter and for any material that advertises the sale or rental of these video recordings. This area shall be labeled "adults only." The failure to create and label the area is an infraction, punishable by a fine not to exceed one hundred dollars (\$100). The failure to place a video recording or advertisement, regardless of its content, in this area shall not constitute an infraction. Any person who sells or distributes video recordings of harmful matter to others for resale purposes shall inform the purchaser of the requirements of this section. . . .

316. **Disorderly house.** (a) Every person who keeps any disorderly house, or any house for the purpose of assignation or prostitution, or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner; and every person who lets any apartment or tenement, knowing that it is to be used for the purpose of assignation or prostitution, is guilty of a misdemeanor.

318.5. Nothing in this code shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a county or city, if such ordinance directly regulates the exposure of the genitals or buttocks of or the breasts of any person who acts as a waiter, waitress, or entertainer, whether or not the owner of the establishment in which the activity is performed employs or pays any compensation to such person to perform such activity, in an establishment which serves food, beverages, or food and beverages, including, but not limited to, alcoholic beverages, for consumption on the premises of such establishment.

The provisions of this section shall not apply to a theater, concert hall, or similar establishment which is primarily devoted to theatrical performances.

This section shall be known and may be cited as the “Quimby-Walsh Act.” [*Added by Stats. 1969, Ch. 1534.*]

318.6. Nothing in this code shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city or county, if such ordinance relates to any live acts, demonstrations, or exhibitions which occur in public places, places open to the public, or places open to public view and involve the exposure of the private parts or buttocks of any participant or the breasts of any female participant, and if such ordinance prohibits an act or acts which are not expressly authorized or prohibited by this code.

The provisions of this section shall not apply to a theater, concert hall, or similar establishment which is primarily devoted to theatrical performances. [*Added by Stats. 1969, Ch. 1535.*]

319. **Lottery defined.** A lottery is any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or any interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprises, or by whatever name the same may be known. [*Enacted 1872.*]

320. **Contriving, preparing or drawing.** Every person who contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a misdemeanor. [*Enacted 1872.*]

321. **Sale of tickets, chances, shares or interest.** Every person who sells, gives, or in any manner whatever, furnishes or transfers to or for any other person any ticket, chance, share, or interest, or any paper, certificate, or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in, or depending upon the event of any lottery, is guilty of a misdemeanor. [*Enacted 1872.*]

330. **Gaming defined; punishment.** Every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan-tan, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of those prohibited games, is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment. [*Amended by Stats. 1991, Ch. 71.*]

**330a. Possession or keeping of slot or card machine, card dice or dice having more than six faces: Punishment.** Every person, who has in his possession or under his control, either as owner, lessee, agent, employee, mortgagee, or otherwise, or who permits to be placed, maintained or kept, in any room, space, inclosure or building owned, leased or occupied by him, or under his management or control, any slot or card machine, contrivance, appliance or mechanical device, upon the result of action of which money or other valuable thing is staked or hazarded, and which is operated, or played, by placing or depositing therein any coins, checks, slugs, balls, or other articles or device, or in any other manner and by means whereof, or as a result of the operation of which any merchandise, money, representative or articles of value, checks, or tokens, redeemable in, or exchangeable for money or any other thing of value, is won or lost, or taken from or obtained from such machine, when the result of action or operation of such machine, contrivance, appliance, or mechanical device is dependent upon hazard or chance, and every person, who has in his possession or under his control, either as owner, lessee, agent, employee, mortgagee, or otherwise, or who permits to be placed, maintained or kept, in any room, space, inclosure or building, owned, leased or occupied by him, or under his management or control, any card dice, or any dice having more than six faces or bases each, upon the result of action of which any money or other valuable thing is staked or hazarded, or as a result of the operation of which any merchandise, money, representative or article of value, check or token, redeemable in or exchangeable for money or any other thing of value, is won or lost or taken, when the result of action or operation of such dice is dependent upon hazard or chance, is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [*Amended by Stats. 1983, Ch. 1092.*]

**330c. Punchboard.** A punchboard as hereinafter defined is hereby declared to be a slot machine or device within the meaning of Section 330b of this code and shall be subject to the provisions thereof. For the purposes of this section, a punchboard is any card, board or other device which may be played or operated by pulling, pressing, punching out or otherwise removing any slip, tab, paper or other substance therefrom to disclose any concealed number, name or symbol. [*Added by Stats. 1953, Ch. 379, p. 1641, Sec. 1.*]

**337a. Pool selling or bookmaking.** Every person,

1. Who engages in pool selling or bookmaking, with or without writing, at any time or place; or

2. Who, whether for gain, hire, reward, or gratuitously, or otherwise, keeps or occupies, for any period of time whatsoever, any room, shed, tenement, tent, booth, building, float, vessel, place, stand or enclosure, of any kind, or any part thereof, with a book or books, paper or papers, apparatus, device or paraphernalia, for the purpose of recording or registering any bet or bets, or any purported bet or bets, or wager or wagers, or any purported wager or wagers, or of selling pools, or purported pools, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of man or beast, or between men, beasts, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown or contingent event whatsoever; or

3. Who, whether for gain, hire, reward, or gratuitously, or otherwise, receives, holds, or forwards, or purports or pretends to receive, hold, or forward, in any manner

whatsoever, any money, thing or consideration of value, or the equivalent or memorandum thereof, staked, pledged, bet or wagered, or to be staked, pledged, bet or wagered, or offered for the purpose of being staked, pledged, bet or wagered, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of man or beast, or between men, beasts, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown or contingent event whatsoever; or

4. Who, whether for gain, hire, reward, or gratuitously, or otherwise, at any time or place, records, or registers any bet or bets, wager or wagers, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of man or beast, or between men, beasts, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown or contingent event whatsoever; or

5. Who, being the owner, lessee or occupant of any room, shed, tenement, tent, booth, building, float, vessel, place, stand, enclosure or grounds, or any part thereof, whether for gain, hire, reward, or gratuitously, or otherwise, permits the same to be used or occupied for any purpose, or in any manner prohibited by subdivisions 1, 2, 3 or 4 of this section; or

6. Who lays, makes, offers or accepts any bet or bets, or wager or wagers, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of man or beast, or between men, beasts, or mechanical apparatus, is punishable by imprisonment in the county jail for a period of not more than one year or in the state prison.

(a) In any accusatory pleading charging a violation of this section, if the defendant has been once previously convicted of a violation of any subdivision of this section, the previous conviction shall be charged in the accusatory pleading, and, if the previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, the defendant shall, if he is not imprisoned in the state prison, be imprisoned in the county jail for a period of not more than one year or pay a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or be punished by both such fine and imprisonment. Nothing in this paragraph shall prohibit a court from placing such a person on probation, provided, however, that such person shall be required to pay a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) or to be imprisoned in the county jail for a period of not more than one year as a condition thereof. In no event does the court have the power to absolve a person convicted hereunder from either being imprisoned or from paying a fine of not less than five hundred dollars (\$500).

(b) In any accusatory pleading charging a violation of this section, if the defendant has been previously convicted two or more times of a violation of any subdivision of this section, each such previous conviction shall be charged in the accusatory pleadings; and if two or more of such previous convictions are found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or are admitted by the defendant, the defendant shall, if he is not imprisoned in the state prison, be imprisoned in the county jail for a period of not more than one year or pay a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or be punished by both such fine and imprisonment. Nothing in this paragraph shall prohibit a court from placing such a person on probation, provided, however, that such person shall be required to pay a fine of not less than one thousand dollars (\$1,000) nor more

than five thousand dollars (\$5,000) or to be imprisoned in the county jail for a period of not more than one year as a condition thereof. In no event does the court have the power to absolve a person convicted hereunder from either being imprisoned or from paying a fine of not less than one thousand dollars (\$1,000).

Except where the existence of a previous conviction of any subdivision of this section was not admitted or not found to be true pursuant to this section, or the court finds that a prior conviction was invalid, the court shall not strike or dismiss any prior convictions alleged in the information or indictment.

This section shall apply not only to persons who may commit any of the acts designated in subdivisions 1 to 6 inclusive of this section, as a business or occupation, but shall also apply to every person or persons who may do in a single instance any one of the acts specified in said subdivisions 1 to 6 inclusive. [*Amended by Stats. 1978, Ch. 1164.*]

**347b. Alcoholic beverage containing deleterious or poisonous substance.** It shall be unlawful for any person, firm or corporation to manufacture, sell, furnish, or give away, or offer to manufacture, sell, furnish, or give away any alcoholic solution of a potable nature containing any deleterious or poisonous substance, and the burden of proof shall be upon the person, firm, or corporation manufacturing, selling, furnishing, or giving away, or offering to manufacture, sell, furnish, or give away, any such alcoholic solution of a potable nature containing any deleterious or poisonous substance, to show that such alcoholic solution of a potable nature did not contain any deleterious or poisonous substance. Every person who violates any of the provisions of this section is guilty of a misdemeanor, and shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

**373a. Maintaining or permitting public nuisance after abatement notice a misdemeanor: Each day's existence a separate offense: Duty of district attorney.** Every person who maintains, permits, or allows a public nuisance to exist upon his or her property or premises, and every person occupying or leasing the property or premises of another who maintains, permits or allows a public nuisance to exist thereon, after reasonable notice in writing from a health officer or district attorney or city attorney or prosecuting attorney to remove, discontinue or abate the same has been served upon such person is guilty of a misdemeanor, and shall be punished accordingly; and the existence of such nuisance for each and every day after the service of such notice shall be deemed a separate and distinct offense, and it is hereby made the duty of the district attorney, or the city attorney of any city the charter of which imposes the duty upon the city attorney to prosecute state misdemeanors, to prosecute all persons guilty of violating this section by continuous prosecutions until the nuisance is abated and removed. [*Amended by Stats. 1955, Ch. 1266.*]

**382. Adulteration.** Every person who adulterates or dilutes any article of drink spirituous or malt liquor, or wine, or any article useful in compounding them, with the fraudulent intent to offer the same, or cause or permit it to be offered for sale as unadulterated and undiluted; and every person who fraudulently sells, or keeps or offers for sale the same, as unadulterated or undiluted, or who, in response to an inquiry for any article of drink spirituous or malt liquor, or wine, sells or offers for sale, a different article, or an article of a different character or manufacture, without first informing such purchaser of such difference, is guilty of a misdemeanor; provided,

that no retail dealer shall be convicted under the provisions of this section if he shall prove a written guarantee of purity obtained from the person from whom he purchased such adulterated or diluted goods.

397. **Selling liquor to habitual drunkard or incompetent.** Every person who sells or furnishes, or causes to be sold or furnished, intoxicating liquors to any habitual or common drunkard, or to any person who has been adjudged legally incompetent or insane by any court of this State and has not been restored to legal capacity, knowing such person to have been so adjudged, is guilty of a misdemeanor. [*Amended by Stats. 1953, Ch. 146.*]

398. **Sale during restricted hours.** [*Repealed Stats. 1987, Ch. 828.*]

529a. **False identification cards.** Every person who manufactures, produces, sells, offers, or transfers to another any document purporting to be either a certificate of birth or certificate of baptism, knowing such document to be false or counterfeit and with the intent to deceive, is guilty of a crime, and upon conviction therefor, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison. Every person who offers, displays, or has in his or her possession any false or counterfeit certificate of birth or certificate of baptism, or any genuine certificate of birth which describes a person then living or deceased, with intent to represent himself or herself as another or to conceal his or her true identity, is guilty of a crime, and upon conviction therefor, shall be punished by imprisonment in the county jail not to exceed one year. [*Added by Stats. 1979, Ch. 739, p. 2215, Sec. 2. Amended by Stats. 1987, Ch. 1477, Sec. 10.*]

529.5. **Furnishing identification.** (a) Every person who manufactures, sells, offers for sale, or transfers any document, not amounting to counterfeit, purporting to be a government-issued identification card or driver's license, which by virtue of the wording or appearance thereon could reasonably deceive an ordinary person into believing that it is issued by a government agency, and who knows that the document is not a government-issued document, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both the fine and imprisonment.

(b) Any person who, having been convicted of a violation of subdivision (a), is subsequently convicted of a violation of subdivision (a), is punishable for the subsequent conviction by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars (\$5,000) or by both the fine and imprisonment.

(c) Any person who possesses a document described in subdivision (a) and who knows that the document is not a government-issued document is guilty of a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000) and not more than two thousand five hundred dollars (\$2,500). The misdemeanor fine shall be imposed except in unusual cases where the interests of justice would be served. The court may allow an offender to work off the fine by doing community service. If community service work is not available, the misdemeanor shall be punishable by a fine of up to one thousand dollars (\$1,000), based on the person's ability to pay.

(d) If an offense specified in this section is committed by a person when he or she is under 21 years of age, but is 13 years of age or older, the court also may suspend the person's driving privilege for one year, pursuant to Section 13202.5 of the Vehicle Code. [*Amended by Stats. 1990, Ch. 960.*]

**633. Authorized use of electronic equipment.** Nothing in Section 631, 632, 632.5, 632.6, or 632.7 prohibits the Attorney General, any district attorney, or any assistant, deputy, or investigator of the Attorney General or any district attorney, any officer of the California Highway Patrol, any chief of police, assistant chief of police, or police officer of a city or city and county, any sheriff, undersheriff, or deputy sheriff regularly employed and paid in that capacity by a county, or any person acting pursuant to the direction of one of these law enforcement officers acting within the scope of his or her authority, from overhearing or recording any communication that they could lawfully overhear or record prior to the effective date of this chapter.

Nothing in Section 631, 632, 632.5, 632.6, or 632.7 renders inadmissible any evidence obtained by the above-named persons by means of overhearing or recording any communication that they could lawfully overhear or record prior to the effective date of this chapter. [*Amended by Stats. 1992, Ch. 298.*]

**Cross-reference**—Penal Code section 632.7 [Cordless/cellular telephone transmission interception, recording].

**647. Disorderly conducts enumerated: Punishment.** Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor.

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution.  
\* \* \*

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself or herself and to account for his or her presence when requested by any peace officer so to do, if the surrounding circumstances would indicate to a reasonable person that the public safety demands such identification.

(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way. \* \* \* [*Amended by Stats. 1996, Ch. 1020.*]

**647e. Open containers adjacent to licensed premises; local control.**

(a) A city, county, or city and county may by local ordinance provide that no person who has in his or her possession any bottle, can or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, shall enter, be, or remain on the posted premises of, including the posted parking lot immediately adjacent to, any retail package off-sale alcoholic beverage licensee licensed pursuant to Division 9 (commencing with Section 23000) of the Business and Professions Code, or on any public sidewalk immediately adjacent to the licensed and posted premises. Any person violating any provision of such an ordinance shall be guilty of an infraction.

(b) As used in subdivision (a), “posted premises” means those premises which are subject to licensure under any retail package off-sale alcoholic beverage license, the parking lot immediately adjacent to the licensed premises and any public sidewalk immediately adjacent to the licensed premises on which clearly visible notices indicate to the patrons of the licensee and parking lot and to persons on the public sidewalk, that the provisions of subdivision (a) are applicable. Any local ordinance adopted pursuant to this section shall require posting of the premises.

(c) The provisions of this section shall not apply to a private residential parking lot which is immediately adjacent to the posted premises.

Nothing in this section shall affect the power of a county or a city, or city and county, to regulate the possession of an opened alcoholic beverage in any public place or in a place open to the public. *[Added by Stats. 1983, Ch. 514, Sec. 1, urgency, in effect July 28, 1983.]*

**830.2. Particular officers.** The following persons are peace officers whose authority extends to any place in the state: \* \* \*

(h) Persons employed by the Department of Alcoholic Beverage Control for the enforcement of Division 9 (commencing with Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control, provided that the primary duty of any of these peace officers shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code. \* \* \* *[Amended by Stats. 1996, Ch. 305.]*

## PUBLIC RESOURCES CODE

14575. (j) (2) (A) Notwithstanding Section 14506, with respect to the payment of processing fees for beer and other malt beverages, the beverage manufacturer shall be deemed to be the person or entity named on the certificate of compliance issued pursuant to Section 23671 of the Business and Professions Code. If the department is unable to collect the processing fee from the person or entity named on the certificate of compliance, the department shall give written notice by certified mail to that person or entity. The notice shall state that the processing fee shall be remitted in full within 30 days of issuance of the notice or the person or entity shall not be permitted to offer that beverage brand for sale within the state. If the person or entity fails to remit the processing fee within 30 days of issuance of the notice, the department shall notify the Department of Alcoholic Beverage Control that the certificate holder has failed to comply, and the Department of Alcoholic Beverage Control shall prohibit the offering or sale of that beverage brand within the state.

(B) The department shall enter into a contract with the Department of Alcoholic Beverage Control, pursuant to Section 14536.5, concerning the implementation of this paragraph, which shall include a provision reimbursing the Department of Alcoholic Beverage Control for its costs incurred in implementing this paragraph.

## REVENUE AND TAXATION CODE

32101. The issuance of any manufacturer’s, winegrower’s, wine blender’s, distilled spirits manufacturer’s agent’s, rectifier’s, wholesaler’s, importer’s, customs broker’s license, or wine direct shipper permit under Division 9 (commencing with Section 23000) of the Business and Professions Code shall constitute the registration of the

person to whom the license or permit is issued as a taxpayer under this part. Upon the issuance of any of these licenses the Department of Alcoholic Beverage Control shall furnish a copy thereof to the board.

*History.—Added by Stats. 2005, Ch. 157, SB 118, in effect January 1, 2006.*

32177.5. No tax shall be imposed upon the sale of distilled spirits by brandy manufacturers, distilled spirits manufacturers, rectifiers, importers, and distilled spirits wholesalers to the following listed instrumentalities of the armed forces of the United States organized under Army, Air Force, Navy, Marine Corps, or Coast Guard regulations and located upon territory within the geographical boundaries of the state:

(a) Army, Air Force, Navy, Marine Corps, and Coast Guard exchanges.

(b) Officers', noncommissioned officers', and enlisted men's clubs or messes.

If any manufacturer, rectifier, importer or wholesaler has paid the tax on alcoholic beverages, except beer and wine, thereafter sold to an instrumentality of the Armed Forces so located, the taxpayer may claim and shall be allowed credit with respect to the tax so paid in any report filed or assessment paid under this part.

### VEHICLE CODE SECTIONS

12800.5. (a) A license issued after January 1, 1974, shall bear a fullface photograph of the licensee. \* \* \*

(c) The department may demand proof of age prior to the issuance of a license. [*Amended by Stats. 1973, Ch. 463.*]

13000. (a) The department may issue an identification card to any person attesting to the true name, correct age, and other identifying data as certified by the applicant for such identification card.

(b) Any person 62 years of age or older may apply for, and the department upon receipt of a proper application therefore shall issue, an identification card bearing the notation "Senior Citizen".

(c) Every application for an identification card shall be signed and verified by the applicant before a person authorized to administer oaths and shall be supported by such bona fide documentary evidence of the age and identity of such person as the department may require, and shall include a legible print of the thumb or finger of the applicant.

(d) Any person 62 years of age or older, and any other qualified person, may apply for, or possess, an identification card under the provisions of either subdivision (a) or (b), but not under both such provisions.

(e) This section shall become operative on July 1, 1982. [*Amended by Stats. 1981, Ch. 1102.*]

13001. [*Repealed by Stats. 1973, Ch. 965.*]

13002. (a) Except as otherwise provided in subdivision (b), every identification card shall expire, unless canceled earlier, on the sixth birthday of the applicant following the date of application for the identification card. Renewal of any identification card, other than a senior citizen identification card, shall be made for a term which shall expire on the sixth birthday of the applicant following expiration of the identification card renewed, unless surrendered earlier. Any application for renewal received after 90 days after expiration of the identification card, including a senior citizen identification card, shall be considered the same as an application for an original identification card. The department shall, at the end of six years and six months after the issuance or renewal

of an identification card, other than a senior citizen identification card, destroy any record of the card if it has expired and has not been renewed.

(b) Every senior citizen identification card issued pursuant to subdivision (b) of Section 13000 shall expire, unless canceled earlier, on the 10th birthday of the applicant following the date of application for the identification card. Renewal of any senior citizen identification card shall be made for a term which shall expire on the 10th birthday of the applicant following expiration of the senior citizen identification card renewed, unless surrendered earlier. The department shall, at the end of 10 years and six months after the issuance or renewal of a senior citizen identification card, destroy any record of the card if it has expired and has not been renewed.

(c) An identification card may be issued to a person in exchange for the person's driver's license which is surrendered to the department for either of the following reasons:

(1) The person has a physical or mental condition and requests cancellation of the driver's license.

(2) The department has revoked the person's driving privilege based upon the person's physical or mental condition.

That card shall be issued without the payment of any additional fee. [*Amended by Stats. 1994, Ch. 675.*]

13003. Identification cards. (a) In the event an identification card issued under this code is lost, destroyed, mutilated, or a new name is acquired, the person to whom it was issued shall make application for an original identification card as specified in Section 13000. The fee provided in Section 14902 shall be paid to the department upon application for the card. Every identification card issued pursuant to this section shall expire as provided in Section 13002 and shall be deemed an original identification card for that purpose.

(b) A person in possession of a valid identification card who has been informed either by the department or by a law enforcement agency that the document is mutilated shall surrender the identification card to the department not later than 10 days after that notification.

(c) For purposes of this section a mutilated identification card is one that has been damaged sufficiently to render any or all of the elements of identity set forth in Sections 13005 and 13005.5 unreadable or unidentifiable through visual, mechanical, or electronic means.

13004. It is unlawful for any person:

(a) To display or cause or permit to be displayed or have in his possession any canceled, fictitious, fraudulently altered, or fraudulently obtained identification card.

(b) To lend his identification card to any other person or knowingly permit the use thereof by another.

(c) To display or represent any identification card not issued to him as being his card.

(d) To permit any unlawful use of an identification card issued to him.

(e) To do any act forbidden or fail to perform any act required by this article.

(f) To photograph, photostat, duplicate, or in any way reproduce any identification card or facsimile thereof in such a manner that it could be mistaken for a valid identification card, or to display or have in his possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by the provisions of this code.

(g) To alter any identification card in any manner not authorized by this code. [*Amended by Stats. 1971, Ch. 1174.*]

13004.1 (a) No person shall manufacture or sell an identification document of a size and form substantially similar to the identification cards issued by the department.

(b) A violation of this section is a misdemeanor punishable by a fine of not less than five hundred dollars (\$500). [*Added by Stats. 1990, Ch. 170.*]

13005. (a) The identification card shall resemble in appearance, so far as is practicable, a driver's license issued pursuant to this code. It shall adequately describe the applicant, bear his or her picture, and be produced in color or engraved by a process or processes that prohibit as near as possible, the ability to alter or reproduce the identification card, or prohibit the ability to superimpose a picture or photograph on the identification card without ready detection.

(b) With every identification card, the department shall provide a form which may be carried with the identification card by which the cardholder may indicate his or her willingness and intent to make an anatomical gift or his or her refusal to make an anatomical gift pursuant to Section 7150.5 of the Health and Safety Code and the date the pacemaker has been implanted. The department shall present this form, and explain its use, to each applicant for an identification card, or for the renewal of an identification card, at the time of the application. The form provided shall contain a statement sufficient in its terms to meet the requirements of the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code.) To be effective, the statement shall be signed by the holder of the card who shall be at least 18 years of age. If the holder of the card cannot sign, the statement may be signed for the cardholder at his or her direction and in his or her presence in the presence of two witnesses who shall sign the statement in his or her presence. The gift shall become effective upon the death of the holder of the card.

(c) No contract shall be let to any nongovernmental entity for the processing of identification cards unless the department receives two or more qualified bids from independent, responsible bidders. [*Amended by Stats. 1992, Ch. 583.*]

13005.5. An identification card issued to any person shall bear a fullface engraved picture or photograph of the person. [*Amended by Stats. 1981, Ch. 1006.*]

13006. No public entity or employee shall be liable for any loss or injury resulting directly or indirectly from false or inaccurate information contained in identification cards provided for in this article.

No public entity or employee shall be liable for any loss, detriment, or injury resulting directly or indirectly from false or inaccurate information contained in the sticker provided pursuant to subdivision (b) of Section 13005. [*Amended by Stats. 1975, Ch. 325.*]

13007. Change of address. Whenever any person after applying for or receiving an identification card acquires an address different from the address shown on the identification card issued to him, he shall within 10 days thereafter notify the department of his old and new address. The department may thereupon take such action as necessary to insure that the identification card reflects the proper address of the identification card holder.

13008. When used in reference to an identification card, "cancellation" means that an identification card is terminated without prejudice and must be surrendered. Cancellation of card may be made when a card has been issued through error or when voluntarily surrendered to the department. [*Added by Stats. 1969, Ch. 1340.*]

13202.5. (a) For each conviction of a person for any offense specified in subdivision (d), committed while the person was under the age of 21 years, but 13 years of age

or older, the court shall suspend the person's driving privilege for one year. If the person convicted does not yet have the privilege to drive, the court shall order the department to delay issuing the privilege to drive for one year subsequent to the time the person becomes legally eligible to drive. However, if there is no further conviction for any offense specified in subdivision (d) in a 12-month period after the conviction, the court, upon petition of the person affected, may modify the order imposing the delay of the privilege. For each successive offense, the court shall suspend the person's driving privilege for those possessing a license or delay the eligibility for those not in possession of a license at the time of their conviction for one additional year.

As used in this section, the term "conviction" includes the findings in juvenile proceedings specified in Section 13105. \* \* \*

(d) This section applies to violations involving controlled substances or alcohol contained in the following provisions:

(1) Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of, and Sections 25658, 25658.5, 25661, and 25662 of, the Business and Professions Code.

(2) Division 10 (commencing with Section 11000) of the Health and Safety Code.

(3) Section 191.5, paragraph (3) of subdivision (c) of Section 192, subdivision (c) or (d) of Section 192.5, and subdivision (f) of Section 647 of the Penal Code.

(4) Section 23103 when subject to Section 23103.5, Section 23140, and Article 2 (commencing with Section 23152) of Chapter 12 of Division 11 of this code.

(e) Suspension, restriction, or delay of driving privileges pursuant to this section shall be in addition to any penalty imposed upon conviction of any violation specified in subdivision (d). [*Amended by Stats. 1990, Ch. 1696.*]

**Constitutionality.**—Section upheld by *People v. Valenzuela*, 5 Cal.Rptr.2d 492.

**23136. DUI—Minor: zero tolerance.** (a) Notwithstanding Sections 23152 and 23153, it is unlawful for a person under the age of 21 years who has a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test or other chemical test, to drive a vehicle. However, this section shall not be a bar to prosecution under Section 23152 or 23153 or any other provision of law.

(b) A person shall be found to be in violation of subdivision (a) if the person was, at the time of driving, under the age of 21 years, and the trier of fact finds that the person had consumed an alcoholic beverage and was driving a vehicle with a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test or other chemical test.

(c) (1) Any person under the age of 21 years who drives a motor vehicle is deemed to have given his or her consent to a preliminary alcohol screening test or other chemical test for the purpose of determining the presence of alcohol in the person, if lawfully detained for an alleged violation of subdivision (a).

(2) The testing shall be incidental to a lawful detention and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of subdivision (a).

(3) The person shall be told that his or her failure to submit to, or the failure to complete, a preliminary alcohol screening test or other chemical test as requested will result in the suspension or revocation of the person's privilege to operate a motor vehicle for a period of one year to three years, as provided in Section 13353.1.

**23137. Minor: Preliminary alcohol screening test.** (a) If a peace officer lawfully detains a person under 21 years of age who is driving a motor vehicle, and the officer

has reasonable cause to believe that the person is in violation of Section 23136, the officer shall request that the person take a preliminary alcohol screening test to determine the presence of alcohol in the person, if a preliminary alcohol screening test device is immediately available. If a preliminary alcohol screening test device is not immediately available, the officer may request the person to submit to chemical testing of his or her blood, breath, or urine, conducted pursuant to Section 23157.

(b) If the person refuses to take, or fails to complete, the preliminary alcohol screening test or refuses to take or fails to complete a chemical test if a preliminary alcohol device is not immediately available, or if the person takes the preliminary alcohol screening test and that test reveals a blood-alcohol concentration of 0.01 percent or greater, or if the results of a chemical test reveal a blood-alcohol concentration of 0.01 percent or greater, the officer shall proceed as follows:

(1) The officer, acting on behalf of the department, shall serve the person with a notice of an order of suspension of the person's driving privilege.

(2) The officer shall take possession of any driver's license issued by this state which is held by the person. When the officer takes possession of a valid driver's license, the officer shall issue, on behalf of the department, a temporary driver's license. The temporary driver's license shall be an endorsement on the notice of the order of suspension and shall be valid for 30 days from the date of issuance, or until receipt of the order of suspension from the department, whichever occurs first.

(3) The officer immediately shall forward a copy of the completed notice of order of suspension form, and any driver's license taken into possession under paragraph (2), with the report required by Section 23158.2, to the department. For purposes of this paragraph, "immediately" means on or before the end of the fifth ordinary business day after the notice of order of suspension was served.

(c) For the purposes of this section, a preliminary alcohol screening test device is an instrument designed and used to measure the presence of alcohol in a person based on a breath sample.

**23138. Minor: DUI Civil penalty.** Notwithstanding Section 40000.1, a violation of Section 23136 is neither an infraction nor a public offense, as defined in Section 15 of the Penal Code. A violation of Section 23136 is only subject to civil penalties. Those civil penalties shall be administered by the department through the civil administrative procedures set forth in this code.

**23139. Minor: DMV Fee.** Any person whose license is suspended or delayed issuance pursuant to Section 23137 shall pay to the department, in addition to any other fees required for the reissuance, return, or issuance of a driver's license, one hundred dollars (\$100) for the reissuance, return, or issuance of his or her driver's license.

**23152.** (a) It is unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle.

(b) It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. \* \* \*

**23158.2. Immediate Report to DMV.** (a) If a peace officer serves a notice of an order of suspension pursuant to Section 23137, or arrests any person for a violation of Section 23140, 23152, or 23153, the peace officer shall immediately forward to the department a sworn report of all information relevant to the enforcement action, including information which adequately identifies the person, a statement of the officer's

grounds for belief that the person violated Section 23136, 23140, 23152, or 23153, a report of the results of any chemical tests which were conducted on the person or the circumstances constituting a refusal to submit to or complete the chemical testing pursuant to Section 23137 or 23157, a copy of any notice to appear under which the person was released from custody, and, if immediately available, a copy of the complaint filed with the court. For purposes of this section and subdivision (g) of Section 23157, "immediately" means on or before the end of the fifth ordinary business day following the arrest, except that with respect to Section 23137 only, "immediately" has the same meaning as defined in paragraph (3) of subdivision (b) of Section 23137.

(b) The peace officer's sworn report shall be made on forms furnished or approved by the department.

(c) For purposes of this section, a report prepared pursuant to subdivision (a) and received pursuant to subdivision (a) of Section 1801, is a sworn report when it bears an entry identifying the maker of the document or a signature that has been affixed by means of an electronic device approved by the department.

23220. No person shall drink any alcoholic beverage while driving a motor vehicle upon any highway. [*Amended by Stats. 1981, Ch. 940.*]

23221. No person shall drink any alcoholic beverage while in a motor vehicle upon a highway. [*Amended by Stats. 1981, Ch. 940.*]

23222. (a) No person shall have in his or her possession on his or her person, while driving a motor vehicle upon a highway, any bottle, can, or other receptacle, containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed. \* \* \* [*Amended by Stats. 1983, Ch. 1005.*]

23223. No person shall have in his or her possession on his or her person, while in a motor vehicle upon a highway, any bottle, can, or other receptacle, containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed. [*Amended by Stats. 1981, Ch. 940.*]

23224. (a) No person under the age of 21 years shall knowingly drive any motor vehicle carrying any alcoholic beverage, unless the person is accompanied by a parent, responsible adult relative, any other adult designated by the parent, or legal guardian for the purpose of transportation of an alcoholic beverage, or is employed by a licensee under the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000) of the Business and Professions Code), and is driving the motor vehicle during regular hours and in the course of the person's employment. If the driver was unaccompanied, he or she shall have a complete defense if he or she was following, in a timely manner, the reasonable instructions of his or her parent, legal guardian, responsible adult relative, or adult designee relating to disposition of the alcoholic beverage.

(b) No passenger in any motor vehicle who is under the age of 21 years shall knowingly possess or have under that person's control any alcoholic beverage, unless the passenger is accompanied by a parent, legal guardian, responsible adult relative, any other adult designated by the parent, or legal guardian for the purpose of transportation of an alcoholic beverage, or is employed by a licensee under the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000) of the Business and Professions Code), and the possession or control is during regular hours and in the course of the passenger's employment. If the passenger was unaccompanied, he or she shall have a complete defense if he or she was following, in a timely manner,

the reasonable instructions of his or her parent, legal guardian, responsible adult relative, or adult designee relating to disposition of the alcoholic beverage.

(c) If the vehicle used in any violation of subdivision (a) or (b) is registered to an offender who is under the age of 21 years, the vehicle may be impounded at the owner's expense for not less than one day nor more than 30 days for each violation.

(d) Any person under 21 years of age convicted of a violation of this section is subject to Section 13202.5. \* \* \* [*Amended by Stats. 1990, Ch. 1697.*]

23225. It is unlawful for the registered owner of any motor vehicle, or the driver if the registered owner is not then present in the vehicle, to keep in a motor vehicle, when the vehicle is upon any highway, any bottle, can, or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, unless the container is kept in the trunk of the vehicle, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers.

This section shall not apply to the living quarters of a housecar or camper. [*Amended by Stats. 1981, Ch. 940.*]

23226. It is unlawful for any person to keep in the passenger compartment of a motor vehicle, when the vehicle is upon any highway, any bottle, can, or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed.

This section shall not apply to the living quarters of a housecar or camper. [*Amended by Stats. 1981, Ch. 940.*]

23229. (a) Except as provided in Section 23229.1, Sections 23221 and 23223 do not apply to passengers in any bus, taxicab, or limousine for hire licensed to transport passengers pursuant to the Public Utilities Code or proper local authority, or the living quarters of a housecar or camper.

(b) Except as provided in Section 23229.1, Section 23225 does not apply to the driver or owner of a bus, taxicab, or limousine for hire licensed to transport passengers pursuant to the Public Utilities Code or proper local authority.

(c) This section shall become operative on July 1, 1989. [*Added by Stats. 1988, Ch. 1105.*]

**Cross reference.**—Vehicle Code Section 23229.1. Vehicle Code Sections 23223 and 23225 apply when transporting passengers under 21.



## FEDERAL LAWS

## 19 U. S. C. A.

1555. **Bonded warehouses.** Buildings or parts of buildings and other inclosures may be designated by the Secretary of the Treasury as bonded warehouses for the storage of imported merchandise entered for warehousing, or taken possession of by the collector, or under seizure, or for the manufacture of merchandise in bond, or for the repacking, sorting, or cleaning of imported merchandise. Such warehouses may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors thereof and be known as private bonded warehouses, or for the storage of imported merchandise generally and be known as public bonded warehouses. Before any imported merchandise not finally released from customs custody shall be stored in any such premises, the owner or lessee thereof shall give a bond in such sum and with such sureties as may be approved by the Secretary of the Treasury to secure the Government against any loss or expense connected with or arising from the deposit, storage, or manipulation of merchandise in such warehouse. Except as otherwise provided in this chapter, bonded warehouses shall be used solely for the storage of imported merchandise and shall be placed in charge of a proper officer of the customs, who, together with the proprietor thereof, shall have joint custody of all merchandise stored in the warehouse; and all labor on the merchandise so stored shall be performed by the owner or proprietor of the warehouse, under supervision of the officer of the customs in charge of the same, at the expense of the owner or proprietor. The compensation of such officer of the customs and other customs employees appointed to supervise the receipt of merchandise into any such warehouse and deliveries therefrom shall be reimbursed to the Government by the proprietor of such warehouse. (46 Stats. 743.)

## 26 U. S. C. A.

2872. **Establishment and control.** The commissioner is authorized, in his discretion, and upon the execution of such bonds as he may prescribe, to establish warehouses, to be known and designated as internal revenue bonded warehouses, to be used exclusively for the storage of spirits distilled at a registered distillery, each of which warehouses shall be in charge of a storekeeper-gauger. Every such warehouse shall be under the control of the District Supervisor of the Alcohol Tax Unit district in which such warehouse is located, and shall be in the joint custody of the storekeeper-gauger and proprietor thereof, and kept securely locked, and shall at no time be unlocked or opened or remain open except in the presence of such storekeeper-gauger or other person who may be designated to act for him. No dwelling house shall be used for such a warehouse, and no door, window, or other opening shall be made or permitted in the walls of such warehouse leading into a distillery. Such warehouses shall be under such further regulations as the Commissioner, with the approval of the Secretary, may prescribe. (53 Stats. 331.)

## 26 U. S. C. A.

3070. **Withdrawal from bond tax free.** (a) **For industrial use.** Domestic alcohol of such degree of proof as may be prescribed by the Commissioner, and approved by the Secretary, may be withdrawn from bond without the payment of internal revenue tax, for use in the arts and industries, and for fuel, light, and power, provided said alcohol shall have been mixed in the presence and under the direction of an authorized Government officer, after withdrawal from the distillery warehouse, with methyl alcohol

or other denaturing material or materials, or admixture of the same, suitable to the use for which the alcohol is withdrawn, but which destroys its character as a beverage and renders it unfit for liquid medicinal purposes; such denaturing to be done upon the application of any registered distillery in denaturing bonded warehouses specially designated or set apart for denaturing purposes only, and under conditions prescribed by the Commissioner with the approval of the Secretary.

The character and quantity of the said denaturing material and the conditions upon which said alcohol may be withdrawn free of tax shall be prescribed by the Commissioner, who shall, with the approval of the Secretary, make all necessary regulations for carrying into effect the provisions of this subsection.

Distillers, manufacturers, dealers and all other persons furnishing, handling or using alcohol withdrawn from bond under the provisions of this section shall keep such books and records, execute such bonds and render such returns as the Commissioner, with the approval of the Secretary, may by regulation require. Such books and records shall be open at all times to the inspection of any internal revenue officer or agent.

**(b) For use in manufacture of chemicals.** Notwithstanding anything contained in subsection (a), domestic alcohol when suitably denatured may be withdrawn from bond without the payment of internal revenue tax and used in the manufacture of ether and chloroform and other definite chemical substances where said alcohol is changed into some other chemical substance and does not appear in the finished product as alcohol. Rum of not less than one hundred and fifty degrees proof may be withdrawn, for denaturation only, in accordance with the provisions of subsection (a).

(c) Transfer of duties. For transfer of powers and duties of commissioner and his agents, see Section 3170. (53 Stats. 355.)

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**TITLE 4**

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DIVISION 1. DEPARTMENT OF ALCOHOLIC  
BEVERAGE CONTROL \*

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## Article 1. Violation of Rules

**1. Violation of Rules.**

NOTE: Authority cited: Section 25750, Business and Professions Code; Section 22, Article XX, California Constitution.

## HISTORY:

1. Chapter 1 (§§ 1 to 142, inclusive), originally published 3-22-45 (Title 4).
2. Amendment to Section 1 filed 11-15-45 as an emergency; effective upon filing (Register 2).
3. Repealer of NOTE and new NOTE filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).
4. Repealer filed 11-6-96; effective thirtieth day thereafter.

## Article 2. Records

**4. General.**

NOTE: Authority cited for repealer filed 3-18-55: Sections 24432, 25750, 25752, Business and Professions Code, and Section 22, Article XX, California Constitution. Issuing agency: State Board of Equalization.

## HISTORY:

1. Amendment filed 11-15-45 as an emergency; effective upon filing (Register 2).
2. Repealer filed 3-18-55; effective 30th day thereafter (Register 55, No. 4).

**6. Price of License Acquisition.**

NOTE: Authority cited: Section 25750, Business and Professions Code, and Section 22 of Article XX, California Constitution.

## HISTORY:

1. New Section 6 filed 10-8-64 as an emergency; effective upon filing (Register 64, No. 20).
2. Repealer filed 9-24-65; effective thirtieth day thereafter (Register 65, No. 18).

**7. Retail Distilled Spirits Licensees: Records.**

NOTE: Authority cited: Section 25750, Business and Professions Code. Reference: Sections 23334 and 25752, Business and Professions Code.

## HISTORY:

1. Amendment filed 11-16-67; effective thirtieth day thereafter (Register 67, No. 46). For prior history, see Register 64, No. 8.
2. Amendment filed 8-6-70; designated effective 9-8-70 (Register 70, No. 32).
3. Repealer of NOTE and new NOTE filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).
4. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

**8. Common Carriers.**

(a) Definition. For the purposes of Section 23661 of the Alcoholic Beverage Control Act, "common carriers" are steamship companies and railroads, or any persons who hold themselves out to the general public to transport in interstate or foreign commerce any class or classes of passengers or property, or both, for compensation by air or highway, who actually engage in such transportation, and who hold an interstate alcoholic beverage transporter's permit as required by Section 32109 of the Revenue and Taxation Code.

Persons who transport only property owned or consigned to themselves shall not be deemed to be common carriers within the meaning of this section.

(b) Receipts and Delivery Reports.

Licensed importers and customs brokers shall furnish common carriers and holders of interstate alcoholic beverage transporter's permits, transporting alcoholic beverages into this

State from without this State for delivery or use within this State, a receipt for the alcoholic beverages so transported and delivered. This receipt must show the following information:

Name of the shipper, point of origin, name of importer or customs broker to whom delivery is made, place of delivery, name of carrier making delivery, a complete description of the shipment, and the number of the waybill covering the shipments. In the case of rail shipments, the receipt shall show also the car number and in the case of water shipments, the receipt shall show also the name of the vessel and the number of the steamship bill of lading.

A copy of the freight bill or other shipping document containing all of this information shall be deemed to be compliance with this requirement. A copy of such receipt must be retained by the importer or customs broker to whom delivery is made. With respect to pool shipments in which more than one licensed importer or customs broker participates, each participating importer or customs broker shall retain a copy of the receipt.

NOTE: Authority cited: Sections 23661, 25750 and 25752, Business and Professions Code; Section 22, Article XX, California Constitution.

HISTORY:

1. New section filed 4-4-58; designated effective 5-15-58 (Register 58, No. 6).

### **9. Winegrower's or Wine Blender's Annual Report.**

Every licensed winegrower or wine blender shall report to the Department of Alcoholic Beverage Control his total gallonage of wine produced or blended for the 12-month period ending June 30th of each year. Such report shall be submitted before August 1st of each year on departmental Form ABC-261.

NOTE: Authority cited: Sections 23320, 23327, 25750 and 25752, Business and Professions Code; Section 22, Article XX, California Constitution.

HISTORY:

1. New section filed 4-4-58; designated effective 5-15-58 (Register 58, No. 6).
2. Amendment filed 11-16-67; effective thirtieth day thereafter (Register 67, No. 46).

### **10. Beer Wholesalers' Records.**

NOTE: Authority cited: Section 25750, Business and Professions Code.

HISTORY:

1. New section filed 11-16-67; effective thirtieth day thereafter (Register 67, No. 46).
2. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

### **12. Beer and Wine.**

NOTE: Additional authority cited for amendment filed 10-18-49: Section 22, Article XX, California Constitution and Section 38a, Alcoholic Beverage Control Act. Additional authority cited for repealer filed 3-18-55: Sections 24432, 25750 and 25752, Business and Professions Code. Issuing agency: State Board of Equalization.

HISTORY:

1. Originally published 3-22-45 (Title 4).
2. Amendment filed 11-15-45 as an emergency (Register 2).
3. Amendment filed 10-18-49 as an emergency designated to be effective 11-1-49 (Register 18, No. 3).
4. Repealer filed 3-18-55; effective thirtieth day thereafter (Register 55, No. 4).

### **14. Beer Sold to Instrumentalities of the Armed Forces.**

NOTE: Authority cited: Sections 6a, 38 and 38a of the Alcoholic Beverage Control Act. Additional authority cited, Sections 24440 and 25750, Business and Professions Code. Additional authority cited for repealer filed 3-18-55: Section 25752, Business and Professions Code. Issuing agency: State Board of Equalization.

## HISTORY:

1. New section filed 6-15-51 as an emergency; effective upon filing (Register 24, No. 5).
2. Amendment filed 9-25-53 as an emergency; designated effective 10-1-53 (Register 53, No. 17).
3. Repealer filed 3-18-55; effective thirtieth day thereafter (Register 55, No. 4).

## Article 4. Invoices

**17. Contents of Sales Invoices and Retail Delivery Orders.**

(a) Every sale or delivery of alcoholic beverages, except beer, from one licensee to another licensee must be recorded on a sales invoice, whether or not consideration is involved. Invoices covering the sale or purchase of alcoholic beverages must be filed in such manner as to be readily accessible for examination by employees of the department and shall not be commingled with invoices covering only commodities other than alcoholic beverages.

Each sales invoice shall have printed thereon the name and address of the seller and shall show the following information:

(1) Name and address of the purchaser. The name of the purchaser may be shown as the name of the licensee or the trade name under which the purchaser operates, or both the name of said licensee and the trade name under which he operates. When the trade name only of said licensee is used on the invoice, the vendor shall keep a record on his licensed premises showing the name of the licensee as set forth on the license certificate issued by the department.

Any licensee who is authorized to sell and who does sell to another licensee shall keep a record showing the name or names of the person or persons to whom the license of the purchasing licensee is issued. These records shall be kept for a period of three years.

(2) Date of sale and invoice number.

(3) Kind, quantity, size, and capacity of packages of alcoholic beverages sold.

(4) The cost to the purchaser, together with any discount which at any time is to be given on or from the price as shown on the invoice.

(5) The place from which delivery of the alcoholic beverages was made unless delivery was made from the premises of the licensee or from a public warehouse located in the same county.

(6) Invoices covering sales of distilled spirits by distilled spirits taxpayers to other distilled spirits taxpayers shall show, in addition to the above, the total number of wine gallons covered by the invoice.

(b) Invoices covering sales of wine in internal bond by a wine grower to another wine grower must also show that delivery was made "in bond."

(c) Invoices covering sales of alcoholic beverages for use in trades, professions, or industries, and not for beverage use, must be marked or stamped: "No state tax—not for beverage use."

(d) Invoices covering the sale of alcoholic beverages for export must be marked or stamped: "Sold for export."

(e) No alcoholic beverage shall leave the premises of an off-sale licensee for delivery to a consumer, except pursuant to an order previously received by such licensee. Such alcoholic beverages shall be accompanied by a delivery order, which order must state the quantity, brand, proof, and price of such alcoholic beverages, and the name and address of the

consumer purchaser, and shall have printed or stamped thereon the name and address of such off-sale licensee. A copy of such order shall be kept on file by the off-sale licensee for a period of two years after the date of delivery.

NOTE: Authority cited: Sections 25750 and 25752, Business and Professions Code; Section 22, Article XX, California Constitution.

HISTORY:

- 1. Amendment of Subsection (a)(1) filed 5-7-74; designated effective 6-10-74 (Register 74, No. 19). For prior history, see Register 56, No. 19.
- 2. Amendment of NOTE filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).

**18. Return of Distilled Spirits by Retailer; Application for Approval by Department; Exceptions.**

NOTE: Authority cited: Section 25750, Business and Professions Code. Reference: Sections 23104.3 and 25503, Business and Professions Code.

HISTORY:

- 1. New section filed 10-2-56; designated effective 12-1-56 (Register 56, No. 19).
- 2. Amendment filed 8-10-73; designated effective 9-12-73 (Register 73, No. 32).
- 3. Repealer of NOTE and new NOTE filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).
- 4. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

**19. Return of Wine by Retailer; Application for Approval by Department; Records.**

NOTE: Authority cited: Sections 24879, 24881, 25750 and 25752, Business and Professions Code and Section 22, Article XX, California Constitution.

HISTORY:

- 1. New section filed 12-6-68; designated effective 1-8-69 (Register 68, No. 46).
- 2. Repealer filed 11-6-96; effective thirtieth day thereafter.

Article 5. Inventories

**27. Retail Store—Qualifications.**

“Retail store” means premises which hold only an off-sale beer and wine or an off-sale general license. Premises may be licensed as a retail store provided the licensee at such premises complies with the following provisions:

(a) Alcoholic beverages shall be sold only in the original package for consumption off the premises.

(b) Alcoholic beverages offered for sale shall be displayed and available for convenient inspection and purchase by the general public. The licensee shall not refuse to sell, for immediate delivery, to qualified purchasers any item of alcoholic beverages on display for sale.

(c) All alcoholic beverages sold shall be delivered from the licensed premises, and shall not be delivered from a supply of alcoholic beverages stored off the licensed premises.

(d) The licensee may accept telephone orders for the purchase of alcoholic beverages only during the hours in which the retail store is open to the general public.

NOTE: Authority cited: Sections 23025, 23300, 23355, 23393, and 23394, Business and Professions Code.

HISTORY:

- 1. New section filed 8-16-72; designated effective 9-20-72 (Register 72, No. 34). For history of former section, see Register 57, No. 7.

**28. Distilled Spirits Wholesalers: Qualifications.**

No distilled spirits wholesaler’s license shall be held by any person who does not meet the following qualifications in connection with his premises licensed as his principal place of business:

(a) Maintains warehouse space either owned or leased by him or dedicated to his use in a public warehouse and such space is sufficient to store at one time either

(1) A stock of distilled spirits equal to 10 percent or more of his annual case volume of distilled spirits sales to retailers within this State, or,

(2) A stock of distilled spirits whose cost of acquisition is one hundred thousand dollars or more.

(b) Maintains at all times in his warehouse either owned or leased by him or in space dedicated to his use in a public warehouse a stock of distilled spirits consisting of either

(1) Not less than 5 percent of his annual sales to retailers within this State, or,

(2) Whose cost of acquisition is one hundred thousand dollars or more.

The stock of distilled spirits herein required shall be: (a) owned by him, (b) not held on consignment, (c) not acquired pursuant to a prior agreement to sell it to a specific licensee or licensees.

(c) Sells distilled spirits to retailers generally rather than a selected few retailers.

(1) A wholesaler who sells to 25 percent of the retailers in the county wherein his wholesale licensed premises are located, or a wholesaler whose total volume of sales of distilled spirits to retailers during any 12-month period consists of 50 percent or more of individual sales in quantities of 10 cases or less shall be conclusively presumed to be selling to retailers generally.

A rectifier who purchases any distilled spirits in packages containing one gallon or less and sells such distilled spirits to retail licensees shall comply with the provisions of this rule.

NOTE: Authority cited: Sections 23778, 23779, 25750, Business and Professions Code; Section 22, Article XX, California Constitution.

**HISTORY:**

- 1. New section filed 10-2-56; designated effective 6-1-57 (Register 56, No. 19).
- 2. Amendment filed 2-8-72; designated effective 3-10-72 (Register 72, No. 7).
- 3. Amendment to NOTE filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).

**28.1. Distilled Spirits Rectifier—Qualifications.**

**HISTORY:**

- 1. Repealer filed 4-13-73; designated effective 5-18-73 (Register 73, No. 15). For prior history, See Register 72, No. 34.

**29. Storage by Retailer on Wholesaler’s Premises.**

NOTE: Authority cited: Section 25750, Business and Professions Code.

**HISTORY:**

- 1. New section filed 10-2-56; designated effective 12-1-56 (Register 56, No. 19).
- 2. Amendment to NOTE filed 6-18-77; effective thirtieth day thereafter (Register 77, No. 25).
- 3. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

Article 6. Reports

**30. Customs Brokers.**

NOTE: Authority cited: Section 25750, Business and Professions Code.

**HISTORY:**

- 1. Repealer of subsection (b) filed 5-9-57 as an emergency; effective thirtieth day thereafter (Register 57, No. 7). For prior history, see Register 55, No. 4.

- 2. Section retitled and amendment filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).
- 3. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

**31. Federal Basic Permit Information.**

NOTE: Authority cited: Sections 23320, 23950, 23958, 25750, 25752, Business and Professions Code, and Section 22 of Article XX, California Constitution.

HISTORY:

- 1. New section filed 9-5-58; designated effective 10-10-58 (Register 58, No. 16).
- 2. Amendment filed 1-22-75; designated effective 2-27-75 (Register 75, No. 4).
- 3. Repealer filed 11-6-96; effective thirtieth day thereafter.

**32. Change of Address of Holder of Certificate of Compliance.**

NOTE: Authority cited: Sections 23671 and 25750, Business and Professions Code, and Section 22 of Article XX, California Constitution.

HISTORY:

- 1. New section filed 12-6-68; designated effective 1-8-69 (Register 68, No. 46).
- 2. Repealer filed 11-6-96; effective thirtieth day thereafter.

Article 7. Losses and Allowances

**35. Losses and Allowances.**

NOTE: Additional authority cited for amendment filed 3-1-50: Sections 23b, 26, 38 and 38a of the Alcoholic Beverage Control Act. Additional authority cited for repealer filed 3-18-55: Sections 24432, 25750 and 25752, Business and Professions Code. Issuing agency: State Board of Equalization.

HISTORY:

- 1. Repealer filed 3-18-55; effective thirtieth day thereafter (Register 55, No. 4). For prior history, see Register 19, No. 4.

**36. Return of Damaged Alcoholic Beverages.**

NOTE: Authority cited: Section 25750, Business and Professions Code.

HISTORY:

- 1. New section filed 12-6-68; designated effective 1-8-69 (Register 68, No. 46).
- 2. Repealer of subsection (c) filed 7-19-73; designated effective 8-20-73 (Register 73, No. 29).
- 3. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

Article 8. Classification of Particular Beverages

**49. Federal Strip Stamps.**

HISTORY:

- 1. Originally published 3-22-45 (Title 4).
- 2. Amendment filed 11-15-45 as an emergency (Register 2).
- 3. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

Article 9. Samples

**52. Restrictions on Giving.**

(a) Samples.

(1) Samples of alcoholic beverages may be given only to licensees or employees or agents of licensees who are eligible to purchase alcoholic beverages of the kind given as samples, and samples may be given only to licensees who have not previously purchased the particular product, or to their employees or agents, for the sole purpose of permitting them to determine the grade, type, and quality of the alcoholic beverages.

(2) Such samples shall not exceed in quantity the following: wine, one quart or one liter when bottled; beer, one bottle or can opened on the premises of the licensee; and distilled spirits, 500 milliliters, or in the smallest size regularly marketed where the brand is not bottled in 500 milliliters, containers. The limit herein stated as to wine samples shall not apply to bulk samples submitted for processing purposes.

(3) Only one sample of each grade, type, or quality shall be given at any one time as to wine and distilled spirits.

(4) Each sample of distilled spirits and wine shall have stamped on its brand label the words: "Sample—not for sale," in letters not less than one-fourth inch in height.

(5) A distilled spirits manufacturer, distilled spirits manufacturer's agent, or rectifier may supply such samples to his own salesmen or to the salesmen of a licensed wholesaler.

(6) Licensees who are authorized to give away samples of any type of alcoholic beverage shall keep a record of all samples so given away. Such record shall be completed within seven calendar days following removal from stock, or from the licensed premises, and the record shall state: the brand, type of alcoholic beverage and size of the sample package; the name of the salesman who removes the sample package and the date of such removal; the name of the licensee to whom any sample is given, together with the brand, type of alcoholic beverage, and quantity thereof, and the date the sample is given. Such records of samples shall be retained for a period of three years.

(b) Gifts. Licensees or officers, agents or employees of licensees may make gifts of alcoholic beverages to nonlicensees provided such gifts are not made in connection with the sale of an alcoholic beverage.

NOTE: Authority cited: Sections 23025, 23386, 25750 and 25752, Business and Professions Code and Section 22 of Article XX, California Constitution. Reference: Sections 23025, 23386 and 25752, Business and Professions Code.

HISTORY:

1. Amendment of subsection (a)(6) filed 12-6-68; designated effective 1-8-69 (Register 68, No. 46). For prior history, see Register 55, No. 4.
2. Amendment of subsection (a)(2) filed 6-18-80; effective thirtieth day thereafter (Register 80, No. 25).

### 53. Samples Used in Winetastings.

A winetasting is a presentation of samples of one or more wines, representing one or more wineries or industry labels, to a group of consumers for the purpose of acquainting the tasters with the characteristics of the wine or wines tasted.

Licensees may engage in winetasting activities only as set forth in this rule. In addition to furnishing wines as provided herein, licensees may supply small amounts of bread, crackers, cheeses or nuts to clear the taste buds of the participants between successive samples of wine during a winetasting.

(a) Winetastings Sponsored by Winegrowers and Wine Blenders.

(1) Winetastings may be conducted without charge or for a fee for the public on a premises licensed with a winegrower's license, duplicate winegrower's license, or California winegrower's agent's license, and on a premises licensed on or before February 2, 1968, with a wine blender's license, provided, however, that no winetasting shall be held on that portion of a winegrower's or duplicate winegrower's premises which is licensed with a retail license. Wine may be offered for tastings by such licensees as follows:

(A) Only wine which was produced or bottled by a winegrower, or was produced and bottled for such winegrower, may be offered for tastings by such winegrower. In addition, however, any winegrower who, prior to July 1, 1970, had, at his premises of production, sold

to consumers for consumption off the premises domestic wine other than wine which was produced or bottled by, or produced and packaged for such winegrower, and which was not sold under a brand or trade name owned by such winegrower, and who had, prior to July 1, 1970, conducted winetastings of such domestic wine at his licensed premises, may continue to conduct such winetastings at his premises of production; and any winegrower who was licensed as such prior to July 1, 1954, and who prior to July 1, 1970, had, at his licensed premises, sold to consumers for consumption off the premises, wine packaged for and imported by him, and who conducted winetastings of such imported wines at his licensed premises, may continue to conduct such winetasting activities at his premises of production.

(B) Only wine which was bottled by a wine blender or was produced and bottled for such wine blender, licensed on or before February 2, 1968, may be offered for tastings by such wine blender.

(C) A California winegrower's agent may conduct winetastings for the winegrower for whom he acts as agent under the same conditions as the winegrower could himself.

(2) Wine blenders, licensed on or before February 2, 1968, winegrowers, and California winegrower's agents may conduct winetastings at unlicensed premises, provided, however, that the tasting shall be only by invitation of the wine blender, winegrower, or California winegrower's agent involved; that there shall be no charge or donation made either for the wine served or for admission to the premises; and that the premises shall not be open to the general public during the time that wine is served, consumed, or otherwise disposed of. Only wine which was produced or bottled by such winegrower, or was produced or bottled by the principal of such California winegrower's agent, or was bottled by such wine blender, or was produced and bottled for such winegrower, for the principal of such California winegrower's agent, or for such wine blender may be offered for tastings off a licensed premises. All wine which is not consumed at the tasting shall be retained by the licensee conducting the tasting.

(b) Winetastings Sponsored by Private Organizations. Winegrowers, California winegrower's agents, and wine blenders licensed on or before February 2, 1968, may furnish wine which is produced or bottled by such winegrower or the principal of a California winegrower's agent, or bottled by such wine blender; or is produced and bottled for such winegrower, for the principal of such California winegrower's agent, or for such wine blender; and may conduct winetastings which are sponsored by a bona fide charitable, fraternal, political, religious, trade, service, or similar private organization, where all of the following conditions shall prevail:

(1) The sponsor shall be a nonprofit organization.

(2) Attendance shall be limited to members of the sponsoring organization and their invited guests.

(3) No charge or donation shall be made either for the wine served or for admission to the premises.

(4) There shall be no advertising or public announcements of the event as a winetasting, and the general public shall not be invited.

(5) No wine shall be sold, and no sales or orders solicited, nor shall order blanks be placed in or about the premises. Brochures describing wines and their prices may be distributed, provided that they are not suitable for use as order blanks. No wine may be given as a gift, nor as a prize to be removed from the premises.

(6) Winetastings sponsored by private organizations may be held on unlicensed premises. They may also be held on premises regularly licensed with an on-sale general or on-sale beer and wine license, provided that the tastings are held in a banquet room or other portion of the

premises which is completely separated from that portion of the premises where the sale of alcoholic beverages is being made; that no consumption of other alcoholic beverages is permitted; and that the retail licensee has surrendered the privileges of his license for the period the winetasting is being conducted on that portion of the retail premises in which the winetasting will take place, on a form provided by the department.

(c) Winetastings Sponsored by Foreign Consulates or Commercial Attachés. A licensed importer of wines may donate wines for the purpose of winetastings to be conducted by the consular service or commercial attaché of the country of origin of the wine donated, but may not otherwise participate in the winetasting, provided:

- (1) Admission to the tasting shall be by invitation only.
- (2) There shall be no advertising or announcement of the event as a tasting to the general public, and the general public shall not be invited.
- (3) No wine shall be sold, and no sales or orders solicited, nor shall order blanks be placed in or about the premises. Brochures describing wines and their prices may be distributed, provided they are not suitable for use as order blanks.
- (4) Winetastings conducted by foreign consulates or commercial attachés may be held on unlicensed premises. They may also be held on premises regularly licensed with an on-sale general or on-sale beer and wine license, provided that the tastings are held in a banquet room or other portion of the premises which is completely separated from that portion of the licensed premises to which the public is admitted; that they are held in a portion of the premises where no sale of alcoholic beverages is being made, and no consumption of other alcoholic beverages is permitted; and that they are held in that portion of the retail premises for which the retailer has surrendered the licensed privileges for the period the winetasting is being conducted, on a form provided by the department.

(d) Club Licensees. No licensee shall furnish or donate wines for tastings to be held on a premises licensed by the department with any type of club license.

(e) Retail Licensees. No winetasting shall be given for the benefit of any retail licensee, and no retail licensee shall participate in a winetasting directly or indirectly, except as provided in this rule.

(f) Records. Licensees who are authorized to furnish or donate wines for winetastings shall keep a record of all wine so furnished or donated, as follows:

- (1) Records of wine actually used and consumed at winetastings conducted by winegrowers, California winegrower's agents, or wine blenders shall include the date of the tasting, the name and address of the licensee, the address of the tasting if not conducted on the licensee's premises, and the brand, class, and type, and the quantity of each wine used.
- (2) Records of wine furnished by licensees to private organizations, foreign consulates, or commercial attachés for winetastings shall include the date of the tasting, the name and address of the licensee, the name of the sponsoring organization, consulate or commercial attaché, the address of the tasting, and the brand, class and type, and quantity of each wine furnished.
- (3) Such records of samples of wine used for winetasting purposes shall be retained for a period of three years.

(g) Exceptions.

(1) Nothing in this rule shall prevent the holder of any license which permits the sale and consumption of wine on the premises from holding a winetasting of wines legally acquired, provided the on-sale licensee shall charge for the wines presented in accordance with law.

(2) An organization holding a temporary wine license may accept donations, charge admissions, and otherwise make charges for wine to be served at a winetasting, and may advertise such events, which may be open to the public. A winegrower or California winegrower's agent may give wine to such a temporary licensee only if such temporary licensee is a nonprofit corporation or association exempt from the payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States. Any other holder of a temporary wine license shall purchase all wines. Wine blenders, licensed on or before February 2, 1968, winegrowers and California winegrower's agents may assist the holder of a temporary wine license in conducting a winetasting.

(3) No student organization, college fraternity or sorority shall sponsor a winetasting.

NOTE: Authority cited: Sections 23355, 23356.1, 23356.9, 23373, 23386, 23390.5 and 25750, Business and Professions Code and Section 22, Article XX, California Constitution. Reference: Sections 23355, 23356.1, 23356.9, 23373, 23386 and 23390.5, Business and Professions Code.

HISTORY:

1. New section filed 2-23-73; designated effective 3-26-73 (Register 73, No. 8).
2. Amendment filed 5-7-74; designated effective 6-10-74 (Register 74, No. 19).
3. Amendment of subsection (h)(2) filed 6-18-80; effective thirtieth day thereafter (Register 80, No. 25).
4. Amendment of subsection (a)(1), (b), (f) and (g) filed 1-18-94; designated effective 2-17-94.

### 53.5. Samples Used in Beer Tastings.

A beer tasting is a presentation of samples of one or more beers, representing one or more beer manufacturers or industry labels, to a group of consumers for the purpose of acquainting the tasters with the characteristics of the beer or beers tasted.

Licensees may engage in beer tasting activities only as set forth in this rule. In addition to furnishing beers as provided herein, licensees may supply small amounts of bread, crackers, pretzels, cheeses or nuts to clear the taste buds of the participants between successive samples of beer during a beer tasting.

(a) Beer Tastings Sponsored by Beer Manufacturer Licensees. Beer tastings may be conducted without charge or for a fee for the public on a premises licensed with a beer manufacturer's license or duplicate beer manufacturer's license, provided, however, that no beer tasting shall be held on that portion of a beer manufacturer's or duplicate beer manufacturer's premises which is licensed with a retail license. Beer may be offered for tastings by such licensees as follows:

(1) Only beer which was produced or bottled by the beer manufacturer or was produced and bottled for such beer manufacturer may be offered for tastings by such beer manufacturer.

(b) Beer Tastings Sponsored by Private Organizations. Licensed beer manufacturers or out-of-state beer manufacturer's certificate holders may furnish beer which is produced or bottled by such beer manufacturer or out-of-state beer manufacturer's certificate holder; or is produced and bottled for such beer manufacturer or out-of-state beer manufacturer's certificate holder; may conduct beer tastings which are sponsored by a bona fide charitable, fraternal, political, religious, trade, service, or similar private organization, where all of the following conditions shall prevail:

(1) The sponsor shall be a nonprofit organization.

(2) Attendance shall be limited to persons affiliated with the sponsor. "Persons affiliated with the sponsor" means directors, officers, members, employees and volunteers of the sponsoring organization including up to three invited guests of each such person.

(3) No charge or donation shall be made either for the beer served or for admission to the premises.

(4) There shall be no advertising or public announcements of the event as a beer tasting, and the general public shall not be invited.

(5) No beer shall be sold, and no sales or orders solicited, nor shall order blanks be placed in or about the premises. Brochures describing beers and their prices may be distributed, provided that they are not suitable for use as order blanks. No beer may be given as a gift, nor as a prize to be removed from the premises.

(6) Beer tastings sponsored by private organizations may be held on unlicensed premises. They may also be held on premises regularly licensed with an on-sale general, on-sale beer and wine or on-sale beer license, provided that the tastings are held in a banquet room or other portion of the premises which is completely separated from that portion of the premises where the sale of alcoholic beverages is being made; that no consumption of other alcoholic beverages is permitted; and that the retail licensee has surrendered the privileges of his license for the period the beer tasting is being conducted on that portion of the retail premises in which the beer tasting will take place, on a form provided by the department. All beer which is not consumed at the tasting shall be retained by the licensee or certificate holder conducting the tasting.

(c) Club Licensees. No licensee shall furnish or donate beers for tastings to be held on a premises licensed by the department with any type of club license.

(d) Retail Licensees. No beer tasting shall be given for the benefit of any retail licensee, and no retail licensee shall participate in a beer tasting directly or indirectly, except as provided in this rule.

(e) Records. Licensees who are authorized to furnish or donate beers for beer tastings shall keep a record of all beer so furnished or donated, as follows:

(1) Records of beer actually used and consumed at beer tastings conducted by licensed beer manufacturer or out-of-state beer manufacturer's certificate holder shall include the date of the tasting, the name and address of the licensee or certificate holder, the address of the tasting if not conducted on the licensee's premises, and the brand, class, and type, and the quantity of each beer used.

(2) Records of beer furnished by licensees to private organizations for beer tastings shall include the date of the tasting, the name and address of the licensee, the name of the sponsoring organization, the address of the tasting, and the brand, class and type, and quantity of each beer furnished.

(3) Such records of samples of beer used for beer tasting purposes shall be retained for a period of three years.

(f) Exceptions.

(1) Nothing in this rule shall prevent the holder of any license which permits the sale and consumption of beer on the premises from holding a beer tasting of beers legally acquired, provided the on-sale licensee shall charge for the beers presented in accordance with law.

(2) An organization holding a temporary beer license may accept donations, charge admissions, and otherwise make charges for beer to be served at a beer tasting, and may advertise such events, which may be open to the public. A licensed beer manufacturer or out-of-state beer manufacturer's certificate holder may give beer to such a temporary licensee only if such temporary licensee is a nonprofit corporation or association exempt from the payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States. Any other holder of a temporary beer license shall purchase all beers. Licensed beer manufacturers or out-of-state beer manufacturer's certificate holders may assist the holder of a temporary beer license in conducting a beer tasting.

(3) No student organization, college fraternity or sorority shall sponsor a beer tasting.

NOTE: Authority cited: California Constitution, Article XX, Section 22, and Business and Professions Code §§ 23357.3 and 25750.

HISTORY:

1. New section filed 2-8-94; effective thirtieth day thereafter (Register 94, No. 6).

## Article 10. Sales for Export

### 54. Export Sales.

Manufacturers, winegrowers, rectifiers, wholesalers, manufacturer's agents, and importers may sell alcoholic beverages specified in their licenses to unlicensed persons (including aircraft, fishing vessels and commercial passenger or freight vessels) who take delivery thereof within this State for delivery or use without this State.

Where the sale is made without the payment of California excise tax, export or actual removal from this State must be accomplished within 90 days from the date of the delivery within this State, and may only be accomplished by one of the following methods:

(a) If in bond, then under the continuous supervision of the United States Customs or United States Internal Revenue authorities until removal from this State has been effected.

(b) In private vehicles owned or operated by out-of-state purchasers who hold an export identification permit issued by the State Board of Equalization pursuant to Rule 2563, Subchapter 6, Chapter 2, Title 18, California Administrative Code.

(c) By common carrier.

Sales of alcoholic beverages to persons operating commercial fishing vessels, private freight and/or passenger-carrying vessels, or to commercial aircraft, for use as ships or aircraft stores outside this State, or upon the high seas, may be made only pursuant to a written order for the purchase of the alcoholic beverages specified in the order. Such purchase order must be signed by the captain of a commercial fishing boat or private freight and/or passenger-carrying vessel or the pilot of the aircraft, or by a duly authorized agent of the owner of the aircraft authorized in writing to sign such purchase orders. All such purchase orders shall contain an acknowledgment that the alcoholic beverages are for use only as ships or aircraft stores outside this State or upon the high seas.

All alcoholic beverages sold and delivered, California tax free within this State, which are intended for ultimate delivery and use outside this State within 90 days, may, until exported or removed from this State, be stored only in bonded or licensed public warehouses and in private warehouses. Such warehouses shall keep and maintain for a period of three years records showing any change in possession of such alcoholic beverages, and shall upon demand make such records available to the Department of Alcoholic Beverage Control, the State Board of Equalization, and to the licensed California seller of such alcoholic beverages.

NOTE: Authority cited: Sections 23107, 23108, 23387 and 25750, Business and Professions Code; Section 22 of Article XX, California Constitution.

HISTORY:

1. New section filed 4-7-58; designated effective 5-15-58 (Register 58, No. 6). For history of former Section 54, see Register 55, No. 4.
2. Amendment filed 10-25-63; effective thirtieth day thereafter (Register 63, No. 19).
3. Amendment filed 11-1-63, as an emergency; designated effective 11-24-63. Certificate of compliance included (Register 63, No. 19).
4. Amendment filed 8-6-70; designated effective 9-8-70 (Register 70, No. 32).

## Article 11. Applications and Licenses

**55. On-sale General License for Seasonal Business.**

NOTE: Authority cited: Sections 23820 and 25750, Business and Professions Code; Section 22, Article XX, California Constitution. Reference: Sections 23038, 23320, 23396, 23399, 23826.8, 24040, 24042, 24044, 24045, 24048, 24048.1, 24048.2, 24070, 24070.1, 24071, 24072, 24073–24076 and 24082, Business and Professions Code.

**HISTORY:**

1. New subsection (e) filed 1-12-79 as an emergency; effective upon filing (Register 79, No. 2). For prior history, see Registers 63, No. 19; 73, No. 29; 73, No. 32; 77, No. 25; and 78, No. 14.
2. Certificate of Compliance filed 4-4-79 (Register 79, No. 14).
3. Repealer filed 11-6-96; effective thirtieth day thereafter.

**55.1. Applicant/Licensee Verification of Eligibility; Limitations on Alcoholic Beverage Licenses for Aliens.**

(a) All eligibility requirements contained herein shall be applied without regard to the race, creed, color, gender, religion, disability, or national origin of the individual applying for the public benefit. This section shall apply to any natural person renewing or applying for the entire direct interest in a license issued by the Department of Alcoholic Beverage Control.

(b) Pursuant to Section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (Pub. L. No. 104-193 (PRWORA)), (8 U.S.C. § 1621), and notwithstanding any other provision of this division, aliens who are not qualified aliens, nonimmigrant aliens under the Immigration and Nationality Act (INA) (8 U.S.C. § 1101 *et seq.*), or aliens paroled into the United States under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)), for less than one year, are not eligible to receive any license issued pursuant to the ABC Act, BPC § 23000 *et seq.*

(c) A qualified alien is an alien who, at the time he or she applies for, receives, or attempts to receive a public benefit, is, under Section 431(b) of the PRWORA (8 U.S.C. § 1641(b)), any of the following:

(1) An alien lawfully admitted for permanent residence under the INA (8 U.S.C. § 1101 *et seq.*).

(2) An alien who is granted asylum under Section 208 of the INA (8 U.S.C. § 1158).

(3) A refugee who is admitted to the United States under Section 207 of the INA (8 U.S.C. § 1157).

(4) An alien who is paroled into the United States under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)) for a period of at least one year.

(5) An alien whose deportation is being withheld under Section 243(h) of the INA (8 U.S.C. § 1253(h)) (as in effect immediately before the effective date of Section 307 of division C of Public Law 104-208) or Section 241(b)(3) of such Act (8 U.S.C. § 1251(b)(3)) (as amended by Section 305(a) of division C of Public Law 104-208).

(6) An alien who is granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980. (8 U.S.C. § 1153(a)(7)) See editorial note under 8 U.S.C. § 1101, "Effective Date of 1980 Amendment.")

(7) An alien who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980 (8 U.S.C. § 1522 note)).

(8) An alien who, under Section 431(c)(1) of the PRWORA (8 U.S.C. § 1641(c)(1)), meets all of the conditions of subparagraphs (A), (B), (C), and (D) below:

(A) The alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same

household as the alien, and the spouse or parent of the alien consented to, or acquiesced in, such battery or cruelty. For purposes of this subsection, the term “battered or subjected to extreme cruelty” includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detection, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered as acts of violence.

(B) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Director of the Department of Alcoholic Beverage Control. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

1. The benefits are needed to enable the alien to become self-sufficient following separation from the abuser.

2. The benefits are needed to enable the alien to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien from the abuser.

3. The benefits are needed due to a loss of financial support resulting from the alien’s separation from the abuser.

4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien to lose his or her job or to earn less or to require the alien to leave his or her job for safety reasons.

5. The benefits are needed because the alien requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.

6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien’s ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into a day care for fear of being found by the abuser).

7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.

8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser’s sexual assault or abuse of, or relationship with, the alien and/or to care for any resulting children.

9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien had when living with the abuser.

(C) The alien has a petition that has been approved or has a petition pending which sets forth a prima facie case for:

1. status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of Section 204(a)(1)(A) of the INA (8 U.S.C. § 1154(a)(1)(A)(ii), (iii) or (iv)),

2. classification pursuant to clause (ii) or (iii) of Section 204(a)(1)(B) of the INA (8 U.S.C. § 1154(a)(1)(B)(ii) or (iii)),

3. suspension of deportation and adjustment of status pursuant to section 244(a)(3) of the INA (8 U.S.C. sec. 1254) as in effect prior to April 1, 1997 [Pub.L. 104-208, sec. 501 (effective September 30, 1996, pursuant to sec. 591); Publ.L. 104-208, sec. 304 (effective April 1, 1997, pursuant to sec. 309); Pub.L. 105-33, sec. 5581 (effective pursuant to sec. 5582)] (incorrectly codified as “cancellation of removal under section 240A of such Act [8 USCS sec. 1229b] (as in effect prior to April 1, 1997),

4. status as a spouse or child of a United States citizen pursuant to clause (i) of Section 204(a)(1)(A) of the INA (8 U.S.C. § 1154(a)(1)(A)) or classification pursuant to clause (i) of Section 204(a)(1)(B) of the INA (8 U.S.C. § 1154(a)(1)(B)), or

5. cancellation of removal pursuant to section 240A(b)(2) of the INA (8 U.S.C. § 1229b(b)(2)).

(D) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.

(9) An alien who, under Section 431(c)(2) of the PRWORA (8 U.S.C. § 1641(c)(2)), meets all of the conditions of subparagraphs (A), (B), (C), (D) and (E) below:

(A) The alien has a child who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent consented or acquiesced to such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered as acts of violence.

(B) The alien did not actively participate in such battery or cruelty.

(C) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Director of the Department of Alcoholic Beverage Control. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

1. The benefits are needed to enable the alien's child to become self-sufficient following separation from the abuser.

2. The benefits are needed to enable the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien's child from the abuser.

3. The benefits are needed due to a loss of financial support resulting from the alien's child's separation from the abuser.

4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien's child to lose his or her job or to earn less or to require the alien's child to leave his or her job for safety reasons.

5. The benefits are needed because the alien's child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.

6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's child's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser).

7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.

8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien's child and/or to care for any resulting children.

9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien's child had when living with the abuser.

(D) The alien meets the requirements of subsection (c)(8)(C) above.

(E) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.

(10) An alien child who meets all of the conditions of subparagraphs (A), (B) and (C) below:

(A) The alien child resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a member of the spouse's family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detection, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered as acts of violence.

(B) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Director of the Department of Alcoholic Beverage Control. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

1. The benefits are needed to enable the alien child's parent to become self-sufficient following separation from the abuser.

2. The benefits are needed to enable the alien child's parent to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien child's parent from the abuser.

3. The benefits are needed due to a loss of financial support resulting from the alien child's parent's separation from the abuser.

4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien child's parent to lose his or her job or to earn less or to require the alien child's parent to leave his or her job for safety reasons.

5. The benefits are needed because the alien child's parent requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.

6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien child's parent's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser).

7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.

8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien child's parent and/or to care for any resulting children.

9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien child's parent had when living with the abuser.

(C) The alien child meets the requirements of subsection (c)(8)(C) above.

(d) For purposes of this section, "nonimmigrant" is defined the same as in Section 101(a)(15) of the INA (8 U.S.C. § 1101(a)(15)).

(e) For purposes of establishing eligibility for a license issued by the Department of Alcoholic Beverage Control pursuant to the ABC Act (B.P.C. § 2300 *et seq.*), all of the following must be met:

(1) The applicant must declare himself or herself to be a citizen of the United States or a qualified alien under subsection (c), a nonimmigrant alien under subsection (d), or an alien paroled into the United States for less than one year under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)). The alien shall declare that status through use of the "Statement of Citizenship, Alienage, and Immigration Status for State Public Benefits," Form ABC-69.

(2) The applicant must present documents of a type acceptable to the Immigration and Naturalization Service (INS) which serve as reasonable evidence of the applicant's declared status. A fee receipt from the INS for replacement of a lost, stolen, or unreadable INS document is reasonable evidence of the alien's declared status.

(3) The applicant must complete and sign Form ABC-69.

(4) Where the documents presented do not on their face appear to be genuine or to relate to the individual presenting them, the government entity that originally issued the documents shall be contacted for verification. With regard to naturalized citizens and derivative citizens presenting certificates of citizenship and aliens, the INS is the appropriate government entity to contact for verification. The Department shall request verification from the INS by filing INS Form G-845 with copies of the pertinent documents provided by the applicant with the local INS office. If the applicant has lost his or her original documents or presents expired documents or is unable to present any documentation evidencing his or her immigration status, the applicant shall be referred to the local INS office to obtain documentation.

(5) The type of documentation referred to the INS for verification pursuant to INS Form G-845 shall include the following:

(A) The document presented indicates immigration status but does not include an alien registration or alien admission number.

(B) The document is suspected to be counterfeit or to have been altered.

(C) The document includes an alien registration number in the A60 000 000 (not yet issued) or A80 000 000 (illegal border crossing) series.

(D) The document is one of the following: an INS Form I-181b notification letter issued in connection with an INS Form I-181 Memorandum of Creation of Record of Permanent Residence, an Arrival-Departure Record (INS Form I-94) or a foreign passport stamped "PROCESSED FOR I-551, TEMPORARY EVIDENCE OF LAWFUL PERMANENT RESIDENCE" that INS issued more than one year before the date of application for the license issued by the Department of Alcoholic Beverage Control pursuant to the ABC Act.

(6) If the INS advises that the applicant has citizenship status or immigration status which makes him or her a qualified alien, a non-immigrant or alien paroled for less than one year under section 212(d)(5) of the INA, the INS verification shall be accepted. If the INS advises that it cannot verify that the applicant has citizenship status or an immigration status that makes him or her a qualified alien, a non-immigrant or alien paroled for less than one year

under section 212(d)(5) of the INA, benefits shall be denied and the applicant notified pursuant to the ABC Act regular procedures of his or her rights to appeal the denial of benefits.

(f) Pursuant to Section 434 of the PRWORA (8 U.S.C. § 1644), where the Department of Alcoholic Beverage Control reasonably believes that an alien is unlawfully in the State based on the failure of the alien to provide reasonable evidence of the alien’s declared status, after an opportunity to do so, said alien shall be reported to the Immigration and Naturalization Service.

(g) Provided that the alien has completed and signed Form ABC-69, revised 2/98, under penalty of perjury, eligibility for renewal of a license shall not be delayed, denied, reduced or terminated while the status of the alien is verified.

(h) Pursuant to Section 432(d) of the PRWORA (8 U.S.C. § 1642(d)), a nonprofit charitable organization that provides federal, state or local public benefits shall not be required to determine, verify, or otherwise require proof of eligibility of any applicant or beneficiary with respect to his or her immigration status or alienage.

(i) Any applicant who is determined to be ineligible pursuant to subsection (b) and (e) or who was made eligible for an alcoholic beverage license whose license is terminated, suspended, or reduced pursuant to subsections (b) and (e), is entitled to a hearing, pursuant to Business and Professions Code section 24300.

(j) Failure to comply with this section shall be cause for revocation of the license held contrary to these provisions.

NOTE: Authority cited: Section 22, California Constitution, Article XX; and Sections 23950, 23952, 23958 and 25750, Business and Professions Code. Reference: 8 U.S.C. Sections 1621, 1641 and 1642.

HISTORY:

1. New section filed 3-2-98 as an emergency; operative 3-2-98 (Register 98, No. 10). A Certificate of Compliance must be transmitted to OAL by 6-30-98 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 99, No. 4).
3. New section filed 1-19-99; operative 2-18-99 (Register 99, No. 4).

**55.5. On-sale Licenses for Boats.**

On-sale beer and wine licenses and on-sale general licenses may be issued to the owner, lessee or operator of a boat carrying passengers for hire, and alcoholic beverages may be served on such vessels when operated or navigated by a person duly licensed by the United States Coast Guard; or on-sale beer and wine licenses and on-sale general licenses may be issued to qualified persons who operate as concessionaires on such publicly or privately owned, leased or operated boats carrying passengers for hire.

(a) Applicants must designate a primary home port for the boat, such primary home port address being the address as shown on the application for the license. The primary home port means the principal place for embarkation or debarkation of passengers, or the loading or unloading for supplies, and is normally used for the overnight berthing of the boat.

(b) Posting of notice of intention and publication as required by Sections 23985 and 23986 of the Business and Professions Code apply to on-sale beer and wine and on-sale general licenses for boats. Notice of intention to engage in the sale of alcoholic beverages shall be posted in a conspicuous place at the entrance of the boat dock or landing at the primary home port, and must also be posted in a conspicuous place on the boat unless application is made pursuant to Section 24044 of said Code, in which case posting of the boat is unnecessary.

(c) On-sale beer and wine and on-sale general licenses for boats shall, at the request of the licensee or applicant, be issued pursuant to the provisions of Section 23800, subject to the following conditions:

(1) There shall be no sales of alcoholic beverages while the boat is at any dock, except sales to passengers one-half hour prior to departing on scheduled trips or charters, and one-half hour after returning from designated commercial docks pursuant to (A) or (B).

(A) In addition to its primary home port dock, a licensee may designate up to ten (10) commercial docks each year at which it intends to embark or debark passengers.

(B) A licensee may designate any public commercial dock within the state. Such designation shall be in writing.

(C) For purposes of these regulations, the term “commercial dock” shall mean a dock generally used by vessels carrying passengers for hire, for the embarkation to debarkation of passengers, or the loading or unloading of supplies.

NOTE: Authority cited: Section 25750, Business and Professions Code. Reference: Section 23397, Business and Professions Code.

**HISTORY:**

1. New section filed 6-18-70; designated effective 7-20-70 (Register 70, No. 25).
2. Amendment of introductory paragraph filed 10-1-70 as an emergency; effective upon filing (Register 70, No. 40).
3. Certificate of Compliance—Section 11422.1, Government Code, filed 1-21-71 (Register 71, No. 4).
4. Amendment of introductory paragraph filed 1-21-71; designated effective 2-22-71 (Register 71, No. 4).
5. Amendment filed 8-23-83; effective upon filing pursuant to Government Code Section 11346.2(d)(Register 83, No. 35).
6. Amendment of subsection (c) filed 1-27-94; designated effective 2-26-94.

**56. On-sale Beer License for Seasonal Business.**

NOTE: Authority cited: Sections 23322, 23357, 23378, 23388, 23389, 23396 and 25750, Business and Professions Code; Section 22, Article XX, California Constitution. Reference: Division 9 (Chapters 1–17), Business and Professions Code.

**HISTORY:**

1. New subsection (e) filed 2-2-77; designated effective 3-7-77 (Register 77, No. 6). For prior history, see Register 58, No. 6.
2. Repealer filed 11-6-96; effective thirtieth day thereafter.

**57. Fingerprinting.**

Every person who has management responsibilities or who has an ownership or financial interest in a licensed business, or a business to be licensed, shall at the request of the department be fingerprinted if they have not heretofore been so fingerprinted.

This requirement shall apply to all licensees and their spouses, applicants for licenses and their spouses, and in the case of corporations, to any person or persons and their spouses who own or control 10% or more of the corporate stock, the managing officers of the corporation, the chairman of the Board of Directors and a majority of the Board of Directors.

The provisions of this rule shall not apply to any bank or other financial institution whose financial interest constitutes a loan rather than an ownership interest.

NOTE: Authority cited: Sections 23950, 23958 and 25750, Business and Professions Code; Section 22, Article XX, California Constitution. Reference: Division 9 (Chapters 1–17), Business and Professions Code.

**HISTORY:**

1. Amendment filed 2-2-77; designated effective 3-7-77 (Register 77, No. 6). For prior history, see Register 58, No. 6.

**57.5. Manager Defined.**

A person to whom a licensee has delegated discretionary powers to organize, direct, carry on or control the operations of a licensed business shall be deemed the manager thereof for purposes of applying Section 23788.5 of the Alcoholic Beverage Control Act. Authority to control one or more of the following functions shall be prima facie evidence that such a person is the manager of the licensed business:

- (a) To hire or separate employees.
- (b) To contract for the purchase of furniture, equipment or supplies other than the occasional replenishment of stock.
- (c) To disburse funds of the licensed business other than for the receipt of regularly replaced items of stock.
- (d) To make, or participate in making, policy decisions relative to operations of the licensed business.

NOTE: Authority cited: Sections 23001, 23788.5, 24200, and 25750, Business and Professions Code; Section 22, Article XX, California Constitution.

**HISTORY:**

- 1. New section filed 10-25-63; effective thirtieth day thereafter (Register 63, No. 19).
- 2. Editorial correction to NOTE filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).

**57.6. Qualifications of Manager.**

(a) Any on-sale licensee who elects to operate his licensed premises through the employment of a manager may request the department to make a determination of the proposed manager's qualifications. Upon such request, the on-sale licensee shall produce the proposed manager at a District Office of the department for fingerprinting and investigation.

(b) Any on-sale licensee who employs a person in the capacity of manager shall notify the department in writing within fifteen (15) days of the effective date of this rule or within fifteen days of such employment, whichever occurs first. Within such 15-day period the on-sale licensee shall cause his manager to appear at a District Office of the department to have the manager's fingerprints taken, and to file an application for qualification as manager and furnish information necessary to establish whether the manager has the qualifications required of a holder of an on-sale license.

(c) When investigation indicates that any person employed as manager of premises operating under an on-sale license does not possess the qualifications required of the holder of an on-sale license, the department shall serve on the manager Notice of Disqualification of Manager and shall furnish a copy of said Notice to the holder of the on-sale license at the premises.

(d) Upon completion of its investigation pursuant to paragraph (a) or (b) of this rule, the department shall serve either Notice of Qualification of Manager or Notice of Disqualification of Manager on the manager or proposed manager. A copy of such Notice shall be furnished to the on-sale licensee who employs or proposes to employ the manager. Within fifteen (15) days after service of Notice of Disqualification of Manager, the manager or proposed manager upon whom served may petition the department for hearing thereon. The Notice of Disqualification of Manager shall advise the manager or proposed manager of his right to a hearing as provided in Chapter 5 (commencing with Section 11500) of Part 1, Division 3 of Title 2 of the Government Code, and upon petition for hearing the reasons set forth in the Notice of Disqualification of Manager shall become the "statement of issues" as that term is used in Section 11504 of the Government Code, and all provisions of said Section 11504 applicable to "statement of issues" shall be applicable to said Notice. In addition, all

other provisions of Chapter 5 (commencing with Section 11500) of Part 1, Division 3 of Title 2 of the Government Code, applicable to “statement of issues” and proceedings initiated thereby, shall be applicable to the Notice of Disqualification of Manager and proceedings initiated by the filing of petition for hearing thereon.

NOTE: Authority cited: Section 25750, Business and Professions Code and Section 22 of Article XX, California Constitution. Reference: Sections 23001 and 23788.5, Business and Professions Code.

HISTORY:

1. New section filed 4-14-69; designated effective 5-15-69 (Register 69, No. 16).

**57.7. Qualifications of Bona Fide Public Eating Place Lessee.**

(a) Any bona fide public eating place licensee who elects to sublet the sale and service of meals, as provided for in Section 23787, shall within fifteen (15) days of such subletting notify the department in writing and request the department to make a determination of the lessee’s, or proposed lessee’s, qualifications. Within thirty (30) days of such subletting, the licensee shall furnish the department with a copy of the agreement between the licensee and lessee, and shall produce the lessee at a district office of the department to have the lessee’s fingerprints taken and to file an application for qualification as lessee. The lessee shall furnish information to the department necessary to establish whether he has the qualifications required of a holder of an alcoholic beverage license.

(b) Upon completion of its investigation pursuant to paragraph (a) of this rule, the department shall serve either Notice of Qualification of Lessee or Notice of Disqualification of Lessee on the lessee, and a copy of such notice shall be mailed to the licensee. Within fifteen (15) days after service of Notice of Disqualification of Lessee, the lessee may petition the department for hearing thereon. The Notice of Disqualification of Lessee shall advise the lessee of his right to a hearing as provided in Chapter 5 (commencing with Section 11500) of Part 1, Division 3 of Title 2 of the Government Code, and upon petition for hearing the reasons set forth in the Notice of Disqualification of Lessee shall become the “Statement of Issues” as that term is used in Section 11504 of the Government Code, and all provisions of said Section 11504 applicable to “Statement of Issues” shall be applicable to said notice. In addition, all other provisions of Chapter 5 (commencing with Section 11500) of Part 1, Division 3 of Title 2 of the Government Code, applicable to “Statement of Issues” and proceedings initiated thereby, shall be applicable to the Notice of Disqualification of Lessee and proceedings initiated by the filing of petition for hearing thereon.

(c) When the department determines that a lessee is disqualified and that determination becomes final as provided for by law, the department shall notify the licensee in writing that he has 60 days in which to rescind or otherwise terminate the agreement and resume, or sublet to a qualified person, the sales and service of meals as required by Section 23038. The department may extend the above period for good cause. Failure to rescind the agreement within the prescribed period may be cause for disciplinary action by the department for the purpose of suspending or revoking the license. In any such disciplinary action, any findings of fact previously adopted by the department in connection with the lessee’s qualifications shall be presumptive proof as to the issue of the lessee’s qualifications.

(d) A licensee who has sublet the sale and service of meals as provided for in Section 23787 remains responsible for keeping the premises in compliance with Section 23038 and may not exercise the privileges of the license unless the premises are equipped with suitable kitchen facilities, maintained in a sanitary condition, and regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation.

(e) A licensee who has sublet the sale and service of the meals required by Section 23038 shall not also employ the lessee or his employees or agents to manage or direct the alcoholic beverage licensed business.

(f) Each license is issued to a specific person, and the privileges of such license are to be exercised by said person. A licensee who has sublet the sale and service of the meals required by Section 23038 shall not permit the lessee to participate or share in revenues resulting from the exercise of privileges granted by the license.

NOTE: Authority cited: Sections 23038, 23300, 23787 and 24040, Business and Professions Code.

HISTORY:

1. New section filed 7-12-72; designated effective 8-14-72 (Register 72, No. 29).

### **57.8. Qualifications of Convention Center, Exhibit Hall or Auditorium Bona Fide Public Eating Place Lessees.**

(a) A bona fide public eating place licensee operating at a premises licensed pursuant to Section 23824 may from time to time at the request of the State of California, incorporated city, county, city and county or public corporation of the State of California which owns or leases the premises, sublease the sale and service of meals to a lessee or lessees. Within thirty (30) days of such subletting, the licensee shall furnish the department with a copy of the agreement between the licensee and lessee. The lessees or proposed lessees shall be persons who are holders of alcoholic beverage licenses or persons who shall be qualified as provided for in Rule 57.7 of these regulations.

(b) The State of California, incorporated city, county, or city and county or public corporation of the State of California which owns or leases the premises and the licensee may maintain a list of proposed lessees for the sale and service of meals who hold alcoholic beverage licenses or who have been qualified pursuant to Rule 57.7 to sell and serve meals, and the licensee shall furnish the department with such list and any additions or deletions from such list. The department may disqualify any person on the list as provided in Rule 57.7 (b) and (c) of these regulations. The licensee shall notify the department at least 10 days prior to the date on which any lessee on the list, or added to the list, is to first sell and serve meals.

(c) A licensee who has sublet the sale and service of meals as provided for in Section 23787 remains responsible for keeping the premises in compliance with Section 23038.1 and may not exercise the privileges of the license unless the premises are equipped with suitable kitchen facilities, maintained in a sanitary condition, and regularly and in a bona fide manner used and kept open for the serving of meals to groups of guests for compensation.

(d) A licensee who has sublet the sale and service of the meals required by Section 23038.1 shall not also employ the lessee or his employees or agents to manage or direct the alcoholic beverage licensed business.

(e) Each license is issued to a specific person, and the privileges of such license are to be exercised by said person. A licensee who has sublet the sale and service of the meals required by Section 23038.1 shall not permit the lessee to participate or share in revenues resulting from the exercise of privileges granted by the license.

NOTE: Authority cited: Section 25750, Business and Professions Code and Section 22, Article XX, California Constitution. Reference: Sections 23038, 23038.1, 23300, 23787, 24040 and 25750, Business and Professions Code.

HISTORY:

1. New section filed as an emergency 10-1-74; designated effective 10-4-74 (Register 74, No. 40).
2. Certificate of Compliance filed 1-22-75 (Register 75, No. 4).

**58. Applications by Married Persons.**

(a) Where a business is the community property of husband and wife, an alcoholic beverage license may be issued or held either:

(1) In the name of both husband and wife; or

(2) In the name of either spouse, if it can be demonstrated by evidence satisfactory to the department that the unlicensed spouse is qualified and cannot participate in the operation of the business for reasons including, but not limited to, the following:

(A) Physical disability;

(B) Absence from the State for a prolonged period.

(b) Where a business is the separate property of a spouse, established by satisfactory proof to the department, an alcoholic beverage license may be issued in the spouse's name alone.

(c) The unlicensed spouse must have the qualifications required of a holder of a license unless the husband and wife are not living together and have not lived together for at least six months.

(d) The provisions of this rule shall apply to the ownership, by either spouse, of 10 percent or more of the stock of any corporation holding an alcoholic beverage license.

NOTE: Authority cited: Sections 23300, 23355, 23950, 23951, 23952, 23953, 23958, and 24040, Business and Professions Code.

**HISTORY:**

1. New section filed 4-7-58; designated effective 5-15-58 (Register 58, No. 6). For history of former Section 58, see Register 10, No. 7.
2. Amendment filed 7-13-62; designated effective 8-15-62 (Register 62, No. 14).
3. Amendment filed 10-25-63; effective thirtieth day thereafter (Register 63, No. 19).
4. Amendment filed 8-16-72; designated effective 9-20-72 (Register 72, No. 34).

**59. Temporary Beer or Wine Licenses.**

(a) A temporary beer license and/or a temporary wine license may be issued to a person making application therefor on behalf of an existing nonprofit organization, including a charitable, civic, cultural, fraternal, patriotic, political, religious, social or amateur sports organization, for the following purposes: (1) sales to members or guests of members of the organization at the site of and during an organized picnic, social gathering, or similar function of the organization; or (2) sales to the general public from a premises temporarily occupied at the site of and during a county fair, civic celebration or similar event, or at a designated premises and during a fund-raising event sponsored by a nonprofit charitable, civic, cultural, fraternal, patriotic, political, religious, or amateur sports organization.

(b) The alcoholic beverage specified on the license issued pursuant to subsection (a) of this rule may be delivered to the licensee within three days of the effective date of the license except as prohibited by Section 25633 of the Alcoholic Beverage Control Act. Upon a showing of good cause, the department may approve earlier delivery.

(c) The holder of a license issued under subsection (a) of this rule may sell the alcoholic beverage specified on the license from 6 a.m. on the first effective date of the license to 2 a.m. on the day following the last effective date of the license.

(d) A wholesaler may lend, sell or rent to the holder of a license issued pursuant to subsection (a) of this rule draft pumps, ice boxes, and other tapping accessories.

(e) The licenses mentioned in paragraph (a) above do not include off-sale privileges.

(f) A temporary beer license and/or a temporary wine license may be revoked summarily by the department if, in the opinion of the department and/or the local law enforcement agency, it is necessary to protect the safety, welfare, health, peace, and morals of the people of the State.

NOTE: Authority cited: Sections 24045, 25500, 25504, 25600, 25633 and 25750, Business and Professions Code; Section 22 of Article XX, California Constitution.

HISTORY:

1. Amendment of subsection (a) filed 2-23-73 as an emergency; designated effective 3-26-73 (Register 73, No. 8). For prior history, see Register 58, No. 22.
2. Amendment of subsection (a) filed 7-19-73; designated effective 8-20-73 (Register 73, No. 29).
3. Amendment of subsection (f) filed 1-27-94; designated effective 2-26-94.

### **59.1. Temporary Off-Sale Beer and Wine Licenses.**

HISTORY:

1. New section filed 10-19-62 as an emergency; effective upon filing (Register 62, No. 22).
2. Certificate of Compliance—Section 11422.1, Government Code, filed 11-27-62 (Register 62, No. 24).
3. Repealer filed 9-17-65 as an emergency; effective upon filing (Register 65, No. 17).
4. Certificate of Compliance—Section 11422.1, Government Code, filed 11-2-65 (Register 65, No. 21).

### **59.5. Daily On-Sale General License.**

(a) A daily on-sale general license may be issued to an organization qualified under Section 24045.1 of the Business and Professions Code upon application by an authorized representative. Such license authorizes the sale of distilled spirits, wine, and beer for consumption on premises approved by the department. The department may refuse the issuance of a daily on-sale general license to any proposed premises if such issuance could prove detrimental to the immediate neighborhood or could be injurious to the public welfare or morals.

(b) No one organization may be issued a daily on-sale general license for more than two consecutive days nor more than twelve days in one calendar year, unless the restriction is waived by the department for good cause.

(c) A daily on-sale general license may not be issued for use at premises permanently licensed unless the premises holds an on-sale general license and the applicant provides the department with a written notice from the on-sale general licensee which certifies that his license privileges will not be exercised in the separate room or rooms wherein the daily on-sale general license is to be issued; provided, however, that the department may, for good cause, issue a daily on-sale general license at any licensed premises where the permanent license has been temporarily surrendered.

(d) Beer or wine for resale by a daily on-sale general licensee may be purchased at either retail or wholesale within three days of the effective date of the license as provided by Section 25633 of the Business and Professions Code. Distilled spirits for resale by the daily on-sale general licensee must be purchased at retail from the holder of an off-sale general license. Unsold and unopened alcoholic beverages may be returned to the seller from whom purchased.

(e) The holder of a daily on-sale general license may sell alcoholic beverages from 6:00 a.m. on the first effective date of the license to 2:00 a.m. on the day following the last effective date of the license.

(f) A daily on-sale general license may be revoked summarily by the department if, in the opinion of the department and/or the local law enforcement agency, it is necessary to protect the safety, welfare, health, peace and morals of the people of the State.

NOTE: Authority cited: Section 25750, Bus. and Prof. Code, Sec. XX, Calif. Constitution. Reference: Secs. 23394, 23396, 23399, 23401, 23402, 24045, 24045.1, 24048, 25500, 25501, 25504, 25600 and 25633, Bus. and Prof. Code.

HISTORY:

1. New section filed 10-31-69 as an emergency; designated effective 11-10-69. Certificate of Compliance included (Register 69, No. 44).
2. Amendment of subsection (f) filed 1-27-94; designated effective 2-26-94.

**60. Transfer of Licenses.**

(a) Subject to the provisions of law and of the department's rules limiting the number of licenses which may be issued in any county, licenses may be transferred from person to person and from premises to premises within the same county upon a single transfer application.

(b) The transferee shall make application to the department for a license of the type to be transferred and shall meet all the qualifications required of an original applicant for such license. The transferor shall join in the application.

(c) The transfer fee shall be paid by the transferee and shall accompany the application. The renewal fee shall accompany the transfer fee under circumstances described in Section 24048.2 or Section 24048.4 of the Business and Professions Code.

(d) In the absence of a temporary permit, the transferee shall not exercise any of the privileges of a licensee until the license is transferred by the issuance of a license certificate to the transferee. The transferor shall not permit the transferee to exercise any of the privileges of his license until the license is transferred.

(e) If a temporary permit is issued to the applicant for the transfer of an on-sale general license on which a caterer's permit has been issued, the temporary permittee shall be entitled to exercise all the privileges of a caterer's permit during the period in which the temporary permit remains in effect without the payment of an additional fee.

(f) The administrator or executor of the estate of a deceased licensee may execute a transfer application and shall accompany such transfer application with a certified copy of letters testamentary or letters of administration.

(g) The guardian of the estate of a licensee may execute a transfer application and shall accompany such transfer application with a certified copy of the order appointing him guardian.

(h) In the event of the death of a limited partner licensee, or a general partner licensee where another general partner survives, the surviving partner or partners may execute a transfer application. In the event of the death of a general partner licensee where the only surviving partner is a limited partner, the executor or administrator of the estate of such general partner, or a person denominated in subsection (j) hereof, must also execute the transfer application. In both events, the transfer application shall be accompanied by a certified copy of the death certificate of the deceased partner, or other documentary proof of death satisfactory to the department.

(i) A trustee of the bankrupt estate of a licensee may execute a transfer application and shall accompany such transfer application with a certified copy of the order appointing him trustee.

(j) In the event that the estate of a deceased licensee may be disposed of without administration pursuant to Division 8 of the Probate Code and, if no administrator or executor of the estate is appointed, the surviving spouse or any other person entitled to administer such estate pursuant to such chapter may execute a transfer application and shall accompany such transfer application with a certified copy of the death certificate of the deceased licensee, or other documentary proof of death satisfactory to the department, and with either a certified copy of the order under which he acts or, if no such order is obtained, with an affidavit of his right to the licensed business.

(k) The receiver of the estate of a licensee may execute a transfer application and shall accompany such transfer application with a certified copy of the order appointing him receiver.

(l) If the transferor is a partnership, all members thereof must execute the application unless the department is satisfied by affidavit or otherwise that one or more partner licensees have abandoned their interest in the business and that such abandonment has continued for a period of not less than six consecutive months immediately preceding the application. The department may accept a transfer application executed by the remaining partners or any other person properly authorized by power of attorney.

For purposes of this rule, a partner licensee shall have abandoned his interest in the licensed business if he makes an oral or written declaration to that effect, or if all of the following conditions exist:

- (1) He cannot be found or located.
- (2) He has taken no active part in the operation or management of the licensed business.
- (3) He has not received any income directly or indirectly from the licensed business.

(m) No license may be issued or transferred to any person unless he owns or otherwise has possession and control, or a right to possession and control, of the premises for which he makes application for a license, evidenced by an instrument in writing or by other clear and convincing proof.

NOTE: Authority cited for amendment filed 12-24-58: Sections 23300, 23820, 23950, 23951, 23952, 23953, 24048.2, 24048.4, 24070, 24071, 24072 and 25750, Business and Professions Code and Section 22 of Article XX of the California Constitution.

HISTORY:

- 1. Amendment filed 11-16-67; effective thirtieth day thereafter (Register 60, No. 46). For prior history, see Register 66, No. 3.
- 2. Amendment of subsections (d), (e) and (l) filed 12-18-69; designated effective 1-19-70 (Register 69, No. 51).

**60.1. Club Licenses.**

NOTE: Authority cited: Section 25750, Business and Professions Code.

HISTORY:

- 1. New section filed 4-4-58; designated effective 5-15-58 (Register 58, No. 6).
- 2. Amendment filed 8-28-61; designated effective 10-1-61 (Register 61, No. 17).
- 3. Amendment filed 7-13-62; designated effective 8-15-62 (Register 62, No. 14).
- 4. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

**60.2. Exchange of On-sale General License for Public Premises.**

NOTE: Authority cited: Sections 23793 and 25750, Business and Professions Code and Section 22, Article XX, California Constitution.

HISTORY:

- 1. New section filed 12-6-68; designated effective 1-8-69 (Register 68, No. 46). For prior history, see Register 67, No. 46.

2. Amendment filed 9-23-71; designated effective 10-26-71 (Register 71, No. 39).
3. Amendment filed 2-8-72; designated effective 3-10-72 (Register 72, No. 7).
4. Amendment filed 5-7-74; designated effective 6-10-74 (Register 74, No. 19).
5. Repealer filed 11-6-96; effective thirtieth day thereafter.

### **60.3. Applications and Contracts to Transfer.**

NOTE: Additional authority cited: Section 25750, Business and Professions Code.

HISTORY:

1. New section filed 7-13-62; designated effective 8-15-62 (Register 62, No. 14).
2. Amendment filed 10-25-63; effective thirtieth day thereafter (Register 63, No. 19).
3. Amendment filed 11-16-67; effective thirtieth day thereafter (Register 67, No. 46).
4. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

### **60.4. Off-sale General License on Off-sale Beer and Wine Premises.**

An off-sale general license may be issued for a designated portion of a premises licensed with an off-sale beer and wine license when all the following conditions are met:

(a) The portion of the premises where the privileges of the off-sale general license are to be exercised shall be for the exclusive use of the off-sale general licensee, and shall be specified by metes and bounds and be distinctly separated from that portion of the premises where the privileges of the off-sale beer and wine license are exercised.

(b) The sale and delivery of alcoholic beverages under the off-sale general license shall be completed within the area defined and specified pursuant to paragraph (a) of this rule, and shall be made by the holder of the off-sale general license or his employees. Such employees shall be in the exclusive employ of the holder of the off-sale general licensee and shall not be employees of the off-sale beer and wine licensee. The holder of the off-sale general license shall possess and exercise the exclusive right to hire, supervise, and discharge such employees.

(c) The sale and delivery of alcoholic beverages under the off-sale beer and wine license shall be completed within the area of the premises other than that defined and specified pursuant to paragraph (a) of this rule, and shall be made by the holder of the off-sale beer and wine license or his employees. Such employees shall be in the exclusive employ of the holder of the off-sale beer and wine license and shall not be employees of the off-sale general licensee. The holder of the off-sale beer and wine license shall possess and exercise the exclusive right to hire, supervise, and discharge such employees.

(d) The off-sale beer and wine licensee and the off-sale general licensee shall each obtain and operate under separate appropriate business licenses, sales tax permits, and other such licenses and permits, and shall each keep and maintain separate records of inventory and sales, and records as required by Rule 17.

NOTE: Authority cited: Secs. 23300, 23355, 24040, 24041.5 and 25750, Business and Professions Code; Sec. 22, Art. XX, Calif. Const.

HISTORY:

1. New section filed 11-16-67; effective thirtieth day thereafter (Register 67, No. 46).

### **60.5. Caterer's Permit.**

A caterer's permit may be issued to an on-sale general licensee, club licensee or veterans' club licensee upon application to the department and payment of the fee provided in Section 23399 of the Alcoholic Beverage Control Act. A caterer's permit authorizes the sale of

alcoholic beverages for consumption upon premises approved by the department, and the privileges thereunder may be exercised under the following conditions:

(1) Unless waived by the department, for good cause shown, a catering authorization shall be obtained at least three days in advance of each catered event. A written application therefor shall be submitted indicating the address and common name of the premises to be catered, the number of occasions upon which the applicant has catered the premises during the current calendar year, the name and address of the person or organization sponsoring the event, the type of event to be catered, and the estimated attendance thereat.

(2) A catering authorization shall not be issued for premises which have previously been denied a license by reason of the proximity of consideration points or conflict with a valid zoning ordinance unless a written waiver, executed by the person in charge of each such consideration point, is submitted or, in the case of conflict with a zoning ordinance, executed by the legal representative of the community involved.

(3) No caterer's authorization shall be issued in an area where the department would not authorize a license because of proximity to a university, State college, veterans home or other institution operated by the State or Federal Government, unless the privileges of the caterer's permit are to be exercised in connection with the serving of bona fide meals, and the exercise of the privileges will not otherwise be contrary to public welfare and morals.

(4) A catering authorization shall not be issued for use at any one premises for more than 24 events in one calendar year, except when the department determines additional events may be catered to satisfy substantial public demand.

NOTE: Authority cited: Sections 23300, 23399, 23789, 23790, 23791, 23958 and 25750, Business and Professions Code; Sections 172 through 172.9, Penal Code; Section 22, Article XX, California Constitution.

HISTORY:

1. New section filed 10-25-63; effective thirtieth day thereafter. (Register 63, No. 19).
2. Amendment filed 11-16-67; effective thirtieth day thereafter (Register 67, No. 46).
3. Repealer of subsection (5) filed 5-7-74; designated effective 6-10-74 (Register 74, No. 19).

## 61. License Limitations.

NOTE: Authority cited: Sections 23820 and 25750, Business and Professions Code. Reference: Sections 23815, 23818 and 23958, Business and Professions Code.

HISTORY:

1. Amendment of subsection (a) filed 12-6-68; designated effective 1-8-69 (Register 68, No. 46). For prior history, see Register 65, No. 18.
2. Repealer of subsection (b) filed 2-8-72; designated effective 3-10-72 (Register 72, No. 7).
3. Repealer of NOTE and new NOTE filed 6-1-77; effective thirtieth day thereafter (Register 77, No. 25).
4. Amendment filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
5. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

### 61.1. Priority Drawings.

NOTE: Authority cited: Sections 23820 and 25750, Business and Professions, Code and Section 22 of Article XX, California Constitution. Reference: Section 23815, Business and Professions Code.

HISTORY:

1. New section filed 2-4-69 as an emergency; effective upon filing (Register 69, No. 6). For former section history, see Register 67, No. 46.
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 4-14-69 (Register 69, No. 16).
3. Amendment filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
4. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

**61.2. Restrictions on Government-owned Premises.**

NOTE: Authority cited: Sections 23824 and 25750, Business and Professions Code, and Section 22 of Article XX of the California Constitution.

**HISTORY:**

1. New section filed 4-18-62; designated effective 5-21-62 (Register 62, No. 8). For history of former Section 61.2, see Register 61, No. 20.
2. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

**61.3. Undue Concentration.**

(a) For the purpose of Section 23958 of the Alcoholic Beverage Control Act, undue concentration includes, but is not limited to, conditions set forth below:

The applicant premises for an original or premises-to-premises transfer of any retail license are located in a crime reporting district which has a 20% greater number of reported crimes, as defined below, than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency if the following conditions exist:

(1) 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.

(2) 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.

Notwithstanding the above, the department may issue a license if the applicant shows that public convenience or necessity would be served by such issuance.

(b) Definition of Terms and Data Sources. The following definitions and data sources shall govern the construction and application of this rule:

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

(2) "Reported Crimes" are 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, motor vehicle theft, and such offenses shall be combined with all arrests for other crimes, 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. Such 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, State Department of Finance.

(5) "Retail Licenses" shall include the following:

(A) Off-sale Retail Licenses: Types 20 (off-sale beer and wine) and 21 (off-sale general).

(B) On-sale Retail Licenses: All retail on-sale licenses except Types 43 (on-sale beer and wine for train), 44 (on-sale beer and wine for fishing party boat), 45 (on-sale beer and wine for boat), 46 (on-sale beer and wine for airplane), 53 (on-sale general for train and sleeping

car), 54 (on-sale general for boat), 55 (on-sale general for airplane), 56 (on-sale general for vessel of more than 1,000 tons burden), and 62 (on-sale general bona fide public eating place intermittent dockside license for vessels of more than 15,000 tons displacement).

(6) The number of retail licenses in the county shall be determined by the most recent yearly retail license count published by the department.

This rule does not apply where the premises have been licensed and operated with the same type license within 90 days of the application.

NOTE: Authority cited: Section 25750, Business and Professions Code and Section 22 of Article XX, California Constitution. Reference: Section 23958, Business and Professions Code.

HISTORY:

- 1. New section filed 8-1-77; effective thirtieth day thereafter (Register 77, No. 32). For history of former section, see Register 61, No. 20.
- 2. Amendment filed 4-4-79 as an emergency; effective upon filing (Register 79, No. 14).
- 3. Certificate of Compliance filed 6-29-79 (Register 79, No. 26).
- 4. Amendment filed 6-29-79; effective thirtieth day thereafter (Register 79, No. 26).
- 5. Amendment filed 2-28-91; effective thirtieth day thereafter (Register 91, No. 13).

**61.4. Proximity to Residences.**

No original issuance of a retail license or premises-to-premises transfer of a retail license shall be approved for premises at which either of the following conditions exist:

- (a) The premises are located within 100 feet of a residence.
- (b) The parking lot or parking area which is maintained for the benefit of patrons of the premises, or operated in conjunction with the premises, is located within 100 feet of a residence. Where the parking lot is maintained for the benefit of patrons of multiple businesses in the vicinity of the premises, the parking area considered for the purpose of this rule shall be determined by the area necessary to comply with the off-street parking requirements as mandated by the local ordinance, or if there are no local requirements for off-street parking, then the area which would reasonably be necessary to accommodate the anticipated parking needs of the premises, taking into consideration the type business and operation contemplated.

Distances provided for in this rule shall be measured by airline from the closest edge of any residential structure to the closest edge of the premises or the closest edge of the parking lot or parking area, as defined hereinabove, whichever distance is shorter.

This rule does not apply where the premises have been licensed and operated with the same type license within 90 days of the application.

Notwithstanding the provisions of this rule, the department may issue an original retail license or transfer a retail license premises-to-premises where the applicant establishes that the operation of the business would not interfere with the quiet enjoyment of the property by residents.

NOTE: Authority cited: Section 25750, Business and Professions Code; Section 22, Article XX, California Constitution. Reference: Section 23958, Business and Professions Code.

HISTORY:

- 1. New section filed 8-1-77; effective thirtieth day thereafter (Register 77, No. 32). For history of former section, see Register 61, No. 20.
- 2. Amendment filed 6-27-79 as an emergency; effective upon filing (Register 79, No. 26).
- 3. Certificate of Compliance filed 10-25-79 (Register 79, No. 43).

**61.5. Off-sale General License Restriction.**

No original off-sale general license shall be issued to any premises for which an on-sale license is issued, except that the department may issue an off-sale general license to premises

licensed under an on-sale general license if it is satisfied that the on-sale business and the off-sale business are to be physically separated and operated independently of each other and the privileges thereby granted are to be fully exercised in a bona fide manner. Subject to the provisions of Section 24044 of the Alcoholic Beverage Control Act, and Rule 65 of these regulations, no off-sale general license shall be held by any person who does not, in good faith, exercise the privileges granted thereby at the licensed premises.

NOTE: Authority cited: Section 25750, Business and Professions Code; Section 22, Article XX, California Constitution. Reference: Sections 23300, 23320, 23355, 23394, 23401 and 24040, Business and Professions Code.

HISTORY:

1. Repealer of NOTE and new NOTE filed 6-1-77; effective thirtieth day thereafter (Register 77, No. 25). For prior history, see Register 61, No. 14; 61, No. 20; 63, No. 19.

**62. Law Enforcement Personnel Not to Hold Licenses.**

No license authorized by the Alcoholic Beverage Control Act shall be held by, or issued or transferred to, any person holding office in, or employed by, any agency of the State of California or any of its political subdivisions when the duties of such person have to do with the enforcement of the Alcoholic Beverage Control Act or any other penal provisions of law of this State prohibiting or regulating the sale, use, possession or manufacture of alcoholic beverages. This rule is deemed to apply specifically, but without limiting its effect, to any persons employed in the Department of Justice of the State of California, in any district attorney's office, in any sheriff's office, in any local police department, or in the Department of Alcoholic Beverage Control. This rule shall not prohibit the ownership of any license interest by any local law enforcement officer or local reserve law enforcement officer where the licensed premises are located in a county other than that in which he is employed as a law enforcement officer.

This rule shall apply to any person mentioned herein who has any ownership interest, directly or indirectly, in any business to be operated or conducted under an alcoholic beverage license.

The provisions of this rule shall not apply to the ownership of any stock of a corporation the stock of which is listed on a stock exchange, or to the ownership of any stock of a bank, trust company, financial institution or title company to which a license is issued in a fiduciary capacity. This rule shall not apply to any person who holds a license in the capacity of executor, administrator or guardian. This rule shall not apply to a peace officers association qualifying for a club license pursuant to Section 23428.10 of the Alcoholic Beverage Control Act.

NOTE: Authority cited: Section 25750, Business and Professions Code; Section 22, Article XX, California Constitution. Reference: Section 23428.10, Business and Professions Code.

HISTORY:

1. Amendment filed 2-2-77; designated effective 3-7-77 (Register 77, No. 6). For prior history, see Register 62, No. 21.  
2. Amendment filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).

**63. License Reinstatement After Automatic Revocation.**

NOTE: Authority cited: Article XX, Section 22, California Constitution and Sections 25750, 24048.1 and 24048.3, Business and Professions Code.

HISTORY:

1. Originally published 3-22-45 (Title 4).  
2. Amendment filed filed 12-19-45 (Register 3).  
3. Amendment filed 9-13-57 as an emergency; effective upon filing (Register 57, No. 15).

4. Amendment filed 8-31-65; effective thirtieth day thereafter (Register 65, No. 16).
5. Repealer filed 11-6-96; effective thirtieth day thereafter.

#### **64. Premises Under Construction.**

(a) No new and original license for the retail sale of alcoholic beverages shall be issued to premises which are in the process of construction until said premises are complete and ready for operation.

(b) A license may be transferred to a person who has premises under construction, and the certificate shall be held by the department until the construction of the premises is complete and ready for operation. No license transferred pursuant to this rule shall be retransferred prior to being placed into operation at the premises for which issued, except for undue hardship arising from causes beyond his control.

(c) The approved expected completion date on both pending applications filed pursuant to Section 24044 of the Alcoholic Beverage Control Act and licenses transferred and held under this section shall not be extended for more than six months, unless the department determines that the delay in construction is beyond control of the applicant or licensee. If good cause for delay does not exist, the application will be denied or the license will be cancelled.

NOTE: Authority cited: Sections 23957, 23985, 24044, 24070 and 25750, Business and Professions Code; Section 22 of Article XX of the California Constitution.

##### **HISTORY:**

1. New section filed 9-22-54; effective thirtieth day thereafter (Register 54, No. 20). For history of former section, see Register 53, No. 4.
2. Amendment filed 7-12-61; effective thirtieth day thereafter (Register 61, No. 14).
3. Amendment filed 7-13-62; designated effective 8-15-62 (Register 62, No. 14).

#### **64.1. Licenses Within 200 Feet of Licenses of the Same Type.**

NOTE: Authority cited: Sections 23793, 23950 and 25750, Business and Professions Code and Section 22 of Article XX of the California Constitution.

##### **HISTORY:**

1. New section filed 9-23-63; effective thirtieth day thereafter (Register 63, No. 17).
2. Repealer filed 9-17-65 as an emergency; effective upon filing (Register 65, No. 17).
3. Certificate of Compliance—Section 11422.1, Government Code, filed 11-2-65 (Register 65, No. 21).

#### **64.2. Premises Designation.**

(a) Premises and Activity Diagram.

(1) Prior to the issuance or transfer of a license, the applicant shall file with the department, on forms furnished by the department, a complete detailed diagram of the proposed premises wherein the license privileges will be exercised.

(2) The diagram will show all boundaries, dimensions, entrances and exits, interior partitions, walls, rooms, and common or shared entryways. Each room and/or partitioned area within the premises area shown will include a brief statement or description of the principal activity to be conducted therein, e.g., office, storeroom, toilets, bar, cardroom, billiards, etc. If any described activity shown thereon is not, or will not be, conducted under the direct control, supervision and ownership of the alcoholic beverage licensee, the name and full identification of any person or persons who own, direct, control and/or supervise the activity will be furnished to the department together with a full disclosure of any agreement, written or oral, between the licensee and said person.

(3) If the area proposed to be licensed uses, either as a principal or secondary means of public ingress and/or egress, any common door or common passage with any other occupant

of the same or adjacent buildings or rooms, a statement of the general entities conducted and the identification of the persons or entities conducting said activities will be made on the diagram.

(b) Substantial Physical Changes of Premises or Character of Premises.

(1) After issuance or transfer of a license, the licensees shall make no changes or alterations of the interior physical arrangements which materially or substantially alter the premises or the usage of the premises from the plan contained in the diagram on file with his application, unless and until prior written assent of the department has been obtained.

For purposes of this rule, material or substantial physical changes of the premises, or in the usage of the premises, shall include, but are not limited to, the following:

(A) Substantial increase or decrease in the total area of the licensed premises previously diagrammed.

(B) Creation of a common entryway, doorway, passage or other such means of public ingress and/or egress, when such common entryway, doorway, passage or other such means of public ingress and/or egress, when such common entryway, doorway or passage permits access to the licensed premises area from or between adjacent or abutting buildings, rooms, or premises.

(C) Where the proposed change will create in the licensed premises an area, or room, or rooms, whether or not partitioned, or in some other manner delimited and defined wherein activities of any nature not directly related to the sale of alcoholic beverages will be conducted by a person, persons, or entity not under the direct control, supervision and direction of the licensee.

(2) Where the proposed change will create in the licensed premises area, or room, or rooms, or any portion of the premises, whereby the licensee, or the owner of the real property wherein the license privileges are exercised, creates or purports to create in any persons or entity by license, easement, grant sublease, subassignment or similar means an interest in which any person or entity will conduct any activity not directly related to the sale and service of alcoholic beverages not previously conducted on the premises.

(c) Application to Winegrower's and Brandy Manufacturer's Premises. The provisions of this rule shall not apply to the premises of a winegrower or brandy manufacturer, except for those portions of such premises where sales at retail are made or wine tasting activities are conducted.

NOTE: Authority cited: Section 25750, Business and Professions Code and Section 22 of Article XX, California Constitution. Reference: Sections 23958 and 24040, Business and Professions Code.

HISTORY:

1. New section filed 9-23-71; designated effective 10-26-71 (Register 71, No. 39).

### **65. Surrender of License on Closing of Business.**

(a) Every licensee who surrenders, abandons or quits his licensed premises, or who closes his licensed business for a period exceeding 15 consecutive calendar days, shall, within 15 days after closing, surrendering, quitting, or abandoning his licensed premises, surrender his license or licenses to the department. The department may seize the license certificate or certificates of any licensee who fails to comply with the surrender provisions of this rule, and may proceed to revoke his license or licenses.

(b) Upon the voluntary request by any licensee, on such form as the department may prescribe, the department may cancel his license or licenses.

(c) A surrendered license may be reinstated upon request made at least 10 days prior to the date of reinstatement upon certification by the licensee that there has been no change of

ownership of the licensed business, and that the premises possess the same qualifications required for the original issuance of the license.

(d) Any license voluntarily surrendered under paragraph (a) of this rule shall be revoked if it is not transferred to another person or for use at another premises, or redelivered and the licensed activity resumed, within one year from the date of such surrender. There shall be no extension of such surrender period except when the department finds good cause exists where: (1) an application is pending for transfer of the surrendered license; or (2) litigation other than that involving disciplinary action by the department is pending; or (3) the premises for which the license had been issued and for which the license is sought to be redelivered were destroyed due to circumstances beyond the control of the licensee by fire, flood, or other natural catastrophe, or as part of an urban renewal program, and the licensee makes an affirmative showing of good faith efforts that he is attempting to obtain reconstruction of such destroyed premises; or (4) the Director in his judgment finds a case of undue hardship exists which would warrant an extension.

NOTE: Authority cited: Section 25750, Business and Professions Code; Section 22 of Article XX, California Constitution.

HISTORY:

1. Amendment of subsection (d) filed 12-6-68; designated effective 1-8-69 (Register 68, No. 46). For prior history, see Register 58, No. 6.
2. Amendment filed 12-18-69; designated effective 1-19-70 (Register 69, No. 51).

**66. Premises Where License Previously Denied, Revoked, or Conditions Imposed.**

No license shall be issued for any premises for which an application for a license has been denied, or at which a license has been revoked, for reasons pertaining to the premises, unless one year has elapsed from the date the order becomes final.

When conditions have been imposed on a license, where otherwise the license would be denied, for reasons relating to the premises, no petition for the removal of the conditions may be filed within one year from the date the license was issued, or from the date a similar petition was denied.

Notwithstanding the provisions of this rule, the department may at any time in the reasonable exercise of its discretion issue a license for any premises which was originally denied or at which a license has been revoked, or may accept a petition to remove conditions, if the reasons which caused the denial, revocation or imposition of conditions no longer exist.

NOTE: Authority cited: Section 25750, Business and Professions Code; Section 22 of Article XX, California Constitution. Reference: Sections 23800, 23801, 23802, 23803, 23804 and 23958, Business and Professions Code.

HISTORY:

1. Amendment filed 11-16-67; effective thirtieth day thereafter (Register 67, No. 46). For prior history, see Register 62, No. 8.
2. Amendment to NOTE filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).

**67. On-sale Beer and On-sale Beer and Wine Licenses.**

NOTE: Authority cited: Sections 23958 and 25750, Business and Professions Code.

HISTORY:

1. Amendment filed 9-18-47 (Register 9).
2. Amendment filed 5-7-74; designated effective 6-10-74 (Register 74, No. 19).
3. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

**67.1. Beer Public Premises.**

(a) On and after November 8, 1967, any premises for which an on-sale beer license has been or is issued, shall be a public premises as defined in Section 23039(a)(2) of the Alcoholic Beverage Control Act if no food is prepared and sold on the premises for consumption on the premises. As used in the foregoing sentence “food” includes sandwiches, hamburgers, hot dogs, pizza, tacos, salads, desserts (other than pre-packaged individual servings of ice cream, ice milk or imitation ice cream), and similar short orders.

(b) Any on-sale beer license issued or transferred on or after November 8, 1967, for premises on which no food is prepared and sold as provided in (a) of this rule, shall be designated as an “On-Sale Beer License for Public Premises.”

(c) Any person who, on November 8, 1967, holds an on-sale beer license, other than a license designated as “On-Sale Beer License for Public Premises,” for premises on which no food is prepared and sold as provided in (a) of this rule, may at the time such person renews his license for 1968, notify the department that his license is to be designated as “On-Sale Beer License for Public Premises.” No fee shall be charged for such initial designation if made at the time the license is renewed for 1968.

Any person who holds an on-sale beer license, other than a license designated as “On-Sale Beer License for Public Premises,” for premises on which no food is prepared and sold as provided in (a) of this rule, shall prior to March 1, 1968, notify the department that the license is to be designated as “On-Sale Beer License for Public Premises.” If such notification of designation is made other than at the time the license is renewed for 1968, the exchange fee prescribed by Business and Professions Code Section 24072.2 shall accompany said notification.

(d) Each licensee who holds an “On-Sale Beer License for Public Premises” shall comply with the provisions of Rule 107 of the department’s rules. The provisions of Section 25665 of the Alcoholic Beverage Control Act shall apply to each licensee who holds an “On-Sale Beer License for Public Premises.”

(e) An on-sale beer license may be exchanged for an “On-Sale Beer License for Public Premises,” and an “On-Sale Beer License for Public Premises” may be exchanged for an on-sale beer license in accordance with the provisions of this rule and with the provisions of Sections 23039 and 24072.2 of the Alcoholic Beverage Control Act.

NOTE: Authority cited: Sections 23039, 24070.1, 24072.1, 24072.2, 25665 and 25750, Business and Professions Code; Section 22, Article XX, California Constitution.

**HISTORY:**

1. New section filed 10-9-67; effective thirtieth day thereafter (Register 67, No. 41).
2. Amendment of subsection (d) filed 2-2-77; designated effective 3-7-77 (Register 77, No. 6).

**68. Transfer of General Licenses.**

NOTE: Authority cited: Sections 23820 and 25750 of the Business and Professions Code; Section 22, of Article XX, California Constitution. Reference: Sections 14100, 14101, 14102, 14103, 16600, 16601, 16602, 23816, 23817, 23821, 23950, 23953, 23954, 23958, 24079 and 24080, Business and Professions Code.

**HISTORY:**

1. Repealer of NOTE and new NOTE filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25). For prior history, see Register 64, No. 8; 71, No. 4; 72, No. 29; 75, No. 4.
2. Repealer filed 11-6-96; effective thirtieth day thereafter.

**68.1. Waiting Period.**

NOTE: Authority cited: Sections 23793, 23815, 23816, 23820, 23954.5, 23958, 24070, 24079, 24080 and 25750, Business and Professions Code; Section 22, Article XX of the California Constitution.

HISTORY:

- 1. New section filed 2-16-65 as an emergency; effective upon filing (Register 65, No. 3).
- 2. Repealed by operation of Sec. 11422.1, Gov. Code (Register 67, No. 41).

**68.2. Tax Delinquency When Transfer Pending.**

The department may refuse to transfer any license limited under Article 2 (commencing with Section 23815) of Chapter 5 of Division 9, Business and Professions Code, or any on-sale general seasonal license if the transferor is delinquent in the payment of any taxes due under the laws specified in Section 24049 of the Alcoholic Beverage Control Act, provided that notice of such delinquency has been filed with the department. Standard forms approved by the department and produced by the agencies which administer the laws specified in Section 24049, or by the department, shall be used by said agencies: (1) to give notice to the department that a delinquency exists as to a licensee; (2) to make demand on the delinquent licensee for the amount of the delinquency, plus interest if applicable; and (3) to give notice to the department that the delinquency has been cleared and the withhold is to be released.

(1) Upon receipt by the department of notice in duplicate that a delinquency exists as to a licensee, the department shall attach the original to the licensee’s file, and shall return the duplicate, endorsed with any pertinent information, to the agency at such time as an application is filed to transfer the license of the licensee to another person.

(2) The taxing agency shall, within 30 days after the date the department returns the duplicate, make demand on the delinquent licensee for the amount of the delinquency, plus interest if applicable, and shall give notice of such demand to the escrow holder and the transferee. Copies of the notice of such demand shall be sent to the Headquarters office of the department in Sacramento and the appropriate district office of the department. If the agency fails to make its demand within 30 days after the date the department returns the duplicate of the agency’s notice of delinquency, the department may proceed to transfer the license.

(3) A form of notice, in duplicate, that the delinquency has been cleared and the withhold is to be released, shall accompany the demand made by the agency as provided in (2) above. The person who pays the delinquency, plus interest if applicable, shall, upon making such payment to the agency, send the original of the notice provided herein to the Headquarters office of the department in Sacramento.

NOTE: Authority cited: Sections 23820, 24049, 24074 and 25750, Business and Professions Code; Section 22, Article XX, California Constitution.

HISTORY:

- 1. New section filed 10-9-67; effective thirtieth day thereafter (Register 67, No. 41).

**68.5. Issuance or Transfer of Corporate Stock; Change of Corporate Directors or Officers.**

(a) Each corporate licensee shall, within thirty days of a change of the members of the board of directors, or a change in any of the corporate officers required by Section 312 of the Corporations Code, or the issuance or transfer of shares of its stock which results in a person not previously approved owning 10% or more of its stock, comply with the following conditions:

(1) Make application to the department on such forms as may be prescribed which shall contain such information with respect to the new person as is required to be furnished by an applicant for a license.

(2) Cause the new director, officer, or stockholder to present himself to the department within thirty (30) days of application, as required under (1) above, for completion of such forms as may be prescribed and for fingerprinting when deemed necessary.

(b) The department shall make an investigation to determine whether provisions of the Alcoholic Beverage Control Act and the Rules have been complied with and to determine the qualifications of the persons who present themselves as required in (a)(2) above. Where the department finds that the person does not have the qualifications to hold an alcoholic beverage license under Division 9 of the Business and Professions Code or Chapter 1, Title 4 of the California Administrative Code, the following procedure shall apply:

(1) In the case of an application filed as required under Section 24071.1 of the Business and Professions Code, the department may deny the transfer application.

(2) In all other cases the department shall notify in writing the corporate licensee and the person who was found to be disqualified. Such written notice shall become “The statement of issues,” as the term is used in Section 11504 of the Government Code. Within ten (10) days after such notification is mailed, the person or corporate licensee may petition the department in writing for a hearing on such notice of disqualification. On receipt of the petition, a hearing shall be scheduled thereon. The provisions of Section 24300 of the Business and Professions Code and Chapter 5 (commencing with Section 11500) of Part 1, Division 3 of Title 2 of the Government Code, shall govern such proceedings.

(c) When the department finds an officer, director or stockholder to be disqualified and the department’s decision becomes final, as provided for by law, the department shall notify the licensed corporation in writing that it has thirty (30) days in which to take such action as may be necessary to remove the disqualified person from the corporation. Failure to so act within the prescribed period may be cause for disciplinary action by the department for the purpose of suspending or revoking the license. In any such disciplinary action, any findings of fact previously adopted by the department in connection with the person’s disqualifications shall be presumptive proof as to the issue of the person’s qualifications.

(d) When the final decision of the department is that a new director, officer or stockholder is qualified, written notice to that effect shall be given the person and the corporate licensee.

(e) The above provisions of this rule shall not apply to the following:

(1) A corporate licensee, the stock of which is listed on a stock exchange in this State, or in the City of New York, State of New York:

(2) A bank, trust company, financial institution or title company to which a license is issued in a fiduciary capacity; and

(3) A corporate licensee which is required by law to file periodic reports with the Securities and Exchange Commission.

NOTE: Authority cited: Section 25750, Business and Professions Code; Section 22, Article XX, California Constitution. Reference: Sections 23958, 24070, 24071 and 24071.1, Business and Professions Code.

**HISTORY:**

1. Amendment filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25). For prior history, see Register 72, No. 7.

**68.6. Retail License Qualifications Where Interest Held by Out-of-Country Winegrower.**

NOTE: Authority cited: Section 25750, Business and Professions Code; Section 22, Article XX, California Constitution. Reference: Section 25503.13, Business and Professions Code.

**HISTORY:**

- 1. New section filed 6-29-79; effective thirtieth day thereafter (Register 79, No. 26).
- 2. Repealer filed 11-6-96; effective thirtieth day thereafter.

Article 12. Military and Naval Reservations and Camps

**69. Denial, Suspension or Revocation of Licenses.**

NOTE: Authority cited: Section 25750, Business and Professions Code.

HISTORY:

- 1. New section filed 12-14-51 as an emergency; effective upon filing (Register 26, No. 6).
- 2. Amendment filed 6-5-59; designated effective 7-6-59 (Register 59, No. 9).
- 3. Editorial correction in NOTE filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).
- 4. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

**70. Premises Declared “Off-Limits” by Military Authorities.**

NOTE: Additional authority cited: Section 25750, Business and Professions Code. Issuing agency: Department of Alcoholic Beverage Control.

HISTORY:

- 1. New section filed 10-10-51 as an emergency; effective upon filing (Register 26, No. 1). (For history of previous section see Register 9.)
- 2. Amendment filed 10-2-56; designated effective 11-1-56 (Register 56, No. 19).
- 3. Repealer filed 8-21-62 as an emergency; effective upon filing (Register 62, No. 17).
- 4. Certificate of Compliance—Section 11422.1, Government Code, filed 11-27-62 (Register 62, No. 24).

**71. Sales to Persons on Federal Reservations.**

NOTE: Authority cited: Section 25750, Business and Professions Code. Reference: Sections 23384, 25616 and 25752, Business and Professions Code.

HISTORY:

- 1. Repealer of NOTE and new NOTE filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25). For prior history, see Register 58, No. 4.
- 2. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

Article 13. Private Warehouses

**76. Private Warehouses.**

Whenever a licensee desires to store alcoholic beverages, other than state tax-paid beer or wine, in a private warehouse, such licensee shall make application for approval of such warehouse to the district office of the department. The application shall specify the location of the warehouse, by whom maintained, the name of the licensee and the types of licenses, together with the numbers thereof, held by him. The district supervisor may approve the application if he is satisfied that the stated facts are correct. The applicant shall be given written notice of such approval, and he shall post it inside and near the entrance to the warehouse.

NOTE: Authority cited for amendment filed 4-7-58: Sections 23035, 23106 and 25750, Business and Professions Code; Section 22 of Article XX, California Constitution.

HISTORY:

- 1. Amendment filed 4-7-58; designated effective 5-15-58 (Register 58, No. 6).

Article 14. Sales Without Licenses

**79. Sales Without Licenses**

(a) Temporary Continuation of Retail Business. The administrator, executor or guardian of the estate of a retail licensee or receiver for a retail licensee or trustee of the bankrupt estate of a retail licensee, or assignee for the benefit of creditors of a retail licensee, or the surviving and competent colicensees of a deceased or incompetent retail licensee, may apply to the district supervisor of the department in the district in which the licensed premises are located

for permission to operate a licensed business under the provisions of Section 23102 of the Alcoholic Beverage Control Act. Permission to sell and deal in alcoholic beverages under the authority of the license may be granted by district supervisor orally and shall be immediately confirmed in writing. Suspension or revocation of permission under this section may be made by the department in accordance with the provisions of the Alcoholic Beverage Control Act applicable to licenses.

(b) **Temporary Continuation of Licensed Business Other Than Retail.** The administrator, executor or guardian of the estate, or receiver, or assignee for the benefit or creditors, or trustee of the bankrupt estate of a licensee other than a retail licensee, may apply to the Director of Alcoholic Beverage Control for permission to operate under the provisions of Section 23102 and shall accompany such application with a surety bond as required by Part 14 of Division 2 of the Revenue and Taxation Code. Permission to operate shall be made in writing by the Director of Alcoholic Beverage Control, and suspension or revocation of such permission to operate may be made by the department in accordance with the provisions of the Alcoholic Beverage Control Act applicable to licenses.

(c) **Sales by Former Licensees.** A former licensee, or licensee whose license has been surrendered under Rule 65, may apply to a district office of the department in writing for permission to sell his stock of alcoholic beverages to a licensee or licensees authorized to resell such alcoholic beverages. The application shall state the date and hour of the proposed sale, which shall be not less than five nor more than 15 days from the date of filing the application, and shall be accompanied by an inventory of all alcoholic beverages to be sold to each licensee. The District Administrator may grant approval if he is satisfied the stated facts are correct. The applicant shall be given written notice of such approval, which notice he shall present upon request to any peace officer at the time of the sale.

The above requirements shall not apply to a licensee whose license is in process of transfer and who, in conjunction with that transfer, sells his stock of alcoholic beverages to the transferee.

(d) **Sales to Enforce Warehouseman's Lien.** A warehouseman, making a sale of alcoholic beverages to enforce a lien acquired under the Warehouse Receipts Act, shall sell distilled spirits only to distilled spirits manufacturers, manufacturers' agents, rectifiers and wholesalers, and shall sell beer and wine only to beer manufacturers and importers and to wine growers and importers. Written notice of sale shall be given the department at least one week in advance of sale.

(e) **Insurers and Common Carriers.** Any insurer which has insured the licensee against loss or damage to alcoholic beverages of the licensee, or any common carrier acting as an insurer for losses to persons shipping alcoholic beverages may apply to the Sacramento office of the department for permission to sell alcoholic beverages of such licensee, or other person shipping alcoholic beverages which have been damaged by fire or otherwise. The application shall be in writing in triplicate and shall state the name of the licensee or other person whose alcoholic beverages have been damaged, the quantity of the alcoholic beverages damaged and which are to be sold, the location of the alcoholic beverages, and the name of the licensee to whom the sale is to be made. Applications by common carriers shall also show the name of the shipper of alcoholic beverages, point of origin of the shipment, and the consignee.

Any insurer or common carrier acting as an insurer shall, before completing a sale of damaged malt beverages to any other type of licensee, offer the merchandise back to the manufacturer who produced it if that manufacturer is a California licensee or to the importer

of the merchandise involved if the manufacturer is not licensed in California. If such California manufacturer or importer meets the highest price offered for the merchandise by any other type of licensee within ten days of notification by the insurer of the highest offer, the sale of the damaged malt beverages shall be made to said manufacturer or importer rather than to the other licensee.

(f) Sales by Executors or Administrators. An executor or administrator of the estate of a deceased person who was not a licensee at the time of his death may apply to a district office of the department in writing for permission to sell alcoholic beverages under Section 23104.4 of the Business and Professions Code. The application shall be in triplicate and shall state the quantity, brand, and type of alcoholic beverages to be sold. The district supervisor may, in writing, grant permission to make the sale of alcoholic beverages to a licensee authorized to sell such alcoholic beverages, such sale to be made at any time within 10 days from the date of granting approval.

NOTE: Authority cited: Section 25750, Business and Professions Code. Reference: Section 23381, Business and Professions Code.

**HISTORY:**

1. Amendment of subsection (c) filed 12-6-68; designated effective 1-8-69 (Register 68, No. 46). For prior history, see Register 64, No. 8.
2. Amendment of subsection (c) filed 2-8-72; designated effective 3-10-72 (Register 72, No. 7).
3. Amendment of subsection (f) filed 2-2-77; designated effective 3-7-77 (Register 77, No. 6).
4. Repealer of subsection (d) and relettering of former subsections (e)-(g) to subsections (d)-(f) filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

**80. Labeling of Damaged Merchandise.**

A common carrier acting as an insurer for losses to persons shipping alcoholic beverages or an insurance company, pursuant to authority of Section 23104 of the Alcoholic Beverage Control Act, may take possession of damaged alcoholic beverages insured by it, after permission has been granted by the department. Such alcoholic beverages may be sold only to qualified licensees. Alcoholic beverages so sold because of damage by fire, wreck, or other similar circumstances shall be labeled to identify them as distressed merchandise.

The label for this purpose shall be white paper not less than two inches long and one inch wide. The following statement shall be printed thereon:

“The alcoholic beverage contained herein is distressed merchandise salvaged from fire, flood, wreck, or similar catastrophe. This label is not affixed by the manufacturer.”

The letters on the label shall be no smaller than pica type and shall be bold-faced. The label may be larger than the minimum herein, if desired. Such label shall be affixed over the regular label of each bottle or other package by the insurance company or common carrier before it is delivered to the purchasing licensee.

No licensee shall purchase or resell such distressed merchandise without such label being securely affixed over the regular label of each bottle or other package.

NOTE: Authority cited: Section 25750, Business and Professions Code; Section 22, Article XX, California Constitution. Reference: Section 23104, Business and Professions Code.

**HISTORY:**

1. New section filed 9-5-58; designated effective 10-10-58 (Register 58, No. 16).
2. Amendment filed 10-30-59; designated effective 11-30-59 (Register 59, No. 18).
3. Amendment filed 6-18-77; effective thirtieth day thereafter (Register 77, No. 25).

**81. Retailers' Sales to Wholesalers.**

NOTE: Authority cited: Sections 23104.3, 23104.4 and 25750, Business and Professions Code.

**HISTORY:**

1. New section filed 9-25-53; effective thirtieth day thereafter (Register 53, No. 17).
2. Amendment filed 2-28-58; effective thirtieth day thereafter (Register 58, No. 4).
3. Repealer filed 11-6-96; effective thirtieth day thereafter.

**Article 15. Prices****90. Posting of Malt Beverage Minimum Retail Prices.**

NOTE: Authority cited: Sections 24757, 25006 and 25750, Business and Professions Code; Section 22 of Article XX, California Constitution. Reference: Sections 24750, 24751 and 24755, Business and Professions Code.

**HISTORY:**

1. Repealer filed 5-31-79; effective thirtieth day thereafter (Register 79, No. 22). For prior history, see Registers 60, No. 16; 61, No. 18; 71, No. 4, 78, No. 14.

**99. Minimum Retail Price Schedules.**

NOTE: Authority cited: Sections 24757 and 25750, Business and Professions Code; Section 22, Article XX, California Constitution. Reference: Sections 24749, 24750–24752 and 24755, Business and Professions Code.

**HISTORY:**

1. Repealer filed 5-31-79; effective thirtieth day thereafter (Register 79, No. 22). For prior history, see Registers 70, No. 25; 71, No. 4; 73, No. 29; 79, No. 25).

**99.1. Consumer Discounts.**

NOTE: Authority cited: Sections 24757 and 25750, Business and Professions Code and Section 22 of Article XX of the California Constitution. Reference: Sections 24749, 24750, 24752, 24755 and 25752, Business and Professions Code.

**HISTORY:**

1. Repealer filed 5-31-79; effective thirtieth day thereafter (Register 79, No. 22). For prior history, see Registers 76, No. 50; 73, No. 27; 7, No. 5.

**99.2. Minimum Distilled Spirits Retail Price Information.**

NOTE: Authority cited: Sections 24757 and 25750, Business and Professions Code; Section 22 of Article XX, California Constitution. Reference: Sections 24749 and 24755, Business and Professions Code.

**HISTORY:**

1. Repealer filed 5-31-79; effective thirtieth day thereafter (Register 79, No. 22). For prior history, see Registers 67, No. 41; 77, No. 6; 78, No. 14.

**100. Distilled Spirits Price Posting.**

NOTE: Authority cited: Sections 24757 and 25750, Business and Professions Code; Section 22, Article XX, California Constitution. Reference: Sections 24749, 24750, 24751, 24752, 24755, 24756, 25503, 25600 and 25752, Business and Professions Code.

**HISTORY:**

1. Amendment filed 5-31-79; effective thirtieth day thereafter (Register 79, No. 22). For prior history, see Registers 73, No. 13; 77, No. 16; 77, No. 10; 77, No. 15.
2. Amendment of subsections (a) and (b)(1) filed 6-18-80; effective thirtieth day thereafter (Register 80, No. 25).
3. Repealer filed 2-27-91; effective thirtieth day thereafter (Register 91, No. 13).

**100.1. Distilled Spirits Price Posting.**

NOTE: Authority cited: Sections 24749, 24750, 24751, 24752, 24755, 24756, 24757, 25503, 25600, 25750, 25752, Business and Professions Code, and Section 22 of Article XX of California Constitution.

HISTORY:

- 1. New section filed 9-12-61; designated effective 10-15-61 (Register 61, No. 18).
- 2. Repealer filed 3-17-67; effective thirtieth day thereafter (Register 67, No. 11).

**101. Wine Price Schedules.**

NOTE: Authority cited: Sections 24881 and 25750, Business and Professions Code. Reference: Sections 24850–24878, Business and Professions Code.

HISTORY:

- 1. Amendment of subsections (b)(2) and (g) filed 2-2-77; designated effective 3-7-77 (Register 77, No. 6). For prior history, see Register 75, No. 4.
- 2. Amendment to NOTE filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).
- 3. Amendment of subsection (p) filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
- 4. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

**103. Retail Price Advertising of Distilled Spirits.**

NOTE: Authority cited: Section 25750, Business and Professions Code.

HISTORY:

- 1. New NOTE filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25). For prior history, see Register 3, 10, No. 7; 61, No. 14.
- 2. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

**104. Misleading Advertising.**

NOTE: Authority cited: Sections 24757 and 25750, Business and Professions Code; Section 22, Article XX, California Constitution. Reference: Sections 23001, 23025, 24752, 24755 and 24875, Business and Professions Code.

HISTORY:

- 1. New section filed 6-24-48, designated to become effective 7-26-48 (Register 12, No. 11).
- 2. New NOTE filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).
- 3. Repealer filed 11-6-96; effective thirtieth day thereafter.

**105. Beer Price Posting.**

(a) The schedule of prices for the sale of beer, as required by Section 25000 of the Alcoholic Beverage Control Act, shall be filed with the department on a form prescribed by the department, in accordance with instructions thereon. All prices filed shall be for immediate delivery. Contract prices for future deliveries of beer and quantity discounts shall not be filed with the department.

(b) Each manufacturer, importer or wholesaler of beer shall file a price schedule for each county in which his customers have their premises, whether the price which is posted is f.o.b. or delivered, or both. Trading areas within a county must be based on natural geographical differences justifying different prices, and shall not be established for special customers.

NOTE: Authority cited: Sections 25006 and 25750, Business and Professions Code; Section 22, Article XX of the California Constitution. Reference cited: Section 25000, Business and Professions Code.

HISTORY:

- 1. Amendment filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25). For prior history, see Registers 23, No. 5; 27, No. 5; 57, No. 15; 61, No. 17.

## Article 16. Signs and Notices

**106. Advertising and Merchandising of Alcoholic Beverages.**

(a) Free Goods. No licensee shall, directly or indirectly, give any premium, gift, free goods, or other thing of value in connection with the sale, distribution, or sale and distribution of alcoholic beverages, and no retailer shall, directly or indirectly, receive any premium, gift, free goods or other thing of value from a supplier of alcoholic beverages, except as authorized by this rule or the Alcoholic Beverage Control Act.

(b) Definitions. Unless the context otherwise requires, the following definitions govern the construction of this rule.

(1) "Supplier" means any manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, blender, broker, distiller, bottler, importer, wholesaler, or any officer, director, agent or affiliate of any such person.

(2) "Retailer" means any on-sale or off-sale licensee or any holder of a temporary retail permit.

(3) "Sign" means a flat material or a three dimensional unit (other than the advertised product itself) principally bearing a conspicuous notice of the manufacturer's name, brand name, trade name, slogans, markings, trademarks or other symbols commonly associated with and generally used by the manufacturer in identifying the manufacturer's name or product, with or without other graphic or pictorial advertising representations, whether illuminated or mechanized, including but not limited to posters, placards, stickers, decals, shelf-strips, wall panels, shadow boxes, price boards, mobiles, inflatables, dummy bottles, bottle toppers, case wrappers, neck ringers, brand identifying statuettes, tap markers, table tents, mirrored signs, plaques and other similar items.

A sign advertising distilled spirits or wine shall have no secondary value and be of value to the retailer only as advertising.

(4) "Decorations" means material other than permitted signs, displays, promotional material, and the product itself which are used in the interior of retail premises for the embellishment of said signs, displays and promotional materials. "Decorations" include such items as holiday decorations, paintings, pictures, streamers, bunting, corrobuff, inflatables, foil, trimming and other temporary material which need not contain a conspicuous notice of the manufacturer's name, brand name, trade name, slogans, markings, trademarks or other symbols commonly associated with and generally used by the manufacturer in identifying the manufacturer's name or product. Such decorations shall have no intrinsic or significant utilitarian or secondary value other than as an embellishment. Decorations furnished to a single off-sale retail premises by one supplier in use at one time shall not exceed \$50 original cost to the supplier, or if not purchased by or for the supplier, shall not exceed the total fair retail market value of \$50.

(5) "Promotional materials" means material of any kind other than permitted signs, displays, decorations, and the product itself furnished by a supplier to a retail licensee for advertising purposes. Promotional materials shall have no intrinsic or significant utilitarian or secondary value other than as permitted by this rule.

(6) "Window display" means the exhibition in windows of any or all of the following: permitted signs, promotional material, decorations and the advertised product itself.

(7) “Temporary floor display” means the exhibition of alcoholic beverages in off-sale premises by means of racks, bins, barrels, casks, shelving and similar devices from which alcoholic beverages are displayed and sold. Such displays shall bear conspicuous advertising required of a sign. “Temporary” shall mean a period of time not exceeding four months.

(8) “Sale”, “Sales”, “Distribution” or “Sales and Distribution” as used in this rule means the total business of merchandising alcoholic beverages, including the solicitation of customers and the various methods and procedures used in advertising and promoting the sale of alcoholic beverages, as well as the actual transfer of title of alcoholic beverages.

(9) “Furnish” as used in this rule means to supply or make available for use as well as the giving or actual transfer of title of an item.

(c) Signs, Displays and Promotional Materials. A supplier shall not give or furnish signs, displays, or promotional materials advertising alcoholic beverages to a retailer, except as permitted by this rule or the Alcoholic Beverage Control Act.

(1) Interior Signs. A supplier may furnish interior signs advertising alcoholic beverages sold by him to a retailer for use within on-sale or off-sale premises, provided no such sign relating to wine or distilled spirits for use within an on-sale premises shall exceed 630 square inches. A sign shall be deemed to be an interior sign although placed in a window and primarily visible from outside the premises. Interior signs furnished by suppliers which advertise distilled spirits and wine shall have no secondary value and be of value to the retailer only as advertising. Suppliers may not directly or indirectly or through an arrangement with an affiliate or other person pay or credit the retailer for displaying the interior sign or for any expense incidental to its operation.

(2) Exterior Signs. No supplier shall sell, rent or otherwise furnish an exterior sign to any retail licensee except that any wholesaler may sell or rent such a sign to any licensee at a price not less than the current market price for such sign.

No supplier shall place any sign, banner, display, or other device advertising alcoholic beverages on or over any public sidewalk, street or thoroughfare; nor shall any supplier place such signs on or adjacent to any retail premises or parking lot used in conjunction with any premises; provided, however, that a supplier may temporarily furnish non-permanent exterior signs, banners and inflatables to organizations in connection with events described in subsections (h) and (i) of this rule.

“Exterior Signs” include but are not limited to billboards, inflatables, panels and any other device used to advertise a supplier’s product.

(3) Displays. A supplier may furnish, install, set up and service signs, promotional materials and decorations as window displays or temporary floor displays in off-sale premises. The supplier shall not, directly or indirectly or through an arrangement with an affiliate or other person, pay or credit the retailer or employees or agents of the retailer for the privilege of placing such advertising materials within the retail premises, or for any expenses incidental to their operation.

(4) Promotional Materials. A supplier may furnish, give, lend, rent or sell promotional materials for alcoholic beverages sold by him to a retailer for use within off-sale premises, so long as the promotional material has no intrinsic value other than as advertising, in the same manner and under the same terms and conditions as the supplying of signs or displays pursuant to this rule.

(d) Alcoholic Beverage Lists. A supplier shall not furnish wine and/or spirits lists to a retailer except as permitted by this Rule.

A supplier of alcoholic beverages other than beer who is authorized by its license to sell its product to retailers may furnish to retailers authorized by their license to sell such alcoholic beverages other than beer, lists of alcoholic beverages other than beer sold and or produced by the licensee and/or other suppliers, provided that the material for such lists and all components thereof shall not cost more than \$25 per unit original cost to the supplier. A supplier may not make payment to a retailer for the purchase of wine and/or spirits lists, or reimburse a retailer for payment already made for the purchase of wine and/or spirits lists. Without limitation, the following may appear on said list: (i) the name (or names) of the producer (or producers) of the wine and/or spirits and address, logo, slogan or other symbols or markings associated with and used by the producer in identifying his name or products; (ii) name of the product (or products), brand name, price, size, vintage date, bin number or other product designation; (iii) product description or identifying information or appellation of origin; (iv) the name of the retail licensee to whom the list is furnished and such retailers address, slogan, logo, etc. associated with and used by the retailer in identifying his name, business or establishment.

(e) Advertising Specialties. No licensee shall give advertising specialties except as permitted by this Rule or upon prior approval of the Department.

(1) Retailer Advertising Specialties. A supplier of wine or distilled spirits may furnish, give, rent, loan or sell advertising specialties to a retailer provided such items bear conspicuous advertising required of a sign and the total value of all retailer advertising specialties furnished by a supplier directly or indirectly, to a retailer shall not exceed \$50 per brand in any one calendar year per retail premises. The value of a retailer advertising specialty is the actual cost of that item to the supplier who initially purchased it. Transportation and installation costs are excluded. The furnishing or giving of any retailer advertising specialty shall not be conditioned upon the purchase of the suppliers product. Retail advertising specialties given or furnished free of charge may not be sold by the retail licensee. Retailer advertising specialties include but are not limited to trays, coasters, coin mats, napkins, thermometers, jiggers, clocks, stirring spoons, pouring spouts, sponges, towels, menu cards, meal checks, calendars and similar items approved by the Department and which have inconsequential value.

(2) Consumer Advertising Specialties. Consumer advertising specialties such as ash trays, bottle or can openers, litter or shopping bags, matches, recipe cards, pamphlets, pencils, post cards, hats, posters, bottle or can stoppers, and other items approved by the Department, and which bear conspicuous advertising required of a sign may be furnished, given or sold to a retail licensee for unconditional distribution to the general public.

(A) Consumer advertising specialties furnished by a distilled spirits supplier to a retailer or to the general public shall not exceed \$5.00 per unit original cost to the supplier who purchased it.

(B) Consumer advertising specialties furnished by a wine supplier to a retailer or to the general public shall not exceed \$1.00 per unit original cost to the supplier who purchased it.

(C) Consumer advertising specialties furnished by a beer supplier to a retailer or to the general public shall not exceed \$0.25 per unit original cost to the supplier who purchased it, or \$15.00 in the aggregate for all such items given by a single beer supplier to a single retail premises per calendar year.

A retailer may not be paid or credited in any manner directly or indirectly for distribution service nor shall consumer advertising specialties furnished free of charge by a supplier be sold by a retailer. A retail licensee may give advertising specialties to consumers provided such gifts are not coupled with the purchase of any alcoholic beverage and the original cost per unit to the retailer or the supplier does not exceed \$1.

Coin banks, toys, balloons, magic tricks, miniature bottles or cans, confections, dolls, or other items which appeal to minors or immature persons may not be used in connection with the merchandising of alcoholic beverages.

(3) Records. Suppliers shall keep and maintain records for a three year period, of all items furnished to retailers under the provisions of this subsection. Commercial records or invoices may be used to satisfy this record keeping requirement if all required information is shown. These records shall show:

- (A) The name and address of the retailer receiving the item;
- (B) The date furnished;
- (C) The item furnished;
- (D) The supplier's cost of the item furnished (determined by manufacturer's invoice price); and,
- (E) Charges to the retailer for any item.

(f) Cooperative advertising. No supplier of alcoholic beverages directly or indirectly, shall participate with a retailer in paying for an advertisement placed by the retailer, nor shall any signs, displays, advertising specialties, promotional materials or decorations furnished by a supplier as permitted by this rule refer to the retailer's name or business.

(g) No licensee, in connection with a licensed business, shall give any alcoholic beverage to any person to whom the licensee is authorized to sell except as provided by in Rule 52 and Section 23386 of the Alcoholic Beverage Control Act.

It is not the intent or purpose of this Rule to prohibit an on-sale licensee or any employee of such licensee from giving an incidental drink to a patron.

(h) Public Service Activities. Without violating this rule suppliers may furnish services to communities and bona fide nonprofit organizations in connection with public service or fund raising activities including picnics, parades, fairs, amateur sporting events, agricultural exhibitions, educational clinics, public concerts, and other similar events when approved by the department provided no such services are conditioned, directly or indirectly, upon the purchase of an alcoholic beverage or the exclusive sale of a supplier's product at such events. No such services shall be furnished for the benefit of any permanent retail licensee. Notwithstanding the prohibitions contained in subsection (f) of this Rule, suppliers may furnish or share in the cost of advertisements, signs, promotional materials, etc. used in connection with such public service activities. Such advertising material may refer to the name of the temporary retail licensee sponsoring the event.

(i) Contests.

(1) Contests sponsored by retail licensees. Without violating this rule, retail licensees may furnish prizes other than alcoholic beverages, to participants in competitive events held on the licensed premises, provided participation in such events shall not be conditioned on the

purchase, sale or consumption of alcoholic beverages and provided that such contest or competitive event does not involve the consumption of alcoholic beverages.

(2) Contest sponsored by suppliers. Without violating this rule, suppliers may sponsor contests, races, tournaments, and other similar activities on or off licensed premises. Sponsorships shall be only in the form of monetary payments to bona fide amateur or professional organizations established for the encouragement and promotion of the activities involved. Sponsorship shall be subject to the following conditions:

(a) There shall be no requirement for the exclusive sale of the sponsor's products nor shall such products be sold exclusively at any such event.

(b) No money or other thing of value other than approved advertising specialties shall be given by a sponsor to anyone other than the organizations conducting the contest.

(c) Participants may be charged an entry fee, but entry shall not be conditioned upon the purchase of any of the sponsor's products.

(j) Limitations.

Nothing in this rule shall be construed to authorize the giving of any premium, gift or goods of any sort, whether by way of sweepstakes, drawings, prizes, cross-merchandising promotions with a non-alcoholic beverage product or products or any other method if the value of the premium, gift or goods given to an individual exceeds \$0.25 with respect to beer, \$1.00 with respect to wine or \$5.00 with respect to distilled spirits.

NOTE: Authority cited: Sections 24757, 25006, 25600, 25503.1 and 25750, Business and Professions Code; and Section 22, Article XX, California Constitution. Reference: Sections 23025, 23301, 23386, 25500, 25501, 25502, 25503, 25503.1, 25600, 25611.1, 25612, 25616, 25752 and 25753, Business and Professions Code.

**HISTORY:**

1. Amendment filed 2-2-77; designated effective 3-7-77 (Register 77, No. 6). For prior history, see Register 74, No. 19.
2. Amendment filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).
3. Amendment of subsection (h)(3) filed 6-18-80; effective thirtieth day thereafter (Register 80, No. 25).
4. Repealer and new section filed 1-22-86; effective thirtieth day thereafter (Register 86, No. 4).
5. Amendment of Section and Note filed 11-30-98 as emergency; operative 11-30-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 3-30-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11-30-98 order, including further amendment of subsection (e)(2)(C), transmitted to OAL 11-25-98 and filed 1-8-99 (Register 99, No. 2).

**107. Retailers Required to Post Warning Notice.**

The licensee of each premises licensed with an on-sale license for public premises shall maintain a clearly legible permanent sign, not less than 7" x 11" in size reading, "No Person Under 21 Allowed" at or near each public entrance thereto in such a manner that such sign shall be visible from the exterior of each public entrance. The lettering of such sign shall be no less than one inch in height. A sign of like size and content shall be maintained at a prominent place in the interior of the premises.

NOTE: Authority cited: Sections 23039, 25665, 25750, Business and Professions Code, and Section 22 of Article XX, California Constitution.

**HISTORY:**

1. New section filed 4-18-62; designated effective 5-21-62 (Register 62, No. 8). For history of former Section 107, see Register 56, No. 19.
2. Amendment filed 10-9-67; effective thirtieth day thereafter (Register 67, No. 41).

**108. Notice of Suspension.**

Every licensee whose licenses have been suspended by order of the department shall post two notices in conspicuous places, one on the exterior and one on the interior of his premises, for the duration of the suspension. The notices shall be two feet in length and 14 inches in width, and shall be in the following form:

NOTICE OF SUSPENSION  
ALCOHOLIC BEVERAGE LICENSES ISSUED

For These Premises Have Been  
Suspended by Order of the

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

For Violation of the  
Alcoholic Beverage Control Act

Advertising or posting signs to the effect that the premises have been closed or business suspended for any reason other than by order of the department suspending alcoholic beverage license, shall be deemed a violation of this rule.

NOTE: Authority cited: Section 25750, Business and Professions Code; Section 22, Article XX, California Constitution.

HISTORY:

1. Originally published 3-22-45 (Title 4).
2. Amendment filed 9-27-49 designated to be effective 11-1-49 (Register 18, No. 1).
3. Amendment filed 2-28-58; effective thirtieth day thereafter (Register 58, No. 4).
4. Amendment to NOTE filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).

**109. Posting Notice.**

After filing an application to sell alcoholic beverages at any premises, the applicant shall post on the proposed premises notice of intention to sell alcoholic beverages. The notice shall be at least two feet in length and fourteen inches in width. This notice shall be posted in a conspicuous place which can be readily observed by ordinary passersby at or near the entrance to the premises. In the case of a vacant lot, posting shall be on a post or stake of permanent material, at the midpoint of the largest boundary fronting on a public thoroughfare at a point not more than ten feet from the sidewalk, or roadway in the absence of any sidewalk. This notice must be mounted upon heavy cardboard or wood backing affixed to the post or stake so as to be readily visible from the sidewalk or roadway.

The notice shall remain posted for at least 30 consecutive days.

NOTE: Authority cited: Sections 23985 and 25750, Business and Professions Code; Section 22 of Article XX, Calif. Constitution.

HISTORY:

1. New section filed 8-28-61; designated effective 11-1-61 (Register 61, No. 17).
2. Amendment filed 11-1-63, as an emergency; effective upon filing (Register 63, No. 22).
3. Certificate of Compliance—Sec. 11422.1, Gov. Code, filed 2-20-64 (Register 64, No. 6).
4. Amendment filed 6-18-80; effective thirtieth day thereafter (Register 80, No. 25).

**110. Brand Identification for Automatic Dispensers.**

NOTE: Authority cited: Section 25750, Business and Professions Code. Reference: Section 25609, Business and Professions Code.

HISTORY:

1. New section filed 2-8-72; designated effective 3-10-72 (Register 72, No. 7).
2. Repealer filed 6-4-84; effective thirtieth day thereafter (Register 84, No. 23).

**111. On-sale Publication.**

NOTE: Additional authority cited: Section 23986, Business and Professions Code.

## HISTORY:

1. New section filed 3-2-72 as an emergency; designated effective 3-6-72 (Register 72, No. 10).
2. Certificate of Compliance filed 6-29-72 (Register 72, No. 27).
3. Repealer filed 11-6-96; effective thirtieth day thereafter.

## Article 17. Distilled Spirits and Wine Credit Regulations

**115. Distilled Spirits and Wine Credit Regulations.**

NOTE: Authority cited: Sections 25500 to 25506, 25750 and 25752, Business and Professions Code.

## HISTORY:

1. New article 17 (§ 115) filed 10-19-53; designated effective on 2-1-54 (Register 53, No. 19).
2. Amendment, postponing effective date to 4-1-54, filed 12-28-53 (Register 54, No. 1).
3. Amendment, postponing effective date to 8-1-54, filed 2-24-54 (Register 54, No. 5).
4. Amendment, postponing effective date to 3-1-55, filed 7-9-54 (Register 54, No. 15).
5. Amendment filed 1-19-55, as an emergency, postponing effective date to September 1, 1955. Issuing agency, Department of Alcoholic Beverage Control. (Register 55, No. 2).
6. Repealer filed 8-31-55 as an emergency; effective upon filing (Register 55, No. 13).

## Article 18. Standard Cases for Distilled Spirits

NOTE: Authority cited: Sections 23029, 24749, 24754, 24757, and 25750, Business and Professions Code; Section 22, Article XX, California Constitution. Reference: Division 9 (Chapters 1–17), Business and Professions Code.

## HISTORY:

1. Amendment filed 11-16-55 as an emergency; effective upon filing (Register 55, No. 17).
2. Amendment filed 10-25-63; effective thirtieth day thereafter (Register 63, No. 19).
3. Amendment filed 2-2-77; designated effective 3-7-77 (Register 77, No. 6).
4. Repealer of Article 18 (Section 123) filed 7-22-82; effective thirtieth day thereafter (Register 82, No. 30).

## Article 19. Malt Beverage Regulations

**128. Certificate of Compliance.**

## HISTORY:

1. Originally published 3-22-45 (Title 4).
2. Amendment filed 6-23-47 (Register 8).
3. Repealer filed 4-19-49 (Register 16, No. 2).

**130. Beer Labeling Requirements.**

Draught beer and packaged beer sold in California, except for export, shall not exceed an alcoholic content of 4 percent by weight; provided, however, that bottled or canned ale, porter, brown, stout, or malt liquor may exceed such alcoholic content if it bears a label which correctly designates the contents as such ale, porter, brown, stout, or malt liquor.

All bottles or cans containing ale, porter, brown, stout, or malt liquor of an alcoholic content of 4 percent or less by weight must have firmly affixed thereto in type of not less than one-sixteenth inch in height a notice specifically certifying that the alcoholic content of the beverages in the package is not greater than 4 percent by weight. Only ale, porter, brown, stout, and malt liquor in packages bearing such labels may be sold by on-sale beer licensees.

The name and address of any manufacturer or bottler or person appearing upon any label of beer must be the true name and address of such person at the time of packaging of such

product. The true name of a manufacturer or bottler or person shall be deemed to include a fictitious business name for which such manufacturer, bottler or person has duly filed a Fictitious Business Name Statement pursuant to the provisions of Section 17900 et seq. of the Business and Professions Code.

Any labels or notices affixed to beer must, if such beer is produced in this State, be affixed prior to the first sale, and in the case of beer produced outside the State and imported into this State, must be affixed prior to delivery in this State.

A copy of any label or notice affixed to beer shall, if that beer is produced in this State, be furnished to the headquarters office of the department by the manufacturer prior to the first sale, and if that beer is produced outside this State and imported into this State, shall be furnished to the headquarters office of the department by the shipper prior to delivery in this State.

NOTE: Authority cited: Section 25750, Business and Professions Code. Reference: Sections 25200 and 25615, Business and Professions Code.

HISTORY:

- 1. Amendment filed 2-2-77; designated effective 3-7-77 (Register 77, No. 6). For prior history, see Register 65, No. 18.
- 2. Amendment filed 8-23-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 35).
- 3. Emergency amendment filed 2-25-94; amendment filed to be permanent 7-18-94.

**131. Tapping Equipment, Furnishing and Servicing.**

Beer manufacturers may furnish to beer wholesalers, and beer wholesalers or beer manufacturers may furnish to on-sale licensees, the following items of equipment in the case of either an initial installation for a new account or a changeover of equipment from a Peerless to a Golden Gate, or other systems, or vice versa. Such equipment shall remain the property of the supplier.

Peerless	Golden Gate
(a) Keg	(a) Keg
(b) Tap rod	(b) Air hose
(c) Valve	(c) Beer hose
(d) Beer hose	(d) Couplings
(e) Air hose	(e) Vent
(f) Washers	(f) Taps
(g) Couplings	(g) Valves (Golden Gate)
(h) Clamps	(h) Clamps or wire

Suppliers may service and repair the above items of equipment from time to time as necessary.

Suppliers may not furnish to retailers and may not repair the following items of equipment:

- (a) Regulators
- (b) Gauges
- (c) Standards
- (d) Refrigeration
- (e) Faucets

NOTE: Authority cited: Sections 25500, 25501, 25504, 25504.5, 25510 and 25750, Business and Professions Code; Section 22, Article XX, California Constitution.

## HISTORY:

1. New section filed 4-24-64; designated effective 6-1-64 (Register 64, No. 8).
2. Amendment filed 12-6-68; designated effective 1-8-69 (Register 68, No. 46).

**132. Out-of-State Beer Manufacturer's Certificate.**

(a) Application. A beer manufacturer in the United States, who does not manufacture beer in California and desires to ship beer into this State, may make an application in person or by mail to the headquarters office of the department in Sacramento for an out-of-state beer manufacturer's certificate. Only one such certificate will be issued to any one beer manufacturer. The application shall be accompanied by the annual fee, and shall include a written undertaking and agreement by the applicant:

(1) That it and its agents and all agencies within this State controlled by it will comply with all laws of this State and all rules of the department with respect to the sale of alcoholic beverages.

(2) That it will make available both in California and from outside the State, for inspection and copying by the department, all books, documents, and records located both within and without this State, which are pertinent to the activities of the applicant, its agents and agencies within this State controlled by it, in connection with the sale and distribution of its products within this State.

(b) Investigation. Upon receipt of an application for an out-of-state beer manufacturer's certificate accompanied by the annual fee, the department shall make an investigation to determine whether the applicant qualifies for the certificate applied for, or whether issuance would be in conflict with any law of this State or rule of the department.

(c) Fees. The fee for the out-of-state beer manufacturer's certificate shall be \$50.00 per year or any portion thereof.

(d) Fiscal Year; Renewability. The certificate shall be issued on the basis of a fiscal year, commencing on July 1 and ending on June 30. The certificate may be renewed annually. Renewals must be postmarked on or before June 30 or the certificate will be cancelled effective July 1 of the new fiscal year.

(e) Nontransferable. An out-of-state beer manufacturer's certificate shall be nontransferable. The department shall cancel the certificate of any holder who has ceased doing business as an out-of-state beer manufacturer.

NOTE: Authority cited: Section 25750, Business and Professions Code; Section 22, California Constitution. Reference: Sections 23357.1 and 23357.2, Business and Professions Code.

## HISTORY:

1. New section filed 5-11-72; designated effective 6-12-72 (Register 72, No. 20).
2. Editorial correction (Register 72, No. 29).
3. New NOTE filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).

**134. Delivery to Temporary Licensee.**

## HISTORY:

1. Originally published 3-22-45 (Title 4).
2. Amendment filed 9-17-47 (Register 9).
3. Repealer filed 7-23-56 as an emergency; effective upon filing (Register 56, No. 14).

**135. Bock Beer.**

NOTE: Additional authority cited: Section 22 of Article XX, California Constitution and 38a, Alcoholic Beverage Control Act.

## HISTORY:

1. Amendment filed 7-2-52; effective thirtieth day thereafter (Register 29, No. 2).
2. Repealer filed 4-2-58; effective thirtieth day thereafter (Register 58, No. 6).

Article 20. Measurement of Time

**137. Pacific War Time.**

HISTORY:

- 1. Originally published 3-22-45 (Title 4).
- 2. Repealer filed 10-15-45 designated to be effective 9-30-45 (Register 2).

Article 21. Interior Illumination of Licensed Premises

**139. Interior Illumination.**

At all times while any licensed retail premises are open for business the interior lighting maintained therein shall be sufficient to make easily discernible the appearance and conduct of all persons and patrons in that portion of the premises where alcoholic beverages are sold, served, delivered, or consumed.

NOTE: Authority cited: Section 25750, Business and Professions Code; Section 22, Article XX, California Constitution. Reference: Division 9 (Chapters 1–17), Business and Professions Code.

HISTORY:

- 1. Amendment filed 4-8-58; designated effective 5-15-58 (Register 58, No. 6).
- 2. Amendment filed 2-2-77; designated effective 3-7-77 (Register 77, No. 6).

Article 22. Suspension or Revocation of Licenses

**141. Minor Decoy Requirements.**

(a) A law enforcement agency may only use a person under the age of 21 years to attempt to purchase alcoholic beverages to apprehend licensees, or employees or agents of licensees who sell alcoholic beverages to minors (persons under the age of 21) and to reduce sales of alcoholic beverages in a fashion that promotes fairness. (b) The following minimum standards shall apply to actions filed pursuant to Business and Professions Code Section 25658 in which it is alleged that a minor decoy has purchased an alcoholic beverage:

- (1) At the time of the operation, the decoy shall be less than 20 years of age;
- (2) The decoy shall display the appearance which could generally be expected of a person under 21 years of age, under the actual circumstances presented to the seller of alcoholic beverages at the time of the alleged offense;
- (3) A decoy shall either carry his or her own identification showing the decoy’s correct date of birth or shall carry no identification; a decoy who carries identification shall present it upon request to any seller of alcoholic beverages;
- (4) A decoy shall answer truthfully any questions about his or her age;
- (5) Following any completed sale, but not later than the time a citation, if any, is issued, the peace officer directing the decoy shall make a reasonable attempt to enter the licensed premises and have the minor decoy who purchased alcoholic beverages to make a face to face identification of the alleged seller of the alcoholic beverages.

(c) Failure to comply with this rule shall be a defense to any action brought pursuant to Business and Professions Code Section 25658.

NOTE: Authority cited: California Constitution, Article XX, Section 22, and Business and Professions Code Section 25750. Reference cited: Business and Professions Code Section 25658 and *Provigo Corporation v. Alcoholic Beverage Control Appeals Board* (1994) 7 Cal.4th 561, 28 Cal.Rptr.2d.sp 638(sic.).

HISTORY:

- 1. New section filed 1-2-96; effective thirtieth day thereafter.

**142. Receiving Stolen Alcoholic Beverages; Ceiling Price Violations.**

**HISTORY:**

- 1. Originally published 3-22-45 (Title 4).
- 2. Repealer filed 9-11-47 (Register 9).

**143. Employees of On-Sale Licensees Soliciting or Accepting Drinks.**

No on-sale retail licensee shall permit any employee of such licensee to solicit, in or upon the licensed premises, the purchase or sale of any drink, any part of which is for, or intended for, the consumption or use of such employee, or to permit any employee of such licensee to accept, in or upon the licensed premises, any drink which has been purchased or sold there, any part of which drink is for, or intended for, the consumption or use of any employee.

It is not the intent or purpose of this rule to prohibit the long-established practice of a licensee or a bartender accepting an incidental drink from a patron.

NOTE: Authority cited: Sections 24200.5 and 25657, Business and Professions Code.

**HISTORY:**

- 1. New section filed 5-25-54; effective thirtieth day thereafter (Register 54, No. 12).
- 2. Amendment filed 7-12-72; designated effective 8-14-72 (Register 72, No. 29).

**143.1. Employment of Minors in Public Premises.**

NOTE: Authority cited: Section 25750, Business and Professions Code, and Section 22, Article XX, California Constitution.

**HISTORY:**

- 1. New section filed 4-18-62; designated effective 5-21-62 (Register 62, No. 8).
- 2. Repealer filed 7-12-72; designated effective 8-14-72 (Register 72, No. 29).

**143.2. Attire and Conduct.**

The following acts or conduct on licensed premises are deemed contrary to public welfare and morals, and therefore no on-sale license shall be held at any premises where such conduct or acts are permitted:

(1) To employ or use any person in the sale or service of alcoholic beverages in or upon the licensed premises while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.

(2) To employ or use the services of any hostess or other person to mingle with the patrons while such hostess or other person is unclothed or in such attire, costume or clothing as described in paragraph (1) above.

(3) To encourage or permit any person on the licensed premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person.

(4) To permit any employee or person to wear or use any device or covering, exposed to view, which simulates the breast, genitals, anus, pubic hair or any portion thereof.

If any provision of this rule or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are severable.

NOTE: Authority cited: Section 25750, Business and Professions Code and Section 22 of Art. XX, California Constitution. Reference: Section 23001, Business and Professions Code.

**HISTORY:**

- 1. New Section 143.2 filed 7-9-70; designated effective 8-10-70 (Register 70, No. 28).

**143.3. Entertainers and Conduct.**

Acts or conduct on licensed premises in violation of this rule are deemed contrary to public welfare and morals, and therefore no on-sale license shall be held at any premises where such conduct or acts are permitted.

Live entertainment is permitted on any licensed premises, except that:

(1) No licensee shall permit any person to perform acts of or acts which simulate:

(a) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

(b) The touching, caressing or fondling on the breast, buttocks, anus or genitals.

(c) The displaying of the pubic hair, anus, vulva or genitals.

(2) Subject to the provisions of subdivision (1) hereof, entertainers whose breasts and/or buttocks are exposed to view shall perform only upon a stage at least 18 inches above the immediate floor level and removed at least six feet from the nearest patron.

No licensee shall permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described above.

No licensee shall permit any person to remain in or upon the licensed premises who exposes to public view any portion of his or her genitals or anus.

If any provision of this rule or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are severable.

NOTE: Authority cited: Section 25750, Business and Professions Code and Section 22 of Art. XX, Calif. Constitution. Reference: Sec. 23001, Bus. & Prof. Code.

**HISTORY:**

1. New section filed 7-9-70; designated effective 8-10-70 (Register 70, No. 28).
2. Entrapment—Officer asking whether “more skin” will be shown during lap dance does not constitute entrapment. *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (4805 Convoy) 100 Cal. App. 4th 1066.

**143.4. Visual Displays.**

NOTE: Authority cited: Section 25750, Business and Professions Code and Section 22 of Art. XX, Calif. Constitution. Reference: Sec. 23001, Bus. & Prof. Code.

**HISTORY:**

1. New section filed 7-9-70; designated effective 8-10-70 (Register 70, No. 28).
2. Repealed. Repealer filed 1-1-2001.

**143.5. Ordinances.**

Notwithstanding any of the provisions of Rules 143.2, 143.3 and 143.4, no on-sale licensee shall employ, use the services of, or permit upon his licensed premises, any entertainment or person so attired as to be in violation of any city or county ordinance.

NOTE: Authority cited: Section 25750, Business and Professions Code and Section 22 of Art. XX, Calif. Constitution. Reference: Sec. 23001, Bus. & Prof. Code.

**HISTORY:**

1. New section filed 7-9-70; designated effective 8-10-70 (Register 70, No. 28).

**144. Penalty Guidelines.**

In reaching a decision on a disciplinary action under the Alcoholic Beverage Control Act (Bus. And Prof. Code Sections 23000, et seq.), and the Administrative Procedures Act (Govt. Code Sections 11400, et seq.), the Department shall consider the disciplinary guidelines entitled “Penalty Guidelines” (dated 12/17/2003) which are hereby incorporated by reference.

Deviation from these guidelines is appropriate where the Department in its sole discretion determines that the facts of the particular case warrant such a deviation—such as where facts in aggravation or mitigation exist.

NOTE: Authority cited: Sec. 24750, Business and Professions Code; and Section 22, Article XX, California Constitution. Reference: Sec. 23001, Business and Professions Code; and Sec. 11425.50(e), Government Code.

**HISTORY:**

1. New section filed 4–13-04 as an emergency; operative 4–13-04 (Reg. 2004, No. 16). A Certificate of Compliance must be transmitted to OAL by 8–11-04, or emergency language will be repealed by operation of law on the following day. For prior History, see Reg. 68, No. 46.
2. Certificate of Compliance as to 4–13-04 order transmitted to OAL 8–11-04; disapproved by OAL and order of repeal and deletion filed 9–23-04. (Reg. 2004, No. 39.)
3. New section filed 9–23-04 as an emergency; operative 9–23-04 (Reg. 2004, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–21-05 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9–23-04 order, including amendment of section, transmitted to OAL 11–18-04, and filed 12–16-04 (Reg. 2004, No. 51).
5. Prior Rule 144. Gambling Stamps, repealer filed 12–6-68; designated effective 1–8-69 (Reg. 68, No. 46).

**PENALTY GUIDELINES  
APPENDIX**

**Policy Statement:** It is the policy of this Department to impose administrative, non-punitive penalties in a consistent and uniform manner with the goal of encouraging and reinforcing voluntary compliance with the law.

**Penalty Policy Guidelines:** The California Constitution authorizes the Department, in its discretion to suspend or revoke any license to sell alcoholic beverages if it shall determine for good cause that the continuance of such license would be contrary to the public welfare or morals. The Department may use a range of progressive and proportional penalties. This range will typically extend from Letters of Warning to Revocation. These guidelines contain a schedule of penalties that the Department usually imposes for the first offense of the law listed (except as otherwise indicated). These guidelines are not intended to be an exhaustive, comprehensive or complete list of all bases upon which disciplinary action may be taken against a license or licensee; nor are these guidelines intended to preclude, prevent, or impede the seeking, recommendation, or imposition of discipline greater than or less than those listed herein, in the proper exercise of the Department's discretion.

Higher or lower penalties from this schedule may be recommended based on the facts of individual cases where generally supported by aggravating or mitigating circumstances.

Aggravating factors may include, but are not limited to:

1. Prior disciplinary history
2. Prior warning letters
3. Licensee involvement
4. Premises located in high crime area
5. Lack of cooperation by licensee in investigation
6. Appearance and actual age of minor
7. Continuing course or pattern of conduct

Mitigating factors may include, but are not limited to:

1. Length of licensure at subject premises without prior discipline or problems
2. Positive action by licensee to correct problem
3. Documented training of licensee and employees
4. Cooperation by licensee in investigation

**PENALTY SCHEDULE**

*Note: For purposes of this schedule of penalties, “revocation” includes a period of stayed revocation as well as outright revocation of the license.*

Sales to minors—§ 25658 B&P:

Sales of alcoholic beverages to person(s) under 21 .....	15 day suspension
Permitting person(s) under 21 to consume .....	15 day suspension
Furnishing or causing to be furnished alcoholic beverage to person(s) under 21 .....	15 day suspension
2nd violation of Section 25658 within 36 months.....	25 day suspension
3rd violation of Section 25658 within 36 months .....	Revocation

(Note: priors must be final—B & P § 25658.1)

Minor(s) on public premises—25665 B&P ..... 10 day suspension

Employment of minor(s)—25663 B&P..... 10 day suspension

Unsupervised sales by person(s) under 18—25663(b)B&P ..... 10 day suspension

Sales to obviously intoxicated person(s)—25602 B&P ..... 15 day suspension

2nd violation of 25602 within 3 years..... 25 day suspension

3rd violation of 25602 within 3 years ..... 45 day suspension  
to revocation

Sales and/or Consumption After Hours—25631 & 25632 B&P:

By public ..... 15 day suspension

By employees and friends only ..... 10 day suspension

By employees only..... 5 day suspension

Illegal Solicitation of Alcoholic Beverages:

Violation of Section 24200.5(b)..... Revocation

Violation of Section 25657(a)..... Revocation

Violation of Section 25657(b) and Section 303aPC..... 30 day suspension  
to revocation

Employees accepting alcoholic drinks—Rule 143 CCR..... 15 day suspension

Refilling—25176 & 25177 B&P Code:

With different brand ..... 15 day suspension

With same brand..... 5 day suspension

Contaminated Bottles (insects, etc.)—347b PC ..... 5 day suspension

Substitution of Brands—25609 & 23614 B&P.....	15 day suspension
Club Licenses, Sale to Public—23431 B&P.....	10 day suspension
Sale to Purchase Between Retailers—23402 B&P .....	15 day suspension
Not Operating Bona Fide Eating Place—23038 & 23396 B&P....	10 day suspension indefinite until compliance
Licensee or Bartender Working In Premises While	
Intoxicated—24200(a) B&P .....	30 day suspension
Licensee or Employee Resisting Arrest or Interfering With	
Investigation on The Premises—24200(a) B&P & 148.....	35 day suspension to revocation
Licensee or Employee Not Permitting Inspection Of:	
Premises—25755 B&P .....	30 day suspension
Records—25616 B&P .....	30 days and indefinite until records produced
Alcoholic Beverage Not Permitted By License—25607 & 23355 B&P:	
Sale .....	15 day suspension
Possession .....	10 day suspension
Gambling—24200(a) B&P and 330 PC:	
Organized (bookmaking, football cards, etc.).....	30 day suspension
Local (cards, dice, football & baseball pools, etc.).....	10 day suspension
Electronic/video games (slot machines, Poker, 21, etc.)—possession .....	15 day suspension
Electronic/video with payoffs .....	30 day suspension, with 15 days stayed for 2 years
Disorderly House, Prostitution, Lewd Conduct—25601 B&P:	
Occasional or isolated offenses .....	30 day suspension
Recurring/aggravated offenses .....	Revocation
Nude Entertainers, etc.—Rule 143.2 & .3 .....	30 day suspension to revocation
Narcotics _ B&P 24200.5 and H&S Violations:	
Transactions on licensed premises.....	Revocation
Paraphernalia, possession for sale .....	Revocation, stayed for 3 years and a 20 day suspension

Failure to correct objectionable conditions—24200(e) and (f) B&P .....	30 day suspension to revocation
Undisclosed Ownership—23300 & 23355 B&P:	
Hidden owner qualified .....	15 day suspension indefinite until ownership corrected
Hidden owner not qualified.....	Revocation
Hidden owner-priority license.....	Revocation
Commission of Crime Involving Moral Turpitude— 24200(a) B&P:	
Committed on premises .....	Revocation
Committed away from premises (petty theft/shoplifting) ..	Revocation stayed 3 yrs
Committed away from premises (other than petty theft) ..	Revocation
Conviction of a crime involving moral turpitude— 24200(d)B&P .....	Revocation
Violation Of Conditions—B&P 23804.....	15 day suspension with 5 days stayed for one year
Rule 65—Chapter 1, Title 4 of the CCR.....	Revocation stayed for 180 days, permit transfer, or reactiva- tion of license
Rule 107—Chapter 1, Title 4 of the CCR .....	5 day suspension
Rule 108—Chapter 1, Title 4 of the CCR .....	5 day suspension to a suspension equal to double the original suspension
Exceeding license privileges—24200(a), 23300, 23355 B&P ..	5 day suspension to revocation
PC 313.1—Harmful matter .....	5 day suspension
Sale of alcoholic beverages while under suspension .....	Double the original suspension to revocation
Receiving Stolen Property—24200(a) and 664 & 496 PC:	
By licensee on premises.....	Revocation

By employee on premises.....	Revocation stayed for 3 years, and a 20 day suspension
Food Stamp Violations—24200(a) B&P:	
Allowing purchases of alcoholic beverages.....	10 day suspension
Food stamp trafficking (i.e. purchasing stamps at discount):	
By licensee .....	Revocation
By employee, with premises involvement.....	Revocation, stayed for one year and a 20 day suspension
Keg Registration violations.....	10 day suspension
Operating Condition Violations—Section 25612.5 B&P:	
Subsections (c) (3), (4), (5), (6), (7), (10).....	5 day suspension
Subsections (c) (1), (2), (8), (9).....	10 day suspension indefinite until compliance
Misrepresenting Material Fact on Application—24200(c) B&P.	Revocation

**PETITION FOR OFFER IN COMPROMISE (“POIC”):**

Business and Professions Code Section 23098 authorizes the Department may accept a Petition for Offer in Compromise (“POIC”) in lieu of the service of a suspension of 15 days or less. For purposes of determining whether the Department may accept a POIC in lieu of suspension, the total penalty imposed must be for 15 days or less, and shall not include any period of stayed suspension that would result in the potential suspension being for a period of greater than 15 days, nor can it include any period of stayed revocation. In the event that the suspension is for a period of 15 days or less with some portion thereof stayed, the POIC shall be calculated based upon the period of actual suspension (not including the stayed portion). In such cases, if the stayed period of suspension is later reimposed, the Department will generally not accept a POIC in lieu of serving the reimposed period of suspension.

Abbreviation Legend:

- B&P California Business and Professions Code
- PC California Penal Code
- H&S California Health & Safety Code
- CCR California Code of Regulations
- POIC Payment of Offer in Compromise (B&P Sections 23095 & 23096)

Article 23. Administrative Procedure

**145. Service of Notices.**

For the purpose of subdivision (c) of Section 11505 of the Government Code, notices which are required to be served by registered mail may be served by certified mail pursuant

to Section 8311 of the Government Code, and shall be mailed to the licensee at the premises for which his license is issued. Any licensee who desires to have such notices mailed to him at an address other than his licensed premises shall file with the department a specific request for that purpose, and in such case notices shall be sent to the licensee at such address. Such licensee shall notify the department of a change in address, and specifically request the department to mail notices to the changed address.

NOTE: Authority cited: Sections 25750 and 25760, Business and Professions Code; Section 22 of Article XX, California Constitution. Reference: Division 9 (Chapters 1–17), Business and Professions Code.

HISTORY:

1. New section filed 11-6-45; designated to be effective 11-1-45 (Register 3).
2. Amendment filed 4-8-58; designated effective 5-15-58 (Register 58, No. 6).
3. Amendment filed 2-2-77; designated effective 3-7-77 (Register 77, No. 6).

**146. Verification of Protests.**

HISTORY:

1. New section filed 11-4-46 (Register 6).
2. Repealer filed 9-17-47 (Register 9).

Article 24. Department of Alcoholic Beverage Control—  
Conflict of Interest Code

**150. General Provisions.**

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 California Code of Regulations Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the Department of Alcoholic Beverage Control.

Designated employees shall file statements of economic interests with this agency which will make the statements available for public inspection and reproduction. (Government Code Section 81008). Upon receipt of the statement of the Director, the agency shall make and retain a copy and forward the original of this statement to the Fair Political Practices Commission. Statements for all other designated employees will be retained by the agency.

NOTE: Authority cited: Sections 81008, 87300 and 87304, Government Code. Reference: Section 87300, et seq., Government Code.

HISTORY:

1. New Article 24 (Section 150) filed 4-4-78; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 4-20-77 (Register 78, No. 14).
2. Repealer of Article 24 (Section 150) and new Article 24 (Section 150 and Appendix) filed 2-26-81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12-1-80 (Register 81, No. 9).
3. Amendment filed 2-1-94; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 1-29-94.
4. Amendments filed 1-16-96; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12-7-95.
5. Amendments filed 5-5-06; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 3-8-06.

APPENDIX

<i>Designated Employees</i>	<i>Disclosure Category</i>
Director	A
Chief Deputy Director	A
Assistant Director, Field Division	A
Assistant Director, Administration	A
Chief Administrative Law Judge	A
Chief Counsel	B
Chief, Business Practices	B
Deputy Division Chief, ABC	B
District Administrator, Alcoholic Beverage Control	B
Supervising Investigator, Alcoholic Beverage Control	B
Investigator II, Alcoholic Beverage Control	B
Investigator I, Alcoholic Beverage Control	B
Investigator Trainee, Alcoholic Beverage Control	B
Licensing Officer, Alcoholic Beverage Control	B
Licensing Representative I and II, Alcoholic Beverage Control	B
All Attorney Classes	B
All Administrative Law Judge Classes	B
All Information Officer Classes	B
Legal Analyst	B
Legal Assistant	B
All Staff Services Manager Classes	B
Accounting Officer	C
Fiscal Officer I	C
All Information Systems Analyst Classes	C
All Data Processing Manager Classes	C
All System Software Specialist Classes	C
Business Services Assistant	C
Consultants	D

*Disclosure Categories.*

*Category A.* Designated employees in Category A must report all interests required to be reported by designated employees in Categories B and C below.

*Category B.* Designated employees in Category B must report: Investments and business positions in business entities, and income received, including gifts, loans, and travel payments, from sources, that either have applications for licensing, have licenses pending, are licensed, or have been licensed by the department within two years prior to any time period covered by a statement of economic interest, and interests in real property upon which a business licensed by the department is maintained.

*Category C.* Designated employees in Category C must report: Investments and business positions in business entities, and income received, including gifts, loans, and travel payments, from sources, of the type that, within the previous two years, contracted with the State of California to provide services, equipment, leased space, materials, or supplies to the Department of Alcoholic Beverage Control.

*Category D.* Consultants in Category D must report: Consultants shall disclose pursuant to the broadest category in the code subject to the following limitation: The director may determine in writing that a particular consultant, although a “designated position,” is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. The director’s determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

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**TITLE 4**

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After Hours, Sales or Purchasing	M	25631
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Beer Keg, Poss of w/o ID Tag	M	25659.5(c)
Distilled Spirits, Unlawful Poss of	M	25607(a)
Drink Solicit, Employ Person to	M	25657(a)
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ID, Poss of False by Minor	M	25661
ID, Sell w/o "Not a Gov Doc"	M	22430(a)
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License, Display not Yours	M	119(c)
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Minor, Sell/Furnish to	M	25658(a)
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<sup>1</sup> Cite licensee only

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Open Container, Driver Allowing	I	23225	VC
Vehicle, Drinking A/B While in	I	23221	VC

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**LICENSE IDENTIFIER**


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**∞PINK - Minors Allowed Inside**

- 20 Off-Sale Beer & Wine (Package Store)
- 21 Off-Sale General (Liquor Store)
- 40 On-Sale Beer (Bar, Tavern)
- 41 On-Sale Beer & Wine Eating Place (Restaurant/Meals Req)
- 47 On-Sale General Eating Place (Restaurant/Meals Req)

**∞GREEN - Minors Not Allowed Inside**

- 42 On-Sale Beer & Wine Public Premises (Bar, Tavern)
- 48 On-Sale General Public Premises (Bar, Night Club)
- 61 On-Sale Beer (Bar, Tavern)

**∞YELLOW - Comply w/Child Support win 150 Days**
**∞WHITE - Temporary/Special Daily/Daily General**


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**MINOR DECOY REQUIREMENTS**
**Rule 141 CCR and 25658(f) BP**


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1. Under age 20
  2. Appears under age 21
  3. Show I.D. if asked or don't carry it
  4. Be truthful about age
  5. Face to face identification
  6. Notify licensees of program results
- 

**RETAIL OPERATING STANDARDS 25612.5(c) BP**
*Apply to Stores, Bars, Taverns only*


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1. No Loitering signs (upon written notice from ABC)
  2. No open A/B container signs (upon written notice from ABC)
  3. No drinking A/B inside off-sale or outside on-sale
  4. Outside premises well lit
  5. Remove litter daily
  6. Remove graffiti within 3 days
  7. Only 1/3 of windows can have signs
  8. No incoming calls on pay phones (upon request by local law enforcement) - Type 20/21 Lic only
  9. "Adults only" area for harmful matter videos
  10. Retail Operating Standards available for viewing
- 

<sup>1</sup> Cite licensee only



