CALIFORNIA ALCOHOLIC BEVERAGE CONTROL ACT

WITH REGULATIONS AND RELATED STATUTES

2014

Statutes Include Amendments through Chapter 800 of the 2013 Regular Session, and through Chapter 5 of the First Extraordinary Session of the 2013-2014 Legislature

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PREFACE

We are pleased to present the 2014 Edition of the California Alcoholic Beverage Control Act. This compilation of selected laws incorporates all changes required by legislative enactments up to and including Chapter 800 of the 2013 Regular Session, and through Chapter 5 of the First Extraordinary Session of the 2013-2014 Legislature.

We appreciate the opportunity to work with the California Department of Alcoholic Beverage Control to create this publication. The Department's regulations, contained in Division 1 of Title 4 of the California Code of Regulations, are also set out in this edition.

Included herein is a Table of Sections Affected which may be utilized to facilitate research into recently enacted legislation affecting these Codes. Through the use of state-of-the-art computer software, attorney editors have created the comprehensive descriptive word index to include the enactments of the 2013 legislature.

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CALIFORNIA ALCOHOLIC BEVERAGE CONTROL ACT

CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENT 21

Section
1. [Repeal of Eighteenth Amendment.]
2. [Intoxicating liquors, shipment into dry territory prohibited.]
3. [Ratification, time limit.]

Sec. 1. [Repeal of Eighteenth Amendment.]

The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Sec. 2. [Intoxicating liquors, shipment into dry territory prohibited.]

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.

Sec. 3. [Ratification, time limit.]

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions 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; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The Twenty-first amendment to the Constitution of the United States was submitted to the several states by the Seventy-second Congress on February 20, 1933, and was declared, in a proclamation by the Secretary of State, dated December 5, 1933, to have been ratified by the following states: Alabama, August 8, 1933; Arizona, September 5, 1933; Arkansas, August 1, 1933; California, July 24, 1933; Colorado, September 26, 1933; Connecticut, July 11, 1933; Delaware, June 24, 1933; Florida, November 14, 1933; Idaho, October 17, 1933; Illinois, July 10, 1933; Indiana, June 26, 1933; Iowa, July 10, 1933; Kentucky, November 27, 1933; Maryland, October 18, 1933; Massachusetts, June 26, 1933; Michigan, April 10, 1933; Minnesota, October 10, 1933; Missouri, August 29, 1933; Nevada, September 5, 1933; New Hampshire, July 11, 1933; New Jersey, June 1, 1933; New Mexico, November 2, 1933; New York, June 27, 1933; Ohio, December 5, 1933; Oregon, August 7, 1933; Pennsylvania, December 5, 1933; Rhode Island, May 8, 1933; Tennessee, August 11, 1933; Texas, November 24, 1933; Utah, December 5, 1933; Vermont, September 23, 1933; Virginia, October 25, 1933; Washington, October 3, 1933; West Virginia, July 25, 1933; Wisconsin, April 25, 1933; and Wyoming, May 25, 1933.

Ratification was completed on December 5, 1933.

The amendment was subsequently ratified by Maine, on December 6, 1933, and by Montana, on August 6, 1934.

The amendment was rejected, and not subsequently ratified, by South Carolina on December 4, 1933.

NOTES:

Research Guide:

Federal Procedure:

1 Administrative Law (Matthew Bender), ch 2, Preemption § 2.02.

Am Jur:

16A Am Jur 2d, Constitutional Law § 419.

45 Am Jur 2d, Intoxicating Liquors §§ 21, 35, 50.

Immigration:

1 Immigration Law and Procedure (rev. ed.), ch 2, The Development of the Immigration Laws § 2.04.

Corporate and Business Law:

1 Kintner, Federal Antitrust Law (Matthew Bender), ch 5, The Constitutional Basis and the Constitutionality of the Sherman Act § 5.3.

10 Kintner, Federal Antitrust Law (Matthew Bender), ch 75, Miscellaneous Exemptions § 75.4.

10 Kintner, Federal Antitrust Law (Matthew Bender), ch 76, State Action Doctrine § 76.12.

Labor and Employment:

3 Larson on Employment Discrimination, Sex Differentiation § 41.02.

3 Larson on Employment Discrimination, State Protective Laws § 44.01.

Annotations:

Supreme Court's views as to extent of states' regulatory powers concerning or affecting intoxicating liquors, under Federal Constitution's Twenty-First Amendment. 134 L Ed 2d 1015.

Construction and Application of Sherman Act, 15 U.S.C.A. §§ 1 et seq. [15 USCS §§ 1 et seq.]--Supreme Court Cases. 35 ALR Fed 2d 1.

Construction and Application of Dormant Commerce Clause, U.S. Const. Art. I, § 8, cl. 3--Supreme Court Cases. 41 ALR Fed 2d 1.

Protection of Out-of-State Sellers from State Income Tax by Public Law 86-272 (15 U.S.C.A. §§ 381 to 384 [15 USCS §§ 381-384]). 182 ALR Fed 291.

Interplay Between Twenty-First Amendment and Commece Clause Concerning State Regulation of Intoxicating Liquors. 116 ALR5th 149.

Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors. 20 ALR4th 600.

Validity and construction of statute or ordinance respecting employment of women in places where intoxicating liquors are sold. 46 ALR3d 369.

State power to regulate price of intoxicating liquors. 14 ALR2d 699.

Texts:

Cohen's Handbook of Federal Indian Law (Matthew Bender), ch 13, Federal Indian Liquor Laws § 13.02.

1 The Law of Advertising (Matthew Bender), ch 4, The Federal Power to Regulate Advertising § 4.05.

3 The Law of Advertising (Matthew Bender), ch 51, Alcoholic Beverage Advertising §§ 51.01-51.03.

3 The Law of Advertising (Matthew Bender), ch 53, Cable Television Advertising § 53.03.

Law Review Articles:

Skilton. State Power Under The Twenty-First Amendment. 7 Brooklyn L Rev 342.

Day. The Expanded Concept of Facial Discrimination in the Dormant Commerce Clause Doctrine. 40 Creighton L Rev 497, April 2007.

De Ganahl. The Scope of Federal Power Over Alcoholic Beverages Since The Twenty-First Amendment. 8 Geo Wash L Rev 819.

Hart. Retail Price Maintenance for Liquor: Does the Twenty-First Amendment Preclude a Free Trade Market? 5 Hastings Const L Q 507, Winter 1978.

The Evolving Scope of State Power Under The Twenty-First Amendment: The 1964 Liquor Cases. 19 Rutgers L Rev 759.

Supremacy Clause vs. Twenty-First Amendment: Low Cost Military Liquor Over State Antidiversion Regulations in United States v. North Dakota. 63 St John's L Rev 83.

Baker; Levinson. Twenty-Year Legacy of South Dakota v. Dole [97 L Ed 2d 171]: Dole Dialogue. 52 SD L REV 468, 2007.

Kallenbach. Interstate Commerce in Intoxicating Liquors Under The Twenty-First Amendment. 14 Temp LQ 474.

Yablon. The Prohibition Hangover: Why we are Still Feeling the Effects of Prohibition. 13 Va J Soc Pol'y & L 552, Spring 2006.

Choper. The Scope of National Power Vis-a-Vis the States: The Dispensability of Judicial Review. 86 Yale L J 1552.

The Twenty-First Amendment Versus The Interstate Commerce Clause. 55 Yale LJ 815.

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I. IN GENERAL

1. Generally

Neither expressly nor impliedly was war power abrogated or limited by Twenty-first Amendment. Jatros v Bowles (1944, CA6 Mich) 143 F2d 453.

When Secretary of State of United States received duly authenticated official notice from requisite number of states, ratification of Twenty-first Amendment was consummated and became, to all intents and purposes, part of Federal Constitution; Secretary's proclamation certifying states which had ratified Amendment was official notice to world of what had happened and was conclusive upon courts, so as to

preclude judicial review of validity of action of state convention called to consider Amendment. Chase v Billings (1934) 106 Vt 149, 170 A 903.

2. Effect of repeal of Eighteenth Amendment

Repeal of Eighteenth Amendment rendered National Prohibition Act unconstitutional and inoperative, even as to pre-existing offenses. Massey v United States (1934) 291 US 608, 78 L Ed 1019, 54 S Ct 532.

Qualifications placed on Tenth Amendment by adoption of Eighteenth Amendment have been abolished. United States v Constantine (1935) 296 US 287, 80 L Ed 233, 56 S Ct 223, 35-2 USTC P 9655, 36-1 USTC P 9009, 16 AFTR 1137 (ovrld as stated in United States v Smith (1952, SD Cal) 106 F Supp 9, 42 AFTR 437); United States v Kesterson (1935) 296 US 299, 80 L Ed 241, 56 S Ct 229, 35-2 USTC P 9656, 36-1 USTC P 9010, 16 AFTR 1143.

Repeal of Eighteenth amendment by Twenty-first Amendment deprived Congress of power to legislate on subject of Eighteenth Amendment or to continue in force statutes based thereon, and repeal being without savings clause, pending prosecutions, either in trial court or on appeal, were suspended. Green v United States (1933, CA9 Idaho) 67 F2d 846.

Conviction under count not based on National Prohibition Act was not annulled by repeal of Eighteenth Amendment. Kajander v United States (1934, CA5 Fla) 69 F2d 222; Shelton v United States (1934, CA5 Fla) 69 F2d 223, cert den (1934) 293 US 574, 79 L Ed 672, 55 S Ct 85.

Repeal of Eighteenth Amendment pending appeal from conviction for violating National Prohibition Act required reversal of conviction. Kajander v United States (1934, CA5 Fla) 69 F2d 222; Shelton v United States (1934, CA5 Fla) 69 F2d 223, cert den (1934) 293 US 574, 79 L Ed 672, 55 S Ct 85; Warren v United States (1934, CA4 Va) 70 F2d 105; Short v United States (1934, CA4 Va) 70 F2d 105.

Repeal of Eighteenth Amendment did not affect prosecutions under revenue laws. Benton v United States (1934, CA4 NC) 70 F2d 24, cert den (1934) 292 US 642, 78 L Ed 1494, 54 S Ct 778; Deutsch v Aderhold (1935, CA5 Ga) 80 F2d 677.

Repeal of Eighteenth Amendment had no effect upon prosecutions under Tariff Act. United States v Merrell (1934, CA2 NY) 73 F2d 49, cert den (1934) 293 US 627, 79 L Ed 713, 55 S Ct 346.

Sections of National Prohibition Act relating to permits for specially denatured alcohol were not repealed with Eighteenth Amendment. Helvering v Druggists' Specialties Co. (1935, CA3 Pa) 76 F2d 743.

Vessels licensed for coasting trade could not be seized for carrying liquor subsequent to repeal of Eighteenth Amendment. The Pueblos (1935, CA2 Conn) 77 F2d 618.

Where judgment for violation of National Prohibition Act was rendered prior to repeal of Eighteenth Amendment, commitment entered subsequent to such repeal was valid. Odekirk v Ryan (1936, CA6 Mich) 85 F2d 313.

Repeal of Eighteenth Amendment has no bearing on question whether Puerto Rican statute should be construed as exempting product of brewery in Puerto Rico from taxation in violation of statute precluding tax discriminating against imports into Puerto Rico. Sanacho v Corona Brewing Corp. (1937, CA1 Puerto Rico) 89 F2d 479, cert den (1937) 302 US 699, 82 L Ed 540, 58 S Ct 18.

Repeal of Eighteenth Amendment and adoption of Twenty-first Amendment did not terminate liability of permittee for use of specially denatured alcohol in manufacture of industrial products for breach of bond prior to such repeal. United States v Glidden Co. (1941, CA6 Ohio) 119 F2d 235, 41-1 USTC P 9408, 27 AFTR 83, cert den (1941) 314 US 678, 86 L Ed 542, 62 S Ct 182.

Repeal of Eighteenth Amendment did not make void conviction and sentence under National Prohibition Act which had become final prior to effective date of repeal. United States ex rel. Randall v United States Marshal, etc. (1944, CA2 NY) 143 F2d 830.

Nothing in Twenty-first Amendment invalidates conviction of conspirators under 15 USCS § 1 for price-fixing, uniform closing hour agreements, and boycott to enforce conspiracy with respect to those engaged in sales of malt beverages for home consumption. United States v Erie County Malt Beverage Distributors Asso. (1959, CA3 Pa) 264 F2d 731.

Although 21st Amendment empowered state to regulate alcoholic beverage sales within its borders provision did not empower state to favor local liquor industries by erecting barriers to competition in violation of Commerce Clause; hence, state's three-tier alcohol distribution system which banned direct shipment to customers of alcohol from out-of-state sellers was unconstitutional because it did not pass promote 21st Amendment's core goals of temperance, raising revenue, and ensuring orderly market. Heald v Engler (2003, CA6 Mich) 342 F3d 517, 2003 FED App 308P, reh, en banc, den (2003, CA6) 2003 US App LEXIS 23001 and (criticized in Swedenburg v Kelly (2004, CA2 NY) 358 F3d 223) and affd (2005, US) 2005 US LEXIS 4174.

3. Congress' right to legislate in field of intoxicants

Twenty-First Amendment does not "repeal" commerce clause wherever regulation of intoxicating liquors is concerned, so as to give states complete and exclusive control over intoxicating liquors unlimited by commerce clause, and Congress is left with regulatory power over interstate or foreign commerce in intoxicating liquor. Hostetter v Idlewild Bon Voyage Liquor Corp. (1964) 377 US 324, 12 L Ed 2d 350, 84 S Ct 1293.

There is no provision in Twenty-first Amendment which restricts power of Congress over commerce in intoxicating liquors carried on without violation of state laws, or which denies to Congress power to legislate in aid of state prohibitions. Arrow Distilleries, Inc. v Alexander (1940, CA7) 109 F2d 397, cert den (1940) 310 US 646, 84 L Ed 1412, 60 S Ct 1095.

Twenty-first Amendment does not deprive national government of all authority to legislate in respect to interstate commerce in intoxicants. Washington Brewers Institute v United States (1943, CA9 Wash) 137 F2d 964, cert den (1943) 320 US 776, 88 L Ed 465, 64 S Ct 89; Jatros v Bowles (1944, CA6 Mich) 143 F2d 453; State v Hall (1944) 224 NC 314, 30 SE2d 158.

Emergency Price Control Act of 1942 was not unconstitutional under Twenty-first Amendment as applied to intrastate sales of intoxicating liquors. Jatros v Bowles (1944,

CA6 Mich) 143 F2d 453; Taub v Bowles (1945, Em Ct App) 149 F2d 817, cert den (1945) 326 US 732, 90 L Ed 435, 66 S Ct 39; Barnett v Bowles (1945, Em Ct App) 151 F2d 77, cert den (1945) 326 US 771, 90 L Ed 465, 66 S Ct 176 and cert den (1945) 326 US 766, 90 L Ed 462, 66 S Ct 168; Dowling Bros. Distilling Co. v United States (1946, CA6 Ky) 153 F2d 353, cert den (1946) 328 US 848, 90 L Ed 1622, 66 S Ct 1120, reh den (1946) 329 US 820, 91 L Ed 698, 67 S Ct 29.

The repeal of Eighteenth Amendment did not utterly deprive Congress of power to legislate in field of intoxicating liquors. Old Monastery Co. v United States (1945, CA4 SC) 147 F2d 905, cert den (1945) 326 US 734, 90 L Ed 437, 66 S Ct 44.

Congress has power to regulate intrastate activities in alcoholic liquor trade because such activities substantially affect interstate commerce. Hanf v United States (1956, CA8 Minn) 235 F2d 710, cert den (1956) 352 US 880, 1 L Ed 2d 81, 77 S Ct 102.

Twenty-first Amendment simply withdraws exclusive control of Congress, under Commerce Clause, over commerce in intoxicating liquors; since police powers of Virgin Islands remain limited by 15 USCS § 3, which is based on plenary power of Congress to govern territories, Virgin Islands Alcoholic Beverages Fair Trade Law which conflicts with 15 USCS § 3 is invalid. Norman's on the Waterfront, Inc. v Wheatley (1971, CA3 VI) 444 F2d 1011, 1971 CCH Trade Cases P 73606, 15 FR Serv 2d 184 (criticized in Kendall-Jackson Winery, Ltd. v Branson (2000, CA7 Ill) 212 F3d 995).

State preemption in regulating liquor does not preclude Federal Government from prohibiting extortion that affects interstate commerce under authority of Commerce Clause. United States v Gill (1973, CA7 Ill) 490 F2d 233, cert den (1974) 417 US 968, 41 L Ed 2d 1139, 94 S Ct 3171.

Eleventh Amendment did not bar liquor store's suit seeking declaration that Maryland's regulatory scheme for liquor wholesales violated Sherman Act since plaintiff was not seeking damages but declaratory and injunctive relief on basis of violation of federal law, and complaint was sufficiently narrow that it did not impinge on state's sovereignty under Twenty-first amendment. TFWS, Inc. v Schaefer (2001, CA4 Md) 242 F3d 198, 2001-1 CCH Trade Cases P 73183.

Twenty-first Amendment does not surrender power of Congress to prohibit or regulate transportation of intoxicating liquor in interstate commerce, and Congress has power to enact legislation to execute Amendment and to penalize its violations. Duckworth v State (1941) 201 Ark 1123, 148 SW2d 656, affd (1941) 314 US 390, 86 L Ed 294, 62 S Ct 311, 138 ALR 1144.

II. STATE POWER TO REGULATE INTOXICATING LIQUORS

A. In General

4. Generally

Twenty-first Amendment conferred upon state power to forbid all intoxicating liquor importations which do not comply with conditions which state prescribes; state may adopt lesser degree of regulation than total prohibition. State Bd. of Equalization v Young's Market Co. (1936) 299 US 59, 81 L Ed 38, 57 S Ct 77, reh den (1936) 299 US 623, 81 L Ed 458, 57 S Ct 229 and (ovrld as stated in Bacchus Imports v Dias (1984) 468 US 263, 82 L Ed 2d 200, 104 S Ct 3049) and (criticized in Granholm v Heald (2005, US) 2005 US LEXIS 4174).

Twenty-First Amendment requires presumption in favor of validity of state regulation of establishments licensed to sell intoxicating liquors; wide latitude as to choice of means to accomplish permissible end must be accorded to state agency which is depository of states' power under Twenty-first Amendment. California v La Rue (1972) 409 US 109, 34 L Ed 2d 342, 93 S Ct 390, reh den (1973) 410 US 948, 35 L Ed 2d 615, 93 S Ct 1351 and (ovrld in part by 44 Liquormart v Rhode Island (1996) 517 US 484, 134 L Ed 2d 711, 116 S Ct 1495, 96 CDOS 3338, 24 Media L R 1673, 9 FLW Fed S 569) and (ovrld in part as stated in J&B Social Club # 1 v City of Mobile (1996, SD Ala) 966 F Supp 1131) and (ovrld in part as stated in WFO Corp. v Ohio Liquor Control Comm'n (1996, Ohio App, Franklin Co) 1996 Ohio App LEXIS 4788) and (ovrld in part as stated in Goldrush II v City of Marietta (1997) 267 Ga 683, 482 SE2d 347, 97 Fulton County D R 874) and (ovrld as stated in J.L. Spoons, Inc. v City of Brunswick (1998, ND Ohio) 181 FRD 354) and (ovrld in part as stated in Purple Orchid v Pennsylvania State Police, Bureau of Liquor Control Enforcement (1998, Pa Cmwlth) 721 A2d 84) and (ovrld in part as stated in Salt Lake City v Wood (1999, Utah App) 991 P2d 595, 381 Utah Adv Rep 33) and (ovrld in part as stated in El Marocco Club, Inc. v Richardson (2000, RI) 746 A2d 1228) and (criticized in Giovani Carandola, Ltd. v Bason (2002, CA4 NC) 303 F3d 507) and (ovrld in part as stated in Rising Sun Entm't, Inc. v Bureau of Liquor Control Enforcement (2003, Pa Cmwlth) 829 A2d 1214).

Although case for upholding state regulation in area covered by Twenty-first Amendment is undoubtedly strengthened by Amendment, other constitutional provisions are not rendered inapplicable by amendment. White v Fleming (1975, CA7 Wis) 522 F2d 730, 11 BNA FEP Cas 619, 10 CCH EPD P 10313.

Analysis of validity of state law regulating liquor does not proceed via traditional route for testing constitutionality of state statutes, rather courts must proceed from vantage point of presumed state power and then ask whether there are any limitations to that power, always keeping in mind that where intoxicating liquors are concerned, great deference must be accorded comprehensive state regulatory scheme; federal laws have prevailed over state regulation of intoxicating liquors in only 2 circumstances: (1) where state regulation was repugnant to overriding national concern with due process and equal protection, and (2) where state had sought to invade area of exclusive federal concern such as federally owned installations, regulation of commerce with foreign nations, and taxation of imports from foreign countries. Castlewood International Corp. v Simon (1979, CA5 Fla) 596 F2d 638, vacated on other grounds (1980) 446 US 949, 64 L Ed 2d 806, 100 S Ct 2914.

State law dealing with sale of alcoholic beverages has priority, under Twenty-First Amendment, when in conflict with federal regulation placing burden on commerce and alcohol which state wishes to avoid, absent federal interest of sufficient magnitude. Wine Industry of Florida, Inc. v Miller (1980, CA5 Fla) 609 F2d 1167.

Regulatory scheme of N.Y. Alco. Bev. Cont. Law § 102(1)(c), (d), is within ambit of powers granted to states by U.S. Const. amend. XXI, § 2. Swedenburg v Kelly (2004, CA2 NY) 358 F3d 223, revd, remanded (2005, US) 2005 US LEXIS 4174.

Police power of states over intoxicating liquors was extremely broad prior to Twenty-first Amendment, and broad sweep of that Amendment has been recognized as conferring something more than normal state authority over public health, welfare, and morals. Arizona State Liquor Bd. v Poulos (1975) 112 Ariz 119, 538 P2d 393.

State may absolutely prohibit manufacture, transportation, sale, or possession of intoxicants, and may adopt measures reasonably appropriate to effectuate these inhibitions and exercise full police authority in respect to them. Francis v Fitzpatrick (1943) 129 Conn 619, 30 A2d 552, 145 ALR 505.

On account of inherent and potential menace to public welfare caused by liquor business, police power to regulate it is of far greater scope and power than is directed toward ordinary business activity; Twenty-first Amendment allows exercise of very broad police powers by states with respect to alcoholic liquors; under Twenty-first Amendment, states may either absolutely prohibit manufacture, sale, or possession of such liquors within their borders or may permit these activities under conditions prescribed by their legislatures. Ruppert v Liquor Control Com. (1952) 138 Conn 669, 88 A2d 388.

Under Twenty-first Amendment, state may absolutely prohibit manufacture, transportation, importation, sale, or possession of alcoholic liquors irrespective of when or where produced, or use to which they may be put, and may adopt measures reasonably appropriate to effectuate these inhibitions and exercise full police authority in respect to them, and this greater power to prohibit includes lesser power to permit under definitely prescribed conditions. State v Payne (1958) 183 Kan 396, 327 P2d 1071.

State or local regulation in field of alcoholic beverages under Amendment 21 must not be discriminatory and must not conflict with other provisions of Constitution. Baxter Springs v Bryant (1979) 226 Kan 383, 598 P2d 1051.

Power of state to regulate sale of intoxicating liquors under Twenty-First Amendment may be exercised by city in such state through ordinance, unless such ordinance is inconsistent with Federal Constitution. Commonwealth v Sees (1978) 374 Mass 532, 373 NE2d 1151 (criticized in Empress Adult Video & Bookstore v City of Tucson (2002, App) 204 Ariz 50, 59 P3d 814, 387 Ariz Adv Rep 14) and (criticized in City of Bangor v Diva's, Inc. (2003) 2003 ME 51, 830 A2d 898).

Twenty-first Amendment has bestowed upon states broad regulatory powers over liquor importation. Federal Distillers, Inc. v State (1975) 304 Minn 28, 229 NW2d 144, app dismd (1975) 423 US 908, 46 L Ed 2d 137, 96 S Ct 209, 96 S Ct 210.

Under Twenty-first Amendment, state has full and complete control over all matters relating to intoxicating liquors within its borders; it is purely within prerogative of state to say whether or not citizen shall possess or use intoxicating liquor; regulation pertaining to sale, possession, or use of intoxicating liquors does not violate constitutional rights of any citizens. State v Wood (1966, Miss) 187 So 2d 820.

Under § 2 of Twenty-first Amendment, any state can prohibit transportation or importation of intoxicating liquors into its territory. State v Epps (1938) 213 NC 709, 197 SE 580.

Since adoption of Twenty-first Amendment, states may prohibit inhabitants from importing intoxicating liquor for their own use. Riggins v District Court (1935) 89 Utah 183, 51 P2d 645.

5. Effect of commerce clause

Twenty-first Amendment sanctions right of state to legislate concerning intoxicating liquors brought from without, unfettered by commerce clause of Constitution (Art I, § 8, cl 3). Ziffrin, Inc. v Reeves (1939) 308 US 132, 84 L Ed 128, 60 S Ct 163 (criticized in Granholm v Heald (2005, US) 2005 US LEXIS 4174); Jones v State (1939) 198 Ark 354, 129 SW2d 249; Hardin v Spiers (1941) 202 Ark 804, 152 SW2d 1010; State v Andre (1936) 101 Mont 366, 54 P2d 566.

Like other provisions of Federal Constitution, Twenty-first Amendment and commerce clause must each be considered in light of other and in context of issues and interests at stake in any concrete case. Hostetter v Idlewild Bon Voyage Liquor Corp. (1964) 377 US 324, 12 L Ed 2d 350, 84 S Ct 1293.

State of New York could not prohibit sale at airport of liquor purchased outside of state to departing international travelers for delivery at their foreign destinations; although state, by virtue of provisions of Twenty-first Amendment, is totally unconfined by traditional commerce clause limitations when it restricts importation of intoxicants destined for use, distribution, or consumption within its borders, nevertheless Twenty-first Amendment does not obliterate commerce clause so far as to empower state to prohibit absolutely passage of liquor through its territory, under supervision of United States Bureau of Customs, for delivery to consumers in foreign countries; state may not totally prevent transactions carried on under aegis of law passed by Congress in exercise of its explicit power under Federal Constitution to regulate commerce with foreign nations. Hostetter v Idlewild Bon Voyage Liquor Corp. (1964) 377 US 324, 12 L Ed 2d 350, 84 S Ct 1293.

By virtue of Twenty-first Amendment, state is totally unconfined by traditional commerce clause limitations when it restricts importation of intoxicants destined for use, distribution, or consumption within its borders. Heublein, Inc. v South Carolina Tax Comm'n (1972) 409 US 275, 34 L Ed 2d 472, 93 S Ct 483; United States v State Tax Com. (1973) 412 US 363, 37 L Ed 2d 1, 93 S Ct 2183.

Although Twenty-first Amendment primarily creates exception to normal operation of commerce clause (Art I, § 8, cl 3), nevertheless Twenty-first Amendment does not pro tanto repeal commerce clause, but merely requires that each provision be considered in light of the other, and in context of issues and interests at stake in any concrete case. Craig v Boren (1976) 429 US 190, 50 L Ed 2d 397, 97 S Ct 451, reh den (1977) 429 US 1124, 51 L Ed 2d 574, 97 S Ct 1161 and (ovrld as stated in Wilson v McBeath (1991, WD Tex) 1991 US Dist LEXIS 21124) and (criticized in UPS Worldwide Forwarding v United States Postal Serv. (1995, CA3 Del) 66 F3d 621) and (criticized in North Shore Concrete & Assoc. v City of New York (1998, ED NY) 1998 US Dist LEXIS 6785).

There is no bright line between federal and state powers over liquor; although the Twenty-first Amendment grants states virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system, and although the states retain substantial discretion to establish other liquor regulations under the Amendment, those controls may be subject to federal commerce power under the commerce clause of the Constitution (Article I, § 8, cl 3) in appropriate situations, and the reconciliation of competing state and federal interests in

such regard can be made only after careful scrutiny of those concerns in a concrete case. California Retail Liquor Dealers Ass'n v Midcal Aluminum, Inc. (1980) 445 US 97, 63 L Ed 2d 233, 100 S Ct 937, 1980-1 CCH Trade Cases P 63201.

Federal Government retains authority under Commerce clause to regulate even interstate commerce in liquor notwithstanding fact that Twenty-First Amendment reserves to states power to impose burdens on interstate commerce in intoxicating liquors. Capital Cities Cable, Inc. v Crisp (1984) 467 US 691, 81 L Ed 2d 580, 104 S Ct 2694, 10 Media L R 1873.

Twenty First Amendment does not entirely remove state regulation of alcoholic beverages from ambit of Commerce clause; question in determining validity of state liquor tax that discriminates against interstate commerce is whether principles underlying Twenty First Amendment are sufficiently implicated to outweigh Commerce clause principles that would otherwise be offended. Bacchus Imports v Dias (1984) 468 US 263, 82 L Ed 2d 200, 104 S Ct 3049 (criticized in Ala. Alcoholic Bev. Control Bd. v Henri-Duval Winery, L.L.C. (2003, Ala) 890 So 2d 70).

State liquor tax that imposes 20 percent excise tax on sales of liquor at wholesale, and from which certain locally produced alcoholic beverages are exempt, violates Commerce clause because it has both purpose and effect of discriminating in favor of local products, and it is not saved by Twenty First Amendment because, while it violates central tenet of Commerce clause, it is not supported by any clear concern of Twenty First Amendment in combating perceived evils of unrestricted traffic in liquor. Bacchus Imports v Dias (1984) 468 US 263, 82 L Ed 2d 200, 104 S Ct 3049 (criticized in Ala. Alcoholic Bev. Control Bd. v Henri-Duval Winery, L.L.C. (2003, Ala) 890 So 2d 70).

Twenty-First Amendment does not entirely remove state regulation of alcohol from reach of commerce clause; rather, each of these constitutional provisions must be considered in light of other and in context of issues and interests at stake in any concrete case. Brown-Forman Distillers Corp. v New York State Liquor Authority (1986) 476 US 573, 90 L Ed 2d 552, 106 S Ct 2080 (criticized in Grant's Dairy -- Maine, LLC v Commissioner of Me. Dep't of Agric., Food & Rural Resources (2000, CA1 Me) 232 F3d 8).

Although Twenty-First Amendment to Federal Constitution grants states virtually complete control over whether to permit importation or sale of liquor and how to structure liquor distribution system, states' powers under Amendment are circumscribed by other provisions of Constitution, such as commerce clause; in harmonizing state and federal powers, question is whether interests implicated by state regulation are so closely related to powers reserved by Amendment that regulation may prevail, notwithstanding that its requirements directly conflict with express federal policies. 324 Liquor Corp. v Duffy (1987) 479 US 335, 93 L Ed 2d 667, 107 S Ct 720, 1986-2 CCH Trade Cases P 67391.

Twenty-first Amendment did not immunize state laws from invalidation under Commerce Clause (Art I, § 8, cl 3) when those laws have practical effect of regulating liquor sales in other states, for purposes of state statute requiring brewers and importers of beer to affirm that their posted prices for products sold to in-state wholesalers were as of time of posting no higher than prices at which they sold those products in bordering states. Healy v Beer Inst. (1989) 491 US 324, 105 L Ed 2d 275, 109 S Ct 2491.

States' power to regulate importation of intoxicating liquor under U.S. Const. amend XXI, § 2, does not allow states to ban, or severely limit, direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state producers in violation of prohibition against discrimination in interstate commerce under U.S. Const. art. I, § 8, cl. 3. Granholm v Heald (2005, US) 161 L Ed 2d 796, 125 S Ct 1885, 18 FLW Fed S 263.

Twenty First Amendment protects state which chooses to impose burden on sale of alcohol which would be impermissible under on Commerce Clause if item burdened was not alcohol. Wine Industry of Florida, Inc. v Miller (1980, CA5 Fla) 609 F2d 1167.

State law authorizing sale of newly defined wine product in grocery stores if produced exclusively from grapes grown in state is clearly protectionist measure which violates commerce clause and which cannot be saved by § 2 of Twenty-first Amendment. Loretto Winery, Ltd. v Duffy (1985, CA2 NY) 761 F2d 140.

North Carolina's regulatory preference of in-state wine manufacturers discriminates against out-of-state wine manufacturers and sellers, in violation of dormant Commerce Clause and preference is not supported by any clear concern of Twenty-first Amendment, and therefore, is not saved by Twenty-first Amendment. Beskind v Easley (2003, CA4 NC) 325 F3d 506, 116 ALR5th 665 (criticized in Swedenburg v Kelly (2004, CA2 NY) 358 F3d 223).

Because of absence of identical restriction on Texas wineries, Texas's statutory prohibition against out-of-state wineries directly selling and shipping wine to Texas consumers was constitutionally defective under Commerce Clause, and enjoinment of administrator of Texas Alcoholic Beverage Commission from enforcing challenged provisions was appropriate remedy. Dickerson v Bailey (2003, CA5 Tex) 336 F3d 388 (criticized in Swedenburg v Kelly (2004, CA2 NY) 358 F3d 223).

Second Circuit considers scope of grant of authority of U.S. Const. amend. XXI, § 2, to states to determine whether challenged statute is within ambit of that authority such that it is exempted from effect of dormant Commerce Clause, U.S. Const. art. I, § 8, cl. 3; inquiry should not allow protective doctrine of dormant Commerce Clause to subordinate plain language of Twenty-first Amendment and should instead be sensitive to manner in which these two constitutional forces interact in light of impact Twenty-first Amendment has on dormant Commerce Clause concerns. Swedenburg v Kelly (2004, CA2 NY) 358 F3d 223, revd, remanded (2005, US) 2005 US LEXIS 4174.

District court improperly granted summary judgment to out-of-state winery proprietors in their action seeking declaration that N.Y. Alco. Bev. Cont. Law § 102(1)(c), (d), was facially unconstitutional under Commerce Clause, U.S. Const. art. I, § 8, cl. 3, where state's alcohol regulatory regime, insofar as N.Y. Alco. Bev. Cont. Law § 102(1)(c), (d), related to direct shipment of wine to New York consumers, was properly within scope of U.S. Const. amend. XXI, § 2, such that it was exempted from normal operation of Commerce Clause, U.S. Const. art. I, § 8, cl. 3, or, more precisely, from dormant Commerce Clause. Swedenburg v Kelly (2004, CA2 NY) 358 F3d 223, revd, remanded (2005, US) 2005 US LEXIS 4174.

Because Twenty-first Amendment grants states virtually complete control over whether to permit importation or sale of liquor and how to structure liquor distribution system, and

because dormant Commerce Clause only prevents state from enacting regulation that favors in-state producers and thus discriminates against interstate commerce, Personal Import Exception to state's Alcoholic Beverage Control Act, Va. Code Ann. § 4.1-100 et seq., does not violate Commerce Clause. Brooks v Vassar (2006, CA4 Va) 462 F3d 341.

Personal Import Exception to state's Alcoholic Beverage Control Act, Va. Code Ann. § 4.1-100 et seq., is not economic protectionism but part of state's import regulation, as it provides de minimis exception to state's import regulations, allowing consumers to import one gallon or four liters of wine for personal consumption (under no economic construct could such provision be considered economic protectionism of local industry because it actually amounts to disadvantage local wineries whose wine may only be purchased through retailers); accordingly, Personal Import Exception does not violate dormant Commerce Clause. Brooks v Vassar (2006, CA4 Va) 462 F3d 341.

N.Y. Alco. Bev. Cont. Law §§ 100(1), 102(1)(a), and 102(1)(b), which prohibit out-of-state wine retailers from selling and delivering wine directly to New York consumers, are valid exercise of state's rights under Twenty-first Amendment, U.S. Const. amend. XXI, § 2, and do not violate Commerce Clause, U.S. Const. art. I, § 8, cl. 3, because regulatory scheme mandates that both in-state and out-of-state liquor pass through same three-tier system before ultimate delivery to consumer. Arnold's Wines, Inc. v Boyle (2009, CA2 NY) 571 F3d 185.

Regulating alcoholic beverage retailing was largely State's prerogative under Twenty-first Amendment, and limited rights Texas gave state-licensed alcoholic beverage retailers to make deliveries did not transgress Dormant Commerce Clause by requiring that only retailers with physical presence in Texas could deliver to consumers in Texas; challenge by plaintiff out-of-state wine retailers against defendant Texas officials, arguing that Tex. Alco. Bev. Code Ann. §§ 6.01, 11.01, 22.01, 22.03, 24.01, 24.03, 37.01, 37.03, 41.01, 43.04, 54.12, 107.07(f), were unconstitutional, failed. Siesta Vill. Mkt. LLC v Steen (2010, CA5 Tex) 595 F3d 249.

U.S. Const. amend. 21, § 2 does not allow states to regulate direct shipment of wine on terms that discriminate in favor of in-state producers, and straightforward attempts to discriminate in favor of local producers are not saved by Twenty-first Amendment; so, unless state shows that discrimination is demonstrably justified, statutes regulating alcohol that discriminate against interstate commerce must be invalidated; however, three-tier system itself is unquestionably legitimate, and state policies are protected under Twenty-first Amendment when they treat liquor produced out of state same as its domestic equivalent. Freeman v Corzine (2010, CA3 NJ) 629 F3d 146.

State has control over intoxicating liquors, and such control is not restricted by Commerce Clause. Dundalk Liquor Co. v Tawes (1952) 201 Md 58, 92 A2d 560.

States do not have plenary powers over all of matters relating to alcoholic beverages and when statute enacted pursuant to Twenty-First Amendment conflicts with enactment based on commerce clause, courts must balance policies furthered by each in order to determine which should prevail. Rice v Alcoholic Beverage Control Appeals Bd. (1978) 21 Cal 3d 431, 146 Cal Rptr 585, 579 P2d 476, 1978-1 CCH Trade Cases P 62054, 96 ALR3d 613.

State statute directing wholesalers to fix and maintain prices at which they will sell retailers alcoholic liquor which has been transported in interstate commerce does not impinge upon Congress' exclusive power to regulate commerce; Twenty-first Amendment accorded to states power to enact such statute unrestricted by commerce clause. Beckanstin v Liquor Control Com. (1953) 140 Conn 185, 99 A2d 119.

Twenty-first Amendment removes spiritous liquors and alcohol from protection of commerce clause to extent necessary to allow states to adopt and enforce appropriate laws and regulations dealing with subject and thus to burden interstate commerce to such extent; state may exercise its power under Twenty-first Amendment to regulate transportation through its territory of intoxicating liquors destined for another state. Atkins v Manning (1949) 206 Ga 219, 56 SE2d 260.

Kansas statutes which do not prohibit but only reasonably regulate transportation of intoxicating liquors across state and are not in conflict with any federal statutes regulating interstate shipments of intoxicating liquors, do not violate Commerce Clause or Twenty-first Amendment. State v Goldberg (1946) 161 Kan 174, 166 P2d 664.

State has power under Twenty-first Amendment to forbid all importations of liquor which do not comply with state regulations, and state is relieved of limitations of Commerce Clause. Ruppert v Morrison (1952) 117 Vt 83, 85 A2d 584.

6. Effect of Supremacy Clause

When state regulations squarely conflict with accomplishment and execution of full purposes of federal law, and state's central power under Twenty-First Amendment for regulating times, places, and manner under which liquor may be imported and sold is not directly implicated, balance between state and federal power tips decisively in favor of federal law, and enforcement of state statute requiring cable television operators to delete all advertisements for alcoholic beverages contained in out-of-state signals that are retransmitted is barred by Supremacy clause. Capital Cities Cable, Inc. v Crisp (1984) 467 US 691, 81 L Ed 2d 580, 104 S Ct 2694, 10 Media L R 1873.

7. Effect of equal protection clause

Since adoption of Twenty-first Amendment, equal protection clause of Fourteenth Amendment is not applicable to intoxicating liquor; under Twenty-first Amendment, discrimination against imported liquor is permissible even if it is not incident of reasonable regulation of liquor traffic. Mahoney v Joseph Triner Corp. (1938) 304 US 401, 82 L Ed 1424, 58 S Ct 952 (ovrld as stated in Bacchus Imports v Dias (1984) 468 US 263, 82 L Ed 2d 200, 104 S Ct 3049) and (criticized in Granholm v Heald (2005, US) 2005 US LEXIS 4174).

On basis of Twenty-first Amendment, state's discrimination between domestic and imported intoxicating liquors, or between imported intoxicating liquors, is not prohibited by equal protection clause. Indianapolis Brewing Co. v Liquor Control Com. (1939) 305 US 391, 83 L Ed 243, 59 S Ct 254 (criticized in Granholm v Heald (2005, US) 2005 US LEXIS 4174).

Invidious gender-based discrimination against males 18-20 years of age contained in state statutes prohibiting sale of 3.2 percent beer to males under age of 21 and to females under age of 18 is not saved from invalidation as denial of equal

protection of the laws in violation of Fourteenth Amendment by virtue of power of states to regulate alcoholic beverages under Twenty-first Amendment, which does not recognize, even indirectly, classifications based upon gender. Craig v Boren (1976) 429 US 190, 50 L Ed 2d 397, 97 S Ct 451, reh den (1977) 429 US 1124, 51 L Ed 2d 574, 97 S Ct 1161 and (ovrld as stated in Wilson v McBeath (1991, WD Tex) 1991 US Dist LEXIS 21124) and (criticized in UPS Worldwide Forwarding v United States Postal Serv. (1995, CA3 Del) 66 F3d 621) and (criticized in North Shore Concrete & Assoc. v City of New York (1998, ED NY) 1998 US Dist LEXIS 6785).

State statute imposing on nonresident brewers requirements which were not imposed on brewers who resided within state did not violate equal protection clause; classification recognized by Twenty-first Amendment cannot be deemed forbidden by Fourteenth Amendment. Ruppert v Liquor Control Com. (1952) 138 Conn 669, 88 A2d 388.

Twenty-first Amendment does not empower state to invade constitutional rights guaranteed by equal protection clause of Fourteenth Amendment; however, failure of state statute dealing with sales of liquor to include wines and malt beverages did not constitute invidious discrimination in violation of equal protection clause. Federal Distillers, Inc. v State (1975) 304 Minn 28, 229 NW2d 144, app dismd (1975) 423 US 908, 46 L Ed 2d 137, 96 S Ct 209, 96 S Ct 210.

8. Effect of due process clause

State's exercise of its power under Twenty-first Amendment to prohibit or regulate liquor traffic within its borders, insofar as such regulations discriminate against or impose special burdens on activities and persons involved in such traffic, is not generally limited by due process clause of Fourteenth Amendment, at least where state's regulations are reasonably appropriate to effectuate its Twenty-first Amendment powers. Indianapolis Brewing Co. v Liquor Control Com. (1939) 305 US 391, 83 L Ed 243, 59 S Ct 254 (criticized in Granholm v Heald (2005, US) 2005 US LEXIS 4174); Ziffrin, Inc. v Reeves (1939) 308 US 132, 84 L Ed 128, 60 S Ct 163 (criticized in Granholm v Heald (2005, US) 2005 US LEXIS 4174); State v Payne (1958) 183 Kan 396, 327 P2d 1071.

Twenty-First Amendment does not prevent Congress from exercising its spending power in conditioning a portion of state's federal highway funds on state's adoption of minimum drinking age of 21; while amendment in no way increased Congress' authority to legislate with respect to liquor, amendment did not limit or withdraw Congress' ability to exercise authority under its existing delegated powers, including spending power. South Dakota v Dole (1986, CA8 SD) 791 F2d 628, affd (1987) 483 US 203, 97 L Ed 2d 171, 107 S Ct 2793.

Twenty-first Amendment does not empower states to invade constitutional rights guaranteed by due process clause of Fourteenth Amendment; however, statute regulating sale of liquor did not employ constitutionally impermissible presumption violative of due process. Federal Distillers, Inc. v State (1975) 304 Minn 28, 229 NW2d 144, app dismd (1975) 423 US 908, 46 L Ed 2d 137, 96 S Ct 209, 96 S Ct 210.

9. Power over lands subject to federal jurisdiction

Though Twenty-first Amendment may have increased power of states as to regulation of importation of intoxicating liquors, it did not increase jurisdiction of state so as to extend to possession of national government lying within state, jurisdiction over which possession is in national government. Collins v Yosemite Park & Curry Co. (1938) 304 US 518, 82 L Ed 1502, 58 S Ct 1009; Johnson v Yellow Cab Transit Co. (1943, CA10 Okla) 137 F2d 274, affd (1944) 321 US 383, 88 L Ed 814, 64 S Ct 622.

With respect to concessionaire which operated hotels, camps, and stores in national park, exclusive jurisdiction was in United States, so that state was without power to regulate alcoholic beverages and Twenty-first Amendment was not applicable. Collins v Yosemite Park & Curry Co. (1938) 304 US 518, 82 L Ed 1502, 58 S Ct 1009.

Section 2 of Twenty-first Amendment was designed only to augment powers of state to regulate importation of liquor destined for use, distribution or consumption in its own territory, not to increase its jurisdiction; absent appropriate express reservation, Twenty-first Amendment confers no power on state to regulate, whether by licensing, taxation, or otherwise, importation of distilled spirits into territory over which United States exercises exclusive jurisdiction; state's interest in regulating importation into state of liquor purchased by individuals on military bases did not extend its territorial jurisdiction so as to permit regulation of transactions between distillers and post exchanges, ship stores, and officers' clubs; thus, state lacked power to regulate liquor sold to officers' clubs, ship stores, and post exchanges located on military bases within state under exclusive jurisdiction of United States. United States v State Tax Com. (1973) 412 US 363, 37 L Ed 2d 1, 93 S Ct 2183.

Twenty-first Amendment does not preclude imposition of state sales tax on liquor sales on military installations within state over which state shares concurrent jurisdiction with United States. United States v Tax Comm'n of Mississippi (1975) 421 US 599, 44 L Ed 2d 404, 95 S Ct 1872.

B. Particular Regulations

10. Slate monopoly on importation or sale

Twenty-first Amendment completely removed any possible doubt as to constitutionality of state statute vesting in state liquor control commission power to import liquor into state, and permitting no person to buy or sell liquor except by or through commission. State v Arluno (1936) 222 Iowa 1, 268 NW 179.

In view of Twenty-first Amendment, commerce clause of Constitution was not violated by state statute prohibiting sale of intoxicating liquor by private individuals or corporations, and providing for sale thereof by state through system of stores. State v Andre (1936) 101 Mont 366, 54 P2d 566.

11. Licenses, permits, fees or taxes

Under Twenty-first Amendment, state could constitutionally enact legislation providing that only common carriers licensed by state would have right to transport locally manufactured intoxicating liquors out of state. Ziffrin, Inc. v Reeves (1939) 308 US 132, 84 L Ed 128, 60 S Ct 163 (criticized in Granholm v Heald (2005, US) 2005 US LEXIS 4174).

State statute confining business of transporting intoxicating liquors through state to those who are licensed as common carriers is reasonable regulation. Cartlidge v Rainey

(1948, CA5 Tex) 168 F2d 841, cert den (1948) 335 US 885, 93 L Ed 424, 69 S Ct 237.

Although state was operating in its "core" power under § 2 of Twenty-First Amendment to Constitution, it did not retained power to implement laws governing transfer of liquor license despite existence of prior federal tax lien; issue involved primacy of federal tax lien over state license rather than regulation of liquor, and state's ability to regulate delivery or sale of liquor in state, as opposed to licenses, was not impinged. In re Kimura (1992, CA9) 969 F2d 806, 92 CDOS 6090, 92 Daily Journal DAR 9646, CCH Bankr L Rptr P 74773, 92-2 USTC P 50397, 70 AFTR 2d 5414.

Amendment did not give state right to condition transfer of liquor license upon satisfaction of claims of trade creditors prior to federal tax lien; case involved primacy of federal tax lien over state license and fact that license happened to regulate liquor establishment was coincidental. United States v Stone (In re Stone) (1993, CA9) 6 F3d 581, 93 CDOS 7049, 93 Daily Journal DAR 12042, 93-2 USTC P 50635, 72 AFTR 2d 6103, 93 TNT 202-15.

Indiana statute, which makes unlawful all direct shipments from out of state to in-state consumers by any person in business of selling alcoholic beverages in another state or country, is not unconstitutional. Bridenbaugh v Freeman-Wilson (2000, CA7 Ind) 227 F3d 848, cert den, motion gr (2001) 532 US 1002, 149 L Ed 2d 652, 121 S Ct 1672 and (criticized in Bolick v Roberts (2001, ED Va) 199 F Supp 2d 397) and (criticized in Dickerson v Bailey (2002, SD Tex) 212 F Supp 2d 673) and (criticized in Swedenburg v Kelly (2002, SD NY) 234 F Supp 2d 231).

Since state may, under Twenty-first Amendment, prohibit sale, transportation, and storage of liquors altogether, it may fix license which, if burden on interstate commerce at all, is less burden than prohibiting sale and transportation altogether. McCarroll v Clyde Collins Liquors, Inc. (1939) 198 Ark 896, 132 SW2d 19.

Arkansas statute requiring that persons transporting intoxicating liquor through or across state have state permit, and providing for confiscation in event of noncompliance, is valid under Twenty-first Amendment to Constitution of United States. Welborn v Morley (1951) 219 Ark 569, 243 SW2d 635.

State statute prohibiting liquor permittees and permittee backers of one class from being permittees and backers of any other class was constitutional exercise of state's legislative power under Twenty-first Amendment. Ruppert v Liquor Control Com. (1952) 138 Conn 669, 88 A2d 388.

Under Twenty-first Amendment, state could enact statute making it unlawful for any person to evade or attempt to evade payment of tax or duty on alcoholic liquor or to possess any cask or package of such liquor without having thereon each mark or stamp required by law; even if statute was designed only to effectuate collection of taxes and had no relation to protection of public health, safety, or morals, state could, under Twenty-first Amendment, discriminate in favor of alcoholic liquor processed within state as against alcoholic liquor processed elsewhere, and such discrimination was permissible although it was not incident to reasonable regulation of liquor traffic or to protection of health, safety, or general welfare of its citizens. State v Payne (1958) 183 Kan 396, 327 P2d 1071.

Under Twenty-first Amendment, state legislatures, subject to constitutional restrictions, may lawfully grant right to engage in traffic of liquor to certain class or classes of persons and withhold it from others, and no one may complain because liquor legislation has denied him privilege of engaging in liquor traffic. Brown Distributing Co. v Oklahoma Alcoholic Beverage Control Board (1979, Okla) 597 P2d 324.

Statute establishing special exemption to quota restrictions on liquor licenses was reasonable decision by legislature to increase number of available liquor licenses, within scope of state's broad power over regulation of liquor traffic under Twenty First Amendment. Moedern v McGinnis (1975) 70 Wis 2d 1056, 236 NW2d 240.

Unpublished Opinions

Unpublished: District court's determination that certain Maryland liquor regulations did not promote temperance because they did not raise liquor and wine prices was clearly erroneous; determination was based on comparison of wholesale and retail liquor prices in Maryland and Delaware, but district court failed to take into account whether difference in two states' excise tax rates affected price comparison analysis. TFWS, Inc. v Schaefer (2005, CA4 Md) 147 Fed Appx 330, 2005-2 CCH Trade Cases ¶ 74885.

Unpublished: Where petitioner attorney challenged forfeiture of defendant's liquor license and argued district court erred in finding attorney had no standing under Twenty-First Amendment, argument was rejected because attorney's injury, if any, stemmed from his failure to establish right to license in first instance, not state's inability to regulate alcohol within its borders and attorney's claim fell under 21 USCS § 853, out of Twenty-First Amendment's zone of interests, which was state's interests. United States v Carrie (2006, CA11 Fla) 2006 US App LEXIS 28500.

12.--Effect of export-import clause

State of Kentucky could not require importer of Scotch whiskey to pay tax of ten cents on each proof gallon of whiskey which it imported from Scotland, which tax was collected while whiskey remained in unbroken packages in hands of original importer and prior to resale or use by importer; export-import clause of Federal Constitution (Art I, § 10, cl 2), which prohibits states from imposing duties or imposts on imports or exports, except as may be absolutely necessary for executing state inspection laws, precludes state from exercising its Twenty-first Amendment powers over intoxicating liquors by imposing tax on imported liquors while in hands of importer in unbroken, original packages, prior to resale or use by importer within state. Department of Revenue v James B. Beam Distilling Co. (1964) 377 US 341, 12 L Ed 2d 362, 84 S Ct 1247.

13. Place of sale

Twenty-First Amendment does not justify state statute which vests in governing bodies of churches and schools power effectively to veto applications for liquor licenses within 500 foot radius of church or school, where state has delegated to churches power relating to liquor sales; state can not exercise its power under Twenty-First Amendment in way that impinges upon establishment clause of First Amendment. Larkin v Grendel's Den, Inc. (1982) 459 US 116, 74 L Ed 2d 297, 103 S Ct 505.

14.--Employment of women

Statute prohibiting women from tending bar except when they are licensees, wives of licensees, or, singly or with their husbands, sole shareholders of corporation holding license, has nothing to do with flow of alcoholic beverages into state and therefore does not fall within literal language of Twenty-first Amendment; notwithstanding Twenty-first Amendment, state may not prohibit employment of women bartenders, because to do so would violate provision of Federal Civil Rights Act (42 USCS § 2000-2(a)) prohibiting discrimination in employment on basis of sex. Sail'er Inn, Inc. v Kirby (1971) 5 Cal 3d 1, 95 Cal Rptr 329, 485 P2d 529, 3 BNA FEP Cas 550, 3 CCH EPD P 8222, 46 ALR3d 351.

15.--Entertainment

Notwithstanding claim of violation of First and Fourteenth Amendment guarantees of freedom of expression, regulations by state department of alcoholic beverage control, prohibiting certain sexually explicit live entertainment or films in licensed bars and nightclubs, were not unconstitutional, in view of state's regulatory powers under Twenty-first Amendment; although some performances to which regulations addressed themselves were within limits of constitutional protection of freedom of expression, state did not forbid such performances across board, but merely proscribed such performances in establishments which it licensed to sell liquor by the drink; department's conclusion, embodied in regulations, that certain sexual performances and dispensation of liquor by the drink ought not to occur simultaneously at premises which had licenses, was not irrational one. California v La Rue (1972) 409 US 109, 34 L Ed 2d 342, 93 S Ct 390, reh den (1973) 410 US 948, 35 L Ed 2d 615, 93 S Ct 1351 and (ovrld in part by 44 Liquormart v Rhode Island (1996) 517 US 484, 134 L Ed 2d 711, 116 S Ct 1495, 96 CDOS 3338, 24 Media L R 1673, 9 FLW Fed S 569) and (ovrld in part as stated in J&B Social Club # 1 v City of Mobile (1996, SD Ala) 966 F Supp 1131) and (ovrld in part as stated in WFO Corp. v Ohio Liquor Control Comm'n (1996, Ohio App, Franklin Co) 1996 Ohio App LEXIS 4788) and (ovrld in part as stated in Goldrush II v City of Marietta (1997) 267 Ga 683, 482 SE2d 347, 97 Fulton County D R 874) and (ovrld as stated in J.L. Spoons, Inc. v City of Brunswick (1998, ND Ohio) 181 FRD 354) and (ovrld in part as stated in Purple Orchid v Pennsylvania State Police, Bureau of Liquor Control Enforcement (1998, Pa Cmwlth) 721 A2d 84) and (ovrld in part as stated in Salt Lake City v Wood (1999, Utah App) 991 P2d 595, 381 Utah Adv Rep 33) and (ovrld in part as stated in El Marocco Club, Inc. v Richardson (2000, RI) 746 A2d 1228) and (criticized in Giovani Carandola, Ltd. v Bason (2002, CA4 NC) 303 F3d 507) and (ovrld in part as stated in Rising Sun Entm't, Inc. v Bureau of Liquor Control Enforcement (2003, Pa Cmwlth) 829 A2d 1214).

State statute prohibiting nude dancing in establishments licensed by state to sell liquor for on-premises consumption does not violate First Amendment since statute is within state's power conferred by Twenty-First Amendment to regulate sale of liquor within its boundaries; state's power to ban sale of alcoholic beverages entirely includes lesser power to ban sale of liquor on premises where topless dancing occurs and whatever artistic or communicative value that might attach to topless dancing is overcome by state's exercise of its broad powers arising under Twenty-First Amendment. New York State Liquor Authority v Bellanca (1981) 452 US 714, 69 L Ed 2d 357, 101 S Ct 2599, 7 Media L R 1500 (ovrld in part by 44 Liquormart v Rhode Island (1996) 517 US 484, 134 L Ed 2d 711, 116 S Ct 1495, 96 CDOS 3338, 24 Media L R 1673, 9 FLW Fed S 569) and (ovrld in part as stated in J&B Social Club # 1 v City of Mobile (1996, SD Ala) 966 F Supp 1131).

City ordinance prohibiting performance of nude or nearly nude dancing on premises of business establishment licensed to sell liquor for consumption on premises is constitutional under Federal Constitution's Twenty-first Amendment, even where it is local voters rather than city or state who have authority under state constitution to determine whether liquor may be sold in city; fact that state has delegated one portion of its regulatory power under Twenty-first Amendment to electorate--power to decide if liquor may be served in local establishments--does not mean that each liquor licensing decision must be made by plebiscite. Newport v Iacobucci (1986) 479 US 92, 93 L Ed 2d 334, 107 S Ct 383, reh den (1987) 479 US 1047, 93 L Ed 2d 862, 107 S Ct 913 and (ovrld in part by 44 Liquormart v Rhode Island (1996) 517 US 484, 134 L Ed 2d 711, 116 S Ct 1495, 96 CDOS 3338, 24 Media L R 1673, 9 FLW Fed S 569) and (ovrld in part as stated in J&B Social Club # 1 v City of Mobile (1996, SD Ala) 966 F Supp 1131).

Municipal ordinance, banning topless dancing in every "cabaret, bar or lounge, dance hall, discotheque, restaurant or coffee shop within municipal boundaries," was not adequately limited in its impact so as to be validated by Twenty-first Amendment; Amendment does not justify regulatory control over places that serve only food or which provide entertainment but not alcoholic beverages. Salem Inn, Inc. v Frank (1975, CA2 NY) 522 F2d 1045.

County commission had authority to enact ordinance prohibiting nude or seminude dancing under state's delegation of Twenty-first Amendment powers to municipalities and counties; presumption exists in favor of validity of regulation under Twenty-first Amendment, and by enacting ordinance county commissioners did not act with total irrationality or invidious discrimination in controlling distribution and dispensation of liquor within their jurisdiction. Fillingim v Boone (1988, CA11 Fla) 835 F2d 1389.

Under Twenty-first Amendment, town ordinance prohibiting topless dancing in establishments dealing in alcoholic beverages is constitutional; town council's findings provided sufficient rationale for ordinance. Lanier v Newton (1988, CA11 Ala) 842 F2d 253.

Ordinance prohibiting topless dancing in establishments dealing in alcoholic beverages falls within ambit of Twenty-first Amendment and is not unconstitutionally overbroad. Lanier v Newton (1988, CA11 Ala) 842 F2d 253.

Because of state's broad powers under Twenty-first Amendment, ordinance prohibiting exotic dancers in bar did not violate bar owner's First Amendment rights, for purposes of action by bar owner seeking zoning classification which would permit him to display go-go girls in drinking establishment. Walker v Kansas City (1990, CA8 Mo) 911 F2d 80, reh den, en banc (1990, CA8) 919 F2d 1339 and cert den (1991) 500 US 941, 114 L Ed 2d 476, 111 S Ct 2234.

Ordinance prohibiting exposure of certain body parts in establishments dealing in alcohol was properly analyzed under Twenty-First Amendment rather than First Amendment, under municipality's broad powers to exercise regulatory power under Twenty-First Amendment. Geaneas v Willets (1990, CA11 Fla) 911 F2d 579, cert den (1991) 499 US 955, 113 L Ed 2d 484, 111 S Ct 1431.

County ordinance regulating nude dancing in businesses serving liquor was not unconstitutionally overbroad because

it required more clothing be worn by erotic dancers in establishment serving liquor than by citizens on street or beaches; state's power to regulate alcohol is broad and outweighs marginal First Amendment interest in totally nude dancing. Dodger's Bar & Grill v Johnson County Bd. of County Comm'rs (1994, CA10 Kan) 32 F3d 1436.

Resolution of board of county commissioners regulating entertainment within 1000 feet of premises licensed to serve alcoholic beverages was within ambit of Twenty-First Amendment and state's police power since there is reasonable relationship between area immediately adjacent to licensed premises and licensed premises. Dodger's Bar & Grill v Johnson County Bd. of County Comm'rs (1996, CA10 Kan) 98 F3d 1262.

Twenty-first Amendment has been recognized as conferring on states something more than normal authority inherent in public power; although amendment did not nullify other provisions of Constitution whenever state seeks to regulate sale of liquor, it did serve to "strengthen" state's authority in that particular area; however state's authority to control and regulate sale of alcoholic beverages is designed to protect from abuses relating to alcohol consumption and is not license to censor whatever occurs at premises authorized to sell alcohol; therefore, state statute prohibiting topless dancing in licensed drinking establishment is not authorized by state's authority under Amendment. Bellanca v New York State Liquor Authority (1980) 50 NY2d 524, 429 NYS2d 616, 407 NE2d 460, reh den (1980) 51 NY2d 879 and revd (1981) 452 US 714, 69 L Ed 2d 357, 101 S Ct 2599, 7 Media L R 1500 (ovrld in part by 44 Liquormart v Rhode Island (1996) 517 US 484, 134 L Ed 2d 711, 116 S Ct 1495, 96 CDOS 3338, 24 Media L R 1673, 9 FLW Fed S 569) and (ovrld in part as stated in J&B Social Club # 1 v City of Mobile (1996, SD Ala) 966 F Supp 1131).

In view of grant to states by Twenty-first Amendment of substantial power to regulate liquor industry, suspension of tavern liquor license by state liquor control commission for improper conduct in violation of commission regulation, in permitting female to dance with insufficient attire, consisting of pasties which covered only nipple and areola portion of her breasts, overall effect of which was to portray female as dancing in topless state, did not violate licensee's First Amendment rights of free expression. Salem v Liquor Control Com. (1973) 34 Ohio St 2d 244, 63 Ohio Ops 2d 387, 298 NE2d 138 (criticized in Dayton Tavern v Liquor Control Comm'n (1999, Ohio App, Montgomery Co) 1999 Ohio App LEXIS 4006).

16. Prices

Commerce Clause is violated through operation of beer price affirmation provisions of state liquor control act which prevent brewer from selling below state wholesale price to any wholesaler in any neighboring state since effect of provisions is to control minimum price that may be charged by non-state brewer to non-state wholesaler in any sale outside of state; nothing in Twenty-First Amendment permits state to set minimum prices for sale of beer in any other state. United States Brewers Asso. v Healy (1982, CA2 Conn) 692 F2d 275, 1982-83 CCH Trade Cases P 65023, affd (1983) 464 US 909, 78 L Ed 2d 248, 104 S Ct 265, 1983-2 CCH Trade Cases P 65661.

Under 21st Amendment, state, as part of its regulatory scheme for sale of liquor, may constitutionally insist that liquor prices to domestic wholesalers and retailers be as low as prices offered elsewhere in country. Brown-Forman Corp. v Tennessee Alcoholic Beverage Comm'n (1988, CA6 Tenn) 860 F2d 1354, vacated, remanded (1989) 492 US 902, 106 L Ed 2d 559, 109 S Ct 3208.

Because State of Washington failed to carry its burden on Twenty-first Amendment defense, post-and-hold scheme of Wash. Rev. Code § 66.28.180(2)(a) and Wash. Admin. Code §§ 314-20-100(2), (5); 314-24-190(2), (5), was not saved from preemption under Sherman Act. Costco Wholesale Corp. v Maleng (2008, CA9 Wash) 514 F3d 915, 2008-1 CCH Trade Cases P 76021.

In action against Washington State Liquor Control Board by corporation that operated international chain of membership warehouses, district court properly held that post-and-hold scheme under Wash. Rev. Code § 66.28.180(2)(a) and Wash. Admin. Code §§ 314-20-100(2), (5), 314-24-190(2), (5) was hybrid restraint of trade, that it was per se violation of Sherman Act, 15 USCS § 1, that restraint was subject to preemption under Sherman Act, and that provisions could not be saved by operation of Washington's powers under U.S. Const. amend. XXI, § 2. Costco Wholesale Corp. v Maleng (2008, CA9 Wash) 522 F3d 874, 2008-1 CCH Trade Cases P 76021.

State statute which directs liquor wholesalers to fix and maintain prices at which they will sell to retailers alcoholic liquor which has been transported in interstate commerce is constitutional under Twenty-first Amendment. Beckanstin v Liquor Control Com. (1953) 140 Conn 185, 99 A2d 119.

Neither Commerce Clause (Art 1, § 8, cl 3) nor Twenty-First Amendment are violated by provision of state's Discrimination in Selling Act, which provides that no brand of alcoholic liquor could be sold by manufacturers to state liquor wholesalers at any price higher than price sold to any liquor wholesaler anywhere in United States or District of Columbia during immediately preceding calendar month. United States Brewers Ass'n v Director of New Mexico Dep't of Alcoholic Beverage Control (1983) 100 NM 216, 668 P2d 1093, 1983-2 CCH Trade Cases P 65750, app dismd (1984) 465 US 1093, 80 L Ed 2d 115, 104 S Ct 1581, 1984-1 CCH Trade Cases P 65902.

If state for its own sufficient reasons deems it desirable policy to standardize price of liquor within its borders, either by direct price-fixing statute or by permissive sanction of such price fixing, in order to discourage temptations of cheap liquor due to cut-throat competition, Twenty-first Amendment gives state such power, notwithstanding commerce clause. Pompei Winery, Inc. v Board of Liquor Control (1957) 167 Ohio St 61, 4 Ohio Ops 2d 29, 146 NE2d 430, cert den (1958) 356 US 937, 2 L Ed 2d 813, 78 S Ct 780, reh den (1958) 357 US 915, 2 L Ed 2d 1163, 78 S Ct 1147.

17. Advertising

State's requirement that cable television operators in state delete all advertisements for alcoholic beverages contained in out-of-state signals that they retransmit by cable to their subscribers is pre-empted by federal law, and is not saved from pre-emption by Twenty-First Amendment. Capital Cities Cable, Inc. v Crisp (1984) 467 US 691, 81 L Ed 2d 580, 104 S Ct 2694, 10 Media L R 1873.

State's complete ban on liquor price advertising abridged speech in violation of First Amendment where State failed to carry burden of justifying complete ban, and ban could not be saved by Twenty-first Amendment which does not qualify First Amendment's prohibition against laws abridging freedom of

speech, but rather is limit on commerce clause. 44 Liquormart v Rhode Island (1996) 517 US 484, 134 L Ed 2d 711, 116 S Ct 1495, 96 CDOS 3338, 24 Media L R 1673, 9 FLW Fed S 569.

First Amendment rights of state advertising media are not violated by intrastate ban on advertising of alcoholic beverages except for signs in interior of licensed sales premises which are not visible from exterior, since there is sufficient reason to believe that advertising and consumption are linked so as to justify ban, whether or not concrete scientific evidence exists to that effect. Dunagin v Oxford (1983, CA5 Miss) 718 F2d 738, 10 Media L R 1001, cert den (1984) 467 US 1259, 82 L Ed 2d 855, 104 S Ct 3553, 104 S Ct 3554 and (criticized in United States v Jones (1997, CA6 Tenn) 107 F3d 1147, 46 Fed Rules Evid Serv 885, 1997 FED App 82P).

Twenty-first Amendment gives state power to prohibit advertising of sale of alcoholic beverages, including advertising via television, free of limitations of commerce clause of Constitution (Article I, § 8, clause 3,). Okla. Alcoholic Bev. Control Bd. v Heublein Wines, Int'l (1977, Okla) 566 P2d 1158.

18. Containers and labels

Even if distiller of whiskey had met all federal requirements with respect to bottles and labels of liquor moving in interstate commerce, there was no sound reason why additional state regulation of bottles and labels to further legitimate local policy could be said to run afoul of commerce clause, in view of vast reservoir of power bestowed upon states, under Twenty-first Amendment, to regulate liquor traffic and protect against its evils within their borders pretty much as they see fit. Boller Beverages, Inc. v Davis (1962) 38 NJ 138, 183 A2d 64.

State statute prohibiting sale of beer and ale in nonreturnable glass containers was valid under Twenty-first Amendment, even though statute applied to all sales within state without reference to import; it is not necessary that statute contain words "import" or "importation" to come within purview of Twenty-first Amendment. Anchor Hocking Glass Corp. v Barber (1954) 118 Vt 206, 105 A2d 271.

19. Retaliatory prohibition of importation or sale

Michigan statute prohibiting local dealers in beer from selling any beer manufactured in state which, by its law, discriminated against beer manufactured in Michigan, was valid; since adoption of Twenty-first Amendment, right of state to prohibit or regulate importation of intoxicating liquor was not limited by commerce clause, and discrimination between domestic and imported intoxicating liquors, or between imported intoxicating liquors, was not protected by equal protection clause. Indianapolis Brewing Co. v Liquor Control Com. (1939) 305 US 391, 83 L Ed 243, 59 S Ct 254 (criticized in Granholm v Heald (2005, US) 2005 US LEXIS 4174).

Under Twenty-first Amendment, Missouri could constitutionally prohibit transportation or importation into state, or purchase, sale, receipt, or possession therein by any licensee, of any alcoholic liquor manufactured in state which, by its law, discriminated against liquor manufactured in Missouri. Joseph S. Finch & Co. v McKittrick (1939) 305 US 395, 83 L Ed 246, 59 S Ct 256 (ovrld as stated in In re G. Heileman Brewing Co. (1991, BC SD NY) 128 BR 876, 21 BCD 1469, 25 CBC2d 492, CCH Bankr L Rptr P 74077) and (criticized in Granholm v Heald (2005, US) 2005 US LEXIS 4174).

Local preference provision located in N.C. Gen. Stat. § 18B-1101(3) was declared unconstitutional as discriminatory against interstate commerce in violation of U.S. Const. art. I, § 8, cl. 3, and provision was not saved by U.S. Const. amend. XXI. Beskind v Easley (2003, CA4 NC) 325 F3d 506, 116 ALR5th 665 (criticized in Swedenburg v Kelly (2004, CA2 NY) 358 F3d 223).

20. Prohibition of importation of liquor lacking patent registration

Under Twenty-first Amendment, state could constitutionally prohibit manufacturer or wholesaler from importing any brand of intoxicating liquors, containing more than 25 percent of alcohol by volume, ready for sale without further processing, unless such brand was duly registered in United States Patent Office; although such statute discriminated in favor of liquor processed within state as against liquor completely processed elsewhere, discrimination against imported liquor was permissible under Twenty-first Amendment even if not incident of reasonable regulation of liquor traffic. Mahoney v Joseph Triner Corp. (1938) 304 US 401, 82 L Ed 1424, 58 S Ct 952 (ovrld as stated in Bacchus Imports v Dias (1984) 468 US 263, 82 L Ed 2d 200, 104 S Ct 3049) and (criticized in Granholm v Heald (2005, US) 2005 US LEXIS 4174).

Twenty-first amendment had no bearing on constitutional challenges to state requirements for local-option initiatives regarding whether county would be "wet" or "dry," since purpose of amendment was to create exception to commerce clause so that it is not relevant to states' power to pass laws that would otherwise violate other constitutional provisions. Wellwood v Johnson ex rel. Bryant (1999, CA8 Ark) 172 F3d 1007.

21. Miscellaneous

Provision of state liquor control statute, stating that monthly price schedules for sales of liquor to wholesalers filed by liquor producers with state liquor authority must be accompanied by affirmation that prices are no higher than lowest price at which sales will be made anywhere in United States during same month, is not valid exercise of state's powers under Twenty-First Amendment so as to save provision from invalidation under commerce clause, since it attempts to regulate sales in other states of liquor to be consumed in other states. Brown-Forman Distillers Corp. v New York State Liquor Authority (1986) 476 US 573, 90 L Ed 2d 552, 106 S Ct 2080 (criticized in Grant's Dairy -- Maine, LLC v Commissioner of Me. Dep't of Agric., Food & Rural Resources (2000, CA1 Me) 232 F3d 8).

Federal Constitution's Twenty-First Amendment, which reserves power to states to impose restrictions on sale of liquor, does not provide independent constitutional bar to national minimum drinking age statute (23 USCS § 158) which directs Federal Secretary of Transportation to withhold percentage of otherwise allocable federal highway funds from states in which it is lawful for person who is less than 21 years of age to purchase or publicly possess any alcoholic beverage, where statute is otherwise valid exercise of Congress' power under Federal Constitution's spending clause; Twenty-First Amendment does not bar such conditional grant of federal funds, since (1) statute does not induce states to engage in unconstitutional activities, and (2) percentage of highway funds that are withheld from state with drinking age below 21 is relatively small, so that Congress' program does not coerce states to enact higher minimum drinking ages than they

would otherwise choose. South Dakota v Dole (1987) 483 US 203, 97 L Ed 2d 171, 107 S Ct 2793.

State liquor reporting and labeling requirement came within core of state's power under Twenty First Amendment, as applied to liquor destined for resale at 2 military bases located within state, over which bases Federal Government and state exercised concurrent jurisdiction. North Dakota v United States (1990) 495 US 423, 109 L Ed 2d 420, 110 S Ct 1986, 36 CCF P 75866 (criticized in Swedenburg v Kelly (2000, SD NY) 2000 US Dist LEXIS 12758).

Twenty-first Amendment does not enlarge state jurisdiction over Indian reservation liquor transactions. Rehner v Rice (1982, CA9 Cal) 678 F2d 1340, revd on other grounds, remanded (1983) 463 US 713, 77 L Ed 2d 961, 103 S Ct 3291, reh den (1983) 464 US 874, 78 L Ed 2d 185, 104 S Ct 209.

Commerce Clause (Art 1, § 8, cl 3) is not violated by portion of state alcoholic beverage code which prohibits holder of package store permit and retail dealer's off-premise license, from selling wholesale quantities of beer to out of state customers for resale out of state, since provisions are consistent with state's authority under Twenty-First Amendment. S.A. S.A. Discount Liquor, Inc. v Texas Alcoholic Beverage Com. (1983, CA5 Tex) 709 F2d 291.

Ohio statutes permitting "local option" elections whereby local voters, via initiative and referendum, may forbid certain sales of alcoholic beverages otherwise authorized by licenses issued by state department of liquor control, did not violate due process and equal protection since no notice or opportunity to be heard need proceed any legislative action of general applicability, local voters possess legitimate interest in regulating types, modes, and circumstances of alcohol sales in their neighborhoods, and local option statutes and referenda which may be adopted under them create sensible legislative distinctions which rationally further legitimate public interests. 37712, Inc. v Ohio Dep't of Liquor Control (1997, CA6 Ohio) 113 F3d 614, 1997 FED App 158P.

Indiana statute, which makes unlawful all direct shipments from out of state to in-state consumers by any person in business of selling alcoholic beverages in another state or country, is not unconstitutional. Bridenbaugh v Freeman-Wilson (2000, CA7 Ind) 227 F3d 848, cert den, motion gr (2001) 532 US 1002, 149 L Ed 2d 652, 121 S Ct 1672 and (criticized in Bolick v Roberts (2001, ED Va) 199 F Supp 2d 397) and (criticized in Dickerson v Bailey (2002, SD Tex) 212 F Supp 2d 673) and (criticized in Swedenburg v Kelly (2002, SD NY) 234 F Supp 2d 231).

Although provision in contract between brewer and beer distributor requiring that all disputes be arbitrated in Poland was invalid under Illinois Beer Industry Fair Dealing Act, 815 Ill. Comp. Stat. Ann. 720/1 -720/9, provision was valid and enforceable under Federal Arbitration Act and Convention on Recognition and Enforcement of Foreign Arbitral Awards, Dec. 29, 1970, 21 U.S.T. 2517, implemented by 9 USCS §§ 201-208, and Twenty-first Amendment did not give state authority to disregard federal statutes or international treaties with respect to liquor business; consequently, forum selection clause was enforceable and district court erred in denying brewer's request to stay litigation while matter was arbitrated in Poland. Stawski Distrib. Co. v Browary Zywiec S.A. (2003, CA7 Ill) 349 F3d 1023, reh den, reh, en banc, den (2003, CA7 Ill) 2003 US App LEXIS 25407 and cert den (2004) 541 US 1010, 158 L Ed 2d 620, 124 S Ct 2069.

U.S. Const. amend. XXI, § 2, does not qualify constitutional prohibition against laws abridging freedom of speech embodied in U.S. Const. amend. I; accordingly, in impermissibly regulating protected commercial speech, N.Y. Alco. Bev. Cont. Law § 102(1)(a) is overbroad and violates U.S. Const. amend. I. Swedenburg v Kelly (2004, CA2 NY) 358 F3d 223, revd, remanded (2005, US) 2005 US LEXIS 4174.

R.I. Gen. Laws § 3-5-11.1(a), enacted under defendant Rhode Island's power under Twenty-First Amendment to protect consumer choice and ensure equitable pricing of retail liquor products, was economic in nature and did not utilize suspect classifications or trench upon fundamental rights; plaintiff package store franchisor failed to show it was irrational for defendant Rhode Island to enact measures aimed at preventing anticompetitive practices by ensuring that holders of Class A liquor licenses operated independently and, thus, district court's denial of preliminary injunction prohibiting enforcement of statute was upheld. Wine & Spirits Retailers, Inc. v Rhode Island (2005, CA1 RI) 418 F3d 36.

In contract case in which beer wholesaler appealed district court's dismissal of its case against Russian brewer based on forum selection clause in parties' agreement, wholesaler, on appeal, obliquely suggested that N.Y. Alco. Bev. Cont. Law § 55-c § 55-c was enacted pursuant to powers reserved to states under U.S. Const. Amend, XXI, to promote public's interest in fair, efficient and competitive distribution of malt beverage products via regulating relationship between brewer and distributor; wholesaler's contention concerning Twenty-first Amendment consisted of only one sentence, which was not sufficient to preserve argument for appellate review. S.K.I. Beer Corp. v Baltika Brewery (2010, CA2 NY) 612 F3d 705.

Although District of Columbia ordinance forbidding alcoholic beverage licensees from storing beverages outside District is facially inconsistent with commerce clause, it is constitutional as valid exercise of District's core power under Twenty-first Amendment. Milton S. Kronheim & Co. v District of Columbia (1996, App DC) 319 US App DC 389, 91 F3d 193, cert den (1997) 520 US 1186, 137 L Ed 2d 681, 117 S Ct 1468.

Supremacy clause of United States Constitution made tax lien priorities accorded United States under 26 USCS § 6323 control over any priority scheme established by state law; statute providing scheme of priorities among private creditors of liquor licensees in no way related to state's interest in regulating consumption and distribution of alcohol, with respect to which Twenty-first Amendment exempted states from traditional commerce clause limitations. Business Title Corp. v Division of Labor Law Enforcement (1976, App) 17 Cal 3d 878, 132 Cal Rptr 454, 553 P2d 614, 76-2 USTC P 9644, 38 AFTR 2d 5734.

CONSTITUTION OF THE STATE OF CALIFORNIA

ARTICLE XX

MISCELLANEOUS SUBJECTS

§ 22. Alcoholic beverage control

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 beverage 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.

Adopted November 8, 1932. Amended November 6, 1934; November 2, 1954, operative January 1, 1955; November 6, 1956, operative January 1, 1957.

Editor's Notes—Const Art XXIV § 4, referred to in the fourth paragraph of § 22, was repealed June 8, 1976. See Const Art VII § 4.

Former Sections:

There was another section of this number which was adopted November 6, 1934 and repealed June 8, 1976. See Const Art XV § 1.

Amendments:

1934 Amendment: Substituted the section for the former section which read: "In the event of the repeal of the State Prohibition Enforcement Law, commonly known as the Wright Act, and if and when it shall become lawful under the Constitution and laws of the United States to manufacture, sell, purchase, possess or transport intoxicating liquor for beverage purposes within the United States, the State of

California, subject to the internal revenue laws of the United States, shall have the exclusive right and power to control, license and regulate the manufacture, sale, purchase, possession, transportation and disposition of intoxicating liquor 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 control and regulate the importation into and the exportation from the State of intoxicating liquor; provided, however, no public saloon, public bar or barroom or other public drinking place where intoxicating liquors to be used for any purpose shall be kept, bought, sold, consumed or otherwise disposed of, shall ever be established, maintained or operated within the State; provided, further, subject to the above provisions, that in hotels, boarding houses, restaurants, cafes, cafeterias and other public eating places, wines and beer may be served and consumed with meals furnished in good faith to the guests and patrons thereof, and the Legislature may authorize, subject to reasonable restrictions, the sale in retail stores of liquor contained in original packages, where such liquor is not to be consumed on the premises where sold."

1954 Amendment: Substituted the section for the former section which read: "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 intoxicating liquor 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 intoxicating liquor. Intoxicating liquors, other than beers, shall not be consumed, bought, sold, or otherwise disposed of for consumption on the premises, in any public saloon, public bar or public barroom within the State; provided, however, that subject to the aforesaid restriction, all intoxicating liquors may be kept and may be bought, sold, served, consumed, and otherwise disposed of in any bona fide hotel, restaurant, cafe, cafeteria, railroad dining or club car, passenger ship, or other public eating place, or in any bona fide club after such club has been lawfully operated for not less than one year. The State Board of Equalization shall have the exclusive power to license the manufacture, importation and sale of intoxicating liquors in this State, and to collect license fees or occupation taxes on account thereof and shall have the power, in its discretion, to deny or revoke any specific liquor license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals. It shall be unlawful for any person other than a licensee of said board to manufacture, import or sell intoxicating liquors in this State. Until the Legislature shall otherwise provide, the privilege of keeping, buying, selling, serving, and otherwise disposing of intoxicating liquors 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 so–called State Liquor Control Act, California Statutes 1933, Chapter 658, 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 intoxicating liquors other than beers and wines, shall be $250 per year, or $62.50 per quarter–annum for seasonal businesses, subject to the power of the State Board of Equalization to change such fees.

"The Legislature may authorize, subject to reasonable restrictions, the sale in retail stores of liquor contained in the original packages, where such liquor is not to be consumed on the premises where sold.

"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."

1956 Amendment: (1) Generally substituted "alcoholic beverages" for "intoxicating liquor", "intoxicating liquors", or "liquor"; **(2)** substituted the second paragraph for the former second paragraph which read: "Intoxicating liquors, other than beers, shall not be consumed, bought, sold, or otherwise disposed of for consumption on the premises, in any public saloon, public bar or public barroom within the State; provided, however, that subject to the aforesaid restriction, all intoxicating liquors may be kept and may be bought, sold, served, consumed, and otherwise disposed of in any bona fide hotel, restaurant, cafe, cafeteria, railroad dining or club car, passenger ship, or other public eating place, or in any bona fide club after such club has been lawfully operated for not less than one year."; **(3)** added the third paragraph; **(4)** substituted "10" for "ten" in the eighth paragraph; **(5)** added "; 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" in eleventh paragraph; and **(6)** substituted "1957" for "1955" in the last paragraph.

Cross References:

Alcoholic Beverage Control Act: B & P C §§ 23000 et seq.

Department of Alcoholic Beverage Control: B & P C §§ 23049 et seq.

Department as succeeding State Board of Equalization except in regard to excise taxes: B & P C § 23051.

Alcoholic Beverage Control Appeals Board: B & P C §§ 23075 et seq.

Appeals from department's decisions: B & P C §§ 23080 et seq.

Judicial review of Appeals Board's decisions: B & P C §§ 23090–23090.7.

Licenses and fees under Alcoholic Beverage Control Act: B & P C §§ 23300 et seq.

Illicit furnishing of alcoholic beverages to minors: B & P C §§ 25658 et seq.

Furnishing false ID–card to persons under 21 years of age: B & P C § 25660.5.

Local entity's apportionment share of license fees: B & P C § 25761.

Liability for determination as to issuance, denial, suspension or revocation of licenses: Gov C § 818.4.

Illicit sale of intoxicating liquors near certain institutions: Pen C §§ 172 et seq.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses."

Cal Points & Authorities (Matthew Bender) ch 15 "Alcoholic Beverage Licensing."

1 Witkin Summary (10th ed) Contracts § 456.

8 Witkin Summary (10th ed) Constitutional Law §§ 989, 992.

9 Witkin Summary (10th ed) Taxation § 377.

Witkin Procedure (4th ed) Courts § 167.

Witkin Summary (9th ed) Contracts § 466.

Cal Jur 3d (Rev) Criminal Law § 1697.

Alcohol beverage tax: 18 Cal Code Reg §§ 2500 et seq.

Transferring retail liquor licenses in California. 6 CEB Bus L Practioner No. 1 p 1.

Congressional power over interstate commerce: US Constitution Art I § 8.

State power to regulate importation of intoxicating liquors: US Constitution Amendment XXI.

Federal criminal sanctions for illegal transportation of liquor: 18 USCS §§ 1261 et seq.

Federal regulation of imported liquors: 19 USCS § 467.

Federal excise taxes on liquor: 26 USCS §§ 5001 et seq.

Federal regulation of transportation of liquor in interstate commerce: 27 USCS §§ 121 et seq.

Cal. Legal Forms, (Matthew Bender) §§ 18.10[1], 18.21[2].

Law Review Articles:

May private clubs lawfully discriminate? 51 LA BJ 9.

Attorney General's Opinions:

State Board of Equalization is under no legal compulsion to issue additional licenses merely because of an increase in population of a given county. 22 Ops. Cal. Atty. Gen. 187.

Rule prohibiting retail licensee from permitting any female employee to accept from a patron upon the licensed premises a proffered drink of alcoholic beverage is within rule–making power of State Board of Equalization. 23 Ops. Cal. Atty. Gen. 199.

Regulation prohibiting an ownership interest, direct or indirect, upon part of any law enforcement official in any license issued under Alcoholic Beverage Control Act, or in any business operated under such license is valid. 23 Ops. Cal. Atty. Gen. 203.

Rule prohibiting delivery and transfer of alcoholic beverage licenses issued pursuant to B & P C § 24044 until such time as premises in connection with which license is sought are in fact equipped and completed for actual and legitimate sale of alcoholic beverages, is valid. 23 Ops. Cal. Atty. Gen. 206.

Administrative practice of issuing on–sale licenses for "record purposes only" without reference to specific location fully qualifying in law is unlawful, as licenses cannot be issued for premises to be constructed on qualified specific location until there has been presented to and approved by the Board adequate plans for construction of type of premises permitted by law for on–sale of alcoholic beverage; such licenses remain unperfected while premises are uncompleted and may not be issued or delivered as perfected licenses until premises are completed and approved. 23 Ops. Cal. Atty. Gen. 262.

Primary burden of proof is on applicant for license under Alcoholic Beverage Control Act before a hearing officer as well as in those instances where the Board purposes to deny an application upon a proposed decision being filed by the hearing officer or on rehearing, on petition of the applicant, after denial of the license. 23 Ops. Cal. Atty. Gen. 290.

No person may engage in the sale of liquor on an Indian reservation in California except in accordance with the terms of a license duly issued pursuant to the Alcoholic Beverage Control Act. 23 Ops. Cal. Atty. Gen. 297.

A corporation owned and operated in the state for the five years preceding July 1, 1937, and which is a bona fide jobbing and distributing wholesale establishment, major portion of whose business during such period consisted of wholesaling of goods, wares and merchandise other than alcoholic beverage, and owning 80 percent of recently organized affiliate or subsidiary corporation, is not barred by B & P C §§ 23771, 23772 from receiving through its subsidiary a distilled spirits wholesaler's or importer's license or a beer and wine wholesaler's or importer's license, or any of them. 25 Ops. Cal. Atty. Gen. 288.

Interstate alcoholic beverage transporter's permits should be issued by Department of Alcoholic Beverage Control; this does not mean that State Board of Equalization does not have authority to require from interstate alcoholic beverage transporters such reports as may be necessary for proper administration of revenue provisions of Alcoholic Beverage Control Act. 26 Ops. Cal. Atty. Gen. 3.

A liquor licensee holding a general on–sale license for a bona fide eating place may not lease or make a concession agreement subletting the restaurant operations on his premises. 29 Ops. Cal. Atty. Gen. 95.

An off–sale general license issued to the holder of a wine grower's or brandy manufacturer's license under the provisions of B & P C § 23362 is not transferable. 30 Ops. Cal. Atty. Gen. 327.

Department need not issue the off–sale general license to the holder of a wine grower's or brandy manufacturer's license despite the fact that a given county may have an excess of the number of off–sale general licenses allowed by B & P C § 23817. 30 Ops. Cal. Atty. Gen. 327.

If a rule were promulgated forbidding alcoholic beverage licensees from entering into insurance contracts insuring them against revocation of their licenses, such a rule would have the effect of law and such insurance thereafter entered into would be invalid. 31 Ops. Cal. Atty. Gen. 79.

Appeals Board's sole function is to review decisions of the Department of Alcoholic Beverage Control; members must spend all time necessary to consider its orders within 60 days of filing of appeals, and may not engage in any other activity inconsistent with the high degree of responsibility and trust placed in them. 32 Ops. Cal. Atty. Gen. 187.

Applicability of B & P C § 25661, proscribing the presenting of false evidence of age, to provisions connected with illicit sale of alcoholic' beverages. 32 Ops. Cal. Atty. Gen. 200.

Department of Alcoholic Beverage Control has the right in its discretion to determine whether or not to approve the transfer of a license to the purchaser or his transferee, after the revocation or suspension of the license; liquor licenses are intangible personal property which are subject to attachment and execution as other such property, subject to the right of the Department of Alcoholic Beverage Control in its discretion to determine whether such license can be transferred. 33 Ops. Cal. Atty. Gen. 140.

Alcoholic Beverage Control Department may issue licenses to premises located on government owned property and may approve the transfer of such licenses. 34 Ops. Cal. Atty. Gen. 208.

It is lawful for the holder of an on–sale general license for a bona fide club to restrict entrance on its licensed premises to particular persons who are members of the club or organization. 35 Ops. Cal. Atty. Gen. 93.

No receiver, other than one appointed for estate of an insolvent licensee, may operate licensed premises for another for even limited period, without first obtaining a transfer of license to him. 38 Ops. Cal. Atty. Gen. 11.

Proposed ordinance which attempts to impose additional regulations as to possession of intoxicating liquor, a field fully occupied by State law, is invalid; however, there is no constitutional prohibition against county adopting an appropriate ordinance relating to the consumption of alcoholic beverages in public places and buildings other than in licensed premises. 38 Ops. Cal. Atty. Gen. 64.

City as lacking power to regulate the possession of liquor within a city park. 40 Ops. Cal. Atty. Gen. 10.

Person who knowingly furnishes to another the equipment and materials intended for and actually used in the unlicensed manufacture of beer as guilty of aiding and abetting in the violation of the law. 42 Ops. Cal. Atty. Gen. 80.

An on–sale general public premises licensee of the Department of Alcoholic Beverage Control may enter into a sublease agreement with a vending machine operator which agreement requires payment to the licensee of a fixed monthly sum so long as the vending machine operator receives no percentage or portion of the revenues derived from the sale of alcoholic beverages. 47 Ops. Cal. Atty. Gen. 182.

An on–sale general public premises license of the Department of Alcoholic Beverage Control may enter into a sublease or concession agreement for the operation of a cardroom on the licensed premises, in a community where cardrooms are permitted, so long as the licensee of the department retains full control over the sale of alcoholic beverages, the enforcement of the laws and department rules relating to the sale of alcoholic beverages, and where no part of the revenue from the sale of such beverages inures to the benefit of the cardroom operator. 47 Ops. Cal. Atty. Gen. 182.

Right of unlicensed organization to promote and operate "liquor by wire" or "liquor gift" service involving retail licensees. 48 Ops. Cal. Atty. Gen. 1.

Authority of Department of Alcoholic Beverage Control to deliver to Department of General Services, for sale at public auction to licensees, alcoholic beverages seized and purchased under forfeiture proceedings. 49 Ops. Cal. Atty. Gen. 142.

Authority of Department to refuse licenses for establishments in proximity to schools of cosmetology. 51 Ops. Cal. Atty. Gen. 35.

Prohibited presence of persons under age of 21 years on "public premises" of holder of license to sell alcoholic beverages on such premises; application of prohibition during closing hours from 2 o'clock a.m. to 6 a.m. 55 Ops. Cal. Atty. Gen. 342.

Provisions of Const Art III § 3.5 apply to the Alcoholic Beverage Control Appeals Board in the exercise of its authority under Const Art XX § 22, and Bus. & Prof. Code, §§ 23080 through 23087. 62 Ops. Cal. Atty. Gen. 788.

Operator of commercial enterprise who offers and provides complimentary alcoholic beverages to any interested adult guest, customer or passenger of the business or service while at the same time charging for product provided or service rendered will be deemed to have "sold" alcoholic beverages, thereby necessitating alcoholic beverage license. 68 Ops. Cal. Atty. Gen. 263.

The Department of Alcoholic Beverage Control is not authorized to adopt a regulation allowing a retail licensee to transport tax paid alcoholic beverages to the retailer's out–of–state Free Port warehouse for "temporary retention" prior to delivery to retailer's licensed premises in California if such retention constitutes storage; the department is not authorized to adopt a regulation allowing a retail licensee to transport alcoholic beverages stored by the retailer in a Free Port warehouse facility outside the state to the retailer's licensed premises in California. 69 Ops. Cal. Atty. Gen. 191.

Department of Alcoholic Beverage Control is authorized under California Constitution to revoke private club license on basis of discriminatory membership practices upon independent determination for good cause that continuance of such license would be contrary to public welfare or morals. 70 Ops. Cal. Atty. Gen. 75.

Annotations:

Immunity from suit of governmental liquor control agency. 9 ALR2d 1292.

State power to regulate price of intoxicating liquors. 14 ALR2d 699.

Right to hearing before revocation or suspension of liquor license. 35 ALR2d 1067.

Right to withdraw application to procure or to transfer liquor license. 73 ALR2d 1223.

Single or isolated transactions as falling within provisions of licensing requirements governing liquor dealers. 93 ALR2d 90.

Measurement of distances for purposes of enactment prohibiting sale, or license for sale, or intoxicating liquor within given distance from church, university, school, or other institution or property as base. 4 ALR3d 1250.

Criminal offense of selling liquor to minor or permitting him to stay on licensed premises as affected by ignorance or mistake regarding his age. 12 ALR3d 991.

Revocation or suspension of liquor license because of drinking or drunkenness on part of licensee or business associate. 36 ALR3d 1301.

Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor. 51 ALR3d 1061.

Validity of statute or ordinance making it an offense to consume or have alcoholic beverages in open package in motor vehicle. 57 ALR3d 1071.

Loss of liquor license as compensable in condemnation proceeding. 58 ALR3d 581.

Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors. 20 ALR4th 600.

Construction and application of § 5301(c) of Internal Revenue Code of 1954 (26 USCS § 5301(c)), punishing sellers of liquor for adulteration or alteration of liquor, or for possession of such adulterated or altered liquor. 23 ALR Fed 925.

NOTES OF DECISIONS

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1. In General

Rule that State may not tax liquor merely passing through State applies to foreign imported liquor as well as to liquor in interstate commerce; with exception of taxes needed to execute State inspection laws, Federal Government has sole,

exclusive and plenary taxing power over imports and exports. Parrott & Co. v. San Francisco (1955, Cal App 1st Dist) 131 Cal App 2d 332, 280 P2d 881, 1955 Cal App LEXIS 2055.

Prevention of intemperance is a proper legislative objective. Allied Properties v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 141, 346 P2d 737, 1959 Cal LEXIS 329; Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control (1966) 65 Cal 2d 349, 55 Cal Rptr 23, 420 P2d 735, 1966 Cal LEXIS 208.

The 1967 Amendments to the Alcoholic Beverage Control Act (B & P C §§ 23089 et seq.), divesting superior courts of jurisdiction to review or stay the operation of a decision of the Department of Alcoholic Beverage Control, are not unconstitutional as an unauthorized legislative attempt to curtail the constitutional jurisdiction of the superior courts, where Art XX § 222, providing that orders of the Board shall be subject to judicial review upon petition of the director or any party aggrieved, does not specify the court in which review is to be obtained nor the procedure therefor, and where the new provisions on judicial review do not burden or impair the right of an aggrieved party to obtain the judicial review guaranteed by the Constitution. Department of Alcoholic Beverage Control v. Superior Court of Orange County (1968, Cal App 4th Dist) 268 Cal App 2d 67, 73 Cal Rptr 780, 1968 Cal App LEXIS 1274.

A city ordinance requiring retailers to collect deposits on certain refillable and nonrefillable beer containers was not preempted by provisions of the state Constitution reserving to the state the exclusive right to regulate the sale of alcoholic beverages (Cal. Const., art. XX, § 22), where the ordinance did not purport to regulate the sale of alcoholic beverages and thus did not stand in the field occupied by Cal. Const., art. XX. It does not appear that the Legislature intended that a person whose license to sell liquor should be immune from supervision, by local government, of any other activity the licensee might pursue in connection with the sale of liquor. Park & Shop Markets, Inc. v. City of Berkeley (1981, Cal App 1st Dist) 116 Cal App 3d 78, 172 Cal Rptr 515, 1981 Cal App LEXIS 1429.

Use by the Department of Alcoholic Beverage Control of an administrative law judge appointed by the director to consider the merits of cases the Department brings, coupled with judicial review as provided for in B & P C § 23090, does not violate a liquor store's constitutional due process and equal protection rights because the California Constitution vests exclusive power in the Department, in accordance with laws enacted by the Legislature, to regulate the manufacture, importation, and sale of alcoholic beverages, and the Department's power includes broad discretion to deny, suspend or revoke any specific alcoholic beverages license for good cause if it determines that permitting a party to hold a license would be contrary to public welfare or morals, or that the party has violated any law prohibiting conduct involving moral turpitude. CMPB Friends, Inc. v. Alcoholic Beverage Control Appeals Bd. (2002, Cal App 2d Dist) 100 Cal App 4th 1250, 122 Cal Rptr 2d 914, 2002 Cal App LEXIS 4484.

2. Construction

Art XX § 22 by its terms does not become effective until the Wright Act is repealed; and the repeal of the Wright Act alone was not sufficient to make such section operative. People v. Draper (1933, Cal App Dep't Super Ct) 134 Cal App 787, 134 Cal App 4th Supp 787, 22 P2d 604, 1933 Cal App LEXIS 854.

The question whether a sandwich, consumed or unconsumed, when served with wine or beer, is a meal as contemplated by Art XX § 22 and the Act of 1933 is one of fact depending on the circumstances: if the sandwich be served as a mere subterfuge for a meal it is not such a meal, but if it is served in good faith as a meal the fact that it is not consumed does not as a matter of law classify it as lacking the essential characteristics of a meal. Sandelin v. Collins (1934) 1 Cal 2d 147, 33 P2d 1009, 1934 Cal LEXIS 343, 93 ALR 956.

The initiative measure which added Art XX § 22 by its own terms did not become effective until the happening of certain events, and where one of said events had not taken place, the provisions of said section could not be held to declare the public policy of the State or the intention of the people adopting it, until its operative date. Los Angeles Brewing Co. v. Los Angeles (1935, Cal App) 8 Cal App 2d 379, 48 P2d 65, 1935 Cal App LEXIS 670.

Provisions of Art XX § 22, which became operative on Dec. 5, 1933, concurrently with the repeal of the Eighteenth Amendment to the Federal Constitution, took away from political subdivisions of the State the right to impose a license tax for the purpose of revenue upon any such business. Los Angeles Brewing Co. v. Los Angeles (1935, Cal App) 8 Cal App 2d 391, 48 P2d 71, 1935 Cal App LEXIS 671; San Diego v. State Board of Equalization (1947, Cal App) 82 Cal App 2d 453, 186 P2d 166, 1947 Cal App LEXIS 1226.

The Unlawful Liquor Sales Abatement Act of 1915 was neither expressly nor impliedly repealed, either by Art XX § 22 or by the Alcoholic Beverage Control Act of 1935. Hammond v. McDonald (1939, Cal App) 32 Cal App 2d 187, 89 P2d 407, 1939 Cal App LEXIS 334.

In the absence of any definition of the terms used in Art XX § 22, as amended in 1934, the words, having no technical meaning, will be taken in the ordinary and generally accepted sense: "saloon" and "barroom" as used in connection with the sale of intoxicating liquors import a place where such liquors are sold for consumption on the premises; a restaurant is "a public eating house," and is so regarded in the constitutional provision, for the enumeration including it is there followed by the words, "no other public eating place." Hammond v. McDonald (1942, Cal App) 49 Cal App 2d 671, 122 P2d 332, 1942 Cal App LEXIS 866.

In an action to abate a liquor nuisance, even though the sales of intoxicating liquor by defendants in their restaurant were not in violation of the Alcoholic Beverage Control Act, they would not for that reason be excluded from operation of the Unlawful Liquor Sales Abatement Law of 1915, if the restaurant was not a bona fide one and the sales were therefore in direct contravention of Art XX § 22, as amended in 1934. Hammond v. McDonald (1942, Cal App) 49 Cal App 2d 671, 122 P2d 332, 1942 Cal App LEXIS 866.

The Alcoholic Beverage Control Act does not occupy the entire field of liquor control so as to preclude prosecution under [former] W & I C § 702 for illicit sale of liquor to minors. People v. Deibert (1953, Cal App) 117 Cal App 2d 410, 256 P2d 355, 1953 Cal App LEXIS 1830.

3. Alcoholic Beverages

A city ordinance, adopted in 1922, which provides that it shall be unlawful for any person to sell any spirituous, vinous, malt or other alcoholic liquor within the city, was not invalid when adopted because of uncertainty in its meaning in failing to define "alcoholic liquor," and "spirituous, vinous, malt or other alcoholic liquor" have not become so obsolete during the years since passage of the ordinance that its provisions have become uncertain. People v. Draper (1933, Cal App Dep't Super Ct) 134 Cal App 787, 134 Cal App 4th Supp 787, 22 P2d 604, 1933 Cal App LEXIS 854.

Under the plain terms of Art XX § 22 intoxicating liquors, other than wine and beer, may not under any circumstances lawfully be consumed in hotel dining rooms or other public drinking places, in whatsoever manner said liquor may be supplied, and wine and beer may be consumed in the public places specified by the Liquor Control Act of 1933 only with

meals. Sandelin v. Collins (1934) 1 Cal 2d 147, 33 P2d 1009, 1934 Cal LEXIS 343, 93 ALR 956.

Neither by the terms of the Liquor Control Act nor by legal definition, nor by common understanding of the word, can beverages sought to be sold as "wines," but consisting of a combination of wine, alcohol, flavoring and water, with the added alcohol being three times as much as the wine, be fairly or properly designated as "wines." Tux Ginger Ale Co. v. Davis (1936, Cal App) 12 Cal App 2d 73, 54 P2d 1122, 1936 Cal App LEXIS 979.

Alcoholic concoctions resulting from mixture of fruit juices and certain other ingredients such as alcohol or brandy are "distilled spirits" rather than wine, and are taxable as such. People v. Tux Winery Co. (1937, Cal App) 21 Cal App 2d 586, 69 P2d 876, 1937 Cal App LEXIS 322.

B & P C § 24200.5, authorizing revocation of a liquor license if the licensee employs or permits any person "to solicit or encourage others, … to buy them drinks in the licensed premises …" for compensation, authorizes the Department of Alcoholic Beverage Control to revoke a liquor license although the drink solicited is orange juice, since the statute refers to "drinks" and makes no requirement that they be "alcoholic." Greenblatt v. Martin (1960, Cal App 1st Dist) 177 Cal App 2d 738, 2 Cal Rptr 508, 1960 Cal App LEXIS 2540.

4. State Board of Equalization

Art XX § 22 gives the State Board broad discretionary powers in the matter of granting or refusing liquor licenses: whether or not "good cause" for denial of a license exists is a matter for determination by the board, and not by the courts. Hansen v. State Board of Equalization (1941, Cal App) 43 Cal App 2d 176, 110 P2d 453, 1941 Cal App LEXIS 632.

Art XX § 22 vests the regulation of the liquor traffic exclusively in the State Board of Equalization. Reynolds v. State Board of Equalization (1946) 29 Cal 2d 137, 173 P2d 551, 174 P2d 4, 1946 Cal LEXIS 284.

In exercising power which State Board of Equalization has under this section to deny, in its discretion, "any specific liquor license if it shall determine for good cause that the granting … of such license would be contrary to public welfare or morals," the board performs a quasi judicial function similar to local administrative agencies. Weiss v. State Board of Equalization (1953) 40 Cal 2d 772, 256 P2d 1, 1953 Cal LEXIS 236; Chosick v. Reilly (1954, Cal App) 125 Cal App 2d 334, 270 P2d 547, 1954 Cal App LEXIS 1886.

Since the State Board of Equalization with respect to its functions in controlling and regulating the sale and use of intoxicating beverages is a constitutional agency (prior to the amendment of this section in 1954), the scope of review of its decisions is limited to determining whether or not there is substantial support therefor to be found in the record, and both the superior court in mandate proceedings and the District Court of Appeal on appeal are without authority to reweigh the evidence. Marcucci v. Board of Equalization (1956, Cal App 3d Dist) 138 Cal App 2d 605, 292 P2d 264, 1956 Cal App LEXIS 2407.

Under the Constitution and B & P C § 25750, the Board of Equalization has the broad power to determine what is contrary to public welfare or morals and to prohibit a licensee from doing or permitting any such acts on the licensed premises. Mercurio v. Department of Alcoholic Beverage Control (1956, Cal App 1st Dist) 144 Cal App 2d 626, 301 P2d 474, 1956 Cal App LEXIS 1773.

It was within the State Board of Equalization's former powers over the sale of alcoholic beverages to determine that a liquor licensee's conduct with reference to lewd performances on premises other than the licensed premises was of such a nature as to make his holding of the license contrary to the public welfare or morals; such conduct cannot be reconciled with good moral character. Jacques, Inc. v. State Board of Equalization (1957, Cal App 3d Dist) 155 Cal App 2d 448, 318 P2d 6, 1957 Cal App LEXIS 1307.

5. Department of Alcoholic Beverage Control

Under Gov C § 11517 subd (c) the Department of Alcoholic Beverage Control has the right to set aside a proposed decision by a hearing officer that the premises for which a license is sought are not in such proximity to churches as adversely to affect the activities of the churches or as to be contrary to public welfare and morals, and to decide the case on the record without taking additional evidence. Schaub's, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 858, 315 P2d 459, 1957 Cal App LEXIS 1570.

In view of 1954 amendment to Art XX § 22, vesting in the Department of Alcoholic Beverage Control "exclusive power" to issue or deny licenses "in its discretion" and denying to the Alcoholic Beverage Control Appeals Board any power to "limit or control in any way the discretion vested by law in the department," the Appeals Board is not empowered to exercise full discretion and its independent judgment on conflicting evidence, but rather its powers are strictly limited and no greater than those previously exercised by the courts on judicial review of the decisions of the State Board of Equalization. Martin v. Alcoholic Bev. Etc. Appeals Bd. (1959) 52 Cal 2d 238, 340 P2d 1, 1959 Cal LEXIS 197.

Discretion to be exercised by Department of Alcoholic Beverage Control under Art XX § 22, is not absolute but must be exercised in accordance with the law, and provision that it may revoke or deny a license for "good cause" necessarily implies that its decisions should be based on sufficient evidence and that it should not act arbitrarily in determining what is contrary to public welfare or morals. Martin v. Alcoholic Beverage Control Appeals Board (1961) 55 Cal 2d 867, 13 Cal Rptr 513, 362 P2d 337, 1961 Cal LEXIS 268; Torres v. Department of Alcoholic Beverage Control (1961, Cal App 4th Dist) 192 Cal App 2d 541, 13 Cal Rptr 531, 1961 Cal App LEXIS 1971; Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

B & P C § 24755.1, providing that punishment for retail sale of alcoholic beverages at less than the minimum price shown in schedules filed with the Department of Alcoholic Beverage Control 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 Art XX § 22, to deny, suspend or revoke liquor licenses; such power of the Department is subject to reasonable legislative enactment, including the addition of mandatory fines as penalty assessments. Kirby v. Alcoholic Beverage Control Appeals Board (1969) 71 Cal 2d 1200, 81 Cal Rptr 241, 459 P2d 657, 1969 Cal LEXIS 314.

Department is duty bound under B & P C §§ 23049-23051 to administer and enforce the retail price maintenance provisions of the Alcoholic Beverage Control Act. Samson Market Co. v. Alcoholic Beverage Control Appeals Bd. (1969) 71 Cal 2d 1215, 81 Cal Rptr 251, 459 P2d 667, 1969 Cal LEXIS 315.

Though Art XX § 22, appears to give the Department of Alcoholic Beverage Control exclusive control over alcoholic beverage licenses, it cannot interfere with the duty cast on the State Personnel Board by Art XXIV § 3, to administer and enforce any and all laws relating to civil service, including Gov C § 19572, which establishes dishonesty and other failure of good behavior either during or outside of duty hours as cause for discipline of a civil service employee; that an employee's conduct might also be cause for discipline under the Alcoholic Beverage Control Act cannot detract from the board's power to enforce § 19572. Gee v. California State Personnel Board

(1970, Cal App 1st Dist) 5 Cal App 3d 713, 85 Cal Rptr 762, 1970 Cal App LEXIS 1474.

Revocation of liquor license under B & P C §§ 24200 and 25601, purportedly in violation of licensee's federal constitutional rights in that, allegedly, sole ground for revocation was presence of homosexual clientele at bar, was res judicata for purposes of injunction action under 42 USCS § 1983, as the Department is a state court of limited jurisdiction. Francisco Enterprises, Inc. v. Kirby (1973, 9th Cir Cal) 482 F2d 481, 1973 US App LEXIS 8706, cert den (1974) 94 S Ct 1413, 39 L Ed 2d 471, 415 US 916, 1974 US LEXIS 1176.

Under constitutional and statutory provisions governing judicial review of orders of the Alcoholic Beverage Control Board (Cal. Const., art. XX, § 22; Bus. & Prof. Code, §§ 23090, 23090.3, and 23090.4), the right of review of a decision of the board holding resale price maintenance provisions (Bus. & Prof. Code, § 24755) invalid under the Sherman Antitrust Act was limited to parties who appeared in proceedings before the board. Rice v. Alcoholic Beverage Control Appeals Bd. (1978) 21 Cal 3d 431, 146 Cal Rptr 585, 579 P2d 476, 1978 Cal LEXIS 238, 96 ALR3d 613.

Under Cal. Const., art. XX, § 22 and Bus. & Prof. Code, § 24200, the Department of Alcoholic Beverage Control is expressly empowered to either suspend or revoke an issued license. The propriety of the penalty to be imposed rests solely within the discretion of the department whose determination may not be disturbed in the absence of a showing of palpable abuse. The fact that unconditional revocation may appear too harsh a penalty does not entitle a reviewing agency or court to substitute its own judgment therein; nor does the circumstance of forfeiture of the interest of an otherwise innocent colicensee sanction a different and less drastic penalty. Rice v. Alcoholic Beverage Control Appeals Board (1979, Cal App 1st Dist) 89 Cal App 3d 30, 152 Cal Rptr 285, 1979 Cal App LEXIS 1356.

It is the Department of Alcoholic Beverage Control, and not the Alcoholic Beverage Control Appeals Board or the courts, which must determine whether "good cause" exists for denying an alcoholic beverage license upon the ground that its issuance would be contrary to the public welfare or morals. The reviewing body determines whether or not the department acted arbitrarily in making its decision. If the decision is without reason under the evidence, the action of the department constitutes an abuse of discretion and may be set aside. But where the decision is the subject of a choice within reason, the department is vested with the discretion of making the selection which it deems proper, its action is within the scope of a valid exercise of the constitutionally conferred discretion (Cal. Const., art. XX, § 22), and neither the board nor the courts may interfere therewith. Department of Alcoholic Bev. Control v. Alcoholic Bev. etc. Appeals Bd. (1982, Cal App 2d Dist) 133 Cal App 3d 814, 184 Cal Rptr 367, 1982 Cal App LEXIS 1759.

Cal. Const., art. XX, § 22 (alcoholic beverage control), vests the Department of Alcoholic Beverage Control with broad discretion to revoke or suspend a liquor license for good cause if continuing the license would be contrary to public welfare or morals. In the absence of a clear abuse of discretion, the courts will uphold the department's decision to suspend a license for violation of the liquor laws. Provigo Corp. v. Alcoholic Beverage Control Appeals Bd. (1994) 7 Cal 4th 561, 28 Cal Rptr 2d 638, 869 P2d 1163, 1994 Cal LEXIS 1391.

It is well within the authority conferred on the Department of Alcoholic Beverage Control by Cal Const Art XX § 22, par. 9, B & P C §§ 23001, 23049 for the Department to determine that the "tied-house" law, B & P C § 25502, applies to certain transactions but not to others. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2002, Cal App 1st Dist) 100 Cal App 4th 1066, 123 Cal Rptr 2d 278, 2002 Cal App LEXIS 4471.

Same deferential standard of review applicable to revocations, grants, or denials of alcoholic beverage licenses by the Department of Alcoholic Beverage Control under B & P C §§ 23084, 23090.2 applies to the Department's discretionary powers to determine whether there is good cause to suspend a license because all of the Department's powers derive from Cal Const Art XX 22. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2002, Cal App 1st Dist) 100 Cal App 4th 1066, 123 Cal Rptr 2d 278, 2002 Cal App LEXIS 4471.

Department of Alcoholic Beverage Control's practice of allowing its ultimate decisionmaker to have access to prosecuting attorneys' reports of hearing violates statutory prohibitions against ex parte communications. The practice is improper regardless of whether the Alcoholic Beverage Control Appeals Board adopts the Department's decision. Rondon v. Alcoholic Beverage Control Appeals Bd. (2007, Cal App 6th Dist) 151 Cal App 4th 1274, 60 Cal Rptr 3d 295, 2007 Cal App LEXIS 953.

6. Alcoholic Beverage Control Appeals Board

The Alcoholic Beverage Control Appeals Board is a constitutional governmental body. Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 523, 314 P2d 1007, 1957 Cal App LEXIS 1526, cert den (1958) 356 US 902, 78 S Ct 562, 2 L Ed 2d 580, 1958 US LEXIS 1394, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

B & P C § 23086, requiring the Alcoholic Beverage Control Appeals Board to enter its order within a certain time, is not applicable to its dismissal of a purported appeal that was filed beyond the time specified in § 23081, and was never perfected. Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 523, 314 P2d 1007, 1957 Cal App LEXIS 1526, cert den (1958) 356 US 902, 78 S Ct 562, 2 L Ed 2d 580, 1958 US LEXIS 1394, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

Where a decision of the Department of Alcoholic Beverage Control suspending and revoking an on-sale liquor license was not appealed within the time allowed by law to the Alcoholic Beverage Control Appeals Board, the licensees failed to exhaust their administrative remedies and were not entitled to judicial review of the order complained of. Van De Veer v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 817, 318 P2d 686, 1957 Cal App LEXIS 1361, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235; Miller v. Department of Alcoholic Beverage Control (1958, Cal App 2d Dist) 160 Cal App 2d 658, 325 P2d 601, 1958 Cal App LEXIS 2169, cert den (1958) 358 US 907, 79 S Ct 234, 3 L Ed 2d 229, 1958 US LEXIS 76.

The Alcoholic Beverage Control Appeals Board is a party aggrieved by a judgment of the superior court ordering the issuance of a writ of mandate commanding the appeals board to vacate its decision setting aside an order of the State Board of Equalization. Koehn v. State Board of Equalization (1958) 50 Cal 2d 432, 326 P2d 502, 1958 Cal LEXIS 166.

Under the 1954 amendment of Art XX § 22, creating the Department of Alcoholic Beverage Control and the Alcoholic Beverage Control Appeals Board and prescribing the powers of each, the Appeals Board ordinarily may enter only "an order either affirming or reversing the decision of the department," depending on its determination of the questions of excess of jurisdiction by the department and sufficiency of evidence and findings to support the decision of the department. Martin v.

Alcoholic Bev. Etc. Appeals Bd. (1959) 52 Cal 2d 238, 340 P2d 1, 1959 Cal LEXIS 197.

Provision in the 1954 amendment of Art XX § 22, that the Alcoholic Beverage Control Appeals Board shall determine "whether the findings (of the Department of Alcoholic Beverage Control) are supported by substantial evidence in the light of the whole record," signifies no more than adoption of the "substantial evidence" rule, as generally applied in judicial proceedings in this state, rather than the "scintilla" rule which has been applied in judicial proceedings in some other jurisdictions. Martin v. Alcoholic Bev. Etc. Appeals Bd. (1959) 52 Cal 2d 238, 340 P2d 1, 1959 Cal LEXIS 197.

The same limitation expressly declared in CCP § 1094.5, subd (e), that the court's "judgment shall not limit on control in any way the discretion legally vested" in an administrative agency, is applicable to the power of the Alcoholic Control Appeals Board in reviewing the propriety of a decision of the Department of Alcoholic Beverage Control on the penalty, which the 1954 amendment of Art XX § 22, has placed in the discretion of the department. Martin v. Alcoholic Bev. Etc. Appeals Bd. (1959) 52 Cal 2d 287, 341 P2d 296, 1959 Cal LEXIS 203.

The powers conferred on the Alcoholic Beverage Control Appeals Board under this section and B & P C § 23084 are strictly limited and no greater than those previously exercised by the courts on judicial review of the decisions of the State Board of Equalization. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

The power of the Alcoholic Beverage Control Appeals Board, in reviewing a licensing decision of the Department of Alcoholic Beverage Control, is 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 (Cal. Const., art. XX, § 22; Bus. & Prof. Code, §§ 23084, 23085). Rice v. Alcoholic Bev. Etc. Appeals Bd. (1978, Cal App 1st Dist) 79 Cal App 3d 372, 144 Cal Rptr 851, 1978 Cal App LEXIS 1381.

Finding that a business was a nuisance under the Unlawful Liquor Sale Abatement Law, Pen C §§ 11200-11207, based on sales of alcohol to obviously intoxicated persons, did not impede the jurisdiction of the Department of Alcoholic Beverage Control under Cal Const Art XX § 22(d), B & P C § 25602.2. An injunction was also not an improper interference because the restrictions were designed to prevent future sales to obviously intoxicated persons and abate the nuisance, not to restrict the right to sell alcohol to willing purchasers. People v. Schlimbach (2011, 2d Dist) 193 Cal App 4th 1132, 122 Cal Rptr 3d 804, 2011 Cal App LEXIS 353.

Exclusive jurisdiction of the Department of Alcoholic Beverage Control under Cal Const Art XX § 22(d) does not prevent either a nuisance abatement action under the Unlawful Liquor Sale Abatement Act, Pen C §§ 11200-11207, or entry of an injunction that affects the licensee's business, when the injunction does not directly affect the licensee's ability to sell alcoholic beverages to a willing purchaser. People v. Schlimbach (2011, 2d Dist) 193 Cal App 4th 1132, 122 Cal Rptr 3d 804, 2011 Cal App LEXIS 353.

7. Licenses and Licensees Generally

A seasonal business within the Alcoholic Beverage Control Act, is a business located in a seasonal area in which consumer demand fluctuates during different periods of the year, and to qualify for such a license the business need not be closed and locked during any part of the year. Johnstone v. Richardson (1951, Cal App) 103 Cal App 2d 41, 229 P2d 9, 1951 Cal App LEXIS 1121.

A liquor license is not a contract. Saso v. Furtado (1951, Cal App) 104 Cal App 2d 759, 232 P2d 583, 1951 Cal App LEXIS 1684.

The Department of Alcoholic Beverage Control is within its rights to require a high standard of economic stability for those who are to hold wholesalers' liquor licenses. Duke Molner Wholesale Liquor Co. v. Martin (1960, Cal App 2d Dist) 180 Cal App 2d 873, 4 Cal Rptr 904, 1960 Cal App LEXIS 2413, cert den (1960) 364 US 870, 81 S Ct 112, 5 L Ed 2d 92, 1960 US LEXIS 325.

Each applicant for a liquor license must provide the Department of Alcoholic Beverage Control with certain information with reference to the applicant's background, crime record, status and other data (B & P C §§ 23950-23958), and must subject himself and the premises where the business will be conducted to a thorough investigation. Duke Molner Wholesale Liquor Co. v. Martin (1960, Cal App 2d Dist) 180 Cal App 2d 873, 4 Cal Rptr 904, 1960 Cal App LEXIS 2413, cert den (1960) 364 US 870, 81 S Ct 112, 5 L Ed 2d 92, 1960 US LEXIS 325.

Legislature demonstrated its recognition of bona fide club as distinct type of licensee when, in Alcoholic Beverage Control Act (B & P C § 23320), it provided for annual fees of each type of license. Harris v. Alcoholic Beverage Control Appeals Board (1962, Cal App 1st Dist) 201 Cal App 2d 567, 20 Cal Rptr 227, 1962 Cal App LEXIS 2628.

The duty to enforce and administer B & P C § 23793, prohibiting the transfer of a retail liquor license to premises within 200 feet of existing premises so licensed, is vested in the Department of Alcoholic Beverage Control with a broad range of discretion, and unless its method of measuring to ascertain the distance between premises was without jurisdiction or contrary to law, its decision must be sustained. Harris v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 238 Cal App 2d 24, 47 Cal Rptr 424, 1965 Cal App LEXIS 1106.

In a hearing on an application for transfer of an on-sale retail liquor license for operation of a bar, the Department of Alcoholic Beverage Control's finding that the proposed premises would appeal to all segments of the community including many residents and business people in the area who were presently reluctant to enter other bars in the vicinity was supported by substantial evidence, and it could not be said on judicial review that the department abused its constitutional or statutory discretion in considering that fact as an aspect of public convenience (Bus. & Prof. Code, § 23958), or in concluding that, on balance, the sale of alcoholic beverages at the proposed premises would not be contrary to public welfare or public morals as that term is used in the agency's constitutional mandate. Sepatis v. Alcoholic Bev. Etc. Appeals Bd. (1980, Cal App 1st Dist) 110 Cal App 3d 93, 167 Cal Rptr 729, 1980 Cal App LEXIS 2229.

8. Issuance of Licenses

Alcoholic Beverage Control Act, Sec 38f, which limits the number of on-sale general liquor licenses issued to one for each 1,000 inhabitants, does not apply such limitation to on-sale seasonal liquor licenses. Johnstone v. State Bd. of Equalization (1950, Cal App) 95 Cal App 2d 527, 213 P2d 429, 1950 Cal App LEXIS 994.

While the Department of Alcoholic Beverage Control may refuse an "on-sale" liquor license if the premises are in the immediate vicinity of a church (B & P C § 23789), there is no such provision or regulation by the department as to "off-sale" licenses; nevertheless proximity of the licensed premises to a church may supply an adequate basis for denial of an "off-sale" license as being inimical to public morals and welfare. Schaub's, Inc. v. Department of Alcoholic Beverage Control

(1957, Cal App 2d Dist) 153 Cal App 2d 858, 315 P2d 459, 1957 Cal App LEXIS 1570.

Provision in the 1954 amendment of Art XX § 22, that the Alcoholic Beverage Control Appeals Board shall determine "whether the findings (of the Department of Alcoholic Beverage Control) are supported by substantial evidence in the light of the whole record," signifies no more than adoption of the "substantial evidence" rule, as generally applied in judicial proceedings in this state, rather than the "scintilla" rule which has been applied in judicial proceedings in some other jurisdictions. Martin v. Alcoholic Bev. Etc. Appeals Bd. (1959) 52 Cal 2d 238, 340 P2d 1, 1959 Cal LEXIS 197.

Ordinarily the ultimate fact for determination by the Department of Alcoholic Beverage Control in passing on an application for a license, or for transfer of a license, is whether the granting "would be contrary to public welfare or morals," if the department makes a finding that the granting of the application "would be contrary to public welfare," and there is substantial evidence to show "good cause" for such determination, the finding must be sustained. Martin v. Alcoholic Bev. Etc. Appeals Bd. (1959) 52 Cal 2d 259, 341 P2d 291, 1959 Cal LEXIS 199.

In considering sufficiency of evidence in proceeding to review decision of Department of Alcoholic Beverage Control respecting denial of license, court is governed by substantial evidence rule generally applied in judicial proceedings; any conflict is resolved in favor of decision, and every reasonably deducible inference in support thereof will be indulged. Torres v. Department of Alcoholic Beverage Control (1961, Cal App 4th Dist) 192 Cal App 2d 541, 13 Cal Rptr 531, 1961 Cal App LEXIS 1971.

Department of Alcoholic Beverage Control may consider presence of schools or playgrounds in vicinity of premises seeking either an on-sale or off-sale liquor license in determining whether issuance of license would be contrary to public welfare or morals, regardless of any legislative expression of policy on subject. Bailey v. Department of Alcoholic Beverage Control (1962, Cal App 4th Dist) 201 Cal App 2d 348, 20 Cal Rptr 264, 1962 Cal App LEXIS 2599.

Cal Adm C tit 4 § 61.1, promulgated by the Department of Alcoholic Beverage Control and providing that no on-sale general license or on-sale beer and wine license shall be issued within 1 mile of a university unless the Department is satisfied that the location of the premises is sufficiently distant from the campus and the nature of the licensed business is such that it will not be patronized by students, is void, being in conflict with Penal C § 172e, removing the restriction against sale of alcoholic beverages in proximity to universities as to bona fide public eating places. Harris v. Alcoholic Beverage Control Appeals Board (1965, Cal App 1st Dist) 235 Cal App 2d 479, 45 Cal Rptr 450, 1965 Cal App LEXIS 947.

B & P C § 24755.1, providing that punishment for retail sale of alcoholic beverages at less than the minimum price shown in schedules filed with the Department of Alcoholic Beverage Control 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 Art XX § 22, to deny, suspend or revoke liquor licenses; such power of the Department is subject to reasonable legislative enactment, including the addition of mandatory fines as penalty assessments. Kirby v. Alcoholic Beverage Control Appeals Board (1969) 71 Cal 2d 1200, 81 Cal Rptr 241, 459 P2d 657, 1969 Cal LEXIS 314.

Convictions of the 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 Cal. Const., art. XX, § 22, which grants the Department of Alcoholic Beverage Control the power to deny, suspend or revoke an alcoholic beverage license if a person seeking or holding a license has violated any law prohibiting conduct involving moral turpitude, and within the meaning of Bus. & Prof. Code, § 24200, which authorizes the department to suspend or revoke a license on the basis of a judgment of guilty to any public offense involving moral turpitude. Conviction of such an offense justifies the imposition of administrative sanctions without a further showing of unfitness or unsuitability or its effect upon the conduct of the licensed business. Rice v. Alcoholic Beverage Control Appeals Board (1979, Cal App 1st Dist) 89 Cal App 3d 30, 152 Cal Rptr 285, 1979 Cal App LEXIS 1356.

9. Proper and Improper Denial of License

The exercise of discretion of the State Board in denying a liquor license was not abused where applicant proposed to sell liquor in a community the deeds in which contained restrictive covenants against selling liquor, and where the city was a purely residential center. Hansen v. State Board of Equalization (1941, Cal App) 43 Cal App 2d 176, 110 P2d 453, 1941 Cal App LEXIS 632.

The Department of Alcoholic Beverage Control did not act arbitrarily, nor abuse its discretion, in finding that the issuance of an off-sale license to sell beer and wine would be contrary to public welfare and morals based on evidence, as to which there could be a reasonable difference of opinion, that the applicant's store, which was 200 feet from a school and which was patronized by approximately 20 children a day, proposed to change its operation to selling take-out food including beer and wine to customers, including children who were permitted to leave the school premises for lunch, during several hours a day that the school was open. Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 2d Dist) 250 Cal App 2d 673, 58 Cal Rptr 788, 1967 Cal App LEXIS 2150.

As a ground for denying a liquor license, the Alcoholic Beverage Control Department's finding that "some of the school children pass by, as well as frequent," the applicant's supermarket was not in itself substantial evidence that the issuance of the license would be contrary to public welfare and morals, where, although the store was only 115 feet across the street from the playground fence of an elementary school, it was 400 feet from the school entrance by "lawful pedestrian feet," where an afternoon check showed that only 17 out of 139 pupils visited the store, where the supermarket chain carried no exterior advertisements on liquor, experienced no problem of thefts by children of beer or wine, trained its personnel on the prohibition of its sale to minors and at a nearby store had experienced no infractions of such law. Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 1st Dist) 255 Cal App 2d 40, 62 Cal Rptr 778, 1967 Cal App LEXIS 1237.

There was no substantial evidence that the issuance of an off-sale beer and wine license to a supermarket should be denied, as being contrary to public welfare and morals, where, although the Alcoholic Beverage Control Department found that an elementary school in the immediate vicinity (a purely commercial district) had a present problem with persons consuming alcoholic beverages nearby and that the license would aggravate the problem, no eyewitness or expert testimony was adduced, where the testimony that the school grounds were sometimes littered with empty liquor bottles, beer cans and wine bottles failed to show how the litter was attributable to the store, not then licensed, or even to the two licensed stores within 900 feet of the school, and where testimony of the dangers to be expected from such undesirables as drunks in cars was conjectural, at best. Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 1st

Dist) 255 Cal App 2d 40, 62 Cal Rptr 778, 1967 Cal App LEXIS 1237.

The findings of the Department of Alcoholic Beverage Control that issuance of an off-sale beer and wine license to a convenience-type market would be contrary to public welfare or morals were supported by substantial evidence and it did not act arbitrarily or abuse its discretion in denying the issuance of the license, where the proposed premises were located some 300 to 400 feet from a school with an approximate attendance of 775 pupils ranging in age from 5 through 14 years, where a substantial number of children would pass directly by the proposed premises from early morning until well into the evening each day, where there was testimony that issuance of the license would create or intensify various problems, such as increased traffic hazards, increased litter on the school grounds, obtaining of alcoholic beverages by children, and increased class cutting, where there were already 11 licensed outlets of the off-sale type within a mile of the school, and where the applicant's beer and wine departments would not be segregated from items attractive to school children which it also intended to handle. Kirby v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 261 Cal App 2d 119, 67 Cal Rptr 628, 1968 Cal App LEXIS 1725.

On administrative review of a denial by the Department of Alcoholic Beverage Control of an application by a "disco" music establishment for a beer and wine license, the Alcoholic Beverage Control Appeals Board properly concluded the department's determination that issuance of a license would create a law enforcement problem and would be contrary to the public welfare and morals was not supported by the department's findings that "disturbances would sometimes occur when several hundred young persons were gathered together in the described surroundings," despite the establishment's employment of a security force. Whatever the precise parameters of the law enforcement problems contemplated by the statute permitting the denial of a license that would tend to create a law enforcement problem, the department's reliance on a finding that "disturbances" of undetermined severity would "sometimes" in the indefinite future occur reflected too sweeping a view of what constitutes "good cause" within the meaning of Cal. Const., art. XX, § 22, requiring "good cause" for the denial of a license. Also, the department's finding that police officers could not respond quickly to the establishment due to its remote location and the limited number of officers was not supported by the evidence. Department of Alcoholic Bev. Control v. Alcoholic Bev. etc. Appeals Bd. (1981, Cal App 3d Dist) 122 Cal App 3d 549, 175 Cal Rptr 342, 1981 Cal App LEXIS 2048.

10. Suspension of Licenses Generally

A liquor license does not automatically become void, beyond any possibility of revival, whenever licensee fails to sell food on the premises as the language of Art XX § 22 indicates that some action by the State Board is necessary before a license is terminated; under such § 22, the Board is empowered to suspend as well as to revoke a license. Reynolds v. State Board of Equalization (1946) 29 Cal 2d 137, 173 P2d 551, 174 P2d 4, 1946 Cal LEXIS 284.

The fact that when a hearing officer recommended suspension of a liquor license he was an employee of the State Board of Equalization did not deprive the Department of Alcoholic Beverage Control, to which the pertinent powers of the State Board of Equalization were transferred, of the power to adopt his findings and to order suspension of the license. Brice v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 153 Cal App 2d 315, 314 P2d 807, 1957 Cal App LEXIS 1494.

In the exercise of its discretion the Department of Alcoholic Beverage Control can properly consider violations of statutory provisions concerning alcoholic beverages or of rules of the department as good cause for suspension of licenses. Allied Properties v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 141, 346 P2d 737, 1959 Cal LEXIS 329.

In a proceeding to suspend a liquor license, the interpretation placed on a written instrument by the Department of Alcoholic Beverage Control, where extrinsic evidence has not been resorted to though not binding on appeal, will be accepted by the appellate court where such interpretation is reasonable, or where such interpretation is one of two or more reasonable constructions of the instrument; moreover, where no extrinsic evidence is considered by the Department of Alcoholic Beverage Control in aid of its interpretation of a written instrument, the construction is one of law, and the appellate court is not bound by the Department's interpretation of the instrument. Cohon v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 218 Cal App 2d 332, 32 Cal Rptr 723, 1963 Cal App LEXIS 1783.

In a proceeding to suspend a corporation's liquor license, a finding that the licensee's sole stockholder and president "is" an unfit and improper person to hold an alcoholic beverage license by reason of his record of arrests and convictions sufficiently established, for review purposes, that the Department of Alcoholic Beverage Control did not believe that he was rehabilitated or fit, at the time of decision, to hold a license. Jack P. Meyers, Inc. v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 238 Cal App 2d 869, 48 Cal Rptr 259, 1965 Cal App LEXIS 1208.

B & P C § 24755.1, providing that punishment for retail sale of alcoholic beverages at less than the minimum price shown in schedules filed with the Department of Alcoholic Beverage Control 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 Art XX § 22, to deny, suspend or revoke liquor licenses; such power of the Department is subject to reasonable legislative enactment, including the addition of mandatory fines as penalty assessments. Kirby v. Alcoholic Beverage Control Appeals Board (1969) 71 Cal 2d 1200, 81 Cal Rptr 241, 459 P2d 657, 1969 Cal LEXIS 314.

An attack under Rule 35, Federal Rules of Criminal Procedure, relating to correction or reduction of sentence, goes only to the sentence not to the fact of conviction, and such an attack was irrelevant in determining the finality of an alcoholic beverage licensee's conviction in Federal District Court of defrauding the government through the filing of knowingly false income tax returns for two years, where the Federal Circuit Court of Appeals' affirmance of the District Court's action had long since become final and petition for writ of certiorari had been denied by the United States Supreme Court, and particularly where the circuit court later refused to interfere with the penalty pronounced by the District Court. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 5th Dist) 270 Cal App 2d 535, 75 Cal Rptr 823, 1969 Cal App LEXIS 1555.

11. Warranted and Unwarranted Suspensions

An on-sale liquor license was properly suspended where under a "concession" agreement (really a lease) the owner sublet an adjoining fully-equipped restaurant room to another, and food together with liquor were served on both premises, when licensee did not operate or have any interest in the restaurant. Harem Corp. v. State Board of Equalization (1948, Cal App) 87 Cal App 2d 915, 198 P2d 48, 1948 Cal App LEXIS 1419.

A liquor licensee established a defense under B & P C § 25660, to a charge of selling to a minor, where the licensee showed that he relied on a draft card from which it appeared that the minor was 21, and where, notwithstanding the birth

date on the card had been altered, there was no substantial support for the State Board of Equalization's suspension based on finding that the alteration should have been apparent from a reasonably careful inspection, where there was no finding that the licensee acted in bad faith or discovered the alteration, where the card accurately described the minor, and where his physical appearance was that of a person who might be under or over 21. Dethlefsen v. State Board of Equalization (1956, Cal App 3d Dist) 145 Cal App 2d 561, 303 P2d 7, 1956 Cal App LEXIS 1376.

In a proceeding for suspension of a liquor license for sale of intoxicating beverages to a minor and allowing the minor to consume them on the licensed premises, the evidence was sufficient to sustain a ruling suspending the license where it showed that the minor was too young in appearance to be 21 years old, that she weighed 19 pounds more than the person described in the identification which she presented, and that she was three and one-half years younger than such person and had blue eyes instead of hazel. 5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 748, 318 P2d 820, 1957 Cal App LEXIS 1351.

Although bookmaking and gambling are not specifically set as grounds for suspension and revocation of a liquor license, a finding that a single act of bookmaking by a bartender has taken place on the licensed premises is sufficient to support revocation; revocation and suspension were supported by evidence that the licensees' bartender was engaged in taking bets on horse races and that he was paying off in cash on winning combinations on mechanical gambling devices, since the bartender's knowledge of such illegal gambling activities on the licensed premises was imputed to the licensees and they were responsible for his acts, it being immaterial that the licensees may have had no actual knowledge of such illegal activities. Mack v. Department of Alcoholic Beverage Control (1960, Cal App 2d Dist) 178 Cal App 2d 149, 2 Cal Rptr 629, 1960 Cal App LEXIS 2573.

It is not the past conduct, immoral character or bad reputation of a patron that subjects an on-sale licensee to discipline, but the patron's present act and condition that offends both the law and public decency; presence of drunkard in a public tavern is an illegal act, and as such mere fact that intoxicated persons were arrested on licensed premises on police "roundups" was evidence of violations of the law though the police were not summoned by the licensee or for any disturbance by such intoxicated persons. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

In a proceeding to suspend a liquor license, for retail sales at less than the fair trade price, a finding of the hearing officer that the fair trade contracts were duly filed with the Department of Alcoholic Beverage Control raised a presumption that "fair and open" competition was ascertained and found by the Department. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

The suspension of a liquor license by the Department of Alcoholic Beverage Control was proper where a relief bartender employed by the licensee accepted a bet on a horse race while employed on the licensed premises, despite the fact that there was no evidence that the act was anything but an isolated transaction which occurred at a time when the general manager of the licensed premises, who was in charge of the cocktail lounge, was not on the premises, and neither the general manager nor any other responsible officer of the licensee had actual knowledge of the bartender's bookmaking offense, knowledge of the offense being imputed to the licensee, and evidence that the bartender committed the act of bookmaking being "substantial evidence" that the licensee "permitted and suffered" its employee to commit that act. Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 1st Dist) 252 Cal App 2d 520, 60 Cal Rptr 641, 1967 Cal App LEXIS 1530.

The Department of Alcoholic Beverage Control correctly decided that a licensee's license to conduct a bar should be suspended for the period of one year pursuant to B & P C § 24200, subd (d), providing for suspension of 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 that the judgment of conviction had become final after appeal in the federal courts. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 5th Dist) 270 Cal App 2d 535, 75 Cal Rptr 823, 1969 Cal App LEXIS 1555.

A rule promulgated by the Department of Alcoholic Beverage Control 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 Pen. 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. Accordingly, decisions of the department suspending the on-sale liquor licenses of nightclubs for violations of the department rule were valid. Kirby v. Alcoholic Bev. Etc. Appeals Bd. (1975, Cal App 1st Dist) 47 Cal App 3d 360, 120 Cal Rptr 847, 1975 Cal App LEXIS 1027.

The Alcoholic Beverage Control Appeals Board did not abuse its discretion in upholding the suspensions of the liquor licenses of two grocery stores for selling alcohol to minors in violation of Bus. & Prof. Code, § 25658, subd. (a), where the stores had sold alcoholic beverages to minors acting as police decoys. Although Cal. Const., art. XX, § 22, prohibits the sale to, or purchase by, minors of alcoholic beverages, the Constitution does not preclude the use of minors as decoys. An interpretation allowing the use of decoys promotes the intent of the constitutional provision to protect minors from harm associated with the consumption of alcohol. To provide licensees a defense based on the use of underage decoys would produce an absurd result. Also, although the Legislature rejected a proposal that would have granted immunity for underage persons who buy alcohol at the direction of peace officers, unpassed bills have little value as evidence of legislative intent. Further, even if the stores were not knowingly engaged in illicit activity, the mature-looking underage decoys did nothing to induce them to violate the law, and routinely checking identification of all purchasers would not have been unduly burdensome. Provigo Corp. v. Alcoholic Beverage Control Appeals Bd. (1994) 7 Cal 4th 561, 28 Cal Rptr 2d 638, 869 P2d 1163, 1994 Cal LEXIS 1391.

The Alcoholic Beverage Control Appeals Board abused its discretion in affirming a suspension of a market's liquor license based on a single illegal act unrelated to the sale of alcohol by an on-duty employee of the market without the market's knowledge. The single criminal act of food stamp sales was insufficient to justify the suspension based on the employee's knowledge of her own criminal act, which was imputed to the market. To be reasoned and not arbitrary, license suspensions must further the goal of the constitutional

and statutory provisions. That goal in general is to protect public welfare and morals, but it must be viewed in the context in which it arose, i.e., the sale of alcoholic beverages. Where a licensee's employee commits a single criminal act unrelated to the sale of alcohol, the licensee has taken strong steps to prevent and deter such crime and is unaware of it before the fact, suspension of the license simply has no rational effect on public welfare or public morals. Santa Ana Food Market, Inc. v. Alcoholic Beverage Control Appeals Bd. (1999, Cal App 4th Dist) 76 Cal App 4th 570, 90 Cal Rptr 2d 523, 1999 Cal App LEXIS 1034.

A peremptory writ of mandate compelling the Department of Alcoholic Beverage Control to vacate its decision to suspend a corporation's liquor license was improperly issued where uncontradicted evidence of the arrests and convictions of the licensee's sole stockholder and president supported findings of his unfitness to hold an alcoholic beverage license. Jack P. Meyers, Inc. v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 238 Cal App 2d 869, 48 Cal Rptr 259, 1965 Cal App LEXIS 1208.

12. Revocation of Licenses Generally

A liquor license does not automatically become void, beyond any possibility of revival, whenever licensee fails to sell food on the premises, as the language of Art XX § 22 indicates that some action by the State Board is necessary before termination. Reynolds v. State Board of Equalization (1946) 29 Cal 2d 137, 173 P2d 551, 174 P2d 4, 1946 Cal LEXIS 284.

Under appropriate circumstances, the same rules apply to determination of an application for a license as those for its revocation. Weiss v. State Board of Equalization (1953) 40 Cal 2d 772, 256 P2d 1, 1953 Cal LEXIS 236.

Provision in the 1954 amendment of Art XX § 22, that the Alcoholic Beverage Control Appeals Board shall determine "whether the findings (of the Department of Alcoholic Beverage Control) are supported by substantial evidence in the light of the whole record," signifies no more than adoption of the "substantial evidence" rule, as generally applied in judicial proceedings in this state, rather than the "scintilla" rule which has been applied in judicial proceedings in some other jurisdictions. Martin v. Alcoholic Bev. Etc. Appeals Bd. (1959) 52 Cal 2d 238, 340 P2d 1, 1959 Cal LEXIS 197.

A finding of the Department of Alcoholic Beverage Control that a licensee had repeatedly violated B & P C §§ 23300, 23355, 23951, 23953, was tantamount to a finding that continuance of the license would be "contrary to public welfare." Martin v. Alcoholic Bev. Etc. Appeals Bd. (1959) 52 Cal 2d 287, 341 P2d 296, 1959 Cal LEXIS 203.

B & P C § 24200, subd (e), providing that a liquor license may be revoked where the premises are a "resort" for illegal possessors or users of narcotics, prostitutes, pimps, panderers or sexual perverts, and that the character of the premises "as a resort" by such prohibited classes may be proved by general reputation, is unconstitutional. Vallerga v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 313, 1 Cal Rptr 494, 347 P2d 909, 1959 Cal LEXIS 349.

A decision of the Department of Alcoholic Beverage Control revoking a liquor license on each of the several counts of the accusation is a valid revocation if any single count can be sustained. Maloney v. Department of Alcoholic Beverage Control (1959, Cal App 1st Dist) 172 Cal App 2d 104, 342 P2d 520, 1959 Cal App LEXIS 1931; Presto v. Alcoholic Beverage Control Appeals Board (1960, Cal App 3d Dist) 179 Cal App 2d 262, 3 Cal Rptr 742, 1960 Cal App LEXIS 2228.

In liquor license revocation proceeding, complaint charging that "On or about [a certain date the licensee], at his above-mentioned licensed premises, did employ or permit woman known only as Brownie, to solicit or encourage other persons to buy her alcoholic beverages, to-wit, beer, on above-mentioned premises" was sufficient to state offense, since it gave licensee fair notice of acts or omissions with which he was charged so that he could prepare his defense, licensee indicating no lack of preparation of his case before hearing officer and no surprise appearing in transcript as to charge or evidence produced against him. Garcia v. Martin (1961, Cal App 1st Dist) 192 Cal App 2d 786, 14 Cal Rptr 59, 1961 Cal App LEXIS 2002.

Where the evidence amply supports an order revoking a liquor license, it is against public policy to reduce the penalty to a suspension of the license on the basis that the licensee informed on an agent of the Department of Alcoholic Beverage Control who was taking bribes and assisted in securing the agent's conviction. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

B & P C § 24755.1, providing that punishment for retail sale of alcoholic beverages at less than the minimum price shown in schedules filed with the Department of Alcoholic Beverage Control 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 Art XX § 22, to deny, suspend or revoke liquor licenses; such power of the Department is subject to reasonable legislative enactment, including the addition of mandatory fines as penalty assessments. Kirby v. Alcoholic Beverage Control Appeals Board (1969) 71 Cal 2d 1200, 81 Cal Rptr 241, 459 P2d 657, 1969 Cal LEXIS 314.

An attack under Rule 35, Federal Rules of Criminal Procedure, relating to correction or reduction of sentence, goes only to the sentence not to the fact of conviction, and such an attack was irrelevant in determining the finality of an alcoholic beverage licensee's conviction in Federal District Court of defrauding the government through the filing of knowingly false income tax returns for two years, where the Federal Circuit Court of Appeals' affirmance of the District Court's action had long since become final and petition for writ of certiorari had been denied by the United States Supreme Court, and particularly where the circuit court later refused to interfere with the penalty pronounced by the District Court. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 5th Dist) 270 Cal App 2d 535, 75 Cal Rptr 823, 1969 Cal App LEXIS 1555.

A revocation of liquor licenses, as expressly stated in Cal. Const., art. XX, § 22, may be based on protecting the public welfare and morals, quite independently of any showing of fault of the licensee. However, the discretion to revoke or suspend licenses must be "legally" 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. There is an abuse of discretion when the revocation is not based on a showing that the use of the premises is conduct contrary to public welfare or morals within the meaning of the constitutional provision. Yu v. Alcoholic Bev. etc. Appeals Bd. (1992, Cal App 6th Dist) 3 Cal App 4th 286, 4 Cal Rptr 2d 280, 1992 Cal App LEXIS 123, review denied (1992) 1992 Cal. LEXIS 2293.

13. Appropriate and Inappropriate Revocations

A revocation of a corporation's liquor license on the ground that the corporation was managed by two persons who, because of police records (a history of narcotics violation convictions extending over approximately 12 years in the case of one, and approximately 19 years in the case of the other), could not themselves qualify as licensees, was sustained by evidence that both persons were authorized to sign checks and contracts for the corporation, that one owned one-third of the corporation stock and that the other's son, the vice-president of the corporation, had given the father a power of attorney to

do anything in relation to ownership of the corporation. Ciro's of San Francisco v. State Board of Equalization (1956, Cal App 1st Dist) 142 Cal App 2d 636, 299 P2d 703, 1956 Cal App LEXIS 2028.

A liquor license held in the name of a corporation may be revoked for the illegal conduct of two individuals as sole stockholders, though their acts were committed off the licensed premises where no minutes of the corporation were kept, no meetings were held by the stockholders or any officers of the corporation, and the two individuals considered themselves as the only owners and that they could do as they pleased in the management and control of the licensed business, since they were the real parties involved and were the alter ego of the corporation, and their acts were also the acts of the corporation. Jacques, Inc. v. State Board of Equalization (1957, Cal App 3d Dist) 155 Cal App 2d 448, 318 P2d 6, 1957 Cal App LEXIS 1307.

In a mandamus proceeding to compel the State Board of Equalization to annul its decision revoking a liquor license, a finding that the licensee participated in procuring, counseling and assisting lewd shows at premises owned and controlled by him was sustained from his admitted knowledge that lewd performances had been given there on several past occasions, from his former association with the man who rented the place from him, from his failure at any time to do anything to stop the lewd performances, and from the fact that because of the rental terms he was to some extent a partner in the enterprise. Jacques, Inc. v. State Board of Equalization (1957, Cal App 3d Dist) 155 Cal App 2d 448, 318 P2d 6, 1957 Cal App LEXIS 1307.

In a proceeding to revoke a liquor license, the Department of Alcoholic Beverage Control was not under a misapprehension as to the facts or the law in finding that the licensee was convicted of taking bets on the licensed premises in "violation of Penal C § 337a subd 3 ..., a felony, as charged in the information," and it did not appear that any such misapprehension entered into the determination that the continued holding of a license by the licensee would be contrary to public welfare or morals or contributed to the decision that the license should be revoked rather than suspended, where the Department's decision was based on the acts committed by the licensee which constituted a violation of the code section and on the fact that he had been convicted of the violation rather than on any determination that the crime was a felony or a misdemeanor. Macfarlane v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 84, 330 P2d 769, 1958 Cal LEXIS 210.

The Department of Alcoholic Beverage Control did not abuse its discretion in revoking the general on-sale liquor license of a licensee where he repeatedly failed on each of several applications for renewal of the license to disclose that the business was in fact operated by a partnership. Martin v. Alcoholic Bev. Etc. Appeals Bd. (1959) 52 Cal 2d 287, 341 P2d 296, 1959 Cal LEXIS 203.

An accusation that "the portions of premises of liquor licensees, have been and still are a resort for sexual perverts," is insufficient to charge the licensees with conduct subjecting their license to revocation other than pursuant to B & P C § 24200, subd (e); to sustain revocation of the license under Art XX § 22, on the ground that its continuance would be contrary to public welfare or morals, would violate due process of law in view of limited charge contained in the accusation and findings made thereon. Vallerga v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 313, 1 Cal Rptr 494, 347 P2d 909, 1959 Cal LEXIS 349.

The Department of Alcoholic Beverage Control did not abuse its discretion in revoking the general on-sale liquor license of a licensee where the conduct for which the license was revoked, namely, the taking of unlawful bets on horse races at the licensed premises, constituted a crime under the state laws and was thus at least technically contrary to public welfare or morals. Maloney v. Department of Alcoholic Beverage Control (1959, Cal App 1st Dist) 172 Cal App 2d 104, 342 P2d 520, 1959 Cal App LEXIS 1931.

Revocation of a liquor license authorizing revocation for employing or permitting persons to solicit drinks on the licensed premises for compensation, was supported by evidence that a bar girl asked agents of the Department of Alcoholic Beverage Control to buy her drinks, which they consented to do and that drinks at exorbitant prices were served to her; revocation was supported by further evidence that the licensee paid the bar girl who solicited the drinks a salary, permitted her to solicit drinks from patrons, and kept track roughly of the solicited drinks for the purpose of seeing that the girl had "friends." Greenblatt v. Martin (1960, Cal App 1st Dist) 177 Cal App 2d 738, 2 Cal Rptr 508, 1960 Cal App LEXIS 2540.

Revocation of the licensees' liquor license for allowing known prostitutes to enter and remain in the licensed premises and there solicit acts of prostitution was supported by the testimony of two agents of the Department of Alcoholic Beverage Control and that while in the licensees' bar they were each asked by female patrons to engage in acts of prostitution, that the bartender not only permitted the acts and conduct alleged but also aided and abetted them. Presto v. Alcoholic Beverage Control Appeals Board (1960, Cal App 3d Dist) 179 Cal App 2d 262, 3 Cal Rptr 742, 1960 Cal App LEXIS 2228.

Department of Alcoholic Beverage Control did not abuse discretion given it by B & P C § 23779, in revoking retail grocery chain's wholesale beer and wine license for failure to make, for a 45-day period, any sales of alcoholic beverages to retail licenses other than itself. Louis Stores, Inc. v. Department of Alcoholic Beverage Control (1962) 57 Cal 2d 749, 22 Cal Rptr 14, 371 P2d 758, 1962 Cal LEXIS 223.

B & P C § 23779, which gives the Department of Alcoholic Beverage Control power to revoke a wholesale license whenever the licensee fails for a period of 45 days to make sales to retail licensees other than himself, constituted a ground for revocation of the wholesale beer and wine license and the wine importer's license of the wholesale corporation that sold only to an incorporated retail licensee, of which it was a wholly owned subsidiary, having to a substantial extent the same officers and directors as such retail licensee. Borun Bros. v. Department of Alcoholic Beverage Control (1963, Cal App 2d Dist) 215 Cal App 2d 503, 30 Cal Rptr 175, 1963 Cal App LEXIS 2526.

A claim of liquor licensees that revocation of their license was arbitrary because "legions" of similar violations have resulted in penalties less severe is not meritorious where proceedings against other licensees are not a part of the record before the appellate court and thus there is nothing to show what charges were made or what evidence produced in the other cases; in any event, there is no requirement that charges similar in nature must result in identical penalties. Coleman v. Harris (1963, Cal App 1st Dist) 218 Cal App 2d 401, 32 Cal Rptr 486, 1963 Cal App LEXIS 1791.

In proceeding to revoke an on-sale liquor license, findings that there had been misconduct on the licensed premises in violation of B & P C § 25601, concerning the keeping of a disorderly house, need not specify that the misconduct occurred within the, conscious presence of the licensee or his employees. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

The cancellation of an off-sale general liquor license by the Department of Alcoholic Beverage Control pursuant to Adm. Code, tit. 4, Rule 65(d) was not unconstitutional and was not in excess of the Department's jurisdiction, where the power of the Department to adopt Rule 65 and to interpret the rule was

derived from Art XX § 22 and B & P C § 25750, and the Department did not, by adoption of the rule, abridge or enlarge its authority or exceed the powers given to it by the constitutional provision and the statute. Samson Market Co. v. Kirby (1968, Cal App 2d Dist) 261 Cal App 2d 577, 68 Cal Rptr 130, 1968 Cal App LEXIS 1779, cert den (1968) 393 US 11, 89 S Ct 49, 21 L Ed 2d 18, 1968 US LEXIS 578.

In a proceeding by the Department of Alcoholic Beverage Control to revoke a corporate liquor license, good cause for the revocation of the license was not shown where, though it appeared that the licensee's president and sole shareholder 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 consistent with public welfare and morals, and where there was no substantial evidence that continuation of the license would be contrary to the public welfare or morals. H. D. Wallace & Associates, Inc. v. Department of Alcoholic Beverage Control (1969, Cal App 3d Dist) 271 Cal App 2d 589, 76 Cal Rptr 749, 1969 Cal App LEXIS 2415, 36 ALR3d 1296.

The structuring of a decision of the Department of Alcoholic Beverage Control revoking a liquor license resulted in a failure to make any findings as to the portion of the accusation alleging a separate cause for discipline on the ground that continuance of the license would be contrary to public welfare and morals (B & P C § 24200, subd (a)) where, though the findings sufficiently set forth facts supported by independent evidence that the licensee knowingly bought and received stolen merchandise, such factual recitation was prefaced by the introductory statement that the licensee had "been convicted of a crime involving moral turpitude, as follows"; findings by implication cannot be substituted for specific findings when they are required. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 2d Dist) 3 Cal App 3d 209, 83 Cal Rptr 89, 1969 Cal App LEXIS 1373.

In revoking an on-sale, general bona fide eating place license, for a violation of B & P C § 25601, the Department of Alcoholic Beverage Control could not properly base its decision on the keeping of a house that disturbed the neighborhood or the keeping of a house to which people resorted for purposes that injured public morals, where there was no evidence that the licensed premises disturbed the neighborhood or that people resorted to such premises for any of the purposes condemned by the statute. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

The employment of "topless" waitresses and the distribution of their photographs to a liquor licensee's patrons was not illegal per se or in violation of any duly issued rule or regulation of the Department of Alcoholic Beverage Control; and though it is not entirely implausible that "topless" waitresses present the same danger of exploitation of customers that "B-Girls" did, it is insufficient as a ground for revocation of a license where there is no evidence that the waitresses have solicited customers to purchase drinks for them or accepted drinks from the patrons. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

In revoking a liquor license for the licensee's conduct contrary to public welfare and morals under Art XX § 22 and B & P C § 24200, subd (a), the Department of Alcoholic Beverage Control did not err in failing to make an express determination as to a violation of those sections, where identical considerations were involved in the Department's determination that illegal and immoral acts on the premises constituted the conduct of a disorderly house on the licensed premises in violation of B & P C § 25601. Kirby v. Alcoholic Beverage Control Appeals Board (1972, Cal App 2d Dist) 25 Cal App 3d 331, 101 Cal Rptr 815, 1972 Cal App LEXIS 1034.

Revocation of liquor license under B & P C §§ 24200 and 25601, purportedly in violation of licensee's federal constitutional rights in that, allegedly, sole ground for revocation was presence of homosexual clientele at bar, was res judicata for purposes of injunction action under 42 USCS § 1983, as the Department is a state court of limited jurisdiction. Francisco Enterprises, Inc. v. Kirby (1973, 9th Cir Cal) 482 F2d 481, 1973 US App LEXIS 8706, cert den (1974) 94 S Ct 1413, 39 L Ed 2d 471, 415 US 916, 1974 US LEXIS 1176.

The Department of Alcoholic Beverage Control properly determined to revoke the license of a business establishment licensed to sell liquor on public premises based on a finding that the licensee had engaged in a sexually discriminatory admittance policy. Apart from testimony of the licensee's own personnel which chronicled their conceded attempts to dissuade potential male customers, the testimony of the department investigators and the licensee's advertisements placed in a newspaper clearly constituted substantial evidence upon which to base a finding of a sexually discriminatory admittance policy. Such discrimination having been established, the department's authority to revoke the liquor license was clear. Cal. Const., art. XX, § 22, vests in the department the power to revoke "any specific alcoholic beverage license if it shall determine for good cause that … continuance of such license would be contrary to the public welfare …" The apposite public policy is set forth in Civ. Code, § 51 (the Unruh Civil Rights Act), which provides that "[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their sex… are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." Easebe Enterprises, Inc. v. Alcoholic Bev. etc. Appeals Bd. (1983, Cal App 2d Dist) 141 Cal App 3d 981, 190 Cal Rptr 678, 1983 Cal App LEXIS 1596, 38 ALR4th 332.

14. Importation, Manufacture, Transportation

Where licensed manufacturer of distilled spirits which also held distilled spirits wholesaler's license under B & P C § 23774 exempting certain persons from provisions of §§ 23771, 23772, was acquired by merger by another manufacturer of distilled spirits not otherwise able to possess wholesaler's license, later manufacturer was not, through such merger, entitled to possess wholesaler's license. Harris v. Alcoholic Beverage Control Appeals Board (1964) 61 Cal 2d 305, 38 Cal Rptr 409, 392 P2d 1, 1964 Cal LEXIS 202.

Penal C § 367(d), making it unlawful to operate a motor vehicle while intoxicated, is included within scope of Veh C § 13352(c), providing for suspension of driving privileges. Wallace v. Department of Motor Vehicles (1970, Cal App 2d Dist) 12 Cal App 3d 356, 90 Cal Rptr 657, 1970 Cal App LEXIS 1632.

Provisions of B & P C § 23661, exempting from taxation quantities of alcoholic beverages imported into California, as prescribed by federal law, are controlled by any and all subsequent revisions to the referenced federal law. Somermeier v. District Director of Customs (1971, 9th Cir Cal) 448 F2d 1243, 1971 US App LEXIS 7931.

15. Regulation of Sales Generally

Where it appeared that the discrepancy between the disbursements and the returns of liquor amounted to 1,280 cases per annum, and plaintiff's manager testified he could not give the name, place, and time of a single transfer, the State Board was not bound by such testimony to the extent that the court could say as a matter of law that the Board's finding that sales were made without necessary stamps, ignoring claimed gifts and exchanges, was arbitrary and capricious. Empire Vintage

Co. v. Collins (1940, Cal App) 40 Cal App 2d 612, 105 P2d 391, 1940 Cal App LEXIS 149.

The provision of Department of Alcoholic Beverage Control Rule 28, relating to minimum requirements for issuance of a wholesaler's liquor license was intended to give every retailer a chance to buy from anyone in licensed class with whom he must deal and thereby to prevent recurrence of the "tied-house" which promoted restraints of trade during pre-prohibition times. Duke Molner Wholesale Liquor Co. v. Martin (1960, Cal App 2d Dist) 180 Cal App 2d 873, 4 Cal Rptr 904, 1960 Cal App LEXIS 2413, cert den (1960) 364 US 870, 81 S Ct 112, 5 L Ed 2d 92, 1960 US LEXIS 325.

Cal. Const., art. XX, § 22, giving the Department of Alcoholic Beverage Control the exclusive power and control over alcoholic beverage licenses, did not prohibit the Department of Corrections and the State Personnel Board from promulgating and enforcing a rule prohibiting correctional officers from owning, operating, or working in a liquor store, even though the Department of Alcoholic Beverage Control did not prohibit such officers from obtaining liquor licenses. Keely v. State Personnel Board (1975, Cal App 3d Dist) 53 Cal App 3d 88, 125 Cal Rptr 398, 1975 Cal App LEXIS 1540, overruled Barber v. State Personnel Board (1976) 18 Cal 3d 395, 134 Cal Rptr 206, 556 P2d 306, 1976 Cal LEXIS 361.

16. Distribution to Minors

A minor's purchase of gin from a liquor licensee's salesman in the licensee's liquor store warrants suspension of the license. Brice v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 153 Cal App 2d 315, 314 P2d 807, 1957 Cal App LEXIS 1494.

If a liquor licensee delegates to an employee, such as a waitress, the task of ascertaining the bona fides of documentary evidence of majority and identity, required by B & P C § 25660, as a defense to a proceeding for suspension of a license for selling intoxicating liquor to a minor, he is bound by her conduct as if he had acted in person. 5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 748, 318 P2d 820, 1957 Cal App LEXIS 1351.

A licensee has no inherent right to sell liquor and his engaging in the business may legitimately be subject to rigid conditions that will limit the possibilities of sales to children under 21; the words "immediately prior," as used in B & P C § 25660, are words of limitation in time, and the act of questioning a minor and seeing some proof of age two or three weeks before a sale is not "immediately prior" to the sale. Farah v. Alcoholic Beverage Control Appeals Board (1958, Cal App 2d Dist) 159 Cal App 2d 335, 324 P2d 98, 1958 Cal App LEXIS 2003.

In proceedings for suspension of a license under the Alcoholic Beverage Control Act for violation of B & P C § 25658(a), (b), by selling and furnishing an alcoholic beverage to a minor and by permitting the minor to consume an alcoholic beverage in the licensee's premises, the licensee may assert reliance on the original demand and exhibition of evidence of majority and identity, on entry upon the premises, in selling, furnishing or permitting the consumption of an alcoholic beverage by that minor following the entry and such defense is not lost because a second employee pursued an inadequate inquiry before serving the minor, where the minor patron had exhibited to one employee on entry on the premises, and at all times thereafter had on his person, what was found to be bona fide evidence of majority and identity. Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968, Cal App 1st Dist) 261 Cal App 2d 181, 67 Cal Rptr 734, 1968 Cal App LEXIS 1730.

17. Price Controls

The General Fair Trade Act, although designed in part to reduce cut-throat competition, is primarily intended to protect the property rights of producers and wholesalers, whereas the primary purpose of the fair trade provisions of the Alcoholic Beverage Control Act is to promote orderly marketing conditions and temperance; this difference in primary purpose has no significant bearing on the question of delegation of legislative power because it does not change the functions of the persons to whom a delegation is assertedly made. Allied Properties v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 141, 346 P2d 737, 1959 Cal LEXIS 329.

The classification made by the Legislature in regulating retail prices in the fair trade provisions of the Alcoholic Beverage Control Act without regulating wholesale prices is reasonable since the Legislature could properly conclude that competition among the relatively few producers and wholesalers would not result in disorderly marketing conditions but that price stabilization with respect to the far larger number of retailers, who sell directly to the consumers, was necessary to prevent selling practices tending to increase sales and consumption of alcoholic beverages. Allied Properties v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 141, 346 P2d 737, 1959 Cal LEXIS 329.

The legislative purpose of preventing price cutting and price wars among retailers is effectively attained under the fair trade provisions of the Alcoholic Beverage Control Act by having each producer or wholesaler establish the retail price of his own brand, and the Legislature may reasonably proceed on the theory that the public will be adequately protected against excessive prices, by the ordinary play of competition between manufacturers. Allied Properties v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 141, 346 P2d 737, 1959 Cal LEXIS 329.

The fact that the Alcoholic Beverage Control Act requires, rather than permits, producers and wholesalers to set retail prices does not render the function of a producer or wholesaler legislative in character but, to the contrary, decreases his discretion since he is not free to determine whether fair trading should occur; nor does fact that the Act's fair trade provisions provide for administrative and criminal sanctions does not involve any delegation of power, the sanctions being prescribed by the Legislature, not by the producers or wholesalers. Allied Properties v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 141, 346 P2d 737, 1959 Cal LEXIS 329.

Fair trade contracts providing that the buyer shall not resell the alcoholic beverage except at a price stipulated by the vendor serve the legislative purpose of preventing price cutting at the retail level and reducing excessive purchases of alcoholic beverages, thus promoting temperance in their use and consumption; it is only agreements between producers or between wholesalers or between retailers as to the sale or retail prices that the fair trade provisions of the Alcoholic Beverage Control Act interdict. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

Price regulation by the Department of Alcoholic Beverage Control of quantity of sales of distilled spirits to retailers does not come within the meaning or purview of "public welfare or morals" as that term is used in Art XX § 22. Schenley Industries, Inc. v. Munro (1965, Cal App 1st Dist) 237 Cal App 2d 106, 46 Cal Rptr 678, 1965 Cal App LEXIS 1234, overruled Ralphs Grocery Co. v. Reimel (1968) 69 Cal 2d 172, 70 Cal Rptr 407, 444 P2d 79, 1968 Cal LEXIS 234.

Failure of the Legislature to seek to prevent intemperance by limiting the volume of liquor sales, by regulating competition among producers and wholesalers, or by establishing high liquor prices generally, creates no constitutional infirmity in

the Alcoholic Beverage Control Act; the Act's mandatory retail price maintenance provisions (B & P C §§ 24750, 24752, former 24755, 24757) are constitutional. Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control (1966) 65 Cal 2d 349, 55 Cal Rptr 23, 420 P2d 735, 1966 Cal LEXIS 208.

A prohibition of quantity discounts of beer, effectively required by Rule 105(a) of the Department of Alcoholic Beverage Control, constitutes not "price-fixing" requiring explicit legislative authorization, but merely a prohibition against price discrimination, for which no explicit legislative authorization is required. Ralphs Grocery Co. v. Reimel (1968) 69 Cal 2d 172, 70 Cal Rptr 407, 444 P2d 79, 1968 Cal LEXIS 234.

Administrative prohibition of multiple discount rates in the sale of a single brand or item of distilled spirits exceeds the powers of the Department of Alcoholic Beverage Control. Schenley Affiliated Brands Corp. v. Kirby (1971, Cal App 3d Dist) 21 Cal App 3d 177, 98 Cal Rptr 609, 1971 Cal App LEXIS 1063.

States are not authorized under the Twenty-first Amendment to require out-of-state liquor distillers and suppliers to collect and remit to the state a wholesale markup on liquor sold to officers' clubs and post exchanges located on military bases within the state over which the United States exercises either exclusive or concurrent jurisdiction. United States v. State Tax Com. (1973) 412 US 363, 37 L Ed 2d 1, 93 S Ct 2183, 1973 US LEXIS 126.

18. Premises Controls

If the proprietor of a hotel permits his patrons to bring into his dining room, which is a public drinking place as contemplated by Art XX § 22 liquor in original packages (other than wine or beer), and consume the contents thereof while occupying seats at the dining room tables, he is maintaining a public drinking place in violation of the Constitution and the Act of 1933 (Stats 1933, p 1697). Sandelin v. Collins (1934) 1 Cal 2d 147, 33 P2d 1009, 1934 Cal LEXIS 343, 93 ALR 956.

Alcoholic Beverage Control Act, Sec 2, subd (in), which states that a room is not a saloon unless it contains a "bar" or counter, places an unwarranted limitation on Art XX § 22, and, if intended as a definition of this term as used in that provision, it is to that extent ineffective. Hammond v. McDonald (1942, Cal App) 49 Cal App 2d 671, 122 P2d 332, 1942 Cal App LEXIS 866.

The statutory definition of "public saloon, public bar, or public barroom" in Alcoholic Beverage Control Act, Sec 2 (m), which is of persuasive although not controlling authority, is consistent with Art XX § 22. Covert v. State Bd. of Equalization (1946) 29 Cal 2d 125, 173 P2d 545, 1946 Cal LEXIS 283.

Since Art XX § 22 permits the sale of liquor in a bona fide restaurant without prescribing any quantitative test, the mere fact that the business of selling food does not produce as much income as the business of selling liquor does not destroy the bona fide character of a restaurant. Covert v. State Bd. of Equalization (1946) 29 Cal 2d 125, 173 P2d 545, 1946 Cal LEXIS 283.

The gross food sales of a restaurant or cafe need not constitute its principal business in order to qualify it as a bona fide public eating place. Covert v. State Bd. of Equalization (1946) 29 Cal 2d 125, 173 P2d 545, 1946 Cal LEXIS 283.

Art XX § 22 which provides that liquor may be sold in a restaurant, does not create a presumption that a person who places his liquor license in a restaurant becomes a partner of the restaurant operator. Weichman v. Vetri (1950, Cal App) 100 Cal App 2d 177, 223 P2d 288, 1950 Cal App LEXIS 1185.

The rule of the Board of Equalization forbidding female employees to solicit the purchase or sale of alcoholic beverages on licensed premises, is reasonable, and the rule has a reasonable relation to the legitimate ends for which the board was created. Mercurio v. Department of Alcoholic Beverage Control (1956, Cal App 1st Dist) 144 Cal App 2d 626, 301 P2d 474, 1956 Cal App LEXIS 1773.

As used in B & P C § 25601, making it a misdemeanor for a liquor licensee to keep or suffer his premises to be used as a disorderly house, the word "suffers" means to permit, allow or not to forbid activities which constitute the premises a "disorderly house." Givens v. Department of Alcoholic Beverage Control (1959, Cal App 2d Dist) 176 Cal App 2d 529, 1 Cal Rptr 446, 1959 Cal App LEXIS 1513.

B & P C § 25604, making it unlawful for any one person to maintain a clubroom in which alcoholic beverages were served without a license, does not conflict with federal or state constitutional provisions relating to deposition of individual liberty and private property without due process of law, but is a valid exercise of the police power. People v. Frangadakis (1960, Cal App 1st Dist) 184 Cal App 2d 540, 7 Cal Rptr 776, 1960 Cal App LEXIS 1904.

Holder of liquor license has affirmative duty to make sure that licensed premises are not used in violation of law and knowledge and acts of his employees are imputable to license. Morell v. Department of Alcoholic Beverage Control (1962, Cal App 1st Dist) 204 Cal App 2d 504, 22 Cal Rptr 405, 1962 Cal App LEXIS 2270.

Though the mere employment of "topless" waitresses by a liquor licensee is not ground for revocation of a license, licensees are not generally sanctioned to employ topless or other similarly undressed waitresses and do not enjoy general immunity from disciplinary action if they do; where such purveying of liquor is attended by deleterious consequences, the Department should establish good cause and make out its case for revocation or, alternatively, the Department can adopt regulations covering the situation. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

A county ordinance proscribing the presence in model studios of persons possessing, consuming, using, or under the influence of alcoholic beverages, as applied to a model studio operated in conjunction with a cocktail bar could not be said to conflict with Art XX § 22, giving the State the exclusive right to regulate in the, field of alcoholic beverages; several opinions of the Attorney General have upheld the right of local authorities to regulate places of public entertainment including premises licensed for the sale of liquor, and amendments to the constitutional provision adopted after the issuance of such opinions have made no significant change in its language; thus it is reasonable to conclude that the Attorney General's opinions correctly interpreted the intent of the legislature and that such intent remains unchanged. Cristmat, Inc. v. County of Los Angeles (1971, Cal App 2d Dist) 15 Cal App 3d 590, 93 Cal Rptr 325, 1971 Cal App LEXIS 926.

Regulation prohibiting certain sexually explicit live entertainment or films in licensed bars and nightclubs upheld notwithstanding that regulations proscribe some forms of visual presentation not obscene, considering the States' broad authority under the Twenty-First Amendment to control intoxicating liquors, and evidence before the Board showing a greater incidence of prostitution, rape, indecent exposure, and assaults near liquor-vending premises. California v. La Rue (1972) 409 US 109, 34 L Ed 2d 342, 93 S Ct 390, 1972 US LEXIS 128, rehearing denied (1973) 410 US 948, 93 S Ct 1351, 35 L Ed 2d 615, 1973 US LEXIS 3546.

19. Zoning Restrictions

The provision in B & P C § 23790, which exempts a nonconforming use, such as an on-sale liquor establishment, from a zoning ordinance does not include a use which had ceased four years before the effective date of the ordinance and eleven years before a renewal application was made; granting an on-sale intoxicating liquor license to an establishment

operating with only a beer and wine license under a nonconforming use is an unwarranted enlargement of the use. Town Council of Los Gatos v. State Bd. of Equalization (1956, Cal App 1st Dist) 141 Cal App 2d 344, 296 P2d 909, 1956 Cal App LEXIS 1851.

"Campus," as used in Penal C § 172a, prohibiting the sale of intoxicants within a certain distance of a university campus, includes more than the areas actually occupied by the principal administrative offices and includes the lands surrounding the offices and buildings used for educational purposes. Vanoli v. Munro (1956, Cal App 1st Dist) 147 Cal App 2d 179, 304 P2d 722, 1956 Cal App LEXIS 1260.

City zoning ordinance prohibiting establishment of cocktail bar or lounge within 200 feet of residential district without use permit did not covertly design local option, since it did not seek to eliminate use of alcoholic beverages by city's residents, but permitted sale of liquors and presence of cocktail bars elsewhere in city. Floresta, Inc. v. City Council of San Leandro (1961, Cal App 1st Dist) 190 Cal App 2d 599, 12 Cal Rptr 182, 1961 Cal App LEXIS 2345.

Cal Adm C tit 4 § 61.1, promulgated by the Department of Alcoholic Beverage Control and providing that no on-sale general license or on-sale beet and wine license shall be issued within 1 mile of a university unless the Department is satisfied that the location of the premises is sufficiently distant from the campus and the nature of the licensed business is such that it will not be patronized by students, is void, being in conflict with Penal C § 172e, removing the restriction against sale of alcoholic beverages in proximity to universities as to bona fide public eating places. Harris v. Alcoholic Beverage Control Appeals Board (1965, Cal App 1st Dist) 235 Cal App 2d 479, 45 Cal Rptr 450, 1965 Cal App LEXIS 947.

A city's ordinance imposing a plan approval process for the rebuilding of businesses destroyed or damaged during a civil disturbance and providing for revocation hearings as to businesses that had become or were threatening to become a nuisance or law enforcement problem were not expressly preempted by Cal. Const., art. XX, § 22 (state shall have exclusive power to license and regulate manufacture, sale, possession, and transportation of alcoholic beverages). The purpose and effect of the ordinance was not to dictate, restrict, or regulate the actual sale of alcoholic beverages; instead, it focused on abating or eradicating nuisance activities in a particular geographic area by imposing conditions aimed at mitigating those effects. These are typical and natural goals of zoning and land use regulations. That these conditions might have some indirect impact on the sale of alcoholic beverages did not transmute the ordinance into regulations merely seeking to control alcohol sales. The ordinance constituted a valid exercise of the city's police powers under Cal. Const., art. XI, § 7, to control and abate nuisances. Korean American Legal Advocacy Foundation v. City of Los Angeles (1994, Cal App 2d Dist) 23 Cal App 4th 376, 28 Cal Rptr 2d 530, 1994 Cal App LEXIS 238, modified, rehearing denied (1994, Cal App 2d Dist) 23 Cal App 4th 1861d, 28 Cal Rptr 2d 530, 1994 Cal App LEXIS 331, review denied (1994) 1994 Cal. LEXIS 3928.

20. Possession and Intoxication

It was not only the right of a police officer but his duty to check any suspicious activity and it was proper that the officer should find out more about a panel truck, which he had never seen before, observed in the middle of the night parked in a questionably illegal way in an alley located in a home area; the officer had the right to stop the car and require identification, and when he discovered that there was an active breach of the law by the minor occupants, under circumstances which prima facie made them guilty of an offense through the use of an open jug of wine, he was not remiss in ordering their arrest. Bramlette v. Superior Court of Merced County (1969, Cal App 5th Dist) 273 Cal App 2d 799, 78 Cal Rptr 532, 1969 Cal App LEXIS 2228.

Defendant, placed under arrest for possession of alcohol by a minor, could not be arrested or prosecuted under B & P C § 25662, relating to possession of an alcoholic beverage by a minor in a public place, but was chargeable under Veh C § 23125.5, covering such possession "in a motor vehicle"; defendant was not only subject to the extra penalties imposed by that section but was also entitled to the rights of a person charged thereunder, including the right to be taken before a magistrate so that he might be admitted to jail. People v. Superior Court (1971, Cal App 1st Dist) 14 Cal App 3d 935, 92 Cal Rptr 545, 1971 Cal App LEXIS 1043.

A complaint in a personal injury action against the employer of an allegedly intoxicated minor whose automobile collided with an automobile in which plaintiffs were riding stated a cause of action, where it was alleged that the minor's intoxication was induced by his employer as the result of a Christmas party where the employer knowingly made available to minor copious amounts of liquor with knowledge he would eventually depart in an auto. Brockett v. Kitchen Boyd Motor Co. (1972, Cal App 5th Dist) 24 Cal App 3d 87, 100 Cal Rptr 752, 1972 Cal App LEXIS 1120.

The trial court properly dismissed charges that defendant violated a city's municipal code by possessing an open container of an alcoholic beverage in public with intent to consume the contents in public, since the local ordinance was an improper attempt to regulate possession of alcohol in any public place under Pen. Code, § 647e (possession of open container on posted premises of off-sale alcoholic beverage licensee), which does not authorize such broad regulation. Although Cal. Const., art. XX, § 22, provides that the state shall have the exclusive right and power to license and regulate the possession of alcoholic beverages within the state, the wording of the local ordinance clearly showed that it sought to prohibit possession of an alcoholic beverage under certain circumstances. The fact that the person with the alcoholic beverage must also intend to consume some part of it in public did not change the act (possession) that was prohibited by the ordinance. People v. Duran (1995, Cal App Dep't Super Ct) 43 Cal App 4th Supp 1, 52 Cal Rptr 2d 79, 1995 Cal App LEXIS 1296.

21. Taxation

Art XX § 22 does not exempt the owner of liquors from paying a personal property tax thereon levied by local tax agencies, such as a city, school district and water district. Three G Distillery Corp. v. County of Los Angeles (1941, Cal App) 46 Cal App 2d 498, 116 P2d 143, 1941 Cal App LEXIS 1419.

Liquor licenses are not subject to ad valorem taxation as personal property, since they are not included in the list of intangibles specified in Art XIII § 14 and Rev & Tax C § 111. Roehm v. County of Orange (1948) 32 Cal 2d 280, 196 P2d 550, 1948 Cal LEXIS 223.

An ordinance of the City and County of San Francisco imposing an excise tax of one-half of 1 percent on the retail purchase of tangible personal property does not, when applied to the sale of intoxicating liquors, enter into the field of taxation pre-empted by the State commensurate with its exclusive power to levy license fees or occupation taxes thereon, and hence does not violate Art XX § 22. Ainsworth v. Bryant (1949) 34 Cal 2d 465, 211 P2d 564, 1949 Cal LEXIS 180.

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 Cal. Const., art. 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. The tax is not paid in consideration of the issuance of a license granting the privilege to engage in business, but is imposed for general revenue purposes on all businesses with employees who perform services within the city and county, and where there was no evidentiary support for an assertion that only persons engaged in the business of manufacturing or selling alcoholic beverages were in fact subject to the tax. A.B.C. Distributing Co. v. San Francisco (1975) 15 Cal 3d 566, 125 Cal Rptr 465, 542 P2d 625, 1975 Cal LEXIS 254.

Cal. Const., art. XX, § 22, grants the State Department of Alcoholic Beverage Control the exclusive power to tax alcoholic beverage sales, and a local tax on alcoholic beverage sales is preempted by state law. However, alcoholic beverages retailers may properly be required to pay their fair share of the cost of government. If a business imposes an unusual burden on city services, a municipality may properly impose fees pursuant to its police powers, but may not impose a tax on alcoholic beverage retailers under the guise of a fee. City of Oakland v. Superior Court (1996, Cal App 1st Dist) 45 Cal App 4th 740, 53 Cal Rptr 2d 120, 1996 Cal App LEXIS 446.

22. Penalty Assessments

The amount of penalty to be assessed against a licensee who violates a provision of the Alcoholic Beverage Control Act is solely within the discretion of the Department of Alcoholic Beverage Control; it is beyond the jurisdiction of the Alcoholic Beverage Control 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 (1959, Cal App 1st Dist) 169 Cal App 2d 294, 337 P2d 83, 1959 Cal App LEXIS 2068.

B & P C § 24755.1, providing that punishment for retail sale of alcoholic beverages at less than the minimum price shown in schedules filed with the Department of Alcoholic Beverage Control 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 Art XX § 22, to deny, suspend or revoke liquor licenses; such power of the Department is subject to reasonable legislative enactment, including the addition of mandatory fines as penalty assessments. Kirby v. Alcoholic Beverage Control Appeals Board (1969) 71 Cal 2d 1200, 81 Cal Rptr 241, 459 P2d 657, 1969 Cal LEXIS 314.

23. Conduct of Proceedings

The provisions of the Alcoholic Beverage Control Act, relating to notice and hearing prior to revocation of licenses, merely prescribe the procedure by which jurisdiction of the State Board is to be exercised, and merely regulate procedure and are not designed to, nor do they in any way, impair the constitutional power of said Board or even remotely attempt to regulate or define what jurisdiction that Board shall possess, and do not conflict with Art XX § 22; while § 22 does not provide for any notice and hearing as a prerequisite to revocation of a license, the Board cannot claim that, when it acts independently and without any verified complaint being filed with it, no notice of such hearing is required, and that the license may be revoked without notice to the licensee and without affording him an opportunity to be heard. Irvine v. State Board of Equalization (1940, Cal App) 40 Cal App 2d 280, 104 P2d 847, 1940 Cal App LEXIS 103.

The Board must afford an opportunity for a full hearing when revoking a liquor license. Covert v. State Bd. of Equalization (1946) 29 Cal 2d 125, 173 P2d 545, 1946 Cal LEXIS 283.

Constitutional guarantees are not violated by revocation of a liquor license without notice or hearing. Saso v. Furtado (1951, Cal App) 104 Cal App 2d 759, 232 P2d 583, 1951 Cal App LEXIS 1684.

The requirement of corroboration of accomplices in criminal proceedings does not apply to, an administrative proceeding to revoke a liquor license for violation of the B-girl statutes. Oxman v. Department of Alcoholic Beverage Control (1957, Cal App 3d Dist) 153 Cal App 2d 740, 315 P2d 484, 1957 Cal App LEXIS 1551.

A liquor licensee accused of suffering his premises to be used as a disorderly house was not denied the right to counsel of his choice where the notice of hearing, served on him pursuant to Gov C § 11509, stated that "You may be present at the hearing, may be but need not be represented by counsel." Givens v. Department of Alcoholic Beverage Control (1959, Cal App 2d Dist) 176 Cal App 2d 529, 1 Cal Rptr 446, 1959 Cal App LEXIS 1513.

In an administrative proceeding against a liquor licensee accused of suffering his premises to be used as a disorderly house, there is no absolute right to a continuance in view of the provisions of Gov C § 11524, for continuances in such proceedings at the discretion of the hearing officer and for "good cause shown." Givens v. Department of Alcoholic Beverage Control (1959, Cal App 2d Dist) 176 Cal App 2d 529, 1 Cal Rptr 446, 1959 Cal App LEXIS 1513.

In liquor license revocation proceeding, complaint charging that "On or about [a certain date the licensee], at his above-mentioned licensed premises, did employ or permit woman known only as Brownie, to solicit or encourage other persons to buy her alcoholic beverages, to-wit, beer, on above-mentioned premises" was sufficient to state offense, since it gave licensee fair notice of acts or omissions with which he was charged so that he could prepare his defense, licensee indicating no lack of preparation of his case before hearing officer and no surprise appearing in transcript as to charge or evidence produced against him. Garcia v. Martin (1961, Cal App 1st Dist) 192 Cal App 2d 786, 14 Cal Rptr 59, 1961 Cal App LEXIS 2002.

In a proceeding to revoke a liquor license, the principal objective of Gov C § 11503, specifying the form of accusation in administrative proceedings, is to safeguard the licensee against an accusation that does not sufficiently enable him to prepare his defense; adherence to technical rules of pleading is not required. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

In a proceeding to revoke a liquor license, the accusation, in addition to alleging a criminal conviction, sufficiently alleged a separate cause for discipline on the ground that continuance of the license would be contrary to public welfare and morals (B & P C § 24200, subd (a)) where the allegation, based on the involvement of the licensee in illegal activity, preceded the allegation dealing with the criminal court proceedings relating to the same activity, where the substantive content of the paragraph, the punctuation, and the use of the conjunctive "and" to precede the allegation detailing the criminal court proceedings were all indicative of the several nature of the allegations, and where the licensee indicated no lack of preparation of his case before the hearing officer and the record showed no surprise on his part as to the charges or evidence produced against him. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 2d Dist) 3 Cal App 3d 209, 83 Cal Rptr 89, 1969 Cal App LEXIS 1373.

Business challenging a suspension of its license to sell beer and wine by the California Department of Alcoholic Beverage Control under B & P C § 23090 made a prima facie case of a California Administrative Procedure Act (APA), Gov C §§ 11340 et seq., violation where it was undisputed that it was standard Department procedure for the Department's pros-

ecuting attorney to furnish a report of hearing ex parte to the Department's decision-maker, and where the Department did not meet its burden to show a change in departmental practice. Although the Department asserted that it did not use the condemned practice, it failed to adduce evidence substantiating its assertion before the California Alcoholic Beverage Control Appeals Board and could not do so for the first time in the appellate court. Chevron Stations, Inc. v. Alcoholic Beverage Control Appeals Bd. (2007, Cal App 3d Dist) 149 Cal App 4th 116, 57 Cal Rptr 3d 6, 2007 Cal App LEXIS 468.

Although the California Department of Alcoholic Beverage Control's decision-maker rejected an administrative law judge's (ALJ) proposed decision in a recent California Supreme Court case that held that the California Administrative Procedure Act (APA), Gov C §§ 11340 et seq., was violated by the Department's practice of having the Department's prosecuting attorney send a "report of hearing" to the Department's decision-maker before a final decision was made, the APA is also violated even where the Department's decision-maker decides to adopt the ALJ's proposed decision. Chevron Stations, Inc. v. Alcoholic Beverage Control Appeals Bd. (2007, Cal App 3d Dist) 149 Cal App 4th 116, 57 Cal Rptr 3d 6, 2007 Cal App LEXIS 468.

24. Reconsideration Determinations

Proceedings for reconsideration by the Department of Alcoholic Beverage Control of its revocation of a liquor license do not affect the time for filing an appeal to the Alcoholic Beverage Control Appeals Board. Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 523, 314 P2d 1007, 1957 Cal App LEXIS 1526, cert den (1958) 356 US 902, 78 S Ct 562, 2 L Ed 2d 580, 1958 US LEXIS 1394, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

It is not the province of a court reviewing the proceedings of the Department of Alcoholic Beverage Control to substitute its judgment for the Department's as to whether a license should issue or as to whether there has been, since a prior hearing and order, a change in circumstances that justifies a change in decision, providing there is substantial evidence for the change. Hasselbach v. Department of Alcoholic Beverage Control (1959, Cal App 2d Dist) 167 Cal App 2d 662, 334 P2d 1058, 1959 Cal App LEXIS 2386.

Where Department of Alcoholic Beverage Control granted liquor license to grocery store after having previously refused to issue such license, fact that Alcoholic Beverage Control Appeals Board, in affirming order granting application for license, may have erroneously held that res judicata was under no circumstances applicable in such proceeding, did not affect validity of its decision since such, statement was not finding of fact, Appeals Board having no power to make findings of fact, and since there was a change of conditions which was found to exist by Department, and by affirming Department's order Appeals Board ruled that findings supported Department's decision and order; Appeals Board's decision was thus correct and it was immaterial that its reasons were erroneous. Hasselbach v. Department of Alcoholic Beverage Control (1959, Cal App 2d Dist) 167 Cal App 2d 662, 334 P2d 1058, 1959 Cal App LEXIS 2386.

25. Judicial Review Generally

The rule that no appeal lies from findings or conclusions is based on CCP § 664 which provides that no judgment is effectual until entered, and on the rule that until entry the judge can change his previously rendered judgment. Brice v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 153 Cal App 2d 315, 314 P2d 807, 1957 Cal App LEXIS 1494.

It was not error to sustain, without leave to amend, a demurrer to a complaint in mandamus to review proceedings of the Alcoholic Beverage Control Appeals Board in which it had properly dismissed, for lack of jurisdiction, a purported appeal from the Department of Alcoholic Beverage Control's order revoking a liquor license. Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 523, 314 P2d 1007, 1957 Cal App LEXIS 1526, cert den (1958) 356 US 902, 78 S Ct 562, 2 L Ed 2d 580, 1958 US LEXIS 1394, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

Under CCP § 1194.5, mandamus in the superior court is a proper procedure to review the decision of the Alcoholic Beverage Control Appeals Board reversing an order of the State Board of Equalization indefinitely suspending a liquor license; judicial review of the Appeals Board's acts is not limited to certiorari in the District Court of Appeal. Koehn v. State Board of Equalization (1958, Cal App 1st Dist) 166 Cal App 2d 109, 333 P2d 125, 1958 Cal App LEXIS 1377.

In a proceeding to obtain a writ of mandamus commanding the Alcoholic Beverage Control Appeals Board to vacate an order reversing an order of the State Board of Equalization, no findings are necessary and the correctness of those made need not be determined by the appellate court where the only question submitted to the trial court was one of law. Koehn v. State Board of Equalization (1958, Cal App 1st Dist) 166 Cal App 2d 109, 333 P2d 125, 1958 Cal App LEXIS 1377.

Where Alcoholic Beverage Control Appeals Board has reversed decision of Department of Alcoholic Beverage Control denying application for on-sale liquor license, judicial review by mandamus is necessarily directed at decision of Appeals Board but any judicial determination of whether Appeals Board has exceeded its "limited" powers would incidentally require review of decision of Department and of record on which Department's decision had been based. Martin v. Alcoholic Beverage Control Appeals Board (1961) 55 Cal 2d 867, 13 Cal Rptr 513, 362 P2d 337, 1961 Cal LEXIS 268.

Though the fact that the Department of Alcoholic Beverage Control or its predecessor agency has been consistent for over eleven years in accepting for filing fair trade agreements between producers and retailers, even though such parties were not and under applicable regulations could not be in a lawful seller-buyer relationship, is not necessarily controlling, this fact is entitled to De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

Under B & P C § 23090.5, only the Supreme Court and the courts of appeal have jurisdiction to review decisions of the Department of Alcoholic Beverage Control, 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. The constitutional proscription against ex post facto laws applies only to criminal statutes and the fact that jurisdiction is taken away from a particular court to hear one kind of case does not in itself deprive anyone of a vested right; under present law the Supreme Court and the Courts of Appeal have all of the powers of review formerly exercisable by the superior court. Department of Alcoholic Beverage Control v. Superior Court of San Francisco (1968, Cal App 1st Dist) 268 Cal App 2d 7, 73 Cal Rptr 671, 1968 Cal App LEXIS 1267.

26. Exhaustion of Administrative Remedies

Gov C § 11523, relating to judicial review of administrative decisions, does not authorize an appeal to the courts directly

from the Department of Alcoholic Beverage Control's revocation of a liquor license; to secure a judicial review, the licensee must first appeal to the Alcoholic Beverage Control Appeals Board, pursuant to B & P C § 23081, and then may seek judicial review of the board's decision. Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 523, 314 P2d 1007, 1957 Cal App LEXIS 1526, cert den (1958) 356 US 902, 78 S Ct 562, 2 L Ed 2d 580, 1958 US LEXIS 1394, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235; Cardoso v. Department of Alcoholic Beverage Control (1958, Cal App 3d Dist) 162 Cal App 2d 277, 327 P2d 591, 1958 Cal App LEXIS 1870.

A party aggrieved by a decision of the Department of Alcoholic Beverage Control authorizing the issuance of an on-sale liquor license has no right to seek judicial review of such decision under Gov C § 11523 without first filing an appeal with the appeals board of the department. Fiscus v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 234, 317 P2d 993, 1957 Cal App LEXIS 1271.

Where an appeal from an order of the Department of Alcoholic Beverage Control revoking a liquor license was filed before the Alcoholic Beverage Control Appeals Board after expiration of the time limit set in B & P C § 23081, the Board had no jurisdiction over the proceeding, the Department's decision became final, and the courts had no jurisdiction to review the proceeding. Van De Veer v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 817, 318 P2d 686, 1957 Cal App LEXIS 1361, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

The rule that exhaustion of the administrative remedy is a jurisdictional prerequisite to resort to the courts is applicable even where the statute sought to be applied and enforced by the administrative agency is challenged on constitutional grounds. Miller v. Department of Alcoholic Beverage Control (1958, Cal App 2d Dist) 160 Cal App 2d 658, 325 P2d 601, 1958 Cal App LEXIS 2169, cert den (1958) 358 US 907, 79 S Ct 234, 3 L Ed 2d 229, 1958 US LEXIS 76.

There was no jurisdiction in a court for judicial review of an order of the Department of Alcoholic Beverage Control revoking an on-sale liquor license where an appeal from such order was not taken to the Alcoholic Beverage Control Appeals Board within the time allowed by law, despite the fact that the licensees alleged that they had exhausted all remedies provided by applicable laws and had no further adequate remedy at law or further right of appeal except to file a petition for writ of mandate. Miller v. Department of Alcoholic Beverage Control (1958, Cal App 2d Dist) 160 Cal App 2d 658, 325 P2d 601, 1958 Cal App LEXIS 2169, cert den (1958) 358 US 907, 79 S Ct 234, 3 L Ed 2d 229, 1958 US LEXIS 76.

An appeal from a decision of the Department of Alcoholic Beverage Control to the Alcoholic Beverage Control Appeals Board is not a useless or meaningless step, notwithstanding the "limited" powers conferred on the Appeals Board by the 1954 amendment of Art XX § 22, in view of the fact that applicants for liquor licenses have freely availed themselves of the relatively expeditious and inexpensive remedy of appeal to the Appeals Board, and that the vast majority of applicants, as well as the department, have ordinarily been willing to accept the decisions of the Appeals Board without resort to the courts. Martin v. Alcoholic Bev. Etc. Appeals Bd. (1959) 52 Cal 2d 238, 340 P2d 1, 1959 Cal LEXIS 197.

In a mandamus proceeding to review an order of the Department of Alcoholic Beverage Control suspending a liquor license, the superior court properly sustained the department's demurrer on the ground of lack of jurisdiction, and stay of the suspension order was thereafter improperly granted by a judge of the same superior court, where the licensee failed to seek judicial review in accordance with B & P C § 23090, within 30 days after the final order of the Alcoholic Beverage Control Appeals Board affirming the suspension, where, although the alleged violations on which the suspension was based occurred prior to the effective date of § 23090.5, divesting superior courts of jurisdiction to review decisions of the department, the right to judicial review of the order of suspension did not mature until some six months after the effective date, and where application of the revised review procedures involved no impairment of the licensee's right to judicial review nor a denial of an opportunity to take advantage of the benefit of the revised procedures. Department of Alcoholic Beverage Control v. Superior Court of San Francisco (1968, Cal App 1st Dist) 268 Cal App 2d 7, 73 Cal Rptr 671, 1968 Cal App LEXIS 1267.

27. Scope and Standards of Judicial Review

In determining whether or not a particular establishment qualifies as a bona fide eating place under Art XX § 22, it is the province of the State Board to ascertain the facts, such as physical aspects, equipment and supplies, amount of food and liquor sold, and the manner in which the business is conducted: after the probative facts have been settled, the construction and application of the Constitution and pertinent statutes are questions of law for the courts to decide. Covert v. State Bd. of Equalization (1946) 29 Cal 2d 125, 173 P2d 545, 1946 Cal LEXIS 283.

On appeal from a judgment for defendants in a proceeding to review revocation of a liquor license, the appellate court will not upset the Director of the Department of Alcoholic Beverage Control's action in resolving a conflict between testimony and the presumption in B & P C § 24200.5, where substantial evidence supports the Department's resolution of the conflict. Kirchhubel v. Munro (1957, Cal App 1st Dist) 149 Cal App 2d 243, 308 P2d 432, 1957 Cal App LEXIS 2024.

The Department of Alcoholic Beverage Control is a constitutional agency and is charged with enforcement of the Alcoholic Beverage Control Act; its decisions should be affirmed by the courts when supported by substantial evidence. Brice v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 153 Cal App 2d 315, 314 P2d 807, 1957 Cal App LEXIS 1494; Farah v. Alcoholic Beverage Control Appeals Board (1958, Cal App 2d Dist) 159 Cal App 2d 335, 324 P2d 98, 1958 Cal App LEXIS 2003; Adler v. Department of Alcoholic Beverage Control (1959, Cal App 1st Dist) 174 Cal App 2d 256, 344 P2d 336, 1959 Cal App LEXIS 1693; Benedetti v. Department of Alcoholic Beverage Control (1960, Cal App 1st Dist) 187 Cal App 2d 213, 9 Cal Rptr 525, 1960 Cal App LEXIS 1374, overruled Kirby v. Alcoholic Bev. Etc. Appeals Bd. (1970, Cal App 1st Dist) 8 Cal App 3d 1009, 87 Cal Rptr 908, 1970 Cal App LEXIS 2117; Morell v. Department of Alcoholic Beverage Control (1962, Cal App 1st Dist) 204 Cal App 2d 504, 22 Cal Rptr 405, 1962 Cal App LEXIS 2270; Mundell v. Department of Alcoholic Beverage Control (1962, Cal App 2d Dist) 211 Cal App 2d 231, 27 Cal Rptr 62, 1962 Cal App LEXIS 1500; Kirby v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 261 Cal App 2d 119, 67 Cal Rptr 628, 1968 Cal App LEXIS 1725; Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258; Kirby v. Alcoholic Beverage Control Appeals Board (1972, Cal App 2d Dist) 25 Cal App 3d 331, 101 Cal Rptr 815, 1972 Cal App LEXIS 1034.

Where the jurisdiction of the Department of Alcoholic Beverage Control to grant or refuse the transfer of a license depends on establishment of an ultimate fact, namely, that the public welfare and morals would be adversely affected by an "offsale" liquor license because of its proximity to a church, the reviewing court may examine the evidence on which a finding

of the department to that effect is based, and if the findings of the Department are contrary to the evidence or without support in the evidence, such findings, like those of a trial court, may be set aside and the decision based thereon may be set aside. Schaub's, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 858, 315 P2d 459, 1957 Cal App LEXIS 1570.

A decision of the Department of Alcoholic Beverage Control revoking a liquor license is final, subject to review for excess of jurisdiction, errors of law, abuse of discretion and insufficiency of evidence, and where there is error the matter ordinarily should be remanded to the Department for further proceedings. Macfarlane v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 84, 330 P2d 769, 1958 Cal LEXIS 210.

Neither the Alcoholic Beverage Control Appeals Board nor the courts may disregard or overturn a finding of fact that the Department of Alcoholic Beverage Control respecting the issuance of a liquor license simply because it is considered that a contrary finding would have been equally or more reasonable. Bowman v. Alcoholic Beverage Control Appeals Board (1959, Cal App 2d Dist) 171 Cal App 2d 467, 340 P2d 652, 1959 Cal App LEXIS 1849; Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 2d Dist) 250 Cal App 2d 673, 58 Cal Rptr 788, 1967 Cal App LEXIS 2150; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968, Cal App 1st Dist) 261 Cal App 2d 181, 67 Cal Rptr 734, 1968 Cal App LEXIS 1730.

Fact that Alcoholic Beverage Control Appeals Board sustained a decision by Department of Alcoholic Beverage Control revoking a liquor license on ground of violation of B & P C § 25601, did not limit reviewing court to consideration of that ground only where original decision was also based on a determination that continuance of license would be contrary to public welfare and morals. Benedetti v. Department of Alcoholic Beverage Control (1960, Cal App 1st Dist) 187 Cal App 2d 213, 9 Cal Rptr 525, 1960 Cal App LEXIS 1374, overruled Kirby v. Alcoholic Bev. Etc. Appeals Bd. (1970, Cal App 1st Dist) 8 Cal App 3d 1009, 87 Cal Rptr 908, 1970 Cal App LEXIS 2117.

On appeal from the suspension of a liquor license, the applicability of certain statutes to a given situation presented on stipulation or uncontradicted facts is a question of law, the determination of which devolves on the appellate court in accordance with applicable principles of law. Cohon v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 218 Cal App 2d 332, 32 Cal Rptr 723, 1963 Cal App LEXIS 1783.

A court is required to accord great respect to the interpretation of a statute by the Department of Alcoholic Beverage Control which must be followed unless it appears to be clearly erroneous. Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 1st Dist) 256 Cal App 2d 158, 64 Cal Rptr 26, 1967 Cal App LEXIS 1839, rehearing denied (1st Dist) 256 Cal App 2d 176, 65 Cal Rptr 251, appeal dismissed Cohon v. Kirby (1968) 393 US 7, 89 S Ct 44, 21 L Ed 2d 9, 1968 US LEXIS 570, dismissed Makah Indian Tribe v. Tax Com. of Washington (1968) 393 U.S. 8, 89 S. Ct. 44, 21 L. Ed. 2d 8, 1968 U.S. LEXIS 571.

On review, under B & P C § 23090, of an order of the Alcoholic Beverage Control Appeals Board reversing a decision of the Department of Alcoholic Beverage Control denying an off-sale beer and wine license, the issue before the court is the same as it was before the Appeals Board, namely, whether the department's ultimate finding that issuance of the license would be contrary to public welfare or morals is supported by substantial evidence in the light of the whole record what is contrary to public welfare or morals, but in considering the sufficiency of the evidence issue, a court is governed by the substantial evidence rule or resolving any conflict in the evidence in favor of the decision, and indulging every reasonably deducible inference in support thereof. Kirby v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 261 Cal App 2d 119, 67 Cal Rptr 628, 1968 Cal App LEXIS 1725.

28. Local Ordinances

Where at the time an ordinance was adopted, in 1922, the Wright Act had been passed but held up by referendum, the ordinance, when adopted, was a lawful exercise of the city police power; and even conceding that during the life of the Wright Act said ordinance could not have been enforced, it was not repealed by said Act and, upon removal of the conflict by repeal of said Act, said ordinance revived and became fully effective. People v. Draper (1933, Cal App Dep't Super Ct) 134 Cal App 787, 134 Cal App 4th Supp 787, 22 P2d 604, 1933 Cal App LEXIS 854.

There is no precise, lasting and inflexible definition of a municipal affair; and while the licensing of a liquor business was a municipal affair prior to adoption of Art XX § 22, its adoption changed the power to impose a license tax for revenue upon those engaged in the liquor business from a municipal affair to one of general state-wide concern and, therefore, removed such power from the protection of Art XI § 6. Los Angeles Brewing Co. v. Los Angeles (1935, Cal App) 8 Cal App 2d 391, 48 P2d 71, 1935 Cal App LEXIS 671.

Art XX § 22, reserving to the State the exclusive power to license and regulate the manufacture, sale, etc., of intoxicating liquor within the State, being special in nature and adopted subsequent to Art XI § 6, permitting chartered municipalities to reserve to themselves control of their municipal affairs subject only to express prohibition or limitation, controls in the express field that it covers, but its effect on the plenary power of taxation possessed by a chartered municipality should not be extended beyond the express terms of the constitutional reservation on the subject of intoxicating liquors. Ainsworth v. Bryant (1949) 34 Cal 2d 465, 211 P2d 564, 1949 Cal LEXIS 180.

City ordinance providing that no person could operate any public place where food or beverages were sold and any form of live entertainment was provided, without written permit, did not conflict with state statutes regulating sale of liquor; neither was the ordinance vague, uncertain or indefinite where it included sufficient rules to guide government body, whose duty it was to issue permit, in determining existence or nonexistence of necessary facts. Daniel v. Board of Police Comm'rs (1961, Cal App 2d Dist) 190 Cal App 2d 566, 12 Cal Rptr 226, 1961 Cal App LEXIS 2341, overruled Burton v. Municipal Court of Los Angeles Judicial Dist. (1968) 68 Cal 2d 684, 68 Cal Rptr 721, 441 P2d 281, 1968 Cal LEXIS 197.

Considering provisions of B & P C §§ 23790, 23791, municipal zoning ordinance that no liquor-serving dance hall be established closer than 200 feet to the boundary of a residential district absent a permit, upheld over pre-emptive contentions. Floresta, Inc. v. City Council of San Leandro (1961, Cal App 1st Dist) 190 Cal App 2d 599, 12 Cal Rptr 182, 1961 Cal App LEXIS 2345.

Because Penal C § 647 deals with field of disorderly conduct and only one subdivision among eight touches on public intoxication, matter with which a city ordinance is concerned there is no justification, in limited reference in one subdivision, for conclusion that Legislature intended to stand in way of further, local regulation in general field of public intoxication. People v. Foote (1962, Cal App 4th Dist) 207 Cal App 2d 860, 24 Cal Rptr 752, 1962 Cal App LEXIS 1979.

An exclusionary provision in a city ordinance prohibiting the drinking of alcoholic beverages on streets or playgrounds which provided that the ordinance did not apply to any act prohibited by state law could not save the ordinance if it substantially duplicated state law in all areas within its scope,

but it did serve to avoid any contention that it would duplicate state law if applied to specific situations, such as drinking in vehicles on public streets. People v. Butler (1967, Cal App Dep't Super Ct) 252 Cal App 2d Supp 1053, 59 Cal Rptr 924, 1967 Cal App LEXIS 1597.

A city ordinance prohibiting the drinking of alcoholic beverages on streets or playgrounds was a regulation of a municipal affair, not exclusively a matter of state-wide concern, and was valid where the State had not pre-empted the entire field of consumption of alcoholic beverages, the matter of consumption of liquor being omitted from the constitutional grant of exclusive power to the State, and the general laws relating to the consumption of alcoholic beverages being selective and limited in their application and demonstrating no comprehensive scheme to prohibit the consumption of liquor in situations where such consumption could reasonably be expected to create a police problem, and where there appeared to be nothing in the ordinance which would have any appreciable impact on the transient citizen that would outweigh the benefit to the municipality. People v. Butler (1967, Cal App Dep't Super Ct) 252 Cal App 2d Supp 1053, 59 Cal Rptr 924, 1967 Cal App LEXIS 1597.

A county ordinance proscribing the presence in model studios of persons possessing, consuming, using, or under the influence of alcoholic beverages, as applied to a model studio operated in conjunction with a cocktail bar could not be said to conflict with Art XX § 22, giving the State the exclusive right to regulate in the field of alcoholic beverages. Cristmat, Inc. v. County of Los Angeles (1971, Cal App 2d Dist) 15 Cal App 3d 590, 93 Cal Rptr 325, 1971 Cal App LEXIS 926.

Penal C §§ 318.5, 318.6, permitting cities and counties to regulate the "topless" or "bottomless" exposure of waiters, waitresses and entertainers, in establishments serving food and drink, and "topless" or "bottomless" exposure in relation to live acts, demonstrations or exhibitions in public places except theaters and similar establishments, do conflict with Art XX § 22, vesting in the Department of Alcoholic Beverage Control the exclusive power to license the manufacture, importation and sale of alcoholic beverages; the Constitution does not reserve to the Department or to the State exclusive power with respect to criminal acts occurring on licensed premises, and local regulations not pursuant to the authorization of state statutes of the state of dress of waiters, waitresses or entertainers in establishments serving food or beverages does not per se conflict with the power of the Department to license and regulate the manufacture, sale, purchase, possession or transportation of alcoholic beverages. Crownover v. Musick (1973) 9 Cal 3d 405, 107 Cal Rptr 681, 509 P2d 497, 1973 Cal LEXIS 198, cert den Owen v. Musick (1974) 415 US 931, 39 L Ed 2d 489, 94 S Ct 1443, 1974 US LEXIS 1343, cert den Reynolds v. Sacramento (1974) 415 US 931, 39 L Ed 2d 489, 94 S Ct 1443, 1974 US LEXIS 1341, overruled Morris v. Municipal Court (1982) 32 Cal 3d 553, 186 Cal Rptr 494, 652 P2d 51, 1982 Cal LEXIS 234.

Fees imposed by a city ordinance on liquor retailers to pay for the costs of regulating nuisance and criminal activities associated with alcoholic beverage sales establishments, were not precluded by Cal. Const., art. XX, § 22, which grants the State Department of Alcoholic Beverage Control the exclusive power to collect license fees or occupation taxes related to alcoholic beverage sales. That the ultimate result of a failure to pay the city's required fee might be abatement or revocation of the state liquor license did not transform the regulatory fee into a prohibited license tax. City of Oakland v. Superior Court (1996, Cal App 1st Dist) 45 Cal App 4th 740, 53 Cal Rptr 2d 120, 1996 Cal App LEXIS 446.

Fees imposed by a city ordinance on liquor retailers to pay for the costs of regulating nuisance and criminal activities associated with alcoholic beverage sales establishments, was not precluded by Cal. Const., art. XX, § 22, which grants the State Department of Alcoholic Beverage Control the exclusive power to collect license fees or occupation taxes related to alcoholic beverage sales. City documents showed that the annual operating budget for the program would be recovered in fees charged to alcoholic beverage retail establishments pursuant to the ordinance. Reinspection fees would be charged only to establishments that were found not to be in compliance with the terms of the ordinance. The estimated revenues derived from the fees matched the program's proposed budget, and the ordinance's revenue was intended to pay the administrative costs of its programs. The ordinance's primary purpose was regulatory, to create an environment in which nuisance and criminal activities associated with alcoholic beverage retail establishments may be reduced or eliminated. Thus, the fee imposed pursuant to the ordinance was not a tax imposed to pay general revenue to the local governmental entity, but a regulatory fee intended to defray the cost of providing and administering the hearing process set out in the ordinance. City of Oakland v. Superior Court (1996, Cal App 1st Dist) 45 Cal App 4th 740, 53 Cal Rptr 2d 120, 1996 Cal App LEXIS 446.

Fees imposed by a city ordinance on liquor retailers to pay for the costs of regulating nuisance and criminal activities associated with alcoholic beverage sales establishments, derived solely from the city's police power under Cal. Const., art. XI, § 7, and the fees were therefore valid. A city's police powers are as broad as the police power that may be exercised by the Legislature itself. However, in its proper exercise of its police powers, the city could not also violate Cal. Const., art. XX, § 22, which grants the State Department of Alcoholic Beverage Control the exclusive power to tax alcoholic beverage sales. Generally, the constitutional provision will not preempt a local ordinance when the ordinance does not directly affect the licensee's ability to sell alcoholic beverage to a willing purchaser. The Legislature did not intend that a person licensed to sell alcoholic beverages be immune from local supervision of any activity that the licensee may pursue in conjunction with the sale of alcoholic beverages. An ordinance prohibiting nuisance and criminal activities from being conducted on or near the premises of liquor licensees falls within the legitimate scope of a city's police power. Thus, since the ordinance was not intended to control the sale of alcoholic beverages, but to eliminate nuisances and criminal activities, it did not conflict with the state's authority to regulate alcoholic beverage sales. City of Oakland v. Superior Court (1996, Cal App 1st Dist) 45 Cal App 4th 740, 53 Cal Rptr 2d 120, 1996 Cal App LEXIS 446.

A municipal code provision prohibiting the possession of alcoholic beverages in public buildings and parks was void, and thus defendant's conviction under the provision, based on his possessing a six-pack of beer in a park within the city, was invalid. Local legislation that contradicts general law is void, and under Cal. Const., art. XX, § 22, the state has the exclusive right and power to license and regulate the possession of alcoholic beverages. Although there is case law approving the local regulation of places of entertainment where alcohol is sold, the issue in such cases concerned the regulation of the licensee, not the person in possession of the alcohol. People v. Ramirez (1994, Cal App Dep't Super Ct) 25 Cal App 4th Supp 1, 30 Cal Rptr 2d 626, 1994 Cal App LEXIS 795.

State law did not preempt an ordinance that prohibited underage drinking, as shown by blood alcohol, because Cal Const Art XX, § 22, does not refer to consumption and the ordinance was not duplicative of H & S C § 11999, subd. (e); B & P C §§ 25662, subd. (a), 25665, 25658, subd. (b); or Veh C §§ 23136, 23140. In re Jennifer S. (2009, 1st Dist) 179 Cal App 4th 64, 101 Cal Rptr 3d 467, 2009 Cal App LEXIS 1803, review denied (2010, Cal.) 2010 Cal. LEXIS 1230.

BUSINESS & PROFESSIONS CODE

DIVISION 9

Alcoholic Beverages

[Added Stats 1953 ch 152 § 1.]

Chapter
1. General Provisions and Definitions
1.5. Administration
2. Authorized Unlicensed Transactions and Exemptions
3. Licenses and Fees
4. Imports
5. Restrictions on Issuance of Licenses
6. Issuance and Transfer of Licenses
7. Suspension and Revocation of Licenses
8. Hearings
9. Excise Taxes [Repealed]
10. Alcoholic Beverages Fair Trade Contracts [Repealed]
11. Wine Fair Trade Contracts and Price Posting [Repealed]
12. Beer Price Posting and Marketing Regulations
13. Labels and Containers
14. Seizure and Forfeiture of Property
15. Tied–House Restrictions
16. Regulatory Provisions
17. Administrative Provisions
18. Alcoholic Rehabilitation [Repealed]

Cross References:

Inapplicability of division relating to denial and revocation of licenses to this division: B & P C § 476.

Collateral References:

Witkin & Epstein, Criminal Law (3d ed), Crimes Against Public Peace and Welfare § 288.

Cal Jur 3d (Rev) Criminal Law §§ 1660, 1964.

Law Review Articles:

Department of Alcoholic Beverage Control [current regulatory agency action]. 4 Cal Reg Law Rep No. 3 p. 65.

The liability of providers of alcohol: Dram Shop Acts? 12 Pepperdine LR No. 1 p 177.

CHAPTER 1

General Provisions and Definitions

[Added Stats 1953 ch 152 § 1.]

Section
23000. Citation of division
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23001.5. Severability of provisions of division
23002. Definitions governing construction of division
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23043. “Department”; “Director”
23044. “License”
23045. “Appeals board”
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23047. “Scheduled flight”

Cross References:

Alcoholic beverages control: Const Art XX § 22.

Liability for determination as to issuance, denial, suspension or revocation of licenses: Gov C § 818.4.

“Food”: H & S C § 109935.

Conflict with Food and Agricultural Code or with Alcoholic Beverage Control Act: H & S C § 110040.

Provisions applicable to beer: H & S C § 110425.

Illicit sale of intoxicating liquors near certain institutions: Pen C §§ 172 et seq.

Peace officer status of director and departmental personnel: Pen C § 830.3.

Sales and use tax exemptions of "medicines" as including alcoholic beverage manufactured, etc., under licensing and regulation provisions of this act: Rev & Tax C § 6369.

Alcoholic beverage tax: Rev & Tax C §§ 32001 et seq.

Collateral References:

Witkin & Epstein, Criminal Law (3d ed), Crimes Against Public Peace and Welfare § 288.

Cal Jur 3d (Rev) Associations and Clubs § 2, Criminal Law §§ 1660, 1964, Enforcement of Judgments § 300.

Pertinent administrative regulations: 4 Cal Code Reg §§ 145 et seq., 150.

Criminal sanctions for illegal transportation of liquor: 18 USCS §§ 1261 et seq.

Seizure of vehicles involved in illegal transportation of liquor: 18 USCS § 3667.

Regulation of imported distilled wines, spirits and malt liquors: 19 USCS § 467.

Federal excise taxes on liquor: 26 USCS §§ 5001 et seq.

Transportation of liquor in interstate commerce: 27 USCS §§ 121, 122.

§ 23000. Citation of division

This division shall be known and may be cited as the "Alcoholic Beverage Control Act."

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 1, as amended Stats 1937 ch 758 § 1.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.22.

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.28.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.10[2], 18.112, 18.150, 18.152, 18.200[1], 18.201[1], 18.202[1], 18.211[1], 18.212[1], 91.38, 91.290[1].

8 Witkin Summary (10th ed) Constitutional Law §§ 897, 989.

9 Witkin Summary (10th ed) Taxation § 377.

Law Review Articles:

Intoxicating liquors in interstate commerce. 25 Cal LR 718.

State power to prohibit interstate commerce. 26 Cal LR 34.

Regulatory power of state over shipment of intoxicating liquor moving in interstate commerce to federal enclave within exterior of such state. 31 Cal LR 579.

Liquor control. 38 Cal LR 875.

Enforcement of liquor laws. 38 Cal LR 886.

Pressure groups and liquor control. 38 Cal LR 892.

Some aspects of liquor control in California. 39 CLR 82.

Criticism of California rule denying dram shop liability—Duty of care as imposed by criminal statute. 57 Cal LR 1009.

Fair Hearing: the Most Important Component of Due Process in an Administrative Hearing Is the Selection of a Fair and Impartial Adjudicator. 27 Los Angeles Lawyer 47.

Alcoholic beverage control: Department, appeals board, and judicial review. 11 Hast LJ 174.

Sale of liquor as proximate cause of acts of inebriate. 23 SCLR 420.

Control of liquor trade. 27 SCLR 449.

Legislation for treatment of alcoholic. 2 Stan LR 515.

Anticompetitive effects of licensing businesses and professions in California. 18 Stan LR 640.

Alcoholic beverage control administration. 20 State Bar J 59.

Administrative functions of State Board of Equalization. 20 State Bar J 73.

Judicial review of actions by State Board of Equalization. 20 State BarJ 74.

Annotations:

Validity of statute or ordinance making it an offense to consume or have alcoholic beverages in open package in motor vehicle. 57 ALR3d 1071.

Loss of liquor license as compensable in condemnation proceeding. 58 ALR3d 581.

NOTES OF DECISIONS

1. Legislative Intent
2. Constitutionality
3. Construction
4. Penalties

1. Legislative Intent

The short title of this act, and the provisions of its full title, indicated at the outset an intention to tax alcoholic liquors used for beverage purposes, and disclosed no intent to tax industrial alcohol as such. Commercial Solvents Corp. v. Riley (1936) 7 Cal 2d 731, 62 P2d 588, 1936 Cal LEXIS 702.

2. Constitutionality

Price regulating provisions of Alcoholic Beverage Control Act do not violate due process clause of US Const 14th Amend; power of states to control traffic in liquor is unconditional and includes complete prohibition, as well as any restriction falling short of prohibition, even if discriminatory in nature and unconnected to public health, safety or morals. Dave's Market, Inc. v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 222 Cal App 2d 671, 35 Cal Rptr 348, 1963 Cal App LEXIS 1711.

There is no inherent right in a citizen to engage in the business of selling alcoholic beverages, and the governing authority may, in the exercise of the police power for the protection of the public morals, health and safety, grant the privilege of selling alcoholic beverages on such terms and conditions as it may determine. Reimel v. House (1968, Cal App 2d Dist) 259 Cal App 2d 511, 66 Cal Rptr 434, 1968 Cal App LEXIS 1994, appeal dismissed Westside Liquor Co. v. Kirby (1968) 393 US 17, 89 S Ct 48, 21 L Ed 2d 17, 1968 US LEXIS 588.

Because of the particular problems presented by traffic in liquor, such traffic is subject to regulation by the state in the exercise of its police power. Hargens v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 263 Cal App 2d 601, 69 Cal Rptr 868, 1968 Cal App LEXIS 2245, overruled Sail'er Inn, Inc. v. Kirby (1971) 5 Cal 3d 1, 95 Cal Rptr 329, 485 P2d 529, 1971 Cal LEXIS 230, 46 ALR3d 351.

Regulation prohibiting certain sexually explicit live entertainment or films in licensed bars and nightclubs upheld notwithstanding that regulations proscribe some forms of visual presentation not obscene, considering the states' broad authority under the Twenty-First Amendment to control intoxicating liquors, and evidence before the Board showing a greater incidence of prostitution, rape, indecent exposure, and assaults near liquor-vending premises. California v. La Rue (1972) 409 US 109, 34 L Ed 2d 342, 93 S Ct 390, 1972 US LEXIS 128, rehearing denied (1973) 410 US 948, 93 S Ct 1351, 35 L Ed 2d 615, 1973 US LEXIS 3546.

3. Construction

Alcoholic Beverage Control Act contains special provisions regulating fair trade contracts relating to alcoholic beverages, and such provisions, though similar to, are separate from general provisions for fair trade contracts found in Fair Trade Act. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

4. Penalties

Penalty for breach of price fixing regulation of Alcoholic Beverage Control Act is both civil and penal, and Department of Alcoholic Beverage Control may suspend or revoke licenses, or institute criminal action. Peck's Liquors, Inc. v. Superior Court of San Francisco (1963, Cal App 1st Dist) 221 Cal App 2d 772, 34 Cal Rptr 735, 1963 Cal App LEXIS 2214.

§ 23001. Purposes of division; Construction

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 1, as amended Stats 1937 ch 758 § 1.

Cross References:

Exclusive right and power to license and regulate the manufacture, sale, etc., of alcoholic beverages within the state: Cal Const Art XX § 22.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 470 "Overview Of Public Administrative Law".

Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

Law Review Articles:

Some aspects of liquor control. 39 Cal LR 82.

Criticism of California rule denying dram shop liability—duty of care as imposed by criminal statute. 57 Cal LR 1009.

Liquor vendor liability in California. 14 Santa Clara Law 46.

Attorney General's Opinions:

Invalidity of insurance policy purporting to protect licensee from loss by suspension or revocation of license. 31 Ops. Cal. Atty. Gen. 79.

Annotations:

Immunity from suit of governmental liquor control agency. 9 ALR2d 1292.

State power to regulate price of intoxicating liquors. 14 ALR2d 699.

Criminal offense of selling liquor to minor or permitting him to stay on licensed premises as affected by ignorance or mistake regarding his age. 12 ALR3d 991.

Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor. 51 ALR3d 1061.

Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquor. 20 ALR4th 600.

NOTES OF DECISIONS

1. Generally
2. Constitutionality
3. Construction
4. Purpose
5. Right to Manufacture or Sell
6. Regulation

1. Generally

As result of constitutional provisions, legislative enactment and administrative rules and regulations, there is, in this state, a complete and comprehensive set of laws which cover liquor industry. Duke Molner Wholesale Liquor Co. v. Martin (1960, Cal App 2d Dist) 180 Cal App 2d 873, 4 Cal Rptr 904, 1960 Cal App LEXIS 2413, cert den (1960) 364 US 870, 81 S Ct 112, 5 L Ed 2d 92, 1960 US LEXIS 325.

Alcoholic beverage wholesaler's sponsorship of athletic events conducted by a promotional company on behalf of a licensee violated B & P C §§ 25500, 25503, because the wholesaler indirectly furnished a thing of value by providing a marketing subsidy to the licensee and promotional materials were placed in retail locations; such conduct was incompatible with the goals of California's Alcoholic Beverage Control Act, as set forth in B & P C § 23001. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2005, Cal App 1st Dist) 128 Cal App 4th 1195, 27 Cal Rptr 3d 766, 2005 Cal App LEXIS 682.

2. Constitutionality

There is no inherent right in citizen to sell intoxicating liquors at retail; it is not privilege of citizen of United States or of State, and it may be entirely prohibited by State legislation, or be permitted under such conditions as will limit its evils. Crowley v. Christensen (1890) 137 US 86, 11 S Ct 13, 34 L Ed 620, 1890 US LEXIS 2070.

The right to possess, make or deal in intoxicating liquor is not a privilege, nor such a property right that state legislation prohibiting, restricting or regulating its manufacture, use, possession, distribution or sale violates Fourteenth Amendment of the United States Constitution. Los Robles Motor Lodge, Inc. v. Department of Alcoholic Beverage Control (1966, Cal App 3d Dist) 246 Cal App 2d 198, 54 Cal Rptr 547, 1966 Cal App LEXIS 1019.

3. Construction

Former Liquor Control Act did not repeal Pen C § 172 which prohibits sale of liquor within certain distances of institutions therein named. In re Zadro (1936, Cal App) 16 Cal App 2d 398, 60 P2d 577, 1936 Cal App LEXIS 293.

Unlawful Liquor Sales Abatement Act of 1915 which provided in effect that every place where intoxicating liquors were unlawfully sold, served or given away was nuisance, and which authorized private citizen in his own name to maintain action in equity to abate and prevent such nuisance, and to enjoin same, was neither expressly nor by implication repealed, either by Const Art XX § 22 or by Alcoholic Beverage Control Act of 1935. Hammond v. McDonald (1939, Cal App) 32 Cal App 2d 187, 89 P2d 407, 1939 Cal App LEXIS 334.

Const Art XX § 22 and Alcoholic Beverage Control Act do

not occupy entire field of liquor control so as to preclude prosecution under former W & I C § 702. People v. Deibert (1953, Cal App) 117 Cal App 2d 410, 256 P2d 355, 1953 Cal App LEXIS 1830.

Word "economic," as used in section, when read in connection with preceding sentence indicates that economic welfare of people is that welfare which is achieved by strict regulation and curtailment of use of liquor, and economic benefits resulting to people from promotion of temperance, rather than those resulting from promotion of liquor industry. American Distilling Co. v. State Board of Equalization (1956, Cal App 1st Dist) 144 Cal App 2d 457, 301 P2d 495, 1956 Cal App LEXIS 1742.

Rule of Board of Alcoholic Beverage Control, forbidding female employees to solicit purchase or sale of alcoholic beverages on licensed premises, is in harmony with purposes of Alcoholic Beverage Control Act. Mercurio v. Department of Alcoholic Beverage Control (1956, Cal App 1st Dist) 144 Cal App 2d 626, 301 P2d 474, 1956 Cal App LEXIS 1773.

The "economic" welfare that will be achieved by strict regulation and curtailment of use of liquor and economic benefit resulting to people from promotion of temperance, rather than those resulting from promotion of liquor industry, is the "welfare" meant by this section, stating purpose of Alcoholic Beverage Control Act to be, among other things, ". . . protection of the. . . welfare. . . of the people of the State." Duke Molner Wholesale Liquor Co. v. Martin (1960, Cal App 2d Dist) 180 Cal App 2d 873, 4 Cal Rptr 904, 1960 Cal App LEXIS 2413, cert den (1960) 364 US 870, 81 S Ct 112, 5 L Ed 2d 92, 1960 US LEXIS 325.

Since Alcoholic Beverage Control Act was enacted to protect safety, welfare, health, peace and morals of people, violation of any of regulatory provisions relating to prohibited sales constitutes misdemeanor within meaning of § 25617. Peck's Liquors, Inc. v. Superior Court of San Francisco (1963, Cal App 1st Dist) 221 Cal App 2d 772, 34 Cal Rptr 735, 1963 Cal App LEXIS 2214.

It is well within the authority conferred on the Department of Alcoholic Beverage Control by Cal Const Art XX § 22, par. 9, B & P C §§ 23001, 23049 for the Department to determine that the "tied-house" law, B & P C § 25502, applies to certain transactions but not to others. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2002, Cal App 1st Dist) 100 Cal App 4th 1066, 123 Cal Rptr 2d 278, 2002 Cal App LEXIS 4471.

4. Purpose

Alcoholic Beverage Control Act was enacted for protection of safety and welfare of people of this State, and is generally regarded as regulatory measure. Ainsworth v. Bryant (1949) 34 Cal 2d 465, 211 P2d 564, 1949 Cal LEXIS 180.

Prevention of intemperance is proper legislative object. Allied Properties v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 141, 346 P2d 737, 1959 Cal LEXIS 329.

One of the purposes of the provisions of Alcoholic Beverage Control Act relating to wholesale liquor dealers is to bring into being a class of true wholesalers to whom retailers can come for their supplies and be certain they are dealing with bona fide wholesaler and not with phone-order business concern, commission merchant, or distiller's representative. Duke Molner Wholesale Liquor Co. v. Martin (1960, Cal App 2d Dist) 180 Cal App 2d 873, 4 Cal Rptr 904, 1960 Cal App LEXIS 2413, cert den (1960) 364 US 870, 81 S Ct 112, 5 L Ed 2d 92, 1960 US LEXIS 325.

In enacting Alcoholic Beverage Control Act, it was not purpose of legislature to reduce intemperance by establishing higher prices generally but only to prevent increase of consumption of alcoholic beverages resulting from retail price cutting and bargain sales; legislature may take reasonable measures to eliminate some of causes of an evil without attacking all of them. Dave's Market, Inc. v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 222 Cal App 2d 671, 35 Cal Rptr 348, 1963 Cal App LEXIS 1711.

5. Right to Manufacture or Sell

Because of nature of products sold, courts have taken view that there is no inherent or natural right to manufacture or sell alcoholic beverages, and no vested right in business or property with which business is carried on to prevent its control or entire destruction by legislative process. Premier-Pabst Sales Co. v. State Bd. of Equalization (1935, D Cal) 13 F Supp 90, 1935 US Dist LEXIS 1069.

There is no inherent right in citizen to sell intoxicating liquors by retail. Schaub's, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 858, 315 P2d 459, 1957 Cal App LEXIS 1570.

6. Regulation

A state may, in exercise of its police power, and without offending commerce clause of Federal Constitution, regulate or control traffic in intoxicating liquors, within its own borders, to extent either of regulating or altogether preventing business of soliciting proposals in such state for purchase of liquors, which proposals are to be consummated outside of state, and liquors to which such proposals relate are also situated outside state. In re Application of Anixter (1913, Cal App) 22 Cal App 117, 134 P 193, 1913 Cal App LEXIS 47.

Under Const Art XX § 22, State, subject to certain federal laws, has exclusive right and power to control, license and regulate the manufacture, sale, purchase, possession, transportation and disposition of intoxicating liquors within this State, and may prohibit entirely manufacture and traffic of intoxicating liquor; this can also be under the police power of State, and State, having power to prohibit entirely, can impose such conditions and regulations as it may deem proper. Sandelin v. Collins (1934) 1 Cal 2d 147, 33 P2d 1009, 1934 Cal LEXIS 343, 93 ALR 956.

Retail sale of intoxicating liquors is business attended with danger to community, and it may be entirely prohibited or permitted under such conditions as will limit to utmost its evils, and manner and extent of regulation rest in discretion of governing authority. Schaub's, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 858, 315 P2d 459, 1957 Cal App LEXIS 1570.

The business of selling intoxicating liquor is one attendant with dangers, and under the police power the state may limit the operation of such business to conditions which will minimize its evils. Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968, Cal App 1st Dist) 261 Cal App 2d 181, 67 Cal Rptr 734, 1968 Cal App LEXIS 1730.

§ 23001.5. Severability of provisions of division

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.

Added Stats 2006 ch 910 § 1 (AB 3065), effective January 1, 2007.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 23002. Definitions governing construction of division

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

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Cross References:
Construction of codes with relation to each other: CC § 23.5.
Operation and construction of statutes generally: CC §§ 3541, 3542.
Construction of words and phrases: CCP § 16.
Included meaning of words used: CCP § 17.
Operation and construction of statutes generally: CCP §§ 1858, 1859, 1866.
Operation and construction of statutes generally: Gov C §§ 9600 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 23003. "Alcohol"

"Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
(a) Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.
(b) Stats 1933 ch 658 § 4.

Collateral References:
9 Witkin Summary (10th ed) Taxation § 378.
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
(a) Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.
(b) Stats 1933 ch 658 § 4.
(c) Stats 1933 ch 178 § 1.
(d) Stats 1933 ch 51 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].
Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2100, Driving Under the Influence Causing Injury.
Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2960, Possession of Alcoholic Beverage by Person Under 21.
Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2961, Purchase of Alcoholic Beverage by Person Under 21.
Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2962, Selling or Furnishing Alcoholic Beverage to Person Under 21.
Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2963, Permitting Person Under 21 to Consume Alcoholic Beverage.
Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2964, Purchasing Alcoholic Beverage for Person Under 21: Resulting in Death of Great Bodily Injury.
Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2965, Parent Permitting Child to Consume Alcoholic Beverage: Causing Traffic Collision.

NOTES OF DECISIONS

1. Generally

1. Generally
"Intoxicating liquor" is beverage containing alcoholic content of one-half of one per cent or more. People v. Rosseau (1929, Cal App) 100 Cal App 245, 279 P 819, 1929 Cal App LEXIS 313.

§ 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Cross References:
Surtax: Rev & Tax C §§ 32220 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

NOTES OF DECISIONS

1. Generally
2. Particular Actions

1. Generally
Alcoholic concoctions, which are the results of mixtures of fruit juices and certain other ingredients with alcohol or brandy, cannot by legal definition nor common understanding of the word be termed wines, and, not being wines and admittedly containing brandy or its equivalent, these concoctions come within the definition of distilled spirits. People v. Tux Winery Co. (1937, Cal App) 21 Cal App 2d 586, 69 P2d 876, 1937 Cal App LEXIS 322.

Definition of "distilled spirits," given in this section, controls determination whether corporation is manufacturer of distilled spirits under § 23363, or rectifier with respect to alcohol imported from another state and distilled here to make it fit for beverage purposes. American Distilling Co. v. State Board of Equalization (1956, Cal App 1st Dist) 144 Cal App 2d 457, 301 P2d 495, 1956 Cal App LEXIS 1742.

"Distilled spirit" must be beverage having its origin in fermented agricultural products, but it does not necessarily become a beverage in initial distillation of agricultural products. American Distilling Co. v. State Board of Equalization (1956, Cal App 1st Dist) 144 Cal App 2d 457, 301 P2d 495, 1956 Cal App LEXIS 1742.

"Thereof" in the definition of distilled spirits means the mixture must be of the enumerated items: alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin. This does not include an alcoholic beverage consisting of a distilled spirit mixed with beer. Diageo-Guinness USA, Inc. v. State Bd. of Equalization (2012, 3d Dist) 2012 Cal App LEXIS 505.

2. Particular Actions

By adopting regulations that defined distilled spirits to include flavored malt beverages, the California State Board of Equalization exceeded its rulemaking authority under Rev & Tax C § 32451, because the regulations were inconsistent with the definitions of distilled spirits and beer in B & P C §§ 23005, 23006. Pursuant to Rev & Tax C §§ 32002, 32152, the board was required to apply those definitions and to coordinate with federal regulations that classified flavored malt beverages as beer; moreover, B & P C § 25750, gave the authority to interpret those definitions to the California Department of Alcoholic Beverage Control. Diageo-Guinness USA, Inc. v. State Bd. of Equalization (2012, 3d Dist) 2012 Cal App LEXIS 505.

§ 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. Beer aged in an empty wooden barrel previously used to contain wine or distilled spirits shall be defined exclusively as "beer" and shall not be considered a dilution or mixture of any other alcoholic beverage.

Added Stats 1953 ch 152 § 1. Amended Stats 2012 ch 96 § 1 (AB 1812), effective January 1, 2013.

Amendments:

2012 Amendment: Added (1) the comma after "and strong beer" in the first sentence; and (2) the second sentence.

Historical Derivation:

(a) Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

(b) Stats 1933 ch 658 § 4.

Cross References:

Provisions applicable to beer: H & S C § 110425.

Surtax: Rev & Tax C §§ 32220 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

Law Review Articles:

Business and Profession: Chapter 96: Read My Lips, No Inappropriate Beer Taxes: Chapter 96 Amends the Definition of Beer, Protecting Craft Brewers. 44 McGeorge L. Rev. 543.

NOTES OF DECISIONS

1. Generally
2. Particular Actions

1. Generally

Term "beer," used without words of qualification, signifies malt liquor and intoxicating beverage. Molina v. Munro (1956, Cal App 2d Dist) 145 Cal App 2d 601, 302 P2d 818, 1956 Cal App LEXIS 1382.

2. Particular Actions

By adopting regulations that defined distilled spirits to include flavored malt beverages, the California State Board of Equalization exceeded its rulemaking authority under Rev & Tax C § 32451, because the regulations were inconsistent with the definitions of distilled spirits and beer in B & P C §§ 23005, 23006. Pursuant to Rev & Tax C §§ 32002, 32152, the board was required to apply those definitions and to coordinate with federal regulations that classified flavored malt beverages as beer; moreover, B & P C § 25750, gave the authority to interpret those definitions to the California Department of Alcoholic Beverage Control. Diageo-Guinness USA, Inc. v. State Bd. of Equalization (2012, 3d Dist) 2012 Cal App LEXIS 505.

§ 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1971 ch 1593 § 47, operative July 1, 1973; Stats 1977 ch 1252 § 50; Stats

1978 ch 429 § 20, effective July 17, 1978, operative July 1, 1978.

Amendments:

1971 Amendment: Substituted "State Department of Health" for "Department of Public Health" in the second paragraph.

1977 Amendment: Substituted "State Department of Public Health" for "State Department of Health" in the second paragraph.

1978 Amendment: Substituted "State Department of Health Services" for "State Department of Public Health" in the second paragraph.

Historical Derivation:

(a) Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

(b) Stats 1933 ch 658 § 4.

Cross References:

Alteration of quality and maturity standards of particular fruit, nut, or vegetable: Fd & Ag C § 42684.

Surtax: Rev & Tax C §§ 32220 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally

As act itself defines what constitutes wine, a ruling of Board of Equalization contrary to terms of act is ineffective. Tux Ginger Ale Co. v. Davis (1936, Cal App) 12 Cal App 2d 73, 54 P2d 1122, 1936 Cal App LEXIS 979.

Neither by terms of Liquor Control Act, by legal definition, nor by common understanding of word, can beverages sought to be sold as "wines" but consisting of combination of wine, alcohol, flavoring and water, with added alcohol being three times as much as wine, be fairly or properly designated as wines; such beverages can be sold only at establishments holding license for sale of intoxicating liquors. Tux Ginger Ale Co. v. Davis (1936, Cal App) 12 Cal App 2d 73, 54 P2d 1122, 1936 Cal App LEXIS 979.

§ 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

(a) Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

(b) Stats 1933 ch 178 § 1.

Cross References:

Rights of state over persons and the exercise thereof: Gov C §§ 200–204.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

NOTES OF DECISIONS

1. Generally
2. Construction with Other Law
3. Singular or Plural

1. Generally

Mere transfer of stock of corporation licensee cannot be used to enable licensee to escape responsibility for its violation of Alcoholic Beverage Control Act. Maxwell Cafe, Inc. v. Department of Alcoholic Beverage Control (1956, Cal App 2d Dist) 142 Cal App 2d 73, 298 P2d 64, 1956 Cal App LEXIS 1949.

2. Construction with Other Law

Sale of distilled spirits to War Department is sale within meaning of Alcoholic Beverage Control Act, although United States may not be "person" within terms of act defining that word; purchase by War Department of distilled spirits for delivery within State is included in definition of sale. National Distillers Products Corp. v. Board of Equalization (1947, Cal App) 83 Cal App 2d 35, 187 P2d 821, 1947 Cal App LEXIS 1365.

3. Singular or Plural

Construing B & P C § 17043 liberally to promote its beneficial purposes as provided in B & P C §§ 17001, 17002, and in light of the provision in B & P C § 23008, that words used in the singular or plural refer to both, a purpose to harm instruction that referred to a single competitor was correct. Bay Guardian Co. v. New Times Media LLC (2010, 1st Dist) 187 Cal App 4th 438, 114 Cal Rptr 3d 392, 2010 Cal App LEXIS 1412, modified, rehearing denied Bay Guardian Co. v. New Times Media LLC (2010, Cal. App. 1st Dist.) 2010 Cal. App. LEXIS 1573, review denied Bay Guardian Company v. New Times Media LLC. (2010, Cal.) 2010 Cal. LEXIS 12380.

§ 23009. "Licensee"

"Licensee" means any person holding a license, a permit, a certification, or any other authorization issued by the department.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 1; Stats 2004 ch 437 § 1 (AB 3085), effective September 9, 2004.

Amendments:

1955 Amendment: Substituted "department" for "board".

2004 Amendment: Added ", a permit, a certification, or any other authorization".

Historical Derivation:

Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 1842 § 3.

Amendments:

1955 Amendment: Substituted "Part 14 of Division 2 of the Revenue and Taxation Code" for "this division".

Historical Derivation:
Stats 1935 ch 330 § 24.1, as added Stats 1941 ch 328 § 3, amended Stats 1943 ch 288 § 4.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 23011. "Salesman"

"Salesman" means any individual who solicits or receives an order for alcoholic beverages from any licensee.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 23012. "Beer manufacturer"

"Beer manufacturer" means any person that has facilities and equipment for the purposes of, and is engaged in, the commercial manufacture of beer.

Added Stats 1953 ch 152 § 1. Amended Stats 2013 ch 686 § 1 (AB 647), effective January 1, 2014.

Amendments:
2013 Amendment: Substituted "that has facilities and equipment for the purposes of, and is engaged in, the commercial" for "engaged in the".

Historical Derivation:
(a) Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.
(b) Stats 1933 ch 178 § 1.
(c) Stats 1933 ch 51 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1965 ch 499 § 1; Stats 2008 ch 28 § 1 (SB 607), effective June 6, 2008.

Amendments:
1965 Amendment: Added "who has facilities and equipment for the conversion of grapes, berries or other fruit into wine and is".
2008 Amendment: (1) Added the comma after "berries"; and (2) deleted ", 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" at the end.

Historical Derivation:
(a) Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.
(b) Stats 1933 ch 178 § 1.
(c) Stats 1933 ch 51 § 1.

Note—Stats 1965 ch 499 provides:
SEC. 10. No revenues collected as the result of the issuance or renewal of a wine blender's license pursuant to the provisions of this act shall be available for expenditure until appropriated.

Cross References:
Transactions involving grapes for by–products purposes: Fd & Ag C §§ 41161–41163.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.52[2], 18.200[1].

Law Review Articles:
Review of Selected 2008 California Legislation: Business and Profession: Heard it Through the Grapevine: Chapter 28 Saves California Wine Competitions From Prohibition-Era Law. 40 McGeorge L. Rev. 303.

§ 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.

Added Stats 1965 ch 499 § 2.

Editor's Notes—See the 1965 Note following B & P C § 23013.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
(a) Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.
(b) Stats 1933 ch 178 § 1.
(c) Stats 1933 ch 51 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 23015. "Distilled spirits manufacturer"

"Distilled spirits manufacturer" means any person who produces distilled spirits from naturally fermented materials or in any other manner. "Distilled spirits manufacturer" shall not include

a winegrower that produces spirits of wine, provided the spirits of wine are blended into wine produced by the winegrower, are sold to an industrial alcohol dealer, or are destroyed by the winegrower.

Added Stats 1953 ch 152 § 1. Amended Stats 2010 ch 129 § 1 (AB 1649), effective January 1, 2011.

Amendments:

2010 Amendment: Added the second sentence.

Historical Derivation:

Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

NOTES OF DECISIONS

1. Generally
2. Who is Manufacturer

1. Generally

Manufacturer is person who produces distilled spirits, whereas rectifier is person who processes distilled spirits that are already in existence. American Distilling Co. v. State Board of Equalization (1956, Cal App 1st Dist) 144 Cal App 2d 457, 301 P2d 495, 1956 Cal App LEXIS 1742.

"Distilled spirit" must be beverage having its origin in fermented agricultural products, but it does not necessarily become a beverage in its initial distillation of agricultural products. American Distilling Co. v. State Board of Equalization (1956, Cal App 1st Dist) 144 Cal App 2d 457, 301 P2d 495, 1956 Cal App LEXIS 1742.

2. Who is Manufacturer

Corporation is, with respect to alcohol imported from another state, manufacturer of distilled spirits, rather than rectifier, under evidence that, when alcohol arrives at corporation's plant, it is not fit for beverage purposes, but is then distilled, its impurities removed, and its proof reduced to make it fit for beverage purposes. American Distilling Co. v. State Board of Equalization (1956, Cal App 1st Dist) 144 Cal App 2d 457, 301 P2d 495, 1956 Cal App LEXIS 1742.

§ 23016. "Rectifier"

"Rectifier" means every person who colors, flavors, or otherwise processes distilled spirits by distillation, blending, percolating, or other processes. "Rectifier" does not include an on-sale licensee that colors, flavors, or blends distilled spirits or wine products on the on-sale licensed premises to be consumed on the licensed premises.

Added Stats 1953 ch 152 § 1. Amended Stats 2011 ch 301 § 1 (SB 32), effective September 21, 2011.

Amendments:

2011 Amendment: Added the second sentence.

Historical Derivation:

Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a,, Stats 1951 ch 1257 § 1.

Note—Stats 2011 ch 301 provides:

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In 2008, the Department of Alcoholic Beverage Control (ABC) issued an advisory informing on-sale licensees that engaging in rectification of distilled spirits exceeded their licensing privileges. The ABC has recently started to forcefully notify on-sale licensees of this advisory. As a result, many bars and restaurants have stopped serving infused drinks and have experienced a drop in business. Therefore, to allow businesses to resume this economically stimulating business practice as soon as possible in order to bolster California's economy and to aid struggling bars and restaurants in this economically stagnant time, it is necessary for this act to take effect immediately.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally

Rectifier is person who processes distilled spirits that are already in existence, whereas manufacturer is person who produces such spirits. American Distilling Co. v. State Board of Equalization (1956, Cal App 1st Dist) 144 Cal App 2d 457, 301 P2d 495, 1956 Cal App LEXIS 1742.

§ 23017. "Importer"

"Importer" means:

(a) Any consignee of alcoholic beverages brought into this 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
(a) Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.
(b) Stats 1933 ch 658 § 4.

Cross References:
Importation of beverages: B & P C §§ 23660 et seq.
Exclusive right to regulate the importation into and the exportation from state: Cal Const Art XX § 22.
"Common carrier": Pub Util C § 211.
"Consignee": UCC § 7102.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally
Though § 23376 authorizes custom broker's license, and such licensee "may transfer to licensed importers" liquor brought into state in bond, this section requires such licensee to act for others, not for himself. Ammex Warehouse Co. v. Department of Alcoholic Beverage Control (1963, SD Cal) 224 F Supp 546, 1963 US Dist LEXIS 8096, aff'd (1964) 378 US 124, 84 S Ct 1657, 12 L Ed 2d 743, 1964 US LEXIS 995.

§ 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1973 ch 453 § 1; Stats 1975 ch 597 § 1.

Amendments:
1973 Amendment: Added ", in an area within or without the state other than a territory or possession of the United States".
1975 Amendment: (1) Substituted "the United States" for "or without the state" after "an area within"; and (2) added ", or within a foreign country having common boundaries with any state of the United States".

Historical Derivation:
Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1933 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 23023. "Retailer"

"Retailer" means any on– or off–sale licensee.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Cross References:
Types of licenses and annual fees therefor: B & P C § 23320.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Code Commissioner's Notes:
"On–sale distilled spirits licenses for seasonal business" has been changed to "on–sale general licenses for seasonal business" by § 5 of the act [1935:330:1123].

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.21[1], 18.200[1].

§ 23025. "Sell"; "Sale"; "To sell"

"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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
(a) Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.
(b) Stats 1933 ch 658 § 4.
(c) Stats 1933 ch 178 § 1.
(d) Stats 1933 ch 51 § 1.

Cross References:
Sales generally: UCC §§ 2101 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

Attorney General's Opinions:
Exemption for stolen liquor. 8 Ops. Cal. Atty. Gen. 204.
Person promoting and operating "liquor by wire" as agent of buyer in view of this section and UCC § 2401. 48 Ops. Cal. Atty. Gen. 1.
Operator of commercial enterprise who offers and provides complimentary alcoholic beverages to any interested adult guest, customer or passenger of the business or service while at the same time charging for product provided or service rendered will be deemed to have "sold" alcoholic beverages, thereby necessitating alcoholic beverage license. 68 Ops. Cal. Atty. Gen. 263.

Annotations:
What constitutes "sale" of liquor in violation of statute or ordinance. 89 ALR3d 551.
Validity, under federal and state establishment of religion provisions, of prohibition of sale of intoxicating liquors on specific religious holidays. 27 ALR4th 1155.

NOTES OF DECISIONS

1. Generally

1. Generally
Transactions constituted sales in this State within Alcoholic Beverage Control Act so as to render seller liable for excise taxes thereon, where orders for liquor were solicited by seller's salesman out of this State and by them delivered to seller's place of business in this State, where liquor was sold to out of state corporations not holding licenses under laws of this State, where orders called for delivery f.o.b. at seller's warehouse in this State and where, after orders had been filled therefrom and also delivered to purchasers in this State, liquor was transported out of State by purchasers' employees. Gooderham & Worts, Ltd. v. Collins (1943, Cal App) 59 Cal App 2d 309, 138 P2d 785, 1943 Cal App LEXIS 318.
In order for a sale to take place within the meaning of this statute there need not be a transfer of title from one person to another as the word "person" is defined in this statute, it is sufficient that there is a delivery of the distilled spirits within the state of California. National Distillers Products Corp. v. Board of Equalization (1947, Cal App) 83 Cal App 2d 35, 187 P2d 821, 1947 Cal App LEXIS 1365.

§ 23026. "Retail sale"; "Sale at retail"

"Retail sale" or "sale at retail" means the sale by an on– or off–sale licensee for consumption and not for resale.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1

Cross References:
Sales and use taxes; "retail sale" or "sale at retail": Rev & Tax C § 6007.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

Annotations:
Sale by wholly–owned subsidiary to parent corporation, or vice versa, as within retail sales tax, or similar, statute. 64 ALR2d 769.
Redemption of trading stamps or the like for merchandise as sale at retail within taxing statute. 80 ALR2d 1221.
What constitutes "sale" of liquor in violation of statute or ordinance. 89 ALR3d 551.

NOTES OF DECISIONS

1. Generally

1. Generally
Under a former statute regulating retail liquor licenses, words "retail sale" were limited to sales in less quantities than one quart. Bettencourt v. Sheehy (1910) 157 Cal 698, 109 P 89, 1910 Cal LEXIS 315.

§ 23027. "Wholesale sale"; "Sale at wholesale"

"Wholesale sale" or "sale at wholesale" means a sale to any licensee for purposes of resale.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

Annotations:
What constitutes "sale" of liquor in violation of statute or ordinance. 89 ALR3d 551.

§ 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
(a) Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.
(b) Stats 1933 ch 658 § 4.
(c) Stats 1933 ch 178 § 1.

Cross References:
Fair Packaging and Labeling Act: B & P C §§ 12601 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally
Provision in Pen C § 172e excepting premises licensed as bona fide public eating place from prohibition (in Pen C § 172) of sale of any intoxicating liquor within one mile of the grounds of University of California at Berkeley, applies only to an establishment that is in fact licensed or seeking to be licensed as bona fide public eating place; even assuming that applicant for different type of license, such as club liquor license, could qualify under definition of bona fide public eating place in this section, exception would not be available to it. Harris v. Alcoholic Beverage Control Appeals Board (1962, Cal App 1st Dist) 201 Cal App 2d 567, 20 Cal Rptr 227, 1962 Cal App LEXIS 2628.

§ 23029. "Case"; "Original 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 23030. "To bottle"; "To package"

"To bottle" or "to package" means to bottle, barrel, or otherwise place alcoholic beverages in a container.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 23031. "Gallon"; "Wine gallon"

"Gallon" or "wine gallon" means that liquid measure containing 231 cubic inches.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Cross References:
Quantity discounts for wine: B & P C § 24871.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 23033. "Proof gallon"

"Proof gallon" means a gallon of proof spirits or an equivalent amount of alcohol.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1959 ch 547 § 1.

Amendments:

1959 Amendment: (1) Substituted "any apparatus" for "a still used in the production, or"; (2) substituted "for separating alcohol, or alcoholic vapors or solutions from alcohol or alcoholic solutions or mixtures, but" for "in the production of alcoholic beverages, and"; and (3) added "for laboratory purposes or".

Historical Derivation:

Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Cross References:

Seizure of unlicensed stills: B & P C § 25352.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:

Transportation in bond and warehousing of merchandise; bonded warehouses: 19 USCS § 1555.

Internal revenue bonded warehouses; entry of distilled spirits for deposit in storage: 26 USCS §§ 5231 et seq.

Cal. Legal Forms, (Matthew Bender) §§ 18.10[2], 18.200[1].

§ 23037. "Club"

"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.

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 618 § 1.

Amendments:

1957 Amendment: Added (1) ", and which sells alcoholic beverages only to its members and its bona fide guests" at the end of the first sentence; and (2) the second sentence.

Historical Derivation:

(a) Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

(b) Stats 1933 ch 658 § 4.

Cross References:

Club permitted to operate premises under special license: B & P C § 23399.2.

Club licenses: B & P C §§ 23425 et seq.

Club operated by common carrier at airport terminal to qualify for license notwithstanding provisions of this section: B & P C § 23428.13.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 61 "Associations And Clubs".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.21[1], 18.21[2], 18.200[1].

§ 23038. "Bona fide public eating place"; "Meals"; "Guests"

"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" mean 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 1779 § 1, operative January 1, 1957.

Amendments:

1955 Amendment: Substituted the section for the former section which read: " 'Hotel,' 'restaurant,' 'cafe,' 'cafeteria,' or 'other eating place' means premises maintained and operated in good faith for selling and serving meals to the public for consumption upon the premises."

Historical Derivation:

Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Cross References:

Prohibited selling of alcoholic beverages, other than beers, in any bona fide public eating place without compliance with requirements prescribed in section: B & P C § 23396.

Authority of hotel or motel, to sublet sale and service of meals required by this section: B & P C § 23787.

Alcoholic beverages served by persons between 18 and 21 years of age: B & P C § 25667.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.21[2], 18.40[2], 18.200[1].

Attorney General's Opinions:

Prohibition against liquor licensee, holding general on–sale license for bona fide eating place, to lease or make concession agreement subletting restaurant operations on his licensed premises. 29 Ops. Cal. Atty. Gen. 95.

NOTES OF DECISIONS

1. Generally

1. Generally

Words "guests for compensation," contained in this section, are used in same sense as guests of hotel, inn, or restaurant. Harris v. Alcoholic Beverage Control Appeals Board (1962, Cal App 1st Dist) 201 Cal App 2d 567, 20 Cal Rptr 227, 1962 Cal App LEXIS 2628.

§ 23038.1. "Bona fide public eating place"; "Meals"; "Groups of guests"; "Convention center"

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.

Added Stats 1968 ch 860 § 1.

Cross References:

Prohibited selling of alcoholic beverages, other than beers, in any bona fide public eating place without compliance with requirements prescribed in this section: B & P C § 23396.

Alcoholic beverages served by persons between 18 and 21 years of age: B & P C § 25667.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.21[2], 18.200[1].

§ 23038.2. "Bona fide eating place"; 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.

Added Stats 1976 ch 561 § 1. Amended Stats 1978 ch 270 § 1.

Amendments:

1978 Amendment: Deleted "contains at least 40,000 seats and which" after "events which" in the first paragraph.

Cross References:

Alcoholic beverages served by persons between 18 and 21 years of age: B & P C § 25667.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.21[2], 18.200[1].

§ 23038.3. "Bona fide public eating place"

Notwithstanding Section 23038, for purposes of issuing an on-sale beer and wine license only, "bona fide public eating place" also means a cooking school that regularly and in a bona fide manner provides courses of instruction in the preparation of food, and that maintains suitable kitchen facilities for the preparation of food that is offered to persons attending the courses of instruction.

Added Stats 2011 ch 702 § 1 (SB 339), effective January 1, 2012.

§ 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; nor does it include theaters licensed pursuant to Section 24045.75; nor does it include winegrowers' premises.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 1779 § 2, operative January 1, 1957; Stats 1967 ch 1296 § 1; Stats 1968 ch 951 § 2, ch 1040 § 2; Stats 1979 ch 487 § 1; Stats 1984 ch 399 § 1, effective July 11, 1984; Stats 2008 ch 508 § 1 (AB 3071), effective January 1, 2009; Stats 2013 ch 235 § 1 (AB 525), effective January 1, 2014.

Former Sections:

There was another section of this number, which was added by Stats 1979 ch 487 § 2, to become operative January 1, 1985, and repealed by Stats 1984 ch 399 § 2, effective July 11, 1984.

Amendments:

1955 Amendment: Prior to 1955 the section read: " 'Public bar,' 'public saloon,' or 'public barroom' means premises maintained and operated for the selling or serving of alcoholic beverages, other than beer, to the public for consumption on the premises, and which are not equipped and maintained for the sale and service of meals to the public, and in which meals are not actually sold and served to the public."

1955 Amendment amended the section to read as at present except for the following amendments.

1967 Amendment: (1) Substituted "(a) 'Public premises' means: (1) Premises licensed with any type of license other than an on–sale beer license, and" for " 'Public premises' means premises"; (2) added subd (a)(2); (3) designated the former second paragraph to be subd (b); and (4) substituted "stadia, auditoria, fairgrounds, racetracks, or premises being operated under a temporary on–sale beer license other than permitted pursuant to Section 24045.5" for "premises in which beer is the only alcoholic beverage sold and served for consumption upon the premises" in subd (b).

1968 Amendment: Amended subd (b) by (1) substituting "historic units of the state park system," for "stadia, auditoria, fairgrounds, racetracks, or"; and (2) adding ", or on–sale beer licensed stadia, auditoria, fairgrounds, or racetracks".

1979 Amendment: Amended subd (b) by adding (1) "; nor does it include nonprofit theater companies licensed pursuant to Section 24045.7" at the end of subd (b); and (2) the last paragraph.

1984 Amendment: (1) Substituted "the" for "such" after "bona fide clubs after" in subd (b); and **(2)** deleted the former last paragraph which read: "This section shall remain in effect only until January 1, 1985, and as of that date is repealed."

2008 Amendment: Added "; nor does it include winegrowers' premises" at the end of subd (b)

2013 Amendment: Added "nor does it include theaters licensed pursuant to Section 24045.75;" in subd (b).

Historical Derivation:

Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Cross References:

Duplicate licenses for public premises with more than one room: B & P C § 24042.

Transfer from licensee of on–sale licenses for public premises: B & P C § 24070.1.

Transfer from premises of on–sale licenses for public premises: B & P C § 24072.1.

Exchange of on–sale licenses for public premises: B & P C § 24072.2.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 547 "Theaters, Shows, And Amusement Places".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.21[2], 18.40[2], 18.200[1].

Attorney General's Opinions:

Prohibition against liquor licensee, holding general on–sale license for bona fide eating place, to lease or make concession agreement subletting restaurant operations on his licensed premises. 29 Ops. Cal. Atty. Gen. 95.

Inclosure of licensed "public premises" so that persons outside the area are restricted from seeing or hearing activities within the premises. 37 Ops. Cal. Atty. Gen. 193.

NOTES OF DECISIONS

1. Generally

1. Generally

The statutory definitions set forth in this statute are consistent with Cal Const Art XX § 22. Covert v. State Bd. of Equalization (1946) 29 Cal 2d 125, 173 P2d 545, 1946 Cal LEXIS 283.

§ 23039.1. Admission of minors to cabaret theater

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 theater performances provided that alcoholic beverages are not sold, served, or consumed on the premises during those performances.

Added Stats 1987 ch 869 § 1, effective September 21, 1987. Amended Stats 2008 ch 18 § 1 (AB 23), effective June 2, 2008.

Amendments:

2008 Amendment: Substituted "theater performances" for "matinee theater performances on Sunday" after "21 years to".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23040. "Within this State"

"Within this State" means all territory within the boundaries of this State.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23041. "Without the State"

"Without the State" means all territory without the boundaries of this State.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 2.

Amendments:

1955 Amendment: 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".

Historical Derivation:

(a) Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

(b) Stats 1933 ch 658 § 4.

(c) Stats 1933 ch 178 § 1.

(d) Stats 1933 ch 51 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23043. "Department"; "Director"

"Department" means the Department of Alcoholic Beverage Control, and "director" means the Director of Alcoholic Beverage Control.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 3.

Amendments:

1955 Amendment: Substituted the section for the former section which read: " 'State Liquor Administrator' means the Chief of the Alcoholic Beverage Control Division, and he shall have the power and duties which this division provides shall be exercised by him and which may be assigned to him by the board."

Historical Derivation:

Stats 1935 ch 330 § 2, as amended Stats 1937 ch 758 § 3, Stats 1945 ch 1401 § 1a, Stats 1951 ch 1257 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23044. "License"

"License" means a license authorized to be issued by the department pursuant to this division.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 4.

Amendments:

1955 Amendment: Substituted "department" for "board".

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23045. "Appeals board"

"Appeals board" means the Alcoholic Beverage Control Appeals Board.

Added Stats 1955 ch 447 § 5.

Former Sections:
There was another section of this number which was added by Stats 1955 ch 954 § 1 and renumbered B & P C § 23046 by Stats 1957 ch 37 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23046. "Air common carrier"; "Airplane"; "Common carrier airplane"

"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.

Added Stats 1955 ch 954 § 1, as B & P C § 23045. Renumbered by Stats 1957 ch 37 § 1. Amended Stats 1968 ch 607 § 1.

Former Sections:
Former § 23046 was added Stats 1955 ch 954 § 2 and renumbered B & P C § 23047 by Stats 1957 ch 37 § 2.

Amendments:
1968 Amendment: Added "or its successor, or the Public Utilities Commission, or its successor,".

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 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.

Added Stats 1955 ch 954 § 2, as B & P C § 23046. Renumbered by Stats 1957 ch 37 § 2.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

CHAPTER 1.5

Administration

[Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955.]

Article 1

The Department of Alcoholic Beverage Control

Section
23049. Legislative intent
23050. Establishment of department; Administration; Director of Alcoholic Beverage Control; Appointment; Compensation
23051. Succession to powers, duties, purposes, responsibilities, and jurisdiction of State Board of Equalization
23052. Application of specified Government Code provisions
23053. Power of director to appoint employees; Responsibility of employees to director
23053.1. Injunctive relief
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23054. Transfer of employees in state civil service under State Board of Equalization to department; Power of director to reorganize department
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23057. Information to be provided with renewal notices
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Article 2

Prohibited Activity

23060. Prohibited activities

Article 3

The Alcoholic Beverage Control Appeals Board

23075. Creation of board; Appointment of members; Compensation
23076. Appointment, direction, and control of personnel of board; Equipment, supplies and housing
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Appeals From Decisions of the Department

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Article 6

Stay of Suspension

Section
23095. Right of licensee to make offer in compromise in lieu of serving suspension; Procedure on receipt of petition; Amount of offer in compromise
23096. Order
23097. Limitations on authority of department in connection with petition
23098. When suspension may go into effect

ARTICLE 1

The Department of Alcoholic Beverage Control

Collateral References:
Pertinent administrative rules and regulations: 4 Cal Code Reg §§ 1 et seq.

§ 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.

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:
Practice Tips: Local Regulation of Alcohol Licensees. 29 LA Law 14 (October, 2006).

Attorney General's Opinions:
Invalidity of insurance policy purporting to protect licensee from loss by suspension or revocation of license. 31 Ops. Cal. Atty. Gen. 79.

NOTES OF DECISIONS

1. Constitutionality

1. Constitutionality
Right to possess, make or deal in intoxicating liquor is not a privilege or such property right that state legislation prohibiting, restricting or regulating its manufacture, use, possession, distribution or sale violates US Const, Fourteenth Amendment. Cooper v. State Board of Equalization (1955, Cal App 1st Dist) 137 Cal App 2d 672, 290 P2d 914, 1955 Cal App LEXIS 1242.

Business of selling intoxicating liquor is attended with dangers, and under police power state may limit operation of such business to conditions that will minimize its evils. Farah v. Alcoholic Beverage Control Appeals Board (1958, Cal App 2d Dist) 159 Cal App 2d 335, 324 P2d 98, 1958 Cal App LEXIS 2003.

It is well within the authority conferred on the Department of Alcoholic Beverage Control by Cal Const Art XX, § 22 par. 9, B & P C §§ 23001, 23049 for the Department to determine that the "tied-house" law, B & P C § 25502, applies to certain transactions but not to others. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2002, Cal App 1st Dist) 100 Cal App 4th 1066, 123 Cal Rptr 2d 278, 2002 Cal App LEXIS 4471.

§ 23050. Establishment of department; Administration; Director of Alcoholic Beverage Control; Appointment; Compensation

There is in the state government, in the Business, Consumer Services, and Housing Agency, 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.

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955. Amended Stats 2000 ch 979 § 1 (AB 2759). See this section as modified in Governor's Reorganization Plan No. 2 § 32 of 2012. Amended Stats 2012 ch 147 § 3 (SB 1039), effective January 1, 2013, operative July 1, 2013 (ch 147 prevails).

Editor's Notes—2012 Governor's Reorganization Plan No. 2 was submitted to the Legislature on May 3, 2012, and became effective July 3, 2012, pursuant to Gov C § 12080.5, and substantively operative July 1, 2013. The text as modified by § 32 reads: "There is in the state government, in the Business and Consumer Services Agency 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."

2012 Amendment: Substituted "state government, in the Business and Consumer Services Agency" for "State Government" in the first sentence.

Note—2012 Governor's Reorganization Plan No. 2 provides:

SEC. 329. (a) Except as provided for in subdivision (b), the provisions of this plan shall become operative on July 1, 2013.

(b) A state agency, department, or entity may take actions prior to July 1, 2013, that are necessary to ensure that the provisions of the plan become operative on July 1, 2013, and are implemented in a timely fashion. These actions may include, but are not limited to, reassignment of duties between state agencies, departments, or entities, activities included in Section 12080.3 of the Government Code, actions relating to planning for the changes provided for in the plan, and the expenditure of funds necessary for the transfer of authority and responsibilities accomplished by the plan.

Stats 2012 ch 147 provides:

SEC. 23. (a) Notwithstanding Section 12080.8 of the Government Code or any other law, Sections 1 to 19, inclusive, and Sections 21 and 22 of this act shall prevail over Sections 1, 23, 32, 33, 45, 158, 159, 178, 188, 196, 199, 202, 203, 207, 208, 209, 210, 215, 285, 287, and 288 of the Governor's Reorganization Plan No. 2 of 2012, regardless of the dates on which this act and that plan take effect.

(b) This act, including subdivision (a), shall become operative only if the Governor's Reorganization Plan No. 2 of 2012 becomes effective.

(c) Except as otherwise provided in subdivision (b), Sections 1 to 22, inclusive, of this act shall become operative on July 1, 2013.

Amendments:

2000 Amendment: Deleted the former fourth and fifth sentences which read: "The director shall be a member of the Governor's Council. Before entering upon the duties of his office, the director shall execute an official bond to the State in the penal sum of twenty–five thousand dollars ($25,000)."

2012 Amendment: Substituted "the state government, in the Business, Consumer Services, and Housing Agency," for "the State Government" in the first sentence.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally
2. Constitutionality

1. Generally

Department is constitutional agency, and is charged with enforcing Alcoholic Beverage Control Act. Farah v. Alcoholic Beverage Control Appeals Board (1958, Cal App 2d Dist) 159 Cal App 2d 335, 324 P2d 98, 1958 Cal App LEXIS 2003.

Though there are procedural differences between applications for, and disciplinary matters concerning, licenses to sell alcoholic beverages, in both procedures, it is responsibility of Department of Alcoholic Beverage Control to safeguard public interest. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

A court is required to accord great respect to the interpretation of a statute by the Department of Alcoholic Beverage Control which must be followed unless it appears to be clearly erroneous. Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 1st Dist) 256 Cal App 2d 158, 64 Cal Rptr 26, 1967 Cal App LEXIS 1839, rehearing denied (1st Dist) 256 Cal App 2d 176, 65 Cal Rptr 251, appeal dismissed Cohon v. Kirby (1968) 393 US 7, 89 S Ct 44, 21 L Ed 2d 9, 1968 US LEXIS 570, dismissed Makah Indian Tribe v. Tax Com. of Washington (1968) 393 U.S. 8, 89 S. Ct. 44, 21 L. Ed. 2d 8, 1968 U.S. LEXIS 571.

The duty to enforce and administer the Alcoholic Beverage Control Act (B & P C §§ 23000-25762) is vested in the Department of Alcoholic Beverage Control, and it has a broad range of power and discretion in carrying out this duty. Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 1st Dist) 256 Cal App 2d 158, 64 Cal Rptr 26, 1967 Cal App LEXIS 1839, rehearing denied (1st Dist) 256 Cal App 2d 176, 65 Cal Rptr 251, appeal dismissed Cohon v. Kirby (1968) 393 US 7, 89 S Ct 44, 21 L Ed 2d 9, 1968 US LEXIS 570, dismissed Makah Indian Tribe v. Tax Com. of Washington (1968) 393 U.S. 8, 89 S. Ct. 44, 21 L. Ed. 2d 8, 1968 U.S. LEXIS 571.

2. Constitutionality

Authority to grant or deny liquor license is vested in Department of Alcoholic Beverage Control by self-executing provisions of Constitution that prescribe criterion for exercise of that authority. Bailey v. Department of Alcoholic Beverage Control (1962, Cal App 4th Dist) 201 Cal App 2d 348, 20 Cal Rptr 264, 1962 Cal App LEXIS 2599.

Cal Const Art XX § 22 confers on Department of Alcoholic Beverage Control power to deny liquor license for "good cause" where granting thereof "would be contrary to public welfare or morals." Bailey v. Department of Alcoholic Beverage Control (1962, Cal App 4th Dist) 201 Cal App 2d 348, 20 Cal Rptr 264, 1962 Cal App LEXIS 2599.

§ 23051. Succession to powers, duties, purposes, responsibilities, and jurisdiction 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.

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955.

Collateral References:

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.03.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally

The Department of Alcoholic Beverage Control is given power to administer and enforce the liquor laws throughout the state (Cal Const, art XX, § 22, B & P C §§ 23049–23051), and it is the department's duty to administer and enforce the retail price maintenance provisions of the Alcoholic Beverage Control Act. Samson Market Co. v. Alcoholic Beverage Control Appeals Bd. (1969) 71 Cal 2d 1215, 81 Cal Rptr 251, 459 P2d 667, 1969 Cal LEXIS 315.

§ 23052. Application of specified Government Code provisions

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.

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955.

Cross References:
Administrative Procedure Act: Gov C §§ 11150 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23053. Power of director to appoint employees; Responsibility of employees to 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.

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23053.1. Injunctive relief

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.

Added Stats 1984 ch 56 § 1, effective March 28, 1984. Amended Stats 1994 ch 627 § 1 (AB 463).

Amendments:
1994 Amendment: (1) Added ", including, but not limited to, subdivision (e) of Section 24200 regarding a licensee's failure to correct objectionable conditions following notice," in the first sentence; and **(2)** deleted the former second paragraph which read: "No action shall be brought against any licensee pursuant to this section until the department has adopted a decision after an administrative hearing revoking the license of the licensee."

Cross References:
Injunctions: CC §§ 3420 et seq, CCP §§ 525 et seq.

Collateral References:
Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Construction
2. Constitutionality

1. Construction
B & P C § 23053.1, construed so as to allow the issuance of an injunction only when a licensee continues to violate the same rules after its license has been revoked by the Department of Alcoholic Beverage Control after an administrative hearing concerning violation of such rules, is a valid legislative addition to the remedies of the department in the exercise of its alcoholic beverage control activities, and thus the superior court did not lack jurisdiction to issue an injunction restraining a licensee from violating Cal. Admin. Code [now Cal Code Reg], tit. 4, § 143.3 (prohibiting holding of on-sale license at any premises where specified sexually-oriented live entertainment occurs), once the department had revoked the licensee's license for violating that section, notwithstanding the licensee's contention that previously enacted statutes granting the Supreme Court and Courts of Appeal exclusive jurisdiction to review or otherwise determine the propriety of departmental activities precluded operation of § 23053.1. Stroh v. Midway Restaurant Systems, Inc. (1986, Cal App 4th Dist) 180 Cal App 3d 1040, 226 Cal Rptr 153, 1986 Cal App LEXIS 1572.

There are no unresolvable inconsistencies between B & P C § 23053.1 (permitting Department of Alcoholic Beverage Control to bring action to enjoin violations by licensee once department has adopted decision after administrative hearing to revoke licensee's license), and B & P C §§ 23082-23089 (pertaining to appeals from decisions of department); § 23053.1 gives the department no power to revoke a license or otherwise interfere with a licensee's license, but only a limited power to ask the court to enjoin continued violations of the license. Further, operation of the statute is not restricted to the period after the appellate process is completed; such restriction would render the statute almost superfluous, since the license revocation is then final. Stroh v. Midway Restaurant Systems, Inc. (1986, Cal App 4th Dist) 180 Cal App 3d 1040, 226 Cal Rptr 153, 1986 Cal App LEXIS 1572.

2. Constitutionality
Issuance of an injunction under B & P C § 23053.1 (permitting Department of Alcoholic Beverage Control to bring action to enjoin violations by licensee once department has adopted decision after administrative hearing to revoke licensee's license), did not violate the equal protection rights of a licensee whose license the department had decided to revoke for violation of Cal. Admin. Code [now Cal Code Reg], tit. 4, § 143.3 (prohibiting holding of on-sale license at any premises where specified sexually-oriented live entertainment occurs), even though only the department has access to the superior court under § 23053.1. A licensee and the department are not similarly situated, and even if they were, the state has sufficiently compelling interests to countervail the imposition of distinct treatment, including the need to enforce rules once violations have been established. Further, the department still must establish both the facts underlying the need for the injunction and the danger of irreparable harm without it. Stroh v. Midway Restaurant Systems, Inc. (1986, Cal App 4th Dist) 180 Cal App 3d 1040, 226 Cal Rptr 153, 1986 Cal App LEXIS 1572.

Application of B & P C § 23053.1 (permitting Department of Alcoholic Beverage Control to bring action to enjoin violations by licensee once department has adopted decision after administrative hearing to revoke licensee's license), to a licensee whose license the department had decided to revoke on the basis of violations occurring before passage of that statute did not violate ex post facto principles. The § 23053.1 remedy was invoked exclusively because of violations taking place after passage of the statute and after the decision to revoke. Further, the licensee could continue to sell alcoholic beverages and was only prevented from continuing to violate proscriptions set forth in the statutes and rules during the period between initial revocation and final action on its appeal. Stroh

v. Midway Restaurant Systems, Inc. (1986, Cal App 4th Dist) 180 Cal App 3d 1040, 226 Cal Rptr 153, 1986 Cal App LEXIS 1572.

Issuance of an injunction pursuant to B & P C § 23053.1 (permitting Department of Alcoholic Beverage Control to bring action to enjoin violations by licensee once department has adopted decision after administrative hearing to revoke licensee's license), did not constitute an unconstitutional prior restraint on the free expression rights of a liquor licensee whose license the department had decided to revoke for violations of Cal. Admin. Code [now Cal Code Reg], tit. 4, § 143.3 (prohibiting holding of on-sale license at any premises where specified sexually oriented live entertainment occurs.) The constitutional rights of free expression are not called into play as they might otherwise be when violation of state regulations concerning alcoholic beverages is involved. Further, the remedy under § 23053.1 is not automatic; the court has inherent discretion to grant or deny relief, and the department must make the showing required for injunctive relief. Stroh v. Midway Restaurant Systems, Inc. (1986, Cal App 4th Dist) 180 Cal App 3d 1040, 226 Cal Rptr 153, 1986 Cal App LEXIS 1572.

The free expression rights of a liquor licensee whose license the Department of Alcoholic Beverage Control had decided to revoke for violations of Cal. Admin. Code [now Cal Code Reg], tit. 4, § 143.3 (prohibiting holding of on-sale license at any premises where specified sexually oriented live entertainment occurs), were not violated by issuance of an injunction under B & P C § 23053.1 (permitting the department to bring action to enjoin violations by licensee once the department has adopted its decision after an administrative hearing to revoke licensee's license), without a demonstration that the specific dance violations were grossly sexual or rose to a level of bacchanalian revelry; it is not necessary to make such a demonstration in order to establish a violation of § 143.3, and although § 23053.1 adds the remedy of injunction, the level and type of proof are not different. Stroh v. Midway Restaurant Systems, Inc. (1986, Cal App 4th Dist) 180 Cal App 3d 1040, 226 Cal Rptr 153, 1986 Cal App LEXIS 1572.

§ 23053.5. Investigation of violations; Fees from licensees

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 those amounts shall be made upon issuance or transfer of these types of licenses, and shall be made by the holders of these 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.

Added Stats 1963 ch 1026 § 1, effective June 21, 1963. Amended Stats 1973 ch 783 § 1; Stats 1992 ch 900 § 2 (AB 432), effective September 24, 1992.

Editor's Notes—Section 23322 of the Business and Professions Code, referred to in this section, was repealed Stats 1992 ch 838 § 2 (AB 2858).

Amendments:

1973 Amendment: Added subd (g).

1992 Amendment: In addition to making technical changes, substituted the last sentence of the last paragraph for the former last sentence which read: "The provisions of Section 25761 shall not apply to the amounts to be paid under this section, and such amounts shall be deposited directly in the General Fund in the State Treasury."

Note—Stats 1992 ch 900 provides:

SECTION 1. The Legislature finds and declares that the regulation of the sale and use of alcoholic beverages is among the highest priorities of state government. The abuse of alcohol can lead to a myriad of other criminal, legal, social, and economic problems. The fair, stable, and effective administration and enforcement of the Alcoholic Beverage Control Act and related laws, therefore, must be insured.

Cross References:

Tied house restrictions: B & P C §§ 25500 et seq.

General fund: Gov C § 16300.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.126, 18.200[1].

§ 23054. Transfer of employees in state civil service under State Board of Equalization to department; Power of director to reorganize department

All person 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 employ-

ees 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.

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955.

Cross References:
State Civil Service Act: Gov C §§ 18500 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23055. Annual report to Legislature

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 and post the report on the department's Internet Web site. The report shall include, but not be limited to, the following information for the previous fiscal 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.

Added Stats 1992 ch 900 § 4 (AB 432), effective September 24, 1992. Amended Stats 2002 ch 579 § 1 (AB 2413); Stats 2010 ch 296 § 1 (SB 1480), effective January 1, 2011; Stats 2011 ch 221 § 1 (AB 749), effective January 1, 2012; Stats 2013 ch 463 § 1 (AB 1425), effective January 1, 2014.

Former Sections:
Former § 23055, relating to transfer of funds available to State Board of Equalization to department and use of funds, was added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955, and repealed Stats 1992 ch 900 § 3, effective September 24, 1992.

Amendments:
2002 Amendment: Added "department and by local law enforcement agencies in conjunction with the" in subd (d).
2010 Amendment: Deleted former subd (f) which read: "(f) Recommendations for legislation to improve the ability of the department to expeditiously and effectively administer this division."
2011 Amendment: Substituted "fiscal year" for "calendar year" in the second sentence of the introductory paragraph.
2013 Amendment: Added "and post the report on the department's Internet Web site" in the first sentence of the introductory paragraph.

Note—Stats 1992 ch 900 provides:
SECTION 1. The Legislature finds and declares that the regulation of the sale and use of alcoholic beverages is among the highest priorities of state government. The abuse of alcohol can lead to a myriad of other criminal, legal, social, and economic problems. The fair, stable, and effective administration and enforcement of the Alcoholic Beverage Control Act and related laws, therefore, must be insured.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23056. Copy of information sheet describing Designated Driver Program to on–sale licensees

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.

Added Stats 1990 ch 1337 § 1 (AB 3620). Amended Stats 1992 ch 838 § 1 (AB 2858).

Amendments:
1992 Amendment: Substituted "each renewal notice to any on–sale licensee" for "the annual renewal notice to all on–sale licensees" at the end.

Cross References:
Information sheet describing Designated Driver Program: Veh C § 2426.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23057. Information to be provided with renewal notices

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.

Added Stats 1995 ch 743 § 1 (AB 683), effective October 10, 1995. Amended Stats 1996 ch 124 § 4 (AB 3470).

Amendments:
1996 Amendment: Substituted "persons under the age of 21 years" for "minors".

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23058. Facilitation of Sales and Use Tax Law; Report on licenses issued or transferred

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 Rev-

enue 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.

Added Stats 2005 ch 172 § 1 (SB 322), effective January 1, 2006.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

ARTICLE 2

Prohibited Activity

[Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955.]

Collateral References:
Sales without licenses: 4 Cal Code Reg §§ 79 et seq.

§ 23060. Prohibited activities

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.

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955.

Collateral References:
Cal. Forms Pleading & Practice (Matthew Bender®) ch 469 "Public Entities And Officers: Conflicts Of Interest".
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:
Restrictions of this section as examples only, and requirement that any other activity which would be in conflict with responsibility and trust placed in board members be avoided. 32 Ops. Cal. Atty. Gen. 187.

ARTICLE 3

The Alcoholic Beverage Control Appeals Board

[Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955.]

Cross References:
Right of Alcoholic Beverage Control Appeals Board to hold executive sessions, notwithstanding provisions requiring open and public meetings: Gov C § 11126.

§ 23075. Creation of board; Appointment of members; Compensation

There is in the state government, in the Business, Consumer Services, and Housing Agency, 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.

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955. Amended Stats 1983 ch 803 § 1; Stats 1988 ch 1335 § 1. See this section as modified in Governor's Reorganization Plan No. 2 § 33 of 2012. Amended Stats 2012 ch 147 § 4 (SB 1039), effective January 1, 2013, operative July 1, 2013 (ch 147 prevails).

Editor's Notes—2012 Governor's Reorganization Plan No. 2 was submitted to the Legislature on May 3, 2012, and became effective July 3, 2012, pursuant to Gov C § 12080.5, and substantively operative July 1, 2013. The text as modified by § 33, reads: "There is in the state government, in the Business and Consumer Services Agency, 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."

2012 Amendment: Added ", in the Business and Consumer Services Agency,".

Note—2012 Governor's Reorganization Plan No. 2 provides:

SEC. 329. (a) Except as provided for in subdivision (b), the provisions of this plan shall become operative on July 1, 2013.

(b) A state agency, department, or entity may take actions prior to July 1, 2013, that are necessary to ensure that the provisions of the plan become operative on July 1, 2013, and are implemented in a timely fashion. These actions may include, but are not limited to, reassignment of duties between state agencies, departments, or entities, activities included in Section 12080.3 of the Government Code, actions relating to planning for the changes provided for in the plan, and the expenditure of funds necessary for the transfer of authority and responsibilities accomplished by the plan.

Stats 2012 ch 147 provides:

SEC. 23. (a) Notwithstanding Section 12080.8 of the Government Code or any other law, Sections 1 to 19, inclusive, and Sections 21 and 22 of this act shall prevail over Sections 1, 23,

32, 33, 45, 158, 159, 178, 188, 196, 199, 202, 203, 207, 208, 209, 210, 215, 285, 287, and 288 of the Governor's Reorganization Plan No. 2 of 2012, regardless of the dates on which this act and that plan take effect.

(b) This act, including subdivision (a), shall become operative only if the Governor's Reorganization Plan No. 2 of 2012 becomes effective.

(c) Except as otherwise provided in subdivision (b), Sections 1 to 22, inclusive, of this act shall become operative on July 1, 2013.

Amendments:

1983 Amendment: (1) Designated the former section to be subd (a); **(2)** deleted ", 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" at the end of subd (a); and **(3)** added subd (b).

1988 Amendment: (1) Deleted former subdivision designations; **(2)** added ", 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"; and **(3)** deleted former subd (b) which read: "(b) No member of the board shall receive a salary but shall receive a per diem of one hundred dollars ($100) for each day actually spent in the discharge of official duties, and shall be reimbursed for traveling and other expenses necessarily incurred in the performance of his or her duties."

2012 Amendment: Added ", in the Business, Consumer Services, and Housing Agency,".

Cross References:

Annual salary of members of Alcoholic Beverage Control Appeals Board: Gov C § 11560.1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Constitutionality

1. Constitutionality

Alcoholic beverage control appeals board is constitutional governmental body. Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 523, 314 P2d 1007, 1957 Cal App LEXIS 1526, cert den (1958) 356 US 902, 78 S Ct 562, 2 L Ed 2d 580, 1958 US LEXIS 1394, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

Department is constitutional agency with respect to its functions in controlling sale and use of intoxicating beverages. Oxman v. Department of Alcoholic Beverage Control (1957, Cal App 3d Dist) 153 Cal App 2d 740, 315 P2d 484, 1957 Cal App LEXIS 1551.

§ 23076. Appointment, direction, and control of personnel of board; Equipment, supplies and housing

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.

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 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.

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Annotations:

Right to attack validity of administrative regulations issued under licensing law. 65 ALR2d 660.

NOTES OF DECISIONS

1. Generally

1. Generally

Alcoholic Beverage Control Appeals Board has jurisdiction to determine whether party followed procedure prescribed for appearing before it; it may err in its interpretation of the law prescribing maximum time for filing appeal, but jurisdiction over subject, being in power to hear and determine, implies power to decide question wrong as well as right. Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control (1961) 55 Cal 2d 728, 13 Cal Rptr 104, 361 P2d 712, 1961 Cal LEXIS 251.

§ 23078. [Section repealed 1967.]

Added Stats 1957 ch 2171 § 1. Repealed Stats 1967 ch 1656 § 42. See Gov C §§ 11120 et seq.

ARTICLE 4

Appeals From Decisions of the Department

[Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955.]

NOTES OF DECISIONS

1. Generally

1. Generally

There are no unresolvable inconsistencies between B & P C § 23053.1 (permitting Department of Alcoholic Beverage Control to bring action to enjoin violations by licensee once department has adopted decision after administrative hearing to revoke licensee's license), and B & P C §§ 23082-23089 (pertaining to appeals from decisions of department); § 23053.1 gives the department no power to revoke a license

or otherwise interfere with a licensee's license, but only a limited power to ask the court to enjoin continued violations of the license. Further, operation of the statute is not restricted to the period after the appellate process is completed; such restriction would render the statute almost superfluous, since the license revocation is then final. Stroh v. Midway Restaurant Systems, Inc. (1986, Cal App 4th Dist) 180 Cal App 3d 1040, 226 Cal Rptr 153, 1986 Cal App LEXIS 1572.

§ 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.

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23081. Perfecting appeal; Time for filing; Procedure; Right to appeal despite failure to seek reconsideration

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.

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955. Amended Stats 1959 ch 549 § 1.

Amendments:

1959 Amendment: (1) Amended the first sentence by substituting (a) "On or before the tenth day after the last day on which reconsideration of a final decision of the department can be ordered" for "Within 40 days after the decision of the department is delivered or mailed to the parties"; and (b) "file an appeal with the board" for "appeal to the board"; and (2) added the last sentence.

Cross References:

Computation of time: Gov C §§ 6800 et seq.

Reconsideration determinations: Gov C § 11521.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.03.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Forms:

See form set out below, following Notes of Decisions.

Annotations:

Right to attack validity of statute, ordinance, or regulation relating to occupational or professional license as affected by nature of proceeding in which attack is made. 65 ALR2d 660.

NOTES OF DECISIONS

1. Generally
2. Time For Appeal
3. Extension of Time to Appeal
4. Failure To Appeal Within Time Specified
5. Appeal as Prerequisite to Judicial Review

1. Generally

This section reasonably permits construction which would include application of CCP § 1013, relating to service of notices by mail, in its entirety to filing of notice of appeal from decision of department. Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

2. Time For Appeal

Mailing of notice of appeal was not equivalent of constructive filing, under prior section. Anderson v. Department of Alcoholic Beverage Control (1958, Cal App 4th Dist) 159 Cal App 2d 413, 324 P2d 24, 1958 Cal App LEXIS 2014, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

Filing notice of appeal from decision of Department of Alcoholic Beverage Control suspending liquor license with that department constituted filing with Alcoholic Beverage Control Appeals Board under latter's policy to consider appeals mailed to department as received by and filed with it on date notice is received by department. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (1959, Cal App 2d Dist) 169 Cal App 2d 785, 338 P2d 50, 1959 Cal App LEXIS 2143.

Under Gov C § 6800, in computing 10-day period for appealing from final decision of Department of Alcoholic Beverage Control, last day on which department could act to order reconsideration of its denial of petition for on-sale beer license is excluded, and appeal period begins next day. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 223 Cal App 2d 563, 35 Cal Rptr 865, 1963 Cal App LEXIS 1569.

An appeal to the Alcoholic Beverage control Appeals Board from a decision of the Department of Alcoholic Beverage Control suspending the license of a licensee was not timely filed, where it was not filed on or before the 10th day after the last day on which reconsideration could be ordered (B & P C § 23081)—that is, on or before the 10th day following the 30th day after the mailing of the decision to the licensee (Gov C § 11521), where the decision contained no effective date, and where no application was made by the licensee for a stay of the effective date nor a stay ordered by the department. Reimel v. House (1968, Cal App 2d Dist) 264 Cal App 2d 173, 70 Cal Rptr 224, 1968 Cal App LEXIS 2064.

3. Extension of Time to Appeal

Request and payment for transcript of record does not extend time to appeal department's liquor revocation to appeals board. Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 523, 314 P2d 1007, 1957 Cal App LEXIS 1526, cert den (1958) 356 US 902, 78 S Ct 562, 2 L Ed 2d 580, 1958 US LEXIS 1394,

overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

Proceedings for reconsideration by department of its revocation of liquor license do not affect time for filing appeal to appeals board. Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 523, 314 P2d 1007, 1957 Cal App LEXIS 1526, cert den (1958) 356 US 902, 78 S Ct 562, 2 L Ed 2d 580, 1958 US LEXIS 1394, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

CCP § 1013 relating to service of notices by mail, applied to extend forty-day period prescribed by former section. Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

Fact that licensee subsequently petitioned for reconsideration of decision, which was denied, does not extend time for appeal from original decision. Anderson v. Department of Alcoholic Beverage Control (1958, Cal App 4th Dist) 159 Cal App 2d 413, 324 P2d 24, 1958 Cal App LEXIS 2014, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

Proceedings for reconsideration by Department of Alcoholic Control of its decision denying application for transfer of off-sale liquor license do not extend time for appeal to board as limited by section. Rishwain v. Department of Alcoholic Beverage Control (1958, Cal App 3d Dist) 162 Cal App 2d 207, 328 P2d 473, 1958 Cal App LEXIS 1856.

Though it had been consistent practice of Alcoholic Beverate Control Appeals Board, both before and after 1959 amendment of this section, providing for time to file appeal, to apply CCP § 1013 to extend time within which appeal could be filed, and though construction of statute by state board is entitled to weight, practice of board cannot grant jurisdiction in face of jurisdictional limitation. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 223 Cal App 2d 563, 35 Cal Rptr 865, 1963 Cal App LEXIS 1569.

Though 30-day period during which Department of Alcoholic Beverage Control had power to reconsider its final decision denying application for on-sale beer license expired on Saturday, filing by applicants of appeal to Alcoholic Beverage Control Appeals Board 12 days thereafter was too late under this section; Gov C § 6707, which extends to next business day time for party to act when last day to act falls on Saturday or holiday, does not refer to time for department to act and does not apply to extend time for reconsideration. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 223 Cal App 2d 563, 35 Cal Rptr 865, 1963 Cal App LEXIS 1569.

4. Failure To Appeal Within Time Specified

Where appeal from department's revocation of liquor license was filed before appeals board after expiration of time limit set in this section, appeals board had no jurisdiction over proceeding, department's decision became final, and superior court had no jurisdiction to review proceeding in mandamus. Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 523, 314 P2d 1007, 1957 Cal App LEXIS 1526, cert den (1958) 356 US 902, 78 S Ct 562, 2 L Ed 2d 580, 1958 US LEXIS 1394, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

Where appeal is filed after expiration of time limit set in this section, board has no jurisdiction over proceeding, department's decision became final, and courts have no jurisdiction to review proceeding. Van De Veer v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 817, 318 P2d 686, 1957 Cal App LEXIS 1361, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

Where department's decision suspending and revoking on-sale liquor license was not appeal within time allowed by law to appeals board, licensees failed to exhaust their administrative remedies and were not entitled to judicial review of order complained of. Miller v. Department of Alcoholic Beverage Control (1958, Cal App 2d Dist) 160 Cal App 2d 658, 325 P2d 601, 1958 Cal App LEXIS 2169, cert den (1958) 358 US 907, 79 S Ct 234, 3 L Ed 2d 229, 1958 US LEXIS 76.

5. Appeal as Prerequisite to Judicial Review

Gov C § 11523, relating to judicial review of administrative decisions, does not authorize appeal to courts directly from department's revocation of liquor license; but to secure judicial review, licensee must first appeal to appeals board, pursuant to this section, and then may seek judicial review of board's decision. Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 523, 314 P2d 1007, 1957 Cal App LEXIS 1526, cert den (1958) 356 US 902, 78 S Ct 562, 2 L Ed 2d 580, 1958 US LEXIS 1394, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

Party aggrieved by decision of Department of Alcoholic Beverage Control authorizing issuance of on-sale liquor license has no right to seek judicial review of such decision without first filing appeal with appeals board of department. Fiscus v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 234, 317 P2d 993, 1957 Cal App LEXIS 1271.

Only decision from which liquor licensee whose license was revoked can appeal is decision of department of alcoholic beverage control revoking his license, and timely appeal to alcoholic beverage control appeals board is necessary to exhaust administrative remedies. Anderson v. Department of Alcoholic Beverage Control (1958, Cal App 4th Dist) 159 Cal App 2d 413, 324 P2d 24, 1958 Cal App LEXIS 2014, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

There was no jurisdiction for judicial review of department's order revoking license where appeal from such order was not taken to appeals board within time allowed by law, despite fact that licensees alleged that they had exhausted all remedies provided by applicable laws and had no further adequate remedy at law or further right of appeal except to file petition for writ of mandate, and such allegation was admitted in department's return. Miller v. Department of Alcoholic Beverage Control (1958, Cal App 2d Dist) 160 Cal App 2d 658, 325 P2d 601, 1958 Cal App LEXIS 2169, cert den (1958) 358 US 907, 79 S Ct 234, 3 L Ed 2d 229, 1958 US LEXIS 76.

Before party to proceeding before department of alcoholic beverage control can seek judicial review of decision of that department, he must prosecute appeal before alcoholic beverage control appeals board. Greenblatt v. Munro (1958, Cal App 1st Dist) 161 Cal App 2d 596, 326 P2d 929, 1958 Cal App LEXIS 1778.

Liquor licensee may not seek court review of decision of Department of Alcoholic Beverage Control Board revoking license without first appealing to Alcoholic Beverage Control Appeals Board. Cardoso v. Department of Alcoholic Beverage Control (1958, Cal App 3d Dist) 162 Cal App 2d 277, 327 P2d 591, 1958 Cal App LEXIS 1870.

A notice of appeal to the Alcoholic Beverage Control Appeals Board from a decision of the Department of Alcoholic Beverage Control imposing disciplinary action on a licensee, filed 46 days after the decision was made and mailed was not timely filed within the provisions of this section, requiring filing of the appeal on or before the 10th day after the last day on which reconsideration could be ordered, where the department had not granted a stay of the 30-day reconsideration period as permitted by Gov C § 11521. Reimel v. Alcoholic

Beverage Control Appeals Board (1967, Cal App 1st Dist) 254 Cal App 2d 340, 62 Cal Rptr 54, 1967 Cal App LEXIS 1400.

SUGGESTED FORMS

Notice of Appeal to Alcoholic Beverage Control Appeals Board

[Caption]

To: ____ [The Alcoholic Beverage Control Appeals Board]

____ hereby appeals from the decision of the Department of Alcoholic Beverage Control, dated ____, whereby ____ *[specify whether license was suspended or revoked, or whether application was denied or protest overruled].*

Such appeal will be based upon the provisions of Section 23084 of the Business and Professions Code of the State of California, and particularly subdivisions ____ *[set forth specific grounds of appeal as set forth in Section 23084].*

The following specific question(s) ____ [is *or* are] to be considered by the Board on review: ____.

Notice is further given pursuant to statute and the rules and regulations of the Appeals Board that appellant herein intends to and will file written briefs in connection with the appeal and desires to make oral arguments in support of the appeal. A request has been made to the Department of Alcoholic Beverage Control that the record on appeal be prepared, including all pleadings, all notices and orders issued by the Department, the proposed decision by the hearing officer, the final decision, a transcription of all proceedings, the exhibits admitted, the written evidence, and any other papers in the case.

Dated ____.

[Signature]

§ 23081.5. Date appeal deemed filed

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.

Added Stats 1959 ch 549 § 2.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 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.

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally

The trial court erred in denying a writ of mandamus to compel the Alcoholic Beverage Control Appeals Board to dismiss an appeal from the issuance of an off-sale liquor license by the Department of Alcoholic Beverage Control, where the department, pursuant to B & P C § 24013, had rejected a protest and ordered a later hearing to revoke the license issued, and where the protestants appealed before any such hearing was held. Reimel v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 263 Cal App 2d 706, 69 Cal Rptr 744, 1968 Cal App LEXIS 2260.

§ 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.

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955. Amended Stats 1995 ch 938 § 4 (SB 523), operative July 1, 1997.

Amendments:

1995 Amendment: (1) Designated the former section to be subd (a); and **(2)** added subd (b).

Note—Stats 1995 ch 938 § 98, in part, provides:

SEC. 98. (a) Except as provided in subdivision (b), this act shall be operative on July 1, 1997.

SEC. 100. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Law Revision Commission Comments:

1995—Section 23083 is amended to add subdivision (b). Subdivision (b) makes the general administrative adjudication provisions of the Administrative Procedure Act inapplicable to determination of an appeal by the Alcoholic Beverage Control Appeals Board. Exemption of the agencys hearings from the Administrative Procedure Act does not exempt the hearings from the language assistance requirements of that act. Govt Code 11435.15(d). Although Section 23083 is silent on the question, the formal hearing provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) do not apply to determination of an appeal by the Alcoholic Beverage Control Appeals Board. Cf. Govt Code 11501 (application of chapter). Nothing in Section 23083 excuses compliance with procedural protections required by due process of law.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally

Business challenging a suspension of its license to sell beer and wine by the California Department of Alcoholic Beverage Control under B & P C § 23090 made a prima facie case of a California Administrative Procedure Act (APA), Gov C § 11340 et seq., violation where it was undisputed that it was standard Department procedure for the Department's prosecuting attorney to furnish a report of hearing ex parte to the Department's decision-maker, and where the Department did not meet its burden to show a change in departmental practice. Although the Department asserted that it did not use the condemned practice, it failed to adduce evidence substantiating its assertion before the California Alcoholic Beverage Control Appeals Board and could not do so for the first time in the appellate court. Chevron Stations, Inc. v. Alcoholic Beverage Control Appeals Bd. (2007, Cal App 3d Dist) 149 Cal App 4th 116, 57 Cal Rptr 3d 6, 2007 Cal App LEXIS 468.

SUGGESTED FORMS

Request for Extension of Time To File Written Briefs

[Caption]

_____ requests an extension of time to file written briefs in the above–entitled matter to _____*[date]*.

Affidavit is attached and made a part of this motion. *[Affidavit should contain facts supporting request.]*

Dated _____.

[Signature]

Motion for Continuance of Oral Argument

[Caption]

_____ requests a continuance in the above–entitled matter of the oral argument set for _____*[date]*, to any future date satisfactory to the Appeals Board.

The request is made on the following grounds: _____ *[specify]*.

Affidavit is attached and made a part of this motion. *[Affidavit should contain facts supporting request]*.

Dated _____.

[Signature]

§ 23083.5. Surcharge on annual license fee; Amount; Deposit in Alcoholic Beverage Control Appeals Fund

(a) The department shall collect a 3-percent surcharge on the annual fees provided for in Section 23320 on behalf of the appeals board at the same time the department makes its regular collections of annual fees pursuant to Section 23320. The surcharge shall be rounded to the nearest whole dollar and pay the costs of the appeals board in carrying out its duties .

(b) All surcharges collected by the department on behalf of the appeals 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 appeals board, upon appropriation by the Legislature, to pay the actual costs of the appeals board in carrying out its duties under this chapter.

Added Stats 1982 ch 327 § 8, effective June 30, 1982. Amended Stats 1983 ch 4 § 2, effective March 10, 1983; Stats 2012 ch 327 § 2 (SB 937), effective January 1, 2013.

Amendments:

1983 Amendment: (1) Substituted subds (a) and (b) for former subds (a) and (b) which read: "(a) The board shall establish a fee for the filing of an appeal. No appeal may be filed with the board for any new case arising on or after 60 days after the operative date of this section unless the fee has been paid to the board.

"(b) The fee set by the board shall be in an amount which is sufficient to pay the actual costs of the board in carrying out its duties under this chapter. The fee shall be adjusted periodically to ensure that sufficient amounts are collected to pay these costs."; and **(2)** amended subd (c) by **(a)** substituting "surcharges collected by the Department of Alcoholic Beverages Control on behalf of" for "fees collected by" near the beginning of the subdivision; and **(b)** adding ", commencing July 1, 1982," near the end of the subdivision.

2012 Amendment: Substituted the section for the former section which read: "(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."

Note—Stats 1983 ch 4 provides:

SECTION 1. It is the intent of the Legislature in this act to make certain changes in the law necessary to implement the Budget Act of 1982.

SEC. 3. All filing fees which were collected pursuant to Section 23083.5 of the Business and Professions Code prior to the effective date of this act, shall be returned to the appellants who paid them. Each timely appeal which had been delivered to the board for filing after August 29, 1982, without payment of the filing fee specified by Section 23083.5 of the Business and Professions Code prior to its amendment by this act at the 1983–84 Regular Session of the Legislature, shall be filed by the board.

SEC. 4. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23084. Questions to be considered by board on review

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.

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.03.

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.20.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Forms:

See form set out below, following Notes of Decisions.

Attorney General's Opinions:

The provisions of Cal Const Art III § 3.5 apply to the Alcoholic Beverage Control Appeals Board in the exercise of its authority under Cal Const Art XX § 22, and B & P C §§ 23080 through 23087. 62 Ops. Cal. Atty. Gen. 788.

NOTES OF DECISIONS

1. Generally
2. Scope of Review of Department's Decisions
3. Discretion
4. Evidence
5. Substantial Evidence Rule
6. Hearsay
7. Entrapment
8. Relief and Review

1. Generally

Decisions of Department of Alcoholic Beverage Control are final except as they are subject to review for excess of jurisdiction, errors of law, abuse of discretion, and insufficiency of evidence. Schaub's, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 858, 315 P2d 459, 1957 Cal App LEXIS 1570.

Section merely enacts in statutory form the same provisions for "limited" review by appeals board as are found in 1954 amendment. Martin v. Alcoholic Bev. Etc. Appeals Bd. (1959) 52 Cal 2d 238, 340 P2d 1, 1959 Cal LEXIS 197.

Powers conferred on Alcoholic Beverage Control Appeals Board under Cal Const Art XX § 22, and this section are strictly limited and no greater than those previously exercised by courts on judicial review of decisions of State Board of Equalization. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

Department of Alcoholic Beverage Control's practice of allowing its ultimate decisionmaker to have access to prosecuting attorneys' reports of hearing violates statutory prohibitions against ex parte communications. The practice is improper, regardless of whether the Alcoholic Beverage Control Appeals Board adopts the Department's decision. Rondon v. Alcoholic Beverage Control Appeals Bd. (2007, Cal App 6th Dist) 151 Cal App 4th 1274, 60 Cal Rptr 3d 295, 2007 Cal App LEXIS 953.

2. Scope of Review of Department's Decisions

Scope of review of decision of Department of Alcoholic Beverage Control is limited to determining whether there is substantial support to be found in record, and both superior court in mandate proceedings, and district court of appeals on appeal are without authority to reweigh evidence. Oxman v. Department of Alcoholic Beverage Control (1957, Cal App 3d Dist) 153 Cal App 2d 740, 315 P2d 484, 1957 Cal App LEXIS 1551.

With minor exceptions, review of decision of Department of Alcoholic Beverage Control by appeals board is limited to whether department proceeded with jurisdiction and as required by law, whether decision is supported by findings, and whether findings are supported by substantial evidence. Harris v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 238 Cal App 2d 24, 47 Cal Rptr 424, 1965 Cal App LEXIS 1106.

The scope of review by the Alcoholic Beverage Control Appeals Board of findings of the Department of Alcoholic Beverage Control is limited to a determination whether there is substantial evidence to support the findings. Harris v. Alcoholic Beverage Control Appeals Board (1966, Cal App 4th Dist) 245 Cal App 2d 919, 54 Cal Rptr 346, 1966 Cal App LEXIS 1535.

The scope of review, by the Appeals Board and the courts, of decisions of the Alcoholic Beverage Control Department, is limited, under Cal Const Art XX § 22, and B & P C § 23084, to whether the department's "findings are supported by substantial evidence in the light of the whole record"; in other words, the scope of review is governed by the substantial evidence rule as generally applied in judicial proceedings in this state. Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 1st Dist) 255 Cal App 2d 40, 62 Cal Rptr 778, 1967 Cal App LEXIS 1237.

With minor exceptions, the review by the Alcoholic Beverage Control Appeals Board of the decisions of the Department of Alcoholic Beverage Control is limited to the questions whether the department has proceeded without jurisdiction, whether it 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 viewed in its entirety, including the body of evidence opposed to the department's findings. Reimel v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 263 Cal App 2d 706, 69 Cal Rptr 744, 1968 Cal App LEXIS 2260.

The power of the Alcoholic Beverage Control Appeals Board,

in reviewing a licensing decision of the Department of Alcoholic Beverage Control, is 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 (Cal Const Art XX § 22; B & P C §§ 23084, 23085). Rice v. Alcoholic Bev. Etc. Appeals Bd. (1978, Cal App 1st Dist) 79 Cal App 3d 372, 144 Cal Rptr 851, 1978 Cal App LEXIS 1381.

3. Discretion

In view of 1954 amendment of Cal Const Art XX § 22, appeals board is not empowered to exercise full discretion and its independent judgment on conflicting evidence, but rather its powers are strictly limited and no greater than those previously exercised by courts on judicial review of decisions of state board of equalization. Martin v. Alcoholic Bev. Etc. Appeals Bd. (1959) 52 Cal 2d 238, 340 P2d 1, 1959 Cal LEXIS 197.

If it be conceded that reasonable minds might differ as to whether granting liquor license would or would not be contrary to public welfare, such concession merely shows that determination of question falls within broad area of discretion which Department of Alcoholic Beverage Control is empowered to exercise. Martin v. Alcoholic Beverage Control Appeals Board (1961) 55 Cal 2d 867, 13 Cal Rptr 513, 362 P2d 337, 1961 Cal LEXIS 268.

Under Cal Const Art XX § 22 and §§ 24200, 23084, 23085 of this code, propriety of penalty for misuse of liquor license is matter vested in discretion of Department of Alcoholic Beverage Control; its determination may not be disturbed unless there is clear abuse of discretion. Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

Same deferential standard of review applicable to revocations, grants, or denials of alcoholic beverage licenses by the Department of Alcoholic Beverage Control under B & P C §§ 23084, 23090.2 apply to the Department's discretionary powers to determine whether there is good cause to suspend a license because all of the Department's powers derive from Cal Const Art XX § 22. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2002, Cal App 1st Dist) 100 Cal App 4th 1066, 123 Cal Rptr 2d 278, 2002 Cal App LEXIS 4471.

4. Evidence

In a proceeding to suspend a liquor license, neither the trier of fact nor the Alcoholic Beverage Control Appeals Board was required to weigh the evidence in accordance with the provisions of Ev C §§ 412, 413; under Gov C § 11513, technical rules of evidence do not apply to administrative hearings. Big Boy Liquors, Ltd. v. Alcoholic Beverage Control Appeals Bd. (1969) 71 Cal 2d 1226, 81 Cal Rptr 258, 459 P2d 674, 1969 Cal LEXIS 316.

Neither the Alcoholic Beverage Control Appeals Board nor the Court of Appeal may reweigh the evidence affording grounds for revocation of a license. Kirby v. Alcoholic Bev. Etc. App. Bd. (1970, Cal App 1st Dist) 7 Cal App 3d 126, 86 Cal Rptr 433, 1970 Cal App LEXIS 2140, superseded by statute as stated in People v. Tilbury (1991) 54 Cal 3d 56, 284 Cal Rptr 288, 813 P2d 1318, 1991 Cal LEXIS 3220.

5. Substantial Evidence Rule

Constitutional and statutory provisions providing for review of decisions of department of alcoholic beverage control to determine whether "findings are supported by substantial evidence in the light of the whole record" signify no more than adoption of substantial evidence rule as generally applied in judicial proceedings in this State. Rosales v. Department of Alcoholic Beverage Control (1959, Cal App 1st Dist) 171 Cal App 2d 624, 341 P2d 366, 1959 Cal App LEXIS 1875.

Alcoholic Beverage Control Appeals Board is not empowered to exercise full discretion and independent judgment on conflicting evidence, its powers being strictly limited by "substantial evidence" rule. Martin v. Alcoholic Beverage Control Appeals Board (1961) 55 Cal 2d 867, 13 Cal Rptr 513, 362 P2d 337, 1961 Cal LEXIS 268.

Alcoholic Beverage Control Appeals Board is governed by substantial evidence rule in its review of sufficiency of evidence to support administrative findings of department concerning revocation of on-sale beer and wine license. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

6. Hearsay

On review by the Alcoholic Beverage Control Appeals Board of suspension of a liquor license by the Department of Alcoholic Beverage Control, the license could not properly raise a hearsay objection to testimony received by the department, where no hearsay objection was interposed at the hearing on which the department's decision rested, and where an appropriate objection, if sustained, would have enable the department to elaborate on the issue involved; in such a proceeding, hearsay admitted without objection has probative value unless there is some evidence, admissible in administrative proceedings, to the contrary, that is, unless objected to, such evidence will serve to shift the burden of producing evidence of the existence or nonexistence of the fact disclosed. Kirby v. Alcoholic Bev. Etc. Appeals Bd. (1970, Cal App 1st Dist) 8 Cal App 3d 1009, 87 Cal Rptr 908, 1970 Cal App LEXIS 2117.

7. Entrapment

The action of the appeals board in reversing the department's suspension of a liquor license on the ground that the department's investigators, by inviting the waitress concerned to have drink with them, instigated the offense and transgressed the bounds of sound public policy as to enforcement measures was ultra vires where there was no showing of entrapment as a matter of law. Harris v. Alcoholic Beverage Control Appeals Board (1966, Cal App 4th Dist) 245 Cal App 2d 919, 54 Cal Rptr 346, 1966 Cal App LEXIS 1535.

The action of the Appeals Board, in reversing, on grounds of entrapment, the revocation of a liquor license by the Department of Alcoholic Beverage Control did not violate the rule that a party may not deprive his opponent of an opportunity to meet an issue at the trial by changing his theory on appeal, where, although entrapment was not raised as an affirmative defense at the initial hearing, the board determined the undisputed facts to show entrapment as a matter of law. Harris v. Alcoholic Beverage Control Appeals Board (1966, Cal App 4th Dist) 245 Cal App 2d 919, 54 Cal Rptr 346, 1966 Cal App LEXIS 1535.

8. Relief and Review

Since Department of Alcoholic Beverage Control is vested with "power, in its discretion to deny" liquor license on its determination "for good cause that the granting. . . would be contrary to public welfare," finding by department of ultimate fact that granting "would be contrary to public welfare" is unassailable on appeal to appeals board if there is substantial evidence in record to show that such determination was made "for good cause." Martin v. Alcoholic Beverage Control Appeals Board (1961) 55 Cal 2d 867, 13 Cal Rptr 513, 362 P2d 337, 1961 Cal LEXIS 268.

Neither Alcoholic Beverage Control Appeals Board nor trial court in mandamus proceeding erred in concluding that there

was no substantial evidence to sustain determination of Department of Alcoholic Beverage Control that good cause existed for denying application for transfer of on-sale beer and wine license to premises operated as restaurant across street from church and within block from school where evidence tended to establish that applicants were law-abiding persons who operated superior restaurant and were endeavoring to make its services still better and attractive to a larger number of patrons, and that proximity of church, when considered in light of facts that church did not protest issuance of license to applicants and that within 600-foot radius of premises there already existed eight licensed premises, of which only one held on-sale beer and wine license, did not appear of such significance as to support department's decision. Martin v. Alcoholic Beverage Control Appeals Board (1961) 55 Cal 2d 867, 13 Cal Rptr 513, 362 P2d 337, 1961 Cal LEXIS 268.

Since the power to determine the facts in licensing matters is vested in the Department of Alcoholic Beverage Control, and not in the Alcoholic Beverage Control 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 receiving tribunal. Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 2d Dist) 250 Cal App 2d 673, 58 Cal Rptr 788, 1967 Cal App LEXIS 2150.

Neither the Alcoholic Beverage Control Appeal Board nor the courts may disregard or overturn a finding of fact of the Department of Alcoholic Beverage Control for the reason that it is considered that a contrary finding would have been equally or more reasonable. Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 2d Dist) 250 Cal App 2d 673, 58 Cal Rptr 788, 1967 Cal App LEXIS 2150.

The rule that a party is not permitted to change his position and adopt a new and different theory on appeal is applicable to appeals from decisions of the Department of Alcoholic Beverage Control and the Alcoholic Beverage Control Appeals Board. (Opinion on denial of rehearing.) Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 1st Dist) 256 Cal App 2d 158, 64 Cal Rptr 26, 1967 Cal App LEXIS 1839, rehearing denied (1st Dist) 256 Cal App 2d 176, 65 Cal Rptr 251, appeal dismissed Cohon v. Kirby (1968) 393 US 7, 89 S Ct 44, 21 L Ed 2d 9, 1968 US LEXIS 570, dismissed Makah Indian Tribe v. Tax Com. of Washington (1968) 393 U.S. 8, 89 S. Ct. 44, 21 L. Ed. 2d 8, 1968 U.S. LEXIS 571.

On review, under B & P C § 23090, of an order of the Alcoholic Beverage Control Appeals Board reversing a decision of the Department of Alcoholic Beverage Control denying an off-sale beer and wine license, the issue before the court is the same as it was before the Appeals Board, namely, whether the department's ultimate finding that issuance of the license would be contrary to public welfare or morals is supported by substantial evidence in the light of the whole record (Cal Const Art XX § 22; B & P C §§ 23084, 23090.2). Kirby v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 261 Cal App 2d 119, 67 Cal Rptr 628, 1968 Cal App LEXIS 1725.

SUGGESTED FORMS

Affidavit of Merits Under Subdivision (e) of Section 23084

[Caption]

To: ____ [Alcoholic Beverage Control Appeals Board]

In support of appellant's contention under subdivision (e) of Section 23084 of the Business and Professions Code of the State of California that there is relevant evidence, which in the exercise of reasonable diligence could not have been produced at the hearing before the Department of Alcoholic Beverage Control, ____ hereby alleges the following: ____ *[set forth newly discovered evidence and the reasons why it could not in the exercise of reasonable diligence have been presented at the original hearing before the Department].*

Dated ____.

[Signature]

[Jurat]

§ 23085. Remand to department for reconsideration; Grounds; Reversal; Effect

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.

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955.

Cross References:

Reconsideration determinations: Gov C § 11521.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally
2. Findings of Fact
3. Procedure
4. Penalties

1. Generally

The power of the Alcoholic Beverage Control Appeals Board, in reviewing a licensing decision of the Department of Alcoholic Beverage Control, is 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 (Cal Const Art XX § 22; B & P C §§ 23084, 23085). Rice v. Alcoholic Bev. Etc. Appeals Bd. (1978, Cal App 1st Dist) 79 Cal App 3d 372, 144 Cal Rptr 851, 1978 Cal App LEXIS 1381.

2. Findings of Fact

Where Department of Alcoholic Beverage Control granted

liquor license to grocery store after having previously refused to issue such license, fact that Alcoholic Beverage Control Appeals Board, in affirming order granting application for license, erroneously held (if such holding was erroneous) that res judicata was under no circumstances applicable in such proceeding, did not affect validity of its decision since such statement was not finding of fact, Appeals Board having no power to make findings of fact, and since there was a change of conditions which was found to exist by Department, and by affirming Department's order Appeals Board ruled that findings supported Department's decision and order; Appeals Board's decision was thus correct and it was immaterial that its reasons were erroneous. Hasselbach v. Department of Alcoholic Beverage Control (1959, Cal App 2d Dist) 167 Cal App 2d 662, 334 P2d 1058, 1959 Cal App LEXIS 2386.

Neither Alcoholic Beverage Control Appeals Board nor courts may disregard or overturn finding of fact by department for reasons that contrary finding would have been equally or more reasonable. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

3. Procedure

Where Alcoholic Beverage Control Appeals Board reversed order of Department of Alcoholic Beverage Control denying application for on-sale beer license, Appeals Board could appeal from judgment of trial court in mandamus proceeding permitting it to affirm department's order. Martin v. Alcoholic Bev. Etc. Appeals Bd. (1959) 52 Cal 2d 238, 340 P2d 1, 1959 Cal LEXIS 197.

4. Penalties

Under Cal Const Art XX § 22 and §§ 24200, 23084, 23085 of this code, propriety of penalty for misuse of liquor license is matter vested in discretion of Department of Alcoholic Beverage Control; its determination may not be disturbed unless there is clear abuse of discretion. Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

§ 23086. Order; Time for entering

In all cases, the board shall enter its order within 60 days after the filing of an appeal.

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955.

Note—Stats 1975 ch 782 provides:

SEC. 2. The Alcoholic Beverage Control Appeals Board is requested to comply with the provisions of Section 23086 of the Business and Professions Code.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:

Requirement that board member spend all time necessary in order to comply with provision that orders be rendered within sixty days after filing of appeals. 32 Ops. Cal. Atty. Gen. 187.

NOTES OF DECISIONS

1. Generally
2. Construction

1. Generally

Mandamus in superior court was proper procedure to review decision of Alcoholic Beverage Control Appeals Board reversing order of State Board of Equalization indefinitely suspending liquor license; judicial review of Appeals Board's acts was not limited to certiorari in district courts of appeal. Koehn v. State Board of Equalization (1958, Cal App 1st Dist) 166 Cal App 2d 109, 333 P2d 125, 1958 Cal App LEXIS 1377.

2. Construction

Section is directory only and Appeals Board, at expiration of sixty days does not lose jurisdiction to act. Koehn v. State Board of Equalization (1958, Cal App 1st Dist) 166 Cal App 2d 109, 333 P2d 125, 1958 Cal App LEXIS 1377.

In "final orders of the board shall be subject to judicial review as prescribed by law" the word "law" refers to CCP § 1094.5 and §§ 1067–1077; and both district courts of appeal and Supreme Court have jurisdiction to issue writs of mandamus and certiorari. Koehn v. State Board of Equalization (1958, Cal App 1st Dist) 166 Cal App 2d 109, 333 P2d 125, 1958 Cal App LEXIS 1377.

§ 23087. Remand on 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.

Added Stats 1959 ch 545 § 1.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23088. Written order on appeal from decision of board; Filing copies; Finality of 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.

Added Stats 1967 ch 1525 § 1.

Historical Derivation:

Former B & P C § 23090, as added Stats 1st Ex Sess 1954 ch 20 § 3.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23089. Review of final orders

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.

Added Stats 1967 ch 1525 § 2.

Historical Derivation:

Former B & P C § 23091, as added Stats 1st Ex Sess 1954 ch 20 § 3 , amended Stats 1963 ch 305 § 1.

Collateral References:

Cal. Points & Authorities (Matthew Bender®) ch 195 "Public Administrative Law" § 195.3.

Cal. Points & Authorities (Matthew Bender®) ch 195 "Public Administrative Law" § 195.30.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally

The 1967 Amendments divesting superior courts of jurisdiction to review or stay the operation of a decision of the Department of Alcoholic Beverage Control, are not unconstitutional as an unauthorized legislative attempt to curtail the constitutional jurisdiction of the superior courts, where Cal Const Art XX § 22, providing that orders of the board shall be subject to judicial review upon petition of the director or any party aggrieved, does not specify the court in which review is to be obtained nor the procedure therefor, and where the new provisions on judicial review do not burden or impair the right of an aggrieved party to obtain the judicial review guaranteed by the Constitution. Department of Alcoholic Beverage Control v. Superior Court of Orange County (1968, Cal App 4th Dist) 268 Cal App 2d 67, 73 Cal Rptr 780, 1968 Cal App LEXIS 1274.

ARTICLE 5

Judicial Review

[Added Stats 1967 ch 1525 § 4. Former Article 5, also entitled "Judicial Review", consisting of §§ 23090, 23091, was added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955, and repealed Stats 1967 ch 1525 § 3.]

Collateral References:

Cal Jur 3d (Rev) Criminal Law § 1699.

§ 23090. Parties applying for writ of review

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.

Added Stats 1967 ch 1525 § 4.

Former Sections:

Former § 23090, similar to present B & P C § 23088, was added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955, and repealed Stats 1967 ch 1525 § 3.

Historical Derivation:

Former B & P C § 23091, as added Stats 1st Ex Sess 1954 ch 20 § 3, amended Stats 1963 ch 305 § 1.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.03.

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.20.

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.25.

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.27.

Cal. Points & Authorities (Matthew Bender®) ch 195 "Public Administrative Law" § 195.30.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:

Practice Tips: Local Regulation of Alcohol Licensees. 29 LA Law 14 (October, 2006).

NOTES OF DECISIONS

1. Generally
2. Scope of Review
3. Exhaustion of Administrative Remedies
4. Appeal and Error

1. Generally

Both superior court in mandate proceedings and district court on appeal are without authority to reweigh evidence in reviewing board's decision. Oxman v. Department of Alcoholic Beverage Control (1957, Cal App 3d Dist) 153 Cal App 2d 740, 315 P2d 484, 1957 Cal App LEXIS 1551.

Department's decisions should be affirmed by courts when supported by substantial evidence. Farah v. Alcoholic Beverage Control Appeals Board (1958, Cal App 2d Dist) 159 Cal App 2d 335, 324 P2d 98, 1958 Cal App LEXIS 2003.

In a mandamus proceeding to review an order of the Department of Alcoholic Beverage Control suspending a liquor license, the superior court properly sustained the department's demurrer on the ground of lack of jurisdiction, and stay of the suspension order was thereafter improperly granted by a judge of the same superior court, where the licensee failed to seek judicial review in accordance with B & P C § 23090, within 30 days after the final order of the Alcoholic Beverage Control Appeals Board affirming the suspension, where, although the alleged violations on which the suspension was based occurred prior to the effective date of B & P C § 23090.5, divesting superior courts of jurisdiction to review decisions of the department, the right to judicial review of the order of suspension did not mature until some six months after the effective date, and where application of the revised review procedures involved no impairment of the licensee's right to judicial review nor a denial of an opportunity to take advantage of the benefit of the revised procedures. Department of Alcoholic Beverage Control v. Superior Court of Orange County (1968, Cal App 4th Dist) 268 Cal App 2d 67, 73 Cal Rptr 780, 1968 Cal App LEXIS 1274.

Under constitutional and statutory provisions governing judicial review of orders of the Alcoholic Beverage Control Board (Cal Const Art XX § 22; B & P C §§ 23090, 23090.3, and 23090.4), the right of review of a decision of the board holding resale price maintenance provisions invalid under the Sherman Antitrust Act was limited to parties who appeared in proceedings before the board. Rice v. Alcoholic Beverage Con-

trol Appeals Bd. (1978) 21 Cal 3d 431, 146 Cal Rptr 585, 579 P2d 476, 1978 Cal LEXIS 238, 96 ALR3d 613.

2. Scope of Review

Scope of review of board's decisions is limited to determining whether or not there is substantial support to be found in record. Oxman v. Department of Alcoholic Beverage Control (1957, Cal App 3d Dist) 153 Cal App 2d 740, 315 P2d 484, 1957 Cal App LEXIS 1551.

3. Exhaustion of Administrative Remedies

Gov C § 11523, relating to judicial review of administrative decisions, does not authorize appeal to courts directly from department's revocation of liquor license; but to secure judicial review, licensee must first appeal to appeals board, pursuant to § 23081, and then may seek judicial review of board's decision. Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 523, 314 P2d 1007, 1957 Cal App LEXIS 1526, cert den (1958) 356 US 902, 78 S Ct 562, 2 L Ed 2d 580, 1958 US LEXIS 1394, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

Only decision from which liquor licensee whose license was revoked can appeal is decision of department of alcoholic beverage control revoking his license, and timely appeal to alcoholic beverage control appeals board is necessary to exhaust administrative remedies. Anderson v. Department of Alcoholic Beverage Control (1958, Cal App 4th Dist) 159 Cal App 2d 413, 324 P2d 24, 1958 Cal App LEXIS 2014, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

Liquor licensee need not petition for reconsideration of decision of department of alcoholic beverage control revoking his license in order to exhaust his administrative remedies. Anderson v. Department of Alcoholic Beverage Control (1958, Cal App 4th Dist) 159 Cal App 2d 413, 324 P2d 24, 1958 Cal App LEXIS 2014, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

There was no jurisdiction for judicial review of department's order revoking license where appeal from such order was not taken to appeals board within time allowed by law, despite fact that licenses alleged that they had exhausted all remedies provided by applicable laws and had no further adequate remedy at law or further right of appeal except to file petition for writ of mandate, and such allegation was admitted in department's return. Miller v. Department of Alcoholic Beverage Control (1958, Cal App 2d Dist) 160 Cal App 2d 658, 325 P2d 601, 1958 Cal App LEXIS 2169, cert den (1958) 358 US 907, 79 S Ct 234, 3 L Ed 2d 229, 1958 US LEXIS 76.

Where department's decision suspending and revoking on-sale liquor license was not appealed within time allowed by law to appeals board, licensees failed to exhaust their administrative remedies and were not entitled to judicial review of order complained of. Miller v. Department of Alcoholic Beverage Control (1958, Cal App 2d Dist) 160 Cal App 2d 658, 325 P2d 601, 1958 Cal App LEXIS 2169, cert den (1958) 358 US 907, 79 S Ct 234, 3 L Ed 2d 229, 1958 US LEXIS 76.

Before party to proceeding before department of alcoholic beverage control can seek judicial review of decision of that department, he must prosecute appeal before alcoholic beverage control appeals board. Greenblatt v. Munro (1958, Cal App 1st Dist) 161 Cal App 2d 596, 326 P2d 929, 1958 Cal App LEXIS 1778.

A liquor licensee was not entitled to judicial consideration of its challenge to the procedure of the Department of Alcoholic Beverage Control whereby it had accumulated evidence of successive sales of distilled spirits below minimum retail prices and then, in a single accusation, imposed cumulative penalties, each based on a single sale, but measured in severity by the prior number of illegal sales in the series, where the licensee had not exhausted its administrative remedy of appeal to the Alcoholic Beverage Control Appeals Board and had not demonstrated that its situation was unique or distinctive or cited any authority supporting its claim of inadequacy of the administrative remedy. B & P C § 23090.5, expressly withholds from the courts jurisdiction to review or otherwise to interfere with the department or its decision except to the extent specified in B & P C §§ 23090–23090.7, and, § 23090, in specifying the conditions under which applications may be made for a writ of review, limits such applications to those persons affected by a "final order of the board." Top Hat Liquors, Inc. v. Department of Alcoholic Beverage Control (1974) 13 Cal 3d 107, 118 Cal Rptr 10, 529 P2d 42, 1974 Cal LEXIS 196.

4. Appeal and Error

It was not error to sustain, without leave to amend, demurrer to complaint in mandamus to review proceedings of appeals board in which it had properly dismissed, for lack of jurisdiction, purported appeal from department's order revoking liquor license. Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 523, 314 P2d 1007, 1957 Cal App LEXIS 1526, cert den (1958) 356 US 902, 78 S Ct 562, 2 L Ed 2d 580, 1958 US LEXIS 1394, overruled Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

Party aggrieved by decision of Department of Alcoholic Beverage Control authorizing issuance of on-sale liquor license has no right to seek judicial review of such decision without first filing appeal with appeals board of department. Fiscus v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 234, 317 P2d 993, 1957 Cal App LEXIS 1271.

Where respondent did not appeal from judgment annulling revocation of license on one count of charges against licensees, that count was not before appellate court and claim that it was erroneously annulled by trial court could not be considered, on appeal by licensees from judgment in mandamus proceedings to review determination by department. Garcia v. Munro (1958, Cal App 1st Dist) 161 Cal App 2d 425, 326 P2d 894, 1958 Cal App LEXIS 1753.

Where licensee was charged by department in two counts in almost identical language with permitting female employee to solicit purchase of alcoholic beverage, penalty imposed under first count being sixty-day suspension of license, penalty under second being revocation of license, because department considered, erroneously, that acts under second count were also violation of Pen C § 303a, appellate court could, in interests of justice, consider violation of Penal Code section, notwithstanding that licensee did not exhaust his administrative remedies in either department or alcoholic beverage control board of appeal and did not raise question in trial court, and could remand case to permit department to reassess penalty imposed under second count. Greenblatt v. Munro (1958, Cal App 1st Dist) 161 Cal App 2d 596, 326 P2d 929, 1958 Cal App LEXIS 1778.

It was error, requiring remand to reassess penalty imposed, for department to revoke on-sale liquor license on ground that there had been violation of Pen C § 303a, making it unlawful for any person to loiter in licensed premises to solicit purchase of alcoholic drinks, where licensee was not charged with violation of section himself or with permitting his employee to violate section, there was no finding that employee loitered about premises, and where it could not be assumed that department found as fact element of crime that was not even charged, that is, loitering. Greenblatt v. Munro (1958, Cal App

1st Dist) 161 Cal App 2d 596, 326 P2d 929, 1958 Cal App LEXIS 1778.

The Alcoholic Beverage Control Appeals Board exceeded its jurisdiction in reversing a decision of the Department of Alcoholic Beverage Control for the revocation of an alcoholic beverage license, where there was no question that the decision of the department was within the department's jurisdiction and that the evidence and findings supported its decision. The reversal followed the department's refusal to furnish to the licensee before revoking its license internal departmental documents demanded by the licensee that related to the department's decision to reject the administrative law judge's proposed decision to suspend, rather than revoke, the license, and to decide the matter on the record. The sole ground for the reversal order was the board's erroneous ruling the department's compliance with the licensee's demand for the documents was required by due process of law and by the statute forbidding the department to decide any case without affording the parties the opportunity to present argument before the department (Gov C § 11517). The material the licensee had demanded was totally irrelevant to the proceedings for which it was sought and was irrelevant to the record to which the board was limited in its review of the department's decision. Department of Alcoholic Bev. Control v. Alcoholic Bev. Etc. Control Appeals Bd. (1981, Cal App 2d Dist) 118 Cal App 3d 720, 173 Cal Rptr 582, 1981 Cal App LEXIS 1694, superseded by statute as stated in Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2006) 40 Cal 4th 1, 50 Cal Rptr 3d 585, 145 P3d 462, 2006 Cal LEXIS 13519.

Court issued a writ and reinstated the decision of the ABC to suspend a store's liquor license after a clerk sold an alcoholic beverage to a minor acting as a police decoy. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2003, Cal App 4th Dist) 109 Cal App 4th 1687, 1 Cal Rptr 3d 339, 2003 Cal App LEXIS 972.

Business challenging a suspension of its license to sell beer and wine by the California Department of Alcoholic Beverage Control under B & P C § 23090 made a prima facie case of a California Administrative Procedure Act (APA), Gov C § 11340 et seq., violation where it was undisputed that it was standard Department procedure for the Department's prosecuting attorney to furnish a report of hearing ex parte to the Department's decision-maker, and where the Department did not meet its burden to show a change in departmental practice. Although the Department asserted that it did not use the condemned practice, it failed to adduce evidence substantiating its assertion before the California Alcoholic Beverage Control Appeals Board and could not do so for the first time in the appellate court. Chevron Stations, Inc. v. Alcoholic Beverage Control Appeals Bd. (2007, Cal App 3d Dist) 149 Cal App 4th 116, 57 Cal Rptr 3d 6, 2007 Cal App LEXIS 468.

§ 23090.1. Time and place for return of writ; New evidence; Hearing on certified 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.

Added Stats 1967 ch 1525 § 4.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally

B & P C § 23090.1's limitation on the introduction of new or additional evidence is in keeping with the typical practice for writs of review. However, an exception to that limitation applies where the evidence is not offered to undermine the Department of Alcoholic Beverage Control's substantive factual findings, but is intended to shed light on whether an illegal practice in fact took place. Rondon v. Alcoholic Beverage Control Appeals Bd. (2007, Cal App 6th Dist) 151 Cal App 4th 1274, 60 Cal Rptr 3d 295, 2007 Cal App LEXIS 953.

Business challenging a suspension of its license to sell beer and wine by the California Department of Alcoholic Beverage Control under B & P C § 23090 made a prima facie case of a California Administrative Procedure Act (APA), Gov C § 11340 et seq., violation where it was undisputed that it was standard Department procedure for the Department's prosecuting attorney to furnish a report of hearing ex parte to the Department's decision-maker, and where the Department did not meet its burden to show a change in departmental practice. Although the Department asserted that it did not use the condemned practice, it failed to adduce evidence substantiating its assertion before the California Alcoholic Beverage Control Appeals Board and could not do so for the first time in the appellate court. Chevron Stations, Inc. v. Alcoholic Beverage Control Appeals Bd. (2007, Cal App 3d Dist) 149 Cal App 4th 116, 57 Cal Rptr 3d 6, 2007 Cal App LEXIS 468.

§ 23090.2. Extent of review; Trial de novo

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.

Added Stats 1967 ch 1525 § 4.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.03.

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.20.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:

Practice Tips: Local Regulation of Alcohol Licensees. 29 LA Law 14 (October, 2006).

NOTES OF DECISIONS

1. Generally
2. Construction with Other Law
3. Discretion of Department
4. Standard of Review
5. Department Action Proper

1. Generally

On review, under B & P C § 23090, of an order of the Alcoholic Beverage Control Appeals Board reversing a decision of the Department of Alcoholic Beverage Control denying an off-sale beer and wine license, the issue before the court is the same as it was before the Appeals Board, namely, whether the department's ultimate finding that issuance of the license would be contrary to public welfare or morals is supported by substantial evidence in the light of the whole record (Cal Const Art XX § 22; B & P C §§ 23084, 23090.2). Kirby v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 261 Cal App 2d 119, 67 Cal Rptr 628, 1968 Cal App LEXIS 1725.

The findings of the Department of Alcoholic Beverage Control must be sustained if they are supported by substantial evidence in the light of the whole record; and neither the appeals board nor a reviewing court may disregard or overturn a finding of fact of the department because it is considered that a contrary finding would have been equally or more reasonable. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 2d Dist) 3 Cal App 3d 209, 83 Cal Rptr 89, 1969 Cal App LEXIS 1373.

2. Construction with Other Law

In accumulating evidence of recurring sales of distilled spirits below established minimum retail prices in violation of B & P C § 24755 [repealed], before filing its accusation charging the licensee with the whole series of violations and assessing the concomitant cumulative penalties provided by B & P C § 24755.1 [repealed], the Department of Alcoholic Beverage Control failed to proceed "in a manner required by law," thus subjecting its action to judicial review and intervention under B & P C § 23090.2. The purpose of the penalty statute is to induce conformance with the fair trade requirements, and a practice whereby notice is withheld while the licensee is afforded an opportunity to engage in a series of violations, defeats the very purposes of the fair trade law. Moreover, the imposition of cumulative penalties on the licensee in question, which resulted in the de facto revocation of his license, was contrary to the provisions and purposes of the Alcoholic Beverage Control Act, was arbitrary and capricious in light of those purposes, and constituted a denial of due process of law. Walsh v. Kirby (1974) 13 Cal 3d 95, 118 Cal Rptr 1, 529 P2d 33, 1974 Cal LEXIS 195.

3. Discretion of Department

The discretion vested in the Department of Alcoholic Beverage Control by Cal Const, art XX § 22, to deny any specific liquor license if it shall determine for good cause that the granting of such license would be contrary to public welfare or morals is not absolute, but must be exercised in accordance with law; and the provision necessarily implies that the department's decisions should be based on sufficient evidence and that it should not act arbitrarily in determining what is contrary to public welfare or morals, but in considering the sufficiency of the evidence issue, a court is governed by the substantial evidence rule of resolving any conflict in the evidence in favor of the decision, and indulging every reasonably deducible inference in support thereof. Kirby v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 261 Cal App 2d 119, 67 Cal Rptr 628, 1968 Cal App LEXIS 1725.

The Department of Alcoholic Beverage Control and not the reviewing court determines whether good cause exists for denying a license on the ground that its issuance would be contrary to public welfare or morals, the court merely determining whether or not the department acted arbitrarily in making its decision; and, if the decision is without reason under the evidence, the action of the department is arbitrary, constitutes an abuse of discretion, and may be set aside; but where the decision is the subject of a choice within reason, the department is vested with the discretion of making the selection which it deems proper, and its action, within the scope of its constitutionally-conferred discretion, may not be interfered with. Kirby v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 261 Cal App 2d 119, 67 Cal Rptr 628, 1968 Cal App LEXIS 1725.

The enforcement and administration of the Alcoholic Beverage Control Act (Bus & Prof Code, §§ 23000 et seq.) is vested in the Department of Alcoholic Beverage Control under the provisions of Cal Const, art XX, § 22; the department has thus been granted a broad range of power and discretion in deciding whether a particular application for a liquor license should be granted or denied; and an abuse of discretion must appear very clearly before the courts will interfere. Reimel v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 263 Cal App 2d 706, 69 Cal Rptr 744, 1968 Cal App LEXIS 2260.

4. Standard of Review

In determining whether a decision of the Department of Alcoholic Beverage Control is arbitrary, its action is measured by the standard set by reason and reasonable people, bearing in mind that such standard may permit a difference of opinion on the same subject; and a reviewing court may not substitute a decision contrary to that made by the department, even though such decision is equally or more reasonable, if the determination by the department is one which could have been made by reasonable people. Kirby v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 261 Cal App 2d 119, 67 Cal Rptr 628, 1968 Cal App LEXIS 1725.

Since the power to determine the facts in licensing matters is vested in the Department of Alcoholic Beverage Control and not in the Appeals Board or the courts, a review of the action of the department is governed by the familiar 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. Kirby v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 261 Cal App 2d 119, 67 Cal Rptr 628, 1968 Cal App LEXIS 1725.

In determining whether findings of the Department of Alcoholic Beverage Control are supported by substantial evidence, a court is required to resolve all conflicts in the evidence in favor of the department's decision. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 2d Dist) 3 Cal App 3d 209, 83 Cal Rptr 89, 1969 Cal App LEXIS 1373.

Same deferential standard of review applicable to revocations, grants, or denials of alcoholic beverage licenses by the Department of Alcoholic Beverage Control under B & P C §§ 23084, 23090.2 apply to the Department's discretionary powers to determine whether there is good cause to suspend a license because all of the Department's powers derive from Cal

Const Art XX § 22. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2002, Cal App 1st Dist) 100 Cal App 4th 1066, 123 Cal Rptr 2d 278, 2002 Cal App LEXIS 4471.

Business challenging a suspension of its license to sell beer and wine by the California Department of Alcoholic Beverage Control under B & P C § 23090 made a prima facie case of a California Administrative Procedure Act (APA), Gov C § 11340 et seq., violation where it was undisputed that it was standard Department procedure for the Department's prosecuting attorney to furnish a report of hearing ex parte to the Department's decision-maker, and where the Department did not meet its burden to show a change in departmental practice. Although the Department asserted that it did not use the condemned practice, it failed to adduce evidence substantiating its assertion before the California Alcoholic Beverage Control Appeals Board and could not do so for the first time in the appellate court. Chevron Stations, Inc. v. Alcoholic Beverage Control Appeals Bd. (2007, Cal App 3d Dist) 149 Cal App 4th 116, 57 Cal Rptr 3d 6, 2007 Cal App LEXIS 468.

5. Department Action Proper

It was reversible error under B & P C § 23090.2 for the Alcoholic Beverage Control Appeals Board to substitute its own interpretation of the "tied-house" law under B & P C § 25502 for that of the Department of Alcoholic Beverage Control when the Department's interpretation of § 25502 was a reasonable and rational one. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2002, Cal App 1st Dist) 100 Cal App 4th 1066, 123 Cal Rptr 2d 278, 2002 Cal App LEXIS 4471.

California Department of Alcoholic Beverage Control acted properly in suspending liquor licensee's license after an employee relied on a customer's fake identification. The appellate court's review was limited to whether the Department's findings were supported by substantial evidence. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2004, Cal App 1st Dist) 118 Cal App 4th 1429, 13 Cal Rptr 3d 826, 2004 Cal App LEXIS 819.

California Department of Alcoholic Beverage Control acted properly in suspending liquor licensee's license after an employee relied on a customer's fake identification. The appellate court's review was limited to whether the Department's findings were supported by substantial evidence, and the appellate court was obliged to accept the Department's findings of fact. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2004, Cal App 1st Dist) 118 Cal App 4th 1429, 13 Cal Rptr 3d 826, 2004 Cal App LEXIS 819.

§ 23090.3. Findings on questions of fact; Entry of judgment

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.

Added Stats 1967 ch 1525 § 4.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.03.

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.20.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally

Under constitutional and statutory provisions governing judicial review of orders of the Alcoholic Beverage Control Board (Cal Const Art XX § 22; B & P C § 23090, 23090.3, and 23090.4), the right of review of a decision of the board holding resale price maintenance provisions invalid under the Sherman Antitrust Act was limited to parties who appeared in proceedings before the board. Rice v. Alcoholic Beverage Control Appeals Bd. (1978) 21 Cal 3d 431, 146 Cal Rptr 585, 579 P2d 476, 1978 Cal LEXIS 238, 96 ALR3d 613.

§ 23090.4. Applicability of Code of Civil Procedure; Service of pleadings

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.

Added Stats 1967 ch 1525 § 4.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

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Under constitutional and statutory provisions governing judicial review of orders of the Alcoholic Beverage and Control Board (Cal Const Art XX § 22; B & P C §§ 23090, 23090.3, and 23090.4), the right of review of a decision of the board holding resale price maintenance provisions invalid under the Sherman Antitrust Act was limited to parties who appeared in proceedings before the board. Rice v. Alcoholic Beverage Control Appeals Bd. (1978) 21 Cal 3d 431, 146 Cal Rptr 585, 579 P2d 476, 1978 Cal LEXIS 238, 96 ALR3d 613.

§ 23090.5. Jurisdiction to hear appeals; Mandamus

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.

Added Stats 1967 ch 1525 § 4.

Collateral References:

Cal Jur 3d (Rev) Criminal Law § 1699.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally
2. Mandamus

1. Generally

B & P C § 23090.5, divesting superior courts of jurisdiction to review decisions or orders of the Department of Alcoholic Beverage Control or to interfere with the operation or execution of such decisions or orders, does not unconstitutionally curtail the jurisdiction of the superior court to issue writs of mandamus. Kirby v. Superior Court of Santa Clara County (1969, Cal App 1st Dist) 275 Cal App 2d 975, 80 Cal Rptr 381, 1969 Cal App LEXIS 2006.

B & P C § 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, as in the instant case, to a rule-making (quasi-legislative) action. Schenley Affiliated Brands Corp. v. Kirby (1971, Cal App 3d Dist) 21 Cal App 3d 177, 98 Cal Rptr 609, 1971 Cal App LEXIS 1063.

Although Gov C § 11440, permits declaratory relief actions in superior court to review regulations adopted under the Administrative Procedure Act, that provision is partially limited and superseded by B & P C § 23090.5, restricting judicial review of the actions of the Department of Alcoholic Beverage Control to only the Supreme Court and courts of appeal. Schenley Affiliated Brands Corp. v. Kirby (1971, Cal App 3d Dist) 21 Cal App 3d 177, 98 Cal Rptr 609, 1971 Cal App LEXIS 1063.

B & P C § 23090.5, restricting judicial review of the actions of the Department of Alcoholic Beverage Control to only the Supreme Court and courts of appeal, does not unconstitutionally interfere with petitioner's access to the courts. Schenley Affiliated Brands Corp. v. Kirby (1971, Cal App 3d Dist) 21 Cal App 3d 177, 98 Cal Rptr 609, 1971 Cal App LEXIS 1063.

A liquor licensee was not entitled to judicial consideration of its challenge to the procedure of the Department of Alcoholic Beverage Control whereby it had accumulated evidence of successive sales of distilled spirits below minimum retail prices and then, in a single accusation, imposed cumulative penalties, each based on a single sale, but measured in severity by the prior number of illegal sales in the series, where the licensee had not exhausted its administrative remedy of appeal to the Alcoholic Beverage Control Appeals Board and had not demonstrated that its situation was unique or distinctive or cited any authority supporting its claim of inadequacy of the administrative remedy. B & P C § 23090.5, expressly withholds from the courts jurisdiction to review or otherwise to interfere with the department or its decision except to the extent specified in B & P C §§ 23090–23090.7, and, § 23090, in specifying the conditions under which applications may be made for a writ of review, limits such applications to those persons affected by a "final order of the board." Top Hat Liquors, Inc. v. Department of Alcoholic Beverage Control (1974) 13 Cal 3d 107, 118 Cal Rptr 10, 529 P2d 42, 1974 Cal LEXIS 196.

Neither Cal Const Art III § 3.5 nor B & P C § 23090.5 preclude state courts from determining constitutional issues arising from administrative discipline of liquor licensees, regardless of whether the Department of Alcoholic Beverage Control or the Alcoholic Beverage Control Appeals Board has jurisdiction to determine said issues. Radtke v. Alcoholic Beverage Control Appeals Board (1980, CD Cal) 491 F Supp 42, 1980 US Dist LEXIS 11535.

B & P C § 23090.5, providing that no court except the Supreme Court or Courts of Appeal shall have jurisdiction to review, affirm, or reverse any order, rule, or decision of the Department of Alcoholic Beverage Control is completely inapplicable to proceedings to abate a nuisance brought pursuant to B & P C § 25604 and Pen C § 11200. Therefore, in an action brought under the nuisance statutes, the superior court had jurisdiction to issue a permanent injunction against the illegal sale and serving of alcoholic beverages as a public nuisance. Department of Alcoholic Beverage Control v. Locker (1982, Cal App 2d Dist) 129 Cal App 3d 381, 181 Cal Rptr 55, 1982 Cal App LEXIS 1330.

Cal Const Art III § 3.5, prohibiting administrative bodies from declaring statutes unconstitutional or refusing enforcement of statutes on the basis of claims that the statutes are unconstitutional, and B & P C § 23090.5, restricting review of Department of Alcoholic Beverage Control determination to petitions fro writ of review in state appellate court, did not deny liquor licensees due process of law by forcing them to submit to revocation by an administrative body which could not act on constitutional defenses, while limiting review of the decision to a discretionary petition for writ of review. Dash, Inc. v. Alcoholic Beverage Control Appeals Bd. (1982, 9th Cir Cal) 683 F2d 1229, 1982 US App LEXIS 16721.

In an action for declaratory and injunctive relief, brought by a holder of a liquor license to preclude the Department of Alcoholic Beverage Control from imposing discipline for the licensee's alleged sales of alcohol to minors, the superior court properly sustained the department's demurrer without leave to amend. The exclusive jurisdiction for judicial review of such disciplinary actions is in the Supreme Court and appellate courts by way of writ review (B & P C § 23090.5). Although the case was filed before a disciplinary order was entered, jurisdictional limitations cannot be circumvented by a preemptive lawsuit. Although declaratory relief is a cumulative remedy and the superior court ordinarily has jurisdiction to entertain declaratory relief actions, an action seeking a judgment which will interfere with the department's prospective disciplinary orders is beyond the jurisdiction of the superior court. American Drug Stores, Inc. v. Stroh (1992, Cal App 4th Dist) 10 Cal App 4th 1446, 13 Cal Rptr 2d 432, 1992 Cal App LEXIS 1319.

2. Mandamus

In a proceeding seeking review of an order of the Department of Alcoholic Beverage Control denying petitioner-liquor license holder an extension of time before cancellation of the license became effective and within which to conclude a transfer of the license (Adm Code, tit 4, Rule 65(d)), the appellate court and not the superior court could exercise jurisdiction to grant relief by a writ of mandate, where, though the applicable statute (B & P C § 23090.5) related to the power of the courts to review, affirm, reverse, correct, or annul any order of decision of the department, the legislative intention when adopting the statute was not to establish an alternative procedure for judicial review of the exercise of the limited judicial powers of the department, but was to provide for judicial review only by the Supreme Court or the courts of

appeal of the orders, rules or decisions or other acts of the department in the performance of its duties when acting in its administrative capacity. Samson Market Co. v. Kirby (1968, Cal App 2d Dist) 261 Cal App 2d 577, 68 Cal Rptr 130, 1968 Cal App LEXIS 1779, cert den (1968) 393 US 11, 89 S Ct 49, 21 L Ed 2d 18, 1968 US LEXIS 578.

In the determination of the propriety of granting a writ of mandate to compel the Department of Alcoholic Beverage Control to grant an extension of time for the cancellation of a liquor license under Adm Code, tit 4, Rule 65(d), the writ must be denied, where no clear abuse of discretion on the part of the department was shown by petitioner, though the license would expire under the rule before three disciplinary actions respecting the license could be heard. Samson Market Co. v. Kirby (1968, Cal App 2d Dist) 261 Cal App 2d 577, 68 Cal Rptr 130, 1968 Cal App LEXIS 1779, cert den (1968) 393 US 11, 89 S Ct 49, 21 L Ed 2d 18, 1968 US LEXIS 578.

In a mandamus proceeding to review an order of the Department of Alcoholic Beverage Control suspending a liquor license, the superior court properly sustained the department's demurrer on the ground of lack of jurisdiction, and stay of the suspension order was thereafter improperly granted by a judge of the same superior court, where the licensee failed to seek judicial review in accordance with B & P C § 23090, within 30 days after the final order of the Alcoholic Beverage Control Appeals Board affirming the suspension, where, although the alleged violations on which the suspension was based occurred prior to the effective date of B & P C § 23090.5, divesting superior courts of jurisdiction to review decisions of the department, the right to judicial review of the order of suspension did not mature until some six months after the effective date, and where application of the revised review procedures involved no impairment of the licensee's right to judicial review nor a denial of an opportunity to take advantage of the benefit of the revised procedures. Department of Alcoholic Beverage Control v. Superior Court of San Francisco (1968, Cal App 1st Dist) 268 Cal App 2d 7, 73 Cal Rptr 671, 1968 Cal App LEXIS 1267.

Under B & P C § 23090.5, only the Supreme Court and the courts of appeal have jurisdiction to review decisions of the Department of Alcoholic Beverage Control, 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. The constitutional proscription against ex post facto laws applied only to criminal statutes and the fact that jurisdiction is taken away from a particular court to hear one kind of case does not in itself deprive anyone of a vested right; under present law the Supreme Court and the Courts of Appeal have all of the powers of review formerly exercisable by the superior court. Department of Alcoholic Beverage Control v. Superior Court of Orange County (1968, Cal App 4th Dist) 268 Cal App 2d 67, 73 Cal Rptr 780, 1968 Cal App LEXIS 1274.

§ 23090.6. Stay of proceedings

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.

Added Stats 1967 ch 1525 § 4.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23090.7. Effectiveness of order

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.

Added Stats 1967 ch 1525 § 4.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23091. [Section repealed 1967.]

Added Stats 1st Ex Sess 1954 ch 20 § 3, operative January 1, 1955. Amended Stats 1963 ch 305 § 1. Repealed Stats 1967 ch 1525 § 3. See B & P C §§ 23089, 23090.

ARTICLE 6

Stay of Suspension

[Added Stats 1957 ch 2298 § 1.]

Collateral References:

Suspension or revocation of licenses: 4 Cal Code Reg §§ 142 et seq.

§ 23095. Right of licensee to make offer in compromise in lieu of serving suspension; Procedure on receipt of petition; Amount of 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 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 not be 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 be not 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 be not 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.

Added Stats 1957 ch 2298 § 1. Amended Stats 1959 ch 548 § 1; Stats 1967 ch 1669 § 1; Stats 1971 ch 1319 § 1; Stats 1979 ch 642 § 1; Stats 1983 ch 323 § 2.1, effective July 21, 1983; Stats 1988 ch 1335 § 2; Stats 1994 ch 627 § 2 (AB 463); Stats 2004 ch 227 § 7 (SB 1102), effective August 16, 2004.

Amendments:

1959 Amendment: (1) Added "and that the payment of the sum of money will achieve the desired disciplinary purposes" in subd (a); (2) deleted former subd (b) which read: "(b) that public convenience and necessity would be better served 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 purpose;"; (3) redesignated former subd (c) to be subd (b); and (4) deleted the former last paragraph which read: "The department shall not accept a petition under this section with respect to a license to be suspended if within 18 months immediately preceding the date of filing the petition, such license has been suspended by a final decision of the department or an offer in compromise has been accepted by the department."

1967 Amendment: (1) Designated the former section to be subd (a); and (2) added subd (b).

1971 Amendment: Deleted "is either pending a final decision or" after "petition which" in the first paragraph of subd (b).

1979 Amendment: Added subd (c).

1983 Amendment: In addition to making technical changes, substituted **(1)** "seven hundred fifty dollars ($750) or more than six thousand dollars ($6,000)" for "two hundred fifty dollars ($250) nor more than two thousand dollars ($2,000)" at the end of subd (a); and **(2)** "three hundred dollars ($300) or more than one thousand five hundred dollars ($1,500)" for "one hundred dollars ($100) nor more than five hundred dollars ($500)" in subd (c).

1988 Amendment: (1) Deleted the former second paragraph of subd (b) which read: "This subdivision does not affect the provisions of Section 24755.1."; and **(2)** added "be not less than three hundred dollars ($300) and shall" in subd (c).

1994 Amendment: In addition to making technical changes; **(1)** substituted "15 days" for "30 days" in the first sentence of subd (a); **(2)** amended the second sentence of subd (a) by **(a)** adding "that the following conditions are met:" after "it is satisfied"; and **(b)** redesignating former subds (a) and (b) to be subds (a)(1) and (a)(2); **(3)** substituted "50 percent" for "20 percent" wherever it appears; **(4)** substituted "one thousand five hundred dollars ($1,500) or more than six thousand dollars ($6,000)" for "seven hundred fifty dollars ($750) or more than six thousand dollars ($6,000)" in the last paragraph of subd (a); **(5)** substituted "three thousand dollars ($3,000)" for "one thousand five hundred dollars ($1,500) in subd (b); **(6)** redesignated former subd (c) to be subd (c)(1); **(7)** substituted "seven hundred fifty dollars ($750)" for "three hundred dollars ($300)" in subds (b) and (c)(1); **(8)** deleted the former last sentence in subd (c)(1) which read: "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 Alcoholic Beverage Control Fund as provided for in Section 25761."; and **(9)** added subds (c)(2) and (c)(3).

2004 Amendment: (1) Deleted "for 15 days or less" after "suspending a license" in subd (a); **(2)** added subd (b); **(3)** added subdivision designations (c) and (d); **(4)** substituted subd (d) for the former second paragraph of subd (a) and subd

(b) which read: "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 shall be not less than one thousand five hundred dollars ($1,500) or more than six thousand dollars ($6,000).

"(b) Notwithstanding any other provision of this division, the department may accept an offer in compromise from a retail licensee in the equivalent of 50 percent of the estimated gross sales of alcoholic beverages for each day of a proposed suspension and the offer in compromise shall be not less than seven hundred fifty dollars ($750) or more than three thousand dollars ($3,000), provided the petitioning retailer has had no other accusation filed against him or her by the department during the prior three years from the date of the petition that has resulted in a final decision to suspend or revoke the retail license concerned."; **(5)** added subd (e); **(6)** redesignated former subd (c) to be subd (f); and **(7)** amended subd (f)(1) by **(a)** deleting "Notwithstanding the provisions of subdivision (a)," at the beginning of subd (f)(1); **(b)** substituting "may not be" for "shall be not" after "offer in compromise" the second time it appears; and **(c)** substituting "may" for "shall" after "($750) and"; and **(8)** substituted "subdivision (d)" for "subdivision (a) or (b)" at the end of subd (f)(2).

Cross References:

Prohibited economic interests in onsale license: B & P C § 25500.

Prohibited economic interests in offsale general license: B & P C § 25502.

Prohibited sales, advertising, and promotional activities: B & P C § 25503.

Gifts or premiums on sales: B & P C § 25600.

Disposition of fees and tax moneys: B & P C § 25761.

State funds: Gov C §§ 16300 et seq.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

SUGGESTED FORMS

Petition For Stay Before the Department of Alcoholic Beverage Control *(Usually Referred to as Petition and Offer in Compromise)*

[Caption]

____, hereby petitions the Department of Alcoholic Beverage Control for permission to make an offer in compromise by the payment of $____ in lieu of serving the suspension period previously ordered by a final decision of the Department.

The following information is furnished in support of this petition:

1. Public welfare and morals would not be impaired by permitting petitioner to operate during the period set for suspension in that ____.

2. The operative date ordered for petitioner's suspension is [was] ____*[date]*, for a total of ____ days.

[If this period has passed, insert below the actual daily gross sales, including sales tax, of alcoholic beverages during the period ordered for suspension. If the period has not passed, insert below the monthly gross sales, including sales tax, of alcoholic beverages for the past 13 months].

3. (a) ____ *[If petitioner reports the actual daily gross sales in Item 2 above, insert total amount of daily gross sales].*

(b) ____ *[If petitioner reports monthly gross sales in Item 2 above, estimate the total of gross sales, including sales tax, of alcoholic beverages for the suspension period].*

4. ____ [Twenty per cent] of the amount of ____ [Item 3(a) *or* Item 3(b)] equals $.

[Note: This amount must be the amount of petitioner's offer, providing that the amount is not less than $250.00 or more than $20000.00].

5. ____ *[Specify the books and records from which the figures set forth in Item 2 were taken].*

In presenting this petition to the Department of Alcoholic Beverage Control, petitioner hereby waives all rights to appeal and judicial review of the Department's decision suspending his license in the above–noted registered case.

I hereby declare, under penalty of perjury, that the statements of fact in answer to the questions contained in this petition are true and correct.

Dated ____.

[Signature]

[Note: This form is only applicable when a decision of the Department suspending a license for thirty days or less becomes final, and before the operative date of such suspension. In effect, this procedure provides for payment of a fine in lieu of serving a suspension, but is not granted as a matter of right, and only in those instances where the prior record of the licensee is satisfactory.]

§ 23096. Order

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.

Added Stats 1957 ch 2298 § 1.

Cross References:

Disposition of fees and tax moneys: B & P C § 25761.

State funds: Gov C §§ 16300 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Constitutionality

1. Constitutionality

Department of Alcoholic Beverage Control's refusal to consider an offer of compromise from a licensee whose license was suspended for 45 days, based on the provision in B & P C § 23095 that limited such compromises to licensees whose licenses were suspended for 30 days or less, was not a denial of due process or of equal protection. Woods v. Alcoholic Beverage Appeals Board (1980, CD Cal) 502 F Supp 528, 1980 US Dist LEXIS 15261.

§ 23097. Limitations on authority of department in connection with petition

In connection with any such petition, the authority of the department is limited to the grant-

ing 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.

Added Stats 1957 ch 2298 § 1. Amended Stats 1961 ch 775 § 1.

Amendments:

1961 Amendment: Substituted "entire suspension or of that portion of the suspension not otherwise conditionally stayed by the decision of the department" for "suspension" at the end of the first sentence.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23098. When suspension may go into effect

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.

Added Stats 1957 ch 2298 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

CHAPTER 2

Authorized Unlicensed Transactions and Exemptions

[Added Stats 1953 ch 152 § 1.]

Section
23100. Sale of stock of lawfully acquired beverages following loss of license
23101. Sale by bank of beverages or warehouse receipts acquired as security for loan
23102. Exercise of license privileges in event of death, insolvency or incompetency of licensee; Absence of competent surviving colicensee; Persons authorized to act; Limitations
23103. [Repealed]
23104. Sale of beverages in damaged containers
23104.1. Return of wine by retailer to seller
23104.2. Return of beer by retail licensee
23104.3. Return of distilled spirits by retail licensee
23104.4. Sale of alcoholic beverages included in inventory of estate by personal representative
23104.5. Sale of alcoholic beverages pursuant to writ of execution
23104.6. "Vintage wine" acquired from private collection
23105. Sale by warehouseman to enforce lien
Section
23106. Storage of beverages in bonded warehouses; Storing other beverages in private or public warehouse under certain conditions
23107. Acquiring of beverages within State for export
23108. Purchase and export by licensees of other states of bulk brandy stored in internal revenue bonded warehouse; Purchase of warehouse receipts
23109. Transportation through State; Affidavits and checking of shipments
23110. Application of division
23111. Use of tax–free ethyl alcohol by governmental agency or other entity
23112. Use of tax–free alcohol or other spirits or wine in certain products
23113. Alcohol sold for specified uses; Packages

Collateral References:

Cal Jur 3d (Rev) Documents of Title §§ 34, 37.

Pertinent administrative regulations: 4 Cal Code Reg §§ 54, 76, 79 et seq.

§ 23100. Sale of stock of lawfully acquired beverages following loss of license

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.

Added Stats 2001 ch 657 § 2 (SB 1035).

Former Sections:

Former § 23100, similar to present section, was added Stats 1953 ch 152 § 1, amended Stats 1955 ch 447 § 6, Stats 2000 ch 979 § 2, and repealed Stats 2001 ch 657 § 1.

Historical Derivation:

(a) Former B & P C § 23100, as added Stats 1953 ch 152 § 1, amended Stats 1955 ch 447 § 6, Stats 2000 ch 979 § 2.

(b) Stats 1935 ch 330 § 4, as amended Stats 1937 ch 758 § 5, Stats 1941 ch 1145 § 2.

Cross References:

Suspension and revocation of licenses: B & P C §§ 24200 et seq.

Rules and regulations by department: B & P C § 25750.

Rules and regulations under the Administrative Procedure Act: Gov C §§ 11371 et seq.

Excise tax on distilled spirits to be paid by any person who possesses such spirits for sale pursuant to this Section: Rev & Tax C § 32201.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23101. Sale by bank of beverages or warehouse receipts acquired as security for loan

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 7; Stats 1965 ch 865 § 1.

Amendments:

1955 Amendment: Substituted "department" for "board".

1965 Amendment: (1) Substituted "alcoholic beverages or warehouse receipts therefor as security for an obligation or as a result of enforcement of a security interest" for "warehouse receipts for alcoholic beverages, which warehouse receipts were acquired by the bank, trust company, or financial institution as security for a loan,"; (2) added "alcoholic beverages or" after "sell the"; and (3) added "for resale" after "to sell".

Historical Derivation:

Stats 1935 ch 330 § 4, as amended Stats 1937 ch 758 § 5, Stats 1941 ch 1145 § 2.

Cross References:

Excise tax on distilled spirits to be paid by any person who possesses such spirits for sale pursuant to this section: Rev & Tax C § 32201.

Warehouse receipts generally: UCC §§ 7101 et seq.

Collateral References:

Cal Jur 3d (Rev) Documents of Title § 34.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Annotations:

Construction and effect of UCC Art 7, dealing with warehouse receipts, bills of lading, and other documents of title. 21 ALR3d 1339.

§ 23102. Exercise of license privileges in event of death, insolvency or incompetency of licensee; Absence of competent surviving colicensee; Persons authorized to act; Limitations

(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.

Added Stats 1959 ch 1576 § 2. Amended Stats 1977 ch 338 § 1.

Former Sections:

Former § 23102, relating to exercise of license privileges in event of licensee's death or incompetency, was added Stats 1953 ch 152 § 1, amended Stats 1955 ch 447 § 8, Stats 1957 ch 1269 § 1, and repealed Stats 1959 ch 1576 § 1.

Amendments:

1977 Amendment: Substituted "incompetent or insolvent" for "or incompetent" in the first sentence of subds (a) and (b).

Cross References:

Issuance and renewal of licenses: B & P C §§ 24040 et seq.

Order of resort to estate assets for payment of debts, expenses, etc.; testamentary provision: Prob C § 21402.

Excise tax on distilled spirits to be paid by any person who possesses such spirits for sale pursuant to this section: Rev & Tax C § 32201.

Transfers by and between certain persons: B & P C § 24071.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:

Authority of receiver to operate licensed premises without obtaining transfer of license. 38 Ops. Cal. Atty. Gen. 11.

§ 23103. [Section repealed 1959.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 9, ch 1842 § 4. Repealed Stats 1959 ch 1576 § 1. The repealed section related to the powers of administrator, executor, etc., of licensee other than retail licensee.

Historical Derivation:

Stats 1935 ch 330 § 4, as amended Stats 1937 ch 758 § 5, Stats 1941 ch 1145 § 2.

§ 23104. Sale of beverages in damaged containers

Any insurer may, or any common carrier acting as an insurer for losses to persons shipping alco-

holic 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 10; Stats 1957 ch 1410 § 1; Stats 1959 ch 819 § 1.

Amendments:

1955 Amendment: Substituted "department" for "State Liquor Administrator" in the first sentence.

1957 Amendment: (1) Added "who are" before "authorized" in the first sentence; and (2) added the last sentence.

1959 Amendment: (1) Substituted "insurer" for "insurance company" wherever it appears in the section; and (2) added ", 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" in the last sentence of the second paragraph.

Historical Derivation:

Stats 1935 ch 330 § 4.1, as added Stats 1945 ch 1401 § 2, amended Stats 1947 ch 1566 § 1.

Cross References:

Excise tax on distilled spirits to be paid by any person who possesses such spirits for sale pursuant to this section: Rev & Tax C § 32201.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23104.1. Return of wine by retailer to seller

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, except that 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 exists:

(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 that 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 that are within the same class as provided in Article 14 (commencing with Section 17001) of Title 17 of the California Code of Regulations and 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 be required only 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 that 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.

Added Stats 1980 ch 1368 § 1. Amended Stats 1995 ch 139 § 1 (AB 1781); Stats 1996 ch 124 § 5 (AB 3470).

Amendments:

1995 Amendment: In addition to making technical changes, **(1)** substituted "The wine" for "It" at the beginning of subd (b); **(2)** amended subd (e) by **(a)** substituting "provided in Article 14 (commencing with Section 17001) of Title 17 of the California Code of Regulations" for "defined in Sections 17005 to 17050, inclusive, by the Standards of Identity and Quality, Title 17, California Administrative Code"; and **(b)** deleting the former last sentence which read: "Wines returned and exchanged pursuant to this subdivision shall have the same current posted price to retailers."; and **(3)** added subd (g).

1996 Amendment: Made technical changes.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23104.2. Return of beer by retail licensee

(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.

(e) Notwithstanding the 15-day time limit for the return of beer described in subdivision (a), beer that is recalled or that is considered by a manufacturer, importer, or governmental entity to present health or safety issues if distributed, offered for sale, or sold in the state may be accepted for return at anytime from a retailer and be picked up by the seller of beer. The seller of beer may exchange the returned beer for identical product, if safe inventory is available, issue a deferred exchange memorandum showing the

beer was picked up and is to be replaced when inventory is available, or issue a credit memorandum to the retailer for the returned beer. The seller of beer may exchange with the manufacturer or importer the returned beer and the seller of beer's inventory that was recalled or considered to present health or safety issues for identical product, if safe inventory is available, or the seller of beer shall receive a refund from or be issued a credit memorandum by the manufacturer or importer for the returned beer and seller of beer's inventory that was recalled or considered to present health or safety issues.

(f) Notwithstanding subdivision (a), a licensee may accept the return of unsold and unopened beer from an organization that obtained a temporary license pursuant to Section 24045 or 24045.1. The licensee may credit the account of the organization in an amount not to exceed the original sales price of the returned beer, provided that the beer has been paid for in full.

(g)(1) Notwithstanding subdivision (a), an on-sale retail licensee that purchases beer for sale at an event for which a catering authorization is issued by the department pursuant to Section 23399 may return the unused and unopened beer to the original selling licensee at the conclusion of the catered event or upon expiration of the catering authorization, provided the beer was purchased for use or sale only at that event and the on-sale retail licensee does not also provide any beer for use or sale at the event from its permanent licensed premises. The on-sale retail licensee holding the catering authorization shall record and maintain a record of the inventory of all unused and unopened beer to be returned at the conclusion of the catering event. The original selling licensee shall prepare an invoice to reflect the returned beer that shall reference the original sales invoice and shall provide the on-sale retail licensee holding the catering authorization with a copy of the invoice.

(2) Any beer returned pursuant to this subdivision must be returned to the original selling licensee at the conclusion of the catered event or upon expiration of the catering authorization. The original selling licensee may credit the account of the on-sale retail licensee in an amount not to exceed the original sales price of the returned beer, provided the beer has been paid for in full.

Added Stats 1957 ch 1409 § 1. Amended Stats 1965 ch 1128 § 1; Stats 1974 ch 270 § 1; Stats 1995 ch 97 § 1 (SB 436); Stats 1998 ch 273 § 1 (SB 452); Stats 1999 ch 83 § 18 (SB 966); Stats 2001 ch 657 § 3 (SB 1035); Stats 2008 ch 508 § 2 (AB 3071), effective January 1, 2009; Stats 2012 ch 163 § 1 (SB 1393), effective January 1, 2013; Stats 2013 ch 242 § 1 (AB 782), effective January 1, 2014.

Amendments:

1965 Amendment: Added "or from an annual licensee operating on a temporary basis if at the termination of such temporary period he has beer remaining unsold" at the end of the second paragraph.

1974 Amendment: (1) Designated the first paragraph to be the first sentence of subd (a); **(2)** added the second sentence of subd (a); **(3)** added subdivision designation (b); and **(4)** added "Notwithstanding the provisions of subdivision (a)," at the beginning of subd (b).

1995 Amendment: In addition to making technical changes, **(1)** substituted ". If" for "; or if" at the end of the second sentence in subd (a); **(2)** added subdivision designation (b)(1); and **(3)** added subd (b)(2).

1998 Amendment: Substituted the section for the former section which read: "(a) A retailer may return beer to the seller and the seller may accept the return thereof if the beer is returned in exchange for the identical quantity and brand of beer. No licensee authorized to sell beer to retailers shall accept the return of any beer from a retailer except when the beer delivered was not the brand or size container ordered by the retailer, or the amount delivered was other than the amount ordered, in which case the order may be corrected. 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 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 retailer.

"(b)(1) Notwithstanding the provisions of subdivision (a), a seller may accept the return of beer 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.

"(2) For purposes of this subdivision, 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, and concert halls. Temporary status shall be deemed terminated when operations cease for 15 days or more. No seller shall accept the return of beer from an annual licensee considered to be operating on a temporary basis, unless the licensee notifies the seller within 15 days of the date the licensee's operations ceased."

1999 Amendment: (1) Deleted the comma before "or the amount delievered" in the second sentence of subd (a); and **(2)** amended subd (b)(1)(B) by **(a)** deleting "this" after "For purposes of" in the first sentence; **(b)** deleting the comma after "temporary basis" in the last sentence; and **(c)** adding the comma before "within 15 days" in the last sentence.

2001 Amendment: Added subds (c) and (d).

2008 Amendment: Added subd (e).

2012 Amendment: (1) Amended the first sentence of subd (e) by (a) substituting "or that is considered by a manufacturer, importer, or governmental entity to present" for "for"; (b) adding "if distributed, offered for sale, or sold in the state"; (2) added the last sentence of subd (e); and (3) added subd (f).

2013 Amendment: Added (1) "for" in the second sentence of subd (f); and (2) subd (g).

Cross References:

Seizure of alcoholic beverages acquired or exchanged in violation of this section: B & P C § 25350.

Excise tax on distilled spirits to be paid by any person who possesses such spirits for sale pursuant to this section: Rev & Tax C § 32201.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23104.3. Return of distilled spirits by retail licensee

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.

Added Stats 1953 ch 1331 § 1. Amended Stats 1955 ch 447 § 11.

Amendments:
1955 Amendment: Substituted "department" for "board" in the first sentence.

Cross References:
Seizure of alcoholic beverages acquired or exchanged in violation of this section: B & P C § 25350.
Excise tax on distilled spirits to be paid by any person who possesses such spirits for sale pursuant to this section: Rev & Tax C § 32201.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23104.4. Sale of alcoholic beverages included in inventory of estate by personal representative

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.

Added Stats 1953 ch 1331 § 3. Amended Stats 1955 ch 447 § 12; Stats 1959 ch 1576 § 3; Stats 1981 ch 212 § 1.

Amendments:
1955 Amendment: Substituted "department" for "board" at the end of the section.
1959 Amendment: Added "or conservator" after "guardian".
1981 Amendment: Added the second sentence.

Cross References:
Issuance of temporary offsale wine license: B & P C § 24045.8.
Guardian and ward; sales, mortgages, leases and conveyances: Prob C §§ 2540 et seq.
Presentation and settlement of conservatorship accounts: Prob C §§ 2620 et seq.
Sales of estate property: Prob C §§ 10000 et seq.
Excise tax on distilled spirits to be paid by any person who possesses such spirits for sale pursuant to this section: Rev & Tax C § 32201.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23104.5. Sale of alcoholic beverages pursuant to writ of execution

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.

Added Stats 1957 ch 1273 § 1.Amended Stats 1981 ch 212 § 2.

Amendments:
1981 Amendment: (1) Deleted "only" after "court order," in the first sentence; and **(2)** added the second sentence.

Cross References:
Issuance of temporary offsale wine license: B & P C § 24045.8.
Excise tax on distilled spirits to be paid by any person who possesses such spirits for sale pursuant to this section: Rev & Tax C § 32201.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23104.6. "Vintage wine" acquired from private collection

(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 perma-

nently 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.

Added Stats 1985 ch 421 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23105. Sale by warehouseman to enforce lien

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 13.

Editor's Notes—The "Warehouse Receipts Act" referred to in this section was added by Stats 1953 ch 49 § 1 and repealed by Stats 1963 ch 819 § 2, effective January 1, 1965. The subject matter of the repealed act is generally covered by UCC §§ 7101–7210, 7401–7603.

Amendments:
1955 Amendment: Substituted "department" for "board" in the first and second sentences.

Historical Derivation:
Stats 1935 ch 330 § 4.2, as added Stats 1941 ch 888 § 1.

Cross References:
Liens in general: CC §§ 2872 et seq.
Excise tax on distilled spirits to be paid by any person who possesses such spirits for sale pursuant to this section: Rev & Tax C § 32201.
Warehouseman's lien: UCC § 7209.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:
Warehouseman's liens. 21 Cal LR 628.

§ 23106. Storage of beverages in bonded warehouses; Storing other beverages in private or public warehouse under certain conditions

(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).

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 14, ch 1600 § 7, ch 1842 § 5; Stats 1984 ch 357 § 1.

Amendments:
1955 Amendment: (1) Substituted "or wine cellar" for "wine storeroom, or field warehouse" in subd (a); (2) substituted "Part 14 of Division 2 of the Revenue and Taxation Code" for "this division" in subd (b); and (3) amended subd (c) by substituting "department" for "board" after "by the" and "wine cellar" for "storeroom" at the end of the subdivision.
1984 Amendment: Added the last sentence of subd (c).

Historical Derivation:
Stats 1935 ch 330 § 7, as amended Stats 1937 ch 758 § 10, Stats 1941 ch 1145 § 1, Stats 1945 ch 1401 § 8, Stats 1947 ch 1566 § 3, Stats 1949 ch 1348 § 3, ch 1418 § 1.

Cross References:
Prohibited exercising of privilege under an off–sale general license, except as provided in this section, by licensee in more than one room or building: B & P C § 23394.5.
Warehouse receipts, bills of lading and other documents of title: UCC §§ 7101 et seq.

Collateral References:
Internal revenue bonded warehouses; entry of distilled spirits for deposit in storage: 26 USCS §§ 5231 et seq.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:
The Department of Alcoholic Beverage Control is not authorized to adopt a regulation allowing a retail licensee to transport tax paid alcoholic beverages to the retailer's out–of–state Free Port warehouse for "temporary retention" prior to delivery to retailer's licensed premises in California if such retention constitutes storage; the department is not authorized to adopt a regulation allowing a retail licensee to transport alcoholic beverages stored by the retailer in a Free Port warehouse facility outside the state to the retailer's licensed premises in California. 69 Ops. Cal. Atty. Gen. 191.

§ 23107. Acquiring of beverages within State for export

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1331 § 4; Stats 1955 ch 447 § 2.

Amendments:
1955 Amendment: Substituted "department" for "board".

Historical Derivation:
Stats 1935 ch 330 § 24.27, as added Stats 1941 ch 328 § 3, amended Stats 1947 ch 839 § 2.

Cross References:
Rules and regulations by department: B & P C § 25750.
Rules and regulations under the Administrative Procedure Act: Gov C §§ 11371 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally
Term "export," as used in State Alcoholic Beverage Control Act must be applied to all shipments for delivery beyond territorial limits of state; sale to retail liquor dealer located in United States military reservation within boundaries of this State and who was not licensee of State Board of Equalization is sale within territorial boundaries of this State, and provisions of Alcoholic Beverage Control Act are applicable. McKesson & Robbins, Inc. v. Collins (1937, Cal App) 18 Cal App 2d 648, 64 P2d 469, 1937 Cal App LEXIS 565.

§ 23108. Purchase and export by licensees of other states of bulk brandy stored in internal revenue bonded warehouse; Purchase of 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 16; Stats 1963 ch 319 § 8, ch 1040 § 1.

Amendments:
1955 Amendment: Substituted "department" for "board" at the end of the first sentence.
1963 Amendment: Substituted "32201 of the Revenue and Taxation Code" for "24465".

Historical Derivation:
Stats 1935 ch 330 § 24.27, as added Stats 1941 ch 328 § 3, amended Stats 1947 ch 839 § 2.

Cross References:
Absence of imposition of excise tax on sale of brandy to licensee of another state pursuant to provisions of this section: Rev & Tax C § 32212.
Warehouse receipts generally: UCC §§ 7101 et seq.

Collateral References:
Internal revenue bonded warehouses; entry of distilled spirits for deposit in storage: 26 USCS §§ 5231 et seq.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23109. Transportation through State; Affidavits and checking of shipments

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 17.

Amendments:
1955 Amendment: Substituted "department" for "board" wherever it appears in the second sentence.

Historical Derivation:
Stats 1935 ch 330 § 66, as amended Stats 1937 ch 758 § 98, Stats 1941 ch 328 § 32.1.

Cross References:
Punishment for misdemeanors: B & P C § 25617.
"Common carrier": Pub Util C § 211.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:
Effect of the twenty– first amendment on equal protection of liquor importers. 27 Cal LR 348.
Liquor and interstate commerce. 7 SCLR 230.

NOTES OF DECISIONS

1. Applicability
2. Scope

1. Applicability
State cannot constitutionally terminate business of liquor exporter whose liquor is handed to purchaser by customs agent at time he crosses border into Mexico where, though purchaser has physical custody of liquor for few moments until he crosses border, liquor is at all times under supervision of customs agent. Ammex Warehouse Co. v. Department of Alcoholic Beverage Control (1963, SD Cal) 224 F Supp 546,

1963 US Dist LEXIS 8096, aff'd (1964) 378 US 124, 84 S Ct 1657, 12 L Ed 2d 743, 1964 US LEXIS 995.

2. Scope

This section's exemption is not broad enough to cover "in bond" situation where liquor may be stored in government bonded warehouse. Ammex Warehouse Co. v. Department of Alcoholic Beverage Control (1963, SD Cal) 224 F Supp 546, 1963 US Dist LEXIS 8096, aff'd (1964) 378 US 124, 84 S Ct 1657, 12 L Ed 2d 743, 1964 US LEXIS 995.

§ 23110. Application of division

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 67, as amended Stats 1941 ch 889 § 1.

Cross References:

Industrial alcohol dealer's license: B & P C § 23380.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23111. Use of tax–free ethyl alcohol by governmental agency or other entity

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 67, as amended Stats 1941 ch 889 § 1.

Cross References:

Industrial alcohol dealer's license: B & P C § 23380.

Application of this section to excise tax imposed by Alcoholic Beverage Tax Law: Rev & Tax C § 32053.

Collateral References:

Denaturation: 26 USCS §§ 5331 et seq.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23112. Use of tax–free alcohol or other spirits or wine in certain 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

(a) Stats 1935 ch 330 § 67, as amended Stats 1941 ch 889 § 1.

(b) Former Pol C § 3383.

(c) Stats 1861 ch 401 § 78, as amended Stats 1863 ch 109 § 1.

(d) Stats 1861 ch 401 § 79.

Cross References:

"Prescription": B & P C § 4036.

Industrial alcohol dealer's license: B & P C § 23380.

Application of this section to excise tax imposed by Alcoholic Beverage Tax Law: Rev & Tax C § 32053.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally

Tax-free alcohol or industrial alcohol, though not specifically defined, must be understood to mean undenatured ethyl alcohol or other distilled spirits in packages of more than one gallon for use in the trades, professions or industries, as described in Stats 1935 ch 330 p 1123 § 6 subd. (i) (now § 23380). Commercial Solvents Corp. v. Riley (1936) 7 Cal 2d 731, 62 P2d 588, 1936 Cal LEXIS 702.

§ 23113. Alcohol sold for specified uses; Packages

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 67, as amended Stats 1941 ch 889 § 1.

Cross References:

"Prescription": B & P C § 4036.

"Registered pharmacists": B & P C § 4037.
Industrial alcohol dealer's license: B & P C § 23380.
Application of this section to excise tax imposed by Alcoholic Beverage Tax Law: Rev & Tax C § 32053.

Collateral References:
Denaturation: 26 USCS §§ 5331 et seq.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

CHAPTER 3

Licenses and Fees

[Added Stats 1953 ch 152 § 1.]

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Annotations:

Loss of liquor license as compensable in condemnation proceeding. 58 ALR3d 581.

ARTICLE 1

In General

Law Review Articles:

Issuing or revoking liquor licenses: State and local authority under recent federal decisions. 15 Urban Law 379.

§ 23300. Necessity for license

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

(a) Stats 1935 ch 330 § 3, as amended Stats 1937 ch 758 § 4.

(b) Former Pol C § 3381, as amended by Act of April 1, 1872.

(c) Stats 1861 ch 401 § 81.

Cross References:

Rights and obligations of licensees: B & P C §§ 23355 et seq.

Portable bar counter licenses: B & P C § 24042.5.

Time within which accusations against licensees for violating section to be filed: B & P C §§ 24207, 24208.

Seizure of alcoholic beverages: B & P C § 25350.

Alcoholic beverages regulatory provisions: B & P C §§ 25600 et seq.

Exclusive power of licensing in department: Cal Const Art XX § 22.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Points & Authorities (Matthew Bender®) ch 15A "Alcoholic Beverages: Civil Liability For Furnishing" § 15A.23.

Cal. Torts (Matthew Bender®), § 1.21.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:

Intoxicating liquors in interstate commerce. 25 Cal LR 718.

Alcoholic beverage control administration. 20 St BJ 59.

Nature of alcoholic beverage licenses. 20 St BJ 65.

Anticompetitive effects of licensing businesses and professions in California. 18 Stan LR 640.

Attorney General's Opinions:

Authorization to board of equalization to issue on–sale beer and off–sale beer and wine licenses, to establishments in area where Penal Code prohibits sales of beer of more than 3.2 per cent of alcohol by weight. 17 Ops. Cal. Atty. Gen. 41.

Authority of receiver to operate licensed premises without obtaining transfer of license. 38 Ops. Cal. Atty. Gen. 11.

Illegality of unlicensed manufacture of beer. 42 Ops. Cal. Atty. Gen. 80.

Right of unlicensed organization to promote and operate "liquor by wire" or "liquor gift" service involving retail licensees. 48 Ops. Cal. Atty. Gen. 1.

Operator of commercial enterprise who offers and provides complimentary alcoholic beverages to any interested adult guest, customer or passenger of the business or service while at the same time charging for product provided or service rendered will be deemed to have "sold" alcoholic beverages, thereby necessitating alcoholic beverage license. (1985) 68 Ops. Cal. Atty. Gen. 263.

Annotations:

Right to attack validity of statute, ordinance, or regulation relating to occupational or professional license. 65 ALR2d 660.

Single or isolated transactions as falling within provisions of licensing requirements governing liquor dealers. 93 ALR2d 90.

NOTES OF DECISIONS

1. Generally
2. Constitutionality
3. Sale Without License
4. Transfer of License

1. Generally

This statute is unenforceable in a national park which the state has ceded to the United States with a reservation only to the right to "tax persons and corporations therein." Collins v. Yosemite Park & Curry Co. (1938) 304 US 518, 58 S Ct 1009, 82 L Ed 1502, 1938 US LEXIS 1030.

There is no inherent right to engage in business of selling alcoholic beverages. Kirchhubel v. Munro (1957, Cal App 1st

Dist) 149 Cal App 2d 243, 308 P2d 432, 1957 Cal App LEXIS 2024.

There is no inherent right in citizen to sell intoxicating liquors by retail; it is not privilege of citizen of state or of United States, and since it is business attended with danger to community, it may be prohibited or be permitted under such conditions as will limit to utmost its evils. Jacques, Inc. v. State Board of Equalization (1957, Cal App 3d Dist) 155 Cal App 2d 448, 318 P2d 6, 1957 Cal App LEXIS 1307.

This section had no application as to right of original licensee to have license retransferred pursuant to lease agreement. Cavalli v. Macaire (1958, Cal App 1st Dist) 159 Cal App 2d 714, 324 P2d 336, 1958 Cal App LEXIS 2060.

Department's determination that liquor business was owned in part by licensee's husband and that license should be suspended indefinitely was not supported by substantial evidence where, among other things, both real property on which premises were located and license were purchased in wife's name as sole owner and improvements, even if made by husband on wife's property out of community funds, gave him no interest therein. Ciambetti v. Department of Alcoholic Beverage Control (1958, Cal App 3d Dist) 161 Cal App 2d 340, 326 P2d 535, 1958 Cal App LEXIS 1739.

The validity of a caterer's permit issued pursuant to Bus. & Prof. Code, § 23399 and Cal. Admin. Code [now Cal Code Reg], tit. 4, reg. 60.5, is dependent upon the existence of a valid, effective and unrevoked onsale alcoholic beverage license. Therefore, alcoholic beverage sales by individuals displaying a caterer's permit after revocation of their onsale license were without authority and were in violation of Bus. & Prof. Code, § 23300, prohibiting individuals from operating as licensees without a license. Department of Alcoholic Beverage Control v. Locker (1982, Cal App 2d Dist) 129 Cal App 3d 381, 181 Cal Rptr 55, 1982 Cal App LEXIS 1330.

2. Constitutionality

Right to possess, make or deal in intoxicating liquor is not a privilege or such property right that state legislation prohibiting, restricting or regulating its manufacture, use, possession, distribution or sale violates US Const, Fourteenth Amendment. Cooper v. State Board of Equalization (1955, Cal App 1st Dist) 137 Cal App 2d 672, 290 P2d 914, 1955 Cal App LEXIS 1242.

Liquor license has certain attributes of property, but it is type of property which state, under police power, has power to control and regulate. Cooper v. State Board of Equalization (1955, Cal App 1st Dist) 137 Cal App 2d 672, 290 P2d 914, 1955 Cal App LEXIS 1242.

Governing authority may, in exercise of police power for protection of public morals, health and safety, grant privilege of selling alcoholic beverages on such terms and conditions as it may determine. Kirchhubel v. Munro (1957, Cal App 1st Dist) 149 Cal App 2d 243, 308 P2d 432, 1957 Cal App LEXIS 2024.

Strict regulation of business of selling alcoholic beverages is public policy of state, and good moral character of licensees is important in such regulation. Jacques, Inc. v. State Board of Equalization (1957, Cal App 3d Dist) 155 Cal App 2d 448, 318 P2d 6, 1957 Cal App LEXIS 1307.

In a proceeding for the suspension of a bar owner's on-sale general license to sell alcoholic beverages, the introduction in evidence of the bar owner's written admission that he had purchased a quantity of beer from an unlicensed vendor for resale in his business did not deprive the bar owner of due process of a law, such license to sell intoxicants is not a proprietary right within the meaning of due process. Mumford v. Department of Alcoholic Beverage Control (1968, Cal App 4th Dist) 258 Cal App 2d 49, 65 Cal Rptr 495, 1968 Cal App LEXIS 2386.

3. Sale Without License

A person who sells without a license is guilty of a violation, even though the sale was one that could not lawfully be made by a licensee. People v. Minter, 73 Cal App 2d Supp 994, 167 P2d 11.

In a prosecution for selling whiskey without a license, where the defendant was asked if he would sell some good whiskey and he produced a bottle bearing the label "Old Crow Whisky, 100 Proof" upon which were unbroken United States Government revenue stamps, although the bottle was never opened and sampled, it was presumed that the statutes prohibiting misbranding had been obeyed and the bottle contained whiskey. People v. Minter, 73 Cal App 2d Supp 994, 167 P2d 11.

In a prosecution for selling alcoholic beverages without a license (B & P C, § 23300) the trial court correctly ruled, and instructed the jury, that the statute defined a strict liability, *malum prohibitum* offense wherein neither guilty knowledge nor intent need be shown, and that a good faith belief that one has a legal right to sell alcoholic beverages is not a legal defense to violations alleged if one, in fact, has no then valid license to sell alcoholic beverages. People v. Guinn (1983, Cal App Dep't Super Ct) 149 Cal App 3d Supp 1, 196 Cal Rptr 696, 1983 Cal App LEXIS 2471.

4. Transfer of License

Where contract for purchase of partner's interest in on-sale liquor license, business and assets provided that purchaser and remaining partner should form partnership to operate new business, that all parties should seek transfer of license to new firm, and that title should pass to purchaser on issuance of new license, purchaser had no interest in business, its assets or profits pending transfer of license, and he was precluded from seeking appointment of receiver. Rondos v. Superior Court of Solano County (1957, Cal App 3d Dist) 151 Cal App 2d 190, 311 P2d 113, 1957 Cal App LEXIS 1743.

If contract for purchase of interest in on-sale business is silent as to when title is to pass, provisions of this section will be read into agreement and prevent transfer of title except coincidentally with transfer of liquor license. Rondos v. Superior Court of Solano County (1957, Cal App 3d Dist) 151 Cal App 2d 190, 311 P2d 113, 1957 Cal App LEXIS 1743.

§ 23301. Penalty for operation without license.

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 3, as amended Stats 1937 ch 758 § 4.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.
Punishment for misdemeanors: B & P C § 25617.
Punishment for felonies: B & P C § 25618.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:

Sale of equipment intended for and used in unlicensed manufacture of beer as aiding and abetting or advising and encouraging purchaser in violation of this section. 42 Ops. Cal. Atty. Gen. 80.

Annotations:
Right to attack validity of licensing law in criminal or civil proceeding for violation of provisions therein. 65 ALR2d 660.

ARTICLE 2

Fees

[Added Stats 1953 ch 152 § 1.]

Collateral References:
Pertinent administrative regulations: 4 Cal Code Reg §§ 55 et seq.

§ 23320. Types of licenses and fees; Adjustments

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

Name &; License Type Number:	Fee Effective 01/01/10
(1) Beer manufacturer:	
(a) Beer manufacturers that produce 60,000 barrels or less a year (Type 23)	$161.00
(b) All other beer manufacturers (Type 1)	$1334.00
(c) Branch Office —Small Beer Manufacturers (Type 23D)	$85.00
—Beer Manufacturers (Type 1D)	$85.00
(2) Winegrower or wine blender (to be computed only on the gallonage produced or blended) (Type 2 & Type 22):	
—5,000 gallons or less	$62.00
—Over 5,000 gallons to 20,000 gallons per year	$115.00
—Over 20,000 to 100,000 gallons per year	$208.00
—Over 100,000 to 200,000 gallons per year	$274.00
—Over 200,000 gallons to 1,000,000 gallons per year	$406.00
—For each 1,000,000 thereof over 1,000,000 gallons an additional	$265.00
Winegrower (Branch Office) - (Type 2D)	$85.00
(3) Brandy manufacturer (Type 3)	$271.00
Brandy manufacturer (Branch Office) (Type 3D)	$248.00
(4) Distilled spirits manufacturer (Type 4)	$444.00
(5) Distilled spirits manufacturer's agent (Type 5)	$444.00
(5a) California winegrower's agent (Type 27)	$444.00
(6) Still (Type 6)	67.00
(7) Rectifier (Type 7)	$444.00
(7a) Distilled spirits rectifier's general license (Type 24)	$444.00
(8) Wine rectifier (Type 8)	$444.00
(9) Beer & wine importer (Type 9)	$67.00
(10) Beer & wine importer's general license (Type 10)	$296.00
(11) Brandy importer (Type 11)	$67.00
(12) Distilled spirits importer (Type 12)	$67.00
(13) Distilled spirits importer's general license (Type 13)	$444.00
(14) Public warehouse (Type 14)	$67.00
(15) Customs broker (Type 15)	$67.00
(16) Wine broker (Type 16)	$90.00
(17) Beer & wine wholesaler (Type 17)	$296.00
(18) Distilled spirits wholesaler (Type 18)	$444.00

(18a) California brandy wholesaler (Type 25).....	$444.00
(19) Industrial alcohol dealer (Type 19).....	$90.00
(20) Retail package off-sale beer & wine (Type 20)...	$242.00
(21) Retail package off-sale general license (Type 21) and controlled access cabinet permit (Type 66).....	$537.00
(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) cabinet permit (Type 66).....	$248.00
(23) On-sale beer & wine eating place (Type 41)...	$335.00
(24) On-sale beer & wine license for trains (per train) (Type 43).....	$100.00
(25) On-sale beer license for fishing party boats (per boat) (Type 44).....	$100.00
(26) On-sale beer & wine license for boats (per boat) (Type 45).....	$100.00
(27) On-sale beer & wine license for airplanes (per scheduled flight) (Type 46).....	$100.00
(28) On-sale general license (Types 47, 48, 57, 70, 75, 78, 78D (for 78D see Section 23396.2)) and club caterer's permit (Type 58):	
—In cities of 40,000 population or over.....	$846.00
—In cities of less than 40,000 but more than 20,000 population.....	$620.00
—In all other localities.....	$551.00
Duplicate on-sale general license (Types 47D, 48D, 57D) and portable bar license (Type 68):	
—In cities of 40,000 population or over.....	$609.00
—In cities of less than 40,000 but more than 20,000 population	$360.00
—In all other localities.....	$284.00
(29) On-sale general license for seasonal business (Type 49):	
—In cities of 40,000 population or over (per quarter).....	$215.00
—In cities of less than 40,000 but more than 20,000 population (per quarter)	$153.00
—In all other localities (per quarter).....	$134.00
Duplicate on-sale general license for seasonal business (Type 49D)	
—In cities of 40,000 population or over (per quarter)	$153.00
—In cities of less than 40,000 but more than 20,000 population (per quarter)	$90.00
—In all other localities (per quarter).....	$71.00
(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.....	$488.00
—In cities of less than 40,000 but more than 20,000 population	$366.00
—In all other localities.....	$325.00
(31) On-sale general license for trains and sleeping cars (Type 53)..	$189.00
—Duplicate on-sale general license for trains and sleeping car companies (Type 53D).....	$67.00

(32) On-sale general license for boats (Type 54)	$491.00
(33) On-sale general license for airplanes (Type 55)	$491.00
—Duplicate on-sale general license for air common carriers (Type 55D)	$67.00
(34) On-sale general license for vessels of more than 1,000 tons burden (Type 56) and for Maritime Museum (Type 76)	$189.00
—Duplicate on-sale general license for vessels of more than 1,000 tons burden (Type 56D) and for Maritime Museum (Type 76D)	$67.00
(35) On-sale general bona fide public eating place intermittent dockside license for vessels of more than 7,000 tons displacement (Type 62) ..	$531.00
(36) On-sale special beer & wine license for hospitals, convalescent homes, and rest homes (Type 63)	$83.00
(37) On-sale beer & wine seasonal (Type 59) and on-sale beer seasonal (Type 60) —Operating period 3-9 months	$208.00
—Operating period 3-6 months.....	$141.00

(b) Beginning January 1, 2013, and each January 1 thereafter, the department may adjust each of the fees specified in this 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 2011, and each April annually thereafter, has increased under the same index over the month of April 2010, 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.

Added Stats 2012 ch 327 § 4 (SB 937), effective January 1, 2013.

Former Sections:

Former B & P C § 23320, similar to the present section, was added Stats 2001 ch 488 § 3, amended Stats 2008 ch 751 § 1, effective September 30, 2008, and repealed Stats 2012 ch 327§ 3, effective January 1, 2013.

Former B & P C § 23320, similar to the present section, was added Stats 1953 ch 152 § 1, amended Stats 1st Ex Sess 1954 ch 22 § 3, Stats 1955 ch 447 § 18, ch 954 § 4, 1955, ch 1221 § 1, effective June 23, 1955, Stats 1957 ch 2307 § 1, effective July 16, 1957, Stats 1959 ch 2192 § 1, Stats 1961 ch 1687 § 1, Stats 1965 ch 499 § 3, Stats 1967 ch 1559 § 1, operative April 1, 1968, Stats 1969 ch 1466 § 6, ch 1467 § 1, Stats 1970 ch 1518 § 1, Stats 1971 ch 831 § 1, Stats 1972 ch 970 § 1, effective August 16, 1972, ch 1280 § 1.5, Stats 1973 ch 783 § 2, Stats 1978 ch 971 § 1, Stats 1980 ch 676 § 36, Stats 1985 ch 519 § 1, and repealed Stats 2001 ch 488 § 2.

Former B & P C § 23320, similar to the present section, was added Stats 2001 ch 488 § 3, amended Stats 2008 ch 751 § 1 (AB 1389), effective September 30, 2008, repealed Stats 2012 ch 327, § 3, effective January 1, 2013.

Historical Derivation:

(a) Former B & P C § 23320, as added Stats 2001 ch 488 § 3, amended Stats 2008 ch 751 § 1, effective September 30, 2008.

(b) Former B & P C § 23320, as added Stats 1953 ch 152 § 1, amended Stats 1st Ex Sess 1954 ch 22 § 3, Stats 1955 ch 447 § 18, ch 954 § 4, 1955, ch 1221 § 1, Stats 1957 ch 2307 § 1, Stats 1959 ch 2192 § 1, Stats 1961 ch 1687 § 1, Stats 1965 ch 499 § 3, Stats 1967 ch 1559 § 1, Stats 1969 ch 1466 § 6, ch 1467 § 1, Stats 1970 ch 1518 § 1, Stats 1971 ch 831 § 1, Stats 1972 ch 970 § 1, ch 1280 § 1.5, Stats 1973 ch 783 § 2, Stats 1978 ch 971 § 1, Stats 1980 ch 676 § 36, Stats 1985 ch 519 § 1

(c) Stats 1935 ch 330 § 5, as amended Stats 1937 ch 758 § 6, Stats 1945 ch 1401 § 3, Stats 1949 ch 1348 § 1, Stats 1951 ch 1257 § 2.

(d) Stats 1933 ch 658 § 17.

(e) Former Pol C § 3381, as amended by Act of April 1, 1872.

(f) Stats 1861 ch 401 § 81.

Cross References:

Surcharge on annual license fees: B & P C § 23083.5.

Necessity for license: B & P C § 23300.

Penalty for operation without license: B & P C § 23301.

Rights and obligations of licensees: B & P C §§ 23355 et seq.

Issuance of club license: B & P C § 23430.
Issuance of veterans' club licenses: B & P C § 23452.
Retailer's on–sale license: B & P C § 24045.
Renewal of licenses: B & P C § 24048.
Possession on premises of goods not covered by license: B & P C § 25607.
Disposition of fees and tax moneys: B & P C § 25761.
Surcharge: B & P C § 23083.5.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[1], 18.20[2], 18.21[3], 18.22[2], 18.40[3], 18.101, 18.126, 18.165, 18.200[1], 18.221[1], 18.222[1].

Attorney General's Opinions:
Delivery of beer to temporary licensee on Sunday. 21 Ops. Cal. Atty. Gen. 87.
Effect of additional fees imposed by 1954 amendment. 21 Ops. Cal. Atty. Gen. 256.
Operator of commercial enterprise who offers and provides complimentary alcoholic beverages to any interested adult guest, customer or passenger of the business or service while at the same time charging for product provided or service rendered will be deemed to have "sold" alcoholic beverages, thereby necessitating alcoholic beverage license. 68 Ops. Cal. Atty. Gen. 263.

Annotations:
Right to attack validity of licensing law provisions for license fees or taxes. 65 ALR2d 660.
Validity of statutory classifications based on population—intoxicating liquor statutes. 100 ALR3d 850.

NOTES OF DECISIONS

1. Generally
2. Applicability
3. Legislative Intent
4. Seasonal Business

Decisions under Former B & P C § 23320

1. Generally
Where the prescribed fee is not tendered with an application for a license and the license is issued or renewed without its payment because of an injunction prohibiting collection pending ultimate determination of the validity of the licensing statute, an action to collect the fee may be brought following the reversal of the judgment in the injunction suit. People v. Schmidt (1941, Cal App) 48 Cal App 2d 255, 119 P2d 766, 1941 Cal App LEXIS 788.
This statute provides for a complete scheme of beer licensing, and the board of equalization may not add to that scheme a license not contemplated or directly or indirectly authorized by the legislature. Blatz Brewing Co. v. Collins (1948, Cal App) 88 Cal App 2d 438, 199 P2d 34, 1948 Cal App LEXIS 1487.

2. Applicability
Requirement of license for sale of intoxicating liquor is unenforceable in national park which state has ceded to United States with reservation only of right to "tax" persons and corporations therein. Collins v. Yosemite Park & Curry Co. (1938) 304 US 518, 58 S Ct 1009, 82 L Ed 1502, 1938 US LEXIS 1030.

3. Legislative Intent
By providing for types of licenses to be issued legislature demonstrated its intent to keep clubs separate and apart from public eating places and public premises that may obtain on-sale general licenses for alcoholic beverages. Harris v. Alcoholic Beverage Control Appeals Board (1962, Cal App 1st Dist) 201 Cal App 2d 567, 20 Cal Rptr 227, 1962 Cal App LEXIS 2628.
Legislature demonstrated its recognition of bona fide club as distinct type of licensee when it provided for annual fees of each type of license. Harris v. Alcoholic Beverage Control Appeals Board (1962, Cal App 1st Dist) 201 Cal App 2d 567, 20 Cal Rptr 227, 1962 Cal App LEXIS 2628.

4. Seasonal Business
The constitution and the statutes use the terms "seasonal business" and "seasonal license" to mean the same thing. Johnstone v. Richardson (1951, Cal App) 103 Cal App 2d 41, 229 P2d 9, 1951 Cal App LEXIS 1121.
A seasonal business is a business located in a seasonal area in which consumer demand fluctuates during different periods of the year, and the business need not be closed and locked during any part of the year. Johnstone v. Richardson (1951, Cal App) 103 Cal App 2d 41, 229 P2d 9, 1951 Cal App LEXIS 1121.

§ 23320.1. Special on–sale general licenses

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.

Added Stats 1961 ch 1914 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.21[1], 18.30[1], 18.200[1].

§ 23320.2. [Section repealed 2001.]

Added Stats 1977 ch 245 § 1. Amended Stats 1992 ch 900 § 5 (AB 432). Repealed Stats 2001 ch 488 § 4 (AB 1298). The repealed section related to annual renewal fee.

§ 23320.25. [Section repealed 1994.]

Added Stats 1992 ch 900 § 6 (AB 432), effective September 24, 1992, operative until July 1, 1993. Repealed operative January 1, 1994, by its own terms. The repealed section related to an annual surcharge.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23320.3. [Section repealed 2001.]

Added Stats 1983 ch 1034 § 1, effective September 22, 1983. Amended Stats 1992 ch 900 § 7 (AB 432), effective September 24, 1992. Repealed Stats 2001 ch 488 § 5 (AB 1298). The repealed section related to a surcharge applicable to the annual fees provided for in Section 23320.

§ 23320.5. 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.

Added Stats 1990 ch 1337 § 2 (AB 3620).

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 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).

Added Stats 1993 ch 1025 § 2 (SB 1022). Amended Stats 1999 ch 288 § 1 (SB 791).

Amendments:
1999 Amendment: (1) Designated the former section to be subd (a); **(2)** amended subd (a) by adding **(a)** "statistically valid testing" after "and supervise a" in the first sentence; and **(b)** ", including the reimbursement of any importer or retailer for the wholesale cost of any wine tested," in the second sentence; and **(3)** added subd (b).

Note—Stats 1993 ch 1025 provides:
SECTION 1. The Legislature finds and declares all of the following:
(a) The wine industry plays a significant role in California's economy, providing jobs and revenue, attracting foreign investment, promoting exports and tourism, and enhancing the state's image around the world.
(b) California's wine industry is a world leader in quality and production techniques, with California wines enjoying increasing popularity throughout the world.
(c) Past reports concerning minute traces of lead detectable in a handful of wines produced in other states and regions have prompted consumer concerns about the safety of wines generally.
(d) Testing by state and federal regulators has since demonstrated that the vast majority of wine sold in California contains lead at levels no higher than those often seen in many fresh fruits, vegetables, and other wholesome agricultural products, and that the levels of lead, if any, in California's wines are generally among the world's lowest.
(e) An industry–funded program already provides warnings advising pregnant women not to drink, utilizing point–of–sale and point–of–display notices that convey a uniform clear and reasonable warning message specified by the state's "Proposition 65" regulations.
(f) Compliance with a new more stringent limit on lead levels in wine will obviate any need for new warnings concerning lead that might dilute the impact and undermine the effectiveness of the uniform warnings now provided pursuant to existing federal laws and the state's "Proposition 65" regulations.
(g) This act, which shall be known, and may be cited, as the "Wine Safety Act" shall establish the world's most stringent limit on the maximum allowable levels of lead in wines sold in California, and shall establish a mechanism whereby the cost of ensuring industry compliance with the new standard is funded by California's wine producers and importers.
(h) To minimize the burden on interstate and foreign commerce, it is the intent of the Legislature that the sampling method and testing protocol used by the State Department of Health Services to quantify levels of lead in wine shall be consistent with the testing protocol and, to the extent practicable, the sampling method that may be used by the federal Food and Drug Administration or the federal Bureau of Alcohol, Tobacco and Firearms to quantify levels of lead in wine.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23320.7. [Section repealed 2000.]

Added Stats 1993 ch 1025 § 3 (SB 1022), operative until January 1, 2000. Repealed, operative January 1, 2000, by its own terms. The repealed section related to annual fees.

§ 23321. Issuance of licenses for trains, cars of sleeping car companies, 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 19, ch 954 § 6, ch 1221 § 2, effective June 23, 1955.

Amendments:
1955 Amendment: Substituted the section for the former

section which read: "In fixing license fees for on–sale general licenses, the board may place common carrier boats and trains in a separate classification or separate classifications, and fix different or lessor license fees for boats or for trains than those fixed for other on–sale general licenses, giving consideration to the limited number of possible customers on boats or on trains and the limited number of hours within which it is practicable to exercise the license on a boat or on a train."

Historical Derivation:
Stats 1935 ch 330 § 5, as amended Stats 1937 ch 758 § 6, Stats 1945 ch 1401 § 3, Stats 1949 ch 1348 § 1, Stats 1951 ch 1257 § 2.

Cross References:
Service of beverages on trains, etc., under on–sale licenses: B & P C § 23397.
"Common carrier" and "inland waters": Pub Util C § 211.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.21[2], 18.200[1].

Attorney General's Opinions:
Effect of additional fees imposed by 1954 Amendment to § 23320. 23 Ops. Cal. Atty. Gen. 256.

§ 23321.5. [Section repealed 1963.]

Added Stats 1955 ch 954 § 7. Repealed Stats 1963 ch 319 § 9, ch 1040 § 2. The repealed section related to issuance of license to air common carrier selling distilled spirits on board airplanes.

§ 23321.6. Issuance of licenses for vessels

The license for vessels or 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.

Added Stats 1959 ch 2192 § 1.5.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.21[2], 18.200[1].

§ 23321.7. Issuance of on–sale general bona fide public eating place intermittent dockside license to specified vessels

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.

Added Stats 1969 ch 1466 § 2. Amended Stats 1972 ch 970 § 2, effective August 16, 1972; Stats 1981 ch 170 § 1; Stats 1985 ch 519 § 2.

Amendments:
1972 Amendment: Substituted "10,000" for "15,000" wherever it appears.
1981 Amendment: Substituted "100" for "45" before "calendar days" in the fourth sentence.
1985 Amendment: Amended the first sentence by **(1)** substituting "7,000" for "10,000" wherever it appears; and **(2)** deleting ", respecting which vessel a duplicate license has also been issued under Section 23321.6" at the end of the sentence.

Cross References:
License fee: B & P C § 23954.7.
Sale of alcoholic beverages on trains, boats, and airplanes: B & P C § 23397.
Limitation on number of licensed premises: B & P C §§ 23815 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.21[2], 18.200[1].

§ 23322. [Section repealed 1992.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 20; Stats 1969 ch 1123 § 1. Repealed Stats 1992 ch 838 § 2 (AB 2858). The repealed section related to quarterly reductions of specified fees; exceptions.

Historical Derivation:
Stats 1935 ch 330 § 5, as amended Stats 1937 ch 758 § 6, Stats 1945 ch 1401 § 3, Stats 1949 ch 1348 § 1, Stats 1951 ch 1257 § 2.

§ 23323 [Section repealed 2004.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 21. Repealed Stats 2004 ch 437 § 2 (AB 3085), effective September 9, 2004. The repealed section related to unrestricted power to make refunds.

Historical Derivation:
Stats 1935 ch 330 § 5, as amended Stats 1937 ch 758 § 6, Stats 1945 ch 1501 § 3, Stats 1949 ch 1348 § 1, Stats 1951 ch 1257 § 2.

§ 23324. [Section repealed 1971.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 22. Repealed Stats 1971 ch 831 § 2. The repealed section related to prorating amount of beverage authorized to be sold where license is applied for after beginning of tax year.

Historical Derivation:
Stats 1935 ch 330 § 5, as amended Stats 1937 ch 758 § 6, Stats 1945 ch 1501 § 3, Stats 1949 ch 1348 § 1, Stats 1951 ch 1257 § 2.

§ 23325. Determination of fee where graduated according to amount of beverages produced under license

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 5, as amended Stats 1937 ch 758 § 6, Stats 1945 ch 1501 § 3, Stats 1949 ch 1348 § 1, Stats 1951 ch 1257 § 2.

Cross References:
"Gallon" and "wine gallon": B & P C § 23031.
Rules and regulations by department: B & P C § 25750.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23326. [Section repealed 1971.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 23, ch 1221 § 3, effective June 23, 1955. Repealed Stats 1971 ch 831 § 3. The repealed section related to off–sale general licensees.

Historical Derivation:
Stats 1935 ch 330 § 22, as amended Stats 1937 ch 758 § 18, Stats 1945 ch 1401 § 14.

§ 23327. Wine grower's license; Annual report; Additional fee

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 24.

Amendments:
1955 Amendment: Substituted "department" for "board" wherever it appears.

Historical Derivation:
Stats 1935 ch 330 § 22a, as added Stats 1937 ch 758 § 19, amended Stats 1945 ch 1401 § 14.1.

Cross References:
"Wine": B & P C § 23007.
Rules and regulations by department: B & P C § 25750.

Collateral References:
Cal. Forms Pleading & Practice (Matthew Bender®) ch 471 "Investigations By Public Agencies".
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23328. Failure to report; Estimate; Arbitrary assessment; Notice to delinquent

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 25; Stats 1971 ch 831 § 4.

Amendments:
1955 Amendment: Substituted "department" for "board" wherever it appears.
1971 Amendment: Amended the first sentence by (1) substituting "Section 23327" for "Sections 23326 and 23327"; (2) deleting "the retail sales of distilled spirits or of" before "wine produced"; and (3) substituting "by" for ", as the case may be, of" after "wine produced".

Historical Derivation:
Stats 1935 ch 330 § 22b, as added Stats 1937 ch 758 § 21, amended Stats 1945 ch 1401 § 15.

Cross References:
"Distilled spirits": B & P C § 23005.
"Wine": B & P C § 23007.
Violations of regulations relating to books, records, and reports: B & P C § 25616.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23329. Unsatisfactory report; Additional assessment; Offsets; Notice

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 26; Stats 1971 ch 831 § 5.

Amendments:
1955 Amendment: Substituted "department" for "board" wherever it appears.
1971 Amendment: Substituted "Section 23327" for "Sections 23326 and 23327".

Historical Derivation:
Stats 1935 ch 330 § 22c, as added Stats 1937 ch 758 § 22, amended Stats 1945 ch 1401 § 16.

Cross References:
Penalty for operation without license: B & P C § 23301.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23330. Petition for reassessment; Time for

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 27.

Amendments:
1955 Amendment: Substituted "department" for "board" in the first sentence.

Historical Derivation:
Stats 1935 ch 330 § 22d,, as added Stats 1937 ch 758 § 22.1, amended Stats 1945 ch 1401 § 17.

Cross References:
Hearing: B & P C § 24300.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23331. Hearing; Notice; Continuances

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 28.

Amendments:
1955 Amendment: Substituted "department" for "board" wherever it appears.

Historical Derivation:
Stats 1935 ch 330 § 22d, as added Stats 1937 ch 758 § 22.1, amended Stats 1945 ch 1401 § 17.

Cross References:
Hearing: B & P C § 24300.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Annotations:
Right to attack validity of licensing law as affected by nature of proceeding in which attack is made. 65 ALR2d 660.

§ 23332. Finality of decision of department; Payment of assessments

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 29.

Amendments:
1955 Amendment: Substituted "department" for "board" wherever it appears.

Historical Derivation:
Stats 1935 ch 330 § 22d, as added Stats 1937 ch 758 § 22.1, amended Stats 1945 ch 1401 § 17.

Cross References:
Manner of giving notice of act of department: B & P C § 25760.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23333. [Section repealed 1961.]

Added Stats 1955 ch 1221 § 4. Repealed Stats 1961 ch 811 § 1. The repealed section related to obligation of off–sale general licensee to file report as to gross retail sales.

Former Sections:
There was another section of this number which was added by Stats 1953 ch 152 § 1, as B & P C § 24402, renumbered B & P C § 23333 by Stats 1955 ch 1842 § 13, and renumbered B & P C § 23334 by Stats 1957 ch 37 § 3.

§ 23334. Books of accounts to be kept by on– or off–sale general licensees; Records

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 records 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.

Added Stats 1953 ch 152 § 1. as B & P C § 24402. Amended and renumbered B & P C § 23333 Stats 1955 ch 1842 § 13. Renumbered by Stats 1957 ch 37 § 3.

Amendments:
1955 Amendment: Substituted "department" for "board".

Historical Derivation:
Stats 1935 ch 330 § 24.4, as added Stats 1937 ch 758 § 26, amended Stats 1945 ch 1401 § 22, Stats 1947 ch 1566 § 5.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.166, 18.200[1].

ARTICLE 3

Rights and Obligations of Licensees

[Added Stats 1953 ch 152 § 1.]

Collateral References:
Witkin & Epstein, Criminal Law (3d ed), Punishment §§ 211, 212.
Pertinent administrative regulations: 4 Cal Code Reg §§ 27, 55 et seq., 4–132.

§ 23355. Rights and privileges of licensees

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1959 ch 2191 § 1; Stats 1974 ch 823 § 1.

Amendments:
1959 Amendment: Added the second and third sentences.
1974 Amendment: Deleted the former second and third sentences which read: "Deliveries of distilled spirits by a licensee to another 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."

Historical Derivation:
Stats 1935 ch 330 § 6 1st par p 1127, as amended by Stats 1937 ch 758 § 7 p 2132, Stats 1941 ch 1044 § 1 p 2702, Stats 1945 ch 1401 § 4 p 2621, Stats 1947 ch 839 § 1 p 2003, Stats 1949 ch 1348 § 2 p 2351, Stats 1951 ch 1257 § 3 p 3119.

Cross References:
Time within which accusations against licensees for violating certain sections to be filed: B & P C §§ 24207, 24208.

Collateral References:
Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally
2. Constitutionality
3. Applicability
4. Evidence
5. Responsibility of Licensee

1. Generally
Finding of department that licensee had repeatedly violated section was tantamount to finding that continuance of license would be "contrary to public welfare." Martin v. Alcoholic Bev. Etc. Appeals Bd. (1959) 52 Cal 2d 287, 341 P2d 296, 1959 Cal LEXIS 203.
Liquor licenses are property and usually have substantial value. Pacific Firestone Escrow Co. v. Food Giant Markets, Inc. (1962, Cal App 2d Dist) 202 Cal App 2d 155, 20 Cal Rptr 570, 1962 Cal App LEXIS 2457.
The fact that the Department of Alcoholic Beverage Control properly filed charges against partners who had entered into an agreement requiring an independent concessionaire to operate a bar and restaurant under its own name, using the partners' liquor license, and that the partners admitted the guilt and paid a fine, did not establish any relationship of principal and agent between the partners and the concessionaire so as to make the partners liable for the debts of the concessionaire to food and liquor wholesalers who had sold to the concessionaire. Associated Creditors' Agency v. Davis (1975) 13 Cal 3d 374, 118 Cal Rptr 772, 530 P2d 1084, 1975 Cal LEXIS 175.

2. Constitutionality
Right to possess, make or deal in intoxicating liquor is not a privilege or such property right that state legislation prohibiting, restricting or regulating its manufacture, use, possession, distribution or sale violates US Const, Fourteenth Amendment. Cooper v. State Board of Equalization (1955, Cal App 1st Dist) 137 Cal App 2d 672, 290 P2d 914, 1955 Cal App LEXIS 1242.
Liquor license has certain attributes of property, but it is type of property which state, under police power, has power to control and regulate. Cooper v. State Board of Equalization (1955, Cal App 1st Dist) 137 Cal App 2d 672, 290 P2d 914, 1955 Cal App LEXIS 1242.

3. Applicability
This section had no application as to right of original licensee to have license retransferred pursuant to lease agreement. Cavalli v. Macaire (1958, Cal App 1st Dist) 159 Cal App 2d 714, 324 P2d 336, 1958 Cal App LEXIS 2060.

4. Evidence

Department's determination that liquor business was owned in part by licensee's husband and that license should be suspended indefinitely was not supported by substantial evidence where, among other things, both real property on which premises were located and license were purchased in wife's name as sole owner and improvements, even if made by husband on wife's property out of community funds, gave him no interest therein. Ciambetti v. Department of Alcoholic Beverage Control (1958, Cal App 3d Dist) 161 Cal App 2d 340, 326 P2d 535, 1958 Cal App LEXIS 1739.

5. Responsibility of Licensee

Owner of liquor license has responsibility to see to it that license is not used in violation of law, and as matter of general law knowledge and acts of employee or agent are imputable to licensee. Garcia v. Martin (1961, Cal App 1st Dist) 192 Cal App 2d 786, 14 Cal Rptr 59, 1961 Cal App LEXIS 2002.

On-sale licensee has affirmative duty to maintain properly operated premises. Ballesteros v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 234 Cal App 2d 694, 44 Cal Rptr 633, 1965 Cal App LEXIS 1054.

§ 23355.1. Deliveries of distilled spirits by licensees; Handling of another's products; Sale of wine at auction

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.

Added Stats 1974 ch 823 § 2. Amended Stats 1997 ch 774 § 1 (AB 1082); Stats 1998 ch 639 § 1 (AB 2416); Stats 1999 ch 699 § 1 (AB 1407).

Amendments:

1997 Amendment: (1) Generally eliminated "such"; **(2)** added "or her" after "deliver to under his" in subd (b), and after "delivery under his" in subd (c); and **(3)** added subd (d).

1998 Amendment: Added "consigned by any person, whether or not the auctioned wine is "vintage wine" as defined in Section 23104.6," in subd (d).

1999 Amendment: Added "or annual wine auction sales revenues of at least five million dollars ($5,000,000)" in subd (d).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23355.2. Sale of alcoholic beverages by hotel or motel by means of controlled access beverage cabinet

(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.

Added Stats 1985 ch 280 § 1. Amended Stats 1986 ch 458 § 1; Stats 1991 ch 726 § 1 (AB 1784).

Amendments:

1986 Amendment: (1) Added "having an on–sale license" in the introductory clause of subd (b); **(2)** deleted former subd (b)(5) which read: "(5) Distilled spirits shall not be sold by means of a controlled access alcoholic beverage cabinet unless an off–sale general license is also issued for the premises."; **(3)** added subds (c) and (d); and **(4)** redesignated former subds (c) and (d) to be subds (e) and (f).

1991 Amendment: Added "or an on–sale general license for restricted service lodging establishments" in the first sentence of subd (c) and in subd (d).

Note—Stats 1985 ch 280 provides:

SEC. 2. The Legislature declares that nothing in this act shall be construed in any manner whatsoever as modifying, revoking, repealing, or otherwise altering the prohibitions of Article 2 (commencing with Section 25631) of Chapter 16 of this division.

Cross References:

Hours of sale and delivery of alcoholic beverages: B & P C §§ 25631 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.21[1], 18.21[4], 18.200[1].

§ 23356. Manufacturer's or wine grower's licenses; Authorized activities

Any manufacturer's or winegrower'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, winegrower'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.

Added Stats 1953 ch 152 § 1. Amended Stats 2004 ch 437 § 3 (AB 3085), effective September 9, 2004.

Amendments:

2004 Amendment: In addition to making technical changes, **(1)** substituted the introductory clause for the former introductory clause and former subd (a) which read: "Any manufacturer's or wine grower's license authorizes the person to whom issued to do any of the following:

"(a) To become a manufacturer or producer of the alcoholic beverage specified in the license."; and **(2)** redesignated former subds (b)–(d) to be subds (a)–(c).

Historical Derivation:
Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:
Types of licenses and annual fees therefor: B & P C § 23320.
Warehouse receipts, bills of lading and other documents of title: UCC §§ 7101 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[2], 18.200[1].

Law Review Articles:
Review of Selected 2008 California Legislation: Business and Profession: Heard it Through the Grapevine: Chapter 28 Saves California Wine Competitions From Prohibition-Era Law. 40 McGeorge L. Rev. 303.

Attorney General's Opinions:
Absence of necessity for issuance of off–sale general license to holder of wine grower's or brandy manufacturer's license despite fact that given county may have excess number of off–sale general licenses allowed by § 23817. 30 Ops. Cal. Atty. Gen. 327.

§ 23356.1. Winetastings conducted by licensee; Sales or orders; Rules

(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, 23701f, 23701g, 23701i, 23701k, 23701*l*, 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.

Added Stats 1972 ch 673 § 1. Amended Stats 1973 ch 809 § 1; Stats 2003 ch 270 § 1 (AB 1505); Stats 2007 ch 246 § 1 (SB 108), effective January 1, 2008.

Amendments:
1973 Amendment: (1) Added subd (c); and **(2)** redesignated former subd (c) to be subd (d).
2003 Amendment: In addition to making technical changes, added the second and third sentences of subd (a).
2007 Amendment: Added "23701f, 23701g, 23701i," after "Section 23701a, 23701b, 23701d, 23701e," in subd (a).

Cross References:
Authority under winegrower's agent's license: B & P C § 23373.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[2], 18.200[1].

Law Review Articles:
Review of Selected 2008 California Legislation: Business and Profession: Heard it Through the Grapevine: Chapter 28 Saves California Wine Competitions From Prohibition-Era Law. 40 McGeorge L. Rev. 303.

§ 23356.2. Beer and wine manufactured for personal or family use; Donated to nonprofit organization

(a) No license or permit shall be required for the manufacture of beer or wine for personal or family use, and not for sale, by a person over 21 years of age. The aggregate amount of beer or wine with respect to any household shall not exceed (1) 200 gallons per calendar year if there are two or more adults in the household or (2) 100 gallons per calendar year if there is only one adult in the household.

(b) Beer or wine produced pursuant to this section may be removed from the premises where made only under any of the following circumstances:

(1) For use, including tasting by judges, in a bona fide competition or exhibition.

(2) For personal or family use.

(3) When donated to a nonprofit organization for use as provided in subdivision (c).

(c)(1) Beer or wine pursuant to this section may be donated to a nonprofit organization for sale at

fundraising events conducted solely by and for the benefit of the nonprofit organization. Beer and wine donated pursuant to this subdivision may be sold by the nonprofit organization only for consumption on the premises of the fundraising event, under a license issued by the department to the nonprofit organization pursuant to this division.

(2) Beer or wine donated and sold pursuant to this subdivision shall bear a label identifying its producer and stating that the beer or wine is homemade and not available for sale or for consumption off the licensed premises. The beer or wine is not required to comply with other labeling requirements under this division. However, nothing in this paragraph authorizes the use of any false or misleading information on a beer or wine label.

(3) A nonprofit organization established for the purpose of promoting home production of beer or wine, or whose membership is composed primarily of home brewers or home winemakers, shall not be eligible to sell beer or wine pursuant to this subdivision.

(d) Except as provided in subdivision (c), this section does not authorize the sale or offering for sale by any person of any beer or wine produced pursuant to this section.

(e) Except as provided herein, nothing in this section authorizes any activity in violation of Section 23300, 23355, or 23399.1.

Added Stats 1978 ch 458 § 1. Amended Stats 1984 ch 334 § 1; Stats 2008 ch 28 § 2 (SB 607), effective June 6, 2008; Stats 2009 ch 140 § 22 (AB 1164), effective January 1, 2010; Stats 2010 ch 328 § 25 (SB 1330), effective January 1, 2011; Stats 2013 ch 463 § 2 (AB 1425), effective January 1, 2014.

Amendments:

1984 Amendment: Added the second paragraph.

2008 Amendment: (1) Designated the former first paragraph to be subd (a); (2) designated the former second paragraph as subd (c); (3) amended subd (a) by (a) substituting "(1)" for "(a)" before "200 gallons"; (b) substituting "the household" for "such household" both times it appears; and (c) substituting "(2)" for "(b)" before "100 gallons"; and (4) added subds (b), (d) and (e).

2009 Amendment: (1) Added the comma after "exhibitions" in subds (c) and (d); and (2) amended the first sentence of subd (d) by (a) substituting "homemakers' contests" for "homemaker's contests"; and (b) adding the comma after "tastings".

2010 Amendment: (1) Substituted "21 years of age" for "the age of 21 years" in the first sentence of subds (a) and (b); (2) deleted the comma before "or (2)" in the second sentence of subd (a); and (3) substituted "judgings" for "judging" in the first sentence of subd (d).

2013 Amendment: Substituted the section for former section which read: "(a) No license or permit shall be required for the manufacture of beer for personal or family use, and not for sale, by a person over 21 years of age. The aggregate amount of beer with respect to any household shall not exceed (1) 200 gallons per calendar year if there are two or more adults in the household or (2) 100 gallons per calendar year if there is only one adult in the household. (b) No license or permit shall be required for the manufacture of wine for personal or family use, and not for sale, by a person over 21 years of age. The aggregate amount of wine with respect to any household shall not exceed (1) 200 gallons per calendar year if there are two or more adults in the household or (2) 100 gallons per calendar year if there is only one adult in the household. (c) Any beer manufactured pursuant to this section may be removed from the premises where manufactured for use in competition at organized affairs, exhibitions, or competitions, including homemakers' contests, tastings, or judgings. (d) Any wine made pursuant to this section may be removed from the premises where made for personal or family use, including use at organized affairs, exhibitions, or competitions, such as homemakers' contests, tastings, or judgings. Wine used under this section shall not be sold or offered for sale. (e) Except as provided herein, nothing in this section authorizes any activity in violation of Section 23300, 23355, or 23399.1."

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:

Review of Selected 2008 California Legislation: Business and Profession: Heard it Through the Grapevine: Chapter 28 Saves California Wine Competitions From Prohibition-Era Law. 40 McGeorge L. Rev. 303.

§ 23356.3. Winetastings; Wines furnished by out–of–state winegrower

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.

Added Stats 1982 ch 393 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23356.5. Wine blender's license; 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 product 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.

Added Stats 1965 ch 499 § 4. Amended Stats 1967 ch 1067 § 1.

Amendments:
1967 Amendment: Added subd (e).

Editor's Notes—See 1965 Note following B & P C § 23013.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[2], 18.200[1].

§ 23356.6. Statutory provisions pertaining to winegrowers to apply to 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.

Added Stats 1965 ch 499 § 5.

Editor's Notes—See the 1965 Note following B & P C § 23013.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23356.7. Absence of effect of statute on winegrowers' licenses; Transfer of license

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.

Added Stats 1965 ch 499 § 6.

Editor's Notes—See the 1965 Note following B & P C § 23013.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23356.8. Wine blender's license; Prohibition as to issuance or ownership of 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.

Added Stats 1968 ch 1056 § 1. Amended Stats 2013 ch 463 § 3 (AB 1425), effective January 1, 2014.

Amendments:
2013 Amendment: Deleted the former second paragraph which read: "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."

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23356.9. Wine tasting activity on or off premises prohibited

A wine blender's license does not authorize winetasting activities or the conducting or sponsoring of wine tastings either on or off the wine blender's licensed premises.

Added Stats 1968 ch 1056 § 2. Amended Stats 2013 ch 463 § 4 (AB 1425), effective January 1, 2014.

Amendments:
2013 Amendment: Deleted the former second paragraph which read: "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."

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23357. Licensed beer manufacturers

(a) A licensed beer manufacturer may, at the licensed premises of production, sell to consumers for consumption off the premises beer that is produced and bottled by, or produced and packaged for, that manufacturer. Licensed beer manufacturers may also exercise any of the following privileges:

(1) Sell such beer to any person holding a license authorizing the sale of beer .

(2) Sell such 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.

(3) 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.

(b) 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.

(c) Notwithstanding any other provision of this division, a licensed beer manufacturer that pro-

duces more than 60,000 barrels of beer a year may manufacture cider or perry at the licensed premises of production and may sell cider or perry to any licensee authorized to sell wine. For purposes of this subdivision, "cider" and "perry" have the meanings provided in Section 4.21(e)(5) of Title 27 of the Code of Federal Regulations. This subdivision does not alter or amend the classification of cider or perry as wine for any purpose other than that provided by this section.

Added Stats 1953 ch 152 § 1. Amended Stats 1977 ch 294 § 1; Stats 1982 ch 1019 § 1; Stats 1988 ch 116 § 1, effective May 25, 1988; Stats 1991 ch 726 § 2 (AB 1784); Stats 2013 ch 379 § 1 (AB 779), effective January 1, 2014.

Amendments:

1977 Amendment: Added "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" in the first sentence.

1982 Amendment: Added the second sentence.

1988 Amendment: Added the third and fourth sentences.

1991 Amendment: Added the first sentence.

2013 Amendment: (1) Added subdivision designations (a), (a)(1)-(a)(3), and (b); (2) amended the first sentence of the introductory paragraph of subd (a) by (a) substituting "that is" for "which is"; and (b) adding the comma after "and packaged for"; (3) added "exercise any of the following privileges:" in the second sentence of the introductory paragraph of subd (a); (4) added "such" after "Sell" in subds (a)(1) and (a)(2); (5) substituted the period for "and may" at the end of subd (a)(1); (6) deleted "Licensed beer manufacturers may also" at the beginning of subd (a)(3); and (7) added subd (c).

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23357.1. Out–of–state beer manufacturer's certificate; Authorized shipment by California manufacturer

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.

Added Stats 1971 ch 1457 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23357.2. Out-of-state beer manufacturer's certificate; Provisions of applicant's undertaking and agreement; Suspension or revocation; Fees

(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 (c) and (d) 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.

Added Stats 1971 ch 1457 § 2. Amended Stats 1992 ch 900 § 8 (AB 432), effective September 24, 1992; Stats 1993 ch 49 § 1 (AB 330); Stats 1998 ch 639 § 2 (AB 2416); Stats 2001 ch 488 § 6 (AB 1298); Stats 2010 ch 296 § 2 (SB 1480), effective January 1, 2011.

Amendments:

1992 Amendment: Deleted "directly in the General Fund of the State Treasury, rather than" after "deposited" in subd (d).

1993 Amendment: Added ", including, but not limited to, Chapter 12 (commencing with Section 25000) of Division 9, and Section 25509, to the same extent as licensees" in subd (a)(1).

1998 Amendment: (1) Substituted "any" for "such" after "Sacramento or in" in subd (b); and **(2)** amended subd (c) by **(a)** deleting "of investigation of the applicant and" after "department's cost"; and **(b)** substituting "the" for "such" after "issuance of".

2001 Amendment: Substituted **(1)** "shall" for "will" after "controlled by it" in subd (a)(1) and after "That it" at the beginning of subd (a)(2); and **(2)** subd (c) for former subd (c) which read: "(c) The annual fees for an out–of–state beer manufacturer's certificate shall be determined by the department, and shall approximate the department's cost of issuance of the certificate."

2010 Amendment: Substituted "subdivisions (c) and (d)" for "subdivisions (b) and (c)" in subd (c).

Note—Stats 1992 ch 900 provides:

SECTION 1. The Legislature finds and declares that the regulation of the sale and use of alcoholic beverages is among the highest priorities of state government. The abuse of alcohol can lead to a myriad of other criminal, legal, social, and economic problems. The fair, stable, and effective administration and enforcement of the Alcoholic Beverage Control Act and related laws, therefore, must be insured.

Cross References:

State funds: Gov C §§ 16300 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23357.3. Beer tastings; Restrictions; Permit and fee; Regulations

(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.

Added Stats 1988 ch 533 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23357.4. Beer tastings for public educational purposes

(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.

Added Stats 1995 ch 216 § 1 (AB 1166).

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23358. Licensed winegrowers

(a) Licensed winegrowers, notwithstanding any other provisions of this division, may also exercise the following privileges:

(1) Sell wine and brandy to any person holding a license authorizing the sale of wine or brandy.

(2) Sell wine and brandy to consumers for consumption off the premises where sold.

(3) Sell wine to consumers for consumption on the premises.

(4) 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.

(5) Produce spirits of wine and blend those spirits of wine into wine produced by the winegrower or sell those spirits of wine to an industrial alcohol dealer.

(b) 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.

(c) A winegrower shall actually produce on his or her 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 or her licensed premise or premises and any licensed branch premise or premises.

(d) The department may, if it shall determine for good cause that the granting of any such privilege would be contrary to public welfare or morals, deny the right to exercise any on-sale privilege authorized by this section in either a bona fide eating place the main entrance to which is within 200 feet of a school or church, or on the licensed winery premises, or both.

(e) Nothing in this section or in Section 23390 is intended to alter, diminish, replace, or eliminate the authority of a county, city, or city and county from exercising land use regulatory authority by law to the extent the authority may restrict, but not eliminate, privileges afforded by these sections.

Added Stats 1953 ch 152 § 1. Amended Stats 1959 ch 750 § 1; Stats 1965 ch 499 § 9; Stats 1967 ch 1067 § 2; Stats 1970 ch 631 § 1; Stats 1978 ch 16 § 1; Stats 1993 ch 238 § 1 (SB 113); Stats 2008 ch 127 § 1 (AB 2004), effective January 1, 2009; Stats 2010 ch 129 § 2 (AB 1649), effective January 1, 2011.

Amendments:

1959 Amendment: (1) Added “, notwithstanding any other provisions of this division,”; (2) added “and brandy” after “sell wine”; (3) substituted “or brandy and” for “and also may sell wine”; and (4) deleted “in quantities of 52 gallons or less per sale” after “consumers”.

1965 Amendment: Added the second sentence.

1967 Amendment: (1) Amended the first sentence of the first paragraph by adding (a) the comma after “or brandy”; and (b) all that part following “where sold”; and (2) added the second paragraph.

1970 Amendment: Amended the first paragraph by adding (1) “and brandy” after “to consumers” in the first sentence; and (2) the second sentence.

1978 Amendment: Substituted “all wines and brandies, regardless of source,” for “only wine and brandy” after “also sell” the second time it appears.

1993 Amendment: In addition to making changes in punctuation; **(1)** added “beer,” before “wine” wherever it appears; **(2)** added the third and fourth sentences in the first paragraph.

2008 Amendment: (1) Divided the first paragraph into the introductory clause of subd (a), subds (a)(1), (a)(2) and (a)(4); (2) added “exercise the following privileges:” in the introductory clause of subd (a); (3) substituted the period for the comma after “wine or brandy” in subd (a)(1); (4) amended subd (a)(2) by (a) adding “Sell wine”; (b) adding “brandy”; (c) deleting “, and may also”at the end; and (d) adding the period at the end; (5) added subd (a)(3); (6) added “or her” both times it appears in subd (c); (7) amended subd (d) by (a) substituting “any such privilege” for “such privilege”; (b) substituting “any on-sale privilege” for “the on-sale privilege”; (c) substituting “either a bona fide” for “any bona fide”; and (d) adding “, or on the licensed winery premises, or both”; and (8) added subd (e).

2010 Amendment: Added subd (a)(5).

Historical Derivation:
Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:
“Winegrower”: B & P C § 23013.
“Gallon” and “wine gallon”: B & P C § 23031.
Types of licenses and annual fees therefor: B & P C § 23320.
Prohibition against sale of wine or brandy to consumers for consumption off the premises where sold or engaged in winetasting activities at more than one licensed branch premise: B & P C § 23390.5.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23358.1. [Section repealed 1994.]

Added Stats 1985 ch 519 § 3. Repealed Stats 1994 ch 318 § 1 (SB 1376). The repealed section related to sale of wine for

consumption on premises of bona fide licensed eating place in San Diego County.

§ 23358.2. Winegrower or brandy manufacturer; Products that may be sold at licensed premises

Notwithstanding any other provision of this division, a winegrower or brandy manufacturer, at his or her licensed premises where the sale of wine or brandy is authorized or permitted, when selling to consumers, 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 or her 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.

Added Stats 1969 ch 1277 § 1, operative July 1, 1970. Amended Stats 1970 ch 100 § 1, effective May 7, 1970, operative July 1, 1970; Stats 2010 ch 129 § 3 (AB 1649), effective January 1, 2011; Stats 2011 ch 296 § 27 (AB 1023), effective January 1, 2012.

Amendments:

1970 Amendment: Added (1) "when selling to consumers for consumption off the premises"; and (2) the second sentence.

2010 Amendment: (1) Amended the first sentence by (a) deleting "for consumption off the premises" before "is authorized"; and (b) substituting the comma for "for consumption off the premises" after "to consumers"; and (2) deleted the former last sentence which read: "This section shall become operative on July 1, 1970."

2011 Amendment: Added "or her" before "licensed premises" in the first and second sentences.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23358.3. Out-of-state distilled spirits shipper's certificate; Issuance; Suspension or revocation; Fees

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 (c) and (d) of Section 23320.

Added Stats 1982 ch 562 § 1. Amended Stats 1985 ch 458 § 1; Stats 2001 ch 488 § 7 (AB 1298); Stats 2010 ch 296 § 3 (SB 1480), effective January 1, 2011.

Amendments:

1985 Amendment: (1) Substituted "grower's" for "growers' " in the first and second paragraphs; **(2)** added "brandy manufacturers, wine blenders," in the first paragraph; **(3)** substituted "is" for "shall be" after "storage license" in the second paragraph; and **(4)** deleted the former third paragraph which read: "This section shall be operative until January 1, 1986, and on that date is repealed."

2001 Amendment: Substituted the second paragraph for the former second paragraph which read: "The annual fee for a wine grape grower's storage license is fifty–six dollars ($56)."

2010 Amendment: Substituted "subdivisions (c) and (d)" for "subdivisions (b) and (c)" in the second paragraph.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.165, 18.200[1].

§ 23358.5. [Section repealed 1994.]

Added Stats 1987 ch 342 § 1. Repealed Stats 1994 ch 318 § 2 (SB 1376). The repealed section related to sale by small producer of wine and brandy for consumption in county of second class (Orange County) and winegrower as member of pension plan.

§ 23358.6. [Section repealed 1994.]

Added Stats 1992 ch 362 § 1 (SB 1617). Repealed Stats 1994 ch 318 § 3 (SB 1376). The repealed section related to ownership of on–sale license by licensed winegrower.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23359. Winegrower's license; Additional rights

A winegrower'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 winegrowers to be used exclusively in the production of wine.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:

"Brandy manufacturer": B & P C § 23014.

Types of licenses and annual fees therefor: B & P C § 23320.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23360. Licensed 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1959 ch 750 § 2.

Amendments:

1959 Amendment: Added (1) ", notwithstanding any other provisions of this division,"; (2) "and wine to consumers for consumption off the premises where sold, and"; and (3) "and wine" at the end of the section.

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:

"Brandy manufacturer": B & P C § 23014.

Prohibition against sale of wine or brandy to consumers for consumption off the premises where sold or engaged in winetasting activities at more than one licensed branch premise: B & P C § 23390.5.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23361. Brandy manufacturer's licensee; Sale to winegrowers and consumers

A person holding a brandy manufacturer's license may also sell grape brandy, fruit brandy, or spirits of wine to licensed winegrowers 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.

Added Stats 1953 ch 152 § 1. Amended 1959 ch 750 § 3.

Amendments:

1959 Amendment: (1) Added "also" before "sell grape"; and (2) substituted ", and beverage brandy for sale to consumers for consumption off the premises" for "only, and not for beverage purposes".

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:

Use of tax–free ethyl alcohol by government agency or scientific university: B & P C § 23111.

Use of tax–free alcohol or industrial alcohol in certain products: B & P C § 23112.

Types of licenses and annual fees therefor: B & P C § 23320.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23362. Issuance of off–sale licenses to licensed winegrowers or brandy manufacturers

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 30th day of September, 1959.

Added Stats 1953 ch 152 § 1. Amended Stats 1959 ch 750 § 4; Stats 1988 ch 116 § 2, effective May 25, 1988.

Amendments:

1959 Amendment: (1) Deleted "for the premises for which he holds a wine grower's or brandy manufacturer's license and for any branch office maintained by the wine grower or brandy manufacturer" at the end of the first sentence; and (2) added the second and third sentences.

1988 Amendment: (1) Added "or a retail package off–sale beer and wine license" at the end of the first sentence; and **(2)** amended the second sentence by **(a)** substituting "these" for "such" after "issuance of"; and **(b)** adding "(commencing with Section 23815".

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:

"Winegrower": B & P C § 23013.

Prohibited economic interests in off–sale general licenses: B & P C § 25502.

Licensed wine grower or brandy manufacturer authorized to hold certain interests: B & P C § 25507.

Limitation on number of licensed premises: B & P C §§ 23815 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[2], 18.200[1].

Attorney General's Opinions:

Nontransferability of off–sale general license issued to holder of wine grower's or brandy manufacturer's license. 30 Ops. Cal. Atty. Gen. 327.

§ 23363. Licensed manufacturers of distilled spirits originally distilled in this State; Sale to licensees

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 con-

tinuously 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1959 ch 1588 § 1.

Amendments:

1959 Amendment: Added the second and third paragraphs.

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 389 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally
2. Distilled Spirits
3. Manufacturer
4. California Produced

1. Generally

Corporation that relies on section for asserted privilege of selling distilled spirits directly to retailers cannot at the same time attack its constitutionality. American Distilling Co. v. State Board of Equalization (1956, Cal App 1st Dist) 144 Cal App 2d 457, 301 P2d 495, 1956 Cal App LEXIS 1742.

2. Distilled Spirits

Definition of "distilled spirits," given in § 23005, controls determination whether corporation is manufacturer of distilled spirits under this section, or rectifier with respect to alcohol imported from another state and distilled here to make it fit for beverage purposes. American Distilling Co. v. State Board of Equalization (1956, Cal App 1st Dist) 144 Cal App 2d 457, 301 P2d 495, 1956 Cal App LEXIS 1742.

3. Manufacturer

Corporation is, with respect to alcohol imported from another state, manufacturer of distilled spirits, rather than rectifier, under evidence that, when alcohol arrives at corporation's plant, it is not fit for beverage purposes, but is then distilled, its impurities removed, and its proof reduced to make it fit for beverage purposes. American Distilling Co. v. State Board of Equalization (1956, Cal App 1st Dist) 144 Cal App 2d 457, 301 P2d 495, 1956 Cal App LEXIS 1742.

4. California Produced

Whiskey to which alcohol is added in production of another whiskey must be California produced whiskey to enable final product to meet test of section. American Distilling Co. v. State Board of Equalization (1956, Cal App 1st Dist) 144 Cal App 2d 457, 301 P2d 495, 1956 Cal App LEXIS 1742.

§ 23363.1. Distilled spirits tastings conducted by licensed distilled spirits manufacturer; Restrictions for off-premises tastings; Conditions for on-premises 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.

(b)(1) Distilled spirits tastings may be conducted by the licensee off the licensee's premises only for an event sponsored by a nonprofit organization. A distilled spirits manufacturer shall not sell or solicit sales of distilled spirits at such event. The sponsoring organization shall first obtain a permit from the department.

(2) For purposes of this subdivision, "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.

(c) Tastings on the licensee's premises shall be subject to the following conditions:

(1) Tastings of distilled spirits shall not exceed one-fourth of one ounce and shall be limited to no more than six tastes per individual per day.

(2) Tastings shall only include the products that are authorized to be produced or bottled by or for the licensee.

(3) A person under 21 years of age shall not serve tastes of distilled spirits.

(4) Tastings of distilled spirits shall not be given in the form of a cocktail or a mixed drink.

(d) Notwithstanding Section 25600, the licensee may provide distilled spirits without charge for any tastings conducted pursuant to this section. The licensee may charge for tastings conducted by the licensee on its licensed premises.

(e) This section shall not relieve the holder of a distilled spirits manufacturer's license of any civil or criminal liability arising out of a violation of Section 25602.

Added Stats 1997 ch 544 § 1 (SB 993). Amended Stats 2013 ch 366 § 2 (AB 933), effective January 1, 2014.

Amendments:

2013 Amendment: (1) Substituted subds (b)-(d) for former subds (b)-(d) which read: "(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."; and (2) added subd (e).

Note—Stats 2013 ch 366 provides:

SECTION 1. (a) The Legislature finds and declares that a tasting of distilled spirits or brandy is a presentation of samples of one or more distilled spirits or brandies, representing one or more distilled spirits or brandy manufacturers, to a group of consumers for the purpose of acquainting the tasters with the characteristics of the distilled spirits or brandy tasted.

(b) The Legislature also finds and declares 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 Sections 23363.1 and 23363.3 of the Business and Professions Code 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 these sections be construed accordingly.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23363.2. Licensee authorized to conduct off–premises tastings of distilled spirits; Restrictions; Permit

(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.

Added Stats 1997 ch 544 § 2 (SB 993).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23363.3. Brandy tastings conducted by licensed brandy manufacturer; Restrictions for off-premises tastings; Conditions for on-premises tastings

(a) A brandy manufacturer's license authorizes the licensee to conduct tastings of brandy produced or bottled by, or produced or bottled for, the licensee, on or off the licensee's premises.

(b)(1) A brandy manufacturer shall not sell or solicit sales of brandy at the event. The sponsoring organization shall first obtain a permit from the department.

(2) For purposes of this subdivision, "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.

(c) Tastings on the licensee's premises shall be subject to the following conditions:

(1) Tastings of brandy shall not exceed one-fourth of one ounce and shall be limited to no more than six tastes per individual per day.

(2) Tastings shall only include the products that are authorized to be produced or bottled by or for the licensee.

(3) A person under 21 years of age shall not serve tastes of brandy.

(4) Tastings of brandy shall not be given in the form of a cocktail or a mixed drink.

(d) Notwithstanding Section 25600, the licensee may provide brandy without charge for any tastings conducted pursuant to this section. The licensee may charge for tastings conducted by the licensee on its licensed premises.

(e) This section shall not relieve the holder of a brandy manufacturer's license of any civil or criminal liability arising out of a violation of Section 25602.

Added Stats 2013 ch 366 § 3 (AB 933), effective January 1, 2014.

Editor's Notes—Subd (b)(1) of this section appears as enacted.

Note—Stats 2013 ch 366 provides:

SECTION 1. (a) The Legislature finds and declares that a tasting of distilled spirits or brandy is a presentation of samples of one or more distilled spirits or brandies, representing one or more distilled spirits or brandy manufacturers, to a group of consumers for the purpose of acquainting the tasters with the characteristics of the distilled spirits or brandy tasted.

(b) The Legislature also finds and declares 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 Sections 23363.1 and 23363.3 of the Business and Professions Code 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 these sections be construed accordingly.

§ 23364. Sales by manufacturers of distilled spirits; Applicable provisions

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 [commencing with § 32001] 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 [commencing with § 32001] 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 1842 § 6.

Amendments:

1955 Amendment: Substituted "Part 14 of Division 2 of the Revenue and Taxation Code" for "this division" wherever it appears.

Historical Derivation:

Stats 1935 ch 330 § 6.9, as added Stats 1937 ch 758 § 9¾, amended Stats 1941 ch 328 § 1.

Cross References:

Necessity for license: B & P C § 23300.
Tax on distilled spirits: Rev & Tax C §§ 32201 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23365. Distribution of distilled spirits as dividend

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1973 ch 47 § 1, effective May 15, 1973, ch 680 § 1, effective September 21, 1973.

Amendments:

1973 Amendment (ch 47): Amended the first sentence by (a) substituting "Neither a" for "No" at the beginning of the section; (b) adding "nor a limited partnership required to maintain a register under Section 23405.1"; and (c) adding "or to its limited partners by return of capital contribution or share of profits,".

1973 Amendment (ch 680): Added "or licensed under Section 23405.2".

Historical Derivation:

Stats 1935 ch 330 § 6.2, as added Stats 1945 ch 1401 § 5.

Cross References:

Gifts and premiums on sales: B & P C § 25600.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23366. License of agent of manufacturer of distilled spirits

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 6 as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

Power to sell packages larger than one gallon: B & P C § 23385.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23366.1. Solicitation of consumer to purchase through specific retailer; Permissible sales to consumers

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.

Added Stats 1961 ch 2025 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23366.2. 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.

Added Stats 1979 ch 413 § 1.

Collateral References:
Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23366.3. Certificate; Issuance, suspension or revocation; Fees

(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 (c) and (d) 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.

Added Stats 1979 ch 413 § 2. Amended Stats 2001 ch 488 § 8 (AB 1298); Stats 2010 ch 296 § 4 (SB 1480), effective January 1, 2011.

Amendments:
2001 Amendment: Substituted **(1)** subd (c) for former subd (c) which read: "(c) The annual fees for an out–of–state distilled spirits shipper's certificate shall be determined by the department, and shall approximate the department's cost of investigation of the applicant and of issuance of such certificate."; and **(2)** amended subd (d) by **(a)** substituting "in the Alcohol" for "directly in the General Fund of the State Treasury, rather than in the Alcoholic"; and **(b)** adding the comma after "Fund".
2010 Amendment: Substituted "subdivisions (c) and (d)" for "subdivisions (b) and (c)" in subd (c).

Collateral References:
Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23366.5. Licenses authorizing solicitation of orders for licensees for sale to other licensees of wine or brandy

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.

Added Stats 1957 ch 2259 § 1. Amended Stats 1968 ch 212 § 1; Stats 1973 ch 783 § 3.

Amendments:

1968 Amendment: (1) Added ", beer and wine wholesaler's license"; (2) deleted "and on behalf of any licensee for the sale to other licensees of" after "orders for"; (3) added ", or both, which are"; and (4) added "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".

1973 Amendment: Added "California winegrower's agent's license,".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23367. Still license

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:

Penalty for operation without license: B & P C § 23301.
Types of licenses and annual fees therefor: B & P C § 23320.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally

Operation of still in State is special privilege, and not right, and one exercising such privilege has burden of establishing that he has legal right to do so. People v. Dal Porto (1936, Cal App) 17 Cal App 2d 755, 62 P2d 1061, 1936 Cal App LEXIS 652, rehearing denied (1936) 17 Cal App 2d 755, 63 P 2d 1199.

§ 23368. Rectifier's license

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 [commencing with § 32001] 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 1842 § 7.

Amendments:

1955 Amendment: Substituted "Part 14 of Division 2 of the Revenue and Taxation Code" for "this division".

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.
Tax on distilled spirits: Rev & Tax C §§ 32201 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23368.1. Authority under distilled spirits rectifier's general license; Limitations on issuance; Fee

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 Alcohol Beverage Control Fund.

Added Stats 1967 ch 1559 § 1.5. Amended Stats 2011 ch 296 § 28 (AB 1023), effective January 1, 2012.

Amendments:

2011 Amendment: (1) Added the comma after "importer's, rectifier's" in the third paragraph; and (2) substituted "Alcohol Beverage Control Fund" for "Alcoholic Beverage Control Fund" in the last paragraph.

Note—Stats 1967 ch 1559 provides:

SEC. 7. Any revenues derived from increases in fees or assessments, or any additional fees, provided by this act shall not be available for expenditure until appropriated.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.
Alcoholic Beverage Control Fund: B & P C § 25761.
State funds: Gov C §§ 16300 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23369. Qualification for rectifier's license

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 6 as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:
Types of licenses and annual fees therefor: B & P C § 23320.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23370. Issuance of distilled spirits manufacturer's agent's license; Construction

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23371. Rectifier performing functions as distilled spirits 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 6 as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:
Types of licenses and annual fees therefor: B & P C § 23320.
Wholesaler's license: B & P C §§ 23776 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23372. Wine rectifier's license

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 30, ch 1842 § 8.

Amendments:
1955 Amendment: Amended the first sentence by substituting (1) "Part 14 of Division 2 of the Revenue and Taxation Code" for "this division"; and (2) "department" for "board".

Historical Derivation:
Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:
Types of licenses and annual fees therefor: B & P C § 23320.
Tax on distilled spirits: Rev & Tax C §§ 32201 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23373. Authority under 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.

Added Stats 1973 ch 783 § 4. Amended Stats 2001 ch 567 § 1 (AB 1429), effective October 7, 2001.

Former Sections:
Former § 23373, relating to bottling or packaging license,

was added Stats 1953 ch 152 § 1 and repealed Stats 1959 ch 665 § 1.

Amendments:
2001 Amendment: (1) Amended subd (b) by **(a)** adding "or her"; and **(b)** substituting "that" for "which" both times it appears; and **(2)** amended subd (d) by **(a)** adding "or she"; and **(b)** substituting "25503.8, 25503.9, 25503.26, and 25503.85" for ", and 25503.9".

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23373.1. Holding of license of winegrower's agent by holder of wholesaler's or retail 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.

Added Stats 1973 ch 783 § 5.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23373.2. Representation of winegrower or brandy manufacturer

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

Added Stats 1973 ch 783 § 6.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23373.3. [Section repealed 1994.]

Added Stats 1973 ch 783 § 7. Repealed Stats 1994 ch 80 § 1 (AB 2346), effective May 20, 1994. The repealed section related to fair trade contracts for wine.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23373.4. Additional functions authorized under winegrower's agent's license

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.

Added Stats 1973 ch 783 § 8.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23373.5. Disciplinary action against winegrower or brandy manufacturer for violation committed by holder of winegrower's agent's license

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.

Added Stats 1973 ch 783 § 9.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23374. Importer's license

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:
Types of licenses and annual fees therefor: B & P C § 23320.
Importer's license: B & P C § 23775.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally
Repeal by 1937 statute of provision of Alcoholic Beverage Control Act imposing license fee on beer importers, could not affect right of people to collect fees from importer where right thereto had vested under act before repeal. People v. Schmidt (1941, Cal App) 48 Cal App 2d 255, 119 P2d 766, 1941 Cal App LEXIS 788.

§ 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.

Added Stats 1959 ch 2192 § 4.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 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.

Added Stats 1961 ch 1687 § 2.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23375. Public warehouse license; Duplicate

(a) 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.

(b) The department may issue to the holder of a public warehouse license a duplicate of the original public warehouse license for each additional warehouse operated by the licensee, which authorizes the exercise of all privileges of the original public warehouse license at the additional warehouse or warehouses. The fee for a duplicate public warehouse license shall be one dollar ($1).

(c) The term "duplicate public warehouse license," as used in this section, only applies herein.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 1600 § 2; Stats 2013 ch 337 § 1 (SB 818), effective January 1, 2014.

Amendments:
1955 Amendment: Substituted "wine cellar" for "storeroom" at the end of the section.
2013 Amendment: Added (1) subdivision designation (a); and (2) subds (b) and (c).

Historical Derivation:
Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:
"Public warehouse": B & P C § 23036.
Types of licenses and annual fees therefor: B & P C § 23320.

Collateral References:
Transportation in bond and warehousing of merchandise; bonded warehouses: 19 USCS § 1555.
Internal revenue bonded warehouses; entry of distilled spirits for deposit in storage: 26 USCS §§ 5231 et seq.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23375.5. Issuance of distilled spirits importer's general license; Prohibitions

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.

Added Stats 1959 ch 2192 § 5.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23375.6. Issuance of beer and wine importer's general license; Prohibitions

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.

Added Stats 1961 ch 1687 § 3.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23376. Custom broker's license

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:
Types of licenses and annual fees therefor: B & P C § 23320.

Collateral References:
Transportation in bond and warehousing of merchandise; bonded warehouses: 19 USCS § 1555.
Internal revenue bonded warehouses; entry of distilled spirits for deposit in storage: 26 USCS §§ 5231 et seq.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally
Section authorizes custom broker's license, and such licensee "may transfer to licensed importers" liquor brought

into state in bond; but § 23019 requires such licensee to act for others, not for himself. Ammex Warehouse Co. v. Department of Alcoholic Beverage Control (1963, SD Cal) 224 F Supp 546, 1963 US Dist LEXIS 8096, aff'd (1964) 378 US 124, 84 S Ct 1657, 12 L Ed 2d 743, 1964 US LEXIS 995.

§ 23377. Wine broker's license

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 30.5.

Amendments:

1955 Amendment: Substituted "department" for "board" in the last sentence.

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.
Rules and regulations by department: B & P C § 25750.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23378. Wholesaler's license

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 31.

Amendments:

1955 Amendment: Substituted "department" for "board".

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:

"Exporter" defined: B & P C § 23018.
Types of licenses and annual fees therefor: B & P C § 23320.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally

Section authorized wholesaler of alcoholic beverages to export but limits sales to persons holding licenses for sale of alcoholic beverages. Ammex Warehouse Co. v. Department of Alcoholic Beverage Control (1963, SD Cal) 224 F Supp 546, 1963 US Dist LEXIS 8096, aff'd (1964) 378 US 124, 84 S Ct 1657, 12 L Ed 2d 743, 1964 US LEXIS 995.

§ 23378.1. California brandy wholesaler's license; Number authorized; Fee

(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 that brandy, subject to all of the following conditions:

(1) The licensee shall:

(A) Maintain warehouse space either owned or leased by him or her or dedicated to his or her 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.

(B) Maintain at all times in his or her warehouse either owned or leased by him or her or in space dedicated to his or her 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 or she 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 con-

signment, and not acquired pursuant to a prior agreement to sell it to a specific licensee or licensees.

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

(4) The licensee, under the authority of his or her 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 those 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 Alcohol Beverage Control Fund.

Added Stats 1970 ch 1518 § 2. Amended Stats 2011 ch 296 § 29 (AB 1023), effective January 1, 2012.

Amendments:

2011 Amendment: In addition to making technical changes, (1) redesignated former (a)(1)(i) and (a)(1)(ii) to be subds (a)(1)(A) and (a)(1)(B); (2) added the comma after "10 cases or less" in the second sentence of subd (a)(2); and (3) substituted "Alcohol Beverage Control Fund" for "Alcoholic Beverage Control Fund" in subd (c).

Cross References:

Alcoholic Beverage Control Fund: B & P C § 25761.

State funds: Gov C §§ 16300 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23378.2. Issuance of retail package off–sale beer and wine licenses to licensed wholesalers or importers

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.

Added Stats 1988 ch 116 § 3, effective May 25, 1988. Amended Stats 1988 ch 284 § 1, effective July 7, 1988.

Amendments:

1988 Amendment: Substituted "wine and no other alcoholic beverages" for "only wine".

Note—Stats 1988 ch 284 provides:

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Chapter 68 of the Statutes of 1987 inadvertently removed longstanding statutory authority for delicatessens and groceries holding off–sale beer and wine licenses to wholesale wine in gift packs with food products. As a result, unless this defect is reversed by June 30, 1988, many small markets will be forced to divest themselves of their wine wholesale businesses. Therefore, it is necessary that this act go into immediate effect.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[2], 18.200[1].

§ 23379. Beer and wine wholesaler's license; Additional rights

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

State Department and agencies: Gov C §§ 11000 et seq.

State Department of Health Care Services: H & S C §§ 100100 et seq.

Sherman Food, Drug, and Cosmetic Law: H & S C §§ 109875 et seq.

Packaging, labeling, and advertising of food, etc.: H & S C §§ 110290 et seq.

Collateral References:

Federal Food, Drug, and Cosmetic Act: 21 USCS §§ 301 et seq.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23380. Industrial alcohol dealer's license

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 554 § 1.

Amendments:

1957 Amendment: Added "and also authorizes the importation and exportation of undenatured ethyl alcohol".

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:

Use of tax–free ethyl alcohol by governmental agency or scientific university: B & P C § 23111.

Use of tax–free alcohol or industrial alcohol in certain products: B & P C § 23112.

Types of licenses and annual fees therefor: B & P C § 23320.

No tax to be imposed upon sale of alcohol for use in trades: Rev & Tax C § 32052.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23381. Acts authorized by specified licenses

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 manufacturers, 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 32.

Amendments:

1955 Amendment: Substituted "department" for "board" in the last paragraph.

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

Warehouse receipts, bills of lading and other documents of title: UCC §§ 7101 et seq.

Collateral References:

Internal revenue bonded warehouses; entry of distilled spirits for deposit in storage: 26 USCS §§ 5231 et seq.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23382. Offer to sell distilled spirits stored in warehouse

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 6 as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:

Fair Packaging and Labeling Act: B & P C §§ 12601 et seq.

"Gallon" and "wine gallon": B & P C § 23031.

Warehouse receipts, bills of lading and other documents of title: UCC §§ 7101 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23383. Transfer of title to specified beverages stored in public warehouse to other licensees

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 licenses 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 33, ch 1600 § 3.

Amendments:

1955 Amendment: Substituted (1) "wine cellars" for "storerooms" in the first sentence; and (2) "department" for "board" in the second sentence.

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Collateral References:

Transportation in bond and warehousing of merchandise; bonded warehouses: 19 USCS § 1555.

Internal revenue bonded warehouses; entry of distilled spirits for deposit in storage: 26 USCS §§ 5231 et seq.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23384. Sale of tax–paid beverages mentioned in license to certain nonlicensees

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 34; Stats 1959 ch 1538 § 1; Stats 1982 ch 906 § 1.

Amendments:

1955 Amendment: Substituted "department" for "board".

1959 Amendment: Added "or veterans homes, and veterans homes maintained by the State of California".

1982 Amendment: (1) Added "or her" after "exercised under his"; **(2)** deleted a comma after "prescribed by the department"; and **(3)** added ", and Indian country or land dedicated for use by the Indians" at the end of the section.

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:

Veterans' home ofCalifornia: Mil & Vet C §§ 1010 et seq.

Imposition of excise tax on beer and wine sold pursuant to this section: Rev & Tax C § 32151.

Imposition of excise tax on distilled spirits: Rev & Tax C § 32201.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23385. Sale of distilled spirits by manufacturers and rectifiers for use in trades, professions, or industries

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:

"Gallon" and "wine gallon": B & P C § 23031.

No tax to be imposed upon sale of alcohol for use in trades: Rev & Tax C § 32052.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23386. Samples of alcoholic beverages

(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).

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 35; Stats 1998 ch 248 § 1 (AB 2285).

Amendments:

1955 Amendment: Substituted "department" for "board" in the first sentence.

1998 Amendment: (1) Designated the former section to be subd (a); **(2)** "that" for "which" after "alcoholic beverages" and "the rules that may" for "such rules as shall" in the first sentence of subd (a); and **(3)** added subd (b).

Historical Derivation:

Stats 1935 ch 330 § 6.5, as added Stats 1937 ch 758 § 8,

amended and renumbered B & P C § 6.45 by Stats 1945 ch 1401 § 7.

Cross References:
Prohibited sales, advertising, and promotional activities: B & P C § 25503.
Gifts and premiums on sales: B & P C § 25600.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally
2. Construction with Other Law

1. Generally
Samples of distilled spirits given away by wholesaler, rather than sales of liquor to another to be used by purchaser for samples, are not gratuitous in true sense, as use of samples is for purpose of encouraging sale of product, and Board of Equalization acted within its rule-making power in adopting rule requiring stamps to be attached to such samples. Tonkin Distributing Co. v. Collins (1942, Cal App) 50 Cal App 2d 790, 123 P2d 938, 1942 Cal App LEXIS 1009.

2. Construction with Other Law
B & P C § 25600 prohibits any licensee from giving any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage except as provided by rules, and the Department of Alcoholic Beverage Control's Rule 52(b) prohibits gifts of alcoholic beverages in connection with the sale of any alcoholic beverage. B & P C § 23386 authorizes wholesalers to give away samples in accordance with rules as shall be prescribed by the Department, and one such rule (Rule 52(a)), allows free samples only to other licensees, and not to consumers. Accordingly, the practice by which a beer brewer purchased its own products in bars or other drinking establishments, and offered customers the opportunity to exchange its product for whatever brand they were currently drinking (a practice commonly known as "trade spending" or "trade sampling"), was unlawful. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (1999, Cal App 4th Dist) 71 Cal App 4th 1518, 84 Cal Rptr 2d 621, 1999 Cal App LEXIS 466, review denied (1999) 1999 Cal. LEXIS 5470.

§ 23387. Sales by wholesalers or rectifiers for out–of–State delivery and use

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 or her license to persons who take delivery of the alcoholic beverages within this state for delivery or use outside of the state within 90 days from the date of the sale in accordance with rules and regulations prescribed by the department.

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1331 § 5; Stats 1955 ch 447 § 36; Stats 2006 ch 910 § 2 (AB 3065), effective January 1, 2007.

Amendments:
1955 Amendment: Substituted "department" for "board" at the end of the section.
2006 Amendment: Amended section by (1) adding "or her" after "mentioned in his"; (2) substituted "such" for "the" after "who take delivery of"; (3) substituted "state for delivery or use outside of the state" for "State for delivery or use without the State"; and (4) substituted "the" for "such" after "90 days from the date of".

Historical Derivation:
Stats 1935 ch 330 § 24.26, as added Stats 1941 ch 329 § 2.

Cross References:
Rules and regulations by department: B & P C § 25750.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23388. Sale of beer from wagons or trucks by manufacturers or wholesalers to licensees

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
(a) Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.
(b) Stats 1933 ch 178 § 2.

Cross References:
Types of licenses and annual fees therefor: B & P C § 23320.
Separate licenses for establishment having more than one location: B & P C § 24041.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23389. Sale and delivery of beer from branch office; Duplicate license

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 37; Stats 1957 ch 630 § 1; Stats 2001 ch 488 § 9 (AB 1298).

Amendments:

1955 Amendment: Substituted "The department" for "The board" at the beginning of the second sentence.

1957 Amendment: Added the second and third paragraphs.

2001 Amendment: **(1)** Amended the first paragraph of subd (a) by **(a)** adding "or her" wherever it appears; and **(b)** substituting "the fee specified in Section 23320" for "an amount equal to the license fee payable for a like period for a wholesale beer and wine license"; **(2)** amended the second paragraph by substituting **(a)** "the" for "such" after "this division" in the first sentence; and **(b)** "the" for "such" after "issuance of" in the second sentence; and **(3)** substituted "the" for "such" after "issuance of" in the third paragraph.

Historical Derivation:

(a) Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

(b) Stats 1933 ch 178 § 2.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

Separate licenses for establishment having more than one location: B & P C § 24041.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23390. Winegrower and brandy manufacturer off–site privileges; Duplicate license; Transferability

(a) 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 the following privileges:

(1) Production or manufacture.

(2) The sale of wine or brandy to consumers for consumption on the premises in a bona fide eating place.

(3) The sale or delivery of wine to consumers in containers supplied, furnished, or sold by the consumer.

(b) The department may 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.

(c) 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 38, ch 1600 § 4; Stats 1957 ch 630 § 2; Stats 1967 ch 1067 § 3; Stats 1970 ch 631 § 3; Stats 1981 ch 450 § 1; Stats 2001 ch 488 § 10 (AB 1298); Stats 2008 ch 127 § 2 (AB 2004), effective January 1, 2009; Stats 2009 ch 535 § 1 (AB 1470), effective January 1, 2010.

Amendments:

1955 Amendment: Substituted **(1)** "wine cellars" for "storerooms" in the first sentence; **(2)** "department" for "board" in the second sentence; and **(3)** "wine cellar" for "storeroom" in the third sentence.

1957 Amendment: Added the second and third paragraphs.

1967 Amendment: Added ", the sale of wine to consumers for consumption on the premises in a bona fide eating place," in the first sentence of the first paragraph.

1970 Amendment: Added "or brandy" in the first sentence of the first paragraph.

1981 Amendment: Added the last paragraph.

2001 Amendment: **(1)** Amended the first paragraph by **(a)** adding "or her" wherever it appears; **(b)** deleting "is an amount equal to the license fee payable for a like period for a wholesale beer and wine license," after "winegrower's license" in the last sentence; and **(c)** substituting "is as specified in Section 23320" for "an amount equal to the fee paid for the original license"; and **(2)** substituted "the" for "such" after "issuance of" in the second sentence of the second paragraph and near the beginning of the third paragraph.

2008 Amendment: Added ", the sale of wine to consumers for consumption on the licensed premises" in the first sentence of the first paragraph.

2009 Amendment: (1) Added subdivision designations; (2) added "the following privileges:" in the introductory clause of subd (a); (3) substituted the period for ", the sale of wine to consumers for consumption on the licensed premises," at the end of subd (a)(1); (4) substituted the period for ", and" at the end of subd (a)(2); and (5) amended subd (b) by (a) substituting "may issue" for "shall, upon request, issue" in the first sentence; and (b) deleting the former second and third paragraphs which read: "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."

Historical Derivation:

(a) Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

(b) Stats 1933 ch 178 § 2.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

Wine blender's licensee to exercise privileges of winegrower's license except to obtain or be issued duplicate winegrower's license as provided for in this Section: B & P C § 23356.5.

Separate licenses for establishment having more than one location: B & P C § 24041.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23390.5. Prohibition against sale at "licensed branch office"; Exceptions

(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 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 January 1, 1966, or any renewal or transfer thereof or at any licensed branch office opened by the licensee in place of such licensed branch office.

Added Stats 1965 ch 499 § 8. Amended Stats 2010 ch 129 § 4 (AB 1649), effective January 1, 2011.

Editor's Notes—See the 1965 Note following B & P C § 23013.

Amendments:

2010 Amendment: Amended subd (b) by substituting (a) "consumers or engage" for "consumers for consumption off the premises where sold or engaged" in the first sentence; and (b) "January 1, 1966," for "the effective date of this section".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23391. Violations in exercise of license privileges 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 39.

Amendments:

1955 Amendment: Substituted "department" for "board" wherever it appears.

Historical Derivation:

(a) Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

(b) Stats 1933 ch 178 § 2.

Cross References:

Hearing: B & P C § 24300.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Annotations:

Right to attack validity of licensing law as affected by nature of proceeding in which attack is made. 65 ALR2d 660.

§ 23392. Violations in connection with premises where manufacture of beer or production of wine is performed

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 40.

Amendments:

1955 Amendment: Substituted "department" for "board" wherever it appears.

Historical Derivation:

(a) Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

(b) Stats 1933 ch 178 § 2.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Annotations:

Right to attack validity of licensing law as affected by nature of proceeding in which attack is made. 65 ALR2d 660.

§ 23393. Retail package off–sale beer and wine license

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1965 ch 721 § 1.

Amendments:

1965 Amendment: Substituted "containers," for "packages and in quantities of 31 gallons or less per sale".

Historical Derivation:

(a) Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

(b) Stats 1933 ch 178 § 19.

Cross References:

"Gallon" and "wine gallon": B & P C § 23031.

Types of licenses and annual fees therefor: B & P C § 23320.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[1], 18.22[1], 18.200[1].

§ 23393.5. Limited off-sale retail wine license; Conditions; Application; Fee; Deposit of moneys collected

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

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

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

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

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

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

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

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

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

Added Stats 2011 ch 292 § 1 (AB 623), effective January 1, 2012. Amended Stats 2012 ch 162 § 7 (SB 1171), effective January 1, 2013, ch 327 § 5 (SB 937), effective January 1, 2013 (ch 327 prevails).

Amendments:

2012 Amendment: Substituted (1) "is delivered" for "are delivered" in subd (a)(4); (2) "premises" for "premise" in subd (b); and (3) "Alcohol Beverage Control Fund" for "Alcoholic Beverage Control Fund" in the last sentence of subd (e).

§ 23394. Off–sale general license

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.

Added Stats 1977 ch 1044 § 1.5, operative January 1, 1980. Amended Stats 1980 ch 24 § 1.

Former Sections:

Former § 23394, similar to the present section, was added Stats 1953 ch 152 § 1, amended Stats 1969 ch 1123 § 2, Stats 1975 ch 167 § 1, Stats 1977 ch 1044 § 1 and repealed, effective January 1, 1980, by its own terms.

Amendments:

1980 Amendment: Deleted **(1)** the former last sentence of the first paragraph which read: "An off–sale general license shall not authorize the purchase or sale of distilled spirits in packages containing less than six ounces or whiskey, gin, or vodka in packages containing one–tenth gallon."; and **(2)** the former second paragraph which read: "This section shall become operative on January 1, 1980."

Historical Derivation:

(a) Former B & P C § 23394, as added Stats 1953 ch 152 § 1, amended Stats 1969 ch 1123 § 2, Stats 1975 ch 167 § 1, Stats 1977 ch 1044 § 1.

(b) Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

(c) Stats 1933 ch 178 § 19.

Cross References:

"Gallon" and "wine gallon": B & P C § 23031.

Conformity with Federal standards: B & P C § 25171.

Beverages subject to seizure notwithstanding provisions of section: B & P C § 25350.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[1], 18.22[1], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally

Section does not authorize importation or exportation of alcoholic beverages. Ammex Warehouse Co. v. Department of Alcoholic Beverage Control (1963, SD Cal) 224 F Supp 546, 1963 US Dist LEXIS 8096, aff'd (1964) 378 US 124, 84 S Ct 1657, 12 L Ed 2d 743, 1964 US LEXIS 995.

§ 23394.5. Rooms or buildings in which off–sale general license privileges exercisable under single license

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.

Added Stats 1959 ch 198 § 1.

Note—Stats 1959 ch 198 provides:

SEC. 2. The provisions of this act shall not be retroactive in their application.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23394.7. No privileges under off-sale license permitted at any customer-operated checkout stand on licensee's premises

No privileges under an off-sale license shall be exercised by the licensee at any customer-operated checkout stand located on the licensee's physical premises.

Added Stats 2011 ch 726 § 2 (AB 183), effective January 1, 2012.

Note—Stats 2011 ch 726 provides:

SECTION 1. The Legislature finds and declares that allowing customers to purchase alcoholic beverages through self-service checkouts:

(a) Facilitates the purchase of alcoholic beverages by minors.

(b) Permits customers who are in an advanced state of intoxication to purchase additional alcoholic beverages, in violation of state law.

(c) Allows for greater theft of alcoholic beverages, thereby depriving the state of tax revenues.

NOTES OF DECISIONS

1. Generally
2. Construction

1. Generally

Advisory issued by the Department of Alcoholic Beverage Control providing that no alcoholic beverages could be sold through any checkout stand that was enabled to allow operation by the customer at the time the customer's check-out transaction commenced or at any point during the check-out process was a regulation subject to the APA because it was directed to the general class of retail off-sale liquor licensees that employed customer-operated checkout stands and because its interpretation of this section was not essentially rote, ministerial, or repetitive. Accordingly, the advisory was void. California Grocers Assn. v. Department of Alcoholic Beverage Control (2013, 3d Dist) 2013 Cal App LEXIS 748.

This section prohibits the sale of alcoholic beverages at any customer-operated checkout stand. The "at" in the statute refers to the checkout stand itself, and "customer-operated" modifies the term "checkout stand." California Grocers Assn. v. Department of Alcoholic Beverage Control (2013, 3d Dist) 2013 Cal App LEXIS 748.

2. Construction

Phrase "customer-operated checkout stand" describes the kind of checkout stand "at" which the sale of alcoholic beverages is prohibited. By contrast, this section does not use qualifying words that specify the function performed by the checkout stand, such as "when" or "by whom" the checkout stand is operated or "unless" a lock-out system is employed. California Grocers Assn. v. Department of Alcoholic Beverage Control (2013, 3d Dist) 2013 Cal App LEXIS 748.

§ 23395. Sale of bitters or similar preparations in packages of less than one–half pint

Nothing in this division prevents the sale, in packages of less than one–half pint, of bitters or other aromatic or flavoring or medicinal prepara-

tions, which are classed for taxing purposes as distilled spirits, by off–sale general licensees.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

(a) Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

(b) Stats 1933 ch 178 § 19.

Cross References:

Use of tax–free alcohol or industrial alcohol in certain products: B & P C § 23112.

Tax on distilled spirits: Rev & Tax C §§ 32201 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23396. On-sale license

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, 23038.2, or 23038.3.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 1779 § 3, operative January 1, 1957; Stats 1967 ch 1296 § 2; Stats 1968 ch 860 § 2; Stats 1969 ch 1123 § 3; Stats 2011 ch 702 § 2 (SB 339), effective January 1, 2012.

Amendments:

1955 Amendment: Added the second sentence.

1967 Amendment: Amended the second sentence by deleting (1) ", other than beers," after "beverages"; and (2) "public" after "bona fide".

1968 Amendment: Amended the second sentence by adding (1) ", other than beers,"; (2) "public"; and (3) "or 23038.1".

1969 Amendment: Amended the second sentence by (1) substituting the comma after "23038" for "or"; and (2) adding ", or 24045.1".

2011 Amendment: Substituted "or 23038.3" for "or 24045.1" in the second sentence.

Historical Derivation:

(a) Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

(b) Stats 1933 ch 178 § 19.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[1], 18.22[1], 18.200[1].

Attorney General's Opinions:

Prohibition against liquor licensee, holding general on–sale license for bona fide eating place, to lease or make concession agreement subletting restaurant operations on his licensed premises. 29 Ops. Cal. Atty. Gen. 95.

Rights of bona fide clubs holding on–sale general license, hotels using duplicate license in separate room and key clubs to restrict entrance to premises to members of particular club or organization only. 35 Ops. Cal. Atty. Gen. 93.

Operator of commercial enterprise who offers and provides complimentary alcoholic beverages to any interested adult guest, customer or passenger of the business or service while at the same time charging for product provided or service rendered will be deemed to have "sold" alcoholic beverages, thereby necessitating alcoholic beverage license. 68 Ops. Cal. Atty. Gen. 263.

NOTES OF DECISIONS

1. Generally

1. Generally

No separate proceedings were required to revoke the caterer's permit of persons whose alcoholic beverage onsale license was revoked; the permit became void upon revocation of the onsale license. Thus, there was no violation of the individuals' administrative due process rights by the absence of proceedings to invalidate their caterer's permit. Department of Alcoholic Beverage Control v. Locker (1982, Cal App 2d Dist) 129 Cal App 3d 381, 181 Cal Rptr 55, 1982 Cal App LEXIS 1330.

§ 23396.1. On–sale general license for 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 alcoholic beverages for consumption on the premises only as follows:

(1) By means of controlled access alcoholic beverage cabinets located in guestrooms, subject to the conditions specified in Section 23355.2.

(2) 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.

(3) Beer and wine in sealed containers to the licensee's transient guests and their invitees from a food sale area as defined in subdivision (c) located within the lodging establishment itself.

(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) "Food sale area" means a food facility, within the meaning of Section 113789 of the Health and Safety Code, that routinely offers for

sale, throughout the area's normal hours of operation each day to all of the lodging establishment's transient guests and their invitees, primarily items like prepackaged sandwiches, salads, snacks, candy, dairy products, water, soft drinks, and other nonalcoholic beverages in bottles or cans, and similar food items. The "food sale area" may also offer for sale various items such as health and beauty aids, cosmetics, nonprescription drugs, film, batteries, and similar sundries.

(d) 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.

(e) 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.

Added Stats 1991 ch 726 § 3 (AB 1784). Amended Stats 2010 ch 289 § 1 (SB 1260), effective January 1, 2011.

Amendments:

2010 Amendment: (1) Amended the introductory clause of subd (a) by (a) deleting "or furnish" before "alcoholic beverages"; and (b) substituting "only as follows" for "by means of"; (2) added "By means of" in subd (a)(1); (3) deleted "Furnishing alcoholic beverages only to their transient guests and their invitees" at the beginning of subd (a)(2); (4) added subds (a)(3) and (c); and (5) redesignated former subds (c) and (d) to be subds (d) and (e).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[1], 18.22[1], 18.200[1].

§ 23396.2. On–sale general license for wine, food and art cultural museum, and educational center

(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 offsale 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.

Added Stats 2000 ch 231 § 1 (SB 1511). Amended Stats 2005 ch 171 § 1 (SB 127), effective September 6, 2005.

Amendments:

2005 Amendment: (1) Deleted former second and third sentences of subd (a) which read: "Such off-sale privileges shall be limited to the sale of no more than six thousand (6,000) cases per calendar year of wine labeled with and otherwise bearing only the name, logo, trademark and/or other proprietary art owned by the wine, food and art cultural museum and educational center licensee. In no event shall such wine bear a name, logo, trademark and/or other proprietary art or statement identifying any other licensee."; and (2) substituted "shall include" for "includes" in subd (b)(1).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 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.

Added Stats 1996 ch 1098 § 1 (AB 684).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[1], 18.22[1], 18.200[1].

§ 23396.5. Removal of partially consumed beverage

Notwithstanding any other law, any on-sale licensee that maintains a bona fide eating place in

conjunction with such license, any on-sale beer and wine public premises licensee, or any winegrower that is exercising a privilege pursuant to Section 23358 or 23390 may allow any person who has purchased and partially consumed a bottle of wine to remove the partially consumed bottle from the premises upon departure.

Added Stats 1980 ch 72 § 1. Amended Stats 2008 ch 127 § 3 (AB 2004), effective January 1, 2009; Stats 2009 ch 535 § 2 (AB 1470), effective January 1, 2010.

Amendments:

2008 Amendment: Added "or any winegrower that is exercising a privilege pursuant to Section 23358,".

2009 Amendment: (1) Deleted "provision of" after "any other"; (2) substituted "that maintains" for ", which maintains"; (3) added "any on-sale beer and wine public premises licensee,"; (4) substituted "Section 23358 or 23390" for "Section 23358," and (5) substituted "the partially" for "such partially".

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23396.6. Issuance of instructional tasting license; Instructional tasting event; Fees

(a) The department may issue to the holder of an off-sale retail license an instructional tasting license at the premises of the off-sale retail license. An instructional tasting license shall not be issued to any of the following:

(1) Off-sale licensees at locations where motor vehicle fuel is sold, unless the licensee operates a fully enclosed off-sale retail area encompassing at least 10,000 square feet.

(2) Off-sale licensees at locations with a total of less than 5,000 square feet of interior retail space, unless the calendar quarterly gross sales of alcoholic beverages at the licensed location comprise at least 75 percent of the total gross sales of all products sold at the licensed premises. A licenseholder that is issued an instructional tasting license pursuant to this paragraph shall maintain records that separately reflect the gross sales of alcoholic beverages and the gross sales of all other products sold on the licensed premises.

(b) The provisions of Article 2 (commencing with Section 23815) of Chapter 5 and Section 23958.4 shall not apply to the issuance of an instructional tasting license, except that the department may expressly deny the issuance of an instructional tasting license for any premises located in an area of undue concentration of licenses as defined in paragraph (1) of subdivision (a) of Section 23958.4. Notwithstanding paragraph (3) of subdivision (c), the provisions of Article 2 (commencing with Section 23985) and Article 3 (commencing with Section 24011) of Chapter 6 shall apply to the issuance of an instructional tasting license.

(c) Notwithstanding subdivision (a) of Section 23386 and paragraph (3) of subdivision (c) of Section 25612.5, an instructional tasting license authorizes the licenseholder to allow an authorized licensee or the designated representative of an authorized licensee, to conduct an instructional tasting event at which tastes of alcoholic beverages may be served to consumers subject to the following limitations, and the limitations set forth in Section 25503.56:

(1)(A) At all times during an instructional tasting event, the instructional tasting event area shall be separated from the remainder of the off-sale licensed premises by a wall, rope, cable, cord, chain, fence, or other permanent or temporary barrier. The licenseholder shall prominently display signage prohibiting persons under 21 years of age from entering the instructional tasting event area.

(B) A licenseholder that permits a person under 21 years of age to enter and remain in the instructional tasting event area during an instructional tasting event is guilty of a misdemeanor. Any person under 21 years of age who enters and remains in the instructional tasting event area during an instructional tasting event 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.

(C) The licenseholder shall not permit any consumer to leave the instructional tasting area with an open container of alcohol.

(2) The instructional tasting license shall not authorize the licenseholder to conduct any on-sale retail sales to consumers attending the instructional tasting event.

(3) Unless otherwise restricted, an instructional tasting event may take place between the hours of 10 a.m. and 9 p.m.

(d) Unless the context otherwise requires, the definitions set forth in Section 25503.56 govern the construction of this section.

(e) An applicant for an instructional tasting license under this section shall, at the time of filing the application for the license, accompany the application with a fee of three hundred dollars ($300). The annual renewal fee for a license issued pursuant to this section shall be two hundred sixty-one dollars ($261) and shall be subject to subdivisions (b) and (c) of Section 23320. Fees collected pursuant to this section shall be deposited in the Alcohol Beverage Control Fund.

Added Stats 2010 ch 230 § 1 (AB 605), effective January 1, 2011. Amended Stats 2012 ch 327 § 6 (SB 937), effective January 1, 2013.

Amendments:

2012 Amendment: Substituted "subdivisions (b) and (c)" for "subdivisions (c) and (d)" in the second sentence of subd (e).

§ 23397. On–sale license; Service of beverages on trains, boats, and airplanes; Restrictions

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 954 § 8; Stats 1959 ch 2192 § 2; Stats 1963 ch 1218 § 1.

Amendments:

1955 Amendment: (1) Substituted ", boats, and airplanes" for "and boats"; (2) substituted ", boats, and airplanes," for "and boats"; (3) added "not on duty"; and (4) added the second paragraph.

1959 Amendment: Added the third paragraph.

1963 Amendment: Deleted the former second paragraph which read: "Alcoholic beverages may be served on airplanes under on–sale licenses with meals only, and no charge, in addition to the price of the ticket for passage on an airplane, shall be made for the service of such alcoholic beverages."

Historical Derivation:

(a) Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 7348 § 2, Stats 1951 ch 1257 § 3.

(b) Stats 1933 ch 178 § 19.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

Issuance of licenses for trains, cars of sleeping car companies, and airplanes: B & P C § 23321.

On–sale general bona fide public eating place intermittent dockside license to specified vessels: B & P C § 23321.7.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23398. On–sale licensee; Purchase or possession of bitters in packages of less than one–half pint

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

(a) Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

(b) Stats 1933 ch 178 § 19.

Cross References:

Tax on distilled spirits: Rev & Tax C §§ 32201 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23398.5. Soju sales

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.

Added Stats 1998 ch 204 § 1 (SB 1710).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23399. Caterer's permit, event 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, an on-sale beer and wine 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 an on-sale beer and wine license shall authorize the sale of beer and wine 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. The fee for each catering or event authorization shall be issued at a fee not to exceed twenty-five dollars ($25) 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, a caterer's permit for a licensee under an on-sale beer and wine 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 1801 § 2; Stats 1957 ch 1149 § 2; Stats 1969 ch 1123 § 4; Stats 1978 ch 656 § 1; Stats 1992 ch 900 § 9 (AB 432), effective September 24, 1992; Stats 1997 ch 103 § 1 (AB 81), effective July 21, 1997; Stats 1999 ch 699 § 2 (AB 1407); Stats 2001 ch 488 § 11 (AB 1298); Stats 2005 ch 62 § 1 (AB 111), effective January 1, 2006; Stats 2008 ch 348 § 1 (SB 1211), effective September 26, 2008; Stats 2010 ch 719 § 5 (SB 856), effective October 19, 2010.

Editor's Notes—Stats 1955 ch 1801 § 4, which provided that B & P C §§ 23824 and 23399.1 and the amendment to B & P C § 23399 should remain in effect only to the ninety–first day after final adjournment of the 1957 Regular Session, was repealed by Stats 1957 ch 1149 § 1.

Amendments:

1955 Amendment: Added the second through eighth sentences.

1957 Amendment: (1) Substituted ", a club license, or a veterans' " for "or a" in the second sentence; **(2)** substituted "held any place in the State approved by the department" for "where the premises are not otherwise licensed" in the third sentence; **(3)** added "or a veterans' club license" in the fourth sentence; **(4)** added the fifth sentence; **(5)** added "may exercise only those privileges authorized by his license and" in the seventh sentence; and **(6)** substituted the eighth sentence for the former eighth sentence which read: "The fee for a caterer's permit shall be one hundred dollars ($100) per year, and such permit may be renewable annually at the same time as the licensee's license."

1969 Amendment: Added "or to issue daily on–sale general licenses under the provisions of Section 24045.1" in the fifth sentence.

1978 Amendment: Added **(1)** "in the form of a catering authorization issued" before "pursuant to rules" in the sixth sentence; and **(2)** the seventh sentence.

1992 Amendment: Substituted "in the Alcohol Beverage Control Fund as provided in Section 25761" for "directly in the General Fund in the State Treasury" in the seventh sentence.

1997 Amendment: (1) Added subdivision designations (a), (c), (d), and (e); **(2)** amended subd (a) by substituting **(a)** "A caterer's" for "Such a" both times it appears; and **(b)** "sales at these" for "such sales at such"; **(3)** added subd (b); **(4)** made technical changes; **(5)** amended subd (c) by **(a)** deleting "of this code" after "Section 24045.1"; **(b)** substituting "for sales" for "to such sale"; **(c)** adding "or event" both times it appears; and **(d)** adding the third sentence; **(6)** amended subd (d) by substituting **(a)** "all approved" for "such"; and **(b)** "the licensee's" for "his"; and **(7)** amended subd (d) by **(a)** adding "or an event permit for a licensee under an on–sale general license"; and **(b)** substituting "A caterer's or event" for "The caterer's".

1999 Amendment: (1) Substituted "or an on–sale beer and wine license" both times it appears in subd (b) and in subd (e); and **(2)** amended the second sentence of subd (b) by **(a)** substituting "one day" for "once" after "more frequently than"; and **(b)** adding "under an on–sale general license or beer and wine only under an on–sale beer and wine license".

2001 Amendment: Amended subd (e) by substituting **(1)** "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," for "one hundred dollars ($100) per year"; and **(2)** "as specified in" for "a sum equal to the annual fee for an on–sale general license prescribed by".

2005 Amendment: Amended subd (b) by (1) substituting "four days" for "one day" and "year" for "quarter" in the second sentence; and (2) deleting the last sentence which read: "For purposes of this subdivision, 'calendar quarter' means January 1 to March 31, inclusive, April 1 to June 30, inclusive, July 1 to September 30, inclusive, or October 1 to December 31, inclusive, of any calendar year."

2008 Amendment: (1) Amended subd (a) by adding (a) "an on-sale beer and wine license," in the second sentence; and (b) the fourth sentence; and (2) added ", a caterer's permit for a licensee under an on-sale beer and wine license," after "under an on-sale general license" in subd (e).

2010 Amendment: Amended the last sentence of subd (c) by (1) adding "The fee for"; and (2) substituting "twenty-five dollars ($25)" for "ten dollars ($10)".

Historical Derivation:

(a) Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

(b) Stats 1933 ch 178 § 19.

Note—Stats 1992 ch 900 provides:

SECTION 1. The Legislature finds and declares that the regulation of the sale and use of alcoholic beverages is among the highest priorities of state government. The abuse of alcohol can lead to a myriad of other criminal, legal, social, and economic problems. The fair, stable, and effective administration and enforcement of the Alcoholic Beverage Control Act and related laws, therefore, must be insured.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

On–sale general bona fide public eating place intermittent dockside license for specified vessels: B & P C § 23321.7.

Application of provisions to a club operated by common carrier at airport terminal: B & P C § 23428.13.

Application of provisions to nonprofit corporation with memberships issued to owners of condominiums and stock cooperatives: B & P C § 23428.20.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.21[4], 18.165, 18.200[1].

Annotations:

Right to attack validity of licensing law as affected by nature of proceeding in which attack is made. 65 ALR2d 660.

NOTES OF DECISIONS

1. Generally

1. Generally

The validity of a caterer's permit issued pursuant to B & P C § 23399 and Cal. Admin. Code [now Cal Code Reg], tit. 4, reg. 60.5, is dependent upon the existence of a valid, effective and unrevoked onsale alcoholic beverage license. Therefore, alcoholic beverage sales by individuals displaying a caterer's permit after revocation of their onsale license were without authority and were in violation of B & P C § 23300, prohibiting individuals from operating as licensees without a license. Department of Alcoholic Beverage Control v. Locker (1982, Cal App 2d Dist) 129 Cal App 3d 381, 181 Cal Rptr 55, 1982 Cal App LEXIS 1330.

§ 23399.1. When license or permit not required for serving and otherwise disposing of alcoholic beverages.

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.

Added Stats 1955 ch 1801 § 3.

Editor's Notes—Stats 1955 ch 1801 § 4, which provided that §§ 23824 and 23399.1 and the amendment to § 23399 should remain in effect only to the ninety–first day after final adjournment of the 1957 Regular Session, was repealed by Stats 1957 ch 1149 § 1.

Cross References:

Alcoholic Beverage Control Act: B & P C §§ 23000 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23399.2. Authorization under special on–sale general license; Club permitted to operate premises under special license

Premises for which a special onsale 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.

Added Stats 1961 ch 1914 § 2.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

Transfer of special on–sale general license: B & P C § 24078.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.21[1], 18.200[1].

§ 23399.3. On–sale special beer and wine license for hospitals, convalescent homes, and rest homes

(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.

Added Stats 1972 ch 1280 § 2. Amended Stats 1986 ch 701 § 1.

Amendments:

1986 Amendment: (1) Designated the former section to be subd (a); and **(2)** added subd (b).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23399.4. Winegrower's farmer's market permit

(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 (c) and (d) 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.

Added Stats 2000 ch 384 § 1 (AB 2520). Amended Stats 2001 ch 488 § 12 (AB 1298); Stats 2010 ch 296 § 5 (SB 1480), effective January 1, 2011.

Amendments:

2001 Amendment: Substituted subd (c) for former subd (c) which read: "(c) The fee for any permit issued pursuant to this section shall be forty dollars ($40)."

2010 Amendment: Substituted "subdivisions (c) and (d)" for "subdivisions (b) and (c)" in subd (c).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23399.5. Service of alcoholic beverages in limousine or hot air balloon

(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.

Added Stats 1986 ch 1354 § 1. Amended Stats 1998 ch 639 § 3 (AB 2416).

Amendments:

1998 Amendment: (1) Added subdivision designation (a); **(2)** amended subd (a) by substituting **(a)** "is" for "shall be" after "permit" in the first paragraph; and **(b)** "subdivision" for "section" in the second paragraph; and **(3)** added subd (b).

Note—Stats 1986 ch 1354 provides:

SEC. 2. This act is not intended to affect existing law prohibiting the sale and service of alcoholic beverages to minors.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23399.6. Wine sales event permits

(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, 23701f, 23701g, 23701i, 23701k, 23701*l*, 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 be first 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.

Added Stats 2003 ch 588 § 1 (SB 88). Amended Stats 2008 ch 337 § 2 (SB 157), effective January 1, 2009.

Amendments:

2008 Amendment: Amended the section list of subd (a) by (1) adding "23701f, 23701g, 23701i,"; and (2) substituting "23701*l*" for "23701".

Note—Stats 2003 ch 588 provides:

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.

Stats 2008 ch 337 provides:

SECTION 1. (a) This act shall be known and may be cited as the Nonprofit Organization Equal Participation Act.

(b) The Legislature finds and declares all of the following:

(1) The California wine industry generates one hundred fifteen million dollars ($115,000,000) annually in support of nonprofit organizations and their causes.

(2) The collaboration between the wine industry and nonprofit organizations has a proven track record in attracting supporters to nonprofit fundraising events. This support has resulted in sustaining vital community services across the state.

(3) Current law provides that the wine industry can participate in winetastings, donate wine, take orders, and sell bottled wine at certain nonprofit events.

(4) The purpose of this act is to provide continuity and equal participation for nonprofit organizations in sanctioned wine-related events and to provide orderly direction for wine producers.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23399.7. Sales of alcoholic beverages from golf cart

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.

Added Stats 1997 ch 21 § 1 (AB 114), effective June 6, 1997.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23400. On–sale general license; Purchase and possession of distilled spirits in packages

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1975 ch 167 § 2.

Amendments:
1975 Amendment: (1) Substituted all those words after "spirits in packages" for "of not more than one gallon capacity and of not less than one–half pint capacity" in the first sentence; and (2) added the second sentence.

Historical Derivation:
(a) Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.
(b) Stats 1933 ch 178 § 19.

Cross References:
"Gallon" and "wine gallon": B & P C § 23031.
Types of licenses and annual fees therefor: B & P C § 23320.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23401. On–sale general license; Exercise of rights and privileges granted by off–sale beer and wine license

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1969 ch 1123 § 5.

Amendments:
1969 Amendment: Added "; provided, however, that a daily on–sale general license issued pursuant to Section 24045.1 shall not authorize the foregoing rights and privileges" at the end of the first sentence.

Historical Derivation:
(a) Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.
(b) Stats 1933 ch 178 § 19.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[1], 18.21[1], 18.200[1].

§ 23402. Retailers to purchase from licensees only

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 148 § 1; Stats 1969 ch 1123 § 6.

Amendments:
1957 Amendment: Added "brandy manufacturer's,".
1969 Amendment: Added " ' except a daily on–sale general licensee holding a license issued pursuant to Section 24045.1,".

Historical Derivation:
Stats 1935 ch 330 § 6.6, as added Stats 1937 ch 758 § 8½ , amended Stats 1945 ch 1401 § 7.1.

Cross References:
Beverages subject to seizure notwithstanding provisions of this section; limitation: B & P C § 25350.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally
2. Due Process

1. Generally
The finding by the Department of Alcoholic Beverage Control that a bar owner purchased beer for resale from an unlicensed vendor (B & P C § 23402) was supported by the evidence, where it was shown that the bar owner-respondent purchased five cases of beer from his part-time bartender, who had no resale license, and the evidence included the written admission signed by the bar owner-respondent to the effect that he had purchased such beer for resale in his business. Mumford v. Department of Alcoholic Beverage Control (1968, Cal App 4th Dist) 258 Cal App 2d 49, 65 Cal Rptr 495, 1968 Cal App LEXIS 2386.

2. Due Process
In a proceeding for the suspension of a bar owner's on-sale

to sell alcoholic beverages, the introduction in evidence of the bar owner's written admission that he had purchased a quantity of beer from an unlicensed vendor for resale in his business did not deprive the bar owner of due process of a law, such license to sell intoxicants is not a proprietary right within the meaning of due process. Mumford v. Department of Alcoholic Beverage Control (1968, Cal App 4th Dist) 258 Cal App 2d 49, 65 Cal Rptr 495, 1968 Cal App LEXIS 2386.

§ 23403. Possession of certain undenatured alcohol by retailers forbidden; Penalty

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 6.7, as added Stats 1937 ch 758 § 9.

Cross References:
"Pharmacy": B & P C § 4035.
Punishment for misdemeanors: B & P C § 25617.
Definition of misdemeanor, and penalties therefor: Pen C §§ 17, 19, 19.2.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Annotations:
Right to attack validity of licensing law in criminal or civil proceeding for violation of provisions therein. 65 ALR2d 660.

§ 23404. Salesmen forbidden to abet violations

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 6.8, as added Stats 1937 ch 758 § 9½.

Cross References:
Penalty for operation without license: B & P C § 23301.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23405. Corporations holding license under division

(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.

Added Stats 1961 ch 544 § 1. Amended Stats 1975 ch 682 § 2, effective January 1, 1977; Stats 1998 ch 639 § 4 (AB 2416).

Amendments:
1975 Amendment: Substituted (1) "record of its shareholders" for "stock register" wherever it appears in the first sentence of subd (a); (2) "Section 312" for "Section 821" in subd (a)(2); and (3) "such person" for "he" before "was a licensee" in subd (d).

1998 Amendment: In addition to making technical changes, amended subd (d) by adding **(1)** deny any application or" near the beginning; and **(2)** "officer, director, or" after "relation to any".

Cross References:
Effect of transfer of ownership of corporation: B & P C § 24071.1.

Collateral References:
Periodic reports required to be filed with Securities and Exchange Commission: 15 USCS § 78m.
Federal Alcohol Administration Act: 27 USCS §§ 201 et seq.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23405.1. Limited partnership

(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 punchcards, 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.

Added Stats 1973 ch 47 § 2, effective May 15, 1973. Amended Stats 1998 ch 639 § 5 (AB 2416).

Amendments:
1998 Amendment: In addition to making technical changes, **(1)** amended the first paragraph of subd (a) by **(a)** substituting "holding a license under this division" for "which is required by law to file periodic reports with the Securities and Exchange Commission, the general partners of which limited partnership hold a license under this division other than a retail license,"; and **(b)** adding the last sentence; **(2)** divided subd (b) into two sentences by substituting ". The" for ", and the"; **(3)** amended subd (c) by adding **(a)** "deny any application or" near the beginning; and **(b)** "general partner or any"; and **(4)** deleted "specified" after "above" near the beginning of the second sentence of subd (d).

Historical Derivation:
Former B & P C § 23405.2, as added Stats 1973 ch 680 § 2, amended Stats 1981 ch 553 § 1.

Cross References:
Distribution of distilled spirits to limited partners prohibited: B & P C § 23365.
Application for license: B & P C § 23951.
Effect of transfer of ownership of limited partnership: B & P C § 24071.1.
Uniform Limited Partnership Act: Corp C §§ 15501 et seq.

Collateral References:
Periodic reports required to be filed with Securities and Exchange Commission: 15 USCS § 78m.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23405.2. Limited liability company; Record of members; Required reports; Ownership interests; Documents to be on file

(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 California Revised Uniform Limited Liability Company Act(Title 2.6 (commencing with Section 17701.01) of the Corporations Code).

Added Stats 1996 ch 44 § 1 (SB 632), effective May 15, 1996, as B & P C § 23405.3. Amended and renumbered by Stats 1998 ch 639 § 7 (AB 2416); Stats 2012 ch 419 § 3 (SB 323), effective January 1, 2013, operative January 1, 2014.

Former Sections:

Former § 23405.2, similar to present B & P C § 23405.1, was added Stats 1973 ch 680 § 2, effective September 21, 1973, amended Stats 1981 ch 553 § 1 and repealed Stats 1998 ch 639 § 6.

Amendments:

1998 Amendment: (1) Divided subd (b) into the first and second sentences by substituting ". The" for ", and the"; **(2)** amended subd (e) by **(a)** adding "deny any application and"; **(b)** adding "manager, officer, or"; and **(c)** substituting "that" for "which" before "would constitute"; and **(3)** deleted "Any and" at the beginning of the first and second sentences in subd (f).

2012 Amendment: Substituted "California Revised Uniform Limited Liability Company Act (Title 2.6 (commencing with Section 17701.01) of the Corporations Code)" for "Beverly-Killea Limited Liability Company Act, Title 2.5 (commencing with Section 17000) of the Corporations Code" in subd (g).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23405.3. Report of change in ownership, management or control of corporation, limited partnership, or limited liability company

If a corporation, limited partnership, or limited liability company holds, directly or indirectly, 10 percent or more of the ownership of a license issued under this division, the licensee shall report any change in the ownership, management, or control of that corporation, limited partnership, or limited liability company, in the same manner as would be required by Sections 23405, 23405.1, and 23405.2, if the corporation, limited partnership, or limited liability company were itself the licensee.

Added Stats 2008 ch 508 § 5 (AB 3071), effective January 1, 2009.

Former Sections:

Former § 23405.3, was added Stats 1996 ch 44 § 1 (SB 632), effective May 15, 1996, amended and renumbered B & P C § 23405.2 by Stats 1998 ch 639 § 7 (AB 2416).

ARTICLE 4

Club Licenses

[Added Stats 1953 ch 153 § 1.]

Cross References:

Prohibited economic interests in on–sale licenses: B & P C § 25500.

Collateral References:
Cal Jur 3d (Rev) Associations and Clubs § 2.
Pertinent administrative regulations: 4 Cal Code Reg §§ 55 et seq.

Attorney General's Opinions:
Department of Alcoholic Beverage Control is authorized under California Constitution to revoke private club license on basis of discriminatory membership practices upon independent determination for good cause that continuance of such license would be contrary to public welfare or morals. 70 Ops. Cal. Atty. Gen. 75.

§ 23425. American national fraternal organization

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1965 ch 244 § 2, ch 492 § 2; Stats 1975 ch 496 § 1; Stats 1977 ch 1070 § 1; Stats 1979 ch 470 § 1.

Amendments:
1965 Amendment: Substituted (1) "31" for "36" before "states" wherever it appears; and (2) "300" for "five hundred" before "local units".
1975 Amendment: Amended subd (a) by substituting (1) "20" for "31" before "states" wherever it appears; and (2) "200" for "300" before "local units".
1977 Amendment: Deleted "for not less than one year" after "purposes" at the end of the first sentence in subd (a).
1979 Amendment: Substituted "175" for "200" before "local units" in subd (a).

Historical Derivation:
Stats 1935 ch 330 § 6.11, as added Stats 1947 ch 1544 § 1, amended Stats 1949 ch 1305 § 1.

Cross References:
Inapplicability of prohibition against discrimination by licensees to club licensees under this article: B & P C § 125.6.
Necessity for club to be in existence for not less than one year: Cal Const Art XX § 22.

Collateral References:
Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 13B.111, 18.01[2], 18.200[1].
Cal Jur 3d (Rev) Associations and Clubs § 2.

§ 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 1377 § 1; Stats 1963 ch 808 § 1; Stats 1977 ch 1070 § 2.

Amendments:
1955 Amendment: Substituted "two" for "five" before "regulation tennis courts".
1963 Amendment: Added "; 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 200 members or more paying regular monthly dues and which has been in existence for not less than two years" after "than two years" the first time it appears.
1977 Amendment: (1) Deleted "has more than 100 bona fide members, which" after "golf club which"; (2) substituted "thereon;" for "thereon, and which has operated the establishment for not less than one year;" before "or any swimming" the first time it appears; and (3) substituted "members paying regular monthly dues" for "200 members or more paying regular monthly dues and which has been in existence for not less than two years" wherever it appears.

Historical Derivation:
Stats 1935 ch 330 § 6.11, as added Stats 1947 ch 1544 § 1, amended Stats 1949 ch 1305 § 1.

Cross References:
Necessity for club to be in existence for not less than one year: Cal Const Art XX § 22.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23426.5. Tennis club; Discrimination prohibited

(a) For purposes of this article, "club" also means any tennis club that maintains not less than four regulation tennis courts, together with the necessary facilities and clubhouse, has members paying regular monthly dues, has been in

existence for not less than 45 years, and is not associated with a common interest development as defined in Section 4100 or 6534 of the Civil 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.

(b) 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 age or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code.

Added Stats 1976 ch 457 § 1. Amended Stats 1977 ch 1070 § 3; Stats 2006 ch 538 § 34 (SB 1852), effective January 1, 2007; Stats 2007 ch 568 § 6 (AB 14), effective January 1, 2008; Stats 2012 ch 181 § 17 (AB 806), effective January 1, 2013, operative January 1, 2014; Stats 2013 ch 605 § 6 (SB 752), effective January 1, 2014.

Amendments:

1977 Amendment: Substituted "members" for "90 members or more" before "paying regular" in the first paragraph.

2006 Amendment: (1) Added subd designations (a) and (b); (2) amended subd (a) by (a) substituting "that" for "which" after "any tennis club"; (b) deleting "and which" both times it appears; (c) adding the comma after "regular monthly dues"; (d) adding the comma after "not less than 45 years"; (e) substituting "common interest" for "real estate" after "associated with a"; (f) substituting "interest development as defined in Section 1351 of the Civil Code" for "development as defined in Section 11003.1 of this code" after "with a common interest"; and (g) adding the comma after "the Civil Code"; and (3) substituted "the" for "such" after "on account of" in subd (b).

2007 Amendment: Substituted "on account of age or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code" for "on account of the person's color, race, religion, ancestry, national origin, sex, or age" in subd (b).

2012 Amendment: Substituted "Section 4100" for "Section 1351" in subd (a).

2013 Amendment: Added "or 6534" in subd (a).

Note—Stats 2007 ch 568 provides:

SECTION 1. The Legislature finds and declares as follows:

(a) Even prior to passage of the Unruh Civil Rights Act, California law afforded broad protection against arbitrary discrimination by business establishments. The Unruh Civil Rights Act was enacted to provide broader, more effective protection against arbitrary discrimination. California's interest in preventing that discrimination is longstanding and compelling.

(b) In keeping with that history and the legislative history of the Unruh Civil Rights Act, California courts have interpreted the categories enumerated in the act to be illustrative rather than restrictive. It is the intent of the Legislature that these enumerated bases shall continue to be construed as illustrative rather than restrictive, and, consistent with the Unruh Civil Rights Act, that the civil rights provisions of this act that reference Section 51 of the Civil Code also be interpreted to be illustrative rather than restrictive.

SEC. 1.5. This act shall be known and may be cited as the Civil Rights Act of 2007.

Stats 2012 ch 181 provides:

SEC. 86. This act shall become operative on January 1, 2014, but only if Assembly Bill 805 of the 2011–12 Regular Session becomes operative on or before January 1, 2014.

Editor's Notes—Assembly Bill 805 was enacted as Stats 2012 ch 180 and became operative January 1, 2014.

Law Revision Commission Comments:

2012—Section 23426.5 is amended to correct a cross-reference to former Civil Code Section 1351(c). 40 Cal. L. Revision Comm'n Reports 235 (2010).

2013—Section 23426.5 is amended to add a cross-reference to Civil Code Section 6534, reflecting the enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876). 42 Cal. L. Revision Comm'n Reports 1 (2012).

Collateral References:

8 Witkin Summary (10th ed) Constitutional Law § 897.

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1977 ch 1070 § 4.

Amendments:

1977 Amendment: Deleted (1) "which yacht club has more than 100 bona fide regular members, and" after "yacht clubs,"; and (2) "and has operated the clubhouse for not less than one year" after "a clubhouse".

Historical Derivation:

Stats 1935 ch 330 § 6.11, as added Stats 1947 ch 1544 § 1, amended Stats 1949 ch 1305 § 1.

Cross References:

Necessity for club to be in existence for not less than one year: Cal Const Art XX § 22.

Nonprofit Corporations Law: Corp C §§ 5000 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1977 ch 1070 § 5.

Amendments:

1977 Amendment: Deleted "and has operated the club room or rooms for a period of not less than five years" after "membership".

Historical Derivation:

Stats 1935 ch 330 § 6.11, as added Stats 1947 ch 1544 § 1, amended Stats 1949 ch 1305 § 1.

Cross References:

Admission to the practice of law: B & P C §§ 6060 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 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.

Added Stats 1955 ch 1377 § 2.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 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.

Added by Stats 1955 ch 1377 § 3. Amended Stats 1957 ch 345 § 1.

Amendments:

1957 Amendment: Substituted (1) "100" for "500"; and (2) "five dollars ($5)" for "ten dollars ($10)".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.4. Nonprofit social club of mobilehome owners

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 clubhouse for not less than one year.

Added Stats 1979 ch 623 § 1 as § 23428.7. Renumbered Stats 1981 ch 714 § 43.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 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.

Added Stats 1953 ch 914 § 2. Amended Stats 1955 ch 1377 § 4; Stats 1973 ch 961 § 1, effective September 30, 1973; Stats 1977 ch 1070 § 6.

Amendments:

1955 Amendment: (1) Substituted "100" for "500" before "members"; (2) added "or clubroom" after "clubhouse" wherever such words appear; and (3) substituted "three years" for "six and a half (6½) years" at the end of the section.

1973 Amendment: (1) Substituted "purpose" for "purposes"; (2) added "or any nonprofit incorporated press club having a membership of more than 100 members, which has been in existence for more than one year, and which owns, or leases, and operates, a clubroom or rooms for its members" at the end of the first paragraph; and (3) added the second paragraph.

1977 Amendment: Amended the first paragraph by deleting (1) "of more than 100 members," after "fide membership"; (2) "and which has operated such clubhouse or clubroom for not less than three years" before "or any nonprofit"; and (3) "of more than 100 members, which has been in existence for more than one year," after "a membership".

Cross References:

Nonprofit Corporations Law: Corp C §§ 5000 et seq.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 116 "Civil Rights: Discrimination In Business Establishments".

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

8 Witkin Summary (10th ed) Constitutional Law § 897.

§ 23428.6. Livestock associations

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.

Added Stats 1976 ch 460 § 1. Amended Stats 1977 ch 1070 § 7.

Amendments:

1977 Amendment: Deleted "shall have been in existence more than three years and have a membership of not less than 225 dues–paying members, and" after "a group" in the first sentence of the second paragraph.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.7. Bona fide horse riding clubs

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.

Added Stats 1953 ch 914 § 3. Amended Stats 1977 ch 1070 § 8.

Former Sections:

There was another section of this number which was added by Stats 1979 ch 623 § 1 and renumbered B & P C § 23428.4 by Stats 1981 ch 714 § 43.

Amendments:

1977 Amendment: Deleted (1) "and which has more than 50 bona fide regular members," after "association,"; and (2) ", and which has operated such establishment for not less than five years" after "maintained".

Cross References:

Nonprofit Corporations Law: Corp C §§ 5000 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.8. Parlors of 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.

Added Stats 1955 ch 1377 § 5. Amended Stats 1977 ch 1070 § 9.

Amendments:

1977 Amendment: Deleted "for not less than three years" after "purposes".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.9. Nonprofit social 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.

Added Stats 1959 ch 453 § 1. Amended Stats 1977 ch 1070 § 10; Stats 1978 ch 336 § 1.

Amendments:

1977 Amendment: Deleted "has more than 100 bona fide members," before "serves daily".

1978 Amendment: Substituted "two years" for "10 years".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.10. Peace officers' associations

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.

Added Stats 1961 ch 423 § 1. Amended Stats 1972 ch 1190 § 1; Stats 1977 ch 1070 § 11.

Amendments:

1972 Amendment: Substituted "75" for "250" after "less than".

1977 Amendment: Deleted (1) "has a membership of not less than 75 bona fide members and has been in existence for a period of more than 10 years, which" before "holds regular"; and (2) "and has operated such establishment for not less than one year" after "purposes".

Cross References:

Peace officers' and employees' associations: B & P C § 23428.27.

Peace officers generally: Pen C §§ 830 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.11. Firemen's associations

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.

Added Stats 1963 ch 291 § 1. Amended Stats 1977 ch 1070 § 12.

Amendments:

1977 Amendment: Deleted (1) "has a membership of not less than 100 bona fide members and has been in existence for a period of more than 10 years, which" before "holds regular"; and (2) "and has operated such establishment for not less than one year" after "purposes".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.12. Nonprofit social and 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.

Added Stats 1963 ch 1790 § 1. Amended Stats 1967 ch 541 § 1; Stats 1970 ch 377 § 1; Stats 1977 ch 1070 § 13.

Amendments:

1967 Amendment: Substituted "eight" for "10" before "years".

1970 Amendment: Deleted the former second paragraph which read: "The provisions of Section 23399 shall not apply to such a club."

1977 Amendment: Deleted "has more than 50 bona fide members, and" before "owns or leases,".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.13. Club operated by common carrier at airport terminal

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.

Added Stats 1968 ch 607 § 2. Amended Stats 1971 ch 1512 § 1; Stats 1977 ch 1070 § 14; Stats 1980 ch 827 § 1.

Amendments:

1971 Amendment: Added "and the numerical limitation of Section 23430".

1977 Amendment: Deleted ", which club is composed of more than 50 qualified members in accordance with the rules of the club and which club has been operated by the common carrier by air for not less than one year" after "terminal".

1980 Amendment: Added the second paragraph.

Cross References:

"Common carrier": Pub Util C § 211.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.14. National Guard clubroom

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.

Added Stats 1970 ch 455 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 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.

Added Stats 1970 ch 975 § 1. Amended Stats 1977 ch 1070 § 15.

Amendments:

1977 Amendment: Deleted "for not less than three years" after "purposes".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.16. Nonprofit 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.

Added Stats 1970 ch 1442 § 1. Amended Stats 1977 ch 1070 § 16.

Amendments:

1977 Amendment: Deleted (1) "has a membership of not

less than 75 bona fide members and has been in existence more than one year, which" before "holds regular"; and (2) ", and which has operated such establishment for not less than one year" after "guests".

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.17. American GI Forum of the U.S.

For the 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 club room 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.

Added Stats 1971 ch 1482 § 1. Amended Stats 1977 ch 1070 § 17.

Amendments:
1977 Amendment: Deleted ", and which has been in existence for not less than two years" after "membership".

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.18. Chartered 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.

Added Stats 1972 ch 1186 § 1. Amended Stats 1977 ch 1070 § 18.

Amendments:
1977 Amendment: Substituted "consists of" for "has been in existence for at least five years, consists of not less than 100" after "United States,".

Collateral References:
8 Witkin Summary (10th ed) Constitutional Law § 897.
National Labor Relations Act: 29 USCS §§ 151 et seq.
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.19. Handball and racquetball clubs; Discrimination prohibited

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 each pay regular monthly dues. As used in this section, a "regulation-size handball or racquetball court" is a court meeting the standards for regulation courts as are 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 any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code

Added Stats 1972 ch 848 § 1, effective August 14, 1972. Amended Stats 2007 ch 568 § 7 (AB 14), effective January 1, 2008.

Amendments:
2007 Amendment: (1) Amended the first paragraph by (a) deleting "of which" after "and the members"; and (b) substituting "standards for regulation courts as are promulgated" for "standards for such regulation courts promulgated"; and (2) substituted "account of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code" for "account of such person's color, race, religion, ancestry, or national origin" in the second paragraph.

Note—Stats 2007 ch 568 provides:
SECTION 1. The Legislature finds and declares as follows: (a) Even prior to passage of the Unruh Civil Rights Act, California law afforded broad protection against arbitrary discrimination by business establishments. The Unruh Civil Rights Act was enacted to provide broader, more effective protection against arbitrary discrimination. California's interest in preventing that discrimination is longstanding and compelling.
(b) In keeping with that history and the legislative history of the Unruh Civil Rights Act, California courts have interpreted the categories enumerated in the act to be illustrative rather than restrictive. It is the intent of the Legislature that these enumerated bases shall continue to be construed as illustrative rather than restrictive, and, consistent with the Unruh Civil Rights Act, that the civil rights provisions of this act that reference Section 51 of the Civil Code also be interpreted to be illustrative rather than restrictive.
SEC. 1.5. This act shall be known and may be cited as the Civil Rights Act of 2007.

Collateral References:
8 Witkin Summary (10th ed) Constitutional Law § 897.
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.20. Nonprofit corporation with memberships issued to owners of condominiums and stock cooperatives

(a) For the purposes of this article, "club" also means any bona fide nonprofit corporation that

has been in existence for not less than nine years, has more than 8,500 memberships issued and outstanding to owners of condominiums and owners of memberships in stock cooperatives, and 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 that was formed as a condominium homeowners' 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 of age.

(c) 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 that withholds membership or denies facilities or services to any person on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(e) Notwithstanding subdivision (d), with respect to familial status, subdivision (d) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (d) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51, Section 4760, and Section 6714 of the Civil Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (d).

Added Stats 1972 ch 1241 § 1. Amended Stats 1976 ch 1086 § 1; Stats 2006 ch 578 § 3 (AB 2800), effective January 1, 2007; Stats 2012 ch 181 § 18 (AB 806), effective January 1, 2013, operative January 1, 2014; Stats 2013 ch 605 § 7 (SB 752), effective January 1, 2014.

Amendments:

1976 Amendment: (1) Designated the former first, second, and third paragraphs to be subds (a), (c), and (d); (2) added subd (b); and (3) substituted "a club defined in this section" for "such a club" in subd (c).

2006 Amendment: (1) Amended subd (a) by (a) adding the comma after "of this article"; (b) substituting "that" for "which" after "bona fide nonprofit corporation"; (c) deleting "which" after "than nine years,"; (d) deleting "which" after "stock cooperatives, and"; and (e) adding the comma after "owns, leases, operates"; (2) substituted "that" for "which" after "bona fide nonprofit corporation" in subd (b); (3) deleted "The provisions of" at the beginning of subd (c); (4) amended subd (d) by (a) substituting "that" for "which" after "to any club"; (b) substituting "any basis listed in subdivision (a) or" for "race, color, creed, religion, national origin, or sex." after "on account of"; and (c) adding "(d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code." at the end; and (5) added subd (e).

2012 Amendment: Substituted "Section 4760" for "Section 1360" in the last sentence of subd (e).

2013 Amendment: (1) Substituted "54 years of age" for "54 years old" in subd (b); and (2) amended the last sentence of subd (e) by (a) substituting ", Section 4760, and Section 6714" for "and Section 4760"; and (b) adding the comma after "the Civil Code".

Note—Stats 2006 ch 578 provides:

SECTION 1.This act shall be known, and may be cited, as the Civil Rights Housing Act of 2006.

Stats 2012 ch 181 provides:

SEC. 86. This act shall become operative on January 1, 2014, but only if Assembly Bill 805 of the 2011-12 Regular Session becomes operative on or before January 1, 2014.

Editor's Notes—Assembly Bill 805 was enacted as Stats 2012 ch 180 and became operative January 1, 2014.

Law Revision Commission Comments:

2012—Section 23428.20 is amended to correct a cross-reference to former Civil Code Section 1360. 40 Cal. L. Revision Comm'n Reports 235 (2010).

2013—Section 23428.20 is amended to add a cross-reference to Civil Code Section 6714, reflecting the enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876). 42 Cal. L. Revision Comm'n Reports 1 (2012).

Cross References:

Nonprofit CorporationsLaw: Corp C §§ 5000 et seq.

Collateral References:

8 Witkin Summary (10th ed) Constitutional Law § 897.

Miller & Starr, Cal Real Estate 3d § 25:94.

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.21. Local dental society; Discrimination

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.

Added Stats 1983 ch 1008 § 1.

Collateral References:
8 Witkin Summary (10th ed) Constitutional Law § 897.
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.22. Nonprofit corporation promoting cultural ties between citizens of foreign country and of the United States

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.

Added Stats 1974 ch 533 § 1, effective August 27, 1974. Amended Stats 1977 ch 1070 § 19.

Amendments:
1977 Amendment: Amended the first sentence in the first paragraph by deleting (1) "has been in existence for not less than two years, and which" after "dues, which"; and (2) "for not less than one year" after "purposes".

Cross References:
Nonprofit Corporations Law: Corp C §§ 5000 et seq.

Collateral References:
8 Witkin Summary (10th ed) Constitutional Law § 897.
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.23. Letter carriers local chartered by national labor organization; Discrimination prohibited; Limitation on license

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.

Added Stats 1974 ch 640 § 1, effective September 5, 1974. Amended Stats 1977 ch 1070 § 20.

Amendments:
1977 Amendment: Deleted "has been in existence for at least five years, which" before "consists of" in the first sentence.

Collateral References:
8 Witkin Summary (10th ed) Constitutional Law § 897.
National Labor Relations Act: 29 USCS §§ 151 et seq.
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.24. Nonprofit social organizations

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.

Added Stats 1976 ch 1446 § 1.

Collateral References:
8 Witkin Summary (10th ed) Constitutional Law § 897.
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.25. Hidalgo Society operating to advance education; Discrimination

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 club room 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.

Added Stats 1976 ch 1013 § 1. Amended Stats 1977 ch 1070 § 21.

Amendments:

1977 Amendment: Amended the second sentence of the first paragraph by deleting (1) "at least two hundred (200)" after "32nd class, have"; and (2) "have been in existence more than three years" after "pay dues,".

Cross References:

Counties of thirty–second class: Gov C § 28053.

Collateral References:

8 Witkin Summary (10th ed) Constitutional Law § 897.

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.26. Nonprofit property owners' association included in term

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.

Added Stats 1978 ch 540 § 1.

Collateral References:

8 Witkin Summary (10th ed) Constitutional Law § 897.

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.27. Peace officers' and 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.

Added Stats 1985 ch 460 § 1, effective September 3, 1985.

Cross References:

Peace officers' associations: B & P C § 23428.10.

Collateral References:

8 Witkin Summary (10th ed) Constitutional Law § 897.

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23428.28. Beach and athletic club owning or operating standard swimming pool; Minimum membership and time of operation; Discrimination prohibited

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 age or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code.

Added Stats 1995 ch 173 § 1 (SB 584), effective July 24, 1995. Amended Stats 2007 ch 568 § 8 (AB 14), effective January 1, 2008.

Amendments:

2007 Amendment: Substituted "on the basis of age or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code" for "on the basis of race, religion, national origin, sex, or age" in the second paragraph.

Note—Stats 2007 ch 568 provides:

SECTION 1. The Legislature finds and declares as follows: (a) Even prior to passage of the Unruh Civil Rights Act, California law afforded broad protection against arbitrary discrimination by business establishments. The Unruh Civil Rights Act was enacted to provide broader, more effective protection against arbitrary discrimination. California's interest in preventing that discrimination is longstanding and compelling.

(b) In keeping with that history and the legislative history of the Unruh Civil Rights Act, California courts have interpreted the categories enumerated in the act to be illustrative rather than restrictive. It is the intent of the Legislature that these enumerated bases shall continue to be construed as illustrative rather than restrictive, and, consistent with the Unruh Civil Rights Act, that the civil rights provisions of this act that reference Section 51 of the Civil Code also be interpreted to be illustrative rather than restrictive.

SEC. 1.5. This act shall be known and may be cited as the Civil Rights Act of 2007.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23429. What constitutes club

A club as defined in this article is a bona fide club within the meaning of Section 22 of Article XX of the Constitution.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 6.11, as added Stats 1947 ch 1544 § 1, amended Stats 1949 ch 1305 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23430. Club license; Issuance

The department may issue one club license to any club as defined in this article.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 41, ch 1221 § 7, effective June 23, 1955.

Amendments:
1955 Amendment: Substituted this section for former section which read: "The board may issue one club license to any club as defined in this article. The fee for a club license shall be seventy–five dollars ($75) per year, plus an additional fee as set by the board for the distilled spirits privileges of the license. The fee for a club license shall not exceed the fee for an on–sale general license in the locality where the club is maintained."

Historical Derivation:
Stats 1935 ch 330 § 6.11, as added Stats 1947 ch 1544 § 1, amended Stats 1949 ch 1305 § 1.

Cross References:
Types of licenses and annual fees therefor: B & P C § 23320.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

Attorney General's Opinions:
Effect of additional fees imposed by 1954 Amendment. 23 Ops. Cal. Atty. Gen. 256.

§ 23431. Rights and privileges; License not transferable; Issuance of license

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 6.11, as added Stats 1947 ch 1544 § 1, amended Stats 1949 ch 1305 § 1.

Cross References:
Rights and obligations of licensees: B & P C §§ 23355 et seq.
Limitation on number of licensed premises: B & P C §§ 23815 et seq.
Time within which accusation against licensees for violating certain sections to be filed: B & P C §§ 24207, 24208.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.21[2], 18.200[1].

Annotations:
Construction of provision precluding sale of intoxicating liquors within specified distance from another establishment selling such liquors. 7 ALR3d 809.

NOTES OF DECISIONS

1. Construction with Other Law

1. Construction with Other Law
The issuance of a duplicate liquor license pursuant to art. 4 of the Alcoholic Beverage Control Act (B & P C § 23000 et seq.), to the holder of an on sale general license for each room within the premises in which there is a service bar (B & P C § 24042), is not one of the "rights or privileges" granted to such a licensee under art. 3 of the act (B & P C § 23355), since such "rights and privileges" are limited to only rights and privileges as specified in art. 3. Thus, even though the holder of a club liquor license may exercise "all the rights and privileges" permitted an on sale general licensee (B & P C § 23431), it is not entitled to have a duplicate club license issued as provided for in art. 4 of the act. Furthermore, B & P C § 23430, limits the issuance of club liquor licenses to one club license to a particular club. Thus, the Alcoholic Beverage Control Appeals Board correctly determined that the holder of a club license was not entitled to a duplicate license for a second club on the holder's premises. Outdoor Resorts Etc. Owners' Assn. v. Alcoholic Beverage Control Appeals Bd. (1990, Cal App 4th Dist) 224 Cal App 3d 696, 273 Cal Rptr 748, 1990 Cal App LEXIS 1102.

§ 23432. Eligibility for club license of club transferring onsale general license

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1963 ch 1066 § 1.

Amendments:
1963 Amendment: Added "which was originally issued to it prior to April 1, 1947,".

Historical Derivation:
Stats 1935 ch 330 § 6.11, as added Stats 1947 ch 1544 § 1, amended Stats 1949 ch 1305 § 1.

Cross References:
Types of licenses and annual fees therefor: B & P C § 23320.
Transfer of licenses: B & P C §§ 24070 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23432.5. [Section repealed 1983.]

Added Stats 1983 ch 121 § 1, effective June 23, 1983. Repealed, effective August 22, 1983, by its own terms. The repealed section related to club licenses.

§ 23433. Issuance of off–sale licenses to golf clubs; Fee

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.

Added Stats 1955 ch 1377 § 6. Amended Stats 1957 ch 619 § 1.

Amendments:

1957 Amendment: Substituted "a retail package off–sale general license as provided in Section 23320" for "club licenses described in Section 23430" at the end of the section.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.21[2], 18.200[1].

§ 23433.5. License to be denied nonprofit lawn bowls club for discrimination

(a) For the purposes of this article, "club" also means any nonprofit lawn bowls club.

(b) No license shall be issued to any nonprofit lawn bowls club qualifying as a club pursuant to this section if the nonprofit lawn bowls club in any manner restricts membership or the use of its facilities on the basis of age or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code.

Added Stats 2010 ch 273 § 1 (AB 2793), effective January 1, 2011.

Former Sections:

Former § 23433.5, relating to ale of alcoholic beverages from golf cart, was added Stats 1996 ch 82 § 1 (AB 2278), and repealed Stats 1997 ch 21 § 2 (AB 114), effective June 6, 1997.

§ 23434. Issuance of new club license to club not organized as nonprofit organization

(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.

Added Stats 1977 ch 1070 § 22.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23435. Membership and duration requirements for new club license

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.

Added Stats 1977 ch 1070 § 23. Amended Stats 1979 ch 128 § 1.

Amendments:

1979 Amendment: Substituted (1) "January 1, 1980" for "the effective date of this section"; and (2) "one year" for "two years".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23437. 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.

Added Stats 1977 ch 1070 § 24.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23438. Nondeductibility of purchases from alcoholic beverage club licensee which restricts membership or use of services based on protected characteristics; Exception

(a) Any alcoholic beverage club licensee which restricts membership or the use of its services or facilities on the basis of ancestry or any characteristic listed or defined in Section 11135 of the Government Code, except for genetic information, 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.

Added Stats 1987 ch 1139 § 2, effective September 25, 1987, ch 1463 § 1, effective September 30, 1987. Amended Stats 2007 ch 568 § 9 (AB 14), effective January 1, 2008; Stats 2011 ch 261 § 2 (SB 559), effective January 1, 2012.

Amendments:

2007 Amendment: Substituted "on the basis of ancestry or any characteristic listed or defined in Section 11135 of the Government Code" for "on the basis of age, sex, race, religion, color, ancestry, or national origin" in the introductory clause of subd (a).

2011 Amendment: Added ", except for genetic information," in the introductory clause of subd (a).

Note—Stats 1987 ch 1139 provides:

SEC. 232. (a) The addition of Section 23438 to the Business and Professions Code and Sections 17269 and 24343.2 to the Revenue and Taxation Code by this act is not intended to affect the tax exempt status of any church or other organization which is exempt from taxation under Section 23701d of the Revenue and Taxation Code.

(b) It is not intended that any inference be drawn as the result of the addition of Section 23438 to the Business and Professions Code and Sections 17269 and 24343.2 to the Revenue and Taxation Code that the Legislature intended to preclude administrative regulations by the Franchise Tax Board which disallow business deductions on public policy grounds with respect to expenses incurred before the operative date of those sections. However, as of the operative date of those sections, any administrative regulations adopted by the Franchise Tax Board which are inconsistent with or contrary to those sections shall be of no further force or effect.

(c) The addition of the sections specified in subdivision (b) shall be applied in the computation of taxes for taxable or income years commencing on or after January 1, 1990.

Stats 1987 ch 1463 provides:

SEC. 4. This act is not intended to affect the tax exempt status of any church or other organization which is exempt from taxation under Section 23701d of the Revenue and Taxation Code.

SEC. 5. It is not intended that any inference be drawn as the result of the enactment of this act that the Legislature intended to preclude administrative regulations by the Franchise Tax Board which disallow business deductions on public policy grounds with respect to expenses incurred before the operative date of this act. However, as of the operative date of this act, any administrative regulations adopted by the Franchise Tax Board which are inconsistent with or contrary to this act shall be of no further force or effect.

Stats 2007 ch 568 provides:

SECTION 1. The Legislature finds and declares as follows: (a) Even prior to passage of the Unruh Civil Rights Act, California law afforded broad protection against arbitrary discrimination by business establishments. The Unruh Civil Rights Act was enacted to provide broader, more effective protection against arbitrary discrimination. California's interest in preventing that discrimination is longstanding and compelling.

(b) In keeping with that history and the legislative history of the Unruh Civil Rights Act, California courts have interpreted the categories enumerated in the act to be illustrative rather than restrictive. It is the intent of the Legislature that these enumerated bases shall continue to be construed as illustrative rather than restrictive, and, consistent with the Unruh Civil Rights Act, that the civil rights provisions of this act that reference Section 51 of the Civil Code also be interpreted to be illustrative rather than restrictive.

SEC. 1.5. This act shall be known and may be cited as the Civil Rights Act of 2007.

Stats 2011 ch 261 provides:

SECTION 1. The Legislature finds and declares all of the following:

(a) Deciphering the sequence of the human genome and other advances in genetics open major new opportunities for medical progress. New knowledge about the genetic basis of illness will allow for earlier detection of illnesses, often long before symptoms have begun.

(b) Genetic testing can allow individuals to take steps to reduce the likelihood that they will contract a particular disorder. New knowledge about genetics may allow for the development of better therapies that are more effective against disease or have fewer side effects than current treatments. These rapid advances promise significant medical progress, but also give rise to the potential for misuse of genetic information to discriminate.

(c) The early science of genetics became the basis of state laws that provided for the sterilization of persons having presumed genetic "defects" such as mental retardation, mental disease, epilepsy, blindness, and hearing loss, among other conditions. The first sterilization law was enacted in the State of Indiana in 1907. California followed suit in 1909. Thirty states ultimately enacted such laws that resulted in 64,000 people, most of whom were poor, young women, being sterilized. Shamefully, nearly a third of these sterilizations took place in California.

(d) Most state laws have since been repealed, and many have been modified to include essential constitutional requirements of due process and equal protection. However, the current explosion in the science of genetics, and the history of sterilization laws by states based on early genetic science, compels legislative action in this area.

(e) Automation is exponentially increasing the speed and efficiency of a complete genomic DNA sequence. What took five years of international effort to produce in the mid-1980s can today be completed in two minutes. Genomic sequencing is quickly approaching the point where it will be widely affordable to the general public and, potentially, a covered insurance benefit.

(f) Although genes are facially neutral markers, many genetic conditions and disorders are associated with particular racial and ethnic groups and gender. Because some genetic traits are most prevalent in particular groups, members of a particular group may be stigmatized or discriminated against as a result of that genetic information.

(g) This form of discrimination was evident in the 1970s, which saw the advent of programs to screen and identify carriers of sickle cell anemia, a disease which afflicts African Americans. Once again, state legislatures began to enact discriminatory laws in the area, and in the early 1970s began mandating genetic screening of all African Americans for sickle cell anemia, leading to discrimination and unnecessary fear.

(h) Examples of genetic discrimination in the workplace include the use of preemployment genetic screening at Lawrence Berkeley Laboratory, which led to a court decision in favor of the employees in that case, Norman-Bloodsaw v.

Lawrence Berkeley Laboratory (9th Cir. 1998) 135 F.3d 1260, 1269.

(i) The State of California has a compelling public interest in realizing the medical promise of genomics. It also has a compelling public interest in relieving the fear of discrimination and in prohibiting its actual practice.

(j) Although Congress enacted the federal Genetic Information and Nondiscrimination Act of 2008 (P.L. 110-233), its range of protections is incomplete for Californians.

Cross References:
Similar provisions: Rev & Tax C §§ 17269, 24343.2.

Collateral References:
Cal. Forms Pleading & Practice (Matthew Bender®) ch 116 "Civil Rights: Discrimination In Business Establishments".
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 13B.111, 18.01[2], 18.200[1].
8 Witkin Summary (10th ed) Constitutional Law § 897.

ARTICLE 5

Veterans' Club Licenses

[Added Stats 1953 ch 152 § 1.]

Cross References:
Prohibited economic interests in on–sale licenses: B & P C § 25500.

Collateral References:
Pertinent administrative regulations: 4 Cal Code Reg §§ 55 et seq., 69 et seq.

§ 23450. "Veterans"

As used in this article, "veteran" means any person who has served in the United States Army, Navy, Air Force, Marine Corps, Coast Guard, 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 these services during the period September 16, 1940, to December 7, 1941, and received a discharge under conditions other than dishonorable.

Added Stats 1953 ch 152 § 1. Amended Stats 2013 ch 337 § 2 (SB 818), effective January 1, 2014.

Amendments:
2013 Amendment: (1) Added "Air Force,"; (2) substituted "Coast Guard" for "Revenue Marine Service"; (3) substituted "Armed Forces" for "armed forces"; and (4) substituted "these services" for "such services".

Historical Derivation:
Stats 1935 ch 330 § 6.1, as added Stats 1st Ex Sess 1946 ch 119 § 1.

Cross References:
"Veteran": Mil & Vet C §§ 890, 920, 940, 980, 1010.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23451. What constitutes club

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

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 6.1, as added Stats 1st Ex Sess 1946 ch 119 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

Attorney General's Opinions:
Eligibility for veterans' club license of Forty and Eight society. 9 Ops. Cal. Atty. Gen. 91.

§ 23452. Issuance of license to local unit

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 42, effective June 23, 1955.

Amendments:
1955 Amendment: (1) Substituted "The department" for "The board"; and (2) deleted the former second sentence which read: "The fee for a veterans' club license shall be in such amount as is set by the board, not to exceed the fee for an on–sale general license in the locality where the club is maintained."

Historical Derivation:
Stats 1935 ch 330 § 6.1, as added Stats 1st Ex Sess 1946 ch 119 § 1.

Cross References:
Types of licenses and annual fees therefor: B & P C § 23320.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

Attorney General's Opinions:
Veterans' memorial hall as an establishment. 14 Ops. Cal. Atty. Gen. 212.

§ 23452.5. Issuance of license to 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.

Added Stats 1957 ch 597 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23453. Rights and privileges; Transferability

The holder of a veterans' 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 quests. 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.

Added Stats 1953 ch 152 § 1.

Editor's Notes—Article 2, of Chapter 5 of this division, commences with B & P C § 23815.

Historical Derivation:
Stats 1935 ch 330 § 6.1, as added Stats 1st Ex Sess 1946 ch 119 § 1.

Cross References:
Rights and obligations of licensees: B & P C §§ 23355 et seq.
Time within which accusations against licensees for violating section to be filed: B & P C §§ 24207, 24208.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23454. Compensation of officers and members prohibited

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 6.1, as added Stats 1st Ex Sess 1946 ch 119 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

§ 23455. Revocation of license

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 43.

Amendments:
1955 Amendment: Substituted "department" for "board" whenever it appears.

Historical Derivation:
Stats 1935 ch 330 § 6.1, as added Stats 1st Ex Sess 1946 ch 119 § 1.

Cross References:
Suspension and revocation of licenses: B & P C §§ 24200 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.01[2], 18.200[1].

Annotations:
Right to hearing before revocation or suspension of liquor license. 35 ALR2d 1067.
Right to attack validity of licensing law in proceedings to contest revocation or suspension of license. 65 ALR2d 660.

CHAPTER 4

Imports

[Added Stats 1953 ch 152 § 1.]

Section
23660. Authority of postal authorities to refuse delivery of imported beverages
23661. Who may import; Application of chapter and section; Shipment by member of armed forces
23661.1. Importation of alcoholic beverages into State by adult passenger on board chartered flight
23661.2. Shipment of wine from another state
23661.3. Wine direct shipper permit; Requirements; Authorized activities; Renewal; Violation as misdemeanor
23661.5. Transportation of wine or beer into State by producer in owned or leased vehicle
23661.6. Right of wine grower to return wine in owned or leased vehicle
23661.7. Right of purchaser to return wine removed from State; Taxation
23662. When shipment deemed consigned to licensed importer
23663. When shipment presumed for delivery and use within state
23664. Railroad carrying interstate or foreign passengers not deemed importer on basis of sale of beverages on train
23665. [Repealed]
23666. Seizure of beverages imported contrary to provisions

Section
23667. Receipt of beverages transported and delivered by common carriers; Refusal of licensed importer or custom broker to give receipt and show license
23668. Refusal of consignee not a licensed importer or custom broker to give receipt and show license
23669. Payment of common carrier's unpaid freight and storage charges from proceeds of sale of seized or forfeited beverages
23670. Violation of provisions a misdemeanor
23671. Importation of beer for sale in State; Certificate of compliance; Issuance; Fee; Suspension or revocation
23672. Designation of licensed importer as authorized importer of brand
23673. Distilled spirits; Price to wholesaler or rectifier

Collateral References:
Pertinent administrative regulations: 4 Cal Code Reg §§ 8, 30 et seq., 49.

§ 23660. Authority of postal authorities to refuse delivery of imported beverages

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 44.

Amendments:
1955 Amendment: Substituted "department" for "board" at the end of the second sentence.

Historical Derivation:
Stats 1935 ch 330 § 49.4, as added Stats 1937 ch 758 § 73.

Cross References:
Seizure and forfeiture of property: B & P C §§ 25350 et seq.
Exclusive right to regulate the importation into and the exportation from state: Cal Const Art XX § 22.

Collateral References:
Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".
Cal. Legal Forms, (Matthew Bender) §§ 13.12, 18.200[1].
Congressional power over interstate commerce: USCS Const Art I § 8 Cl 3.
State power to regulate importation of intoxicating liquors: USCS Const Amend 21.
Criminal sanctions for illegal transportation of liquor: 18 USCS §§ 1261 et seq.

Law Review Articles:
Effect of Twenty– First Amendment on equal protection of liquor importers. 27 Cal LR 348.

§ 23661. Who may import; Application of chapter and section; Shipment by member of armed forces

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 the payment of duty in accordance with 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.

Added Stats 1953 ch 152 § 1. Amended 1955 ch 1747 § 1; Stats 1957 ch 147 § 1; Stats 1959 ch 1398 § 1; Stats 1973 ch 563 § 1;. Stats 1977 ch 1042 § 1; Stats 1980 ch 523 § 1.

Amendments:

1955 Amendment: (1) Substituted "Except as otherwise provided in this section, alcoholic" for "Alcoholic" at the beginning of the section; and (2) added the third paragraph.

1957 Amendment: Added the second paragraph.

1959 Amendment: Added the fourth paragraph.

1973 Amendment: Added the fifth paragraph.

1977 Amendment: Deleted "on board a steamship, common carrier, or air common carrier" after "adult" in the third paragraph.

1980 Amendment: Amended the first sentence of the third paragraph by adding **(1)** "a reasonable amount of" after "in the case of"; and **(2)** "; 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" after "household use".

Historical Derivation:

Stats 1935 ch 330 § 49, as amended Stats 1937 ch 758 § 71, Stats 1941 ch 328 § 32.1, ch 463 § 1, Stats 1945 ch 1401 § 36.5.

Note—Stats 1977 ch 1042 provides:

SEC. 2. The State Board of Equalization shall conduct a study of the impact of the amendments made to Section 23661 of the Business and Professions Code by this act on state revenues from excise and sales taxes. The report shall be submitted to the Governor and the Legislature on or before January 1, 1979.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

Importer's license: B & P C § 23374.

"Common carriers": Pub Util C § 211.

Registration and interstate transporter's permit prior to transporting distilled spirits into state: Rev & Tax C §§ 32109, 32111.

Exclusive right to regulate the importation into and exportation from state: Cal Const Art XX § 22.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:

Effect of the Twenty– First Amendment on equal protection of liquor importers. 27 Cal LR 348.

Attorney General's Opinions:

Section as not illegally discriminatory merely because it authorizes importation of alcoholic beverages for personal use by common carrier only. 26 Ops. Cal. Atty. Gen. 191.

The Department of Alcoholic Beverage Control is not authorized to adopt a regulation allowing a retail licensee to transport tax paid alcoholic beverages to the retailer's out–of–state Free Port warehouse for "temporary retention" prior to delivery to retailer's licensed premises in California if such retention constitutes storage; the department is not authorized to adopt a regulation allowing a retail licensee to transport alcoholic beverages stored by the retailer in a Free Port warehouse facility outside the state to the retailer's licensed premises in California. 69 Ops. Cal. Atty. Gen. 191.

NOTES OF DECISIONS

1. Generally
2. Constitutionality
3. Construction with Other Law
4. Federal Law

1. Generally

There is no transportation into California for delivery or use therein where delivery and use is in a national park, under the exclusive jurisdiction of the United States. Collins v. Yosemite Park & Curry Co. (1938) 304 US 518, 58 S Ct 1009, 82 L Ed 1502, 1938 US LEXIS 1030.

States are not authorized under the Twenty-first Amendment to require out-of-state liquor distillers and suppliers to collect and remit to the state a wholesale markup on liquor sold to officers' clubs and post exchanges located on military bases within the state over which the United States exercises either exclusive or concurrent jurisdiction. United States v. State Tax Com. (1973) 412 US 363, 37 L Ed 2d 1, 93 S Ct 2183, 1973 US LEXIS 126.

2. Constitutionality

A state alcoholic beverage control statute, which provides that a licensed importer must 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 is not per se illegal under the Sherman Act (15 USCS §§ 1 et seq.) and, accordingly, on its face is not invalid pursuant to the supremacy clause of the United States Constitution (Art VI, cl 2), where the statute merely enforces a distiller's decision to restrain intrabrand competition and does not require the distiller to impose vertical restraints of any kind and does not limit the number of importers which may be designated by the distiller, any anticompetitive effect the statute might have when applied in concrete factual situations being insufficient to declare the statute itself void on its face. Rice v. Norman Williams Co. (1982) 458 US 654, 102 S Ct 3294, 73 L Ed 2d 1042, 1982 US LEXIS 156.

A state liquor control designation statute, which prohibits a licensed importer from purchasing or accepting 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, does not violate the equal protection clause as discriminating between designated and nondesignated wholesalers, the statute being rationally related to the statute's legitimate purposes of enabling the distiller to place restraints on intrabrand competition in order to foster interbrand competition. Rice v. Norman Williams Co. (1982) 458 US 654, 102 S Ct 3294, 73 L Ed 2d 1042, 1982 US LEXIS 156.

3. Construction with Other Law

Provisions of this statute which exempt from taxation quantities of alcoholic beverages imported into California, as prescribed by federal law, are controlled by any and all subsequent revisions to the referenced federal law. Somermeier v. District Director of Customs (1971, 9th Cir Cal) 448 F2d 1243, 1971 US App LEXIS 7931.

Under California law, when, by statute, reference is made to general law rather than to a specific statute, the adopted laws are taken not only in their contemporary from but also as they may be changed from time to time. Therefore the amount of liquor which a person flying in from a foreign country may bring in, without a license, is one quart. Somermeier v. District Director of Customs (1971, 9th Cir Cal) 448 F2d 1243, 1971 US App LEXIS 7931.

4. Federal Law

A state alcoholic control designation statute which prohibits a licensed importer from purchasing or accepting delivery of any brand of distilled spirits unless he is designated as a authorized importer of such brand by the brand owner or his authorized agent is not preempted by § 5(a) of the Federal Alcohol Administration Act (27 USCS § 205(a))—which prohibits a distiller or wholesaler from establishing exclusive retailer outlets and prohibits a distiller or wholesaler from requiring a retailer to buy only the distiller's or wholesaler's products to the exclusion of the products of other distillers or wholesalers, but does not prohibit a distiller from requiring its wholesalers to purchase the distiller's products from the distiller itself rather than from a third party—where the state statute in no way requires exclusive retailer outlets or even exclusive wholesale arrangements; although one might be able to hypothesize an arrangement enforced by the designation statute that might be prohibited by § 5(a), this is insufficient to invalidate a state statute pursuant to the supremacy clause, of the Federal Constitution (Art VI, cl 2). Rice v. Norman Williams Co. (1982) 458 US 654, 102 S Ct 3294, 73 L Ed 2d 1042, 1982 US LEXIS 156.

§ 23661.1. Importation of alcoholic beverages into State by adult passenger on board chartered flight

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.

Added Stats 1961 ch 1683 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23661.2. Shipment of wine from another state

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 this 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.

Added Stats 1963 ch 1635 § 1. Amended Stats 1986 ch 735 § 1; Stats 1994 ch 394 § 1 (AB 611); Stats 2005 ch 157 § 1 (SB 118), effective January 1, 2006.

Amendments:

1986 Amendment: (1) Designated the former section to be subd (a); **(2)** amended the second sentence of subd (a) by substituting **(a)** "The" for "Such" at the beginning; and **(b)** "adopted" for "promulgated"; and **(3)** added subd (b) and the last paragraph.

1994 Amendment: (1) Amended subd (a) by **(a)** substituting "resident of California" for "person"; **(b)** substituting "any" for "another" after "champagne, from"; **(c)** adding "that allows adult residents of that state to receive by permit of nominal cost shipments of no less than nine liters of wine, including vermouth and champagne, per month from California" at the end of the first sentence; **(d)** adding "into this state" after "The shipment"; and **(e)** "nine liters" for "2.4 gallons" at the end of the second sentence; and **(2)** amended the first sentence of the first paragraph of subd (b) by substituting **(a)** "that" for "which" before "affords California"; and **(b)** "no" for "not" after "not for resale,".

2005 Amendment: (1) Deleted subd (a) which read: "(a) Notwithstanding any other provision of law, any unlicensed adult resident of California may apply to the Department of Alcoholic Beverage Control and be issued a permit to receive a shipment of wine, including vermouth and champagne, from any state of the United States that allows adult residents of that state to receive by permit of nominal cost shipments of no less than nine liters of wine, including vermouth and champagne, per month from California. The shipment into this state shall be made in accordance with rules adopted by the department, but the total shipments permitted in any calendar month to a person shall not be in excess of nine liters. A common carrier to whom the permit is presented is authorized to make deliver of the shipment to the person named in the permit. Delivery of a shipment pursuant to the permit shall not be deemed to constitute a sale in this state."; (2) deleted subdivision designation (b); (3) amended the first paragraph by (a) deleting "provision of" after "Notwithstanding any other"; and (b) adding "retail" both times it appears; and (4) amended the second paragraph by (a) substituting "container" for "package" after "indicate that the"; and (b) deleting "to" after "a minor or".

Note—Stats 1994 ch 394 provides:

SEC. 3. It is the intent of the Legislature in enacting Section 1 of this act to encourage the adoption of reciprocal wine shipping privileges legislation in other states for purposes of improving fairness and equity for the small, family vintners and winegrowers of California. Currently, only 12 states have adopted reciprocal wine shipping privileges legislation.

The Legislature encourages the Department of Alcoholic Beverage Control to notify other states of California laws relating to reciprocal wine shipping privileges through established channels of communication.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally

Three individuals and a West Virginia licensed wine dealer lacked U.S. Const. art. III standing to challenge B & P C § 23661.2, which controlled the shipment of wine to California from out-of-state persons, because they did not establish an injury-in-fact by alleging a concrete plan to violate § 23661.2 or a credible threat of prosecution. Coulombe v. Jolly (2006, CD Cal) 447 F Supp 2d 1117, 2006 US Dist LEXIS 63483.

§ 23661.3. Wine direct shipper permit; Requirements; Authorized activities; Renewal; Violation as misdemeanor

(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.

Added Stats 2005 ch 157 § 2 (SB 118), effective January 1, 2006.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23661.5. Transportation of wine or beer into State by producer in owned or leased vehicle

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.

Added 1959 ch 903 § 1. Amended Stats 1967 ch 876 § 1; Stats 1971 ch 1075 § 1.

Amendments:

1967 Amendment: Added "or beer" after "wine" wherever it appears in the introductory paragraph.

1971 Amendment: Added "or by contract carrier," in the introductory paragraph.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23661.6. Right of wine grower to return wine in owned or leased vehicle

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.

Added Stats 1959 ch 903 § 2.

Cross References:

Registration and permit prerequisite to transportation of wine into State: Rev & Tax C § 32110.

Tax on beer and wine: Rev & Tax C §§ 32151 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23661.7. Right of purchaser to return wine removed from State; Taxation

(a) A person who has purchased wine from a licensed winegrower, the holder of a beer and wine wholesaler's license and an off-sale retail license that only sells wine, or the holder of a limited off-sale retail wine license, has taken delivery of that wine within this state for delivery or use without the state, and has removed that wine from the state, may return all or any portion of that wine to the premises of the licensee from whom the wine was purchased. To make a return the purchaser need not obtain any license in this state, and may return the wine in a vehicle owned or controlled by the purchaser.

(b) The provisions of Section 32175 of the Revenue and Taxation Code shall apply to any wine so returned.

Added Stats 1970 ch 355 § 1. Amended Stats 2010 ch 276 § 1 (SB 806), effective January 1, 2011; Stats 2011 ch 292 § 2 (AB 623), effective January 1, 2012.

Amendments:

2010 Amendment: (1) Added subdivision designations; (2) amended the first sentence of subd (a) by (a) adding "or a holder of a beer and wine wholesaler's license and an off-sale retail license that only sells wine"; (b) substituting "that wine" for "such wine" wherever it appears; and (c) adding "or holder of a beer and wine wholesaler's license and an off-sale retail license that only sells wine"; and (3) amended the second sentence of subd (a) by substituting (a) "a return" for "such return"; and (b) "the purchaser" for "such purchaser" at the end.

2011 Amendment: Amended the first sentence of subd (a) by (1) substituting ", the holder" for "or a holder" after "winegrower"; (2) adding "or the holder of a limited off-sale retail wine license,"; and (3) substituting "premises of the licensee" for "licensed premises of the winegrower or holder of a beer and wine wholesaler's license and an off-sale retail license that only sells wine in this state".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23662. When shipment deemed consigned to licensed importer

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 49, as amended Stats 1937 ch 758 § 71, Stats 1941 ch 328 § 32.1, ch 463 § 1, Stats 1945 ch 1401 § 36.5.

Cross References:

"Within this state": B & P C § 23040.

Exclusive right to regulate the importation into and exportation from state: Cal Const Art XX § 22.

"Common Carrier": Pub Util C § 211.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23663. When shipment presumed for delivery and use within state

Alcoholic beverages which are consigned to a destination within this State shall be presumed to be for delivery or use within this State.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 49, as amended Stats 1937 ch 758 § 71, Stats 1941 ch 328 § 32.1, ch 463 § 1, Stats 1945 ch 1401 § 36.5.

Cross References:
"Within this State": B & P C § 23040.
Presumption of sale in state of imports: Rev & Tax C § 32175.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23664. Railroad carrying interstate or foreign passengers not deemed importer on basis of sale of beverages on train

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 954 § 9.

Amendments:
1955 Amendment: (1) Added "or air common carrier" after "steamship company"; (2) substituted "boats, or airplanes" for "or boats" wherever it appears; and (3) added "not on duty" after "employees".

Historical Derivation:
Stats 1935 ch 330 § 49, as amended Stats 1937 ch 758 § 71, Stats 1941 ch 328 § 32.1, ch 463 § 1, Stats 1945 ch 1401 § 36.5.

Cross References:
Transportation through State: B & P C § 23109.
Issuance of licenses for trains, cars of sleeping car companies and airplanes: B & P C § 23321.
"Common Carrier": Pub Util C § 211.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:
Liquor and interstate commerce. 7 SCLR 230.

§ 23665. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2. See Rev & Tax C § 32109.

§ 23666. Seizure of beverages imported contrary to provisions

Alcoholic beverages imported into this State contrary to the provisions of Sections 23661 to 23664, inclusive, shall be seized by the department.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 45, ch 1842 § 9.

Amendments:
1955 Amendment: Substituted (1) "23664" for "23665"; and (2) "department" for "board".

Historical Derivation:
Stats 1935 ch 330 § 49, as amended Stats 1937 ch 758 § 71, Stats 1941 ch 328 § 32.1, ch 463 § 1, Stats 1945 ch 1401 § 36.5.

Cross References:
Seizure and forfeiture of property: B & P C §§ 25350 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23667. Receipt of beverages transported and delivered by common carriers; Refusal of licensed importer or custom broker to give receipt and show license

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 46.

Amendments:
1955 Amendment: Substituted "department" for "board" in the first sentence.

Historical Derivation:
Stats 1935 ch 330 § 49.2 , as added Stats 1937 ch 758 § 72, amended Stats 1941 ch 328 § 31.2, Stats 1945 ch 1401 § 37.

Cross References:
"Within this state": B & P C § 23040.
Public warehouse license: B & P C § 23375.
Rules and regulations by department: B & P C § 25750.
"Common carrier": Pub Util C § 211.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally
There is no transportation into California for delivery or use therein where delivery and use is in a national park, under the exclusive jurisdiction of the United States. Collins v. Yosemite

Park & Curry Co. (1938) 304 US 518, 58 S Ct 1009, 82 L Ed 1502, 1938 US LEXIS 1030.

§ 23668. Refusal of consignee not a licensed importer or custom broker to give receipt and show license

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 47.

Amendments:

1955 Amendment: Substituted "department" for "board" wherever it appears.

Historical Derivation:

Stats 1935 ch 330 § 49.2t, as added Stats 1937 ch 758 § 72, amended Stats 1941 ch 328 § 31.2, Stats 1945 ch 1401 § 37.

Cross References:

Seizure and forfeiture of property: B & P C §§ 25350 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23669. Payment of common carrier's unpaid freight and storage charges from proceeds of sale of seized or forfeited beverages

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 48.

Amendments:

1955 Amendment: Substituted "department" for "board".

Historical Derivation:

Stats 1935 ch 330 § 49.2, as added Stats 1937 ch 758 § 72, amended Stats 1941 ch 328 § 31.2, Stats 1945 ch 1401 § 37.

Cross References:

Excise taxes on alcoholic beverages: Rev & Tax C §§ 32001 et seq.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 342 "Liens And Wage Preferences".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23670. Violation of provisions a misdemeanor

Every person violating the provisions of this article is guilty of a misdemeanor.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 49.2, as added Stats 1937 ch 758 § 72, amended Stats 1941 ch 328 § 31.2, Stats 1945 ch 1401 § 37.

Cross References:

Punishment for misdemeanors: B & P C § 25617.

Definition of misdemeanor, and penalties therefor: Pen C §§ 17, 19, 19.2.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Annotations:

Right to attack validity of statute, ordinance, or regulation relating to occupational or professional license in criminal or civil proceeding for violation of provisions therein. 65 ALR2d 660.

§ 23671. Importation of beer for sale in State; Certificate of compliance; Issuance; Fee; Suspension or revocation

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.

Added Stats 1957 ch 750 § 1. Amended Stats 1965 ch 78 § 1 1965; Stats 1988 ch 320 § 1, effective July 8, 1988; Stats 1993 ch 49 § 2 (AB 330).

Amendments:

1965 Amendment: Substituted "10th" for "twenty–fifth" before "day" in the second sentence of the first paragraph.

1988 Amendment: (1) Generally eliminated "such"; **(2)** amended the first paragraph by substituting **(a)** "in the state" for "herein" after "state for sale" in the first sentence; and **(b)** "makes" for "shall have made" before "a written agreement" in the second sentence; and **(3)** amended the first sentence of the second paragraph by **(a)** substituting "fails" for "fail" after "certificate,"; and **(b)** adding "or to comply with Section 14575 of the Public Resources Code".

1993 Amendment: Added the third sentence of the first paragraph.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23672. Designation of licensed importer as authorized importer of brand

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.

Added Stats 1973 ch 707 § 1. Amended Stats 1979 ch 280 § 1.

Amendments:

1979 Amendment: Amended the first sentence by substituting (1) "an" for "the" after "designated as"; and (2) "brand owner or his authorized agent" for "licensee who filed the minimum retail price schedule for such brand pursuant to Section 24755" at the end of the sentence.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.26.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Constitutionality
2. Construction with Other Law

1. Constitutionality

A state alcoholic beverage control statute, which provides that a licensed importer must 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 is not per se illegal under the Sherman Act (15 USCS §§ 1 et seq.) and, accordingly, on its face is not invalid pursuant to the supremacy clause of the United States Constitution (Art VI, cl 2), where the statute merely enforces a distiller's decision to restrain intrabrand competition and does not require the distiller to impose vertical restraints of any kind and does not limit the number of importers which may be designated by the distiller, any anticompetitive effect the statute might have when applied in concrete factual situations being insufficient to declare the statute itself void on its face. Rice v. Norman Williams Co. (1982) 458 US 654, 102 S Ct 3294, 73 L Ed 2d 1042, 1982 US LEXIS 156.

A state liquor control designation statute, which prohibits a licensed importer from purchasing or accepting 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, does not violate the equal protection clause as discriminating between designated and nondesignated wholesalers, the statute being rationally related to the statute's legitimate purposes of enabling the distiller to place restraints on intrabrand competition in order to foster interbrand competition. Rice v. Norman Williams Co. (1982) 458 US 654, 102 S Ct 3294, 73 L Ed 2d 1042, 1982 US LEXIS 156.

2. Construction with Other Law

A state alcoholic control designation statute which prohibits a licensed importer from purchasing or accepting delivery of any brand of distilled spirits unless he is designated as a authorized importer of such brand by the brand owner or his authorized agent is not preempted by § 5(a) of the Federal Alcohol Administration Act (27 USCS § 205(a))—which prohibits a distiller or wholesaler from establishing exclusive retailer outlets and prohibits a distiller or wholesaler from requiring a retailer to buy only the distiller's or wholesaler's products to the exclusion of the products of other distillers or wholesalers, but does not prohibit a distiller from requiring its wholesalers to purchase the distiller's products from the distiller itself rather than from a third party—where the state statute in no way requires exclusive retailer outlets or even exclusive wholesale arrangements; although one might be able to hypothesize an arrangement enforced by the designation statute that might be prohibited by § 5(a), this is insufficient to invalidate a state statute pursuant to the supremacy clause, of the Federal Constitution (Art VI, cl 2). Rice v. Norman Williams Co. (1982) 458 US 654, 102 S Ct 3294, 73 L Ed 2d 1042, 1982 US LEXIS 156.

§ 23673. Distilled spirits; Price to wholesaler or rectifier

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 remediable only by a civil action for damages or 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.

Added Stats 1979 ch 407 § 1.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

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CHAPTER 5

Restrictions on Issuance of Licenses

[Added Stats 1953 ch 152 § 1.]

Article 1

In General

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23771. Distilled spirits license
23772. Distilled spirits manufacturer's or manufacturer's agent's license; Exceptions
23773. Solicitation by agents of out–of–state manufacturer
23774. Distilled spirits wholesale license
23775. Importer's license
23776. Wholesaler's license
23777. Off–sale general license
23778. Distilled spirits wholesaler's license
23779. Wholesale license
23780. Distilled spirits wholesaler's license or rectifier's license
23781–23783. [Repealed]
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Article 1.5

Conditional Licenses

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23825. "Onsale general license"
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23826.2. Issuance of new off–sale beer and wine licenses in Los Angeles County; Conditions
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23826.8. Conversion of on–sale general license for seasonal business to on–sale general license; Restrictions on license transfer
23826.9. Issuance of additional new original on-sale general licenses in any county of the 56th class
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23826.11. Additional new original on-sale general licenses for bona fide public eating places with seating capacity of 50 or more
23826.12. Issuance of additional new original on-sale general licenses in any county of the 24th class
23827. Counties with fewer than 7000 inhabitants with economy dependent on continual use of county's recreational facilities

ARTICLE 1

In General

Collateral References:

Qualifications, applications and licenses: 4 Cal Code Reg §§ 28, 55 et seq.

§ 23770. Winegrower's license

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1331 § 6; Stats 1955 ch 1600 § 5; Stats 1965 ch 499 § 7.

Amendments:

1955 Amendment: Substituted (1) "or wine cellar" for "wine storeroom or field warehouse" in the first sentence; and (2) "wine cellar" for "wine storeroom" in the second sentence.

1965 Amendment: Added (1) "or a wine blender's license, whichever is appropriate to the operations to be conducted on the licensed premises,"; (2) "or wine blender's"; and (3) ", as may be appropriate for operations conducted on the licensed premises".

Editor's Notes—See note to B & P C § 23013, relating to expenditure of revenues collected from issuance of wine blender's licenses.

Historical Derivation:

Stats 1935 ch 330 § 19, as added Stats 1943 ch 288 § 7, amended Stats 1945 ch 1401 § 12.1.

Cross References:

"Wine grower": B & P C § 23013.
Types of licenses and annual fees therefor: B & P C § 23320.
Manufacturer's or wine grower's licenses: B & P C § 23356.

Collateral References:

Internal revenue bonded warehouses; entry of distilled spirits for deposit in storage: 26 USCS §§ 5231 et seq.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23771. Distilled spirits license

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 20½ , as added Stats 1937 ch 758 § 16½.

Cross References:

"Distilled spirits manufacturer": B & P C § 23015.
Types of licenses and annual fees therefor: B & P C § 23320.

Sales by distilled spirits manufacturers: B & P C §§ 23363 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:
Right of parent corporation meeting requirements of § 23774 to have licenses permitted therein issued directly to newly formed subsidiary corporation. 25 Ops. Cal. Atty. Gen. 288.

NOTES OF DECISIONS

1. Legislative Intent
2. Construction with Other Law

1. Legislative Intent
Where licensed manufacturer of distilled spirits which also held distilled spirits wholesaler's license under § 23774, exempting certain persons from provisions of this section and § 23772, was acquired by merger by another manufacturer of distilled spirits not otherwise able to possess wholesaler's license, latter manufacturer was not, through such merger, entitled to possess wholesaler's license; legislature intended to establish uniform system of regulation whereby through process of natural attrition those qualified for exemption would gradually diminish in number until no more existed; while licenses themselves may be transferable, it was never intended that right of dual licensing would be transferable. Harris v. Alcoholic Beverage Control Appeals Board (1964) 61 Cal 2d 305, 38 Cal Rptr 409, 392 P2d 1, 1964 Cal LEXIS 202.

2. Construction with Other Law
Grant of dual licenses to one falling within "grandfather" clause of § 23774, exempting certain persons from the provisions of this section and § 23772, was not predicated on desirability of such dual licensing, but rather despite lack of desirability thereof to prevent inequitable results; exception creates a current and undesirable nonuniformity in legislative scheme of regulation, and perpetuation thereof through transfers and business rearrangements would defeat ultimate legislative objective of keeping distinct and apart all persons engaged in handling of alcoholic beverages, whether manufacturing, wholesaling, importing or retailing. Harris v. Alcoholic Beverage Control Appeals Board (1964) 61 Cal 2d 305, 38 Cal Rptr 409, 392 P2d 1, 1964 Cal LEXIS 202.

§ 23772. Distilled spirits manufacturer's or manufacturer's agent's license; 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 1790 § 1.

Amendments:
1957 Amendment: Added the second paragraph.

Historical Derivation:
Stats 1935 ch 330 § 20½, as added Stats 1937 ch 758 § 16½.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

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2. Construction with Other Law

1. Legislative Intent
Where licensed manufacturer of distilled spirits which also held distilled spirits wholesaler's license under § 23774, exempting certain persons from provisions of this section and § 23771, was acquired by merger by another manufacturer of distilled spirits not otherwise able to possess wholesaler's license, latter manufacturer was not, through such merger, entitled to possess wholesaler's license; legislature intended to establish uniform system of regulation whereby through the process of natural attrition those qualified for the exemption would gradually diminish in number until no more existed; while the licenses themselves may be transferable, it was never intended that the right of dual licensing would be transferable. Harris v. Alcoholic Beverage Control Appeals Board (1964) 61 Cal 2d 305, 38 Cal Rptr 409, 392 P2d 1, 1964 Cal LEXIS 202.

2. Construction with Other Law
Grant of dual licenses to one falling within "grandfather" clause of § 23774, exempting certain persons from the provisions of this section and § 23771, was not predicated on desirability of such dual licensing, but rather despite lack of desirability thereof to prevent inequitable results; exception creates current and undesirable nonuniformity in legislative scheme of regulation, and perpetuation thereof through transfers and business rearrangements would defeat ultimate leg-

islative objective of keeping distinct and apart all persons engaged in handling of alcoholic beverages, whether manufacturing, wholesaling, importing or retailing. Harris v. Alcoholic Beverage Control Appeals Board (1964) 61 Cal 2d 305, 38 Cal Rptr 409, 392 P2d 1, 1964 Cal LEXIS 202.

§ 23773. Solicitation by agents of out–of–state manufacturer

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 20½, as added Stats 1937 ch 758 § 16½.

Cross References:
"Within this state": B & P C § 23040.
"Without the state": B & P C § 23041.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23774. Distilled spirits wholesale license

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 20½, as added Stats 1937 ch 758 § 16½.

Cross References:
"Alcoholic beverage": B & P C § 23004.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:
Right of parent corporation meeting requirements of this section to have licenses permitted herein issued directly to newly formed subsidiary corporation. 25 Ops. Cal. Atty. Gen. 288.

Annotations:
"Grandfather clause" of statute or ordinance. 4 ALR2d 667.

NOTES OF DECISIONS

1. Legislative Intent
2. Construction with Other Law

1. Legislative Intent
Where licensed manufacturer of distilled spirits which also held distilled spirits wholesaler's license under this section exempting certain persons from provisions of §§ 23771, 23772, was acquired by merger by another manufacturer of distilled spirits not otherwise able to possess wholesaler's license, latter manufacturer was not, through such merger, entitled to possess wholesaler's license; legislature intended to establish uniform system of regulation whereby through process of natural attrition those qualified for exemption would gradually diminish in number until no more existed; while licenses themselves may be transferable, it was never intended that right of dual licensing would be transferable. Harris v. Alcoholic Beverage Control Appeals Board (1964) 61 Cal 2d 305, 38 Cal Rptr 409, 392 P2d 1, 1964 Cal LEXIS 202.

2. Construction with Other Law
Grant of dual licenses to one falling within "grandfather" clause of this section, exempting certain persons from provisions of §§ 23771, 23772, prohibiting manufacturer of distilled spirits from holding distilled spirits wholesaler's license, was not predicated on desirability of such dual licensing, but rather despite lack of desirability thereof to prevent inequitable results; exception creates a current and undesirable nonuniformity in legislative scheme of regulation, and perpetuation thereof through transfers and business rearrangements would defeat ultimate legislative objective of keeping distinct and apart all persons engaged in handling of alcoholic beverages, whether manufacturing, wholesaling, importing or retailing. Harris v. Alcoholic Beverage Control Appeals Board (1964) 61 Cal 2d 305, 38 Cal Rptr 409, 392 P2d 1, 1964 Cal LEXIS 202.

§ 23775. Importer's license

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:
Types of licenses and annual fees therefor: B & P C § 23320.
Importer's license: B & P C § 23374.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:
Right of parent corporation meeting requirements of § 23774 to have licenses permitted therein issued directly to newly formed subsidiary corporation. 25 Ops. Cal. Atty. Gen. 288.

§ 23776. Wholesaler's license

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1961 ch 246 § 1; Stats 1987 ch 68 § 1; Stats 1988 ch 284 § 2, effective July 7, 1988.

Amendments:

1961 Amendment: Added the exception.

1987 Amendment: Added **(1)** "or renewed" after "issued" wherever it appears; **(2)** "or off–sale" after "any on–sale"; and **(3)** "restricted to sales to on–sale licenses".

1988 Amendment: Substituted the section for the former section which read: "A wholesaler's license shall not be issued or renewed to any on–sale or off–sale licensee, except that a wholesaler's license restricted to sales to on–sale licenses may be issued or renewed to an on–sale licensee in counties not to exceed 15,000 population."

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Editor's Notes—For urgency provision, see 1988 Note following B & P C § 23378.2.

Cross References:

"Wholesale sale" and "sale at wholesale": B & P C § 23027.

Population of counties: Gov C § 28020.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:

Review of Selected 1987 Legislation. 19 Pacific LJ 472.

§ 23777. Off–sale general license

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Cross References:

"Distilled spirits": B & P C § 23005.

"Wholesaler": B & P C § 23021.

Types of licenses and annual fees therefor: B & P C § 23320.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. License Properly Denied

1. License Properly Denied

The findings of the Department of Alcoholic Beverage Control that issuance of an off-sale beer and wine license to a convenience-type market would be contrary to public welfare or morals were supported by substantial evidence and it did not act arbitrarily or abuse its discretion in denying the issuance of the license, where the proposed premises were located some 300 to 400 feet from a school with an approximate attendance of 775 pupils ranging in age from 5 through 14 years, where a substantial number of children would pass directly by the proposed premises from early morning until well into the evening each day, where there was testimony that issuance of the license would create or intensify various problems, such as increased traffic hazards, increased litter on the school grounds, obtaining of alcoholic beverages by children, and increased class cutting, where there were already 11 licensed outlets of the off-sale type within a mile of the school, and where the applicant's beer and wine departments would not be segregated from items attractive to school children which it also intended to handle. Kirby v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 261 Cal App 2d 119, 67 Cal Rptr 628, 1968 Cal App LEXIS 1725.

§ 23778. Distilled spirits wholesaler's license

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 49.

Amendments:

1955 Amendment: Substituted "department" for "board".

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:

Revocation of beer and wine wholesale license. 20 Ops. Cal. Atty. Gen. 217.

§ 23779. Wholesale license

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 50.

Amendments:

1955 Amendment: Substituted "department" for "board" in the first sentence.

Historical Derivation:

Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1; Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

Code Commissioner's Notes:

(1) Provision is made applicable to "any person" rather than "any other person," since analysis of subd (f) [§ 6, 1951: 1257: 3113] indicates no apparent exception to application of this provision. (2) While the provision regarding revocation of a distilled spirits wholesaler's license purports to require compliance with "all other provisions of this section [§ 6]," we believe that only compliance with the provisions of subd (f) of § 6, which deal with wholesalers, is intended and the section has been drafted accordingly.

Cross References:

Grounds for suspension or revocation of licenses: B & P C § 24200.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:

Meaning and definition of the word "may" as used in statute. 20 Ops. Cal. Atty. Gen. 217.

Annotations:

Hearing before revocation or suspension of liquor license. 35 ALR2d 1067.

NOTES OF DECISIONS

1. Generally
2. Construction
3. Purpose
4. Revocation of License

1. Generally

Administrative rule (4 Cal Adm C § 65) did not justify granting wholesaler's license to licensee already holding one for premises in same city, or to person who does not, in good faith, actually carry on or intend to carry on bona fide wholesale business. Joseph George, Distributor v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 149 Cal App 2d 702, 308 P2d 773, 1957 Cal App LEXIS 2089.

Wholesaler's license was "issued" within meaning of former section notwithstanding that State Board of Equalization retained physical possession of license as inactive license, under its misinterpretation of administrative rule, where licensee already held one such license for other premises in same city, did not intend to conduct business at premises covered by second license, but benefited therefrom in that it was counted in county quota, and thus effectively reduced competition. Joseph George, Distributor v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 149 Cal App 2d 702, 308 P2d 773, 1957 Cal App LEXIS 2089.

Section concerns public interest in industry requiring close supervision, and it is important part of integrated and rather complex licensing and price regulating system. Louis Stores, Inc. v. Department of Alcoholic Beverage Control (1962) 57 Cal 2d 749, 22 Cal Rptr 14, 371 P2d 758, 1962 Cal LEXIS 223.

Section requires wholesale licensee of alcoholic beverages to carry on bona fide wholesale business by sale to retail licensees. Ammex Warehouse Co. v. Department of Alcoholic Beverage Control (1963, SD Cal) 224 F Supp 546, 1963 US Dist LEXIS 8096, aff'd (1964) 378 US 124, 84 S Ct 1657, 12 L Ed 2d 743, 1964 US LEXIS 995.

While a licensed wholesaler is strictly prohibited from dealing exclusively with just one retailer (Bus. & Prof. Code, § 23779), there is nothing in the Alcoholic Beverage Control Act which prevents a winegrower, who also holds an off-sale general license, from dealing exclusively with himself as a retailer. Pronto Market No. 1, Inc. v. Alcoholic Bev. Etc. Appeals Bd. (1976, Cal App 2d Dist) 61 Cal App 3d 545, 132 Cal Rptr 236, 1976 Cal App LEXIS 1833.

2. Construction

By use of word "shall," this section flatly prohibits issuance of beer or wine wholesale license to any person who does not in good faith intend to make sales to retail licensees other than himself; such provision, together with permissive power of revocation given by section to Department of Alcoholic Beverage Control with respect to persons who already hold such licenses, establishes legislative policy against methods of operation such as those employed by retail grocery chain in purchasing beer and wine "at wholesale" from manufacturer, bringing beverage to warehouse which it maintained, and subsequently delivering beverages to retail stores owned by chain for sale to consumers, without selling or attempting to sell at wholesale to any retail licensees other than its stores. Louis Stores, Inc. v. Department of Alcoholic Beverage Control (1962) 57 Cal 2d 749, 22 Cal Rptr 14, 371 P2d 758, 1962 Cal LEXIS 223.

Section contains no requirement that, before Department of Alcoholic Beverage Control can revoke license, there must be evidence showing that such method of operation is contrary to general welfare, and there is no basis for reading into provision that restriction on power of department. Legislature may properly, as it has here, provide that certain conduct is contrary to public welfare, and department may rely on legislative declaration without taking evidence as to detrimental effect on public welfare. Louis Stores, Inc. v. Department of Alcoholic Beverage Control (1962) 57 Cal 2d 749, 22 Cal Rptr 14, 371 P2d 758, 1962 Cal LEXIS 223.

Section contains no requirement that, before department can revoke license, there must be evidence showing that such method of operation is contrary to general welfare, and department may rely on this legislative declaration that prohibited conduct is contrary to public welfare. Borun Bros. v. Department of Alcoholic Beverage Control (1963, Cal App 2d Dist) 215 Cal App 2d 503, 30 Cal Rptr 175, 1963 Cal App LEXIS 2526.

3. Purpose

Section is part of general system of liquor regulation, which includes establishment of orderly marketing conditions; this basic purpose of liquor law furnishes general standard for guiding Department of Alcoholic Beverage Control in determining whether persons holding wholesale liquor licenses should be permitted to continue, for more than 45 days, making wholesale deliveries solely to their own retail outlets. Louis Stores, Inc. v. Department of Alcoholic Beverage Control (1962) 57 Cal 2d 749, 22 Cal Rptr 14, 371 P2d 758, 1962 Cal LEXIS 223.

4. Revocation of License

Section clearly gives Department of Alcoholic Beverage Control power to revoke wholesale license in its discretion whenever licensee fails for period of 45 days to make sales to retail licensees other than himself. Louis Stores, Inc. v. Department of Alcoholic Beverage Control (1962) 57 Cal 2d 749, 22 Cal Rptr 14, 371 P2d 758, 1962 Cal LEXIS 223.

Determination of Board of Equalization that failure of retail grocery chain under its wholesale license to sell beer or wine to retail licensees other than to its stores presented no problem which was contrary to public welfare and morals, thus rendering such methods of wholesale licensee permissible, was contrary to language of this section, and Department of Alcoholic Beverage Control, as successor to board, correctly interpreted statute as granting discretionary power of revocation. Louis Stores, Inc. v. Department of Alcoholic Beverage Control (1962) 57 Cal 2d 749, 22 Cal Rptr 14, 371 P2d 758, 1962 Cal LEXIS 223.

Both public interest and effect on third persons strongly indicated that determination of Board of Equalization sustaining validity of retail grocery chain's wholesale beer and wine license, in prior proceeding to revoke such license on ground that licensee had failed to engage in business of wholesaling beer and wine for 45-day period as required by this section, should not operate to preclude either successor Department of Alcoholic Beverage Control or courts from reexamining statute and applying correct interpretation, whether or not different from that of board, to retail grocery chain. Louis Stores, Inc. v. Department of Alcoholic Beverage Control (1962) 57 Cal 2d 749, 22 Cal Rptr 14, 371 P2d 758, 1962 Cal LEXIS 223.

Department of Alcoholic Beverage Control did not abuse discretion given it by this section, in revoking retail grocery chain's wholesale beer and wine license for failure to make, for 45-day period, any sales of alcoholic beverages to retail licensees other than itself, where department found on sufficient evidence that any reliance by grocery chain on prior erroneous administrative ruling was insufficient to justify continuance of stores' method of operation when considered in light of adverse effect of this method on other retailers who could not purchase same beverages at lower price available to grocery chain. Louis Stores, Inc. v. Department of Alcoholic Beverage Control (1962) 57 Cal 2d 749, 22 Cal Rptr 14, 371 P2d 758, 1962 Cal LEXIS 223.

Provision, which gives Department of Alcoholic Beverage Control power to revoke wholesale license whenever licensee fails for period of 45 days to make sales to retail licensees other than himself, constituted ground for revocation of wholesale beer and wine license and wine importer's license of wholesaler corporation that sold only to incorporated retail licensee, of which it was wholly owned subsidiary, having to substantial extent the same officers and directors as such retail licensee. Borun Bros. v. Department of Alcoholic Beverage Control (1963, Cal App 2d Dist) 215 Cal App 2d 503, 30 Cal Rptr 175, 1963 Cal App LEXIS 2526.

§ 23780. Distilled spirits wholesaler's license or rectifier's license

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 7.4, as added Stats 1949 ch 1348 § 4.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23781. [Section repealed 1961.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1961 ch 1474 § 1. The repealed section related to limitation on numbers of certain licenses.

Historical Derivation:

Stats 1935 ch 330 § 14.5, as added Stats 1937 ch 758 § 14½ .

§ 23782. [Section repealed 1957.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1957 ch 554 § 2. The repealed section related to industrial alcohol dealers' licenses.

Historical Derivation:

Stats 1935 ch 330 § 20, as amended Stats 1945 ch 1401 § 13.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23783. [Section repealed 1959.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1959 ch 935 § 1. The repealed section related to license for premises for which prior license was revoked.

Historical Derivation:

Stats 1935 ch 330 § 14, as amended Stats 1937 ch 758 § 15.

§ 23784. Retailer's on–sale license

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1961 ch 246 § 2.

Amendments:

1961 Amendment: Added the exception at the end of the section.

Historical Derivation:

Stats 1935 ch 330 § 16, as amended Stats 1945 ch 1401 § 9.1.

Cross References:
Population of counties: Gov C § 28020.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23785. Retail package off–sale general license

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 16½, as added Stats 1937 ch 758 § 15¼, amended Stats 1945 ch 1401 § 11.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23786. [Section repealed 1957.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 954 § 10. Repealed Stats 1955 ch 1779 § 4, operative January 1, 1957. The repealed section related to retailer's on–sale beer, wine and general licenses.

Historical Derivation:
(a) Stats 1935 ch 330 § 181, as amended Stats 1945 ch 1401 § 12.
(b) Stats 1933 ch 658 § 18.

§ 23787. On–sale license for sale of alcoholic beverages in 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 51; Stats 1955 ch 1779 § 5, operative January 1, 1957; Stats 1957 ch 1922 § 1; Stats 1961 ch 1686 § 1; Stats 1967 ch 1189 § 2, ch 1296 § 4; Stats 1968 ch 1196 § 1; Stats 1971 ch 1184 § 1.

Amendments:
1955 Amendment (ch 447): Substituted "The department" for "The board" at the beginning of the section.
1955 Amendment (ch 1779): Substituted "bona fide public eating place, determine whether the" for "hotel, restaurant, cafe, cafeteria, or other public eating place, determine whether the hotel, restaurant, cafe, cafeteria, or other".
1957 Amendment: Added the second and third sentences.
1961 Amendment: Added the second paragraph.
1967 Amendment: (1) Deleted ", other than beers," after "alcoholic beverages"; and (2) added "or a bowling center of 32 lanes or more".
1968 Amendment: Substituted "12" for "32" before "lanes".
1971 Amendment: (1) Added "or any other bona fide public eating place,"; (2) deleted "or" after "motel,"; (3) added "or bona fide public eating place"; (4) added "upon notification to the department"; and (5) added the third sentence in the first paragraph.

Historical Derivation:
(a) Stats 1935 ch 330 § 181, as amended Stats 1945 ch 1401 § 12.
(b) Stats 1933 ch 658 § 18.

Cross References:
Duplicate licenses for premises with more than one room: B & P C § 24042.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:
Issuance of on–sale license "for record purposes only". 23 Ops. Cal. Atty. Gen. 262.
Prohibition against liquor licensee, holding general on–sale license for bona fide eating place, to lease or make concession agreement subletting restaurant operations on his licensed premises. 29 Ops. Cal. Atty. Gen. 95.

§ 23788. [Section repealed 1967.]

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 1267 § 1. Repealed Stats 1967 ch 567 § 1. The repealed section related to on–sale licenses for general or seasonal business.

Historical Derivation:
Stats 1935 ch 330 § 12, as amended Stats 1945 ch 1401 § 10, Stats 1947 ch 1566 § 4.

§ 23788.5. Employees of onsale licensee; 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.

Added Stats 1957 ch 1267 § 2. Amended Stats 1963 ch 1000 § 1; Stats 1978 ch 656 § 2; Stats 1992 ch 900 § 10 (AB 432), effective September 24, 1992.

Amendments:

1963 Amendment: Deleted (1) "general" after "onsale"; and (2) "or on–sale general licensee for seasonal business" after "licensee".

1978 Amendment: Added the second sentence.

1992 Amendment: Substituted "Alcohol Beverage Control Fund as provided in Section 25761" for "General Fund in the State Treasury" at the end of the last sentence.

Historical Derivation:

(a) Former B & P C § 23788, as added Stats 1953 ch 152 § 1.

(b) Stats 1935 ch 330 § 12, as amended Stats 1945 ch 1401 § 10, Stats 1947 ch 1566 § 4.

Note—Stats 1992 ch 900 provides:

SECTION 1. The Legislature finds and declares that the regulation of the sale and use of alcoholic beverages is among the highest priorities of state government. The abuse of alcohol can lead to a myriad of other criminal, legal, social, and economic problems. The fair, stable, and effective administration and enforcement of the Alcoholic Beverage Control Act and related laws, therefore, must be insured.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:

Propriety of agreement between on–sale general public premises licensee and licensed card room operator for operation of card room; propriety of sublease agreement with operator of vending machines. 47 Ops. Cal. Atty. Gen. 182.

NOTES OF DECISIONS

1. Generally
2. Licensee/Manager Relationship

1. Generally

Each of words "manage, direct, or conduct," as used in section, suggest control. Ciro's of San Francisco v. State Board of Equalization (1956, Cal App 1st Dist) 142 Cal App 2d 636, 299 P2d 703, 1956 Cal App LEXIS 2028.

2. Licensee/Manager Relationship

Although a liquor licensee who permits his license to be used by another will not be held absolutely liable for debts to the user's suppliers, the fact that the license is so used is one factor to be considered in determining whether there was an ostensible agency between the licensee and the user; the maxim "the law has been obeyed," may be applied to protect third persons who deal with another person in reliance upon what appears to be a legal relationship between him and a second person, so that creditors of a concessionaire who operated a bar and restaurant under his own name, but used the liquor license of the partners from whom he leased the premises, were entitled to rely on the appearances created by the use of the license and assume that, rather than the illegal relationship established by the agreement, there was a relationship of licensee and manager. Associated Creditors' Agency v. Davis (1975) 13 Cal 3d 374, 118 Cal Rptr 772, 530 P2d 1084, 1975 Cal LEXIS 175.

§ 23789. On–sale retail license for premises located near church, hospital, schools and public playgrounds, or nonprofit youth facilities

(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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 52; Stats 1959 ch 803 § 1; Stats 1984 ch 273 § 1, effective July 3, 1984; Stats 1992 ch 678 § 1 (SB 1315).

Amendments:

1955 Amendment: Substituted "The department" for "The board".

1959 Amendment: (1) Added ", other than renewal or ownership transfer," in the first paragraph; (2) added "and" before, and deleted "schools, and children's public playgrounds" after, "hospital" at the end of the first paragraph; and (3) added the last paragraph.

1984 Amendment: Added "or nonprofit youth facilities, including, but not limited to, facilities serving girl scouts, boy scouts, or campfire girls" in the second paragraph.

1992 Amendment: (1) Added subdivision designations (a) and (b); **(2)** substituted "any retail license" for "on–sale retail licenses" after "transfer, of" in subds (a) and (b); and **(3)** deleted "further" after "The department is" in subd (b).

Historical Derivation:

Stats 1935 ch 330 § 13.

Note—Stats 1984 ch 273 provides:

SEC. 4. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Cross References:

Rules and regulations by department: B & P C § 25750.

Prohibition against sale of liquors near certain institutions: Pen C §§ 172 et seq.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.20.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:

Word "schools" as not including schools of cosmetology; authority of department to refuse licenses to establishments in proximity to such schools. 51 Ops. Cal. Atty. Gen. 35.

Annotations:

"School," "schoolhouse," or the like within statute prohibiting liquor sales within specified distance thereof. 49 ALR2d 1103.

"Church," or the like, within statute prohibiting liquor sales within specified distance thereof. 59 ALR2d 1439.

Measurement of distances for purposes of enactment prohibiting sale, or license for sale, of intoxicating liquor within given distance from church, university, school, or other institution or property as base. 4 ALR3d 1250.

Validity, under federal and state establishment of religion provisions, of prohibition of sale of intoxicating liquors on specific religious holidays. 27 ALR4th 1155.

NOTES OF DECISIONS

1. Generally
2. Churches and Hospitals
3. Schools and Playgrounds

1. Generally

Department's investigations in connection with applications for liquor licenses must be made with view to protection of public welfare and morals. Schaub's, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 858, 315 P2d 459, 1957 Cal App LEXIS 1570.

Any regulations of liquor traffic by way of exceptions in respect to churches and schools should be liberally construed in favor of such regulations and against applicants for license to sell liquor within prescribed areas. Schaub's, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 858, 315 P2d 459, 1957 Cal App LEXIS 1570.

Decision of Department of Alcoholic Beverage Control to issue general off-sale liquor license to super market located in close proximity to high school, church, public swimming pool, proposed children's playground and location on which YMCA building was to be erected, and that such action was not contrary to public welfare and morals, was supported by substantial evidence, despite conflicting testimony by witnesses for school, church and YMCA, since ultimate question was peculiarly question for departmental resolution and there was no abuse of discretion in its determination. Board of Trustees v. Munro (1958, Cal App 3d Dist) 163 Cal App 2d 440, 329 P2d 765, 1958 Cal App LEXIS 1518.

In determining whether issuance of liquor license would be inimical to general welfare or public morals, Department of Alcoholic Beverage Control is entitled to consider applicant's integrity as shown by his previous business experience, kind of business to be conducted on licensed premises, probable manner in which it will be conducted, type of guests and probability that their consumption of alcoholic beverages will be moderate, nature of protest made to issuance of license, and any conflict that use of license might have with church in area and activities that it conducts. Koss v. Department of Alcoholic Beverage Control (1963, Cal App 4th Dist) 215 Cal App 2d 489, 30 Cal Rptr 219, 1963 Cal App LEXIS 2524.

2. Churches and Hospitals

The mere fact that churches are in the immediate vicinity of the premises does not establish an abuse of discretion in granting of license. Altadena Community Church v. State Board of Equalization (1952, Cal App) 109 Cal App 2d 99, 240 P2d 322, 1952 Cal App LEXIS 1803.

There is no provision, or regulation by department, that department may refuse "off-sale" license in immediate vicinity of church, but nevertheless proximity of license premises to church may supply adequate basis for denial of such license as being inimical to public morals and welfare. Schaub's, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 858, 315 P2d 459, 1957 Cal App LEXIS 1570.

Fact that when church was seeking zoning ordinance so that its edifice could be constructed, president of store signed petition to grant such zoning ordinance on unwritten promise of then pastor that church would not object to liquor license for store its president planned did not aid store in application for such license. Schaub's, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 858, 315 P2d 459, 1957 Cal App LEXIS 1570.

Though department was entitled to give consideration to unwritten agreement between pastor of church and store owner that church would not object to liquor license for store, it was not binding on department in arriving at its decision on application for license. Schaub's, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 858, 315 P2d 459, 1957 Cal App LEXIS 1570.

Specific authorization in this section of Department of Alcoholic Beverage Control to refuse issuance of on-sale retail licenses for premises located within immediate vicinity of churches, cannot impair constitutional requirement of showing of "good cause" for refusal of license, and does not determine that proximity of premises to church is in and of itself "good cause" for refusal of license; in every such case, department is bound to exercise legal discretion in passing on application. Martin v. Alcoholic Beverage Control Appeals Board (1961) 55 Cal 2d 867, 13 Cal Rptr 513, 362 P2d 337, 1961 Cal LEXIS 268.

Location of church near premises for which liquor license is proposed does not require finding, as matter of law, that issuance of license therefor would be contrary to public welfare or morals. Koss v. Department of Alcoholic Beverage Control (1963, Cal App 4th Dist) 215 Cal App 2d 489, 30 Cal Rptr 219, 1963 Cal App LEXIS 2524.

3. Schools and Playgrounds

A distance of 80 feet between school buildings and a proposed off-sale liquor distribution place constitutes sufficient proximity for the denial of a license. Weiss v. State Board of Equalization (1953) 40 Cal 2d 772, 256 P2d 1, 1953 Cal LEXIS 236.

The denial of an application for an off-sale beer and wine license for a store across the street from a school is proper, and the fact that the neighborhood is composed mainly of persons of the Jewish faith who would purchase wine for sacramental purposes does not constitute altering circumstances. Weiss v. State Board of Equalization (1953) 40 Cal 2d 772, 256 P2d 1, 1953 Cal LEXIS 236.

Findings by Department of Alcoholic Beverage Control that there is amusement center within 400 feet of premises seeking a liquor license, that there is swimming pool between the center and proposed premises, that children frequent center and pool, that all related enterprises are privately owned, and that none of them is children's public playground within meaning of this section, refute any contention that location of premises in relation to enterprises was not considered by department in determining that granting of liquor license would not be contrary to public welfare and morals. Bailey v. Department of Alcoholic Beverage Control (1962, Cal App 4th Dist) 201 Cal App 2d 348, 20 Cal Rptr 264, 1962 Cal App LEXIS 2599.

The Department of Alcoholic Beverage Control did not act arbitrarily, nor abuse its discretion, in finding that the issuance of an off-sale license to sell beer and wine would be contrary to public welfare and morals based on evidence, as to which there could be a reasonable difference of opinion, that the applicant's store, which was 200 feet from a school and which was patronized by approximately 20 children a day, proposed to change its operation to selling take-out food including beer and wine to customers, including children who were permitted to leave the school premises for lunch, during several hours a day that the school was open. Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 2d Dist) 250 Cal App 2d 673, 58 Cal Rptr 788, 1967 Cal App LEXIS 2150.

Mere proximity of a liquor license applicant's premises to a school or church is not, as a matter of law, "good cause" which will constitutionally sustain the Alcoholic Beverage Control Department's denial of the license, and it was improper to deny a supermarket's application for an off-sale beer and wine license, where, although the store was located in the immediate vicinity of an elementary school, the department's finding on the essential, ultimate fact upon which the denial could properly be made, namely, that issuance of the license would contravene public welfare and morals, was unsupported by substantial evidence. Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 1st Dist) 255 Cal App 2d 40, 62 Cal Rptr 778, 1967 Cal App LEXIS 1237.

As a ground for denying a liquor license, the existence of Ed C § 7852, requiring schools to instruct upon the nature of alcohol and its effects, was not in itself substantial evidence that the sale of beer and wine at a store in close proximity to an elementary school would contravene public welfare and morals. Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 1st Dist) 255 Cal App 2d 40, 62 Cal Rptr 778, 1967 Cal App LEXIS 1237.

As a ground for denying a liquor license, the Alcoholic Beverage Control Department's finding that "some of the school children pass by, as well as frequent," the applicant's supermarket was not in itself substantial evidence that the issuance of the license would be contrary to public welfare and morals, where, although the store was only 115 feet across the street from the playground fence of an elementary school, it was 400 feet from the school entrance by "lawful pedestrian feet," where an afternoon check showed that only 17 out of 139 pupils visited the store, where the supermarket chain carried no exterior advertisements on liquor, experienced no problem of thefts by children of beer or wine, trained its personnel on the prohibition of its sale to minors and at a nearby store had experienced no infractions of such law. Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 1st Dist) 255 Cal App 2d 40, 62 Cal Rptr 778, 1967 Cal App LEXIS 1237.

There was no substantial evidence that the issuance of an off-sale beer and wine license to a supermarket should be denied, as being contrary to public welfare and morals, where, although the Alcoholic Beverage Control Department found that an elementary school in the immediate vicinity (a purely commercial district) had a present problem with persons consuming alcoholic beverages nearby and that the license would aggravate the problem, no eyewitness or expert testimony was adduced, where the testimony that the school grounds were sometimes littered with empty liquor bottles, beer cans and wine bottles failed to show how the litter was attributable to the store, not then licensed, or even to the two licensed stores within 900 feet of the school, and where testimony of the dangers to be expected from such undesirables as drunks in cars was conjectural, at best. Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 1st Dist) 255 Cal App 2d 40, 62 Cal Rptr 778, 1967 Cal App LEXIS 1237.

The findings of the Department of Alcoholic Beverage Control that issuance of an off-sale beer and wine license to a convenience-type market would be contrary to public welfare or morals were supported by substantial evidence and it did not act arbitrarily or abuse its discretion in denying the issuance of the license, where the proposed premises were located some 300 to 400 feet from a school with an approximate attendance of 775 pupils ranging in age from 5 through 14 years, where a substantial number of children would pass directly by the proposed premises from early morning until well into the evening each day, where there was testimony that issuance of the license would create or intensify various problems, such as increased traffic hazards, increased litter on the school grounds, obtaining of alcoholic beverages by children, and increased class cutting, where there were already 11 licensed outlets of the off-sale type within a mile of the school, and where the applicant's beer and wine departments would not be segregated from items attractive to school children which it also intended to handle. Kirby v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 261 Cal App 2d 119, 67 Cal Rptr 628, 1968 Cal App LEXIS 1725.

§ 23790. Issuance of retail license contrary to zoning ordinance

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1982 ch 474 § 1; Stats 1989 ch 95 § 1.

Amendments:

1982 Amendment: (1) Divided the former first sentence into the present first and second sentences by substituting ". Premises which" for "unless the premises"; **(2)** added "may continue operation under the following conditions:"; and **(3)** added subds (a) and (b).

1989 Amendment: (1) Substituted "those" for "such" after "exercise of" in the introductory clause; and **(2)** added the second paragraph of subd (b).

Historical Derivation:
Stats 1935 ch 330 § 15.

Cross References:
Zoning regulations: Gov C §§ 65800 et seq.

Collateral References:
8 Witkin Summary (10th ed) Constitutional Law §§ 989, 992.
13 Witkin Summary (10th ed) Equity § 165.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

Attorney General's Opinions:
City's right to exclude within fixed zone sale of alcoholic beverages except wine and beer, and effect on Board of Equalization's power to issue on–sale licenses in excluded beverage. 5 Ops. Cal. Atty. Gen. 18.

Annotations:
"School," "school house," or the like within statutory prohibition of liquor license for location within specified distance thereof. 49 ALR2d 1103.
"Church" or the like, within statutory prohibition of liquor license for location within specified distance thereof. 59 ALR2d 1439.
Measurement of distances for purposes of enactment prohibiting sale, or license for sale, of intoxicating liquor within given distance from church, university, school, or other institution or property as base. 4 ALR3d 1250.
Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor. 51 ALR3d 1061.
Zoning regulation of intoxicating liquor as pre–empted by state law. 65 ALR4th 555.

NOTES OF DECISIONS

1. Generally
2. Legislative Intent
3. Construction
4. Due Process
5. Exemptions
6. Zoning Ordinance Improper
7. Zoning Ordinance Valid
8. License Improper
9. Nuisance Abatement Ordinance

1. Generally
Section confers upon counties and cities the right to control districts in which various types of liquor business could be carried on by enactment of valid zoning ordinances, and even though excluding of liquor business of any type in certain zone does have effect of denying in advance all applications for liquor licenses in that zone, such result is expressly authorized by section, which in turn is legislation authorized by Cal Const Art XX § 22. Town Council of Los Gatos v. State Bd. of Equalization (1956, Cal App 1st Dist) 141 Cal App 2d 344, 296 P2d 909, 1956 Cal App LEXIS 1851.
Section only requires that there be a valid zoning ordinance and that exercise of rights and privileges of license sought to be issued would be contrary to its provisions; section does not require specific limitation against sale of alcoholic beverages in designated area. Town Council of Los Gatos v. State Bd. of Equalization (1956, Cal App 1st Dist) 141 Cal App 2d 344, 296 P2d 909, 1956 Cal App LEXIS 1851.
In granting off-sale liquor license to super market located on tract subject to restrictive covenant against sale of intoxicating liquors, Department of Alcoholic Beverage Control properly determined that existence of covenant did not justify board in holding that its violation would be matter affecting public welfare and morals and left parties to covenant to resort to courts if so advised, since only legislative enactment restricting licensing power of department for issuance of license to premises located in territory where exercise of rights thereunder would be contrary to valid zoning ordinance. Board of Trustees v. Munro (1958, Cal App 3d Dist) 163 Cal App 2d 440, 329 P2d 765, 1958 Cal App LEXIS 1518.

2. Legislative Intent
Legislature has expressly negatived its intent to extend state control to zoning matters through exercise of its liquor license authority under this section and § 23791; local zoning ordinance may validly prohibit use of property for business of selling liquor. Jon-Mar Co. v. Anaheim (1962, Cal App 4th Dist) 201 Cal App 2d 832, 20 Cal Rptr 350, 1962 Cal App LEXIS 2664.

3. Construction
In an action against a city by the owners of two stores selling alcoholic beverages, challenging the validity of an ordinance requiring them to obtain conditional use permits in order to continue to sell alcoholic beverages, the trial court properly dismissed those of plaintiffs' causes of action premised on the assertions that the conditions imposed on them were an impermissible attempt to regulate the sale of alcohol and that the ordinance duplicated or contradicted state law in that both it and state law addressed the abatement of nuisance activity at off-sale liquor businesses. However, the trial court erred in granting judgment on the pleadings for the city on plaintiffs' cause of action based on B & P C § 23790, which exempts from zoning ordinances off-sale liquor stores that predate enactment of such ordinances under specified conditions. That statute preempts local zoning ordinances at least insofar as such ordinances purport to regulate previously existing businesses. Boccato v. City of Hermosa Beach (1994, Cal App 2d Dist) 29 Cal App 4th 1797, 35 Cal Rptr 2d 282, 1994 Cal App LEXIS 1148, superseded by statute as stated in Venegas v. County of Los Angeles (2004) 32 Cal 4th 820, 11 Cal Rptr 3d 692, 87 P3d 1, 2004 Cal LEXIS 2822, superseded by statute as stated in Francis v. California (2004, ND Cal) 2004 US Dist LEXIS 16816, superseded by statute as stated in Hous. Rights Ctr., Inc. v. Moskowitz (2004, CD Cal) 2004 US Dist LEXIS 28885, superseded by statute as stated in Thompson v. County of Los Angeles (2006, Cal App 2d Dist) 142 Cal App 4th 154, 47 Cal Rptr 3d 702, 2006 Cal App LEXIS 1278, overruled as stated Moreno v. Town of Los Gatos (2008, CA9 Cal) 267 Fed Appx 665, 2008 US App LEXIS 4676, overruled as stated Kincaid v. City of Fresno (2008, ED Cal) 2008 US Dist LEXIS 38532.

4. Due Process
A city's procedure in deeming the 60-day suspension of plaintiff's Alcoholic Beverage Control (ABC) license to terminate automatically her "grandfathered" existing legal nonconforming use of her property as a liquor store under B & P C § 23790 violated her due process right to notice and the opportunity to be heard. The Court of Appeal reversed with directions to the superior court to grant a writ mandating the city to hold a new administrative hearing including adjudication of the grandfathered right termination issue before applying its 1995 zoning ordinance to require plaintiff to obtain a conditional use permit to resume selling alcoholic beverages at her business. Bauer v. City of San Diego (1999, Cal App 4th Dist) 75 Cal App 4th 1281, 89 Cal Rptr 2d 795, 1999 Cal App LEXIS 951.

5. Exemptions
Provision of section which exempts nonconforming use, such

as on-sale liquor establishment, from zoning ordinance does not include use which had ceased for years before effective date of ordinance and eleven years before renewal application was made. Town Council of Los Gatos v. State Bd. of Equalization (1956, Cal App 1st Dist) 141 Cal App 2d 344, 296 P2d 909, 1956 Cal App LEXIS 1851.

6. Zoning Ordinance Improper

Zoning ordinances cannot single out and prohibit sale of liquor as such; there must be reasonable classification of districts and in any zoning district in which other retail businesses are allowed to be conducted, it might and probably would be unreasonable and arbitrary to exclude sale of liquor. Town Council of Los Gatos v. State Bd. of Equalization (1956, Cal App 1st Dist) 141 Cal App 2d 344, 296 P2d 909, 1956 Cal App LEXIS 1851.

7. Zoning Ordinance Valid

City zoning ordinance prohibiting establishment of cocktail bar or lounge within 200 feet of residential district without use permit did not invade field preempted by state under statutes dealing with licensing of sale of intoxicating liquors, since ordinance in question was valid exercise of city's right to control districts in which various types of liquor business could be carried on. Floresta, Inc. v. City Council of San Leandro (1961, Cal App 1st Dist) 190 Cal App 2d 599, 12 Cal Rptr 182, 1961 Cal App LEXIS 2345.

8. License Improper

Granting on-sale intoxicating liquor license to establishment operating with only beer and wine license under nonconforming use is unwarranted enlargement of use. Town Council of Los Gatos v. State Bd. of Equalization (1956, Cal App 1st Dist) 141 Cal App 2d 344, 296 P2d 909, 1956 Cal App LEXIS 1851.

9. Nuisance Abatement Ordinance

The trial court erred in granting the petition of the licensed owners of a retail liquor store for a writ of mandate requiring a city to set aside its imposition of restrictions and conditions on the continued operation of the owners' liquor store, and in ordering that the city refrain from applying its nuisance abatement ordinance so long as the nature and operation of the owners' business remained unchanged. The city had imposed the restrictions and conditions on certain activities around the store after the store became a police problem during a civil disturbance. Contrary to the trial court's ruling, B & P C § 23790 (issuance of retail license contrary to zoning ordinance), did not have a preemptive effect on the ordinance at issue in this case, since the purpose and effect of the ordinance was the abatement of specific nuisance activities at a particular offending location. The city ordinance was not limited to businesses selling alcoholic beverages, but applied to any business, as long as the business, as operated or maintained, constituted a nuisance. Further, the ordinance was not a forward-looking zoning ordinance; instead it looked to the past and operated only in response to a specific business with a documented history of nuisance problems. There is no legal impediment to retroactive application of a nuisance abatement ordinance based on the difference between the object and scope of nuisance ordinances and the compelling public necessity to abate nuisances wherever found. Suzuki v. City of Los Angeles (1996, Cal App 2d Dist) 44 Cal App 4th 263, 51 Cal Rptr 2d 880, 1996 Cal App LEXIS 306, review denied (1996) 1996 Cal. LEXIS 3879.

B & P C § 23790 (issuance of retail license contrary to zoning ordinance), did not preempt a city's imposition, pursuant to its nuisance abatement ordinance, of restrictions and conditions on the owners of a licensed liquor store in response to nuisance activity around the store. Although § 23790 protects licensed retail liquor store owners from later enacted ordinances, the plain language of the statute only exempts existing nonconforming uses from compliance with later enacted zoning ordinances, and then only when the business has continuously operated without substantial change in either mode or character of operation. Neither the purpose nor the effect of the city's nuisance abatement ordinance was that of a zoning ordinance. Also, neither the language of § 23790 nor anything in the legislative history of amendments thereto indicates this statute was intended to operate to exempt a nonconforming licensee from compliance with nuisance abatement ordinances whenever enacted. In the absence of a clear legislative mandate to the contrary, there was no valid reason why business owners, such as the owners in the present case, should be exempted from the valid exercise of the city's police power to eradicate an existing nuisance. Thus, § 23790 does not exempt a licensee who allows his or her business to be maintained as a nuisance from a city's administrative procedures to abate what has been found, after proper notice and a hearing, to constitute a nuisance Suzuki v. City of Los Angeles (1996, Cal App 2d Dist) 44 Cal App 4th 263, 51 Cal Rptr 2d 880, 1996 Cal App LEXIS 306, review denied (1996) 1996 Cal. LEXIS 3879.

B & P C § 23790, which permits alcoholic beverage licensees operating in an area before the enactment of restrictive zoning ordinances to remain in business, did not preempt or otherwise preclude enforcement of a city's ordinance addressing nuisance problems associated with alcoholic beverage sale establishments. A city may properly enact a local ordinance to control and abate nuisance activities, despite the fact that the business that would be regulated by the ordinance possessed grandfather rights that might ordinarily render it immune from compliance with local ordinances. The ordinance did not create any new authority empowering the city to halt operation of an alcoholic beverage sales establishment. It merely created an administrative mechanism that might have resulted in a third party taking action against the alcoholic beverage seller—abatement by a court or license revocation by the State Department of Alcoholic Beverage Control. The conduct that is regulated by the ordinance, the control and abatement of nuisances and criminal activities, did not fall within the ambit of § 23790. City of Oakland v. Superior Court (1996, Cal App 1st Dist) 45 Cal App 4th 740, 53 Cal Rptr 2d 120, 1996 Cal App LEXIS 446.

§ 23790.5. Sale of beer and wine in conjunction with sale of motor vehicle fuel

(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.

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.

Added Stats 1987 ch 176 § 1. Amended Stats 1991 ch 108 § 1 (AB 140), effective July 10, 1991; Stats 1994 ch 627 § 3 (AB 463).

Amendments:

1991 Amendment: Substituted "January 1, 1994" for "January 1, 1990" wherever it appears in subds (d) and (e).

1994 Amendment: (1) Deleted ", until January 1, 1994," after "consumption shall" in the introductory clause of subd (d); **(2)** amended subd (d)(6) by **(a)** adding "who sell beer or wine"; and **(b)** deleting "to sell beer and wine" at the end; and **(3)** deleted "Until January 1, 1994," in the beginning of subd (e).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:

Review of Selected 1987 Legislation. 19 Pacific LJ 473.

§ 23791. Powers of cities conferred by 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1961 ch 252 § 1; Stats 1967 ch 232 § 1.

Amendments:

1961 Amendment: (1) Substituted "65800 to 65808" for "38690 to 38706"; and (2) deleted ", the "Zoning Law of 1917" at the end of the section.

1967 Amendment: Substituted "65850 to 65861" for "65800 to 65808".

Historical Derivation:

Stats 1935 ch 330 § 15.

Collateral References:

8 Witkin Summary (10th ed) Constitutional Law § 989.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:

Practice Tips: Local Regulation of Alcohol Licensees. 29 LA Law 14 (October, 2006).

Annotations:

Zoning regulation of intoxicating liquor as pre–empted by state law. 65 ALR4th 555.

NOTES OF DECISIONS

1. Generally

1. Generally

Legislature has expressly negatived its intent to extend state control to zoning matters through exercise of its liquor license authority under § 23790 and this section; local zoning ordinance may validly prohibit use of property for business of selling liquor. Jon-Mar Co. v. Anaheim (1962, Cal App 4th Dist) 201 Cal App 2d 832, 20 Cal Rptr 350, 1962 Cal App LEXIS 2664.

§ 23792. Licenses for rural premises near construction work

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 53.

Amendments:

1955 Amendment: Substituted "department" for "board" at the end of the section.

Historical Derivation:

(a) Stats 1935 ch 330 § 17, as amended Stats 1937 ch 758 § 15½, Stats 1941 ch 248 § 1, Stats 1951 ch 1728 § 1.

(b) Stats 1909 ch 413 § 1.

Code Commissioner's Notes:

As far as we know there are no incorporated towns in California even though the Constitution still authorizes their incorporation (Art XI § 6). There is no longer any statutory authority for their incorporation (see Stats 1949 ch 660 p 1162). Thus the reference to towns has been deleted.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Annotations:

Measurement of distances for purposes of enactment prohibiting sale, or license for sale, of intoxicating liquor within given distance from church, university, school, or other institution or property as base. 4 ALR3d 1250.

§ 23793. Issuance or transfer of public premises licenses

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.

Added Stats 1961 ch 783 § 1, effective June 9, 1961. Amended Stats 1965 ch 1546 § 1; Stats 1967 ch 1296 § 5; Stats 1973 ch 425 § 1.

Amendments:

1965 Amendment: Deleted the former first paragraph which read: "On and after the effective date of this section, no license shall be issued or transferred from premises to premises for premises to be operated under a retail license within 200 feet of existing premises operated under a license of the same type, except when the proposed premises are to be a bona fide public eating place, or a hotel or motel of 75 rooms or more where the sale of alcoholic beverages would be incidental to the main purpose of providing hotel or motel and restaurant facilities, or where the applicant can show that the licensing of his particular business would serve a public demand not otherwise satisfied by existing licensed premises."

1967 Amendment: Added "except for beer".

1973 Amendment: Added "or beer and wine,".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Annotations:

Transfer of retail liquor license or permit from one location to another. 98 ALR2d 1123.

NOTES OF DECISIONS

1. Legislative Intent
2. Construction
3. Enforcement

1. Legislative Intent

It must be assumed that legislature, in enacting this section, was aware of broad application of word "premises" as applied to various circumstances and intended construction to

allow Department of Alcoholic Beverage Control to exercise wide discretion to formulate reasonable rules for enforcement of statute. Harris v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 238 Cal App 2d 24, 47 Cal Rptr 424, 1965 Cal App LEXIS 1106.

2. Construction

In construing this section, order of Department of Alcoholic Beverage Control measuring distance between premises by number of feet from entrance of one licensed premises to entrance of other was not contrary to law. Harris v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 238 Cal App 2d 24, 47 Cal Rptr 424, 1965 Cal App LEXIS 1106.

3. Enforcement

Duty to enforce and administer this section is vested in Department of Alcoholic Beverage Control with broad range of discretion, and unless its method of measuring to ascertain distance between premises was without jurisdiction or contrary to law, its decision must be sustained. Harris v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 238 Cal App 2d 24, 47 Cal Rptr 424, 1965 Cal App LEXIS 1106.

ARTICLE 1.5

Conditional Licenses

[Added Stats 1959 ch 1351 § 1.]

Collateral References:

Pertinent administrative regulations: 4 Cal Code Reg §§ 55.5, 66.

§ 23800. Placing conditions on retail licenses; Situation in which authorized

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 24070, 24071.1, or 24071.2, 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.

(f) At the time of a transfer of a license pursuant to Article 5 (commencing with Section 24070) of Chapter 6.

Added Stats 1959 ch 1351 § 1. Amended Stats 1969 ch 502 § 1; Stats 1989 ch 903 § 1; Stats 1994 ch 627 § 4 (AB 463);

Stats 1999 ch 499 § 1 (AB 1092); Stats 2000 ch 979 § 3 (AB 2759); Stats 2001 ch 931 § 2 (AB 624); Stats 2006 ch 625 § 1 (SB 148), effective January 1, 2007; Stats 2008 ch 254 § 1 (AB 2893), effective January 1, 2009; Stats 2012 ch 327 § 7 (SB 937), effective January 1, 2013.

Amendments:

1969 Amendment: (1) Amended subd (a) by **(a)** substituting "If grounds exist for the denial of an application" for "In any proceedings upon a petition"; **(b)** adding "where" after "license or"; **(c)** adding "is filed and"; **(d)** adding "such" before "grounds"; and **(e)** deleting "exist for the denial of the application for the license which" before "may be removed"; **(2)** amended subd (b) by **(a)** substituting "Where" for "In any proceedings for the suspension or revocation of a license, if"; **(b)** adding "by the department"; **(c)** substituting "a" for "such" after "would justify"; and **(d)** adding "of a license," after "revocation"; and **(3)** deleted ", after proceedings to suspend or revoke a license," before "the department" in subd (c).

1989 Amendment: (1) Made technical changes; and **(2)** added "or upon any licensee in the exercise of retail privileges" in the introductory clause.

1994 Amendment: (1) Deleted "Upon request of the licensee or applicant for a license" in the beginning of the introductory clause; and **(2)** added subd (d).

1999 Amendment: Added subd (e).

2000 Amendment: Substituted "At the time of transfer of a license pursuant to Section 24071.1, 24071.2, or 24072 and upon written" for "Upon" at the beginning of subd (e).

2001 Amendment: Amended subd (e) by **(1)** adding subdivision designation (e)(1); **(2)** substituting ", the department may adopt" for "from the department adopting" in the first sentence; and **(3)** adding subd (e)(2).

2006 Amendment: (1) Added ", or subdivision (a) or (b) of Section 24200.1" in subd (d); and (2) amended subd (e)(1) by (a) adding "that the department determines are reasonable pursuant to its investigation or that are" after "department may adopt condition" in the first sentence; and (b) substituting the fourth and fifth sentences for the former fourth sentence which read: "The department may adopt conditions requested pursuant to this paragraph only when the request is filed within the time authorized for a local law enforcement agency to file a protest or proposed conditions pursuant to Section 23987."

2008 Amendment: Added subd (f).

2012 Amendment: Substituted "Section 24070, 24071.1, or 24071.2," for "Section 24071.2, or 24072" in the first sentence of subd (e)(1).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.32[1], 18.32[2], 18.52[3], 18.200[1].

§ 23801. Matters which conditions may cover

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 subdivision (c) of Section 23800, the portion of the privileges to be exercised under the license.

(f) The personal conduct of the licensee.

(g) In cases under subdivision (f) of Section 23800, restrictions on the presence of the license transferor on the licensed premises without lawful business if that license transferor has multiple violations of this division when in possession of the license. For purposes of this section, "lawful business" specifically excludes, without limitation, working or volunteering at the premises, consulting with the licensee regarding the operation of the premises, and loitering.

Added Stats 1959 ch 1351 § 1. Amended Stats 1969 ch 502 § 2; Stats 2008 ch 254 § 2 (AB 2893), effective January 1, 2009.

Amendments:

1969 Amendment: Added (1) "the personal qualifications of the licensee," in the introductory paragraph; and (2) subd (f).

2008 Amendment: (1) Deleted "the" after "Employment of" in subd (c); (2) substituted "subdivision (c) of Section 23800" for "Section 23800(c)"; and (3) added subd (g).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.32[1], 18.200[1].

§ 23802. Endorsement of 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.

Added Stats 1959 ch 1351 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.32[1], 18.200[1].

§ 23803. Removal or modification of conditions; Notice and hearing

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).

Added Stats 1959 ch 1351 § 1. Amended Stats 1983 ch 587 § 1; Stats 1997 ch 454 § 1 (SB 609).

Amendments:

1983 Amendment: Added the second paragraph.

1997 Amendment: Amended the first paragraph by adding **(1)** "or modification, provided written notice is given to the local governing body of the area in which the premises are located" at the end of the first sentence; and **(2)** the second and third sentences.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.32[1], 18.200[1].

§ 23804. Violation of condition

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.

Added Stats 1959 ch 1351 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.32[1], 18.200[1].

Annotations:

Hearing before revocation or suspension of liquor license. 35 ALR2d 1067.

§ 23805. Conduct of proceedings

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.

Added Stats 1959 ch 1351 § 1. Amended Stats 1999 ch 499 § 2 (AB 1092).

Amendments:

1999 Amendment: In addition to making technical changes, **(1)** substituted "Section 23800(a), (b), (c), (d), and (e)" for "Section 23800(a), (b), and (c)"; and **(2)** added "gives notice of conditions pursuant to subdivision (e) of Section 23800 or".

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.32[1], 18.200[1].

Annotations:

Right to hearing before revocation or suspension of liquor license. 35 ALR2d 1067.

Availability of defense of entrapment where one accused of violation of liquor law denies participation in offense. 61 ALR2d 677.

ARTICLE 2

Limitation on Number of Licensed Premises

[Added Stats 1953 ch 152 § 1.]

Cross References:

Issuance of sale general bona fide public eating place intermittent dockside license to specified vessels: B & P C § 23321.7.

Issuance of off–sale general license to licensed wine growers or brandy manufacturers subject to pertinent provisions of article: B & P C § 23362.

Temporary daily on–sale general licenses not governed by article: B & P C § 24045.1.

Collateral References:

Pertinent administrative regulations: 4 Cal Code Reg §§ 55, 60, 68, 68.2.

§ 23815. Declaration of 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 38f,, as added Stats 1945 ch 1401 § 33a.

Cross References:

Rights and privileges of club license holders: B & P C § 23431.

Rights and privileges of veterans' club license holders: B & P C § 23453.

Denial of on–sale retail license for premises located near church or hospital: B & P C § 23789.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.30[1], 18.126, 18.200[1], 18.242[1].

Law Review Articles:

State Board of Equalization and liquor control. 38 Cal LR 875.

Limitations on licensing power. 38 Cal LR 879.

Attorney General's Opinions:

Legislative intention in adopting limitation upon number of certain licenses that might be issued, to negative policies found necessary to carrying out of basic policy. 7 Ops. Cal. Atty. Gen. 250.

Annotations:

Construction of provision precluding sale of intoxicating liquors within specified distance from another establishment selling such liquors. 7 ALR3d 809.

NOTES OF DECISIONS

1. Generally

1. Generally

Where addition of liquor license in particular location is factor related to public welfare and morals, decision as to point at which line between granting and denying should be drawn is peculiarly matter of discretion, and even one more license may be "too many." Torres v. Department of Alcoholic Beverage Control (1961, Cal App 4th Dist) 192 Cal App 2d 541, 13 Cal Rptr 531, 1961 Cal App LEXIS 1971.

§ 23816. Onsale general licenses

The number of premises for which an onsale 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 onsale 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 onsale general licenses are issued is more than one for each 2,000, or fraction thereof, inhabitants of the county. No onsale general license shall be issued in lieu of or upon the cancellation or surrender of an onsale beer and wine license.

Added Stats 1953 ch 152 § 1. Amended Stats 1961 ch 783 § 2, effective June 10, 1961.

Amendments:

1961 Amendment: (1) Substituted "2,000" for "1,000" before "or fraction" wherever it appears; (2) substituted "Section 23821," for "Sections 23821 or 23822"; (3) added "general" before "licenses"; and (4) deleted "other than on–sale beer licenses" before "are issued".

Historical Derivation:

Stats 1935 ch 330 § 38f , as added Stats 1945 ch 1401 § 33a.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

Inapplicability of section to certain premises: B & P C § 23824.

Transferability of licenses: B & P C § 24070.

Suspension and revocation of licenses: B & P C §§ 24200 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[1], 18.21[3], 18.22[2], 18.30[1], 18.30[2], 18.41[2], 18.126, 18.200[1], 18.242[1].

Attorney General's Opinions:

Legislative intention in adopting limitation upon number of certain licenses that might be issued, to negative policies found necessary to carrying out of basic policy. 7 Ops. Cal. Atty. Gen. 250.

To what extent this statute applies to bona fide clubs. 7 Ops. Cal. Atty. Gen. 269.

Mandatory or permissive. 8 Ops. Cal. Atty. Gen. 97.

License issued pursuant to Gov C § 11522 as new license and not renewal or transfer of issued license. 12 Ops. Cal. Atty. Gen. 59.

Denial of licenses upon racial basis. 18 Ops. Cal. Atty. Gen. 253.

Compulsory issuance of license by equalization board. 22 Ops. Cal. Atty. Gen. 187.

Consideration by department of application for license on premises located on governmentally owned property. 34 Ops. Cal. Atty. Gen. 208.

Annotations:

Validity of statutory classifications based on population—intoxicating liquor statutes. 100 ALR3d 850.

NOTES OF DECISIONS

1. Generally
2. Construction with Other Law
3. Public Welfare

1. Generally

In computing the number of licenses, seasonal on-sale liquor licenses should not be included. Johnstone v. State Bd. of Equalization (1950, Cal App) 95 Cal App 2d 527, 213 P2d 429, 1950 Cal App LEXIS 994.

Alcoholic Beverage Control Act § 7.1, B & P C § 24050 [repealed], providing for reinstatement of licenses to persons of Japanese ancestry, would not accomplish its purposes if limitations of § 38f, B & P C §§ 23815–23823 to apply to licenses formerly held by persons of Japanese ancestry, and restoration of such licenses should be effected automatically where neighborhood in question has remained substantially the same as when licenses were revoked. Taenaka v. State Board of Equalization (1954) 42 Cal 2d 657, 268 P2d 472, 1954 Cal LEXIS 194.

2. Construction with Other Law

Authority of Department of Alcoholic Beverage Control to deny granting of license on ground its issuance would be contrary to public welfare or morals is derived from self-executing provisions of Constitution, exists independently of any legislation and may not be restricted by statute. Torres v. Department of Alcoholic Beverage Control (1961, Cal App 4th Dist) 192 Cal App 2d 541, 13 Cal Rptr 531, 1961 Cal App LEXIS 1971.

3. Public Welfare

Decision of Department of Alcoholic Beverage Control denying on-sale beer license directed toward limiting number of licenses to be issued in particular area having law enforcement problems was not contrary to law and thus unreasonable, on ground that Legislature excluded beer from laws respecting limitations on number of licensed premises, where denial was based on fact that granting license would be contrary to public welfare or morals. Torres v. Department of Alcoholic Beverage Control (1961, Cal App 4th Dist) 192 Cal App 2d 541, 13 Cal Rptr 531, 1961 Cal App LEXIS 1971.

§ 23817. Offsale general license

Until July 1, 1963, the number of premises for which an offsale 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 offsale 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 offsale 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 offsale 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 offsale 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 offsale general licenses are issued is more than one for each 2,500, or fraction thereof, inhabitants of the county.

Added Stats 1953 ch 152 § 1. Amended Stats 1961 ch 783 § 3, effective June 10, 1961.

Amendments:

1961 Amendment: (1) Added "Until July 1, 1963,"; (2) substituted "2,000" for "1,000" after "for each" wherever it appears; (3) added "and" after "situated;"; (4) substituted "Section 23821" for "Sections 23821 and 23822"; (5) added "general" after "offsale"; and (6) added the second paragraph.

Historical Derivation:

Stats 1935 ch 330 § 38f,, as added Stats 1945 ch 1401 § 33a.

Cross References:

Offsale general license fee: B & P C § 23956.
Licenses as renewable: B & P C § 24048.
Transferability of licenses: B & P C § 24070.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[1], 18.30[1], 18.30[2], 18.41[2], 18.126, 18.200[1], 18.242[1].

Attorney General's Opinions:

Legislative intention in adopting limitation upon number of certain licenses that might be issued, to negative policies found necessary to carrying out of basic policy. 7 Ops. Cal. Atty. Gen. 250.

To what extent this statute applies to bona fide clubs. 7 Ops. Cal. Atty. Gen. 269.

Mandatory or permissive. 8 Ops. Cal. Atty. Gen. 97.

Application for reinstatement of alcoholic beverage licenses after revocation. 12 Ops. Cal. Atty. Gen. 57.

License issued pursuant to Gov C § 11522 as new license and not renewal or transfer of issued license. 12 Ops. Cal. Atty. Gen. 59.

Revocation of off–sale alcoholic beverage licenses where continuance of such licenses would be contrary to public welfare; denial of licenses upon racial basis; revocation of licenses issued to persons disloyal to the United States. 18 Ops. Cal. Atty. Gen. 253.

Compulsory issuance of license by equalization board. 22 Ops. Cal. Atty. Gen. 187.

Absence of necessity for department's issuance of off–sale general license to holder of winegrower's or brandy manufacturer's license despite fact that given county may have excess of number of off–sale general licenses allowed by this section. 30 Ops. Cal. Atty. Gen. 327.

Consideration by department of application for license on premises located on governmentally owned property. 34 Ops. Cal. Atty. Gen. 208.

Annotations:

Validity of statutory classifications based on population—intoxicating liquor statutes. 100 ALR3d 850.

NOTES OF DECISIONS

1. Construction

Decisions Under Former Law

1. Construction

Former section was properly interpreted to include in computation of total number of off-sale general licenses, the number of existing off-sale beer and wine licenses, and where such total number exceeded statutory maximum, State Board of Equalization had no jurisdiction to issue new off-sale general licenses, and hearing for such purpose was not required, since board could not be compelled to do something law prohibited. Lukin v. State Board of Equalization (1953, Cal App) 120 Cal App 2d 261, 260 P2d 1046, 1953 Cal App LEXIS 1925.

Alcoholic Beverage Control Act § 7.1, B & P C § 24050 [repealed], providing for reinstatement of licenses to persons of Japanese ancestry, would not accomplish its purpose if limitations of § 38f, B & P C §§ 23815–23823, were to apply to licenses formerly held by persons of Japanese ancestry, and restoration of such licenses should be effected automatically where neighborhood in question has remained substantially the same as when licenses were revoked. Taenaka v. State Board of Equalization (1954) 42 Cal 2d 657, 268 P2d 472, 1954 Cal LEXIS 194.

§ 23817.4. Legislative findings regarding limitations on 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.

Added Stats 1997 ch 564 § 1 (AB 849).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.126, 18.200[1], 18.242[1].

§ 23817.5. Limit on off–sale beer and wine licenses in proportion to number of residents; Retail off–sale beer and wine replacement licenses

(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)(1) Notwithstanding subdivision (a), a retail off-sale beer and wine replacement license may be issued at a premises that was operated under an existing off-sale beer and wine license no less than 90 days prior to the date of application for the replacement license, provided that the existing licensee is subject to a bankruptcy proceeding and the existing licensee has no right to operate at the premises, or has abandoned the premises of that license.

(2) A replacement license shall not be issued if the existing license has been, or is in the process of being, transferred, or if the existing license has been canceled by the licensee or surrendered by the licensee pursuant to department rule.

(3) An application for a replacement license shall be accompanied by a fee of one hundred dollars ($100) and all conditions imposed upon the existing off-sale beer and wine license at the premises shall be imposed upon the replacement license.

(4) Upon issuance of the replacement license, the off-sale beer and wine license existing at the premises shall be canceled by operation of law. A replacement license shall not be transferred to another premises.

Added Stats 1994 ch 627 § 5 (AB 463). Amended Stats 1995 ch 834 § 1 (SB 646); Stats 1997 ch 564 § 2 (AB 849); Stats 1998 ch 485 § 34 (AB 2803); Stats 2000 ch 979 § 3.3 (AB 2759); Stats 2012 ch 327 § 8 (SB 937), effective January 1, 2013.

Amendments:

1995 Amendment: (1) Designated the former introductory clause to be the introductory clause of subd (a); **(2)** amended the introductory clause of subd (a) by **(a)** substituting "and no" for "nor any"; **(b)** adding "may be"; and **(c)** substituting "on January 1, 1995" for "at the time this section takes effect"; **(3)** redesignated former subds (a)–(c) to be subds (a)(1)–(a)(3); and **(4)** added subds (b)–(d).

1997 Amendment: (1) Substituted subd (a) for former subd (a) which read: "(a) No application for an original retail off–sale beer and wine license may be made and no original retail off–sale beer and wine license may be issued until January 1, 1998, for any premises where any of the following conditions exist on January 1, 1995.

"(1) The applicant premises are located in an incorporated city where the number of retail off–sale beer and wine licenses issued exceeds one license for each 2,500, or fraction thereof, inhabitants of the incorporated city.

"(2) The applicant premises are located in a county where the number of retail off–sale beer and wine licenses issued exceeds one license for each 2,500, or fraction thereof, inhabitants of the county.

"(3) The applicant premises are located in a city and county where the total number of retail off–sale beer and wine licenses and off–sale general licenses issued exceeds one license for each 1,250, or fraction thereof, inhabitants of the city and county."; **(2)** substituted "subdivision (a)" for "any other provision of law" in the introductory clause of subd (b); and **(3)** deleted former subd (d) which read: "(d) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1998, deletes or extends that date."

1998 Amendment: (1) Substituted "and" for "or" after "issued in any city" in the second sentence of subd (a)(2); and **(2)** amended subd (b)(3) by substituting **(a)** "The application" for "An applicant"; and **(b)** "be accompanied by" for "accompany the application with".

2000 Amendment: (1) Substituted "and operated within the past 90 days" for "within the past 12 months" in subd (b)(1); **(2)** amended subd (b)(2) by adding **(a)** "license has not been transferred to a new location and the prior"; and **(b)** the third sentence; and **(3)** substituted "be canceled by operation of law upon" for "not be transferred subsequent to" in subd (c)(3).

2012 Amendment: (1) Substituted subd (b) for former subd (b) which read: "(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)."; and (2) deleted former subd (c) which read: "(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."

Cross References:

Exception to moratorium on licenses: B & P C § 23817.7.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[1], 18.22[2], 18.31, 18.126, 18.200[1], 18.242[1].

§ 23817.7. Exception to limits on off–sale beer and wine licenses to serve public convenience and necessity

(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.

Added Stats 1995 ch 245 § 1 (SB 408). Amended Stats 1996 ch 869 § 1 (AB 2841); Stats 1997 ch 564 § 3 (AB 849); Stats 2001 ch 931 § 3 (AB 624).

Amendments:

1996 Amendment: Added ", or its designated subordinate officer or body," in subd (a)(3).

1997 Amendment: (1) Amended the introductory clause of subd (a) by deleting **(a)** "the moratorium provision of" after "Notwithstanding"; and **(b)** "the moratorium provided for in" after "areas covered by"; and **(2)** deleted former subd (c) which read: "(c) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1998, deletes or extends that date."

2001 Amendment; Added the second and third sentences of subd (a)(1).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[1], 18.22[2], 18.31, 18.126, 18.200[1], 18.242[1].

§ 23817.8. Off–sale beer and wine license for 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.

Added Stats 1996 ch 900 § 1 (SB 1923). Amended Stats 1997 ch 564 § 4 (AB 849).

Amendments:

1997 Amendment: Deleted **(1)** "the moratorium provision of" after "Notwithstanding" at the beginning of subd (a); and **(2)** former subd (c) which read: "(c) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1998, deletes or extends that date."

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[1], 18.22[2], 18.31, 18.126, 18.200[1], 18.242[1].

§ 23817.9. Determination of population

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.

Added Stats 1997 ch 564 § 5 (AB 849).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[1], 18.22[2], 18.31, 18.126, 18.200[1], 18.242[1].

§ 23817.10. Issuance of additional off–sale beer and wine licenses upon showing of 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 or county or for each increase of 1,250 inhabitants in the city and county since the taking of the census.

Added Stats 1997 ch 564 § 6 (AB 849).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.126, 18.200[1], 18.242[1].

§ 23818. Determination of population

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1973 ch 806 § 1.

Amendments:

1973 Amendment: Added "or a subsequent census validated by the Population Research Unit of the Department of Finance".

Historical Derivation:

Stats 1935 ch 330 § 38f , as added Stats 1945 ch 1401 § 33a.

Cross References:

Population Research Unit, creation and duties of: Gov C §§ 13073, 13073.5.

Collateral References:

Federal census generally: 13 USCS §§ 131 et seq.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[1], 18.22[2], 18.30[1], 18.31, 18.126, 18.200[1], 18.242[1].

Attorney General's Opinions:

Legislative intention in adopting limitation upon number of certain licenses that might be issued, to negative policies found necessary to carrying out of basic policy. 7 Ops. Cal. Atty. Gen. 250.

Mandatory or permissive. 8 Ops. Cal. Atty. Gen. 97.

License issued pursuant to Gov C § 11522 as new license and not renewal or transfer of issued license. 12 Ops. Cal. Atty. Gen. 59.

Compulsory issuance of license by equalization board. 22 Ops. Cal. Atty. Gen. 187.

§ 23819. Areas varying from authorized ratio

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 38f, as added Stats 1945 ch 1401 § 33a.

Cross References:

Suspension and revocation of licenses: B & P C §§ 24200 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.126, 18.200[1], 18.242[1].

Attorney General's Opinions:

Legislative adoption of the policies theretofore embraced within the board of equalization's rules. 7 Ops. Cal. Atty. Gen. 250.

To what extent this statute applies to bona fide clubs. 7 Ops. Cal. Atty. Gen. 269.

Mandatory or permissive. 8 Ops. Cal. Atty. Gen. 97.

License issued pursuant to Gov C § 11522 as new license and not renewal or transfer of issued license. 12 Ops. Cal. Atty. Gen. 59.

Compulsory issuance of license by equalization board. 22 Ops. Cal. Atty. Gen. 187.

§ 23820. Rules and regulations

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 54; Stats 1963 ch 1642 § 1; Stats 1997 ch 564 § 7 (AB 849).

Amendments:

1955 Amendment: Substituted "department" for "board" wherever it appears.

1963 Amendment: (1) Substituted "offsale" for "off–sale"; (2) deleted comma following "wine wholesaler's"; and (3) substituted "winegrower's" for "wine grower's".

1997 Amendment: (1) Deleted "offsale beer and wine" after "including beer,"; **(2)** deleted ", beer and wine" before "wholesaler's"; **3)** added the comma after "wine wholesaler's"; and **(4)** substituted "a" for "such" after "licenses, to".

Historical Derivation:

Stats 1935 ch 330 § 38f, as added Stats 1945 ch 1401 § 33a.

Cross References:

Purposes of alcoholic beverages regulations: B & P C § 23001.

Number of distilled spirits rectifier's general licenses which may be issued not to be limited by provisions of this Section: B & P C § 23368.1.

Rules and regulations by department: B & P C § 25750.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.126, 18.200[1], 18.242[1].

Attorney General's Opinions:
Legislative intention in adopting limitation upon number of certain licenses that might be issued, to negative policies found necessary to carrying out of basic policy. 7 Ops. Cal. Atty. Gen. 250.
To what extent this statute applies to bona fide clubs. 7 Ops. Cal. Atty. Gen. 269.
Mandatory or permissive. 8 Ops. Cal. Atty. Gen. 97.
License issued pursuant to Gov C § 11522 as new license and not renewal or transfer of issued license. 12 Ops. Cal. Atty. Gen. 59.
Compulsory issuance of license by board of equalization. 22 Ops. Cal. Atty. Gen. 187.

Annotations:
Right to attack validity of administrative regulations issued under licensing law. 65 ALR2d 660.

NOTES OF DECISIONS

1. Generally

1. Generally
The cancellation of an off-sale general liquor license by the Department of Alcoholic Beverage Control pursuant to Adm Code, tit 4, Rule 65(d) was not unconstitutional and was not in excess of the department's jurisdiction, where the power of the department to adopt Rule 65 and to interpret the rule was derived from Cal Const, art XX, § 22, and Bus & Prof Code, § 25750, and implied from the power granted thereby, and the department did not by adoption of the rule, exceed the powers given to it by the constitutional provision and the statute. Samson Market Co. v. Kirby (1968, Cal App 2d Dist) 261 Cal App 2d 577, 68 Cal Rptr 130, 1968 Cal App LEXIS 1779, cert den (1968) 393 US 11, 89 S Ct 49, 21 L Ed 2d 18, 1968 US LEXIS 578.

§ 23821. Increase in population

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 55; Stats 1961 ch 783 § 4, effective June 10, 1961; Stats 1967 ch 1222 § 1, effective August 17, 1967; Stats 1969 ch 1466 § 3.

Amendments:
1955 Amendment: Substituted "department" for "board" wherever it appears.
1961 Amendment: (1) Substituted "2000" for "1000" wherever it appears; (2) added ", subject to the limitation contained in Section 24070,"; (3) deleted the former last sentence of the first paragraph which read: "In all other respects the limitations hereinbefore provided for shall continue in effect."; and (4) added the second and third paragraphs.
1967 Amendment: (1) Added "on–sale general" after "total number of"; (2) substituted "Section 23816" for "Sections 23816 and 23817"; (3) deleted "and one offsale general license" after "general license"; (4) deleted "Notwithstanding the preceding paragraph, on and after July 1, 1963," at the beginning of the second paragraph; (5) added ", subject to the limitation contained in Section 24070," in the second paragraph; (6) added "for new original on–sale general or new original off–sale general or intercounty transfer of off–sale general licenses" in the third paragraph; (7) added "new original" after "such" wherever it appears in the third paragraph; (8) added "or into which off–sale general licenses may be transferred," in the third paragraph; and (9) added "or for the intercounty transfer of off–sale general licenses," in the third paragraph.
1969 Amendment: Added "or on–sale general" after "off–sale general" wherever it appears in the third paragraph.

Historical Derivation:
Stats 1935 ch 330 § 38f, as added Stats 1945 ch 1401 § 33a.

Cross References:
Off–sale general license: B & P C § 23777.
Issuance and transfer of licenses: B & P C §§ 23950 et seq.
Drawing to determine priority of applications: B & P C § 23961.

Additional notice if number of applications is insufficient: B & P C § 23962.

Population of counties: Gov C § 28020.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.30[1], 18.126, 18.200[1], 18.242[1].

Federal census generally: 13 USCS §§ 131 et seq.

Attorney General's Opinions:

Legislative intention in adopting limitation upon number of certain licenses that might be issued, to negative policies found necessary to carrying out of basic policy. 7 Ops. Cal. Atty. Gen. 250.

To what extent this statute applies to bona fide clubs. 7 Ops. Cal. Atty. Gen. 269.

Mandatory or permissive. 8 Ops. Cal. Atty. Gen. 97.

Compulsory issuance of license by equalization board. 22 Ops. Cal. Atty. Gen. 187.

Power of department to issue less than full quota of new original licenses; right to refuse to accept applications after filing deadline though quota not filled. 51 Ops. Cal. Atty. Gen. 12.

Annotations:

Validity of statutory classifications based on population—intoxicating liquor statutes. 100 ALR3d 850.

NOTES OF DECISIONS

1. Generally
2. Construction
3. Evidence

1. Generally

The power given by this statute to issue licenses exists subject only to the conditions set forth, and it is not necessary for licensed applicants to allege or prove matters mentioned in former Stats 1945 ch 1401 § 38f, paragraph 6 (now § 23822) [repealed]. San Diego v. State Board of Equalization (1947, Cal App) 82 Cal App 2d 453, 186 P2d 166, 1947 Cal App LEXIS 1226.

2. Construction

The words "do not then exceed the maximum specified" clearly relate to the situation that will exist after the additional licenses are issued, and not to whether or not an excess has previously existed or to the number outstanding before the determination of an increase in population is made. San Diego v. State Board of Equalization (1947, Cal App) 82 Cal App 2d 453, 186 P2d 166, 1947 Cal App LEXIS 1226.

3. Evidence

The elements of increase of population and discrimination set forth in this statute, are both questions of fact, but can involve opinion; and when the board at its hearings considers census data, commercial and newspaper reports, other pertinent documentary evidence, and a full report of the State Liquor Administrator, the evidence is legally sufficient to sustain its findings and determination. San Diego v. State Board of Equalization (1947, Cal App) 82 Cal App 2d 453, 186 P2d 166, 1947 Cal App LEXIS 1226.

§ 23822. [Section repealed 1961.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 56. Repealed Stats 1961 ch 783 § 5, effective June 10, 1961. The repealed section related to contents of application for license on ground of increased population.

Historical Derivation:

Stats 1935 ch 330 § 38f, as added Stats 1945 ch 1401 § 33a.

§ 23823. [Section repealed 1961]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 57. Repealed Stats 1961 ch 783 § 6, effective June 10, 1961. The repealed section related to investigation of application for license on ground of increased population.

Historical Derivation:

Stats 1935 ch 330 § 38f, as added Stats 1945 ch 1401 § 33a.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.126, 18.200[1], 18.242[1].

§ 23824. Publicly owned premises; Disposition of funds

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.

Added Stats 1955 ch 1801 § 1. Amended Stats 1957 ch 1149 § 3; Stats 1961 ch 533 § 1; Stats 1967 ch 809 § 1; Stats 1976 ch 1021 § 1; Stats 1983 ch 966 § 1, effective September 21, 1983; Stats 1993 ch 85 § 1 (AB 374), effective July 8, 1993; Stats 2000 ch 7 § 1 (AB 1525), effective March 28, 2000, ch 979 § 3.5 (AB 2759).

Editor's Notes—Stats 1955 ch 1801 § 4, which provided that B & P C §§ 23824 and 23399.1 and the amendment to B & P C § 23399 should remain in effect only to the ninety–first day after final adjournment of the 1957 Regular Session, was repealed by Stats 1957 ch 1149 § 1.

Amendments:

1957 Amendment: Added the last sentence.

1961 Amendment: (1) Amended first paragraph by **(a)** substituting "Section 23816" for "this article"; and **(b)** adding "and operated as a bona fide eating place" after "State of California"; and **(2)** amended second paragraph by substituting **(a)** "renewable as set forth in Sections 24048.1 and 24048.3" for "excluded from the number of premises used in determining application of the limitations provided by this article"; and **(b)** the last three sentences for former last sentence which read: "Such license shall be exempt from the provisions of Section 23954.5 and shall be nontransferable."

1967 Amendment: (1) Substituted "or to premises leased to any county, so long as any such premises are" for "and" following "State of California" in the first paragraph; and **(2)** amended second paragraph by adding **(a)** "or issued on premises leased to any county," in the first sentence; and **(b)** "or the county leasing" in the last sentence.

1976 Amendment: (1) Amended the first paragraph by adding **(a)** all that part following "public eating place" in the first sentence; and **(b)** the second sentence; **(2)** amended the first sentence in the second paragraph by **(a)** substituting "Section" for "Sections"; and **(b)** adding "or city"; and **(3)** added the third and fourth paragraphs.

1983 Amendment: Added **(1)** "city or" after "leased to any" in the first paragraph, and after "owning or the" in the third paragraph; and **(2)** "or city" in the fourth sentence of the second paragraph.

1993 Amendment: In addition to making technical changes, amended the second paragraph by substituting **(1)** "Section 24048" for "Section 24048.1 or 24048.3" at the end of the first sentence; and **(2)** "an original fee of six thousand dollars ($6,000)" for "the provisions of Section 23954.5" in the second sentence.

2000 Amendment (ch 7): (1) Added "to the State of California or to" wherever it appears after "premises leased to"; **(2)** amended the first paragraph by substituting **(a)** "the" for "any such" after "so long as" in the first sentence; and **(b)** "The" for "such" in the second sentence; and **(3)** deleted "the county or city" after "owning or" in the last sentence of the second paragraph.

2000 Amendment (ch 979): Added "located on land owned by and leased from the State of California, or to premises" in the first paragraph.

Cross References:

Renewal of licenses: B & P C § 24048.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.30[1], 18.126, 18.200[1], 18.242[1].

Attorney General's Opinions:

On–sale or off–sale general license issued under section as not subject to transfer. 34 Ops. Cal. Atty. Gen. 209.

§ 23824.1. Convention and event centers

(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.

Added Stats 1996 ch 254 § 1 (AB 2091).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.126, 18.200[1], 18.242[1].

§ 23825. "Onsale general license"

As used in this article, "onsale general license" includes a special onsale general license; provided, that the limitation prescribed in Section 23816 shall not prohibit the exchange of an onsale general license for a special onsale general license, or the exchange of a special onsale general license for an onsale general license.

Added Stats 1961 ch 1914 § 3. Amended Stats 1963 ch 785 § 1.

Amendments:

1963 Amendment: Added ", or the exchange of a special onsale general license for an onsale general license".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.30[1], 18.126, 18.200[1], 18.242[1].

§ 23826. Counties with fewer than 2,500 inhabitants

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.

Added Stats 1967 ch 889 § 1.

Cross References:
Population of counties: Gov C § 28020.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.126, 18.200[1], 18.242[1].

§ 23826.2. Issuance of new off–sale beer and wine licenses in Los Angeles County; Conditions

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.

Added Stats 1984 ch 793 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.126, 18.200[1], 18.242[1].

§ 23826.5. Counties of 58th class

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.

Added Stats 1975 ch 407 § 1.

Cross References:
Counties of fifty–eighth class: Gov C § 28079.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.126, 18.200[1], 18.242[1].

§ 23826.7. Counties with fewer than 5000, but more than 3000, inhabitants

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.

Added Stats 1975 ch 571 § 1.

Cross References:
Population of counties: Gov C § 28020.

Collateral References:
Federal census generally: 13 USCS §§ 131 et seq.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.126, 18.200[1], 18.242[1].

§ 23826.8. Conversion of on–sale general license for seasonal business to on–sale general license; Restrictions on license transfer

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.

Added Stats 1978 ch 216 § 2. Amended Stats 1982 ch 554 § 1; Stats 1985 ch 166 § 1.

Former Sections:

Former § 23826.8, similar to the present section, was added Stats 1977 ch 753 § 1 and repealed Stats 1978 ch 216 § 1.

Amendments:

1982 Amendment: Substituted the first paragraph for the former first paragraph which read: "Notwithstanding any other provision of law, the director may authorize the conversion of any on–sale general license for seasonal business issued before July 1, 1977, to an on–sale general license if an application for such conversion is submitted before January 1, 1980. Such application shall be accompanied by the fee required by Section 23954.5 for an on–sale general license."

1985 Amendment: Amended the first sentence of the first paragraph by **(1)** substituting "that" for "such" after "original issuance of"; and **(2)** adding all that part following "May 1, 1982" the second time it appears.

Historical Derivation:

(a) Former B & P C § 23826.8, as added Stats 1977 ch 753 § 1.

(b) Former B & P C § 23826.9, as added Stats 1977 ch 753 § 2.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.126, 18.200[1], 18.242[1].

§ 23826.9. Issuance of additional new original on-sale general licenses in any county of the 56th class

(a) Notwithstanding any other provision of this chapter, in any county of the 56th class, the department may issue 10 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 50 or more diners. In no event shall more than 10 on-sale general licenses for bona fide eating places be issued under this section.

(b) In issuing the licenses provided for in this section, the department shall follow the procedure set forth in Section 23961.

(c) 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.

(d) 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.

Added Stats 2007 ch 193 § 1 (SB 762), effective January 1, 2008.

§ 23826.10. Issuance of additional new original on-sale general licenses in any county of the 29th class

(a) Notwithstanding any other provision of this chapter, in any county of the 29th class, commencing January 1, 2009, the department may issue five additional new original on-sale general licenses for bona fide public eating places per year, for a period of three years. Any premises to qualify for a license under this section shall have a seating capacity for 50 or more diners. In no event shall more than 15 on-sale general licenses for bona fide eating places be issued under this section.

(b) In issuing the licenses provided for in this section, the department shall follow the procedure set forth in Section 23961.

(c) 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.

(d) 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.

Added Stats 2008 ch 130 § 1 (AB 2266), effective January 1, 2009.

§ 23826.11. Additional new original on-sale general licenses for bona fide public eating places with seating capacity of 50 or more

(a) Notwithstanding any other provision of this chapter, in any county of the 18th class the department may issue five additional new original on-sale general licenses for bona fide public eating places per year, until January 1, 2016. To qualify for a license under this section the premises upon which a bona fide public eating place is operated shall have a seating capacity for 50 or more diners. Not more than a total of 15 on-sale

general licenses shall be issued under this section.

(b) In issuing the licenses provided for in this section, the department shall follow the procedure set forth in Section 23961.

(c) This chapter does not 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.

(d) 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.

Added Stats 2012 ch 467 § 1 (AB 1320), effective January 1, 2013.

Note—Stats 2012 ch 467 provides:

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the economy of a county of the 18th class specified in Section 1, that are applicable only to a county of the 18th class.

§ 23826.12. Issuance of additional new original on-sale general licenses in any county of the 24th class

(a) Notwithstanding any other provision of this chapter, in any county of the 24th class, the department may issue no more than a total of five additional new original on-sale general licenses for bona fide public eating places from January 1, 2014, to December 31, 2016, inclusive. To qualify for a license under this section, the premises upon which a bona fide public eating place is operated shall have a seating capacity for 50 or more diners.

(b) In issuing the licenses provided for in this section, the department shall follow the procedure set forth in Section 23961.

(c) This chapter does not 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.

(d) 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.

Added Stats 2013 ch 110 § 1 (AB 461), effective January 1, 2014.

§ 23827. Counties with fewer than 7000 inhabitants with economy dependent on continual use of county's recreational facilities

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.

Added Stats 1969 ch 1078 § 1.

Cross References:

Population of counties: Gov C § 28020.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.126, 18.200[1], 18.242[1].

CHAPTER 6

Issuance and Transfer of Licenses

[Added Stats 1953 ch 152 § 1.]

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Applications for Licenses

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NOTES OF DECISIONS

1. Generally

1. Generally

Department of Alcoholic Beverage Control is within its rights to require high standard of economic stability for those who are to hold wholesalers' liquor licenses. Duke Molner Wholesale Liquor Co. v. Martin (1960, Cal App 2d Dist) 180 Cal App 2d 873, 4 Cal Rptr 904, 1960 Cal App LEXIS 2413, cert den (1960) 364 US 870, 81 S Ct 112, 5 L Ed 2d 92, 1960 US LEXIS 325.

ARTICLE 1

Applications for Licenses

Collateral References:

Pertinent administrative regulations: 4 Cal Code Reg §§ 31, 55 et seq.

Law Review Articles:

Issuing or revoking liquor licenses: State and local authority under recent federal decisions. 15 Urban Lawyer 379.

§ 23950. To whom made

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 58; Stats 1957 ch 1270 § 1.

Amendments:

1955 Amendment: Substituted "department" for "board" wherever it appears.

1957 Amendment: Added all that following "by the department".

Historical Derivation:

(a) Stats 1935 ch 330 § 10, as amended Stats 1937 ch 758 § 13.

(b) Stats 1933 ch 658 § 10.

(c) Stats 1933 ch 178 § 18.

(d) Stats 1933 ch 51 § 2.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

Rules and regulations by department: B & P C § 25750.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.10[2], 18.11, 18.200[1].

Pertinent administrative regulations: 4 Cal Code Reg §§ 55 et seq.

Attorney General's Opinions:

Prohibition against city's denying permit to operate restaurant in which alcoholic beverages are served, where person seeking permit has been issued on–sale general liquor license. 31 Ops. Cal. Atty. Gen. 259.

Annotations:

Grant or renewal of liquor license as affected by fact that applicant held such license in the past. 2 ALR2d 1239.

Right to attack validity of statute, ordinance, or regulation relating to occupational or professional license as affected by applying for, or securing, license. 65 ALR2d 660.

Right to withdraw application to procure or to transfer liquor license. 73 ALR2d 1223.

NOTES OF DECISIONS

1. Power of Board
2. Required Information
3. Application Not Required

1. Power of Board

Board of Equalization had power to determine suitability and fitness of premises where proposed "on-sale" dispositions were to be made. Parente v. State Board of Equalization (1934, Cal App) 1 Cal App 2d 238, 36 P2d 437, 1934 Cal App LEXIS 1257.

In determining suitability and fitness of premises where proposed on-sale license is to be granted, State Board of Equalization was not confined to consideration of structural features of building, such as whether it was constructed of wood, brick, concrete, was weatherproof, properly heated, inviting or uninviting, but it could consider location of structure or building, irrespective of materials of which it was composed, as affecting questions of peace, safety and good order of whatever surrounded place in question. Parente v. State Board of Equalization (1934, Cal App) 1 Cal App 2d 238, 36 P2d 437, 1934 Cal App LEXIS 1257.

Discretion vested in Department of Alcoholic Beverage Control by Constitution (Cal Const Art XX § 22) is not absolute, but must be exercised in accordance with law. Torres v. Department of Alcoholic Beverage Control (1961, Cal App 4th Dist) 192 Cal App 2d 541, 13 Cal Rptr 531, 1961 Cal App LEXIS 1971.

2. Required Information

Each applicant for liquor license must provide department of alcoholic beverage control with certain information with reference to applicant's background, crime record, status and other data, and must subject himself and premises where business will be conducted to full investigation. Duke Molner Wholesale Liquor Co. v. Martin (1960, Cal App 2d Dist) 180 Cal App 2d 873, 4 Cal Rptr 904, 1960 Cal App LEXIS 2413, cert den (1960) 364 US 870, 81 S Ct 112, 5 L Ed 2d 92, 1960 US LEXIS 325.

3. Application Not Required

Where the licensee merely seeks reinstatement of a suspended license, an application as for a new license is not required. Reynolds v. State Board of Equalization (1946) 29 Cal 2d 137, 173 P2d 551, 1946 Cal LEXIS 284, 1946 Cal LEXIS 370.

§ 23951. Contents of application

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 59; Stats 1957 ch 1270 § 2; Stats 1973 ch 47 § 3, effective May 15, 1973, ch 680 § 3, effective September 21, 1973; Stats

1996 ch 44 § 2 (SB 632), effective May 15, 1996; Stats 1998 ch 639 § 8 (AB 2416).

Amendments:

1955 Amendment: Substituted "department" for "board" in subd (e).

1957 Amendment: Deleted former subd (e) which read: "(e) Such other information as the department may require to assist it in determining whether the applicant and the premises qualify for a license."

1973 Amendment (ch 47): Added the proviso in subd (b).

1973 Amendment (ch 680): Added "or applying for a license authorized under Section 23405.2" in subd (b).

1996 Amendment: (1) Amended subd (b) by **(a)** substituting "general partnership" for "copartnership" after "In the case of a"; **(b)** substituting the period for "; provided, however, that" after "individual partners" at the end of the first sentence; **(c)** substituting the comma for "required to maintain a register in California under Section 23405.1 or applying for a license authorized under Section 23405.2 the application shall contain" after "limited partnership"; **(d)** adding "the names" before "of the limited"; and **(e)** substituting "the" for "such" before "limited partnership" at the end of the subdivision; **(2)** added subd (c); **(3)** redesignated former subds (c) and (d) to be subds (d) and (e); and **(4)** added "names of the" before "principal" in subd (d).

1998 Amendment: (1) Added "information" in the introductory clause; **(2)** substituted subds (b) and (c) for former subds (b) and (c) which read: "(b) in the case of a general partnership, the names of the individual partners. In the case of a limited partnership, the names of the general partners and the names of the limited partners owning 10 percent or more of the capital or profits of the limited partnership.

"(c) In the case of a limited liability company, the names of the members and officers, if any. However, if the limited liability company has elected to be managed by a manager or managers pursuant to Section 17151 of the Corporations Code, the names of the manager or managers, officers, if any, and members owning 10 percent or more of the voting rights of the limited liability company."; **(3)** deleted former subd (d) which read: "(d) In the case of a corporation, the names of the principal officers and directors."; and **(4)** redesignated former subd (e) to be subd (d).

Historical Derivation:

(a) Stats 1935 ch 330 § 10, as amended Stats 1937 ch 758 § 13.

(b) Stats 1933 ch 658 § 10.

(c) Stats 1933 ch 178 § 18.

(d) Stats 1933 ch 51 § 2.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

Limitation on number of licensed premises: B & P C §§ 23815 et seq.

Rules and regulations by department: B & P C § 25750.

Collateral References:

Pertinent administrative regulations: 4 Cal Code Reg §§ 55 et seq.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

NOTES OF DECISIONS

1. Generally
2. Partnership Application
3. No Partnership Found

1. Generally

Demurrer to petition for mandamus to compel State Board of Equalization to issue to petitioner an on-sale beer and wine license should have been sustained, where petition in effect alleged compliance with requirements of § 12 of former State Liquor Control Act, but said nothing about compliance with any other requirements except those relating to form of application for a license, and it did not on its face sufficiently negative existence of circumstances in which board was by such statute itself expressly authorized to deny license sought. San Diego Cotton Club, Inc. v. State Board of Equalization (1934, Cal App) 139 Cal App 655, 34 P2d 749, 1934 Cal App LEXIS 660.

This section and § 23953 are not limited to original applications, and partner's failure to sign application for renewal is violation of those sections. Martin v. Alcoholic Bev. Etc. Appeals Bd. (1959) 52 Cal 2d 287, 341 P2d 296, 1959 Cal LEXIS 203.

2. Partnership Application

Where saloon business, illegally conducted by partnership because license was not procured in name of both partners as required by law, has been terminated and one partner has orally agreed to divide assets of business in his possession, other partner is entitled to maintain suit for accounting of such assets because it does not necessarily involve legality of the partnership agreement to conduct saloon, but depends on oral agreement to divide the property. Denning v. Taber (1945, Cal App) 70 Cal App 2d 253, 160 P2d 900, 1945 Cal App LEXIS 1067.

Partnership application should be denied if one of partners is unable to qualify. Coletti v. State Bd.of Equalization (1949, Cal App) 94 Cal App 2d 61, 209 P2d 984, 1949 Cal App LEXIS 1490.

Where two or more persons apply for partnership license, each of them necessarily assumes responsibility for acts of others with relation to conditions under which license is held. Coletti v. State Bd.of Equalization (1949, Cal App) 94 Cal App 2d 61, 209 P2d 984, 1949 Cal App LEXIS 1490.

3. No Partnership Found

Department's determination that liquor business was owned in part by licensee's husband and that license should be suspended indefinitely was not supported by substantial evidence where, among other things, both real property on which premises were located and license were purchased in wife's name as sole owner and improvements, even if made by husband on wife's property out of community funds, gave him no interest therein. Ciambetti v. Department of Alcoholic Beverage Control (1958, Cal App 3d Dist) 161 Cal App 2d 340, 326 P2d 535, 1958 Cal App LEXIS 1739.

§ 23952. Additional contents

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 60.

Editor's Notes—Sections 25611 and 25615, referred to in this section, were repealed by Stats 1975 ch 812 §§ 1 and 2.

Amendments:

1955 Amendment: Substituted "department" for "board".

Historical Derivation:

(a) Stats 1935 ch 330 § 10, as amended Stats 1937 ch 758 § 13.
(b) Stats 1933 ch 658 § 10.
(c) Stats 1933 ch 178 § 18.
(d) Stats 1933 ch 51 § 2.

Cross References:

Tied–house restrictions: B & P C §§ 25500–25504.
Regulations regarding signs and notices; Penalties: B & P C §§ 25611.1–25614.
Sale of beer containing more than 4 percent of alcohol: B & P C § 25615.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.150, 18.152, 18.200[1].

Attorney General's Opinions:

Prohibition against city's denying permit to operate restaurant in which alcoholic beverages are served, where person seeking permit has been issued on–sale general liquor license. 31 Ops. Cal. Atty. Gen. 259.

§ 23953. Signatures on application

(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.

Added Stats 1953 ch 152 § 1. Amended 1973 ch 47 § 4, effective May 15, 1973, ch 680 § 4, effective September 21, 1973; Stats 1996 ch 44 § 3 (SB 632), effective May 15, 1996; Stats 1998 ch 639 § 9 (AB 2416).

Amendments:

1973 Amendment (ch 47): Substituted the second and third sentences for the former second sentence which read: "In the case of a partnership the application shall be signed by each of the partners, and in the case of a corporation by an officer and under the seal of the corporation."

1973 Amendment (ch 680): Added the second proviso of the second sentence.

1996 Amendment: Substituted the section for the former section which read: "The application shall be signed by the applicant. In the case of a partnership the application shall be signed by each of the partners, and for the purposes of this division such partners shall be deemed the applicant for any such license and the licensees under any license issued pursuant to such application; provided, however, that in the case of a limited partnership which is required by law to file periodic reports with the Securities and Exchange Commission, the application for any license other than a retail license shall be signed by each of the general partners, and for purposes of this division such general partners shall be deemed to be the applicant for any such license and the licensees under any license issued pursuant to said application; and provided, further, that in the case of a limited partnership which is applying for a license authorized under Section 23405.2, the application for such license shall be signed by each of the general partners and by each limited partner who owns 10 percent or more of the capital or profits of such limited partnership. In the case of a corporation the application shall be signed by an officer and under the seal of the corporation."

1998 Amendment: (1) Substituted "For" for "In the case of" in subds (b)–(d) and in the introductory clause of subd (e); **(2)** amended subd (c) by deleting **(a)** "required by law to file periodic reports with the Securities and Exchange Commission" after "partnership"; and **(b)** the former last sentence which read: "In the case of any other limited partnership, the application for the license shall be signed by each of the general partners and by each limited partner who owns 10 percent or more of the capital or profits of the limited partnership."; and **(3)** amended subd (e) by **(a)** substituting "two officers of the corporation, one from each of the following categories:" for "an officer and under the seal of the corporation." in the introductory clause; and **(b)** adding subds (e)(1) and (e)(2).

Historical Derivation:

(a) Stats 1935 ch 330 § 10, as amended Stats 1937 ch 758 § 13.
(b) Stats 1933 ch 658 § 10.
(c) Stats 1933 ch 178 § 18.
(d) Stats 1933 ch 51 § 2.

Cross References:

Uniform Limited Partnership Act: Corp C §§ 15500 et seq.
Corporate Securities Law of 1968: Corp C §§ 25000 et seq.
Signature or subscription by mark: Gov C § 16.
Signature by facsimile signature machine: Gov C §§ 11100 et seq.

Collateral References:

Pertinent administrative regulations: 4 Cal Code Reg §§ 55 et seq.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.110, 18.126, 18.200[1].

NOTES OF DECISIONS

1. Construction

1. Construction

This section and § 23951 are not limited to original applications, and partner's failure to sign application for renewal is violation of those sections. Martin v. Alcoholic Bev. Etc. Appeals Bd. (1959) 52 Cal 2d 287, 341 P2d 296, 1959 Cal LEXIS 203.

§ 23954. Verification; License fee

The application shall be verified under oath and accompanied by the license fee.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

(a) Stats 1935 ch 330 § 10, as amended Stats 1937 ch 758 § 13.

(b) Stats 1933 ch 51 § 2.

Cross References:

"Oath" as including affirmation: B & P C § 20.

Types of licenses and annual fees therefor: B & P C § 23320.

Administration of oaths and affirmations: CCP §§ 2093 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.20[1], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally

Where the prescribed fee is not tendered with an application for a license and the license is issued or renewed without its payment because of an injunction prohibiting collection pending ultimate determination of the validity of the licensing statute, an action to collect the fee may be brought following the reversal of the judgment in the injunction suit. People v. Schmidt (1941, Cal App) 48 Cal App 2d 255, 119 P2d 766, 1941 Cal App LEXIS 788.

§ 23954.5. On-sale general license; Fees; License issued upon renewal or transfer of license; Adjustments; Deposit of fees

(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 thirteen thousand eight hundred dollars ($13,800). Beginning January 1, 2011, and each January thereafter, the department may adjust this fee as provided in subdivisions (c) and (d) of Section 23320.

(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.

Added Stats 1955 ch 1748 § 1. Amended Stats 1957 ch 1820 § 1; Stats 1961 ch 783 § 7, effective June 10, 1961; Stats 1967 ch 1559 § 2, operative April 1, 1968; Stats 1983 ch 323 § 2.2, effective July 21, 1983; Stats 1992 ch 900 § 11 (AB 432), effective September 24, 1992; Stats 1994 ch 1028 § 1 (AB 988); Stats 2010 ch 719 § 6 (SB 856), effective October 19, 2010.

Amendments:

1957 Amendment: (1) Amended the first paragraph by adding the second sentence; **(2)** amended the second paragraph by adding **(a)** " 'original on–sale general license for seasonal business,' 'original on–sale beer and wine license,' 'original on–sale beer license' "; and **(b)** " 'original off–sale beer and wine license' ".

1961 Amendment: (1) Amended the first paragraph by **(a)** deleting "on or after January 1, 1956," after "general license" in first sentence; **(b)** deleting from the former second sentence the first clause, which read: "On or after the effective date of the amendments to this section enacted by the Legislature at the 1957 Regular Session, and"; **(c)** creating present second through fifth sentences from remainder of former second sentence by substituting periods for commas, deleting "and" before "an applicant for an original off–sale beer", and making appropriate capitalizations; **(d)** deleting "on or after January 1, 1956," before "shall, at the time" in the last sentence; and **(e)** substituting "six thousand dollars ($6,000)" for "three thousand dollars ($3,000)" in the last sentence; and **(2)** substituted "division" for "section" in the second paragraph.

1967 Amendment: Amended the first paragraph by substituting **(1)** "four thousand five hundred dollars ($4,500)" for "two thousand dollars ($2,000)"; **(2)** "three hundred dollars ($300)" for "one hundred fifty dollars ($150)"; **(3)** "two hundred

dollars ($200)" for "one hundred dollars ($100)"; and **(4)** "fifty dollars ($50)" for "twenty–five dollars ($25)".

1983 Amendment: Amended the first paragraph by **(1)** deleting the former fifth sentence which read: "An applicant for an original off–sale beer and wine license shall accompany the application with a fee of fifty dollars ($50).."; and **(2)** adding the last sentence.

1992 Amendment: (1) Added subdivision designations (a) and (c); **(2)** amended the first paragraph of subd (a) by substituting **(a)** "as determined by the department pursuant to subdivision (b) of this section" for "of six thousand dollars ($6,000)" in the first and fifth sentences; and **(b)** "as determined by the department pursuant to subdivision (b) of this section" for "of four thousand five hundred dollars ($4,500)" in the second sentence; **(3)** added subd (b); and **(4)** deleted "deposited directly in the General Fund in the State Treasury, rather than" after "section shall be" in subd (c).

1994 Amendment: (1) Substituted "do" for "does" after "in this division," in the second paragraph of subd (a); and **(2)** substituted subd (b) for former subd (b) which read: "(b) The department shall determine the average price paid in each county during every fiscal year for on–sale general licenses and off–sale general licenses. The fee for an original on–sale general license or an original off–sale general license shall be 90 percent of the average price paid for the same type license in that county during the previous fiscal year but in no event shall it be less than twelve thousand dollars ($12,000). The fee for an original on–sale general license for seasonal business shall be 60 percent of the average price paid for an on–sale general license in that county during the previous fiscal year, but in no event shall it be less than nine thousand dollars ($9,000)."

2010 Amendment: Amended subd (b) by (1) substituting "thirteen thousand eight hundred dollars ($13,800)" for "twelve thousand dollars ($12,000)" in the first sentence; and (2) adding the second sentence.

Note—Stats 1992 ch 900 provides:

SECTION 1. The Legislature finds and declares that the regulation of the sale and use of alcoholic beverages is among the highest priorities of state government. The abuse of alcohol can lead to a myriad of other criminal, legal, social, and economic problems. The fair, stable, and effective administration and enforcement of the Alcoholic Beverage Control Act and related laws, therefore, must be insured.

Cross References:

Conversion of on–sale general license for seasonal business: B & P C § 23826.8.

Disposition of fees and tax moneys: B & P C § 25761.

State funds: Gov C §§ 16300 et seq.

Annotations:

Right to attack licensing law provisions for license fees or taxes. 65 ALR2d 660.

§ 23954.6. "Original onsale general license"

As used in Section 23954.5, "original onsale general license" includes an original special onsale general license; provided, that the fee prescribed in Section 23954.5 shall not be required in connection with the exchange of an onsale general license for a special onsale general license, or for the exchange of a special onsale general license for an onsale general license.

Added Stats 1961 ch 1914 § 4. Amended Stats 1963 ch 785 § 2.

Amendments:

1963 Amendment: Added ", or for the exchange of a special onsale general license for an onsale general license".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 23954.7. On–sale general bona fide public eating place intermittent dockside license for vessels

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.

Added Stats 1969 ch 1466 § 4. Amended Stats 1972 ch 970 § 3, effective August 16, 1972, Stats 1985 ch 519 § 4.

Amendments:

1972 Amendment: Substituted "10,000" for "15,000" before "tons".

1985 Amendment: Substituted "7,000" for "10,000".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 23955. Wine grower's license 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 22a, as added Stats 1937 ch 758 § 19, amended Stats 1945 ch 1401 § 14.1.

Cross References:

"Wine": B & P C § 23007.

Types of licenses and annual fees therefor: B & P C § 23320.

Wine grower's license: B & P C § 23327.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 23956. Offsale general license fee

Any applicant for an offsale 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1963 ch 1040 § 3.

Amendments:

1963 Amendment: Added "such" before "license".

Historical Derivation:
Stats 1935 ch 330 § 22, as amended Stats 1937 ch 758 § 18, Stats 1945 ch 1401 § 14.

Cross References:
Minimum license fee: B & P C § 23320.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 61; Stats 1979 ch 373 § 38.

Amendments:
1955 Amendment: Substituted "department" for "board".
1979 Amendment: Routine code maintenance.

Historical Derivation:
Stats 1935 ch 330 § 10.1, as added Stats 1951 ch 591 § 2.

Cross References:
Separate licenses for establishment having more than one location: B & P C § 24041.
Rules and regulations: B & P C § 25750.

Collateral References:
Pertinent administrative regulations: 4 Cal Code Reg § 64.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 23958. Investigation of application; Grounds for 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.

Added Stats 1980 ch 1194 § 2, effective January 1, 1983. Amended Stats 1982 ch 1189 § 2, effective January 1, 1984; Stats 1994 ch 630 § 1 (AB 2897).

Former Sections:
Former § 23958, similar to the present section, was added Stats 1953 ch 152 § 1, amended Stats 1955 ch 447 § 62, Stats 1963 ch 1642 § 2, Stats 1980 ch 445 § 1, ch 1194 § 1, Stats 1982 ch 1189 § 1, and repealed, operative January 1, 1984, by its own terms.

Amendments:
1982 Amendment: Substituted "January 1, 1984" for "January 1, 1983" in the last paragraph.
1994 Amendment: (1) Amended the second paragraph by **(a)** substituting "shall" for "may" after "department further"; **(b)** substituting "that" for "such" after "if issuance of"; and **(c)** adding ", except as provided in Section 23958.4" at the end; and **(2)** deleted the last paragraph which read: "This section shall take effect January 1, 1994.

Historical Derivation:
(a) Former B & P C § 23958, as added Stats 1953 ch 152 § 1, amended Stats 1955 ch 447 § 62, Stats 1963 ch 1642 § 2, Stats 1980 ch 445 § 1, ch 1194 § 1, Stats 1982 ch 1189 § 1.
(b) Stats 1935 ch 330 § 11, as amended Stats 1937 ch 758 § 13½, Stats 1945 ch 1401 § 9.5, Stats 1949 ch 1348 § 6.
(c) Stats 1933 ch 658 §§ 12, 13.
(d) Stats 1933 ch 658 § 19, as amended Stats 1935 ch 320 § 1.
(e) Stats 1933 ch 178 § 21.

Note—Stats 1980 ch 1194 provides:
SEC. 10. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.
Stats 1992 ch 838 provides:
SEC. 12. On or before July 1, 1993, the Department of Alcoholic Beverage Control shall report to the Legislature recommendations for revisions to the Alcoholic Beverage Control Act in the following areas:
(a) The use of local conditional use permit process and approval as qualification of a proposed premises pursuant to Section 23958 of the Business and Professions Code.
(b) The appropriateness of summary revocation procedures for chronic violators of the Alcoholic Beverage Control Act.

Cross References:
Restrictions on issuance of licenses: B & P C §§ 23770 et seq.
Effect of transfer of ownership of corporation or limited partnership: B & P C § 24071.1.
Prohibited sale of liquors near certain institutions: Pen C §§ 172 et seq.

Collateral References:
Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".
Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.20.
Pertinent administrative regulations: 4 Cal Code Reg §§ 55 et seq.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.20[1], 18.41[6], 18.41[9], 18.52[1], 18.110, 18.126, 18.127, 18.200[1], 18.240[1].

Law Review Articles:
Practice Tips: Local Regulation of Alcohol Licensees. 29 LA Law 14 (October, 2006).

Attorney General's Opinions:

Authorization to issue on–sale beer and off–sale beer and wine licenses to establishments in areas where Pen C §§ 172, 172a prohibit sale of beer of more than 3.2 per cent of alcohol by weight. 17 Ops. Cal. Atty. Gen. 41.

Prohibition against city's denying permit to operate restaurant in which alcoholic beverages are served, where person seeking permit has been issued on–sale general liquor license. 31 Ops. Cal. Atty. Gen. 259.

Propriety of agreement between on–sale general public premises licensee and licensed card room operator for operation of card room; propriety of sublease agreement with operator of vending machines. 47 Ops. Cal. Atty. Gen. 182.

Annotations:

Transfer of retail liquor license from one location to another. 98 ALR2d 1123.

NOTES OF DECISIONS

1. Generally
2. Construction
3. "Good Cause"
4. Discretion
5. Application Approved
6. Application Properly Denied
7. Application Improperly Denied

1. Generally

A partnership application should be denied if one of the partners is unable to qualify. Coletti v. State Bd.of Equalization (1949, Cal App) 94 Cal App 2d 61, 209 P2d 984, 1949 Cal App LEXIS 1490.

All alcoholic beverage licenses are issued only to specific individuals for use at specific locations (B & P C § 24040), and all transfers are subject to official investigation and approval in the same manner as the initial issuance of the license. (B & P C §§ 24070, 23958, 23987, 23988.) Greve v. Leger, Ltd. (1966) 64 Cal 2d 853, 52 Cal Rptr 9, 415 P2d 824, 1966 Cal LEXIS 320.

2. Construction

B & P C § 23958, appears to authorize issuance of a liquor license on some requisite showing of public convenience or necessity even though it is determined that issuance would otherwise "result in or add to an undue concentration of licenses." Principles of deference to the legislative branch and established rules of statutory construction require courts to construe apparently contradictory provisions in such a way as to achieve harmony rather than find there is an irreconcilable inconsistency. Accordingly, the assumption must be that the Legislature intended by the phrase "public convenience or necessity" to invoke criteria different from those utilized in determining "undue concentration," and intended to permit the Department of Alcoholic Beverage Control on the basis of such criteria to grant an application for issuance or transfer of such a license even where undue concentration is found to exist. Sepatis v. Alcoholic Bev. Etc. Appeals Bd. (1980, Cal App 1st Dist) 110 Cal App 3d 93, 167 Cal Rptr 729, 1980 Cal App LEXIS 2229.

3. "Good Cause"

Whether "good cause" for denial of license existed was matter for determination by State Board of Equalization, not by courts. Hansen v. State Board of Equalization (1941, Cal App) 43 Cal App 2d 176, 110 P2d 453, 1941 Cal App LEXIS 632.

On administrative review of a denial by the Department of Alcoholic Beverage Control of an application by a "disco" music establishment for a beer and wine license, the Alcoholic Beverage Control Appeals Board properly concluded the department's determination that issuance of a license would create a law enforcement problem and would be contrary to the public welfare and morals was not supported by the department's findings that "disturbances would sometimes occur when several hundred young persons were gathered together in the described surroundings," despite the establishment's employment of a security force. Whatever the precise parameters of the law enforcement problems contemplated by the statute permitting the denial of a license that would tend to create a law enforcement problem, the department's reliance on a finding that "disturbances" of undetermined severity would "sometimes" in the indefinite future occur reflected too sweeping a view of what constitutes "good cause" within the meaning of Cal Const Art XX § 22, requiring "good cause" for the denial of a license. Also, the department's finding that police officers could not respond quickly to the establishment due to its remote location and the limited number of officers was not supported by the evidence. Department of Alcoholic Bev. Control v. Alcoholic Bev. etc. Appeals Bd. (1981, Cal App 3d Dist) 122 Cal App 3d 549, 175 Cal Rptr 342, 1981 Cal App LEXIS 2048.

4. Discretion

Exercise of discretion of State Board of Equalization in denying a liquor license was not abused, where the applicant proposed to sell liquor in community the deeds in which contained restrictive covenants against selling liquor, and where city was purely residential center in which people made their homes because of unusual recreational development and its general moral tone. Hansen v. State Board of Equalization (1941, Cal App) 43 Cal App 2d 176, 110 P2d 453, 1941 Cal App LEXIS 632.

The mere fact that churches are in the immediate vicinity of premises did not establish an abuse of discretion by the board in granting an on-sale general liquor license for such premises. Altadena Community Church v. State Board of Equalization (1952, Cal App) 109 Cal App 2d 99, 240 P2d 322, 1952 Cal App LEXIS 1803.

Whether the Board of Equalization abused its discretion in exercising the power to regulate enjoyment of the rights to manufacture, sell, purchase or consume alcoholic beverages could be determined only by examining all the facts and circumstances. Altadena Community Church v. State Board of Equalization (1952, Cal App) 109 Cal App 2d 99, 240 P2d 322, 1952 Cal App LEXIS 1803.

5. Application Approved

In a hearing on an application for transfer of an on-sale retail liquor license for operation of a bar, the Department of Alcoholic Beverage Control's finding that the proposed premises would appeal to all segments of the community including many residents and business people in the area who were presently reluctant to enter other bars in the vicinity was supported by substantial evidence, and it could not be said on judicial review that the department abused its constitutional or statutory discretion in considering that fact as an aspect of public convenience (B & P C § 23958), or in concluding that, on balance, the sale of alcoholic beverages at the proposed premises would not be contrary to public welfare or public morals as that term is used in the agency's constitutional mandate. Sepatis v. Alcoholic Bev. Etc. Appeals Bd. (1980, Cal App 1st Dist) 110 Cal App 3d 93, 167 Cal Rptr 729, 1980 Cal App LEXIS 2229.

6. Application Properly Denied

The Department of Alcoholic Beverage Control properly denied an application for an off-sale beer and wine license

where substantial evidence supported its conclusion that issuance of an off-sale license would be contrary to public welfare and morals in that it would add to an undue concentration of licenses (B & P C § 23958; Cal. Admin. Code [now Cal Code Reg], tit. 4, § 61.3). The applicant-premises were located in a high crime district, and the population of the applicable census tract permitted only four off-sale retail licenses whereas ten such licenses had already been granted. The department further determined it was not established that public convenience and necessity required the issuance of a license to the applicant-premises, a Cuban grocery store, in that its customers could easily avail themselves of alcoholic beverages from licensees in close proximity to the applicant premises. These conclusions, which were supported by the department's findings and by substantial evidence in the record, constituted good cause for its determination. Department of Alcoholic Bev. Control v. Alcoholic Bev. etc. Appeals Bd. (1982, Cal App 2d Dist) 133 Cal App 3d 814, 184 Cal Rptr 367, 1982 Cal App LEXIS 1759.

7. Application Improperly Denied

The Department of Alcoholic Beverage Control abused its discretion in denying an application for an off-premises liquor license where the application was denied because the reporting area in which the applicant's premises were located had 20 percent more crimes than the average in the city as a whole and the ratio of liquor licenses to population was greater than in the county as a whole, but where there was no evidence of a police problem or undue concentration within the immediate vicinity of the applicant's premises. The department may deny a license under B & P C § 23958, if its issuance "would result in or add to an undue concentration of licenses," and Cal. Admin. Code [now Cal Code Reg], tit. 4, § 61.3, states an "undue concentration" exists when the reported crimes and the ratio of licenses to population exceed the city averages. Although, in most instances, the mere existence of facts which are deemed to constitute undue concentration under § 61.3 is sufficient for denial of a license without any showing the particular license would adversely affect the particular neighborhood, in those rare instances where, because of the size of a reporting or census tract or the vagaries of geographical topography, the applicant's location, albeit located in a reporting area subject to § 61.3, is itself free of the adversities directing a denial under § 61.3, then it is necessary to present evidence to establish or rebut the effect of the particular license. Department of Alcoholic Bev. Control v. Alcoholic Bev. etc. Bd. (1982, Cal App 4th Dist) 136 Cal App 3d 315, 186 Cal Rptr 189, 1982 Cal App LEXIS 2016.

§ 23958.1. Investigation of application; 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.

Added Stats 1959 ch 1887 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 23958.2. Investigation by department where license transferred 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.

Added Stats 1978 ch 477 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 23958.3. [Section repealed 1984.]

Added Stats 1980 ch 1194 § 3. Amended Stats 1982 ch 1189 § 3. Repealed effective January 1, 1984, by its own terms. The repealed section related to scope of investigation.

Former Sections:

There was another section of this number which was added by Stats 1980 ch 445 § 2 and repealed by Stats 1981 ch 714 § 44.

§ 23958.4. "Undue concentration"; Requirements for issuance of license; Number of licenses issued

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

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

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

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

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

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

public convenience or necessity would be served by the issuance.

(2) With respect to any other license, if the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance. The 90-day period shall commence upon receipt by the local governing body of (A) notification by the department of an application for licensure, or (B) a completed application according to local requirements, if any, whichever is later.

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

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

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

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

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

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

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

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

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

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

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

(e) The enactment of this section shall not affect any existing rights of any holder of a retail license issued before 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.

Added Stats 1994 ch 630 § 2 (AB 2897). Amended Stats 1995 ch 91 § 12 (SB 975); Stats 1996 ch 811 § 1 (AB 2218), ch 869 § 2 (AB 2841); Stats 2012 ch 327 § 9 (SB 937), effective January 1, 2013; Stats 2013 ch 76 § 6 (AB 383), effective January 1, 2014.

Amendments:

1995 Amendment: Routine code maintenance.

1996 Amendment: (1) Amended subd (b)(2) by **(a)** substituting ", or its designated subordinate officer or body, determines within 90 days of notification of a completed application" for "determines" in the first sentence; and **(b)** adding the second sentence; and **(2)** added the last paragraph of subd (b). (As amended Stats 1996 ch 869, compared to the section as it read prior to 1996. This section was also amended by an earlier chapter, ch 811. See Gov C § 9605.)

2012 Amendment: Substituted "established by the department on an annual basis" for "determined by the most recent yearly retail license count published by the department in its Procedure Manual" in subd (d).

2013 Amendment: (1) Added the comma after "burglary, larceny" in subd (c)(2); (2) substituted "premises-to-premises transfer" for "premises to premises transfer" in subd (c)(6); and (3) substituted "before" for "prior to" in subd (e).

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.32[2], 18.127, 18.200[1], 18.240[1].

Law Review Articles:

Review of 1994 legislation; interpretive comments. 26 Pacific LJ 302.

Practice Tips: Local Regulation of Alcohol Licensees. 29 LA Law 14 (October, 2006).

§ 23959. Credit and refund of fee

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 1842 § 10; Stats 1957 ch 2307 § 2, effective July 16, 1957; Stats 1978 ch 656 § 3; Stats 1992 ch 900 § 12 (AB 432), effective September 24, 1992.

Amendments:

1955 Amendment: (1) Added "than" before "ten dollars"; and (2) substituted "Part 14 of Division 2 of the Revenue and Taxation Code" for "this division".

1957 Amendment: (1) Substituted "one–fourth of the license fee paid, or not more than twenty–five dollars ($25), shall be deposited in the General Fund. The balance of this amount" for "three–fourths of the license fee paid, or an amount equal to the license fee paid less than ten dollars ($10), whichever is greater"; (2) added "and" before, and deleted "of this amount" after, "the remaining portion"; and (3) deleted "and the balance of the license fee shall be deposited in the Alcohol Beverage Control Fund" at the end of the section.

1978 Amendment: Substituted "fifty dollars ($50)" for "twenty–five dollars ($25)".

1992 Amendment: (1) Substituted "one hundred dollars ($100), shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761" for "fifty dollars ($50), shall be deposited in the General Fund" in the first sentence; and **(2)** added "(commencing with Section 32001)' in the last sentence.

Historical Derivation:

(a) Stats 1935 ch 330 § 11, as amended Stats 1937 ch 758 § 13½ , Stats 1945 ch 1401 § 9.5, Stats 1949 ch 1348 § 6.

(b) Stats 1933 ch 658 § 19, as amended Stats 1935 ch 320 § 1.

Note—Stats 1992 ch 900 provides:

SECTION 1. The Legislature finds and declares that the regulation of the sale and use of alcoholic beverages is among the highest priorities of state government. The abuse of alcohol can lead to a myriad of other criminal, legal, social, and economic problems. The fair, stable, and effective administration and enforcement of the Alcoholic Beverage Control Act and related laws, therefore, must be insured.

Cross References:

Temporary retail permit: B & P C § 24045.5.

Disposition of fees and tax moneys: B & P C § 25761.

State funds: Gov C §§ 16300 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1], 18.250[1].

§ 23960. [Section repealed 1992.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 1842 § 11. Repealed Stats 1992 ch 838 § 3 (AB 2858). The repealed section related to license not issued within quarter applied for; credit and refund.

Historical Derivation:

Stats 1935 ch 330 § 11a, as added Stats 1937 ch 758 § 14, amended Stats 1949 ch 1348 § 7.

§ 23961. Drawing to determine priority of applications; Residence requirements

(a) If, at the conclusion of the period prescribed by the department for the filing of applications for issuance or transfer of onsale general licenses or offsale 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 onsale general licenses and offsale 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.

Added Stats 1961 ch 783 § 7.5, effective June 10, 1961. Amended Stats 1977 ch 1092 § 1.

Former Sections:
Former § 23961, relating to investigation of application by State Liquor Administrator, was added Stats 1953 ch 152 § 1 and repealed Stats 1955 ch 447 § 63.

Amendments:
1977 Amendment: Added subds (c) and (d).

Historical Derivation:
Stats 1935 ch 330 § 21.1, as added Stats 1945 ch 1401 § 13.1.

Cross References:
Effect of increase in population on number of licenses: B & P C § 23821.
Transferability of licenses: B & P C § 24070.

Collateral References:
Pertinent administrative regulations: 4 Cal Code Reg § 61.1.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

Attorney General's Opinions:
Power of department to issue less than full quota of new original licenses; right to refuse to accept applications after filing deadline though quota not filled. 51 Ops. Cal. Atty. Gen. 12.

§ 23962. Insufficient number of applications; Additional notice

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.

Added Stats 1969 ch 1466 § 5.

Cross References:
Effect of increase in population on number of licenses: B & P C § 23821.
Transferability of licenses: B & P C § 24070.
Publication one time: Gov C § 6061.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

ARTICLE 2

Notices and Protests

[Added Stats 1953 ch 152 § 1.]

Cross References:
Temporary daily on–sale general licenses not governed by this article: B & P C § 24045.1.
Temporary retail permit: B & P C § 24045.5.

Collateral References:
Pertinent administrative regulations: 4 Cal Code Reg §§ 64, 106 et seq., 145 et seq.

§ 23985. Posting of 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 64; Stats 1957 ch 2358 § 1; Stats 1963 ch 784 § 1.

Amendments:
1955 Amendment: Substituted "department" for "board" after "form as the" in the last sentence of the first paragraph and at the end of the second paragraph.
1957 Amendment: (1) Amended the first paragraph by (a) substituting "Within five days after filing an application" for "Before commencing" at the beginning of the section; (b)

adding the second sentence; and (c) substituting the third sentence for the former third sentence which read: "The notice shall be in such form as the department shall prescribe."; and (2) amended the second paragraph by (a) substituting "at the proposed premises within five days after the application is filed and shall remain so posted for at least 30 consecutive days" for "on the premises for 15 days from the date of the application in the form and manner prescribed by the board"; and (b) adding the ast sentence.

1963 Amendment: Deleted (1) "Within five days" at the beginning of the section; and (2) "within five days" after "proposed premises" in the second paragraph.

Historical Derivation:

(a) Stats 1935 ch 330 § 10.1, as added Stats 1951 ch 591 § 2.

(b) Stats 1935 ch 330 § 21, as amended Stats 1937 ch 758 § 17, Stats 1945 ch 1495 § 1.

Cross References:

Temporary retail permits: B & P C § 24045.5.

Issuance and renewal of on–sale beer licenses for fishing party boats: B & P C § 24051.

Rules and regulations by department: B & P C § 25750.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.41[10], 18.126, 18.127, 18.200[1], 18.241[1].

Pertinent administrative regulations: 4 Cal Code Reg § 109.

§ 23985.5. Notice of application to residents of surrounding area

(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 and owner 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.

Added Stats 1984 ch 614 § 1. Amended Stats 1990 ch 612 § 1 (AB 3612); Stats 2001 ch 931 § 4 (AB 624).

Amendments:

1990 Amendment: Substituted "retail license at a premises which is not currently licensed or for a different retail license" for "on–sale or off–sale license" after "issuance of any".

2001 Amendment: (1) Designated the former section to be subd (a); **(2)** amended subd (a) by **(a)** substituting "that" for "which" after "at a premises"; **(b)** adding "and owner" after "every resident"; and **(c)** deleting the former second sentence which read: "The applicant shall submit proof of compliance to the department prior to license approval."; and **(3)** added subds (b) and (c).

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.41[10], 18.127, 18.200[1].

§ 23986. Publication of notice

(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.

(c) This section shall not apply to any licensee subject to the notification requirements of Section 23985.5 or Section 23987.

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1086 § 2; Stats 1955 ch 447 § 65; Stats 1957 ch 262 § 1; Stats 1971 ch 269 § 1; Stats 1978 ch 1060 § 1; Stats 2000 ch 979 § 4 (AB

2759); Stats 2013 ch 502 § 1 (AB 593), effective January 1, 2014.

Amendments:

1955 Amendment: Substituted "department" for "board" wherever it appears.

1957 Amendment: Substituted "pursuant to Section 6061 of the Government Code" for "once" after "published" in the first sentence.

1971 Amendment: (1) Deleted ", within ten (10) days after filing his application with the department," after "license shall"; and (2) added the last sentence.

1978 Amendment: (1) Designated the former section to be subd (a); (2) added ", other than a legal or professional trade publication," after "general circulation" the first time it appears in subd (a); and (3) added subd (b).

2000 Amendment: (1) Substituted "in paragraph (2) or (3) of subdivision (a) of Section 23958.4" for "by departmental rule or regulation" in the first sentence of subd (b); and **(2)** amended the second sentence of subd (a) by **(a)** deleting "Such" at the beginning; **(b)** substituting "are" for "is" after "which the premises" and after "if the premises"; and **(c)** adding "in" after "premises are not".

2013 Amendment: Added subd (c).

Historical Derivation:

Stats 1935 ch 330 § 21, as amended Stats 1937 ch 758 § 17, Stats 1945 ch 1495 § 1.

Cross References:

Temporary retail permit: B & P C § 24045.5.

Issuance and renewal of on–sale beer licenses for fishing party boats: B & P C § 24051.

Affidavit of publication or of other notice: CCP § 2010.

Newspaper of general circulation: Gov C § 6060.

Rules and regulations under the Administrative Procedure Act: Gov C §§ 11371 et seq.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.41[10], 18.127, 18.200[1],18.240[1].

Pertinent administrative regulations: 4 Cal Code Reg § 111.

Annotations:

What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper. 24 ALR4th 822.

§ 23987. Notice to public 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 within an unincorporated area, 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1st Ex Sess 1954 ch 21 § 1; Stats 1955 ch 447 § 66; Stats 1963 ch 1040 § 4; Stats 1994 ch 629 § 1 (AB 2742); Stats 2001 ch 931 § 5 (AB 624); Stats 2002 ch 664 § 30 (AB 3034).

Amendments:

1954 Amendment: Substituted the section for the former section which read: "Upon the receipt by the board of an original application for any license, written notice thereof shall immediately be mailed by the board to the sheriff, chief of police, and district attorney of the locality in which the premises are situated, to 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.

"No license shall be issued by the board until at least 15 days after the mailing by the board of the notices required by this section."

1955 Amendment: Substituted "department" for "board" wherever it appears in the first paragraph and after "transferred by the" in the second paragraph.

1963 Amendment: (1) Added "or an application for transfer of any license" in the first paragraph; and **(2)** substituted "department" for "board" after "mailing by the" in the second paragraph.

1994 Amendment: (1) Amended the first paragraph by **(a)** substituting "consisting" for "which shall consist" after "notice thereof,"; and **(b)** adding "city or county planning director, whoever has jurisdiction, the" before "board of supervisors"; and **(2)** added the second and third sentences of the second paragraph.

2001 Amendment: Added "Except as specified in paragraph (2) of subdivision (e) of Section 23800," at the beginning of the second paragraph.

2002 Amendment: Substituted "within an unincorporated area" for "in unincorporated territory" after "premises are situated, if" the first time it appears in the first paragraph.

Historical Derivation:

Stats 1935 ch 330 § 21, as amended Stats 1937 ch 758 § 17, Stats 1945 ch 1495 § 1.

Cross References:

Issuance and renewal of on–sale beer licenses for fishing party boats: B & P C § 24051.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.32[2], 18.41[9], 18.52[3], 18.126, 18.127, 18.200[1], 18.221[1].

NOTES OF DECISIONS

1. Generally

1. Generally

All alcoholic beverage licenses are issued only to specific individuals for use at specific locations (B & P C § 24040), and all transfers are subject to official investigation and approval in the same manner as the initial issuance of the license. Greve v. Leger, Ltd. (1966) 64 Cal 2d 853, 52 Cal Rptr 9, 415 P2d 824, 1966 Cal LEXIS 320.

§ 23988. [Section repealed 1971.]

Added Stats 1953 ch 152 § 1. Amended Stats 1st Ex Sess 1954 ch 21 § 2; Stats 1955 ch 447 § 67; Stats 1967 ch 1273 § 1. Repealed Stats 1971 ch 1344 § 1. The repealed section related to provisions governing protest proceedings.

Historical Derivation:

Stats 1935 ch 330 § 21, as amended Stats 1937 ch 758 § 17, Stats 1945 ch 1495 § 1.

ARTICLE 3

Denial of Licenses

[Added Stats 1953 ch 152 § 1.]

Cross References:

Temporary retail permit: B & P C § 24045.5.

Collateral References:

Pertinent administrative regulations: 4 Cal Code Reg §§ 55 et seq.

§ 24010. [Section repealed 1957.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 68. Repealed Stats 1957 ch 1271 § 1. The repealed section related to grounds for denial of licenses.

Historical Derivation:

Stats 1935 ch 330 § 39, as amended Stats 1945 ch 1401 § 34, ch 1495 § 2, Stats 1947 ch 1566 § 9.

§ 24011. Notice to applicant; Petition

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 69.

Amendments:

1955 Amendment: Substituted "department" for "board" wherever it appears.

Historical Derivation:

Stats 1935 ch 330 § 39, as amended Stats 1945 ch 1401 § 34, ch 1495 § 2, Stats 1947 ch 1566 § 9.

Cross References:

Applications for licenses: B & P C §§ 23950 et seq.

Temporary retail permit: B & P C § 24045.5.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.50[1], 18.200[1].

Annotations:

Right to attack validity of licensing law in proceedings to obtain license. 65 ALR2d 660.

SUGGESTED FORMS

Notice of Denial of Application

[Caption]

To: ____ *[Applicant]*

You are hereby informed that the Department of Alcoholic Beverage Control ordered that your application for ____ *[type of license]* be denied on ____ *[date]*. This denial is ordered for the following reasons: ____ *[specify grounds for denial]*.

You have ____ [10] days in which to file with the Department of Alcoholic Beverage Control a petition for a hearing. At that hearing you should be prepared to offer evidence to counter the reasons for denial as set forth above in this notice.

Dated ____.

[Signature]

Petition for Hearing Upon Denial of Application for License

[Caption]

To: ____ [Department of Alcoholic Beverage Control]

I, ____, hereby petition for a hearing on the denial of my application for a ____ *[type of license]* license made by the Department on ____*[date]*.

Dated ____.

[Signature]

§ 24012. Setting petition for hearing

Upon receipt by the department of a petition for a license in proper form, the petition shall be set for hearing.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 70; Stats 1963 ch 1040 § 5; Stats 1983 ch 323 § 2.3, effective July 21, 1983, ch 1034 § 2, effective September 22, 1983.

Amendments:

1955 Amendment: Substituted "department" for "board" wherever it appears.

1963 Amendment: Substituted "such petition shall be set" for "it shall be referred to a representative of the department".

1983 Amendment: Substituted "the" for "such" after "proper form,". (As amended by Stats 1983, ch 1034, compared to the section as it read prior to 1983. This section was also amended by an earlier chapter, ch 323. See Gov C § 9605.)

Historical Derivation:

Stats 1935 ch 330 § 39, as amended Stats 1945 ch 1401 § 34, ch 1495 § 2, Stats 1947 ch 1566 § 9.

Cross References:
Temporary retail permit: B & P C § 24045.5.
Hearings: B & P C § 24300.

Collateral References:
Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.50[1], 18.200[1].

§ 24013. Protests

(a) Protests may be filed at any office of the department within 30 days from the first date of posting the notice of intention to engage in the sale of alcoholic beverages at the premises, within 30 days of the mailing of the notification pursuant to Section 23985.5, or within 30 days of the mailing of the notices of the department to public officials as required by Section 23987, whichever is later. The time within which a local law enforcement agency may file a protest shall be extended by the period prescribed in Section 23987, pursuant to a request made under that section.

(b)(1) 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, invalid or unreasonable, 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.

(2) The department shall promulgate regulations by January 1, 2016, to implement this provision.

(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.

Added Stats 1980 ch 1194 § 5, effective January 1, 1983. Amended Stats 1982 ch 1189 § 5, effective January 1, 1984; Stats 1983 ch 323 § 2.5, effective July 21, 1983, ch 1034 § 4, effective September 22, 1983, operative January 1, 1984; Stats 1990 ch 612 § 2 (AB 3612); Stats 1994 ch 629 § 2 (AB 2742); Stats 2004 ch 345 § 1 (AB 2296); Stats 2009 ch 68 § 1 (SB 825), effective January 1, 2010; Stats 2013 ch 502 § 2 (AB 593), effective January 1, 2014.

Former Sections:
Former § 24013, similar to the present section, was added Stats 1953 ch 152 § 1, amended Stats 1955 ch 447 § 71, Stats 1957 ch 2358 § 2, Stats 1965 ch 1161 § 1, Stats 1971 ch 1344 § 2, Stats 1980 ch 445 § 3, ch 1194 § 4, Stats 1982 ch 1189 § 4, Stats 1983 ch 323 § 2.4, effective July 21, 1983, ch 1034 § 3, effective September 22, 1983, and repealed, operative January 1, 1984, by its own terms.

Amendments:
1982 Amendment: Substituted "January 1, 1984" for "January 1, 1983" at the end of the section.
1983 Amendment: Substituted "the" for "such" after "determines" in the first sentence of the second paragraph. (As amended by Stats 1983, ch 1034, compared to the section as it read prior to 1983. This section was also amended by an earlier chapter, ch 323. See Gov C § 9605.)
1990 Amendment: (1) Substituted "the premises, or within 30 days of the mailing of the notification pursuant to Section 23985.5, whichever is later" for "such premises" at the end of the first paragraph; **(2)** deleted "the provisions of" after "hearing thereon, notwithstanding" near the end of the first sentence of the second paragraph; and **(3)** deleted the former last paragraph which read: "This section shall take effect January 1, 1984."
1994 Amendment: Added **(1)** subdivision designations (a)–(c); and **(2)** the second sentence of subd (b).
2004 Amendment: (1) Added "frivolous," in subd (b); and **(2)** substituted "that" for "which" in subd (c).
2009 Amendment: (1) Amended the first sentence of subd (a) by (a) substituting "department within 30 days" for "department at any time within 30 days"; (b) deleting "or" after "the premises,"; and (c) adding "or within 30 days of the mailing of the notices of the department to public officials as required by Section 23987,"; and (2) added the second sentence of subd (a).
2013 Amendment: (1) Added subdivision designation (b)(1); (2) substituted "frivolous, invalid or unreasonable, or" for "frivolous, or" in the first sentence of subd (b)(1); and (3) added subd (b)(2).

Historical Derivation:
Stats 1935 ch 330 § 39, as amended Stats 1945 ch 1401 § 34, ch 1495 § 2, Stats 1947 ch 1566 § 9.

Editor's Notes—See the 1980 Note following B & P C § 23958.

Cross References:
Issuance and renewal of on–sale beer licenses for fishing party boats: B & P C § 24051.
Place of hearings: B & P C § 24300.
Administrative Procedure Act: Gov C §§ 11340 et seq.

Collateral References:
Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.52[2], 18.200[1].
Pertinent administrative regulations: 4 Cal Code Reg § 145.

Forms:
See forms set out below, following Notes of Decisions.

Law Review Articles:
Practice Tips: Local Regulation of Alcohol Licensees. 29 LA Law 14 (October, 2006).

Attorney General's Opinions:
Person upon whom rests burden of proof and burden of going forward with evidence; adoption of rules prescribing order of proof at hearing. 23 Ops. Cal. Atty. Gen. 290.

NOTES OF DECISIONS

1. Construction
2. Procedure

1. Construction
The protest allowed under this statute does not relate to other parts of the act, but is restricted to this article. San Diego v. State Board of Equalization (1947, Cal App) 82 Cal App 2d 453, 186 P2d 166, 1947 Cal App LEXIS 1226.

2. Procedure
The trial court erred in denying a writ of mandamus to compel the Alcoholic Beverage Control Appeals Board to dismiss an appeal from the issuance of an off-sale liquor license by the Department of Alcoholic Beverage Control, where the department, pursuant to Bus & Prof Code, § 24013, had rejected a protest and ordered a later hearing to revoke the license issued, and where the protestants appealed before any such hearing was held. Reimel v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 263 Cal App 2d 706, 69 Cal Rptr 744, 1968 Cal App LEXIS 2260.

SUGGESTED FORMS

Protest Against Issuance of Liquor License

[Caption]

____, the undersigned, hereby protests the issuance of a ____ *[type of license]* under the Alcoholic Beverage Control Act to ____ *[applicant],* at ____ *[address],* in the City of ____, County of ____, State of California, on the grounds that ____ *[specify].*

For the reasons set forth above, the issuance of a license to ____*[applicant]* would be contrary to the public welfare and morals.

Dated ____.

[Signature]

[Verification]

The common grounds are:

(1) The proposed premises will have an adverse effect upon a school, church, hospital, or children's public playground.

(2) Issuance of the license would cause a policing problem or aggravate an existing policing problem.

(3) Premises do not comply with county and/or city health and sanitation requirements.

(4) Premises are not equipped to operate as a bona fide public eating place (applicable to restaurant–type licenses).

(5) Applicant has a police record which disqualifies him or her for a license or is a habitual drunkard, or has committed a crime involving moral turpitude.

(6) Applicant is not the true party in interest in the business to be licensed.

Notice of Hearing on Protest Against Issuance of License

[Caption]

To: ____ *[Applicant]*

You are hereby notified that a hearing on this protest against the issuance of a ____ *[type of license]* will be held before a ____ [hearing officer *or as the case may be]* of the Department at ____ on ____ *[date],* at ____ o'clock.

You are further notified that at that time, you may but do not have to be represented by counsel, and that you may further present any pertinent evidence. You will further be given a full and complete opportunity during that hearing to examine all witnesses testifying against you.

You are further entitled to issuance of ____ *[for example,* subpoenas to force the attendance of witnesses and the production of all relevant books and records] by making application to the Department of Alcoholic Beverage Control at ____ *[address of district office].*

____ *[To the Applicant:* Enclosed is a copy of the protest filed in these proceedings with the Department of Alcoholic Beverage Control].

____ *[To the Protester:* If you do not appear at the hearing as scheduled the Department may consider the submitted protest abandoned].

Dated ____.

[Signature]

§ 24013.1. Waiting period before refiling application withdrawn voluntarily due to protest

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.

Added Stats 1978 ch 454 § 1.

Collateral References:
Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1], 18.250[1].

§ 24013.2. Verified protests valid against subsequent applications at same premises

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.

Added Stats 1978 ch 454 § 2.

Collateral References:
Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1], 18.250[1].

§ 24013.5. Time requirements

(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.

Added Stats 1996 ch 538 § 1 (AB 1042).

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24014. Verification of protest

(a) 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.

(b) A protest made pursuant to this section shall be submitted by an individual and shall be limited to one signatory.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 72; Stats 2013 ch 502 § 3 (AB 593), effective January 1, 2014.

Amendments:
1955 Amendment: Substituted "department" for "board".
2013 Amendment: Added (1) subdivision designation (a); and (2) subd (b).

Historical Derivation:
Stats 1935 ch 330 § 39, as amended Stats 1945 ch 1401 § 34, ch 1495 § 2, Stats 1947 ch 1566 § 9.

Cross References:
Issuance and renewal of on–sale beer licenses for fishing party boats: B & P C § 24051.

Collateral References:
Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

SUGGESTED FORMS

Verification by Private Citizen

I, ____, declare under penalty of perjury:

That I am the protester in this proceeding and that I have read the attached protest and know its contents. The protest is true of my own knowledge except as to those matters that are stated on information and belief, and as to those matters I believe them to be true.

Executed on ____ *[date],* at ____ *[address].*

[Signature]

[Protests filed by private citizens or organizations must be verified. Protests filed by certain public officers, such as Chiefs of Police and City Council members acting as an official body need not be verified.]

§ 24015. Notice of license; Request for hearing of 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.

Added Stats 2004 ch 345 § 2 [3] (AB 2296).

Former Sections:

Former § 24015, relating to time for hearing protest, was added Stats 1975 ch 782 § 1 and repealed Stats 2004 ch 345 § 2. Historical derivation: Stats 1935 ch 330 § 39, as amended Stats 1945 ch 1401 § 34, ch 1495 § 2, Stats 1947 ch 1566 § 9.

Former § 24015, relating to place of hearing to consider protest, was added Stats 1961 ch 1350 § 1, amended Stats 1967 ch 1273 § 2, and repealed Stats 1971 ch 1344 § 3.

Former § 24015, relating to consideration of protests received after issuance of a license, was added Stats 1953 ch 152 § 1, amended Stats 1955 ch 447 § 73, and repealed Stats 1957 ch 2358 § 4.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24015.5. [Section repealed 1995.]

Added Stats 1984 ch 614 § 2. Repealed Stats 1995 ch 743 § 2 (AB 683), effective October 10, 1995. The repealed section related to scheduling of hearing at time and place convenient to witnesses and public.

§ 24016. [Section repealed 2013.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 74. Repealed Stats 2012 ch 327 § 10 (SB 937), effective January 1, 2013. The repealed section related to provisions governing proceedings.

Historical Derivation:

Stats 1935 ch 330 § 39, as amended Stats 1945 ch 1401 § 34, ch 1495 § 2, Stats 1947 ch 1566 § 9.

NOTES OF DECISIONS

1. Judicial Review
2. Abuse of Discretion
3. Sufficiency of Evidence
4. Procedure

1. Judicial Review

Judicial review of denial of license by Department of Alcoholic Beverage Control, instituted by petition for writ of mandate attacking sufficiency of evidence and alleging abuse of discretion, is limited in scope, it does not authorize trial de novo or reweighing of evidence, but empowers court to determine only whether or not there is substantial evidence in record of proceedings before department in support of its decision, and whether or not its action was arbitrary. Torres v. Department of Alcoholic Beverage Control (1961, Cal App 4th Dist) 192 Cal App 2d 541, 13 Cal Rptr 531, 1961 Cal App LEXIS 1971.

In determining whether decision of Department of Alcoholic Beverage Control denying license was arbitrary, its action is measured by the standard set by reason and reasonable people, bearing in mind that such standard may permit difference of opinion on same subject, and reviewing court may not substitute decision contrary to that made by department, although such decision is equally or more reasonable, if department's determination is one that could have been made by reasonable people. Torres v. Department of Alcoholic Beverage Control (1961, Cal App 4th Dist) 192 Cal App 2d 541, 13 Cal Rptr 531, 1961 Cal App LEXIS 1971.

2. Abuse of Discretion

Decision of Department of Alcoholic Beverage Control refusing to grant license, unsupported by sufficient evidence or based on arbitrary determination that granting thereof would be contrary to public welfare or morals, constitutes abuse of discretion and will be set aside. Torres v. Department of Alcoholic Beverage Control (1961, Cal App 4th Dist) 192 Cal App 2d 541, 13 Cal Rptr 531, 1961 Cal App LEXIS 1971.

It was not abuse of discretion for Department of Alcoholic Beverage Control to deny on-sale beer license to operator of pool hall and lunch counter where evidence showed that pool hall was located in area in which there were 88 licensed premises, 26 of which were within radius of 500 feet of pool hall, that such concentration of licenses in limited area gave rise to tendency to disregard regulations restricting sales and to disproportionately greater number of liquor law violations, that two of six liquor agents assigned to night duty in district in which area was located patroled 88 licensed premises in that area at least two or three nights a week, and during some seasons of year, every night of week, and that licenses in area comprised 3.8 per cent of licenses in district but required from 9.3 per cent to 33⅓ per cent of law enforcement services provided for night patrol. Torres v. Department of Alcoholic Beverage Control (1961, Cal App 4th Dist) 192 Cal App 2d 541, 13 Cal Rptr 531, 1961 Cal App LEXIS 1971.

The enforcement and administration of the Alcoholic Beverage Control Act (B & P C §§ 23000 et seq.) is vested in the Department of Alcoholic Beverage Control under the provisions of Cal Const Art XX 22; the department has thus been granted a broad range of power and discretion in deciding whether a particular application for a liquor license should be granted or denied; and an abuse of discretion must appear very clearly before the courts will interfere. Reimel v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 263 Cal App 2d 706, 69 Cal Rptr 744, 1968 Cal App LEXIS 2260.

3. Sufficiency of Evidence

Provisions of Cal Const Art XX § 22 that Department of Alcoholic Beverage Control may deny license "for good cause" necessarily implies that its decisions should be based on sufficient evidence and that it should not act arbitrarily in determining what is contrary to public welfare or morals. Torres v. Department of Alcoholic Beverage Control (1961, Cal App 4th Dist) 192 Cal App 2d 541, 13 Cal Rptr 531, 1961 Cal App LEXIS 1971.

In considering sufficiency of evidence in proceeding to review decision of Department of Alcoholic Beverage Control respecting denial of license, court is governed by substantial evidence rule generally applied in judicial proceedings, any conflict is resolved in favor of decision, and every reasonably deducible inference in support thereof will be indulged. Torres v. Department of Alcoholic Beverage Control (1961, Cal App 4th Dist) 192 Cal App 2d 541, 13 Cal Rptr 531, 1961 Cal App LEXIS 1971.

4. Procedure

The trial court erred in denying a writ of mandamus to compel the Alcoholic Beverage Control Appeals Board to dismiss an appeal from the issuance of an off-sale liquor license by the Department of Alcoholic Beverage Control, where the department, pursuant to B & P C § 24013, had rejected a protest and ordered a later hearing to revoke the license issued, and where the protestants appealed before any such hearing was held. Reimel v. Alcoholic Beverage Control Appeals Board (1968, Cal App 2d Dist) 263 Cal App 2d 706, 69 Cal Rptr 744, 1968 Cal App LEXIS 2260.

§ 24017. [Section repealed 1983.]

Added Stats 1983 ch 323 § 2.6, effective July 1, 1983. Repealed Stats 1983 ch 1034 § 5, effective September 22, 1983. The repealed section related to deposit required for hearing.

ARTICLE 4

Issuance and Renewal of Licenses

[Added Stats 1953 ch 152 § 1.]

Collateral References:
Pertinent administrative regulations: 4 Cal Code Reg §§ 55 et seq.

§ 24040. Issuance to specific person and for specific location

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 954 § 11, ch 1323 § 1; Stats 1963 ch 1040 § 6.

Amendments:
1955 Amendment: Added (1) "or the service of alcoholic beverages on airplanes" in the first sentence; and (2) the second sentence.
1963 Amendment: Deleted "or become null and void" at the end of the second sentence.

Historical Derivation:
(a) Stats 1935 ch 330 § 7, as amended Stats 1937 ch 758 § 10, Stats 1941 ch 1145 § 1, Stats 1945 ch 1401 § 8, Stats 1947 ch 1566 § 3, Stats 1949 ch 1348 § 3, ch 1418 § 1.
(b) Stats 1933 ch 658 § 16.

Cross References:
"Person": B & P C § 23008.
Necessity for license: B & P C § 23300.
Issuance of licenses for trains, cars of sleeping car companies, and airplanes: B & P C § 23321.

Collateral References:
Pertinent administrative regulations: 4 Cal Code Reg §§ 55 et seq.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1], 18.202[1].

Attorney General's Opinions:
Transfer of liquor license by general partners to limited partnership. 7 Ops. Cal. Atty. Gen. 251.
Transfer restrictions. 9 Ops. Cal. Atty. Gen. 287.
Application for transfer of license executed by trustee; application for transfer of license by licensee to person other than trustee or nominee; surrender of license by bankrupt licensee and application for transfer of license by trustee in bankruptcy. 14 Ops. Cal. Atty. Gen. 35.
Authority of juvenile court and attaches to regulate premises of holder of on–sale liquor license. 14 Ops. Cal. Atty. Gen. 93.
Legality of administrative practice of issuing on–sale licenses for "record purposes only" without reference to a specific location which fully qualifies with law. 23 Ops. Cal. Atty. Gen. 262.
Issuance of on–sale license on Indian reservations. 23 Ops. Cal. Atty. Gen. 297.

NOTES OF DECISIONS

1. Generally
2. Applicability
3. Intent
4. Suspension of License
5. Revocation of License

1. Generally
All alcoholic beverage licenses are issued only to specific individuals for use at specific locations (B & P C § 24040), and all transfers are subject to official investigation and approval in the same manner as the initial issuance of the license. Greve v. Leger, Ltd. (1966) 64 Cal 2d 853, 52 Cal Rptr 9, 415 P2d 824, 1966 Cal LEXIS 320.

2. Applicability
This section had no application as to right of original licensee to have license retransferred pursuant to lease agreement. Cavalli v. Macaire (1958, Cal App 1st Dist) 159 Cal App 2d 714, 324 P2d 336, 1958 Cal App LEXIS 2060.

3. Intent
Intent is controlling factor where constructive delivery of liquor license is in question. Joseph George, Distributor v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 149 Cal App 2d 702, 308 P2d 773, 1957 Cal App LEXIS 2089.
Question of issuance or delivery of liquor license is one of intent, where no physical possession of certificate is transferred. Joseph George, Distributor v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 149 Cal App 2d 702, 308 P2d 773, 1957 Cal App LEXIS 2089.

4. Suspension of License
Department's determination that liquor business was owned in part by licensee's husband and that license should be suspended indefinitely was not supported by substantial evidence where, among other things, both real property on which premises were located and license were purchased in wife's name as sole owner and improvements, even if made by husband on wife's property out of community funds, gave him no interest therein. Ciambetti v. Department of Alcoholic Beverage Control (1958, Cal App 3d Dist) 161 Cal App 2d 340, 326 P2d 535, 1958 Cal App LEXIS 1739.

5. Revocation of License
Revocation of off-sale general liquor license for nonuse within 30 days of issuance, as required by this section, was justified where owners of license had, before issuance of license, removed virtually all liquor inventory from their store, none of various licenses and permits necessary to lawful operation of liquor retail department had been obtained, owners, though experienced licensees, made virtually no attempt to supervise store subsequent to issuance of license and made no request of store manager to sell liquor on their behalf, but requested only that he retain license on premises, apply for manager's license, and keep minimal amount of liquor in stock, and no liquor was sold subsequent to issuance of license for period of three months. Gore v. Harris (1964, Cal App 1st Dist) 229 Cal App 2d 821, 40 Cal Rptr 666, 1964 Cal App LEXIS 1051.
Revocation of off-sale liquor license for nonuse within 30 days of issuance, as required by this section, was not too severe, despite subsequent amendment to eliminate requirement of automatic revocation for nonuse, where evidence of

licensees' nonuse of license was not closely balanced, and Department of Alcoholic Beverage Control also found that continuation of license would be contrary to public welfare and morals and therefore based its revocation on Const Art XX § 22 and § 24200 subd (a), as well as this section. Gore v. Harris (1964, Cal App 1st Dist) 229 Cal App 2d 821, 40 Cal Rptr 666, 1964 Cal App LEXIS 1051.

§ 24041. Separate licenses for establishment having more than one location; Out–of–state businesses

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 75; Stats 2002 ch 413 § 1 (SB 1774); Stats 2013 ch 337 § 3 (SB 818), effective January 1, 2014.

Amendments:

1955 Amendment: Substituted "department" for "board".

2002 Amendment: (1) Substituted the first sentence for the former first sentence which read: "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 23388, 23389, and 23390, and except that 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 public warehouse establishments."; **(2)** added the second and third sentences; **(3)** amended the fourth sentence by **(a)** substituting "State" for "state" after "warehouse in this"; and **(b)** adding "or her" after "in each of his".

2013 Amendment: Deleted the former third through last sentences which read: "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."

Historical Derivation:

Stats 1935 ch 330 § 7, as amended Stats 1937 ch 758 § 10, Stats 1941 ch 1145 § 1, Stats 1945 ch 1401 § 8, Stats 1947 ch 1566 § 3, Stats 1949 ch 1348 § 3, ch 1418 § 1.

Cross References:

Warehouse receipts, bills of lading and other documents of title: UCC §§ 7101 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24041.5. Off–sale general license for previously licensed 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.

Added Stats 1965 ch 826 § 1.

Cross References:

Rules and regulations by department: B & P C § 25750.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24042. Duplicate onsale general license; Premises with more than one room

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 76, ch 1779 § 6, operative January 1, 1957; Stats 1957 ch 1250 § 2; Stats 1961 ch 1686 § 2; Stats 2001 ch 488 § 13 (AB 1298).

Amendments:

1955 Amendment: (ch 447) Substituted "department" for "board" wherever it appears.

1955 Amendment: (ch 1779) Added the third paragraph.

1957 Amendment: Added "to members of the public" in the first sentence.

1961 Amendment: (1) Substituted "may" for "shall" after "department" in the first sentence; **(2)** substituted "fee payable for a like period for the distilled spirits privileges of" for "fees and renewal fees therefor shall subject the licensee to" in the second sentence; **(3)** added the second paragraph; and **(4)** deleted "Notwithstanding the foregoing provisions," at the beginning of the last paragraph.

2001 Amendment: In addition to making technical changes, **(1)** amended the first paragraph by **(a)** deleting the former second sentence which read: "He shall pay to the department at the time of application for each duplicate license an amount equal to the license fee payable for a like period for the distilled spirits privileges of the original onsale general license or onsale general license for seasonal business."; and **(b)** adding ", as specified in Section 23320," for "therefor" after "and renewal fees" in the second sentence; and **(2)** transposed the former second and third paragraphs.

Historical Derivation:

Stats 1935 ch 330 § 7, as amended Stats 1937 ch 758 § 10, Stats 1941 ch 1145 § 1, Stats 1945 ch 1401 § 8, Stats 1947 ch 1566 § 3, Stats 1949 ch 1348 § 3, ch 1418 § 1.

Cross References:

"Public premises": B & P C § 23039.

Necessity for license: B & P C § 23300.

Penalty for operation without license: B & P C § 23301.

Types of licenses and annual fees therefor: B & P C § 23320.

On–sale general bona fide public eating place intermittent dockside license for specified vessels: B & P C § 23321.7.

On–sale license for sale in public eating place: B & P C § 23787.

Administrative adjudication: Gov C §§ 11500 et seq.

Collateral References:

Pertinent administrative regulations: 4 Cal Code Reg §§ 55 et seq.

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.21[4], 18.200[1].

§ 24042.5. Portable bar counter licenses

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.

Added Stats 1987 ch 517 § 1. Amended Stats 2001 ch 488 § 14 (AB 1298).

Amendments:

2001 Amendment: Substituted ", as specified in Section 23320," for "therefor" in the last sentence.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.21[4], 18.200[1].

§ 24043. Licenses for 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 77.

Amendments:

1955 Amendment: Substituted "department" for "board".

Historical Derivation:

(a) Stats 1935 ch 330 § 7, as amended Stats 1937 ch 758 § 10, Stats 1941 ch 1145 § 1, Stats 1945 ch 1401 § 8, Stats 1947 ch 1566 § 3, Stats 1949 ch 1348 § 3, ch 1418 § 1.

(b) Stats 1933 ch 178 § 16.

Cross References:

Issuance of licenses for trains, cars of sleeping car companies, and airplanes: B & P C § 23321.

Rules and regulations by department: B & P C § 25750.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.21[2], 18.200[1].

§ 24044. Licenses for 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 7.1, as added Stats 1951 ch 591 § 1.

Collateral References:

Pertinent administrative regulations: 4 Cal Code Reg § 64.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.41[10], 18.126, 18.200[1], 18.202[1].

Attorney General's Opinions:

Validity of rule prohibiting delivery and transfer of alcoholic beverage license until such time as premises in connection with which license is sought are in fact equipped and completed for actual and legitimate retail sale of alcoholic beverages. 23 Ops. Cal. Atty. Gen. 206.

§ 24044.5. Interim Operating Permit

(a) The department, in its discretion, may issue an interim operating permit to an applicant for any 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 operating 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 operating permit is accompanied by a fee of one hundred dollars ($100).

(b) An interim operating permit issued by the department pursuant to this section shall be for a period not to exceed 120 days. An interim operating 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 operating 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 license is withdrawn, whichever occurs first. An interim operating permit is a conditional permit and authorizes the holder to whom issued to exercise the rights and 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) of Chapter 5 shall apply to any interim operating permit issued by the department.

(c) Purchase of beer and wine by the holder of an interim operating permit issued to an applicant for a retail license 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 operating permit issued to an applicant for a retail license 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 operating permit issued to an applicant for a retail license, who also holds one or more retail licenses and is operating under the retail license or licenses in addition to the interim operating 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 operating permit.

(d) All checks received by a seller for beer or wine purchased by the holder of an interim operating permit issued to an applicant for a retail license 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 an interim operating 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 operating permit issued to an applicant for a retail license has filed an application shall not be approved by the department until the holder of the interim operating 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 operating permit issued to an applicant for a retail license or to receive payment from the holder of an interim operating permit in a manner other than authorized herein unless the seller has knowledge of the fact that the purchaser was operating under an interim operating 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 operating permit were posted with the notice required by Section 23985, or the holder of the interim operating permit has recorded notice as required by Section 24073, or the holder of the interim operating permit has published notice as required by Section 23986, or the holder of the interim operating 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 operating 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 operating permits.

(h) Notwithstanding any other provision of law, the department may, in its discretion, cancel or suspend summarily at any time an interim operating 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 operating permits.

(i) Application for an interim operating permit shall be on any form the department shall prescribe. If an application for an interim operating permit is withdrawn before issuance or is refused by the department, the fee that accompanied the application shall be refunded in full, and Section 23959 shall not apply. Fees received by the department for issuance of interim operating permits shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

Added Stats 1992 ch 838 § 4 (AB 2858). Amended Stats 1994 ch 1028 § 2 (AB 988); Stats 2010 ch 296 § 6 (SB 1480), effective January 1, 2011.

Amendments:

1994 Amendment: (1) Added "of Chapter 5" in the last sentence of subd (b); and **(2)** amended subd (i) by **(a)** substituting "that" for "which" after "department, the fee"; and **(b)** deleting "and 23960" after "and Sections 23959".

2010 Amendment: (1) Substituted "operating permit" for "retail permit" wherever it appears; (2) deleted "retail" after "applicant for any" in the introductory clause of subd (a); (3) amended subd (b) by (a) deleting "retail" after "application for the" in the third sentence; and (b) substituting "to whom issued to exercise the rights and" for "thereof to sell alcoholic beverages as would be permitted to be sold under the" in the fourth sentence; (4) substituted "operating permit issued to an applicant for a retail license" for "retail permit" wherever it appears in subds (c)-(f); (5) substituted "an interim operating" for "a temporary" in the second sentence of the second paragraph of subd (d); (6) substituted "holder of an interim operating permit" for "permittee" in the first sentence of subd (f); and (7) substituted "operating permits" for "retail permits" in the last sentence of subds (g)-(i).

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.52[2], 18.200[1].

§ 24045. Basis of issuance of retailer's on–sale licenses

(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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 78; Stats 1957 ch 2307 § 3, effective July 16, 1957; Stats 1969 ch 1123 § 7; Stats 1983 ch 323 § 2.7, effective July 21,

1983, ch 607 § 1; Stats 1992 ch 838 § 5 (AB 2858); Stats 1994 ch 123 § 1 (SB 1379), effective June 30, 1994.

Amendments:

1955 Amendment: Substituted "department" for "board".

1957 Amendment: (1) Added "and renew on–sale beer licenses and on–sale beer and wine licenses on a quarterly basis for the remainder of the calendar year where the privilege of such licensees is exercised only a portion of each year; provided, however, that the department may issue"; and (2) substituted "five dollars and fifty cents ($5.50)" for "five dollars ($5)".

1969 Amendment: Added "and daily on–sale general licenses issued pursuant to Section 24045.1".

1983 Amendment (ch 323): Substituted "not to exceed fifteen dollars ($15) per day as determined by the department" for "of five dollars and fifty cents ($5.50) per day" at the end of the first sentence.

1983 Amendment (ch 607): Substituted "equal to the actual cost of issuing the license but not to exceed twenty–five dollars ($25)" for "of five dollars and fifty cents ($5.50)" at the end of the first sentence.

1992 Amendment: (1) Designated the former section to be subd (a); **(2)** amended subd (a) by **(a)** deleting "retailer's on–sale" after "All" at the beginning; **(b)** substituting "an annual basis" for "a calendar year basis, except that the department may issue and renew on–sale beer licenses and on–sale beer and wine licenses on a quarterly basis for the remainder of the calendar year where the privilege of such licenses is exercised only a portion of each year" after "shall be issued on"; **(c)** adding the comma after "issuing the license"; and **(d)** deleting the former second sentence which read: "All other licenses shall be issued on the basis of a fiscal year, commencing July 1st and ending June 30th."; and **(3)** added subd (b).

1994 Amendment: (1) Substituted ". However," for "; provided, however, that" at the end of the first sentence of subd (a); and **(2)** added subd (b).

Historical Derivation:

Stats 1935 ch 330 § 8, as amended Stats 1937 ch 758 § 11, Stats 1941 ch 935 § 1, Stats 1949 ch 1348 § 5.

Note—Stats 1994 ch 123 provides:

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Chapter 838 of the Statutes of 1992 inadvertently mandated the payment of duplicate annual renewal fees by licensees whose businesses are ongoing, but who are required to transfer their licenses as a result of changes in ownership occasioned by the death of a spouse, removal of a partner, reorganization or incorporation of a business, or similar circumstances. In order to alleviate the severe financial hardship to many retail businesses in this state caused by this inadvertent duplicate assessment of license fees, it is necessary that this act take effect immediately.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

Provision pertaining to on–sale licensee's sale of beer for consumption on premises as not limiting the power of department to issue special licenses under this Section: B & P C § 23399.

Collateral References:

Pertinent administrative regulations: 4 Cal Code Reg §§ 55 et seq.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.21[3], 18.22[2], 18.200[1].

Attorney General's Opinions:

Issuance of substitute license to applicant whose original license was automatically revoked for failure to renew, where such failure was due to circumstances beyond applicant's control. 7 Ops. Cal. Atty. Gen. 250.

§ 24045.1. Temporary 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.

Added Stats 1969 ch 1123 § 8.

Former Sections:

Former § 24045.1, similar to present B & P C § 24045.5, was added Stats 1961 ch 1716 § 1 and repealed Stats 1965 ch 1490 § 2.

Cross References:

Prohibited selling of alcoholic beverages, other than beers, in any bona fide public eating place without compliance with requirements prescribed in section: B & P C § 23396.

Provision pertaining to on–sale licensee's sale of beer for consumption on premises as not limiting the power of department to issue daily on–sale general licenses under section: B & P C § 23399.

Daily on–sale general license issued pursuant to section as not authorizing on–sale general licensee to exercise rights and privileges granted by off–sale beer and wine license: B & P C § 23401.

Retailers to purchase from licensees only: B & P C § 23402.

Limitation on number of licensed premises: B & P C §§ 23815 et seq.

Notices and protests: B & P C §§ 23985 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.21[3], 18.22[1], 18.200[1].

§ 24045.2. Temporary off–sale license to certain member–supported television stations and nonprofit charitable organizations

(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 Statesthat 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 forthis 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.

Added Stats 1972 ch 66 § 1, effective May 5, 1972. Amended Stats 1975 ch 405 § 1; Stats 2004 ch 523 § 1 (AB 2927), effective September 14, 2004.

Amendments:
1975 Amendment: Amended the first sentence of subd (a) by adding **(1)** ": (1)" after "license to"; and **(2)** ", or (2) a nonprofit, caritable 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 such a license shall accompany the application with a fee of one hundred dollars ($100)".

2004 Amendment: (1) Amended subd (a) by substituting **(a)** "the Internal Revenue Code of 1954 of the United States that receives and administers" for "the Internal Revenue Code of 1954 of the United States which receives and administers" in the first sentence; **(b)** "An applicant for this license shall" for "An applicant for such a license shall" in the last sentence; **(2)** amended subd (b) by **(a)** substituting "This license shall" for" Such a license shall"; **(b)** deleting "; however, no such beer or wine shall be sold at less than the minimum retail price therefor, established pursuant to provisions of this division" after "donated to it" in the first sentence; **(c)** substituting "a licensee may donate" for "licensees may donate"; and **(d)** deleting "such" before "donations are not made" in the last sentence; and **(3)** amended subd (c) by **(a)** substituting "This license shall" for "Such a license shall"; **(b)** deleting "such" before "license shall"; and **(c)** substituting "in a calendar year" for "in any 12–month period".

Cross References:
Nonprofit corporations for charitable or eleemosynary purposes: Corp C §§ 10200 et seq.

Collateral References:
Organizations exempt from taxations: 26 USCS §§ 501 et seq.
Public Broadcasting Act of 1967: 47 USCS §§ 390 et seq.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24045.3. Temporary off–sale license issued to 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 beer and 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 beer and 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.

Added Stats 1974 ch 688 § 1. Amended Stats 2004 ch 523 § 2 (AB 2927), effective September 14, 2004; Stats 2005 ch 22 § 6 (SB 1108), effective January 1, 2006.

Former Sections:
There was another section of this number which was added Stats 1975 ch 400 § 1 and renumbered B & P C § 24045.4 by Stats 1979 ch 373 § 39.

Amendments:
2004 Amendment: (1) Amended subd (a) by substituting **(a)** "charitable organization that is a part of" for "charitable organization which is a part of" in the first sentence; and **(b)** "An applicant for this license shall" for "An applicant for such

a license shall" in the last sentence; **(2)** amended subd (b) by **(a)** substituting "This license shall" for "Such a license shall"; **(b)** deleting "; however, no such wine shall be sold at less than the minimum retail price therefor, established pursuant to provisions of this division" after "wine donated to it" in the first sentence; **(c)** substituting "None of the funds realized from this auction shall" for "None of the funds realized from such auction shall"; **(d)** deleting "such" before "funds shall be places" in the second sentence; **(e)** substituting "a licensee may donate" for "licensees may donate"; and **(f)** substituting "provided that donations are not made" for "provided such donations are not made" in the last sentence; and **(3)** amended subd (c) by **(a)** substituting "This license shall" for "Such a license shall" in the first sentence; **(b)** deleting "such" before "license shall"; and **(c)** substituting "in a calendar year" for "in any 12–month period" in the last sentence.

2005 Amendment: Amended subd (b) by (1) adding "beer and" before "wine"; and (2) deleting the comma after wine in the last sentence.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24045.4. Issuance of special temporary off-sale general license to certain nonprofit corporations; Application fee; Restrictions; Duration

(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 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 three licenses authorized by this section shall be issued to any corporation in a calendar year.

Added Stats 1975 ch 400 § 1, as B & P C § 24045.3. Renumbered by Stats 1979 ch 373 § 39. Amended Stats 2004 ch 523 § 3 (AB 2927), effective September 14, 2004; Stats 2008 ch 71 § 1 (AB 1964), effective January 1, 2009; Stats 2009 ch 140 § 23 (AB 1164), effective January 1, 2010.

Amendments:

2004 Amendment: (1) Substituted "An applicant for this license shall" for "An applicant for such a license shall" in the last sentence of subd (a); **(2)** amended subd (b) by **(a)** substituting "This license shall" for "Such a license shall"; **(b)** deleting "; however, no such alcoholic beverages shall be sold at less than the minimum retail price therefor, established pursuant to provisions of this division" after "alcoholic beverages donated to it" in the first sentence; **(c)** substituting "a licensee may donate" for "licensees may donate"; and **(d)** substituting "provided that donations are not made" for "provided such donations are not made" in the last sentence; and **(3)** amended subd (c) by **(a)** substituting "This license shall" for "Such a license shall" in the first sentence; **(b)** deleting "such" before "license shall"; and **(c)** substituting "in a calendar year" for "in any 12–month period" in the last sentence.

2008 Amendment: Substituted "three licenses authorized by this section" for "one license" in subd (c).

2009 Amendment: Substituted "Internal Revenue Code of the United States" for "Internal Revenue Code of 1954 of the United States" in the first sentence of subd (a).

Cross References:

Religious, charitable, etc., corporations: Rev & Tax C § 23701d.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24045.5. Temporary permit to transferee of license

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 a 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.

Added Stats 1965 ch 1490 § 1. Amended Stats 1968 ch 206 § 1; Stats 1988 ch 289 § 1; Stats 1989 ch 1360 § 10; Stats 1999 ch 699 § 3 (AB 1407); Stats 2002 ch 246 § 1 (AB 2801); Stats 2004 ch 335 § 1 (AB 3043); Stats 2005 ch 22 § 7 (SB 1108), effective January 1, 2006.

Amendments:

1968 Amendment: (1) Amended the first paragraph by (a) substituting "permit to the transferee of a retail license to continue the operation of a retail premises during the period a transfer application for the license from person to person at the same premises is pending and" for "license"; (b) deleting "of the same type" after "retail license" in subparagraph (a); (c) substituting "a temporary permit" for "temporary license of such type" in subparagraph (a); (d) substituting "for said premises" for "of the same type" in subparagraph (b); and (e) deleting "of the same type" after "retail license" in subparagraph (c); (2) amended the second paragraph by substituting (a) "extended" for "renewed"; and (b) "sell such alcoholic beverages as would be permitted to be sold under the privileges of the retail license for which transfer application has been filed with the department," for "purchase alcoholic beverages only by payment in currency or certified check for such alcoholic beverages on or before they are delivered to him"; (3) added the third through the seventh paragraphs; (4) amended the eighth paragraph by substituting "extend" for "renew"; (5) substituted "permit" for "license" wherever it appears; and (6) substituted "permits" for "licenses" wherever it appears.

1988 Amendment: (1) Added feminine pronouns; **(2)** deleted "retail" after "a temporary" in the introductory clause, before "a license" in subds (a), (b), and (c), after "privileges of the" in the second paragraph, and after "Transfer of the" in the sixth paragraph; **(3)** substituted "any" for "retail" after "transferee of" and "the" for "a retail" after "operation of" in the introductory clause of the first paragraph; **(4)** substituted "one hundred dollars ($100)" for "fifty dollars ($50)" in subd (d) and in the second paragraph; **(5)** amended the second paragraph by **(a)** substituting "120 days" for "60 days" at the end of the first sentence and "120–day" for "60–day" in the second sentence; and **(b)** deleting "and to sell such alcoholic beverages to consumers only and not for resale" at the end; and **(6)** added "retail" after "a temporary" in the third sentence of the third paragraph and in the fourth paragraph.

1989 Amendment: Routine code maintenance.

1999 Amendment: Substituted "Section 23959" for "Sections 23959 and 23960" in the last paragraph.

2002 Amendment: (1) Amended the third paragraph by deleting **(a)** the former first sentence which read: "Purchase of beer and wine 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."; and **(b)** "certified" after "in currency or by"; and **(2)** amended the fourth paragraph by substituting **(a)**

"alcoholic beverages" for "beer or wine" both times it appears; and **(b)** "are" for "is" before "delivered" at the end of the paragraph.

2004 Amendment: Amended the second paragraph by substituting **(1)** "four calendar months" for "120 days" in the first sentence; and **(2)** "four calendar months" for "120–day period" in the second sentence.

2005 Amendment: Added "a" before "temporary permit" in the second sentence of the last paragraph.

Historical Derivation:

Former B & P C § 24045.1, as added Stats 1961 ch 1716 § 1.

Cross References:

"Public premises" as not including premises being operated under a temporary on–sale beer license other than permitted pursuant to this Section: B & P C § 23039.

Credit and refund of fee: B & P C § 23959.

Notices and protests: B & P C §§ 23985 et seq.

Denial of licenses: B & P C §§ 24011 et seq.

Notice of intended transfer of license: B & P C § 24073.

Hearings: B & P C §§ 24300 et seq.

Additional charge against retailer not making payment: B & P C § 25509.

Rules and regulations by department: B & P C § 25750.

Disposition of fees and tax moneys: B & P C § 25761.

Bulk transfers: UCC §§ 6101 et seq.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.50[1], 18.50[2], 18.103, 18.126, 18.132, 18.150, 18.200[1], 18.200[2], 18.220[1], 18.221[1], 18.223[1].

Law Review Articles:

Handling the sale of a restaurant. 9 CEB Bus L Pract No. 1, p. 32.

§ 24045.6. Issuance of special temporary on-sale or off-sale wine license to certain nonprofit corporations; Application fee; Restrictions; Duration and use

(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. 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 that 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 three special licenses authorized by this section shall be issued to any corporation in a calendar year.

Added Stats 1978 ch 106 § 1, effective April 21, 1978. Amended Stats 1984 ch 920 § 1, effective September 7, 1984; Stats 1996 ch 900 § 2 (SB 1923); Stats 2004 ch 523 § 4 (AB 2927), effective September 14, 2004; Stats 2008 ch 71 § 2 (AB 1964), effective January 1, 2009; Stats 2009 ch 140 § 24 (AB 1164), effective January 1, 2010.

Amendments:

1984 Amendment: (1) Added "or off–sale" in subds (a) and (b); **(2)** deleted "the provisions of" after "taxes under" in subd (a); **(3)** amended subd (b) by **(a)** substituting "the" for "such" after" donated to," and after "section, provided"; and **(b)** deleting "provisions of" after "pursuant to"; and **(4)** substituted "two days" for "one day" in subd (c).

1996 Amendment: In addition to making technical changes, **(1)** amended subd (a) by **(a)** substituting "Section 23701d or 23701e" for "Section 23701d"; **(b)** adding "or 501(c)(6); and **(c)** substituting "1986" for "1954 of the United States" in the first sentence; **(2)** amended subd (b) by **(a)** adding "to a consumer and to any person holding a license authorizing the sale of wine" in the first sentence; **(b)** adding "not" after "wine shall" in the second sentence; and **(c)** substituting "a licensee" for "licensees" and "donation is" for "donations are" in the third sentence; and **(3)** amended subd (c) by **(a)** substituting "15 days" for "two days"; **(b)** adding the second sentence; and **(c)** substituting "special license authorized by this section" for "such license".

2004 Amendment: (1) Deleted the former second sentence of subd (b) which read: "That wine shall not be sold at less than the minimum retail price therefor, established pursuant to this division."; and **(2)** substituted "a calendar year" for "any 12–month period" at the end of subd (c).

2008 Amendment: Substituted "three special licenses" for "one special license" in the last sentence of subd (c).

2009 Amendment: (1) Deleted "of 1986" after "Internal Revenue Code" in the first sentence of subd (a); and (2) added "that" before "the donation" in the second sentence of subd (b).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24045.7. On–sale general license to nonprofit theater company; Hours of sale; Fees

(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 or the City of Livermore 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.

Added Stats 1979 ch 487 § 3. Amended Stats 1984 ch 399 § 3, effective July 11, 1984; Stats 1987 ch 1104 § 1; Stats 1990 ch 238 § 1 (AB 3890); Stats 2001 ch 488 § 15 (AB 1298), ch 567 § 2 (AB 1429), effective October 7, 2001; Stats 2002 ch 579 § 2 (AB 2413); Stats 2010 ch 273 § 2 (AB 2793), effective January 1, 2011.

Amendments:

1984 Amendment: Deleted the former last paragraph which read: "This section shall remain in effect only until January 1, 1985, and as of such date is repealed."

1987 Amendment: (1) Added subdivision designation (a); **(2)** deleted "of 1954" before "of the United States" at the end of the first paragraph; and **(3)** added subd (b).

1990 Amendment: (1) Deleted "the provisions of" before "Section 23701d" in the first paragraph of subds (a) and (b); and **(2)** amended the second paragraph of subd (b) by substituting **(a)** "two hours" for "one hour" before "prior to" in the first sentence; **(b)** "if" for "provided that" before "the concession"; **(c)** "and the alcoholic beverages sold is" for ", and provided that alcoholic beverages sold shall be" before "consumed only" in the second sentence.

2001 Amendment: (1) Amended subd (a) by **(a)** adding subdivision designation (a)(1); **(b)** substituting "that" for "which" after "theater company" in subd (a)(1); **(c)** adding the second sentence of subd (a)(1); **(d)** adding subd (a)(3); **(e)** adding subdivision designation (a)(4); and **(f)** added subd (a)(5); and **(3)** added subdivision designations (b)(1)–(b)(3). (As amended Stats 2001 ch 567, compared to the section as it read prior to 2001. This section was also amended by an earlier chapter, ch 488. See Gov C § 9605.)

2002 Amendment: Added "or as an officer, director, or employee" in the second sentence of subd (a)(3).

2010 Amendment: Added "or the City of Livermore" in subd (a)(3).

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 547 "Theaters, Shows, And Amusement Places".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24045.75. On-sale general license to operator of for-profit theater located within City and County of San Francisco, configured with theatrical seating and primarily devoted to live theatrical performances; Hours of sale; "For-profit theater"

(a)(1) The department may issue a special on-sale general license to the operator of any for-profit theater located within the City and County of San Francisco, configured with theatrical seating of at least 1,000 seats and primarily devoted to live theatrical performances.

(2) A special on-sale general license described by this section shall not be issued until any existing licenses issued by the department to the operator for the premises of the for-profit theater are canceled.

(b) The special on-sale general license shall permit sales, service, and consumption of alcoholic beverages in the lobbies and seating areas of the theater for the period beginning two consecutive hours prior to a live theatrical performance and ending one hour after the live theatrical performance is completed, subject to Section 25631. Any special on-sale general license issued pursuant to this section 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 theater further shall not be subject to the provisions of Section 23793.

(c) For purposes of this section, "for-profit theater" shall not include an adult or sexually oriented business, as defined in Section 318.5 of the Penal Code.

Added Stats 2013 ch 235 § 2 (AB 525), effective January 1, 2014.

§ 24045.8. Temporary off–sale wine license to representative of estate or pursuant to writ of execution

(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.

Added Stats 1981 ch 212 § 3.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24045.85. Special on–sale beer and wine license to symphony association; Hours of sale; Fees

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.

Added Stats 1984 ch 399 § 4, effective July 11, 1984, as B & P C § 24045.9. Amended and renumbered by Stats 1986 ch 248 § 12. Amended Stats 1988 ch 155 § 1. Amended Stats 2001 ch 488 § 17 (AB 1298); Stats 2002 ch 246 § 2 (AB 2801).

Amendments:

1986 Amendment: Routine code maintenance.

1988 Amendment: Substituted "on the licensed premises" for "presented by the symphony association" at the end of the first sentence of the second paragraph.

2001 Amendment: Deleted "subdivision (23) of" after "provided in" in the third paragraph.

2002 Amendment: Substituted "beer, wine, or distilled spirits" for "beer and wine" near the beginning of the first paragraph.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 547 "Theaters, Shows, And Amusement Places".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24045.9. Temporary on–sale beer and wine license to member–supported television or broadcasting station

(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 or wine to a corporation licensed under this section, provided that the 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 or wine 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.

Added Stats 1984 ch 969 § 1. Amended Stats 2004 ch 523 § 5 (AB 2927), effective September 14, 2004; Stats 2005 ch 22 § 8 (SB 1108), effective January 1, 2006.

Former Sections:

There was another section of this number which was added Stats 1984 ch 399 § 4, effective July 11, 1984, and amended and renumbered B & P C § 24045.85 by Stats 1986 ch 248 § 12.

Amendments:

2004 Amendment: (1) Substituted "An applicant for this license shall" for "An applicant for such a license shall" in the last sentence of subd (a); **(2)** amended subd (b) by substituting **(a)** "This license shall" for "Such a license shall" in the first sentence; and **(b)** "a licensee may donate" for "licensees may donate" in the last sentence; and **(3)** amended subd (c) by **(a)** substituting "This license shall" for "Such a license shall" in the first sentence; **(b)** deleting "such" before "license shall"; and **(c)** substituting "a calendar year" for "any 12–month period" in the last sentence.

2005 Amendment: (1) Amended subd (b) by (a) adding "or wine" after "beer"; and (b) substituting "such" for "that" in the last sentence; and (2) added "or wine" after "beer" in subd (d).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24045.10. Temporary daily on–sale license for docked vessels in certain counties

(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, bona fide 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 of 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.

Added Stats 1986 ch 723 § 1.

Former Sections:

There was another section of this number which was added by Stats 1987 ch 869 § 2, effective September 21, 1987, and renumbered B & P C § 24045.12 by Stats 1988 ch 160 § 11.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24045.11. Special on-sale wine license to bed and breakfast inn

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.

Added Stats 1987 ch 615 § 1. Amended Stats 2001 ch 488 § 16 (AB 1298); Stats 2010 ch 296 § 7 (SB 1480), effective January 1, 2011; Stats 2012 ch 327 § 11 (SB 937), effective January 1, 2013.

Amendments:

2001 Amendment: Substituted "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" for "fifty dollars ($50) and shall pay an annual renewal fee of five dollars ($5) for each guestroom in the establishment" in the fourth paragraph.

2010 Amendment: Substituted "subdivisions (c) and (d)" for "subdivisions (b) and (c)" in the last paragraphs.

2012 Amendment: Substituted "subdivisions (b) and (c)" for "subdivisions (c) and (d)" in the last paragraph.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24045.12. Special on–sale general license to bed and breakfast inn

(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, that 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.

Added Stats 2001 ch 53 § 1 (AB 1437).

Former Sections:

There was another section of this number, relating to general on-sale license to caterer, which was added Stats 1987 ch 869 § 2, effective September 21, 1987, as B & P C § 24045.10, renumbered by Stats 1988 ch 160 § 11, amended Stats 1998 ch 639 § 10, and renumbered B & P C § 24045.17 by Stats 2007 ch 349 § 2, effective January 1, 2008.

§ 24045.13. Issuance of special temporary off–sale license to former licensee

(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.

Added Stats 1995 ch 139 § 2 (AB 1781).

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24045.14. On–sale general license for maritime museum

(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 onboard 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.

Added Stats 1996 ch 372 § 1 (AB 2299). Amended Stats 1998 ch 485 § 35 (AB 2803).

Amendments:
1998 Amendment: Substituted **(1)** "1986" for "1954" at the end of subd (a); and **(2)** "original application shall be accompanied by a fee of five hundred dollars ($500) and the applicant" for "applicant shall accompany the application with an original fee of five hundred dollars ($500) and" in subd (d).

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24045.15. Special license for agricultural nonprofit corporation

(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 autho-

rized by this section shall be issued to any nonprofit corporation in a calendar year.

Added Stats 1997 ch 383 § 1 (SB 509), effective August 26, 1997. Amended Stats 1997 ch 774 § 2 (AB 1082); Stats 1998 ch 485 § 36 (AB 2803); Stats 2004 ch 523 § 6 (AB 2927), effective September 14, 2004; Stats 2005 ch 22 § 9 (SB 1108), effective January 1, 2006.

Amendments:

1997 Amendment: Added the second, sixth, and seventh sentences of subd (b).

1998 Amendment: Added "services" at the end of the third sentence of subd (b).

1999 Amendment: Substituted "Section 23405.2" for "Section 23405.3" in the first sentence of subd (a).

2004 Amendment: Substituted **(1)** "and online computer services" for "and on–line computer services" at the end of the second sentence in subd (b); and **(2)** "in a calendar year" for "in any 12–month period" at the end of subd (c).

2005 Amendment: Substituted "viticultural area" for "Viticultural Area".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24045.16. Grant of license to nonprofit charitable arts trust; "Arts trust"; Restrictions

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.

Added Stats 1997 ch 20 § 1 (AB 710), effective June 6, 1997.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24045.17. General on-sale license to caterer

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.

Added Stats 1987 ch 869 § 2, effective September 21, 1987, as B & P C § 24045.10. Renumbered as B & P C § 24045.12 by Stats 1988 ch 160 § 11. Amended Stats 1998 ch 639 § 10 (AB 2416). Renumbered by Stats 2007 ch 349 § 2 (SB 520), effective January 1, 2008.

Amendments:

1998 Amendment: Substituted "one year" for "4 years" in subd (b).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24045.18. Certain beer and wine wholesalers allowed to assist nonprofit organizations holding temporary wine license in conducting winetasting

Notwithstanding any other provision of this division, a beer and wine wholesaler that also holds an off-sale beer and wine retail license and only sells wine or the holder of a limited off-sale retail wine license may assist a nonprofit organization holding a temporary wine license in conducting a winetasting. The privilege granted under this section for a beer and wine wholesaler that also holds an off-sale beer and wine retail license and only sells wine or the holder of a limited off-sale retail wine license shall apply only to wine produced for the donating licensee that is labeled with a brand owned exclusively by the donating licensee and shall include in the tasting only wine donated by the licensee to the event.

Added Stats 2007 ch 131 § 1 (AB 323), effective July 27, 2007. Amended Stats 2011 ch 292 § 3 (AB 623), effective January 1, 2012.

Amendments:

2011 Amendment: Added "or the holder of a limited off-sale retail wine license" both times it appears.

§ 24045.19. Temporary on-sale wine license; Conditions for sale to general public; Limitations

(a) The department may issue a special temporary on-sale wine license to a nonprofit corpora-

tion, exempt from payment of income taxes under Section 23701a or 23701e of the Revenue and Taxation Code and Section 501(c)(5) or 501(c)(6) of the Internal Revenue Code, if a majority of whose members are either licensed winegrowers, winegrape growers, or professionals in the fields of enology or viticulture. The license shall authorize the sale of wine for consumption on the premises where sold, and no off-sale privileges shall be exercised under this license. An applicant for this license shall accompany the application with a fee equal to the actual cost of issuing the license, but not to exceed seventy-five dollars ($75) per day.

(b) This special license shall only entitle the licensee to sell to the general public wine bought by, or donated to, the licensee under either of the following conditions:

(1) The wine is sold as part of a class, seminar, or other instructional event organized by the licensee to educate the general public on topics related to enology or viticulture. The instruction may include, without limitation, the history, nature, values, and characteristics of the wines and grapes that were used to make the wines. A single tasting of wine shall not exceed one ounce. The licensee shall remove any wine not consumed during the instruction that the licensee provided following the instruction.

(2) The wine is sold at a winetasting event organized by the licensee to educate and instruct the general public with respect to the uses and value of winegrapes from a particular agricultural region that is related to the licensee's exempt purpose. A single tasting of wine shall not exceed one ounce. If the licensee's name, or any name under which the licensee does business, includes the designation of an American appellation of origin, as defined in Section 4.25 of Title 27 of the Code of Federal Regulations, the wines sold by the licensee pursuant to this license shall be labeled with the named appellation of origin, or an appellation of origin located entirely within the named appellation of origin. The licensee shall remove any wine not consumed during the winetasting event that the licensee provided following the winetasting event.

(c) A class, seminar, instructional event, or winetasting event organized pursuant to this section shall not be directed toward a specific private brand or trade name, although private brands and trade names may be used at the events.

(d) Only six special licenses authorized by this section shall be issued to any single nonprofit corporation in any one calendar year. The special license shall be for a period not to exceed two consecutive days.

(e) Notwithstanding any other provision of this division, licensees may donate wine or sell wine to a nonprofit corporation that obtains a special temporary on-sale license under this section, provided the donation is not made in connection with a sale of an alcoholic beverage.

Added Stats 2008 ch 441 § 1 (AB 2090), effective January 1, 2009.

§ 24046. Posting of 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 79, ch 954 § 12; Stats 1957 ch 1271 § 3; Stats 1959 ch 1529 § 1.

Amendments:

1955 Amendment: Substituted the second sentence for the former second sentence which read: "Licenses issued for trains or boats may, in lieu of being posted upon the train or boat for which issued, be posted in such other place in this State as the board shall designate."

1957 Amendment: Substituted "department" for "board" in the second sentence.

1959 Amendment: Deleted "sign it and" before "post it in a conspicuous place" in the first sentence.

Historical Derivation:

(a) Stats 1935 ch 330 § 9.
(b) Stats 1933 ch 658 § 15.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24047. Duplicate license; Original lost or destroyed

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).

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 80; Stats 1957 ch 2307 § 4, effective July 16, 1957.

Amendments:

1955 Amendment: Substituted "department" for "board."

1957 Amendment: Substituted "five dollars and fifty cents ($5.50)" for "five dollars ($5)."

Historical Derivation:

Stats 1935 ch 330 § 7, as amended Stats 1937 ch 758 § 10, Stats 1941 ch 1145 § 1, Stats 1945 ch 1401 § 8, Stats 1947 ch 1566 § 3, Stats 1949 ch 1348 § 3, ch 1418 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24048. Licenses renewable; Procedure for renewal; Cancellation and reinstatement

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 as set forth in Section 23320, 23358.3, or 23399.

(c) For 60 days after the license expires, the 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. of 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 that 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 81; Stats 1957 ch 1822 § 1; Stats 1969 ch 1123 § 9; Stats 1992 ch 838 § 6 (AB 2858); Stats 1994 ch 1028 § 3 (AB 988); Stats 2001 ch 488 § 18 (AB 1298).

Amendments:

1955 Amendment: Substituted "department" for "board".

1957 Amendment: (1) Substituted "in accordance with Sections 24048.1 to 24048.4" for "on or before the date on which payment thereof is due" at the end of the first sentence; and **(2)** deleted the former second and third sentences which read: "If the fee for the renewal of any license is not so paid, the license is automatically suspended but may be reinstated by the department within 31 days thereafter upon payment of the amount due. Unless the licensee is so reinstated, it is automatically revoked 31 days after the date upon which payment of the renewal fee is due, and no license shall be issued to the licensee except upon a new application for a license."

1969 Amendment: Added "or a daily on–sale general license issued pursuant to Section 24045.1".

1992 Amendment: (1) Amended the first paragraph by **(a)** deleting "in accordance with Sections 24048.1 to 24048.4" at the end of the first sentence; and **(b)** adding the introductory clause; and **(2)** added subds (a)–(g).

1994 Amendment: Made technical changes.

2001 Amendment: Substituted "Section 23320, 23358.3, or 23399" for "Section 23320" in subds (b), (c), and (f).

Historical Derivation:

(a) Former B & P C § 24048.1, as added Stats 1957 ch 1822 § 2, amended Stats 1965 ch 1519 § 1.

(b) Former B & P C § 24048.3, as added Stats 1957 ch 1822 § 3, amended Stats 1965 ch 1519 § 2.

(c) Stats 1935 ch 330 § 8, as amended Stats 1937 ch 758 § 11, Stats 1941 ch 935 § 1, Stats 1949 ch 1348 § 5.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

Publicly–owned premises: B & P C § 23824.

Suspension and revocation of licenses: B & P C §§ 24200 et seq.

When application, tax return, or claim for credit or refund is deemed filed: Gov C § 11003.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.21[3], 18.22[2], 18.165, 18.200[1].

Annotations:

Grant or renewal of liquor license as affected by fact that applicant held such license in the past. 2 ALR2d 1239.

NOTES OF DECISIONS

1. Generally

1. Generally

Renewal of liquor license is deemed continuation of original license. Golden v. State (1955, Cal App 1st Dist) 133 Cal App 2d 640, 285 P2d 49, 1955 Cal App LEXIS 1675.

§ 24048.1. [Section repealed 1992.]

Added Stats 1957 ch 1822 § 2. Amended Stats 1965 ch 1519 § 1. Repealed Stats 1992 ch 838 § 7 (AB 2858). See § 24048.

§ 24048.2. [Section repealed 1994.]

Added Stats 1957 ch 1822 § 3. Amended Stats 1959 ch 546 § 1. Repealed Stats 1992 ch 838 § 8 (AB 2858), operative January 1, 1994. The repealed section prohibited issuance or transfer of calendar year basis licenses between December 1st and December 31st.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24048.3. [Section repealed 1992.]

Added Stats 1957 ch 1822 § 4. Amended Stats 1965 ch 1519 § 2. Repealed Stats 1992 ch 838 § 9 (AB 2858). See § 24048.

§ 24048.4. [Section repealed 1993.]

Added Stats 1957 ch 1822 § 5. Amended Stats 1959 ch 546 § 2. Repealed Stats 1992 ch 838 § 10 (AB 2858), operative July 1, 1993. The repealed section related to prohibited issuance or transfer of fiscal year basis licenses between June 1st and June 30th.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24049. Transfer of license; Grounds for refusal

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 82, ch 1842 § 12, ch 1848 § 1; Stats 1957 ch 553 § 1; Stats 1963 ch 965 § 1; Stats 1967 ch 1034 § 1.

Amendments:

1955 Amendment: Added (1) "or transfer" after "the renewal"; and (2) ", or any amounts due under the Unemployment Insurance Code, the Personal Income Tax Law, or the Bank and Corporation Tax Law" at the end of the section.

1957 Amendment: Substituted the section for the former section which read: "The board may refuse the renewal or transfer of any license when the applicant is delinquent in the payment of any taxes due under this division or under the Sales and Use Tax Law, or any amounts due under the Unemployment Insurance Code, the Personal Income Tax Law, or the Bank and Corporation Tax Law."

1963 Amendment: Substituted (1) "to" for "the renewal or" after "may refuse"; and (a) "when" for "which" before "such tax".

1967 Amendment: Added "or on unsecured property as defined in Section 134 of the Revenue and Taxation Code".

Historical Derivation:

Stats 1935 ch 330 § 8, as amended Stats 1937 ch 758 § 11, Stats 1941 ch 935 § 1, Stats 1949 ch 1348 § 5.

Cross References:

"Unsecured property" defined: Rev & Tax C § 134.
Sales and use taxes: Rev & Tax C §§ 6001 et seq.
Personal income tax: Rev & Tax C §§ 17001 et seq.
Alcoholic beverage tax: Rev & Tax C §§ 32001 et seq.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Points & Authorities (Matthew Bender®) ch 200 "Receivers" § 200.320.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.41[5], 18.51[1], 18.51[2], 18.129, 18.130, 18.131, 18.151, 18.200[1], 18.201[1], 18.202[2].

Matthew Bender ® Practice Guide: Cal. Debt Collection, §§ 9.28[4], 20.38.

Attorney General's Opinions:

Impropriety of refusing to transfer liquor license on ground that present holder of license has failed to pay wages to his employees. 39 Ops. Cal. Atty. Gen. 215.

NOTES OF DECISIONS

1. Generally

1. Generally

Allocation of funds received from trustee's sale of bankrupt's liquor license, the sale being mandated by the Department as a condition to approving transfer of the license, to penalties and post-petition interest was prohibited by § 57j of the Bankruptcy Act. State Board of Equalization v. Stodd (1974, 9th Cir Cal) 500 F2d 1208, 1974 US App LEXIS 7438.

The California Employment Development Department and the State Board of Equalization may not collect tax penalties and post-bankruptcy petition interest out of the proceeds of sale of a bankrupt's liquor license as a condition of transfer of the license under B & P C § 24049. In re Petite Auberge Village, Inc. (1981, 9th Cir Cal) 650 F2d 192, 1981 US App LEXIS 11752.

§ 24049.5. Seizure and sale of license

(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.

Added Stats 1980 ch 1194 § 6. Amended Stats 1983 ch 337 § 1; Stats 1986 ch 1361 § 2; Stats 1992 ch 838 § 11 (AB 2858).

Amendments:

1983 Amendment: Substituted **(1)** "The" for "Such" in the fourth sentence of subd (a); and **(2)** "Paragraph (1) of subdivision (a) of Section 699.720" for "Subdivision (f) of Section 688" in subd (d).

1986 Amendment: Added **(1)** all references to Franchise State Board; **(2)** ", Personal Income Tax Law, or Bank and Corporation Tax Law, respectively" at the end of the first sentence of subd (a); and **(3)** "or Article 4 (commencing with Section 26221) of Chapter 23 of Part 11 of Division 2 of the Revenue and Taxation Code, respectively," in the last sentence of subd (a).

1992 Amendment: Substituted **(1)** "the license has expired pursuant to Section 24048" for "or failed to pay the annual renewal fee by the date specified in subdivision (b) of Section 24048.1 or subdivision (b) of Section 24048.3" at the end of subd (b); and **(2)** "subdivision (f) of Section 24048" for "Sections 24048.1 and 24048.3" at the end of subd (c).

Editor's Notes—See the 1980 Note following B & P C § 23958.

Collateral References:

9 Witkin Summary (10th ed) Taxation § 369.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24050. [Section repealed 1978.]

Added Stats 1978 ch 104 § 1, effective April 20, 1978. Repealed, operative December 31, 1978, by its own terms. The repealed section related to extension of on–sale general license for seasonal business where natural disaster has impaired business.

Former Sections:

Former § 24050, relating to extension of licenses for seasonal business in disaster areas, was added Stats 1969 ch 94 § 1, and repealed Stats 1970 ch 534 § 1.

Former § 24050, relating to reissuance of licenses revoked because of Japanese ancestry, was added Stats 1953 ch 152 § 1, amended Stats 1955 ch 477 § 83, Stats 1957 ch 757 § 1, and repealed Stats 1963 ch 1040 § 7.

§ 24051. Issuance and renewal of on–sale beer license for 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.

Added Stats 1959 ch 2192 § 3, as B & P C § 24052; Renumbered by Stats 1961 ch 73 § 6.

Editor's Notes—§ 23988, referred to in this section, related to provisions governing protest proceedings and was repealed Stats 1971 ch 1344 § 1.

Cross References:

Notices and protests: B & P C §§ 23985 et seq.

Protests against issuance of license: B & P C § 24013.

Verification of protest: B & P C § 24014.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.11, 18.200[1].

§ 24052. [Section renumbered 1961.]

Added Stats 1959 ch 2192 § 3. Renumbered B & P C § 24051 by Stats 1961 ch 73 § 6.

Former Sections:

There was another section of this number, relating to the effect on licenses of the extension of the boundaries of certain institutions, which was added Stats 1959 ch 2194 § 1 and repealed Stats 1961 ch 1617 § 5.

ARTICLE 5

Transfer of Licenses

[Added Stats 1953 ch 152 § 1.]

Collateral References:

Cal Jur 3d (Rev) Creditors' Rights and Remedies § 143, Enforcement of Judgements § 26.

Pertinent administrative regulations: 4 Cal Code Reg §§ 55 et seq.

Handling real property sales transactions. CEB Action Guide.

NOTES OF DECISIONS

1. Generally
2. Applicability
3. Legislative Intent

1. Generally

Agreement for sale of real property inclusive of liquor license is legal when transfer of license was intended to be in accordance with Alcoholic Beverage Control Act. Leboire v. Black (1948, Cal App) 84 Cal App 2d 260, 190 P2d 634, 1948 Cal App LEXIS 1187.

Contract to transfer on-sale liquor license enjoys constitutional immunity from legislative impairment. Golden v. State (1955, Cal App 1st Dist) 133 Cal App 2d 640, 285 P2d 49, 1955 Cal App LEXIS 1675.

Refusal to perform valid contract to transfer on-sale liquor license is remedial. Golden v. State (1955, Cal App 1st Dist) 133 Cal App 2d 640, 285 P2d 49, 1955 Cal App LEXIS 1675.

State has complete control over matters dealing with sale and licensing of alcoholic products and this control extends to transfer of liquor licenses. Pacific Firestone Escrow Co. v. Food Giant Markets, Inc. (1962, Cal App 2d Dist) 202 Cal App 2d 155, 20 Cal Rptr 570, 1962 Cal App LEXIS 2457.

2. Applicability

A transfer of a liquor license from a partnership to one partner is subject to the provisions of this article. Coletti v. State Bd.of Equalization (1949, Cal App) 94 Cal App 2d 61, 209 P2d 984, 1949 Cal App LEXIS 1490.

3. Legislative Intent

B & P C §§ 24070–24082, provide a comprehensive program to regulate liquor license transfers, giving unmistakable indication of the Legislature's determination to exercise its power to control every phase of such transfers; in the field of liquor license transfers the Legislature has established a mandatory and exclusive system of priorities intended to replace other procedures such as ordinary levy and execution, in order to protect all parties to the transaction, and at the same time, to prevent use of a liquor license or its transfer directly or surreptitiously as a security device. Grover Escrow Corp. v. Gole (1969) 71 Cal 2d 61, 77 Cal Rptr 21, 453 P2d 461, 1969 Cal LEXIS 233.

§ 24070. Transferability of licenses

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 that 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 that 12–month period, additional off–sale general licenses in any county, off–sale general licenses may be transferred into that county in a number not to exceed by more than 10 percent the number of off–sale general licenses in existence in that 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 that 12–month period, additional on–sale general licenses in any county, on–sale general licenses may be transferred into that county in a number not to exceed by more than 10 percent the number of on–sale general licenses in existence in that county on 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 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 that 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 United States Securities and 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)(1) An on-sale general license or off-sale general license that has been transferred from one county to another county shall not be transferred for a purchase price or consideration in excess of the original fee paid for that license pursuant to subdivision (b) of Section 23954.5 for a period of five years following the previous transfer of that license.

(2) An on-sale general license or off–sale general license that has been transferred from one county to another county 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 previous intercounty transfer of the license.

Added by Stats 1961 ch 783 § 9, effective June 10, 1961. Amended Stats 1967 ch 1222 § 2, effective August 17, 1967; Stats 1968 ch 1273 § 1, ch 1381 § 1; Stats 1971 ch 1072 § 1; Stats 2013 ch 337 § 4 (SB 818), effective January 1, 2014.

Former Sections:

Former § 24070, similar to the present section, was added Stats 1953 ch 152 § 1, amended Stats 1955 ch 447 § 84, Stats 1957 ch 1821 § 1, and repealed Stats 1961 ch 783 § 8, effective June 10, 1961.

Amendments:

1967 Amendment: Prior to 1967 the section read: "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. All retail licenses may be transferred from one county to another county, except that the number of onsale general licenses and offsale general licenses in existence in any county on June 1st of any year shall not be increased by more than 5 percent by such transfers or by more than 10 percent by any combination of transfers and issuance of original licenses during the following 12–month period but in no event to exceed 25 licenses during said 12–month period; provided, however, that in any county where original offsale general licenses are issued during any 12–month period following the effective date of this section, no offsale general licenses shall be transferred into that county from another county during said 12–month period. No transfer of a retail license may be made from one county to another county on and after June 1, 1963. The number of licenses transferred from one county to another county shall not be limited by the provisions of Section 23816 or 23817, but such licenses shall be included in the number of premises used in determining application of such limitations in Sections 23816 and 23817. Before any applications for transfer of licenses are accepted, the department shall publish pursuant to Section 6061 of the Government Code in the county to which such licenses may be transferred notice of the department's intention to receive applications for the transfer of such licenses setting forth the date, time, manner and place of acceptance of such applications within the county. "No retail license subject to the provisions of Section 23816 or 23817, issued on or after the effective date of this section as an original license 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."

1967 Amendment amended the section to read as at present, except for the following amendments.

1968 Amendment: (1) Amended subd (b) by (a) adding "All on–sale general licenses may be transferred from one county to another county, subject to the following provisions: 1." following "(b)"; and (b) adding subds 2–4; (2) amended subd (c) by (a) adding "or on–sale general license" following "off–sale general license"; and (b) substituting "August 17, 1967" for "the operative date of the 1967 amendment to this section"; and (3) amended subd (d) by (a) adding "or on–sale general license" following "off–sale general license"; (b) deleting "the 1967 amendment to" following "pursuant to"; and (c) adding", 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".

1971 Amendment: Added subd (e).

2013 Amendment: (1) Redesignated former subds (a)1.-(a)3., (b)1.-(b)4. and (e) to be subds (a)(1)-(a)(3), (b)(1)-(b)(4), and (d)(2); (2) substituted "that county" for "such county" wherever it appears in subds (a)(1), (a)(2), (b)(2), and (b)(3); (3) substituted "that 12-month period" for "such 12-month period" in subds (a)(2) and (b)(2); (4) substituted "that county on June 1" for "such county on the June" in subds (b)(2); (5) substituted "United States Securities and Exchange Commission" for "Security Exchange Commission" in subd (c); (6) added subdivision designation (d)(1); (7) substituted subd (d)(1) for former subd (d) which read: "(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."; and (8) amended subd (d)(2) by (a) substituting "An on-sale general license or" for "Notwithstanding the provisions of subdivision (d) of this section any"; (b) substituting "that has been" for "or on-sale general license"; (c) deleting "pursuant to this section" after "another county"; and (d) adding "previous".

Historical Derivation:

(a) Former B & P C § 24070, as added Stats 1953 ch 152 § 1, amended Stats 1955 ch 447 § 84, Stats 1957 ch 1821 § 1.

(b) Stats 1935 ch 330 § 7, as amended Stats 1937 ch 758 § 10, Stats 1941 ch 1145 § 1, Stats 1945 ch 1401 § 8, Stats 1947 ch 1566 § 3, Stats 1949 ch 1348 § 3, ch 1418 § 1.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

Limitation on number of onsale premises: B & P C § 23816.

Limitation on number of offsale premises: B & P C § 23817.

Drawing to determine priority of applications: B & P C § 23961.

Additional notice if number of applications is insufficient: B & P C § 23962.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.10[2], 18.10[3], 18.20[1], 18.30[2], 18.30[3], 18.30[4], 18.40[1], 18.103, 18.111, 18.150, 18.152, 18.200[1], 18.202[1], 18.211[1], 18.221[1].

Matthew Bender ® Practice Guide: Cal. Debt Collection, §§ 1.42[2], 4.26[2], 9.26, 9.28[4], 16.06[2].

4 Witkin Summary (10th ed) Sales § 222.

Pertinent administrative regulations: 4 Cal Code Reg §§ 60, 60.3, 68.

Attorney General's Opinions:

Transfer of liquor license by general partners to limited partnership. 7 Ops. Cal. Atty. Gen. 251.

Transfer restrictions. 9 Ops. Cal. Atty. Gen. 287.

Notice from Division of Labor Law Enforcement that transferor of liquor license has failed to pay wages due his employees as ground for refusal to transfer license. 39 Ops. Cal. Atty. Gen. 215.

Power of department to issue less than full quota of new original licenses; right to refuse to accept applications after filing deadline though quota not filled. 51 Ops. Cal. Atty. Gen. 12.

Annotations:

Transfer of retail liquor license or permit from one location to another. 98 ALR2d 1123.

NOTES OF DECISIONS

1. Generally
2. Construction with Other Law
2. On-sale License
3. Off-sale License
4. Official Approval

1. Generally

A legal agreement may be entered into to transfer a liquor license as a chose in action or as personal property, provided that the transfers are made in the method prescribed by the statute and subject to approval. Etchart v. Pyles (1951, Cal App) 106 Cal App 2d 549, 235 P2d 427, 1951 Cal App LEXIS 1783.

Ordinarily holders of alcoholic beverage licenses may freely contract to transfer those licenses to others subject to official approval of the transfer. Such contracts are valid and specifically enforceable. (B & P C § 24070.) Greve v. Leger, Ltd. (1966) 64 Cal 2d 853, 52 Cal Rptr 9, 415 P2d 824, 1966 Cal LEXIS 320.

Holders of licenses to purvey alcoholic beverages have a right, in combination, to protest the granting or transfer of a similar license, even though their protest is for the sole purpose of preventing or limiting competition. Thus, in an action by the holders of a liquor license for damages against other holders of similar licenses, who challenged plaintiffs' application for transfer of the license, the trial court properly sustained defendants' demurrers to the counts in the complaint alleging malicious prosecution and tortious interference with a business and abuse of process. The record indicated defendants had conceded, arguendo, the existence of a conspiratorial motive to prohibit excessive competition in their challenge to plaintiff's application for transfer of the license. Defendants' use of the legal process consisted of unsuccessful protests to the Department of Alcoholic Beverage Control and a subsequent unsuccessful appeal to the Alcoholic Beverage Control Appeals Board. Matossian v. Fahmie (1980, Cal App 1st Dist) 101 Cal App 3d 128, 161 Cal Rptr 532, 1980 Cal App LEXIS 1381.

2. Construction with Other Law

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 B & P C, § 24070, 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 B & P. C §§ 23002, 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 (1974) 10 Cal 3d 605, 111 Cal Rptr 553, 517 P2d 817, 1974 Cal LEXIS 347.

2. On-sale License

Contract to transfer on-sale liquor license, subject to approval of state licensing agency and other conditions and restrictions imposed by law, is valid. Golden v. State (1955, Cal App 1st Dist) 133 Cal App 2d 640, 285 P2d 49, 1955 Cal App LEXIS 1675.

3. Off-sale License

When department's jurisdiction to grant or refuse transfer of license depends on establishment of ultimate fact that public welfare and morals would be adversely affected by "off-sale" liquor license because of its proximity to church, reviewing court may examine evidence on which finding of department to that effect is based. Schaub's, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 153 Cal App 2d 858, 315 P2d 459, 1957 Cal App LEXIS 1570.

4. Official Approval

All alcoholic beverage licenses are issued only to specific individuals for use at specific locations (B & P C § 24040), and all transfers are subject to official investigation and approval

in the same manner as the initial issuance of the license. Greve v. Leger, Ltd. (1966) 64 Cal 2d 853, 52 Cal Rptr 9, 415 P2d 824, 1966 Cal LEXIS 320.

Omission in a private agreement for transfer of an alcoholic beverage license of a provision for official approval does not affect the need for official sanction. Greve v. Leger, Ltd. (1966) 64 Cal 2d 853, 52 Cal Rptr 9, 415 P2d 824, 1966 Cal LEXIS 320.

In all agreements for transfer of alcoholic beverage licenses, the requirement of official approval is in the implied condition, whatever the context and whatever the nature of the consideration. Greve v. Leger, Ltd. (1966) 64 Cal 2d 853, 52 Cal Rptr 9, 415 P2d 824, 1966 Cal LEXIS 320.

§ 24070.1. Transfer of on–sale license for bona fide public eating place or for public premises

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.

Added Stats 1955 ch 1779 § 7, operative January 1, 1957.

Cross References:

"Bona fide public eating place": B & P C §§ 23038, 23038.1.
"Public premises": B & P C § 23039.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.40[2], 18.200[1].

§ 24070.2. Transfer of off–sale general license 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).

Added Stats 1993 ch 1285 § 1 (AB 107).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.200[1], 18.211[1].

§ 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.

Added Stats 1969 ch 1277 § 2.

Cross References:

"Wine grower": B & P C § 23013.
Licensed wine growers: B & P C § 23358.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.200[1], 18.211[1].

§ 24071. Transfers by and between certain persons

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, debtor in a bankruptcy case, 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1331 § 7; Stats 1957 ch 2307 § 5, effective July 16, 1957; Stats 1959 ch 466 § 1, ch 1576 § 4; Stats 1963 ch 1040 § 8; Stats 1965 ch 1243 § 1; Stats 1967 ch 1559 § 3, operative April 1, 1968; Stats 1971 ch 1378 § 1; Stats 1982 ch 497 § 1, operative July 1, 1983; Stats 1985 ch 532 § 1; Stats 1992 ch 900 § 13 (AB 432), effective September 24, 1992; Stats 1996 ch 44 § 4 (SB 632), effective May 15, 1996; Stats 2009 ch 500 § 9 (AB 1059), effective January 1, 2010.

Amendments:

1957 Amendment: Substituted "Twenty–seven dollars and fifty cents ($27.50)" for "twenty–five dollars ($25)" wherever it appeared.

1959 Amendment: (1) Deleted "or licenses" after "The license" at the beginning of the section and before "of a decedent" in the first sentence; (2) added "conservatee," after "incompetent person,"; (3) deleted "partner or" before "partners of a deceased licensee"; (4) added "conservator" after "administrator,"; (5) added "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," in the first sentence; and (6) added the second sentence.

1963 Amendment: Substituted "24072" for "24070".

1965 Amendment: 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," in the first sentence.

1967 Amendment: Substituted (1) "fifty dollars ($50)" for "twenty–seven dollars and fifty cents ($27.50)"; and (2) the last sentence for the former last sentence which read: "If the annual fee for a license is less than twenty–seven dollars and fifty cents ($27.50), the fee to be charged for the transfer thereof in any case shall be the amount of the fee payable upon an original application as provided under Sections 23320 and 23322 of this division."

1971 Amendment: Added ", except if such transfer of stock is from a parent to his child or grandchild, in which case the fee shall be one–half of the regular transfer fee" in the second sentence.

1982 Amendment: Added "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," in the first sentence.

1985 Amendment: Added "to a revocable living trust when the license is also the trustee, or a license may be transferred" before "between partners" in the first sentence.

1992 Amendment: In addition to making technical changes, deleted "directly in the General Fund in the State Treasury, rather than" after "be deposited" in the last sentence.

1996 Amendment: Added **(1)** "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" in the first sentence of the first paragraph; and **(2)** the second paragraph.

2009 Amendment: Substituted "debtor in a bankruptcy case" for "bankrupt person" in the first sentence of the first paragraph.

Historical Derivation:

Stats 1935 ch 330 § 7, as amended Stats 1937 ch 758 § 10, Stats 1941 ch 1145 § 1, Stats 1945 ch 1401 § 8, Stats 1947 ch 1566 § 3, Stats 1949 ch 1348 § 3, ch 1418 § 1.

Note—Stats 1992 ch 900 provides:

SECTION 1. The Legislature finds and declares that the regulation of the sale and use of alcoholic beverages is among the highest priorities of state government. The abuse of alcohol can lead to a myriad of other criminal, legal, social, and economic problems. The fair, stable, and effective administration and enforcement of the Alcoholic Beverage Control Act and related laws, therefore, must be insured.

Cross References:

Disposition of fees and tax moneys: B & P C § 25761.

State funds: Gov C §§ 16300 et seq.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 2A.01[1], 17.20[2], 17.111, 18.01[2], 18.20[1], 18.21[3], 18.22[2], 18.30[3], 18.40[3], 18.41[1], 18.111, 18.200[1], 18.210[1], 18.211[1], 18.221[1].

NOTES OF DECISIONS

1. Generally
2. Construction with Other Law

1. Generally

A receiver may be appointed to take possession of liquor license belonging to judgment debtor and sell it to satisfy a judgment which has become final, where debtor has no property or interest of value other than such license. Mollis v. Jiffy-Stitcher Co. (1954, Cal App) 125 Cal App 2d 236, 270 P2d 25, 1954 Cal App LEXIS 1870.

2. Construction with Other Law

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 B & P C § 24070, 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 B & P C §§ 23002, 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 (1974) 10 Cal 3d 605, 111 Cal Rptr 553, 517 P2d 817, 1974 Cal LEXIS 347.

§ 24071.1. Effect of transfer of ownership of corporation or limited partnership

(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.

Added Stats 1967 ch 1494 § 1. Amended Stats 1969 ch 654 § 1; Stats 1973 ch 47 § 5, effective May 15, 1973; Stats 1978 ch 725 § 1; Stats 1992 ch 900 § 14 (AB 432), effective September 24, 1992; Stats 1996 ch 44 § 5 (SB 632), effective May 15, 1996; Stats 1998 ch 639 § 11 (AB 2416).

Amendments:

1969 Amendment: **(1)** Substituted "corporation as newly constituted" for "newly constituted corporation"; **(2)** deleted the former last sentence of the first paragraph, which read: "The notice required to be published under Section 24073 and the escrow provisions of Sections 24074 and 24074.1 shall apply in the exchange of a license as herein provided." and **(3)** added the second through fourth paragraphs.

1973 Amendment: Added **(1)** the second sentence in the first paragraph; **(2)** "or who own as limited partners 50 percent or more of the capital or profits of the limited partnership, as the case may be," in the fifth sentence of the first

paragraph; and **(3)** "by a corporation" after "transferred" in the second paragraph.

1978 Amendment: Amended the first paragraph by **(1)** substituting the third sentence for the former third sentence which read: "The fee for such transfer shall be one hundred dollars ($100) which shall be deposited as provided in Section 24072." and **(2)** adding the fourth and fifth sentences.

1992 Amendment: Deleted "directly in the General Fund in the State Treasury, rather than" after "deposited" in the fifth sentence of the first paragraph.

1996 Amendment: In addition to making technical changes, **(1)** added subdivision designations (a)–(c); **(2)** substituted "except" for "provided" before "that the minimum" in the third sentence of subd (a); **(3)** redesignated former subds (a)–(e) to be subds (a)(1)–(a)(5); and **(4)** substituted "any person" for "an alcoholic beverage supplier or manufacturer" after "new credit from" in subd (c).

1998 Amendment: **(1)** Amended the second sentence of subd (a) by **(a)** adding "there is a new general partner or when" near the beginning; **(b)** adding "general or" after "persons as"; **(c)** deleting "general partners of the" after "issued to the"; and **(d)** deleting "general partners of the" after "transferred to the" near the end; **(2)** amended subd (b) by adding **(a)** "or a limited partnership" near the beginning of the introductory clause; **(b)** "or limited partnership" in the introductory clause, and in subd (b)(1); **(c)** "or capital or profits of the limited partnership" in subd (b)(2); and **(d)** "or limited partnership interests" in subd (b)(3); **(3)** amended subd (c) by **(a)** adding "or limited partnership"; **(b)** substituting "is not" for "shall not be" before "eligible"; **(c)** substituting "entity" for "corporation" after "owed by the"; and **(d)** substituting "entity" for "corporate" after "nor shall any".

Note—Stats 1992 ch 900 provides:

SECTION 1. The Legislature finds and declares that the regulation of the sale and use of alcoholic beverages is among the highest priorities of state government. The abuse of alcohol can lead to a myriad of other criminal, legal, social, and economic problems. The fair, stable, and effective administration and enforcement of the Alcoholic Beverage Control Act and related laws, therefore, must be insured.

Cross References:

Corporations holding license under division: B & P C § 23405.

Limited partnership required to maintain register: B & P C § 23405.1.

Investigation of application and grounds for denial: B & P C § 23958.

Additional charge against retailer not making payment: B & P C § 25509.

Collateral References:

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.28.

Pertinent administrative regulations: 4 Cal Code Reg § 68.5.

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.21[3], 18.22[2], 18.40[3], 18.200[1], 18.211[1].

NOTES OF DECISIONS

1. Generally
2. Construction with Other Law

1. Generally

Transfer of stock of corporation does not result in transfer of liquor license held by corporation to transferee of stock. Maxwell Cafe, Inc. v. Department of Alcoholic Beverage Control (1956, Cal App 2d Dist) 142 Cal App 2d 73, 298 P2d 64, 1956 Cal App LEXIS 1949.

2. Construction with Other Law

Contract for purchase and sale of restaurant and bar business was not illegal because it provided that sellers would form corporation, transfer assets of business to it, issue stock and sell stock to buyers, since transfer of liquor license to corporation was duly completed by sellers, making corporation licensed to operate business with regard to sale of liquor, and operation of business by buyers was under existing license held by sellers and as their agent until transfer of license was completed. Richards v. Oliver (1958, Cal App 2d Dist) 162 Cal App 2d 548, 328 P2d 544, 1958 Cal App LEXIS 1906.

§ 24071.2. Limited liability company

(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.

Added Stats 1996 ch 44 § 6 (SB 632), effective May 15, 1996. Amended Stats 1997 ch 17 § 12 (SB 947); Stats 1999 ch 699 § 4 (AB 1407).

Amendments:

1997 Amendment: (1) Amended subd (a) by **(a)** substituting "be required for only" for "only be required for"; and **(b)** deleting "the provisions of" after "investigation pursuant to"; and **(2)** added "day" after "42–" in subd (c).

1999 Amendment: Substituted "Section 23405.2" for "Section 23405.3" in the first sentence of subd (a).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.21[3], 18.22[2], 18.40[3], 18.200[1], 18.211[1].

§ 24072. Transfer fees

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.

Added Stats 1961 ch 783 § 11, effective June 10, 1961. Amended Stats 1967 ch 1559 § 4, operative April 1, 1968; Stats 1968 ch 1016 § 1; Stats 1971 ch 1417 § 1; Stats 1992 ch 900 § 15 (AB 432), effective September 24, 1992.

Editor's Notes—Section 23322 of the Business and Professions Code, referred to in subd (a) of this section, was repealed Stats 1992 ch 838 § 2 (AB 2858).

Former Sections:

Former § 24072, similar to present section, was added Stats 1953 ch 152 § 1, amended Stats 1955 ch 447 § 85, Stats 1957 ch 2307 § 6, effective July 16, 1957, and repealed Stats 1961 ch 783 § 10, effective June 10, 1961.

Amendments:

1967 Amendment: Prior to 1967 the section read: "The following transfer fees shall be charged by the department: (a) the fee for transfer of a license from a licensee to another person is a fee equal to 70 percent of the annual fee for the license, but not including additional fees for gross retail sales, except as provided in Section 24071 and Section 23322 shall not apply to this transfer fee; (b) the fee for transfer of a license from one premises to another premises is twenty–seven dollars and fifty cents ($27.50). "In addition, a fee of three thousand dollars ($3,000) must accompany the application where the onsale general license or offsale general license is transferred from one county to another county. All money collected from this fee shall be deposited directly in the General Fund in the State Treasury, rather than in the Alcohol Beverage Control Fund as provided in Section 25761."

1967 Amendment amended the section to read as at present, except for the following amendments.

1968 Amendment: (1) Added "Except as provided in Section 24082,"; and (2) deleted the former first sentence of the second paragraph which read: "In addition, a fee of three thousand dollars ($3,000) must accompany the application where the on–sale general license or off–sale general license is transferred from one county to another county."

1971 Amendment: Added subd (e).

1992 Amendment: (1) Substituted "six thousand dollars ($6,000)" for "three thousand dollars ($3,000) in subd (d); and **(2)** deleted "directly in the General Fund in the State Treasury, rather than" after "deposited" in the last paragraph.

Historical Derivation:

(a) Former § 24072, as added Stats 1953 ch 152 § 1, amended Stats 1955 ch 447 § 85, Stats 1957 ch 2307 § 6.

(b) Stats 1935 ch 330 § 7, as amended Stats 1937 ch 758 § 10, Stats 1941 ch 1145 § 1, Stats 1945 ch 1401 § 8, Stats 1947 ch 1566 § 3, Stats 1949 ch 1348 § 3, ch 1418 § 1.

Note—Stats 1992 ch 900 provides:

SECTION 1. The Legislature finds and declares that the regulation of the sale and use of alcoholic beverages is among the highest priorities of state government. The abuse of alcohol can lead to a myriad of other criminal, legal, social, and economic problems. The fair, stable, and effective administration and enforcement of the Alcoholic Beverage Control Act and related laws, therefore, must be insured.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.
Disposition of fees and tax moneys: B & P C § 25761.
State funds: Gov C §§ 16300 et seq.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.40[3], 18.41[8], 18.126, 18.200[1], 18.211[1], 18.221[1].

Attorney General's Opinions:

Enjoinability of Board of Equalization as to transferring alcoholic beverage licenses or performing other acts in enforcement of Alcoholic Beverage Control Act and of Const Art XX § 22. 7 Ops. Cal. Atty. Gen. 154.

Transfer restriction. 9 Ops. Cal. Atty. Gen. 287.

§ 24072.1. Transfer from premises of on–sale license for bona fide public eating place or for public 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.

Added Stats 1955 ch 1779 § 8, operative January 1, 1957.

Cross References:

"Bona fide public eating place": B & P C §§ 23038, 23038.1.
"Public premises": B & P C § 23039.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.200[1], 18.211[1].

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

§ 24072.2. Exchange of on–sale license; Bona fide public eating place and public premises

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.

Added Stats 1955 ch 1779 § 9, operative January 1, 1957. Amended Stats 1957 ch 33 § 1, effective February 4, 1957; Stats 1959 ch 1797 § 1; Stats 1967 ch 1559 § 5, operative April 1, 1968; Stats 1994 ch 1028 § 4 (AB 988).

Amendments:

1957 Amendment: (1) Substituted the second sentence for the former second sentence which read: "Such an exchange may be made only at the time of renewal of the license sought to be exchanged, and only upon the approval of the department, the payment of an exchange fee of twenty–five dollars ($25), and compliance with the provisions of this division relating to the issuance of an original license"; and (2) added the former last sentence.

1959 Amendment: Deleted the former last sentence which read: "On and after the ninety–first day after the adjournment of the 1959 Regular Session of the Legislature, such an exchange may be made only at the time of renewal of the license sought to be exchanged."

1967 Amendment: (1) Substituted "one hundred dollars ($100)" for "twenty–seven dollars and fifty cents ($27.50)"; and (2) added the last sentence.

1994 Amendment: (1) Added "or her" after "may exchange his" wherever it appears; **(2)** substituted "The" for "Such an" at the beginning of the second sentence; and **(3)** deleted "the General Fund in the State Treasury, rather than in" after "deposited directly in" in the last sentence.

Cross References:

"Public premises": B & P C § 23039.
Disposition of fees and tax moneys: B & P C § 25761.
State funds: Gov C §§ 16300 et seq.

Collateral References:

Pertinent administrative regulations: 4 Cal Code Reg § 60.2.

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.200[1], 18.211[1], 18.222[1].

§ 24072.5. Exchange of 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 pay-

ment 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.

Added Stats 1961 ch 1914 § 5. Amended Stats 1963 ch 785 § 3; Stats 1967 ch 1559 § 6, operative April 1, 1968; Stats 1990 ch 612 § 3 (AB 3612); Stats 1992 ch 900 § 16 (AB 432), effective September 24, 1992.

Amendments:

1963 Amendment: Added (1) "and any person who has a special onsale general license may exchange his license for an onsale general license"; and (2) the proviso at the end of the second sentence.

1967 Amendment: (1) Substituted "one hundred dollars ($100)" for "twenty–seven dollars and fifty cents ($27.50)"; and (2) added the last sentence.

1990 Amendment: Substituted **(1)** "The" for "Such" in the second sentence; and **(2)** ". However, Sections 23985, 23985.5," for "; provided, that the provisions of Sections 23985".

1992 Amendment: (1) Added "or her" wherever it appears in the first sentence; and **(2)** deleted "directly in the General Fund in the State Treasury, rather than" after "deposited" in the last sentence.

Note—Stats 1992 ch 900 provides:

SECTION 1. The Legislature finds and declares that the regulation of the sale and use of alcoholic beverages is among the highest priorities of state government. The abuse of alcohol can lead to a myriad of other criminal, legal, social, and economic problems. The fair, stable, and effective administration and enforcement of the Alcoholic Beverage Control Act and related laws, therefore, must be insured.

Cross References:

State funds: Gov C §§ 16300 et seq.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.127, 18.200[1], 18.211[1], 18.222[1].

§ 24073. Notice of intended transfer

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1331 § 8; Stats 1955 ch 447 § 86; Stats 1957 ch 1272 § 1; Stats 1961 ch 1002 § 1; Stats 1970 ch 750 § 1; Stats 1972 ch 1047 § 1; Stats 1973 ch 816 § 1.

Amendments:

1955 Amendment: Substituted "department" for "board" wherever it appears.

1957 Amendment: (1) Substituted subd (e) for former subd (e) which read: "(e) The date when, which shall be at least ten days after the recordation of the notice, and the place where the purchase price or consideration for the transfer of the license or licenses, if any there be, is to be paid and the amount of the purchase price or consideration, if any there be."; (2) redesignated former subd (f) to be subd (g); and (3) added subd (f).

1961 Amendment: Added ", or on–sale general license for seasonal business" in the introductory paragraph.

1970 Amendment: Added ", 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" in subd (f).

1972 Amendment: Added "off–sale beer and wine license, on–sale beer and wine license, on–sale beer and wine public premises license,".

1973 Amendment: Substituted ", or of the guarantor referred to in Section 24074.4, as the case may be" for "of this division" in subd (g).

Historical Derivation:

Stats 1935 ch 330 § 7.2, as added Stats 1941 ch 1189 § 1, amended Stats 1947 ch 995 § 1.

Cross References:

Limitation on number of licensed premises: B & P C §§ 23815 et seq.

Temporary retail permits: B & P C § 24045.5.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Pertinent administrative regulations: 4 Cal Code Reg §§ 60, 60.3, 68.

Miller & Starr, Cal Real Estate 3d § 11:6.

Cal. Legal Forms, (Matthew Bender) §§ 2A.01[1], 2A.113, 2A.131, 17.20[2], 17.111, 18.01[2], 18.20[1], 18.41[1], 18.41[2], 18.41[3], 18.41[6], 18.41[7], 18.41[10], 18.111, 18.123, 18.126, 18.128, 18.151, 18.200[1], 18.201[2], 18.202[1], 18.210[1], 18.211[1], 18.212[1], 18.221[1], 18.242[1].

Attorney General's Opinions:

Transfer restrictions. 9 Ops. Cal. Atty. Gen. 287.

NOTES OF DECISIONS

1. Construction
2. Liability

1. Construction

This section neither declares transfers of licenses to be against public policy nor expressly voids contracts specifying payments of consideration before application for license is made; injunction "No. . . license. . . shall be transferred" is not directed at buyer and seller; Department of Alcoholic Beverage Control, not parties, transfers licenses; parties, denominated "licensee" and "intended transferee" merely apply to department for transfer. Harriman v. Tetik (1961) 56 Cal 2d 805, 17 Cal Rptr 134, 366 P2d 486, 1961 Cal LEXIS 340.

This section and § 24074, protect interests of creditors of seller of liquor business by allowing them to satisfy their claim out of purchase price, and protect buyer from loss of his consideration if Department of Alcoholic Beverage Control does not transfer license to him; statutory purpose to protect creditors was accomplished by provision in sale agreement that they could be paid from funds in escrow; its purpose to protect buyer would be defeated if, on failure of department to transfer license to him and seller's subsequent sale of license to his attorney, buyer could not recover seller's unjust enrichment resulting from payments received. Harriman v. Tetik (1961) 56 Cal 2d 805, 17 Cal Rptr 134, 366 P2d 486, 1961 Cal LEXIS 340.

2. Liability

The fact that partners operating a public golf course illegally permitted their liquor license to be used by an independent concessionaire in the operation of a bar and restaurant connected with the golf course, did not create an agency relationship between the partners and the concessionaire by operation of law so as to make the partners liable to creditors who supplied alcoholic beverages and foodstuffs to the restaurant and bar. Furthermore, since the creditors who supplied liquor were charged with the duty of selling only to licensees, public policy should not permit them to blindly sell to any person operating a licensed premise, and unqualifiedly be granted a recovery as a matter of law from the licensee. Associated Creditors' Agency v. Davis (1975) 13 Cal 3d 374, 118 Cal Rptr 772, 530 P2d 1084, 1975 Cal LEXIS 175.

SUGGESTED FORMS

Notice of Intended Transfer of Liquor License

NOTICE IS HEREBY GIVEN:

That ____, licensee, whose address is ____, in the City of ____, County of ____, State of California, intend[s] to sell, assign and transfer to ____, intended transferee, whose address is ____, in the City of ____, County of ____, State of California, the following alcoholic beverage ____ [license *or* licenses] described below and issued for the premises located at ____, in the City of ____, County of ____, State of California.

Pursuant to that intention, the undersigned are applying to the Department of Alcoholic Beverage Control for issuance and transfer of the following alcoholic beverage ____ [license *or* licenses] ____ *[specify all licenses applied for as kinds of licenses appear on application issued for the above premises]* for the premises located at ____.

Amount of purchase price or consideration in connection with that transfer of the ____ [license *or* licenses] is the sum of $____, ____ [which sum has been deposited in escrow,] and that sum will be paid on the ____ day of ____ *[date],* at ____ o'clock, at the escrow department of the ____ at ____, in the City of ____, County of ____, State of California, provided, however, that it has been agreed between the licensee and intended transferee as required by the Business and Professions Code, that the consideration for the transfer of the license is to be paid only after that transfer has been approved by the Department of Alcoholic Beverage Control.

Dated ____.

_____
Licensee

_____
Intended Transferee

§ 24074. Establishment of 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 of 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1331 § 9; Stats 1955 ch 447 § 87; Stats 1957 ch 1272 § 2; Stats 1959 ch 524 § 1; Stats 1967 ch 753 § 1; Stats 1968 ch 459 § 1; Stats 1969 ch 524 § 2, ch 1083 § 2; Stats 1970 ch 492 § 1; Stats 1972 ch 1000 § 1; Stats 1977 ch 266 § 1; Stats 1984 ch 763 § 1, ch 1570 § 2.

Amendments:

1955 Amendment: Prior to 1955 the section read: "Before the filing of such a transfer application with the board, 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, if any there be, to be paid in connection with the transfer. The licensee and intended transferee shall also enter into an agreement, which agreement shall be deposited with the escrow holder, directing the escrow holder, out of the purchase price or consideration, to pay the claims of the bona fide creditors of the licensee who file their claims with the escrow holder 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, or if the purchase price or consideration is not sufficient to pay the claims in full, to distribute the consideration pro rata to the creditors of the 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."

1955 Amendment substituted "department" for "board".

1957 Amendment: Amended the first sentence by (1) adding "if the intended transfer of the business or license involves a purchase price or consideration,"; and (2) deleting ", if any there be, to be paid in connection with the transfer" at the end of the sentence.

1959 Amendment: 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," in the second sentence.

1967 Amendment: (1) Amended the second sentence by (a) substituting "after the requirements for transfer as provided in Section 24049 are satisfied, to pay out of the purchase price or consideration," for "out of the purchase price or consideration, to pay"; and (b) substituting "as follows:" for "pro rata to the creditors of the licensee."; (2) added the second through seventh paragraphs, which read: "First, To the payment of claims of secured creditors to the extent of the proceeds which arise from the sale of the security;

"Second, To the United States for claims based on income or withholding taxes;

"Third, To the payment of claims for wages and salaries earned not more than 90 days prior to the transfer of the license and to the payment of claims on mechanic liens;

"Fourth, 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;

"Fifth, To the payment of claims for goods sold and delivered to the transferor for resale at his license premises;

"Sixth, To the payment of all other claims. The last category of creditors for whom there are not sufficient assets available for the payment of the claim in full, shall be paid pro rata." and (3) added "If the transferor licensee disputes any claim, 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." before the last sentence, to form the last paragraph.

1968 Amendment: (1) Added "and thereafter for claims based on any tax other than taxes specified in Section 24049;" in the third paragraph; and (2) substituted "mechanics" for "mechanic" in the fourth paragraph.

1969 Amendment: Amended the section to read as at present, except for the following amendments.

1970 Amendment: (1) Added "and the payment of claims for services rendered, performed, or supplied in connection with the operation of the licensed business" in the seventh paragraph, and (2) substituted "payment of these claims if sufficient assets are not" for "last category of creditors for whom there are not sufficient assets" in the eighth paragraph.

1972 Amendment: Deleted "within ninety (90) days" after "or accruing" in the second paragraph

1977 Amendment: (1) Added "whether such consideration takes the form of cash, checks, promissory notes, or tangible or intangible property," before "the claims of" in the fourth sentence of the first paragraph; (2) added the First subd; (3) redesignated the former First and Second subds to be the Second and Third subds; (4) added "and to the payment of claims of a landlord, to the extent of proceeds on past due

rent;" in the Third subd; and (5) deleted the former Third subd which read: "Third, to the United States for claims based on income or withholding taxes, and thereafter for claims based on any tax other than taxes specified in Section 24049".

Historical Derivation:

Stats 1935 ch 330 § 7.2, as added Stats 1941 ch 1189 § 1, amended Stats 1947 ch 995 § 1.

Cross References:

Escrow agents: Fin C §§ 17000 et seq.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Points & Authorities (Matthew Bender®) ch 50 "Contracts" § 50.240.

Cal. Points & Authorities (Matthew Bender®) ch 123 "Interpleader" § 123.25.

Cal. Points & Authorities (Matthew Bender®) ch 200 "Receivers" § 200.320.

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.10[3], 18.20[1], 18.41[1], 18.41[2], 18.41[4], 18.41[5], 18.41[6], 18.41[10], 18.51[1], 18.51[2], 18.103, 18.110, 18.123, 18.125, 18.128, 18.130, 18.131, 18.150, 18.151, 18.152, 18.200[1], 18.200[2], 18.201[1], 18.201[2], 18.202[1], 18.202[2], 18.210[1], 18.211[1], 18.211[2], 18.212[2], 18.221[1], 18.242[1], 18.243[1], 26.01[1]

Matthew Bender ® Practice Guide: Cal. Debt Collection, § 9.28[4].

Matthew Bender® Practice Guide: California Contract Litigation, 6.09.

NOTES OF DECISIONS

1. Generally
2. Construction
3. Filing of Claims
4. Priorities
5. Payment Plan
6. Defense

1. Generally

State, in exercise of its police power, may regulate manner in which creditors of liquor licensee may seek some protection in collection of their debts from proceeds of sale of license. Pacific Firestone Escrow Co. v. Food Giant Markets, Inc. (1962, Cal App 2d Dist) 202 Cal App 2d 155, 20 Cal Rptr 570, 1962 Cal App LEXIS 2457.

Fact that escrow holder of consideration for sale of liquor license impleaded all creditors of transferor in interpleader action to determine rights to escrow fund did not remove case from this section, particularly where agreement between transferor and transferee specifically authorized interpleader action. Pacific Firestone Escrow Co. v. Food Giant Markets, Inc. (1962, Cal App 2d Dist) 202 Cal App 2d 155, 20 Cal Rptr 570, 1962 Cal App LEXIS 2457.

The mandatory and exclusive provisions of B & P C § 24074, governing transfers in escrow of liquor licenses and establishing rights of the transferor's creditors in escrow proceeds must be read into every liquor license transfer, and the parties cannot defeat the section simply by failure or delay, deliberate or inadvertent, in issuing the required instructions to the escrow holder. Grover Escrow Corp. v. Gole (1969) 71 Cal 2d 61, 77 Cal Rptr 21, 453 P2d 461, 1969 Cal LEXIS 233.

An escrow holder named in an escrow opened pursuant to B & P C § 24074, in connection with the sale and purchase of a cocktail lounge business could not be compelled to give testimony pursuant to CCP § 545 [repealed], relating to examination of garnishees, where there was no showing that the escrow holder was in possession of any personal property of the debtor-transferror not connected with the transfer and sale of the cocktail lounge and alcoholic beverage license; B & P C § 24074.1 provides the exclusive discovery procedure available to a creditor of a liquor license transferror. Gramercy Escrow Co. v. Superior Court (1971, Cal App 2d Dist) 14 Cal App 3d 426, 92 Cal Rptr 397, 1971 Cal App LEXIS 1005.

While the term "business" has no definite or legal meaning and is not defined in the Alcoholic Beverage Control Act, that term as used in B & P C § 24074 requiring the opening of an escrow in connection with "the intended transfer of the business or license" must be construed to include the trade name, good will, furniture, fixtures, equipment and any other personal property or building improvements customarily used in connection with the sale of alcoholic beverages. Gramercy Escrow Co. v. Superior Court (1971, Cal App 2d Dist) 14 Cal App 3d 426, 92 Cal Rptr 397, 1971 Cal App LEXIS 1005.

As contemplated by B & P C § 24074, the event which is necessary to transfer title to the escrow fund from buyer to seller and seller's creditors is transfer of the liquor license and not, as with the ordinary escrow, the fulfillment of all escrow conditions. Doyle v. Coughlin (1974, Cal App 4th Dist) 37 Cal App 3d 911, 112 Cal Rptr 701, 1974 Cal App LEXIS 1382.

The ownership change envisioned by B & P C §§ 24074, 24074.1, occurs regardless of whether or not the buyer and seller have previously complied with instructions concerning, inter alia, consideration and executed bills of sale. Doyle v. Coughlin (1974, Cal App 4th Dist) 37 Cal App 3d 911, 112 Cal Rptr 701, 1974 Cal App LEXIS 1382.

The requirement for opening an escrow referred to in B & P C § 24074, applies broadly to the intended transfer of a business utilizing a liquor license. As so used, "business" includes the trade name, goodwill, furniture, fixtures, equipment and other personal property or building improvements customarily used in connection with the sale of alcoholic beverages. Doyle v. Coughlin (1974, Cal App 4th Dist) 37 Cal App 3d 911, 112 Cal Rptr 701, 1974 Cal App LEXIS 1382.

11 USCS § 104, provides that debts of a bankrupt shall be paid in an order of priority different from that set forth in B & P C § 24074. Gough v. Finale (1974, Cal App 1st Dist) 39 Cal App 3d 777, 114 Cal Rptr 562, 1974 Cal App LEXIS 1010.

There was nothing in California law which suggested that the priority provisions of B & P C § 24074 subsumed any significant right or concern of the State of California or the public, beyond the protection of suppliers or service creditors of licensee. Gough v. Finale (1974, Cal App 1st Dist) 39 Cal App 3d 777, 114 Cal Rptr 562, 1974 Cal App LEXIS 1010.

The fact that partners operating a public golf course illegally permitted their liquor license to be used by an independent concessionaire in the operation of a bar and restaurant connected with the golf course, did not create an agency relationship between the partners and the concessionaire by operation of law so as to make the partners liable to creditors who supplied alcoholic beverages and foodstuffs to the restaurant and bar. Furthermore, since the creditors who supplied liquor were charged with the duty of selling only to licensees, public policy should not permit them to blindly sell to any person operating a licensed premise, and unqualifiedly be granted a recovery as a matter of law from the licensee. Associated Creditors' Agency v. Davis (1975) 13 Cal 3d 374, 118 Cal Rptr 772, 530 P2d 1084, 1975 Cal LEXIS 175.

On appeal from an order for summary judgment for defendants in a creditor's action under a complaint alleging a conspiracy to convert and negligence on their part as agents for an escrow opened pursuant to B & P C § 24074, for transfer of a liquor license, in paying a purportedly inflated claim of the seller, plaintiff could not successfully attack the judgment under his theory that triable issues of fact existed as

to whether the agents fulfilled their fiduciary duties, whether they complied with that statute, and whether they violated CC § 1057.5, restricting payments from an escrow fund, where such purported issues constituted no more than plaintiff's legal conclusions on appeal, rather than triable issues of fact. Cullincini v. Deming (1975, Cal App 3d Dist) 53 Cal App 3d 908, 126 Cal Rptr 427, 1975 Cal App LEXIS 1622.

The escrow holder in a transaction for the sale of a liquor license breached its statutory duty under B & P C § 24074, creating an escrow fund-creditor protection plan, to protect the interests of the bona fide creditors of the seller of the liquor license to the escrow fund, where it distributed the buyer's promissory note to the seller only 4 days after giving notice to the creditors that it intended to do so on or before 14 days hence. The time for the creditors to protest distribution of the promissory note or to take legal action was so minimal that it bordered on the impossible. Cohn v. Gramercy Escrow Co. (1977, Cal App 2d Dist) 65 Cal App 3d 884, 135 Cal Rptr 688, 1977 Cal App LEXIS 1097.

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 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 (1978) 21 Cal 3d 710, 147 Cal Rptr 622, 581 P2d 627, 1978 Cal LEXIS 256.

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 (1978) 21 Cal 3d 710, 147 Cal Rptr 622, 581 P2d 627, 1978 Cal LEXIS 256.

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 (1978) 21 Cal 3d 710, 147 Cal Rptr 622, 581 P2d 627, 1978 Cal LEXIS 256.

2. Construction

This section and § 24073 protect interests of creditors of seller of liquor business by allowing them to satisfy their claim out of purchase price, and buyer from loss of his consideration if Department of Alcoholic Beverage Control does not transfer license to him; statutory purpose to protect creditors was accomplished by provision in sale agreement that they could be paid from funds in escrow; its purpose to protect buyer would be defeated if, on failure of department to transfer license to him and seller's subsequent sale of license to his attorney, buyer could not recover seller's unjust enrichment resulting from payments received. Harriman v. Tetik (1961) 56 Cal 2d 805, 17 Cal Rptr 134, 366 P2d 486, 1961 Cal LEXIS 340.

B & P C § 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 (1969) 71 Cal 2d 61, 77 Cal Rptr 21, 453 P2d 461, 1969 Cal LEXIS 233.

B & P C § 24074, governing transfers in escrow of liquor licenses and establishing rights of the transferor's creditors in escrow proceeds, was intended to protect not only buyers and sellers of liquor licenses, but also the creditors of sellers, by creating a payment plan dependent upon submission of claims, and not upon the usual commercial self-help procedures of attachment and execution. Grover Escrow Corp. v. Gole (1969) 71 Cal 2d 61, 77 Cal Rptr 21, 453 P2d 461, 1969 Cal LEXIS 233.

The procedures and priorities of B & P C § 24074, relating to the use of escrows in the transfer of liquor licenses, are mandatory and exclusive, and are designed to protect, not only buyers and sellers of such licenses, but also the seller's creditors. Doyle v. Coughlin (1974, Cal App 4th Dist) 37 Cal App 3d 911, 112 Cal Rptr 701, 1974 Cal App LEXIS 1382.

The escrow fund-creditor protection plan set forth in B & P C § 24074, is intended to prevent use of a liquor license or its transfer, directly or surreptitiously, as a security device and, also, to eliminate races to the court house by those creditors who are first privy to the knowledge of an intended transfer of a liquor license. Doyle v. Coughlin (1974, Cal App 4th Dist) 37 Cal App 3d 911, 112 Cal Rptr 701, 1974 Cal App LEXIS 1382.

B & P C § 24074, creating an escrow fund-creditor protection plan, was designed to protect not only the buyer and seller of a liquor license, but creditors of the seller, and the provisions of § 24074 are mandatory and are to be read into all escrow instructions relative to a liquor license. Cohn v. Gramercy Escrow Co. (1977, Cal App 2d Dist) 65 Cal App 3d 884, 135 Cal Rptr 688, 1977 Cal App LEXIS 1097.

B & P C § 24074, creating an escrow fund-creditor protection plan, replaces all other procedures that a creditor would normally use against a seller of a liquor license to collect sums due him when the seller's liquor license is being sold. When one of the main purposes of an agreement is to benefit third persons, they are entitled to recover as third-party beneficiaries in the event of a breach of that agreement, and it follows that bona fide creditors of the licensed seller are in this category and failure to protect their interests to the escrow fund assets will subject the escrow holder to liability to the creditors for a loss occasioned by its breach of duty. Cohn v. Gramercy Escrow Co. (1977, Cal App 2d Dist) 65 Cal App 3d 884, 135 Cal Rptr 688, 1977 Cal App LEXIS 1097.

B & P C § 24074 (requiring an escrow when any transfer of a liquor license involves a purchase price or consideration, providing for the payment of claims of bona fide creditors of the licensee who file claims in the escrow, and setting up the priority in which such claims are to be paid) was designed to protect not only the buyer and seller of the license but also creditors of the seller; the requirements are mandatory and must be considered a part of all escrow agreements involving the sale of a liquor license. Webster v. Southern Cal. First Nat. Bank (1977, Cal App 4th Dist) 68 Cal App 3d 407, 137 Cal Rptr 293, 1977 Cal App LEXIS 1331.

3. Filing of Claims

Filing notice of claim for taxes against seller of on-sale liquor license escrow holder within required period is not prerequisite to perfection of federal government's lien. Golden v. State (1955, Cal App 1st Dist) 133 Cal App 2d 640, 285 P2d 49, 1955 Cal App LEXIS 1675.

Section does not deprive any creditor of his claim against transferor, but merely requires that to establish right to

escrow fund, creditor must act within time specified in statute. Pacific Firestone Escrow Co. v. Food Giant Markets, Inc. (1962, Cal App 2d Dist) 202 Cal App 2d 155, 20 Cal Rptr 570, 1962 Cal App LEXIS 2457.

4. Priorities

An attempted garnishment by a liquor license transferor's creditor of the escrow proceeds of a transfer in escrow of a liquor license created no priority over other bona fide creditors who filed timely claims with the escrow holder in accordance with the mandate of B & P C § 24074, governing transfers in escrow of liquor licenses and establishing rights of the transferor's creditors in escrow proceeds. Grover Escrow Corp. v. Gole (1969) 71 Cal 2d 61, 77 Cal Rptr 21, 453 P2d 461, 1969 Cal LEXIS 233.

The priorities for payment of creditors set forth in B & P C § 24074, relating to escrows in the transfer of liquor licenses, are not conditions to the approval of the transfer and do not confer on the Department of Alcoholic Beverage Control the power to refuse the transfer unless the priorities are complied with, but instead sets forth the priorities for disbursement of the funds belonging to the seller after the transfer has been approved by the department in accordance with the prescribed escrow. Accordingly, 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 B & P C § 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 Corp. v. Division of Labor Law Enforcement (1976) 17 Cal 3d 878, 132 Cal Rptr 454, 553 P2d 614, 1976 Cal LEXIS 329.

5. Payment Plan

Under B & P C § 24074, providing that when a transfer of a liquor license involves a purchase price or consideration, the full amount must be deposited in an escrow account with a description of the entire consideration, including cash and promissory notes and tangible and intangible property, all of the deposited assets, not just cash, are to be distributed in a manner that will benefit creditors covered by the statute. The law, by interpleader and declaratory relief actions, provides practical methods to resolve distribution problems of promissory notes, tangible and intangible property, if the parties have not provided for a plan or method in the escrow instructions that would protect the bona fide creditors. Cohn v. Gramercy Escrow Co. (1977, Cal App 2d Dist) 65 Cal App 3d 884, 135 Cal Rptr 688, 1977 Cal App LEXIS 1097.

6. Defense

In an action by the holder of a promissory note given by a corporate restaurant and bar and payable on demand, against several parties including the corporation and a bank holding the escrow for the bulk transfer sale of the premises and its liquor license to another party, the bank, which in violation of B & P C § 24074, and the provisions thereof incorporated in the escrow instructions had disbursed the escrow funds without paying the notes, despite a timely claim thereon, was not entitled to use the defense of impossibility of performance through operation of law, where, though such nonpayment resulted from disbursement of the funds specifically in accordance with a court order, that order had been made in a totally unrelated suit against the bank and others by private litigants, namely, by shareholders of the corporation. The defense of impossibility was precluded, moreover, by the fact every order in the unrelated suit had been participated in and stipulated to by the bank itself, which, therefore, was in no position to argue it was compelled by legal authority to act contrary to its previously undertaken escrow duties. Webster v. Southern Cal. First Nat. Bank (1977, Cal App 4th Dist) 68 Cal App 3d 407, 137 Cal Rptr 293, 1977 Cal App LEXIS 1331.

§ 24074.1. Duties of 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.

Added Stats 1965 ch 1426 § 1.

Cross References:

Escrow agents: Fin C §§ 17000 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.41[4], 18.125, 18.128, 18.131, 18.151, 18.200[1], 18.201[1], 18.201[2], 18.202[1], 18.211[1], 18.243[1], 18.243[2], 26.01[1].

NOTES OF DECISIONS

1. Generally
2. Construction with Other Law
3. Notice

1. Generally

The ownership change envisioned by B & P C §§ 24074, 24074.1, occurs regardless of whether or not the buyer and seller have previously complied with instructions concerning, inter alia, consideration and executed bills of sale. Doyle v. Coughlin (1974, Cal App 4th Dist) 37 Cal App 3d 911, 112 Cal Rptr 701, 1974 Cal App LEXIS 1382.

2. Construction with Other Law

An escrow holder named in an escrow opened pursuant to B

& P C § 24074, in connection with the sale and purchase of a cocktail lounge business could not be compelled to give testimony pursuant to CCP § 545 [repealed], relating to examination of garnishees, where there was no showing that the escrow holder was in possession of any personal property of the debtor-transferror not connected with the transfer and sale of the cocktail lounge and alcoholic beverage license; B & P C § 24074.1 provides the exclusive discovery procedure available to a creditor of a liquor license transferror; it makes it mandatory for an escrow holder to give the creditor of such a transferror the same type of information as is available to a creditor under CCP § 545 concerning, personal property not connected with the transfer of an alcoholic beverage license; and to require such an escrow holder to testify under oath concerning information already divulged would not only be a cumulative redundancy but also a burdensome and fruitless exercise since such property is not subject to ordinary levy or execution. Gramercy Escrow Co. v. Superior Court (1971, Cal App 2d Dist) 14 Cal App 3d 426, 92 Cal Rptr 397, 1971 Cal App LEXIS 1005.

3. Notice

The notice required to be given by the escrow holder to all creditors of a seller of a liquor license under B & P C § 24074.1, providing that if there are not sufficient assets to pay all creditors in full the escrow holder shall advise each creditor of the total assets and the nature of each asset, the name of each creditor and the amount of his claim, the amount he proposes to pay each creditor, and the date on or before which said amount will be paid to the creditors, only requires the escrow holder to notify the creditors of the amount it intends to pay them and approximately when. It does not authorize distribution of an asset other than cash to the seller when the bona fide creditors are still not fully paid, and before the creditors can reasonably protect themselves. Cohn v. Gramercy Escrow Co. (1977, Cal App 2d Dist) 65 Cal App 3d 884, 135 Cal Rptr 688, 1977 Cal App LEXIS 1097.

§ 24074.2. Release of escrow funds

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.

Added Stats 1967 ch 1494 § 2.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.200[1], 18.201[1], 18.211[1], 26.01[1].

§ 24074.3. Statement by transferee

(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.

Added Stats 1972 ch 1047 § 2. Amended Stats 1973 ch 816 § 2.

Amendments:

1973 Amendment: (1) Designated the former section to be subd (a); and (2) added subd (b).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.41[4], 18.41[10], 18.110, 18.126, 18.200[1], 18.210[1], 18.211[1], 18.242[1], 26.01[1].

§ 24074.4. When escrow not required

(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).

Added Stats 1973 ch 816 § 3.

§ 24075. Application of specified sections

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 1272 § 3; Stats 1959 ch 1576 § 5; Stats 1982 ch 497 § 1.5, operative July 1, 1983.

Amendments:

1957 Amendment: Added ", nor to a surviving spouse or fiduciary or other person within the meaning of Section 24071".

1959 Amendment: Added "conservator," after "guardian,".

1982 Amendment: (1) Added "except a receiver appointed under the provisions of Section 708.630 of the Code of Civil Procedure,"; **(2)** substituted "the person" for "him" after "imposed upon"; and **(3)** deleted ", statutory or otherwise," after "transfer or assignment".

Historical Derivation:

Stats 1935 ch 330 § 7.2, as added Stats 1941 ch 1189 § 1, amended Stats 1947 ch 995 § 1.

Law Revision Commission Comments:

1982—Section 24075 is amended to make clear that the priorities for distribution of proceeds from the sale of a liquor license provided by Section 24074 apply where a liquor license is to be sold to satisfy a money judgment by a receiver appointed pursuant to Section 708.630 of the Code of Civil Procedure.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.41[1], 18.41[2], 18.41[4], 18.123, 18.200[1], 18.210[1], 18.211[1], 26.01[1].

§ 24076. License not to be pledged as security; Prohibited transfers

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 88; Stats 1963 ch 295 § 1; Stats 1967 ch 753 § 2.

Amendments:

1955 Amendment: Substituted "department" for "board" after "filed with the" in the second sentence.

1963 Amendment: Substituted the section for the former section which read: "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. Each application for the transfer of a license shall be accompanied by or contain a statement verified by both the transferor and transferee specifically stating that the transfer application or proposed transfer is not made to satisfy the payment of a loan or to fulfill an agreement entered into more than ninety (90) days preceding the day on which the transfer application is filed with the department or to gain or establish a preference to or for any creditor of the transferor or to defraud or injure any creditor of the transferor. This statement shall become part of the transfer application, and any misrepresentation contained in the statement shall be considered the misrepresentation of a material fact."

1967 Amendment: Added "except as provided by Section 24074,".

Historical Derivation:

Stats 1935 ch 330 § 7.3, as added Stats 1949 ch 1348 § 4.5.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.29.

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.103, 18.151, 18.200[1], 18.202[1], 18.210[1], 18.211[1].

Attorney General's Opinions:

Right of liquor license holder to transfer it to limited partnership for his capital contribution thereto as limited partner provided arrangement constitutes creation of bona fide limited partnership interest. 27 Ops. Cal. Atty. Gen. 394.

NOTES OF DECISIONS

1. Generally
2. Construction
3. Retroactivity
4. Words and Phrases
5. Particular Agreements and Transactions Violating Section
6. Particular Agreements and Transactions Not Violating Section

1. Generally

A transferor's failure to inform the State Board of Equalization of the existence of an agreement entered into prior to the enactment of this statute did not amount to a fraud on the officers of the board and the public in the absence of any showing that the withheld information was requested by the board. Etchart v. Pyles (1951, Cal App) 106 Cal App 2d 549, 235 P2d 427, 1951 Cal App LEXIS 1783.

If, in view of prohibition against pledging transfer of liquor license as security for loan or as security for fulfillment of any agreement there was any error in order imposing lien on ward's liquor license, principal asset of her estate, to secure payment of fees and expenses, or in subsequent order charging guardian with liquor license because of his transfer of it in violation of previous order, such error was in exercise of court's jurisdiction and could have been corrected on appeal, and there could be no collateral attack on such orders, since court was acting within scope of its jurisdiction in making them. Hartford Acci. & Indem. Co. v. Crawford (1962, Cal App 1st Dist) 204 Cal App 2d 557, 22 Cal Rptr 424, 1962 Cal App LEXIS 2277.

The fact that partners operating a public golf course illegally permitted their liquor license to be used by an independent concessionaire in the operation of a bar and restaurant connected with the golf course, did not create an agency relationship between the partners and the concessionaire by operation of law so as to make the partners liable to creditors who supplied alcoholic beverages and foodstuffs to the restaurant and bar. Furthermore, since the creditors who supplied liquor were charged with the duty of selling only to licensees, public policy should not permit them to blindly sell to any person operating a licensed premise, and unqualifiedly be granted a recovery as a matter of law from the licensee. Associated Creditors' Agency v. Davis (1975) 13 Cal 3d 374, 118 Cal Rptr 772, 530 P2d 1084, 1975 Cal LEXIS 175.

2. Construction

This section is not directed against making of agreement by

licensee only; in view of fact that it requires both transferee and transferor to verify statement excluding violation of such section, its purpose and policy is to prohibit all use of liquor license as security, and any such use is unlawful and void. Holt v. Morgan (1954, Cal App) 128 Cal App 2d 113, 274 P2d 915, 1954 Cal App LEXIS 1437.

This section constitutes express recognition of right to contract for transfer of license, and merely narrows scope of uses and purposes of agreement for transfer. Golden v. State (1955, Cal App 1st Dist) 133 Cal App 2d 640, 285 P2d 49, 1955 Cal App LEXIS 1675.

B & P C § 24076, undertakes to qualify the otherwise unlimited contractual freedom to transfer alcoholic beverage licenses by prohibiting contracts for a transfer that affords "security" to one of the parties. Greve v. Leger, Ltd. (1966) 64 Cal 2d 853, 52 Cal Rptr 9, 415 P2d 824, 1966 Cal LEXIS 320.

3. Retroactivity

This statute is not retroactive. Campbell v. Bauer (1951, Cal App) 104 Cal App 2d 740, 232 P2d 590, 1951 Cal App LEXIS 1682.

This section is not retroactive as to rights that accrued before its effective date, even though not adjudicated until after its effective date. Tognoli v. Taroli (1954, Cal App) 127 Cal App 2d 426, 273 P2d 914, 1954 Cal App LEXIS 1357.

Where hotel, restaurant and bar were leased for term commencing before effective date of this section, the lease providing that on-sale general liquor license be transferred to lessee, who agreed to retransfer it on termination of lease, lessor's rights to reassignment of license at future time were fixed as of date of lease, and lessor was entitled to damages for breach when lessee, after effective date of this section, sold license to third party. Tognoli v. Taroli (1954, Cal App) 127 Cal App 2d 426, 273 P2d 914, 1954 Cal App LEXIS 1357.

Application of this section is not retroactive in case of an unsecured creditor who, prior to enactment of this section, was without any right contractual or otherwise to demand security; there could only be retroactive application where, prior to enactment, transfer of liquor license had been pledged or some right to its transfer had been obtained. Holt v. Morgan (1954, Cal App) 128 Cal App 2d 113, 274 P2d 915, 1954 Cal App LEXIS 1437.

Prohibition against pledging transfer of on-sale liquor license as security for loan or for fulfillment of agreement does not act retroactively. Golden v. State (1955, Cal App 1st Dist) 133 Cal App 2d 640, 285 P2d 49, 1955 Cal App LEXIS 1675.

This section is not only not retroactive as to rights that have accrued and have been adjudicated before effective date of section, but it is also not retroactive as to rights that have accrued but have not yet been adjudicated. Cavalli v. Macaire (1958, Cal App 1st Dist) 159 Cal App 2d 714, 324 P2d 336, 1958 Cal App LEXIS 2060.

Agreement by assignee of lease to retransfer license to original owners thereof was not deemed to have been made prior to effective date of this statute, and, therefore, outside its operation, where effect of new agreement, after this statute's effective date, was creation of new lease and new tenancy. Citrigno v. Williams (1958, 9th Cir Cal) 255 F2d 675, 1958 US App LEXIS 4924.

Where, by contract to transfer liquor license, rights have accrued as between parties prior to effective date of this section, they enjoy constitutional immunity from legislative impairment and are not subject to deprivation by retroactive operation of statute; same rights as between parties, if accruing after such date, are unenforceable if violative of statute. Belle'Isle v. Hempy (1962, Cal App 1st Dist) 206 Cal App 2d 14, 23 Cal Rptr 599, 1962 Cal App LEXIS 1990.

4. Words and Phrases

All of language of statute must be given effect and purpose if that is possible, and word "pledge" must be interpreted in light of this principle. Citrigno v. Williams (1958, 9th Cir Cal) 255 F2d 675, 1958 US App LEXIS 4924.

The sole distinguishing characteristic of a pledge is the present physical transfer of the property pledged (CC §§ 2986–2988), and a literal rendition of the word "pledge" produces an internal inconsistency in B & P C § 24076, providing in part that no alcoholic beverage licensee shall enter into an agreement wherein he pledges the transfer of his license as security. Greve v. Leger, Ltd. (1966) 64 Cal 2d 853, 52 Cal Rptr 9, 415 P2d 824, 1966 Cal LEXIS 320.

To give effect to the portion of B & P C § 24076, prohibiting an alcoholic beverage licensee from entering into an agreement in which he pledges the transfer of his license as security, the reference to "pledge" must be read as embracing all promises or undertakings. Greve v. Leger, Ltd. (1966) 64 Cal 2d 853, 52 Cal Rptr 9, 415 P2d 824, 1966 Cal LEXIS 320.

5. Particular Agreements and Transactions Violating Section

An agreement between creditor and liquor licensee and her husband whereby pre-existing debt for which action had been brought against such spouses was acknowledged, creditor agreed to lend them an additional sum and to dismiss action with prejudice, and spouses agreed to give promissory note and to secure such note by a chattel mortgage, a power of attorney authorizing transfer of liquor license in event of default and power of attorney to transfer lease of their business premises, and separate powers of attorney to creditor which were signed by spouses on same date and which referred to above agreement and expressly declared such powers irrevocable, were in substance an agreement in which wife pledged transfer of her license as security for loan as prohibited by this section. Holt v. Morgan (1954, Cal App) 128 Cal App 2d 113, 274 P2d 915, 1954 Cal App LEXIS 1437.

Agreement whereby assignee of lease and liquor license were to retransfer license to former owners after lease ended was invalid. Citrigno v. Williams (1958, 9th Cir Cal) 255 F2d 675, 1958 US App LEXIS 4924.

Lease-retransfer agreement entered into after effective date of § 7.3 of Alcoholic Beverage Control Act of 1949 was invalidated as forbidden under statute. In re Newcomb Interests, Inc. (1959, D Cal) 171 F Supp 704, 1959 US Dist LEXIS 3642, aff'd (1960, CA9 Cal) 275 F2d 350, 1960 US App LEXIS 5430.

In transaction involving lease of real property and sale of liquor license, where lease gave lessor option to repurchase liquor license at expiration of lease, repurchase agreement was unenforceable because retransfer pursuant to this agreement would be "to fulfill an agreement entered into more than 90 days preceding the day on which the transfer application is filed. . ." and would be in violation of this section. Hammond v. Pasquini (1963, Cal App 1st Dist) 211 Cal App 2d 540, 27 Cal Rptr 208, 1963 Cal App LEXIS 2942.

6. Particular Agreements and Transactions Not Violating Section

In action for declaratory relief to decide which of parties were entitled to certain liquor licenses where plaintiff sold defendants furnishings and liquor inventory of bar, transferred to them liquor licenses for use at bar, and leased premises to them for five years, including in lease clause that on expiration, or sooner termination, of lease lessee would retransfer licenses to lessors or their successors or representatives, and where parties at end of term of first lease signed another two-year lease with option to extend term for three more years, such new lease was extension of first lease and not renewal, and, where first lease was entered into prior to enactment of this section, retransfer of licenses was not illegal and void as contrary to public policy, and plaintiffs were

entitled to their return. Cavalli v. Macaire (1958, Cal App 1st Dist) 159 Cal App 2d 714, 324 P2d 336, 1958 Cal App LEXIS 2060.

Though the owners of a hotel might have sold it without assurance that they could repurchase the alcoholic beverage licenses if compelled to repossess the hotel and, to this extent, an option to repurchase the licenses in event of default of purchase of the hotel tended to "secure" or preserve the value of the sellers' interest in the hotel, the option did not function as a "security" device within the meaning of B & P C § 24076, prohibiting contracts for transfers of alcoholic beverage licenses affording "security" to one of the parties. Greve v. Leger, Ltd. (1966) 64 Cal 2d 853, 52 Cal Rptr 9, 415 P2d 824, 1966 Cal LEXIS 320.

B & P C § 24076, restricting contracts for the transfer of alcoholic beverage licenses, did not invalidate a contract giving the seller of a hotel an option to repurchase the alcoholic beverage licenses used at the hotel at the same price the purchaser paid for them ($5,000 could not be deemed nominal) in the event of default in the purchase of the hotel. Greve v. Leger, Ltd. (1966) 64 Cal 2d 853, 52 Cal Rptr 9, 415 P2d 824, 1966 Cal LEXIS 320.

The provision in B & P C § 24076, proscribing transfer of an alcoholic beverage license to fulfill an agreement entered into more than 90 days preceding the filing of the transfer application, did not render illegal the option by the seller of a hotel to repurchase alcoholic beverage licenses from the purchaser at the same price in the event of default in purchase of the hotel and afforded no defense to an action for damages, though the provision precluded specific performance of the option agreement. Greve v. Leger, Ltd. (1966) 64 Cal 2d 853, 52 Cal Rptr 9, 415 P2d 824, 1966 Cal LEXIS 320.

§ 24077. Licenses not to be transferred into certain counties

Notwithstanding any other provision of law, no license shall be transferred into any county having a population of 35,000 or less.

Added Stats 1961 ch 783 § 12, effective June 10, 1961.

Cross References:

Population of counties: Gov C § 28020.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.40[1], 18.200[1], 18.211[1].

§ 24078. Transfer of special onsale general license

A special onsale 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.

Added Stats 1961 ch 1914 § 6.

Cross References:

Operation under special on–sale general license: B & P C § 23399.2.

Collateral References:

Pertinent administrative regulations: 4 Cal Code Reg §§ 60, 60.3, 68.

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.21[1], 18.200[1], 18.211[1].

§ 24079. Transfer of on-sale or off-sale general license; Maximum price or consideration

(a) An on-sale general license or off-sale general license shall not be transferred for a purchase price or consideration in excess of the original fee paid for that license pursuant to subdivision (b) of Section 23954.4 for a period of two years following the original issuance of that license.

(b) On and after the two-year period following the original issuance of an on-sale general license or off-sale general license, there shall not be a restriction as to the purchase price or consideration paid by a transferee or received by a transferor for an on-sale general license or off-sale general license.

Added Stats 2012 ch 327 § 13 (SB 937), effective January 1, 2013.

Former Sections:

Former B & P C § 24079, similar to the present section, was added Stats 1963 ch 1696 § 1, amended Stats 1971 ch 1072 § 2, Stats 1992 ch 900 § 18, effective September 24, 1992, Stats 1994 ch 1028 § 5, and repealed Stats 2012 ch 327 § 12 effective January 1, 2013.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Pertinent administrative regulations: 4 Cal Code Reg §§ 60, 60.3, 68.

NOTES OF DECISIONS

1. Legislative Intent
2. Agreement

1. Legislative Intent

In a prosecution for conspiracy to violate state liquor laws by transferring a restricted liquor license for consideration in excess of the statutory amount (B & P C § 24079), the trial court properly determined that a violation of B & P C § 24079, constitutes a crime. That statute limits the purchase price that may be paid by a transferee or received by a transferor to $6,000 for a period of five years from the date of the original issuance. B & P C § 25617, provides that any person convicted for a violation of any of the provisions of div. 9 for which another penalty or punishment is not specifically provided for is guilty of a misdemeanor, and B & P C § 24079, is contained in div. 9, and no other punishment is prescribed. The fact that the Alcoholic Beverage Control Act was enacted for the purpose of protection of the safety, welfare, health, peace and morals of the people is enough to suggest penal sanctions were intended. The Legislature obviously concluded that speculation in liquor licenses was an evil to be discouraged by including it within div. 9, as the remedies of suspension or revocation of the offender's license were inadequate to deter bootleg sales of licenses. People v. Anderson (1991, Cal App 4th Dist) 1 Cal App 4th 1084, 3 Cal Rptr 2d 247, 1991 Cal App LEXIS 1460.

2. Agreement

In a criminal conspiracy, the question is not whether the

defendant committed the underlying crime, but whether there was an agreement between two or more persons with the specific intent to agree to commit a public offense followed by overt acts committed in the state by one or more of the parties for the purpose of accomplishing the object of the agreement. People v. Anderson (1991, Cal App 4th Dist) 1 Cal App 4th 1084, 3 Cal Rptr 2d 247, 1991 Cal App LEXIS 1460.

§ 24080. Application for transfer of onsale or offsale general license

Every application filed by the intended transferee with the department for the transfer of an onsale or offsale 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.

Added Stats 1963 ch 1689 § 1.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.41[7], 18.200[1], 18.211[1], 18.221[1].

Pertinent administrative regulations: 4 Cal Code Reg § 60.3.

§ 24081. Destruction of premises; Continuation of business at adjacent location

(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 the licensee may carry on his or her business for a period of not more than 180 days at a location within 500 feet of the premises for which the license was issued and while the premises are being repaired or rebuilt and he or she shall be entitled to carry on his or her business under his or her existing license upon the former premises when they have been repaired or rebuilt.

(b) 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 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 the licensee, may carry on his or her 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 the premises are being repaired or rebuilt and he or she shall be entitled to carry on his or her business under his or her existing license upon the former premises when they have been repaired or rebuilt.

Added Stats 1967 ch 1494 § 3. Amended Stats 1974 ch 699 § 1; Stats 2008 ch 93 § 1 (AB 2080), effective January 1, 2009.

Amendments:

1974 Amendment: (1) Designated the former section to be subd (a); (2) added ", other than an off–sale license," in subd (a); and (3) added subd (b).

2008 Amendment: (1) Generally eliminated "such"; (2) added feminine pronouns; and (3) substituted "180 days" for "60 days" in subd (a).

Note—Stats 1974 ch 699 provides:

SEC. 3. Section 1 of this act shall apply to premises destroyed within 60 days of the effective date of this act as a result of fire or any act of God or other force beyond the control of such licensee, and to premises so destroyed thereafter.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.200[1], 18.211[1].

§ 24082. Destruction or condemnation of premises; Transfers without payment of fee

The license of a licensee whose licensed premises have been destroyed as a 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 18 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.

Added Stats 1968 ch 1016 § 2. Amended Stats 2008 ch 93 § 2 (AB 2080), effective January 1, 2009.

Amendments:

2008 Amendment: (1) Substituted "a result" for "the result"; (2) deleted the comma after "act of God"; and (3) substituted "18 months" for "six months".

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 10 "Act Of God".

Cal. Legal Forms, (Matthew Bender) §§ 17.20[2], 17.111, 18.01[2], 18.20[1], 18.200[1], 18.211[1], 18.221[1].

§§ 24083–24199. [No sections of these numbers.]

CHAPTER 7

Suspension and Revocation of Licenses

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Law Review Articles:

The liability of providers of alcohol: Dram Shop Acts? 12 Pep LR No. 1 p 177.

§ 24200. Grounds for suspension or revocation

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 that 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 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 89, ch 1217 § 1, ch 1842 § 14; Stats 1963 ch 1040 § 9; Stats 1977 ch 238 § 1; Stats 1984 ch 790 § 1; Stats 1994 ch 629 § 3 (AB 2742); Stats 1995 ch 91 § 13 (SB 975) (ch 743 prevails), ch 743 § 3 (AB 683), effective October 10, 1995; Stats 2006 ch 625 § 2 (SB 148), effective January 1, 2007.

Amendments:

1955 Amendment: (1) Substituted "department" for "board" in subd (a); (2) added "adopted pursuant to Part 14 of Division 2 of the Revenue and Taxation Code or any rules of the department" in subd (b); and (3) added subds (e) and (f) which read: "(e) Where the portion of the premises of the licensee upon which the activities permitted by the license are conducted are a resort for illegal possessors or users of narcotics, prostitutes, pimps, panderers, or sexual perverts. In addition to any other legally competent evidence, the character of the premises may be proved by the general reputation of the premises in the community as a resort for illegal possessors or users of narcotics, prostitutes, pimps, panderers, or sexual perverts.

"(f) Failure to correct objectionable conditions constituting a nuisance within a reasonable time after receipt of notice to make such corrections from a district attorney under Section 373a of the Penal Code."

1963 Amendment: (1) Deleted former subd (e); and (2) redesignated former subd (f) to be subd (e).

1977 Amendment: (1) Deleted "the" before "revocation" in the introductory clause; **(2)** added "California" in subd (a); **(3)** amended subd (b) by **(a)** substituting "Chapter 11 (commencing with Section 24850) and Chapter 12 (commencing with Section 25000)" for "Chapters 11 and 12"; and **(b)** adding "(commencing with Section 32001)" after "Part 14"; **(4)** substituted "an" for "any" before "application" in subd (c); substituted "a" for "any" after "obtaining" in subd (c); and **(5)** added ", or the plea of nolo contendere" in subd (d).

1984 Amendment: (1) Substituted "Section 22 of Article XX of the California Constitution" for "Article XX, Section 22, of the California Constitution" in subd (a); **(2)** added the comma after "Taxation Code" in subd (b); and **(3)** amended subd (e) by **(a)** substituting "take reasonable steps to correct objectionable conditions on the licensed premises or immediate adjacent area owned, leased, or rented by the licensee" for "correct objectional conditions"; **(b)** adding ", city attorney, county counsel, or the department,"; and **(c)** adding the second sentence.

1994 Amendment: In addition to making technical changes, **(1)** substituted "subdivision" for "section upon this ground" in subd (b); and **(2)** added subds (f) and (g).

1995 Amendment: In addition to making technical changes, **(1)** deleted "Chapter 11 (commencing with Section 24850) and" after "as limited by" in subd (b); and **(2)** amended subd (g) by **(a)** adding "23038.1, or 23038.2," after "Section 23038," both times it appears; **(b)** adding "or on–sale beer and wine licensee;" after "on–sale licensee" the first time it appears; and **(c)** substituting "which a retail on–sale licensee or on–sale beer and wine" for "which an on–sale" after "contiguous premises at". (As amended Stats 1995 ch 743, compared to the section as it read prior to 1995. This section was also amended by an earlier chapter, ch 91. See Gov C § 9605.)

2006 Amendment: Deleted "a district attorney, city attorney, county counsel, or" after "make those corrections from" in the first sentence of subd (e).

Historical Derivation:

(a) Stats 1935 ch 330 § 40, as amended Stats 1937 ch 758 § 67, Stats 1945 ch 1495 § 3, Stats 1947 ch 1566 § 10, Stats 1949 ch 574 § 2, ch 1383 § 1.

(b) Stats 1933 ch 658 § 19, as amended Stats 1935 ch 320 § 1.

(c) Stats 1933 ch 178 § 23.

(d) Stats 1933 ch 51 § 10.

Cross References:

Restrictions on issuance of licenses: B & P C §§ 23770 et seq.

Regulatory provisions governing alcoholic beverages and licensees: B & P C §§ 25600 et seq.

Hours of sale and delivery: B & P C §§ 25630 et seq.

Women and minors: B & P C §§ 25655 et seq.

Nuisance: CC §§ 3479 et seq.

Maintaining or permitting public nuisance after abatement notice: Pen C § 373a.

Alcoholic beverage tax: Rev & Tax C § 32001 et seq.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.22.

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.24.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.32[1], 18.200[1].

Pertinent administrative rules and regulations: 4 Cal Code Reg §§ 143–143.5.

Law Review Articles:

Professional and occupational licensing. 14 CLR 403.

May private clubs lawfully discriminate? (1975) 51 LA BJ 9.

Administrative procedure in suspending or revoking licenses. 15 SCLR 214.

Attorney General's Opinions:

Report received by State Board of Equalization from State Liquor Administrator as privileged communication. 16 Ops. Cal. Atty. Gen. 185.

Effect of assembly resolution on right of Board of Equalization with respect to revocation of beer and wine wholesalers license. 20 Ops. Cal. Atty. Gen. 217.

Necessity of hearing prior to revocation of liquor license on violation of administrative rule. 25 Ops. Cal. Atty. Gen. 157.

Annotations:

Cancellation or suspension of license irrespective of licensee's personal fault. 3 ALR2d 107.

Construction and application of statute or ordinance respecting amusements on premises licensed for sale of intoxicating liquor. 4 ALR2d 1216.

Hearing before revocation or suspension of liquor license. 35 ALR2d 1067.

Right to attack validity of licensing law in proceedings to contest revocation or suspension of license. 65 ALR2d 660.

Admissibility of evidence of general reputation of premises in prosecution for maintaining liquor nuisance. 68 ALR2d 1300.

Statute authorizing revocation of license upon conviction as applicable to conviction based on pleas of nolo contendere or non vult. 89 ALR2d 540.

Sale of liquor to homosexuals or permitting their congregation at licensed premises as ground for suspension or revocation of liquor license. 27 ALR3d 1254.

Revocation or suspension of liquor license because of drinking or drunkenness on part of licensee or business associate. 36 ALR3d 1301.

Sale or use of narcotics or dangerous drugs on licensed premises as ground for revocation or suspension of liquor license. 51 ALR3d 1130.

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A. GENERALLY

1. Generally

Acquittal of bartender-manager in criminal proceeding is no bar to license revocation action against owner based on same facts. Cornell v. Reilly (1954, Cal App) 127 Cal App 2d 178, 273 P2d 572, 1954 Cal App LEXIS 1318.

Revocation or suspension of a license is not penal in nature but is a mechanism by which licensees who have demonstrated their ignorance, incompetency, or lack of honesty and integrity may be removed from the licensed business. Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968, Cal App 1st Dist) 261 Cal App 2d 181, 67 Cal Rptr 734, 1968 Cal App LEXIS 1730.

Revocation of liquor license under B & P C §§ 24200 and 25601, allegedly in violation of licensee's federal constitutional rights in that purported sole ground for revocation was presence of homosexual clientele at bar, was res judicata for purposes of injunction action under 42 USCS § 1983, as the Department is a state court of limited jurisdiction. Francisco Enterprises, Inc. v. Kirby (1973, 9th Cir Cal) 482 F2d 481, 1973 US App LEXIS 8706, cert den (1974) 94 S Ct 1413, 39 L Ed 2d 471, 415 US 916, 1974 US LEXIS 1176.

2. Constitutionality

[Former] subd e of this section is unconstitutional; to hold that by such language Legislature intended that grounds for revocation existed only where objectionable conduct took place on premises would constitute judicial legislation under guise of interpretation, which Supreme Court is not permitted to do because it would amount to invasion of field committed in its entirety to legislative branch of government. Vallerga v. Department of Alcoholic Beverage Control (1959) 53 C2d 313, 1 Cal Rptr 494, 347 P 2d 909, 1959 Cal LEXIS 349, disapproving

holding in Kershaw v. Department of Alcoholic Beverage Control (1957) 155 CA2d 544, 318 P 2d 494, 1957 Cal App LEXIS 1321, and Nickola v. Munro (1958) 162 CA2d 449, 328 P 2d 271, 1958 Cal App LEXIS 1895.

Right to possess, make or deal in intoxicating liquor is not a privilege, nor such property right that state legislation prohibiting, restricting or regulating its manufacture, use, possession, distribution or sale violates US Const 14th Amendment. Garcia v. Martin (1961, Cal App 1st Dist) 192 Cal App 2d 786, 14 Cal Rptr 59, 1961 Cal App LEXIS 2002.

The fact that the Alcoholic Beverage Control Act authorizes public enforcement in the form of administrative sanctions (B & P C § 24200) and criminal penalties (B & P C § 25617) does not furnish a basis for finding an unlawful delegation of legislative power. Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control (1966) 65 Cal 2d 349, 55 Cal Rptr 23, 420 P2d 735, 1966 Cal LEXIS 208.

B & P C § 24200, subd. (b), which authorizes suspension of an alcoholic beverage license upon "the violation or the causing or the permitting of a violation by a licensee" of various rules or statutes regulating the sale, use, or possession of alcoholic beverages, is not vague and uncertain with respect to what a licensee must do to avoid a finding that he has caused or permitted underage drinking. The word "permit," defined by case law as "abstaining from preventative action," means abstaining from the action that in fact prevents, not abstaining from any action to try to prevent. A licensee with knowledge of underage drinking violates § 24200, subd. (b), if he does not in fact prevent underage drinking (subject to the defense that the licensee may rely on an apparently valid identification). The word "permit," as interpreted by case law, has a clear meaning. Reilly v. Stroh (1984, Cal App 1st Dist) 161 Cal App 3d 47, 207 Cal Rptr 250, 1984 Cal App LEXIS 2637.

B. DUTIES AND LIABILITIES OF LICENSEE

3. Generally

Owner of liquor license has responsibility to see that license is not used in violation of law. Maxwell Cafe, Inc. v. Department of Alcoholic Beverage Control (1956, Cal App 2d Dist) 142 Cal App 2d 73, 298 P2d 64, 1956 Cal App LEXIS 1949.

It is not necessary for accused to have knowledge of violation or that he was negligent in not discovering violation. Munro v. Alcoholic Beverage Control Appeals Board (1957, Cal App 3d Dist) 154 Cal App 2d 326, 316 P2d 401, 1957 Cal App LEXIS 1629.

If there is evidence that violation of subd (b) of this section occurred on licensed premises, licensee is responsible for it. Munro v. Alcoholic Beverage Control Appeals Board (1957, Cal App 3d Dist) 154 Cal App 2d 326, 316 P2d 401, 1957 Cal App LEXIS 1629.

Licensee, in making sales of intoxicating liquors, is not required to act a his peril, but he must exercise caution which would be shown by reasonable and prudent man in same circumstances. 5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 748, 318 P2d 820, 1957 Cal App LEXIS 1351.

There is an affirmative duty on the licensee under the Alcoholic Beverage Control Act to maintain and operate his premises in accordance with law, and failure to discharge the duty may amount to permitting any prohibited conduct to occur. Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968, Cal App 1st Dist) 261 Cal App 2d 181, 67 Cal Rptr 734, 1968 Cal App LEXIS 1730.

4. Liability for Acts of Employees

Licensee operating business through employees is subject to disciplinary action for violations of Alcoholic Beverage Control Act by his employees. Mantzoros v. State Board of Equalization (1948, Cal App) 87 Cal App 2d 140, 196 P2d 657, 1948 Cal App LEXIS 1304; Cooper v. State Board of Equalization (1955, Cal App 1st Dist) 137 Cal App 2d 672, 290 P2d 914, 1955 Cal App LEXIS 1242.

Whatever is suffered or permitted by agent and employees of liquor licensee is attributed to licensee. Maxwell Cafe, Inc. v. Department of Alcoholic Beverage Control (1956, Cal App 2d Dist) 142 Cal App 2d 73, 298 P2d 64, 1956 Cal App LEXIS 1949.

Liquor licensee is responsible for acts of his bartender in knowingly permitting illegal sales of narcotics on licensed premises, under principle that licensed employer may be disciplined to extent of revocation of his license for acts of his employees. Endo v. State Board of Equalization (1956, Cal App 1st Dist) 143 Cal App 2d 395, 300 P2d 366, 1956 Cal App LEXIS 1615.

Suspension of liquor license was warranted where repeated acts of licensee's bartender over month in taking bets on horse races established that licensee permitted use of premises for violation of penal statute, though there was no evidence that bets were placed when he was in bar. Quilici v. Department of Alcoholic Beverage Control (1960, Cal App 1st Dist) 178 Cal App 2d 549, 3 Cal Rptr 49, 1960 Cal App LEXIS 2627.

To revoke licensee's liquor license because of conduct and knowledge of his employees does not deprive him of due process of law, since licensee, if he elects to operate his business through employees, must be responsible to licensing authority for their conduct in exercise of his license. Garcia v. Martin (1961, Cal App 1st Dist) 192 Cal App 2d 786, 14 Cal Rptr 59, 1961 Cal App LEXIS 2002.

5. Absence of Knowledge; Imputation of Knowledge

Licensee of on-sale liquor establishment is chargeable with knowledge of his bartender that girl is loitering in place for purpose of soliciting drinks from customers. Wright v. Munro (1956, Cal App 1st Dist) 144 Cal App 2d 843, 301 P2d 997, 1956 Cal App LEXIS 1801.

Liquor licensee may be disciplined by licensing authority for unlawful acts of employees while engaged in conduct and operation of the business, though employer did not authorize them and did not have actual knowledge of the activities. Mack v. Department of Alcoholic Beverage Control (1960, Cal App 2d Dist) 178 Cal App 2d 149, 2 Cal Rptr 629, 1960 Cal App LEXIS 2573; Quilici v. Department of Alcoholic Beverage Control (1960, Cal App 1st Dist) 178 Cal App 2d 549, 3 Cal Rptr 49, 1960 Cal App LEXIS 2627.

Revocation and suspension of liquor license were supported by evidence that licensees' bartender was engaged in taking bets on horse races and that he was paying off in cash on winning combinations on mechanical gambling devices, since bartender's knowledge of such illegal gambling activities on licensed premises was imputed to licensees and they were responsible for his acts, it being immaterial that licensees may have had no actual knowledge of such illegal gambling activities. Mack v. Department of Alcoholic Beverage Control (1960, Cal App 2d Dist) 178 Cal App 2d 149, 2 Cal Rptr 629, 1960 Cal App LEXIS 2573.

Owner of liquor license has responsibility to see to it that license is not used in violation of the law, and, as matter of general law, knowledge and acts of employee or agent are imputable to licensee. Munro v. Alcoholic Beverage Control Appeals Board (1960, Cal App 1st Dist) 181 Cal App 2d 162, 5 Cal Rptr 527, 1960 Cal App LEXIS 1975; Morell v. Department of Alcoholic Beverage Control (1962, Cal App 1st Dist) 204 Cal App 2d 504, 22 Cal Rptr 405, 1962 Cal App LEXIS 2270.

In proceeding to revoke liquor license for solicitation of drinks on licensed premises by two women, knowledge of such activity was imputed to licensee by reason of fact that women

were employed by him and sometimes worked as bartenders in licensed premises. Garcia v. Martin (1961, Cal App 1st Dist) 192 Cal App 2d 786, 14 Cal Rptr 59, 1961 Cal App LEXIS 2002.

In proceeding to revoke liquor license for permitting female employees to accept in or on licensed premises alcoholic beverages purchased or sold there for consumption by such female employees, fact that work "permit" was used in complaint did not connote volitional act, employees' knowledge as to which should not have been imputed to licensee, such rule not being changed by whether drinking was or was not furtive. Garcia v. Martin (1961, Cal App 1st Dist) 192 Cal App 2d 786, 14 Cal Rptr 59, 1961 Cal App LEXIS 2002.

6. Corporate Licensees

When liquor license is issued to corporation, corporation retains and is responsible for license until suspended or revoked. Maxwell Cafe, Inc. v. Department of Alcoholic Beverage Control (1956, Cal App 2d Dist) 142 Cal App 2d 73, 298 P2d 64, 1956 Cal App LEXIS 1949.

Mere transfer of stock of corporate licensee cannot be used to enable licensee to escape responsibility for its violation of Alcoholic Beverage Control Act. Maxwell Cafe, Inc. v. Department of Alcoholic Beverage Control (1956, Cal App 2d Dist) 142 Cal App 2d 73, 298 P2d 64, 1956 Cal App LEXIS 1949.

Liquor license held in name of corporation may be revoked for illegal conduct of sole stockholders, though their acts were committed off licensed premises, where they were real parties involved and were alter ego of corporation, and their acts were also acts of corporation. Jacques, Inc. v. State Board of Equalization (1957, Cal App 3d Dist) 155 Cal App 2d 448, 318 P2d 6, 1957 Cal App LEXIS 1307.

C. GROUNDS FOR SUSPENSION OR REVOCATION

7. Generally

Licenses issued under Alcoholic Beverage Control Act and the privileges thereunder are at all times subject to revocation for good cause under act and Const Art XX § 22. Taketa v. State Board of Equalization (1951, Cal App) 104 Cal App 2d 455, 231 P2d 873, 1951 Cal App LEXIS 1639.

It is not past conduct, immoral character or bad reputation of patron that subjects on-sale licensee to discipline, but patron's present act and condition that offends both law and public decency, mere presence in public tavern of intoxicated person is illegal act. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

Liquor license is permit to do what otherwise would be unlawful, and Department of Alcoholic Beverage Control need not define by rule or law all of things that will put that license in jeopardy. Gore v. Harris (1964, Cal App 1st Dist) 229 Cal App 2d 821, 40 Cal Rptr 666, 1964 Cal App LEXIS 1051.

Giving proper scope to discretion of Department of Alcoholic Beverage Control under Const Art XX, § 22, it cannot be said as a matter of law that finding of person being unfit to hold liquor license because of his arrest and conviction record does not support decision to suspend and revoke license. Jack P. Meyers, Inc. v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 238 Cal App 2d 869, 48 Cal Rptr 259, 1965 Cal App LEXIS 1208.

The Department of Alcoholic Beverage Control, in its desire to reduce intemperance, cannot resort to the expedient of revoking licenses without good cause. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

Though the mere employment of "topless" waitresses by a liquor licensee is not ground for revocation of a license, licensees are not generally sanctioned to employ topless or other similarly undressed waitresses and do not enjoy general immunity from disciplinary action if they do; where such purveying of liquor is attended by deleterious consequences, the department should establish good cause and make out its case for revocation or, alternatively, the department can adopt regulations covering the situation. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

8. Continuance of License as Contrary to Public Welfare or Morals

Violation of Pen C § 303 is good cause for holding that continuance of an on-sale general liquor license would be contrary to public welfare and morals. Chosick v. Reilly (1954, Cal App) 125 Cal App 2d 334, 270 P2d 547, 1954 Cal App LEXIS 1886.

Department has power in its discretion to revoke any liquor license if it determines for good cause that continuance of such license will be contrary to public welfare or morals. Allied Properties v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 141, 346 P2d 737, 1959 Cal LEXIS 329.

Evidence similar to that which supports decision and order of Department of Alcoholic Beverage Control revoking license on ground that licensee knowingly permitted woman to loiter in or about premises for purpose of begging or soliciting customer to purchase for her alcoholic beverage (§ 25657) will support charge that continuance of license by that licensee would be contrary to public welfare and morals in that he caused or permitted designated females to solicit drinks on licensed premises on certain dates. Greenblatt v. Martin (1961, Cal App 1st Dist) 189 Cal App 2d 787, 11 Cal Rptr 669, 1961 Cal App LEXIS 2250.

Where premises licensed for sale of alcoholic beverages are operated so as to make them law enforcement problem for police, public welfare and morals are directly involved and affected; where law enforcement problem emerges from repeated instances of intoxicated patrons found on premises in violation of local ordinance, it cannot be maintained that these conditions of doing business do not offend public welfare or morals until or unless intoxicated patron has aggravated them by performing additional improper, illegal or immoral acts on premises. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

Revocation of off-sale liquor license for nonuse within 30 days of issuance, as required by § 24040, was not too severe, despite subsequent amendment of that section to eliminate requirement of automatic revocation for nonuse, where evidence of licensees' nonuse of license was not closely balanced, and Department of Alcoholic Beverage Control also found that continuation of license would be contrary to public welfare and morals and therefore based its revocation on Const Art XX § 22, and subd (a) of this section, as well as § 24040. Gore v. Harris (1964, Cal App 1st Dist) 229 Cal App 2d 821, 40 Cal Rptr 666, 1964 Cal App LEXIS 1051.

In a disciplinary action against a liquor licensee under B & P C § 24200, subd. (a) (suspension or revocation of license when continuation of license would be contrary to public welfare and morals), the licensee's knowledge of illegal or improper activity on his or her premises may be either actual knowledge or constructive knowledge imputed to the licensee from the knowledge of his or her employees. Laube v. Stroh (1992, Cal App 1st Dist) 2 Cal App 4th 364, 3 Cal Rptr 2d 779, 1992 Cal App LEXIS 32, rehearing denied (1992) 3 Cal. Rptr. 2d 779, 1992 Cal. App. LEXIS 133, 92 Cal. Daily Op. Service 1072, 92 D.A.R. 1722.

The word "permit" implies no affirmative act and involves no intent. It is mere passivity, abstaining from preventive action. However, the concept that one may permit something of which he or she is unaware does not withstand analysis.

Thus, in disciplinary actions against two liquor licensees for allegedly permitting drug sales in their establishments, the Department of Alcoholic Beverage Control and the Alcoholic Beverage Control Appeals Board erred by holding licensees strictly liable solely because a drug transaction occurred, where neither licensee had knowledge of the drug activity. A licensee must have either constructive or actual knowledge before he or she can be found to have permitted unacceptable conduct. The imposition of strict liability is impermissible, since under B & P C § 24200, subd. (a) (grounds for suspension or revocation), and Cal. Const., art. XX, § 22 (alcoholic beverage control), a license may only be suspended for good cause. Laube v. Stroh (1992, Cal App 1st Dist) 2 Cal App 4th 364, 3 Cal Rptr 2d 779, 1992 Cal App LEXIS 32, rehearing denied (1992) 3 Cal. Rptr. 2d 779, 1992 Cal. App. LEXIS 133, 92 Cal. Daily Op. Service 1072, 92 D.A.R. 1722.

The Department of Alcoholic Beverage Control properly revoked the off-sale beer and wine licenses of two markets for keeping a disorderly house (B & P C $25601) and causing a law enforcement problem and a condition contrary to public welfare and morals (Cal. Const., art. XX, § 22; B & P C § 24200, subd. (a)), because of frequently occurring illegal drug transactions on the premises, without requiring proof that the licensees knowingly permitted the drug transactions or that the sale of alcohol caused or contributed to the illegal conduct. There was ample evidence that the premises had become law enforcement problems, that the owners were actually or constructively aware of the problems, and that they were not effective in controlling the rampant drug trade on the licensed premises. That the markets were located in a high-crime area was irrelevant. There was a sufficient showing the premises constituted a nuisance within the meaning of the statutes and the constitutional provision. Yu v. Alcoholic Bev. etc. Appeals Bd. (1992, Cal App 6th Dist) 3 Cal App 4th 286, 4 Cal Rptr 2d 280, 1992 Cal App LEXIS 123, review denied (1992) 1992 Cal. LEXIS 2293.

9. "Public Welfare or Morals" Defined

Public welfare is not a single, platonic archetypal idea, but a construct of political philosophy embracing a wide range of goals, including the enhancement of majority interests in safety, health, education, the economy, and the political process; to intelligently conclude that a course of conduct is contrary to the public welfare, its effects must be canvassed, considered and evaluated as being harmful or undesirable. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

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 (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

The Constitution formulates the standard for departmental action in revoking a liquor license in terms of public morals. This does not imply that the subjective moral notions of the Department of Alcoholic Beverage Control necessarily reflect or express actual public morality; rather, the modifying adjective "public" necessarily indicates the obligation to apply an objective standard. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

10. Lewdness; Nudity; Sexual Activities

State Board of Equalization had power to determine that liquor licensee's conduct with reference to lewd performances on premises other than licensed premises was of such nature as to make his holding of license contrary to public welfare or morals. Jacques, Inc. v. State Board of Equalization (1957, Cal App 3d Dist) 155 Cal App 2d 448, 318 P2d 6, 1957 Cal App LEXIS 1307.

Law demands that on-sale licensee so conduct his business that it meets minimum requirements of decency and morality, where overwhelming evidence shows that licensed premises are in fact "disorderly house", conclusion follows that licensee has permitted or suffered such condition to exist. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

Though it is not entirely implausible that "topless" waitresses present the same danger of exploitation of customers that "B-Girls" did, it is insufficient as a ground for revocation of a license where there is no evidence that the waitresses solicited customers to purchase drinks for them or accepted drinks from the patrons. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

Though, in some cases conduct may be so extreme that the Department of Alcoholic Beverage Control could conclude it to be per se contrary to public morals in that it is so vile and its impact on society so corruptive as to be almost immediately repudiated as being contrary to the standards of morality generally accepted by the community after a balance is struck between personal freedom and social restraint, the employment of "topless" waitresses in the context of a licensed bar and/or restaurant is not such a case. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

11. Gambling

Department was not under misapprehension as to facts or law in finding that licensee was convicted of taking bets on licensed premises, and it did not appear that any such misapprehension entered into determination that continued holding of license by licensee would be contrary to public welfare or morals or contributed to decision that license should be revoked rather than suspended. Macfarlane v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 84, 330 P2d 769, 1958 Cal LEXIS 210.

Department did not abuse its discretion in revoking general on-sale liquor license of licensee where conduct for which license was revoked, namely, taking of unlawful bets on horse races at licensed premises, constituted crime under state laws and was thus at least technically contrary to public welfare or morals. Maloney v. Department of Alcoholic Beverage Control (1959, Cal App 1st Dist) 172 Cal App 2d 104, 342 P2d 520, 1959 Cal App LEXIS 1931.

Though bookmaking and gambling are not specifically set out either in Const Art XX § 22, or in this section, as grounds for suspension or revocation of liquor license, finding that single act of bookmaking by bartender had taken place on licensed premises is sufficient to support revocation, since bookmaking and other forms of gambling on licensed premises constitute conditions that are contrary to public welfare and morals and are thus grounds for discipline under Const Art XX § 22. Mack v. Department of Alcoholic Beverage Control (1960, Cal App 2d Dist) 178 Cal App 2d 149, 2 Cal Rptr 629, 1960 Cal App LEXIS 2573.

The suspension of a liquor license by the Department of Alcoholic Beverage Control was proper (Cal. Const., art. XX, § 22; B & P C § 24200, subd. a) where a relief bartender employed by the licensee accepted a bet on a horse race while employed on the licensed premises, despite the fact that there was no evidence that the act was anything but an isolated transaction which occurred at a time when the general manager of the licensed premises, who was in charge of the cocktail lounge, was not on the premises, and neither the general manager nor any other responsible officer of the

licensee had actual knowledge of the bartender's bookmaking offense, knowledge of the offense being imputed to the licensee, and evidence that the bartender committed the act of bookmaking being "substantial evidence" that the licensee "permitted and suffered" its employee to commit that act. Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 1st Dist) 252 Cal App 2d 520, 60 Cal Rptr 641, 1967 Cal App LEXIS 1530.

12. Necessity of Rational Relationship With Operation of Premises

Although the Department of Alcoholic Beverage Control has discretion under Cal. Const., art. XX, § 22, to determine whether continuance of a liquor license would be contrary to public welfare or morals, the constitutional demand for "good cause" necessarily implies that its decision must be based upon sufficient evidence and that it avoid arbitrariness; properly construed, the public welfare and morals clause permits license termination for law violation not involving moral turpitude but having a relational relationship with the operation of the licensed business in a manner consistent with public welfare and morals. H. D. Wallace & Associates, Inc. v. Department of Alcoholic Beverage Control (1969, Cal App 3d Dist) 271 Cal App 2d 589, 76 Cal Rptr 749, 1969 Cal App LEXIS 2415, 36 ALR3d 1296.

In a proceeding by the Department of Alcoholic Beverage Control to revoke a corporate liquor license, good cause for the revocation of the license was not shown, where, though it appeared that the licensee's president and sole shareholder 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 consistent with public welfare and morals, and where there was no substantial evidence that continuation of the license would be contrary to the public welfare or morals. H. D. Wallace & Associates, Inc. v. Department of Alcoholic Beverage Control (1969, Cal App 3d Dist) 271 Cal App 2d 589, 76 Cal Rptr 749, 1969 Cal App LEXIS 2415, 36 ALR3d 1296.

The action of the Department of Alcoholic Beverage Control in revoking the on-sale, general bona fide eating place license on the basis that it was protecting the working girl from the possibility of violence and the humiliation and degradation attending exposure of her breasts in public for financial reward was not warranted, where there was no evidence that the evils sought to be avoided were related to the use of "topless" waitresses or occurred on the licensee's premises. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

The rule that disciplinary action by the Alcoholic Beverage Control Board is permitted only for offenses having a rational relation with the operation of the licensed premises in a manner consistent with public welfare and morals is oversimplified by construing it to deny disciplinary authority unless the act occurs on or in direct connection with the operation of the licensed premises. Kirby v. Alcoholic Bev. Etc. App. Bd. (1970, Cal App 1st Dist) 7 Cal App 3d 126, 86 Cal Rptr 433, 1970 Cal App LEXIS 2140, superseded by statute as stated in People v. Tilbury (1991) 54 Cal 3d 56, 284 Cal Rptr 288, 813 P2d 1318, 1991 Cal LEXIS 3220.

A finding by the Department of Alcoholic Beverage Control, 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 relation 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 Bev. Etc. App. Bd. (1970, Cal App 1st Dist) 7 Cal App 3d 126, 86 Cal Rptr 433, 1970 Cal App LEXIS 2140, superseded by statute as stated in People v. Tilbury (1991) 54 Cal 3d 56, 284 Cal Rptr 288, 813 P2d 1318, 1991 Cal LEXIS 3220.

A condition of probation for a licensee, providing for revocation of his license on conviction of any charges of excessive use of intoxicants, was improper, since a mere conviction of intoxication, absent some circumstance showing a rational relation to the licensee's own operation, cannot affect the license. Kirby v. Alcoholic Bev. Etc. App. Bd. (1970, Cal App 1st Dist) 7 Cal App 3d 126, 86 Cal Rptr 433, 1970 Cal App LEXIS 2140, superseded by statute as stated in People v. Tilbury (1991) 54 Cal 3d 56, 284 Cal Rptr 288, 813 P2d 1318, 1991 Cal LEXIS 3220.

13. Violation of Rules or Statutes Regulating the Sale, Use, or Possession of Alcoholic Beverages

A rule of the State Board of Equalization making a violation of the Federal laws or regulations relating to ceiling prices for alcoholic beverages a ground for revocation of a liquor license, did not set up an original standard which bound the board in advance to be guided by any and every regulation which the O.P.A. might turn out touching liquor prices. Moore v. State Board of Equalization (1946, Cal App) 76 Cal App 2d 758, 174 P2d 323, 1946 Cal App LEXIS 780.

A violation of law in the sale of intoxicating liquor is a cause for revocation of a license, and it is nonetheless a cause if committed away from the licensed premises. Coletti v. State Bd.of Equalization (1949, Cal App) 94 Cal App 2d 61, 209 P2d 984, 1949 Cal App LEXIS 1490.

Subd (b) of this section authorizes suspension or revocation of license when licensee permits violation of any penal provision of law prohibiting use or possession of alcoholic beverages or intoxicating liquors. Munro v. Alcoholic Beverage Control Appeals Board (1957, Cal App 3d Dist) 154 Cal App 2d 326, 316 P2d 401, 1957 Cal App LEXIS 1629.

In the exercise of its discretion department can properly consider violations of statutory provisions concerning alcoholic beverages or of rules of department as good cause for suspension of license. Allied Properties v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 141, 346 P2d 737, 1959 Cal LEXIS 329.

Under subd (b), any conduct constituting violation of any section of Alcoholic Beverage Control Act is ground for suspension or revocation of license. Nelson v. Department of Alcoholic Beverage Control (1959, Cal App 3d Dist) 166 Cal App 2d 783, 333 P2d 771, 1959 Cal App LEXIS 2547.

To constitute violation of subd (b) and of Rule 17(e) in effect before rules revision October 15, 1961, of Department of Alcoholic Beverage Control there need be no evidence that delivery of liquor by licensee without accompanying delivery order be wilfully or intentionally done. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

In its reversal of a decision of the Department of Alcoholic Beverage Control for the suspension of a liquor store's license on the ground of insufficiency of evidence to support a determination of the department that a clerk of the store had violated the statute making it a misdemeanor to sell any alcoholic beverage to any obviously intoxicated person (B & P C § 25602, subd. (a)), the Alcoholic Beverage Control Appeals Board erred in construing B & P C § 25602, subd. (a), so as not to apply to the sale of an alcoholic beverage to an intoxicated person whose intoxication was due to marijuana and a small

amount of alcohol, rather than solely to the consumption of alcohol. The purpose of B & P C § 25602, is to protect the public from the use of alcohol by a person who is already obviously intoxicated. This protection is intended whether the existing intoxication was caused by alcohol alone or by other drugs or a combination of substances. Thus, B & P C § 25602, subd. (a), forbids the sale of alcoholic beverages to any obviously intoxicated person regardless of the substance or combination of substances that brought on that condition. Rice v. Alcoholic Bev. Etc. Appeals Bd. (1981, Cal App 2d Dist) 118 Cal App 3d 30, 173 Cal Rptr 232, 1981 Cal App LEXIS 1620.

It is not necessary for an alcoholic beverage licensee to knowingly allow its premises to be used in a prohibited manner in order to be found to have "permitted" its use for the prohibited act. However, if a licensee does not reasonably know of drug transactions taking place on the premises, and further has taken all reasonable measures to prevent such transactions, the licensee does not "permit" the transactions for purposes of suspending its license under B & P C § 24200. McFaddin San Diego 1130, Inc. v. Stroh (1989, Cal App 4th Dist) 208 Cal App 3d 1384, 257 Cal Rptr 8, 1989 Cal App LEXIS 247, review denied (1989) 1989 Cal. LEXIS 3687.

14. Keeping Disorderly House; Sexual Perversion; Nudity

Under § 25601, making it misdemeanor for liquor licensee to keep, permit to be used, or suffer to be used, in connection with licensed premises, any disorderly house, no proof of knowledge by licensee or his agent of proscribed acts is necessary, it being sufficient that evidence show that such acts took place in licensed premises, and where there is evidence sufficient to show that patrons of licensed premises engaged in homosexual activity, licensees' license is properly revoked under subd (b), through which § 25601 operates to establish grounds for revocation. Morell v. Department of Alcoholic Beverage Control (1962, Cal App 1st Dist) 204 Cal App 2d 504, 22 Cal Rptr 405, 1962 Cal App LEXIS 2270.

It is clear that revocation of on-sale liquor license did not depend solely on violation of unconstitutional subd (e) concerning use of licensed premises as resort for sexual perverts, where order or revocation adopted hearing officer's decision stating that additional grounds for suspension or revocation of license existed under subd (b), concerning violation by licensee of rules of Department of Alcoholic Beverage Control, and for violation of § 25601, concerning keeping of disorderly house. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

The employment of "topless" waitresses and the distribution of their photographs to a liquor licensee's patrons was not illegal or in violation of any duly issued rule or regulation of the Department of Alcoholic Beverage Control, and to establish good cause for the revocation of the licensee's license, something more had to be shown than the employment of "topless" waitresses. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

In revoking an on-sale, general bona fide eating place license, for a violation of B & P C § 25601, the Department of Alcoholic Beverage Control could not properly base its decision on the keeping of a house that disturbed the neighborhood or the keeping of a house to which people resorted for purposes that injured public morals, where there was no evidence that the licensed premises disturbed the neighborhood or that people resorted to such premises for any of the purposes condemned by the statute. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

15. Sales to Minors

Licentiate conducting sale of beverages under on-sale license is charged with active duty to prevent minors from consuming intoxicating liquor on licensed premises, and if licentiate through employee, has knowledge that such consumption is taking place there arises immediately active duty to prevent its continuance, and failure to prevent it is permitting such unlawful consumption, justifying suspension of license. Marcucci v. Board of Equalization (1956, Cal App 3d Dist) 138 Cal App 2d 605, 292 P2d 264, 1956 Cal App LEXIS 2407.

It was not abuse of discretion by board to order 15-day suspension of liquor license for serving whiskey to minor, though he was over 20 years of age and sole drink served to him indicated no conscious intent to violate the law. Griswold v. Department of Alcoholic Beverage Control (1956, Cal App 1st Dist) 141 Cal App 2d 807, 297 P2d 762, 1956 Cal App LEXIS 1920.

Minor's purchase of intoxicating liquor from liquor licensee's salesman in licensee's liquor store warrants suspension of license. Brice v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 153 Cal App 2d 315, 314 P2d 807, 1957 Cal App LEXIS 1494.

Subd (b) of this section authorizes suspension or revocation of license when licensee violates penal provision in permitting minors to consume beer on licensed premises. Munro v. Alcoholic Beverage Control Appeals Board (1957, Cal App 3d Dist) 154 Cal App 2d 326, 316 P2d 401, 1957 Cal App LEXIS 1629.

Where girls under age of twenty-one testified that they consumed beer on premises, fact that their act was involuntary did not aid licensee. Munro v. Alcoholic Beverage Control Appeals Board (1957, Cal App 3d Dist) 154 Cal App 2d 326, 316 P2d 401, 1957 Cal App LEXIS 1629.

A licensee does not act at his peril in selling liquor and if he uses due care and acts in good faith his license is not to be jeopardized because some minor representing himself as an adult succeds in purchasing liquor. Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968, Cal App 1st Dist) 261 Cal App 2d 181, 67 Cal Rptr 734, 1968 Cal App LEXIS 1730.

A licensee conducting the sale of alcoholic beverages under an on-sale license is charged with an active duty to prevent minors from consuming intoxicating liquor on the licensed premises, and if the licensee, through an employee, has knowledge that such consumption is taking place, there arises immediately an active duty to prevent its continuance. A failure to prevent it is a "permitting" of that unlawful consumption within the meaning of B & P C § 24200, subd. (b), which authorizes suspension of an alcoholic beverage license upon "the violation or the causing or the permitting of a violation by a licensee" of various rules or statutes regulating the sale, use, or possession of alcoholic beverages. Reilly v. Stroh (1984, Cal App 1st Dist) 161 Cal App 3d 47, 207 Cal Rptr 250, 1984 Cal App LEXIS 2637.

16. Solicitation of Drinks

It is not prerequisite to holding liquor licensees responsible under this section, § 25657 and Pen C § 303 that they personally hired "B" girls or permitted solicitation of drinks in their tavern. Cooper v. State Board of Equalization (1955, Cal App 1st Dist) 137 Cal App 2d 672, 290 P2d 914, 1955 Cal App LEXIS 1242.

In liquor license revocation proceeding, all that was required to support charge of employing or knowingly permitting woman to loiter around licensed premises for purpose of begging or soliciting patrons to purchase alcoholic beverages for her was knowledge of bartender imputed to licensee and evidence that woman solicited drinks from three persons in premises, one of whom was alcoholic beverage control agent.

Garcia v. Martin (1961, Cal App 1st Dist) 192 Cal App 2d 786, 14 Cal Rptr 59, 1961 Cal App LEXIS 2002.

17. Restrictions on Issuance and Ownership of Licenses

Section 23779, which gives Department of Alcoholic Beverage Control power to revoke wholesale license whenever licensee fails for period of 45 days to make sales to retail licensees other than himself, constituted ground for revocation of wholesale beer and wine license and wine importer's license of wholesaler corporation that sold only to incorporated retail licensee, of which it was wholly owned subsidiary, having to substantial extent same officers and directors as such retail licensee. Borun Bros. v. Department of Alcoholic Beverage Control (1963, Cal App 2d Dist) 215 Cal App 2d 503, 30 Cal Rptr 175, 1963 Cal App LEXIS 2526.

Section 25502, prohibiting wholesaler or any of its officers, directors, or agents from directly or indirectly holding ownership of any off-sale general license for any premises or from owning or controlling any interest in such premises, constituted ground for revocation of wholesale beer and wine license and wine importer's license of wholesaler, where wholesaler's officers owned such substantial amounts of stock in such licensee that they might be deemed to have ownership interest in licensee, and where also wholesaler, by reason of such stock ownership and by reason of interlocking directorship involving wholesaler and licensee, owned interest in premises covered by license. Borun Bros. v. Department of Alcoholic Beverage Control (1963, Cal App 2d Dist) 215 Cal App 2d 503, 30 Cal Rptr 175, 1963 Cal App LEXIS 2526.

18. Misrepresentations by Applicant for License

Revocation of corporation's liquor license is not abuse of discretion under evidence that corporation was managed by two individuals having a history of narcotics violation convictions, extending approximately over 12 years in case of one, and approximately 19 years in case of the other. Ciro's of San Francisco v. State Board of Equalization (1956, Cal App 1st Dist) 142 Cal App 2d 636, 299 P2d 703, 1956 Cal App LEXIS 2028.

Revocation of corporation's liquor license on ground that corporation was managed by two persons who, because of police records, could not themselves qualify as licensees is sustained by evidence that both persons were authorized to sign checks and contracts for corporation, that one owned one-third of corporation stock and that the other's son, the vice president of corporation, had given father a power of attorney to act in relation to ownership of corporation. Ciro's of San Francisco v. State Board of Equalization (1956, Cal App 1st Dist) 142 Cal App 2d 636, 299 P2d 703, 1956 Cal App LEXIS 2028.

Department did not abuse its discretion in revoking general on-sale liquor license of licensee where he repeatedly failed on each of several applications for renewal of license to disclose that business was in fact operated by partnership. Martin v. Alcoholic Bev. Etc. Appeals Bd. (1959) 52 Cal 2d 287, 341 P2d 296, 1959 Cal LEXIS 203.

Under provision of section making misrepresentation of material fact by liquor license applicant ground for suspension or revocation of license granted to him, word "misrepresentation" is implicit with dishonest state of mind or intention to mislead and deceive. Jack P. Meyers, Inc. v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 238 Cal App 2d 869, 48 Cal Rptr 259, 1965 Cal App LEXIS 1208.

19. Conviction of Crime Involving Moral Turpitude

Though Pen C § 1203.4, concerning release of probationer who fulfills probation conditions from disabilities of his conviction, is not expressly made inapplicable to proceedings under subd (d), to revoke liquor license of one convicted of crime involving moral turpitude, as is case with other statutes subjecting various licensees to disciplinary action for conviction of designated offenses, such statutes are merely codification of effect of Pen C § 1203.4, and liquor licensee convicted of crime is not aided by lack of statute making § 1203.4 inapplicable in his case. Copeland v. Department of Alcoholic Beverage Control (1966, Cal App 2d Dist) 241 Cal App 2d 186, 50 Cal Rptr 452, 1966 Cal App LEXIS 1232.

Disciplining of liquor licensee convicted of crime involving moral turpitude is for protection of the public in exercise of police power, not to punish licensee. Copeland v. Department of Alcoholic Beverage Control (1966, Cal App 2d Dist) 241 Cal App 2d 186, 50 Cal Rptr 452, 1966 Cal App LEXIS 1232.

An attack under Rule 35, Federal Rules of Criminal Procedure, relating to correction or reduction of sentence, goes only to the sentence not to the fact of conviction, and such an attack was irrelevant in determining the finality of an alcoholic beverage licensee's conviction in Federal District Court of defrauding the government through the filing of knowingly false income tax returns for two years, where the Federal Circuit Court of Appeals' affirmance of the district court's action had long since become final and petition for writ of certiorari had been denied by the United States Supreme Court, and particularly where the circuit court later refused to interfere with the penalty pronounced by the district court. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 5th Dist) 270 Cal App 2d 535, 75 Cal Rptr 823, 1969 Cal App LEXIS 1555.

A liquor licensee's entry of a plea of nolo contendere in a prosecution for receiving stolen property did not constitute a plea, verdict, or judgment of guilty to a public offense involving moral turpitude within the meaning of B & P C § 24200, subd. (d), providing for suspension or revocation of licenses in such cases, where the imposition of sentence was suspended by the court and the licensee was placed on probation for three years, and where the offense was thereafter adjudicated a misdemeanor by the court pursuant to the provisions of Pen C § 17. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 2d Dist) 3 Cal App 3d 209, 83 Cal Rptr 89, 1969 Cal App LEXIS 1373.

Convictions of the 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 Cal. Const., art. XX, § 22, which grants the Department of Alcoholic Beverage Control the power to deny, suspend or revoke an alcoholic beverage license if a person seeking or holding a license has violated any law prohibiting conduct involving moral turpitude, and within the meaning of B & P C § 24200, which authorizes the department to suspend or revoke a license on the basis of a judgment of guilty to any public offense involving moral turpitude. Conviction of such an offense justifies the imposition of administrative sanctions without a further showing of unfitness or unsuitability or its effect upon the conduct of the licensed business. Rice v. Alcoholic Beverage Control Appeals Board (1979, Cal App 1st Dist) 89 Cal App 3d 30, 152 Cal Rptr 285, 1979 Cal App LEXIS 1356.

20. Fraud

Intent to defraud is essential element of issuing check without sufficient funds in violation of Pen C § 476a, and crime defined under such section is public offense involving moral turpitude for purpose of revoking liquor license. Copeland v. Department of Alcoholic Beverage Control (1966, Cal App 2d Dist) 241 Cal App 2d 186, 50 Cal Rptr 452, 1966 Cal App LEXIS 1232.

The Department of Alcoholic Beverage Control correctly

decided that a licensee's license to conduct a bar should be suspended for the period of one year pursuant to B & P C § 24200, subd. (d), providing for suspension of 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 that the judgment of conviction had become final after appeal in the federal courts. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 5th Dist) 270 Cal App 2d 535, 75 Cal Rptr 823, 1969 Cal App LEXIS 1555.

An alcoholic beverage bar licensee was convicted in Federal District Court of income tax evasion in circumstances involving moral turpitude justifying the Department of Alcoholic Beverage Control's suspension of her license to conduct a bar, where there was a federal conviction and a federal finding of fraud, irrespective of what the state court's rule might be in order to convict of a crime involving moral turpitude. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 5th Dist) 270 Cal App 2d 535, 75 Cal Rptr 823, 1969 Cal App LEXIS 1555.

In respect to suspension of liquor licenses, where a criminal conviction involves fraud, the conviction necessarily also involves moral turpitude. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 5th Dist) 270 Cal App 2d 535, 75 Cal Rptr 823, 1969 Cal App LEXIS 1555.

D. PRACTICE AND PROCEDURE

21. Generally

Object of license revocation proceeding is protection of public, rather than punishment of licensee, and proceedings are not criminal in nature, nor governed by law applicable to criminal cases. Cornell v. Reilly (1954, Cal App) 127 Cal App 2d 178, 273 P2d 572, 1954 Cal App LEXIS 1318.

Proceeding before administrative agency to determine whether license should be revoked is not criminal or quasi-criminal prosecution. Molina v. Munro (1956, Cal App 2d Dist) 145 Cal App 2d 601, 302 P2d 818, 1956 Cal App LEXIS 1382.

22. Complaint

Where accusation charged acts declared unlawful by Pen C § 303, although without mentioning that section, license could be revoked, whether evidence showed violation of that section or not, if evidence showed situation contrary to public welfare or morals. Cornell v. Reilly (1954, Cal App) 127 Cal App 2d 178, 273 P2d 572, 1954 Cal App LEXIS 1318.

There is no variance between accusation charging liquor licensees with violation of this section, § 25657 and Pen C § 303, and proof of violation by licensees' employees. Cooper v. State Board of Equalization (1955, Cal App 1st Dist) 137 Cal App 2d 672, 290 P2d 914, 1955 Cal App LEXIS 1242.

In proceeding for suspension or revocation of license for violation of subd (b) of this section, it is not necessary to allege violation of § 25658 subd (b) relating to purchase of alcoholic beverages by minors. Munro v. Alcoholic Beverage Control Appeals Board (1957, Cal App 3d Dist) 154 Cal App 2d 326, 316 P2d 401, 1957 Cal App LEXIS 1629.

Though accusations before department do not have to be as precise as those in criminal proceeding, they must disclose to licensee particular offense with which he is charged, at least to extent of stating essential elements of that offense. Greenblatt v. Munro (1958, Cal App 1st Dist) 161 Cal App 2d 596, 326 P2d 929, 1958 Cal App LEXIS 1778.

In proceeding to revoke liquor license, principal objective of Gov C § 11503, specifying form of accusation in administrative proceedings, is to safeguard licensee against accusation that does not sufficiently enable him to prepare his defense; adherence to technical rules of pleading is not required. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

23. Sufficiency of Allegations

Charge that on-sale liquor licensee violated § 25657 subd (b) by employing or permitting designated person to loiter on premises for purpose of soliciting purchase of alcoholic beverage for solicitor, is sufficient to enable licensee to prepare defense, since in administrative proceedings the courts are more concerned with fair notice to accused than with technical rules of pleading. Wright v. Munro (1956, Cal App 1st Dist) 144 Cal App 2d 843, 301 P2d 997, 1956 Cal App LEXIS 1801.

Accusation that "the portions of the premises of the [liquor] licensees, where the activities permitted by the license are conducted, have been and still are a resort for sexual perverts, to wit: Homosexuals," is insufficient to charge licensees with conduct subjecting their license to revocation other than pursuant to [former] subd (e); to sustain revocation of license under Const Art XX § 22, on the ground that its continuance would be contrary to public welfare or morals, would violate due process of law in view of the limited charge contained in the accusation and the findings made thereon; nor could revocation be affirmed under section which purports to authorize revocation on mere proof of resorting to or patronage of licensed premises without proof of illegal, immoral or indecent acts on such premises. Vallerga v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 313, 1 Cal Rptr 494, 347 P2d 909, 1959 Cal LEXIS 349.

In proceeding to suspend license of off-sale liquor licensee accused of making sale of liquor in county other than one in which licensed premises were located, fact that accusation did not specify that licensee was not authorized to make sale by valid license did not render it insufficient to state cause of action where it specified that accused had license for specified premises in certain county, but no license for any place in county in which sale took place. Dami v. Department of Alcoholic Beverage Control (1959, Cal App 1st Dist) 176 Cal App 2d 144, 1 Cal Rptr 213, 1959 Cal App LEXIS 1458.

In liquor license revocation proceeding, complaint charging that "On or about [a certain date the licensee], at his above-mentioned licensed premises, did employ or permit woman known only as Brownie, to solicit or encourage other persons to buy her alcoholic beverages, to-wit, beer, on above-mentioned premises" was sufficient to state offense, since it gave licensee fair notice of acts or omissions with which he was charged so that he could prepare his defense, licensee indicating no lack of preparation of his case before hearing officer and no surprise appearing in transcript as to charge or evidence produced against him. Garcia v. Martin (1961, Cal App 1st Dist) 192 Cal App 2d 786, 14 Cal Rptr 59, 1961 Cal App LEXIS 2002.

On-sale liquor licensee was fully and fairly apprised of charge of violating § 25601, concerning keeping of disorderly house, with sufficient certainty to prepare his defense, where it was charged that between certain dates, on licensed premises, licensee permitted or suffered males to kiss, caress, and engage in lewd and indecent acts and conversations with other males, and that police officer and two agents were invited by patrons to engage in lewd acts. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

In a proceeding to revoke a liquor license, the accusation, in addition to alleging a criminal conviction, sufficiently alleged a separate cause for discipline on the ground that continuance of the license would be contrary to public welfare and morals (B & P C § 24200, subd. (a), Cal. Const., art. XX, § 22), where the allegation, based on the involvement of the licensee in illegal activity, preceeded the allegation dealing with the

criminal court proceedings relating to the same activity, where the substantive content of the paragraph, the punctuation, and the use of the conjunctive "and" to precede the allegation detailing the criminal court proceedings were all indicative of the several nature of the allegations, and where the licensee indicated no lack of preparation of his case before the hearing officer and the record showed no surprise on his part as to the charges or evidence produced against him. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 2d Dist) 3 Cal App 3d 209, 83 Cal Rptr 89, 1969 Cal App LEXIS 1373.

24. Notice and Hearing

The Legislature did not intend to recognize in this statute the right of the board to revoke a license summarily and without notice or hearing when acting on its own motion. Irvine v. State Board of Equalization (1940, Cal App) 40 Cal App 2d 280, 104 P2d 847, 1940 Cal App LEXIS 103.

In proceeding before administrative agency to determine whether license should be revoked, litigant may appear solely by his counsel to defend charges against him, and, having done so, his fortunes are linked with ensuing judgment. Molina v. Munro (1956, Cal App 2d Dist) 145 Cal App 2d 601, 302 P2d 818, 1956 Cal App LEXIS 1382.

Liquor licensee accused of suffering his premises to be used as disorderly house was not denied right to counsel of his choice where notice of hearing, served on him pursuant to Gov C § 11509, stated that "you may be present at hearing, may be but need not be represented by counsel." Givens v. Department of Alcoholic Beverage Control (1959, Cal App 2d Dist) 176 Cal App 2d 529, 1 Cal Rptr 446, 1959 Cal App LEXIS 1513.

In proceedings to revoke liquor licenses, the hearing officer did not abuse his discretion in refusing to grant a continuance for the licensee to obtain copies of press releases issued by the department director in connection with disciplinary action taken against various licensees where the motion for continuance was made one year after the date accusations were filed and six months after commencement of the hearings and where there was no indication that the press releases would have disclosed evidence not already obtained by subpoena. Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control (1966) 65 Cal 2d 349, 55 Cal Rptr 23, 420 P2d 735, 1966 Cal LEXIS 208.

In a proceeding to revoke liquor licenses, the hearing officer's ruling, granting a motion to quash a subpoena duces tecum to compel the production of records of departmental investigations that had not resulted in any official action did not effect such prejudice as to require reversal where the matters in question were relevant, at best, to the possibility that persons other than the licensee may have engaged in unfair trade practices and where, even had the licensee shown that others were guilty of such illegal conduct, the record still amply supported the conclusion that there are on the market commodities produced by others that are so similar in character they provide competition unhampered by unlawful trade restraints. Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control (1966) 65 Cal 2d 349, 55 Cal Rptr 23, 420 P2d 735, 1966 Cal LEXIS 208.

25. Inferences; Presumptions; Burden of Proof

Burden of proof in license revocation proceeding is on party asserting affirmative; guilt must be established to reasonable certainty, and cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or uncorroborated hearsay. Cornell v. Reilly (1954, Cal App) 127 Cal App 2d 178, 273 P2d 572, 1954 Cal App LEXIS 1318.

In liquor case, presumption that liquor is served when requested is not overcome by presumption of innocence. Mercurio v. Department of Alcoholic Beverage Control (1956, Cal App 1st Dist) 144 Cal App 2d 626, 301 P2d 474, 1956 Cal App LEXIS 1773.

Determination that premises licensed for sale of liquor constituted resort for sexual perverts, in violation of [former] subd e, is sustained by evidence warranting inferences that place was customarily and regularly used by persons who were prone to and did engage in aberrant sexual conduct, to extent of qualifying as sexual perverts under statute, and used place as haunt for mutual stimulation of their sexually aberrant urges and place of assignation for renewal of old and making of new associations looking toward consummation of those urges. Kershaw v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 155 Cal App 2d 544, 318 P2d 494, 1957 Cal App LEXIS 1321.

In proceeding to suspend liquor license because of sale to minor and for permitting minor to consume liquor on licensed premises, fair inference arises that minor was served drink she had ordered from evidence that she ordered coke and whiskey and was served drink by waitress without comment which, according to police officer, was amber colored fluid smelling of alcohol which he testified was bourbon, and where there was no evidence to contrary. 5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 748, 318 P2d 820, 1957 Cal App LEXIS 1351.

Where presence of intoxicated patrons on premises licensed to sell alcoholic beverages and their removal and arrest by public authority occur with alarming regularity, it will be presumed that conditions of premises prevailed with permission and consent of licensee. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

In proceeding to revoke on-sale beer and wine license, evidence that intoxicated persons were arrested repeatedly on licensed premises and that police standards governing such arrests indicated that such persons were arrested only when they had reached advanced and obvious stages of intoxication supports inference that these occurrences, which were not isolated, infrequent or unusual, were open and in full view and thus easily detectable by bartender of licensed premises. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

26. Evidence: Admissibility

In hearing, before Board of Equalization, of accusation that liquor licensee permitted waitresses to accept alcoholic beverages purchased on premises, sufficient foundation for introduction of bottles containing drinks served to waitresses was laid by officer's testimony that he seized drinks, poured them into bottles, sealed bottles, pasted identifying slips thereon, put bottles in storage and later delivered them to Department of Public Health for analysis. Mercurio v. Department of Alcoholic Beverage Control (1956, Cal App 1st Dist) 144 Cal App 2d 626, 301 P2d 474, 1956 Cal App LEXIS 1773.

In proceeding to revoke liquor license on ground that licensees permitted licensed premises to be used as disorderly house or place to which people resorted for purposes contrary to public welfare and morals by allowing homosexual activity on premises, it was not error to exclude testimony of psychologist as to whether or not she considered homosexuality perversion, where conduct and activity shown by evidence to have occurred on licensed premises were well within meaning of term "sexual perversion" as that term is known to average person, and testimony of psychologist in contradiction of clear, certain and commonly accepted understanding of behavior in question was immaterial. Morell v. Department of Alcoholic Beverage Control (1962, Cal App 1st Dist) 204 Cal App 2d 504, 22 Cal Rptr 405, 1962 Cal App LEXIS 2270.

Offer of evidence to hearing officer of Department of Alcoholic Beverage Control to show that premises of licensee, whose liquor license is sought to be revoked constituted "police problem" is not evidence. Mundell v. Department of Alcoholic Beverage Control (1962, Cal App 2d Dist) 211 Cal App 2d 231, 27 Cal Rptr 62, 1962 Cal App LEXIS 1500.

That intoxicated persons were arrested on licensed premises on police "roundups" was evidence of violations of law though police were not summoned by licensee or for any disturbance by such intoxicated persons. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

In administrative matters, consideration of prior disciplinary proceedings is entirely proper, and in proceeding to revoke off-sale retail liquor license for sales under fair trade prices, licensee's prior record is relevant and material evidence of his knowledge of and compliance with laws involved. Dave's Market, Inc. v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 222 Cal App 2d 671, 35 Cal Rptr 348, 1963 Cal App LEXIS 1711.

In proceeding to revoke off-sale retail liquor license for sales under fair trade prices, it was not sufficient for licensee to make vague offer to prove that off-brands of distilled beverages were not in fair and open competition with other advertised brands allegedly sold by him below fair trade prices; offer of proof must be distinctly directed to some material fact, and where it is vague or fails to reveal what facts it is proposed to bring out, it is not error to reject it. Dave's Market, Inc. v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 222 Cal App 2d 671, 35 Cal Rptr 348, 1963 Cal App LEXIS 1711.

Bulletin from Director of Department of Alcoholic Beverage Control to area administrators, containing schedule of penalties for misuse of liquor license, absent mitigating or aggravating circumstances, merely constitutes evidence of department's policy regarding penalties and thus of manner in which department's discretion was probably exercised in other cases, which is appropriate matter for court to consider in determining whether department acted within limits of its discretion in revoking license. Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

27. Evidence: Hearsay

In proceeding before Department of Alcoholic Beverage Control to revoke liquor license on ground that known prostitutes were permitted to enter and remain on premises and solicit acts of prostitution thereon, conversations between agents of Department of Alcoholic Beverage Control and licensee's bartender and between agents and prostitutes were not inadmissible as hearsay, since fact in controversy was whether solicitation of prostitution took place on premises and words of bartender and prostitutes were admissible as original evidence. Presto v. Alcoholic Beverage Control Appeals Board (1960, Cal App 3d Dist) 179 Cal App 2d 262, 3 Cal Rptr 742, 1960 Cal App LEXIS 2228.

In proceeding to revoke on-sale beer and wine license, official records of police department, so identified by officer who produced them at hearing and described manner in which they were prepared and maintained, were prima facie evidence that 101 arrests of intoxicated persons were made at address of licensed premises as stated in records; although a compilation made by police officer of disposition of cases of 76 of arrested persons was not official record and was hearsay since officer had no personal knowledge as to conviction and sentencing of persons arrested, such hearsay was admissible to supplement and explain direct evidence of arrests. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

In proceedings to revoke liquor licenses, where the licensee sought to examine a witness as to his knowledge of secret rebates allegedly encouraging unfair competition by retailers and where, to the extent that such testimony would not have been hearsay or cumulative of other evidence, it would, at best, have yielded evidence that the licensee had unsuccessfully sought by a subpoena that was properly quashed, the hearing officer acted within his discretion in preventing the effort to circumvent the prior ruling. Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control (1966) 65 Cal 2d 349, 55 Cal Rptr 23, 420 P2d 735, 1966 Cal LEXIS 208.

Though relevant hearsay evidence that is the kind of statement on which responsible persons are accustomed to rely in the conduct of serious affairs (Gov C § 11513, subd (c)) may be admitted at an administrative hearing, in proceedings to revoke liquor licenses, excerpts from a speech in a trade journal article allegedly referring to unfair practices in the sale of unspecified brands of alcoholic beverages attained neither the relevance nor the character required by the rule; and where such evidence could have furnished no more than slight corroboration for documentary evidence already obtained by subpoena, the hearing officer did not abuse his discretion by excluding the article. Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control (1966) 65 Cal 2d 349, 55 Cal Rptr 23, 420 P2d 735, 1966 Cal LEXIS 208.

Statements by a waitress to agents of the Department of Alcoholic Beverage Control, when they gave her free liquor on licensed premises, indicating that she had done this sort of thing before and knew that it was illegal, would have been inadmissible as evidence of the truth of the statements and on the issue of entrapment, had this been raised, but were admissible as evidence of her disposition and readiness to violate the regulations at the time she made them. Harris v. Alcoholic Beverage Control Appeals Board (1966, Cal App 4th Dist) 245 Cal App 2d 919, 54 Cal Rptr 346, 1966 Cal App LEXIS 1535.

Where the fact in issue was solicitation for prostitution and the truth of the girls' statements was not important, testimony by agents of the Department of Alcoholic Beverage Control regarding conversations with two girls was not inadmissible as "administrative" hearsay, though admitted in an administrative hearing; and the testimony was equally admissible under common-law rules. Since the declarations were "operative facts" they were also admissible as original evidence. Los Robles Motor Lodge, Inc. v. Department of Alcoholic Beverage Control (1966, Cal App 3d Dist) 246 Cal App 2d 198, 54 Cal Rptr 547, 1966 Cal App LEXIS 1019.

On review by the Alcoholic Beverage Control Appeals Board of suspension of a liquor license by the Department of Alcoholic Beverage Control, the licensee could not properly raise a hearsay objection to testimony received by the department, where no hearsay objection was interposed at the hearing on which the department's decision rested, and where an appropriate objection, if sustained, would have enabled the department to elaborate on the issue involved; in such a proceeding, hearsay admitted without objection has probative value unless there is some evidence, admissible in administrative proceedings, to the contrary, that is, unless objected to, such evidence will serve to shift the burden of producing evidence of the existence or nonexistence of the fact disclosed. Kirby v. Alcoholic Bev. Etc. Appeals Bd. (1970, Cal App 1st Dist) 8 Cal App 3d 1009, 87 Cal Rptr 908, 1970 Cal App LEXIS 2117.

28. Evidence: Admissions

The constitutional provisions guaranteeing a person the right to remain silent and to counsel (U.S. Const., 5th, 6th and 14th Amends.; Cal. Const., art. I, § 13) apply only to criminal

prosecutions; and in a proceeding for the suspension of a bar owner's on-sale general license to sell alcoholic beverages, the written admission of the bar owner that he had purchased a quantity of beer from an unlicensed vendor for resale his business was not inadmissible merely because it did not appear that the bar owner had been warned of his rights to silence and to counsel. Mumford v. Department of Alcoholic Beverage Control (1968, Cal App 4th Dist) 258 Cal App 2d 49, 65 Cal Rptr 495, 1968 Cal App LEXIS 2386.

In a proceeding for the suspension of a bar owner's on-sale general license to sell alcoholic beverages, the introduction in evidence of the bar owner's written admission that he had purchased a quantity of beer from an unlicensed vendor for resale in his business did not deprive the bar owner of due process of a law, such license to sell intoxicants is not a proprietary right within the meaning of due process. Mumford v. Department of Alcoholic Beverage Control (1968, Cal App 4th Dist) 258 Cal App 2d 49, 65 Cal Rptr 495, 1968 Cal App LEXIS 2386.

In a proceeding for the suspension of a bar owner's on-sale general license to sell alcoholic beverages, the bar owner's written admission that he had purchased beer for resale from an unlicensed vendor was admissible in evidence as an exception to the hearsay rule. Mumford v. Department of Alcoholic Beverage Control (1968, Cal App 4th Dist) 258 Cal App 2d 49, 65 Cal Rptr 495, 1968 Cal App LEXIS 2386.

29. Evidence: Sufficiency

Evidence of liquor law violation should be clear and convincing in order to justify imposition of penalty of revocation of liquor license. Wright v. Munro (1956, Cal App 1st Dist) 144 Cal App 2d 843, 301 P2d 997, 1956 Cal App LEXIS 1801.

Requirement of corroboration of accomplices in criminal proceedings does not apply to administrative proceeding to revoke liquor license for violation of B-girl statutes. Oxman v. Department of Alcoholic Beverage Control (1957, Cal App 3d Dist) 153 Cal App 2d 740, 315 P2d 484, 1957 Cal App LEXIS 1551.

Licensee can be held to have permitted violation by showing that acts themselves took place. Munro v. Alcoholic Beverage Control Appeals Board (1957, Cal App 3d Dist) 154 Cal App 2d 326, 316 P2d 401, 1957 Cal App LEXIS 1629.

Department's determination that liquor business was owned in part by licensee's husband and that license should be suspended indefinitely was not supported by substantial evidence where, among other things, both real property on which premises were located and license were purchased in wife's name as sole owner and improvements, even if made by husband on wife's property out of community funds, gave him no interest therein. Ciambetti v. Department of Alcoholic Beverage Control (1958, Cal App 3d Dist) 161 Cal App 2d 340, 326 P2d 535, 1958 Cal App LEXIS 1739.

Findings of Department of Alcoholic Beverage Control revoking liquor license were sustained by substantial evidence where department's hearing officer could reasonably infer from evidence that licensee's bartender allowed two designated persons to continue to drink and agitate and challenge patrons in premises over period of two or three hours without taking any effective action by summoning police, and where resulting fight and injury to certain patron were logical consequence to their behavior and should have been apparent to bartender; such passive conduct on part of bartender amounted to "permitting" conduct to occur. Mundell v. Department of Alcoholic Beverage Control (1962, Cal App 2d Dist) 211 Cal App 2d 231, 27 Cal Rptr 62, 1962 Cal App LEXIS 1500.

In a proceeding to suspend a liquor license, neither the trier of fact nor the Alcoholic Beverage Control Appeals Board was required to weigh the evidence in accordance with the provisions of Evid C §§ 412, 413; under Gov C § 11513, technical rules of evidence do not apply to administrative hearings. Big Boy Liquors, Ltd. v. Alcoholic Beverage Control Appeals Bd. (1969) 71 Cal 2d 1226, 81 Cal Rptr 258, 459 P2d 674, 1969 Cal LEXIS 316.

30. Solicitation of Drinks

Evidence that girls employed by restaurant bar as entertainers asked customers to buy them drinks, and that bartender kept record of all drinks consumed by entertainers, even though paid for by patrons, was sufficient to support finding that girls were employed for purpose of procuring or encouraging liquor sales in violation of Pen C § 303. Cornell v. Reilly (1954, Cal App) 127 Cal App 2d 178, 273 P2d 572, 1954 Cal App LEXIS 1318.

Revocation of liquor license on ground that continuance thereof would be contrary to public welfare and morals and that licensees permitted "B" girls to solicit drinks is proper under evidence that, in licensees' presence in their tavern, girls received tally markers for each drink purchased for them by customers and were paid by bartender for each marker. Cooper v. State Board of Equalization (1955, Cal App 1st Dist) 137 Cal App 2d 672, 290 P2d 914, 1955 Cal App LEXIS 1242.

Sufficient showing that drinks accepted by waitresses on liquor licensee's premises allegedly in violation of this section and Rule 143 of Board of Equalization were alcoholic was made by testimony before board, considered in connection with presumption that drinks served were what were ordered, that alcoholic drinks were ordered for waitresses and were poured from bottles bearing alcoholic drink labels. Mercurio v. Department of Alcoholic Beverage Control (1956, Cal App 1st Dist) 144 Cal App 2d 626, 301 P2d 474, 1956 Cal App LEXIS 1773.

Finding that petitioner employed and permitted female entertainer to solicit and encourage patrons to buy her drinks under scheme or conspiracy by which she was to receive commission was supported by proof, in mandamus proceeding to compel department to vacate its order revoking petitioner's liquor license. Oxman v. Department of Alcoholic Beverage Control (1957, Cal App 3d Dist) 153 Cal App 2d 740, 315 P2d 484, 1957 Cal App LEXIS 1551.

Suspension of on-sale liquor license for violation of rule prohibiting solicitation of alcoholic beverages by licensee's female employee for her consumption was supported by testimony that entertainer and cigarette girl, both employees of licensee, asked witnesses to buy them drinks, as against claim that such testimony was hearsay and inadmissible. Greenblatt v. Munro (1958, Cal App 1st Dist) 161 Cal App 2d 596, 326 P2d 929, 1958 Cal App LEXIS 1778.

Suspension of on-sale liquor license for violation of rule prohibiting solicitation of purchase or sale of alcoholic beverages by female employee of licensee for her consumption was sustained by testimony that entertainer employed by licensee asked agent of department to buy her champagne, though agent refused to do so. Greenblatt v. Munro (1958, Cal App 1st Dist) 161 Cal App 2d 596, 326 P2d 929, 1958 Cal App LEXIS 1778.

Proof was sufficient to show that female employee was served alcoholic drink where bartender indicated that he was serving her "screwdriver," licensee testified that "screwdriver" as served in his place contained orange juice and vodka and there was no evidence that alcoholic drink was not served to female employee, in proceeding to revoke on-sale liquor license for allowing female employee to solicit alcoholic beverage from customer. Greenblatt v. Munro (1958, Cal App 1st Dist) 161 Cal App 2d 596, 326 P2d 929, 1958 Cal App LEXIS 1778.

Decision of Department of Alcoholic Beverage Control Board that licensee, through his bartender, knowingly permitted woman to loiter in or about premises for purpose of soliciting customer to purchase alcoholic beverage for her, in violation of

§ 25657 subd (b), and order revoking license, were supported by substantial evidence where agent testified that two female persons were sitting at bar when he entered premises, that one approached him, said she was waitress and asked him to buy her drink, that this conversation took place in immediate presence of bartender, who fixed drink as soon as girl specified what she wanted and without waiting for order, that girl stated that drink contained vodka, and bartender, after he had furnished "double" of same drink, assented to agent's statement that drink contained vodka, and that agent paid for both drinks. Greenblatt v. Martin (1961, Cal App 1st Dist) 189 Cal App 2d 787, 11 Cal Rptr 669, 1961 Cal App LEXIS 2250.

Revocation of liquor license was supported by evidence that on specified dates, two women each asked customer to buy her beer, which he did, and that both women were on salary paid by licensee. Garcia v. Martin (1961, Cal App 1st Dist) 192 Cal App 2d 786, 14 Cal Rptr 59, 1961 Cal App LEXIS 2002.

31. Sales to Minors and Intoxicated Persons

In proceeding to set aside order of Board of Equalization suspending liquor license on ground that licensee sold whiskey to minor, finding that board's decision was not supported by substantial evidence will not be disturbed on appeal where it appears that clerk in charge of cafe asked minor to show his identification as to his age, that minor exhibited registration card issued in name of another person, that minor signed piece of paper copying name of other person, and that clerk compared signatures, and made sale, there being fair resemblance between the two signatures. Young v. State Board of Equalization (1949, Cal App) 90 Cal App 2d 256, 202 P2d 587, 1949 Cal App LEXIS 969.

In mandamus proceeding to review order of board suspending liquor license, board's decision that licensee through his employee, the bartender, permitted minor to consume liquor on licensed premises in violation of subd (b) was sustained by evidence that officers observed minor sitting at bar, watched him consume bottle of beer which bartender served to adult who brought him here, and when next bottle was placed before him he poured part of contents into his own glass, it being reasonable inference that what officers saw was also observed by bartender. Marcucci v. Board of Equalization (1956, Cal App 3d Dist) 138 Cal App 2d 605, 292 P2d 264, 1956 Cal App LEXIS 2407.

Department's findings that licensees sold intoxicating liquor to minor were sustained by minor's testimony that he purchased liquor in store operated by licensees, and by evidence that first four of seven numbers of federal stamp on bottle of liquor so purchased coincided with first four numbers on bottles of brand of liquor on shelves in store day after purchase. Brice v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 153 Cal App 2d 315, 314 P2d 807, 1957 Cal App LEXIS 1494.

Evidence is sufficient to sustain ruling, suspending license, under § 25658, where it shows that minor was too young in appearance to be twenty-one years of age, that she weighed nineteen pounds more than person described in identification which she presented, and that she was three and one-half years younger than such person and had blue eyes instead of hazel. 5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 748, 318 P2d 820, 1957 Cal App LEXIS 1351.

Suspension of liquor license for selling or furnishing alcoholic beverage to minor was sustained by evidence that waitress placed alcoholic drink on table and it was handed to minor, and it was no defense that minor ordered nonalcoholic drink and got alcoholic one through misunderstanding. Nickola v. Munro (1958, Cal App 1st Dist) 162 Cal App 2d 449, 328 P2d 271, 1958 Cal App LEXIS 1895.

Suspension of on-sale liquor license for serving obviously intoxicated person was supported by evidence that person served walked in an unsteady manner and was unshaven, that his face was flushed and his eyes watery, that at time he slumped over bar as if asleep, that he would jerk and yell out at no one in particular and, on occasion, would laugh almost hysterically, that he would spit on floor and on himself, and that bartender shook him awake and placed beer in front of him, and by bartender's statement, when arrested, that "I didn't think he was so drunk." Samaras v. Department of Alcoholic Beverage Control (1960, Cal App 1st Dist) 180 Cal App 2d 842, 4 Cal Rptr 857, 1960 Cal App LEXIS 2407.

Suspension of on-sale liquor license for permitting person under age of 21 years to enter and remain in licensed premises was supported by evidence that minor had been in premises for period of at least 10 minutes before investigating officer entered, that some of persons at minor's table went to bar and ordered drinks, and that bartender served drinks to persons without going to table where minor sat and without determining that persons at table were 21 years of age. Ballesteros v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 234 Cal App 2d 694, 44 Cal Rptr 633, 1965 Cal App LEXIS 1054.

32. Keeping Disorderly House; Sexual Perversion; Nudity

The mere fact that homosexuals patronized a restaurant and bar for the purpose of illegal or immoral acts, and used it as a meeting place or hangout, without proof of the illegal or immoral acts committed on the premises or resort thereto for such purposes was insufficient to show a violation of former Alcoholic Beverage Control Act § 58 (now § 25601), warranting the suspension of the on-sale liquor license of the proprietor. Stoumen v. Reilly (1951) 37 Cal 2d 713, 234 P2d 969, 1951 Cal LEXIS 325, superseded by statute as stated in Harris v. Capital Growth Investors XIV (1991) 52 Cal 3d 1142, 278 Cal Rptr 614, 805 P2d 873, 1991 Cal LEXIS 900.

Corporation's liquor license is properly revoked for violation of § 25601, prescribing use of licensed premises for purposes injurious to public morals, under evidence that numerous homosexual acts were committed on premises, liquor was sold to obviously intoxicated persons, and beer was sold to minors. Maxwell Cafe, Inc. v. Department of Alcoholic Beverage Control (1956, Cal App 2d Dist) 142 Cal App 2d 73, 298 P2d 64, 1956 Cal App LEXIS 1949.

Finding that licensee participated in procuring, counseling and assisting lewd shows at premises owned and controlled by him is sustained from his admitted knowledge that lewd performances had been given there on several past occasions, from his former association with man who rented place from him, from his failure at any time to do anything to stop lewd performances, and from fact that because of rental terms he was to some extent partner in enterprise. Jacques, Inc. v. State Board of Equalization (1957, Cal App 3d Dist) 155 Cal App 2d 448, 318 P2d 6, 1957 Cal App LEXIS 1307.

Liquor license revocation for violation of subd a on ground that continuance of license would be contrary to public welfare or morals, is sustained by evidence that, to licensee's knowledge sexual perverts met at premises and there engaged in sexual perversion without opposition from her and in more than isolated instances. Kershaw v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 155 Cal App 2d 544, 318 P2d 494, 1957 Cal App LEXIS 1321.

Liquor license revocation for violation of § 25601, prohibiting keeping disorderly house in connection with licensed premises, is sustained by evidence that, to licensee's knowledge, sexual perverts met at premises and there engaged in sexual perversion without opposition from her and in more than isolated instances. Kershaw v. Department of Alcoholic

Beverage Control (1957, Cal App 1st Dist) 155 Cal App 2d 544, 318 P2d 494, 1957 Cal App LEXIS 1321.

Liquor license revocation for permitting licensed premises to become resort for sexual perverts was sustained by evidence that, to licensee's knowledge, patrons of premises committed acts that should have informed licensee that they were sex perverts, and fact that such acts may not have been punishable under Penal Code was immaterial. Nickola v. Munro (1958, Cal App 1st Dist) 162 Cal App 2d 449, 328 P2d 271, 1958 Cal App LEXIS 1895.

Findings of department in revoking liquor license of taxi dance establishment that premises were permitted to be used for purposes injurious to public morals were sustained by evidence that one taxi dancer rubbed her hands against the leg of a witness and then "touching him in a public area" asked him to go home with her, that another girl demonstrated her "peek-a-boo" dress by exposing her breasts to a customer, and that sexually suggestive dancing occurred. Adler v. Department of Alcoholic Beverage Control (1959, Cal App 1st Dist) 174 Cal App 2d 256, 344 P2d 336, 1959 Cal App LEXIS 1693.

Even assuming that knowledge by liquor licensees or their agents of homosexual activity on licensed premises was necessary to sustain revocation of their license under subd (b), such penalty was supported by evidence that licensees' employees were on premises on all occasions when agents of Department of Alcoholic Beverage Control made their investigation, that one of licensees admitted that he was present on all such occasions except one, and that much of objectionable behavior was open, conspicuous and in full view of all present including employees. Morell v. Department of Alcoholic Beverage Control (1962, Cal App 1st Dist) 204 Cal App 2d 504, 22 Cal Rptr 405, 1962 Cal App LEXIS 2270.

Revocation of on-sale liquor license for violation of § 25601, concerning keeping of disorderly house, was supported by substantial evidence, where there was testimony that male patrons, in bartender's presence, caressed one another, that male patrons invited each other and agents to participate in lewd acts, that bartender greeted male patrons with lewd language and pantomined unnatural sex practice, that when licensee was behind bar an employee invited officer to engage in lewd acts, and that patron invited agent to commit perversion denounced by Pen C § 228a. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

33. Violation of Department Rules, Fair Trade Laws, and Other Statutes

Finding that licensee sold and delivered alcoholic beverages to named vendee pursuant to order and failed to accompany said order with delivery orders in violation of Rule 17(e) of Department of Alcoholic Beverage Control in effect before rules revision October 15, 1961, and thus in violation of subd (b), was supported by substantial evidence where agent of department testified that licensee admitted to him that delivery in question had not been accompanied with delivery orders or invoices. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

In proceeding to suspend off-sale liquor license, for retail sale of alcoholic beverages at less than fair trade price, certified copies of fair trade contracts and fair trade contract price schedules that had been duly filed with Department of Alcoholic Beverage Control and that covered brands in question were in themselves sufficient evidence to support finding that beverages were in fair and open competition. United Liquors, Inc. v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 218 Cal App 2d 450, 32 Cal Rptr 603, 1963 Cal App LEXIS 1801.

In proceeding to revoke off-sale retail liquor license for sales below fair trade prices, where admittedly prima facie case against licensee was established, testimony of licensee's witness establishing that he bottled and sold Kentucky bourbon under off brand names to retailers, subject to fair trade agreements, and that it retailed at prices lower than established prices of four distilled beverages involved in licensee's violations, by itself, did not disprove fair and open competition. Dave's Market, Inc. v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 222 Cal App 2d 671, 35 Cal Rptr 348, 1963 Cal App LEXIS 1711.

To warrant revocation of off-sale retail liquor license for sales below fair trade prices, evidence must not only be substantial, but competent and material; guilt must be established to reasonable certainty and cannot be based on surmise or conjecture, suspicion or theoretical conclusion or on uncorroborated hearsay. Dave's Market, Inc. v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 222 Cal App 2d 671, 35 Cal Rptr 348, 1963 Cal App LEXIS 1711.

The finding by the Department of Alcoholic Beverage Control that a bar owner purchased beer for resale from an unlicensed vendor (B & P C § 23402) was supported by the evidence, where it was shown that the bar owner-respondent purchased five cases of beer from his part-time bartender, who had no resale license, and the evidence included the written admission signed by the bar owner-respondent to the effect that he had purchased such beer for resale in his business. Mumford v. Department of Alcoholic Beverage Control (1968, Cal App 4th Dist) 258 Cal App 2d 49, 65 Cal Rptr 495, 1968 Cal App LEXIS 2386.

In a proceeding to revoke a liquor license, the record showed substantial evidence to support a finding of a violation of Pen C § 496, subd. (1) (receiving stolen property), where a quantity of merchandise belonging to a department store was found in the possession of the licensee at the time of his arrest, where he admitted receiving the property during a period of about four months, where the merchandise was received from a man never positively identified, who never produced an invoice for the goods, who never voluntarily offered a receipt of any sort for the cash payments made, and who never signed his name to a receipt prepared by the licensee, where, despite the fact that he admitted getting suspicious as early as the third sale, the licensee later purchased additional merchandise from the man, and where the licensee had acquaintances take the merchandise over the Mexican border in small lots rather than as a bulk shipment. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 2d Dist) 3 Cal App 3d 209, 83 Cal Rptr 89, 1969 Cal App LEXIS 1373.

34. Defenses; Estoppel Against Department

In license revocation proceeding charging acts prohibited by Pen C § 303, it was no defense that owner licensee was not shown to have specific intent assertedly required by that section, in absence of evidence that he knew of or directed acts of his manager and agent, since owner of liquor license has responsibility to see to it that license is not used in violation of law. Cornell v. Reilly (1954, Cal App) 127 Cal App 2d 178, 273 P2d 572, 1954 Cal App LEXIS 1318.

Department was not estopped to revoke wholesaler's license, issued in violation of §§ 23779, 23781, notwithstanding that licensee, in addition to paying license fee, paid sum to his transferor, and that Board of Equalization retained physical possession of license but counted it in county quota, pursuant to allegedly established interpretation of administrative rule, where there was no evidence that licensee paid his transferor in reliance on anything said or done by board, and no evidence as to any representation, practice, custom or interpretation

guaranteeing anyone fixed status as licensee. Joseph George, Distributor v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 149 Cal App 2d 702, 308 P2d 773, 1957 Cal App LEXIS 2089.

Fact that when hearing officer recommended suspension of liquor license he was employee of state board of equalization did not deprive department of power to adopt his findings and to order suspension of license. Brice v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 153 Cal App 2d 315, 314 P2d 807, 1957 Cal App LEXIS 1494.

Assuming that defense of entrapment is available in proceeding to revoke on-sale liquor license for violation of § 25601, such defense was not established where record was without conflict that agents were solicited by patrons and employee of licensee to engage in sexual perversion, that intent to commit such acts originated in minds of those who made proposals, and that agents did no more than to afford those on premises opportunity for solicitation. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

Where liquor licensee knew that any agreement for reducing penalty of revoking his license to suspension, in return for his acting as informer, would have to be approved by director of Department of Alcoholic Beverage Control for agreement to be binding on department, and where it was clear that licensee did not rely on any statement of director, but relied on alleged opinion of attorney for department that director would act in accordance with attorney's recommendation, such reliance, even if true, would not warrant application of doctrine of estoppel against department to deny agreement. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

There was no entrapment in the legal sense where the only possible claim of entrapment by Department of Alcoholic Beverage Control agents rested upon the fact that they were males sitting at a bar, feignedly willing to be customers of soliciting prostitutes, and the originating intent was in the prostitutes with agile assists by bartenders. Los Robles Motor Lodge, Inc. v. Department of Alcoholic Beverage Control (1966, Cal App 3d Dist) 246 Cal App 2d 198, 54 Cal Rptr 547, 1966 Cal App LEXIS 1019.

35. Findings

Finding indicating that licensees were in effect promoting and conducting professional gambling operations, supported board's conclusion that licensees' participation in gambling offenses and their convictions of Pen C § 330 were contrary to public welfare and morals and constitute grounds for revocation of licenses. Jacques, Inc. v. State Board of Equalization (1957, Cal App 3d Dist) 155 Cal App 2d 448, 318 P2d 6, 1957 Cal App LEXIS 1307.

In proceeding to suspend liquor license, for retail sale of alcoholic beverages at prices less than fair trade price, assuming arguendo necessity of finding that alcoholic beverages covered by fair trade contract and involved in the sales were in open and fair competition, licensees could not complain of failure to make such finding where only evidence on question was that such distilled spirits were in fair and open competition, licensees introduced no contrary evidence, and finding stated that sales were made at prices less than minimum sale price provided for in fair trade contracts duly filed with Department of Alcoholic Beverage Control. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

In proceeding to revoke on-sale liquor license, findings that there had been misconduct on licensed premises in violation of § 25601, concerning keeping of disorderly house, need not specify that misconduct occurred within conscious presence of licensee or his employees. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

In proceeding to revoke liquor license, findings may be made in language of accusation. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

In a proceeding to revoke a liquor license, findings may be made in the language of the accusation and need not be stated with the formality required in judicial proceedings. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 2d Dist) 3 Cal App 3d 209, 83 Cal Rptr 89, 1969 Cal App LEXIS 1373.

In revoking a liquor license for the licensee's conduct contrary to public welfare and morals under Cal Const art XX, § 22, and B & P C § 24200, subd (a), the Department of Alcoholic Beverage Control did not err in failing to make an express determination as to a violation of those sections, where identical considerations were involved in the department's determination that illegal and immoral acts on the premises constituted the conduct of a disorderly house on the licensed premises in violation of B & P C § 25601. Kirby v. Alcoholic Beverage Control Appeals Board (1972, Cal App 2d Dist) 25 Cal App 3d 331, 101 Cal Rptr 815, 1972 Cal App LEXIS 1034.

36. By Implication

Fair trade contracts for sale of alcoholic beverages cannot conform to requirements of § 24750, authorizing fair trade contracts fixing resale price of alcoholic beverages bearing trademark or name of producer or owner and in fair and open competition with others of same class, and cannot be filed as required by Department of Alcoholic Beverage Control rule 99(b) in effect before rules revision October 15, 1961, unless alcoholic beverages covered by such contracts are in fair and open competition; therefore, finding that alcoholic beverages were in fair and open competition can be reasonably implied from finding that fair trade contracts were duly filed with department. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

In proceeding to suspend liquor license, for retail sales at less than fair trade price, finding of hearing officer that fair trade contracts were duly filed with Department of Alcoholic Beverage Control raised presumption that "fair and open" competition was ascertained and found by department. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

The structuring of a decision of the Department of Alcoholic Beverage Control revoking a liquor license resulted in a failure to make any findings as to the portion of the accusation alleging a separate cause for discipline on the ground that continuance of the license would be contrary to public welfare and morals (B & P C § 24200, subd. (a), Cal Const art. XX, § 22), where, though the findings sufficiently set forth facts supported by independent evidence that the licensee knowingly bought and received stolen merchandise, such factual recitation was prefaced by the introductory statement that the licensee had "been convicted of a crime involving moral turpitude, as follows:"; findings by implication cannot be substituted for specific findings when they are required. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 2d

Dist) 3 Cal App 3d 209, 83 Cal Rptr 89, 1969 Cal App LEXIS 1373.

37. As Sufficient

Notwithstanding that accusation, charging liquor licensee with violation of this section and Rule 143 of Board of Equalization, declared that he "knowingly" permitted female employees to accept alcoholic beverages purchased on premises, board's finding omitting term "knowingly" and stating merely that he permitted violations was sufficient, since neither this section nor rule requires that permitting be knowingly done. Mercurio v. Department of Alcoholic Beverage Control (1956, Cal App 1st Dist) 144 Cal App 2d 626, 301 P2d 474, 1956 Cal App LEXIS 1773.

By finding that liquor licensee violated Rule 143 of Board of Equalization in permitting waitresses to accept alcoholic drinks purchased on premises, board made sufficient finding that he acted contrary to public welfare and morals. Mercurio v. Department of Alcoholic Beverage Control (1956, Cal App 1st Dist) 144 Cal App 2d 626, 301 P2d 474, 1956 Cal App LEXIS 1773.

In proceeding to suspend liquor license, for retail sale of alcoholic beverages at less than fair trade prices, findings were sufficient, did not impede judicial review, and did not fail to apprise licensees of reason for action taken against them where, in language of pleadings, it was stated that licensees made sales at less than stipulated resale price and that price was set forth in fair trade contract duly filed with Department of Alcoholic Beverage Control; no express finding was required that products covered by fair trade contracts were in fair and open competition. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

In proceeding to suspend off-sale liquor license, for retail sale of alcoholic beverages at less than fair trade price, express finding by Department of Alcoholic Beverage Control, in language of accusation, that licensee sold beverages "at a price less than the stipulated minimum resale price provided for in Fair Trade Contracts duly filed with the Department. . ." was in no way deficient, and department was not required to make express finding that beverages were in fair and open competition; department was entitled to state its findings in language of pleadings, which made no reference to fair and open competition, and, furthermore, finding that beverages were in fair and open competition could reasonably be inferred from language in department's finding that fair trade contracts had been duly filed with department. United Liquors, Inc. v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 218 Cal App 2d 450, 32 Cal Rptr 603, 1963 Cal App LEXIS 1801.

In proceeding to suspend corporation's liquor license, findings that one man was sole stockholder and president of corporate licensee after approximate date were adequate findings as to his status and duration of his relation to licensee. Jack P. Meyers, Inc. v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 238 Cal App 2d 869, 48 Cal Rptr 259, 1965 Cal App LEXIS 1208.

In proceeding to suspend corporation's liquor license, finding that licensee's sole stockholder and president "is" unfit and improper person to hold alcoholic beverage license by reason of his record of arrests and convictions sufficiently established, for review purposes, that Department of Alcoholic Beverage Control did not believe that he was rehabilitated or fit, at time of decision, to hold license. Jack P. Meyers, Inc. v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 238 Cal App 2d 869, 48 Cal Rptr 259, 1965 Cal App LEXIS 1208.

E. RELIEF AND REVIEW

38. Generally

On appeal from revocation of liquor license for causing and permitting unlicensed female to dispense wine from behind permanently affixed fixture used for preparation of alcoholic beverages, there was no merit to claim that fixture was not used for "preparation" of alcoholic beverages because no drinks were mixed in premises, since preparation is broader than mixing and includes, for example, opening of container, and since such issue was raised for first time on appeal. Garcia v. Martin (1961, Cal App 1st Dist) 192 Cal App 2d 786, 14 Cal Rptr 59, 1961 Cal App LEXIS 2002.

Where liquor licensee admitted charge in each of counts against him in proceeding to suspend his license and did not raise any question regarding sufficiency of allegations of counts or included offense of double jeopardy, it was improper for Alcoholic Beverage Control Appeals Board to consider licensee's contention relative to included offenses which was raised for first time on appeal from decision of Department of Alcoholic Beverage Control suspending his license. Harris v. Alcoholic Beverage Control Appeals Board (1961, Cal App 2d Dist) 197 Cal App 2d 182, 17 Cal Rptr 167, 1961 Cal App LEXIS 1328.

On appeal from judgment denying peremptory writ of mandate in proceedings for judicial review of decision to revoke off-sale retail liquor license for sales below fair trade prices, where record revealed that each time hearing officer's attention was directed to prior pending proceedings against licensee, officer stated he would not consider these prior matters unless they became final before he reached his decision, it must be presumed that hearing officer did as he said he would do. Dave's Market, Inc. v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 222 Cal App 2d 671, 35 Cal Rptr 348, 1963 Cal App LEXIS 1711.

In proceedings to revoke liquor licenses, the validity of the hearing officer's ruling quashing a subpoena duces tecum by which the licensee sought to compel the production of certain documents possessed by the department was rendered moot with respect to certain brands of alcoholic beverages where the counts in the accusations relating thereto were later dismissed. Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control (1966) 65 Cal 2d 349, 55 Cal Rptr 23, 420 P2d 735, 1966 Cal LEXIS 208.

Since the Alcoholic Beverage Control Appeals Board exercises a strictly limited power of review over the exclusive power of the Department of Alcoholic Beverage Control to issue, deny, suspend, or revoke licenses, the decisions of the department should not be defeated by reason of any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the appeals board shall be of the opinion that the error complained of has resulted in a miscarriage of justice (Cal. Const., art. VI, § 13). Reimel v. House (1969, Cal App 2d Dist) 268 Cal App 2d 780, 74 Cal Rptr 345, 1969 Cal App LEXIS 1739, superseded by statute as stated in Chavez v. Zapata Ocean Resources, Inc. (1984, 4th Dist) 155 Cal App 3d 115, 201 Cal Rptr 887, 1984 Cal App LEXIS 1967.

In examining the power invested by Const. art. XX, § 22, in the Department of Alcoholic Beverage Control to revoke a specific alcoholic beverage license when it determines 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, the public morals, not the private morals of the officials or employees of the department must be the criteria. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

The Alcoholic Beverage Control Appeals Board abused its discretion in affirming a suspension of a market's liquor license based on a single illegal act unrelated to the sale of alcohol by an on-duty employee of the market without the market's knowledge. The single criminal act of food stamp sales was insufficient to justify the suspension based on the employee's knowledge of her own criminal act, which was imputed to the market. To be reasoned and not arbitrary, license suspensions must further the goal of the constitutional and statutory provisions. That goal in general is to protect public welfare and morals, but it must be viewed in the context in which it arose, i.e., the sale of alcoholic beverages. Where a licensee's employee commits a single criminal act unrelated to the sale of alcohol, the licensee has taken strong steps to prevent and deter such crime and is unaware of it before the fact, suspension of the license simply has no rational effect on public welfare or public morals. Santa Ana Food Market, Inc. v. Alcoholic Beverage Control Appeals Bd. (1999, Cal App 4th Dist) 76 Cal App 4th 570, 90 Cal Rptr 2d 523, 1999 Cal App LEXIS 1034.

39. Mandamus

Department's determination as to whether license should be revoked or suspended cannot be controlled by mandamus. Joseph George, Distributor v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 149 Cal App 2d 702, 308 P2d 773, 1957 Cal App LEXIS 2089.

In mandamus proceeding to review order of Department of Alcoholic Beverage Control suspending nonsale license for selling beer to minor, lower court erred in setting aside suspension despite the fact that five witnesses testified licensee did not make sale charged, while only one, the minor, testified that he did, the department having chosen to believe the minor. Marini v. Department of Alcoholic Beverage Control (1960, Cal App 1st Dist) 177 Cal App 2d 785, 2 Cal Rptr 714, 1960 Cal App LEXIS 2547.

On petition for writ of mandate to compel Department of Alcoholic Beverage Control to vacate and set aside its suspension of liquor license, superior court should review evidence and findings in same fashion that appellate court reviews trial court's findings. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

In mandamus proceeding to review validity of order revoking liquor license, burden of proof is on party asserting affirmative. Dave's Market, Inc. v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 222 Cal App 2d 671, 35 Cal Rptr 348, 1963 Cal App LEXIS 1711.

Peremptory writ of mandate compelling Department of Alcoholic Beverage Control to vacate its decision to suspend corporation's liquor license was improperly issued where uncontradicted evidence of arrests and convictions of licensee's sole stockholder and president supported findings of his unfitness to hold alcoholic beverage license. Jack P. Meyers, Inc. v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 238 Cal App 2d 869, 48 Cal Rptr 259, 1965 Cal App LEXIS 1208.

On appeal by licensees from the judgment in a mandamus proceeding to review a determination by the Department of Alcoholic Beverage Control suspending a license, the department cannot challenge the validity of a decision finding that the licensee had established an affirmative defense to charges of permitting the entry of a minor on licensed premises where no appeal was taken from such decision. Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968, Cal App 1st Dist) 261 Cal App 2d 181, 67 Cal Rptr 734, 1968 Cal App LEXIS 1730.

In the determination of the propriety of granting a writ of mandate to compel the the Department of Alcoholic Beverage Control to grant an extension of time for the cancellation of a liquor license under Adm. Code, tit. 4, Rule 65(d), the writ must be denied, where no clear abuse of discretion on the part of the department was shown by petitioner, though the license would expire under the rule before three disciplinary actions respecting the license could be heard. Samson Market Co. v. Kirby (1968, Cal App 2d Dist) 261 Cal App 2d 577, 68 Cal Rptr 130, 1968 Cal App LEXIS 1779, cert den (1968) 393 US 11, 89 S Ct 49, 21 L Ed 2d 18, 1968 US LEXIS 578.

40. Finality of Department's Decision

Department's decision revoking liquor license is final, subject to review for excess of jurisdiction, errors of law, abuse of discretion and insufficiency of evidence. Macfarlane v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 84, 330 P2d 769, 1958 Cal LEXIS 210.

That trial court or appellate court considers contrary finding as reasonable as or more reasonable than finding made by Department of Alcoholic Beverage Control is not reason for either court to disregard or overturn finding made by department. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

Department of Alcoholic Beverage Control is constitutional agency which exercises limited judicial functions; its decision suspending liquor license must be sustained if it has committed no error of law and if there is substantial evidence to support its findings of fact. Ballesteros v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 234 Cal App 2d 694, 44 Cal Rptr 633, 1965 Cal App LEXIS 1054.

Principles governing review of evidence before the Department of Alcoholic Beverage Control differ from judicial review of administrative action to the extent that administrative action consists of declarations or applications of legal rules or is the statement of the conclusions of law drawn from facts found in an adjudicatory proceeding. The decisions of the board are final, subject to review for excess of jurisdiction, errors of law, abuse of discretion, and insufficiency of the evidence. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

41. Questions of Law

On appeal from suspension of liquor license, applicability of certain statutes to given situation presented on stipulated or uncontradicted facts is question of law, determination of which devolves on appellate court in accordance with applicable principles of law. Cohon v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 218 Cal App 2d 332, 32 Cal Rptr 723, 1963 Cal App LEXIS 1783.

In proceeding to suspend liquor license, interpretation placed on written instrument by Department of Alcoholic Beverage Control, where intrinsic evidence has not been resorted to, though not binding on appeal, will be accepted by appellate court where such interpretation is reasonable, or where such interpretation is one of two or more reasonable constructions of instrument. Cohon v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 218 Cal App 2d 332, 32 Cal Rptr 723, 1963 Cal App LEXIS 1783.

In proceeding to suspend liquor license, where no extrinsic evidence was considered by Department of Alcoholic Beverage Control in aid of its interpretation of written instrument, construction is one of law, and appellate court is not bound by department's interpretation of instrument. Cohon v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist)

218 Cal App 2d 332, 32 Cal Rptr 723, 1963 Cal App LEXIS 1783.

On appeal from suspension of liquor license, where there is no factual issue of substantial conflict in evidence, question presented is one of law and conclusions of Department of Alcoholic Beverage Control are not necessarily binding on appellate court whose duty it is to make final determination in accordance with applicable principles of law. Cohon v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 218 Cal App 2d 332, 32 Cal Rptr 723, 1963 Cal App LEXIS 1783.

42. Questions of Fact

Decision of Department of Alcoholic Beverage Control with reference to charges of misconduct brought against licensee must be sustained, provided department committed no error of law, if evidence is sufficient to support its findings of fact, and conflicts must be resolved in favor of such findings. Molina v. Munro (1956, Cal App 2d Dist) 145 Cal App 2d 601, 302 P2d 818, 1956 Cal App LEXIS 1382.

Trial court is not permitted to exercise independent judgment on facts, but must give department's factual determinations same deference that appellate court must give to trial court's findings, in mandamus proceedings to review department's suspension of liquor license. Brice v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 153 Cal App 2d 315, 314 P2d 807, 1957 Cal App LEXIS 1494.

Neither Alcoholic Beverage Control Appeals Board nor courts may disregard or overturn finding of fact of Department of Alcoholic Beverage Control for reason that it is considered that contrary finding would have been equally or more reasonable. Gore v. Harris (1964, Cal App 1st Dist) 229 Cal App 2d 821, 40 Cal Rptr 666, 1964 Cal App LEXIS 1051.

In a proceeding for suspension of license, neither the Alcoholic Beverage Control Appeals Board nor the courts may disregard or overturn a finding of fact of the Department of Alcoholic Beverage Control for the reason that it is considered that a contrary finding would have been equally or more reasonable. Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968, Cal App 1st Dist) 261 Cal App 2d 181, 67 Cal Rptr 734, 1968 Cal App LEXIS 1730.

43. Review of Evidence

Ability of witness in hearing before department is to be measured by board and its hearing officer, rather than by trial court in subsequent mandamus proceeding to review board's decision. Brice v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 153 Cal App 2d 315, 314 P2d 807, 1957 Cal App LEXIS 1494.

In reviewing action of department of Alcoholic Beverage Control in suspending liquor license, courts are bound by substantial evidence rule and may not reweigh the evidence, pass on credibility of witnesses, or resolve conflicting testimony contrary to department's findings. Samaras v. Department of Alcoholic Beverage Control (1960, Cal App 1st Dist) 180 Cal App 2d 842, 4 Cal Rptr 857, 1960 Cal App LEXIS 2407; Mundell v. Department of Alcoholic Beverage Control (1962, Cal App 2d Dist) 211 Cal App 2d 231, 27 Cal Rptr 62, 1962 Cal App LEXIS 1500; Ballesteros v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 234 Cal App 2d 694, 44 Cal Rptr 633, 1965 Cal App LEXIS 1054.

A licensee's claim, that evidence at administrative proceedings for the suspension of its liquor licenses failed to show that beverages involved in the accusations against it were in fair and open competition, could not be upheld where it appeared that the department had submitted evidence that all brands involved were in fair and open competition with alcoholic beverages of the same general class produced by others and that the licensee, though clearly entitled to do so, failed to offer evidence in rebuttal. Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control (1966) 65 Cal 2d 349, 55 Cal Rptr 23, 420 P2d 735, 1966 Cal LEXIS 208.

44. Record on Appeal; Notice

In proceeding to suspend liquor license, for making retail sales at less than fair trade prices, evidence that alcoholic beverages covered in fair trade agreement filed with Department of Alcoholic Beverage Control are in fair and open competition can be supplied by department's taking official notice of fact that there are countless brands of distilled spirits sold in this state that vie with each other for public favor through various outlets. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

Claim of liquor licensees that revocation of their license was arbitrary because "legions" of similar violations have resulted in penalties less severe is not meritorious where proceedings against other licensees are not part of record before appellate court and there was thus nothing to show what charges were made or what evidence produced in other cases; in any event, there is no requirement that charges similar in nature must result in identical penalties. Coleman v. Harris (1963, Cal App 1st Dist) 218 Cal App 2d 401, 32 Cal Rptr 486, 1963 Cal App LEXIS 1791.

Failure to make part of administrative record bulletin of Director of Department of Alcoholic Beverage Control to area administrators containing schedule of penalties for misuse of beer and wine license does not preclude Supreme Court from taking judicial notice of it. Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P 2d 745, 1965 Cal LEXIS 278.

45. Weight of Evidence

Neither superior court nor district court of appeal had power to reweigh or exercise its independent judgment on evidence presented before board of equalization on liquor license violation charge. Dethlefsen v. State Board of Equalization (1956, Cal App 3d Dist) 145 Cal App 2d 561, 303 P2d 7, 1956 Cal App LEXIS 1376; Kirchhubel v. Munro (1957, Cal App 1st Dist) 149 Cal App 2d 243, 308 P2d 432, 1957 Cal App LEXIS 2024; Morell v. Department of Alcoholic Beverage Control (1962, Cal App 1st Dist) 204 Cal App 2d 504, 22 Cal Rptr 405, 1962 Cal App LEXIS 2270; Kirby v. Alcoholic Bev. Etc. App. Bd. (1970, Cal App 1st Dist) 7 Cal App 3d 126, 86 Cal Rptr 433, 1970 Cal App LEXIS 2140, superseded by statute as stated in People v. Tilbury (1991) 54 Cal 3d 56, 284 Cal Rptr 288, 813 P2d 1318, 1991 Cal LEXIS 3220.

Department of Alcoholic Beverage Control under the Constitution exercises judicial functions and superior court cannot reweigh evidence on which department's decision suspending liquor license is based. Marini v. Department of Alcoholic Beverage Control (1960, Cal App 1st Dist) 177 Cal App 2d 785, 2 Cal Rptr 714, 1960 Cal App LEXIS 2547.

In proceeding under CCP § 1094.5 to determine validity of order of Alcoholic Beverage Control Appeals Board affirming decision of Department of Alcoholic Beverage Control revoking license as to two counts and reversing order as to another count, trial court's function is not that of weighing evidence, but rather of determining whether Board's findings are supported by substantial evidence. Greenblatt v. Martin (1961, Cal App 1st Dist) 189 Cal App 2d 787, 11 Cal Rptr 669, 1961 Cal App LEXIS 2250.

In a proceeding to suspend a liquor license, neither the trier of fact nor the Alcoholic Beverage Control Appeals Board was required to weigh the evidence in accordance with the provisions of Evid C §§ 412, 413; under Gov C § 11513, technical

rules of evidence do not apply to administrative hearings. Big Boy Liquors, Ltd. v. Alcoholic Beverage Control Appeals Bd. (1969) 71 Cal 2d 1226, 81 Cal Rptr 258, 459 P2d 674, 1969 Cal LEXIS 316.

46. Substantial Evidence Rule

Scope of review of board's decision revoking liquor license was limited to determining whether decision was supported by substantial evidence. Maxwell Cafe, Inc. v. Department of Alcoholic Beverage Control (1956, Cal App 2d Dist) 142 Cal App 2d 73, 298 P2d 64, 1956 Cal App LEXIS 1949.

On appeal from superior court judgment in mandamus setting aside board of equalization's findings on hearing of liquor license violation charge, appellate court was required to test sufficiency of evidence to support board's decision by substantial evidence rule. Dethlefsen v. State Board of Equalization (1956, Cal App 3d Dist) 145 Cal App 2d 561, 303 P2d 7, 1956 Cal App LEXIS 1376.

Decision of Department of Alcoholic Beverage Control after administrative hearing without prejudicial error will not be upset when supported by substantial, though contradicted, evidence. Molina v. Munro (1956, Cal App 2d Dist) 145 Cal App 2d 601, 302 P2d 818, 1956 Cal App LEXIS 1382; Kirchhubel v. Munro (1957, Cal App 1st Dist) 149 Cal App 2d 243, 308 P2d 432, 1957 Cal App LEXIS 2024; Brice v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 153 Cal App 2d 315, 314 P2d 807, 1957 Cal App LEXIS 1494; Fromberg v. Department of Alcoholic Beverage Control (1959, Cal App 2d Dist) 169 Cal App 2d 230, 337 P2d 123, 1959 Cal App LEXIS 2058; Gore v. Harris (1964, Cal App 1st Dist) 229 Cal App 2d 821, 40 Cal Rptr 666, 1964 Cal App LEXIS 1051.

Trial court is simply called on to determine whether findings are supported by substantial evidence, in mandamus proceeding to review department's suspension of liquor license. Brice v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 153 Cal App 2d 315, 314 P2d 807, 1957 Cal App LEXIS 1494.

Department of Alcoholic Beverage Control is agency on which Constitution has conferred limited judicial powers, and its administrative determination respecting revocation of liquor license must be affirmed if there is substantial evidence to support it. Morell v. Department of Alcoholic Beverage Control (1962, Cal App 1st Dist) 204 Cal App 2d 504, 22 Cal Rptr 405, 1962 Cal App LEXIS 2270.

Department of Alcoholic Beverage Control being agency on which Constitution has conferred limited judicial powers, appellate court, in reviewing suspension of liquor license, is called on, where there are conflicts in evidence, conflicting interpretations thereof and conflicting inferences that may be drawn therefrom, to determine whether department's findings are supported by substantial evidence; in this respect, appellate court's function is same as that of court below. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278; Cohon v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 218 Cal App 2d 332, 32 Cal Rptr 723, 1963 Cal App LEXIS 1783; Dave's Market, Inc. v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 222 Cal App 2d 671, 35 Cal Rptr 348, 1963 Cal App LEXIS 1711.

The decision of the Department of Alcoholic Beverage Control in a disciplinary proceeding against a liquor licensee must be affirmed by the Alcoholic Beverage Control Appeals board as well as by the courts where there is substantial evidence to support it. Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 1st Dist) 252 Cal App 2d 520, 60 Cal Rptr 641, 1967 Cal App LEXIS 1530.

In a proceeding for suspension of license, the findings of the Department of Alcoholic Beverage Control must be sustained if they are supported by substantial evidence, and the superior court is without authority to exercise its independent judgment as to the effect and weight of that evidence. Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968, Cal App 1st Dist) 261 Cal App 2d 181, 67 Cal Rptr 734, 1968 Cal App LEXIS 1730.

The scope of review of evidence considered in revoking a liquor license, at each of the three levels of review, is the same and consists in the application of the substantial evidence rule to the original record of the Department of Alcoholic Beverage Control. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

47. Resolving Conflicts; Presumptions and Inferences

Function of both superior court and appellate court on review of decision of Department of Alcoholic Beverage Control revoking liquor license is merely to determine whether department's findings are supported by substantial evidence, and in making this determination, conflicts in evidence must be resolved in favor of administrative decision and all legitimate and reasonable inferences must be indulged in to support it. Morell v. Department of Alcoholic Beverage Control (1962, Cal App 1st Dist) 204 Cal App 2d 504, 22 Cal Rptr 405, 1962 Cal App LEXIS 2270; Gore v. Harris (1964, Cal App 1st Dist) 229 Cal App 2d 821, 40 Cal Rptr 666, 1964 Cal App LEXIS 1051; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968, Cal App 1st Dist) 261 Cal App 2d 181, 67 Cal Rptr 734, 1968 Cal App LEXIS 1730.

All legitimate and reasonable inferences must be indulged in support of department's decision. Mundell v. Department of Alcoholic Beverage Control (1962, Cal App 2d Dist) 211 Cal App 2d 231, 27 Cal Rptr 62, 1962 Cal App LEXIS 1500.

Department of Alcoholic Beverage Control is agency on which Constitution has conferred limited judicial powers (Const art XX, § 22) and its decisions are examined by courts only to see if department's findings are supported by substantial evidence in light of whole record; in making this determination, courts resolve all conflicts in evidence in favor of department's decision and indulge in all legitimate and reasonable inferences to support it. Jack P. Meyers, Inc. v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 238 Cal App 2d 869, 48 Cal Rptr 259, 1965 Cal App LEXIS 1208.

Where, in suspending liquor license, Department of Alcoholic Beverage Control found that applicant for license misstated material fact under oath by omitting disclosure of his criminal record, it could be presumed on review that misstatement found was intended to be synonymous with dishonest misrepresentation required by this section as ground for license suspension, and thus presumed that applicant's omission was purposeful, not inadvertent. Jack P. Meyers, Inc. v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 238 Cal App 2d 869, 48 Cal Rptr 259, 1965 Cal App LEXIS 1208.

48. Penalty Imposed by Department

Under Const Art XX § 22, Board of Equalization has power to suspend as well as revoke a license. Reynolds v. State Board of Equalization (1946) 29 Cal 2d 137, 173 P2d 551, 174 P2d 4, 1946 Cal LEXIS 284.

Revocation of liquor license could not be successfully assailed as deprivation of property without due process where State Board of Equalization acted within its jurisdiction, its proceedings complied with Administrative Procedure Act, there was no abuse of discretion, and its findings were supported by substantial evidence. Cooper v. State Board of

Equalization (1955, Cal App 1st Dist) 137 Cal App 2d 672, 290 P2d 914, 1955 Cal App LEXIS 1242.

Revocation of liquor license is not excessive penalty for violation of this section, § 25657 and Pen C § 303. Cooper v. State Board of Equalization (1955, Cal App 1st Dist) 137 Cal App 2d 672, 290 P2d 914, 1955 Cal App LEXIS 1242.

Determination that revocation rather than suspension, of liquor license for taking bets on licensed premises is too harsh is not within function of supreme court. Macfarlane v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 84, 330 P2d 769, 1958 Cal LEXIS 210.

When penalty of revocation of license is imposed on each of several counts of an accusation against liquor licensee, court need only find that one of several counts is sufficient. Presto v. Alcoholic Beverage Control Appeals Board (1960, Cal App 3d Dist) 179 Cal App 2d 262, 3 Cal Rptr 742, 1960 Cal App LEXIS 2228.

Where evidence amply supports order revoking liquor license, it is against public policy to reduce penalty to suspension of license on basis that licensee informed on agent of Department of Alcoholic Beverage Control who was taking bribes and assisted in securing agent's conviction. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

Since there is a public policy in favor of negotiations for compromise even in cases strictly criminal, a fortiori an alleged offer by the Department of Alcoholic Beverage Control to a licensee of a settlement more favorable than discipline that was ultimately imposed was not, in and of itself, a ground for the setting aside by the Alcoholic Beverage Control Appeals Board of the penalty ultimately adopted by the department. Kirby v. Alcoholic Beverage Etc. Appeals Bd. (1971, Cal App 2d Dist) 17 Cal App 3d 255, 94 Cal Rptr 514, 1971 Cal App LEXIS 1478.

49. Discretion

State Board of Equalization had broad discretion to determine what constituted good cause for suspension or revocation of liquor license, that is, power to determine when continuance of license would be contrary to public welfare and morals. Jacques, Inc. v. State Board of Equalization (1957, Cal App 3d Dist) 155 Cal App 2d 448, 318 P2d 6, 1957 Cal App LEXIS 1307.

The fact that reasonable minds might differ as to propriety of punishment to be imposed for liquor law violation by licensee merely serves to fortify conclusion that department acted within broad area of discretion conferred on it in revoking license on charge that licensed premises were used as disorderly house. Adler v. Department of Alcoholic Beverage Control (1959, Cal App 1st Dist) 174 Cal App 2d 256, 344 P2d 336, 1959 Cal App LEXIS 1693; Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

Propriety of revocation of liquor license by Department of Alcoholic Beverage Control is matter vested in discretion of that agency and its decision thereon will not be disturbed unless there has been clear abuse of such discretion; reviewing court is not free to substitute its own discretion in matter. Morell v. Department of Alcoholic Beverage Control (1962, Cal App 1st Dist) 204 Cal App 2d 504, 22 Cal Rptr 405, 1962 Cal App LEXIS 2270; Mundell v. Department of Alcoholic Beverage Control (1962, Cal App 2d Dist) 211 Cal App 2d 231, 27 Cal Rptr 62, 1962 Cal App LEXIS 1500; Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

That liquor licensees were first offenders who were guilty, at most, of passive tolerance of wrongful acts charged against them did not make order revoking their license for maintaining disorderly house in violation of § 25601 a harsh and discriminatory penalty which ought not to have been imposed against them, where there concededly was substantial evidence to sustain violation charged; fixing of penalty was vested in discretion of Department of Alcoholic Beverage Control and its determination will be disturbed only if there is clear abuse of discretion. Coleman v. Harris (1963, Cal App 1st Dist) 218 Cal App 2d 401, 32 Cal Rptr 486, 1963 Cal App LEXIS 1791.

Propriety of revoking off-sale retail liquor license for sales below retail prices is vested in Alcoholic Beverage Control Board, and its decision will not be disturbed unless there is clear abuse of discretion; where record on appeal showed repeated course of conduct in violation of law, it could not be held that revocation of license was arbitrary or that it constituted abuse of discretion. Dave's Market, Inc. v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 222 Cal App 2d 671, 35 Cal Rptr 348, 1963 Cal App LEXIS 1711.

Though discretion of Department of Alcoholic Beverage Control as to penalty for misuse of liquor license is broad, department does not have absolute and unlimited power, but is bound to exercise legal discretion, which is judicial discretion. Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

Revocation of on-sale beer and wine license constituted abuse of discretion where it appeared that licensee operated for almost five years without record of disciplinary action, and that improper acts, which occurred within eight-day period, included volunteer services of licensee's minor son not regularly employed as bartender, son's service of beer to minors, service of beer by waitress to intoxicated person, presence at bar of liqueur for licensee's personal use only, and service of wine from behind bar by unlicensed waitress who was not licensee's wife. Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

The action of the Department of Alcoholic Beverage Control in revoking an on-sale, general bona fide eating place license could not be approved on the basis that "topless" waitresses are per se contrary to public welfare or morals, and the trial court properly determined that the department's decision was necessarily arbitrary and an abuse of discretion within CCP § 1094.5, subd (b). Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

Under Cal. Const., art. XX, § 22 and B & P C § 24200, the Department of Alcoholic Beverage Control is expressly empowered to either suspend or revoke an issued license. The propriety of the penalty to be imposed rests solely within the discretion of the department whose determination may not be disturbed in the absence of a showing of palpable abuse. The fact that unconditional revocation may appear too harsh a penalty does not entitle a reviewing agency or court to substitute its own judgment therein; nor does the circumstance of forfeiture of the interest of an otherwise innocent colicensee sanction a different and less drastic penalty. Rice v. Alcoholic Beverage Control Appeals Board (1979, Cal App 1st Dist) 89 Cal App 3d 30, 152 Cal Rptr 285, 1979 Cal App LEXIS 1356.

50. Remand; New Trial

Where there is error in decision of department revoking liquor license, matter ordinarily should be remanded to department for further proceedings. Macfarlane v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 84, 330 P2d 769, 1958 Cal LEXIS 210.

Where licensee was charged by department in two counts in almost identical language with permitting female employee to solicit purchase of alcoholic beverage, penalty imposed under

first count being sixty-day suspension of license, penalty under second being revocation of license, because department considered, erroneously, that acts under second count were also violation of Pen C § 303a, appellate court could, in interests of justice, consider violation of Penal Code section, notwithstanding that licensee did not exhaust his administrative remedies in either department or alcoholic beverage control board of appeal and did not raise question in trial court, and could remand case to permit department to reassess penalty imposed under second count. Greenblatt v. Munro (1958, Cal App 1st Dist) 161 Cal App 2d 596, 326 P2d 929, 1958 Cal App LEXIS 1778.

Denial of motion for new trial was well within trial court's discretionary power, where moving party, whose liquor license had been revoked, based his motion on newly discovered evidence that, after submission of case for decision by superior court, licensee allegedly agreed to assist Department of Alcoholic Beverage Control in trapping and convicting an agent of department who was taking bribes in return for reduction of licensee's penalty to suspension of his license and that attorney for department repudiated settlement arrangements while trial was still pending, and where licensee waited until findings and judgment had been signed and until he made motion for new trial to disclose alleged agreement to court. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

In a proceeding to review a decision of the Alcoholic Beverage Control Appeals Board reversing an order of the Department of Alcoholic Beverage Control suspending a bar liquor license for one year on two counts of alleged crime conviction involving moral turpitude, the second of which was abandoned by the department as not warranting a license suspension, the abandonment of the second count did not entitle petitioner to have the cause remanded, where the suspensions as to each of the two convictions were separately imposed. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 5th Dist) 270 Cal App 2d 535, 75 Cal Rptr 823, 1969 Cal App LEXIS 1555.

§ 24200.1 Additional basis for suspension or revocation of license

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.

Added Stats 2006 ch 625 § 3 (SB 148), effective January 1, 2007.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 24200.5. Additional grounds

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 the sales, of controlled substances or dangerous drugs upon his or her licensed premises. Successive sales, or negotiations for sales, over any continuous period of time shall be deemed evidence of permission. As used in this section, "controlled substances" 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 2 (commencing with Section 4015) 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.

Added Stats 1st Ex Sess 1954 ch 23 § 1. Amended Stats 1955 ch 447 § 90; Stats 1957 ch 1248 § 1; Stats 1963 ch 399 § 1; Stats 1984 ch 1635 § 23; Stats 2007 ch 349 § 3 (SB 520), effective January 1, 2008.

Editor's Notes—"Dangerous drugs" is now defined in Section 4022 which appears in Division 2, Chapter 9, Article 2 (commencing with section 4015).

Amendments:

1955 Amendment: Substituted "department" for "board".

1957 Amendment: Added ", or negotiations for such sales" wherever it appears in subd (a).

1963 Amendment: Added (1) "or dangerous drugs"; and (2) the last sentence of subd (a).

1984 Amendment: Substituted "controlled substances" for "narcotics" wherever it appears in subd (a).

2007 Amendment: Amended subd (a) by (1) substituting "the" for "such" after "or negotiations for" in the first sentence; (2) adding "or her" after "drugs upon his" in the first sentence; (3) deleting "such" after "or negotiations for"; and "deemed evidence of"; and (4) substituting "Article 2 (commencing with Section 4015)" for "Article 8 (commencing with Section 4210)".

Cross References:

"Dangerous drug" defined: B & P C § 4022.

Uniform Controlled Substances Act: H & S C §§ 11000 et seq.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Annotations:

Sale or use of narcotics or dangerous drugs on licensed premises as ground for revocation or suspension of liquor license. 51 ALR3d 1130.

NOTES OF DECISIONS

1. Generally
2. Sale of Narcotics
3. Sale of Narcotics: Presumption of Knowing Permission
4. Sale of Narcotics: Evidence: Sufficiency
5. Solicitation of Drinks
6. Solicitation of Drinks: Evidence: Sufficiency
7. Notice and Hearing
8. Review

1. Generally

Section is not unconstitutional as applied to liquor licensees in whose premises numerous narcotics sales took place, but as to which sales they denied personal knowledge. Kirchhubel v. Munro (1957, Cal App 1st Dist) 149 Cal App 2d 243, 308 P2d 432, 1957 Cal App LEXIS 2024.

2. Sale of Narcotics

Liquor licensee is responsible for acts of his bartender in knowingly permitting illegal sales of narcotics on licensed premises, under principle that licensed employer may be disciplined to extent of revocation of his license of acts of his employees. Endo v. State Board of Equalization (1956, Cal App 1st Dist) 143 Cal App 2d 395, 300 P2d 366, 1956 Cal App LEXIS 1615.

Subd (a) of this section is not unconstitutional as being vague and uncertain. Endo v. State Board of Equalization (1956, Cal App 1st Dist) 143 Cal App 2d 395, 300 P2d 366, 1956 Cal App LEXIS 1615.

Liquor licensee must effectively police his premises against successive sales of narcotics thereon by his employees or his patrons. Kirchhubel v. Munro (1957, Cal App 1st Dist) 149 Cal App 2d 243, 308 P2d 432, 1957 Cal App LEXIS 2024.

A search of a bar, made because of an anonymous tip indicating that narcotics sales were occurring there, which search was conducted without a warrant and pursuant to provisions of the Business and Professions Code was constitutionally reasonable. It advanced a substantial government

interest in that B & P C § 24200.5, subd. (a) (revocation of liquor license for permitting illegal sales of drugs or narcotics), reflects a legislative judgment that the use of licensed premises for the purpose of drug sales poses a unique threat to the safety, welfare, health, peace, and morals of the people of the state that must be dealt with more vigorously than other illegal acts taking place on licensed premises. Further, the prerequisite of a warrant in such instances could easily frustrate inspection, and the statutes under which the search was authorized collectively provide a constitutionally adequate substitute for a warrant: B & P C §§ 25753, 25755, advise the licensee that inspections may take place during business hours and adequately limit the discretion of the inspectors as to time, place, and scope. People v. Paulson (1990, Cal App 1st Dist) 216 Cal App 3d 1480, 265 Cal Rptr 579, 1990 Cal App LEXIS 10.

Although the use of the word "permitted" in B & P C § 24200.5 (revocation of liquor license) indicates that the statute may have been primarily directed to the situation in which a licensee allows others to sell controlled substances or dangerous drugs on its premises, it would be anomalous not to construe it to include also the situation in which the licensee himself carries out the proscribed illegal sales. People v. Paulson (1990, Cal App 1st Dist) 216 Cal App 3d 1480, 265 Cal Rptr 579, 1990 Cal App LEXIS 10.

3. Sale of Narcotics: Presumption of Knowing Permission

Petitioner whose liquor license was revoked cannot attack subd (a) of this section on ground that there was no rational relation between illegal sales of narcotics on premises by his bartender and the knowing permission presumed therefrom under that part of section declaring that successive sales of over continuous period of time shall be deemed evidence of permission. Endo v. State Board of Equalization (1956, Cal App 1st Dist) 143 Cal App 2d 395, 300 P2d 366, 1956 Cal App LEXIS 1615.

Presumption raised by provision that successive sales of narcotics on licensee's premises shall be deemed evidence of his permission is based on natural and rational evidentiary relationship between facts proved and those presumed. Kirchhubel v. Munro (1957, Cal App 1st Dist) 149 Cal App 2d 243, 308 P2d 432, 1957 Cal App LEXIS 2024.

Liquor licensees' employment, on week ends, of off-duty policeman to check identification cards and maintain order did not make inapplicable as to them presumption that successive sales of narcotics on premises were with licensees' permission. Kirchhubel v. Munro (1957, Cal App 1st Dist) 149 Cal App 2d 243, 308 P2d 432, 1957 Cal App LEXIS 2024.

4. Sale of Narcotics: Evidence: Sufficiency

In proceeding to review decision of Board of Equalization revoking on-sale liquor license for violation of subd (a) of this section and § 24200 subd (2), Board's finding that licensee did "knowingly permit" such sale was sustained by testimony that his bartender who managed premises made several sales of marijuana on premises within 96 hours. Endo v. State Board of Equalization (1956, Cal App 1st Dist) 143 Cal App 2d 395, 300 P2d 366, 1956 Cal App LEXIS 1615.

Findings that successive sales of narcotics over continuous period occurred at premises licensed to sell intoxicating liquors and that licensees were, under this section, presumed to know of sales were sustained by evidence of numerous sales of narcotics over two-week period and that considerable portion of patrons were marijuana users. Kirchhubel v. Munro (1957, Cal App 1st Dist) 149 Cal App 2d 243, 308 P2d 432, 1957 Cal App LEXIS 2024.

Revocation of on-sale liquor license was proper under evidence that licensee, who also operated liquor store at another location, did not personally operate licensed premises, but visited them about twice a week during afternoon when they were closed, that he hired bartender to operate business, that on numerous occasions sales of narcotics were made on premises by bartender, his wife, the cook and various patrons, and that premises had reputation as being hangout for addicts and pushers of narcotics. Fromberg v. Department of Alcoholic Beverage Control (1959, Cal App 2d Dist) 169 Cal App 2d 230, 337 P2d 123, 1959 Cal App LEXIS 2058.

5. Solicitation of Drinks

Classification in Rule 143 of Board of Equalization forbidding female employees to solicit purchase or sale of alcoholic beverages on licensed premises is reasonable and does not arbitrarily discriminate against women, and rule has reasonable relation to legitimate ends for which board was created, is in harmony with purposes of Alcoholic Beverage Control Act, and is valid and constitutional as against charge that it is too broad and that Legislature had covered the field in enacting this section and § 25657. Mercurio v. Department of Alcoholic Beverage Control (1956, Cal App 1st Dist) 144 Cal App 2d 626, 301 P2d 474, 1956 Cal App LEXIS 1773.

To order a drink and take money from another's wallet to pay for it is act of solicitation or encouragement within meaning of subd (b). Karides v. Department of Alcoholic Beverage Control (1958, Cal App 1st Dist) 164 Cal App 2d 549, 331 P2d 145, 1958 Cal App LEXIS 1641.

Omission, in subd (b), of word "knowingly" which appears in preceding subdivision, indicates legislature did not intend to require actual knowledge by licensee in order to revoke liquor license for permitting solicitation or encouragement of others to buy drinks under any sort of profit-sharing agreement. Karides v. Department of Alcoholic Beverage Control (1958, Cal App 1st Dist) 164 Cal App 2d 549, 331 P2d 145, 1958 Cal App LEXIS 1641.

Under subd (b), liquor license may be revoked although drink solicited is orange juice, since statute refers to "drinks" and makes no requirement that they be "alcoholic." Greenblatt v. Martin (1960, Cal App 1st Dist) 177 Cal App 2d 738, 2 Cal Rptr 508, 1960 Cal App LEXIS 2540.

Evil that subd (b) is designed to meet is use of bar for purposeful and commercial exploitation of customer, and it is immaterial that drink purchased for employee is nonalcoholic, particularly when price charged is exorbitant for such drinks. Harris v. Alcoholic Beverage Control Appeals Board (1964, Cal App 1st Dist) 224 Cal App 2d 468, 36 Cal Rptr 697, 1964 Cal App LEXIS 1489, 99 ALR2d 1211.

Licensee who pays salary to female employee he permits to solicit purchase of drinks for herself has committed offense described in subd (b); moreover, statutory prohibition is not limited to solicitation of purchase of drinks for employees, but extends to direct or indirect encouragement thereof. Harris v. Alcoholic Beverage Control Appeals Board (1964, Cal App 1st Dist) 224 Cal App 2d 468, 36 Cal Rptr 697, 1964 Cal App LEXIS 1489, 99 ALR2d 1211.

6. Solicitation of Drinks: Evidence: Sufficiency

A finding that petitioner employed and permitted female entertainer to solicit and encourage patrons to buy her drinks under scheme or conspiracy by which she was to receive commission was supported as against objection that there was insufficient proof that champagne cocktails purchased for entertainer and consumed by her were alcoholic beverages, where she testified that she ordered champagne cocktails and was served what purported to be such, that she had champagne in her home and knew how it tasted, and that drinks served her in licensed premises were either champagne or cheap wine. Oxman v. Department of Alcoholic Beverage

Control (1957, Cal App 3d Dist) 153 Cal App 2d 740, 315 P2d 484, 1957 Cal App LEXIS 1551.

Violation of subd (b), by licensee was established by proof of conspiracy or profit-sharing plan or scheme between licensee's bartender and girl whereby girl would solicit or encourage purchase of drinks by others, despite fact that bartender was acting outside scope of licensee's orders to be very polite to customers and not to permit anyone to solicit drinks. Karides v. Department of Alcoholic Beverage Control (1958, Cal App 1st Dist) 164 Cal App 2d 549, 331 P2d 145, 1958 Cal App LEXIS 1641.

Revocation of liquor license under subd (b) was supported by evidence that bar girl asked agents of Department of Alcoholic Beverage Control to buy her drinks, which they consented to do, that she expressed satisfaction at finding a "sucker," that drinks at exorbitant prices were served to her, each containing a straw and a toothpick, and that she removed the toothpick from each drink and kept it. Greenblatt v. Martin (1960, Cal App 1st Dist) 177 Cal App 2d 738, 2 Cal Rptr 508, 1960 Cal App LEXIS 2540.

Suspension of liquor license for violation of subd (b) was supported by evidence that it was practice of salaried female entertainers, during off-stage hours, to mingle with customers at bar in licensed premises and accept drinks from them, that entertainers, even if invited for first drink, requested customers to purchase refills or themselves ordered refills for customer's account, and that each expensive nonalcoholic drink served to entertainer contained pick which entertainer retained. Harris v. Alcoholic Beverage Control Appeals Board (1964, Cal App 1st Dist) 224 Cal App 2d 468, 36 Cal Rptr 697, 1964 Cal App LEXIS 1489, 99 ALR2d 1211.

7. Notice and Hearing

In hearing on accusations charging violations of Cal Admin Code tit 4 § 143 [Cal Code Reg], prohibiting on-sale retail licensee from permitting female employee to solicit or accept, on licensed premises, alcoholic beverage purchased or sold there, and subd (b) of this section, hearing officer properly sustained objection to questions asked of state narcotics agent called by licensee, since issue was not whether licensee's bars constituted police problem and his reputation with law enforcement agencies was of doubtful relevancy; in any event, both issues were fully covered, favorably to licensee, by other law enforcement officers more directly concerned with problem than narcotics bureau. Harris v. Alcoholic Beverage Control Appeals Board (1964, Cal App 1st Dist) 224 Cal App 2d 468, 36 Cal Rptr 697, 1964 Cal App LEXIS 1489, 99 ALR2d 1211.

8. Review

On appeal from judgment suspending liquor license for violations of subd (b), appellate court need not determine whether defense or entrapment as to one count is available where evidence does not disclose that agent solicited solicitation, or that trapping employee was herself trapped and where, moreover, issue was not determined by Alcoholic Beverage Control Appeals Board, against whose decision judgment runs. Harris v. Alcoholic Beverage Control Appeals Board (1964, Cal App 1st Dist) 224 Cal App 2d 468, 36 Cal Rptr 697, 1964 Cal App LEXIS 1489, 99 ALR2d 1211.

§ 24200.6. Revocation or suspension of license

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.

Added Stats 2002 ch 1027 § 1 (AB 2334).

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 24201. Accusation

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 91.

Amendments:

1955 Amendment: Substituted "department" for "board" wherever it appears.

Historical Derivation:

(a) Stats 1935 ch 330 § 40, as amended Stats 1937 ch 758 § 67, Stats 1945 ch 1945 § 3, Stats 1947 ch 1566 § 10, Stats 1949 ch 574 § 2, ch 1383 § 1.

(b) Stats 1933 ch 178 § 23.

(c) Stats 1933 ch 51 § 10.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Forms:

See suggested form set out below, following Notes of Decisions.

Law Review Articles:

Practice Tips: Local Regulation of Alcohol Licensees. 29 LA Law 14 (October, 2006).

Attorney General's Opinions:

Effect of Assembly resolution on right of Board of Equalization with respect to revocation of beer and wine wholesaler's license. 20 Ops. Cal. Atty. Gen. 217.

NOTES OF DECISIONS

1. Generally
2. Construction with Other Law

3. Pleadings

1. Generally

Person whose complaint against on-sale liquor licensee had been rejected by State Board of Equalization had a sufficient interest to institute proceedings for writ of mandate to compel board to revoke license. Covert v. State Bd. of Equalization (1946) 29 Cal 2d 125, 173 P2d 545, 1946 Cal LEXIS 283.

In administrative proceedings for revocation of liquor licenses, the test of the adequacy of the pleadings is simply whether the licensee is given fair notice of the acts or omissions with which he is charged so that he may prepare his defense. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 2d Dist) 3 Cal App 3d 209, 83 Cal Rptr 89, 1969 Cal App LEXIS 1373.

2. Construction with Other Law

The Unlawful Liquor Sales Abatement Act of 1915 was neither expressly nor impliedly repealed, either by Const Art XX § 22 or by this act. Hammond v. McDonald (1939, Cal App) 32 Cal App 2d 187, 89 P2d 407, 1939 Cal App LEXIS 334.

3. Pleadings

Accusation properly stated charge against liquor licensee where it stated clearly and concisely that he permitted two named minors to consume beer on his premises, to which was then issued on-sale beer license. Munro v. Alcoholic Beverage Control Appeals Board (1957, Cal App 3d Dist) 154 Cal App 2d 326, 316 P2d 401, 1957 Cal App LEXIS 1629.

In a proceeding to revoke a liquor license, the accusation, in addition to alleging a criminal conviction, sufficiently alleged a separate cause for discipline on the ground that continuance of the license would be contrary to public welfare and morals (B & P C § 24200, subd. (a), Cal. Const., art. XX, § 22), where the allegation, based on the involvement of the licensee in illegal activity, preceded the allegation dealing with the criminal court proceedings relating to the same activity, where the substantive content of the paragraph, the punctuation, and the use of the conjunctive "and" to precede the allegation detailing the criminal court proceedings were all indicative of the several nature of the allegations, and where the licensee indicated no lack of preparation of his case before the hearing officer and the record showed no surprise on his part as to the charges or evidence produced against him. Kirby v. Alcoholic Beverage Control Appeals Board (1969, Cal App 2d Dist) 3 Cal App 3d 209, 83 Cal Rptr 89, 1969 Cal App LEXIS 1373.

SUGGESTED FORMS

Accusation Made to Department–To Suspend or Revoke License

[Caption]

To: ____ [Department of Alcoholic Beverage Control]

I, ____, hereby accuse ____ *[respondent],* who holds a duly issued ____ *[type of license],* No. ____, issued by the Department on ____*[date].*____, of the following ____ [acts *or* omissions] which constitute grounds for the ____ [suspension *or* revocation] of such license: ____.

____ *[If applicable, set forth any further statutory or administrative violations of licensee].*

____ *[If applicable, set forth licensee's prior record].*

Therefore, as a result of the facts set forth above, I request that a hearing be held pursuant to law on this accusation.

Dated ____.

[Signature]

§ 24202. Notice of arrests; Investigation

(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.

Added Stats 1957 ch 1275 § 1 as § 24206. Renumbered Stats 1959 ch 621 § 1. Amended Stats 1989 ch 1195 § 1; Stats 1990 ch 695 § 1 (AB 3448).

Former Sections:

Former § 24202, relating to written report of accusation by officer of department, was added Stats 1953 ch 152 § 1, amended Stats 1955 ch 447 § 92, and repealed Stats 1957 ch 1271 § 2. Historical derivation: (a) Stats 1935 ch 330 § 40, as amended Stats 1937 ch 758 § 67, Stats 1945 ch 1495 § 3, Stats 1947 ch 1566 § 10, Stats 1949 ch 574 § 2, ch 1383 § 1; (b) Stats 1933 ch 51 § 10.

Amendments:

1989 Amendment: (1) Designated the former section to be subd (a); and **(2)** added subd (b).

1990 Amendment: Added the second sentence in subd (a).

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:

Review of 1989 Legislation. 21 Pacific LJ 449.

§ 24203. Accusation by public officials

Accusations against any on–sale or off–sale licensee 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 accusa-

tion, 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 93; Stats 1957 ch 1250 § 1, ch 2358 § 3; Stats 1980 ch 457 § 1.

Amendments:

1955 Amendment: Substituted "department" for "board" wherever it appears.

1957 Amendment: (1) Added ", or chief of police," after "legislative body" and "or the sheriff," after "board of supervisors" in the first sentence; (2) added ", the chief of police, or the sheriff," in the last sentence; and (3) substituted "20 days" for "five (5) days" in the last sentence.

1980 Amendment: Substituted "60 days" for "20 days" in the last sentence.

Historical Derivation:

Stats 1935 ch 330 § 40.5, as added Stats 1937 ch 758 § 67 ½.

Cross References:

Place for hearings by department: B & P C § 24300.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:

Practice Tips: Local Regulation of Alcohol Licensees. 29 LA Law 14 (October, 2006).

Attorney General's Opinions:

Effect of Assembly resolution on right of Board of Equalization with respect to revocation; effect of dismissal of proceeding before Board on subsequent proceeding under doctrine of res judicata; discretionary power of Board with respect to revocation of license; and right to seek writ of mandate to compel revocation. 20 Ops. Cal. Atty. Gen. 217.

Annotations:

Hearsay in proceeding for suspension or revocation of liquor license. 142 ALR 1388.

Prohibition as means of controlling grant or revocation of license. 159 ALR 630.

Right to hearing before revocation or suspension of liquor license. 35 ALR2d 1067.

NOTES OF DECISIONS

1. Generally
2. Mandamus

1. Generally

A writ of certiorari was not a proper remedy to compel the State Board of Equalization to cancel an illegal license permitting the sale of intoxicating liquors. Board of Trustees v. State Board of Equalization (1934) 1 Cal 2d 784, 37 P2d 84, 1934 Cal LEXIS 447, 96 ALR 775.

Former provisions merely prescribed procedure by which jurisdiction of State Board of Equalization was to be exercised, and to regulate that procedure, and were not designed to, nor did they, in any way impair constitutional power of board or even remotely attempt to regulate or define what jurisdiction that board should possess. Irvine v. State Board of Equalization (1940, Cal App) 40 Cal App 2d 280, 104 P2d 847, 1940 Cal App LEXIS 103.

While there is no inherent right in citizen to sell intoxicants, and license is merely permit to do what would otherwise be unlawful, it is policy of law that person should not be deprived even of permit to engage in legitimate business without fair and impartial hearing and without opportunity to present competent evidence for consideration by licensing authority in opposition to proposed revocation of permit. Irvine v. State Board of Equalization (1940, Cal App) 40 Cal App 2d 280, 104 P2d 847, 1940 Cal App LEXIS 103.

A partnership license must be revoked as to both partners. It cannot be valid as to one and invalid as to the other. Coletti v. State Bd.of Equalization (1949, Cal App) 94 Cal App 2d 61, 209 P2d 984, 1949 Cal App LEXIS 1490.

2. Mandamus

The right to apply for a writ of mandamus to compel the board to revoke a liquor license is not precluded on the ground that the petitioner has an adequate remedy at law under the Unlawful Liquor Sales Abatement Act. Covert v. State Bd. of Equalization (1946) 29 Cal 2d 125, 173 P2d 545, 1946 Cal LEXIS 283.

An on-sale liquor licensee had the right to appear as a party in a mandate proceeding to compel the State Board of Equalization to revoke his license, where he was named as a party by the petitioner. Covert v. State Bd. of Equalization (1946) 29 Cal 2d 125, 173 P2d 545, 1946 Cal LEXIS 283.

A person whose complaint against an on-sale liquor licensee had been rejected by the State Board of Equalization had sufficient interest to institute proceedings for a writ of mandate to compel the board to revoke the license. Covert v. State Bd. of Equalization (1946) 29 Cal 2d 125, 173 P2d 545, 1946 Cal LEXIS 283.

A judgment denying a writ of mandamus to compel the State Board of Equalization to annul its order indefinitely suspending plaintiff's on-sale liquor license and to reinstate the license would be reversed and the matter remanded to the board, where it appeared that the order of indefinite suspension was based on a finding that the plaintiff violated former Alcoholic Beverage Control Act §§ 58 and 61(a) (now §§ 25601, 25658), but only a violation of the latter section was established, that the plaintiff's prior record was clear, that the minor looked to be of age, and that usual punishment imposed for the violation established varied from a reprimand to a 30-day suspension. Stoumen v. Reilly (1951) 37 Cal 2d 713, 234 P2d 969, 1951 Cal LEXIS 325, superseded by statute as stated in Harris v. Capital Growth Investors XIV (1991) 52 Cal 3d 1142, 278 Cal Rptr 614, 805 P2d 873, 1991 Cal LEXIS 900.

Four years is the period of limitations within which a petition may be filed for a writ of mandate to compel the licensing authority to set aside an order revoking liquor licenses and to restore such licenses. Taketa v. State Board of Equalization (1951, Cal App) 104 Cal App 2d 455, 231 P2d 873, 1951 Cal App LEXIS 1639.

§ 24204. Notice of conviction under Pure Foods Act; Investigation

The Chief of the Bureau of Food and Drug Inspection shall immediately notify the depart-

ment of the conviction of any licensee of any violation of the California Pure Foods Act in connection with alcoholic beverages. The department shalll promptly cause an investigation to be made as to whether grounds exist for suspension or revocation of the license of such licensee.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 94.

Amendments:

1955 Amendment: (1) Substituted "notify the department" for "notify the State Liquor Administrator" in the first sentence; (2) deleted "and shall send a copy of the notice to the chief liquor control officer of the district in which the premises of the licensee are situated" at the end of the first sentence; and (3) substituted the second sentence for the former second sentence which read: "The respective officers shall promptly cause an investigation to be made and shall report to the board their recommendations as to suspension or revocation of the license of such licensee."

Editor's Notes—The "California Pure Foods Act" referred to in this Section formerly appeared as §§ 26450 et seq. of the Health and Safety Code; such sections were repealed Stats 1970 ch 1573. For disposition of the repealed sections in the "Sherman Food, Drug, and Cosmetic Law", see table preceding § 26000 of the Health and Safety Code.

Historical Derivation:

Stats 1935 ch 330 § 48.5, as added Stats 1937 ch 758 § 70¼.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 24205. Automatic suspension

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.

Added Stats 1953 ch 152 § 1 as § 24523; Renumbered and amended Stats 1955 ch 1842 § 15. Amended Stats 1996 ch 409 § 1 (SB 1901).

Amendments:

1955 Amendment: Substituted "Part 14 of Division 2 of the Revenue and Taxation Code" for "this division".

1996 Amendment: In addition to making technical changes, amended the first paragraph by **(1)** substituting "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)" for "Part 14 of Division 2 of the Revenue and Taxation Code [commencing with § 32001]" in the first sentence; and **(2)** adding the last sentence.

Historical Derivation:

Stats 1935 ch 330 § 24.55, as added Stats 1941 ch 328 § 6a, amended Stats 1945 ch 1401 § 24.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

SUGGESTED FORMS

Notice by Department Suspending License

[Caption]

To: ____ [Licensee]

____ [Type of License]

You are hereby notified that as prescribed by the provisions of Section 24205 of the Business and Professions Code of the State of California, the aforementioned ____ [license *or* licenses] issued to you are suspended as of the date of this notice for the following reasons: ____ [specify statutory violations or as the case may be].

Pursuant to the provisions of the Alcoholic Beverage Control Act, it is unlawful for you to exercise any of the privileges allowed by the ____ [license *or* licenses] set forth above after the date of this notice. Such prohibition is effective until such time as the ____ [license *or* licenses] are reinstated.

Dated ____.

[Signature]

§ 24206. Limitation period; 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.

Added Stats 1957 ch 1962 § 1. Amended Stats 1963 ch 319 § 10, ch 1040 § 10.

Former Sections:

Sections 24750 to 24757, inclusive, were repealed Stats 1994 ch 1028 $ 6. Sections 24850 to 24881, inclusive, were repealed Stats 1980 ch 1368 $ 5. Section 25611 was repealed Stats 1975 ch 812 § 1. Section 25615 was repealed July 1, 1997, by its own terms. Section 25630 was repealed Stats 1969 ch 614 § 1. Section 25656 was repealed Stats 1971 ch 152 § 1.

Amendments:

1963 Amendment: (1) Deleted "25655," after "25633,"; (2) deleted "or" after "25663,"; and (3) added "or 25665".

Editor's Notes—There was another section of this number which was added Stats 1957 ch 1275 § 1 and renumbered § 24202 by Stats 1959 ch 621 § 1.

Cross References:

Alcoholic beverages fair trade contracts and price posting: B & P C §§ 24750–24757.

Wine fair trade contracts and price posting: B & P C §§ 24850–24881.

Beer price posting and market regulations: B & P C §§ 25000–25010.

Labels and containers: B & P C §§ 25170–25238.

Gifts and premiums on sales forbidden: B & P C § 25600.

Sales to habitual drunkards: B & P C § 25602.

Possession on premises of goods not covered by license: B & P C § 25607.

Sale of brand different from that requested: B & P C § 25609.

Tampering with stamps, numbers, or other information on package: B & P C § 25610.

Nature of signs: B & P C § 25612.

Sale of beer containing more than four percent alcohol: B & P C § 25615.

Sales during closing hours: B & P C § 25631.

Consumption of intoxicant on premises during closing hours: B & P C § 25632.

Hours for delivery: B & P C § 25633.

Sale to minor: B & P C § 25658.

Employment of minor: B & P C § 25663.

Advertisements appealing to minors: B & P C § 25664.

Permitting minor on premises: B & P C § 25665.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 24207. Limitation period; 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.

Added Stats 1957 ch 1962 § 2.

Cross References:

Necessity for license: B & P C § 23300.

Rights and privileges of licensees: B & P C § 23355.

Rights and privileges of club licensee: B & P C § 23431.

Rights and privileges of veterans' club licensee: B & P C § 23453.

Tied–house restrictions: B & P C §§ 25500–25512.

Keeping disorderly house in connection with licensed premises: B & P C § 25601.

Violations of regulations relating to books, records, and reports: B & P C § 25616.

Employment of person to procure purchase of alcoholic beverage: B & P C § 25657.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally

Disciplinary action against a liquor licensee, on the ground that he permitted prostitutes to solicit in his bar (B & P C § 25601) was not precluded by unreasonable delay, where the violations charged took place within the three-year statute of limitations (B & P C § 24207), and where the delay was not shown to have been deliberate or prejudicial, but, on the other hand, could have been to the licensee's benefit had he heeded the police warnings during that period. Munson v. Department of Alcoholic Beverage Control (1967, Cal App 2d Dist) 248 Cal App 2d 598, 56 Cal Rptr 805, 1967 Cal App LEXIS 1665.

When charges are filed within the statutory period, any delay is without legal significance. Munson v. Department of Alcoholic Beverage Control (1967, Cal App 2d Dist) 248 Cal App 2d 598, 56 Cal Rptr 805, 1967 Cal App LEXIS 1665.

§ 24208. Limitation period; Commencement

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.

Added Stats 1957 ch 1962 § 3.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 24209. Release on agreement to appear

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.

Added Stats 1959 ch 199 § 1.

Former Sections:

There was another section of this number which was added Stats 1959 ch 544 § 1 and renumbered § 24210 by Stats 1961 ch 73 § 7.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally

A booking search of a juvenile defendant legally arrested under B & P C § 25662, for possession of alcoholic beverages in a public place was proper, and marijuana found on his person was therefore admissible in evidence against him. While B & P C § 24209, provides that a person arrested for such an offense may be released without being taken before a magistrate on his signing an agreement to appear in court, there is no requirement that such a person must be released without bail or without booking; it is a matter within the discretion of the arresting officer or the booking officer. People v. Superior Court (1973, Cal App 1st Dist) 30 Cal App 3d 257, 106 Cal Rptr 211, 1973 Cal App LEXIS 1155.

§ 24210. [Section repealed 2013.]

Added Stats 1959 ch 544 § 1 as § 24209. Renumbered Stats 1961 ch 73 § 7. Amended Stats 1961 ch 1737 § 1; Stats 1963 ch 778 § 1; Stats 1994 ch 627 § 6 (AB 463), operative July 1, 1995. Repealed Stats 2012 ch 327 § 14 (SB 937), effective January 1, 2013. The repealed section related to delegation of power to hear and decide to an administrative law judge appointed by the director.

NOTES OF DECISIONS

1. Generally
2. Construction
3. Protests

1. Generally

In an action concerning erotic dancing in places that served liquor it was determined that B & P C § 24210, which allowed the Department of Alcoholic Beverage Control to appoint an administrative law judge (ALJ) could not be reconciled with Gov C § 11502's requirement that administrative hearings be held before an ALJ on the staff of the Office of Administrative Hearings. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2002, Cal App 4th Dist) 99 Cal App 4th 880, 121 Cal Rptr 2d 729, 2002 Cal App LEXIS 4325, review denied Department of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd. (2002) 2002 Cal. LEXIS 7251, cert den Vicary v. Cal. Dep't of Alcoholic Bev. Control (2003) 538 U.S. 924, 123 S. Ct. 1593, 155 L. Ed. 2d 315, 2003 U.S. LEXIS 2226.

2. Construction

Plain language of B & P C § 24210 does not limit its application to administrative hearings pertaining to the suspension and revocation of liquor licenses. Rather, the broad language of § 24210 establishes the intent to authorize the Department of Alcoholic Beverage Control to employ its own administrative law judges for the purpose of conducting all hearings under the Alcoholic Beverage Control Act. County of San Diego v. Alcoholic Beverage Control Appeals Bd. (2010, 4th Dist) 184 Cal App 4th 396, 109 Cal Rptr 3d 59, 2010 Cal App LEXIS 611.

3. Protests

Department of Alcoholic Beverage Control did not proceed in a manner contrary to law or in excess of its jurisdiction when it directed an administrative law judge (ALJ) to conduct an administrative hearing on a county's protests against a casino's liquor license application, even though the ALJ was not a judge with the Office of Administrative Hearings because B & P C § 24210 authorizes the department to employ its own ALJs for the purpose of conducting all hearings under the Alcoholic Beverage Control Act. County of San Diego v. Alcoholic Beverage Control Appeals Bd. (2010, 4th Dist) 184 Cal App 4th 396, 109 Cal Rptr 3d 59, 2010 Cal App LEXIS 611.

§ 24211. Reconsideration 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.

Added Stats 1963 ch 777 § 1.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Generally
2. Applicability

1. Generally

B & P C § 24211, limiting 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 Etc. Appeals Bd. (1971, Cal App 2d Dist) 17 Cal App 3d 255, 94 Cal Rptr 514, 1971 Cal App LEXIS 1478.

2. Applicability

B & P C § 24211, permitting the Department of Alcoholic Beverage Control on its own motion at any time before a penalty assessment is placed into effect and without further proceedings, to review the penalty for the purpose of reducing it, cannot properly be applied to give the department discretion to impose penalties not yet conceived (much less enacted) at the time violations of the retail price statute occurred or its administrative proceedings were concluded. Liquor Sellers, Inc. v. Department of Alcoholic Beverage Control (1970, Cal App 1st Dist) 3 Cal App 3d 536, 83 Cal Rptr 567, 1970 Cal App LEXIS 1147.

§ 24212. [Section repealed 1983.]

Added Stats 1983 ch 323 § 2.8, effective July 21, 1983. Repealed Stats 1983 ch 1034 § 6, effective September 22, 1983. The repealed section related to payment of hearing costs and suspension upon failure to pay.

CHAPTER 8

Hearings

Section
24300. Place for hearings; Delegation of power to hear and decide
24301. [Repealed]
24310. Payments for cost of transcript; Refund of excess fee
24400. Group purchase of distilled spirits and wine

Cross References:

Temporary retail permit: B & P C § 24045.5.

§ 24300. Place for hearings; Delegation of power to hear and decide

(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.

(c) For any hearing held pursuant to this division, 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1331 § 10; Stats 1955 ch 447 § 95; Stats 1971 ch 1344 § 4; Stats 1995 ch 743 § 4 (AB 683), effective October 10, 1995; Stats 2012 ch 327 § 15 (SB 937), effective January 1, 2013.

Amendments:

1955 Amendment: Substituted "department" for "board" wherever it appears.

1971 Amendment: (1) Designated the former section to be subd (a); (2) deleted "in Sacramento or" after "may be held"; (3) deleted "other" before "place in the state"; and (4) added subd (b).

1995 Amendment: In addition to making technical changes, amended subd (a) by **(1)** substituting "in" for "at the county seat of" after "shall be held"; **(2)** adding "(commencing with Section 11500)" after "Chapter 5"; **(3)** deleting "[commencing with § 11500]" after "Government Code" the last time it appears; and **(4)** adding the last sentence.

2012 Amendment: Added subd (c).

Historical Derivation:

(a) Stats 1935 ch 330 § 41, as amended Stats 1937 ch 758 § 68, Stats 1945 ch 1495 § 4.

(b) Stats 1933 ch 658 § 20, as amended Stats 1935 ch 320 § 2 and § 21.

Cross References:

Notices and protests: B & P C §§ 23985 et seq.

Protests against licensing: B & P C § 24013.

Issuance and renewal of licenses: B & P C §§ 24040 et seq.

Accusation against licensee by public officials: B & P C § 24203.

Administrative adjudication: Gov C §§ 11500–11528.

Decision in contested cases: Gov C § 11517.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.32[2], 18.200[1].

Attorney General's Opinions:

Effect of Assembly resolution on right of Board of Equalization with respect to revocation; effect of dismissal of proceeding before board on subsequent proceeding under doctrine of res judicata; discretionary power of board with respect to revocation of license; and right to seek writ of mandate to compel revocation. 20 Ops. Cal. Atty. Gen. 217.

Necessity of hearing prior to revocation of liquor license on violation of administrative rule. 25 Ops. Cal. Atty. Gen. 157.

Annotations:

Right to hearing before revocation or suspension of liquor license. 35 ALR2d 1067.

Right to attack validity of licensing law as affected by nature of proceeding in which attack is made. 65 ALR2d 660.

NOTES OF DECISIONS

1. Generally
2. Applicability
3. Abuse of Discretion
4. Evidence: Sufficient

1. Generally

In determining whether issuance of liquor license would be inimical to general welfare or public morals, Department of Alcoholic Beverage Control is entitled to consider applicant's integrity as shown by his previous business experience, kind of business to be conducted on licensed premises, probable manner in which it will be conducted, type of guests and probability that their consumption of alcoholic beverages will be moderate, nature of protest made to issuance of license, and any conflict that use of license might have with church in area and activities that it conducts. Koss v. Department of Alcoholic Beverage Control (1963, Cal App 4th Dist) 215 Cal App 2d 489, 30 Cal Rptr 219, 1963 Cal App LEXIS 2524.

2. Applicability

In determining whether facts established by substantial evidence constitute good cause for concluding that issuance of liquor license will not be contrary to public welfare or morals, Department of Alcoholic Beverage Control exercises discretion adherent to standard set by reason and reasonable people, bearing in mind that such standard may permit difference of opinion on same subject. Koss v. Department of Alcoholic Beverage Control (1963, Cal App 4th Dist) 215 Cal App 2d 489, 30 Cal Rptr 219, 1963 Cal App LEXIS 2524.

3. Abuse of Discretion

Where decision of Department of Alcoholic Beverage Control as to whether issuance of liquor license would be contrary to public welfare or morals is reached without reason under evidence, action of department is arbitrary, constitutes abuse of discretion, and may be set aside. Koss v. Department of Alcoholic Beverage Control (1963, Cal App 4th Dist) 215 Cal App 2d 489, 30 Cal Rptr 219, 1963 Cal App LEXIS 2524.

4. Evidence: Sufficient

There was substantial evidence to establish that Department of Alcoholic Beverage Control was entitled to conclude that issuance of liquor license would not be contrary to public welfare or morals where applicant had been in food and beverage business for number of years and owned four establishments licensed to sell alcoholic beverages, where he proposed to operate premises for which license was sought as family-type resort, where he intended that alcoholic beverages would be primarily served in dining room and did not intend to use bar located on premises, where he proposed to operate business in the way that would not adversely affect church or neighboring residences, and where, since his purchase of premises, there had been no disturbing noise emanating therefrom. Koss v. Department of Alcoholic Beverage Control (1963, Cal App 4th Dist) 215 Cal App 2d 489, 30 Cal Rptr 219, 1963 Cal App LEXIS 2524.

Finding by Department of Alcoholic Beverage Control that issuance of liquor license would not be contrary to public welfare or morals includes finding of all special facts necessary to sustain it, which are supported by substantial evidence, and constitutes adverse finding on any evidentiary fact in conflict therewith. Koss v. Department of Alcoholic Beverage Control (1963, Cal App 4th Dist) 215 Cal App 2d 489, 30 Cal Rptr 219, 1963 Cal App LEXIS 2524.

§ 24301. [Section repealed 1967.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 96. Repealed Stats 1967 ch 1525 § 5. The repealed section related to review of rulings, orders, and decisions of the department.

Historical Derivation:

(a) Stats 1935 ch 330 § 46, as amended Stats 1937 ch 758 § 69½, Stats 1945 ch 1401 § 35, ch 1495 § 5.

(b) Stats 1933 ch 658 § 23.

§ 24310. Payments for cost of transcript; Refund of excess fee

(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.

Added Stats 1984 ch 273 § 3, effective July 3, 1984.

Former Sections:

Former § 24310, similar to the present section, was added Stats 1983 ch 323 § 2.9, effective July 21, 1983, and repealed Stats 1984 ch 273 § 2, effective July 3, 1984.

Note—Stats 1984 ch 273 provides:

SEC. 4. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 24400. Group purchase of distilled spirits and wine

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.

Added Stats 1979 ch 455 § 1. Amended Stats 1980 ch 1194 § 7.

Former Sections:

Former § 24400, was repealed and reenacted as Rev & Tax C § 32004, Stats 1955 ch 1842 § 2.

Amendments:

1980 Amendment: Added "and wine" after "distilled spirits" in the introductory clause.

Note—Stats 1980 ch 1194 provides:

SEC. 10. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

CHAPTER 9

Excise Taxes

TABLE SHOWING DISPOSITION OF SECTIONS OF FORMER CHAPTER 9 (§§ 24400–24620) IN THE REVENUE AND TAXATION CODE

Article 1

B & P C	Rev & Tax C
24400	32004
24401	32003
24402	Renumbered B & P C § 23333
24403	32386
24404	32552
24405	32052
24406	32553
24407	32054

Article 2

B & P C	Rev & Tax C
24431	32151
24432	32152
24433	32171
24434	Repealed 1953 ch 1331
24435	32172
24436	32173
24437	32174
24438	32175
24439	32176
24440	32177
24441	32178

Article 3

B & P C	Rev & Tax C
24465	32201
24466	32211
24467	32212
24468	32213
24469	32202
24470	32203

Article 4

B & P C	Rev & Tax C
24495	32251
24496	32252
24497	32292
24498	32253
24499	32254

Article 5

B & P C	Rev & Tax C
24520	32101
24521	32103
24522	32104
24523	Renumbered B & P C § 24205
24524	32105
24525	32106

Article 6

Article 1

B & P C	Rev & Tax C
24545	32271
24546	32291
24547	32301
24548	32311
24549	32312
24550	32272

Article 7

B & P C	Rev & Tax C
24575	32351
24576	32381–32383
24577	32352
24578	32361
24579	32362
24580	32371
24581	32372
24582	32373
24583	32374
24584	32385

Article 8

B & P C	Rev & Tax C
24605	32401
24606	32402
24607	32403
24608	32404
24609	32405
24610	32406
24611	32411
24612	32412
24613	32413
24614	32414
24615	32415
24616	32416
24617	32417
24618	32418
24619	32431
24620	32440

[Heading of Chapter 9, consisting of §§ 24400–24620, was repealed Stats 1979 ch 373 § 432. Former Chapter 9, also entitled "Excise Taxes,"consisting of §§ 24400–24620, was added Stats 1953 ch 152 § 1, and repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018).]

Section
24401–24522. [Repealed]
24523. [Repealed]
24524–24620. [Repealed]

§ 24401. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32003.

§ 24402. [Section renumbered 1955.]

Added Stats 1953 ch 152 § 1. Renumbered B & P C § 23333 by Stats 1955 ch 1842 § 13. See B & P C § 23334.

§ 24403. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32386.

§ 24404. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32552.

§ 24405. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32052.

§ 24406. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32553.

§ 24407. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 954 § 13. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32054.

§ 24431. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 300 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32151.

§ 24432. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1331 § 11. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32152.

§ 24433. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1331 § 12. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32171.

§ 24434. [Section repealed 1953.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1953 ch 1331 § 13. The repealed section related to exemptions from beer and wine tax.

§ 24435. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32172.

§ 24436. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 1600 § 6. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32173.

§ 24437. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32174.

§ 24438. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32175.

§ 24439. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1331 § 14. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32176.

§ 24440. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 285 § 2. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32177.

§ 24441. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32178.

§ 24495. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32251.

§ 24496. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32252.

§ 24497. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32292.

§ 24498. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1331 § 16. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32253.

§ 24499. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32254.

§ 24520. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32101.

§ 24521. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32103.

§ 24522. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32104.

§ 24523. [Section renumbered 1955.]

Added Stats 1953 ch 152 § 1. Amended and renumbered B & P C § 24205 by Stats 1955 ch 1842 § 15.

§ 24524. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32105.

§ 24525. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32106.

§ 24545. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32271.

§ 24546. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32291.

§ 24547. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32301.

§ 24548. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32311.

§ 24549. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32312.

§ 24550. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32272.

§ 24575. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32351.

§ 24576. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C §§ 32381–32383.

§ 24577. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32352.

§ 24578. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32361.

§ 24579. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32362.

§ 24580. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32371.

§ 24581. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32372.

§ 24582. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32373.

§ 24583. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32374.

§ 24584. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32385.

§ 24605. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32401.

§ 24606. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32402.

§ 24607. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32403.

§ 24608. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32404.

§ 24609. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32405.

§ 24610. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32406.

§ 24611. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32411.

§ 24612. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32412.

§ 24613. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32413.

§ 24614. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32414.

§ 24615. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32415.

§ 24616. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32416.

§ 24617. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32417.

§ 24618. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32418.

§ 24619. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32431.

§ 24620. [Section repealed 1955.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1955 ch 1842 § 2 (Rev & Tax C § 50018). See Rev & Tax C § 32440.

CHAPTER 10

Alcoholic Beverages Fair Trade Contracts and Price Posting

[Chapter 10, consisting of §§ 24749–24757.5, added Stats 1953 ch 152 § 1. Repealed Stats 1994 ch 1028 § 6.]

Section
24749–24757.5. [Repealed]

§ 24749. [Section repealed 1994.]

Added Stats 1961 ch 635 § 1. Repealed Stats 1994 ch 1028 § 6 (AB 988). The repealed section related to declaration of policy.

§ 24750. [Section repealed 1994.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1994 ch 1028 § 6 (AB 988). The repealed section related to beverage contracts and price–fixing agreements authorized.

Historical Derivation:
Stats 1935 ch 330 § 55.5, as added Stats 1937 ch 758 § 88.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

NOTES OF DECISIONS

1. In General
2. Purpose
3. Constitutionality
4. Sufficiency of Agreement
5. Fair and Open Competition
6. Filing With Department

1. In General

If there was irreconcilable conflict between Cartwright Anti-trust Law and provisions of the former Alcoholic Beverage Control Act legalizing fair trade contracts in liquor industry, latter legislation was to control. Nelson v. Reilly (1948, Cal App) 88 Cal App 2d 303, 198 P2d 694, 1948 Cal App LEXIS 1466.

A manufacturer of liquor did not violate either Federal or State Fair Trade Act by its contracts with plaintiff distributor specifying that retail prices to be charged by plaintiff to retailers should be in accordance with Fair Trade Act of California, since such control by manufacturer over resale prices was in accordance with this section which prevails in event it conflicts with any other statute. A. B. C. Distributing Co. v. Distillers Distributing Corp. (1957, Cal App 2d Dist) 154 Cal App 2d 175, 316 P2d 71, 1957 Cal App LEXIS 1607.

Under this section and under rule 99 subds (a), (b), (f) of Department of Alcoholic Beverage Control in effect before rule's revision October 15, 1961, liquor licensees are prohibited from selling distilled spirits at retail except at prices fixed in fair trade contracts. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

Though mandatory fair trading means that retailers of alcoholic beverages cannot obtain merchandise free from price restrictions, this is due to the determination of the Legislature under the Alcoholic Beverage Control Act, not the action of the producers and wholesalers. Wilke & Holzheiser, Inc. v. Depart-

ment of Alcoholic Beverage Control (1966) 65 Cal 2d 349, 55 Cal Rptr 23, 420 P2d 735, 1966 Cal LEXIS 208.

To the extent that the retail price maintenance provisions of the Alcoholic Beverage Control Act enable a producer to control the bargaining process between those who sell and those who buy his own product, the Legislature could reasonably assume that competition among producers, coupled with the bargaining power of those low-overhead retailers who desire lower retail prices, would provide a safeguard against excessive prices. Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control (1966) 65 Cal 2d 349, 55 Cal Rptr 23, 420 P2d 735, 1966 Cal LEXIS 208; Reimel v. Alcoholic Beverage Control Appeals Board (1967, Cal App 1st Dist) 256 Cal App 2d 158, 64 Cal Rptr 26, 1967 Cal App LEXIS 1839, rehearing denied (1st Dist) 256 Cal App 2d 176, 65 Cal Rptr 251, appeal dismissed Cohon v. Kirby (1968) 393 US 7, 89 S Ct 44, 21 L Ed 2d 9, 1968 US LEXIS 570, dismissed Makah Indian Tribe v. Tax Com. of Washington (1968) 393 U.S. 8, 89 S. Ct. 44, 21 L. Ed. 2d 8, 1968 U.S. LEXIS 571.

2. Purpose

It was not purpose of fair trade provisions of Alcoholic Beverage Control Act to reduce intemperance by establishing high prices generally but only by preventing increase of consumption of alcoholic beverages resulting from retail price cutting and bargain sales, and Legislature may take reasonable measures to eliminate some of the causes of evil without attacking all of them. Allied Properties v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 141, 346 P2d 737, 1959 Cal LEXIS 329.

Legislative purpose of preventing price cutting and price wars among retailers is effectively attained under fair trade provisions of Alcoholic Beverage Control Act by having each producer or wholesaler establish retail price of his own brand, and Legislature may reasonably proceed on theory that public will be adequately protected against excessive prices by ordinary play of competition between manufacturers. Allied Properties v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 141, 346 P2d 737, 1959 Cal LEXIS 329.

Purpose of fair trade agreements under Alcoholic Beverage Control Act is to establish fair trade prices; considered as such, and not as agreements of sale, they are supported by valid and sufficient consideration; mutual benefits are derived therefrom by contracting parties in that manufacturer or producer obtains protection for his trademarks and brands, whereas retailer is made secure from unfair competition and, more importantly, retailer is benefited by entering into agreement, since without fair trade agreement, sicne without fair trade agreement, distilled spirits could not be sold at retail. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

3. Constitutionality

The fair trade provisions of Alcoholic Beverage Control Act do not unlawfully delegate legislative power insofar as they provide that each producer and wholesaler must set the price at which retailers must sell his products, since determination to be made by producers and wholesalers are not legislative in character but merely facts in contemplation of which legislature acted and on existence of which provisions of enactment were to be applicable. Allied Properties v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 141, 346 P2d 737, 1959 Cal LEXIS 329.

The fact that Alcoholic Beverage Control Act requires, rather than permits, producers and wholesalers to set retail prices does not render the function of a producer or wholesaler legislative in character but, to the contrary, decreases his discretion since he is not free to determine whether fair trading should occur. Allied Properties v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 141, 346 P2d 737, 1959 Cal LEXIS 329.

Fact that fair trade provisions of Alcoholic Beverage Control Act provide for administrative and criminal sanctions does not involve any delegation of power, sanctions being prescribed by Legislature, not by producers or wholesalers. Allied Properties v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 141, 346 P2d 737, 1959 Cal LEXIS 329.

Classification made by Legislature in regulating retail prices in fair trade provisions of Alcoholic Beverage Control Act without regulating wholesale prices is reasonable since Legislature could probably conclude that competition among the relatively few producers and wholesalers would not result in disorderly marketing conditions but that price stabilization with respect to far larger number of retailers, who sell directly to consumers, was necessary to prevent selling practices tending to increase sales and consumption of alcoholic beverages. Allied Properties v. Department of Alcoholic Beverage Control (1959) 53 Cal 2d 141, 346 P2d 737, 1959 Cal LEXIS 329.

Summary judgment in favor of corporate defendant in action seeking to have fair trade provision of Alcoholic Beverage Control Act (§§ 24750–24757 [repealed]) declared unconstitutional was properly entered where there were pending before Department of Alcoholic Beverage Control administrative actions involving constitutionality of such statutes in which each of plaintiffs was engaged, despite fact that no administrative proceedings were pending against corporate defendants, so that plaintiffs had not exhausted their administrative remedies before bringing suit. Walker v. Munro (1960, Cal App 1st Dist) 178 Cal App 2d 67, 2 Cal Rptr 737, 1960 Cal App LEXIS 2561.

The lifting under the Alcoholic Beverage Control Act of the private act of specifying a resale price beyond the contracting producer and retailer to a publicly enforced observance by all retailers within the state does not convert the act into a "price-fixing" statute, since the law still empowers no one to regulate the retail price of any commodity. Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control (1966) 65 Cal 2d 349, 55 Cal Rptr 23, 420 P2d 735, 1966 Cal LEXIS 208.

The mandatory retail price maintenance provisions of the Alcoholic Beverage Control Act (B & P) Code, §§ 24750, 24752 [repealed], are constitutional. Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control (1966) 65 Cal 2d 349, 55 Cal Rptr 23, 420 P2d 735, 1966 Cal LEXIS 208; Samson Market Co. v. Alcoholic Beverage Control Appeals Bd. (1969) 71 Cal 2d 1215, 81 Cal Rptr 251, 459 P2d 667, 1969 Cal LEXIS 315.

4. Sufficiency of Agreement

In suspension proceeding against off-sale licensee for making retail sales at less than fair trade price, agreements offered in evidence satisfied the requirements of agreements executed pursuant to the fair trade provisions of the Alcoholic Beverage Control Act where agreements were entitled fair trade agreements and related to sale and resale of distilled spirits bearing on their label or container the trademark or name of the producer or owner, the products covered by the agreements were declared to be those in fair and open competition with products of same class produced by others, minimum retail resale prices for such products were stipulated by seller or owner, agreements provided that buyer would not resell except at stipulated price, they bore indorsements of filing with Department of Alcoholic Beverage Control or its predecessor agency, and appended to them were sworn official

certifications that they were copies of fair trade contracts required by law to be filed with department. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

5. Fair and Open Competition

Fair trade contracts for sale of alcoholic beverages cannot conform to requirements of this section authorizing fair trade contracts fixing resale price of alcoholic beverages bearing trademark or name of producer or owner and in fair and open competition with others of same class, and cannot be filed as required by Department of Alcoholic Beverage Control rule 99(b) in effect before rule's division October 15, 1961, unless alcoholic beverages covered by such contracts are in fair and open competition; therefore, finding that alcoholic beverages were in fair and open competition can be reasonably implied from finding that fair trade contracts were duly filed with department. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

Requirement in Alcoholic Beverage Control Act that alcoholic beverages subject to fair trade price agreements filed with department be in fair and open competition relates only to manner of competing, not to results. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

In proceeding to suspend on-sale licensee's license, for retail sale of alcoholic beverages at less than fair trade price, evidence that alcoholic beverages covered by fair trace contracts were in fair and open competition with those of same general class produced by others were substantial where it was shown that contracts were filed with Department of Alcoholic Beverage Control; under CCP § 1963 subd 15, it is presumed that official duty has been regularly performed, and therefore, it could be presumed that department had satisfied itself that contracts were in fact entered into pursuant to this section and that products to which they related were in fact in fair and open competition; under CCP § 1963 subd 19, it is presumed that private transactions have been fair and regular, and, therefore, it could be presumed that agreements were not designed to impose unlawful restraints on open competition in market; and under CCP § 1963 subd 33, it is presumed that law has been obeyed, and therefore, it could be presumed that agreements were in fair and open competition, otherwise they would have offended Cartwright Anti-Trust Law. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

6. Filing With Department

Though fact that Department of Alcoholic Beverage Control or its predecessor agency has been consistent for over 11 years in accepting for filing fair trade agreements between producers and retailers, even though such parties were not and under applicable regulations could not be in lawful seller-buyer relationship, is not necessarily controlling, this fact is entitled to great weight and courts generally will not depart from such construction, unless it is clearly erroneous or unauthorized. De Martini v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 215 Cal App 2d 787, 30 Cal Rptr 668, 1963 Cal App LEXIS 2558, overruled Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745, 1965 Cal LEXIS 278.

In proceeding to revoke off-sale retail liquor license for sales below fair trade prices, copies of fair trade contracts, certified by custodian of records for Department of Alcoholic Beverage Control pursuant to CCP §§ 1920 [repealed], 1923 [repealed], fixing for liquor brands involved minimum retail prices higher than those allegedly charged by licensee, being valid and effective contracts under this section and § 24755 [repealed], could properly be relied on to establish minimum retail prices. Dave's Market, Inc. v. Department of Alcoholic Beverage Control (1963, Cal App 1st Dist) 222 Cal App 2d 671, 35 Cal Rptr 348, 1963 Cal App LEXIS 1711.

§ 24750.5. [Section repealed 1994.]

Added Stats 1961 ch 635 § 2. Repealed Stats 1994 ch 80 § 2 (AB 2346), effective May 20, 1994. The repealed section related to fair trade contracts for wine.

§ 24751. [Section repealed 1994.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1994 ch 1028 § 6 (AB 988). The repealed section related to resale without reference to agreement.

Historical Derivation:

Stats 1935 ch 330 § 55.5, as added Stats 1937 ch 758 § 88.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 24752. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1961 ch 635 § 2.5. Repealed Stats 1980 ch 1368 § 2. The repealed section related to right of action for breach of fair trade agreement.

Historical Derivation:

Stats 1935 ch 330 § 55.5, as added Stats 1937 ch 758 § 88.

§ 24753. [Section repealed 1994.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1994 ch 1028 § 6 (AB 988). The repealed section related to chapter not applicable.

Historical Derivation:

Stats 1935 ch 330 § 55.5, as added Stats 1937 ch 758 § 88.

§ 24754. [Section repealed 1994.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1994 ch 1028 § 6 (AB 988). The repealed section related to application of chapter.

Historical Derivation:

Stats 1935 ch 330 § 55.6, as added Stats 1947 ch 657 § 1, amended Stats 1949 ch 574 § 3.

§ 24755. [Section repealed 1980.]

Added Stats 1961 ch 635 § 4. Amended Stats 1963 ch 1022 § 1; Stats 1967 ch 1450 § 1. Repealed Stats 1980 ch 1368 § 3. The repealed section related to minimum retail price for sale of distilled spirits.

Editor's Notes—This section was declared unconstitutional by the California Supreme Court in the case of Rice v. Alcoholic

Beverage Control Appeals Board (1978) 21 C3d 431, 146 Cal Rptr 585, 579 P2d 476, decided May 30, 1978.

Former Sections:
Former § 24755, relating to minimum retail price for sale of distilled spirits, was added Stats 1953 ch 152 § 1 and repealed Stats 1961 ch 635 § 3.

Historical Derivation:
(a) Former B & P C § 24755, as added Stats 1953 ch 152 § 1.
(b) Stats 1935 ch 330 § 55.6, as added Stats 1947 ch 657 § 1, amended Stats 1949 ch 574 § 3.

§ 24755.1. [Section repealed 1980.]

Added Stats 1965 ch 742 § 1. Amended Stats 1972 ch 1008 § 1. Repealed Stats 1980 ch 1368 § 4. The repealed section related to penalty for violation of minimum price requirement.

§ 24756. [Section repealed 1994.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 97; Stats 1970 ch 237 § 1. Repealed Stats 1994 ch 1028 § 6 (AB 988). The repealed section related to price lists and filing.

Historical Derivation:
Stats 1935 ch 330 § 55.6, as added Stats 1947 ch 657 § 1, amended Stats 1949 ch 574 § 3.

Attorney General's Opinions:
Authority of licensed wholesaler to post with department price list showing prices at which distilled spirits are sold to retailers, f.o.b. wholesaler's warehouse as well as delivered price. 48 Ops. Cal. Atty. Gen. 138.

§ 24757. [Section repealed 1994.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 98; Stats 1961 ch 635 § 5. Repealed Stats 1994 ch 1028 § 6 (AB 988). The repealed section related to adoption of rules and enforcement.

Former Sections:
There was another section of this number which was added Stats 1984 ch 131 § 1, effective May 21, 1984, and amended and renumbered B & P C § 24757.5 by Stats 1986 ch 248 § 13.

Historical Derivation:
Stats 1935 ch 330 § 55.6, as added Stats 1947 ch 657 § 1, amended Stats 1949 ch 574 § 3.

§ 24757.5. [Section repealed 1994.]

Added Stats 1984 ch 131 § 1, effective May 21, 1984, as B & P C § 24757. Amended and renumbered by Stats 1986 ch 248 § 13. Repealed Stats 1994 ch 1028 § 6 (AB 988). The repealed section related to actions by trade associations to enjoin violations of act and intervention.

CHAPTER 11

Wine Fair Trade Contracts and Price Posting

[Chapter 11, consisting of §§ 24850–24881, was repealed Stats 1980 ch 1368 § 5.]

Section
24850–24881. [Repealed]

Cross References:
Authority of the Department of Alcoholic Beverage Control to investigate violations of this Chapter: B & P C § 23053.5.
Limitations period governing violations of this chapter: B & P C §§ 24206, 24208.
Fair trade contracts for wine: B & P C § 24750.5.
Seizure of wine possessed in violation of this chapter: B & P C § 25350.

§ 24850. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1980 ch 1368 § 5. The repealed section related to meaning of words in the chapter.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24851. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1980 ch 1368 § 5. The repealed section related to the definition of "bottled wine".

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24852. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1980 ch 1368 § 5. The repealed section related to the definition of "bulk wine".

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24853. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1980 ch 1368 § 5. The repealed section related to the definition of "class" and "type" of wine.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24854. [Section repealed 1957.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1957 ch 183 § 1, effective November 1, 1957. The repealed section defined "competitive price" and "affiliated company or corporation".

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24855. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1980 ch 1368 § 5. The repealed section related to the definition of "consumer".

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24856. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1980 ch 1368 § 5. The repealed section related to the definition of "effective".

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24857. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 99. Repealed Stats 1980 ch 1368 § 5. The repealed section related to the definition of "file" or "post".

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24858. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1980 ch 1368 § 5. The repealed section related to the definition of "item of wine".

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24859. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1980 ch 1368 § 5. The repealed section related to the definition of "licensee".

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24860. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1980 ch 1368 § 5. The repealed section related to the definition of "person".

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24861. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1980 ch 1368 § 5. The repealed section related to the definition of "sell".

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24862. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 183 § 2; Stats 1968 ch 205 § 1. Repealed Stats 1980 ch 1368 § 5. The repealed section related to compliance with price schedule.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24863. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 183 § 3. Repealed Stats 1980 ch 1368 § 5. The repealed section related to exceptions.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24864. [Section repealed 1980.]

Added Stats 1953 ch 142 § 1. Amended Stats 1955 ch 1129 § 1; Stats 1968 ch 205 § 1.5; Stats 1970 ch 1518 § 3. Repealed Stats 1980 ch 1368 § 5. The repealed section related to trading areas.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24865. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1968 ch 205 § 2. Repealed Stats 1980 ch 1368 § 5. The repealed section related to specified minimum prices.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24866. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1980 ch 1368 § 5. The repealed section related to duty to post price schedules.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24867. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1975 ch 351 § 1. Repealed Stats 1980 ch 1368 § 5. The repealed section related to designation of licensee.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24868. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1980 ch 1368 § 5. The repealed section related to off-sale retailers posting of price schedule.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24869. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 100. Repealed Stats 1980 ch 1368 § 5. The repealed section related to contents of price schedule.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24870. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1963 ch 1040 § 11. Repealed Stats 1980 ch 1368 § 5. The repealed section related to price inclusions.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24871. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 1129 § 2; Stats 1957 ch 183 § 4; Stats 1968 ch 205 § 3; Stats 1975 ch 656 § 1. Repealed Stats 1980 ch 1368 § 5. The repealed section related to quantity discounts.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24871.5. [Section repealed 1980.]

Added Stats 1965 ch 883 § 1. Amended Stats 1968 ch 205 § 4. Repealed Stats 1980 ch 1368 § 5. The repealed section related to quality discount.

§ 24872. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 183 § 5; Stats 1968 ch 205 § 5. Repealed Stats 1980 ch 1368 § 5. The repealed section related to filing of price schedules.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24873. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 101; Stats 1957 ch 183 § 6; Stats 1968 ch 205 § 6. Repealed Stats 1980 ch 1368 § 5. The repealed section related to compliance with federal pricing laws.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24874. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 102. Repealed Stats 1980 ch 1368 § 5. The repealed section related to public inspection.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24875. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 103; Stats 1957 ch 183 § 7. Repealed Stats 1980 ch 1368 § 5. The repealed section related to publication of price schedules.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24876. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 104. Repealed Stats 1980 ch 1368 § 5. The repealed section related to close-out sales.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24877. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1980 ch 1368 § 5. The repealed section related to Unfair Practices Act.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24878. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 105; Stats 1957 ch 1768 § 1; Stats 1968 ch 205 § 7. Repealed Stats 1980 ch 1368 § 5. The repealed section related to prohibition of rebates.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24879. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 149 § 1; Stats 1968 ch 241 § 1; Stats 1969 ch 381 § 1; Stats 1975 ch 656 § 2. Repealed Stats 1980 ch 1368 § 5. The repealed section related to returns to seller.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24880. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 106; Stats 1970 ch 1008 § 1. Repealed Stats 1980 ch 1368 § 5. The repealed section related to suspension and revocation of licenses.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

§ 24881. [Section repealed 1980.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 107. Repealed Stats 1980 ch 1368 § 5. The repealed section related to adoption of rules.

Historical Derivation:
Stats 1935 ch 330 § 55.65, as added Stats 1949 ch 574 § 1, amended Stats 1951 ch 895 § 1.

CHAPTER 12

Beer Price Posting and Marketing Regulations

Section

25000. Beer price schedules; Filing
25000.2. Definitions; Compliance by successor beer manufacturer who cancels existing beer wholesaler's rights to distribute product; Arbitration
25000.5. Territorial agreements
25000.6. Provision in distribution contract restricting venue to forum outside state
25000.7. Termination of distribution agreement for failure to meet goal or quota
25000.9. Manufacturer's withholding of consent or approval of transfer of beer wholesaler's ownership interest

Section
25001. Beer price schedules; Change or modification
25002. Beer price schedules; Effective date
25003. Beer price schedules; Public inspection
25004. Departure from schedule by licensee
25005. Abetting violations by licensee
25006. Adoption of rules for marketing of beer
25007. Right of choice of customers
25008. Actions by trade association
25009. Evidence
25010. Suspension or revocation of license for violation of chapter

Cross References:

Limitations period governing violations of this chapter: B & P C §§ 24206, 24208.

Seizure of beer possessed in violation of this chapter: B & P C § 25350.

§ 25000. Beer price schedules; Filing

(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 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 108; Stats 1957 ch 1685 § 1; Stats 1967 ch 1080 § 1; Stats 1976 ch 74 § 1; Stats 1978 ch 49 § 1; Stats 1981 ch 864 § 1; Stats 1989 ch 300 § 1 Stats 2001 ch 567 § 3 (AB 1429), effective October 7, 2001.

Amendments:

1955 Amendment: Substituted "department" for "board" wherever it appears.

1957 Amendment: Substituted "to licensees" for "within the State for delivery and use therein" following "distributed by him".

1967 Amendment: Added," except that the transfer 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".

1976 Amendment: Substituted "his customers in California" for "licensees".

1978 Amendment: Added ", including the sale," before "of beer between wholesalers".

1981 Amendment: Added the second through fifth sentences.

1989 Amendment: Amended the first sentence by **(1)** deleting "triplicate and in" after "department," the first time it appears; and **(2)** substituting "the licensee to" for "him to his" after "distributed by".

2001 Amendment: (1) Designated the former section to be subd (a); **(2)** amended subd (a) by **(a)** adding ", 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"; and **(b)** substituting "premises, whether the price that" for "premise, whether the price which" in the third sentence; and **(3)** added subd (b).

Historical Derivation:

Stats 1935 ch 330 § 38e, as added Stats 1937 ch 758 § 65.

Cross References:

Grounds for suspension or revocation of licenses: B & P C §§ 24200 et seq.

Limitations period governing violations of this section: B & P C §§ 24206, 24208.

Collateral References:

Pertinent administrative rules and regulations: 4 Cal Code Reg §§ 99–105, 132.

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

Annotations:

Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like. 80 ALR3d 740.

NOTES OF DECISIONS

1. Generally
2. Construction

1. Generally

Statute can not be claimed as source of authority for rule requiring certificates of compliance to be obtained by out-of-state beer manufacturers. Blatz Brewing Co. v. Collins (1945, Cal App) 69 Cal App 2d 639, 160 P2d 37, 1945 Cal App LEXIS 705.

2. Construction

B & P C § 25000.5, which compels beer manufacturers to designate territorial limits of wholesalers and prohibits a wholesaler from filing price schedules under B & P C § 25000, unless he has entered into and filed a written agreement outlining his territory, does not permit the assigning of territories as a means of price fixing. R. E. Spriggs Co. v. Adolph Coors Co. (1979, Cal App 2d Dist) 94 Cal App 3d 419, 156 Cal Rptr 738, 1979 Cal App LEXIS 1871, cert den (1980) 444 US 1076, 100 S Ct 1024, 62 L Ed 2d 758, 1980 US LEXIS 718.

§ 25000.2. Definitions; Compliance by successor beer manufacturer who cancels existing beer wholesaler's rights to distribute product; Arbitration

(a) For purposes of this section:

(1) "Acquire" means to purchase, receive, assume, obtain, or otherwise come into possession or control of.

(2) "Affected distribution rights" means the distribution rights to the product held by the existing beer wholesaler prior to the acquisition of the right to manufacture, import, or distribute the product by the successor beer manufacturer.

(3) "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.

(4) "Cancel" means to terminate, reduce, not renew, not appoint or reappoint, or cause any of the same.

(5) "Existing beer wholesaler" means a beer wholesaler that distributes a product at the time a successor beer manufacturer acquires the rights to manufacture, import, or distribute that product.

(6) "Fair market value" includes all elements of value, including, but not limited to, goodwill.

(7) "Product" means a brand or brands of beer, as defined by Section 23006.

(8) "Successor beer manufacturer" means a beer manufacturer that acquires the rights to manufacture, import, or distribute a product.

(9) "Successor beer manufacturer's designee" means one or more distributors designated by the successor beer manufacturer to replace the existing beer wholesaler, for all or part of the existing beer wholesaler's territory, in the distribution of the product.

(b)(1) Any successor beer manufacturer that acquires the rights to manufacture, import, or distribute a product, and who cancels any of the existing beer wholesaler's rights to distribute the product, shall comply with this section.

(2) A successor beer manufacturer's designee shall comply with this section.

(c)(1) The successor beer manufacturer shall notify the existing beer wholesaler of the successor beer manufacturer's intent to cancel any of the existing beer wholesaler's rights to distribute the product.

(2) The successor beer manufacturer shall mail the notice by certified mail, return receipt requested, to the existing beer wholesaler. The successor beer manufacturer shall include in the notice the name, address, and telephone number of the successor beer manufacturer's designee or designees.

(d) The successor beer manufacturer's designee shall negotiate with the existing beer wholesaler to determine the fair market value of the affected distribution rights and, if the existing beer wholesaler and the successor beer manufacturer's designee agree to the fair market value of the affected distribution rights, shall compensate the existing beer wholesaler in the agreed amount. The successor beer manufacturer's designee and the existing beer wholesaler shall negotiate in good faith.

(e) The existing beer wholesaler shall continue to distribute the product to at least the same extent that it distributed the product immediately before the successor beer manufacturer acquired rights to the product until receipt of the payment of the compensation agreed to under subdivision (d) is made or is awarded under subdivision (f). The successor beer manufacturer and the existing beer wholesaler shall act in good faith regarding the ongoing supply and distribution of the product.

(f) If the successor beer manufacturer's designee and the existing beer wholesaler are unable to mutually agree on the fair market value of the affected distribution rights within 30 days of the existing beer wholesaler's receipt of the successor beer manufacturer' s notice pursuant to subdivision (c), the successor beer manufacturer' s designee or the existing beer wholesaler shall initiate arbitration against each other to determine the issue of compensation for the fair market value of the affected distribution rights no later than 40 days after the existing beer wholesaler's receipt of the successor beer manufacturer's notice pursuant to subdivision (c). Upon submission to arbitration, the arbitration shall be the means of determining compensation to the existing beer wholesaler for the fair market value of the affected distribution rights, and the fair market value of the affected distribution rights shall be

the purpose of the arbitration unless the parties agree otherwise.

(1) An arbitration held under this subdivision shall be held in California through a private arbitration services provider with at least three offices in California and a statewide roster of at least 70 neutral arbitrators, of which at least 30 have prior experience as a sole arbitrator in franchise, distribution, or related business litigation.

(2) The direct costs of the arbitration, including any fees charged by the arbitrator, shall be borne equally by the parties engaged in the arbitration. All other costs shall be paid by the party incurring them.

(3) The parties shall mutually agree on an arbitrator. If the parties cannot agree on the arbitrator, the arbitration provider shall select an impartial arbitrator.

(4)(A) No later than 20 days after receipt of a notification to arbitrate, the parties shall complete an initial exchange of all nonprivileged documents and other information relevant to the fair market value of the affected distribution rights in their possession and control, including, without limitation, copies of all documents and the names of individuals who may be called to testify at the arbitration hearing. No later than 45 days after receipt of notification to arbitrate, the parties shall complete an exchange of the names of any experts who may be called to testify at the arbitration hearing, together with each expert's report that may be introduced at the arbitration hearing.

(B) The arbitrator may modify the requirements of subparagraph (A) on a showing of good cause. The arbitrator shall permit third-party discovery and additional discovery between beer wholesalers, including depositions, which the arbitrator finds appropriate for a period of time not to exceed 90 days after receipt of a notification to arbitrate. No discovery shall be permitted against a beer manufacturer.

(5) The decision of the arbitrator shall be final and binding on the parties unless notice of appeal is filed, within 10 business days after service of the arbitration award, with the superior court of the county in which the hearing was held. Upon filing of the appeal, the court shall review the arbitration award for errors of fact or law by determining whether the award is supported by the sufficiency of the evidence presented at the arbitration. This subdivision shall further permit any other appeal or review that is authorized by the California Arbitration Act (Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure).

(6) The arbitrator's award shall be monetary only and shall not enjoin or compel conduct.

(7) The arbitration hearing shall conclude not more than 180 days after receipt of a notification to arbitrate, unless the time period is extended by mutual agreement of the parties or by the arbitrator.

(8) The arbitrator shall render a decision not later than 15 days after the conclusion of the arbitration unless this time period is extended by mutual agreement of the parties or by the arbitrator.

(9) A party who fails to participate in the arbitration hearings waives all rights the party would have had in the arbitration and is considered to have consented to the determination of the arbitrator.

(10) The Legislature finds and declares that several unique factors in combination warrant the Legislature authorizing limited mandatory arbitration between an existing beer wholesaler and a successor beer manufacturer's designee solely to determine the issue of compensation for the fair market value of the affected distribution rights:

(A) On the issue of the fair market value of the affected distribution rights, the parties are sophisticated and in an equal position in their knowledge of this legal issue and understand the law and their legal rights, including their jury trial rights.

(B) The parties desire a mandatory arbitration provision to resolve the question of compensation for the fair market value of the affected distribution rights if the parties are not able to reach a mutual settlement so that product distribution can be continued in an orderly manner and the determination of compensation can be made in a timely manner.

(C) The state's regulatory interest in maintaining orderly markets for the safe and efficient transportation, distribution, and sale of beer within the state warrants the statutory authorization for mandatory arbitration as provided in this section.

(g) If the existing beer wholesaler does not receive payment of the compensation under subdivision (d) or (f) not later than 10 business days after the date of the settlement or service of the arbitration award, and if there is no appeal or review filed under paragraph (5) of subdivision (f), the existing beer wholesaler shall remain the distributor of the product in the existing beer wholesaler' s territory to at least the same extent that the existing beer wholesaler distributed the product immediately before the successor beer manufacturer acquired rights to the product, and

the existing beer wholesaler is not entitled to the settlement or arbitration award.

(h) Nothing in this section shall be construed to limit or prohibit good faith settlements voluntarily entered into by the parties subsequent to the successor beer manufacturer's notice pursuant to subdivision (c).

Added Stats 2007 ch 350 § 1 (SB 574), effective January 1, 2008.

NOTES OF DECISIONS

1. Constitutionality

1. Constitutionality

B & P C § 25000.2 did not violate the contract clauses of U.S. Const. art. I, § 10, or Cal Const Art I, § 9, by imposing an obligation on an existing beer distributor to arbitrate the issue of the fair market value of affected beer distribution rights when a successor manufacturer cancelled the distribution agreement. Mussetter Distrib. v. DBI Bev., Inc. (2010, ND Cal) 685 F Supp 2d 1028, 2010 US Dist LEXIS 9021.

§ 25000.5. Territorial agreements

(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.

Added Stats 1972 ch 760 § 1. Amended Stats 1984 ch 348 § 1.

Amendments:

1984 Amendment: (1) Substituted "customers" for "retail licensees" at the end of subd (a); **(2)** divided the former first sentence of subd (b) into the present introductory clause and subd (b)(1) by substituting "sell any brand of beer unless the following conditions are met: (1) The wholesaler" for "file a written schedule of selling prices to be charged by that licensee for any brand of beer unless he"; **(3)** designated the former second sentence of subd (b) to be subd (b)(2); and **(4)** amended subd (b)(2) by substituting **(a)** "the" for "such"; and **(b)** "has been" for "shall be".

Cross References:

Limitations period governing violations of this section: B & P C §§ 24206, 24208.

Collateral References:

Pertinent administrative rules and regulations: 4 Cal Code Reg §§ 90–105, 132.

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally

B & P C § 25000.5, which compels beer manufacturers to designate territorial limits of wholesalers and prohibits a wholesaler from filing price schedules under B & P C § 25000, unless he has entered into and filed a written agreement outlining his territory, does not permit the assigning of territories as a means of price fixing. R. E. Spriggs Co. v. Adolph Coors Co. (1979, Cal App 2d Dist) 94 Cal App 3d 419, 156 Cal Rptr 738, 1979 Cal App LEXIS 1871, cert den (1980) 444 US 1076, 100 S Ct 1024, 62 L Ed 2d 758, 1980 US LEXIS 718.

§ 25000.6. Provision in distribution contract restricting venue to forum outside state

(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 the 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.

Added Stats 1999 ch 860 § 1 (SB 587). Amended Stats 2001 ch 567 § 4 (AB 1429), effective October 7, 2001.

Amendments:

2001 Amendment: Added subd (c).

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 323 "Jurisdiction: Personal Jurisdiction, Inconvenient Forum, And Appearances".

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25000.7. Termination of distribution agreement for failure to meet goal or quota

(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.

Added Stats 2000 ch 1083 § 1 (SB 1957).

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25000.9. Manufacturer's withholding of consent or approval of transfer of beer wholesaler's ownership interest

(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.

Added Stats 2000 ch 1083 § 2 (SB 1957).

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25001. Beer price schedules; Change or modification

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 109.

Amendments:
1955 Amendment: Substituted "department" for "board" wherever it appears.

Historical Derivation:
Stats 1935 ch 330 § 38e, as added Stats 1937 ch 758 § 65.

Collateral References:
Pertinent administrative rules and regulations: 4 Cal Code Reg §§ 90–105.
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25002. Beer price schedules; Effective date

The first schedule of prices filed by a licensee shall be effective immediately upon filing, but an amendatory schedule or amendments to a 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 38e, as added Stats 1937 ch 758 § 65.

Code Commissioner's Notes:
It appears from the wording of this section that the provisions re effective date of schedules or amendments to meet competing prices was intended to apply to both new schedules and amendments to prior filed schedules, so the section has been drafted to clarify this intent.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25003. Beer price schedules; 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1991 ch 161 § 1 (SB 655).

Amendments:
1991 Amendment: Substituted the section for the former section which read: "Filed price schedules shall be subject to public inspection and shall not in any sense be considered confidential. Each filing licensee shall retain in his licensed premises for public inspection a copy of his effective posted and filed schedule."

Historical Derivation:
Stats 1935 ch 330 § 38e, as added Stats 1937 ch 758 § 65.

Cross References:
Limitations period governing violations of this section: B & P C §§ 24206, 24208.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25004. Departure from schedule by licensee

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1967 ch 1080 § 2.

Amendments:
1967 Amendment: Added the exception at the end of the first sentence.

Historical Derivation:
Stats 1935 ch 330 § 38e, as added Stats 1937 ch 758 § 65.

Cross References:
Limitations period governing violations of this section: B & P C §§ 24206, 24208.
Punishment for misdemeanors: B & P C § 25617.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

NOTES OF DECISIONS

1. Generally

1. Generally
A co-operative corporation, holding an off-sale beer and wine wholesaler's license, did not violate this statute and former Alcoholic Beverage Control Act § 55.7 (now § 25600), so as to warrant suspension of its license by the State Board of Equalization, by paying patronage dividends to its stockholder members. Certified Grocers of California, Ltd. v. State Board of Equalization (1950, Cal App) 100 Cal App 2d 289, 223 P2d 291, 1950 Cal App LEXIS 1208.

§ 25005. Abetting violations by licensee

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 110.

Amendments:
1955 Amendment: Substituted "department" for "board".

Historical Derivation:
Stats 1935 ch 330 § 38e, as added Stats 1937 ch 758 § 65.

Cross References:
Limitations period governing violations of this section: B & P C §§ 24206, 24208.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25006. Adoption of rules for marketing of beer

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 111.

Amendments:
1955 Amendment: Substituted "department" for "board" wherever it appears.

Historical Derivation:
Stats 1935 ch 330 § 38e, as added Stats 1937 ch 758 § 65.
Stats 1935 ch 330 § 38g, as added Stats 1945 ch 1401 § 33b.

Cross References:
Rules and regulations by department: B & P C § 25750.

Collateral References:
Pertinent administrative rules and regulations: 4 Cal Code Reg §§ 99–105.
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

Annotations:
Right to attack administrative regulations issued under licensing law. 65 ALR2d 660.
Validity and construction of statute or ordinance requiring or prohibiting posting or other publication of price by liquor dealer. 89 ALR2d 901.

NOTES OF DECISIONS

1. Generally
2. Applicability
3. Legislative Intent

1. Generally
Rule may not be enacted prohibiting licensed dealers in beer produced by out-of-state brewers unless latter obtain certificates of compliance. Blatz Brewing Co. v. Collins (1945, Cal App) 69 Cal App 2d 639, 160 P2d 37, 1945 Cal App LEXIS 705.

2. Applicability
A prohibition of quantity discounts of beer, effectively required by Rule 105(a) of the Department of Alcoholic Beverage Control, constitutes, not "price-fixing" requiring explicit legislative authorization, but merely a prohibition against price discrimination, for which no explicit legislative authorization is required (disapproving, to the extent inconsistent herewith, the rationale in Schenley Industries, Inc. v. Munro (1965, Cal

App 1st Dist) 237 Cal App 2d 106, 46 Cal Rptr 678, 1965 Cal App LEXIS 1234, overruled Ralphs Grocery Co. v. Reimel (1968) 69 Cal 2d 172, 70 Cal Rptr 407, 444 P2d 79, 1968 Cal LEXIS 234.

Rule 105(a) of the Department of Alcoholic Beverage Control, effectively prohibiting manufacturers, importers and wholesalers from granting discounts for quantity purchases of beer, lies within the authority delegated to the department by B & P C § 25006, to promulgate rules that "foster and encourage the orderly wholesale marketing and wholesale distribution of beer," and reasonably effectuates the purpose of the statute. Ralphs Grocery Co. v. Reimel (1968) 69 Cal 2d 172, 70 Cal Rptr 407, 444 P2d 79, 1968 Cal LEXIS 234.

3. Legislative Intent

What constitutes promotion of "orderly wholesale marketing and distribution" of beer, required by B & P C § 25006, was clearly intended by the Legislature, by its failure to include express provisions thereon, to be committed to the expertise of the Department of Alcoholic Beverage Control. Ralphs Grocery Co. v. Reimel (1968) 69 Cal 2d 172, 70 Cal Rptr 407, 444 P2d 79, 1968 Cal LEXIS 234.

§ 25007. Right of 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 1685 § 2; Stats 1972 ch 760 § 2.

Amendments:

1957 Amendment: Deleted "or prohibited from dividing his customers into functional classes and establishing different prices for the same article for the different functional classes, such different functional classes being based upon the manner in which the classes sell beer, as wholesaler or retailer" at the end of the section.

1972 Amendment: Added "Except as provided in Section 25000.5,".

Historical Derivation:

Stats 1935 ch 330 § 38e, as added Stats 1937 ch 758 § 65.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

Annotations:

Constitutionality, construction and application of statutes designed to prevent or limit control of retail liquor dealers by manufacturers, wholesalers or importers. 136 ALR 1238.

§ 25008. Actions by trade association

(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.

Added Stats 1953 ch 152 § 1. Amended Stats 1984 ch 131 § 2, effective May 21, 1984.

Amendments:

1984 Amendment: (1) Added subdivision designation (a); **(2)** amended the first sentence of subd (a) by **(a)** adding "or licensed beer wholesalers"; and **(b)** deleting "produced and" before "sold in California"; and **(3)** added subd (b).

Historical Derivation:

Stats 1935 ch 330 § 38e, as added Stats 1937 ch 758 § 65.

Cross References:

Limitations period governing violations of this chapter: B & P C §§ 24206, 24208.

Injunction: CCP §§ 525 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25009. Evidence

Any defendant in any action brought under this chapter or any person who may be a witness therein under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure or Section 776 of the Evidence Code, and the books and records of the 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 the witness as a

basis for a misdemeanor prosecution under this chapter.

Added Stats 1953 ch 152 § 1. Amended Stats 1965 ch 299 § 5, operative January 1, 1967; Stats 2005 ch 294 § 1 (AB 333), effective January 1, 2006.

Amendments:

1965 Amendment: (1) Substituted "2016, 2018, and 2019" for "2021, 2031 or 2055"; and (2) added "or Section 776 of the Evidence Code,".

2005 Amendment: (1) Substituted "Title 4 (commencing with Section 2016.010) of Part 4" for "Sections 2016, 2018, and 2019"; (2) substituted "the" for "any such" before "defendant or witness"; and (3) substituted "the" for "any such" before "as a basis".

Historical Derivation:

Stats 1935 ch 330 § 38e, as added Stats 1937 ch 758 § 65.

Law Revision Commission Comment:

The amendment merely substitutes correct references of the obsolete references in Section 25009. [Recommendation, January 1965]

Law Revision Commission Comments:

2005— Section 25009 is amended to reflect revision and relocation of the civil discovery provisions referenced in it (former Code Civ. Proc. §§ 2016, 2018, and 2019). Those provisions were repealed in 1986 and their substance relocated to Code of Civil Procedure Sections 2017, 2018, 2021, and 2025-2028, which were in turn repealed and recodified in 2004, as part of a nonsubstantive reorganization of the Civil Discovery Act. 1986 Cal. Stat. ch. 1334, §§ 1, 2; 2004 Cal. Stat. ch. 182, §§ 22, 23, 23.5, 61, 62; see *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003); see also 1961 Cal. Stat. ch. 192, § 1 (former Code Civ. Proc. § 2018); 1963 Cal. Stat. ch. 519, § 1 (former Code Civ. Proc. § 2019); 1965 Cal. Stat. ch. 299, § 125 (former Code Civ. Proc. § 2016); 1965 Cal. Stat. ch. 299, § 5 (earlier version of Section 25009). For purposes of simplification and to make it easier to keep the cross- references up-to-date in the future, Section 25009 is amended to refer to the Civil Discovery Act generally, rather than to a list of discovery provisions pertaining to depositions. This is not a substantive change.

Cross References:

Examination of adverse party or witness: Ev C § 776.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25010. Suspension or revocation of license for violation of chapter

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 112.

Amendments:

1955 Amendment: Substituted "department" for "board" wherever it appears.

Historical Derivation:

Stats 1935 ch 330 § 38e, as added Stats 1937 ch 758 § 65.

Cross References:

Suspension and revocation of licenses: B & P C §§ 24200 et seq.

Limitations period governing violations of this chapter: B & P C §§ 24206, 24208.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

Annotations:

Right to attack validity of licensing law in proceedings to contest revocation or suspension of license. 65 ALR2d 660.

CHAPTER 13

Labels and Containers

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ARTICLE 1

Distilled Spirits

Cross References:
Limitations period governing violations of this article: B & P C §§ 24206, 24208.

§ 25170. Label; Contents

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 34, as amended Stats 1937 ch 758 § 53, Stats 1941 ch 328 § 22, Stats 1945 ch 1401 § 30.

Cross References:
Fair Packaging and Labeling Act: B & P C §§ 12601 et seq.
Time within which accusations against licensees for violating section to be filed: B & P C §§ 24206, 24208.
Punishment for misdemeanors: B & P C § 25617.

Collateral References:
Pertinent administrative rules and regulations: 17 Cal Code Reg §§ 18025 et seq., 18120 et seq.
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

Annotations:
Validity, construction, and effect of statutes, ordinances or regulations prohibiting or regulating advertising of intoxicating liquors. 20 ALR4th 600.

§ 25171. Conformity with federal standards

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.

Added Stats 1977 ch 1044 § 3, operative January 1, 1980. Amended Stats 1980 ch 24 § 2.

Former Sections:
Former § 25171, similar to the present section, was added Stats 1953 ch 152 § 1, amended Stats 1955 ch 954 § 16, Stats 1973 ch 163 § 1, Stats 1975 ch 167 § 3, Stats 1977 ch 1044 § 2, and repealed effective January 1, 1980, by its own terms.

Amendments:
1955 Amendment: Prior to 1955, the section read: "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 more than one gallon or less than one–half pint is guilty of a misdemeanor, except that this section does not apply to packages of distilled spirits in containers less than one–half pint which are sold and delivered to railroad, sleeping car, or steamship companies for use and consumption on trains or boats."
1955 Amendment: (1) added "or air common carrier" after "steamship companies"; and (2) substituted ", boats, or airplanes" for "or boats".
1973 Amendment: (1) Deleted "or" before "steamship"; and (2) added ", or common carriers operating vessels, as defined in Section 238 of the Public Utilities Code, under a certificate of public convenience and necessity, in transit in the Pacific Ocean from points on the California shore to points in California off the California shore," following "steamship companies".
1975 Amendment: Amended the section to read as at present, except for the following 1980 Amendment.
1980 Amendment: Deleted **(1)** ", except that this section does not apply to packages of distilled spirits in containers less than one–half pint which are sold and delivered to railroad, sleeping car, steamship companies, or common carriers operating vessels, as defined in Section 238 of the Public Utilities Code, under a certificate of public convenience and necessity, or air common carriers for use and consumption on trains, boats, or airplanes" at the end of the first paragraph; and **(2)** the former second and third paragraphs which read: "Notwithstanding the provisions of this section, a rectifier or wholesaler of distilled spirits may not purchase or sell whiskey, gin or vodka in packages containing one–tenth of a gallon.
"This section shall become operative on January 1, 1980."

Historical Derivation:
Stats 1935 ch 330 § 34, as amended Stats 1937 ch 758 § 53, Stats 1941 ch 328 § 22, Stats 1945 ch 1401 § 30.

Cross References:
Off–sale general license: B & P C § 23394.
Limitations period governing violations of this section: B & P C §§ 24206, 24208.
"Vessel": Pub Util C § 238.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25171.1. Conformity with federal standards; Exception

The provisions of Section 25171 shall not apply to any sightseeing, tourist or charter vessels hold-

ing 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.

Added Stats 1975 ch 647 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25172. Packages or containers larger than one gallon

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 34, as amended Stats 1937 ch 758 § 53, Stats 1941 ch 328 § 22, Stats 1945 ch 1401 § 30.

Cross References:
Limitations period governing violations of this section: B & P C §§ 24206, 24208.
Punishment for misdemeanors: B & P C § 25617.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25173. Packages or containers larger than one gallon; Label

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 34, as amended Stats 1937 ch 758 § 53, Stats 1941 ch 328 § 22, Stats 1945 ch 1401 § 30.

Cross References:
Limitations period governing violations of this section: B & P C §§ 24206, 24208.
Punishment for misdemeanors: B & P C § 25617.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25174. Seizure of spirits

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 113.

Amendments:
1955 Amendment: Substituted "department" for "board".

Historical Derivation:
Stats 1935 ch 330 § 34, as amended Stats 1937 ch 758 § 53, Stats 1941 ch 328 § 22, Stats 1945 ch 1401 § 30.

Cross References:
Seizure and forfeiture of property: B & P C §§ 25350 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25175. Products labeled as 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1970 ch 534 § 2; Stats 1984 ch 921 § 1.

Amendments:
1970 Amendment: Added ", or spirit whiskeys containing not less than 5 percent straight whiskey, four years old or older" at the end of the section.
1984 Amendment: Substituted **(1)** "three or more years" for "four or more years" after "containers for"; and **(2)** "three years" for "four years" before "old or older" at the end of the section.

Historical Derivation:
Stats 1935 ch 330 § 6.5, as added Stats 1941 ch 750 § 1.

Cross References:
Limitations period governing violations of this section: B & P C §§ 24206, 24208.
Punishment for misdemeanors: B & P C § 25617.
"Misdemeanor": Pen C § 17.

Collateral References:
Pertinent administrative rules and regulations: 17 Cal Code Reg § 18015.

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25176. Refilling containers

Every person who refills or causes to be refilled with distilled spirits any distilled spirits container is guilty of a misdemeanor.

Added Stats 1953 ch 152 § 1. Amended Stats 2009 ch 68 § 2 (SB 825), effective January 1, 2010.

Amendments:

2009 Amendment: Substituted "container" for "package to which has been affixed a stamp evidencing the payment of United States internal revenue taxes levied on the distilled spirits".

Historical Derivation:

Stats 1935 ch 330 § 36a, as added Stats 1937 ch 758 § 58, amended Stats 1945 ch 1401 § 32a.

Cross References:

Limitations period governing violations of this section: B & P C §§ 24206, 24208.

Punishment for misdemeanors: B & P C § 25617.

Collateral References:

Federal alcohol excise taxes: 26 USCS §§ 5001 et seq.

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25177. Sale of spirits in refilled container

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 36a, as added Stats 1937 ch 758 § 58, amended Stats 1945 ch 1401 § 32a.

Cross References:

Limitations period governing violations of this chapter: B & P C §§ 24206, 24208.

Punishment for misdemeanors: B & P C § 25617.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25178. Sale of empty distilled spirits bottle

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.

Added Stats 1973 ch 177 § 2.

Former Sections:

Former § 25178, which provided for destruction of bottles, was added Stats 1953 ch 152 § 1 and repealed Stats 1973 ch 177 § 1.

Cross References:

Limitations period governing violations of this section: B & P C §§ 24206, 24208.

Collateral References:

Witkin & Epstein, Criminal Law (3d ed), Crimes Against Public Peace and Welfare § 290.

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§§ 25179, 25180. [Sections repealed 1973.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1973 ch 177 §§ 3, 4. The repealed sections related to facilities for the destruction of empty bottles and the possession of empty bottles by licensees.

Historical Derivation:

Stats 1935 ch 330 § 36b, as added Stats 1937 ch 758 § 58½, amended Stats 1945 ch 1401 § 32b.

§ 25181. [Section repealed 1973.]

Added Stats 1957 ch 455 § 1. Repealed Stats 1973 ch 177 § 5. The repealed section related to the destruction of empty bottles having automatic measuring and dispensing devices.

ARTICLE 2

Beer

Cross References:

Limitations period governing violations of this article: B & P C §§ 24206, 24208.

§ 25200. Label; Contents; Refilled containers

(a) All beer sold in this state shall have a label affixed to the package or container thereof, containing the brand and type of beer, 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.

(b) A manufacturer, importer, or wholesaler of beer shall not use a container or carton as a package or container of a beer other than the 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.

(c) A beer manufacturer that refills any container supplied by a consumer shall affix a label that complies with this section on the container prior to its resale to the consumer. Any information concerning any beer previously packaged in the container, including, but not limited to, information regarding the manufacturer and bottler of the beer, or any associated brands or trademarks, shall be removed or completely obscured in a

manner not readily removable by the consumer prior to the resale of the container to the consumer. This subdivision does not authorize a beer manufacturer to refill a container supplied by a consumer with a capacity of five liquid gallons or more.

Added Stats 1953 ch 152 § 1. Amended Stats 2013 ch 686 § 2 (AB 647), effective January 1, 2014.

Amendments:

2013 Amendment: (1) Added subdivision designations (a) and (b); (2) amended subd (a) by (a) substituting "state" for "State"; and (b) adding "containing the brand and type of beer,"; (3) amended subd (b) by (a) substituting "A manufacturer, importer" for "No manufacturer, importer"; (b) adding "not" after "of beer shall"; and (c) substituting "the beer" for "such beer"; and (4) added subd (c).

Historical Derivation:

Stats 1935 ch 330 § 53.5, as added Stats 1937 ch 758 § 86.

Cross References:

Limitations period governing violations of this section: B & P C §§ 24206, 24208.

Collateral References:

Pertinent administrative rules and regulations: 4 Cal Code Reg § 130.

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25201. [Section repealed 1963.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 114. Repealed Stats 1963 ch 1040 § 12. The repealed section related to labeling of single–trip cartons.

Historical Derivation:

Stats 1935 ch 330 § 53.55, as added Stats 1943 ch 825 § 1, Stats 1951 ch 1764 § 1.

§ 25202. Obliteration of manufacturers' or brand names

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 53.55, as added Stats 1943 ch 825 § 1, Stats 1951 ch 1764 § 1.

Cross References:

Limitations period governing violations of this section: B & P C §§ 24206, 24208.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25203. Brand 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 115.

Amendments:

1955 Amendment: Substituted "department" for "board."

Historical Derivation:

Stats 1935 ch 330 § 53.6, as added Stats 1937 ch 758 § 86½, amended Stats 1951 ch 440 § 1.

Cross References:

Limitations period governing violations of this section: B & P C §§ 24206, 24208.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25204. Alcohol content labeling for beer

(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.

Added Stats 1996 ch 900 § 3 (SB 1923), operative July 1, 1997.

Former Sections:

Former § 25204, relating to the number of allowable brand names of beer, was added Stats 1953 ch 152 § 1 and repealed Stats 1965 ch 78 § 5.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25205. Beer or alcoholic beverages; Special labeling requirements; Licensee information

(a) Any container of beer or alcoholic beverage, other than sake, that is approved for labeling as a malt beverage under the Federal Alcohol Administration Act (27 U.S.C. Sec. 201 et seq.), that derives 0.5 percent or more of its alcoholic content by volume from flavors or other ingredients containing distilled alcohol and that is sold by a manufacturer or importer to a wholesaler or retailer within this state on or after July 1, 2009, shall bear a distinctive, conspicuous, and promi-

nently displayed label, or firmly affixed sticker, containing the following information:

(1) The percentage alcohol content of the beverage by volume.

(2) The phrase "CONTAINS ALCOHOL" in bold capitalized letters at least three millimeters in height and that is distinguishable from the background and placed conspicuously in either horizontal or vertical lettering on the front of the brand label. A firmly affixed sticker need not be placed on the brand label provided it is placed on the front of the container.

(b) The department may require licensees to submit information as it determines to be necessary, and may adopt regulations as may be required, to implement and enforce this section. The regulations shall be for the limited purpose of ensuring compliance with this section and shall not place additional requirements on the label or sticker required by this section. Any information required to be provided by any licensee to the department pursuant to this section shall be considered confidential and corporate proprietary information. This information shall not be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(c) It is the exclusive purpose of this section to identify and specially label products described in subdivision (a) and not to classify these specially labeled products. Nothing in this section shall be construed to permit the classification of any product in a manner that is inconsistent with the definitions of beer, wine, and distilled spirits set forth in Chapter 1 (commencing with Section 23000) of this division.

Added Stats 2008 ch 624 § 2 (AB 346), effective January 1, 2009.

Former Sections:
Former B & P C § 25205, relating to contents of tap and draught beer signs, was added Stats 1953 ch 152 § 1, and repealed Stats 1965 ch 78 § 6.

Historical Derivation:
Stats 1935 ch 330 § 53.6, as added Stats 1937 ch 758 § 86 ½, amended Stats 1951 ch 440 § 1.

§ 25206. Draught beer

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1990 ch 135 § 1.

Amendments:
1990 Amendment: Added the second sentence.

Historical Derivation:
Stats 1935 ch 330 § 53.6, as added Stats 1937 ch 758 § 86½, amended Stats 1951 ch 440 § 1.

Cross References:
Limitations period governing violations of this section: B & P C §§ 24206, 24208.
Draught beer tap sign: B & P C § 25613.

Collateral References:
Witkin & Epstein, Criminal Law (3d ed), Crimes Against Public Peace and Welfare § 290.
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25207. [Section repealed 1965.]

Added Stats 1953 ch 152 § 1. Amended Stats 1961 ch 252 § 2. Repealed Stats 1965 ch 78 § 7. The repealed section related to the sale of draught beer under an unfiled name.

Historical Derivation:
Stats 1935 ch 330 § 53.6, as added Stats 1937 ch 758 § 86½, amended Stats 1951 ch 440 § 1.

§ 25208. [Section repealed 1965.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1965 ch 78 § 8. The repealed section related to the capacity limit of beer containers.

Historical Derivation:
Stats 1935 ch 330 § 53.6, as added Stats 1937 ch 758 § 86½, amended Stats 1951 ch 440 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§§ 25209–25212. [Sections repealed 1963.]

Added Stats 1953 ch 152 § 1. Repealed Stats 1963 ch 1040 §§ 13–16. The repealed sections related to single trip beer bottles.

Historical Derivation:
Stats 1935 ch 330 § 53.65, as added Stats 1943 ch 830 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

ARTICLE 3

Wine

Cross References:
Limitation period governing violations of this chapter: B & P C §§ 24206, 24208.

§ 25235. Wine containers

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 milli-

liters, 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1989 ch 87 § 1.

Amendments:

1989 Amendment: Amended the first sentence by **(1)** adding "or" after "licensee to sell"; **(2)** adding "or her" after "upon his"; and **(3)** substituting "750 milliliters" for "one–fifth gallon".

Historical Derivation:

Stats 1935 ch 330 § 53.7, as added Stats 1951 ch 440 § 2.

Cross References:

Limitations period governing violations of this section: B & P C §§ 24206, 24208.

Collateral References:

Pertinent administrative rules and regulations: 17 Cal Code Reg §§ 17000 et seq.

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25236. "California Central Coast Counties Dry Wine"

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 116; Stats 1990 ch 135 § 2.

Amendments:

1955 Amendment: Substituted "department" for "board" in the second paragraph.

1990 Amendment: Added "and may dispose of the wine pursuant to Section 25355." at the end.

Historical Derivation:

Stats 1935 ch 330 § 53.75, as added Stats 1939 ch 1033 § 1.

Cross References:

Limitations period governing violations of this section: B & P C §§ 24206, 24208.

Seizure and forfeiture of property: B & P C §§ 25350 et seq.

Collateral References:

Pertinent administrative rules and regulations: 17 Cal Code Reg § 17015.

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25237. False representations of origin

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 53.8, as added Stats 1939 ch 1033 § 3.

Cross References:

Limitations period governing violations of this section: B & P C §§ 24206, 24208.

Collateral References:

Pertinent administrative rules and regulations: 17 Cal Code Reg §§ 17015, 17075, 17090.

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25238. Records of winegrowers or bottlers

Every winegrower 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 or her and obtained and used by him or her 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 winegrower or bottler of wine shall keep a complete record showing the total amount of wine produced by him or her, or bottled by him or her, made entirely from grapes grown within the counties mentioned in Section 25236.

Added Stats 1953 ch 152 § 1. Amended Stats 2010 ch 276 § 2 (SB 806), effective January 1, 2011.

Amendments:

2010 Amendment: (1) Substituted "winegrower" for "wine grower" in the first and last sentences; (2) added "or her" both times it appears in the first sentence; and (3) substituted "or her, or bottled by him or her" for ", or bottled by him" in the last sentence.

Historical Derivation:

Stats 1935 ch 330 § 53.9, as added Stats 1939 ch 1033 § 4, amended Stats 1945 ch 1401 § 39.1.

Cross References:

Limitations period governing violations of this section: B & P C §§ 24206, 24208.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 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.

Added Stats 1958 ch 458 § 2. Amended Stats 1990 ch 135 § 3.

Amendments:
1990 Amendment: Added the second sentence.

Cross References:
Misdemeanors: Pen C §§ 17, 19, 19.2.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25240. "Napa Valley" wine label; Designation

(a) 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.

(b) The department may suspend or revoke the license of any person who violates this section.

(c) This section shall not apply to 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 when the name of the appellation includes the term "Napa Valley."

Added Stats 1989 ch 588 § 2. Amended Stats 2007 ch 674 § 2 (AB 87), effective January 1, 2008.

Amendments:
2007 Amendment: Added (1) subdivision designations (a) and (b); and (2) subd (c).

Note—Stats 1989 ch 588 provides:
SECTION 1. The Legislature finds and declares:
(a) That wine produced in the Napa Valley from grapes grown in the Napa Valley has national and international recognition.
(b) That Napa Valley was designated a viticultural area in 1981 by the federal government which designation authorizes growers and vintners whose wine is derived at least 85% from grapes grown in the Napa Valley, to label their wines as Napa Valley wines.
(c) That since 1981 a few smaller areas have acquired separate viticultural area designations, notwithstanding that the areas are either entirely or partially within the Napa Valley and several other areas that lie within Napa Valley are being proposed.
(d) That the proliferation of viticultural areas within the Napa Valley has the potential of diminishing the historical, agricultural, and economic importance of the Napa Valley winegrowing area and confusing consumers.
(e) That it is necessary to require wines produced within the Napa Valley to be labeled as being derived from that valley, if the wine label indicates that they are produced within a separate viticultural area within the Napa Valley, in order to preserve consumer identification and understanding of the name "Napa Valley" and to protect this important state agricultural resource and wine products derived from that area.
Stats 2007 ch 674 provides:
SECTION 1. The Legislature finds and declares all of the following:
(a) That wine produced in Paso Robles from grapes grown in the Paso Robles region has national and international recognition.
(b) That Paso Robles was designated a viticultural area in 1983 by the federal government, and that designation authorizes growers and vintners, whose wine is derived from at least 85 percent of grapes grown in the Paso Robles region, to label their wines as Paso Robles wines.
(c) California's Central Coast is geologically different from other California winegrowing regions. The proximity of the Pacific Ocean, orientation of numerous canyons and valleys, and varying elevations produce many different distinct microclimates, including the largest variation between high daytime and low nighttime temperatures of any region in California because of the cool marine air that flows east through the Templeton Gap and south along the Salinas River Valley from the Monterey Bay.
(d) Since the early 1990s, Paso Robles wines have proven consistent gold medal winners and have been featured regularly in the top rankings of national and international wine reviews. A milestone in the worldwide recognition of Paso Robles as a premier wine region came in 1997 when a local product was named one of the top 10 wines in the world by the Wine Spectator.
(e) In the last eight years, the number of wineries in the Paso Robles wine country has tripled from 50 to 170, mostly due to an increase of boutique and small family owned vineyards and wineries. The appellation's burgeoning reputation has also lured a number of winemakers from France, Australia, South Africa, and Switzerland who are eager to find new applications for their winemaking skills.
(f) The likely proliferation of smaller, separate viticultural area designations, while highly desirable within the developing Paso Robles region, has the potential of diminishing the historical, agricultural, and economic importance of the Paso Robles winegrowing area and confusing consumers.
(g) Thus, it is necessary to require wines produced within the boundaries of the existing Paso Robles appellation to be labeled as being derived from that region, if the wine label indicates that they are produced within a separate viticultural area within Paso Robles wine country, to preserve consumer identification and understanding of the name "Paso Robles" and to protect this important state agricultural resource and wine products derived from that area.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25241. "Napa" label on wine

(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.

Added Stats 2000 ch 831 § 1 (SB 1293).

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

NOTES OF DECISIONS

1. Constitutionality
2. Construction with Other Laws

1. Constitutionality

Because a geographic name in a brand name is inherently likely to mislead wine consumers when grapes are grown elsewhere, B & P C § 25241, in restricting the commercial speech of a winemaker by prohibiting such use of brand names, did not violate the free speech provisions of the California and federal constitutions; moreover, the statute did not deny equal protection, violate the Commerce Clause, or constitute a taking of the winemaker's property without compensation. Bronco Wine Co. v. Jolly (2005, Cal App 3d Dist) 129 Cal App 4th 988, 29 Cal Rptr 3d 462, 2005 Cal App LEXIS 861, rehearing denied (2005, Cal App 3d Dist) 2005 Cal App LEXIS 983, review denied Bronco Wine Company v. Jolly (2005, Cal) 2005 Cal LEXIS 9470, cert den (2006) 126 S. Ct. 1169, 163 L. Ed. 2d 1129, 2006 U.S. LEXIS 953.

2. Construction with Other Laws

B & P C § 25241 is not preempted by the Federal Alcohol Administration Act (FAA Act), 27 USCS § 201 et seq.; when Congress finally entered the specific field of wine label regulation in 1935 by enacting the FAA Act, Congress was legislating in a field traditionally regulated by the states and the history of the FAA Act discloses no intent on the part of Congress to supplant or preempt state efforts to regulate wine labeling; additionally, B & P C § 25241 is consistent with Congress's overall purpose in enacting the FAA Act, and § 25241 does not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

Bronco Wine Co. v. Jolly (2005, Cal App 3d Dist) 129 Cal App 4th 988, 29 Cal Rptr 3d 462, 2005 Cal App LEXIS 861, rehearing denied (2005, Cal App 3d Dist) 2005 Cal App LEXIS 983, review denied Bronco Wine Company v. Jolly (2005, Cal) 2005 Cal LEXIS 9470, cert den (2006) 126 S. Ct. 1169, 163 L. Ed. 2d 1129, 2006 U.S. LEXIS 953.

§ 25242. Restrictions on sale of wine using name of Sonoma in labeling, packaging, or advertising

(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.

Added Stats 2006 ch 879 § 1 (SB 1380), effective January 1, 2007.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25243. Application of restrictions on use of a name of viticultural significance to multicounty appellation

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, or 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.

Added Stats 2006 ch 879 § 2 (SB 1380), effective January 1, 2007.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25244. "Paso Robles" wine label; Designation; Exception

(a) 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 that is located entirely within the "Paso Robles" viticultural area shall bear the designation "Paso Robles" on the label in direct conjunction therewith in a type size not smaller than 1mm less than that of said 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.

(b) The department may suspend or revoke the license of any person who violates this section.

(c) This section shall not apply to 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 when the name of the appellation includes the term "Paso Robles."

(d) This section applies only to wine that is bottled on or after January 1, 2008.

Added Stats 2007 ch 674 § 3 (AB 87), effective January 1, 2008.

Note—Stats 2007 ch 674 provides:

SECTION 1. The Legislature finds and declares all of the following:

(a) That wine produced in Paso Robles from grapes grown in the Paso Robles region has national and international recognition.

(b) That Paso Robles was designated a viticultural area in 1983 by the federal government, and that designation authorizes growers and vintners, whose wine is derived from at least 85 percent of grapes grown in the Paso Robles region, to label their wines as Paso Robles wines.

(c) California's Central Coast is geologically different from other California winegrowing regions. The proximity of the Pacific Ocean, orientation of numerous canyons and valleys, and varying elevations produce many different distinct microclimates, including the largest variation between high daytime and low nighttime temperatures of any region in California because of the cool marine air that flows east through the Templeton Gap and south along the Salinas River Valley from the Monterey Bay.

(d) Since the early 1990s, Paso Robles wines have proven consistent gold medal winners and have been featured regularly in the top rankings of national and international wine reviews. A milestone in the worldwide recognition of Paso Robles as a premier wine region came in 1997 when a local product was named one of the top 10 wines in the world by the Wine Spectator.

(e) In the last eight years, the number of wineries in the Paso Robles wine country has tripled from 50 to 170, mostly due to an increase of boutique and small family owned vineyards and wineries. The appellation's burgeoning reputation has also lured a number of winemakers from France, Australia, South Africa, and Switzerland who are eager to find new applications for their winemaking skills.

(f) The likely proliferation of smaller, separate viticultural area designations, while highly desirable within the developing Paso Robles region, has the potential of diminishing the historical, agricultural, and economic importance of the Paso Robles winegrowing area and confusing consumers.

(g) Thus, it is necessary to require wines produced within the boundaries of the existing Paso Robles appellation to be labeled as being derived from that region, if the wine label indicates that they are produced within a separate viticultural area within Paso Robles wine country, to preserve consumer identification and understanding of the name "Paso Robles" and to protect this important state agricultural resource and wine products derived from that area.

§ 25245. "Lodi" wine label; Violation; Exception

(a) 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 that is located entirely within the "Lodi" viticultural area shall bear the designation "Lodi" on the label in direct conjunction therewith in a type size not smaller than 1mm less than that of said 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.

(b) The department may suspend or revoke the license of any person who violates this section.

(c) This section shall not apply to 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 when the name of the appellation includes the term "Lodi."

(d) This section applies only to wine that is bottled on or after January 1, 2009.

Added Stats 2008 ch 75 § 2 (AB 2397), effective January 1, 2009.

§ 25246. "Sonoma County" wine label; Violation; Exception

(a) Any wine labeled with an American Viticultural Area established pursuant to Part 9 (commencing with Section 9.1) of Title 27 of the Code of Federal Regulations, that is located entirely within a county of the 19th class, shall bear the designation "Sonoma County" on the label in a type size not smaller than two millimeters on containers of more than 187 milliliters or smaller than one millimeter on containers of 187 milliliters or less.

(b) The department may suspend or revoke the license of any person who violates this section.

(c) This section shall not apply to 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 when the name of the appellation includes the term "Sonoma County."

(d) This section shall apply to wines bottled on or after January 1, 2014.

Added Stats 2010 ch 242 § 1 (AB 1798), effective January 1, 2011.

CHAPTER 14

Seizure and Forfeiture of Property

Section

25350. Beverages subject to seizure
25351. Possession of beverages subject to seizure
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25373. Holding of seized property as evidence
25374. Application of chapter
25375. Order for seizure of license to seek forfeiture

Cross References:

Seizure of spirits for violation of labeling and container regulations: B & P C § 25174.

Use of automobile or other vehicle to transport beverages, stills, etc., subject to seizure: B & P C § 25606.

§ 25350. 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 [commencing with Section 32001] 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 117, ch 1842 § 16; Stats 1963 ch 774 § 1.

Amendments:

1955 Amendment: Substituted (1) "department" for "board" in the introductory clause; and (2) "Part 14 of Division 2 of the Revenue and Taxation Code" for "this division" in subds (b) and (c).

1963 Amendment: Added subd (e).

Historical Derivation:

Stats 1935 ch 330 § 51, as amended Stats 1937 ch 758 § 75, Stats 1941 ch 328 § 32, Stats 1945 ch 1401 § 37.1.

Cross References:

Authority of retailer to return and seller to accept beer: B & P C § 23104.2.

Return of distilled spirits to wholesaler: B & P C § 23104.3.

Necessity for license: B & P C § 23300.

Off–sale general license: B & P C § 23394.

Retailers to purchase from licensees only: B & P C § 23402.

Alcoholic beverages fair trade contracts and price positing: B & P C §§ 24749 et seq.

Beer price posting and marketing regulations: B & P C §§ 25000 et seq.

Seizure of improperly labeled wine: B & P C § 25236.

Alcoholic Beverage Tax: Rev & Tax C §§ 32001 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

Annotations:

Constitutional guaranties against unreasonable search and seizure as applied to search or seizure of intoxicating liquor. 3 ALR 1514; 13 ALR 1316; 27 ALR 709; 39 ALR 811; 74 ALR 1418.

NOTES OF DECISIONS

1. Generally

1. Generally

An injunction would not issue to restrain the State Board of Equalization from exercising the powers conferred by former statute where the transaction alleged in the complaint constituted an illegal sale in that the plaintiff was not authorized to make the sale under the licenses issued to it by the board. McKesson & Robbins, Inc. v. Collins (1937, Cal App) 18 Cal App 2d 648, 64 P2d 469, 1937 Cal App LEXIS 565.

§ 25351. Possession of beverages subject to seizure

Any person who possesses alcoholic beverages which are subject to seizure under Section 25350 is guilty of a misdemeanor.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 51, as amended Stats 1937 ch 758 § 75, Stats 1941 ch 328 § 32, Stats 1945 ch 1401 § 37.1.

Cross References:

Punishment for misdemeanors: B & P C § 25617.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

Annotations:

Constitutionality, construction, and effect of statute making possession of intoxicating liquor evidence of violation of law. 31 ALR 1222.

§ 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 118.

Amendments:

1955 Amendment: Substituted "department" for "board" wherever it appears.

Historical Derivation:

Stats 1935 ch 330 § 51a, as added Stats 1937 ch 758 § 76, amended Stats 1941 ch 1209 § 1.

Cross References:

"Still": B & P C § 23034.

Use of automobile or other vehicle to transport beverages, stills, etc.: B & P C § 25606.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

Annotations:

Constitutional guaranties against unreasonable search and seizure as applied to search or seizure of intoxicating liquor. 3 ALR 1514; 13 ALR 1316; 27 ALR 709; 39 ALR 811; 74 ALR 1418.

Constitutionality of statutes providing for confiscation or destruction, without notice, of intoxicating liquors, and vehicles or other property used in connection with same. 8 ALR 888; 45 ALR 93.

Rights and protection of innocent persons where property in which they are interested is seized because of its illegal use in connection with intoxicating liquor. 47 ALR 1055; 61 ALR 551; 73 ALR 1087; 82 ALR 607; 124 ALR 288.

NOTES OF DECISIONS

1. Applicability
2. Costs

1. Applicability

Where the United States claimed a lien on the still to be seized for unpaid alcohol taxes the state liquor officers could properly be restrained from seizing the still until action was taken by the State Board of Equalization on application of the bankruptcy trustee for a license. Stout v. Green (1942, 9th Cir Cal) 131 F2d 995, 1942 US App LEXIS 3008.

Disbursements made by States for storage of automobile seized for transporting contraband alcoholic beverage are not taxable as costs against legal owner who appears as claimant in proceeding to forfeit automobile. People v. One 1950 Ford Sedan (1956, Cal App 1st Dist) 140 Cal App 2d 647, 295 P2d 486, 1956 Cal App LEXIS 2295, 60 ALR2d 809.

2. Costs

In proceeding to forfeit automobile for transportation of contraband alcoholic beverage, court may award costs against legal owner who voluntarily appears as claimant of automobile. People v. One 1950 Ford Sedan (1956, Cal App 1st Dist) 140 Cal App 2d 647, 295 P2d 486, 1956 Cal App LEXIS 2295, 60 ALR2d 809.

§ 25353. Statutory 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 440 § 51b, as added Stats 1937 ch 758 § 77.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

Annotations:

Rights and protection of innocent persons where property in which they are interested is seized because of its illegal use in connection with intoxicating liquor. 47 ALR 1055; 61 ALR 551; 73 ALR 1087; 82 ALR 607; 124 ALR 288.

Forfeiture of property for violation of liquor laws before trial of individual offender. 3 ALR2d 738.

§ 25354. Disposition of seized beverages

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 119; Stats 1999 ch 787 § 1 (AB 749).

Amendments:

1955 Amendment: Substituted "department" for "board."

1999 Amendment: (1) Substituted "state" for "State" after "produced in this"; **(2)** substituted "winegrower" for "wine grower" after "manufacturer or"; and **(3)** added the second sentence.

Historical Derivation:

Stats 1935 ch 330 § 51c, as added Stats 1937 ch 758 § 78, amended Stats 1939 ch 1087 § 1, Stats 1941 ch 1209 § 2, Stats 1945 ch 1401 § 38.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

Annotations:

Forfeiture of property for violation of liquor laws before trial of individual offender. 3 ALR2d 738.

§ 25355. Order for destruction

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 120.

Amendments:

1955 Amendment: Substituted "department" for "board" wherever it appears.

Historical Derivation:

Stats 1935 ch 330 § 51c, as added Stats 1937 ch 758 § 78, amended Stats 1939 ch 1087 § 1, Stats 1941 ch 1209 § 2, Stats 1945 ch 1401 § 38.

Cross References:

Seizure of automobile or vehicle: B & P C § 25606.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25356. Return of seized property; Petition

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 121.

Amendments:

1955 Amendment: Substituted "department" for "board".

Historical Derivation:

Stats 1935 ch 330 § 51c, as added Stats 1937 ch 758 § 78, amended Stats 1939 ch 1087 § 1, Stats 1941 ch 1209 § 2, Stats 1945 ch 1401 § 38.

Cross References:

Use of automobile or other vehicle to transport beverages, stills, etc., subject to seizure: B & P C § 25606.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25357. Return of seized property; 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 122.

Amendments:

1955 Amendment: Substituted "department" for "board" each time.

Historical Derivation:

Stats 1935 ch 330 § 51c, as added Stats 1937 ch 758 § 78, amended Stats 1939 ch 1087 § 1, Stats 1941 ch 1209 § 2, Stats 1945 ch 1401 § 38.

Collateral References:

Cal. Legal Forms, (Matthew Bender) § 18.200[1].

Annotations:

Jury trial in case of seizure of liquors. 17 ALR 569; 50 ALR 97.

§ 25358. Return of seized property; Decision

The department may order the alcoholic beverages or other property seized disposed of, or returned to the petitioner if illegally or erroneously seized.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 123.

Amendments:

1955 Amendment: Substituted "department" for "board".

Historical Derivation:
Stats 1935 ch 330 § 51c, as added Stats 1937 ch 758 § 78, amended Stats 1939 ch 1087 § 1, Stats 1941 ch 1209 § 2, Stats 1945 ch 1401 § 38.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25359. Turning over seized property to state department or institution

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 124.

Amendments:
1955 Amendment: Substituted "department" for "board" in the first sentence.

Historical Derivation:
Stats 1935 ch 330 § 51e, as added Stats 1937 ch 758 § 78, amended Stats 1939 ch 1087 § 1, Stats 1941 ch 1209 § 2, Stats 1945 ch 1401 § 38.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25360. Forfeiture proceedings

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 51d, as added Stats 1937 ch 758 § 79.

Cross References:
Use of automobile or other vehicle to transport beverages, stills, etc., subject to seizure: B & P C § 25606.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

Annotations:
Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding. 8 ALR3d 473.

NOTES OF DECISIONS

1. Generally
2. Constitutionality
3. Applicability

1. Generally
Where the owner expressly prohibits the use of his taxicabs for transporting liquor, a procedure to forfeit one of the cabs for illegal transportation of intoxicating liquor by an employee, would be abhorrent to law. People v. One 1941 Buick 8, (1944, Cal App) 63 Cal App 2d 661, 147 P2d 401, 1944 Cal App LEXIS 988.

An automobile which is used in the business of a common carrier at the time it is also used to transport intoxicating liquor unlawfully, is wrongfully forfeited. People v. One 1941 Buick 8, (1944, Cal App) 63 Cal App 2d 661, 147 P2d 401, 1944 Cal App LEXIS 988.

2. Constitutionality
The Alcoholic Beverage Control Act, independent of its common carrier exclusion clause, does not contemplate that owners of automobiles which are illegally used without their knowledge or consent shall become liable to forfeitures under all circumstances. People v. One 1941 Buick 8, (1944, Cal App) 63 Cal App 2d 661, 147 P2d 401, 1944 Cal App LEXIS 988.

3. Applicability
An owner of a taxicab company is exempted from forfeiture of a taxicab which he did not know was being illegally used by the driver to transport or sell liquor while operating the taxicab for the company. People v. One 1937 Lincoln Zephyr Sedan (1945) 26 Cal 2d 736, 160 P2d 769, 1945 Cal LEXIS 188.

§ 25361. Forfeiture proceedings; Notice

Notice of the seizure and of the intended forfeiture proceeding shall be filed with the clerk of the court 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 357 § 17; Stats 2002 ch 784 § 10 (SB 1316).

Amendments:
1957 Amendment: Amended the second sentence by (1) deleting "one" before "publication"; and (2) substituting "pursuant to Section 6061 of the Government Code" for "in a newspaper of general circulation".
2002 Amendment: Substituted "clerk of the court" for "county clerk" in the first sentence.

Historical Derivation:
Stats 1935 ch 330 § 52, as amended Stats 1937 ch 758 § 83, Stats 1941 ch 1209 § 4.

Law Revision Commission Comments:
2002—Section 25361 is amended to reflect elimination of the county clerk's role as ex officio clerk of the superior court. See former Gov't Code § 26800 (county clerk acting as clerk of superior court). The powers, duties, and responsibilities formerly exercised by the county clerk as ex officio clerk of the court are delegated to the court administrative or executive officer, and the county clerk is relieved of those powers, duties, and responsibilities. See Gov't Code §§ 69840 (powers, duties,

and responsibilities of clerk of court and deputy clerk of court), 71620 (trial court personnel).

Cross References:
Publication one time: Gov C § 6061.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25362. Forfeiture proceedings; 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 52, as amended Stats 1937 ch 758 § 83, Stats 1941 ch 1209 § 4.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25363. Forfeiture proceedings; Hearing where no answer filed

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 52, as amended Stats 1937 ch 758 § 83, Stats 1941 ch 1209 § 4.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

NOTES OF DECISIONS

1. Evidence: Generally

1. Evidence: Generally
A certified copy of a municipal court record showing a plea of guilty to a charge of violation of the Alcoholic Beverage Act is admissible in evidence as an admission of the defendant in a civil action arising out of the same act for forfeiture of an automobile. People v. One 1940 Oldsmobile Club Coupe (1947, Cal App) 80 Cal App 2d 372, 181 P2d 950, 1947 Cal App LEXIS 964.

§ 25364. Forfeiture proceedings; Hearing where answer filed

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 52, as amended Stats 1937 ch 758 § 83, Stats 1941 ch 1209 § 4.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25365. Forfeiture proceedings; Evidence

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 52, as amended Stats 1937 ch 758 § 83, Stats 1941 ch 1209 § 4.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

Annotations:
Jury trial in case of seizure of liquors. 17 ALR 569; 50 ALR 97.

§ 25366. Forfeiture proceedings; Release of property

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 52, as amended Stats 1937 ch 758 § 83, Stats 1941 ch 1209 § 4.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25367. Forfeiture proceedings; Rights of lienor, mortgagor, or conditional vendor

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 52, as amended Stats 1937 ch 758 § 83, Stats 1941 ch 1209 § 4.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

Annotations:
Relief to claimant of interest in motor vehicle subject to state forfeiture for use in violation of liquor laws. 14 ALR3d 221.

NOTES OF DECISIONS

1. Applicability
2. Costs

1. Applicability
Disbursements made by state for storage of automobile seized for transporting contraband alcoholic beverage are not taxable as costs against legal owner who appears as claimant in proceeding to forfeit automobile. People v. One 1950 Ford Sedan (1956, Cal App 1st Dist) 140 Cal App 2d 647, 295 P2d 486, 1956 Cal App LEXIS 2295, 60 ALR2d 809.

2. Costs
In proceeding to forfeit automobile for transportation of contraband alcoholic beverage, court may award costs against legal owner who voluntarily appears as claimant of automobile. People v. One 1950 Ford Sedan (1956, Cal App 1st Dist) 140 Cal App 2d 647, 295 P2d 486, 1956 Cal App LEXIS 2295, 60 ALR2d 809.

§ 25368. Forfeiture proceedings; Release to lienor, mortgagor, or conditional vendor

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 125.

Amendments:
1955 Amendment: Substituted "department" for "board" in the last sentence.

Historical Derivation:
Stats 1935 ch 330 § 52, as amended Stats 1937 ch 758 § 83, Stats 1941 ch 1209 § 4.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25369. Forfeiture proceedings; Purchase of property 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 52, as amended Stats 1937 ch 758 § 83, Stats 1941 ch 1209 § 4.

Code Commissioner's Notes:
This subdivision (h) [of § 52, 1941:1209:2998], along with the rest of § 52, appears to be patterned upon H & S C §§ 11610–11629, incl., re forfeiture of vehicles in which narcotics are unlawfully transported or kept. In those sections of the Health and Safety Code there appears to be some inconsistency in that §§ 11619–11622, incl., speak of proof of certain facts by bona fide or innocent owners, lienholders, mortgagees, or vendors, and release of vehicles to such persons, while §§ 11625 and 11626 speak of payments to bona fide or innocent purchasers, lienholders, mortgagees, or vendors. Similarly in subdivision (h) above "purchaser" is used. It would appear that "owners" is probably more correct, but we have left the word unchanged.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25370. Disposition of forfeited property

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 126; Stats 1965 ch 371 § 16.

Amendments:
1955 Amendment: Amended subd (a) by substituting (1) "Department of Alcoholic Beverage Control" for "board"; and (2) "department" for "board".
1965 Amendment: Substituted "General Services" for "Finance" in the introductory clause.

Historical Derivation:
Stats 1935 ch 330 § 51d, as added Stats 1937 ch 758 § 79.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

Attorney General's Opinions:
Authority of Department of Alcoholic Beverage control to deliver to Department of General Services, for sale at public auction to licensees, alcoholic beverages seized and purchased under forfeiture proceedings. 49 Ops. Cal. Atty. Gen. 142.

§ 25371. Record of seizures

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 127.

Amendments:
1955 Amendment: Substituted "Department of Alcoholic Beverage Control" for "board".

Historical Derivation:
Stats 1935 ch 330 § 51e, as added Stats 1937 ch 758 § 80.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25372. Liability of officer disposing of seized goods unlawfully

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 128.

Amendments:
1955 Amendment: 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" at the beginning of the section.

Historical Derivation:
Stats 1935 ch 330 § 51f,, as added Stats 1937 ch 758 § 81.

Cross References:
Punishment for felonies: B & P C § 25618.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25373. Holding of seized property as evidence

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 52, as amended Stats 1937 ch 758 § 83, Stats 1941 ch 1209 § 4.

Cross References:
Enforcement duties of peace officers: B & P C § 25619.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

§ 25374. Application of chapter

Nothing contained in this chapter applies to common carriers or to an employee acting within the scope of his employment under this division.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 52, as amended Stats 1937 ch 758 § 83, Stats 1941 ch 1209 § 4.

Code Commissioner's Notes:
While by its terms subdivision (i) [of § 52, 1941:1209:2998] would be limited to § 52, it appears clear that it is intended to exempt common carriers from forfeiture so the exemption has been drafted to exempt them from the entire chapter.

Cross References:
What is a common carrier: CC § 2168.
"Common carrier": Pub Util C § 211.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

NOTES OF DECISIONS

1. Generally
2. Constitutionality
3. Applicability

1. Generally
This statute exempts an owner of a taxicab company from forfeiture of a taxicab which he did not know was being illegally used by the driver to transport or sell liquor while operating the taxicab for the company. People v. One 1937 Lincoln Zephyr Sedan (1945) 26 Cal 2d 736, 160 P2d 769, 1945 Cal LEXIS 188.

2. Constitutionality
This statute does not contravene Const Art I § 11, providing that all laws shall have a uniform operation. People v. One 1937 Lincoln Zephyr Sedan (1945) 26 Cal 2d 736, 160 P2d 769, 1945 Cal LEXIS 188.

3. Applicability
This statute is not limited to a situation where the vehicle is being used for the exclusive purpose of conducting a common carriage business. People v. One 1941 Buick 8, (1944, Cal App) 63 Cal App 2d 661, 147 P2d 401, 1944 Cal App LEXIS 988.

§ 25375. Order for seizure of license to seek forfeiture

(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.

Added Stats 1989 ch 1195 § 1.2.

Collateral References:
Cal. Legal Forms, (Matthew Bender) § 18.200[1].

Law Review Articles:
Review of 1989 Legislation. 21 Pacific LJ 449.

CHAPTER 15

Tied–House Restrictions

Section
25500. Prohibited economic interests in on–sale license

Section
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25500.2. Conditions for authorization of promotional appearance of person engaged by licensee
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25502. Prohibited economic interests in off–sale general license
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Section
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25511. Equipment and supplies lost or damaged as result of natural disaster
25512. Holding of stock of beer manufacturer in certain locations by holders of on–sale licenses

Cross References:

Authority of the Department of Alcoholic Beverage Control to investigate violations of this Chapter: B & P C § 23053.5.

Beverages subject to seizure notwithstanding provisions of this Chapter; limitation: B & P C § 25350.

§ 25500. Prohibited economic interests in on–sale license

(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 a bona fide club.

(2) Club license issued under Article 4 (commencing with Section 23425) of Chapter 3.

(3) Veterans' 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 nonsupervisorial employee.

(e) Notwithstanding any other provision of this division or regulation of the department, this section does not apply to an employee of a licensee referred to in subdivision (a) who is the spouse of an on-sale licensee, so long as the on-sale licensee does not purchase, offer for sale, or promote, regardless of source, any of the brands of alcoholic beverages that are produced, bottled, processed, imported, rectified, distributed, represented, or sold by any licensee referred to in subdivision (a) that employs the spouse of the on-sale licensee.

(f) 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 129; Stats 1957 ch 1790 § 2; Stats 1961 ch 246 § 3; Stats 1965 ch 78 § 2; Stats 1973 ch 783 § 10; Stats 1984 ch 193 § 8; Stats 1987 ch 1121 § 1; Stats 1991 ch 347 § 1 (AB 232); Stats 2007 ch 744 § 1 (AB 1739), effective January 1, 2008.

Amendments:

1955 Amendment: Substituted "department" for "board" at the end of the first paragraph of subd (c).

1957 Amendment: Added the present third paragraph.

1961 Amendment: Added the second paragraph.

1965 Amendment: Amended the first paragraph of subd (c) by (1) adding "refrigeration equipment," after "fixtures,"; and (2) deleting "refrigeration equipment," after "Section 25503,".

1973 Amendment: Added "California winegrower's agent," wherever it appears.

1984 Amendment: Routine code maintenance.

1987 Amendment: (1) Substituted "with" for "at" before "Section" in subd (c)(3); and **(2)** added subd (d).

1991 Amendment: Added **(1)** the comma after "cars" and after "furnished" in subd (c)(4); and **(2)** subd (e).

2007 Amendment: (1) Added subd (e); and (2) redesignated former subd (e) to be subd (f).

Historical Derivation:

(a) Stats 1935 ch 330 § 54, as amended Stats 1937 ch 758 § 87, Stats 1939 ch 16 § 1, Stats 1945 ch 1401 § 40, Stats 1947 ch 1387 § 1.

(b) Stats 1933 ch 178 § 24.

Cross References:

Contents of license application: B & P C § 23952.

Time within which accusations against licensees for violating section to be filed: B & P C §§ 24207, 24208.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 472 "Public Agency Rules3".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

13 Witkin Summary (10th ed) Equity § 11.

Attorney General's Opinions:

Out–of–state manufacturer or wholesaler of alcoholic beverages prohibited by "tied–house" restrictions of Alcoholic

Beverages Control Act from having interest in California licensed alcoholic beverage retailers. 55 Ops. Cal. Atty. Gen. 208.

Annotations:

Statutes designed to prevent control of retail dealers by manufacturers, wholesalers, or importers. 136 ALR 1238.

NOTES OF DECISIONS

1. Generally
2. Construction
3. Applicability

1. Generally

B & P C § 25500(a)(2) prohibits entities that supply alcoholic beverages from furnishing, giving, or lending any money or other thing of value, directly or indirectly, to any on-sale licensee; a supplier indirectly furnishes a licensee with a thing of value by providing a marketing-cost subsidy. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2005, Cal App 1st Dist) 128 Cal App 4th 1195, 27 Cal Rptr 3d 766, 2005 Cal App LEXIS 682.

2. Construction

California has a comprehensive statutory scheme restricting "tied-house" arrangements in the distribution of alcoholic beverages (B & P C §§ 25500–25512). The laws seek to avoid the evils and excesses of disorderly marketing conditions that plagued the alcoholic beverage industry prior to prohibition. The "tied-house" prohibitions target two particular dangers: the ability of large firms to dominate local markets through vertical and horizontal integration, and the excessive sales of alcoholic beverages produced by the overly aggressive marketing techniques of larger alcoholic beverage concerns. The Legislature recognized that small retailers were unable to cope with the pressures exerted by larger manufacturing interests. Thus, the statutes sought to remove the manufacturer's influence over the retailer, which could result in preference for the manufacturer's product. Under the statutory scheme, all levels of the alcoholic beverage industry must remain separate; producers are not to be involved with, or exercise influence over, retailers. Kendall-Jackson Winery, Ltd. v. Superior Court (1999, Cal App 5th Dist) 76 Cal App 4th 970, 90 Cal Rptr 2d 743, 1999 Cal App LEXIS 1066, rehearing denied (2000) 77 Cal. App. 4th 870a, 2000 Cal. App. LEXIS 2, review denied (2000) 2000 Cal. LEXIS 1539.

3. Applicability

Alcoholic beverage wholesaler's sponsorship of athletic events conducted by a promotional company on behalf of a licensee violated B & P C §§ 25500(a)(2), and 25503(h) because the wholesaler indirectly furnished a thing of value by providing a marketing subsidy to the licensee and promotional materials were placed in retail locations; such conduct was incompatible with the goals of California's Alcoholic Beverage Control Act, as set forth in B & P C § 23001. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2005, Cal App 1st Dist) 128 Cal App 4th 1195, 27 Cal Rptr 3d 766, 2005 Cal App LEXIS 682.

§ 25500.1. Listing of on–sale retailers as not thing of value or prohibited inducement

(a) The listing of the names, addresses, telephone numbers, email addresses, or Internet Web site addresses, or other electronic media, of two or more unaffiliated on-sale retailers selling 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 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.

Added Stats 2000 ch 980 § 1 (AB 2777) as B & P C § 25500.2. Amended Stats 2001 ch 567 § 5 (AB 1429), effective October 7, 2001; Stats 2010 ch 285 § 2 (SB 1096), effective January 1, 2011. Amended and renumbered by Stats 2012 ch 374 § 2 (AB 2349), effective January 1, 2013.

Former Sections:

Former B & P C § 25500.1, relating to the listing of on-sale retailers as not a thing of value or a prohibited inducement, was added Stats 2000 ch 205 § 1 (SB 1423), amended Stats 2010 ch 285 § 1 (SB 1096), effective January 1, 2011, and repealed Stats 2012 ch 374 § 1 (AB 2349), effective January 1, 2013.

Amendments:

2001 Amendment: (1) Substituted "E-mail addresses, or website" for "e-mail addresses, or Web Site" in the introductory clause of subd (a); and (2) amended subd (b) by deleting (a) "of distilled spirits or wine" after "or a wholesaler"; and (b) the former second sentence which read: "Except as specifically provided above, any payment for, making or production, either directly or indirectly, listing the names, addresses, telephone numbers, E-mail addresses, or website addresses, of on-sale retailers selling beer otherwise authorized by this section by a wholesaler of beer or by a wholesaler of beer 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."

2010 Amendment: (1) Added subdivision designations (a) and (b); (2) substituted "e-mail addresses, or Internet Web site" for "and/or e-mail addresses, or web site" in the introductory clause of subd (a) and in the second sentence of subd (b); (3) amended the introductory clause of subd (a) by (a) substituting "wine, brandy, or both wine and" for "wine and/or" both times it appears; (b) substituting "distributed, imported, or both distributed and" for "distributed and/or"; and (c) deleting

"Internet" after "by electronic"; (4) redesignated former subds (a)-(d) to be subds (a)(1)-(a)(4); (5) substituted "produced by, or paid for, or any combination thereof" for "and/or produced by, and/or paid for" in subd (a)(4); and (6) substituted "wine, brandy, or both" for "wine and/or brandy" in the first sentence of subd (b).

2012 Amendment: Amended the introductory clause of subd (a) by (1) deleting "Notwithstanding Section 25500," at the beginning; (2) substituting "email addresses" for "e-mail addresses"; (3) adding "or other electronic media,"; (4) deleting "and operating and licensed as bona fide public eating places pursuant to Section 23038 selling the beer, wine, or distilled spirits" after "or distilled spirits,"; and (5) adding "all of the following conditions are met".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25500.2. Conditions for authorization of promotional appearance of person engaged by licensee

(a) A person employed or engaged by an authorized licensee may appear at a promotional event at the premises of an off-sale retail licensee for the purposes of providing autographs to consumers at the promotional event only under the following conditions:

(1) A purchase from the off-sale retail licensee is not required.

(2) A fee is not charged to attend the promotional event.

(3) Autographing may only be provided on consumer advertising specialities given by the authorized licensee to a consumer or on any item provided by the consumer.

(4) The promotional event does not exceed four hours in duration.

(5) There are no more than two promotional events per calendar year involving the same authorized licensee at a single premises of an off-sale retail licensee.

(6) The off-sale retail licensee may advertise the promotional event to be held at its licensed premises.

(7) An authorized licensee may advertise in advance of the promotional event only in publications of the authorized licensee, subject to the following conditions:

(A) The advertising only lists the name and address of the off-sale retail licensee, the name of the alcoholic beverage product being featured at the promotional event, and the time, date, and location of the off-sale retail licensee location where the promotional event is being held.

(B) The listing of the off-sale retail licensee's name and address is the only reference to the off-sale retail licensee in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole, and the advertisement does not contain any pictures or illustrations of the off-sale retail licensee's premises or laudatory references to the off-sale retail licensee.

(8) A wholesaler does not directly or indirectly underwrite, share in, or contribute to any costs related to the promotional event, except that a beer and wine wholesaler that holds at least six distilled spirits wholesaler licenses may directly or indirectly underwrite, share in, or contribute to any costs related to a promotional event for which the wholesaler employs or engages the person providing autographs to consumers at the promotional event.

(9) The authorized licensee notifies the department in writing of the promotional event at least 30 days in advance of the promotional event.

(10) The authorized licensee maintains records necessary to establish its compliance with this section.

(b) For purposes of this section, "authorized licensee" means a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, importer, brandy manufacturer, brandy importer, or wholesaler.

(c) This section shall remain in effect only until January 1, 2016.

Added 2012 ch 480 § 1 (AB 2184), effective January 1, 2013.

Former Sections:

Former B & P C § 25500.2, relating to listings as thing of value or inducement, was added Stats 2000 ch 980 § 1 (AB 2777), Amended Stats 2001 ch 567 § 5 (AB 1429), effective October 7, 2001, Stats 2010 ch 285 § 2 (SB 1096), effective January 1, 2011, and amended and renumbered B & P C § 25500.1 by Stats 2012 ch 374 § 2 (AB 2349), effective January 1, 2013.

§ 25501. Equipping or furnishing on–sale premises prohibited

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, own-

ing, 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1965 ch 1128 § 2; Stats 1968 ch 567 § 1; Stats 1996 ch 85 § 1 (AB 2118); Stats 1997 ch 774 § 2.3 (AB 1082).

Amendments:

1965 Amendment: Added the proviso in subd (a).

1968 Amendment: Added subd (c).

1996 Amendment: (1) Amended subd (a) by **(a)** dividing the former first sentence into the present first and second sentence by substituting a period for "; provided, however, that"; **(b)** substituting "those" for "such" after "iceboxes to"; and **(c)** adding the last sentence; and **(2)** amended subd (c) by **(a)** making technical changes; and **(b)** substituting "sold" for "held" after "products are".

1997 Amendment: Substituted the last sentence in subd (a) for the former last sentence in subd (a) which read: "For the purposes of this subdivision, supplies do not include paper beverage coasters less than 25 square inches in size and having a value of less than five cents ($0.05) per coaster."

Historical Derivation:

Stats 1935 ch 330 § 54, as amended Stats 1937 ch 758 § 87, Stats 1939 ch 16 § 1, Stats 1945 ch 1401 § 40, Stats 1947 ch 1387 § 1.

Cross References:

Contents of license application: B & P C § 23952.

Limitations period governing violations of this section: B & P C §§ 24207, 24208.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

Annotations:

Statutes designed to prevent control of retail dealers by manufacturers, wholesalers, or importers. 136 ALR 1238.

§ 25502. Prohibited economic interests in off–sale general license

(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 nonsupervisorial employee.

Added Stats 1953 ch 152 § 1. Amended Stats 1959 ch 1375 § 1; Stats 1969 ch 759 § 1; Stats 1973 ch 783 § 11; Stats 1987 ch 68 § 2, ch 1121 § 3.

Amendments:

1959 Amendment: Added the second paragraph.

1969 Amendment: (1) Substituted the first paragraph for the former first paragraph which read: "No manufacturer, wine grower, manufacturer'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, hold the ownership, directly or indirectly, of any off–sale general license for any premises, or own or control any interest, directly or indirectly, by stock ownership, interlocking directors, trusteeship, or mortgage of the premises or fixtures covered by an off–sale general license."; and (2) added the last paragraph.

1973 Amendment: Added "California winegrower's agent," wherever it appears.

1987 Amendment: (1) Added subdivision designation (a); **(2)** redesignated former subds (a)–(d) to be subds (a)(1)–(a)(4); **(3)** deleted "general" after "offsale" wherever it appears in subds (a)(2)–(a)(4); **(4)** added subdivisions (b)–(d); **(5)** amended subd (b) by substituting **(a)** "but may not transfer the beer and wine wholesaler's license" for "or may transfer either or both licenses" after "hold such licenses"; and **(b)** "the off–sale general license is" for "both licenses are simultaneously" before "transferred to an"; **(6)** deleted "of this code" after "Section 23362" in subd (d); and **(7)** added subd (e). (As amended Stats 1987, ch 1121, compared to the section as it read prior to 1987. This section was also amended by an earlier chapter, ch 68. See Gov C § 9605.)

Historical Derivation:

Stats 1935 ch 330 § 54, as amended Stats 1937 ch 758 § 87, Stats 1939 ch 16 § 1, Stats 1945 ch 1401 § 40, Stats 1947 ch 1387 § 1.

Cross References:

Off–sale general license for licensed wine growers and brandy manufacturers: B & P C § 23362.

Contents of license application: B & P C § 23952.

Limitations period governing violations of this section: B & P C §§ 24207, 24208.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[2], 18.33, 18.200[1], 18.224[1].

Law Review Articles:

Review of Selected 1987 legislation. 19 Pacific LJ 472.

Attorney General's Opinions:

Out–of–state manufacturer or wholesaler of alcoholic beverages prohibited by "tied–house" restrictions of Alcoholic Beverage Control Act from having interest in California licensed alcoholic beverage retailers. 55 Ops. Cal. Atty. Gen. 208.

Annotations:

Statutes designed to prevent control of retail dealers by manufacturers, wholesalers, or importers. 36 ALR 1238.

NOTES OF DECISIONS

1. Generally
2. Construction
3. Applicability
4. Construction with Other Laws
5. Authority of Department

1. Generally

Section constituted ground for revocation of wholesale beer and wine license and wine importer's license of wholesaler, where wholesaler's officers owned such substantial amounts of stock in such licensee that they might be deemed to have ownership interest in licensee, and where also wholesaler, by reason of such stock ownership and by reason of interlocking directorship involving wholesaler and licensee, owned interest in premises covered by license. Borun Bros. v. Department of Alcoholic Beverage Control (1963, Cal App 2d Dist) 215 Cal App 2d 503, 30 Cal Rptr 175, 1963 Cal App LEXIS 2526.

Narrow prohibition contained in B & P C § 25503(h), which specifically prohibits only on-premises advertising, cannot be used to nullify the general prohibitions under B & P C § 25502 and the basic objective of the tied-house statutes to erect and maintain a triple-tiered system of distribution and licensing of alcoholic beverages. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2002, Cal App 1st Dist) 100 Cal App 4th 1066, 123 Cal Rptr 2d 278, 2002 Cal App LEXIS 4471.

2. Construction

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 B & P C § 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 Bev. Etc. Appeals Bd. (1976, Cal App 2d Dist) 61 Cal App 3d 545, 132 Cal Rptr 236, 1976 Cal App LEXIS 1833.

3. Applicability

B & P C § 25502 prohibits, with some exceptions, any substantial integration between commercial interests holding wholesale beer and wine or distilled spirits licenses and interests holding general off-sale retail liquor licenses. California Beer Wholesalers Asso. v. Alcoholic Beverage Control Appeals Board (1971) 5 Cal 3d 402, 96 Cal Rptr 297, 487 P2d 745, 1971 Cal LEXIS 262.

Winegrower, a licensed supplier, violated B & P C § 25502(a)(2) when it furnished money to a publisher to pay a portion of a licensed off-sale retailer's obligation to the publisher to produce the off-sale retailer's exclusive sales catalog. To limit the reach of the statute's use of "furnish" to unilateral contracts would have invited suppliers to engage in subterfuges regarding fair value exchanges as a non-proscribed activity between suppliers and retailers and would have defeated legislative intent to limit vertical and horizontal integration of the alcoholic beverage industry. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2002, Cal App 1st Dist) 100 Cal App 4th 1066, 123 Cal Rptr 2d 278, 2002 Cal App LEXIS 4471.

Suppliers are not allowed to advertise in the catalog of a single retailer under B & P C § 25502. There is no exception in the statute to allow suppliees to advertise in a generic trade association publication even if the publication does not benefit an individual retailer. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2002, Cal App

1st Dist) 100 Cal App 4th 1066, 123 Cal Rptr 2d 278, 2002 Cal App LEXIS 4471.

4. Construction with Other Laws

B & P C §§ 25502, 25506, relating to off-sale alcoholic beverage licenses, are neither inherently nor fundamentally in conflict. California Beer Wholesalers Asso. v. Alcoholic Beverage Control Appeals Board (1971) 5 Cal 3d 402, 96 Cal Rptr 297, 487 P2d 745, 1971 Cal LEXIS 262.

B & P C § 25506, was not drawn to limit in any way the more general policy of segregation between wholesale and retail alcoholic beverage interests expressed in B & P C § 25502. California Beer Wholesalers Asso. v. Alcoholic Beverage Control Appeals Board (1971) 5 Cal 3d 402, 96 Cal Rptr 297, 487 P2d 745, 1971 Cal LEXIS 262.

5. Authority of Department

It is well within the authority conferred on the Department of Alcoholic Beverage Control by Cal Const Art XX § 22, par. 9, B & P C §§ 23001, 23049 for the Department to determine that the "tied-house" law, B & P C § 25502, applies to certain transactions but not to others. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2002, Cal App 1st Dist) 100 Cal App 4th 1066, 123 Cal Rptr 2d 278, 2002 Cal App LEXIS 4471.

§ 25502.1. Listing of retailers as thing of value or prohibited inducement

(a) Notwithstanding Section 25502, the listing of the names, addresses, telephone numbers, e-mail addresses, or Internet 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 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.

Added Stats 1999 ch 666 § 1 (SB 1233). Amended Stats 2000 ch 162 § 1 (SB 1232), ch 979 § 7 (AB 2759), ch 980 § 2 (AB 2777); Stats 2001 ch 567 § 7 (AB 1429), effective October 7, 2001; Stats 2010 ch 285 § 3 (SB 1096), effective January 1, 2011.

Amendments:

2000 Amendment: (1) Added subdivision designation (a); **(2)** substituted ", E–mail addresses, or website" for "and/or e–mail addresses, or web site" in the introductory clause of subd (a) and in subd (b); **(3)** amended the introductory clause of subd (a) by **(a)** substituting "or" for "and/or" after "produced, distributed"; and **(b)** adding "all of the following conditions are met:"; **(4)** redesignated former subds (c)–(f) to be subds (a)(1)–(a)(4); **(5)** substituted "product" for "produce, and" at the end of subd (a)(1); **(6)** substituted the periods for ", and" at the end of subds (a)(2) and (a)(3); **(7)** substituted "or produced by, or" for "and/or produced by, and/or" in subd (a)(4); **(8)** added subdivision designation (b); **(9)** added "including, but not limited to, a beer manufacturer, winegrower, or distiller of alcoholic beverages or an agent of that entity, or a wholesaler of distilled spirits or wine" for "winegrower, distiller of alcoholic beverages" in the first sentence of subd (b); and **(10)** amended the second sentence of subd (b) by adding **(a)** "selling beer" after "off–sale retailers"; and **(b)** "of beer" after "by a wholesaler" both times it appears. (As amended Stats 2000 ch 980, compared to the section as it read prior to 2000. This section was also amended by two earlier chapters, chs 162 and 979. See Gov C § 9605.)

2001 Amendment: (1) Substituted "e–mail addresses, or Web site" for "E–mail addresses, or website" in the introductory clause; and **(2)** amended subd (b) by **(a)** substituting ", or an agent of those entities, or a wholesaler" for "or an agent of that entity, or a wholesaler of distilled spirits or wine"; and **(b)** deleting the former second which read: "Except as specifically provided above, any payment for, making or production, either directly or indirectly, listing the names, addresses, telephone numbers, E–mail addresses, or website addresses, of off–sale retailers selling beer otherwise authorized by this section by a wholesaler of beer or by a wholesaler of beer that also holds an importer's license shall constitute the furnishing of a thing of value or inducement to the listed off–sale retailers in violation of this division."

2010 Amendment: Amended the introductory clause of subd (a) by (1) adding "Internet" before "Web site"; and (2) deleting "Internet" after "by electronic".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25502.2. (Repealed January 1, 2016) Conditions for authorization of promotional appearance of person engaged by licensee

(a) A person employed or engaged by an authorized licensee may appear at a promotional event at the premises of an off-sale retail licensee for the purposes of providing autographs to consumers at the promotional event only under the following conditions:

(1) A purchase from the off-sale retail licensee is not required.

(2) A fee is not charged to attend the promotional event.

(3) Autographing may only be provided on consumer advertising specialities given by the authorized licensee to a consumer or on any item provided by the consumer.

(4) The promotional event does not exceed four hours in duration.

(5) There are no more than two promotional events per calendar year involving the same authorized licensee at a single premises of an off-sale retail licensee.

(6) The off-sale retail licensee may advertise the promotional event to be held at its licensed premises.

(7) An authorized licensee may advertise in advance of the promotional event only in publications of the authorized licensee, subject to the following conditions:

(A) The advertising only lists the name and address of the off-sale retail licensee, the name of the alcoholic beverage product being featured at the promotional event, and the time, date, and location of the off-sale retail licensee location where the promotional event is being held.

(B) The listing of the off-sale retail licensee's name and address is the only reference to the off-sale retail licensee in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole, and the advertisement does not contain any pictures or illustrations of the off-sale retail licensee's premises or laudatory references to the off-sale retail licensee.

(8) A wholesaler does not directly or indirectly underwrite, share in, or contribute to any costs related to the promotional event, except that a beer and wine wholesaler that holds at least six distilled spirits wholesaler licenses may directly or indirectly underwrite, share in, or contribute to any costs related to a promotional event for which the wholesaler employs or engages the person providing autographs to consumers at the promotional event.

(9) The authorized licensee notifies the department in writing of the promotional event at least 30 days in advance of the promotional event.

(10) The authorized licensee maintains records necessary to establish its compliance with this section.

(b) For purposes of this section, "authorized licensee" means a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, importer, brandy manufacturer, brandy importer, or wholesaler.

(c) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

Added Stats 2012 ch 480 § 1 (AB 2184), effective January 1, 2013, repealed January 1, 2016. Amended Stats 2013 ch 76 § 7 (AB 383), effective January 1, 2014, repealed January 1, 2016.

Amendments:

2013 Amendment: Added ", and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date" in subd (c).

§ 25503. Prohibited sales, advertising, and promotional activities

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 1987 § 1; Stats 1973 ch 783 § 12.

Amendments:

1957 Amendment: (1) Added "do any of the following" at the end of the introductory paragraph; (2) substituted "advertising their own products as permitted by Section 25611.1" for "for interior use of not to exceed in area 630 square inches for use in or about or in connection with any premises where alcoholic beverages are sold for consumption on the premises, or pay money or 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" at the end of subd (g); and (3) added subd (h).

1973 Amendment: Added "California winegrower's agent," in the introductory clause.

Historical Derivation:

Stats 1935 ch 330 § 54, as amended Stats 1937 ch 758 § 87, Stats 1939 ch 16 § 1, Stats 1945 ch 1401 § 40, Stats 1947 ch 1387 § 1.

Cross References:

Giving away of samples: B & P C § 23386.

Contents of license application: B & P C § 23952.

Limitations period governing violations of this section: B & P C §§ 24207, 24208.

Prohibition against giving premium, gift, or free goods: B & P C § 25600.

Furnishing signs: B & P C § 25611.1.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 14 "Advertising".

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.25.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[2], 18.33, 18.200[1], 18.224[1].

Court upholds ban against shopping cart advertisements for alcohol. CEB Cal Bus L Rep (1986) Vol 8 No. 2 p 57.

Law Review Articles:

Alcoholic beverage advertising on the airwaves: Alternatives to a ban or counteradvertising. 34 UCLA LR 1139.

Attorney General's Opinions:

Propriety of employment of personnel of distilled spirits wholesale licensee in off–sale licensee's premises. 32 Ops. Cal. Atty. Gen. 75.

Authority of licensed wholesaler to post with department price list showing prices at which distilled spirits are sold to retailers, f.o.b. wholesaler's warehouse as well as delivered price. 48 Ops. Cal. Atty. Gen. 138.

Violation of subd (d) of this section where distilled spirits wholesaler pays for privilege of maintaining wallboard sign in hall of bartender's union, for promoting wholesaler's sales. 53 Ops. Cal. Atty. Gen. 1.

Annotations:

Statutes designed to prevent control of retail dealers by manufacturers, wholesalers, or importers. 136 ALR 1238.

State power to regulate price of intoxicating liquor. 14 ALR2d 699.

NOTES OF DECISIONS

1. Generally
2. Constitutionality
3. Construction
4. Applicability

1. Generally

In light of B & P C § 25503, subd. (c), prohibiting distillers and wholesalers from indirect or direct price discrimination among retailers, and in light of the presumption of validity generally attaching to an administrative regulation, a regulation promulgated by the Department of Alcoholic Beverage Control (Cal. Admin. Code. tit. 4, § 100(f)(4)), prohibiting price discounts conditioned upon "the purchase of any specific item or items of distilled spirits in any quantity," was valid as a proper implementation of the Department's statutory authority. Schenley Affiliated Brands Corp. v. Kirby (1971, Cal App 3d Dist) 21 Cal App 3d 177, 98 Cal Rptr 609, 1971 Cal App LEXIS 1063.

2. Constitutionality

The state Department of Alcoholic Beverage Control's interpretation of B & P C § 25503(h), forbidding manufacturers and distributors of alcoholic beverages from paying retail establishments to advertise their products, as prohibiting these groups from using the advertising displays of a corporation whose business consisted of leasing advertising space on supermarket carts, did not violate the corporation's right to engage in commercial speech as guaranteed by the United States Constitution's First Amendment. Section 25503(h) furthers the state's purposes both of limiting the ability of large alcoholic-beverage manufacturers and wholesalers to achieve vertical and horizontal integration by acquiring influences over the state's retail outlets and of promoting temperance among the state's residents. Further, the provision is not broader than necessary to achieve these purposes. Actmedia, Inc. v. Stroh (1986, 9th Cir Cal) 830 F2d 957, 1986 US App LEXIS 25087.

3. Construction

Narrow prohibition contained in B & P C § 25503(h), which specifically prohibits only on-premises advertising, cannot be used to nullify the general prohibitions under B & P C § 25502 and the basic objective of the tied-house statutes to erect and maintain a triple-tiered system of distribution and licensing of alcoholic beverages. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2002, Cal App 1st Dist) 100 Cal App 4th 1066, 123 Cal Rptr 2d 278, 2002 Cal App LEXIS 4471.

4. Applicability

Wholesale liquor dealers giving cash refunds from five to ten per cent of invoice price, based on the amount of the sale, to all customers alike, and in accordance with a general practice of the trade known to the Board of Equalization, were not guilty of giving secret rebates or making secret concessions. Polley v. Westover (1948, SD Cal) 77 F Supp 973, 1948 US Dist LEXIS 2782.

The payment of a dividend to the stockholder members of a co-operative corporation holding an off-sale beer and wine wholesaler's license is not a violation of this statute. Certified Grocers of California, Ltd. v. State Board of Equalization (1950, Cal App) 100 Cal App 2d 289, 223 P2d 291, 1950 Cal App LEXIS 1208.

Alcoholic beverage wholesaler's sponsorship of athletic events conducted by a promotional company on behalf of a licensee violated B & P C § 25500(a)(2), 25503(h) because the wholesaler indirectly furnished a thing of value by providing a marketing subsidy to the licensee and promotional materials were placed in retail locations; such conduct was incompatible with the goals of California's Alcoholic Beverage Control Act, as set forth in B & P C § 23001. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2005, Cal App 1st Dist) 128 Cal App 4th 1195, 27 Cal Rptr 3d 766, 2005 Cal App LEXIS 682.

B & P C § 25503(h) does not prohibit payments only to a retailer; the statute has been described as a blanket prohibi-

tion of paid advertising in retail establishments, and the proscription of paid advertising does not necessarily link the payment to the retailer. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2005, Cal App 1st Dist) 128 Cal App 4th 1195, 27 Cal Rptr 3d 766, 2005 Cal App LEXIS 682.

§ 25503.1. Authorized sales, advertising, and promotional activities

(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.

Added Stats 1957 ch 1768 § 2. Amended Stats 1976 ch 41 § 1; Stats 1983 ch 215 § 1, effective July 13, 1983.

Amendments:

1976 Amendment: (1) Added subd (a); **(2)** redesignated subds (a)–(c) to be subds (a)(1)–(a)(3); and **(3)** added subd (b).

1983 Amendment: Substituted "shall not exceed the amount established by rules of the department" for "does not exceed fifteen dollars ($15)" before "; and provided," in subd (a)(2).

Cross References:

Authority under winegrower's agent's license: B & P C § 23373.

Contents of license application: B & P C § 23952.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

Law Review Articles:

Alcoholic beverage advertising on the airwaves: Alternatives to a ban or counteradvertising. 34 UCLA LR 1139.

§ 25503.2. Authorized services with respect to off–sale retail licensees' stock

(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.

Added Stats 1968 ch 204 § 1, effective May 28, 1968. Amended Stats 1997 ch 40 § 1 (AB 315); Stats 1999 ch 699 § 5 (AB 1407).

Amendments:

1997 Amendment: (1) Designated the former introductory clause and subds (a)–(d) to be the introductory clause of subd (a) and subds (a)(1)–(a)(4); **(2)** made technical changes; **(3)** substituted "Notwithstanding any other provision in this division" for "Anything in this division to the contrary notwithstanding" in the beginning of the introductory clause of subd (a); **(4)** substituted "sold by the licensee performing the service" for "sells" in subd (a)(1); **(5)** substituting "owned or sold by the licensee performing the service" for "he owns or sells" wherever it appears; **(6)** substituted ". This paragraph does" for "; provided that this shall" in subd (a)(2); **(7)** added "performing the service" in subd (a)(4); and **(8)** added subd (b).

1999 Amendment: Added subd (a)(5).

Cross References:

Authority under winegrower's agent's license: B & P C § 23373.

Contents of license application: B & P C § 23952.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.3. Meetings and publications of trade associations; Authorized advertising

(a) Notwithstanding any other provision of this division, 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 subdivision (a) 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 subdivision (a) 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.

(d) A licensed beer manufacturer or a brewpub-restaurant licensee may serve, for consumption on the premises, beer produced by the licensed beer manufacturer or brewpub-restaurant licensee to attendees at a meeting of a bona fide

beer manufacturer trade association or brewers' guild held on the premises of a licensed beer manufacturer.

Added Stats 1968 ch 1030 § 1. Amended Stats 1969 ch 508 § 1; Stats 1985 ch 481 § 1; Stats 1990 ch 78 § 1 (AB 129); Stats 1995 ch 127 § 1 (AB 303); Stats 2013 ch 686 § 3 (AB 647), effective January 1, 2014.

Amendments:

1969 Amendment: Added ", and any beer manufacturer," in the second paragraph.

1985 Amendment: **(1)** Amended the first paragraph by **(a)** adding "beer manufacturer,"; **(b)** adding the comma after "agent may"; and **(c)** substituting ", conventions, or combined conventions and trade shows" for "or conventions" both times it appears; and **(2)** substituted "person specified in this section" for "such person, and any beer manufacturer," in the first sentence of the second paragraph.

1990 Amendment: In addition to making technical changes, amended the second paragraph by **(1)** adding "or alcoholic beverage" after "which are food"; **(2)** substituting "quarterly" for "monthly" after "published at least"; and **(3)** deleting the former second sentence which read: "A 'food retailer' for the purpose of this chapter, means a person engaged primarily in the retail sale of good other than alcoholic beverages."

1995 Amendment: **(1)** Added subdivision designations (a) and (b); **(2)** amended subd (a) by **(a)** substituting "alcoholic and nonalcoholic beverages, entertainment, and recreational activities" for "and alcoholic and nonalcoholic beverages" in the first sentence; and **(b)** adding the second sentence; **(3)** amended subd (b) by **(a)** deleting "published at least quarterly," after "beverage retailers," in the first sentence; and **(b)** adding the second sentence; and **(4)** added subd (c).

2013 Amendment: (1) Substituted "Notwithstanding any other provision of this division" for Anything in this division to the contrary notwithstanding" in the first sentence of subd (a); (2) substituted "subdivision (a)" for "this section" in the first sentence of subd (b) and in subd (c); and (3) added subd (d).

Cross References:

Authority under winegrower's agent's license: B & P C § 23373.

Contents of license application: B & P C § 23952.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[2], 18.33, 18.200[1], 18.224[1].

Law Review Articles:

Alcoholic beverage advertising on the airwaves: Alternatives to a ban or counteradvertising. 34 UCLA LR 1139.

§ 25503.4. Participation of winegrower, winegrower's agent, or wine importer at instructional event for consumers at retailer's premises; Conditions; Provision of autographs; Advertisement

(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 minimal amounts of wine, taken from barrels or from tanks, may be supplied and provided as samples at the instructional event. A person authorized by subdivision (a) may also provide no more than three one-ounce tastes of wine per consumer at the instructional event from bottles of wine provided by the authorized person. For purposes of this section, minimal amounts of the samples or tastes provided at the instructional event do not constitute a thing of value. Following the instructional event, any unused wine provided by the authorized person shall be removed from the retailer's premises by the authorized person.

(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 Section 25502.2, a person identified in subdivision (a) appearing at an instructional event described in subdivision (a) may, in addition to other permitted activities, provide autographs to consumers on consumer advertising specialties given by the person to a consumer or on any item provided by a consumer. No purchase of any alcoholic beverage shall be required in connection with such autographing.

(c) 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 these advertisements are not hereby authorized.

(d) 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.

(e) 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.

(f) Nothing in this section authorizes any person to consume any alcoholic beverage on any premises licensed with an off-sale retail license.

Added Stats 1992 ch 471 § 1 (AB 2868). Amended Stats 1994 ch 394 § 2 (AB 611); Stats 2003 ch 270 § 2 (AB 1505); Stats 2004 ch 183 § 22 (AB 3082); Stats 2010 ch 177 § 1 (SB 1101), effective January 1, 2011; Stats 2013 ch 329 § 1 (AB 636), effective January 1, 2014.

Amendments:

1994 Amendment: (1) Added "wine" before "importer" wherever it appears in subds (a) and the introductory clause of subd (b); and **(2)** deleted "that is used in blending the wines being featured" before "may be sampled" in the first sentence of subd (a)(2).

2003 Amendment: Amended subd (a) by **(1)** substituting "may" for "shall" after "alcholic beverages"; **(2)** substituting "except" for "; provided, however," in the first sentence of subd (a)(2); and **(3)** adding subd (a)(3).

2004 Amendment: Substituted "these" for "such" after "the retailer in" in the last sentence of subd (b)(2).

2010 Amendment: (1) Amended the first sentence of subd (a)(2) by (a) adding "minimal amounts of"; and (b) substituting "supplied and provided as samples" for "sampled"; (2) added the second and last sentences of subd (a)(2); and (3) amended the third sentence of subd (a)(2) by (a) deleting "the" before "purposes of this"; (b) substituting "or tastes provided" for "provided for tasting"; and (c) deleting "in addition to the wines being featured" after "instructional event".

2013 Amendment: (1) Added subd (b); and (2) redesignated former subds (b)-(e) to be subds (c)-(f).

Note—Stats 1994 ch 394 provides:

SEC. 3. It is the intent of the Legislature in enacting Section 1 of this act to encourage the adoption of reciprocal wine shipping privileges legislation in other states for purposes of improving fairness and equity for the small, family vintners and winegrowers of California. Currently, only 12 states have adopted reciprocal wine shipping privileges legislation.

The Legislature encourages the Department of Alcoholic Beverage Control to notify other states of California laws relating to reciprocal wine shipping privileges through established channels of communication.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.5. Instruction for licensees and employees

(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 that 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 that 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.

Added Stats 1968 ch 213 § 1. Amended Stats 1969 ch 1155 § 1; Stats 1998 ch 248 § 2 (AB 2285).

Amendments:

1969 Amendment: (1) Designated the first and third paragraphs as subds (a) and (c); (2) added subd (b); and (3) amended subd (c) by (a) deleting "or" after "beer manufacturer," and (b) adding "distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits general rectifier, distilled spirits general importer".

1998 Amendment: In addition to making technical changes, **(1)** added subd (c); and **(2)** redesignated former subd (c) to be subd (d).

Cross References:

Authority under winegrower's agent's license: B & P C § 23373.

Contents of license application: B & P C § 23952.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.55. Instruction for consumers on subject of beer; Tastings; Requirements

(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.

Added Stats 2006 ch 670 § 1 (SB 1548), effective January 1, 2007.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.56. Instructional tasting event on subject of wine, beer, or distilled spirits; Violations; Legislative findings

(a) An authorized licensee, or a designated representative of an authorized licensee acting as an agent of the authorized licensee, may conduct, on the area specified by paragraph (1) of subdivision (c) of Section 23396.6, an instructional tasting event for consumers on the subject of wine, beer, or distilled spirits, including, but not limited to, the history, nature, values, and characteristics of wine, beer, or distilled spirits, and the methods of presenting and serving wine, beer, or distilled spirits.

(1)(A) Except as provided in subparagraph (B), the instructional tasting event may include the serving of alcoholic beverages to an attendee of legal drinking age. An instructional tasting event on the subject of wine or distilled spirits shall be limited to not more than three tastings per person per day. A single tasting of distilled spirits shall not exceed one-fourth of one ounce and a single tasting of wine shall not exceed one ounce. An instructional tasting event on the subject of beer shall be limited to not more than the tasting of eight ounces of beer per person per day. The wine, beer, or distilled spirits tasted shall be limited to the products that are authorized to be sold by the authorized licensee and the licenseholder under its off-sale license.

(B) A beer and wine wholesaler may conduct an instructional tasting event but shall not serve tastes of beer unless the beer and wine wholesaler also holds a beer manufacturer's license, an out-of-state beer manufacturer's certificate, or more than six distilled spirits wholesaler's licenses.

(C) No charge of any sort shall be made for the tastings. Except for the purposes of Section 23985, the serving of tastings shall not be deemed a sale of products pursuant to this division.

(D) A person under 21 years of age shall not serve wine, beer, or distilled spirits at the instructional tasting event.

(E) All tastes shall be served by an employee of the authorized licensee, the designated representative of the authorized licensee, or by an employee of the designated representative of the authorized licensee.

(F) An authorized licensee, or a designated representative of an authorized licensee, shall either supply the wine or distilled spirits to be tasted during the instructional tasting event or purchase the wine or distilled spirits from the licenseholder at the original invoiced cost. An authorized licensee, or a designated representative of an authorized licensee, shall purchase beer to be tasted during the instructional tasting event from the licenseholder at the original invoiced cost.

(G) Any unused wine, beer, or distilled spirits remaining from the tasting shall be removed from the off-sale licensed premises by the authorized licensee or its designated representative.

(2) If the instructional tasting event is conducted by a designated representative of an authorized licensee, the designated representative shall not be owned, controlled, or employed directly or indirectly by the licenseholder on whose premises the instructional tasting event is held.

(3) An instructional tasting event shall be limited to a single type of alcoholic beverage. For purposes of this paragraph, "type of alcoholic beverage" means distilled spirits, wine, or beer.

(b) For purposes of this section:

(1) "Authorized licensee" means a winegrower, California winegrower's agent, beer and wine importer general, beer and wine wholesaler, wine rectifier, distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits importer general, distilled spirits rectifier, distilled spirits general rectifier, rectifier, out-of-state distilled spirits shipper's certificate holder, distilled spirits wholesaler, brandy manufacturer, brandy importer, California brandy wholesaler, beer manufacturer, or an out-of-state beer manufacturer certificate holder. "Authorized licensee" shall not include an entity that solely holds a combination of a beer and wine wholesale license and an off-sale beer and wine retail license or holds those licenses solely in combination with any license not listed in this paragraph, or holds a limited off-sale retail wine license.

(2) "Licenseholder" means an off-sale retail licensee issued an instructional tasting license pursuant to Section 23396.6.

(3) "Location" means the total contiguous area encompassed by the off-sale and on-sale licenses.

(c) Notwithstanding subparagraph (E) of paragraph (1) of subdivision (a), a licenseholder may conduct an instructional tasting event that includes the serving of tastings only when an authorized licensee or its designated representative are unable to conduct an instructional tasting event previously advertised pursuant to this section and scheduled by the authorized licensee or its designated representative, provided that the licenseholder supplies the wine, beer, or distilled spirits used in the instructional tasting event and provides or pays for a person to serve the wine, beer, or distilled spirits. Instructional tasting events conducted by a licenseholder pursuant to this subdivision are subject to the provisions of this section and Section 23396.6.

(d) No more than one authorized licensee, or its designated representative, may conduct an instructional tasting event that includes the serving of tastes of wine, beer, or distilled spirits at any one individual licensed premises of a licenseholder per day.

(e) A licenseholder that also holds an on-sale beer and wine license, an on-sale beer and wine eating place license, or an on-sale general license shall not allow an authorized licensee, or its designated representative, to conduct an instructional tasting event on the same day and at the same location as any instructional tasting event held pursuant to subdivision (b) of Section 23386,

Section 25503.4, subdivision (c) of Section 25503.5, or Section 25503.55.

(f) A licenseholder shall not condition the allowance of an instructional tasting event upon the use of a particular designated representative of an authorized licensee.

(g)(1) In addition to any point-of-sale advertising or other advertising items allowed under this division or under rules of the department, an authorized licensee or its designated representative, in his or her absolute discretion and with permission of the licenseholder upon whose premises the instructional tasting event will be held, may list in an advertisement to the general public the name and address of the licenseholder, the names of the alcoholic beverages being featured at the instructional tasting event, and the time, date, and location of, and other information about, the instructional tasting event, provided that both of the following apply:

(A) The advertisement does not contain the retail price of the alcoholic beverages.

(B) The listing of the licenseholder's name and address is the only reference to the licenseholder in the advertisement.

(2) Pictures or illustrations of the licenseholder's licensed premises and laudatory references to the licenseholder in these advertisements are not authorized. Nothing in this section shall authorize an authorized licensee or its designated representative to share in the costs, if any, of the licenseholder.

(h) A licenseholder may advertise an instructional tasting event to the general public. The costs of this advertising shall be borne solely by the licenseholder. Advertising permitted by this subdivision includes flyers, newspaper ads, Internet communications, and interior signage.

(i) Except as otherwise provided in this division or rules of the department, no premium, gift, free goods, or other thing of value shall be given away by an authorized licensee or its designated representative in connection with an instructional tasting event that includes tastings of an alcoholic beverage.

(j) The licenseholder or the authorized licensee or its designated representative is authorized to perform setup and breakdown of the instructional tasting event area. The authorized licensee or its designated representative may provide, free of charge to the licenseholder, the equipment, materials, and utensils as may be required for use in connection with the instructional tasting event.

(k)(1) A licenseholder shall not require, or enter into a collusive scheme with, an authorized licensee or its designated representative to conduct one or more instructional tasting events as a condition of the licenseholder's carrying or continuing to carry a brand or brands of the authorized licensee or as a condition for display or other merchandising plan which is based on an agreement to provide shelf space. An authorized licensee or its designated representative shall not require any preferential treatment or benefit from, or enter into a collusive scheme with, a licenseholder as a condition of conducting one or more instructional tasting events, require a licenseholder to carry or continue to carry a brand or brands of the authorized licensee as a condition of conducting one or more instructional tasting events, or condition display or other merchandising plans that are based on agreements for the provision of shelf space on the conducting of one or more instructional tasting events. Any agreement, whether written or oral, entered into by and between a licenseholder and an authorized licensee or its designated representative that precludes the conducting of instructional tasting events on the premises of the licenseholder by any other authorized licensee is prohibited. A licenseholder or authorized licensee, or its designated representative, shall not use an instructional tasting event to circumvent any other requirements of this division.

(2) In addition to any other remedies available under this division, upon a finding by the department of a failure to comply with this subdivision, the department shall suspend the instructional tasting license of the licenseholder and the privilege of the authorized licensee to conduct instructional events for not less than six months but for no more than one year.

(*l*) 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.

Added Stats 2010 ch 230 § 2 (AB 605), effective January 1, 2011. Amended Stats 2011 ch 292 § 4 (AB 623), effective January 1, 2012; Stats 2012 ch 162 § 8 (SB 1171), effective January 1, 2013.

Amendments:

2011 Amendment: Amended the second sentence of subd (b)(1) by (1) substituting "licenses" for "licences"; and (2) adding ", or holds a limited off-sale retail wine license".

2012 Amendment: (1) Added "that" after "designated representative, provided" in the first sentence of subd (c); (2) substituted "point-of-sale" for "point of sale" in the introductory clause of subd (g)(1); (3) amended the first sentence of subd (j) by substituting (a) "is" for "are" after "designated representative"; and (b) "setup and breakdown" for "set up and break down"; and (4) amended the first sentence of subd (k)(1) by (a) adding the comma after "collusive scheme with"; and (b) substituting "licenseholder's" for "licenseholder."

§ 25503.6. Purchase of advertising by beer manufacturer, licensed winegrower, or distilled spirits rectifier or manufacturer from or on behalf of on–sale retail licensee; Conditions; Punishment for coercing fulfillment of contract or for soliciting or coercing purchase of advertising; "Beer manufacturer"

(a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a winegrower's license, a distilled spirits rectifier, 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.

(L) An outdoor professional sports facility with a fixed seating capacity of at least 4,200 seats located within San Joaquin County.

(M) A fully enclosed arena with a fixed seating capacity in excess of 13,000 seats in the City of Inglewood.

(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.

Added Stats 1986 ch 38 § 1, effective March 30, 1986. Amended Stats 1991 ch 396 § 1 (AB 738); Stats 1993 ch 33 § 1 (AB 379), effective June 16, 1993; Stats 1994 ch 67 § 1 (AB 1230); Stats 1999 ch 937 § 1 (SB 810), effective October 10, 1999; Stats 2000 ch 7 § 2 (AB 1525), effective March 28, 2000, ch 979 § 8 (AB 2759), ch 980 § 3 (AB 2777); Stats 2001 ch 582 § 1 (SB 647); Stats 2002 ch 47 § 1 (SB 1189), effective May 22, 2002; Stats 2004 ch 275 § 1 (SB 1647), effective August 23, 2004, ch 437 § 5 (AB 3085), effective September 9, 2004; Stats 2005 ch 617 § 1 (AB 1442); Stats 2007 ch 744 § 2 (AB 1739), effective January 1, 2008, Stats 2007 ch 745 § 1 (AB 663), effective January 1, 2008 (ch 745 prevails); Stats 2013 ch 164 § 1 (SB 324), effective August 27, 2013.

Amendments:

1991 Amendment: (1) Amended subd (a) by **(a)** adding "an outdoor stadium or" after "owner of" in subd (a)(1); **(b)** adding subd (a)(2); **(c)** redesignating former subds (a)(2) and (a)(3) to be subds (a)(3) and (a)(4); and **(d)** adding "stadium or" after "of the" in subd (a)(3); and **(2)** deleted "license" after "beer manufacturer's" in subd (c).

1993 Amendment: (1) Added the introductory clause in subd (a)(1); **(2)** redesignated former subd (a)(1) to be subd (a)(1)(A); **(3)** deleted "The on–sale licensee is the owner of" at the beginning of subd (a)(1)(A); and **(4)** added subd (a)(1)(B).

1994 Amendment: Added ", manager, agent of the owner, assignee of the owner's advertising rights, or the major tenant of the owner" in the introductory clause of subd (a)(1).

1999 Amendment: (1) Substituted "any" for "either" after "the owner of" in subd (a)(1); **(2)** added subds (a)(1)(C), (a)(1)(D), and (d); and **(3)** added "the" after "in connection with" in subd (a)(3).

2000 Amendment (ch 7): Added subd (a)(1)(E).

2000 Amendment (ch 980): (1) Added "or a distilled spirits manufacturer or distilled spirits manufacturer's agent" in the introductory clause of subd (a); **(2)** amended subd (a)(1) by **(a)** substituting "in Sacramento County" for "within a county of the eighth class, as defined in Section 28029 of the Government Code" in subd (a)(1)(A); **(b)** substituting "Orange County or Los Angeles County" for "Orange County" in subd (a)(1)(B); and **(c)** substituting subd (a)(4) for former subd (a)(4) which read: "(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 purchasing the advertising space or time."; **(3)** added ", the distilled spirits manufacturer, or the distilled spirits manufacturer's agent" in subd (b); **(4)** added ", any distilled spirits manufacturer, or any distilled spirits manufacturer's agent" in subd (c); **(5)** substituted ", wine or distilled spirits" for "or wine" in the first sentence of subds (c) and (d); and **(6)** added ", a distilled spirits manufacturer, or a distilled spirits manufacturer's agent" in the first sentence of subd (d). (As amended Stats 2000 ch 980, compared to the section as amended Stats 2000 ch 7. This section was also amended by an earlier chapter, ch 979. See Gov C § 9605.)

2001 Amendment: (1) Added "a beer manufacturer," in the introductory clause of subd (a); **(2)** substituted "in San Bernardino County" for "within a county of the fourth class, as defined in Section 28025 of the Government Code" in subd (a)(1)(D); **(3)** added subds (a)(1)(F) and (a)(1)(G); **(4)** amended subd (a)(4) by adding **(a)** "distributed by a competing beer wholesaler"; **(b)** "or marketed" both times it appears; **(c)** "distributed by a competing wine wholesaler"; **(d)** "distributed by a competing distilled spirits wholesaler"; and **(e)** "that purchased the advertising space or time" at the end of the subdivision; **(5)** substituted "beer manufacturer, the holder of the" for "holder of the beer manufacturer's or" in subd (b); **(6)** amended subd (c) by **(a)** substituting "beer manufacturer or holder of a" for "holder of a beer manufacturer's or"; **(b)** substituting ", directly or indirectly, a holder of a" for "a holder of a beer, wine, or distilled spirits"; **(c)** adding "all or part of" after "license to fulfill"; and **(d)** substituting ", time, or costs, involved in the contract, whichever is greater" for "or time involved in the contract"; **(7)** amended subd (d) by **(a)** adding ", directly or indirectly,"; **(b)** deleting "beer, wine, or distilled spirits" after "holder of a" the first time it appears; **(c)** substituting "beer manufacturer, a holder of a" for "holder of a

beer manufacturer's or"; and **(d)** adding "whichever is greater,"; and **(8)** added subd (e).

2002 Amendment: Added subds (a)(1)(H) and (a)(1)(I).

2004 Amendment (ch 275): **(1** Added "a distilled spirits rectifier," in the introductory clause of subd (a); **(2)** added "or Alameda County" in subd (a)(1)(A); **(3)** substituted "rectifier, the distilled spirits manufacturer, or the" for "manufacturer or" in subd (a)(4); **(4)** added "rectifier, the distilled spirits" in subd (b); **(5)** added "any distilled spirits rectifier," in subd (c); and **(6)** added "rectifier, a distilled spirits" in subd (d).

2004 Amendment (ch 437): Added **(1)** subd (a)(1)(J); **(2)** "exposition park," in the first sentence of subd (a)(3); and **(3)** the second sentence of subd (a)(3).

2005 Amendment: (1) Deleted "or" after "distilled spirits rectifier," in subd (a); and (2) added subd (a)(1)(K).

2007 Amendment: Added subd (a)(1)(L). (As amended by Stats 2007 ch 745, compared to the section as it read prior to 2007. This section was also amended by an earlier chapter, ch 744. See Gov C § 9605.)

2013 Amendment: Added (a)(1)(M).

Note—Stats 1986 ch 38, Stats 1991 ch 396, provides:

SEC. 2. The Legislature finds that it is necessary that the exception established by this act to the general prohibition against manufacturers compensating retailers in any way in connection with the advertising of alcoholic beverages be limited to the express terms of the exception so as not to undermine the general prohibition, and intends that this act be construed accordingly.

Stats 2004 ch 275 provides:

SEC. 2. The Legislature hereby finds and declares that a special statute is necessary and that a general statute cannot be made applicable, within the meaning of Section 16 of Article IV of the California Constitution, because of unique circumstances and concerns applicable to certain facilities in Alameda County.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1], 50.01[2].

§ 25503.7. Serving food and beverages to persons visiting 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.

Added Stats 1968 ch 296 § 1. Amended Stats 1998 ch 216 § 1 (AB 1750).

Amendments:

1998 Amendment: **(1)** Substituted the comma for "or" after "winegrower" both times it appears; **(2)** added ", or beer and wine wholesaler" both times it appears; and **(3)** added "or her" after "division and his".

Cross References:

Authority under winegrower's agent's license: B & P C § 23373.

Contents of license application: B & P C § 23952.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.8. Purchase of advertising space from on–sale retail licensee by beer manufacturer or winegrower

(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, distilled spirits wholesaler, 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, or the distilled spirits wholesaler, and the on-sale licensee, which contract shall not in any way involve the holder of a wholesaler's license, except as provided herein.

(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.

Added Stats 1985 ch 616 § 1, effective September 17, 1985. Amended Stats 1991 ch 580 § 2 (AB 985); Stats 1994 ch 80 § 3 (AB 2346), effective May 20, 1994; Stats 1999 ch 937 § 2 (SB 810), effective October 10, 1999; Stats 2000 ch 424 § 1 (AB 1604), effective September 13, 2000, ch 979 § 9 (AB 2759); Stats 2001 ch 567 § 8 (AB 1429), effective October 7, 2001; Stats 2005 ch 617 § 2 (AB 1442), effective January 1, 2006; Stats 2006 ch 587 § 1 (AB 3046), effective January 1, 2007.

Amendments:

1991 Amendment: Substituted subds (a)(1) and (a)(2) for former subds (a)(1) and (a)(2) which read: "(1) The on–sale licensee is the owner of 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.

"(2) The advertising space or time is purchased only 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."

1994 Amendment: (1) Substituted "any" for "either" in the introductory clause of subd (a)(1); **(2)** added subds (a)(1)(C) and (a)(2)(C); and **(3)** substituted "one" for "either" after "connection with" in the introductory clause of subd (a)(2).

1999 Amendment: Added **(1)** subds (a)(1)(D) and (a)(2)(D); and **(2)** subd (d).

2000 Amendment (ch 424): (1) Added "distilled spirits manufacturer's license, distilled spirits manufacturer's agent's license, a" in the introductory clause of subd (a); **(2)** added "the City of Los Angeles, Los Angeles County," in subds (a)(1)(D) and (a)(2)(D); **(3)** amended subd (a)(3) by **(a)** adding "distilled spirits,"; and **(b)** substituting "or marketed by the distilled spirits manufacturer's agent," for "by the"; **(4)** added "distilled spirits manufacturer's agent's license," in subd (b); **(5)** substituted "distilled spirits, beer," for "beer" in subds (b)–(d); and **(6)** added "distilled spirits manufacturer's license, a distilled spirits manufacturer's agent's license," in subd (c).

2000 Amendment (ch 979): (1) Substituted "a beer manufacturer, the holder of a winegrower's license, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent" for "the holder of a distilled spirits manufacturer's

license, a distilled spirits manufacturer's agent's license, a beer manufacturer's or winegrower's license" in the introductory clause of subd (a); **(2)** amended subd (a)(3) by adding **(a)** the comma after "distilled spirits, beer"; and **(b)** "or" after "manufacturer's agent,"; **(3)** substituted "beer manufacturer, the holder of the winegrower's license, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent," for "holder of the distilled spirits manufacturer's license, distilled spirits manufacturer's agent's license, beer manufacturer's or winegrower's license" in subd (b); **(4)** substituted "beer manufacturer, distilled spirits manufacturer, distilled spirits manufacturer's agent, or holder of a" for "holder of a distilled spirits manufacturer's license, a distilled spirits manufacturer's agent's license, beer manufacturer's license or" in subd (c); and **(5)** amended subd (d) by substituting **(a)** "distilled spirits, beer," for "beer"; and **(b)** "holder of a beer manufacturer's" for "beer manufacturer, distilled spirits manufacturer, or distilled spirits manufacturer's agent, or holder of a".

2001 Amendment: **(1)** Substituted "California winegrower's agent," for "distilled spirits manufacturer, or" in the introductory clause of subd (a); **(2)** substituted subd (a)(3) for former subd (a)(3) which read: "(3) The on–sale licensee serves other brands of distilled spirits, beer, or wine in addition to the brand manufactured or marketed by the distilled spirits manufacturer, distilled spirits manufacturer's agent, or beer manufacturer,or produced by the winegrower purchasing the advertising space or time."; **(3)** amended subd (b) by **(a)** adding "California winegrower's agent, the"; and **(b)** deleting "distilled spirits, beer, or wine" after "holder of a" near the end of the subdivision; **(4)** deleted "or" after "manufacturer's agent," in subd (c); **(5)** added ", or California winegrower's agent," in subds (c) and (d); **(6)** substituted "illegal means, induces, directly or indirectly, a holder of a" for "means, induces a holder of a beer or wine" in subd (c); **(7)** added "whichever is greater" in subds (c) and (d); **(8)** amended subd (d) by **(a)** adding ", directly or indirectly,"; and **(b)** deleting "or" after "manufacturer's agent,"; and **(9)** added subd (e).

2005 Amendment: (1) Added "a distilled spirits rectifier," after "winegrower's agent," in subd (a); (2) added subd (a)(1)(E); and (3) added subd (a)(2)(E).

2006 Amendment: Added subds (a)(1)(F) and (a)(2)(F).

Note—Stats 1985 ch 616 provides:

SEC. 2. 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 manufacturers from dominating local markets through incentives and compensation to retailers. The Legislature further finds that it is necessary that the exception established by this act to the general prohibition against manufacturers compensating retailers in any way in connection with the advertising of alcoholic beverages be limited to the express terms of the exception so as not to undermine the general prohibition, and intends that this act be construed accordingly.

Stats 1991 ch 580 provides:

SECTION 1. The Legislature hereby finds and declares that the enactment of this act will provide nonprofit zoological societies with the ability to accept financial assistance for program funding from manufacturers of alcoholic beverages.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1], 50.01[2].

§ 25503.85. Purchase of advertising space to portray sponsorship of educational programs, special fundraising, and other specified purposes

(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.

Added Stats 1991 ch 580 § 3 (AB 985). Amended Stats 2000 ch 979 § 11 (AB 2759); Stats 2001 ch 567 § 12 (AB 1429), effective October 7, 2001.

Amendments:

2000 Amendment: (1) Amended the introductory clause of subd (a) by **(a)** adding "a beer manufacturer" near the beginning; and **(b)** deleting the comma after "manufacturer's license"; **(2)** amended the first sentence of subd (c) by **(a)** adding "beer manufacturer or the"; and **(b)** substituting "license" for the comma after "spirits manufacturer's"; and **(3)** amended the first sentence of subd (d) by **(a)** adding "beer manufacturer or" at the beginning; and **(b)** substituting "license" for "license, beer, manufacturer's, license," after "or other means,".

2001 Amendment: (1) Substituted ", distilled spirits manufacturer, distilled spirits manufacturer's agent, holder of a winegrower's license, or California winegrower's agent" for or the holder of a distilled spirits manufacturer's license or winegrower's license" in the intro " ductory clause of subd (a); **(2)** substituted subd (a)(3) for former subd (a)(3) which read: "(3) The on–sale licensee serves other brands of distilled spirits, beer, or wine within the same license category, in addition to the brand manufactured by the distilled spirits or beer manufacturer or produced by the winegrower purchasing the advertising space or time."; **(3)** amended subd (c) by **(a)** substituting ", the distilled spirits manufacturer, the distilled spirits manufacturer's agent, a holder of the winegrower's license, or the California winegrower's agent" for "or the holder of the distilled spirits manufacturer's license or winegrower's license"; and **(b)** deleting "distilled spirits wholesaler's license, or beer and wine" after "holder of a" near the end of the subdivision; **(4)** amended subd (d) by substituting **(a)** ", distilled spirits manufacturer, distilled spirits manufacturer's agent, holder of a winegrower's license, or California winegrower's agent" for "or holder of a distilled spirits manufacturer's license or winegrower's license"; and **(b)** ", directly or indirectly, a holder of a" for "a holder of a distilled spirits"; and **(5)** added subds (e) and (f).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.9. Sales or gifts to nonprofit corporations

(a) Nothing in this division prohibits a winegrower, a beer and wine wholesaler that also holds an off-sale beer and wine retail license and only sells wine, or the holder of a limited off-sale retail wine license from giving or selling wine, a beer manufacturer from giving or selling beer, a distilled spirits manufacturer, rectifier, or a distilled spirits manufacturer's agent from giving or selling distilled spirits, or an importer general licensee 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:

(1) A nonprofit charitable corporation or association exempt from payment of income taxes under the provisions of the Internal Revenue Code of the United States and Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code.

(2) A nonprofit incorporated trade association that is exempt from payment of income taxes under the provisions of the Internal Revenue Code 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.

(3) A nonprofit corporation or association that is exempt from payment of income taxes under the provisions of the Internal Revenue Code of the United States and is defined as a tax exempt organization under Section 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701i, 23701k, 23701*l*, 23701r, or 23701w 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 importer general licensee 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.

(b) Nothing in this division prohibits a winegrower, a beer and wine wholesaler that also holds an off-sale beer and wine retail license and

only sells wine, or the holder of a limited off-sale retail wine license from giving or selling wine, a beer manufacturer from giving or selling beer, a distilled spirits manufacturer, rectifier, or a distilled spirits manufacturer's agent from giving or selling distilled spirits, or a beer and wine wholesaler that also holds an importer's license 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:

(1) A nonprofit charitable corporation or association exempt from payment of income taxes under the provisions of the Internal Revenue Code of the United States and Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code.

(2) A nonprofit incorporated trade association that is exempt from payment of income taxes under the provisions of the Internal Revenue Code 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.

(3) A nonprofit corporation or association that is exempt from payment of income taxes under the provisions of the Internal Revenue Code 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.

Added Stats 1968 ch 350 § 1. Amended Stats 1993 ch 400 § 1 (AB 1666); Stats 1994 ch 266 § 1 (AB 2919); Stats 1994 ch 1028 § 7 (AB 988); Stats 2007 ch 131 § 2 (AB 323), effective July 27, 2007; Stats 2008 ch 337 § 3 (SB 157), effective January 1, 2009; Stats 2010 ch 281 § 1 (SB 1022), effective January 1, 2011; Stats 2011 ch 292 § 5 (AB 623), effective January 1, 2012.

Amendments:

1993 Amendment: In addition to making technical changes, **(1)** added "and Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code" after "the United States" in subds (a) and (b); and **(2)** added subd (c).

1994 Amendment: In addition to making technical changes, **(1)** substituted the introductory paragraph for the former introductory paragraph which read: "Nothing in this division prohibits a winegrower from giving or selling, or giving and selling wine and a beer manufacturer from giving or selling, or giving and selling beer at prices other than those contained in schedules filed with the department to"; **(2)** substituted ". However, the wine, beer, and distilled spirits" for "provided, however, that the wine and beer" in subd (b); and **(3)** substituted "Wine, beer, and distilled spirits given or sold by a winegrower, beer manufacturer, distilled spirits manufacturer, distilled spirits manufacturer's agent, or licensed importer" for "Wine or beer given or sold by a winegrower or beer manufacturer" in subd (c).

2007 Amendment: Added "or a beer and wine wholesaler that also holds an off-sale beer and wine retail license and only sells wine" in the introductory paragraph.

2008 Amendment: (1) Redesignated the former introductory clause and subds (a)-(c) to be the introductory clause of subd (a) and subds (a)(1)-(a)(3); (2) substituted "or an importer general licensee" for "or a licensed importer" in the introductory clause of subd (a); (3) substituted "Internal Revenue Code of the United States" for "Internal Revenue Code of 1954 of the United States" in subds (a)(1)-(a)(3); (4) amended the section list of subd (a)(3) by (a) adding "23701b,"; and (b) substituting "23701g, 23701i, 23701k, 23701*l*, 23701r, or 23701w" for "or 23701r"; (5) substituted "importer general licensee" for "licensed importer" in the last sentence of subd (a)(3); and (6) added subd (b).

2010 Amendment: (1) Added ", rectifier," in the introductory clause of subds (a) and (b); and (2) deleted the commas before "that also holds" and after "only sells wine" in the introductory clause of subd (b).

2011 Amendment: Amended the introductory clause of subds (a) and (b) by (1) substituting the comma for "or" after "prohibits a winegrower"; and (2) adding ", or the holder of a limited off-sale retail wine license".

Note—Stats 2008 ch 337 provides:

SECTION 1. (a) This act shall be known and may be cited as the Nonprofit Organization Equal Participation Act.

(b) The Legislature finds and declares all of the following:

(1) The California wine industry generates one hundred fifteen million dollars ($115,000,000) annually in support of nonprofit organizations and their causes.

(2) The collaboration between the wine industry and nonprofit organizations has a proven track record in attracting supporters to nonprofit fundraising events. This support has resulted in sustaining vital community services across the state.

(3) Current law provides that the wine industry can participate in winetastings, donate wine, take orders, and sell bottled wine at certain nonprofit events.

(4) The purpose of this act is to provide continuity and equal participation for nonprofit organizations in sanctioned wine-related events and to provide orderly direction for wine producers.

Cross References:

Contents of license application: B & P C § 23952.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.10. Department's approval of lease or sublease

(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.

Added Stats 1971 ch 296 § 1. Amended Stats 1974 ch 699 § 2.

Amendments:

1974 Amendment: Added "California winegrower's agent," in the introductory clause of subd (a).

Cross References:

Contents of license application: B & P C § 23952.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.11. Ownership of stock 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.

Added Stats 1971 ch 296 § 2. Amended Stats 1979 ch 570 § 1, effective September 12, 1979; Stats 1998 ch 639 § 12 (AB 2416).

Amendments:

1979 Amendment: Added **(1)** "or serve on the board of directors of a corporate off–sale retail licensee" before ", provided"; and **(2)** "or service on the board of directors" after "ownership" wherever it appears.

1998 Amendment: In addition to making technical changes, added "or NASDAQ,".

Cross References:

Contents of license application: B & P C § 23952.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.12. Ownership of stock in corporate licensed manufacturer, etc.

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 the stock ownership.

Added Stats 1971 ch 296 § 3. Amended Stats 1998 ch 639 § 13 (AB 2416).

Amendments:

1998 Amendment: In addition to making technical changes, added "or on NASDAQ,".

Cross References:

Contents of license application: B & P C § 23952.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.13. Encouragement of private sector to create new employment and job–training opportunities for low–income persons and establish business enterprises owned and managed by such persons

(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 persons. 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.

Added Stats 1977 ch 1044 § 4.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.14. Retail off–sale general licensee authorized to hold beer and wine wholesale license in state with population not exceeding 700,000

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.

Added Stats 1978 ch 407 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.15. Ownership of interest in on–sale license

(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, if both of the following conditions exist:

(1) Neither that person, nor any officer, director, or agent of that person, sells or furnishes to the holder of the license any wine, or permits 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) Neither that person, nor any officer, director, or agent of that person, enters 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.

Added Stats 1981 ch 696 § 1. Amended Stats 1988 ch 69 § 1, effective April 5, 1988, ch 284 § 3, effective July 7, 1988; Stats 1994 ch 318 § 4 (SB 1376); Stats 1995 ch 91 § 14 (SB 975); Stats 1997 ch 529 § 1 (SB 359); Stats 2010 ch 296 § 8 (SB 1480), effective January 1, 2011.

Amendments:

1988 Amendment: (1) Generally eliminated "such"; **(2)** substituted "on–sale license" for "on–sale or offsale general license" after "any interest in any"; **(3)** deleted "or offsale" after "his or her on–sale"; and **(4)** substituted "on–sale" for "on–sale or offsale" after "promoted in the". (As amended Stats 1988, ch 284, compared to the section as it read prior to 1988. This section was also amended by an earlier chapter, ch 69. See Gov C § 9605.)

1994 Amendment: In addition to making technical changes, **(1)** designated the former section to be subd (a); **(2)** added "both of the following: (1)" at the end of the introductory clause of subd (a); **(3)** substituted ". (2)" for ", nor" at the end of subd (a)(1); and **(4)** added subds (b) and (c).

1995 Amendment: Routine code maintenance.

1997 Amendment: (1) Added "wholesaled," after "manufactured, produced," in subd (a)(1); and **(2)** amended subd (b) by adding **(a)** "winegrower who has a wholesale license, or any" in the introductory clause; and **(b)** "other than the licensed winegrower who has a wholesale license and an interest in an on–sale license," in the introductory clause of subd (b)(2).

2010 Amendment: (1) Substituted "if both of the following conditions exist" for "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" in the introductory clause of subd (a); (2) substituted "Neither that person," for "That neither that person" at the beginning of subds (a)(1) and (a)(2); (3) amended subd (a)(2) by substituting (a) ", sells or furnishes" for "shall sell or furnish"; and (b) "permits" for "permit"; and (4) substituted ", enters into any collusive scheme," for "shall enter into any collusive scheme" in subd (a)(2).

Editor's Notes—For urgency provision, see 1988 Note following B & P C § 23378.2.

Cross References:

Onsale licensee forbidden to hold interest in certain licenses: B & P C § 25505.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.20[2], 18.33, 18.200[1], 18.224[1].

§ 25503.16. Issuance of retail license with respect to specified premises owned or operated by winegrower or distiller

(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 opera-

tions 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.

Added Stats 1982 ch 575 § 1. Amended Stats 1986 ch 292 § 1; Stats 1990 ch 135 § 4; Stats 1992 ch 277 § 1 (AB 2711), effective July 20, 1992; Stats 2001 ch 567 § 9 (AB 1429), effective October 7, 2001.

Amendments:

1986 Amendment: (1) Amended the introductory clause of subd (a) by substituting **(a)** "has" for "holds the ownership of" after "or wholesaler"; and **(b)** ", 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, subdivisions (a) or (b) of Section 25501, or subdivision (a), (b), (c), or (d) of Section 25502" for "or in the retail licensee"; and **(2)** amended subd (a)(3) by **(a)** substituting "which has" for "holding the ownership of"; and **(b)** adding", in the retail license,".

1990 Amendment: (1) Substituted "subdivision (a) or (b) of Section 25501, or Section 25502, if" for "subdivisions (a) or (b) of Section 25501, or subdivision (a), (b), (c) or (d) of Section 25502, provided that" at the end of the introductory clause of subd (a); **(2)** substituted "100" for "150" in subd (a)(1); and **(3)** substituted "the hotel" for "such hotel" both times it appears in subd (a)(2).

1992 Amendment: (1) Substituted ", motel, or marine park" for "or motel" after "operations of a hotel," in the introductory clause of subd (a) and both times it appears in subd (a)(2); **(2)** added "In the case of a hotel or motel," at the beginning of subd (1)(a); **(3)** added subds (a)(4) and (a)(5); **(4)** added subd (c); and **(5)** redesignated former subd (c) to be subd (d).

2001 Amendment: (1) Added subdivision designation (a)(3)(A); **(2)** amended subd (a)(3) by **(a)** adding ", except as otherwise provided in subparagraph (B),"; **(b)** substituting "that" for "which" after "wholesale licensee" in subd (a)(3)(A); and **(c)** adding subd (a)(3)(B); and **(3)** substituted "shall" for "must" after "against tied interests" in the second sentence of subd (d).

Cross References:

Prohibited economic interest in on–sale license: B & P C § 25500.

Equipping or furnishing of on–sale premises: B & P C § 25501.

Prohibited economic interest in off–sale general license: B & P C § 25502.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.17. Issuance or transfer of retail on–sale general license with respect to operation of school for professional chefs

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.

Added Stats 1983 ch 314 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.18. Issuance or transfer of retail offsale beer and wine license with respect to operation of school for professional chefs

Nothing in this division shall prohibit the issuance or transfer of any retail offsale 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.

Added Stats 1983 ch 313 § 1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.19. Issuance or transfer of retail on–sale general license to passenger cruise ships or lines

(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 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.

Added Stats 1986 ch 804 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.20. Ownership in retail licensee; School for professional chefs in conjunction with public eating place

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.

Added Stats 1995 ch 245 § 2 (SB 408).

Former Sections:

Former § 25503.20, relating to ownership of stock in corporate licensed beer manufacturer, was added Stats 1987 ch 96 § 1, effective July 2, 1987, and repealed Stats 1994 ch 1028 § 8.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.21. Lease of premises to off–sale licensee in which lessor holds no financial interest

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.

Added Stats 1988 ch 116 § 4, effective May 25, 1988.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.22. Issuance, transfer, or renewal of retail license; Separation of interests

(a) Nothing in this division shall prohibit the issuance, transfer, or renewal of any retail license to any person with respect to premises which are

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 40 percent of the gross annual revenues of the retailer 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.

Added Stats 1988 ch 68 § 1, effective April 5, 1988. Amended Stats 1995 ch 76 § 1 (SB 1171), effective July 6, 1995; Stats 2008 ch 412 § 1 (SB 1560), effective September 27, 2008.

Amendments:

1995 Amendment: (1) Deleted "beer and wine" after "retail on–sale" in the introductory clause of subd (a); and **(2)** substituted "alcoholic beverages" for "beer or wine" after "purchase no" wherever it appears in subd (a)(1).

2008 Amendment: (1) Amended the introductory clause of subd (a) by (a) substituting "issuance, transfer, or renewal of any retail license" for "issuance or transfer of any retail on-sale license"; and (b) deleting "an integral part of a restaurant" after "premises which are"; and (2) substituted "40 percent of the gross annual revenues of the retailer" for "30 percent of the gross annual revenues of the restaurant" in subd (a)(2).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.23. Purchase of advertising space and time

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.

Added Stats 1990 ch 124 § 1, effective June 7, 1990.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.24. Purchase of data for market research regarding sales of alcoholic beverages

(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 manufac-

turer, 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.

Added Stats 1991 ch 347 § 2 (AB 232). Amended Stats 2001 ch 567 § 10 (AB 1429), effective October 7, 2001.

Amendments:

2001 Amendment: (1) Amended the first sentence of subd (b) by **(a)** adding ", directly or indirectly," after "means, induces"; **(b)** substituting "an" for "any" after "by a fine in"; and **(c)** adding "whichever is greater,"; and **(2)** added subds (c) and (d).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.26. Purchase from on–sale licensee of advertising space by manufacturers and growers

(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 spirits 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 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.

Added Stats 1989 ch 134 § 1. Amended Stats 1990 ch 206 § 1 (SB 2411); Stats 1991 ch 1091 § 14 (AB 1487); Stats 1994 ch 60 § 5 (SB 29), effective May 3, 1994; Stats 2000 ch 979 § 10 (AB 2759); Stats 2001 ch 567 § 11 (AB 1429), effective October 7, 2001.

Amendments:

1990 Amendment: **(1)** Substituted "the Los Angeles County, Alameda County, or San Mateo County" for "a county of the first class, as defined in Section 28022 of the Government Code" at the end of subd (a)(1); and **(2)** substituted "is" for "shall be" after "(a) or (b) in subd (c).

1991 Amendment: Routine code maintenance.

1994 Amendment: Added **(1)** ", or a manufacturer of distilled spirits," in the introductory clause of subd (a); **(2)** ", distilled spirits," in subd (a)(3); **(3)** ", or the manufacturer of distilled spirits," in subd (b); and **(4)** ", or any manufacturer of distilled spirits," and "or distilled spirits" in the first sentence of subd (c).

2000 Amendment: Substituted **(1)** "a beer manufacturer, the holder of a winegrower's license, a manufacturer of distilled spirits, or distilled spirits manufacturer's agent" for "manufacturer's or winegrower's license, or a manufacturer of distilled spirits" in the introductory clause of subd (a); **(2)** "beer manufacturer, the holder of the" for "holder of the beer manufacturer's or" in subd (b); and **(3)** "beer manufacturer, holder of a winegrower's license, or" for "holder of a beer manufacturer's or winegrower's license, or any" in subd (c).

2001 Amendment: **(1)** Added "California winegrower's agent, a" in the introductory clause of subd (a); **(2)** substituted subd (a)(3) for former subd (a)(3) which read: "(3) The on–sale licensee serves other brands of beer, distilled spirits, or wine in addition to the brand manufactured by the beer manufacturer or distilled spirits manufacturer or produced by the winegrower purchasing the advertising space or time."; **(3)** amended subd (b) by substituting **(a)** "the California winegrower's agent," for "or"; and **(b)** adding "or distilled spirits manufacturer's agent"; **(4)** amended subd (c) by **(a)** substituting "California winegrower's agent," for "or"; **(b)** adding "or the distilled spirits manufacturer's agent,"; **(c)** substituting ", directly or indirectly, a holder of a" for "a holder of a beer or wine or distilled spirits"; and **(d)** adding ", whichever is greater," after "in the contract"; and **(5)** added subds (d) and (e).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.27. Provision of food and beverages and admission to athletic activities for licensed retailers and employees

(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.

Added Stats 1990 ch 425 § 1 (AB 3175), effective July 25, 1990.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.28. Ownership of licensed beer manufacture by holder of 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.

Added Stats 1994 ch 1028 § 10 (AB 988), operative January 1, 1998.

Former Sections:

Former § 25503.28, similar to the present section, was added Stats 1993 ch 362 § 1, amended Stats 1994 ch 1028

§ 9), and repealed, operative January 1, 1998, by its own terms.

Cross References:
Classification of counties according to population: Gov C §§ 28021 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.29. Sale of license for premises that are part of motion picture or television theme park

(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 monetary expenditures for alcoholic beverages for sale on its licensed premises in a calendar year shall be for 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.

Added Stats 1995 ch 232 § 1 (AB 805), effective July 31, 1995. Amended Stats 2012 ch 327 § 16 (SB 937), effective January 1, 2013.

Amendments:
2012 Amendment: Amended subd (a)(4) by substituting (1) "monetary expenditures for" for "purchases of"; and (2) "in a calendar year shall be for products" for "shall be products".

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.30. Winegrower's interest in 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.

Added Stats 1996 ch 900 § 4 (SB 1923). Amended Stats 1997 ch 535 § 1 (SB 508); Stats 1998 ch 485 § 37 (AB 2803); Stats 2000 ch 162 § 2 (SB 1232).

Amendments:

1997 Amendment: (1) Deleted subdivision designation (a) at the beginning; **(2)** substituted ", 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" for "the following conditions apply" at the end of the introductory clause; **(3)** deleted former subds (a)(1) and (a)(2) which read: "(1) The winegrower's principal place of business is located in Napa County, the winegrower has been in continuous operation, although not necessarily under the same ownership, for more than 25 years, and the winegrower, directly or through its subsidiaries, produces more than 5,000,000 gallons of wine annually in this state.

"(2) 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:"; **(4)** redesignated former subds (a)(2)(A)–(a)(2)(C) to be subds (a)–(c) and subd (b) to be subd (e); **(5)** substituted "this section" for "subdivision (a)" after "persons specified in" and for "that subdivision" after "interests specified in" in subd (c); and **(6)** added subd (d).

1998 Amendment: (1) Added subdivision designation (a); **(2)** redesignated former subds (a)–(c) to be subds (a)(1)–(a)(3) and subds (d) and (e) to be subds (b) and (c); and **(3)** added the comma after "finds that" near the beginning of subd (b).

2000 Amendment: Added the second sentence of subd (a)(2).

Note—Stats 1996 ch 900 provides:

SEC. 7. With respect to Section 4 of this act, the Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution in order to allow a winegrower whose principal place of business is located in Napa County and who meets certain other requirements to hold an interest in an on–sale license.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.31. Monetary or alcoholic beverage contributions to symphony organization; Conditions; Serving by symphony organization; Legislative findings

(a) Notwithstanding any other provision of this division, a beer manufacturer, holder of a winegrower's license, a California winegrower's agent, a distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, a distilled spirits manufacturer's agent, and a licensed retailer may make monetary contributions or alcoholic beverage contributions of the type that licensee is authorized to sell to a symphony association, if all the following conditions are met:

(1) The symphony association is a nonprofit charitable corporation or association exempt from

payment of income taxes under the provisions of the Internal Revenue Code of the United States and Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code.

(2) The symphony association has been incorporated in the City and County of San Francisco by and through its predecessor organizations for not less than 99 years and produces not less than 175 musical events open to the general public per symphony season.

(3) The symphony association holds a retail on-sale license in a portion of its premises, provided that no contribution shall be used in or for the benefit of the symphony association's retail on-sale license.

(4) The contribution shall not be conditioned directly or indirectly, in any way, on the purchase, sale, or distribution of any alcoholic beverage manufactured or distributed by the beer manufacturer, holder of a winegrower's license, California winegrower's agent, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, a distilled spirits manufacturer's agent, or a licensed retailer by the symphony association.

(b) The symphony association shall serve other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the contributing beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced or marketed by the contributing 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 contribution distilled spirits manufacturer or distilled spirits manufacturer's agent.

(c) For purposes of this section, "beer manufacturer" includes a holder of a beer manufacturer's license, a holder of an out-of-state beer manufacturer's certificate, or a holder of a beer and wine importer's general license.

(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 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.

Added Stats 2009 ch 638 § 1 (SB 131), effective November 2, 2009, repealed December 31, 2014. Amended Stats 2013 ch 463 § 5 (AB 1425), effective January 1, 2014.

Amendments:

2013 Amendment: Deleted former subd (e) which read: "(e) This section shall remain in effect only until December 31, 2014, and as of that date is repealed."

Note—Stats 2009 ch 638 provides:

SEC. 2. The Legislature finds and declares that, because of the unique circumstances, and the cultural importance of the San Francisco Symphony, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution, and, therefore, this special statute is necessary.

§ 25503.32. (Repealed January 1, 2018) Donations of wine and monetary contributions to an opera house; Conditions

(a) A holder of a winegrower's license whose licensed premises of production are located within the Counties of Lake, Mendocino, Napa, or Sonoma may donate wine and make monetary contributions to an opera house, if all of the following conditions are met:

(1) The opera house is a nonprofit charitable corporation or association exempt from payment of income taxes under the provisions of the Internal Revenue Code of the United States and Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code.

(2) The opera house has been incorporated in the City and County of Napa and produces not less than 150 events open to the general public per year.

(3) The opera house holds a permanent retail on-sale license.

(4) The donation or monetary contribution shall not be conditioned directly or indirectly, in any way, on the purchase, sale, or distribution of any alcoholic beverage manufactured or distributed by the holder of a winegrower's license by the opera house.

(5) Except as provided in paragraph (6), donated wine shall not be used or sold by the permanent retail licensee and a monetary contribution shall not be used in or for the benefit of the permanent retail on-sale licensee.

(6) Donated wine may only be used or sold in connection with fundraising activities held on or off the permanent licensed premises. Fundraising activities held on the licensed premises during which donated wine is used or sold shall not take place in conjunction with any performance at the opera house or while the permanent retail licensee is exercising its license privileges and

shall only be conducted pursuant to a temporary license issued by the department.

(b) The opera house may acknowledge and thank a donating winegrower in the opera house's event programs, on the opera house's Internet Web site, and on stage at the permanent licensed premises during an event.

(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.

(d) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

Added Stats 2012 ch 334 § 1 (SB 1531), effective January 1, 2013, repealed January 1, 2018.

§ 25503.33. Beer manufacturer's or winegrower's provision of sponsorship funds for on–sale licensee; Misdemeanor violation

(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.

Added Stats 1996 ch 638 § 1 (AB 682).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.37. Exemption from restrictions for interactive entertainment facility owned or operated by licensee

(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, 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) 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 monetary expenditures for alcoholic beverages for sale on its licensed premises in a calendar year shall be for 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.

Added Stats 1997 ch 75 § 1 (SB 928). Amended Stats 2012 ch 327 § 17 (SB 937), effective January 1, 2013.

Amendments:

2012 Amendment: Amended subd (a)(4) by substituting (1) "monetary expenditures for" for "purchases of"; and (2) "in a calendar year shall be for products" for "shall be products".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25503.38. Sponsoring or purchasing advertising space and time from off-sale retail licensee; Conditions

(a) Notwithstanding any other provision of this chapter, a beer manufacturer may sponsor or purchase advertising space and time from, or on behalf of, an off-sale retail licensee subject to all of the following conditions:

(1) The off-sale retail licensee is an owner or coowner of a professional sports team.

(2) The professional sports team owned or coowned by the off-sale retail licensee is a tenant of, and plays its home games in, an arena with a fixed seating capacity in excess of 10,000 seats located in San Joaquin County.

(3) The advertising space or time is sponsored or purchased only in connection with the professional sports team's events held on the premises of the arena.

(4) The owner or coowner of the professional sports team does not hold or have an interest in more than two off-sale retail licenses.

(b) Any sponsorship or 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 off-sale retail licensee, and all other coowners, where applicable.

(c) Any beer manufacturer 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 off-sale retail licensee described in subdivision (a) who, directly or indirectly, solicits or coerces a holder of a wholesaler' s license to solicit a beer manufacturer to sponsor or purchase advertising time or space 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 advertis-

ing 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) Nothing in this section shall authorize the purchasing of advertising space or time from, or on behalf of, any on-sale licensee that is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or a tenant of the arena described in paragraph (2) of subdivision (a).

(f) Nothing in this section shall authorize a beer manufacturer to furnish, give, or lend anything of value to an off-sale retail licensee described in subdivision (a) except as expressly authorized by this section or any other provision of this division.

(g) For purposes of this section, "beer manufacturer" includes a holder of a beer manufacturer's license, a holder of an out-of-state beer manufacturer's certificate, or a holder of a beer and wine importer's general license, selling beer only.

Added Stats 2007 ch 221 § 1 (AB 776), effective September 21, 2007.

Note—Stats 2007 ch 221 provides:

SEC. 2. Due to the unique circumstances concerning the County of San Joaquin, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Therefore, this act is necessarily applicable only to the County of San Joaquin.

§ 25503.39. Sponsoring or purchasing advertising space and time from live entertainment marketing company; Conditions

(a) Notwithstanding any other provision of this chapter, a beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of an importer's general license, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer's agent may sponsor events promoted by, and may purchase advertising space and time from, or on behalf of, a live entertainment marketing company subject to all of the following conditions:

(1) The live entertainment marketing company is a wholly owned subsidiary of a live entertainment company that has its principal place of business in the County of Los Angeles, whose shares of stock are sold to the general public on a national stock exchange, and also owns subsidiaries that hold on-sale retail licenses.

(2) The sponsorship and the advertising space or time is purchased only in connection with the promotion of live artistic, musical, sports, or cultural entertainment events at entertainment facilities, auditoriums, or arenas that are designed and used for live artistic, musical, sports, or cultural entertainment events.

(3)(A) Any on-sale licensee operating at a venue where live artistic, musical, sports, or cultural entertainment events are performed pursuant to a sponsorship described in this section or where advertising is purchased as described in this section shall serve other brands of beer, distilled spirits, and wine in addition to any brand manufactured or distributed by the sponsoring or advertising beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of an importer's general license, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer's agent.

(B) Any on-sale retail licensee owned by the live entertainment company described in paragraph (1) shall serve other brands of beer, distilled spirits, and wine in addition to any brand manufactured or distributed by the sponsoring or advertising beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of an importer's general license, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer's agent.

(4)(A) Advertising space or time purchased pursuant to this section shall not be placed in any on-sale licensed premises where the on-sale retail licensee is owned by the live entertainment company, or any of its subsidiaries, described in paragraph (1).

(B) Sponsorship provided pursuant to this section shall not be allowed if the event or activity is held at or in any on-sale licensed premises where the on-sale retail licensee is owned by the live entertainment company, or any of its subsidiaries, described in paragraph (1).

(5) An agreement for the sponsorship of, or for the purchase of advertising space and time during, a live artistic, musical, sports, or cultural entertainment event shall not be conditioned directly or indirectly, in any way, on the purchase, sale, or distribution of any alcoholic beverage manufactured or distributed by the advertising or sponsoring beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of an importer's general license, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer's agent by the live entertainment company described in paragraph (1) or by any on-sale retail licensee that is owned by the live entertainment company.

(b) Any sponsorship of events or 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, holder of a winegrower's license, winegrower's agent, holder of an importer's general license, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer's agent and the live entertainment marketing company.

(c) Any beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of an importer's general license, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a 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 those contractual 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 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 who, directly or indirectly, solicits or coerces a holder of a wholesaler's license to solicit a beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of an importer's general license, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer's agent to purchase advertising time or space 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 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 purposes of this section, "beer manufacturer" includes a holder of a beer manufacturer's license, a holder of an out-of-state beer manufacturer's certificate, or a holder of a beer and wine importer's general license.

(f) Nothing in this section shall authorize the purchasing of advertising space or time directly from, or on behalf of, any on-sale licensee.

(g) Nothing in this section shall authorize a beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of an importer's general license, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer's agent to furnish, give, or lend anything of value to an on-sale retail licensee described in subdivision (a) except as expressly authorized by this section or any other provision of this division.

Added Stats 2007 ch 349 § 4 (SB 520), effective January 1, 2008.

§ 25503.41. Authority to hold interest in brewpub restaurants for operator of out-of-state winery who produces distilled spirits; Conditions; Legislative findings; Construction

(a) Notwithstanding any other provision of this division, any person that both operates a winery in another state and produces distilled spirits in another state may hold an interest in no more than 12 brewpub-restaurant licenses, provided that all of the following conditions are met:

(1) The out-of-state distilling operations occur only on premises where the licensee also conducts brewpub-restaurant operations, and do not exceed 12,000 gallons of distilled spirits annually at any licensed location.

(2) The out-of-state winery operations occur only on premises where the licensee also conducts brewpub-restaurant operations.

(3) The distilled spirits and wine that are manufactured out of state by the licensee are not imported into or sold in this state. If the licensee imports beer into this state that is produced in its out-of-state brewpub, it shall do so only through a licensed beer and wine wholesaler.

(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.

Added Stats 2008 ch 461 § 1 (AB 2426), effective January 1, 2009.

§ 25503.42. Purchase of indoor advertising space or time; Violations; Annual certificate

(a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a

winegrower's license, a California winegrower's agent, a holder of a distilled spirits rectifier's general license, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent may purchase indoor advertising space or time at a fully enclosed venue with box office sales and attendance by the public on a ticketed basis only, with a patronage capacity in excess of 2,000, but not more than 3,000, 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, where the owner of the venue is not the on-sale retail licensee. The purchase of the indoor advertising space or time shall be subject to all of the following conditions:

(1) The indoor advertising space or time is purchased only at the venue specified in this subdivision.

(2) The purchase of indoor advertising space or time shall be conducted pursuant to a written agreement entered into by the beer manufacturer, holder of a winegrower's license, California winegrower' s agent, holder of a distilled spirits rectifier's general license, distilled spirits manufacturer, or a distilled spirits manufacturer's agent and the owner of the venue described in this subdivision. A holder of a wholesale license shall not be a party to the written agreement or otherwise have any direct or indirect obligations under the agreement, including an obligation to share in the costs or contribute to the costs of the indoor advertising space or time purchased pursuant to this section.

(3) An agreement for the purchase of indoor advertising space or time pursuant to this section shall not be conditioned directly or indirectly, in any way, on the purchase, sale, or distribution of any alcoholic beverage manufactured or distributed by the advertising beer manufacturer, holder of a winegrower's license, California winegrower's agent, holder of a distilled spirits rectifier's general license, distilled spirits manufacturer, or a distilled spirits manufacturer's agent by any on-sale retail licensee.

(4) An on-sale licensee operating at a venue described in this subdivision where indoor advertising space or time is purchased shall serve other brands of beer distributed by a competing beer wholesaler in addition to the brands manufactured or marketed by the advertising beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brands produced or marketed by the advertising winegrower or California winegrower's agent, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brands manufactured or marketed by the advertising distilled spirits manufacturer, the distilled spirits manufacturer's agent, or a holder of a distilled spirits rectifier's general license.

(5) No more than 15 percent of the retail licensee's monetary expenditures for distilled spirits and wine for sale on its licensed premises in any calendar year shall be for products manufactured, produced, or distributed by the holder of a winegrower's license, California winegrower's agent, distilled spirits manufacturer, holder of a distilled spirits rectifier's general license, or a distilled spirits manufacturer's agent that has purchased indoor advertising space.

(b) A beer manufacturer, holder of a winegrower's license, California winegrower's agent, holder of a distilled spirits rectifier's general license, distilled spirits manufacturer, or a 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 those contractual obligations entered into pursuant to subdivision (a) shall be guilty of a misdemeanor and shall be punished by imprisonment in a county jail for not more than six months, or by a fine equal to the greater of an amount equal to the entire value of the advertising space or time involved in the contract or ten thousand dollars ($10,000), or by both that imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(c) An on-sale retail licensee who, directly or indirectly, solicits or coerces a holder of a wholesaler's license to solicit a beer manufacturer, holder of a winegrower's license, California winegrower's agent, holder of a distilled spirits rectifier's general license, distilled spirits manufacturer, or a distilled spirits manufacturer's agent to purchase indoor advertising time or space pursuant to subdivision (a) shall be guilty of a misdemeanor and shall be punished by imprisonment in a county jail for not more than six months, or by a fine equal to the greater of an amount equal to the entire value of the advertising space or time involved in the contract or ten thousand dollars ($10,000), or by both that imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) For purposes of this section, "beer manufacturer" includes a holder of a beer manufacturer's license, a holder of an out-of-state beer manufacturer's certificate, or a holder of a beer and wine importer's general license.

(e) Nothing in this section shall authorize the purchasing of indoor advertising space or time

pursuant to subdivision (a) by any beer manufacturer, holder of a winegrower's license, a California winegrower's agent, a distilled spirits manufacturer, holder of a distilled spirits rectifier's general license, or a distilled spirits manufacturer's agent directly or indirectly from any on-sale licensee.

(f) A venue owner that meets the description provided in subdivision (a) and that enters into a written agreement pursuant to this section shall obtain an annual certificate from the department. The director shall prepare, as part of the annual report required by Section 23055 for submission to the Legislature, a listing of the number of certifications made pursuant to this section or the absence of any certifications. Where there have been no certifications made pursuant to this section for two consecutive years, this information shall be included in the report.

(g) The Legislature finds that it is necessary and proper to require a separation among 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.

Added Stats 2009 ch 647 § 1 (AB 813), effective November 5, 2009. Amended Stats 2010 ch 273 § 3 (AB 2793) (ch 273 prevails), effective January 1, 2011, ch 328 § 26 (SB 1330), effective January 1, 2011; Stats 2012 ch 327 § 18 (SB 937), effective January 1, 2013.

Amendments:

2010 Amendment: (1) Added "but not more than 3,000," in subd (a); and (2) amended subd (a)(5) by substituting (a) "monetary expenditures for" for "purchases of"; and (b) "in any calendar year shall be for products" for "shall be".

2012 Amendment: (1) Substituted "rectifier's" for "rectifiers" wherever it appears in subds (a)–(c) and (e); and (2) amended the first sentence of subds (b) and (c) by (a) substituting "a county jail for not more than" for "a county jail not exceeding"; and (b) adding "that" after "or by both".

Cross Reference:

Purchase of indoor advertising space or time from specified Los Angeles County venues: B & P C § 25503.41.

§ 25503.45. Licenseholders allowed to instruct consumers at on-sale retail licensed premises; Conditions; Advertisements

(a) Notwithstanding any other provision of this division, a licensed beer manufacturer or a holder of beer and wine importer's general license, or any director, partner, officer, agent, or representative of that person, may instruct consumers at an on-sale retail licensed premises authorized to sell its product with the permission of the on-sale retail licensee. The instruction may include serving beer sold by the on-sale retail licensee to the consumer and providing information on the history, nature, values, and characteristics of the beer, and methods of presenting and serving the beer. Orders for the sale of beer may be accepted by the beer manufacturer conducting an instructional event if the sales transaction is completed at the beer manufacturer's licensed premises.

(b) A person authorized by subdivision (a), in advance of an authorized instructional event, may list in an advertisement the name and address of the on-sale retail licensee, the names of the beers being featured at the instructional event, and the time, date, and location of, and other information about, the instructional event, subject to the following limitations:

(1) The advertisement does not also contain the retail price of the beers.

(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 these advertisements are not hereby authorized.

(c) An on-sale retail licensee's advertisement of an authorized instructional event may include the name, address, and brand names of the person authorized by subdivision (a), however nothing in this section allows that person to share in the costs of the on-sale retail licensee's advertisement.

(d) For purposes of this section, a licensed beer and wine wholesaler shall not be a representative of a beer manufacturer or a holder of a beer and wine importer's general license.

(e) Notwithstanding any other provision of this division, no alcoholic beverage may be given away in connection with the instructional event authorized by this section.

Added Stats 2010 ch 149 § 1 (AB 2134), effective January 1, 2011.

§ 25504. Penalty for violations

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1149 § 1.

Historical Derivation:
Stats 1935 ch 330 § 54, as amended Stats 1937 ch 758 § 87, Stats 1939 ch 16 § 1, Stats 1945 ch 1401 § 40, Stats 1947 ch 1387 § 1.

Cross References:
Contents of license application: B & P C § 23952.
Punishment for misdemeanors: B & P C § 25617.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

Attorney General's Opinions:
Propriety of employment of personnel of distilled spirits wholesale licensee in off–sale licensee's premises. 32 Ops. Cal. Atty. Gen. 75.

§ 25504.5. Exceptions

The provisions of Sections 25500 to 25503, inclusive, and of Section 25600 do not apply to the occasional inspection and cleaning by manufacturers and wholesalers of taps and tapping equipment installed in retail on-sale premises.

Added Stats 1957 ch 258 § 1. Amended Stats 2012 ch 367 § 1 (AB 573), effective January 1, 2013.

Amendments:
2012 Amendment: Deleted (1) "beer" after "and cleaning by" and after "and wholesalers of"; and (2) the former second paragraph which read: "This section does not constitute a change in, but is declaratory of, the pre-existing law."

Cross References:
Gifts and premiums on sales: B & P C § 25600.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25505. Ban on interest in certain licenses or businesses by on–sale licensee; Exemptions

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 any winegrower's license, provided the on–sale licensee, or the officer, director, employee, or agent thereof does 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 1790 § 3; Stats 1961 ch 246 § 4, ch 2093 § 1; Stats 1981 ch 696 § 2;

Stats 1996 ch 900 § 5 (SB 1923); Stats 2010 ch 296 § 9 (SB 1480), effective January 1, 2011.

Amendments:

1957 Amendment: Added the third paragraph.

1961 Amendment: Added (1) the second paragraph; and (2) the last paragraph.

1981 Amendment: Added the last paragraph.

1996 Amendment: In addition to making technical changes, added **(1)** ", except as otherwise specified," in the introductory clause; **(2)** ", except as provided in subdivision (e),"; and **(3)** "subd (e).

2010 Amendment: Substituted "does not" for "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" after "or agent thereof" in the last paragraph of subd (d).

Historical Derivation:

Stats 1935 ch 330 § 54.5, as added Stats 1937 ch 758 § 87½, amended Stats 1945 ch 1401 § 41.1.

Cross References:

Limitations period governing violations of this section: B & P C §§ 24207, 24208.

Ownership of interest in on–sale or offsale license: B & P C § 25503.15.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25506. Off–sale general licensee forbidden to hold interest in certain licenses

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 54.6, as added Stats 1947 ch 1387 § 2.

Cross References:

Limitations period governing violations of this section: B & P C §§ 24207, 24208.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

NOTES OF DECISIONS

1. Generally
2. Construction

1. Generally

The mere fact that B & P C § 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 Asso. v. Alcoholic Beverage Control Appeals Board (1971) 5 Cal 3d 402, 96 Cal Rptr 297, 487 P2d 745, 1971 Cal LEXIS 262.

2. Construction

B & P C §§ 25502, 25506, relating to off-sale alcoholic beverage licenses, are neither inherently nor fundamentally in conflict. California Beer Wholesalers Asso. v. Alcoholic Beverage Control Appeals Board (1971) 5 Cal 3d 402, 96 Cal Rptr 297, 487 P2d 745, 1971 Cal LEXIS 262.

B & P C § 25506, was not drawn to limit in any way the more general policy of segregation between wholesale and retail alcoholic beverage interests expressed in B & P C § 25502. California Beer Wholesalers Asso. v. Alcoholic Beverage Control Appeals Board (1971) 5 Cal 3d 402, 96 Cal Rptr 297, 487 P2d 745, 1971 Cal LEXIS 262.

§ 25507. Licensed wine grower or brandy manufacturer authorized to hold certain interests

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 54.6, as added Stats 1947 ch 1387 § 2.

Cross References:

Off–sale general license for licensed wine growers and brandy manufacturers: B & P C § 23362.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25508. Interest or membership in cooperative wholesale grocery company holding distilled spirits wholesaler's license

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 mem-

bers or some of them hold off–sale general licenses pursuant to this section.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 54.6, as added Stats 1947 ch 1387 § 2.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25509. Credit restrictions

(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 or her 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.

Added Stats 1963 ch 1891 § 1. Amended Stats 1967 ch 860 § 1; Stats 1969 ch 549 § 1; Stats 2006 ch 910 § 3 (AB 3065), effective January 1, 2007.

Amendments:
1967 Amendment: (1) Amended the first and second paragraphs by adding (a) "a brandy manufacturer,"; (b) "a winegrower, a wine blender,"; and (c) "a wine rectifier,"; and (2) added "wine," after "beer," wherever it appears.
1969 Amendment: Added "a beer manufacturer," in the first and second paragraphs.
2006 Amendment: (1) Added subdivision designations (a)–(d); (2) added the comma after "Saturday, Sunday" in the second sentence of subd (c); (3) added "or her" in the first sentence of subd (d); and (4) added subd (e).

Cross References:
Temporary retail permits: B & P C § 24045.5.
Effect of transfer of ownership of corporation or limited partnership: B & P C § 24071.1.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.50[2], 18.126, 18.200[1], 18.224[1].

§ 25510. Beer 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.

Added Stats 1963 ch 1001 § 1. Amended Stats 1998 ch 277 § 1 (SB 1621); Stats 2004 ch 604 § 1 (AB 2878).

Amendments:

1998 Amendment: Substituted the section for the former section which read: "Notwithstanding any other provision of this chapter, a beer manufacturer may furnish to a beer wholesaler, and a beer wholesaler or manufacturer may furnish to a retailer, such items of equipment as permitted by department regulation in the case of either an initial installation for a new account or a changeover of equipment from one tapping system to another. Such equipment shall remain the property of the supplier. A supplier may service and repair the items of equipment as may be deemed necessary."

2004 Amendment: Substituted "keg spacers, and filters" for "and keg spacers" after "vents, valves," in the first sentence.

Collateral References:

Pertinent administrative rules and regulations: 4 Cal Code Reg § 131.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25511. Equipment and supplies lost or damaged as result of natural disaster

Notwithstanding any other provision of this division, a manufacturer or 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 that 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.

Added Stats 1990 ch 425 § 2 (AB 3175), effective July 25, 1990. Amended Stats 2006 ch 910 § 4 (AB 3065), effective January 1, 2007; Stats 2012 ch 367 § 2 (AB 573), effective January 1, 2013.

Former Sections:

Former § 25511, similar to the present section, was added Stats 1st Ex Sess 1964 ch 86 § 1, effective May 18, 1964, and repealed Stats 1990 ch 425 § 1.5, effective July 25, 1990.

There was another section of this number, which was added Stats 1993 ch 907 § 1. Renumbered B & P C § 25512 by Stats 1994 ch 1028 § 11.

Amendments:

2006 Amendment: Substituted "that occur three months" for "which occur six weeks" in the second paragraph.

2012 Amendment: Substituted "a manufacturer or wholesaler" for "a beer manufacturer or beer wholesaler" in the first paragraph.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

§ 25512. Holding of stock of beer manufacturer in certain locations by holders of on–sale 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.

Added Stats 1993 ch 907 § 1 (SB 814), as B & P C § 25511. Renumbered by Stats 1994 ch 1028 § 11 (AB 988). Amended Stats 2000 ch 979 § 12 (AB 2759).

Amendments:

2000 Amendment: Substituted "Contra Costa, San Joaquin" for "El Dorado, Marin" in subd (a).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.33, 18.200[1], 18.224[1].

CHAPTER 16

Regulatory Provisions

Article 1

In General

Section
25600. Premiums, gifts, or free goods; Refunds or exchanges for dissatisfied customers; Advertising specialties
25600.1. Consumer contests
25600.2. Consumer sweepstakes

Section
25600.5. (Repealed January 1, 2018) Authority to provide, free of charge, entertainment, food and beverages at invitation-only event in connection with sale or distribution of wine or distilled spirits; Conditions and limitations
25601. Keeping disorderly house
25602. Sales to habitual drunkards; Civil liability; Consumption of alcoholic beverages as proximate cause of injuries inflicted upon another by intoxicated person
25602.1. Supplying of alcoholic beverage to intoxicated minor; Cause of action
25602.2. Action by director for injunctive relief
25602.3. Petitions for offer in compromise for second or subsequent violation prohibited
25603. Bringing intoxicants into penal institutions
25604. Unlicensed club room or drinking place
25605. Delivery of beverage pursuant to telephone order or other electronic means
25606. Use of vehicle to transport beverages or property subject to seizure
25607. Possession on premises of goods not covered by license
25607.5. Possession of donated wine by nonprofit corporation under specified circumstances
25608. Alcoholic beverages on school premises; Exceptions
25608.2. [Repealed]
25608.5. Possession of a container containing alcoholic beverage on Lower American River during certain summer holiday periods
25608.10. Possession of container containing alcoholic beverage on Truckee River during certain summer holiday periods
25608.12. Possession of container containing alcoholic beverage on Sacramento River during certain summer holiday periods
25609. Sale of different brand
25610. Tampering with stamps, numbers, or other information on packages
25611. [Repealed]
25611.1. Signs or other advertising matter that may be furnished
25611.2. Electronic data services
25611.3. Exterior signs advertising beer for use at any on-sale or off-sale retail premises
25611.5. [Repealed]
25612. Nature of signs on premises
25612.5. Requirements of retail licensee; Legislative findings and declarations; Compliance
25613. Draught beer tap sign
25614. Violation of provisions; Substitution of different brand
25615. [Repealed]
25616. Violations of regulations relating to books, records, and reports
25617. Misdemeanors
25618. Penalty for felonies
25619. Enforcement duties of peace officers
25620. Possession of open container in city or county owned public place
25621. Sale, purchase, and use of any vaporized form of alcohol prohibited; Penalties
25622. Beer to which caffeine has been directly added as separate ingredient; Prohibited acts; Information required by department; Confidentiality

Article 2

Hours of Sale and Delivery of Alcoholic Beverages

25630. [Repealed]
25631. Sales during closing hours
Section
25632. Consumption on premises during closing hours
25633. Hours for delivery

Article 3

Women and Minors

25655, 25656. [Repealed]
25657. Employment of persons to encourage or solicit purchase of beverages
25658. Sale to and consumption by person under 21 years of age; Use by peace officers to apprehend sellers of alcoholic beverages to minors
25658.1. Offer in compromise not permitted for violation of Section 25658; Revocation of license
25658.2. Liability of parent or legal guardian for underaged consumption of alcohol or use of controlled substance at home
25658.4. Application and acknowledgment for off–sale of alcoholic beverages; Notice of prohibited sales
25658.5. Attempted purchase of alcoholic beverage by person under 21 years of age; Penalties
25659. Proof of age
25659.5. Sale of keg beer; Identification label; Provision of false information by purchaser; Fees
25660. Evidence of age and identity; Proof of reliance as defense
25660.5. Furnishing false evidence of age
25661. Presenting or possessing false evidence of age; Penalties
25662. Possession by person under 21 years of age in public place; Penalties; Seizure, destruction, and impoundment by peace officer
25663. Employment of person under 21; Employment of person under 18 by off-sale licensee; Employment in bona fide public eating place licensed for on-sale of alcoholic beverages
25663.5. Employment of persons 18 to 21 years of age as musicians
25664. Advertisements appealing to minors
25665. Persons under 21 years of age on premises
25666. Appearance of minor at hearing
25666.5. Participation in youthful drunk driver visitation program
25667. Immunity from prosecution under specified circumstances

ARTICLE 1

In General

Cross References:

Grounds for suspension or revocation of license: B & P C § 24200.

Law Review Articles:

The liability of providers of alcohol: Dram Shop Acts? 12 Pep LR No. 1 p 177.

NOTES OF DECISIONS

1. Constitutionality

1. Constitutionality

Even assuming that the Legislature did no more than fashion under the Alcoholic Beverage Control Act further means of proscribing previously prohibited marketing practices (B & P C §§ 25600–25666, 17000–17101), any such

duplication is not a ground for unconstitutionality. The possibility that other less stringent regulations might suffice is a matter within the Legislature's discretion and not the concern of the Supreme Court. Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control (1966) 65 Cal 2d 349, 55 Cal Rptr 23, 420 P2d 735, 1966 Cal LEXIS 208.

§ 25600. Premiums, gifts, or free goods; Refunds or exchanges for dissatisfied customers; Advertising specialties

(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 that 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)(1) Except as provided in paragraph (2), 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.

(2)(A) No rule of the department may impose a dollar limit for consumer advertising specialties furnished by a beer manufacturer to the general public other than three dollars ($3) per unit original cost to the beer manufacturer who purchased it.

(B) With respect to beer, a beer manufacturer may give consumer advertising specialties to the general public that do not exceed three dollars ($3) per unit original cost to the beer manufacturer who purchased it. For purposes of this paragraph, "beer manufacturer" includes a holder of a beer manufacturer's license, a holder of an out-of-state beer manufacturer's certificate, an out-of-state vendor that holds a certificate of compliance, or a holder of a beer and wine importer's general license. A licensee authorized to give consumer advertising specialties pursuant to this paragraph shall not be precluded from doing so on the basis of holding any other type of alcoholic beverage license.

(C) A beer manufacturer, as defined in subparagraph (B) of paragraph (2) shall not require a beer wholesaler to fund the purchase of consumer advertising specialties that beer manufacturers are permitted to give under paragraph (2).

(D) Consumer advertising specialties furnished by a beer manufacturer are intended only for adults of legal drinking age. Coin banks, toys, balloons, magic tricks, miniature bottles or cans, confections, dolls, or other items that appeal to minors or underage drinkers may not be used in connection with the merchandising of beer.

(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 supplier's 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1983 ch 215 § 2, effective July 13, 1983; Stats 1985 ch 803 § 1; Stats 1988 ch 1080 § 1; Stats 1994 ch 392 § 1 (AB 3329); Stats 1995 ch 91 § 15 (SB 975); Stats 1997 ch 544 § 3 (SB 993); Stats 2008 ch 629 § 1 (AB 1245), effective January 1, 2009; Stats 2009 ch 521 § 1 (AB 1282), effective October 11, 2009.

Amendments:

1983 Amendment: Substituted the section for the former section which read: "No licensee shall, directly or indirectly, give any premium, gift, or free goods in connection with the sale of any alcoholic beverage. Any person violating the provisions of this section is guilty of a misdemeanor."

1985 Amendment: Deleted former third paragraph which read: "This section shall remain in effect until January 1, 1986, and on that date it shall be repealed unless a later

enacted statute extends or otherwise changes that date of repeal."

1988 Amendment: Added **(1)** the second sentence of the second paragraph; and **(2)** the third paragraph.

1994 Amendment: In addition to making technical changes and adding subdivision designations, added subd (a)(2).

1995 Amendment: Routine code maintenance.

1997 Amendment: Added the last sentence of subd (c).

2008 Amendment: (1) Redesignated former subd (b) to be subd (b)(1); (2) added "Except as provided in paragraph (2)," at the beginning of subd (b)(1); and (3) added subd (b)(2).

2009 Amendment: (1) Added subds (b)(2)(B) and (b)(2)(C); and (2) redesignated former subd (b)(2)(B) to be subd (b)(2)(D).

Historical Derivation:

Stats 1935 ch 330 § 55.7, as added Stats 1937 ch 758 § 89.

Cross References:

Authority of licensed manufacturers to provide distilled spirits for tastings without charge: B & P C § 23363.1.

Giving away of samples: B & P C § 23386.

Time within which accusations against licensees for violating section to be filed: B & P C §§ 24206, 24208.

Prohibited sales, advertising, and promotional activities: B & P C § 25503.

Exceptions: B & P C § 25504.5.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Cal Jur 3d (Rev) Gifts § 2.

Attorney General's Opinions:

Illegality of selling wine at price that includes token redeemable in merchandise. 31 Ops. Cal. Atty. Gen. 71.

Annotations:

Statutes designed to prevent control of retail dealers by manufacturers, wholesalers, or importers. 136 ALR 1238.

State power to regulate price of intoxicating liquor. 14 ALR2d 699.

Validity and construction of measure prohibiting retail alcoholic beverage seller from furnishing free food or drink. 66 ALR2d 758.

NOTES OF DECISIONS

1. Generally
2. Construction
3. Applicability
4. Construction with Other Laws
5. Authority of Department

1. Generally

Co-operative corporation holding off-sale beer and wine wholesaler's license does not violate Alcoholic Beverage Control Act so as to warrant suspension of its license, by paying patronage dividends to its stockholder members. Certified Grocers of California, Ltd. v. State Board of Equalization (1950, Cal App) 100 Cal App 2d 289, 223 P2d 291, 1950 Cal App LEXIS 1208.

A liquor wholesaler's offer of a $1 rebate to purchasers of certain types of wines did not constitute "free goods" under B & P C § 25600, prohibiting a licensee from giving "free goods" in connection with the sale of alcoholic beverages. The word "goods" is commonly defined as tangible movable personal property having intrinsic value, and does not ordinarily mean money. Gonzales & Co. v. Department of Alcoholic Bev. Control (1984, Cal App 3d Dist) 151 Cal App 3d 172, 198 Cal Rptr 479, 1984 Cal App LEXIS 1538.

2. Construction

"Distribution," as used in B & P C § 25600 (gifts or premiums in connection with sale or distribution), means the process by which commodities get to final consumers, including storing, selling, shipping and advertising, or the marketing or merchandising of commodities, with "merchandising" defined as sales promotion as a comprehensive function including market research, development of new products, coordination of manufacturing and marketing, and effective advertising and selling. Miller Brewing Co. v. Department of Alcoholic Beverage Control (1988, Cal App 3d Dist) 204 Cal App 3d 5, 250 Cal Rptr 845, 1988 Cal App LEXIS 803.

As used in B & P C § 25600 and Cal. Code Regs. tit, 4, § 106, the term "premium" does not include cash rebates. People ex rel. Dept. of Alcoholic Beverage Control v. Miller Brewing Co. (2002, Cal App 3d Dist) 104 Cal App 4th 1189, 128 Cal Rptr 2d 861, 2002 Cal App LEXIS 5241.

3. Applicability

A liquor wholesaler's offer of a $1 rebate to purchasers of certain types of wine did not constitute a "gift" under B & P C § 25600, prohibiting a licensee from giving any gift in connection with the sale of any alcoholic beverages. The rebate was inextricably bound up with a bargained exchange of reciprocal consideration, while a gift is commonly defined as something that is voluntarily transferred by one person to another without compensation. Gonzales & Co. v. Department of Alcoholic Bev. Control (1984, Cal App 3d Dist) 151 Cal App 3d 172, 198 Cal Rptr 479, 1984 Cal App LEXIS 1538.

Where a wine manufacturer offered retail consumers a rebate of money, in the form of a refund of a portion of the retail price paid for the wine, the rebate did not constitute a "premium, gift, or free goods" within the meaning of B & P C § 25600, prohibiting any liquor licensee from giving a premium, gift, or free goods in connection with the sale of alcoholic beverages. Accordingly, the rebate was not made unlawful by the statute. Gonzales & Co. v. Department of Alcoholic Bev. Control (1984, Cal App 3d Dist) 151 Cal App 3d 172, 198 Cal Rptr 479, 1984 Cal App LEXIS 1538.

B & P C § 25600(a) prohibits any licensee from giving any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage except as provided by rules, and the Department of Alcoholic Beverage Control's Rule 52(b) prohibits gifts of alcoholic beverages in connection with the sale of any alcoholic beverage. B & P C § 23386 authorizes wholesalers to give away samples in accordance with rules as prescribed by the Department, and one such rule (Rule 52(a)), allows free samples only to other licensees, and not to consumers. Accordingly, the practice by which a beer brewer purchased its own products in bars or other drinking establishments, and offered customers the opportunity to exchange its product for whatever brand they were currently drinking (a practice commonly known as "trade spending" or "trade sampling"), was unlawful. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (1999, Cal App 4th Dist) 71 Cal App 4th 1518, 84 Cal Rptr 2d 621, 1999 Cal App LEXIS 466, review denied (1999) 1999 Cal. LEXIS 5470.

A regulation of the Department of Alcohol Beverage Control that prohibited a beer company's use of sweepstakes to promote its product was valid, since a cash prize was a "premium" within the meaning of B & P C § 25600, which prohibited licensees from giving any premium, gift, or free goods in connection with the sale or distribution of an alcoholic beverage, except those of inconsequential value. Accordingly, the regulation did not operate more broadly than § 25600. Coors

Brewing Co. v. Stroh (2001, Cal App 3d Dist) 86 Cal App 4th 768, 103 Cal Rptr 2d 570, 2001 Cal App LEXIS 54, review denied (2001) 2001 Cal. LEXIS 2479.

4. Construction with Other Laws

California State Department of Alcoholic Beverage Control cannot construe Cal. Code Regs. tit, 4, § 106 in contravention of B & P C § 25600. People ex rel. Dept. of Alcoholic Beverage Control v. Miller Brewing Co. (2002, Cal App 3d Dist) 104 Cal App 4th 1189, 128 Cal Rptr 2d 861, 2002 Cal App LEXIS 5241.

5. Authority of Department

The Department of Alcoholic Beverage Control did not act beyond the scope of its authority in enforcing one of its rules so as to prohibit a beer manufacturer from giving things of value to members of the public in circumstances unrelated to a sale of alcoholic beverages. Such action exceeded the scope of B & P C § 25600 (gifts or premiums in connection with sale or distribution), as that statute relates to the "sale" of alcoholic beverages, since in regard to sales, § 25600 only authorizes the department to prohibit donations made in connection with the transfer of title of alcoholic beverages for any consideration. However, in amending § 25600 to prohibit donations made in connection with a "distribution" as well as a "sale," the Legislature intended to authorize the department to enforce its rule, which then defined "sale" as the total business of merchandising. Miller Brewing Co. v. Department of Alcoholic Beverage Control (1988, Cal App 3d Dist) 204 Cal App 3d 5, 250 Cal Rptr 845, 1988 Cal App LEXIS 803.

California State Department of Alcoholic Beverage Control could not prohibit a brewing company from offering its customers cash rebates on the purchase of beer. B & P C § 25600 forbade the giving of cash premiums, not rebates. People ex rel. Dept. of Alcoholic Beverage Control v. Miller Brewing Co. (2002, Cal App 3d Dist) 104 Cal App 4th 1189, 128 Cal Rptr 2d 861, 2002 Cal App LEXIS 5241.

§ 25600.1. Consumer contests

(a) An authorized licensee may conduct consumer contests, subject to the following conditions:

(1)(A) Entry or extra chances in a contest shall not be made available via the purchase of an alcoholic beverage.

(B) Entry into or participation in a contest shall be limited to persons 21 years of age or older.

(C) No contest shall involve consumption of alcoholic beverages by a participant.

(D) A contest may not be conducted for the benefit of any permanent retail licensee.

(2)(A) Closures, caps, cap liners, corks, labels, cartons, cases, packaging, or other similar material shall not be used as an entry to a contest or as a means of determining the amount or size of the prize or the winner in a contest, except as provided in subparagraphs (D) and (F).

(B) The authorized licensee shall provide an alternative means of entry that does not require a visit to a licensed premises.

(C) Except as provided in subparagraph (D), removable entry forms shall not be used on alcoholic beverage labels, containers, packaging, cases, or cartons.

(D) Removable entry forms that are neck hangers shall be used only on bottles of wine or distilled spirits, and shall not require purchase of the product. Removable neck hangers shall be used only if other entry forms are available at the point of sale or if an alternative means of entry is also available.

(E) Entry forms may be provided through electronic or other media, including point of sale.

(F) Codes that may be scanned or electronically entered by a consumer where the authorized licensee has permanently affixed the codes as part of the original alcoholic beverage label, container, packaging, case, or carton, and where the codes are not removable and not required to be removed are permitted as a form of entry.

(G) All permitted means of entry, including the use of electronic or scanner codes, shall clearly indicate that no purchase is required to enter.

(3) A contest shall not provide for the instant or immediate awarding of a prize or prizes. Instant or immediate notification to the consumer that he or she is a winner is permissible.

(4) Except for providing a means of entry, a contest authorized by this section shall not be conducted at the premises of a retail licensee or the premises of a winegrower or beer manufacturer operating under a duplicate license for a branch office.

(5) Alcoholic beverages or anything redeemable for alcoholic beverages shall not be awarded as a contest prize. This paragraph shall not prohibit a contest in which the prize is cash or cash equivalent or the awarding of cash or cash equivalent.

(6) A retail licensee shall not serve as the agent of an authorized licensee by collecting or forwarding entries or awarding prizes to, or redeeming prizes for, a contest winner.

(7) A licensee that is not an authorized licensee shall not directly or indirectly underwrite, share in, or contribute to, the costs of a contest authorized by this section or serve as the agent of an authorized licensee to collect or forward entries or to furnish any prize to a contest winner.

(8)(A) Advertising of a contest shall comply with the signage and advertising restrictions contained in this chapter, Chapter 15 (commencing with Section 25500), and any regulations issued by the department.

(B) Advertising or promotion of a contest shall not identify or refer to any retail licensee.

(C) A retail licensee shall only advertise or promote a contest authorized by this section in the manner specified in subparagraph (A).

(D) Advertising or promotion of a contest shall only be conducted on the premises of a retail

licensee when such advertisement or promotion involves a minimum of three unaffiliated retail licensees. For purposes of this subparagraph, "unaffiliated retail licensees" shall not include any retail licensee owned or controlled in whole or in part by an authorized licensee or any officer, director, or agent of that licensee.

(E) Placement of signs or other advertising of a contest in a licensed retail premises shall not be conditioned upon the following:

(i) The placement of any product within the licensed premises or the restriction, in any way, of the purchase of a product by a licensee, the removal of a product from the sales area of a licensed premises, or the resetting or repositioning of a product within the licensed premises.

(ii) The purchase or sale of any product produced, imported, distributed, represented, or promoted by an authorized licensee or its agent.

(F) An agreement, whether written or oral, entered into, by, and between a retail licensee and an authorized licensee or its agent that precludes the advertisement or promotion of a contest on the premises of the retail licensee by another authorized licensee is prohibited.

(9) Contest prizes shall not be awarded to an authorized licensee, retail licensee, or wholesale licensee or agent, officer, employee, or family member of an authorized licensee, retail licensee, or wholesale licensee. For the purposes of this paragraph, "family member" means a spouse, parent, sibling, child, son-in-law, daughter-in-law, and lineal descendants, including those by adoption. An authorized licensee shall maintain all records pertaining to a contest for three years following the completion of a contest. This section shall not apply to contests conducted by an authorized licensee as part of a sales incentive program for wholesale licensees or their employees or an authorized licensee's employees.

(b) Nothing in this section shall preclude licensees from sponsoring contests as permitted by regulations of the department.

(c) For purposes of this section:

(1)(A) "Authorized licensee" means a winegrower, beer and wine importer general, beer manufacturer, out-of-state beer manufacturer certificate holder, distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits importer general, distilled spirits general rectifier, rectifier, out-of-state distilled spirits shipper's certificate holder, brandy manufacturer, and brandy importer. An authorized licensee may conduct a consumer contest pursuant to this section regardless of whether the licensee holds any additional license not included in this paragraph.

(B) An "authorized licensee" shall not include a beer and wine wholesaler, a beer and wine importer general, or distilled spirits importer general that only holds a wholesaler's or retailer's license as an additional license.

(2) "Contest" means a game, contest, puzzle, or similar activity that holds out or offers to participants the opportunity to receive or compete for gifts, prizes, gratuities, or other things of value as determined by skill, knowledge, or ability rather than upon random selection. Skill, knowledge, or ability does not include the consumption or use of alcoholic beverages.

(d) Nothing in this section authorizes conducting any contest where consumers are entitled to an allotment or accumulation of points based on purchases made over a period of time that can be redeemed for prizes, things of value, or additional contest entries.

(e) A prize awarded for a contest conducted pursuant to this section shall not be subject to the monetary limitation imposed by Section 25600 or a regulation of the department.

(f) An authorized licensee that violates this section, in addition to any other penalty imposed by this division, may be prohibited by the department from offering a contest to California residents for a period of 12 months.

Added Stats 2012 ch 489 § 1 (SB 778), effective January 1, 2013.

§ 25600.2. Consumer sweepstakes

(a) An authorized licensee may conduct or sponsor consumer sweepstakes, subject to the following conditions:

(1)(A) No entry fee may be charged to participate in a sweepstakes authorized by this subdivision. Entry or extra chances in a sweepstakes shall not be made available via the purchase of an alcoholic beverage.

(B) Entry into or participation in a sweepstakes shall be limited to persons 21 years of age or older.

(C) No sweepstakes shall involve consumption of alcoholic beverages by a participant.

(D) Subject to subparagraph (B), any sweepstakes offered in California shall be open to all residents of California.

(E) A sweepstakes may not be conducted for the benefit of any permanent retail license.

(2)(A) Closures, caps, cap liners, corks, labels, cartons, cases, packaging, or other similar material shall not be used as an entry to a sweepstakes or as a means of determining the amount or size of the prize or the winner in a sweepstakes, except as provided in subparagraphs (D) and (F).

(B) The authorized licensee shall provide an alternative means of entry that does not require a visit to a licensed premises.

(C) Except as provided in subparagraph (D), removable entry forms shall not be used on alcoholic beverage labels, containers, packaging, cases, or cartons.

(D) Removable entry forms that are neck hangers shall be used only on bottles of wine or distilled spirits, and shall not require purchase of the product. Removable neck hangers shall be used only if other entry forms are available at the point of sale or if an alternative means of entry is also available.

(E) Entry forms may be provided through electronic or other media, including point of sale.

(F) Codes that may be scanned or electronically entered by a consumer where the authorized licensee has permanently affixed the codes as part of the original alcoholic beverage label, container, packaging, case, or carton and where the codes are not removable and not required to be removed are permitted as a form of entry.

(G) All permitted means of entry, including the use of electronic or scanner codes, shall clearly indicate that no purchase is required to enter.

(H) All sweepstakes entries shall provide the entrant with an equal odds of winning.

(3) A sweepstakes shall not provide for the instant or immediate awarding of a prize or prizes. Instant or immediate notification to the consumer that he or she is a winner is permissible.

(4) Except for providing a means of entry, a sweepstakes authorized by this section shall not be conducted at the premises of a retail licensee or the premises of a winegrower or beer manufacturer operating under a duplicate license for a branch office.

(5) Alcoholic beverages or anything redeemable for alcoholic beverages shall not be awarded as a sweepstakes prize. This paragraph shall not prohibit a sweepstakes in which the prize is cash or cash equivalent or the awarding of cash or cash equivalent.

(6) A retail licensee shall not serve as the agent of an authorized licensee by collecting or forwarding entries or awarding prizes to, or redeeming prizes for, a sweepstakes winner. The matching of entries with numbers or pictures on the point-of-sale materials at retail licensed premises is permitted only if entrants are also offered the opportunity to use an alternative means to determine prize-winning status. An authorized licensee may furnish and maintain a deposit box on a retail licensed premises for the collection and forwarding of sweepstakes entry forms.

(7) A licensee that is not an authorized licensee shall not directly or indirectly underwrite, share in, or contribute to, the costs of a sweepstakes authorized by this section or serve as the agent of an authorized licensee to collect or forward entries or to furnish any prize to a sweepstakes winner.

(8)(A) Advertising of a sweepstakes shall comply with the signage and advertising restrictions contained in this chapter, Chapter 15 (commencing with Section 25500), and any regulations issued by the department.

(B) Advertising or promotion of a sweepstakes shall not identify or refer to a retail licensee.

(C) A retail licensee shall only advertise or promote a sweepstakes authorized by this section in the manner specified in subparagraph (A).

(D) Advertising or promotion of a sweepstakes shall only be conducted on the premises of a retail licensee when such advertisement or promotion involves a minimum of three unaffiliated retail licensees. For purposes of this subparagraph, "unaffiliated retail licensees" shall not include a retail licensee owned or controlled in whole or in part by an authorized licensee or any officer, director, or agent of that licensee.

(E) Placement of signs or other advertising of a sweepstakes in a licensed retail premises shall not be conditioned upon the following:

(i) The placement of a product within the licensed premises or the restriction, in any way, of the purchase of a product by a licensee, the removal of a product from the sales area of a licensed premises, or the resetting or repositioning of a product within the licensed premises.

(ii) The purchase or sale of a product produced, imported, distributed, represented, or promoted by an authorized licensee or its agent.

(F) An agreement, whether written or oral, entered into, by, and between a retail licensee and an authorized licensee that precludes the advertisement or promotion of a sweepstakes on the premises of the retail licensee by another authorized licensee or its agent is prohibited.

(9) Sweepstakes prizes shall not be awarded to an authorized licensee, retail licensee, or wholesale licensee or agent, officer, employee, or family member of an authorized licensee, retail licensee, or wholesale licensee. For the purposes of this paragraph, "family member" means a spouse, parent, sibling, child, son-in-law, daughter-in-law, and lineal descendants, including those by adoption. An authorized licensee shall maintain all records pertaining to a sweepstakes for three years following the completion of a sweepstakes.

(b) For purposes of this section:

(1)(A) "Authorized licensee" means a winegrower, beer and wine importer general, beer manufacturer, out-of-state beer manufacturer certificate holder, distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits importer general, distilled spirits general rectifier, rectifier, out-of-state distilled spirits shipper's certificate holder, brandy manufacturer, and brandy importer. An authorized licensee may conduct, sponsor, or participate in a sweepstakes pursuant to this section regardless of whether the licensee holds an additional license not included in this paragraph.

(B) An "authorized licensee" shall not include a beer and wine wholesaler, a beer and wine importer general, or distilled spirits importer general that only holds a wholesaler's or retailer's license as an additional license.

(2) "Sweepstakes" means a procedure, activity, or event for the distribution of anything of value by lot, chance, or random selection where the odds for winning a prize are equal for each entry.

(c) Nothing in this section authorizes conducting sweepstakes where consumers are entitled to an allotment or accumulation of points based on purchases made over a period of time that can be redeemed for prizes, things of value, or additional sweepstakes entries.

(d) A prize awarded for a sweepstakes conducted pursuant to this section shall not be subject to the monetary limitation imposed by Section 25600 or a regulation of the department.

(e) An authorized licensee that violates this section, in addition to any other penalty imposed by this division, may be prohibited by the department from offering a sweepstakes to California residents for a period of 12 months.

Added Stats 2012 ch 489 § 2 (SB 778), effective January 1, 2013. Amended Stats 2013 ch 76 § 8 (AB 383), effective January 1, 2014.

Amendments:

2013 Amendment: (1) Deleted the comma after "or carton" in subd (a)(2)(F); (2) substituted "a retail" for "any retail" in subd (a)(8)(B) and the second sentence of subd (a)(8)(D); (3) substituted "placement of a" for "placement of any" in subd (a)(8)(E)(i); (4) substituted "a product" for "any product" in subd (a)(8)(E)(ii); and (5) substituted "an additional" for "any additional" in the second sentence of subd (b)(1)(A).

§ 25600.5. (Repealed January 1, 2018) Authority to provide, free of charge, entertainment, food and beverages at invitation-only event in connection with sale or distribution of wine or distilled spirits; Conditions and limitations

Notwithstanding any other provision of this division, a manufacturer of distilled spirits, distilled spirits manufacturer's agent, out-of-state distilled spirits shipper's certificate holder, winegrower, rectifier, or distiller, or its authorized unlicensed agent, may provide, free of charge, entertainment, food, and distilled spirits, wine, or nonalcoholic beverages to consumers at an invitation-only event in connection with the sale or distribution of wine or distilled spirits, subject to the following conditions:

(a) No licensee, other than those specified in this section, may conduct or participate in any portion of an event authorized by this section. A licensee authorized to conduct an event pursuant to this section shall not be precluded from doing so on the basis of holding any other type of alcoholic beverage license.

(b) An event authorized by this section shall be conducted on either the:

(1) Premises for which a caterer's authorization has been issued, except that any event held on the premises of a licensed winegrower shall not be authorized to provide any distilled spirits other than brandy.

(2) Premises of a hotel holding an on-sale beer and wine or on-sale general license, except an event shall not be conducted in the lobby area of a hotel or in any portion of a hotel that is identified, promoted, or otherwise designated by the hotel as a club, nightclub, or other similar entertainment venue. For purposes of this paragraph, "hotel" means any hotel, motel, resort, bed and breakfast inn, or other similar transient lodging establishment, but it does not include any residential hotel as defined in Section 50519 of the Health and Safety Code.

(c) A hotel where the event authorized by this section is being conducted shall maintain, during all times while exercising its license privileges, other areas within the licensed premises that shall be made readily available to the public not attending the authorized event.

(d) Except as provided in paragraph (2) of subdivision (b), an event authorized by this section shall not be conducted on premises for which a permanent retail license has been issued.

(e) Except for fair market value payments authorized pursuant to this section, a retail licensee, including the licensed caterer or the licensed hotel, shall not receive, nor shall the licensee conducting the event give, any other item of value or benefit in connection with events authorized by this section.

(f) The person authorized by this section to provide, free of charge, entertainment, food, and beverages shall be present during the event.

(g) The person authorized by this section to provide, free of charge, entertainment, food, and

beverages shall have sole responsibility for providing payment for the entertainment, food, beverages, and rental fees at the event. Payments for entertainment, food, beverages, and rental fees shall not exceed fair market value. No other licensed person shall be authorized, under this section, to provide any portion of these payments.

(h) Requests for attendance at the event shall be by invitation sent to consumers over 21 years of age at a specific address via mail or email, by telephone, or presented in person. Invitations or other advertisements of the event shall not be disseminated by any other means. Invitations shall not be sent by the authorized person or their authorized unlicensed agent inviting all of the employees of a retail licensee or a chain of retail licensees under common ownership to an authorized event.

(i) Attendance at the event shall be limited to consumers who receive and accept an invitation to the event. Invited consumers may each invite one guest. All attendees shall be over 21 years of age. The total number of consumers and their guests allowed at any event authorized by this section shall not exceed 600 people. Admittance to the event shall be controlled by a list containing the names of consumers who accepted the invitation and their guests. The persons identified in this section shall be responsible for compliance.

(j) No premium, gift, free goods, or other thing of value may be given away in connection with the event, except as authorized by this division.

(k) The duration of any event authorized by this section shall not exceed four hours.

(*l*)(1) Subject to paragraph (3), a person authorized to conduct events pursuant to this section shall not conduct more than 12 events in a calendar year where the consumers and guests in attendance exceed 100 people, and not more than 24 events in a calendar year where the consumers and guests in attendance is 100 people or fewer.

(2) The limitation on events authorized by this section shall be by person, whether that person holds a single license or multiple licenses. If a person holds multiple licenses, the limitation shall be applied to the person holding the license, not by type of license.

(3) A licensee authorized to conduct events pursuant to this section shall not conduct more than two events in a calendar year on the premises of any single licensed hotel or other licensed hotel under the same or common ownership.

(4) The licensee conducting the event shall not advertise any retail licensee. If the event is held on the premises of a retail licensee as permitted by this section, the licensee conducting the event may list the retailer's name and address in the invitation and any related advertising for the sole purpose of identifying the location of the event. The listing of the retailer's name and address shall be the only reference to the retail licensee and shall be relatively inconspicuous in relation to the invitation or advertisement as a whole. Pictures or illustrations of the retailer's premises, or laudatory references to the retailer, shall not be permitted.

(5)(A) Other than as specifically authorized by this section, alcoholic beverage promotions of any sort shall not be conducted by any licensee in conjunction with an event held on the premises of a retail licensee pursuant to this section. This restriction includes any discounted drink specials offered by the retail licensee to consumers.

(B) For purposes of this paragraph, "in conjunction with" means during an event and any period within 24 hours before and 24 hours following an event.

(6) A retail licensee shall conspicuously offer for sale alcoholic beverages other than the products produced, distributed, bottled, or otherwise offered for sale by the licensee conducting the event.

(m) At least 30 days prior to an event, the licensee, or its authorized unlicensed agent, authorized to conduct the event shall apply to the department for a permit authorizing the event. In addition to any other information required by the department, the licensee shall provide the department all of the following information:

(1) The name of the company authorized to conduct the event.

(2) The number of people planned to be in attendance.

(3) The start and end times for the event.

(4) The location of the event.

(5) The name of the caterer, if required, obtaining the caterer's authorization for the event.

(n) All alcoholic beverages provided pursuant to this section shall be purchased from the holder of the caterer's permit or the licensed hotel, as applicable.

(o) All alcoholic beverages served at an event authorized by this section shall be served in accordance with Sections 25631 and 25632.

(p) No person authorized to conduct an event pursuant to this section shall hold such an event at the same location more than eight times in a calendar year.

(q) The person authorized to conduct an event under this section may provide attendees at the event with a free ride home. The free rides shall only constitute free ground transportation to attendees' homes or to hotels or motels where attendees are staying.

(r) In addition to the prescribed fee imposed upon a licensed caterer to conduct an event authorized by this section, a fee of two hundred dollars ($200) shall be collected by the department from the licensee, or its authorized unlicensed agent, authorized by this section to provide, free of charge, entertainment, and beverages at an authorized event.

(s) All licensees involved in events held pursuant to this section shall be responsible for compliance with this section, and with all other provisions of this division in connection with these events, and each may be subject to discipline for violation of this division.

(t) The Legislature finds and declares both of the following:

(1) 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.

(2) Any exception established by the Legislature to the general prohibition against tied interests must be limited to the express terms of the exception so as to not undermine the general prohibitions.

(u) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

Added Stats 2008 ch 638 § 1 (AB 2293), effective January 1, 2009, repealed January 1, 2014. Amended Stats 2012 ch 153 § 1 (AB 252), effective January 1, 2013, repealed January 1, 2014; Stats 2013 ch 461 § 1 (AB 1116), effective January 1, 2014, repealed January 1, 2018

Amendments:

2012 Amendment: Added "distilled spirits manufacturer's agent," in the introductory clause.

2013 Amendment: (1) Added "out-of-state distilled spirits shipper's certificate holder," in the introductory clause; (2) added "either the:" in the introductory clause of subd (b); (3) added subdivision designation (b)(1); (4) deleted "permit" after "which a caterer's" in subd (b)(1); (5) added subd (b)(2), (c); (6) redesignated former subds (c)-(s) to be subds (d)-(r), (t), and (u); (7) amended subd (d) by (a) substituting "Except as provided in paragraph (2) of subdivision (b), an" for "No"; and (b) adding "not"; (8) substituted "retail licensee, including the licensed caterer or the licensed hotel, shall not receive, nor shall the licensee conducting the event give," for "licensed caterer shall not receive" in subd (e); (9) substituted "email" for "e-mail" in the first sentence of subd (h); (10) substituted "600 people" for "400 people" in the fourth sentence of subd (i); (11) added "Subject to paragraph (3)," in subd (*l*)(1); (12) added subds (*l*)(3)-(*l*)(6), (m)(5), and (s); (13) substituted the introductory clause of subd (m) for the former introductory clause of subd (*l*) which read: "When applying for a caterer's permit authorization, the person authorized to conduct an event pursuant to this section shall include, in addition to any information required by the department, all of the following information:"; (14) added "or the licensed hotel, as applicable" in subd (n); (15) amended subd (r) by (a) substituting "a fee of two hundred dollars ($200) shall be collected by the department from the licensee, or its authorized unlicensed agent," for "the department may also impose a fee upon a licensee"; and (b) deleting "food," after "entertainment,"; (16) deleted the former second sentence of subd (r) which read: "The fee shall be representative of the cost of administering and enforcing the provisions of this section, but shall not exceed two hundred dollars ($200) per event."; and (17) amended subd (u) by (a) adding "only"; (b) substituting "January 1, 2018" for "January 1, 2014" both times it appears; and (c) adding the comma after "enacted statute".

§ 25601. Keeping 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 58, as amended Stats 1937 ch 758 § 90.

Cross References:

Time within which accusations against licensees for violating section to be filed: B & P C §§ 24207, 24208.

Keeping disorderly houses: Pen C § 316.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.22.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Annotations:

Constitutionality of statute predicating criminality upon reputation of premises or of persons keeping or frequenting them. 13 ALR 372; 67 ALR 1440; 92 ALR 1232.

Entrapment to commit offense against liquor laws. 18 ALR 162; 66 ALR 488; 86 ALR 267.

Constitutionality of statute making certain fact prima facie evidence of guilt. 51 ALR 1162; 86 ALR 186; 162 ALR 528.

Entrapment to commit offense against laws regulating sales of liquor. 55 ALR2d 1322.

Availability in state court of defense of entrapment where accused denies committing acts which constitute offense charged. 5 ALR4th 1128.

Availability in federal court of defense of entrapment where accused denies committing acts which constitute offense charged. 54 ALR Fed 644.

NOTES OF DECISIONS

A. GENERALLY

1. Generally

2. Construction
3. Duty of Licensee
4. Knowledge; Acts of Employees

B. PROCEEDINGS
5. Generally
6. Admissibility of Evidence
7. Sufficiency of Evidence
8. Prostitution
9. Relief and Review

A. GENERALLY

1. Generally

This statute refers to conduct on the premises or resort thereto for improper purposes, and cannot be construed as an attempt to regulate mere patronage by any particular class of persons without regard to their conduct on the premises. Stoumen v. Reilly (1951) 37 Cal 2d 713, 234 P2d 969, 1951 Cal LEXIS 325, superseded by statute as stated in Harris v. Capital Growth Investors XIV (1991) 52 Cal 3d 1142, 278 Cal Rptr 614, 805 P2d 873, 1991 Cal LEXIS 900.

Fact that violation of section constitutes misdemeanor does not limit power of department to proceed where the facts are such as to bring it within provisions of section. Nelson v. Department of Alcoholic Beverage Control (1959, Cal App 3d Dist) 166 Cal App 2d 783, 333 P2d 771, 1959 Cal App LEXIS 2547.

It is clear that revocation of on-sale liquor license did not depend solely on violation of unconstitutional § 24200 subd (e), concerning use of licensed premises as resort for sexual perverts, where order of revocation adopted hearing officer's decision stating that additional grounds for suspension or revocation of license existed under § 24200 subd (b), concerning violation by licensee of rules of Department of Alcoholic Beverage Control, for violation of this section. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

Revocation of liquor license under B & P C §§ 24200 and 25601, allegedly in violation of licensee's federal constitutional rights in that, purported sole ground for revocation was presence of homosexual clientele at bar, was res judicata for purposes of injunction action under 42 USCS § 1983, as the Department is a state court of limited jurisdiction. Francisco Enterprises, Inc. v. Kirby (1973, 9th Cir Cal) 482 F2d 481, 1973 US App LEXIS 8706, cert den (1974) 94 S Ct 1413, 39 L Ed 2d 471, 415 US 916, 1974 US LEXIS 1176.

2. Construction

Word "suffers" means to permit, allow or not to forbid activities which constitute premises a "disorderly house." Givens v. Department of Alcoholic Beverage Control (1959, Cal App 2d Dist) 176 Cal App 2d 529, 1 Cal Rptr 446, 1959 Cal App LEXIS 1513.

Word "permit" does not imply affirmative act; "permit" involves no intent; it is merely passivity, abstaining from preventative action. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

A statute such as B & P C § 25601, which imposes penal sanctions for maintenance of a disorderly house, may not be uncertain or vague and must fairly apprise the public of the conduct prohibited. Los Robles Motor Lodge, Inc. v. Department of Alcoholic Beverage Control (1966, Cal App 3d Dist) 246 Cal App 2d 198, 54 Cal Rptr 547, 1966 Cal App LEXIS 1019.

The meaning of "disorderly house" as used in B & P C § 25601 is specific both in common parlance and in common law, and a house is disorderly if kept as a place where acts prohibited by statute are habitually indulged in or permitted, or where acts are performed which tend to corrupt morals of the community or promote breaches of the peace. Los Robles Motor Lodge, Inc. v. Department of Alcoholic Beverage Control (1966, Cal App 3d Dist) 246 Cal App 2d 198, 54 Cal Rptr 547, 1966 Cal App LEXIS 1019.

There is no uncertainty in a statute which provides that "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,. . . for purposes which are injurious to the public morals, health, convenience, or safety, is guilty of a misdemeanor," and since the statute is clear there can be no doubt of its constitutionality as a valid exercise of the state's police power. Los Robles Motor Lodge, Inc. v. Department of Alcoholic Beverage Control (1966, Cal App 3d Dist) 246 Cal App 2d 198, 54 Cal Rptr 547, 1966 Cal App LEXIS 1019.

3. Duty of Licensee

Law requires more than that licensee make some colorable efforts toward maintenance of lawfully conducted premises; it demands that he so conduct his business that it meets minimum requirements of decency and morality. Givens v. Department of Alcoholic Beverage Control (1959, Cal App 2d Dist) 176 Cal App 2d 529, 1 Cal Rptr 446, 1959 Cal App LEXIS 1513.

An on-sale liquor licensee has affirmative duty to maintain properly operated premises, acquiescence is permission or sufficient within purview of section and his license may be revoked where he fails to perform his statutory duty. Givens v. Department of Alcoholic Beverage Control (1959, Cal App 2d Dist) 176 Cal App 2d 529, 1 Cal Rptr 446, 1959 Cal App LEXIS 1513.

Law demands that on-sale licensee so conduct his business that it meets minimum requirements of decency and morality, where overwhelming evidence shows that licensed premises are in fact "disorderly house," conclusion follows that licensee has permitted or suffered such condition to exist. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

Section imposes affirmative duty of maintaining lawfully conducted premises, and it is unnecessary, in proceeding to revoke license for violation of that section, that evidence show active participation on part of license holder in acts that have rendered premises injurious to public morals. Coleman v. Harris (1963, Cal App 1st Dist) 218 Cal App 2d 401, 32 Cal Rptr 486, 1963 Cal App LEXIS 1791.

4. Knowledge; Acts of Employees

Whatever is permitted by an on-sale liquor licensee's agents with respect to licensed premises is permitted by her within this section. Swegle v. State Board of Equalization (1954, Cal App) 125 Cal App 2d 432, 270 P2d 518, 1954 Cal App LEXIS 1902.

Section does not require that condition of licensed premises as disorderly house be knowingly created. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

Under B & P C § 25601, making it a misdemeanor for a liquor licensee to keep, permit to be used, or suffer to be used, in connection with licensed premises, any disorderly house, no proof of knowledge by the licensee or his agent of the proscribed acts is necessary, it being sufficient that the evidence show that such acts took place at the licensed premises. Munson v. Department of Alcoholic Beverage Control (1967, Cal App 2d Dist) 248 Cal App 2d 598, 56 Cal Rptr 805, 1967 Cal App LEXIS 1665.

The Department of Alcoholic Beverage Control properly revoked the off-sale beer and wine licenses of two markets for keeping a disorderly house (B & P C § 25601) and causing a law enforcement problem and a condition contrary to public welfare and morals (Cal. Const., art. XX, § 22; B & P C § 24200, subd. (a)), because of frequently occurring illegal drug transactions on the premises, without requiring proof that the licensees knowingly permitted the drug transactions or that the sale of alcohol caused or contributed to the illegal conduct. There was ample evidence that the premises had become law enforcement problems, that the owners were actually or constructively aware of the problems, and that they were not effective in controlling the rampant drug trade on the licensed premises. That the markets were located in a high-crime area was irrelevant. There was a sufficient showing the premises constituted a nuisance within the meaning of the statutes and the constitutional provision. Yu v. Alcoholic Bev. etc. Appeals Bd. (1992, Cal App 6th Dist) 3 Cal App 4th 286, 4 Cal Rptr 2d 280, 1992 Cal App LEXIS 123, review denied (1992) 1992 Cal. LEXIS 2293.

B. PROCEEDINGS

5. Generally

On-sale liquor licensee was fully and fairly apprised of charge of violating this section with sufficient certainty to prepare his defense, where it was charged that between certain dates, on licensed premises, licensee permitted or suffered males to kiss, caress, and engage in lewd and indecent acts and conversations with other males, and that police officer and two agents were invited by patrons to engage in lewd acts. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

In proceeding to revoke on-sale liquor license, findings that there had been misconduct on licensed premises in violation of this section need not specify that misconduct occurred within conscious presence of licensee or his employees. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

Assuming that defense of entrapment is available in proceeding to revoke on-sale liquor license for violation of this section, such defense was not established where record was without conflict that agents were solicited by patrons and employee of licensee to engage in sexual perversion, that intent to commit such acts originated in minds of those who made proposals, and that agents did no more than to afford those on premises opportunity for solicitation. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

In a proceeding before the Alcoholic Beverage Appeals Board an accusation was sufficient and it gave defendant notice sufficient to satisfy due process where it charged that defendant permitted a motel to be used as a disorderly house, set forth the date, place, name of a female solicitor, name of the solicitee, the fact of solicitation for an act of prostitution on seven separate occurrences, and in a second count, relating to the keeping of unbroken bottles, gave the date, number of unbroken bottles, size, brand and type of liquor, of each of seventeen bottles involved. Los Robles Motor Lodge, Inc. v. Department of Alcoholic Beverage Control (1966, Cal App 3d Dist) 246 Cal App 2d 198, 54 Cal Rptr 547, 1966 Cal App LEXIS 1019.

Disciplinary action against a liquor licensee, on the ground that he permitted prostitutes to solicit in his bar (B & P C § 25601) was not precluded by reasonable delay, where the violations charged took place within the three-year statute of limitations (B & P C § 24207), and where the delay was not shown to have been deliberate or prejudicial, but, on the other hand, could have been to the licensee's benefit had he heeded the police warnings during that period. Munson v. Department of Alcoholic Beverage Control (1967, Cal App 2d Dist) 248 Cal App 2d 598, 56 Cal Rptr 805, 1967 Cal App LEXIS 1665.

In revoking a liquor license for the licensee's conduct contrary to public welfare and morals under Cal Const art. XX, § 22, and B & P C § 24200, subd (a), the Department of Alcoholic Beverage Control did not err in failing to make an express determination as to a violation of those sections, where identical considerations were involved in the department's determination that illegal and immoral acts on the premises constituted the conduct of a disorderly house on the licensed premises in violation of B & P C § 25601. Kirby v. Alcoholic Beverage Control Appeals Board (1972, Cal App 2d Dist) 25 Cal App 3d 331, 101 Cal Rptr 815, 1972 Cal App LEXIS 1034.

6. Admissibility of Evidence

In proceeding to revoke liquor license on ground that licensees permitted licensed premises to be used as disorderly house or place to which people resorted for purposes contrary to public welfare and morals by allowing homosexual activity on premises, it was not error to exclude testimony of psychologist as to whether or not she considered homosexuality perversion, where conduct and activity shown by evidence to have occurred on licensed premises were well within meaning of term "sexual perversion" as that term is known to average person, and testimony of psychologist in contradiction of clear, certain and commonly accepted understanding of behavior in question was immaterial. Morell v. Department of Alcoholic Beverage Control (1962, Cal App 1st Dist) 204 Cal App 2d 504, 22 Cal Rptr 405, 1962 Cal App LEXIS 2270.

Where the fact in issue was solicitation for prostitution and the truth of the girls' statements was not important, testimony by agents of the Department of Alcoholic Beverage Control regarding conversations with two girls was not inadmissible as "administrative" hearsay, though admitted in an administrative hearing; the testimony was equally admissible under commonlaw rules. Since the declarations were "operative facts" they were also admissible as original evidence. Los Robles Motor Lodge, Inc. v. Department of Alcoholic Beverage Control (1966, Cal App 3d Dist) 246 Cal App 2d 198, 54 Cal Rptr 547, 1966 Cal App LEXIS 1019.

7. Sufficiency of Evidence

Mere proof that homosexuals patronize a restaurant and bar, for the purpose of illegal or immoral acts, and use it as a meeting place or hangout, without proof of illegal or immoral acts committed on the premises or resort thereto for such purposes, is insufficient to show a violation of this statute. Stoumen v. Reilly (1951) 37 Cal 2d 713, 234 P2d 969, 1951 Cal LEXIS 325, superseded by statute as stated in Harris v. Capital Growth Investors XIV (1991) 52 Cal 3d 1142, 278 Cal Rptr 614, 805 P2d 873, 1991 Cal LEXIS 900.

Corporation's liquor license is properly revoked for violation of section, under evidence that numerous homosexual acts were committed on premises, liquor was sold to obviously intoxicated persons, and beer was sold to minors. Maxwell Cafe, Inc. v. Department of Alcoholic Beverage Control (1956, Cal App 2d Dist) 142 Cal App 2d 73, 298 P2d 64, 1956 Cal App LEXIS 1949.

Liquor license revocation for violation of this section is sustained by evidence that, to licensee's knowledge, sexual perverts met at premises and there engaged in sexual perversion without opposition from her and in more than isolated instances. Kershaw v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 155 Cal App 2d 544, 318 P2d 494, 1957 Cal App LEXIS 1321.

Where objectionable behavior, such as homosexual activity,

in licensed establishment is of continuing nature and not merely isolated or accidental instance, it is inescapable conclusion that licensee has permitted and suffered resultant condition which offends public welfare and morals and violates statutory prohibition against keeping disorderly house. Morell v. Department of Alcoholic Beverage Control (1962, Cal App 1st Dist) 204 Cal App 2d 504, 22 Cal Rptr 405, 1962 Cal App LEXIS 2270.

That premises licensed to sell alcoholic beverages were permitted to be kept and used as disorderly house in violation of this section is supported by evidence that police surveillance was constant necessity, arrests for intoxication were frequent and regular, and minimum of 58 intoxicated persons frequented establishment in six months' period. Harris v. Alcoholic Beverage Control Appeals Board (1963, Cal App 1st Dist) 212 Cal App 2d 106, 28 Cal Rptr 74, 1963 Cal App LEXIS 2821.

Revocation of on-sale liquor license for violation of this section was supported by substantial evidence, where there was testimony that male patrons, in bartender's presence, caressed one another, that male patrons invited each other and agents to participate in lewd acts, that bartender greeted male patrons with lewd language and pantomimed unnatural sex practice, that when licensee was behind bar employee invited officer to engage in lewd acts, and that patron invited agent to commit perversion denounced by Pen C § 288a. Stoumen v. Munro (1963, Cal App 1st Dist) 219 Cal App 2d 302, 33 Cal Rptr 305, 1963 Cal App LEXIS 2375.

In revoking an on-sale, general bona fide eating place license, for a violation of B & P C § 25601, the Department of Alcoholic Beverage Control could not properly base its decision on the keeping of a house that disturbed the neighborhood or the keeping of a house to which people resorted for purposes that injured public morals, where there was no evidence that the licensed premises disturbed the neighborhood or that people resorted to such premises for any of the purposes condemned by the statute. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

8. Prostitution

Finding of department in revoking liquor license that licensees permitted their premises to be used as disorderly house to which people resorted for purposes injurious to the public morals and health was sustained by evidence that prostitutes solicited acts of prostitution on the premises under circumstances clearly supporting inference that they were knowingly permitted to do so by licensees or their employees, that drinks were served to obviously intoxicated persons, and that lewd and lascivious acts were performed there with knowledge and co-operation of employees. Rosales v. Department of Alcoholic Beverage Control (1959, Cal App 1st Dist) 171 Cal App 2d 624, 341 P2d 366, 1959 Cal App LEXIS 1875.

Findings of department in revoking liquor license of taxi dance establishment that premises were permitted to be used for purposes injurious to public morals were sustained by evidence that one taxi dancer rubbed her hands against the leg of a witness and then "touching him in a pubic area" asked him to go home with her, that another girl demonstrated her "peek-a-boo" dress by exposing her breasts to a customer, and that sexually suggestive dancing occurred. Adler v. Department of Alcoholic Beverage Control (1959, Cal App 1st Dist) 174 Cal App 2d 256, 344 P2d 336, 1959 Cal App LEXIS 1693.

Revocation of licensee's liquor license for allowing known prostitutes to enter and remain in licensed premises and there solicit acts of prostitution was supported by testimony of two agents of Department of Alcoholic Beverage Control that while in licensee's bar they were each asked by female patrons to engage in acts of prostitution, that bartender not only permitted acts and conduct alleged but also aided and abetted them, that he told agents most of female patrons of bar were prostitutes, and that bartender used vulgar and obscene language which was audible to other patrons of bar. Presto v. Alcoholic Beverage Control Appeals Board (1960, Cal App 3d Dist) 179 Cal App 2d 262, 3 Cal Rptr 742, 1960 Cal App LEXIS 2228.

A decision by the Alcoholic Beverage Control Appeals Board was supported by substantial evidence as generally applied in judicial proceedings and such evidence supported the decision of the board, where two investigators of the Department of Alcoholic Beverage Control testified that they were solicited for acts of prostitution on seven separate occasions, on one occasion the solicitation was accompanied by physical acts of sexual enticement, all solicitations were accompanied by a discussion of the proposed monetary consideration, most of the solicitations were within sight and earshot of one of the two, or both, bartenders of the establishment, and in conversations between one of the agents and a bartender an awareness of the girls' activities was clearly manifested. Los Robles Motor Lodge, Inc. v. Department of Alcoholic Beverage Control (1966, Cal App 3d Dist) 246 Cal App 2d 198, 54 Cal Rptr 547, 1966 Cal App LEXIS 1019.

Proof of solicitations of prostitution (Pen C § 647 subd (b)) in a licensed bar is sufficient to sustain a finding of violation of B & P C § 25601, and the revocation of the owner's license. Munson v. Department of Alcoholic Beverage Control (1967, Cal App 2d Dist) 248 Cal App 2d 598, 56 Cal Rptr 805, 1967 Cal App LEXIS 1665.

An administrative finding that for three years the licensee of a bar and his employees "permitted" the premises to be used in conjunction with a disorderly house, within the meaning of B & P C § 25601, proscribing such conduct as a misdemeanor, was amply supported by evidence, inter alia, that police officers' conversations with prostitutes were conducted so as to be overheard by others at the bar, including the bartenders, that a bartender was given a list of known prostitutes by the police, that another was warned about solicitations, and that another actually warned prostitutes when police officers were present. Munson v. Department of Alcoholic Beverage Control (1967, Cal App 2d Dist) 248 Cal App 2d 598, 56 Cal Rptr 805, 1967 Cal App LEXIS 1665.

The record in a proceeding to revoke a liquor license supported the conclusion of the Department of Alcoholic Beverage Control that the licensee conducted a disorderly house in conjunction with the licensed premises in violation of B & P C § 25601, where there was substantial evidence of the commission by employees of the licensee on the premises of the illegal acts of pandering, attempted pandering, and conspiring to operate a house of prostitution, as well as substantial evidence of the commission of immoral acts on the premises. The licensee had the responsibility to see that its employees committed no illegal or immoral acts on the premises. Kirby v. Alcoholic Beverage Control Appeals Board (1972, Cal App 2d Dist) 25 Cal App 3d 331, 101 Cal Rptr 815, 1972 Cal App LEXIS 1034.

9. Relief and Review

Department did not abuse its discretion in revoking general on-sale liquor license of licensee where conduct for which license was revoked, namely, taking of unlawful bets on horse races at licensed premises, constituted crime under state laws and was thus at least technically contrary to public welfare or morals. Maloney v. Department of Alcoholic Beverage Control (1959, Cal App 1st Dist) 172 Cal App 2d 104, 342 P2d 520, 1959 Cal App LEXIS 1931.

Fact that Alcoholic Beverage Control Appeals Board sustained decision by Department of Alcoholic Beverage Control revoking liquor license on ground of violation of this section, did not limit reviewing court to consideration of that ground

only where original decision was also based on determination that continuance of license would be contrary to public welfare and morals within meaning of Const Art XX § 22, and accusation put licensee on notice that his license might be revoked under constitutional provision and there was finding to that effect. Benedetti v. Department of Alcoholic Beverage Control (1960, Cal App 1st Dist) 187 Cal App 2d 213, 9 Cal Rptr 525, 1960 Cal App LEXIS 1374, overruled Kirby v. Alcoholic Bev. Etc. Appeals Bd. (1970, Cal App 1st Dist) 8 Cal App 3d 1009, 87 Cal Rptr 908, 1970 Cal App LEXIS 2117.

That liquor licensees were first offenders who were guilty, at most, of passive tolerance of wrongful acts charged against them did not make order revoking their license for maintaining disorderly house in violation of this section a harsh and discriminatory penalty which ought not to have been imposed against them, where there concededly was substantial evidence to sustain violation charged; fixing of penalty was vested in discretion of Department of Alcoholic Beverage Control and its determination will be disturbed only if there is clear abuse of discretion. Coleman v. Harris (1963, Cal App 1st Dist) 218 Cal App 2d 401, 32 Cal Rptr 486, 1963 Cal App LEXIS 1791.

§ 25602. Sales to habitual drunkards; Civil liability; Consumption of alcoholic beverages as proximate cause of injuries inflicted upon another by 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 (____ Cal. 3d ____) 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1978 ch 929 § 1.

Amendments:

1978 Amendment: (1) Designated the former section to be subd (a); and **(2)** added subds (b) and (c).

Editor's Notes—Coulter v. Superior Court is reported at 21 C3d 144.

Historical Derivation:

(a) Stats 1935 ch 330 § 62, as amended Stats 1937 ch 758 § 94.

(b) Stats 1889 ch 241 § 1, as amended Stats 1915 ch 40 § 1.

Cross References:

Time within which accusations against licensees for violating section to be filed: B & P C §§ 24206, 24208.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Forms Pleading & Practice (Matthew Bender®) ch 19 "Alcoholic Beverages: Civil Liability".

Cal. Points & Authorities (Matthew Bender®) ch 15A "Alcoholic Beverages: Civil Liability For Furnishing" § 15A.21.

Cal. Points & Authorities (Matthew Bender®) ch 16 "Amended And Supplemental Pleadings" § 16.50.

Cal. Points & Authorities (Matthew Bender®) ch 160 "Motions To Strike" § 160.60.

Cal. Points & Authorities (Matthew Bender®) ch 165 "Negligence" § 165.70.

Cal. Points & Authorities (Matthew Bender®) ch 178 "Physicians And Surgeons: Licensing And Professional Discipline" § 178.60.

Cal. Employment Law (Matthew Bender®), § 20.23.

Cal. Employment Law (Matthew Bender®), § 30.05.

Cal. Torts (Matthew Bender®), § 1.20-1.21.

Cal. Torts (Matthew Bender®), § 2.11.

Cal. Torts (Matthew Bender®), § 3.10.

Cal. Torts (Matthew Bender®), § 11.06.

Cal. Torts (Matthew Bender®), § 15.06.

Cal. Torts (Matthew Bender®), § 20.58.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

3 Witkin Summary (10th ed) Agency and Employment § 180.

6 Witkin Summary (10th ed) Torts §§ 1061, 1067, 1069, 1070, 1071, 1073, 1074.

Miller & Starr, Cal Real Estate 3d § 22:53.

Rutter Cal Prac Guide, Personal Injury §§ 2:852, 2:855.1, 2:212.3, 2:212.36.

Forms:

Calif Criminal Forms & Instructions (BW, 1983) § 44:29.

Law Review Articles:

Negligence liability of landowners and occupiers for the criminal conduct of another: On a clear day in California one can foresee forever. 23 Cal Western LR 165.

Criticism of California rule denying dram shop liability—duty of care as imposed by criminal statute. 57 CLR 1009.

Liability for vendors of alcoholic beverages. 60 CLR 1034.

Liability of vendor who sells intoxicants to visibly intoxicated person to third persons for injurious results of such sales. 5 Loyola U of LA LR 441.

Civil liability for furnishing liquor. 5 Pacific LJ 186.

Review of Selected 1978 Legislation. 10 Pacific LJ 591.

California liquor liability a decade after *Coulter v. Superior Court*. 16 Pepperdine LR 21.

Liquor vendor liability in California. 14 Santa Clara Law 46.

Liability of liquor suppliers in California: A return to the common law. 12 UCD LR 191.

Minor drinking and driving: California's inconsistent and inequitable statutory scheme of social host immunity. 25 UCD LR 463.

Preventing alcohol–related injuries: Dram shop liability in a public health perspective. 12 Western LR 417.

Parking lot attendant malpractice (extension of liability for furnishing alcoholic beverages)—A new tort in California? 16 Western State LR 693.

Annotations:

Entrapment to commit offense against liquor laws. 18 ALR 162; 66 ALR 488; 86 ALR 267.

Responsibility for illegal sale by employee or agent. 139 ALR 306.

Entrapment to commit offense against laws regulating sales of liquor. 55 ALR2d 1322.

Liability of one who furnishes liquor to another for consumption by third parties for injury to or damage caused by consumer. 64 ALR3d 922.

Recovery under Civil Damage (Dram Shop) Act for intangibles such as mental anguish, embarrassment, loss of affection or companionship, or the like. 78 ALR3d 1199.

What constitutes "sale" of liquor in violation of statute or ordinance. 89 ALR3d 551.

Liability of persons furnishing intoxicating liquor for injury to or death of consumer, outside coverage of civil damage acts. 98 ALR3d 1230.

Choice of law as to liability of liquor seller for injuries caused by intoxicated person. 2 ALR4th 952.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence. 62 ALR4th 16.

Tort liability of college of university for injury suffered by student as a result of own or fellow student's intoxication. 62 ALR4th 81.

Validity, construction, and effect of statute limiting amount recoverable in dram shop action. 78 ALR4th 542.

NOTES OF DECISIONS

1. Criminal Liability
2. Civil Liability

1. Criminal Liability

The conclusion of the court that the patron was "obviously" intoxicated at the time the defendant served him was sustained by evidence that the patron talked loudly, spilled some of the beer he was drinking, fell against a witness, set the glass on the bar rather heavily several times, and asked in a loud voice for another glass of beer; also by evidence that the balance was poor, face flushed, speech thick, and eyes bloodshot; his clothing was disarranged, and he kept arguing with another person. People v. Smith (1949, Cal App Dep't Super Ct) 94 Cal App 2d Supp 975, 210 P2d 98, 1949 Cal App LEXIS 1640, overruled Paez v. Alcoholic Beverage Control Appeals Bd. (1990) 222 Cal. App. 3d 1025, 272 Cal. Rptr. 272, 1990 Cal. App. LEXIS 837.

An injured motor vehicle passenger's cause of action against the residents and owners of the home in which a guest consumed alcohol before driving the car in which plaintiff was injured failed under B & P C § 25602 (social host not to be held liable for damages resulting from consumption of alcoholic beverages), and B & P C § 25602.1 (liability of liquor licensee furnishing alcohol to intoxicated minors), as those statutes stood at the time of the accident, since liquor licensees were not involved. Baker v. Sudo (1987, Cal App 4th Dist) 194 Cal App 3d 936, 240 Cal Rptr 38, 1987 Cal App LEXIS 2109.

Selling alcohol to obviously intoxicated persons, in violation of B & P C § 25602(a) provided a sufficient basis for a finding that a business was a nuisance under the Unlawful Liquor Sale Abatement Law, Pen C §§ 11200-11207. People v. Schlimbach (2011, 2d Dist) 193 Cal App 4th 1132, 122 Cal Rptr 3d 804, 2011 Cal App LEXIS 353.

2. Civil Liability

In a wrongful death action brought against bar owners by the family of a man who, plaintiffs alleged, though known by defendants to be an alcoholic, had been served liquor by them in violation of B & P C § 25602, until, and after, he became intoxicated, with the result that he became ill in the bar and was strangled by his own vomit, the court properly sustained defendants demurrer to plaintiffs' count based on defendants' negligence in serving him the liquor. His own concurrent negligence in drinking it, being a proximate contributing cause of his death, constituted a valid defense to such cause of action, regardless of any lack of volition on his part predicated upon alcoholism. Carlisle v. Kanaywer (1972, Cal App 1st Dist) 24 Cal App 3d 587, 101 Cal Rptr 246, 1972 Cal App LEXIS 1155.

The trial court properly sustained the demurrer of defendant liquor store operator to a wrongful death complaint alleging that plaintiff's decedent purchased as alcoholic beverage from defendant while in a state approaching intoxication immediately prior to receiving injuries allegedly causing his death. The rule that a seller of alcoholic beverages who makes a sale to an obviously intoxicated person in violation of B & P C § 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. Moreover, the complaint failed to allege facts from which a violation of the statute could be inferred or from which it could be inferred that a violation, if such existed, proximately caused the death, and, in any event, the contributory negligence of the deceased barred recovery by his heirs. Sargent v. Goldberg (1972, Cal App 2d Dist) 25 Cal App 3d 940, 102 Cal Rptr 300, 1972 Cal App LEXIS 1088.

A presumption of negligence will arise against a noncommercial, as well as a commercial, furnisher of alcoholic beverages to an obviously intoxicated person in violation of Alcoholic Beverage Control Act, B & P C § 25602. Ordinarily, a social host who makes available intoxicating liquors to an adult guest is not liable for injuries to third persons resulting from the guest's intoxication. However, the host has a duty to deny his guest further access to alcohol when he has reason to know that he is dealing with persons whose characteristics makes it especially likely that they will do unreasonable things, such as those already severely intoxicated or those whose behavior the hosts knows to be unusually affected by alcohol, including minors. Coffman v. Kennedy (1977, Cal App 1st Dist) 74 Cal App 3d 28, 141 Cal Rptr 267, 1977 Cal App LEXIS 1891.

A commercial vendor of alcoholic beverages may be held liable for injuries to a patron or third parties proximately caused by the sale of liquor to an obviously intoxicated customer in violation of B & P C § 25602. However, damages may not be recovered from the vendor where the patron is guilty of willful misconduct. Thus, in an action by the survivors of a person who died in an automobile accident against the proprietor of a bar who allegedly served the decedent drinks, while he was obviously intoxicated, just before the accident, the trial court properly sustained of a general demurrer to the complaint. Though the complaint alleged that defendants knew the decedent would, upon leaving the premises, drive an automobile on a public highway, it also alleged that the decedent intentionally drove an automobile while intoxicated in violation of Veh C § 23102, subd. (a) [renumbered], and that he drove in an opposite lane of traffic in violation of Veh C § 21650. Sissle v. Stefenoni (1979, Cal App 1st Dist) 88 Cal App 3d 633, 152 Cal Rptr 56, 1979 Cal App LEXIS 1319.

The 1978 amendment to B & P C § 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. Stefenoni (1979, Cal App 1st Dist) 88 Cal App 3d 633, 152 Cal Rptr 56, 1979 Cal App LEXIS 1319.

In order for there to be a violation of B & P C § 25602 so that civil negligence liability may result, service of alcoholic

beverage must be made to a habitual or common drunkard or to a person who is obviously intoxicated. Gonzales v. United States (1979, 9th Cir Cal) 589 F2d 465, 1979 US App LEXIS 17659.

In an action against the estate of a deceased tavern operator for damages allegedly resulting from the tavern having served liquor to an intoxicated person, limited to available insurance coverage pursuant to Prob C § 721, enforcement of a liquor liability exclusion in the decedent's insurance policy was not violative of the public policy of the state of recognizing a cause of action against a vendor of alcoholic beverages. That public policy does not mandate that insurers must provide coverage for such vendors in every insurance policy. Stewart v. Estate of Bohnert (1980, Cal App 5th Dist) 101 Cal App 3d 978, 162 Cal Rptr 126, 1980 Cal App LEXIS 1455.

The 1978 amendments to B & P C § 25602 and CC § 1714, which abrogated the judicial rule that a commercial vendor of alcoholic beverages is liable for injuries proximately caused by the sale of liquor to an obviously intoxicated customer, did not divest an intoxicated plaintiff of her then pending 1974 cause of action against a cocktail lounge, even though the repeal of a statutory remedy without a savings clause terminates all pending actions based on the statute, since plaintiff's cause of action for negligent service of alcohol was grounded in the common law and was not solely a statutory remedy. The abolition of civil causes of action by the 1978 amendments did not bar pending actions, but only those causes of action that had not yet accrued. Fosgate v. Gonzales (1980, Cal App 1st Dist) 107 Cal App 3d 951, 166 Cal Rptr 233, 1980 Cal App LEXIS 2017.

In an action by a minor who was allegedly injured after he became intoxicated at a party and lost control of his vehicle while attempting to drive home, against the minor who hosted and supervised the party, for negligent management of the premises, the serving of alcohol without a license, the furnishing of alcohol to an intoxicated minor, and for nuisance, the trial court properly sustained defendant's general demurrer to the complaint without leave to amend, where the essence of the charging allegations of each cause of action asserted was that defendant unlawfully caused plaintiff's intoxication or permitted such intoxication to occur, and that plaintiff was injured as a proximate result thereof. However, B & P C § 25602, subd. (b), providing that no person who sells or furnishes any alcoholic beverage shall be civilly liable to any injured person for injuries inflicted on that person as a result of intoxication by the consumer, immunized defendant from liability to plaintiff for injuries allegedly resulting from his own intoxication following his consumption of alcoholic beverages. The statute, reasonably construed, bars a suit by the intoxicated consumer as well as by third persons injured by him. Cory v. Shierloh (1981) 29 Cal 3d 430, 174 Cal Rptr 500, 629 P2d 8, 1981 Cal LEXIS 146.

In an action against a bar owner by a customer allegedly injured as a result of a fight in the bar between two other persons, the trial court properly granted defendant's motion for summary judgment, where defendant produced evidence in support of his motion showing that plaintiff was not entitled to recover either on the theory (available at the time) that defendant furnished alcoholic beverages to obviously intoxicated persons in violation of former B & P C § 25602, or on the theory that defendant failed to exercise reasonable care to protect plaintiff from injury at the hands of the combatants, and where nothing in plaintiff's opposing declarations controverted defendant's evidence that the bartender and another employee got to the scene of the fight as fast as they could and broke up the fight. A statement in plaintiff's opposing declarations that defendant did not ascertain the names of the men involved in the fight was outside the scope of the issues raised by the pleadings and thus did not create a triable issue of fact. Saatzer v. Smith (1981, Cal App 2d Dist) 122 Cal App 3d 512, 176 Cal Rptr 68, 1981 Cal App LEXIS 2044.

Liquor licensees who sold alcoholic beverages to a minor in violation of B & P C § 25658, were not liable to a girl who sustained injuries while a passenger in an automobile driven by an underaged person to whom the minor had furnished the alcoholic beverages, even though the licensees knew or should have known that the minor would distribute the beverages to other minors, and that such minors would become intoxicated and drive. The licensees were immune from liability under the 1978 amendments to CC § 1714 and B & P C § 25602, providing that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication. The sweeping immunity was intended to encompass the situation of a sale by a licensee to a minor except when the sale was to an obviously intoxicated minor within the meaning of B & P C § 25602.1. Since that was the only exception, the maxim *expressio unius est exclusio alterius* (an express exclusion from the operation of a statute indicates no implied exceptions) applied. (Disapproving Burke v. Superior Court (1982) 129 Cal App 3d 570, 181 Cal Rptr 149, 1982 Cal App LEXIS 1352, to the extent it is inconsistent with the court's opinion.) Strang v. Cabrol (1984) 37 Cal 3d 720, 209 Cal Rptr 347, 691 P2d 1013, 1984 Cal LEXIS 142.

In a personal injury action by the driver of a car against the owner, arising from an accident which occurred after the owner provided liquor and the car to the driver, the trial court erred in granting the owner summary judgment. The immunity afforded to suppliers of alcoholic beverages by CC § 1714, and B & P C § 25602, protects only against the risks directly flowing from the supply of the liquor. This immunity did not apply to the owner's alleged negligent entrustment of the car to the driver. Therefore, although the driver might be unable to excuse his voluntary intoxication, issues of fact were present, requiring a comparative fault trial on the merits. Blake v. Moore (1984, Cal App 5th Dist) 162 Cal App 3d 700, 208 Cal Rptr 703, 1984 Cal App LEXIS 2819.

In an action to establish the liability of a convenience store franchisor for the sale of beer to an intoxicated minor by the franchisee, the trial court did not err in refusing to instruct that the franchisor owed a nondelegable statutory duty of care with respect to the sale of alcoholic beverages. Although B & P C §§ 25602 and 25658, prohibit the furnishing of alcoholic beverages to minors and intoxicated persons, they provide no specific safeguards or precautions to be exercised by the licensee in that regard. Moreover, the case was tried on the theory that the franchisee was the agent of the franchisor, and to have permitted plaintiffs to drastically change their theory of trial after all the evidence was in would have been unfair to the franchisor. Wickham v. Southland Corp. (1985, Cal App 4th Dist) 168 Cal App 3d 49, 213 Cal Rptr 825, 1985 Cal App LEXIS 2070.

In a personal injury action against an employer on the theory of respondeat superior, by an employee who was injured when a coemployee drove a truck in which the employee was a passenger off the road, the coemployee's consumption of alcohol was within the scope of her employment and thus the employer was not immunized from liability by CC § 1714, or B & P C § 25602 (immunities from liability for those who furnish alcohol to others). Since the employer is liable for the risk of an employee's consumption of alcohol within the employee's scope of employment, and regardless of the employer's furnishing of alcohol, the immunity of the statutes was inapplicable. Childers v. Shasta Livestock Auction Yard, Inc. (1987, Cal App 3d Dist) 190 Cal App 3d 792, 235 Cal Rptr 641, 1987 Cal App LEXIS 1542.

The 1978 amendments to CC § 1714, and B & P C § 25602, created broad immunity against liability occasioned by the furnishing of alcoholic beverages. The Legislature intended to

extend this immunity to an unlicensed host who sells alcoholic beverages to an obviously intoxicated minor. Zieff v. Weinstein (1987, Cal App 1st Dist) 191 Cal App 3d 243, 236 Cal Rptr 536, 1987 Cal App LEXIS 1599, review denied (1987) 1987 Cal. LEXIS 305.

Under the 1978 amendments to CC § 1714, and B & P C § 25602 (immunity against liability occasioned by furnishing alcohol), no duty to supervise or protect can arise from the sale of alcoholic beverages to an obviously intoxicated minor by a host not licensed pursuant to B & P C § 23300 (requirement of alcoholic beverage license). Zieff v. Weinstein (1987, Cal App 1st Dist) 191 Cal App 3d 243, 236 Cal Rptr 536, 1987 Cal App LEXIS 1599, review denied (1987) 1987 Cal. LEXIS 305.

In a tort action brought by a person injured by an intoxicated automobile driver, the application of B & P C § 25602, embodying a legislative determination that consumption rather than service of liquor is the proximate cause of injuries inflicted by intoxicated persons, afforded civil immunity to an alcoholic beverage licensee that had served the driver. Thus, the trial court properly sustained the licensee's demurrer without leave to amend and dismissed the injured person's complaint, which had asserted several tort theories all premised on the service of liquor to the driver. The sole exception, sale of liquor by a licensee to an obviously intoxicated minor, did not apply and no other exceptions could be implied under the statute. Hepe v. Paknad (1988, Cal App 6th Dist) 199 Cal App 3d 412, 244 Cal Rptr 823, 1988 Cal App LEXIS 192.

In an action against a bar and bartender by the father of an intoxicated person who was killed when crossing the street after leaving the bar, CC § 1714 and B & P C § 25602, barring dramshop causes of action, also barred any action based on the decedent's reliance upon an expectation that defendants would provide a safe ride home. Andrews v. Wells (1988, Cal App 3d Dist) 204 Cal App 3d 533, 251 Cal Rptr 344, 1988 Cal App LEXIS 854.

The amendment of B & P C § 25602, to eliminate civil liability for the furnishing of alcoholic beverages to intoxicated persons, was intended by the Legislature to have the effect of imposing sole and exclusive liability upon the consumer of alcoholic beverages for any liability to a third party. Knighten v. Sam's Parking Valet (1988, Cal App 4th Dist) 206 Cal App 3d 69, 253 Cal Rptr 365, 1988 Cal App LEXIS 1098.

The legislative intent behind amendments to B & P C § 25602, eliminating civil liability for the furnishing of alcoholic beverages to intoxicated persons, is to impose sole and exclusive liability upon the consumer of alcoholic beverages for any damages caused to third persons. Accordingly, to effectuate the spirit of the Legislature's intent, complainants may not maintain civil actions for liability against the furnishers of alcoholic beverages merely by couching their complaints in language apart from the furnishing or selling of liquor. Knighten v. Sam's Parking Valet (1988, Cal App 4th Dist) 206 Cal App 3d 69, 253 Cal Rptr 365, 1988 Cal App LEXIS 1098.

In an action against a bar alleging that it and its employees knew or should have known of plaintiff's mental disability and that he was unable to control his consumption of alcohol, and that the bar continued to serve him drinks resulting in his being injured as he crossed a street, the trial court did not err in sustaining defendant's demurrer without leave to amend on the ground that the action was barred by B & P C § 25602 (liability for furnishing of liquor to intoxicated person), and CC § 1714 (proximate cause of injuries resulting from furnishing of alcoholic beverages to intoxicated person). There is no statutory exception to the immunity provided by B & P C § 25602, except for obviously intoxicated minors (B & P C § 25602.1). Because the mentally infirm, incompetent, or retarded range from those whose disability is not immediately evident to those requiring constant care, it must be left to the Legislature, guided by qualified professionals, to determine whether this large and diversified group is to be treated similarly to minors. Cardinal v. Santee Pita, Inc. (1991, Cal App 4th Dist) 234 Cal App 3d 1676, 286 Cal Rptr 275, 1991 Cal App LEXIS 1176.

In accordance with the maxim (an express exclusion from the operation of a statute indicates that the Legislature intended no other exceptions to be implied), the Legislature, in amending CC § 1714 (proximate cause of injuries resulting from furnishing of alcoholic beverages to intoxicated person), and B & P C § 25602 (liability for furnishing of liquor to intoxicated person), and enacting B & P C 25602.1 (furnishing alcoholic beverages to obviously intoxicated minor), must be deemed to have abolished tort liability against the furnisher of alcoholic beverages except in only one situation, namely, providing alcohol to an obviously intoxicated minor. No other exceptions to this immunity exist. By declaring the consumption of alcohol, and not the sale or furnishing of such, to be the proximate cause of injury inflicted by intoxicated persons, subject to only one exception, the Legislature stated loudly and clearly that it rejected the concept of preserving even limited liability for those selling or furnishing alcoholic beverages to anyone other than obviously intoxicated minors. Such a legislative declaration is within its domain. Cardinal v. Santee Pita, Inc. (1991, Cal App 4th Dist) 234 Cal App 3d 1676, 286 Cal Rptr 275, 1991 Cal App LEXIS 1176.

In an action against a baseball team, a parking company, and the city that owned the stadium, for the wrongful death of plaintiff's son, who was killed while riding his bicycle, by a driver leaving a baseball game at which he had consumed alcoholic beverages both in the stadium and the parking lot, the trial court properly sustained defendants' demurrer without leave to amend. In view of B & P C § 25602, under which the consumption of alcoholic beverages rather than the serving of alcoholic beverages is the proximate cause of injuries inflicted by an intoxicated person, neither the parking company nor the baseball team could be found civilly liable. Neither could the liability of any defendant be based on their simply permitting the driver to consume alcoholic beverages on the premises. Moreover, the claim that defendants failed to prevent or to prohibit patrons from drinking and actually encouraged the use of the parking lot premises for drinking failed as a matter of law to state a cause of action. B & P C § 25602, bars suit against those who simply permit the consumption of alcoholic beverages on their premises as well as against those who supply alcohol. Leong v. San Francisco Parking, Inc. (1991, Cal App 1st Dist) 235 Cal App 3d 827, 1 Cal Rptr 2d 41, 1991 Cal App LEXIS 1252.

B & P C § 25602, providing a person who furnishes alcoholic beverage to any obviously intoxicated person shall not be civilly liable to any injured person for injuries inflicted as a result of intoxication, is not limited only to those who provide alcohol to obviously intoxicated persons, despite the statute's reference thereto, and to cases involving the provision of alcohol to such persons. Were the reference interpreted as limiting, then the statute would bar suits only against a person supplying alcoholic beverages to an obviously intoxicated consumer, yet permit tort recovery against one who supplies to a sober individual who later becomes intoxicated. Obviously, the supplier in the former situation is better able to foresee the risk of harm to others and thus engages in the more culpable conduct. It cannot be believed the Legislature intended such a whimsical anomaly. Leong v. San Francisco Parking, Inc. (1991, Cal App 1st Dist) 235 Cal App 3d 827, 1 Cal Rptr 2d 41, 1991 Cal App LEXIS 1252.

In an action against the operator of a bar and restaurant for injuries suffered when plaintiff was assaulted and stabbed by another patron, the trial court erred in sustaining defendant's demurrer to plaintiff's first amended complaint, which was founded on premises liability and alleged defendant's failure

to protect its patrons against such assaults. Although the initial complaint was subject to demurrer because it alleged the assailant was intoxicated and it sought to impose liability precluded by B & P C § 25602, subd. (b), for defendant's negligence in furnishing the alcohol to the assailant, plaintiff deleted that allegation in the amended complaint. The amended complaint alleged a viable cause of action, separate and distinct from any asserted dram shop liability and, under the facts alleged, defendant's liability existed regardless of the fact that it sold alcohol to the assailant. A license to sell alcoholic beverages does not confer a grant of immunity to the innkeeper who permits the premises to be used as an arena for aggressive tortfeasors. B & P C § 25602, does not affect an innkeeper's duty of care to take reasonable steps to protect his or her guests from the aggressive conduct of other persons on the premises. Cantwell v. Peppermill, Inc. (1994, Cal App 1st Dist) 25 Cal App 4th 1797, 31 Cal Rptr 2d 246, 1994 Cal App LEXIS 637, review denied (1994) 1994 Cal. LEXIS 4969.

B & P C § 25602, generally immunizes an establishment from liability for injuries to third parties resulting from the furnishing of alcohol to its patrons, permitting its patrons to consume alcoholic beverages on the premises, or for failing to prevent or prohibit its patrons from drinking alcoholic beverages and encouraging the use of its premises for drinking. However, the statute does not preclude all actions against innkeepers merely because they furnish alcohol. The proprietor of a place where intoxicating liquors are dispensed owes a duty of exercising reasonable care to protect his or her patrons from injury at the hands of fellow guests. Although the proprietor is not an insurer of the patrons' safety, he or she has a duty of care to protect patrons from the reasonably foreseeable criminal or tortious conduct of third persons, and is thus liable for receiving or harboring guests of known violent or vicious propensities. Cantwell v. Peppermill, Inc. (1994, Cal App 1st Dist) 25 Cal App 4th 1797, 31 Cal Rptr 2d 246, 1994 Cal App LEXIS 637, review denied (1994) 1994 Cal. LEXIS 4969.

In an action arising out of an automobile accident caused by an intoxicated minor, against the owner of the building rented by the sponsor of a dance at which alcohol was served to the minor on the evening of the accident, the trial court properly entered summary judgment for defendant. Under B & P C § 25602.1, imposing liability on any person who "causes to be sold" any alcoholic beverage to an obviously intoxicated minor, the phrase "causes to be sold" requires an affirmative act directly related to the sale of alcohol, which necessarily brings about the resultant action to which the statute is directed, i.e., the furnishing of alcohol to an obviously intoxicated minor. The statute requires malfeasance, not acquiescence; mere inaction is not sufficient. Accordingly, when a person's only acts relating to the sale of alcohol to an obviously intoxicated minor are (1) being the landlord of the premises on which the renter sold alcohol to the minor, and (2) having acquiesced in the liquor license application of the organization which rented the premises, the person cannot be said to have "cause[d] [alcohol] to be sold" to the minor within the meaning of B & P C § 25602.1. Therefore, defendant was immune from liability for injuries inflicted as a result of the minor's intoxication under the sweeping civil immunity of B & P C § 25602, subd. (b). Hernandez v. Modesto Portuguese Pentecost Assn. (1995, Cal App 3d Dist) 40 Cal App 4th 1274, 48 Cal Rptr 2d 229, 1995 Cal App LEXIS 1191.

Security company hired by a restaurant that served alcoholic beverages did not owe a duty to prevent minors from consuming alcoholic beverages. The court dismissed an action against the security company brought by the parents of intoxicated minors who suffered a fatal accident after leaving the restaurant; B & P C § 25602 provided the security company with immunity from suit. Elizarraras v. L.A. Private Security Services, Inc. (2003, Cal App 2d Dist) 108 Cal App 4th 237, 133 Cal Rptr 2d 302, 2003 Cal App LEXIS 627.

Court granted defendants' motion to strike parents' claim for improper service of alcohol in a wrongful death and survival action because California's anti-dram shop provision, B & P C § 25602(b), precluded the parents' dram shop claim. Voillat v. Red & White Fleet (2004, ND Cal) 2004 US Dist LEXIS 4359.

§ 25602.1. Supplying of alcoholic beverage to intoxicated minor; Cause of action

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.

Added Stats 1978 ch 930 § 1. Amended Stats 1986 ch 289 § 1.

Amendments:

1986 Amendment: (1) Substituted ", 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," for "pursuant to Section 23300"; **(2)** added ", and any other person who sells, or causes to be sold, any alcoholic beverage,"; and **(3)** substituted "that" for "such" after "giving of" and after "sustained by".

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 19 "Alcoholic Beverages: Civil Liability7".

Cal. Points & Authorities (Matthew Bender®) ch 15A "Alcoholic Beverages: Civil Liability For Furnishing" § 15A.21.

Cal. Employment Law (Matthew Bender®), § 20.23.

Cal. Torts (Matthew Bender®), § 1.20-1.21.

Cal. Torts (Matthew Bender®), § 2.11.

Cal. Torts (Matthew Bender®), § 15.06.

Cal. Torts (Matthew Bender®), § 20.58.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Judicial Council of California Civil Jury Instructions, CACI Nos. 422, 709, VF–406 (Matthew Bender).

Dramshop liability—Injured minor may sue bar that served her liquor. CEB Civil Litigation Reporter (1986) Vol 8 No. 2 p 68.

6 Witkin Summary (10th ed) Torts §§ 1071, 1072, 1073, 1074.

Forms:

See suggested forms following Notes of Decisions.

Law Review Articles:

Review of 1978 California Legislation. 10 Pacific LJ 591.

Liability of liquor suppliers in California: A return to the common law. 12 UCD LR 191.

Minor drinking and driving: California's inconsistent and

inequitable statutory scheme of social host immunity. 25 UCD LR 463.

Preventing alcohol–related injuries: Dram shop liability in a public health perspective. 12 Western LR 417.

Annotations:

What constitutes violation of enactment prohibiting sale of intoxicating liquor to minor. 89 ALR3d 1256.

Tort liability of college of university for injury suffered by student as a result of own or fellow student's intoxication. 62 ALR4th 81.

NOTES OF DECISIONS

1. Generally
2. Construction
3. Applicability
4. Construction with Other Laws
5. Purpose
6. Evidence: Generally

1. Generally

In a personal injury action alleging defendants' liability as retail liquor dealers in furnishing alcoholic beverages to a sober minor, who subsequently operated a motor vehicle while intoxicated and caused plaintiffs' injuries, the trial court properly granted summary judgment in favor of defendants. Under B & P C § 25602.1, licensed alcoholic beverage dealers who provide alcoholic beverages to sober minors are immune from claims by third parties injured as a result of the intoxication of those minors. Rogers v. Alvas (1984, Cal App 1st Dist) 160 Cal App 3d 997, 207 Cal Rptr 60, 1984 Cal App LEXIS 2607.

It was well within the prerogative of the Legislature to declare that the consumption of alcohol and not the sale or furnishing thereof is the proximate cause of injury inflicted by intoxicated persons, except for sales by licensed vendors to obviously intoxicated minors, as it did by enacting the 1978 amendments to B & P C § 25602, and CC § 1714, and adding B & P C § 25602.1. Rogers v. Alvas (1984, Cal App 1st Dist) 160 Cal App 3d 997, 207 Cal Rptr 60, 1984 Cal App LEXIS 2607.

In an action against a bar alleging that it and its employees knew or should have known of plaintiff's mental disability and that he was unable to control his consumption of alcohol, and that the bar continued to serve him drinks resulting in his being injured as he crossed a street, the trial court did not err in sustaining defendant's demurrer without leave to amend on the ground that the action was barred by B & P C § 25602 (liability for furnishing of liquor to intoxicated person), and CC § 1714 (proximate cause of injuries resulting from furnishing of alcoholic beverages to intoxicated person). There is no statutory exception to the immunity provided by B & P C § 25602, except for obviously intoxicated minors (B & P C § 25602.1). Because the mentally infirm, incompetent, or retarded range from those whose disability is not immediately evident to those requiring constant care, it must be left to the Legislature, guided by qualified professionals, to determine whether this large and diversified group is to be treated similarly to minors. Cardinal v. Santee Pita, Inc. (1991, Cal App 4th Dist) 234 Cal App 3d 1676, 286 Cal Rptr 275, 1991 Cal App LEXIS 1176.

A supplier of alcohol must use reasonable care to ensure the person receiving the alcoholic beverage is not an obviously intoxicated minor. A seller violates the law, and is liable, who serves a customer affected by the commonly known outward manifestations of liquor intoxication, whether by failing to observe what was plain and easily seen or discovered or, having observed, by ignoring what was apparent. To establish liability, it must be proved not only that the patron was intoxicated but that this was obvious. The standard for determining obvious intoxication is measured by that of a reasonable person having normal powers of observation. Schaffield v. Abboud (1993, Cal App 4th Dist) 15 Cal App 4th 1133, 19 Cal Rptr 2d 205, 1993 Cal App LEXIS 526, review denied (1993) 1993 Cal. LEXIS 3569.

2. Construction

In B & P C § 25602.1, which provides immunity to licensed alcoholic beverage dealers who provide alcoholic beverages to sober minors from liability to third parties injured as a result of the intoxication of those minors, the term "minor" refers to persons under the age of 21. Rogers v. Alvas (1984, Cal App 1st Dist) 160 Cal App 3d 997, 207 Cal Rptr 60, 1984 Cal App LEXIS 2607.

An 18-year-old woman who was injured when, upon leaving a restaurant and bar in which she had become intoxicated, she ran across the street against the traffic signal and into the path of a car stated a cause of action against the restaurant and its agents, based on their negligence in serving her alcoholic beverages, under B & P C § 25602.1, which provides that, notwithstanding B & P C § 25602, subd. (b) (barring actions against purveyors of alcoholic beverages by persons injured by intoxicated persons), "any person" may bring an action against licensees who furnish alcoholic beverages to obviously intoxicated minors where the furnishing is the proximate cause of the injury or death. The usual meaning of the words "any person" include injured intoxicated minors in the absence of a statement excluding them, and the Legislature made no such exclusion, in contrast to the language of other statutes dealing with minors. Additionally, both the legislative history of the statute and its subsequent interpretation by the Supreme Court supported the conclusion that minors themselves were intended to be included in the class of persons who could bring actions against licensees. Chalup v. Aspen Mine Co. (1985, Cal App 4th Dist) 175 Cal App 3d 973, 221 Cal Rptr 97, 1985 Cal App LEXIS 2892.

In an action by an injured motor vehicle passenger against the residents and owners of the home in which a guest consumed alcohol before driving the car in which plaintiff was injured, statutory amendments to B & P C § 25602.1 (supplying of alcoholic beverages to intoxicated minor), which broadened the exception to the general statutory immunity enjoyed by those who serve alcohol from liability for injuries caused to third persons, did not apply retroactively to the facts of the case, and thus the trial court did not err in granting summary judgment for defendants. Nothing in the amendments indicated that they were intended to apply retroactively, and the absence of an urgency clause indicated a lack of legislative intent that they so apply. Further, the amendments did not clarify existing law, and there were not compelling public policy reasons for retroactive application. Baker v. Sudo (1987, Cal App 4th Dist) 194 Cal App 3d 936, 240 Cal Rptr 38, 1987 Cal App LEXIS 2109.

In accordance with the maxim (an express exclusion from the operation of a statute indicates that the Legislature intended no other exceptions to be implied), the Legislature, in amending CC § 1714 (proximate cause of injuries resulting from furnishing of alcoholic beverages to intoxicated person), and B & P C § 25602 (liability for furnishing of liquor to intoxicated person), and enacting B & P C 25602.1 (furnishing alcoholic beverages to obviously intoxicated minor), must be deemed to have abolished tort liability against the furnisher of alcoholic beverages except in only one situation, namely, providing alcohol to an obviously intoxicated minor. No other exceptions to this immunity exist. By declaring the consumption of alcohol, and not the sale or furnishing of such, to be the proximate cause of injury inflicted by intoxicated persons,

subject to only one exception, the Legislature stated loudly and clearly that it rejected the concept of preserving even limited liability for those selling or furnishing alcoholic beverages to anyone other than obviously intoxicated minors. Such a legislative declaration is within its domain. Cardinal v. Santee Pita, Inc. (1991, Cal App 4th Dist) 234 Cal App 3d 1676, 286 Cal Rptr 275, 1991 Cal App LEXIS 1176.

In an action arising out of an automobile accident caused by an intoxicated minor, against the owner of the building rented by the sponsor of a dance at which alcohol was served to the minor on the evening of the accident, the trial court properly entered summary judgment for defendant. Under B & P C § 25602.1, imposing liability on any person who "causes to be sold" any alcoholic beverage to an obviously intoxicated minor, the phrase "causes to be sold" requires an affirmative act directly related to the sale of alcohol, which necessarily brings about the resultant action to which the statute is directed, i.e., the furnishing of alcohol to an obviously intoxicated minor. The statute requires malfeasance, not acquiescence; mere inaction is not sufficient. Accordingly, when a person's only acts relating to the sale of alcohol to an obviously intoxicated minor are (1) being the landlord of the premises on which the renter sold alcohol to the minor, and (2) having acquiesced in the liquor license application of the organization which rented the premises, the person cannot be said to have "cause[d] [alcohol] to be sold" to the minor within the meaning of B & P C § 25602.1. Therefore, defendant was immune from liability for injuries inflicted as a result of the minor's intoxication under the sweeping civil immunity of B & P C § 25602, subd. (b). Hernandez v. Modesto Portuguese Pentecost Assn. (1995, Cal App 3d Dist) 40 Cal App 4th 1274, 48 Cal Rptr 2d 229, 1995 Cal App LEXIS 1191.

3. Applicability

Although, under B & P C § 25602.1, a licensee may be held liable for furnishing alcoholic beverages to an obviously intoxicated minor, this statutory section is the sole explicit exception to social host immunity; although not set forth specifically, a party cannot be held civilly liable for violating the statute's misdemeanor provision of serving alcohol to minors (B & P C § 25658). DeBolt v. Kragen Auto Supply, Inc. (1986, Cal App 4th Dist) 182 Cal App 3d 269, 227 Cal Rptr 258, 1986 Cal App LEXIS 1703.

B & P C § 25602.1 (action against licensed person for providing alcohol to obviously intoxicated minor causing injury), may be invoked only when the provider of alcohol is licensed. Thus, in an action by a passenger injured while riding in an automobile driven by an intoxicated minor, against two persons who had sold alcohol to the minor before the accident, the trial court properly sustained without leave to amend defendants' demurrer to the passenger's complaint, and dismissed the causes of action against them. Defendants had sold the alcohol at a social gathering at their home, and were not licensed under B & P C § 23300 (requirement of alcoholic beverage license); thus, § 25602.1 did not apply. Zieff v. Weinstein (1987, Cal App 1st Dist) 191 Cal App 3d 243, 236 Cal Rptr 536, 1987 Cal App LEXIS 1599, review denied (1987) 1987 Cal. LEXIS 305.

An injured motor vehicle passenger's cause of action against the residents and owners of the home in which a guest consumed alcohol before driving the car in which plaintiff was injured failed under B & P C § 25602 (social host not to be held liable for damages resulting from consumption of alcoholic beverages), and B & P C § 25602.1 (liability of liquor licensee furnishing alcohol to intoxicated minors), as those statutes stood at the time of the accident, since liquor licensees were not involved. Baker v. Sudo (1987, Cal App 4th Dist) 194 Cal App 3d 936, 240 Cal Rptr 38, 1987 Cal App LEXIS 2109.

In an action by the family of the victim of an automobile accident against the corporate owner of a convenience store, the convenience store franchisees, and a store employee, the trial court erred in denying summary judgment for defendants, who asserted that B & P C § 25602.1 (supplying alcoholic beverage to intoxicated minor), provided no basis for imposing liability on them. A minor who had been drinking heavily with a companion bought beer in the convenience store, and then rejoined his companion in the companion's automobile, which was subsequently involved in the accident in which the victim died. The companion was driving at the time of the accident. Section 25602.1 should be construed strictly so as to require that the negligence resulting in liability of the alcohol purveyor be that of the very person who purchased the beverage. Salem v. Superior Court (1989, Cal App 4th Dist) 211 Cal App 3d 595, 259 Cal Rptr 447, 1989 Cal App LEXIS 611, review denied (1989) 1989 Cal. LEXIS 2752 .

As the sole exception to statutory immunity from liability for injuries to third persons resulting from the furnishing of alcohol to another, B & P C § 25602.1 (imposing liability on any person who "causes to be sold" any alcoholic beverage to an obviously intoxicated minor), must be strictly construed to effect the Legislature's intent. In their ordinary sense, the words "causes to be sold" imply some type of affirmative act on the part of the person causing alcohol to be sold, which is directly related to the act of selling alcohol. Thus, a trier of fact may not find liability unless it determines that the minor exhibited one or more signs of intoxication which were sufficient to cause a reasonable person to believe the minor was intoxicated. Hernandez v. Modesto Portuguese Pentecost Assn. (1995, Cal App 3d Dist) 40 Cal App 4th 1274, 48 Cal Rptr 2d 229, 1995 Cal App LEXIS 1191.

Security company hired by a restaurant that served alcoholic beverages did not owe a duty to prevent minors from consuming alcoholic beverages. The court dismissed an action against the security company brought by the parents of intoxicated minors who suffered a fatal accident after leaving the restaurant; B & P C § 25602 provided the security company with immunity from suit. Elizarraras v. L.A. Private Security Services, Inc. (2003, Cal App 2d Dist) 108 Cal App 4th 237, 133 Cal Rptr 2d 302, 2003 Cal App LEXIS 627.

4. Construction with Other Laws

California courts do not hold liable, under B & P C § 25602.1 (sale of alcoholic beverage to intoxicated minor; creation of cause of action against licensee), a private person who, although he or she served liquor to an obviously intoxicated minor, was not licensed under California law to serve liquor. Thus, an Enlisted Club Marine Barracks which sold alcohol to an obviously intoxicated minor was immune from tort liability under the Federal Tort Claims Act, with regard to the minor's motorcycle accident which killed his passenger, since the club was exempt from California liquor licensing requirements. Federal Tort Claims Act liability was predicated on state law, and a private person in a situation similar to the United States would be immune from civil liability. Gallea v. United States (1986, 9th Cir Cal) 779 F2d 1403, 1986 US App LEXIS 21635.

5. Purpose

Although Veh C § 23155 [repealed] (driving while under the influence), and B & P C § 25602.1 (civil liability of licensees for injury caused by serving alcohol to obviously intoxicated minor), deal with related problems, the purposes behind the statutes are different. To impose liability under § 25602.1, the injury need not be caused by the minor's driving; instead, visible signs of a minor's obvious intoxication must be established. Being under the influence of alcohol is not comparable; blood alcohol level may be circumstantial evidence of a minor's

outward appearance, but it is not dispositive. Reaction to alcohol and tolerance of it differ among persons, and even within a person, depending on physical condition and other factors. Jones v. Toyota Motor Co. (1988, Cal App 1st Dist) 198 Cal App 3d 364, 243 Cal Rptr 611, 1988 Cal App LEXIS 61.

6. Evidence: Generally

In determining whether one has sold liquor to an intoxicated person, a jury may consider evidence of blood-alcohol level, but such evidence is marginally relevant where there is no direct evidence of the patron's behavior at the time of the sale. Thus, in an accident victim's suit alleging negligently selling an alcoholic beverage to an obviously intoxicated minor, sufficient evidence supported the jury's conclusion that the minor was not obviously intoxicated at the time of the sale, where the jury could reasonably have found his .10 percent blood-alcohol content about two hours after the accident was due to alcohol consumed after rather than before the sale. There was conflicting testimony as to the amount of liquor consumed by the minor, and two experts testified that the amount the minor admitted drinking prior to the sale would have been insufficient to raise his blood alcohol that high by the time of the test. Red eyes and alcoholic breath alone do not compel a conclusion that a person is obviously intoxicated. Schaffield v. Abboud (1993, Cal App 4th Dist) 15 Cal App 4th 1133, 19 Cal Rptr 2d 205, 1993 Cal App LEXIS 526, review denied (1993) 1993 Cal. LEXIS 3569.

SUGGESTED FORMS

Complaint by Bystander Against Assailant and Tavern Proprietor for Damages for Personal Injuries—Resulting from Proprietor's Service of Alcohol to Underage Assailant

[Title of Court and Cause]

First Cause of Action

For a First Cause of Action against defendant(s) ____ *[tavern proprietor],* ____ [and DOES I through V, inclusive,] plaintiff represents:

1. Plaintiff resides at ____ *[address],* in the City of ____, County of ____, State of California.

2. Defendant ____ is the ____ [sole] owner and proprietor of a tavern known as ____, located at ____ *[address],* in the City of ____, County of ____, State of California, and is engaged in the business of selling alcoholic beverages to the general public.

3. Defendant ____ *[assailant]* resides at ____ *[address],* in the City of ____, County of ____, State of California.

4. ____ *[If applicable, allege:* Plaintiff does not know the true names and capacities of the defendants sued herein as DOES ____ (I through v. *or as the case may be),* inclusive, and therefore sues such defendants by fictitious names. Plaintiff will amend this complaint setting forth their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of such defendants was negligently responsible in some manner for the events referred to, and negligently caused injuries and damages to plaintiff].

5. ____ *[If applicable, allege:* At all times mentioned herein, each defendant was the agent, servant, and employee of each of the remaining defendants, and was acting within the scope and course of his employment and with the knowledge and consent of his employers].

6. On ____ *[date],* commencing at approximately ____ o'clock ____.m., and continuing until ____ o'clock ____.m., defendant ____ *[tavern proprietor]*____ [served *or* permitted to be served] to defendant ____ *[assailant],* a minor, at ____ *[tavern],* substantial quantities of alcoholic beverages.

7. Defendant ____ *[tavern proprietor]* ____ [and defendants DOES I through V] knew at the time of serving such alcoholic beverages to defendant ____ *[assailant]* that he was becoming intoxicated. Defendant ____ *[tavern proprietor]* further knew that defendant ____ *[assailant]* had a propensity for becoming aggressive when intoxicated. In spite of such knowledge, defendant ____ *[tavern proprietor]* negligently continued to sell and serve alcoholic beverages to defendant ____ *[assailant].*

8. As a proximate result of such negligence, defendant ____ *[assailant]* became intoxicated and aggressive ____ *[set forth assault, for example:* and stabbed plaintiff with a knife immediately outside the ____ *(tavern),* causing the hereinafter described injuries].

9. As prescribed by Section 25602.1 of the Business and Professions Code of the State of California, defendant(s) ____ and ____ [DOES I through V, inclusive] owed plaintiff a statutory duty of care. By continuing to serve intoxicating beverages to defendant ____ *[assailant],* defendant(s) breached this statutory duty of due care. Such breach directly caused the injuries hereinafter described.

10. As a proximate result of the assault and battery, plaintiff suffered a ____ [stab wound *or as the case may be]* and was seriously injured in that ____. As a result of such injury, plaintiff has suffered mental and physical pain, all to his general damages in a sum to be ascertained.

11. As a further proximate result, plaintiff has incurred medical expenses in a sum in excess of ____ [$1000.00 *or as the case may be].* The true nature and extent of such medical expenses is presently unknown to plaintiff, who will seek leave to amend this complaint to provide such expenses when they have been ascertained.

12. Plaintiff was employed as a ____ *[specify]* by ____ *[employer]* at the time of the assault and battery. As a further proximate result of the injuries sustained, plaintiff was prevented from engaging in his employment and thereby lost earnings. The precise amount of such earnings is not presently ascertained; plaintiff will seek leave to amend this complaint to provide such information when his wage loss has been computed.

13. ____ *[If applicable, set forth facts supporting further damages sustained by plaintiff].*

Second Cause of Action

1. Plaintiff re–alleges Paragraphs ____ [1, 2, 3, 4, 5, 10, 11, 12, and ____ (13)] of the First Cause of Action of this complaint with the full force and effect as if fully set forth herein.

2. Defendant(s) ____ *[tavern proprietor]* ____ [and DOES I through V, inclusive] knew, or in the exercise of ordinary care, should have known that defendant ____ *[assailant]* was a minor, and consequently should not have been sold and served alcoholic beverages in ____ *[tavern]* or been permitted to remain in ____ *[tavern].*

3. Despite such knowledge, on the ____ [evening *or as the case may be]* of ____ *[date],* and continuing on into the ____ [early morning hours *or as the case may be]* of ____ *[date],* defendant(s) ____ *[tavern proprietor]*____ [and DOES I through V, inclusive,] ____ [served *or* permitted to be served] to defendant ____ *[assailant],* a minor, large quantities of alcoholic

beverages without requiring proof of age from defendant ____ *[assailant].*

4. As a proximate result of defendant(s)' negligence, defendant ____ *[assailant]* became intoxicated and assaulted plaintiff as previously alleged.

5. Defendant(s) ____ *[tavern proprietor]*____ [and DOES I through V, and each of them,] owed plaintiff a statutory duty of care as prescribed by Sections 25602.1 and 25658 of the Business and Professions Code of the State of California. By providing alcoholic beverages to such minor, ____ *[assailant],* defendant(s) breached that duty of care, and the negligence proximately caused plaintiff to suffer the injuries previously described in this complaint.

Third Cause of Action

For a cause of action against defendant ____ *[assailant],* plaintiff represents:

1. Plaintiff re–alleges Paragraphs ____ [1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, and ____ (13)] of the First Cause of Action of this complaint with the full force and effect as if fully set forth herein.

2. In committing the acts set forth herein, defendant ____ *[assailant]* acted maliciously and intended to cause injury to plaintiff, and plaintiff is entitled to punitive damages in the sum of $____.

Wherefore, plaintiff prays:

First Cause of Action

1. That defendant(s) ____ *[tavern proprietor]* ____ [and DOES I through V, and each of them] be cited to appear and answer this complaint;

2. For general damages in a sum to be ascertained;

3. For special damages in a sum according to proof;

4. For costs of suit; and

5. For such further relief as the court may deem just and equitable.

Second Cause of Action

1. That defendant(s) ____ *[tavern proprietor]* ____ [and DOES I through V, and each of them] be cited to appear and answer this complaint;

2. For general damages in a sum to be ascertained;

3. For special damages in a sum according to proof;

4. For costs of suit; and

5. For such further relief as the court may deem just and equitable.

Third Cause of Action

1. That defendant ____ *[assailant]* be cited to appear and answer this complaint;

2. For general damages in a sum to be ascertained;

3. For special damages in a sum according to proof;

4. For punitive damages in the sum of $____;

5. For costs of suit; and

6. For such further relief as the court may deem just and equitable.

Dated ____*[date].*.

[Signature]

[Verification]

§ 25602.2. Action by director for 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.

Added Stats 1978 ch 930 § 2.

Collateral References:
6 Witkin Summary (10th ed) Torts § 1070.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:
Review of Selected 1978 Legislation. 10 Pacific LJ 591.

NOTES OF DECISIONS

1. Generally
2. Jurisdiction

1. Generally
Although B & P C § 25602.2 provides one remedy for violations of B & P C § 25602, it is not the exclusive one. People v. Schlimbach (2011, 2d Dist) 193 Cal App 4th 1132, 122 Cal Rptr 3d 804, 2011 Cal App LEXIS 353.

2. Jurisdiction
Finding that a business was a nuisance under the Unlawful Liquor Sale Abatement Law, Pen C §§ 11200-11207, based on sales of alcohol to obviously intoxicated persons did not impede the jurisdiction of the Department of Alcoholic Beverage Control under Cal Const Art XX § 22(d), B & P C § 25602.2. An injunction was also not an improper interference because the restrictions were designed to prevent future sales to obviously intoxicated persons and abate the nuisance, not to restrict the right to sell alcohol to willing purchasers. People v. Schlimbach (2011, 2d Dist) 193 Cal App 4th 1132, 122 Cal Rptr 3d 804, 2011 Cal App LEXIS 353.

§ 25602.3. Petitions for offer in compromise for second or subsequent violation prohibited

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.

Added Stats 1978 ch 930 § 3.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:
Review of Selected 1978 Legislation. 10 Pacific LJ 591.
Preventing alcohol–related injuries: Dram shop liability in a public health perspective. 12 Western LR 417.

§ 25603. Bringing intoxicants into penal institutions

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 63.

Cross References:
Bringing alcoholic beverages into prison, etc.: Pen C § 4573.

§ 25604. Unlicensed club room or drinking place

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1331 § 17; Stats 1955 ch 447 § 130.

Amendments:
1955 Amendment: Substituted "department" for "board" in the last paragraph.

Historical Derivation:
Stats 1935 ch 330 § 53.2, as added Stats 1943 ch 730 § 1.

Cross References:
Public nuisances: CC §§ 3480, 3490 et seq.
Public nuisances defined: Pen C § 370.

Collateral References:
Cal. Forms Pleading & Practice (Matthew Bender®) ch 19 "Alcoholic Beverages: Civil Liability".
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].
Cal Jur 3d (Rev) Criminal Law §§ 1697, 1699.

NOTES OF DECISIONS

1. Generally
2. Constitutionality
3. Applicability
4. Construction with Other Laws

1. Generally
Provision respecting public nuisance under this section is not ambiguous or unintelligible. People v. Frangadakis (1960, Cal App 1st Dist) 184 Cal App 2d 540, 7 Cal Rptr 776, 1960 Cal App LEXIS 1904.

2. Constitutionality
This section does not conflict with federal or state constitutional provisions relating to deprivation of individual liberty and private property without due process of law, but is valid exercise of police power. People v. Frangadakis (1960, Cal App 1st Dist) 184 Cal App 2d 540, 7 Cal Rptr 776, 1960 Cal App LEXIS 1904.

3. Applicability
In action to abate as public nuisance restaurant engaged in serving intoxicating liquor without license, it was not error to permit agents of department of alcoholic beverage control to relate conversations between them and doorman and waitresses, where ostensible employment was established as to both doorman and waitresses and defendant was in area at time. People v. Frangadakis (1960, Cal App 1st Dist) 184 Cal App 2d 540, 7 Cal Rptr 776, 1960 Cal App LEXIS 1904.

Decree ordering that defendants, "their heirs and assigns," be enjoined and restrained from using or permitting the use of the premises was modified by striking quoted words since action was in personam, not in rem, and heirs and assigns were not parties; and decree was also required to be modified by adding words "in violation of Section 25604 of the Business and Professions Code," since it was unlawful to use premises for serving alcoholic beverages or mixes for consideration only without license. People v. Frangadakis (1960, Cal App 1st Dist) 184 Cal App 2d 540, 7 Cal Rptr 776, 1960 Cal App LEXIS 1904.

In an action under B & P C § 25604 and Pen C § 11200, to abate the public nuisance created by persons unlawfully selling and serving alcoholic beverages on their premises, failure of the Department of Alcoholic Beverage Control to give defendants two weeks written notice of the existence of a nuisance prior to seeking an injunction did not prejudice defendants. Such notice is required only by the Penal Code and defendants had actual notice through the existence of years of litigation on the matter. In a suit in federal court they had admitted facts constituting the nuisance and they failed to request that the injunction be dissolved on the ground of lack of notice. Department of Alcoholic Beverage Control v. Locker (1982, Cal App 2d Dist) 129 Cal App 3d 381, 181 Cal Rptr 55, 1982 Cal App LEXIS 1330.

4. Construction with Other Laws
B & P C § 23090.5, providing that no court except the Supreme Court or Courts of Appeal shall have jurisdiction to review, affirm, or reverse any order, rule, or decision of the Department of Alcoholic Beverage Control is completely inap-

plicable to proceedings to abate a nuisance brought pursuant to B & P C § 25604 and Pen C § 11200. Therefore, in an action brought under the nuisance statutes, the superior court had jurisdiction to issue a permanent injunction against the illegal sale and serving of alcoholic beverages as a public nuisance. Department of Alcoholic Beverage Control v. Locker (1982, Cal App 2d Dist) 129 Cal App 3d 381, 181 Cal Rptr 55, 1982 Cal App LEXIS 1330.

§ 25605. Delivery of beverage pursuant to telephone order or other electronic means

No off-sale licensee shall deliver any alcoholic beverages pursuant to orders received for alcoholic beverages by telephone or other electronic means 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.

Added Stats 1963 ch 1410 § 1. Amended Stats 2013 ch 337 § 5 (SB 818), effective January 1, 2014.

Former Sections:

Former § 25605, relating to sales of beverages other than beer over a bar, was added Stats 1953 ch 152 § 1 and repealed Stats 1955 ch 1779 § 11, operative January 1, 1957. Historical derivation: Stats 1935 ch 330 § 53, as amended Stats 1937 ch 758 § 85.

Amendments:

2013 Amendment: Substituted (1) "off-sale" for "offsale"; and (2) "alcoholic beverages by telephone or other electronic means" for "such alcoholic beverage by telephone".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25606. Use of vehicle to transport beverages or property subject to seizure

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 131; Stats 1983 ch 1092 § 59, effective September 27, 1983, operative January 1, 1984.

Amendments:

1955 Amendment: Substituted "department" for "board" in the last paragraph.

1983 Amendment: Substituted "one thousand dollars ($1,000)" for "five hundred dollars ($500)" in the third sentence of the first paragraph.

Historical Derivation:

Stats 1935 ch 330 § 51g, as added Stats 1937 ch 758 § 82, amended Stats 1941 ch 1209 § 3, Stats 1945 ch 1401 § 39.

Cross References:

Seizure and forfeiture of property: B & P C §§ 25350–25374.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:

Review of Selected 1983 Legislation. 15 Pacific LJ 559.

Annotations:

Constitutional guaranties against unreasonable search and seizure as applied to search or seizure of intoxicating liquor. 3 ALR 1514; 13 ALR 1316; 27 ALR 709; 39 ALR 811; 74 ALR 1418.

Constitutionality of statutes providing for confiscation or destruction, without notice, of intoxicating liquors, and vehicles or other property used in connection with same. 8 ALR 888; 45 ALR 93.

Taxicab which transports passengers who carry intoxicating liquor. 24 ALR 1130.

Right to arrest without a warrant for unlawful possession or transportation of intoxicating liquor. 44 ALR 132.

Rights and protection of innocent persons where property in which they are interested is seized because of its illegal use in connection with intoxicating liquor. 47 ALR 1055; 61 ALR 551; 73 ALR 1087; 82 ALR 607; 124 ALR 288.

What amounts to transportation of intoxicating liquor. 65 ALR 983.

Possession of liquor and transporting liquor as a single offense or as separate offenses. 74 ALR 411.

Unlawful transportation of intoxicating liquor in airplane. 99 ALR 209.

Relief to claimant of interest in motor vehicle subject to state forfeiture for use in violation of liquor laws. 14 ALR3d 221.

Availability in state court of defense of entrapment where accused denies committing acts which constitute offense charged. 5 ALR4th 1128.

Availability in federal court of defense of entrapment where accused denies committing acts which constitute offense charged. 54 ALR Fed 644.

NOTES OF DECISIONS

1. Constitutionality
2. Applicability
3. Costs

1. Constitutionality

Former Alcoholic Beverage Control Act, construed as exempting innocent common carriers from forfeiture of vehicles wrongfully used by their employees in violation of statute, did not contravene Const Art I § 11, providing that all laws shall have a uniform operation, since character, duties, and responsibilities of common carriers furnish ample justification for placing them in separate classification. People v. One 1937 Lincoln Zephyr Sedan (1945) 26 Cal 2d 736, 160 P2d 769, 1945 Cal LEXIS 188.

2. Applicability

Where owner expressly prohibits use of her taxicabs for transporting liquor, procedure to forfeit one of cabs for illegal transportation of intoxicating liquor by employee would be abhorent to law. People v. One 1941 Buick 8, (1944, Cal App) 63 Cal App 2d 661, 147 P2d 401, 1944 Cal App LEXIS 988.

Former Alcoholic Beverage Control Act (Stats 1935 p 1123, as amended), exempting common carriers from forfeiture provisions of the statute, exempted owner of taxicab company from forfeiture of taxicab which he did not know was being illegally used by driver to transport or sell liquor while operating taxicab for company. People v. One 1937 Lincoln Zephyr Sedan (1945) 26 Cal 2d 736, 160 P2d 769, 1945 Cal LEXIS 188.

The placing of a case of liquor on the back seat of a parked automobile, the doors of which are locked, constitutes concealment where the record discloses no evidence that the case of liquor could be seen from outside by one looking through the window of the automobile. People v. One 1940 Oldsmobile Club Coupe (1947, Cal App) 80 Cal App 2d 372, 181 P2d 950, 1947 Cal App LEXIS 964.

3. Costs

Disbursements made by state for storage of automobile seized for transporting contraband alcoholic beverage are not taxable as costs against legal owner who appears as claimant in proceeding to forfeit automobile. People v. One 1950 Ford Sedan (1956, Cal App 1st Dist) 140 Cal App 2d 647, 295 P2d 486, 1956 Cal App LEXIS 2295, 60 ALR2d 809.

In proceeding to forfeit automobile for transportation of contraband alcoholic beverage, court may award costs against legal owner who voluntarily appears as claimant of automobile. People v. One 1950 Ford Sedan (1956, Cal App 1st Dist) 140 Cal App 2d 647, 295 P2d 486, 1956 Cal App LEXIS 2295, 60 ALR2d 809.

§ 25607. Possession on premises of goods not covered by license

(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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 132; Stats 1984 ch 382 § 1.

Amendments:

1955 Amendment: Substituted "department" for "board" in the last sentence.

1984 Amendment: (1) Designated the former section to be subd (a); **(2)** amended subd (a) by adding **(a)** "Except as provided in subdivision (b),"; and **(b)** "or her" near the end of the first sentence; and **(3)** added subd (b).

Historical Derivation:

Stats 1935 ch 330 § 50, as amended Stats 1937 ch 758 § 74.

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.

Time within which accusations against licensees for violating section to be filed: B & P C §§ 24206, 24208.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25607.5. Possession of donated wine by nonprofit corporation under specified circumstances

A nonprofit corporation that is required to obtain a license to sell wine under Section 23300 may receive and possess wine donated to it if, at the time of receipt of the wine, the nonprofit corporation has submitted an application with the department for a license to sell the donated wine. Nothing in this section is intended to affect or otherwise limit the application of Section 25503.9.

Added Stats 2008 ch 71 § 3 (AB 1964), effective January 1, 2009.

§ 25608. Alcoholic beverages on school premises; Exceptions

(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 of the schoolhouse, 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 of the schoolhouse, 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 of the schoolhouse are leased to a lessee that is a general law city with a population of less than 50,000, or the public schoolhouse is surplus school property and the grounds of the schoolhouse are located in an unincorporated area and are leased to a lessee that is a civic organization, and the property is to

be used for community center purposes and no public school education is to be conducted on the property 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 6,000,000 people. As used in this paragraph, "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 that 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 paragraph, "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 or a city 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 that 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 paragraph, "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 paragraph 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, permit, or authorization obtained under this division, for an event held at an overnight retreat facility owned and operated by a county office of education or a school district at times when pupils are not on the grounds.

(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.

(14) The alcoholic beverage is beer or wine acquired, possessed, used, sold, or consumed only in connection with a course of instruction, sponsored dinner, or meal demonstration given as part of a culinary arts program at a campus of a California community college and the person has been authorized to acquire, possess, use, sell, or consume the beer or wine by the governing body or other administrative head of the school.

(15) The alcoholic beverages are possessed, consumed, or sold, pursuant to a license or permit obtained under this division for special events held at the facilities of a public community college during the special event. As used in this paragraph, "special event" means events that are held with the permission of the governing board of the community college district that are festivals, shows, private parties, concerts, theatrical productions, and other events held on the premises of

the public community college and for which the principal attendees are members of the general public or invited guests and not students of the public community college.

(16) The alcoholic beverages are acquired, possessed, or used during an event at a community college-owned facility in which any grade from kindergarten to grade 12, inclusive, is schooled, if the event is held at a time when students in any grades from kindergarten to grade 12, inclusive, are not present at the facility. As used in this paragraph, "events" include fundraisers held to benefit a nonprofit corporation that has obtained a license pursuant to this division for the event.

(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 Division 7 of Title 3 the Education Code.

Added Stats 1953 ch 152 § 1. Amended Stats 1963 ch 1040 § 17, ch 1557 § 1; Stats 1981 ch 605 § 1; Stats 1983 ch 216 § 1; Stats 1985 ch 188 § 1; Stats 1986 ch 248 § 14 (ch 1123 prevails), ch 1123 § 1; Stats 1987 ch 685 § 1; Stats 1989 ch 112 § 1, ch 543 § 1; Stats 1993 ch 238 § 2 (SB 113); Stats 1997 ch 90 § 1 (SB 572), effective July 21, 1997; Stats 1998 ch 639 § 14 (AB 2416); Stats 2005 ch 203 § 1 (SB 220), effective September 6, 2005, operative until January 1, 2006, ch 204 § 2 (AB 767), effective January 1, 2006; Stats 2006 ch 72 § 2 (SB 1486), effective January 1, 2007; Stats 2007 ch 149 § 1 (AB 1598), effective January 1, 2008; Stats 2008 ch 508 § 3 (AB 3071), effective January 1, 2009; Stats 2009 ch 398 § 1 (AB 172), effective January 1, 2010, ch 399 § 1 (AB 1448), effective January 1, 2010; Stats 2010 ch 79 § 1 (AB 1643), effective July 15, 2010, ch 84 § 1 (AB 1748), effective January 1, 2010, ch 239 § 1.7 (AB 1860), effective September 24, 2010; Stats 2011 ch 296 § 30 (AB 1023), effective January 1, 2012, ch 672 § 1 (AB 319), effective January 1, 2012, ch 702 § 3.5 (SB 339), effective January 1, 2012.

Amendments:

1963 Amendment: (1) Added "possesses," before "consumes,"; **(2)** added the second sentence; **(3)** substituted "4 (commencing with Section 16551)" for "9"; and **(4)** substituted "Division 12" for "Division 9".

1981 Amendment: (1) Divided the former second sentence into the present introductory clause and subd (a) by **(a)** adding "either of the following applies (a)"; and **(b)** substituting "the" for "such" after "school and"; **(2)** added subd (b); and **(3)** designated the former third sentence to be the second paragraph.

1983 Amendment: Added ", 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," in subd (b).

1985 Amendment: (1) Substituted "any" for "either" after "thereof," in the introductory clause; and **(2)** added subd (c).

1986 Amendment: Added subd (d) of the first paragraph.

1987 Amendment: (1) Substituted subd (d) for former subd (d) which read: "(d) The alcoholic beverages are acquired, possessed, or used during an event not sponsored by any college at a performing arts facility built by a nonprofit organization on property owned by a community college district and leased to the organization in a county of the 11th class as defined in the 1980 census."; and **(2)** added subds (e) and (f).

1989 Amendment: Added subd (g). (As amended Stats 1989, ch 543, compared to the section as it read prior to 1989. This section was also amended by an earlier chapter, ch 112. See Gov C § 9605.)

1993 Amendment: (1) Substituted "5" for "300" in subd (g); and **(2)** added subd (h).

1997 Amendment: (1) Substituted "college–operated" for "operated" in subd (c); **(2)** added subd (i); and **(3)** substituted "Section 82537" for "Section 82530" in the last paragraph.

1998 Amendment: (1) Amended subd (i) by **(a)** substituting "or other facility" for "with a capacity of over 18,900 people, located in a county of the 14th class" in the first sentence; **(b)** substituting "that" for "which" after "corporation" in the second sentence; and **(c)** adding the last sentence; and **(2)** added subd (j).

2005 Amendment (ch 203): (1) Added subdivision designations (a) and (b); (2) added subd (a)(1); and (3) redesignated former subds (a)–(j) to be subds (a)(2)–(a)(11).

2005 Amendment (ch 204): (1) Substituted "school-sponsored" for "school sponsored" near the end of subd (a)(7); and (2) added subd (a)(12).

2006 Amendment: Added subd (a)(13).

2007 Amendment: Added subd (a)(14).

2008 Amendment: (1) Substituted "California community college" for "California Community College" in subd (a)(14); and (2) added subd (a)(15).

2009 Amendment: (1) Substituted "18th or 20th class" for "18th class" in subd (a)(11); and (2) added "Division 7 of" in subd (b). (As amended Stats 2009 ch 399, compared to the section as it read prior to 2009. This section was also amended by an earlier chapter, ch 398. See Gov C § 9605.)

2010 Amendment (ch 79): In addition to making technical changes, (1) amended subd (a)(3) by substituting (a) "of the schoolhouse" for "thereof" wherever it appears; and (b) "on the property" for "thereon" after "to be conducted"; (2) substituted "paragraph" for "subdivision" wherever it appears; (3) added subd (a)(16); and (4) added "Title 3 of" in subd (b).

2010 Amendment (ch 239): (1) Substituted "of the schoolhouse" for "thereof" twice in the introductory paragraph of subd (a); (2) amended subd (a)(11) by (a) adding ", permit, or authorization" after "pursuant to a license"; (b) substituting "held at" for "during the weekend or at other times when pupils are not on the grounds of"; (c) substituting "or a school district at times when pupils are no on the grounds" for "in a county of the 18th or 20th class"; (3) amended subd (a)(15) by (a) substituting a comma for "or" after "firsts class"; and (b) adding ", or a county of the tenth class" after "fourth class"; and (4) deleted "of" before "the Education Code" in subd (b).

2011 Amendment: (1) Added "or a city" in subd (a)(7); (2) deleted ", located in a county of the first class, a county of the fourth class, or a county of the tenth class," after "public community college" in the first sentence of subd (a)(15); and (3) amended the second sentence of subd (a)(15) by (a) adding "events that are held with the permission of the governing board of the community college district that are"; and (b) deleting ", pursuant to a license or permit," after "public community college". (As amended Stats 2011 ch 702, compared to the section as it read prior to 2011. This section was also amended by two earlier chapters, chs 296, 672. See Gov C § 9605.)

Historical Derivation:

(a) Stats 1935 ch 330 § 64, as amended Stats 1949 ch 1152 § 1.

(b) Former Sch C §§ 3.80, 3.81.

(c) Stats 1915 ch 21 §§ 1, 2.

Cross References:
Use of school property for public purposes: Ed C §§ 16551 et seq.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Annotations:
Tort liability of college of university for injury suffered by student as a result of own or fellow student's intoxication. 62 ALR4th 81.

§ 25608.2. [Section repealed 1989.]

Added Stats 1987 ch 685 § 2. Repealed, operative January 1, 1989, by its own terms. The repealed section related to exemption for beer and wine served at specified event.

§ 25608.5. Possession of a container containing alcoholic beverage on Lower American River during certain summer holiday periods

(a) On the portion of the Lower American River, as defined in Section 5841 of the Public Resources Code, from the Hazel Avenue Bridge to the Watt Avenue Bridge, a person in a nonmotorized vessel shall not possess a container with an alcoholic beverage, whether opened or closed, during the summer holiday periods that the Sacramento County Board of Supervisors prohibits the consumption or possession of an open alcoholic beverage container on the land portions along the river.

(b) For purposes of this section, "container" means bottle, can, or other receptacle.

(c) A violation of this section is punishable as an infraction pursuant to subdivision (b) of Section 25132 of the Government Code.

(d) Sacramento County shall provide notice on the land portions along the river described in subdivision (a) that a violation of this section is punishable as an infraction.

Added Stats 2007 ch 19 § 1 (AB 951), effective June 28, 2007.

Note—Stats 2007 ch 19 provides:
SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique problem of prevalent consumption of alcohol during certain summer holiday periods on this portion of the Lower American River.

§ 25608.10. Possession of container containing alcoholic beverage on Truckee River during certain summer holiday periods

(a) On the portion of the Truckee River, from the outfall of Lake Tahoe upstream of the Highway 89 Bridge in Tahoe City to the Alpine Meadows Bridge, a person in a vessel, as defined by Section 651 of the Harbors and Navigation Code, or a bather, as defined by Section 651.1 of the Harbors and Navigation Code, shall not possess a container with an alcoholic beverage, whether opened or closed, during the summer holiday periods that the Placer County Board of Supervisors prohibits the consumption of an alcoholic beverage or possession of an open alcoholic beverage container on the land portions along this portion of the river.

(b) For purposes of this section, "container" means a bottle, can, or other receptacle.

(c) A violation of this section is punishable as an infraction pursuant to subdivision (b) of Section 25132 of the Government Code.

(d) Placer County shall provide notice on the land portions along the Truckee River described in subdivision (a) that a violation of this section is punishable as an infraction.

Added Stats 2008 ch 44 § 1 (SB 1159), effective June 30, 2008.

Note—Stats 2008 ch 44 provides:
SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique problem of prevalent consumption of alcohol during certain summer holiday periods on this portion of the Truckee River and the health hazards created by improper disposal of beverage containers.

Law Review Articles:
Review of Selected 2008 California Legislation: Business and Profession: Patriotic Inebriation: Reducing Alcohol-Related Issues on the Truckee River During the Fourth of July. 40 McGeorge L. Rev. 309.

§ 25608.12. Possession of container containing alcoholic beverage on Sacramento River during certain summer holiday periods

(a) On the portion of the Sacramento River, from the Highway 32 Bridge to the mouth of Big Chico Creek, a person in a vessel, as defined by Section 651 of the Harbors and Navigation Code, or a bather, as defined by Section 651.1 of the Harbors and Navigation Code, shall not possess a container with an alcoholic beverage, whether opened or closed, during the summer holiday periods that the Glenn County Board of Supervisors and the Butte County Board of Supervisors prohibit the consumption of an alcoholic beverage or possession of an open alcoholic beverage container on the land portions along this portion of the Sacramento River.

(b) For purposes of this section, "container" means a bottle, can, or other receptacle.

(c) A violation of this section is punishable as an infraction pursuant to subdivision (b) of Section 25132 of the Government Code.

(d) Glenn County and Butte County shall provide notice on the land portions along the Sacramento River described in subdivision (a) that a violation of this section is punishable as an infraction.

Added Stats 2011 ch 158 § 1 (AB 494), effective August 1, 2011.

§ 25609. Sale of different brand

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:
Stats 1935 ch 330 § 36a, as added Stats 1937 ch 758 § 58, amended Stats 1945 ch 1401 § 32a.

Cross References:
Time within which accusations against licensees for violating section to be filed: B & P C §§ 24206, 24208.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25610. Tampering with stamps, numbers, or other information on packages

(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.

Added Stats 1953 ch 152 § 1. Amended Stats 1963 ch 775 § 1.

Amendments:
1963 Amendment: (1) Designated the former section to be subd (a); and (2) added subd (b).

Historical Derivation:
(a) Stats 1935 ch 330 § 28, as amended Stats 1937 ch 758 § 37.2, Stats 1945 ch 1401 § 28, Stats 1947 ch 1566 § 6.
(b) Stats 1933 ch 178 §§ 7, 8.

Cross References:
Time within which accusations against licensees for violating section to be filed: B & P C §§ 24206, 24208.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25611. [Section repealed 1975.]

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 678 § 1; Stats 1959 ch 1337 § 1; Stats 1970 ch 139 § 1, ch 700 § 1. Repealed Stats 1975 ch 812 § 1. The repealed section related to regulation and size of signs.

Historical Derivation:
Stats 1935 ch 330 § 55.

§ 25611.1. Signs or other advertising matter that may be furnished

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.

Added Stats 1957 ch 1987 § 2. Amended Stats 1965 ch 721 § 1; Stats 1968 ch 653 § 1; Stats 1996 ch 99 § 1 (AB 3144); Stats 1997 ch 26 § 1 (AB 973); Stats 2001 ch 207 § 1 (AB 395).

Amendments:

1965 Amendment: Added **(1)** "relating to wine or distilled spirits," in subd (a); (2) "Except as limited in subdivision (a) of this section," in subd (b); and **(3)** "on or" after "consumption" in subd (b).

1968 Amendment: Added the second and third sentences of subd (b).

1996 Amendment: In addition to making technical changes, added ", and acrylic table tent holders" at the end of the second sentence of subd (b).

1997 Amendment: (1) Substituted subds (a) and (b) for former subds (a) and (b) which read: "(a) Signs relating to wine or distilled spirits, each of which shall not exceed 630 square inches, for interior use in premises where alcoholic beverages are sold for consumption on the premises.

"(b) Except as limited in subdivision (a) of this section, signs for interior use in premises where alcoholic beverages are sold for consumption on or off the premises. Signs relating to malt beverage advertising the beer manufacturer's product 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 or not illuminated or mechanized, including but 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, table tents, and acrylic table tent holders. These signs for interior use on licensed premises selling malt beverages shall not be deemed of intrinsic or utilitarian value."; **(2)** added subd (c); **(3)** redesignated former subd (c) to be subd (d); and **(4)** amended subd (d) by substituting **(a)** "at" for "on" after "exterior use"; and **(b)** "on–sale or off–sale retail" for "licensed".

2001 Amendment: (1) Amended the introductory clause by **(a)** substituting "of these persons" for "such person"; and **(b)** adding "sell," after "give, lend"; and **(2)** added "and shall remain the property of the beer wholesaler who authorized and furnished them, unless given or sold to the retail licensee" at the end of subds (b) and (c).

Cross References:

Contents of license application: B & P C § 23952.

Prohibited sales, advertising, and promotional activities: B & P C § 25503.

Collateral References:

Pertinent administrative rules and regulations: 4 Cal Code Reg § 106.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25611.2. Electronic data services

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.

Added Stats 1994 ch 171 § 1 (SB 1618). Amended Stats 1996 ch 99 § 1 (AB 3144).

Amendments:

1996 Amendment: In addition to making technical changes, **(1)** added ", or wholesaler" in the first sentence; and **(2)** amended the last sentence by adding **(a)** ", or wholesaler's"; and **(b)** "electronic invoice transmissions,".

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25611.3. Exterior signs advertising beer for use at any on-sale or off-sale retail premises

A beer wholesaler may sell or rent exterior signs advertising beer for use at any on-sale or off-sale retail premises. Exterior signs include, but are not limited to, signs, inflatables, and banners used to advertise a beer manufacturer's product. Exterior signs must be sold or rented at not less than cost, as defined in Section 17026. An exterior sign that is customized for a retailer must be sold, and may not be rented.

Added Stats 2008 ch 395 § 1 (SB 1246), effective January 1, 2009.

§ 25611.5. [Section repealed 1975.]

Added by Stats 1970 ch 1244 § 1. Repealed Stats 1975 ch 812 § 2. The repealed section excepted buildings in state parks from certain sign regulations.

§ 25612. Nature of signs on premises

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 133.

Amendments:

1955 Amendment: Substituted "department" for "board".

Historical Derivation:

Stats 1935 ch 330 § 55.

Cross References:

Contents of license application: B & P C § 23952.

Time within which accusations against licensees for violating section to be filed: B & P C §§ 24206, 24208.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 14 "Advertising".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1], 50.01[2].

Pertinent administrative rules and regulations: 4 Cal Code Reg § 106.

Law Review Articles:

Alcoholic beverage advertising on the airwaves: Alternatives to a ban or counteradvertising. 34 UCLA LR 1139.

Annotations:

Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors. 19 ALR2d 1114.

§ 25612.5. Requirements of retail licensee; Legislative findings and declarations; Compliance

(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.

Added Stats 1994 ch 629 § 4 (AB 2742). Amended Stats 1995 ch 743 § 5 (AB 683), effective October 10, 1995; Stats 1999 ch 787 § 2 (AB 749).

Amendments:

1995 Amendment: Amended subd (a) by adding **(1)** "or on–sale beer and wine licensee" both times it appears; and **(2)** "23038.1, or 23038.2," both times it appears.

1999 Amendment: **(1)** Added the second sentence of subd (c)(6); **(2)** added subd (c)(9); and **(3)** redesignated former subd (c)(9) to be subd (c)(10).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25613. Draught beer tap sign

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1965 ch 78 § 3.

Amendments:

1965 Amendment: Deleted the former second sentence which read: "The notice, placard, or marker shall be so situated as to be clearly legible to a person with normal vision for a distance of at least 10 feet from the spigot, faucet, or outlet and clearly legible from the place where any customer or consumer is served the beer."

Historical Derivation:

Stats 1935 ch 330 § 55.

Cross References:

Contents of license application: B & P C § 23952.
Sale of beer without display of sign: B & P C § 25206.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25614. Violation of provisions; Substitution of different brand

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.

Added Stats 1953 ch 152 § 1.

Editor's Notes—B & P C § 25611 was repealed Stats 1975 ch 812 § 1. B & P C § 25611.5 was repealed Stats 1975 ch 812 § 2.

Historical Derivation:

Stats 1935 ch 330 § 55.

Cross References:

Contents of license application: B & P C § 23952.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1], 50.01[2].

§ 25615. [Section repealed 1997.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 158 § 1; Stats 1965 ch 78 § 4; Stats 1978 ch 971 § 2; Stats 1996 ch 900

§ 6 (SB 1923). Repealed, operative July 1, 1997, by its own terms. The repealed section related to misdemeanor sale of beer exceeding specified alcohol content.

Historical Derivation:
Stats 1935 ch 330 § 55.

Attorney General's Opinions:
Provisions of Penal Code prohibiting sale of intoxicating liquors within certain distances of various public institutions, buildings, and university campus, as applying to all beer though alcoholic contents thereof does not exceed 4 per cent. 31 Ops. Cal. Atty. Gen. 172.

§ 25616. Violations of regulations relating to books, records, and reports

Any person who knowingly or willfully 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 two hundred dollars ($200) 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 134, ch 1842 § 17; Stats 1983 ch 1092 § 60, effective September 27, 1983, operative January 1, 1984.

Amendments:
1955 Amendment: (1) Deleted "a false tax return or" after "wilfully files"; and (2) substituted "department" for "board" wherever it appears.
1983 Amendment: Substituted "two hundred dollars ($200)" for "one hundred dollars ($100)".

Historical Derivation:
(a) Stats 1935 ch 330 § 28, as amended Stats 1937 ch 758 § 37.2, Stats 1945 ch 1401 § 28, Stats 1947 ch 1566 § 6.
(b) Stats 1933 ch 178 §§ 7, 8.

Cross References:
Failure to make annual report: B & P C § 23328.
Time within which accusations against licensees for violating section to be filed: B & P C §§ 24207, 24208.
Examination of books and inspection of premises: B & P C § 25753.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:
Review of Selected 1983 Legislation. 15 Pacific LJ 559.

§ 25617. Misdemeanors

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1983 ch 1092 § 61, effective September 27, 1983, operative January 1, 1984.

Amendments:
1983 Amendment: Substituted "one thousand dollars ($1,000)" for "five hundred dollars ($500)".

Historical Derivation:
(a) Stats 1935 ch 330 § 65, as amended Stats 1937 ch 758 § 95.
(b) Stats 1933 ch 658 § 35.

Cross References:
Violations of regulations relating to distilled spirits labels and containers: B & P C §§ 25170, 25172, 25173, 25175–25177.
Possession of alcoholic beverages subject to seizure: B & P C § 25351.
Penalty for violations of tied–house regulations: B & P C § 25504.
Hours of sale and delivery: B & P C §§ 25631–25633.

Collateral References:
Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1], 100B.31[2].
Witkin & Epstein, Criminal Law (3d ed), Crimes Against Public Peace and Welfare § 288.
Witkin & Epstein, Criminal Law (3d ed), Punishment § 244.

Law Review Articles:
Review of Selected 1983 Legislation. 15 Pacific LJ 559.

NOTES OF DECISIONS

1. Generally
2. Construction
3. Applicability

1. Generally
Since Alcoholic Beverage Control Act was enacted to protect safety, welfare, health, peace and morals of people, violation of any of regulatory provisions relating to prohibited sales constitutes misdemeanor within meaning of this section. Peck's Liquors, Inc. v. Superior Court of San Francisco (1963, Cal App 1st Dist) 221 Cal App 2d 772, 34 Cal Rptr 735, 1963 Cal App LEXIS 2214.

2. Construction
Section means that violation of any of prohibited acts contained in div 9 of Alcoholic Beverage Control Act is misdemeanor, and unless another penalty is specifically provided, violator may be punished in accordance with this section. Peck's Liquors, Inc. v. Superior Court of San Francisco (1963,

Cal App 1st Dist) 221 Cal App 2d 772, 34 Cal Rptr 735, 1963 Cal App LEXIS 2214.

The fact that the Alcoholic Beverage Control Act authorizes public enforcement in the form of administrative sanctions (B & P C § 24200) and criminal penalties (B & P C § 25617) does not furnish a basis for finding an unlawful delegation of legislative power. Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control (1966) 65 Cal 2d 349, 55 Cal Rptr 23, 420 P2d 735, 1966 Cal LEXIS 208.

3. Applicability

Assuming mere failure by administrative agency to use one form of enforcing statute rather than another constitutes agency's interpretation that form not used is not available, interpretation by Alcoholic Beverage Control Board of §§ 24749-24751 [repealed], prohibiting sales of intoxicating liquors at less than fair trade price, by limiting itself to remedy of suspending or revoking licenses for violations and not attempting to prosecute persons for violations cannot prevail against Supreme Court's interpretation that Alcoholic Beverage Control Act contains general provision applicable to prohibited sales, that violations for which another penalty is not specifically provided constitute misdemeanors punishable by fine, jail term, or both. Peck's Liquors, Inc. v. Superior Court of San Francisco (1963, Cal App 1st Dist) 221 Cal App 2d 772, 34 Cal Rptr 735, 1963 Cal App LEXIS 2214.

§ 25618. Penalty for felonies

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), imprisonment in a county jail for not more than one year, imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by both that fine and imprisonment.

Added Stats 1953 ch 152 § 1. Amended Stats 1983 ch 1092 § 62, effective September 27, 1983, operative January 1, 1984; Stats 2006 ch 347 § 1 (AB 2367), effective January 1, 2007; Stats 2011 ch 15 § 30 (AB 109), effective April 4, 2011, operative October 1, 2011.

Amendments:

1983 Amendment: Substituted "ten thousand dollars ($10,000)" for "five thousand dollars ($5,000)".

2006 Amendment Substituted ", imprisonment in a county jail for not more than one year, imprisonment in the state prison, or by both that" for "or by imprisonment in the state penitentiary for not less than one year nor more than five years, or by both such," after "ten thousand dollars ($10,000)".

2011 Amendment: Substituted "pursuant to subdivision (h) of Section 1170 of the Penal Code" for "in the state prison".

Historical Derivation:

Stats 1935 ch 330 § 65a, as added Stats 1937 ch 758 § 96.

Note—Stats 2011 ch 15 provides:

SECTION 1. This act is titled and may be cited as the 2011 Realignment Legislation addressing public safety.

Stats 2011 ch 15 § 636, as amended by Stats 2011 ch 39 § 68, provides:

SEC. 636. This act will become operative no earlier than October 1, 2011, and only upon creation of a community corrections grant program to assist in implementing this act and upon an appropriation to fund the grant program.

Editor's Notes—The Community Corrections Grant Program referred to in Stats 2011 ch 15 § 636, as amended by Stats 2011 ch 39 § 68, was created by Stats 2011 ch 40 § 3, operative October 1, 2011.

Cross References:

Liability of officer disposing of seized goods unlawfully: B & P C § 25372.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:

Review of Selected 1983 Legislation. 15 Pacific LJ 559.

§ 25619. Enforcement duties of peace officers

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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 66.5, as added Stats 1937 ch 758 § 100.

Cross References:

Holding of seized property as evidence: B & P C § 25373.
Authority of peace officers: B & P C § 25755.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25620. Possession of open container in city or county owned public place

(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.

Added Stats 1980 ch 255 § 1, effective June 28, 1980. Amended Stats 2000 ch 381 § 1 (AB 2187).

Amendments:

2000 Amendment: (1) Added subdivision designations (a) and (b); **(2)** amended subd (a) by **(a)** substituting "that" for "which" after "alcoholic beverage" and after "enacted an ordinance"; **(b)** substituting "have" for "has" after "contents of which"; **(c)** deleting "adjacent" after "park or other"; **(d)** adding "possession of those containers in those areas or the"; and **(e)** substituting "those" for "such" at the end of the subdivision; **(3)** substituted "does" for "shall" after "This section" in subd (b); and **(4)** added subd (c).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25621. Sale, purchase, and use of any vaporized form of alcohol prohibited; Penalties

(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.

Added Stats 2006 ch 29 § 1 (AB 273), effective January 1, 2006.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:

Review of Selected 2007 California Legislation: Business and Profession: Vaporized Alcohol Goes "AWOL" in California. 38 McGeorge LR 38.

§ 25622. Beer to which caffeine has been directly added as separate ingredient; Prohibited acts; Information required by department; Confidentiality

(a) Beer to which caffeine has been directly added as a separate ingredient shall not be imported into this state, produced, manufactured, or distributed within this state, or sold by a licensed retailer within this state.

(b) The department may require licensees to submit product formulas as it determines to be necessary to implement and enforce this section. Any information required to be provided by any licensee to the department pursuant to this section shall be considered confidential and corporate proprietary information. This information shall not be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6520) of Division 7 of Title 1 of the Government Code).

Added Stats 2011 ch 140 § 1 (SB 39), effective January 1, 2012.

Note—Stats 2011 ch 140 provides:

SEC. 2. The Legislature finds and declares that Section 1 of this act, which adds Section 25622 to the Business and Professions Code, imposes a limitation on the public's rights of access to the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to facilitate licensee participation in this prohibition, it is necessary to protect the confidentiality of trade secrets.

Law Review Articles:

Review of Selected 2011 California Legislation: Business and Professions: Chapter 140: From Blacked Out to Tapped. 43 McGeorge L. Rev. 517.

ARTICLE 2

Hours of Sale and Delivery of Alcoholic Beverages

Cross References:

Grounds for suspension or revocation of license: B & P C § 24200.

§ 25630. [Section repealed 1969.]

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1860 § 1; Stats 1957 ch 2351 § 1, Stats 1963 ch 662 § 1. Repealed Stats 1969 ch 614 § 1. The repealed section related to sales on election days.

Historical Derivation:

(a) Stats 1935 ch 330 § 59.
(b) Former Pen C § 63b, as added Stats 1905 ch 479 § 17.
(c) Stats 1873–74 ch 198 § 1.

§ 25631. Sales during closing hours

Any on- or off-sale licensee, or agent or employee of that 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 saving time, or back again to Pacific standard time, "2 o'clock a.m." means two hours after midnight of the day preceding the day such change occurs.

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1331 § 18; Stats 1957 ch 569 § 1; Stats 1978 ch 420 § 1; Stats 2007 ch 744 § 3 (AB 1739), effective January 1, 2008.

Amendments:

1957 Amendment: Added the second paragraph.

1978 Amendment: Added "or any person who knowingly purchases any alcoholic beverage" in the first paragraph.

2007 Amendment: Substituted "that licensee" for "such licensee" in the first paragraph.

Historical Derivation:

Stats 1935 ch 330 § 59.5, as added Stats 1937 ch 758 § 91.

Cross References:

Limitations period governing violations of section: B & P C §§ 24206, 24208.

Punishment for misdemeanors: B & P C § 25617.

Daylight Saving Time Act: Deering's Uncodified Measures 1949–1 §§ 1 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:

Prohibited presence of persons under age of 21 years on "public premises" of holder of license to sell alcoholic beverages on such premises; application of prohibition during closing hours from 2 o'clock a.m. to 6 o'clock a.m. 55 Ops. Cal. Atty. Gen. 342.

Annotations:

Entrapment to commit offense against laws regulating sales of liquor. 18 ALR 162; 66 ALR 488; 86 ALR 267; 55 ALR2d 1322.

Statute requiring closing during certain hours as affected by fact that places are also used for other business. 139 ALR 756.

Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor. 51 ALR3d 1061.

§ 25632. Consumption on premises during closing 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.

Added Stats 1953 ch 152 § 1.

Historical Derivation:

Stats 1935 ch 330 § 59.7, as added Stats 1947 ch 1566 § 12.

Cross References:

Time within which accusations against licensees for violating section to be filed: B & P C §§ 24206, 24208.

Punishment for misdemeanors: B & P C § 25617.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:

Prohibited presence of persons under age of 21 years on "public premises" of holder of license to sell alcoholic beverages on such premises; application of prohibition during closing hours from 2 o'clock a.m. to 6 o'clock a.m. 55 Ops. Cal. Atty. Gen. 342.

Annotations:

Statute requiring closing during certain hours as affected by fact that places are also used for other business. 139 ALR 756.

§ 25633. Hours for delivery

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1490 § 2; Stats 1987 ch 509 § 1; Stats 1996 ch 334 § 1 (SB 1879), effective August 8, 1996.

Amendments:

1987 Amendment: Added "may be delivered between the hours of 4 a.m. and 8 p.m. of any day other than Sunday to any person holding on on–sale or off–sale license and" in the second sentence.

1996 Amendment: Substituted **(1)** "3 a.m." for "6 a.m."; **(2)** "Any alcoholic beverage may be delivered" for "Beer and wine may be delivered between the hours of 4 a.m. and 8 p.m. of any day other than Sunday to any person holding on–sale or off–sale license and may be delivered"; and **(3)** "any alcoholic beverage" for "beer and wine" in the third sentence.

Historical Derivation:

Stats 1935 ch 330 § 60, as amended Stats 1937 ch 758 § 92, Stats 1945 ch 1401 § 43.1, Stats 1949 ch 1348 § 12.

Cross References:

Time within which accusations against licensees for violating section to be filed: B & P C §§ 24206, 24208.

Punishment for misdemeanors: B & P C § 25617.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:

Sunday delivery of beer to temporary licensee. 21 Ops. Cal. Atty. Gen. 87.

ARTICLE 3

Women and Minors

Cross References:
Grounds for suspension or revocation of license: B & P C § 24200.

§ 25655. [Section repealed 1976.]

Added Stats 1968 ch 1144 § 1. Repealed Stats 1976 ch 1171 § 1.5. The repealed section related to dispensing beer or wine by a woman employee.

Former Sections:
Former § 25655, similar to the present section, was added Stats 1953 ch 152 § 1 and repealed Stats 1957 ch 1268 § 1.

Historical Derivation:
(a) Former B & P C § 25655, as added Stats 1953 ch 152 § 1.
(b) Stats 1935 ch 330 § 18.5, as added Stats 1947 ch 1279 § 1.

§ 25656. [Section repealed 1971.]

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 1268 § 2; Stats 1967 ch 867 § 1. Repealed Stats 1971 ch 152 § 1. The repealed section related to employment of women for mixing or dispensing drinks.

Historical Derivation:
(a) Former B & P C § 25655, as added Stats 1953 ch 152 § 1.
(b) Stats 1935 ch 330 § 18.5, as added Stats 1947 ch 1279 § 1.
(c) Stats 1935 ch 330 § 56.4, as added Stats 1937 ch 681 § 1.

NOTES OF DECISIONS

1. Constitutionality
2. Construction with Other Laws

1. Constitutionality
B & P C § 25656, prohibiting females from tending bar except in certain situations, is repugnant to Cal Const art XX, § 18, declaring that a person may not be disqualified because of sex from entering or pursuing a lawful business, vocation, or profession, and is, therefore, void. Sail'er Inn, Inc. v. Kirby (1971) 5 Cal 3d 1, 95 Cal Rptr 329, 485 P2d 529, 1971 Cal LEXIS 230, 46 ALR3d 351.
The classification created by B & P C § 25656, prohibiting females from tending bar except in certain situations, is invidious, wholly arbitrary, and unconstitutional under the equal protection clauses of the state and federal constitutions. Sail'er Inn, Inc. v. Kirby (1971) 5 Cal 3d 1, 95 Cal Rptr 329, 485 P2d 529, 1971 Cal LEXIS 230, 46 ALR3d 351.

2. Construction with Other Laws
B & P C § 25656, prohibiting females from tending bar except in certain situations, is not based on a bona fide occupational qualification necessary to the operation of a bar, and is, therefore, in direct conflict with 42 USCS § 2000e-2, a part of the Civil Rights Act of 1964, prohibiting certain employment practices. Sail'er Inn, Inc. v. Kirby (1971) 5 Cal 3d 1, 95 Cal Rptr 329, 485 P2d 529, 1971 Cal LEXIS 230, 46 ALR3d 351.

§ 25657. Employment of persons to encourage or solicit purchase of beverages

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1591 § 3; Stats 1971 ch 151 § 1.

Amendments:
1971 Amendment: Substituted "person" for "hostess or entertainer" the second and third time it appears in subd (a).

Historical Derivation:
Stats 1935 ch 330 § 57, as amended Stats 1945 ch 1401 § 42.

Cross References:
Time within which accusations against licensees for violating section to be filed: B & P C §§ 24207, 24208.
Punishment for misdemeanors: B & P C § 25617.

Collateral References:
Pertinent administrative rules and regulations: 4 Cal Code Reg § 143.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Annotations:
Coverture as affecting criminal responsibility of women for liquor offenses. 4 ALR 282; 71 ALR 1127.
Employing women in places where intoxicating liquors are sold. 172 ALR 620.
Construction and application of statute or ordinance respecting amusements on premises licensed for sale of intoxicating liquor. 4 ALR2d 1216.
Provision as to sale of liquor to women as affecting validity of regulatory statute. 9 ALR2d 541.

NOTES OF DECISIONS

1. Generally
2. Validity
3. Construction and Application
4. Persons Subject to Action
5. Accusation
6. Evidence: Generally
7. Evidence: Sufficiency

1. Generally
If contract between liquor licensee and entertainment

agency under which entertainers are employed by licensee created independent contractor relationship and not that of employer and employee, it applied only to performances of entertainers as dancers; it did not extend to acts of entertainers in seeking patrons to purchase drinks for them or to any other contractual deals or transactions with licensee, and as to these relationship of employer and employee existed. Oxman v. Department of Alcoholic Beverage Control (1957, Cal App 3d Dist) 153 Cal App 2d 740, 315 P2d 484, 1957 Cal App LEXIS 1551.

In prosecution for conspiracy to violate section, it was not error to neglect to instruct jury as to meaning of words "hostess" and "B girls," as used in information, where defendant did not request such instruction, "hostess" is one of common understanding, and court, in instructing with reference to finding as to alleged overt acts, sufficiently directed their attention to meaning of expression "B girls." People v. Holstun (1959, Cal App 2d Dist) 167 Cal App 2d 479, 334 P2d 645, 1959 Cal App LEXIS 2359.

2. Validity

Section is not void for want of certainty on ground that language is so broad as to apply to legitimate entertainers. Cooper v. State Board of Equalization (1955, Cal App 1st Dist) 137 Cal App 2d 672, 290 P2d 914, 1955 Cal App LEXIS 1242.

Classification in Rule 143 of Board of Equalization forbidding female employees to solicit purchase or sale of alcoholic beverages on licensed premises was reasonable and did not arbitrarily discriminate against women, and rule had reasonable relation to legitimate ends for which board was created, was in harmony with purposes of Alcoholic Beverage Control Act, and was valid and constitutional as against charge that it was too broad and that Legislature had covered the field in enacting this section and § 24200.5 subd (b). Mercurio v. Department of Alcoholic Beverage Control (1956, Cal App 1st Dist) 144 Cal App 2d 626, 301 P2d 474, 1956 Cal App LEXIS 1773.

Provision prohibiting licensee from permitting anyone to "loiter" on licensed premises to "solicit" drinks is not too broad, vague, or indefinite for enforcement, since meaning of "loiter" and "solicit" is clear and certain. Wright v. Munro (1956, Cal App 1st Dist) 144 Cal App 2d 843, 301 P2d 997, 1956 Cal App LEXIS 1801.

Section is not unconstitutional on ground that it is vague and uncertain for failing to define word "hostess" used therein, since it is apparent that it was legislative intent to prohibit direct procuring or encouraging of purchase of alcoholic beverages by female attendant employed at on-sale premises if her duties as such attendant include dispensing hospitality by such means as receiving, entertaining or drinking with male customers. People v. Holstun (1959, Cal App 2d Dist) 167 Cal App 2d 479, 334 P2d 645, 1959 Cal App LEXIS 2359.

3. Construction and Application

Section prohibits only direct solicitation of drinks and not purchase of drinks by patrons of their own initiative and violition while watching entertainment and when asked by waitress if they desire service. Cooper v. State Board of Equalization (1955, Cal App 1st Dist) 137 Cal App 2d 672, 290 P2d 914, 1955 Cal App LEXIS 1242.

"Loiter," as used in section, has meaning of "to linger idly by the way, to idle," "to loaf," or to "idle." Wright v. Munro (1956, Cal App 1st Dist) 144 Cal App 2d 843, 301 P2d 997, 1956 Cal App LEXIS 1801.

"Loiter," as used in section, has sinister or wrongful as well as reasonable definite implication; it connotes lingering in designated places for purpose of committing crime as opportunity may be discovered; loitering as forbidden includes waiting, but mere waiting for any lawful purpose does not constitute loitering. In re Cregler (1961) 56 Cal 2d 308, 14 Cal Rptr 289, 363 P2d 305, 1961 Cal LEXIS 297.

4. Persons Subject to Action

Contention that this section does not expressly provide for vicarious liability of principal for acts of his agent, whereas § 25601 expressly provides that "Every licensee, agent or employee of licensee,. . ." is unsound since quoted language is not used to impose vicarious liability upon employer for acts of his employee, but is inserted to add personal liability of employee to that of employer, and no such language is necessary in this section. Cooper v. State Board of Equalization (1955, Cal App 1st Dist) 137 Cal App 2d 672, 290 P2d 914, 1955 Cal App LEXIS 1242.

It is not prerequisite to holding liquor licensees responsible under this section, § 24200 and Pen C § 303 that they personally hired "B" girls or permitted solicitation of drinks in their tavern. Cooper v. State Board of Equalization (1955, Cal App 1st Dist) 137 Cal App 2d 672, 290 P2d 914, 1955 Cal App LEXIS 1242.

Licensee of on-sale liquor establishment is chargeable with knowledge of his bartender that girl is loitering in place for purpose of soliciting drinks from customers. Wright v. Munro (1956, Cal App 1st Dist) 144 Cal App 2d 843, 301 P2d 997, 1956 Cal App LEXIS 1801.

Club's practice of hiring women to solicit the club's male patrons to buy drinks for them at an elevated price and paying the women commission for the sales was improper. Lopez v. Baca (2002, Cal App 2d Dist) 98 Cal App 4th 1008, 120 Cal Rptr 2d 281, 2002 Cal App LEXIS 4172.

5. Accusation

There is no variance between accusation charging liquor licensees with violation of this section, § 24200 and Pen C § 303, and proof of violation by licensees' employees. Cooper v. State Board of Equalization (1955, Cal App 1st Dist) 137 Cal App 2d 672, 290 P2d 914, 1955 Cal App LEXIS 1242.

Charge that on-sale liquor licensee violated subd (b) by employing or permitting designated person to loiter on premises for purpose of soliciting purchase of alcoholic beverage for solicitor is sufficient to enable licensee to prepare his defense, since in administrative proceedings against licensee the courts are more concerned with fair notice to accused than technical rules of pleading. Wright v. Munro (1956, Cal App 1st Dist) 144 Cal App 2d 843, 301 P2d 997, 1956 Cal App LEXIS 1801.

6. Evidence: Generally

Requirement of corroboration of accomplices in criminal proceedings does not apply to administrative proceeding to revoke liquor license for violation of statute. Oxman v. Department of Alcoholic Beverage Control (1957, Cal App 3d Dist) 153 Cal App 2d 740, 315 P2d 484, 1957 Cal App LEXIS 1551.

Trial court properly determined in mandamus proceeding that no relevant evidence was excluded at hearing to revoke liquor license where affidavit of witness licensee wished to present stated that affiant was employed by licensee and had been instructed by him not to accept or ask for any alcoholic beverages and not to drink alcoholic beverages while on duty, but also stated that affiant had been employed by licensee many months after proceedings to revoke license were begun. Skipitar v. Munro (1959, Cal App 1st Dist) 175 Cal App 2d 1, 345 P2d 508, 1959 Cal App LEXIS 1288.

Evidence similar to that which supports decision and order of Department of Alcoholic Beverage Control revoking license on ground that licensee knowingly permitted woman to loiter in or about premises for purpose of begging or soliciting customer to purchase for her alcoholic beverage will support charge that continuance of license by that licensee would be

contrary to public welfare and morals (§ 24200 subd (a)) in that he caused or permitted designated females to solicit drinks on licensed premises on certain dates. Greenblatt v. Martin (1961, Cal App 1st Dist) 189 Cal App 2d 787, 11 Cal Rptr 669, 1961 Cal App LEXIS 2250.

7. Evidence: Sufficiency

Evidence though weak, is legally sufficient to show violation of subd (b) where it shows that girl approached patron and asked, "Do you want a drinking companion?" and, on being asked to sit down, girl motioned bartender for drink without specifying what she wanted, whereupon bartender poured drink from Vermouth bottle into old-fashion glass which girl drank and for which patron paid, and bartender then asked customer if he wanted to buy the lady another drink and on receiving affirmative reply, poured similar drink for girl at patron's expense, and procedure was repeated several times after patron left place for few minutes and then returned. Wright v. Munro (1956, Cal App 1st Dist) 144 Cal App 2d 843, 301 P2d 997, 1956 Cal App LEXIS 1801.

It is a reasonable inference that liquid poured from bottle labeled "Vermouth" is in effect Vermouth, an alcoholic beverage within purview of concluding portion of subd (b), where it is poured by bartender in on-sale liquor establishment in response to request for "a drink," and there is no evidence to show that it was in fact not alcoholic. Wright v. Munro (1956, Cal App 1st Dist) 144 Cal App 2d 843, 301 P2d 997, 1956 Cal App LEXIS 1801.

Finding that licensee employed and permitted female entertainer to solicit and encourage patrons to buy her drinks under scheme by which she was to receive commission was supported, as against objection that there was insufficient proof that champagne cocktails purchased for entertainer and consumed by her were alcoholic beverages, where she testified that she ordered champagne cocktails and was served what purported to be such, that she had champagne in her home and knew how it tasted, and that drinks served her in licensed premises were either champagne or cheap wine. Oxman v. Department of Alcoholic Beverage Control (1957, Cal App 3d Dist) 153 Cal App 2d 740, 315 P2d 484, 1957 Cal App LEXIS 1551.

Evidence was insufficient to support revocation of license on ground that licensees employed waitress to loiter on premises for purpose of soliciting patrons to buy drinks, where it appeared, among other things, that waitress was not standing idly by, loafing or walking around aimlessly without purpose, but was engaged in her duties as witness or bartender, and where evidence that licensees knew she solicited drinks was weak. Garcia v. Munro (1958, Cal App 1st Dist) 161 Cal App 2d 425, 326 P2d 894, 1958 Cal App LEXIS 1753.

Suspension of on-sale liquor license for violation of rule prohibiting solicitation of purchase or sale of alcoholic beverages by female employee of licensee for her consumption was sustained by testimony that entertainer employed by licensee asked agent of department to buy her champagne, though agent refused to do so. Greenblatt v. Munro (1958, Cal App 1st Dist) 161 Cal App 2d 596, 326 P2d 929, 1958 Cal App LEXIS 1778.

Suspension of on-sale liquor license for violation of rule prohibiting solicitation of alcoholic beverages by licensee's female employee for her consumption was supported by testimony that entertainer and cigarette girl, both employees of licensee, asked witnesses to buy them drinks, as against claim that such testimony was hearsay and inadmissible. Greenblatt v. Munro (1958, Cal App 1st Dist) 161 Cal App 2d 596, 326 P2d 929, 1958 Cal App LEXIS 1778.

Proof was sufficient to show that female employee was served alcoholic drink where bartender indicated that he was serving her "screwdriver," licensee testified that "screwdriver" as served in his place contained orange juice and vodka and there was no evidence that alcoholic drink was not served to female employee, in proceeding to revoke on-sale liquor license for allowing female employee to solicit alcoholic beverage from customer. Greenblatt v. Munro (1958, Cal App 1st Dist) 161 Cal App 2d 596, 326 P2d 929, 1958 Cal App LEXIS 1778.

Decision of Department of Alcoholic Beverage Control Board that licensee, through his bartender, knowingly permitted woman to loiter in or about premises for purpose of soliciting customer to purchase alcoholic beverage for her, in violation of subd (b) and order revoking license, were supported by substantial evidence where agent testified that two female persons were sitting at bar when he entered premises, that one approached him, said she was waitress and asked him to buy her drink, that this conversation took place in immediate presence of bartender, who fixed drink as soon as girl specified what she wanted and without waiting for order, that girl stated that drink contained vodka, and bartender, after he had furnished "double" of same drink, assented to agent's statement that drink contained vodka, and that agent paid for both drinks. Greenblatt v. Martin (1961, Cal App 1st Dist) 189 Cal App 2d 787, 11 Cal Rptr 669, 1961 Cal App LEXIS 2250.

In liquor license revocation proceeding, all that was required to support charge of employing or knowingly permitting woman to loiter around licensed premises for purpose of begging or soliciting patrons to purchase alcoholic beverages for her was knowledge of bartender imputed to licensee and evidence that woman solicited drinks from three persons in premises, one of whom was alcoholic beverage control agent. Garcia v. Martin (1961, Cal App 1st Dist) 192 Cal App 2d 786, 14 Cal Rptr 59, 1961 Cal App LEXIS 2002.

§ 25658. Sale to and consumption by person under 21 years of age; Use by peace officers to apprehend sellers of alcoholic beverages 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 21 years of age is guilty of a misdemeanor.

(b) Except as provided in Section 25667, any person under 21 years of age who purchases any alcoholic beverage, or any person under 21 years of age 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 21 years of age, and the person under 21 years of age 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 21 years of age to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under 21 years of age, is guilty of a misdemeanor.

(e)(1) Except as otherwise provided in paragraph (2) or (3), or Section 25667, 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 a fine and community service as determined by the court. A second or subsequent violation of subdivision (b), where prosecution of the previous violation was not barred pursuant to Section 25667, 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 a 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 of one thousand dollars ($1,000), or by both imprisonment and fine.

(f) Persons under 21 years of age may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, or other persons who sell or furnish alcoholic beverages to minors. Notwithstanding subdivision (b), any person under 21 years of age 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 21 years of age 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 21 years of age. 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 to licensees and the department 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 or the imposition of penalties under any other provision of law, including, but not limited to, Section 272 of the Penal Code and Section 13202.5 of the Vehicle Code.

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 2152 § 1; Stats 1959 ch 866 § 1; Stats 1983 ch 1092 § 63, effective September 27, 1983, operative January 1, 1984; Stats 1984 ch 403 § 1; Stats 1990 ch 695 § 2 (AB 3448); Stats 1994 ch 1205 § 1 (AB 3805), effective September 30, 1994; Stats 1997 ch 357 § 1 (SB 805); Stats 1998 ch 441 § 1 (AB 1204), ch 565 § 1.5 (SB 1696); Stats 1999 ch 786 § 1 (SB 340), ch 787 § 3 (AB 749); Stats 2004 ch 291 § 1 (AB 2037); Stats 2005 ch 22 § 10 (SB 1108), effective January 1, 2006; Stats 2007 ch 743 § 1 (AB 1658), effective January 1, 2008, Stats 2007 ch 744 § 4.5 (AB 1739), effective January 1, 2008 (ch 744 prevails); Stats 2010 ch 245 § 1 (AB 1999), effective January 1, 2011; Stats 2011 ch 296 § 31 (AB 1023), effective January 1, 2012.

Amendments:

1957 Amendment: Added (1) "and shall be punished by a fine of not less than one hundred dollars ($100)" at the end of subd (b); and (2) subd (c).

1959 Amendment: Added ", no part of which shall be suspended" at the end of subd (b).

1983 Amendment: Substituted "two hundred dollars ($200)" for "one hundred dollars ($100)" in subd (b).

1984 Amendment: (1) Amended the first sentence of subd (b) by **(a)** substituting "one hundred dollars ($100)" for "two hundred dollars ($200)"; and **(b)** adding "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 such combination of fine and community service as the court deems just"; and **(2)** added the second sentence of subd (b).

1990 Amendment: (1) Amended subd (b) by deleting **(a)** "and shall be punished by a fine of not less than one hundred dollars ($100), 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 such

combination of fine and community service as the court deems just" at the end; and **(b)** the former second sentence which read: "Any person under the age of 21 years who is convicted under this section and who has previously been convicted under this section is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100), no part of which shall be suspended, and, in addition, 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, except in any case in which the court makes a finding and states on the record its reasons that such community service would be inappropriate." ; and **(2)** added subd (d).

1994 Amendment: Added subd (e).

1997 Amendment: **(1)** Redesignated former subd (d) to be subd (d)(1); **(2)** amended subd (d)(1) by **(a)** adding "Except as otherwise provided in paragraph (2),"; and **(b)** deleting "not less than" after "a fine of"; and **(3)** added subd (d)(2).

1998 Amendment: **(1)** Added "Except as otherwise provided in subdivision (c)," at the beginning of subd (a); **(2)** added subd (c); **(3)** redesignated former subds (c)–(e) to be subds (d)–(f); **(4)** added "or (3)" in subd (e)(1); **(5)** added subd (e)(3); and **(6)** added the last sentence of subd (f). (As amended Stats 1998 ch 565, compared to the section as it read prior to 1998. This section was also amended by an earlier chapter, ch 441. See Gov C § 9605.)

1999 Amendment: **(1)** Added the second and third sentences of subd (e)(1); and **(2)** amended subd (f) by adding **(a)** "within 72 hours" near the end of the fifth sentence; and **(b)** the sixth and seventh sentences. (As amended Stats 1999 ch 787, compared to the section as it read prior to 1999. This section was also amended by an earlier chapter, ch 786. See Gov C § 9605.)

2004 Amendment: **(1)** Amended subd (c) by **(a)** substituting "any" for "an" after "by purchasing"; **(b)** adding ", or furnishing, giving, or giving away any alcoholic beverage to," and **(c)** adding the comma after "years"; **(2)** added "Except as provided in paragraph (3)," at the beginning of subd (e)(2); and **(3)** added subd (g).

2005 Amendment: Added "a" before "fine and community service" both times it appears in subd (e)(1).

2007 Amendment: (1) Substituted "a fine of" for "a fine not exceeding" in subd (e)(3); (2) amended subd (f) by adding (a) "or other persons who sell or furnish" in the first sentence; and (b) "to licensees and the department" in the seventh sentence; (3) amended subd (g) by adding (a) "or the imposition of penalties"; and (b) "and Section 13202.5 of the Vehicle Code". (As amended by Stats 2007 ch 444, compared to the section as it read prior to 2007. This section was also amended by an earlier chapter, ch 443. See Gov C § 9605.)

2010 Amendment: (1) Added "Except as provided in Section 25667," at the beginning of subd (b); and (2) amended subd (e)(1) by (a) substituting "paragraph (2), (3), or Section 25667" for "paragraph (2) or (3)"; and (b) adding ", where prosecution of the previous violation was not barred pursuant to Section 25667,".

2011 Amendment: (1) Deleted the comma after "given away" in subd (a); (2) substituted "21 years of age" for "the age of 21 years" wherever it appears in subds (a)-(d) and (f); and (3) substituted "paragraph (2) or (3)" for "paragraph (2), (3)" in the first sentence of subd (e)(1).

Historical Derivation:

(a) Former Pen C § 397b, as added Stats 1905 ch 514 § 1.
(b) Stats 1935 ch 330 § 61, as amended Stats 1937 ch 758 § 93, Stats 1949 ch 1022 § 2, Stats 1951 ch 1085 § 1.
(c) Stats 1933 ch 658 § 34.
(d) Stats 1933 ch 178 § 25.
(e) Stats 1903 ch 240 § 1.
(f) Stats 1891 ch 87 § 1.
(g) Stats 1871–72 ch 188 § 1.

Cross References:

Time within which accusations against licensees for violating section to be filed: B & P C §§ 24206, 24208.
Punishment for misdemeanors: B & P C § 25617.
Purchase or consumption of alcoholic beverage in on–sale premises by person under 21 as an infraction: Pen C § 19.8.
Sending children to immoral places: Pen C § 273f.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".
Cal. Forms Pleading & Practice (Matthew Bender®) ch 19 "Alcoholic Beverages: Civil Liability".
Cal. Forms Pleading & Practice (Matthew Bender®) ch 116 "Civil Rights: Discrimination In Business Establishments".
Cal. Points & Authorities (Matthew Bender®) ch 15A "Alcoholic Beverages: Civil Liability For Furnishing" § 15A.22.
Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.22.
Cal. Torts (Matthew Bender®), § 1.21.
Cal. Torts (Matthew Bender®), § 20.58.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].
10 Witkin Summary (10th ed) Parent and Child § 479.
6 Witkin Summary (10th ed) Torts §§ 1069, 1073.
Cal Jur 3d (Rev) Criminal Law § 71.
Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2961, Purchase of Alcoholic Beverage by Person Under 21
Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2962, Selling or Furnishing Alcoholic Beverage to Person Under 21
Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2963, Permitting Person Under 21 to Consume Alcoholic Beverage
Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2964, Purchasing Alcoholic Beverage for Person Under 21: Resulting in Death or Great Bodily Injury
Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2965, Parent Permitting Child to Consume Alcoholic Beverage: Causing Traffic Collision

Forms:

See suggested form, "Complaint by Bystander Against Assailant and Tavern Proprietor for Damages for Personal Injuries—Resulting from Proprietor's Service of Alcohol to Underage Assailant" under B & P C § 25602.1 in supplement, making appropriate changes.

Law Review Articles:

Criticism of California rule denying dram shop liability—duty of care as imposed by criminal statute. 57 Cal LR 1009.
Liability for vendors of alcoholic beverages. 60 Cal LR 1034.
Review of Selected 1983 Legislation. 15 Pacific LJ 559.
Review of Selected 1984 Legislation. 16 Pacific LJ 520.
California liquor liability a decade after *Coulter v. Superior Court*. 16 Pepperdine LR 21.
Liquor vendor liability in California. 14 Santa Clara Law 46.
The "Special Relationship" between school and student. 41 UCLA LR 1101.

Annotations:

Entrapment to commit offense against laws regulating sales

of liquor. 18 ALR 162; 66 ALR 488; 86 ALR 267; 55 ALR2d 1322.

Delivery of liquor to minor who purchases, or professes to be purchasing for another person as violation of statute against sale to minors. 114 ALR 121.

Ignorance or mistake regarding purchaser's age as affecting criminal offense of selling liquor to minor or person under specified age. 115 ALR 1230.

Criminal responsibility of one authorized generally to sell intoxicating liquors for particular illegal sale thereof by employee or agent. 139 ALR 306.

Criminal offense of selling liquor to minor or permitting him to stay on licensed premises as affected by ignorance or mistake regarding his age. 12 ALR3d 991.

Serving liquor to minor in home as unlawful sale or gift. 14 ALR3d 1186.

Recovery under Civil Damage (Dram Shop) Act for intangibles such as mental anguish, embarrassment, loss of affection or companionship, or the like. 78 ALR3d 1199.

What constitutes violation of enactment prohibiting sale of intoxicating liquor to minor. 89 ALR3d 1256.

Availability in state court of defense of entrapment where accused denies committing acts which constitute offense charged. 5 ALR4th 1128.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence. 62 ALR4th 16.

Availability in federal court of defense of entrapment where accused denies committing acts which constitute offense charged. 54 ALR Fed 644.

NOTES OF DECISIONS

1. Generally
2. Construction
3. Defenses
4. Hearing
5. Evidence: Generally
6. Evidence: Sufficiency
7. Local Ordinances

1. Generally

In action against tavern owner for injuries resulting from collision with automobile driven by minor who had been sold intoxicating liquor by the defendant, demurrer is properly sustained, as sale was too remote to be considered as proximate cause of injuries. Fleckner v. Dionne (1949, Cal App) 94 Cal App 2d 246, 210 P2d 530, 1949 Cal App LEXIS 1518.

Offense of giving alcoholic beverage to person under age of 21 years does not in every case evidence bad moral character, and therefore moral turpitude is not inherent in crime itself. Lorenz v. Board of Medical Examiners (1956) 46 Cal 2d 684, 298 P2d 537, 1956 Cal LEXIS 222.

Licentiate conducting sale of beverages under on-sale license is charged with active duty to prevent minors from consuming intoxicating liquor on licensed premises, and if licentiate through employee, has knowledge that such consumption is taking place there arises immediately active duty to prevent its continuance, and failure to prevent it is permitting such unlawful consumption, justifying suspension of license. Marcucci v. Board of Equalization (1956, Cal App 3d Dist) 138 Cal App 2d 605, 292 P2d 264, 1956 Cal App LEXIS 2407; 5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 748, 318 P2d 820, 1957 Cal App LEXIS 1351.

Violation of subd (b) need not be alleged, in proceeding under § 24200(b), authorizing suspension or revocation of liquor license when licensee permits violation of any penal provisions of law prohibiting use or possession of alcoholic beverages. Munro v. Alcoholic Beverage Control Appeals Board (1957, Cal App 3d Dist) 154 Cal App 2d 326, 316 P2d 401, 1957 Cal App LEXIS 1629.

Licensee, in making sales of intoxicating liquors, is not required to act at his peril, but he must exercise caution which would be shown by reasonable and prudent man in same circumstances. 5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 748, 318 P2d 820, 1957 Cal App LEXIS 1351.

Licensee has no inherent right to sell liquor, and his engaging in that business may legitimately be subject to rigid conditions that will limit possibility of sales to children under twenty-one. Farah v. Alcoholic Beverage Control Appeals Board (1958, Cal App 2d Dist) 159 Cal App 2d 335, 324 P2d 98, 1958 Cal App LEXIS 2003.

A licensee does not act at his peril in selling liquor and if he uses due care and acts in good faith his license is not to be jeopardized because some minor representing himself as an adult succeeds in purchasing liquor. Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968, Cal App 1st Dist) 261 Cal App 2d 181, 67 Cal Rptr 734, 1968 Cal App LEXIS 1730.

A complaint in a personal injury action against the employer of an allegedly intoxicated minor whose automobile collided with an automobile in which plaintiffs were riding stated a cause of action, where it was alleged that the minor's intoxication was induced by his employer as the result of a Christmas party where the employer knowingly made available to the minor copious amounts of intoxicating beverage with knowledge that he was going to drive an automobile upon the public highways. B & P C § 25658, providing that every person who sells, furnishes or gives any alcoholic beverage to a minor is guilty of a misdemeanor was adopted for the purpose of protecting members of the general public from injuries resulting from the excessive use of intoxicating liquor. Presumably the legislature believed that most minors are neither physically nor mentally equipped to handle the consumption of intoxicating liquor. Brockett v. Kitchen Boyd Motor Co. (1972, Cal App 5th Dist) 24 Cal App 3d 87, 100 Cal Rptr 752, 1972 Cal App LEXIS 1120.

In an action to establish the liability of a convenience store franchisor for the sale of beer to an intoxicated minor by the franchisee, the trial court did not err in refusing to instruct that the franchisor owed a nondelegable statutory duty of care with respect to the sale of alcoholic beverages. Although B & P C §§ 25602 and 25658, prohibit the furnishing of alcoholic beverages to minors and intoxicated persons, they provide no specific safeguards or precautions to be exercised by the licensee in that regard. Moreover, the case was tried on the theory that the franchisee was the agent of the franchisor, and to have permitted plaintiffs to drastically change their theory of trial after all the evidence was in would have been unfair to the franchisor. Wickham v. Southland Corp. (1985, Cal App 4th Dist) 168 Cal App 3d 49, 213 Cal Rptr 825, 1985 Cal App LEXIS 2070.

Legislation enacted in 1978 (B & P C § 25658, subd. (a); CC § 1714), which eliminated social host liability for injuries resulting from the intoxication of a guest is not retroactive, and does not immunize social hosts from being civilly liable for injuries resulting from an accident occurring before the January 1, 1979, effective date of the legislation. Sagadin v. Ripper (1985, Cal App 3d Dist) 175 Cal App 3d 1141, 221 Cal Rptr 675, 1985 Cal App LEXIS 2910.

In a personal injury action against the hosts of a party who provided beer to an already intoxicated minor for injuries plaintiffs received shortly thereafter when the minor collided with another car while going at a high rate of speed, in a residential district, at a time he was legally intoxicated, the trial court properly granted the hosts' summary judgment motion, since the hosts were immune from liability under CC

§ 1714, and B & P C § 25658, unless they knowingly provided alcoholic beverages to one who was unable to voluntarily resist their consumption because of some exceptional physical or mental condition, and youth, by itself, was not such a condition. Bass v. Pratt (1986, Cal App 1st Dist) 177 Cal App 3d 129, 222 Cal Rptr 723, 1986 Cal App LEXIS 2533.

B & P C § 25658(c) applies to any situation in which an individual purchases alcoholic beverages for an underage person; this includes, but is not limited to, the buyer-by-proxy and shoulder tap scenarios. In re Jennings (2004) 34 Cal 4th 254, 17 Cal Rptr 3d 645, 95 P3d 906, 2004 Cal LEXIS 7669.

2. Construction

Cal Code Reg. tit. 4, § 141(b)(5) does not require the identification take place inside the premises where the sale was made. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2003, Cal App 4th Dist) 109 Cal App 4th 1687, 1 Cal Rptr 3d 339, 2003 Cal App LEXIS 972.

Whenever term "beer" is used without words of qualification, it signifies malt liquor and an intoxicating beverage. Molina v. Munro (1956, Cal App 2d Dist) 145 Cal App 2d 601, 302 P2d 818, 1956 Cal App LEXIS 1382.

When person is accused under section of having sold "beer" to minor, court takes judicial notice that it means an intoxicant. Molina v. Munro (1956, Cal App 2d Dist) 145 Cal App 2d 601, 302 P2d 818, 1956 Cal App LEXIS 1382.

The firemen's rule, providing that negligence in causing a fire furnishes no basis for liability to a professional fireman injured fighting the fire, is applicable to policemen, and precluded recovery by a policeman for personal injuries sustained while attempting to arrest a minor for being drunk in public as the result of defendants' minor daughter's unlawful serving of alcoholic beverages at defendants' residence. Since the policeman was not one of the class of persons for whose protection B & P C § 25658, subd. (a), prohibiting the furnishing of alcoholic beverages to persons under the age of 21, was adopted, the doctrine that violation of a statute gives rise to a presumption of negligence was not applicable and did not preclude the application of the fireman's rule. Walters v. Sloan (1977) 20 Cal 3d 199, 142 Cal Rptr 152, 571 P2d 609, 1977 Cal LEXIS 188.

Defendant minor's contribution of money toward the purchase of alcoholic beverages, which were subsequently consumed by a minor companion, was not sufficient to establish, under Pen C § 31, a joint enterprise or conspiracy among the minors to violate B & P C § 25658, subd. (a) (furnishing alcoholic beverages to a minor). Defendant did not himself purchase the liquor and there was no evidence to indicate that he had exercised any control over it. Bennett v. Letterly (1977, Cal App 4th Dist) 74 Cal App 3d 901, 141 Cal Rptr 682, 1977 Cal App LEXIS 1974.

A complaint against a minor in a personal injury action based on the minor's violation of B & P C § 25658, in furnishing alcoholic beverages to another minor who, while under the influence of alcohol, negligently operated his car so as to collide with plaintiff's vehicle, and which alleged that defendant's conduct was the proximate cause of plaintiff's injuries, stated a cause of action sufficient to withstand a demurrer. The statute imposed a duty on defendant even though he was a minor, and plaintiff was within the class of persons for whose protection the statute was enacted. A presumption of negligence arises from the violation of a statute which was enacted to protect a class of persons of which the plaintiff is a member against the type of harm which the plaintiff suffered as a result of the violation of the statute. King v. Ladyman (1978, Cal App 3d Dist) 81 Cal App 3d 837, 146 Cal Rptr 782, 1978 Cal App LEXIS 1628.

In order to violate B & P C § 25658, subd. (a), making it a misdemeanor to furnish alcohol to a person under 21 years of age, there must be some affirmative act of furnishing alcohol. Mere nonfeasance does not violate the statute, and allegations which do not allege that a defendant actually furnished alcohol fail to state a cause of action for negligence under the statute. Sagadin v. Ripper (1985, Cal App 3d Dist) 175 Cal App 3d 1141, 221 Cal Rptr 675, 1985 Cal App LEXIS 2910.

Under B & P C § 25658, subd. (a), making it a misdemeanor to furnish alcohol to a person under 21 years of age, a party giver furnished beer within the meaning of the statute where he not only contributed to the common fund for the purchase of the beer, but directed two guests to pick up the beer, and where he also attached the keg, facilitating access to the beer. Sagadin v. Ripper (1985, Cal App 3d Dist) 175 Cal App 3d 1141, 221 Cal Rptr 675, 1985 Cal App LEXIS 2910.

In a civil action against social hosts for violating B & P C § 25658, subd. (a), making it a misdemeanor to provide alcohol to a person under 21 years, the party giver's father was properly found to have "furnished" beer where he told his son that if parental beer was used, it would have to be replaced, from which the jury could reasonably infer an authorization to use the beer. Such an authorization constitutes the requisite affirmative act of furnishing as a matter of law. However, since the mother took no affirmative act which directly or inferentially constituted furnishing alcohol, and since family relationship alone is not sufficient to impute the negligence of her husband and son to her, there was no competent evidence that she violated the statute. Sagadin v. Ripper (1985, Cal App 3d Dist) 175 Cal App 3d 1141, 221 Cal Rptr 675, 1985 Cal App LEXIS 2910.

In order to impose civil liability on social hosts for violation of B & P C § 25658, subd. (a), making it a misdemeanor to furnish alcohol to a person under 21 years of age, there is no requirement that alcohol be furnished with the knowledge that the drinker will be driving. The question in cases of concurrent causes is one of foreseeability, not knowledge. Defendant may be liable if his conduct was a substantial factor in bringing about the harm, though he neither foresaw nor should have foreseen the manner in which the harm occurred. Sagadin v. Ripper (1985, Cal App 3d Dist) 175 Cal App 3d 1141, 221 Cal Rptr 675, 1985 Cal App LEXIS 2910.

In order to violate B & P C § 25658(c), the person furnishing the alcohol need not know that the person to whom it is furnished is under the age of 21 years. In re Jennings (2003, Cal App 3d Dist) 106 Cal App 4th 869, 131 Cal Rptr 2d 233, 2003 Cal App LEXIS 300, rev'd (2004) 34 Cal 4th 254, 17 Cal Rptr 3d 645, 95 P3d 906, 2004 Cal LEXIS 7669.

Cal Code Reg tit. 4, § 141(b)(5) only requires the peace officer to enter or remain on the premises to arrange a face–to–face identification. The literal terms of the section leave the location of the identification to the discretion of the peace officer. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2003, Cal App 4th Dist) 109 Cal App 4th 1687, 1 Cal Rptr 3d 339, 2003 Cal App LEXIS 972.

Although B & P C § 25658(a) clearly embraces the social party host (because such persons furnish or give away alcoholic beverages to their guests), the generalized actions of the typical social party host, providing libations for his or her guests, do not run afoul of the more specific § 25658(c) because, as a general matter, such hosts cannot be said to have purchased alcohol "for" any particular guest. Although a social host could be said to have purchased alcoholic beverages for every one of his or her guests, such an interpretation would be unreasonable, as in that case, "purchase for" would mean the same as "furnish to," blurring the distinction between the two subdivisions; as used in § 25658(c), the term "for" is used as a function word to indicate the person that something is to be

delivered to. In re Jennings (2004) 34 Cal 4th 254, 17 Cal Rptr 3d 645, 95 P3d 906, 2004 Cal LEXIS 7669.

To obtain a conviction under B & P C § 25658(a), the People need not prove the offender knew the person to whom he or she furnished, sold or gave an alcoholic beverage was in fact not yet 21 years old. In re Jennings (2004) 34 Cal 4th 254, 17 Cal Rptr 3d 645, 95 P3d 906, 2004 Cal LEXIS 7669.

Legislative history indicates the legislature intended that a conviction of violating B & P C § 25658(c) does not require a showing the offender had knowledge of the imbiber's age or other criminal intent; accordingly, although the People must prove an accused "purchased" an alcoholic beverage "for" an underage person, the People need not also prove the accused knew that person was under 21 years of age. In re Jennings (2004) 34 Cal 4th 254, 17 Cal Rptr 3d 645, 95 P3d 906, 2004 Cal LEXIS 7669.

3. Defenses

In a mandamus proceeding to compel the State Board of Equalization to set aside an order suspending liquor licenses of cafe owners following a decision of the board that they sold whiskey to a minor in violation of this statute, a finding that the board's decision was not supported by substantial evidence would not be disturbed on appeal, where it appeared that the clerk in charge of the cafe asked the minor to show his identification as to his age, that the minor exhibited a registration card issued in the name of another person; that the minor signed a piece of paper copying the name of the other person, and that the clerk compared the signatures, thought there was a fair resemblance, and made the sale. Young v. State Board of Equalization (1949, Cal App) 90 Cal App 2d 256, 202 P2d 587, 1949 Cal App LEXIS 969.

Where evidence shows that before purchasing intoxicating liquor, purchaser submitted to bartender document purporting to indicate majority, apparently complying with former Alcoholic Beverage Control Act, and bartender testified that he believed document to be official, Board of Equalization and courts could not suspend license for selling to minor, in absence of supported finding that bartender acted in bad faith without diligence. Keane v. Reilly (1955, Cal App 1st Dist) 130 Cal App 2d 407, 279 P2d 152, 1955 Cal App LEXIS 1912.

Section 25660 is available as defense in prosecution for violation of this section. People v. Garrigan (1955, Cal App Dep't Super Ct) 137 Cal App 2d Supp 854, 289 P2d 892, 1955 Cal App LEXIS 1273.

Ruling that § 25660 is not available as defense in prosecution under this section, though erroneous, does not affect any substantial right of defendant where it is conceded that defendant did not comply with § 25660 on occasion of sale on which prosecution is based. People v. Garrigan (1955, Cal App Dep't Super Ct) 137 Cal App 2d Supp 854, 289 P2d 892, 1955 Cal App LEXIS 1273.

Although a violation of B & P C § 25658 (prohibition against sale of alcoholic beverages to minors), can occur despite the seller's lack of knowledge that the purchaser is under the age of 21, the seller's liability is not absolute, since B & P C § 25660, allows the seller to rely on bona fide evidence of majority and identity. Provigo Corp. v. Alcoholic Beverage Control Appeals Bd. (1994) 7 Cal 4th 561, 28 Cal Rptr 2d 638, 869 P2d 1163, 1994 Cal LEXIS 1391.

The Alcoholic Beverage Control Appeals Board did not abuse its discretion in upholding the suspensions of the liquor licenses of two grocery stores for selling alcohol to minors in violation of B & P C § 25658, subd. (a), where the stores had sold alcoholic beverages to minors acting as police decoys. Although Cal. Const., art. XX, § 22, prohibits the sale to, or purchase by, minors of alcoholic beverages, the Constitution does not preclude the use of minors as decoys. An interpretation allowing the use of decoys promotes the intent of the constitutional provision to protect minors from harm associated with the consumption of alcohol. To provide licensees a defense based on the use of underage decoys would produce an absurd result. Also, although the Legislature rejected a proposal that would have granted immunity for underage persons who buy alcohol at the direction of peace officers, unpassed bills have little value as evidence of legislative intent. Further, even if the stores were not knowingly engaged in illicit activity, the mature-looking underage decoys did nothing to induce them to violate the law, and routinely checking identification of all purchasers would not have been unduly burdensome. Provigo Corp. v. Alcoholic Beverage Control Appeals Bd. (1994) 7 Cal 4th 561, 28 Cal Rptr 2d 638, 869 P2d 1163, 1994 Cal LEXIS 1391.

The Department of Alcoholic Beverage Control improperly suspended a restaurant's liquor license for selling an alcoholic beverage to a 19-year-old decoy (B & P C § 25658(a)). Although a police officer was seated at a nearby table and observed the transaction, the officer failed to enter the licensed premises and have the minor decoy who purchased the alcoholic beverage make a face to face identification of the alleged seller as required by Cal C Regs, tit 4, § 141(b)(5), which is a defense to any action brought pursuant to § 25658. Acapulco Restaurants, Inc. v. Alcoholic Beverage Control Appeals Bd. (1998, Cal App 2d Dist) 67 Cal App 4th 575, 79 Cal Rptr 2d 126, 1998 Cal App LEXIS 896.

In a prosecution for sale of an alcoholic beverage to a minor (B & P C § 25658), the trial court properly refused to instruct the jury to find defendant not guilty if the jurors found police had not complied with specific guidelines established by regulation requiring a decoy to answer truthfully when asked any questions about his or her age. Although the Legislature directed the Department of Alcoholic Beverage Control to adopt and publish guidelines for the use of underage decoys, there was no statutory directive for the Department to determine what action or inaction would create a defense to conduct made criminal when the Legislature enacted § 25658. Absent an indication the Legislature delegated such power to the Department, this would constitute an improper usurpation of the Legislature's function to define what is criminal conduct. People v. Figueroa (1999, Cal App 4th Dist) 68 Cal App 4th 1409, 81 Cal Rptr 2d 216, 1999 Cal App LEXIS 5.

Although the prosecution need not prove an offender's knowledge of age in order to establish a violation of B & P C § 25658(c), a defendant is entitled to raise an affirmative defense, for which he bears the burden of proof, that he honestly and reasonably believed the person for whom he or she purchased alcohol was at least 21 years old. Recognizing the viability of a mistake of fact defense is consistent with the modern trend away from strict liability for criminal offenses as well as with Pen C § 20 and the statutory scheme of which B & P C § 25658(c) is but a part. In re Jennings (2004) 34 Cal 4th 254, 17 Cal Rptr 3d 645, 95 P3d 906, 2004 Cal LEXIS 7669.

4. Hearing

Where licensee accused of having sold beer to minor was represented at administrative hearing of department by member of bar who actively participated in proceedings, cross-examined witnesses, introduced evidence and made use of all available facts or authorities to effectuate licensee's exoneration, and where attorney made no motion for continuance to enable licensee to be present in person, but offered in evidence transcript of proceedings of licensee's trial in municipal court for purpose of proving his innocence, he is in no position, in subsequent mandamus proceeding to compel department to set aside order revoking license, to complain of his failure before department or to claim that he was denied due process.

Molina v. Munro (1956, Cal App 2d Dist) 145 Cal App 2d 601, 302 P2d 818, 1956 Cal App LEXIS 1382.

5. Evidence: Generally

Although evidence of identification of bartender as having illegally sold alcoholic liquor to minors may have been hearsay, such evidence is admissible to supplement direct evidence of identity. Moyer v. State Board of Equalization (1956, Cal App 1st Dist) 140 Cal App 2d 651, 295 P2d 583, 1956 Cal App LEXIS 2296.

Police officer testifying in liquor license case is, as expert in field, competent to give his opinion that a drink served a minor contained distilled spirits. Griswold v. Department of Alcoholic Beverage Control (1956, Cal App 1st Dist) 141 Cal App 2d 807, 297 P2d 762, 1956 Cal App LEXIS 1920.

Presumption in liquor license case that liquor is served when requested is not overcome by presumption of innocence; it may support a finding, and it prevails until controverted. Griswold v. Department of Alcoholic Beverage Control (1956, Cal App 1st Dist) 141 Cal App 2d 807, 297 P2d 762, 1956 Cal App LEXIS 1920.

ABC was permitted to suspend a store's liquor license after a clerk sold an alcoholic beverage to a minor acting as a police decoy. Cal. Code Regs. tit. 4, § 141(b)(5) permitted the police to conduct a face–to–face identification of the clerk outside rather than inside the store. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2003, Cal App 4th Dist) 109 Cal App 4th 1687, 1 Cal Rptr 3d 339, 2003 Cal App LEXIS 972.

6. Evidence: Sufficiency

Finding that liquor licensee sold whiskey to minor is supported by evidence that minor ordered "bourbon on rocks" and it was served to him, where licensee did not see fit to attack such prima facie case, but simply offered evidence to excuse violation, claiming inadvertence. Griswold v. Department of Alcoholic Beverage Control (1956, Cal App 1st Dist) 141 Cal App 2d 807, 297 P2d 762, 1956 Cal App LEXIS 1920.

Finding of Department of Alcoholic Beverage Control that liquor licensee sold beer to minor in violation of law is sustained by evidence that two officers saw minor, a 15-year-old boy, make the purchase, by boy's testimony that he purchased beer from licensee, and by licensee's admissions of his sale of beverage. Molina v. Munro (1956, Cal App 2d Dist) 145 Cal App 2d 601, 302 P2d 818, 1956 Cal App LEXIS 1382.

In proceeding to suspend liquor license because of sale to minor and for permitting minor to consume liquor on licensed premises, fair inference arises that minor was served drink she had ordered from evidence that she ordered coke and whiskey and was served drink by waitress without comment which, according to police officer, was amber colored fluid smelling of alcohol which he testified was bourbon, and where there was no evidence to contrary. 5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 748, 318 P2d 820, 1957 Cal App LEXIS 1351.

Evidence is sufficient to sustain ruling, suspending license, under this section, where it shows that minor was too young in appearance to be twenty-one years of age, that she weighed nineteen pounds more than person described in identification which she presented, and that she was three and one-half years younger than such person and had blue eyes instead of hazel. 5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 748, 318 P2d 820, 1957 Cal App LEXIS 1351.

Suspension of liquor licensee for selling or furnishing alcoholic beverage to minor was sustained by evidence that waitress placed alcoholic drink on table and it was handed to minor, and it was no defense that minor ordered nonalcoholic drink and got alcoholic one through misunderstanding. Nickola v. Munro (1958, Cal App 1st Dist) 162 Cal App 2d 449, 328 P2d 271, 1958 Cal App LEXIS 1895.

Conviction of conspiracy to violate this section and § 25663 was supported by evidence that minor girls were employed by defendant as hostesses and waitresses, that defendant did not ask their ages but was on notice from their appearance that there was a question as to their minority, that defendant and manager of premises agreed to make as good use of girls as possible, that defendant gave orders to have girls "push" sale of champagne and that their purpose was to associate with male customers and induce them to spend money, that defendant encouraged girls with respect to their conduct with customers, and that he instructed one of the girls to serve champagne to customer and to other girls. People v. Holstun (1959, Cal App 2d Dist) 167 Cal App 2d 479, 334 P2d 645, 1959 Cal App LEXIS 2359.

7. Local Ordinances

State law did not preempt an ordinance that prohibited underage drinking, as shown by blood alcohol, because Cal Const Art XX, § 22, does not refer to consumption and the ordinance was not duplicative of H & S C § 11999, subd. (e); B & P C §§ 25662, subd. (a), 25665, 25658, subd. (b); or Veh C §§ 23136, 23140. In re Jennifer S. (2009, 1st Dist) 179 Cal App 4th 64, 101 Cal Rptr 3d 467, 2009 Cal App LEXIS 1803, review denied (2010, Cal.) 2010 Cal. LEXIS 1230.

§ 25658.1. Offer in compromise not permitted for violation of Section 25658; Revocation of license

(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.

Added Stats 1994 ch 627 § 7 (AB 463). Amended Stats 1999 ch 786 § 2 (SB 340); Stats 2004 ch 227 § 8 (SB 1102), effective August 16, 2004.

Amendments:

1999 Amendment: Added subd (c).

2004 Amendment: Substituted "third" for "second" after "23095 for a" in subd (a).

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25658.2. Liability of parent or legal guardian for underaged consumption of alcohol or use of controlled substance at home

(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.

Added Stats 2003 ch 625 § 1 (AB 1301).

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 19 "Alcoholic Beverages: Civil Liability".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2965, Parent Permitting Child to Consume Alcoholic Beverage: Causing Traffic Collision.

§ 25658.4. Application and acknowledgment for off–sale of alcoholic beverages; Notice of prohibited sales

(a) 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 25631).

(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 an 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) 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 state-

ment 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) 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 21 years of age.

(d) Nonprofit organizations or licensees may obtain video recordings and other training materials from the department on the Licensee Education on Alcohol and Drugs (LEAD) program. The video recordings 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.

Added Stats 1991 ch 726 § 4 (AB 1784). Amended Stats 1997 ch 357 § 2 (SB 805), ch 774 § 3.5 (AB 1082); Stats 1999 ch 786 § 3 (SB 340); Stats 2009 ch 88 § 11 (AB 176), effective January 1, 2010; Stats 2010 ch 328 § 27 (SB 1330), effective January 1, 2011.

Former Sections:

There was another section of this number, which was added Stats 1990 ch 695 § 3 and repealed Stats 1997 ch 357 § 3 (SB 805), ch 774 § 4 (AB 1082). In Stats 1991 ch 726 § 4, the Legislature, intending to amend the existing section, added it with changes. Stats 1997 chs 357 and 774 repeals the section as added in 1990 and amends the section as it was added in 1991, indicating that the Legislature has treated the sections individually.

Amendments:

1997 Amendment: (1) Amended subd (a) by **(a)** substituting "that" for "such a" after "he or she makes" in the first sentence; **(b)** substituting "Section 25602 and Section 25602.1 pertaining to sales to an" for "Sections 25602 and 25602.1 pertaining to sales to" in subd (a)(1)(D); and **(c)** adding subd (a)(1)(F); **(2)** substituted "that" for "which" after "shall post a notice" in the first sentence of subd (b); **(3)** added subd (c); **(4)** redesignated former subd (c) to be subd (d); and **(5)** added subd (e). (As amended Stats 1997 ch 774, compared to the section as it read prior to 1997. This section was also amended by an earlier chapter, ch 357. See Gov C § 9605.)

1999 Amendment: (1) Added subd (d); and **(2)** redesignated former subds (d) and (e) to be subds (e) and (f).

2009 Amendment: (1) Deleted "On and after January 1, 1992," at the beginning of the first sentence of subds (a) and (b); (2) added the comma after "acknowledgment" in the introductory clause of subd (a)(1); (3) substituted "(commencing with Section 25631)" for "(commencing with Section 25630) of Chapter 16" in subd (a)(1)(C); (4) deleted "On and after January 1, 1998," at the beginning of subd (c); and (5) substituted "video recordings" for "videotapes" both times it appears in subd (d).

2010 Amendment: (1) Added "an" after "to maintain" in the fifth sentence of subd (a)(3); and (2) substituted "21 years of age" for "the age of 21 years " in subd (c).

Law Revision Commission Comments:

2009—Subdivision (a)(1)(C) of Section 25658.4 is amended to correct a cross-reference. Former Section 25630, the first section of Article 2 of Chapter 16, was repealed by 1969 Cal. Stat. ch. 614, § 1.

Subdivision (d) is amended to reflect advances in recording technology and for consistency of terminology. For a similar reform, see 2002 Cal. Stat. ch. 1068 (replacing numerous references to "audiotape" in Civil Discovery Act with either "audio technology," "audio recording," or "audio record," as context required).

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25658.5. Attempted purchase of alcoholic beverage by person under 21 years of age; Penalties

(a) 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 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, 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.

(b) The penalties imposed by this section do not preclude prosecution or the imposition of penalties under any other provision of law, including,

but not limited to, Section 13202.5 of the Vehicle Code.

Added Stats 1987 ch 583 § 1. Amended Stats 1999 ch 787 § 4 (AB 749); Stats 2007 ch 743 § 2 (AB 1658), effective January 1, 2008.

Amendments:

1999 Amendment: **(1)** Added ", 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 attending school or a combination of fine and community service as determined by the court" in the first sentence; **(2)** substituted "not less than 36 hours or more than 48" for "up to 36" in the second sentence; and **(3)** added the third sentence.

2007 Amendment: (1) Designated the former section to be subd (a); (2) amended subd substituting (a) "two hundred fifty dollars ($250)" for "one hundred dollars ($100)"; and (b) "five hundred dollars ($500)" for "two hundred fifty dollars ($250)"; and (3) added subd (b).

Cross References:

Violation as an infraction: Pen C § 19.8.

Collateral References:

10 Witkin Summary (10th ed) Parent and Child § 479.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25659. Proof of age

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1998 ch 565 § 2 (SB 1696).

Amendments:

1998 Amendment: Added **(1)** "or her" after "or his" in the first sentence; and **(2)** the second and third sentences.

Historical Derivation:

Stats 1935 ch 330 § 61.2, as added Stats 1941 ch 565 § 1.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25659.5. Sale of keg beer; Identification label; Provision of false information by purchaser; Fees

(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.

Added Stats 1993 ch 270 § 1 (AB 8).

Cross References:

Misdemeanor: Pen C § 19.
Punishment for misdemeanor: Pen C § 19.2.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25660. Evidence of age and identity; Proof of reliance as defense

(a) Bona fide evidence of majority and identity of the person is any of the following:

(1) A document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a valid motor vehicle operator's license, that contains the name, date of birth, description, and picture of the person.

(2) A valid passport issued by the United States or by a foreign government.

(3) A valid identification card issued to a member of the Armed Forces that includes a date of birth and a picture of the person.

(b) Proof that the defendant-licensee, or his or her employee or agent, demanded, was shown, and acted in reliance upon 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 therefor or to any proceedings for the suspension or revocation of any license based thereon.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 627 § 1; Stats 1959 ch 550 § 1; Stats 1987 ch 67 § 1; Stats 2005 ch 68 § 1 (AB 764), effective January 1, 2006; Stats 2006 ch 538 § 35 (SB 1852), effective January 1, 2007; Stats 2009 ch 142 § 2 (AB 1191), effective January 1, 2010, ch 405 § 1.5 (AB 59), effective January 1, 2010; Stats 2010 ch 165 § 1 (AB 1896), effective January 1, 2011.

Amendments:

1955 Amendment: Prior to 1955, the section read: "In any criminal prosecution or proceeding for the suspension or revocation of any license based upon violation of Section 25658, proof that the defendant licensee, or his agent or employee, demanded and was shown, before furnishing any alcoholic beverage to a minor, a motor vehicle operator's license or a registration certificate issued under the Federal Selective Service Act or other bona fide documentary evidence of majority and identity of the person, is a defense to the prosecution or proceeding for the suspension or revocation of any license."

1955 Amendment substituted (1) "immediately prior to" for "before" and (2) "person under 21 years of age, bona fide documentary evidence of majority and identity of the person 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, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the armed forces, is a defense to the prosecution or proceeding for the suspension or revocation of any license," for that portion of section following "alcoholic beverage to a".

1959 Amendment: Amended the section to read: "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, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the Armed Forces. 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 Sections 25658, 25663 or 25665 shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon."

1987 Amendment: (1) Amended the first sentence by **(a)** deleting ", a registration certificate issued under the Federal Selective Service Act," after "operator's license"; and **(b)** adding ", which contains the name, date of birth, description, and picture of the person"; and **(2)** deleted the comma after "employment, use" in the second sentence.

2005 Amendment: (1) Redesignated the first sentence of the section to be subd (a); (2) substituted "that" for "which" in subd (a); (3) redesignated the last sentence of the section to be subd (c); (4) added subd (b); and (5) substituted "Section" for "Sections" in subd (c).

2006 Amendment: Amended subd (c) by (1) adding "or her" after "defendant-licensee, or his"; (2) adding the comma after "demanded, was shown"; (3) deleting "such" after "in reliance upon"; (4) adding the comma after "transaction, employment, use"; and (5) adding the comma after "Section 25658, 25663".

2009 Amendment: (1) Amended subd (a) by (a) substituting the comma for "or" after "operator's license"; (b) deleting the comma after "Armed Forces"; and (c) adding ", or a valid passport issued by the United States or by a foreign government"; and (2) substituted "but does include date of birth and a photo, further proof of majority shall not be required" for "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" in subd (b). (As amended Stats 2009 ch 405, compared to the section as it read prior to 2009. This section was also amended by an earlier chapter, ch 142. See Gov C § 9605.)

2010 Amendment: (1) Added "any of the following:" in the introductory clause of subd (a); (2) added subdivision designations (a)(1) and (a)(3); (3) amended subd (a)(1) by adding (a) "valid"; and (b) "that contains the name, date of birth, description, and picture of the person."; (4) added subd (a)(2); (5) amended subd (a)(3) by (a) substituting "A valid" for "an"; (b) substituting "includes a date of birth" for "contains the name, date of birth, description,"; and (c) deleting ", or a valid passport issued by the United States or by a foreign government" at the end; (6) deleted former subd (b) which read: "(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, but does include date of birth and a photo, further proof of majority shall not be required."; and (7) redesignated former subd (c) to be subd (b).

Historical Derivation:

Stats 1935 ch 330 § 61.2, as added Stats 1941 ch 565 § 1.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 473G "Agency Adjudication Decisions".

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.22.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2962, Selling or Furnishing Alcoholic Beverage to Person Under 21

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2963, Permitting Person Under 21 to Consume Alcoholic Beverage

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2964, Purchasing Alcoholic Beverage for Person Under 21: Resulting in Death or Great Bodily Injury

Law Review Articles:

Business and Profession: Chapter 405: Military IDs Are

Sufficient for the Purchase of Alcohol. 41 McGeorge L. Rev. 481.

Motor vehicle operator's license or Federal Selective Service Act or other bona fide documentary evidence of majority. 30 SCLR 31.

Attorney General's Opinions:

Effect of 1959 amendment. 36 Ops. Cal. Atty. Gen. 124.

Annotations:

Serving liquor to minor in home as unlawful sale or gift. 14 ALR3d 1186.

NOTES OF DECISIONS

1. Generally
2. Purpose
3. Construction
4. Requisites for Successful Defense
5. Burden of Proof
6. Evidence: Sufficiency

1. Generally

This statute does not impose on licensees the duty of determining at their peril whether the drivers license in a bona fide license of the party presenting it and they have a right to assume the validity of such 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 (1952, Cal App) 113 Cal App 2d 465, 248 P2d 31, 1952 Cal App LEXIS 1391.

If liquor licensee delegates to employee task of ascertaining bona fides of documentary evidence of majority and identity, required by this section, as defense to proceeding for suspension of license for selling intoxicating liquor to minor, he is bound by employee's conduct as if he had acted in person. 5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 748, 318 P2d 820, 1957 Cal App LEXIS 1351.

A licensee does not act at his peril in selling liquor, and if he uses due care and acts in good faith his license is not to be jeopardized because a minor representing himself as an adult succeeds in purchasing liquor. Raab v. Department of Alcoholic Beverage Control (1960, Cal App 4th Dist) 177 Cal App 2d 333, 2 Cal Rptr 26, 1960 Cal App LEXIS 2475.

A licensee under the Alcoholic Beverage Control Act is barred by the acts and omissions of his employees, but, by the same token, he has the benefit of their collective conduct, knowledge and reliance in determining whether there has been a compliance with the provisions of B & P C § 25660, relating to evidence of majority and identity. Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968, Cal App 1st Dist) 261 Cal App 2d 181, 67 Cal Rptr 734, 1968 Cal App LEXIS 1730.

Although a violation of B & P C § 25658 (prohibition against sale of alcoholic beverages to minors), can occur despite the seller's lack of knowledge that the purchaser is under the age of 21, the seller's liability is not absolute, since B & P C § 25660, allows the seller to rely on bona fide evidence of majority and identity. Provigo Corp. v. Alcoholic Beverage Control Appeals Bd. (1994) 7 Cal 4th 561, 28 Cal Rptr 2d 638, 869 P2d 1163, 1994 Cal LEXIS 1391.

2. Purpose

Purpose of section, when enacted, was to relieve vendors of alcoholic beverages from having in all events to determine at their peril the purchaser's age, and it was intended to furnish readily applicable standard usuable under conditions generally obtaining which, when complied with, would constitute a defense if in fact purchaser was under 21. Dethlefsen v. State Board of Equalization (1956, Cal App 3d Dist) 145 Cal App 2d 561, 303 P2d 7, 1956 Cal App LEXIS 1376.

Purpose of requiring documentary evidence as proof of identity is that licensee, or his agent, may, by comparing picture, description, or signature appearing on documents with appearance or handwriting of person representing them, have reasonable basis for concluding that person in question is individual depicted in documents, and has reached his majority as indicated by information therein. Pastime Cafe, Inc. v. Department of Alcoholic Beverage Control (1958, Cal App 2d Dist) 159 Cal App 2d 114, 323 P2d 551, 1958 Cal App LEXIS 1969.

In adopting this section legislature provided method whereby liquor licensee can protect himself in any case of doubt as to age of prospective customer. Farah v. Alcoholic Beverage Control Appeals Board (1958, Cal App 2d Dist) 159 Cal App 2d 335, 324 P2d 98, 1958 Cal App LEXIS 2003.

The provisions of B & P C § 25660, relating to bona fide evidence of majority and identity, furnish a licensee under the Alcoholic Beverage Control Act with a procedure to protect himself and in effect establish an exception to the general prohibition against transactions with minors. Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968, Cal App 1st Dist) 261 Cal App 2d 181, 67 Cal Rptr 734, 1968 Cal App LEXIS 1730.

3. Construction

Section, as it read prior to 1955 amendment, should be interpreted to apply to each individual sale, and any seller acting in violation of such requirement must have done so at his own risk. People v. Garrigan (1955, Cal App Dep't Super Ct) 137 Cal App 2d Supp 854, 289 P2d 892, 1955 Cal App LEXIS 1273.

This section requires documentary evidence of majority and identity which is intrinsically bona fide. 5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 748, 318 P2d 820, 1957 Cal App LEXIS 1351; Pastime Cafe, Inc. v. Department of Alcoholic Beverage Control (1958, Cal App 2d Dist) 159 Cal App 2d 114, 323 P2d 551, 1958 Cal App LEXIS 1969.

Words "immediately prior" are limitation in time. Farah v. Alcoholic Beverage Control Appeals Board (1958, Cal App 2d Dist) 159 Cal App 2d 335, 324 P2d 98, 1958 Cal App LEXIS 2003.

Act of questioning minor and seeing proof of age two or three weeks before sale is not "immediately prior" to sale. Farah v. Alcoholic Beverage Control Appeals Board (1958, Cal App 2d Dist) 159 Cal App 2d 335, 324 P2d 98, 1958 Cal App LEXIS 2003.

4. Requisites for Successful Defense

To protect a vendor, evidence of majority and identity of purchaser would have to be presented by person whose appearance is such as to make it doubtful on which side of line dividing minority from majority the purchaser is; when doubt as to fact would arise in good faith, vendor can rely upon documentary evidence of majority and identity, such as motor vehicle operators' licenses and draft board certificates, but bona fides of such documents must be ascertained if lack of it would be disclosed by reasonable inspections, circumstances considered; such circumstances include vendor's right to rely upon usual presumptions of CCP § 1963. Dethlefsen v. State Board of Equalization (1956, Cal App 3d Dist) 145 Cal App 2d 561, 303 P2d 7, 1956 Cal App LEXIS 1376.

To prevail with defense under section, it is incumbent on merchant to demand documentary proof of customer's majority "before furnishing any alcoholic beverage to a minor," and where hearing officer and department do not believe mer-

chant's story that minor exhibited driver's license which purportedly proved his majority, such defense is not established. Molina v. Munro (1956, Cal App 2d Dist) 145 Cal App 2d 601, 302 P2d 818, 1956 Cal App LEXIS 1382.

It is essential to successful defense under this section that operator's license or other evidence of majority be presented by one whose appearance indicates that he or she could be twenty-one years of age, and reasonable inspection of document must be made by licensee or his agent. 5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 748, 318 P2d 820, 1957 Cal App LEXIS 1351.

There are three tests by which to measure conduct of liquor licensee in determining whether there has been compliance with this section: (1) licensee who makes diligent inspection of documentary evidence of majority and identity offered by customer is entitled to rely on its apparent genuineness; (2) he must exercise caution that would be shown by reasonable and prudent person in same or similar circumstances; and (3) he must make inspection of documentary evidence and his appraisal of physical appearance of customer "immediately prior" to sale. Farah v. Alcoholic Beverage Control Appeals Board (1958, Cal App 2d Dist) 159 Cal App 2d 335, 324 P2d 98, 1958 Cal App LEXIS 2003.

In proceedings for suspension of a license under the Alcoholic Beverage Control Act for violation of B & P C § 25658, subds. (a), (b), by selling and furnishing an alcoholic beverage to a minor and by permitting the minor to consume an alcoholic beverage in the licensee's premises, the licensee may assert reliance on the original demand and exhibition of evidence of majority and identity (B & P C § 25660), on entry upon the premises, in selling, furnishing or permitting the consumption of an alcoholic beverage by that minor following the entry and such defense is not lost because a second employee pursued an inadequate inquiry before serving the minor, where the minor patron had exhibited to one employee on entry on the premises, and at all times thereafter had on his person, what was found to be bona fide evidence of majority and identity. Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968, Cal App 1st Dist) 261 Cal App 2d 181, 67 Cal Rptr 734, 1968 Cal App LEXIS 1730.

Reliance in good faith upon a document issued by one of the governmental entities enumerated in B & P C § 25660, constitutes a defense to a liquor license suspension proceeding based upon dealings with a minor, even though the document is altered, forged, or otherwise spurious. Kirby v. Alcoholic Beverage Control Appeals Board (1968, Cal App 5th Dist) 267 Cal App 2d 895, 73 Cal Rptr 352, 1968 Cal App LEXIS 1466.

B & P C § 25660 applies to fake identifications that purport to be issued by a government agency. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2004, Cal App 1st Dist) 118 Cal App 4th 1429, 13 Cal Rptr 3d 826, 2004 Cal App LEXIS 819.

Liquor licensee's employee asked to see minor's identification, but she did not recognize that the license was a fake. Although B & P C § 25560 applied to fake identifications that purported to be issued by a government agency, the licensees in this case failed to exercise reasonable diligence and did not reasonably rely on the fake identification. Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2004, Cal App 1st Dist) 118 Cal App 4th 1429, 13 Cal Rptr 3d 826, 2004 Cal App LEXIS 819.

5. Burden of Proof

Defense afforded licensee by this section is affirmative, and burden is on him to show that he is entitled to its benefits. Farah v. Alcoholic Beverage Control Appeals Board (1958, Cal App 2d Dist) 159 Cal App 2d 335, 324 P2d 98, 1958 Cal App LEXIS 2003; Burako v. Munro (1959, Cal App 1st Dist) 174 Cal App 2d 688, 345 P2d 124, 1959 Cal App LEXIS 1754.

In a proceeding involving a suspension of a license under the Alcoholic Beverage Control Act, the licensee has the burden of proving the defense that evidence of majority and identity was demanded, shown and acted on as prescribed by the provisions of B & P C § 25660. Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968, Cal App 1st Dist) 261 Cal App 2d 181, 67 Cal Rptr 734, 1968 Cal App LEXIS 1730.

The Department of Alcoholic Beverage Control did not abuse its discretion in suspending a liquor license because of the licensee's employment of a minor in violation of B & P C § 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 governmental entity (B & P C § 25660); a licensee in such case has the dual burden of showing, not only that he acted in good faith, free from an 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 (1968, Cal App 5th Dist) 267 Cal App 2d 895, 73 Cal Rptr 352, 1968 Cal App LEXIS 1466.

6. Evidence: Sufficiency

A finding that the State Board of Equalization's decision was not supported by substantial evidence would not be disturbed on appeal, where it appeared that the clerk in charge of the cafe asked the minor to show his identification as to his age, that the minor exhibited a registration card issued in the name of another person; that the minor signed a piece of paper copying the name of the other person, and that the clerk compared the signatures, thought there was a fair resemblance, and made the sale. Young v. State Board of Equalization (1949, Cal App) 90 Cal App 2d 256, 202 P2d 587, 1949 Cal App LEXIS 969.

Where evidence showed that before purchasing an intoxicant purchaser submitted to the bartender a document, purporting to indicate majority, apparently complying with this section, and bartender testified that he believed document to be official, Board of Equalization and courts could not suspend license for selling to a minor, in absence of a supported finding that bartender acted in bad faith and without diligence. Keane v. Reilly (1955, Cal App 1st Dist) 130 Cal App 2d 407, 279 P2d 152, 1955 Cal App LEXIS 1912.

Where purchaser of liquor presented card issued by draft board to purchaser which accurately described him, and his appearance physically was that of one who might either be a minor or have attained his majority, vendor is entitled to rely upon presumption that purchaser had not committed crime of altering certificate. Dethlefsen v. State Board of Equalization (1956, Cal App 3d Dist) 145 Cal App 2d 561, 303 P2d 7, 1956 Cal App LEXIS 1376.

Liquor licensee establishes defense under section where licensee shows that he relied on draft card from which it appeared that minor was 21, and where, notwithstanding the birth date on card had been altered, there is no substantial support for court's finding that alteration should have been apparent from reasonably careful inspection, where there is no finding that licensee acted in bad faith or discovered alteration, where card accurately described minor, and where his physical appearance was that of person who might be under or over 21. Dethlefsen v. State Board of Equalization (1956, Cal App 3d Dist) 145 Cal App 2d 561, 303 P2d 7, 1956 Cal App LEXIS 1376.

Mere fact of production of vehicle operator's license does not make case. 5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control (1957, Cal App 2d Dist) 155 Cal App 2d 748, 318 P2d 820, 1957 Cal App LEXIS 1351.

Mere production of birth certificate does not establish defense in proceeding for suspension under this section. Pastime Cafe, Inc. v. Department of Alcoholic Beverage Control (1958, Cal App 2d Dist) 159 Cal App 2d 114, 323 P2d 551, 1958 Cal App LEXIS 1969.

If document presented does not contain sufficient information to enable licensee or his agent reasonably to conclude that holder is person described therein, it does not meet requirements of this section. Pastime Cafe, Inc. v. Department of Alcoholic Beverage Control (1958, Cal App 2d Dist) 159 Cal App 2d 114, 323 P2d 551, 1958 Cal App LEXIS 1969.

In disciplinary proceeding against on-sale liquor licensee charging sale of liquor to named minor and that he was permitted to consume liquor on premises, though co-owner who sold liquor testified that minor ordered drink and exhibited navy identification card which showed him to be "almost twenty-two years old" that he was served, left bar and returned hour later and that co-owner recognized him and served him without again asking for his card, hearing officer of department of alcoholic beverage control was not required to believe this testimony, co-owner's interest and motive being obvious, and where hearing officer disbelieved this testimony and there was sufficient evidence to sustain accusation, reviewing court will uphold suspension of license without determining whether showing of card one hour before service is "immediate" within meaning of this section. Burako v. Munro (1959, Cal App 1st Dist) 174 Cal App 2d 688, 345 P2d 124, 1959 Cal App LEXIS 1754.

The evidence was sufficient to support the suspension of a liquor license for sale to minors where it appeared that each of the minors involved testified that he purchased liquor from the licensees' store, two of them showing no identification at all and the third showing only an identification card such as contained in a wallet and which he filled out himself, and there was some corroboration of their testimony. Raab v. Department of Alcoholic Beverage Control (1960, Cal App 4th Dist) 177 Cal App 2d 333, 2 Cal Rptr 26, 1960 Cal App LEXIS 2475.

§ 25660.5. Furnishing false evidence of age

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.

Added Stats 1957 ch 1274 § 1. Amended Stats 1965 ch 1216 § 1.

Amendments:

1965 Amendment: Added "or who sells, gives or furnishes to any person under the age of 21 years evidence of majority and identification of any other person".

Cross References:

Punishment for misdemeanors: B & P C § 25617.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25661. Presenting or possessing false evidence of age; Penalties

(a) 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.

(b) The penalties imposed by this section do not preclude prosecution or the imposition of penalties under any other provision of law, including, but not limited to, Section 13202.5 of the Vehicle Code.

Added Stats 1953 ch 152 § 1. Amended Stats 1957 ch 1274 § 2; Stats 1959 ch 868 § 1; Stats 1983 ch 1092 § 64, effective September 27, 1983, operative January 1, 1984; Stats 1989 ch 110 § 1; Stats 1999 ch 787 § 5 (AB 749); Stats 2007 ch 743 § 3 (AB 1658), effective January 1, 2008.

Amendments:

1957 Amendment: Added **(1)** "printed, or photostatic" before "and identity" after, "evidence of age"; **(2)** "or who has in his possession any false or fraudulent written, printed, or photostatic evidence of age and identity," before "is guilty of a misdemeanor"; and **(3)** "and shall be punished by a fine of at least one hundred dollars ($100)" at the end of the section.

1959 Amendment: Added ", no part of which shall be suspended" at the end of the section.

1983 Amendment: Substituted "two hundred fifty dollars ($250)" for "one hundred twenty–five dollars ($125)".

1989 Amendment: Added **(1)** "or her" wherever it appears; and **(2)** "; 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".

1999 Amendment: Added the second and third sentences.

2007 Amendment: (1) Designated the former section to be subd (a); and (2) added subd (b).

Historical Derivation:
Stats 1935 ch 330 § 61, as amended Stats 1937 ch 758 § 93, Stats 1949 ch 1022 § 2, Stats 1951 ch 1085 § 1.

Cross References:
Punishment for misdemeanors: B & P C § 25617.
Violation as an infraction: Pen C § 19.8.

Collateral References:
10 Witkin Summary (10th ed) Parent and Child § 479.
Cal Jur 3d (Rev) Criminal Law § 71.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:
Review of Selected 1983 Legislation. 15 Pacific LJ 559.

Attorney General's Opinions:
Application to this section with regard to whether false evidence of age and identity is possessed on licensed premises or in connection with sale of alcoholic beverages. 32 Ops. Cal. Atty. Gen. 200.

Annotations:
Serving liquor to minor in home as unlawful sale or gift. 14 ALR3d 1186.

§ 25662. Possession by person under 21 years of age in public place; Penalties; Seizure, destruction, and impoundment by peace officer

(a) Except as provided in Section 25667, 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.

(c) The penalties imposed by this section do not preclude prosecution or the imposition of penalties under any other provision of law, including, but not limited to, Section 13202.5 of the Vehicle Code.

Added Stats 1953 ch 152 § 1. Amended Stats 1963 ch 396 § 1; Stats 1988 ch 680 § 1; Stats 1990 ch 1697 § 1 (SB 2635); Stats 1996 ch 124 § 6 (AB 3470); Stats 1997 ch 17 § 13 (SB 947); Stats 1999 ch 787 § 6 (AB 749); Stats 2007 ch 743 § 4 (AB 1658), effective January 1, 2008; Stats 2010 ch 245 § 2 (AB 1999), effective January 1, 2011.

Amendments:
1963 Amendment: Added "or in any place open to the public" before "is guilty".
1988 Amendment: Added **(1)** subdivision designation (a); **(2)** "or her" wherever it appears in subd (a); and **(3)** subd (b).
1990 Amendment: **(1)** Amended subd (a) by adding **(a)** ", responsible adult relative, or any other adult designated by the parent or legal guardian," in the second sentence; and **(b)** the third sentence; and **(2)** substituted "that period" for "the time limits prescribed herein" in the last sentence of subd (b).
1996 Amendment: Substituted **(1)** "that" for "which" after "in plain view" in the first paragraph of subd (b); and **(2)** "possession" for "possesssion" after "container and in the" in the second paragraph of subd (b).

1997 Amendment: The amendment made no changes.

1999 Amendment: Substituted subd (a) for former subd (a) which read: "(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. 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."

2007 Amendment: Added subd (c).

2010 Amendment: Added "Except as provided in Section 25667," at the beginning of subd (a).

Historical Derivation:

Stats 1935 ch 330 § 61, as amended Stats 1937 ch 758 § 93, Stats 1949 ch 1022 § 2, Stats 1951 ch 1085 § 1.

Cross References:

Punishment for misdemeanors: B & P C § 25617.

Violation as an infraction: Pen C § 19.8.

Possession by minor: Veh C § 23123.5.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 329 "Juvenile Courts: Delinquency Proceedings".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2960, Possession of Alcoholic Beverage by Person Under 21

10 Witkin Summary (10th ed) Parent and Child § 479.

Law Review Articles:

Review of Selected 1988 Legislation. 20 Pacific LJ 685.

Annotations:

Serving liquor to minor in home as unlawful sale or gift. 14 ALR3d 1186.

NOTES OF DECISIONS

1. Generally
2. Construction with Other Laws

1. Generally

It was not only the right of a police officer but his duty to check any suspicious activity and it was proper that the officer should find out more about a panel truck, which he had never seen before, observed in the middle of the night parked in a questionably illegal way in an alley located in a home area; the officer had the right to stop the car and require identification, and when he discovered that there was an active breach of the law by the minor occupants, under circumstances which prima facie made them guilty of an offense through the use of an open jug of wine, he was not remiss in ordering their arrest. Bramlette v. Superior Court of Merced County (1969, Cal App 5th Dist) 273 Cal App 2d 799, 78 Cal Rptr 532, 1969 Cal App LEXIS 2228.

A police officer's arrest of a juvenile for violating B & P C § 25662 (possession of alcoholic beverages by a minor in a public place) was proper, where the officer had noticed a group of juveniles congregated near a liquor store, where they told him they were waiting for someone but would move on, where defendant then came out of the liquor store with a paper bag, which he went out of his way to deposit behind a wall upon seeing the officer, and where the bag proved to contain a bottle of whiskey and two bottles of wine. The fact that juveniles were in an area where such groups do not usually congregate justified detaining and questioning them and defendant's suspicious actions justified investigation of the contents of the bag. People v. Superior Court (1973, Cal App 1st Dist) 30 Cal App 3d 257, 106 Cal Rptr 211, 1973 Cal App LEXIS 1155.

2. Construction with Other Laws

Defendant, placed under arrest for possession of alcohol by a minor, could not be arrested or prosecuted under B & P C § 25662, relating to possession of an alcoholic beverage by a minor in a public place, but was chargeable under Veh C § 23123.5 [renumbered], covering such possession "in a motor vehicle"; defendant was not only subject to the extra penalties imposed by that section but was also entitled to the rights of a person charged thereunder, including the right to be taken before a magistrate so that he might be admitted to jail. People v. Superior Court (1971, Cal App 1st Dist) 14 Cal App 3d 935, 92 Cal Rptr 545, 1971 Cal App LEXIS 1043.

The special provisions of the Vehicle Code relating to the possession of an alcoholic beverage by a minor "in a motor vehicle" govern overlapping provisions of the Business and Professions Code, covering such possession in a public place. People v. Superior Court (1971, Cal App 1st Dist) 14 Cal App 3d 935, 92 Cal Rptr 545, 1971 Cal App LEXIS 1043.

A booking search of a juvenile defendant legally arrested under B & P C § 25662, for possession of alcoholic beverages in a public place was proper, and marijuana found on his person was therefore admissible in evidence against him. While B & P C § 24209, provides that a person arrested for such an offense may be released without being taken before a magistrate on his signing an agreement to appear in court, there is no requirement that such a person must be released without bail or without booking; it is a matter within the discretion of the arresting officer or the booking officer. People v. Superior Court (1973, Cal App 1st Dist) 30 Cal App 3d 257, 106 Cal Rptr 211, 1973 Cal App LEXIS 1155.

State law did not preempt an ordinance that prohibited underage drinking, as shown by blood alcohol, because Cal Const Art XX, § 22, does not refer to consumption and the ordinance was not duplicative of H & S C § 11999, subd. (e); B & P C §§ 25662, subd. (a), 25665, 25658, subd. (b); or Veh C §§ 23136, 23140. In re Jennifer S. (2009, 1st Dist) 179 Cal App 4th 64, 101 Cal Rptr 3d 467, 2009 Cal App LEXIS 1803, review denied (2010, Cal.) 2010 Cal. LEXIS 1230.

Defendant was not advised of his right to elect a misdemeanor prosecution as provided in Pen C § 17(d)(1), and of his right to a jury trial and appointed counsel if he so elected. This was fundamental structural error; thus, defendant's conviction for being a minor in possession of an alcoholic beverage in violation of B & P C § 25662(a), which had been charged as an infraction pursuant to Pen C § 19.8, had to be reversed. People v. Smith (2012) 2012 Cal App LEXIS 535.

§ 25663. Employment of person under 21; Employment of person under 18 by off-sale licensee; Employment in bona fide public eating place licensed for on-sale of alcoholic beverages

(a) Except as provided in subdivision (c), no licensee that sells or serves alcoholic beverages for consumption on the premises shall employ any person under 21 years of age for the purpose of preparing or serving alcoholic beverages. 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.

(c) Any person between 18 and 21 years of age employed 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, may serve alcoholic beverages to consumers only under the following circumstances: such service occurs in an area primarily designed and used for the sale and service of food for consumption on the premises; and the primary duties of the employee shall be the service of meals to guests, with the service of alcoholic beverages being incidental to such duties. For purposes of this subdivision, "serve" or "service" includes the delivery, presentation, opening, or pouring of an alcoholic beverage.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 1258 § 1; Stats 1959 ch 543 § 1; Stats 1984 ch 770 § 1; Stats 2008 ch 508 § 4 (AB 3071), effective January 1, 2009.

Amendments:

1955 Amendment: Added (1) ", during business hours,"; and (2) "primarily designed and".

1959 Amendment: Substituted "any person under the age of 21 years" for "minors".

1984 Amendment: (1) Designated the former section to be subd (a); and **(2)** added subd (b).

2008 Amendment: Added (1) the first sentence of subd (a); and (2) subd (c).

Historical Derivation:

Former B & P C § 25667 as added Stats 1976 ch 486 § 1.

Cross References:

Limitations period governing violation of this section: B & P C §§ 24206, 24208.

Punishment for misdemeanors: B & P C § 25617.

Collateral References:

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.22.

3 Witkin Summary (10th ed) Agency and Employment § 380.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1], 100B.31[2].

Law Review Articles:

Review of Selected 1984 Legislation. 16 Pacific LJ 520.

NOTES OF DECISIONS

1. Evidence: Sufficiency
2. Abuse of Discretion

1. Evidence: Sufficiency

Conviction of conspiracy to violate this section and § 25658 was supported by evidence that minor girls were employed by defendant as hostesses and waitresses, that defendant did not ask their ages but was on notice from their appearance that there was question as to their minority, that defendant and manager of premises agreed to make as good use of girls as possible, that defendant gave orders to have girls "push" sale of champagne and that their purpose was to associate with male customers and induce them to spend money that defendant encouraged the girls with respect to their conduct with customers, and that he instructed one of the girls to serve champagne to customer and to other girls. People v. Holstun (1959, Cal App 2d Dist) 167 Cal App 2d 479, 334 P2d 645, 1959 Cal App LEXIS 2359.

2. Abuse of Discretion

The Department of Alcoholic Beverage Control did not abuse its discretion in suspending a liquor license because of the licensee's employment of a minor in violation of B & P C § 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 governmental entity (B & P C § 25660); a licensee in such case has the dual burden of showing, not only that he acted in good faith, free from an 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 (1968, Cal App 5th Dist) 267 Cal App 2d 895, 73 Cal Rptr 352, 1968 Cal App LEXIS 1466.

§ 25663.5. Employment of persons 18 to 21 years of age as 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 the 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.

Added Stats 1971 ch 1761 § 1.

Collateral References:

3 Witkin Summary (10th ed) Agency and Employment § 380.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25664. Advertisements appealing to minors

(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.

Added Stats 1953 ch 152 § 1. Amended Stats 1985 ch 803 § 2, operative July 1, 1986; Stats 2003 ch 771 § 3 (AB 1398).

Amendments:

1985 Amendment: (1) Amended the first paragraph by **(a)** substituting "alcoholic beverages" for "distilled spirits" after "advertisement of" and after "drink the"; **(b)** deleting "or immature persons" after "minors" in the first sentence; and **(c)** adding the second sentence; and **(2)** added the second paragraph.

2003 Amendment: (1) Added subdivision designation (a)(1); **(2)** added the commas after "The use" and after "beverages" both times it appears in subd (a)(1); **(3)** added subd (a)(2); and (4) added subdivision designations (a)(3) and (b).

Historical Derivation:

Stats 1935 ch 330 § 55.2, as added Stats 1937 ch 758 § 87¾.

Note—Stats 2003 ch 771 provides:

SEC. 2. It is the intent of the Legislature, in enacting this act, to prohibit, in California, advertising promoting the consumption of alcohol outside the United States that is aimed at individuals under the age of 21 years by establishments that sell alcoholic beverages as one of an establishment's principal business activities.

Cross References:

Representations to the public: B & P C §§ 17500 et seq.

Time within which accusations against licensees for violating section to be filed: B & P C §§ 24206, 24208.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 14 "Advertising".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1], 50.01[2].

Law Review Articles:

Alcoholic beverage advertising on the airwaves: Alternatives to a ban or counteradvertising. 34 UCLA LR 1139.

Annotations:

Validity, construction, and effect of statutes, ordinances or regulations prohibiting or regulating advertising of intoxicating liquors. 20 ALR4th 600.

§ 25665. Persons under 21 years of age on 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.

Added Stats 1955 ch 1779 § 11, operative January 1, 1957. Amended Stats 1957 ch 2152 § 2; Stats 1959 ch 867 § 1; Stats 1983 ch 1092 § 65, effective September 27, 1983, operative January 1, 1984.

Amendments:

1957 Amendment: (1) Substituted "in" for "on" before "the licensed premises" in the first sentence and (2) added the second sentence.

1959 Amendment: Added ", no part of which shall be suspended" at the end of the section.

1983 Amendment: Substituted "two hundred dollars ($200)" for "one hundred dollars ($100)".

Cross References:

Limitations period governing violations of this section: B & P C §§ 24206, 24208.

Punishment for misdemeanors: B & P C § 25617.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 116 "Civil Rights: Discrimination In Business Establishments".

Cal. Points & Authorities (Matthew Bender®) ch 15 "Alcoholic Beverage Licensing" § 15.22.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.21[2], 18.200[1].

Law Review Articles:

Review of Selected 1983 Legislation. 15 Pacific LJ 559.

Attorney General's Opinions:

Prohibited presence of persons under age of 21 years on "public premises" of holder of license to sell alcoholic beverages on such premises; application of prohibition during closing hours from 2 o'clock a.m. to 6 o'clock a.m. 55 Ops. Cal. Atty. Gen. 342.

NOTES OF DECISIONS

1. Generally
2. Applicability
3. Local Ordinances

1. Generally

Where minor is present in barroom and bartender is inactive or passive with respect to his affirmative duty to ascertain age of patrons, such passive conduct on part of bartender

amounts to "permitting" minor to be present in barroom. Ballesteros v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 234 Cal App 2d 694, 44 Cal Rptr 633, 1965 Cal App LEXIS 1054.

Married woman 18 years of age who accompanies her husband into on-sale licensed premises does not come within exception stated in this section that prohibition against minors being on on-sale premises is not applicable to person under 21 years of age who is on premises on lawful business, where husband was in barroom merely as patron of alcoholic beverage licensees. Ballesteros v. Alcoholic Beverage Control Appeals Board (1965, Cal App 2d Dist) 234 Cal App 2d 694, 44 Cal Rptr 633, 1965 Cal App LEXIS 1054.

2. Applicability

A finding that a liquor store that also had a bar allowed a 20-year old woman to enter with friends and sit at a table for 10 minutes before a waitress notice her and asked for identification, alone, was not sufficient to support a conclusion that the store violated B & P C § 25665. CMPB Friends, Inc. v. Alcoholic Beverage Control Appeals Bd. (2002, Cal App 2d Dist) 100 Cal App 4th 1250, 122 Cal Rptr 2d 914, 2002 Cal App LEXIS 4484.

3. Local Ordinances

State law did not preempt an ordinance that prohibited underage drinking, as shown by blood alcohol, because Cal Const Art XX, § 22, does not refer to consumption and the ordinance was not duplicative of H & S C § 11999, subd. (e); B & P C §§ 25662, subd. (a), 25665, 25658, subd. (b); or Veh C §§ 23136, 23140. In re Jennifer S. (2009, 1st Dist) 179 Cal App 4th 64, 101 Cal Rptr 3d 467, 2009 Cal App LEXIS 1803, review denied (2010, Cal.) 2010 Cal. LEXIS 1230.

§ 25666. Appearance of minor at hearing

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.

Added Stats 1963 ch 1562 § 1. Amended Stats 1987 ch 81 § 1.

Amendments:

1987 Amendment: (1) Added "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" in the first sentence; **(2)** added the second sentence; and **(3)** substituted "the" for "such" after "testimony of" in the third sentence.

Cross References:

Depositions: Gov C § 11511.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25666.5. Participation in youthful drunk driver visitation program

If a person is convicted of a violation of subdivision (b) of Section 25658, or Section 25658.5, 25661, or 25662 and is granted probation, the court may order, with the consent of the defendant, as a term and condition of probation, in addition to any other term and condition required or authorized by law, that the defendant participate in the program prescribed in Article 3 (commencing with Section 23509) of Chapter 12 of Division 11.5 of the Vehicle Code.

Added Stats 1992 ch 432 § 1 (AB 2361). Amended Stats 1998 ch 118 § 1 (SB 1186), operative July 1, 1999.

Amendments:

1998 Amendment: Substituted "Article 3 (commencing with Section 23509) of Chapter 12 of Division 11.5" for "Article 1.7 (commencing with Section 23145) of Chapter 12 of Division 11".

Note—Stats 1998 ch 118 provides:

SEC. 85. Sections 1 to 83, inclusive, of this act, shall become operative on July 1, 1999.

Cross References:

Similar provision of the Penal Code: Pen C § 647.2.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25667. Immunity from prosecution under specified circumstances

(a) Any person under the age of 21 years shall be immune from criminal prosecution under subdivision (a) of Section 25662 and subdivision (b) of Section 25658, where the person establishes all of the following:

(1) The underage person called 911 and reported that either himself or herself or another person was in need of medical assistance due to alcohol consumption.

(2) The underage person was the first person to make the 911 report.

(3) The underage person, who reported that another person was in need of medical assistance, remained on the scene with the other person until that medical assistance arrived and cooperated with medical assistance and law enforcement personnel on the scene.

(b) This section shall not provide immunity from criminal prosecution for any offense that involves activities made dangerous by the consumption of alcoholic beverages, including, but

not limited to, a violation of Section 23103 of the Vehicle Code, as specified by Section 23103.5 of the Vehicle Code, or a violation of Sections 23152 and 23153 of the Vehicle Code.

Added Stats 2010 ch 245 § 3 (AB 1999), effective January 1, 2011.

Former Sections:

Former B & P C § 25667, similar to the present section, was added Stats 1976 ch 486 § 1, and repealed Stats 2008 ch 508 § 6 (AB 3071), effective January 1, 2009. See B & P C § 5663.

CHAPTER 17

Administrative Provisions

Section
25750. Power of department to make rules; Nude persons; County option
25751. Power of department
25752. Records
25753. Examination of books and inspection of premises
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25755. Authority as peace officers; Inspection of premises; Narcotics enforcement training
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25761. Disposition of fees and tax moneys
25762. Disposition of fines and forfeitures
25763. [Repealed]

§ 25750. Power of department to make rules; Nude persons; County option

(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 use 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 135, ch 1842 § 18; Stats 1987 ch 636 § 1.

Amendments:

1955 Amendment: Substituted "department" for "board".

1987 Amendment: (1) Designated the former section to be subd (a); **(2)** amended subd (a) by **(a)** substituting "those" for "such" after "and prescribe"; **(b)** adding "California"; **(c)** deleting "any of the provisions of" after "inconsistent with"; and **(d)** deleting "the provisions of" after "including particularly" and after "this division and"; and **(3)** added subds (b) and (c).

Historical Derivation:

(a) Stats 1935 ch 330 § 38, as amended Stats 1937 ch 758 § 60, Stats 1945 ch 1401 § 33.1.
(b) Stats 1933 ch 658 § 7.
(c) Stats 1933 ch 178 § 12.

Cross References:

Alcoholic beverages control: Const Art XX § 22.
Administrative adjudication: Gov C §§ 11500 et seq.

Collateral References:

Pertinent administrative rules and regulations: 4 Cal Code Reg §§ 1 et seq.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Law Review Articles:

Liquor control. 38 CLR 79.
Some aspects of liquor control in California. 39 CLR 82.
Alcoholic control administration. 20 St BJ 59.

Attorney General's Opinions:

Powers as regards rules regulating liquor fair trade contracts and price schedules. 9 Ops. Cal. Atty. Gen. 296.

Power to make rule prohibiting retail licensee from permitting any female employee to accept from patron upon licensed premises proffered drink of alcoholic beverage. 23 Ops. Cal. Atty. Gen. 199.

Power to make rule prohibiting ownership interest, direct or indirect, upon part of any law enforcement official in any license issued under Alcoholic Beverage Control Act or in any business operated under such license. 23 Ops. Cal. Atty. Gen. 203.

Power to make rule prohibiting delivery and transfer of alcoholic beverage licenses issued pursuant to § 24044 until such time as premises in connection with which license is sought are in fact equipped and completed for actual and legitimate retail sale of alcoholic beverages. 23 Ops. Cal. Atty. Gen. 206.

Authority to adopt rule barring licensees from maintaining insurance purporting to protect the holder of license from loss by suspension or revocation. 31 Ops. Cal. Atty. Gen. 79.

Department of Alcoholic Beverage Control is not authorized to adopt regulation allowing retail licensee to transport tax paid alcoholic beverages to retailer's out–of–state Free Port warehouse for "temporary retention" prior to delivery to retailer's licensed premises in California if such retention constitutes storage; Department is not authorized to adopt regulation allowing retail licensee to transport alcoholic beverages stored by retailer in a Free Port warehouse facility outside the state to retailer's licensed premises in California. 69 Ops. Cal. Atty. Gen. 191.

Annotations:

Right to attack validity of administrative regulations issued under licensing law. 65 ALR2d 660.

NOTES OF DECISIONS

1. Generally
2. Particular Rules and Regulations
3. Applications and Licenses
4. Prices
5. Employees and Entertainment

1. Generally

Former Board of Equalization could not, under the guise of rule making, in effect usurp the power of the legislature by attempting to enlarge and extend the Alcoholic Beverage Control Act. Blatz Brewing Co. v. Collins (1945, Cal App) 69 Cal App 2d 639, 160 P2d 37, 1945 Cal App LEXIS 705.

An invalid rule of the State Board of Equalization was not ratified by the subsequent passage of this statute and former Stats 1935 p 1123 § 38 (now § 25006). Blatz Brewing Co. v. Collins (1948, Cal App) 88 Cal App 2d 438, 199 P2d 34, 1948 Cal App LEXIS 1487.

Fact that person could conjure up a hypothetical situation as to which rule of Board of Equalization might have been unreasonable did not require that rule be held unconstitutional in every case of facts actually before court. Mercurio v. Department of Alcoholic Beverage Control (1956, Cal App 1st Dist) 144 Cal App 2d 626, 301 P2d 474, 1956 Cal App LEXIS 1773.

Board of Equalization had broad power to determine what was contrary to public welfare or morals and to prohibit licensee from doing or permitting any such acts on licensed premises. Mercurio v. Department of Alcoholic Beverage Control (1956, Cal App 1st Dist) 144 Cal App 2d 626, 301 P2d 474, 1956 Cal App LEXIS 1773.

In determining whether rule of Department of Alcoholic Beverage Control constitutes proper exercise of police power, appellate court is limited to ascertaining whether object of rule is one for which police power may be invoked and, if so, whether rule bears reasonable relation to object sought to be obtained. Harris v. Alcoholic Beverage Control Appeals Board (1962, Cal App 3d Dist) 204 Cal App 2d 729, 22 Cal Rptr 634, 1962 Cal App LEXIS 2304.

In evaluating an equal protection attack against a regulatory statute or regulation, it is improper to isolate its effects on a specific segment of the affected class and to sustain the attack if found deficient as to that segment alone; the overall effect on the entire class must be viewed. Hence, the Alcoholic Beverage Control Appeals Board improperly based its finding that a rule of the Department of Alcoholic Beverage Control, disqualifying spouses of disqualified persons from holding liquor licenses, was unconstitutional sex discrimination, by considering the effect on spouses of law enforcement officers only and ignoring the multitude of spouses of other employees of sheriff, police, district attorney and Alcoholic Beverage Control offices, all of whom were disqualified from holding liquor licenses and most of whom would probably be male. Reece v. Alcoholic Beverage Etc. Appeals Bd. (1976, Cal App 3d Dist) 64 Cal App 3d 675, 134 Cal Rptr 698, 1976 Cal App LEXIS 2111.

2. Particular Rules and Regulations

Where the act itself defines what constitutes wine, a ruling contrary to that definition is ineffective. Tux Ginger Ale Co. v. Davis (1936, Cal App) 12 Cal App 2d 73, 54 P2d 1122, 1936 Cal App LEXIS 979.

Rule may not be enacted prohibiting licensed dealers in beer from purchasing or importing beer produced by out-of-state brewers unless the latter obtains certificates of compliance. Blatz Brewing Co. v. Collins (1945, Cal App) 69 Cal App 2d 639, 160 P2d 37, 1945 Cal App LEXIS 705.

Cal Adm Code § 70 [Cal Code Reg], requiring liquor licensee whose licensed premises have been placed "out of bounds" or "off limits" by armed forces disciplinary control board to post two notices of that fact in conspicuous places on his premises, is in excess of rule-making authority vested in Department of Alcoholic Beverage Control, and Alcoholic Beverage Control Appeals Board properly set aside decision of Department of Alcoholic Beverage Control suspending on-sale beer license held by licensees who refused to comply with requirement. Harris v. Alcoholic Beverage Control Appeals Board (1962, Cal App 3d Dist) 204 Cal App 2d 729, 22 Cal Rptr 634, 1962 Cal App LEXIS 2304.

By adopting regulations that defined distilled spirits to include flavored malt beverages, the California State Board of Equalization exceeded its rulemaking authority under Rev & Tax C § 32451, because the regulations were inconsistent with the definitions of distilled spirits and beer in B & P C §§ 23005, 23006. Pursuant to Rev & Tax C §§ 32002, 32152, the board was required to apply those definitions and to coordinate with federal regulations that classified flavored malt beverages as beer; moreover, B & P C § 25750, gave the authority to interpret those definitions to the California Department of Alcoholic Beverage Control. Diageo-Guinness USA, Inc. v. State Bd. of Equalization (2012, 3d Dist) 2012 Cal App LEXIS 505.

3. Applications and Licenses

Department may promulgate and interpret rules concerning surrender of licenses, such as 4 Cal Adm Code § 65 [Cal Code Reg]. Joseph George, Distributor v. Department of Alcoholic Beverage Control (1957, Cal App 1st Dist) 149 Cal App 2d 702, 308 P2d 773, 1957 Cal App LEXIS 2089.

Cal Adm Code tit 4 § 61.1 [Cal Code Reg], promulgated by Department of Alcoholic Beverage Control and providing that no on-sale general license or on-sale beer and wine license shall be issued within 1 mile of university unless department is satisfied that location of premises is sufficiently distant from campus and nature of licensed business is such that it will not be patronized by students, is void, being in conflict with Pen C § 172e, removing restriction against sale of alcoholic beverages in proximity to universities as to bona fide public eating places. Harris v. Alcoholic Beverage Control Appeals Board (1965, Cal App 1st Dist) 235 Cal App 2d 479, 45 Cal Rptr 450, 1965 Cal App LEXIS 947.

The cancellation of an off-sale general liquor license by the Department of Alcoholic Beverage Control pursuant to Adm Code, tit 4, Rule 65(d) was not unconstitutional and was not in excess of the department's jurisdiction, where the power of the department to adopt Rule 65 and to interpret the rule was derived from Cal Const, art XX, § 22, and B & P C § 25750, and implied from the power granted thereby, and the department did not, by adoption of the rule, abridge or enlarge its authority or exceed the powers given to it by the constitutional provision and the statute. Samson Market Co. v. Kirby (1968, Cal App 2d Dist) 261 Cal App 2d 577, 68 Cal Rptr 130, 1968 Cal App LEXIS 1779, cert den (1968) 393 US 11, 89 S Ct 49, 21 L Ed 2d 18, 1968 US LEXIS 578.

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. Hence, the record in proceedings challenging the departmental rules on equal protection grounds unequivocally disclosed justification for, and the rational relationship of, spousal disability where it was evident from the record that conflict of interest situations could readily develop should a person of questionable age be sold an alcoholic beverage by the licensee in the presence of the law enforcement officer. Reece v. Alcoholic Beverage Etc.

Appeals Bd. (1976, Cal App 3d Dist) 64 Cal App 3d 675, 134 Cal Rptr 698, 1976 Cal App LEXIS 2111.

The liquor industry is one whose regulation is recognized as intimately 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 of Alcoholic Beverage Control disqualifying law enforcement officials and spouses from holding liquor licenses, and the strict scrutiny test does not apply on a constitutional equal protection challenge to the rules. Reece v. Alcoholic Beverage Etc. Appeals Bd. (1976, Cal App 3d Dist) 64 Cal App 3d 675, 134 Cal Rptr 698, 1976 Cal App LEXIS 2111.

4. Prices

A rule of the State Board of Equalization making a violation of the Federal laws or regulations relating to ceiling prices for alcoholic beverages a ground for revocation of a liquor license, did not set up an original standard which bound the board in advance to be guided by any and every regulation which the O.P.A. might turn out touching liquor prices. Moore v. State Board of Equalization (1946, Cal App) 76 Cal App 2d 758, 174 P2d 323, 1946 Cal App LEXIS 780.

Regulation by Department of Alcoholic Beverage Control of quantity sales of distilled spirits to retailers does not come within meaning or purview of "public welfare or morals" as that term is used in Const Art XX, § 22. Schenley Industries, Inc. v. Munro (1965, Cal App 1st Dist) 237 Cal App 2d 106, 46 Cal Rptr 678, 1965 Cal App LEXIS 1234, overruled Ralphs Grocery Co. v. Reimel (1968) 69 Cal 2d 172, 70 Cal Rptr 407, 444 P2d 79, 1968 Cal LEXIS 234.

Legislature comprehensively covered entire field of alcoholic beverage control in enacting Alcoholic Beverage Control Act, but remained silent as to subject of permissible discounts on quantity sales of distilled spirits and did not delegate authority to act in this respect to Department of Alcoholic Beverage Control, notwithstanding department's authority to make "such reasonable rules as may be necessary or proper"; thus department did not have power or authority to enact rule prohibiting quantity sales of distilled spirits by manufacturers, rectifiers and wholesalers to retailers at discount which would amount to greater sum than seller's cost saving resulting from quantity sale as compared with single-case sale. Schenley Industries, Inc. v. Munro (1965, Cal App 1st Dist) 237 Cal App 2d 106, 46 Cal Rptr 678, 1965 Cal App LEXIS 1234, overruled Ralphs Grocery Co. v. Reimel (1968) 69 Cal 2d 172, 70 Cal Rptr 407, 444 P2d 79, 1968 Cal LEXIS 234.

A prohibition of quantity discounts of beer, effectively required by Rule 105(a) of the Department of Alcoholic Beverage Control, constitutes, not "price-fixing" requiring explicit legislative authorization, but merely a prohibition against price discrimination, for which no explicit legislative authorization is required (disapproving, to the extent inconsistent herewith, the rationale in Schenley Industries, Inc. v. Munro (1965) 237 Cal App 2d 106, 46 Cal Rptr 678, 1965 Cal App LEXIS 1234). Ralphs Grocery Co. v. Reimel (1968) 69 Cal 2d 172, 70 Cal Rptr 407, 444 P2d 79, 1968 Cal LEXIS 234.

5. Employees and Entertainment

Classification in Rule 143 of Board of Equalization forbidding female employees to solicit purchase or sale of alcoholic beverages on licensed premises was reasonable and did not arbitrarily discriminate against women, and rule had reasonable relation to legitimate ends for which board was created, was in harmony with purposes of Alcoholic Beverage Control Act, and was valid and constitutional as against charge that it was too broad and that Legislature had covered the field in enacting this section and §§ 25657, 24200.5 subd (b), relating to grounds for suspension and revocation of licenses. Mercurio v. Department of Alcoholic Beverage Control (1956, Cal App 1st Dist) 144 Cal App 2d 626, 301 P2d 474, 1956 Cal App LEXIS 1773.

Though the mere employment of "topless" waitresses by a liquor licensee is not ground for revocation of a license, licensees are not generally sanctioned to employ topless or other similarly undressed waitresses and do not enjoy general immunity from disciplinary action if they do; where such purveying of liquor is attended by deleterious consequences, the department should establish good cause and make out its case for revocation or, alternatively, the department can adopt regulations covering the situation. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1, 1970 Cal LEXIS 258.

§ 25751. Power of department

For the performance of its duties the department has the power conferred by Sections 11180 to 11191, inclusive, of the Government Code.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 136, ch 1842 § 19.

Amendments:

1955 Amendment: Substituted "department" for "board".

Historical Derivation:

Stats 1935 ch 330 § 38, as amended Stats 1937 ch 758 § 60, Stats 1945 ch 1401 § 33.1.

Cross References:

Investigations and hearings: Gov C §§ 11180 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 137, ch 1842 § 20; Stats 1959 ch 1357 § 1.

Amendments:

1955 Amendment: Prior to 1955, the section read: "In addition to any other reports required under this division, the board may, by rule and otherwise, require additional, other, or supplemental reports from licensees, common and private carriers, and other persons and prescribe the form, including verification, of the information to be given on, and the times

for filing of, such additional, other, or supplemental reports. The failure or refusal of any person to render the reports required under this section is a misdemeanor."

1955 Amendment substituted "department" for "board".

1959 Amendment: Amended the section to read as at present.

Historical Derivation:

Stats 1935 ch 330 § 38a, as added Stats 1937 ch 758 § 61.

Collateral References:

Pertinent administrative rules and regulations: 4 Cal Code Reg §§ 7 et seq.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.166, 18.200[1].

§ 25753. Examination of books and inspection of 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 138, ch 1842 § 21.

Amendments:

1955 Amendment: Substituted "department" for "board".

Historical Derivation:

(a) Stats 1935 ch 330 § 38b, as added Stats 1937 ch 758 § 62.

(b) Stats 1933 ch 658 § 9.

(c) Stats 1933 ch 51 § 7.

Cross References:

Penalty for filing false return, refusing to permit inspection, etc.: B & P C § 25616.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal Jur 3d (Rev) Criminal Law § 2551.

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Annotations:

Validity of particular statutory provisions or other regulations as to inspection, entry, or search of places where intoxicating liquors are sold, to facilitate determination of whether conditions of license are being complied with. 116 ALR 1098.

NOTES OF DECISIONS

1. Generally
2. Authority of Department
3. Evidence: Admissibility
4. Search and Seizure

1. Generally

An agent of the Department of Alcoholic Beverage Control, who, pursuant to an investigation of a public bar, failed to identify a man accompanying him as a police officer but merely identified him as a "new man" or by the officer's name, could not be charged with fraud or bad faith which would vitiate the authority of agents of the Department of Alcoholic Beverage Control and peace officers who make a reasonable search of a licensee's premises where the announced purpose of the visit by the agent was to conduct an investigation; neither the agent nor the police officer were under a duty to inform an employee of the licensee being investigated the exact capacity of the police officer accompanying the agent. People v. Lisner (1967, Cal App 2d Dist) 249 Cal App 2d 637, 57 Cal Rptr 674, 1967 Cal App LEXIS 2270.

2. Authority of Department

An investigation of a public bar by a police officer and an agent of the Department of Alcoholic Beverage Control did not exceed the scope of authority conferred by B & P C §§ 25753 and 25755, which authorizes the inspection of liquor licensee premises by employees of the Department of Alcoholic Beverage Control and peace officers for purposes of enforcing the Alcoholic Beverage Control Act, where the record indicates that the investigating officer did not extend the search beyond that incident to enforcement of the alcoholic beverage controls statute. People v. Lisner (1967, Cal App 2d Dist) 249 Cal App 2d 637, 57 Cal Rptr 674, 1967 Cal App LEXIS 2270.

This section authorizes the Department to examine only books and records relating to the business enterprise. However in view of the fact that this section had never been judicially construed the acts of the agent in examining licensee's personal bank records were discretionary and within the scope of his authority. Boreta v. Kirby (1971, ND Cal) 328 F Supp 670, 1971 US Dist LEXIS 13005, aff'd (CA9 Cal) 485 F2d 582, 1973 US App LEXIS 7494.

3. Evidence: Admissibility

In a criminal prosecution, incriminatory statements made by the defendant to a police officer and an agent of the Department of Alcoholic Beverage Control were not the fruits of an illegal search and therefore inadmissible evidence where the premises searched were not a dwelling or a private place of business, but a public bar; where evidence is sought by governmental officers, pursuant to a regulatory function, such as the public regulation of traffic in spiritous liquors, both the privilege against self-incrimination and the guaranty against unreasonable search and seizure are limited. People v. Lisner (1967, Cal App 2d Dist) 249 Cal App 2d 637, 57 Cal Rptr 674, 1967 Cal App LEXIS 2270.

4. Search and Seizure

An entry onto the premises and an examination of the records of a public bar with or without the consent of an employee of the bar did not constitute an illegal search where the officers conducting the entry and search did not exceed the authority conferred on them by B & P C §§ 25753 and 25755, relating to the power given agents and local peace officers to visit and inspect premises of liquor licensees. People v. Lisner (1967, Cal App 2d Dist) 249 Cal App 2d 637, 57 Cal Rptr 674, 1967 Cal App LEXIS 2270.

A search of a bar, made because of an anonymous tip indicating that narcotics sales were occurring there, which search was conducted without a warrant and pursuant to provisions of the Business and Professions Code was constitutionally reasonable. It advanced a substantial government interest in that B & P C § 24200.5, subd. (a) (revocation of liquor license for permitting illegal sales of drugs or narcotics), reflects a legislative judgment that the use of licensed premises for the purpose of drug sales poses a unique threat to the safety, welfare, health, peace, and morals of the people of the state that must be dealt with more vigorously than other illegal acts taking place on licensed premises. Further, the prerequisite of a warrant in such instances could easily frustrate inspection, and the statutes under which the search was authorized collectively provide a constitutionally adequate substitute for a warrant: B & P C §§ 25753, 25755,

advise the licensee that inspections may take place during business hours and adequately limit the discretion of the inspectors as to time, place, and scope. People v. Paulson (1990, Cal App 1st Dist) 216 Cal App 3d 1480, 265 Cal Rptr 579, 1990 Cal App LEXIS 10.

§ 25754. Administration of 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 139.

Amendments:

1955 Amendment: Substituted "The director and the persons employed by the department" for "The members of the board and the persons employed by the board" at the beginning of the section.

Historical Derivation:

(a) Stats 1935 ch 330 § 38c, as added Stats 1937 ch 758 § 63.

(b) Stats 1933 ch 658 § 24.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25755. Authority as peace officers; Inspection of premises; Narcotics enforcement training

(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.

Added Stats 1953 ch 152 § 1. Amended Stats 1953 ch 1331 § 19; Stats 1955 ch 447 § 140, ch 1516 § 1; Stats 1957 ch 39 § 7, ch 1271 § 4; Stats 1961 ch 1914 § 7; Stats 1968 ch 1222 § 30; Stats 1983 ch 572 § 1; Stats 1989 ch 1165 § 1, ch 1166 § 1; Stats 1990 ch 1695 § 1 (SB 2140); Stats 1993 ch 353 § 1 (AB 1047); Stats 1994 ch 742 § 1 (SB 2066). Supplemented by the Governor's Reorganization Plan No. 1 of 1995, effective July 12, 1995. Amended Stats 1996 ch 305 § 3 (AB 3103).

Amendments:

1955 Amendment: Substituted the section for the former section which read: "The members of the board and the persons employed by the board for the administration and enforcement of this division have all the powers of peace officers in, and the power to serve all warrants relating to, the enforcement of the penal provisions of this division, the rules of the board 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."

1957 Amendment: Substituted "department" for "board" after "rules of the".

1961 Amendment: Added the last paragraph.

1968 Amendment: (1) Amended the first paragraph by substituting (a) "are" for "have all the powers of" after "enforcement of this division"; (b) "are authorized, while acting as" for "have all the powers of" after "and such persons"; and (3) ", to enforce" for "in the enforcement of" before "any penal provisions"; and (2) amended the second paragraph by (a) deleting "local" before "peace officers"; and (b) adding "listed in Section 830.1 of the Penal Code".

1983 Amendment: (1) Substituted "or her license on the" for "license on such" near the end of the second paragraph; and **(2)** added the third paragraph.

1989 Amendment: (1) Added subdivision designations (a)–(c); **(2)** amended subd (a) by **(a)** substituting "these" for "such" after "intoxicating liquors, and"; and **(b)** deleting ", on, or about any licensed premises in" after "law while in"; and **(3)** added subd (d). (As amended Stats 1989, ch 1166, compared to the section as it read prior to 1989. This section was also amended by an earlier chapter, ch 1165. See Gov C § 9605.)

1990 Amendment: (1) Substituted "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" for "and peace officers listed in Section 830.1 of the Penal Code" in subd (b);

and **(2)** amended subd (c) by substituting **(a)** "California State Police Division" for "California State Police"; and **(b)** "subdivisions (b) and (g)" for "subdivisions (b) and (h)".

1993 Amendment: Substituted "June 1, 1995" for "June 1, 1993" at the end.

1994 Amendment: Amended subd (c) by adding **(1)** ", members of the University of California and California State University police departments,"; and **(2)** ", (c), (d),".

1996 Amendment: Amended subd (c) by substituting **(1)** "Peace officers of the Department of the California Highway Patrol" for "Members of the California State Police Division"; and **(2)** "subdivisions (a), (b), (c), and (f)" for "subdivisions (b), (c), (d), and (g)".

Historical Derivation:

Stats 1935 ch 330 § 38d, as added Stats 1937 ch 758 § 64.

Note—Stats 1996 ch 305 provides:

SECTION 1. It is the intent of the Legislature in enacting this act to enact, without substantive change, the Governor's Reorganization Plan No. 1 of 1995, which took effect July 12, 1995, and make related, conforming changes.

Cross References:

Enforcement duties of peace officers: B & P C § 25619.

Authority of sheriffs, policemen, marshals, and constables: Pen C § 830.1.

Commission on Peace Officer Standards and Training: Pen C § 13500.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender®) ch 18 "Alcoholic Beverage Licenses".

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Cal Jur 3d (Rev) Criminal Law § 2551.

NOTES OF DECISIONS

1. Generally
2. Authority of Department
3. Evidence: Admissibility
4. Search and Seizure

1. Generally

An investigation of a public bar by a police officer and an agent of the Department of Alcoholic Beverage Control did not exceed the scope of authority conferred by B & P C §§ 25753 and 25755, which authorizes the inspection of liquor licensee premises by employees of the Department of Alcoholic Beverage Control and peace officers for purposes of enforcing the Alcoholic Beverage Control Act, where the record indicates that the investigating officer did not extend the search beyond that incident to enforcement of the alcoholic beverage controls statute. People v. Lisner (1967, Cal App 2d Dist) 249 Cal App 2d 637, 57 Cal Rptr 674, 1967 Cal App LEXIS 2270.

2. Authority of Department

An entry onto the premises and an examination of the records of a public bar with or without the consent of an employee of the bar did not constitute an illegal search where the officers conducting the entry and search did not exceed the authority conferred on them by B & P C §§ 25753 and 25755, relating to the power given agents and local peace officers to visit and inspect premises of liquor licensees. People v. Lisner (1967, Cal App 2d Dist) 249 Cal App 2d 637, 57 Cal Rptr 674, 1967 Cal App LEXIS 2270.

An agent of the Department of Alcoholic Beverage Control, who, pursuant to an investigation of a public bar, failed to identify a man accompanying him as a police officer but merely identified him as a "new man" or by the officer's name, could not be charged with fraud or bad faith which would vitiate the authority of agents of the Department of Alcoholic Beverage Control and peace officers who make a reasonable search of a licensee's premises where the announced purpose of the visit by the agent was to conduct an investigation; neither the agent nor the police officer were under a duty to inform an employee of the licensee being investigated the exact capacity of the police officer accompanying the agent. People v. Lisner (1967, Cal App 2d Dist) 249 Cal App 2d 637, 57 Cal Rptr 674, 1967 Cal App LEXIS 2270.

3. Evidence: Admissibility

Proprietor of hotel who operated dining room where wines and beers were sold under on sale license, was not entitled to be free from policing on part of inspectors of Alcoholic Beverage Control Board, who were attempting to enforce provisions of former act. Sandelin v. Collins (1934) 1 Cal 2d 147, 33 P2d 1009, 1934 Cal LEXIS 343, 93 ALR 956.

4. Search and Seizure

In a criminal prosecution, incriminatory statements made by the defendant to a police officer and an agent of the Department of Alcoholic Beverage Control were not the fruits of an illegal search and therefore inadmissible evidence where the premises searched were not a dwelling or a private place of business, but a public bar; where evidence is sought by governmental officers, pursuant to a regulatory function, such as the public regulation of traffic in spiritous liquors, both the privilege against self-incrimination and the guaranty against unreasonable search and seizure are limited. People v. Lisner (1967, Cal App 2d Dist) 249 Cal App 2d 637, 57 Cal Rptr 674, 1967 Cal App LEXIS 2270.

A search of a bar, made because of an anonymous tip indicating that narcotics sales were occurring there, which search was conducted without a warrant and pursuant to provisions of the Business and Professions Code was constitutionally reasonable. It advanced a substantial government interest in that B & P C § 24200.5, subd. (a) (revocation of liquor license for permitting illegal sales of drugs or narcotics), reflects a legislative judgment that the use of licensed premises for the purpose of drug sales poses a unique threat to the safety, welfare, health, peace, and morals of the people of the state that must be dealt with more vigorously than other illegal acts taking place on licensed premises. Further, the prerequisite of a warrant in such instances could easily frustrate inspection, and the statutes under which the search was authorized collectively provide a constitutionally adequate substitute for a warrant: B & P C §§ 25753, 25755, advise the licensee that inspections may take place during business hours and adequately limit the discretion of the inspectors as to time, place, and scope. People v. Paulson (1990, Cal App 1st Dist) 216 Cal App 3d 1480, 265 Cal Rptr 579, 1990 Cal App LEXIS 10.

§ 25756. [Section repealed 1961.]

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 141. Repealed Stats 1961 ch 653 § 52, operative January 1, 1962. The repealed section related to the equipment of automobiles.

Historical Derivation:

Stats 1935 ch 330 § 38d, as added Stats 1937 ch 758 § 64.

§ 25757. Authority to join association

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 142.

Amendments:
1955 Amendment: Substituted "department" for "board".

Historical Derivation:
Stats 1935 ch 330 § 38d, as added Stats 1937 ch 758 § 64.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25758. Payment of witnesses

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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 143.

Amendments:
1955 Amendment: Substituted "department" for "board".

Historical Derivation:
Stats 1935 ch 330 § 37.5, as added Stats 1947 ch 1566 § 11.

Cross References:
Fees and expenses of witnesses in criminal proceedings: Pen C § 1329.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25758.5. Payment of witness expenses

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.

Added Stats 1997 ch 774 § 5 (AB 1082).

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25759. When license fees deemed to be 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 133, ch 1842 § 22; Stats 1963 ch 1040 § 18.

Amendments:
1955 Amendment: (1) Deleted "tax reports or payment of excise taxes or" after "When" at the beginning of the section; and (2) substituted "department" for "board".
1963 Amendment: (1) Substituted "paid" for "made" wherever it appears; and (2) deleted "report or" after "envelope containing the".

Historical Derivation:
Stats 1935 ch 330 § 47.5, as added Stats 1945 ch 1401 § 36.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 25760. Manner of giving 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 made 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.

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 145, ch 1842 § 23.

Amendments:
1955 Amendment: Substituted (1) "department" for "board" after "Notice of any act of the" at the beginning of the section; and (2) "director or an authorized employee of the department" for "board, its secretary or an authorized employee of the board".

Historical Derivation:
Stats 1935 ch 330 § 48, as amended Stats 1937 ch 758 § 70, Stats 1945 ch 1401 § 36.2.

Cross References:
Completion of service by mail: CCP § 1013.

Collateral References:
Pertinent administrative rules and regulations: 4 Cal Code Reg § 145.
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

NOTES OF DECISIONS

1. Construction

1. Construction

This section reasonably permits construction which would include application of CCP § 1013, relating to service of notices by mail, in its entirety to filing of notice of appeal from decision of department. Pesce v. Department of Alcoholic Beverage Control (1958) 51 Cal 2d 310, 333 P2d 15, 1958 Cal LEXIS 235.

§ 25761. Disposition of fees and tax moneys

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 alcohol 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).

Added Stats 1953 ch 152 § 1. Amended Stats 1st Ex Sess 1954 ch 22 § 4; Stats 1955 ch 1221 § 9, effective June 23, 1955, ch 1842 § 24; Stats 1957 ch 2298 § 2; Stats 1981 ch 101 § 1, effective June 28, 1981, operative July 1, 1981; Stats 1992 ch 900 § 17 (AB 432), effective September 24, 1992; Stats 1996 ch 339 § 1 (AB 385), effective August 19, 1996; Stats 1998 ch 328 § 4 (SB 1589), effective August 21, 1998; Stats 2005 ch 120 § 2 (AB 428), effective January 1, 2006.

Amendments:

1954 Amendment: Added ", except the additional revenue produced by the 10 percent increase in fees made by act amending this section," after "All money collected from fees" in the first sentence of subd (a).

1955 Amendment (ch 1221): (1) Substituted "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, and except amounts deposited in the fund pursuant to Section 23959" for "the additional revenue produced by the 10 percent increase in fees made by the act amending this section" after "collected from fees, except" in the first sentence in subd (a); and (2) added former subd (d), which read "(d) For the purposes of this section 10 percent of each fee for an off–sale general license due and payable on and after July 1, 1955, shall be deemed to be the amount by which the revenue produced by such fee exceeds the revenue which would be produced by the rate of such fee fixed by statute and board rule and in effect immediately prior to July 1, 1954."

1955 Amendment (ch 1842): Added "or Part 14 of Division 2 of the Revenue and Taxation Code" in the introductory paragraph and at the end of subd (b).

1957 Amendment: (1) Added ", as payments under Section 23096," in the introductory paragraph; (2) amended the first sentence in subd (a) to read as at present; and (3) deleted former subd (d).

1981 Amendment: (1) Added "(commencing with Section 32001)" in the first paragraph and in subd (a); **(2)** deleted former subd (a) which read: "(a) Ninety percent of all money collected from license fees, except amounts deposited in the fund pursuant to Section 23959, and of all money collected from payments made under Section 23096, shall be paid semiannually to the counties, cities and counties, and cities of this State in the proportion that the amount of the fees collected in the particular county, city and county, or city bears to the total amount collected throughout the State. The Controller shall, during the months of April and October of the year, draw his warrants upon the fund in favor of the treasurer of each county, city and county, and city for the amount to which each is entitled under this section."; **(3)** redesignated former subds (b) and (c) to be subds (a) and (b); and **(4)** amended subd (a) by **(a)** substituting "The amount" for "Such amount as is" at the beginning of the subdivision; and **(b)** adding "is appropriated to the Controller for payment of these refunds".

1992 Amendment: (1) Substituted "fees pursuant to this division" for "licence fees" in the first paragraph; **(2)** substituted "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)" for "Any remaining balance" in subd (b); and **(3)** added subds (c)–(e).

1996 Amendment: Substituted **(1)** "shall be expended" for "is appropriated" in the introductory clause; **(2)** "hereby ap-

propriated, without regard to fiscal years," for "appropriated" in subd (a); **(3)** "Section 23954.5" for "Sections 23320.2, 23320.3, and 23954.5" in subd (c); and **(4)** "shall be" for "is" before "allocated, upon" in subd (d).

1998 Amendment: (1) Substituted subd (c) for former subd (c) which read: "(c) All money derived as payments under Section 23954.5 shall be transferred to the General Fund on the order of the Controller."; and **(2)** amended subd (e) by substituting **(a)** "subdivision (b)" for "subdivision (c)"; and **(b)** "and following" for "et seq."

2005 Amendment: Added subd (f).

Historical Derivation:

Stats 1935 ch 330 § 37, as amended Stats 1937 ch 758 § 59, Stats 1945 ch 1401 § 33, Stats 1947 ch 301 § 1, ch 712 § 1.

Note—Stats 1981 ch 102 provides:

SEC. 157. It is the intent of the Legislature that cities which existed but did not levy a property tax in 1977–78 shall receive an in–lieu appropriation from the state for their loss of revenue if the subventions provided pursuant to Section 25761 of the Business and Professions Code, Section 4306 of the Public Utilities Code, and Section 26483 of the Revenue and Taxation Code are reduced or eliminated for the 1981–82 fiscal year.

Stats 1992 ch 900 provides:

SECTION 1. The Legislature finds and declares that the regulation of the sale and use of alcoholic beverages is among the highest priorities of state government. The abuse of alcohol can lead to a myriad of other criminal, legal, social, and economic problems. The fair, stable, and effective administration and enforcement of the Alcoholic Beverage Control Act and related laws, therefore, must be insured.

Stats 1996 ch 339 provides:

SEC. 2. It is the intent of the Legislature in enacting this act that all money collected as annual license renewal fees and surcharges to the annual licensee fees under the Alcoholic Beverage Control Act shall be used to supplement the enforcement efforts of the Department of Alcoholic Beverage Control and to provide for additional law enforcement training.

Cross References:

Inapplicability of provisions of this Section to amounts to be paid by licensees for investigation of violation of specified Chapters of this Division: B & P C § 23053.5.

Disposition of moneys derived from payment in compromise: B & P C § 23096.

Types of licenses and annual fees therefor: B & P C § 23320.

All money collected from annual fees for out–of–state beer manufacturer's certificate to be deposited in state general fund, rather than in the Alcoholic Beverage Control Fund as provided by this Section: B & P C § 23357.2.

Fees for original licenses: B & P C § 23954.5.

Credit and refund of fee: B & P C § 23959.

License not issued within quarter applied for: B & P C § 23960.

Temporary retail permit: B & P C § 24045.5.

Transfers of liquor licenses by and between certain persons: B & P C § 24071.

Inapplicability to fees for transfers of licenses between certain persons: B & P C § 24071.

Transfer fees: B & P C § 24072.

Exchange of on–sale licenses for bona fide eating places and for public premises: B & P C § 24072.2.

Warrants: Gov C §§ 12440, 17000 et seq.

General fund: Gov C §§ 16300 et seq.

Alcoholic beverage tax: Rev & Tax C §§ 32001 et seq.

Collateral References:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:

Apportionment of license fees to local agencies under 1947 amendment. 10 Ops. Cal. Atty. Gen. 108.

Liquor license fees received as subventions by counties and cities may be deposited in local general funds and expended for local government purposes. 14 Ops. Cal. Atty. Gen. 149.

NOTES OF DECISIONS

1. Generally

1. Generally

This section is appropriation measure. San Francisco v. Kuchel (1948) 32 Cal 2d 364, 196 P2d 545, 1948 Cal LEXIS 228.

§ 25762. Disposition of fines and forfeitures

(a) All fines and forfeitures of bail imposed for a violation of this division and collected in any felony case after the indictment or the legal commitment by a magistrate, or at or after the sentencing hearing, shall be paid to the county treasurer of the county in which the court is held.

(b) 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 misdemeanor or infraction case, or in any felony case at the preliminary hearing or at another proceeding before the legal commitment by a magistrate, shall be deposited with the county treasurer of the county in which the court is situated and the money deposited shall be distributed and disposed of pursuant to Section 1463 of the Penal Code.

(c) For purposes of this section, a case in which both a felony and a misdemeanor were charged shall be treated as a felony case.

Added Stats 1953 ch 152 § 1. Amended Stats 1st Ex Sess 1954 ch 24 § 1; Stats 1998 ch 931 § 11 (SB 2139), effective September 28, 1998; Stats 2012 ch 470 § 1 (AB 1529), effective January 1, 2013.

Amendments:

1954 Amendment: Added (1) "other than a municipal court or a justice court" in the first paragraph; and (2) the second paragraph.

1998 Amendment: (1) Deleted "or a justice court" after "a municipal court" in the first paragraph; and **(2)** amended the second paragraph by **(a)** deleting "or justice court" after "any municipal court"; **(b)** substituting "the" for "such" after "county in which"; and **(c)** substituting "Sectionh 1463 of the Penal Code" for "Penal Code Section 1463".

2012 Amendment: (1) Added subdivision designations (a) and (b); (2) substituted "felony case after the indictment or the legal commitment by a magistrate, or at or after the sentencing hearing," for "court other than a municipal court" in subd (a); (3) substituted "misdemeanor or infraction case, or in any felony case at the preliminary hearing or at another proceeding before the legal commitment by a magistrate," for "municipal court" in subd (b); and (4) added subd (c).

Historical Derivation:
Stats 1935 ch 330 § 65b, as added Stats 1937 ch 758 § 97.

Law Revision Commission Comments:
1998—Section 25762 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

2012—Section 25762 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution. The amendment seeks to preserve the pre-unification status quo with regard to the distribution of fines and bail forfeitures collected for violations of the Alcoholic Beverage Control Act (hereafter, "the Act").

Subdivision (a) is amended to replace the reference to such fines and bail forfeitures imposed and collected in "any court other than a municipal court." The amendment tracks the criminal jurisdiction of the superior court as it existed before trial court unification.

Similarly, subdivision (b) is amended to replace the reference to fines, bail forfeitures, and bail deposits under the Act "in any municipal court." The amendment generally tracks the criminal jurisdiction of the municipal court as it existed before trial court unification.

Subdivision (c) makes clear how this section applies to a case in which both a felony and a misdemeanor were charged. The case is to be treated as a felony, even if the felony charge was dismissed. This is consistent with pre-unification practice. See generally People v. Leney, 213 Cal. App. 3d 265, 268, 261 Cal. Rptr. 541 (1989) (superior court has jurisdiction to try remaining misdemeanor even if felony charge eliminated before trial); People v. Clark, 17 Cal. App. 3d 890, 897-98, 95 Cal. Rptr. 411 (1971) (same). 40 Cal. L. Revision Comm'n Reports 235 (2010).

Cross References:
Forfeiture of bail: Pen C §§ 1305 et seq.
Disposition of fines, forfeitures, and deposits: Pen C § 1463.

Collateral References:
Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

Attorney General's Opinions:
Municipal court fines paid to county treasurer. 22 Ops. Cal. Atty. Gen. 203.

§ 25763. [Section repealed 1977.]

Added Stats 1971 ch 1212 § 4, operative July 1, 1972. Repealed Stats 1977 ch 191 § 1. The repealed section related to venereal disease information.

CHAPTER 18

Alcoholic Rehabilitation

[Chapter 18, consisting of §§ 26000–26004, was added Stats 1st Ex Sess 1954 ch 22 § 2. Amended Stats 1955 ch 1909 § 1. Repealed Stats 1957 ch 1004 § 3.]

Editor's Notes—The subject of alcoholic rehabilitation is now governed by H & S C §§ 11750 et seq.

CALIFORNIA CODE OF REGULATIONS

TITLE 4.
BUSINESS REGULATIONS

Division 1.
Department of Alcoholic Beverage Control

(Originally Printed 3-22-45)

Article 1. Violation of Rules [Repealed]

Article 2. Records

§ 4. General.
§ 6. Price of License Acquisition.
§ 7. Retail Distilled Spirits Licensees: Records.
§ 8. Common Carriers.
§ 9. Winegrower's or Wine Blender's Annual Report.
§ 10. Beer Wholesalers' Records.
§ 12. Beer and Wine.
§ 14. Beer Sold to Instrumentalities of the Armed Forces.

Article 4. Invoices

§ 17. Contents of Sales Invoices and Retail Delivery Orders.
§ 18. Return of Distilled Spirits by Retailer; Application for Approval by Department; Exceptions.
§ 19. Return of Wine by Retailer; Application for Approval by Department; Records.

Article 5. Inventories

§ 27. Retail Store—Qualifications.
§ 28. Distilled Spirits Wholesalers: Qualifications.
§ 28.1. Distilled Spirits Rectifier—Qualifications.
§ 29. Storage by Retailer on Wholesaler's Premises.

Article 6. Reports [Repealed]

Article 7. Losses and Allowances [Repealed]

Article 8. Classification of Particular Beverages [Repealed]

Article 9. Samples

§ 52. Restrictions on Giving.
§ 53. Samples Used in Winetastings.
§ 53.5. Samples Used in Beer Tastings.

Article 10. Sales for Export

§ 54. Export Sales.

Article 11. Applications and Licenses

§ 55. On-Sale General License for Seasonal Business.
§ 55.1. Applicant/Licensee Verification of Eligibility; Limitations on Alcoholic Beverage Licenses for Aliens.
§ 55.5. On-Sale Licenses for Boats.
§ 56. On-Sale Beer License for Seasonal Business.
§ 57. Fingerprinting.
§ 57.5. Manager Defined.

§ 57.6. Qualifications of Manager.
§ 57.7. Qualifications of Bona Fide Public Eating Place Lessee.
§ 57.8. Qualifications of Convention Center, Exhibit Hall or Auditorium Bona Fide Public Eating Place Lessees.
§ 58. Applications by Married Persons.
§ 59. Temporary Beer or Wine Licenses.
§ 59.1. Temporary Off-Sale Beer and Wine Licenses.
§ 59.5. Daily On-Sale General License.
§ 60. Transfer of Licenses.
§ 60.1. Club Licenses.
§ 60.2. Exchange of On-Sale General License for Public Premises.
§ 60.3. Applications and Contracts to Transfer.
§ 60.4. Off-Sale General License on Off-Sale Beer and Wine Premises.
§ 60.5. Caterer's Permit.
§ 61. License Limitations.
§ 61.1. Priority Drawings.
§ 61.2. Restrictions on Government-Owned Premises.
§ 61.3. Undue Concentration. [Repealed]
§ 61.4. Proximity to Residences.
§ 61.5. Off-Sale General License Restriction.
§ 62. Law Enforcement Personnel Not to Hold Licenses.
§ 63. License Reinstatement After Automatic Revocation.
§ 64. Premises Under Construction.
§ 64.1. Licenses Within 200 Feet of Licenses of the Same Type.
§ 64.2. Premises Designation.
§ 65. Surrender of License on Closing of Business.
§ 66. Premises Where Conditions Imposed.
§ 67. On-Sale Beer and On-Sale Beer and Wine Licenses.
§ 67.1. Beer Public Premises.
§ 68. Transfer of General Licenses.
§ 68.1. Waiting Period.
§ 68.2. Tax Delinquency When Transfer Pending.
§ 68.5. Issuance or Transfer of Corporate Stock; Change of Corporate Directors or Officers.
§ 68.6. Retail License Qualifications Where Interest Held by Out-of-Country Winegrower.

Article 12. Military and Naval Reservations and Camps [Repealed]

Article 13. Private Warehouses

§ 76. Private Warehouses.

Article 14. Sales Without Licenses

§ 79. Sales Without Licenses.
§ 80. Labeling of Damaged Merchandise.
§ 81. Retailers' Sales to Wholesalers.

Article 15. Prices

§ 90. Posting of Malt Beverage Minimum Retail Prices.
§ 99. Minimum Retail Price Schedules.
§ 99.1. Consumer Discounts.
§ 99.2. Minimum Distilled Spirits Retail Price Information.
§ 100. Distilled Spirits Price Posting.
§ 100.1. Distilled Spirits Price Posting.
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§ 103. Retail Price Advertising of Distilled Spirits.
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Article 16. Signs and Notices

§ 106. Advertising and Merchandising of Alcoholic Beverages.
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§ 108. Notice of Suspension.
§ 109. Posting Notice.
§ 110. Brand Identification for Automatic Dispensers. [Repealed]

§ 111. On–Sale Publication. [Repealed]

Article 17. Distilled Spirits and Wine Credit Regulations [Repealed]
§ 115. Distilled Spirits and Wine Credit Regulations. [Repealed]

Article 18. Standard Cases for Distilled Spirits [Repealed]

Article 19. Malt Beverage Regulations
§ 128. Certificate of Compliance. [Repealed]
§ 130. Beer Labeling Requirements.
§ 131. Tapping Equipment, Furnishing and Servicing.
§ 132. Out-of-State Beer Manufacturer's Certificate.
§ 134. Delivery to Temporary Licensee. [Repealed]
§ 135. Bock Beer. [Repealed]

Article 20. Measurement of Time [Repealed]
§ 137. Pacific War Time.

Article 21. Interior Illumination of Licensed Premises
§ 139. Interior Illumination.

Article 22. Suspension or Revocation of Licenses
§ 141. Minor Decoy Requirements.
§ 142. Receiving Stolen Alcoholic Beverages; Ceiling Price Violations. [Repealed]
§ 143. Employees of On-Sale Licensees Soliciting or Accepting Drinks.
§ 143.1. Employment of Minors in Public Premises. [Repealed]
§ 143.2. Attire and Conduct.
§ 143.3. Entertainers and Conduct.
§ 143.4. Visual Displays. [Repealed]
§ 143.5. Ordinances.
§ 144. Penalty Guidelines.

Article 23. Administrative Procedure
§ 145. Service of Notices.
§ 146. Verification of Protests. [Repealed]

Article 24. Department of Alcoholic Beverage Control—Conflict-of-Interest Code
§ 150. General Provisions.

ARTICLE 1.

Violation of Rules [Repealed]

History:
1. Repealer of article 1 (section 1) filed 11-6-96; operative 12-6-96 (Register 96, No. 45). For prior history, see Register 77, No. 25.

ARTICLE 2.

Records

Section
4. General.
6. Price of License Acquisition.
7. Retail Distilled Spirits Licensees: Records.
8. Common Carriers.
9. Winegrower's or Wine Blender's Annual Report.
10. Beer Wholesalers' Records.
12. Beer and Wine.
14. Beer Sold to Instrumentalities of the Armed Forces.

§ 4. General.

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.

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.

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 carrier 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.

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.

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.

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.

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.

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

Section
17. Contents of Sales Invoices and Retail Delivery Orders.
18. Return of Distilled Spirits by Retailer; Application for Approval by Department; Exceptions.
19. Return of Wine by Retailer; Application for Approval by Department; Records.

§ 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.

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.

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.

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; operative 12-6-96 (Register 96, No. 45).

ARTICLE 5.

Inventories

Section
27. Retail Store—Qualifications.
28. Distilled Spirits Wholesalers: Qualifications.
28.1. Distilled Spirits Rectifier—Qualifications.
29. Storage by Retailer on Wholesaler's Premises.

§ 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.

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.

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.

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 [Repealed]

History:
1. Repealer of article 6 (sections 30-32) filed 11-6-96; operative 12-6-96 (Register 96, No. 45). For prior history, see Register 84, No. 23.

ARTICLE 7.

Losses and Allowances [Repealed]

History:
1. Repealer of article 7 (sections 35-36) filed 6-4-84; operative 7-5-84 (Register 84, No. 23). For prior history, see Register 73, No. 29.

ARTICLE 8.

Classification of Particular Beverages [Repealed]

History:
1. Repealer of article 8 (section 49) filed 6-4-84; operative 7-5-84 (Register 84, No. 23). For prior history, see Register 45, No. 2.

ARTICLE 9.

Samples

Section
52. Restrictions on Giving.
53. Samples Used in Winetastings.
53.5. Samples Used in Beer Tastings.

§ 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.

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 statute and 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.

(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, or 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 statute or 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.

(3) 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. A beer and wine wholesaler that also holds an off-sale beer and wine retail license and only sells wine or the holder of a limited off-sale retail wine license may assist a nonprofit organization only as permitted by Business and Professions Code Section 24045.18.

(4) No student organization, college fraternity or sorority shall sponsor a winetasting.

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, 23390.5 and 24045.18, 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 subsections (a)(1) and (b), repealer of subsection (f) and subsection redesignation filed 1-18-94; operative 2-17-94 (Register 94, No. 3).
5. Change without regulatory effect amending first paragraph and subsection (a)(1), repealing subsections (a)(1)(A)-(C), amending subsections (b)(5), (e) and (g)(2), adopting new subsection (g)(3), renumbering subsection and amending Note filed 4-17-2012 pursuant to section 100, title 1, California Code of Regulations (Register 2012, No. 16).

§ 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 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.

Authority cited: Section 22, Article XX, California Constitution; and Sections 23357.3 and 25750, Business and Professions Code. Reference: Sections 23357.3 and 25750, Business and Professions Code.

History:

1. New section filed 2-8-94; operative 3-10-94 (Register 94, No. 6).

ARTICLE 10.

Sales for Export

Section

54. Export Sales.

§ 54. Export Sales.

Manufacturers, winegrowers, rectifiers, wholesalers, manufacturer's agents, and importers may sell alcoholic beverages specified in their li censes 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.

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

Section

55. On-Sale General License for Seasonal Business.
55.1. Applicant/Licensee Verification of Eligibility; Limitations on Alcoholic Beverage Licenses for Aliens.
55.5. On-Sale Licenses for Boats.
56. On-Sale Beer License for Seasonal Business.
57. Fingerprinting.
57.5. Manager Defined.
57.6. Qualifications of Manager.
57.7. Qualifications of Bona Fide Public Eating Place Lessee.
57.8. Qualifications of Convention Center, Exhibit Hall or Auditorium Bona Fide Public Eating Place Lessees.
58. Applications by Married Persons.
59. Temporary Beer or Wine Licenses.
59.1. Temporary Off-Sale Beer and Wine Licenses.
59.5. Daily On-Sale General License.
60. Transfer of Licenses.
60.1. Club Licenses.
60.2. Exchange of On-Sale General License for Public Premises.
60.3. Applications and Contracts to Transfer.
60.4. Off-Sale General License on Off-Sale Beer and Wine Premises.
60.5. Caterer's Permit.
61. License Limitations.
61.1. Priority Drawings.
61.2. Restrictions on Government-Owned Premises.
61.3. Undue Concentration. [Repealed]
61.4. Proximity to Residences.
61.5. Off-Sale General License Restriction.
62. Law Enforcement Personnel Not to Hold Licenses.
63. License Reinstatement After Automatic Revocation.
64. Premises Under Construction.

64.1. Licenses Within 200 Feet of Licenses of the Same Type.
64.2. Premises Designation.
65. Surrender of License on Closing of Business.
66. Premises Where Conditions Imposed.
67. On-Sale Beer and On-Sale Beer and Wine Licenses.
67.1. Beer Public Premises.
68. Transfer of General Licenses.
68.1. Waiting Period.
68.2. Tax Delinquency When Transfer Pending.
68.5. Issuance or Transfer of Corporate Stock; Change of Corporate Directors or Officers.
68.6. Retail License Qualifications Where Interest Held by Out-of-Country Winegrower.

§ 55. On-Sale General License for Seasonal Business.

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; operative 12-6-96 (Register 96, No. 45).

§ 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 if 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); Pub.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-sufficien t 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.

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 or debarkation of passengers, or the loading or unloading of supplies.

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, Gov. 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)(1) and new subsections (c)(1)(A)-(C) filed 1-27-94; operative 2-28-94 (Register 94, No. 4).

§ 56. On-Sale Beer License for Seasonal Business.

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; operative 12-6-96 (Register 96, No. 45).

§ 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.

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.

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.

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.

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.

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.

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 fundraising 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.

Authority cited: Section 22 of Article XX, California Constitution; and Sections 23001, 24045, 25500, 25504, 25600, 25633 and 25750, Business and Professions Code.

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. New subsection (f) and amendment of Note filed 1-27-94; operative 2-28-94 (Register 94, No. 4).

§ 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.

Authority cited: Section 22, Article XX, California Constitution; and Section 25750, Business and Professions Code. Reference: Sections 23001, 23394, 23396, 23399, 23401, 23402, 24045, 24045.1, 24048, 25500, 25501, 25504, 25600 and 25633, Business and Professions Code.

History:

1. New section filed 10-31-69 as an emergency; designated effective 11-10-69.
2. Certificate of Compliance included (Register 69, No. 44).
3. New subsection (f) and amendment of Note filed 1-27-94; operative 2-28-94 (Register 94, No. 4).

§ 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 a 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 Chapter 10 of Division 3 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.

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. Reference: Section 23399, Business and Professions Code.

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).
3. Change without regulatory effect amending subsection (e) and Note filed 3-8-2012 pursuant to section 100, title 1, California Code of Regulations (Register 2012, No. 10).

§ 60.1. Club Licenses.

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.

No on-sale general license shall be exchanged for a public premises license for a period of two years from the date of the original issuance of the license, or two years from the date of transfer county to county, unless the applicant can show that substantial public demand cannot otherwise be satisfied.

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).

§ 60.3. Applications and Contracts to Transfer.

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.

Authority cited: Secs. 23300, 23355, 24040, 24041.5 and 25750, Business and Professions Code; Sec. 22, Art. XX, Calif. Constitution.

History:

1. New section filed 11-16-67; effective thirtieth day thereafter (Register 67, No. 46).

§ 60.5. Caterer's Permit.

The holder of a caterer's permit issued pursuant to paragraph (a) of Section 23399 of the Alcoholic Beverage Control Act may request consent of the department to sell alcoholic beverages for consumption at designated locations and events. Consent of the department shall be in the form of a caterer's authorization issued pursuant to paragraph (c) of Section 23399 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.

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. Reference: Section 23399, Business and Professions Code.

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).
4. Change without regulatory effect amending first paragraph and Note filed 3-8-2012 pursuant to section 100, title 1, California Code of Regulations (Register 2012, No. 10).

§ 61. License Limitations.

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.

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.

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. [Repealed]

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. Change without regulatory effect amending section pursuant to section 100, title 1, California Code of Regulations filed 2-28-91 (Register 91, No. 13).
6. Change without regulatory effect repealing section filed 5-15-2012 pursuant to section 100, title 1, California Code of Regulations (Register 2012, No. 20).

§ 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 herein above, 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.

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.

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.

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.

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 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; operative 12-6-96 (Register 96, No. 45).

§ 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.

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.

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, per sons, 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.

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.

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 Conditions Imposed.

(a) 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.

(b) Notwithstanding subdivision (a), the department may at any time in the reasonable exercise of its discretion accept a petition to remove conditions, if the reasons which caused the imposition of conditions no longer exist.

Authority cited: Section 25750, Business and Professions Code; Section 22 of Article XX, California Constitution. Reference: Sections 23800, 23801, 23802, 23803, 23804 and 24013.5, 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).
3. Change without regulatory effect amending section heading, section and Note filed 2-8-2012 pursuant to section 100, title 1, California Code of Regulations (Register 2012, No. 6).

§ 67. On-Sale Beer and On-Sale Beer and Wine Licenses.

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.

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.

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; operative 12-6-96 (Register 96, No. 45).

§ 68.1. Waiting Period.

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.

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.

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.

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; operative 12-6-96 (Register 96, No. 45).

ARTICLE 12.

Military and Naval Reservations and Camps [Repealed]

History:

1. Repealer of article 12 (sections 69-71) and section filed 6-4-84; operative 7-4-84 (Register 84, No. 23).

ARTICLE 13.

Private Warehouses

Section
76. 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.

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

Section
79. Sales Without Licenses.
80. Labeling of Damaged Merchandise.
81. Retailers' Sales to Wholesalers.

§ 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.

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.

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.

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; operative 12-6-96 (Register 96, No. 45).

ARTICLE 15.

Prices

Section
90. Posting of Malt Beverage Minimum Retail Prices.
99. Minimum Retail Price Schedules.
99.1. Consumer Discounts.
99.2. Minimum Distilled Spirits Retail Price Information.
100. Distilled Spirits Price Posting.
100.1. Distilled Spirits Price Posting.
101. Wine Price Schedules.
103. Retail Price Advertising of Distilled Spirits.
104. Misleading Advertising.
105. Beer Price Posting.

§ 90. Posting of Malt Beverage Minimum Retail Prices.

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.

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.

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.

Authority cited: Sections 24757 and 25750, Business and Professions Code; Section 2 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.

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. Change without regulatory effect repealing section filed 2-27-91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 13).

§ 100.1. Distilled Spirits Price Posting.

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.

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.

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.

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; operative 12-6-96 (Register 96, No. 45).

§ 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 in structions 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.

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

Section
106. Advertising and Merchandising of Alcoholic Beverages.
107. Retailers Required to Post Warning Notice.
108. Notice of Suspension.
109. Posting Notice.
110. Brand Identification for Automatic Dispensers. [Repealed]
111. On–Sale Publication. [Repealed]

§ 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 or interim 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 or 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 mean 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.

(A) Except as provided herein, no supplier shall sell, rent or otherwise furnish an exterior sign to any retail licensee.

(B) Any wholesaler may sell or rent an exterior sign advertising wine or distilled spirits to any licensee at a price not less than the current market price for such sign.

(C) Any wholesaler of beer may sell or rent an exterior sign advertising beer at a price not less than the wholesaler's cost for such sign. Any such sign that is customized for a retailer must be sold by the wholesaler. For purposes of this provision, "cost" shall be as defined in Section 17026 of the Business and Professions Code.

(D) 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:

(1) 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;

(2) name of the product (or products), brand name, price, size, vintage date, bin number or other product designation;

(3) product description or identifying information or appellation of origin;

(4) 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)(i) Except as provided in subdivision (e)(2)(C)(ii), 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.

(ii) Consumer advertising specialties furnished by a beer manufacturer to the general public shall not exceed $3.00 per unit original cost to the beer manufacturer who purchased it.

(D) 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.

(E) 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 retailers name or business, except for exterior signs advertising beer sold pursuant to subdivision (c)(2)(C).

(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 suppliers 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 the limits specified in subdivision (e)(2).

Authority cited: Sections 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, 25611.3, 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 an 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).
7. Amendment of section and Note filed 6-4-2009; operative 7-4-2009 (Register 2009, No. 23).

§ 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.

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.

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.

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. 20).
3. Certificate of Compliance section 11422.1, Government Code, filed 2-20-64 (Register 64, No. 6).
4. Amendment filed 6-18-80; effective thirtieth day thereafter (Register 80, No. 25).
5. Editorial correction of printing error in HISTORY 2. (Register 91, No. 31).

§ 110. Brand Identification for Automatic Dispensers. [Repealed]

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. [Repealed]

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; operative 12-6-96 (Register 96, No. 45).

ARTICLE 17.

Distilled Spirits and Wine Credit Regulations [Repealed]

Section
115. Distilled Spirits and Wine Credit Regulations. [Repealed]

§ 115. Distilled Spirits and Wine Credit Regulations. [Repealed]

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 [Repealed]

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 722-82; effective thirtieth day thereafter (Register 82, No. 30).

ARTICLE 19.

Malt Beverage Regulations

Section
128. Certificate of Compliance. [Repealed]
130. Beer Labeling Requirements.
131. Tapping Equipment, Furnishing and Servicing.
132. Out-of-State Beer Manufacturer's Certificate.
134. Delivery to Temporary Licensee. [Repealed]
135. Bock Beer. [Repealed]

§ 128. Certificate of Compliance. [Repealed]

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.

(a) The name and address of any manufacturer, bottler or packager 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, bottler or packager shall be deemed to include a fictitious business name for which such manufacturer, bottler or packager has duly filed a Fictitious Business Name Statement pursuant to the provisions of Section 17900 et seq. of the Business and Professions Code. For purposes of this section, "address" means the city and state if domestically produced or city and country if produced outside of the United States. The manufacturer's, bottler's or packager's principal place of business may be shown in lieu of the actual place where manufactured, bottled or packaged if the address shown is a location where bottling or packaging operation takes place.

(b) 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, be affixed prior to shipment into this State.

(c) A copy of any label or notice affixed to beer shall, if that beer is produced in this State, be filed with 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, be filed with the headquarters office of the department by the shipper prior to shipment into this State.

(1) No beer may be sold or delivered in this State unless the label or notice submitted to the department has been accepted for filing.

(2) The department may refuse to accept for filing any label or notice that is not in compliance with the provisions of this section or any provision of the Alcoholic Beverage Control Act.

(d) For purposes of this section, "affixed" means the placement, by any means, of a label or notice, or the information required on a label or notice, on a container of beer.

(e) Any variation or change to a label or notice shall be separately filed with the department.

Authority cited: Sections 25205 and 25750, Business and Professions Code. Reference: Sections 23030, 25200, 25204 and 25205, 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. Amendment filed 2-25-94 as an emergency; operative 2-25-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-27-94 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 2-25-94 order transmitted to OAL 6-3-94 and filed 7-18-94 (Register 94, No. 29).

5. Amendment of section and Note filed 8-20-2010; operative 9-19-2010 (Register 2010, No. 34).

§ 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

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.

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. [Repealed]

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. [Repealed]

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 [Repealed]

History:

1. Repealer of article 20 (section 137) filed 10-15-45 designated to be effective 9-30-45 (Register 2).

Section
137. Pacific War 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

Section
139. Interior Illumination.

§ 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.

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

Section
141. Minor Decoy Requirements.
142. Receiving Stolen Alcoholic Beverages; Ceiling Price Violations. [Repealed]
143. Employees of On-Sale Licensees Soliciting or Accepting Drinks.
143.1. Employment of Minors in Public Premises. [Repealed]
143.2. Attire and Conduct.
143.3. Entertainers and Conduct.
143.4. Visual Displays. [Repealed]
143.5. Ordinances.
144. Penalty Guidelines.

§ 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 to minors 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 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.

Authority cited: California Constitution, article XX, section 22; and section 25750, Business and Professions Code. Reference: Section 25658, Business and Professions Code; and *Provigo Corporation v. Alcoholic Beverage Control Appeals Board* (1994) 7 Cal.4th 561, 28 Cal.Rptr. 638.

History:
1. New section filed 1-2-96; operative 2-1-96 (Register 96, No. 1).

§ 142. Receiving Stolen Alcoholic Beverages; Ceiling Price Violations. [Repealed]

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.

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. [Repealed]

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.

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.

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).

§ 143.4. Visual Displays. [Repealed]

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. Repealer filed 12-12-2001; operative 1-11-2002 (Register 2001, No. 50).

§ 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.

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.

Authority cited: Section 25750, Business and Professions Code; and Section 22, Article XX, California Constitution. Reference: Section 23001, Business and Professions Code; and Section 11425.50(e), Government Code.

History:

1. New section filed 4-13-2004 as an emergency; operative 4-13-2004 (Register 2004, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-11-2004 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 68, No. 46.
2. Certificate of Compliance as to 4-13-2004 order transmitted to OAL 8-11-2004; disapproved by OAL and order of repeal and deletion filed 9-23-2004 (Register 2004, No. 39).
3. New section filed 9-23-2004 as an emergency; operative 9-23-2004 (Register 2004, No. 39). A Certificate of Compliance must be transmitted to OAL by 1-21-2005 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9-23-2004 order, including amendment of section, transmitted to OAL 11-18-2004 and filed 12-16-2004 (Register 2004, No. 51).

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 303a PC	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 reactivation 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

Section
145. Service of Notices.
146. Verification of Protests. [Repealed]

§ 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.

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. [Repealed]

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

Section
150. General Provisions.

§ 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) that 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 Appendices, designating positions and establishing disclosure categories, are hereby incorporated by reference and constitute the conflict-of-interest code of the Department of Alcoholic Beverage Control (ABC).

Individuals holding designated positions shall file statements of economic interests with ABC which will make the statements available for public inspection and reproduction. (Government Code Section 81008). Upon receipt of the statement of the Director, ABC shall make and retain a copy and forward the original of this statement to the Fair Political Practices Commission. Statements for all other designated positions will be retained by ABC.

Authority cited: Sections 81008, 87300, 87304 and 87306, 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 of text and Appendix filed 2-1-94; operative 3-3-94. Approved by Fair Political Practices Commission 1-27-94 (Register 94, No. 5).
4. Amendment of Appendix filed 5-5-2006; operative 6-4-2006. Approved by Fair Political Practices Commission 3-3-2006 (Register 2006, No. 18).
5. Amendment of article 24 heading, section and Note and redesignation and amendment of portions of former Appendix to new Appendix A and Appendix B filed 7-20-2011; operative 8-19-2011. Approved by Fair Political Practices Commission 6-21-2011 (Register 2011, No. 29).

Appendix A
DESIGNATED POSITIONS

Designated Positions	*Disclosure Category*
Director	1, 2
Chief Deputy Director	1, 2
Assistant Director, Field Division	1, 2
Assistant Director, Administration	1, 2
Chief Administrative Law Judge	1, 2
General Counsel	1, 2
Chief Counsel	1, 2
Deputy Division Chief, Alcoholic Bevarage Control	1
District Administrator, Alcoholic Beverage Control	1
Supervising Investigator, Alcoholic Beverage Control	1
Investigator Assistant	2
Investigator	2
Licensing Officer, Alcoholic Beverage Control	1
Licensing Representative I and II, Alcoholic Beverage Control	1
All Attorney Classes	1
All Administrative Law Judge Classes	1
All Information Officer Classes	1
Legal Analyst	1
Legal Assistant	1
All Staff Services Manager Classes	1
Accounting Officer	2

Designated Positions	*Disclosure Category*
All Information Systems Analyst Classes	2
All Data Processing Manager Classes	2
All System Software Specialist Classes	2
Business Services Assistant	2
Consultants	*

*Consultants shall disclose pursuant to the broadest disclosure 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. (Gov. Code Sec. 81008.)

Appendix B
DISCLOSURE CATEGORIES

Disclosure Categories:

Category 1. Designated positions in Category 1 must report:

Investments and business positions in business entities, and income, 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 interests, and interests in real property upon which a business licensed by the department is maintained.

Category 2. Designated positions in Category 2 must report:

Investments and business positions in business entities, and income, 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 ABC.

MISCELLANEOUS RELATED STATUTES

GENERAL LAW
California Statutes of 1976
Chapter 398 [Uncodified]

BUSINESS & PROFESSIONS CODE
Division 1. Department of Consumer Affairs
Chapter 1. The Department, §§ 119, 125.6
Division 8. Special Business Regulations
Chapter 18. Identification Cards, § 22430

CIVIL CODE
Preliminary Provisions, § 10
Division 3. Obligations
Part 3. Obligations Imposed by Law, § 1714

CODE OF CIVIL PROCEDURE
Part 2. Of Civil Actions
Title 9. Enforcement of Judgments
Division 2. Enforcement of Money Judgments
Chapter 1. General Provisions, § 695.060
Chapter 3. Execution, § 699.720
Chapter 6. Miscellaneous Creditors' Remedies, § 708.630

FINANCIAL CODE
Division 6. Escrow Agents
Chapter 1. Application of This Division, §§ 17005, 17006
Chapter 2. License and Bond, § 17200

GOVERNMENT CODE
Title 1. General
Division 7. Miscellaneous
Chapter 8. Computation of Time, § 6800
Title 2. Government of the State of California
Division 1. General
Chapter 5. Miscellaneous, § 8311
Division 3. Executive Department
Part 1. State Departments and Agencies
Chapter 1. State Agencies, § 11003

HEALTH AND SAFETY CODE
Division 10. Uniform Controlled Substances Act
Chapter 6. Offenses and Penalties, § 11364.7
Chapter 8. Seizure and Disposition, § 11474
Division 20. Miscellaneous Health and Safety Provisions
Chapter 6.6. Safe Drinking Water and Toxic Enforcement Act of 1986, §§ 25249.5, 25249.6

PENAL CODE
Part 1. Of Crimes and Punishments
Title 7. Of Crimes Against Public Justice
Chapter 7. Other Offenses Against Public Justice, §§ 172 to 172j, 172*l* to 172.8, 172.9, 172.95
Title 9. Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals

Chapter 7. Of Crimes Against Religion and Conscience, and Other Offenses Against Good Morals,
§§ 303, 303a, 307, 308, 308.2
Chapter 7.6. Harmful Matter, § 313.1
Chapter 8. Indecent Exposure, Obscene Exhibitions, and Bawdy and Other Disorderly Houses, §§ 316, 318.5, 318.6
Chapter 9. Lotteries, §§ 319, 320, 321
Chapter 10. Gaming, §§ 330 to 330c, 337a, 337j
Chapter 12. Other Injuries to Persons, § 347b
Title 10. Of Crimes Against the Public Health and Safety, §§ 373a, 382, 397
Title 13. Of Crimes Against Property
Chapter 5. Larceny, § 496
Chapter 6. False Personation and Cheats, §§ 529a, 529.5
Title 15. Miscellaneous Crimes
Chapter 2. Of Other and Miscellaneous Offenses, §§ 647, 647e
Part 2. Of Criminal Procedure
Title 3. Additional Provisions Regarding Criminal Procedure
Chapter 4.5. Peace Officers, § 830.2
Part 4. Prevention of Crimes and Apprehension of Criminals
Title 2. Control of Deadly Weapons (First of two; Repealed)
Chapter 1. Firearms [Repealed], § 12020

PUBLIC RESOURCES CODE
Division 12.1. California Beverage Container Recycling and Litter Reduction Act
Chapter 6. Returns, § 14575

REVENUE AND TAXATION CODE
Division 2. Other Taxes
Part 14. Alcoholic Beverage Tax
Chapter 3. Registration and Bonds, § 32101
Chapter 4. Tax on Beer and Wine, § 32177.5

VEHICLE CODE
Division 6. Drivers' Licenses
Chapter 1. Issuance of Licenses, Expiration, and Renewal, §§ 13004, 13004.1
Chapter 2. Suspension or Revocation of Licenses, § 13202.5
Chapter 4. Violation of License Provisions, §§ 14610, 14610.1
Division 11. Rules of the Road
Chapter 12. Public Offenses, §§ 23136, 23152, 23220 to 23229

GENERAL LAW

CALIFORNIA STATUTES OF 1976

CHAPTER 398

An act relating to wine on school property.

[Approved by Governor July 8, 1976
Filed with Secretary of State July 9, 1976]

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

SECTION 1. (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 tease 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).

BUSINESS & PROFESSIONS CODE

DIVISION 1

Department of Consumer Affairs

CHAPTER 1

The Department

Section
119. Misdemeanors pertaining to use of licenses
125.6. Unlawful discrimination by licensees

§ 119. Misdemeanors pertaining to use of licenses

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) Knowingly permits any unlawful use of a license issued to him or her.

(f) Photographs, photostats, duplicates, manufactures, 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.

(g) Buys or receives a fraudulent, forged, or counterfeited license knowing that it is fraudulent, forged, or counterfeited. For purposes of this subdivision, "fraudulent" means containing any misrepresentation of fact.

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 Section 1000 or 3600.

Added Stats 1965 ch 1083 § 1. Amended Stats 1990 ch 350 § 1 (SB 2084) (ch 1207 prevails), ch 1207 § 1 (AB 3242); Stats 1994 ch 1206 § 1 (SB 1775); Stats 2000 ch 568 § 1 (AB 2888).

§ 125.6. Unlawful discrimination by licensees

(a)(1) With regard to an applicant, 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 that person if, because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code, he or she refuses to perform the licensed activity or aids or incites the refusal to perform that licensed activity by another licensee, or if, because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code, he or she makes any discrimination, or restriction in the performance of the licensed activity.

(2) Nothing in this section shall be interpreted to prevent a physician or health care professional licensed pursuant to Division 2 (commencing with Section 500) from considering any of the characteristics of a patient listed in subdivision (b) or (e) of Section 51 of the Civil Code if that consideration is medically necessary and for the sole purpose of determining the appropriate diagnosis or treatment of the patient.

(3) 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.

(4) The presence of architectural barriers to an individual with physical disabilities that conform to applicable state or local building codes and regulations shall not constitute discrimination under this section.

(b)(1) 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.

(2) Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to perform a licensed activity for which he or she is not qualified to perform.

(c)(1) "Applicant," as used in this section, means a person applying for licensed services provided by a person licensed under this code.

(2) "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.

Added Stats 1974 ch 1350 § 1. Amended Stats 1977 ch 293 § 1; Stats 1980 ch 191 § 1; Stats 1992 ch 913 § 2 (AB 1077); Stats 2007 ch 568 § 2 (AB 14), effective January 1, 2008.

DIVISION 8

Special Business Regulations

CHAPTER 18

Identification Cards

Section

22430. Sale or manufacture of deceptive identification document; Violation; Penalties

§ 22430. Sale or manufacture of deceptive identification document; Violation; Penalties

(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 pursuant to subdivision (h) of Section 1170 of the Penal Code.

Added Stats 1979 ch 739 § 1. Amended Stats 1981 ch 138 § 1, effective July 1, 1981; Stats 1987 ch 1477 § 1; Stats 1995 ch 133 § 1 (AB 156); Stats 2011 ch 15 § 29 (AB 109), effective April 4, 2011, operative October 1, 2011.

CIVIL CODE

PRELIMINARY PROVISIONS

Section
10. Computation of time

§ 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 day is a holiday, and then it is also excluded.

Enacted 1872.

DIVISION 3

Obligations

PART 3

Obligations Imposed by Law

Section
1714. Responsibility for willful acts or negligence; Proximate cause of injuries resulting from furnishing alcohol to intoxicated person; Liability of social host; Provision of alcoholic beverages to persons under 21 years of age

§ 1714. Responsibility for willful acts or negligence; Proximate cause of injuries resulting from furnishing alcohol to intoxicated person; Liability of social host; Provision of alcoholic beverages to persons under 21 years of age

(a) Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself. The design, distribution, or marketing of firearms and ammunition is not exempt from the duty to use ordinary care and skill that is required by this section. The extent of liability in these 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 (1971) 5 Cal.3d 153, Bernhard v. Harrah's Club (1976) 16 Cal.3d 313, and Coulter v. Superior Court (1978) 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) Except as provided in subdivision (d), no social host who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages.

(d)(1) Nothing in subdivision (c) shall preclude a claim against a parent, guardian, or another adult who knowingly furnishes alcoholic beverages at his or her residence to a person whom he or she knows, or should have known, to be under 21 years of age, in which case, notwithstanding subdivision (b), the furnishing of the alcoholic beverage may be found to be the proximate cause of resulting injuries or death.

(2) A claim under this subdivision may be brought by, or on behalf of, the person under 21 years of age or by a person who was harmed by the person under 21 years of age.

Enacted Stats 1872. Amended Stats 1978 ch 929 § 2; Stats 2002 ch 913 § 1 (SB 682); Stats 2003 ch 62 § 15 (SB 600); Stats 2010 ch 154 § 1 (AB 2486), effective January 1, 2011; Stats 2011 ch 410 § 1 (AB 1407), effective January 1, 2012.

CODE OF CIVIL PROCEDURE

PART 2

Of Civil Actions

TITLE 9

Enforcement of Judgments

DIVISION 2

Enforcement of Money Judgments

CHAPTER 1

General Provisions

Article 1

Property Subject to Enforcement of Money Judgment

Section
695.060. License to engage in business

ARTICLE 1

Property Subject to Enforcement of Money Judgment

§ 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 Stats 1982 ch 1364 § 2, operative July 1, 1983.

CHAPTER 3

Execution

Article 3

Property Subject to Execution

Section
699.720. Property not subject to execution

ARTICLE 3

Property Subject to Execution

§ 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.

(2) The interest of a partner in a partnership or member in a limited liability company if the partnership or the limited liability company is not a judgment debtor.

(3) A cause of action that is the subject of a pending action or special proceeding.

(4) A judgment in favor of the judgment debtor prior to the expiration of the time for appeal from the judgment or, if an appeal is filed, prior to the final determination of the appeal.

(5) A debt (other than earnings) owing and unpaid by a public entity.

(6) The loan value of an unmatured life insurance, endowment, or annuity policy.

(7) A franchise granted by a public entity and all the rights and privileges of the franchise.

(8) The interest of a trust beneficiary.

(9) A contingent remainder, executory interest, or other interest in property that is not vested.

(10) Property in a guardianship or conservatorship estate.

(b) Nothing in subdivision (a) affects or limits the right of the judgment creditor to apply property to the satisfaction of a money judgment pursuant to any applicable procedure other than execution.

Added Stats 1982 ch 1364 § 2, operative July 1, 1983. Amended Stats 1996 ch 57 § 1 (SB 141), effective June 6, 1996.

CHAPTER 6

Miscellaneous Creditors' Remedies

Article 7

Receiver to Enforce Judgment

Section
708.630. Receiver to transfer alcoholic beverage license

ARTICLE 7

Receiver to Enforce Judgment

§ 708.630. Receiver to transfer 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.

Added Stats 1982 ch 1364 § 2, operative July 1, 1983.

FINANCIAL CODE

DIVISION 6

Escrow Agents

CHAPTER 1

Application of This Division

Section
17005. "Licensee"
17006. Exceptions

§ 17005. "Licensee"

"Licensee" means any person holding a valid, unrevoked license as an escrow agent.

Enacted 1951.

§ 17006. Exceptions

(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 has a bona fide client relationship with a principal in a real estate or personal property transaction and who is not actively engaged in the business of an escrow agent.

(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.

Enacted 1951. Amended Stats 1961 ch 475 § 3; Stats 1965 ch 287 § 2; Stats 1980 ch 243 § 1; Stats 1992 ch 861 § 3 (AB 2583); Stats 1998 ch 641 § 14 (SB 1554).

CHAPTER 2

License and Bond

Section
17200. License requirement

§ 17200. License requirement

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.

Enacted 1951. Amended Stats 1953 ch 1076 § 2; Stats 1961 ch 475 § 7; Stats 1999 ch 441 § 6 (AB 583).

GOVERNMENT CODE

TITLE 1

GENERAL

DIVISION 7

Miscellaneous

CHAPTER 8

Computation of Time

Section
6800. Computation of time

§ 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 Stats 1951 ch 655 § 26.

TITLE 2

Government of the State of California

DIVISION 1

General

CHAPTER 5

Miscellaneous

Section
8311. Mailing by certified mail

§ 8311. Mailing by 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.

Added Stats 1955 ch 1668 § 1, as Gov C § 8401. Renumbered by Stats 1965 ch 1157 § 2.

DIVISION 3

Executive Department

PART 1

State Departments and Agencies

CHAPTER 1

State Agencies

Article 1

General

Section
11003. Application, tax return, or claim sent to state agency by mail

ARTICLE 1

General

§ 11003. Application, tax return, or claim sent to state agency by mail

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 or through a bona fide commercial delivery service, as determined by the state or the state agency addressee, properly addressed with postage prepaid, it shall be deemed filed on the date shown by the 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 or through a bona fide commercial delivery service, as determined by the state or the state agency addressee, 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.

Added Stats 1945 ch 111 § 3. Amended Stats 1959 ch 53 § 2; Stats 1998 ch 612 § 2 (AB 821).

HEALTH AND SAFETY CODE

DIVISION 10

Uniform Controlled Substances Act

CHAPTER 6

Offenses and Penalties

Article 4

Miscellaneous Offenses and Provisions

Section
11364.7. Trafficking in drug paraphernalia

ARTICLE 4

Miscellaneous Offenses and Provisions

§ 11364.7. Trafficking in drug paraphernalia

(a) Except as authorized by law, any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it 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, except as provided in subdivision (b), in violation of this division, is guilty of a misdemeanor.

No public entity, its agents, or employees shall be subject to criminal prosecution for distribution of hypodermic needles or syringes to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to Chapter 18 (commencing with Section 121349) of Part 4 of Division 105.

(b) Except as authorized by law, any person who manufactures with intent to deliver, furnish, or transfer drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body cocaine, cocaine base, heroin, phencyclidine, or methamphetamine in violation of this division shall be punished by imprisonment in a county jail for not more than one year, or in the state prison.

(c) Except as authorized by law, any person, 18 years of age or over, who violates subdivision (a) by delivering, furnishing, or transferring drug paraphernalia to a person under 18 years of age who is at least three years his or her junior, or who, upon the grounds of a public or private elementary, vocational, junior high, or high school, possesses a hypodermic needle, as defined in paragraph (7) of subdivision (a) of Section 11014.5, with the intent to deliver, furnish, or transfer the hypodermic needle, knowing, or under circumstances where one reasonably should know, that it will be used by a person under 18 years of age to inject into the human body a controlled substance, is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) The violation, or the causing or the permitting of a violation, of subdivision (a), (b), or (c) by a holder of a business or liquor license issued by a city, county, or city and county, or by the State of California, and in the course of the licensee's business shall be grounds for the revocation of that license.

(e) All drug paraphernalia defined in Section 11014.5 is subject to forfeiture and may be seized by any peace officer pursuant to Section 11471.

(f) If any provision of this section or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

Added Stats 1982 ch 1278 § 2. Amended Stats 1991 ch 573 § 1 (AB 898); Stats 1992 ch 983 § 1 (AB 565); Stats 1999 ch 762 § 1 (AB 136); Stats 2005 ch 692 § 2 (AB 547), effective January 1, 2006.

CHAPTER 8

Seizure and Disposition

Section
11474. Court order for destruction of property

§ 11474. Court order for destruction of property

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.

Added Stats 1980 ch 1019 § 6. Amended Stats 1996 ch 1154 § 5 (AB 3020), effective September 30, 1996; Stats 1999 ch 787 § 7 (AB 749).

DIVISION 20

Miscellaneous Health and Safety Provisions

CHAPTER 6.6

Safe Drinking Water and Toxic Enforcement Act of 1986

Section
25249.5. Prohibition on contaminating drinking water with chemicals known to cause cancer or reproductive toxicity
25249.6. Required warning before exposure to chemicals known to cause cancer or reproductive toxicity

§ 25249.5. Prohibition on contaminating drinking water with chemicals known to cause cancer or reproductive toxicity

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.

Added by initiative measure, Proposition 65, approved November 4, 1986, effective January 1, 1987.

§ 25249.6. Required warning before exposure to chemicals known to cause cancer or reproductive toxicity

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.

Added by initiative measure, Proposition 65, approved November 4, 1986, effective January 1, 1987.

PENAL CODE

PART 1

Of Crimes and Punishments

TITLE 7

Of Crimes Against Public Justice

CHAPTER 7

Other Offenses Against Public Justice

Section

172. Sale of liquor near certain institutions
172a. Sale of liquor near university; Special applications
172b. Sale of liquor near UCLA
172c. Sales at California Science Center
172d. Sale of liquor near UC Riverside
172e. Construction of Sections 172, 172a, 172b, 172d, and 172g
172f. Inapplicability of Sections 172, 172a, 172b, 172d, and 172g to certain licenses
172g. Sale of liquor near specified college campuses
172h. Inapplicability of Sections 172, 172a, 172b, 172d, 172g where dormitories have been constructed since January 1, 1960
172j. Inapplicability of Sections 172, 172a, 172b, 172d and 172g to holders of retail offsale general license or retail offsale beer and wine license
172l. Inapplicability of Section 172a to certain sales near Claremont Colleges
172m. Inapplicability of Section 172a to certain sales near Stanford campus
172n. Inapplicability of Sections 172a and 172b to certain groceries near UCLA
172o. Inapplicability of specified sections to sale of wine by bona fide eating place for consumption off premises
172p. Application of provisions to licensee more than certain distance from Whittier College
172.1. Exception for wine used in experimentation or instruction
172.3. Sale of liquor near University of Redlands
172.5. Inapplicability of Sections 172 and 172a to clubs near UC Berkeley
172.6. Inapplicability of Section 172 to clubs near San Quentin Prison
172.7. Inapplicability of Section 172a to clubs near Whittier College
172.8. Inapplicability of Section 172a to conference center near California Institute of Technology
172.9. "University"
172.95. Inapplicability of restrictions to sales to wholesalers or retailers

§ 172. Sale of liquor near certain institutions

(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.

Enacted 1872. Amended Code Amdts 1875–76 ch 510 § 1; Stats 1905 ch 491 § 1; Stats 1907 ch 99 § 1; Stats 1911 ch 268 § 1; Stats 1915 ch 734 § 1; Stats 1933 ch 826 § 1, ch 1023 § 1; Stats 1937 ch 186 § 1; Stats 1957 ch 526 § 1; Stats 1959 ch 807 § 1; Stats 1961 ch 54 § 1, effective March 30, 1961; Stats 1963 ch 1437 § 1; Stats 1965 ch 1588 § 1; Stats 1967 ch 667 § 1; Stats 1969 ch 529 § 1; Stats 1971 ch 1024 § 1; Stats 1983 ch 121 § 2, effective June 23, 1983.

§ 172a. Sale of liquor near university; Special applications

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.

Added Stats 1909 ch 447 § 1. Amended Stats 1933 ch 1023 § 2; Stats 1947 ch 1448 § 1; Stats 1949 ch 1541 § 1; Stats 1st Ex Sess 1954 ch 25 § 1; Stats 1957 ch 526 § 2; Stats 1959 ch 765 § 1, ch 2195 § 1; Stats 1961 ch 764 § 1, ch 1617 § 1; Stats 1965 ch 1588 § 2.

§ 172b. Sale of liquor near UCLA

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.

Added Stats 1951 ch 1204 § 1, effective June 26, 1951. Amended Stats 1957 ch 526 § 3; Stats 1959 ch 2193 § 1; Stats 1961 ch 1617 § 2; Stats 1965 ch 1588 § 3.

§ 172c. Sales at California Science Center

Section 172a shall not apply to the sale at auction of alcoholic beverages by a nonprofit organization at the California Science Center premises located at Exposition Park, Los Angeles, California.

Added Stats 1977 ch 1118 § 1, effective September 28, 1977. Amended Stats 1996 ch 841 § 15 (AB 3220).

§ 172d. Sale of liquor near UC Riverside

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 intoxicat-

ing 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 air line 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.

Added Stats 1953 ch 1754 § 1. Amended Stats 1957 ch 526 § 4; Stats 1961 ch 1617 § 3; Stats 1965 ch 1588 § 4; Stats 1972 ch 1241 § 2.

§ 172e. Construction of Sections 172, 172a, 172b, 172d, and 172g

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.

Added Stats 1959 ch 2190 § 1 p 5312. Amended Stats 1963 ch 393 § 2 p 1199; Stats 1965 ch 1310 § 1 p 3195, ch 2026 § 2 p 4592; Stats 1973 ch 599 § 1.

§ 172f. Inapplicability of Sections 172, 172a, 172b, 172d, and 172g to certain licenses

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.

Added Stats 1961 ch 1617 § 4. Amended Stats 1963 ch 393 § 3; Stats 1967 ch 740 § 1; Stats 1969 ch 1152 § 1; Stats 1976 ch 778 § 1.

§ 172g. Sale of liquor near specified college campuses

(a) Every person who, within one-half 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 that fine and imprisonment in the discretion of the court.

(b) 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.

(c) 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.

Added Stats 1963 ch 393 § 1. Amended Stats 1965 ch 1588 § 5; Stats 1967 ch 740 § 2; Stats 1968 ch 435 § 1; Stats 1970 ch 945 § 1; Stats 1984 ch 140 § 1, effective May 31, 1984; Stats 2013 ch 43 § 1 (SB 120), effective June 28, 2013.

§ 172h. Inapplicability of Sections 172, 172a, 172b, 172d, 172g where dormitories have been constructed since January 1, 1960

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 Stats 1965 ch 1309 § 1 p 3194.

§ 172j. Inapplicability of Sections 172, 172a, 172b, 172d and 172g to holders of retail offsale general license or retail offsale beer and wine license

The provisions of Sections 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 Stats 1973 ch 210 § 1, operative January 1, 1979.

§ 172*l*. Inapplicability of Section 172a to certain sales near Claremont Colleges

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 air line but by following the shortest road or roads connecting the points in question.

Added Stats 1969 ch 405 § 1. Amended Stats 1973 ch 224 § 1.

§ 172m. Inapplicability of Section 172a to certain sales near Stanford campus

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 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 Stats 1970 ch 1442 § 2.

§ 172n. Inapplicability of Sections 172a and 172b to certain groceries near UCLA

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 Stats 1973 ch 210 § 3.

§ 172o. Inapplicability of specified sections to sale of wine by bona fide eating place for consumption off premises

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 Stats 1985 ch 267 § 1.

§ 172p. Application of provisions to licensee more than certain distance from Whittier College

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 Stats 1997 ch 774 § 6 (AB 1082).

§ 172.1. Exception for wine used in experimentation or instruction

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.

Added Stats 1959 ch 807 § 2. Amended Stats 1970 ch 102 § 565.

§ 172.3. Sale of liquor near University of Redlands

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, and off-sale license situated within 1½ miles from the grounds of the University of Redlands.

Added Stats 1977 ch 760 § 1.

§ 172.5. Inapplicability of Sections 172 and 172a to clubs near UC Berkeley

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).

Added Stats 1941 ch 259 § 1. Amended Stats 1965 ch 1588 § 6; Stats 1967 ch 138 § 1.

§ 172.6. Inapplicability of Section 172 to clubs near San Quentin Prison

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 Stats 1965 ch 1452 § 1 p 3405.

§ 172.7. Inapplicability of Section 172a to clubs near Whittier College

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 premises which it occupies.

Added Stats 1969 ch 410 § 1. Amended Stats 1970 ch 1285 § 1.

§ 172.8. Inapplicability of Section 172a to conference center near California Institute of Technology

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 ½ miles from the California Institute of Technology in Pasadena.

Added Stats 1975 ch 88 § 1, effective May 19, 1975.

§ 172.9. "University"

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.

Added Stats 1963 ch 293 § 1 p 1063. Amended Stats 1965 ch 1588 § 7 p 3682.

§ 172.95. Inapplicability of restrictions to sales to wholesalers or retailers

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 Stats 1965 ch 710 § 1, effective June 17, 1965.

TITLE 9

Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals

CHAPTER 7

Of Crimes Against Religion and Conscience, and Other Offenses Against Good Morals

Section

303. Employment of person to procure sale of alcoholic beverages
303a. Begging or soliciting customer to purchase alcoholic beverage
307. Selling confectionery with excess alcohol content to person under 21 as misdemeanor
308. Selling or furnishing tobacco or smoking paraphernalia to minor; Criminal and civil actions and penalties; Defense to action; Persons liable; Purchase or receipt by minor; Posting of notice; Legislative intent
308.2. Sale of improperly sealed or labeled cigarettes

§ 303. Employment of person to procure sale of alcoholic beverages

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 Stats 1935 ch 504 § 1 p 1576.

§ 303a. Begging or soliciting customer to purchase alcoholic beverage

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 Stats 1953 ch 1591 § 2 p 3272.

§ 307. Selling confectionery with excess alcohol content to person under 21 as misdemeanor

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 ½ of 1 percent by weight, is guilty of a misdemeanor.

Added Stats 1977 ch 795 § 1. Amended Stats 1985 ch 934 § 4.

§ 308. Selling or furnishing tobacco or smoking paraphernalia to minor; Criminal and civil actions and penalties; Defense to action; Persons liable; Purchase or receipt by minor; Posting of notice; Legislative intent

(a)(1) Every person, firm, or corporation that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or blunts wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars ($200) for the first offense, five hundred dollars ($500) for the second offense, and one thousand dollars ($1,000) for the third offense.

Notwithstanding Section 1464 or any other law, 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county counsel, or district attorney, whoever is responsible for bringing the successful action, and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (b).

Proof that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of majority shall be defense to any action brought pursuant to this subdivision. Evidence of majority of a person is a facsimile of or a reasonable likeness of 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, a registration certificate issued under the federal Selective Service Act, or an identification card issued to a member of the Armed Forces.

For purposes of this section, the person liable for selling or furnishing tobacco products to minors by a tobacco vending machine shall be the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or should otherwise have grounds for knowledge, that the tobacco vending machine will be utilized by minors.

(2) For purposes of this section, "blunt wraps" means cigar papers or cigar wrappers of all types that are designed for smoking or ingestion of tobacco products and contain less than 50 percent tobacco.

(b) Every person under the age of 18 years who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of seventy-five dollars ($75) or 30 hours of community service work.

(c) Every person, firm, or corporation that sells, or deals in tobacco or any preparation thereof, shall post conspicuously and keep so posted in his, her, or their place of business at each point of purchase the notice required pursuant to subdivision (b) of Section 22952 of the Business and Professions Code, and any person failing to do so shall, upon conviction, be punished by a fine of fifty dollars ($50) for the first offense, one hundred dollars ($100) for the second offense, two hundred fifty dollars ($250) for the third offense, and five hundred dollars ($500) for the fourth offense and each subsequent violation of this provision, or by imprisonment in a county jail not exceeding 30 days.

(d) For purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in multiple locations for the second and subsequent violations of this section, each individual franchise or business location shall be deemed a separate entity.

(e) Notwithstanding subdivision (b), any person under 18 years of age who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, any other instrument or paraphernalia that is designed for the smoking of tobacco, or products prepared from tobacco, while participating in the enforcement activities that comply with the guidelines adopted pursuant to subdivisions (c) and (d) of Section 22952 of the Business and Professions Code is immune from prosecution for that purchase, receipt, or possession.

(f) It is the Legislature's intent to regulate the subject matter of this section. As a result, a city, county, or city and county shall not adopt any

ordinance or regulation inconsistent with this section.

Added Stats 1891 ch 70 § 1. Amended Stats 1911 ch 288 § 1; Stats 1972 ch 618 § 115; Stats 1980 ch 542 § 1; Stats 1983 ch 1092 § 265, effective September 27, 1983, operative January 1, 1984. Amended Stats 1988 ch 1045 § 1; Stats 1989 ch 223 § 1; Stats 1996 ch 1166 § 1 (SB 1849); Stats 1997 ch 110 § 1 (SB 198); Stats 2001 ch 376 § 4 (SB 757); Stats 2004 ch 798 § 2 (AB 384), ch 822 § 5 (AB 3092), effective September 27, 2004; Stats 2006 ch 501 § 11 (AB 1749), effective January 1, 2007; Stats 2012 ch 335 § 5 (AB 1301), effective January 1, 2013.

§ 308.2. Sale of improperly sealed or labeled cigarettes

(a) Every person who sells one or more cigarettes, other than in a sealed and properly labeled package, is guilty of an infraction.

(b) "A sealed and properly labeled package," as used in this section, means the original packaging or sanitary wrapping of the manufacturer or importer which conforms to federal labeling requirements, including the federal warning label.

Added Stats 1991 ch 1231 § 1 (SB 1079).

CHAPTER 7.6

Harmful Matter

Section

313.1. Distribution or exhibition of harmful matter to minor; Addition of harmful matter to rented video; Defenses

§ 313.1. Distribution or exhibition of harmful matter to minor; Addition of harmful matter to rented video; Defenses

(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.

It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or to perform related activities in providing telephone services.

(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. This subdivision shall not apply to public libraries as defined in Section 18710 of the Education Code.

(f) Any person who rents a video recording and alters the video recording by adding harmful material, and who then returns the video recording to a video rental store, shall be guilty of a misdemeanor. It shall be a defense in any prosecution for a violation of this subdivision that the video rental store failed to post a sign, reasonably visible to all customers, delineating the provisions of this subdivision.

(g) It shall be a defense in any prosecution for a violation of subdivision (a) by a person who knowingly distributed any harmful matter by the use of telephones or telephone facilities to any person under the age of 18 years that the defendant has taken either of the following measures to restrict access to the harmful matter by persons under 18 years of age:

(1) Required the person receiving the harmful matter to use an authorized access or identification code, as provided by the information provider, before transmission of the harmful matter begins, where the defendant previously has issued the code by mailing it to the applicant after taking reasonable measures to ascertain that the applicant was 18 years of age or older and has established a procedure to immediately cancel the code of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of 18 years or that the code is no longer desired.

(2) Required payment by credit card before transmission of the matter.

(h) It shall be a defense in any prosecution for a violation of paragraph (2) of subdivision (c) that the defendant has taken either of the following measures to restrict access to the harmful matter by persons under 18 years of age:

(1) Required the person receiving the harmful matter to use an authorized access or identification card to the vending machine after taking reasonable measures to ascertain that the applicant was 18 years of age or older and has established a procedure to immediately cancel the card of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of 18 years or that the card is no longer desired.

(2) Required the person receiving the harmful matter to use a token in order to utilize the vending machine after taking reasonable measures to ascertain that the person was 18 years of age or older.

(i) Any list of applicants or recipients compiled or maintained by an information-access service provider for purposes of compliance with paragraph (1) of subdivision (g) is confidential and shall not be sold or otherwise disseminated except upon order of the court.

Added Stats 1969 ch 248 § 1. Amended Stats 1970 ch 257 § 1 p 522; Stats 1976 ch 1121 § 1. Amended Stats 1987 ch 471 § 1; Stats 1988 ch 909 § 1, ch 1392 § 7; Stats 1989 ch 1058 § 3; Stats 1990 ch 877 § 1 (SB 2475); Stats 1993 ch 559 § 1 (AB 538); Stats 1994 ch 38 § 1 (AB 17).

CHAPTER 8

Indecent Exposure, Obscene Exhibitions, and Bawdy and Other Disorderly Houses

Section

316. Keeping disorderly house
318.5. Local regulation of topless or bottomless waiters, waitresses, or entertainers
318.6. Local regulation of topless and bottomless exhibitions in public places

§ 316. Keeping disorderly house

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.

Enacted 1872; Amended Code Amdts 1873–74 ch 614 § 26 p 430. Amended Stats 1989 ch 1360 § 108.

§ 318.5. Local regulation of topless or bottomless waiters, waitresses, or entertainers

(a) 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 that ordinance directly regulates the exposure of the genitals or buttocks of any person, or the breasts of any female 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 that person to perform the activity, in an adult or sexually oriented business. For purposes of this section, an "adult or sexually oriented business" includes any establishment that regularly features live performances which are distinguished or characterized by an emphasis on the exposure of the genitals or buttocks of any person, or the breasts of any female person, or specified sexual activities that involve the exposure of the genitals or buttocks of any person, or the breasts of any female person.

(b) The provisions of this section shall not be construed to apply to any adult or sexually oriented business, as defined herein, that has been adjudicated by a court of competent jurisdiction to be, or by action of a local body such as issuance of

an adult entertainment establishment license or permit allowing the business to operate on or before July 1, 1998, as, a theater, concert hall, or similar establishment primarily devoted to theatrical performances for purposes of this section.

This section shall be known and may be cited as the "Quimby-Walsh Act."

Added Stats 1969 ch 1534 § 1 p 3128. Amended Stats 1998 ch 294 § 2 (AB 726).

§ 318.6. Local regulation of topless and bottomless exhibitions in public places

(a) 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 that ordinance relates to any live acts, demonstrations, or exhibitions occurring within adult or sexually oriented businesses and involve the exposure of the genitals or buttocks of any participant or the breasts of any female participant, and if that ordinance prohibits an act or acts which are not expressly authorized or prohibited by this code.

(b) For purposes of this section, an "adult or sexually oriented business" includes any establishment that regularly features live performances which are distinguished or characterized by an emphasis on the exposure of the genitals or buttocks of any person, or the breasts of any female person or sexual activities that involve the exposure of the genitals or buttocks of any person, or the breasts of any female person.

(c) The provisions of this section shall not be construed to apply to any adult or sexually oriented business, as defined herein, that has been adjudicated by a court of competent jurisdiction to be, or by action of a local body such as issuance of an adult entertainment establishment license or permit allowing the business to operate on or before July 1, 1998, as, a theater, concert hall, or similar establishment primarily devoted to theatrical performances for purposes of this section.

(d) This section shall not be construed to preempt the legislative body of any city or county from regulating an adult or sexually oriented business, or similar establishment, in the manner and to the extent permitted by the United States Constitution and the California Constitution.

Added Stats 1969 ch 1535 § 1 p 3129. Amended Stats 1998 ch 294 § 3 (AB 726).

CHAPTER 9

Lotteries

Section
319. Lottery defined
320. Punishment for drawing lottery
321. Punishment for selling lottery tickets

§ 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-enterprise, or by whatever name the same may be known.

Enacted 1872.

§ 320. Punishment for drawing lottery

Every person who contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a misdemeanor.

Enacted 1872.

§ 321. Punishment for selling lottery tickets

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.

CHAPTER 10

Gaming

Section
330. Gaming
330a. Possession or keeping of slot or card machine or card dice; Punishment
330b. Possession or keeping of slot machines or devices; Exceptions; Punishment
330c. "Punchboards"
337a. Bookmaking; Bets and wagers
337j. Controlled games; Gambling equipment; License requirement; Collection of fees in gambling establishments

§ 330. Gaming

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.

Enacted 1872. Amended Stats 1885 ch 145 § 1; Stats 1891 ch 62 § 1; Stats 1983 ch 1092 § 267, effective September 27, 1983, operative January 1, 1984. Amended Stats 1991 ch 71 § 1 (AB 97).

§ 330a. Possession or keeping of slot or card machine or card dice; Punishment

(a) Every person, who has in his or her possession or under his or her 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 her, or under his or her 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 the machine, when the result of action or operation of the machine, contrivance, appliance, or mechanical device is dependent upon hazard or chance, and every person, who has in his or her possession or under his or her 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 her, or under his or her 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 the dice is dependent upon hazard or chance, is guilty of a misdemeanor.

(b) A first violation of this section shall be punishable by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(c) A second offense shall be punishable by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(d) A third or subsequent offense shall be punishable by a fine of not less than ten thousand dollars ($10,000) nor more than twenty-five thousand dollars ($25,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(e) If the offense involved more than one machine or more than one location, an additional fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) shall be imposed per machine and per location.

Added Stats 1911 ch 483 § 1. Amended Stats 1983 ch 1092 § 268, effective September 27, 1983, operative January 1, 1984; Stats 2010 ch 577 § 1 (AB 1753), effective January 1, 2011.

§ 330b. Possession or keeping of slot machines or devices; Exceptions; Punishment

(a) It is unlawful for any person to manufacture, repair, own, store, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to repair, sell, rent, lease, let on shares, lend or give away, or permit the operation, placement, maintenance, or keeping of, in any place, room, space, or building owned, leased, or occupied, managed, or controlled by that person, any slot machine or device, as defined in this section.

It is unlawful for any person to make or to permit the making of an agreement with another person regarding any slot machine or device, by which the user of the slot machine or device, as a result of the element of hazard or chance or other unpredictable outcome, may become entitled to receive money, credit, allowance, or other thing of value or additional chance or right to use the slot machine or device, or to receive any check, slug, token, or memorandum entitling the holder to receive money, credit, allowance, or other thing of value.

(b) The limitations of subdivision (a), insofar as they relate to owning, storing, possessing, or transporting any slot machine or device, do not apply to any slot machine or device located upon or being transported by any vessel regularly operated and engaged in interstate or foreign commerce, so long as the slot machine or device is located in a locked compartment of the vessel, is not accessible for use, and is not used or operated within the territorial jurisdiction of this state.

(c) The limitations of subdivision (a) do not apply to a manufacturer's business activities that are conducted in accordance with the terms of a license issued by a tribal gaming agency pursuant to the tribal-state gaming compacts entered into in accordance with the Indian Gaming Regulatory Act (18 U.S.C. Sec. 1166 to 1168, inclusive, and 25 U.S.C. Sec. 2701 et seq.).

(d) For purposes of this section, "slot machine or device" means a machine, apparatus, or device that is adapted, or may readily be converted, for use in a way that, as a result of the insertion of any piece of money or coin or other object, or by any other means, the machine or device is caused to operate or may be operated, and by reason of any element of hazard or chance or of other outcome of operation unpredictable by him or her, the user may receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or additional chance or right to use the slot machine or device, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value, or which may be given in trade, irrespective of whether it may, apart from any element of hazard or chance or unpredictable outcome of operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.

(e) Every person who violates this section is guilty of a misdemeanor.

(1) A first violation of this section shall be punishable by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(2) A second offense shall be punishable by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(3) A third or subsequent offense shall be punishable by a fine of not less than ten thousand dollars ($10,000) nor more than twenty-five thousand dollars ($25,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(4) If the offense involved more than one machine or more than one location, an additional fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) shall be imposed per machine and per location.

(f) Pinball and other amusement machines or devices, which are predominantly games of skill, whether affording the opportunity of additional chances or free plays or not, are not included within the term slot machine or device, as defined in this section.

Added Stats 1st Ex Sess 1950 ch 17 § 1. Amended Stats 2003 ch 264 § 1 (AB 360); Stats 2004 ch 183 § 267 (AB 3082); Stats 2010 ch 577 § 2 (AB 1753), effective January 1, 2011.

§ 330c. "Punchboards"

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 Stats 1953 ch 379 § 1 p 1641.

§ 337a. Bookmaking; Bets and wagers

(a) Except as provided in Section 336.9, every person who engages in one of the following offenses, shall be punished for a first offense by imprisonment in a county jail for a period of not more than one year or in the state prison, or by a fine not to exceed five thousand dollars ($5,000), or by both imprisonment and fine:

(1) Pool selling or bookmaking, with or without writing, at any time or place.

(2) 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, any purported bet or bets, wager or wagers, any purported wager or wagers, selling pools, or purported pools, upon the result, or purported result, of any trial, purported trial, contest, or purported contest, of skill, speed or power of endurance of person or animal, or between persons, animals, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown or contingent event whatsoever.

(3) 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 person or animal, or between persons, animals, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown or contingent event whatsoever.

(4) 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 person or animal, or between persons, animals, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown or contingent event whatsoever.

(5) 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 that space to be used or occupied for any purpose, or in any manner prohibited by paragraph (1), (2), (3), or (4).

(6) 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 person or animal, or between persons, animals, or mechanical apparatus.

(b) 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 or she is not imprisoned in the state prison, be imprisoned in the county jail for a period of not more than one year and pay a fine of not less than one thousand dollars ($1,000) and not to exceed ten thousand dollars ($10,000). Nothing in this paragraph shall prohibit a court from placing a person subject to this subdivision on probation. However, that person shall be required to pay a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) or 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 pursuant to this subdivision from either being imprisoned or from paying a fine of not less than one thousand dollars ($1,000) and not more than ten thousand dollars ($10,000).

(c) 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 previous conviction shall be charged in the accusatory pleadings. If two or more of the 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 or she 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 fifteen thousand dollars ($15,000), or be punished by both imprisonment and fine. Nothing in this paragraph shall prohibit a court from placing a person subject to this subdivision on probation. However, that person shall be required to pay a fine of not less than one thousand dollars ($1,000) nor more than fifteen thousand dollars ($15,000), or 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 and subject to this subdivision from either being imprisoned or from paying a fine of not more than fifteen thousand dollars ($15,000).

(d) 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.

(e) This section applies not only to persons who commit any of the acts designated in paragraphs (1) to (6), inclusive, of subdivision (a), as a business or occupation, but also applies to every person who in a single instance engages in any one of the acts specified in paragraphs (1) to (6), inclusive, of subdivision (a).

Added Stats 1909 ch 28 § 1. Amended Stats 1911 ch 7 § 1 p 4; Stats 1968 ch 578 § 1 p 1246; Stats 1976 ch 1139 § 183, operative July 1, 1977; Stats 1978 ch 1164 § 1; Stats 2005 ch 546 § 4 (AB 1753), effective January 1, 2006; Stats 2009 ch 72 § 2 (AB 58), effective January 1, 2010.

§ 337j. Controlled games; Gambling equipment; License requirement; Collection of fees in gambling establishments

(a) It is unlawful for any person, as owner, lessee, or employee, whether for hire or not, either solely or in conjunction with others, to do any of the following without having first procured and thereafter maintained in effect all federal, state, and local licenses required by law:

(1) To deal, operate, carry on, conduct, maintain, or expose for play in this state any controlled game.

(2) To receive, directly or indirectly, any compensation or reward or any percentage or share of the revenue, for keeping, running, or carrying on any controlled game.

(3) To manufacture, distribute, or repair any gambling equipment within the boundaries of this state, or to receive, directly or indirectly, any compensation or reward for the manufacture, distribution, or repair of any gambling equipment within the boundaries of this state.

(b) It is unlawful for any person to knowingly permit any controlled game to be conducted, operated, dealt, or carried on in any house or building or other premises that he or she owns or leases, in whole or in part, if that activity is undertaken by a person who is not licensed as required by state law, or by an employee of that person.

(c) It is unlawful for any person to knowingly permit any gambling equipment to be manufactured, stored, or repaired in any house or building or other premises that the person owns or leases, in whole or in part, if that activity is undertaken by a person who is not licensed as required by state law, or by an employee of that person.

(d) Any person who violates, attempts to violate, or conspires to violate this section shall be punished by imprisonment in a county jail for not more than one year or by a fine of not more than ten thousand dollars ($10,000), or by both imprisonment and fine. A second offense of this section is punishable by imprisonment in a county jail for a period of not more than one year or in the state prison or by a fine of not more than ten thousand dollars ($10,000), or by both imprisonment and fine.

(e)(1) As used in this section, "controlled game" means any poker or Pai Gow game, and any other game played with cards or tiles, or both, and approved by the Department of Justice, and any game of chance, including any gambling device, played for currency, check, credit, or any other thing of value that is not prohibited and made unlawful by statute or local ordinance.

(2) As used in this section, "controlled game" does not include any of the following:

(A) The game of bingo conducted pursuant to Section 326.3 or 326.5.

(B) Parimutuel racing on horse races regulated by the California Horse Racing Board.

(C) Any lottery game conducted by the California State Lottery.

(D) Games played with cards in private homes or residences, in which no person makes money for operating the game, except as a player.

(f) This subdivision is intended to be dispositive of the law relating to the collection of player fees in gambling establishments. A fee may not be calculated as a fraction or percentage of wagers made or winnings earned. The amount of fees charged for all wagers shall be determined prior to the start of play of any hand or round. However, the gambling establishment may waive collection of the fee or portion of the fee in any hand or round of play after the hand or round has begun pursuant to the published rules of the game and the notice provided to the public. The actual collection of the fee may occur before or after the start of play. Ample notice shall be provided to the patrons of gambling establishments relating to the assessment of fees. Flat fees on each wager may be assessed at different collection rates, but no more than five collection rates may be established per table. However, if the gambling establishment waives its collection fee, this fee does not constitute one of the five collection rates.

Added Stats 1997 ch 867 § 59 (SB 8). Amended Stats 1998 ch 423 § 2 (AB 518), effective September 1, 1998; Stats 2001 ch 941 § 3 (AB 54). Amended Stats 2003 ch 756 § 1 (AB 278); Stats 2004 ch 405 § 8 (SB 1796); Stats 2005 ch 546 § 6 (AB 1753), effective January 1, 2006; Stats 2007 ch 176 § 62 (SB 82), effective August 24, 2007, ch 493 § 2 (AB 356), effective January 1, 2008; Stats 2008 ch 748 § 7 (SB 1369), effective January 1, 2009.

CHAPTER 12

Other Injuries to Persons

Section
347b. Poisonous alcoholic solutions

§ 347b. Poisonous alcoholic solutions

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.

Added Stats 1931 ch 167 § 1 p 237; Amended Stats 1957 ch 139 § 35 p 744; Stats 1976 ch 1125 § 17.

TITLE 10

Of Crimes Against the Public Health and Safety

Section
373a. Maintaining or permitting public nuisance after abatement notice
382. Adulteration of food, drink, or medicine
397. Selling or furnishing liquor to habitual drunkard or person adjudged incompetent

§ 373a. Maintaining or permitting public nuisance after abatement notice

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.

Added Stats 1903 ch 147 § 1 p 163. Amended Stats 1955 ch 1266 § 1 p 2304.

§ 382. Adulteration of food, drink, or medicine

Every person who adulterates or dilutes any article of food, drink, drug, medicine, 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 or 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 food, drink, drug, medicine, 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 guaranty of purity obtained from the person from whom he purchased such adulterated or diluted goods.

Enacted 1872; Amended Stats 1903 ch 254 § 1 p 351.

§ 397. Selling or furnishing liquor to habitual drunkard or person adjudged 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.

Enacted 1872; Amended Code Amdts 1873–74 ch 438 § 1 p 462; Stats 1893 ch 83 § 1 p 98; Stats 1897 ch 31 § 1 p 29; Stats 1903 ch 85 § 1 p 93; Stats 1915 ch 169 § 1 p 341; Stats 1939 ch 1035 § 1 p 2839; Stats 1943 ch 490 § 1 p 2032; Stats 1953 ch 146 § 1 p 918.

TITLE 13

Of Crimes Against Property

CHAPTER 5

Larceny

Section
496. Receiving or concealing stolen property; Duty of swap meet vendor or personal property dealer or collector to make reasonable inquiry; Action for damages; Attempts

§ 496. Receiving or concealing stolen property; Duty of swap meet vendor or personal property dealer or collector to make reasonable inquiry; Action for damages; Attempts

(a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170. However, if the district attorney or the grand jury determines that this action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may, if the value of the property does not exceed nine hundred fifty dollars ($950), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year.

A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.

(b) Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives any property of a value in excess of nine hundred fifty dollars ($950) that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170.

Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives any property of a value of nine hundred fifty dollars ($950) or less that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be guilty of a misdemeanor.

(c) Any person who has been injured by a violation of subdivision (a) or (b) may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees.

(d) Notwithstanding Section 664, any attempt to commit any act prohibited by this section, except an offense specified in the accusatory pleading as a misdemeanor, is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

Added Stats 1935 ch 434 § 1, as Pen C § 496bb. Amended and renumbered by Stats 1951 ch 97 § 2. Amended Stats 1959 ch 734 § 1; Stats 1963 ch 1605 § 1; Stats 1968 ch 1085 § 1; Stats 1972 ch 963 § 1; Stats 1976 ch 1139 § 224, operative July 1, 1977; Stats 1980 ch 1163 § 4; Stats 1982 ch 935 § 1; Stats 1992 ch 1146 § 1 (AB 3326); Stats 1997 ch 161 § 1 (AB 143); Stats 2009–2010 3d Ex Sess ch 28 § 23 (SB 18XXX), effective January 25, 2010; Stats 2011 ch 15 § 372 (AB 109), effective April 4, 2011, operative October 1, 2011.

CHAPTER 8

False Personation and Cheats

Section
529a. Manufacture or sale of false certificate of birth or baptism
529.5. Possession, manufacture, or sale of documents falsely purporting to be government identification

§ 529a. Manufacture or sale of false certificate of birth or baptism

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 a county jail not to exceed one year, or by imprisonment pursuant to subdivision (h) of Section 1170. 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 Stats 1979 ch 739 § 2. Amended Stats 1987 ch 1477 § 10; Stats 2011 ch 15 § 382 (AB 109), effective April 4, 2011, operative October 1, 2011.

§ 529.5. Possession, manufacture, or sale of documents falsely purporting to be government 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.

Added Stats 1979 ch 717 § 2. Amended Stats 1990 ch 960 § 1 (AB 2718).

TITLE 15

Miscellaneous Crimes

CHAPTER 2

Of Other and Miscellaneous Offenses

Section
647. Disorderly conduct; Punishment for violation
647e. Possession of opened alcoholic beverage container on posted premises of off–sale alcoholic beverage licensee

§ 647. Disorderly conduct; Punishment for violation

Except as provided in subdivision (*l*), 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. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(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 lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.

(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, controlled substance, or toluene, in 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.

(g) When a person has violated subdivision (f), a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force which would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. A person who has been placed in civil protective custody shall not thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement. This subdivision shall not apply to the following persons:

(1) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.

(2) Any person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f).

(3) Any person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.

(h) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. As used in this subdivision, "loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(i) Who, while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of any inhabited building or structure, without visible or lawful business with the owner or occupant.

(j)(1) Any person who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, motion picture camera, camcorder, or mobile phone, the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside. This subdivision shall not apply to those areas of a private business used to count currency or other negotiable instruments.

(2) Any person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person under or through the clothing being worn by that other person, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy.

(3)(A) Any person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person.

(B) Neither of the following is a defense to the crime specified in this paragraph:

(i) The defendant was a cohabitant, landlord, tenant, cotenant, employer, employee, or business partner or associate of the victim, or an agent of any of these.

(ii) The victim was not in a state of full or partial undress.

(4)(A) Any person who photographs or records by any means the image of the intimate body part or parts of another identifiable person, under circumstances where the parties agree or understand that the image shall remain private, and the person subsequently distributes the image taken, with the intent to cause serious emotional distress, and the depicted person suffers serious emotional distress.

(B) As used in this paragraph, intimate body part means any portion of the genitals, and in the case of a female, also includes any portion of the breasts below the top of the areola, that is either uncovered or visible through less than fully opaque clothing.

(C) Nothing in this subdivision precludes punishment under any section of law providing for greater punishment.

(k) In any accusatory pleading charging a violation of subdivision (b), if the defendant has been once previously convicted of a violation of that subdivision, the previous conviction shall be charged in the accusatory pleading. 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 be imprisoned in a county jail for a period of not less than 45 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 45 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 45 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 45 days in confinement in a county jail.

In any accusatory pleading charging a violation of subdivision (b), if the defendant has been previously convicted two or more times of a violation of that subdivision, each of these previous convictions shall be charged in the accusatory pleading. If two or more of these 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 be imprisoned in a county jail for a period of not less

than 90 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 90 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in a county jail.

In addition to any punishment prescribed by this section, a court may suspend, for not more than 30 days, the privilege of the person to operate a motor vehicle pursuant to Section 13201.5 of the Vehicle Code for any violation of subdivision (b) that was committed within 1,000 feet of a private residence and with the use of a vehicle. In lieu of the suspension, the court may order a person's privilege to operate a motor vehicle restricted, for not more than six months, to necessary travel to and from the person's place of employment or education. If driving a motor vehicle is necessary to perform the duties of the person's employment, the court may also allow the person to drive in that person's scope of employment.

(*l*)(1) A second or subsequent violation of subdivision (j) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both that fine and imprisonment.

(2) If the victim of a violation of subdivision (j) was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both that fine and imprisonment.

Added Stats 1961 ch 560 § 2. Amended Stats 1965 ch 1959 § 1; Stats 1967 ch 1317 § 1; Stats 1969 ch 204 § 1, ch 1319 § 2; Stats 1970 ch 26 § 1, effective March 23, 1970; Stats 1971 ch 1581 § 1; Stats 1977 ch 426 § 1; Stats 1984 ch 1633 § 1, ch 1635 § 80; Stats 1986 ch 264 § 1, ch 1276 § 1; Stats 1987 ch 828 § 41; Stats 1988 ch 524 § 1; Stats 1st Ex Sess 1993–94 ch 21 § 1 (AB 116 X), effective November 30, 1994; Stats 1995 ch 91 § 126 (SB 975); Stats 1996 ch 1019 § 2 (AB 2949), ch 1020 § 2 (AB 2051); Stats 1998 ch 758 § 1 (AB 1788); Stats 1999 ch 231 § 1 (AB 182); Stats 2004 ch 666 § 1 (SB 1484); Stats 2007 ch 302 § 11 (SB 425), effective January 1, 2008; Stats 2011 ch 658 § 1 (AB 665), effective January 1, 2012; Stats 2013 ch 466 § 1 (SB 255), effective October 1, 2013.

§ 647e. Possession of opened alcoholic beverage container on posted premises of off–sale alcoholic beverage licensee

(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 Stats 1983 ch 514 § 1, effective July 28, 1983.

PART 2

Of Criminal Procedure

TITLE 3

Additional Provisions Regarding Criminal Procedure

CHAPTER 4.5

Peace Officers

Section

830.2. Highway Patrol members, university police, certain persons in Department of Corrections, employees of specified departments, state fair marshals and police, and certain persons of Inspector General's office

§ 830.2. Highway Patrol members, university police, certain persons in Department of Corrections, employees of specified departments, state fair marshals and police, and certain persons of Inspector General's office

The following persons are peace officers whose authority extends to any place in the state:

(a) Any member of the Department of the California Highway Patrol including those members designated under subdivision (a) of Section 2250.1 of the Vehicle Code, provided that the primary duty of the peace officer is the enforcement of any law relating to the use or operation of vehicles upon the highways, or laws pertaining to the provision of police services for the protection of state officers, state properties, and the occupants of state properties, or both, as set forth in the Vehicle Code and Government Code.

(b) A member of the University of California Police Department appointed pursuant to Section 92600 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 92600 of the Education Code.

(c) A member of the California State University Police Departments appointed pursuant to Section 89560 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 89560 of the Education Code.

(d)(1) Any member of the Office of Correctional Safety of the Department of Corrections and Rehabilitation, provided that the primary duties of the peace officer shall be the investigation or apprehension of inmates, wards, parolees, parole violators, or escapees from state institutions, the transportation of those persons, the investigation of any violation of criminal law discovered while performing the usual and authorized duties of employment, and the coordination of those activities with other criminal justice agencies.

(2) Any member of the Office of Internal Affairs of the Department of Corrections and Rehabilitation, provided that the primary duties shall be criminal investigations of Department of Corrections and Rehabilitation personnel and the coordination of those activities with other criminal justice agencies. For purposes of this subdivision, the member of the Office of Internal Affairs shall possess certification from the Commission on Peace Officer Standards and Training for investigators, or have completed training pursuant to Section 6126.1 of the Penal Code.

(e) Employees of the Department of Fish and Game designated by the director, provided that the primary duty of those peace officers shall be the enforcement of the law as set forth in Section 856 of the Fish and Game Code.

(f) Employees of the Department of Parks and Recreation designated by the director pursuant to Section 5008 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as set forth in Section 5008 of the Public Resources Code.

(g) The Director of Forestry and Fire Protection and employees or classes of employees of the Department of Forestry and Fire Protection designated by the director pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as that duty is set forth in Section 4156 of the Public Resources Code.

(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.

(i) Marshals and police appointed by the Board of Directors of the California Exposition and State Fair pursuant to Section 3332 of the Food and Agricultural Code, provided that the primary duty of the peace officers shall be the enforcement of the law as prescribed in that section.

Added Stats 1968 ch 1222 § 1. Amended Stats 1969 ch 1206 § 1; Stats 1970 ch 1454 § 3; Stats 1971 ch 631 § 2, ch 632 § 2,

ch 1469 § 6; Stats 1976 ch 420 § 4; Stats 1980 ch 1340 § 6, effective September 30, 1980; Stats 1982 ch 1277 § 2; Stats 1987 ch 367 § 1; Stats 1989 ch 1165 § 21, ch 1166 § 2; Stats 1990 ch 82 § 7 (SB 655), effective May 2, 1990; Stats 1992 ch 427 § 128 (AB 3355), ch 1370 § 38 (AB 3193), effective October 27, 1992 (ch 1370 prevails). Supplemented by the Governor's Reorganization Plan No. 1 of 1995, effective July 12, 1995. Amended Stats 1996 ch 305 § 49 (AB 3103); Stats 1999 ch 917 § 2 (AB 1502), ch 918 § 4.5 (SB 868); Stats 2008 ch 699 § 11 (SB 1241), effective January 1, 2009; Stats 2009 ch 35 § 10 (SB 174), effective January 1, 2010; Stats 2011 ch 10 § 5 (SB 78), effective March 24, 2011, ch 36 § 19 (SB 92), effective June 30, 2011.

PART 4

Prevention of Crimes and Apprehension of Criminals

TITLE 2

Control of Deadly Weapons [Repealed]

CHAPTER 1

Firearms [Repealed]

Article 2

Unlawful Carrying and Possession of Weapons [Repealed]

Section
12020. [Repealed]

ARTICLE 2

Unlawful Carrying and Possession of Weapons [Repealed]

§ 12020. [Section repealed 2012.]

Added Stats 1953 ch 36 § 1. Amended Stats 1961 ch 996 § 1; Stats 1965 ch 36 § 2; Stats 1973 ch 732 § 2, effective September 25, 1973; Stats 1974 ch 141 § 1, effective April 4, 1974; Stats 1975 ch 1161 § 1; Stats 1976 ch 1140 §§ 2, 3; Stats 1977 ch 857 § 1; Stats 1978 ch 70 § 1, effective March 29, 1978; Stats 1979 ch 78 § 1, effective May 22, 1979; Stats 1983 ch 1129 § 1; Stats 1984 ch 1414 § 3, ch 1562 § 1.1; Stats 1986 ch 1421 § 1; Stats 1987 ch 1461 § 1; Stats 1988 ch 512 § 1, ch 1191 § 1, ch 1269 § 2.7; Stats 1989 ch 358 § 1; Stats 1990 ch 350 § 17 (SB 2084) (ch 1690 prevails), ch 1690 § 1 (AB 376); Stats 1993 ch 357 § 1 (AB 1266), ch 1139 § 2 (SB 180); Stats 1994 ch 23 § 4 (AB 482); Stats 1995 ch 128 § 2 (AB 1222); Stats 1997 ch 158 § 1 (AB 78), ch 593 § 1.5 (AB 202); Stats 1999 ch 111 § 2 (SB 359), effective July 13, 1999, ch 129 § 3.5 (SB 23), operative January 1, 2000; Stats 2000 ch 287 § 22 (SB 1955); Stats 2001 ch 130 § 1 (SB 578), ch 937 § 1 (SB 626); Stats 2004 ch 247 § 7 (AB 1232), effective August 23, 2004; Stats 2008 ch 699 § 18 (SB 1241), effective January 1, 2009. Repealed Stats 2010 ch 711 § 4 (SB 1080), effective January 1, 2011, operative January 1, 2012. The repealed section related to illegal manufacture, importation, sale and possession of weapons. See Pen C §§ 16140, 16170, 16220, 16260, 16320, 16330, 16340, 16460, 16470, 16520, 16570, 16590, 16740, 16760, 16830, 16920, 16930, 16940, 17090, 17125, 17160, 17170, 17180, 17190, 17200, 17270, 17280, 17330, 17350, 17360, 17700, 17705, 17710, 17715, 17720, 17725, 17730, 17735, 17740, 17745, 19100, 19200, 19205, 20200, 20310, 20410, 20510, 20610, 20710, 21110, 21310, 21810, 22010, 22015, 22210, 22215, 22410, 24310, 24410, 24510, 24610, 24680, 24710, 20910, 30210, 30215, 31500, 32310, 32400, 32405, 32410, 32415, 32420, 32425, 32430, 32435, 32440, 32445, 32450, 32900, 33215, 33220, 33225, 33600.

PUBLIC RESOURCES CODE

DIVISION 12.1

California Beverage Container Recycling and Litter Reduction Act

CHAPTER 6

Returns

Section
14575. Annual processing fee and processing payment

§ 14575. Annual processing fee and processing payment

(a) If any type of empty beverage container with a refund value established pursuant to Section 14560 has a scrap value less than the cost of recycling, the department shall, on January 1, 2000, and on or before January 1 annually thereafter, establish a processing fee and a processing payment for the container by the type of the material of the container.

(b) The processing payment shall be at least equal to the difference between the scrap value offered to a statistically significant sample of recyclers by willing purchasers, and except for the initial calculation made pursuant to subdivision (d), the sum of both of the following:

(1) The actual cost for certified recycling centers, excluding centers receiving a handling fee, of receiving, handling, storing, transporting, and maintaining equipment for each container sold for recycling or, only if the container is not recyclable, the actual cost of disposal, calculated pursuant to subdivision (c). The department shall determine the statewide weighted average cost to recycle each beverage container type, which shall serve as the actual recycling costs for purposes of paragraph (2) of subdivision (c), by conducting a survey of the costs of a statistically significant sample of certified recycling centers, excluding those recycling centers receiving a handling fee, for receiving, handling, storing, transporting, and maintaining equipment.

(2) A reasonable financial return for recycling centers.

(c) The department shall base the processing payment pursuant to this section upon all of the following:

(1) Except as provided in paragraph (2), for calculating processing payments that will be in effect on and after January 1, 2004, the department shall determine the actual costs for certified recycling centers, every second year, pursuant to paragraph (1) of subdivision (b). The department shall adjust the recycling costs annually to reflect changes in the cost of living, as measured by the Bureau of Labor Statistics of the United States Department of Labor or a successor agency of the United States government.

(2) On and after January 1, 2010, the department shall use the most recently published, measured actual costs of recycling for a specific beverage material type if the department determines the number of beverage containers for that material type that is returned for recycling pursuant to Section 14551, based on the most recently published calendar year number of beverage containers returned for recycling, is less than 5 percent of the total number of beverage containers returned for recycling for all material types. The department shall determine the actual recycling cost to be used for calculating processing payments for those beverage containers in the following manner:

(A) The department shall adjust the costs of recycling that material type every second year by the percentage change in the most recently measured cost of recycling HDPE plastic beverage containers, as determined by the department. The department shall use the percentage change in costs of recycling HDPE plastic beverage containers for this purpose, even if HDPE plastic beverage containers are less than 5 percent of the total volume of returned beverage containers.

(B) The department shall adjust the recycling costs annually for that material type to reflect changes in the cost of living, as measured by the Bureau of Labor Statistics of the United States Department of Labor or a successor agency of the United States government.

(d) Except as specified in subdivision (e), the actual processing fee paid by a beverage manufacturer shall equal 65 percent of the processing payment calculated pursuant to subdivision (b).

(e) The department, consistent with Section 14581 and subject to the availability of funds, shall reduce the processing fee paid by beverage manufacturers by expending funds in each material processing fee account, in the following manner:

(1) On January 1, 2005, and annually thereafter, the processing fee shall equal the following amounts:

(A) Ten percent of the processing payment for a container type with a recycling rate equal to or greater than 75 percent.

(B) Eleven percent of the processing payment for a container type with a recycling rate equal to or greater than 65 percent, but less than 75 percent.

(C) Twelve percent of the processing payment for a container type with a recycling rate equal to or greater than 60 percent, but less than 65 percent.

(D) Thirteen percent of the processing payment for a container type with a recycling rate equal to or greater than 55 percent, but less than 60 percent.

(E) Fourteen percent of the processing payment for a container type with a recycling rate equal to or greater than 50 percent, but less than 55 percent.

(F) Fifteen percent of the processing payment for a container type with a recycling rate equal to or greater than 45 percent, but less than 50 percent.

(G) Eighteen percent of the processing payment for a container type with a recycling rate equal to or greater than 40 percent, but less than 45 percent.

(H) Twenty percent of the processing payment for a container type with a recycling rate equal to or greater than 30 percent, but less than 40 percent.

(I) Sixty-five percent of the processing payment for a container type with a recycling rate less than 30 percent.

(2) The department shall calculate the recycling rate for purposes of paragraph (1) based on the 12-month period ending on June 30 that directly precedes the date of the January 1 processing fee determination.

(f) Not more than once every three months, the department may make an adjustment in the amount of the processing payment established pursuant to this section notwithstanding any change in the amount of the processing fee established pursuant to this section, for any beverage container, if the department makes the following determinations:

(1) The statewide scrap value paid by processors for the material type for the most recent available 12-month period directly preceding the quarter in which the processing payment is to be adjusted is 5 percent more or 5 percent less than the average scrap value used as the basis for the processing payment currently in effect.

(2) Funds are available in the processing fee account for the material type.

(3) Adjusting the processing payment is necessary to further the objectives of this division.

(g)(1) Except as provided in paragraphs (2) and (3), every beverage manufacturer shall pay to the department the applicable processing fee for each container sold or transferred to a distributor or dealer within 40 days of the sale in the form and in the manner which the department may prescribe.

(2)(A) Notwithstanding Section 14506, with respect to the payment of processing fees for beer and other malt beverages manufactured outside the state, 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, return receipt requested, 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 for 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.

(3)(A) Notwithstanding paragraph (1), if a beverage manufacturer displays a pattern of operation in compliance with this division and the regulations adopted pursuant to this division, to the satisfaction of the department, the beverage manufacturer may make a single annual payment of processing fees, if the beverage manufacturer meets either of the following conditions:

(i) If the redemption payment and refund value is not increased pursuant to paragraph (3) of subdivision (a) of Section 14560, the beverage manufacturer's projected processing fees for a calendar year total less than ten thousand dollars ($10,000).

(ii) If the redemption payment and refund value is increased pursuant to paragraph (3) of subdivision (a) of Section 14560, the beverage manufacturer's projected processing fees for a calendar year total less than fifteen thousand dollars ($15,000).

(B) An annual processing fee payment made pursuant to this paragraph is due and payable on or before February 1 for every beverage container sold or transferred by the beverage manufacturer to a distributor or dealer in the previous calendar year.

(C) A beverage manufacturer shall notify the department of its intent to make an annual processing fee payment pursuant to this paragraph on or before January 31 of the calendar year for which the payment will be due.

(4) The department shall pay the processing payments on redeemed containers to processors, in the same manner as it pays refund values pursuant to Sections 14573 and 14573.5. The processor shall pay the recycling center the entire processing payment representing the actual costs and financial return incurred by the recycling center, as specified in subdivision (b).

(h) When assessing processing fees pursuant to subdivision (a), the department shall assess the processing fee on each container sold, as provided in subdivisions (d) and (e), by the type of material of the container, assuming that every container sold will be redeemed for recycling, whether or not the container is actually recycled.

(i) The container manufacturer, or a designated agent, shall pay to, or credit, the account of the beverage manufacturer in an amount equal to the processing fee.

(j) If, at the end of any calendar year for which glass recycling rates equal or exceed 45 percent and sufficient surplus funds remain in the glass processing fee account to make the reduction pursuant to this subdivision or if, at the end of any calendar year for which PET recycling rates equal or exceed 45 percent and sufficient surplus funds remain in the PET processing fee account to make the reduction pursuant to this subdivision, the department shall use these surplus funds in the respective processing fee accounts in the following calendar year to reduce the amount of the processing fee that would otherwise be due from glass or PET beverage manufacturers pursuant to this subdivision.

(1) The department shall reduce the glass or PET processing fee amount pursuant to this subdivision in addition to any reduction for which the glass or PET beverage container qualifies under subdivision (e).

(2) The department shall determine the processing fee reduction by dividing two million dollars ($2,000,000) from each processing fee account by an estimate of the number of containers sold or transferred to a distributor during the previous calendar year, based upon the latest available data.

Added Stats 1999 ch 817 § 7 (AB 1244). Amended Stats 2003 ch 753 § 12 (AB 28); Stats 2005 ch 202 § 2 (AB 1763), effective January 1, 2006; Stats 2006 ch 907 § 11 (AB 3056), effective September 30, 2006; Stats 2008 ch 696 § 16 (SB 1781), effective September 30, 2008, ch 697 § 1 (SB 1357), effective January 1, 2009.

REVENUE AND TAXATION CODE

DIVISION 2

Other Taxes

PART 14

Alcoholic Beverage Tax

CHAPTER 3

Registration and Bonds

Section
32101. Issuance of license as registration; Copy to board

§ 32101. Issuance of license as registration; Copy to board

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.

Added Stats 1955 ch 1842 § 1. Amended Stats 1968 ch 539 § 2; Stats 1982 ch 454 § 173; Stats 2005 ch 157 § 3 (SB 118), effective January 1, 2006.

CHAPTER 4

Tax on Beer and Wine

Article 2

Presumptions and Exemptions

Section
32177.5. Sale of alcoholic beverages to specified instrumentalities of armed forces; Exceptions

ARTICLE 2

Presumptions and Exemptions

§ 32177.5. Sale of alcoholic beverages to specified instrumentalities of armed forces; Exceptions

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.

Added Stats 2000 ch 609 § 1 (SB 607), effective September 24, 2000.

VEHICLE CODE

DIVISION 6

Drivers' Licenses

CHAPTER 1

Issuance of Licenses, Expiration, and Renewal

Article 5

Identification Cards

Section
13004. Unlawful acts
13004.1. Manufacture or sale of identification documents similar to department-issued identification cards; Punishment

ARTICLE 5

Identification Cards

§ 13004. Unlawful acts

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.

Added Stats 1968 ch 494 § 3. Amended Stats 1969 ch 1340 § 4; Stats 1971 ch 1174 § 3.

§ 13004.1. Manufacture or sale of identification documents similar to department-issued identification cards; Punishment

(a) A person shall not manufacture or sell an identification document of a size and form substantially similar to, or that purports to confer the same privileges as, the identification cards issued by the department.

(b) A violation of this section is a misdemeanor punishable as follows:

(1) The court shall impose a fine of not less than two hundred fifty dollars ($250) and not more than one thousand dollars ($1,000), and 24 hours of community service, to be served when the person is not employed or is not attending school. No part of the fine or community service shall be suspended or waived.

(2) In lieu of the penalties imposed under paragraph (1), the court, in its discretion, may impose a jail term of up to one year and a fine of up to one thousand dollars ($1,000). In exercising its discretion the court shall consider the extent of the defendant's commercial motivation for the offense.

(c) Prosecution under this section shall not preclude prosecution under any other applicable provision of law.

Added Stats 1990 ch 170 § 1 (SB 1873). Amended Stats 2007 ch 743 § 5 (AB 1658), effective January 1, 2008; Stats 2010 ch 684 § 1 (AB 2471), effective January 1, 2011.

CHAPTER 2

Suspension or Revocation of Licenses

Article 2

Suspension or Revocation by Court

Section
13202.5. Conviction of person under 21 for offense involving alcohol or controlled substances; "Conviction"; "Critical need to drive"

ARTICLE 2

Suspension or Revocation by Court

§ 13202.5. Conviction of person under 21 for offense involving alcohol or controlled substances; "Conviction"; "Critical need to drive"

(a) For each conviction of a person for an 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 an 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.

(b) Whenever the court suspends driving privileges pursuant to subdivision (a), the court in which the conviction is had shall require all driver's licenses held by the person to be surrendered to the court. The court shall within 10 days following the conviction transmit a certified abstract of the conviction, together with any driver's licenses surrendered, to the department.

(c)(1) After a court has issued an order suspending or delaying driving privileges pursuant to subdivision (a), the court, upon petition of the person affected, may review the order and may impose restrictions on the person's privilege to drive based upon a showing of a critical need to drive.

(2) As used in this section, "critical need to drive" means the circumstances that are required to be shown for the issuance of a junior permit pursuant to Section 12513.

(3) The restriction shall remain in effect for the balance of the period of suspension or restriction in this section. The court shall notify the department of any modification within 10 days of the order of modification.

(d) This section applies to violations involving controlled substances or alcohol contained in the following provisions:

(1) Article 7 (commencing with Section 4110) 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, subdivision (a) or (b) 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 a violation specified in subdivision (d).

Added Stats 1984 ch 658 § 1. Amended Stats 1988 ch 1254 § 3; Stats 1990 ch 1696 § 3 (SB 1756), ch 1697 § 4 (SB 2635); Stats 2007 ch 747 § 17 (AB 678), effective January 1, 2008.

CHAPTER 4

Violation of License Provisions

Section
14610. Unlawful use of license
14610.1. Manufacture or sale of identification document similar to drivers' licenses; Punishment

§ 14610. Unlawful use of license

(a) It is unlawful for any person:

(1) To display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious, fraudulently altered, or fraudulently obtained driver's license.

(2) To lend his driver's license to any other person or knowingly permit the use thereof by another.

(3) To display or represent any driver's license not issued to him as being his license.

(4) To fail or refuse to surrender to the department upon its lawful demand any driver's license which has been suspended, revoked or canceled.

(5) To permit any unlawful use of a driver's license issued to him.

(6) To do any act forbidden or fail to perform any act required by this division.

(7) To photograph, photostat, duplicate, or in any way reproduce any driver's license or facsimile thereof in such a manner that it could be mistaken for a valid license, or to display or have in his possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by the provisions of this code.

(8) To alter any driver's license in any manner not authorized by this code.

(b) For purposes of this section, "driver's license" includes a temporary permit to operate a motor vehicle.

Enacted Stats 1959 ch 3. Amended Stats 1967 ch 545 § 1; Stats 1971 ch 1174 § 4; Stats 1990 ch 44 § 5 (AB 1648).

§ 14610.1. Manufacture or sale of identification document similar to drivers' licenses; Punishment

(a) A person shall not manufacture or sell an identification document of a size and form sub-

stantially similar to, or that purports to confer the same privileges as, the drivers' licenses issued by the department.

(b) A violation of this section is a misdemeanor punishable as follows:

(1) The court shall impose a fine of not less than two hundred fifty dollars ($250) and not more than one thousand dollars ($1,000), and 24 hours of community service, to be served when the person is not employed or is not attending school. No part of the fine or community service shall be suspended or waived.

(2) In lieu of the penalties imposed under paragraph (1), the court, in its discretion, may impose a jail term of up to one year and a fine of up to one thousand dollars ($1,000). In exercising its discretion the court shall consider the extent of the defendant's commercial motivation for the offense.

(c) Prosecution under this section shall not preclude prosecution under any other applicable provision of law.

Added Stats 1990 ch 170 § 2 (SB 1873). Amended Stats 2007 ch 743 § 6 (AB 1658), effective January 1, 2008; Stats 2010 ch 684 § 2 (AB 2471), effective January 1, 2011.

DIVISION 11

Rules of the Road

CHAPTER 12

Public Offenses

Article 1.3

Offenses by Persons Under 21 Years of Age Involving Alcohol

Section
23136. Zero tolerance law; Refusal to take screening test; Civil penalties

Article 2

Offenses Involving Alcohol and Drugs

23152. Driving under the influence
23220. Drinking while driving
23221. Drinking while in motor vehicle
23222. Possession of opened alcoholic beverage bottle or can while driving; Possession of marijuana while driving; Fine
23223. Possession of opened can or bottle while in motor vehicle
23224. Possession of alcohol in vehicle by persons under age 21
23225. Storage of opened bottle or can
23226. Keeping opened bottle or can in passenger compartment
23229. Possession of alcoholic beverages in limousines and other specified vehicles

ARTICLE 1.3

Offenses by Persons Under 21 Years of Age Involving Alcohol

§ 23136. Zero tolerance law; Refusal to take screening test; Civil penalties

(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.

Added Stats 1993 ch 899 § 11 (SB 689). Amended Stats 1994 ch 938 § 13 (SB 1295), effective September 27, 1994; Stats 1996 ch 10 § 18 (AB 1869), effective February 9, 1996.

ARTICLE 2

Offenses Involving Alcohol and Drugs

§ 23152. Driving under the influence

(a) It is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle.

(b) It is unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

For purposes of this article and Section 34501.16, percent, by weight, of alcohol in a person's blood is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) It is unlawful for a person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a narcotic treatment program approved pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code.

(d) It is unlawful for a person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a commercial motor vehicle, as defined in Section 15210.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(e) It is unlawful for a person who is under the influence of any drug to drive a vehicle.

(f) It is unlawful for a person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle.

(g) This section shall become operative on January 1, 2014.

Added Stats 1989 ch 1114 § 25, operative January 1, 1992. Amended Stats 1992 ch ch 974 § 16 (SB 1600), effective September 26, 1992; Stats 1995 ch 455 § 31 (AB 1113), operative term contingent; Stats 2012 ch 753 § 2 (AB 2552), effective January 1, 2013, operative January 1, 2014.

§ 23220. Drinking while driving

(a) No person shall drink any alcoholic beverage while driving a motor vehicle upon any highway or on any lands described in subdivision (b).

(b) As used in subdivision (a), "lands" means those lands to which the Chappie–Z'berg Off–Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off–highway motor vehicles, as described in Section 38001.

Added Stats 1961 ch 1903 § 1, as Veh C § 23121. Amended Stats 1979 ch 363 § 2. Amended and renumbered by Stats 1981 ch 940 § 23. Amended Stats 1998 ch 384 § 1 (SB 1639), effective August 24, 1998.

§ 23221. Drinking while in motor vehicle

(a) No driver shall drink any alcoholic beverage while in a motor vehicle upon a highway.

(b) No passenger shall drink any alcoholic beverage while in a motor vehicle upon a highway.

Added Stats 1979 ch 363 § 3, as Veh C § 23121.5. Renumbered by Stats 1981 ch 940 § 24. Amended Stats 1999 ch 723 § 2 (AB 194).

§ 23222. Possession of opened alcoholic beverage bottle or can while driving; Possession of marijuana while driving; Fine

(a) No person shall have in his or her possession on his or her person, while driving a motor vehicle upon a highway or on lands, as described in subdivision (b) of Section 23220, 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.

(b) Except as authorized by law, every person who possesses, while driving a motor vehicle upon a highway or on lands, as described in subdivision (b) of Section 23220, not more than one avoirdupois ounce of marijuana, other than concentrated cannabis as defined by Section 11006.5 of the Health and Safety Code, is guilty of an infraction punishable by a fine of not more than one hundred dollars ($100).

Added Stats 1961 ch 1903 § 2, as Veh C § 23122. Amended Stats 1968 ch 238 § 1; Stats 1979 ch 363 § 4. Amended and renumbered by Stats 1981 ch 940 § 25. Amended Stats 1983 ch 1005 § 1; Stats 1998 ch 384 § 2 (SB 1639), effective August 24, 1998; Stats 2010 ch 708 § 2 (SB 1449), effective January 1, 2011.

§ 23223. Possession of opened can or bottle while in motor vehicle

(a) No driver shall have in his or her possession, while in a motor vehicle upon a highway or on lands, as described in subdivision (b) of Section 23220, any bottle, can, or other receptacle, containing any alcoholic beverage that has been

opened, or a seal broken, or the contents of which have been partially removed.

(b) No passenger shall have in his or her possession, while in a motor vehicle upon a highway or on lands, as described in subdivision (b) of Section 23220, any bottle, can, or other receptacle containing any alcoholic beverage that has been opened or a seal broken, or the contents of which have been partially removed.

Added Stats 1979 ch 363 § 5, as Veh C § 23122.5. Amended and renumbered by Stats 1981 ch 940 § 26. Amended Stats 1998 ch 384 § 3 (SB 1639), effective August 24, 1998; Stats 1999 ch 723 § 3 (AB 194).

§ 23224. Possession of alcohol in vehicle by persons under age 21

(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 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.

(e) Any person convicted for a violation of subdivision (a) or (b) is guilty of a misdemeanor and shall be punished upon conviction 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 that fine and imprisonment.

Added Stats 1965 ch 1662 § 2, as Veh C § 23123.5. Amended Stats 1972 ch 881 § 2. Amended and renumbered by Stats 1981 ch 940 § 28. Amended Stats 1990 ch 1697 § 6 (SB 2635); Stats 1996 ch 690 § 1 (AB 2000).

§ 23225. Storage of opened bottle or can

(a)(1) It is unlawful for the registered owner of any motor vehicle to keep in a motor vehicle, when the vehicle is upon any highway or on lands, as described in subdivision (b) of Section 23220, any bottle, can, or other receptacle containing any alcoholic beverage that 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.

(2) If the vehicle is not equipped with a trunk and is not an off–highway motor vehicle subject to identification, as defined in Section 38012, the bottle, can, or other receptacle described in paragraph (1) shall be kept in some other area of the vehicle that is not normally occupied by the driver or passengers. For the purposes of this paragraph, a utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers.

(3) If the vehicle is not equipped with a trunk and is an off–highway motor vehicle subject to identification, as defined in subdivision (a) of Section 38012, the bottle, can, or other receptacle described in paragraph (1) shall be kept in a locked container. As used in this paragraph, "locked container" means a secure container that is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device.

(b) Subdivision (a) is also applicable to a driver of a motor vehicle if the registered owner is not present in the vehicle.

(c) This section shall not apply to the living quarters of a housecar or camper.

Added Stats 1961 ch 1903 § 3, as Veh C § 23123. Amended Stats 1968 ch 238 § 2. Amended and renumbered by Stats 1981 ch 940 § 27. Amended Stats 1998 ch 384 § 4 (SB 1639), effective August 24, 1998; Stats 1999 ch 723 § 4 (AB 194).

§ 23226. Keeping opened bottle or can in passenger compartment

(a) It is unlawful for any driver to keep in the passenger compartment of a motor vehicle, when

the vehicle is upon any highway or on lands, as described in subdivision (b) of Section 23220, any bottle, can, or other receptacle containing any alcoholic beverage that has been opened, or a seal broken, or the contents of which have been partially removed.

(b) It is unlawful for any passenger to keep in the passenger compartment of a motor vehicle, when the vehicle is upon any highway or on lands, as described in subdivision (b) of Section 23220, any bottle, can, or other receptacle containing any alcoholic beverage that has been opened or a seal broken, or the contents of which have been partially removed.

(c) This section shall not apply to the living quarters of a housecar or camper.

Added Stats 1979 ch 363 § 6, as Veh C § 23123.6. Amended and renumbered by Stats 1981 ch 940 § 29. Amended Stats 1998 ch 384 § 5 (SB 1639), effective August 24, 1998; Stats 1999 ch 723 § 5 (AB 194).

§ 23229. Possession of alcoholic beverages in limousines and other specified vehicles

(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 Stats 1988 ch 1105 § 7, operative July 1, 1989.

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