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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 9. ALCOHOLIC BEVERAGES [23000 - 25762] (*Division 9 added by Stats. 1953, Ch. 152.*)

CHAPTER 5. Restrictions on Issuance of Licenses [23770 - 23827] (*Chapter 5 added by Stats. 1953, Ch. 152.*)

ARTICLE 1. In General [23770 - 23794] (*Article 1 added by Stats. 1953, Ch. 152.*)

23770. 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.

(Amended by Stats. 1965, Ch. 499.)

23771. Except as provided in Section 23771.5, a distilled spirits license of any kind, except a distilled spirits manufacturer's, a craft distiller's, or a distilled spirits manufacturer's agent's license, shall not be issued to any person, or to any officer, director, employee, or agent of any person that manufactures distilled spirits within or without this state.

(Amended by Stats. 2018, Ch. 695, Sec. 5. (SB 1164) Effective January 1, 2019.)

23771.5. Section 23771 does not prevent a licensed craft distiller from holding a distilled spirits license authorizing the importing of distilled spirits, provided, however, that any distilled spirits imported by the licensee shall only be used by the licensee to manufacture or produce distilled spirits pursuant to Section 23502.

(Added by Stats. 2016, Ch. 423, Sec. 6. (AB 2913) Effective January 1, 2017.)

23772. (a) A distilled spirits manufacturer's or distilled spirits manufacturer's agent's license shall not be held by any person that 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 craft distiller's, distilled spirits wholesaler's, rectifier's, or retailer's license.

(b) 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 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 at Section 23425) of Chapter 3).
- (3) Veterans' club license (issued under Article 5 (commencing at 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, 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.

(Amended by Stats. 2015, Ch. 640, Sec. 4. (AB 1295) Effective January 1, 2016.)

23773. 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 by Stats. 1953, Ch. 152.)

23774. 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 by Stats. 1953, Ch. 152.)

23775. 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 by Stats. 1953, Ch. 152.)

23776. 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.

(Amended by Stats. 1988, Ch. 284, Sec. 2. Effective July 7, 1988.)

23777. 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 by Stats. 1953, Ch. 152.)

23778. 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.

(Amended by Stats. 1955, Ch. 447.)

23779. 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.

(Amended by Stats. 1955, Ch. 447.)

23780. 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 by Stats. 1953, Ch. 152.)

23784. 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.

(Amended by Stats. 1961, Ch. 246.)

23785. 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 by Stats. 1953, Ch. 152.)

23786. (a) The department may issue a special nonprofit sales license to a nonprofit mutual benefit corporation, as described in the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or a nonprofit public benefit corporation, as described in the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code), that has a board membership composed of the Dean of the College of Agricultural and Environmental Sciences, or their designee, the Chair of the Department of Viticulture and Enology, or their designee, and the Chair of the Department of Food Science and Technology, or their designee, of the public university located within the county of the 28th class that includes courses in viticulture and enology in its curriculum.

(b) A special nonprofit sales license authorizes the licensee to do all of the following:

(1) Accept the transfer of, and take title to, up to 20,000 gallons of wine per year produced by the public university described in subdivision (a), notwithstanding that the public university does not hold any license issued pursuant to this division. For purposes of this section, "produced" includes wine donated to, or purchased by, the public university for educational or experimental purposes and that are thereafter treated or processed by the public university.

(2) Sell wine received pursuant to paragraph (1) to consumers for consumption off the licensed premises or to other licensees authorized to sell wine.

(3) Give licensees samples of the wine it sells, subject to the limitations in subdivision (a) of Section 23386 and any department regulations.

(c) The special nonprofit sales license does not authorize the licensee to purchase or otherwise obtain wine from a licensee or other manufacturer or seller of wine, except as specified in this section.

(d) A public university, as described in subdivision (a), may transfer wine produced by the public university to a special nonprofit sales licensee.

(Amended by Stats. 2020, Ch. 362, Sec. 1. (SB 918) Effective January 1, 2021.)

23787. 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.

(Amended by Stats. 1971, Ch. 1184.)

23788.5. An on-sale licensee shall not 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 forty dollars (\$140), which shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761. This fee may be adjusted by the department pursuant to subdivisions (d) and (e) of Section 23320.

(Amended by Stats. 2019, Ch. 29, Sec. 35. (SB 82) Effective June 27, 2019.)

23789. (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.

(Amended by Stats. 1992, Ch. 678, Sec. 1. Effective January 1, 1993.)

23790. 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.

(Amended by Stats. 1989, Ch. 95, Sec. 1.)

23790.5. (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.

(Amended by Stats. 1994, Ch. 627, Sec. 3. Effective January 1, 1995.)

23791. Nothing in this division interferes with the powers of cities conferred upon them by Sections 65850 to 65861, inclusive, of the Government Code.

(Amended by Stats. 1967, Ch. 232.)

23793. 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.

(Amended by Stats. 1973, Ch. 425.)

23794. A license shall not be issued to any applicant to authorize the manufacture, distribution, or retail sale of powdered alcohol.

(Added by Stats. 2016, Ch. 742, Sec. 4. (AB 1554) Effective January 1, 2017.)