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AB-776 Alcoholic beverage control. (2015-2016)

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Assembly Bill No. 776

CHAPTER 519

An act to amend Sections 25500 and 25666 of, and to add Sections 23355.3, 23399.65, and 23402.5 to, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor October 06, 2015. Filed with Secretary of State October 06, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 776, Cooper. Alcoholic beverage control.

(1) The Alcoholic Beverage Control Act regulates the application for, the issuance of, the suspension of, and the conditions imposed upon, various alcoholic beverage licenses pursuant to which the licensees may exercise specified privileges in the state.

This bill would authorize licensees to sponsor or otherwise participate in an event conducted by, and for the benefit of, a nonprofit organization subject to specified conditions, including that a nonretail or retail licensee may choose to participate in any level of sponsorship.

(2) The Alcoholic Beverage Control Act authorizes a licensed winegrower to apply to the Department of Alcoholic Beverage Control for a wine sales event permit that allows the sale of bottled wine produced by that winegrower at specified events approved by the department. The act prohibits a wine sales event permit from being used more than 2 times a month at a particular location, and requires the winegrower to pay a fee of \$50 for the permit. The act provides that moneys collected as fees pursuant to the act are to be deposited in the Alcohol Beverage Control Fund. These moneys are generally allocated to the Department of Alcoholic Beverage Control upon appropriation by the Legislature.

This bill would authorize a licensed beer manufacturer to apply to the department for a brewery event permit that allows the sale of beer produced by that beer manufacturer for consumption on property contiguous and adjacent to the licensed premises of the manufacturer, as provided. The bill would authorize a fee for a brewery event permit of \$110 for the 2016 calendar year, and thereafter as provided, and an event authorization fee of not more than \$25 for each approved event. The bill would allow up to 4 authorized events each calendar year.

(3) Existing law, known as tied-house restrictions, generally prohibits a manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, and wholesaler, and any officer, director, or agent of any of those persons, from having specified relationships with an on-sale alcoholic beverage licensee, with limited exceptions. Existing law specifies that the Alcoholic Beverage Control Act does not prohibit holders of retail on-sale or off-sale licenses from purchasing advertising in any publication by specified alcoholic beverage licensees.

This bill would specify that the act does not prohibit purchasing advertising in a publication published by a nonretail licensee, as defined, and would include Internet Web sites and social media feeds as types of publications for these purposes.

(4) The Alcoholic Beverage Control Act authorizes specified licensees to purchase alcoholic beverages for resale under specified circumstances. The act provides that a person convicted of a violation of its provisions is guilty of a misdemeanor unless another penalty or punishment is specifically provided.

This bill would prohibit a retail licensee from purchasing beer from any beer manufacturer for the purpose of selling or offering to sell that beer under specified circumstances, including where the beer container contains the statement or is marked "Not Packaged for Resale".

By expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) Existing law requires the Department of Alcoholic Beverage Control, in any hearing on an accusation charging a licensee with a violation of specified provisions relating to minors, to 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. Existing law provides that 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.

This bill would state that the above provisions are not intended to preclude the continuance of a hearing because of the unavailability of a minor for any other reason pursuant to a specified provision.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 23355.3 is added to the Business and Professions Code, to read:

23355.3. (a) A licensee may sponsor or otherwise participate in an event conducted by, and for the benefit of, a nonprofit organization in which retail and nonretail licensees are involved as sponsors or participants, subject to all of the following conditions:

(1) Except as otherwise provided in this section, any payment of money or other consideration for sponsorship or participation in the event shall be made only to the nonprofit organization conducting the event.

(2) Except as otherwise provided in this section, a nonretail licensee shall not, directly or indirectly, pay money or provide any other thing of value to a permanent retail licensee that is also a sponsor of, or participant in, the event.

(3) A nonretail licensee may donate alcoholic beverages to a nonprofit only as otherwise authorized by Section 25503.9.

(4) Except as otherwise provided by this division, a retail licensee shall not give, sell, or furnish any alcoholic beverages to the temporary licensee.

(5) A nonretail or retail licensee may choose to participate in any level of sponsorship, including at the name or principal sponsor level. A nonprofit organization may choose to have one, or multiple, name or principal sponsors.

(6) (A) A nonretail licensee may advertise or communicate sponsorship or participation in the event. This advertising or communication may include, but is not limited to, initiating, sharing, reposting, or otherwise forwarding a social media post by a permanent retail licensee or a nonretail licensee if the advertisement or communication does not contain the retail price of any alcoholic beverage or otherwise promotes a retail licensee beyond its sponsorship or participation in the event.

(B) A nonretail licensee shall not pay or reimburse a permanent licensee, directly or indirectly, for any advertising services, including by way of social media. Except as otherwise permitted by this section, a permanent retail licensee shall not accept any payment or reimbursement, directly or indirectly, for any advertising services offered by a nonretail licensee.

(C) For the purposes of this subdivision, "social media" means a service, platform, application, or site where users communicate and share media, such as pictures, videos, music, and blogs, with other users.

(7) A nonretail licensee shall not require, directly or indirectly, as a condition of sponsorship or participation in any event under this section, that its products be sold or served exclusively at the event. A retail licensee shall not receive, directly or indirectly, any advertising, sale, or promotional benefit from any permanent retail licensee in connection with the sponsorship or

participation. A permanent retail licensee shall not offer or provide a nonretail licensee any advertising, sale, or promotional benefit in connection with the sponsorship or participation.

(b) This section does not authorize a nonretail licensee to pay, in whole or in part, any costs, including the cost of sponsorship, of any retail licensee that is sponsoring or participating in a nonprofit event.

(c) A licensee that sponsors or participates in a nonprofit event under this section shall keep detailed records of its sponsorship or participation and shall maintain those records for a period of at least three years. These records shall be provided to the department upon request.

(d) Nothing in this section shall be deemed to exempt the nonprofit organization from obtaining any licenses or permits as may be required to conduct the event.

SEC. 2. Section 23399.65 is added to the Business and Professions Code, to read:

23399.65. (a) A licensed beer manufacturer may apply to the department for a brewery event permit. A brewery event permit shall authorize the sale of beer produced by the licensee pursuant to Section 23357 for consumption on property contiguous and adjacent to the licensed premises owned or under the control of the licensee. The property shall be secured and controlled by the licensee.

(b) (1) The fee for a brewery event permit for a licensed beer manufacturer shall be one hundred ten dollars (\$110) for a permit issued during the 2016 calendar year, and for a permit issued during the years thereafter, the annual fee shall be calculated pursuant to subdivisions (b) and (c) of Section 23320. The permit may be renewed annually at the same time as the licensee's license. A brewery event permit shall be transferable as a part of the license.

(2) For each brewery event, consent for the sale of beer pursuant to subdivision (a) at the brewery event shall be first obtained by the licensee from the department in the form of an event authorization issued by the department. An event authorization shall be subject to approval by the appropriate local law enforcement agency. The fee for each event authorization shall not exceed twenty-five dollars (\$25). The number of events authorized by a brewery event permit shall not exceed four in any calendar year.

(3) All moneys 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.

(c) 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.

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

SEC. 3. Section 23402.5 is added to the Business and Professions Code, to read:

23402.5. (a) A retail licensee shall not sell or offer for sale any beer that is purchased from a beer manufacturer at the beer manufacturer's licensed premises under any of the following circumstances:

(1) The beer manufacturer from which the beer is purchased has not filed a price schedule pursuant to Chapter 12 (commencing with Section 25000) for the sale of that beer in the county in which the retail licensee's premises at which the beer is being sold or offered for sale is located.

(2) The price at which the retailer purchases the beer is different from the price in the price schedule filed by the beer manufacturer pursuant to Chapter 12 (commencing with Section 25000) from which the beer is purchased.

(3) The beer container contains the statement or is marked "Not Packaged for Resale".

(b) Nothing in this section creates any exception to the requirements of Chapter 12 (commencing with Section 25000).

SEC. 4. Section 25500 of the Business and Professions Code is amended to read:

25500. (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 nonsupervisory 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) (1) Nothing in this division prohibits the holder of any retail on-sale or off-sale license from purchasing advertising in any publication published by a nonretail licensee.

(2) For purposes of this subdivision:

(A) "Nonretail licensee" means any manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, or wholesaler, or any person who does not directly or indirectly hold the ownership of any interest in a retail license.

(B) "Publication published by a nonretail licensee" includes Internet Web sites and social media feeds operated and maintained by or for a nonretail licensee under an account or Internet Web site address owned by the nonretail licensee.

SEC. 5. Section 25666 of the Business and Professions Code is amended to read:

25666. (a) 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.

(b) (1) Nothing in this section shall prevent the department from taking testimony of the minor as provided in Section 11511 of the Government Code.

(2) This section is not intended to preclude the continuance of a hearing because of the unavailability of a minor for any other reason pursuant to Section 11524 of the Government Code.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of

the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.