



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

SB-796 Alcoholic beverages: licenses: advertising: contests and sweepstakes. (2015-2016)

SHARE THIS:  

Senate Bill No. 796

CHAPTER 311

An act to amend Sections 25502.2, 25503.28, 25600.1, and 25600.2 of, and to add Section 23405.4 to, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 21, 2015. Filed with Secretary of State September 21, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 796, Committee on Governmental Organization. Alcoholic beverages: licenses: advertising: contests and sweepstakes.

(1) The Alcoholic Beverage Control Act specifies the rules and procedures for the issuance and transfer of alcoholic beverage licenses by the Department of Alcoholic Beverage Control. The act requires the department to make a thorough investigation to determine whether the applicant for a license and the premises for which a license is applied qualify for a license.

This bill would provide that the Department of Alcoholic Beverage Control is not required to qualify for a license a person who is an investor in a private equity fund that holds an interest in an alcoholic beverage license, subject to specified conditions, and would authorize the department to require the manager of the private equity fund to execute an affidavit confirming compliance with the requirements of this provision.

(2) The Alcoholic Beverage Control Act includes tied-house restrictions, which prohibit specified licensees from furnishing, giving, or lending money or other thing of value, directly or indirectly, to a person engaged in operating, owning, or maintaining an off-sale licensed premises. Existing law authorizes, until January 1, 2016, the appearance of a person employed or engaged by an authorized licensee at a promotional event held at the premises of an off-sale retail licensee for the purposes of providing autographs, subject to specified conditions.

This bill would delete the sunset date of the above provision, thereby extending the provision indefinitely.

(3) Existing law authorizes a beer manufacturer to sell, at the licensed premises of production, specified beer and wine to consumers under described conditions, and limits the beer manufacturer to 6 branch locations that may be used for the sale of alcoholic beverages to consumers for consumption off the licensed premises.

This bill would prohibit a beer manufacturer, regardless of the number of beer manufacturer licenses that are held by the beer manufacturer alone, under common ownership with any other licensed beer manufacturer, or under common ownership with any officer, director, employee, or agent of that beer manufacturer that is operating as an on-sale retailer, from exercising, alone or in common, any combination of specified described retail privileges that would result in that beer manufacturer exercising retail privileges at more than 6 locations.

(4) The Alcoholic Beverage Control Act 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. Existing law permits an authorized licensee, as defined, to

conduct a consumer contest, as defined, and conduct or sponsor consumer sweepstakes, as defined, offering the chance to win prizes, if specified conditions are met, including that alcoholic beverages or anything redeemable are not awarded as a prize.

This bill would authorize the inclusion of alcoholic beverages as part of a prize in a consumer contest or sweepstakes where the inclusion is an incidental part of a prize package.

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

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

SECTION 1. Section 23405.4 is added to the Business and Professions Code, to read:

23405.4. (a) The department is not required to qualify for a license a person who is an investor in a private equity fund that holds an interest in a license, provided all of the following conditions are satisfied:

(1) The private equity fund's interest in the license is limited to a passive investment, so that neither the private equity fund nor any manager, employee, or agent of the private equity fund has any involvement in, or control over, the management of the licensed business or of the licensee.

(2) The private equity fund advisors are registered under the federal Investment Advisors Act of 1940, and the private equity fund advisors are subject to, and comply with, Section 275.204(b)-1 of Title 17 of the Code of Federal Regulations.

(3) An investor shall not, directly or indirectly, hold more than 10-percent interest in the private equity fund.

(4) An investor in the private equity fund shall not have any control, directly or indirectly, over the investment decisions of the private equity fund.

(b) For purposes of this section, private equity fund means an investment company that makes investments in equity or debt securities of another company that does not provide investors with redemption rights in the ordinary course. A private equity fund does not include a hedge fund, liquidity fund, real estate fund, securitized asset fund, or venture capital fund.

(c) The department may require the manager of the private equity fund to execute an affidavit confirming compliance with the requirements of this section. If the manager does not have personal knowledge of any of the facts necessary to execute the affidavit, the manager shall make a diligent inquiry and may thereafter execute the affidavit upon information and belief. The manager of the private equity fund shall promptly notify the department in writing if any of the facts attested to change.

(d) This section is not intended to allow a person, by reason of his or her investment in a private equity fund, to hold an interest in a license issued by the department if that interest is not otherwise permitted under this division.

SEC. 2. Section 25502.2 of the Business and Professions Code is amended to read:

25502.2. (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 specialties 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.

SEC. 3. Section 25503.28 of the Business and Professions Code is amended to read:

25503.28. (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 Section 23357, and may serve on the board of directors and as an officer or employee of a licensed beer manufacturer. A beer manufacturer, regardless of how many beer manufacturer licenses are held by the beer manufacturer alone, under common ownership with any other licensed beer manufacturer, or under common ownership with any officer, director, employee or agent of that beer manufacturer licensee who is operating as an on-sale retailer pursuant to this section, shall be prohibited from exercising alone or in common any combination of retail privileges authorized under this section and Section 23389(c) that would result in that beer manufacturer exercising retail privileges at more than six locations regardless of whether the retail privileges are exercised pursuant to this section alone, pursuant to Section 23389(c) alone, or pursuant to any combination of the retail privileges authorized under both of these sections. This section shall not limit the number of licensed beer manufacturer locations or the exercise of retail privileges at those licensed beer manufacturer locations as authorized pursuant to Section 23357.

(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.

SEC. 4. Section 25600.1 of the Business and Professions Code is amended to read:

25600.1. (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, the awarding of cash or cash equivalent, or the inclusion of alcoholic beverages as an incidental part of a prize package.

(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.

SEC. 5. Section 25600.2 of the Business and Professions Code is amended to read:

25600.2. (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, the awarding of cash or cash equivalent, or the inclusion of alcoholic beverages as an incidental part of a prize package.

(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.