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AB-3139 Alcoholic beverages: licensees. (2019-2020)

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Date Published: 09/29/2020 02:00 PM

Assembly Bill No. 3139

CHAPTER 175

An act to amend Sections 24045.7 and 24081 of, and to add Section 25503.35 to, the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2020. Filed with Secretary of State September 25, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3139, Gray. Alcoholic beverages: licensees.

(1) The Alcoholic Beverage Control Act, which is administered by the Department of Alcoholic Beverage Control, contains various provisions regulating the application for, the issuance of, the suspension of, and the conditions imposed upon, alcoholic beverage licenses by the Department of Alcoholic Beverage Control.

Existing law authorizes the department to issue a special on-sale general license to any nonprofit theater company, as specified, for use at a single location. Existing law, known as tied-house restrictions, generally prohibits certain alcoholic beverage licensees, including manufacturers, from holding any ownership interest in an on-sale license, subject to a variety of exceptions. In connection with special on-sale general licenses issued to nonprofit theater companies, existing law creates an exception to tied-house restrictions, by permitting a licensed manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, among others, to serve on the board of trustees or as an officer, director, or employee of a nonprofit theater company operating in the County of Napa and in the City of Livermore.

This bill would extend the exception to tied-house restrictions provided to special on-sale general licenses for the trustees, officers, directors, and employees of nonprofit theater companies, described above, to a nonprofit theater company operating a theater in the City of Modesto.

(2) Existing law provides that a licensee whose licensed premises were destroyed as a result of fire or any act of God or other force beyond the control of the licensee may carry on the licensee's business for a period of up to 180 days or six months, as applicable, at a location within 500 feet of the licensed premises while the destroyed premises are being repaired or rebuilt.

This bill would revise these provisions to authorize a licensee to carry on its business at a substitute location, within 1,000 feet of the destroyed premises for a period of up to 180 days. The bill would authorize the Director of Alcoholic Beverage Control to extend that time period, as provided.

(3) The Alcoholic Beverage Control Act generally prohibits a manufacturer, winegrower, distiller, bottler, or wholesaler, among other licensees, or agents of these licensees, from paying a retailer for advertising. The act creates a variety of exceptions from this prohibition, including permitting specified licensees to purchase advertising space and time from, or on behalf of, an on-sale retail licensee that is an owner, manager, or major tenant of certain stadiums, parks, entertainment complexes, and arenas, subject to specified conditions.

This bill would expand the exceptions described above to allow beer manufacturers, winegrowers, distilled spirits rectifiers, craft distillers, distilled spirits manufacturers, or distilled spirits manufacturer's agents to purchase advertising space and time, in connection with described events, from, or on behalf of, on-sale retail licensees, as described above, at a for-profit theater with specified characteristics located in the City and County of San Francisco. The bill would require all payments for the purchase of advertising space and time to be made pursuant to a written contract with the owner of the theater, the licensee, or the long-term tenant, as appropriate.

(4) This bill would make legislative findings and declarations as to the necessity of a special statute for the City of Modesto and the City and County of San Francisco.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 24045.7 of the Business and Professions Code is amended to read:

24045.7. (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 the County of Napa, the City of Livermore, or the City of Modesto, licensed pursuant to this subdivision.

(4) 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.

SEC. 2. Section 24081 of the Business and Professions Code is amended to read:

24081. (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 the business for a period of not more than 180 days at a location within 1,000 feet of the premises for which the license was issued and while the premises are being repaired or rebuilt and the licensee shall be entitled to carry on the licensee's business under the 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 the business for a period of not

more than 180 days at a location within 1,000 feet of the premises for which the license was issued and while the premises are being repaired or rebuilt and the licensee shall be entitled to carry on the licensee's business under the existing license upon the former premises when they have been repaired or rebuilt.

(c) The director, in the director's discretion, may extend the 180-day period described in subdivisions (a) and (b) by 60 days.

SEC. 3. Section 25503.35 is added to the Business and Professions Code, to read:

25503.35. (a) Notwithstanding Sections 25500 and 25503, a beer manufacturer, winegrower, rectifier, distilled spirits manufacturer, craft distiller, or a distilled spirits manufacturer's agent may purchase advertising space and time in connection with a special on-sale retail licensed premises, if all of the following conditions are met:

(1) The on-sale retail licensed premises is a for-profit theater licensed with a special on-sale general license pursuant to Section 24045.75.

(2) The on-sale retail licensed premises is configured with theatrical seating of at least 2,100 seats but no more than 2,400 seats.

(3) The on-sale retail licensed premises is a historic theater that is located in the City and County of San Francisco, that was built prior to 1927, and that is either within a historic district as designated by the National Register of Historic Places or is designated as a Landmark by the San Francisco Historic Preservation Commission.

(4) All payments for the purchase of advertising space and time shall be made pursuant to a written contract with the owner of the theater, the licensee, or the long-term tenant, as appropriate.

(5) No agreement for advertising authorized by this section shall be contingent upon or otherwise require, directly or indirectly, implicitly or explicitly, the retail licensee to purchase or sell any alcoholic beverages or other products produced, manufactured, imported, distributed, or otherwise represented by the purchaser of the advertising space and time. The special on-sale general licensee shall offer for sale, in a bona fide manner, alcoholic beverages manufactured, produced, or distributed by competing licensed beer manufacturers, winegrowers, rectifiers, distilled spirits manufacturers, craft distillers, or distilled spirits manufacturer's agents.

(6) Advertising space and time purchased pursuant to this section may be included in printed programs for specific theatrical performances and in announcements made during the theatrical performances, as well as any internet, social media, or other media promotion of the specific theatrical performance. The advertising may also be placed on or in the special on-sale general licensed premises.

(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 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.

SEC. 4. The Legislature 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 the conditions unique to the City of Modesto and the City and County of San Francisco.

SEC. 5. 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 California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect businesses affected by fires, natural disasters, or other forces beyond control of the business owner, it is necessary that this act take effect immediately.