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SB-788 Alcoholic beverages: appeals: decision: tied-house restrictions. (2019-2020)

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Senate Bill No. 788

CHAPTER 257

An act to amend Sections 23080, 23090.5, 25503.4, 25503.56, and 25503.57 of the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 05, 2019. Filed with Secretary of State September 05, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 788, Committee on Governmental Organization. Alcoholic beverages: appeals: decision: tied-house restrictions.

(1) Under existing law, the Alcoholic Beverage Control Act is administered by the Department of Alcoholic Beverage Control and authorizes the department to impose a penalty or suspend or revoke a license issued pursuant to the act. Existing law authorizes a party aggrieved by a decision of the department to file an appeal with the State Board of Equalization, as provided. Existing law defines "decision," for these purposes, to mean 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 California Constitution.

This bill would revise the definition of "decision" when used in reference to the department to mean any final 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 California Constitution, and would not include any emergency decision for temporary, interim relief issued by the department, as provided.

(2) The Alcoholic Beverage Control Act provides that, except for the Supreme Court and the courts of appeal, a court shall not 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 of Alcoholic Beverage Control in the performance of its duties, except as provided.

This bill would provide that a superior court shall have jurisdiction to review an emergency decision issued by the department, as provided. The bill would further provide that the decision of a superior court following review of the emergency decision shall not be considered by the department in connection with specified adjudicative proceedings or by the Alcoholic Beverage Control Appeals Board, court of appeal, or Supreme Court upon review of a final decision of the department.

(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 giving or lending money or a thing of value to a person operating, owning, or maintaining any on-sale premises where alcoholic beverages are sold. The law provides certain exceptions to this prohibition if specified requirements are met.

Tied-house restrictions permit specified licensees to conduct or participate in, and serve specified alcoholic beverages at, an instructional event or instructional tasting event for consumers held at a retailer's premises, if specified conditions are met. In this

regard, these parties may list certain information in advertisements for the event provided that particular information in the advertisement be relatively inconspicuous in relation to the advertisement as a whole.

This bill would require that any pictures, illustrations, or depictions in the advertisement are also relatively inconspicuous in relation to the advertisement as a whole.

(4) 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 23080 of the Business and Professions Code is amended to read:

23080. As used in this article, "decision" when used in reference to the department means any final 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 California Constitution, and does not include any emergency decision for temporary, interim relief issued pursuant to the authority conferred to the department pursuant to Section 11460.10 of the Government Code.

SEC. 2. Section 23090.5 of the Business and Professions Code is amended to read:

23090.5. (a) Except as provided in subdivision (b), a court of this state, except the Supreme Court and the courts of appeal to the extent specified in this article, shall not 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.

(b) Notwithstanding subdivision (a), a superior court shall have jurisdiction to review an emergency decision issued by the department pursuant to Article 13 (commencing with Section 11460.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, in the manner provided by Section 11460.80 of the Government Code. Review by a superior court pursuant to this subdivision shall not be construed as giving the superior court jurisdiction over any other matter or aspect of a case pending before the department. The decision of a superior court following review of the emergency decision shall not be considered by the department in connection with the adjudicative proceedings commenced as required by Section 11460.60 of the Government Code, or by the Alcoholic Beverage Control Appeals Board, court of appeal, or Supreme Court upon review of a final decision of the department.

SEC. 3. Section 25503.4 of the Business and Professions Code is amended to read:

25503.4. (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, in addition to any point-of-sale advertising or other advertising items allowed under this division or under rules of the department, 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 any advertisement for the instructional event the name, address, telephone number, email address, internet website address, and any other electronic media of the retailer, the names of the wines being featured at the instructional event, pictures, illustrations, and depictions of the retailer's premises, personnel, and customers, 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, address, telephone number, email address, internet website address, and any other electronic media in the advertisement, and any pictures, illustrations, or depictions, are relatively inconspicuous in relation to the advertisement as a whole. Laudatory references to the retailer in these advertisements are not authorized. Pictures, illustrations, or depictions shall be still pictures, illustrations, or depictions only and shall not include any video. The reposting of social media posts, including posts by the retailer, is permitted provided that the reposting complies with all the requirements of this section.

(d) Notwithstanding any other provision of this division, the name, address, telephone number, email address, internet website address, and any other electronic media 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.

SEC. 4. Section 25503.56 of the Business and Professions Code is amended to read:

25503.56. (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, craft distiller, 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) 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 their absolute discretion and with permission of the licenseholder upon whose premises the instructional tasting event will be held, may list in any advertisement to the general public for the instructional tasting event the name, address, telephone number, email address, internet website address, and any other electronic media of the licenseholder, the names of the alcoholic beverages being featured at the instructional tasting event, pictures, illustrations, and depictions of the retailer's premises, personnel, and customers, and the time, date, and location of, and other information about, the instructional tasting event, provided that both of the following apply:

(1) The advertisement does not contain the retail price of the alcoholic beverages.

(2) The listing of the licenseholder's name, address, telephone number, email address, internet website address, and any other electronic media in the advertisement, and any pictures, illustrations, or depictions, are relatively inconspicuous in relation to the advertisement as a whole. Laudatory references to the licenseholder in these advertisements are not authorized. Pictures, illustrations, or depictions shall be still pictures, illustrations, or depictions only and shall not include any video. The reposting of social media posts, including posts by the retailer, is permitted provided that the reposting complies with all the requirements of this section. 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.

SEC. 5. Section 25503.57 of the Business and Professions Code is amended to read:

25503.57. (a) (1) An authorized licensee, or its designated representative, 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 wine or distilled spirits and the methods of presenting and serving the wine or distilled spirits.

(2) 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.

(3) The authorized licensee, or its designated representative, 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 retail on-sale licensee at the original invoiced cost.

(4) The authorized licensee, or its designated representative, shall remove any unfinished alcoholic beverages that were supplied by the authorized licensee, or its designated representative, following the instruction.

(5) Nothing in this subdivision shall limit the giving away of samples pursuant to subdivision (a) of Section 23386.

(b) For purposes of this section, "authorized licensee" means a winegrower, California winegrower's agent, beer and wine importer general, beer and wine wholesaler, wine rectifier, craft distiller, 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, or California brandy wholesaler. "Authorized licensee" shall not include any person that solely holds a combination of a beer and wine wholesaler 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 in combination with a beer and wine importer general license, or holds a limited off-sale retail wine license.

(c) Except as otherwise provided in this division or by the 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 conducted pursuant to this section that includes tastings of wine or distilled spirits.

(d) 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 their absolute discretion and with permission of the retail on-sale licensee upon whose premises the instructional tasting event will be held, may list in any advertisement to the general public for the instructional tasting the name, address, telephone number, email address, internet website address, and any other electronic media of the on-sale retail licensee, the names of the wines or distilled spirits being featured at the instructional tasting event, pictures, illustrations, and depictions of the retailer's premises, personnel, and customers, and the time, date, and location of, and other information about, the instructional tasting event, provided that both of the following apply:

(1) The advertisement does not contain the retail price of the alcoholic beverages.

(2) The listing of the licenseholder's name, address, telephone number, email address, internet website address, and any other electronic media in the advertisement, and any pictures, illustrations, or depictions, are relatively inconspicuous in relation to the advertisement as a whole. Laudatory references to the licenseholder in these advertisements are not authorized. Pictures, illustrations, or depictions shall be still pictures, illustrations, or depictions only and shall not include any video. The reposting of social media posts, including posts by the retailer, is permitted provided that the reposting complies with all the requirements of this section. Nothing in this section shall authorize an authorized licensee or its designated representative to share in the costs, if any, of the licenseholder.

(e) An on-sale retail licensee may advertise an instructional tasting event to the general public. The costs of this advertising shall be borne solely by the on-sale retail licensee. Advertising permitted by this subdivision includes flyers, newspaper ads, internet communications, and interior signage.

(f) No more than one authorized licensee or its designated representative shall conduct an instructional tasting pursuant to this section at the on-sale retail licensed premises of an on-sale retail licensee at any time, and a person shall not act as the designated representative for more than one authorized licensee at that instructional tasting.

SEC. 6. 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 ensure the Department of Alcoholic Beverage Control's ability to take immediate action when egregious circumstances exist that pose an immediate threat to the public's health and safety and to ensure that alcoholic beverage licensees have a right to contest the department's actions, it is necessary that this act take effect immediately.