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SB-314 Alcoholic beverages. (2021-2022)

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Senate Bill No. 314

CHAPTER 656

An act to amend Sections 23399 and 25607 of, and to add and repeal Section 25750.5 of, the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 08, 2021. Filed with Secretary of State October 08, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 314, Wiener. Alcoholic beverages.

(1) The Alcoholic Beverage Control Act 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 generally provides that a violation of the Alcoholic Beverage Control Act is a misdemeanor.

Existing law authorizes the issuance of a caterer's permit, upon application to the department, to a licensee under an on-sale general license, an on-sale beer and wine license, a club license, or a veterans' club license, that authorizes the holder of the permit to sell alcoholic beverages at specified locations and events, including, among others, conventions, sporting events, and trade exhibits. Under existing law, licensees are required to first obtain consent from the department for sales of alcoholic beverages at each event in the form of a catering or event authorization. The department, pursuant to its powers and in furtherance of emergency declarations and orders of the Governor under the California Emergency Services Act regarding the spread of the COVID-19 virus, has prescribed temporary relief measures to suspend certain legal restrictions relating to, among other things, the expansion of a licensed footprint, sales of alcoholic beverages to-go, and delivery privileges.

This bill would prohibit the issuance of a catering authorization for use at any one premises for more than 36 events in one calendar year, except as specified.

This bill would authorize the department, for a period of 365 days following the end of the state of emergency proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic, to permit licensees to exercise license privileges in an expanded license area authorized pursuant to a COVID-19 Temporary Catering Authorization approved in accordance with the Fourth Notice of Regulatory Relief issued by the department, as specified. The bill would also authorize the department to extend the period of time during which the COVID-19 Temporary Catering Authorization is valid beyond 365 days if the licensee has filed a pending application with the department for the permanent expansion of their premises before the 365-day time period expires. The bill would make these provisions effective only until July 1, 2024, and repeal them as of that date.

(2) Existing law, with exceptions, prohibits a licensee from having, upon the licensed premises, any alcoholic beverages other than the alcoholic beverage that the licensee is authorized to sell at the premises under their license, and makes a violation of this prohibition punishable as a misdemeanor.

This bill would, as an exception to that prohibition, authorize a licensed manufacturer to share a common licensed area with multiple licensed retailers, subject to specified provisions, including, but not limited to, that (A) a licensee sharing the common licensed area with a licensed manufacturer is prohibited from selling or serving any alcoholic beverages that are manufactured, produced, bottled, processed, imported, rectified, distributed, represented, or sold by the manufacturer, as provided, (B) the licensed manufacturer may, in connection with the operation of the shared common area only, advertise or promote the common licensed area, provided that each retailer pays its pro rata share of the costs of such advertising or promotion, as specified, (C) no thing of value may be given or furnished by the manufacturer to the retailers, except as specified, (D) the manufacturer may have on the area of its licensed premises that encompass the shared common licensed area alcoholic beverages that would not otherwise be permitted on the manufacturer's licensed premises, as provided, (E) all licensees sharing the common licensed area are required to hold the same license type retailers, (F) all licensees holding licenses within the shared common licensed area are jointly responsible for compliance with all laws that may subject their license to discipline, and (G) the manufacturer maintains records necessary to establish its compliance, as specified.

(3) 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. The Legislature finds and declares all of the following:

(a) The COVID-19 pandemic has had a huge financial impact on restaurants, bars, retailers, and small businesses throughout the state, including sidewalk vendors who are only now beginning to return to local streets, boardwalks, and piers.

(b) Senate Bill 946 (Chapter 459 of the Statutes of 2018) established a statewide framework for the local regulation of sidewalk vendors to sell food or merchandise.

(c) Nothing in this measure should unintentionally roll back existing protections given to these microbusinesses under the existing sidewalk vendor law, create additional restrictions, limitations, or requirements on local sidewalk vendors, or limit any local authority from creating, maintaining, and enforcing a local sidewalk vendor program.

(d) These protections ensure that entrepreneurial microbusinesses, many of whom come from low-income and immigrant communities, are protected and promoted in our collective push for statewide economic revitalization and resumption of commercial activities, post-pandemic.

SEC. 2. Section 23399 of the Business and Professions Code is amended to read:

23399. (a) An on-sale general license authorizes the sale of beer, wine, and distilled spirits for consumption on the premises where sold. Any licensee under an on-sale general license, an on-sale beer and wine license, a club license, or a veterans' club license may apply to the department for a caterer's permit. A caterer's permit under an on-sale general license shall authorize the sale of beer, wine, and distilled spirits for consumption at conventions, sporting events, trade exhibits, picnics, social gatherings, or similar events held any place in the state approved by the department. A caterer's permit under an on-sale beer and wine license shall authorize the sale of beer and wine for consumption at conventions, sporting events, trade exhibits, picnics, social gatherings, or similar events held any place in the state approved by the department. A caterer's permit under a club license or a veterans' club license shall authorize sales at these events only upon the licensed club premises.

(b) Any licensee under an on-sale general license or an on-sale beer and wine license may apply to the department for an event permit. An event permit under an on-sale general license or an on-sale beer and wine license shall authorize, at events held no more frequently than four days in any single calendar year, the sale of beer, wine, and distilled spirits only under an on-sale general license or beer and wine only under an on-sale beer and wine license for consumption on property adjacent to the licensed premises and owned or under the control of the licensee. This property shall be secured and controlled by the licensee and not visible to the general public.

(c) (1) This section shall in no way limit the power of the department to issue special licenses under the provisions of Section 24045 or to issue daily on-sale general licenses under the provisions of Section 24045.1. Consent for sales at each event shall be first obtained from the department in the form of a catering or event authorization issued pursuant to rules prescribed by it. Any event authorization shall be subject to approval by the appropriate local law enforcement agency. The daily fee for each catering or event authorization shall be based on the estimated attendance at each day of the event, as follows:

(A) One hundred dollars (\$100) when anticipated attendance is less than 1,000 people.

(B) Three hundred twenty-five dollars (\$325) when anticipated attendance is at least 1,000 people and less than 5,000 people.

(C) One thousand dollars (\$1,000) when anticipated attendance is 5,000 people or more.

(2) All fees collected pursuant to this section shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

(d) 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.

(e) The fee for a caterer's permit for a licensee under an on-sale general license, a caterer's permit for a licensee under an on-sale beer and wine license, or an event permit for a licensee under an on-sale general license or an on-sale beer and wine license shall be the annual fee as specified in subdivision (b) of Section 23320, and the fee for a caterer's permit for a licensee under a club license or a veterans' club license shall be as specified in Section 23320, and the permit may be renewable annually at the same time as the licensee's license. A caterer's or event permit shall be transferable as a part of the license.

(f) A catering authorization shall not be issued for use at any one premises for more than 36 events in one calendar year, except when the department determines additional events may be catered to satisfy substantial public demand.

SEC. 3. Section 25607 of the Business and Professions Code is amended to read:

25607. (a) Except as provided in subdivisions (b), (c), (d), and (e), it is unlawful for any person or licensee to have upon any premises for which a license has been issued any alcoholic beverages other than the alcoholic beverage which the licensee is authorized to sell at the premises under their license. It shall be presumed that all alcoholic beverages found or located upon premises for which licenses have been issued belong to the person or persons to whom the licenses were issued. Every person violating the provisions of this section is guilty of a misdemeanor. The department may seize any alcoholic beverages found in violation of this section.

(b) Except as provided in subdivision (c), a bona fide public eating place for which an on-sale beer and wine license has been issued may have upon the premises brandy, rum, or liqueurs for use solely for cooking purposes.

(c) (1) A licensed winegrower, licensed beer manufacturer that holds a small beer manufacturer's license, and a licensed craft distiller, in any combination, whose licensed premises of production are immediately adjacent to each other and which are not branch offices, may, with the approval of the department and under such conditions as the department may require, share a common licensed area in which the consumption of alcoholic beverages is permitted, only under all of the following circumstances:

(A) The shared common licensed area is adjacent and contiguous to the licensed premises of the licensees.

(B) The licensed premises of the licensees are not branch offices.

(C) The shared common licensed area shall be readily accessible from the premises of the licensees without the necessity of using a public street, alley, or sidewalk.

(D) Except as otherwise authorized by this division, the alcoholic beverages that may be consumed in the shared common licensed area shall be purchased by the consumer only from the licensed winegrower, the licensed beer manufacturer, or the licensed craft distiller.

(E) The licensed winegrower, the licensed beer manufacturer, and the licensed craft distiller shall be jointly responsible for compliance with the provisions of this division and for any violations that may occur within the shared common licensed area.

(2) Nothing in this subdivision is intended to authorize the licensed winegrower, the licensed beer manufacturer, or the licensed craft distiller to sell, furnish, give, or have upon their respective licensed premises any alcoholic beverages, or to engage in any other activity, not otherwise authorized by this division, including, without limitation, the consumption on the premises of any distilled spirits purchased by consumers for consumption off the premises pursuant to Section 23504 or the consumption of distilled spirits other than as permitted by Section 23363.1.

(d) The holder of a beer manufacturer's license, winegrower's license, brandy manufacturer's license, distilled spirits manufacturer's license, craft distiller's license, any rectifier's license, any importer's license, or any wholesaler's license, that holds more than one of those licenses for a single premises, may have alcoholic beverages that are authorized under those licenses at the same time anywhere within the premises for purposes of production and storage, if the holder of the licenses maintains records of production and storage that identify the specific location of each alcoholic beverage product within the premises. Nothing in this subdivision is intended to allow a licensee to hold licenses, alone or in combination, or to exercise any license privileges, not otherwise provided for or authorized by this division.

(e) Notwithstanding any provision to the contrary, a licensed manufacturer may share a common licensed area with multiple licensed retailers, subject to the provisions of this subdivision.

(1) No retail licensee sharing the common licensed area with a licensed manufacturer shall sell or serve any alcoholic beverages that are manufactured, produced, bottled, processed, imported, rectified, distributed, represented, or sold by the manufacturer, directly or indirectly. This prohibition shall apply to all licensed premises owned or operated, in whole or in part, by the retail licensee anywhere in the state. No wholesaler shall be responsible for compliance with this paragraph.

(2) The licensed manufacturer may, in connection with the operation of the shared common area only, advertise or promote the common licensed area, including, but not limited to, any advertising or promotion related to the licensed retailers sharing the common licensed area, provided that each retailer pays its pro rata share of the costs of that advertising or promotion. The cost attributed to each retailer's pro rata share shall not be less than the current market price for that advertising or promotion.

(3) The licensed manufacturer may, in connection with the operation of the shared common area only, pay its pro rata share of the cost of the operation of the shared common area, including, but not limited to, the cost of renting, utilities, or any other operating costs for the area.

(4) Except as provided in paragraphs (2) and (3), no other thing of value may be given or furnished by the manufacturer to the retailers.

(5) The manufacturer may have on the area of its licensed premises that encompass the shared common licensed area alcoholic beverages that would not otherwise be permitted on the manufacturer's licensed premises. This provision does not authorize the possession of alcoholic beverages not otherwise permitted on the manufacturer's licensed premises that is not part of the shared common licensed area.

(6) All retailers sharing the common licensed area shall hold the same license type. Nothing in this subdivision shall authorize any of the retailers to exercise license privileges that are not authorized by their license.

(7) All licensees holding licenses within the shared common licensed area shall be jointly responsible for compliance with all laws that may subject their license to discipline.

(8) A wholesaler does not directly or indirectly underwrite, share in, or contribute to any costs related to the common licensed area.

(9) The manufacturer maintains records necessary to establish its compliance with this section.

(10) (A) This subdivision does not authorize a licensed manufacturer to share a common licensed area with a single retailer or with multiple retailers under common ownership, in whole or in part.

(B) This subdivision is intended to be a narrow exception to the separation of manufacturers and retailers. This subdivision shall be narrowly construed.

(11) The Legislature finds and declares both of the following:

(A) 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.

(B) Any exception established by the Legislature to the general prohibition against tied interests must be limited to the express terms of the exception so as to not undermine the general prohibitions.

SEC. 4. Section 25750.5 is added to the Business and Professions Code, to read:

25750.5. (a) For a period of 365 days following the end of the state of emergency proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic, the Department of Alcoholic Beverage Control may permit licensees to exercise license privileges in an expanded license area authorized pursuant to a COVID-19 Temporary Catering Authorization approved in accordance with the Fourth Notice of Regulatory Relief issued by the department on May 15, 2020. A COVID-19 Temporary Catering Authorization authorizes the on-sale consumption of those alcoholic beverages for which the licensee has on-sale privileges on property that is adjacent to the licensed premises, under the control of the licensee. The department may extend the period of time during which the COVID-19 Temporary Catering Authorization is valid beyond 365 days if the licensee has filed a pending application with the department for the permanent expansion of their premises before the 365-day time period expires.

(b) The COVID-19 Temporary Catering Authorization approved by the department shall be subject to those terms and conditions established by the department and as stated in the Fourth Notice of Regulatory Relief and the related application form, including,

but not limited to, that the authorization may be canceled as determined by the department, as provided in the Fourth Notice, which includes, but is not limited to, upon objection by local law enforcement or if operation of the temporarily authorized area is inconsistent with state or local public health directives.

(c) Notwithstanding any other provision of law, if the department determines that any licensee is found to be abusing the relief provided by this section, or if the licensee's actions jeopardize public health, safety, or welfare, the department may summarily rescind the relief as to that licensee at any time.

(d) This section shall remain in effect only until July 1, 2024, and as of that date is repealed.

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 address the economic loss restaurants and bars have sustained after being hit extremely hard by COVID-19 and to protect against further loss, which will help ensure public health and safety, it is necessary for this act to take effect immediately.