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SB-389 Alcoholic beverages: retail on-sale license: off-sale privileges. (2021-2022)

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Senate Bill No. 389

CHAPTER 657

An act to add and repeal Section 23401.5 of the Business and Professions Code, relating to alcoholic beverages.

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

LEGISLATIVE COUNSEL'S DIGEST

SB 389, Dodd. Alcoholic beverages: retail on-sale license: off-sale privileges.

Existing law, the Alcoholic Beverage Control Act, which is administered by the Department of Alcoholic Beverage Control, regulates the application, issuance, and suspension of alcoholic beverage licenses. Existing law authorizes a person holding an on-sale general license, with respect to beer and wine, and any on-sale license, with respect to the particular beverage or beverages mentioned in the license, to exercise the rights and privileges granted by an off-sale beer and wine license.

This bill would, until December 31, 2026, authorize the holder of an on-sale license for a bona fide public eating place that has off-sale privileges, or a licensed beer manufacturer, licensed wine manufacturer, or licensed craft distiller that operates a bona fide public eating place at its premises of production, to exercise additional off-sale rights and privileges, subject to specified requirements. In this regard, the bill would authorize the licensee to sell distilled spirits for off-sale consumption for which their license permits on-sale consumption if the beverages are in manufacturer-prepackaged containers, and are ordered and picked up by the consumer. Additionally, the bill would authorize a licensee to sell the alcoholic beverages, except beer, for off-sale consumption for which their license permits on-sale consumption when the beverages are not in manufacturer-prepackaged containers if specified conditions are met, including, among other things, that the beverages be packaged in a container with a secure lid or cap sealed in a manner designed to prevent consumption without removal of the lid or cap by breaking the seal, and the beverages are ordered and picked up by the consumer. The bill would authorize the department to place conditions on a license prohibiting or restricting the licensee's rights granted under this bill, as provided.

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

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

SECTION 1. Section 23401.5 is added to the Business and Professions Code, to read:

23401.5. (a) Notwithstanding any other law to the contrary, the holder of an on-sale license for a bona fide public eating place that has off-sale privileges, or a licensed beer manufacturer, licensed wine manufacturer, or licensed craft distiller that operates a bona fide public eating place at its premises of production, may exercise the following rights and privileges subject to the requirements of this section:

- (1) The licensee may sell the distilled spirits for off-sale consumption for which their license permits on-sale consumption provided the beverages are in manufacturer-prepackaged containers and ordered and picked up by the consumer in

compliance with subdivision (b).

(2) In addition to the privilege provided by paragraph (1), the licensee may sell the alcoholic beverages, except beer, for off-sale consumption for which their license permits on-sale consumption when the beverages are not in manufacturer prepackaged containers if the following conditions are met:

(A) The alcoholic beverages are packaged in a container with a secure lid or cap sealed in a manner designed to prevent consumption without removal of the lid or cap by breaking the seal.

(B) Wine is sold only in single-serve containers. For purposes of this subparagraph, "single-serve containers" means containers that have a standard of fill between 187 milliliters and 355 milliliters that is authorized for wine under Section 4.72 of Title 27 of the Code of Federal Regulations.

(C) Mixed drinks and cocktails sold for off-sale consumption pursuant to the authorization granted by this section shall not exceed four and one-half ounces of distilled spirits.

(D) Alcoholic beverages sold pursuant to this paragraph shall be sold in conjunction with a bona fide meal, and shall be limited to two such drinks per bona fide meal. For purposes of this requirement, a "bona fide meal" shall conform to the guidance issued by the department on July 5, 2020, entitled "What is required to be considered a 'meal'?", available on the department's internet website.

(E) The container is clearly and conspicuously labeled or otherwise identified as containing an alcoholic beverage.

(F) (i) The following warning sign is posted in a manner that notifies consumers of restrictions regarding open container laws:

"Alcoholic beverages that are packaged by this establishment are open containers and shall not be transported in a motor vehicle except in the vehicle's trunk or, if there is no trunk, the containers shall be kept in some other area of the vehicle that is not normally occupied by the driver or passengers. This does not include a utility compartment or glove compartment (See Vehicle Code Section 23225). Additionally, these beverages shall not be consumed in public or in any other area where open containers are prohibited by law."

(ii) For purposes of this subparagraph, "post" means to prominently display on the premises, post online, or present in whatever manner is necessary to ensure that the consumer purchasing the beverages to which this section applies is given notice of this warning.

(G) The alcoholic beverages are ordered and picked up by the consumer in compliance with subdivision (b).

(3) Nothing in this section shall require a licensee to sell alcoholic beverages for off-sale consumption whether or not the alcoholic beverage is in a manufacturer-sealed prepackaged container or otherwise.

(b) An alcoholic beverage sold pursuant to subdivision (a) shall meet both of the following conditions:

(1) The alcoholic beverage shall be ordered by the consumer online, over the telephone, or in person, for pickup by the consumer.

(2) The consumer who places the order for an alcoholic beverage shall pick up the order directly from the licensee and shall present a bona fide identification card for purposes of confirming the age and identity of the consumer who placed the order. The alcoholic beverage shall not be ordered or picked up for delivery.

(c) Prior to exercising the privileges authorized in paragraph (2) of subdivision (a), the licensee shall notify the department in writing of its intent to do so.

(d) Notwithstanding any law to the contrary, the department may at any time impose conditions on a license restricting or prohibiting the licensee from selling or furnishing any alcoholic beverage pursuant to this Section.

(1) Any conditions imposed pursuant to this subdivision shall be based upon a showing of good cause. Good cause includes, but is not limited to, a written request, including the reason for the restriction or prohibition, from a local law enforcement agency or local governing body, or its designated subordinate officer or agency.

(2) A licensee may petition the department to modify or remove a condition within 10 days following imposition of the condition.

(A) A petition under this paragraph shall be subject to the same fee as provided in Section 23803.

(B) If the department denies the licensee's petition, the licensee may request a hearing, which shall be conducted in the same manner as provided in Section 23805.

(C) In any hearing pursuant to this paragraph, the licensee shall have the burden to establish that the condition is unreasonable or that no good cause exists for its imposition. The condition shall remain in effect during any appeal of its imposition.

(e) Nothing in this section shall preclude privileges authorized pursuant to Sections 23401 and 23661.3.

(f) This section shall be operative until December 31, 2026, and as of that date is repealed.