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SB-1370 Alcoholic beverages: licensees. (2021-2022)

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Senate Bill No. 1370

CHAPTER 732

An act to amend Sections 23039 and 24045.7 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1370, Pan. 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 that is exempt from the payment of income taxes, as specified. Existing law specifies that the license shall be for a single specified premises only, and authorizes a theater company that holds the license to sell and serve alcoholic beverages to ticketholders only during, and two hours before and one hour after, a bona fide theater performance of the company. Existing law makes it a misdemeanor for any on- or off-sale licensee, or agent of that licensee, to sell, give, or deliver to any persons any alcoholic beverage between the hours of 2 a.m. and 6 a.m. of the same day. The Alcoholic Beverage Control Act also provides for application fees for a new license and for various annual renewal fees, depending on the type of license.

This bill would additionally authorize the department to issue a special on-sale general license to a nonprofit radio broadcasting company. The bill would authorize those nonprofit radio broadcasting companies, subject to the misdemeanor provision described above, to sell and serve alcoholic beverages, as specified, to ticketholders only during, and 2 hours before and one hour after, a bona fide performance. The bill would provide the application fee for a new license and for annual renewal fees for that license type, as specified. By expanding the application of an existing crime, the bill would impose a state-mandated local program.

(2) 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 specified licensees, including a licensed manufacturer, 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, the City of Livermore, or the City of Modesto.

This bill would expand the list of cities to include the City of Sacramento. The 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 radio broadcasting company operating a venue in the specified cities and county.

(3) This bill would make legislative findings and declarations as to the necessity of a special statute for the City of Sacramento.

(4) This bill would incorporate additional changes to Sections 23039 and 24045.7 of the Business and Professions Code proposed by AB 631 to be operative only if this bill and AB 631 are enacted and this bill is enacted last.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. Section 23039 of the Business and Professions Code is amended to read:

23039. (a) "Public premises" means:

(1) Premises licensed with any type of license other than an on-sale beer license, and maintained and operated for the selling or serving of alcoholic beverages to the public for consumption on the premises, and in which food shall not be sold or served to the public as in a bona fide public eating place, but upon which premises food products may be sold or served incidentally to the sale or service of alcoholic beverages, in accordance with rules prescribed by the department.

(2) Premises licensed with an on-sale beer license, in which food shall not be sold or served to the public as in a bona fide public eating place, and in which sandwiches, salads, desserts, and similar short orders shall not be sold and served, in accordance with rules prescribed by the department.

(b) "Public premises" does not include any of the following:

(1) Railroad dining or club cars, passenger ships, airplanes, or bona fide clubs after the clubs have been lawfully operated for not less than one year.

(2) Historic units of the state park system.

(3) Premises being operated under a temporary on-sale beer license other than permitted pursuant to Section 24045.5, or on-sale beer licensed stadia, auditoria, fairgrounds, or racetracks.

(4) Nonprofit theater companies or nonprofit radio broadcasting companies licensed pursuant to Section 24045.7.

(5) Theaters licensed pursuant to Section 24045.75.

(6) Cemeteries licensed pursuant to Section 24045.76.

(7) Winegrowers' premises.

(8) Licensed premises of a nonprofit arts foundation licensed pursuant to Section 24045.78.

SEC. 1.5. Section 23039 of the Business and Professions Code is amended to read:

23039. (a) "Public premises" means:

(1) Premises licensed with any type of license other than an on-sale beer license, and maintained and operated for the selling or serving of alcoholic beverages to the public for consumption on the premises, and in which food shall not be sold or served to the public as in a bona fide public eating place, but upon which premises food products may be sold or served incidentally to the sale or service of alcoholic beverages, in accordance with rules prescribed by the department.

(2) Premises licensed with an on-sale beer license, in which food shall not be sold or served to the public as in a bona fide public eating place, and in which sandwiches, salads, desserts, and similar short orders shall not be sold and served, in accordance with rules prescribed by the department.

(b) "Public premises" does not include any of the following:

(1) Railroad dining or club cars, passenger ships, airplanes, or bona fide clubs after the clubs have been lawfully operated for not less than one year.

(2) Historic units of the state park system.

(3) Premises being operated under a temporary on-sale beer license other than permitted pursuant to Section 24045.5, or on-sale beer licensed stadia, auditoria, fairgrounds, or racetracks.

(4) Nonprofit theater companies, nonprofit radio broadcasting companies, or nonprofit cultural film exhibition companies licensed pursuant to Section 24045.7.

(5) Theaters licensed pursuant to Section 24045.75.

(6) Cemeteries licensed pursuant to Section 24045.76.

(7) Winegrowers' premises.

(8) Licensed premises of a nonprofit arts foundation licensed pursuant to Section 24045.78.

SEC. 2. 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 or nonprofit radio broadcasting 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 or nonprofit radio broadcasting company pursuant to this subdivision shall be for a single specified premises only.

(2) Theater companies or nonprofit radio broadcasting companies holding a license under this subdivision may, subject to Section 25631, sell and serve alcoholic beverages to ticketholders only during, and two hours before and one hour after, a bona fide performance.

(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 or nonprofit radio broadcasting company operating a venue in the County of Napa, the City of Livermore, the City of Modesto, or the City of Sacramento licensed pursuant to this subdivision.

(4) A nonprofit radio broadcasting company shall be subject to the same application fee for a new permanent license and applicable annual fee as a nonprofit theater company, as provided in Section 23320, which may be adjusted pursuant to subdivisions (d) and (e) of Section 23320.

(5) 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 that has been in existence for at least eight years, that for at least six years has performed in facilities leased or rented from a local county fair association, and 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.

(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 before, a bona fide theater performance of the company. Beer and wine may be sold from an open-air concession stand that 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. This section does not authorize a theater company to sell beer or wine during the run of a county fair.

SEC. 2.5. 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, nonprofit radio broadcasting company, or nonprofit cultural film exhibition 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, nonprofit radio broadcasting company, or nonprofit cultural film exhibition company pursuant to this subdivision shall be for a single specified premises only.

(2) Theater companies or nonprofit radio broadcasting companies holding a license under this subdivision may, subject to Section 25631, sell and serve alcoholic beverages to ticketholders only during, and two hours before and one hour after, a bona fide performance.

(3) (A) Nonprofit cultural film exhibition companies holding a license under this subdivision may, subject to Section 25631, sell and serve alcoholic beverages to ticketholders only during, and two hours before and one hour after, a bona fide film exhibition of the company.

(B) For purposes of this subdivision, "nonprofit cultural film exhibition company" means a company that predominantly exhibits classic, foreign, independent, or rare movies by means of digital or film projection equipment for its members or the general public, or both, in a theater with a seating capacity of at least 100 seats, at least three days per week.

(4) 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 or nonprofit radio broadcasting company operating a venue in the County of Napa, the City of Livermore, the City of Modesto, or the City of Sacramento, licensed pursuant to this subdivision.

(5) A nonprofit radio broadcasting company and a nonprofit cultural film exhibition company shall be subject to the same application fee for a new permanent license and applicable annual fee as a nonprofit theater company, as provided in Section 23320, which may be adjusted pursuant to subdivisions (d) and (e) of Section 23320.

(6) 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 that has been in existence for at least eight years, that for at least six years has performed in facilities leased or rented from a local county fair association, and 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.

(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 before, a bona fide theater performance of the company. Beer and wine may be sold from an open-air concession stand that 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. This section does not authorize a theater company to sell beer or wine during the run of a county fair.

SEC. 3. 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 Sacramento.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 23039 of the Business and Professions Code proposed by both this bill and Assembly Bill 631. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2023, (2) each bill amends Section 23039 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 631, in which case Section 1 of this bill shall not become operative.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 24045.7 of the Business and Professions Code proposed by both this bill and Assembly Bill 631. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2023, (2) each bill amends Section 24045.7 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 631, in which case Section 2 of this bill shall not become operative.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.