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AB-1704 Alcoholic beverage licenses. (2023-2024)

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Assembly Bill No. 1704

CHAPTER 375

An act to amend Sections 23015, 23358, 23961, and 24072.3 of the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 07, 2023. Filed with Secretary of State October 07, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1704, Santiago. Alcoholic beverage licenses.

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 licensed winegrower to conduct specified activities, including the production of spirits of wine, provided those spirits of wine are blended into wine produced by the winegrower, sold to an industrial alcohol dealer, or destroyed by the winegrower.

This bill would expand the authorization of a licensed winegrower to include selling spirits of wine it produces to a distilled spirits manufacturer.

Existing law limits the amount of on- and off-sale general licenses that may be issued per county and establishes procedural requirements concerning the issuance and transfer of those licenses, including a requirement that the department hold a drawing to determine the priority for consideration when there are more applicants for licensure than available licenses, as provided.

This bill would require the department to make the drawing available for viewing via a live video feed.

Existing law authorizes a person that has a brewpub-restaurant license to exchange that license for a bona fide public eating place license subject to the approval of the department, the payment of specified fees, and compliance with other relevant provisions of the act relating to the issuance of an original license. Existing law specifies that this provision applies only to a person that has held a brewpub-restaurant license since on or before December 31, 2019.

This bill instead would apply that provision to a brewpub-restaurant license that was first issued on or before December 31, 2019, regardless of transfers subsequent to the original issuance of the license.

This bill would incorporate additional changes to Section 23358 of the Business and Professions Code proposed by SB 76 to be operative only if this bill and SB 76 are enacted and this bill is enacted last.

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 23015 of the Business and Professions Code is amended to read:

23015. “Distilled spirits manufacturer” means a person who produces distilled spirits from naturally fermented materials or in any other manner. “Distilled spirits manufacturer” does not include a winegrower that produces spirits of wine, provided the spirits of wine are blended into wine produced by the winegrower, are sold to an industrial alcohol dealer or a distilled spirits manufacturer, or are destroyed by the winegrower.

SEC. 2. Section 23358 of the Business and Professions Code is amended to read:

23358. (a) Licensed winegrowers, notwithstanding any other provisions of this division, may also exercise the following privileges:

(1) Sell wine and brandy to any person holding a license authorizing the sale of wine or brandy.

(2) Sell wine and brandy to consumers for consumption off the premises where sold.

(3) Sell wine to consumers for consumption on the premises.

(4) Sell all beers, wines, and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place as defined in Section 23038 of this code, which is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and which is operated by and for the licensee. At such a bona fide public eating place beer, wine, and brandy may be used in the preparation of food and beverages to be consumed on the premises.

(5) Produce spirits of wine and blend those spirits of wine into wine produced by the winegrower or sell those spirits of wine to an industrial alcohol dealer or a distilled spirits manufacturer.

(b) A winegrower may also have upon the premises all beers, wines, and brandies, regardless of source, for sale or service only to guests during private events or private functions not open to the general public. Alcoholic beverage products sold at the premises that are not produced and bottled by, or produced and packaged for, the winegrower shall be purchased by the winegrower only from a licensed wholesaler.

(c) A winegrower shall actually produce on the winegrower’s licensed premises by conversion of grapes, berries, or other fruit, into wine, not less than 50 percent of all wines sold to consumers on the winegrower’s licensed premises and any licensed branch premises.

(d) The department may, if it shall determine for good cause that the granting of any such privilege would be contrary to public welfare or morals, deny the right to exercise any on-sale privilege authorized by this section in either a bona fide eating place the main entrance to which is within 200 feet of a school or church, or on the licensed winery premises, or both.

(e) Nothing in this section or in Section 23390 is intended to alter, diminish, replace, or eliminate the authority of a county, city, or city and county from exercising land use regulatory authority by law to the extent the authority may restrict, but not eliminate, privileges afforded by these sections.

SEC. 2.5. Section 23358 of the Business and Professions Code is amended to read:

23358. (a) Licensed winegrowers, notwithstanding any other provisions of this division, may also exercise the following privileges:

(1) Sell wine and brandy to any person holding a license authorizing the sale of wine or brandy.

(2) Sell wine and brandy to consumers for consumption off the premises where sold.

(3) Sell wine to consumers for consumption on the premises.

(4) Sell all beers, wines, and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place as defined in Section 23038, which is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and which is operated by and for the licensee. At such a bona fide public eating place beer, wine, and brandy may be used in the preparation of food and beverages to be consumed on the premises.

(5) (A) Permit consumers to leave the premises with open containers of alcoholic beverages for consumption off the premises within an entertainment zone if all of the following conditions are satisfied:

(i) The premises is located within the entertainment zone.

(ii) Consumption of that type of alcoholic beverage is authorized by the ordinance creating the entertainment zone.

(iii) Open alcohol containers only leave the premises during the hours allowed by the ordinance establishing the entertainment zone.

(iv) Patrons with open containers exit the premises directly into an entertainment zone.

(v) All alcoholic beverages in the entertainment zone are purchased only at a licensed premises located within the entertainment zone.

(vi) The premises expressly prohibits open containers or closed containers of alcoholic beverages acquired outside their premises.

(vii) Delivery of alcoholic beverages to consumers within the entertainment zone by the licensee or by any third-party delivery service is expressly prohibited unless the delivery is to a residential building or private business that is not a licensee.

(viii) No alcoholic beverages purchased at the licensed premises may leave the premises in an open glass or metal container for consumption in an entertainment zone.

(ix) The licensee annually submits their notice of intent to participate in an open container entertainment zone to the department.

(B) This paragraph does not require a licensee to sell any alcoholic beverage for consumption off the premises within an entertainment zone.

(C) Licensees whose privileges are restricted due to operating conditions or other statutory restrictions may be prohibited from exercising entertainment zone privileges that are contrary to their operating conditions. For purposes of this paragraph, any restrictions on the exercise of off-sale privileges shall apply to the removal of alcoholic beverages from the licensed premises for consumption in the entertainment zone.

(6) Produce spirits of wine and blend those spirits of wine into wine produced by the winegrower or sell those spirits of wine to an industrial alcohol dealer or a distilled spirits manufacturer.

(b) A winegrower may also have upon the premises all beers, wines, and brandies, regardless of source, for sale or service only to guests during private events or private functions not open to the general public. Alcoholic beverage products sold at the premises that are not produced and bottled by, or produced and packaged for, the winegrower shall be purchased by the winegrower only from a licensed wholesaler.

(c) A winegrower shall actually produce on the winegrower's licensed premises by conversion of grapes, berries, or other fruit, into wine, not less than 50 percent of all wines sold to consumers on the winegrower's premises and any licensed branch premises.

(d) The department may, if it shall determine for good cause that the granting of any such privilege would be contrary to public welfare or morals, deny the right to exercise any on-sale privilege authorized by this section in either a bona fide eating place the main entrance to which is within 200 feet of a school or church, or on the licensed winery premises, or both.

(e) Nothing in this section or in Section 23390 is intended to alter, diminish, replace, or eliminate the authority of a county, city, or city and county from exercising land use regulatory authority by law to the extent the authority may restrict, but not eliminate, privileges afforded by these sections.

SEC. 3. Section 23961 of the Business and Professions Code is amended to read:

23961. (a) (1) If, at the conclusion of the period prescribed by the department for the filing of applications for issuance or transfer of on-sale general licenses or off-sale general licenses in any county in its notice of intention to receive applications therefor published pursuant to Sections 23821 and 24070, the department finds that there are more applicants for the particular type of license than there are licenses available for issuance or transfer under Sections 23821 and 24070 the department shall, within 60 days following the conclusion of said period, conduct a drawing to determine the priority in which all of such applications filed with it shall be considered. No more than one such drawing shall be made in any county in any one year, and no person will be entitled to more than one opportunity to participate in such a drawing in any county with respect to an application for issuance or transfer of any one type of license. The number drawn by any applicant shall indicate the priority to be given to the consideration of the application but shall not insure the issuance of a license by the department.

(2) In order to participate in the drawing, an applicant shall pay a fee in an amount equal to the fee for licenses identified in paragraph (2) of subdivision (a) of Section 23320. Any participant that does not file a formal application shall receive a refund of the fee less a service charge of one hundred dollars (\$100). Any participant that files a formal application and whose application is thereafter denied or withdrawn is entitled to the refund specified in Section 23320.

(b) If a drawing is not conducted as provided in subdivision (a) of this section, applications for issuance of original on-sale general licenses and off-sale general licenses in a county or transfer of the licenses into the county shall be made and considered as otherwise provided in this article.

(c) No person shall be qualified to participate in such a drawing unless such applicant is a resident of California for at least 90 days prior to the drawing. Prior to the issuance of any license, pursuant to such a drawing, the applicant shall present proof of such residency status. A corporation incorporated in a state other than California, but registered with the Secretary of State to do business in California for 90 days, shall be deemed to have satisfied the residency requirement for the purpose of this section.

(d) The department shall advertise, in connection with a drawing conducted pursuant to this section, that participation in such a drawing is available only to California residents.

(e) The department shall make the drawing available for viewing via a live video feed.

SEC. 4. Section 24072.3 of the Business and Professions Code is amended to read:

24072.3. (a) (1) Any person that has a brewpub-restaurant license may exchange that license for a bona fide public eating place license, as defined in Section 23038. The exchange may be made at any time upon the approval of the department, the payment of an exchange fee of one hundred dollars (\$100), and compliance with the provisions of this division relating to the issuance of an original license.

(2) This section shall only apply to a brewpub-restaurant license that was first issued on or before December 31, 2019. For purposes of this paragraph, "first issued" means the date that the original brewpub-restaurant license was issued by the department, regardless of subsequent transfers thereof.

(b) (1) The fee established in subdivision (a) may be adjusted by the department pursuant to subdivisions (d) and (e) of Section 23320.

(2) A person that exchanges a license pursuant to this section shall be required to pay the fee required for a new permanent license as set forth in Section 23320 for an on-sale general eating place.

(3) All money collected from the fee provided for in this section shall be deposited directly in the Alcohol Beverage Control Fund as provided in Section 25761.

(c) (1) The department may designate a license issued pursuant to this section as an on-sale general license for special use. A designation pursuant to this subdivision shall not alter any license privileges or restrictions otherwise established by this section.

(2) An on-sale general license for special use issued pursuant this section shall be excluded from the number of on-sale general licenses available under Sections 23816 and 23821.

(d) A license issued pursuant to this section shall not be sold or transferred for a price greater than the fee paid by the seller or transferor under paragraph (2) of subdivision (b).

(e) For purposes of this section, "brewpub-restaurant license" means a license described in Section 23396.3.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 23358 of the Business and Professions Code proposed by both this bill and Senate Bill 76. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2024, but this bill becomes operative first, (2) each bill amends Section 23358 of the Business and Professions Code, and (3) this bill is enacted after Senate Bill 76, in which case Section 23358 of the Business and Professions Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of Senate Bill 76, at which time Section 2.5 of this bill shall become operative.

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 provide support to California businesses at the earliest possible time, it is necessary that this act take effect immediately.