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SB-498 Alcoholic beverage control: violations. (2023-2024)

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Senate Bill No. 498

CHAPTER 613

An act to amend Sections 23095 and 25658 of, and to add Section 24200.8 to, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor October 08, 2023. Filed with Secretary of State October 08, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

SB 498, Gonzalez. Alcoholic beverage control: violations.

Existing law, the Alcoholic Beverage Control Act, contains various provisions regulating the application for, the issuance of, and the suspension of alcoholic beverage licenses by the Department of Alcoholic Beverage Control. Existing law authorizes an alcoholic beverage licensee, as provided, to petition the Department of Alcoholic Beverage Control for permission to make an offer in compromise, before the operative date of the suspension of the alcoholic beverage license, and to pay an amount in lieu of serving the suspension. Existing law prescribes certain guidelines for calculating the applicable amount of the offer in compromise for licensees, including, specifically for retail licensees, that an offer in compromise may not be less than \$750 nor more than \$3,000, or, if the retail licensee has had any other accusation against them within 3 years that resulted in the suspension or revocation of the license, not less than \$1,500 nor more than \$6,000.

This bill would instead provide that an offer in compromise for retail licensees may not be less than \$750 nor more than \$6,000, or, where the licensee has had the retail license suspended or revoked, as specified, not less than \$1,500 nor more than \$12,000.

Existing law prohibits a licensee from petitioning for an offer in compromise if the proposed suspension exceeds 15 days. Existing law, notwithstanding that prohibition, authorizes a petition for an offer in compromise for a 2nd violation of specified provisions of existing law relating to the provision of alcohol to minors that occurs within 36 months of the initial violation without regard to the length of suspension and provides that the offer in compromise may not be less than \$2,500 nor more than \$20,000.

This bill would instead provide that the offer in compromise may not be less than \$2,500 nor more than \$40,000.

Existing law prohibits a person from providing an alcoholic beverage to a person under 21 years of age, to a habitual or common drunkard, or to an obviously intoxicated person, as specified. Existing law makes violation of those provisions a misdemeanor and makes any violation by a licensee of any provision of the Alcoholic Beverage Control Act a basis for revocation or suspension of a license.

This bill would authorize the department to consider as a factor, in determining the level of discipline for violations of the above-described prohibitions, whether there is a subsequent death or great bodily injury to the individual provided the alcoholic beverage or to any other person.

Existing law, for specified violations of the above-described prohibition on providing alcoholic beverages to persons under 21 years of age that result in great bodily injury or death, as specified, makes that violation a misdemeanor punishable by 6 months

to one year in county jail, a fine of \$1,000, or both.

This bill would increase the fine for that violation to \$3,000.

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

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

SECTION 1. Section 23095 of the Business and Professions Code is amended to read:

23095. (a) Whenever a decision of the department suspending a license becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension, petition the department for permission to make an offer in compromise, to be paid into the Alcohol Beverage Control Fund, consisting of a sum of money in lieu of serving the suspension.

(b) No licensee may petition the department for an offer in compromise in any case in which the proposed suspension is for a period in excess of 15 days.

(c) Upon the receipt of the petition, the department may stay the proposed suspension and cause any investigation to be made which it deems desirable and may grant the petition if it is satisfied that the following conditions are met:

(1) The public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and the payment of the sum of money will achieve the desired disciplinary purposes.

(2) The books and records of the licensee are kept in such a manner that the loss of sales of alcoholic beverages that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom.

(d) The offer in compromise for retail licensees shall be the equivalent of 50 percent of the estimated gross sales of alcoholic beverages for each day of a proposed suspension, subject to the following limits:

(1) The offer in compromise may not be less than seven hundred fifty dollars (\$750) nor more than six thousand dollars (\$6,000).

(2) If the petitioning retailer has had any other accusation filed against the petitioning retailer by the department during the three years prior to the date of the petition that has resulted in a final decision to suspend or revoke the retail license concerned, the offer in compromise may be not less than one thousand five hundred dollars (\$1,500) nor more than twelve thousand dollars (\$12,000).

(e) Notwithstanding subdivision (b), a licensee may petition the department for an offer in compromise for a second violation of Section 25658 that occurs within 36 months of the initial violation without regard to the period of suspension. In these cases, the offer in compromise shall be the equivalent of 50 percent of the estimated gross sales of alcoholic beverages for each day of the proposed suspension, and the offer in compromise may be not less than two thousand five hundred dollars (\$2,500) nor more than forty thousand dollars (\$40,000).

(f) (1) The offer in compromise for nonretail licensees shall be the equivalent of 50 percent of the estimated gross sales of alcoholic beverages for each day of the proposed suspension, and the offer in compromise may not be less than seven hundred fifty dollars (\$750) and may not exceed ten thousand dollars (\$10,000) unless the nonretail licensee has violated Section 25500, 25502, 25503, or 25600 by giving to any licensee illegal inducements, secret rebates, or free goods amounting to more than ten thousand dollars (\$10,000) in value, in which case the offer in compromise shall be equal to the value of the illegal inducements, secret rebates, or free goods given.

(2) Notwithstanding paragraph (1), any nonretail licensee who pays an offer in compromise based upon a violation in the exercise of any retail privileges of that license shall have the offer in compromise computed on estimated retail gross sales only pursuant to subdivision (d).

(3) All moneys collected as a result of penalties imposed under this subdivision shall be deposited directly in the General Fund in the State Treasury, rather than the Alcohol Beverage Control Fund as provided for in Section 25761.

SEC. 2. Section 24200.8 is added to the Business and Professions Code, to read:

24200.8. In determining the level of discipline for a violation of Section 25602 or 25658, the department may consider as a factor whether there is subsequent death or great bodily injury to the person who is sold, served, furnished, or given the alcoholic beverage, to any other person, or to both.

SEC. 3. Section 25658 of the Business and Professions Code is amended to read:

25658. (a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away any alcoholic beverage to any person under 21 years of age is guilty of a misdemeanor.

(b) Except as provided in Section 25667 or 25668, any person under 21 years of age who purchases any alcoholic beverage, or any person under 21 years of age who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any person who violates subdivision (a) by purchasing any alcoholic beverage for, or furnishing, giving, or giving away any alcoholic beverage to, a person under 21 years of age, and the person under 21 years of age thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to themselves or any other person, is guilty of a misdemeanor.

(d) Any on-sale licensee who knowingly permits a person under 21 years of age to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under 21 years of age, is guilty of a misdemeanor.

(e) (1) Except as otherwise provided in paragraph (2) or (3), or Section 25667 or 25668, any person who violates this section shall be punished by a fine of two hundred fifty dollars (\$250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of a fine and community service as determined by the court. A second or subsequent violation of subdivision (b), where prosecution of the previous violation was not barred pursuant to Section 25667 or 25668, shall be punished by a fine of not more than five hundred dollars (\$500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed and is not attending school, or a combination of a fine and community service as determined by the court. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

(2) Except as provided in paragraph (3), any person who violates subdivision (a) by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of one thousand dollars (\$1,000), no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.

(3) Any person who violates subdivision (c) shall be punished by imprisonment in a county jail for a minimum term of six months not to exceed one year, by a fine of three thousand dollars (\$3,000), or by both imprisonment and fine.

(f) Persons under 21 years of age may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, or other persons who sell or furnish alcoholic beverages to minors. Notwithstanding subdivision (b), any person under 21 years of age who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase an alcoholic beverage. Guidelines with respect to the use of persons under 21 years of age as decoys shall be adopted and published by the department in accordance with the rulemaking portion of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy displays to the seller of alcoholic beverages the appearance of a person under 21 years of age. This subdivision shall not be construed to prevent the department from taking disciplinary action against a licensee who sells alcoholic beverages to a minor decoy prior to the department's final adoption of regulatory guidelines. After the completion of every minor decoy program performed under this subdivision, the law enforcement agency using the decoy shall notify licensees within 72 hours of the results of the program. When the use of a minor decoy results in the issuance of a citation, the notification required shall be given to licensees and the department within 72 hours of the issuance of the citation. A law enforcement agency may comply with this requirement by leaving a written notice at the licensed premises addressed to the licensee, or by mailing a notice addressed to the licensee.

(g) The penalties imposed by this section do not preclude prosecution or the imposition of penalties under any other provision of law, including, but not limited to, Section 272 of the Penal Code.