

AMENDED IN SENATE AUGUST 14, 2006

AMENDED IN SENATE JUNE 22, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 3065

**Introduced by Committee on Governmental Organization
(Jerome Horton (Chair), Aghazarian, Bermudez, Calderon,
Chavez, Coto, Garcia, La Suer, Levine, Liu, Mountjoy, Negrete
McLeod, Torrico, and Yee)**

March 13, 2006

An act to amend Sections 23387, 25509, and 25511 of, *and to add Section 23001.5 to*, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 3065, as amended, Committee on Governmental Organization. Alcoholic beverages: tied-interests restrictions: licensees: wholesalers and rectifiers: fixtures and supplies.

(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 also contains various provisions regulating the sale, storage, taxes, and labeling of alcoholic beverages.[PU 20030AB__308596ENR]

This bill would provide that if any provision of the Alcoholic Beverage Control Act, or application thereof, is held invalid, that invalidity shall not affect other provisions or applications of the act

which can be given effect without the invalid portion or application, and stating the legislative intent thereof, as specified.

(1)

(2) Existing law requires distilled spirits manufacturers, brandy manufacturers, beer manufacturers, wine blenders, distilled spirits rectifiers, distilled spirits wholesalers, and wine wholesalers to comply with specified billing procedures when selling and delivering beer, wine, or distilled spirits to a retailer.

This bill would provide that the Legislature finds it necessary and proper to ~~require a separation between specified business interests involved in the production and distribution of alcoholic beverages for specified reasons~~ *remove retailers from specified obligations regarding the extension of credit to specified persons*. This bill would also provide that the general prohibition against tied interests is to be limited to its express terms.

(2)

(3) Existing law permits a wholesaler or rectifier to sell the alcoholic beverages mentioned in his or her license to persons who take delivery of the alcoholic beverages within the state for delivery or use outside of the state within 90 days from the date of the sale in accordance with rules and regulations prescribed by the department.

This bill would make technical, nonsubstantive changes to this provision.

(3)

(4) Existing law permits a beer manufacturer or beer wholesaler to furnish, give, rent, lend, or sell, any equipment, fixtures, or supplies, other than alcoholic beverages, to a retailer whose equipment, fixtures, or supplies were lost or damaged as a result of a natural disaster, except that this provision does not apply to transactions that occur 6 weeks or more after the Governor proclaims an area to be in a state of disaster.

This bill would instead make this provision inapplicable to transactions that occur 3 months or more after the Governor proclaims an area to be in a state of disaster.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 23001.5 is added to the Business and*
2 *Professions Code, to read:*

3 23001.5. *If any provision of this division or the application*
4 *thereof to any person or circumstances is held invalid, such*
5 *invalidity shall not affect other provisions or applications of this*
6 *division that can be given effect without the invalid portion or*
7 *application, and to this end the provisions of this division are*
8 *severable. It is the intent of the Legislature that this division*
9 *would have been adopted regardless if such invalid provision*
10 *had not been included or any invalid application had not been*
11 *made.*

12 ~~SECTION 1.~~

13 *SEC. 2. Section 23387 of the Business and Professions Code*
14 *is amended to read:*

15 23387. In addition to the other privileges exercised under a
16 wholesaler's or rectifier's license, a wholesaler or rectifier may
17 sell the alcoholic beverages mentioned in his or her license to
18 persons who take delivery of the alcoholic beverages within this
19 state for delivery or use outside of the state within 90 days from
20 the date of the sale in accordance with rules and regulations
21 prescribed by the department.

22 ~~SEC. 2.~~

23 *SEC. 3. Section 25509 of the Business and Professions Code*
24 *is amended to read:*

25 25509. (a) A distilled spirits manufacturer, a brandy
26 manufacturer, a beer manufacturer, a winegrower, a wine
27 blender, a distilled spirits rectifier, a wine rectifier, a distilled
28 spirits wholesaler or a beer and wine wholesaler who sold and
29 delivered beer, wine, or distilled spirits to a retailer and who did
30 not receive payment for such beer, wine, or distilled spirits by the
31 expiration of the 42nd day from date of delivery shall charge the
32 retailer 1 percent of the unpaid balance for such beer, wine, and
33 distilled spirits on the 43rd day from date of delivery and an
34 additional 1 percent for each 30 days thereafter.

35 (b) A distilled spirits manufacturer, a brandy manufacturer, a
36 beer manufacturer, a winegrower, a wine blender, distilled spirits
37 rectifier, a wine rectifier, distilled spirits wholesaler or beer and
38 wine wholesaler who sold and delivered beer, wine, or distilled

1 spirits to a retailer and who did not receive payment in full by the
2 expiration of the 30th day from date of delivery or who has not
3 received payment of the 1 percent charge at the expiration of the
4 30th day from the day the charge became due shall thereafter sell
5 beer, wine, or distilled spirits to said retailer either for cash or by
6 receiving payment in advance of delivery until such time as all
7 payments are received for the beer, wine, or distilled spirits sold
8 and delivered to the said retailer more than 30 days previously.

9 (c) The 42-day period and the 30-day period provided for in
10 this section shall commence with the day immediately following
11 the date of invoice and shall include all successive days including
12 Sundays and holidays to and including the 42nd or 30th day as
13 the case may be. When the 42nd day from date of invoice or the
14 expiration of each additional 30-day period falls on Saturday,
15 Sunday, or legal holiday, the next business day shall be deemed
16 to be the expiration day.

17 (d) All moneys received from a retailer in payment for any
18 beer, wine, or distilled spirits sold and delivered to him *or her*
19 shall be first applied to the payment of the oldest balance on beer,
20 wine, or distilled spirits. All checks received for such payments
21 shall be deposited for collection not later than the second
22 business day following receipt of said check. A promissory note,
23 postdated check or check dishonored on presentation shall not be
24 deemed payment.

25 (e) In enacting *the act that amends this section by adding* this
26 subdivision, the Legislature finds that it is necessary and proper
27 to ~~require a separation between manufacturing interests,~~
28 ~~wholesale interests, and retail interests in the production and~~
29 ~~distribution of alcoholic beverages in order to prevent suppliers~~
30 ~~or wholesalers from dominating local markets through vertical~~
31 ~~integration and to remove the retailer from financial or business~~
32 obligations to suppliers or wholesalers by the extension of credit
33 beyond the terms contained in this section. The Legislature
34 further finds that the exception established by this section to the
35 general prohibition against tied interests shall be limited to its
36 express terms so as not to undermine the general prohibition, and
37 intends that this section shall be construed accordingly.

38 ~~SEC. 3.~~

39 *SEC. 4.* Section 25511 of the Business and Professions Code
40 is amended to read:

1 25511. Notwithstanding any other provision of this division,
2 a beer manufacturer or beer wholesaler, or any officer, director,
3 or agent of any of those persons may furnish, give, rent, lend, or
4 sell, directly or indirectly, any equipment, fixtures, or supplies,
5 other than alcoholic beverages, to a retailer whose equipment,
6 fixtures, or supplies were lost or damaged as a result of a natural
7 disaster and whose premises are located in an area proclaimed to
8 be in a state of disaster by the Governor.

9 This section does not apply to transactions that occur three
10 months or more after the Governor proclaims an area to be in a
11 state of disaster.

12 Nothing in this section is intended to affect or otherwise limit
13 Section 23104.1, 23104.2, or 23104.3.

O