

Assembly Bill No. 3065

CHAPTER 910

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.

[Approved by Governor September 30, 2006. Filed with Secretary of State September 30, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3065, 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.

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.

(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 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.

(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.

(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.

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

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

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

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

23387. In addition to the other privileges exercised under a wholesaler's or rectifier's license, a wholesaler or rectifier may sell the alcoholic beverages mentioned in his or her license to persons who take delivery of the alcoholic beverages within this 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.

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

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

(b) A distilled spirits manufacturer, a brandy manufacturer, a beer manufacturer, a winegrower, a wine blender, distilled spirits rectifier, a wine rectifier, distilled spirits wholesaler or beer and wine wholesaler who sold and delivered beer, wine, or distilled spirits to a retailer and who did not receive payment in full by the expiration of the 30th day from date of delivery or who has not received payment of the 1 percent charge at the expiration of the 30th day from the day the charge became due shall thereafter sell beer, wine, or distilled spirits to said retailer either for cash

or by receiving payment in advance of delivery until such time as all payments are received for the beer, wine, or distilled spirits sold and delivered to the said retailer more than 30 days previously.

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

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

(e) In enacting the act that amends this section by adding this subdivision, the Legislature finds that it is necessary and proper to remove the retailer from financial or business obligations to suppliers or wholesalers by the extension of credit beyond the terms contained in this section. The Legislature further finds that the exception established by this section to the general prohibition against tied interests shall be limited to its express terms so as not to undermine the general prohibition, and intends that this section shall be construed accordingly.

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

25511. Notwithstanding any other provision of this division, a beer manufacturer or beer wholesaler, or any officer, director, or agent of any of those persons may furnish, give, rent, lend, or sell, directly or indirectly, 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 and whose premises are located in an area proclaimed to be in a state of disaster by the Governor.

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

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