

AMENDED IN SENATE AUGUST 2, 2010

AMENDED IN SENATE JUNE 28, 2010

AMENDED IN SENATE JUNE 7, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 605

Introduced by Assembly Member Portantino

February 25, 2009

An act to add Sections 23396.6 and 25503.56 to the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 605, as amended, Portantino. Alcoholic beverages: instructional tasting events.

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 provides for various annual fees for the issuance of alcoholic beverage licenses depending upon the type of license issued. The Alcoholic Beverage Control Act provides that a violation of its provisions is a misdemeanor, unless otherwise specified.

This bill would authorize the department to issue to the holder of any off-sale retail license an instructional tasting license that would allow the licenseholder to allow an authorized licensee, as defined, or designated representative of that licensee, to conduct, on a designated portion of, or contiguous to, an existing licensed premises, an instructional *tasting* event at which tastes of alcoholic beverages may be served to consumers, as provided. The bill would impose an original

fee of \$300 and an annual renewal fee of \$261 for the license, which would be deposited in the Alcohol Beverage Control Fund. ~~By expanding~~ *Because the violation of a specified provision of the instructional tasting license by a licensee or by a person under 21 years of age is punishable as a misdemeanor, the bill both creates a new crime and expands the definition of a an existing crime, this bill would create thereby creating a state-mandated local program.*

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.
State-mandated local program: yes.

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

1 SECTION 1. Section 23396.6 is added to the Business and
2 Professions Code, to read:
3 23396.6. (a) ~~Notwithstanding any other provision of this~~
4 ~~division, the~~ *The department may issue to the holder of any an*
5 *off-sale retail license an instructional tasting license for premises*
6 ~~operated in conjunction with the off-sale licensed premises, except~~
7 ~~that an~~ *at the premises of the off-sale retail license. An instructional*
8 *tasting license shall not be issued to any of the following:*
9 (1) Off-sale licensees at locations where motor vehicle fuel is
10 sold, unless the licensee operates a fully enclosed off-sale retail
11 area encompassing at least 10,000 square feet.
12 (2) Off-sale licensees at locations with a total of less than 5,000
13 square feet of interior retail space, unless the ~~annual~~ *calendar*
14 *quarterly* gross sales of alcoholic beverages at the licensed location
15 comprise at least 75 percent of the total gross sales of all products
16 sold at the licensed premises. *A licensee that is issued an*
17 *instructional tasting license pursuant to this paragraph shall*
18 *maintain records that separately reflect the gross sales of alcoholic*
19 *beverages and the gross sales of all other products sold on the*
20 *licensed premises.*
21 (b) The provisions of ~~Article 1 (commencing with Section~~
22 ~~23790) and Article 2 (commencing with Section 23815) of Chapter~~
23 ~~5, and Section 23958.4 of this code, and Section 64.2 of Title 4 of~~

1 the California Code of Regulations shall not apply to the issuance
2 of an instructional tasting license, *except that the department may*
3 *expressly deny the issuance of an instructional tasting license for*
4 *any premises located in an area of undue concentration of licenses*
5 *as defined in paragraph (1) of subdivision (a) of Section 23958.4.*
6 Notwithstanding paragraph (3) of subdivision (c), the provisions
7 of Article 2 (commencing with Section 23985) and Article 3
8 (commencing with Section 24011) of Chapter 6 shall apply to the
9 issuance of an instructional tasting license.

10 (c) ~~An~~ *Notwithstanding subdivision (a) of Section 23386 and*
11 *paragraph (3) of subdivision (c) of Section 25612.5, an*
12 instructional tasting license authorizes the ~~holder~~ *licenseholder* to
13 allow an authorized licensee, as defined in ~~Section 25503.56~~, or
14 the designated representative of an authorized licensee, to conduct
15 an instructional *tasting* event at which tastes of alcoholic beverages
16 may be served to consumers subject to the following limitations,
17 ~~including and~~ the limitations set forth in ~~Section 25503.56~~:

18 (1) ~~The licenseholder shall restrict the instructional event to an~~
19 ~~area that is in the portion of the licensed premises where alcoholic~~
20 ~~beverages are exposed and offered for sale, and any contiguous~~
21 ~~areas reasonably related to the merchandising or sale of alcoholic~~
22 ~~beverages. The area where the instructional event is conducted~~
23 ~~shall be within the interior of the existing licensed premises, but~~
24 ~~separated from the remainder of the licensed premises by a wall,~~
25 ~~rope, cable, cord, chain, fence, or other permanent or temporary~~
26 ~~barrier and shall display signage prohibiting the presence of persons~~
27 ~~under 21 years of age from entering the area. The provisions of~~
28 ~~Section 25665 shall apply to the separated area where the~~
29 ~~instructional event is conducted when the authorized licensee is~~
30 ~~exercising tasting privileges set forth in Section 25503.56.~~

31 (2) ~~The licenseholder bears responsibility for ensuring that~~
32 ~~persons entering the instructional event area are of legal drinking~~
33 ~~age. The licenseholder shall not allow any consumer attending the~~
34 ~~instructional event to leave the event area with an alcoholic~~
35 ~~beverage.~~

36 (1) (A) *At all times during an instructional tasting event, the*
37 *instructional tasting event area shall be separated from the*
38 *remainder of the off-sale licensed premises by a wall, rope, cable,*
39 *cord, chain, fence, or other permanent or temporary barrier. The*
40 *licenseholder shall prominently display signage prohibiting persons*

1 *under 21 years of age from entering the instructional tasting event*
 2 *area.*

3 (B) *A licenseholder that permits a person under 21 years of age*
 4 *to enter and remain in the instructional tasting event area during*
 5 *an instructional tasting event is guilty of a misdemeanor. Any*
 6 *person under 21 years of age who enters and remains in the*
 7 *instructional tasting event area during an instructional tasting*
 8 *event is guilty of a misdemeanor and shall be punished by a fine*
 9 *of not less than two hundred dollars (\$200), no part of which shall*
 10 *be suspended.*

11 (C) *The licenseholder shall not permit any consumer to leave*
 12 *the instructional tasting area with an open container of alcohol.*

13 ~~(3)~~

14 (2) *The instructional tasting license shall not authorize the*
 15 *licenseholder to conduct any on-sale retail sales to consumers*
 16 *attending the instructional tasting event.*

17 ~~(4) An instructional event shall only~~

18 (3) *Unless otherwise restricted, an instructional tasting event*
 19 *may take place between the hours of 10 a.m. and 9 p.m.*

20 (d) *Unless the context otherwise requires, the definitions set*
 21 *forth in Section 25503.56 govern the construction of this section.*

22 ~~(d)~~

23 (e) *An applicant for an instructional tasting license under this*
 24 *section shall, at the time of filing the application for the license,*
 25 *accompany the application with a fee of three hundred dollars*
 26 *(\$300). The annual renewal fee for a license issued pursuant to*
 27 *this section shall be two hundred sixty-one dollars (\$261) and shall*
 28 *be subject to subdivision (e) subdivisions (c) and (d) of Section*
 29 *23320. Fees collected pursuant to this section shall be deposited*
 30 *in the Alcohol Beverage Control Fund.*

31 SEC. 2. Section 25503.56 is added to the Business and
 32 Professions Code, to read:

33 25503.56. (a) ~~Notwithstanding any other provision of this~~
 34 ~~division, an~~ *An authorized licensee, or a designated representative*
 35 *of an authorized licensee acting as an agent of the authorized*
 36 *licensee, may conduct, on the area specified by paragraph (1) of*
 37 *subdivision (c) of Section 23396.6, an instructional tasting event*
 38 *for consumers on the subject of wine, beer, or distilled spirits,*
 39 *including, but not limited to, the history, nature, values, and*

1 characteristics of wine, beer, or distilled spirits, and the methods
2 of presenting and serving wine, beer, or distilled spirits.

3 (1) (A) Except as provided in subparagraph (B),—and
4 notwithstanding any other provision of this division, the
5 instructional *tasting* event may include the serving of not more
6 than three tastings in one day *alcoholic beverages* to an attendee
7 of legal drinking age. A single tasting of distilled spirits shall not
8 exceed one-fourth of one ounce, a single tasting of wine shall not
9 exceed one ounce, and a single tasting of beer shall not exceed
10 three ounces. *An instructional tasting event on the subject of wine*
11 *or distilled spirits shall be limited to not more than three tastings*
12 *per person per day. A single tasting of distilled spirits shall not*
13 *exceed one-fourth of one ounce and a single tasting of wine shall*
14 *not exceed one ounce. An instructional tasting event on the subject*
15 *of beer shall be limited to not more than the tasting of eight ounces*
16 *of beer per person per day. The wine, beer, or distilled spirits*
17 *tasted shall be limited to the products that are authorized to be sold*
18 *by the authorized licensee and the licenseholder under its off-sale*
19 *license.*

20 (B) ~~Except for a beer and wine wholesaler who is also a beer~~
21 ~~manufacturer, an out-of-state beer manufacturer's certificate holder,~~
22 ~~or who holds more than six distilled spirits wholesaler's licenses,~~
23 ~~a beer and wine wholesaler may conduct an instructional event,~~
24 ~~but may not serve tastes of beer.~~

25 (B) *A beer and wine wholesaler may conduct an instructional*
26 *tasting event but shall not serve tastes of beer unless the beer and*
27 *wine wholesaler also holds a beer manufacturer's license, an*
28 *out-of-state beer manufacturer's certificate, or more than six*
29 *distilled spirits wholesaler's licenses.*

30 (C) No charge of any sort shall be made for the tastings. ~~The~~
31 ~~Except for the purposes of Section 23985, the serving of tastings~~
32 ~~shall not be deemed a sale of products pursuant to this division.~~

33 (D) A person under 21 years of age shall not serve wine, beer,
34 or distilled spirits at the instructional *tasting* event.

35 (E) All tastes shall be served by an employee of the authorized
36 licensee, the designated representative of the authorized licensee,
37 or by an employee of the designated representative of the
38 authorized licensee.

39 (F) An authorized licensee, or a designated representative of an
40 authorized licensee, shall either supply the wine or distilled spirits

1 to be tasted during the instructional *tasting* event or purchase the
2 wine or distilled spirits from the licenseholder at the original
3 invoiced cost. An authorized licensee, or a designated
4 representative of an authorized licensee, shall purchase beer to be
5 tasted during the instructional *tasting* event from the licenseholder
6 at the original invoiced cost.

7 (G) Any unused wine, beer, or distilled spirits remaining from
8 the tasting shall be removed from the off-sale licensed premises
9 by the authorized licensee or its designated representative.

10 (2) If the instructional *tasting* event is conducted by a designated
11 representative of an authorized licensee, the designated
12 representative shall not be owned, controlled, or employed directly
13 or indirectly by the licenseholder on whose premises the
14 instructional *tasting* event is held.

15 (3) An instructional *tasting* event shall be limited to a single
16 type of alcoholic beverage and tastes, if furnished, shall only be
17 ~~of that type of alcoholic beverage.~~ *alcoholic beverage.* For
18 *purposes of this paragraph, "type of alcoholic beverage" means*
19 *distilled spirits, wine, or beer.*

20 (b) For purposes of this section:

21 (1) "Authorized licensee" means a winegrower, California
22 winegrower's agent, ~~beer and wine importer, beer and wine general~~
23 ~~importer importer general, beer and wine wholesaler, wine broker,~~
24 wine rectifier, distilled spirits manufacturer, distilled spirits
25 manufacturer's agent, distilled spirits ~~general importer importer~~
26 *general*, distilled spirits rectifier, distilled spirits general rectifier,
27 rectifier, out-of-state distilled spirits shipper's certificate holder,
28 distilled spirits wholesaler, brandy manufacturer, brandy importer,
29 California brandy wholesaler, beer manufacturer, or an out-of-state
30 beer manufacturer certificate holder. "Authorized licensee" shall
31 not include an entity that solely holds a combination of a beer and
32 wine wholesale license and an off-sale beer and wine retail license
33 ~~pursuant to Section 23817.8 or holds those licences solely in~~
34 *combination with any license not listed in this paragraph.*

35 (2) "Licenseholder" means an off-sale retail licensee issued an
36 instructional tasting license pursuant to Section 23396.6.

37 (3) "*Location*" means the total contiguous area encompassed
38 by the off-sale and on-sale licenses.

39 (c) Notwithstanding ~~subdivision (e) subparagraph (E) of~~
40 *paragraph (1) of subdivision (a)*, a licenseholder may conduct an

1 instructional *tasting* event that includes the serving of tastings only
2 when an authorized licensee or its designated representative are
3 unable to conduct an instructional ~~event~~ *tasting event previously*
4 *advertised pursuant to this section and* scheduled by the authorized
5 licensee or its designated representative, provided the licenseholder
6 supplies the wine, beer, or distilled spirits used in the instructional
7 *tasting* event and provides or pays for a person to serve the wine,
8 beer, or distilled spirits. *Instructional tasting events conducted by*
9 *a licenseholder pursuant to this subdivision are subject to the*
10 *provisions of this section and Section 23396.6.*

11 (d) No more than one authorized licensee, or its designated
12 representative, may conduct an instructional *tasting* event that
13 includes the serving of tastes of wine, beer, or distilled spirits at
14 any one individual licensed premises of a licenseholder per day.

15 (e) A licenseholder that also holds an on-sale beer and wine
16 license, an on-sale beer and wine eating place license, or an on-sale
17 general license shall not allow an authorized licensee, or its
18 designated representative, to conduct an instructional ~~event at the~~
19 ~~same time and location as an instructional~~ *tasting event on the*
20 *same day and at the same location as any instructional tasting*
21 *event held pursuant to* ~~Section 23386, 25503.5, or 25503.55.~~
22 *subdivision (b) of Section 23386, Section 25503.4, subdivision (c)*
23 *of Section 25503.5, or Section 25503.55.*

24 (f) A licenseholder shall not condition the allowance of an
25 instructional *tasting* event upon the use of a particular designated
26 representative of an authorized licensee.

27 (g) (1) ~~Notwithstanding any other provision of this division,~~
28 ~~and in~~ *In* addition to any point of sale advertising or other
29 advertising items allowed under this division or under rules ~~or~~
30 ~~regulations promulgated by~~ *of* the department, an authorized
31 licensee or its designated representative, in his or her absolute
32 discretion and with permission of the licenseholder upon whose
33 premises the instructional *tasting* event will be held, may list in
34 an advertisement to the general public the name and address of
35 the licenseholder, the names of the alcoholic beverages being
36 featured at the instructional *tasting* event, and the time, date, and
37 location of, and other information about, the instructional *tasting*
38 event, provided that both of the following apply:

39 (A) The advertisement does not contain the retail price of the
40 alcoholic beverages.

1 (B) The listing of the licenseholder's name and address is the
2 only reference to the licenseholder in the advertisement.

3 (2) Pictures or illustrations of the licenseholder's licensed
4 premises and laudatory references to the licenseholder in these
5 advertisements are not authorized. Nothing in this section shall
6 authorize an authorized licensee or its designated representative
7 to share in the costs, if any, of the licenseholder.

8 (h) A licenseholder may advertise an instructional *tasting* event
9 to the general public. The costs of this advertising shall be borne
10 solely by the licenseholder. Advertising permitted by this
11 subdivision includes flyers, newspaper ads, Internet
12 communications, and interior signage.

13 (i) Except as otherwise provided in this division or ~~by any rules~~
14 ~~or regulations promulgated by~~ of the department, no premium,
15 gift, free goods, or other thing of value shall be given away by an
16 authorized licensee or its designated representative in connection
17 with an instructional *tasting* event that includes tastings of an
18 alcoholic beverage.

19 ~~(j) Notwithstanding any other provision of this division or any~~
20 ~~rules or regulations promulgated by the department, the~~ (j) *The*
21 licenseholder or the authorized licensee or its designated
22 representative are authorized to perform set up and break down of
23 the instructional *tasting* event area. The authorized licensee or its
24 designated representative may provide, free of charge to the
25 licenseholder, the equipment, materials, and utensils ~~that may be~~
26 ~~required during the instructional event~~ *as may be required for use*
27 *in connection with the instructional tasting event.*

28 (k) (1) A licenseholder shall not require, or enter into a collusive
29 scheme with an authorized licensee or its designated representative
30 to conduct one or more instructional *tasting* events as a condition
31 of the licenseholder carrying or continuing to carry a brand or
32 brands of the authorized licensee or as a condition for display or
33 other merchandising plan which is based on an agreement to
34 provide shelf space. An authorized licensee or its designated
35 representative shall not require any preferential treatment or benefit
36 from, or enter into a collusive scheme with, a licenseholder as a
37 condition of conducting one or more instructional *tasting* events,
38 require a licenseholder to carry or continue to carry a brand or
39 brands of the authorized licensee as a condition of conducting one
40 or more instructional *tasting* events, or condition display or other

1 merchandising plans that are based on agreements for the provision
 2 of shelf space on the conducting of one or more instructional
 3 *tasting* events. Any agreement, whether written or oral, entered
 4 into by and between a licenseholder and an authorized licensee or
 5 its designated representative that precludes the conducting of
 6 instructional *tasting* events on the premises of the licenseholder
 7 by any other authorized licensee is prohibited. *A licenseholder or*
 8 *authorized licensee, or its designated representative, shall not use*
 9 *an instructional tasting event to circumvent any other requirements*
 10 *of this division.*

11 (2) In addition to any other remedies available under this
 12 division, upon a finding by the department of a failure to comply
 13 with this subdivision, the department shall suspend the instructional
 14 tasting license of the licenseholder and the privilege of the
 15 authorized licensee to conduct instructional events for not less than
 16 six months but for no more than one year.

17 (1) *The Legislature finds that it is necessary and proper to*
 18 *require a separation between manufacturing interests, wholesale*
 19 *interests, and retail interests in the production and distribution of*
 20 *alcoholic beverages in order to prevent suppliers from dominating*
 21 *local markets through vertical integration and to prevent excessive*
 22 *sales of alcoholic beverages produced by overly aggressive*
 23 *marketing techniques. The Legislature further finds that the*
 24 *exception established by this section to the general prohibition*
 25 *against tied interests must be limited to its express terms so as not*
 26 *to undermine the general prohibition, and intends that this section*
 27 *be construed accordingly.*

28 SEC. 3. No reimbursement is required by this act pursuant to
 29 Section 6 of Article XIII B of the California Constitution because
 30 the only costs that may be incurred by a local agency or school
 31 district will be incurred because this act creates a new crime or
 32 infraction, eliminates a crime or infraction, or changes the penalty
 33 for a crime or infraction, within the meaning of Section 17556 of
 34 the Government Code, or changes the definition of a crime within
 35 the meaning of Section 6 of Article XIII B of the California
 36 Constitution.

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