

AMENDED IN ASSEMBLY MAY 21, 2012

AMENDED IN SENATE JANUARY 5, 2012

AMENDED IN SENATE JANUARY 4, 2012

**SENATE BILL**

**No. 778**

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**Introduced by Senator Padilla**

February 18, 2011

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An act to add Section 25600.1 to the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 778, as amended, Padilla. Alcoholic beverages licensees: contests and sweepstakes.

The Alcoholic Beverage Control Act prohibits any licensee from giving any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage, except as provided.

This bill would permit an authorized licensee, as defined, to conduct, sponsor, or participate in a consumer contest or sweepstakes, as defined, offering the chance to win prizes, if specified conditions are met.

The Alcoholic Beverage Control Act provides that a violation of any of its provisions for which another penalty or punishment is not specifically provided is a misdemeanor. This bill would expand existing crimes by imposing additional duties on a licensee under the act, thus, the bill would impose 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 25600.1 is added to the Business and  
2 Professions Code, to read:  
3 25600.1. (a) Notwithstanding any other provision of law, an  
4 authorized licensee may conduct, sponsor, or participate in  
5 consumer contests and sweepstakes, subject to the following  
6 conditions:  
7 (1) ~~A(A)~~ *Except as provided in subparagraph (B), a purchase*  
8 *or entry fee shall not be required to enter a contest or sweepstakes.*  
9 *Entry or extra chances in a contest or sweepstakes shall not be*  
10 *made available via the purchase of an alcoholic beverage. Entrance*  
11 *into a contest or sweepstakes shall be limited to persons 21 years*  
12 *of age or older.*  
13 *(B) A purchase or entry fee may be required to enter a contest*  
14 *or sweepstakes if the principal sponsor of the contest or*  
15 *sweepstakes is a bona fide amateur or professional organization*  
16 *established for the encouragement and promotion of an activity.*  
17 *Entrance into a contest where the principal sponsor of the contest*  
18 *or sweepstakes is a bona fide amateur or professional organization*  
19 *established for the encouragement and promotion of an activity*  
20 *shall be limited to persons 21 years of age or older.*  
21 (2) (A) Caps, cap liners, corks, labels, cartons, cases, or other  
22 material attached to an alcoholic beverage ~~when purchased~~ shall  
23 not be used as an entry to a contest or sweepstakes or as a means  
24 of determining the amount or size of the prize or the winner in a  
25 contest or sweepstakes.  
26 (B) ~~Neck hangers may carry an entry form~~ *Entry forms may be*  
27 *provided via neck hangers or other printed materials that are*  
28 *easily removable from alcoholic beverage containers or packaging*  
29 *only if similar entry forms are available at the point of sale and*  
30 ~~are reproduced~~ *or an alternative means of entry is available.*  
31 (C) *Entry forms may be in the form of codes printed on alcoholic*  
32 *beverage containers or packaging that may be scanned or*  
33 *electronically entered by a consumer without requiring the*  
34 *purchase of any product. All entry forms or codes attached to,*  
35 *printed on, or in any way connected to or with an alcoholic*

1 *beverage container or package shall clearly indicate that the entry*  
2 *form may be removed or the code scanned or electronically entered*  
3 *without the purchase of any alcoholic beverage or other product.*

4 (D) *All sweepstakes entry forms shall provide an entrant with*  
5 *equal odds of winning.*

6 ~~(3) Scratch-offs, pull tabs, or other means of instant wins in a~~  
7 ~~contest or sweepstakes shall be not permitted.~~

8 (3) *A contest or sweepstakes shall not provide for the instant*  
9 *or immediate awarding of a prize or prizes.*

10 (4) (A) *A visit to a retail premises shall not be required to enter*  
11 *a contest or sweepstakes.*

12 (B) *Except as provided in subparagraph (C), a contest shall not*  
13 *be held at the premises of a retail licensee or the premises of a*  
14 *winegrower or beer manufacturer operating under a duplicate*  
15 *license for a branch office.*

16 (C) *A contest in which the principal sponsor is a bona fide*  
17 *amateur or professional organization established for the*  
18 *encouragement and promotion of an activity may be held on the*  
19 *premises of a retail licensee. Authorized licensees may sponsor or*  
20 *participate in this type of contest only by making monetary*  
21 *payments to the bona fide amateur or professional organization*  
22 *acting as the principal sponsor.*

23 (5) *Alcoholic beverages or anything redeemable for alcoholic*  
24 *beverages shall not be awarded as a contest or sweepstakes prize.*  
25 *This paragraph shall not prohibit a contest or sweepstakes in which*  
26 *the prize is cash or the awarding of cash in lieu of a prize that is*  
27 *tangible personal property or real property.*

28 (6) *A retail licensee shall not serve as the agent of an authorized*  
29 *licensee by collecting or forwarding entries or awarding prizes to*  
30 *a contest or sweepstakes winner. The matching of entries with*  
31 *numbers or pictures on the point-of-sale materials at retail licensed*  
32 *premises is permitted only if entrants are also offered the*  
33 *opportunity to use an alternative means to determine prize-winning*  
34 *status.*

35 (7) *A licensee that is not an authorized licensee shall not share*  
36 *in, or contribute to, the costs of a contest or sweepstakes authorized*  
37 *by this section. A licensee that is not an authorized licensee shall*  
38 ~~not~~ *section or serve as the agent of an authorized licensee to collect*  
39 *or forward entries or to furnish any prize to any a contest or*  
40 *sweepstakes winner.*

1 (8) (A) Advertising of a contest or sweepstakes shall comply  
2 with the signage and advertising restrictions contained in this  
3 chapter, Chapter 15 (commencing with Section 25500), and any  
4 regulations issued by the department.

5 (B) Advertising or promotion of a contest or sweepstakes shall  
6 not identify or refer to any retail licensee.

7 (C) A retail licensee shall only advertise or promote a contest  
8 or sweepstakes authorized by this section in the manner specified  
9 in subparagraph (A).

10 (D) Advertising or promotion of a contest or sweepstakes shall  
11 only be conducted on the premises of a retail licensee when such  
12 advertisement or promotion involves a minimum of ~~two~~ *three*  
13 unaffiliated retail licensees. For purposes of this subparagraph,  
14 “unaffiliated retail licensees” shall not include any retail licensee  
15 owned in whole or in part by an authorized licensee or any officer,  
16 director, or agent of that licensee.

17 (E) Placement of signs or other advertising of a contest or  
18 sweepstakes in a licensed retail premises shall not be conditioned  
19 upon the following:

20 (i) ~~Product~~ *The placement of any product within the licensed*  
21 *premises or the exclusion of a product from the licensed premises.*

22 (ii) *The purchase or sale of any product produced, imported,*  
23 *distributed, represented, or promoted by an authorized licensee.*

24 (F) *An agreement, whether written or oral, entered into, by,*  
25 *and between a retail licensee and an authorized licensee that*  
26 *precludes the advertisement or promotion of a contest or*  
27 *sweepstakes on the premises of the retail licensee by another*  
28 *authorized licensee is prohibited.*

29 (9) Contest or sweepstakes prizes shall not be awarded to ~~any~~  
30 *an authorized licensee, retail licensee, or wholesale licensee or*  
31 *agent, officer, employee, or family member of any an authorized*  
32 *licensee, retail licensee, or wholesale licensee. An authorized*  
33 *licensee shall maintain all records pertaining to a contest or*  
34 *sweepstakes for three years following the completion of a contest*  
35 *or sweepstakes.*

36 (b) For purposes of this section:

37 (1) (A) “Authorized licensee” means a winegrower, beer and  
38 wine importer general, beer manufacturer, out-of-state beer  
39 manufacturer certificate holder, distilled spirits manufacturer,  
40 distilled spirits manufacturer’s agent, distilled spirits importer

1 general, ~~distilled spirits rectifier~~, distilled spirits general rectifier,  
2 rectifier, out-of-state distilled spirits shipper's certificate holder,  
3 brandy manufacturer, and brandy importer. An authorized licensee  
4 may ~~hold more than one license issued pursuant to this division~~  
5 *conduct, sponsor, or participate in consumer contest and*  
6 *sweepstakes pursuant to this section if the licensee holds an*  
7 *additional license not included in this paragraph.*

8 (B) An "authorized licensee" shall not include a beer and wine  
9 importer general or distilled spirits importer general that only  
10 holds a wholesaler's or retailer's license as an additional license.

11 (2) "Contest" means a game, contest, puzzle, scheme, plan, or  
12 similar activity that holds out or offers to participants the  
13 opportunity to receive or compete for gifts, prizes, gratuities, or  
14 other things of value as determined by skill, knowledge, or ability  
15 rather than upon random selection. Skill, knowledge, or ability  
16 does not include the consumption or use of alcoholic beverages.

17 (3) "Principal sponsor" means the person or organization that  
18 is identified as a primary or major sponsor of the event or activity  
19 or for which the event or activity is named.

20 (3)

21 (4) "Sweepstakes" means a procedure, activity, or event for the  
22 distribution of anything of value by lot, chance, or random selection  
23 where the odds for winning a prize are equal for each entry.

24 ~~(e) A prize awarded for a contest or sweepstakes conducted~~  
25 ~~pursuant to this section shall not be subject to the monetary~~  
26 ~~limitations imposed by Section 25600 or a regulation issued by~~  
27 ~~the department.~~

28 (c) A contest or sweepstakes conducted pursuant to this section  
29 shall not offer or award more than five prizes that exceed the  
30 monetary limits for premiums, gifts, or free goods specified in this  
31 division or a regulation of the department.

32 (d) Nothing in this section authorizes marketing schemes where  
33 consumers are entitled to an allotment of points based on purchases  
34 made over a period of time that can be redeemed for prizes, things  
35 of value, or additional contest or sweepstakes entries.

36 (e) An authorized licensee that violates this section, in addition  
37 to any other penalty imposed by this division, may be prohibited  
38 by the department from offering a contest or sweepstakes to  
39 California residents for a period of 12 months.

1     SEC. 2. No reimbursement is required by this act pursuant to  
2 Section 6 of Article XIII B of the California Constitution because  
3 the only costs that may be incurred by a local agency or school  
4 district will be incurred because this act creates a new crime or  
5 infraction, eliminates a crime or infraction, or changes the penalty  
6 for a crime or infraction, within the meaning of Section 17556 of  
7 the Government Code, or changes the definition of a crime within  
8 the meaning of Section 6 of Article XIII B of the California  
9 Constitution.

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