

AMENDED IN SENATE JANUARY 24, 1996

AMENDED IN SENATE JANUARY 10, 1996

AMENDED IN SENATE APRIL 24, 1995

SENATE BILL

No. 632

Introduced by Senator Thompson
(Principal coauthor: Assembly Member Cortese)

February 22, 1995

An act to amend Sections 23951, 23953, and 24071 of, and to add Sections 23405.3 and 24071.2 to, the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 632, as amended, M. Thompson. Alcoholic beverages licenses: limited liability companies.

The Alcoholic Beverage Control Act sets forth procedures for applications for alcoholic beverage licenses by limited partnerships and requires limited partnerships to maintain a register of ownership interests available for inspection by the Department of Alcoholic Beverage Control.

This bill would set forth similar procedures and requirements for limited liability companies, as specified. This bill would also eliminate certain restrictions upon the scope of existing signature requirements for alcoholic beverage license applications by limited partnerships.

The Alcoholic Beverage Control Act also requires that an application for an alcoholic beverage license by a limited partnership contain the names of and be signed by the general

partners and by the limited partners owning 10% or more of the capital or profits of the limited partnership.

This bill would require that an application for an alcoholic beverage license by a limited liability company managed by its members contain the names of the members and officers and be signed by the members or an authorized officer. The bill would require that an application by a limited liability company managed by one or more managers contain the names of the manager or managers, members, and officers owning 10% or more of the voting interests of the company and be signed by the manager or managers or an authorized officer.

The Alcoholic Beverage Control Act authorizes a licensee, upon compliance with a specified statute, to transfer any alcoholic beverage license to a corporation whose entire stock is owned by the licensee or his or her spouse.

This bill would authorize a licensee, upon compliance with the same specified statute, to transfer any alcoholic beverage license to a limited liability company whose entire membership consists of the licensee, or his or her spouse. This bill would, subject to certain conditions and certain fee, investigation, and reporting requirements, also specify that an alcoholic beverage license is transferred when the ownership of 50% or more of the membership interests in a limited liability company subject to certain reporting requirements proposed by this bill is transferred to a person or persons who did not hold 50% or more of the membership interests in that company on the date upon which the license was issued.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 23405.3 is added to the Business
2 and Professions Code, to read:
3 23405.3. (a) Any limited liability company holding a
4 license under this division shall maintain a record of its
5 members at the principal office of the company in



1 California and the record of its members shall be available
2 to the department for inspection. The company shall
3 report to the department in writing any of the following:

4 (1) Issuance or transfer of memberships to any person
5 where the issuance or transfer results in the person
6 owning 10 percent or more of the voting interests of the
7 company.

8 (2) If the limited liability company is managed by a
9 manager or managers, any change in the manager or
10 managers of the company.

11 (3) If any officer has been appointed, any change in
12 the officers of the company.

13 The report shall be filed with the department within 30
14 days after the issuance or transfer of membership voting
15 interests, or any change in members, managers, or
16 officers.

17 (b) Any limited liability company within the purview
18 of this section that is required under the provisions of the
19 Federal Alcohol Administration Act or the Internal
20 Revenue Code to report to the federal government the
21 information required by this section may send to the
22 department a copy of the report at the same time as it is
23 sent to the federal government, and the copy of the
24 report sent to the department by the company shall be
25 deemed sufficient compliance with the provisions of this
26 section.

27 (c) The reporting requirements of subdivision (b)
28 shall not apply to a limited liability company that is
29 required by law to file periodic reports with the Securities
30 and Exchange Commission.

31 (d) The person or persons who are required to sign the
32 application shall certify to the department on forms
33 prescribed by the department whether or not any
34 member, manager, or officer holds an ownership interest,
35 directly or indirectly, in any license within or without this
36 state to manufacture, import, distribute, rectify, or sell
37 alcoholic beverages. The department may deny any
38 application or suspend or revoke any license under this
39 section in the event any member, manager, or officer
40 holds or acquires any prohibited ownership interest,



1 directly or indirectly, in any licensed business in violation
2 of the tied-house provisions of Chapter 15 (commencing
3 with Section 25500).

4 (e) The department may suspend or revoke any
5 license of a limited liability company subject to the
6 provisions of this section where conditions exist in
7 relation to any person holding 10 percent or more of the
8 voting interests of the limited liability company which
9 would constitute grounds for disciplinary action against
10 the person if he or she was a licensee.

11 (f) Any and all articles of organization and operating
12 agreements of a limited liability company or certificates
13 or amendments thereto shall be filed with the
14 department at the time of filing the application for the
15 license. Any and all articles of organization, operating
16 agreements, certificates, or amendments executed after
17 the issuance of the license shall be filed with the
18 department within 30 days after execution.

19 (g) *The requirements of this section are in addition to*
20 *the requirements set forth in the Beverly-Killea Limited*
21 *Liability Company Act, Title 2.5 (commencing with*
22 *Section 17000) of the Corporations Code.*

23 SEC. 2. Section 23951 of the Business and Professions
24 Code is amended to read:

25 23951. The application shall contain the following:

26 (a) The name of the applicant.

27 (b) In the case of a general partnership, the names of
28 the individual partners. In the case of a limited
29 partnership, the names of the general partners and the
30 names of the limited partners owning 10 percent or more
31 of the capital or profits of the limited partnership.

32 (c) In the case of a limited liability company, the
33 names of the members and officers, if any. However, if
34 the limited liability company has elected to be managed
35 by a manager or managers pursuant to Section 17151 of
36 the Corporations Code, the names of the manager or
37 managers, members, and officers, if any, owning 10
38 percent or more of the voting rights of the limited liability
39 company.



1 (d) In the case of a corporation, the names of the
2 principal officers and directors.

3 (e) The location of the premises for which the license
4 is applied.

5 SEC. 3. Section 23953 of the Business and Professions
6 Code is amended to read:

7 23953. (a) The application shall be signed by the
8 applicant.

9 (b) In the case of a general partnership, the
10 application shall be signed by each of the partners, and for
11 the purposes of this division the partners shall be deemed
12 the applicant for any license and the licensees under any
13 license issued pursuant to that application.

14 (c) In the case of a limited partnership required by law
15 to file periodic reports with the Securities and Exchange
16 Commission, the application for any license shall be
17 signed by each of the general partners. In the case of any
18 other limited partnership, the application for the license
19 shall be signed by each of the general partners and by
20 each limited partner who owns 10 percent or more of the
21 capital or profits of the limited partnership.

22 (d) In the case of a limited liability company that has
23 elected to be managed by its members, the application
24 shall be signed by each member or by an officer
25 authorized by the articles of organization or the operating
26 ~~equipment~~ *agreement* to bind the company. In the case
27 of a limited liability company that has elected to be
28 managed by a manager or managers, the application shall
29 be signed by the manager or managers or by an officer
30 authorized by the articles of organization or the operating
31 ~~equipment~~ *agreement* to bind the company.

32 (e) In the case of a corporation, the application shall be
33 signed by an officer and under the seal of the corporation.

34 SEC. 4. Section 24071 of the Business and Professions
35 Code is amended to read:

36 24071. The license of one spouse may be transferred
37 to the other spouse when the application for transfer is
38 made prior to the entry of a final decree of divorce, and
39 the license of a decedent, minor ward, incompetent
40 person, conservatee, bankrupt person, person for whose



1 estate a receiver is appointed, or assignor for the benefit
2 of creditors may be transferred by or to the surviving
3 partners of a deceased licensee, the executor,
4 administrator, conservator or guardian of an estate of a
5 licensee, the surviving spouse of a deceased licensee in
6 the event that the deceased licensee leaves no estate to
7 be administered, the trustee of a bankrupt estate of a
8 licensee, a receiver of the estate of a licensee, or an
9 assignee for the benefit of creditors of a licensee with the
10 consent of the assignor, or a license may be transferred by
11 or to a receiver appointed for a judgment debtor as
12 provided by Section 708.630 of the Code of Civil
13 Procedure, or a license may be transferred to a revocable
14 living trust when the licensee is also the trustee, or a
15 license may be transferred between partners where no
16 new partner is being licensed, or a license may be
17 transferred between corporations whose outstanding
18 shares of stock are owned by the same natural persons, or
19 a licensee may transfer upon compliance with Section
20 24073 any license to a corporation whose entire stock is
21 owned by the licensee, or his or her spouse, or a licensee
22 may transfer upon compliance with Section 24073 any
23 license to a limited liability company whose entire
24 membership consists of the licensee, or his or her spouse,
25 or a license may be transferred from a corporation to a
26 person who owns, or whose spouse owns, the entire stock
27 of the corporation, and the fee for transfer of each license
28 is fifty dollars (\$50). The regular transfer fee provided in
29 Section 24072 shall be due and payable upon the
30 subsequent transfer of 25 percent of the stock in a
31 corporation to which a license has been transferred by a
32 licensee or his or her spouse pursuant to this section,
33 except if the transfer of stock is from a parent to his or her
34 child or grandchild, in which case the fee shall be one-half
35 of the regular transfer fee. In no case shall a fee be
36 charged for the transfer of an importer's license. All
37 money collected from the fees provided for in this section
38 shall be deposited in the Alcohol Beverage Control Fund
39 as provided in Section 25761.



1 *Nothing in this section shall be deemed to authorize the*
2 *formation of a limited liability company composed of only*
3 *one member in violation of subdivision (b) of Section*
4 *17050 of the Corporations Code.*

5 SEC. 5. Section 24071.2 is added to the Business and
6 Professions Code, to read:

7 24071.2. (a) When the ownership of 50 percent or
8 more of the membership interests in a limited liability
9 company required to report the issuance or transfer of
10 memberships under Section 23405.3 is acquired by or
11 transferred to a person or persons who did not hold the
12 ownership of 50 percent of the membership interests on
13 the date the license was issued to the limited liability
14 company, the license of the limited liability company
15 shall be transferred to the limited liability company as
16 newly constituted. The fee for the transfer shall be equal
17 to 50 percent of the original fee for the license, except that
18 the minimum fee shall be one hundred dollars (\$100) and
19 the maximum fee shall be eight hundred dollars (\$800).
20 In situations involving the multiple and simultaneous
21 transfer of licenses under this section, the regular transfer
22 fee shall only be required for one of the licenses being
23 transferred and the remainder of the licenses shall be
24 transferred for a fee of one hundred dollars (\$100) each.
25 All of the transfer fees collected pursuant to this section
26 shall be deposited in the Alcohol Beverage Control Fund,
27 as provided in Section 25761. Before the license is
28 transferred, the department shall conduct an
29 investigation pursuant to the provisions of Section 23958.
30 Any person or persons who own 50 percent or more of the
31 membership interests of the limited liability company
32 shall have all the qualifications required of a person
33 holding the same type of license.

34 (b) No retail license shall be transferred by a limited
35 liability company under this section unless, before the
36 filing of the transfer application with the department, the
37 company initiating the transfer records, in the office of
38 the county recorder of the county or counties in which
39 the premises to which the license has been issued are

1 situated, a notice of the intended transfer, stating all of
2 the following:

3 (1) The name and address of the limited liability
4 company.

5 (2) The name and address of the person or persons
6 acquiring ownership of 50 percent or more of the
7 membership interests of the limited liability company.

8 (3) The amount of the consideration paid for the
9 membership interests.

10 (4) The kind of license or licenses intended to be
11 transferred.

12 (5) The address or addresses of the premises to which
13 the license or licenses have been issued.

14 A copy of the notice of the intended transfer, certified
15 by the county recorder, shall be filed with the
16 department together with the transfer application.

17 (c) Notwithstanding any other contrary provision of
18 this division, a limited liability company as newly
19 constituted by transfer under this section shall not be
20 eligible for any new credit from an alcoholic beverage
21 supplier or manufacturer named in Section 25509 until all
22 delinquent payments owed by the limited liability
23 company as formerly constituted are made, nor shall any
24 retail licensee, by transferring its license under this
25 section, avoid the provisions of Section 25509 with regard
26 to 42- or 30-day periods, percentage charges for unpaid
27 balances, or cash-on-delivery basis.

28 *(d) Nothing in this section shall be deemed to*
29 *authorize the formation of a limited liability company*
30 *composed of only one member in violation of subdivision*
31 *(b) of Section 17050 of the Corporations Code.*

32 SEC. 6. This act is an urgency statute necessary for the
33 immediate preservation of the public peace, health, or
34 safety within the meaning of Article IV of the
35 Constitution and shall go into immediate effect. The facts
36 constituting the necessity are:

37 In order to timely provide essential guidance with
38 respect to the obtaining, holding, and transfer of alcoholic



1 beverage licenses by limited liability companies, it is
2 necessary that this bill take effect immediately.

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