

AMENDED IN ASSEMBLY MARCH 4, 1996

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~~ 24071, and 24071.1 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, *if any, and members* 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.

*Existing law provides for the transfer of an alcoholic beverage license upon the transfer of ownership in a corporation or limited partnership, as specified. Existing law also provides that a corporation, as newly constituted by transfer under this provision, shall not be eligible for any new credit from an alcoholic beverage supplier or manufacturer, as specified, until all delinquent payments owed by the corporation, as formerly constituted, are made.*



*This bill would instead provide that the new corporation shall not be eligible for any credit from any person, as specified, until those delinquent payments are made.*

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  
6 California and the record of its members shall be available  
7 to the department for inspection. The company shall  
8 report to the department in writing any of the following:

9 (1) Issuance or transfer of memberships to any person  
10 where the issuance or transfer results in the person  
11 owning 10 percent or more of the voting interests of the  
12 company.

13 (2) If the limited liability company is managed by a  
14 manager or managers, any change in the manager or  
15 managers of the company.

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

18 The report shall be filed with the department within 30  
19 days after the issuance or transfer of membership voting  
20 interests, or any change in members, managers, or  
21 officers.

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



1 deemed sufficient compliance with the provisions of this  
2 section.

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

7 (d) The person or persons who are required to sign the  
8 application shall certify to the department on forms  
9 prescribed by the department whether or not any  
10 member, manager, or officer holds an ownership interest,  
11 directly or indirectly, in any license within or without this  
12 state to manufacture, import, distribute, rectify, or sell  
13 alcoholic beverages. The department may deny any  
14 application or suspend or revoke any license under this  
15 section in the event any member, manager, or officer  
16 holds or acquires any prohibited ownership interest,  
17 directly or indirectly, in any licensed business in violation  
18 of the tied-house provisions of Chapter 15 (commencing  
19 with Section 25500).

20 (e) The department may suspend or revoke any  
21 license of a limited liability company subject to the  
22 provisions of this section where conditions exist in  
23 relation to any person holding 10 percent or more of the  
24 voting interests of the limited liability company which  
25 would constitute grounds for disciplinary action against  
26 the person if he or she was a licensee.

27 (f) Any and all articles of organization and operating  
28 agreements of a limited liability company or certificates  
29 or amendments thereto shall be filed with the  
30 department at the time of filing the application for the  
31 license. Any and all articles of organization, operating  
32 agreements, certificates, or amendments executed after  
33 the issuance of the license shall be filed with the  
34 department within 30 days after execution.

35 (g) The requirements of this section are in addition to  
36 the requirements set forth in the Beverly-Killea Limited  
37 Liability Company Act, Title 2.5 (commencing with  
38 Section 17000) of the Corporations Code.

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



1 23951. The application shall contain the following:

2 (a) The name of the applicant.

3 (b) In the case of a general partnership, the names of  
4 the individual partners. In the case of a limited  
5 partnership, the names of the general partners and the  
6 names of the limited partners owning 10 percent or more  
7 of the capital or profits of the limited partnership.

8 (c) In the case of a limited liability company, the  
9 names of the members and officers, if any. However, if  
10 the limited liability company has elected to be managed  
11 by a manager or managers pursuant to Section 17151 of  
12 the Corporations Code, the names of the manager or  
13 managers, ~~members, and officers, if any,~~ *officers, if any,*  
14 *and members* owning 10 percent or more of the voting  
15 rights of the limited liability company.

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

18 (e) The location of the premises for which the license  
19 is applied.

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

22 23953. (a) The application shall be signed by the  
23 applicant.

24 (b) In the case of a general partnership, the  
25 application shall be signed by each of the partners, and for  
26 the purposes of this division the partners shall be deemed  
27 the applicant for any license and the licensees under any  
28 license issued pursuant to that application.

29 (c) In the case of a limited partnership required by law  
30 to file periodic reports with the Securities and Exchange  
31 Commission, the application for any license shall be  
32 signed by each of the general partners. In the case of any  
33 other limited partnership, the application for the license  
34 shall be signed by each of the general partners and by  
35 each limited partner who owns 10 percent or more of the  
36 capital or profits of the limited partnership.

37 (d) In the case of a limited liability company that has  
38 elected to be managed by its members, the application  
39 shall be signed by each member or by an officer  
40 authorized by the articles of organization or the operating

1 agreement to bind the company. In the case of a limited  
2 liability company that has elected to be managed by a  
3 manager or managers, the application shall be signed by  
4 the manager or managers or by an officer authorized by  
5 the articles of organization or the operating agreement to  
6 bind the company.

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

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

11 24071. The license of one spouse may be transferred  
12 to the other spouse when the application for transfer is  
13 made prior to the entry of a final decree of divorce, and  
14 the license of a decedent, minor ward, incompetent  
15 person, conservatee, bankrupt person, person for whose  
16 estate a receiver is appointed, or assignor for the benefit  
17 of creditors may be transferred by or to the surviving  
18 partners of a deceased licensee, the executor,  
19 administrator, conservator or guardian of an estate of a  
20 licensee, the surviving spouse of a deceased licensee in  
21 the event that the deceased licensee leaves no estate to  
22 be administered, the trustee of a bankrupt estate of a  
23 licensee, a receiver of the estate of a licensee, or an  
24 assignee for the benefit of creditors of a licensee with the  
25 consent of the assignor, or a license may be transferred by  
26 or to a receiver appointed for a judgment debtor as  
27 provided by Section 708.630 of the Code of Civil  
28 Procedure, or a license may be transferred to a revocable  
29 living trust when the licensee is also the trustee, or a  
30 license may be transferred between partners where no  
31 new partner is being licensed, or a license may be  
32 transferred between corporations whose outstanding  
33 shares of stock are owned by the same natural persons, or  
34 a licensee may transfer upon compliance with Section  
35 24073 any license to a corporation whose entire stock is  
36 owned by the licensee, or his or her spouse, or a licensee  
37 may transfer upon compliance with Section 24073 any  
38 license to a limited liability company whose entire  
39 membership consists of the licensee, or his or her spouse,  
40 or a license may be transferred from a corporation to a



1 person who owns, or whose spouse owns, the entire stock  
2 of the corporation, and the fee for transfer of each license  
3 is fifty dollars (\$50). The regular transfer fee provided in  
4 Section 24072 shall be due and payable upon the  
5 subsequent transfer of 25 percent of the stock in a  
6 corporation to which a license has been transferred by a  
7 licensee or his or her spouse pursuant to this section,  
8 except if the transfer of stock is from a parent to his or her  
9 child or grandchild, in which case the fee shall be one-half  
10 of the regular transfer fee. In no case shall a fee be  
11 charged for the transfer of an importer's license. All  
12 money collected from the fees provided for in this section  
13 shall be deposited in the Alcohol Beverage Control Fund  
14 as provided in Section 25761.

15 Nothing in this section shall be deemed to authorize the  
16 formation of a limited liability company composed of only  
17 one member in violation of subdivision (b) of Section  
18 17050 of the Corporations Code.

19 SEC. 5. *Section 24071.1 of the Business and*  
20 *Professions Code is amended to read:*

21 24071.1. (a) When the ownership of 50 percent or  
22 more of the shares of stock of a corporation, which is  
23 required to report the issuance or transfer of ~~such~~ those  
24 shares of stock under Section 23405, is acquired by or  
25 transferred to a person or persons who did not hold the  
26 ownership of 50 percent of ~~such~~ those shares of stock on  
27 the date the license was issued to the corporation, the  
28 license of the corporation shall be transferred to the  
29 corporation as newly constituted. When the ownership of  
30 50 percent or more of the capital or profits of a limited  
31 partnership, which is required to maintain a register  
32 under Section 23405.1, is acquired by or transferred to a  
33 person or persons as limited partners and who did not  
34 hold ownership of 50 percent or more of the capital or  
35 profits of ~~such~~ the limited partnership on the date the  
36 license was issued to the general partners of ~~such~~ the  
37 limited partnership, the license of the general partners of  
38 ~~such~~ the limited partnership shall be transferred to the  
39 general partners of the limited partnership as newly  
40 constituted. The fee for ~~such~~ the transfer shall be equal



1 to 50 percent of the original fee for the license, ~~provided~~  
2 *except* that the minimum fee shall be one hundred dollars  
3 (\$100) and the maximum fee shall be eight hundred  
4 dollars (\$800). In situations involving the multiple and  
5 simultaneous transfer of licenses under this section, the  
6 regular transfer fee shall only be required for one of the  
7 licenses being transferred and the remainder of the  
8 licenses shall be transferred for a fee of one hundred  
9 dollars (\$100) each. All of the transfer fees collected  
10 pursuant to this section shall be deposited in the Alcohol  
11 Beverage Control Fund as provided in Section 25761.  
12 Before the license is transferred, the department shall  
13 conduct an investigation pursuant to the provisions of  
14 Section 23958. Any person or persons who own 50 percent  
15 or more of the shares of stock of the corporation or who  
16 own as limited partners 50 percent or more of the capital  
17 or profits of the limited partnership, as the case may be,  
18 shall have all the qualifications required of a person  
19 holding the same type of license.

20 (b) No retail license shall be transferred by a  
21 corporation under this section unless, before the filing of  
22 the transfer application with the department, the  
23 corporation initiating ~~such~~ *the* transfer records in the  
24 office of the county recorder of the county or counties in  
25 which the premises to which the license has been issued  
26 are situated a notice of the intended transfer, stating all  
27 of the following:

28 ~~(a)~~

29 (1) The name and address of the corporation.

30 ~~(b)~~

31 (2) The name and address of the person or persons  
32 acquiring ownership of 50 percent or more of the stock of  
33 the corporation.

34 ~~(c)~~

35 (3) The amount of the consideration paid for the stock.

36 ~~(d)~~

37 (4) The kind of license or licenses intended to be  
38 transferred.

39 ~~(e)~~



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

3 A copy of the notice of the intended transfer, certified  
4 by the county recorder, shall be filed with the  
5 department together with the transfer application.

6 (c) Notwithstanding any other provision of this  
7 division to the contrary, a corporation as newly  
8 constituted by transfer under this section, shall not be  
9 eligible for any new credit from ~~an alcoholic beverage~~  
10 ~~supplier or manufacturer~~ *any person* named in Section  
11 25509 until all delinquent payments owed by the  
12 corporation as formerly constituted, are made, nor shall  
13 any corporate retail licensee, by transferring its license  
14 under this section, avoid the provisions of Section 25509  
15 with regard to 42-day or 30-day periods, percentage  
16 charges for unpaid balances, or ~~cash-on-delivery~~  
17 *cash-on-delivery* basis.

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

20 24071.2. (a) When the ownership of 50 percent or  
21 more of the membership interests in a limited liability  
22 company required to report the issuance or transfer of  
23 memberships under Section 23405.3 is acquired by or  
24 transferred to a person or persons who did not hold the  
25 ownership of 50 percent of the membership interests on  
26 the date the license was issued to the limited liability  
27 company, the license of the limited liability company  
28 shall be transferred to the limited liability company as  
29 newly constituted. The fee for the transfer shall be equal  
30 to 50 percent of the original fee for the license, except that  
31 the minimum fee shall be one hundred dollars (\$100) and  
32 the maximum fee shall be eight hundred dollars (\$800).  
33 In situations involving the multiple and simultaneous  
34 transfer of licenses under this section, the regular transfer  
35 fee shall only be required for one of the licenses being  
36 transferred and the remainder of the licenses shall be  
37 transferred for a fee of one hundred dollars (\$100) each.  
38 All of the transfer fees collected pursuant to this section  
39 shall be deposited in the Alcohol Beverage Control Fund,  
40 as provided in Section 25761. Before the license is



1 transferred, the department shall conduct an  
2 investigation pursuant to the provisions of Section 23958.  
3 Any person or persons who own 50 percent or more of the  
4 membership interests of the limited liability company  
5 shall have all the qualifications required of a person  
6 holding the same type of license.

7 (b) No retail license shall be transferred by a limited  
8 liability company under this section unless, before the  
9 filing of the transfer application with the department, the  
10 company initiating the transfer records, in the office of  
11 the county recorder of the county or counties in which  
12 the premises to which the license has been issued are  
13 situated, a notice of the intended transfer, stating all of  
14 the following:

15 (1) The name and address of the limited liability  
16 company.

17 (2) The name and address of the person or persons  
18 acquiring ownership of 50 percent or more of the  
19 membership interests of the limited liability company.

20 (3) The amount of the consideration paid for the  
21 membership interests.

22 (4) The kind of license or licenses intended to be  
23 transferred.

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

26 A copy of the notice of the intended transfer, certified  
27 by the county recorder, shall be filed with the  
28 department together with the transfer application.

29 (c) Notwithstanding any other ~~contrary provision of~~  
30 ~~this division~~ *provision of this division to the contrary*, a  
31 limited liability company as newly constituted by transfer  
32 under this section shall not be eligible for any new credit  
33 from ~~an alcoholic beverage supplier or manufacturer~~ *any*  
34 *person* named in Section 25509 until all delinquent  
35 payments owed by the limited liability company as  
36 formerly constituted are made, nor shall any retail  
37 licensee, by transferring its license under this section,  
38 avoid the provisions of Section 25509 with regard to 42- or  
39 30-day periods, percentage charges for unpaid balances,  
40 or cash-on-delivery basis.



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

5 ~~SEC. 6.~~

6 *SEC. 7.* This act is an urgency statute necessary for the  
7 immediate preservation of the public peace, health, or  
8 safety within the meaning of Article IV of the  
9 Constitution and shall go into immediate effect. The facts  
10 constituting the necessity are:

11 In order to timely provide essential guidance with  
12 respect to the obtaining, holding, and transfer of alcoholic  
13 beverage licenses by limited liability companies, it is  
14 necessary that this bill take effect immediately.

