

Senate Bill No. 632

CHAPTER 44

An act to amend Sections 23951, 23953, 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.

[Approved by Governor May 14, 1996. Filed with
Secretary of State May 15, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 632, M. Thompson. Alcoholic beverage 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, 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.

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

SECTION 1. Section 23405.3 is added to the Business and Professions Code, to read:

23405.3. (a) Any limited liability company holding a license under this division shall maintain a record of its members at the principal office of the company in California and the record of its members shall be available to the department for inspection. The company shall report to the department in writing any of the following:

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

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

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

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

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



department by the company shall be deemed sufficient compliance with the provisions of this section.

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

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

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

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

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

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

23951. The application shall contain the following:

(a) The name of the applicant.

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

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



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

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

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

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

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

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

(d) In the case of a limited liability company that has elected to be managed by its members, the application shall be signed by each member or by an officer authorized by the articles of organization or the operating agreement to bind the company. In the case of a limited liability company that has elected to be managed by a manager or managers, the application shall be signed by the manager or managers or by an officer authorized by the articles of organization or the operating agreement to bind the company.

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

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

24071. The license of one spouse may be transferred to the other spouse when the application for transfer is made prior to the entry of a final decree of divorce, and the license of a decedent, minor ward, incompetent person, conservatee, bankrupt person, person for whose estate a receiver is appointed, or assignor for the benefit of creditors may be transferred by or to the surviving partners of a deceased licensee, the executor, administrator, conservator or guardian of an estate of a licensee, the surviving spouse of a deceased licensee in the event that the deceased licensee leaves no estate to be administered, the trustee of a bankrupt estate of a licensee, a receiver of the estate of a licensee, or an assignee for the benefit of creditors of a licensee with the consent of the assignor, or a license may be transferred by or to a receiver appointed for a judgment debtor as provided by Section 708.630 of the Code of Civil Procedure, or a license may be transferred to a revocable living trust when the licensee is also the trustee, or a license may be transferred between partners where no new partner is being licensed, or a license may be transferred between corporations whose outstanding shares of stock



are owned by the same natural persons, or a licensee may transfer upon compliance with Section 24073 any license to a corporation whose entire stock is owned by the licensee, or his or her spouse, or a licensee may transfer upon compliance with Section 24073 any license to a limited liability company whose entire membership consists of the licensee, or his or her spouse, or a license may be transferred from a corporation to a person who owns, or whose spouse owns, the entire stock of the corporation, and the fee for transfer of each license is fifty dollars (\$50). The regular transfer fee provided in Section 24072 shall be due and payable upon the subsequent transfer of 25 percent of the stock in a corporation to which a license has been transferred by a licensee or his or her spouse pursuant to this section, except if the transfer of stock is from a parent to his or her child or grandchild, in which case the fee shall be one-half of the regular transfer fee. In no case shall a fee be charged for the transfer of an importer's license. All money collected from the fees provided for in this section shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

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

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

24071.1. (a) When the ownership of 50 percent or more of the shares of stock of a corporation, which is required to report the issuance or transfer of those shares of stock under Section 23405, is acquired by or transferred to a person or persons who did not hold the ownership of 50 percent of those shares of stock on the date the license was issued to the corporation, the license of the corporation shall be transferred to the corporation as newly constituted. When the ownership of 50 percent or more of the capital or profits of a limited partnership, which is required to maintain a register under Section 23405.1, is acquired by or transferred to a person or persons as limited partners and who did not hold ownership of 50 percent or more of the capital or profits of the limited partnership on the date the license was issued to the general partners of the limited partnership, the license of the general partners of the limited partnership shall be transferred to the general partners of the limited partnership as newly constituted. The fee for the transfer shall be equal to 50 percent of the original fee for the license, except that the minimum fee shall be one hundred dollars (\$100) and the maximum fee shall be eight hundred dollars (\$800). In situations involving the multiple and simultaneous transfer of licenses under this section, the regular transfer fee shall only be required for one of the licenses being transferred and the remainder of the licenses shall be transferred for a fee of one hundred dollars (\$100) each. All of the



transfer fees collected pursuant to this section shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761. Before the license is transferred, the department shall conduct an investigation pursuant to the provisions of Section 23958. Any person or persons who own 50 percent or more of the shares of stock of the corporation or who own as limited partners 50 percent or more of the capital or profits of the limited partnership, as the case may be, shall have all the qualifications required of a person holding the same type of license.

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

- (1) The name and address of the corporation.
- (2) The name and address of the person or persons acquiring ownership of 50 percent or more of the stock of the corporation.
- (3) The amount of the consideration paid for the stock.
- (4) The kind of license or licenses intended to be transferred.
- (5) The address or addresses of the premises to which the license or licenses have been issued.

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

(c) Notwithstanding any other provision of this division to the contrary, a corporation as newly constituted by transfer under this section, shall not be eligible for any new credit from any person named in Section 25509 until all delinquent payments owed by the corporation as formerly constituted, are made, nor shall any corporate retail licensee, by transferring its license under this section, avoid the provisions of Section 25509 with regard to 42-day or 30-day periods, percentage charges for unpaid balances, or cash-on-delivery basis.

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

24071.2. (a) When the ownership of 50 percent or more of the membership interests in a limited liability company required to report the issuance or transfer of memberships under Section 23405.3 is acquired by or transferred to a person or persons who did not hold the ownership of 50 percent of the membership interests on the date the license was issued to the limited liability company, the license of the limited liability company shall be transferred to the limited liability company as newly constituted. The fee for the transfer shall be equal to 50 percent of the original fee for the license, except that the minimum fee shall be one hundred dollars (\$100) and the maximum fee shall be eight hundred dollars (\$800). In situations



involving the multiple and simultaneous transfer of licenses under this section, the regular transfer fee shall only be required for one of the licenses being transferred and the remainder of the licenses shall be transferred for a fee of one hundred dollars (\$100) each. All of the transfer fees collected pursuant to this section shall be deposited in the Alcohol Beverage Control Fund, as provided in Section 25761. Before the license is transferred, the department shall conduct an investigation pursuant to the provisions of Section 23958. Any person or persons who own 50 percent or more of the membership interests of the limited liability company shall have all the qualifications required of a person holding the same type of license.

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

- (1) The name and address of the limited liability company.
- (2) The name and address of the person or persons acquiring ownership of 50 percent or more of the membership interests of the limited liability company.
- (3) The amount of the consideration paid for the membership interests.
- (4) The kind of license or licenses intended to be transferred.
- (5) The address or addresses of the premises to which the license or licenses have been issued.

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

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

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

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



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

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