

Assembly Bill No. 849

CHAPTER 564

An act to amend Sections 23817.5, 23817.7, 23817.8, and 23820 of, and to add Sections 23817.4, 23817.9, and 23817.10 to, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 28, 1997. Filed
with Secretary of State September 29, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 849, Sweeney. Alcoholic beverages: licenses.

The Alcoholic Beverage Control Act prohibits the application for, and issuance of, until January 1, 1998, an original retail off-sale beer and wine license for any premises if the applicant premises are located in a city, county, or city and county where the number of retail off-sale beer and wine licenses or total number of retail off-sale beer and wine licenses and off-sale general licenses exceeds one license for a certain number of inhabitants. Notwithstanding any other provision of law, existing law, until January 1, 1998, allows a retail off-sale beer and wine replacement license to be issued under specified conditions.

This bill would recast and extend the operation of those provisions indefinitely. The bill would make related changes.

Existing law also provides that, notwithstanding that prohibition, until January 1, 1998, the Department of Alcoholic Beverage Control may: (1) approve an application for a retail off-sale beer and wine license in those areas if the applicant shows that public convenience and necessity would be served by the issuance and certain other conditions are met, and (2) issue a retail off-sale beer and wine license to a licensed beer and wine wholesaler if certain conditions relating to location of the license and types of sales are met.

This bill would extend the operation of those enabling provisions indefinitely and would make conforming changes.

Existing law allows the Department of Alcoholic Beverage Control to issue additional on-sale or off-sale general licenses for each specified increase in the number of inhabitants in a county.

This bill would provide similar authorization with respect to off-sale beer and wine licenses for each specified increase in the number of inhabitants in a city, county, or city and county.

Existing law prohibits the Department of Alcoholic Beverage Control from restricting the number of beer, off-sale beer and wine, beer and wine wholesaler's, or winegrower's licenses in any county, as specified.

This bill would eliminate that prohibition with respect to off-sale beer and wine licenses, thereby allowing the department to restrict the issuance of off-sale beer and wine licenses in a county to a certain number, as specified.

This bill would state the Legislature's intent concerning a limitation on the number of premises licensed for the off sale of beer and wine.

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

SECTION 1. Section 23817.4 is added to the Business and Professions Code, to read:

23817.4. The Legislature finds and declares that the public welfare and morals require that there be a limitation on the number of premises licensed for the off sale of beer and wine.

SEC. 2. Section 23817.5 of the Business and Professions Code is amended to read:

23817.5. (a) (1) The number of premises for which an off-sale beer and wine license is issued shall be limited to one for each 2,500, or fraction thereof, inhabitants of the city or county in which the premises are situated. No additional off-sale beer and wine license, other than a renewal or transfer or as permitted by Section 23821, shall be issued in any city or county where the number of premises for which all off-sale beer and wine licenses are issued is more than one for each 2,500, or fraction thereof, inhabitants of the city or county.

(2) The number of premises for which an off-sale beer and wine license is issued in a city and county, in combination with the number of premises for which an off-sale general license is issued in a city and county, shall be limited to one for each 1,250, or fraction thereof, inhabitants of the city and county in which the premises are situated. No additional off-sale beer and wine license, other than a renewal or transfer or as permitted by Section 23821, shall be issued in any city or county where the number of premises for which all off-sale beer and wine licenses in combination with off-sale general licenses are issued is more than one for each 1,250, or fraction thereof, inhabitants of the city and county.

(b) Notwithstanding subdivision (a), a retail off-sale beer and wine replacement license shall be issued upon application when all of the following conditions exist:

(1) The replacement license is only for use at a premises which was licensed within the past 12 months.

(2) The prior licensee abandoned the premises or the original license is subject to a bankruptcy proceeding and the prior licensee has no right to operate at that location. For purposes of this paragraph, "abandoned" means that the prior licensee is not exercising dominion or control over the premises.



(3) An applicant for a replacement license shall accompany the application with a fee of one hundred dollars (\$100).

(c) The following limitations shall apply to the issuance of a replacement license:

(1) The replacement license shall not be transferred to another premises.

(2) All conditions imposed on the original license shall apply to the replacement license.

(3) The original license shall not be transferred subsequent to the issuance of the replacement license.

SEC. 3. Section 23817.7 of the Business and Professions Code is amended to read:

23817.7. (a) Notwithstanding Section 23817.5, the department may approve an application for an off-sale beer and wine license in areas covered by Section 23817.5, if the applicant shows that public convenience or necessity would be served by the issuance, and where all of the following conditions are found to exist:

(1) The applicant premises are located in a crime reporting district that is below that specified pursuant to paragraph (1) of subdivision (a) of Section 23958.4.

(2) The applicant premises are located in an area that falls below the concentration level provided in paragraph (3) of subdivision (a) of Section 23958.4.

(3) The local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines that public convenience or necessity would be served by the issuance.

(b) The department may impose reasonable conditions on a licensee as may be needed in the interest of the public health, safety, and welfare regarding signing, training for responsible beverage sales and hours, and mode of sale.

SEC. 4. Section 23817.8 of the Business and Professions Code is amended to read:

23817.8. (a) Notwithstanding Section 23817.5, the department may approve an application for an off-sale beer and wine license by a licensed beer and wine wholesaler, even though the applicant premises will be located in an area having an undue concentration of off-sale beer and wine licenses, as provided in paragraph (3) of subdivision (a) of Section 23958.4, provided each of the following conditions are met:

(1) The off-sale beer and wine license shall be held at the same location as the beer and wine wholesaler license.

(2) The off-sale beer and wine license shall be restricted to sales solicited and accepted by direct mail, telephone, or on-line computer. The off-sale beer and wine license shall not be used for operations conducted from a retail store open to the public.



(b) The department may impose reasonable conditions on a licensee as may be needed in the interest of the public health, safety, and welfare regarding signing, training for responsible beverage sales, hours, and mode of sale.

SEC. 5. Section 23817.9 is added to the Business and Professions Code, to read:

23817.9. For the purposes of Section 23817.5, beginning with the year 2000, population shall be determined by the most recent United States decennial census or a single subsequent census between United States decennial censuses validated by the Population Research Unit of the Department of Finance five years after a United States decennial census.

SEC. 6. Section 23817.10 is added to the Business and Professions Code, to read:

23817.10. Whenever it is made to appear to the department by satisfactory evidence that the population in any city or county has increased by more than 2,500 or multiples of 2,500 inhabitants or the population in a city and county has increased by more than 1,250 or multiples of 1,250 inhabitants since the most recent United States decennial census and if the total number of off-sale beer and wine licenses in that city, county, or city and county does not then exceed the maximum specified in Section 23817.5, the department may issue additional licenses, not to exceed one off-sale beer and wine license for each increase of 2,500 inhabitants in the city or county or for each increase of 1,250 inhabitants in the city and county since the taking of the census.

SEC. 7. Section 23820 of the Business and Professions Code is amended to read:

23820. The department may make all rules consistent with the provisions of Section 22 of Article XX of the Constitution, or the provisions of this division, necessary to carry into effect the provisions of this article, and to restrict the issuance of alcoholic beverage licenses, including seasonal licenses, but not including beer, beer and wine wholesaler's, and winegrower's licenses, to a number in any county as the department shall determine is in the interest of public welfare and morals, convenience, or necessity.

