

**RESOLUTION 02-05-2015**

**DIGEST**

Nonprofits - Alcoholic Beverages as Raffle Prizes

Amends Business and Professions Code section 24045.6 to allow nonprofits to give away alcoholic beverages in raffles, sweepstakes, or contests.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Association recommends that legislation be sponsored to amend Business and Professions Code section 24045.6 to read as follows:

§24045.6

1 (a) The department may issue a special temporary on-sale or off-sale wine license to any  
2 nonprofit corporation that is exempt from payment of income taxes under Section 23701d or  
3 23701e of the Revenue and Taxation Code and Section 501(c)(3) or 501(c)(6) of the Internal  
4 Revenue Code. An applicant for this license shall accompany the application with a fee of one  
5 hundred dollars (\$100).

6 (b) This special license shall only entitle the licensee to sell wine bought by, or donated  
7 to, the licensee to a consumer and to any person holding a license authorizing the sale of wine.  
8 Notwithstanding any other provision of this division, a licensee may donate or sell wine to a  
9 nonprofit corporation that obtains a special temporary on-sale or off-sale license under this  
10 section, provided that the donation is not made in connection with a sale of an alcoholic  
11 beverage.

12 (c) This special license shall be for a period not exceeding 15 days. In the event the  
13 license under this section is issued for a period exceeding two days, it shall be used solely for  
14 retail sales in conjunction with an identifiable fundraising event sponsored or conducted by the  
15 licensee and all bottles of wine sold under this license shall bear a label prominently identifying  
16 the event. Only three special licenses authorized by this section shall be issued to any corporation  
17 in a calendar year.

18 (d) Notwithstanding any other provision, any nonprofit as defined above who obtains a  
19 Department of Justice raffle registration pursuant to Section 320.5 of the Penal Code and the  
20 special temporary license described in this section, may hold a raffle, sweepstakes, or contest  
21 involving a prize of alcoholic beverages and not be in violation of Section 25600.1 or 25600.2.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Sacramento County Bar Association

**STATEMENT OF REASONS**

The Problem: After Prohibition ended, only those with state-issued licenses or permits can commercially make, distribute, or sell alcoholic beverages. The Department of Alcoholic Beverage Control (ABC) issues those licenses and permits.

Separately, any charity wishing to hold a raffle must register annually with the Department of Justice's Registry of Charitable Trusts. This includes school booster clubs, fraternal organizations, religious groups, etc. The Department of Justice reviews the registrations to ensure the legitimacy of these groups. Any raffles conducted without such a current registration may run afoul of state gambling laws. Penalties, in addition to the loss of goodwill from "bad press," include criminal misdemeanor prosecution and civil administrative action against a registrant.

Many non-profits include wine (and other alcoholic beverages) in fundraising raffles without the approval of either the Registry of Charitable Trusts or the Department of Alcoholic Beverage Control, and are thus operating outside the confines of current law. Under ABC statutes and regulations, "free goods" are not allowed to be given away, including as prizes for contests, sweepstakes, raffles, etc., in conjunction with the sale or advertisement of alcohol. (Some exceptions exist for novelty trifles.) For instance, a winery could not offer a patron (or restaurant) a bottle of scotch for purchasing a case of wine. Penalties for licensees found in violation of free goods rules start at a \$10,000 fine and can escalate to revocation of the license entirely. A common fundraiser for many non-profits is a "wine auction" or "wine tasting" which requires a special temporary permit from ABC.

Even if non-profits seek to hold "wine raffles" in which bottles of wine, beer, or spirits are given as prizes in a fundraising raffle conducted pursuant to Penal Code 320.5 (charitable raffles), according to the Department of Alcoholic Beverage Control, having alcohol as a prize violates Business and Professions Code 25600.1 (raffle) or 25600.2 (sweepstakes).

There is an absence of clear guidance and a lack of uniform enforcement regarding whether non-profit organizations may include such alcoholic beverages as prizes in fundraising raffles. On the one hand, the Registry of Charitable Trusts is responsible for licensing raffles, but does not have the authority to issue a license that includes alcoholic beverages. While the Department of Alcoholic Beverage Control grants single-day licenses for non-profits to "auction" wine, but interprets having alcohol as a prize violates Business and Professions Code 25600.1 (raffle) or 25600.2 (sweepstakes). Further complicating things, ABC states that it does not have the authority to control the conduct of raffles, since such authority is vested with the Registry.

The Solution: This resolution would allow non-profits to raise money with prizes of alcohol donated by a winegrower, beer manufacturer, distilled spirits manufacturer, distilled spirits manufacturer's agent or an importer. This would allow nonprofits to raise more money than if they conducted a "wine auction" where individuals bid on single bottles of alcohol.

#### **IMPACT STATEMENT**

This resolution does not affect any other law, statute, or rule.

#### **CURRENT OR PRIOR RELATED LEGISLATION**

Added Stats 1978 ch 106 § 1, effective April 21, 1978. Amended Stats 1984 ch 920 § 1, effective September 7, 1984; Stats 1996 ch 900 § 2 (SB 1923); Stats 2004 ch 523 § 4 (AB 2927), effective September 14, 2004; Stats 2008 ch 71 § 2 (AB 1964), effective January 1, 2009; Stats 2009 ch 140 § 24 (AB 1164), effective January 1, 2010.

(The 2009 change was code maintenance; the 2008 change was to expand to a three-days-per-year provision. The 2004 change had allowed such a temporary license only once per calendar year. The 1996 change expanded the number of days for which a permit could issue.)

In addition to expanding the ability of non-profits to participate in fundraising with the alcoholic beverage industry in the 2008 legislation, separately, 2008 Stats. 337 (SB 157) enacted the *Nonprofit Organization Equal Participation Act*, which declared in section 1(b)(2) that the “collaboration between the wine industry and nonprofit organizations has a proven track record in attracting supporters to nonprofit fundraising events. This support has resulted in sustaining vital community services across the state.”

**AUTHOR AND/OR PERMANENT CONTACT:** Stephen M. Duvernay, President, Sacramento Law Foundation, [stephen.duvernay@gmail.com](mailto:stephen.duvernay@gmail.com)

**RESPONSIBLE FLOOR DELEGATE:** Stephen M. Duvernay

## **RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE**

### History:

No similar resolutions found.

### Reasons:

This resolution amends Business and Professions Code section 24045.6 to allow nonprofits to give away alcoholic beverages in raffles, sweepstakes, or contests. This resolution should be disapproved because the raffles it seeks to legalize already appear to be allowed under current law, and if they are not, the resolution would not effectively legalize them without amendment.

It does not appear that current law prohibits wine raffles by nonprofit temporary license holders. This is because a raffle award likely constitutes a “sale” of alcohol authorized under a license to sell alcohol, rather than a prohibited gift. If a raffle award were a gift, arguably it would run afoul of Business and Professions Code section 25600, which prohibits any licensee from giving “any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage[.]” But Business and Professions Code section 23025 defines “sale” quite broadly, to include “any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another[.]” Under this definition, even exchanging the winning raffle ticket for a prize of wine would constitute a sale authorized by the holders license, rather than a giveaway prohibited by section 25600. Indeed, the 2008 version of Department of Alcohol Beverage and Control (“ABC”) form entitled “Instructions for Obtaining a Daily License” (Form No. ABC-221 INSTR (04/08)) describes the fee for a “Special Temporary License” as “\$100.00 (Auctions/Raffles),” suggesting that, at least at the time, the agency charged with enforcement of alcohol control laws held the view that nonprofit wine raffles were permitted under the law.

If ABC were to construe wine raffles as prohibited “gifts” of alcohol, clarifying that such raffles do not violate Business and Professions Code sections 25600.1 or 25600.2, as proposed in the resolution, would not solve the problem because these statutes apply only to “authorized licensees,” a group that does not include temporary nonprofit licensees. Rather, the resolution would need to be amended either to exempt wine raffles from the prohibition in section 25600, or to amend another statute to clarify that alcohol raffles are “sales.”