

AMENDED IN SENATE SEPTEMBER 2, 2009

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 813

Introduced by Assembly Member ~~Hall~~ John A. Perez

(Principal coauthor: Assembly Member Hall)

(Principal coauthor: Senator Cedillo)

(Coauthor: Assembly Member Audra Strickland)

*(Coauthors: Senators Calderon, Florez, Oropeza, Padilla, Strickland,
and Wright)*

February 26, 2009

~~An act to amend Section 19827 of the Business and Professions Code, relating to gambling.~~ *An act to add Section 25503.42 to the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 813, as amended, ~~Hall~~ John A. Perez. ~~Gambling Control Act: administration.~~ *Alcoholic beverages: advertising.*

Existing law generally restricts certain alcoholic beverage licensees, including manufacturers and winegrowers, from paying, crediting, or compensating a retailer for advertising in connection with the advertising and sale of alcoholic beverages.

This bill would expressly authorize a beer manufacturer, holder of a winegrower's license, California winegrower's agent, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer's agent to purchase advertising space

or time from specified fully enclosed venues located in Los Angeles County, as described, under specified conditions. This bill would require a venue owner who enters into a written agreement pursuant to this authorization to obtain an annual certificate from the Department of Alcoholic Beverage Control and to pay an initial and annual certification fee of \$750. This bill would additionally require the department to, in its annual report to the Legislature, include specified information and recommendations to the Legislature with regard to this authorization. This bill would also make a beer manufacturer, holder of a winegrower's license, winegrower's agent, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer's agent who, through coercion or other means, induces the holder of a wholesaler's license to fulfill those contractual obligations guilty of a misdemeanor. This bill would additionally make an on-sale retail licensee, as described, who solicits or coerces a holder of a wholesaler's license to solicit a beer manufacturer, holder of a winegrower's license, winegrower's agent, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer's agent to purchase advertising time or space guilty of a misdemeanor. The bill thus imposes a state-mandated local program by creating new crimes.

This bill would make findings regarding the need for special legislation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

~~Existing law, the Gambling Control Act, provides for the licensure and regulation of various legalized gambling activities and establishments by the California Gambling Control Commission and the investigation and discipline of those activities and establishments by the Division of Gambling Control within the Department of Justice, as specified. Existing law permits the department to seize, remove, impound, photocopy, and audit any equipment, supplies, documents, papers, books, and records on the premises of a licensed gambling establishment for examination and inspection.~~

~~This bill would require that the Department of Justice examine documents requested in a routine audit during normal business hours, as specified.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~^{yes}.

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

1 SECTION 1. Section 25503.42 is added to the Business and
2 Professions Code, to read:

3 25503.42. (a) Notwithstanding any other provision of this
4 chapter, a beer manufacturer, the holder of a winegrower’s license,
5 a California winegrower’s agent, a holder of a distilled spirits
6 rectifiers general license, a distilled spirits manufacturer, or a
7 distilled spirits manufacturer’s agent may purchase indoor
8 advertising space or time at a fully enclosed venue with box office
9 sales and attendance by the public on a ticketed basis only, with
10 a patronage capacity in excess of 2,000, located in Los Angeles
11 County within the area subject to the Los Angeles Sports and
12 Entertainment District Specific Plan adopted by the City of Los
13 Angeles pursuant to ordinance number 174225, as approved on
14 September 6, 2001, where the owner of the venue is not the on-sale
15 retail licensee. The purchase of the indoor advertising space or
16 time shall be subject to all of the following conditions:

17 (1) The indoor advertising space or time is purchased only at
18 the venue specified in this subdivision.

19 (2) The purchase of indoor advertising space or time shall be
20 conducted pursuant to a written agreement entered into by the
21 beer manufacturer, holder of a winegrower’s license, California
22 winegrower’s agent, holder of a distilled spirits rectifiers general
23 license, distilled spirits manufacturer, or a distilled spirits
24 manufacturer’s agent and the owner of the venue described in this
25 subdivision. A holder of a wholesale license shall not be a party
26 to the written agreement or otherwise be a beneficiary or obligor
27 under the written agreement.

28 (3) An agreement for the purchase of indoor advertising space
29 or time pursuant to this section shall not be conditioned directly
30 or indirectly, in any way, on the purchase, sale, or distribution of
31 any alcoholic beverage manufactured or distributed by the
32 advertising beer manufacturer, holder of a winegrower’s license,

1 California winegrower's agent, holder of a distilled spirits
2 rectifiers general license, distilled spirits manufacturer, or a
3 distilled spirits manufacturer's agent by any on-sale retail licensee.

4 (4) An on-sale licensee operating at a venue described in this
5 subdivision where indoor advertising space or time is purchased
6 shall serve other brands of beer distributed by a competing beer
7 wholesaler in addition to the brand manufactured or marketed by
8 the advertising beer manufacturer, other brands of wine distributed
9 by a competing wine wholesaler in addition to the brand produced
10 or marketed by the advertising winegrower or California
11 winegrower's agent, and other brands of distilled spirits distributed
12 by a competing distilled spirits wholesaler in addition to the brand
13 manufactured or marketed by the advertising distilled spirits
14 manufacturer or distilled spirits manufacturer's agent.

15 (5) The total gross sales by the on-sale licensee of wine and
16 distilled spirits brands owned or distributed by the holder of a
17 winegrower's license, California winegrower's agent, distilled
18 spirits manufacturer, holder of a distilled spirits rectifiers general
19 license, or a distilled spirits manufacturer's agent that has
20 purchased indoor advertising space or time shall not exceed 15
21 percent of the on-sale licensee's gross sales of all alcoholic
22 beverages during the period within which the licensee has
23 purchased indoor advertising time or space. The on-sale licensee
24 shall at all times maintain records that reflect separately the gross
25 sales of brands owned or distributed by the holder of a
26 winegrower's license, California winegrower's agent, distilled
27 spirits manufacturer, holder of a distilled spirits rectifiers general
28 license, or a distilled spirits manufacturer's agent that has
29 purchased indoor advertising time or space and the on-sale
30 licensee's gross sales of all alcoholic beverages during the period
31 within which the on-sale licensee has purchased indoor advertising
32 time or space. The on-sale licensee shall maintain these records
33 no less frequently than on a quarterly basis and shall make these
34 records available to the department on demand.

35 (b) A beer manufacturer, holder of a winegrower's license,
36 California winegrower's agent, holder of a distilled spirits
37 rectifiers general license, distilled spirits manufacturer, or a
38 distilled spirits manufacturer's agent who, through coercion or
39 other illegal means, induces, directly or indirectly, a holder of a
40 wholesaler's license to fulfill those contractual obligations entered

1 *into pursuant to subdivision (a) shall be guilty of a misdemeanor*
2 *and shall be punished by imprisonment in the county jail not*
3 *exceeding six months, or by a fine equal to the greater of an amount*
4 *equal to the entire value of the advertising space or time involved*
5 *in the contract or ten thousand dollars (\$10,000), or by both*
6 *imprisonment and fine. The person shall also be subject to license*
7 *revocation pursuant to Section 24200.*

8 *(c) An on-sale retail licensee who, directly or indirectly, solicits*
9 *or coerces a holder of a wholesaler's license to solicit a beer*
10 *manufacturer, holder of a winegrower's license, California*
11 *winegrower's agent, holder of a distilled spirits rectifiers general*
12 *license, distilled spirits manufacturer, or a distilled spirits*
13 *manufacturer's agent to purchase indoor advertising time or space*
14 *pursuant to subdivision (a) shall be guilty of a misdemeanor and*
15 *shall be punished by imprisonment in the county jail not exceeding*
16 *six months, or by a fine equal to the greater of an amount equal*
17 *to the entire value of the advertising space or time involved in the*
18 *contract or ten thousand dollars (\$10,000), or by both*
19 *imprisonment and fine. The person shall also be subject to license*
20 *revocation pursuant to Section 24200.*

21 *(d) For purposes of this section, "beer manufacturer" includes*
22 *a holder of a beer manufacturer's license, a holder of an*
23 *out-of-state beer manufacturer's certificate, or a holder of a beer*
24 *and wine importer's general license.*

25 *(e) Nothing in this section shall authorize the purchasing of*
26 *indoor advertising space or time pursuant to subdivision (a) by*
27 *any beer manufacturer, holder of a winegrower's license, a*
28 *California winegrower's agent, a distilled spirits manufacturer,*
29 *holder of a distilled spirits rectifiers general license, or a distilled*
30 *spirits manufacturer's agent directly or indirectly from any on-sale*
31 *licensee.*

32 *(f) A venue owner that meets the description provided in*
33 *subdivision (a) and that enters into a written agreement pursuant*
34 *to this section shall obtain an annual certificate from the*
35 *department and pay an initial certification fee of seven hundred*
36 *fifty dollars (\$750) and thereafter pay an annual certification*
37 *renewal fee of seven hundred fifty dollars (\$750). The director*
38 *shall prepare, as part of the annual report required by Section*
39 *23055 for submission to the Legislature, a listing of the number*
40 *of certifications and payments made pursuant to this section or*

1 *the absence of any certifications and payments. Where there have*
2 *been no certifications and payments made pursuant to this section*
3 *for two consecutive years, a recommendation of repeal of this*
4 *section shall be included in the report's recommendations for*
5 *legislation to improve the ability of the department to expeditiously*
6 *and effectively administer this division.*

7 *(g) The Legislature finds that it is necessary and proper to*
8 *require a separation between manufacturing interests, wholesale*
9 *interests, and retail interests in the production and distribution of*
10 *alcoholic beverages in order to prevent suppliers from dominating*
11 *local markets through vertical integration and to prevent excessive*
12 *sales of alcoholic beverages produced by overly aggressive*
13 *marketing techniques. The Legislature further finds that the*
14 *exceptions established by this section to the general prohibition*
15 *against tied interests must be limited to their express terms so as*
16 *not to undermine the general prohibition, and intends that this*
17 *section be construed accordingly.*

18 *SEC. 2. The Legislature hereby finds and declares, with respect*
19 *to Section 1 of this act, that a special statute is necessary and that*
20 *a statute of general applicability cannot be enacted within the*
21 *meaning of Section 16 of Article IV of the California Constitution,*
22 *because of unique circumstances and concerns applicable to*
23 *certain facilities in Los Angeles County.*

24 *SEC. 3. No reimbursement is required by this act pursuant to*
25 *Section 6 of Article XIII B of the California Constitution because*
26 *the only costs that may be incurred by a local agency or school*
27 *district will be incurred because this act creates a new crime or*
28 *infraction, eliminates a crime or infraction, or changes the penalty*
29 *for a crime or infraction, within the meaning of Section 17556 of*
30 *the Government Code, or changes the definition of a crime within*
31 *the meaning of Section 6 of Article XIII B of the California*
32 *Constitution.*

33 *SEC. 4. This act is an urgency statute necessary for the*
34 *immediate preservation of the public peace, health, or safety within*
35 *the meaning of Article IV of the Constitution and shall go into*
36 *immediate effect. The facts constituting the necessity are:*

37 *In order to continue to aid in the economic recovery and*
38 *stimulation of the County of Los Angeles, and maintain the*
39 *economic viability of the arenas and venues that are a vital*

1 *component of the revitalization of the downtown Los Angeles area,*
2 *it is necessary that this act take immediate effect.*

3 ~~SECTION 1. Section 19827 of the Business and Professions~~
4 ~~Code is amended to read:~~

5 ~~19827. (a) The department has all powers necessary and proper~~
6 ~~to enable it to carry out fully and effectually the duties and~~
7 ~~responsibilities of the department specified in this chapter. The~~
8 ~~investigatory powers of the department include, but are not limited~~
9 ~~to, all of the following:~~

10 ~~(1) Upon approval of the chief, and without notice or warrant,~~
11 ~~the department may take any of the following actions:~~

12 ~~(A) Visit, investigate, and place expert accountants, technicians,~~
13 ~~and any other person, as it may deem necessary, in all areas of the~~
14 ~~premises wherein controlled gambling is conducted for the purpose~~
15 ~~of determining compliance with the rules and regulations adopted~~
16 ~~pursuant to this chapter.~~

17 ~~(B) Visit, inspect, and examine all premises where gambling~~
18 ~~equipment is manufactured, sold, or distributed.~~

19 ~~(C) Inspect all equipment and supplies in any gambling~~
20 ~~establishment or in any premises where gambling equipment is~~
21 ~~manufactured, sold, or distributed.~~

22 ~~(D) Summarily seize, remove, and impound any equipment,~~
23 ~~supplies, documents, or records from any licensed premises for~~
24 ~~the purpose of examination and inspection. However, upon~~
25 ~~reasonable demand by the licensee or the licensee's authorized~~
26 ~~representative, a copy of all documents and records seized shall~~
27 ~~be made and left on the premises.~~

28 ~~(E) Demand access to, and inspect, examine, photocopy, and~~
29 ~~audit all papers, books, and records of an owner licensee on the~~
30 ~~gambling premises in the presence of the licensee or his or her~~
31 ~~agent.~~

32 ~~(2) The department shall examine documents requested in a~~
33 ~~routine audit at a gambling establishment between the normal~~
34 ~~business hours of 8 a.m. to 6 p.m. within a five-day workweek~~
35 ~~schedule. However, this requirement shall not be construed to take~~
36 ~~away from the department's investigatory authority and duties.~~

37 ~~(3) Except as provided in paragraph (1), upon obtaining an~~
38 ~~inspection warrant pursuant to Section 1822.60 of the Code of~~
39 ~~Civil Procedure, the department may inspect and seize for~~
40 ~~inspection, examination, or photocopying any property possessed,~~

1 controlled, bailed, or otherwise held by any applicant, licensee, or
2 any intermediary company, or holding company.

3 (4) The department may investigate, for purposes of prosecution,
4 any suspected criminal violation of this chapter. However, nothing
5 in this paragraph limits the powers conferred by any other law on
6 agents of the department who are peace officers.

7 (5) The department may do both of the following:

8 (A) Issue subpoenas to require the attendance and testimony of
9 witnesses and the production of books, records, documents, and
10 physical materials.

11 (B) Administer oaths, examine witnesses under oath, take
12 evidence, and take depositions and affidavits or declarations.
13 Notwithstanding Section 11189 of the Government Code, the
14 department, without leave of court, may take the deposition of any
15 applicant or any licensee. Sections 11185 and 11191 of the
16 Government Code do not apply to a witness who is an applicant
17 or a licensee.

18 (b) (1) Subdivision (a) shall not be construed to limit
19 warrantless inspections except as required by the California
20 Constitution or the United States Constitution.

21 (2) Subdivision (a) shall not be construed to prevent entries and
22 administrative inspections, including seizures of property, without
23 a warrant in the following circumstances:

24 (A) With the consent of the owner, operator, or agent in charge
25 of the premises.

26 (B) In situations presenting imminent danger to health and
27 safety.

28 (C) In situations involving inspection of conveyances where
29 there is reasonable cause to believe that the mobility of the
30 conveyance makes it impractical to obtain a warrant, or in any
31 other exceptional or emergency circumstance where time or
32 opportunity to apply for a warrant is lacking.

33 (D) In accordance with this chapter.

34 (E) In all other situations where a warrant is not constitutionally
35 required.