

Assembly Bill No. 813

CHAPTER 647

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.

[Approved by Governor November 4, 2009. Filed with
Secretary of State November 5, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 813, John A. Perez. 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 that enters into a written agreement pursuant to this authorization to obtain an annual certificate from the Department of Alcoholic Beverage Control. This bill would additionally require the department to, in its annual report to the Legislature, include specified information 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.

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

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

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

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

(2) The purchase of indoor advertising space or time shall be conducted pursuant to a written agreement entered into by the beer manufacturer, holder of a winegrower's license, California winegrower's agent, holder of a distilled spirits rectifiers general license, distilled spirits manufacturer, or a distilled spirits manufacturer's agent and the owner of the venue described in this subdivision. A holder of a wholesale license shall not be a party to the written agreement or otherwise have any direct or indirect obligations under the agreement, including an obligation to share in the costs or contribute to the costs of the indoor advertising space or time purchased pursuant to this section.

(3) An agreement for the purchase of indoor advertising space or time pursuant to this section shall not be conditioned directly or indirectly, in any way, on the purchase, sale, or distribution of any alcoholic beverage manufactured or distributed by the advertising beer manufacturer, holder of a winegrower's license, California winegrower's agent, holder of a distilled spirits rectifiers general license, distilled spirits manufacturer, or a distilled spirits manufacturer's agent by any on-sale retail licensee.

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

or marketed by the advertising distilled spirits manufacturer, the distilled spirits manufacturer's agent, or a holder of a distilled spirits rectifiers general license.

(5) No more than 15 percent of the retail licensee's purchases of distilled spirits and wine for sale on its licensed premises shall be manufactured, produced, or distributed by the 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 that has purchased indoor advertising space.

(b) A beer manufacturer, holder of a winegrower's license, California winegrower's agent, holder of a distilled spirits rectifiers general license, distilled spirits manufacturer, or a distilled spirits manufacturer's agent who, through coercion or other illegal means, induces, directly or indirectly, a holder of a wholesaler's license to fulfill those contractual obligations entered into pursuant to subdivision (a) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine equal to the greater of an amount equal to the entire value of the advertising space or time involved in the contract or ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

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

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

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

(f) A venue owner that meets the description provided in subdivision (a) and that enters into a written agreement pursuant to this section shall obtain an annual certificate from the department. The director shall prepare, as part of the annual report required by Section 23055 for submission to the Legislature, a listing of the number of certifications made pursuant to this section or the absence of any certifications. Where there have been no

certifications made pursuant to this section for two consecutive years, this information shall be included in the report.

(g) The Legislature finds that it is necessary and proper to require a separation among manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests shall be limited to its express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

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

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

SEC. 4. 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 continue to aid in the economic recovery and stimulation of the County of Los Angeles, and maintain the economic viability of the arenas and venues that are a vital component of the revitalization of the downtown Los Angeles area, it is necessary that this act take immediate effect.