

AMENDED IN SENATE MARCH 17, 2014

AMENDED IN ASSEMBLY MAY 28, 2013

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 600

Introduced by Assembly Member Bonta
(Principal coauthor: Assembly Member Wieckowski)
(Principal coauthor: Senator Corbett)

February 20, 2013

An act to amend Section ~~22928~~ 25503.6 of the Business and Professions Code, relating to ~~business~~ alcoholic beverage control, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 600, as amended, Bonta. ~~Intermodal marine terminals. Alcoholic beverages: tied-house restrictions: advertising.~~

Existing law generally prohibits a manufacturer of alcoholic beverages and a winegrower from paying, crediting, or compensating a retailer for advertising or paying or giving anything of value for the privilege of placing a sign or advertisement with a retail licensee. It authorizes, as an exception, the holder of a winegrower's license, a beer manufacturer, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent, to purchase advertising space and time from, or on behalf of, an on-sale retail licensee, under certain conditions, if the on-sale retail licensee is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or major tenant of specified facilities. Existing law specifies that any coercion or other illegal means

to induce the purchase of advertising, permitted under this section by a specified licensee, is a crime.

This bill would expand the exceptions to existing law to allow beer manufacturers, winegrowers, distilled spirits rectifiers, distilled spirits manufacturers, or distilled spirits manufacturer's agents to purchase advertising space and time from, or on behalf of, on-sale retail licensees at specified facilities located in the City of Santa Clara, as provided.

This bill would expand the scope of an existing crime thus imposing a state-mandated local program.

This bill would make legislative findings and declarations as to the necessity of a special statute for the City of Santa Clara.

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 prohibits an intermodal marine equipment provider or marine terminal operator from imposing per diem, detention, or demurrage charges, as defined, on an intermodal motor carrier relative to transactions involving cargo shipped by intermodal transport under certain circumstances. Existing law also prohibits an intermodal marine equipment provider from terminating, suspending, or restricting equipment interchange rights of a motor carrier for specified reasons and from charging back, deducting, or offsetting per diem or certain other charges from the motor carrier's freight bill.~~

~~This bill would recast these provisions to prohibit a party signatory to an interchange agreement involving intermodal marine equipment from unilaterally terminating, suspending, or restricting the equipment interchange rights of any other signatory to the same interchange agreement. This bill would modify the circumstances under which an intermodal marine equipment provider or an intermodal marine terminal operator is prohibited from imposing per diem, detention, demurrage charges, or citations for parking violations.~~

~~This bill would specify that an "intermodal marine terminal" does not include a railroad, warehouse, or any other domestic terminal facility that may handle intermodal marine equipment, but where cargo shipped by intermodal marine transport is not transferred to or from ocean-going~~

vessels. ~~The bill would declare that certain of its provisions are not a change in, but are declaratory of, existing law.~~

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

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

1 SECTION 1. Section 25503.6 of the Business and Professions
2 Code is amended to read:

3 25503.6. (a) Notwithstanding any other provision of this
4 chapter, a beer manufacturer, the holder of a winegrower’s license,
5 a distilled spirits rectifier, a distilled spirits manufacturer, or
6 distilled spirits manufacturer’s agent may purchase advertising
7 space and time from, or on behalf of, an on-sale retail licensee
8 subject to all of the following conditions:

9 (1) The on-sale licensee is the owner, manager, agent of the
10 owner, assignee of the owner’s advertising rights, or the major
11 tenant of the owner of any of the following:

12 (A) An outdoor stadium or a fully enclosed arena with a fixed
13 seating capacity in excess of 10,000 seats located in Sacramento
14 County or Alameda County.

15 (B) A fully enclosed arena with a fixed seating capacity in
16 excess of 18,000 seats located in Orange County or Los Angeles
17 County.

18 (C) An outdoor stadium or fully enclosed arena with a fixed
19 seating capacity in excess of 8,500 seats located in Kern County.

20 (D) An exposition park of not less than 50 acres that includes
21 an outdoor stadium with a fixed seating capacity in excess of 8,000
22 seats and a fully enclosed arena with an attendance capacity in
23 excess of 4,500 people, located in San Bernardino County.

24 (E) An outdoor stadium with a fixed seating capacity in excess
25 of 10,000 seats located in Yolo County.

26 (F) An outdoor stadium and a fully enclosed arena with fixed
27 seating capacities in excess of 10,000 seats located in Fresno
28 County.

29 (G) An athletic and entertainment complex of not less than 50
30 acres that includes within its boundaries an outdoor stadium with
31 a fixed seating capacity of at least 8,000 seats and a second outdoor
32 stadium with a fixed seating capacity of at least 3,500 seats located
33 within Riverside County.

- 1 (H) An outdoor stadium with a fixed seating capacity in excess
 2 of 1,500 seats located in Tulare County.
- 3 (I) A motorsports entertainment complex of not less than 50
 4 acres that includes within its boundaries an outdoor speedway with
 5 a fixed seating capacity of at least 50,000 seats, located within San
 6 Bernardino County.
- 7 (J) An exposition park, owned or operated by a bona fide
 8 nonprofit organization, of not less than 400 acres with facilities
 9 including a grandstand with a seating capacity of at least 8,000
 10 people, at least one exhibition hall greater than 100,000 square
 11 feet, and at least four exhibition halls, each greater than 30,000
 12 square feet, located in the City of Pomona or the City of La Verne
 13 in Los Angeles County.
- 14 (K) An outdoor soccer stadium with a fixed seating capacity of
 15 at least 25,000 seats, an outdoor tennis stadium with a fixed
 16 capacity of at least 7,000 seats, an outdoor track and field facility
 17 with a fixed seating capacity of at least 7,000 seats, and an indoor
 18 velodrome with a fixed seating capacity of at least 2,000 seats, all
 19 located within a sports and athletic complex built before January
 20 1, 2005, within the City of Carson in Los Angeles County.
- 21 (L) An outdoor professional sports facility with a fixed seating
 22 capacity of at least 4,200 seats located within San Joaquin County.
- 23 (M) A fully enclosed arena with a fixed seating capacity in
 24 excess of 13,000 seats in the City of Inglewood.
- 25 (N) *An outdoor stadium with a fixed seating capacity of at least*
 26 *68,000 seats located in the City of Santa Clara.*
- 27 (2) The outdoor stadium or fully enclosed arena described in
 28 paragraph (1) is not owned by a community college district.
- 29 (3) The advertising space or time is purchased only in connection
 30 with the events to be held on the premises of the exposition park,
 31 stadium, or arena owned by the on-sale licensee. With respect to
 32 an exposition park as described in subparagraph (J) of paragraph
 33 (1) that includes at least one hotel, the advertising space or time
 34 shall not be displayed on or in any hotel located in the exposition
 35 park, or purchased in connection with the operation of any hotel
 36 located in the exposition park.
- 37 (4) The on-sale licensee serves other brands of beer distributed
 38 by a competing beer wholesaler in addition to the brand
 39 manufactured or marketed by the beer manufacturer, other brands
 40 of wine distributed by a competing wine wholesaler in addition to

1 the brand produced by the winegrower, and other brands of distilled
2 spirits distributed by a competing distilled spirits wholesaler in
3 addition to the brand manufactured or marketed by the distilled
4 spirits rectifier, the distilled spirits manufacturer or the distilled
5 spirits manufacturer’s agent that purchased the advertising space
6 or time.

7 (b) Any purchase of advertising space or time pursuant to
8 subdivision (a) shall be conducted pursuant to a written contract
9 entered into by the beer manufacturer, the holder of the
10 winegrower’s license, the distilled spirits rectifier, the distilled
11 spirits manufacturer, or the distilled spirits manufacturer’s agent
12 and the on-sale licensee.

13 (c) Any beer manufacturer or holder of a winegrower’s license,
14 any distilled spirits rectifier, any distilled spirits manufacturer, or
15 any distilled spirits manufacturer’s agent who, through coercion
16 or other illegal means, induces, directly or indirectly, a holder of
17 a wholesaler’s license to fulfill all or part of those contractual
18 obligations entered into pursuant to subdivision (a) or (b) shall be
19 guilty of a misdemeanor and shall be punished by imprisonment
20 in the county jail not exceeding six months, or by a fine in an
21 amount equal to the entire value of the advertising space, time, or
22 costs involved in the contract, whichever is greater, plus ten
23 thousand dollars (\$10,000), or by both imprisonment and fine. The
24 person shall also be subject to license revocation pursuant to
25 Section 24200.

26 (d) Any on-sale retail licensee, as described in subdivision (a),
27 who, directly or indirectly, solicits or coerces a holder of a
28 wholesaler’s license to solicit a beer manufacturer, a holder of a
29 winegrower’s license, a distilled spirits rectifier, a distilled spirits
30 manufacturer, or a distilled spirits manufacturer’s agent to purchase
31 advertising space or time pursuant to subdivision (a) or (b) shall
32 be guilty of a misdemeanor and shall be punished by imprisonment
33 in the county jail not exceeding six months, or by a fine in an
34 amount equal to the entire value of the advertising space or time
35 involved in the contract, whichever is greater, plus ten thousand
36 dollars (\$10,000), or by both imprisonment and fine. The person
37 shall also be subject to license revocation pursuant to Section
38 24200.

39 (e) For the purposes of this section, “beer manufacturer” includes
40 any holder of a beer manufacturer’s license, any holder of an

1 out-of-state beer manufacturer’s certificate, or any holder of a beer
2 and wine importer’s general license.

3 *SEC. 2. The Legislature finds and declares that a special law*
4 *is necessary and that a general law cannot be made applicable*
5 *within the meaning of Section 16 of Article IV of the California*
6 *Constitution because of the unique circumstances and concerns*
7 *applicable to certain facilities in the City of Santa Clara.*

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

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

21 *In order to ensure the fair and efficient application of the*
22 *alcoholic beverage control licensing laws with respect to eligible*
23 *facilities in the City of Santa Clara, it is necessary that this act*
24 *take immediate effect.*

25 ~~SECTION 1. Section 22928 of the Business and Professions~~
26 ~~Code is amended to read:~~

27 ~~22928. (a) The Legislature finds and declares all of the~~
28 ~~following:~~

29 ~~(1) That no party who is a signatory to an interchange agreement~~
30 ~~involving intermodal marine equipment shall unilaterally terminate,~~
31 ~~suspend, or restrict the equipment interchange rights of any other~~
32 ~~party signatory to the same interchange agreement, as specified in~~
33 ~~this section.~~

34 ~~(2) Nothing in this section shall restrict any parties from entering~~
35 ~~into contracts with enforceable contractual and commercial terms~~
36 ~~to provide drayage services if the contract is consistent with Part~~
37 ~~2 (commencing with Section 1549) of Division 3 of Civil Code.~~

38 ~~(3) If the parties to a contract to provide drayage services are~~
39 ~~mutual signatories to an interchange agreement, then the terms of~~
40 ~~that agreement are binding except to the extent that they otherwise~~

1 conflict with this section, other provisions of law, or otherwise by
2 agreement of the contracting parties.

3 (b) ~~An intermodal marine equipment provider or intermodal
4 marine terminal operator shall not impose per diem or detention
5 charges on an intermodal motor carrier relating to transactions
6 involving cargo shipped by intermodal marine transport under any
7 of the following circumstances:~~

8 (1) ~~When the intermodal marine terminal truck gate is closed
9 during posted normal working hours, including any gate closures
10 that occur on a weekend or holiday, during a labor disruption
11 period, or during any other period involving an act of God, or any
12 other planned or unplanned action that closes the truck gate.~~

13 (2) ~~When the intermodal marine terminal or intermodal marine
14 equipment provider decides to divert the return of equipment from
15 the point at which it was interchanged without 48 hours' electronic
16 or written notification to the intermodal motor carrier having
17 possession of the equipment.~~

18 (3) ~~When the intermodal marine terminal is assessed a fine
19 pursuant to Section 40720 of the Health and Safety Code.~~

20 (4) ~~When the intermodal equipment is not compliant with
21 Section 34505.9 of the Vehicle Code or is placed out of service.~~

22 (5) ~~When the intermodal marine terminal is too congested to
23 safely or reasonably accept the intermodal marine equipment and
24 the intermodal marine terminal turns away the intermodal motor
25 carrier.~~

26 (c) ~~An intermodal marine equipment provider shall not take any
27 of the following actions:~~

28 (1) ~~Charge back, deduct, or offset per diem or detention charges,
29 maintenance and repair charges, or peak hour pricing from an
30 intermodal motor carrier's freight bill.~~

31 (2) ~~Unilaterally terminate, suspend, or restrict the equipment
32 interchange rights of an intermodal motor carrier that utilizes the
33 dispute resolution process contained in the Uniform Intermodal
34 Interchange and Facilities Access Agreement to contest a charge,
35 fee, or fine, including a charge for maintenance and repairs imposed
36 by the intermodal marine terminal, while the dispute resolution
37 process is ongoing or after a challenge is resolved, solely on the
38 basis that the dispute resolution process was utilized by the
39 intermodal motor carrier.~~

1 ~~(3) Unilaterally terminate, suspend, or restrict the equipment~~
2 ~~interchange rights of an intermodal motor carrier for late payment~~
3 ~~of an undisputed invoice from the intermodal marine terminal,~~
4 ~~provided that the payment is no more than 60 days late.~~

5 ~~(d) Except as otherwise included in a terminal tariff agreement~~
6 ~~filed with the federal Maritime Commission, an intermodal marine~~
7 ~~terminal shall not take any of the following actions:~~

8 ~~(1) Require an intermodal motor carrier to pay for any parking~~
9 ~~violation or to pay for any parking citation issued by the marine~~
10 ~~terminal unless the citation remains unpaid more than 60 days after~~
11 ~~the intermodal motor carrier is in actual physical receipt of the~~
12 ~~citation. For the purposes of this subdivision, delivery by certified~~
13 ~~mail or other recorded delivery service shall constitute evidence~~
14 ~~that the intermodal motor carrier is in actual physical custody of~~
15 ~~a parking violation citation.~~

16 ~~(2) Issue a parking citation to an intermodal motor carrier for a~~
17 ~~parking violation if the assigned parking space at issue was~~
18 ~~occupied and the trouble window or terminal administration was~~
19 ~~unable to immediately provide a place to park, or if the driver was~~
20 ~~instructed to park the equipment in a different spot by marine~~
21 ~~terminal personnel or security.~~

22 ~~(3) Issue a parking violation citation more than five business~~
23 ~~days after the date that the violation occurred.~~

24 ~~(e) (1) Other than what is specified in an agreement or the~~
25 ~~governing port tariff, a party shall not collect cargo demurrage~~
26 ~~unless it is due and payable in a manner that is consistent with this~~
27 ~~section.~~

28 ~~(2) An intermodal motor carrier shall not be liable for any~~
29 ~~portion of cargo demurrage that is solely for the account of the~~
30 ~~beneficial owner or the owner's agent.~~

31 ~~(3) Except as otherwise agreed to in writing, an intermodal~~
32 ~~motor carrier shall not be required by a cargo owner, or an owner's~~
33 ~~agent, to pick up a loaded container that has any outstanding cargo~~
34 ~~charges, including, but not limited to, demurrage charges.~~

35 ~~(4) Commencing January 1, 2015, an intermodal marine terminal~~
36 ~~shall require that any outstanding cargo charges, including, but~~
37 ~~not limited to, all cargo demurrage charges, imposed relative to~~
38 ~~transactions involving intermodal marine cargo be paid~~
39 ~~electronically by the responsible party, or that party's agent, before~~
40 ~~a container is released.~~

1 ~~(5) If a loaded container is not made available for pickup when~~
2 ~~an intermodal motor carrier arrives at the intermodal marine~~
3 ~~terminal, and all current charges have been paid as set forth in~~
4 ~~paragraph (4), the intermodal marine terminal operator shall not~~
5 ~~impose any further cargo demurrage charges on the intermodal~~
6 ~~motor carrier.~~

7 (f) ~~As used in this chapter:~~

8 (1) ~~“Per diem,” or “detention,” means a charge imposed by an~~
9 ~~equipment provider or marine terminal operator for late return or~~
10 ~~pickup of an empty or a loaded intermodal container and chassis.~~

11 (2) ~~“Closed” means not open or available to receive equipment.~~
12 ~~The intermodal marine terminal shall have posted working hours,~~
13 ~~and “closed” shall mean that the terminal is not open to release or~~
14 ~~accept intermodal marine equipment during those posted working~~
15 ~~hours.~~

16 (3) ~~“Divert equipment” means the motor carrier has been~~
17 ~~directed to return the equipment to a location different from the~~
18 ~~location where the equipment was picked up by the motor carrier.~~

19 (4) ~~“Intermodal marine equipment” means equipment commonly~~
20 ~~used in the road transport of intermodal cargo by an intermodal~~
21 ~~motor carrier to or from an intermodal marine terminal, including~~
22 ~~trailers, chassis, containers, and associated devices, but excluding~~
23 ~~tractors.~~

24 (5) ~~“Intermodal marine terminal” means a terminal location or~~
25 ~~facility that engages in discharging or receiving intermodal marine~~
26 ~~equipment owned, operated, or controlled by an intermodal marine~~
27 ~~equipment provider. This definition does not apply to any railroad,~~
28 ~~warehouse, or any other domestic terminal facility that may handle~~
29 ~~intermodal marine equipment, but where cargo shipped by~~
30 ~~intermodal marine transport is not transferred to or from~~
31 ~~ocean-going vessels.~~

32 (6) ~~“Written or electronic notification” means any~~
33 ~~communication by postal letter, facsimile, electronic mail, or other~~
34 ~~electronic notification.~~

35 (7) ~~“Intermodal marine equipment provider” means the party~~
36 ~~providing intermodal marine equipment to an intermodal motor~~
37 ~~carrier at an intermodal marine terminal pursuant to the Uniform~~
38 ~~Intermodal Interchange and Facilities Access Agreement or any~~
39 ~~other interchange agreement.~~

1 (8) “Cargo demurrage” means a charge including, but not limited
2 to, any “wharf demurrage” applied against cargo that results from
3 the storage of the cargo on an intermodal terminal beyond the end
4 of the allowable free time as established by tariff or agreement.
5 SEC. 2. ~~The amendment of subdivision (b) of Section 22928~~
6 ~~of the Business and Professions Code made by Section 1 of this~~
7 ~~act does not constitute a change in, but is declaratory of, existing~~
8 ~~law relative to the prohibition on the imposition of per diem and~~
9 ~~retention charges by intermodal marine equipment providers in~~
10 ~~the instances identified therein.~~