

AMENDED IN SENATE MARCH 6, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 816

Introduced by Assembly Member Hall

February 21, 2013

An act to amend ~~Section~~ *Sections 25000.2 and 25500.1* of, and to repeal Section 25502.1 of, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 816, as amended, Hall. ~~Alcoholic beverages: tied-house restrictions: on-sale and off-sale retailers advertising: beverages.~~

(1) The Alcoholic Beverage Control Act authorizes a licensed beer manufacturer that produces more than 60,000 barrels of beer a year to manufacture cider or perry, as defined, at the licensed premises of production and to sell cider or perry to any licensee authorized to sell wine. Further, under existing law, if a successor beer manufacturer, as defined, acquires the rights to manufacture, import, or distribute a product, defined as a brand or brands of beer, and then cancels the distribution rights of an existing beer wholesaler, as defined, the successor beer manufacturer is required to notify the existing beer wholesaler of his or her intent to cancel those rights. Existing law also requires the existing beer wholesaler to continue to distribute the product to at least the same extent that it distributed the product immediately before the successor beer manufacturer acquired rights to the product until receipt of the payment of the specified compensation is made or awarded. The act provides that a violation of its provisions is a misdemeanor, unless otherwise specified.

This bill would redefine “product” to also include cider or perry, as defined. By changing the definition of a crime, the bill would impose a state-mandated local program.

~~The~~

(2) *The Alcoholic Beverage Control Act contains limitations on sales commonly known as “tied-house” restrictions, which generally prohibit a manufacturer, winegrower, manufacturer’s agent, California winegrower’s agent, rectifier, distiller, bottler, importer, or wholesaler from furnishing, giving, or lending any money or other thing of value to any person engaged in operating, owning, or maintaining any off-sale licensed premises. For purposes of these provisions, the listing of the names, addresses, telephone numbers, or ~~email~~ e-mail addresses, or Internet Web site addresses, of 2 or more unaffiliated off-sale retailers selling beer, wine, or distilled spirits and operating and licensed as bona fide public eating places selling the beer, wine, or distilled spirits produced, distributed, or imported by a nonretail industry member in response to a direct inquiry from a consumer, as specified, does not constitute a thing of value or prohibited inducement to the listed off-sale retailer, if specified conditions are met.*

Existing law includes similar provisions applicable to on-sale licensed premises, except that those provisions also extend the above-described exception to other forms of electronic media.

This bill would delete the above exceptions that apply specifically to off-sale licensed premises and instead would include off-sale licensed premises within the exceptions previously applicable only to on-sale licensed premises.

(3) *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.

Vote: majority. 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 25000.2 of the Business and Professions
- 2 Code is amended to read:
- 3 25000.2. (a) For purposes of this section:

1 (1) “Acquire” means to purchase, receive, assume, obtain, or
2 otherwise come into possession or control of.

3 (2) “Affected distribution rights” means the distribution rights
4 to the product held by the existing beer wholesaler ~~prior to~~ *before*
5 the acquisition of the right to manufacture, import, or distribute
6 the product by the successor beer manufacturer.

7 (3) “Beer manufacturer” includes any holder of a beer
8 manufacturer’s license, any holder of an out-of-state beer
9 manufacturer’s certificate, or any holder of a beer and wine
10 importer’s general license.

11 (4) “Cancel” means to terminate, reduce, not renew, not appoint
12 or reappoint, or cause any of the same.

13 (5) “Existing beer wholesaler” means a beer wholesaler that
14 distributes a product at the time a successor beer manufacturer
15 acquires the rights to manufacture, import, or distribute that
16 product.

17 (6) “Fair market value” includes all elements of value, including,
18 but not limited to, goodwill.

19 (7) “Product” means a brand or brands of beer, as defined by
20 Section 23006 *and cider and perry as defined in Section 4.21(e)(5)*
21 *of Title 27 of the Code of Federal Regulations. This paragraph*
22 *does not alter or amend the classification of cider or perry as wine*
23 *for any purpose other than that provided by this section.*

24 (8) “Successor beer manufacturer” means a beer manufacturer
25 that acquires the rights to manufacture, import, or distribute a
26 product.

27 (9) “Successor beer manufacturer’s designee” means one or
28 more distributors designated by the successor beer manufacturer
29 to replace the existing beer wholesaler, for all or part of the existing
30 beer wholesaler’s territory, in the distribution of the product.

31 (b) (1) Any successor beer manufacturer that acquires the rights
32 to manufacture, import, or distribute a product, and who cancels
33 any of the existing beer wholesaler’s rights to distribute the
34 product, shall comply with this section.

35 (2) A successor beer manufacturer’s designee shall comply with
36 this section.

37 (c) (1) The successor beer manufacturer shall notify the existing
38 beer wholesaler of the successor beer manufacturer’s intent to
39 cancel any of the existing beer wholesaler’s rights to distribute the
40 product.

1 (2) The successor beer manufacturer shall mail the notice by
2 certified mail, return receipt requested, to the existing beer
3 wholesaler. The successor beer manufacturer shall include in the
4 notice the name, address, and telephone number of the successor
5 beer manufacturer's designee or designees.

6 (d) The successor beer manufacturer's designee shall negotiate
7 with the existing beer wholesaler to determine the fair market value
8 of the affected distribution rights and, if the existing beer
9 wholesaler and the successor beer manufacturer's designee agree
10 to the fair market value of the affected distribution rights, shall
11 compensate the existing beer wholesaler in the agreed amount.
12 The successor beer manufacturer's designee and the existing beer
13 wholesaler shall negotiate in good faith.

14 (e) The existing beer wholesaler shall continue to distribute the
15 product to at least the same extent that it distributed the product
16 immediately before the successor beer manufacturer acquired rights
17 to the product until receipt of the payment of the compensation
18 agreed to under subdivision (d) is made or is awarded under
19 subdivision (f). The successor beer manufacturer and the existing
20 beer wholesaler shall act in good faith regarding the ongoing supply
21 and distribution of the product.

22 (f) If the successor beer manufacturer's designee and the existing
23 beer wholesaler are unable to mutually agree on the fair market
24 value of the affected distribution rights within 30 days of the
25 existing beer wholesaler's receipt of the successor beer
26 manufacturer's notice pursuant to subdivision (c), the successor
27 beer manufacturer's designee or the existing beer wholesaler shall
28 initiate arbitration against each other to determine the issue of
29 compensation for the fair market value of the affected distribution
30 rights no later than 40 days after the existing beer wholesaler's
31 receipt of the successor beer manufacturer's notice pursuant to
32 subdivision (c). Upon submission to arbitration, the arbitration
33 shall be the means of determining compensation to the existing
34 beer wholesaler for the fair market value of the affected distribution
35 rights, and the fair market value of the affected distribution rights
36 shall be the purpose of the arbitration unless the parties agree
37 otherwise.

38 (1) An arbitration held under this subdivision shall be held in
39 California through a private arbitration services provider with at
40 least three offices in California and a statewide roster of at least

1 70 neutral arbitrators, of which at least 30 have prior experience
2 as a sole arbitrator in franchise, distribution, or related business
3 litigation.

4 (2) The direct costs of the arbitration, including any fees charged
5 by the arbitrator, shall be borne equally by the parties engaged in
6 the arbitration. All other costs shall be paid by the party incurring
7 them.

8 (3) The parties shall mutually agree on an arbitrator. If the
9 parties cannot agree on the arbitrator, the arbitration provider shall
10 select an impartial arbitrator.

11 (4) (A) No later than 20 days after receipt of a notification to
12 arbitrate, the parties shall complete an initial exchange of all
13 nonprivileged documents and other information relevant to the
14 fair market value of the affected distribution rights in their
15 possession and control, including, without limitation, copies of all
16 documents and the names of individuals who may be called to
17 testify at the arbitration hearing. No later than 45 days after receipt
18 of notification to arbitrate, the parties shall complete an exchange
19 of the names of any experts who may be called to testify at the
20 arbitration hearing, together with each expert's report that may be
21 introduced at the arbitration hearing.

22 (B) The arbitrator may modify the requirements of subparagraph
23 (A) on a showing of good cause. The arbitrator shall permit
24 third-party discovery and additional discovery between beer
25 wholesalers, including depositions, which the arbitrator finds
26 appropriate for a period of time not to exceed 90 days after receipt
27 of a notification to arbitrate. No discovery shall be permitted
28 against a beer manufacturer.

29 (5) The decision of the arbitrator shall be final and binding on
30 the parties unless notice of appeal is filed, within 10 business days
31 after service of the arbitration award, with the superior court of
32 the county in which the hearing was held. Upon filing of the appeal,
33 the court shall review the arbitration award for errors of fact or
34 law by determining whether the award is supported by the
35 sufficiency of the evidence presented at the arbitration. This
36 subdivision shall further permit any other appeal or review that is
37 authorized by ~~the California Arbitration Act (Title Title 9~~
38 (commencing with Section 1280) of Part 3 of the Code of Civil
39 ~~Procedure) Procedure, which governs arbitration.~~

1 (6) The arbitrator’s award shall be monetary only and shall not
2 enjoin or compel conduct.

3 (7) The arbitration hearing shall conclude not more than 180
4 days after receipt of a notification to arbitrate, unless the time
5 period is extended by mutual agreement of the parties or by the
6 arbitrator.

7 (8) The arbitrator shall render a decision not later than 15 days
8 after the conclusion of the arbitration unless this time period is
9 extended by mutual agreement of the parties or by the arbitrator.

10 (9) A party who fails to participate in the arbitration hearings
11 waives all rights the party would have had in the arbitration and
12 is considered to have consented to the determination of the
13 arbitrator.

14 (10) The Legislature finds and declares that several unique
15 factors in combination warrant the Legislature authorizing limited
16 mandatory arbitration between an existing beer wholesaler and a
17 successor beer manufacturer’s designee solely to determine the
18 issue of compensation for the fair market value of the affected
19 distribution rights:

20 (A) On the issue of the fair market value of the affected
21 distribution rights, the parties are sophisticated and in an equal
22 position in their knowledge of this legal issue and understand the
23 law and their legal rights, including their jury trial rights.

24 (B) The parties desire a mandatory arbitration provision to
25 resolve the question of compensation for the fair market value of
26 the affected distribution rights if the parties are not able to reach
27 a mutual settlement so that product distribution can be continued
28 in an orderly manner and the determination of compensation can
29 be made in a timely manner.

30 (C) The state’s regulatory interest in maintaining orderly markets
31 for the safe and efficient transportation, distribution, and sale of
32 beer within the state warrants the statutory authorization for
33 mandatory arbitration as provided in this section.

34 (g) If the existing beer wholesaler does not receive payment of
35 the compensation under subdivision (d) or (f) not later than 10
36 business days after the date of the settlement or service of the
37 arbitration award, and if there is no appeal or review filed under
38 paragraph (5) of subdivision (f), the existing beer wholesaler shall
39 remain the distributor of the product in the existing beer
40 wholesaler’s territory to at least the same extent that the existing

1 beer wholesaler distributed the product immediately before the
2 successor beer manufacturer acquired rights to the product, and
3 the existing beer wholesaler is not entitled to the settlement or
4 arbitration award.

5 (h) Nothing in this section shall be construed to limit or prohibit
6 good faith settlements voluntarily entered into by the parties
7 subsequent to the successor beer manufacturer's notice pursuant
8 to subdivision (c).

9 ~~SECTION 1.~~

10 *SEC. 2.* Section 25500.1 of the Business and Professions Code
11 is amended to read:

12 25500.1. (a) The listing of the names, addresses, telephone
13 numbers, ~~email~~ *e-mail* addresses, or Internet Web site addresses,
14 or other electronic media, of two or more unaffiliated on-sale or
15 off-sale retailers selling beer, wine, or distilled spirits produced,
16 distributed, or imported by a nonretail industry member in response
17 to a direct inquiry from a consumer received by telephone, by mail,
18 by electronic inquiry, or in person does not constitute a thing of
19 value or prohibited inducement to the listed on-sale or off-sale
20 retailer, provided all of the following conditions are met:

21 (1) The listing does not also contain the retail price of the
22 product.

23 (2) The listing is the only reference to the on-sale or off-sale
24 retailers in the direct communication.

25 (3) The listing does not refer only to one on-sale retailer or only
26 to on-sale or off-sale retail establishments controlled directly or
27 indirectly by the same retailer.

28 (4) The listing is made by, or produced by, or paid for,
29 exclusively by the nonretail industry member making the response.

30 (b) For the purposes of this section, "nonretail industry member"
31 is defined as a manufacturer, including, but not limited to, a beer
32 manufacturer, winegrower, or distiller of alcoholic beverages or
33 an agent of that entity, or a wholesaler, regardless of any other
34 licenses held directly or indirectly by that person.

35 ~~SEC. 2.~~

36 *SEC. 3.* Section 25502.1 of the Business and Professions Code
37 is repealed.

38 *SEC. 4.* *No reimbursement is required by this act pursuant to*
39 *Section 6 of Article XIII B of the California Constitution because*
40 *the only costs that may be incurred by a local agency or school*

1 *district will be incurred because this act creates a new crime or*
2 *infraction, eliminates a crime or infraction, or changes the penalty*
3 *for a crime or infraction, within the meaning of Section 17556 of*
4 *the Government Code, or changes the definition of a crime within*
5 *the meaning of Section 6 of Article XIII B of the California*
6 *Constitution.*

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