

**ASSEMBLY BILL**

**No. 1128**

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**Introduced by Assembly Member Salas**

February 22, 2013

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An act to amend Section 25658 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1128, as introduced, Salas. Alcoholic beverages: underage drinking.

Existing law provides that every person who purchases any alcoholic beverage for, or furnishes, gives, or gives away any alcoholic beverage to, a person under 21 years of age who thereafter consumes the alcohol and then causes great bodily injury or death to himself, herself, or any other person is guilty of a misdemeanor punishable by a fine of \$1,000 and community service.

This bill would include, in this provision, a person who sells any alcoholic beverage to a person under 21 years of age and would provide that a violation of the prohibition is punishable as a felony. By creating a new crime, this bill would impose a state-mandated local program.

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: yes.

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

1 SECTION 1. Section 25658 of the Business and Professions  
 2 Code is amended to read:  
 3 25658. (a) Except as otherwise provided in subdivision (c),  
 4 every person who sells, furnishes, gives, or causes to be sold,  
 5 furnished, or given away any alcoholic beverage to any person  
 6 under 21 years of age is guilty of a misdemeanor.  
 7 (b) Except as provided in Section 25667, any person under 21  
 8 years of age who purchases any alcoholic beverage, or any person  
 9 under 21 years of age who consumes any alcoholic beverage in  
 10 any on-sale premises, is guilty of a misdemeanor.  
 11 (c) Any person who violates subdivision (a) by *selling to*,  
 12 purchasing any alcoholic beverage for, or furnishing, giving, or  
 13 giving away any alcoholic beverage to, a person under 21 years  
 14 of age, and the person under 21 years of age thereafter consumes  
 15 the alcohol and thereby proximately causes great bodily injury or  
 16 death to himself, herself, or any other person, is guilty of *either* a  
 17 misdemeanor *or a felony*.  
 18 (d) Any on-sale licensee who knowingly permits a person under  
 19 21 years of age to consume any alcoholic beverage in the on-sale  
 20 premises, whether or not the licensee has knowledge that the person  
 21 is under 21 years of age, is guilty of a misdemeanor.  
 22 (e) (1) Except as otherwise provided in paragraph (2) or (3),  
 23 or Section 25667, any person who violates this section shall be  
 24 punished by a fine of two hundred fifty dollars (\$250), no part of  
 25 which shall be suspended, or the person shall be required to  
 26 perform not less than 24 hours or more than 32 hours of community  
 27 service during hours when the person is not employed and is not  
 28 attending school, or a combination of a fine and community service  
 29 as determined by the court. A second or subsequent violation of  
 30 subdivision (b), where prosecution of the previous violation was  
 31 not barred pursuant to Section 25667, shall be punished by a fine  
 32 of not more than five hundred dollars (\$500), or the person shall  
 33 be required to perform not less than 36 hours or more than 48 hours  
 34 of community service during hours when the person is not  
 35 employed and is not attending school, or a combination of a fine  
 36 and community service as determined by the court. It is the intent  
 37 of the Legislature that the community service requirements  
 38 prescribed in this section require service at an alcohol or drug

1 treatment program or facility or at a county coroner's office, if  
2 available, in the area where the violation occurred or where the  
3 person resides.

4 (2) Except as provided in paragraph (3), any person who violates  
5 subdivision (a) by furnishing an alcoholic beverage, or causing an  
6 alcoholic beverage to be furnished, to a minor shall be punished  
7 by a fine of one thousand dollars (\$1,000), no part of which shall  
8 be suspended, and the person shall be required to perform not less  
9 than 24 hours of community service during hours when the person  
10 is not employed and is not attending school.

11 (3) Any person who violates subdivision (c) shall be punished  
12 by *either* imprisonment in a county jail for a minimum term of six  
13 months not to exceed one year, by a fine of one thousand dollars  
14 (\$1,000), or by both imprisonment and fine, *or as described in*  
15 *Section 25618.*

16 (f) Persons under 21 years of age may be used by peace officers  
17 in the enforcement of this section to apprehend licensees, or  
18 employees or agents of licensees, or other persons who sell or  
19 furnish alcoholic beverages to minors. Notwithstanding subdivision  
20 (b), any person under 21 years of age who purchases or attempts  
21 to purchase any alcoholic beverage while under the direction of a  
22 peace officer is immune from prosecution for that purchase or  
23 attempt to purchase an alcoholic beverage. Guidelines with respect  
24 to the use of persons under 21 years of age as decoys shall be  
25 adopted and published by the department in accordance with the  
26 rulemaking portion of the Administrative Procedure Act (Chapter  
27 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
28 Title 2 of the Government Code). Law enforcement-initiated minor  
29 decoy programs in operation prior to the effective date of regulatory  
30 guidelines adopted by the department shall be authorized as long  
31 as the minor decoy displays to the seller of alcoholic beverages  
32 the appearance of a person under 21 years of age. This subdivision  
33 shall not be construed to prevent the department from taking  
34 disciplinary action against a licensee who sells alcoholic beverages  
35 to a minor decoy prior to the department's final adoption of  
36 regulatory guidelines. After the completion of every minor decoy  
37 program performed under this subdivision, the law enforcement  
38 agency using the decoy shall notify licensees within 72 hours of  
39 the results of the program. When the use of a minor decoy results  
40 in the issuance of a citation, the notification required shall be given

1 to licensees and the department within 72 hours of the issuance of  
2 the citation. A law enforcement agency may comply with this  
3 requirement by leaving a written notice at the licensed premises  
4 addressed to the licensee, or by mailing a notice addressed to the  
5 licensee.

6 (g) The penalties imposed by this section do not preclude  
7 prosecution or the imposition of penalties under any other provision  
8 of law, including, but not limited to, Section 272 of the Penal Code  
9 and Section 13202.5 of the Vehicle Code.

10 SEC. 2. No reimbursement is required by this act pursuant to  
11 Section 6 of Article XIII B of the California Constitution because  
12 the only costs that may be incurred by a local agency or school  
13 district will be incurred because this act creates a new crime or  
14 infraction, eliminates a crime or infraction, or changes the penalty  
15 for a crime or infraction, within the meaning of Section 17556 of  
16 the Government Code, or changes the definition of a crime within  
17 the meaning of Section 6 of Article XIII B of the California  
18 Constitution.