

AMENDED IN SENATE JULY 9, 2013  
AMENDED IN SENATE JUNE 26, 2013  
AMENDED IN ASSEMBLY APRIL 18, 2013  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**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 amended, Salas. Alcoholic beverages: underage drinking.

Existing law provides that every person who sells, furnishes, gives, or causes to be sold, furnished, or given away an alcoholic beverage to a person under 21 years of age, or 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.

This bill would require that these acts be performed knowingly for the penalties to apply. The bill would include in the provision regarding great bodily injury or death, described above, 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 also punishable as a felony *where a person knew that a person to whom an alcoholic beverage was provided was under 21 years of age*. This bill would provide for an exception from felony prosecution for a licensee or employee, agent, or representative of a licensee, unless the person had actual prior

knowledge that the person to whom the alcoholic beverage was ~~sold~~ *provided* was under 21 years of age. 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 knowingly sells, furnishes, gives, or causes to  
5 be sold, furnished, or given away any alcoholic beverage to any  
6 person 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) (1) Any person who violates subdivision (a) by knowingly  
12 selling to, purchasing any alcoholic beverage for, or furnishing,  
13 giving, or giving away any alcoholic beverage to, a person under  
14 21 years of age, and the person under 21 years of age thereafter  
15 consumes the alcohol and thereby proximately causes great bodily  
16 injury or death to himself, herself, or any other person, is guilty  
17 of either a misdemeanor or, *if the person knew that the person was*  
18 *under 21 years of age*, a felony.  
19 (2) A licensee or employee, agent, or representative of a licensee  
20 shall not be subject to felony prosecution under this subdivision  
21 for the sale, furnishing, giving, or giving away of any alcoholic  
22 beverage to a person under 21 years of age unless the licensee or  
23 employee, agent, or representative of the licensee had actual prior  
24 knowledge that the person to whom the alcoholic beverage was  
25 sold, furnished, given, or given away was under 21 years of age.  
26 (d) Any on-sale licensee who knowingly permits a person under  
27 21 years of age to consume any alcoholic beverage in the on-sale

1 premises, whether or not the licensee has knowledge that the person  
2 is under 21 years of age, is guilty of a misdemeanor.

3 (e) (1) Except as otherwise provided in paragraph (2) or (3),  
4 or Section 25667, any person who violates this section shall be  
5 punished by a fine of two hundred fifty dollars (\$250), no part of  
6 which shall be suspended, or the person shall be required to  
7 perform not less than 24 hours or more than 32 hours of community  
8 service during hours when the person is not employed and is not  
9 attending school, or a combination of a fine and community service  
10 as determined by the court. A second or subsequent violation of  
11 subdivision (b), where prosecution of the previous violation was  
12 not barred pursuant to Section 25667, shall be punished by a fine  
13 of not more than five hundred dollars (\$500), or the person shall  
14 be required to perform not less than 36 hours or more than 48 hours  
15 of community service during hours when the person is not  
16 employed and is not attending school, or a combination of a fine  
17 and community service as determined by the court. It is the intent  
18 of the Legislature that the community service requirements  
19 prescribed in this section require service at an alcohol or drug  
20 treatment program or facility or at a county coroner's office, if  
21 available, in the area where the violation occurred or where the  
22 person resides.

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

30 (3) Any person who violates subdivision (c) shall be punished  
31 by either imprisonment in a county jail for a minimum term of six  
32 months not to exceed one year, by a fine of one thousand dollars  
33 (\$1,000), ~~or by imprisonment pursuant to subdivision (h) of Section~~  
34 ~~1170 of the Penal Code for 16 months, or 2 or 3 years, or by both~~  
35 ~~imprisonment and fine, or as described in Section 25618 fine.~~

36 (f) Persons under 21 years of age may be used by peace officers  
37 in the enforcement of this section to apprehend licensees, or  
38 employees or agents of licensees, or other persons who sell or  
39 furnish alcoholic beverages to minors. Notwithstanding subdivision  
40 (b), any person under 21 years of age who purchases or attempts

1 to purchase any alcoholic beverage while under the direction of a  
 2 peace officer is immune from prosecution for that purchase or  
 3 attempt to purchase an alcoholic beverage. Guidelines with respect  
 4 to the use of persons under 21 years of age as decoys shall be  
 5 adopted and published by the department in accordance with the  
 6 rulemaking portion of the Administrative Procedure Act (Chapter  
 7 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
 8 Title 2 of the Government Code). Law enforcement-initiated minor  
 9 decoy programs in operation prior to the effective date of regulatory  
 10 guidelines adopted by the department shall be authorized as long  
 11 as the minor decoy displays to the seller of alcoholic beverages  
 12 the appearance of a person under 21 years of age. This subdivision  
 13 shall not be construed to prevent the department from taking  
 14 disciplinary action against a licensee who sells alcoholic beverages  
 15 to a minor decoy prior to the department’s final adoption of  
 16 regulatory guidelines. After the completion of every minor decoy  
 17 program performed under this subdivision, the law enforcement  
 18 agency using the decoy shall notify licensees within 72 hours of  
 19 the results of the program. When the use of a minor decoy results  
 20 in the issuance of a citation, the notification required shall be given  
 21 to licensees and the department within 72 hours of the issuance of  
 22 the citation. A law enforcement agency may comply with this  
 23 requirement by leaving a written notice at the licensed premises  
 24 addressed to the licensee, or by mailing a notice addressed to the  
 25 licensee.

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

30 SEC. 2. No reimbursement is required by this act pursuant to  
 31 Section 6 of Article XIII B of the California Constitution because  
 32 the only costs that may be incurred by a local agency or school  
 33 district will be incurred because this act creates a new crime or  
 34 infraction, eliminates a crime or infraction, or changes the penalty  
 35 for a crime or infraction, within the meaning of Section 17556 of  
 36 the Government Code, or changes the definition of a crime within  
 37 the meaning of Section 6 of Article XIII B of the California  
 38 Constitution.

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