

AMENDED IN ASSEMBLY APRIL 28, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1320

Introduced by Assembly Member Maienschein

February 27, 2015

An act to amend Section 25503.6 of the Business and Professions Code, relating to alcoholic beverages. An act to add Section 25503.36 to the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1320, as amended, Maienschein. ~~Alcoholic beverages: tied-house restrictions: fairgrounds.~~ *Alcoholic beverages: tied-house restrictions: 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. Existing law expressly authorizes a beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of an importer's general license, distilled spirits manufacturer, holder of a distilled spirits rectifier's general license, or a distilled spirits manufacturer's agent to sponsor events promoted by or purchase advertising space and time from, or on behalf of, a live entertainment marketing company that is a wholly owned subsidiary of a live entertainment company that has its principal place of business in the County of Los Angeles, as provided.

This bill would expressly authorize a beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of an importer's

general license, as described, distilled spirits manufacturer, holder of a distilled spirits rectifier's general license, or a distilled spirits manufacturer's agent to sponsor events promoted by or purchase advertising space and time from, or on behalf of, a live entertainment marketing company that conducts entertainment events solely at the San Diego County Fairgrounds, under specified conditions. The bill would also make a beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of an importer's general license, distilled spirits manufacturer, holder of a distilled spirits rectifier's general license, or a distilled spirits manufacturer's agent who, through coercion or other illegal means, induces the holder of a wholesaler's license to fulfill those contractual obligations entered into pursuant to these provisions guilty of a misdemeanor. The 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, holder of an importer's general license, distilled spirits manufacturer, holder of a distilled spirits rectifier's general license, or a distilled spirits manufacturer's agent to purchase advertising time or space pursuant to these provisions guilty of a misdemeanor. The bill would make a related statement of findings.

By creating new crimes this bill would impose a state-mandated local program.

This bill would make legislative findings and declarations as to the necessity of a special statute for the County of San Diego.

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.

~~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. Existing law expressly authorizes a beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of an importer's general license, distilled spirits manufacturer, holder of a distilled spirits rectifier's general license, or a distilled spirits manufacturer's agent to sponsor events promoted by or purchase advertising space and time from, or on behalf of, specified~~

entities, including certain parks, entertainment complexes, and outdoor stadiums, as provided:

~~This bill would expressly authorize a beer manufacturer, holder of a winegrower’s license, winegrower’s agent, holder of an importer’s general license, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer’s agent to sponsor events promoted by or own, sponsor, conduct, or purchase advertising space and time from, or on behalf of, an on-sale retail licensee that is the owner, manager, agent of the owner, assignee of the owner’s advertising rights, or major tenant of a state- or county-owned fairground, under specified conditions. The bill would also make a beer manufacturer, holder of a winegrower’s license, winegrower’s agent, holder of an importer’s general license, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer’s agent who, through coercion or other illegal means, induces the holder of a wholesaler’s license to fulfill those contractual obligations entered into pursuant to these provisions guilty of a misdemeanor. The 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, holder of an importer’s general license, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer’s agent to purchase advertising time or space pursuant to these provisions guilty of a misdemeanor.~~

~~By creating new crimes, 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 25503.36 is added to the Business and*
- 2 *Professions Code, to read:*
- 3 *25503.36. (a) Notwithstanding any other law, a beer*
- 4 *manufacturer, holder of a winegrower’s license, winegrower’s*

1 agent, holder of an importer's general license that does not also
2 hold a wholesale or retail license as an additional license, distilled
3 spirits manufacturer, holder of a distilled spirits rectifier's general
4 license, or a distilled spirits manufacturer's agent may sponsor
5 events promoted by, and may purchase advertising space and time
6 from, or on behalf of, a live entertainment marketing company
7 subject to all of the following conditions:

8 (1) The live entertainment marketing company operates and
9 promotes live artistic, musical, sports, or cultural entertainment
10 events only.

11 (2) All of the live artistic, musical, sports, or cultural
12 entertainment events are conducted at the San Diego County
13 Fairgrounds, located in the City of Del Mar in the County of San
14 Diego, and the events will typically occur over a period of three
15 or more consecutive days during which approximately 100 acts
16 will perform before approximately 20,000 or more patrons. The
17 live entertainment marketing company shall not conduct more than
18 three of these types of events within a calendar year.

19 (3) The live entertainment marketing company is a Delaware
20 limited liability company that is under common ownership,
21 management, or control by a private equity firm that may also
22 have common ownership, management, or control of a licensed
23 California winery, provided the winery represents not more than
24 25 percent of the assets under common ownership, management,
25 or control by the private equity firm or its subsidiaries, and the
26 live entertainment marketing company exercises no control over
27 the operations of the winery.

28 (4) Any on-sale licensee operating at a venue where live artistic,
29 musical, sports, or cultural entertainment events are performed
30 pursuant to a sponsorship described in this section or where
31 advertising is purchased as described in this section shall serve
32 other brands of beer, distilled spirits, and wine distributed by a
33 competing wholesaler in addition to any brand manufactured or
34 distributed by the owning, sponsoring, or advertising beer
35 manufacturer, holder of a winegrower's license, winegrower's
36 agent, holder of an importer's general license, distilled spirits
37 manufacturer, holder of a distilled spirits rectifier's general
38 license, or a distilled spirits manufacturer's agent.

39 (5) An agreement for the sponsorship of, or for the purchase of
40 advertising space and time during, a live artistic, musical, sports,

1 *or cultural entertainment event shall not be conditioned directly*
2 *or indirectly, in any way, on the purchase, sale, or distribution of*
3 *any alcoholic beverage manufactured or distributed by the owning,*
4 *advertising, or sponsoring beer manufacturer, holder of a*
5 *winegrower's license, winegrower's agent, holder of an importer's*
6 *general license, distilled spirits manufacturer, holder of a distilled*
7 *spirits rectifier's general license, or a distilled spirits*
8 *manufacturer's agent by the live entertainment company described*
9 *in this section.*

10 *(b) Any sponsorship of events or purchase of advertising space*
11 *or time conducted pursuant to subdivision (a) shall be conducted*
12 *pursuant to a written contract entered into by the beer*
13 *manufacturer, holder of a winegrower's license, winegrower's*
14 *agent, holder of an importer's general license, distilled spirits*
15 *manufacturer, holder of a distilled spirits rectifier's general*
16 *license, or a distilled spirits manufacturer's agent and the live*
17 *entertainment marketing company.*

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

32 *(d) Any on-sale retail licensee who, directly or indirectly, solicits*
33 *or coerces a holder of a wholesaler's license to solicit a beer*
34 *manufacturer, holder of a winegrower's license, winegrower's*
35 *agent, holder of an importer's general license, distilled spirits*
36 *manufacturer, holder of a distilled spirits rectifier's general*
37 *license, or a distilled spirits manufacturer's agent to purchase*
38 *advertising time or space pursuant to subdivision (a) shall be guilty*
39 *of a misdemeanor and shall be punished by imprisonment in the*
40 *county jail not exceeding six months, or by a fine in an amount*

1 equal to the entire value of the advertising space or time involved
2 in the contract, whichever is greater, plus ten thousand dollars
3 (\$10,000), or by both imprisonment and fine. The person shall
4 also be subject to license suspension or revocation pursuant to
5 Section 24200.

6 (e) For purposes of this section, “beer manufacturer” includes
7 a holder of a beer manufacturer’s license, a holder of an
8 out-of-state beer manufacturer’s certificate, or a holder of a beer
9 and wine importer’s general license.

10 (f) Nothing in this section shall authorize the purchasing of
11 advertising space or time directly from, or on behalf of, any on-sale
12 licensee except as expressly authorized by this section or any other
13 provision of this division.

14 (g) Nothing in this section shall authorize a beer manufacturer,
15 holder of a winegrower’s license, winegrower’s agent, holder of
16 an importer’s general license, distilled spirits manufacturer, holder
17 of a distilled spirits rectifier’s general license, or a distilled spirits
18 manufacturer’s agent to furnish, give, or lend anything of value
19 to an on-sale retail licensee described in subdivision (a) except as
20 expressly authorized by this section or any other provision of this
21 division.

22 (h) The Legislature finds that it is necessary and proper to
23 require a separation between manufacturing interests, wholesale
24 interests, and retail interests in the production and distribution of
25 alcoholic beverages in order to prevent suppliers from dominating
26 local markets through vertical integration and to prevent excessive
27 sales of alcoholic beverages produced by overly aggressive
28 marketing techniques. The Legislature further finds that the
29 exception established by this section to the general prohibition
30 against tied interests must be limited to its expressed terms so as
31 not to undermine the general prohibition, and intends that this
32 section be construed accordingly.

33 SEC. 2. The Legislature finds and declares that a special law
34 is necessary and that a general law cannot be made applicable
35 within the meaning of Section 16 of Article IV of the California
36 Constitution because of the unique conditions located in the County
37 of San Diego.

38 SEC. 3. 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.*

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

9 ~~25503.6. (a) Notwithstanding any other provision of this~~
10 ~~chapter, a beer manufacturer, the holder of a winegrower's license,~~
11 ~~a distilled spirits rectifier, a distilled spirits manufacturer, or~~
12 ~~distilled spirits manufacturer's agent may purchase advertising~~
13 ~~space and time from, or on behalf of, an on-sale retail licensee~~
14 ~~subject to all of the following conditions:~~

15 ~~(1) The on-sale licensee is the owner, manager, agent of the~~
16 ~~owner, assignee of the owner's advertising rights, or the major~~
17 ~~tenant of the owner of any of the following:~~

18 ~~(A) An outdoor stadium or a fully enclosed arena with a fixed~~
19 ~~seating capacity in excess of 10,000 seats located in Sacramento~~
20 ~~County or Alameda County.~~

21 ~~(B) A fully enclosed arena with a fixed seating capacity in~~
22 ~~excess of 18,000 seats located in Orange County or Los Angeles~~
23 ~~County.~~

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

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

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

32 ~~(F) An outdoor stadium and a fully enclosed arena with fixed~~
33 ~~seating capacities in excess of 10,000 seats located in Fresno~~
34 ~~County.~~

35 ~~(G) An athletic and entertainment complex of not less than 50~~
36 ~~acres that includes within its boundaries an outdoor stadium with~~
37 ~~a fixed seating capacity of at least 8,000 seats and a second outdoor~~
38 ~~stadium with a fixed seating capacity of at least 3,500 seats located~~
39 ~~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) (i) An outdoor stadium with a fixed seating capacity of at~~
26 ~~least 68,000 seats located in the City of Santa Clara.~~

27 ~~(O) A state- or county-owned fairground.~~

28 ~~(ii) A beer manufacturer, the holder of a winegrower's license,~~
29 ~~a distilled spirits rectifier, a distilled spirits manufacturer, or~~
30 ~~distilled spirits manufacturer's agent may purchase advertising~~
31 ~~space and time from, or on behalf of, a major tenant of an outdoor~~
32 ~~stadium described in clause (i), provided the major tenant does not~~
33 ~~hold a retail license, and the advertising may include the placement~~
34 ~~of advertising in an on-sale licensed premises operated at the~~
35 ~~outdoor stadium.~~

36 ~~(2) The outdoor stadium or fully enclosed arena described in~~
37 ~~paragraph (1) is not owned by a community college district.~~

38 ~~(3) The advertising space or time is purchased only in connection~~
39 ~~with the events to be held on the premises of the exposition park,~~
40 ~~stadium, or arena owned by the on-sale licensee. With respect to~~

1 an exposition park as described in subparagraph (J) of paragraph
2 (1) that includes at least one hotel, the advertising space or time
3 shall not be displayed on or in any hotel located in the exposition
4 park, or purchased in connection with the operation of any hotel
5 located in the exposition park.

6 ~~(4) The on-sale licensee serves other brands of beer distributed
7 by a competing beer wholesaler in addition to the brand
8 manufactured or marketed by the beer manufacturer, other brands
9 of wine distributed by a competing wine wholesaler in addition to
10 the brand produced by the winegrower, and other brands of distilled
11 spirits distributed by a competing distilled spirits wholesaler in
12 addition to the brand manufactured or marketed by the distilled
13 spirits rectifier, the distilled spirits manufacturer or the distilled
14 spirits manufacturer's agent that purchased the advertising space
15 or time.~~

16 ~~(b) Any purchase of advertising space or time pursuant to
17 subdivision (a) shall be conducted pursuant to a written contract
18 entered into by the beer manufacturer, the holder of the
19 winegrower's license, the distilled spirits rectifier, the distilled
20 spirits manufacturer, or the distilled spirits manufacturer's agent
21 and the on-sale licensee, or with respect to clause (ii) of
22 subparagraph (N) of paragraph (1) of subdivision (a), the major
23 tenant of the outdoor stadium.~~

24 ~~(c) Any beer manufacturer or holder of a winegrower's license,
25 any distilled spirits rectifier, any distilled spirits manufacturer, or
26 any distilled spirits manufacturer's agent who, through coercion
27 or other illegal means, induces, directly or indirectly, a holder of
28 a wholesaler's license to fulfill all or part of those contractual
29 obligations entered into pursuant to subdivision (a) or (b) shall be
30 guilty of a misdemeanor and shall be punished by imprisonment
31 in the county jail not exceeding six months, or by a fine in an
32 amount equal to the entire value of the advertising space, time, or
33 costs involved in the contract, whichever is greater, plus ten
34 thousand dollars (\$10,000), or by both imprisonment and fine. The
35 person shall also be subject to license revocation pursuant to
36 Section 24200.~~

37 ~~(d) Any on-sale retail licensee, as described in subdivision (a),
38 who, directly or indirectly, solicits or coerces a holder of a
39 wholesaler's license to solicit a beer manufacturer, a holder of a
40 winegrower's license, a distilled spirits rectifier, a distilled spirits~~

1 manufacturer, or a distilled spirits manufacturer's agent to purchase
2 advertising space or time pursuant to subdivision (a) or (b) shall
3 be guilty of a misdemeanor and shall be punished by imprisonment
4 in the county jail not exceeding six months, or by a fine in an
5 amount equal to the entire value of the advertising space or time
6 involved in the contract, whichever is greater, plus ten thousand
7 dollars (\$10,000), or by both imprisonment and fine. The person
8 shall also be subject to license revocation pursuant to Section
9 24200.

10 (e) For the purposes of this section, "beer manufacturer" includes
11 any holder of a beer manufacturer's license, any holder of an
12 out-of-state beer manufacturer's certificate, or any holder of a beer
13 and wine importer's general license.

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