

AMENDED IN SENATE AUGUST 18, 2015
AMENDED IN ASSEMBLY MAY 13, 2015
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 add Section 25503.36 to the Business and Professions Code, relating to alcoholic ~~beverages~~: *beverages, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1320, as amended, Maienschein. 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 *holder of a beer manufacturer license, holder of an out-of-state beer manufacturer's certificate, holder of a winegrower's license, winegrower's agent, holder of an importer's general license, as described, a rectifier license, distilled spirits manufacturer, holder of a distilled spirits rectifier's general license, or a distilled spirits manufacturer's agent agent, or holder of a beer and wine importer's general license or distilled spirits importer's general license, as described*, 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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. 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 provision of this
4 division, a *holder of a beer manufacturer license, holder of an*
5 *out-of-state beer manufacturer's certificate, holder of a*
6 *winegrower's license, winegrower's agent, holder of an importer's*
7 ~~general license that does not also hold a wholesale or retail license~~
8 ~~as an additional license, a rectifier license, distilled spirits~~
9 ~~manufacturer, holder of a distilled spirits rectifier's general license,~~
10 ~~or a distilled spirits manufacturer's agent agent, or holder of a~~
11 *beer and wine importer's general license or distilled spirits*
12 *importer's general license that, unless it holds one of the other*
13 *authorized licenses specified in this section, does not also hold a*
14 *wholesale or retail license as an additional license, may sponsor*
15 *events promoted by, and may purchase advertising space and time*
16 *from, or on behalf of, a live entertainment marketing company*
17 *subject to all of the following conditions:*

18 (1) The live entertainment marketing company operates and
19 promotes live artistic, musical, sports, or cultural entertainment
20 events only.

21 (2) All of the live artistic, musical, sports, or cultural
22 entertainment events are conducted at the San Diego County
23 Fairgrounds, located in the City of Del Mar in the County of San
24 Diego, and the events will typically occur over a period of no more
25 than four consecutive days during which approximately 100 acts
26 will perform before approximately 20,000 or more patrons. The
27 live entertainment marketing company shall not conduct more than
28 three of these types of events within a calendar year.

29 (3) The live entertainment marketing company is a Delaware
30 limited liability company that is under common ownership,
31 management, or control by a private equity firm that may also have
32 common ownership, management, or control of a licensed
33 California winery, provided the winery represents not more than
34 25 percent of the assets under common ownership, management,
35 or control by the private equity firm or its subsidiaries, and the
36 live entertainment marketing company exercises no control over
37 the operations of the winery.

1 (4) Any on-sale licensee operating at a venue where live artistic,
2 musical, sports, or cultural entertainment events are performed
3 pursuant to a sponsorship described in this section or where
4 advertising is purchased as described in this section shall serve
5 other brands of beer, distilled spirits, and wine distributed by a
6 competing wholesaler in addition to any brand manufactured or
7 distributed by the owning, sponsoring, or advertising beer
8 manufacturer, holder of a winegrower's license, winegrower's
9 agent, holder of an importer's general license, distilled spirits
10 manufacturer, holder of a distilled spirits rectifier's general license,
11 or a distilled spirits manufacturer's agent.

12 (5) An agreement for the sponsorship of, or for the purchase of
13 advertising space and time during, a live artistic, musical, sports,
14 or cultural entertainment event shall not be conditioned directly
15 or indirectly, in any way, on the purchase, sale, or distribution of
16 any alcoholic beverage manufactured or distributed by the owning,
17 advertising, or sponsoring beer manufacturer, holder of a
18 winegrower's license, winegrower's agent, holder of an importer's
19 general license, distilled spirits manufacturer, holder of a distilled
20 spirits rectifier's general license, or a distilled spirits
21 manufacturer's agent by the live entertainment company described
22 in this section.

23 (b) Any sponsorship of events or purchase of advertising space
24 or time conducted pursuant to subdivision (a) shall be conducted
25 pursuant to a written contract entered into by the beer manufacturer,
26 holder of a winegrower's license, winegrower's agent, holder of
27 an importer's general license, distilled spirits manufacturer, holder
28 of a distilled spirits rectifier's general license, or a distilled spirits
29 manufacturer's agent and the live entertainment marketing
30 company.

31 (c) Any beer manufacturer, holder of a winegrower's license,
32 winegrower's agent, holder of an importer's general license,
33 distilled spirits manufacturer, holder of a distilled spirits rectifier's
34 general license, or a distilled spirits manufacturer's agent who,
35 through coercion or other illegal means, induces, directly or
36 indirectly, a holder of a wholesaler's license to fulfill those
37 contractual obligations entered into pursuant to subdivision (a)
38 shall be guilty of a misdemeanor and shall be punished by
39 imprisonment in the county jail not exceeding six months, or by
40 a fine in an amount equal to the entire value of the advertising

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

5 (d) Any on-sale retail licensee who, directly or indirectly, solicits
6 or coerces a holder of a wholesaler's license to solicit a beer
7 manufacturer, holder of a winegrower's license, winegrower's
8 agent, holder of an importer's general license, distilled spirits
9 manufacturer, holder of a distilled spirits rectifier's general license,
10 or a distilled spirits manufacturer's agent to purchase advertising
11 time or space pursuant to subdivision (a) shall be guilty of a
12 misdemeanor and shall be punished by imprisonment in the county
13 jail not exceeding six months, or by a fine in an amount equal to
14 the entire value of the advertising space or time involved in the
15 contract, whichever is greater, plus ten thousand dollars (\$10,000),
16 or by both imprisonment and fine. The person shall also be subject
17 to license suspension or revocation pursuant to Section 24200.

18 ~~(e) For purposes of this section, "beer manufacturer" includes~~
19 ~~a holder of a beer manufacturer's license, a holder of an out-of-state~~
20 ~~beer manufacturer's certificate, or a holder of a beer and wine~~
21 ~~importer's general license.~~

22 ~~(f)~~

23 (e) Nothing in this section shall authorize the purchasing of
24 advertising space or time directly from, or on behalf of, any on-sale
25 licensee except as expressly authorized by this section or any other
26 provision of this division.

27 ~~(g)~~

28 (f) Nothing in this section shall authorize a beer manufacturer,
29 holder of a winegrower's license, winegrower's agent, holder of
30 an importer's general license, distilled spirits manufacturer, holder
31 of a distilled spirits rectifier's general license, or a distilled spirits
32 manufacturer's agent to furnish, give, or lend anything of value to
33 an on-sale retail licensee described in subdivision (a) except as
34 expressly authorized by this section or any other provision of this
35 division.

36 ~~(h)~~

37 (g) The Legislature finds that it is necessary and proper to
38 require a separation between manufacturing interests, wholesale
39 interests, and retail interests in the production and distribution of
40 alcoholic beverages in order to prevent suppliers from dominating

1 local markets through vertical integration and to prevent excessive
2 sales of alcoholic beverages produced by overly aggressive
3 marketing techniques. The Legislature further finds that the
4 exception established by this section to the general prohibition
5 against tied interests must be limited to its expressed terms so as
6 not to undermine the general prohibition, and intends that this
7 section be construed accordingly.

8 SEC. 2. The Legislature finds and declares that a special law
9 is necessary and that a general law cannot be made applicable
10 within the meaning of Section 16 of Article IV of the California
11 Constitution because of the unique conditions located in the County
12 of San Diego.

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

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

26 *In order to allow for the sponsoring of events within the County*
27 *of San Diego as soon as possible, it is necessary that this act take*
28 *effect immediately.*