

AMENDED IN SENATE SEPTEMBER 4, 2015

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, 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 a rectifier license, distilled spirits manufacturer, holder of a distilled spirits rectifier's general license, distilled spirits manufacturer's agent, or holder of a beer and wine importer's general license or distilled spirits importer's general license, as described, an authorized licensee, as defined,~~ 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 in connection with events organized and conducted by the live entertainment marketing company~~ 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~~ *an authorized licensee* 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~~ *an authorized licensee* 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: $\frac{2}{3}$. 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 a rectifier~~
7 ~~license, distilled spirits manufacturer, holder of a distilled spirits~~
8 ~~rectifier's general license, distilled spirits manufacturer's agent,~~
9 ~~or holder of a beer and wine importer's general license or distilled~~
10 ~~spirits importer's general license that, unless it holds one of the~~
11 ~~other authorized licenses specified in this section, does not also~~
12 ~~hold a wholesale or retail license as an additional license, an~~
13 *authorized licensee* may sponsor events promoted by, and may
14 purchase advertising space and time from, or on behalf of, a live
15 entertainment marketing company *in connection with events*
16 *organized and conducted by the live entertainment marketing*
17 *company on the premises of a permanent retail licensee located*
18 *at the San Diego County Fairgrounds, located in the City of Del*
19 *Mar in the County of San Diego*, subject to all of the following
20 conditions:
21 (1) The live entertainment marketing company operates and
22 promotes live artistic, musical, sports, or cultural entertainment
23 events only.
24 (2) ~~All of the live artistic, musical, sports, or cultural~~
25 ~~entertainment events are conducted at the San Diego County~~
26 ~~Fairgrounds, located in the City of Del Mar in the County of San~~
27 ~~Diego, and the~~ *The* events will typically occur *take place* over a
28 period of no more than four consecutive days during which
29 approximately 100 acts will perform before approximately 20,000
30 or more patrons. ~~The live entertainment marketing company shall~~
31 ~~not conduct more than three of these types of events within a~~
32 ~~calendar year.~~
33 (3) The live entertainment marketing company is a Delaware
34 limited liability company that is under common ownership,
35 management, or control by a private equity firm that may also have

1 common ownership, management, or control of a licensed
 2 California winery, provided the winery represents not more than
 3 25 percent of the assets under common ownership, management,
 4 or control by the private equity firm or its subsidiaries, and the
 5 live entertainment marketing company exercises no control over
 6 the operations of the winery. *Any authorized licensee sponsoring*
 7 *an event or purchasing advertising space or time, pursuant to this*
 8 *section, shall obtain written verification of compliance with this*
 9 *subdivision prior to such sponsorship or the purchase of*
 10 *advertising space or time.*

11 (4) Any on-sale licensee operating at a venue where live artistic,
 12 musical, sports, or cultural entertainment events are performed
 13 pursuant to a sponsorship described in this section or where
 14 advertising is purchased as described in this section *the San Diego*
 15 *County Fairgrounds* shall serve other brands of beer, distilled
 16 spirits, and wine distributed by a competing wholesaler or
 17 manufacturer in addition to any brand manufactured or distributed
 18 by the owning, sponsoring, or advertising beer manufacturer, holder
 19 of a winegrower’s license, winegrower’s agent, holder of an
 20 importer’s general license, distilled spirits manufacturer, holder
 21 of a distilled spirits rectifier’s general license, or a distilled spirits
 22 manufacturer’s agent. *manufactured, distributed, or owned by the*
 23 *authorized licensee sponsoring an event or purchasing advertising*
 24 *space or time pursuant to this section.*

25 (5) An agreement for the sponsorship of, or for the purchase of
 26 advertising space and time during, a live artistic, musical, sports,
 27 or cultural entertainment event *pursuant to this section* shall not
 28 be conditioned directly or indirectly, in any way, on the purchase,
 29 sale, or distribution of any alcoholic beverage manufactured or
 30 distributed by the owning, advertising, or sponsoring beer
 31 manufacturer, holder of a winegrower’s license, winegrower’s
 32 agent, holder of an importer’s general license, distilled spirits
 33 manufacturer, holder of a distilled spirits rectifier’s general license,
 34 or a distilled spirits manufacturer’s agent by the live entertainment
 35 company described in this section. *any authorized licensee*
 36 *sponsoring or purchasing advertising space or time pursuant to*
 37 *this section.*

38 (b) Any sponsorship of events or purchase of advertising space
 39 or time conducted pursuant to subdivision (a) shall be conducted
 40 pursuant to a written contract entered into by the beer manufacturer,

1 holder of a winegrower's license, winegrower's agent, holder of
2 an importer's general license, distilled spirits manufacturer, holder
3 of a distilled spirits rectifier's general license, or a distilled spirits
4 manufacturer's agent *authorized licensee* and the live entertainment
5 marketing company.

6 (c) Any ~~beer manufacturer, holder of a winegrower's license,~~
7 ~~winegrower's agent, holder of an importer's general license,~~
8 ~~distilled spirits manufacturer, holder of a distilled spirits rectifier's~~
9 ~~general license, or a distilled spirits manufacturer's agent~~
10 ~~*authorized licensee*~~ who, through coercion or other illegal means,
11 induces, directly or indirectly, a holder of a wholesaler's license
12 to fulfill those contractual obligations entered into pursuant to
13 subdivision (a) shall be guilty of a misdemeanor and shall be
14 punished by imprisonment in the county jail not exceeding six
15 months, or by a fine in an amount equal to the entire value of the
16 advertising space or time involved in the contract, whichever is
17 greater, plus ten thousand dollars (\$10,000), or by both
18 imprisonment and fine. The person shall also be subject to license
19 suspension or revocation pursuant to Section 24200.

20 (d) Any on-sale retail licensee who, directly or indirectly, solicits
21 or coerces a holder of a wholesaler's license to solicit a ~~beer~~
22 ~~manufacturer, holder of a winegrower's license, winegrower's~~
23 ~~agent, holder of an importer's general license, distilled spirits~~
24 ~~manufacturer, holder of a distilled spirits rectifier's general license,~~
25 ~~or a distilled spirits manufacturer's agent~~ *an authorized licensee*
26 to purchase advertising time or space pursuant to subdivision (a)
27 shall be guilty of a misdemeanor and shall be punished by
28 imprisonment in the county jail not exceeding six months, or by
29 a fine in an amount equal to the entire value of the advertising
30 space or time involved in the contract, whichever is greater, plus
31 ten thousand dollars (\$10,000), or by both imprisonment and fine.
32 The person shall also be subject to license suspension or revocation
33 pursuant to Section 24200.

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

38 (f) Nothing in this section shall authorize a ~~beer manufacturer,~~
39 ~~holder of a winegrower's license, winegrower's agent, holder of~~
40 ~~an importer's general license, distilled spirits manufacturer, holder~~

1 of a distilled spirits rectifier's general license, or a distilled spirits
 2 manufacturer's agent *an authorized licensee* to furnish, give, or
 3 lend anything of value to an on-sale retail licensee described in
 4 subdivision (a) except as expressly authorized by this section or
 5 any other provision of this division.

6 (g) *For purposes of this section, the following definitions shall*
 7 *apply:*

8 (1) *"Authorized licensee" means the following licensees: beer*
 9 *manufacturer, out-of-state beer manufacturer's certificate,*
 10 *winegrower, winegrower's agent, importer, rectifier, distilled*
 11 *spirits manufacturer, distilled spirits rectifier general, distilled*
 12 *spirits manufacturer's agent.*

13 (2) *Except for a licensee that holds only a beer and wine*
 14 *importer general license or a distilled spirits importer general*
 15 *license, "importer" does not include the holder of any importer*
 16 *license that does not also hold at least one other license specified*
 17 *as an authorized licensee.*

18 ~~(g)~~

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

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

35 SEC. 3. No reimbursement is required by this act pursuant to
 36 Section 6 of Article XIII B of the California Constitution because
 37 the only costs that may be incurred by a local agency or school
 38 district will be incurred because this act creates a new crime or
 39 infraction, eliminates a crime or infraction, or changes the penalty
 40 for a crime or infraction, within the meaning of Section 17556 of

1 the Government Code, or changes the definition of a crime within
2 the meaning of Section 6 of Article XIII B of the California
3 Constitution.

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

8 In order to allow for the sponsoring of events within the County
9 of San Diego as soon as possible, it is necessary that this act take
10 effect immediately.

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