

Assembly Bill No. 1320

Passed the Assembly September 10, 2015

Chief Clerk of the Assembly

Passed the Senate September 9, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 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 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 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 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.

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

SECTION 1. Section 25503.36 is added to the Business and Professions Code, to read:

25503.36. (a) Notwithstanding any other provision of this division, an authorized licensee may sponsor events promoted by, and may purchase advertising space and time from, or on behalf of, a live entertainment marketing company in connection with events organized and conducted by the live entertainment marketing company on the premises of a permanent retail licensee located at the San Diego County Fairgrounds, located in the City of Del Mar in the County of San Diego, subject to all of the following conditions:

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

(2) The events will take place over a period of no more than four consecutive days during which approximately 100 acts will perform before approximately 20,000 or more patrons.

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

the operations of the winery. Any authorized licensee sponsoring an event or purchasing advertising space or time, pursuant to this section, shall obtain written verification of compliance with this subdivision prior to such sponsorship or the purchase of advertising space or time.

(4) Any on-sale licensee operating at the San Diego County Fairgrounds shall serve other brands of beer, distilled spirits, and wine distributed by a competing wholesaler or manufacturer in addition to any brand manufactured, distributed, or owned by the authorized licensee sponsoring an event or purchasing advertising space or time pursuant to this section.

(5) An agreement pursuant to this section shall not be conditioned directly or indirectly on the purchase, sale, or distribution of any alcoholic beverage manufactured or distributed by any authorized licensee sponsoring or purchasing advertising space or time pursuant to this section.

(b) Any sponsorship of events or purchase of advertising space or time conducted pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the authorized licensee and the live entertainment marketing company.

(c) Any authorized licensee who, through coercion or other illegal means, induces, directly or indirectly, a holder of a wholesaler's license to fulfill those contractual obligations entered into pursuant to subdivision (a) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license suspension or revocation pursuant to Section 24200.

(d) Any on-sale retail licensee who, directly or indirectly, solicits or coerces a holder of a wholesaler's license to solicit an authorized licensee to purchase advertising time or space pursuant to subdivision (a) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license suspension or revocation pursuant to Section 24200.

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

(f) Nothing in this section shall authorize an authorized licensee to furnish, give, or lend anything of value to an on-sale retail licensee described in subdivision (a) except as expressly authorized by this section or any other provision of this division.

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

(1) “Authorized licensee” means the following licensees: beer manufacturer, out-of-state beer manufacturer’s certificate, winegrower, winegrower’s agent, importer, rectifier, distilled spirits manufacturer, distilled spirits rectifier general, distilled spirits manufacturer’s agent.

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

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

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

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or

infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

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

Approved _____, 2015

Governor