

AMENDED IN ASSEMBLY SEPTEMBER 4, 2015

AMENDED IN SENATE APRIL 22, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 327

Introduced by Senator ~~Hall~~ Hernandez
(Principal coauthor: Assembly Member Low)

February 23, 2015

~~An act to amend Section 25500.1 of, and to repeal Section 25502.1 of, the Business and Professions Code, relating to alcoholic beverages. An act to amend Section 516 of the Labor Code, relating to private employment.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 327, as amended, ~~Hall Hernandez. Alcoholic beverages: licensees: tied-house restrictions. Industrial Welfare Commission: wage orders: meal periods.~~

Existing law provides it is the continuing duty of the Industrial Welfare Commission to ascertain the wages paid to all employees in this state, to ascertain the hours and conditions of labor and employment in the various occupations, trades, and industries in which employees are employed in this state, and to investigate the health, safety, and welfare of those employees. Existing law establishes the Division of Labor Standards Enforcement in the Department of Industrial Relations for enforcement of labor laws, including orders of the commission. Existing law, subject to certain exceptions, prohibits an employer from requiring an employee to work more than 5 hours per day without providing a meal period and, notwithstanding that provision, authorizes the commission to adopt a working condition order permitting a meal period

to commence after 6 hours of work if the order is consistent with the health and welfare of affected employees. Existing law, except as provided in that described meal period provision, authorizes the commission to adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers. Existing law requires the commission, by July 1, 2000, to adopt wage, hours, and working conditions orders necessary to ensure fairness in the establishment of employee workweek schedules. Existing law further requires the commission, by July 1, 2000, to conduct reviews of wages, hours, and working conditions in specified industries and to adopt or modify regulations necessary to protect the health, safety, and welfare of workers in those industries. Existing wage orders of the commission provide that employees in the health care industry who work shifts in excess of 8 total hours in a workday may voluntarily waive their right to 1 of their 2 meal periods in a prescribed manner. Existing law prohibits an employer from requiring an employee to work during a meal or rest or recovery period mandated by an applicable statute, or applicable regulation, standard, or order of the commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, and establishes penalties for an employer's failure to provide a mandated meal or rest or recovery period.

This bill would provide that the health care employee meal period waiver provisions in those existing wage orders were valid and enforceable on and after October 1, 2000, and continue to be valid and enforceable. The bill would state that the bill is declarative of, and clarifies, existing law.

~~Existing law, known as tied-house restrictions, prohibits a manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, and wholesaler, and any officer, director, or agent of any of those persons, from having specified relationships with an on-sale and off-sale alcoholic beverage licensee with limited exceptions, and makes a violation of these prohibitions punishable as a misdemeanor.~~

~~Existing law, with certain exceptions, prohibits a manufacturer of alcoholic beverages and a winegrower from paying, crediting, or compensating a retailer for advertising or paying or giving anything of value for the privilege of placing a sign or advertisement with a retail licensee. In this context, existing law specifies that the listing of~~

specified information, including Internet Web site addresses, regarding two or more unaffiliated on-sale or off-sale retailers is not a thing of value or a prohibited inducement, if certain conditions are met.

This bill would recast those provisions to specify that for off-sale retailers, as with on-sale retailers, the listing of other electronic media does not constitute a thing of value or a prohibited inducement, and would make other changes of a conforming or nonsubstantive nature.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. *The Legislature finds and declares the following:*
2 (a) *From 1993 through 2000, Industrial Welfare Commission*
3 *Wage Orders 4 and 5 contained special meal period waiver rules*
4 *for employees in the health care industry. Employees were allowed*
5 *to waive voluntarily one of the two meal periods on shifts exceeding*
6 *12 hours. On June 30, 2000, the Industrial Welfare Commission*
7 *adopted regulations allowing those rules to continue in place.*
8 *Since that time, employees in the health care industry and their*
9 *employers have relied on those rules to allow employees to waive*
10 *voluntarily one of their two meal periods on shifts exceeding 12*
11 *hours.*
12 (b) *Given the uncertainty caused by a recent appellate court*
13 *decision, Gerard v. Orange Coast Memorial Medical Center (2015)*
14 *234 Cal.App.4th 285, without immediate clarification, hospitals*
15 *will alter scheduling practices.*
16 SEC. 2. *Section 516 of the Labor Code is amended to read:*
17 516. (a) *Except as provided in Section 512, the Industrial*
18 *Welfare Commission may adopt or amend working condition*
19 *orders with respect to break periods, meal periods, and days of*
20 *rest for any workers in California consistent with the health and*
21 *welfare of those workers.*
22 (b) *Notwithstanding subdivision (a), or any other law, including*
23 *Section 512, the health care employee meal period waiver*
24 *provisions in Section 11(D) of Industrial Welfare Commission*
25 *Wage Orders 4 and 5 were valid and enforceable on and after*
26 *October 1, 2000, and continue to be valid and enforceable. This*
27 *subdivision is declarative of, and clarifies, existing law.*

1 SECTION 1. Section 25500.1 of the Business and Professions
2 Code is amended to read:
3 25500.1. (a) ~~The listing of the names, addresses, telephone
4 numbers, email addresses, or Internet Web site addresses, or other
5 electronic media, of two or more unaffiliated on-sale or off-sale
6 retailers selling beer, wine, or distilled spirits produced, distributed,
7 or imported by a nonretail industry member in response to a direct
8 inquiry from a consumer received by telephone, by mail, by
9 electronic inquiry, or in person does not constitute a thing of value
10 or prohibited inducement to the listed on-sale or off-sale retailer,
11 provided all of the following conditions are met:~~
12 ~~(1) The listing does not also contain the retail price of the
13 product.~~
14 ~~(2) The listing is the only reference to the on-sale or off-sale
15 retailers in the direct communication.~~
16 ~~(3) The listing does not refer only to one on-sale or off-sale
17 retailer or only to on-sale or off-sale retail establishments controlled
18 directly or indirectly by the same retailer.~~
19 ~~(4) The listing is made by, or produced by, or paid for,
20 exclusively by the nonretail industry member making the response.~~
21 ~~(b) For the purposes of this section, "nonretail industry member"
22 is defined as a manufacturer, including, but not limited to, a beer
23 manufacturer, winegrower, or distiller of alcoholic beverages or
24 an agent of that entity, or a wholesaler, regardless of any other
25 licenses held directly or indirectly by that person.~~
26 SEC. 2. Section 25502.1 of the Business and Professions Code
27 is repealed.