

AMENDED IN SENATE MAY 31, 2016

SENATE BILL

No. 1426

**Introduced by Senator Hall
(Coauthor: Senator De León)**

February 19, 2016

An act to add and repeal Section 25513 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1426, as amended, Hall. Alcoholic beverage control: tied-house restrictions: compensation.

Existing law generally restricts certain alcoholic beverage licensees from paying, crediting, or compensating a retailer for advertising in connection with the advertising and sale of alcoholic beverages and expressly authorizes exceptions to this prohibition.

This bill would authorize, until January 1, 2022, a person, as defined, who has an ownership interest in ~~a~~ *an on-sale* retail ~~license~~, *license*, *subject to a numerical limitation*, to be compensated by an authorized licensee, as defined, for promotional or marketing services of the authorized licensee's products subject to ~~the~~ specified conditions, including that the compensation be based solely on the promotional and marketing activities. The bill would ~~also make~~ *create several new crimes, including that* an authorized licensee who, through coercion or other illegal means, induces the holder of a wholesaler's license to provide compensation pursuant to these provisions guilty of a misdemeanor. The bill would additionally make an authorized licensee or a person who violates these provisions guilty of a misdemeanor.

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 25513 is added to the Business and
2 Professions Code, to read:

3 25513. (a) For purposes of this section:

4 (1) “Authorized licensee” means a manufacturer, winegrower,
5 manufacturer’s agent, rectifier, California winegrower’s agent,
6 beer manufacturer, holder of an out-of-state beer manufacturer’s
7 certificate, distilled spirits manufacturer, *holder of a* distilled spirits
8 ~~rectifier~~, *rectifier’s general license*, distilled spirits manufacturer’s
9 agent, *brandy manufacturer, brandy importer, holder of an*
10 *out-of-state distilled spirits shipper’s certificate, holder of a*
11 *distilled spirits importer’s general license, distilled spirits importer,*
12 or craft distiller.

13 (2) “Person” means a natural person 21 years of age or ~~older~~.
14 ~~older who does not hold an ownership interest in more than five~~
15 ~~California on-sale retail licenses.~~

16 (b) Notwithstanding any other provision of this division, an
17 authorized licensee may compensate a person with ownership
18 interest in ~~a~~ *an on-sale* retail license for promotional or marketing
19 services of the authorized licensee’s products, subject to the
20 following conditions:

21 (1) Any compensation agreement with the person shall be in
22 the form of a written contract and include the conditions outlined
23 in this section.

24 (2) *The authorized licensee may have written contracts*
25 *regarding compensation authorized pursuant to this section with*
26 *no more than five persons at any given time.*

27 ~~(2)~~
28 (3) The person shall not be ~~directly or indirectly involved in the~~
29 ~~retailer’s purchasing~~ *exclusively responsible for the on-sale retail*

1 *licensee's* decisions of the brands of alcoholic beverages owned
2 by the authorized licensee compensating the person.

3 ~~(3)~~

4 (4) The authorized licensee compensating the person shall not
5 utilize the person to ~~conduct promotional and marketing activities~~
6 ~~to promote or market alcoholic beverages on the premises of the~~
7 ~~retailer~~ *engage in any endorsement or promotional or marketing*
8 *activity for alcoholic beverages on the premises of the on-sale*
9 *retail licensee* in which the person has an ownership interest.

10 ~~(4)~~

11 (5) All compensation the authorized licensee pays to the person
12 shall be based solely on the person's promotional and marketing
13 activities and shall not be related directly or indirectly to the sale
14 of alcoholic beverages by the ~~retailer~~ *on-sale retail licensee* in
15 which the person has an ownership interest.

16 (6) *The person shall not personally serve any alcoholic*
17 *beverages while on the premises of an on-sale retail licensee. This*
18 *paragraph shall not apply to an event held at an unlicensed venue*
19 *under a caterer's permit.*

20 (7) *The on-sale retail licensee in which a person holds an*
21 *ownership interest shall offer for sale, and serve, alcoholic*
22 *beverages that compete with the brands of the authorized licensee*
23 *compensating the person for promotional or marketing services.*

24 ~~(5)~~

25 (8) The name, image, and brand of the ~~retailer~~ *on-sale retail*
26 *licensee* in which the person has an ownership interest shall not
27 *in any way* be featured or referenced ~~in any way~~ in any advertising
28 of brands sold by the authorized licensee compensating the ~~person~~.
29 *person, except the name and address of an on-sale retail licensee*
30 *in which the person has an ownership interest may be advertised*
31 *when promoting specific events at which the compensated person*
32 *does not provide services.*

33 ~~(6)~~

34 (9) The person shall not be involved in the decisions by the
35 ~~authorized licensee~~ *licensee* regarding the selection of ~~retailers~~
36 *on-sale retail licensees* that will offer for sale the brands the person
37 is compensated to promote and market.

38 (c) *An on-sale retail licensee in which the compensated person*
39 *has an ownership interest that solicits or receives any*
40 *compensation from an authorized licensee for any unlawful activity*

1 *relating to promotional or marketing services shall be guilty of a*
2 *misdemeanor and shall be punished by imprisonment in the county*
3 *jail not exceeding six months, or by a fine in an amount of ten*
4 *thousand dollars (\$10,000), or by both imprisonment and fine.*

5 ~~(e)~~

6 ~~(d)~~ A licensee that is not an authorized licensee shall not licensee
7 shall not compensate a person under this section and shall not
8 directly or indirectly underwrite, share in, or contribute to the costs
9 of compensation authorized by this section.

10 ~~(d)~~

11 (e) Any officer, director, or agent of an authorized licensee that
12 is compensated by that authorized licensee for promotional or
13 marketing services of the authorized licensee's products shall not
14 be subject to the conditions of subdivision (b), notwithstanding
15 the fact that the authorized licensee, or any officer, director, or
16 agent of that authorized licensee, holds an ownership interest in a
17 *an on-sale retail license.*

18 ~~(e)~~

19 (f) (1) An authorized licensee who, through coercion or other
20 illegal means, induces, directly or indirectly, a holder of a
21 wholesaler's license to provide compensation to a person pursuant
22 to this section shall be guilty of a misdemeanor and shall be
23 punished by imprisonment in the county jail not exceeding six
24 months, or by a fine in an amount of ten thousand dollars
25 (\$10,000), or by both imprisonment and fine.

26 (2) *An on-sale retail licensee who, through coercion or other*
27 *illegal means, induces or conditions, directly or indirectly, the*
28 *purchase or sale of alcoholic beverages upon an authorized*
29 *licensee's decision about the promotional or marketing services*
30 *of a person compensated by the authorized licensee shall be guilty*
31 *of a misdemeanor and shall be punished by imprisonment in the*
32 *county jail not exceeding six months, or by a fine in an amount of*
33 *ten thousand dollars (\$10,000), or by both imprisonment and fine.*

34 ~~(2)~~

35 (3) An authorized licensee or person who violates any provision
36 of this section shall be guilty of a misdemeanor and shall be
37 punished by imprisonment in the county jail not exceeding six
38 months, or by a fine in the amount of ten thousand dollars
39 (\$10,000), or by both imprisonment and fine.

40 ~~(f)~~

1 (g) Nothing in this section shall limit the activities authorized
2 under Section 25503.1.

3 ~~(g)~~

4 (h) The Legislature finds and declares both of the following:

5 (1) That it is necessary and proper to require a separation
6 between manufacturing interests, wholesale interests, and retail
7 interests in the production and distribution of alcoholic beverages
8 in order to prevent suppliers from dominating local markets through
9 vertical integration and to prevent excessive sales of alcoholic
10 beverages produced by overly aggressive marketing techniques.

11 (2) Any exception established by the Legislature to the general
12 prohibition against tied interests must be limited to the express
13 terms of the exception so as to not undermine the general
14 prohibitions.

15 ~~(h)~~

16 (i) This section will remain in effect only until January 1, 2022,
17 and as of that date is repealed.

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