

Assembly Bill No. 2777

CHAPTER 980

An act to amend Sections 25502.1 and 25503.6 of, and to add Section 25500.2 to, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 29, 2000. Filed
with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2777, Granlund. Alcoholic beverages: licensees: advertising: tied-house restrictions.

The Alcoholic Beverage Control Act contains limitations on sales commonly known as "tied-house" restrictions, which generally prohibit a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler from furnishing, giving, or lending any money or other thing of value to any person engaged in operating, owning, or maintaining any on-sale or off-sale licensed premises.

Existing law provides that for purposes of the off-sale provisions, the listing of the names, addresses, telephone numbers or E-mail addresses, or both, or website addresses, of 2 or more unaffiliated off-sale retailers selling the products produced, distributed or imported by a nonretail industry member, defined as a manufacturer, winegrower, or distiller of alcoholic beverages, in response to a direct inquiry from a consumer received by telephone, by mail, by electronic Internet inquiry or in person does not constitute a thing of value or prohibited inducement to the listed off-sale retailer, if specified conditions are met.

This bill would extend these provisions to on-sale licensees, and would include within the definition of a nonretail industry member an agent of a manufacturer, winegrower, or distiller of alcoholic beverages, and a wholesaler of distilled spirits or wine.

Existing law generally 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. It authorizes, as an exception, the holder of a beer manufacturer's or winegrower's license to purchase advertising space and time from, or on behalf of, an on-sale retail licensee, subject to specified conditions.

This bill would also permit a distilled spirits manufacturer or a distilled spirits manufacturer's agent to purchase the advertising space and time from, or on behalf of, an on-sale retail licensee subject



to the existing conditions. The bill would permit specified manufacturers to purchase advertising space and time from a retail licensee who is the owner, manager, agent, assignee, or major tenant of a certain sized arena in Los Angeles County.

Existing law makes it a misdemeanor for a licensee, subject to the provisions of the bill, to violate existing provisions relating to the purchase of that advertising space or time.

This bill would impose a state-mandated local program by expanding the licensees subject to these criminal provisions.

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.

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

SECTION 1. Section 25500.2 is added to the Business and Professions Code, to read:

25500.2. (a) Notwithstanding Section 25500, the listing of the names, addresses, telephone numbers, E-mail addresses, or website addresses, of two or more unaffiliated on-sale retailers selling beer, wine, or distilled spirits, and operating and licensed as bona fide public eating places pursuant to Section 23038 selling the beer, wine, or distilled spirits produced, distributed, or imported by a nonretail industry member in response to a direct inquiry from a consumer received by telephone, by mail, by electronic Internet inquiry, or in person does not constitute a thing of value or prohibited inducement to the listed on-sale retailer, provided all of the following conditions are met:

(1) The listing does not also contain the retail price of the product.

(2) The listing is the only reference to the on-sale retailers in the direct communication.

(3) The listing does not refer only to one on-sale retailer or only to on-sale retail establishments controlled directly or indirectly by the same on-sale retailer.

(4) The listing is made by, or produced by, or paid for, exclusively by the nonretail industry member making the response.

(b) For the purposes of this section, “nonretail industry member” is defined as a manufacturer, including, but not limited to, a beer manufacturer, winegrower, or distiller of alcoholic beverages or an agent of that entity, or a wholesaler of distilled spirits or wine, regardless of any other licenses held directly or indirectly by that person. Except as specifically provided above, any payment for, making or production, either directly or indirectly, listing the names, addresses, telephone numbers, E-mail addresses, or website



addresses, of on-sale retailers selling beer otherwise authorized by this section by a wholesaler of beer or by a wholesaler of beer that also holds an importer's license shall constitute the furnishing of a thing of value or inducement to the listed on-sale retailers in violation of this division.

SEC. 2. Section 25502.1 of the Business and Professions Code is amended to read:

25502.1. (a) Notwithstanding Section 25502, the listing of the names, addresses, telephone numbers, E-mail addresses, or website addresses, of two or more unaffiliated off-sale retailers selling the products produced, distributed or imported by a nonretail industry member in response to a direct inquiry from a consumer received by telephone, by mail, by electronic Internet inquiry or in person does not constitute a thing of value or prohibited inducement to the listed off-sale retailer, provided all of the following conditions are met:

- (1) The listing does not also contain the retail price of the product.
- (2) The listing is the only reference to the off-sale retailers in the direct communication.
- (3) The listing does not refer only to one off-sale retailer or only to off-sale retail establishments controlled directly or indirectly by the same off-sale retailer.

(4) The listing is made by, or produced by, or paid for, exclusively by the nonretail industry member making the response.

(b) For the purposes of this section, "nonretail industry member" is defined as a manufacturer, including, but not limited to, a beer manufacturer, winegrower, or distiller of alcoholic beverages or an agent of that entity, or a wholesaler of distilled spirits or wine, regardless of any other licenses held directly or indirectly by that person. Except as specifically provided above, any payment for, making or production, either directly or indirectly, listing the names, addresses, telephone numbers, E-mail addresses, or website addresses, of off-sale retailers selling beer otherwise authorized by this section by a wholesaler of beer or by a wholesaler of beer that also holds an importer's license shall constitute the furnishing of a thing of value or inducement to the listed off-sale retailers in violation of this division.

SEC. 3. Section 25503.6 of the Business and Professions Code is amended to read:

25503.6. (a) Notwithstanding any other provision of this chapter, the holder of a beer manufacturer's or winegrower's license or a distilled spirits manufacturer or distilled spirits manufacturer's agent may purchase advertising space and time from, or on behalf of, an on-sale retail licensee subject to all of the following conditions:

- (1) The on-sale licensee is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or the major tenant of the owner of any of the following:



(A) An outdoor stadium or a fully enclosed arena with a fixed seating capacity in excess of 10,000 seats located in Sacramento County.

(B) A fully enclosed arena with a fixed seating capacity in excess of 18,000 seats located in Orange County or Los Angeles County.

(C) An outdoor stadium or fully enclosed arena with a fixed seating capacity in excess of 8,500 seats located in Kern County.

(D) An exposition park of not less than 50 acres that includes an outdoor stadium with a fixed seating capacity in excess of 8,000 seats and a fully enclosed arena with an attendance capacity in excess of 4,500 people, located within a county of the fourth class, as defined in Section 28025 of the Government Code.

(E) An outdoor stadium with a fixed seating capacity in excess of 10,000 seats located in Yolo County.

(2) The outdoor stadium or fully enclosed arena described in paragraph (1) is not owned by a community college district.

(3) The advertising space or time is purchased only in connection with the events to be held on the premises of the stadium or arena owned by the on-sale licensee.

(4) The on-sale licensee serves other brands of beer in addition to the brand manufactured by the beer manufacturer, other brands of wine in addition to the brand produced by the winegrower, and other brands of distilled spirits in addition to the brand manufactured by the distilled spirits manufacturer or distilled spirits manufacturer's agent.

(b) Any purchase of advertising space or time pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the holder of the beer manufacturer's or winegrower's license, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent and the on-sale licensee.

(c) Any holder of a beer manufacturer's or winegrower's license, any distilled spirits manufacturer, or any distilled spirits manufacturer's agent who, through coercion or other illegal means, induces a holder of a beer, wine, or distilled spirits wholesaler's license to fulfill those contractual obligations entered into pursuant to subdivision (a) or (b) 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, plus ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) Any on-sale retail licensee, as described in subdivision (a), who solicits or coerces a holder of a beer, wine, or distilled spirits wholesaler's license to solicit a holder of a beer manufacturer's or winegrower's license, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent to purchase advertising space or time pursuant to subdivision (a) or (b) 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, plus ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

SEC. 4. 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.

