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AB-527 Alcoholic beverage control: tied-house restrictions: advertising. (2015-2016)

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Assembly Bill No. 527

CHAPTER 517

An act to add and repeal Section 25503.40 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor October 06, 2015. Filed with Secretary of State October 06, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 527, Dodd. Alcoholic beverage control: 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, until January 1, 2019, a beer manufacturer, as described, holder of a winegrower's license, winegrower's agent, holder of any importer's license that does not also hold a wholesaler or retail license as an additional license, as specified, distilled spirits manufacturer, holder of any rectifier's 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 is not publicly traded and has its principal place of business in the County of Napa, under specified conditions. The bill would also make a beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of any importer's license, distilled spirits manufacturer, holder of any rectifier's license, or a distilled spirits manufacturer's agent 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 any importer's license, distilled spirits manufacturer, holder of any rectifier's license, or a distilled spirits manufacturer's agent to purchase advertising time or space pursuant to these provisions guilty of a misdemeanor.

By creating a new crime, 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 Napa.

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. The Legislature finds and declares both of the following:

(a) The earthquake that struck Napa on August 24, 2014, was a catastrophic event that resulted in economic hardship in the County of Napa.

(b) It is in the best interests of the citizens of the County of Napa that the exception, established by this law, to the tied-house provisions of the Alcoholic Beverage Control Act be provided for the benefit of the County of Napa.

SEC. 2. Section 25503.40 is added to the Business and Professions Code, to read:

25503.40. (a) Notwithstanding any other law, a beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of any importer's license that does not also hold a wholesaler or retail license as an additional license, unless the holder of the importer's license holds one of the other authorized licenses specified in this section, distilled spirits manufacturer, holder of any rectifier's license, or a distilled spirits manufacturer's agent may sponsor events promoted by, and may purchase advertising space and time from, or on behalf of, a live entertainment marketing company subject to all of the following conditions:

(1) (A) The live entertainment marketing company is a wholly owned subsidiary of a live entertainment company that is not publicly traded and has its principal place of business in the County of Napa, that may also own interests, directly or indirectly, in retail licenses or winegrower licenses.

(B) The venue of the event is located within the County of Napa, expected attendance of the event is at least 5,000 people per day, and no more than three of these events are held in the County of Napa each year. The live entertainment company promoting the event shall affirmatively represent and warrant in writing to any retail licensee operating as the retail licensee for such an event that the live entertainment company promoting the event, including the subject event, has not exceeded the permissible limit of three events in the County of Napa for the year in which the event is being held and the expected attendance for the event is in excess of 5,000 people per day. Any retail licensee operating as the retail licensee for an event in the County of Napa for an event with expected attendance of more than 5,000 people per day shall provide the written representation and warranty of the live entertainment company to the department and affirmatively state when obtaining the authorization for the event from the department that the event is being held pursuant to the conditions of this section and that the live entertainment company promoting the event, including the subject event, has not exceeded the permissible limit of three events in the County of Napa for the year in which the event is being held and the expected attendance for the event is in excess of 5,000 people per day.

(2) The sponsorship and the advertising space or time is purchased only in connection with the promotion of live artistic, musical, sports, food, beverage, culinary, lifestyle, or other cultural entertainment events at entertainment facilities, parks, fairgrounds, auditoriums, arenas, or other areas or venues that are designed for, or set up to be, and lawfully permitted to be used for live artistic, musical, sports, food, beverage, culinary, lifestyle, or other cultural entertainment events.

(3) (A) Any on-sale licensee operating at a venue where live artistic, musical, sports, food, beverage, culinary, lifestyle, or other cultural entertainment events are performed pursuant to a sponsorship described in this section or where advertising is purchased as described in this section shall serve other brands of beer, distilled spirits, and wine distributed by a competing wholesaler in addition to any brand manufactured or distributed by the sponsoring or advertising beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of any importer's license, distilled spirits manufacturer, holder of any rectifier's license, or a distilled spirits manufacturer's agent.

(B) Any on-sale retail licensee owned by the live entertainment company described in paragraph (1) shall serve other brands of beer, distilled spirits, and wine distributed by a competing wholesaler in addition to any brand manufactured or distributed by the sponsoring or advertising beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of any importer's license, distilled spirits manufacturer, holder of any rectifier's license, or a distilled spirits manufacturer's agent.

(4) (A) Advertising space or time purchased pursuant to this section shall not be placed in any on-sale licensed premises where the on-sale retail licensee is owned directly or indirectly by the live entertainment company, or any of its subsidiaries, described in paragraph (1).

(B) Sponsorship provided pursuant to this section shall not be allowed if the event or activity is held at or in any on-sale licensed premises where the on-sale retail licensee is owned by the live entertainment company, or any of its subsidiaries, described in paragraph (1).

(5) An agreement for the sponsorship of, or for the purchase of advertising space and time during, a live artistic, musical, sports, food, beverage, culinary, lifestyle, or other cultural entertainment event shall not be conditioned directly or indirectly, in any way, on the purchase, sale, or distribution of any alcoholic beverage manufactured or distributed by the advertising or sponsoring beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of any importer's license, distilled spirits manufacturer, holder of any rectifier's license, or a distilled spirits manufacturer's agent by the live entertainment company described in paragraph (1) or by any on-sale retail licensee that is owned directly or indirectly by the live entertainment company.

(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 beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of any importer's license, distilled spirits manufacturer, holder of any rectifier's license, or a distilled spirits manufacturer's agent and the live entertainment marketing company.

(c) Any beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of any importer's license, distilled spirits manufacturer, holder of any rectifier's license, or a distilled spirits manufacturer's agent 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 a beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of any importer's license, distilled spirits manufacturer, holder of any rectifier's license, or a distilled spirits manufacturer's agent 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) For purposes of this section, "beer manufacturer" includes a holder of a beer manufacturer's license, a holder of an out-of-state beer manufacturer's certificate, or a holder of a beer and wine importer's license that does not also hold a wholesaler or retail license as an additional license.

(f) Nothing in this section shall authorize the purchasing of advertising space or time directly from, or on behalf of, any on-sale retail licensee.

(g) Nothing in this section shall authorize a beer manufacturer, holder of a winegrower's license, winegrower's agent, holder of any importer's license, distilled spirits manufacturer, holder of any rectifier's license, or a distilled spirits manufacturer's agent 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.

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

(1) 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.

(2) Any exception established by the Legislature to the general prohibition against tied interests shall be limited to the express terms of the exception so as not to undermine the general prohibition.

(i) This section shall remain in effect only until January 1, 2019, and as of that date is repealed unless a later enacted statute, that is chaptered before January 1, 2019, deletes or extends that date.

SEC. 3. 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 Napa.

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.