

AMENDED IN SENATE MARCH 30, 2016

AMENDED IN ASSEMBLY MAY 28, 2015

AMENDED IN ASSEMBLY APRIL 13, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 866**

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**Introduced by Assembly Member Eduardo Garcia**

February 26, 2015

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An act to amend ~~Sections 12096.3, 12098.3, and 12098.4 of the Government Code, relating to economic development. Section 25503.6 of the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 866, as amended, Eduardo Garcia. ~~Economic development: small business. Alcoholic beverages: advertising: San Diego.~~

*Existing law generally prohibits various licenseholders from providing money or any other thing of value to a person owning or operating an on-sale premises where alcoholic beverages are served, subject to specified exceptions. Existing law authorizes the holder of a winegrower's license, a beer manufacturer, a distilled spirits rectifier, a distilled spirits manufacturer, and a distilled spirits manufacturer's agent, to purchase advertising space and time from, or on behalf of, an on-sale retail licensee, under certain conditions, if the on-sale retail licensee is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or major tenant of specified facilities. Existing law makes it a misdemeanor to coerce or solicit licensees in connection with these provisions, as specified.*

*This bill would expand the facilities to which the exception described above would apply to include an outdoor stadium with a fixed seating capacity of at least 46,000 seats located in the City of San Diego. By expanding the scope of a crime, this bill would impose a state-mandated local program.*

*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 make legislative findings and declarations as to the necessity of a special statute for the City of San Diego.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~Existing law establishes the Governor's Office of Business and Economic Development, also known as GO-Biz, to serve the Governor as the lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth. Existing law authorizes GO-Biz to, among other things, support small businesses by providing information about accessing capital. Existing law establishes the Office of Small Business Advocate, within GO-Biz. Existing law establishes the duties and functions of the Director of the Office of Small Business Advocate, also known as the advocate. Those duties include, among other things, representing the views and interests of small businesses before other state agencies whose policies and activities may affect small businesses. Under existing law, each agency of the state is required to furnish to the advocate reports, documents, and information that are public records and that the advocate deems necessary to carry out his or her functions.~~

~~This bill would additionally authorize GO-Biz to support small businesses by providing information about technical assistance. The bill would expand the duties of the advocate to include sharing with a rulemaking agency the contact information for small business organizations, to the extent that information is available and requested. The bill would additionally require each agency that develops a small entity compliance guide, as specified, to notify the advocate within 45 days after the guide becomes available to the public, and to include in that notice information on how a small business can obtain a copy of~~

~~the small business compliance guide. The bill would also make various findings and declarations regarding small businesses.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~<sup>yes</sup>.

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

1     SECTION 1. Section 25503.6 of the Business and Professions  
2 Code is amended to read:

3     25503.6. (a) Notwithstanding any other provision of this  
4 chapter, a beer manufacturer, the holder of a winegrower's license,  
5 a distilled spirits rectifier, a distilled spirits manufacturer, or  
6 distilled spirits manufacturer's agent may purchase advertising  
7 space and time from, or on behalf of, an on-sale retail licensee  
8 subject to all of the following conditions:

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

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

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

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

20     (D) An exposition park of not less than 50 acres that includes  
21 an outdoor stadium with a fixed seating capacity in excess of 8,000  
22 seats and a fully enclosed arena with an attendance capacity in  
23 excess of 4,500 people, located in San Bernardino County.

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

26     (F) An outdoor stadium and a fully enclosed arena with fixed  
27 seating capacities in excess of 10,000 seats located in Fresno  
28 County.

29     (G) An athletic and entertainment complex of not less than 50  
30 acres that includes within its boundaries an outdoor stadium with  
31 a fixed seating capacity of at least 8,000 seats and a second outdoor  
32 stadium with a fixed seating capacity of at least 3,500 seats located  
33 in Riverside County.

1 (H) An outdoor stadium with a fixed seating capacity in excess  
2 of 1,500 seats located in Tulare County.

3 (I) A motorsports entertainment complex of not less than 50  
4 acres that includes within its boundaries an outdoor speedway with  
5 a fixed seating capacity of at least 50,000 seats, located in San  
6 Bernardino County.

7 (J) An exposition park, owned or operated by a bona fide  
8 nonprofit organization, of not less than 400 acres with facilities  
9 including a grandstand with a seating capacity of at least 8,000  
10 people, at least one exhibition hall greater than 100,000 square  
11 feet, and at least four exhibition halls, each greater than 30,000  
12 square feet, located in the City of Pomona or the City of La Verne  
13 in Los Angeles County.

14 (K) An outdoor soccer stadium with a fixed seating capacity of  
15 at least 25,000 seats, an outdoor tennis stadium with a fixed  
16 capacity of at least 7,000 seats, an outdoor track and field facility  
17 with a fixed seating capacity of at least 7,000 seats, and an indoor  
18 velodrome with a fixed seating capacity of at least 2,000 seats, all  
19 located within a sports and athletic complex built before January  
20 1, 2005, in the City of Carson in Los Angeles County.

21 (L) An outdoor professional sports facility with a fixed seating  
22 capacity of at least 4,200 seats located in San Joaquin County.

23 (M) A fully enclosed arena with a fixed seating capacity in  
24 excess of 13,000 seats in the City of Inglewood.

25 (N) (i) An outdoor stadium with a fixed seating capacity of at  
26 least 68,000 seats located in the City of Santa Clara.

27 (ii) A beer manufacturer, the holder of a winegrower's license,  
28 a distilled spirits rectifier, a distilled spirits manufacturer, or  
29 distilled spirits manufacturer's agent may purchase advertising  
30 space and time from, or on behalf of, a major tenant of an outdoor  
31 stadium described in clause (i), provided the major tenant does not  
32 hold a retail license, and the advertising may include the placement  
33 of advertising in an on-sale licensed premises operated at the  
34 outdoor stadium.

35 (O) A complex of not more than 50 acres located on the campus  
36 of, and owned by, Sonoma State University dedicated to presenting  
37 live artistic, musical, sports, food, beverage, culinary, lifestyle, or  
38 other cultural and entertainment events and performances with  
39 venues that include a concert hall with a seating capacity of  
40 approximately 1,500 seats, a second concert hall with a seating

1 capacity of up to 300 seats, an outdoor area with a seating capacity  
2 of up to 5,000 seats, and a further outdoor area with a seating  
3 capacity of up to 10,000 seats. With respect to this complex,  
4 advertising space and time may also be purchased from or on behalf  
5 of the owner of the complex, a long-term tenant or licensee of the  
6 venue, whether or not the owner, long-term tenant, or licensee  
7 holds an on-sale license.

8 (P) A fairgrounds with a horse racetrack and equestrian and  
9 sports facilities located in San Diego County.

10 (Q) *An outdoor stadium with a fixed seating capacity of at least*  
11 *43,000 seats located in the City of San Diego.*

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

14 (3) The advertising space or time is purchased only in connection  
15 with the events to be held on the premises of the exposition park,  
16 stadium, or arena owned by the on-sale licensee. With respect to  
17 an exposition park as described in subparagraph (J) of paragraph  
18 (1) that includes at least one hotel, the advertising space or time  
19 shall not be displayed on or in any hotel located in the exposition  
20 park, or purchased in connection with the operation of any hotel  
21 located in the exposition park. With respect to the complex  
22 described in subparagraph (O) of paragraph (1), the advertising  
23 space or time shall be purchased only in connection with live  
24 artistic, musical, sports, food, beverage, culinary, lifestyle, or other  
25 cultural and entertainment events and performances to be held on  
26 the premises of the complex.

27 (4) The on-sale licensee serves other brands of beer distributed  
28 by a competing beer wholesaler in addition to the brand  
29 manufactured or marketed by the beer manufacturer, other brands  
30 of wine distributed by a competing wine wholesaler in addition to  
31 the brand produced by the winegrower, and other brands of distilled  
32 spirits distributed by a competing distilled spirits wholesaler in  
33 addition to the brand manufactured or marketed by the distilled  
34 spirits rectifier, the distilled spirits manufacturer, or the distilled  
35 spirits manufacturer's agent that purchased the advertising space  
36 or time.

37 (b) Any purchase of advertising space or time pursuant to  
38 subdivision (a) shall be conducted pursuant to a written contract  
39 entered into by the beer manufacturer, the holder of the  
40 winegrower's license, the distilled spirits rectifier, the distilled

1 spirits manufacturer, or the distilled spirits manufacturer’s agent  
2 and any of the following:

3 (1) The on-sale licensee.

4 (2) With respect to clause (ii) of subparagraph (N) of paragraph  
5 (1) of subdivision (a), the major tenant of the outdoor stadium.

6 (3) With respect to subparagraph (O) of paragraph (1) of  
7 subdivision (a), the owner, a long-term tenant of the complex, or  
8 licensee of the complex, whether or not the owner, long-term  
9 tenant, or licensee holds an on-sale license.

10 (c) Any beer manufacturer or holder of a winegrower’s license,  
11 any distilled spirits rectifier, any distilled spirits manufacturer, or  
12 any distilled spirits manufacturer’s agent who, through coercion  
13 or other illegal means, induces, directly or indirectly, a holder of  
14 a wholesaler’s license to fulfill all or part of those contractual  
15 obligations entered into pursuant to subdivision (a) or (b) shall be  
16 guilty of a misdemeanor and shall be punished by imprisonment  
17 in the county jail not exceeding six months, or by a fine in an  
18 amount equal to the entire value of the advertising space, time, or  
19 costs involved in the contract, whichever is greater, plus ten  
20 thousand dollars (\$10,000), or by both imprisonment and fine. The  
21 person shall also be subject to license revocation pursuant to  
22 Section 24200.

23 (d) Any on-sale retail licensee, as described in subdivision (a),  
24 who, directly or indirectly, solicits or coerces a holder of a  
25 wholesaler’s license to solicit a beer manufacturer, a holder of a  
26 winegrower’s license, a distilled spirits rectifier, a distilled spirits  
27 manufacturer, or a distilled spirits manufacturer’s agent to purchase  
28 advertising space or time pursuant to subdivision (a) or (b) shall  
29 be guilty of a misdemeanor and shall be punished by imprisonment  
30 in the county jail not exceeding six months, or by a fine in an  
31 amount equal to the entire value of the advertising space or time  
32 involved in the contract, whichever is greater, plus ten thousand  
33 dollars (\$10,000), or by both imprisonment and fine. The person  
34 shall also be subject to license revocation pursuant to Section  
35 24200.

36 (e) For the purposes of this section, “beer manufacturer” includes  
37 any holder of a beer manufacturer’s license, any holder of an  
38 out-of-state beer manufacturer’s certificate, or any holder of a beer  
39 and wine importer’s general license.

1 (f) The Legislature finds that it is necessary and proper to require  
2 a separation among manufacturing interests, wholesale interests,  
3 and retail interests in the production and distribution of alcoholic  
4 beverages in order to prevent suppliers from dominating local  
5 markets through vertical integration and to prevent excessive sales  
6 of alcoholic beverages produced by overly aggressive marketing  
7 techniques. The Legislature further finds that the exceptions  
8 established by this section to the general prohibition against tied  
9 interests shall be limited to their express terms so as not to  
10 undermine the general prohibition and intends that this section be  
11 construed accordingly.

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

21 *SEC. 3. The Legislature finds and declares that a special law*  
22 *is necessary and that a general law cannot be made applicable*  
23 *within the meaning of Section 16 of Article IV of the California*  
24 *Constitution because of the unique conditions located in the City*  
25 *of San Diego.*

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

30 *In order to ensure the fair and efficient application of the*  
31 *alcoholic beverage control licensing laws with respect to eligible*  
32 *facilities in the City of San Diego, it is necessary that this act take*  
33 *immediate effect.*

34 ~~SECTION 1. This act shall be known as the Small Business~~  
35 ~~Regulatory Enforcement Fairness Act of 2015.~~

36 ~~SEC. 2. (a) The Legislature finds and declares all of the~~  
37 ~~following:~~

38 ~~(1) A vibrant and growing small business sector is critical to~~  
39 ~~creating jobs in a dynamic economy.~~

1 ~~(2) In California, 62 percent of all firms have fewer than five~~  
2 ~~employees and 98 percent of all firms have fewer than 100~~  
3 ~~employees and account for 36 percent of all jobs in the state.~~

4 ~~(3) While California small businesses create jobs and anchor~~  
5 ~~the state's economy, research shows that they bear a~~  
6 ~~disproportionate share of regulatory costs and burdens.~~

7 ~~(4) Changes are needed in the regulatory and enforcement~~  
8 ~~culture of state agencies in order to help agencies be more~~  
9 ~~responsive to the implementation challenges of small businesses~~  
10 ~~without compromising statutory missions of the agencies.~~

11 ~~(b) The Legislature further declares that the purpose of this act~~  
12 ~~is to do all of the following:~~

13 ~~(1) Encourage the effective participation of small businesses in~~  
14 ~~the state regulatory process.~~

15 ~~(2) Develop more accessible sources of information on~~  
16 ~~regulatory reporting requirements for small businesses.~~

17 ~~(3) Create a more cooperative regulatory environment among~~  
18 ~~agencies and small businesses that is less punitive and more~~  
19 ~~solution-oriented.~~

20 ~~(4) Make state regulators more accountable for their enforcement~~  
21 ~~actions by providing small businesses and nonprofit organizations~~  
22 ~~with meaningful opportunities for redress of excessive enforcement~~  
23 ~~activities.~~

24 ~~SEC. 3. Section 12096.3 of the Government Code is amended~~  
25 ~~to read:~~

26 ~~12096.3. The office shall serve the Governor as the lead entity~~  
27 ~~for economic strategy and the marketing of California on issues~~  
28 ~~relating to business development, private sector investment, and~~  
29 ~~economic growth. In this capacity, the office may:~~

30 ~~(a) Recommend to the Governor and the Legislature new state~~  
31 ~~policies, programs, and actions, or amendments to existing~~  
32 ~~programs, advance statewide economic goals and respond to~~  
33 ~~emerging economic problems and opportunities, and ensure that~~  
34 ~~all state policies and programs conform to the adopted state~~  
35 ~~economic and business development goals.~~

36 ~~(b) Coordinate the development of policies and criteria to ensure~~  
37 ~~that federal grants administered or directly expended by state~~  
38 ~~government advance statewide economic goals and objectives.~~

39 ~~(c) Market the business and investment opportunities available~~  
40 ~~in California by working in partnership with local, regional, federal,~~

1 and other state public and private institutions to encourage business  
2 development and investment in the state.  
3 ~~(d) Provide, including, but not limited to, all of the following:~~  
4 ~~(1) Economic and demographic data.~~  
5 ~~(2) Financial information to help link businesses with state and~~  
6 ~~local public and private programs.~~  
7 ~~(3) Workforce information, including, but not limited to, labor~~  
8 ~~availability, training, and education programs.~~  
9 ~~(4) Transportation and infrastructure information.~~  
10 ~~(5) Assistance in obtaining state and local permits.~~  
11 ~~(6) Information on tax credits and other incentives.~~  
12 ~~(7) Permitting, siting, and other regulatory information pertinent~~  
13 ~~to business operations in the state.~~  
14 ~~(e) Establish a well-advertised telephone number, an interactive~~  
15 ~~Internet Web site, and an administrative structure that effectively~~  
16 ~~supports the facilitation of business development and investment~~  
17 ~~in the state.~~  
18 ~~(f) Encourage collaboration among research institutions, startup~~  
19 ~~companies, local governments, venture capitalists, and economic~~  
20 ~~development agencies to promote innovation.~~  
21 ~~(g) In cooperation with the federal government, foster~~  
22 ~~relationships with overseas entities to improve the state's image~~  
23 ~~as a destination for business investment and expansion.~~  
24 ~~(h) Conduct research on the state's business climate, including,~~  
25 ~~but not limited to, research on how the state can remain on the~~  
26 ~~leading edge of innovation and emerging sectors.~~  
27 ~~(i) Support small businesses by providing information about~~  
28 ~~accessing capital, technical assistance, and complying with~~  
29 ~~regulations, and by supporting state initiatives that support small~~  
30 ~~business.~~  
31 ~~SEC. 4.— Section 12098.3 of the Government Code is amended~~  
32 ~~to read:~~  
33 ~~12098.3.— (a) The Director of the Office of Small Business~~  
34 ~~Advocate shall be appointed by, and shall serve at the pleasure of,~~  
35 ~~the Governor.~~  
36 ~~(b) The Governor shall appoint the employees who are needed~~  
37 ~~to accomplish the purposes of this article.~~  
38 ~~(c) The duties and functions of the advocate shall include all of~~  
39 ~~the following:~~

1     ~~(1) Serve as the principal advocate in the state on behalf of small~~  
2 ~~businesses, including, but not limited to, advisory participation in~~  
3 ~~the consideration of all legislation and administrative regulations~~  
4 ~~that affect small businesses, and advocacy on state policy and~~  
5 ~~programs related to small businesses on disaster preparedness and~~  
6 ~~recovery including providing technical assistance.~~

7     ~~(2) Represent the views and interests of small businesses before~~  
8 ~~other state agencies whose policies and activities may affect small~~  
9 ~~business. To the extent information is available and requested,~~  
10 ~~share with a rulemaking agency the contact information for small~~  
11 ~~business organizations, which the rulemaking agency may want~~  
12 ~~to include when disseminating public information about a proposed~~  
13 ~~new rule or amendment.~~

14     ~~(3) Enlist the cooperation and assistance of public and private~~  
15 ~~agencies, businesses, and other organizations in disseminating~~  
16 ~~information about the programs and services provided by state~~  
17 ~~government that are of benefit to small businesses, and information~~  
18 ~~on how small businesses can participate in, or make use of, those~~  
19 ~~programs and services.~~

20     ~~(4) Consult with experts and authorities in the fields of small~~  
21 ~~business investment, venture capital investment, and commercial~~  
22 ~~banking and other comparable financial institutions involved in~~  
23 ~~the financing of business, and with individuals with regulatory,~~  
24 ~~legal, economic, or financial expertise, including members of the~~  
25 ~~academic community, and individuals who generally represent the~~  
26 ~~public interest.~~

27     ~~(5) Seek the assistance and cooperation of all state agencies and~~  
28 ~~departments providing services to, or affecting, small business,~~  
29 ~~including the small business liaison designated pursuant to Section~~  
30 ~~14846, to ensure coordination of state efforts.~~

31     ~~(6) Receive and respond to complaints from small businesses~~  
32 ~~concerning the actions of state agencies and the operative effects~~  
33 ~~of state laws and regulations adversely affecting those businesses.~~

34     ~~(7) Counsel small businesses on how to resolve questions and~~  
35 ~~problems concerning the relationship of small business to state~~  
36 ~~government.~~

37     ~~(8) Maintain, publicize, and distribute an annual list of persons~~  
38 ~~serving as small business ombudsmen throughout state government.~~

39     ~~SEC. 5. Section 12098.4 of the Government Code is amended~~  
40 ~~to read:~~

1     ~~12098.4.— (a) Each agency of the state shall furnish to the~~  
2 ~~advocate the reports, documents, and information that are public~~  
3 ~~records and that the director deems necessary to carry out his or~~  
4 ~~her functions under this chapter.~~

5     ~~(b) Each agency that develops a small entity compliance guide~~  
6 ~~to assist small businesses and nonprofit organizations in complying~~  
7 ~~with regulations in collaboration with a federal agency pursuant~~  
8 ~~to the federal Small Business Regulatory Fairness Act of 1996~~  
9 ~~(Public Law 104-121) shall notify the advocate within 45 days~~  
10 ~~after the guide becomes available to the public. The notice to the~~  
11 ~~advocate shall include information on how a small business or~~  
12 ~~nonprofit organization can obtain a copy of the small business~~  
13 ~~compliance guide.~~

14     ~~(c) The advocate shall prepare and submit a written annual report~~  
15 ~~to the Governor and to the Legislature that describes the activities~~  
16 ~~and recommendations of the office, including an evaluation of the~~  
17 ~~efforts of state agencies and, where appropriate, specific~~  
18 ~~departments, that significantly regulate small businesses to assist~~  
19 ~~minority and other small business enterprises, and making~~  
20 ~~recommendations that may be appropriate to assist the development~~  
21 ~~and strengthening of minority and other small business enterprises.~~

22     ~~(d) The advocate may establish a centralized interactive~~  
23 ~~telephone referral system and Internet Web site to assist small and~~  
24 ~~minority businesses in their operations, including governmental~~  
25 ~~requirements, such as taxation, accounting, and pollution control,~~  
26 ~~and to provide information concerning the agency from which~~  
27 ~~more specialized assistance may be obtained. The advocate may~~  
28 ~~establish and advertise a telephone number and an Internet Web~~  
29 ~~site address to serve this centralized interactive telephone referral~~  
30 ~~system and Internet Web site.~~