

AMENDED IN SENATE APRIL 26, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 517

Introduced by Assembly Member Hall

February 15, 2011

~~An act to amend Section 23104.2 of the Business and Professions Code, relating to alcoholic beverages. An act to add Section 12012.56 to the Government Code, relating to tribal gaming, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 517, as amended, Hall. ~~Alcoholic beverage control: licensees: returns.~~ *Tribal gaming: compact ratification.*

Existing federal law, the Indian Gaming Regulatory Act of 1988, provides for the negotiation and execution of tribal-state gaming compacts for the purpose of authorizing certain types of gaming on Indian lands within a state. The California Constitution authorizes the Governor to negotiate and conclude compacts, subject to ratification by the Legislature. Existing law expressly ratifies a number of tribal-state gaming compacts, and amendments of tribal-state gaming compacts, between the State of California and specified Indian tribes.

The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect.

This bill would ratify the tribal-state gaming compact entered into between the State of California and the Federated Indians of Graton

Rancheria, executed on March 27, 2012. The bill would provide that, in deference to tribal sovereignty, certain actions may not be deemed projects for purposes of CEQA. By imposing additional duties on a lead agency with regard to the implementation of CEQA requirements, this bill would increase the service provided by a local agency, thereby creating 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 declare that it is to take effect immediately as an urgency statute.

~~Under the Alcoholic Beverage Control Act, a wholesaler or manufacturer may accept the return of beer from a retailer only if the beer is returned in exchange for the identical quantity and brand of beer. Existing law provides for exceptions, including permitting a wholesaler or manufacturer to accept the return of beer from a seasonal or temporary licensee or an annual licensee operating on a temporary basis, as specified.~~

~~This bill would allow for an additional exception to allow a wholesaler or manufacturer to accept the return of unsold and unopened beer from an organization that obtained a specified temporary license, as provided.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~^{yes}.

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

- 1 SECTION 1. Section 12012.56 is added to the Government
- 2 Code, to read:
- 3 12012.56. (a) The tribal-state gaming compact entered into
- 4 in accordance with the federal Indian Gaming Regulatory Act of
- 5 1988 (18 U.S.C. Secs. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701
- 6 et seq.) between the State of California and the Federated Indians
- 7 of Graton Rancheria, executed on March 27, 2012, is hereby
- 8 ratified.
- 9 (b) (1) In deference to tribal sovereignty, none of the following
- 10 shall be deemed a project for purposes of the California

1 *Environmental Quality Act (Division 13 (commencing with Section*
2 *21000) of the Public Resources Code):*

3 *(A) The execution of an amendment to the tribal-state gaming*
4 *compact ratified by this section.*

5 *(B) The execution of the tribal-state gaming compact ratified*
6 *by this section.*

7 *(C) The execution of an intergovernmental agreement between*
8 *a tribe and a county or city government negotiated pursuant to*
9 *the express authority of, or as expressly referenced in, the*
10 *tribal-state gaming compact ratified by this section.*

11 *(D) The execution of an intergovernmental agreement between*
12 *a tribe and the Department of Transportation negotiated pursuant*
13 *to the express authority of, or as expressly referenced in, the*
14 *tribal-state gaming compact ratified by this section.*

15 *(E) The on-reservation impacts of compliance with the terms*
16 *of the tribal-state gaming compact ratified by this section.*

17 *(F) The sale of compact assets, as defined in subdivision (a) of*
18 *Section 63048.6, or the creation of the special purpose trust*
19 *established pursuant to Section 63048.65.*

20 *(2) Except as expressly provided herein, nothing in this*
21 *subdivision shall be construed to exempt a city, county, or city and*
22 *county, or the Department of Transportation, from the requirements*
23 *of the California Environmental Quality Act.*

24 *SEC. 2. No reimbursement is required by this act pursuant to*
25 *Section 6 of Article XIII B of the California Constitution because*
26 *a local agency or school district has the authority to levy service*
27 *charges, fees, or assessments sufficient to pay for the program or*
28 *level of service mandated by this act, within the meaning of Section*
29 *17556 of the Government Code.*

30 *SEC. 3. This act is an urgency statute necessary for the*
31 *immediate preservation of the public peace, health, or safety within*
32 *the meaning of Article IV of the Constitution and shall go into*
33 *immediate effect. The facts constituting the necessity are:*

34 *In order to allow the revenues from this act to be eligible for*
35 *revenue sharing at the earliest possible time to address some of*
36 *the state's pressing budget issues, it is necessary that this act take*
37 *effect immediately.*

38 ~~SECTION 1. Section 23104.2 of the Business and Professions~~
39 ~~Code is amended to read:~~

1 ~~23104.2. (a) Subject to the exceptions specified in subdivision~~
2 ~~(b), a retail licensee may return beer to the wholesaler or~~
3 ~~manufacturer from whom the retail licensee purchased the beer,~~
4 ~~or any successor thereto, and the wholesaler, manufacturer, or~~
5 ~~successor thereto may accept that return if the beer is returned in~~
6 ~~exchange for the identical quantity and brand of beer. No~~
7 ~~wholesaler or manufacturer, or any successor thereto, shall accept~~
8 ~~the return of any beer from a retail licensee except when the beer~~
9 ~~delivered was not the brand or size container ordered by the retail~~
10 ~~licensee or the amount delivered was other than the amount~~
11 ~~ordered, in which case the order may be corrected by the wholesaler~~
12 ~~or manufacturer who sold the beer, or any successor thereto. If a~~
13 ~~package had been broken or otherwise damaged prior to or at the~~
14 ~~time of actual delivery, a credit memorandum may be issued for~~
15 ~~the returned package by the wholesaler or manufacturer who sold~~
16 ~~the beer, or any successor thereto, in lieu of exchange for an~~
17 ~~identical package when the return and corrections are completed~~
18 ~~within 15 days from the date the beer was delivered to the retail~~
19 ~~licensee.~~

20 ~~(b) Notwithstanding subdivision (a), a wholesaler or~~
21 ~~manufacturer, or any successor thereto, may accept the return of~~
22 ~~beer purchased from that wholesaler, manufacturer, or successor~~
23 ~~thereto, as follows:~~

24 ~~(1) (A) From a seasonal or temporary licensee if at the~~
25 ~~termination of the period of the license the seasonal or temporary~~
26 ~~licensee has beer remaining unsold, or from an annual licensee~~
27 ~~operating on a temporary basis if at the termination of the~~
28 ~~temporary period the annual licensee has beer remaining unsold.~~

29 ~~(B) For purposes of subparagraph (A), an annual licensee shall~~
30 ~~be considered to be operating on a temporary basis if he or she~~
31 ~~operates at seasonal resorts, including summer and winter resorts,~~
32 ~~or at sporting or entertainment facilities, including racetracks,~~
33 ~~arenas, concert halls, and convention centers. Temporary status~~
34 ~~shall be deemed terminated when operations cease for 15 days or~~
35 ~~more. No wholesaler or manufacturer, or successor thereto, shall~~
36 ~~accept the return of beer from an annual licensee considered to be~~
37 ~~operating on a temporary basis unless the licensee notifies that~~
38 ~~wholesaler or manufacturer, or successor thereto, within 15 days~~
39 ~~of the date the licensee's operations ceased.~~

1 ~~(2) (A) Subject to subparagraph (B), a wholesaler or~~
2 ~~manufacturer, or any successor thereto, may, with department~~
3 ~~approval, accept the return of a brand of beer discontinued in a~~
4 ~~California market area or a seasonal brand of beer from a retail~~
5 ~~licensee, provided that the beer is exchanged for a quantity of beer~~
6 ~~of a brand produced or sold by the same manufacturer with a value~~
7 ~~no greater than the original sales price to the retail licensee of the~~
8 ~~returned beer. For purposes of this subparagraph, “seasonal brand~~
9 ~~of beer” means a brand of beer, as defined in Section 23006, that~~
10 ~~is brewed by a manufacturer to commemorate a specific holiday~~
11 ~~season and is so identified by appropriate product packaging and~~
12 ~~labeling.~~

13 ~~(B) A discontinued brand of beer shall not be reintroduced for~~
14 ~~a period of 12 months in the same California market area in which~~
15 ~~a return and exchange of that beer as described in subparagraph~~
16 ~~(A) has taken place. A seasonal brand of beer shall not be~~
17 ~~reintroduced for a period of six months in the same California~~
18 ~~market area in which a return and exchange of that beer as~~
19 ~~described in subparagraph (A) has taken place.~~

20 ~~(c) Notwithstanding subdivision (a), a wholesaler or~~
21 ~~manufacturer, or any successor thereto, may accept the return of~~
22 ~~beer purchased from that wholesaler or manufacturer, or any~~
23 ~~successor thereto, by the holder of a retail license following the~~
24 ~~revocation of, suspension of, voluntary surrender of, or failure to~~
25 ~~renew the retail license.~~

26 ~~(d) A wholesaler or manufacturer, or any successor thereto, may~~
27 ~~credit the account of the retailer identified in subdivision (c) in an~~
28 ~~amount not to exceed the original sales price to the retailer of the~~
29 ~~returned beer, provided that the beer has been paid for in full.~~

30 ~~(e) Notwithstanding the 15-day time limit for the return of beer~~
31 ~~described in subdivision (a), beer that is recalled for health or~~
32 ~~safety issues may be accepted for return at anytime from a retailer~~
33 ~~and be picked up by the seller of beer. The seller of beer may~~
34 ~~exchange the returned beer for identical product, if safe inventory~~
35 ~~is available, issue a deferred exchange memorandum showing the~~
36 ~~beer was picked up and is to be replaced when inventory is~~
37 ~~available, or issue a credit memorandum to the retailer for the~~
38 ~~returned beer.~~

39 ~~(f) Notwithstanding subdivision (a), a wholesaler or~~
40 ~~manufacturer may accept the return of unsold and unopened beer~~

1 purchased from that wholesaler or manufacturer by a organization
2 that obtained a temporary license pursuant to Section 24045 or
3 24045.1. The licensee may credit the account of the organization
4 in an amount not to exceed the original sales prices of the returned
5 beer, provided that the beer was paid for in full.

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