

AMENDED IN ASSEMBLY JUNE 26, 2006
AMENDED IN ASSEMBLY JUNE 14, 2006
AMENDED IN ASSEMBLY JUNE 15, 2005
AMENDED IN SENATE MAY 27, 2005
AMENDED IN SENATE MAY 2, 2005
AMENDED IN SENATE APRIL 11, 2005

SENATE BILL

No. 148

Introduced by Senator Scott
(Principal coauthor: Senator Florez)
(Principal coauthor: Assembly Member Liu)
(Coauthors: Assembly Members Bass, Frommer, Hancock, Jones,
Oropeza, and Umberg)

February 7, 2005

An act to amend ~~Section 23790~~ *Sections 23800 and 24200* of, and to add Section ~~23790.3~~ *24200.1* to, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 148, as amended, Scott. ~~Alcoholic beverages: licensing restrictions: local ordinances.~~ *Alcoholic beverages: licenses.*

The Alcoholic Beverage Control Act authorizes the Department of Alcoholic Beverage Control to impose reasonable conditions on the exercise of retail privileges under the act. The department may impose conditions on certain license transfers at the request of a local governing body in whose jurisdiction a license is located. Existing law requires the local governing body to make the request for imposition

of conditions, which shall be supported by substantial evidence, as provided, if the license to be transferred is located in an area of undue concentration, as defined. Existing law requires the department to either adopt the conditions requested or notify the local governing body of its determination, as provided.

This bill would authorize the department to impose conditions that it determines are reasonable pursuant to its investigation. This bill would delete the requirements that the request for imposition of conditions be supported by substantial evidence and that require the department to either adopt the conditions requested or notify the local governing body of its determination that there is not substantial evidence.

Existing law specifies the grounds that constitute a basis for the suspension or revocation of an alcoholic beverage license, including a licensee's failure, within a reasonable time, after specified notice from a district attorney, city attorney, county counsel, or the department to take reasonable steps to correct objectionable conditions on the licensed premises, as provided.

This bill would provide additional bases for the suspension or revocation of an alcoholic beverage license, when a licensee fails to take reasonable steps to correct objectionable conditions on the licensed premises or on any public sidewalk abutting a licensed premises, as provided, after specified notice from the district attorney, city attorney, or a county counsel. This bill would also impose a continuing obligation on the licensee, after correcting the objectionable conditions, to ensure that the objectionable conditions do not occur again.

~~(1) The Alcoholic Beverage Control Act prohibits the issuance of retail license to sell alcoholic beverages for any premises that are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city. Existing law provides that premises which had been used in the exercise of the rights and privileges of a retail license to sell alcoholic beverages at a time prior to the effective date of the zoning ordinance may continue operation under specified conditions.~~

~~This bill would provide that a city or county may impose conditions, by a validly enacted city or county zoning ordinance, on any premises issued an off-sale retail license where the city or county holds a administrative hearing with regard to placing conditions on the~~

~~premises and the city or county gives specified persons notice of that hearing.~~

~~(2) The Alcoholic Beverage Control Act imposes upon the Department of Alcoholic Beverage Control the responsibility to administer and enforce state laws with respect to alcoholic beverages, including the implementation of alcoholic beverage licensing. Among other things, the act prohibits the issuance of any retail license for the sale of alcoholic beverages for any premises that are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city. The act provides that premises which had been used in the exercise of those rights and privileges at a time prior to the effective date of the zoning ordinance may continue operation under specified conditions.~~

~~This bill would, in the case of premises issued a Type 20 or Type 21 off-sale retail license, authorize a county or city to provide for a reasonable amortization period and termination or imposition of conditions on legal nonconforming uses pursuant to a validly enacted zoning ordinance. These provisions would also apply to premises which had been used in the exercise of rights and privileges conferred by the retail license at a time prior to the effective date of the zoning ordinance, as provided. These provisions would become inoperative on January 1, 2010.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.~~

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

1 SECTION 1. Section 23800 of the Business and Professions
2 Code is amended to read:

3 23800. The department may place reasonable conditions upon
4 retail licensees or upon any licensee in the exercise of retail
5 privileges in the following situations:

6 (a) If grounds exist for the denial of an application for a
7 license or where a protest against the issuance of a license is filed
8 and if the department finds that those grounds may be removed
9 by the imposition of those conditions.

10 (b) Where findings are made by the department which would
11 justify a suspension or revocation of a license, and where the
12 imposition of a condition is reasonably related to those findings.

1 In the case of a suspension, the conditions may be in lieu of or in
2 addition to the suspension.

3 (c) Where the department issues an order suspending or
4 revoking only a portion of the privileges to be exercised under
5 the license.

6 (d) Where findings are made by the department that the
7 licensee has failed to correct objectionable conditions within a
8 reasonable time after receipt of notice to make corrections given
9 pursuant to subdivision (e) of Section 24200.

10 (e) (1) At the time of transfer of a license pursuant to Section
11 24071.1, 24071.2, or 24072 and upon written notice to the
12 licensee, the department may adopt conditions *that the*
13 *department determines are reasonable pursuant to its*
14 *investigation or that are requested by the local governing body,*
15 *or its designated subordinate officer or agency, in whose*
16 *jurisdiction the license is located. The request for conditions shall*
17 *be supported by substantial evidence that the problems either on*
18 *the premises or in the immediate vicinity identified by the local*
19 *governing body or its designated subordinate officer or agency*
20 *will be mitigated by the conditions. Upon receipt of the request*
21 *for conditions, the department shall either adopt the conditions*
22 *requested or notify the local governing body, or its designated*
23 *subordinate officer or agency, in writing of its determination that*
24 *there is not substantial evidence that the problem exists or that*
25 *the conditions would not mitigate the problems identified. The*
26 *department may adopt conditions requested pursuant to this*
27 *paragraph only when the request is filed. Any request for*
28 *conditions from the local governing body or its designated*
29 *subordinate officer or agency pursuant to this provision shall be*
30 *filed with the department within the time authorized for a local*
31 *law enforcement agency to file a protest or proposed conditions*
32 *pursuant to Section 23987.*

33 (2) If the license to be transferred subject to paragraph (1) is
34 located in an area of undue concentration as defined in Section
35 23958.4, the period within which the local governing body or its
36 designated subordinate officer or agency may submit a written
37 request for conditions shall be 40 days after the mailing of the
38 notices required by Section 23987. For purposes of this provision
39 only, undue concentration shall be established when the
40 requirements of both paragraph (1) of subdivision (a) and either

1 paragraph (2) or paragraph (3) of subdivision (a) of Section
2 23958.4 exist. Pursuant to Section 23987, the department may
3 extend the 40-day period for a period not to exceed an additional
4 20 days upon the written request of any local law enforcement
5 agency or local government entity with jurisdiction. Nothing in
6 this paragraph is intended to reduce the burden of the local
7 governing body or its designated subordinate officer or agency to
8 support any request for conditions as required by paragraph (1).
9 Notwithstanding Section 23987, the department may not transfer
10 any license subject to this paragraph until after the time period
11 permitted to request conditions as specified in this paragraph.

12 *SEC. 2. Section 24200 of the Business and Professions Code*
13 *is amended to read:*

14 24200. The following are the grounds that constitute a basis
15 for the suspension or revocation of licenses:

16 (a) When the continuance of a license would be contrary to
17 public welfare or morals. However, proceedings under this
18 subdivision are not a limitation upon the department's authority
19 to proceed under Section 22 of Article XX of the California
20 Constitution.

21 (b) Except as limited by Chapter 12 (commencing with
22 Section 25000), the violation or the causing or permitting of a
23 violation by a licensee of this division, any rules of the board
24 adopted pursuant to Part 14 (commencing with Section 32001) of
25 Division 2 of the Revenue and Taxation Code, any rules of the
26 department adopted pursuant to the provisions of this division, or
27 any other penal provisions of law of this state prohibiting or
28 regulating the sale, exposing for sale, use, possession, giving
29 away, adulteration, dilution, misbranding, or mislabeling of
30 alcoholic beverages or intoxicating liquors.

31 (c) The misrepresentation of a material fact by an applicant in
32 obtaining a license.

33 (d) The plea, verdict, or judgment of guilty, or the plea of nolo
34 contendere to any public offense involving moral turpitude or
35 under any federal law prohibiting or regulating the sale, exposing
36 for sale, use, possession, or giving away of alcoholic beverages
37 or intoxicating liquors or prohibiting the refilling or reuse of
38 distilled spirits containers charged against the licensee.

39 (e) Failure to take reasonable steps to correct objectionable
40 conditions on the licensed premises, including the immediately

1 adjacent area that is owned, leased, or rented by the licensee, that
2 constitute a nuisance, within a reasonable time after receipt of
3 notice to make those corrections from ~~a district attorney, city~~
4 ~~attorney, county counsel, or~~ the department, under Section 373a
5 of the Penal Code. For the purpose of this subdivision only,
6 “property or premises” as used in Section 373a of the Penal Code
7 includes the area immediately adjacent to the licensed premises
8 that is owned, leased, or rented by the licensee.

9 (f) Failure to take reasonable steps to correct objectionable
10 conditions that occur during business hours on any public
11 sidewalk abutting a licensed premises and constitute a nuisance,
12 within a reasonable time after receipt of notice to correct those
13 conditions from the department. This subdivision shall apply to a
14 licensee only upon written notice to the licensee from the
15 department. The department shall issue this written notice upon
16 its own determination, or upon a request from the local law
17 enforcement agency in whose jurisdiction the premises are
18 located, that is supported by substantial evidence that persistent
19 objectionable conditions are occurring on the public sidewalk
20 abutting the licensed premises. For purposes of this subdivision:

21 (1) “Any public sidewalk abutting a licensed premises” means
22 the publicly owned, pedestrian-traveled way, not more than 20
23 feet from the premises, that is located between a licensed
24 premises, including any immediately adjacent area that is owned,
25 leased, or rented by the licensee, and a public street.

26 (2) “Objectionable conditions that constitute a nuisance”
27 means disturbance of the peace, public drunkenness, drinking in
28 public, harassment of passersby, gambling, prostitution, loitering,
29 public urination, lewd conduct, drug trafficking, or excessive
30 loud noise.

31 (3) “Reasonable steps” means all of the following:

32 (A) Calling the local law enforcement agency. Timely calls to
33 the local law enforcement agency that are placed by the licensee,
34 or his or her agents or employees, shall not be construed by the
35 department as evidence of objectionable conditions that
36 constitute a nuisance.

37 (B) Requesting those persons engaging in activities causing
38 objectionable conditions to cease those activities, unless the
39 licensee, or his or her agents or employees, feel that their
40 personal safety would be threatened in making that request.

1 (C) Making good faith efforts to remove items that facilitate
2 loitering, such as furniture, except those structures approved or
3 permitted by the local jurisdiction. The licensee shall not be
4 liable for the removal of those items that facilitate loitering.

5 (4) When determining what constitutes “reasonable steps,” the
6 department shall consider site configuration constraints related to
7 the unique circumstances of the nature of the business.

8 (g) Subdivision (f) does not apply to a bona fide public eating
9 place, as defined in Section 23038, 23038.1, or 23038.2, that is
10 so operated by a retail on-sale licensee or on-sale beer and wine
11 licensee; a hotel, motel, or similar lodging establishment, as
12 defined in subdivision (b) of Section 25503.16; a winegrowers
13 license; a licensed beer manufacturer, as defined in Section
14 23357; those same or contiguous premises for which a retail
15 licensee concurrently holds an off-sale retail beer and wine
16 license and a beer manufacturer’s license; or those same or
17 contiguous premises at which a retail on-sale licensee or on-sale
18 beer and wine licensee who is licensed as a bona fide public
19 eating place as defined in Section 23038, 23038.1, or 23038.2, a
20 hotel, motel, or similar lodging establishment as defined in
21 subdivision (b) of Section 25503.16, a licensed beer
22 manufacturer, as defined in Section 23357, or a winegrowers
23 license, sells off-sale beer and wine under the licensee’s on-sale
24 license.

25 *SEC. 3. Section 24200.1 is added to the Business and*
26 *Professions Code, to read:*

27 *24200.1. The following are additional bases upon which the*
28 *department may suspend or revoke a license:*

29 *(a) Failure to take reasonable steps to correct objectionable*
30 *conditions on the licensed premises, including the immediately*
31 *adjacent area that is owned, leased, or rented by the licensee,*
32 *that constitute a nuisance within a reasonable time after receipt*
33 *of notice to make those corrections from a district attorney, city*
34 *attorney, or a county counsel, under Section 373a of the Penal*
35 *Code. For the purpose of this subdivision only, “property or*
36 *premises” as used in Section 373a of the Penal Code includes the*
37 *area immediately adjacent to the licensed premises that is*
38 *owned, leased, or rented by the licensee.*

39 *(b) Failure to take reasonable steps to correct objectionable*
40 *conditions that occur during business hours on any public*

1 sidewalk abutting a licensed premises and constitute a nuisance
2 within a reasonable time after receipt of notice to correct those
3 conditions from a district attorney, city attorney, or a county
4 counsel. This subdivision shall apply to a licensee only upon
5 written notice to the licensee from a district attorney, city
6 attorney, or a county counsel.

7 (c) Notwithstanding that the licensee corrects the
8 objectionable conditions within a reasonable time pursuant to
9 subdivision (a) or subdivision (b), the licensee has a continuing
10 obligation to ensure that the objectionable conditions do not
11 reoccur, and failure to do so shall constitute grounds for
12 disciplinary action pursuant to this section.

13 (d) For purposes of this section:

14 (1) “Any public sidewalk abutting a licensed premises”
15 means the publicly owned, pedestrian-traveled way, not more
16 than 20 feet from the premises, that is located between a licensed
17 premises, including any immediately adjacent area that is owned,
18 leased, or rented by the licensee, and a public street.

19 (2) “Objectionable conditions that constitute a nuisance”
20 means disturbance of the peace, public drunkenness, drinking in
21 public, harassment of passersby, gambling, prostitution,
22 loitering, public urination, lewd conduct, drug trafficking, or
23 excessive loud noise.

24 (3) “Reasonable steps” means all of the following:

25 (A) Calling the local law enforcement agency. Timely calls to
26 the local law enforcement agency that are placed by the licensee,
27 or his or her agents or employees, shall not be construed by the
28 department as evidence of objectionable conditions that
29 constitute a nuisance.

30 (B) Requesting those persons engaging in activities causing
31 objectionable conditions to cease those activities, unless the
32 licensee, or his or her agents or employees, feel that their
33 personal safety would be threatened in making that request.

34 (C) Making good faith efforts to remove items that facilitate
35 loitering, such as furniture, except those structures approved or
36 permitted by the local jurisdiction. The licensee shall not be
37 liable for the removal of those items that facilitate loitering.

38 (4) When determining what constitutes “reasonable steps,”
39 the department shall consider site configuration constraints
40 related to the unique circumstances of the nature of the business.

1 (5) “Reasonable time” shall mean 30 days following service
2 of notice pursuant to either subdivision (a) or subdivision (b)
3 upon a licensee that objectionable conditions exist.

4 (e) Subdivision (b) does not apply to a bona fide public eating
5 place, as defined in Section 23038, 23038.1, or 23038.2, that is
6 so operated by a retail on-sale licensee or on-sale beer and wine
7 licensee; a hotel, motel, or similar lodging establishment, as
8 defined in subdivision (b) of Section 25503.16; a winegrowers
9 license; a licensed beer manufacturer, as defined in Section
10 23357; those same or contiguous premises for which a retail
11 licensee concurrently holds an off-sale retail beer and wine
12 license and a beer manufacturer’s license; or those same or
13 contiguous premises at which a retail on-sale licensee or on-sale
14 beer and wine licensee who is licensed as a bona fide public
15 eating place as defined in Section 23038, 23038.1, or 23038.2, a
16 hotel, motel, or similar lodging establishment as defined in
17 subdivision (b) of Section 25503.16, a licensed beer
18 manufacturer, as defined in Section 23357, or a winegrowers
19 license, sells off-sale beer and wine under the licensee’s on-sale
20 license.

21 (f) A hearing for a violation of this section shall be held within
22 60 days of an accusation being filed.

23 ~~SECTION 1. Section 23790 of the Business and Professions~~
24 ~~Code is amended to read:~~

25 ~~23790. (a) No retail license shall be issued for any premises~~
26 ~~which are located in any territory where the exercise of the rights~~
27 ~~and privileges conferred by the license is contrary to a valid~~
28 ~~zoning ordinance of any county or city.~~

29 ~~(b) Premises which had been used in the exercise of those~~
30 ~~rights and privileges at a time prior to the effective date of the~~
31 ~~zoning ordinance may continue operation under the following~~
32 ~~conditions:~~

33 ~~(1) The premises retain the same type of retail liquor license~~
34 ~~within a license classification.~~

35 ~~(2) The licensed premises are operated continuously without~~
36 ~~substantial change in mode or character of operation.~~

37 ~~(c) For purposes of this subdivision, a break in continuous~~
38 ~~operation does not include:~~

39 ~~(1) A closure for not more than 30 days for purposes of repair,~~
40 ~~if that repair does not change the nature of the licensed premises~~

1 and does not increase the square footage of the business used for
2 the sale of alcoholic beverages.

3 ~~(2) The closure for restoration of premises rendered totally or~~
4 ~~partially inaccessible by an act of God or a toxic accident, if the~~
5 ~~restoration does not increase the square footage of the business~~
6 ~~used for the sale of alcoholic beverages.~~

7 ~~(d) (1) Notwithstanding subdivision (b), with respect to any~~
8 ~~premises issued a Type 20 or Type 21 off-sale retail license, a~~
9 ~~city or county may provide for a reasonable amortization period~~
10 ~~and termination or imposition of conditions on legal~~
11 ~~nonconforming uses pursuant to a validly enacted zoning~~
12 ~~ordinance.~~

13 ~~(2) Notwithstanding paragraph (1), any premises issued a~~
14 ~~Type 20 or Type 21 off-sale retail license prior to the effective~~
15 ~~date of the act adding this subdivision shall have up to six~~
16 ~~months to conform to the conditions imposed by an ordinance~~
17 ~~described in paragraph (1).~~

18 ~~(3) Notwithstanding any other provision of this subdivision to~~
19 ~~the contrary, nothing in this section shall preclude a city, county,~~
20 ~~or city and county from entering into a negotiated agreement for~~
21 ~~a longer amortization period than specified in an ordinance~~
22 ~~described in paragraph (1) with a premises issued a Type 20 or~~
23 ~~Type 21 off-sale retail license.~~

24 ~~(4) Nothing in this section shall be interpreted to require the~~
25 ~~department to impose conditions upon Type 20 and Type 21~~
26 ~~licenseholders.~~

27 ~~(5) This subdivision shall cease to be operative on January 1,~~
28 ~~2010.~~

29 ~~SEC. 2. Section 23790.3 is added to the Business and~~
30 ~~Professions Code, to read:~~

31 ~~23790.3. Notwithstanding Section 23790, a city or county~~
32 ~~may impose conditions, by a validly enacted city or county~~
33 ~~zoning ordinance, on any premises issued an off-sale retail~~
34 ~~license where the city or county holds a public administrative~~
35 ~~hearing with regard to placing conditions upon the existing use of~~
36 ~~those premises and the city or county gives notice to the owner of~~
37 ~~record or lessee of the real property affected, and to the off-sale~~
38 ~~retail licensee if different than the owner of record or lessee of~~

- 1 ~~the real property, of the public administrative hearing with regard~~
- 2 ~~placing conditions upon the existing use of those premises.~~

O