

Introduced by Senator LenoFebruary 22, 2013

An act to amend Section 25631 of, and to add Section 25634 to, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 635, as introduced, Leno. Alcoholic beverages: hours of sale.

The Alcoholic Beverage Control Act provides that any on- or off-sale licensee, or agent or employee of the licensee, who sells, gives, or delivers to any person any alcoholic beverage between the hours of 2 a.m. and 6 a.m. of the same day, and any person who knowingly purchases any alcoholic beverages between those hours, is guilty of a misdemeanor.

This bill would allow the local governing body of a county or a city and county to apply to the Department of Alcoholic Beverage Control to authorize, with or without conditions on the licensees within those jurisdictions, the selling, giving, delivering, or purchasing of alcoholic beverages at an on-sale licensed premises between the hours of 2 a.m. and 4 a.m., as provided. This bill would require the local governing body to notify specified persons of the application for additional hours and would provide a procedure for protest and hearing regarding the application.

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.

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

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

1 SECTION 1. Section 25631 of the Business and Professions
 2 Code is amended to read:

3 25631. ~~Any~~(a) (1) *Except as provided in subdivision (b), any*
 4 *on- or off-sale licensee, or agent or employee of that licensee, who*
 5 *sells, gives, or delivers to any persons any alcoholic beverage or*
 6 *any person who knowingly purchases any alcoholic beverage*
 7 *between the hours of 2 ~~o'clock~~ a.m. and 6 ~~o'clock~~ a.m. of the same*
 8 *day, is guilty of a misdemeanor.*

9 For
 10 (2) *For the purposes of this ~~section~~ subdivision, on the day that*
 11 *a time change occurs from Pacific standard time to Pacific daylight*
 12 *saving time, or back again to Pacific standard time, “2 ~~o'clock~~*
 13 *a.m.” means two hours after midnight of the day preceding the*
 14 *day such change occurs.*

15 (b) (1) *In a county or city and county that has additional serving*
 16 *hours pursuant to Section 25634, any on-sale licensee, or agent*
 17 *or employee of the licensee, who sells, gives, or delivers to any*
 18 *person any alcoholic beverage or any person who knowingly*
 19 *purchases any alcoholic beverage between the hours of 4 a.m. and*
 20 *6 a.m. of the same day, is guilty of a misdemeanor.*

21 (2) *For the purposes of this subdivision, on the day that a time*
 22 *change occurs from Pacific standard time to Pacific daylight time,*
 23 *or back again to Pacific standard time, “4 a.m.” means four hours*
 24 *after 12 midnight of the day preceding the day the change occurs.*

25 SEC. 2. Section 25634 is added to the Business and Professions
 26 Code, to read:

27 25634. (a) Notwithstanding Section 25631, the department
 28 may authorize, with or without conditions on the licensees, the
 29 selling, giving, delivering, or purchasing of alcoholic beverages
 30 at an on-sale licensed premises between the hours of 2 a.m. and 4
 31 a.m. within a county or a city and county if the local governing
 32 body of that county or city and county, or its designated subordinate
 33 officer or body, applies to the department and shows the department
 34 the public convenience or necessity served by the additional hours.

35 (b) (1) Upon receipt of an application for additional hours
 36 pursuant to this section, the department shall make a thorough
 37 investigation to determine whether the additional hours would
 38 serve the public convenience or necessity.

1 (2) The local governing body of the county or city and county
2 shall notify the law enforcement agencies of the county or city and
3 county, the residents of the county or city and county, and any
4 other interested parties, as determined by the local governing body,
5 of the application for additional hours pursuant to this section
6 within 30 consecutive days of the filing of the application, in a
7 manner determined by the local governing body.

8 (3) Protests may be filed at any office of the department within
9 30 days from the first date of notice of the filing of an application
10 for additional hours. The time within which a local law
11 enforcement agency may file a protest shall be extended by the
12 period prescribed in Section 23987.

13 (4) The department may reject protests, except protests made
14 by a public agency or public official, if it determines the protests
15 are false, vexatious, frivolous, or without reasonable or probable
16 cause at any time before hearing thereon, notwithstanding Section
17 24016 or 24300. If, after investigation, the department recommends
18 that additional hours be authorized notwithstanding a protest by a
19 public agency or a public official, the department shall notify the
20 agency or official in writing of its determination and the reasons
21 therefor, in conjunction with the notice of hearing provided to the
22 protestant pursuant to Section 11509 of the Government Code. If
23 the department rejects a protest as provided in this section, a
24 protestant whose protest has been rejected may, within 10 days,
25 file an accusation with the department alleging the grounds of
26 protest as a cause for revocation of the additional hours and the
27 department shall hold a hearing as provided in Chapter 5
28 (commencing with Section 11500) of Part 1 of Division 3 of Title
29 2 of the Government Code.

30 (5) This section shall not be construed as prohibiting or
31 restricting any right that the individual making the protest might
32 have to a judicial proceeding.

33 (c) (1) If, after investigation, the department recommends that
34 additional hours be authorized, with or without conditions on the
35 licensees, notwithstanding that one or more protests have been
36 accepted by the department, the department shall notify the local
37 governing body and all protesting parties whose protests have been
38 accepted in writing of its determination.

39 (2) Any person who has filed a verified protest in a timely
40 fashion pursuant to subdivision (b) that has been accepted pursuant

1 to this article may request that the department conduct a hearing
2 on the issue or issues raised in the protest. The request shall be in
3 writing and shall be filed with the department within 15 business
4 days of the date the department notifies the protesting party of its
5 determination as required under paragraph (1).

6 (3) At any time prior to the issuance of the license, the
7 department may, in its discretion, accept a late request for a hearing
8 upon a showing of good cause. Any determination of the
9 department pursuant to this subdivision shall not be an issue at the
10 hearing nor grounds for appeal or review.

11 (4) If a request for a hearing is filed with the department
12 pursuant to paragraph (2), the department shall schedule a hearing
13 on the protest. The issues to be determined at the hearing shall be
14 limited to those issues raised in the protest or protests of the person
15 or persons requesting the hearing.

16 (5) Notwithstanding that a hearing is held pursuant to paragraph
17 (4), the protest or protests of any person or persons who did not
18 request a hearing as authorized in this section shall be deemed
19 withdrawn.

20 (6) If a request for a hearing is not filed with the department
21 pursuant to this section, any protest or protests shall be deemed
22 withdrawn and the department may issue the license without any
23 further proceeding.

24 (7) If the person filing the request for a hearing fails to appear
25 at the hearing, the protest shall be deemed withdrawn.

26 (d) The department shall notify the on-sale licensees within the
27 county or city and county of the outcome of the application for
28 additional hours. Any conditions placed upon the licensees pursuant
29 to this section shall be subject to Article 1.5 (commencing with
30 Section 23800).

31 (e) The local governing body shall, at the time of application
32 for additional hours pursuant to this section, accompany the
33 application with a fee of ____ dollars (\$____). Fees collected
34 pursuant to this section shall be deposited in the Alcohol Beverage
35 Control Fund.

36 SEC. 3. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

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