

AMENDED IN SENATE JUNE 22, 2016

AMENDED IN ASSEMBLY MAY 23, 2016

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2082

Introduced by Assembly Member Campos

February 17, 2016

An act to add Section 23059 to the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2082, as amended, Campos. Alcoholic beverages: licenses: emergency orders.

Existing law, the Alcoholic Beverage Control Act, which is administrated by the Department of Alcoholic Beverage Control, regulates the application, issuance, and suspension of alcoholic beverage licenses. The act authorizes the department to investigate potential violations of the act, authorizes the Director of the Department of Alcoholic Beverage Control to bring an action to enjoin a violation or the threatened violation of the act, and provides for a hearing process held on a protest, accusation, or petition for a license.

This bill would authorize the director, by emergency order, to temporarily suspend, limit, or condition any license *that authorizes consumption of alcohol on the premises of the licensee, except as specified*, prior to any hearing when, in the opinion of the department, the action is urgent and necessary to protect against an immediate threat

to health or safety that is reasonably related to the operation of the licensed business. The bill would, among other things related to the issuance and application of an emergency order, authorize a licensee against whom the order has been issued to petition for relief by written argument. *The bill, upon order of the department, would authorize the hearing to be conducted electronically. The bill would authorize a licensee to bring a cause of action seeking damages against a local civil authority, law enforcement, or another public official acting in his or her official capacity, if the licensee can establish that the direct evidence proffered to the department to support the existence of an immediate threat to health or safety was false and presented with malicious intent.*

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 23059 is added to the Business and
 2 Professions Code, to read:
 3 23059. (a) (1) The director may, by emergency order,
 4 temporarily suspend, limit, or condition any license issued pursuant
 5 to this division by emergency order prior to any hearing when, in
 6 the opinion of the department, the action is urgent and necessary
 7 to protect against an immediate threat to health or safety that is
 8 reasonably related to the operation of the licensed business.
 9 (2) If an immediate threat to health or safety is alleged, direct
 10 evidence of the threat must be presented to the director prior to
 11 the issuance of an emergency order pursuant to this section. The
 12 standard in any subsequent evidentiary hearing shall be whether
 13 the licensee ~~knew, or should have known,~~ *knew* about the threat.
 14 (b) For purposes of this section:
 15 (1) “Direct evidence” includes, but is not limited to, police
 16 reports, citations from the relevant local civil authority,
 17 photographs, and video footage provided by law enforcement or
 18 another public official acting in his or her official capacity.
 19 (2) “Immediate threat to health or safety” means the trafficking
 20 or dealing of controlled substances, prostitution, human trafficking,
 21 gambling, or violence involving great bodily injury or death that
 22 occurs on ~~or immediately adjacent to~~ the licensee’s premises.

1 (3) “License” means a license issued pursuant to this division
2 that authorizes consumption of alcohol on the premises of a
3 licensee, excluding the licensed premises of production of a winery,
4 brewery, or distillery.

5 (c) (1) The emergency order shall set forth the grounds upon
6 which it is based, including a statement of facts constituting the
7 alleged emergency necessitating the action.

8 (2) The emergency order shall be effective immediately upon
9 issuance and service upon the licensee or any agent of the licensee.
10 The department shall serve the licensee with the emergency order,
11 a copy of available discovery, and other relevant evidence in
12 possession of the department, including, but not limited to,
13 affidavits, declarations, and any other direct evidence upon which
14 the department relied in issuing the emergency order. The
15 department shall notify the licensee of the licensee’s right to
16 petition for relief.

17 (d) (1) Once the emergency order has been served, a licensee
18 may petition for relief from the order by written argument.

19 (2) If a petition for relief is filed, using a preponderance of the
20 evidence standard, the director shall modify or vacate the
21 emergency order if either:

22 ~~(A) There is a reasonable probability that the licensee will~~
23 ~~prevail in the accusation.~~

24 (A) *The department has determined that the evidence is not*
25 *substantial enough to prevail in a hearing or the department has*
26 *acknowledged an error on its behalf.*

27 (B) The likelihood of immediate threat to the health or safety
28 in not sustaining the emergency order does not outweigh the
29 likelihood of injury to the licensee in sustaining the emergency
30 order.

31 (e) The department shall respond, in writing, to a petition for
32 relief, either by sustaining, modifying, or vacating the emergency
33 order, within three business days of receipt of the petition. If the
34 department does not sustain or modify the emergency order within
35 three business days of receipt of the petition, the emergency order
36 shall be dissolved.

37 (f) The emergency order shall remain effective until further
38 order of the department or disposition at an accusation proceeding.

39 (g) The department shall file an accusation against the licensee
40 with any additional, available pertinent discovery that was not

1 provided to the licensee at the time the emergency order was issued
2 within five business days after the issuance of an emergency order.
3 The emergency order shall be dissolved if the department does not
4 file an accusation within five business days after the issuance of
5 the order.

6 (h) The licensee is entitled to a hearing. If a hearing is requested,
7 it shall commence within 10 business days after the department's
8 receipt of the Notice of Defense.

9 (i) Nothing in this section precludes a licensee from proceeding
10 directly to a full evidentiary hearing on an accusation without first
11 petitioning the department for relief.

12 (j) At the accusation hearing, the administrative law judge shall
13 issue a verbal decision which sustains or vacates the emergency
14 order or shall issue a written order sustaining or vacating the
15 emergency order within 24 hours of the close of the hearing. The
16 administrative law judge shall submit a written proposed decision
17 within 10 days after the close of the hearing.

18 (k) *Notwithstanding any other law, upon order of the*
19 *department, the hearing required by this section may be conducted*
20 *electronically.*

21 (l) *If a licensee can establish that the direct evidence proffered*
22 *to the department to support the existence of an immediate threat*
23 *to health or safety pursuant to this section was false and presented*
24 *with malicious intent, the licensee may bring a cause of action*
25 *seeking damages against a local civil authority, law enforcement,*
26 *or another public official acting in his or her official capacity.*