

ASSEMBLY BILL

No. 2296

Introduced by Assembly Members Leno and Aghazarian

February 19, 2004

An act to amend Section 24013 of the Business and Professions Code, relating to alcoholic beverage control.

LEGISLATIVE COUNSEL'S DIGEST

AB 2296, as introduced, Leno. Alcoholic beverages: issuance of liquor licenses: protests.

Existing law provides that protests against the issuance of a liquor license may be filed with the Department of Alcoholic Beverage Control. Existing law permits the department to reject protests, except protests made by a public agency, public official, or governing body of a city or county, it determines to be false, vexatious, or without reasonable or probable cause. Existing law also permits a protestant whose protest has been rejected to file an accusation with the department, in which case the department is required to hold a hearing, as specified.

This bill would establish a procedure by which an applicant for a liquor license whose license is being protested may file with the department, no later than 30 days before the date set for a hearing on the protest, a verified motion to dismiss the protest on grounds that the protest is false, vexatious, or without reasonable or probable cause. The bill would require the department to grant the motion to dismiss the protest if it determines that there is no evidentiary support for the protest on which reasonable minds may differ. This bill would permit a protestant whose protest has been dismissed, in addition to a protestant whose protest has been rejected, to file an accusation with the

department and would require the department to hold a hearing in this instance.

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 24013 of the Business and Professions
2 Code is amended to read:

3 24013. (a) Protests may be filed at any office of the
4 department at any time within 30 days from the first date of posting
5 the notice of intention to engage in the sale of alcoholic beverages
6 at the premises, or within 30 days of the mailing of the notification
7 pursuant to Section 23985.5, whichever is later.

8 (b) ~~The~~ Any applicant for a license whose license is being
9 protested may file, no later than 30 days before the date set for a
10 hearing on the protest, with the department a verified motion to
11 dismiss the protest on grounds that the protest is false, vexatious,
12 or without reasonable or probable cause. The motion shall be
13 served on the protestant together with a copy of this section. The
14 protestant, not later than 15 days after the filing of the motion, may
15 file and serve on the applicant an opposition to the motion. The
16 motion and any opposition to the motion may be supported by
17 verified declarations. The motion to dismiss the protest shall be
18 granted if the department determines that there is no evidentiary
19 support for the protest on which reasonable minds may differ. This
20 subdivision does not apply to protests made by a public agency, a
21 public official acting in an official capacity, or the governing body
22 of a city or county.

23 (c) With respect to any motion made under subdivision (b), the
24 following shall apply:

25 (1) The date for hearing the underlying protest shall be
26 continued until the department grants or denies the motion.

27 (2) The applicant may request oral argument on the motion, to
28 be scheduled at the discretion of the administrative law judge. The
29 oral argument on the motion may be by telephone conference. A
30 court reporter is not required.

31 (3) Not later than 10 days after the oral argument on the motion
32 or, if no oral argument is requested, not later than 10 days after the
33 filing of the protestant's opposition to the motion, the



1 *administrative law judge shall issue a decision on the motion. The*
2 *decision shall be based on whether the opposition papers and*
3 *verified declarations demonstrate that there is competent evidence*
4 *supporting the protest upon which reasonable minds may differ.*
5 *The burden of proof shall be on the protestant. If the protestant*
6 *does not oppose the motion, the protest may be dismissed.*

7 (4) *If the motion to dismiss the protest is granted, the protest*
8 *shall have no legal effect and may not be used by the department*
9 *on a basis to deny the license or to impose conditions on the*
10 *license, or for any other purpose. Nothing in this subdivision shall*
11 *be construed as otherwise limiting the department's authority to*
12 *deny or impose conditions on a license under this division.*

13 (5) *If the motion to dismiss the protest is denied, the protest*
14 *shall thereafter be set for hearing pursuant to Sections 24016 and*
15 *24300.*

16 (d) *Notwithstanding any other provision of law, the department*
17 *may reject ~~protests~~ a protest, except protests made by a public*
18 *agency or public official acting in his or her official capacity or*
19 *protests made by the governing body of a city or county, if it*
20 *determines the ~~protests are~~ protest is false, vexatious, or without*
21 *reasonable or probable cause at any time before hearing thereon;*
22 *~~notwithstanding Section 24016 or 24300. If, The department's~~*
23 *power to reject a protest shall not be affected by the failure of the*
24 *applicant to file a motion to dismiss the protest pursuant to*
25 *subdivision (b).*

26 (e) *If, after investigation, the department recommends that a*
27 *license be issued notwithstanding a protest by a public agency, a*
28 *public official, or the governing body of a city or county, the*
29 *department shall notify the agency, official, or governing body in*
30 *writing of its determination and the reasons therefor, in*
31 *conjunction with the notice of hearing provided to the protestant*
32 *pursuant to Section 11509 of the Government Code. ~~If~~*

33 (f) *If the department dismisses or rejects a protest as provided*
34 *in this section and issues a license, a protestant whose protest has*
35 *been dismissed or rejected may, within 10 days after the issuance*
36 *of the license, file an accusation with the department alleging the*
37 *grounds of protest as a cause for revocation of the license and the*
38 *department shall hold a hearing as provided in Chapter 5*
39 *(commencing with Section 11500) of Part 1 of Division 3 of Title*
40 *2 of the Government Code.*



- 1 ~~(e)~~
- 2 (g) Nothing in this section shall be construed as prohibiting or
- 3 restricting any right which the individual making the protest might
- 4 have to a judicial proceeding.

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