

AMENDED IN SENATE JUNE 9, 2004
AMENDED IN ASSEMBLY APRIL 15, 2004
AMENDED IN ASSEMBLY APRIL 1, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2296

Introduced by Assembly Members Leno and Aghazarian

February 19, 2004

An act to amend Section 24013 of, and to repeal and add Section 24015 of, the Business and Professions Code, relating to alcoholic beverage control.

LEGISLATIVE COUNSEL'S DIGEST

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

Existing

(1) 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, if the protest is determined 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.

Existing

This bill would also permit the department to reject protests if the protest is determined to be frivolous.

(2) Existing law requires, in the case of a protest of the issuance of a liquor license, that a hearing be held not more than 60 days after the receipt of the protest by the State Office of Administrative Hearings.

This bill would repeal this hearing requirement and instead would establish procedures to be followed in cases in which the department recommends that a license be issued, notwithstanding that one or more protests have been accepted by the department. Under these procedures, the department would be required to notify the applicant and any party whose protest has been accepted in writing of its determination. The bill would provide for a hearing upon the request of any of these protesting parties who have filed a ~~timely~~ verified protest *in a timely fashion pursuant to existing law*, authorize the department to accept a late request for a hearing, limit the issues that may be determined at the hearing, provide that the protests of any person who did not request a hearing under these provisions shall be deemed withdrawn, ~~and~~ authorize the department to issue the license without any further proceedings if no request for hearing is filed with the department, *and provide that the protest is deemed withdrawn if the person requesting the hearing fails to appear at that hearing.*

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 department may reject protests, except protests made
9 by a public agency or public official or protests made by the
10 governing body of a city or county, if it determines the protests are
11 false, vexatious, *frivolous*, or without reasonable or probable
12 cause at any time before hearing thereon, notwithstanding Section
13 24016 or 24300. If, after investigation, the department
14 recommends that a license be issued notwithstanding a protest by
15 a public agency, a public official, or the governing body of a city
16 or county, the department shall notify the agency, official, or



1 governing body in writing of its determination and the reasons
2 therefor, in conjunction with the notice of hearing provided to the
3 protestant pursuant to Section 11509 of the Government Code. If
4 the department rejects a protest as provided in this section and
5 issues a license, a protestant whose protest has been rejected may,
6 within 10 days after the issuance of the license, file an accusation
7 with the department alleging the grounds of protest as a cause for
8 revocation of the license and the department shall hold a hearing
9 as provided in Chapter 5 (commencing with Section 11500) of Part
10 1 of Division 3 of Title 2 of the Government Code.

11 (c) Nothing in this section shall be construed as prohibiting or
12 restricting any right ~~which~~ *that* the individual making the protest
13 might have to a judicial proceeding.

14 *SEC. 2.* Section 24015 of the Business and Professions Code
15 is repealed.

16 *SEC. 2.* Section 24015 is added to the Business and
17 Professions Code, to read:

18 24015. (a) If, after investigation, the department
19 recommends that a license be issued, with or without conditions,
20 notwithstanding that one or more protests have been accepted by
21 the department, the department shall notify the applicant and all
22 protesting parties whose protests have been accepted in writing of
23 its determination.

24 (b) Any person who has filed a ~~timely verified protest~~ *verified*
25 *protest in a timely fashion pursuant to subdivision (a) of Section*
26 *24013*, that has been accepted pursuant to this article may request
27 that the department conduct a hearing on the issue or issues raised
28 in the protest. The request shall be in writing and shall be filed with
29 the department within 15 business days of the date the department
30 notifies the protesting party of its determination as required under
31 subdivision (a).

32 (c) At any time prior to the issuance of the license, the
33 department may, in its discretion, accept a late request for a hearing
34 upon a showing of good cause. Any determination of the
35 department pursuant to this subdivision shall not be an issue at the
36 hearing nor grounds for appeal or review.

37 (d) If a request for a hearing is filed with the department
38 pursuant to subdivision (b), the department shall schedule a
39 hearing on the protest. The issues to be determined at the hearing



1 shall be limited to those issues raised in the protest or protests of
2 the person or persons requesting the hearing.

3 (e) Notwithstanding that a hearing is held pursuant to
4 subdivision (d), the protest or protests of any person or persons
5 who did not request a hearing as authorized in this section shall be
6 deemed withdrawn.

7 (f) If no request for a hearing is filed with the department
8 pursuant to this section, any protest or protests shall be deemed
9 withdrawn and the department may issue the license without any
10 further proceeding.

11 (g) *If the person filing the request for a hearing fails to appear*
12 *at the hearing, the protest shall be deemed withdrawn.*

