

Date of Hearing: April 20, 2016

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 2082 (Campos) – As Amended March 17, 2016

SUBJECT: Alcoholic beverages: licenses: emergency orders.

SUMMARY: Authorizes the Director of the Alcoholic Beverage Control (ABC) to temporarily suspend, limit, condition, or take other action upon, any license by emergency order 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. The bill would, among other things related to the issuance and application of an emergency order, a licensee or person or entity against whom the emergency order has been issued may petition for relief from the order by written argument, as specified. Specifically, **this bill:**

- 1) States that the Director may temporarily suspend, limit, condition, or take other action upon, any license issued, as specified, by emergency order prior to any hearing when, in the opinion of ABC, the action is urgent and necessary to protect against an immediate threat to health or safety.
- 2) Maintains the emergency order may suspend, limit, condition, or take other action in relation to the license of one or more persons in an operation without affecting other individual licensees.
- 3) Provides the emergency order shall set forth the grounds upon which it is based, including a statement of facts constituting the alleged emergency necessitating the action.
- 4) States the emergency order shall be effective immediately upon issuance and service upon the licensee or any agent of the licensee. ABC shall serve the licensee with the emergency order, a copy of available discovery, and other relevant evidence in possession of the department, including, but not limited to, affidavits, declarations, and any other evidence upon which the ABC relied in issuing the emergency order. ABC shall notify the licensee of the licensee's right to petition for relief.
- 5) Provides that once the emergency order has been served, a licensee, person, or entity against whom the emergency order has been issued may petition for relief from the order by written argument.
- 6) States if a petition for relief is filed, using a preponderance of the evidence standard; the director shall modify or vacate the emergency order if either:
 - (a) There is a reasonable probability that the licensee will prevail in the accusation.
 - (b) The likelihood of immediate threat to the health or safety in not sustaining the emergency order does not outweigh the likelihood of injury to the licensee in sustaining the emergency order.
 - (d) ABC shall respond, in writing, to a petition for relief, either by sustaining, modifying, or vacating the emergency order, within three business days of receipt of the petition. If ABC

does not sustain or modify the emergency order within three business days of receipt of the petition, the emergency order shall be dissolved.

e) The emergency order shall remain effective until further order of the ABC or disposition at an accusation proceeding.

(f) ABC shall file an accusation against the licensee with any additional, available pertinent discovery that was not provided to the licensee at the time the emergency order was issued within five business days after the issuance of an emergency order.

(g) The licensee or person or entity against whom the emergency order has been issued and served is entitled to a hearing. If a hearing is requested, it shall commence within 10 business days of the received date of the Notice of Defense.

(h) A licensee is not precluded from proceeding directly to a full evidentiary hearing on an accusation without first petitioning ABC for relief.

(i) At the accusation hearing, the administrative law judge shall issue a verbal decision that sustains or vacates the emergency order. A proposed decision by an administrative judge on the accusation shall be prepared for the director's review within 10 business days after the submission of the hearing.

EXISTING LAW:

1) States ABC has the exclusive power, in accordance with laws enacted, to license and regulate the manufacture, importation and sale of alcoholic beverages in this State. It also has the power for good cause to deny, suspend or revoke any specific alcoholic beverage license. (Section 22 of Article XX, California Constitution)

2) Provides ABC is headed by a Director, whose function is to supervise the manufacture, distribution and sale of alcoholic beverages in such a number as to fulfill the public policy and legislative purpose of the ABC Act.

3) Authorizes ABC to investigate potential violations of the ABC Act. Authorizes the Director of the department 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.

4) Provides that the ABC may place reasonable conditions upon any licensee in certain situations, including, but not limited to, the following: where grounds exist for the denial of an application for a license or where a protest against the issuance of a license has been filed; where findings are made by the ABC which would justify suspension or revocation of the license, and imposition of the conditions is reasonably related to those findings; where findings are made by the ABC that the licensee has failed to correct objectionable conditions within a reasonable period of time. Provides further that the ABC may suspend or revoke a license for failure to take reasonable steps to correct objectionable conditions, as described. (B & P Code Sections 23800, 24200, and 24200.1.)

5) Authorizes ABC, in its discretion, to suspend or revoke any license to sell alcoholic beverages if it shall determine for good cause that the continuance of such license would be

contrary to the public welfare or morals. ABC may use a range of progressive and proportional penalties. This range will typically extend from Letters of Warning to Revocation. Higher or lower penalties may be recommended based on the facts of individual cases where generally supported by aggravating or mitigating circumstances.

6) Provides if an accusation is filed against a licensee, the licensee is entitled to have a public hearing on the accusation to present a defense against the charges made. The hearing will be presided over by an Administrative Law Judge of the Administrative Hearing Office. At the hearing, the licensee is entitled to the issuance of subpoenas to compel the attendance of witnesses and materials and may be represented by counsel (but not at public expense), may present relevant evidence and may cross-examine all witnesses. The Administrative Law Judge makes a proposed decision, which is filed with the ABC Director. (Government Code Sections 11500-11528)

7) Provides generally that the ABC shall deny an application for a license if the issuance or transfer of the license would tend to create a law enforcement problem or add to undue concentration of licenses, unless issuing the license would serve a public convenience or necessity. Defines "undue concentration" in terms of a specified ratio of licensed premises-to-population within a census tract or a crime-reporting district in which the reported crime rate exceeds the crime rate of the entire local law enforcement jurisdiction by more than 20%. (Business & P Code Sections 23958 and 23958.4.)

8) Defines an "on-sale" license as authorizing the sale of all types of alcoholic beverages: namely, beer, wine and distilled spirits, for consumption on the premises (such as at a restaurant or bar). An "off-sale" license authorizes the sale of all types of alcoholic beverages for consumption off the premises in original, sealed containers.

9) States the California Gambling Control Commission (CGCC) may issue any emergency orders against an owner licensee or any person involved in a transaction requiring prior approval that the division deems reasonably necessary for the immediate preservation of the public peace, health, safety, or general welfare, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the bill: The author's office notes this bill would provide the Director of ABC with the authority to suspend a business' alcohol license in the case of an emergency that threatens the health and safety of the public. To do so, the Director must produce an emergency order with a statement of facts containing the alleged emergency, any relevant evidence upon which the department relied in issuing the emergency order, and a notice of the licensee's right to petition for relief.

The author states this bill also allows the licensee to petition for relief from the order by written argument, to which the department must respond within three business days with a document sustaining, modifying, or vacating the emergency order. If the licensee or entity against who the emergency order has been issued requests a hearing, it will be granted within 10 business days of the received date of the Notice of Defense.

The author points out “in San Jose, we have seen many cases of violent crime and murder in relation to bars that double as “bikini bars” or strip clubs. The illegal operations in these bars may go unpunished for weeks or even months, while the police department and local ABC officials build a case against them. Even under urgent situations, like repeated violent crimes happening, local officials have their hands tied and must let the businesses continue operation. Even worse, many times these establishments are run by the same group of business partners/family members who merely transfer the alcohol license amongst each other when the business is finally shut down. The author notes that the San Jose Police Department has had success in dealing with and shutting down these establishments, but their authority is still lacking.”

The author believes this bill will be a tool that can be used, with caution, when residents face dangerous circumstances because of problem businesses. The bill was drafted in close collaboration with local and statewide ABC officials, as well as San Jose Police Department officials. Currently, the San Jose Chief of Police can immediately suspend an entertainment license of a business in the case of an emergency, but this practice is only applicable within the city’s “entertainment zone.” Law enforcement and ABC have their hands tied when the same emergency situations happen anywhere outside that zone. This bill also takes into consideration the current abilities of the Department of Consumer Affairs, the Department of Public Health and the Bureau of Gambling Control (*see #9 in Existing Law*) as examples of how to craft the ability to suspend licenses in cases of emergencies, while ensuring that licensees have necessary protections and the right to due process.

Background:

State v. Local Control of Alcohol Policy: Much to local government's frustration, both the state Constitution and the ABC Act generally prohibit local governments from regulating the sale of alcoholic beverages within their jurisdictions. Exacerbating this sentiment is the perception that ABC is under-funded and understaffed with less than 200 enforcement agents available to police the almost 70,000 retail licenses in the state. Further compounding this situation is the inability of ABC to receive any funding increases. The ABC is a special fund department that receives funding from fees imposed upon alcoholic beverage licensees.

Over the years, local governments have often petitioned the Legislature for greater authority to directly regulate establishments that sell alcohol (e.g., restricting the hours of operation of problem premises, or limiting the sale of certain products such as fortified wines or high alcohol content malt beverages). Much of this activity has been centered on local government's use of zoning laws and conditional use permits that place operating conditions on new businesses that sell alcohol. While current law prohibits the ABC from issuing a new license in an area not locally zoned for that type of business activity, those establishments in existence prior to any local zoning action are "grandfathered" and therefore beyond the reach of the local government – a source of contention for local governments.

Historically, the alcohol industry and retailers have opposed ceding to local government any measure of the state's exclusive authority to regulate alcohol. The industry has advocated that matters relating to the regulation of alcohol should be determined at the state level, as opposed to an assortment of local regulations, which may vary from local jurisdiction to local jurisdiction.

Disorderly house law: A disorderly house is a licensed premises that disturbs the neighborhood or is maintained for purposes that are injurious to the public morals, health, convenience or safety. For example, a licensed outlet that (a) disturbs the neighborhood with noise, loud music, loitering, littering, vandalism, urination or defecation by patrons, graffiti, etc.; or (b) has many crimes ongoing inside, such as drunks, fights, assaults, prostitution, narcotics, etc. The licensed premise includes the parking lot. Any licensee, or employee of any licensee, who keeps or permits such a disorderly house is guilty of a misdemeanor, and the license is subject to disciplinary action. (B & P Sections 25601 and 24200)

Penalty for selling an alcoholic beverage to a minor or permitting a minor to consume an alcoholic beverage in an on-sale premises: The law requires the suspension of a license for a second or subsequent violation within a 36-month period. The law also authorizes the revocation of a license for a third violation within a 36-month period. ABC may revoke a license prior to a third violation when the circumstances warrant it. (B & P Section 25658.1)

In support: Writing in support, Alcohol Justice (formerly Marin Institute) states, “The state already suffers more than \$38 billion dollars in alcohol-related harm and over 10,000 alcohol-related deaths annually. This bill will help safeguard public health and safety and reduce the number of problem alcohol retailers in California. Existing law provides ABC with exclusive authority to revoke the license of problem retailers, such as those that make underage sales, disturb the neighbors, or engage in other illegal behavior. This fact coupled with the lack of resources devoted to ABC enforcement often allows problem retailers to continue operation long after the community raises concerns. As a result, it is that much more important that when a license is revoked that ABC ensures problems do not continue at the location when a new license is issued.”

Also writing in support, The California Council on Alcohol Problems states, “quite frankly, we were a little shocked to learn that the ABC Director currently lacks the authority to do what this reasonable bill authorizes, which is to be able to suspend the alcohol license of a business if the department deems that there is an urgent or immediate threat to the health and safety of the public. The bill assures due process rights to the licensee. We are aware of many unfortunate examples of ABC licenses being given to businesses that claim to be eating places or bars, but morph -- often in the late evening hours into commercial enterprises that mix alcohol (including after-hour drinking) with prohibited business activities. AB 2082 would give ABC a tool to assist local law enforcement in their efforts to protect the citizens of the communities negatively impacted by these "morphing" business ventures.”

Prior legislation: AB 2151 (D. Jones), 2007-2008 Session, Vetoed by Governor. The bill added provisions to the ABC Act for the purpose of assisting local governments in their effort to control the issuance and transfer of liquor licenses.

AB 2893 (Hancock), Chapter 253, Statutes of 2008. Grants ABC the authority to impose restrictions on retail license transfers in instances where the license transferor has been cited for multiple violations of the ABC Act during his/her ownership of the license.

AB 960 (Hancock), 2007-08 Session. Provides local governments more control over the issuance of liquor licenses through the use of zoning and amortization. (Died in Assembly Governmental Organization Committee)

SB 148 (Scott), Chapter 625, Statutes of 2006. Among other things, provided 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 any public sidewalk abutting a licensed premise, as provided, after specified notice from the district attorney, city attorney, or a county counsel.

AB 624 (Oropeza), Chapter 931, Statutes of 2001. Permitted ABC to take into account neighboring crime statistics in the area of the site of the establishment when transferring an alcohol license. Furthermore, extended the time local entities have to respond to the notice of a new or transferred license and require the notification of local property owners around the site.

AB 1092 (Lowenthal), Chapter 499, Statutes of 1999 Authorized ABC to place reasonable restrictions upon retail licenses or any licensee in the exercise of retail privileges if ABC adopts conditions required by a local governing body.

AB 2897 (Caldera), Chapter 630, Statutes of 1994. Among other things, granted ABC the authority to deny an application for a license if issuance would tend to create a law enforcement problem, or would result in or add to an undue concentration of licenses. In addition, provided that a license may be issued if the local governing body of the area in which the applicant premises are located determines that public convenience or necessity would be served by the issuance.

AB 463 (Tucker), Chapter 627, Statutes of 1994. Authorized ABC to suspend or impose new conditions on a licensee who has failed to correct "reasonable conditions" as noticed by a local official.

AB 2742 (Lee), Chapter 629, Statutes of 1994. Made a series of changes relating to ABC licensing and standards, including (1) establishing general operating standards with respect to the licensed premise of retailers of alcoholic beverages, (2) providing that the current 30-day review process shall be extended by 20 days to give the local jurisdictions more authority and opportunity for related input, (3) requiring ABC to notify the entity or official in writing as to why they recommend that a license be issued after a protest has been made by an entity or official, as specified, and (4) providing additional regulation of a licensee, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

Alcohol Justice
California Council on Alcohol Problems

Opposition

None on file

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