

Date of Hearing: March 29, 2017

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 1285 (Gipson) – As Introduced February 17, 2017

SUBJECT: Alcoholic Beverage Control Act: administrative hearings: records

SUMMARY: Would allow the Department of Alcohol Beverage Control (ABC or department) to utilize an audio recording as the record of administrative hearings. The bill would also create a record of proceedings before the Alcoholic Beverage Appeals Board (ABC Appeals Board). Specifically, **this bill:**

- 1) Requires an audio record to be kept as the official record of any administrative hearing conducted by ABC. In an appeal to the ABC Appeals Board, when a hearing record has been created by audio recording, ABC shall provide to the Board and each party a copy of the audio recording in lieu of a transcript as a record of the administrative hearing.
- 2) Requires the ABC Appeals Board to keep a record of the argument before ABC by audio recording.
- 3) Requires the ABC Appeals Board to adopt a regulation establishing a fee to be paid for an audio recording, as specified.

EXISTING LAW:

- 1) Establishes ABC and grants it exclusive authority to administer the provisions of the Alcoholic Beverage Control Act (Act) in accordance with laws enacted by the Legislature.
- 2) Requires a record of any administrative hearing of the ABC, and if an appeal is made to the ABC Appeals Board, requires the Board to determine the appeal upon the record of the ABC and upon any briefs authorized to be filed by the parties.
- 3) Requires proceedings at an administrative hearing to be reported by a stenographic reporter unless there is consent for an electronic report.
- 4) States that if any party to the appeal requests the right to appear before the ABC Appeals Board, the Board is required to fix a time and place for argument. The ABC Appeals Board shall not receive any evidence other than that contained in the record of the proceedings of ABC.

FISCAL EFFECT: Unknown

COMMENTS:

Background. According to ABC staff, existing law requires the department to utilize a stenographic reporter for all administrative hearings, unless each of the parties consents to an electronic record. However, respondents in ABC hearings generally do not consent to an electronic record because the use of a stenographic reporter adds 50-75 day delays to the appeals process waiting for preparation of the transcript. Delayed appeals, delay the imposition of penalties (fines, suspensions, license revocation), and potentially endanger the public. The cost

to ABC for a stenographic reporter is between \$200-500 per day, for each hearing. Additional costs are assessed to the ABC Appeals Board, the department, and the affected parties for transcripts and copies of the transcripts. Based upon the number of hearings held annually, the costs for court reporters simply to appear can exceed \$42,000. In addition, it is estimated that ABC spends in excess of \$47,000 annually to prepare transcripts of hearings.

Furthermore, existing law requires that a Department Administrative Law Judge (ALJ) issue a proposed decision within 30 days of the hearing. The expense and time associated with the preparation of a transcript from a stenographic record prohibits ABC from routinely providing transcripts prior to the issuance of a proposed decision. As a result, ALJs prepare decisions without the benefit of a copy of the record. Existing law requires both the ABC Appeals Board and the judicial branch to give deference to the ALJs findings of fact, yet those findings must be reached without the ability to review testimonial evidence.

Existing law also requires the ABC Appeals Board to hear oral arguments on an appeal where a party requests it. The statute does not require a record of said hearing. According to ABC staff, the lack of clear statutory direction creates two problems. First, there is no mandate to create a record of the hearing. The ABC Appeals Board currently does not record, by audio or stenographic reporter, its hearings. Second, to the extent that a record is created, the lack of authority for the record may create issues on appeal.

ABC staff notes that other agencies have been exempted from the stenographic reporting provisions as contained in this bill.

Purpose of the bill. The author states this bill is a sensible change to the law that will ensure efficiency in administrative hearing record keeping and will protect the identity of undercover ABC peace officers and minors by also prohibiting video recording of the hearing. AB 1285 would allow ABC to utilize an audio recording as the record of administrative hearings. It would also create a record of proceedings before the ABC Appeals Board.

The author further states that efficiency is an important part of government, and when certain procedures are out of date and do not reflect current technology or practices, we have an obligation to update them for the benefit of everyone. Privacy is also an important liberty and right, and protecting the privacy of minors and undercover police officers is essential to any investigation or court hearing. AB 1285 will promote efficiency and privacy in the administrative hearing process of the Act.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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