

Date of Hearing: May 2, 2018

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 2795 (Gray) – As Introduced February 16, 2018

SUBJECT: Beverage Control Appeals Board

SUMMARY: Requires the Alcoholic Beverage Control Appeals Board (Appeals Board) to enter its order within 90 days after the filing of an appeal. Specifically, **this bill:**

1) Increases from 60 to 90 days the period upon which the Appeals Board must enter its order after the filing of an appeal.

EXISTING LAW:

1) Establishes in state government an Appeals Board, of which the members are appointed and serve as provided in the Constitution, and receive an annual salary.

2) Provides that an appeal must be filed at the Appeals Board office within 40 days from the date of the Alcoholic Beverage Control (ABC) decision. However, if ABC's decision states it is to be "effective immediately," an appeal must be filed within 10 days after the date of ABC's decision. Documents not filed within the time limits are untimely and cannot be accepted by the Appeals Board.

3) Specifies that no decision of the ABC shall become effective during the period in which an appeal may be filed and the filing of an appeal shall stay the effect of the decision until such time as a final order is made by the Appeals Board.

4) Provides that the review by the Appeals Board of a decision by ABC shall be limited to the following questions:

a) Whether the ABC has proceeded without, or in excess of, its jurisdiction;

b) Whether the ABC has proceeded in the manner required by law;

c) Whether the decision is supported by the findings;

d) Whether the findings are supported by substantial evidence in the light of the whole record;

e) Whether there is relevant evidence, which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the ABC.

3) Provides that the Appeals Board is required to enter its order within 60 days after the filing of an appeal.

FISCAL EFFECT: This bill is keyed non-fiscal by Legislative Counsel.

COMMENTS:

Background. The Alcoholic Beverage Control Appeals Board provides quasi-judicial administrative review of decisions of ABC. The questions that may be considered by the Appeals Board are limited by the California Constitution and by statute. (See the California Constitution, article XX, §22 and Business and Professions Code §§23084 and 23085.)

The Appeals Board is made up of three members appointed by the Governor. Funding for the Appeals Board comes entirely from a surcharge on all ABC license renewals. All Appeals Board activities, staff functions, and budget expenditures are directed toward the review and finalization of appeals. The Appeals Board conducts hearings throughout the year in both northern and southern California.

The Appeals Board determines appeals solely on the record of ABC and any briefs filed by the parties. The Appeals Board may receive no additional evidence. However, the parties to appeals may present oral argument during the Appeals Board's monthly hearings.

The Appeals Board issues written decisions with orders affirming, reversing, and/or remanding ABC decisions. Judicial review of the Board's order may be obtained by filing a petition for writ of review with the California Supreme Court or the Court of Appeal.

The timely issuance of orders by the Appeals Board is a critical part of the State's regulation of the alcoholic beverage industry and enforcement of the Act. When an appeal is filed, any action by the ABC on its decision is stayed until the appeal is concluded by a final order of the Appeals Board. During the appeal period, a license that is subject to the appeal may not be suspended or revoked; in the case of an application for a license, the ABC may not issue or transfer the license while the process is in effect.

How an appeal is filed. Licensees must notify the Appeals Board that they are appealing a decision of the ABC by filing a document with the Appeals Board. The document may be in the form of a legal pleading or a letter. The appeal document must: 1) state that an appeal is being filed; 2) include the name of the appellant, the registration and file numbers, and the date of the decision; and 3) state at least one ground for the appeal, that is, a statement of why the licensee believes ABC decision is incorrect.

The appeal document must be filed at the Appeals Board office within 40 days from the date of the ABC's decision. However, if ABC's decision states it is to be "effective immediately," a licensee must file an appeal within 10 days after the date of the ABC's decision. Documents not filed with these time limits are untimely and cannot be accepted by the Appeals Board. There is no charge for filing an appeal, but there is a charge for the cost of transcripts.

Purpose of the bill. According to the author's office, this bill attempts to address a growing concern by the alcohol industry, law enforcement, and citizens relating to the period upon which an appeal is rendered by the Appeals Board. ABC's enforcement activities have increased in response to legislative mandates to curtail underage drinking, which has led to more rulings and, in turn, the number of appeals to the Appeals Board has increased. The author is concerned with the length of time it is taking to process the appeals. In many cases, it has been reported that it is taking up to 12 to 18 months before the Appeals Board renders a final order. The author notes while the case is being reviewed the "bad actors" continue to operate which troubles law enforcement and residents within the community.

Lastly, the author's office notes that this bill is necessary to ensure that the principles of the appeals process within the Act are preserved and upheld as they relate to a licensee's right of due process.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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