

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2082

Introduced by Assembly Member Campos

February 17, 2016

An act to add Section ~~23963~~ 23059 to the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2082, as amended, Campos. Alcoholic beverages: licenses: ~~probationary period.~~ *emergency orders.*

Existing law, the Alcoholic Beverage Control Act, which is administrated by the Department of Alcoholic Beverage Control, regulates the application, issuance, and suspension of alcoholic beverage licenses. *The act authorizes the department to investigate potential violations of the act, authorizes the Director of the Department of Alcoholic Beverage Control 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.*

This bill would authorize the ~~department to place a license on a 6-month probationary period when that license is transferred or sold to an entity or individual and currently under review by the department or is transferred or sold to an entity or individual that has been convicted of, or been subject to disciplinary action for, a violation of the Alcoholic Beverage Control Act. The bill would provide that proceedings to revoke a license during a probationary hearing shall be expedited and authorizes the department to consult with other state agencies regarding these~~

~~provisions:~~ director 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, authorize or licensee or person or entity against whom the order has been issued to petition for relief by written argument.

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 23059 is added to the Business and
2 Professions Code, to read:
3 23059. (a) The director may temporarily suspend, limit,
4 condition, or take other action upon, any license issued pursuant
5 to this division by emergency order prior to any hearing when, in
6 the opinion of the department, the action is urgent and necessary
7 to protect against an immediate threat to health or safety.
8 (b) (1) The emergency order may suspend, limit, condition, or
9 take other action in relation to the license of one or more persons
10 in an operation without affecting other individual licensees.
11 (2) The emergency order shall set forth the grounds upon which
12 it is based, including a statement of facts constituting the alleged
13 emergency necessitating the action.
14 (3) The emergency order shall be effective immediately upon
15 issuance and service upon the licensee or any agent of the licensee.
16 The department shall serve the licensee with the emergency order,
17 a copy of available discovery, and other relevant evidence in
18 possession of the department, including, but not limited to,
19 affidavits, declarations, and any other evidence upon which the
20 department relied in issuing the emergency order. The department
21 shall notify the licensee of the licensee's right to petition for relief.
22 (c) (1) Once the emergency order has been served, a licensee
23 or person or entity against whom the emergency order has been
24 issued may petition for relief from the order by written argument.
25 (2) If a petition for relief is filed, using a preponderance of the
26 evidence standard, the director shall modify or vacate the
27 emergency order if either:

1 (A) *There is a reasonable probability that the licensee will*
2 *prevail in the accusation.*

3 (B) *The likelihood of immediate threat to the health or safety*
4 *in not sustaining the emergency order does not outweigh the*
5 *likelihood of injury to the licensee in sustaining the emergency*
6 *order.*

7 (d) *The department shall respond, in writing, to a petition for*
8 *relief, either by sustaining, modifying, or vacating the emergency*
9 *order, within three business days of receipt of the petition. If the*
10 *department does not sustain or modify the emergency order within*
11 *three business days of receipt of the petition, the emergency order*
12 *shall be dissolved.*

13 (e) *The emergency order shall remain effective until further*
14 *order of the department or disposition at an accusation proceeding.*

15 (f) (1) *The department shall file an accusation against the*
16 *licensee with any additional, available pertinent discovery that*
17 *was not provided to the licensee at the time the emergency order*
18 *was issued within five business days after the issuance of an*
19 *emergency order.*

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

24 (h) *Nothing in this section precludes a licensee from proceeding*
25 *directly to a full evidentiary hearing on an accusation without first*
26 *petitioning the department for relief.*

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

32 ~~SECTION 1. Section 23963 is added to the Business and~~
33 ~~Professions Code, to read:~~

34 ~~23963. (a) The department may place a license issued pursuant~~
35 ~~to this division on a six-month probation under the following~~
36 ~~circumstances:~~

37 ~~(1) The license is transferred or sold to an entity or individual~~
38 ~~and is currently under review by the department for a violation of~~
39 ~~this division.~~

1 ~~(2) The license is transferred or sold to an entity or individual~~
2 ~~that has been either been convicted of a violation of this division~~
3 ~~or been subject to disciplinary action by the department because~~
4 ~~of a violation of this division.~~
5 ~~(b) Violation of a condition of probation or of a provision of~~
6 ~~this division constitutes cause for revocation of the license.~~
7 ~~Proceedings to revoke a license during the six-month probationary~~
8 ~~period shall be expedited.~~
9 ~~(c) The department may adopt regulations establishing a~~
10 ~~monitoring program to ensure compliance with any terms or~~
11 ~~conditions of probation imposed by the department pursuant to~~
12 ~~subdivision (a). The department may consult with other state~~
13 ~~agencies that administer licensing within the state with regard to~~
14 ~~any provision of this section, including the establishment of an~~
15 ~~expedited license revocation proceeding.~~