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Code: Section:

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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 9. ALCOHOLIC BEVERAGES [23000 - 25762] (*Division 9 added by Stats. 1953, Ch. 152.*)

CHAPTER 1.5. Administration [23049 - 23098] (*Chapter 1.5 added by Stats. 1954, 1st Ex. Sess., Ch. 20.*)

ARTICLE 5. Judicial Review [23090 - 23090.7] (*Article 5 repealed and added by Stats. 1967, Ch. 1525.*)

23090. Any person affected by a final order of the board, including the department, may, within the time limit specified in this section, apply to the Supreme Court or to the court of appeal for the appellate district in which the proceeding arose, for a writ of review of such final order. The application for writ of review shall be made within 30 days after filing of the final order of the board.

(*Repealed and added by Stats. 1967, Ch. 1525.*)

23090.1. The writ of review shall be made returnable at a time and place then or thereafter specified by court order and shall direct the board to certify the whole record of the department in the case to the court within the time specified. No new or additional evidence shall be introduced in such court, but the cause shall be heard on the whole record of the department as certified to by the board.

(*Added by Stats. 1967, Ch. 1525.*)

23090.2. The review by the court shall not extend further than to determine, based on the whole record of the department as certified by the board, whether:

- (a) The department has proceeded without or in excess of its jurisdiction.
- (b) The department has proceeded in the manner required by law.
- (c) The decision of the department is supported by the findings.
- (d) The findings in the department's decision are supported by substantial evidence in the light of the whole record.
- (e) 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 department.

Nothing in this article shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence.

(*Added by Stats. 1967, Ch. 1525.*)

23090.3. The findings and conclusions of the department on questions of fact are conclusive and final and are not subject to review. Such questions of fact shall include ultimate facts and the findings and conclusions of the department. The board, the department, and each party to the action or proceeding before the board shall have the right to appear in the review proceeding. Following the hearing, the court shall enter judgment either affirming or reversing the decision of the department, or the court may remand the case for further proceedings before or reconsideration by the department.

(*Added by Stats. 1967, Ch. 1525.*)

23090.4. The provisions of the Code of Civil Procedure relating to writs of review shall, insofar as applicable, apply to proceedings in the courts as provided by this article. A copy of every pleading filed pursuant to this article shall be served on the board, the department, and on each party who entered an appearance before the board.

(*Added by Stats. 1967, Ch. 1525.*)

23090.5. (a) Except as provided in subdivision (b), a court of this state, except the Supreme Court and the courts of appeal to the extent specified in this article, shall not have jurisdiction to review, affirm, reverse, correct, or annul any order, rule, or decision of the

department or to suspend, stay, or delay the operation or execution thereof, or to restrain, enjoin, or interfere with the department in the performance of its duties, but a writ of mandate shall lie from the Supreme Court or the courts of appeal in any proper case.

(b) Notwithstanding subdivision (a), a superior court shall have jurisdiction to review an emergency decision issued by the department pursuant to Article 13 (commencing with Section 11460.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, in the manner provided by Section 11460.80 of the Government Code. Review by a superior court pursuant to this subdivision shall not be construed as giving the superior court jurisdiction over any other matter or aspect of a case pending before the department. The decision of a superior court following review of the emergency decision shall not be considered by the department in connection with the adjudicative proceedings commenced as required by Section 11460.60 of the Government Code, or by the Alcoholic Beverage Control Appeals Board, court of appeal, or Supreme Court upon review of a final decision of the department.

(Amended by Stats. 2019, Ch. 257, Sec. 2. (SB 788) Effective September 5, 2019.)

23090.6. The filing of a petition for, or the pendency of, a writ of review shall not of itself stay or suspend the operation of any order, rule, or decision of the department, but the court before which the petition is filed may stay or suspend, in whole or in part, the operation of the order, rule, or decision of the department subject to review, upon the terms and conditions which it by order directs.

(Added by Stats. 1967, Ch. 1525.)

23090.7. No decision of the department which has been appealed to the board and no final order of the board shall become effective during the period in which application may be made for a writ of review, as provided by Section 23090.

(Added by Stats. 1967, Ch. 1525.)