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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 6. Stay of Suspension [23095 - 23098] (*Article 6 added by Stats. 1957, Ch. 2298.*)

23095. (a) Whenever a decision of the department suspending a license becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension, petition the department for permission to make an offer in compromise, to be paid into the Alcohol Beverage Control Fund, consisting of a sum of money in lieu of serving the suspension.

(b) No licensee may petition the department for an offer in compromise in any case in which the proposed suspension is for a period in excess of 15 days.

(c) Upon the receipt of the petition, the department may stay the proposed suspension and cause any investigation to be made which it deems desirable and may grant the petition if it is satisfied that the following conditions are met:

(1) The public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and the payment of the sum of money will achieve the desired disciplinary purposes.

(2) The books and records of the licensee are kept in such a manner that the loss of sales of alcoholic beverages that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom.

(d) The offer in compromise for retail licensees shall be the equivalent of 50 percent of the estimated gross sales of alcoholic beverages for each day of a proposed suspension, subject to the following limits:

(1) The offer in compromise may not be less than seven hundred fifty dollars (\$750) nor more than six thousand dollars (\$6,000).

(2) If the petitioning retailer has had any other accusation filed against the petitioning retailer by the department during the three years prior to the date of the petition that has resulted in a final decision to suspend or revoke the retail license concerned, the offer in compromise may be not less than one thousand five hundred dollars (\$1,500) nor more than twelve thousand dollars (\$12,000).

(e) Notwithstanding subdivision (b), a licensee may petition the department for an offer in compromise for a second violation of Section 25658 that occurs within 36 months of the initial violation without regard to the period of suspension. In these cases, the offer in compromise shall be the equivalent of 50 percent of the estimated gross sales of alcoholic beverages for each day of the proposed suspension, and the offer in compromise may be not less than two thousand five hundred dollars (\$2,500) nor more than forty thousand dollars (\$40,000).

(f) (1) The offer in compromise for nonretail licensees shall be the equivalent of 50 percent of the estimated gross sales of alcoholic beverages for each day of the proposed suspension, and the offer in compromise may not be less than seven hundred fifty dollars (\$750) and may not exceed ten thousand dollars (\$10,000) unless the nonretail licensee has violated Section 25500, 25502, 25503, or 25600 by giving to any licensee illegal inducements, secret rebates, or free goods amounting to more than ten thousand dollars (\$10,000) in value, in which case the offer in compromise shall be equal to the value of the illegal inducements, secret rebates, or free goods given.

(2) Notwithstanding paragraph (1), any nonretail licensee who pays an offer in compromise based upon a violation in the exercise of any retail privileges of that license shall have the offer in compromise computed on estimated retail gross sales only pursuant to subdivision (d).

(3) All moneys collected as a result of penalties imposed under this subdivision shall be deposited directly in the General Fund in the State Treasury, rather than the Alcohol Beverage Control Fund as provided for in Section 25761.

(Amended by Stats. 2023, Ch. 613, Sec. 1. (SB 498) Effective January 1, 2024.)

23096. The moneys derived from a payment in compromise under Section 23095 shall be paid to the State Treasury for deposit in the Alcohol Beverage Control Fund. Upon such payment, the department shall enter its further order permanently staying the imposition of the suspension.

(Added by Stats. 1957, Ch. 2298.)

23097. In connection with any such petition, the authority of the department is limited to the granting of such stays as are necessary for it to complete its investigation and make its findings and, if it makes such findings, to the granting of an order permanently staying the imposition of the entire suspension or of that portion of the suspension not otherwise conditionally stayed by the decision of the department. If the suspension was imposed as a result of an accusation filed by another public officer acting in his official capacity, the department shall not order such permanent stay of suspension without the written concurrence of such other public officer.

(Amended by Stats. 1961, Ch. 775.)

23098. If the department does not make the findings required in Section 23095, and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the department.

(Added by Stats. 1957, Ch. 2298.)