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AB-1589 Alcoholic beverages: appeals: tied-house restrictions. (2021-2022)

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Assembly Bill No. 1589

CHAPTER 306

An act to amend Sections 23081, 23081.5, 23083, 23088, and 25503.24 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 24, 2021. Filed with Secretary of State September 24, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1589, Committee on Governmental Organization. Alcoholic beverages: appeals: tied-house restrictions.

The Alcoholic Beverage Control Act establishes the Department of Alcoholic Beverage Control to license the manufacture, importation, and sale of alcoholic beverages. The act also establishes the Alcoholic Beverage Control Appeals Board to review the department's decisions ordering penalty assessments and issuing, denying, transferring, suspending, or revoking a license, as specified.

Existing law allows an aggrieved party to file an appeal with the board, so long as the appeal is received in the principal office of the board or, if mailed, registered by the United States Post Office on or before the 10th day after the last day on which reconsideration of the decision could be ordered. Existing law requires a final order by the board to be in writing and delivered personally or by mail to the parties to the appeal.

This bill would authorize electronic filing of appeals to the board and electronic delivery of final orders by the board to a party and would make other conforming changes.

Existing law requires the board to fix a time and place for argument if a party to an appeal requests the right to appear before the board.

This bill would instead provide that the board need only fix a date and time for oral argument if the party requests it.

The act prohibits specified holders of alcoholic beverage licenses from having certain relationships with an on-sale alcoholic beverage licensee, with limited exceptions. Existing law permits a manufacturer, winegrower, rectifier, distiller, distilled spirits wholesaler, or any agent of those licensees to conduct market research. Existing law permits the entity conducting the market research, in connection with that research, to purchase from a licensed off-sale retailer data regarding purchases and sales of alcoholic beverage products at the customary rates that the retailer sells similar data for nonalcoholic beverage products, provided that the retailer is not obligated to purchase or sell the alcoholic beverage products of the manufacturer, winegrower, rectifier, or distiller.

This bill would additionally include a distilled spirits wholesaler in the provision prohibiting a licensed off-sale retailer from being obligated to purchase or sell the alcoholic beverages of the licensee conducting the market research.

Because the violation of this provision would be punishable as a misdemeanor, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 23081 of the Business and Professions Code is amended to read:

23081. On or before the tenth day after the last day on which reconsideration of a final decision of the department can be ordered, any party aggrieved by a final decision of the department may file an appeal with the board from such decision. The appeal shall be in writing and shall state the grounds upon which a review is sought. A copy of the appeal shall be served by the appellant to each party who appeared in the proceeding before the department, including the department which shall thereafter be treated in all respects as a party to the appeal. The right to appeal shall not be affected by failure to seek reconsideration before the department.

SEC. 2. Section 23081.5 of the Business and Professions Code is amended to read:

23081.5. An appeal to the board shall be deemed filed on the date it is received by the board electronically or by mail to the principal office; provided, however, an appeal mailed to the board by means of registered mail shall be deemed filed with the board on the date of the registry with the United States Post Office.

SEC. 3. Section 23083 of the Business and Professions Code is amended to read:

23083. (a) The board shall determine the appeal upon the record of the department and upon any briefs which may be filed by the parties. If any party to the appeal requests oral argument, the board shall schedule a date and time for argument. The board shall not receive any evidence other than that contained in the record of the proceedings of the department.

(b) Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the determination.

SEC. 4. Section 23088 of the Business and Professions Code is amended to read:

23088. An order of the board on appeal from a decision of the department shall be in writing and shall be filed by delivering copies to the parties personally or electronically or by mailing copies to them by certified mail. An order shall become final upon being filed as provided herein, and there shall be no reconsideration or rehearing by the board.

SEC. 5. Section 25503.24 of the Business and Professions Code is amended to read:

25503.24. (a) Notwithstanding any other provision of this chapter, any manufacturer, winegrower, rectifier, distiller, distilled spirits wholesaler, or any officer, director, agent, or representative of any of those entities, may conduct market research and, in connection with that research, the entity conducting the market research may purchase from licensed off-sale retailers data regarding purchases and sales of alcoholic beverage products at the customary rates that those retailers sell similar data for nonalcoholic beverage products subject to the following limitations:

(1) A licensed retailer shall not be obligated to purchase or sell the alcoholic beverage products of that manufacturer, winegrower, rectifier, distiller, or distilled spirits wholesaler.

(2) A retail premises shall not participate in more than one research project conducted by any single manufacturer, winegrower, rectifier, distiller, or distilled spirits wholesaler during a calendar year. A research project may involve multiple onsite surveys.

(3) Nothing in this section shall allow a licensed retailer to require a manufacturer, winegrower, rectifier, distiller, or distilled spirits wholesaler to conduct any market research as a condition for selling alcoholic beverage products to that licensed retailer.

(b) Any holder of a beer manufacturer's license or winegrower's license who, through coercion or other illegal means, induces, directly or indirectly, a holder of a beer or wine wholesaler's license to fulfill obligations entered into pursuant to subdivision (a) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine

in an amount equal to the entire value of the market research or time involved in the project, whichever is greater, plus ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(c) Any retail licensee who, directly or indirectly, solicits or coerces a holder of a beer or wine wholesaler's license to solicit a beer manufacturer, or holder of a winegrower's license to fulfill obligations entered into pursuant to subdivision (a) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the market research or time involved in the project, whichever is greater, plus ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) For the purposes of this section, "beer manufacturer" includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.