



SB-635 Alcoholic beverages: hours of sale. (2013-2014)

SENATE BILL

No. 635

Introduced by Senator Leno

February 22, 2013

An act to amend Section 25631 of, and to add Section 25634 to, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 635, as introduced, Leno. Alcoholic beverages: hours of sale.

The Alcoholic Beverage Control Act provides that any on- or off-sale licensee, or agent or employee of the licensee, who sells, gives, or delivers to any person any alcoholic beverage between the hours of 2 a.m. and 6 a.m. of the same day, and any person who knowingly purchases any alcoholic beverages between those hours, is guilty of a misdemeanor.

This bill would allow the local governing body of a county or a city and county to apply to the Department of Alcoholic Beverage Control to authorize, with or without conditions on the licensees within those jurisdictions, the selling, giving, delivering, or purchasing of alcoholic beverages at an on-sale licensed premises between the hours of 2 a.m. and 4 a.m., as provided. This bill would require the local governing body to notify specified persons of the application for additional hours and would provide a procedure for protest and hearing regarding the application.

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 25631 of the Business and Professions Code is amended to read:

25631. ~~Any~~ *(a) (1) Except as provided in subdivision (b), any* on- or off-sale licensee, or agent or employee of that licensee, who sells, gives, or delivers to any persons any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of ~~2-o'clock~~ a.m. and ~~6-o'clock~~ a.m. of the same day, is guilty of a misdemeanor.

~~For~~

(2) For the purposes of this ~~section~~ subdivision, on the day that a time change occurs from Pacific standard time to Pacific daylight saving time, or back again to Pacific standard time, “2-~~o’clock~~ a.m.” means two hours after midnight of the day preceding the day such change occurs.

(b) (1) In a county or city and county that has additional serving hours pursuant to Section 25634, any on-sale licensee, or agent or employee of the licensee, who sells, gives, or delivers to any person any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of 4 a.m. and 6 a.m. of the same day, is guilty of a misdemeanor.

(2) For the purposes of this subdivision, on the day that a time change occurs from Pacific standard time to Pacific daylight time, or back again to Pacific standard time, “4 a.m.” means four hours after 12 midnight of the day preceding the day the change occurs.

SEC. 2. Section 25634 is added to the Business and Professions Code, to read:

25634. (a) Notwithstanding Section 25631, the department may authorize, with or without conditions on the licensees, the selling, giving, delivering, or purchasing of alcoholic beverages at an on-sale licensed premises between the hours of 2 a.m. and 4 a.m. within a county or a city and county if the local governing body of that county or city and county, or its designated subordinate officer or body, applies to the department and shows the department the public convenience or necessity served by the additional hours.

(b) (1) Upon receipt of an application for additional hours pursuant to this section, the department shall make a thorough investigation to determine whether the additional hours would serve the public convenience or necessity.

(2) The local governing body of the county or city and county shall notify the law enforcement agencies of the county or city and county, the residents of the county or city and county, and any other interested parties, as determined by the local governing body, of the application for additional hours pursuant to this section within 30 consecutive days of the filing of the application, in a manner determined by the local governing body.

(3) Protests may be filed at any office of the department within 30 days from the first date of notice of the filing of an application for additional hours. The time within which a local law enforcement agency may file a protest shall be extended by the period prescribed in Section 23987.

(4) The department may reject protests, except protests made by a public agency or public official, if it determines the protests are false, vexatious, frivolous, or without reasonable or probable cause at any time before hearing thereon, notwithstanding Section 24016 or 24300. If, after investigation, the department recommends that additional hours be authorized notwithstanding a protest by a public agency or a public official, the department shall notify the agency or official in writing of its determination and the reasons therefor, in conjunction with the notice of hearing provided to the protestant pursuant to Section 11509 of the Government Code. If the department rejects a protest as provided in this section, a protestant whose protest has been rejected may, within 10 days, file an accusation with the department alleging the grounds of protest as a cause for revocation of the additional hours and the department shall hold a hearing as provided in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(5) This section shall not be construed as prohibiting or restricting any right that the individual making the protest might have to a judicial proceeding.

(c) (1) If, after investigation, the department recommends that additional hours be authorized, with or without conditions on the licensees, notwithstanding that one or more protests have been accepted by the department, the department shall notify the local governing body and all protesting parties whose protests have been accepted in writing of its determination.

(2) Any person who has filed a verified protest in a timely fashion pursuant to subdivision (b) that has been accepted pursuant to this article may request that the department conduct a hearing on the issue or issues raised in the protest. The request shall be in writing and shall be filed with the department within 15 business days of the date the department notifies the protesting party of its determination as required under paragraph (1).

(3) At any time prior to the issuance of the license, the department may, in its discretion, accept a late request for a hearing upon a showing of good cause. Any determination of the department pursuant to this subdivision shall not be an issue at the hearing nor grounds for appeal or review.

(4) If a request for a hearing is filed with the department pursuant to paragraph (2), the department shall schedule a hearing on the protest. The issues to be determined at the hearing shall be limited to those issues raised in the protest or protests of the person or persons requesting the hearing.

(5) Notwithstanding that a hearing is held pursuant to paragraph (4), the protest or protests of any person or persons who did not request a hearing as authorized in this section shall be deemed withdrawn.

(6) If a request for a hearing is not filed with the department pursuant to this section, any protest or protests shall be deemed withdrawn and the department may issue the license without any further proceeding.

(7) If the person filing the request for a hearing fails to appear at the hearing, the protest shall be deemed withdrawn.

(d) The department shall notify the on-sale licensees within the county or city and county of the outcome of the application for additional hours. Any conditions placed upon the licensees pursuant to this section shall be subject to Article 1.5 (commencing with Section 23800).

(e) The local governing body shall, at the time of application for additional hours pursuant to this section, accompany the application with a fee of ____ dollars (\$____). Fees collected pursuant to this section shall be deposited in the Alcohol Beverage Control Fund.

SEC. 3. 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.