

## NOTICE OF PROPOSED RULEMAKING

### **Title 4, California Code of Regulations, NEW SECTION 61 Submission and Contents of Protests; Protest Processes**

The Department of Alcoholic Beverage Control ("Department") proposes to adopt the regulation described below after considering all comments, objections, or recommendations regarding the proposed action.

#### PROPOSED REGULATORY ACTION

The Department proposes to adopt a new section 61 of Title 4 of the California Code of Regulations, concerning protests. The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at a scheduled hearing or during the written comment period.

#### PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

#### **WRITTEN COMMENT PERIOD: February 26, 2016 through April 11, 2016**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department at any time during the public comment period. To be considered for summary and response, **all written comments must be received no later than 5:00 p.m., April 11, 2016**.

Written comments for the Department's consideration should be directed to:

Devin Gray, Department of Alcoholic Beverage Control  
3927 Lennane Drive, Suite 100 Sacramento, CA 95834  
E-mail: [LegislativeOffice@abc.ca.gov](mailto:LegislativeOffice@abc.ca.gov)  
Facsimile (FAX): (916) 419-2516

#### AUTHORITY AND REFERENCE

Specific authority for the proposed regulations is provided by Business and Professions Code section 24013, amended by AB 593 (Stats 2013 ch 502).

The proposed regulation implements, interprets, or makes specific Business and Professions Code sections 24013 and 24014, which are included as reference citations in the proposed regulation.

#### INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The California Constitution (Article XX, section 22) and the Alcoholic Beverage Control Act (Business and Professions Code 23000 *et seq.*) charge the Department with issuing licenses for the sale, distribution, or manufacture of alcoholic beverages, including providing a process for the public to protest a new license.

The proposed regulation provides clarity on the process for protesting the issuance of a license and makes specific the requirements for submitting a valid protest.

Business and Professions Code Section 24013 allows individuals to file protests against the issuance of alcoholic beverage licenses if done so within the 30-day period. This section also allows the Department to reject protests it determines to be false, vexatious, frivolous, invalid or unreasonable.

Business and Professions Code Section 24014 states that protests made pursuant to this section shall be submitted by an individual and shall be limited to one signatory. This is a legislative change to a former process by which “petitions” had been filed by multiple protestants.

The regulation proposed in this rulemaking action would clarify the protest process by providing a standard protest form (ABC-510-A, Rev January 2016) which includes instructions (ABC-510, Rev January 2016) stating how to effectively fill out and complete the form in a valid and reasonable manner. The regulation will also define how the form may be submitted as well as provide the deadlines for such. Finally, the regulation will provide a level of transparency within the protest process by stating that all valid protests will be sent to the alcoholic beverage license applicant.

*Anticipated Benefits of the Proposed Regulation:*

The objective of the regulation is to clarify the protest process by providing and requiring an official Department protest form. This form will help Protestants adequately express their concerns with the necessary information for the protest to be considered valid by the Department.

A standardized form will also increase productivity within the Department by allowing the Department to more easily process protests with the ability to not respond to protests which are deemed invalid or unreasonable. By requiring the form with the statutorily-mandated verification, this may save applicants up to three weeks of processing time while the Department has previously had to follow up on and wait for additional verifications from unverified protests.

*Determination of Inconsistency/Incompatibility with Existing State Regulations:*

The Department has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the alcoholic beverage license protest process.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

**Mandate on local agencies and school districts:** These regulations do not impose a mandate on local agencies or school districts.

**Cost or savings to any state agency:** None.

**Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17500-17630:** None

**Other non-discretionary cost or savings imposed upon local agencies:** None

**Cost or savings in federal funding to the state:** None

**Cost impact on representative private person or business:** No additional costs are contemplated in this regulation – the regulatory text clarifies the protest procedure, and the majority of protestants already use the currently-optional form available from the Department. Based on the above determination, the Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Impact on Business:** The Department has made an initial determination that the proposed regulatory changes will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has made a determination that the proposed regulatory changes will affect small businesses.

The Department has determined that this regulation may result in an increased number of protests because it will simplify and standardize the protest process. If the new protests are valid and represent reasonable concerns from individuals, this regulation could possibly lead to fewer new licensed alcoholic beverage retail businesses or the imposition of conditions on new licenses due to protests.

However, this regulation may also result in a decreased number of protests. By clearly stating what is considered a valid protest and by defining how the filing date must be met, individuals may realize that their reason for protest is invalid or out of the time frame, and thus, file fewer protests. Fewer protests would allow new alcoholic beverage retail businesses to begin operation much faster. The standardization of the protest form will also streamline the process, which may make the time to obtain a license shorter.

**Significant effect on housing costs:** The Department has made an initial determination that the proposed regulatory action would not significantly cause an effect on housing costs.

#### RESULTS OF ECONOMIC IMPACT ANALYSIS / ASSESSMENT

**Assessment Regarding Creation or Elimination of Jobs in California:** The Department has made an initial assessment and determined that the adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

**Benefits of the Proposed Action:** The proposed regulation will benefit residents of California by providing them with a clear and standardized way to file alcoholic beverage license protests with the Department and thus provide Californians more clearly a voice to be heard and provide input.

**Effect on Small Business:** Some license applicants may be small businesses; the cost effects on these applicants are the same as that addressed under “Impact on Business.”

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

#### CONTACT PERSONS

Inquiries concerning the substance of the proposed action should be directed to:

Devin Gray, Department of Alcoholic Beverage Control  
3927 Lennane Drive, Suite 100 Sacramento, CA 95834  
E-mail: [LegislativeOffice@abc.ca.gov](mailto:LegislativeOffice@abc.ca.gov)  
Phone: (916) 928-7627

Requests for a copy of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other technical information upon which the rulemaking is based should be directed to the backup contact person:

Adriana Ruelas, Department of Alcoholic Beverage Control  
3927 Lennane Drive, Suite 100 Sacramento, CA 95834  
E-mail: [LegislativeOffice@abc.ca.gov](mailto:LegislativeOffice@abc.ca.gov) or facsimile (FAX): (916) 419-2516  
Phone: (916) 928-6821

#### AVAILABILITY OF STATEMENT OF REASONS (Initial and Final) AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. A copy may be obtained by contacting Devin Gray at the address or facsimile number listed above or accessing the Department website at <http://www.abc.ca.gov> (located under “Pending Changes: Regulations”).

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from Mr. Gray or viewed on the website.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the comment period, the Department may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, will be made available to the public for at least 15 days prior to the date on which the

Department adopts the regulation. Requests for copies of any modified regulation should be sent to the attention of Devin Gray at the address indicated above.

The Department will accept written comments on the modified regulation for 15 days after the date on which it is made available.