

ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

STAFF REPORT

TELEPHONIC BOARD MEETING

September 2, 2022

SUBJECT:

Assembly Bill 2921 (Santiago, 2022): Alcoholic Beverages

BACKGROUND:

Current law requires the Alcoholic Beverage Control Appeals Board (the Board) to determine appeals solely upon the record of the Department of Alcoholic Beverage Control (the Department) and any briefs filed by the parties, as well as provide appellants an opportunity for oral argument. **Business and Professions** code §23086 also requires the Board issue a decision within 60 days of the appeal being filed.

The required 60-day deadline is not compatible with the fact that the Board cannot, consistent with statute, regulations, and due process, decide a case unless the administrative record (containing all the evidence in that matter) is before it, briefs from the parties are reviewed, and oral argument is heard by the Board – all of which take more than 60 days to complete.

ANALYSIS:

As amended August 25, 2022, AB 2921 would redefine when the timeframe within which to file a final order actually begins. Instead of beginning when an appeal is filed, the time to file a final order would begin when the complete and statutorily required information on an appeal has been submitted to the Board so they can make a fair and thoughtful decision consistent with due process. This would codify into law a prudent statutory deadline for the Board to issue a decision.

The bill's required timeframe includes time for (1) receipt by the ABCAB of all the information necessary to issue a final decision, including: the recorder's transcript of the administrative hearing, exhibits admitted to the record, briefs from the parties, as well as oral argument presented to the Board, and (2) the appeal to be submitted for decision and considered by the Board.

AB 2921 holds the Board accountable to a timely statutory deadline to issue a decision.

The Board's analysis only addresses those sections that impact ABCAB (§23086).

ATTACHMENTS:

AB 2921 (Santiago, 2022): Alcoholic Beverages (as amended August 25, 2022)

STAFF RECOMMENDATION:

Vote to support AB 2921

STAFF CONTACT:

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AMENDED IN SENATE AUGUST 25, 2022

CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

ASSEMBLY BILL

NO. 2921

Introduced by Assembly Member Santiago

February 18, 2022

An act to amend Sections 23086 and 25503.24 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2921, as amended, Santiago. Alcoholic beverages.

Existing law, the Alcoholic Beverage Control Act, which is administered by the Department of Alcoholic Beverage Control, regulates the application, issuance, and suspension of alcoholic beverage licenses. Existing law prescribes a process pursuant to which an alcoholic beverage licensee may appeal a final determination of the department imposing a penalty assessment or affecting a license to the Alcoholic Beverage Control Appeals Board. In this regard, the board is required to enter its order within 60 days after the filing of an appeal.

This bill would ~~extend the time within which~~ *instead require* the Alcoholic Beverage Control Appeals Board ~~is required to file its order, as described above, to 90 days. to enter its order within 60 days after an appeal is submitted for decision.~~

Existing law permits a manufacturer, winegrower, rectifier, distiller, distilled spirits wholesaler, or any agent of those licensees to conduct market research. In this regard,

existing law prohibits a retail premises from participating in more than one research project, as specified, during a calendar year and authorizes a research project to involve multiple onsite surveys.

This bill would make clarifying changes to these provisions, including specifying that surveys, as described above, are to gather feedback.

DIGEST KEY

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

BILL TEXT

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

SECTION 1.

Section 23086 of the Business and Professions Code is amended to read:

23086.

In all cases, the board shall enter its order within ~~90~~ 60 days after the ~~filing of an appeal.~~ *appeal is submitted for decision.*

SEC. 2.

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 market 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 to gather feedback.

(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.