

Introduced by Senator WienerFebruary 14, 2017

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 384, as introduced, Wiener. 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. Existing law provides for moneys collected as fees pursuant to the act to be deposited in the Alcohol Beverage Control Fund, with those moneys generally allocated to the Department of Alcoholic Beverage Control upon appropriation by the Legislature.

This bill would allow an on-sale licensee to apply to the Department of Alcoholic Beverage Control to authorize, with or without conditions on the on-sale license, the selling, giving, delivering, or purchasing of alcoholic beverages at the licensed premises between the hours of 2 a.m. and 4 a.m., upon completion of specified requirements by the local jurisdiction in which the licensee is located and upon payment a fee to be deposited in the Alcohol Beverage Control Fund, as provided. This bill would require the applicant 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.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
2 following:
- 3 (a) It is the policy of the state to promote the responsible
4 consumption of alcoholic beverages through making multiple
5 planning options available to local communities and entertainment
6 areas of the state, including the option of extended services hours
7 up to a limit of 4 a.m. in communities and areas of the state where
8 those extended hours are found by the governing body of the
9 responsible community to be proper and appropriate.
- 10 (b) It is the policy of the state to encourage local communities
11 to implement local entertainment and licensed venue operation
12 policies designed for their specific communities and to support
13 those local initiatives by all appropriate means.
- 14 (c) It is the policy of the state that modified closing times can
15 improve the quality of life in local jurisdictions by mitigating
16 public safety and nuisance issues associated with the uniform 2
17 a.m. closing hour.
- 18 (d) It is the policy of the state that local communities consider
19 different approaches to address issues of the 2 a.m. uniform closing
20 hour and encourage responsible consumption by, including, but
21 not limited to, extending service hours within a limited
22 geographical area, staggering service hours to alleviate stress on
23 public services, differentiating between the end of sale hour and
24 the end of consumption hour, and extending service hours only on
25 holidays or specific days of the week.
- 26 (e) At least 15 states across the country delegate complete or
27 partial authority for setting service hours to local jurisdictions or
28 allow local jurisdictions to extend the hours of service, subject to
29 state approval.
- 30 (f) The Legislature supports a well-planned and managed
31 nightlife that can have a profound positive impact on a local
32 economy, generating direct tax revenues, and growing public funds

1 through increased property value, revitalized business districts,
2 and increased tourism.

3 (g) The Legislature supports the world-renowned California
4 licensed restaurant, venue, and entertainment industry, which
5 generates more than fifty billion dollars (\$50,000,000,000) every
6 year in consumer spending in California communities on jobs,
7 goods and services, and related industries, and that attracts
8 world-class acts as well as tourists to visit and enjoy California.

9 (h) The Legislature has determined that it is in the best interest
10 of the State of California for extended hours of operation policies
11 to be administered by the Department of Alcoholic Beverage
12 Control in connection with applications for additional hour
13 privileges, with the fees for those applications to be determined
14 and assessed by the department at a rate that will fully reimburse
15 the department for administrative expenses.

16 SEC. 2. Section 25631 of the Business and Professions Code
17 is amended to read:

18 25631. ~~Any~~(a) (1) *Except as provided in subdivision (b), any*
19 *on- or off-sale licensee, or agent or employee of that licensee, who*
20 *sells, gives, or delivers to any persons any alcoholic beverage or*
21 *any person who knowingly purchases any alcoholic beverage*
22 *between the hours of 2-o'clock a.m. and 6-o'clock a.m. of the same*
23 *day, is guilty of a misdemeanor.*

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

30 (b) (1) *In a city, county, or city and county that has additional*
31 *selling hours pursuant to Section 25634, any on-sale licensee, or*
32 *agent or employee of the licensee, who sells, gives, or delivers to*
33 *any person any alcoholic beverage or any person who knowingly*
34 *purchases any alcoholic beverage between the hours of 4 a.m. and*
35 *6 a.m. of the same day, is guilty of a misdemeanor.*

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

1 SEC. 3. Section 25634 is added to the Business and Professions
2 Code, to read:

3 25634. (a) Notwithstanding Section 25631, the department
4 may authorize, with or without conditions, the selling, giving,
5 delivering, or purchasing of alcoholic beverages at an individual
6 on-sale licensed premises between the hours of 2 a.m. and 4 a.m.
7 within a city, county, or a city and county if the local governing
8 body of that city, county, or city and county, or its designated
9 subordinate officer or body does the following:

10 (1) Develops and approves a local plan that meets the following
11 requirements:

12 (A) Shows that the public convenience or necessity will be
13 served by the additional hours.

14 (B) Identifies the area that will be affected by the additional
15 hours and demonstrates how that area will benefit from the
16 additional hours.

17 (C) Shows that residents and businesses within the additional
18 hours service area support the additional hours.

19 (D) Includes an assessment by local law enforcement regarding
20 the potential impact of an additional hours service area and the
21 public safety plan, created by local law enforcement, for managing
22 those impacts that has been approved by the local governing body.

23 (E) Shows that transportation services are readily accessible in
24 the additional hours service area during the additional service
25 hours.

26 (F) Includes programs to increase public awareness of the
27 transportation services available in the additional hours service
28 area and the impacts of alcohol consumption.

29 (2) Resolves and certifies the local plan and submits the local
30 plan to the department.

31 (b) Upon receipt of a local plan developed pursuant to paragraph
32 (1) of subdivision (a), the department shall review the local plan
33 to ensure compliance with existing law and regulations
34 promulgated by the department. The department shall review the
35 local plan within ____ days of receipt and shall notify the local
36 governing body of its approval or denial of the plan. During the
37 review process the department shall post the local plan on its
38 Internet Web site.

39 (c) An on-sale licensee shall not apply for additional hours
40 pursuant to this section until the department has approved the local

1 plan of the city, county, or city and county in which the licensed
2 premises is located.

3 (d) (1) Upon receipt of an application by an on-sale licensee
4 for additional hours pursuant to this section, the department shall
5 make a thorough investigation to determine whether the additional
6 hours sought by the applicant would unreasonably interfere with
7 the quiet enjoyment of their property by the residents of the city,
8 county, or city and county in which the applicant's licensed
9 premises are located .

10 (2) The applicant shall notify the law enforcement agencies of
11 the city, county, or city and county, the residents of the city, county,
12 or city and county located within 500 feet of the premises for which
13 additional hours are sought, and any other interested parties, as
14 determined by the local governing body, of the application by an
15 on-sale licensee for additional hours pursuant to this section within
16 30 consecutive days of the filing of the application, in a manner
17 determined by the local governing body.

18 (3) Protests may be filed at any office of the department within
19 30 days from the first date of notice of the filing of an application
20 by an on-sale licensee for additional hours. The time within which
21 a local law enforcement agency may file a protest shall be extended
22 by the period prescribed in Section 23987.

23 (4) The department may reject protests, except protests made
24 by a public agency or public official, if it determines the protests
25 are false, vexatious, frivolous, or without reasonable or probable
26 cause at any time before hearing thereon, notwithstanding Section
27 24300. If, after investigation, the department recommends that
28 additional hours be authorized notwithstanding a protest by a public
29 agency or a public official, the department shall notify the agency
30 or official in writing of its determination and the reasons therefor,
31 in conjunction with the notice of hearing provided to the protestant
32 pursuant to Section 11509 of the Government Code. If the
33 department rejects a protest as provided in this section, a protestant
34 whose protest has been rejected may, within 10 days, file an
35 accusation with the department alleging the grounds of protest as
36 a cause for revocation of the additional hours and the department
37 shall hold a hearing as provided in Chapter 5 (commencing with
38 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
39 Code.

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

4 (e) (1) If, after investigation, the department recommends that
5 additional hours be authorized, with or without conditions on the
6 applicant's license, notwithstanding that one or more protests have
7 been accepted by the department, the department shall notify the
8 local governing body and all protesting parties whose protests have
9 been accepted in writing of its determination.

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

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

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

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

31 (6) If a request for a hearing is not filed with the department
32 pursuant to this section, any protest or protests shall be deemed
33 withdrawn and the department may approve the on-sale licensee's
34 application for additional hours without any further proceeding.

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

37 (f) The department shall notify the applicant of the outcome of
38 the application for additional hours. Any conditions placed upon
39 the license pursuant to this section shall be subject to Article 1.5
40 (commencing with Section 23800).

1 (g) The applicant shall, at the time of application for additional
2 hours pursuant to this section, accompany the application with a
3 fee of ____ dollars (\$____). Fees collected pursuant to this section
4 shall be deposited in the Alcohol Beverage Control Fund.

5 SEC. 4. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.