

TITLE 4. BUSINESS REGULATIONS
DIVISION 1. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
ARTICLE 11. APPLICATIONS AND LICENSES
SECTION 61. SUBMISSION AND CONTENTS OF PROTESTS; PROTEST
PROCESSES

INITIAL STATEMENT OF REASONS

ADOPTION OF NEW SECTION 61,
SUBMISSION AND CONTENTS OF PROTESTS; PROTEST PROCESSES

PROBLEM STATEMENT

The Legislature adopted AB 593 (Quirk, Chapter 502, Statutes of 2013), in part to clarify the alcoholic beverage license protest process and to give The Department of Alcoholic Beverage Control (“Department”) more discretion to not respond to “unreasonable” protests (Business and Professions Code Sections 24013-24014).

Section 24013 of the Business and Professions Code allows individuals to, within 30 days, file protests against the issuance of an alcoholic beverage license. This section also states that “The Department may reject protests ... if it determines the protests are false, vexatious, frivolous, invalid or unreasonable, or without reasonable or probable cause.”

To clarify the protest process, Section 24013 of the Business and Professions Code (b)(2) states that “The department shall promulgate regulations by January 1, 2016, to implement this provision.”

BENEFITS

The regulation will greatly clarify the protest process by providing and requiring an official Department form (ABC-510-A) with instructions (ABC-510). These forms will help Protestants adequately express their concerns with the necessary information for the protest to be considered valid by the Department. Both the 510 and 510-A have been in use as “optional aides” for years, with both Department personnel and potential protestants finding them very useful in articulating concerns regarding license applications.

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 using a standardized form which contains the required “verification” element of Business and Professions Code 24014, delays can be avoided – currently, Department personnel must follow-up with unverified protestants to obtain a declaration of verification for the small percentage of persons who choose not to use the currently-optional 510-A. By requiring the use of the 510-A and eliminating the step of tracking down verifications, weeks may be shaved off of the application process.

The regulation will further provide transparency within the protest process by stating that all valid protests will be sent to alcoholic beverage license applicant and that anonymous protests will not be accepted.

There has been some confusion in the past if a protest was a public record; this regulation eliminates that confusion by stating in the instructions that the form is public and therefore disclosable.

Information is newly added to the 510 to provide protestants with notice of statutorily-available alternate means of voicing their concerns if their protest is rejected by the Department.

PURPOSE

To adopt a standard form for efficient filing of alcoholic beverage license protests by members of the public that includes all the necessary information needed for the Department to conduct a proper review, and to direct public officials to the necessary methods of protesting in an official capacity.

NECESSITY

As required by Business and Professions Code Section 24013 (b)(2), this regulation will promulgate the provisions of this section.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Department did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of this regulation.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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.

Although the proposed action will directly affect new businesses statewide, including small businesses, the Department concludes that the adverse economic impact, including the ability of California businesses to compete with businesses in other states, will likely not be significant.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

This regulatory action will have no significant statewide adverse economic impact directly affecting business because it only clarifies existing law. The goal of the proposed regulatory action is to update and clarify the existing template for how protests

are filed and processed by the Department. Form ABC-510-A (Rev. January 2016) included in this proposed regulation was already in use by many Protestants as an optional form. In addition, ABC-510 (Rev. January 2016) was also used as a guideline for filing protests. With the addition of both of these forms into this regulation, which both clarify existing statute, the Department concludes that this regulatory action will have no significant statewide adverse economic impact directly affecting business.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES

The Department has not identified any alternatives that would lessen any adverse impact on small businesses.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE DEPARTMENT'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other reasonable alternatives were presented to or considered by the Department.