

CHAPTER 384  
FORMERLY  
SENATE BILL NO. 277

AN ACT TO AMEND TITLE 4 AND TITLE 29 OF THE DELAWARE CODE AMENDING THE APPEAL PROCESS FROM A DECISION OF THE DELAWARE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 541(c) and (d), Title 4 of the Delaware Code by making insertions as shown by underlining and deleting as shown by strike through as follows:

~~(e) The decision of the Appeals Commission shall be final and conclusive unless, within 30 days after notice thereof has been mailed by the Appeals Commission, a party to such hearing files an appeal in the Superior Court of the county within which the applicant sought a license. Unless otherwise agreed by all parties, in every appeal the cause shall be first decided by an arbitration conducted pursuant to the Superior Court Rules of Civil Procedure by a Superior Court Commissioner from the record, and the Superior Court Commissioner may affirm, reverse or modify the Appeals Commission's decision. The Appeals Commission's findings of fact shall not be set aside unless the Superior Court Commissioner determines that the record contains no substantial evidence that would reasonably support the findings. If the Superior Court Commissioner finds that additional evidence should be taken, the Superior Court Commissioner may take the additional evidence or remand the cause to the Commissioner for taking additional evidence on the record. If the Superior Court Commissioner finds that the Appeals Commission has made an error of law, the Superior Court Commissioner shall reverse or modify the Appeals Commission's decision and render an appropriate judgment.~~

(c) The Commissioner's decision must be in writing and shall be final and conclusive unless, within 30 days from the date of the postmark on the Commissioner's decision, a party to the hearing files a written appeal in the office of the Commissioner. Upon receipt of the appeal, the Commissioner shall cause the Chairperson of the Appeals Commission to be advised of the pending appeal and the Chairperson shall cause the Appeals Commission to be convened with at least 20 days notice to all parties. The Appeals Commission's review of an appeal from the Commissioner's final decision shall be on the record and in accordance with the Administrative Procedures Act, Title 29, Chapter 101, Subchapter III of the Delaware Code. A decision of the Commissioner shall be reversed only upon a finding of abuse of discretion.

~~(d) The Superior Court may affirm, reverse or modify the decision of the Superior Court Commissioner or the Appeals Commission. The findings of fact by the Superior Court Commissioner or the Appeals Commission shall not be set aside unless the court determines that the record contains no substantial evidence that would reasonably support the findings. If the court finds that additional evidence should be taken, the court may take the additional evidence or remand the cause to the Superior Court Commissioner or the Appeals Commission for taking additional evidence on the record. If the court finds that the Superior Court Commissioner or Appeals Commission has made an error of law, the court shall reverse or modify the decision of the Superior Court Commissioner or Appeals Commission and render an appropriate judgment.~~

(d) A party who is aggrieved by a final decision of the Appeals Commission may file a written appeal with the Superior Court within 30 days of the date that the Appeals Commission's decision was mailed. The Superior Court's review of an appeal shall be on the record and in accordance with the Administrative Procedures Act, Title 29, chapter 101, subchapter V of the Delaware Code. The Superior Court's review shall take into account the experience and specialized competence of the agency and the purpose under which the agency acted. Further, the Superior Court's review, in the absence of fraud, shall be limited to whether the agency's decision is supported by substantial evidence on the record and is free from legal error.

Section 2. Amend § 10161(a)(1), Title 29 of the Delaware Code by making insertions as shown by underlying and deleting as shown by strike through as follows:

§ 10161. State agencies affected [Effective until Aug. 6, 2013]

(a) This chapter shall apply only to the following agencies:

~~(1) Alcoholic Beverage Control Commission~~ Appeals Commission, as defined by 4 *Del. C.* § 301(b);

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~~(1) Alcoholic Beverage Control Commission~~ Appeals Commission, as defined by 4 *Del. C.* § 301(b);

Section 3. Amend § 562, Title 4 of the Delaware Code by making insertions as shown by underlying and deleting as shown by strike through as follows:

§ 562. Public hearing and right of appeal.

(a) No license shall be cancelled or suspended, or any licensee fined (1) until the licensee has been given a public hearing by the Commissioner at which time the licensee shall be entitled to legal representation and to present witnesses, and (2) unless the ground therefor shall be established by clear and convincing evidence. A full and complete record shall be kept of all proceedings incident to such hearing. All testimony shall be recorded but need not be transcribed unless an order of the Commissioner ~~shall be~~ is appealed to the Superior Court as set forth in subsection (c) of this section.

(b) Any order of the Commissioner relative to suspension or cancellation of a license, or a fine imposed against a licensee shall become final 10 days after the licensee receives notice thereof, unless within ten (10) days of the date of the postmark on the Commissioner's decision ~~an~~ written appeal is filed in the Superior Court. No bond shall be required for filing such appeal ~~timely made~~.

~~(e) Within 10 days after the licensee has received notice that the Commissioner has rendered a decision fining the licensee or ordering the suspension or cancellation of his license, the licensee may secure judicial review of such decision by commencing an action in the Superior Court. No bond shall be required for entering such appeal.~~

~~(c) (d) In such action, a petition, which need not be verified, but which~~ The appeal shall state the grounds upon which a review is sought, ~~shall be served upon the Commissioner~~. After the ~~petition~~ appeal is filed, service shall be made by the Sheriff upon the Commissioner. ~~With the answer,~~ The Commissioner shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter, together with the Commissioner's findings therein as soon as practicable but in no event later than 20 calendar days from the date of service of the appeal. Unless otherwise agreed to by all of the parties, in every appeal the cause shall be first decided by arbitration conducted by a Superior Court Commissioner pursuant to the Superior Court Rules of Civil Procedure. The decision of the Superior Court Commissioner may be reviewed by the Superior Court in the same manner as is provided in civil cases. The Superior Court's review of an appeal shall be on the record and the Superior Court shall take into account the experience and specialized competence of the agency and the purpose under which the agency acted. Further, the Superior Court's review, in the absence of fraud, shall be limited to whether the agency's decision is supported by substantial evidence on the record and is free from legal error.

~~(e) (d)~~ An appeal without bond may be taken from the decision of the Superior Court to the Supreme Court of this State in the same manner as is provided in civil cases. Upon the final determination of judicial proceedings, the Commissioner shall enter an order in accordance with such determination, or shall take such further or other action as the ~~arbitrator or the~~ Court may order. A petition for judicial review shall act as a supersedeas.

Approved August 01, 2012