



SPONSOR: Sen. DeLuca & Rep. Schwartzkopf

DELAWARE STATE SENATE
146th GENERAL ASSEMBLY

SENATE BILL NO. 259

AN ACT TO AMEND TITLE 4 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:

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

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

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

21 ~~(d) The Superior Court may affirm, reverse or modify the decision of the Superior Court Commissioner or the~~
22 ~~Appeals Commission. The findings of fact by the Superior Court Commissioner or the Appeals Commission shall not be set~~

23 ~~aside unless the court determines that the record contains no substantial evidence that would reasonably support the~~
24 ~~findings. If the court finds that additional evidence should be taken, the court may take the additional evidence or remand~~
25 ~~the cause to the Superior Court Commissioner or the Appeals Commission for taking additional evidence on the record. If~~
26 ~~the court finds that the Superior Court Commissioner or Appeals Commission has made an error of law, the court shall~~
27 ~~reverse or modify the decision of the Superior Court Commissioner or Appeals Commission and render an appropriate~~
28 ~~judgment.~~

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

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

38 § 10161. State agencies affected [Effective until Aug. 6, 2013]

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

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

41 § 10161. State agencies affected [Effective Aug. 6, 2013]

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

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

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

46 § 562. Public hearing and right of appeal.

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

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

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

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

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

SYNOPSIS

This bill modifies and clarifies the appeal process for final decisions from the Delaware Alcoholic Beverage Control Commissioner to the Appeals Commission, and the appeal process for final decisions of the Appeals Commission to the Superior Court. The process in both instances shall follow the Administrative Procedures Act. Further, section 2 of this bill corrects an error in the designation of the proper state agency subject to judicial review.

This bill also modifies and clarifies the appeal process from a final decision of the Delaware Alcoholic Beverage Control Commissioner, to cancel or suspend a license, or to fine a licensee, directly to the Superior Court. Due to the emergent business nature of such a final decision by the Delaware Alcoholic Beverage Control Commissioner the licensee's appeal should proceed directly to the Superior Court. The current statute's arbitration process in which a

Superior Court Commissioner's decision is subsequently reviewed by the Superior Court is not a routine review process which is available in the Superior Court. The reference to compliance with an arbitrator's order is no longer applicable because the requirement that a Superior Court Commissioner arbitrate the appeal is being deleted from the appeal process.

Author: Sen. DeLuca