

TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

NOTICE OF PROPOSED ADOPTION OF REGULATION

The Department of Alcoholic Beverage Control (“Department”) proposes to adopt the emergency regulation described below after considering all comments, objections, and recommendations regarding the proposed action. Pursuant to Government Code Section 11346.1, the Department has added Section 144 “Penalty Guidelines” to Title 4, Division 1, of the California Code of Regulations. The proposed addition of Section 144 is pursuant to the California Constitution, Article XX Section 22, Business and Professions Code Sections 23001 and 25750, and Government Code Section 11340, et. seq., and specifically, but not limited to, Sections 11340.5, 11342.600 and 11425.50; *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557; and *Vicary v. ABC, AB-7606a* (Nov. 12, 2003).

PUBLIC HEARINGS

Pursuant to Government Code § 11346.8, any interested person, or his or her duly authorized representative, may present oral or written statements, arguments, or contentions relevant to the proposed action in the Informative Digest at hearings to be held on **July 12, 2004**, commencing at **10:00 a.m.** at the following address:

**Ronald Reagan State Building
300 South Spring Street – Auditorium
Los Angeles, CA 90013**

AND

July 13, 2004 commencing at **10:00 a.m.** at the following address:

**EDD Building
722 Capitol Mall – Auditorium
Sacramento, CA 95814**

(* The Department reserves the right to impose reasonable limitations on oral presentations – Government Code § 11346.8)

WRITTEN COMMENT PERIOD

Pursuant to Government Code § 11346.5, any interested person may present statements, arguments, or contentions relating to the proposal, in writing, by 5:00 p.m., on July 13, 2004. The Department will consider only those comments received at the Department office by that time. Submit comments to any of the following persons:

Nicholas R. Loehr, Chief Counsel (Acting)
Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

Dennis Clear, Legislative Officer
Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

Theresa Laster, Legal Analyst
Department of Alcoholic Beverage Control
3927 Lennane Dr., Ste. 100
Sacramento, CA 95834

AUTHORITY AND REFERENCE CITATIONS

The Department adds Section 144 under the authority granted to it in California Constitution, Article XX, Section 22, Business and Professions Code Sections 23001 and 25750, and Government Code Sections 11340.5, 11342.600 and 11425.50; the California Supreme Court's holding in *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557; and the ABC Appeals Board's ruling in *Vicary v. ABC*, AB-7606a (Nov. 12, 2003).

INFORMATIVE DIGEST/
POLICY STATEMENT OVERVIEW

California Code of Regulations, Title 4, Division 1, Section 144, “Penalty Guidelines.”

It is the policy of this Department to impose administrative, non-punitive penalties in a consistent and uniform manner with the goal of encouraging and reinforcing voluntary compliance with the law.

The California Constitution authorizes the Department, in its discretion, to suspend or revoke any license to sell alcoholic beverages if it shall determine for good cause that the continuance of such license would be contrary to the public welfare or morals. The Department may use a range of progressive and proportional penalties. This range will typically extend from Letters of Warning to Revocation. These guidelines contain a schedule of penalties that the Department usually imposes for the first offense of the law listed (except as otherwise indicated). These guidelines are not intended to be an exhaustive, comprehensive or complete list of all bases upon which disciplinary action may be taken against a license or licensee; nor are these guidelines intended to preclude, prevent, or impede the seeking, recommendation, or imposition of discipline greater than or less than those listed herein, in the proper exercise of the Department’s discretion.

Higher or lower penalties from this schedule may be recommended based on the facts of individual cases where generally supported by aggravating or mitigating circumstances.

1. Add Section 144.

Section 144 incorporates by reference the Department’s “Penalty Guidelines” dated December 17, 2003. The Department’s prior “Penalty Policy Guidelines” were found to be an underground regulation in violation of the Administrative Procedures Act by the ABC Appeals Board. This proposes to codify the Department’s penalty policy, procedures and guidelines to insure that disciplinary proceedings are conducted in a fair, reasoned and consistent manner, and in a manner authorized by law.

Authority and Reference Citations

Section 144:

The Department of Alcoholic Beverage Control proposes to add Section 144 pursuant to and to implement, interpret, and make specific California Constitution, Article XX, Section 22, Business and Professions Code Sections 23001 and 25750, and Government Code Sections 11340.5, 11342.600 and 11425.50; *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557; and *Vicary v. ABC*, AB-7606a (Nov. 12, 2003).

DISCLOSURES REGARDING THE PROPOSED ACTION

Fiscal Impact Estimates

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Cost to Any Local Agency or School District for Which Government Code §17561 Requires Reimbursement: None.

Local Mandate Statement

Addition of the above-mentioned section does not impose a mandate on local agencies.

Business Impact Statement

The Department of Alcoholic Beverage Control has determined that the proposed regulatory action would have no significant, statewide adverse economic impact directly affecting California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses

The Department of Alcoholic Beverage Control finds that the proposed regulatory action will not have any impact on the creation or elimination of jobs or businesses or the expansion of businesses in the State of California.

Statement of Potential Cost Impact on Private Persons or Entities

The Department of Alcoholic Beverage Control is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Statement of Effect on Small Businesses

The Department of Alcoholic Beverage Control finds that the proposed regulatory action will have no effect on small businesses since it merely codifies existing disciplinary procedures.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a) (13), the Department must determine that no reasonable alternative it may have considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements, comments, or arguments with respect to alternatives to the proposed regulation at the scheduled hearings or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to any of the following persons:

Nicholas R. Loehr, Chief Counsel (Acting)
Department of Alcoholic Beverage Control
3927 Lennane Dr., Ste. 100
Sacramento, CA 95834

Dennis Clear, Legislative Officer
Department of Alcoholic Beverage Control
3927 Lennane Drive, Ste. 100
Sacramento, CA 95834

Theresa Laster, Legal Analyst
Department of Alcoholic Beverage Control
3927 Lennane Dr., Ste. 100
Sacramento, CA 95834

Questions on the substance of the proposed regulation may be directed to any of the persons listed above.

Please direct requests for copies of the proposed text (the “express terms”) of the regulation, statement of reasons, or any other information concerning the rulemaking file to Ms. Theresa Laster at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearings and considering all timely and relevant comments received, the Department upon its own motion or at the instance of any interested person may adopt the proposal substantially as presented. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulation as revised. Please send requests for copies of any modified regulation to the attention of Theresa Laster at the address indicated above. The Department will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. The

aforementioned items are also available for review on the Department website at <http://abc.ca.gov>. (Located under 'points of interest.')

Notice is also given that each proposal should be reviewed in terms of the statutory requirements for necessity, clarity, consistency, authority, reference, and non-duplication.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Theresa Laster at the above address.

ITEMS UNDER CONSIDERATION in Title 4. Business Regulations, Division 1, Department of Alcoholic Beverage Control ARE:

Item 1: Add Section 144: Penalty Guidelines (Incorporated by reference herein)