

TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

August 9, 2019

NOTICE OF PROPOSED RULEMAKING

The Department of Alcoholic Beverage Control (“ABC”) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

ABC has not scheduled a public hearing on this proposed action. However, the department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to ABC. Comments may also be submitted by email to RBSTPComments@abc.ca.gov. The written comment period closes at **12:00 p.m. on September 24, 2019**. ABC will consider only comments received at ABC Headquarters by that time. Submit comments to:

Responsible Beverage Service Training Program
Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

AUTHORITY AND REFERENCE

Business and Professions Code Section 25681 and 25685 authorizes ABC to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific sections 25680-25686 of the Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

The Responsible Beverage Service Training Program Act of 2017 (RBSTPA), codified as Business and Professions Code sections 25680-25686, mandates and authorizes the ABC to establish standards for a statewide Responsible Beverage Service (RBS) Training Program to certify all alcohol servers working at ABC on-premises licensed premises have been trained in RBS curriculum and passed an exam testing their knowledge and understanding of the curriculum. The RBSTPA was passed to curb the negative effects of the overuse of alcohol in California.

ABC approved accreditation agencies and training providers under the RBSTPA and these regulations will qualify as ABC licensees under the definition found in Business and Professions Code section 23009 but will not hold an ABC license to sell, produce, or import alcohol. ABC approved accreditation agencies and training providers, including their owners and officers, must meet existing standards and requirements of ABC licensees, such as not being convicted of a crime of moral turpitude. ABC approved accreditation agencies and training providers are also granted the due process procedure and rights of ABC licensees for departmental decisions concerning their approval.

There are no existing regulations regarding the RBSTPA, or for ABC licensees by approval who do not have an ABC license. The proposed regulation action will implement the RBSTPA as mandated.

Summary of Effect

The proposed action will create California Code of Regulations, Title 4, Division 1, Article 25 by adopting the requirements to implement the RBSTPA, including the required curriculum standards for RBS training courses, approval standards for accreditation agencies and training providers, reporting requirements of ABC on-premises licensees, the establishment of an online alcohol server certification system, and enforcement standards and penalties for violations of the RBSTPA by accreditation agencies, training providers, and ABC on-premises licensees. The implementation of the RBSTPA will ensure that alcohol servers in California will be better trained to curb harms to the California community and economy caused by the overuse of alcohol.

Comparable Federal Statute or Regulations

The ABC has determined that this proposed regulation does not have a comparable federal statute or regulation.

Policy Statement Overview

This rulemaking action was required by the legislature in its passage of the RBSTPA to ensure the anticipated benefits are realized through the ABC's implementation, oversight, and

enforcement of the program. The adoption of this action will lower the \$35 billion annual costs to the California economy due to the overuse of alcohol by training alcohol servers and their managers in RBS practices. In addition, the overuse of alcohol endangers public health and safety. By training alcohol servers and their managers to limit the overuse of alcohol in California, residents will have a higher quality of life through the benefits of better public health and safety.

Benefits Anticipated

By establishing a uniform and standard education requirement for all alcohol servers, the Legislature sought to improve the likelihood that an alcohol server will intervene before a customer who has overused alcohol endangers the public. It is estimated that the cost for the overuse of alcohol on the California economy is \$35 billion dollars per year. It is estimated that this regulations package will be able to reduce those costs by 10% by 2024, saving the California economy \$3.5 billion dollars per year while increasing public health and safety for all Californians.

Determination of Inconsistency/Incompatibility with Existing State Regulations

The ABC has determined that this proposed regulatory action is not inconsistent or incompatible with existing state regulations. The proposed action is the only regulations that address the minimum standards for the implementation of an RBS training course curriculum, approval of RBS accreditation agencies and RBS training providers, or ABC licensees by approval that do not hold an ABC license.

Disclosures Regarding the proposed Action

The ABC has made the following initial determinations:

1. Mandate on local agencies or school districts: None.
2. Costs or Savings to any state agency: The ABC is implementing, overseeing, and enforcing the RBSTPA. It is estimated the costs from 2018 through 2023 will be a total of \$7.6 million for new ABC staff, IT solution funding, and increased enforcement costs to monitor the program. These reasonable costs will be recovered through the administration of the alcohol server certification exam, fees for the approval of accreditation agencies and training providers, and annual renewal fees for accreditation agencies and training providers. The ongoing costs to the ABC after the initial implementation are estimated to be \$1 million ongoing for administration and oversight of the program.
3. Cost to any local agency or school district that is required to be reimbursed by the state: None.
4. Other nondiscretionary cost or savings imposed on local agencies: None.
5. Cost or savings in federal funding to the state: None.
6. Cost impacts on housing costs: None.

Determination of Statewide Adverse Economic Impact on Business

The ABC has made an initial determination that the adoption of this regulation may have a significant, statewide adverse economic impact directly effecting businesses, including the ability of California businesses to compete with businesses in other states. The ABC has considered alternatives that lessen the adverse economic impact on business and invites you to submit proposals.

Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

The types of businesses affected include any ABC licensee exercising on-premises consumption privileges whether in the retail, distribution, or manufacturing tier, such as: restaurants, bars, movie theaters, wineries, breweries, distilleries, importers, wholesalers, stadiums, casual dining establishments, and supermarkets. These businesses will be required to ensure their alcohol servers and their managers as defined in the regulatory action complete an approved RBS training course and pass the alcohol server certification exam within 60 days of their initial employment. They will also need to keep records of the certification of their employees for inspection by law enforcement upon request. The department is creating an online certification system to allow ABC licensees to check, report, and keep all mandated records in one place to reduce the total economic costs.

In addition, current RBS training providers, both non-profit and for-profit, will need to update their RBS training courses to meet the new standards set by the RBSTPA and this regulatory action. They will then need to submit to departmental or accreditation agency review for approval under the standards set by this regulatory action for both their curriculum and delivery to foster a change in alcohol server behavior. The department's online certification system will be available to approved training providers for them to easily comply with the mandatory record keeping and reporting.

Description of all cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ABC on-premises licensees

ABC on-premises licensees employ persons who will qualify as alcohol servers under the statutory definition. The mandatory certification will be a requirement for alcohol servers' continued employment and ABC on-premises licensees believe California law requires employers to reimburse employees for these types of trainings. In addition, alcohol servers in certain hospitality industries have union contracts with their employers requiring wages for time spent in any mandatory training and reimbursement for mandatory training costs. This cost is estimated to be \$89 per alcohol server.

ABC on-premises licensees will need to install a certificate tracking system or modify an existing tracking system to ensure all employees that are alcohol servers are certified according to statute. ABC is developing a full-service database system to minimize the cost of a certificate tracking system for ABC on-premises licensees. Under the current chosen option, ABC and its stakeholders have estimated an average cost of \$200 per ABC on-premises licensed premises to sync their records to the ABC online certificate system in the first year. Further ongoing costs of keeping these records to date will be included in actions of previous record keeping requirements and are negligible.

Training providers

Each training provider, including existing RBS programs, will need to seek accreditation under the standards set by ABC through the RBSTPA regulations. Accreditation will involve approval of an RBS training course used by RBS trainers employed or contracted by a training provider. It is estimated this process will cost training providers \$1000 per curriculum approval. Each training provider will also need to modify their existing trainings to comply with the statutorily mandated subjects and ABC regulated subject matter required for accreditation. In discussing with the industry, depending on the current curriculum of a training provider, this content development should cost from \$2,000 to \$10,000. According to the RBSTPA, a training provider will need to keep records of all alcohol servers trained and certified. ABC is developing a full service database system to minimize the cost to training providers. This reporting is included in actions of previous record keeping by training providers and is negligible.

Alcohol servers

Alcohol servers who are hired after the implementation of the RBSTPA will most likely be required to complete an alcohol server certification prior to being employed by an ABC on-premises licensee. It will cost each individual an estimated \$20 for an RBS training course, \$3 for the RBS certification exam, and \$64 of time opportunity cost per individual who seeks to become certified under the RBSTPA to be employed as an alcohol server at an ABC on-premises licensed premises.

Results of the Standardized Regulatory Impact Assessment

The ABC has determined the following estimates of all costs and benefits due to the proposed regulatory change.

The costs of implementing the RBSTPA and training 1,000,000 alcohol servers will be borne by alcohol servers, ABC on-premises licensees, training providers, and the state. It is anticipated that the date of filing with the Secretary of State will be January 1, 2020. Total costs in 2020 are estimated to be \$20.8 Million. Total costs in 2021 are estimated to be \$80.1 Million. Total costs in 2022 are estimated to be \$19.7 Million. Total costs in 2023 are estimated to be \$24.7 Million. Total costs in 2024, are estimated to be \$61.5 Million.

A similar three-year direct costs cycle of new hires and retained alcohol servers will continue moving forward from 2024 coupled with an estimated 20% annual turnover for alcohol servers, and a 2.11% average annual growth in the amount of ABC on-premises licensees.

Benefits of the RBSTPA will most likely not be seen until after the entire California alcohol server population is trained after 2021. Total benefits in 2022 and 2023 are estimated to be \$1.75 billion annually to the California economy through the reduction of the over use of alcohol by 5%. Total benefits in 2024 estimated to be \$3.50 billion annually to the California economy through the reduction of the over use of alcohol by 10%

For a more extensive and detailed economic impact assessment please see ABC's Standard Regulatory Impact Assessment for this regulation action.

Creation or Elimination of Jobs within California

RBS training providers will receive \$20 million from providing the initial RBS training courses to the 1,000,000 existing alcohol servers, they will also need to spend \$680,000 to update their curriculum and get it approved through ABC. In addition, ABC on-premises licensees will invest \$11.22 million in creating and maintaining systems to monitor and review their employees' mandatory training requirements, and \$64 million in wages to its employees. ABC on-premises licensees will be responsible for paying for their employees' RBS certification exams paying \$3 million to ABC. In total, these investments will create an estimated 2,316 jobs.

ABC on-sale licensees anticipate the need to provide \$89 million to pay for their current employees to be trained as mandated by the RBSTPA, or \$89 for each alcohol server the ABC on-sale licensee employs. Through information collected at the stakeholder meetings discussed above, the ABC does not anticipate any reduction of jobs due to this regulation being implemented.

Creation or Elimination of Businesses in California

ABC, through its public outreach and economic analysis, does not anticipate any creation or loss of businesses in California due to the implementation of the RBSTPA. Although there could be less than ten new RBS training providers that enter the market from out of state, it is anticipated that there will also be a consolidation of some existing training providers to pool knowledge and experience to both update and innovate within their existing RBS training programs.

Advantages and Disadvantages for Current California Businesses

The ABC on-sale licensees currently doing business in California are not benefited or disadvantaged by this regulatory action. The ABC licensees will incur additional costs of training, but there are no exempt businesses they will be competing with inside the market since out of state or new businesses will also need to comply.

Current Californian RBS training providers will have advantages due to this regulatory action. The RBS training market will grow and have a uniform standard for the entire state's population of alcohol servers. This will likely draw more out-of-state actors, but in-state training providers are familiar with applicable California law and will need less changes to their existing RBS training courses to be approved by the department.

Incentives for Innovation

The regulatory action will provide incentives to the RBS training providers to better teach alcohol servers and provide behavioral change. Both the need for students to pass the alcohol server certification, and the three-year renewal requirements will incentivize strong RBS programs to create a loyal customer base through innovation. RBS classes will be offered both in person and online so innovation in teaching techniques in both arenas will be incentivized.

Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

This regulatory action will increase the health and welfare of California residents through the anticipated reduction in community harm due to the overuse of alcohol throughout the state. This will reduce alcohol related car wrecks, disease, fatalities, and their attached harms both economically and socially. In addition, if obviously intoxicated persons are no longer served in ABC on-premises locations, the workers will have increased safety due to a reduction in alcohol related assaults or violence in their workplaces.

Expansion of Business Investment

It is anticipated that RBS training providers will invest \$0.68 million over the first year to better hone their course offerings and control a portion of the new RBS training market created by implementing the RBSTPA. In addition, ABC On-Sale Licensees anticipate investing \$11.22 million in creating and maintaining systems to monitor and review their employees' mandatory training requirements over the first year to comply with the law, \$25 million in the cost of training their employees, and \$64 million in wages to its employees. This will effectively be a total investment of \$100.9 million in the industry in 2020-2021.

Small Businesses Affected by Proposed Regulation

An estimated 33% of ABC on-premises licensees qualify as small businesses. The estimated effect of the proposed action is dependent on the number of alcohol servers employed by an ABC on-premises licensee, so the small businesses will be affected in smaller amounts due to their smaller employment numbers.

Summary of Department of Finance Comments to the Standard Regulatory Impact Assessment

The Department of Finance (DOF) stated that it "generally concurs with the methodology used to estimate the annual economic impacts under the proposed regulations." There were no recommended changes or revisions except in the case that the proposed regulations package necessitated a shift in either the proposed options, or other estimated outcomes. The department has not submitted a formal response to the DOF comments due to no changes being requested or encouraged by DOF. The proposed regulations, as currently proposed, are in line with the estimates included within the submitted standard regulatory impact assessment.

The need to require a report from businesses

The RBSTPA required both the ABC on-premises licensees and training providers keep and maintain records of valid alcohol server certifications issued and received to allow ABC to enforce compliance. Reporting is not required under the RBSTPA unless a request for the records is made by an authorized agent of ABC. However, to lower the economic impact on the state, ABC on-premises licensees, and training providers, ABC is creating an online certificate system to validate all issued alcohol server certifications. This is a form of reporting for both ABC on-premises licensees and training providers. ABC through this regulatory action is requiring actors to keep some of their statutorily required records within an ABC online certificate system to alleviate the need to build multiple tracking databases throughout the state or use paper certificates that are easily recreated and fraudulently provided. This mandatory reporting and validation will ensure the anticipated benefits to the health, safety, and welfare of California residents due to the integrity of the online certification system requiring all alcohol servers to complete the mandatory training and pass the exam, learning to change their behavior in serving alcohol for consumption limiting the overuse of alcohol. It is necessary for the health, safety, or welfare of the people of the state that this regulation which requires a report apply to businesses.

Consideration of alternatives

The ABC must determine that no reasonable alternative considered by the department 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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. For a detailed discussion of alternatives that the agency itself considered, see Section 10 of ABC's Standard Regulatory Impact Assessment on the proposed major regulation action. ABC invites interested persons to present statement or arguments with respect to alternatives to the proposed regulation during the written comment period.

Agency contact person

Inquiries concerning the proposed regulatory action may be directed to the agency representative Robert de Ruyter, Attorney III, Office of the General Counsel, (916) 419-8958 or (designated backup contact) Megan Rasis, Associate Governmental Program Analyst, Responsible Beverage Service Training Program, (916) 419-4912.

Availability of documents

The ABC prepared an Initial Statement of Reasons for the proposed action, which includes a summary of the economic impacts of the proposal. In addition, due to this being a major regulation action the ABC prepared a Standard Regulatory Impact Assessment to examine the specific economic impact on businesses and individuals in detail.

Copies of the Initial Statement of Reasons, the Standard Regulatory Impact Assessment, and the full text of the proposed regulations may be accessed on ABC's website listed below or may be obtained from the Responsible Beverage Service Training Program, Department of Alcoholic Beverage Control, 3927 Lennane Drive, Suite 100, Sacramento, CA 95834, on or after August 9, 2019.

The ABC staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

Change to the proposed full text of the regulation action

If there is any change to the proposed full text of the regulation action in a substantial, or sufficiently related way, it will be made available for comment for at least 15 days prior to the date on which the department adopts the resulting regulation.

Final statement of reasons availability

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the department contact persons in this notice or may be accessed on ABC's website listed below.

Internet Access

This notice, the Initial Statement of Reasons, and all subsequent regulatory documents, including the Final Statement of Reasons, when completed, are available on ABC's website for this rulemaking at <https://www.abc.ca.gov/law-and-policy/regulations/>