

TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

October 23, 2020

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. This proposed rulemaking is a certificate of compliance action for a previously approved emergency rulemaking action that is effective through January 25, 2021.

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 RPU@abc.ca.gov, please include “Emergency Administrative Decisions” in the subject line of your email. The written comment period closes at **12:00 p.m. on December 9, 2020**. ABC will consider only comments received at ABC Headquarters by that time. Submit comments to:

Law and Policy Unit
Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

AUTHORITY AND REFERENCE

Government Code section 11460.20, Business and Professions Code section 23080 authorizes ABC to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific Government Code sections 11460.10, 11460.20, 11460.30, 11460.40, 11460.50, 11460.60, 11460.70, and 1460.80; and Business and Professions Code sections 23080, 23090.5, 23095, 24044.5, 24045.5, 24201, 24203, 24204, 24300, and 24301.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current law has a large bureaucratic loophole through which unscrupulous ABC licensees can continue to present an immediate danger to public health, safety, and welfare during the lengthy administrative process of holding ABC licensees accountable for their violations of the ABC Act. The Department of Alcoholic Beverage Control (the Department) aims to close the loophole with this regulatory action which will authorize the Department to issue emergency decisions to protect the public health, safety, and welfare as provided under the Administrative Procedures Act (APA) without waiting for protracted litigation. Protracted litigation has the potential to defer decisive action from the Department for months or years providing opportunity for licensees to continue to harm the public.

Summary of Existing Laws and Regulations

Business and Professions Code section 23082 requires ABC to complete its entire normal disciplinary process prior imposing administrative remedies intended to prevent or stop the illegal conduct from continuing at a licensed premises. This formal process can last months. Even when an ABC decision is final, ABC decisions are subject to an automatic stay if appealed to the Alcoholic Beverage Control Appeals Board. This allows licensees endangering the public health, safety, and welfare to continue operation for years prior to effective ABC action.

Summary of Effect

If a business is operating in a fashion egregious enough to warrant an administrative emergency decision, the likelihood of the inappropriate behavior continuing is too great to allow it to continue during ABC's disciplinary proceedings. Bad actors are gaming the system as they see an impending loss of license for their business on the horizon. They have no reasonable incentive to correct their behavior and abide by the rules, instead they elect to continue litigating, thereby extending the appeals process and fiscally profiting for as long as they can with an absolute disregard for the law. The proposed regulatory action will make permanent the emergency administrative decision regulations previously established under an emergency regulation in early 2020. Administrative emergency decisions allow ABC to implement limits on the ongoing harm to the public health, safety, and welfare in the form of temporary suspensions, temporary limitations on licensed privileges, and temporary license conditions while the normal accusation process is pending. The regulations will ensure ABC complies with due process in issuing administrative emergency decisions pending completion of an accusation process while also protecting the public health, safety, and welfare.

Comparable Federal Statute or Regulations

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

Policy Statement Overview

ABC's mission to protect the public health, safety, and welfare through licensing alcohol businesses and enforcing legislative standards is limited when its normal accusation process takes years to bring a final decision. By limiting bad actions from the licensed premises on an emergency temporary basis pending final rulings, California residents will have a higher quality of life through the benefits of better public health, safety, and welfare. The proposed regulations are consistent and compatible with existing state regulations.

Benefits Anticipated

By establishing immediate consequences for unacceptable behavior, ABC anticipates a reversal in the current trend of multiple appeals and prolonged litigation in many of ABC's disciplinary actions which have become less of a deterrent and more of an unanticipated cost of doing business which bad actors are willing to pay for. This will also limit additional violations of the law by ABC licensees from harming the public while ABC completes its normal disciplinary process, or while the ABC Appeals Board reviews an ABC decision.

Determination of Inconsistency/Incompatibility with Existing State Regulations

ABC has determined that this proposed regulatory action is not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, ABC has concluded that these are the only regulations that concern administrative emergency decisions by ABC in California.

Effect upon Small Businesses in California

ABC has determined this proposed regulatory action does ~~not~~ affect small businesses: the laws that ABC seeks to enforce via the proposed regulation are laws to which small businesses are already subject. While some ABC licensees are small businesses, this regulation is affecting all ABC licensees who present and immediate harm to the public health, safety, and welfare through their actions. ABC is not affecting any business with this regulation without due process and the Department providing evidence that the business presents an immediate threat to the public health, safety, and welfare.

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: ABC estimates a \$10,000 per year cost to the department through a rare appeal of a temporary order at the Superior Court of the county where a licensed premises subject to an emergency decision is located. This new cost will be absorbed into ABC's current budget, and could be offset by a similar reduction of additional violations at licensed premises occurring during the ABC normal disciplinary process.
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 will have negligible economic impact on businesses that do not violate the law. The laws that ABC seeks to enforce via the proposed regulation are laws to which businesses are already subject. The proposed action only lays out the process by which ABC will investigate and discipline licenses for potential violations and seek enforcement of these same laws. There is no foreseeable impact on businesses based on the process laid out in the proposed regulation.

Results of the Economic Impact Assessment:

ABC concludes that it is (1) unlikely that the proposal will eliminate any jobs, (2) unlikely that the proposal will create an unknown number of jobs, (3) unlikely that the proposal will create an unknown number of new businesses, (4) unlikely that the proposal will eliminate any existing businesses, and (5) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state.

ABC does anticipate the proposed regulations will allow increased public health, safety, and welfare from a better check upon ABC licensees that currently can continue violating the ABC Act during ABC's normal accusation process. It will provide clarity to law enforcement officers, ABC licensees, and the public of the regulatory procedure to implement administrative

emergency decisions to stop the above conduct. This proposed regulation will further ABC's mission which is to protect the public health, safety, and welfare through licensing alcohol businesses and enforcing legislative standards. Additionally, the proposed regulations will promote more safety, as well as consistent enforcement of these laws throughout the state. The proposed regulations will not benefit worker safety or the state's environment.

Description of All Economic Impacts That a Representative Private Person or Business Would Necessarily Incur in Reasonable Compliance with the Proposed Action

ABC has made the determination that the adoption of this regulation will have negligible economic impact on a representative private person or business that does not violate the law. The laws that ABC seeks to enforce via the proposed regulation are laws to which persons and businesses are already subject. The proposed action lays out the process by which ABC will investigate potential violations and seek enforcement of these same laws. There is no foreseeable impact on representative private persons or businesses based on the process laid out in the proposed regulation.

Thus, ABC is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action.

The Need to Require Report from Businesses

The proposed regulation does not require any reports from ABC licensees or any other business.

Consideration of alternatives

ABC has determined 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. 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, Assistant General Counsel, (916) 419-8958 or (designated backup contact) Sonny Bains, Associate Governmental Program Analyst, Law and Policy Unit, (916) 285-0891.

Availability of documents

ABC prepared an Initial Statement of Reasons for the proposed action. Copies of the Initial Statement of Reasons, and the full text of the proposed regulations may be accessed on ABC's website listed below or may be obtained from the Regulations and Policy Unit, Department of Alcoholic Beverage Control, 3927 Lennane Drive, Suite 100, Sacramento, CA 95834, on or after October 23, 2020.

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-rulemaking/>