

**Department of
Alcoholic Beverage Control**

FINAL STATEMENT OF REASONS

**PROPOSED ADOPTION OF REGULATIONS FOR
DELIVERY MINOR DECOY REQUIREMENTS**

PROPOSED ADOPTIONS TO TITLE 4:

SECTION 141.1.

UPDATE OF INITIAL STATEMENT OF REASONS

The Department has no changes to the Initial Statement of Reasons noticed on August 7, 2020.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE COMMENT PERIOD OF AUGUST 7, 2020, THROUGH SEPTEMBER 23, 2020.

The Department received three written comments from the public during the public written comment period from August 7, 2020, through September 23, 2020. Each comment the Department received is included in its entirety in the Public Comment section of the rulemaking record. Comment 1 from the Neighborhood Market Association and Comment 2 from Ms. Jennifer L. Simpson were both letters in support of the regulatory package as noticed. Comment 3 from the California Restaurant Association (CRA) requested changes to the definition of “Agent” in the regulation that was previously implemented in the Emergency Regulatory Package and had not been changed in the Certificate of Compliance process.

The Department respectfully disagrees with CRA’s interpretation of the law and their request to limit the liability and responsibility of ABC Licensees who choose to use third-party delivery providers to deliver alcoholic beverages to their customers. The Department is unaware of the exact agreements between ABC Licensees and various third-party delivery services, but the language in their public comment suggests that ABC Licensees who are responsible for all sales of alcoholic beverages under their license may not be taking appropriate precautions to ensure that these sales are not being delivered to underaged or obviously intoxicated persons illegally.

An ABC Licensee is responsible to ensure that all sales and deliveries of alcoholic beverages under their license comply with existing laws. Third-party delivery services are not licensed entities and have no authority to sell or resell alcoholic beverages to consumers. CRA’s letter states, “In a third-party delivery app-based scenario, the customer places an order and makes payment on the third-party app or platform. The order is transmitted electronically to the restaurant which prepares the order and waits for the third-party delivery driver to come pick up the order on behalf of the

customer. The third-party delivery driver then delivers the order to the customer.” In the scenario presented, third-party delivery companies are clearly agents of the ABC Licensee to make sales and deliver on their behalf which would create liability for the ABC licensee for any illegal actions taken by the third-party delivery service or their contracted driver. The only other alternative is that the ABC Licensee is knowingly allowing a non-licensee to buy, resell, and deliver alcoholic beverages to consumer which would be a violation of current ABC laws and regulations. The relationship between an ABC licensee and third-party delivery services are discussed thoroughly in the Department’s industry advisories previously relied.

CRA suggests that the Department hold the third-party delivery services and their drivers responsible for violations of the ABC act. While third-party delivery services may be held responsible under the criminal statutes, the Department’s administrative authority does not extend to them as non-licensees. However, the Department’s administrative disciplinary process falls upon the ABC license used to make the illegal sale or delivery. An ABC licensee that chooses to make a third-party delivery service their agent should be subject to administrative liability for a delivery made to a minor decoy by their agent.

The Department has concluded that the comments suggested by CRA do not require any changes to the proposed regulatory package.

ALTERNATIVES DETERMINATION

ABC has determined that no reasonable alternative considered by ABC would be more effective in carrying out the purpose for which the action is proposed. Utilizing minor decoys would be as effective, 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 statutory policies or other provision of law.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

ADDITIONAL DOCUMENTS OR INFORMATION IN THE RULEMAKING FILE

The Department of Alcoholic Beverage Control did not add any other documents or information to the rulemaking file