

TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL PROPOSED REGULATIONS

Text of modified proposed language for adoption.

§147. Emergency decision procedures for administrative actions against alcohol licenses.

(a) The department may issue an emergency decision temporarily suspending a license, temporarily suspending specific licensed privileges, or temporarily imposing conditions on a license in situations involving an immediate threat to the public health, safety, or welfare that requires immediate action, pursuant to the provisions of Article 13 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code (commencing with section 11460.10).

(b) If occurring on a licensed premises, or on any adjacent property rented or leased by a licensee and the circumstances are directly connected to the operation of a licensed business, the department has determined that an emergency decision may be issued under any of the following circumstances:

(1) *A pattern of conduct where the ~~The~~ licensee, or an employee or agent of the licensee, sells, or negotiates the sale of, or knowingly permits another to sell, or negotiate for the sale of, controlled substances or dangerous drugs. A pattern of conduct includes, multiple sales of controlled substances or dangerous drugs over the course of a single investigation;*

(2) The licensee, or an employee or agent of the licensee, knowingly permits the licensed premises to be operated in a manner that constitutes either: (i) a disorderly house as defined under Business and Professions Code section 25601, or (ii) a law enforcement problem;

(A) For purposes of this subsection, “law enforcement problem” means ~~upon that~~ a preponderance of evidence establishes that the local law enforcement agency must devote more resources to the licensed premises, or to an adjacent property rented or leased by the licensee, than it does for similar licensed businesses within its jurisdictional area, due to unlawful conduct on the premises or adjacent property, ~~the average alcoholic beverage location, or to an adjoining property rented or leased by a licensee~~ and the circumstances are directly connected to the operation of the licensed business due to the conduct, policy, or operations of the licensee, or an employee or agent of the licensee;

(3) The licensee, or an employee or agent of the licensee, engages in or knowingly permits activities that directly relate to human trafficking;

(4) The licensee is convicted of, or pleads guilty or nolo contendere to, a crime that shows the licensee is a danger or immediate threat to employees, visitors, guests, or customers of the licensed premises;

(A) Crimes that show a licensee is a danger or immediate threat to employees, visitors, guests, or customers of the licensed premises include Penal Code section 261, 262, 264.1, 269, 286, 287, 288, 288.5, or 289, or any felony violation of Penal Code section 207, 209, or 220 of the Penal Code, committed with the intent to commit a violation of Penal Code section 261, 262, 264.1, 286, 287, 288, or 289;

(5) Licensee, or employee or agent of the licensee, knowingly permits, on a consistent basis, violations of law that constitute grounds for suspension or revocation of the license; or

(6) The licensee, or an employee or agent of the licensee, due to the conduct, policy, or operations of the licensee, or an employee or agent of the licensee, knowingly acts in a manner in conflict with violation of an order issued by a federal, state, or local official during a declared state of emergency to protect the public health, safety, and welfare from immediate harm in and around the location of the licensed premises due to circumstances caused by or related to the declared emergency issued by a federal, state, or local official during a declared state of emergency.

(c) Prior to issuing an administrative emergency decision, the department shall hold a hearing on administrative emergency action to determine if the alleged violation is an immediate threat to the public health, safety, or welfare, and if an administrative emergency decision should be adopted pending the conclusion of the department's normal accusation process.

(d) If practicable, the department shall give the licensee notice of the hearing on administrative emergency action concerning the licensee's licensed premises, whether oral or written, including by telephone, facsimile transmission, or other electronic means. If the department finds that giving notice to a licensee was not practicable prior to a hearing on administrative emergency action, the department shall present evidence at the hearing, proving by a preponderance of the evidence, that the department made a good faith effort to provide the licensee with notice of the hearing on administrative emergency action. In giving notice, if the department uses a mailing address, phone or facsimile number, or email address which the licensee has placed on file with the department, notice is presumed to be effective.

(e) Unless otherwise noticed, the hearing on administrative emergency action shall be conducted in Sacramento, California during regular business hours. The hearing on administrative emergency action may be conducted as an informal hearing using electronic communication by the parties and witnesses. Upon request and showing of good cause by any party, the department may schedule the hearing on administrative emergency action at a time, including evening hours, and at a place convenient to all parties to the proceeding, including those witnesses required to be present, and the public affected.

(f) During a hearing on administrative emergency action, the department shall present evidence of the immediate threat to the public health, safety, or welfare, and shall recommend an appropriate action to be taken under an emergency decision.

(g) During a hearing on administrative emergency action the licensee shall be afforded an opportunity to present evidence related to the alleged immediate threat to the public health, safety, or welfare, and to request what the licensee believes to be an appropriate action, if any, to be taken under an administrative emergency decision.

(h) If the department finds by a preponderance of the evidence that the alleged violation occurred, and that the alleged violation constitutes an immediate threat to the public health, safety, or welfare, the department shall issue an administrative emergency decision.

(i) An administrative emergency decision shall include an explanation of the factual and legal bases to justify the finding of the immediate threat to the public health, safety, or welfare, and shall include the department's reasoning for the administrative emergency action taken. An administrative emergency decision issued by the department is effective upon issuance or as provided in the decision. Any suspension imposed by an administrative emergency decision shall be implemented in the manner prescribed in Title 4, California Code of Regulations, section 108.

(j) An administrative emergency decision issued by the department under this section may only be reviewed by the superior court of the county where the licensed premises is located as established in Business and Professions Code section 23090.5.

(k) An administrative emergency decision against a license shall end without further action if the department does not commence its normal accusation process by registering the accusation no later than 10 days after issuing the administrative emergency decision. If an administrative emergency decision ends pursuant to this subsection, upon a showing of good cause, the department may pursue a subsequent administrative emergency decision against the same license pursuant to this section.

(l) The department retains the jurisdiction to rescind an administrative emergency decision at any time.

(m) Upon a party's written motion, the party's notice to all other parties of its request, and showing of good cause, the department may modify an administrative emergency decision. To be considered by the department, all other parties shall submit any response to a written motion requesting a modification of an administrative emergency order after 5 business days of receiving notice. The department may make the requested modification upon the submitted record, or by scheduling further proceedings as the department deems necessary to reach an appropriate decision on the written motion.

(n) A decision following the normal accusation process shall not consider any temporary discipline imposed by an administrative emergency decision when imposing an appropriate penalty. If a temporary suspension is imposed by an administrative emergency decision, the number of days a license is suspended pursuant to this section will be credited toward any period of suspension imposed at the conclusion of the department's normal accusation process.

(o) If a suspension to be served upon the conclusion of the department's normal accusation process is 15 days or less solely due to a credit of days served under an administrative emergency decision, the suspension is not subject to a petition for offer in compromise pursuant to Business and Professions Code section 23095.

(p) Nothing in this section shall have any effect on the department's authority to summarily cancel or suspend an interim operating permit pursuant to Business and Professions Code section 24044.5, subdivision (h).

(q) Nothing in this section shall have any effect on the department's authority to summarily cancel or suspend a temporary permit pursuant to Business and Professions Code section 24045.5.

(r) Nothing in this section shall have any effect on the jurisdiction of the Alcoholic Beverage Control Appeals Board pursuant to Business and Professions Code section 23080.

Authority: Section 25750, Business and Professions Code; Article XX, section 22, California Constitution; and Section 11460.20, Government Code.

Reference: Sections 23080, 23090.5, 23095, 24044.5, 24045.5, 24201, 24203, 24204, 24300, and 24301, Business and Professions Code; Article XX, section 22, California Constitution; and Sections 11460.10, 11460.20, 11460.30, 11460.40, 11460.50, 11460.60, 11460.70, and 11460.80, Government Code.