

TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

January 9, 2023

NOTICE OF PROPOSED EMERGENCY ACTION

The Department of Alcoholic Beverage Control (“ABC”) proposes to adopt an emergency regulation to implement the provisions of Senate Bill No. 793 (Chapter 468, Statutes of 2022), which creates a new Music Venue License under the administration of ABC. SB 793 amended Section 23320, and added Article 7 (commencing with Section 23550) to Chapter 3 of Division 9, of the Business and Professions Code. This new statutory scheme, which was approved by Governor Newsom on September 22, 2022, becomes effective on January 1, 2023. Attached is the proposed text of the emergency regulation to be adopted as California Code of Regulations, title 4, section 71.

EXPRESS FINDING OF EMERGENCY

The Legislature established a new license in statute that takes effect January 1, 2023, and additional clarity and specificity is required for ABC staff to perform the legislatively mandated tasks of processing, approving, and regulating music venue licensees. The language of the new statute is in part vague and ambiguous and presents practical issues in the issuance of new Music Venue Licenses. Clarification and specificity are necessary to establish guidelines and expectations and to inform current and potential licensees of those requirements. In addition, the proposed emergency regulation will aid ABC staff in establishing statewide consistency with respect to investigations and approvals of applications for Music Venue Licenses.

FACTUAL BASIS OF THE EMERGENCY

This bill was signed into law on September 22, 2022, and takes effect January 1, 2023. ABC has determined, after consulting with staff and the independent venue trade association, that some of the provisions in the statute necessitate further definition and specificity for ABC to uniformly and consistently determine when a Music Venue License is appropriate at a potential licensed premises pursuant to Business and Professions Code sections 23550 and 23552.

ABC has received questions from the industry and potential licensees seeking clarification of how ABC will administrate exchanges of existing licenses for the new license, how expiration dates of licenses will be affected in an exchange, and how ABC will determine compliance with the statutory requirements (such as the required equipment, what constitutes a “live performance,” and what “paid tickets or cover charges” are).

Without clarification, the public, current and potential licensees, and ABC staff will not know when a Music Venue License is appropriately issued – for the first time or during a license

exchange. Applying for a permanent ABC license, and investigations for such applications, can be a lengthy and costly process. ABC seeks to provide clarification and guidance to establish parameters for applications to ensure appropriate notice of requirements and uniformity. ABC cannot complete the full rulemaking process prior to the statutory effective date, necessitating emergency rulemaking to provide stakeholder access to the newly established license type. The alternative is to not issue new license type until a nonemergency rulemaking process is finished. This delay would limit the use of the statutorily mandated license type that has no current similar alternatives. The Legislature has determined that the new license type is imperative for the success of the music entertainment facility industry in response to closures required of these facilities during the COVID pandemic. Industry stakeholders have an expectation that ABC will be in the position to accept applications and proceed with a timely thorough investigation and issuance of licenses. Without this emergency regulatory action, these applications will not have the ability to move forward and significant costs associated with lengthy delays of approval could further hurt an industry the Legislature has determined needs this relief through its legislative mandate. To ensure the timely implementation of the new license type and comply with the legislative mandate of licensing music entertainment facilities, an emergency regulation in this matter is warranted.

WRITTEN EMERGENCY COMMENT PERIOD

Government Code section 11346.1 (a)(2) requires that, at least five working days prior to the submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the Department. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

AUTHORITY AND REFERENCE

Business and Professions Code section 23552 authorizes ABC to adopt these proposed regulations to implement the new law. The proposed regulations implement, interpret, and make specific Business and Professions Code sections 23550, 23552, 23958, 25616, and 25753.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

ABC is statutorily and constitutionally responsible for the administration, issuance, oversight, and enforcement of all alcoholic beverage licenses throughout the state. There are many varied and different types of licenses, each with differing requirements for issuance, and they confer privileges for certain actions that are illegal without a proper license. SB 793 created a new license type called a “Music Venue License” which allows for a “Music Entertainment Facility” to be licensed to serve beer, wine, and spirits to patrons two hours prior to, during, and one hour after a live performance, subject to Section 25631 of the Business and Professions Code. It allows this privilege without the requirement that food be served while also allowing for minors

to be on the licensed premises while alcoholic beverages are served. This combination of privileges and requirements, or anything similar, has never been available pursuant to any previous alcoholic beverage license. SB 793 also created an exchange program to allow certain license holders to exchange their current license for one of the new music venue licenses. Although standards of privileges, based on live performances, and requirements for the license are established in the statutory language, there are some provisions that are ambiguous and require clarification through regulatory action.

ABC seeks to clarify and make plain ambiguities in the statutory language established by SB 793 which creates the new Music Venue License and the requirements to hold one at a licensed premises, as well as the exchange process. The Legislature anticipated the need for ABC to promulgate regulations by giving ABC express statutory authority to promulgate implementing regulations. ABC, through this regulatory action, will clarify to the public, licensees, potential licensees, and ABC staff, how a Music Venue License should be overseen to ensure only a qualifying “Music Entertainment Facility” is issued a Music Venue License, and that the licensed premises must continue to act in a bona fide manner when serving alcoholic beverages only prior to, during, and after a live event as outlined in Business and Professions Code sections 23550 and 23552.

Summary of Existing Laws and Regulations

Business and Professions Code sections 23300 and 23355 provide that any person seeking to engage in the manufacture or sale of alcoholic beverages must hold a license and that they may only exercise such privileges as are established by the Legislature for each specific license type at the premises for which the license is issued. The Legislature has established over 65 different license types pertaining to the manufacture, distribution, and retail sale of alcoholic beverages, each with their own requirements and privileges within Division 9 of the Business and Professions Code (ABC Act).

Business and Professions Code section 23958 requires the Department to conduct a thorough investigation to determine if an applicant and proposed licensed premises meet the qualifications and requirements for the requested license type and to ensure that the normal operation of the licensed premises does not negatively impact the public welfare and morals.

Business and Professions Code Division 9, Chapter 7, commencing with section 24200, establishes ABC’s authority to take disciplinary actions against licenses where a violation of the ABC Act or Title 4, Division 1 of the California Code of Regulations (ABC Regulations) occurs. The keeping of certain records pertaining to the operation of a licensed business and providing such records to the Department in accordance with its regulatory oversight obligations are required pursuant to sections 25616 and 25753. The Department may suspend or revoke a license for violations of the ABC Act, among other things.

With the addition of a new license type created by the Legislature, the existing ABC Act and ABC regulations regarding applications, licensing, oversight, and enforcement all apply to the

new license type. Although the license is new, the process for the application, issuance, due process of ABC decisions, and ongoing oversight of issued licenses remains unchanged.

Summary of Effect of Proposed Action on Existing Laws and Regulations

ABC must ensure that all aspects of the new music venue license are consistent with the rest of the ABC Act and that ambiguities on matters such as expiration date for an exchanged license, the exchange program procedure, or any terms in need of further clarification are all clarified prior to the issuance of the new license type. The proposed regulatory action will ensure public notice of ABC actions regarding applications for the new license type and how the privileges and requirements, where ambiguous in statute, will be determined by ABC for the issuance and oversight of the new licenses. Specifically, the proposed regulation clarifies how ABC will administrate exchanges of existing licenses for the new license, how license expiration dates will be affected in an exchange, and how ABC will determine compliance with the statutory requirements (such as the required equipment, what constitutes a “live performance,” and what “paid tickets or cover charges” are).

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 regulation promotes ABC’s mission, which is to protect the health, safety, and welfare of the public while implementing legislatively mandated licenses to allow for the public manufacture, sale, and consumption of alcoholic beverages. With new license types, ABC must endeavor to protect the health, safety, and welfare of the public, and ensure that the statutorily mandated requirements and privileges for the new license type are effectively issued and overseen by ABC. When statutory requirements and privileges of licensees are not plain or require clarity, ABC must establish standards by regulation to ensure the public, licensees, and ABC staff are aware of unified statewide standards for implementation, issuance of licenses, and oversight of conduct by licenses for any potential enforcement.

Benefits Anticipated

The proposed regulatory action will ensure the public, licensees, and ABC staff are aware of unified statewide standards for issuance of this new license type and for licensee conduct. Clarity and uniformity of implementation of the new music venue license type will save resources and provide clarity in the licensing and oversight processes of ABC.

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.

Small Business

The ABC has determined that this proposed regulatory action does not target small businesses. While some ABC licensees are small businesses, and some potential Music Venue License may be issued to small businesses, this regulation applies to all license exchanges for Music Venue Licenses, or any “Music Entertainment Venue” that is originally licensed pursuant to a new application for a Music Venue 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: None
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 no adverse economic impact.

The need to require a report from businesses

The proposed change to 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, or 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 statements 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) Sarah Easter, Associate Governmental Program Analyst, (916) 928-7627.

Internet Access

This notice, along with the full text of the proposed regulations is available at <https://www.abc.ca.gov/law-and-policy/regulations-rulemaking/>