

ADDENDUM TO THE FINDING OF EMERGENCY FOR THE PROPOSED EMERGENCY ACTION

EXPRESS FINDING OF EMERGENCY

The Legislature established a new license in statute that took effect on 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 additional clarity, including by defining key terms, would support the issuance and administration 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 already being received.

The Legislature in passing SB 793 established that music entertainment facilities needed their own license type in response to the dire conditions of the industry following the COVID-19 pandemic. This statute was implemented to allow music entertainment facilities to immediately benefit from a new license to avoid the continued grave economic losses that occurred due to the pandemic. ABC has been urgently tasked to issue the new music venue licenses to appropriate venues to relieve the ongoing economic disruption. ABC has already accepted applications for music venue licenses in anticipation of swiftly establishing these proposed regulations and limiting further harm to this struggling industry. Each of the proposed subsections are necessary to implement SB 793 and avoid continued harm occurring in the live music and entertainment industry by issuing the new music venue licenses quickly and uniformly throughout the state.

Section 71(a): This subsection is necessary to define what a “live performance” is pursuant to Business and Professions Code sections 23550 and 23552. Under the new music venue license alcoholic beverages can only be served two hours prior, during, and one hour after a live performance. This term is not otherwise defined in the statute, and during implementation ABC found stakeholders and ABC staff had many differing views as to what constituted a “live performance.” ABC adapted a live performance definition from information given to the department by the National Independent Venue Association.

Section 72(b): This subsection is necessary to define a “paid ticket or cover charge” that music entertainment facilities must establish for live performances pursuant to Business and Professions Code sections 23550 and 23552. This term is not further defined in statute, and during implementation ABC found stakeholders and ABC staff had many differing views as to what constituted a “paid ticket or cover charge.”

In setting the standard of Title 4 California Code of Regulations section 71(b) which limited music venue licensees from making alcoholic beverages directly or indirectly a part of a cover charge, the Department relied upon the over-arching mandate of the Alcoholic Beverage Control

Act to promote temperance in the sale and use of alcoholic beverages. By encouraging or promoting the purchase of alcoholic beverages to enter an entertainment venue it was considered that the statutory requirement of a paid ticket or cover charge could be abused.

However, in consideration of the comments received, ABC recognized that Title 4 California Code of Regulations section 71(b) should be changed to a suggested alternative that would be as effective in discouraging the purchase and consumption of alcoholic beverages while being less burdensome and offering greater flexibility to affected persons than the proposed language. This change allows many existing venues to continue their long-standing practice of applying cover charges to patron purchases made at the venue, including alcoholic beverages, while still protecting the public health, safety, and welfare.

This subsection allows for music venue licensees to apply a paid ticket or cover charge to food, beverages, alcoholic beverages for patrons over 21, or merchandise, while still prohibiting the serving or furnishing of alcoholic beverages to minors. This modified language also makes clear that no cover charge can require alcoholic beverages for those who pay to enter the licensed music entertainment facility.

Section 72(c)-(e): These subsections are necessary to enforce a standard of review for ABC investigators in determining what constitutes the statutory standards required for a music entertainment facility pursuant to Business and Professions Code sections 23550 and 23552. This subsection is necessary to grant flexibility with respect to the equipment requirements in the bill so that the venue does not have to solely rely only on their own equipment and may allow artists to utilize their own. This subsection also instructs how applicants may meet the statutory requirement of having a defined performance space and defined audience space. Further, these provisions outline how licensees demonstrate adherence to the employment and marketing requirements specific to the license. It is also necessary to inform those who are issued the music venue license that they must continue to abide by the statutory standards through record keeping and keeping their performance space one used only for performances. Without these subsections, music venue licenses cannot be quickly and uniformly issued throughout the state without a prolonged and detailed investigation on a case-by-case basis.

Subsections (f) and (f)(1): These subsections are necessary to clarify what happens to a license that was exchanged pursuant to the statute, and when the expiration date for the new music venue license will occur. The subsection ensures licensees are not required to pay extra money after making an exchange by a change in their license expiration date. These details were not directly addressed in statute and require regulatory action to be implemented. This clarification is necessary due to the interaction of the new statutory scheme with already existing statutes and to enable the implementation of the exchange program for music venue licenses quickly and uniformly throughout the state.

FACTUAL BASIS OF THE EMERGENCY

This bill was signed into law on September 22, 2022, and took effect January 1, 2023. ABC closely tracked this legislation and communicated with the author's office, though the bill was regularly undergoing amendments and the final content was not finalized until late August 2022. After SB 793 was signed into law, ABC reached out to stakeholders, the industry, the bill's sponsors, and ABC staff on how to implement and issue the new license type. While the Department had anticipated the need to promulgate regulations, it was through this first attempt at implementation, including stakeholder comments and questions, when it became apparent that additional clarity, defining of terms, and a clarified license exchange processes were necessary to support the issuance of licenses.

In October 2022, ABC consulted with staff and an independent venue trade association, to determine all the provisions that necessitated 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. It was also during this period that ABC 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).

In November 2022, ABC worked with the industry and stakeholders to draft language defining a "live performance" required in statute, defining "paid ticket or cover charge" required in statute, and how an applicant can comply with the various requirements to be classified as a music entertainment facility under the statute.

In early December 2022, ABC drafted language to clarify the exchange process that was required in statute and what would happen with the interaction of the old license exchanged for the new music venue license as well as fee due dates required by the ABC Act. During this time ABC prepared the materials for the proposed regulation to be ADA compliant to be published on its website and sought approval for the regulatory action from governing entities.

ABC noticed the regulation as soon as all of this was completed on January 9, 2023, the first day it was ready following the September 22, 2022, signing of the law.

Applying for a permanent ABC license, and investigations for such applications, can be a lengthy and costly process. Through this proposed regulation, ABC seeks to provide clarification and guidance to establish parameters for applications to ensure appropriate notice of requirements and uniformity. ABC was not able to complete a full rulemaking process prior to the statute's effective date, necessitating emergency rulemaking to provide stakeholder access to the newly established license type. Delaying the implementation of this new license type will continue the economic hardship of the music entertainment facility industry. The alternative is to

not issue the new license type until a nonemergency rulemaking process is finished. This delay would limit the use of the statutorily authorized license type that has no current similar alternatives and thus continue the economic harm that the music entertainment industry is currently facing.

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 proceed with a timely thorough investigation and issuance of the new license types.

Without this emergency regulatory action, 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 avoid the further economic harm to the music entertainment facility industry in California as laid out by the Legislature, an emergency regulation in this matter is warranted.