

**Department of
Alcoholic Beverage Control**

INITIAL STATEMENT OF REASONS

CERTIFICATE OF COMPLIANCE FOR PERMANENT ADOPTION OF REGULATIONS FOR
ADMINISTRATION OF MUSIC VENUE LICENSES

PROPOSED ADOPTIONS TO TITLE 4, ARTICLE 11:
SECTION 71 ADMINISTRATION OF MUSIC LICENSES

PROBLEM STATEMENT AND PURPOSE

This addition to the Department of Alcoholic Beverage Control (ABC) regulations implements the provisions of Senate Bill No. 793 (Wiener, 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, became effective on January 1, 2023. Additional clarity and specificity are 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.

BENEFITS

The proposed regulation is beneficial because it 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 assist in the licensing and oversight processes of ABC. SB 793 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.

AUTHORITY

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.

NECESSITY

Specific necessity to remove former section as follows:

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 ABC 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, ABC 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): This subsection is necessary to require that the equipment statutorily mandated to be present on the licensed premises to qualify as a music entertainment facility pursuant to Business and Profession Code section 23550(c)(2) needs to remain upon the licensed premises and in working order whenever alcoholic beverages are served upon the licensed premises. This subsection is also 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 during live

performances. This subsection informs licensees who are issued a music venue license that they must continue to abide by the statutory standards regarding the equipment required of them by statute. Without this subsection, music venue licenses cannot be quickly and uniformly issued throughout the state without a prolonged and detailed investigation on a case-by-case basis.

Section 72(d): This subsection is necessary to enforce a standard of review for ABC investigators in determining what constitutes compliance with the statutory standards required for a music entertainment facility pursuant to Business and Professions Code section 23550(c)(1). This subsection is also necessary to clarify how applicants may meet the statutory requirement of having a defined performance space and defined audience space. It is also necessary to inform those who are issued the music venue license that they must continue to abide by the statutory standards by keeping their performance space only for performances after the license is issued. Without this subsection, music venue licenses cannot be quickly and uniformly issued throughout the state without a prolonged and detailed investigation on a case-by-case basis.

Section 72(e): This subsection is 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(c)(3), 23550(c)(4), and 23550(c)(5). This subsection is also necessary to clarify how ABC may enforce adherence to the employment, booking, and marketing requirements to qualify as a music entertainment facility by requiring the licensees to keep records for compliance for the preceding three years. 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 that may be requested by ABC at any time to demonstrate continued compliance with the statutory standards. This subsection is also necessary to make the failure to keep the required records or provide them upon the request from ABC a violation of the ABC Act. Without this subsection, music venue licenses cannot be quickly and uniformly issued throughout the state without a prolonged and detailed investigation on a case-by-case basis.

Section 72(f): This subsection is necessary to clarify the process for an exchange of licenses pursuant to Business and Professions Code section 23552(f)(1). This subsection is also necessary to clarify that the “approval of the department” pursuant to Business and Professions Code section 23552(f)(1) will occur after a thorough investigation to ensure the proposed licensed premises meets the statutory qualification of the new license type. This subsection is also necessary to clarify what occurs to the previous license held by the licensee once the exchange is complete. 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.

Section 72(f)(1): This subsection is necessary to clarify when the expiration date for the new music venue license will occur when issued during an exchange and clarify the cap on the sale price of a music venue license that was issued pursuant to an exchange authorized by Business and Professions Code section 23552. 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.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENTS RELIED UPON.

Articles

There are no articles that pertain to these proposed regulations.

Department and Appeals Board Decisions

There are no Appeals Board decisions that affect these regulations.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

ABC has determined that these regulations have a negligible economic impact. The proposed regulation implements SB 793, and clarifies the implementation, issuance, and administration of the new music venue license type created thereby. This regulation will not change the economic impact of the statute's implementation, nor will the regulation adversely or beneficially effect any business or private person. The economic impact of ABC implementation of SB 793 will likewise not be affected by the proposed regulation as it does not change the number of licensing investigations which ABC will conduct, but only the manner by which it determines an applicant qualifies for the issuance of the new license type.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

Based on the above, ABC has determined that the proposed regulatory action will not have a significant statewide adverse economic impact to businesses statewide including the ability of California businesses to compete with businesses in other states.

ALTERNATIVES CONSIDERED FOR THE IMPLEMENTATION AND ADMINISTRATION OF MUSIC VENUE LICENSES

ABC has determined that no reasonable alternative considered by ABC or that has otherwise been identified and brought to the attention of ABC 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.

REGULATORY MANDATES

This regulatory package creates no new duties or regulatory mandates for licensees, local governments, or ABC.