

## **TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL**

April 7, 2023

### **NOTICE OF PROPOSED RULEMAKING FOR CERTIFICATE OF COMPLIANCE FOR PREVIOUS EMERGENCY RULEMAKING**

The Department of Alcoholic Beverage Control (ABC) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

#### **PUBLIC HEARING**

ABC has not scheduled a public hearing on this proposed action. However, the department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

#### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to ABC. The written comment period closes at 12 p.m. on May 23, 2023. ABC will consider only comments received at ABC Headquarters by that time. Submit comments to:

Law and Policy Unit  
Department of Alcoholic Beverage Control  
3927 Lennane Drive, Suite 100  
Sacramento, CA 95834

Comments may also be submitted by email to [rpu@abc.ca.gov](mailto:rpu@abc.ca.gov), please include “Music Venue Licenses” in the subject line of your email.

#### **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 do so. 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 75 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 dates for an exchanged license, the exchange program procedures, 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**

ABC reviewed the existing state regulations and statutes currently enforced and has determined that this proposed regulatory action is not inconsistent or incompatible with existing state regulations.

## **Effect Upon Small Businesses in California**

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 the adoption of this regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. There is no foreseeable impact on businesses based on the policy laid out in the proposed regulation.

## **Results of the Economic Impact Assessment:**

ABC concludes that it is (1) unlikely that the proposal will eliminate any jobs, (2) that the proposal will not likely create additional jobs, (3) that the proposal will not likely create additional new businesses, (4) unlikely that the proposal will eliminate any existing businesses, and (5) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state, (6) unlikely that the proposal will impact worker safety.

As stated above under ‘Benefits Anticipated,’ the implementation of the proposed new music venue license regulations will benefit the health, welfare, and public safety of California

residents through the uniform statewide standards for issuance of licenses and oversight of conduct by licenses for any potential enforcement.

ABC has determined this proposed regulation will have no effect upon the environment.

### **Description of All Economic Impacts That a Representative Private Person or Business Would Necessarily Incur in Reasonable Compliance with the Proposed Action**

The ABC has made an initial determination that the adoption of this regulation will have negligible economic impact on private persons or businesses. There is no foreseeable impact on private persons or businesses based on the process laid out in the proposed regulation. Thus, ABC is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **Required Reports from Businesses**

The proposed regulation does not require any reports from ABC licensees or any other business. It does require the keeping of records in compliance with the ABC Act to ensure licensed premises continue to qualify as a music entertainment facility after the license is issued.

### **Consideration of Alternatives**

ABC must determine 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, (designated backup contact) Sarah Easter, Associate Governmental Program Analyst, Law and Policy Unit, (916) 823-1310 or via email at [rpu@abc.ca.gov](mailto:rpu@abc.ca.gov).

### **Availability of Documents**

The ABC prepared an Initial Statement of Reasons for the proposed action. Copies of the Initial Statement of Reasons, and the full text of the proposed regulations may be accessed on ABC's website listed below or may be obtained from the Law and Policy Unit, Department of Alcoholic Beverage Control, 3927 Lennane Drive, Suite 100, Sacramento, CA 95834, on or after April 7, 2023.

ABC staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

### **Change to the Proposed Full Text of the Regulation Action**

If there is any change to the proposed full text of the regulation action in a substantial, or sufficiently related way, it will be made available for comment for at least 15 days prior to the date on which the department adopts the resulting regulation.

### **Final Statement of Reasons Availability**

Upon its completion, the Final Statement of Reasons will be available, and copies may be requested, from the department contact persons in this notice or may be accessed on ABC's website listed below.

### **Internet Access**

This notice, the Initial Statement of Reasons, and all subsequent regulatory documents, including the Final Statement of Reasons, when completed, are available on ABC's website for this rulemaking at <https://www.abc.ca.gov/law-and-policy/regulations-rulemaking/>