

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

Text of new adopted language.

### **ARTICLE 25**

#### **Responsible Beverage Service Training Program**

**Authority cited:** Sections 25680-25686, Business and Professions Code.

##### **§160. Responsible Beverage Service Training Program.**

(a) The department adopts these regulations in compliance with Business and Professions Code § 25681 with the intent to ensure effective responsible beverage service training for servers and their managers to curb harm of the overuse of alcohol in California communities.

(b) Definitions for use in this article and in interpreting and enforcing Business and Professions code §§ 25680-25686.

(1) “ABC” means the Department of Alcoholic Beverage Control.

(2) “ABC on-premises license” means an ABC license that grants the privilege to serve alcoholic beverages to patrons who then consume them within the licensed premises.

(3) “ABC on-premises licensee” means the owner of an ABC on-premises license

(4) “ABC licensed premises” means a location where an ABC on-premises licensee uses the privileges granted by an ABC on-premises license.

(5) “Accreditation agency” means a business entity the department has given the authority to approve RBS training courses and training providers according to the standards of the RBSTPA and this article.

(6) “Alcohol server certification exam” means an exam given to alcohol servers after they complete an RBS training course to test the alcohol server’s knowledge of the required curriculum.

(7) “Initial employment” means the date an employee signs an employment contract or employee tax and identification documents, whichever is sooner.

(8) “Interactivity element” means a portion of an RBS training course that reasonably requires alcohol servers to be engaged in the training, demonstrate their knowledge of the curriculum, and develop an understanding of how to apply course material to their employment.

(9) “Manages or supervises” means any person who trains, hires, or oversees alcohol servers at an ABC licensed premises, or any person who makes policy or operational decisions dictating how alcohol service is performed at an ABC licensed premises, including but not limited to, when to check identification or when to refuse service to a patron. This definition specifically excludes an employee or contractor of another separate ABC licensee who is training alcohol servers for marketing or distribution purposes.

(10) “Onsite” for the purposes of Business and Professions Code § 25682(c) means being engaged and directly overseeing the service of alcohol for consumption by any persons on behalf of the nonprofit organization licensee. This includes, but is not limited to, creating and imparting responsible beverage service policies to the other persons serving alcoholic beverages for consumption at the event.

(11) “Online certification system” means an electronic online database maintained by the department that alcohol servers, training providers, ABC on-premises licensees, law enforcement agencies, and the department will use to establish the validity of issued alcohol server certifications.

(12) “Owners and officers” include any owner, director, or officer of a business entity that has at least a ten percent interest or control of a business entity.

(13) “RBS” means responsible beverage service.

(14) “RBS trainer” means an owner, contractor, or employee of a training provider that delivers an RBS training course to alcohol servers either in-person or online.

(15) “Serving alcoholic beverages for consumption” means performing any of the following actions by an alcohol server as an employee or contractor of an ABC on-premises licensee when interacting with a patron of the ABC licensed premises: (A) checking patron identification, (B) taking patron alcoholic beverage orders, (C) pouring alcoholic beverages for patrons, or (D) delivering alcoholic beverages to patrons.

### **§161. Responsible Beverage Service Training Course General Requirements**

(a) Training providers shall present, at a minimum, the topics and information contained in California Code of Regulations Title 4 §§162 -166 to alcohol servers in their RBS training course.

(b) Interactivity elements must occur, at a minimum, during an RBS training course portion for each of the five major curriculum topics in Business and Professions Code § 25680(c).

(c) A training provider shall provide handouts, electronic files, or transcripts detailing its RBS training course content to aid alcohol servers in refreshing their knowledge after they complete an approved RBS training course.

### **§162. Curriculum requirements for the social impact of alcohol.**

- (a) The general positive impact of alcohol sales on the community.
- (b) The general negative impact of alcohol sales on the community.
- (c) Specific costs to the community for overuse of alcohol:
  - (1) Alcohol related crimes:
    - (A) Driving under the influence;
    - (B) Domestic violence; and
    - (C) Assault, including sexual assault.

- (2) Increased calls to first responders:
  - (A) Emergency medical transporters;
  - (B) Law enforcement; and
  - (C) Fire departments.
- (3) Neighborhood quality of life:
  - (A) Noise;
  - (B) Litter;
  - (C) Crime; and
  - (D) Public indecency.
- (4) Public health risks:
  - (A) Binge drinking;
  - (B) Alcoholism;
  - (C) Diseases, including cancer and cirrhosis; and
  - (D) Alcohol poisoning and death.
- (d) The alcohol server's responsibility to the community as the gatekeepers of persons obtaining alcohol in public establishments.

**§163. Curriculum requirements for the impact of alcohol on the body.**

- (a) Physiology of alcohol on the human body.
  - (1) Alcohol's path through the human body:
    - (A) No digestion needed in alcohol absorption;
    - (B) Alcohol is absorbed into the bloodstream after consuming;
    - (C) Some consumed alcohol is absorbed through the stomach lining; and
    - (D) Most consumed alcohol is absorbed quickly through the small intestine.
  - (2) How the human body processes alcohol:
    - (A) Most alcohol must be processed by the liver to remove it from the body;
    - (B) The liver metabolizes approximately one standard sized drink per hour;
    - (C) The liver does not speed up metabolization when the bloodstream has excessive alcohol; and
    - (D) Alcohol in the blood stream causes intoxication.
  - (3) Common myths about sobering up.
  - (4) Alcohol's effect on the human body:
    - (A) Alcohol depresses the central nervous systems' functions, including judgement, inhibitions, and reaction times;
    - (B) Alcohol depletes the body's fluids and causes thirst and dehydration; and
    - (C) The liver normally maintains the body's blood-sugar levels, but when alcohol is present the liver ceases normal functions to metabolize the alcohol from the bloodstream.
- (b) Alcohol-impaired driving:
  - (1) Slows reaction times;
  - (2) Reduced or decreased vision;

- (3) Impaired judgement; and
- (4) Reduction in concentration and coordination.
- (c) Blood Alcohol Concentration (BAC) levels and associated symptomologies:
  - (1) The definition of intoxication by alcohol; and
  - (2) Intoxication can occur in as little as one standard drink.
- (d) Potential signs of intoxication.
  - (1) Physical reactions:
    - (A) Slurred and varied speech;
    - (B) Slow and deliberate movement;
    - (C) Decreased alertness; and
    - (D) Loss of coordination while sitting or standing.
  - (2) Physical appearance:
    - (A) Red or watery eyes;
    - (B) Sweating;
    - (C) Droopy eyelids;
    - (D) Face appearing flushed or red;
    - (E) Disheveled clothing;
    - (F) Lack of eye focus; and
    - (G) An odor of alcohol.
  - (3) Lowering of inhibitions:
    - (A) Overly friendly;
    - (B) Use of foul language;
    - (C) Increased volume of speech; and
    - (D) Increased rate of alcohol consumption.
  - (4) Loss of judgement:
    - (A) Complaints about the strength of the alcoholic beverages being served;
    - (B) Carelessness with money;
    - (C) Increasingly argumentative; and
    - (D) Makes irrational statements.
- (e) Factors affecting the severity of intoxication.
  - (1) Amount and speed of consumption of alcohol:
    - (A) Food in the stomach can slow the rate of intoxication; and
    - (B) The higher the amount of alcohol consumed the more alcohol is found in the blood stream.
  - (2) Drinking alcohol rapidly, like binge drinking, can quickly lead to higher levels of intoxication.
  - (3) Tolerance to alcohol, drugs, and other toxic substances can build up over time as the human body adapts:
    - (A) Varies from person to person;
    - (B) Increased tolerance lessens the effects of alcohol on the central nervous system; and

(C) A person with high tolerance can hide effects of intoxication while still being impaired.

(4) Medications or recreational and illegal drugs can have very harmful effects when mixed with alcohol:

(A) Medications, and recreational and illegal drugs, can themselves impair the human body in similar ways to alcohol intoxication; and

(B) Combining alcohol with medications or recreational and illegal drugs can lead to side effects from discomfort to death.

(5) Altitude can make alcohol intoxication nearly twice as potent on the human body.

**§164. Curriculum requirements for state laws and regulations relating to alcoholic beverage control, including laws and regulations related to driving under the influence.**

(a) Information contained in Business and Professions Code § 25682.

(b) Information contained in Title 4 California Code of Regulations § 160(b).

(c) Information contained in Business and Professions Code § 25683.

(d) Information contained in Business and Professions Code § 25684.

(e) Categories of crimes in California:

(1) Definition of and penalties for infractions in California;

(2) Definition of and penalties for misdemeanors in California; and

(3) Definition of and penalties for felonies in California.

(f) Types of liability for licensees, their employees, and their contractors.

(1) Criminal liability:

(A) Committing a criminal act; and

(B) Penalties include monetary fines, community service, and jail time.

(2) Administrative liability:

(A) Action against the license;

(B) The purpose of penalties is not punishment, but to deter licensee's using license privileges in ways contrary to law and that puts the community's health, safety, and welfare at risk; and

(C) Penalties include the suspension of license privileges, the imposition of conditions, and revocation of a license.

(3) Civil liability:

(A) Information contained in Business and Professions Code § 25602.1;

(B) General negligence and reckless conduct; and

(C) Monetary liability includes payments to victims who bring civil lawsuits.

(g) Laws related to the service of alcohol for consumption:

(1) Information contained in Business and Professions Code § 25658(a), (c), (d);

(2) Information contained in Business and Professions Code § 25665;

(3) Information contained in Business and Professions Code § 25602(a);

(4) Information contained in Penal Code § 647(f);

- (5) Information contained in Business and Professions Code § 25663(a), (c);
- (6) Information contained in Business and Professions Code § 24200.5(a);
- (7) Information contained in Vehicle Code § 23152(a), (b), (g);
- (8) Information contained in Business and Professions Code §§ 25631-25632;
- (9) Information contained in Health and Safety Code § 11362.3;
- (10) Information contained in Business and Professions Code § 25621.5; and
- (11) Information contained in California Code of Regulations Title 17 § 40300.
- (h) Regulation of alcoholic beverages.
  - (1) Alcohol-related laws are enforced by state and local law enforcement agencies.
  - (2) Role of the department:
    - (A) The department licenses businesses to sell alcohol;
    - (B) ABC agents are sworn peace officers;
    - (C) Definition of a sworn peace officer in California; and
    - (D) Information about the Target Responsibility for Alcohol Connected Emergencies (T.R.A.C.E.) protocol.
  - (i) Role of local law enforcement officers:
    - (1) Local law enforcement is required to enforce alcohol laws; and
    - (2) Local law enforcement officers are required to send the department all arrest reports and calls for service at ABC licensed locations.
    - (3) Inspection rights and peace officer authority:
      - (A) Any sworn peace officer, whether in uniform or in plain clothes, has the right to visit and inspect any licensed premises at any time during business hours;
      - (B) The right to inspect is not dependent on probable cause or obtaining a warrant;
      - (C) The right to inspect extends to the bar, back bar, store room, office, closed or locked cabinets, safes, kitchen, or any other area within the licensed premises;
      - (D) Interfering in any way with a peace officer's right to inspect is grounds for arrest and license revocation; and
      - (E) The ABC agent's right to inspect also extends to licensee records required to be kept under Business and Professions Code Division 9.
  - (j) Local jurisdictions may have additional laws, ordinances, or provisions that apply to an ABC licensed location in their area in addition to the statewide laws.

**§165. Curriculum requirements for intervention techniques to prevent the service or sale of alcoholic beverages to underage persons or intoxicated patrons.**

- (a) Checking identification (ID) of patrons prior to serving alcohol.
  - (1) Twenty-one is the minimum age for a person to legally purchase or consume alcoholic beverages in California.
  - (2) If prior to serving alcohol an alcohol server diligently inspects a patron's ID and reasonably concludes it is legally acceptable (even if it turns out to be a fake ID), and the

appearance of the minor indicates the minor could be twenty-one years of age or older, the alcohol server has a defense to a charge of selling to a minor.

(b) Characteristics of a legally acceptable ID:

(1) Issued by a government agency;  
(2) Contains the name, date of birth, photograph, and physical description of the ID holder; and

(3) A valid expiration date.

(c) Legally acceptable ID's including the information found in Business and Professions Code § 25660:

(1) State issued driver's licenses and identification cards;

(2) Military ID's, even without a physical description of the ID holder; and

(3) Government issued passports, even without a physical description of the ID holder.

(d) Unacceptable ID's:

(1) Expired ID;

(2) School or Work ID;

(3) Obviously altered ID;

(4) ID belonging to someone else; and

(5) Interim or temporary state issued driver licenses.

(e) Elements of a valid California Real ID.

(f) Elements of a valid California Federal Non-Compliant ID.

(g) Indicators of a false ID:

(1) Photograph appears raised or altered;

(2) Thickness of the card, too thick or too thin;

(3) Lumps, bumps, or creases on the surface of the card;

(4) The card can be peeled apart;

(5) Alterations of the birthdate; and

(6) Signature written in ink.

(h) Techniques for checking ID:

(1) Physically hold the ID;

(2) Look at the front and back of the ID;

(3) Compare the photograph to the ID holder;

(4) Compare the physical description to the ID holder;

(5) Verify the information on the card by asking questions of the ID holder;

(6) Compare the signature on the ID to a fresh signature given by the ID holder; and

(7) Check for security features visible by UV light or flashlight.

(i) The alcohol server's right to refuse service of alcoholic beverages, information contained in Business and Professions Code § 25659.

(j) Avoiding service to obviously intoxicated patrons:

(1) Use effective listening and visual cues to determine when patrons have become obviously intoxicated; and

(2) Do not advocate for continued drinking when one patron attempts to buy a beverage for another patron who no longer wants a beverage.

(k) When to refuse service:

- (1) If a patron's ID is invalid;
- (2) If the patron becomes belligerent;
- (3) If a patron is obviously intoxicated either by alcohol, medication, or recreational or illegal drugs;
- (4) If a patron requests service outside the hours of operation; and
- (5) If a server has any doubts about any of the preceding factors.

(l) Techniques for an alcohol server refusing service to a patron:

- (1) Be courteous but firm in telling patrons they can no longer be served;
- (2) Be quiet and discrete;
- (3) Be assertive in the decision to stop alcoholic beverage service;
- (4) Focus on statements about the alcohol server's duty and liability not to serve;
- (5) Do not bargain with the patron;
- (6) The server should inform managers and co-workers of the decision, identity of the person, and reasons the person should no longer be served alcohol;
- (7) Inform other members of the patron's group, if any; and
- (8) Offer a glass of water, non-alcoholic beverage, or food item.

(m) Identifying persons under the influence of medication or recreational or illegal drugs.

(1) Depressants:

- (A) Define what a depressant is;
- (B) Identify common depressants; and
- (C) Identify signs of a patron being under the influence of a depressant.

(2) Stimulant:

- (A) Define what a stimulant is;
- (B) Identify common stimulants; and
- (C) Identify signs of a patron being under the influence of a stimulant.

(3) Hallucinogenic (psychedelics):

- (A) Define what a hallucinogenic is;
- (B) Identify common types of hallucinogenic; and
- (C) Identify signs of a patron being under the influence of a hallucinogenic.

**§166. Curriculum requirements for the development of management policies that support the prevention of service or sale of alcoholic beverages to underage persons or intoxicated patrons.**

(a) ABC Licensee's duty to ensure policies are created to guide employees in the service of alcoholic beverages for consumption in their licensed premises according to legal standards:

- (1) If an administrative violation occurs on the licensed premises, the license for that premises is at risk for administrative penalties;

- (2) Information contained in Title 4 California Code of Regulations § 144;
  - (3) Explanation of aggravating and mitigating factors upon administrative penalties; and
  - (4) Information contained in Business and Professions Code § 23095(a)-(c).
- (b) Benefits for an ABC on-premises licensee of having policies in place for the service of alcoholic beverages for consumption to the public:
- (1) Policies ensure uniformity of responsible business practices;
  - (2) Policies ensure an ABC licensed premises is a safe and comfortable space for patrons and employees; and
  - (3) Policies reduce the risk of criminal, civil, and administrative liability for the ABC licensee, its agents, and its employees.
  - (4) Effective policies increase profitability of the ABC licensed premises.
- (c) Guidelines for the effective development of policies for the service of alcoholic beverages for consumption to the public:
- (1) Develop policies to enforce objectives like preventing alcohol service to minors and overly-intoxicated persons;
  - (2) Develop policies to comply with all state and local laws pertaining to the ABC on-premises licensed premises; and
  - (3) Develop strategies for instructing and reinforcing policy implementation by management and employees.
- (d) Guidelines for the effective use of policies for the service of alcoholic beverages for consumption to the public:
- (1) Written policies should be clear and specific;
  - (2) Policies should be reviewed for relevance and accuracy, especially if there are frequent incidents of violence or illegal activity requiring peace officer assistance;
  - (3) Policies need to be taught and enforced with each employee; and
  - (4) Policies should be reinforced through regular training and meetings with employees.
- (e) Critical RBS policy elements:
- (1) Stopping alcoholic beverage service to a patron;
  - (2) Encouraging intoxicated patrons travel home safely;
  - (3) Handling patrons who arrive already intoxicated;
  - (4) Handling potentially violent situations;
  - (5) Handling illegal activities;
  - (6) Dealing with underage patrons;
  - (7) How and when to check a patron's identification;
  - (8) Handling emergency situations;
  - (9) Implementing an incident log;
  - (10) Prohibiting employees consuming alcohol while working; and
  - (11) Prohibiting promotions that encourage intemperate consumption of alcoholic beverages or unlawful discrimination:
- (A) Two for one drink specials;

- (B) Ladies nights; and
- (C) All you can drink or 'bottomless' alcoholic drink specials.
- (f) Use of an incident log for the following incidents for employee communication:
  - (1) When alcoholic beverage service was stopped for a patron;
  - (2) When alternate transportation has been arranged for a patron;
  - (3) Any seizure of an identification;
  - (4) A patron becoming ill due to over consumption of alcohol;
  - (5) Any injury, medical treatment, or hospitalization of a person on the ABC licensed premises;
  - (6) Any illegal or violent incidents occurring on the ABC licensed premises; and
  - (7) Any calls for law enforcement assistance or other contact with peace officers.
- (g) Interacting with law enforcement:
  - (1) ABC licensees, their employees, and their agents are expected to cooperate with all sworn peace officers, including ABC agents and local law enforcement;
  - (2) Frequent calls for law enforcement assistance at an ABC - licensed premises can be grounds for an administrative action to suspend or revoke the license; and
  - (3) Policy changes to avoid frequent need for law enforcement assistance could include hiring more employees, closing earlier, hiring security guards, changing the type of music played, and increasing lighting on the premises.
- (h) Discrimination against classifications of individuals included in California Civil Code § 51.6 at an ABC licensed premises is prohibited:
  - (1) Information contained in Business and Professions Code § 125.6; and
  - (2) Prohibition includes discrimination by drink specials.
- (i) Hiring practices for alcohol servers:
  - (1) To pour and serve an alcoholic beverage, an employee must be 21 years or older;
  - (2) If incidental to food service, an employee who is at least 18 years old may serve an alcoholic beverage, but not pour;
  - (3) ABC on-premises licensees must independently confirm any employed or contracted alcohol server is certified under Business and Professions Code § 25682 (b)(1); and
  - (4) ABC on-premises licensees' employment and payroll records shall be kept for four years and made available for inspection by ABC agents upon request.
- (j) Good hospitality policies for the service of alcoholic beverage for consumption by patrons at an ABC licensed premises:
  - (1) Offer or serve a glass of water with the service of alcohol;
  - (2) Serve one beverage per patron at a time;
  - (3) Slow beverage service if needed;
  - (4) Do not serve a beverage to anyone who does not want one;
  - (5) Offer alternative non-alcoholic beverages;
  - (6) Offer food promotions;
  - (7) Offer promotions for designated drivers;

- (8) Advise managers and coworkers when ceasing service to a patron; and
- (9) Encourage all patrons have a safe ride to their next destination.
- (k) Monitoring patrons' alcoholic-beverage intake:
  - (1) The standard beverage size for all poured alcoholic beverages are generally as follows:
    - (A) 12 oz. beer or cooler, about 5% alcohol by volume;
    - (B) 8 to 9 oz. malt liquor, including some beers greater than 7% alcohol by volume;
    - (C) 5 oz. table wine, 12% alcohol by volume; and
    - (D) 1.5 oz. 80 proof-distilled spirit, 40% alcohol by volume;
  - (2) Use measuring devices to ensure standard drink sizes are used for all types of alcoholic beverages;
  - (3) Mixed beverages may have multiple servings within one drink; and
  - (4) Using correct pours ensures profitability of the business and helps the alcohol server calculate how much a patron has consumed to comply with other policies against serving obviously intoxicated persons.
    - (l) Policies for monitoring common behavior of minors seeking alcohol service:
      - (1) One patron ordering alcoholic beverages for a large group that may include one or more minors;
      - (2) Making excuses for not having an identification; and
      - (3) Finding secluded locations in the licensed premises where employees cannot monitor their activity.
- (m) Polices on the economics of quality hospitality service:
  - (1) Having multiple interactions with patrons to evaluate their moods and needs;
  - (2) Listening to patron complaints, compliments, and suggestions for improvement of service;
  - (3) Sharing feedback with management; and
  - (4) Recognizing that better service and patron engagement will help the establishment be more popular and more productive.

**§167. Accreditation Agencies Application and Standards.**

- (a) To seek approval to be an accreditation agency, a business entity must submit the following information to the department:
  - (1) Legal entity name and DBA;
  - (2) Legal structure of the business entity;
  - (3) A business entity subject to registration with the California Secretary of State, must provide proof of that registration, including person designated for service of process and their contact information;
  - (4) A list of owners and officers, their contact information, personal identification information, and titles;
  - (5) Email contact information;
  - (6) Telephone contact information;

- (7) Business address;
- (8) Mailing address if different;
- (9) A list of any arrests or convictions for crimes of moral turpitude by owners or officers of the business entity;
- (10) An affidavit explaining in writing how the business entity, its owners, and officers comply with the accreditation agency approval criteria;
- (11) Descriptions of accreditation policies and procedures to approve training providers and RBS training courses using the standards in Business and Professions code § 25681(b) and California Code of Regulations Title 4 §168(b); and
- (12) Fingerprints of all owners and officers;
  - (A) To be valid, each fingerprinting shall be verified by a governmental body such as a notary or through an electronic fingerprinting service such as Live Scan.
  - (B) The department is not responsible for the payment of any fees associated with the review or validation of criminal history by fingerprint of any owner or officer; and
- (13) The initial review fee set forth in this section, subsection (m)(1).
  - (b) Approval criteria for an accreditation agency:
    - (1) An accreditation agency, its owners and officers, director, employees, or agents shall not have any ownership interest, directly or indirectly, in the business, property or license of any ABC licensee;
    - (2) An accreditation agency, its owners and officers, director, employees, or agents shall not have any ownership interest, directly or indirectly, in the business or property of any training provider;
    - (3) An accreditation agency, its owners, and officers shall not be RBS trainers.
    - (4) An accreditation agency shall have the ability to provide technical support to training providers it accredits;
    - (5) An accreditation agency shall apply the same standards for approval of RBS training providers and RBS training courses used by the department as set forth in Business and Professions code § 25681(b) and California Code of Regulations Title 4 §168(b);
    - (6) An accreditation agency shall maintain strict data security protocols that protect disclosure of private training provider information, including payment information, received during its RBS training course approval process; and
    - (7) An accreditation agency's owners and officers must not have been convicted of any crimes of moral turpitude, as that term is applied to ABC license holders under Business and Professions Code §24200(d).
  - (c) If the department needs more information or clarification to approve an accreditation agency application, the prospective accreditation agency will have 60 days to respond from the date the department's request is issued. If the prospective accreditation agency does not respond within the specified period, the application will be deemed abandoned and withdrawn. The accreditation agency's response is considered received the day it is delivered to the department either electronically, in person, or by mail.

(d) Accreditation agencies shall maintain current contact information with the department. Any department communication is presumed received and notice requirements are deemed effective if the communication is sent to the accreditation agency using the contact information on record.

(e) Accreditation agencies shall maintain current lists of all owners and officers and ensure any changes to its owners and officers continue to comply with the accreditation agency approval criteria.

(f) When approving a training provider or RBS training course, an accreditation agency shall use the policies and procedures to approve training providers and RBS training courses it submitted to the department under California Code of Regulations Title 4 §167(a)(11).

(g) An accreditation agency shall notify the department through the department's online certification system within five business days of any training provider accreditation given.

(h) An accreditation agency shall provide the department with a record of all information the accreditation agency received from the training provider during its approval process. The record must include the following documents; the RBS training course; handouts, electronic files, or transcripts; explanation and affidavit that the training provider complies with all training provider approval criteria; written explanation of the interactivity elements in the RBS training course; written explanation of training provider's compliance with the record keeping, customer support, and security requirements; and the list of any arrests or convictions for crimes of moral turpitude by the individual, or owners or officers of the business entity.

(i) The record shall be submitted to the department in electronic formats through the department's online certification system.

(j) The department may deny, revoke, or suspend an accreditation agency approval if it finds any of the following conduct by the accreditation agency:

- (1) The accreditation agency does not meet the approval criteria;
  - (2) The accreditation agency application is incomplete;
  - (3) The accreditation agency misrepresented material facts in its application;
  - (4) The department is informed an owner or officer of the accreditation agency has committed a crime of moral turpitude, as that term is applied to ABC license holders under Business and Professions Code §24200(d);
  - (5) The accreditation agency fails to inform the department of a change in its owners or officers.
  - (6) The accreditation agency perpetuates a fraud in approving training providers;
  - (7) The accreditation agency does not provide the department with requested records justifying training provider approvals;
  - (8) The accreditation agency fails to notify the department of training provider approvals;
- or
- (9) The accreditation agency does not follow the standards set forth in Business and Professions code § 25681(b) and California Code of Regulations Title 4 §168(b) to approve training providers.

(k) The department authorization to be an accreditation agency grants the accreditation agency the due process rights accorded to ABC licensees under Business and Professions code § 23009 but does not grant a license to the accreditation agency. If an accreditation agency wishes to challenge a department decision to deny, suspend, or revoke department authorization, it is subject to the processes, procedures, and due process rights of licensees under Business and Professions Code Division 9 Chapters 6 – 8.

(l) The accreditation agency must renew its approval annually.

(1) Approvals expire at midnight on the last day of the month in which the approval was given in the previous year.

(2) On or before the first day of the month preceding the month that the approval expires, the department shall notify the accreditation agency using the contact information on file with the department.

(3) To seek renewal, the accreditation agency shall submit an itemized list of any changes it has made since its submission of its initial application, or last annual renewal, that modifies how the accreditation agency approves training providers, approves RBS training courses, or complies with the accreditation agency approval criteria. The accreditation agency shall submit the annual renewal fee set out in California Code of Regulations Title 4 § 167 (m)(2).

(4) The department shall review the submitted list of changes and renew the accreditation agency using the same approval standards as the initial review.

(5) If an approval expires pursuant to subsection (l)(1), the approval may still be renewed within 60 calendar days of the expiration following the process described in subsection (l)(3). For renewals submitted during this 60-day time period, the accreditation agency shall submit payment of the annual renewal fee set out in California Code of Regulations Title 4 § 167 (m)(2), plus a penalty fee that shall be equal to 50 percent of the annual renewal fee.

(6) Unless otherwise terminated, or until renewed, an approval that is in effect during the expiration month shall continue in effect through midnight of the 60th day following expiration of the approval pursuant to subsection (l)(1), at which time it is automatically cancelled.

(7) On or before the 10th day preceding the cancellation of the approval pursuant to subsection (l)(6), the department shall notify the accreditation agency using the contact information on file with the department that its approval will be cancelled under California Code of Regulations Title 4 § 167(l)(6).

(m) The following non-refundable fees are established to recover the reasonable costs of the department for review, approval, and renewal of the accreditation agency standards:

(1) Initial accreditation agency review fee of \$1000.00; and

(2) Annual renewal fee of \$250.00.

### **§168. Training provider application and standards.**

(a) To seek departmental approval to be a training provider, an individual or business entity must submit the following information to the department through its online certification system to complete an application:

- (1) Legal entity name and DBA;
  - (2) Legal structure of the business entity;
  - (3) A business entity subject to registration with the California Secretary of State must provide proof of that registration, including person(s) designated for service of process and their contact information;
  - (4) A list of owners and officers, their contact information, personal identification information, and titles;
  - (5) Email contact information;
  - (6) Telephone contact information;
  - (7) Business address;
  - (8) Mailing address, if different;
  - (9) A proposed RBS training course, consisting of an electronic program, electronic files, recordings, transcripts, or course outline to be approved by the department, and an itemized and tabulated record of how the proposed RBS training course complies with California Code of Regulations Title 4 §§161-166;
  - (10) Written explanation of the interactivity elements to be used in its proposed RBS training course required by California Code of Regulations Title 4 §161 (b);
  - (11) A copy of the handouts, electronic files, or transcripts detailing the RBS training course content provided to alcohol servers for their use after completing the RBS training course as required by California Code of Regulations Title 4 §161 (c);
  - (12) Affidavit explaining how and attesting that the training provider complies with each training provider approval criteria in subsection (b) of this section;
  - (13) A list of any arrests or convictions for crimes of moral turpitude by the owners or officers of the business entity; and
  - (14) The initial review fee set forth in California Code of Regulations Title 4 § 168.3(1)(1).
- (b) Approval criteria for training providers:
- (1) A training provider must meet the background and expertise requirement in Business and Professions Code § 25681 (b)(1)(A), meaning a training provider must have at least one owner, employee, or consultant with degrees, work experience, or certifications in alcohol, training, hospitality, and psychology included in the creation of its RBS training course;
  - (2) A training provider's proposed RBS training course(s) must comply with the minimum standard curriculum as set forth in California Code of Regulations Title 4 §§161-166 herein and be approved by the department or an accreditation agency prior to its use.
  - (3) Training providers must comply with requirement in Business and Professions Code § 25681 (b)(1)(B) for keeping records of alcohol server certifications issued. Training providers may use the department's online certification system as a compliant record keeping program;
  - (4) Training providers must comply with the requirement in Business and Professions Code § 25681 (b)(1)(C) to have the ability to give technical support required for alcohol servers to complete their RBS training course;

(5) Training providers must comply with the requirement in Business and Professions Code § 25681 (b)(1)(D) for data security protocols for any collected alcohol server information, online payments, and alcohol server certification records kept outside the department's online certificate system; and

(6) Training providers' owners and officers must not have been convicted of any crimes of moral turpitude, as that term is applied to ABC license holders under Business and Professions Code §24200(d).

(c) If the department needs more information or clarification to approve a training provider application, the prospective training provider will have 60 days to respond from the date the department's request is issued. If the prospective training provider does not respond in the specified time period, the application will be deemed abandoned and withdrawn. The training provider's response is considered received the day it is delivered to ABC either electronically, in person, or by mail.

#### **§168.1. Registration of training providers approved by an accreditation agency.**

(a) If a training provider and its RBS training course are approved through an accreditation agency, the training provider does not need to pay any departmental fees for the initial review of its RBS training course.

(b) If a training provider and its RBS training course is approved through an accreditation agency, the training provider must provide the following registration information to the department after or concurrent with accreditation agency approval in order to operate under their approval:

- (1) Legal entity name and DBA;
- (2) Legal structure of the business entity;
- (3) A business entity subject to registration with the California Secretary of State, must provide proof of that registration, including person designated for service of process and their contact information;
- (4) A list of owners and officers, their contact information, personal identification information, and titles;
- (5) Telephone contact information;
- (6) Business Address; and
- (7) Mailing Address if different.

(c) Training provider registration must be completed prior to beginning the fingerprinting process for all owners and officers required under California Code of Regulations Title 4 § 168.2.

(d)

**§168.2. Fingerprinting by the department for all training providers.**

(a) After, or concurrent to, the approval of a training provider by either the department or an accreditation agency, the training provider must provide fingerprints of all its owners and officers to the department. To be valid, each fingerprinting shall be verified by a governmental body such as a notary or through an electronic fingerprinting service such as Live Scan.

(b) The department must receive the results of the verified fingerprints of all owners and officers prior to the training provider being placed upon the department's approved training-provider list.

(c) The department is not responsible for the payment of any fees associated with the review or validation of the criminal history of any owner or officer by fingerprint.

**§ 168.3. Training provider review, modifications, and fees.**

(a) A training provider shall maintain current contact information within the department's online certification system and notice from the department is deemed effective if it contacts the training provider using the information on record.

(b) A training provider shall maintain current lists of its owners and officers and ensure any changes to its owners and officers continue to comply with the training provider approval criteria.

(c) A training provider must use one of its approved RBS training courses on file with the department whenever providing RBS training to alcohol servers under the RBSTPA.

(d) A training provider must notify the department using the online certification system within 24 hours of an alcohol server's completion of an approved RBS training course. Upon receiving this notification, the department will grant access to the alcohol server certification exam to the alcohol server through the online certification system registration under California Code of Regulations Title 4 § 170(b).

(e) The department shall review the effectiveness of all training provider RBS training courses through analysis of data collected when administering alcohol server certification exams. The department shall make the alcohol server certification exam data pertaining to a training provider's students available to the training provider through the department's online certification system.

(f) The department may deny, revoke, or suspend a training provider approval if it finds any of the following conduct by the training provider:

- (1) The training provider does not meet the approval standards in this section;
- (2) The training provider application is incomplete;
- (3) The training provider misrepresented material facts within its application;
- (4) The department is informed an owner or officer of the training provider has committed a crime of moral turpitude, as that term is applied to ABC license holders under Business and Professions Code §24200(d).;

(5) The training provider fails to inform the department of a change in its owners and officers;

(6) The training provider's RBS training course does not follow the standards set forth in Business and Professions code § 25681(b) and California Code of Regulations Title 4 §168;

(7) The training provider is not teaching from its RBS training course submitted to file with the department pursuant to California Code of Regulations Title 4 § 168(a)(9)-(10), or the RBS training course it submitted to the accreditation agency submitted to the department pursuant to California Code of Regulations Title 4 § 167(h);

(8) The training provider fails to timely inform the department when an alcohol server has completed their RBS training course;

(9) The training provider fails to comply with a mandatory modification request from the department as outlined in California Code of Regulations Title 4 § 168.3(f); or

(10) The training provider perpetuates a fraud within the department's online certification system.

(g) If the department requires a modification of all RBS training course materials due to a change in referenced law or the completion of a rulemaking action:

(1) The department shall notify the training provider in writing with a detailed list of the mandatory changes;

(2) The training provider shall have 60 days from the date notice is sent by the department to respond and provide an estimate of the length of time the training provider will need to complete the modification;

(3) If the training provider does not respond to the department's request within the specified time, the training provider's approval will be deemed withdrawn;

(4) The training provider shall modify their program within a reasonable time based on the amount of mandatory changes required and submit a record of all changes to the existing program to the department for approval;

(5) The department shall review the training provider's RBS training course without any additional fees for a mandatory modification;

(6) The department shall use the same standards of approval for any modification as with the initial approval of an RBS training course; and

(7) The training provider shall not use the modified course until it has been approved by the department.

(h) If a training provider chooses to modify its RBS training course without a legal requirement to do so:

(1) The training provider shall seek approval from an accreditation agency, or the department;

(2) The training provider will notify the department or accreditation agency in writing with a detailed change log of all changes made to the RBS training that was submitted to the department under California Code of Regulations Title 4 § 168(a)(9)-(10), or the RBS training

course it submitted to the accreditation agency submitted to the department under California Code of Regulations Title 4 § 167(h);

(3) The department after receiving a modification request from a training provider will determine if the modification constitutes a substantial change and notify the training provider of its decision in writing;

(4) If the department finds the modification request constitutes a substantial change, the request is subject to an initial review fee as itemized in California Code of Regulations Title 4 §168.3(l)(1).

(5) A substantial change is a modification to an approved RBS training course to the extent that the department must review most of the approved RBS training course to reapprove its suitability, including but not limited to, a 50 percent or greater change of submitted content or a new language translation;

(6) The department shall review a modification request for an RBS training course without any additional fees, unless the department determines that the modification constitutes a substantial change;

(7) The department or accreditation agency shall use the same standards of approval for any modification as with the initial approval of an RBS training course; and

(8) The training provider shall not use the modified course until it has been approved by the department or an accreditation agency.

(i) If a training provider wishes to create a new RBS training course, either in format, presentation, language, or by a substantial change from its existing RBS training course:

(1) The training provider must provide an itemized and tabulated record demonstrating that the proposed RBS training course complies with California Code of Regulations Title 4 §§162-166 to the department or an accreditation agency;

(2) If submitted to the department, the training provider must pay an additional RBS training course initial approval fee set out in California Code of Regulations Title 4 § 168.3(l)(1) for review and approval of the proposed RBS training course; and

(3) The department and accreditation agency shall use the same standards for approval of the new RBS training course as if it was an initial training provider application.

(j) The department authorization to be a training provider grants the training provider the due process rights as a licensee under Business and Professions code § 23009 but does not grant an ABC license to the training provider. If a training provider wishes to challenge a department decision to deny, suspend, or revoke department authorization, it is subject to the processes, procedures, and due process rights of licensees under Business and Professions Code Division 9 chapters 6 – 8.

(k) A training provider must renew its approval annually with the department or an accreditation agency to ensure it continues to comply with the statutory and regulatory standards of the RBSTPA and any mandatory content added to the curriculum requirements by the department.

(1) Approvals expire at midnight on the last day of the month in which the approval was given in the previous year.

(2) On or before the first day of the month preceding the month that the approval expires, the department shall notify the training provider using the contact information on file with the department.

(3) To seek renewal, the training provider shall submit an itemized list of any changes it has made since its submission of its initial application, or last annual renewal, that modifies how the training provider complies with the training provider approval criteria.

(4) If seeking renewal from the department, the training provider shall submit the annual review fee set out in California Code of Regulations Title 4 § 168.3 (l)(2) for each approved RBS training course currently being used.

(5) The department or accreditation agency shall review the submitted list of changes and renew the training provider using the same approval standards as the initial review.

(6) If an accreditation agency gives an approval, it is subject to the same reporting requirements to the department under California Code of Regulations Title 4 § 167(g)-(i).

(7) If an approval expires pursuant to subsection (k)(1), the approval may still be renewed within 60 calendar days of the expiration following the process described in subsection (k)(3). For renewals submitted to the department during this 60-day period, the training provider shall submit payment of the annual renewal fee set out in California Code of Regulations Title 4 § 168.3(l)(2), plus a penalty fee that shall be equal to 50 percent of the annual fee.

(8) Unless otherwise terminated, or until renewed, an approval that is in effect during the expiration month continues in effect through midnight of the 60th day following expiration of the approval pursuant to subsection (k)(1), at which time it is automatically cancelled.

(9) On or before the 10th day preceding the cancellation of the approval pursuant to subsection (k)(8), the department shall notify the accreditation agency using the contact information on file with the department that its approval will be cancelled under California Code of Regulations Title 4 § 168.3(k)(8)

(l) The following non-refundable fees are set to recover the reasonable costs of the department for approval, oversight, and enforcement of the above training provider standards:

- (1) RBS training course initial approval fee of \$1000.00; and
- (2) Annual renewal fee of \$250.00 per approved RBS training course.

### **§169. ABC On-Premises Licensee Certification Record Requirements**

(a) An ABC on-premises licensee can only establish the validity of its employees' alcohol server certifications within the department's online certification system.

(b) An ABC on-premises licensee may maintain records of employee alcohol server certifications, as required by Business and Professions code § 25682(b)(1), within the department's online certification system.

(c) An ABC on-premises licensee may request automatic notifications from the online certification system for employed alcohol servers prior to their certificate's expiration, but the

department does not otherwise have a duty to notify licensees when an alcohol server certification held by an ABC on-premises licensee's employee or contractor is expiring.

(d) An ABC on-premises licensee must ensure that a certified alcohol server is recertified prior to the expiration, or they will be subject to the prohibition found in Business and Professions code § 25683.

(e) If an ABC on-premises licensee wishes to use the affirmative defense found in Business and Professions Code § 25682 (b)(2), the ABC on-premises licensee must provide to the department:

(1) The date and records of the alcohol server's initial employment; and

(2) Six preceding months of payroll records for all employees.

(f) The 60-day grace period for the affirmative defense found in Business and Professions Code § 25682 (b)(2) applies only to the date of initial employment, and not for alcohol server certification renewals.

### **§170. Administration of the alcohol server certification exam database**

(a) The department shall prepare the alcohol server certification examination using the topics and information contained in California Code of Regulations Title 4 §§162 -166.

(b) Alcohol servers shall register with the department's electronic certification system prior to taking the alcohol server certification exam and provide the following information to establish their alcohol-server profile:

(1) Legal name;

(2) Birthdate;

(3) Email;

(4) Zip code of current residence; and

(5) Personal identification information, which may be any of the following: a state issued identification number, state issued driver's license number, social security number, tax identification number, or employment identification number.

(c) When registering with the department's electronic certification system, alcohol servers shall pay a \$3.00 non-refundable registration fee electronically through the department's online certificate system to reimburse the department for the upkeep, enforcement, and record keeping within the online certificate system.

(d) The department shall administer the alcohol server certification exam only to alcohol servers who have completed an approved RBS training course from an approved training provider.

(e) The alcohol server certification exam will test alcohol servers on the topics and information outlined in §§162-166.

(f) Alcohol servers must answer at least 70% of questions on the alcohol server certification exam correctly in order to be issued an alcohol server certification by their training provider.

(g) Alcohol servers will have 30 days from their completion of an RBS training course or three attempts to successfully pass the alcohol server certification exam, whichever comes first.

(h) The department shall provide results of alcohol server certification exams to the training provider who provided the associated RBS training course. If the alcohol server has a passing score, the training provider shall issue the valid alcohol server certification as specified in Business and Professions Code § 25681(d).

(i) If an alcohol server fails to successfully pass the alcohol server certification exam within the above time limits or number of attempts, they shall complete an additional approved RBS training course prior to paying an additional \$3.00 non-refundable registration fee to the department for another set of attempts at the alcohol server certification exam.

(j) Alcohol servers' certification records will be kept within the department's online certification system.

(k) The department shall notify an alcohol server sixty days prior to their certification's expiration date at the email address submitted to the department by the alcohol server.

(l) To renew an alcohol server certification, an alcohol server must complete an approved RBS training course, pass the alcohol server certification exam, and pay a \$3.00 non-refundable registration fee to the department in the same manner as for initial certification.

**§171. Emergency decisions for accreditation agency or training provider misconduct.**

(a) If an accreditation agency or a training provider is allowing alcohol servers to receive alcohol server certifications without completing an approved RBS training course, it is deemed to be an immediate danger to the public health, safety, and welfare that requires immediate action under Government code § 11460.30 due to the harm and cost of the overuse of alcohol to the community by untrained alcohol servers.

(b) To address an immediate danger to the public health, safety, and welfare that requires immediate action, the department may prepare a petition and hearing for emergency decision as specified under Government Code §§ 11460.40 and 11460.50.

**§172. Hearing to determine accreditation agency or training provider misconduct.**

(a) For any hearing regarding a revocation, suspension, or denial of an approval by the department for either an accreditation agency or a training provider, the department, in its exclusive discretion, shall consider scheduling the hearing at a time, including evening hours, and at a place convenient to all parties to a proceeding, including those witnesses required to be present, and the public affected.

(b) These hearings are otherwise controlled by Business and Professions Code § 24300 et seq.

(c)

**§173. Penalty assessment for ABC licensee violation.**

(a) The penalty guideline for an ABC licensee in violation of Business and Professions code § 25683 is a 10-day suspension.

(b) For an administrative penalty imposed upon an ABC licensee for violation of Business and Professions code § 25683, an administrative law judge may consider the following factors, among others, for either aggravation or mitigation:

- (1) percentage of employees without a certification;
- (2) the length of time one or more employees is employed without a certification; and
- (3) any prior warnings given to the ABC licensee regarding alcohol server certification requirements under the RBSTPA.

(c) A suspension imposed for violation of Business and Professions code § 25683 is to be served consecutively, not concurrently, with other alcohol-service related offenses.