CALIFORNIA DEPARTMENT OF
Alcoholic Beverage Control

Mar 19, 2020

EN ESPAÑOL

First Notice of Regulatory Relief

Pursuant to the Constitution of the State of California, Article XX, Section 22, and in furtherance of Governor Newsom's emergency declarations and orders regarding the spread of the COVID-19 virus, the Department of Alcoholic Beverage Control is temporarily suspending enforcement of specific legal prohibitions identified below.

This regulatory relief is designed to support the alcoholic beverage industry in its efforts to assist California in slowing the spread of the virus while assisting the industry in dealing with the economic challenges it is facing as a result. The Department has carefully considered the public's health, safety, and welfare in providing this relief, and the Department has concluded that none of

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these measures, exercised on a temporary basis, will jeopardize the public's health, safety, or welfare. In lieu of individual requests for relief submitted to the Department, the temporary relief from the regulatory requirements set forth in this notice are applicable to all affected Department licensees and will continue until further notice, as provided below. The Department's regulatory relief addresses the following issues:

1. Returns of Alcoholic Beverages

Notwithstanding any restrictions in sections 23104.1 (wine), 23104.2 (beer), and 23104.3 (distilled spirits), manufacturers and wholesalers may accept returns of alcoholic beverages from retailers. This is not intended to require manufacturers or wholesalers to accept returns. Manufacturers and wholesalers may establish their own parameters for accepting returns, except that they may not require retailers to purchase specific products or quantities of products in the future as a condition to the acceptance of a return of alcoholic beverages. This authorization does not allow manufacturers or wholesalers to provide any other things of value to retailers.

2. Retail-to-Retail Transactions

Off-sale retailers may purchase alcoholic beverages from on-sale retailers to the same extent they can purchase such beverages from suppliers authorized to sell to them (e.g., wholesalers, beer manufacturers, and winegrowers). Given that many on-sale retailers may have greater inventories of alcoholic beverages

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than they can use under the current limitations of their on-sale privileges, and that suppliers may not be willing or able to accept returns, this regulatory relief will provide needed revenue to on-sale retailers and avoid wasteful inventory spoliation.

3. Extension of Credit

Business and Professions Code Section 25509 prohibits manufacturers, wholesalers, and other specified suppliers from extending credit to retailers beyond 30 days. This section also requires the imposition of statutory penalty charges on delinquent accounts. It further provides that delinquent retailers may purchase additional alcoholic beverages from any unpaid supplier only on a COD basis. The Department will not be enforcing these provisions. It will be up to the parties to determine appropriate credit terms during this time. However, licensees should also consider that when these temporary measures are lifted, the statutory provisions will pre-empt any agreed-upon credit terms.

4. On-Sale Retailers Exercising Off-Sale Privileges

Licensees with on-sale privileges may sell those alcoholic beverages for off-sale consumption in manufacturer pre-packaged containers as to which their license permits on-sale consumption. For example, a Type 47 restaurant may sell beer, wine, and distilled spirits for off-sale consumption, regardless of any condition on its license to the contrary and regardless of the statutory

CONTACT

Additional information may be obtained by contacting:

Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

Email us at headquarters@abc.ca.gov
Call (916) 419-2500

prohibition against on-sale licensees selling distilled spirits for off-sale consumption. Similarly, a Type 41 beer and wine licensed restaurant may sell beer and wine, but not distilled spirits, for consumption off the premises regardless of any conditions on its license that prohibit such sales.

5. Sales of Alcoholic Beverages To-Go

In addition to selling manufacturer pre-packaged containers as provided above, ABC licensees selling beer, wine, and pre-mixed drinks or cocktails not in manufacturers containers for consumption off the licensed premises may do so when sold in conjunction with meals prepared for pick-up or delivery either by the licensee or by a meal provider. Any such alcoholic beverages must be packaged in a container with a secure lid or cap and in a manner designed to prevent consumption without removal of the lid or cap (e.g., no lids with sipping holes or openings for straws). Further, any licensee selling such beverages for off-sale consumption shall prominently post the following warning in a manner that puts consumers on notice of limitations regarding open container laws:

> Alcoholic beverages that are packaged by this establishment are open containers and may not be transported in a motor vehicle except in the vehicle's trunk; or, if there is no trunk, the container may be kept in some other area of the vehicle that is not normally occupied by the driver or passengers (which does not include a utility compartment or glove compartment (Vehicle Code Section 23225)). Further, such beverages may not be consumed in public or in any other area where open containers are prohibited by law.

"Post" means to prominently display on the premises, post online, or present in whatever manner is necessary to ensure that the consumer purchasing, or delivery person transporting, such beverages is given notice of this warning.

PRINTABLE NOTICE

6. Off-Sale Transactions Through Pass-Out Windows

The Department is suspending any conditions on licenses that prohibit licensees from making sales and deliveries of alcoholic beverages to persons in a motor vehicle or to persons outside the licensed premises through a pass-out window or a slide-out tray to the exterior of the premises.

7. Hours of Operation for Retail Sales

State law prohibits retailers from exercising retail privileges between the hours of 2:00 a.m. and 6:00 a.m., and many licensees have conditions on their licenses that further restrict the hours of sales and service that require them to close before 2:00 a.m. or open after 6:00 a.m. The Department suspends enforcement of any license condition restricting the hours of sales and service for licensees exercising off-sale privileges consistent with this Notice of Relief. The Department will continue to enforce the 2:00 a.m.–6:00 a.m. prohibition.

8. Deliveries to Consumers

Existing law allows licensees who are permitted to sell off-sale to also deliver such alcoholic beverages to consumers. The sales transaction, other than delivery, must occur on the licensed premises. This means that the order must be received, and the payment processed, at the licensed premises (i.e., no payment at time of delivery away from the licensed premises). In addition, craft distillers may only exercise their off-sale privileges at the licensed premises (limited to 2.25 liters of distilled spirits per consumer per day) and are not authorized to deliver to consumers away from the licensed premises. The Department is suspending enforcement of these restrictions. As such, licensees who are authorized to sell alcoholic beverages to consumers for consumption off the licensed premises may accept payment therefore, including cash, at the point of delivery. In addition, craft distillers may also deliver to consumers away from the licensed premises (however, they must still adhere to the maximum of 2.25 liters per consumer per day). For clarification, existing statutory delivery authority does not specify the location at which the delivery must occur. As such, delivery to consumers immediately outside the licensed premises (often known as “curbside delivery”) is acceptable. In addition, although the Department has relaxed delivery rules, this does not allow a licensee to run a mobile sales apparatus of any kind away from their licensed premises in an effort to sell and deliver in real time to customers in a public space.

Limitations on Relief

The relief provided by this notice is temporary

and may be withdrawn by the Department at any time. The Department intends to provide a 10-day notice of the termination of any such relief, although such relief may be withdrawn immediately should the needs of public safety dictate. In addition, licensees are directed to use the relief provided by this notice responsibly without compromising the public's health, safety, or welfare. Notwithstanding any other provision of law, if the Department determines that any licensee is found to be abusing the relief provided by this notice, or if the licensee's actions jeopardize public health, safety, or welfare, the Department may summarily rescind the relief as to that licensee at any time. Until the Department rescinds any of these temporary relief measures, whether as to all licensees or a particular licensee, any licensee adhering to the terms of this notice, and other applicable laws, may rely on this notice to utilize the privileges described without risk of enforcement by the Department against its license for actions taken up until the time of the rescission.

In addition, this notice does not exempt licensees from local ordinances, zoning restrictions, conditional use permits, and the like, over which the Department has no jurisdiction or control. That said, the Department will not consider any violation of such local controls to constitute a violation of the license issued by the Department.

We encourage all licensees to sign up with the Department for email notices regarding this and other issues. This is easily done by clicking Subscribe. If you have any questions, please contact the Department.