

Sales of Homemade Beer or Wine by Non-Profit Organizations Frequently Asked Questions

CAUTION: Although California law authorizes the sale of homemade beer or wine in very limited circumstances, such activity may violate federal law. Federal law (for wine at 26 U.S.C. 5042(a)(2) and for beer at 26 U.S.C. 5053(e)) provides that homemade wine and beer is restricted to personal or family use, and may not be sold under any circumstances.

Q. What does the new law allow?

A. Business and Professions Code section 23356.2 was amended (effective January 1, 2014) to clarify certain provisions about when homemade beer or wine may be removed from the location at which it is produced. In addition, it is now possible to non-profit organizations to sell homemade beer and wine that has been donated to them, under specific circumstances. The full language of the amended section is:

23356.2. (a) No license or permit shall be required for the manufacture of beer or wine for personal or family use, and not for sale, by a person over 21 years of age. The aggregate amount of beer or wine with respect to any household shall not exceed (1) 200 gallons per calendar year if there are two or more adults in the household or (2) 100 gallons per calendar year if there is only one adult in the household.

(b) Beer or wine produced pursuant to this section may be removed from the premises where made only under any of the following circumstances:

- (1) For use, including tasting by judges, in a bona fide competition or exhibition.
- (2) For personal or family use.
- (3) When donated to a nonprofit organization for use as provided in subdivision (c).

(c) (1) Beer or wine produced pursuant to this section may be donated to a nonprofit organization for sale at fundraising events conducted solely by and for the benefit of the nonprofit organization. Beer and wine donated pursuant to this subdivision may be sold by the nonprofit organization only for consumption on the premises of the fundraising event, under a license issued by the department to the nonprofit organization pursuant to this division.

(2) Beer or wine donated and sold pursuant to this subdivision shall bear a label identifying its producer and stating that the beer or wine is homemade and not available for sale or for consumption off the licensed premises. The beer or wine is not required to comply with other labeling requirements under this division. However, nothing in this paragraph authorizes the use of any false or misleading information on a beer or wine label.

(3) A nonprofit organization established for the purpose of promoting home production of beer or wine, or whose membership is composed primarily of home brewers or home winemakers, shall not be eligible to sell beer or wine pursuant to this subdivision.

(d) Except as provided in subdivision (c), this section does not authorize the sale or offering for sale by any person of any beer or wine produced pursuant to this section.

(e) Except as provided herein, nothing in this section authorizes any activity in violation of Section 23300, 23355, or 23399.1.

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Q. Does this mean homemade beer or wine can be sold by anyone?

A. No. It is a misdemeanor for anyone to sell homemade beer or wine, except as specifically authorized by Section 23356.2. That means only non-profit organizations can sell homemade beer and wine that has been donated to them.

Q. Does the non-profit organization need to get any sort of license or permit to be able to sell the homemade beer or wine?

A. Yes. The law only allows the non-profit organization to sell homemade beer and wine at a fundraising event under a license issued by ABC for on-site consumption only. A one-day license is required even when the only beer or wine sold at the event is donated homemade beer or wine.

Q. Are there any restrictions on the type of non-profit organization that can sell donated homemade beer or wine?

A. First, the non-profit organization must be eligible to obtain a one-day license from ABC. Second, non-profit organizations established for the purpose of promoting home production of beer or wine, or whose memberships are composed primarily of home brewers or home winemakers, are not authorized to sell homemade beer or wine. This would include, for example, any home brewer or home winemaker guilds or clubs that are organized as non-profits.

Q. Are there any restrictions on the types of events at which homemade beer or wine may be sold?

A. The section provides that donated homemade beer or wine may only be sold at a fundraising event conducted **solely by and for the benefit of** the non-profit organization. This means, for example, that homemade beer or wine may not be sold at events conducted by some other person or organization (such as a promoter), with the non-profit organization being merely a beneficiary of a monetary donation. In addition, the non-profit organization must receive all of the proceeds from the sale of the homemade beer or wine.

Q. Who can pour the donated homemade beer or wine sold by the non-profit organization?

A. There are no statutory restrictions on who may pour the beer or wine. While the holder of the one-day license (i.e., the non-profit organization) is ultimately responsible for insuring that the service of all alcoholic beverages at the event, including the homemade beer or wine, is done in accordance with legal requirements, an individual server may be charged with a misdemeanor if they serve alcoholic beverages to a minor or obviously intoxicated customer.

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Q. Are special labels or signs required?

A. The statute requires that donated homemade beer and wine sold by the non-profit organization bear a label stating it is homemade beer or wine. In addition, the label must contain the following information: (1) the name of the producer, and (2) a statement that the beer or wine is not available for sale or for consumption off the licensed premises (i.e., the premises for which the one-day license is issued). This label should be on any container of homemade beer or wine that is donated to the non-profit organization, whether that is a bottle, growler, keg, or any other type of container. While the statute does not specifically require any other specific notification, it is suggested that signs be posted clearly advising consumers that the beer or wine provided is homemade.

Q. Can the non-profit organization advertise that homemade beer or wine is being sold at the event?

A. Yes.

Q. Do the home brewers or home winemakers need to get anything from ABC or provide ABC with any information?

A. No. Home brewers and home winemakers are not subject to administrative oversight by ABC. (Note: However, home brewers and home winemakers may be subject to criminal prosecution if they do not comply with Section 23356.2.)

Q. Does there need to be any separation between homemade beer or wine sold at the event and other beer or wine that is sold there?

A. Such separation is not required by the statute, but it may be a good practice to do so.

Q. Are there any limitations on how much homemade beer or wine the non-profit organization may accept as donations?

A. No. However, home brewers and home winemakers must comply with the production limits in Section 23356.2. If the non-profit organization knows or should reasonably know that they are accepting a donation from a home brewer or home winemaker that is in violation of the statute (e.g., they accept a donation in excess of what is legally permitted to be produced) then they may be subject to criminal prosecution for aiding and abetting a violation.

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Q. What constitutes a “sale” of homemade beer or wine under this section?

A. A “sale” of alcoholic beverages occurs when any consideration is given in exchange for the alcoholic beverage. This includes circumstances in which an entry fee is charged for an event (e.g., where tickets are sold which entitle attendees to obtain “tastes” or drinks), or when there is a separate charge for drinks.

Q. Can homemade beer or wine be included as raffle prizes or otherwise sold “to go”?

A. The new law allows donated homemade beer or wine to be sold only for consumption on the licensed premises. No homemade beer or wine may be sold for consumption off the licensed premises (“to go”).

Q. Can licensees host homemade beer or wine competitions or other similar events at their licensed premises?

A. No. Business and Professions Code section 25607 prohibits licensees and any other person from having upon licensed premises any alcoholic beverages other than those which may be sold at the licensed premises pursuant to the license issued. Since homemade beer and wine may not be sold by permanent licensees, such beer or wine may not be possessed on licensed premises. This prohibition applies whether the license is a manufacturing license (such as beer manufacturer or winegrower) or a retail license (such as a bar or restaurant).

Q. Can “home brew” supply stores make homemade beer or wine for demonstration purposes?

A. No. The law provides that beer or wine may only be produced without a license in a “household” for “personal or family” use. Beer or wine produced at a “home brew” supply store or any other similar location for any purpose, including demonstration, would not comply with this provision.