

Earthquake-Related Information for ABC Licensees

This information is being provided by ABC to address some of the questions that ABC licensed businesses may have following the Napa-American Canyon Earthquake. ABC will continue to answer questions as the region strives to recover from the quake. The information below is not the only assistance that may be available to licensees impacted by the earthquake. Any licensees who have questions may contact the ABC Santa Rosa District Office at 1-707-576-2165 or the Oakland District Office at 1-510-622-4970. Both offices are prepared to respond promptly to licensure issues resulting from the earthquake's impact on businesses.

The information on this website is being provided in a question and answer type of format to address the following:

- 1. Relocation of Business Operations**
- 2. Storage of Alcoholic Beverages**
- 3. Retail License Issues Related to Breakage of Products**
- 4. Return of Inventory in Storage back to a Supplier**
- 5. Regulations that Apply to Sales or Returns by Insurers, Former Licensees or Surrendered Licenses**
- 6. Tied House Exceptions for Natural Disasters**

Can I Relocate Business Operations Following an Earthquake?

There are two sections of the California Business and Professions Code, 24081 and 24082, that could be helpful following a disaster. This link takes you to those specific sections.

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&group=24001-25000&file=24070-24082>.

The full text of those sections is below:

24081. (a) Notwithstanding any other provision of law in this division including, but not limited to, requirements relating to the issuance or transfer of a license, any licensee whose premises, for

which a license, other than an off-sale license, has been issued, have been destroyed as a result of fire or any act of God or other force beyond the control of the licensee may carry on his or her business for a period of not more than 180 days at a location within 500 feet of the premises for which the license was issued and while the premises are being repaired or rebuilt and he or she shall be entitled to carry on his or her business under his or her existing license upon the former premises when they have been repaired or rebuilt.

(b) Notwithstanding any other provision of law in this division, including, but not limited to, requirements relating to the issuance or transfer of a license, any licensee whose premises, for which an off-sale license has been issued, have been destroyed as a result of fire or any act of God or other force beyond the control of the licensee, may carry on his or her business for a period of not more than six months at a location within 500 feet of the premises for which the license was issued and while the premises are being repaired or rebuilt and he or she shall be entitled to carry on his or her business under his or her existing license upon the former premises when they have been repaired or rebuilt.

24082. The license of a licensee whose licensed premises have been destroyed as a result of fire or act of God or have been taken under the power of eminent domain, may be transferred to another location within the same county without payment of the fee for transfer of a license from one premises to another premises. Within 18 months of the fire or act of God, if the destroyed premises have been reconstructed and the license has not been transferred to another person, the license may be transferred back to the location of the destroyed premises without payment of the fee for transfer of a license from one premises to another premises.

What about Storage of Alcoholic Beverages?

1. Tax-paid wine and beer may be stored anywhere in the state. No ABC approval is required.
2. Distilled spirits may only be stored on licensed premises, including Type-14 public warehouses. No ABC approval is required to transfer from one storage location to another.
3. If alcoholic beverages are stored in a Type-14 public warehouse, no ABC approval is required to transfer them to another Type-14 warehouse or to a private warehouse.
4. If wine is stored in bond, no ABC approval is required to transfer it to another facility. However, approval of taxing authorities (BOE, TTB) may be required.

Can you tell me about Retail License Issues Related to Breakage of Products?

Understanding that there may be questions involving breakage of alcoholic beverage at retail licensed business, we are advising that there are no provisions in the ABC Act that permit suppliers (manufacturers and distributors) to replace “breakage” due to natural disasters. Retailers should file a claim with their insurer for the value of breakage. Additionally if a retail premise closes for a period that exceeds 15 days, or closes permanently, Rule 65 requires them to surrender their license. When they have done so, ABC permits suppliers to pick up alcoholic beverages and credit the account of a retailer who has surrendered their license, See Rule 79.

Since the Governor has declared a State of Emergency for Napa, Solano and Sonoma counties, Business and Professions Code Section 25511 permits suppliers to furnish, give, rent, lend, or sell, "*any equipment, fixtures, or supplies, other than alcoholic beverages, to a retailer whose equipment, fixtures, or supplies were lost or damaged as a result of a natural disaster and whose premises are located in an area proclaimed to be in a state of disaster by the Governor.*"

What Laws Explain Inventory Return Issues for Current Retail Licensees?

Returns of wine by a retailer to a supplier is covered in Business and Professions Code Section 23104.1

Returns of beer by a retailer to a supplier is covered in Business and Professions Code Section 23104.2

Returns of distilled spirits by a retailer to a supplier is covered in Business and Professions Code Section 23104.3

Full text of Sections 23104.1, 23104.2 and 23104.3 are below:

23104.1. A retailer may return wine to the seller or to the successor of the seller and the seller or his or her successor may accept the return thereof, except that the seller or his or her successor may not sell wine to the retailer for a period of one year after the date the returned wine is accepted or received unless any of the following exists:

(a) The wine is returned in exchange for the identical quantity, brand, and item of wine.

(b) The wine is returned pursuant to court order.

(c) The returned wine is a brand or item of wine that has been discontinued by the seller or his or her successor, and the wine is exchanged for the identical quantity of a brand or item of similar quality.

(d) The wine delivered was other than that ordered by a retailer or was in a quantity other than that ordered. In these cases, the retailer may, within 15 days after delivery, return the wine to the seller or his or her successor for exchange for the wine actually ordered, or may return the wine delivered in excess of the wine actually ordered. Returns under this subdivision may also be made after 15 days from the date of delivery upon written approval of the department.

(e) The wine has deteriorated in quality or the container thereof has been damaged, or the label or container for the wine has been changed, and the wine is returned and exchanged for the identical quantity of the same brand and type of wine and size of container. For the purpose of this subdivision, "wines of the same type" means wines that are within the same class as provided in Article 14 (commencing with Section 17001) of Title 17 of the California Code of Regulations and bear the same rate of state wine excise tax.

If wine or the container thereof is damaged or deteriorated, and the seller thereof has ceased to carry on a business licensed under this division and there is no successor to the business, the wine may

be returned by a retailer to a winegrower or wholesaler who handles the same brand or item of wine, upon the same terms and conditions provided in this section for the return of wine to a seller or his or her successor, after receiving approval from the department.

The approval of the department shall be required only for returns made after 15 days from the date of delivery under the provisions of subdivision (d), or returns made under the provisions of the immediately preceding paragraph.

(f) As used in subdivisions (a), (c), and (e), the term "identical quantity" includes wine in metric measure containers and wine in United States standard measure containers that contain substantially the same amount of wine.

(g) Notwithstanding the above provisions, a seller may accept the return of wine from a seasonal or temporary licensee if, at the termination of the period of the license, the seasonal or temporary licensee has wine remaining unsold, or from an annual licensee operating on a temporary basis if, at the termination of the temporary period, the annual licensee has wine remaining unsold.

23104.2. (a) Subject to the exceptions specified in subdivision (b), a retail licensee may return beer to the wholesaler or manufacturer from whom the retail licensee purchased the beer, or any successor thereto, and the wholesaler, manufacturer, or successor thereto may accept that return if the beer is returned in exchange for the identical quantity and brand of beer. No wholesaler or manufacturer, or any successor thereto, shall accept the return of any beer from a retail licensee except when the beer delivered was not the brand or size container ordered by the retail licensee or the amount delivered was other than the amount ordered, in which case the order may be corrected by the wholesaler or manufacturer who sold the beer, or any successor thereto. If a package had been broken or otherwise damaged prior to or at the time of actual delivery, a credit memorandum may be issued for the returned package by the wholesaler or manufacturer who sold the beer, or any successor thereto, in lieu of exchange for an identical package when the return and corrections are completed within 15 days from the date the beer was delivered to the retail licensee.

(b) Notwithstanding subdivision (a), a wholesaler or manufacturer, or any successor thereto, may accept the return of beer purchased

from that wholesaler, manufacturer, or successor thereto, as follows:

(1) (A) From a seasonal or temporary licensee if at the termination of the period of the license the seasonal or temporary licensee has beer remaining unsold, or from an annual licensee operating on a temporary basis if at the termination of the temporary period the annual licensee has beer remaining unsold.

(B) For purposes of subparagraph (A), an annual licensee shall be considered to be operating on a temporary basis if he or she operates at seasonal resorts, including summer and winter resorts, or at sporting or entertainment facilities, including racetracks, arenas, concert halls, and convention centers. Temporary status shall be deemed terminated when operations cease for 15 days or more. No wholesaler or manufacturer, or successor thereto, shall accept the return of beer from an annual licensee considered to be operating on a temporary basis unless the licensee notifies that wholesaler or manufacturer, or successor thereto, within 15 days of the date the licensee's operations ceased.

(2) (A) Subject to subparagraph (B), a wholesaler or manufacturer, or any successor thereto, may, with department approval, accept the return of a brand of beer discontinued in a California market area or a seasonal brand of beer from a retail licensee, provided that the beer is exchanged for a quantity of beer of a brand produced or sold by the same manufacturer with a value no greater than the original sales price to the retail licensee of the returned beer. For purposes of this subparagraph, "seasonal brand of beer" means a brand of beer, as defined in Section 23006, that is brewed by a manufacturer to commemorate a specific holiday season and is so identified by appropriate product packaging and labeling.

(B) A discontinued brand of beer may not be reintroduced for a period of 12 months in the same California market area in which a return and exchange of that beer as described in subparagraph (A) has taken place. A seasonal brand of beer may not be reintroduced for a period of six months in the same California market area in which a return and exchange of that beer as described in subparagraph (A) has taken place.

(c) Notwithstanding subdivision (a), a wholesaler or manufacturer, or any successor thereto, may accept the return of beer purchased from that wholesaler or manufacturer, or any successor thereto, by the holder of a retail license following the revocation of, suspension of, voluntary surrender of, or failure to renew the retail

license.

(d) A wholesaler or manufacturer, or any successor thereto, may credit the account of the retailer identified in subdivision (c) in an amount not to exceed the original sales price to the retailer of the returned beer, provided that the beer has been paid for in full.

(e) Notwithstanding the 15-day time limit for the return of beer described in subdivision (a), beer that is recalled or that is considered by a manufacturer, importer, or governmental entity to present health or safety issues if distributed, offered for sale, or sold in the state may be accepted for return at anytime from a retailer and be picked up by the seller of beer. The seller of beer may exchange the returned beer for identical product, if safe inventory is available, issue a deferred exchange memorandum showing the beer was picked up and is to be replaced when inventory is available, or issue a credit memorandum to the retailer for the returned beer. The seller of beer may exchange with the manufacturer or importer the returned beer and the seller of beer's inventory that was recalled or considered to present health or safety issues for identical product, if safe inventory is available, or the seller of beer shall receive a refund from or be issued a credit memorandum by the manufacturer or importer for the returned beer and seller of beer's inventory that was recalled or considered to present health or safety issues.

(f) Notwithstanding subdivision (a), a licensee may accept the return of unsold and unopened beer from an organization that obtained a temporary license pursuant to Section 24045 or 24045.1. The licensee may credit the account of the organization in an amount not to exceed the original sales price of the returned beer, provided that the beer has been paid for in full.

(g) (1) Notwithstanding subdivision (a), an on-sale retail licensee that purchases beer for sale at an event for which a catering authorization is issued by the department pursuant to Section 23399 may return the unused and unopened beer to the original selling licensee at the conclusion of the catered event or upon expiration of the catering authorization, provided the beer was purchased for use or sale only at that event and the on-sale retail licensee does not also provide any beer for use or sale at the event from its permanent licensed premises. The on-sale retail licensee holding the catering authorization shall record and maintain a record of the inventory of all unused and unopened beer to be returned at

the conclusion of the catering event. The original selling licensee shall prepare an invoice to reflect the returned beer that shall reference the original sales invoice and shall provide the on-sale retail licensee holding the catering authorization with a copy of the invoice.

(2) Any beer returned pursuant to this subdivision must be returned to the original selling licensee at the conclusion of the catered event or upon expiration of the catering authorization. The original selling licensee may credit the account of the on-sale retail licensee in an amount not to exceed the original sales price of the returned beer, provided the beer has been paid for in full.

23104.3. A retail licensee may make a return of distilled spirits to the wholesaler, rectifier or manufacturer from whom he purchased the distilled spirits or to the successor of such wholesaler, rectifier or manufacturer, or in the event that such wholesaler, rectifier or manufacturer has ceased carrying on a business licensed under this division and there is no successor to such business, the return may be made to some other wholesaler, rectifier or manufacturer after the retail licensee has obtained from the department approval to make such return. A retail licensee may exchange a package of distilled spirits for a similar package of the same brand with any manufacturer, rectifier or wholesaler whether or not the retail licensee had purchased the package from the manufacturer, rectifier or wholesaler with whom he is exchanging it for a similar package of the same brand.

What Regulations Apply to Sales or Returns by Insurers, Former Licensees or Surrendered Licenses?

Business and Professions Code Section 23100 addresses returns by Insurers, Former Licensees or Surrendered Licenses.

CCR Rule 79(c) – Licensee

CCR Rule 79 (e) – Insurers

Full text of Section 23100 is below:

Any person in possession of a stock of lawfully acquired alcoholic beverages following the revocation of, suspension of, voluntary surrender of, or failure to renew, the license may sell the stock, under supervision of the department in the manner as the

department by rule provides, to licensees authorized to sell the alcoholic beverages.

What must a Former Licensee or someone who Surrendered a License do before returning Inventory in Storage back to a Supplier?

Form ABC-273 must be filled out. This form can be found at the following link <http://www.abc.ca.gov/FORMS/ABC273.pdf>. This form is the Application by a former Licensee to sell Stock of Alcoholic Beverages. The form is needed to address the return of inventory. This form must be completed to “sell” or return for refund to a supplier any alcoholic beverages that remain in inventory once the ABC license is surrendered or cancelled per Rule 65. The form is submitted to the local ABC office.

Are there any Tied House Exceptions for Natural Disasters?

California Business and Professions Code Section 25511 addresses Tied-House Exceptions following Natural Disasters. Below is the complete text of the section: 25511. Notwithstanding any other provision of this division, a manufacturer or wholesaler, or any officer, director, or agent of any of those persons may furnish, give, rent, lend, or sell, directly or indirectly, any equipment, fixtures, or supplies, other than alcoholic beverages, to a retailer whose equipment, fixtures, or supplies were lost or damaged as a result of a natural disaster and whose premises are located in an area proclaimed to be in a state of disaster by the Governor.

This section does not apply to transactions that occur three months or more after the Governor proclaims an area to be in a state of disaster.

Nothing in this section is intended to affect or otherwise limit Section 23104.1, 23104.2, or 23104.3.