

removed from this State, be stored only in bonded or licensed public warehouses and in private warehouses. Such warehouses shall keep and maintain for a period of three years records showing any change in possession of such alcoholic beverages, and shall upon demand make such records available to the Department of Alcoholic Beverage Control, the State Board of Equalization, and to the licensed California seller of such alcoholic beverages.

Authority cited: Sections 23107, 23108, 23387 and 25750, Business and Professions Code; Section 22 of Article XX, California Constitution.

HISTORY:

1. New section filed 4-7-58; designated effective 5-15-58 (Register 58, No. 6). For history of former Section 54, see Register 55, No. 4.
2. Amendment filed 10-25-63; effective thirtieth day thereafter (Register 63, No. 19).
3. Amendment filed 11-1-63, as an emergency; designated effective 11-24-63. Certificate of Compliance included (Register 63, No. 19).
4. Amendment filed 8-6-70; designated effective 9-8-70 (Register 70, No. 32).

ARTICLE 11.

Applications and Licenses

Section

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§ 55. On-Sale General License for Seasonal Business.

Authority cited: Sections 23820 and 25750, Business and Professions Code; Section 22, Article XX, California Constitution. Reference: Sections 23038, 23320, 23396, 23399, 23826.8, 24040, 24042, 24044, 24045, 24048, 24048.1, 24048.2, 24070, 24070.1, 24071, 24072, 24073-24076 and 24082, Business and Professions Code.

HISTORY:

1. New subsection (e) filed 1-12-79 as an emergency; effective upon filing (Register 79, No. 2). For prior history, see Registers 63, No. 19; 73, No. 29; 73, No. 32; 77, No. 25; and 78, No. 14.
2. Certificate of Compliance filed 4-4-79 (Register 79, No. 14).
3. Repealer filed 11-6-96; operative 12-6-96 (Register 96, No. 45).

§ 55.1. Applicant/Licensee Verification of Eligibility; Limitations on Alcoholic Beverage Licenses for Aliens.

~~(a) All eligibility requirements contained herein shall be applied without regard to the race, creed, color, gender, religion, disability, or national origin of the individual applying for the public benefit. This section shall apply to any natural person renewing or applying for the entire direct interest in a license issued by the Department of Alcoholic Beverage Control.~~

~~(b) Pursuant to Section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (Pub. L. No. 104-193 (PRWORA)), 8 U.S.C. § 1621, and notwithstanding any other provision of this division, aliens who are not qualified aliens, nonimmigrant aliens under the Immigration and Nationality Act (INA) (8 U.S.C. § 1101 et seq.), or aliens paroled into the United States under Section 212(d)(5) of the INA 8 U.S.C. § 1182(d)(5)), for less than one year, are~~

not eligible to receive any license issued pursuant to the ABC Act, BPC § 23000 et seq.

~~c) A qualified alien is an alien who, at the time he or she applies for, receives, or attempts to receive a public benefit, is, under Section 431(b) of the PRWORA (8 U.S.C. § 1641(b)), any of the following:~~

~~(1) An alien lawfully admitted for permanent residence under the INA (8 U.S.C. § 1101 et seq.).~~

~~(2) An alien who is granted asylum under Section 208 of the INA (8 U.S.C. § 1158).~~

~~(3) A refugee who is admitted to the United States under Section 207 of the INA (8 U.S.C. § 1157).~~

~~(4) An alien who is paroled into the United States under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)) for a period of at least one year.~~

~~(5) An alien whose deportation is being withheld under Section 243(h) of the INA (8 U.S.C. § 1253(h)) (as in effect immediately before the effective date of Section 307 of division C of Public Law 104-208) or Section 241(b)(3) of such Act (8 U.S.C. § 1251(b)(3)) (as amended by Section 305(a) of division C of Public Law 104-208).~~

~~(6) An alien who is granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980. 8 U.S.C. § 1153(a)(7). See editorial note under 8 U.S.C. § 1101, "Effective Date of 1980 Amendment."~~

~~7) An alien who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980 (8 U.S.C. § 1522 note)).~~

~~8) An alien who, under Section 431(c)(1) of the PRWORA (8 U.S.C. § 1641(c)(1)), meets all of the conditions of subparagraphs (A), (B), (C), and (D) below:~~

~~(A) The alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent of the alien consented to, or acquiesced in, such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest if the victim is a minor, or forced prostitution shall be considered as acts of violence.~~

~~(B) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Director of the Department of Alcoholic Beverage Control.~~

For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

~~1. The benefits are needed to enable the alien to become self-sufficient following separation from the abuser.~~

~~2. The benefits are needed to enable the alien to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien from the abuser.~~

~~3. The benefits are needed due to a loss of financial support resulting from the alien's separation from the abuser.~~

~~4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien to lose his or her job or to earn less or to require the alien to leave his or her job for safety reasons.~~

~~5. The benefits are needed because the alien requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.~~

~~6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into a day care for fear of being found by the abuser).~~

~~7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.~~

~~8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien and/or to care for any resulting children.~~

~~9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien had when living with the abuser.~~

~~(C) The alien has a petition that has been approved or has a petition pending which sets forth a prima facie case for:~~

~~1. status as a spouse or child of a United States citizen pursuant to clause ii), (iii), or iv) of Section 204(a)(1)(A) of the INA (8 U.S.C. § 1154(a)(1)(A) ii), (iii) or (iv));~~

~~2. classification pursuant to clause ii) or (iii) of Section 204(a)(1)(B) of the INA (8 U.S.C. § 1154(a)(1)(B)(ii) or (iii)),~~

~~3. suspension of deportation and adjustment of status pursuant to section 244(a)(3) of the INA (8 U.S.C. sec.1254) as in effect prior to April 1, 1997 [Pub.L. 104-208, sec. 501 effective September 30, 1996, pursuant to sec. 591]; Pub.L. 104-208, sec. 304 (effective April 1, 1997, pursuant to sec. 309); Pub.L. 105-33, sec. 5581 effective pursuant to sec. 5582)) (incorrectly codified as "cancellation of removal under section 240A of such Act [8 USCS sec. 1229b] (as in effect prior to April 1, 1997);~~

~~4. status as a spouse or child of a United States citizen pursuant to clause (i) of Section 204(a)(1)(A) of the INA (8 U.S.C. § 1154(a)(1) (A)) or classification pursuant to clause i) of Section 204(a)(1)(B) of the INA (8 U.S.C. § 1154(a)(1)(B)); or~~

~~5. cancellation of removal pursuant to section 240A(b)(2) of the INA (8 U.S.C. § 1229b(b)(2)).~~

~~D) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.~~

~~9) An alien who, under Section 431(c)(2) of the PRWORA (8 U.S.C. § 1641(c)(2)), meets all of the conditions of subparagraphs A), B), C), D) and (E) below:~~

~~(A) The alien has a child who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent consented or acquiesced to such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered as acts of violence.~~

~~(B) The alien did not actively participate in such battery or cruelty.~~

~~(C) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Director of the Department of Alcoholic Beverage Control. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:~~

~~1. The benefits are needed to enable the alien's child to become self-sufficient following separation from the abuser.~~

~~2. The benefits are needed to enable the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien's child from the abuser.~~

~~3. The benefits are needed due to a loss of financial support resulting from the alien's child's separation from the abuser.~~

~~4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien's child to lose his or her job or to earn less or to require the alien's child to leave his or her job for safety reasons.~~

~~5. The benefits are needed because the alien's child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.~~

~~6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's child's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser).~~

~~7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.~~

~~8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien's child and/or to care for any resulting children.~~

~~9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien's child had when living with the abuser.~~

~~(D) The alien meets the requirements of subsection (c)(8)(C) above.~~

~~E) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.~~

~~(10) An alien child who meets all of the conditions of subparagraphs (A), (B) and (C) below:~~

~~(A) The alien child resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a member of the spouse's family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being~~

the victim of any act or threatened act of violence including any forceful detection, which results or threatens to result in physical or mental injury. Rape, molestation, incest if the victim is a minor, or forced prostitution shall be considered as acts of violence.

(B) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Director of the Department of Alcoholic Beverage Control. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

1. The benefits are needed to enable the alien child's parent to become self-sufficient following separation from the abuser:

2. The benefits are needed to enable the alien child's parent to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien child's parent from the abuser:

3. The benefits are needed due to a loss of financial support resulting from the alien child's parent's separation from the abuser:

4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien child's parent to lose his or her job or to earn less or to require the alien child's parent to leave his or her job for safety reasons:

5. The benefits are needed because the alien child's parent requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty:

6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien child's parent's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser):

7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser:

8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien child's parent and/or to care for any resulting children:

9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien child's parent had when living with the abuser:

(C) The alien child meets the requirements of subsection (c)(8)(C) above:

d) For purposes of this section, "nonimmigrant" is defined the same as in Section 101(a)(15) of the INA (8 U.S.C. § 1101(a)(15)):

(e) For purposes of establishing eligibility for a license issued by the Department of Alcoholic Beverage Control pursuant to the ABC Act (B.P.C. § 2300 et seq.), all of the following must be met:

(1) The applicant must declare himself or herself to be a citizen of the United States or a qualified alien under subsection (c), a nonimmigrant alien under subsection (d), or an alien paroled into the United States for less than one year under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)). The alien shall declare that status through use of the "Statement of Citizenship, Alienage, and Immigration Status for State Public Benefits," Form ABC-69:

(2) The applicant must present documents of a type acceptable to the Immigration and Naturalization Service (INS) which serve as reasonable evidence of the applicant's declared status. A fee receipt from the INS for replacement of a lost, stolen, or unreadable INS document is reasonable evidence of the alien's declared status:

(3) The applicant must complete and sign Form ABC-69:

(4) Where the documents presented do not on their face appear to be genuine or to relate to the individual presenting them, the government entity that originally issued the documents shall be contacted for verification. With regard to naturalized citizens and derivative citizens presenting certificates of citizenship and aliens, the INS is the appropriate government entity to contact for verification. The Department shall request verification from the INS by filing INS Form G-845 with copies of the pertinent documents provided by the applicant with the local INS office. If the applicant has lost his or her original documents or presents expired documents or is unable to present any documentation evidencing his or her immigration status, the applicant shall be referred to the local INS office to obtain documentation:

(5) The type of documentation referred to the INS for verification pursuant to INS Form G-845 shall include the following:

(A) The document presented indicates immigration status but does not include an alien registration or alien admission number:

(B) The document is suspected to be counterfeit or to have been altered:

(C) The document includes an alien registration number in the A60 000 000 (not yet issued) or A80 000 000 (illegal border crossing) series.

(D) ~~The document is one of the following: an INS Form I-181b notification letter issued in connection with an INS Form I-181 Memorandum of Creation of Record of Permanent Residence; an Arrival-Departure Record (INS Form I-94) or a foreign passport stamped "PROCESSED FOR I-551, TEMPORARY EVIDENCE OF LAWFUL PERMANENT RESIDENCE" that INS issued more than one year before the date of application for the license issued by the Department of Alcoholic Beverage Control pursuant to the ABC Act.~~

(G) ~~If the INS advises that the applicant has citizenship status or immigration status which makes him or her a qualified alien, a non-immigrant or alien paroled for less than one year under section 212(d)(5) of the INA, the INS verification shall be accepted. If the INS advises that it cannot verify that the applicant has citizenship status or an immigration status that makes him or her a qualified alien, a non-immigrant or alien paroled for less than one year under section 212(d)(5) of the INA, benefits shall be denied and the applicant notified pursuant to the ABC Act regular procedures of his or her rights to appeal the denial of benefits.~~

(f) ~~Pursuant to Section 434 of the PRWORA (8 U.S.C. § 1644), where the Department of Alcoholic Beverage Control reasonably believes that an alien is unlawfully in the State based on the failure of the alien to provide reasonable evidence of the alien's declared status, after an opportunity to do so, said alien shall be reported to the Immigration and Naturalization Service.~~

(g) ~~Provided that the alien has completed and signed Form ABC-69, revised 2/98, under penalty of perjury, eligibility for renewal of a license shall not be delayed, denied, reduced or terminated while the status of the alien is verified.~~

(h) ~~Pursuant to Section 432(d) of the PRWORA (8 U.S.C. § 1642(d)), a nonprofit charitable organization that provides federal, state or local public benefits shall not be required to determine, verify, or otherwise require proof of eligibility of any applicant or beneficiary with respect to his or her immigration status or alienage.~~

(i) ~~Any applicant who is determined to be ineligible pursuant to subsection (b) and (e) or who was made eligible for an alcoholic beverage license whose license is terminated, suspended, or reduced pursuant to subsections (b) and (e), is entitled to a hearing, pursuant to Business and Professions Code section 24300.~~

(j) ~~Failure to comply with this section shall be cause for revocation of the license held contrary to these provisions.~~

~~**Authority cited:** Section 22, California Constitution, Article XX; and Sections 23950, 23952, 23958 and 25750; Business and Professions Code. Reference: 8 U.S.C. Sections 1621, 1641 and 1642.~~

HISTORY:

- ~~1. New section filed 3-2-98 as an emergency; operative 3-2-98 (Register 98, No. 10). A Certificate of Compliance must be transmitted to OAL by 6-30-98 or emergency language will be repealed by operation of law on the following day.~~
- ~~2. Repealed by operation of Government Code section 11346.1(g) (Register 99, No. 4).~~
- ~~3. New section filed 1-19-99; operative 2-18-99 Register 99, No. 4).~~

§ 55.5. On-Sale Licenses for Boats.

(a) Pursuant to Business and Professions Code sections 23321.6, subject to the statutory conditions, the Department may issue all the following:

- 1) an on-sale beer fishing party boat license, type 44;
- 2) an on-sale beer and wine boat license, type 45; and
- 3) an on-sale general boat license, type 54.

(b) Pursuant to Business and Professions Code sections 23321.7, subject to the statutory conditions, the Department may issue all the following:

- 1) an on-sale general vessel license, type 56; and
- 2) An on-sale general bona fide public eating place intermittent dockside vessel license, type 62.

(A) Type 62 licenses shall be issued for each vessel operated by the licensee, and each vessel must hold a separate type 62 license for each county in which it operates.

(c) Licenses issued under this section shall have no off-sale or delivery privileges.

(d) Licenses issued under this section shall authorize sales of alcoholic beverages only to passengers and off-duty employees. For purpose of this section, the term "passengers" shall mean members of the public who have purchased a ticket to travel upon the boat or vessel, and the ticket purchased is not just for the purpose of boarding the boat or vessel to purchase and consume alcoholic beverages.

(e) Licenses issued pursuant to this section must be held by the owner, lessee, or operator of a boat operated or navigated by a person duly licensed by the United States Coast Guard carrying passengers for hire, or qualified persons who operate as concessionaires on publicly or privately owned, leased, or operated boats navigated by a person duly licensed by the United States Coast Guard carrying passengers for hire.