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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 9. ALCOHOLIC BEVERAGES [23000 - 25762] (*Division 9 added by Stats. 1953, Ch. 152.*)

CHAPTER 2. Authorized Unlicensed Transactions and Exemptions [23100 - 23113] (*Chapter 2 added by Stats. 1953, Ch. 152.*)

23100. 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.

(*Repealed and added by Stats. 2001, Ch. 657, Sec. 2. Effective January 1, 2002.*)

23101. Any bank, trust company, or financial institution owning or possessing alcoholic beverages or warehouse receipts therefor as security for an obligation or as a result of enforcement of a security interest may, after permission has been given by the department, sell the alcoholic beverages or warehouse receipts to a licensee authorized to sell for resale such alcoholic beverages or such warehouse receipts.

(*Amended by Stats. 1965, Ch. 865.*)

23102. (a) On the death, insolvency or incompetency to act of a natural person who is a licensee, the privileges of the license may be exercised by a competent surviving colicensee for thirty (30) days or until an administrator, executor, guardian, conservator, receiver, trustee or assignee for the benefit of creditors of the estate of the deceased, incompetent or insolvent licensee has been appointed, whichever first occurs. If there is no competent surviving colicensee, the privileges of the license may be exercised by any person acting on behalf of the deceased or incompetent licensee or his estate.

(b) At the end of the period permitted by subsection (a) of this section the privileges of the license may be exercised for sixty (60) days without transfer and thereafter upon transfer by the administrator, executor, guardian, conservator, receiver, trustee or assignee for the benefit of creditors of the estate of the deceased, incompetent or insolvent licensee, acting jointly with any competent surviving colicensee if such joint action is required by law. The sixty (60) day period provided for in this subsection may be extended by the department for good cause.

(c) If prior to the expiration of the period permitted by subsection (b) and any extension thereof there has been filed and is pending an application to transfer the license pursuant to Section 24071 or otherwise, the persons exercising the privilege of the license under subsection (b) may continue to do so until such application is finally granted or denied.

(d) If the license was issued to a taxpayer as defined in Section 32005 of the Revenue and Taxation Code, the person exercising the privileges of the license hereunder shall be deemed to be a taxpayer and shall file an appropriate bond for the purposes of Part 14 (commencing at Section 32001) of Division 2 of the Revenue and Taxation Code.

(*Amended by Stats. 1977, Ch. 338.*)

23104. Any insurer may, or any common carrier acting as an insurer for losses to persons shipping alcoholic beverages may, after permission has been granted by the department, take possession of and sell any alcoholic beverages the containers of which have been damaged by fire or otherwise to licensees who are authorized to sell the alcoholic beverages. Any licensee so qualified may purchase and accept delivery of the alcoholic beverages from the insurer or common carrier so authorized to sell. This permission extends only to alcoholic beverages owned by a licensee and insured against loss or damage by the insurer or common carrier applying for the permission. Alcoholic beverages so sold shall be labeled or otherwise identified, prior to and at the time of sale, as distress merchandise, salvaged from fire, wreck, or similar catastrophe, and such label or other identification shall be affixed over the regular label of the merchandise, and shall provide thereon that it was not affixed by the manufacturer.

(*Amended by Stats. 1959, Ch. 819.*)

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.

(Amended by Stats. 1996, Ch. 124, Sec. 5. Effective January 1, 1997.)

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. A wholesaler or manufacturer, or any successor thereto, shall not 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 the licensee 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 similar quality of a brand produced or sold by the same manufacturer, or of another manufacturer if the original manufacturer has ceased doing business, 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 recognize a season or a holiday 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) (1) 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, safety, or product quality 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 or quality-controlled product 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, safety, or product quality issues. The returned beer may be exchanged for identical product, if safe inventory or quality-controlled product inventory is available, or the seller of beer may elect to receive either 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, safety, or product quality issues.

(2) Returns for manufacturer or importer product quality issues pursuant to this subdivision are subject to department approval, and shall not include the return of beer due to the aging of beer.

(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.

(Amended by Stats. 2024, Ch. 218, Sec. 1. (AB 1940) Effective January 1, 2025.)

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.

(Amended by Stats. 1955, Ch. 447.)

23104.4. An executor or administrator of the estate of a deceased person who was not a licensee at the time of his death but in whose estate there is included an inventory of alcoholic beverages, or the guardian or conservator of the estate of an incompetent person in whose estate there is included an inventory of alcoholic beverages, is authorized to sell such alcoholic beverages to a licensee authorized to sell the same in accordance with regulations prescribed by the department. Nothing in this division prevents

or restricts the sale to a nonlicensee of bottled wine included among such inventory of alcoholic beverages by such executor, administrator, guardian, conservator, or an auctioneer acting as an agent of any of the foregoing when the sale is in compliance with Section 24045.8.

(Amended by Stats. 1981, Ch. 212, Sec. 1.)

23104.5. A sheriff or any other person appointed by a court of competent jurisdiction may sell alcoholic beverages pursuant to a writ of execution to satisfy a judgment, or to execute a court order, to licensees authorized to sell such alcoholic beverages. Nothing in this division prevents or restricts the sale to a nonlicensee of bottled wine included among such alcoholic beverages by such sheriff or court appointee, when such sale is in compliance with Section 24045.8.

(Amended by Stats. 1981, Ch. 212, Sec. 2.)

23104.6. (a) Any nonlicensed person owning bottled vintage wine purchased by that person at retail, is authorized to sell that wine to a licensee authorized to sell that wine if each bottle has a permanently affixed label stating that the wine was acquired from a private collection.

(b) "Vintage wine," as used in this section, means bottled white, rose, or sparkling wine which is not less than five years old or bottled red wine which is not less than 10 years old.

(Added by Stats. 1985, Ch. 421, Sec. 1.)

23105. In accordance with rules prescribed by the department, a warehouseman may sell alcoholic beverages to enforce the lien provided for by the Warehouse Receipts Act only to licensees authorized to sell the alcoholic beverages. Notice of the time and place of the sale shall be given to the department prior to the sale.

(Amended by Stats. 1955, Ch. 447.)

23106. (a) Wine stored in a winery or wine cellar bonded under the internal revenue laws of the United States and brandy in bulk stored in an internal revenue bonded warehouse may be stored by or for any licensee without the necessity of any license by the person furnishing or providing the storage space.

(b) Beer and wine upon which excise taxes have been paid to the state at the rate fixed under Part 14 of Division 2 of the Revenue and Taxation Code may be stored by or for any licensee in any private or public warehouse or elsewhere in this state without the necessity of any license by the person furnishing or providing the storage space or any special additional license by the licensee.

(c) Any other alcoholic beverage may, without the necessity of any additional license, be stored by or for a licensee in private warehouses approved by the department, if within the limits of the county in which the licensee's licensed premises are located, or in a public warehouse within that county, or may be stored in bond in a public warehouse outside that county if the public warehouse is also a United States customs bonded warehouse, a United States internal revenue bonded warehouse, or a United States bonded wine cellar. An application for the approval of a private warehouse shall be accompanied by a fee of one hundred seventy dollars (\$170). This fee may be adjusted by the department pursuant to subdivisions (d) and (e) of Section 23320.

(Amended by Stats. 2019, Ch. 29, Sec. 6. (SB 82) Effective June 27, 2019.)

23107. Any person may, in accordance with rules and regulations to be prescribed by the department, purchase and take delivery of alcoholic beverages within this State for delivery or use without the State and may, without obtaining any license in this State, export the same from this State within 90 days from the date of such purchase.

(Amended by Stats. 1955, Ch. 447.)

23108. Licensees of other states may purchase bulk brandy produced in this State and stored in an internal revenue bonded warehouse in this State or may purchase warehouse receipts covering the brandy for storage in this State, and may subsequently, without obtaining any license therefor in this State, export the brandy in accordance with the rules prescribed by the department. The sale of brandy or warehouse receipts pursuant to this section by a taxpayer to the purchasing licensee of another state shall be exempt from the excise tax levied by Section 32201 of the Revenue and Taxation Code.

(Amended by Stats. 1963, Ch. 1040.)

23109. Alcoholic beverages in continuous transit through this State are exempt from the provisions of this division only while in continuous transit through this State in the possession or custody of common carriers. The department may require affidavits of any person on forms prescribed by the department and may require any such shipments to be checked in and checked out at the boundaries of the State. Any person refusing to make the affidavits required or refusing to check in or check out the alcoholic beverages is guilty of a misdemeanor.

(Amended by Stats. 1955, Ch. 447.)

23110. This division does not apply to the manufacture, sale, or use of completely denatured ethyl alcohol or special denatured ethyl alcohol, as these substances are defined in the various statutes and regulations of the United States Government relating thereto.

(Added by Stats. 1953, Ch. 152.)

23111. Nothing in this division prevents or restricts the use of tax-free ethyl alcohol under regulation of the Treasury Department of the United States Government by any governmental agency, state or federal, or by any scientific university or college of learning or any laboratory for use exclusively in scientific research, or by any hospital or sanitarium.

(Added by Stats. 1953, Ch. 152.)

23112. Nothing in this division prevents or restricts the use of tax-free alcohol or of industrial alcohol or other distilled spirits or wine under regulation of the United States Government in the manufacture of any of the following products, if the products are unfit for beverage use:

- (a) Medicinal, pharmaceutical, or antiseptic products, including prescriptions compounded by registered pharmacists.
- (b) Toilet products.
- (c) Flavoring extracts.
- (d) Sirups.
- (e) Food products.
- (f) Scientific, chemical, or industrial products.

(Added by Stats. 1953, Ch. 152.)

23113. Alcohol sold for the uses mentioned in Section 23111 may be sold tax-free in packages of not less than one-half pint capacity. Alcohol sold to a registered pharmacist for use in compounding prescriptions as provided in Section 23112 may be sold to the pharmacist in packages of not less than one-half pint capacity if the distilled spirits excise tax is reported and paid by the licensee selling the alcohol to the pharmacist.

The sales of alcohol authorized to be made by this section may be made by those licensees who are authorized to sell alcohol for use in the trades, professions, or industries.

(Added by Stats. 1953, Ch. 152.)