



**DATE:** April 25, 2013  
**TO:** Members  
California Beer & Beverage Distributors  
**FROM:** Becky Stolberg  
Vice President  
**RE:** Laws Governing Returns or Exchanges of Beer

Many CBBBD members have received requests from retailers to replace broken or damaged malt beverage packages. Some of the packages for which replacement product is being requested may have been damaged or broken after being delivered by the beer distributor. If distributors comply by replacing product that was not broken prior to or at the time of delivery, they are violating sections of the ABC Act that govern returns and exchanges of beer.

California's Business and Professions Code §23104.2 permits permanent retail license holders to return beer for credit if a package has been broken or otherwise damaged before or at the time of actual delivery. Director of Alcoholic Beverage Control Jay Stroh further emphasized, in an April 28, 1993, bulletin, that product replacement is authorized under this section only if the breakage happens prior to or at the time of delivery stating, ***"Under no circumstances may credit, product or other compensation be furnished to a retailer for 'breakage' which occurs as a result of handling by the retailer or his or her employees or the retailer's customers."*** In a recent conversation with ABC, I asked whether the department would publish an updated bulletin to industry members on this subject. I was told that the department does not feel it necessary to update the 1993 bulletin because its position has remained unchanged. The department's preference would be to proceed with enforcement against any licensee who is found to be in violation of these provisions or the department's interpretive bulletin.

The purpose of this memorandum is to ensure that all CBBBD members and their customers are fully aware of the laws governing exchanges and return of beer. Because both the supplier and the retailer are obviously participants in any unlawful product return transaction, both licensees may be subject to administrative suspension or revocation. In aggravated cases, when the return of product may be to disguise a consignment sale or to provide the retailer with a "gift of something of value", constituting commercial bribery, all parties involved are subject to misdemeanor criminal liability.

#### OUT OF CODE PRODUCT

If beer has remained in the retailer's licensed premise beyond its "code date", a distributor may pick up the old beer and exchange it for the identical quantity and brand of beer originally sold to the retailer. **THERE IS NO TIME LIMIT OR REQUIREMENT FOR ABC APPROVAL OF THIS TYPE OF EXCHANGE. BEER MAY ONLY BE EXCHANGED BY THE DISTRIBUTOR (OR SUCCESSOR DISTRIBUTOR) WHO ORIGINALLY SOLD THE BEER TO THE RETAIL ACCOUNT FOR THE SAME QUANTITY OF THE IDENTICAL PRODUCT.**

#### BROKEN OR DAMAGED PACKAGES

If a package has been broken or otherwise damaged before or at the time of actual delivery to the retailer, a retailer has 15 days from the date of delivery of the order to, either receive an exchange for an identical package, or receive a credit from the distributor. Beer packages that have been broken by a retailer, its employees or by a customer of a retailer may not be returned for credit or exchanged for new product. **THE EXCHANGE FOR PRODUCT OR REQUEST FOR A CREDIT MUST BE COMPLETED WITHIN 15 DAYS OF THE DATE OF DELIVERY. THERE IS NO PROVISION FOR CORRECTION FOR BREAKAGE DISCOVERED AFTER THE 15-DAY TIME PERIOD.**

#### **CALIFORNIA BEER & BEVERAGE DISTRIBUTORS**

DELIVERIES IN ERROR

If beer delivered was not the brand or size container ordered by the retailer, or the amount delivered was other than the amount ordered, deliveries may be corrected by providing replacement product or issuing credit for product not delivered. **THE CORRECTION MUST BE COMPLETED WITHIN 15 DAYS OF THE DATE OF DELIVERY.**

SEASONAL AND TEMPORARY LICENSEES

A distributor may credit the account of a retail licensee for the return of product if the licensee operates at seasonal resorts, including summer and winter resorts, or at sporting or entertainment facilities, including racetracks, arenas, and concert halls. The retail premise must go "dark" for a period of time exceeding 15 days. **UNSOLD BEER MAY BE RETURNED TO THE DISTRIBUTOR WITHOUT ABC APPROVAL. THE SEASONAL OR TEMPORARY LICENSEE MUST PROVIDE NOTICE TO THE DISTRIBUTOR WITHIN 15 DAYS OF THE DATE OPERATIONS CEASE.**

SPECIAL DAILY LICENSEES (NONPROFITS)

A distributor, manufacturer or importer may accept the return of unsold and unopened beer from an organization that obtained a Special Daily license pursuant to Business & Professions Code Section 24045 or 24045.1. A credit in an amount not to exceed the original sales price of the returned beer may be issued if the beer has been paid in full.

SURRENDER OF THE RETAIL LICENSE

A distributor may credit the account of a retailer if the permanent license is surrendered to the Department under Rule 65, or if the license has been suspended or revoked for failure to pay renewal fees.

SEASONAL OR BEER DISCONTINUED BY THE SUPPLIER

A distributor, manufacturer, or any successor thereto, may exchange beer discontinued by the supplier or produced only on a seasonal basis if the beer is exchanged for beer produced or sold by the same manufacturer and the value of the replacement beer is not greater than the original sales price to the retail licensee. **NOTE THAT A DISCONTINUED BEER MAY NOT BE REINTRODUCED INTO THE SAME CALIFORNIA MARKET AREA FOR A PERIOD OF 12 MONTHS. A SEASONAL BEER MAY NOT BE REINTRODUCED INTO THE SAME CALIFORNIA MARKET AREA FOR A PERIOD OF SIX MONTHS. ALL EXCHANGES OF DISCONTINUED AND SEASONAL BEER ARE SUBJECT TO ABC APPROVAL IN WRITING. A CREDIT MAY NOT BE ISSUED IN LIEU OF EXCHANGE FOR PRODUCT.**

HEALTH AND SAFETY RECALLS

A distributor, manufacturer, or any successor thereto may pick up beer that is recalled or that is considered by a manufacturer, importer or governmental entity to present health or safety issues, and may exchange the recalled product for an identical quantity of the same brand if safe product is available, issue a deferred exchange memorandum showing that the beer was picked up and is to be replaced when safe inventory is available, or issue credit for the recalled product.

Please don't hesitate to call me at 800/952-8308 if you or your customers have any questions concerning this memorandum. Clarification of these laws may also be obtained from the Trade Enforcement Division of the Department of Alcoholic Beverage Control at 916/419-2574.

**West's Annotated California Codes**  
**Business and Professions Code**  
**Division 9. Alcoholic Beverages**  
**Chapter 2. Authorized Unlicensed Transactions and Exemptions**

**§23104.2 Return of beer to seller by retailer; seasonal and temporary licensees; acceptance of returned beer by wholesaler or manufacturer; credit on account; beer with health or safety issues; acceptance of unsold and unopened beer by licensee**

(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.

*Business & Professions Code Section 23104.2 continued*

(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 any time 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 in full.

*CREDIT(S) (Added by Stats.1957, c. 1409, p. 2743, § 1. Amended by Stats.1965, c. 1128, p. 2775, § 1; Stats.1974, c. 270, p. 496, § 1; Stats.1995, c. 97 (S.B.436), § 1; Stats.1998, c. 273 (S.B.452), § 1; Stats.1999, c. 83 (S.B.966), § 18; Stats.2001, c. 657 (S.B.1035), § 3; Stats.2008, c. 508 (A.B.3071), § 2; Stats.2012, c. 163 (S.B.1393), § 1.)*

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
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Contact: Donald D. Decious  
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April 28, 1993

BULLETIN

It has come to the attention of the Department that certain retail and wholesaler/producer licensees routinely process returns of alcoholic beverages, particularly beer, as "breakage" without regard for the time limits or other restrictions that apply to product return transactions.

The term "breakage" is not defined by statute. The Department, however, interprets the term to refer to product containers that are actually broken when they arrive at the retailer's premises. In the case of beer, the product return statute (§23104.2) is explicit with respect to "breakage". It states, in pertinent part, "...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 in lieu of exchange for an identical package..." A credit memorandum for broken/damaged beer containers must be issued within 15 days from the date the affected beer was delivered to the retailer.

As to wine and distilled spirits, broken or damaged merchandise may only be exchanged for an identical quantity and identical merchandise. Such exchanges are permissible only if they occur within 15 days from the receipt of the goods by the retailer. Exchanges for credit or cash are strictly prohibited. Moreover, a wholesaler/producer is not required by statute or regulation to accept a return or make an exchange; the supplier may do so at its discretion.

Under no circumstances may credit, product or other compensation be furnished to a retailer for "breakage" which occurs as a result of handling by the retailer or his or her employees or the retailer's customers.

The purpose of the product return statutes (§23104.1 for wine, §23104.2 for beer and §23104.3 for spirits) contained in the Alcoholic Beverage Control Act is to prohibit unlawful business practices that may constitute consignment sales, commercial bribery or similar conduct. The penalties for failing to comply with these statutes include possible misdemeanor criminal liability as well as administrative sanctions against the licenses of all parties involved.

Questions concerning this bulletin, or concerning the procedures to return products in situations other than those involving "breakage" may be directed to the Department's Headquarters office at (916) 445-4687.

  
Jay B. Stroh  
Director

Distribution: C-3, F