



Drinking Through a Pandemic: Will Relaxed Alcohol Sales During COVID-19 Survive in California?

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Since the COVID-19 outbreak in the U.S. in March, the California Department of Alcoholic Beverage Control (the “ABC”) has issued various regulatory relief measures, making it easier for restaurants, bars and other industry establishments in the state to sell alcohol at retail to customers. These measures were taken to ease the severe economic impact of the pandemic on the hospitality industry, and they certainly have helped. However, the question remains: What will the future look like when these establishments re-open for business under a “new normal”?

Prior and Current ABC Regulations for Alcohol Retailers

The general rules pertaining to various retail alcoholic beverage practices, along with the ABC’s regulatory relief, are summarized below:

Business Operation

Normal Regulation

Relief during COVID-19

Sales of Alcoholic Beverages To-Go

Licensed restaurants and bars and holders of “club licenses” may not sell alcoholic beverages for consumption off the licensed premises.

Now allowed; note however:

- alcoholic beverages may only be sold to customers by pick-up or delivery in conjunction with meals prepared at the licensed premises or, if the licensed premises do not have kitchen facilities, meals prepared by a “partnered” meal provider^[1];
- for holders of club licenses, sale and delivery of alcoholic beverages must be made to club members only;
- beverages not in a manufacturer’s container must be packaged in a container with a secure lid or cap and in a manner that prevents consumption without removal of the lid or cap; and
- beverages must be transported in the trunk of a vehicle or, if there is no trunk, in an area that is not normally occupied by the driver or passengers.

Sales of Alcoholic Beverages Through Pass-Out Windows

Licensed restaurants and bars may not make sales and deliveries of alcoholic beverages to persons in a car or through pass-out windows outside the licensed premises.

Now allowed.

Delivery of Alcohol to Customers

Delivery of alcohol to customers cannot be free.

Now allowed.

Orders for delivery and payments must be processed at the licensed premises.

Payment (including cash) may be received at the point of delivery away from the licensed premises.

Craft distillers may not deliver distilled spirits off licensed premises.

Now allowed; however, the maximum of 2.25 liters per consumer per day still applies.

Hours of Operation

State law only allows retail licensees to operate between the hours of 2:00 a.m. to 6:00 a.m. Some licenses contain further conditions/restrictions requiring them to close earlier than 2:00 a.m. and open after 6:00 a.m.

Regardless of any conditions imposed on their licenses, hours of operation have been extended to allow off-sale licensees (i.e., grocery stores, liquor stores and convenience stores) to operate for the fully permitted time period between 6:00 a.m. to 2:00 a.m.

Expansion of Licensed Premises Footprint

The on-sale consumption of alcoholic beverages may only take place on the licensed premises.

For counties where temporary stay-at-home orders have been lifted, the ABC may grant temporary authorizations to licensed bars and restaurants to sell alcoholic beverages on adjacent property if such adjacent property is under the control of the license. The ABC has provided the following examples of adjacent property under the control of the licensee:

- indoor or outdoor areas that are accessible within or from the licensed premises that are not currently licensed;
- indoor and outdoor areas under the control of the licensees and one or more other businesses;
- parking lots;
- sidewalks and other public thoroughfares that are closed to public access during the time alcoholic beverages are served or sold; and
- at the ABC’s discretion, other areas within close proximity to the licensed premises that are immediately accessible to the licensee or are secured by and under the control of the licensee.
- A licensee may share use of the adjacent property with one or more licensees; however, all licensees using the adjacent property for alcohol service will be jointly responsible for compliance with applicable law and the conditions imposed on their respective licenses.

Prior and Current ABC Regulations for Alcohol Suppliers (Manufacturers, Wholesalers, and Others)

In addition to the above relief, the ABC has also relaxed certain rules for manufacturers, wholesalers, and other suppliers of wine, beer and distilled spirits.

Business Operation

Normal Regulation

Relief during COVID-19

Returns of Alcoholic Inventory from Retailers to Suppliers

Prohibited

Now allowed.

Credit Extensions

Credit cannot be extended beyond 30 days and delinquent retailers can only purchase inventory from any unpaid supplier on a cash on delivery (“COD”) basis.

Suppliers may now extend credit to retailers beyond 30 days and on such other terms as agreed between the parties.

Delivery Times

Delivery is limited to between 3:00 a.m. and 8:00 p.m. daily, except Sunday.

Suppliers may now deliver inventory between the hours of midnight and 8:00 p.m. daily, except Sunday. However, if a retailer’s license contains restrictions on when deliveries may be accepted, such conditions remain in effect.

Making Distilled Spirits Available for Purposes Other Than Drinking

Prohibited

Licensed distilled spirits manufacturers and craft distillers may produce and provide denatured high proof distilled spirits for use in hand sanitizer or as a disinfectant in accordance with FDA guidance. Also, such distilled spirits may be provided for free to any person so long as they are not (i) used to promote the manufacturer's or distiller's products and/or (ii) provided in exchange for an agreement to buy other products.

The Future of Alcohol Sales and Consumption

The above measures have been a welcome relief to restaurant and bar owners and other retailers as they struggle to deal with the economic fall-out from the various shelter-at-home and safer-at-home orders amid the pandemic. In many instances, these measures are the *only* means by which these businesses have been able to survive to date and, undoubtedly, industry members will want them to remain in place after the crisis has abated. Moreover, these measures have caused changes in consumer preferences and buying habits, which may continue long after COVID-19 has been contained.

However, the ABC in its Frequently Asked Questions has indicated that the above measures are only temporary and are not intended to continue once the pandemic has ended.^[2] As businesses start to re-open and try to recover from the deep impact the pandemic is having on the economy, the big question is whether the ABC will give in to industry and consumer demands to allow these measures to continue (at least in some form) once the pandemic is over. The ABC traditionally looks to the State Legislature to modify existing alcohol laws or enact new ones, as it is the agency charged with implementing and enforcing those laws. However, a groundswell of industry stakeholders and public opinion may cause the ABC to extend these relief measures. Regardless of how this plays out, it is clear that the legal landscape when it comes to alcoholic beverages in California will not look the same when all is said and done. In the meantime, consumers can enjoy their beer, wine and cocktails during these difficult times, and hopefully retailers can survive the economic havoc that the coronavirus has wrought.

[1] A "partnered" meal provider is a business that is regularly engaged in preparing and offering meals for sale to the public, but excludes non-retail licensees. The state's "tied house" laws continue to apply to the relationship with meal providers. The licensee must notify the ABC of the agreement and relationship between the "partnered" meal provider. All orders for food and alcoholic beverages from customers must be received by the licensee. The licensee may then pass the food order and a portion of the payment to the meal provider.

[2] Prior to discontinuing any temporary relief efforts, the ABC does intend to provide licensees with 10 days' prior notice on its website, unless such advanced notice could create a health or safety concern.