

Date of Hearing: July 5, 2017

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

SB 56 (Mendoza) – As Amended May 16, 2017

**SENATE VOTE:** 37-0

**SUBJECT:** Alcoholic beverages: retail licensees: beer returns

**SUMMARY:** States that a retail licensee may return beer to the wholesaler or manufacturer from whom the retail licensee purchased the beer if the beer is returned in exchange for a manufacturer's lite beer, or return of a manufacturer's lite beer in exchange for a manufacturer's regular beer, as specified.

**EXISTING LAW:**

- 1) Establishes the Department of Alcoholic Beverage Control (ABC) and grants it exclusive authority to administer the provisions of the Alcoholic Beverage Control Act (Act) in accordance with laws enacted by the Legislature. This involves licensing individuals and businesses associated with the manufacture, importation, and sale of alcoholic beverages in this state and the collection of license fees or occupation taxes for this purpose.
- 2) Separates the alcoholic beverage industry into three component parts, or tiers, of the manufacturer (including breweries, wineries, and distilleries), wholesaler, and retailer (both on-sale and off-sale). This is referred to as the “Tied-house” law or the “three-tier” system.
- 3) Provides that a retail licensee may return beer to the wholesaler or manufacturer from whom the retail licensee purchased the beer, and the wholesaler or manufacturer may accept that return if the beer is returned in exchange for the identical quantity and brand of beer.
- 4) Provides that errors in delivery may be corrected by the wholesaler or manufacturer who sold the beer. Additionally, provides that 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, 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.
- 5) Allows beer that is recalled or that is considered by a manufacturer, importer, or governmental entity to present health, safety, or product quality issues to be accepted for return at any time from a retailer and be picked up by the seller of beer, as specified.
- 6) Authorizes a wholesaler or manufacturer of beer, with ABC approval, to accept the return of quantities of discontinued or seasonal brands of beer from a retail licensee, provided that the returned beer is exchanged for a quantity of beer of a brand produced or sold by the same manufacturer with a value not greater than the original sales price to the retail licensee of the returned beer.
- 7) Provides additional instances where a wholesaler or manufacturer may accept the return of beer purchased from that wholesaler or manufacturer, in the following circumstances:

- 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) From the holder of a retail license following the revocation of, suspension of, voluntary surrender of, or failure to renew the retail license, and in these circumstances a wholesaler or manufacturer may credit the account of the retailer 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.
- c) From an organization that obtained a temporary daily license, and in these circumstances, 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.
- d) Authorizes an on-sale retail licensee that purchases beer for sale at an event for which a catering authorization is issued by ABC to 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, as specified.

**FISCAL EFFECT:** This bill is keyed non-fiscal by Legislative Counsel.

**COMMENTS:**

Background: According to a bulletin issued by ABC in 1993, the purpose of the product return statues contained in the 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 statues include possible misdemeanor criminal liability as well as administrative sanctions against the licensees of all parties involved.

In addition to specified circumstances, existing law permits the return or exchange of beer for errors in delivery, health and safety recalls, product quality issues, and the identical exchange of out-of-code products.

Some beer manufacturers assign a “code date” to their products to prevent stale or outdated products from remaining in the market. If beer has remained in a retailer’s licensed premise beyond its assigned date, the wholesaler or manufacturer may pick up the out-of-code beer, and exchange the beer for the identical quality and brand of beer originally sold to the retailer. There is no time limit or requirement for ABC approval for this type of exchange. Additionally, beer may only be exchanged by the wholesaler or manufacturer who originally sold the beer to the retailer.

Similarly, beer that has been recalled or that is considered to present health, safety, or product quality issues may be accepted for return at any time from a retailer. Currently, a wholesaler or beer manufacturer may pick up by the recalled beer and exchange it 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.

SB 56 would allow returns of a manufacturer's regular and light beers, provided the exchange is for the identical quantity of beer with a value no greater than the original sales price to the retail licensee and the manufacturer's regular and light beers involved in the exchange are labeled under the same brand name.

Purpose of the bill: According to the author's office, SB 56 has been introduced on behalf of beer distributors in California who want to clarify the law in order to allow the exchange of a beer manufacturer's lower calorie beer for an identical quantity of the beer manufacturer's full calorie beer. For example, distributors would like the flexibility to exchange a case of Budweiser, for a case of Budweiser Select or Bud Light.

In support: The California Beer and Beverage Distributors, the sponsor of this bill, states, "this bill would extend the existing identical exchange exception for beer to permit the exchange of a beer manufacturer's lower calorie beer for an identical quantity of the beer manufacturer's full calorie beer."

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Beer and Beverage Distributors

**Opposition**

Alcohol Justice  
California Alcohol Policy Alliance

**Analysis Prepared by:** Eric Johnson / G.O. / (916) 319-2531