

**ASSEMBLY BILL**

**No. 782**

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**Introduced by Assembly Member Bocanegra**

February 21, 2013

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An act to amend Section 23104.2 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 782, as introduced, Bocanegra. Alcoholic beverage control: licensees: returns.

Under the Alcoholic Beverage Control Act, a wholesaler or manufacturer may accept the return of beer from a retailer only if the beer is returned in exchange for the identical quantity and brand of beer. Existing law provides for exceptions to that provision, including permitting the return of beer from a seasonal or temporary licensee or an annual licensee operating on a temporary basis, permitting the return of unsold and unopened beer from an organization that obtained a specified temporary license, and permitting the return of beer that is recalled or presents a health and safety issue as provided.

This bill would add to the above exceptions, to permit a wholesaler or manufacturer to accept the return of unsold and unopened beer from an organization that obtained a caterer's permit or an event permit, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 23104.2 of the Business and Professions  
2 Code is amended to read:

3       23104.2. (a) Subject to the exceptions specified in subdivision  
4 (b), a retail licensee may return beer to the wholesaler or  
5 manufacturer from whom the retail licensee purchased the beer,  
6 or any successor thereto, and the wholesaler, manufacturer, or  
7 successor thereto may accept that return if the beer is returned in  
8 exchange for the identical quantity and brand of beer. No  
9 wholesaler or manufacturer, or any successor thereto, shall accept  
10 the return of any beer from a retail licensee except when the beer  
11 delivered was not the brand or size container ordered by the retail  
12 licensee or the amount delivered was other than the amount  
13 ordered, in which case the order may be corrected by the wholesaler  
14 or manufacturer who sold the beer, or any successor thereto. If a  
15 package had been broken or otherwise damaged prior to or at the  
16 time of actual delivery, a credit memorandum may be issued for  
17 the returned package by the wholesaler or manufacturer who sold  
18 the beer, or any successor thereto, in lieu of exchange for an  
19 identical package when the return and corrections are completed  
20 within 15 days from the date the beer was delivered to the retail  
21 licensee.

22       (b) Notwithstanding subdivision (a), a wholesaler or  
23 manufacturer, or any successor thereto, may accept the return of  
24 beer purchased from that wholesaler, manufacturer, or successor  
25 thereto, as follows:

26           (1) (A) From a seasonal or temporary licensee if at the  
27 termination of the period of the license the seasonal or temporary  
28 licensee has beer remaining unsold, or from an annual licensee  
29 operating on a temporary basis if at the termination of the  
30 temporary period the annual licensee has beer remaining unsold.

31           (B) For purposes of subparagraph (A), an annual licensee shall  
32 be considered to be operating on a temporary basis if he or she  
33 operates at seasonal resorts, including summer and winter resorts,  
34 or at sporting or entertainment facilities, including racetracks,  
35 arenas, concert halls, and convention centers. Temporary status  
36 shall be deemed terminated when operations cease for 15 days or  
37 more. No wholesaler or manufacturer, or successor thereto, shall  
38 accept the return of beer from an annual licensee considered to be

1 operating on a temporary basis unless the licensee notifies that  
2 wholesaler or manufacturer, or successor thereto, within 15 days  
3 of the date the licensee's operations ceased.

4 (2) (A) Subject to subparagraph (B), a wholesaler or  
5 manufacturer, or any successor thereto, may, with department  
6 approval, accept the return of a brand of beer discontinued in a  
7 California market area or a seasonal brand of beer from a retail  
8 licensee, provided that the beer is exchanged for a quantity of beer  
9 of a brand produced or sold by the same manufacturer with a value  
10 no greater than the original sales price to the retail licensee of the  
11 returned beer. For purposes of this subparagraph, "seasonal brand  
12 of beer" means a brand of beer, as defined in Section 23006, that  
13 is brewed by a manufacturer to commemorate a specific holiday  
14 season and is so identified by appropriate product packaging and  
15 labeling.

16 (B) A discontinued brand of beer may not be reintroduced for  
17 a period of 12 months in the same California market area in which  
18 a return and exchange of that beer as described in subparagraph  
19 (A) has taken place. A seasonal brand of beer may not be  
20 reintroduced for a period of six months in the same California  
21 market area in which a return and exchange of that beer as  
22 described in subparagraph (A) has taken place.

23 (c) Notwithstanding subdivision (a), a wholesaler or  
24 manufacturer, or any successor thereto, may accept the return of  
25 beer purchased from that wholesaler or manufacturer, or any  
26 successor thereto, by the holder of a retail license following the  
27 revocation of, suspension of, voluntary surrender of, or failure to  
28 renew the retail license.

29 (d) A wholesaler or manufacturer, or any successor thereto, may  
30 credit the account of the retailer identified in subdivision (c) in an  
31 amount not to exceed the original sales price to the retailer of the  
32 returned beer, provided that the beer has been paid for in full.

33 (e) Notwithstanding the 15-day time limit for the return of beer  
34 described in subdivision (a), beer that is recalled or that is  
35 considered by a manufacturer, importer, or governmental entity  
36 to present health or safety issues if distributed, offered for sale, or  
37 sold in the state may be accepted for return at anytime from a  
38 retailer and be picked up by the seller of beer. The seller of beer  
39 may exchange the returned beer for identical product, if safe  
40 inventory is available, issue a deferred exchange memorandum

1 showing the beer was picked up and is to be replaced when  
2 inventory is available, or issue a credit memorandum to the retailer  
3 for the returned beer. The seller of beer may exchange with the  
4 manufacturer or importer the returned beer and the seller of beer's  
5 inventory that was recalled or considered to present health or safety  
6 issues for identical product, if safe inventory is available, or the  
7 seller of beer shall receive a refund from or be issued a credit  
8 memorandum by the manufacturer or importer for the returned  
9 beer and seller of beer's inventory that was recalled or considered  
10 to present health or safety issues.

11 (f) Notwithstanding subdivision (a), a licensee may accept the  
12 return of unsold and unopened beer from an organization that  
13 obtained a temporary license pursuant to Section 24045 or 24045.1,  
14 *or a caterer's permit or an event permit pursuant to Section 23399.*  
15 The licensee may credit the account of the organization *that*  
16 *obtained the temporary license or the caterer's permit or the event*  
17 *permit*, in an amount not to exceed the original sales price of the  
18 returned beer, provided that the beer has been paid for in full.