

# CALIFORNIA CRAFT BREWERS ASSOCIATION

## EVENTS, SPONSORSHIPS & FESTIVALS

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#### **BAHANEH HOBEL**

PARTNER, ALCOHOL BEVERAGE & WINE LAW

DICKENSON, PEATMAN & FOGARTY

T: 707.261.7070 | [BHOBEL@DPF-LAW.COM](mailto:BHOBEL@DPF-LAW.COM)



# AGENDA

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- ❑ Background - Tied House Laws
- ❑ Events at Retailers
- ❑ Sponsorships
- ❑ Festivals



*This handout is made available for general informational purposes only and none of the information provided herein should be considered to constitute legal advice.*

## TIED HOUSE LAWS— CONCURRENT STATE AND FEDERAL POWER

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- ❑ **Federal:** Commerce Clause grants Congress the power to regulate commerce "among the several states."
- ❑ **State:** Section 2 of 21<sup>st</sup> Amendment gives states the right to regulate within their own borders:

“The transportation or importation into any state for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.”

## CURRENT-DAY TIED HOUSE LAWS

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- ❑ ***Goal of Tied House***

- ❑ Prevent vertical integration and undue influence by suppliers over retailers.

- ❑ ***Methods***

- ❑ Prevent cross-ownership interests, including direct and indirect interests.
  - ❑ Prohibit certain practices that could indicate undue control (no free goods, no things of value, etc).



- ❑ ***General Tied House Approach***

- ❑ If not specifically permitted, likely prohibited!

## DIFFERENCES BETWEEN FEDERAL & STATE TIED HOUSE

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### ❑ *Federal Tied House Laws:*

- ❑ **General Rule:** Unlawful for an alcohol beverage manufacturer or supplier to “induce” directly or indirectly, any alcohol beverage retailer (such as a bottle store, bar or restaurant) to purchase any products from that supplier to the “exclusion,” in whole or in part, of other suppliers’ products.
- ❑ A violation of federal law only occurs if the inducement leads to “exclusion” of a competitor’s product. Mere showing that a retailer purchased less of a rival’s product not enough to find “exclusion. Need “direct action” by supplier that “bars the rival”

### ❑ *California Tied House Laws:*

- ❑ **General Rule:** Under California law, “no licensee shall directly or indirectly give any premium, gift or free goods in connection with the sale or distribution of any alcoholic beverage....” . So, no free goods or thing of value unless an exception allows it.
- ❑ Unlike federal law, no need for there to be actual exclusion for violation to arise. Supplier’s intent does not play any role in evaluating if a tied house violation has occurred.
- ❑ Per se standard (like many other states), no exclusion of competitor required.

## EVENT COMPLIANCE QUESTIONS

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- ❑ **Who is hosting the event ? Are they licensed and how? Who is invited?**
- ❑ **How are they selling tickets or is it free?**
- ❑ **Where is the event being held? On licensed or unlicensed premises? Is a special license required and if so, has he ABC issued one?**
- ❑ **Whose alcohol is being served and in permitted quantities?**
- ❑ **How is the event being advertised?**



## SCOPE OF PUBLIC EVENTS FOR CONSUMERS

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- ❑ Event regulations are state specific
- ❑ In CA, must fit into one of many statutory permissions or exemptions
  - ❑ Bottle Signings
  - ❑ Beer Dinners
  - ❑ Retailer Tastings
  - ❑ Charity/Nonprofit Events
  - ❑ Private Events
  - ❑ Specific Statutory Authority



## EVENTS AT RETAILERS



- ❑ ***Off Premises Retailers***

- ❑ **Tastings at Type 86 Licensed Off-Premises Retailers (25503.56)**

- ❑ ***On Premises Retailers***

- ❑ **Instructional Events at On-Premises Retailers (25503.55, 25503.45)**



## ON-PREMISE EVENTS

- ❑ **25503.45. Instructional Events for Consumers aka “Beer Dinners”**
  - ❑ A licensed beer manufacturer may instruct consumers at an on-sale retail licensed premises
  - ❑ Any beer served at the event must be sold to the retailer through normal channels and then sold by the on-sale retail licensee to the consumer. So, no free tastings from the brewer.
  - ❑ Brewer may be present to educate and talk to consumers. Brewer may not be represented by a wholesaler at these events.
  - ❑ No requirement that food be served.
  - ❑ Orders for the sale of beer may be accepted by the brewer –transaction must be completed at brewer premises.
  - ❑ Permitted to advertise participation in event, the names of the beers being featured at the instructional event, and the time, date, and location of, and other information about, the instructional event. Can’t list retail price, retailers name and address only reference and inconspicuous. Pictures or illustrations of the retailer’s premises and laudatory references to the retailer in these advertisements are not hereby authorized. Retailer may advertise it but can’t share in the cost of advertising
  - ❑ Other statutes that allow beer tastings much more limited than the above.



# SPONSORSHIPS

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- ❑ ***Contests, races, tournaments - On or off licensed premises***
  - ❑ Monetary payment to bona fide amateur or professional organizations established for encouragement and promotion of activities involved.
- ❑ ***Nonprofits***
  - ❑ Other sporting event sponsorships, tastings, festivals typically involve a nonprofit, which allows donations of products as part of sponsorship (PGA Tour, Local Marathons, etc.)
- ❑ ***Special venues or entities***
  - ❑ Through legislation certain venues or entities, that are promoters typically and not nonprofits, are permitted to receive sponsorship funds under the ABC Act.
  - ❑ Location and entity specific . Examples include Bottlerock, certain events at Del Mar Fairgrounds, Sea World, etc.
- ❑ ***If doesn't fall into any of the above categories, sponsorship not permitted.***
- ❑ ***If a retailer holds the license for event, then normal rules regarding pouring/tasting at a retailer apply. Cannot sponsor a retailer!***

## SPORTING EVENTS

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- ❑ ABC Rule 106 permits sponsorship of contests, races, tournaments, and other similar activities on or off licensed premises. Sponsorships shall be only in the form of monetary payments to bona fide amateur or professional organizations established for the encouragement and promotion of the activities involved.
- ❑ Other sporting event sponsorships typically involve a nonprofit, which allows donations of products as part of sponsorship (PGA Tour, Local Marathons, etc.)



## VENUE SPONSORSHIPS

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- ❑ Contracts with unlicensed venue or owner with separate caterer OR
- ❑ Contracts with the licensed venue owner but only where venue has specific statutory tied-house exemptions in the code
- ❑ Tied house/thing of value concerns with respect to licensed concessionaire

## NONPROFIT EVENTS

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# Ca CRAFT BEER SUMMIT

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SACRAMENTO SEPT. 7-9, 2017

- ❑ Nonprofit or other civic organizations specified in ABC Act can obtain one day or multiple day temporary licenses to sell wine, beer and/or spirits. All revenue from sales of alcoholic beverages at any nonprofit event must go to the nonprofit. Usually 501c3 or 501c6 entity.
- ❑ Both Type 01 and type 23 Licenses can “sponsor” and participate in tastings sponsored by a nonprofit if a nonprofit obtains a temporary license and can have their wines at the event and “assist” at the event by pouring, education, etc.
- ❑ If nonprofit is just *receiving the proceeds* from the event, then the above rules don’t apply. Need to determine who holds the license to know what rights and privileges at event may be.

# FESTIVALS (NONPROFIT LICENSEE)

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- ❑ Nonprofit obtains a temporary one day or multi day license for the festival. Nonprofit purchases all alcohol for event, or receives donated beer as permitted, and makes all sales of alcohol at the event.
- ❑ Licensed beer manufacturer (Type 01 or Type 23) permitted to participate in such events as follows:
  - ❑ Donate beer and/or money to nonprofit.
  - ❑ Provide services, ie, assistance with pouring at the event.
  - ❑ Provide kegs, tapping equipment, beer trucks – as part of the service they are providing.
  - ❑ Have a presence and signage at event, to educate consumers.
  - ❑ Receive product returns from nonprofit after event.
  - ❑ Provide advertising specialties to consumers (\$3.00 per unit).
  - ❑ Take consumer orders with order form, to be fulfilled from licensed premises.
  - ❑ Contests/sweepstakes ok (although advise against it) - no alcohol as prize and no immediate award of prizes.
- ❑ Prohibitions:
  - ❑ No exclusives.
  - ❑ No sales at premises are permitted by beer manufacturer.



# FESTIVALS (RETAIL LICENSEE)

- ❑ **Licensed beer manufacturer (Type 01 or Type 23) permitted to participate in such events in the same way and with the same restrictions as events on a retail premises:**
  - ❑ Any alcohol being sold has to be sold by the retailer and purchased by the retailer.
  - ❑ Signage Restrictions.
  - ❑ No returns permitted. NO consignment sales.
  - ❑ No deliveries on Sundays
  - ❑ Orders permitted so long as fulfilled later from licensed premises.
  - ❑ Can provide certain beer tapping equipment (25510)
  - ❑ No contests or sweepstakes permitted
- ❑ **Common Issues with Retail-Licensed Festivals**
  - ❑ Who are the sponsorship dollars being provided to?
  - ❑ Is the promoter permitted to retain the funds from the event?



## FESTIVALS (BY STATUTE)

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## PROMOTION & ADVERTISING OF FESTIVALS

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- ❑ **If a nonprofit event, can advertise participation.**
  - ❑ If a retailer is a co-sponsor of event, need to comply with 23355.3, but in general basic advertising is allowed - no laudatory references. (Save Mart )
  - ❑ Can share a retailer's post in this scenario.
  - ❑ No joint advertising permitted where share the costs.
- ❑ **If event is at a retailer, can just provide the basic information about the event per code, no laudatory references and no prices.**

# THANK YOU

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**BAHANEH HOBEL**

PARTNER, ALCOHOL BEVERAGE & WINE LAW

DICKENSON, PEATMAN & FOGARTY

1455 FIRST STREET, STE. 301 | NAPA, CA 94559

T: 707.261.7070 | F: 707.255.6876

BHOBEL@DPF-LAW.COM | WWW.DPF-LAW.COM

