

# CABC DOs and DON'Ts

Candace L. Moon, Esq.  
The Craft Beer Attorney/Dinsmore & Shohl, LLP  
California Craft Brewers Association - April 9, 2018



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# CABC DOs and DON'Ts

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## Homebrew

Domestic homebrewers must be labeled to comply with the law. Labeling rules to remember when homebrew is sold.

## Giveaways (cont.)

- To Retailers:
- In-store signs for use on premises - must be less than 630 sq. in.
- Window displays
- Temporary displays
- Promotional materials with no trademark value other than advertising
- Tipping equipment for an initial installation in a new on-site licensed account

## Promotional Materials

A certain Gray Hawk promotional material was distributed to a retailer. The retailer was asked to remove the material. Why? The retailer was asked to remove the material because it was promotional material, not advertising.

## Consumer Advertising Specialties

If furnished by a beer supplier to a retailer:  
\$ .25 per unit original cost or  
\$15 in the aggregate per retailer per year

## Non-Profits (cont.)

NP needs ABC label. Temporary license for consumption of beer on premises where sold. Free license for retail privileges for beer.

## Labeling



## Type 23 (cont.)

- May conduct beer tastings under specific conditions
- Activities are allowed on the premises
- Must hold off-site license for all other food/beverage
- May allow employees to "bring their own beer" but may not exceed your licensed privileges

## Type 23

- Self-Distribution
- Part 6 Growlers
- Dining Rooms
- Dispatch Schemes
- For off-premises, change - unlimited, must be health license process
- For retail - 6pm, regular license process
- 2 of the 6 may have a bar/beer outside area/ have their own bar/beer

## Agenda

- Basic Privileges
- Type 23
- Type 25
- Non-Profits
- Events
- Labeling
- Homebrew
- Giveaways
- Social Media

## Penalties

At the discretion of the Board:

- License or Retailer may be suspended
- License may be revoked
- Licensee may be fined
- Licensee may be suspended

So if it does not say you can do something, you can't!

## Penalties

At the discretion of the Board:

- License or Retailer may be suspended
- License may be revoked
- Licensee may be fined
- Licensee may be suspended

Questions? Comments?

# CABC DOs and DON'Ts

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**Homebrew**  
Donated homebrew must be labeled to identify the producer stating "homebrewed and not available for sale."



**Giveaways (cont.)**  
**To Retailers:**  
- Interior signs for use on premises - must be less than 630 sq. in.  
- Window displays  
- Temporary displays  
- Promotional materials with no intrinsic value other than advertising.  
- Tapping equipment for an initial installation in a new on-sale licensed account

**Promotional Materials**  
A supplier may furnish promotional materials for alcoholic beverages sold by him to a retailer for use within off-sale premises, so long as the promotional material has no intrinsic value other than advertising.

**Consumer Advertising Specialties**  
If furnished by a beer supplier to a retailer:  
\$0.25 per unit original cost or  
\$15 in the aggregate per retailer per year

**Agenda**  
• Basic Privileges  
• Tva-

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*Promotional Materials*

A supplier must

### *Consumer Advertising Specialties*

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If furnished by a beer  
supplier to a retailer:

#### *Consumer Advertising Specialties (cont.)*

- Must bear conspicuous advertising
- Can sell or give to retailer
- Retailer cannot sell
- Cannot be coupled with the purchase of beer
- Must keep and maintain records for a 3 year period

# *Agenda*

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- Basic Privileges
  - Type 23
  - Type 75
- Non-Profits
- Events
- Labeling
- Homebrew
- Giveaways
- Social Media

# Type 23

- Self Distribution
- Refill Growlers
- Tasting Rooms
- Duplicate licenses
  - For offices, storage - unlimited, issued forthwith
  - For retail - 6 max, regular license process
    - 2 of the 6 may have a bonafide restaurant - however must purchase outside beer/wine from a distributor



# Self-Distribution

- No deliveries on Sunday
- Deliveries only between 3am and 8pm
- No returns from retailers except
  - may exchange product for identical brand
  - swap similar for seasonals
- Tax-paid beer may be stored anywhere; all other storage must be licensed
- Retailers paying late invoices must be charged a penalty

# *Type 23 - (cont.)*

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## Sales to consumers

- On sale consumption
- Off sale consumption
- Limited to your own product unless:
  - you have a bonafide restaurant
  - or at a private event
- Share a common licensed area with a licensed winegrower whose licensed premises are immediately adjacent (2017)



## *Type 23 (cont.)*

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- May conduct beer tastings under specific conditions
- Minors are allowed on the premises
- May hold ownership in up to 6 retail licenses, *\*including duplicates with retail privileges*
- May hold off-sale license, but all other beer/wine must be purchased from wholesaler
- May allow consumers to "bring their own bottle" but may not exceed your licensed privileges



# *Type 75 Brewpub license\**

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- Min and max brewing quantities
- No growler refills
- No self distribution
- No off sale privileges to consumers
- No donations to festivals, NPs, etc.
- All outside beer, wine and spirits must be purchased from a licensed wholesaler (Type 17)

*\*Retail license, not a manufacturing license*



*Non-Profits*

# *Non-Profits*

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- Only a beer **manufacturer** may donate beer to:
  - 501(c)(3)
  - 501(c)(6) -only for meetings/conventions
  - other 501(c) - only for public service or fundraising
- *This means Types 01 and 23, not 75 or 17*

# *Non-Profits (cont.)*

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NP needs ABC special temporary license for:

- Consumption of beer on premises where sold
- 2nd license for off sale privileges for beer\*

*\* As of last year, a NP that holds the off-sale license AND obtains a raffle registration can also award alcohol as a raffle prize*

#### Non-Profit (cont.)

- No sale of alcohol
- No general admission
- No raffle
- Cannot be off-premise
- No off-premise
- No off-premise

#### *No license required when:*

- No sale of alcohol/no paid admission *and*
- Premises not open to general public when alcohol is served *and*
- Premises not already licensed

*No license required  
when:*

- No sale of alcohol/no paid admission *and*
- Premises not open to general public when alcohol is served *and*
- Premises not already licensed

# *Private Events*

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- On premises or contiguous to licensed premises and operated by manufacturer
- Event not open to general public -  
*\*Ticketed events where tickets are available to the general public are NOT considered private events*
- May sell beer and wine, regardless of source, but must be purchased from a licensed wholesaler

## Brewery Event Permit:

You can extend your own premises for the sale of ***your beer only*** on property contiguous and adjacent to your licensed premises.

- Annual permit \$110
- Each actual event needs its own authorization by local ABC
- Subject to approval by law enforcement
- Event authorization fee \$25
- Only 4 events per year allowed



# Farmer's Markets

- Type 84 Certified Farmers' Market Beer Sales Permit (ABC-239)
  - Offsale privileges - may sell **sealed** containers of beer
  - One permit needed per Farmers' Market, good one day per week
  - Certified is defined by the Food and Agriculture code - for more info: [https://www.cdffa.ca.gov/is/i\\_&c/cfm.html](https://www.cdffa.ca.gov/is/i_&c/cfm.html)
  - Can only be obtained for certified Farmers' Markets held within same county as the manufacturing facility or adjacent counties
  - Sales not to exceed 5,000 gallons annually
  - Must maintain records of sales
  - No **refilling** of growlers
  - Brewery must be approved by the Farmers' Market to set up and attend - ideally before applying for ABC permit

# Farmers' Markets (cont'd)

- Maximum of 8 oz of beer per individual, per day - can be multiple tastes or one single serving
- Only 1 licensee may conduct an instructional tasting event at any one certified farmers' market
- Tasting area must be separated from the remainder of the market by a barrier (i.e. wall, rope, cable, chain, fence, etc.)
- No consumer may leave tasting area with an open container of beer
- Each farmers' market has managerial control over tasting activities, including if they want to permit it at all

# *Labeling*

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All beer sold in this state shall have a label affixed to the package ....

- name and address (city and state) of manufacturer
- name and address of bottler (if not manufacturer)
- brand name of beer
- alcohol content if greater than 5.7% alcohol by volume
- special rules if contains distilled alcohol
- must be affixed prior to first sale (cannot sell unlabeled beer to anyone)

\*This includes growlers and crowlers

# *Labeling (cont.)*

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Kegs sold to individuals for off premise consumption need an identification tag and require a signed receipt from the purchaser

\*Tags and receipts available from ABC

## **Homebrew**

Can only leave the premises where made for:

- Competition or exhibition
- Personal or family use
- Donation to non-profit for fundraising events
- And...

**Temporary Event Permit**  
You can sell your beer at an event for the sale of your beer only, not for any other purpose, including on your business premises.

- Temporary Event Permit
- 100 gallons per permit
- 1 permit per event
- 1 permit per person per event

# *Filings*

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Need to file with ABC:

- Brand names that you sell beer under (all beer, unless not leaving your premises) - Beer Brand Registration
- Any variation must be filed separately
- Price Posting
  - Price for wholesalers
  - Price for retailers
- Distribution Agreements (aka territorial agreements)

# *Homebrew*



# *Homebrew*

Can only leave the premises where made for:

- Competition or exhibition
- Personal or family use
- Donation to non-profit for fundraising events
- And...

# Homebrew (con't)

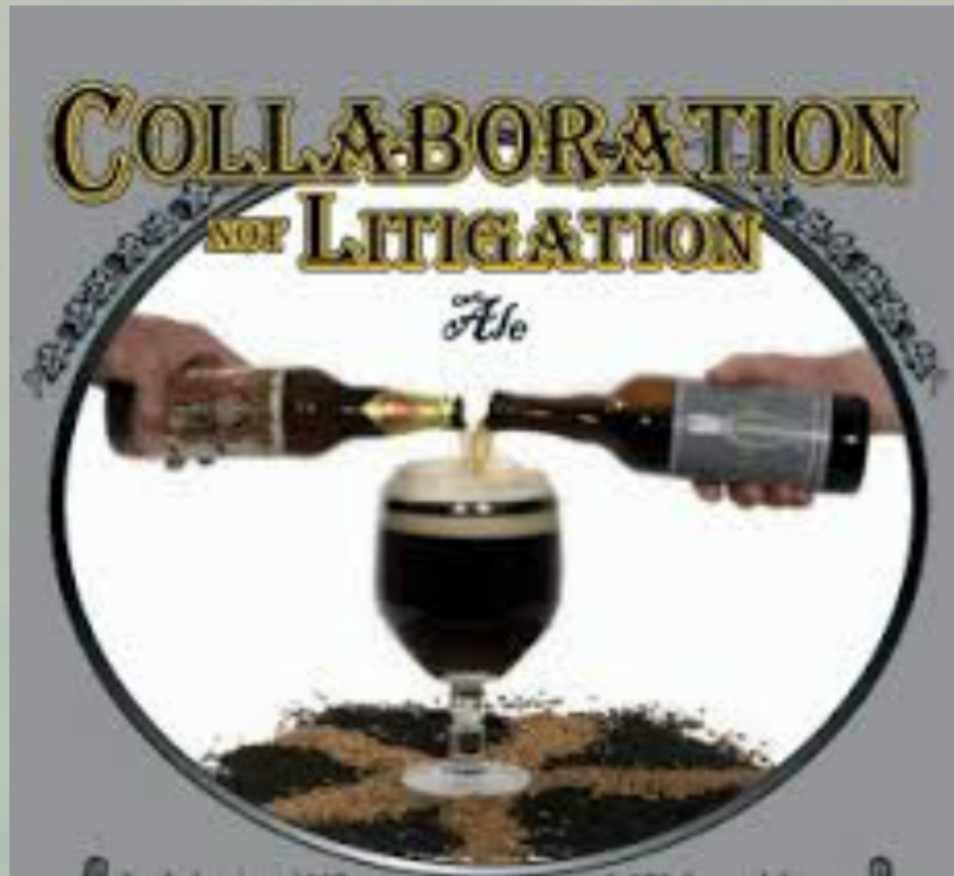
Permits the removal and use of homebrew in conjunction with a club meeting (or competition) on the premises of an authorized licensee (including breweries, bars and restaurants). Club members can exchange and consume homebrew at this type of meeting.



# *Homebrew*

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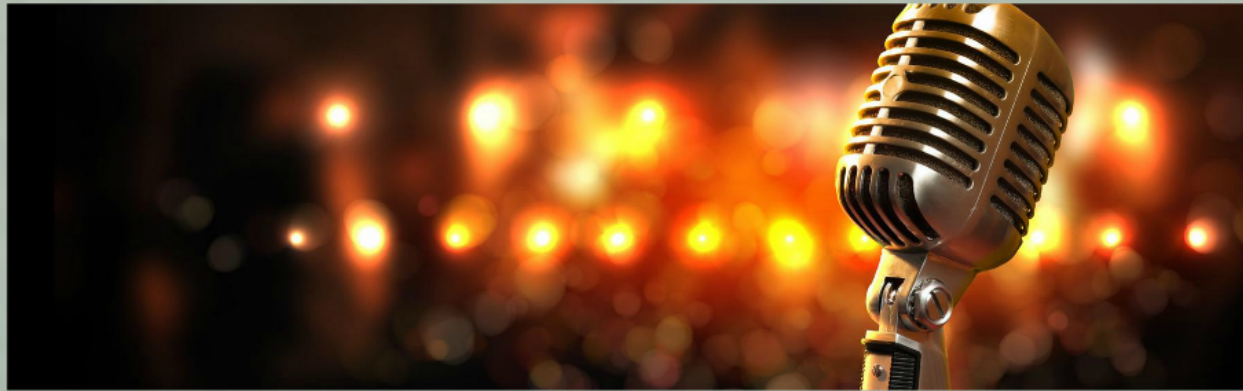
Donated homebrew must be labeled to identify the producer, stating that it is homemade and not available for sale.



Collaboration Beers

# Collaboration Beers

- Collaboration beers are owned in full by the brewery that brews the beer on their premises
- Collaborations are not allowed with retailers, as ABC considers your logo a thing of value
- Private labeling is fine



# Music in the Brewery

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# Copyright Statutes

- Performing Rights Organizations - BMI, ASCAP, SESAC - act as intermediaries between bars/restaurants and songwriters to protect intellectual property
- Restaurants pay a fee to the PROs for a blanket license that grants permission to use all of the music each organization represents, and they, in turn, distribute the fees, less operating expenses, to their affiliated songwriters, publishers and composers as royalties.
- Federal copyright law, Section 110 (5)(B), exempts restaurants that play music transmitted via radio, TV and cable and satellite sources if they don't charge to hear the music. Music played by other means, such as live bands, CDs, etc., aren't covered by the exemption. The exemption applies to establishments smaller than 3,750 gross square feet in their premises

## Copyrights (con't)

- Unless the music on the albums is in the public domain and not protected any longer by copyright law, you need a license.
- Pandora offers a Pandora for Business option that covers the fees for you.
- The BA recently enacted a program with BMI that gives a 10% discount

# *Giveaways*

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## *To Retailers:*

- No free goods
- No advertising
- Nothing of value
- No exterior banners\*

\*Unless sold or rented

## *Giveaways (cont.)*

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### **To Retailers:**

- Interior signs for use on premises - must be less than 630 sq. in.
- Window displays
- Temporary displays
- Promotional materials with no intrinsic value other than advertising
- Tapping equipment for an initial installation in a new on-sale licensed account



## *Consumer Advertising Specialties*

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If furnished by a beer  
supplier to a retailer:

\$.25 per unit original cost or

\$15 in the aggregate  
per retailer per year

# Examples



Keychains



Bottle  
Openers

# *Consumer Advertising Specialties (cont.)*

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- Must bear conspicuous advertising
- Can sell or give to retailer
- Retailer cannot sell
- Cannot be coupled with the purchase of beer
- Must keep and maintain records for a 3 year period

# *Giveaways (cont.)*

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If given directly to the general public:

\$3 per unit original cost

# *Social Media*

The ABC does consider Social Media to be "a thing of value", so...what are you allowed to do?

- Must list:
  - at least 2 or more unaffiliated retailers
  - giving each equal prominence

*\*No longer requires a direct inquiry*

# Educational Event

- May list retailer and address
  - as location for event
  - only listed reference to retailer in the ad
  - relatively inconspicuous in relation to the ad as a whole
- Time and Date
- Beers being served
- Brewery rep must be present at the event and able to discuss beer to qualify

# What can't I do?

- Post anything positive about a retailer
  - including pictures, posts, check-ins, likes, shares, tweets, re-tweets, etc.
  - includes representatives of the brewery (use common sense)
- Give laudatory comments about a retailer
- Post retail prices of beer
- Post pictures of retailers



Remember, the ABC Act is a permissive document



So if it does not say  
you can do  
something, you can't!

# *Penalties*

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## 5 day suspension of license

- Exceeding license privileges
- Not adhering to license requirements re: outside your premises (consumption, litter, lighting, etc.)

# *Penalties*

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## *10 Day suspension of license*

- Sale or consumption after hours (employees and friends only)
- Possession of an alcoholic beverage not permitted by license
- Keg registration violations
- Not operating a bona fide eating place
- Some signage (ex. No loitering, no open containers)
- Premises different from diagram on application

# *Penalties*

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## *15 Day suspension of license*

- Sales of alcoholic beverages to people under 21
- Permitting person under 21 to consume
- Furnishing alcoholic beverage to person under 21
- Sale to obviously intoxicated person
- Sale of consumption after hours by public
- Undisclosed ownership if hidden owner qualified
- Violation of license conditions
- Sale of alcohol not permitted by license
- Free goods

# *Penalties*

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## *30 Day suspension of license*

- Licensee or Bartender working in premises while intoxicated
- Licensee or Employee not permitting inspection of premises

# *Penalties*

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Revocation of license

Misrepresenting a material  
fact on your application

A teal circular graphic is centered on a green background. A white path or road curves through the bottom left corner of the image. The text "Questions?" and "Comments?" is written in a white, bold, italicized font inside the teal circle.

***Questions?***  
***Comments?***



**Labeling rules:**  
- No health claims  
- No nutrition facts  
- No alcohol content  
- No "crafted" or "artisanal" claims  
- No "small batch" or "limited edition" claims  
- No "microbrewery" or "brewpub" claims  
- No "local" or "regional" claims  
- No "premium" or "select" claims  
- No "specialty" or "signature" claims  
- No "premium" or "select" claims  
- No "specialty" or "signature" claims

**NP needs ABC temporary license for consumption of beer on premises where sold**  
• 2nd license for off sale privileges for beer

Questions?  
Comments?

**ABC License:**  
- Must be issued by a person who is at least 21 years old and has been issued a valid driver's license  
- Must be issued by a person who is at least 21 years old and has been issued a valid driver's license  
- Must be issued by a person who is at least 21 years old and has been issued a valid driver's license

**Type 23 (cont.)**  
• May conduct beer tastings under specific conditions  
• Minors are allowed on the premises  
• May hold ownership in up to 6 retail licenses, **including duplicates with retail privileges**  
• May hold off-sale license, but all other beer/wine must be purchased from wholesaler  
• May allow consumers to "bring their own bottle" but may not exceed your licensed privileges

**Type 23**  
• Self Distribution  
• Refill Growlers  
• Tasting Rooms  
• Duplicate licenses  
• For offices, storage - unlimited, issued forthwith  
• For retail - 6 max, regular license process  
• 2 of the 6 may have a bonafide restaurant - however must purchase outside beer/wine from a distributor

**Penalties**  
30 Day suspension of license  
• Licensee or Bartender working in premises while intoxicated  
• Licensee or Employee not permitting inspection of premises

**Type 75**  
• Non-Profits  
• Events  
• Labeling  
• Homebrew  
• Giveaways  
• Social Media

**Penalties**  
15 Day suspension of license  
• Sale of alcoholic beverages to person under 21  
• Person who consumes alcohol under 21  
• Person who provides alcohol to person under 21  
• Sale of consumption of beer by public  
• Sale of beer to person who is not a consumer  
• Violation of license conditions  
• Sale of alcohol not permitted by license  
• Free goods

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