

2023

California Peace Officers'

LEGAL AND SEARCH & SEIZURE FIELD SOURCEGUIDE

Contains Important Law Enforcement
Mandated Advisements, Procedures,
and Search & Seizure Law with
Over 240 Case Citations.

See the Back Cover for a Complete List of Topics

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eISBN: 978-1-56325-631-8

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PART I: LEGAL SOURCEGUIDE

PREFACE

Part 1 of this Guide is designed to assist peace officers in quickly locating information relating to the handling of infrequently encountered and/or complex cases, and cases where an officer's actions are mandated by law. It also includes many advisements officers are required by law to provide in the course of an investigation or handling of a case.

When an advisement or procedure herein is mandated by law, it is indicated as *MANDATORY*.

This Guide is a summary reference only. Any action taken should always conform to your department's policies and procedures.

ALCOHOLIC BEVERAGE CONTROL LAWS

PEACE OFFICER'S AUTHORITY TO INSPECT PREMISES (BP 25755)

Peace officers may visit and inspect licensed premises during authorized hours, 0600–0200 of the next day.

PROCEDURES AND ADVISEMENTS

Upon Arrival:

- Keep the peace
- Examine the license for compliance
- Verify any ID and age of persons in question
- Examine any questioned product or substance
- Interview the involved parties

Preliminary Investigation:

- Follow department policies regarding ABC violations

- Consult with the local ABC office if necessary
- Establish if minors were questioned about age prior to service
- Arrests or citations
- Arrest or cite violator if probable cause exists

Evidence Collection:

- Alcoholic beverage
 1. Remove ice
 2. Place in evidence bottle if necessary
- Suspected documents
- Bags, records of sale or receipts
- Seal seized beverage in presence of person from whom seized if possible
- Issue receipt for unopened containers

Police report should include:

- Condition of premises
- Lighting
- Description of interior and fixtures
- Size and demeanor of crowd
- Number of employees present
- Beverage order, time, type, cost and how served
- Source of beverage
- Description of activity, e.g.: observations of consumption, sale, *etc.*
- Type of license, location and pertinent information
- Accurate time (verified by dispatcher—compare to licensee clock or watch)
- Any ABC notifications made

Mandatory ACTION (BP 24202)

Notify ABC of arrests or violations involving licensee or licensed premises for offenses under ABC jurisdiction.

LICENSE REQUIRED

License Required (BP 23300)

- No one may sell any alcoholic beverage without a license
- Licenses are issued to specific persons for specific locations and the licensee must post the license in a conspicuous place
- It is necessary to prove that in sales case, the seller had no license
- It is necessary to show an exchange of consideration for an alcoholic beverage
 - » Must observe actual sale and retain evidence of the violation
 - » Of prime concern in this type of offense are unlicensed premises, “underground” clubs, (temporary businesses operating without the required licenses or permits), private parties which require an entry fee

NO LICENSE REQUIRED

License Not Required (BP 23399.1)

No license required if all following conditions met:

- No sale of alcoholic beverage¹
- Premises not open to public, *etc.*
- Premises not maintained for dispensing alcoholic beverages

Example: At a private party.

Beer Manufacture for Personal Use; No License Required; Restrictions (BP 23356.2)²

- No license required for the manufacture of beer for personal or family use and “not for sale” by a person over 21 years
- Amount not to exceed
 - » 200 gallons per calendar year if two adults in household or
 - » 100 gallons per calendar year if one adult in household

Wine Manufacture for Personal Use (BP 23013)

- Permits 200 gallons of wine
- For personal consumption

LICENSE POSTING REQUIREMENTS

License Must be Posted in a Conspicuous Place (BP 24046)

- The licensee shall post license in a conspicuous place on the premises
- Licenses issued for trains, boats or airplanes
- May be posted in such other place as the department shall designate

LICENSE TYPES

Off-Sale means the license privilege is for alcoholic beverages to be sold in original, unopened packages for consumption off the premises where sold.

On-Sale means the license privilege is for alcoholic beverages sold on the premises to be consumed on the premises.

Off-Sale Beer and Wine, Type 20 (Package Store)

- Authorizes the sale of beer, wine for consumption
- Off the premises where sold

Off-Sale General, Type 21 (Package Store)

- Authorizes the sale of beer, wine, and distilled spirits
- For consumption off the premises where sold

Small Beer Manufacturer, Type 23 (Brewpub or Microbrewery)

- Authorizes the same privileges and restrictions as large brewery
- A brewpub is a small brewery with a restaurant
- A microbrewery is a small-scale brewery
- Dedicated solely to the production of specialty beers
- May have restaurant or pub on premises

On-Sale Beer, Type 40 (Bar, Tavern)

- Authorizes the sale of beer for consumption on the premises where sold
- The sale of beer for consumption

- Off the premises where sold

On-Sale Beer and Wine Eating Place, Type 41 (Restaurant)

- Authorizes the sale of beer and wine
- For consumption in a *bona fide* public eating place type premises
- Plus the sale of beer and wine for consumption off the premises where sold
- May possess brandy, rum and liqueurs for use solely for cooking purposes

On-Sale Beer and Wine Public Premises, Type 42 (Bar, Tavern)

- Authorizes the sale of beer and wine for consumption on the premises
- Wherein no person under 21 years of age is allowed
- Plus the sale of beer and wine for consumption off the premises where sold

On-Sale General Eating Place, Type 47 (Restaurant)

- Authorizes the sale of beer, wine and distilled spirits for consumption
- On *bona fide* public eating place type premises
- Plus the sale of beer and wine only for consumption off the premises where sold

On-Sale General Public Premises, Type 48 (Bar, Night Club)

- Authorizes the sale of beer, wine, and distilled spirits for consumption
- On the premises wherein no person under 21 years of age is allowed
- Plus the sale of beer and wine only for consumption off the premises where sold

On-Sale General—Seasonal, Type 49

- Authorizes same privileges and restrictions as Type 47
- Except issued for specific season (Effective dates on certificate)

Club, Type 51

- Authorizes the sale of beer, wine and distilled spirits

- To members and guests only to be consumed on premises
- No food service required
- Minors permitted on premises

Veteran's Club, Type 52: Same privileges and restrictions as Type 51

- Special On-Sale General, Type 57
- Issued to certain organizations which cannot qualify for Club License
- Authorizes the same privileges and restrictions as Type 51

On-Sale Beer and Wine—Seasonal, Type 59

- Authorizes the same privileges and restrictions as Type 41
- Issued for specific season (Effective dates on certificate)

On-Sale Beer—Seasonal, Type 60

- Authorizes sale of beer only for consumption on or off the premises
- Issued for specific season (Effective dates on certificate)
- No wine or distilled spirits on premises
- Minors permitted on premises

On Sale Beer—Public Premises, Type 61 (Bar, Tavern)³

- Authorizes sale of beer only for consumption on or off premises
- Wine or distilled spirits not allowed on premises
- Minors not allowed to enter and remain
- Food service not required

Bed and Breakfast Inn, Type 67

- Authorizes the sale of wine purchased from a licensed winegrower or wine wholesaler
- Only to registered guests for consumption on the premises
- No distilled spirits or beer allowed on premises
- Wines shall not be given away but price shall be included in room fee
- Removal of wine from premises not permitted
- Minors allowed on premises

On-Sale General Restrictive Service, Type 70

- Authorizes the sale or furnishing beer, wine and distilled spirits
- For consumption on premises to establishment's guests or invitees
- Normally issued to suite-type hotels for “complimentary happy hour”
- Minors allowed on premises

On-Sale General Brewpub, Type 75 (Restaurant)

- Authorizes the sale of beer, wine and distilled spirits
- For consumption on a *bona fide* eating place
- Plus a limited amount of brewing of beer
- Also authorizes the sale of beer and wine only for consumption off premises
- Minors allowed on premises

TEMPORARY SPECIAL EVENTS LICENSE TYPES

Temporary Beer and/or Wine License (Form ABC-281)⁴

- Authorizes sale of beer and/or wine for consumption on premises
- No off-sale privileges
- Minors permitted on premises
- May need written approval of local law enforcement

Daily On-Sale General License (Form ABC-281)⁵

- Authorizes the sale of beer, wine and distilled spirits
- For consumption on premises
- No off-sale privileges
- Minors allowed on premises
- May need written approval from local law enforcement

Catering Authorization (Form ABC-218)

- Authorizes Type 47, 48, 51, and 57 licensees (and qualified caterers)
- To sell beer, wine and distilled spirits at conventions, sporting events, trade exhibits, *etc.*
- Type 47, 48 and 57 licensees may cater alcoholic beverages at any ABC approved locations

- Type 51 and 52 licensees may only cater alcoholic beverages at their licensed premises

Event Authorization (Form ABC-218)

- Authorized Type 47, 48, 49, 57 and 75 licensees
- To sell beer, wine and distilled spirits
- For consumption on property adjacent to licensed premises owned or under control of licensee
- Shall obtain prior approval of local law enforcement
- Subject to restrictions by ABC

EVIDENCE OF AGE AND IDENTITY

Bona Fide Evidence of Majority and Identity (BP 25660)⁶

A document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to:

- Driver's license
- California I.D. Card
- Armed Forces I.D.
- Valid Passport containing: Name, Date of Birth, Description and Picture

Adequate Proof of Age; Refusal to Serve a Minor (BP 25659)

- Any licensee, or his agent or employee
- May refuse to sell or serve alcoholic beverages
- To any person who is unable to produce adequate written evidence that he or she is over 21 years of age
- And may seize false I.D. if presented

ENFORCEMENT MANDATORY

PEACE OFFICER'S DUTY TO INSPECT AND ENFORCE

Inspection of Premises by Peace Officer (BP 25755)

- May visit and inspect the premises of any licensee at any time
- During which the licensee is exercising the privileges authorized by the license

Enforcement (BP 25619)

- Peace officers shall enforce the provisions of the Act
- Failure to do so is a misdemeanor

ABC NOTIFICATIONS—MANDATORY

Notifications (BP 24202)

- State and local agencies *shall notify* the department, (ABC), within 10 days
- Of any arrests or citations for licensing violations over which the department has jurisdiction
- The department shall investigate regarding the possible suspension or revocation of the license

ARREST/CITATION

Citation in Lieu of Arrest; Conditions (BP 24209)

- When an arrest is made
- Of any person, licensee or employee
- Arresting officer may release arrestee
- Upon signing a promise to appear

ENFORCEMENT SECTIONS

License Required (BP 23300)

- No one may sell any alcoholic beverage without a license
- Licenses are issued to specific persons for specific locations, and
- Licensee must post the license in a conspicuous place
- It is necessary to prove that in sales case, the seller had no license
- It is necessary to show an exchange of consideration for an alcoholic beverage
 - » Must observe actual sale and retain evidence of the violation

- » Of prime concern in this type of offense are unlicensed premises, “underground” clubs, (temporary businesses operating without the required licenses or permits), private parties which require an entry fee

Unauthorized Alcohol on Licensed Premises (BP 25607 Misdemeanor)⁷

- Unlawful to have alcoholic beverages on the premises
- Which are not covered by the license

Caffeinated Beer (BP 25622 Misdemeanor)

- Sell, make, import or distribute
- Beer to which caffeine has been directly added

Unlawful Consumption on Licensed Premises (BP 25632 Misdemeanor)

(Permitted by Licensee, Agent or Employee)

- The aforementioned are prohibited from allowing consumption of alcoholic beverages
- On ABC licensed premises
- Between the hours of 2:00 a.m. and 6:00 a.m. of the same day

Sale After Hours (BP 25631 Misdemeanor)

- No licensee, *etc.*, or any person
- May knowingly purchase an alcoholic beverage
- During restricted hours
- No one may sell, deliver, or give away any alcoholic beverages
- Between the hours of 2:00 a.m. and 6:00 a.m. of the same day

Unlicensed Club Rooms or Premises a Public Nuisance; Abatement (BP 25604)⁸

- It is a public nuisance
- For any person to maintain any club room
- In which any alcoholic beverage is received or kept, *etc.* for consumption on the premises
- By members of the public or of any club, corporation, or association

- Unless the person and premises are licensed under this division

and...

- For any person to keep any premises
- For the purpose of providing for a consideration⁹ a place for the drinking of alcoholic beverages by
- Members of the public or other persons, unless the person and premises are licensed under this division

Furnish Alcohol to an intoxicated Person (BP 25602(a) Misdemeanor)

- Illegal for alcoholic beverages to be sold, furnished, *etc.*
- To an obviously intoxicated person, or
- To one who is commonly known to be a drunk¹⁰

Removal of Opened Wine Bottle from Restaurant (BP 23396.5 Misdemeanor)

- On-sale licenses that include a full restaurant or winegrower
- are not allowed to have opened containers of alcoholic beverages leave premises
- **Exception:** A patron who has purchased a bottle of wine may take home the partially consumed bottle.¹¹

Maintain a Disorderly House (BP 25601 Misdemeanor)

Every licensee, *etc.*:

- who keeps in conjunction with licensed premises
- any disorderly house or place in which people disturb the neighborhood, or
- conduct which is injurious to the public morals, health, convenience or safety

Proof of Age Required for Telephone Orders (BP 25605 Misdemeanor)

- No off-sale licensee
- shall deliver any alcoholic beverages
- pursuant to phone order

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