

CLERK'S AFFIDAVIT AND SIGN
(Required by Section 25658.4 Business and Professions Code)

Instructions to the Licensee:

Section 25658.4 requires every person who sells alcoholic beverages in your store to read, understand and sign a *Clerk's Affidavit*. You may photocopy this form or create your own. If you create your own, its content must match parts 1 through 4 of this form. You must keep the signed *Clerk's Affidavits* on your licensed premises at all times and make them available for inspection by the Department.

If you have more than one store, you may keep the signed *Clerk's Affidavits* at a location other than your licensed stores. However, you must notify the Department in advance and in writing. If you decide to keep the signed *Clerk's Affidavits* at a location other than your licensed stores, you must maintain at each store a notice of where the signed *Clerk's Affidavits* are kept. In addition, you must provide any signed *Clerk's Affidavits* to the Department, upon its written demand, within 10 days.

Section 25658.4 also requires you to post a sign like the one shown on page 6 in your store. You must post it at your entrance, point of sale or any other location visible to your customers and employees. The sign should be at least 8-1/2 x 11 inches.

Failure to comply with the above may result in the suspension or revocation of your ABC license.

Part 1: REVIEW OF LAWS (*Clerk must read and understand these laws*)

(1) Sales to Minors (Section 25658 Business and Professions Code)

(a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any person who violates subdivision (a) by purchasing any alcoholic beverage for, or furnishing, giving, or giving away any alcoholic beverage to, a person under the age of 21 years, and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor.

(e)(1) Except as otherwise provided in paragraph (2) or (3), any person who violates this section shall be punished by a fine of two hundred fifty dollars (\$250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of a fine and community service as determined by the court. A second or subsequent violation of subdivision (b) shall be punished by a fine of not more than five hundred dollars (\$500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed and is not attending school, or a combination of a fine and community service as determined by the court. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides. (2) Except as provided in paragraph (3), any person who violates subdivision (a) by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of one thousand dollars (\$1,000), no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and

is not attending school. (3) Any person who violates subdivision (c) shall be punished by imprisonment in a county jail for a minimum term of six months not to exceed one year, by a fine of one thousand dollars (\$1,000), or by both imprisonment and fine.

(2) Attempt to Purchase by Minor (Section 25658.5 Business and Professions Code)

(a) Any person under the age of 21 years who attempts to purchase any alcoholic beverage from a licensee, or the licensee's agent or employee, is guilty of an infraction and shall be punished by a fine of not more than two hundred fifty dollars (\$250), or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed or is not attending school, or a combination of fine and community service as determined by the court. A second or subsequent violation of this section shall be punished by a fine of not more than five hundred dollars (\$500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed or is not attending school, or a combination of fine and community service, as the court deems just. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

(b) The penalties imposed by this section do not preclude prosecution or the imposition of penalties under any other provision of law, including, but not limited to, Section 13202.5 of the Vehicle Code.

(3) Documentary Evidence of Age and Identity (Section 25660 Business and Professions Code)

a) Bona fide evidence of majority and identity of the person is any of the following:

(1) A document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a valid motor vehicle operator's license, that contains the name, date of birth, description, and picture of the person.

(2) A valid passport issued by the United States or by a foreign government.

(3) A valid identification card issued to a member of the Armed Forces that includes a date of birth and a picture of the person.

(b) Proof that the defendant-licensee, or his or her employee or agent, demanded, was shown, and acted in reliance upon bona fide evidence in any transaction, employment, use, or permission forbidden by Section 25658, 25663, or 25665 shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon.

Note: The person accepting identification must make a reasonable inspection of the identification and act with due diligence to confirm that the identification presented is that of the person presenting it. The picture and physical description on the identification must match the customer. If the identification is altered or mutilated, it is not acceptable. It must be currently valid, in other words, not expired.

(4) Hours of Operation (Sections 25631, 25632 and 25633 Business and Professions Code)

25631. Any on- or off-sale licensee, or agent or employee of that licensee, who sells, gives, or delivers to any persons any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of 2 o'clock a.m. and 6 o'clock a.m. of the same day, is guilty of a misdemeanor.

For the purposes of this section, on the day that a time change occurs from Pacific standard time to Pacific daylight saving time, or back again to Pacific standard time, "2 o'clock a.m." means two

hours after midnight of the day preceding the day such change occurs.

25632. Any retail licensee, or agent or employee of such licensee, who permits any alcoholic beverage to be consumed by any person on the licensee's licensed premises during any hours in which it is unlawful to sell, give, or deliver any alcoholic beverage for consumption on the premises is guilty of a misdemeanor.

25633. Except as otherwise provided in this section, no person licensed as a manufacturer, winegrower, distilled spirits manufacturer's agent, rectifier, or wholesaler of any alcoholic beverage shall deliver or cause to be delivered any alcoholic beverage to or for any person holding an on-sale or off-sale license on Sunday or except between the hours of 3 a.m. and 8 p.m. of any day other than Sunday. Any alcoholic beverage may be delivered at the platform of the manufacturing, producing, or distributing plant at any time. Nothing contained in this section prohibits the transportation or the carriage and delivery in transit at any time of any alcoholic beverage between the premises of a manufacturer, winegrower, wholesaler, distiller, importer, or any of them. Every person violating the provisions of this section is guilty of a misdemeanor.

Note: Some stores must stop selling alcoholic beverages earlier than 2:00 a.m. because of local laws or special conditions (restrictions) on the ABC license.

(5) Sales to Obviously Intoxicated Persons (Section 25602(a) Business and Professions Code)

(a) Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor.

(b) No person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage pursuant to subdivision (a) of this section shall be civilly liable to any injured person or the estate of such person for injuries inflicted on that person as a result of intoxication by the consumer of such alcoholic beverage.

Note: It is illegal to sell alcohol to a person who is displaying obvious symptoms of intoxication.

(6) Civil Liability (Section 25602.1 Business and Professions Code)

Notwithstanding subdivision (b) of Section 25602, a cause of action may be brought by or on behalf of any person who has suffered injury or death against any person licensed, or required to be licensed, pursuant to Section 23300, or any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave, who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic beverage, and any other person who sells, or causes to be sold, any alcoholic beverage, to any obviously intoxicated minor where the furnishing, sale or giving of that beverage to the minor is the proximate cause of the personal injury or death sustained by that person.

(7) ABC Off-Sale License Privileges (Sections 23393 and 23394 Business and Professions Code)

23393. A retail package off-sale beer and wine license authorizes the sale, to consumers only and not for resale, of beer in containers, and wine in packages and in quantities of 52 gallons or less per sale, for consumption off the premises where sold.

23394. An off-sale general license includes the privileges specified in Section 23393 and authorizes the sale, to consumers only and not for resale, except to holders of daily on-sale general licenses issued pursuant to Section 24045.1, of distilled spirits for consumption off the premises where sold. Standards of fill for distilled spirits authorized for sale pursuant to this section shall conform in all respects to the standards established pursuant to regulations issued under the Federal Alcohol Administration Act (27 U.S.C. Secs. 201 et seq.) and any amendments thereto.

Note: Alcoholic beverages may only be sold in sealed, unopened bottles, packages or containers. No person may drink alcoholic beverages in a store or in adjacent parking lots or other areas under the control of the store.

(8) Beer Keg Registration (Section 25659.5 Business and Professions Code)

(a) Retail licensees selling keg beer for consumption off licensed premises shall place an identification tag on all kegs of beer at the time of sale and shall require the signing of a receipt for the keg of beer by the purchaser in order to allow kegs to be traced if the contents are used in violation of this article. The keg identification shall be in the form of a numbered label prescribed and supplied by the department that identifies the seller. The receipt shall be on a form prescribed and supplied by the department and shall include the name and address of the purchaser and the purchaser's driver's license number or equivalent form of identification number. A retailer shall not return any deposit upon the return of any keg that does not have the identification label required pursuant to subdivision (a).

(b) Any licensee selling keg beer for off premise consumption who fails to require the signing of a receipt at the time of sale and fails to place a numbered identification label on the keg shall be subject to disciplinary action pursuant to this division. The licensee shall retain a copy of the receipt, which shall be retained on the licensed premise for a period of six months. The receipt records shall be available for inspection and copying by the department or other authorized law enforcement agency.

(c) Possession of a keg containing beer with knowledge that the keg is not identified as required by subdivision (a) is a misdemeanor.

(d) Any purchaser of keg beer who knowingly provides false information as required by subdivision (a) is guilty of a misdemeanor.

(e) The identification label required pursuant to subdivision (a) shall be constructed of material and made attachable in such a manner as to make the label easily removable for the purpose of cleaning and reusing the keg by a beer manufacturer.

(f) The department is authorized to charge a fee not to exceed the actual cost of supplying receipt forms and identification labels required pursuant to subdivision (a). Fees collected pursuant to this subdivision shall be deposited in the Alcohol Beverage Control Fund.

(g) As used in this section, "keg" means any brewery-sealed, individual container of beer having a liquid capacity of six gallons or more.

Note: Keg receipts must be fully completed at the time of sale and be maintained in the store with accurate, corresponding identification labels.

Part 2: CLERK'S PRIOR VIOLATIONS *(Clerk must check one)*

_____ *I have never been* convicted of violating any law in the Alcoholic Beverage Control Act (such as selling an alcoholic beverage to an underage or obviously intoxicated person).

_____ *I have been* convicted of violating a law (or laws) in the California Alcoholic Beverage Control Act (such as selling an alcoholic beverage to an underage or obviously intoxicated person). [If you checked this box, please explain in full what happened. Use the space below or a separate sheet of paper, if necessary.]

Part 3: DECLARATION UNDER PENALTY OF PERJURY

(Clerk must complete this section)

I have read and understand this affidavit. I swear that all statements I have made in this affidavit are true. I swear that I signed this affidavit, on the date stated, under "penalty of perjury." I understand that if I did not tell the truth in this affidavit, I may be found guilty of perjury.

Signature of Clerk Date

Name of Clerk (printed)

Home Address Street City State Zip

Home Telephone Work Telephone

Part 4: ACKNOWLEDGMENT OF LICENSEE

(Licensee must complete this section)

I have reviewed the attached *Clerk's Affidavit* with the person who signed it. I will keep a signed copy of the *Clerk's Affidavit* at (address):

I understand if I do not have a signed *Clerk's Affidavit* for every person who sells alcoholic beverages in my store, the ABC may discipline my license.

Signature of Licensee *(or licensee's agent)* Date

ABC License Number

Part 5: NOTICE TO LICENSEE

(Licensee must read this section, then post sign in store)

Pursuant to Section 25658.4 of the Business and Professions Code, you must post a sign in your store that warns customers about certain laws and penalties relating to the sale of alcoholic beverages to, or the purchase of alcoholic beverages by, any person under the age of 21 years. The sign must be placed at an entrance or at a point of sale in your store, or in any other location in your store that is visible to your customers and employees. A sample sign that complies with Section 25658.4(b) and (c) is shown on the following page.

NOTICE TO CUSTOMERS

Pursuant to Section 25658.4 Business and Professions Code

This store will not sell alcoholic beverages in violation of the California Alcoholic Beverage Control Act.

We will refuse to sell an alcoholic beverage to any customer if we reasonably suspect that: (1) The customer is under the age of 21 years; (2) The customer looks or acts intoxicated; (3) The request to buy an alcoholic beverage is made between the hours of 2:00 a.m. and 6:00 a.m. on any day or in violation of legally required shorter hours of sale; (4) The customer intends to drink the alcoholic beverage in this store or on adjacent property immediately outside this store; or (5) Any other violation of the California Alcoholic Beverage Control Act will occur as a result of the sale.

FINES AND PENALTIES

for the Sale or Furnishing of Alcoholic Beverages to, or the Purchase of Alcoholic Beverages by, Persons Under Age 21

For the Person Under Age 21 Who Tries to Purchase Alcohol

Up to \$100 fine and/or 24-32 hours of community service; second offense, up to a \$250 fine and/or 36-48 hours of community service (and a one-year suspension or delay of the person's driver's license).

For the Person Under Age 21 Who Purchases Alcohol

A \$250 fine and/or 24-32 hours of community service; second offense, up to a \$500 fine and/or 36-48 hours of community service (and a one-year suspension or delay of the purchaser's driver's license).

For the Person Who Furnishes Alcohol or Causes Alcohol to be Furnished to a Person Under Age 21

A \$1,000 fine and at least 24 hours of community service (and a one-year suspension or delay of the furnisher's driver's license if the furnisher is under age 21). If great bodily injury or death occurs, the penalty is 6-12 months county jail and/or a \$1,000 fine.

For the Person Who Sells Alcohol to a Person Under Age 21

A \$250 fine and/or 24-32 hours of community service; second offense, up to a \$500 fine and/or 36-48 hours of community service (and a one-year suspension or delay of the seller's driver's license if the seller is under age 21).

***In addition, the Department of Alcoholic Beverage Control (ABC)
will file charges to suspend or revoke this store's license to sell alcoholic beverages.***

--The Management