

State of California
Department of Alcoholic Beverage Control

Information to Corporate Applicants and Licensees

- I. Section 23405 of the Business and Professions Code and Department's Rule 68.5 provide that any corporation holding an alcoholic beverage license shall maintain a stock register at the principal office of the corporation in California, and the stock register shall be available to the Department for inspection. Such corporation shall report to the Department in writing any of the following: (For exceptions, see Section 23405)
- A. Issuance or transfer of any shares of stock to any person where the issuance or transfer results in the person owning 10 percent or more of the corporate stock.
- B. Change in any of the corporate officers which are required by Section 312 of the Corporations Code.
Section 312 of the Corporations Code states in part:
"312.(a) A corporation shall have a chairman of the board or a president or both, a secretary, a chief financial officer and such other officers with such titles and duties as shall be stated in the bylaws or determined by the board and as may be necessary to enable it to sign instruments and share certificates...Any number of offices may be held by the same person unless the articles or bylaws provide otherwise."
- C. Change in any of the members of its board of directors.
THE CORPORATION SHALL FILE AN APPLICATION WITH THE DEPARTMENT WITHIN 30 DAYS AFTER THE ISSUANCE OR TRANSFER OF CORPORATE STOCK, CHANGE IN CORPORATE OFFICERS, OR CHANGE IN MEMBERS OF THE BOARD OF DIRECTORS (SEE RULE 68.5)
- II. Any application requesting approval shall be filed at the Department's District Office having jurisdiction over the area in which the premises are located.
- III. When the ownership of 50 percent or more of the shares of stock of a corporation is acquired by or transferred to a person or persons who did not hold the ownership of 50 percent of such shares of stock on the date the license was issued to the corporation, the license shall be transferred to the newly constituted corporation as provided for in Section 24071.1. The application fee for a stock transfer of an on-sale general license, an off-sale general license and all other license fees can be found on the Departments website - www.abc.ca.gov/licensing/license-fees/.
ANY DISCIPLINARY HISTORY, PENDING ACCUSATIONS, STAYED PENALTY OR LICENSE CONDITIONS REMAIN IN EFFECT.

FAILURE OF THE CORPORATE LICENSEE TO REPORT AND MAKE APPLICATION AS REQUIRED BY BUSINESS AND PROFESSIONS CODE SECTIONS 23405 AND 24071.1 AND DEPARTMENT'S RULE 68.5 MAY RESULT IN A SUSPENSION OR REVOCATION OF THE ALCOHOLIC BEVERAGE LICENSE.

Section 23405. Transfer of corporate stock.

(a) Any corporation holding a license under this division shall maintain a record of its shareholders at the principal office of the corporation in California and the record of its shareholders shall be available to the department for inspection. Such corporation shall report to the department in writing any of the following:

- (1) Issuance or transfer of any shares of stock to any person where the issuance or transfer results in the person owning 10 percent or more of the corporate stock.
- (2) Change in any of the corporate officers which are required by Section 312 of the Corporations Code.
- (3) Change of the members of its board of directors.

The report shall be filed with the department within 30 days after the issuance or transfer of corporate stock, change in corporate officers, or change in members of the board of directors, as the case may be.

(b) Any licensee within the purview of this section who is required by federal law to report to the federal government under the provisions of the Federal Alcohol Administration Act or the Internal Revenue Code the information required by this section may send to the department a copy of the report at the same time as it is sent to the federal government, and the copy of the report sent to the department by the licensee shall be deemed sufficient compliance with the provisions of this section.

(c) The provisions of this section shall not apply to any of the following:

- (1) A corporation the stock of which is listed on a stock exchange in this State or in the City of New York, State of New York.
- (2) A bank, trust company, financial institution or title company to which a license is issued in a fiduciary capacity.
- (3) A corporation which is required by law to file periodic reports with the Securities and Exchange Commission.

(d) The department may suspend or revoke any license of a corporation subject to the provisions of this section where conditions exist in relation to any person holding 10 percent or more of the corporate stock of such corporation which would constitute grounds for disciplinary action against such person if such person was a licensee.

Section 24071.1 Stock ownership.

When the ownership of 50 percent or more of the shares of stock of a corporation, which is required to report the issuance or transfer of such shares of stock under Section 23405, is acquired by or transferred to a person or persons who did not hold the ownership of 50 percent of such shares of stock on the date the license was issued to the corporation, the license of the corporation shall be transferred to the corporation as newly constituted. The application fee for the transfer of an on-sale general license or an off-sale general license shall be eight hundred dollars (\$800). For all other licenses, the fee shall be three hundred thirty-five dollars (\$335). In situations involving the multiple and simultaneous transfer of licenses under this section, the regular transfer fee shall only be required for one of the licenses being transferred and the remainder of the licenses shall be transferred for a fee of one hundred dollars (\$100) each. All of the transfer fees collected pursuant to this section shall be deposited directly in the General Fund in the State Treasury, rather than in the Alcohol Beverage Control Fund as provided in Section 25761. Before the license is transferred, the Department shall conduct an investigation pursuant to the provisions of Section 23958. Any person or persons who own 50 percent or more of the shares of stock of the corporation or who own as limited partners 50 percent or more of the capital or profits of the limited partnership, as the case may be, shall have all the qualifications required of a person holding the same type of license.

The fees may be adjusted by the department pursuant to subdivisions (d) and (e) of Section 23320.

A retail license shall not be transferred by a corporation under this section unless, before the filing of the transfer application with the department, the corporation initiating such transfer records in the office of the county recorder of the county or counties in which the premises to which the license has been issued, are situated a notice of the intended transfer, stating all of the following:

- (a) The name and address of the corporation.
- (b) The name and address of the person or persons acquiring ownership of 50 percent or more of the stock of the corporation.
- (c) The amount of the consideration paid for the stock.
- (d) The kind of license or licenses intended to be transferred.
- (e) The address or addresses of the premises to which the license or licenses have been issued.

A copy of the notice of the intended transfer, certified by the county recorder, shall be filed with the department together with the transfer application.

Notwithstanding any other provision of this division, a corporation as newly constituted by transfer under this section, shall not be eligible for any new credit from an alcoholic beverage supplier or manufacturer named in Section 25509 until all delinquent payments owed by the corporation as formerly constituted, are made, nor shall any corporate retail licensee, by transferring its license under this section, avoid the provisions of Section 25509 with regard to 42-day or 30-day periods, percentage charges for unpaid balances, or cash on delivery basis.

Rule 68.5. Issuance or Transfer of Corporate Stock, Change of Corporate Directors or Officers.

- (a) Each corporate licensee shall, within thirty (30) days of a change of the members of the board of directors, or a change in any of the corporate officers required by Section 312 of the Corporations Code, or the issuance or transfer of shares of its stock which results in a person not previously approved owning 10 percent or more of its stock, comply with the following conditions:
- (1) Make application to the department on such forms as may be prescribed which shall contain such information with respect to the new person as is required to be furnished by an applicant for a license.
 - (2) Cause the new director, officer, or stockholder to present himself to the department within thirty (30) days of application, as required under (1) above, for completion of such forms as may be prescribed and for fingerprinting when deemed necessary.
- (b) The department shall make an investigation to determine whether provisions of the Alcoholic Beverage Control Act and the Rules have been complied with and to determine the qualifications of the persons who present themselves as required in (a) (2) above. Where the department finds that the person does not have the qualifications to hold an alcoholic beverage license under Division 9 of the Business and Professions Code or Chapter 1, Title 4 of the California Administrative Code, the following procedure shall apply:
- (1) In the case of an application filed as required under Section 24071.1 of the Business and Professions Code, the department may deny the transfer application.
 - (2) In all other cases the department shall notify in writing the corporate licensee and the person who was found to be disqualified. Such written notice shall become "The statement of issues," as the term is used in Section 11504 of the Government Code. Within ten (10) days after such notification is mailed, the person or corporate licensee may petition the department in writing for a hearing on such notice of disqualification. On receipt of the petition, a hearing shall be scheduled thereon. The provisions of Section 24300 of the Business and Professions code and Chapter 5 (commencing with Section 11500) of Part 1, Division 3 of Title 2 of the Government Code, shall govern such proceedings.
- (c) When the department finds an officer, director or stockholder to be disqualified and the department's decision becomes final, as provided for by law, the department shall notify the licensed corporation in writing that it has thirty (30) days in which to take such action as may be necessary to remove the disqualified person from the corporation. Failure to so act within the prescribed period may be cause for disciplinary action by the department for the purpose of suspending or revoking the license. In any such disciplinary action, any findings of fact previously adopted by the department in connection with the person's disqualifications shall be presumptive proof as to the issue of the person's qualifications.
- (d) When the final decision of the department is that a new director, officer or stockholder is qualified, written notice to that effect shall be given the person and the corporate licensee.

- (e) The above provisions of this rule shall not apply to the following:
- (1) A corporate licensee, the stock of which is listed on a stock exchange in this State, or in the City of New York, State of New York;
 - (2) A bank, trust company, financial institution or title company to which a license is issued in a fiduciary capacity; and
 - (3) A corporate licensee which is required by law to file periodic reports with the Securities and Exchange Commission.