



STATE OF ARIZONA  
DEPARTMENT OF LIQUOR LICENSES AND CONTROL

Douglas A. Ducey  
GOVERNOR

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DIRECTOR

March 13, 2020

On March 11, 2020, Governor Ducey issued a Declaration of Emergency for Arizona regarding COVID-19. Due to concerns with the spread of COVID-19, many events within Arizona's hospitality industry have been or will be cancelled. These unexpected developments may result in retailers that have purchased spirituous liquor from wholesalers in bona fide purchase transactions that did not involve credit or consignment terms, being unable to sell those products to consumers as originally intended. The Department has received inquiries from the industry about how it will treat these circumstances. This advisory is intended to provide general guidance on these issues during these uncertain times. Arizona and Federal liquor laws generally prohibit the sale of spirituous liquors on credit or consignment.

See Arizona Revised Statute ("A.R.S.") § 4-243(A)(4) and (7), 27 U.S.C. § 205(d), 27 C.F.R. 11.21-.22.

First, there are some clear exceptions that may apply. Under A.R.S. § 4-243(E)(1), if a retailer *intends* to close for business for thirty or more consecutive days and malt beverage products are likely to spoil or expire, a wholesaler may accept the return of those products. Similarly, under subsection (E)(2), music and live sporting event venues that will experience a long gap between events may return malt beverages that may spoil or expire. Wholesalers who intend to use this exception should inquire with retailers about their schedules and intentions and document those discussions before accepting the return.

Second, under A.R.S. § 4-243(A)(4), the Department is authorized to and has adopted rule-based exceptions involving the return of spirituous liquor. Under Arizona Administrative Code R19-1-321(H), a wholesaler may accept the return of any type of spirituous liquor if that return is permitted under 27 U.S.C. § 205(d) and 27 C.F.R. Subchapter A, Part 11. Those Federal regulations generally prohibit sales on consignment or credit. Consignment Sales are defined in 27 C.F.R. 11.22 as "arrangements wherein the [retailer] is under no obligation to pay for distilled spirits, wine, or malt beverages until they are sold by the trade buyer." Under 27 C.F.R. 11.21, however, the regulations expressly do not apply to "transactions involving solely the bona fide return of merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold."

If a wholesaler that has entered into a transaction where there were no credit or consignment terms and the circumstances do not otherwise suggest such terms were in place but concealed, the Department will interpret the return of spirituous liquors necessitated solely by the impact of the spread of COVID-19 and resulting impacts on the liquor industry as a "bona fide return of merchandise for ordinary and commercial reasons."

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Industry members should be careful to maintain all records related to the return of merchandise as a bona fide return necessitated by the spread of COVID-19 and its impact on the industry. Sales that are made *after* a retailer has closed, cancelled events, or suffered severe loss of business for an extended period may not justify the bona fide return of merchandise.

This interpretation applies only to returns necessitated by the spread of COVID-19 and its impacts on the industry. As circumstances are rapidly changing, the Department reserves the right to determine that a return for these purposes is no longer a bona fide return or to otherwise modify this guidance. The Department will not tolerate any abuses of this guidance, and trusts that none will occur as the State bands together to keep its citizens safe and to promote the success of its businesses, large and small.

A handwritten signature in black ink, appearing to read 'John Cocca', with a stylized flourish at the end.

John Cocca, Director