

How to Protect Your Liquor License from California's New "Watchdog" Reporting Portal



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As if the coronavirus pandemic wasn't already bad enough for business, California liquor license holders now have to contend with a new anonymous reporting portal that connects concerned citizens directly with the Department of Alcoholic Beverage Control (the "ABC"). The portal provides an avenue for customers and other third parties to file anonymous reports on liquor store, tavern, restaurant and nightclub owners and operators, exposing such owners and operators to severe penalties. While the new portal is problematic for a number of reasons, liquor license holders can implement a number of protocols to ensure they keep their businesses safe from repercussions.

What is the New Portal and What's at Stake?

In early March, Alcohol Justice, the California-based, nonprofit alcohol industry watchdog formed in 1987, launched an anonymous complaint system through a new online portal that directly reports to the ABC. Known as the "ABC Online Complaint Form," this confidential portal allows anyone to submit a complaint about a variety of issues, from criminal behavior to minor infractions related to businesses that sell alcohol. In theory, the portal is a way to help the ABC keep communities safe by investigating problematic establishments and enforcing the California Alcoholic Beverage Control Act (the "Act"). In practice, however, this new portal could create more unnecessary problems for struggling businesses in the restaurant and hospitality sectors.

Alcohol Justice's mission is to improve the alcoholic beverage industry's product development, advertising, promotions and practices. It supports alcohol policies that keep youth and communities safe and healthy. While these are certainly worthwhile goals, there is some concern about whether the new portal will be used as a weapon rather than a shield. After all, since the ABC Online Complaint Form is entirely anonymous, what's to stop proprietors from making false and unscrupulous claims against their competitors?

Moreover, will the new portal unintentionally strain the ABC's enforcement resources? The ABC could receive a huge influx of complaints, some worthy of investigation and others completely frivolous, and be unable to investigate all of them, as its enforcement resources are already stretched thin. Perhaps the ABC will employ a "gatekeeper" function to try and screen incoming complaints, but this will only add another level of bureaucracy to an already bureaucratic state regulatory body.

Furthermore, let's not forget that we're still living with COVID-19. Due to the pandemic's devastating effect on the hospitality and restaurant industries, the ABC took unprecedented steps last year to relax many of its restrictions on retail licensees (e.g., allowing "to-go cocktails," permitting outdoor consumption in unlicensed areas, etc.). In its community guide, "10 Things to Look Out For and Report to ABC," Alcohol Justice lists the practices below that should be reported through the new portal, some of which directly target these new COVID-based practices:

1. New sites of alcohol litter and public nuisance.
2. Giving public space over to private businesses (parking lots and curbsides to serve patrons).
3. Poor enforcement of public health requirements.
4. Not providing bona fide meals.
5. Alcohol while driving (mixed drinks/unsealed beverages ordered for take-out).
6. Taking alcohol from one venue to another.
7. Over-occupancy.
8. Minors ordering alcohol.
9. Illegal parties/gatherings at venues.
10. External advertising.

How to Prevent Action by the ABC

While the impact of the new portal remains to be seen, what's abundantly clear is that holders of California liquor licenses should stay vigilant. There's no telling whether the public at large will consider the extreme hardships these businesses have faced since the pandemic hit or stick to reporting only egregious complaints during this difficult time. Whether the ABC has the resources to investigate an increase in complaints or even carry out sufficient enforcement actions is also unclear for now. But what we do know is that the new portal makes reporting anonymous complaints to the ABC incredibly easy and may bring even more struggles to an industry that has been reeling for over a year.

Given this uncertainty, liquor licensees should take extra care to ensure that they are complying with all aspects of the law in order to protect themselves from ABC scrutiny and possible disciplinary action. The above list of reportable practices is certainly not exhaustive in this regard, and violations of the Act can lead to fines, license suspensions and even license revocation. Accordingly, licensees would be well-advised to prioritize education and training of their employees and staff and to adopt best practices when it comes to sales and service of alcohol.

There are plenty of resources on the ABC's website that may be helpful, from information on its L.E.A.D. (Licensee Education on Alcohol and Drugs) program, to materials on other licensee and merchant training. Keep in mind that the California Legislature has enacted legislation requiring that, by summer 2022, all servers and managers at on-premises businesses complete the ABC's Responsible Beverage Service Training Program (RBSTP). However, also keep in mind that the RBSTP program has just been initiated, so licensees may not want to wait for that program to be fully implemented before training their personnel. Now that Alcohol Justice's new watchdog system is here and will empower virtually *anyone* in the community to accuse licensees of violations – no matter how minor or insignificant – the time to act is now.

[Nossaman LLP](#) - [Marco D. Costales](#) and [Asally Adib-Samadian](#)