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ABC Industry Advisory

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### **ABC Industry Advisory - Delivery of Alcoholic Beverages**

Many licensees deliver alcoholic beverages to consumers at residences, businesses, and other locations away from the licensed premises. Although delivery is a privilege most retailers have had for many years with respect to beer and wine, since the advent of the COVID-19 crisis, and the Department permitting the delivery of distilled spirits and retailer-packaged alcoholic beverages, there has been a marked increase in deliveries.

This Industry Advisory is to call licensees' attention to four issues:

- (1) to remind licensees of their legal obligations relating to deliveries;
- (2) to ensure licensees are aware that they are ultimately responsible for the delivery of the alcoholic beverage;
- (3) that the Department's recent enforcement actions have revealed that third-party delivery services are routinely delivering alcoholic beverages to minors; and
- (4) that many licensees, and the delivery services they use, are failing to adhere to a variety of other legal obligations.

Licensees are ultimately responsible for the delivery of alcoholic beverages away from their licensed premises, whether those deliveries are made by their own employees, by third-party services on behalf of a licensee, or by anyone else a licensee transfers an alcoholic beverage to for delivery to another person. This applies to all deliveries of alcoholic beverages, whether under the Department's [Notice of Regulatory Relief](#) or under already-existing license privileges.

Business and Professions Code section 25658 prohibits the sale, furnishing, or giving, or causing the sale, furnishing, or giving, of alcoholic beverages to minors—persons under 21 years of age. Business and Professions Code section 25602 prohibits the sale, furnishing, or giving, or causing the sale, furnishing, or giving, of alcoholic beverages to obviously intoxicated

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persons. These statutory prohibitions apply to all alcoholic beverages that are delivered to consumers away from the licensed premises, whether the beverage is ordered at the premises, by telephone, online, or by any other means. Licensees are ultimately responsible for any employee or agent acting on their behalf in the ordering and delivery of alcoholic beverages. For example, if a licensee relies on a third-party online service to pick up and deliver an alcoholic beverage to a customer, and that third-party service delivers the beverage to a minor, the licensee has violated section 25658, is subject to discipline against its license, and its employees may be subject to arrest and criminal prosecution. This is so no matter what assurances the delivery service may have provided to the licensee.

Further, if licensees choose to sell alcoholic beverages via third-party applications, ordering platforms, or delivery services, licensees are also reminded that they must control the transaction, including, among other things, receipt of funds directly from the consumer. Third-party services are not authorized to buy and sell alcoholic beverages, because they do not hold a license issued by the Department. This means, for example, they are prohibited from “up-charging” any alcoholic beverages sold by the licensee. However, the service may charge a delivery or service fee that is separate and independent from the sale of the alcoholic beverages.

For those licensees taking advantage of the Department’s [Notice of Regulatory Relief](#) regarding drinks to go, they are reminded of the various conditions in that Notice, including that alcoholic beverages must be sold with meals and must be sealed in the manner specified.

The Department has recently conducted enforcement actions throughout the state and found significant violations of the law. Most concerning is that minors are routinely able to purchase alcohol through delivery from restaurants. There have been instances in which the licensee’s own employees have done so, but a far greater rate has been evident among third-party delivery services. Licensees are responsible for these unlawful deliveries, and the Department encourages licensees to review the practices of these services and their reliance on them. The Department notes that many third-party delivery companies have specific guidelines designed to avoid sales to minors, but those guidelines are largely being ignored by the delivery personnel.

Other problems the Department has observed include violations of the [Notice of Regulatory Relief](#) regarding drinks to go, including the provision of alcoholic beverages without meals, beverages in containers that are not properly sealed (e.g., a soft drink cup with a lid that has masking tape over the straw hole, or a coffee cup with the sipping-hole stoppered, are not properly sealed), and beverages in the passenger compartments of vehicles.