



## **INDUSTRY ADVISORY**

### **Limited Off-Sale Wine License**

Recently enacted legislation (Assembly Bill 623, Statutes 2011, effective January 1, 2012) created Business and Professions Code section 23393.5 and amended Business and Professions Code sections 23661.7, 24045.18, 25503.56 and 25503.9. In addition to providing for a new license (limited off-sale wine license), Section 23393.5 includes specific exceptions to standard retail licensing investigation requirements for this license type. This license is designated as “Type 85” by the Department.

The use of on-line ordering of alcoholic beverages has significantly increased with the proliferation of the internet in the past decade. California statutes have not kept pace with the changing needs for licensees who desire to conduct their business by on-line computer, telephone, or direct mail. Prior to this statute, a licensee who wanted to make sales of wine directly to the consumer via the internet was required to make application for an off-sale beer and wine license, together with a beer and wine wholesaler license. This combination, most commonly referred to as a 17/20, required the licensee to maintain a bona fide wholesale business (Business and Professions Code section 23779). This new license will enable a licensee to make direct sales of wine to consumers via the internet, direct mail, or telephone from a premises not open to the public, without the requirement to also hold a wholesaler license.

The Type 85 is identified as an “off-sale retail” license and most provisions related to investigating retail license types are applicable unless specifically exempted by the statute. Tied-house prohibitions for off-sale licensees are applicable to this license type unless specifically exempted.

Application procedures for a Type 85 are similar to those for other retail licenses, although some ABC Act provisions such as those related to number limitations within counties and establishing public convenience or necessity do not apply.

An application for the Type 85 license should be prepared using forms required for an original retail license (available on the Department's website at [www.abc.ca.gov](http://www.abc.ca.gov)) and submitted to the appropriate ABC District Office. Applicants will be able to apply for the limited off-sale wine license beginning Tuesday, January 3, 2012, and applications shall be subject to a \$100 original fee and \$242 annual fee.

This new license does not replace the 17/20 combinations for those who wish to operate as a wholesaler in addition to selling wine to consumers. The Department will continue to accept and investigate applications for 17/20 licenses.

The following highlights *some* of the privileges and restrictions associated with the Type 85 license. The full text of the chaptered bill and detailed legislative analysis is available at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

- *All sales of wine must be conducted via direct mail, telephone, or the internet.*
- *The Type 85 license prohibits the licensee from conducting sales directly to the consumer from a premises open to public.*
- *The Type 85 licensee is able to assist a non-profit organization holding a temporary wine license in conducting a winetasting, but this privilege shall only apply to wine produced for the Type 85 under a brand they own exclusively and have donated or sold to the licensee for the event.*
- *The Type 85 licensee is able to give or sell wine to a non-profit organization.*
- *The Type 85 licensee is not authorized to conduct an instructional tasting event for consumers pursuant to a Type 86 license.*