

#### **TITLE 4. ARTICLE 6 APPLICATIONS. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL PROPOSED REGULATIONS**

Text proposed for adoption.

##### **§35 Applications for Licenses by Trusts**

(a) Definitions for use in this section.

(1) “Beneficiary” means any person who benefits directly from the trust assets under the trust. This does not include contingent beneficiaries, until they begin to receive benefits from the assets of the trust.

(2) “Contingent beneficiary” means any person who will become a beneficiary in the future based on events outlined within the trust.

(3) “Controlling person” means the trustee or any other person with control over trust assets, even if given a different title than trustee, including all persons with power to remove a trustee or direct a trustee to act.

(4) “Disqualifying interest” means an interest in another alcoholic beverage license or another alcoholic beverage business, wherever it may be located, that is prohibited or not otherwise authorized by the Business and Professions Code.

(5) “Interest holder” means any person identified in the trust who may in the future receive the benefits of the trust including both beneficiaries and contingent beneficiaries.

(6) “Natural person” means an individual, and not a legal entity such as a corporation, limited liability company, trust, or partnership.

(7) “Person” means the definition found in Business and Professions Code section 23008.

(8) “Qualified” means meeting all requirements of a license holder after a full investigation of a person for an application for a license, including fingerprinting and background checks.

(9) “Trust” means a legal entity created to hold legal title to assets on behalf of a person that is managed by one or more controlling persons with a fiduciary duty to act for the benefit of specific interest holders. The legal entity must be formed in compliance with the law of the jurisdiction in which it is created.

(b) A full and complete copy of the trust applying for a license, in whole or in part, shall be provided to the Department in connection with the application. The Department shall retain

the copy of the trust in its licensing file. A certificate of trust is not sufficient to fulfill this requirement.

- (c) Any controlling person within a trust applying for a license, in whole or in part, shall be qualified for the alcoholic beverage license to be issued.
- (d) Except as provided herein, any interest holder and any controlling person within a trust applying for a license, in whole or in part, must meet all requirements to hold the applied-for license and shall not hold any disqualifying interest.
- (e) Any spouse of either a controlling person or an interest holder within a trust applying for a license, in whole or in part, shall not hold any disqualifying interest.
- (f) Any trust that has applied, or holds an ABC license, in whole or in part, shall give written notice to the Department of any changes to any controlling person, interest holder, the spouse of a controlling person, or the spouse of an interest holder, within 30 days of such change occurring.
  - (1) Any new controlling person, interest holder, the spouse of a controlling person, or the spouse of an interest holder, shall meet the requirements of this section.
- (g) If an interest holder or controlling person is not a natural person, the trust shall disclose any intervening entity or entities and their ownership or beneficial interests until a natural person with control, in whole or in part, over the trust or any interest in the trust is disclosed.
- (h) No beneficiary of a trust holding a license may be under the age of 21. A person under 21 years of age may be a contingent beneficiary of a trust, but they cannot become a beneficiary of the trust they reach the age of 21 for the trust to qualify for a license.
- (i) A trust company serving as a trustee of a trust that may only act at the direction of another controlling person shall not be subject to qualification.
- (j) Banks and financial institutions that are chartered by a state or federal agency need not be qualified when acting as a trustee of a trust.

Authority cited:

Section 25750, Business and Professions Code; Section 22 Article XX California Constitution

Reference:

Sections 23008, 23394, 23396, 23396.1, 23396.2, 23396.3, 23816, 23818, 23821, 23826, 23826.5, 23836.7, 23836.9, 23826.10, 23826.12, 23836.13, 23836.14, 23827, 23950, 23951, 23952, 23953, 23954, 23954.6, 23959, 23961, 24070, Business and Professions Code.