



## **INDUSTRY ADVISORY**

### **Contests and Sweepstakes**

Recently enacted legislation (Senate Bill 778, Statutes 2012, effective January 1, 2013) created Business and Professions Code sections 25600.1 and 25600.2. These statutes permit authorized licensees to conduct consumer contests and conduct or sponsor consumer sweepstakes offering the chance to win prizes. “Contests” are authorized under Section 25600.1 and “sweepstakes” are authorized under Section 25600.2. The two statutes use similar language in their numerous provisions and restrictions, except where otherwise noted.

Each statute defines “authorized licensee” as a winegrower, beer and wine importer general, beer manufacturer, out-of-state beer manufacturer certificate holder, distilled spirits manufacturer, distilled spirits manufacturer’s agent, distilled spirits importer general, distilled spirits general rectifier, rectifier, out-of-state distilled spirits shipper’s certificate holder, brandy manufacturer, and brandy importer.

An authorized licensee may conduct a consumer contest pursuant to Section 25600.1 regardless of whether the licensee holds any additional license not included in the statutory definition. An authorized licensee may conduct, sponsor, or participate in a sweepstakes pursuant to Section 25600.2 regardless of whether the licensee holds any additional license not included in the statutory definition. However, there is an important exception to this.

Authorized licensees do not include a beer and wine wholesaler, beer and wine importer general, or distilled spirits importer general that holds only a wholesaler’s or retailer’s license as an additional license.

“Contest” means a game, contest, puzzle, or similar activity that holds out or offers to participants the opportunity to receive or compete for gifts, prizes, gratuities, or other things of value as determined by skill, knowledge, or ability rather than upon random selection. Skill, knowledge, or ability does not include the consumption or use of alcoholic beverages.

“Sweepstakes” means a procedure, activity, or event for the distribution of anything of value by lot, chance, or random selection where the odds of winning a prize are equal for each entry.

Nothing in these sections authorizes conducting any contest or sweepstakes where consumers are entitled to an allotment or accumulation of points based on purchases made over a period of time that can be redeemed for prizes, things of value, or additional contest or sweepstakes entries.

A prize awarded for a contest or sweepstakes conducted pursuant to these sections shall not be subject to the monetary limitation imposed by Section 25600 or a regulation of the department.

In addition to any other penalty that may be imposed, an authorized licensee that violates either section may be prohibited by the department from offering a contest or sweepstakes to California residents for a period of 12 months.

An authorized licensee may conduct consumer contests or sweepstakes, subject to the following conditions:

- Entry or extra chances in a contest or sweepstakes shall not be made available via the purchase of an alcoholic beverage. No entry fee may be charged to participate in a sweepstakes.
- Entry into or participation in a contest or sweepstakes shall be limited to persons 21 years of age or older.
- No contest or sweepstakes shall involve consumption of alcoholic beverages by a participant.
- A contest or sweepstakes may not be conducted for the benefit of any permanent retail licensee.
- Closures, caps, cap liners, corks, labels, cartons, cases, packaging, or other similar material shall not be used as an entry to a contest or sweepstakes or as a means of determining the amount or size of the prize or the winner in a contest or sweepstakes, except as follows:
  - (i) Removable entry forms that are neck hangers may be used only on bottles of wine or distilled spirits, and shall not require purchase of the product. Removable neck hangers may be used only if other entry forms are available at the point of sale or if an alternative means of entry is also available.
  - (ii) Codes that may be scanned or electronically entered by a consumer where the authorized licensee has permanently affixed the codes as part of the original alcoholic beverage label, container, packaging, case, or carton, and where the codes are not removable and not required to be removed, are permitted as a form of entry.

- The authorized licensee shall provide an alternative means of entry that does not require a visit to a licensed premises.
- Except as otherwise provided, removable entry forms shall not be used on alcoholic beverage labels, containers, packaging, cases, or cartons.
- Entry forms may be provided through electronic or other media, including point of sale.
- All permitted means of entry, including the use of electronic or scanner codes, shall clearly indicate that no purchase is required to enter.
- A contest or sweepstakes shall not provide for the instant or immediate awarding of a prize or prizes. Instant or immediate notification to the consumer that he or she is a winner is permissible.
- Except for providing a means of entry, a contest or sweepstakes authorized by these sections shall not be conducted at the premises of a retail licensee or the premises of a winegrower or beer manufacturer operating under a duplicate license for a branch office.
- Alcoholic beverages or anything redeemable for alcoholic beverages shall not be awarded as a contest or sweepstakes prize. This paragraph shall not prohibit a contest or sweepstakes in which the prize is cash or cash equivalent or the awarding of cash or cash equivalent.
- A retail licensee shall not serve as the agent of an authorized licensee by collecting or forwarding entries or awarding prizes to, or redeeming prizes for, a contest or sweepstakes winner. With respect to sweepstakes, the matching of entries with numbers or pictures on the point-of-sale materials at retail licensed premises is permitted only if entrants are also offered the opportunity to use an alternative means to determine prize-winning status. An authorized licensee may furnish and maintain a deposit box on a retail licensed premises for the collection and forwarding of sweepstakes entry forms.
- A licensee that is not an authorized licensee shall not directly or indirectly underwrite, share in, or contribute to, the costs of a contest or sweepstakes authorized by this section or serve as the agent of an authorized licensee to collect or forward entries or to furnish any prize to a contest or sweepstakes winner.
- Advertising of a contest or sweepstakes shall comply with the signage and advertising restrictions contained in this chapter, Chapter 15 (commencing with Section 25500), and any regulations issued by the department. A retail licensee shall only advertise or promote a contest or sweepstakes authorized by these sections in this manner.
- Advertising or promotion of a contest or sweepstakes shall not identify or refer to any retail licensee.

- Advertising or promotion of a contest or sweepstakes shall only be conducted on the premises of a retail licensee when such advertisement or promotion involves a minimum of three unaffiliated retail licensees. For purposes of this subparagraph, “unaffiliated retail licensees” shall not include any retail licensee owned or controlled in whole or in part by an authorized licensee or any officer, director, or agent of that licensee.
- Placement of signs or other advertising of a contest or sweepstakes in a licensed retail premises shall not be conditioned upon the following:
  - (i) The placement of any product within the licensed premises or the restriction, in any way, of the purchase of a product by a licensee, the removal of a product from the sales area of a licensed premises, or the resetting or repositioning of a product within the licensed premises.
  - (ii) The purchase or sale of any product produced, imported, distributed, represented, or promoted by an authorized licensee or its agent.
- An agreement, whether written or oral, between a retail licensee and an authorized licensee or its agent that precludes the advertisement or promotion of a contest or sweepstakes on the premises of the retail licensee by another authorized licensee is prohibited.
- Contest or sweepstakes prizes shall not be awarded to an authorized licensee, retail licensee, or wholesale licensee, or agent, officer, employee, or family member of an authorized licensee, retail licensee or wholesale licensee. For purposes of this paragraph, “family member” means a spouse, parent, sibling, child, son-in-law, daughter-in-law, and all lineal descendants, including those by adoption. An authorized licensee shall maintain all records pertaining to a contest or sweepstakes for three years following the completion of a contest or sweepstakes. This section does not apply to contests conducted by an authorized licensee as part of a sales incentive program for wholesale licensees or their employees or an authorized licensee’s employees.
- Nothing in this section shall preclude licensees from sponsoring contests as permitted by regulations of the department. (See Rule 106(i)(2).)