



INDUSTRY ADVISORY

Amendments to Restrictions on Listing Retailers

Effective January 1, 2016, Assembly Bill 780 amends Business and Professions Code section 25500.1 with respect to limitations on non-retail licensees identifying retailers that sell their products. This provision authorizes non-retail licensees to list “the names, addresses, telephone numbers, email addresses, or Internet Web site addresses, or other electronic media, of two or more unaffiliated on-sale or off-sale retailers selling beer, wine, or distilled spirits produced, distributed, or imported by a nonretail industry member”, with certain specific limitations.

There are three significant changes to existing law:

1. Previously the tied-house exceptions for on-sale and off-sale retailers were separate and slightly different. The exceptions are now consolidated in a single section and are consistent.
2. Prior law required that the non-retail licensee may only provide the specified information in response to a direct consumer inquiry. This is no longer required. What this means is that a non-retail licensee may now provide the authorized information to consumers without first receiving a request for such information.
3. The information allowed may only be provided in a “direct communication” with consumers. This means that there must be some relationship between the non-retail licensee and the consumer(s) to whom the information is provided. For example, if a consumer “follows” the non-retail licensee on social media (such as Facebook or Twitter) or takes some affirmative act to seek-out the non-retail licensee (such as viewing the licensee’s website), the listing of permitted information via such social media or on the non-retailer’s website would be in compliance with this section. In contrast, taking out an advertisement that identifies retailers in a newspaper or magazine would not be considered a “direct communication”.

The specific limitations on this privilege are:

1. The listing does not also contain the retail price of the product.
2. The listing is the only reference to the on-sale or off-sale retailers in the direct communication.
3. The listing does not refer only to one on-sale or off-sale retailer or only to on-sale or off-sale retail establishments controlled directly or indirectly by the same retailer.

4. The listing is made, or produced, or paid for, exclusively by the nonretail industry member.

The Department has received several inquiries regarding various methods of communicating the permitted information. It is the Department's opinion that as long as the mode of communication or presentation complies with the requirements stated above, and provides no additional "thing of value" to the retailer, then it is consistent with the section. For example, if the "listing" of retailers is by way of image(s) posted on social media sites, the image(s) must identify two or more unaffiliated retailers, and do no more than provide information concerning the retailers' addresses, telephone numbers, email addresses, or Internet Web site addresses, or other electronic media.