INDUSTRY ADVISORY

Tied-House Exception for Sponsorship of Certain Events in Napa County

Effective January 1, 2016, a new provision in the ABC Act (Business and Professions Code section 25503.40) will allow certain non-retail licensees to sponsor events promoted by live entertainment marketing companies in Napa County only under specific circumstances. This Advisory summarizes the key provisions of the new and amended laws.

(**Note:** This is intended to be a summary only. Licensees are cautioned to review the new section in its entirety for a complete understanding of the privileges and restrictions.)

Key provisions of Section 25503.40:

1. Specified licensees may sponsor events promoted by, and may purchase advertising space and time from, or on behalf of, a live entertainment marketing company subject to specific provisions. "Live entertainment marketing company" is not specifically defined. As such, it should be broadly understood to mean any marketing or promotional company that markets, promotes, or organizes events involving live entertainment.
2. Authorized licensees: winegrower; winegrower's agent; any importer that does not also hold a wholesale or retail license as an additional license, unless the holder of the importer's license holds one of the other authorized licenses specified; distilled spirits manufacturer, rectifier, distilled spirits manufacturer's agent.
3. The live entertainment marketing company must be a wholly owned subsidiary of a live entertainment company that is not publicly traded and has its principal place of business in the County of Napa; that may also own interests, directly or indirectly, in retail licenses or winegrower licenses.
4. Restrictions on the event:
    a. Venue must be located within the County of Napa and must be lawfully permitted to be used for live artistic, musical, sports, food, beverage, culinary, lifestyle, or other cultural entertainment events;
    b. Expected attendance shall be at least 5,000 people per day;
    c. No more than three (3) such events are held in the County of Napa each year. This limitation is on the total number of events per year held in Napa County, regardless of how many live entertainment marketing companies hold such events;
    d. The live entertainment company promoting the event shall affirmatively represent and warrant in writing to any retail licensee operating as the retail licensee for such an event that the live entertainment company promoting the event, including the subject event, has not exceeded the permissible limit of

three (3) events in the County of Napa for the year in which the event is being held and the expected attendance for the event is in excess of 5,000 people per day.

5. The on-sale licensee that will be selling alcoholic beverages at the event must obtain from the live entertainment company promoting the event a written representation and warranty that it has not exceeded the permissible limit of three (3) events in Napa County. The retail licensee shall provide the Department with a copy of this written representation and shall also notify the Department that the event is being held pursuant to this provision.
6. The on-sale licensee selling alcoholic beverages at the event, and any on-sale licensee that is owned by the live entertainment company, must serve other brands of beer, distilled spirits, and wine distributed by a competing wholesaler in addition to any brand manufactured or distributed by an authorized licensee that is sponsoring or advertising in connection with the event.
7. No advertising time or space purchased as permitted by this section may be placed in any on-sale licensed premises where the on-sale retail licensee is owned by the live entertainment company or any of its subsidiaries.
8. No permitted sponsorship or advertising agreement shall be conditioned, directly or indirectly, on the purchase, sale, or distribution of any alcoholic beverage manufactured or distributed by the advertising or sponsoring licensee.
9. The sponsorship of events or the purchasing of advertising space or time shall be conducted pursuant to a written contract entered into between the authorized licensee and the live entertainment marketing company.
10. It is a violation of this section for an on-sale retail licensee to solicit or coerce, directly or indirectly, any authorized licensee to purchase advertising time or space pursuant to this section.
11. This section does not allow an authorized licensee to purchase advertising time or space from, or on behalf of, any on-sale retail licensee.
12. No authorized licensee may give anything of value to the on-sale retail licensee selling alcoholic beverages at the event unless it is otherwise permitted by the ABC Act. For example, non-retail licensees may not donate any alcoholic beverages for sale or use at such an event. In addition, any “special pricing” of alcoholic beverages sold to the on-sale retail licensee for re-sale at the event may be considered a prohibited thing of value. Because the event venue will be licensed as an on-sale retail premise, consumer sampling events consistent with Sections 25503.55 (beer) and 25503.57 (wine and distilled spirits) would be permitted. Care should be taken, however, as other permitted activities are very limited.

<u>Issues to consider in connection with sponsorships under this section:</u>

1. Licensees should use care in deciding whether to sponsor such events. Although the live entertainment company involved in a particular event may not have exceeded the three (3) permissible events, this does not necessarily mean that there have not been three (3) permissible events already. Since the limitation on the number of events is the total

number of events held per year in Napa County, and is not a limit of three (3) events per live entertainment company, it may be difficult to know whether or not the sponsorship is authorized.

2. Licensees may not sponsor any event in Napa County that is promoted by a live entertainment marketing company unless both the live entertainment marketing company and the event are in full compliance with the requirements of Section 25503.40.
3. Mere issuance of a catering authorization to an on-sale licensee in connection with an authorized event does not mean that sponsorships are themselves authorized.