



INDUSTRY ADVISORY

High Proof Alcoholic Beverages

The Department has recently received a number of inquiries regarding the availability, at retail-licensed premises, of high proof distilled spirits products. "High proof" in this context is an alcoholic beverage containing more than 60 percent alcohol by volume (or 120 proof).

Business and Professions Code section 23403 provides as follows:

"No retail licensee, except a pharmacy or drug store registered with the California State Board of pharmacy, shall sell or possess on his licensed premises any undenatured alcohol of any proof or compound thereof which is an alcoholic beverage as defined in Section 23004 containing more than 60 percent of alcohol by volume. Undenatured alcohol shall be sold at retail only upon the prescription or order of the holder of a physician's and surgeon's certificate or a dentist's or veterinarian's license. Any person who violates any of the provisions of this section is guilty of a misdemeanor."

Because this provision references both "alcohol" and "alcoholic beverages," consideration must be given to the respective definitions in the ABC Act in understanding the restriction.

Business and Professions Code section 23003 defines "alcohol" as: "ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced."

Business and Professions Code section 23004 defines "alcoholic beverage" to include: "alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of 1 percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances."

Section 23403 thus expressly prohibits the retail sale (without a prescription) of undenatured alcohol that is an alcoholic beverage (for example, grain neutral spirits) that is in excess of 60 percent alcohol by volume (120 proof). An alcoholic beverage that is not itself simply alcohol as defined (not just ethyl alcohol, hydrated oxide of ethyl, or spirits of wine that is fit for beverage purposes) may be sold at retail even if the alcohol by volume exceeds 60 percent (120 proof). This would include alcoholic beverages such as rum or whiskey, among others.