

# **Expanded Alcohol To-Go Privileges Requirements and Guidelines**

## **Requirements**

Effective January 1, 2022, [Business and Professions Code \(BPC\) Section 23401.5](#) authorizes the holder of an on-sale license for a bona fide public eating place that has off-sale privileges, and licensed beer manufacturers, licensed wine manufacturer, or licensed craft distillers that operate a bona fide public eating place at its premises of production to have the following increased off-sale privileges subject to specified requirements:

- 1) The licensee may sell distilled spirits for off-sale provided the beverages are in manufacturer-prepackaged containers and ordered and picked up by the consumer.
- 2) The licensee may also sell the alcoholic beverages, except beer, for off-sale consumption when the beverages are in non-manufacturer sealed containers if specified conditions are met.

Alcoholic beverages sold pursuant to this statute shall be ordered by the consumer online, over the telephone, or in person, for pickup by the consumer. The consumer who places the order for an alcoholic beverage shall pick up the order directly from the licensee and shall present a bona fide identification card for purposes of confirming the age and identity of the consumer who placed the order.

To sell distilled spirits or wine for off-site consumption, the licensee must have on-sale wine or distilled spirits privileges.

A manufacturer-prepackaged container is a container, such as a bottle or can, that is filled and packaged by the manufacturer of the alcohol. A non-manufacturer sealed container (to-go) is a container filled by the retail licensee that has a secure lid or cap that is sealed in a manner designed to prevent consumption without removal of the lid or cap by breaking the seal. Non-manufacturer sealed to-go alcoholic beverages may be distilled spirits, mixed drinks, or single-serve wine that are prepared by the on-sale retailer on the licensed premises and are not sold to the consumer in the original manufacturer-prepackaged container.

## **Specified Conditions**

Licensees authorized to sell non-manufacturer sealed alcoholic beverages to-go must comply with the following conditions:

- 1) The alcoholic beverages must be ordered and picked up in-person by the consumer directly from the licensee (i.e., they cannot be delivered to the consumer away from the licensed premises). The ordering consumer must present a valid ID to verify legal alcohol consumption age and that they are the consumer who placed the order.
- 2) The alcoholic beverage must be packaged in a container with a secure lid or cap that is sealed in a manner designed to prevent consumption without removal of the lid or cap by breaking the seal.

- 3) Wine can only be sold in single-serve containers, meaning containers that hold between 187 milliliters and 355 milliliters (between 6.3 and 12 ounces).
- 4) Mixed drinks and cocktails sold for off-sale consumption cannot contain more than 4.5 ounces of distilled spirits per drink.
- 5) Alcoholic beverages in a non-manufacturer sealed container can only be sold in conjunction with a meal. There is a limit of 2 to-go drinks that are not in a manufacturer-sealed container per individual meal.
- 6) The alcoholic beverage container must be clearly and conspicuously labeled or otherwise identified as containing alcohol so that it is easily identified as containing an alcoholic beverage.
- 7) A specific [warning sign](#) must be posted on the premises, online, or wherever necessary to ensure the consumer purchasing the alcoholic beverages is given notice of open container laws.
- 8) The licensee shall notify the Department of their intent to sell non-manufacturer-sealed to-go containers of alcoholic beverages prior to exercising the privileges.

## **Guidelines**

Licensees must utilize the [Alcohol To-Go Notification Tool](#) to submit their Intent to Sell Non-manufacturer Sealed Alcoholic Beverages To-Go. Licensees will receive an automated confirmation that their notice was submitted. Licensees that have reviewed the Requirements and Guidelines and attested that they meet the requirements set forth in BPC § 23401.5 can begin exercising the privileges immediately after the notification has been submitted.

Licensees that intend to sell beer, wine, or distilled spirits only in manufacturer-prepackaged containers are not required to notify the Department.

### **Warning Sign: Alcohol To-Go**

An alcoholic beverage in a non-manufacturer sealed container is considered an “open container” if transported in a motor vehicle. In addition to other requirements, licensees selling non-manufacturer sealed alcoholic beverages to-go must post a notice (see [warning sign](#)) that states the following:

*“Alcoholic beverages that are packaged by this establishment are open containers and shall not be transported in a motor vehicle except in the vehicle’s trunk or, if there is no trunk, the containers shall be kept in some other area of the vehicle that is not normally occupied by the driver or passengers. This does not include a utility compartment or glove compartment (See [Vehicle Code Section 23225](#)). Additionally, these beverages shall not be consumed in public or in any other area where open containers are prohibited by law.”*

### **Delivery**

Delivery of the alcoholic beverages authorized pursuant to this bill is expressly prohibited, whether by the licensee or by any third-party delivery service.

## **Non-Manufacturer Sealed Container**

A nonmanufacturer-sealed container (to-go) is a container filled by the retail licensee that has a secure lid or cap that is sealed in a manner designed to prevent consumption without removal of the lid or cap by breaking the seal. The container must be clearly and conspicuously labeled or otherwise identified as containing an alcoholic beverage.

If a non-manufacturer sealed container is packaged to-go but subsequently opened by a customer prior to the leaving the premises, the licensee is responsible for ensuring that alcoholic beverage can no longer leave the licensed premises. Similarly, partially consumed alcoholic beverages, such as those ordered while dining-in, cannot be packaged to-go.

## **Conditions**

Licensees whose off-sale privileges are restricted due to operating conditions or other statutory restrictions are prohibited from exercising privileges, including those in this statute, that are contrary to their operating conditions. The temporary COVID-19 regulatory relief which allowed on-sale licensees to sell alcoholic beverages to-go regardless of their operating conditions will end on December 31, 2021. Effective January 1, 2022, licensees cannot sell non-manufacturer sealed to-go alcoholic beverages unless they meet the requirements set forth in BPC § 23104.5. Licensees that would like to exercise the to-go privileges but have operating conditions prohibiting them from doing so, must contact their local district office to request a Condition Modification (see [BPC § 23803](#)) utilizing Change in License Information/Licensed Premises ([Form ABC-244](#)).

With good cause, the Department may at any time impose conditions on a license restricting or prohibiting the licensee from selling or furnishing alcoholic beverages pursuant to this bill. Good cause includes, but is not limited to, a written request, that states the reason for the restriction or prohibition, from a local law enforcement agency or local governing body or its designated subordinate officer or agency. Licensees would be able to petition the Department to remove or modify the condition within 10 days following imposition of the condition. If a petition is not submitted within 10 days, then the licensee would need to wait one year, pursuant to existing law, before the licensee may file a petition for the removal or modification of the condition. When petitioning the Department for the removal or modification of the condition, the licensee has the burden of establishing that the condition is unreasonable or that no good cause exists for its imposition. The condition shall remain in place until a final determination is made.