

# Alcohol Regulation (NY): Overview

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A Practice Note providing guidance for parties considering entering the alcohol beverage business in New York, particularly at the retail level. This Note provides an overview of the regulatory structure for the manufacturing, wholesale, and retail sale of alcohol beverages in New York; New York's three-tier system including manufacturers, wholesalers, and retailers; the control versus non-control models states use to regulate alcohol beverages; New York's tied-house rules, New York's licensing process including types of licenses, qualification and application requirements; ongoing maintenance requirements, notification and approval requirements, New York's price posting and brand labeling rules, and an overview of advertising and marketing for alcohol beverages in New York and at the federal level.

New York heavily regulates the production, distribution, and sale of alcohol beverages. Anyone considering entering the alcohol business in New York must have an understanding of how the various laws, rules, and regulations operate. This Note provides parties considering entering the alcohol beverage business with an overview and a basic understanding of certain key areas related to alcohol regulation in New York, including:

- The regulatory structure of alcohol regulation in New York.
- New York's three-tier system.
- Where New York fits within the non-control versus control model of alcohol regulation.

- Tied-house rules and potential issues.
- The New York licensing process and how to maintain a license.
- Advertising and marketing of alcohol beverages in New York.

For purposes of this Note, "alcohol" or "alcohol beverages" (often referred to as "alcoholic beverages" under New York law) includes:

- Alcohol.
- Spirits.
- Liquor.
- Wine and wine products.
- Beer.
- Cider.

This definition includes every liquid, solid, powder or crystal containing alcohol, spirits, wine, or beer. It does not include alcohol when it is not capable of being consumed by a person, such as when ethyl alcohol is used in ethanol fuel. (N.Y. Alco. Bev. Cont. Law § 3.)

## REGULATORY STRUCTURE AND AGENCIES

In most states, alcohol is regulated at each of the following levels:

- The federal level for manufacturers and distributors (more commonly referred to as "producers" and "wholesalers," respectively, at the federal level) (see Federal Regulation).
- The state level (see State Regulation).
- The local level (see Local Regulation).

## FEDERAL REGULATION

The Federal Alcohol Administration Act (FAA Act) (27 U.S.C. §§ 201 to 219a):

- Requires manufacturers, importers, and distributors of alcohol beverages, including distilled spirits, wine, and malt beverages (such as beer), to obtain a permit from the Department of the Treasury's Alcohol and Tobacco Tax and Trade Bureau (TTB) before engaging in business.
- Provides authority to the TTB to regulate labeling and advertising of alcohol beverages.

- Prohibits certain trade practices that may give manufacturers and distributors of alcohol beverages undue influence over alcohol beverage retailers.

The FAA Act created what is now commonly referred to as the “three-tier system.” This system provides for three independent levels for alcohol distribution: the manufacturer tier, the distributor tier, and the retailer tier. This system is used in a variety of forms in most states, including New York (see Three-Tier System; Practice Note, Alcohol Regulation: Overview: Three-Tier System ([W-019-9723](#))). The intended purpose of the three-tier system is to eliminate “tied-houses” (see Tied-House Rules and Exceptions; Practice Note, Alcohol Regulation: Overview: Tied-House Regulation ([W-019-9723](#))).

## STATE REGULATION

### State Liquor Authority

In New York, the State Liquor Authority (SLA), has expansive authority to issue licenses and otherwise regulate the production and sale of alcoholic beverages in the state (N.Y. Exec. Law § 270 and N.Y. Alco. Bev. Cont. Law § 17).

The SLA is responsible for:

- Permitting and licensing, including:
  - accepting and rejecting applications;
  - revoking, cancelling, or suspending a license for cause;
  - imposing civil penalties on licensees and permit holders; and
  - holding hearings, investigating, and issuing subpoenas.
- Setting standards for the manufacture and fermentation of alcoholic beverages.
- Temporarily prohibiting the sale of any or all alcoholic beverages.

The SLA controls licensing and maintains enforcement authority over all tiers:

- Manufacturers (including importers).
- Wholesalers (also known as distributors).
- Retailers.

### New York Alcoholic Beverage Control Law

The New York Alcoholic Beverage Law (ABC Law) governs the manufacturing, distribution, and sale of alcohol beverages within the state (N.Y. Alco. Bev. Cont. Law §§ 1 to 164). The statute has three main purposes:

- Promoting temperance in the consumption of alcoholic beverages.
- Promoting the health, welfare, and safety of the people of New York.
- Supporting New York’s alcoholic beverage production, agriculture, tourism, and recreation industries.

(N.Y. Alco. Bev. Cont. Law § 2.)

## LOCAL REGULATION

In New York, local regulatory schemes are preempted by state law (see, for example, *People v. Amerada Hess Corp.*, 765 N.Y.S.2d 202, 203 (Dist. Ct. Nassau Co. 2003) (covenant and local resolution banning alcohol sales at a gas station was preempted by ABC Law)). However, localities retain some powers over alcohol-related business, including:

- The right of cities and towns to hold a popular vote to ban the sale of alcoholic beverages or certain license types within their jurisdiction (N.Y. Alco. Bev. Cont. Law §§ 140 to 145).
- Setting retail hours adopted by a local board (9 NYCRR § 60.1).
- Local building codes, fire, health, safety, and government regulations (9 NYCRR § 48.3).

In practice, the SLA considers input from local governments and community boards when making licensing decisions. State law requires applicants for most on-premises licenses to notify municipalities of license applications and renewals (N.Y. Alco. Bev. Cont. Law § 110-b).

## THREE-TIER SYSTEM

The ABC Law classifies licensees in three distinct categories, in line with the three-tier system in place in most states across the country and under federal law. The three tiers (or categories) are:

- Manufacturers (see Manufacturers).
- Wholesalers (see Wholesalers).
- Retailers (see Retailers).

The intended purpose of the three-tier system is to eliminate “tied-houses” (see Tied-House Rules and Exceptions Practice Note, Alcohol Regulation: Overview: Tied-House Regulation ([W-019-9723](#))).

For more information on the background and history of the three-tier system, see Practice Note, Alcohol Regulation: Overview: Three-Tier System ([W-019-9723](#)).

## MANUFACTURERS

Manufacturers (also sometimes referred to as “producers”) include:

- Distillers.
- Brewers.
- Vintners.
- Cideries.
- Meaderies.
- Rectifiers (such as producers of neutral spirits).

(N.Y. Alco. Bev. Cont. Law § 3.)

The statute covers all commercial manufacturing in New York, from major international businesses to farms and microbreweries.

## WHOLESALERS

Wholesalers sell alcohol to other licensed wholesalers and retailers for the purpose of resale (N.Y. Alco. Bev. Cont. Law § 3(35)). The SLA offers wholesaler licenses for each different type of liquor sold, such as beer and wine.

## RETAILERS

Retailers sell alcoholic beverages directly to consumers for personal use (N.Y. Alco. Bev. Cont. Law § 3(26)). Within the industry, retailers are further divided into:

- **On-premises retailers.** These retailers sell and serve alcohol beverages by the glass to be consumed on the licensed premises. Examples include:

- bars;
- restaurants; and
- hotels.
- **Off-premises retailers.** These retailers sell alcohol beverages in sealed containers for consumption somewhere other than the licensed premises. Examples include:
  - liquor stores (also known as package stores);
  - drug stores; and
  - grocery stores.

New York retailers must buy their supplies from licensed New York state manufacturers or wholesalers and may not purchase from or sell to other retailers. The one exception to this rule is a liquidation permit, which allows a retail licensee that is terminating its business to sell its remaining stock of alcoholic beverages to other retail licensees (N.Y. Alco. Bev. Cont. Law § 99-b(f)).

### Vendors

Vendors are off-premises beer vendors. A vendor's license is available to retailers in cities with a population of one million or more. A licensed vendor may:

- Sell and deliver beer to customers for consumption at home.
- Operate one vehicle for the purpose of beer delivery.

A vendor may not:

- Sell any type of alcohol other than beer.
- Sell for resale.
- Conduct in-person sales on the licensed premises.

(N.Y. Alco. Bev. Cont. Law § 53-a.)

### Deliveries

The ABC Law permits retailers deliver alcohol beverages. Deliveries must be made:

- Directly to a purchaser's residence.
- Not for resale by the purchaser.
- In a vehicle owned by the licensee or hired from a transport company registered with the SLA and meeting regulatory signage standards.

(N.Y. Alco. Bev. Cont. Law §§ 105 and 116; 9 NYCRR § 67.1.)

Wineries from both in and outside of New York may receive a direct shipping license, which allows them to ship up to 36 cases of wine annually to an individual purchaser for personal use, subject to labeling and purchaser identification requirements (N.Y. Alco. Bev. Cont. Law §§ 79-c and 79-d).

## NON-CONTROL VERSUS CONTROL STATES

Since the repeal of Prohibition in 1933, alcohol beverage control went from being a federal matter to a matter for each of the individual states. The 21st Amendment gives each state the right to establish laws to govern the manufacture, distribution, and sale of alcohol beverages within the state border. However, the federal government still maintains some degree of control over the production, distribution, labeling, and advertising of alcohol beverages through its administration of the FAA Act

(see Practice Note, Alcohol Beverage Marketing and Advertising ([W-018-8644](#))).

In governing, each state operates under one of the following models:

- Non-Control (see Non-Control States).
- Control (see Control States).

### NON-CONTROL STATES

The majority of states in the US, including New York, operate under a non-control model. Under this model, private businesses apply for licenses to manufacture, distribute, and sell alcohol beverages to consumers. Individual state laws regulate these private businesses.

New York has enacted the ABC Law to regulate the manufacturing, distribution, and the sale of alcohol within the state (see New York Alcoholic Beverage Control Law).

### CONTROL STATES

The minority of states operate under the control model. In these states, the state government controls the sale of distilled spirits (and in some cases, wine and beer) through government agencies at the distribution level. In most of these states, the government also exercises control over retail sales for off-premises consumption, either through government-operated package stores or designated agents.

## TIED-HOUSE RULES AND EXCEPTIONS

A "tied-house" is where there is some sort of tie between two of the three tiers that leads to impermissible control by one tier (typically a manufacturer or distributor) over another (typically a retailer). These ties include overlapping ownership between the tiers, one tier providing something of value to another tier, or otherwise controlling another tier's purchasing decisions.

Tied-house laws at both the federal and the state level are designed to outlaw tied-houses and activity that may lead to manufacturer or distributor control over retailers. For additional background and information on tied-houses and the laws to prevent them, see Practice Note, Alcohol Regulation: Overview: Tied House Regulation ([W-019-9723](#)).

New York's tied-house law exists to prevent monopolies and "other undesirable influences" on the industry (see *RIHGA Int'l U.S.A., Inc. v. State Liquor Auth.*, 620 N.Y.S.2d 784, 785 (1994)). The ABC Law's tied-house provisions prohibit:

- A manufacturer or wholesaler from having any direct or indirect interest in a retailer (N.Y. Alco. Bev. Cont. Law § 101(1)(a)).
- A retailer from having any direct or indirect interest in a manufacturer or wholesaler (N.Y. Alco. Bev. Cont. Law §§ 105(16) and 106(13)).
- A manufacturer from making or causing to be made a loan to a retailer or wholesaler (N.Y. Alco. Bev. Cont. Law § 101(1)(b)).
- A manufacturer or wholesaler from making a gift to a retailer that may tend to influence the retailer to purchase the manufacturer or wholesalers' product (N.Y. Alco. Bev. Cont. Law § 101(1)(c)).
- A manufacturer or wholesaler from entering into a contract in which a retailer agrees to exclusively stock alcohol beverages from one manufacturer or wholesaler (N.Y. Alco. Bev. Cont. Law § 101(1)(d)).

Prohibited ownership interests include:

- Stock ownership.
- Mortgages.
- Liens.
- Interlocking Directorates.
- Personal or real property.
- Any other means of ownership.

(N.Y. Alco. Bev. Cont. Law § 101(1)(a).)

### CROSS-TIER OWNERSHIP AND EXCEPTIONS

Some exceptions to tied-house laws include:

- Manufacturer licensees may conduct tastings and sell their products at retail for consumption on or off the premises. These licensees may also operate, adjacent to the manufacturing premises, a:
  - restaurant;
  - hotel;
  - catering establishment; and
  - other food and drinking establishment.
- (N.Y. Alco. Bev. Cont. Law §§ 30, 51, 51-a, 58, 58-c, 76-e.)
- Restaurant-brewers licenses give limited manufacturing privileges to brewpubs (N.Y. Alco. Bev. Cont. Law § 64-c).

### GIFTS AND SERVICES RULE

Manufacturers and wholesalers may not give anything of value to retailers to induce purchases (Alco. Bev. Cont. Law § 101(1)(c), 9 NYCRR § 86.1). The SLA presumes that anything a manufacturer or wholesaler gives to a retailer is for the purpose of inducing purchases (see SLA: Trade Practice Issues). Exceptions to this rule include:

- Product displays valued at \$300 per brand or under (9 NYCRR § 86.3).
- Signage used on the inside of the retailer's premises or in the windows (9 NYCRR § 86.4).
- Retailer advertising specialties, which are branded items intended for use by the retailer for advertising and have some secondary value in connection with the operation of the business, valued at \$200 per brand or under, including:
  - coasters;
  - trays; and
  - clocks.
 (9 NYCRR § 86.5.)
- Customer advertising specialties, which are branded goods intended for consumer use, with no value limit, including:
  - bottle openers;
  - corkscrews; and
  - hats.
 (9 NYCRR § 86.5.)
- Point-of-sale advertising for contests and rebates offered by a manufacturer or wholesaler directly to consumers (9 NYCRR § 86.9).
- Certain sales incentive programs for beer wholesalers (9 NYCRR § 94.3).

### TIED-HOUSE ENFORCEMENT

New York's tied-house law is among the strictest in the country. Even a de minimis ownership interest in a foreign manufacturer can prevent an applicant from obtaining a retail license. (*Rhiga Int'l U.S.A., Inc. v. State Liquor Auth.*, 620 N.Y.S.2d 784, 785 (1994); SLA Declaratory Ruling 2013-00357). Manufacturers and wholesalers must keep records documenting all gifts and services to retailers falling within exceptions to the tied-house law.

These records must be available to any SLA representative and generally must be maintained by licensees for a period of two years. They must include:

- The name, address, and license number of the retailer involved.
- An adequate description of the particular article delivered or installed or the service rendered.
- The unit cost of an article or service.
- The quantity of articles given or services rendered.
- The date when the manufacturer or wholesaler gave or rendered the gift.

(9 NYCRR § 86.15.)

There are statutory exemptions to New York State tied-house laws for specific properties (see, for example (N.Y. Alco. Bev. Cont. Law § 101(13)(a)(xii) (exempting specific tracts in the City of Troy from tied-house laws)).

### LICENSING

All businesses that deal with manufacturing, distributing, selling, or importing alcohol in New York must be licensed. More than 125 different kinds of license are available. Manufacturers and wholesalers cannot sell for purposes of resale to anyone not licensed as a retailer (N.Y. Alco. Bev. Cont. Law § 100(2)).

In New York, a license for the sale or manufacture of alcohol beverages is tied to a particular person and premises. Licenses may not be transferred to another person or location without SLA approval (N.Y. Alco. Bev. Cont. Law § 111).

Licenses correspond to the three-tier system and the type of alcohol to be manufactured or sold. The four main groups of licenses are:

- Off-premises retailers (see Off-Premises License).
- On-premises retailers (see On-Premises License).
- Manufacturers (see Manufacturer Licenses).
- Craft licensees (see Craft Licenses).
- Wholesalers (see Wholesaler and Importer Licenses).

### OFF-PREMISES LICENSES

Off-premises licensees sell alcohol for consumption off of the licensed premises. The two most common categories of off-premises license are:

- Wine and Liquor Store Licenses (see Wine and Liquor Store Licenses).
- Grocery and Drugstore Licenses (see Grocery and Drug Store Licenses).

Unlike in many other states, New York:

- Wine and liquor store licensees may not sell beer.
- Grocery and drug store licensees may not sell wine or liquor.

Both of these off-premises license types may sell to consumers on the internet, but must have a brick and mortar location (see SLA: Grocery/Drug Store License Quick Reference).

### Wine and Liquor Store Licenses

Common license types in this class include:

- Liquor store (L 222). This license allows for the sale of:
  - wine;
  - wine products;
  - liquor; and
  - cider.
- Wine store (W 322). This license allows for the sale of:
  - wine;
  - wine products; and
  - cider; and
  - mead.

This class of licensee may sell:

- The type of alcohol for which it is licensed, such as liquor or wine.
- Lottery tickets.
- Certain enumerated goods complementary to alcohol beverages, such as:
  - ice;
  - corkscrews; and
  - water.
- (See SLA: Wine Store/Liquor Store Quick Reference.)
- Wine and Liquor Store licensees cannot:
  - Own or have a direct or indirect interest in more than one wine or liquor store in New York state
  - Receive a license for a wine or liquor store if the premises is within 200 feet of and on the same street as a building used exclusively as a:
    - school; or
    - place of worship.

(N.Y. Alco. Bev. Cont. Law § 105.)

### Grocery and Drug Store Licenses

Common license types in this class include:

- Grocery Store Beer and Wine Products (AX 122).
- Drug Store Beer and Wine Products (DC 122).

Both of these license types allow for the sale of cider.

This class of licensee is limited to premises where at least 50% of the retail space is for sale of:

- Food, excluding alcohol and carbonated beverages.
- Household items.

- Personal health items.
- Hygiene items.

(See SLA: Grocery Store/Drug Store License Quick Reference.)

### ON-PREMISES LICENSES

On-premises licensees sell alcohol beverages to be consumed on the licensed premises. All on-premises licensees may sell alcohol for on-premises consumption. The types of alcohol beverage permitted depends on the specific license type. Common on-premises license types include:

- Hotels (HB 142, HW 342, HL 242).
- Taverns (RW 344).
- Ballparks and other stadia (BP 144).
- Cabaret, a venue type specializing in musical entertainment (CR 256).
- Restaurant brewers, known commonly as a brewpub (MR 210).

Most on-premises licenses are also available seasonally, to accommodate licensees, such as outdoor snack bars, that are not open year-round.

### MANUFACTURER LICENSES

New York offers several different types of licenses for manufacturers and wholesalers. These licenses vary depending on the types of alcohol and the quantities produced.

The major manufacturer's license types are:

- Mead producer (MD 312).
- Brewery (D 101).
- Cider Producer (CD 304).
- Distiller Class A (DA 201).
- Winery (DW 201).

(N.Y. Alco. Bev. Cont. Law §§ 30, 51, 58, 61, and 76.)

Manufacturers may:

- Produce quantities of their product limited by license type.
- Distribute their own products to licensed retailers for resale.
- Sell alcohol products at retail for consumption on or off the premises, except distillers.
- Conduct on-premises tastings, except certain distillers.
- Operate a hospitality business in an adjacent property, except certain distillers (see Cross-Tier Ownership and Exceptions).

Manufacturers may not:

- Produce their own products in a facility they do not own or rent.
- Engage in retail sales over the internet.

The SLA does not issue manufacturer or distributor licenses until the applicant has provided proof of federal permitting (see Federal Regulation).

### CRAFT LICENSES

The craft beverage manufacturing industry in New York has enjoyed substantial growth in recent years. To support and encourage

this growth, New York offers a number of different craft licenses for smaller manufacturers. These licenses offer additional retail privileges beyond those attached to an ordinary manufacturing license. The three craft license categories are:

- Farm License (see Farm Licenses).
- Micro License (see Micro Licenses).

Unlike other licensees, craft manufacturers may operate multiple entities on the same licensed premises. For example, a farm winery may also operate a farm brewery and a farm distillery under a combined license (N.Y. Alco. Bev. Cont. Law § 61-a).

For more information, see SLA: Complying With New York's Alcoholic Beverage Control Law: A Guide for Craft Manufacturers.

### Farm Licenses

Farm licenses are special type of license available to small producers. A farm manufacturer need not be on an actual farm, except for a farm winery (N.Y. Alco. Bev. Cont. Law § 3(12-a)). These licensees are subject to a cap on total annual production and must use specified percentages of ingredients from New York State. The farm license types are:

- Farm Brewery (FD 106).
- Farm Cidery (CF 309).
- Farm Distiller Class D (DD 207).
- Farm Meadery (FY 313).
- Farm Winery (FW 203).

Farm manufacturers may:

- Conduct tastings on the licensed premises.
- Sell their own and any other New York State labeled products (including beer, wine, and liquor), for consumption on and off-premises. If alcoholic beverages are sold for on-premises consumption, food must be available.
- Operate a gift shop on the licensed premises.
- Open an off-site tasting room or branch office.

(N.Y. Alco. Bev. Cont. Law §§ 51-a, 76-a, 61, 31 and 58.)

### Micro Licenses

Micro licenses are a class of license allowing holders to produce in limited quantities and do not require use of ingredients from New York, except for MicroFarm Winery licenses. Micro license types are:

- Micro Brewer (FD 106).
- Distiller Class A-1 (DA 206).
- Distiller Class B-1 (DB 205).
- MicroFarm Winery (MW 307).

(N.Y. Alco. Bev. Cont. Law §§ 56(1), 61(1-a), 61(2-b).)

### WHOLESALE LICENSES

A wholesale licensee may:

- Sell alcoholic beverages at wholesale to licensed wholesalers and retailers.
- Purchase alcohol beverages from manufacturers.

- Sell alcoholic beverages outside of the state, subject to the laws of the jurisdiction where the beverages are delivered.

(N.Y. Alco. Bev. Cont. Law §§ 53, 58, 62, 78.)

To obtain a manufacturer's or wholesaler's license in New York, an applicant must submit a verified license application with supporting documentation and the required fee (see SLA Licensing Process). No license can be issued until the applicant has obtained a federal permit from the TTB. If the applicant is a corporation or an LLC, it must be registered with the New York Secretary of State's office. If the applicant is a sole proprietorship or partnership, it must obtain a business certificate from the clerk of the county in which the business is located (New York Business Express: Alcoholic Beverage Wholesale and Importer Licenses).

### LICENSE QUALIFICATION CONSIDERATIONS

The ABC Law disqualifies persons in the following five categories from holding an SLA license:

- Persons convicted of:
  - any felony;
  - misdemeanor promoting prostitution in the fourth degree;
  - misdemeanor permitting prostitution; or
  - sale of liquor without an alcohol beverage license.
- (N.Y. Alco. Bev. Cont. Law § 126(1)).
- Persons under the age of 21 (N.Y. Alco. Bev. Cont. Law § 126(2)).
- Persons not a US citizens, an alien admitted to the US for permanent lawful residence, or a citizen of a reciprocal trade nation (N.Y. Alco. Bev. Cont. Law § 126(3); see also 1964 N.Y. Op. Atty. Gen. No. 11).
- anyone the alcoholic beverage license of which was revoked for cause within the past two years (N.Y. Alco. Bev. Cont. Law § 126(6)).
- anyone who is a police officer or police official (N.Y. Alco. Bev. Cont. Law § 128).

If the applicant is a corporation, LLC, or partnership, each of the principal officers and directors, or all shareholders or partners must be qualified to hold a license. A person convicted of a disqualifying crime may obtain a license if they receive a:

- Pardon.
- Certificate of good conduct from the New York Department of Corrections and Community Supervision.
- Certification of relief from disability.

(N.Y. Alco. Bev. Cont. Law § 126.)

### LICENSEE DISCLOSURE REQUIREMENTS

New York's ABC Law requires license applicants to provide extensive information about themselves and the premises sought to be licensed, including:

- Reporting for individual applicants, including;
  - proof of citizenship;
  - fingerprints; and
  - A photograph.

- Reporting for corporate applicants, including identifying information for all:
    - directors;
    - officers;
    - shareholders, unless there are more than ten;
    - partners; or
    - members.
  - A description of the premises to be licensed, including photographs and floor plans.
  - Descriptions of any other alcohol beverage licenses the applicant has held during the previous ten years.
  - A statement that premises location does not violate any requirements of ABC Law.
  - A statement and records that the applicant owns or has a lease for the premises and the authority to control food and beverage service there for the initial license term.
  - A financial statement identifying all persons with ownership interest in the business.
  - A copy of proposed menu for on-premises applications.
- (N.Y. Alco. Bev. Cont. Law § 110, see also SLA: What You Need to Know to Become a Licensed Retailer.)

## SLA LICENSING PROCESS

### Application

All license applications are available online from the New York Business Express website as fillable forms. Applications are submitted on the SLA website (SLA: Get a License. A completed application includes:

- Application and license fees (see License Fees).
- Required disclosures (see Licensee Disclosure Requirements).
- Surety Bond.
- Certificate of occupancy for the premises.
- Proof of workers' compensation insurance.
- Certificate of authority to collect sales tax.
- Proof of financing.
- Newspaper affidavit (see Notice Requirements).

Applications must be signed and verified by:

- The applicant, by
- An officer, if a corporation.
- By all partners, if a partnership.

### Notice Requirements

All new applicants must give notice to the municipality where the premises to be licensed are located at least 30 days before the application is filed. If the premises are outside New York City, this notice should be sent to the clerk of the municipality. In New York City, the notice should be sent to the appropriate community board. (N.Y. Alco. Bev. Cont. Law § 110-b.)

After filing, all applicants for an on-premises license must also publish a newspaper notice of the pending application to sell/serve alcohol on premises. The form of the notice and frequency of

publication depends on the county where the licensed premises are located. (N.Y. Alco. Bev. Cont. Law § 110-a; 9 NYCRR § 104.1; see also SLA: Notice of Publication.)

Applicants for a license to sell liquor at retail, whether on-premises or off-premises, must also post a notice in a conspicuous place near the entrance of the proposed location within ten days of filing the application (see SLA: SLA: Become a Retailer).

### License Denials for Cause

The SLA generally must issue a license unless good cause exists to deny an application (N.Y. Alco. Bev. Cont. Law § 64). Good cause includes:

- A statutory prohibition for a license at the proposed location, such as those within 200 feet of schools or places of worship (N.Y. Alco. Bev. Cont. Law § 105(3)).
- A history of ABC Law violations:
  - at the proposed location; or
  - by the applicant.
- The applicant's failure to meet statutory requirements (see License Qualification Considerations).
- The applicant's character, fitness, experience, and financial responsibility.
- Fraud, misrepresentation, or failure to disclose information in connection with the application.

(See SLA: What You Need to Know to Become a Licensed Retailer.)

### Temporary Permit

Under some circumstances, an applicant may be eligible for a temporary permit while its application is being processed. An applicant is eligible for a temporary permit if its application is for a:

- Retail business being bought from an existing licensee (also called a transfer application).
- New retail business outside New York City.
- Winery or farm winery.

(N.Y. Alco. Bev. Cont. Law §§ 97-a and § 76-b.)

Applicants should file their application for a temporary permit at the same time they apply for a full license. Applications for temporary permits are processed within 30 days and valid for 90 days (see SLA: Temporary Operating Permit Application for Retailers).

### License Issuance and Standards

The SLA's Licensing Board reviews routine license applications. An incomplete application delays processing. Applications are either:

- Approved.
- Disapproved.
- Conditionally approved.

If the application is conditionally approved, a license certificate cannot be issued until the applicant demonstrates compliance with conditions specified by the SLA.

Before issuing licenses for retail on-premises liquor sales, the SLA must determine whether granting the license serves "public

convenience and advantage” (N.Y. Alco. Bev. Cont. Law § 2; see also *Cleveland Place Neighborhood Ass’n. v. State Liquor Auth.*, 709 N.Y.S.2d 12, 14-15 (1st Dept. 2000)). The factors considered are:

- How many licenses and of which types exist near the proposed location.
- Evidence that all necessary licensing and permits have been obtained from the state and all other governing bodies.
- The effect of granting the license on vehicular traffic and parking near the proposed location.
- The existing noise level at the location and any increase in noise level that would be generated by the proposed premises.
- The history of liquor violations and reported criminal activity at the proposed location.
- The applicant’s character, fitness, maturity, experience, and financial responsibility.

(N.Y. Alco. Bev. Cont. Law § 64(6-a); 9 NYCRR § 48.7)

### License Renewal

Most licenses are valid for two or three years. Seasonal licenses must be renewed every year. Licensees receive a renewal advisory from the SLA approximately three months before the renewal is due. The renewal application must be submitted before the current license term expires. (N.Y. Alco. Bev. Cont. Law § 109; SLA: Website, Renew Your License.)

Licensees in New York City with on-premises beer, wine, or liquor licenses must notify their community board of the intent to renew their license at least 30 days before filing a renewal application.

### License Fees

Licensee fees vary based on license type and the county where the premises is located. Each application also carries a filing fee and some also have ancillary fees. Total fees can range from \$180 for a seasonal retail beer license to \$50,800 for a distiller Class A license. The SLA publishes a full list of license fees for:

- Retail licenses (SLA: Schedule of Retail License Fees).
- Wholesale licenses (SLA: Wholesale/Importer Fee Chart With Required Bond Amounts).
- Manufacturer licenses (SLA: Manufacturer Fee Chart With Required Bond Amounts).

### LICENSE TRANSFER

Licenses cannot be transferred or assigned without SLA approval (N.Y. Alco. Bev. Cont. Law § 114(2)). The proposed transferee must file its own license application and the proceeding is treated like new licensing process. A corporate change in control also requires SLA approval.

### LICENSE MAINTENANCE

A licensed establishment must follow all existing laws, rules, and guidelines to maintain its license. These vary by license type.

### Retail Licenses

Retail licensees must comply with a variety of ongoing obligations. For example, a licensee may not:

- Sell alcoholic beverages to anyone under age 21 or visibly intoxicated (N.Y. Alco. Bev. Cont. Law § 65).
- Employ anyone under age 18 in a position that requires them to sell, dispense or handle alcoholic beverages. There are exceptions for drug and grocery stores licensees (N.Y. Alco. Bev. Cont. Law § 100(2-a)).
- Offer unlimited drink specials (N.Y. Alco. Bev. Cont. Law § 117-a).

A licensee must:

- Frame and post its license certificate as well as required warning signs (N.Y. Alco. Bev. Cont. Law §§ 65-d; 105-b; 114(6)).
- Exercise adequate supervision over the conduct in licensed premises (9 NYCRR § 48.2).
- Maintain adequate books and records of all transactions involving the licensed business.

For more information on ongoing requirements for retail licensees, see SLA: Handbook for Retail Licensees).

### Manufacturer and Wholesaler Licenses

Manufacturers and wholesalers must also fulfill ongoing obligations to maintain a license. Licensees must:

- Keep adequate records of all transactions, including any permissible gifts and services given to retailers (N.Y. Alco. Bev. Cont. Law §§ 103(7), 104(10); 9 NYCRR § 86.15)).
- Follow rules regarding the terms of sale. In most cases, manufacturers and wholesalers must sell to any retailer able to pay cash, but any other terms must comply with the ABC law (N.Y. Alco. Bev. Cont. Law, § 110-aa; see also SLA: Trade Practice Issues: Terms of Sale).
- Report retailers delinquent in payment to the SLA. Delinquent retailers are placed on a Delinquency List, also known as the C.O.D. list. Credit may not be extended to any retailer on the C.O.D. list, although cash sales are permissible. Manufacturers and wholesalers are responsible for checking on a retailer’s delinquency status before offering credit. (N.Y. Alco. Bev. Cont. Law § 101-aa(3); see also SLA: Delinquency Reporting).
- File a price schedule with the SLA (N.Y. Alco. Bev. Cont. Law § 101-b; see also SLA: Price Posting)).
- Register all brands sold by the licensee with the SLA (N.Y. Alco. Bev. Cont. Law § 107-a; see also SLA: Brand Label Registration Guidance and SLA: Brand Label Registration).

### LICENSE CHANGES

All licensees must notify the SLA before making changes to the licensed entity or premises. Significant changes require approval, while more minor changes require only notice. Licensees must obtain SLA must pre-approve:

- Substantial renovations that materially affect the character of the licensed premises (9 NYCRR § 47.7). Changes costing less than \$10,000 that do not materially affect the character or physical structure of the premises typically require only notice, not approval.
- Certain changes in the type of business licensed, such as from a restaurant to a tavern or nightclub, or from an off-premises beer

licensee to an off-premises beer and wine licensee. Some changes in the class of business may require a new license application.

- Corporate changes, such as a change in a licensee's name or adding an officer or director of a corporation.
- Changes in the method of operation, such as:
  - the hours of operation,
  - whether the venue allows dancing; or
  - the presence of background music.
- Moving the licensed business to different location, also called a removal. A removal application is treated similarly to a new application because the SLA must determine whether a license can be issued for new location.

Changes in any information displayed on the license, including an update to an individual licensee's name due to marriage or divorce require filing an endorsement application to give the SLA notice of the change.

For more information, see SLA: Change Your License.

## ADVERTISING AND MARKETING

The regulation of alcohol beverage advertising and marketing is done at both:

- The federal level (see Federal Regulation).
- The state level (see State Regulation).

### FEDERAL REGULATION

Most regulation of alcohol beverage advertising and marketing is at the federal level. The FAA Act authorizes the TTB to regulate advertising and marketing of alcohol beverages, including distilled spirits, wine, and malt beverages.

The TTB defines alcohol beverage advertising broadly to include any statement, illustration, or depiction either:

- Made in commerce.
- Aimed at inducing sales in commerce.

The Federal Trade Commission (FTC) makes efforts to limit advertising of alcohol beverages to people under 21. It encourages alcohol advertisers to adopt and comply with self-regulatory standards limiting advertising to teens. For more information about the regulation of alcohol beverage marketing and advertising at the federal level, see Practice Note, Alcohol Beverage Marketing and Advertising ([W-018-8644](#)).

### STATE REGULATION

In addition to the tied-house regulations that limit the advertising and promotional items wholesalers and manufacturers may give to retailers and consumers, the ABC Law places other significant restrictions on advertising. For instance:

- Retailers may not display any signs bearing trademarks, symbols, product slogans, or brand labels on the exterior of the licensed premises (9 NYCRR § 83.2).
- Manufacturers and wholesalers may not include pictures of retail establishments or laudatory references to particular retailers in their advertising (9 NYCRR § 86.10).

- Off-premises licensees are subject to restrictions on advertising regarding pricing and disclosures (9 NYCRR §§ 99.1 to 99.9).

Retailers are also subject to New York's broader consumer protection statutes. For more information, see Practice Note, New York's Deceptive Practices Act: Overview ([W-020-1534](#)).

## ENFORCEMENT AND PENALTIES

Licensees violating New York's alcohol laws or regulations are subject to disciplinary proceedings. These proceedings are commenced based on referrals from law enforcement or investigations by the SLA's Enforcement Bureau. Disciplinary proceedings before the SLA are administrative in nature. Penalties include:

- Suspension of a license for a specified period of time.
- Cancellation of the license.
- Revocation of the license, in which the license is terminated and the licensee is prohibited from holding another license or permit for two years.
- Fines. Maximum fine amounts differ by license type. For example, the maximum fine for retailers is \$10,000 (N.Y. Alco. Bev. Cont. Law § 17(3)).

While the SLA itself has no criminal authority, it works with law enforcement agencies regarding violations that are criminal in nature. ABC Law violations by retailers that are also crimes include:

- Sales to minors.
- Sales to intoxicated persons.

The SLA considers the sale of alcoholic beverages to minors to be one of the most serious violations and cooperates in multi-agency efforts to crack down on this activity. (See Governor Cuomo Announces Multi-Agency Effort to Crack Down on Underage Drinking in October, September 20, 2019). Often, the sanction for a criminal violation is license revocation (See, for example, *Matter of Kusewich Realty, Inc. v. State Liquor Auth.*, 820 N.Y.S.2d 195, 197 (Sup. Ct. Nassau Cnty. 2006) (license revoked for sale of alcoholic beverages to a minor)).

Common violations that are not also criminal include:

- Failure to conform with representations made in the license application or with all applicable rules and regulations, such as violations of local health and safety codes.
- Failure to prevent disorder on the licensed premises, such as fighting and the use or sale of controlled substances.
- Offering unlimited drink specials (see License Maintenance).
- Availing, which occurs when a person who was not disclosed on the licensed application has an ownership or controlling interest in a licensee. An unauthorized corporate change, where the name of the corporation stays the same but the principals change, without notice to the SLA, constitutes availing (see License Transfer).
- Permitting or encouraging gambling, whether professional or casual, and whether or not the licensee profits from it. Certain kinds of gambling are permitted with proper authorization, including the sale of lottery tickets and simulcast betting.

- Extension of premises, when the licensee uses an unlicensed area of the premises, such as a patio, for the sale of alcoholic beverages (see License Changes).

Substantial noncriminal violations can also result in license revocation (see, for example, *In re Le Cave LLC v. State Liquor Auth.* 966 N.Y.S.2d 430, 431 (1st Dept. 2013) (license revoked for numerous violations including disorderly activity, assaults, and violation of fire and safety regulations)).

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