



**State Liquor  
Authority**

# **COMPLYING WITH NEW YORK'S ALCOHOLIC BEVERAGE CONTROL LAW- A GUIDE FOR CRAFT MANUFACTURERS**

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## **INTRODUCTION**

This presentation is intended to assist craft alcoholic beverage manufacturers in complying with the provisions of the Alcoholic Beverage Control Law ("ABCL"). It is not intended to serve as a comprehensive manual with respect to either the ABCL or the other laws and regulations that govern the operation of breweries, cideries, distilleries and wineries. In addition, please note that any changes made to the ABCL or new directives issued by the State Liquor Authority ("the Authority") after the date of this presentation may impact some of the information provided in this document. The guidance offered in this document is set forth by the author, and should not be considered as statements issued by the State Liquor Authority or the Members of the Authority. Readers are encouraged to visit the State Liquor Authority's website for additional information regarding the laws and regulations governing the manufacture of alcoholic beverages in this state.

## **LICENSING MATTERS**

### *How does the application process work?*

- Applications are mailed to a post office box in New York City. Checks are deposited into an account held by the agency and images of the application and all supporting documents are scanned into a secured file that can be viewed by the Authority's Licensing Bureau staff.
- Applications are then forwarded to the Albany office of the Authority for data entry and assignment to Licensing Bureau examiners.
  - The examiners review applications in the order they are received. If there are deficiencies in an application, the examiner will prepare a letter detailing any items that need submission, correction or clarification.
  - The applicant is given 20 business days to comply with the deficiency letter.
  - Should the submission of requested items lead to additional questions, the applicant will receive another letter giving them additional time to respond.
  - The examiner will list both items that are needed in order to complete their review and missing items that have not been submitted but may be submitted later as conditions of approval. These items will be needed prior to the issuance of the license certificate but will not prevent a determination on the application from being made.
- Once the examiner's review is completed the application is forwarded to the Licensing Board for a determination. The Licensing Board consists of senior staff recommended by the Deputy Commissioner to the Members of the Authority. The applicant will receive a letter stating whether the application has been approved, conditionally approved or denied.

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- If an application is denied, the applicant will be provided with the reasons for the disapproval.

**What do you need to submit with an application?**

- An application for a craft manufacturing license must include the following:
  - Application Fee (license fee plus filing fee).
  - Application forms with all questions answered accurately and completely.
  - Personal Questionnaire.
  - Proof of citizenship for all principals.
  - Fingerprints for all principals.
  - Contract of Sale and Conveyance (if applicable).
  - Lease Agreement or Deed for property.
  - Diagrams and Photographs of the premises.
  - Copies of financial records showing the availability of funds being used for the venture.
  - Filing Receipts for Corporations or LLC's/LLP's and/or Assumed Name Certificate.
- Some information may be provided after approval of the application, but the license will not be issued until the information is received. Following are examples of such items:
  - Certificate of Authority to collect sales tax.
  - Workers Compensation/Disability Insurance- carrier name and policy number.
  - Federal Tax Identification Number.
  - TTB permit.

**Once you have a license, do you have to file any other applications?**

- A Renewal Application must be filed before the expiration of the current license period. Licensees will receive a reminder that the application needs to be filed.<sup>1</sup>

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<sup>1</sup> ABCL §109

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- If there are any changes to the corporate structure, a Corporate Change Application must be filed and approved prior to the change taking place.<sup>2</sup> In some situations an Endorsement Application may be used instead of a Corporate Change Application.
- If alterations are made to the physical structure, an Application for Permission to Make Alterations must be filed and approved prior to making the changes.<sup>3</sup>
- If the licensee seeks to move to another location, a Removal Application must be filed.<sup>4</sup>
- An Endorsement Application must be filed in the following situations:
  - A name or address correction on the license certificate is needed.
  - The court appointment of a representative, such as an administrator of an estate in the case of the death of a licensee (individual or partner), a bankruptcy trustee, or a receiver.
  - Dissolution of a licensed partnership or the addition of partner.
  - Name changes due to marriage, divorce, or any other reason.
  - Amending the corporate name of the licensee when there is no change in ownership (FEIN number must remain the same).
  - Change from a sole proprietor to a corporation or LLC where the sole proprietor remains the sole principal.

**MANUFACTURING YOUR PRODUCT**

*What types of licenses are available to manufacture alcoholic beverages?*

- Brewer<sup>5</sup>
  - No limit on amount of beer than can be produced.
  - No restriction on type of beer that can be produced.
  - Annual license fee of \$4,000.

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<sup>2</sup> ABCL §99-d(2)

<sup>3</sup> ABCL §99-d(1)

<sup>4</sup> ABCL §99-d(3)

<sup>5</sup> ABCL §51

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- Micro-Brewer<sup>6</sup>
  - Can produce no more than 75,000 barrels of beer each year.
  - No restriction on type of beer that can be produced.
  - Annual license fee of \$320.
  
- Farm Brewer<sup>7</sup>
  - Can produce no more than 75,000 barrels of beer each year.
  - May only produce New York state labeled beer.
  - May also produce New York state labeled cider.
  - Annual license fee of \$320.
  
- Cider Producer<sup>8</sup>
  - No limit on amount of cider than can be produced.
  - No restriction on type of cider that can be produced.
  - Annual license fee of \$125.
  
- Farm Cidery<sup>9</sup>
  - Can produce no more than 250,000 gallons of cider each year.
  - May only produce New York state labeled cider.
  - Annual license fee of \$75.
  
- Distiller<sup>10</sup>
  - No limit on amount of liquor than can be produced.
  - No restriction on type of liquor that can be produced.
  - Annual license fee of \$12,000.

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<sup>6</sup> ABCL §51

<sup>7</sup> ABCL §51-a

<sup>8</sup> ABCL §58

<sup>9</sup> ABCL §58-c

<sup>10</sup> ABCL §61(1)

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- Micro Distiller<sup>11</sup>
  - Can produce no more than 75,000 gallons of liquor each year.
  - No restriction on type of liquor that can be produced.
  - Annual license fee of \$250.
  
- Farm Distiller<sup>12</sup>
  - Can produce no more than 75,000 gallons of liquor each year.
  - May only produce New York state labeled liquor.
  - Annual license fee of \$128.
  
- Rectifier<sup>13</sup>
  - A rectifier purifies, refines or blends/mixes liquors produced by other manufacturers.
  - No limit on amount of liquor than can be produced.
  - No restriction on type of liquor that can be produced.
  - Annual license fee of \$8,000.
  
- Micro Rectifier<sup>14</sup>
  - Can produce no more than 75,000 gallons of liquor each year.
  - No restriction on type of liquor that can be produced.
  - Annual license fee of \$320.
  
- Fruit Brandy Producer<sup>15</sup>
  - No limit on amount of fruit brandy than can be produced.
  - No restriction on type of fruit brandy that can be produced.
  - Annual license fee of \$128.

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<sup>11</sup> ABCL §61(1-a)

<sup>12</sup> ABCL §61(2-c)

<sup>13</sup> ABCL §61(2)

<sup>14</sup> ABCL §61(2-b)

<sup>15</sup> ABCL §61(2-a)

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- Winery<sup>16</sup>
  - No limit on amount of wine than can be produced.
  - No restriction on type of wine that can be produced.
  - Annual license fee of \$625.
  
- Farm Winery<sup>17</sup>
  - Can produce no more than 250,000 gallons of wine each year.
  - May only produce wine made exclusively from New York grapes or other fruits.
  - May also produce New York state labeled cider.
  - Annual license fee of \$125.
  
- Micro Winery<sup>18</sup>
  - Can produce no more than 1,500 gallons of wine each year.
  - May only produce wine made exclusively from New York grapes or other fruits.
  - May also produce New York state labeled cider.
  - Annual license fee of \$50.

**What is a “farm” license”?**

- Manufacturing license with additional retail privileges.
- Production limits and restrictions on ingredients that can be used.
- Only farm wineries have to be on a “farm.”

**What are “New York state labeled” alcoholic beverages?**

- "New York state labeled beer"
  - From January 14, 2013 until December 31, 2018, beer made with no less than 20%, by weight, of its hops grown in New York state and no less than 20%, by weight, of all of its other ingredients, excluding water, grown in New York state.<sup>19</sup>

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<sup>16</sup> ABCL §76

<sup>17</sup> ABCL §76-a

<sup>18</sup> ABCL §76-a

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- From January 1, 2019 until December 31, 2023, beer made with no less than 60%, by weight, of its hops grown in New York state and no less than 60%, by weight, of all of its other ingredients, excluding water, grown in New York state.<sup>20</sup>
- From January 1, 2024 and thereafter, beer made with no less than 90%, by weight, of its hops grown in New York state and no less than 90%, by weight, of all of its other ingredients, excluding water, grown in New York state.<sup>21</sup>
- “New York state labeled cider”
  - Must be made exclusively from apples or other pome fruits grown in New York state.<sup>22</sup>
- “New York state labeled liquor”
  - No less than 75%, by volume, of the fruits, vegetables, grain and grain products, honey, maple sap or other agricultural products used must be grown or produced in New York state.<sup>23</sup>
- “New York state labeled wine”
  - No less than 75%, by volume, of the grapes or other fruits used must be grown in New York state.<sup>24</sup>

**What permits do you need?**

- Solicitor’s permit<sup>25</sup>
  - Sales staff working for a licensed manufacturer or wholesaler must have a solicitor’s permit.
  - Principals of the licensed entity and staff accepting orders at licensed premises do not need a solicitor’s permit.
  - A solicitor may only work for one licensed entity, but may work under any licenses to that entity.

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<sup>19</sup> ABCL §3(20-d)(a)

<sup>20</sup> ABCL §3(20-d)(b)

<sup>21</sup> ABCL §3(20-d)(c)

<sup>22</sup> ABCL §3(20-e)

<sup>23</sup> ABCL §3(20-c)

<sup>24</sup> ABCL §3(20-a)

<sup>25</sup> ABCL §93

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- Licensed manufacturers and wholesalers can obtain a “temporary solicitor’s permit” to cover newly hired sales staff while they apply for their solicitor’s permit.
- Warehouse permit<sup>26</sup>
  - A warehouse permit is not needed if the licensee is storing its inventory on its own licensed premises.
  - A warehouse permit is needed if the licensee is storing its inventory someplace other than the licensed premises.
  - The licensee may operate its own warehouse or use the services of a third party’s warehouse. In either situation the warehouse must have a permit.
- Trucking permit<sup>27</sup>
  - A licensed manufacturer or wholesaler does not need a separate trucking permit if it is transporting its own product in a vehicle owned/hired and operated by the licensed manufacturer or wholesaler. The license information must be posted on the sides of the vehicle or a copy of the license must be kept in the cab of the vehicle.
  - A trucking permit is needed by a non-licensee that will be transporting alcoholic beverages, or a licensed manufacturer or wholesaler transporting another licensee’s product.
  - There are three types of trucking permits: single vehicle trucking permit; a “fleet permit” for all the permittee’s vehicles; and a “company permit” for licensed manufacturer’s and beer wholesalers for tractor-trailers hired by permittee to deliver product.

## DISTRIBUTING YOUR PRODUCT

### How do you get your product to retailers?

- “Self-distribution”
  - All licensed manufacturers have the right to “self-distribute” (act as their own wholesaler) and/or use a licensed wholesaler to distribute their products.

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<sup>26</sup> ABCL §96

<sup>27</sup> ABCL §94

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- Franchise agreements with beer wholesalers<sup>28</sup>
  - Written agreement between brewer and wholesale required.
  - With one exception, agreements between brewers and wholesalers cannot be terminated unless there is good cause. Brewers producing less than 300,000 barrels can terminate without good cause as long as it makes up 3% or less of wholesaler's business.
- Licensed manufacturers can sell to out-of-state entities if allowed by the state where the entity is located.

**Do you need state brand label registration?**

- All alcoholic beverages sold in New York must have a brand label that has been approval by the Authority.<sup>29</sup>
- Wine does not require state approval if the label has been approved by TTB.<sup>30</sup>
- Fee exemptions for beer, cider or liquor produced in small batches.<sup>31</sup>

**Are there restrictions on the prices you charge wholesalers and retailers?**

- Beer
  - 180 Day Law- price charged to a wholesaler or retailer cannot be increased until 180 days after last price decrease.<sup>32</sup>
  - No uniform prices to retailers required- can charge different price to different retailers.
- Liquor & wine subject to price posting<sup>33</sup>
  - Price posting is the filing of a schedule with the prices at which liquor and wine manufacturers and wholesalers will sell their products.
  - Two price schedules: the "wholesale schedule" of prices charged by manufacturers/importers to licensed wholesalers; and the "retail schedule" of

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<sup>28</sup> ABCL §55-c

<sup>29</sup> ABCL §107-a(3)(a)

<sup>30</sup> ABCL §107-a(4)(c)(3)

<sup>31</sup> ABCL §107-a(4)(e) & ABCL §107-a(4)(f)

<sup>32</sup> ABCL §55-b

<sup>33</sup> ABCL §101-b

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prices charged by licensed manufacturers and licensed wholesalers to licensed retailers.<sup>34</sup>

- No liquor or wine can be sold at retail unless it is included on both price schedules. Any volume discounts must be set forth in the schedule.<sup>35</sup>
- All schedules now filed electronically.<sup>36</sup>
- New price schedule must be posted each month, except that wineries and farm wineries can file once a year. Need to file amendment if prices change.<sup>37</sup>
- A licensed manufacturer or licensed wholesaler cannot refuse to sell to any retailer who offers to pay cash unless: one retailer owns the brand; or the product has been posted as "limited availability."<sup>38</sup>
- The price schedule cannot require purchase of one product to get another, except for permissible combination packages.<sup>39</sup>
- Combination packages are sealed, pre-wrapped packages containing either: two or more bottles of different liquors or wines; or one bottle of liquor or wine combined with certain other items.<sup>40</sup>

### What is the "C.O.D. list" and how can you sell on credit?

- Manufacturers and wholesalers must sell to any retailer willing to pay "cash."<sup>41</sup>
  - "Cash" means U.S. currency, certified check, money order, electronic funds transfer, bank officer's check or draft, or a check drawn on the retailer's account payable to the manufacturer or wholesaler.
  - Checks cannot be from third parties.
  - Checks drawn on retailer's account cannot be post-dated.
  - Manufacturers and wholesalers do not have to accept checks drawn on retailer's account.

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<sup>34</sup> ABCL §101-b(3)(a) and §101-b(3)(b)

<sup>35</sup> ABCL §101-b(3)(a) and §101-b(3)(b)

<sup>36</sup> ABCL §101-b(3)(d)

<sup>37</sup> ABCL §101-b(4) and §101-b(5)

<sup>38</sup> ABCL §101-b(3)(c) and §101-b(4-a)(d)

<sup>39</sup> ABCL §101-b(4-a)(e)

<sup>40</sup> ABCL §101-b(3)(a)

<sup>41</sup> ABCL §101-aa(1)(f) and §101-aaa(1)(g)

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- Manufacturers and wholesalers can, but are not required to, allow retailers to pay on credit.<sup>42</sup>
  - Retailers purchasing liquor or wine on credit have 30 days to pay the bill.<sup>43</sup>
  - Retailers purchasing beer on credit have between 12-to 26 days to pay the bill, depending on the date of delivery within the credit cycle.<sup>44</sup>
- Licensed manufacturers and wholesalers must report retailers who are delinquent in payment.
- “C.O.D. list” contains all the retailers who are delinquent in paying for products purchased on credit from licensed manufacturers and wholesalers.<sup>45</sup>
  - For liquor and wine, if a retailer has a credit equal to, or more than, the outstanding bill, the retailer cannot be reported as delinquent.<sup>46</sup>
  - Licensed manufacturers and wholesalers cannot sell on credit to any retailer on C.O.D. list.<sup>47</sup>

**TASTINGS; SALES BY THE BOTTLE; AND SALES BY THE GLASS**

*Can you conduct tastings at your licensed premises?*

- Brewery
  - A brewer may conduct tastings of beer it produces and any New York state labeled beer without obtaining an additional license or permit.<sup>48</sup>
- Farm Brewery
  - A farm brewer may conduct tastings of any New York state labeled beer and New York State labeled cider without obtaining an additional license or permit.<sup>49</sup>
  - A farm brewer may also conduct tastings of any New York state labeled liquor<sup>50</sup> and New York state labeled wine<sup>51</sup> without obtaining an additional license or permit.

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<sup>42</sup> ABCL §101-aa(8) and §101-aaa(7)

<sup>43</sup> ABCL §101-aa(1)(b)

<sup>44</sup> ABCL §101-aaa(3)

<sup>45</sup> ABCL §101-aa(3) and §101-aaa(3)

<sup>46</sup> ABCL §101-aa(3)

<sup>47</sup> ABCL §101-aa(3) and §101-aaa(3)

<sup>48</sup> ABCL §51(3-a)

<sup>49</sup> ABCL §51-a(2)(f)

<sup>50</sup> ABCL §51-a(2)(j)

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- Cider Producer
  - A cider producer may conduct tastings of New York State labeled cider manufactured by the licensee without obtaining an additional license or permit.<sup>52</sup>
- Farm Cidery
  - A farm cidery may conduct tastings of any New York state labeled cider without obtaining an additional license or permit.<sup>53</sup>
  - A farm cidery may also conduct tastings of any New York state labeled beer, New York state labeled liquor and New York state labeled wine without obtaining an additional license or permit.<sup>54</sup>
- Winery
  - A winery may conduct tastings of wine and wine products it produces and any New York state labeled wine and New York state labeled wine product without obtaining an additional license or permit.<sup>55</sup>
- Farm Winery
  - A farm winery may conduct tastings of any New York state labeled wine and New York State labeled cider without obtaining an additional license or permit.<sup>56</sup>
  - A farm winery may also conduct tastings of New York state labeled liquor and New York state labeled beer without obtaining an additional license or permit.<sup>57</sup>
- Distillery
  - A distillery cannot conduct any tastings at its licensed premises.
- *Farm Distillery*
  - A farm distillery may conduct tastings of any New York state labeled liquor without obtaining an additional license or permit.<sup>58</sup>
  - A farm distillery may also conduct tastings of New York state labeled wine, New York state labeled cider and New York state labeled beer without obtaining an additional license or permit.<sup>59</sup>

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<sup>51</sup> ABCL §51-a(2)(i)

<sup>52</sup> ABCL §58(3-a)(b)

<sup>53</sup> ABCL §58-c(3-a)(b)

<sup>54</sup> ABCL §58-c(2)(h), ABCL §58-c(2)(j) & ABCL §58-ca(2)(i)

<sup>55</sup> ABCL §76(4)

<sup>56</sup> ABCL §76-a(6)(h) & ABCL §80(1)

<sup>57</sup> ABCL §76-a(6)(f) & ABCL §76-a(6)(g)

<sup>58</sup> ABCL §61(2-c)(c)

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**Can you sell “by the bottle” at your licensed premises?**

- Brewery
  - A brewer may sell by the bottle beer it produces and any New York state labeled beer without obtaining an additional license or permit.<sup>60</sup>
- Farm Brewery
  - A farm brewer may sell by the bottle any New York state labeled beer and New York State labeled cider without obtaining an additional license or permit.<sup>61</sup>
  - A farm brewer may also sell by the bottle any New York state labeled liquor and New York state labeled wine without obtaining an additional license or permit.<sup>62</sup>
- Cider Producer
  - A cider producer may sell by the bottle any New York State labeled cider manufactured by the licensee without obtaining an additional license or permit.<sup>63</sup>
- Farm Cidery
  - A farm cidery may sell by the bottle any New York state labeled cider without obtaining an additional license or permit.<sup>64</sup>
  - A farm cidery may also sell by the bottle any New York state labeled beer, New York state labeled liquor and New York state labeled wine without obtaining an additional license or permit.<sup>65</sup>
- Winery
  - A winery may sell by the bottle wine and wine products it produces and any New York state labeled wine and New York state labeled wine product without obtaining an additional license or permit.<sup>66</sup>

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<sup>59</sup> ABCL §61(2-c)(a)(v), ABCL §61(2-c)(a)(vi) & ABCL §61(2-c)(a)(vii)

<sup>60</sup> ABCL §51(3-a)

<sup>61</sup> ABCL §51-a(2)(e)

<sup>62</sup> ABCL §51-a(2)(k) & ABCL §51-a(2)(i)

<sup>63</sup> ABCL §58(3-a)(b)

<sup>64</sup> ABCL §58-c(2)(f)(i)

<sup>65</sup> ABCL §58-c(2)(h), ABCL §58-c(2)(i) & ABCL §58-c(2)(j)

<sup>66</sup> ABCL §76(4)

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- Farm Winery
  - A farm winery may sell by the bottle any New York state labeled wine and New York State labeled cider without obtaining an additional license or permit.<sup>67</sup>
  - A farm winery may also sell by the bottle New York state labeled liquor and New York state labeled beer without obtaining an additional license or permit.<sup>68</sup>
- Distillery
  - A distillery cannot sell any alcoholic beverages by the bottle at its licensed premises.
- Farm Distillery
  - A farm distillery may sell by the bottle any New York state labeled liquor without obtaining an additional license or permit.<sup>69</sup>
  - A farm distillery may also sell by the bottle New York state labeled wine, New York state labeled cider and New York state labeled beer without obtaining an additional license or permit.<sup>70</sup>

*Can you sell “by the glass” at your licensed premises?*

- Brewery
  - A brewery may sell, for on-premises consumption, the beer it produces and any New York state labeled beer without obtaining an additional license or permit.<sup>71</sup>
  - A brewery that operates a restaurant, hotel, catering establishment or other food and drinking establishment in or adjacent to the brewery can obtain an on-premises license to sell other alcoholic beverages.<sup>72</sup>
- Farm Brewery
  - A farm brewery may sell, for on-premises consumption, any New York State labeled beer and New York State labeled cider without obtaining an additional license or permit.<sup>73</sup>

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<sup>67</sup> ABCL §76-a(2)(e)

<sup>68</sup> ABCL §76-a(6)(f)] & ABCL §76-a(6)(g)]

<sup>69</sup> ABCL §61(2-c)(a)(iii)

<sup>70</sup> ABCL §61(2-c)(a)(vii), ABCL §61(2-c)(a)(vi) & ABCL §61(2-c)(a)(v)

<sup>71</sup> ABCL §51(3-a)

<sup>72</sup> ABCL §51(4)

<sup>73</sup> ABCL §51-a(2)(e)

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- A farm brewery that operates a restaurant, hotel, catering establishment or other food and drinking establishment in or adjacent to the brewery can obtain an on-premises license to sell other alcoholic beverages.<sup>74</sup>
- Cider Producer
  - A cider producer that operates a restaurant, hotel, catering establishment or other food and drinking establishment in or adjacent to the cidery may sell, for on-premises consumption, New York state labeled cider that it produces without obtaining an additional license or permit.<sup>75</sup>
- Farm Cidery
  - A farm cidery may sell, for on-premises consumption, any New York State labeled cider without obtaining an additional license or permit.<sup>76</sup>
  - A farm cidery that operates a restaurant, hotel, catering establishment or other food and drinking establishment in or adjacent to the cidery can obtain an on-premises license to sell other alcoholic beverages.<sup>77</sup>
- Winery
  - A winery may sell, for on-premises consumption, the wine it produces and any New York state labeled wine without obtaining an additional license or permit.<sup>78</sup>
  - A winery that operates a restaurant, hotel, catering establishment or other food and drinking establishment in or adjacent to the winery can obtain an on-premises license to sell other alcoholic beverages.<sup>79</sup>
- Farm Winery
  - A farm winery may sell, for on-premises consumption, any New York State labeled wine and New York State labeled cider without obtaining an additional license or permit.<sup>80</sup>
  - A farm winery that operates a restaurant, hotel, catering establishment or other food and drinking establishment in or adjacent to the brewery can obtain an on-premises license to sell other alcoholic beverages.<sup>81</sup>

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<sup>74</sup> ABCL §51-a(2)(g)

<sup>75</sup> ABCL §58(3)(d)

<sup>76</sup> ABCL §58-c(2)(f)

<sup>77</sup> ABCL §58-c(2)(f)

<sup>78</sup> ABCL §76(4)

<sup>79</sup> ABCL §76(4-a)

<sup>80</sup> ABCL §76-a(2)(e)

<sup>81</sup> ABCL §76-a(2)(f)

## COMPLYING WITH NEW YORK'S ALCOHOLIC BEVERAGE CONTROL LAW- A GUIDE FOR CRAFT MANUFACTURERS

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- *Distiller*
  - A distillery cannot sell any alcoholic beverages by the glass at its licensed premises.
- *Farm Distiller*
  - A farm distillery may sell, for on-premises consumption, any New York State labeled liquor without obtaining an additional license or permit.<sup>82</sup>
  - A farm distillery that operates a restaurant, hotel, catering establishment or other food and drinking establishment in or adjacent to the distillery can obtain an on-premises license to sell other alcoholic beverages.<sup>83</sup>

### What is the “marketing permit”?

- Permit created under the Authority's powers to issue miscellaneous permits for situations not addressed by, but consistent with the purposes of, the ABCL.<sup>84</sup>
- Allows licensed manufacturers to conduct tastings and sell their products by the bottle at certain events.
- Licensed manufacturers can accept orders on behalf of their wholesalers.
- Tastings and bottle sales can be conducted at:
  - An establishment licensed under the ABCL to sell the product at retail;
  - The State Fair, recognized county fairs and farmers markets operated on a not-for-profit basis;
  - Outdoor or indoor gatherings, functions, occasions or events sponsored by a bona fide charitable organization; and
  - Other indoor or outdoor events specifically approved by the Authority.
- Permit holder cannot charge for samples.
- Limitations on size of samples, but not the number of samples.
  - Beer, wine products and cider: 3 ounces.

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<sup>82</sup> ABCL §61(2-c)(e)(i)

<sup>83</sup> ABCL §61(2-c)(e)(ii)

<sup>84</sup> ABCL §99-b(1)(k)

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- Wine: 2 ounces.
- Liquor: one-quarter ounce.

**What is a “branch office”?**

- A “branch office” is a separate location where any activity that can be conducted at the licensed premises can be conducted.
- Available to farm breweries,<sup>85</sup> farm cideries,<sup>86</sup> farm distilleries<sup>87</sup> and farm wineries.<sup>88</sup>
- A farm brewery, farm cidery or farm winery may operate up to five “branch offices”. A farm distiller can operate one branch office.
- The licensee must file for a permit for each branch office.

**RELATIONSHIPS WITH RETAILERS**

**What is the “tied house” law?**

- The “tied house” law restricts licensees in one tier of the industry from having an interest in a business in another tier of the industry.
  - Licensed retailers cannot have an interest in a business that manufactures or wholesales alcoholic beverages.<sup>89</sup>
  - Licensed manufacturers and wholesalers cannot have an interest in a business that sells alcoholic beverages at retail.<sup>90</sup>
- Direct and indirect interests are prohibited. It does not matter whether the interest is significant or insignificant.
  - It does not matter where the other business is located.
  - The ABCL contains exceptions to the tied house law for specific geographic locations.

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<sup>85</sup> ABCL §51-a(9)

<sup>86</sup> ABCL §51-a(9)

<sup>87</sup> ABCL §61(2-c)(g)

<sup>88</sup> ABCL §51-a(9)

<sup>89</sup> ABCL §105(16) and §106(13)

<sup>90</sup> ABCL §101(1)(a)

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**What is the “gifts and services” law?**

- The “gifts and services” law prohibits manufacturers and wholesalers from giving something of value to retailers to induce the retailer into buying the manufacturer’s or wholesaler’s product.<sup>91</sup>
  - The Authority presumes that anything a manufacturer or wholesaler gives to a retailer is meant to induce the retailer to buy product.
  - Manufacturers should be familiar with the Consent Orders.
- There are certain things that a manufacturer can do without violating the gifts and services law, for example:
  - Retailer advertising specialties- items with the brand logo intended to be used by the retailer. There is an annual cap on the value that can be given to a retailer.<sup>92</sup>
  - Consumer advertising specialties- items with the brand logo intended to be given away to consumers. There is no limit on the amount that can be given to a retailer.<sup>93</sup>
  - Contests and rebates (with no retailer participation)- the Authority allows mail-in rebates but not those that can be redeemed immediately at the retail location.<sup>94</sup>
  - Advertising the name of retailers who carry the product- the advertisement must include several retailers and the reference to the retailers cannot be the predominant part of the advertisement.<sup>95</sup>

**ADMINISTRATION OF THE ABC LAW**

**What is the State Liquor Authority?**

- The State Liquor Authority (the “Authority”) is the agency responsible for issuing licenses and permits to traffic in alcoholic beverages in New York. It is also responsible for ensuring that licensees and permittees comply with the Alcoholic Beverage Control Law and the Rules of the Authority.
- In addition to those responsibilities, the Authority has other statutory powers, including the following:

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<sup>91</sup> ABCL §101(1)(c)

<sup>92</sup> Rules of the Authority §86.5

<sup>93</sup> Rules of the Authority §86.6

<sup>94</sup> Rules of the Authority §86.9

<sup>95</sup> Rules of the Authority §86.10

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- The Authority can place a moratorium on issuing licenses throughout the state or in any political subdivision of the state.<sup>96</sup>
- The Authority can, during a public emergency, prohibit the sale of alcoholic beverages.<sup>97</sup>
- At the request of a county legislative body, the Authority can restrict the hours of sale of alcoholic beverages within the county.<sup>98</sup>
- The Authority consists of three Commissioners, or Members, appointed by the Governor for three year terms. One of the Commissioners is designated by the Governor to serve as the Chairman.<sup>99</sup>
- Any action of the Members of the Authority must be taken by a majority vote at a public meeting. When the Members meet to consider matters, they are referred to as the "Full Board."<sup>100</sup>

### How does the Authority enforce the law?

- Disciplinary proceedings commenced by the Authority are based on referrals from other law enforcement agencies or investigations conducted by the Authority's Enforcement Bureau.
- Most investigations of licensed manufacturers and wholesalers are in response to complaints made by retailers and other licensed manufacturers and wholesalers.
- Referrals from other law enforcement agencies and Enforcement Bureau investigation reports are reviewed by the Office of Counsel to determine whether there is evidence of a violation of the ABCL or the Rules of the Authority.
- Disciplinary proceedings result in either: an administrative hearing; a "no contest" plea to the charges; or an offer negotiated between the licensee and the prosecutor that must be reviewed by the Members of the Authority.

### What are the penalties for violations?

- The Authority can suspend, cancel or revoke a license.<sup>101</sup>
- In addition to, or instead of, a suspension, cancellation or revocation, the Authority can also impose a fine. For each violation, the maximum fine for a brewer is \$100,000.<sup>102</sup>

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<sup>96</sup> ABCL §17(2)

<sup>97</sup> ABCL §17(7)

<sup>98</sup> ABCL §17(11)

<sup>99</sup> ABCL §10

<sup>100</sup> ABCL §14

<sup>101</sup> ABCL §17(3) and ABCL §119(1)

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- In combination with any other penalty, the Authority can also impose a bond claim.<sup>103</sup>

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<sup>102</sup> ABCL §17(3) and ABCL §119(1)

<sup>103</sup> ABCL §17(3) and ABCL §112