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# State Liquor Authority Handbook for Retail Licensees

New York State

Division of Alcoholic Beverage Control
State Liquor Authority
&
New York State Office of Alcoholism
and Substance Abuse Services

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## A Message to Retail Licensees From the State Liquor Authority

Possessing a retail liquor, beer and/or wine license in New York State is a privilege carrying with it obligations to both your patrons and the community you serve. The purpose of this pamphlet is to give you some insight into your duties and potential liabilities as a license holder. This booklet is not intended to be an all inclusive legal or operating manual. If you are uncertain as to the legality of a contemplated course of action, we strongly recommend you contact your legal representative or the State Liquor Authority before proceeding. On routine queries, we may be able to provide an answer via telephone or e-mail (www.abc.state.ny.us). On more complex issues, we may request you submit your question(s) in writing. We hope by working together, the public will benefit by the responsible operation of your establishment.

## A Message to Retail Licensees From the New York State Office of Alcoholism and Substance Abuse Services

Underage alcohol use is a serious issue impacting communities across New York State. Every community, neighborhood and family should be concerned about alcohol use by youth under 21 because it is associated with the three most common causes of teenage deaths: accidental deaths, homicides and suicides as reported in the 2003 National Survey of Parents. The enforcement of the underage drinking laws requires an awareness and commitment from parents, schools, communities, clergy, healthcare and law enforcement professionals that the health and safety of our children, families and communities can not be compromised due to the devastating, and often fatal consequences of underage drinking. Everyone can play a role in reducing the use of alcohol by youth under 21 by using the following environmental strategies:

- Limit the access of alcohol to youth.
- Create clear, consistent no-use messages in each community.
- Implement evidence-based programs and practices in our schools and communities.
- Partner with state and local key stakeholders to address the issues related to underage drinking.

We hope that by working together we can protect our youth.

UNDERAGE DRINKING 21 NOT A MINOR PROBLEM

Underage Drinking Not a Minor Problem is a campaign of the New York State Office of Alcoholism and Substance Abuse Services. For more information, go to www.oasas.state.ny.us



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## The State Liquor Authority

In 1934, after the prohibition against the manufacturing, sale and distribution of alcoholic beverages was repealed by the 21st Amendment to the United States Constitution, the New York State Legislature enacted the Alcoholic Beverage Control law which created the State Liquor Authority (SLA) and the Division of Alcoholic Beverage Control. The Authority is comprised of three Commissioners (one designated as Chairman) appointed by the Governor with the advice and consent of the State Senate. This three member board is the highest tribunal within the agency where all disciplinary matters are adjudicated. Decisions on routine licensing matters are delegated to the regional zone offices, but may be referred to the Authority for their consideration.

The mission of the SLA is to regulate and control the manufacturing, sale and distribution of alcoholic beverages for the purpose of fostering and promoting temperance in their consumption and respect for and obedience to the law. It is for this reason that the two primary bureaus within the agency are licensing and compliance. Regional ABC offices are located in New York City, Albany and Buffalo with a satellite office in Syracuse. Generally, all routine licensing and compliance matters are handled from the regional office. New York State has a three tier system (manufacturer, wholesaler, and retailer) for distribution of alcoholic beverages within the state. Within the three categories of distribution, the SLA issues approximately 140 different types of licenses and permits. In the retail sector, there are two main types of licenses: On-Premises (taverns, restaurants, and hotels, etc.) and Off-Premises (package stores, grocery stores, and drug stores, etc.). Applications for licenses may be filed on-line at our website: www.abc.state.ny.us. In addition to issuing licenses, the agency is responsible for administratively enforcing the provisions of the ABC Law. Violations of the ABC Law may result in penalties of bond claims, fines, suspensions, cancellations and revocation of license privilege.

The purpose of this booklet is to acquaint retailers with some basic information concerning their responsibilities as licensees. For additional information or questions you may contact one of the Zone offices listed on back page of this booklet. The Public Affairs office can also provide assistance.



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## Your Liquor License

A license issued to you permits the sale of alcoholic beverages at a specific designated area or location as approved by the Authority. This license privilege is not transferable to any other person(s), corporation, corporate principals or unapproved locations without prior application and consent of the SLA. As a licensee, if you decide to sell, transfer, or lease your premises to any other person(s), you must seek and receive prior approval from the SLA. A liquor license is similar to other types of licenses (i.e. motor vehicle license, barber license, etc.,) in that it is not transferable to any other person/s unless permitted by the licensing agency. All sales, transfers or lease contract/agreement relating to the licensed premises should be contingent upon the filing and approval of a new license application with the Authority by the new individual/s. ***If your license certificate is lost or stolen, a police report should be filed immediately. A copy of the police report should be submitted with your request for a duplicate license from the appropriate zone office. Upon the payment of a fee, a duplicate license will be issued by the SLA. Your license certificate should be displayed in a conspicuous place in your establishment.***

## Your Licensed Establishment

When you filed your application for a license, you were required to provide a detailed diagram, description and photographs of the area to be licensed. This was the specific area approved for sale, consumption and/or use by the Authority. The ABC law prohibits any substantial alterations to both the interior and/or exterior of the approved licensed premises without applying for and receiving permission from the Authority prior to commencing any changes. There are provisions permitting minor alterations and cosmetic changes that do not require prior approval. We recommend that you contact the Authority as to whether the change you are making requires the filing of an alteration application. The law also prohibits the use of any area by the licensee that had not been previously approved by the Authority. Therefore, a licensee must receive prior approval from the SLA before extending or reducing the area of the approved licensed premises.

**Note: If you intend on closing your premises for five (5) or more consecutive days, contact the SLA as to whether your license certificate should be placed in safekeeping until you are ready to reopen. Failure to do so may result in disciplinary charges being instituted against you.**

Your License



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## Your Responsibilities

As previously stated a liquor license is a privilege and under the ABC law licensees are obligated to properly supervise their premises. This responsibility extends to the licensee's patrons concerning noise, fights, disorders, and/or other unlawful behavior both inside and outside the premises which may adversely affect the health, safety and repose of the inhabitants in the area of the licensed premises and/or the premises becoming a focal point of police attention. Disciplinary charges may be instituted against a licensee for suffering or permitting disorders on or about the licensed premises relating to the operation of the premises and its' patrons. Licensees should ensure that they have adequate and properly trained staff to supervise the premises at all times as to avoid violations of law.

### Important information for all licensees:

- If there be any change, after the granting of a license, in any of the facts or information provided in the license application, a supplemental statement giving notice of change shall be filed with the Authority within **ten days** after such change. If an application for license or permit or the renewal thereof is pending with the Authority, the licensee shall notify in writing, **within 48 hours,** of any arrest, indictment or service of a summons, or conviction for any crime or offense of any kind other than a traffic infraction.

- On premises licensees are permitted ***only*** one stand-up bar per license certificate. A stand-up bar is defined by the Authority as any bar, counter or similar contrivance whereby a patron/customer orders and/or receives an alcoholic beverage directly from that bar, counter or similar contrivance. Each on-premises licensee is permitted upon the payment of a fee two additional stand-up bars at their establishment. Licensees may have a **portable stand-up service bar**, without the payment of an additional fee, in any banquet, dining or other separate room for private parties or special occasions in which the *general public is not in attendance*. The Authority defines a service bar as a bar, counter or similar contrivance where **only** waiters, waitress or other staff can order and/or obtain alcoholic beverages to be delivered to customers at other locations within the establishment. A customer is not permitted to order or obtain an alcoholic beverage directly at this service bar. No fees are required for staff service bars but the licensee must file and receive approval for use of this type bar.

- All licensees are required to maintain adequate books and records detailing purchases (with invoices) and sales at their premises. These books and records must be kept upon the licensed premises and made available for inspection by SLA personnel.





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# Responsibilities

- All alcoholic beverages stored and displayed for sale on the premises may only be purchased from NYS licensed wholesalers. Licensees are prohibited from purchasing any alcoholic beverages from other retailers for resale at their establishment.

- All alcoholic beverages must be dispensed from the container in which it was received from the licensed wholesaler. Refilling (including same brands), altering or tampering with the contents of any alcoholic beverage container is unlawful. Pre-mixing drinks (i.e. jello shots, test tube drinks, etc.) by the licensee, agent or his employees is also prohibited.

- All licensed premises are subject to inspection by police officers and peace officers when the establishment is open for the transaction of business. This includes all public and private events being held on the premises.

- All forms of gambling (social or professional) are prohibited in all premises licensed by the SLA. This includes sports betting pools, dice roll, poker, black jack and other gambling type card games. The sale of lottery tickets, raffles or other games of chance are permitted in a licensed premises when authorized by the NYS Division of Lottery, NYS Racing and Wagering, or Bingo Commission.

- All licensees must ensure that they are properly licensed before allowing customers to take or be served any alcoholic beverages at any patio, deck or other outside areas. On-Premises establishments are permitted to sell beer and malt beverage products to customers for off-premises consumption. On-Premises licensees are prohibited from selling liquor or wine to go, except a restaurant may permit one bottle of wine to be taken for off-premises consumption by a customer if this bottle of wine was purchased in conjunction with a full meal and was partially consumed with the full meal at the licensed premises. The specific requirements relating to the removal of one bottle of wine with a full meal from a licensed establishment is explained in Bulletin 588 on the agency's website.

- Sixteen years old is the minimum age a child may enter and remain in place where alcoholic beverages are sold or given away unless the child is accompanied by his parent, guardian or an adult authorized by a parent or guardian (NYS Penal Law – Section 260.21, sub 1). There are exceptions provided for in this statute including alcohol free teen nights (Alcohol free teen event forms are available on the agency's website).



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## Employees:

All licensees prior to hiring an employee should obtain a completed employment application form to be kept on file with their books and records. This employment application form should include the question: Have you ever been convicted of any crimes (both Felonies and Misdemeanors)? Licensees have an obligation to insure that they are not employing any prohibited persons pursuant to the ABC Law. Completed employment application forms on all employees may also benefit the licensees in complying with other state and federal regulations. The ABC Law (Section 100.2-a & 2-b) defines the minimum age for employment upon a licensed premises. The chart below indicates the minimum age for employees denoted by their title, duties, and type of license at the establishment. The minimum age for entertainers is 18 years old. The ABC Law's employment statutes **do not** provide exemptions (except in grocery stores) in the minimum age requirement pertaining to licensee's relatives or immediate family members working or providing volunteer assistance on the licensed establishment.

**Retail license premises have different requirements for minimum employment age – see chart.**

| | Type of Establishment | Type of Work | Permitted Age | Permitted Tasks |
|---|---|---|---|---|
| On-Premises | **Restaurant<br>Bar<br>Hotel<br>Club<br>Pizza Parlor<br>Tavern<br>Delicatessen** | Bartender, Waitress, Waiter, Hostess | **18** | Handle, dispense & receive payment for alcoholic beverages |
| | | Bus Person | **16** (must be directly supervised by someone 21 years old) | Handle containers which have held alcoholic beverages |
| | | Dishwasher | **16** (must be directly supervised by someone 21 years old) | Handle containers which have held alcoholic beverages |
| | | Entertainer | **18** (except under certain circumstances) | Entertain |
| Off-Premises | **Grocery Store** | Clerk/Cashier | **16** (must be supervised by someone at least 18) | Handle, record & receive payment for beer & wine products |
| | **Convenience Store** | Clerk/Cashier | **16** (must be supervised by someone at least 18) | Handle, record & receive payment for beer & wine products |
| | **Drug Store** | Clerk/Cashier | **16** (must be supervised by someone at least 18) | Handle, record & receive payment for alcoholic beverages |
| | **Liquor Store** | Clerk/Cashier | **18** | Handle, record & receive payment for alcoholic beverages |



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## Sales To Minors

It is a crime to sell, deliver or give away an alcoholic beverage to a person(s) less than 21 years of age in a licensed establishment. You should instruct your employees to check for proof of age before delivering an alcoholic beverage. In surveys, many underage purchasers say they were not asked for proof of age. Licensees are responsible for indirect deliveries of alcoholic beverages to underage person on or about the licensed establishment. Precautionary measures should be implemented to insure that underage persons are not obtaining alcoholic beverages through a third party. If you suspect that an alcoholic beverage is being purchased for an underage person, refuse the sale.

## Acceptable Documents For Identification

- A valid driver's license or non-driver identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of the dominion of Canada.
- A valid passport issued by the United States government or any other country.
- An identification card issued by the armed forces of the United States.

***Birth Certificates, college IDs or Sheriffs IDs are not acceptable proof of age***

### Tips for checking valid ID documents:

- Check for tampered or fake documents
- Check the date of birth on the ID
- Check information and photo on the document and compare data to the person presenting the ID.
- Check the lamination for unclear edges
- Check for bumps or uneven surfaces on document
- Check for erased ink or alteration marks around the date of birth
- If NYS license, check security laminate for continuous state seal.
- Ask for a second form of ID

Identification



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## Sales To Intoxicated Persons

The ABC law prohibits the sale, delivery or giving away of an alcoholic beverage to an intoxicated person. There are no exceptions to this law. Regardless, of whether a patron is driving or has other means of transportation to or from your establishment, you must cease sale/delivery of alcoholic beverages to that patron if he/she displays visible signs of intoxication. It is recommended that licensees establish written policies for their employees concerning the proper dispensing of alcoholic beverages to customers. Licensees should provide training and educational programs for all employees that encourage responsible alcohol sales and consumption at their premises.

***Licensees should also advise their employees that in addition to being arrested, they may also be subject to civil liability for selling alcoholic beverages to an underage and/or intoxicated person.***



## All You Can Drink Specials

Section 117-a (ABC Law) makes it unlawful to offer, sell, serve or deliver to any person or persons an unlimited number of drinks during any set period of time for a fixed price (i.e., all you can drink). Attempts to circumvent the intent and purpose of this statute by offering of free drinks, or multiple drinks for free or for the price of a single drink or for such a minor amount that in the judgment of the Authority the pricing would constitute an attempt to circumvent the intent and purposes of this section is also prohibited. This section of law shall not apply to **private functions not open to the public**, such as weddings, banquets, or receptions, or other similar functions or to a package of food and beverages where the service of alcoholic beverage is incidental to the event or function.



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## Disciplinary Proceedings and Penalties

*Note: The SLA disciplinary proceeding is a separate and independent process from any criminal, civil or other administrative procedure instituted against the licensee relative to the same incident or issue. The licensee may be represented by an attorney or by another person acting on behalf of the licensee upon the commencement of disciplinary action by the SLA. Anyone appearing on behalf of the licensee, other than an attorney, must present a written authorization signed by the licensee.*

A disciplinary proceeding is an administrative procedure the SLA institutes against a licensee alleging a violation/s of the Alcoholic Beverage Control Law or Rules of the Authority. The first step in this process is a **Notice of Pleading** will be sent to the licensee outlining the specific charges brought by the Authority. The **Notice of Pleading** contains the date of the offense/s, the section of ABC law violated and the maximum penalty for the offense/s. The **Notice of Pleading** also provides a pleading date by which the licensee must enter a plea to the charge or charges.

**Not Guilty Plea** - preserves the licensee's right to an administrative hearing on the charges contained in the Notice of Pleading. Upon receipt of the Not Guilty plea, the licensee will be supplied with documentation concerning the charges. If the case is not resolved later by either a No Contest plea or a Conditional No Contest, the case will proceed to hearing.

**No Contest Plea** –in response to the Notice of Pleading, or at anytime after a Not Guilty plea has been entered (but before the start of the hearing) the licensee may submit a No Contest plea. The licensee may submit a statement of explanation with the No Contest Plea. If a licensee pleads No Contest, the charges are deemed sustained and there will be no hearing. The case will be forwarded to the Members of the Authority, who will review the matter and impose a penalty.

**Conditional No Contest Offer** – may also be submitted in response to the Notice of Pleading, or after a Not Guilty plea has been entered. **A conditional offer cannot be made once the hearing starts.** The licensee pleads No Contest on the condition that the Members of the Authority impose the penalty proposed by the licensee. If the Members of the Authority accept the offer, or impose a lesser penalty, the charges are deemed sustained and there will be no hearing. If the Members decline the offer, the licensee may then elect to proceed to the hearing, enter a No Contest plea, or accept a counter-offer that may be proposed by the Members. If the licensee intends to submit a conditional offer, the terms of that offer must be discussed with the Office of Counsel. The Office of Counsel must authorize any conditional offer being forwarded to the Members of the Authority. The Office of Counsel reserves the right to reject any conditional offer that is not deemed acceptable. A form can be provided to the licensee to use to submit a conditional offer.

Disciplinary



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**Hearing Procedure** – If the licensee chooses not to submit either a Conditional Offer or a No Contest plea, the matter will proceed to a hearing before an Administrative Law Judge (ALJ). The licensee will receive a hearing notice with the date, time and place of the hearing. At the conclusion of the hearing, the ALJ will issue a report which will be forwarded to the Members of the Authority for their review. The Members of the Authority make the final decision as to whether the charges are sustained or dismissed. The hearing will be the only opportunity for the Authority and the licensee to introduce evidence and present witnesses. **Failure to appear at the hearing will be treated as a No Contest plea.**

***Administrative penalties - At the discretion of the Members of the Authority***

**Letter of Warning**
Adjudicated guilty, appropriate penalty is a warning, loss of good record. Good record is defined as a continuous licensing period of 60 months with no adjudicated violations of law. The 60 months is calculated from date of violation to date of violation.

**Suspension**
Adjudicated guilty, temporary loss of licensed privilege – business can remain open but licensee is prohibited from buying, selling, trafficking, or permitting consumption of alcoholic beverages during that period.

**Cancellation**
Adjudicated guilty, loss of license privilege without prejudice. Licensee is not prohibited from reapplying for another license and other locations operated by licensee are not impacted by the cancellation.

**Revocation**
Adjudicated guilty, loss of license privilege with prejudice. Revoked person is prohibited from trafficking in alcoholic beverages in New York State for two years. All liquor, beer and wine licenses held by this person in New York State are revoked.

**Proscription**
The Members of the Authority impose a two year ban on any application for a license at the location where a license was revoked.

**Bond Claim & Civil Penalty**
Adjudicated guilty, bond claim up to $1,000 and civil money penalty up to $10,000 per violation in addition to other sanctions.

**Non renewal & Recall**
In addition to the above disciplinary actions, the SLA may institute proceedings to not renew and/or to recall the license.





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