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COMPLYING WITH NEW YORK'S ALCOHOLIC BEVERAGE CONTROL LAW- A GUIDE FOR WINERIES AND FARM WINERIES

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Chairman
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Dennis Rosen was appointed Chairman of the State Liquor Authority in August, 2009, after serving as a New York State Assistant Attorney General. He is a graduate of Brooklyn College and Harvard Law School, and has been a member of the New York State Bar since 1973.

Kerri O'Brien
Deputy Commissioner of Licensing
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As Deputy Commissioner of Licensing, Kerri O'Brien oversees the Authority's Licensing Bureau. The Licensing Bureau is responsible for processing and reviewing all applications for new licenses and permits, renewals of license and permits, and brand label registration applications and renewals. Kerri has served in a number of positions with the Authority, including Director of Licensing in the Authority's Albany office and Assistant to the Chairman.

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Tom Donohue has been with the Authority since 1999. From 2006 until 2010 he served as Counsel to the Authority. As Special Counsel he has been involved in drafting many of the recent changes to the Alcoholic Beverage Control Law, including the revisions to the winery laws in 2011 and the creation of the farm brewery law in 2012. Prior to joining the Authority, Tom maintained a private law practice in Columbia County where he also served as First Assistant District Attorney, First Assistant Public Defender and Counsel to the Social Services Commissioner.

This presentation is intended to assist wineries and farm wineries in complying with the provisions of the Alcoholic Beverage Control Law. It is not intended to serve as a comprehensive manual with respect to either the Alcoholic Beverage Control Law or the other laws and regulations that govern the operation of wineries and farm wineries. In addition, please note that any changes made to the Alcoholic Beverage Control Law or new directives issued by the State Liquor Authority after the date of this presentation may impact some of the information provided in this document.

LICENSING MATTERS

How does the application process work?

- Applications are mailed to a post office box belonging to Wells Fargo Bank. Checks are deposited into an account held by the agency and an image of the application and all supporting documents is 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 throughout the state.
 - 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 items that have not been submitted that may be submitted 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 Licensing Board for 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 advising it of the determination.

What do you need to submit with an application?

- An application for a manufacturing or wholesale license must include the following:
 - Application Fee (License fee plus filing fee)
 - Application forms with all questions answered accurately and completely
 - Penal Bond
 - 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

- Bulletin #254 (lists the minimum office requirements)
- 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. [ABCL §109].
- If there are any changes to the corporate structure, a Corporate Change application must be filed and approved prior to the change taking place. [ABCL §99-d(2)].
- 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. This does not apply to Farm Wineries, however, submission of a diagram showing the area licensed is recommended. [ABCL §99-d(1)].
- If the licensee seeks to move to another location, a Removal Application must be filed. [ABCL §99-d(3)].
- 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.

RECENT STATUTORY AND REGULATORY CHANGES

What new laws, regulations and policy changes affect manufacturers?

Amendments to ABC Law

- Section 97 has been amended to add a new subdivision 4. This provision allows the Authority to issue TPA permits to wine manufacturers (NY and out-of-state) to sell wine (but not beer) at special events. Only wine manufacturers that produce no more than 150,000 gallons of wine annually are eligible for the permit. [Chapter 120 of the Laws of 2012]
- Section 55-c places restrictions on the ability of a brewer and a beer wholesaler to terminate an agreement giving the wholesaler the right to distribute the brewer's beer. The party seeking to end the agreement must show that there is "good cause" to terminate the contract. That section has been amended to allow small brewers (those producing less than 300,000 barrels of beer annually) to terminate such an agreement without showing "good cause". This change became effective on January 1, 2013. Any questions about beer franchise agreements in general, and this change in particular, should be directed to the Wholesale Bureau. [Chapter 367 of the Laws of 2012]
- Trucking permits under Section 94 are issued to the owners/operators of vehicles either for individual vehicles or a fleet of vehicles. Subdivision 2-b has been added to Section 94 to create a "company permit" that can be issued to licensed manufacturers and licensed beer wholesalers. The permit will cover large trucks hired by these licensees to transport product from the licensed premises to other locations. The bill was signed on September 7, 2012 and became effective immediately. [Chapter 453 of the Laws of 2012]
- There are two credit calendars (one for beer and wine products and the other for liquor and wine) for purchases by retailers from wholesalers. The relevant section of the ABC Law (Sections 101-aa & 101-aaa) have been amended to allow liquor and wine wholesalers to use the liquor and wine credit calendar for sales of wine products. The bill was signed on July 18, 2012 and became effective immediately. Any questions about this change or terms of sale, credit calendars and the "COD list" in general should be directed to the Wholesale Bureau. [Chapter 242 of the Laws of 2012]
- Section 107-a provided an exemption from paying the brand label registration fee for beer produced by New York brewers in limited quantity. That exemption has now been expanded to include beer produced by any manufacturer in limited quantities. The bill was signed on July 18, 2012 and became effective immediately. [Chapter 109 of the Laws of 2012]
- The farm distillery law has been amended to allow these licensees to conduct tastings at the state fair, county fairs and farmers markets. The amendment also allows these licenses to obtain a permit to sell their liquor at those same events. This change in the law should not be confused with the Marketing Permit that the Authority makes available to all manufacturers and wholesalers. The bill was signed on October 3, 2012 and becomes effective April 1, 2013. [Chapter 484 of the Laws of 2012]

Advisories issued in 2012

- 2012-1: Section 55-b of the Alcoholic Beverage Control Law contains what is commonly referred to as the "180 Day Law". In a nutshell, this law places restrictions on price changes. If a brewer lowers the price it charges a wholesaler, or a wholesaler lowers the price it charges a retailer, that price cannot be increased for 180 days. This advisory provides clarification regarding the application of the 180 Day Law with respect to marketing programs and volume discounts offered by wholesalers to retailers.
- 2012-2: Section 107-a of the Alcoholic Beverage Control Law is the brand label registration law. A provision in that statute gave New York state brewers an exemption from the filing fee for beer produced

in small batches. This advisory alerted brewers to the fact that, as a result of a court decision, that exemption had been eliminated. Subsequent legislation has created an exemption for beer produced in small batches by all brewers, not just those located in this state.

- 2012-5: This advisory, replacing several earlier bulletins, explains how the price posting law and brand label registration applies to liquor and wine that is sold in special containers. The advisory also explains to suppliers and distributors how they can package products being delivered to retailers.
- 2012-6: Through this advisory the Members of the Authority increased the duration of certain wine licenses. As a result of the advisory, winery, farm winery, wine wholesale, wine store and direct shipping licenses are now issued for three years. On premises wine licenses (RW & TW licenses) will continue to be issued for two years.
- 2012-7: This advisory provides guidance to manufacturers, importers and wholesalers regarding their ability to conduct tastings and sell their product “by the bottle”. The advisory also creates a new “Marketing Permit” that replaces the Supplier Tasting Permit and Wine Tasting Permit that were both issued under Section 99-b(1)(k) of the Alcoholic Beverage Control Law.
- 2012-8: Through this advisory the Members of the Authority have interpreted the Alcoholic Beverage Control Law to allow holders of temporary beer and wine permits to also sell cider.
- 2012-9: Through this advisory the Members of the Authority are allowing small manufacturers to obtain temporary beer and wine permits.
- 2012-10: Through this advisory the Members of the Authority have interpreted the Alcoholic Beverage Control Law to allow for the issuance of multiple manufacturing licenses for the same location.
- 2012-11: The Members of the Authority have eliminated the need for applicants for manufacturing licenses to submit certain documentation with their applications. This advisory lists the information that will no longer be required.
- 2012-12: In response to the devastation caused by Hurricane Sandy, the Authority allowed brewers and beer wholesalers to replace retailer inventory that was damaged as a result of the storm. This advisory provided the guidelines that brewers and wholesalers were required to follow when conducting the exchanges.
- 2012-13: To accommodate retailers who wanted to purchase sufficient inventory for the holiday season, the Authority exercised its statutory discretion by granting retailers an extension of time to pay for liquor and wine purchased on credit and allowing retailers to make early January purchases at the lower December prices. This advisory provided wholesalers and retailers with the guidelines for these transactions.

What does the farm brewery law do?

- Creates a new farm brewery license for brewers producing New York state labeled beer. [ABCL §51-a].
- Provides definitions for New York state labeled beer and New York state labeled cider. [ABCL §3(20-d) and §3(20-e)].
- Allows farm breweries to produce New York state labeled cider. [ABCL §51-a(2)(a)].
- Provides farm breweries with license privileges similar to farm wineries. [ABCL §51-a(7)].
- Gives farm licensees retail off-premises sale and tasting privileges for New York state labeled wine and liquor. [ABCL §51-a(2)(i) and §51-a(2)(j)].

What is the new “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. [ABCL §99-b(1)(k)].
- Allows manufacturers, importers and wholesalers to conduct tastings and sell product by the bottle at certain events.
- Manufacturers and importers can accept orders on behalf of their wholesalers.
- Tastings and bottle sales can be conducted at:
 - An establishment licensed under the ABCL to sell at retail the alcoholic beverage that will be tasted;
 - 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. Limitation on size of samples used for tastings:
 - In the case of beer, wine products and cider, to 3 ounces or less;
 - In the case of wine, to 2 ounces; and
 - In the case of liquor, to one-quarter ounce.

MANUFACTURING AND DISTRIBUTING YOUR PRODUCT

What licenses and permits do you need?

Basic manufacturing license

- A license is needed to manufacture alcoholic beverages in this state that are intended for consumption.
- There are permits available to manufacture alcohol for other commercial, scientific, technical or chemical purposes.

Solicitor's permit [ABCL §93]

- Sales staff working for a licensed manufacturer or wholesaler must have a solicitor's permit.
- A solicitor may only work for one licensed entity, but may work under any licenses to that entity.
- 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 [ABCL §96]

- 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 [ABCL §94]

- 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.

How do you get your product to retailers?

- All licensed manufacturers have the right to "self-distribute" or act as their own wholesaler.
- A liquor or wine manufacturer can allow all licensed wholesalers to distribute its product, or only allow certain wholesalers to sell their product. [ABCL §101-b(4-a)(a)].
- Licensed manufacturers can sell to out-of-state entities if allowed by the state where the entity is located.

What is price posting, and do you have to do it?

- 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 prices charged by licensed manufacturers and licensed wholesalers to licensed retailers. [ABCL §101-b(3)(a) and §101-b(3)(b)].
- 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. [ABCL §101-b(3)(a) and §101-b(3)(b)].
- All schedules now filed electronically. [ABCL §101-b(3)(d)].
- 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. [ABCL §101-b(4) and §101-b(5)].
- 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”. [ABCL §101-b(3)(c) and §101-b(4-a)(d)].
- The price schedule cannot require purchase of one product to get another, except for permissible combination packages. [ABCL §101-b(4-a)(e)].
- 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. [ABCL §101-b(3)(a) and Bulletin 583].

Do you need state brand label registration?

- All alcoholic beverages must have brand label approval to be sold in this state. [ABCL §107-a(4)(a)].
 - Liquor, beer, wine products and cider require both Federal and state label approval.
 - Wine does not require state approval if the label has been approved by TTB. [ABCL §107-a(4)(c)(3)].
- Fee exemption for beer produced in small batches. [ABCL §107-a(4)(g)].

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”.
 - “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. [ABCL §101-aa(1)(f) and §101-aaa(1)(g)].
 - 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.

- Manufacturers and wholesalers can, but are not required to, allow retailers to pay on credit. [ABCL §101-aa(8) and §101-aaa(7)].
 - Retailers purchasing liquor or wine on credit have 30 days to pay the bill. [ABCL §101-aa(1)(b)].
 - 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. [ABCL §101-aaa(3)].
- Licensed manufacturers and wholesalers must report retailers who are delinquent in payment.
 - Within 5 days of default for liquor and wine. [ABCL §101-aa(1)(d)].
 - Within 4 days of default for beer. [ABCL §101-aaa(1)(e)].
- “C.O.D. list” contains all the retailers who are delinquent in paying for products purchased on credit from licensed manufacturers and wholesalers. [ABCL §101-aa(3) and §101-aaa(3)].
 - 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. [ABCL §101-aa(3)].
 - Licensed manufacturers and wholesalers cannot sell on credit to any retailer on C.O.D. list. [ABCL §101-aa(3) and §101-aaa(3)].

Can you accept returns of your product?

- The Authority allows manufacturers and wholesalers to accept returns from retailers for mistakes in orders; breakage during shipment; and when the product is defective. Any other return requires the approval of the Authority. [Rules of the Authority §66.5]
- The Authority allows wholesalers to exchange, or give credit for, “out-of-code” beer. “Wine-in-a-box” that is out-of-date cannot be returned.
- Retailers, at their discretion, can accept returns from consumers of unopened containers. The manufacturer/wholesaler cannot take the product back from the retailer in these situations.

THE “FARM” LICENSES AND NEW YORK STATE LABELED ALCOHOLIC BEVERAGES

What is the difference between a “farm” license and other licenses?

- There are three types of “farm” licenses: farm winery; farm distillery; and farm brewery.
- “Farm” manufacturing licenses have production limits...
 - A farm brewery can produce no more than 60,000 finished barrels of beer each year. [ABCL §51-a(10)].
 - A farm distillery can produce no more than 35,000 gallons of liquor each year. [ABCL §61(2)(f)].
 - A farm winery can produce no more than 150,000 finished barrels each year. [ABCL §76-a(8)].
- ...but have lower license fees than standard manufacturing licenses.
 - Farm brewery license is \$320/year vs. \$4,000/year for brewer’s license. [ABCL §56(1)].
 - Farm distillery license is \$128/year vs. \$12,000/year for a distillery’s license or \$250/year for a micro-distillery’s license. [ABCL §66(1); §66(1-a); and §66(2-c)].
 - Farm winery license is \$125/year (\$50/year if producing less than 1,500 gallons annually) vs. \$625/year for a winery license. [ABCL §83(1) and §83(1-a)].
- “Farm” manufacturing licenses have more privileges than standard manufacturing licenses.
- “Farm” manufacturing licensees do not have to grow the ingredients being used to produce the alcoholic beverages.
- A farm winery may only produce wine that is made exclusively from ingredients grown in New York State. [ABCL §76-a(5)(a)].
 - A farm winery must be located on a farm. [ABCL §3(12-a)].
 - A farm winery can also produce cider. [ABCL §76-a(2)(a)].
- A farm distillery may only produce liquor that is made primarily from ingredients grown in New York State.
 - “Primarily” means most of the ingredients must be from New York, not just 51%.
 - A farm distillery does not have to be located on a farm. [ABCL §3(11-a)].
- A farm brewery may only produce beer that qualifies as New York state labeled beer. [ABCL §51-a(11)].
 - A farm brewery does not have to be located on a farm. [ABCL §3(12-aaa)].
 - A farm brewery may also produce New York state labeled cider. [ABCL §51-a(2)(a)].

What is the relationship between the “farm” licenses?

- The legislation creating the Farm Brewery license allows the “farm” licensees to sell each other’s products at retail.

- Farm brewers can sell (by the bottle) wine made by farm wineries and liquor made by farm distilleries. [ABCL §51-a(2)(i) and §51-a(2)(j)].
- Farm distilleries can sell (by the bottle) beer made by farm brewers and wine (and cider) made by farm wineries. [ABCL §61(2-c)(a)(v); §61(2-c)(a)(vi); and §61(2-c)(a)(vii)].
- Farm wineries can sell (by the bottle) beer (and cider) made by farm brewers and liquor made by farm distilleries. [ABCL §76-a(4)(b) (6); §76-a(6)(g);and §76-a(h);
- Each “farm” licensee can also conduct tastings of New York state labeled alcoholic beverages made by other “farm” licensees.

What is a “New York state labeled” alcoholic beverage?

- “New York state labeled wine” means wine made from grapes or other fruits, at least seventy-five percent the volume of which were grown in New York state. [ABCL §3(20-a).
- “New York state labeled liquor” means liquors made from fruit, vegetables, grain and grain products, honey, maple sap or other agricultural products, at least seventy-five percent the volume of which were grown or produced in New York state. . [ABCL §3(20-c).
- “New York state labeled beer” means:
 - 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. [ABCL §3(20-d)(a)].
 - 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. [ABCL §3(20-d)(b)].
 - 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. [ABCL §3(20-d)(c)].
- “New York state labeled cider” means cider made exclusively from apples grown in New York state. [ABCL §3(20-e)].
- The percentages apply to each product line, not to overall production.

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

Where can you conduct tastings and what permits do you need?

Brewers

- A brewery may conduct tastings at its licensed premises of beer it produces. No additional permit is needed. [ABCL §51(8)(d)].
- A brewery may obtain a temporary (3 day) or annual brewer tasting permit. Such permit allows the brewer to conduct tastings of the beer it produces at: (a) establishments licensed under ABCL §54 or §54-a to sell beer, or beer and wine products at retail for consumption off the premises, such as grocery store or drug store licensees; (b) county fairs; and (c) establishments licensed under ABCL §53 to sell beer at wholesale that may also sell beer at retail for consumption off the premises, also known as “C” licensees. [ABCL §51(8)(a)].
- A brewery may obtain a permit to conduct tastings throughout the state of New York State labeled beer it produces. These permits are issued either on an annual basis or for a specific event. [ABCL §51(6-a)(e)].
- A brewery may conduct tastings of beer it produces using a supplier/wholesaler marketing permit.

Farm brewers:

- A farm brewery may conduct tastings at its licensed premises (or one of its branch offices) of New York State labeled beer and New York State labeled cider that it produces or that is produced by any other farm brewery. No additional permit is needed. [ABCL §51-a(2)(g)].
- A farm brewery may conduct tastings at its licensed premises (or one of its branch offices) of New York State labeled wine that is produced by a winery or farm winery. No additional permit is needed. [ABCL §51-a(2)(i)].
- A farm brewery may conduct tastings at its licensed premises (or one of its branch offices) of New York State labeled liquor that is produced by a distillery or farm distillery. No additional permit is needed. [ABCL §51-a(2)(j)].
- A farm brewery may obtain a temporary (3 day) or annual brewer tasting permit. Such permit allows the brewer to conduct tastings of the beer it produces at: (a) establishments licensed under ABCL §54 or §54-a to sell beer, or beer and wine products at retail for consumption off the premises, such as grocery store or drug store licenses; (b) County fairs; and (c) establishments licensed under ABCL §53 to sell beer at wholesale that may also sell beer at retail for consumption off the premises, also known as “C” licensees. [ABCL §51(8)(a)].
- A farm brewery may obtain a permit to conduct tastings of beer it produces at events throughout the state. Such permits are issued on an annual basis or for individual events. [ABCL §51-a(2)(e)].
- A farm brewery may conduct tastings of beer it produces using a supplier/wholesaler marketing permit.

Cider producers:

- A cider producer may not conduct tastings at its licensed premises.
- A cider producer may conduct tastings of New York State labeled cider at licensed package stores without having to obtain a permit. [ABCL §58(2)(a)].

- A cider producer may conduct tastings of New York State labeled cider at licensed restaurants, hotels and catering establishments without having to obtain a permit. [ABCL §58(2)(b)].
- A cider producer that holds a “satellite store” license may also conduct tastings of New York State labeled cider at the satellite store. No additional license or permit for these tastings is needed. [ABCL §58(4)].
- A cider producer may obtain a permit to conduct tastings of New York State labeled cider at the State Fair county fairs and farmers markets. [ABCL §58(3)].
- A cider producer may conduct cider tastings using a supplier/wholesaler marketing permit. Information concerning such permits is provided later in this document.

Distillers:

- A distillery may not conduct tastings at its licensed premises.
- A distillery may conduct tastings at establishments licensed in this state to sell liquor at retail for consumption off the premises (a “package store”). No additional license or permit for these tastings is needed. [ABCL §63-a].
- A distillery may also conduct tastings using a supplier/wholesaler marketing permit.

Farm distillers:

- A farm distillery may conduct tastings at its licensed premises of liquor made primarily from New York State products that is produced by the farm distillery or by other licensed distilleries and farm distilleries. No additional license or permit for these tastings is needed. [ABCL §61(2-c)(c)].
- A farm distillery may conduct tastings at its licensed premises of New York State labeled wine that is produced by a winery or farm winery. No additional permit is needed. [ABCL §61(2-c)(a)(vii)].
- A farm distillery may conduct tastings at its licensed premises of New York State labeled beer that is produced by a brewer or farm brewer. No additional permit is needed. [ABCL §61(2-c)(v)].
- A farm distillery may conduct tastings at its licensed premises of New York State labeled cider that is produced by a brewer, farm brewer, winery or farm winery. No additional permit is needed. [ABCL §61(2-c)(vi)].
- A farm distillery may conduct tastings of liquor it produces at a licensed package store. No additional permit is needed. [ABCL §63-a].
- A farm distillery may conduct tastings of liquor it produces at the State Fair, county fairs and farmers markets. [ABCL §61(6)].¹
- A farm distillery may also conduct tastings of liquor it produces using a supplier/wholesaler marketing tasting permit.

Wineries:

- A winery may conduct tastings of the wine it produces at its own licensed premises (or its satellite stores) without a separate permit. [ABCL §80].

¹ Effective April 1, 2013

- A winery may conduct tastings of New York State labeled wine at licensed package and wine stores without having to obtain a permit. [ABCL §76(3)(a)].
- A winery may conduct tastings of New York State labeled wine at establishments with licenses to sell wine at retail for on-premises consumption without having to obtain a permit. [ABCL §76(3)(a-1)].
- A winery may obtain a “charitable event” permit to conduct tastings of New York State labeled wine at events sponsored by charitable organizations. [ABCL §76(3)(c)(ii)].
- A winery may obtain a permit to conduct tastings of New York State labeled wine at the State Fair, county fairs and farmers markets.
- A winery may also conduct wine tastings using a supplier/wholesaler marketing permit.

Farm wineries:

- A farm winery can conduct tastings of the wine it produces at its own licensed premises (or its branch offices) without a separate permit. [ABCL §80].
- A farm winery may conduct tastings of New York State labeled wine at licensed package and wine stores without having to obtain a permit. [ABCL §76-a(3)(a)].
- A farm winery may conduct tastings of New York State labeled wine at establishments with licenses to sell wine at retail for on-premises consumption without having to obtain a permit. [ABCL §76-a(3)(b)].
- A farm winery may obtain a “charitable event” permit to conduct tastings of New York State labeled wine at events sponsored by charitable organizations. [ABCL §76-a(3)(d)(ii)].
- A winery may obtain a permit to conduct tastings of New York State labeled wine at the State Fair, county fairs and farmers markets.
- A farm winery may conduct tastings at its licensed premises (or its branch offices) of New York State labeled liquor that is produced by any distillery or farm distillery. No permit is needed to conduct this tasting. [ABCL §76-a(6)(f)].
- A farm winery may conduct tastings at its licensed premises (or its branch offices) of New York State labeled beer that is produced by a brewer or farm brewer. No additional permit is needed. [ABCL §76-a(6)(g)].
- A farm winery may conduct tastings at its licensed premises (or its branch offices) of New York State labeled cider that is produced by a brewer, farm brewer, winery or another farm winery. No additional permit is needed. [ABCL §76-a(6)(h)].
- A farm winery may also conduct tastings of New York State labeled wine and cider using a supplier/wholesaler marketing permit.

Where can you sell “by the bottle”?

Brewers:

- A brewery may apply for a license to sell beer by the bottle at its licensed premises. [ABCL §52].
- A brewery whose annual production is less than 60,000 barrels may apply for a permit to sell beer by the bottle at the State Fair, county fairs and farmers markets. [ABCL §51(5)].

- A brewery may sell beer it produces by the bottle using a supplier/wholesaler marketing permit.

Farm brewers:

- A farm brewery may sell New York State labeled beer and New York State labeled cider by the bottle at its licensed premises (or its branch offices) that it produces or that is produced by any other farm brewery. No additional license or permit is needed. [ABCL §51-a(2)(e)].
- A farm brewery may sell New York State labeled beer and New York State labeled cider that it produces or that is produced by any other farm brewery by the bottle at the State Fair, county fairs and farmers markets. No additional license or permit is needed. [ABCL §51-a(2)(h)].
- A farm brewery may sell New York State labeled wine by the bottle at its licensed premises (or its branch offices) that is produced by a winery or farm winery. No additional license or permit is needed. [ABCL §51-a(2)(i)].
- A farm brewery may sell New York State labeled liquor by the bottle at its licensed premises (or its branch offices) that is produced by a distillery or farm distillery. No additional license or permit is needed. [ABCL §51-a(2)(j)].
- A farm brewery may obtain a permit to sell New York State labeled beer and New York State labeled cider by the bottle that it produced while conducting a tasting being held pursuant to a permit issued under ABCL §51-a(3)(a). [ABCL §51-a(4)].
- A farm brewery may sell beer by the bottle that it produces using a supplier/wholesaler marketing permit.

Cider producers:

- A cider producer may obtain a permit to sell New York State labeled cider by the bottle during tastings at licensed restaurants, hotels and catering establishments. [ABCL §58(2)(b)].
- A cider producer may not sell by the bottle from its licensed premises. A cider wholesaler that holds a “satellite store” license may sell New York State labeled cider by the bottle at the satellite store. [ABCL §58(4)]
- A cider producer with a permit to conduct tastings at the State Fair, county fairs and farmers markets may sell New York State labeled cider by the bottle at the tasting. [ABCL §58(3)]
- A cider producer may sell cider by the bottle that it produces using a supplier/wholesaler marketing permit.

Distillers:

- The ABCL does not contain any provision that allows a distillery to sell alcoholic beverages by the bottle. However, a distillery may sell its liquor by the bottle using a supplier/wholesaler marketing permit.

Farm distillers:

- A farm distillery may sell at its licensed premises liquor made primarily from New York State products by the bottle that is produced by the farm distillery. [ABCL §61(2-c)(a)(iii)].
- A farm distillery may sell at its licensed premises New York State labeled wine by the bottle that is produced by a winery or farm winery. [ABCL §61(2-c)(a)(vii)].
- A farm distillery may sell New York State labeled beer by the bottle at its licensed premises that is produced by a brewer or farm brewer. [ABCL §61(2-c)(v)].

- A farm distillery may sell New York State labeled cider by the bottle at its licensed premises that is produced by a brewer, farm brewer, winery or farm winery. [ABCL §61(2-c)(vi)].
- A farm distillery may obtain a permit to sell liquor made primarily from New York State by the bottle products at the State Fair, county fairs and farmers markets. [ABCL §61(2-c)(b)(iv)].²
- A farm distillery may sell liquor made primarily from New York State by the bottle products using a supplier/wholesaler marketing permit.

Wineries:

- A winery may obtain a license to sell wine by the bottle at its licensed premises. [ABCL §76(10)].
- A winery that holds a “satellite store” license may sell New York State labeled wine by the bottle at the satellite store. [ABCL §76(5)].
- A winery with a “charitable event” tasting permit may sell New York State labeled wine at such tastings. [ABCL §76(3)(c)(ii)].
- A winery may obtain a permit to sell New York State labeled wine at the State Fair, county fairs and farmers markets. [ABCL §76(7)].
- A winery conducting tastings of New York State labeled wine at establishments with licenses to sell wine at retail for on-premises consumption may obtain a permit to sell such wine by the bottle during the tasting. [ABCL §76(3)(a-1)].
- A winery may sell wine it produces by the bottle using a supplier/wholesaler marketing permit. Information concerning such permits is provided later in this document.

Farm wineries:

- A farm winery may sell New York State labeled wine and cider by the bottle at its licensed premises (or its branch offices). [ABCL §76-a(2)(e)].
- A farm winery with a “charitable event” tasting permit may sell New York State labeled wine at such tastings. [ABCL §76-a(3)(d)(ii)].
- A farm winery may obtain a permit to sell New York State labeled wine at the State Fair, county fairs and farmers markets.
- A farm winery conducting tastings of New York State labeled wine at establishments with licenses to sell wine at retail for on-premises consumption may obtain a permit to sell such wine by the bottle during the tasting. [ABCL §76-a(3)(b)].
- A farm winery may sell New York State labeled beer by the bottle at its licensed premises that is produced by a brewer or farm brewer. [ABCL §76-a(6)(g)].
- A farm winery may sell New York State labeled cider by the bottle at its licensed premises (or its branch offices) that is produced by a brewer, farm brewer, winery or farm winery. [ABCL §76-a(6)(h)].

² Effective April 1, 2013.

- A farm winery may sell New York State labeled liquor by the bottle at its licensed premises (or one its branch offices) that is produced by a distillery or farm distillery. No additional license or permit is needed. [ABCL §76-a(6)(b)].
- A farm winery may sell wine it produces by the bottle using a supplier/wholesaler marketing permit. Information concerning such permits is provided later in this document.

Where can you sell “by the glass”?

Brewers:

- A brewery may apply for a license to sell alcoholic beverages in a restaurant in or adjacent to the brewery. [ABCL §52(4)].
- A brewery whose annual production is less than 60,000 barrels may apply for a permit to sell beer, cider and wine by the glass at outdoor and indoor gatherings. [ABCL §97(1) & Advisory 2012-09].
- A brewery may apply for a permit to sell beer by the glass at certain outdoor or indoor gatherings that are closed to the public. [ABCL §97(2)].

Farm brewers:

- A farm brewery may sell New York State labeled beer and New York State labeled cider by the glass at the licensed farm brewery. No additional license or permit is needed. [ABCL §51-a(2)(e)].
- A farm brewery may sell New York State labeled beer and New York State labeled cider by the glass at a restaurant that is in or adjacent to the licensed farm brewery. No additional license or permit is needed. [ABCL §51-a(2)(e)].
- A farm brewery may apply for a license to sell liquor and wine by the glass in a restaurant in or adjacent to the brewery. [ABCL §51-a(6)].
- A farm brewery may apply for a permit to sell beer, cider and wine by the glass at outdoor and indoor gatherings. [ABCL §97(1) & Advisory 2012-09].
- A farm brewery may apply for a permit to sell beer by the glass at certain outdoor or indoor gatherings that are closed to the public. [ABCL §97(2)].

Cider producers:

- A cider producer cannot sell cider by the glass at the licensed premises or operate a restaurant in or adjacent to the licensed premises.
- A cider producer may apply for a permit to sell beer, cider and wine by the glass at outdoor and indoor gatherings. [ABCL §97(1) & Advisory 2012-09].

Distillers:

- A distillery cannot sell liquor by the glass at the licensed premises or operate a restaurant in or adjacent to the licensed premises.

Farm distillers:

- A farm distillery cannot sell liquor by the glass at the licensed premises.

- A farm distillery may apply for a license to sell alcoholic beverages by the glass in a restaurant in or adjacent to the farm distillery. [ABCL §61(2-c)(e)].

Wineries:

- A winery may apply for a license to sell wine by the glass at the winery. [ABCL §76(4)].
- A winery may apply for a license to sell alcoholic beverages by the glass in a restaurant in or adjacent to the licensed winery. [ABCL §76(4-a)].
- A winery producing no more than 150,000 gallons of wine per year may apply for a permit to sell beer, cider and wine by the glass at outdoor and indoor gatherings. [ABCL §97(4) & Advisory 2012-09].
- A winery may sell wine by the glass at the State Fair provided that the winery has a concessionaire's license issued by the State Fair. [ABCL §76(9)].

Farm wineries:

- A farm winery may sell New York state labeled wine and cider by the glass at the farm winery. No additional license or permit is needed. [ABCL §76(2)(e)].
- A farm winery may sell New York state labeled wine by the glass in a restaurant, hotel, conference center or bed & breakfast in or adjacent to the farm winery. [ABCL §76-a(2)(f)].
- A farm winery may apply for a license to sell alcoholic beverages by the glass in a restaurant, hotel, conference center or bed & breakfast in or adjacent to the farm winery. [ABCL §76-a(3-a)].
- A farm winery may apply for a permit to sell beer, cider and wine by the glass at outdoor and indoor gatherings. [ABCL §97(4) & Advisory 2012-09].
- A farm winery may sell wine by the glass at the State Fair provided that the winery has a concessionaire's license issued by the State Fair.

What is “direct shipping”?

- In New York State, wine manufacturers are allowed to take orders from state residents who are not physically present at the winery and ship wine directly to the customer. [ABCL §79-d].
 - No more than 36 cases (no more than 9 liters per case) of wine can be sold to any one resident per year.
 - Shipments must be made through a company holding a trucking permit.
 - Licensed wineries and farm wineries may direct ship as part of their basic license privilege.
- Out-of-state wineries may obtain a permit to direct ship to New York residents. The state where the winery is located must allow New York wineries to direct ship to residents of that state under similar restrictions. [ABCL §79-c].
- Distilleries, breweries and cider producers are not allowed to engage in direct shipping.
- Direct shipping to residents of other states is governed by the laws of the state where the customer resides.

What is the difference between a “satellite store” and a “branch office”?

- A winery, or a combination of wineries, may operate up to five “satellite stores”. [ABCL §76(5)].
 - Activities at a satellite store are limited to the sale and tastings of New York state labeled wine.
 - A separate license must be obtained for each store and it is subject to the same licensing standards as a package store.
- Farm wineries and farm breweries may operate up to five “branch offices”. [ABCL §51-a(9) and §76-a(7)].
 - Any activity that can be conducted at the farm winery or farm brewery can be conducted at the 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. [ABCL §105(16) and §106(13)].
 - Licensed manufacturers and wholesalers cannot have an interest in a business that sells alcoholic beverages at retail. [ABCL §101(1)(a)].
- 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.
 - §101(1)(a) contains exceptions to the tied house law for specific geographic locations.

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. [ABCL §101(1)(c)].
 - The Authority presumes that anything a manufacturer or wholesaler gives to a retailer is meant to induce the retailer to buy product.
 - Licensees should be familiar with the Consent Orders.
- There are certain things that a manufacturer or wholesaler 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. [Rules of the Authority §86.5]
 - 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. [Rules of the Authority §86.6]
 - 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. [Rules of the Authority §86.9]
 - 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. [Rules of the Authority §86.10]

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:
 - The Authority can place a moratorium on issuing licensees throughout the state or in any political subdivision of the state. [ABCL §17(2)].
 - The Authority can, during a public emergency, prohibit the sale of alcoholic beverages. [ABCL §17(7)].
 - At the request of a county legislative body, the Authority can restrict the hours of sale of alcoholic beverages within the county. [ABCL §17(11)].
- 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. [ABCL §10].
- 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”. [ABCL §14].

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. [ABCL §17(3) and ABCL §119(1)].
- In addition to, or instead of, a suspension, cancellation or revocation, the Authority can also impose a fine. [ABCL §17(3) and ABCL §119(1)].
- For each violation, the maximum fine is:
 - \$10,000 for retail licensees.

- \$30,000 for beer wholesalers, wineries, farm wineries and wine wholesalers.
 - \$100,000 for breweries, distilleries and liquor wholesalers.
- In combination with any other penalty, the Authority can also impose a bond claim. [ABCL §17(3) and ABCL §112].
- Common violations committed by manufacturers and wholesalers include:
 - Price posting and brand label registration.
 - Sales to unlicensed entities.
 - Gifts and services.