



**State Liquor
Authority**

Compliance guide

- dealings between suppliers,
distributors and retailers**

Disclaimer

This presentation is intended to assist members of the alcoholic beverage industry that are directly or indirectly involved in the distribution of alcoholic beverages in the State of New York. It is not intended to serve as a comprehensive guide with respect to the Alcoholic Beverage Control Law (“ABCL”), the Rules of the State Liquor Authority (“Rules”), or the other laws and regulations that govern the distribution of alcoholic beverages in this state.

Please note that any changes made to the ABCL or the Rules, or any new directives or rulings issued by the State Liquor Authority after the date of this presentation may impact some of the information provided in this presentation.

You are encouraged to visit the State Liquor Authority’s website at www.sla.ny.gov. On the site you will find links to the ABCL, guidance documents (Advisories, Declaratory Rulings, etc.) issued by the Authority as well as archived recorded meetings of the Members of the Authority.

Dated: April 24, 2019

Introduction

- Target audience
 - “Suppliers:
 - NYS licensed manufacturers and importers
 - Out-of-state entities selling to NYS licensed wholesalers
 - “Distributors”
 - NYS licensed wholesalers
 - Retailers
 - NYS licensed retailers
- Trade practice standards
 - Alcoholic Beverage Control Law (“ABCL”)
 - Rules of the Authority (“Rules”)
 - Full Board guidance (Advisories and Declaratory Rulings)
 - Opinions of Counsel
 - Consent Orders

Organization of State Liquor Authority

- **Members of the Authority**
 - Chairman and two Commissioners
 - Also known as “The Full Board”
 - Resolve disciplinary and significant licensing matters at Full Board meetings
 - Issue Advisories and Declaratory Rulings
 - Delegate powers to agency bureaus
- **Licensing Bureau**
 - Licensing Board – acts on routine licensing matters
 - Brand Label Registration
 - Refunds
- **Wholesale Bureau**
 - Price postings
 - COD list

Organization of State Liquor Authority

- Counsel's Office
 - Prosecution of disciplinary cases
 - Opinions and guidance
 - FOIL
- Enforcement Bureau
 - Investigations
 - Law Enforcement trainings
- Secretary's Office
 - Coordinate Full Board meetings
 - Issue Full Board decisions and penalties
 - craftbev@sla.ny.gov
 - Training events for industry and public
 - ATAP

Organization of State Liquor Authority

- Hearing Bureau
 - Disciplinary hearings
 - Licensing hearings
- Public Affairs
 - Media inquiries and releases
 - Inter-governmental matters
 - Website

Disciplinary Process

- “Complaint driven” investigations
 - Conducted by staff from Enforcement Bureau & Counsel’s Office
- Referral to Counsel’s Office
 - Review to determine if charges should be brought
- Disciplinary proceeding
 - Pleading
 - Plea by Licensee
 - Hearing, Conditional No Contest or No Contest
 - Final Determination by Full Board

Disciplinary Penalties

- Suspension
 - Loss of privileges for set period of time
- Cancellation
 - Termination of license
- Revocation
 - Termination of license and two year ban on holding any license
- Civil Penalty
 - \$10,000 for retailers
 - \$30,000 for beer wholesalers, importers, wineries, farm wineries & wine wholesalers
 - \$100,000 for brewers, distillers and liquor wholesalers
- Bond Claim

Gifts & Services Laws

- ABCL §101(1)(c)
 - Prohibits licensed manufacturers and wholesalers from making any gift or providing any service to a retailer “which in the judgment of the Authority may tend to influence” the retailer to purchase the product of the manufacturer/wholesaler
 - Presumption that gift or service is meant to induce a purchase
- State Liquor Authority Rules Part 86
 - Subjects licensed retailers to disciplinary action for accepting a prohibited gift or service
 - Contains list of exceptions
 - Full Board has also created exceptions through Advisories, Declaratory Rulings and Consent Orders

Gifts & Services Law- Exceptions

- Product Displays
 - Rules §86.3
 - Racks, shelving, etc. with “conspicuous and prominent advertising” used to display and sell alcoholic beverages
 - Total value of displays cannot exceed \$300 per brand (in use at any one time)
 - Can condition provision of display on purchase of product for initial setup
- Inside Signs
 - Rules §86.4
 - Posters, mechanical devices, digital displays, window decorations etc., bearing advertising
 - No secondary value to retailer
 - Use only in windows or displayed inside establishment
 - No exterior signs

Gifts & Services Law- Exceptions

- **Retailer Advertising Specialties**
 - Rules §86.5
 - Primarily advertising with some secondary value to retailer
 - Trays, coasters, mats, paper napkins, clocks, glassware, etc.
 - Can include name of retailer
 - Total value cannot exceed \$200 per brand per year

- **Consumer Advertising Specialties**
 - Rules §86.6
 - Bears advertising and intended for unconditional distribution to public
 - Bottle/can openers, shirts, hats, shopping bags, etc.
 - Cannot be kept by the retailer for own use
 - No monetary limit on amount provided

Gifts & Services Law- Exceptions

- Wine Lists
 - Rules §86.7
 - Provided to on-premises licensees
 - Can contain the name of retailer
 - Consent Orders
 - Cannot include food items
 - No menu jackets, covers, binders unless made of paper, cardboard, etc. and with “de minimis value”
 - Produced by supplier/distributor or bona fide printer
- Educational Seminars
 - Rules §86.8
 - Held at either supplier/distributor premises or retailer’s establishment
 - Using equipment, training staff, tour of supplier/distributor premises
 - Can’t pay retailer’s expenses in connection with seminar



Gifts & Services Law- Exceptions

- Advertising name of retailer
 - Rules §86.10
 - Can list the name of retailer in advertisement but not the retail price of products
 - Reference to retailer must be “relatively inconspicuous”
 - Should mention at least three other retailers
 - No photos/illustrations/laudatory references of retailer’s establishment
- Wine Decanters
 - Rules §86.11
 - Provided to on-premises liquor or wine retailer
 - Only for use with wine from supplier/distributor
 - Only when purchasing containers of at least 1 gallon
 - Can contain not less than 8 ounces nor more than 32 ounces
 - Must state for “Wine Service Only” and brand name of wine



Gifts & Services Law- Exceptions

- **Dummy Display Bottles**
 - Rules §86.12
 - Liquor or wine
 - Cannot exceed 5 gallons
 - Must have label indicating for display only
- **Contests and Refunds**
 - Rules §86.9
 - Contest prizes, offers, refunds, etc. directly to consumers
 - Can promote with point-of sale advertising, entry blanks, etc. at retailer's establishment
 - **Opinion of Counsel**
 - No retail involvement- no instant rebates
 - Can include purchase of food - only national brands

Gifts & Services Law- Exceptions

- **Equipment**
 - Rules §86.13
 - Allows for the furnishing (given or sold) and installation of numerous pieces of equipment for use at the retailer's establishment
 - Includes couplings, valves, gauges, regulators, taps, hoses
 - Also allows for furnishing of items for temporary use at a particular function
 - Includes portable cooling units and refrigerated trucks/trailers
 - Cannot be used in normal day-to-day operations of retailer
- **Emergency Services**
 - Rules §86.14
 - Coil cleaning (when other assistance not available)
 - Repairs to tapping equipment and pressure system
 - Seasonal connecting/disconnecting of precoolers

Gifts & Services Law- Exceptions

- Stocker services
 - Rules §86.17
 - Allows stocking, replenishing, rotating, displaying and price marking in coolers, shelves and floor displays
 - Only for beer and wine products
 - Only by supplier/distributor and only for products that it sold to retailer
 - Only by employees of the supplier/distributor
- Lunch/dinner entertainment
 - ABCL §101(1)(c)
- Support of bona fide retailer organization
 - ABCL §101(1)(c)
 - Allows for membership, participation in dinners, trade shows, etc.
 - Reasonable amounts



Gifts & Services Law- other restrictions

- Payments to 3rd parties
 - Consent Orders
 - No payments to entity that provides services to retailer intended as reward for retailer purchasing product
 - No payments to entity owned or controlled by retailer
 - No payments to principals or employees of retailer
- Retailer advertising
 - Consent Orders
 - No payments toward cost of advertisement produced by or for retailer
 - No payments to participate in retailer catalogue unless:
 - Catalogues not distributed in this state
 - Payments made to bona fide independent printing company

Gifts & Services Law- other restrictions

- “Buy backs”, “bar spends”, private and promotional events
 - Advisory 2014-8
 - General prohibition against supplier/distributor buying alcoholic beverages from retailer
 - Exceptions, with conditions for:
 - Business meetings and business entertainment
 - Private invitation-only events closed to general public
 - Promotional events open to general public (“bar spends”)
 - Promotional invitational events open to general public
- Bill and Hold
 - Advisory 2017-3
 - Allowing wholesaler to retain physical possession (not title) to product purchased by retailer

Gifts & Services Law- other restrictions

- Personalization of bottles
 - Advisory 2014-23
 - Supplier or distributor can personalize bottle for retailer's customer
 - Service must be made available to all retailers
- “Barrel programs”
 - Advisory 2014-23
 - Particular barrel set aside for designated retailer
 - Retailer's name can be placed on barrel
 - Must be price posted as an item
 - Program must be available to all retailers
- Samples to retailers
 - Advisory 2010-1
 - Two 750 ml bottles of each brand of wine or beer
 - Not for use in consumer tastings

Tied House Laws

- Restrictions on NYS manufacturers and wholesalers
 - ABCL §101(1)(a)
 - Prohibits licensed manufacturers and wholesalers from having any interest in any retail business
 - ABCL §101(1)(b)
 - Prohibits licensed manufacturers and wholesalers from making any loans to a manufacturer, wholesaler or retailer
 - ABCL §101(1)(d)
 - Prohibits licensed manufacturers and wholesalers from having contract with retail licensee to restrict retail sales to products of manufacturer/wholesaler

Tied House Laws

- Restriction on NYS retailers
 - ABCL §106(13)
 - Prohibits retail on-premises licensees from having any interest in any manufacturing or wholesale business
 - ABCL §105(16)
 - Prohibits retail off-premises liquor and wine (not beer) licensees from having any interest in any manufacturing or wholesale business

Tied House Laws

- Not restricted to in-state interests
 - Prohibition applies [except for ABCL §101(1)(d)] no matter where the other business is located
- Exceptions
 - Statutory retail privileges granted to certain licensed manufacturers and wholesalers
 - Statutory manufacturing & wholesale privileges granted to certain retailers
 - Statutory “carve-outs” for designated parcels of land

Price Posting

- General standards
 - ABCL §101-b
 - All liquor and wine must be sold at prices posted with Authority, except:
 - Private brand labels (only sold to retailer owning brand)
 - As specifically approved by the Authority
 - No discounts except for quantity and payment within ten days
 - Required information
 - Exact brand name
 - Capacity of container
 - Nature of contents of container
 - Age and proof if stated on label
 - Bottle and case price paid by seller
 - Bottle and case price to buyer
 - Discounts in effect
 - Must be filed for each month (except for wineries and farm wineries)



Price Posting

- Wholesale price schedule
 - ABCL §101-b(3)(a)
 - Price paid by wholesalers
 - Filed by
 - Brand owner if licensed in New York
 - Licensed wholesaler designated by unlicensed brand owner
 - Filed by 25th day of month to become effective in the second succeeding month
 - Can restrict sales to designated wholesalers
- Retail price schedule
 - ABCL §101-b(3)(b)
 - Price paid by retailers
 - Filed by wholesaler selling product
 - Filed by 5th day of month to become effective in the succeeding month



Price Posting

- Limited availability
 - Advisory 2016-2
 - In general, wholesalers must sell to any retailer able to pay “cash”
 - Can restrict sales if reason to believe demand will exceed available inventory
 - Items must be price posted as limited availability
 - Must specify method of allocation
 - Advisory provides acceptable methods of allocation
 - No quantity discounts allowed
- Items must be price posted and sold individually, except for:
 - Value added packages
 - Combination packages

Price Posting

- Value added packages
 - ABCL §101-b(3)(a)
 - One bottle of liquor or wine with other merchandise
 - Merchandise must be used in connection with preparation, storage or service of liquor or wine (not potable or edible)
 - Must be price posted as separate item
- Combination packages
 - Advisory 2018-3
 - Two or more bottles of liquor and/or wine sold as one item
 - Three types:
 - Assembled by supplier and intended to be disassembled by retailer for resale
 - Assembled by supplier and intended to be sold as one item to consumer
 - Assembled by distributor with approval of supplier

Brand Label Registration

- All alcoholic beverages sold in this state must be brand label registered
 - ABCL §107-a
 - Wine with a COLA is deemed approved- no state application required
 - Application filed by:
 - Brand owner if licensed in New York
 - Licensed wholesaler designated by unlicensed brand owner
 - Must be submitted by:
 - Certified mail, return receipt
 - Overnight delivery service
 - Electronic filing
 - With a COLA, deemed approved seven business days after receipt
 - Fee reduction for small batches

Terms of Sale/ C.O.D. List

- Retailers can pay “cash” or on statutory credit terms
 - “Cash” when delivered
 - US currency
 - Certified check
 - Money order
 - Electronic funds transfer (not credit/debit card)
 - Bank check
 - Check drawn on retailer’s account dated on/before delivery date
 - Don’t have to offer sale on credit to all retailers
 - Have to sell to any retailer willing to pay “cash”
- Suppliers/distributors cannot extend credit to retailers on C.O.D list
 - Need to report retailers who are delinquent
 - Need to check list before extending credit

Terms of Sale/ C.O.D. List

- Credit terms for liquor and wine
 - ABCL §101-aa
 - Retailer has 30 days to pay (“payment period”)
 - Payment due by 30th day (“final payment date”)
 - Authority must be notified within five days of final payment date of default (“notification date”)
- Credit terms for beer and wine products
 - ABCL §101-aaa
 - Delivery takes place during two week “credit period” (calendar on Authority website)
 - Retailer has 12 days to pay (“payment period”)
 - Payment due by 12th day (“final payment date”)
 - Retailer advised of default within three business days of final payment date (delinquent notice date”)
 - Authority must be notified of default day after delinquent notice date



Terms of Sale/ C.O.D. List

- Obligations of supplier/distributor
 - Report delinquent retailers
 - ABCL §101-aa
 - Retailer has 30 days to pay (“payment period”)
 - Payment due by 30th day (“final payment date”)
 - Authority must be notified within five days of final payment date of default (“notification date”)
- Credit terms for beer and wine products
 - ABCL §101-aaa
 - Delivery takes place during two week “credit period” (calendar on Authority website)
 - Retailer has 12 days to pay (“payment period”)
 - Payment due by 12th day (“final payment date”)
 - Retailer advised of default within three business days of final payment date (delinquent notice date”)
 - Authority must be notified of default day after delinquent notice date

Franchise Agreements

- Written agreement between brewers and wholesalers required
 - ABCL §55-c
 - Can only be terminated by brewer for “good cause”
 - National or regional consolidation
 - Failure of wholesaler to comply with material term of agreement
 - Exception for small brewers- can be terminated without good cause
 - Law provides for notice and opportunity to cure failure to comply
 - Wholesaler may be entitled to “fair market value” of business upon termination of agreement
 - Arbitration provisions
 - Right of wholesaler to bring civil action against brewer illegally terminating agreement

180 Day Law

- Restriction in changing beer prices to wholesalers and retailers
 - ABCL §55-b
 - Applies to prices charged by:
 - Brewer to wholesaler
 - Brewer or wholesaler to retailer
 - Price cannot be increased for 180 days after last price decrease
 - Does not prevent price increase after prior price increase
 - Authority can waive restriction

Books & Records

- Licensed wholesalers
 - ABCL §104(10)
 - Required to keep records two years
- Licensed manufacturers
 - ABCL §103(7)
 - Required to keep records for two years
- Availability
 - Records must be kept and maintained at licensed premises (except for wineries and farm wineries)
 - Must be available for inspection by Authority representative
 - Access to records via computer at licensed premises sufficient

Books & Records

- “All transactions involving the business transacted...”
 - Ingredients, not formula (manufacturers)
 - Amount and seller of alcoholic beverages purchased
 - Amount and buyer of alcoholic beverages sold
 - Payroll records for employees
- Invoices required
 - Each sale requires separately numbered invoice
 - Name, address and serial number of seller
 - Name, address and serial number of buyer
 - Description of product, quantity and price
 - All terms and conditions of sale
 - Copy provided to buyer