



ANDREW M. CUOMO
Governor

VINCENT G. BRADLEY
Chairman

GREELEY FORD
Commissioner

REPRESENTING CRAFT ALCOHOLIC BEVERAGE MANUFACTURERS BEFORE THE STATE LIQUOR AUTHORITY

Prepared by
Thomas J. Donohue
Secretary to the Authority
New York State Liquor Authority
80 South Swan Street, Suite 900
Albany, NY 12210
518-473-2261
Thomas.Donohue@sla.ny.gov

Prepared for
Albany Law School
Government Law Center
Rural Law Initiative

“Hops, Barley, Apples & Laws: Lawyering Basics for Craft Beverage Businesses”
October 20, 2017 Presentation

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INTRODUCTION

The information provided in this document is intended to assist attorneys who represent New York State craft alcoholic beverage manufacturers. It is not intended to serve as a comprehensive manual with respect to either the Alcoholic Beverage Control Law (“ABCL”), the Rules of the State Liquor Authority (“Rules”), or the other laws and regulations that govern the issuance of licenses or the obligations of licensees with respect to the operation of a licensed business.

Please note that any changes made to the ABCL or the Rules, as well as any new directives or rulings issued by the SLA after the date of this presentation may impact some of the information provided in this document. You are encouraged to visit the State Liquor Authority’s website at www.sla.ny.gov. On that site, you will find a link to the Alcoholic Beverage Control Law and view Advisories and Declaratory Rulings issued by the agency. You can also view archived recordings of meetings of the Members of the Authority.

TYPES OF MANUFACTURING LICENSES

A person cannot manufacture or sell at wholesale or retail alcoholic beverages in New York State without obtaining the appropriate license. [ABCL §100(1)]. Licensed manufacturers can distribute their products through licensed wholesalers and/or sell directly to licensed retailers. As with wholesalers, manufacturers must obtain a federal permit to operate. Certain manufacturers can conduct retail operations at their licensed premises.

Manufacturing licenses are distinguished by the type of alcoholic beverage produced. “Micro” licenses allow for the same privileges as the standard license, but have limits on the amount that can be produced in return for a lower license fee. “Farm” manufacturers are also limited in the amount that can be produced, and are also limited to producing alcoholic beverages made from New York State ingredients.

BREWERY

- ABCL §51
- No limit on type or amount of beer produced

MICRO-BREWERY

- ABCL §51
- Same as brewery license, except production limited to 75,000 barrels

FARM BREWERY

- ABCL §51-a
- Can only produce up to 75,000 barrels of “NYS labeled beer”
- Can also produce “NYS labeled cider”
- Can get permits to operate up to five branch offices

CIDER PRODUCER’S

- ABCL §58
- No limit on type or amount of cider produced
- Can get permits to operate up to five satellite stores to sell NYS labeled cider for off premises consumption

FARM CIDERY

- ABCL §58-c
- Can only produce up to 250,000 gallons of NYS labeled cider

- Can get permits to operate up to five branch offices

WINERY

- ABCL §76
- No limit on type or amount of wine produced

FARM WINERY

- ABCL §76-a
- Can only produce up to 250,000 gallons of wine made exclusively from NYS products
- Must be located on a farm
- Can get permits to operate up to five branch offices

MICRO-WINERY

- ABCL §76-a
- Same as farm winery license, except production limited to 1,500 barrels

DISTILLER

- ABCL §61(1)
- No limit on type or amount of liquor produced
- Allows for production by distilling or rectifying

MICRO-DISTILLER

- ABCL §61(1-a)
- Same as distiller's license, except production limited to 75,000 gallons

RECTIFIER

- ABCL §61(2)
- No limit on type or amount of liquor produced
- Allows for production by rectifying

MICRO-RECTIFIER

- ABCL §61(2-b)

- Same as rectifier's license, except production limited to 75,000 gallons

FRUIT BRAND PRODUCER

- ABCL §61(2-a)
- Limited to production of fruit brandy

FARM DISTILLER

- ABCL §61(2-c)
- Can only produce up to 75,000 gallons of NYS labeled liquor

COMBINED CRAFT MANUFACTURING LICENSE

- ABCL §61-a
- Allows two or more "micro" and/or "farm" manufacturing licenses
- Eliminates multiple filing fees and paperwork

"NEW YORK STATE LABELED" ALCOHOLIC BEVERAGES

"NEW YORK STATE LABELED BEER"

- From January 14, 2013 until December 31, 2018, beer made with no less than 20%, by weight, of its hops grown in New York state and no less than 20%, by weight, of all other ingredients, excluding water, grown in New York state.¹
- 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 other ingredients, excluding water, grown in New York state.²
- 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 other ingredients, excluding water, grown in New York state.³

"NEW YORK STATE LABELED CIDER"

- Must be made exclusively from apples or other pome fruits grown in New York state.⁴

¹ ABCL §3(20-d)(a)

² ABCL §3(20-d)(b)

³ ABCL §3(20-d)(c)

⁴ ABCL §3(20-e)

“NEW YORK STATE LABELED LIQUOR”

- No less than 75%, by volume, of the fruits, vegetables, grain and grain products, honey, maple sap or other agricultural products used must be grown or produced in New York state.⁵

“NEW YORK STATE LABELED WINE”

- No less than 75%, by volume, of the grapes or other fruits used must be grown in New York state.⁶

⁵ ABCL §3(20-c)

⁶ ABCL §3(20-a)

THE APPLICATION PROCESS

ELIGIBILITY TO HOLD LICENSE

Citizenship

- Applicants must meet citizenship requirements.⁷

Criminal History

- Applicants cannot have convictions for felonies or certain misdemeanors.⁸

Police Officers

- Certain police officials cannot hold a license.⁹

ITEMS TO BE SUBMITTED WITH AN APPLICATION

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

⁷ See ABCL §126(3) for individual licensees and ABCL §126(4) for partnerships and corporations

⁸ See ABCL §126(1) for individual licensees and ABCL §126(4) for partnerships and corporations

⁹ ABCL §128

- Federal Tax Identification Number.
- TTB permit.

REVIEW OF THE APPLICATION

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

TEMPORARY PERMITS

- Only applicants for winery and farm winery licenses can obtain a permit to operate while the application is pending.¹⁰

STANDARDS FOR APPROVAL OF LICENSE

- Generally, any application for a license must be approved unless there is good cause to deny the application.¹¹
- Good cause includes, among other things any statutory prohibition against issuing the license to the location or to the applicant, the character, fitness, experience and financial responsibility of the applicant; the history of violations of the ABCL at the location of the proposed licensed establishment and by the applicant; and fraud, misrepresentation, false

¹⁰ ABCL §76-b

¹¹ ABCL §54(1)

material statements, concealment or suppression of facts, documents and other information regarding the application.

- The “good cause” standard applies to all manufacturing licenses. Certain retail licenses, are subject to additional licensing standards not addressed in this material. If the manufacturing applicant intends to apply for an on-premises license for a food/drinking establishment in or adjacent to the manufacturing site, that retail application may be subject to those restrictions.

CONDITIONAL APPROVAL

- An application may be “conditionally” approved. The license certificate will not be issued until the applicant complies with certain conditions, such as the submission of photographs showing the premises ready to open and operate.

PUBLISHING NOTICE IN NEWSPAPER

- Every applicant obtaining a license must publish a notice of the issuance of the license in a newspaper once week for two weeks.¹²

POSTING LICENSE CERTIFICATE IN PREMISES

- Before starting in business, each licensee must post the original license certificate in the licensed premises. The license certificate must be “enclosed in a suitable wood or metal frame having a clear glass space and a substantial wood or metal back so that the whole of said license may be seen therein, and shall be posted up and at all times displayed in a conspicuous place in the room where such business is carried on, so that all persons visiting such place may readily see the same”.¹³

¹² ABCL §107

¹³ ABCL §114(6)

DISAPPROVAL OF APPLICATION

WRITTEN DECISIONS

- When an application is disapproved, the SLA will issue a written decision.¹⁴

REVIEW OF DISAPPROVAL

- If an application is disapproved, the applicant has two options, a disapproval hearing or a request for reconsideration. Once the applicant has exercised one of the options, it may seek judicial review of the disapproval under Article 78 of the CPLR.¹⁵

DISAPPROVAL HEARING

- A disapproval hearing is limited to determining whether the reasons for the disapproval are supported by the record and the law. The process consists of an administrative hearing followed by a review by the Full Board.

REQUEST FOR RECONSIDERATION

- A request for reconsideration may go beyond the issues addressed in the written disapproval. There is no administrative hearing in this process. Licensing Board decisions are reviewed by one of the Members of the Authority to determine if there is a sufficient reason to have the matter reviewed by the Full Board. A request to reconsider a Full Board disapproval goes directly to the Full Board.

¹⁴ ABCL §54(3)

¹⁵ ABCL §121

APPROVALS NEEDED AFTER LICENSE IS ISSUED

RENEWAL OF THE LICENSE

- ABCL §109
- The term of the license depends on the type of license. For example, a brewer's license is issued for one year while a distiller's license is issued for three years.
- A renewal application must be filed before the expiration of the current license period. The licensee will receive a notice approximately three months prior to the expiration of the current license as a reminder that the renewal application needs to be filed.
- A licensee who files a complete renewal application before the expiration of the current license period is entitled to continue to operate under the expired license until the SLA makes a decision on the renewal application. This is commonly referred to as "operating under SAPA."¹⁶
- Licensees who do not file a complete application before the expiration of the current license must cease selling (or allowing the consumption of) alcoholic beverages at the premises once the current license expires and await the SLA's decision on the renewal application.

ALTERATIONS

- ABCL §99-d(2)
- A licensee making any renovations to the licensed premises may need to notify, or obtain the approval of, the SLA before going forward with the changes. A minor alteration is anything that costs less than \$10,000 that does not "materially affect the character of the premises or the physical structure that existed at the time of licensing." The licensee must notify the SLA in advance of minor alterations but does not need to obtain the SLA's approval.¹⁷
- If the licensee is making a substantial alteration to the licensed premises, it must file an application in advance and obtain the SLA's approval. Substantial alterations include adding or deleting space (including outside areas) from the licensed premises; physical changes that reduces visibility; physical changes to interior that materially affect the character of premises; relocating the entrance; enlarging or relocating the bar; converting a room for food/beverage service; installing a bandstand, stage, dance floor; and sealing off or creating a public entrance or window.¹⁸
- Wineries and farm wineries are not required to notify/obtain approval for alterations.

¹⁶ State Administrative Procedure Act §401(2)

¹⁷ ABCL §99-d(1)

¹⁸ ABCL §99-d(1)

CHANGES IN INFORMATION CONTAINED IN APPLICATION

- All licensees are required to notify the SLA in writing of any changes to the information that was contained in the original application. This includes any change in your residential address. Such changes must be reported to the SLA within ten days.¹⁹

CORPORATE CHANGES

- If the license has been issued in the name of a corporation or limited liability company, the licensee must obtain the approval of the SLA before making any of the following changes to the corporate structure: (a) adding or removing an officer or director of the corporation; or (b) adding or removing a managing member of a limited liability company.²⁰
- In addition, SLA approval must be obtained before there is a change in the stockholders of the corporation or the members of the limited liability company, or any change in the stock held by an existing stockholder (of the corporation) or the ownership interest of an existing member (of the limited liability company) has in the business. Please note that no approval is needed if there are ten or more stockholders or members and: (a) the change involves less than 10% of the stock or ownership interest; and (b) none of the existing stockholders or members with less than a 10% interest have their interest increased to 10% or more.²¹

FIDUCIARIES

- On occasion, a court may give someone (such as an administrator or executor of an estate, a bankruptcy trustee, or a receiver in a mortgage foreclosure) power to run the licensed business pending the outcome of the court proceeding. In such cases, that person must advise the SLA of the court appointment and that person will become the only person recognized by the SLA to act for the licensee until the court directs otherwise.²²

NAME CHANGES

- If the licensee's name has changed due to marriage, divorce, or any other reason, it must file an endorsement application so that the SLA's records can be updated. The endorsement application may also be used if the licensee is changing the name of the corporation that holds the license if there is no change in ownership and the federal employer information number remains the same.
- If the license is held in an individual's name, the SLA will also allow a change to a corporation or limited liability company using an endorsement application. This can only be done if the individual remains the sole owner of the business.

¹⁹ ABCL §110(4)

²⁰ ABCL §99-d(2)

²¹ ABCL §99-d(2)(a)

²² ABCL §122

PARTNERSHIP CHANGES

- If the license is issued to a partnership, SLA approval must be obtained if partners are being added or removed. SLA approval is also required if the partnership is being dissolved and one partner intends to continue with the license in his/her name only.

REMOVALS (CHANGING LOCATIONS)

- A license may not be moved to another location without the SLA's approval.²³

²³ABCL §99-d(3)

PERMITS THAT MAY BE NEEDED

SOLICITOR'S PERMIT

- ABCL §93
- Sales staff working for brewers, cider producers distillers, rectifiers, fruit brandy producers and wineries, or any wholesaler must have a solicitor's permit.
- Sales staff of micro-brewers, farm brewers, farm cideries, micro-distillers, farm distillers and farm wineries do not need a solicitor's permit.²⁴
- Principals of the licensed entity and staff accepting orders at licensed premises do not need a solicitor's permit.
- 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.²⁵

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.²⁶
- 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.

²⁴ ABCL §93(1)

²⁵ ABCL §93(2)

²⁶ ABCL §116

- 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.

DISTRIBUTION OF PRODUCTS

METHODS OF DISTRIBUTION

- “Self-distribution”
 - All licensed manufacturers have the right to “self-distribute” (act as their own wholesaler) and/or use a licensed wholesaler to distribute their products.
- Franchise agreements with beer wholesalers²⁷
 - Written agreement between brewer and wholesale required.
 - With one exception, agreements between brewers and wholesalers cannot be terminated unless there is good cause. Brewers producing less than 300,000 barrels can terminate without good cause if the brewer makes up 3% or less of wholesaler’s business.
- Licensed manufacturers can sell to out-of-state entities if allowed by the state where the entity is located.

STATE BRAND LABEL REGISTRATION

- All alcoholic beverages sold in New York must have a brand label that has been approval by the Authority.²⁸
- Wine does not require state approval if the label has been approved by TTB.²⁹
- Fee exemptions for beer, cider or liquor produced in small batches.³⁰
- Brand label registration guidance contained in Advisory 2016-3.

PRICE RESTRICTIONS

- Beer
 - 180 Day Law- price charged to a wholesaler or retailer cannot be increased until 180 days after last price decrease.³¹
 - No uniform prices to retailers required- can charge different price to different retailers.
- Liquor & wine subject to price posting.³²

²⁷ ABCL §55-c

²⁸ ABCL §107-a(3)(a)

²⁹ ABCL §107-a(4)(c)(3)

³⁰ ABCL §107-a(4)(e) & ABCL §107-a(4)(f)

³¹ ABCL §55-b

³² ABCL §101-b

- 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.³³
- 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.³⁴
- All schedules now filed electronically.³⁵
- 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.³⁶
- 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.”³⁷
- The price schedule cannot require purchase of one product to get another, except for permissible combination packages.³⁸
- 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.³⁹

SALE ON CREDIT AND THE “C.O.D. LIST”

- Manufacturers and wholesalers must sell to any retailer willing to pay “cash.”⁴⁰
 - “Cash” means U.S. currency, certified check, money order, electronic funds transfer, bank officer’s check or draft, or a check drawn on the retailer’s account payable to the manufacturer or wholesaler.
 - Checks cannot be from third parties.
 - Checks drawn on retailer’s account cannot be post-dated.
 - Manufacturers and wholesalers do not have to accept checks drawn on retailer’s account.
- Manufacturers and wholesalers can, but are not required to, allow retailers to pay on credit.⁴¹

³³ ABCL §101-b(3)(a) and §101-b(3)(b)

³⁴ ABCL §101-b(3)(a) and §101-b(3)(b)

³⁵ ABCL §101-b(3)(d)

³⁶ ABCL §101-b(4) and §101-b(5)

³⁷ ABCL §101-b(3)(c) [private labels] and §101-b(4-a)(d) & Advisory 2016-2 [limited availability]

³⁸ ABCL §101-b(4-a)(e)

³⁹ ABCL §101-b(3)(a) & Advisory 2016-9

⁴⁰ ABCL §101-aa(1)(f) and §101-aaa(1)(g)

- Retailers purchasing liquor or wine on credit have 30 days to pay the bill.⁴²
- 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.⁴³
- Licensed manufacturers and wholesalers must report retailers who are delinquent in payment.
- “C.O.D. list” contains all the retailers who are delinquent in paying for products purchased on credit from licensed manufacturers and wholesalers.⁴⁴
 - 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.⁴⁵
 - Licensed manufacturers and wholesalers cannot sell on credit to any retailer on C.O.D. list.⁴⁶

⁴¹ ABCL §101-aa(8) and §101-aaa(7)

⁴² ABCL §101-aa(1)(b)

⁴³ ABCL §101-aaa(3)

⁴⁴ ABCL §101-aa(3) and §101-aaa(3)

⁴⁵ ABCL §101-aa(3)

⁴⁶ ABCL §101-aa(3) and §101-aaa(3)

TASTINGS AND RETAIL SALES

TASTINGS AT THE LICENSED PREMISES

Brewery & Micro- Brewery

- May conduct tastings of beer it produces and any New York state labeled beer without obtaining an additional license or permit.⁴⁷

Farm Brewery

- May conduct tastings of any New York state labeled beer and New York State labeled cider without obtaining an additional license or permit.⁴⁸
- May also conduct tastings of any New York state labeled liquor⁴⁹ and New York state labeled wine⁵⁰ without obtaining an additional license or permit.

Cider Producer

- May conduct tastings of New York State labeled cider manufactured by the licensee without obtaining an additional license or permit.⁵¹

Farm Cidery

- May conduct tastings of any New York state labeled cider without obtaining an additional license or permit.⁵²
- May also conduct tastings of any New York state labeled beer,⁵³ New York state labeled liquor⁵⁴ and New York state labeled wine⁵⁵ without obtaining an additional license or permit.

Winery

- May conduct tastings of wine and wine products it produces and any New York state labeled wine and New York state labeled wine product without obtaining an additional license or permit.⁵⁶

Farm Winery & Micro-Winery

- May conduct tastings of any New York state labeled wine and New York State labeled cider without obtaining an additional license or permit.⁵⁷

⁴⁷ ABCL §51(3-a)

⁴⁸ ABCL §51-a(2)(f)

⁴⁹ ABCL §51-a(2)(k)

⁵⁰ ABCL §51-a(2)(i)

⁵¹ ABCL §58(3-a)(b)

⁵² ABCL §58-c(3-a)(b)

⁵³ ABCL §58-c(2)(h)

⁵⁴ ABCL §58-c(2)(j)

⁵⁵ ABCL §58-c(2)(i)

⁵⁶ ABCL §76(4)

- May also conduct tastings of New York state labeled liquor⁵⁸ and New York state labeled beer without obtaining an additional license or permit.⁵⁹

Distillery, Micro-Distillery, Rectifier, Micro-Rectifier and Fruit Brandy Producer

- Cannot conduct any tastings at its licensed premises.

Farm Distillery

- May conduct tastings of any New York state labeled liquor without obtaining an additional license or permit.⁶⁰
- May also conduct tastings of New York state labeled wine,⁶¹ New York state labeled cider⁶² and New York state labeled beer⁶³ without obtaining an additional license or permit.

OFF-PREMISES SALES AT THE LICENSED PREMISES

Brewery & Micro-Brewery

- May sell by the bottle beer it produces and any New York state labeled beer without obtaining an additional license or permit.⁶⁴

Farm Brewery

- May sell by the bottle any New York state labeled beer and New York State labeled cider without obtaining an additional license or permit.⁶⁵
- May also sell by the bottle any New York state labeled liquor⁶⁶ and New York state labeled wine⁶⁷ without obtaining an additional license or permit.

Cider Producer

- Cannot sell by the bottle at the licensed premises.

Farm Cidery

- May sell by the bottle any New York state labeled cider without obtaining an additional license or permit.⁶⁸

⁵⁷ ABCL §76-a(6)(h) & ABCL §80(1)

⁵⁸ ABCL §76-a(6)(f)

⁵⁹ ABCL §76-a(6)(g)

⁶⁰ ABCL §61(2-c)(c)

⁶¹ ABCL §61(2-c)(a)(vii)

⁶² ABCL §61(2-c)(a)(vi)

⁶³ ABCL §61(2-c)(a)(v)

⁶⁴ ABCL §51(3-a)

⁶⁵ ABCL §51-a(2)(e)

⁶⁶ ABCL §51-a(2)(k)

⁶⁷ ABCL §51-a(2)(i)

- May also sell by the bottle any New York state labeled beer, New York state labeled liquor and New York state labeled wine without obtaining an additional license or permit.⁶⁹

Winery

- May sell by the bottle wine and wine products it produces and any New York state labeled wine and New York state labeled wine product without obtaining an additional license or permit.⁷⁰

Farm Winery

- May sell by the bottle any New York state labeled wine and New York State labeled cider without obtaining an additional license or permit.⁷¹
- May also sell by the bottle New York state labeled liquor⁷² and New York state labeled beer without obtaining an additional license or permit.⁷³

Distillery, Micro-Distillery, Rectifier, Micro-Rectifier and Fruit Brandy Producer

- Cannot sell any alcoholic beverages by the bottle at its licensed premises.

Farm Distillery

- May sell by the bottle any New York state labeled liquor without obtaining an additional license or permit.⁷⁴
- May also sell by the bottle New York state labeled wine,⁷⁵ New York state labeled cider⁷⁶ and New York state labeled beer⁷⁷ without obtaining an additional license or permit.

ON-PREMISES SALES AT THE LICENSED PREMISES

Brewery & Micro-Brewery

- May sell, for on-premises consumption, the beer it produces and any New York state labeled beer without obtaining an additional license or permit.⁷⁸
- May operate a food/drinking establishment in or adjacent to the brewery and can obtain an on-premises license to sell other alcoholic beverages at that establishment.⁷⁹

⁶⁸ ABCL §58-c(2)(f)(i)

⁶⁹ ABCL §58-c(2)(h), ABCL §58-c(2)(i) & ABCL §58-c(2)(j)

⁷⁰ ABCL §76(4)

⁷¹ ABCL §76-a(2)(e)

⁷² ABCL §76-a(6)(e)

⁷³ ABCL §76-a(6)(g)

⁷⁴ ABCL §61(2-c)(a)(iii)

⁷⁵ ABCL §61(2-c)(a)(vii)

⁷⁶ ABCL §61(2-c)(a)(vi)

⁷⁷ ABCL §61(2-c)(a)(v)

⁷⁸ ABCL §51(3-a)

Farm Brewery

- May sell, for on-premises consumption, any New York State labeled beer,⁸⁰ New York state labeled cider,⁸¹ New York state labeled liquor⁸² and New York state labeled wine⁸³ without obtaining an additional license or permit.
- May operate a food/drinking establishment in or adjacent to the brewery and obtain an on-premises license to sell other alcoholic beverages for that establishment.⁸⁴

Cider Producer

- May operate a food/drinking establishment in or adjacent to the cidery and sell, for on-premises consumption, New York state labeled cider that it produces without obtaining an additional license or permit.⁸⁵

Farm Cidery

- May sell, for on-premises consumption, any New York State labeled cider without obtaining an additional license or permit.⁸⁶
- May sell, for on-premises consumption, any New York State labeled beer,⁸⁷ New York state labeled liquor⁸⁸ and New York state labeled wine⁸⁹ without obtaining an additional license or permit.
- May operate a food/drinking establishment in or adjacent to the cidery can obtain an on-premises license to sell other alcoholic beverages for that establishment.⁹⁰

Winery

- May sell, for on-premises consumption, the wine it produces and any New York state labeled wine without obtaining an additional license or permit.⁹¹
- May operate a food/drinking establishment in or adjacent to the winery and obtain an on-premises license to sell other alcoholic beverages for that establishment.⁹²

⁷⁹ ABCL §51(4)

⁸⁰ ABCL §51-a(2)(e)

⁸¹ ABCL §51-a(2)(e)

⁸² ABCL §51-a(2)(e)

⁸³ ABCL §51-a(2)(e)

⁸⁴ ABCL §51-a(2)(g)

⁸⁵ ABCL §58(3)(d)

⁸⁶ ABCL §58-c(2)(f)

⁸⁷ ABCL §58-c(2)(h)

⁸⁸ ABCL §58-c(2)(j)

⁸⁹ ABCL §58-c(2)(i)

⁹⁰ ABCL §58-c(2)(f)

⁹¹ ABCL §76(4)

⁹² ABCL §76(4-a)

Farm Winery

- May sell, for on-premises consumption, any New York State labeled beer, New York state labeled cider, New York state labeled liquor and New York state labeled wine without obtaining an additional license or permit.⁹³
- May operate a food/drinking establishment in or adjacent to the brewery can obtain an on-premises license to sell other alcoholic beverages for that establishment.⁹⁴

Distillery, Micro-Distillery, Rectifier, Micro-Rectifier and Fruit Brandy Producer

- Cannot sell any alcoholic beverages by the glass at its licensed premises.

Farm Distiller

- May sell, for on-premises consumption, any New York State labeled liquor without obtaining an additional license or permit.⁹⁵
- May also sell, for on-premises consumption, any New York State labeled beer,⁹⁶ New York state labeled cider⁹⁷ and New York state labeled wine⁹⁸ without obtaining an additional license or permit.
- May operate a food/drinking establishment in or adjacent to the distillery can obtain an on-premises license to sell other alcoholic beverages for that establishment.⁹⁹

THE “MARKETING PERMIT”

- Advisory 2015-17
- Permit created under the Authority’s powers to issue miscellaneous permits for situations not addressed by, but consistent with the purposes of, the ABCL.¹⁰⁰
- Allows licensed manufacturers to conduct tastings and sell their products by the bottle at certain events.
- Licensed manufacturers can accept orders on behalf of their wholesalers.
- Tastings and bottle sales can be conducted at:
 - An establishment licensed under the ABCL to sell the product at retail;

⁹³ ABCL §51-a(2)(e)

⁹⁴ ABCL §76-a(2)(f)

⁹⁵ ABCL §61(2-c)(e)(i)

⁹⁶ ABCL §61(2-c)(a)(v)

⁹⁷ ABCL §61(2-c)(a)(vi)

⁹⁸ ABCL §61(2-c)(a)(iii)

⁹⁹ ABCL §61(2-c)(e)(ii)

¹⁰⁰ ABCL §99-b(1)(k)

- The State Fair, recognized county fairs and farmers markets operated on a not-for-profit basis;
- Outdoor or indoor gatherings, functions, occasions or events sponsored by a bona fide charitable organization; and
- Other indoor or outdoor events specifically approved by the Authority.
- Permit holder cannot charge for samples.
- Limitations on size of samples, but not the number of samples.
 - Beer, wine products and cider: 3 ounces.
 - Wine: 2 ounces.
 - Liquor: one-quarter ounce.

BRANCH OFFICES AND SATELLITE STORES

- A “branch office” is a separate location where any activity that can be conducted at the licensed premises can be conducted.
- Available to farm breweries,¹⁰¹ farm cideries¹⁰² farm distilleries¹⁰³ and farm wineries.¹⁰⁴
- A farm brewery, farm cidery or farm winery may operate up to five “branch offices”. A farm distiller can operate one branch office.
- The licensee must file for a permit for each branch office.

¹⁰¹ ABCL §51-a(9)

¹⁰² ABCL §51-a(9)

¹⁰³ ABCL §61(2-c)(g)

¹⁰⁴ ABCL §51-a(9)

COMPLIANCE MATTERS

TIED HOUSE LAWS

- 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.¹⁰⁵
 - Licensed manufacturers and wholesalers cannot have an interest in a business that sells alcoholic beverages at retail.¹⁰⁶
- Direct and indirect interests are prohibited. It does not matter whether the interest is significant or insignificant.
 - It does not matter where the other business is located.
 - The ABCL contains exceptions to the tied house law for specific geographic locations.

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.¹⁰⁷
 - The Authority presumes that anything a manufacturer or wholesaler gives to a retailer is meant to induce the retailer to buy product.
 - Manufacturers should be familiar with the Consent Orders.
- There are certain things that a manufacturer can do without violating the gifts and services law, for example:
 - Retailer advertising specialties- items with the brand logo intended to be used by the retailer. There is an annual cap on the value that can be given to a retailer.¹⁰⁸
 - 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.¹⁰⁹
 - 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.¹¹⁰

¹⁰⁵ ABCL §105(16) and §106(13)

¹⁰⁶ ABCL §101(1)(a)

¹⁰⁷ ABCL §101(1)(c)

¹⁰⁸ Rules of the Authority §86.5

¹⁰⁹ Rules of the Authority §86.6

¹¹⁰ 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.¹¹¹

COMMON DISCIPLINARY VIOLATIONS BY LICENSED MANUFACTURERS

Alterations

- Failure to notify or obtain approval for alterations.¹¹²

Availing

- A license issued to one person/entity cannot be transferred to another person/entity.¹¹³
- Allowing someone not disclosed (and approved by the Authority) as a principal of the licensee to use (or avail themselves) of the license is a violation. Failure to have the transfer approved by the Authority is an availing. Availing is considered one of the most serious violations of the ABCL, since it undermines the entire licensing process and constitutes a danger to the public.¹¹⁴

Books & records

- All manufacturing licensees are required to maintain “adequate books and records of all transactions” involving the business conducted by the licensee.¹¹⁵
- The failure of a licensee to keep records regarding employees, even part-time employees, constitutes failure to maintain adequate books and records.¹¹⁶

Brand labels

- No alcoholic beverages can be advertised or offered for sale in this state unless the brand label affixed to the container has been registered with and approved by the Authority.¹¹⁷

Corporate Changes

- Corporate licensees are required to obtain the approval of the Authority before making changes to the corporate principals. Failure to obtain such approval is an unauthorized corporate change.¹¹⁸

¹¹¹ Rules of the Authority §86.10

¹¹² ABCL §99-d(1)

¹¹³ ABCL §111

¹¹⁴ *Hacker v. State Liquor Authority*, 19 NY2d 177 (1967)

¹¹⁵ ABCL §103(7)

¹¹⁶ *Rob Tess Restaurant Corp. v. State Liquor Authority*, 68 AD2d 821 (1st Dept., 1979)

¹¹⁷ ABCL §107-a(4)(a)

¹¹⁸ ABCL 99-d(2)

Extension of premises

- A licensee cannot transfer or extend its license to another premises or to another part of the building containing the licensed premises. The license can be used only in the premises that is licensed by the Authority.¹¹⁹

False material statements

- Fraud, misrepresentation, false material statements, concealment or suppression of facts by a licensee in connection with the original application, a renewal application, or any other application requiring the Authority's approval is grounds for revocation of the license.¹²⁰

Felons

- Manufacturing licensees may not employ a person who has been convicted of a felony of any of the following offenses: illegally using, carrying or possessing a pistol or other dangerous weapon; making or possessing burglar's instruments; buying or receiving or criminally possessing stolen property; unlawful entry of a building; aiding escape from prison; unlawfully possessing or distributing habit forming narcotic drugs; violating provisions of the former Penal Law involving prostitution; vagrancy; prostitution; or ownership, possession, operation, custody or control of a still.¹²¹
- The general prohibition does not apply to:
 - Persons who have received a pardon; certificate of relief from civil disabilities; certificate of good conduct; or other relief from disabilities provided for in the law.
 - Persons who have obtained the approval of the SLA to work in licensed premises.

Improper conduct

- Licensees are subject to disciplinary action for improper conduct by the licensee or its principals, even if the conduct does not take place at the licensed premises. The standard is whether the conduct is of such a nature that if known to the Authority, the license/permit or renewal thereof would have been disapproved because of the unsatisfactory character and/or fitness of the person.¹²²

License certificates

- A licensee is required to display its license certificate in the licensed premises. The certificate must be enclosed in a wood or metal frame with (a) a clear glass front showing the entire certificate space and (b) a substantial wood or metal back. The certificate, as framed, must always be posted and displayed in the licensed premises. It must be posted in a "conspicuous place" so that it may be readily seen by all persons visiting the establishment.¹²³

¹¹⁹ ABCL §111

¹²⁰ Rules of the Authority §53.1(b)

¹²¹ ABCL §102(2)

¹²² Rules of the Authority §53.1(n)

¹²³ ABCL §114

Non Bona Fide

- When a licensed premises ceases to be operated within the contemplation of the license that was issued, it is considered to be non bona fide.¹²⁴
- Put another way, the licensee is no longer operating the business that the Authority licensed, or the business no longer meets the requirements to be eligible for a license.

Notification of changes

- Licensees must notify the Authority of any change if facts in the information submitted in an application within ten days of such change.¹²⁵

Police Officers

- Manufacturing licensees may not employ police officers.¹²⁶

Surety bonds

- The ABCL gives the SLA the power to require licensees and permittees to obtain surety bonds to insure the payment of penalties imposed by the Authority.¹²⁷
- By regulation, the SLA has designated the licensees and permittees that must obtain a bond, as well as the amount of the bond for each type of license or permit.¹²⁸
- Once the Authority makes a claim against a bond, or a portion of a bond, the licensee or permittee has 10 days to file a new bond, or (in the case of a partial bond claim) restore the bond to the full amount required by the regulations. Failure to do so is grounds for revocation of the license or permit.¹²⁹

Trade Names

- Licensees are not permitted to use a trade name that does not appear on the license certificate. Use of the trade name includes having it appear on books, records, stationary, canopies, exterior signs, advertisement, or telephone listings.¹³⁰
- The inclusion by the licensee of the unapproved trade name in a renewal or other application does not constitute approval by the Authority. To obtain approval of new trade name, a licensee needs to submit a letter requesting sale along with a copy of the assumed name certificate. Multiple trade names can be used at the same licensed premises.

Transportation of alcoholic beverages

- Licensees may deliver/ship alcoholic beverages in one of two ways. They may:

¹²⁴ Rules of the Authority §53.1(d)

¹²⁵ ABCL §110(4)

¹²⁶ ABCL §128

¹²⁷ ABCL §112

¹²⁸ Rules of the Authority Part 81

¹²⁹ Rules of the Authority §81.7

¹³⁰ Rules of the Authority §53.1(p)

- use a delivery company with a trucking permit,¹³¹ or
- use vehicles owned (or hired) and operated by the licensee.¹³²
- A licensee using its own vehicle must either have a sign with licensing information on the sides of the vehicle or keep a copy of the licensee certificate in the vehicle.

¹³¹ ABCL §94

¹³² ABCL §116

ADMINISTRATION OF THE ABC LAW

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.¹³³
 - The Authority can, during a public emergency, prohibit the sale of alcoholic beverages.¹³⁴
 - At the request of a county legislative body, the Authority can restrict the hours of sale of alcoholic beverages within the county.¹³⁵
- 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.¹³⁶
- 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.”¹³⁷

ENFORCEMENT

- 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.

¹³³ ABCL §17(2)

¹³⁴ ABCL §17(7)

¹³⁵ ABCL §17(11)

¹³⁶ ABCL §10

¹³⁷ ABCL §14

- Refusal to appear and/or testify at such an interview constitutes grounds for revocation of the license.¹³⁸

THE DISCIPLINARY PROCESS

- A disciplinary proceeding against licensees consists of the issuance of a pleading, followed by the entry of a plea (or a default in responding) by the licensee. The type of plea entered will dictate the next steps that must be taken.

Statute of limitations

- A disciplinary proceeding may be commenced for violations taking place during: the current license period; and the license period immediately before the current license period.¹³⁹
- A license may be renewed on stipulation, with the licensee agreeing to waive the time limitation for bringing violations that took place prior to the renewal.¹⁴⁰
- If a license is surrendered, a disciplinary proceeding should be brought within thirty days of the license certificate being submitted to the Authority for surrender. Failure to bring a proceeding within that time entitles the licensee to a refund of the unused portion of its license fee.¹⁴¹

Content of pleading

- All pleadings must indicate whether the proceeding may result in a revocation or cancellation of the license (a “revocation proceeding”) or a penalty other than revocation or cancellation (a “suspension proceeding”). The caption of the pleading will indicate whether the proceeding involves a revocation or suspension proceeding.¹⁴²
- All pleadings must include a reference to the legal authority and jurisdiction under which the proceeding is being conducted.¹⁴³
- All pleadings must set forth numbered charges against the licensee. Insofar as possible, each charge should allege a separate violation.¹⁴⁴
- A short and plain statement of the matters asserted is required.¹⁴⁵
- The Authority’s finding as to the sufficiency of the statement provided is not subject to judicial review.
- All pleadings must require the licensee to enter a plea to the charges on or before the date specified in the pleading (also known as “the return date”).¹⁴⁶

¹³⁸ Rules of the Authority §53.1(o)

¹³⁹ ABCL §118(2)

¹⁴⁰ *Matter of Pepper & Salt Tavern Inc.*, 99 AD2d 840 (2nd Dept., 1984)

¹⁴¹ ABCL §127

¹⁴² Rules of the Authority §54.1(b)(1)

¹⁴³ SAPA §301(2)(b)

¹⁴⁴ Rules of the Authority §54.1(b)(2)

¹⁴⁵ SAPA §301(2)(d)

¹⁴⁶ Rules of the Authority §54.1(b)(3)

- All pleadings must advise the licensee of its right to counsel.¹⁴⁷
- All pleadings must advise licensee that upon failure to appear or enter a plea, the licensee will be deemed to have entered a “No Contest” plea to the charges and no further hearing will be held.¹⁴⁸
- All pleadings must contain a statement that interpreter services will be made available to deaf persons at no charge.¹⁴⁹
- Pleadings in a suspension proceeding must also: set forth the maximum penalty, including a fine and/or any claim against the licensee’s surety bond, which the Authority may assess if the charges are sustained; and advise the licensee that it may request that (in the Authority’s discretion) a bond forfeiture or fine be imposed in lieu of any suspension of its license.¹⁵⁰
- Pleadings for commonly charged violations (such as sales to minors for first and second time offenders) may include proposed terms of a Conditional No Contest offer.
- The pleading cannot inform the licensee that by entering a No Contest plea it will receive a lesser penalty than if it proceeds to hearing.¹⁵¹
- The Authority must prepare a summary of the disciplinary process in plain language and provide a copy of same to licensees who are the subject of disciplinary actions.

Service of pleadings

- A disciplinary proceeding is commenced with the service of a notice of pleading on the licensee.¹⁵²
- The pleading must be delivered: in person to the licensee; or by registered or certified mail to the licensee addressed to the licensed premises. In addition, a copy of the pleading must be sent by first class mail to the residence of record of the licensee (if any individual) or any officer or director of a corporate licensee, or any general partner of a partnership licensee.¹⁵³
- In a revocation proceeding, a copy of the pleading must also be sent by first class mail to the owner of the property on which the licensed premises is located. If the licensee leases the premises from someone other than the owner, a copy must also be mailed to the lessor.

Amendment of pleadings/withdrawal of charges

- A prosecutor may amend a pleading at any time before the close of the hearing or (if there was no hearing) prior to a determination by the Full Board.¹⁵⁴ Rules §54.4(d).

¹⁴⁷ Rules of the Authority §54.1(b)(4)

¹⁴⁸ Rules of the Authority §54.1(b)(5)

¹⁴⁹ SAPA of the Authority §301(2)(e)

¹⁵⁰ Rules of the Authority §54.2(c)

¹⁵¹ *Costello v. State Liquor Authority*, 17 AD2d 547 (4th Dept., 1963)

¹⁵² Rules of the Authority §54.1(a)

¹⁵³ Rules of the Authority §54.1(a)

¹⁵⁴ Rules of the Authority §54.1(d)]

- The Full Board does not allow prosecutors to withdraw and close a case once a pleading has been issued.

Types of pleas

- A “**Not Guilty**” plea reserves the licensee’s right to have a hearing on the charges contained in the pleading. The licensee may decide later to change its plea to “No Contest” or submit a conditional offer.
- With a “**No Contest**” plea, the licensee gives up the right to have a hearing and the charges are considered sustained.¹⁵⁵
- Licensees may submit a statement with the plea either to explain the circumstances that led to the charges or to present some other information that it wants considered before a penalty is imposed. At any time before the case goes to the Full Board, a licensee may change a Not Guilty plea to a No Contest plea.
- A “**Conditional No Contest**” plea or conditional offer is a No Contest plea made on the condition that a certain penalty is imposed. Conditional Offers are not specifically provided for in the Rules of the Authority. However, State Administrative Procedure Act §301(5) provides that “[u]nless precluded by statute, disposition may be made of any adjudicatory proceeding by stipulation, agreed settlement, consent order, default, or other informal method.” According, the Authority has the power to accept conditional offers.¹⁵⁶
- Some pleadings will have a proposed conditional offer included (usually on a second page attached to the pleading). A licensee automatically reserves it right to a hearing if a conditional offer is rejected by the Full Board.

Defaults

- Failure of the licensee to enter a plea on or before the return date set forth in the pleading is deemed a No Contest plea. The charges are deemed sustained and there is no hearing.¹⁵⁷
- Failure of the licensee to appear for the hearing, or any adjournment of the hearing, is deemed a No Contest plea. The charges are deemed sustained and there is no hearing.¹⁵⁸

Discovery

- The State Administrative Procedure Act provides that “each agency having power to conduct adjudicatory proceedings may adopt rules providing for discovery and deposition to the extent and in the manner appropriate to its proceedings.”¹⁵⁹
- The Authority has not adopted any regulations regarding discovery or depositions in disciplinary proceedings.

¹⁵⁵ Rules of the Authority §54.2(a) & *Mohsin v. State Liquor Authority*, 162 AD2d 203 (1st Dept., 1990)

¹⁵⁶ *Nostima Foods Inc. v. State Liquor Authority*, 71 NY2d 648 (1988)

¹⁵⁷ Rules of the Authority §54.2(b)

¹⁵⁸ Rules of the Authority §54.3(a)

¹⁵⁹ SAPA §305

- In a revocation proceeding, either party must, upon demand and at least seven days prior to the hearing, disclose the evidence that it intends to introduce at the hearing. This includes documentary evidence and identification of witnesses.¹⁶⁰

Subpoenas

- The Authority has the power to issue a subpoena to compel the attendance of a witness at a disciplinary hearing and to compel the production of any books and records at disciplinary hearings. The CPLR governs the issuance of a subpoena issued by the Authority.

HEARINGS

- If a disciplinary proceeding is not resolved by way of a No Contest Plea, Conditional No Contest Plea, or a default, it will proceed to a hearing before an administrative law judge. Once the hearing is concluded, the matter is submitted to the Full Board for its consideration

Notice

- The notice of hearing must set forth the date, time and place of the hearing.¹⁶¹
- The notice of hearing is deemed served by delivering the notice in person or by first class mail to the licensee (at the address of the licensed premises). A copy of the notice must also be sent to the residential address of record of: the licensee for an individual licensee; any officer or director for a corporate licensee; and any general partner for a partnership licensee.¹⁶²

Adjournments

- The Authority's regulations provide that no adjournment of a hearing shall be granted except for good cause shown.¹⁶³
- If the adjournment is granted by the hearing officer, he/she may direct that no further adjournments may be granted.

Conduct of hearing

- Hearings are conducted by an administrative law judge ("ALJ"). The ALJ may be a full or part-time hearing officer employed by the Authority, or a hearing officer from another state agency.¹⁶⁴
- Unless otherwise directed by the ALJ, the prosecutor presents his/her case in support of the charges first, followed by any defense or explanation offered by the licensee.¹⁶⁵
- Licensees are not required to move to dismiss the charges to preserve any rights.¹⁶⁶

¹⁶⁰ SAPA §401(4)

¹⁶¹ Rules of the Authority §54.3(a) & SAPA §301(2)

¹⁶² Rules of the Authority §54.3(b)

¹⁶³ Rules of the Authority §54.3(f)

¹⁶⁴ Rules of the Authority §54.4(a)

¹⁶⁵ Rules of the Authority §54.4(b)(1)

- Even if the licensee moves to dismiss the ALJ has no power to act on the motion.¹⁶⁷
- An ALJ may curtail the testimony of any witness which the ALJ finds to be merely cumulative.¹⁶⁸
- The parties can stipulate as to any facts involved in the proceeding.¹⁶⁹
- Both the licensee and the prosecutor must be afforded an opportunity to present written argument on issues of law and the facts.¹⁷⁰
- Oral argument may be made at the discretion of the ALJ.¹⁷¹
- Upon application by the licensee or the prosecutor before a determination in the matter, the Full Board may reopen the hearing for the presentation of new or additional evidence. On its own motion, the Full Board may reopen the hearing for the presentation of additional evidence.¹⁷²

Evidence

- The regulations direct ALJs that the rules of evidence governing proceedings in judicial proceedings are not to be rigidly enforced.¹⁷³
- Unless there is an objection made on the record, all evidence is deemed to have been validly introduced for the ALJ's consideration.¹⁷⁴

Decision

- After the hearing concludes, the ALJ must issue a written decision of his/her findings as to whether the evidence sustains the charge(s). The ALJ may also include a recommendation of the action that should be taken against the licensee.¹⁷⁵
- The licensee is afforded an opportunity to submit a statement controverting the ALJ's findings.¹⁷⁶

¹⁶⁶ Rules of the Authority §54.4(a)(3)

¹⁶⁷ Rules of the Authority §54.4(a)(4)

¹⁶⁸ Rules of the Authority §54.4(c)(2)

¹⁶⁹ Rules of the Authority §54.4(e)

¹⁷⁰ SAPA §301(2)

¹⁷¹ Rules of the Authority §54.4(f)

¹⁷² Rules of the Authority §54.4(c)(3)

¹⁷³ Rules of the Authority §54.4(c)(1)

¹⁷⁴ Rules of the Authority §54.4(c)(1)

¹⁷⁵ Rules of the Authority §54.4(g)

¹⁷⁶ Rules of the Authority §54.4(g)

CONSIDERATION BY FULL BOARD

No Contest pleas and Defaults

- The Full Board reviews these matters and determines what the appropriate penalty should be, based on the nature of the charges and the licensee's disciplinary history, if any.

Conditional offers

- The Full Board reviews these matters and determines whether the proposed offer should be accepted, based on the nature of the charges and the licensee's disciplinary history, if any.
- If the Full Board rejects the conditional offer, the case is returned to the prosecutor to proceed to hearing. In rejecting a conditional offer, the Full Board may propose a "counter-offer".

Hearings

- The Full Board reviews the hearing record and first determines whether to adopt the ALJ's findings or return the matter for alternative findings based on the facts found by the ALJ.
- If one or more charges are sustained, the Full Board then determines what the appropriate penalty should be, based on the nature of the charges and the licensee's disciplinary history, if any.

PENALTIES

- The SLA has the power to revoke, cancel or suspend a license or permit, as well as to impose a civil penalty for violations of the ABCL or the Rules.¹⁷⁷
- In addition to any other penalty imposed, the Authority may make a bond claim against the surety bond filed with the licensee when the license was issued or renewed.¹⁷⁸

Revocation

- A **revocation** order terminates the license. In addition, a person whose license has been revoked may not obtain another license or permit for two years from the date of the revocation.¹⁷⁹
- A corporation or partnership may not obtain a license or permit if any officer, director or partner has had a license revoked within the last two years.¹⁸⁰

¹⁷⁷ ABCL §17(3), ABCL 118(1) & ABCL 119(1)

¹⁷⁸ ABCL §112 & ABCL §118(2)

¹⁷⁹ ABCL §126(5)(a)

¹⁸⁰ ABCL §126(6)

Cancellation

- A **cancellation** order terminates the license but does not prevent the licensee from filing for a new license any time in the future.

Suspension

- A **suspension** order suspends the privileges of the license up to the maximum period set forth in the pleading.

Civil Penalties

- A **civil penalty** (or fine) may be imposed an alternative to, or in addition to a revocation, cancellation or suspension.¹⁸¹
- The maximum civil penalty for each violation depends on the type of license that has been issued.¹⁸² For example, the maximum civil penalty is: \$30,000 for wineries and farm wineries; and \$100,000 for brewers and distillers.

SUMMARY SUSPENSIONS

- An emergency order of summary suspension is the only tool available to the SLA to take any action against a licensee before a disciplinary proceeding has been resolved.

Standard for issuing order

- An emergency order of summary suspension can be issued when the Authority finds that public health, safety, or welfare “imperatively requires” taking such action.¹⁸³

Time frames

- An emergency order of summary suspension is issued in conjunction with a disciplinary proceeding. The disciplinary proceeding must be promptly commenced and determined.¹⁸⁴
- The order becomes effective on the date specified in the order, or upon service of a certified copy of the order on the licensee, whichever is later.¹⁸⁵

¹⁸¹ ABCL §119(1)

¹⁸² ABCL §17(3)

¹⁸³ SAPA §401(3)

¹⁸⁴ SAPA §401(3)

¹⁸⁵ SAPA §401(3)