

NYS Law Revision Commission

Report on the Alcoholic Beverage Control Law and its Administration

Link to full report:

<http://www.lawrevision.state.ny.us/reports/12-15-09%20Report%20on%20ABC%20Law.pdf>

The subject of wine in grocery stores is not addressed within this report. The Commission believes that “before any action should be taken a complete and independent analysis of its economic consequences should be undertaken.”

II. Executive Summary:

- The largest problem had by the SLA now is the backlog in license applications, currently at more than 2,300 (7)
- Economic development should not come at the expense of the core mission of the ABC Law, which is promoting health, safety, and welfare (17)
- The SLA should be “truly independent” and allowed to handle its own administration (18)
- Current structure of the SLA should be retained with certain modifications (18)

V. Administration of the ABC Law:

- The authority should be permitted to fill all of the open examiner positions as well as hire temporary examiners until the backlog has been reduced (80-81)
- Authority should have the option of permitting a temporary retail license subject to certain criteria: (80-81)
 - Only those eligible to obtain a full license can hold a temporary;
 - Temporary permits cannot be allowed to become permanent through extensions;
 - Random investigations of permittees should be conducted to be sure of compliance;
 - The premises must satisfy the requirements of the ABC law; and
 - The permittee must demonstrate an interest in the premises either through ownership or lease
- The SLA website should allow for online submission of applications as well as status tracking (81)
- Currently the SLA does not have the capability to make underage drinking a statewide priority – possible WIGS argument (96)
- Price posting is currently not monitored by the SLA
 - Data should be analyzed to see if price discrimination is taking place (99)
- Regular site visits should be conducted to determine if licensees are complying with the law and terms of their licenses (99)
- The SLA should post all of its Bulletins and written formal opinions on its website to ensure transparency (99)

VI. Policy of the ABC Law:

- It is difficult to see how encouraging economic development can coexist with concerns over public health and safety (104)

- Any statement of policy should promote health, safety, and welfare while allowing for economic growth to the extent that doing so does not impede the primary objectives of the ABC Law, which is to provide for the public health, safety, and welfare (106)
- Section 2 of the ABC law should be amended to read: (106)
 - *This chapter shall be deemed an exercise of the police power of the state, for the primary purpose of protecting the welfare, health, and safety of the people of the state, promoting temperance in the consumption of alcohol, and to the extent possible, supporting economic growth and development provided such activities do not conflict with the primary objectives. It is hereby declared that such policy will best be carried out by empowering the liquor authority of the state to determine whether public convenience and advantage will be promoted by the issuance of licenses to traffic in alcoholic beverages, the increase or decrease in the number thereof and the location of premises licensed thereby, subject only to the right of judicial review hereinafter provided for. All the provisions of this chapter shall be liberally construed for the accomplishment of its primary purpose.*

VII. Organization of the ABC Law:

- The current format of the ABC Law is confusing and troublesome (107)
- Related components of the law should be consolidated into the appropriate Articles (108)
 - Definitions (108)
 - Requirements regarding the submission of a license application (108)
 - Winery and distillery licenses (109)
 - Tasting provisions (109-110)
 - Unlawful activities (110)
 - Individual exemptions from specific provisions, deed descriptions (111)
 - 200 and 500 foot requirements should be separated, unlike they currently are (112)
- A clear penalty structure should also be incorporated (109)
- Antiquated references and repetitious language should be eliminated (112)
- The statute should be reorganized into the following Articles: (113)
 1. Short Title, Policy, and Definitions;
 2. Agency Organization and Power;
 3. General Licensing and Requirements and Procedures;
 4. Off-Premises Licenses
 5. On-Premises Licenses
 6. Vendors' Licenses
 7. Distillers' Licenses
 8. Winery Licenses
 9. Brewers' Licenses
 10. Cider Producers' Licenses
 11. Brand Registration and Labeling
 12. Wholesalers Licenses
 13. Alcoholic Beverage Tastings

14. (Art. 14 is skipped over in the report; may just be a typo on their part)
15. Fees
16. Alcohol Training Awareness Programs
17. Unlawful Activities and Penalties
18. Local Option
19. Keg Registration
20. Miscellaneous provisions including deed description exemptions; laws repealed; time of taking effect

VIII. Organization and Administration of the Division of Alcoholic Beverage

Control:

- The Chairman of the Authority should be granted exclusive authority over the Division of Alcoholic Beverage Control and the SLA (130)
- The SLA should be authorized to notify the Tax Dept. when a retail license has been granted, renewed, canceled, revoked, transferred, or expired (130-133, 135)
 - Should also notify Tax Dept. of any corporate changes that may affect the validity of the licensee's tax registration (135)
- SLA should have rulemaking authority to determine what tax information is necessary to process an application (133-135)
 - Applicants should be required to waive confidentiality of tax information on file with the Tax dept. by supplying requested information to the SLA (133-135)

IX. Retail Licenses:

- Location and furnishing requirements are not in keeping with contemporary building designs and are over burdensome on businesses (140)
 - The siting requirements of § 105, subdivision 2 should be liberalized in accordance with SLA departmental bill #07-10 (140)
- Municipalities and community boards should be required to submit their objections/recommendations to the SLA in writing (145)
- Concerning the 200 foot rule, the definition of the term “exclusively” needs to be fully developed (150)
- Schools and churches should also be allowed to waive the application of the 200 foot rule (150)
- If an area has been designated as an economic revitalization zone by a municipality, the 200 foot rule should not apply to any school or church (149-150)
- The reliance on Bulletin 279 and the “four nearest liquor stores” should be ended (152-153)
- ABC Law section 63 should be amended to provide the SLA with the ability to consider the number and character of licenses in proximity to the proposed unlicensed location (153)
- An economic impact study should be completed to determine if it is rational to keep the limit of off-premise licenses to one per “person” (160)
- Cooperative purchasing should be permitted for off-premise license holders (161)
 - This would help the smaller liquor stores currently being disadvantaged
- The interpretation of what is “another business” is confusing

- Criteria should be established that allows for economic growth without impeding the primary objectives of the ABC Law (162-163)
- Two such categories can be established: (163)
 1. Items sold for service and presentation of the beverage (non-food; glasses, coasters, corkscrews, napkins, etc.); and
 2. Items sold for purchase and carry of the beverage (reusable carriers)
- Merchandise and other activities currently permitted under section 63 should be continued (164)
- SLA should be granted rulemaking authority to promulgate rules and regulations as to the permissible merchandise (164)
- The rationale behind prohibiting house accounts is no longer viable today due to credit cards
 - Retailers should be permitted to offer house accounts if it wishes and to have an on-premise ATM (169)

XI. Relationships Among the Tiers of the Industry:

- Retailers should be given the discretion to accept returns of purchases from consumers, provided the product maintains the original seal (185)