

# What's New for 2012

## Changes to ABC Law & SLA May Affect Your Business

BY KEVEN DANOW

In this article, I will summarize the changes to the Alcoholic Beverage Control Law passed by the New York Legislature in the year 2011.

### Salary Shift

What may turn out to be the most significant change to the ABC law was made at the very beginning of 2012. Governor Cuomo inserted a provision into his budget which removed the "salary provision for state liquor authority commissioners, other than the chairman." As a consequence, two of the three members of the State Liquor Authority became per diem employees. How this will affect the long term health of the agency remains to be seen. However, there can be no doubt that it will have an effect. Commissioner Healey recently tendered her resignation.

### Changes Affecting Wineries

Farm wineries are now permitted to operate up to five branch stores. Before the law was passed, farm wineries could operate up to five "satellite stores." However, each store had to obtain a separate license and was subject to the same off-premise restrictions imposed on package/liquor stores. Under the new "branch store" system the stores are considered extensions of the farm winery, not separate entities. At these stores, the farm winery is permitted to sell New York state-labeled wine or liquors produced by any other New York state winery or farm winery licensee or by the holder of a Class A-1, B-1 or C distiller's license. Qualified wine or liquors may be purchased outright by the licensee or obtained on a consignment basis.

The new law also makes it clear that wineries and farm wineries may operate custom crush facilities which obtain "grapes, fruits and other plants grown exclusively in New York state from, or

on behalf of, other licensed wineries or farm wineries and crushes, processes, ferments, bottles or conducts any combination of such services for such other licensed wineries or farm wineries."

New York wineries have been able to ship directly to consumers in other states since 2005, but needed to produce a very costly, time-consuming and underutilized report. This legislation now requires them to maintain reports on-site and provide them to SLA only upon request.

The law no longer requires the State's wineries that manufacture less than 1,500 gallons of wine annually to apply for a separate micro-winery license; rather all farm wineries have the same license, with micro-winery licenses continuing to cost \$50 annually.

New York wineries seeking to participate in charitable events are no longer restricted to five per year. Now, wineries can obtain an annual permit and notify SLA of the event.

### New Control Requirements

Until recently, in order to obtain a license for on-premise or off-premise consumption, the licensee had to either own or lease the licensed premise. Now the licensee may own, lease or control the premise under a management or other agreement which gives the applicant control over the food and beverages at the premise.

### Frozen Desserts

The Agriculture and Markets Law was amended to provide that frozen desserts made from wine which have no more than 5% of alcohol by volume will not be regulated as an alcoholic beverage. Even so, they may not be sold to persons under the age of 21 and menus and packages must contain statutory warning notices.

### Applications For Alterations

Notices to community boards and municipalities may now be made by overnight carrier and personal delivery as well as certified mail. Alteration and license renewal notifications outside the City of New York no longer require municipal notification. Inside the City of New York, community board notification is required for a substantial ownership change (80% or more), on-premise alteration and license renewals.

### Movie Theaters

A movie theater or other venue that shows motion pictures and also meets the definition of restaurant can now obtain an on-premise license. While there is not enough information to know what the Authority will require for a movie theater, in general a restaurant requires a chef, suitable kitchen facilities and must be open regularly for the service of meals to guests for compensation. The meals must be the usual assortment of foods commonly ordered at various hours of the day. Service of only sandwiches and salads does not meet the food requirements.

### Temporary Permits

Section 97-a allows the Liquor Authority to issue a temporary permit. This permit allows a retail on-premise applicant to serve liquor and wine at a location which does not have a liquor license. The permit is good for 90 days and can be renewed while the application for such a license is pending. Such a permit cannot be obtained in the city of New York. When the law was passed, it had a sunset date of October 12, 2011. The law was extended and the new sunset date is October 12, 2012. ■

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