

# Inside NYSABC

The official newsletter of the New York State Association of Beverage Centers



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## NYSABC's Long Fight Ends in Victory: New Law Allows Sale of Additional Retail Items and ATMs

Capping NYSABC's long struggle, in January, Governor Cuomo signed NYSABC's expanded retail items bill. As a result, C licensed beverage centers may now legally sell:

- candy, chewing gum and cough drops;
  - non-refrigerated salsa;
  - cigarette lighters, lighter fluid, matches and ashtrays;
  - barbecue and picnic-related products and supplies, which shall include, but not be limited to, charcoal, grills, propane gas, plastic and paper cups; paper or plastic tablecloths and coolers;
  - beer making and brewing supplies and publications, which shall include, but not be limited to, books, magazines, equipment and ingredients;
  - steins, mugs and other glassware appropriate for the consumption of beer, malt beverages and wine products;
  - items typically used to serve beer and malt beverages including, but not limited to, taps, kegerators, koozies and beer socks;
  - lemons, limes and oranges, provided that no more than two dozen of each shall be displayed at any one time;
  - rock salt, ice and snow melting compounds, snow shovels; windshield washer solvent; firewood; beach umbrellas; sunglasses and sun block; and
  - prepaid telephone cards.
- In addition, C Licenses may offer a single ATM in each licensed premise.

### No 25% Floor Space Limit

There is no limitation on the space that can be devoted to these new retail items. The original NYSABC proposal had a limit of 25% of retail floor space, but that restriction was dropped in the negotiations with other stakeholders that led to the final draft.

## SLA Interpretation Allows Beverage Centers to Offer Beer Tastings with Own Employees

C-Licensed beverage centers can offer beer tastings using their own employees, under a recent SLA advisory (#2012-7 October 25, 2012). The interpretation allows Cs to offer tastings with their own employees because they hold wholesale licenses. The interpretation does NOT allow A Licenses to offer tastings using their own employees. To offer tastings with their own employees, Cs must get a supplier/wholesaler marketing permit and comply with certain rules. *continued on page 3*

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## Beer Tastings with Own Employees

*continued from cover*

### Marketing Permit

The marketing permit can be annual or for an individual function. The annual permit fee is \$125 plus a \$20 filing fee. The annual permit is issued for a 3-year period, for a total cost of \$395. The fee for an individual function is \$20 plus a \$5 filing fee. Links for the permit application and instructions are at the end of this article.

### Tasting Rules

Following is a quick summary of the rules for tastings, but please review the full text of the rules at the link below.

- Must be at the licensed premises.
- The site is subject to SLA inspection during the tasting.
- No fee can be charged to a consumer attending or participating in the tasting.
- Each beer sample must be limited to 3 ounces or less.
- The permit holder must comply with all federal and state tax requirements.
- The permit holder must provide all beverages used for the samples.
- All remaining product must be removed at the conclusion of the event.
- All beer used at the tasting must be in the original containers and must comply with the ABCL and the SLA's regulations pertaining to brand label registration.
- The permit or a duplicate copy must be displayed at the location.
- The permit holder must keep records, including a log of all events conducted pursuant to the permit, and make such records available for SLA inspection.
- The event must be conducted by the permit holder or an authorized agent of the permit holder. A beer wholesaler may not serve as the agent for another permit holder, nor shall a licensed beer wholesaler be involved in any manner with a beer tasting conducted by another permit holder.

## NYSABC FAQs

Answers to frequently asked questions.

Q: Can on-premises licensees sell beer for off-premises consumption?

A: Yes, because the ABCL specifically says they can. It's a provision that dates back to colonial times, when taverns were the only source of beer. But if an on-premises licensee sells beverages in beverage containers for off-premises consumption, he must accept for redemption all containers of that brand and type, regardless of whether he actually sold them.

*§ 55. License to sell beer at retail for consumption on the premises*

*2. Such a license shall contain a description of the licensed premises and in form and in substance shall be a license to the person therein specifically designated to sell beer in the premises therein specifically licensed, at retail, to be consumed upon such premises. Such license shall also include the privilege of selling beer at retail to be consumed off the premises.*

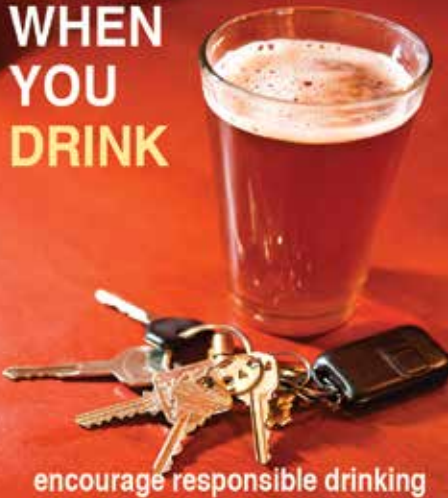
However, by selling for off-premises consumption, the licensee becomes a dealer under the Bottle Law, which means that the licensee must accept and refund the deposit on all containers of the type (brand, size, shape, color and composition) it sells for off-premises consumption, regardless of where the container was originally purchased.



### Got a Question?

Email NYSABC Counsel Ken Rosenblum at  
nysabc@gmail.com.

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## RESOURCES & LINKS

**SLA Advisory#2012-7**

**October 25, 2012**

<http://tinyurl.com/lna68l7>

**Marketing Permit Instructions**

<http://tinyurl.com/nypgehx>

**Marketing Permit App. Forms**

<http://tinyurl.com/qy3fby7>

# NYSABC Helps Derail Bottle Law Proposals that Would Have Hurt C License Business; Some Minor Changes Made

The Returnable Container Act (better known as “the Bottle Bill”) was amended to as part of the State budget process, and some relatively minor changes went into effect on March 29, 2013.

What is most notable, though, it what was NOT in the amendments. The original proposal from both the Senate and the Governor’s Office contained changes that were unfriendly to C License businesses, including allowing off-site container counting and allowing distributors to refuse to redeem dirty or damaged containers.

These changes were **removed** from the final version, though some other, mostly non-controversial changes were enacted (see summary, below).

## **Following is a quick summary of what is in the amendments:**

- The DEC is authorized to register redemption centers (RCs) and revoke registrations after a hearing, but existing RCs are grandfathered in.
- The DEC can adopt regulations to prevent mobile RCs from redeeming containers in a different geographical area.
- Dealers and RCs must get identification of anyone redeeming more than 2500 containers at one time, keep it for a year and give it to DEC on request. The bulk redemption form is available at [http://www.dec.ny.gov/docs/materials\\_minerals\\_pdf/bulkredeem.pdf](http://www.dec.ny.gov/docs/materials_minerals_pdf/bulkredeem.pdf).
- There are several increased enforcement measures, including new penalties for tampering with RVMs, redeeming containers previously accepted by RVMs, and for failing to collect or charge deposits on large quantities of containers.
- Money from the unredeemed accounts and fines is now guaranteed to the State Environmental Protection Fund.

## **What is NOT in the amendment:**

- No additional beverages or containers were added.
- Off-site container counting remains prohibited.

- A dealer or RC may now refuse crushed containers, as well as corroded or dismembered ones, but deposit initiators still have to accept them if you take them and the NY markings are visible.

## **More details:**

*What is in the amendment:*

- It’s now a violation to tamper with an RVM to get deposits.
- Deposit Initiators must report to DEC all the types of containers on which they initiate deposits.
- Bottlers may use state-specific or deposit-state-only UPC, and must notify DEC when the UPC is changed.

The DEC can now adopt regulations governing how deposit initiators accept empties (corrects an omission in the original law, which allowed the DEC to regulate only with respect to dealers (retailers) and distributors (non-deposit initiating wholesalers)).

## **Redemption Center Registration**

- Authorizes DEC to issue registrations to redemptions centers – at no cost.
- If the DEC begins issuing registrations to redemption centers, those in operation in accordance with existing DEC regulations as of 3/1/13 will be grandfathered in and will be able to continue to operate as long as they furnish whatever additional information may be required by the new DEC regulations.
- The DEC can deny an application or revoke a redemption center registration after notice and hearing.
- The DEC may adopt regulations governing mobile redemption centers to prevent containers being redeemed to a deposit initiator or distributor outside the geographic area where such deposit initiator or distributor sells containers and initiates deposits.

## **High Volume Redemptions**

A dealer or redemption center must require anyone redeeming more than 2500 containers at one time to provide

name, address and license plate of vehicle transporting the containers, or, in the case of a not-for-profit corporation, a sales tax exemption certificate. The information must be kept for 12 months and provided to the DEC on request.

## **Increased Enforcement.**

- Makes it a violation for a distributor or deposit initiator to return empty beverage containers to a dealer or redemption center if such containers were previously accepted by a reverse vending machine. It’s already a violation for a distributor or deposit initiator to return empties to a dealer or redemption center if the distributor or deposit initiator had previously accepted such beverage container from any dealer or operator of a redemption center.
- All fines collected for violations get turned over to State Environmental Protection Fund (EPF).
- Failing to collect or charge deposit on 5000 or more containers in a year is a class B misdemeanor (<90 days jail, <1 year probation, <\$500 fine). Second offense within 3 years is a Class A misdemeanor (<1 year jail, <3 years probation, <\$1000 fine). Failing to collect or charge deposit on 20,000 or more containers in a year is an E Felony (indeterminate sentence 1-4 years jail, <5 years probation, <\$5000 fine or double the illegal gain). NYC, Nassau and Suffolk get to keep 25% of all fines for these violations.
- Starting with the fiscal year beginning 4/1/13, \$15 million of the escheats each year go to EPF, plus all funds received by the state each fiscal year in excess of the amount received from 4/1/2012 through 3/31/13, with a minimum of \$4 million for the fiscal year commencing 4/1/13 and not less than \$8 million for all fiscal years thereafter.

For more details on the 2013 bottle law changes, see the NYS DEC website, <http://www.dec.ny.gov/chemical/57774.html>.

# Beer Products

a roundup of some of the latest state-of-the-art beer accessories

## Bicycle with Growler Holder

First, the ultimate in urban transport, a bicycle with a built-in growler holder, the Growler City Bike from J. Ruiter Design.

<http://www.jruiter.com/transport>.

## Leather Growler Carrier

For the less ambitious, just rig your bike with this fashionable leather growler carrier, \$80 + shipping, from Pedal Happy Design, San Francisco.

[http://www.etsy.com/shop/PedalHappyDesign?ref=listing\\_107352718](http://www.etsy.com/shop/PedalHappyDesign?ref=listing_107352718)

## Beer Can Disguises

And here's a product that's probably not a great idea, beer can disguises, real soda cans that are machined so they can slip over beer cans, \$4 from

<http://www.hidemybeer.com>.



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## Beer Ratings

In a June 18, 2013 article USA Today ranked the 10 healthiest brews. Top-rated was **Yuengling Light Lager**.

Rounding out the list:

2. **New Planet 3R Raspberry Ale**, from an eco-conscious Colorado brewer, the 3R stand for reduce, reuse, recycle.
3. **Abita Purple Haze**, raspberries add anti-oxidants.
4. **Left Hand Good Juju**, ale with ginger, herbs and spices
5. **Guinness Draught**, packed with phenols, low in carbs and calories.
6. **Sam Adams Light Lager**.
7. **New Belgium Blue Paddle**.
8. **Full Sail Session Lager**.
9. **Butte Creek Organic IPA**, pesticide and chemical fertilizer free
10. **Sierra Nevada Pale Ale**.

Full article: <http://tinyurl.com/lt6rhp3>

*Zymurgy Magazine*, published by the American Homebrewers Association, announced the results of its 2013 member poll of the Best Commercial Beers in America. The top vote-getters:

1. **Russian River Pliny the Elder**
2. **Bell's Two Hearted Ale**
3. **Dogfish Head 90 Minute IPA**
4. **Bell's Hopslam Ale**
5. **Ballast Point Sculpin IPA**
6. **Founders Breakfast Stout**
7. **Arrogant Bastard Ale**
8. **Sierra Nevada Ruthless Rye IPA**
9. (tie) **Lagunitas Sucks**
9. (tie) **Sierra Nevada Celebration Ale**
9. (tie) **Stone Brewing Co. Ruination IPA**

The full story:

<http://tinyurl.com/kn7ltuu>

## Albany Wrap Up

A number of bills were passed by both the Assembly and Senate in the just-ended 2013 session that amend the Alcoholic Beverage Control Law. As of the issue deadline (June 25, 2013), these bills have not been delivered to the Governor, though it is likely that some, if not all, will be signed into law.

**A1512/S267** - creates a "roadside farm market" license.

**A25090B/S4101A** - increases penalties for underage possession of alcoholic beverages.

**A3869/S3978** - requires applicants/licensees to include on the original and renewal application the type of establishment that will be operated. There are specific reporting requirements for venues with "adult entertainments."

**A4834/S4534** - creates a "carve out" to the 200 Foot Law<sup>1</sup> to allow the licensing of a location in Brooklyn (Afrika House Caterers in Flatbush).

**A4851/S3560** - creates a "carve out" to the 200 Foot Law to allow the licensing of a location in Brooklyn (the Botanic Gardens site).

**A7121/S4913** - extends for another year, until October 2014, the provision



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allowing the SLA to issue temporary retail permits to applicants for “new” (not currently licensed) locations outside of New York City. Temporary retail permits for “transfer” (the applicant is buying the business from the current licensee) applications will remain available throughout the state whether or not there is another extension for the “new” applications.

**A7166/S352** - adds the word “intentionally” before the language used for contaminated bottle charges. The SLA has used this section to cite on-premises establishments for fruit flies that get into beverage containers, technically a health code violation. The amendment will allow the SLA to continue to protect consumers from intentional adulteration, but leaves the fruit flies to the health department.

**A7817/S5752** - requires the SLA to “plan and coordinate” with the NYPD on

efforts to get arrest and conviction information concerning incidents at licensed premises.

**A7965B/S4739C** - creates a “carve out” to the “tied house” laws to allow for the licensing of a location in Lake George. The Fort William Henry Hotel and Conference Center, a historic Adirondack hotel located on the shores of Lake George, wants to operate a craft distillery on site utilizing products from local farms and water from a well located on their property.

**A7992/S4523** - creates a “carve out” to the 200 Foot Law to allow the licensing of a location in Manhattan (a landmark house of worship on E. 63rd and Park, owned by the Christian Science Church and leased to an upscale events management company).

**A8046/S5832** - amends the brand label registration law, including a fee

exemption for spirits produced in small batches.

**A8047/S5833** - creates a “farm cidery” license.

**A8181/S5883** - providing for casinos in the state would give the state gaming commission the exclusive power to issue alcoholic beverage licenses to casinos. However, the gaming commission would be required to consult with the SLA: before issuing a license; before commencing an enforcement action; and on a regular basis on general matters.

You can look up the full text of the bills and supporting memos, at <http://assembly.state.ny.us/leg>.

Thanks to good NYSABC friend SLA Special Counsel Thomas J. Donohue for providing the info. Any errors are the sole responsibility of the author. *KAR*

## Beer Events, Tours & Beer On The Web

- A new website lists Long Island beer events: <http://www.libeevents.com>, and has links to all Long Island craft breweries. Upcoming events include :
  - The North Fork Craft Beer, BBQ & Wine Festival** Saturday, August 10, at Martha Clara Vineyards, 6025 Sound Avenue, Riverhead, <http://www.northforkcraftbeerfestival.com>.
- There's a similar site for NYC beer events: <http://www.nycbeerevents.com>.
- Long Island Beer Tours. Several companies offer beer and craft brew tours: <http://libeerbus.com>
- Long Island Beer Guide: <http://www.longislandbeerguide.com>.



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