

Inside NYSABC

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



In This Issue:

- *Governor Signs ABC Law Amendments*
- *Governor Proposes Tax Credit For Theft Prevention Expenses*
- *SLA Task Force Tackles Licensing Backlog*
- *Bottle Bill Proposals*
- *Wine In Supermarkets*
- *Keynote Speaker: Lily M. Fan*
- *Upstate Lawmaker Proposes Far-Reaching ABC Law Changes*
- *ABC Law Study Commission Report*

Governor Signs ABC Law Amendments

Last October, New York Governor Kathy Hochul signed a package of bills intended to update and simplify the Alcoholic Beverage Control Law. Here's a summary:

Extended Hours for Sunday Beer Sales

Allows beer to be sold for off-premises consumption between 3 a.m. and 8 a.m. on Sundays.

Extended Sunday Hours for Wine and Liquor Stores

Changes the time wine and liquor stores may open on Sundays from noon to 10 a.m. and the time they may close from 9 p.m. to 10 p.m.

Lengthens Term of Brewer's License

Authorizes the SLA to extend the duration of brewers, farm brewers and restaurant-brewers licenses from the current 1 year to 3 years.

Authorizes the Use of a Pressurized Mixing and Dispensing System

Allows for the preparation and on-premises consumption of alcoholic beverages that are dispensed and served via a pressurized draft system. The ABC Law previously prohibited the storage and service of pre-mixed drinks unless they were dispensed through a machine that continually "agitates" the mixture. This permits the

use of newer technology that meets higher food safety and sanitation levels.

Permits the Sale and Gifting of Promotional Items

Allows wine and liquor stores to sell or gift promotional items "that are complimentary and directly associated with the sale of wine or distilled spirits" which are:

- of minimal value (no more than \$15).
- imprinted with a wine or spirits brand logo.
- are included as part of a pre-sealed package with the wine or spirit that is being gifted or promoted.
- does not include any food or non-alcoholic beverage, or other drink or food mix.
- not be offered for sale as individual items.

Creates Exemption from "Tied House" Ban for Specific Business

This is a one-off exemption from NY's Prohibition-era "Tied House" law that prohibits holders of manufacturing/wholesale licenses from having an interest in a retail license, and vice versa. Specifically, this law allows Kampgrounds of America to apply for retail licenses in NYS, while also maintaining an interest in a craft manufacturing license in Tennessee.





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Governor Proposes Tax Credit For Theft Prevention Expenses

Buried in the Governor's budget is a proposal that would establish a tax credit available to businesses with <100 employees of \$3,000 for each location that exceeds \$12,000 in retail theft prevention expenses. Covered expenses would include security guards, cameras, perimeter lighting, alarm systems, and access control.



SLA Task Force Tackles Licensing Backlog

Since last December, a special committee of senior SLA staffers has been digging into nearly 6,000 backlogged license applications. At the Authority's full board meeting on November 28, 2023, Chair Lily M. Fan and Commissioner Edgar De Leon approved what's called a "Delegation of Power" that appoints the committee for 6 months and authorizes it to review and approve pending applications in certain categories:

- New On-Premises license applications submitted by entities already licensed (e.g., a chain restaurant or chain hotel)
- Applications pending for over 90 days from entities already operating with a Temporary Retail Permit with no local board or municipal opposition
- Bar applications pending for over 90 days with no local board or municipal opposition and no pending charges
- Corporate Change applications pending for over 90 days with no local board or municipal opposition and no pending charges
- Endorsement applications pending for over 90 days with no local board or municipal opposition and no pending charges
- On-Premises Removal or Class Change applications pending for over 90 days with no local board or municipal opposition and no pending charges
- Method of Operation applications pending for over 90 days with no local board or municipal opposition and no pending charges
- On-Premises license applications subject to the 500 Foot Law but are not qualified for a Temporary Retail Permit pending for over 90 days with no local board or municipal opposition

If the committee determines any applications need to be denied or further reviewed, those items will be sent to the full board.

In mid-February the committee reported that it had reviewed 272 applications so far, and approved 67, but added that with procedures in place and staff trained, it expects reviews to continue "at a brisk pace." The committee is expected to issue a detailed report this spring.

Wine In Supermarkets

A6989(Hunter)/S6786(Krueger) would allow supermarkets to sell wine. Unlike previous versions, though, C licenses are not included. The supermarket wine license would only be available to full-service grocery stores that are primarily engaged in the sale of food (at least 65% of sales from food-related products), already have a license for off-premises beer sales and are more than 5,000 square feet (so most convenience stores, gas station quick marts and drug stores are also excluded, the latter because of the 65% food requirement). Currently the bills are stuck in committee, the liquor stores are fighting hard against them, and the ABC Law Commission thumbs-down hurts its chances.

Bottle Bill Proposals

S237B(May) would add wine, liquor, distilled spirit coolers, cider, wine coolers, non-carbonated soft drinks, non-carbonated fruit or vegetable drinks, coffee and tea beverages, and carbonated fruit beverages, increase the deposit to 10¢ and the handling fee to 6¢. All changes would take effect one year from the time the bill becomes law.

A3375(Woerner)/S7428(Hinchey) would increase the handling fee to 5¢ cents; to fund the increase, it would hike every deposit initiator's share of the unclaimed from 20% to 53%, at an estimated cost to NYS of \$50 million/year based on current RCA coverage. Would be more if additional containers are added. Makes no changes in what containers are covered or the deposit amount.

A7557(Glick) would allocate 2% of the past year's unredeemed deposits to the Beverage Container Assistance Program for grants to municipalities and businesses to defray the costs of Reverse Vending Machines (RVMs) and other expenses related to collecting and sorting containers.

A9044(Ramos)/S8520(Sepulveda) is a stand-alone that would increase the handling fee to 6¢ effective immediately, makes no other changes to RCA.



Keynote Speaker

Lily M. Fan, Chair, New York State Liquor Authority

Lily M. Fan was nominated to lead the New York State Liquor Authority by Governor Kathy Hochul and confirmed by the New York State Senate on June 10, 2023. Ms. Fan, the first Asian American woman appointed as a Commissioner of the SLA, has served with the agency since her original confirmation in June of 2018. She is the first woman to head the agency.

Ms. Fan, a graduate of Yale College and Yale Law School, was born in Hong Kong and speaks fluent Cantonese. Ms. Fan is a New York City resident who previously served as a member of Community Board 4 in Manhattan in 2015 and served as the Board's Co-Secretary from 2016 to 2017.

Ms. Fan was previously a lawyer at the law firms of Shearman & Sterling LLP and Morrison & Foerster LLP, specializing in white-collar criminal litigation and securities class actions. She also served as Legislative Counsel for the Standing Committee on Social Services in the New York State Senate in 2010. After her law practice, she trained as a family law mediator.

Ms. Fan founded Scandobean Productions, a theatrical and film production company, in 2011. In 2019, Ms. Fan won a Tony Award as co-producer of *Hadestown for Best New Musical*. Her documentary film *Weiner* received the U.S. Documentary Grand Jury Prize at the 2016 Sundance Film Festival. In 2020, another film, *The Fight*, a documentary about the American Civil Liberties Union, won the U.S. Documentary Special Jury Award for Social Impact Filmmaking.

Ms. Fan is a Member of the Board of Advisors at the Yale School of Drama and a Member of the Yale Law School Fund Board. She also serves on the Board of Directors of the Eugene O'Neill Theater Center. She is a member of the New York City Bar Association and the National Committee on United States-China Relations.



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Upstate Lawmaker Proposes Far-Reaching ABC Law Changes

State Senator James Skoufis (D-Cornwall) has introduced S6785B, a bill that would make significant changes in the ABC Law, mostly relating to wine and liquor stores. The companion Assembly version is A9244, sponsored by Assemblyman Al Stirpe (D-Cicero, just north of Syracuse). Here's a summary:

Temporary Special Events Permits

Authorizes the SLA to issue a temporary special event permit for <24 hours allowing the sale of beer, wine (deletes the previous limit to wine manufactured in NYS), and adds liquor, cider, mead and/or braggot.

Extended New Year's Hours

Allows restaurants and bars to apply for a permit to stay open on January 1 between 4 a.m. and 8 a.m.

Retail on-premises license purchases from retail off-premises license

Allows on-premises retail licensees to buy and resell up to 12 bottles of wine and liquor per week from off-premises retailers.

Expands sale of complementary items

Allows off-premises retail wine/liquor license to sell tonic water, bitters, maraschino cherries and dealcoholized wine. Allows wine/liquor wholesalers to sell and transport tonic water, bitters, maraschino cherries and dealcoholized wine.

Individual/entity may hold <2 off-premises retail wine/liquor licenses

Allows the holder of an off-premises retail wine/liquor license to be granted one additional off-premises retail wine/liquor license.

Relaxes the standard for issuing new off-premises wine/liquor licenses

Changes the standard for the approval of new off-premises wine/liquor licenses from "public convenience and advantage" to a showing of "good cause for disapproval."

License fees

Adjusts various license fees, mostly by rounding off odd numbers. The most significant change is that for wine or liquor wholesalers whose gross sales in NY in the previous year exceed \$750 million, the fee would be \$1 million. Gross sales <\$750 million, fee would be \$800.

Expedites the municipal notification process

Currently, applicants must notify a municipality of their intent to apply no earlier than 270 days before and no later than 30 days before a proposed opening. This change would remove the 30-day minimum and allow proof of notification to be submitted with the license application.

Expedites review of corporate changes

Application for corporate changes would be deemed approved if the SLA has not acted on them in 90 days.

Temporary Retail Permits

Allows businesses to apply for a temporary permit for locations that have not had an active licensed retailer in the prior two years, gives permit holders the ability to purchase alcohol on credit, and allow permits to be extended for 90 days.

This proposal removes the need for there to have been an active retailer at the location within the previous two years and maintains the ban on issuing a permit if a location had a license previously suspended, canceled, or revoked in the prior two years, and also lengthens the 30-day extension period to 90 days.

Temporary Wholesaler Permits

Allows the issuance of a temporary wholesaler permit while an application is under review, which would allow an applicant to start doing business faster. The temporary permit may be granted once there is a pending application for a permanent license at the same location, all fees have been paid, the applicant

would be likely to receive the license, and has obtained all necessary permits and licenses to operate at the location. Any current license at the location that would be prohibited from operating concurrently with a wholesale business must have been surrendered, placed in safekeeping, or deemed abandoned. The SLA would be required to process the application within 45 days. The temporary permit would remain in effect until the permanent application is approved or rejected.

Multiple wholesale licenses at the same premises

Allows multiple wholesale licenses owned by the same person/entity to be located at the same premises.

Modifies the 200' rule

The 200' foot rule prohibits issuance of a retail on-premises license when the premises is on the same street and within 200' of a school or place of worship. This proposal would allow the SLA to approve the license if the school or place of worship affirmatively states their support.

Modifies the 500' rule

The 500' rule prohibits the issuance of a retail on-premises license when the premises is within 500' of three or more existing licensed premises. This proposal would allow the SLA to issue such a license in a county with a population between 1.6 and 1.7 million in the 2020 census (only New York County) if it finds the issuance is in the public interest.

Permits the off-premises sale of wine and liquor on levels other than street level

Repeals a post-Prohibition ban on the sale of wine and liquor for off-premises consumption unless the premises has a street level entrance.

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ABC Law Study Commission Report

The Governor's 2023 budget created the "Commission to Study Reform of the Alcoholic Beverage Control Law," charged with reviewing a range of topics and voting on recommendations to simplify and modernize the 90-year-old law. The sixteen members were handpicked, and included representatives of wholesalers, liquor stores, alcoholic beverage industry lawyers and lobbyists. There was no published agenda, no opportunity for public participation and no open meetings. The committee issued its final report on May 1, 2023. A copy is available here: <https://bit.ly/nysabc-sla>

The recommendations that received a majority vote are likely to be included in upcoming legislation.

The following recommendations received a majority vote (votes are yes-no-abstain):

- Allow applications to be submitted simultaneously with municipal notice instead of waiting for the 30-day notice period to expire (15-0-1)
- Allow new on-premises retail applicant subject to NYC 500' law to obtain a temporary permit after a positive public interest recommendation after a hearing notwithstanding the fact that the premises has not been licensed in the last 2 years (13-0-3)
- Allow corporate and other ownership changes to take effect prior to SLA approval (14-0-2)
- Ensure SLA is properly funded (16-0-0)
- Allow wine and liquor stores to sell additional items (9-4-3)
- Allow on-premises retailers to purchase limited amounts from off-premises retailers (10-6-0)
- Allow individual to own more than one liquor store but not unlimited number (10-5-1)
- Allow off-premises liquor stores to open at 10 a.m. Sundays (instead of noon (same as on-premises retailers) (15-1-0)
- No change in on-premises operating hours (12-2-2)
- Allow weekend all-night permits (14-0-2)

majority votes (continued)

- Loosen tied house restrictions (wholesalers may not have an interest in retail premises and vice versa) (13-2-1)
- Eliminate the 500' rule (15-0-1)
- Eliminate the 200' rule (15-1-0)
- Change the liquor license approval standard from public convenience and advantage to good cause for disapproval (10-5-1)
- Remove obsolete provisions of the ABC Law (14-0-2)
- Create a temporary beer, wine, cider and liquor permit (14-1-1)
- Create temporary permits for wholesalers who have applied for a full license (13-1-2)
- Review all licensing fees (9-7-0)

The following topics did not receive a majority vote, and so are less likely to advance in the legislature:

- Consider a control state model (1-14-1)
- Allow wine sales in grocery stores (6-9-1)
- Allow liquor sales in grocery stores (7-8-1)
- Allow liquor stores to sell beer (6-9-1)
- Allow grocery stores to sell ready-to-drink distilled products with ABV <7% (6-9-1)
- Allow individual to own an unlimited number of liquor stores (6-9-1)
- Allow off-premises licensees to form purchasing co-ops, subject to limitations (1-15-0)
- Allow on-premises licensees to form purchasing co-ops, subject to limitations (1-14-1)
- Allow manufacturers (other than wineries, already permitted) to ship products directly to consumers and as a matter of Constitutional law allow out-of-state manufacturers the same privilege (8-8-0)
- Allow 24/7 sale of beer, cider and wine product (currently prohibited 3-8 a.m. Sundays (8-5-3)

