

2010 – ABCL AND OTHER NOTABLE STATUTORY CHANGES
FOR THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL

NOTICE: THIS MEMORANDUM IS INTENDED FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO CONSTITUTE LEGAL ADVICE. ALL LICENSEES AND APPLICANTS ARE REMINDED TO CONSULT WITH THEIR OWN ATTORNEY(S) REGARDING INTERPRETATION OF THESE OR ANY OTHER STATUTES.

- 1) **30 DAY NOTIFICATIONS** – [SLA Departmental #4-10] ABC Law provisions have required most license applicants and renewal applicants to file notifications with their local municipalities a minimum of 30 days in advance of SLA filings and via certified mail. **Effective January 11, 2011**, the types of notice that are considered legally sufficient to satisfy these notice requirements will expand, as follows: overnight delivery or personal service will be added to the list of options available for new or renewal applicants for on-premises beer licenses; full on-premises liquor licenses; restaurant-brewer licenses; cabaret licenses; and on-premises wine licenses. In addition, overnight delivery will be added to the list of options available for alteration applications [ABCL §99-d(1)].

- 2) **TEMPORARY RETAIL PERMITS FOR NEW APPLICANTS** – **Effective October 13, 2010 (Deemed Repealed October 13, 2011 Unless Extended)**, [ABCL § 97-a] Temporary Retail Permits (TRP) will be available to applicants for new retail licenses during the pendency of their application where the prospective licensed premises is located outside of the City of New York. Some highlights:
 - Filing fee of \$128 for retail beer licenses or \$640 for all other retail licenses;
 - For transfers, current license must have been operating within 30 days of filing the temporary permit application;
 - The term “Transfer” has now been defined as “the administrative processes involved in issuing a license to a new applicant for an existing licensed business.” Transfer applicants will also now be required to be under contract with the existing licensee for purchase of the existing licensed business. [ABCL §3(30-a)].
 - Current license must be surrendered, put into safekeeping or otherwise deemed abandoned;
 - TRP may not be issued to new applicants applying for package wine or liquor stores; or for any on-premises license that is subject to the 500 foot rule. [ABCL §97-a(1)(b)].
 - TRP shall be good for 90 days. May be extended for additional 30 day periods for additional fee of \$64 for all retail beer licenses and \$96 for all other temporary permits.

- TRP permits payment of alcoholic beverage only on or before the day of delivery. However, a TRP holder who also holds an active retail license and is not on the delinquent list may purchase alcohol on credit.
- TRA is a conditional permit. It may be summarily cancelled or suspended at any time for good cause.

3) **CONVICTED FELONS MAY WORK FOR SPECIFIED ON-PREMISES LICENSEES- Effective Immediately** - [ABCL § 102(2); Part OO, Chapter 56, Laws of 2010].

- a. Anyone who is convicted of a felony or convicted of:
 - i. Illegally using, carrying or possessing a pistol or other dangerous weapon;
 - ii. Making or possessing burglar’s instruments;
 - iii. Buying or receiving or criminally possessing stolen property;
 - iv. Unlawful entry of a building;
 - v. Aiding escape from prison;
 - vi. Unlawfully possessing or distributing habit forming narcotic drugs;
 - vii. Jostling (Penal Law §165.25), fraudulent accosting (Penal Law §165.30) or loitering (Penal Law §240.35);
 - viii. Vagrancy or prostitution; or
 - ix. Ownership, operation, possession, custody or control of a still.
- b. May work in any of the following licensed premises:
 - i. Catering establishments (CT);
 - ii. Hotel (HL);
 - iii. Restaurant (see “restaurant” definition in §3);
 - iv. Club (CL); or
 - v. Recreational Facility (theatre; concert hall; opera house; bowling establishment; excursion and sightseeing vessel; facilities for golf, tennis, swimming, skiing or boating; or accommodation of athletic events, sporting events, expositions and other similar events or occasions requiring the accommodation of large gatherings of persons),
- c. May not work in the following licensed premises, unless such individual has received and executive pardon removing any civil disabilities, a certificate of good conduct, other relief from disabilities or upon the written approval of the SLA:
 - i. Nightclub (OP), if not a “Restaurant” pursuant to definition in §3;
 - ii. Tavern (TL, TW);
 - iii. Cabaret (CR); or
 - iv. Bar (OP), if not a “Restaurant” pursuant to definition in §3.

4) **TEMPORARY PERMITTEES AT STATE FAIR – Effective Immediately** - The liquor authority is now authorized to issue Temporary Beer & Wine Permits to holders of a concessionaire's license issued by the division of the New York state fair in the department of agriculture and markets. Such permit allows for the sale and consumption of wine manufactured in New York state,

and beer manufactured anywhere upon the premises known as the New York state fairgrounds during the annual New York state fair for the calendar year such permit is issued. The fee for the permit shall be determined by the liquor authority. [ABCL §97(3)].

- 5) **ANNUAL BREWER TASTING PERMITS – Effective Immediately** - Due to a drafting error in ABCL §51(8)(b), the “Annual Brewer Tasting Permit” appeared limited only to New York licensees, and not all brewers. All brewers and distributors (wholesalers) of beer and malt beverages (in state and out-of-state) now qualify for an Annual Brewer Tasting Permit in addition to the Temporary Brewer Tasting Permits already available to them. In addition, for the first time employees and “representatives” of brewers are now eligible to obtain tasting permits pursuant to statute. [ABCL §51(8)(a)]. Note, a “representative” cannot be a wholesaler or an employee of a wholesaler.
- 6) **ALTERNATING PROPRIETORSHIPS FOR BREWERIES – Effective Immediately** – Licensed brewers are now allowed to lease their excess brewing capacity (space and equipment) to “licensed tenant brewers” for purposes of alternation, manufacture, production, blending, packaging, bottling, purchasing, selling and delivering of alcoholic beverages. Brewers will be required to submit an application to do so on such forms as the authority shall prescribe and may be approved as long as the authority determines in its discretion that the approval of same will not “impede the effective administration of this chapter.” Additional license fees will also be imposed upon the recipient of any such permit commensurate with an equivalent winery or distillery license fee. [ABCL §51(7)].
- 7) **BRAND LABEL REGISTRATION OPTIONS – [SLA Departmental #4-10]** Brand label registrants have always been required to submit their applications to the Wholesale Bureau via “registered mail, return receipt requested,” in order for same to be “deemed” approved by the SLA if it is not denied by the SLA within 30 days. **Effective January 11, 2011, brand label registrants will have the option of filing applications with the authority via certified mail or overnight delivery service** as well. [ABCL §§107-a(4)(c)(1), 107-a(4)(c)(2)(i)].
- 8) **LIQUIDATION PERMITS NO LONGER AVAILABLE FOR THOSE ON DELINQUENT LIST - Effective October 13, 2010**, Liquidation permits will no longer be available to any licensee or former licensee on the delinquent list (until such time as the wholesaler is paid and the licensee or former licensee is removed from the delinquent list). [ABCL §99-b(1)(f)].
- 9) **ELECTRONIC FUNDS TRANSFERS = CASH – Effective Immediately** - The definition of “Cash” for wholesale to retail wine and spirits sales was amended to include electronic funds transfers several years ago. Unfortunately, due to a drafting oversight, the same update was never made for wholesale to retail beer sales, thereby causing confusion in the industry. That oversight has now been corrected and electronic funds transfers are now considered “cash” for all wholesale to retail sales of beer as well as wine and spirits. [ABCL §101-aaa(1)(g)].

10) **KEG REGISTRATION SET TO EXPIRE** - keg registration expired and is no longer required in New York as of 11/22/2010. [ABCL § 105-c]

11) **NEW LEGAL STANDARD FOR “FOCAL POINT” FOR POLICE ATTENTION – [SLA Departmental #3-10] Effective Immediately** - The existence of a sustained and continuing pattern of noise, disturbance, misconduct, or disorder on or about a licensed premises sufficient to sustain a charge of “Focal Point for Police Attention” will now be presumed upon the sixth incident (of noise, disturbance, misconduct or disorder on or about the premises or related to the operation of the premises or the conduct of its patrons) reported to the authority by a law enforcement agency in any sixty day period. The presumption can be rebutted by clear and convincing evidence of either fraudulent intent on the part of any complainant or a factual error with respect to the content of any report concerning such complaint relied upon by the authority. [ABCL §97-a].