# Commission to Study Reform of the Alcoholic Beverage Control Law

May 1, 2023

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ACRONYMS AND TERMS			
ABCL	Alcoholic Beverage Control Law		
ABC Law	Alcoholic Beverage Control Law		
ABV	Alcohol by Volume		
ALJ	Administrative Law Judge		
ASA	Albany Strategic Advisors		
ASM	Annual Survey of Manufacturers		
ATAP	Alcohol Training Awareness Program		
BLS	Bureau of Labor Statistics		
СВР	County Business Patterns		
CES	Consumer Expenditure Survey		
CPLR	Civil Practice Law and Rules		
CUNY	City University of New York		
DISCUS	Distilled Spirits Council of the United States, Inc.		
DOB	Division of the Budget		
DTC	Direct to Consumer		
DTF	Department of Taxation and Finance		
EFT	Electronic Funds Transfer		
ERS	Economic Research Service		
ESD	Empire State Development		
FTE	Full-time equivalents		
FY	Fiscal Year		
HWS	Hobart and William Smith Colleges		
I-O	Input-Output		
MTA	Metropolitan Transportation Authority		
NAICS	North American Industry Classification System		
NASS	National Agricultural Statistics Service		
NIPA	National Income and Product Accounts		
NJ	New Jersey		
NYACS	New York Association of Convenience Stores		
NYC	New York City		

NYCA	New York Cider Association
NYS	New York State
NYSP	New York State Police
NYSTEC	New York State Technology Enterprise Corporation
OECD	Organization for Economic Co-Operation and Development
PPE	Personal Protective Equipment
QCEW	Quarterly Covered Employment and Wages
REA	Regional Economic Accounts
RIP	Retail Incentive Program
SAPA	State Administrative Procedure Act
SLA	State Liquor Authority
TPA	Temporary Beer and Wine Permits
ТТВ	U.S. Department of Treasury Alcohol and Tobacco Tax and Trade Bureau
UDI	Underage Drinking Initiative
WTO	World Trade Organization

## 1 Introduction

A temporary state commission, to be known as the "Commission to Study Reform of the Alcoholic Beverage Control Law" ("ABC Law") (hereinafter referred to as the "Commission") was created as part of the enacted fiscal year (FY) 2023 New York State Budget.<sup>1</sup> The law tasks the Commission with discussing a statutorily prescribed range of topics and with voting whether to recommend or not recommend legislative changes to the ABC Law and other changes relative to those topics.<sup>2</sup> Additionally, the law tasks the Commission with reporting on various statutorily prescribed economic impact matters related to the alcoholic beverage industry. Commission meetings were held on August 18, 2022, November 16, 2022, and December 19, 2022. This report, a compendium of those two statutory tasks, shall by law be delivered to the Governor and Legislature on or prior to May 1, 2023.

## 1.1 Part GG of Chapter 55 of the Laws of 2022

The FY 2023 State Budget Part GG of chapter 55 of the laws of 2022 contains the statutory language for the creation of a temporary State Commission. The scope provided in the statutory language focused the Commission discussions on the following topics:<sup>3</sup>

- Amendments to the law, increases in resources available for administering existing laws and rules, and new State Liquor Authority (SLA) practices that would lessen processing times for the issuance of licenses, license renewals, and permit applications.
- Review of laws against underage consumption of alcohol and the enforcement mechanisms utilized.
- The overall impact of laws and corresponding State Liquor Authority regulations on the numerous sectors of the industry.
- Whether New York should consider adopting a "control state" model or other regulatory model.
- Specific privileges to sell different types of alcoholic beverages and other items granted to retail licensees and the effect changing such privileges would have on the various types of retailers.
- The number of off-premises retail licenses an individual may be granted for beer, wine, or liquor.
- The ability of licensees to form purchasing cooperatives, and the effects such cooperatives would have on the rest of the market.
- The authorization of direct sales to consumers by manufacturers, and the effect direct sales would have on the rest of the market.
- A review of the hours and manner in which retailers can operate or sell different types of beverages.
- Potential barriers to market entry for new businesses by sector.
- Any other issues deemed necessary and appropriate to include by members of this Commission.

<sup>&</sup>lt;sup>1</sup> NYS Senate S. 8005--C/NYS Assembly A. 9005--C, April 9, 2022. Enacted Fiscal Year 2023 State Budget Language Part GG of S8005C. Retrieved from <a href="https://legislation.nysenate.gov/pdf/bills/2021/s8005c">https://legislation.nysenate.gov/pdf/bills/2021/s8005c</a> on 12/30/2022.

<sup>&</sup>lt;sup>2</sup> The summary of the Commission Members' individual votes, along with their associated comments herein are presented in their original format and have not been edited for content, grammar, or spelling.

<sup>&</sup>lt;sup>3</sup> NYS Senate S. 8005--C/NYS Assembly A. 9005--C, April 9, 2022. Enacted Fiscal Year 2023 State Budget Language Part GG of S8005C. Retrieved from <a href="https://legislation.nysenate.gov/pdf/bills/2021/s8005c">https://legislation.nysenate.gov/pdf/bills/2021/s8005c</a> on 12/30/2022.

Per the statute, the Chairman of the SLA, Vincent G. Bradley, presided over the 21-member Commission, which includes the heads of the Department of Taxation and Finance (DTF), the Division of the Budget (DOB), Empire State Development (ESD), and the New York State Police (NYSP), as well as, per the statute, 16 members reflecting a "diverse representation of the...alcoholic beverage market from throughout the state": 10 members appointed by the Governor, two by the Senate Majority Leader, two by the Speaker of the Assembly, and one each appointed by the Senate and Assembly Minority Leaders.

For discussions that resulted in potential legislative consideration, the Commission conducted a vote on the topic. Any topic that received a majority vote is identified in this final report as a recommendation of the Commission. A majority vote for the Commission is defined as a vote for the affirmative of at least nine out of 16 Commission members who were appointed to represent the alcoholic beverage industry. There were five nonvoting ex officio Commission members represented by the following state agencies: SLA, DTF, DOB, ESD, and NYSP. Topics that did not receive sufficient votes are not recommended by the Commission.

The 10 representatives of the alcoholic beverage industry appointed by Governor Kathy Hochul were:

- Courtney Armour, Chief Legal Officer, Distilled Spirits Council of the United States, Inc.
- Michael Correra, Owner, Michael-Towne Wines & Spirits.
- Keven Danow, Partner, Danow, McMullan & Panoff, P.C.
- Sonya del Peral, Proprietor and GM, Nine Pin Ciderworks.
- Melissa Fleischut, President and CEO, New York State Restaurant Association.
- Stephen Hanson, New York City Hospitality Veteran.
- Jeffrey Garcia, Retired NYPD 1st Grade Detective.
- Mark Koslowe, Managing Partner, Buchman Law Firm, LLP.
- Kimberly Wagner, Owner, Stoutridge Vineyard, LLC.
- Paul Zuber, Executive Vice President, The Business Council of New York State, Inc.

The two representatives of the alcoholic beverage industry appointed by Majority Leader Andrea Stewart-Cousins were:

- Evan Gallo, Chief of Investigations and Counsel in the Office of New York State Senator James Skoufis.
- Jeff Zacharia, CEO Zachys, Retail, Auctions, Storage.

The two representatives of the alcoholic beverage industry appointed by Assembly Speaker Carl E. Heastie were:

- Steven Harris, President, New York State Beer Wholesalers Association.
- Andrew Rigie, Executive Director, NYC Hospitality Alliance.

The representative of the alcoholic beverage industry appointed by Senate Minority Leader Robert G. Ortt was:

• Edward Cooper, Vice President, Public Affairs, Total Wine & More.

The representative of the alcoholic beverage industry appointed by Assembly Minority Leader William A. Barclay was:

• Ashley White, Senior General Manager, Anheuser-Busch.

The five nonvoting ex officio Commission members were:

- Vincent G. Bradley, Chairman, SLA.
- James E. Barnes, Lt. Colonel, Assistant Deputy Superintendent, Bureau of Criminal Investigation, New York State Police designee.
- Stefan Fleming, Director of Industry Development, Empire State Development designee.
- Maria LoGiudice, Chief Budget Examiner, Public Protection designee.
- William Raleigh, Tax Policy Analyst, Office of Tax Policy Analysis designee.

### 1.2 Brief History of ABC Law

The purpose of the ABC Law is to articulate the policies of the State of New York relating to regulation of alcoholic beverages as a controlled substance. From the enactment of the ABC Law in 1934 until present day, the state's policy with respect to alcoholic beverages has been to regulate and control the manufacturing, sale, and distribution of such products within the state "for the purpose of fostering and promoting temperance in their consumption and respect for and obedience to law."

Effective April 19, 2015, the stated purpose of the ABC Law was amended to consider, "to the extent possible, supporting economic growth, job development, and the state's alcoholic beverage production industries and its tourism and recreation industry; and which promotes the conservation and enhancement of state agricultural lands; provided that such activities do not conflict with the primary regulatory objectives of the [ABC Law]."

The provisions of the ABC Law were enacted for the "protection, health, welfare and safety of the people of the state." The ABC Law preempts any local law that attempts to regulate the manufacture or sale of alcoholic beverages. In general, administrative jurisdiction over the ABC Law lies with the Division of Alcoholic Beverage Control, which is part of the Executive Department. The head of the Division of Alcoholic Beverage Control is the NYS State Liquor Authority. The State Liquor Authority is a three-member board, appointed by the Governor with the advice and consent of the Senate. One member is appointed as the Chair, who is also the chief administrative officer of the Division of Alcoholic Beverage Control. Other departments of state government are also involved in regulating the manufacture of alcoholic beverages. For example, the DTF collects excise taxes on alcoholic beverages manufactured in this state or imported into this state for sale. The Department of Agriculture and Markets regulates the agricultural activities related to the production of alcoholic beverages.

## 1.3 Brief History of ABC Law Reform and Legislative Results

When New York State enacted Chapter 478 of 1934, known as the Alcoholic Beverage Control Law, it created the State Liquor Authority and the Division of Alcoholic Beverage Control. In the ensuing decades, calls to the Legislature for reform have come from many sectors. In answer to those calls, a number of efforts, prior to the instant effort, have been made to study the ABC Law and the industry and to advise the Legislature and Executive. The first of these studies was called for by Governor Nelson Rockefeller on February 17, 1963. He appointed a Moreland Act Commission to make a "thorough"

<sup>&</sup>lt;sup>4</sup> SLA. Alcoholic Beverage Control Law. Retrieved from <a href="https://sla.ny.gov/alcoholic-beverage-control-law">https://sla.ny.gov/alcoholic-beverage-control-law</a> on 12/30/2022.

<sup>&</sup>lt;sup>5</sup> New York Times, May 24, 1964. Moreland Group Ends Its Study On Reform of State Liquor Law. Retrieved from <a href="https://www.nytimes.com/1964/05/24/moreland-group-ends-its-study-on-reform-of-state-liquor-law.html">https://www.nytimes.com/1964/05/24/moreland-group-ends-its-study-on-reform-of-state-liquor-law.html</a> on 12/30/2022.

study and reappraisal of the law with respect to the sale and distribution of alcoholic beverages in the State ... in light of the experience of current social and economic conditions."<sup>6</sup>

The second was conducted by the New York State Law Revision Commission, which issued a Report on the Alcoholic Beverage Control Law and its Administration. The Law Revision Commission was called for by Chapter 37 and Chapter 73 of the Laws of 2007 and 2008, respectively. The Law Revision Commission familiarized itself with ABC Law and regulations, NYSLA, the goals and objectives of regulating alcoholic beverages, and current concerns as the basis for developing findings and recommendations.

The third, and most recent effort to provide legislative recommendations, was the New York State Liquor Authority (SLA) ABC Law Working Group report on the proposed reorganization of, and revisions to, the ABC Law. The formation of the working group was at the direction of Governor Andrew Cuomo during the third Wine, Beer, Spirits, and Cider Summit held on October 7, 2015. The working group identified and discussed issues where there was a consensus and drafted such consensus recommendations to be considered by the Legislature. The two most recent efforts are described in more detail in the sections 1.3.1 and 1.3.2 below. The status of each recommendation can be identified by the following key.

STATUS	DEFINITION		
$\overline{\checkmark}$	Recommendation was implemented/enacted.		
×	Recommendation was not implemented/not enacted.		

#### 1.3.1 Law Revision Commission

The New York State Law Revision Commission, a standing statutory commission "devoted to law reform through legislation" <sup>10</sup> examined the ABC Law and its administration by the SLA as outlined by Chapter 37 and Chapter 73 of the Laws of 2007 and 2008, respectively. The Law Revision Commission focused on the SLA's historical and present-day role in regulating alcoholic beverages and conducted a detailed study of New York's ABC Laws. The Law Revision Commission presented their final report findings and recommendations in two components delivered on September 30, 2009 (Part One), and December 15, 2009 (Part Two). Part One addressed the challenges with the administration of the ABC Law by the SLA. Part Two addressed the need for and scope of regulation, fundamental changes in the governing statutes and regulations, and the need for the ABC Law's reorganization and modernization.

In addition, the Law Revision Commission conducted hundreds of hours of interviews, discussions, and public meetings with current and former SLA Commissioners and staff, other state agencies — including the New York State Office of Alcohol and Substance Abuse Services, the DTF, the Department of Agriculture and Markets, and the DOB, legislators and legislative staff, state and local law enforcement agencies, attorneys who practice in the field of ABC Law, academics with expertise in beverage control

<sup>&</sup>lt;sup>6</sup> New York State Morland Commission on the Alcoholic Beverage Control Law. Retrieved from <a href="https://babel.hathitrust.org/cgi/pt?id=uiug.30112064899120&view=1up&seq=7">https://babel.hathitrust.org/cgi/pt?id=uiug.30112064899120&view=1up&seq=7</a> on 3/31/2023.

<sup>&</sup>lt;sup>7</sup> Chapter 37 of the Laws of 2007; Chapter 73 of the Laws of 2008.

<sup>&</sup>lt;sup>8</sup> The New York State Law Revision Commission, September 1, 2008. Preliminary Report on the Alcoholic Beverage Control Law and its Administration, page 3.

<sup>&</sup>lt;sup>9</sup> New York State Liquor Authority Alcoholic Beverage Control Law (ABCL) Working Group, April 13, 2016. Report on proposed reorganization of, and revisions to, the ABCL, page 1.

<sup>&</sup>lt;sup>10</sup> New York State Law Revision Commission. Retrieved from https://lawrevision.state.ny.us/ on 4/7/2023.

laws, and stakeholders in New York's three-tier system (manufacturers, wholesalers, and retailers). Furthermore, the Law Revision Commission requested the views of concerned citizens and community leaders about the quality of life in their neighborhoods, as well as public health professionals and advocates concerned about the harmful impact and cost of alcohol on the health and wellbeing of our citizens.

#### Part One Final Report - September 30, 2009

The following recommendations were developed for Part One of the final report and submitted by the Law Revision Commission for consideration:

#### Licensing (backlog of retail license applications):11

#### Recommendations for the SLA:

- ☑ Vacant positions for licensing examiners should be filled.
- Temporary examiners should be hired.

#### Recommendations for Legislation:

- ☑ Legislation should be enacted permitting the issuance of temporary retail permits.
- Legislation should be enacted to extend a "Bring your Own Bottle" (BYOB) privilege to restaurant and similar applicants allowing customers to bring their own bottles of wine or beer.

#### Administration by the SLA:12

#### Recommendations for the SLA:

- Allow the SLA to manage its own administration.
- Create a "Budget and Management Bureau" to assume responsibility for budget and fiscal matters.
- Create an "Audit and Compliance Bureau" to evaluate and enforce internal policies and procedures.
- ☑ Create and fill two regional manager positions to oversee upstate and downstate offices.
- Allow the agency to hire additional staff to enable it to carry out its mission and adopt several measures to improve the culture of the agency.
- Review case procedures.
- ☑ Review case decisions to evaluate current procedures.
- ✓ Interpret the law in concert with the statutory intent to avoid an absurd result.
- ☑ Replace the SLA's antiquated software systems.
- ☑ Make underage drinking a priority.
- ✓ Focus on serious violations with an impact on public safety.
- ☑ Monitor price posting submissions.
- ✓ Publish formal opinions, written agency decisions and all current bulletins, divisional orders on the SLA's website.

<sup>&</sup>lt;sup>11</sup> The New York State Law Revision Commission, September 30, 2009. Report on the Alcoholic Beverage Control Law and its Administration, page 7.

<sup>&</sup>lt;sup>12</sup> The New York State Law Revision Commission, September 30, 2009. Report on the Alcoholic Beverage Control Law and its Administration, page 7.

☑ Eliminate outdated and unnecessary regulations, bulletins, and divisional orders.

#### Part Two Final Report - December 15, 2009

The following recommendations were developed for Part Two of the 2009 final report and submitted by the Law Revision Commission for consideration:<sup>13</sup>

#### **Policy of Regulatory Control:**

Recommendations for Legislation:

☑ Section 2 of the ABC Law should be amended to provide:

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.

#### Organization of the ABC Law:

Recommendations for Legislation:

The statute should be reorganized into the following Articles: Article 1 - Short Title, Policy, and Definitions; Article 2 - Agency Organization and Power; Article 3 - General Licensing and Requirements and Procedures; Article 4 - Off-premises licenses; Article 5 - On-Premises Licenses; Article 6 - Vendors' licenses; Article 7 - Distillers' Licenses; Article 8 - Winery Licenses; Article 9 - Brewers' Licenses; Article 10 - Cider Producers' Licenses; Article 11 - Brand Registration and Labeling; Article 12 - Wholesalers' Licenses; Article 13 - Alcoholic Beverage Tastings; Article 15 - Fees; Article 16 - Alcohol Training Awareness Programs; Article 17 - Unlawful Activities and Penalties; Article 18 - Local Option; Article 19 - Keg Registration; and Article 20 - miscellaneous provisions including deed description exemptions; laws repealed; time of taking effect. Reorganization should include redrafting to eliminate redundancies, unnecessary and repetitious language, and antiquated references.

#### Organization and Administration of the Division of Alcoholic Beverage Control:

#### Organization

Recommendations for Legislation:

The ABC Law should be amended to provide that all delegations of Authority responsibilities be made public.

<sup>&</sup>lt;sup>13</sup> The New York State Law Revision Commission, December 15, 2009. Report on the Alcoholic Beverage Control Law and its Administration, pages 24 – 31.

- The ABC Law should be amended to grant the Chairman of the Authority exclusive executive authority over both the division of alcoholic beverage control and the Authority, including the authority to hire, assign, and fire deputies, counsels, assistants, investigators, and all other employees within the limits of the agency appropriation, in consultation with the other members of the Authority; and to remove all such responsibility from the Authority.
- The ABC Law should be amended to provide that in the event of a deadlock in a decision by the Authority, the deadlock will be treated as a denial subject to judicial review.

#### <u>Information Sharing with the Tax Department</u>

#### Recommendations for Legislation:

- The ABC Law should be amended to authorize the SLA to notify the Tax Department when a retail license or a license for a distributor, as that term is defined by the Tax Law, has been granted or renewed, or when such a license has been canceled, revoked, transferred or expired, or when any corporate change has occurred that might affect the validity of the licensee's tax registration.
- The applicant for a license or license renewal should be required to waive the confidentiality of specific tax information on file with the Tax Department by supplying requested information to the SLA. The SLA should have rulemaking authority to determine which information is necessary for the processing of an application.

#### **Enforcement of Judgments**

#### Recommendations for Legislation:

- The ABC Law §121 should be amended to provide that the court may order a stay in accordance with the provisions of CPLR 5519, provided that any stay under section 121 place certain obligations on the petitioner to ensure prompt resolution of the matter, such as the prompt prosecution of the article 78 proceeding, and that any section 121 stay must be renewed upon motion of the petitioner before prosecuting an appeal of an unsuccessful article 78 proceeding.
- The ABC Law §121 should be amended to clarify that determinations of the SLA which impose only a fine are within the coverage of the section.

#### SAPA section 401(2)

#### Recommendations for the SLA:

✓ The SLA should investigate the procedure that is followed in renewing licenses facing disciplinary action to ensure that SAPA §401(2) does not become a haven for unlawful licensees.

#### **Retail Licenses**

#### Physical Location of Licensed Premises

#### Recommendations for Legislation:

The ABC Law should be amended to liberalize the location requirements of subdivision 2 of section 105, in accordance with SLA Departmental Bill #07- 10.

#### **Change in Operation**

#### Recommendations for Legislation:

The ABC Law should be amended to clarify that a substantial alteration to the premises includes a change in the licensee's plan of operation.

#### 200 Foot Rule

#### Recommendations for Legislation:

- The ABC Law should be amended to give the SLA rule-making authority so that it can more fully develop the definition of "exclusively," and thus allow potential applicants better to judge whether a particular location is likely to run afoul of the 200 foot rule.
- The ABC Law should be amended to permit schools and houses of worship to waive the application of the rule if they have no objection to the issuance of a license to a particular applicant without impairing the discretion of the SLA to apply the 200 foot rule.
- The ABC Law should be amended to provide that when a municipality has designated an area as an economic revitalization zone, the 200 foot rule does not apply to any schools and places of worship moving into the zone.

#### 500 Foot Rule

#### Recommendations for Legislation:

- ✓ The ABC Law should be amended to include the public interest factors in all of the on premise license sections at sections 64, 64-a, 64-b, 64-c, and 64-d.
- The ABC Law should be amended to eliminate the exemption of municipalities of 20,000 or less from the applicability of the 500 foot rule.
- The ABC Law should be amended to clarify the SLA's authority to promulgate regulations regarding the conduct of 500 foot rule hearings.

#### **Four Nearest Stores**

#### Recommendations for Legislation:

The ABC Law should be amended to provide that the SLA may consider the number and character of licenses in proximity to the location and in the particular municipality or subdivision thereof in determining whether public convenience and advantage and the public interest will be promoted by the granting of licenses and permits for the sale of alcoholic beverages at a particular unlicensed location.

#### Recommendations for the SLA:

☑ The SLA should end its reliance on Bulletin 279.<sup>14</sup>

<sup>&</sup>lt;sup>14</sup> SLA. Series 1955. Bulletin #279. December 9, 1955. To: Package Store Licensees. Subject: Removal of Package Store. Retrieved from <a href="https://books.google.com/books?id=B93la">https://books.google.com/books?id=B93la</a> -

 $<sup>\</sup>underline{\texttt{kUtMC\&pg}} = \texttt{PA130\&lpg} = \texttt{PA130\&dq} = \texttt{new+york+state+liquor+authority+1955+bulletin+279\&source=bl\&ots=0PqUwXgnNx\&sig=ACfU3U0Qn1l74wFyqVwkl-}$ 

<sup>1</sup>hJCfLcCOj2g&hl=en&sa=X&ved=2ahUKEwj4hKnh3ur9AhXvMlkFHajBCuw4ChDoAXoECAlQAw#v=onepag on 3/20/2023.

#### **Industry Practices**

A study of the economic impact of this change would be necessary to make a rational determination of how many off-premises licenses should be issued to one person.

#### Recommendations for Legislation:

Cooperative purchasing by holders of off-premises licenses should be permitted to remove the current disadvantage experienced by small liquor stores.

#### **Engaging in other businesses**

#### Recommendations for Legislation:

- ABC Law section 63 should be amended to provide two categories of merchandise that can be sold in an off-premises store: 1) non-food items that can be sold for service and presentation of the alcoholic beverage; and 2) items that can be sold for purchase and carry of alcoholic beverages.
- The SLA should be given rule making authority to promulgate rules regarding such merchandise.

#### **Convenience Stores**

#### Recommendations for the SLA:

☑ The SLA regulations should be amended with respect to grocery stores and convenience stores to provide that more than 50% of the product display space (as opposed to dollar value) in the grocery store consist of "consumer commodities" as defined in section 214-h(2-a) of the Agriculture and Markets Law. The remaining requirements of the SLA would continue.

#### **C** Licenses

#### Recommendations for Legislation:

- The ABC Law should be amended to provide that the permissible inventory of non-alcoholic products be measured at 25% of its displayed inventory which would include food and seasonal specialty items related to its business.
- ☑ The ABC Law should be amended to provide that a C licensee can maintain an ATM at its discretion.

#### **House Accounts and ATMs**

#### Recommendations for Legislation:

☑ The ABC Law should be amended to permit house accounts and ATMs in the discretion of the licensee.

#### **Gifts and Services**

#### Recommendations for Legislation:

The ABC Law should be amended to incorporate the terms of the 2006–2007 consent decrees regarding gifts and services.

#### Recommendations for the SLA:

✓ The SLA should amend the governing regulations, Divisional Orders and Bulletins such that trade practice restrictions and exceptions apply uniformly to all licensed entities, regardless of alcoholic beverage product, to the extent that such changes do not conflict with other sections or the goals of the authority.

#### **Prohibited Consumer Exchanges**

#### Recommendations for Legislation:

The ABC Law should be amended to clarify that a retailer has the discretion to accept the return of a container of alcoholic beverage, for a refund or exchange, provided that the product is under its original seal and accompanied by the receipt for the sale of the beverage. In the event of a return, the licensee may be held liable for any tampering or spoilage of the product.

#### Brand or Trade Name Label Approval and Registrations

#### Recommendations for Legislation:

- ☑ The ABC Law should be amended to clarify the SLA's scope of label review to include a
  determination as to whether a label is attractive to underage drinkers in accordance with
  the Bad Frog case.¹5
- ✓ The ABC Law should be amended to enlarge the scope of the SLA's review of packaging of the product to address concerns about packaging that may be dangerously deceptive or attractive to underage drinkers.

#### **Primary Source**

#### Recommendations for Legislation:

- The ABC Law should be amended to include a formal primary source statute.
- The ABC Law should be amended to define private collections to restrict the ability of wholesalers and retailers to use private collections to circumvent the price posting requirement.

#### Economic Development of Craft Breweries, Distilleries, and Wineries

#### Wineries

#### Recommendations for Legislation:

- Amend the ABC Law to include requirements for alternating proprietorship that are consistent with federal law to eliminate the potential for confusion.
- Amend the ABC Law to clarify custom crush as a permissible arrangement between two wineries and to permit custom crush in a manner consistent with federal law.
- Amend the ABC Law to allow any licensed winery to exercise the privilege to provide tastings at licensed off-premises establishments, licensed on-premises restaurants, events

<sup>&</sup>lt;sup>15</sup> Jon O. Newman, Circuit Judge. US Court of Appeals, Second Circuit. Bad Frog Brewery Inc. v. New York State Liquor Authority (1998). Findlaw. Retrieved from https://caselaw.findlaw.com/us-2nd-circuit/1128977.html on 3/21/2023.

- sponsored by charitable organizations, the State Fair, recognized county fairs and recognized farmers markets upon notice to the SLA.
- The Legislature should reconsider the issue of whether satellite stores are exempt from all the requirements of an off-premises wine store.
- Amend the ABC Law to permit an existing winery, micro- winery and other entrepreneurs to operate home winemaking centers, so long as the commercial (if any) and home operations are segregated.
- Amend the ABC Law to permit the sale of wine making equipment by wineries.

#### **Breweries**

#### Recommendations for Legislation:

- ☑ The Legislature should consider an exemption from section 55- c for craft brewers.
- Amend the ABC Law to permit alternating proprietorships in a manner consistent with federal law.
- Amend the ABC Law to clarify that contract brewing arrangements are permissible in a manner consistent with federal law.
- Amend the ABC Law to clarify that brewers participating in brewing festivals can supervise the tasting of their beer.

#### Distillers

#### Recommendations for Legislation:

- The ABC Law should be amended to streamline the number of distiller licenses to reflect current practices consistent with federal law and to distinguish between craft distilleries and other commercial distilleries.
- The ABC Law should be amended to clarify what products a craft distillery can sell and the locations where the products can be sold.
- The ABC Law should be amended to permit alternating proprietorships by craft distilleries consistent with the requirements of federal law.

#### Cider Producers

#### Recommendations for Legislation:

The ABC Law should be amended to make it clear that the production of craft cider is analogous to the production of wine and craft beer.

#### **Underage drinking**

We defer to the recommendations of the New York State Advisory Council on Underage Alcohol Consumption.

#### 1.3.2 2016 SLA Report

The SLA ABC Law Working Group was formed to consider the reorganization of, and revisions to, the ABC Law. The Working Group consisted of members from all three tiers of the alcoholic beverage industry (manufacturers, wholesalers and retailers), including three distinct sectors of the retail industry

(on-premises, off-premises beer, and off-premises wine and liquor), representatives on behalf of each type of alcoholic beverage (beer, wine, liquor, and cider), and a representative from one of New York City's community boards, which represented the interests of the public. The Working Group held meetings on November 12, 2015; December 8, 2015; January 7, 2016; and March 2, 2016. Meetings of the Working Group were open to the public and recorded with the video posted on the SLA's website.<sup>16</sup>

The initial stage of the Working Group sought to identify items that the members agreed needed continued discussion to consider possible legislative action. Once issues were selected, the Working Group discussed whether there was consensus on what reform was needed and how that reform should be achieved. With respect to some matters, it was determined that, while there was consensus to address an issue, there was no consensus of the Working Group with respect to what reform should be made. For those matters on which the Working Group was able to from a consensus, a series of recommendations was developed for review and consideration to improve the ABC Law. On other matters, it was agreed that an administrative or non-legislative solution should be pursued.

The following summary of recommendations were submitted to the Governor by the Working Group on the proposed reorganization of, and revisions to, the ABLC.<sup>17</sup>

Reorganization of the Alcoholic Beverage Control Law.

The current structure of the ABCL is difficult to navigate and thus, "should be reorganized to better serve those who are regulated by it."

☑ General Rule Making Power.

"The Working Group finds that while guidance documents serve a useful purpose, the SLA should have general rule making power to carry out any provisions of the ABCL."

Consolidation of Retail On-Premises Licenses.

"The Working Group recommends that the ABCL be amended to reduce the number of such licenses to three: one for beer; a second for wine and beer; and a third for liquor, wine and beer."

☑ Creation of Importers License.

"The Working Group recommends that the ABCL be amended to create a low-cost "importer's license" that would be available to wholesalers that sell only to other wholesalers. Holders of such a permit for wine and liquor would, of course, be required to comply with the ABCL's price posting provisions."

■ Modifications to Solicitor's Permit.

"The Working Group proposes that: the fee for a solicitor's permit be eliminated or reduced as much as reasonably possible, taking into consideration the costs incurred by the SLA in issuing the permits; the duration of the temporary solicitor's permit should be extended; and the requirement for a bond for a solicitor's permit be eliminated."

☑ Combined Manufacturing License.

<sup>&</sup>lt;sup>16</sup> New York State Liquor Authority Alcoholic Beverage Control Law (ABCL) Working Group, April 13, 2016. Report on proposed reorganization of, and revisions to, the ABCL, page 1.

<sup>&</sup>lt;sup>17</sup> New York State Liquor Authority Alcoholic Beverage Control Law (ABCL) Working Group, April 13, 2016. Report on proposed reorganization of, and revisions to, the ABCL, pages 9 – 23.

"The Working Group recommends an amendment to the ABCL that would allow the SLA to issue one license that would allow a business to engage in multiple craft manufacturing activities."

#### Felony Convictions.

"The Working Group recommends two amendments to the ABCL with respect to disqualifying convictions. First, the prohibition should be limited to felonies and the references to certain misdemeanors should be eliminated. Second, the disqualification for felonies should only apply to convictions within the five years immediately preceding the filing of the license application. While not an automatic ban, the conduct underlying any conviction could still be considered with respect to the individual's character and fitness to hold a license."

"The Working Group also recommends that the SLA be able to consider another jurisdiction's equivalent of a certificate of relief from disabilities when issuing licenses and, for the rare instance where an applicant cannot obtain an equivalent document, the SLA should be given discretion to examine an applicant's character and fitness to hold a license."

#### ☑ Wine Growlers.

"The Working Group recommends that the ABCL be amended to allow wineries to have unsealed containers of wine at the winery for the purpose of filling growlers."

#### Opened Wine Bottles.

The Working Group "recommends that wineries and farm wineries, who must comply with specified food requirements to serve wine for on-premises consumption, should be allowed to have patrons leave the winery with an opened bottle of wine, provided that the provisions regarding how the bottle must be secured are followed."

#### 200 Foot Law

"The Working Group finds that the SLA should have discretion to approve applications that would otherwise be denied based on the 200 Foot Law. The Working Group recommends an amendment to the various sections containing the law to allow the Authority, for good cause shown, to approve such an application provided that the local municipality and the school or place of worship are provided notice of the application and have an opportunity to express their view with respect to the issuance of the license. However, in deference to the policy underlying the 200 Foot Law, the Working Group further recommends that the amendment be limited to establishments that operate as restaurants within the meaning of the ABCL. Additionally, in fairness to existing restaurants that hold wine and beer licensees because they could not obtain a liquor license as a result of the 200 Foot Law, such licensees should be afforded the first opportunity to apply for a liquor license before applications for new sites are considered."

#### ✓ Sunday Hours of Sale.

"The Working Group recommends that the ABCL be amended to allow on-premises licensees to serve alcoholic beverages earlier on Sundays. The Working Group proposes two options: changing the end of prohibited hours from noon to 8 am for all on-premises licenses; or creating a permit system that would allow on-premises licenses to serve earlier on Sundays. Such a permit could be issued either for specific events or on a calendar year basis, or both."

Restrictions On the Location of On-premises Establishments.

"The statute in question prohibits such venues from having "any opening or means of entrance or passageway for persons or things between the licensed premises and any other room or place in the building containing the licensed premises or any adjoining or abutting premises..." - "the Working Group recommends that the referenced prohibition be eliminated."

☑ Package Store Second Businesses.

"It is recommended that the licensee be allowed, as part of any such class or seminar, to provide food items intended to complement the tasting of alcoholic beverages (for example food that is ordinarily consumed without the use of tableware and can be conveniently consumed while standing or walking, including but not limited to: cheeses, fruits, vegetables, chocolates, breads, mustards and crackers."

☑ Restrictions on Licensees with On-Premises and Off-Premises Licenses.

"When both businesses are operated by the same licensee, and the liquor and wine is kept sealed while moving through the area licensed for beer only, the Working Group finds no practical reason why the licensee should not be allowed to move the liquor or wine through the grocery store. Therefore, the Working Group recommends that this restriction be amended to allow this activity."

■ Full Board Voting/Vacancies.

"The Working Group suggests consideration of one or more of the following amendments: 1) allowing the Governor to appoint an acting Member to serve at any time when there are less than three Members in office; 2) granting to the Chief Executive Officer of the SLA, or other appropriate senior staff of the agency, the power to vote on an application when there are fewer than three Members in office; 3) granting to the Chief Executive Officer of the SLA, or other appropriate senior staff of the agency, the power to serve as an acting Member when, due to a vacancy, illness or other incapacity, there is an insufficient number of Members present at a Full Board meeting to constitute a quorum for purposes of conducting business; and 4) creation of a weighted voting system that would allow the Chairperson's vote to decide matters when there are only two Members in office."

"The Working Group recommends that the ABCL be amended to allow the Governor, in the event of the death, resignation, removal or disability of the Chairperson, to designate one of the Commissions to serve as acting Chairperson until such time as a new Chairperson is nominated by the Governor and confirmed by the Senate."

## 1.4 Overview of Legislative Efforts Since 2013

Since 2013, there have been 116 bills chaptered that amend the ABC Law. Of those, the largest category of bills, at 47, has been carve-out bills exempting a business from the 200 Foot Law or from the Tied House Law; 43 have been bills from the Legislature affecting policy and/or operations in some manner; 9 of the bills have been Governor's program bills or departmental bills crafted by the SLA; 11 have been bills to extend a particular provision of law; five have been chapter amendments to fix issues with a previous bill; and one was a budget Article VII bill, containing ABC Law provisions.

#### 1.4.1 Legislative Chapters Since 2013

#### 2013 - 11 ABCL bills chaptered

• Three carve out bills.

- One routine extender bill.
- Two governor program bills.
  - Chapter 354 Provides for the brand or trade name labeling of alcoholic beverages.
  - Chapter 384 Creates a farm cidery license.
- Five legislative ABC Law bills.
  - Chapter 2 Permitting beer wholesalers to sell certain food items at retail.
  - Chapter 188 Requires license and renewal applications to indicate the type of establishment to be operated.
  - Chapter 224 Provides that no retail licensee for on premises consumption may intentionally adulterate, dilute or fortify the contents of any container.
  - Chapter 355 Authorizes roadside farm markets to sell wine from up to two wineries located within 20 miles.
  - Chapter 257 Increases the community service requirement for underage purchase of alcoholic beverages.

#### 2014 - Nine ABC Law bills chaptered

- Five carve out bills.
- One routine extender bill.
- One governor program bill.
  - A10122 (Rules) Relates to licenses and permits regarding the manufacture of alcoholic beverages.
- Two legislative ABC Law bills.
  - Chapter 406 Provides that the state policy with regard to the alcoholic beverage control law shall be to promote economic development in the beer, wine and liquor industries.
  - Chapter 412 Relates to on-premises license or permit for the provision of alcohol by a volunteer firefighters' organization.

#### 2015 - Eight ABC Law bills chaptered

- Two carve out bills.
- Two routine extender bills.
- Four legislative ABC Law bills.
  - Chapter 228 Relates to authorizing farm distillery licensees to sell gift items.
  - Chapter 466 Relates to providing alcoholic beverages on credit to any business or corporation.
  - Chapter 231 Prohibits the sale or offering for sale of any powdered or crystalline alcohol product.
  - Chapter 232 relates to alcohol tastings.

#### 2016 - 11 ABC Law bills chaptered

- Four carve out bills.
- One routine extender bill.

- One governor program bill.
- Five legislative ABC Law bills.
  - Chapter 336 Relates to definition of "for cause" instances of revocation of licenses.
  - Chapter 409 Relates to the consumption of alcoholic by students under the age of twenty-one who are enrolled in certain courses of study.
  - Chapter 422 Provides for the operation of home beer makers centers, home cider makers centers and home wine makers centers.
  - Chapter 423 Relates to pro rata license fees for seasonal bars.
  - Chapter 327 Relates to cider sold at retail for consumption.

#### 2017 - Eight ABC Law bills chaptered

- Three carve out bills.
- One routine extender bill.
- One departmental bill.
  - Chapter 369 Authorizes the electronic filing of applications for a brand or trade name label for an alcoholic beverage.
- Three legislative ABC Law bills.
  - Chapter 171 Expands the items which may be sold by a licensed farm cidery and the licensees to whom a farm cidery may sell its cider for resale.
  - Chapter 360 Relates to allowing off-premises licensees to conduct educational seminars.
  - Chapter 103 Relates to the tastings of and selling at retail for consumption on or off the premises of certain beverages.

#### 2018 - 12 ABC Law bills chaptered

- Four carve out bills.
- Two routine extender bills.
- Two departmental bills.
  - Chapter 230 Defines a hotel license.
  - Chapter 522 Relates to the production and sale of mead and braggot.
- Four legislative ABC Law bills.
  - Chapter 396 Requires applicants for all-night liquor licenses to notify local community boards of their intent to apply for such licenses.
  - Chapter 193 Relates to authorizing custom liquor production for a non-licensed individual by farm distilleries.
  - Chapter 440 Relates to electronic payment of fees of brand label registration and to change the time required for an application to be deemed approved.
  - Chapter 118 Relates to ice cream or other frozen desserts made with wine, beer or cider.

#### 2019 - 16 ABC Law bills chaptered

Seven carve out bills.

- One routine extender bill.
- One departmental bill.
  - Chapter 222 Relates to the filing of notifications with municipalities.
- Seven legislative ABC Law bills.
  - Chapter 655 Expands the amount of barrels that a restaurant brewer may sell at retail.
  - Chapter 340 Requires the state liquor authority to make available to the public information pertaining to any conditions it imposes on a licensed premises.
  - Chapter 724 Requires the posting of notice by certain establishments upon the submission of an application or application for renewal for a liquor license to sell liquor.
  - Chapter 188 Relates to authorizing the sale of certain beverages at games of chance.
  - Chapter 745 Authorizes retail licensees to purchase beer, wine or liquor by means of a business payment card.
  - Chapter 174 Relates to the sale of alcoholic beverages for consumption at the New York state fair.
  - Chapter 644 Relates to regulation and sale of alcoholic beverages at certain tribal casinos.

#### 2020 - Seven ABC Law bills chaptered

- Three carve out bills.
- One chapter amendment.
- Three legislative ABC Law bills.
  - Chapter 367 Requires certain licenses to brew or sell beer to include the certificate of authority number.
  - Chapter 39 Relates to information required to be included on certain notices.
  - Chapter 132 Authorizes the manufacture and sale of ice cream and other frozen desserts made with liquor.

#### 2021 - 11 ABC Law bills chaptered

- Four carve out bills.
- Two routine extender bills.
- Five legislative ABC Law bills.
  - Chapter 719 Relates to license and permit applications.
  - Chapter 3 Relates to certificate of authority numbers.
  - Chapter 738 Provides for alternative penalties for a first time violation of certain provisions of the alcoholic beverage control law.
  - Chapter 700 Authorizes the issuance of a temporary retail permit by the state liquor authority to licensees located in a municipality having a population of one million or more persons.
  - Chapter 238 Relates to permitting the use of municipal space for outdoor dining.

#### 2022 – 23 ABC Law bills chaptered

Twelve carve out bills.

- Four chapter amendments.
- One budget bill.
  - Chapter 55
    - Part K: Modernizes the ABC Law by allowing municipalities to receive notice by email.
    - Part P: Allows sale of alcoholic beverages to-go from an on-premises establishment under certain conditions.
    - Part DD: Allows farm manufacturers to permit other businesses to operate on their licensed premises.
    - Part EE: Allows liquor stores to remain open on Christmas Day.
    - Part FF: Allows police officers to serve as officers of certain club licenses.
    - Part GG: Creates a temporary state commission to study and recommend reforms to the ABC Law.
- One departmental bill.
  - Chapter 315 Provides distillers with the same privileges currently enjoyed by other
     New York manufacturers.
- Five legislative ABC Law bills.
  - Chapter 387 Promotes the education of the human trafficking information and referral hotline to assist persons in freeing themselves from severe acts of sex trafficking.
  - Chapter 255 Authorizes a licensee with a license to sell wine at retail for consumption on the premises to include the sale of shochu on such premise to be consumed under the same terms and conditions.
  - Chapter 392 Requires curriculum related to human trafficking awareness to be included in alcohol training awareness programs.
  - Chapter 703 Relates to licenses to sell liquor at off-premises catering establishments.
  - Chapter 326 Amends the definition of New York State labelled beer.

#### 1.4.2 SLA Departmental Bills (excluding routine extenders) and Governor Program Bills

STATUS	DEFINITION				
V	<ul><li>SLA departmental bill was chaptered.</li><li>Governor program bill was chaptered.</li></ul>				
×	<ul> <li>Remained in committee.</li> <li>Passed Assembly or Senate.</li> <li>Died on calendar.</li> </ul>				
×	Not introduced.				

- Program #17 Makes easier brand labeling of alcoholic beverages.
  - ✓ A8046/S5832 chapter 354.
- Program #18 Creates a farm cidery license.

✓ A8047/S5833 – chapter 384.

#### 2014

- <u>Departmental #117</u> repeals subdivision 9 of section 106 which limits licensure where certain physical egress/ingress access to a premises exists.
  - △ A9422/S6968 remained in committee.

#### 2016

- <u>Departmental #129</u> addresses vacancies on the SLA Board, allowing designation of acting Chair for continuity.
  - S7642/no same as − remained in committee.

#### 2017

- <u>Departmental #78</u> creates an exporter license for NYS alcoholic beverages to reach other markets.
  - S5382/no same as − remained in committee.
- <u>Departmental #79</u> amends the food standard for motels to no longer require a full restaurant menu and to be licensable under the tavern food standard.
  - ✓ A8174/S6119 chapter 230 of 2018.
- Departmental #82 provides farm distillers the same privileges as other farm manufacturers.
  - S5372/no same as − passed Senate.
- Departmental #87 allows roadside farm markets to sell in addition to NYS wine, NYS liquor, cider, and beer.
  - ≤ S5381/no same as died on calendar.
- <u>Departmental #88</u> allows electronic filing of brand label registrations and extends duration of effectiveness of brand labels from one year to three.
  - ✓ S6120/A8242 chapter 369.

- <u>Departmental #56</u> creates a temporary operating permit for all manufacturers during pendency of license application review.
  - △ A8025/no same as passed Assembly.
- <u>Departmental #57</u> amends the definition of wine to allow other agricultural products.
  - S6180/no same as − remained in committee.
  - <u>Departmental #58</u> allows other businesses, e.g., food trucks, to operate on the premises of a farm manufacturer.
    - ≤ S6181/no same as passed Senate.
- <u>Departmental #59</u> amends the ABC Law to make clear that LLCs, and not for profits are licensable entities under the law.

- Not introduced.
- <u>Departmental #60</u> amends municipal notice provisions to limit notice to 270 days before the filing of an application.
  - ✓ A8026/S6416 chapter 222.

#### 2020

- <u>Departmental #138</u> provides distillers the same privileges as other manufacturers.
  - Not introduced.
- <u>Departmental #139</u> allows multiple wholesale licenses owned by the same person or entity to be located at the same premises.
  - Not introduced.
- Departmental #162 makes various changes to better organize the ABC Law and to provide clarity
  in certain sections to the industry, as well as to move all carve outs to discrete sections for
  readability.
  - A10083/no same as remained in committee.

#### 2021

- <u>Departmental #65</u> makes various changes to better organize the ABC Law and to provide clarity in certain sections to the industry, as well as to move all carve outs to discrete sections for readability.
  - Not introduced.
- <u>Departmental #66</u> allows multiple wholesale licenses owned by the same person or entity to be located at the same premises.
  - Not introduced.
- <u>Departmental #67</u> amends the tied house law to resemble federal law and to make it easier to do business in New York where undue influence is not a factor.
  - Not introduced.

#### 2022

- <u>Departmental #138 of 2020</u> (as a legislative bill) provides distillers the same privileges as other manufacturers.

#### 1.4.3 Executive Budget Proposals

- S7505 Part Q Amends the food standard for hotels to no longer require a full restaurant menu and to be licensable under the tavern food standard.
  - Not included in executed budget.

- S7505 Part R Creates a new meadery license under the ABC Law.
  - Not included in executed budget.
- S7505 Part S Creates an exporter license for NYS alcoholic beverages to reach other markets.
  - Not included in executed budget.

#### 2020

- S7505 Part CC Creates a new higher education license for accredited colleges and universities to grow the craft beverage industry in New York.
  - Not included in executed budget.
- S7505 Part DD Allows movie theaters to be licensed to serve alcoholic beverages without the requirement of a full restaurant menu.
  - Not included in executed budget.
- S7505 Part EE Amends the tied house law to resemble federal law and to make it easier to do business in New York where undue influence is not a factor.
  - Not included in executed budget.
- S7505 Part FF Amends the hours of sale of alcoholic beverages at certain international airports.
  - ✓ Included as part of executed budget.

#### 2021

- S2505 Part Y Expands access to temporary retail permits for businesses applying for a license in NYC.
  - Not included in executed budget.
- S2505 Part Z Allows movie theaters to be licensed to serve alcoholic beverages without the requirement of a full restaurant menu.
  - Not included in executed budget.

- S8005 Part K Modernizes the ABC Law by allowing municipalities to receive notice by email.
  - ✓ Included as part of executed budget.
- S8005 Part L Removes certain unnecessary and superfluous information categories from the law requiring their collection at time of application for a liquor license.
  - Not included as part of executed budget.
- S8005 Part M Extends authorization for temporary retail permits.
  - ✓ Included as part of executed budget.
- S8005 Part P Allows sale of alcoholic beverages to-go from an on premises establishment under certain conditions.
  - ✓ Included as part of executed budget.

#### 2023

- S4005 Part K Directs the SLA to undertake an effort to reorganize the ABC Law to make it more logically structured and accessible to businesses and practitioners.
  - Intentionally omitted by both houses.
- S4005 Part L Creates a temporary wholesale operating permit to allow wholesale businesses to be open and operating in weeks while a determination on their license application is pending.
  - Intentionally omitted by Assembly/Modified by Senate.
- S4005 Part M Creates a 90 day period for changes in ownership structures to be approved or deemed approved by the Authority to expedite business changes.
  - Intentionally omitted by both houses.
- S4005 Part N Allows required municipal notice and SLA applications be submitted simultaneously instead of sequentially, saving applicants 30 days, while preserving municipality's input period.
  - Intentionally omitted by both houses.
- S4005 Part O Expands eligibility for temporary retail operating permits in NYC to more businesses to get them open and operating sooner, allows businesses operating under temporary permits to utilize credit terms to improve liquidity.
  - Intentionally omitted by Assembly/Modified by Senate.

## 1.5 Executive Summary

The Commission was tasked with voting to recommend changes to modernize and simplify the state's nearly 90-year-old alcoholic laws. Ten agenda topics and several additional open items were discussed during the three Commission meetings. For Commission discussions that resulted in potential legislative consideration, the Commission conducted a vote on the topic. Any topic that received a majority vote is identified herein as a recommendation of the Commission. A majority vote for the Commission is defined as a vote for the affirmative of nine out of 16 Commission members appointed as representatives of the alcoholic beverage industry. The Commission members voted on 28 questions that resulted in 18 recommendations to be considered for future legislative changes by the New York State Legislature.

<u>Table 1</u> provides a summary of each question that resulted in a majority vote and associated recommendation by the Commission. <u>Table 2</u> below provides a summary of each question that did not receive a majority vote and did not result in a recommendation. For detailed topic information and associated Commission member voting comments, see <u>Sections 4</u> through 14 of this report.

Please note that the question numbering is based on the Commission Meeting and associated agenda topic numbering and, therefore, gaps may appear in the numbering sequence.

TABLE 1, VOTING TOPICS THAT RECEIVED MAJORITY VOTE FOR RECOMMNEDATIONS

YES	NO	ABSTAIN	TOPIC QUESTION/RECOMMENDATIONS OF THE COMMISSION
15	0	1	Amendments Question 1: As a commission member, do you recommend that New York State amend section 110-b of the ABC Law (Notification to Municipalities) to allow applications to be submitted to the SLA before the 30 day municipal notice period runs (while also preventing the SLA from issuing a license before the 30 day municipal notice period has run)?  Recommendation: Allow applications to be submitted simultaneous with municipal notice.
13	0	3	Amendments Question 2: As a commission member, do you recommend, that New York State amend section 97-a (Temporary Retail Permit) to allow new on premises retail businesses in New York City that are subject to the 500 Foot Law to obtain a temporary retail permit after a positive public interest recommendation by an Administrative Law Judge (ALJ) after a 500 Foot Law hearing, notwithstanding the fact that the location has not been licensed in last two years?  Recommendation: Do away with the requirement of licensure within 2 years for New York City/500 ft temp permit applications.
14	0	2	Amendments Question 3: As a commission member, do you recommend that New York State amend section 99-d (Miscellaneous Fees) to allow corporate and other ownership changes to be made prior to approval for the change being granted by the SLA?  Recommendation: Allow corporate changes to take effect prior to application for approval.
16	0	0	Resources Question 4: As a commission member, do you recommend that New York State provide all the resources necessary for the SLA to perform its responsibilities in a timely manner?  Recommendation: Ensure SLA is properly funded.
9	4	3	Exclusive Privileges Question 4: Should the law be amended to allow wine/liquor stores to sell items in addition to those listed exhaustively in section 63 of the ABC Law?  Recommendation: Allow additional items to be sold in liquor/wine stores.
10	6	0	Purchasing Amendment Question 3: As a commission member, do you recommend that New York State amend the ABC Law to allow on premise retailers the ability to purchase from off premises retailers, subject to limitations?  Recommendation: Allow on premises retailers to purchase from off premises retailers in limited fashion.
10	5	1	Store Ownership Question 2: Should the law be amended to allow an individual to own more than one liquor store in New York State up to a certain limit on the number of licenses they can have?  Recommendation: Allow an individual to own more than one but not unlimited numbers of liquor stores.

YES	NO	ABSTAIN	TOPIC QUESTION/RECOMMENDATIONS OF THE COMMISSION
15	1	0	Sales Hours Question 1: As a commission member, do you recommend that New York State amend section 105 of the ABC Law (Provisions Governing Licensees to Sell at Retail for Consumption Off the Premises) to allow off premises liquor stores to open at 10:00 AM on Sundays (currently noon) — the same as on premises retailers?  Recommendation: 10 AM Liquor Store Sales.
12	2	2	Sales Hours Question 2: As a commission member, do you recommend that
			New York State not amend section 106 of the ABC Law (Provisions Governing Licensees to Sell at Retail for Consumption On the Premises) to expand or decrease on premises operating hours?
			Recommendation: No change to on-premises hours.
14	0	2	Sales Hours Question 4: As a commission member, do you recommend that New York State amend section 99 of the ABC Law (Special Permit to Remain Open During Certain Hours of the Morning – more commonly known as an All Night Permit) to replace "any week day" with "any day" to allow issuance of such permits on Saturday and Sunday mornings?
			Recommendation: Allow all night permits to be issued on weekends.
13	2	1	Barriers to Entry Question 1: Should the law be amended to loosen New York's tied house restrictions?  Recommendation: Loosen the Tied house laws.
15	0	1	Barriers to Entry Question2: Should the law be amended to eliminate the 500 Foot Law?  Recommendation: Eliminate the 500 Foot Law.
15	1	0	Barriers to Entry Question3: Should the law be amended to eliminate the 200 Foot Law?
			Recommendation: Eliminate the 200 Foot Law.
10	5	1	Barriers to Entry Question 4: Should the "public convenience and advantage" standard for liquor store license approval be amended to a "good cause" for disapproval standard?  Recommendation: Change liquor license approval standard to good cause for
			disapproval (from public convenience and advantage for approval).
14	0	2	Open Discussion Item Question 5: Should the Legislature remove obsolete portions of the ABC Law?
			Recommendation: Remove obsolete provisions of law.
14	1	1	Open Discussion Item Question 6: Should the law be amended to create a temporary permit for licensees that allows the service of beer, wine, cider, and liquor?  Recommendation: Create a temporary beer, wine, cider, and liquor permit for licensees.

YES	NO	ABSTAIN	TOPIC QUESTION/RECOMMENDATIONS OF THE COMMISSION
13	1	2	Open Discussion Item Question 7: Should the law be amended to create temporary operating permits for wholesale license holders who have applied for a full license?  Recommendation: Create a temporary wholesale permit.
9	7	0	Open Discussion Item Question 8: Should the Legislature review all licensing fees for appropriateness? <u>Recommendation: Review licensing fee structure.</u>

TABLE 2, VOTING TOPICS THAT DID NOT RECEIVE MAJORITY VOTE - NO RECOMMENDATION ISSUED

YES	NO	ABSTAIN	TOPIC QUESTION
1	14	1	Control State Question: As a commission member, do you recommend that New York State should consider adopting a "control state" state model or other regulatory model?
			No Recommendation Issued: Control State
6	9	1	Exclusive Privileges Question 1: Should the law be amended to allow wine (currently only sold for off premises consumption by wine/liquor stores) to be sold for off premises consumption by grocery stores?
			No Recommendation Issued: Allow wine to be sold in grocery stores.
7	8	1	Exclusive Privileges Question 2: Should the law be amended to allow liquor (currently only sold for off premises consumption by liquor stores) to be sold for off premises consumption by grocery stores?
			No Recommendation Issued: Allow liquor to be sold in grocery stores.
6	9	1	Exclusive Privileges Question 3: Should the law be amended to allow beer (currently only sold for off premises consumption by grocery stores, drug stores and C wholesalers) to be sold for off premises consumption by wine/liquor stores?  No Recommendation Issued: Allow beer to be sold in liquor stores.
6	9	1	Exclusive Privileges Question 5: Should the law be amended to allow ready to drink distilled products with an alcohol by volume of 7% or less to be sold in grocery stores?  No Recommendation Issued: Allow ready to drink cocktails to be sold in grocery stores.
6	9	1	Store Ownership Question 1: Should the law be amended to allow an individual to own more than one liquor store in New York State without any limit on the number of licenses they can have?  No Recommendation Issued: Allow an individual to own any number of liquor stores.
1	15	0	Co-op Buying Question 1: As a commission member, do you recommend that New York State amend the ABC Law to allow off premise licensees the ability to form a purchasing cooperative, subject to limitations?

YES	NO	ABSTAIN	TOPIC QUESTION
			No Recommendation Issued: Allow cooperative purchasing by licensed off premises retailers.
1	14	1	Co-op Buying Question 2: As a commission member, do you recommend that New York State amend the ABC Law to allow on premise licensees the ability to form a purchasing cooperative, subject to limitations?  No Recommendation Issued: Allow cooperative purchasing by licensed on premises retailers.
8	8	0	DTC Question: Should manufacturers other than wineries – who are already permitted – be allowed to ship product directly to consumers in NYS, and as a corollary matter of constitutional law, should out of state manufactures have the same privilege?  No Recommendation Issued: Allow direct to consumer (DTC) sales for manufacturers.
8	5	3	Sales Hours Question 3: As a commission member, do you recommend that New York State amend section 105-a of the ABC Law (Provisions Governing Licensees to Sell at Retail for Consumption Off the Premises) to allow off premise beer, cider, and wine product sales 24 hours/day for all days (currently may not sell between 3:00 AM and 8:00 AM on Sunday)?  No Recommendation Issued: 24 hour grocery store beer sales.

## 2 Current State of the Market for Alcoholic Beverages in New York

To assess the current state of the market for alcoholic beverages in New York State (NYS), the research team employed various research and economic analysis techniques and methodologies. This current-state assessment used standard econometric models first developed by the U.S. Forest Service, and now maintained by IMPLAN Group, LLC.<sup>18</sup> Data used in this current state-assessment and analysis came from:

- DTF
- U.S. Department of the Treasury Alcohol and Tobacco Tax and Trade Bureau (TTB).
- IMPLAN.
- Other industry sources.

IMPLAN datasets are gathered from numerous sources comprising roughly 100 datasets. IMPLAN's main raw data resources are from:

- The Bureau of Economic Accounts National Income and Product Accounts (NIPAs), Benchmark Input-Output (I-O) tables (released every five years), Regional Economic Accounts (REA) (released annually but lag a year), and GDP-by-State Series (also lag one year).
- USDA Census of Agriculture (released every five years), National Agricultural Statistics Service (NASS), and Economic Research Service (ERS).

<sup>&</sup>lt;sup>18</sup> IMPLAN GROUP, LLC. IMPLAN 2022. Huntersville, NC. IMPLAN.com.

- Bureau of Labor Statistics (BLS) Quarterly Covered Employment and Wages (QCEW) Data and Consumer Expenditure Survey (CES) (lag at least one year, sometimes more).
- Census Bureau County Business Patterns (CBP) (lag one-year), Annual Survey of Manufactures (ASM), U.S.-level construction sector output, U.S.-level foreign exports and imports, and Census of Government Finances.<sup>19</sup>

IMPLAN's data sources and processes for conversion into consistent form can be reviewed in more detail in their IMPLAN Data Overview & Sources document. <sup>20</sup> "The North American Industry Classification System (NAICS) is the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy." <sup>21</sup> NAICS Codes of alcohol industry sector and their description for those industries are used in this assessment.

Note: The values presented in this section have been rounded to the nearest whole value.

#### 2.1 Retail Sales Volume in NYS

- (a) The current state of the market for alcoholic beverages in New York, including but not limited to:
  - (i) The amount of alcoholic beverages being sold in the state.

**Methodology:** To assess the amount of alcoholic beverages being sold in the state, it was agreed that the research team would use NYS tax data. There are separate taxes paid on alcoholic beverages that are reported individually, which allows the research team to determine the amount sold. The NYS tax data being analyzed is for taxable sales and purchases of the retail tier and does not apply to the wholesale tier.

**Summary:** According to industry output data within IMPLAN<sup>22</sup>, from 2018-2022<sup>23</sup>, total sales of alcoholic beverages has vacillated (see <u>Table 3</u>). A low occurred in 2020, after the pandemic began, with total sales and purchases decreasing 29% from 2019. With the closing of on-premises retail operations, as expected, restaurants and bars experienced the largest decrease in sales — between 40% and 59%, respectively. Grocery stores in NYS did not see a substantial effect on sales during the pandemic between 2019 and 2020. There was a nominal decrease in sales, by 1%, which may be due to grocery stores' continued ability to sell beer and other malted beverages in NYS versus bars and restaurants. The NYS market for alcoholic beverages rebounded in 2021, with total sales and purchases close to 98% of the highest sales and purchases in year 2019.

<sup>&</sup>lt;sup>19</sup> IMPLAN GROUP, LLC. Research & Reports, IMPLAN Data Overview & Sources, IMPLAN Group, LLC. Retrieved from <a href="http://implan.com/wp-content/uploads/IMPLAN-Data-Overview-and-Sources.pdf">http://implan.com/wp-content/uploads/IMPLAN-Data-Overview-and-Sources.pdf</a> on 2/15/2023.

<sup>&</sup>lt;sup>20</sup> IMPLAN GROUP, LLC. Research & Reports, IMPLAN Data Overview & Sources, IMPLAN Group, LLC. Retrieved from <a href="http://implan.com/wp-content/uploads/IMPLAN-Data-Overview-and-Sources.pdf">http://implan.com/wp-content/uploads/IMPLAN-Data-Overview-and-Sources.pdf</a> on 2/15/2023.

<sup>&</sup>lt;sup>21</sup> US Census Bureau. Last Revised 3/10/2023. Retrieved from

https://www.census.gov/naics/#:~:text=The%20North%20American%20Industry%20Classification,to%20the%20U.S.%20business%20economy on 3/10/2023.

<sup>&</sup>lt;sup>22</sup> IMPLAN GROUP, LLC. IMPLAN 2022. IMPLA Data Sources. Huntersville, NC. IMPLAN.com.

<sup>&</sup>lt;sup>23</sup> The IMPLAN model is based on a series of national input-output accounts known as RIMS II. These data are developed and maintained by the U.S. Department of Commerce, Bureau of Economic Analysis as a policy and economic decision analysis tool.

TABLE 3, TOTAL TAXABLE SALES AND PURCHASES 2018 – 2023 BY NAICS CODE

TOTAL TAXABLE SALES AND FORCHASES 2018 - 2023 BY NAICS CODE						
SALES TAX YEAR	NAICS CODE <sup>24</sup>	NAICS DESCRIPTION	PURCHASES			
2022 - 2023	4244	Wholesale grocery	\$579,293,319			
2022 - 2023	7225	Restaurants eating places	\$23,462,919,858			
2022 - 2023	7224	Drinking Places	\$1,184,324,515			
2022 - 2023	4453	Beer wine liquor stores	\$2,521,951,831			
2022 - 2023	4248	Beer wine distill wholesale	\$100,542,085			
2022 - 2023	4451	Grocery stores	\$5,750,381,554			
2021 - 2022	4244	Wholesale grocery	\$918,132,982			
2021 - 2022	7225	Restaurants eating places	\$39,630,215,550			
2021 - 2022	7224	Drinking Places	\$1,798,077,100			
2021 - 2022	4453	Beer wine liquor stores	\$5,419,586,016			
2021 - 2022	4248	Beer wine distill wholesale	\$181,491,593			
2021 - 2022	4451	Grocery stores	\$10,692,350,888			
2020 - 2021	4244	Wholesale grocery	\$782,874,382			
2020 - 2021	7225	Restaurants eating places	\$25,114,469,508			
2020 - 2021	7224	Drinking Places	\$671,396,979			
2020 - 2021	4453	Beer wine liquor stores	\$5,651,708,629			
2020 - 2021	4248	Beer wine distill wholesale	\$173,092,276			
2020 - 2021	4451	Grocery stores	\$10,275,686,171			
2019 - 2020	4244	Wholesale grocery	\$1,015,613,947			
2019 - 2020	7225	Restaurants eating places	\$41,541,474,855			
2019 - 2020	7224	Drinking Places	\$2,141,812,349			
2019 - 2020	4453	Beer wine liquor stores	\$4,575,428,602			
2019 - 2020	4248	Beer wine distill wholesale	\$173,407,811			
2019 - 2020	4451	Grocery stores	\$10,327,360,260			
2018 - 2019	4244	Wholesale grocery	\$878,585,272			
2018 - 2019	7225	Restaurants eating places	\$39,688,717,745			
2018 - 2019	7224	Drinking Places	\$2,008,921,701			
2018 - 2019	4453	Beer wine liquor stores	\$4,376,197,436			
2018 - 2019	4248	Beer wine distill wholesale	\$166,466,676			
2018 - 2019	4451	Grocery stores	\$9,896,582,203			

<sup>24</sup> NAICS Code for 4248 (Beer wine distill wholesale) has not been compiled for the complete sales tax year of 2022 - 2023.

#### 2.2 On- and Off-Premises Sales Volume Breakdown

#### (a) The current state of the market for alcoholic beverages in New York, including but not limited to:

(ii) The distribution of sales of alcoholic beverages in the state to consumers by both on- and offpremises retailers.

<u>Methodology:</u> To assess the distribution of sales of alcoholic beverages in the state to consumers by both on- and off-premises retailers, it was agreed that the research team would use NAICS codes to break down the on- and off-premises categories. The research team assumed that on-premises retail point-of-sale systems break down sales taxes based on food and alcohol sales.

<u>Summary:</u> The analysis of sales and purchases data for both on- and off-premises retailers was derived from IMPLAN. The IMPLAN data for state and local government sales and revenues are obtained from a combination of the five-year Census of State and Local Government Finances, the Annual Survey of State and Local Government Finances, and the Annual Survey of State Government Tax Collections. State and local government expenditures are estimated using NIPA control totals and the Benchmark I-O distribution.<sup>25</sup>

The COVID-19 pandemic exacted an unimaginable toll on the restaurant industry, beginning with the state-mandated shutdown to the effects of reinventing themselves, often several times, while slowly reopening with takeout menus and elaborate year-round outdoor dining. As expected, restaurants and bars had a significant decrease in sales — 40% and 69% respectively (see <u>Table 4</u> and <u>Table 5</u>). Grocery stores in NYS experienced minimal effects, with only a small decrease in sales between 2019 and 2020, which is likely due to them not being subjected to the same closures as the restaurant industry — including their ability to sell beer and other malted beverages.

Note: Sales Tax Year 2022-23 contains only two quarters of data. Additionally, cider data has been combined into the wine data and has just begun to be separated into its own category in the last year.

TABLE 4, ON-PREMISES SALES VOLUME BREAKDOWN

ON-PREMISES RETAILERS								
Restaurants Eating Places				Drinking Places				
Sales Tax Year	NAICS Code	TOTAL Taxable Sales and Purchases	% Change	Sales Tax Year	NAICS Code	TOTAL Taxable Sales and Purchases	% Change	
2022 - 2023	7225	\$23,462,919,858	TBD	2022 - 2023	7224	\$1,184,324,515	TBD	
2021 - 2022	7225	\$39,630,215,550	58%	2021 - 2022	7224	\$1,798,077,100	168%	
2020 - 2021	7225	\$25,114,469,508	-40%	2020 - 2021	7224	\$671,396,979	-69%	
2019 - 2020	7225	\$41,541,474,855	5%	2019 - 2020	7224	\$2,141,812,349	7%	
2018 - 2019	7225	\$39,688,717,745	0%	2018 - 2019	7224	\$2,008,921,701	0%	

<sup>&</sup>lt;sup>25</sup> IMPLAN GROUP, LLC. IMPLAN 2022. IMPLAN Data Sources. Retrieved from <a href="https://support.implan.com/hc/en-us/articles/115009674448-IMPLAN-Data-Sources">https://support.implan.com/hc/en-us/articles/115009674448-IMPLAN-Data-Sources</a> on 3/7/2023.

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TABLE 5, OFF-PREMISES SALES VOLUME BREAKDOWN

OFF-PREMISES RETAILERS									
Wholesalers Grocery				Grocery Stores					
Sales Tax Year	NAICS Code	TOTAL Taxable Sales and Purchases	% Change	Sales Tax Year	NAICS Code	TOTAL Taxable Sales and Purchases	% Change		
2022 - 2023	4244	\$579,293,319	TBD	2022 - 2023	4451	\$5,750,381,554	TBD		
2021 - 2022	4244	\$918,132,982	17%	2021 - 2022	4451	\$10,692,350,888	4%		
2020 - 2021	4244	\$782,874,382	-23%	2020 - 2021	4451	\$10,275,686,171	-1%		
2019 - 2020	4244	\$1,015,613,947	16%	2019 - 2020	4451	\$10,327,360,260	4%		
2018 - 2019	4244	\$878,585,272	0%	2018 - 2019	4451	\$9,896,582,203	0%		
	OFF-PREMISES RETAILERS								
Beer Wine Distilled Spirits Wholesales				Beer Wine Liquor Stores					
Sales Tax Year	NAICS Code	TOTAL Taxable Sales and Purchases	% Change	Sales Tax Year	NAICS Code	TOTAL Taxable Sales and Purchases	% Change		
2022 - 2023	4248	\$100,542,085	TBD	2022 - 2023	4453	\$2,521,951,831	TBD		
2021 - 2022	4248	\$181,491,593	5%	2021 - 2022	4453	\$5,419,586,016	-4%		
2020 - 2021	4248	\$173,092,276	0%	2020 - 2021	4453	\$5,651,708,629	24%		
2019 - 2020	4248	\$173,407,811	4%	2019 - 2020	4453	\$4,575,428,602	5%		
2018 - 2019	4248	\$166,466,676	5%	2018 - 2019	4453	\$4,376,197,436	0%		

## 2.3 Production Volume in NYS – Export Volume

#### (a) The current state of the market for alcoholic beverages in New York, including but not limited to:

(iii) The levels of production of alcoholic beverages by manufacturers in the state and how much of that production is sold in the state versus how much is exported.

<u>Methodology:</u> To assess the levels of production of alcoholic beverages by manufacturers in the state and how much of that production is sold in the state versus how much is exported, it was agreed that the reporting would be based on the following parameters:

- A \$500,000 minimum output production value threshold.
- Manufacturers will be broken out into three categories: breweries, wineries, and distilleries.
- When evaluating how much is being exported out of state, the data will be limited to U.S. only and does not include international sales.

<u>Summary:</u> For the trade data analysis, IMPLAN was used. IMPLAN provides inter-county trade flow data for which there is no comprehensive raw data source. This is done using a calibrated and doubly constrained gravity model. These trade flow data (along with commuting data) allow for multi-regional input-output (MRIO) analysis, which estimates the effects of economic activity in one region across any number of linked regions.<sup>26</sup>

Alcoholic beverage manufacturers have traditionally been classified into three main groups: breweries, wineries, and distilleries. The unit of measure for the production of each of these is variable (gallon verses barrel) and, as such, that production is normalized by the dollar value of that production. Using IMPLAN for the year 2019, the level of production for distilled spirits, beer, and wine — as well as where they were sold — have been extracted.<sup>27</sup> All three production levels for alcoholic beverages that were manufactured in NYS total of \$1.6 billion in sales for 2019, with relatively equal amounts in total trade values being sold in state and out of state (see <u>Table 6</u>, <u>Table 7</u>, and <u>Table 8</u>).

TABLE 6, PRODUCTION LEVELS OF ALCOHOLIC BEVERAGES BY MANUFACTURES IN THE STATE

COMMODITY DESCRIPTION	TRADE VALUE	% OF TOTAL VALUE
NY Distilled Spirits 2019	\$197,208,149	12%
NY Beer 2019	\$1,006,941,006	60%
NY Wine 2019	\$470,072,812	28%
Total Production	\$1,675,221,967	100%

TABLE 7, PRODUCTION LEVELS SOLD IN STATE

COMMODITY DESCRIPTION	TRADE VALUE	% OF TOTAL VALUE
Trade Flow Distilled Spirits NY to NY 2019	\$11,751,414	2%
Trade Flow Beer NY to NY 2019	\$563,826,408	67%
Trade Flow Wine NY to NY 2019	\$261,145,007	31%
Total Sold In State	\$836,722,829	100%

TABLE 8, PRODUCTION LEVELS SOLD OUT OF STATE (U.S. ONLY)

Commodity Description	Trade Value	% Of Total Value
Trade Flow Distilled Spirits from NY to other States 2019	\$185,456,735	22%
Trade Flow Beer from NY to other States 2019	\$443,114,598	53%
Trade Flow Wine from NY to other States 2019	\$208,927,805	25%
Total Sold Out of State (US Only)	\$837,499,138	100%

<sup>&</sup>lt;sup>26</sup> IMPLAN GROUP, LLC. IMPLAN 2022. IMPLA Data Sources. Retrieved from <a href="https://support.implan.com/hc/en-us/articles/115009674448-IMPLAN-Data-Sources">https://support.implan.com/hc/en-us/articles/115009674448-IMPLAN-Data-Sources</a> on 3/7/2023.

<sup>&</sup>lt;sup>27</sup> This analysis excludes the value of inventory within the year as it is assumed there is a traditional first in, first out inventory effect and as such inventory on hand value is constant.

### 2.4 Import Volume into NYS

#### (a) The current state of the market for alcoholic beverages in New York, including but not limited to:

(iv) The amount of alcoholic beverages imported into the state.

<u>Methodology:</u> To assess the amount of alcoholic beverages being imported into the state, it was agreed that alcohol imported from outside the U.S. would not be considered in this analysis. The research team analyzed the trade flows of distilled spirits, beer, and wine into NYS from out-of-state manufacturers.

<u>Summary:</u> As noted above, this analysis used IMPLAN data to derive trade flows. Again, IMPLAN provides inter-county trade flow data, for which there is no comprehensive raw data source. This is done using a calibrated and doubly constrained gravity model. These trade flow data (along with commuting data) allow for MRIO analysis, which estimates the effects of economic activity in one region across any number of linked regions.<sup>28</sup>

Despite robust levels of manufacturing of alcohol among NYS distilleries, breweries, and wineries, \$1.4 billion of alcoholic beverages were imported to the state in 2019. It is not surprising that "Distilled spirits" was the largest import category of alcohol, as there are limited distillers within the state as compared to wineries and breweries. According to SLA, New York has 537 licensed wineries, 723 licensed breweries, 276 licensed distilleries, 73 licensed cideries, and 18 licensed meaderies. <sup>29</sup>

TRADE FLOWS COMMODITY DESCRIPTION	TRADE FLOWS TRADE VALUE	% OF TOTAL VALUE
Trade Flow Distilled Spirits into NYS	\$382,604,906	27%
Trade Flow Beer into NYS	\$541,776,950	38%
Trade Flow Wine into NYS	\$506,065,152	35%
Total	\$1,430,447,008	100%

TABLE 9, IMPORT LEVELS INTO NYS (U.S. ONLY)

#### 2.5 Tax Revenues Derived

#### (a) The current state of the market for alcoholic beverages in New York, including but not limited to:

(v) The revenues earned by the state and localities from excise taxes on alcohol, as well as sales taxes on the sale of alcoholic beverages.

<u>Methodology:</u> To assess the revenues earned by the state and localities from excise taxes on alcohol, as well as sales taxes on the sale of alcoholic beverages, it was agreed that the research team would use sales and excise taxes over the last 10 years from public data provided by DTF.

<sup>&</sup>lt;sup>28</sup> IMPLAN GROUP, LLC. IMPLAN 2022. IMPLA Data Sources. Retrieved from <a href="https://support.implan.com/hc/en-us/articles/115009674448-IMPLAN-Data-Sources">https://support.implan.com/hc/en-us/articles/115009674448-IMPLAN-Data-Sources</a> on 3/7/2023.

<sup>&</sup>lt;sup>29</sup> SLA. Active Craft Manufacturers, New York State Liquor Authority, File: Craft-Manufacturers-Active-03-17-2023.xlsx data retrieved on 3/17/2023.

<u>Summary:</u> Alcoholic beverage sales and excise and use tax collections are reported DTF. This agency has standard business tax collection tables published every year in their data set list.<sup>30</sup> The analysis below used data directly from the department datasets. NYS not only collects sales tax on both on- and off-premises alcohol purchases, but there is also excise tax for alcohol purchases by licensed vendors within NYS. According to DTF,<sup>31</sup> total net tax collections on alcohol have increased year over year for the past 10 years (see <u>Table 10</u>). Even with the COVID-19 pandemic and various supply chain issues, alcohol sales have continued to increase. Although of the major alcohol groups, both beer and wine had decreasing revenues in years 2020 and 2021, total liquor sales have increased significantly from 2020 to 2021, accounting for the overall increase in tax collections in 2021.

<sup>&</sup>lt;sup>30</sup> NYS Department of Taxation and Finance. Page last reviewed or updated 9/26/2022. 2022 Data sets. Retrieved from https://www.tax.ny.gov/research/stats/statistics/open-data.htm on January 20, 2023.

<sup>&</sup>lt;sup>31</sup> NYS Department of Taxation and Finance. Alcoholic Beverage Tax Collections by Type. Fiscal Years 2012-2021. Retrieved from <a href="https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.tax.ny.gov%2Fpdf%2F2020-2021%2520collections%2FTable%252012.xlsx&wdOrigin=BROWSELINK">https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.tax.ny.gov%2Fpdf%2F2020-2021%2520collections%2FTable%252012.xlsx&wdOrigin=BROWSELINK</a> on March 20, 2023.

TABLE 10, ALCOHOLIC BEVERAGE TAX COLLECTIONS BY TYPE

ALCOHOLIC BEVERAGE TAX COLLECTIONS BY TYPE	FISCAL YEARS 2012 – 2021									
		Collections								
Beverage Type	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Beer	\$44,824,109	\$47,450,810	\$46,526,560	\$46,055,217	\$46,392,401	\$46,629,793	\$45,513,258	\$45,522,570	\$43,220,411	\$43,206,928
Liquor – Total	\$174,961,853	\$180,523,321	\$184,417,825	\$185,143,383	\$187,979,230	\$190,755,615	\$192,345,059	\$196,438,468	\$195,941,606	\$207,694,105
Liquor over 24% alcohol	\$166,412,845	\$172,031,169	\$176,389,061	\$177,364,957	\$180,449,797	\$183,395,017	\$184,978,460	\$188,773,316	\$188,606,248	\$196,346,900
Liquor not over 24% alcohol	\$8,549,007	\$8,492,152	\$8,028,765	\$7,778,426	\$7,529,433	\$7,360,597	\$7,366,598	\$7,665,152	\$7,335,358	\$11,347,205
Wine – Total	\$19,142,745	\$19,326,537	\$19,985,376	\$19,703,220	\$20,197,899	\$20,304,204	\$20,468,647	\$21,491,964	\$21,485,472	\$21,374,889
Naturally sparkling	\$1,014,332	\$1,056,025	\$1,130,581	\$1,189,749	\$1,267,552	\$1,345,485	\$1,390,321	\$992,648	\$1,393,363	\$949,579
Artificially carbonated	\$35,693	\$53,093	\$343,615	\$51,919	\$63,705	\$47,137	\$47,641	\$41,726	\$78,536	\$59,234
Still	\$18,064,290	\$18,176,725	\$18,425,596	\$18,322,176	\$18,702,322	\$18,771,428	\$18,880,866	\$20,455,835	\$19,856,191	\$20,185,612
Cider	\$28,431	\$40,695	\$85,584	\$139,376	\$164,319	\$140,155	\$149,819	\$140,155	\$157,382	\$180,464
TOTAL	\$238,928,707	\$247,300,668	\$250,929,761	\$250,901,820	\$254,569,529	\$257,689,612	\$258,326,964	\$263,453,001	\$260,647,489	\$272,275,922
Reconciliations:  Prior period adjustments and administrative charges from N.Y.  City Tax	-\$647,406	-\$1,060,685	-\$597,572	-\$19,470	\$17,967	\$27,141	\$924,983	-\$1,036,128	-\$1,629,281	-\$1,189,277
Floor Taxes 1/	\$368	\$74	-\$500	\$0	-\$30	\$0	\$0	\$0	\$0	\$0
TOTAL NET COLLECTIONS	\$238,281,669	\$246,240,057	\$250,331,689	\$250,882,350	\$254,587,467	\$257,716,752	\$259,251,947	\$262,416,873	\$259,018,207	\$271,086,645

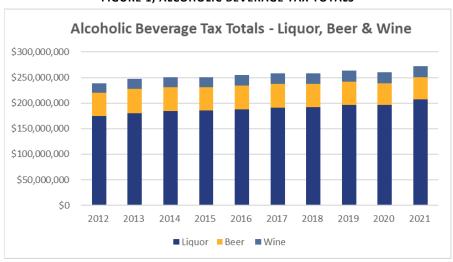


FIGURE 1, ALCOHOLIC BEVERAGE TAX TOTALS

# 3 Relative Health of the Various Sectors

This analysis estimates the economic contributions made by the winery, brewery, and distillery industries to the NYS economy in 2019. It uses standard econometric models first developed by the U.S. Forest Service and now maintained by IMPLAN Group, LLC. Data used in this analysis came from DTF, TTB, original survey research, IMPLAN,<sup>32</sup> and other industry sources.

The goal of this analysis is to provide an overall view of the economic health and impact on NYS for each of the alcohol sectors (beer, wine, and distilled spirits/liquor). Aspects such as industry tourism or charitable contributions that create additional effects are outside the scope of this analysis. Although this report will be analyzed in 2023 dollars, this analysis uses 2019 data due to the adverse economic effects the coronavirus (COVID-19) pandemic had on all industries within NYS. The data in year 2019 provides for a more typical impact year.<sup>33</sup>

One consideration to keep in mind with this analysis is that it defines these industries as only those licensed to produce, distribute, and sell alcoholic products within NYS, and only those jobs associated with that production are included within the specific industry analysis. The wholesale distribution of alcoholic beverages is assumed in the industry impact analysis of each alcohol manufacturing category and is not separately analyzed (see <a href="Table 11">Table 11</a> for NAICS Codes of Alcohol Industry Sector and their description for those industries included in this analysis). On- and off-premises retailing of alcoholic beverages are examined separately as to their economic impact, as that can be directly analyzed. In NYS, off-premises sale of wine and spirits is only allowed at liquor stores, while beer is not sold at liquor stores and must be sold at grocery or convenience stores. Retailing of alcoholic beverages includes on- and off-premises sales.

<sup>&</sup>lt;sup>32</sup> IMPLAN GROUP, LLC. IMPLAN 2022. Huntersville, NC. IMPLAN.com.

<sup>&</sup>lt;sup>33</sup> Both the 2021 and 2019 data were run in IMPLAN for verification. Although the 3-tier alcohol beverage industry had positive effects after COVID 19 where net gains were still positive, there was a contraction in amount produced and shipped due to supply chain and other issues. There were also lagged tax income and subsidies that also impacted the industry.

The alcohol industry in NYS is composed of three tiers — manufacturers, wholesalers, and retailers — collectively referred to as the three-tiered system. The first tier is comprised of the manufacturers — wineries, breweries, and distilleries that produce alcohol. Once the alcohol (wine, beer, and distilled spirits) is produced and packaged, it is ready for the second tier of the industry, comprised of the wholesalers who sell and distribute to the retailers. In some cases, the producers self-distribute their products instead of relying on a third party for distribution, or they can direct ship. The third tier is comprised of retailers — including on-premise retailers such as restaurants and bars, and off-premise retailers such as wine and liquor stores, convenience stores, and grocery stores.

TABLE 11, NAICS CODES OF ALCOHOL INDUSTRY SECTORS

	OFF PREMISES RETAIL			
NAICS Code	Description			
44511	Supermarkets and Other Grocery (except Convenience) Stores			
44512	Convenience Stores			
44531	Beer, Wine, and Liquor Stores			
	ON PREMISES RETAIL			
NAICS Code	Description			
72251	Restaurants and Other Eating Places			
	MANUFACTURERS			
NAICS Code	Description			
31212	Breweries: This industry comprises establishments primarily engaged in brewing beer, ale,			
	malt liquors, and nonalcoholic beer.			
31213	Wineries: This industry comprises establishments primarily engaged in manufacturing wine or			
	brandy, from grapes or other fruit. Establishments primarily engaged in growing grapes and			
	manufacturing wine; manufacturing wine from purchased grapes and other fruit; blending			
	wines; or distilling brandy are included.			
31214	Distilleries: This industry comprises establishments primarily engaged in distilling liquor,			
	except brandy; blending liquor; or blending and mixing liquor and other ingredients.			

Our analysis employs the use of IMPLAN for economic modeling, which is designed to run on input from specific economic factors. The results of an I-O analysis are broken down into direct, indirect, and induced effects. The IMPLAN Data Library contains direct measures of labor and output, such as total employment, labor income, proprietor income, and other economic indicators. These values are collected from the U.S. Department of Labor's ES-202 reports that are used by IMPLAN to provide annual average wage and salary establishment counts, employment counts, and payrolls at the county level. Total output is the value of production by industry in a given state. It is estimated by IMPLAN from sources such as the Bureau of Economic Analysis (BEA) in its Regional Input-Output Modeling System (RIMS II) series, where no census or government surveys are available. IMPLAN uses models such as the Bureau of Labor Statistics' growth model to estimate the missing output. IMPLAN data also includes information on income received by the federal, state, and local governments and produces estimates for the following taxes at the federal level: corporate income, payroll, personal income, estate and gift, excise taxes, customs duties, fines, and fees, etc. State and local tax revenues include estimates of corporate profits, property, sales, severance, estate and gift, and personal income taxes, as well as licenses, fees, and certain payroll taxes.<sup>34</sup>

<sup>&</sup>lt;sup>34</sup> IMPLAN GROUP, LLC. IMPLAN 2022. Huntersville, NC. IMPLAN.com.

The 2019 industry labor, employment, and output data for breweries, wineries, and distilleries from IMPLAN's Data Library were used as input in a detailed economic analysis of each industry. This modeling approach was discussed with economists at IMPLAN to verify the validity of the approach. This modeling was completed for all three industries within NYS. This modeling estimates the direct, indirect, and induced impacts of each industry with regard to employment, output, and taxes. These impacts are a result of the affects along the value chain. The percentage of output (regional product margin) for each industry along the value chain is based on an average estimate for that industry across the country and may underestimate the effects within NYS. 35 Similarly, tax revenues at the local, state, and federal levels are based on national effective rates and may underestimate their impact by these industries to NYS. Exact industry data for breweries, wineries, and distilleries that manufacture within the state are not publicly available. Other economic impact studies have used proprietary data derived from member associations for each of those industries to further specify their modeling. Outreach to these associations did not allow for the use of these proprietary data sets and, as such, could not be incorporated into this analysis. Additionally, aspects such as industry tourism, research, commodity growing, or charitable contributions that create additional effects are outside the scope of this analysis and may further dilute the economic impact of these industries on NYS.

## 3.1 Retail, Wholesale, and Manufacturing Sectors

# (b) The relative health of the various sectors of the alcoholic beverage market in New York, including but not limited to:

- (i) the general financial state of the on- and off-premises retailers, including package stores, restaurants, bars and taverns, convenience stores, bodegas, grocery stores, or other licensed retail entities.
- (ii) the general financial state of beer and wine and liquor distributors.
- (iii) the general financial state of manufacturers and farm manufacturers in the state.

#### **Breweries Analysis**

The Breweries Industry in NYS has grown over the past years, in part due to the efforts of the state to encourage small craft brewers to develop in the market. In 2012, the state enacted a Production Tax Credit for craft breweries within the state to reduce taxes and fees to spur economic development of that industry. <sup>36</sup> In addition, there are major initiatives by both ESD and SLA to promote this industry. There are more than 9,000 craft breweries in the U.S., <sup>37</sup> with more than 723 licensed craft breweries in NYS. <sup>38</sup> Incentives for craft brewers have allowed this industry to become quickly and definitively established in NYS, as well as being in the forefront in the manufacturing and distribution of craft beer.

This impact analysis provides a baseline snapshot of the economic contribution of the growing breweries industry in 2019, which is the most current stable data year for alcoholic beverage manufacture and sale before the impacts of COVID-19 affected the global economy. The focus is on the core breweries industry

<sup>&</sup>lt;sup>35</sup> IMPLAN GROUP, LLC. IMPLAN 2022. Huntersville, NC. IMPLAN.com.

<sup>&</sup>lt;sup>36</sup> Mark A. Nickerson, CPA, CMA and Linda Hall, PhD, CPA. October 2017. New York Pours Tax Incentives into the Craft Brewing Industry. Retrieved from <a href="https://www.cpajournal.com/2017/10/19/new-york-pours-tax-incentives-craft-brewing-industry/">https://www.cpajournal.com/2017/10/19/new-york-pours-tax-incentives-craft-brewing-industry/</a> on 1/22/2023.

<sup>&</sup>lt;sup>37</sup> New York State Brewers Association. Craft Beer Facts. Retrieved from https://newyorkcraftbeer.com/facts/ on 1/22/2023.

<sup>&</sup>lt;sup>38</sup> SLA. Active Craft Manufacturers, New York State Liquor Authority, File: Craft-Manufacturers-Active-03-17-2023.xlsx data retrieved on 3/17/2023.

within NYS and excludes additional supplemental effects, such as tourism or charitable contributions, as these effects are outside the scope and purpose of this analysis. Hence, this analysis and the breweries contribution to the overall NYS economy could be considered a conservative estimate.

Examination of economic impacts was estimated using the well-established and leading provider of economic impact data, IMPLAN.<sup>39</sup> IMPLAN's software allows for an analysis of an industry's impact on the regional economy, which in this case is NYS. These impacts include direct, indirect, and induced effects. Direct effects are those direct contributions (e.g., jobs, organizational expenditures) by the operations of the industry producer. Indirect effects capture business-to-business expenditures along the supply chain to operate the organizations. Induced effects capture household expenditures from employees of that producer and suppliers with the value chain.<sup>40</sup> As a result of the multiplier effect (multipliers are a measure of an industry's connection to the wider local economy through purchases, payments of wages and taxes, and other transactions), the industries contribute derivative effects in many ways that are intwined with other local business activity and that create overall economic benefits.<sup>41</sup> Contribution in the NYS economy is estimated by number of jobs, labor income, total output, and value added to the gross state product (GSP). Local, state, and federal taxes are also generated through economic transactions, and these have also been analyzed.

#### **Industry Position**

Even before multiplied effects are applied, the breweries industry is a growing manufacturer in NYS. In the 2018-2019 State Fiscal Year, the tax department collected \$73.5 billion from state-imposed taxes and fees as follows:<sup>42</sup>

- Personal income tax—\$48.0 billion.
- State sales tax plus excise and user taxes—\$16.3 billion.
- Business taxes—\$6.8 billion.
- Property transfer taxes—\$2.2 billion.
- Other taxes and fees—\$0.2 billion.

In addition, the state reported 642,760 business establishments, 9,543,323 jobs, and an average wage of \$75,365 per worker within the state.  $^{43}$ 

In 2019, breweries manufactured more than one million barrels of beer, contributing more than 5,000 jobs directly to the NYS economy and more than 10,000 jobs overall, which puts NYS in the top 10 of craft beer production within the U.S. The brewery industry employs a higher percentage of younger workers, with approximately 45% of workers in this industry estimated to be between 25 and 34 years of age and, overall, 73% of the workforce between 25 and 44. Additionally, the industry estimates a higher percentage of males, at approximately 62%. Roughly one in four breweries industry workers were in a production occupation, which often helps point to where an industry may be headed, included

<sup>&</sup>lt;sup>39</sup> IMPLAN GROUP, LLC. IMPLAN 2022. Huntersville, NC. IMPLAN.com.

<sup>&</sup>lt;sup>40</sup> Joe Demski. June 18, 2020. Understanding IMPLAN: Direct, Indirect, and Induced Effects. Retrieved from <a href="https://blog.implan.com/understanding-implan-effects">https://blog.implan.com/understanding-implan-effects</a> on 3/20/2023.

<sup>&</sup>lt;sup>41</sup> Joe Demski. May 28, 2020. Understanding IMPLAN: Multipliers. Retrieved from <a href="https://blog.implan.com/understanding-implan-multipliers">https://blog.implan.com/understanding-implan-multipliers</a> on 3/20/2023.

<sup>&</sup>lt;sup>42</sup> NYS Department of Taxation and Finance. Fiscal Year Tax Collections: 2018-2019. Retrieved from <a href="https://www.tax.ny.gov/research/collections/fy">https://www.tax.ny.gov/research/collections/fy</a> collections stat report/2018 2019 annual statistical report of ny state tax collections.htm on 1/22/2023.

<sup>&</sup>lt;sup>43</sup> NYS Department of Labor. Quarterly Census of Employment and Wages. Retrieved from <a href="https://doi.ny.gov/quarterly-census-employment-and-wages">https://doi.ny.gov/quarterly-census-employment-and-wages</a> on 1/22/2023.

packaging and labeling, restaurant operation, food safety, truck and machinery, and inventory and merchandising. 44

#### **Impact Results Summary**

#### **Contribution**

To perform the baseline scenario using IMPLAN, direct output is initially accounted for in this analysis. Breweries perform central activities, including malt manufacturing, which is included in the analysis. All local area outputs are included as an input. Additionally, partial employment estimates categorized in the Wholesale Trade sector capture the presence of beer and ale merchant wholesalers.

The total contribution of the economic impact of the breweries industry is captured in <u>Table 12</u> (values are reported in 2023 dollars).

IMPACT	EMPLOYMENT	LABOR INCOME	VALUE ADDED	OUTPUT
Direct	5,032	\$639,704,915	\$1,197,988,790	\$2,472,334,774
Indirect	2,330	\$206,289,452	\$374,177,823	\$706,453,165
Induced	3,453	\$241,774,374	\$431,295,918	\$656,317,089
<b>Total Effect</b>	10,815	\$1,087,768,741	\$2,003,462,531	\$3,835,105,028

**TABLE 12, TOTAL CONTRIBUTION SUMMARY OF BREWERIES 2019** 

Due to the direct employment of 10,815 workers in the breweries industry in NYS, the following estimated effects were captured:

- Total Output<sup>45</sup> (Total Output includes Value Added. Total Output may include some instances of duplicate counting of goods and services at different points in the production stage, whereas Value Added does not. Each is a valuable measure for the state's overall industry activity), <sup>46</sup> which is a measure of total economic activity in 2019, was more than \$3 trillion.
- Approximately 10,815 industry workers garnered salaries of more than \$1.08 billion in labor income.
- More than \$2 billion was contributed to the state's Gross Regional Product (GRP) (also referred to as Value Added, which includes labor income).
- For every one job in the main breweries core industries, approximately one additional job was created or supported through spinoff effects.

#### Direct, Indirect, and Induced Contribution Summary

As noted in <u>Table 12</u>, the direct effects are a measure of direct industry activity. In summary, 5,032 direct jobs were paid approximately \$640 million in labor income as part of these companies' \$2 billion contribution to GRP. Overall, \$3.8 billion worth of output or production was accounted for related to all effects.

Indirect effects are the ancillary effects to the economy, with breweries making supply chain and other purchases as business-to-business transactions. For example, local breweries use a variety of

<sup>&</sup>lt;sup>44</sup> New York State Brewers Association retrieved from https://newyorkcraftbeer.com/ on 1/22/2023.

<sup>&</sup>lt;sup>45</sup> Total Output may also be referred to as an industry's sales and revenues plus net inventory change.

<sup>&</sup>lt;sup>46</sup> Candi Clouse, PhD. Updated February 14, 2020. Output, Value Added, & Double-Counting. Retrieved from <a href="https://support.implan.com/hc/en-us/articles/360025171053-Output-Value-Added-Double-Counting">https://support.implan.com/hc/en-us/articles/360025171053-Output-Value-Added-Double-Counting</a> on 3/23/2023.

ingredients to make beer, and the suppliers for these goods benefit from the brewers' demand. In 2019, breweries' indirect effects accounted for approximately \$706 million in output and \$206 million in labor income.

Induced effects are related to consumer spending by employees in the industry and include such things as spending on homes or rent and healthcare needs. In 2019, breweries' induced effects accounted for approximately \$656 million in output and \$241 million in labor income.

Indirect and induced effects combined represented an additional \$1.3 billion in total output, which includes \$448 million in labor income, as part of the \$805 million contribution to Value Added (GRP).

#### **Tax Revenue Contribution Summary**

Tax revenues are a component of Value Added (GRP). Tax revenues are generated by the operations of industries and households at all levels of the contribution analysis. These include payroll taxes, taxes on production and imports, corporate profits tax, and other types of taxable transactions. In 2019, the total tax contribution from breweries was \$826,057,582.47 48 49

 LOCAL
 STATE
 FEDERAL
 TOTAL

 Tax Contribution
 \$394,771,864
 \$183,064,543
 \$248,221,175
 \$826,057,582

TABLE 13, TAX REVENUE CONTRIBUTION SUMMARY OF BREWERIES 2019

#### **Employment Contribution**

In addition to the contribution of direct employment, employment in other industries is created or supported because of local supply chain demand and household spending. Table 14 displays the top 25 industries with the greatest impacts on employment due to breweries. Grain farmers, trucking, and wholesale merchants are industries where employment was created or supported largely because of indirect or value-chain activities created by breweries. Restaurants and retail food and beverage stores are examples where employment was created or supported largely because of the spending of additional labor income. The top 25 industries make up approximately 68% of the total employment created or supported by breweries, malt manufacturing, and beer and ale merchant wholesalers.

TABLE 14, TOP 25 INDUSTRIES MOST IMPACTED BY BREWERIES (DIRECT, INDIRECT, AND INDUCED EMPLOYMENT EFFECTS)

INDUSTRY DISPLAY	TOTAL IMPACT EMPLOYMENT	
106 - Breweries	5,037	
417 - Truck transportation	234	

<sup>&</sup>lt;sup>47</sup> Organization for Economic Co-Operation and Development (OECD) Data Retrieved from <a href="https://data.oecd.org/tax/tax-revenue.htm">https://data.oecd.org/tax/tax-revenue.htm</a> on 3/14/2023.

<sup>&</sup>lt;sup>48</sup> NYS Department of Taxation and Finance. Retrieved from <a href="https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.tax.ny.gov%2Fpdf%2F2019-20">https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.tax.ny.gov%2Fpdf%2F2019-20</a> Collections%2FFY19 20%2520Tables.xls&wdOrigin=BROWSELINK on 3/14/2023.

<sup>&</sup>lt;sup>49</sup> NYS Department of Taxation and Finance. 2018-2019 New York State Tax Collections - Statistical Summaries and Historical Tables Retrieved from <a href="https://www.tax.ny.gov/pdf/2018-19">https://www.tax.ny.gov/pdf/2018-19</a> collections/FY 18 19 Collections Report.pdf on March 3/14/2023.

INDUSTRY DISPLAY	TOTAL IMPACT EMPLOYMENT
2 - Grain farming	207
395 - Wholesale - Machinery, equipment, and supplies	143
396 - Wholesale - Other durable goods merchant wholesalers	135
398 - Wholesale - Grocery and related product wholesalers	119
469 - Management of companies and enterprises	123
201 - Glass container manufacturing	89
447 - Other real estate	190
10 - All other crop farming	67
243 - Metal cans manufacturing	57
400 - Wholesale - Other nondurable goods merchant wholesalers	73
147 - Paperboard container manufacturing	56
445 - Insurance agencies, brokerages, and related activities	73
472 - Employment services	96
476 - Services to buildings	61
421 - Couriers and messengers	56
456 - Accounting, tax preparation, bookkeeping, and payroll services	57
65 - Flour milling	31
19 - Support activities for agriculture and forestry	31
509 - Full-service restaurants	206
420 - Scenic and sightseeing transportation and support activities for transportation	43
468 - Marketing research and all other miscellaneous professional, scientific, and technical services	29
479 - Waste management and remediation services	31
401 - Wholesale - Wholesale electronic markets and agents and brokers	30

#### **Supplier Industry Contribution**

As noted in <u>Table 15</u>, the businesses that make up breweries create and facilitate interactions with local suppliers and service providers. These indirect effects are associated with demand for goods and services that support breweries' operations. <u>Table 15</u> shows the top 25 industries where the contribution of breweries had the greatest impact. As an example, firms in the top industries of metal cans, wholesale machinery, equipment and supplies, and flour (grain) milling benefitted with an estimated contribution of \$130 million as beer was produced. Similarly, in the local truck transportation industry, as goods were moved from place to place, they benefited from \$35.8 million in contributions from the breweries industry.

TABLE 15, TOP 25 INDUSTRIES MOST IMPACTED BY BREWERIES BUSINESS TO BUSINESS TRANSACTIONS (2019)

INDUSTRY DISPLAY	CONTRIBUTION
	ESTIMATE
243 - Metal cans manufacturing	\$53,448,079
395 - Wholesale - Machinery, equipment, and supplies	\$42,891,819
2 - Grain farming	\$37,061,902
396 - Wholesale - Other durable goods merchant wholesalers	\$36,561,516
417 - Truck transportation	\$35,876,780
201 - Glass container manufacturing	\$35,277,879
65 - Flour milling	\$33,834,065
147 - Paperboard container manufacturing	\$30,387,088
469 - Management of companies and enterprises	\$26,410,695
400 - Wholesale - Other nondurable goods merchant wholesalers	\$22,010,258
445 - Insurance agencies, brokerages, and related activities	\$21,737,587
454 - Lessors of nonfinancial intangible assets	\$21,214,651
441 - Monetary authorities and depository credit intermediation	\$21,129,874
398 - Wholesale - Grocery and related product wholesalers	\$21,106,138
447 - Other real estate	\$20,630,278
47 - Electric power transmission and distribution	\$20,595,748
444 - Insurance carriers, except direct life	\$12,754,800
394 - Wholesale - Household appliances and electrical and electronic goods	\$8,159,907
468 - Marketing research and all other miscellaneous professional, scientific, and technical services	\$7,736,930
415 - Rail transportation	\$7,290,480
438 - Internet publishing and broadcasting and web search portals	\$6,685,791
534 - Other local government enterprises	\$6,601,898
393 - Wholesale - Professional and commercial equipment and supplies	\$6,467,320
456 - Accounting, tax preparation, bookkeeping, and payroll services	\$6,362,543
472 - Employment services	\$6,121,555

#### **Household Income Contribution**

Labor income is generated or supported for employees because of the direct and indirect activity of Breweries. Table 16 illustrates the top 25 industries most impacted by household spending of related labor income. Not surprisingly, housing tops the list. Workers also spend their income on healthcare, banking, and restaurants.

TABLE 16, TOP 25 INDUSTRIES MOST IMPACTED BY BREWERIES HOUSEHOLD TRANSACTIONS (2019)

INDUSTRY DISPLAY	INDUCED
449 - Owner-occupied dwellings	\$75,583,129
490 - Hospitals	\$44,732,918
447 - Other real estate	\$24,194,329
441 - Monetary authorities and depository credit intermediation	\$23,577,955
444 - Insurance carriers, except direct life	\$21,986,461
483 - Offices of physicians	\$20,381,056
448 - Tenant-occupied housing	\$18,979,525
509 - Full-service restaurants	\$15,561,214
442 - Other financial investment activities	\$14,441,596
510 - Limited-service restaurants	\$12,016,140
413 - Retail - Non-store retailers	\$11,192,495
481 - Junior colleges, colleges, universities, and professional schools	\$9,653,131
455 - Legal services	\$9,557,817
440 - Securities and commodity contracts intermediation and brokerage	\$9,030,299
47 - Electric power transmission and distribution	\$8,493,721
469 - Management of companies and enterprises	\$8,361,923
406 - Retail - Food and beverage stores	\$8,046,830
433 - Wired telecommunications carriers	\$8,011,827
446 - Funds, trusts, and other financial vehicles	\$7,645,203
511 - All other food and drinking places	\$7,231,426
445 - Insurance agencies, brokerages, and related activities	\$7,049,711
438 - Internet publishing and broadcasting and web search portals	\$6,913,761
493 - Individual and family services	\$6,822,108
472 - Employment services	\$6,739,739
400 - Wholesale - Other nondurable goods merchant wholesalers	\$6,435,428

#### **Key Findings**

The brewery industry within NYS has experienced considerable growth over the past decade and created or supported thousands of jobs within the state. This industry has created not only jobs directly working for breweries but also due to the indirect and induced economic effects that created additional and substantial economic activity. NYS residents realized additional job opportunities and income due to the existence of breweries. Other manufacturers and business also benefited from the existence of breweries manufacturing within the state. These key findings of breweries' contribution to the NYS economy in 2019 include:

- 10,815 jobs were created or supported.
- \$1,087,768,741 in labor income generated.
- \$2 billion GRP.
- \$3.8 billion total output.
- \$826 million in tax revenues generated.
- For every one direct job in the industries, approximately one additional job was created or supported in the state economy.
- Supported through state tax incentives and economic development initiatives.
- Competitive due to national trends of consumer tastes.
- Allows for the expansion of manufacturing presence.
- Potentially lower retirement risk in the manufacturing industry.
- Presence spurred widespread activity across local sectors, including real estate, healthcare, retail trade, financial, agriculture, and transportation and warehousing.

#### **Wineries**

#### **Impact Results Summary**

The winery industry in NYS has grown over the last decade, and according to SevenFifty, it is the third largest grape and wine producer in the U.S.<sup>50</sup> With 537 licensed wineries and 73 licensed cideries within the state, its economic impact is considerable.

#### **Contribution**

To perform the baseline scenario using IMPLAN, direct output is initially accounted for in this analysis. This study defines the winery industries as wine manufacturing, retailing, and wholesaling. All local area outputs are included as an input. Additionally, partial employment estimates categorized in the wholesale trade sector capture the presence of wine wholesalers. This analysis does not include grape juice manufacturers, juice grape growing, tourism, wine research and education, or wine-related tourism, as they are beyond the scope of the study.

The total contribution of the economic impact of the wineries industry is captured in <u>Table 17</u> (values are reported in 2023 dollars).

	•			
IMPACT	EMPLOYMENT	LABOR INCOME	VALUE ADDED	ОИТРИТ
Direct	3,563	\$295,337,466	\$416,082,684	\$1,230,410,386
Indirect	2,270	\$180,449,028	\$313,473,133	\$516,355,638
Induced	1,927	\$134,837,178	\$240,689,765	\$366,289,689
Total Effect	7,760	\$610,623,672	\$970,245,582	\$2,113,055,713

**TABLE 17, TOTAL CONTRIBUTION SUMMARY WINERIES 2019** 

Due to the direct employment of 7,760 workers in the winery industry in NYS, the following estimated effects were captured:

<sup>&</sup>lt;sup>50</sup> SevenFifty Daily Editors. (March 3,2021). Why New York State is the Next Great American Wine Region. Retrieved from <a href="https://daily.sevenfifty.com/why-new-york-state-is-the-next-great-american-wine-region/">https://daily.sevenfifty.com/why-new-york-state-is-the-next-great-american-wine-region/</a> on 3/14/2023.

- Total Output<sup>51</sup> (Total Output includes Value Added. Total Output may include some instances of duplicate counting of goods and services at different points in the production stage, whereas Value Added does not. Each are valuable measures for the state's overall industry activity), <sup>52</sup> which is a measure of total economic activity in 2019, was more than \$2 billion.
- Approximately 7,760 industry workers garnered salaries of more than \$610 million in labor income.
- More than \$970 million was contributed to the state's GRP.
- For every one job in the main wineries' core industries, approximately 1.18 additional jobs were created or supported through spinoff effects.

#### Direct, Indirect, and Induced Contribution Summary

As noted in <u>Table 17</u>, direct effects are a measure of direct industry activity. In summary, 3,563 direct jobs were paid approximately \$295 million in Labor Income as part of these companies' \$1.2 billion contribution to GRP. Overall, \$2.1 billion worth of output or production was accounted for related to all effects.

Indirect effects are the ancillary effects to the economy, with wineries making supply chain and other purchases as business-to-business transactions. For example, local wineries use a variety of ingredients to make wine, and suppliers for these goods benefit from their demand. In 2019, wineries' indirect effects accounted for approximately \$516 million in output and \$180 million in labor income.

Induced effects is related to consumer spending by employees of the industry and includes such things as spending on homes or rent and healthcare needs. In 2019, wineries' induced effects accounted for approximately \$366 million in output and \$134 million in labor income.

Indirect and induced effects combined represent an additional \$882 million in total output, which includes \$315 million in labor income as part of \$554 million contribution to Value Added (GRP).

#### **Tax Revenue Contribution Summary**

Tax revenues are a component of Value Added (GRP). Tax revenues are generated by the operations of industries and households at all levels of the contribution analysis. These include payroll taxes, taxes on production and imports, corporate profits tax, and other types of taxable transactions. In 2019, the total tax contribution from wineries was \$248,864,307. 53 54 55

**TABLE 18, TAX REVENUE CONTRIBUTION SUMMARY WINERIES 2019** 

	LOCAL	STATE	FEDERAL	TOTAL
Tax Contribution	\$ 90,378,061	\$49,978,931	\$108,507,315	\$248,864,307

<sup>&</sup>lt;sup>51</sup> Total Output may also be referred to as an industry's sales and revenues plus net inventory change.

https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.tax.ny.gov%2Fpdf%2F2019-20 Collections%2FFY19 20%2520Tables.xls&wdOrigin=BROWSELINK on 3/14/2023.

<sup>&</sup>lt;sup>52</sup> Candi Clouse, PhD. Updated February 14, 2020. Output, Value Added, & Double-Counting. Retrieved from <a href="https://support.implan.com/hc/en-us/articles/360025171053-Output-Value-Added-Double-Counting">https://support.implan.com/hc/en-us/articles/360025171053-Output-Value-Added-Double-Counting</a> on 3/23/2023.

<sup>&</sup>lt;sup>53</sup> Organization for Economic Co-Operation and Development (OECD) Data Retrieved from <a href="https://data.oecd.org/tax/tax-revenue.htm">https://data.oecd.org/tax/tax-revenue.htm</a> on 3/14/2023.

<sup>&</sup>lt;sup>54</sup> NYS Department of Taxation and Finance. Retrieved from

<sup>&</sup>lt;sup>55</sup> NYS Department of Taxation and Finance. 2018-2019 New York State Tax Collections - Statistical Summaries and Historical Tables Retrieved from <a href="https://www.tax.ny.gov/pdf/2018-19">https://www.tax.ny.gov/pdf/2018-19</a> collections/FY 18 19 Collections Report.pdf on March 3/14/2023.

#### **Employment Contribution**

In addition to the contribution of direct employment, employment in other industries is created or supported because of local supply chain demand and household spending. Table 19 displays the top 25 industries with the greatest impacts on employment due to wineries. Fruit farmers, wholesale merchants, and transportation are industries where employment was created or supported largely because of indirect or value chain activities created by wineries. Restaurants and retail food and beverage stores are examples where employment was created or supported largely because of the spending of additional labor income. The top 25 industries made up approximately 79% of the total employment created or supported by wineries and the ancillary industries.

TABLE 19, TOP 25 INDUSTRIES MOST IMPACTED BY WINERIES (DIRECT, INDIRECT, AND INDUCED EMPLOYMENT EFFECTS)

INDUSTRY DISPLAY	TOTAL IMPACT EMPLOYMENT
107 - Wineries	3,615
4 - Fruit farming	443
398 - Wholesale - Grocery and related product wholesalers	301
395 - Wholesale - Machinery, equipment, and supplies	171
447 - Other real estate	151
400 - Wholesale - Other nondurable goods merchant wholesalers	141
417 - Truck transportation	135
509 - Full-service restaurants	122
490 - Hospitals	114
469 - Management of companies and enterprises	91
493 - Individual and family services	81
510 - Limited-service restaurants	78
472 - Employment services	71
483 - Offices of physicians	68
406 - Retail - Food and beverage stores	55
511 - All other food and drinking places	55
421 - Couriers and messengers	52
418 - Transit and ground passenger transportation	51
476 - Services to buildings	50
481 - Junior colleges, colleges, universities, and professional schools	48
445 - Insurance agencies, brokerages, and related activities	47
517 - Personal care services	44
456 - Accounting, tax preparation, bookkeeping, and payroll services	43

INDUSTRY DISPLAY	TOTAL IMPACT EMPLOYMENT
488 - Home health care services	43
411 - Retail - General merchandise stores	40

#### **Supplier Industry Contribution**

As noted in <u>Table 20</u>, the businesses that make up wineries create and facilitate interactions with local suppliers and service providers. These indirect effects are associated with demand for goods and services that support wineries' operations. <u>Table 20</u> shows the top 25 industries where the contribution of Wineries had the greatest impact. As an example, firms in the top industries were wholesale grocery, wholesale machinery, equipment and supplies, and wholesale merchants benefited with an estimated contribution of \$163 million as wine was produced. Similarly, in the local truck transportation industry, as goods were moved from place to place, they benefited from \$20.7 million in contributions from the wineries industry.

TABLE 20, TOP 25 INDUSTRIES MOST IMPACTED BY WINERIES BUSINESS-TO-BUSINESS TRANSACTIONS (2019)

INDUSTRY DISPLAY	CONTRIBUTION ESTIMATE
398 - Wholesale - Grocery and related product wholesalers	\$59,899,036
395 - Wholesale - Machinery, equipment, and supplies	\$51,651,530
400 - Wholesale - Other nondurable goods merchant wholesalers	\$50,980,528
4 - Fruit farming	\$24,531,166
447 - Other real estate	\$21,952,964
469 - Management of companies and enterprises	\$21,089,07
417 - Truck transportation	\$20,716,075
107 – Wineries	\$17,794,491
441 - Monetary authorities and depository credit intermediation	\$15,436,732
445 - Insurance agencies, brokerages, and related activities	\$14,566,866
454 - Lessors of nonfinancial intangible assets	\$13,499,773
201 - Glass container manufacturing	\$13,331,733
394 - Wholesale - Household appliances and electrical and electronic goods	\$9,852,147
444 - Insurance carriers, except direct life	\$9,318,045
47 - Electric power transmission and distribution	\$8,442,071
438 - Internet publishing and broadcasting and web search portals	\$7,530,897
393 - Wholesale - Professional and commercial equipment and supplies	\$6,704,631
465 - Advertising, public relations, and related services	\$5,973,385
472 - Employment services	\$5,735,097
456 - Accounting, tax preparation, bookkeeping, and payroll services	\$5,706,885

INDUSTRY DISPLAY	CONTRIBUTION ESTIMATE
455 - Legal services	\$5,200,083
462 - Management consulting services	\$4,835,196
457 - Architectural, engineering, and related services	\$4,283,592
396 - Wholesale - Other durable goods merchant wholesalers	\$4,080,700
476 - Services to buildings	\$3,900,259

#### **Household Income Contribution**

Labor income is generated or supported for employees because of the direct and indirect activity of wineries. <u>Table 21</u> illustrates the top 25 industries most impacted by household spending of related labor income. Not surprisingly, housing tops the list. Workers also spend their income on healthcare, insurance, and restaurants.

TABLE 21, TOP 25 INDUSTRIES MOST IMPACTED BY WINERIES HOUSEHOLD TRANSACTIONS (2019)

INDUSTRY DISPLAY	INDUCED
449 - Owner-occupied dwellings	\$42,142,660
490 – Hospitals	\$24,895,145
447 - Other real estate	\$13,500,290
441 - Monetary authorities and depository credit intermediation	\$13,143,102
444 - Insurance carriers, except direct life	\$12,301,336
483 - Offices of physicians	\$11,381,086
448 - Tenant-occupied housing	\$10,693,155
509 - Full-service restaurants	\$8,678,530
442 - Other financial investment activities	\$7,986,240
510 - Limited-service restaurants	\$6,726,946
413 - Retail - Non-store retailers	\$6,259,010
455 - Legal services	\$5,349,663
481 - Junior colleges, colleges, universities, and professional schools	\$5,340,491
440 - Securities and commodity contracts intermediation and brokerage	\$5,007,121
47 - Electric power transmission and distribution	\$4,757,185
469 - Management of companies and enterprises	\$4,668,747
406 - Retail - Food and beverage stores	\$4,500,133
433 - Wired telecommunications carriers	\$4,492,263
446 - Funds, trusts, and other financial vehicles	\$4,263,637
511 - All other food and drinking places	\$4,031,001

INDUSTRY DISPLAY	INDUCED
445 - Insurance agencies, brokerages, and related activities	\$3,940,627
438 - Internet publishing and broadcasting and web search portals	\$3,859,238
493 - Individual and family services	\$3,791,290
472 - Employment services	\$3,761,538
400 - Wholesale - Other nondurable goods merchant wholesalers	\$3,599,475

#### **Key Findings**

Within NYS, the wineries industry has grown and created or supported thousands of jobs. Including jobs directly working for wineries, indirect and induced economic effects created additional and substantial economic activity. Additional job opportunities and income were realized due to the existence of wineries. Other manufacturers and businesses along the value chain also benefited from the existence of wineries manufacturing within the state. These key findings of wineries' contribution to the NYS economy in 2019 include:

- 7,260 jobs were created or supported.
- \$610 million in in labor income generated.
- \$970 million GRP.
- \$3.8 billion total output.
- \$248,864,307 million in tax revenues generated.
- For every one direct job in the industries, approximately 1.18 additional jobs were created or supported in the state economy.
- Presence spurred widespread activity across local sectors, including Real Estate, Healthcare, Retail Trade, Financial, Agriculture, and Transportation and Warehousing.

#### **Distilleries**

#### **Impact Results Summary**

Although much smaller than its partner industries, breweries and wineries, there is a continuation of the economic impact that the distilled spirits industry contributes to NYS. In 2016, there were only 160 distilleries within NYS, and now there are 276 licensed distilleries.

#### **Contribution**

To perform the baseline scenario using IMPLAN, direct output is initially accounted for in this analysis. This study defines the distilled spirits industries as distilled spirits manufacturing, retailing, and wholesaling. All local area outputs are included as an input. Only those jobs associated with NYS-produced distilled spirits are included in the analysis.

The total contribution of the economic impact of the distilleries industry is captured in <u>Table 22</u> (values are reported in 2023 dollars).

TABLE 22. TOTAL	CONTRIBUTION SUMMARY	DISTILLERIES 2019
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IMPACT	EMPLOYMENT	LABOR INCOME	VALUE ADDED	ОИТРИТ
Direct	681	\$119,708,516	\$683,485,786	\$1,052,850,86
Indirect	756	\$74,311,882	\$132,274,923	\$225,597,856
Induced	799	\$55,974,513	\$99,792,830	\$151,848,920
Total Effect	2,236	\$249,994,911	\$915,553,539	\$1,430,297,640

Due to the direct employment of 2,236 workers in the distilleries industry in NYS, the following estimated effects were captured:

- Total Output<sup>56</sup> (Total Output includes Value Added. Total Output may include some instances of duplicate counting of goods and services at different points in the production stage whereas Value Added does not. Each are valuable measures for the state's overall industry activity),<sup>57</sup> which is a measure of total economic activity in 2019, was more than \$1.4 billion.
- Approximately 2,236 industry workers garnered salaries of more than \$249 million in labor income.
- More than \$915 million was contributed to the state's GRP.
- For every one job in the main distilleries core industries, approximately 2.2 additional jobs were created or supported through spinoff effects.

#### Direct, Indirect, and Induced Contribution Summary

As noted in the <u>Table 22</u>, the direct effects are a measure of direct industry activity. In summary, 681 direct jobs were paid approximately \$119 million in Labor Income as part of these companies' \$1 billion contribution to GRP. Overall, \$1.4 billion worth of output or production was accounted for related to all effects.

Indirect effects are the ancillary effects to the economy, with distilleries making supply chain and other purchases as business-to-business transactions. For example, local wineries use a variety of ingredients to make spirits, and suppliers for these goods benefit from their demand. In 2019, Distilleries indirect effects accounted for approximately \$225 million in output and \$74 million in labor income.

Induced effects is related to consumer spending by employees of the industry and includes such things as spending on homes or rent and healthcare needs. In 2019, distilleries induced effects accounted for approximately \$151 million in output and \$55 million in labor income.

Indirect and induced effects combined represented an additional \$377 million in total output, which includes \$130 million in labor income, as part of \$232 million contribution to Value Added (GRP).

#### **Tax Revenue Contribution Summary**

Tax revenues are a component of Value Added (GRP). Tax revenues are generated by the operations of industries and households at all levels of the contribution analysis. These include payroll taxes, taxes on

<sup>&</sup>lt;sup>56</sup> Total Output may also be referred to as an industry's sales and revenues plus net inventory change.

<sup>&</sup>lt;sup>57</sup> Candi Clouse, PhD. Updated February 14, 2020. Output, Value Added, & Double-Counting. Retrieved from https://support.implan.com/hc/en-us/articles/360025171053-Output-Value-Added-Double-Counting on 3/23/2023.

production and imports, corporate profits tax, and other types of taxable transactions. In 2019, the total tax contribution from distilleries was \$635,495,851. <sup>58</sup> <sup>59</sup> <sup>60</sup>

**TABLE 23, TAX REVENUE CONTRIBUTION SUMMARY DISTILLERIES 2019** 

	LOCAL	STATE	FEDERAL	TOTAL
Tax Contribution	\$396,808,760	\$154,050,056	\$84,637,035	\$635,495,851

#### **Employment Contribution**

In addition to the contribution of direct employment, employment in other industries is created or supported because of local supply chain demand and household spending. Table 24 displays the top 25 industries with the greatest impacts on employment due to Distilleries. Wholesale merchants and transportation are industries where employment was created or supported largely because of indirect or value-chain activities created by distilleries. Restaurants and retail food and beverage stores are examples where employment was created or supported largely because of the spending of additional labor income. The top 25 industries made up approximately 70% of the total employment created or supported by distilleries and the ancillary industries.

TABLE 24, TOP 25 INDUSTRIES MOST IMPACTED BY DISTILLERIES (DIRECT, INDIRECT, AND INDUCED EMPLOYMENT EFFECTS)

INDUSTRY DISPLAY	TOTAL IMPACT EMPLOYMENT
108 – Distilleries	683
400 - Wholesale - Other nondurable goods merchant wholesalers	172
395 - Wholesale - Machinery, equipment, and supplies	69
447 - Other real estate	61
509 - Full-service restaurants	54
417 - Truck transportation	49
490 – Hospitals	48
469 - Management of companies and enterprises	45
493 - Individual and family services	34
510 - Limited-service restaurants	32
201 - Glass container manufacturing	29
483 - Offices of physicians	28

<sup>&</sup>lt;sup>58</sup> Organization for Economic Co-Operation and Development (OECD) Data Retrieved from <a href="https://data.oecd.org/tax/tax-revenue.htm">https://data.oecd.org/tax/tax-revenue.htm</a> on 3/14/2023.

<sup>&</sup>lt;sup>59</sup> NYS Department of Taxation and Finance. Retrieved from <a href="https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.tax.ny.gov%2Fpdf%2F2019-20">https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.tax.ny.gov%2Fpdf%2F2019-20</a> Collections%2FFY19 20%2520Tables.xls&wdOrigin=BROWSELINK on 3/14/2023.

<sup>&</sup>lt;sup>60</sup> NYS Department of Taxation and Finance. 2018-2019 New York State Tax Collections - Statistical Summaries and Historical Tables Retrieved from <a href="https://www.tax.ny.gov/pdf/2018-19">https://www.tax.ny.gov/pdf/2018-19</a> collections/FY 18 19 Collections Report.pdf on March 3/14/2023.

INDUSTRY DISPLAY	TOTAL IMPACT EMPLOYMENT
472 - Employment services	27
107 – Wineries	24
406 - Retail - Food and beverage stores	23
511 - All other food and drinking places	22
421 - Couriers and messengers	21
481 - Junior colleges, colleges, universities, and professional schools	21
465 - Advertising, public relations, and related services	19
517 - Personal care services	18
456 - Accounting, tax preparation, bookkeeping, and payroll services	18
488 - Home health care services	18
476 - Services to buildings	17
418 - Transit and ground passenger transportation	17
411 - Retail - General merchandise stores	17

#### Supplier Industry Contribution

As noted in <u>Table 25</u>, the businesses that make up distilleries create and facilitate interactions with local suppliers and service providers. These indirect effects are associated with demand for goods and services that support Distilleries' operations. <u>Table 25</u> shows the top 25 industries where the contribution of distilleries had the greatest impact. As an example, the top three firms in the industry were wholesale merchants, wholesale machinery, and glass manufacturing, with an estimated contribution of \$97 million as distilled spirits were produced. Similarly, in the local truck transportation industry, as goods were moved from place to place, the distilleries industry benefited from \$7.4 million in contributions.

TABLE 25, TOP 25 INDUSTRIES MOST IMPACTED BY DISTILLERIES — BUSINESS TO BUSINESS TRANSACTIONS (2019)

INDUSTRY DISPLAY	CONTRIBUTION ESTIMATE
400 - Wholesale - Other nondurable goods merchant wholesalers	\$65,064,856
395 - Wholesale - Machinery, equipment, and supplies	\$20,847,390
201 - Glass container manufacturing	\$11,363,501
469 - Management of companies and enterprises	\$10,687,001
447 - Other real estate	\$8,768,370
107 – Wineries	\$8,103,980
417 - Truck transportation	\$7,476,168
441 - Monetary authorities and depository credit intermediation	\$4,868,032

INDUSTRY DISPLAY	CONTRIBUTION ESTIMATE
438 - Internet publishing and broadcasting and web search portals	\$4,597,121
445 - Insurance agencies, brokerages, and related activities	\$4,454,534
465 - Advertising, public relations, and related services	\$3,947,344
47 - Electric power transmission and distribution	\$3,541,116
444 - Insurance carriers, except direct life	\$3,212,187
456 - Accounting, tax preparation, bookkeeping, and payroll services	\$2,307,496
432 - Cable and other subscription programming	\$2,196,209
247 - Machine shops	\$2,084,219
472 - Employment services	\$2,007,397
431 - Radio and television broadcasting	\$1,945,841
143 - All other miscellaneous wood product manufacturing	\$1,935,393
2 - Grain farming	\$1,907,633
147 - Paperboard container manufacturing	\$1,841,390
455 - Legal services	\$1,820,987
396 - Wholesale - Other durable goods merchant wholesalers	\$1,803,938
462 - Management consulting services	\$1,683,090
393 - Wholesale - Professional and commercial equipment and supplies	\$1,595,817

#### **Household Income Contribution**

Labor income is generated or supported for employees because of the direct and indirect activity of distilleries. Table 26 illustrates the top 25 industries most impacted by household spending of related labor income. Not surprisingly, housing tops the list. Workers also spend their income on healthcare, insurance, and restaurants.

TABLE 26, TOP 25 INDUSTRIES MOST IMPACTED BY DISTILLERIES — HOUSEHOLD TRANSACTIONS (2019)

INDUSTRY DISPLAY	INDUCED
449 - Owner-occupied dwellings	\$17,502,404
490 – Hospitals	\$10,376,016
447 - Other real estate	\$5,598,676
441 - Monetary authorities and depository credit intermediation	\$5,461,019
444 - Insurance carriers, except direct life	\$5,075,365
483 - Offices of physicians	\$4,713,049
448 - Tenant-occupied housing	\$4,353,372
509 - Full-service restaurants	\$3,602,638

INDUSTRY DISPLAY					
442 - Other financial investment activities	\$3,368,919				
510 - Limited-service restaurants	\$2,772,323				
413 - Retail – Non-store retailers	\$2,584,862				
481 - Junior colleges, colleges, universities, and professional schools	\$2,251,012				
455 - Legal services	\$2,205,542				
440 - Securities and commodity contracts intermediation and brokerage	\$2,101,567				
47 - Electric power transmission and distribution	\$1,958,823				
469 - Management of companies and enterprises					
406 - Retail - Food and beverage stores					
433 - Wired telecommunications carriers					
446 - Funds, trusts, and other financial vehicles	\$1,770,013				
511 - All other food and drinking places	\$1,674,921				
445 - Insurance agencies, brokerages, and related activities	\$1,628,732				
438 - Internet publishing and broadcasting and web search portals	\$1,599,349				
493 - Individual and family services	\$1,584,451				
472 - Employment services	\$1,559,304				
400 - Wholesale - Other nondurable goods merchant wholesalers	\$1,485,978				

#### **Key Findings**

The distilleries industry within NYS has grown and created or supported thousands of jobs within the state. This industry has created not only jobs directly working for distilleries but also, due to the indirect and induced economic effects, has created additional and substantial economic activity. NYS residents realized additional job opportunities and income due to the existence of distilleries. Other manufacturers and businesses along the value chain also benefited from the existence of wineries manufacturing within the state. Key findings of distilleries' contribution to the NYS economy in 2019 include:

- 2,236 jobs were created or supported.
- \$249 million in labor income generated.
- \$915 million GRP.
- \$1.4 billion total output.
- \$635,495,851 in tax revenues generated.
- For every one direct job in the industries, approximately 2.2 additional jobs were created or supported in the state economy.
- Presence spurred widespread activity across local sectors, including real estate, healthcare, retail trade, financial, agriculture, and transportation.

#### 3.2 Production Tax Credit

# (b) The relative health of the various sectors of the alcoholic beverage market in New York, including but not limited to:

(iv) An examination of tax credits associated with production and tastings for parity between alcoholic beverage types.

#### **Alcoholic Beverage Production Credit**

In an effort to spur continued economic development of the craft alcohol industry within NYS, in June of 2016, former Governor Andrew Cuomo expanded the Alcoholic Beverage Production (ABP) Credit to include wineries, distilleries, and cideries. Previously, this tax incentive was only offered to breweries in an effort to bolster the success of small manufacturers within NYS. <sup>61</sup> The 2016 legislation was intended to assist craft manufactures with the amount of taxes they were responsible to pay. This ABP Credit is offered on a scaled basis, based on production levels. According to the DTF, the ABP Credit <sup>62</sup> may be claimed by a taxpayer subject to tax Article 9-A or Article 22 that is a registered distributor (person or entity who produces, distills, manufacturers, brews, compounds, mixes, or ferments within NYS for sale) <sup>63</sup> of alcoholic beverages (beer, cider, wine, or liquor) under Article 18 or the Tax Law (taxes on alcoholic beverages) and produces beer, cider, wine, or liquor in NYS in the tax year for which the credit is claimed, subject to the following production limitations:

- 60,000,000 or fewer gallons of beer.
- 60,000,000 or fewer gallons of cider.
- 20,000,000 or fewer gallons of wine.
- 800,000 or fewer gallons of liquor.

A distributor that produces more than one type of alcoholic beverage in NYS in the same tax year qualifies for the ABP Credit for each alcoholic beverage produced within the stated limits. If the production limitation for an alcoholic beverage is exceeded, for example, production of 60,000,001 gallons of beer or cider, then no ABP Credit is allowed for that beverage type category.<sup>64</sup>

A credit of 14 cents is available on a per-gallon basis for the first 500,000 gallons of beer, cider, wine, or liquor produced in NYS in a tax year, plus 4.5 per gallon for each additional gallon over 500,000 (up to 15,000,000 additional gallons for beer, cider, and wine and up to 300,000 additional gallons for liquor) produced in NYS in the same tax year.<sup>65</sup>

To gain an understanding of the disparity between the tax credits provided to producers between alcoholic beverage types, it's necessary to include the effects of the associated excise taxes. Historically, taxation on alcohol has been used as revenue to pay debt and is based on a mixture of beverage

<sup>&</sup>lt;sup>61</sup> NYS Department of Agriculture and Markets. June 9, 2016. Governor Cuomo Announces Alcohol Beverage Production Credit Expanded to Include Wine, Spirits and Cider Industries. Retrieved from <a href="https://agriculture.ny.gov/news/governor-cuomo-announces-alcohol-beverage-production-credit-expanded-include-wine-spirits-and">https://agriculture.ny.gov/news/governor-cuomo-announces-alcohol-beverage-production-credit-expanded-include-wine-spirits-and</a> on 1/20/2023.

<sup>&</sup>lt;sup>62</sup> NYS Department of Taxation and Finance, August 1, 2016. Technical Memorandum TSB-M-16(5)C, (3)I Alcoholic Beverage Production Credit.

<sup>&</sup>lt;sup>63</sup> NYS Department of Taxation and Finance, January 2021. Instructions for Forms MT-456 and MT-456-ATT (MT-456-I), definition of distributor.

<sup>&</sup>lt;sup>64</sup> NYS Department of Taxation and Finance, August 1, 2016. Technical Memorandum TSB-M-16(5)C, (3)I Alcoholic Beverage Production Credit.

<sup>&</sup>lt;sup>65</sup> NYS Department of Taxation and Finance, August 1, 2016. Technical Memorandum TSB-M-16(5)C, (3)I Alcoholic Beverage Production Credit.

volume, *ad valorem* (according to the value of the beverage), and alcohol content. Alcohol content and percentage can vary widely, depending on the drink and on the different types of alcoholic beverage. Alcoholic percentages in beer typically fall within the range of 4-8%, while craft beer is typically higher, at 8%-12% and higher. Unfortified wines typically have alcohol percentages between 14%-16%, while fortified wines have between 16%-24%. Gin, rum, and whiskeys generally have alcohol percentages much higher, in ranges between 36%-50%, while vodkas can contain even higher percentages, between 40%-95%. 66

<u>Table 27</u> displays the excise tax rate, as well as the eligible ABP Credit available based on the type of alcohol produced. The excise tax and ABP Credit are administered separately and reported on separate tax returns (NYS MT-456 & NYS CT-636) at different points during the process.

ALCOHOL TYPE	EXCISE TAX RATE (PER GALLON)	ABP CREDIT (FIRST 500,000 GALLONS)	ABP CREDIT (EACH ADDITIONAL UP TO 15M GALLONS)	ABP CREDIT (EACH ADDITIONAL UP TO 300,000 GALLONS)
Beer	\$0.14	\$0.14	\$0.045	None
Wine	\$0.30	\$0.30 \$0.14 \$0.045		None
Cider	\$0.0379	\$0.14	\$0.045	None
Liquor (2% – 24% ABV)	\$2.54	\$0.14	None	\$0.045
Liquor	\$6.44	\$0.14	None	\$0.045

TABLE 27, NYS EXCISE TAX RATE AND ABP CREDITS

The maximum amount of ABP Credit for each type of alcoholic beverage allowed to a qualified taxpayer in a given tax year is shown in the  $\frac{\text{Table 28}}{\text{1}}$ 67:

ALCOHOLIC BEVERAGE TYPE	GALLON LIMITATION	MAXIMUM CREDIT ALLOWED
Beer	15,500,000	\$745,000*
Cider	15,500,000	\$745,000*
Winer	15,500,000	\$745,000*
Liquor	800,000	\$83,500**

TABLE 28, MAXIMUM ABP CREDIT ALLOWED

To examine the ABP Credits associated with production and tastings for parity between alcoholic beverage types, the following scenarios were developed based on the production limitations outlined above.

<sup>\*(\$.14</sup> X 500,000 gallons) + (\$.045 X 15,000,000 gallons) = \$745,000

<sup>\*\*(\$.14</sup> X 500,000 gallons) + (\$.045 X 300,000 gallons) = \$83,500

<sup>&</sup>lt;sup>66</sup> Erica Slaughter. (Updated September 15, 2022). Alcohol Percentage Content in Drinks: Comparing ABV by Drink Type. Retrieved from <a href="https://americanaddictioncenters.org/alcoholism-treatment/alcohol-content-percentage">https://americanaddictioncenters.org/alcoholism-treatment/alcohol-content-percentage</a> on 3/13/2023.

<sup>&</sup>lt;sup>67</sup> NYS Department of Taxation and Finance, August 1, 2016. Technical Memorandum TSB-M-16(5)C, (3)I Alcoholic Beverage Production Credit.

The following assumptions were made when developing Scenario #1:

- One distributor per alcohol beverage type.
- Each distributor applies for and receives the ABP Credit.
- Gallons produced by each distributor for the sample tax year is based on the maximum gallons allowed for the Liquor alcohol beverage type.
- Even though excise tax and ABP Credits are administered separately and at different points in time, the example numbers are based on reporting at the end of sample tax year.
- Each table provides the net effect of the taxes and credits being applied for sample tax year.

ALCOHOL BEVERAGE TYPE	EXCISE TAX RATE (PER GALLON)	GALLONS PRODUCED	EXCISE TAX PAID	ELIGIBLE ABP CREDIT	NET EXCISE TAX PAID	NET EXCISE TAX % PAID
Beer	\$0.14	800,000	\$112,000	\$83,500	\$28,500	25%
Wine	\$0.30	800,000	\$240,000	\$83,500	\$156,500	65%
Cider	\$0.0379	800,000	\$30,320	\$83,500	-\$53,180	-175%
Liquor (2% - 24% ABV)	\$2.54	800,000	\$2,032,000	\$83,500	\$1,948,500	96%
Liquor	\$6.44	800,000	\$5,152,000	\$83,500	\$5,068,500	98%

TABLE 29, SCENARIO #1: LIQUOR — 800,000 GALLONS LIMITATION

#### Scenario #1 Observations:

- As the excise tax rate increases per alcohol beverage type, the effect of the ABP Credit is reduced.
- Each distributor is eligible to receive the ABP Credit based the gallon production limitations.
- Cider distributor would receive the full ABP Credit amount of \$83,500, resulting in a positive payment of \$53,180 (difference between excise tax paid and ABP Credit).

The following assumptions were made when developing the Scenario #2:

- One distributor per alcohol beverage type.
- Each distributor applies for and receives the ABP Credit.
- Gallons produced by each distributor for the sample tax year is based on the maximum gallons allowed for each alcohol beverage type.
- Even though excise tax and ABP credits are administered separately and at different points in time, the example numbers are based on reporting at the end of sample tax year.
- Each table provides the net effect of the taxes and credits being applied for sample tax year.

TABLE 30, SCENARIO #2: MAXIMUM GALLON LIMITATIONS PER ALCOHOL BEVERAGE TYPE

ALCOHOL BEVERAGE TYPE	EXCISE TAX RATE (PER GALLON)	GALLONS PRODUCED	EXCISE TAX PAID	ELIGIBLE ABP CREDIT	NET EXCISE TAX PAID	NET EXCISE TAX % PAID
Beer	\$0.14	60,000,000	\$8,400,000	\$745,000	\$7,655,000	91%
Wine	\$0.30	20,000,000	\$6,000,000	\$745,000	\$5,255,000	88%
Cider	\$0.0379	60,000,000	\$2,274,000	\$745,000	\$1,529,000	67%
Liquor (2% - 24% ABV)	\$2.54	800,000	\$2,032,000	\$83,500	\$1,948,500	96%
Liquor	\$6.44	800,000	\$5,152,000	\$83,500	\$5,068,500	98%

#### Scenario #2 Observations:

- Each distributor is eligible to receive the ABP Credit based the gallon production limitations.
- As the excise tax rate increases per alcohol beverage type, the effect of the ABP Credit is reduced.
- All distributors paid some amount of "net" excise tax.
- As the gallons produced reach their maximum allowed limitations per alcohol beverage type, the net excise tax paid becomes more equivalent for beer, wine, and liquor.

The following assumptions were made when developing the Scenario #3:

- Distributor produces both beer and cider.
- Distributor applies for and receives ABP Credit for cider based on gallon limitation threshold.
- Even though excise tax and ABP credits are administered separately and at different points in time, the example numbers are based on reporting at the end of sample tax year.
- Each table provides the net effect of the taxes and credits being applied for sample tax year.

TABLE 31, SCENARIO #3: BEER LIMITATION EXCEEDED - NO BEER ABP CREDIT

ALCOHOL BEVERAGE TYPE	EXCISE TAX RATE (PER GALLON)	GALLONS PRODUCED	EXCISE TAX PAID	ELIGIBLE ABP CREDIT	NET EXCISE TAX PAID	NET EXCISE TAX % PAID
Beer	\$0.14	100,000,000	\$14,000,000	NA	\$14,000,000	100%
Cider	\$0.0379	50,000,000	\$1,895,000	\$745,000	\$1,150,000	61%

#### **Scenario #3 Observations:**

- Beer distributor is not eligible for beer ABP Credit since they produced more than the 60,000,000-gallon limitation threshold.
- Cider distributor is eligible for the cider ABP Credit since they produced less than the 60,000,000-gallon limitation threshold.

In addition to the expanded ABP Credit described above, additional enacted legislation provided sales and use tax exemptions for producers. In 2016, Chapter 60 of the Laws of 2016 (Part V) amended NYS Tax Law in relation to alcoholic beverages. Part V amended §424 of the alcoholic beverages tax to add a

new §424.6, which provided an exemption for alcoholic beverages furnished by a licensed producer at no charge to a customer or prospective customer at a tasting for consumption at the tasting.<sup>68</sup> To qualify for the exemption, the alcoholic beverage tasting must be held by a licensed producer of alcoholic beverages as defined by the ABC Law and in accordance with all alcoholic beverage control laws governing consumption at tastings for beer, cider, wine, and liquor.<sup>69</sup> Part V also amended §1118(13) of the sales and use tax to make the use tax exemption available to any licensed producer of alcoholic beverages.<sup>70</sup> For beer, cider, liquor, and wine tastings, this amendment provided an exemption from the use tax for the alcoholic beverage or beverages authorized by the ABC Law, furnished at no charge to a customer or prospective customer, and also applies to bottles, corks, caps, and labels used to package such alcoholic beverages served at the tasting.<sup>71</sup>

# 4 Amendments to the Law, Increased Resources, SLA Practices

Part GG of chapter 55 of the laws of 2022, §1(c) – "Amendments to the law, increases in resources available for administering existing laws and rules, and new state liquor authority practices that would lessen processing times for the issuance of licenses, license renewals, and permit applications."

#### Summary:

In 1934, New York State enacted Chapter 478, known as the Alcoholic Beverage Control Law, creating the State Liquor Authority and the Division of Alcoholic Beverage Control. The State Liquor Authority's first Annual Report noted that Chapter 478 was enacted by the Legislature to provide for "the protection, health, welfare and safety of the people of the State." These principles are the core of the Authority's mission to this day.

The responsibilities of the SLA Division of Alcoholic Beverage Control include:

- Reviewing applications.
- Issuing licenses and permits for the manufacture, wholesale distribution and retail sale of all alcoholic beverages.
- Regulating trade and credit practices related to the sale and distribution of alcoholic beverages at wholesale and retail.
- Inspecting premises where alcoholic beverages are manufactured or sold.
- Investigating licensees in connection with violations of the ABC Law, and working with local law enforcement to ensure compliance with the Law.
- Conducting disciplinary proceedings and hearings, and revoking, canceling or suspending for cause any license or permit, and/or imposing monetary penalties where appropriate.<sup>72</sup>

<sup>&</sup>lt;sup>68</sup> NYS Tax Law Article 18 §424.6.

<sup>&</sup>lt;sup>69</sup> NYS Department of Taxation and Finance, August 1, 2016. Technical Memorandum TSB-M-16(6)C, (4)I, (5)M, (7)S 2016 Legislation Related to Taxes on Alcoholic Beverages.

<sup>&</sup>lt;sup>70</sup> NYS Department of Taxation and Finance, August 1, 2016. Technical Memorandum TSB-M-16(6)C, (4)I, (5)M, (7)S 2016 Legislation Related to Taxes on Alcoholic Beverages.

<sup>&</sup>lt;sup>71</sup> NYS Department of Taxation and Finance, July 24, 2015. Technical Memorandum TSB-M-15(1)S Sales and Use Taz Exemptions for Alcoholic Beverage Tastings.

<sup>&</sup>lt;sup>72</sup> SLA. Historical Overview. Retrieved from https://sla.ny.gov/historical-overview on 2/16/2023.

The SLA consists of the following offices and bureaus which collectively ensure that the agency's mission statement is met: Executive Office, Public Information Office, Licensing Bureau, Enforcement, Counsel's Office, Hearing Bureau, and Secretary's Office. The SLA currently operates three offices across the state including New York City (Zone 1); Albany (Zone 2), which serves as the administrative headquarters, and Buffalo (Zone 3)<sup>73</sup>.

#### **Items Affecting Processing**

#### **Statutory Licensing Process Requirements**

Examples of requirements in the law that dictate the time it takes for a business to begin alcoholic beverage sales and to complete review of an application are:

- Municipal notice.
- Newspaper publication of notice.
- Documents and disclosure required under §110 (financial documents, corporate documents, leases, certificates of occupancy, diagrams and photographs, licensing history, spousal information, etc.).
- 500 Foot Law hearings.
- 200 Foot Law measurements/determinations.
- Fingerprinting and record checks.
- Eligibility and availability for temporary permits, and the requirements for renewal.
- Access prohibitions under §106(9).
- Citizenship requirement.
- Bond requirements.

#### **SLA Resources**

The SLA's budget, like that of all other executive agencies, is subject to the annual state budget process. In the Fiscal Year 2023 budget, the executive and adopted budgets provided the SLA with additional resources (\$16,461,000 appropriated) and FTEs (153).

<sup>&</sup>lt;sup>73</sup> SLA. 2021 Annual Report, New York State Liquor Authority.

TABLE 32, APPROPRIATIONS AND FTES

YEAR	APPROPRIATION	FTE TARGET
2012	\$16,860,000	140
2013	\$17,001,000	132
2014	\$18,893,000	127
2015	\$18,065,000	127
2016	\$18,065,000	127
2017	\$13,313,000	127
2018	\$13,313,000	127
2019	\$13,313,000	120
2020	\$13,313,000	120
2021	\$13,313,000	114
2022	\$13,313,000	114
2023	\$16,461,000	153

## **Licensing Application Volume**

TABLE 33, LICENSING APPLICATION VOLUME

YEAR	LICENSE APPLICATIONS	RENEWALS	PERMITS
2012	10,765	36,179	36,318
2013	12,424	37,259	42,325
2014	13,041	29,148	44,186
2015	14,283	47,164	31,423
2016	12,680	35,887	36,890
2017	14,024	44,247	42,176
2018	13,265	51,055	40,188
2019	13,324	35,429	48,469
2020	9,454	21,324	23,647
2021	11,669	29,866	46,719
2022	11,154	23,314	44,498
2023	n/a	n/a	n/a

Commission Members were provided with briefing materials that gave additional information and context for the topic being discussed. Commission Meeting briefing materials for this topic may be found in the associated document "Topic 5 - Commission Meetings Briefing Materials 2022.pdf."

#### **Commission Votes and Recommendations:**

The Commission Members participated in a discussion regarding amendments to the law, increases in resources, and SLA practices for processing licenses and permits. The Commission Members were posed the following four questions, and their votes, comments, and recommendations are presented below in the format provided by the Commission Members. No comments have been edited for language, grammar, or spelling.

<u>Amendments Question 1</u>: As a commission member, do you recommend that New York State amend section 110-b of the ABC Law (Notification to Municipalities) to allow applications to be submitted to the SLA before the 30-day municipal notice period runs (while also preventing the SLA from issuing a license before the 30-day municipal notice period has run)?

YES	NO	ABSTAIN	RECOMMENDATION
15	0	1	Recommendation: Allow applications to be submitted simultaneous with municipal notice.

COMMISSION MEMBER	VOTE	AMENDMENTS QUESTION 1 COMMENTS
Andrew Rigie	Yes	New York State must expedite the process to get new businesses open faster because the current slow process creates burdens for small businesses, harms job growth, reduces tax revenue and harms economic activity and creates a negative business climate. This recommendation can speed processing times while preserving community input.
Ashley White	Yes	Increase speed and efficiency
Courtney Armour	Yes	This change will create efficiencies for all parties.
Edward Cooper	Yes	I am supportive of efforts to streamline the application process for off- and on-premises alcohol licenses.
Evan Gallo	Yes	Anything that can expedite required reviews and approvals while still maintaining the integrity of the process is a good thing.
Jeff Zacharia	Yes	yes
Jeffrey Garcia	Yes	100000% this will allow for a more expeditious process.
Keven Danow	Yes	The SLA never has and does not now issue a license within thirty days of the application. There is no reason to hold up filing. The Community Board or local municipality has sufficient time to notify the SLA of its opinion.
Kim Wagner	Yes	During the discussion it became clear that allowing applicants to 'simultaneously' submit permit notifications to Municipalities and permit applications to the SLA would: 1) eliminate applicants filing 'just in case' notifications to municipalities which generates unnecessary extra work for these organizations; 2) reduces the time an applicant waits to be issued/denied a permit by the SLA; and 3) does not reduce time the

COMMISSION MEMBER	VOTE	AMENDMENTS QUESTION 1 COMMENTS
		municipality has to comment on the application. For these reasons I support the proposed change.
Mark Koslowe	Yes	This will allow applicants who are set to file their applications the ability to do so without a 30-day delay. Municipalities have ample time to consider these applications without the need of a 30-day delay as SLA processing time is greater than 30 days. The Authority Members present at the Commission Meeting indicated that SLA will not act on applications before 30 to 45 days from receipt of same.
Melissa Fleischut	Yes	Members of the Commission were made aware that the current law has an applicant submit their licenses, license renewals, and permit applications to the municipality and that 30 days pass prior to submitting to the State Liquor Authority. Given the time it takes to process a license, license renewal, or permit application, allowing the applicant to submit both at the same time could speed up the process and eliminate an unnecessary waiting period. We also added the caveat that the State Liquor Authority, should it ever be able to do so, not issue the license before the 30-day municipal notice period has expired.
Michael Correra	Abstain	I represent wine and liquor retailers so this does not pertain to our side of the industry.
Paul Zuber	Yes	The recommendation would help expedite the license process without taking away from input from the municipality.
Sonya del Peral	Yes	I recommend this amendment as it will facilitate the review of applications by the SLA on a faster timeline while simultaneously providing the municipality the opportunity to be heard on the application.
Stephen Hanson	Yes	I agree.
Steve Harris	Yes	There is no logical reason that the SLA shouldn't be able to start processing a license. This proposal still requires the municipal notice, and the license still can't be granted until the 30-day period has been met. Allowing the agency to still start processing the license certainly will help in the backlog in licensing.

Amendments Question 2: As a Commission Member, do you recommend, that New York State amend section 97-a (Temporary Retail Permit) to allow new on premises retail businesses in New York City that are subject to the 500 Foot Law to obtain a temporary retail permit after a positive public interest recommendation by an Administrative Law Judge (ALJ) after a 500 Foot Law hearing, notwithstanding the fact that the location has not been licensed in last two years?

YES	NO	ABSTAIN	RECOMMENDATION
13	0	3	Recommendation: Do away with the requirement of licensure within 2 years for New York City/500 ft temp permit applications.

COMMISSION MEMBER	VOTE	AMENDMENTS QUESTION 2 COMMENTS
Andrew Rigie	Yes	Entrepreneurs in New York City should not be discriminated against compared to those elsewhere in the city and state by preventing them from receiving a Temporary Retail Permit only because their premise had not had a liquor license within the past two years. There is a lot of new development where restaurants and bars thankfully want to open, or locations that shuttered at the beginning of the pandemic now more than 2 years ago that are ineligible Temporary Retail Permits resulting in significant financial, operational, and other challenges. For example, the new Moynihan Train Hall. Applicants there are not eligible for a temporary permit because it is a new development. The current situation is nonsensical. Additionally, this section of the law should be further amended to allow Temporary Retail Permits to be issued in New York City to 500 Foot Law applicants after appearing at the Community Board for public review, instead of the current requirement that they receive a positive public interest recommendation by an Administrative Law Judge (ALJ) after a 500 Foot Law hearing. Such amendment would reduce waiting times and treat said applicants equally with non-500 Foot Rule applicants, Beer and Wine on-premises applicants in New York City, and all other on-premises applicants around the rest of New York State. The amendments to allow more temporary permits in NYC has worked well this past year with no negative community issues. It is time to take the next step.
Ashley White	Abstain	Does not impact our business
Courtney Armour	Yes	We understand the current law has been creating an undue burden on the retailers, particularly for those impacted by the pandemic over the last 2+ years, who are forced to carry very high costs while waiting and who would benefit greatly by being able to move forward under a temporary permit while the process proceeds.
Edward Cooper	Abstain	I do not have an opinion on this matter.
Evan Gallo	Yes	No comment
Jeff Zacharia	Yes	yes
Jeffrey Garcia	Yes	Yes prior history should have no impact on new owner or new property's ability to get a temp permit. Every license should stand on its own merits.
Keven Danow	Yes	On premise licensees must be allowed to apply for temporary licenses. Without it, they have to start paying rent, but have no income. Restaurants without a liquor license will not survive. Temporary permits are the best solution to avoid these delays.

COMMISSION MEMBER	VOTE	AMENDMENTS QUESTION 2 COMMENTS
Kim Wagner	Yes	The expense of opening a retail establishment in NY is significant and delays in permitting can make the economics of the venture impossible to justify. Many viable locations that were closed as a result of the COVID pandemic (which began in NYS in March 2020) have now been 'unlicensed' for more than two years. In addition, some locations across the state have seen substantial new development/redevelopment that would benefit from permitted retail establishments. Not 'qualifying' for a temporary permit puts these locations at a significant disadvantage for revitalization and further slows the economic recovery of these neighborhoods/municipalities. Eliminating the 'licensed in the last two years' requirement, supports economic development without introducing new risks to the community.
Mark Koslowe	Yes	There are many NYC construction sites that take at least 2 years to complete and without this waiver, new applicants could not qualify for the Temporary Permit.
Melissa Fleischut	Yes	I recommended allowing a new on-premise retail business in New York City subject to the 500 foot rule to obtain a temporary permit after a positive recommendation from an administrative law judge regardless of whether the location was licensed in the past two years. Whether or not the location has been licensed in the past two years does not have any bearing on whether a temporary retail permit should be issued. If the Administrative Law Judge gives a positive public interest recommendation, then the temporary retail permit should be issued. This would also create consistency in the rules for temporary retail licenses throughout the state.
Michael Correra	Abstain	I represent wine and liquor retailers so this does not pertain to our side of the industry
Paul Zuber	Yes	This change would make sense and again expedite businesses opening with some form of positive feedback.
Sonya del Peral	Yes	I recommend this amendment which will permit business who are paying rent to operate and begin to see a return on their investment as soon as possible. The current law has had a disparate impact on locations that had to close due to no fault of their own, such as circumstances caused by Covid-19, or those venues that are part of new construction.
Stephen Hanson	Yes	l agree. Much needed
Steve Harris	Yes	It is my understanding that the current restriction in law applies only to location in NYC. There is no reason potential NYC licensees should be treated differently than any other applicants

<u>Amendments Question 3</u>: As a Commission Member, do you recommend that New York State amend section 99-d (Miscellaneous Fees) to allow corporate and other ownership changes to be made prior to approval for the change being granted by the SLA?

YES	NO	ABSTAIN	RECOMMENDATION
14	0	2	Recommendation: Allow corporate changes to take effect prior to application for approval.

COMMISSION MEMBER	VOTE	AMENDMENTS QUESTION 3 COMMENTS
Andrew Rigie	Yes	Given the Authority's current processing times, licensees that wish to respect this provision of the ABCL are forced to wait as many as 7 months for a corporate change application to be approved before consummating said change. Such a wait time is entirely impractical, as almost no business transaction can wait that long. Any amendment to this provision of the ABCL should require that changes in ownership be reported to the Authority within 30 days of such change taking place. This will allow business transactions involving licensees to proceed in a more typical timeframe, while still preserving the important oversight function vested in the Authority to ensure that licensees are owned by individuals who are responsible and qualified.
Ashley White	Abstain	Does not impact our business
Courtney Armour	Yes	This is in alignment with federal and most other state regulations.
Edward Cooper	Yes	I am supportive of efforts to streamline the application process for off and on-premises alcohol licenses.
Evan Gallo	Yes	No comment
Jeff Zacharia	Yes	yes
Jeffrey Garcia	Yes	We should allow for changes
Keven Danow	Yes	It can take up to eight months to obtain approval of a corporate change. Businesses cannot wait that long to close deals. Most states and the federal government allow the change to take place, with notice to the Authority within 30 days. Then if the Authority does not approve of the new applicants, they can be forced to give up their ownership. Many businesses have licenses in more than one state. New York is interfering with closings nationwide. There is little risk to the core interests of the state if it allows the transfer subject to later SLA approval or required action.
Kim Wagner	Yes	Per the discussion in the meeting, we learned that the time required for the SLA to grant approval for a change in ownership was sufficiently long that it made it economically difficult to sell or transfer ownership of a permitted business. We agreed that once the criteria for a 'Temporary Retail Permit' were met, the SLA should issue the Temporary Permit to allow for the change to occur. This would allow the business to continue operations while waiting for the SLA to conduct their evaluation in advance of issuing the Active Permit. This change supports economic development while maintaining the necessary level of control to ensure the new owner meets the criteria of the permit.
Mark Koslowe	Yes	This would allow corporate changes to proceed in the same manner as an applicant who is receiving a Temporary Permit. The parties can close their transaction in a timely fashion and yet the SLA still maintains its ability to grant or disapprove of the applicant.

COMMISSION MEMBER	VOTE	AMENDMENTS QUESTION 3 COMMENTS
Melissa Fleischut	Yes	Making a corporate or other ownership change should be allowed to proceed legally prior to "approval" by the State Liquor Authority. The Authority for the most part is receiving and verifying the change and not granting actual approval. The various companies should be allowed to make the necessary changes without having to wait for the State Liquor Authority to approve them first.
Michael Correra	Abstain	I need to learn more about this issue
Paul Zuber	Yes	This again would simplify the current process.
Sonya del Peral	Yes	I recommend this amendment because corporate and other ownership changes commonly occur in small business and many times for important business, tax and other family reasons and should not be subject to delay because of review timelines at the SLA.
Stephen Hanson	Yes	I agree
Steve Harris	Yes	Corporate changes often happen for unexpected reasons (especially in family-controlled corps). Allowing the corporate change in advance allows for a more seamless transition. This proposal still gives ultimate approval for the continuous of the license to the regulator

<u>Resources Question 4</u>: As a Commission Member, do you recommend that New York State provide all the resources necessary for the SLA to perform its responsibilities in a timely manner?

YES	NO	ABSTAIN	RECOMMENDATION
16	0	0	Recommendation: Ensure SLA is properly funded.

COMMISSION MEMBER	VOTE	RESOURCES QUESTION 4 COMMENTS
Andrew Rigie	Yes	SLA performs functions that are essential to thousands of businesses in New York that are vital to our state's economy and thus the agency needs all the resources necessary to conduct their work in a timely manner.  Back
Ashley White	Yes	Much needed
Courtney Armour	Yes	We support the SLA having sufficient resources so that it can continue to operate efficiently, reduce processing times for license and permit applications and renewals, meet its other responsibilities, and adjust to changes in technology and the marketplace. A properly resourced regulator is critical for the healthy operation of the businesses it regulates, all of which contribute significantly to the economic vibrancy and growth in New York.
Edward Cooper	Yes	The legislature should appropriate sufficient funds to the NYSLA so it may efficiently perform its responsibilities in a timely manner. The wait times for licensing and other decisions made by the SLA is both unfair to applicants and NY consumers alike.

COMMISSION MEMBER	VOTE	RESOURCES QUESTION 4 COMMENTS
Evan Gallo	Yes	A fully resourced and staffed governmental entity leads to a more effective governmental entity.
Jeff Zacharia	Yes	yes
Jeffrey Garcia	Yes	Yes we need to get processing times down to 90 days maximum on issuance of licenses. Business are being hurt, jobs and collections of taxes all loss of revenues all around.
Keven Danow	Yes	The SLA is one of the most important agencies in the state. It is one of the highest income producers for the state. It is essential it has the resources to properly do its business.
Kim Wagner	Yes	The SLA plays a critical role in both enabling economic development and enforcing the ABC Law. Over time the number of permits, expansion in the types of permits, and the consequential changes in the retail environment has materially increased the work the SLA must undertake. Given these mandates, NYS should provide the SLA with the necessary resources to perform its duties in a timely manner.
Mark Koslowe	Yes	No State agency can proceed to fulfill its tasks without appropriate funding. Underfunding leads to a backlog, such as we have today. With new funding granted by the Governor & Legislature appropriate personnel can be hired to allow the administrative to proceed.
Melissa Fleischut	Yes	The biggest concern we hear from our members at the New York State Restaurant Association is the time it takes for the State Liquor Authority to process a new license. We understand that the current time frame to process any application or licensing change is all being negatively impacted by a lack of staffing in licensing. However, I do not believe that this is due to a lack of funding for these staff positions, but instead is part of the overall lack of employees for the jobs available. It remains a priority for the hospitality industry to get up and running as quickly as possible and we would ask the state to provide the State Liquor Authority with the resources they need to perform their duties and responsibilities in as timely a manner as possible.
Michael Correra	Yes	Yes I recommend this
Paul Zuber	Yes	There is a strong need to properly provide the resources necessary to enable the SLA to move quickly on applications as well as enforce the current law.
Sonya del Peral	Yes	I make this recommendation because as both a former attorney serving clients and as a current business owner in need of various licenses and permits from the SLA, I have first hand experience of the delays and other inefficiencies created by the constant lack of resources available to the SLA over the decades. Prior Law Commission reports have identified the lack of resources as having had an adverse impact on the agency's proper functioning, thus this is not new news. New York State should finally recognize the important contributions the alcohol business sector makes to New York's economy and provide the SLA with the resources that will permit it to further support the sector and facilitate its development.
Stephen Hanson	Yes	I agree. Much needed

COMMISSION MEMBER	VOTE	RESOURCES QUESTION 4 COMMENTS
Steve Harris	Yes	I think this goes without saying. The mandates in the law for licensing can be (and often are) complex and by their very nature time consuming. The State should do everything in its power to give the resources the agency needs to meet these requirements. This is ultimately the best solution to allow the industry to continue to be the economic engine it is for the State.

# 5 Underage Laws

Part GG of chapter 55 of the laws of 2022, §1(c): "review of laws against underage consumption of alcohol and the enforcement mechanisms utilized."

#### **Summary:**

New York State statutory provisions in the ABC Law govern the consumption and possession of alcohol by persons under the age of 21. The laws impact persons under the age of 21, NYSLA license holders of both on and off-premises sales, and anyone who may be procuring alcohol to be consumed by a person under the age of 21.

The following NYS statutory provisions summaries provide details on the language surrounding the governance of underage drinking:

- ABC Law §65-a<sup>74</sup>.
  - A fine of \$200 or up to five (5) days imprisonment is possible for a guilty conviction of misrepresenting the age of a person under 21 years for the intent of purchasing alcohol.
- ABC Law §65-b<sup>75</sup>.
  - Presenting a fake or altered ID in attempts to purchase alcohol while under the age of 21 is prohibited. A sliding scale of punishments are provided beginning with a \$100 fine and community service and escalating to \$750 and 90 hours of community service.
- ABC Law §65-c<sup>76</sup>.
  - It is unlawful for a person under the age of 21 to possess alcohol with the intent to consume. Exceptions do apply such as those taking a licensed curriculum which requires tasting or if ones parent or guardian supplies the alcohol.
- PENAL Law 260.20<sup>77</sup>.
  - It is considered unlawfully dealing with a child in the first degree to give or sell alcohol to a person under the age of 21. This is a class A misdemeanor.

Combating underage sales continues to be a top priority for the SLA, as a sale to a minor is considered one of the most serious violations of the ABC Law. The SLA conducts underage operations independently checking licensed establishments as well as joint operations with the New York State Police (NYSP), the New York City Police Department (NYPD) and local law enforcement across the state.

<sup>&</sup>lt;sup>74</sup> ABCL §65-a.

<sup>&</sup>lt;sup>75</sup> ABCL §65-b.

<sup>&</sup>lt;sup>76</sup> ABCL §65-c.

<sup>&</sup>lt;sup>77</sup> PENL 260.20.

The SLA and law enforcement agencies routinely conduct operations to monitor compliance with the underage drinking laws which include SLA investigators and/or police officers observing sales in a licensed establishment as well as utilizing underage agents. Additionally, the SLA receives referrals from local law enforcement agencies regarding sales to minors. When a police referral is received, it is forwarded to the SLA's Counsel's Office for review. Based on the facts alleged and the sufficiency of the evidence in the referral, SLA Counsel's Office will either: bring a disciplinary proceeding; refer the matter to the Enforcement Bureau for further investigation; or close the case.

SLA investigators make thousands of undisclosed visits to licensed premises to ensure licensees are following the law. These include SLA operations targeting repeat offenders, establishments with prior sales to minors, targeted investigations based on complaints, in addition to general compliance checks covering specific geographical areas. During these initiatives, the SLA utilizes underage agents that work under the direct supervision of SLA Beverage Control Investigators.

The chart below provides data on Underage Drinking Initiatives (UDI) operations over the past six years. Using 2019 to illustrate the SLA's enforcement of underage drinking laws in a typical year (as Enforcement priorities shifted in 2020 and 2021 to concentrate on Covid related violations) the SLA brought a total of 1,157 charges against licensees for selling alcohol to minors. This included 448 charges for sale to minor obtained through SLA initiatives, in addition to 709 charges resulting from referrals from state and local police departments.

YEAR	SLA INITIATIVES	PREMISES VISITED DURING SLA INITIATIVES	SALES FROM SLA INITIATIVES
2022	42	488	99
2021	15	173	44
2020	N/A	N/A	N/A
2019	165	2253	448
2018	127	1734	440
2017	120	1620	393
2016	68	847	188

Commission Members were provided with briefing materials that gave additional information and context for the topic being discussed. Commission Meeting briefing materials for this topic may be found in the associated document "Topic 1 - Commission Meetings Briefing Materials 2022.pdf".

#### **Commission Votes and Recommendations:**

The Commission Members participated in a discussion regarding the laws against underage consumption and their enforcement. The Commission members concluded that the current laws and enforcement methods are adequate, and no recommendations were presented for this topic.

## 6 Laws and Regulations

Part GG of chapter 55 of the laws of 2022, §1(c): "the overall impact of laws and corresponding state liquor authority regulations on the numerous sectors of the industry."

#### Summary:

After review of the statutory language, the depth and breadth of the subject matter referenced is too open-ended to provide meaningful guidance/direction to the Commission and was believed to be subsumed in the other more specific statutory provisions. However, the Commission did have an open discussion related to this agenda topic at Commission Meeting #1. Topics included but were not limited to temporary liquor licenses, barriers to entry, 200 Foot Law, and 500 Foot Law.

#### **Commission Votes and Recommendations:**

No recommendations were presented for consideration on this topic.

### 7 Control State

Part GG of chapter 55 of the laws 2022, §1(c) – "whether New York should consider adopting a "control state" model or other regulatory model."

#### **Summary**:

The two models used by states to regulate the distribution of alcoholic beverages are the "license state" model and the "control state" model. The "license state" model, implemented by New York State (NYS), regulates the distribution of alcoholic beverages based on issuing licenses to manufacturers, wholesalers, and retailers, which are private businesses that make up the three-tier system. In the "control state" model, the states are involved in the actual distribution of alcoholic beverages. Control states have a state-run monopoly over the sale at retail and/or wholesale of some (or all) of the different categories of alcoholic beverages.

In consultation with the National Alcohol Beverage Control Association (NABCA), it was confirmed that there has not been an instance where a license model state has changed to a control system (model). However, in June of 2012, the State of Washington, through a voter initiative, became a license state model from its previous control state model.<sup>78</sup>

Commission Members were provided with briefing materials that gave additional information and context for the topic being discussed. Commission Meeting briefing materials for this topic may be found in the associated document "Topic 3 - Commission Meetings Briefing Materials 2022.pdf."

#### **Commission Votes and Recommendations:**

The Commission Members participated in a discussion on whether NYS should consider adopting a "control state" or other regulatory model. The Commission Members voted on the topic and their votes, comments, and recommendation are presented below. No comments have been edited for language, grammar, or spelling.

<u>Control State Question</u>: As a Commission Member, do you recommend that New York State should consider adopting a "control state" state model or other regulatory model?

YES	NO	ABSTAIN	NO RECOMMENDATION
1	14	1	No Recommendation Issued: Control State

<sup>&</sup>lt;sup>78</sup> Margaret Barchine, Director Communications, NABCA. 8/2/2022. Email communication received from NABCA.

COMMISSION MEMBER	VOTE	CONTROL STATE QUESTION COMMENTS
Andrew Rigie	No	While there are many problems that must be addressed with the current regulatory model of the state's alcohol laws, I do not believe that New York should consider adopting a "control state" model that would put government in charge of running various sectors of this enormous alcohol industry, which they do not have the experience in nor the expertise and bandwidth to do. A control state would significantly disrupt the marketplace in a negative way, I believe, hurt entrepreneurship, and it would create a long list of other challenges and problems which would then need to be addressed as a result. Let's focus on update and fixing the system we have.
Ashley White	Abstain	There is just not enough information to make an informed decision. We don't know if the plan would allow the current retail situation or have the state take over all retail sales. That is important information to have.
Courtney Armour	No	I do not support New York adopting a control state model. While DISCUS and its members work well with all of our control state partners, the license state model also works very well and has many of its own advantages. Adoption of a control state model will have several significant adverse effects on the State, including, but not limited to, a loss of jobs, excessive costs, and a waste of State resources with no commensurate benefit.
Edward Cooper	No	Changing to a "control" system in New York State would only replicate what is found in other control states - poor service, limited selection and higher prices - which would be to the disadvantage of New York State consumers.
Evan Gallo	Yes	This recommendation is a vote in favor of generally exploring an alternative regulatory model for New York's alcohol industry rather than an endorsement of a specific control state regime. Neither licensing nor control states have perfected the implementation of the traditional three-tiered system of alcohol production, distribution, and sale. However, aspects of each could be combined, bolstering a robust public-private partnership within our state's alcohol industry. Though consumer choice and accessibility through private retail should be wholly preserved and empowered, there is significant merit to the state having a larger role in the distribution of alcohol - chiefly, wine and spirits. Despite a supposedly free market in New York, smaller intra- and interstate producers face significant barriers to getting businesses to sell their goods, keeping bottles on retailers' shelves, and seeking alternative arrangements when wholesalers no longer operate in suppliers' best interests. Retailers are subject to nebulous service fees and other unfair trade practices on behalf of the biggest distributors. These barriers to entry and success are predominantly the result of the wholesaler duopoly for wine and spirits that exists in New York, as well as many parts of the country. Whether it is a public option for a state entity or regulators taking firmer steps to ensure broader private competition in the wholesale space, the distribution playing field must be leveled. Moreover, New York should consider pro-consumer components of some control states such as centralized online databases showing the stores in which beverages are available and at what cost, as well as fairer allocation methods and retail pricing of more desired products. New York need not fully abandon its current licensing system, but a properly constructed hybrid

COMMISSION MEMBER	VOTE	CONTROL STATE QUESTION COMMENTS	
		regulatory model could ultimately behoove the interests of our state's customers and businesses.	
Jeff Zacharia	No	I see no benefit for the NY to change their overall model to control state model	
Jeffrey Garcia	No	Not a good choice for New York, many jobs would be lost & companies.	
Keven Danow	No	Control states are generally moving toward licensing. Control states have fewer options. If New York moved to control states, I would anticipate a great deal of litigation as long established licensed businesses were forced out of business. Those who lost their license would be terminating employees. Union workers would lose their jobs. The state is currently understaffed and does not have the expertise to enter into the alcoholic beverage business.	
Kim Wagner	No	In February, 2022 the US Department of the Treasury issued a report entitled "Competition in the Markets for Beer, Wine, and Spirits" <a href="https://home.treasury.gov/system/files/136/Competition-Report.pdf">https://home.treasury.gov/system/files/136/Competition-Report.pdf</a> . Among other things, this report outlined that 1) across the US there has been a significant consolidation in the wholesale tier; 2) the Federal government does not require the implementation of a three-tier distribution system for alcoholic beverages by the States; and 3) it is up to each State to determine how the market for the sale of alcoholic beverages is structured. With that as background NY State currently supports a mandatory three tier system, with limited exceptions. Each of these three tiers is primarily populated by family-owned businesses with the majority of these businesses in the retail/on-premises tier, the second largest number (>1000 in headquartered in NYS) occupying the manufacturing tier, and the middle tier with the fewest businesses dominated by a few very large distributors.  States that have elected to implement a Control State structure take one of two forms — one where the State acts as the sole wholesaler for alcoholic beverages in the State and the retailers remain independent for-profit businesses or the second where the State is the sole wholesaler and retailer of alcoholic beverages. While the number of businesses impacted is relatively small, establishing the State of New York as the sole wholesaler in the state would create significant disruption in the market, further consolidate what is already a 'choke point' in the value chain, and potentially result in higher prices and reduced selection for customers. Implementing the second form of Control State has the disadvantages of the first model combined with the discontinuation of thousands of family-owned, small and medium sized businesses. The Commission did not evaluate any potential additional regulatory structures beyond some form of Control State	
Mark Koslowe	No	As almost all of the Members of the Commission mentioned, the current NY model generates a competitive business with a vast array of alcoholic beverages available to the consumer. It would be economically ruinous for the NYS beverage alcohol trade to even consider changing a thriving working model (NY has an "open" state model) which aside from offering one of the largest varieties of spirits, wines and beers to NYS consumers, with competitive prices, also generates enviable taxes to the State's coffers.	

COMMISSION MEMBER	VOTE	CONTROL STATE QUESTION COMMENTS
		American, family-owned wine and spirits distributors are the central hub of the safest, most efficient, and diverse alcohol supply chain in the world. Wine & Spirits Wholesalers of America (WSWA)'s nearly 400 member companies deliver the widest variety of beverage alcohol products in every state and every district, connecting all corners of the country's alcohol marketplace. Wholesalers work in New York to efficiently move America's favorite alcoholic products from producer to consumer, via local, licensed retailers.
		Wholesaler Jobs and Wages: Wholesalers are American taxpayers with American jobs ranging from mixologists to importers, to truck drivers and warehouse workers, to sales and logistics experts, and office workers and administrative personnel. The NYS wine and spirits industry creates 68,131 jobs in New York.
		Distributors employ 6,339 people in New York. New York wholesaler employees receive \$758.8 million in wages. Distributors service 85,278 retailers from 441 facilities throughout New York.
		Tax Revenue & Collection:
		New York's tax and regulatory structure creates a safe and competitive market enabling consumers to select from the most diverse selection of alcoholic products in the world, allows local family-owned businesses to reinvest in their workforce and local communities, all while providing New York with much needed tax revenue. New York receives \$3.4 billion in state tax revenue from alcohol sales. Wholesalers collect and remit \$237.4 million in state excise taxes in New York. Wine and spirits wholesalers account for more than 86,000 jobs paying over nearly \$7.8 billion in wages in the United States. In New York, 68,131 people depend on the wine and spirits industry for their livelihood.
		I vote against any change to the current model.
Melissa Fleischut	No	I voted against New York becoming an alcohol beverage "control state". Based on the information provided to the commission, the National Alcohol Beverage Control Group paper showed the trend is for states to move away from control jurisdictions to license states, like New York currently has. The information explains the purpose of a control state this way, "a control system, which substituted the state for the private marketplace so that economic incentives for maximum sales were eliminated and policies supporting moderate consumption could be put in place."  That same report goes on to state, "Statistical evidence over the years shows a clear and consistent pattern of lower rates of consumption for those products that are controlled. In the control jurisdictions, distilled spirit consumption is 13.8% LESS per capita than in the license states. Additionally, in the control jurisdictions, there is significantly LESS access through the number of off-
		premise outlets and their hours of operation. Interestingly, the control jurisdictions generate 104.7% MORE revenue per capita on the products controlled than do license states."

COMMISSION	VOTE	CONTROL STATE QUESTION COMMENTS
MEMBER		
		This information provides data to show that control states have lower consumption, limited access, and higher costs, all of which would harm the struggling hospitality industry. For an industry decimated by the recent pandemic and struggling to build back, a control state model is not a solution and would simply cause more problems. No other regulatory models were discussed or reviewed.
Michael Correra	No	This would be a move to the dark ages for NY states wine and liquor industry!
Paul Zuber	No	New York's model for the sale and distribution of alcohol was a well thought out model that took into consideration the consumer and retailer. The issues pertaining to the ABC Law have little to do with its overall structure and more to do with the laws not changing to fit societal changes. Therefore, the current model is effective and based on evidence from other states, it is my belief that a control state model would not benefit New York consumers or business owners. A discussion around modernizing certain aspects of the law is more relevant that changing the overall model. Therefore I vote no to such consideration.
Sonya del Peral	No	A control state model would not support the stated purpose of the ABC law to support economic growth, job development, and the state's alcoholic beverage production industries and its tourism and recreation industry, and the conservation and enhancement of state agricultural lands. Rather, in control states, the range of available products tends to be limited suggesting that the growth of the state's industry is not one of the core purposes of the control state model. The private sector is better suited to establish best practices for the alcoholic beverage sector based on its depth of institutional knowledge of the industry.
Stephen Hanson	No	Do not think it would benefit NYS or the consumer
Steve Harris	No	New York's ABC Law has fundamentally worked since the repeal of prohibition. Certainly changes have been made over time, but the logic of the three tier system has always remained a constant. Such a radical departure would only disrupt the marketplace, likely lead to supply problems, and limit consumer choice. Additionally, and perhaps more importantly, is a theme I will in all likelihood be repeating in the future. The ABC law is more than just a regulatory scheme, it is an ECONOMIC MODEL as well. Players in this regulated space rely on the law to make significant financial decisions almost daily. To remove that reliance in one fell swoop by such a radical change would cause severe economic impact on those that have in good faith relied upon the law for their business model. I am confident I will be repeating this theme as the Commission progresses with it's work. I respectfully vote NO.

# 8 Exclusive Privileges

Part GG of chapter 55 of the laws of 2022, \$1(d) – "Specific privileges to sell different types of alcoholic beverages and other items granted to retail licensees and the effect changing such privileges would have on the various types of retailers."

#### Summary:

The Alcoholic Beverage Control Law provides specific and, at times, exclusive privileges for each type of license and permit. For example, in the off-premises retail sector, the on-site sale of wine and liquor for off-premises consumption is exclusively provided by licensed wine and/or liquor stores per §63<sup>79</sup> and §79<sup>80</sup> of the ABC Law and cannot be offered by any other retailers. Wine and liquor stores, however, are limited in the privileges of what items they can sell beyond wine and liquor. The list does not include items such as carbonated and flavored waters, sodas, and food items that are frequently used as a mixer or garnish with the preparation of "spirits". The forcery stores may sell beer, cider, and wine products, but may not sell wine or liquor (including products such as liquor-based ready-to-drink cocktails). Grocery stores are not limited in what other products they may sell but must carry an inventory of food and household items.

The potential effects of changing such privileges on the various types of retailers is difficult to measure and is entirely dependent on what changes were made and in what fashion. The direct and indirect effects of any statute requirement change is hard to quantify and would take time to measure, thus a change in statutory requirements can take a few years to show impact in a meaningful way. Economic analysis of this change would require data elements that are not readily available for review. Depending on the expansion items selected, the analysis would have to determine what retailers (e.g., grocery store, convenience store) would be affected by this change, and if their data would have the correct level of detail for analysis.

Commission Members were provided with briefing materials that gave additional information and context for the topic being discussed. Commission meeting briefing materials for this topic may be found in the associated document "Topic 8 - Commission Meetings Briefing Materials 2022.pdf."

#### **Commission Votes and Recommendations:**

The Commission Members participated in a discussion regarding specific privileges of selling alcoholic beverages by the various types of retailers. The discussion focused on if the law should be amended to allow wine, liquor, and ready-to-drink cocktails to be sold for off-premises consumption by grocery stores, to allow beer and additional items not listed in §63 to be sold by wine and liquor stores, and to allow on-premises retailers the ability to purchase from off-premises retailers, subject to limitation. The Commission Members were posed the following six questions and their votes, comments, and recommendations are presented below. No comments have been edited for language, grammar, or spelling.

<u>Exclusive Privileges Question 1</u>: Should the law be amended to allow wine (currently only sold for off-premises consumption by wine/liquor stores) to be sold for off-premises consumption by grocery stores?

YES	NO	ABSTAIN	NO RECOMMENDATION
6	9	1	<b>No Recommendation Issued</b> : Allow wine to be sold in grocery stores.

<sup>&</sup>lt;sup>79</sup> ABCL §63.

<sup>&</sup>lt;sup>80</sup> ABCL §79.

<sup>&</sup>lt;sup>81</sup> ABCL §3.29.

COMMISSION MEMBER	VOTE	EXCLUSIVE PRIVILEGES QUESTION 1 COMMENTS
Andrew Rigie	Abstain	Presuming the implication in this question is the privilege to sell bottles of wine, I abstain on this vote in part because it does not expand the same privilege to on- premises licensees like restaurants and bars. Furthermore, the multiple questions in Topic 8 further divide the privileges provided to off- and onpremises licensees without compelling reasoning, rather than seeking to bring parity among the license classes with proper guardrails for the various stakeholders.
Ashley White	No	N/A
Courtney Armour	No	We would support this proposal if spirits were also allowed to be sold in grocery stores. Regulatory parity between spirits, wine, and beer is important for the viability of the industry, as well as responsible and efficient regulatory implementation. Alcohol is alcohol and scientific research supports that there is no difference between beer, wine, and spirits. According to the CDC, "it is the amount of alcohol consumed that affects a person most, not the type." Public policy regarding beverage alcohol should not differentiate between distilled spirits, wine, and beer. It sends the dangerous message that some forms of beverage alcohol are 'safer' than others. Consumers are entitled to see, select, and purchase all alcohol beverages at the same location.
Edward Cooper	No	There are more than 10,000 grocery stores in NYS. Grocery stores being able to sell wine inside their boxes would put package stores that sell wine and spirits at a decided disadvantage when it comes to the sale of a package store's most profitable category.  When retailers compete, the winner is always the customer. However, until such time as a level playing field is created, by the Legislature adopting a state quota licensing system that removes the state's ambiguous public convenience and advantage standard and permits package store licensees to hold multiple licenses rather than the current one license limit, any change in the system would serious disrupt the off-premises retail tier and place the state's package stores at a decided disadvantage.
Evan Gallo	No	Expanding sales in such a way could be the death knell for local wine and liquor stores, rendering them largely obsolete if "one-stop shopping" of alcohol and groceries was allowed to occur.
Jeff Zacharia	No	
Jeffrey Garcia	Yes	We understand that this will benefit consumers also will help local wine makers if a percentage of NY wine is the majority of your inventory.
Keven Danow	No	The New York system limits package stores to wine and spirits. These stores, mostly owned by minorities and immigrants could not compete with grocery stores. A very large percentage of them would go out of business. Grocery stores tend to sell based upon quantity with low margins. After the package stores are cleared from the market the variety of goods available in grocery stores will fall. New York products will not have a position of pride in grocery stores. Package stores tend to have experts in wine and spirits to assist customers, grocery stores tend to push customers to nationally advertised brands and brands that offer higher margins to the store. Moreover, there is currently no need for minors to go into a package store. On the other hand,

COMMISSION MEMBER	VOTE	EXCLUSIVE PRIVILEGES QUESTION 1 COMMENTS
		they regularly shop in grocery stores. The convenience it will bring is not sufficient to address the total disruption to the lives and businesses of the package store owners.
Kim Wagner	Yes	There are several states that currently permit wine to be sold in the grocery channel. From a consumer convenience perspective this makes perfect sense. Grocery stores have responsibly sold other products requiring age verification including beer and cider so there is every reason to believe that they could do the same for wine. Anticipating that there is a high probability that wine could be included in the deposit system, having the redemption infrastructure of the grocery channel could be quite important in the implementation of an expanded bottle bill. Just as some groceries choose not to sell cigarettes or beer, I assume that they would have the opportunity to not carry wine if it didn't make business sense for their operation. It's important to point out that the grocery channel did not have any representation on the Commission so they were not afforded an opportunity to comment.
Mark A. Koslowe	No	This proposal would have major impact on the general structure of sales of alcoholic beverages in NYS which has not been addressed (in terms of wholesale service and sales) and extreme negative economic implications for off-premises retail liquor & wine licensees. In addition, the large grocery stores will likely stock the regularly sold brands, much to the detriment of the introduction of new brands. This change will set off a supplier/wholesale struggle for shelf space for wines at these grocery store locations, especially with the likely diminishment of the number of retail outlets resulting from this change. Also, would expect trade practice issue as a result of the changeover and the ensuing need for marketing space, with less space available.
Melissa Fleischut	Yes	While the hospitality industry has typically stayed out of this legislative fight, with a seat on the Commission, we tried to provide input on every issue, and therefore voted yes on this proposal. During our recent legislative efforts to allow drinks to-go, the representatives of the liquor stores started making a correlation between allowing drinks to-go and allowing wine in grocery stores. We don't see a correlation between these two issues. However, an argument can be made that both are popular with consumers and provide great flexibility and options for purchase. There are certainly more brands and types of wine than any one store could possibly stock.
Michael Correra	No	Once again no!  It would allow more access to a volatile product that is already widely available form package stores!  The current system works great!
Paul Zuber	Yes	Like many other states, allowing grocery stores to sell wine is an economic boost to New York. This would benefit New York wineries as well as New York consumers. The change would also add jobs to New York.
Sonya del Peral	Yes	For the convenience to the public and for more competition.

COMMISSION MEMBER	VOTE	EXCLUSIVE PRIVILEGES QUESTION 1 COMMENTS
Stephen Hanson	Yes	It will benefit not only the consumer, but also add tremendous additional revenue to the state and taxation, and also employment. New York State is almost the lowest ratio of liquor stores to population, and over 22 states allow wine and spirits to be sold in supermarkets. Why do liquor stores have a monopoly, and so many others could benefit?
Steve Harris	No	Similar to my answer to the previous question, this suggestion can cripple already established mom and pop liquor stores. There is no current hardship for consumers seeking to by wine. The only real benefit is to grocery stores who certainly are not experiencing financial hardship. Again, businesses rely upon the law to make financial decisions and invest accordingly. Amending the law, especially in this area, will cripple these establishments.

<u>Exclusive Privileges Question 2</u>: Should the law be amended to allow liquor (currently only sold for off-premises consumption by liquor stores) to be sold for off-premises consumption by grocery stores?

YES	NO	ABSTAIN	NO RECOMMENDATION
7	8	1	<b>No Recommendation Issued</b> : Allow liquor to be sold in grocery stores.

COMMISSION MEMBER	VOTE	EXCLUSIVE PRIVILEGES QUESTION 2 COMMENTS
Andrew Rigie	Abstain	Presuming the implication in this question is the privilege to sell bottles of liquor, I abstain on this vote in part because it does not expand the same privilege to on-premises licensees like restaurants and bars. Furthermore, the multiple questions in Topic 8 further divide the privileges provided to off- and on-premises licensees, rather than seeking to bring parity among the license classes with proper guardrails for the various stakeholders.
Ashley White	No	N/A
Courtney Armour	Yes	As noted above, regulatory parity between the different types of alcohol is important. As beer is currently allowed to be sold in grocery stores, spirits should also be available in these forums.
Edward Cooper	No	There are several states that allow grocers to sell distilled spirits. As I mentioned above in my comments, there are more than 10,000 grocery stores in NYS.  Competition among off-premises retailers is good for the customer, Until such time as a level playing field is created, by the Legislature adopting a state license quota system that permits package store licensees to hold multiple licenses rather than the current one license limit, any change in the system would serious disrupt the off-premises retail tier and place the state's package stores at a decided disadvantage.
Evan Gallo	No	Same as above.  [Expanding sales in such a way could be the death knell for local wine and liquor stores, rendering them largely obsolete if "one-stop shopping" of alcohol and groceries was allowed to occur.]
Jeff Zacharia	No	

COMMISSION MEMBER	VOTE	EXCLUSIVE PRIVILEGES QUESTION 2 COMMENTS
Jeffrey Garcia	Yes	This allows for more consumer accessibility
Keven Danow	No	The New York system limits package stores to wine and spirits. These stores, mostly owned by minorities and immigrants could not compete with grocery stores. A very large percentage of them would go out of business. Grocery stores tend to sell based upon quantity with low margins. After the package stores are cleared from the market the variety of goods available in grocery stores will fall. New York products will not have a position of pride in grocery stores. Package stores tend to have experts in wine and spirits to assist customers, grocery stores tend to push customers to nationally advertised brands and brands that offer higher margins to the store. Moreover, there is currently no need for minors to go into a package store. On the other hand, they regularly shop in grocery stores. The convenience it will bring is not sufficient to address the total disruption to the lives and businesses of the package store owners.
Kim Wagner	Yes	There are several states that currently permit spirits to be sold in the grocery channel. From a consumer convenience perspective this makes perfect sense. Grocery stores have responsibly sold other products requiring age verification including beer and cider so there is every reason to believe that they could do the same for spirits. Anticipating that there is a high probability that spirits could be included in the deposit system, having the redemption infrastructure of the grocery channel could be quite important in the implementation of an expanded bottle bill. Just as some groceries choose not to sell cigarettes or beer, I assume that they would have the opportunity to not carry spirits if it didn't make business sense for their operation. It's important to point out that the grocery channel did not have any representation on the Commission so they were not afforded an opportunity to comment.
Mark A. Koslowe	No	This proposal would have major impact on the general structure of sales of alcoholic beverages in NYS which has not been addressed (in terms of wholesale service and sales) and extreme negative economic implications for off-premises retail liquor & wine licensees. In addition, the large grocery stores will likely stock the regularly sold brands, much to the detriment of the introduction of new brands. This change will set off a supplier/wholesale struggle for shelf space for spirits at these grocery store locations, especially with the likely diminishment of the number of retail outlets resulting from this change. Also, would expect trade practice issue as a result of the changeover and the ensuing need for marketing space, with less space available.
Melissa Fleischut	Yes	Again this is not an issue that directly impacts the restaurant industry. But the purpose of the Commission was to look at the outdated and confusing language of the ABC law and provide solutions. Consumers are looking for convenience so expanding the markets of both the grocery stores and liquor stores to sell more items and make it consistent makes sense. By supporting an expansion of sales for both liquor stores and grocery stores, a level playing field should exist between both sets of retailers.
Michael Correra	No	Once again no!  It would allow more access to a volatile product that is already widely available form package stores!

COMMISSION MEMBER	VOTE	EXCLUSIVE PRIVILEGES QUESTION 2 COMMENTS
		The current system works great!
Paul Zuber	Yes	if wine is sold in grocery stores then liquor should also be allowed to be sold in grocery stores. There are states that effectively enforce this type of sale so there should be not a concern as to access to alcohol. Additionally, this would expand outlets for New York distilled products as well as wine.
Sonya del Peral	Yes	For the convenience to the public and for more competition.
Stephen Hanson	Yes	Similar to the response above to question number five, oh, most of the states in America, allow wine and spirits to be sold in supermarkets, why is New York State being held hostage to the liquor store owners?
Steve Harris	No	See previous comments above.  [Similar to my answer to the previous question, this suggestion can cripple already established mom and pop liquor stores. There is no current hardship for consumers seeking to by wine. The only real benefit is to grocery stores who certainly are not experiencing financial hardship. Again, businesses rely upon the law to make financial decisions and invest accordingly. Amending the law, especially in this area, will cripple these establishments.]

<u>Exclusive Privileges Question 3</u>: Should the law be amended to allow beer (currently only sold for off-premises consumption by grocery stores, drug stores and C wholesalers) to be sold for off-premises consumption by wine/liquor stores?

YES	NO	ABSTAIN	NO RECOMMENDATION
6	9	1	No Recommendation Issued: Allow beer to be sold in liquor stores.

COMMISSION MEMBER	VOTE	EXCLUSIVE PRIVILEGES QUESTION 3 COMMENTS
Andrew Rigie	Abstain	I abstain on this vote because the multiple questions in Topic 8 further divide the privileges provided to off and on premises licensees without compelling reasoning, rather than seeking to bring parity among the license classes with proper guardrails for the various stakeholders.
Ashley White	Yes	N/A
Courtney Armour	No	Beer is already allowed to be sold in many more locations than spirits or wine. Allowing greater access without also expanding the availability of the other beverage types will only further entrench the unfairly disparate treatment across the categories.
Edward Cooper	No	Until such time as a level playing field is created, by the Legislature adopting a state license quota system that permits package store licensees to hold multiple licenses rather than the current one license limit, any change in the system would seriously disrupt the off-premises retail tier.
Evan Gallo	No	There does not appear to be notable consumer demand to purchase beer within wine and liquor stores. The current division of locations able to sell beer vs. wine/liquor is reasonable and should continue in its current form, as it allows

COMMISSION MEMBER	VOTE	EXCLUSIVE PRIVILEGES QUESTION 3 COMMENTS
		multiple retail entities to enjoy alcohol sales revenue from separate industry sectors.
Jeff Zacharia	No	
Jeffrey Garcia	Yes	It should be reciprocal
Keven Danow	No	Beer is part of the container redemption system, which package stores are not set up to accommodate. Most package stores have limited space. Handling cans, is very different from handling bottles. Beer has a use by date. For all these reasons it is best to leave beer to the grocery stores and for package stores to concentrate on the beverages they know how to handle and sell.
Kim Wagner	Yes	Wine/liquor stores have responsibly sold products requiring age verification and in the spirit of promoting entrepreneurship and innovation they should be afforded the option of also selling beer. It's important to note that the small, progressive, boutique retailers were not explicitly represented on the Commission and I anticipate that they might not agree with the main stream established players who voted down this opportunity.
Mark A. Koslowe	No	There was no indication by those individuals representing package store interests of any request to handle beer products. In fact, just the reverse. The representatives of that arm of the retail trade specifically declined to expand their ability to sell such product. It would present high cost to these merchants in the form of: loss of shelf space to more profitable wine & spirit items, dealing with bottle/can deposit laws and storage of used containers, need for additional personnel, just to name a few of the burdens involved for an expansion into this product line of merchandise.
Melissa Fleischut	Yes	Similar to our other rationale previously stated, the idea of creating a level playing field between retailers and offering convenience for consumers was the reason behind our vote here. Since we voted in favor of expanding what a grocery store could sell, we voted to expand what a liquor store could sell as well. By supporting an expansion of sales for both liquor stores and grocery stores, a level playing field should exist between both sets of retailers.
Michael Correra	No	Once again no! The current system works great!
Paul Zuber	Yes	If wine is sold in grocery stores then beer should be allowed to be sold in liquor stores. Since the majority of liquor stores are not large entities in terms of square footage, the addition of beer will only be a small convenience item for most stores. Thus it will have limited impact on other licensees.
Sonya del Peral	Yes	For the convenience to the public and for more competition.
Stephen Hanson	No	They have a large enough monopoly
Steve Harris	No	The ability to buy beer in establishments that already are licensed to sell it are numerous and there is no reason to change the current model. Smaller C-stores have a profit center in selling malt-based beverages and creating further licenses would hurt that profit margin. Again, the ABC law is also a financial model.

<u>Exclusive Privileges Question 4</u>: Should the law be amended to allow wine/liquor stores to sell items in addition to those listed exhaustively in section 63 of the ABC Law?

YES	NO	ABSTAIN	RECOMMENDATION
9	4	3	Recommendation: Allow additional items to be sold in liquor/wine stores.

COMMISSION MEMBER	VOTE	EXCLUSIVE PRIVILEGES QUESTION 4 COMMENTS
Andrew Rigie	Abstain	I abstain on this vote because the question does not list a description of the additional items for consideration.
Ashley White	Abstain	N/A
Courtney Armour	Yes	Wine/liquor stores should be allowed to sell items in addition to those listed in section 63 of the ABC Law. Many states allow a broader range of items to be sold in wine/liquor stores. For example, Connecticut and New Jersey allow a variety of foods, utensils, equipment, lottery tickets, and other types of goods. Allowing additional items would give consumers added convenience they want and deserve.
Edward Cooper	Yes	The list in Section 63 is too narrow for present-day package store customers and should be expanded to accommodate today's consumers needs and convenience.
Evan Gallo	Yes	The current list is a relic of the past and does not allow for any modern growth in alcohol-associated product offerings that would not adversely impact other off-premises retailers (e.g. branded glassware, tonic water, and limes). Individual items should not have to be expressly legislated in order for a wine/liquor store to sell them, as long as products reasonably relate to the sale, preparation, and/or consumption of alcohol, which could be regulated by the SLA instead.
Jeff Zacharia	No	
Jeffrey Garcia	Yes	This is a temporary 7 day license
Keven Danow	No	The purpose of the law is to limit the reason for minors to enter a package store. These stores are restricted so that the people who work in them are trained to deal with adult beverages. They have limited space and that space should be dedicated to wine and spirits. Allowing package stores to sell other items will simply change the package store into an inefficient grocery store.
Kim Wagner	Yes	I don't understand why, at this point in history, wine/liquor stores are limited in the items that they can sell. This appears to be a holdover to an immediately post-prohibition era. While many wine/liquor stores may choose not to expand their offerings, I believe that creative entrepreneurs should be able to sell the items that their customers demand and be given an opportunity to differentiate their offering in a world that has largely gone on-line.

COMMISSION MEMBER	VOTE	EXCLUSIVE PRIVILEGES QUESTION 4 COMMENTS
Mark A. Koslowe	No	There was no indication by those individuals representing package store interests of any request to handle items other than the alcoholic beverages allowed currently together with a few unrelated non-beverage items + water. In fact, just the reverse. The representatives of that arm of the retail trade specifically declined to expand their ability to sell such product. It would present high cost to these merchants in the form of: loss of shelf space to more profitable wine & spirit items, dealing with storage of same, need for additional personnel, just to name a few of the burdens involved for an expansion of this nature.
Melissa Fleischut	Yes	We see no reason to oppose having a wine/liquor store sell additional items if they want to dedicate the floor/shelf space to do so. We believe that these items would be a likely compliment to the wine and liquor they are already selling. It would also provide a liquor/wine store with a more level playing field to compete with grocery stores if each is allowed to carry the others' products.
Michael Correra	No	Package stores are only for people who have a reason to be in them!  Not kids buying soda or candy!
Paul Zuber	Yes	Consumers should be allowed to shop conveniently and not be forced to shop at multiple locations for simple items that could be purchased at their local liquor store. Again, space is limited in most liquor stores therefore the additional product selection and amount will be limited thus nullifying any real concerns about impact on other retailers.
Sonya del Peral	Yes	For the convenience to the public and for more competition.
Stephen Hanson	Yes	Items should be associated with wine and spirits sold
Steve Harris	Abstain	This question is too broad for a definitive answer. Narrowing the scope of what additional items would be included would allow me to better answer.

<u>Exclusive Privileges Question 5</u>: Should the law be amended to allow ready to drink distilled products with an alcohol by volume of 7% or less to be sold in grocery stores?

YES	NO	ABSTAIN	NO RECOMMENDATION
6	9	1	<b>No Recommendation Issued</b> : Allow ready to drink cocktails to be sold in grocery stores.

COMMISSION MEMBER	VOTE	EXCLUSIVE PRIVILEGES QUESTION 5 COMMENTS
Andrew Rigie	Abstain	Ready-to-drink distilled products can currently only be sold for off-premises consumption in (1) liquor stores, and (2) by on-premises licensees pursuant to a three-year law that subjects such sales to various restrictions, including size limitations. There is no compelling reason to extend this privilege to grocery stores without any restrictions, such as size limitations, while maintaining those restrictions for on-premises licensees. Thus, I abstain because it doesn't bring parity among the license classes with proper guardrails for the various stakeholders.

COMMISSION MEMBER	VOTE	EXCLUSIVE PRIVILEGES QUESTION 5 COMMENTS
Ashley White	No	Liquor products should only be sold by liquor stores. Note - changed vote
		There is no good public policy rationale to limit competition and the ability of consumers to access and purchase many of the new and exciting spirits based ready-to-drink (RTDs) products (i.e. hard seltzers, canned cocktails, etc.) that have been and continue to be developed and introduced by distillers.  Regardless of the alcohol base, all RTDs are widely recognized as being in the same product category. They are in the same general ABV range, typically are mixed with various flavors and other ingredients, often are carbonated, and frequently are packaged similarly. In states that allow it, you are likely to find them shelved near each other and often sold out of the cold box. They are directly competitive with each other and consumers view them as interchangeable.
Courtney Armour	Yes	Consumers are entitled to have equal access to all of these products regardless of the type of alcohol base. In our experience, consumers are confused as to why, for example, a seltzer made with a base of beer can be sold in grocery stores, but a seltzer made with spirits are only available in a liquor store.
		The law needs to evolve and adopt to commonsense changes for a modern marketplace. RTDs have become the fastest growing segment of the alcohol beverage industry in the US and increasing numbers of new RTDs are being introduced. The current regulatory framework in the states governing the distribution and sale of our products was developed many decades ago, certainly without these products in mind. The laws in this area in most states generally have not kept up with this product innovation. It is time for the regulation of RTDs to adopt to the new marketplace.
Edward Cooper	No	Competition among off-premises retailers is good for the customer. Until such time as a level playing field is created, by the Legislature adopting a state license quota system licensing system that permits package store licensees to hold multiple licenses rather than the current one license limit, any change in the system would serious disrupt the off-premises retail tier and place the state's package stores at a decided disadvantage.
Evan Gallo	No	Regardless of the proposed - and potentially subjective - ABV limitations, there could be long-term and currently unintended consequences for wine/liquor stores regarding the allowance of sales of spirits-based products in groceries. The current division between off-premises retailers predominantly based on alcohol type for beverage sales is the most objective framework, which should remain.
Jeff Zacharia	No	
Jeffrey Garcia	Yes	This allows for more consumer accessibility
Keven Danow	No	The public will only be confused because the 7% is an arbitrary distinction without a difference. The public is already confused by wine products in grocery stores because they often do not realize why some products are allowed and others not. The distinction between wine and spirits on the one hand and beer on the other is something the public understands. This should remain in place. Also, because the package stores are limited to wine and spirits, they should continue to be the sole outlet for these products.

COMMISSION MEMBER	VOTE	EXCLUSIVE PRIVILEGES QUESTION 5 COMMENTS
Kim Wagner	Yes	Alcohol is alcohol regardless of the starting raw material used to produce it. In a world where the grocery channel is limited in the alcoholic beverages that it can sell, placing an alcohol by volume limit vs. a raw material limit makes much more sense. It's important to point out that the grocery channel did not have any representation on the Commission so they were not afforded an opportunity to comment.
Mark A. Koslowe	No	There is no viable difference to allow one form of spirit item to be sold for off-premises consumption at premises other than a package store, as opposed to any other alcoholic beverage spirit product. Why not ice-pops (spirit based)? Why use 7% as the threshold Why not 6% like wine-product based products already sold at such licensed grocery/drug store beer premises? These items are available at package stores for those who desire same and like spirit products at these sites, far less issue with sales to minors or the need for added SLA enforcement.
Melissa Fleischut	No	When presented during the meeting, I did not understand the proposal as presented. Upon further review and discussion, I believe that this would allow grocery stores to sell canned, pre-made, cocktails. This is something that on-premise licensees were recently prohibited from doing under the cocktails togo legislation. We believe that raising that issue for on-premise retailers is beyond the purview of the commission. Therefore, we would change our vote from abstain to no.
Michael Correra	No	These liquor products are already widely available! There is no reason to expand into more outlets! It is a dangerous product it does not need to be in more outlets!
Paul Zuber	Yes	Similar to the other proposals, this is a consumer convenience proposal.  Additionally, if we do allow other items to be sold at liquor stores, then a similar provision should be allowed to let grocery and convenient stores sell other products.
Sonya del Peral	Yes	For the convenience to the public and for more competition.
Stephen Hanson	Yes	They are already allowed to sell hard cider, the 7% It's just slightly above the hard cider
Steve Harris	No	Liquor should be sold in liquor stores or on-premise, no matter what the ABV is. Again, grocery stores don't need additional products to stay profitable. The RTD category in liquor stores would literally die if this amendment were made.

<u>Purchasing Amendment Question 3</u>: As a Commission Member, do you recommend that New York State amend the ABC Law to allow on premise retailers the ability to purchase from off-premises retailers, subject to limitations?

YES	NO	ABSTAIN	RECOMMENDATION
10	6	0	Recommendation: Allow on-premises retailers to purchase from off-premises retailers in limited fashion.

COMMISSION MEMBER	VOTE	PURCHASING AMENDMENT QUESTION 3 COMMENTS
Andrew Rigie	Yes	A restaurant or bar may run out of a certain wine or spirit that a customer requests at a time when they cannot receive a delivery from a distributor, so they should be permitted to go down the block to an off-premises retailer and purchase product to sell their customers. It's good for customers and it supports on-premises and off-premises licensees.
Ashley White	No	N/A
Courtney Armour	No	While we certainly want retailers to be able to obtain all of the product they need in a timely manner and in sufficient quantities to meet consumer demand, we fear that this proposal has the potential for several unintended consequences and urge the industry to look for another business solution to meet these needs. We are weary of effectively creating a fourth tier and that it could devolve into such a loose system that there will no longer be any effective record of where the product is going. This is not only bad for the veracity of the commercial data industry members depend on for planning their business, it could also exacerbate potential for counterfeit or unauthorized importation of product.
Edward Cooper	Yes	The three-tier system works well in NYS. However, on those occasions when an on-premises retailer runs out of stock on an item(s), and the wholesale-distributor is closed or otherwise unable to deliver those items, the on-premise retailer should have the option to purchase those items, at retail, from the properly-licensed off-premise retailer subject to limitations.
Evan Gallo	Yes	Limited retailer to retailer sales will not upend New York's three tiered system. Wholesalers will not go out of business simply because a restaurant runs out of a preferred bottle of alcohol and needs to make a spot purchase before its next delivery from a distributor. Tax and reporting compliance for both retailers can fairly easily be hashed out, and reasonable purchasing limitations would ensure a bar is not sourcing all its alcoholic goods from the liquor store down the block.
Jeff Zacharia	Yes	Yes
Jeffrey Garcia	Yes	On premise should be allowed to purchase from off premise retailers with limitations.
Keven Danow	No	This would make a package store a wholesaler. Package stores would be required to obtain a federal basic wholesale permit or be in violation of the law. It will have the effect of making it more difficult to track sales and keep track of sale taxes due and owing.
Kim Wagner	Yes	On-premise retail establishments are relatively low margin businesses that typically depend on their alcohol revenue to maintain viable economics. When business is unexpectedly strong it is not unusual to run out of a key product and need it to be replaced faster than the wholesaler is willing to accommodate at a reasonable price. Allowing the on-premise retailer to purchase from a local off-premise retailer to address this outage helps both businesses and does not interfere with the collection of state taxes.

COMMISSION MEMBER	VOTE	PURCHASING AMENDMENT QUESTION 3 COMMENTS
Mark Koslowe	No	This would turn the retail tier into a hybrid wholesale tier, completely unregulated with no ability of the Authority to control sales or the amounts sold (notwithstanding the professed "limits" discussed at the Meeting). There are already illegal sales occurring, but by examining sales patterns, illegal activity can be monitored and prosecuted. However, once a loophole is created, the amounts cannot be monitored, all stores will claim legal sales within the minimums; this will only encourage larger sales outside the limited scope. This will also subject the retailers involved to the scrutiny of the TTB and all ensuing regulations which have been applied to the supplier/wholesale trade (including obtaining a Federal Permit), much of which they do not understand nor which to be involved with. What proponents claim is just a simple bottle or two transaction when needed is incorrect; it is complex and highly regulated.
Melissa Fleischut	Yes	I voted to recommend changes to the ABC law to allow on-premise retailers to purchase from off-premise retailers in limited quantities that were not defined in our meeting. Occasionally an on-premise licensee will run out of a particular brand on a busy weekend and should be allowed to run out and purchase a few bottles at the local liquor store. The liquor stores would easily be able to implement systems to track these sales as similar sales are already allowed and the state would not lose any tax revenue.
Michael Correra	No	I do not recommend this
Paul Zuber	Yes	This is a proposal that makes sense in light of how product is delivered to retailers. A bar or restaurant should have the ability to purchase in limited quantities when needed from an off-premises retailer.
Sonya del Peral	Yes	There are many circumstances that arise where the sudden need for an on-premise retailer to purchase from an off-premise retailer arises. An amendment to this effect will, therefore support small business as well as the public convenience. The on-premise retailer will not be motivated to do this often as they will be paying retail pricing as opposed to wholesale pricing, so this does not pose a threat to a wholesaler or to a manufacturer who sells directly to the retailer. The off-premise retailer will have to track the sale separately as a non-taxable sale which is not difficult to do.
Stephen Hanson	Yes	I think this would be beneficial to the industry
Steve Harris	No	This issue was discussed as a "tangent" from another topic at our last meeting. While the proponents of this proposal see it as a limited exception to the prohibition of retail-to-retail sales (limited, that is, in the amount and frequencies when such transactions would be allowed), the fact is that this would create a "Fourth Tier". Even if the law and subsequent regulatory scheme required notification to SLA of such transactions, it is doubtful that they would be followed because it would be almost impossible to prove who the liquor store actually sold product to. Allowing a liquor store to act as a distributor, even in a limited fashion, also brings into play federal requirements that likely will not be understood or even recognized by the retail licensee.

# 9 Store Ownership Limitation

Part GG of chapter 55 of the laws of 2022, §1(d) – "the number of off-premises retail licenses an individual may be granted for beer, wine, or liquor."

#### **Summary:**

In New York State, a licensed wine store or liquor store owner may only own or have an interest (direct or indirect) in one (1) wine store or liquor store per sections §63(5)<sup>82</sup> and §79(2)<sup>83</sup> of the ABC Law. This statutory requirement prohibits an owner in having multiple locations or having an interest in more than one (1) licensed wine or liquor stores. An owner may have an eligible family member apply for and receive their own individual license that could be used to open another location. However, since the law limits to having only one interest, there cannot be any co-mingling of finances or inventory between these licensed locations.

For other retail operations, this limiting factor of one (1) license (store) per owner does not exist. Owners are allowed to have multiple locations which may provide them economies of scale, additional revenue streams, and the ability to create chain stores or corporate conglomerates.

There are many permutations when it comes to the number of wine and/or liquor stores a person/entity may own in the other 32 license states. For some states, licensing is set to a specific number (e.g., one, two, five), for others it is based on a quota or ratio, and there are a few with no limits defined. <sup>84</sup> Three license states have a limit of one license per owner, ten states have a defined number of licenses that range from two up to a total of nine, 13 states licenses are based on a quota or ratio, and six states have no limit on the number licenses issued. <sup>85</sup>

Commission Members were provided with briefing materials that gave additional information and context for the topic being discussed. Commission Meeting briefing materials for this topic may be found in the associated document "Topic 9 - Commission Meetings Briefing Materials 2022.pdf."

#### **Commission Votes and Recommendations:**

The Commission Members participated in a discussion regarding the number of off-premises retail licenses an individual may be granted. The discussion centered on whether the law should be amended to allow an individual to own more than one liquor store and if there should be any limitations on the number of licenses an individual can have. The Commission Members were posed the following two questions and their votes, comments, and recommendations are presented below. No comments have been edited for language, grammar, or spelling.

<u>Store Ownership Question 1</u>: Should the law be amended to allow an individual to own more than one liquor store in New York State without any limit on the number of licenses they can have?

YES	NO	ABSTAIN	NO RECOMMENDATION
6	9	1	<b>No Recommendation Issued</b> : Allow an individual to own any number of liquor stores.

<sup>82</sup> ABCL §63(5).

<sup>83</sup> ABCL §79(2).

<sup>&</sup>lt;sup>84</sup> Commission to Reform the Alcoholic Beverage Control Law, Commission Meeting #3, December 19, 2022, Briefing Material – Policy Research, Topic – 9 "The number of off premises retail licenses an individual may be granted for beer, wine, or liquor."

<sup>&</sup>lt;sup>85</sup> Note: data for the number of licenses was not obtainable for three of the license states.

COMMISSION MEMBER	VOTE	STORE OWNERSHIP QUESTION 1 COMMENTS
Andrew Rigie	No	There is potential to have negative consequences for smaller off-premises retailers and there is no need to create this potential disruption to the marketplace when you can achieve similar benefits and less risk as contemplated in question 16, which I voted "yes" on.
Ashley White	Abstain	N/A
Courtney Armour	Yes	DISCUS supports eliminating the one liquor store license per person limit. To my knowledge, only 6 other states impose a license off premise per retailer limit. We support New York State joining the majority of states, which do not impose any limit on the number of off premise spirits retail licenses that may be issued to one person. In the alternative, the law should be amended to lift the limit to some number above just one license per individual.
		The Legislature should consider expanding the number of licenses that any one individual or entity may hold. This change is central to any effort to expand opportunities for current licensees and those seeking to start/operate a beverage alcohol business in New York State.
Edward Cooper	Yes	The fairest way to grant package store licenses for off-premises consumption is to adopt a state license quota system. Comparable states throughout the country utilize this form of licensing to administratively determine who may acquire and hold an off-premises license to sell alcohol to the consumer. Attached is a document that provides a comparison of New York State alcohol licensing to that of large population states (CA, TX, FL) with information describing each state's licensing system in the document's appendix.
		Attachment: New York Alcohol Licensing Comparison.pdf
Evan Gallo	No	Any expansion should come with a reasonable limit.
Jeff Zacharia	No	
Jeffrey Garcia	Yes	This is free enterprise if the person can show they can responsibly adhere to the law they should be allowed to own more than one Liquor store. Maybe a limit, now what that is maybe 3-5
Keven Danow	No	Package stores were limited to one store per owner so that the owner of the package store would have a stake in the neighborhood. Usually, package store owners live in or near their stores. They are highly responsive to the needs of their customers and are therefore more likely to avoid sales to minors. Multiple store ownership leads to chains with little or no ties to the neighborhood. The current system works well and should not be amended.
Kim Wagner	Yes	Currently farm wineries and distilleries are allowed multiple 'branch offices' which are essentially retail outlets and on-premise hospitality businesses are not limited in the number of licenses they can have. Currently those retailers that want to have multiple retail establishments fund family members to work around the system so that while each person only controls one license, a single family can oversee five or more. The current rule discriminates against individual entrepreneurs and other business entities. Allowing multiple licenses puts some parity in the system and not placing a limit allows market forces to determine how many licenses an individual maintains.

COMMISSION MEMBER	VOTE	STORE OWNERSHIP QUESTION 1 COMMENTS
Mark A. Koslowe	No	There is a fine balance in NYS among package store owners (whether large or small), based on location, competition, buying power and related factors. One key element is that a party can own (have an interest in) only one store. This creates competition, although larger store can be in quantity. Balancing against large stores is the general reasoning of the Authority in approving licensees, which is to generate a mix of large and smaller retailers in an area, which allows competition, lower pricing for consumers (at the larger store) and better service (at the smaller store). However, this dynamic changes once a party can own or have an interest in more than one store, especially in terms of buying power. Frankly, the big will just get bigger, as opposed to a smaller owner establishing a second site. No large enterprise can hope to create an imbalance and capture a very large swath of the public domain as no matter how large an economic net, only one location is allowed.
Melissa Fleischut	Yes	The New York State Restaurant Association believes in competition and believes businesses should be able to grow and expand if they want to. As restaurant owners, our members are not limited to one license and we would never want to see a limit for on-premise licenses. That is why we support expanding the number of licenses a liquor store is allowed to hold. There was also discussion that this rule is sometimes worked around by having different family members on the various store licenses. It would seem to make sense then to update the law and allow for multiple licenses.
Michael Correra	No	We do not need to corporatize this industry with large companies destroying the marketplace!
Paul Zuber	Yes	When this provision was first enacted in New York is was a post Prohibition statute that was designed to alleviate fears of excessive drinking post Prohibition. That is why the "neighborhood" store concept was proposed. But times have changed and this provisions limits the ability of a business owner to expand. This is unlike any other licensee such as an on-premises licensee who can own more than one licensed establishment. Additionally, it is commonly known in the industry that there are several liquor stores that act as a chain located in New York. These stores may have separate family members who are the licensee but they clearly function as a chain. Therefore this law will actually give the opportunity to expand to any licensee rather than those who have the family and resources to work around the current law.
Sonya del Peral	No	An individual, or an individual entity, should be allowed to own more than one liquor store in New York. However, no limit on the number of licenses could result in an eventual consolidation of ownership of liquor stores in the state and a resulting restraint on competition and higher prices.
Stephen Hanson	No	Liquor stores already have monopoly on product to be sold, so letting the wealthier liquor store owners having even more than monopoly by letting them have more than one store to me. This is the most outrageous bill that could be presented. Some large box supermarkets already have every relative owning liquor stores next to these stores and now they're asking for an additional stores, I find this outrageous.

COMMISSION MEMBER	VOTE	STORE OWNERSHIP QUESTION 1 COMMENTS
Steve Harris	No	This would create the "Walmartization" of the liquor store industry. Only corporate America can really have a model for multiple licenses, driving out mom and pop stores who have relied on the current law to invest in their business.

<u>Store Ownership Question 2</u>: Should the law be amended to allow an individual to own more than one liquor store in New York State up to a certain limit on the number of licenses they can have?

YES	NO	ABSTAIN	RECOMMENDATION
10	5	1	Recommendation: Allow an individual to own more than one but not unlimited numbers of liquor stores.

COMMISSION MEMBER	VOTE	STORE OWNERSHIP QUESTION 2 COMMENTS
Andrew Rigie	Yes	This will allow all applicants including small business owners to open a limited number of additional liquor stores, removing barriers to growth for businesses while still keeping a check on the proliferation new stores, so it strikes a balance.
Ashley White	Abstain	N/A
Courtney Armour	Yes	Same reasoning as above. DISCUS is opposed to limitations on the number of liquor stores an individual may own in New York State. While we do not support any limit, we alternatively would support increasing the current one liquor store per retailer limit.
Edward Cooper	Yes	The Legislature should consider expanding the number of licenses that any one individual or entity may hold. This change is central to any effort to expand opportunities for current licensees and those seeking to start/operate a beverage alcohol business in New York State.  The fairest way to grant package store licenses for off-premises consumption is to adopt a state license quota system. Comparable states throughout the country utilize this form of licensing to administratively determine who may acquire and hold an off-premises license to sell alcohol to the consumer. Attached is a document that provides a comparison of New York State alcohol licensing to that of large population states (CA, TX, FL) with information describing each state's licensing system in the document's appendix.  Attachment: New York Alcohol Licensing Comparison.pdf
Evan Gallo	Yes	One or two additional licenses only. NYS has one of the lowest liquor stores to residents ratios/per capita in the entire northeast United States. Increasing the number of available licenses by one or two would create new liquor store and employment opportunities while protecting against corporate/chain proliferation.
Jeff Zacharia	No	
Jeffrey Garcia	Yes	Sure 3-5 licensed stores

COMMISSION MEMBER	VOTE	STORE OWNERSHIP QUESTION 2 COMMENTS
Keven Danow	No	Package stores were limited to one store per owner so that the owner of the package store would have a stake in the neighborhood. Usually, package store owners live in or near their stores. They are highly responsive to the needs of their customers and are therefore more likely to avoid sales to minors. Multiple store ownership leads to chains with little or no ties to the neighborhood. The current system works well and should not be amended. Moreover, the Commission should not make open ended recommendations. The current system encourages immigrants and minorities and others to own their businesses and to pay close attention to that business. It helps to limit over consumption and encourages people to know their business, their neighbors and their products.
Kim Wagner	Yes	Currently farm wineries and distilleries are allowed multiple 'branch offices' which are essentially retail outlets and on-premise hospitality businesses are not limited in the number of licenses they can have. Currently those retailers that want to have multiple retail establishments fund family members to work around the system so that while each person only controls one license, a single family can oversee five or more. The current rule discriminates against individual entrepreneurs and other business entities. Allowing multiple licenses puts some parity in the system.
Mark A. Koslowe	No	There is a fine balance in NYS among package store owners (whether large or small), based on location, competition, buying power and related factors. One key element is that a party can own (have an interest in) only one store. This creates competition, although larger store can be in quantity. Balancing against large stores is the general reasoning of the Authority in approving licensees, which is to generate a mix of large and smaller retailers in an area, which allows competition, lower pricing for consumers (at the larger store) and better service (at the smaller store). However, this dynamic changes once a party can own or have an interest in more than one store, especially in terms of buying power. Frankly, the big will just get bigger, as opposed to a smaller owner establishing a second site. No large enterprise can hope to create an imbalance and capture a very large swath of the public domain as no matter how large an economic net, only one location is allowed.
Melissa Fleischut	Yes	The New York State Restaurant Association believes in competition and believes businesses should be able to grow and expand if they want to. As restaurant owners, our members are not limited to one license and we would never want to see a limit for on-premise licenses. While we don't see the need to limit the number of licenses for liquor store owners, this proposal would still expand the number beyond the current limit of one. There was also discussion that this rule is sometimes worked around by having different family members on the various store licenses. It would seem to make sense then to update the law and allow for multiple licenses.
Michael Correra	No	We do not need to corporatize this industry with large companies destroying the marketplace!
Paul Zuber	Yes	Same reasoning as above but it is true that limiting the number may be a more prudent start to changing the current law.

COMMISSION MEMBER	VOTE	STORE OWNERSHIP QUESTION 2 COMMENTS
Sonya del Peral	Yes	An individual, or an individual entity, should be allowed to own more than one liquor store in New York. By limiting the number of licenses and creating legal "firewalls" to ensure that beneficial ownership does not end up beyond the legal limit, healthy business competition would be maintained.
Stephen Hanson	Yes	Same response as #15  [Liquor stores already have monopoly on product to be sold, so letting the wealthier liquor store owners having even more than monopoly by letting them have more than one store to me. This is the most outrageous bill that could be presented. Some large box supermarkets already have every relative owning liquor stores next to these stores and now they're asking for an additional stores, I find this outrageous.]
Steve Harris	No	With the exception of one interested party, I am not aware of any other license holder asking for this change. It is my understanding that all three trade associations that represent the industry oppose this. I respect their position and accordingly vote no.

# 10 Cooperative Buying

Part GG of chapter 55 of the laws of 2022, §1(d) – "the ability of licensees to form purchasing cooperatives, and the effects such cooperatives would have on the rest of the market."

#### **Summary:**

Cooperative buying allows multiple retail licensees to form a cooperative entity to leverage their buying power in the context of volume-based discounting from wholesalers. Smaller stores are often disadvantaged, either financially or on the basis of available space, and therefore are less able to avail themselves of lower prices offered for higher volume purchases. Retail licensees will enter into a contractual agreement to form the co-op which outlines each member's responsibility and liability. Purchasing cooperative arrangements typically enact rules around the number of members, discount percentages and quantities to purchase. Cooperative buying is <u>not</u> permissible under NYS Alcoholic Beverage Control Law.

The potential effects of licensees forming purchasing cooperatives on the rest of the market are difficult to measure as many factors must be considered. Some factors include: 1) What are the statutory requirements for implementing purchasing cooperatives? 2) What quantity levels and volume discounts would be allowed (price reductions) to buyers as incentives to purchase more product? 3) How many retail licensees may from and participate in a purchasing cooperative? 4) Can a retail licensee join and participate in more than one purchasing cooperative?

Therefore, to understand the effects such cooperatives have on the rest of the market, data would need to be obtained from state's liquor control boards, state's department of revenue/taxes, wholesalers, and teamsters' unions (e.g., drivers and warehouse workers) based on relevant categories for beer, wine, and spirits. The data collection actions would require considerable cooperation from each state as well as unions across the US, and months of data collection and analysis. Additionally, information from alcohol related associations, census and Federal Alcohol and Tobacco Tax and Trade Bureau (TTB) data

would need to be further collected and analyzed. It is also likely that each state will have vastly different statutory requirements or regulations that are not comparable, making the effects realized for one state, not comparable with another states.

Commission Members were provided with briefing materials that gave additional information and context for the topic being discussed. Commission Meeting briefing materials for this topic may be found in the associated document "Topic 7 - Commission Meetings Briefing Materials 2022.pdf."

#### **Commission Votes and Recommendations:**

The Commission Members participated in a discussion regarding the ability of licensees to form purchasing cooperatives, and the effects such cooperatives would have on the rest of the market. The discussion focused on if the ABC Law should be amended to allow off-premises licensees the ability to form a purchasing cooperative subject to limitations, and to allow on-premises licensees the ability to form a purchasing cooperative subject to limitations. The Commission Members were posed the following two questions and their votes, comments, and recommendations are presented below. No comments have been edited for language, grammar, or spelling.

<u>Co-op Buying Question 1</u>: As a Commission Member, do you recommend that New York State amend the ABC Law to allow off-premise licensees the ability to form a purchasing cooperative, subject to limitations?

YES	NO	ABSTAIN	NO RECOMMENDATION
1	15	0	<b>No Recommendation Issued</b> : Allow cooperative purchasing by licensed off-premises retailers.

COMMISSION MEMBER	VOTE	CO-OP BUYING QUESTION 1 COMMENTS
Andrew Rigie	No	I supported this recommendation but after participating in lengthy deliberation, I determined that even if purchasing cooperatives were permitted the distributors would have many ways to disrupt the potential benefits on-premises licensees may receive if it were allowed. Ultimately, I felt the recommendations should focus on the most beneficial and impactful reforms possible and I determined this would distract from that at this time, but I do believe there could be potential benefit to revisit this matter in the future.
Ashley White	No	N/A
Courtney Armour	No	Based on the discussion at the last Commission meeting, it appears that this proposal may be counterproductive to the intended goal – to allow smaller retailers to negotiate lower prices from wholesalers and replicate the buying power of larger retailers. As discussed, under the current proposal, the large retailers could all join the same cooperative and garner the biggest discount, thereby undermining the whole objective and creating other potential issues. There could also be issues around some retailers being targeted and boycotted by others. Practically speaking, there is also the issue of how to implement this without imposing unfair costs on those upstream – it takes more time and resources to negotiate and deliver to multiple retailers. Bulk pricing is usually

COMMISSION MEMBER	VOTE	CO-OP BUYING QUESTION 1 COMMENTS
		justified by the cost savings from only dealing with one other party for a large volume.
Edward Cooper	No	Retailers currently may buy excess inventory and put it in storage. Individual licensees are treated individually by the state. Purchasing cooperatives would undermine the state's policy of one license per licensee.
Evan Gallo	Yes	If authorized, retailers should be able to make the business decision to enter into agreements with other like-minded owners to maximize their purchasing power subject to reasonable limitations. Wholesalers have a significant upper hand in the extent to which they can structure bulk purchase discounts where mostly the largest retailers are the ones to take advantage of such an offering (due to cash flow and shelf/storage space). By permitting coops, retailers could conceivably band together to seek better deals on their inventory. However, reasonable restrictions must be put in place so the outcome does not result in wholesalers simply raising prices for everyone in order to diminish the buying power of coops.
Jeff Zacharia	No	no
Jeffrey Garcia	No	We understand that this would hurt smaller business.
Keven Danow	No	This will only result in the increase in the number of cases necessary for a quantity discount and will create issues with the regard to tax collection, default payment lists and other issues.
Kim Wagner	No	The underlying rationale for a purchasing cooperative is to allow smaller establishments to make collective purchases to take advantage of the volume discounts offered by the wholesale distributors. During the discussion the representatives of the wholesale distributors made it clear that to maintain their own economics, they would adjust the volume discounts to 'balance out' the economics that would result when more purchasers took advantage of the discounts. Since prices and volume discounts are posted on a monthly basis in New York, it is clear that any benefit of cooperative purchasing would be erased relatively quickly. In a truly free-market environment this behavior would be kept in check by natural competition and purchasing cooperatives would help level the playing field between small and large businesses. However in NY the consolidation of the wholesale tier and the implementation of single source have eliminated this check and balance in the beverage alcohol sector.

COMMISSION MEMBER	VOTE	CO-OP BUYING QUESTION 1 COMMENTS
		The SLA should not allow licensees to form purchasing cooperatives.
		<ul> <li>Allowing cooperative buying by retailers would erode the three-tier system, by essentially allowing retailers to resell at wholesale to other retailers.</li> <li>Cooperative buying could harm smaller retailers. Larger retailers and groups would dominate the market by purchasing at deeper discounts and</li> </ul>
		undercutting the retail competition.  • It will also impact the allocation of Limited Availability items. If larger
		retailers end up buying more allocated items through a coop, smaller retailers will not have the same opportunity to buy LA items, and their ability to service their consumers will be negatively impacted.
Mark Koslowe	No	New York only allows 1 off-premise license per person. Coop buying would essentially allow a person to control multiple unrelated off-premise retail licenses.
		<ul> <li>Retailers could also suffer from reduced servicing by wholesalers, as wholesalers would lose insight into retailer buying patterns.</li> </ul>
		<ul> <li>Coop buying would result in reduced regulatory control of individual retailers, with no insights into retailer buying and payment patterns.</li> </ul>
		<ul> <li>Certain retailers could also be harmed by being placed on COD when other members of a coop buying group are reported as delinquent.</li> </ul>
		The state would need to expend more resources for enforcement and oversight to ensure the cooperative remains in compliance. There are no details on how the cooperative would function, conduct transactions, move goods, etc.
Melissa Fleischut	No	I don't recall taking a vote on this issue specifically, I don't see it in my notes or the meeting minutes, but it was discussed. In general, I have nothing against a group of small operators joining a cooperative to save money. But based on the discussion and the fact that we did not vote to allow cooperatives for onpremise, I will vote no. The wholesaler representatives made it clear that the wholesalers would change the quantity discounts to erode any potential benefit from a cooperative.
Michael Correra	No	I do not recommend this
Paul Zuber	No	Allowing cooperative agreements would not create the desired outcome which is to help small owners as larger licensees would be afforded the same opportunity. Additionally, there is a concern as to when, how and where the shipments made cooperatively would be delivered.
Sonya del Peral	No	While the intent of this amendment is to assist small retailers to form cooperatives (limited to 10 retailers) in their ability to purchase at discount levels provided by wholesalers that otherwise might be out of reach to the single retailer, evidence presented by the wholesalers indicated that any such benefit to the cooperative would be fleeting as the wholesalers would end up raising their discount levels placing the new discounts out of reach to the smaller cooperatives permitted by the amendment.
Stephen Hanson	No	I do not think the above would Benefit

COMMISSION MEMBER	VOTE	CO-OP BUYING QUESTION 1 COMMENTS
Steve Harris	No	While it is understandable why certain licenses would support this proposal, such change would have no real-world impact, and in fact likely increase prices to the very establishments seeking the change. Bottom line is, distributors need to hit price points to remain profitable. If the law artificially changes those price points, the front-line price of the product will just be increased.

<u>Co-op Buying Question 2</u>: As a Commission Member, do you recommend that New York State amend the ABC Law to allow on-premise licensees the ability to form a purchasing cooperative, subject to limitations?

YES	NO	ABSTAIN	NO RECOMMENDATION
1	14	1	<b>No Recommendation Issued</b> : Allow cooperative purchasing by licensed on- premises retailers.

COMMISSION MEMBER	VOTE	CO-OP BUYING QUESTION 2 COMMENTS
Andrew Rigie	No	I supported this recommendation but after participating in lengthy deliberation, I determined that even if purchasing cooperatives were permitted the distributors would have many ways to disrupt the potential benefits on-premises licensees may receive if it were allowed. Ultimately, I felt the recommendations should focus on the most beneficial and impactful reforms possible and I determined this would distract from that at this time, but I do believe there could be potential benefit to revisit this matter in the future.
Ashley White	No	N/A
Courtney Armour	No	Same answer as above.  [Based on the discussion at the last Commission meeting, it appears that this proposal may be counterproductive to the intended goal – to allow smaller retailers to negotiate lower prices from wholesalers and replicate the buying power of larger retailers. As discussed, under the current proposal, the large retailers could all join the same cooperative and garner the biggest discount, thereby undermining the whole objective and creating other potential issues. There could also be issues around some retailers being targeted and boycotted by others. Practically speaking, there is also the issue of how to implement this without imposing unfair costs on those upstream – it takes more time and resources to negotiate and deliver to multiple retailers. Bulk pricing is usually justified by the cost savings from only dealing with one other party for a large volume.]
Edward Cooper	Abstain	I do not have an opinion on this matter.

COMMISSION MEMBER	VOTE	CO-OP BUYING QUESTION 2 COMMENTS
Evan Gallo	Yes	For the same reasons listed above.  [If authorized, retailers should be able to make the business decision to enter into agreements with other like-minded owners to maximize their purchasing power subject to reasonable limitations. Wholesalers have a significant upper hand in the extent to which they can structure bulk purchase discounts where mostly the largest retailers are the ones to take advantage of such an offering (due to cash flow and shelf/storage space). By permitting coops, retailers could conceivably band together to seek better deals on their inventory. However, reasonable restrictions must be put in place so the outcome does not result in wholesalers simply raising prices for everyone in order to diminish the buying power of coops.]
Jeff Zacharia	No	no
Jeffrey Garcia	No	We understand that this would adversely affect the smaller business not in cooperative
Keven Danow	No	This will only result in the increase in the number of cases necessary for a quantity discount and will create issues with the regard to tax collection, default payment lists and other issues.
Kim Wagner	No	The underlying rationale for a purchasing cooperative is to allow smaller establishments to make collective purchases to take advantage of the volume discounts offered by the wholesale distributors. During the discussion the representatives of the wholesale distributors made it clear that to maintain their own economics, they would adjust the volume discounts to 'balance out' the economics that would result when more purchasers took advantage of the discounts. Since prices and volume discounts are posted on a monthly basis in New York, it is clear that any benefit of cooperative purchasing would be erased relatively quickly. In a truly free-market environment this behavior would be kept in check by natural competition and purchasing cooperatives would help level the playing field between small and large businesses. However in NY the consolidation of the wholesale tier and the implementation of single source have eliminated this check and balance in the beverage alcohol sector.

COMMISSION MEMBER	VOTE	CO-OP BUYING QUESTION 2 COMMENTS
Mark Koslowe	No	<ul> <li>The SLA should not allow licensees to form purchasing cooperatives.</li> <li>Allowing cooperative buying by retailers would erode the three-tier system, by essentially allowing retailers to resell at wholesale to other retailers.</li> <li>Cooperative buying could harm smaller retailers. Larger retailers and groups would dominate the market by purchasing at deeper discounts and undercutting the retail competition.</li> <li>It will also impact the allocation of Limited Availability items. If larger retailers end up buying more allocated items through a coop, smaller retailers</li> </ul>
		will not have the same opportunity to buy LA items, and their ability to service their consumers will be negatively impacted.  • New York only allows 1 off-premise license per person. Coop buying would essentially allow a person to control multiple unrelated off-premise retail licenses.
		<ul> <li>Retailers could also suffer from reduced servicing by wholesalers, as wholesalers would lose insight into retailer buying patterns.</li> </ul>
		<ul> <li>Coop buying would result in reduced regulatory control of individual retailers, with no insights into retailer buying and payment patterns.</li> </ul>
		<ul> <li>Certain retailers could also be harmed by being placed on COD when other members of a coop buying group are reported as delinquent.</li> </ul>
		<ul> <li>The state would need to expend more resources for enforcement and oversight to ensure the cooperative remains in compliance. There are no details on how the cooperative would function, conduct transactions, move goods, etc.</li> </ul>
Melissa Fleischut	No	I voted no on allowing on-premise licensees the ability to form a purchasing cooperative, but not because it is a bad idea. In a properly functioning regulatory system, co-op buying would be a reasonable way for small operators to band together and pay less without having to buy more as an individual location. However, during this meeting, the representatives of the wholesalers made it clear that any attempt to help the small operator with a co-op would be met by the wholesalers posting new prices and discounts to remove any benefit to the small operator. As they control what they charge, with no oversight other than to post it publicly, and no option for the operator to purchase a certain brand except from the one designated wholesaler, the co-op would have no impact. The system we currently have favors the wholesaler and they have all of the power over the on-premise licensee.
Michael Correra	No	I do not recommend this
Paul Zuber	No	Allowing cooperative agreements would not create the desired outcome which is to help small owners as larger licensees would be afforded the same opportunity. Additionally, there is a concern as to when, how and where the shipments made cooperatively would be delivered.
Sonya del Peral	No	While the intent of this amendment is to assist on premise accounts to form cooperatives (limited to 10 accounts) in their ability to purchase at discount levels provided by wholesalers that otherwise might be out of reach to the single on-premise account, evidence presented by the wholesalers indicated that any such benefit to the cooperative would be fleeting as the wholesalers

COMMISSION MEMBER	VOTE	CO-OP BUYING QUESTION 2 COMMENTS
		would end up raising their discount levels placing the new discounts out of reach to the smaller cooperatives permitted by the amendment.
Stephen Hanson	No	I do not think the above would be beneficial
Steve Harris	No	See above.  [While it is understandable why certain licenses would support this proposal, such change would have no real-world impact, and in fact likely increase prices to the very establishments seeking the change. Bottom line is, distributors need to hit price points to remain profitable. If the law artificially changes those price points, the front-line price of the product will just be increased.]

# 11 Direct to Consumer Shipping by Manufacturers

Part GG of chapter 55 of the laws of 2022, §1(d) – "the authorization of direct sales to consumers by manufacturers, and the effect direct sales would have on the rest of the market."

#### Summary:

The term "direct to consumer" (DTC), describes a retail sales approach that is used by some manufacturers to sell the goods they produce directly to the consumer. With DTC, the manufacturer does not have to use wholesalers or retailers to sell their products to the consumer. Typically, online stores are utilized where consumers go can browse products and make their purchases. New York State ABC Law Article 6 §79-C<sup>86</sup> and §79-D<sup>87</sup> allows DTC shipping by wineries for wine shipments. For New York cideries<sup>88</sup>, breweries<sup>89</sup>, meaderies<sup>90</sup> and distilleries<sup>91</sup> with a manufacturing license, sales must take place in person at the licensed premises, as they do not have the same right to sell their products via the DTC sales channels as wineries.

The potential effects of direct sales are difficult to quantify and is greatly dependent on each state's regulatory constraints on such statutes (e.g., quantity restrictions), the competitiveness of the in-state industry in the global marketplace whose manufacturer's must be allowed to ship in, the size of the manufacturing sectors in each state, the tax provisions, as well as the general economic landscape of industries in each state. Additionally, the direct and indirect financial effects of any industry provision is difficult to quantify and is lagged, thus a change in direct shipment provisions can take a few years to show impact in a meaningful way. A complete analysis would require data elements that are not publicly available and a deeper understanding of the state's financial context, which would require direct input from each state to be completed. Each states regulations would have to be carefully analyzed within their state's context and are not readily comparable.

<sup>86</sup> ABCL §79-C.

<sup>87</sup> ABCL §79-D.

<sup>88</sup> SLA. Cidery Quick Reference. Retrieved from https://sla.ny.gov/cidery-quick-reference-1 on 1/20/2023.

<sup>&</sup>lt;sup>89</sup> SLA. Brewery Quick Reference. Retrieved from <a href="https://sla.ny.gov/brewery-quick-reference-0">https://sla.ny.gov/brewery-quick-reference-0</a> on 1/20/2023.

<sup>&</sup>lt;sup>90</sup> SLA. Meadery Quick Reference. Retrieved from <a href="https://sla.ny.gov/meadery-quick-reference-0">https://sla.ny.gov/meadery-quick-reference-0</a> on 1/20/2023.

<sup>&</sup>lt;sup>91</sup> SLA. Distillery Quick Reference. Retrieved from https://sla.ny.gov/distillery-quick-reference-0 on 1/20/2023.

Commission Members were provided with briefing materials that gave additional information and context for the topic being discussed. Commission Meeting briefing materials for this topic may be found in the associated document "Topic 6 - Commission Meetings Briefing Materials 2022.pdf".

#### **Commission Votes and Recommendations:**

The Commission Members participated in discussions regarding the authorization of direct sales to consumers by the different manufacturer types. The discussions focused on whether manufacturers other than wineries, who are already permitted to ship, should be allowed to ship product directly to consumers in NYS, and as a corollary matter of constitutional law, should out-of-state manufacturers have the same privilege. The Commission Members were posed the following question, and their votes, comments, and recommendations are presented below. No comments have been edited for language, grammar, or spelling.

<u>DTC Question</u>: Should manufacturers other than wineries – who are already permitted – be allowed to ship product directly to consumers in NYS, and as a corollary matter of constitutional law, should out of state manufacturers have the same privilege?

YES	NO	ABSTAIN	NO RECOMMENDATION
8	8	0	<u>No Recommendation Issued</u> : Allow direct to consumer (DTC) sales for manufacturers.

COMMISSION MEMBER	VOTE	DTC QUESTION COMMENTS
Andrew Rigie	Yes	The smaller spirit manufactures made a compelling argument that this would help their businesses and is already permitted for wineries, and that it is a proconsumer policy.
Ashley White	No	N/A
Courtney Armour	Yes	Distillers should be provided the same opportunity to ship directly to consumers that has been afforded to the wine industry for decades. In the same token of parity and fairness, spirits consumers should be provided with the same convenience and opportunity that wine consumers have long enjoyed. As detailed below, decades of successful wine direct shipping clearly demonstrate that direct shipping of spirits can be done responsibly and in a manner that is not only good for consumers and distillers, but for the entire industry. DISCUS fully supports the three tier system and the experience from wine and other spirits DTC states demonstrates that this will be complementary to the three tier system, addressing currently unmet needs and benefiting all stakeholders—consumers, distillers, distributors, and retailers. Finally, regarding the issue of interstate privileges, all out-of-state manufactures should have the same privilege to ship directly to consumers in NYS as in-state manufacturers. Any reciprocity requirement raises issues of constitutionality under <i>Granholm</i> and should be avoided.  Detail and Supportive Data:  In the last 15 years, growing consumer interest in diverse spirits products has led to the increase in the number of distilleries in the U.S. from just 70 to more than 2,300. There are now more than 15,000 distilled spirits products in the

COMMISSION MEMBER	VOTE	DTC QUESTION COMMENTS
		the products they want, in the way they want, while allowing smart regulation to ensure responsible delivery.
		Direct-to-Consumer (DTC) Shipping is Right for New York
		For nearly two decades, New Yorkers have enjoyed wine direct-to-consumer shipping. Now, consumers expect and want direct-to-consumer shipping of distilled spirits. It's time for the marketplace to meet what consumers are seeking. In fact, 80 percent of consumers believe distillers should be allowed to direct ship spirits in the same way that wineries are able to do today. (IWSR Direct to Consumer Survey, 2021; National Survey Shows Overwhelming Support for Direct-to-Consumer Shipping of Spirits, DISCUS, 2021).
		Spirits DTC is not new in New York. For 15 months, New York consumers and distillers enjoyed the benefits of DTC under a temporary allowance at the height of the COVID-19 pandemic. Following the expiration of the temporary allowance, 76 percent of New York consumers want the ability to buy spirits from distillers and have it shipped directly from the distillery to them, and 74 percent of New York consumers believe distillers should be subject to the same laws and regulations as wineries when it comes to DTC shipments. (IWSR Direct to Consumer Survey – New York and United States Data, 2021).  All Stakeholders Benefit From Direct Shipments of Distilled Spirits  Consumers Benefit
		Consumers want the ability to choose limited-release products, products not available at their local communities/stores and club offerings, or to ship product home from a distillery visit. In New York, at least 75 percent of consumers would consider buying spirits online shipped DTC from distillers outside or within New York, and 68 percent of consumers have purchased beverage alcohol online. (IWSR Direct to Consumer Survey – New York and United States Data, 2021).
		Studying the wine market, the U.S. Federal Trade Commission (FTC) found that "consumers could reap significant benefits" from DTC online orders. (Federal Trade Commission Report: Possible Anticompetitive Barriers to E-Commerce: Wine, 2003; see also FTC: E-commerce Lowers Prices, Increases Choices in Wine Market, 2003).
		Distillers Benefit
		DTC shipping provides additional market access channels for distillers to connect with new and returning consumers. Without DTC, many distillers, particularly the over 180 craft distillers in New York, experience challenges in accessing consumers. Overall, 69 percent of craft distillers report that their wholesaler does not give their brands necessary attention and 42 percent said it is difficult to even find a wholesaler. (IWSR Direct to Consumer Survey – New York and United States Data, 2021)). This is not surprising, as there is a limit to how many products can fit on a distributor's truck or on a retailer's shelves. Many New York distillers have
		reported that their business will not survive without spirits DTC.
		During the COVID-19 pandemic, DTC shipping provided a critical lifeline for many struggling distilleries who were suddenly cut from their customers and will continue to be an avenue for customer interaction and growth where permitted. (National Survey Shows Overwhelming Support for Direct-to-Consumer Shipping of Spirits, DISCUS, 2021). This spirits DTC lifeline generated an average of 39 percent of total craft distiller sales during the pandemic. (ADI Craft Distiller Survey Results, 2020). With the expiration of the temporary DTC allowance, New York distillers

COMMISSION MEMBER	VOTE	DTC QUESTION COMMENTS
		are voicing their support and advocating for spirits DTC in the State. ( <i>Times Union Letter to the Editor by Brian Facquet, 2022; New York Distillers Launch Campaign to Urge Legislature to Make DTC of Spirits and Cider Permanent. 2021</i> ).
		Benefits Wider Spirits Industry – Distributors and Retailers
		Extensive data demonstrates that direct shipping will not replace traditional distribution and sales channels, rather, it will satisfy a currently unmet need and complement the system. Expanding distillers' ability to direct ship will introduce consumers to new products that will eventually grow into brands carried by wholesalers and retailers in the state, thus strengthening the overall spirits industry.
		Wine has been direct shipped for seventeen years in New York, and during that time, wholesale jobs in New York state grew by more than 58 percent and liquor store jobs grew by 45 percent. (U.S. Bureau of Labor Statistics, Quarterly Census of Employment and Wages, 2005-2021). Other states passing wine DTC laws have experienced similar growth. In fact, post-Granholm the states that allowed DTC grew wholesaler jobs at a faster rate than the non-DTC states. (Direct-to-Consumer and Wholesalers: No Evidence DtC Reduces Employment, DISCUS, 2021).
		This is because DTC is satisfying an unmet need, not cutting into existing sales. DTC shipping serves as an onramp for small distillers by allowing tasting experiences and organic brand building – creating a cost-effective way to generate the kind of attention that is critical for partnering with distributors and earning retailer shelf space. The same is true for medium and large distillers, allowing them to test limited release products and build brand loyalty with limited releases and bespoke experiences. The U.S. Treasury Department acknowledges this reality, noting that DTC "offers distinct distribution opportunities for small producers, opportunities for innovation, and the possibility of serving small niches." (Competition in the Markets for Beer, Wine, and Spirits, U.S. Department of the Treasury, 2022).
		Similar to the FTC's findings regarding consumer behavior in the wine market, New Yorkers will not order a spirit online that is available at their local retailer, due to the high cost of shipping and the extra time required for delivery. (FTC: E-commerce Lowers Prices, Increases Choices in Wine Market, 2003). Spirits DTC shipping is naturally self-limiting, with consumers only willing to pay these extra costs for products that, for whatever reason, are not available in their local market. That is why DTC does not cannibalize local business activity and job creation.
		New York Benefits
		As it has with wine DTC, the state would benefit from additional licensing fees and new tax revenue on each DTC sale made in New York. Since the 2005 legalization of wine DTC, New York excise tax collection has increased 122 percent, from about \$9.6 million to \$21.4 million. (New York State Department of Taxation and Finance: Fiscal Year Tax Collections Annual Statistical Report of New York State Tax Collections, 2005-2021). Additionally, the new market access channels would foster growth in the spirits industry which already supports 94,500 jobs and contributes more than \$1.8 billion in economic impact in the state. (Ship My Spirits Fact Sheet, New York, 2022).

#### **Tested Measures Ensure Responsible Shipping**

Wine producers have responsibly shipped wine directly to consumers for nearly two decades in New York. There are well established guidelines and appropriate responsibility measures in place that help prevent minors from illegally accessing beverage alcohol. Just as IDs are required for those seeking entrance into a bar or to purchase beverage alcohol at a restaurant or store, ID checks are required before the product can be given to the recipient. Additionally, an adult signature is required.

These measures clearly work – the SLA has noted no problems with responsible shipping over these past 17 years of wine DTC, nor any during the 15-month period of spirits DTC.

A number of new platforms have also emerged through companies including Spirits 360, Avalara, and UPS to help ensure regulatory compliance, safe delivery and the appropriate tax collection. Additionally, e-commerce platforms like Drizly, Minibar, Spirits Network and LibDib have skyrocketed, confirming that strong consumer demand exists for greater convenience but also affirming that home delivery of distilled spirits can be delivered while upholding high standards of responsibility. Those same requirements should be applied to spirits DTC. The bottom line is that at any point of sale there should be an age verification process and just as IDs are required for a brick-and-mortar alcohol purchase, ID checks and an adult signature are required for alcohol deliveries.

### **DTC Has Not Increased Underage Access/Consumption**

New York has allowed wine DTC since 2005 and during that time underage drinking has been on the decline. Since 2005, underage consumption of alcohol in New York declined from 43.4 percent to 26.4 percent. (*Center for Disease Control and Prevention's Youth Risk Behavior Surveillance Systems Survey, 2019*). In the last five years, underage drinking among those 12-20 years old in New York declined 23.5 percent; binge drinking among the same age group declined by 34.1 percent. (*SAMHSA, Center for Behavioral Health Statistics and Quality, National Survey on Drug Use and Health, 2016-2020*).

Research shows that allowing direct-to-consumer shipping of alcohol does NOT result in an increase in underage access. (*The Truth About Alcohol Delivery and Underage Drinking, R Street Institute, 2022*). Non-profit R Street Institute has analyzed the potential impact of wine DTC shipping on underage drinking, reporting:

"States that have continuously allowed DtC wine shipments for the past few decades have seen the largest decline in underage drinking. This suggests that allowing DtC wine shipments has not led to an increase in the consumption of alcohol by minors." (Alcohol Delivery and Underage Drinking, R Street, 2022).

In its 2003 report on DTC wine shipments, the FTC states that it was "aware of no systematic studies assessing whether direct shipping causes an increase in alcohol consumption by minors," rather, states that permit wine DTC "generally report few or no problems with shipments to minors." (Federal Trade Commission Report: Possible Anticompetitive Barriers to E-Commerce: Wine, 2003). This has held true over the last 20 years and is consistent with decreasing rates of underage drinking. This also just makes common sense, as it is more difficult and expensive for underage individuals to attempt to procure alcohol through DTC.

COMMISSION MEMBER	VOTE	DTC QUESTION COMMENTS
		Conclusion It's time for consumers to be granted the same market access to distilled spirits that they have enjoyed with wine for nearly two decades in New York.  DTC legislation for spirits should:  Treat all types of beverage alcohol products equally.  Treat in-state and out-of-state products equally.  Maintain state tax collections.
Edward Cooper	No	Safeguard against underage purchases and ensure product integrity.  We strongly support New York brands and strive to carry NYS brands that have wholesale distribution. NYS products are featured on end caps and home spots and we invite producers that we carry in our store to work with our store team to
Evan Gallo	Yes	This measure is essential to the livelihood and survival of smaller NYS alcohol producers. Due to the limitations they face in their ability to secure meaningful retailer shelf space and widespread distribution, in-state manufacturers should be afforded the reasonable privilege to directly ship to their NYS customers. Direct-to-consumer wine shipping has underscored the notions this practice can be done safely with no consequences to underage youth and can coexist with traditional off-premises retail sales. Further, given the advent of the new "4th Tier" (i.e. retailer and distributor backed delivery services), it is only equitable to grant a similar sales opportunity to the entities making these products in the first place. In order to best mitigate any cannibalization of retail while still supporting the intended stakeholders, if constitutional, the law is best amended to: (1) allow for only intrastate shipping and no shipments into NYS from out-of-state producers, and (2) limit direct-to-consumer opportunities to smaller NYS producers only.
Jeff Zacharia	No	
Jeffrey Garcia	Yes	Will allow for more options for consumers
Keven Danow	No	Allowing suppliers to ship directly strikes at the heart of the three tier system. Retail off premise licensees for wine and spirits are not permitted to sell anything other than wine and spirits and a few related items. Allowing suppliers to ship directly will disrupt the business of retail package stores. Moreover, it will allow unfair competition because the taxes and wage requirement in New York are higher than in most other states. It will hurt New York suppliers because, while New York suppliers manufacture excellent products, they do not make as much as states like Washington and California. Suppliers from those states would flood the market and elbow New York manufacturers out.

COMMISSION MEMBER	VOTE	DTC QUESTION COMMENTS
MEMBER	Yes	All manufacturers of beverage alcohol should be permitted to ship product directly to consumers in New York State. At the most basic level wineries of all sizes, structures and geographic locations have been able to ship products directly to NYS consumers since 2005 (following the SCOTUS decision Granholm v. Heald) and there is no logical or structural reason why the other beverage alcohol classes should be denied the same privilege. It is worth noting that during COVID, under privileges granted by an Executive Order, the other beverage classes were allowed to ship products directly to consumers within the state for 15 months.  Multi-paged reports citing independent references and third party data (mostly government data) were provided to Commission participants spelling out the rationale for creating direct to consumer (DTC) shipping parity across the beverage classes. Rather than recite the data in these reports, I will base this response on my first hand experiences as a NYS Farm Distiller in the post-covid world.  Allowing DTC Shipping benefits the consumer by:  • Allowing consumers to purchase products on-line, which is increasingly their preference, and have them safely delivered to their homes via a highly regulated 3rd party delivery system like UPS Adult Signature Required  • Providing access to NYS products including small batch and limited-release products  • Ensuring product integrity because they are sourcing directly from the manufacturer vs. third party gray market sites that have on occasion sold consumers counterfeit beverage products  • Allowing tourists to ship their vacation purchases home rather than having to incur extra hangage costs and logistical challenges.
		to incur extra baggage costs and logistical challenges Allowing DTC Shipping benefits New York State by:
		<ul> <li>Enhancing tax revenue – both excise tax and sales tax. When out of state retailers ship alcoholic beverage products directly to consumers in NY (which is illegal, but occurs regularly) NY State loses out on collecting both excise and sales tax on the transaction.</li> <li>Providing viable economic development opportunities by growing small &amp; medium sized, mostly family-owned food manufacturing businesses; supporting the agricultural economy; and creating well-paying jobs.</li> <li>Driving tourism across all parts of NY State. Just as the wineries have created significant tourism opportunities across the state, other beverage manufacturers generate tourism activities and revenue. Currently there are distilleries in 52 of the 62 counties in NY.</li> </ul>
		Allowing DTC Shipping benefits NY Distilleries by:
		<ul> <li>Addressing the significant challenges we have with market access. There are over 200 distilleries in NY State that are too small to get distribution in the highly consolidated wholesale system. While farm distilleries have the ability to self-distribute to on-premise (bars/restaurants) and off-premise (retail stores) permit holders, these establishments are limited in the number of products that they can reasonably stock. To be honest, we do not have the margin structure/financial resources to compete against the established national/global brands to get shelf facings in these venues.</li> </ul>

COMMISSION MEMBER	VOTE	DTC QUESTION COMMENTS
		<ul> <li>Improving customer access by expanding access within and outside the state. For all intents and purposes, our primary retail outlet is our tasting room where we are dependent on consumers and tourists to travel to our locations to make a purchase. This limits our consumer access to those that have the means and the time to travel. It is difficult if not impossible to establish a consumer brand and a loyal following under these circumstances.</li> <li>Enabling the survival of the nascent NY distilling sector. The NY wine sector experiences the same access and brand building challenges as the other beverage classes, but their ability to ship product directly to customers has been widely cited as the critical component in their survival and ability to make NY the third largest wine state in the nation. In the post-covid economy the NY distilling industry is on the brink of collapse – we lost 9 farm distilleries in 2022, how many more do we need to lose before we are given a fighting chance?</li> <li>In the best possible scenario, small distilleries would be able to build brands of sufficient size via DTC shipping to one day be able to take advantage of the efficiencies and services of wholesaler distribution and broad retail presence.</li> <li>Supporting the innovation engine of the spirits sector. Already several of the early NY distillery entrants have been acquired by multi-national brand houses. By their nature, smaller brands have the ability to experiment and innovate. We are an important part of the food innovation ecosystem in the state, but we can only serve this role if we are allowed to stay as independent businesses.</li> </ul>
		The wholesale and retail channels will argue that extending DTC shipping privileges to distilleries will cause the collapse of the entire alcohol beverage industry in NY and cause a public health crisis. At a minimum this is a gross exaggeration in an attempt to maintain the status quo and their protected positioning within the beverage industry in NY State. In defense of entrepreneurs and the small, mostly family-owned beverage manufacturers across the state I will point out:
		<ul> <li>In February, 2022 the US Department of the Treasury issued a report entitled "Competition in the Markets for Beer, Wine, and Spirits" <a href="https://home.treasury.gov/system/files/136/Competition-Report.pdf">https://home.treasury.gov/system/files/136/Competition-Report.pdf</a>.         Among other things, this report outlined that 1) across the US there has been a significant consolidation in the wholesale tier; 2) the Federal government does not require the implementation of a three-tier distribution system for alcoholic beverages by the States; and 3) it is up to each State to determine how the market for the sale of alcoholic beverages is structured. This clarification gives each state the opportunity to modernize their beverage industry.</li> <li>In the last 5 years underage drinking in NY has declined 23.5% and states that have allowed DTC wine have seen the largest declines in underage drinking.</li> <li>In 2005 wine DTC began. Since that time wholesale jobs in NY increased &gt;58% and liquor store jobs grew by ~45%.</li> </ul>
		<ul> <li>Compliant shipping via UPS Adult Signature Required employs union labor AND is the same secure system used to deliver wine, guns and controlled pharmaceuticals to residential addresses.</li> </ul>

COMMISSION MEMBER	VOTE	DTC QUESTION COMMENTS
		<ul> <li>The NY State Liquor Authority and NY State Police noted that they are not aware of any problems with responsible shipping over the 17 years of wine DTC or during the 15 months of spirits DTC during COVID.</li> <li>The majority of NY distilleries self-distribute to on- and off-premise license holders because formal distribution through the traditional wholesale channel is not available to them so there is no impact to wholesalers by enabling spirits DTC.</li> <li>NY retailers currently have access to our products but choose not to stock them so again there is no impact to retailers by enabling spirits DTC.</li> <li>NY distilleries are permitted by both NY State and the Federal governments. We regularly file operating reports, tax filings and other data requests to both entities. We are heavily regulated and the penalty for non-compliance is the potential loss of our permits. On behalf of our families, employees and investors we are incentivized to follow the rules and regulations to the best of our ability. For those of us who are Farm Distillers we already fulfill the reporting and tax obligations of manufacturers, wholesalers and retailers. For the other 'tiers' in the current system to state that only they can ensure a safe and efficient market is patently false and offensive to those of us who continue to make significant sacrifices to try to stay in business in NY State.</li> </ul>
Mark A. Koslowe	No	This proposal will have a significant negative impact on retail off-premises accounts due to expected loss of spirits product trade. Nothing in the proposal would limit the type or variety of product that could be sold DtC, which means that any product could be shipped, not just new items, but also high value items. Insufficient time has been given to see the effect of recently enacted legislation allowing DtC (for spirits) when accompanied by consumer visitation of a distilled spirit plant. The key purpose of the legislation is to raise the level of consumer awareness of these facilities (in addition to what already exists for craft producers) and since it requires physical presence (which promotes NYS business), the negative impact of out-of-state supplier shipment is greatly diminished (and accomplished in a constitutional fashion). In general, DtC has created source of supply issues, which together with delivery to minor issues, should be monitored carefully, which is beyond the abilities of the SLA. Based on the forgoing, this proposal should be rejected.  Brief summary of issues, as compiled by Wine & Spirits Wholesalers of America (WSWA), against using DtC:  1. Increased risk of non-compliance with state and local tax collection.  2. Lack of transparency to identify illegal shippers.  3. No oversight of ID verification by common carrier drivers risks underage access.
		<ul><li>4. Difficult and expensive to audit and hold accountable out-of-state shippers.</li><li>5. Undercuts local businesses that employ members of the community.</li></ul>
		As consumers seek more convenience in their purchases, interstate direct-to-consumer (DTC) shipments of beverage alcohol (predominantly wine) has become increasingly common. Unlicensed and unscrupulous actors dodge state laws that

COMMISSION MEMBER	VOTE	DTC QUESTION COMMENTS
		regulate shipments to avoid license fees, local laws and regulations, and important tax requirements (excise, retail, and local taxes).
		States need mechanisms to differentiate between legal and illegal shipments to effectively enforce DTC laws, and enacting "common carrier reporting" can give states more visibility into the marketplace by requiring common carriers (FedEx, UPS, etc.) to report alcohol shipments to regulators. States across the country have begun to use common carrier reports to identify illegal shipments and launch enforcement efforts to stop businesses from illegally shipping into their state.
		Below summarizes state regulators' findings of illegal shipping based on the data in common carrier reports and the subsequent enforcement actions brought by the state against those illegal shippers.
		COMMON CARRIER REPORTING PROGRESS:
		FINDINGS FROM COMMON CARRIER REPORTS AND ENFORCEMENT INVESTIGATIONS
		ILLINOIS  SHIPPING LAW: In- and out-of-state wineries with a winery shipper license may ship up to 12 cases of wine of their own production to an Illinois resident per year.
		CARRIER REPORTING DATA: The Wine and Spirits Distributors of Illinois (WSDI) examined carrier reporting data from December 2013, see the presentation, and found the following:
		84,811 unlicensed shipments from two carrier companies in a single month
		460,961 unlicensed 750ml bottles shipped
		91,329 unlicensed gallons shipped
		WSDI projects tax loss estimates as high as \$20 million per year
		ENFORCEMENT ACTIONS
		In 2015, the Illinois Liquor Control Commission agency issued 160 cease and desist letters that resulted in an additional 150 winery shipper permits being issued.
		• In 2017, the Illinois Liquor Control Commission agency issued cease and desist letters to 261 unlicensed retailers and 395 unlicensed manufacturers.
		KANSAS
		SHIPPING LAW: In- and out-of-state wineries holding a special-order shipping license may make direct shipments of wine to consumers in Kansas of up to 12 standard cases of wine per year.

COMMISSION MEMBER	VOTE	DTC QUESTION COMMENTS
		CARRIER REPORTING DATA
		• Common carriers reported that 198,556 shipments of alcohol were made to Kansas residents in 2020. The Kansas Department of Revenue, Alcoholic Beverage Control reported that, based on carrier reports, "Unlawful shipments of alcoholic liquor are a known problem." And further: "(I)t is clearly easy to order alcoholic liquor online giving easy access to underage individuals. Not only is underage access a problem, but there is a high risk for tainted or counterfeit alcoholic liquor which poses a health riskAdditionally, there is a significant loss of revenue due to the State of Kansas in the form of unpaid liquor enforcement tax and gallonage tax." Read the full briefing (page 3).
		<ul> <li>An investigation by the Kansas ABC into 22 vendors with unsolicited social media advertisements for shipping alcoholic liquor to Kansas residents found that 95% sold and shipped spirits illegally into the state.</li> </ul>
		<ul> <li>Additionally, 100% of the vendors sold and shipped beer which is illegal in Kansas.</li> </ul>
		<ul> <li>Fifty percent of the vendors that sold and shipped alcohol during the investigation had no federal license from the Alcohol and Tobacco Tax and Trade Bureau (TTB) and none ofthe vendors held the required Kansas special order shipping license for wine.</li> </ul>
		<ul> <li>The investigation also found two shipments were delivered to an underage individual, including to a 7-year-old.</li> </ul>
		MASSACHUSETTS
		SHIPPING LAW: In- and out-of-state wineries may ship up to 12 9-liter cases of wine per year to Massachusetts residents.
		CARRIER REPORTING DATA
		<ul> <li>Massachusetts' legally reported shipped wine sales increased from \$48.7 million in 2019 to \$66.5 million and \$66.3 million in 2020 and 2021, respectively.</li> <li>The number of Massachusetts consumers legally order wine shipments grew from 116,289 in 2019, to 180,860 and 169,723 in the following two years of the pandemic.</li> </ul>
		• These numbers do not include a growing illegal market operating outside the parameters of the state's direct shipping license, a "generational perfect storm" according to Ted Mahoney, Chief Investigator of the Massachusetts Alcoholic Beverages Control Commission.
		ENFORCEMENT ACTIONS
		<ul> <li>Compliance checks conducted by Chief Mahoney and his team shed light on illegal shippers and the products they ship into Massachusetts.</li> </ul>
		<ul> <li>Investigations found bottles bought from California and Florida had return addresses of hotels and promotional firms.</li> </ul>
		o Statistically, compliance checks returned the following results:
		<ul> <li>96% of the digital platforms accepted order and payment from a 15- year-old consumer.</li> </ul>
		<ul> <li>43% of the package deliveries did not obtain an adult signature.</li> </ul>

COMMISSION MEMBER	VOTE	DTC QUESTION COMMENTS
		<ul> <li>26% of these deliveries were simply left at a consumer's door.</li> <li>0% of delivery personnel verified the age of the recipient.</li> <li>To curb the illegal alcohol shipments into Massachusetts, the Alcoholic Beverages Control Commission sent cease-and-desist letters to all parties involved, and notice to common carriers.</li> </ul>
		MICHIGAN SHIPPING LAW: Holders of a direct shipper license may ship up to 1,500 9-liter cases of wine per calendar year to Michigan consumers.
		<ul> <li>CARRIER REPORTING DATA</li> <li>In 2019, Michigan consumers received 2,233,880 bottles of alcohol via direct shipment. Of those, 734,365 (33%) were shipped illegally, meaning that one in three bottles of wine was shipped illegally. In the fourth quarter of 2019, 484,101 bottles of alcohol were shipped into Michigan. Approximately 52%, or 250,264, of those bottles were shipped illegally into the state. Read the press release.</li> </ul>
		<ul> <li>ENFORCEMENT ACTIONS</li> <li>In 2019, the Michigan Liquor Control Commission (MLCC) and the Michigan</li> <li>Office of Attorney General used carrier reports to send 129 cease and desist letters</li> </ul>
		to unlicensed sellers for illegally shipping alcohol directly to Michigan consumers.  In 2020, Michigan Attorney General Dana Nessel brought 21st Amendment Enforcement Act cases against two out-of-state entities that illegally shipped wine and beer directly to consumers. The cases were the second use of the 21st Amendment Enforcement Act (Ohio being the first) and resulted in consent decrees requiring the companies to stop shipping into the state. The cases also included a consumer protection act claim that led to the imposition of monetary penalties. Read more here.
		On May 5, 2021, Attorney General Nessel filed a second round of cases under the 21st Amendment Enforcement Act. Stemming from earlier carrier reporting enforcement actions and sting operations,
		the lawsuits allege four out-of-state entities, three wineries and one retailer, shipped wine directly to consumers without obtaining a direct shipper license and after receiving cease- and-desist letters.
		Three out of the four cases were resolved by consent decrees, while the fourth case was voluntarily dismissed.
		• On November 30, 2021, Attorney General Nessel filed a federal complaint for a permanent injunction against Cellar Collections, a wine retailer from Napa, California, for illegally shipping alcoholic beverages. The case was resolved by a consent decree on February 16, 2022.
		• On January 4, 2022, General Nessel filed a federal complaint for a permanent injunction against Hunt Cellars, a winery in Paso Robles, California, for illegally shipping alcoholic beverages into the state. The case was resolved by a consent decree on April 6, 2022.

COMMISSION MEMBER	VOTE	DTC QUESTION COMMENTS
		• On March 16, 2022, General Nessel filed suits against three California retailers for violation of the Michigan Consumer Protection Act and the 21st Amendment Enforcement Act for illegally shipping wine directly to Michigan consumers.
		• In May 2022, a settlement between General Nessel and Wine.com resulted in Wine.com acknowledging it was illegally shipping wine to Michigan customers for years, agreeing to not renew its direct shipper license and paying a \$10,000 fee.
		NORTH CAROLINA
		SHIPPING LAW: In- and out-of-state wineries holding a federal basic wine manufacturing permit may apply for a wine shipper permit authorizing the holder to ship no more than two cases (24 bottles) of wine per month to North Carolina consumers.
		CARRIER REPORTING DATA
		• An investigation by the North Carolina Alcohol Law Enforcement of internet advertisements for shipping alcoholic liquor caught six out-of-state retailers selling spirits directly to North Carolina residents, which is illegal. The out-of-state retailers were Frootbat (DE), Irokos Group (MA), LaPresa Liquor & Deli/The Barrel Tap (CA), Mission Trails Market/SipWhiskey.com(CA), Caskers (NY), and Vino Fine Wine and Spirits (NY).
		ENFORCEMENT ACTIONS
		• On May 3, 2022, the North Carolina Alcoholic Beverage Control Commission sent cease and desist letters to multiple out-of-state retailers that had been shipping illegally to North Carolina residents. Offenders were given 30 days to provide a receipt proving that North Carolina state taxes had been paid or be considered presumptively guilty of a felony.
		NEW HAMPSHIRE
		SHIPPING LAW: In- and out-of-state wine manufacturers with a direct shipper permit may ship up to twelve 9-liter cases of wine directly to New Hampshire consumers per year. The Commission may grant permission for additional shipments if the product is not otherwise available in New Hampshire.
		CARRIER REPORTING DATA
		• A 2018/2019 audit of the New Hampshire Liquor Commission found that the Division did not ensure compliance with the majority of direct shipping-related statutory and regulatory requirements. Rules, SOPs, data, and program practices were inadequate, leading to illegal shipments, excessive shipments to individual consumers and licensees. (pg. 185)
		o The audit found significant noncompliance with the 60 bottle per year alcohol shipping limit:
		One consumer received at least 563 bottles in 2018, 503 more than the legal limit.

COMMISSION MEMBER	VOTE	DTC QUESTION COMMENTS
		1,425, or 4 percent, of all customers received more than the legal limit.
		440 customers received more than 100 bottles.
		46 received more than 200 bottles.
		o Ten direct shippers illegally shipped nearly 5,000 bottles into New Hampshire during 2018. Four had already been on a list of shippers not allowed to do business in New Hampshire due to prior violations or improper practices.
		o Nearly 12 New Hampshire licensees received illegal shipments of over 200 bottles each for a total of at least 2,800 bottles illegally shipped into New Hampshire, without permission from the Commission.
		ОНІО
		SHIPPING LAW: In- and out-of-state wine manufacturers and brand owners producing less than 250,000 gallons per year with an S-permit may ship wine that the permit holder has manufactured to an Ohio consumer.
		CARRIER REPORTING DATA
		<ul> <li>"Shipping data reported to the Division of Liquor Control showed that, in 2019, Wine.com directly shipped about 24,000 packages of wine to Ohio consumers and Winc shipped about 13,000 packages. Those two companies alone delivered nearly 700,000 pounds, or 350 tons, of wine shipments to the state, all without paying Ohio taxes." Read General Yost's press release.</li> </ul>
		<ul> <li>In 2021, the Ohio legislature enacted a law requiring that the fulfillment centers used by alcohol producers to ship online orders must report to Ohio regulators information about each alcohol shipment into the state.</li> </ul>
		ENFORCEMENT ACTIONS
		• In 2020, Ohio Attorney General Dave Yost filed the first lawsuit under the 21st Amendment Enforcement Act seeking to enjoin multiple out-of-state retailers including Wine.com, Winc, Wine Country Grift Baskets, Reserve Bar, Pacific Wine & Spirits, ShakeStir, and Ace Spirits, from making illegal shipments into the state. The case resulted in several consent decrees that required the retailers to ensure that no further illegal shipments are made into Ohio
		OKLAHOMA
		SHIPPING LAW: In- and out-of-state wineries may apply for a direct wine shipper permit authorizing the holder to ship no more than six nine-liter cases of wine annually to Oklahoma consumers.
		CARRIER REPORTING DATA
		During a six-month period in 2018, a state legislative committee conducted a study on direct wine shipper permit holders using shipping reports filed by FedEx and UPS. Though FedEx estimated it had delivered over 60,000 liters of wine during this period, the Tax Commission was unable to verify any remittance of

COMMISSION MEMBER	VOTE	DTC QUESTION COMMENTS
		alcohol excise or state and local use taxes attributable to these direct shipments of wine.
		ENFORCEMENT ACTIONS
		<ul> <li>Following the 2018 study on direct wine shippers, the ABLE Commission notified direct wine shipper permit holders that they had not created an alcohol excise and vendor use tax account with the Tax Commission, which was grounds for revocation of their direct wine shipper permit.</li> </ul>
		TENNESSEE
		SHIPPING LAW: An in- or out-of-state winery holding a federal basic permit may apply for a winery direct shipper's license to ship a maximum of 12 bottles per month and not more than 36 bottles during a calendar year to a Tennessee consumer.
		CARRIER REPORTING DATA
		• In the first seven months of mandatory carrier reporting, 185,000 shipments equaling approximately 1.2 million bottles of wine or spirits were shipped into the state. Read more here (page 3).
		ENFORCEMENT ACTIONS
		<ul> <li>After examining carrier reports, the Tennessee Alcohol Beverage Commission (TABC) ordered seven out-of-state businesses that were responsible for approximately 1,000 illegal direct-to- consumer shipments to cease and desist shipping alcohol into the state.</li> </ul>
		• In February 2020, the TABC ordered six unlicensed businesses to cease and desist further shipping operations in the state after successful undercover operations by TABC agents. Investigations by the TABC found that these businesses were illegally shipping alcoholic beverages directly to consumers in the state. Enforcement actions continue, and updates are posted at the TABC website.
		<ul> <li>In April 2020, the TABC requested FedEx and UPS to cease illegal alcohol shipments to Tennessee resident from Benchmark Wine Group after discovering it was responsible for over 240 separate illegal shipments occurring between July 2018 and July 2019.</li> </ul>
		• In September 2020, a cease-and-desist letter was sent by the TABC to the owners of the website caskcartel.com after TABC agents were able to order and receive illegally shipped liquor through an online transaction facilitated by the company's website.
		VIRGINIA
		SHIPPING LAW: Any winery or farm winery with a wine shipper's license may ship not more than two 9-liter cases of wine per month (24 9-liter cases per year) to any person in Virginia.
		CARRIER REPORTING DATA

COMMISSION MEMBER	VOTE	DTC QUESTION COMMENTS
		• The Virginia Alcoholic Beverage Control Authority examined carrier reports from June to September of 2018 and found 69,478 shipping transactions. Of those shipments, 26,963, or 39 percent, were shipped from unlicensed entities. See the presentation here.
		<ul> <li>Due to unlicensed shipments, the state lost an estimated \$62,770 in unpaid excise taxes during a four-month period in 2018. The study did not account for lost retail taxes, which would also have been a significant number. Find the full presentation here.</li> </ul>
		ENFORCEMENT ACTIONS
		• In the 2021 budget, the Virginia ABC received an additional \$1 million per year for 10 new DTC enforcement positions including four auditors, three non-sworn compliance agents, two special agents, and one license technician
Melissa Fleischut	Yes	The representatives of the NY distilleries and cideries on the Commission believe it is imperative for them to be granted direct-to-consumer privileges. They went so far as to say their businesses depended on it. The New York State Restaurant Association has long been a supporter of Taste NY and the businesses that exist under that umbrella, and we support their efforts to compete and thrive in a global economy. During the COVID pandemic, distilleries and cideries had the ability to ship directly to consumers, similar to the alcohol to-go privileges held by restaurants, and it helped many of them survive. It worked well during that time and we believe it can work well again. By extending direct-to-consumer privileges to distillers and cideries we would also create parity with the wine industry which has had the ability to ship direct-to-consumers for almost 20 years. While we would prefer to see this limited to only NY businesses, we understand that would not be constitutional. Should all manufacturers be granted direct to consumer shipping permanently, we would also want to see the on-premise retail licensees be granted drinks to-go permanently as well.
Michael Correra	No	This would destroy the three tier system!  No to all!
Paul Zuber	Yes	When New York allowed for the direct shipment of wine there was great concern that it would change the existing landscape. Although one must acknowledge the decisions by the US Supreme Court, it is unlikely that direct shipment will have the negative impact some suggest. The proposed change would clearly benefit consumers and New York producers.
Sonya del Peral	Yes	First, the long term viability of New York's alcoholic beverage manufacturers, particularly farm manufacturers, depends on the ability to ship product directly to consumers in NYS and this privilege fully supports all the stated purposes that were expressly added to the ABC law effective April 19, 2015: "supporting economic growth, job development, the state's alcoholic beverage production industries and its tourism and recreation industry, and the conservation and enhancement of state agricultural lands.
		Second, there must be parity among the beverage sectors. It is unfair (and downright silly), for example, that manufactures who ferment a beverage from grapes (wine) are permitted to ship directly to consumers but that manufacturers who ferment a beverage from apples (cider) are not.

COMMISSION MEMBER	VOTE	DTC QUESTION COMMENTS
		Third, the arguments we heard during our discussion against permitting this change to the law are weak and not supported by the empirical evidence. Some cried that the system is working well as is and should not be changed. The system does not work well for the majority of small beverage manufacturers who are unable to find distribution through the centralized distribution system that is alcoholic distribution in New York and the resulting limited shelf space in brick & mortar retail; for these small manufacturers (who all support New York agricultural and local agritourism), direct shipping would open a game changing revenue channel that would have no effect on the existing distribution system of large national brands. Another nonsensical argument against a change in this law was that it would negatively affect the bottom line for distributors and retailers. The evidence, however, clearly shows that distributors and retailers have thrived despite the change in the law permitting wine manufacturers to ship. Further, during the special experimental period during The Covid 19 emergency when other manufactures had the temporary privilege to ship (a true life line for such manufactures), the businesses of retailers and wholesalers grew and expanded. Also materials submitted show that the common carriers enforce underage drinking laws well in the direct shipping context.
		Finally, we must keep the convenience to the public in mind as well. Bans on direct shipping constitute economic protectionism that negatively impacts consumers because they result in limited selection and higher prices. Without a showing of likely harm (which our wholesalers and retailer representatives have not done) restraining competition in a way likely to hurt consumers by eliminating their ability to choose among competing products is unwarranted. In one of our meetings, certain colleagues on this Commission actually said that craft cider will be threatened by the competition that would arise if direct shipping of cider were permitted intrastate because it would open up the state to the direct shipping of cider from out-of-state ciders. Competition is important; it provides selection to the consumer and helps to keep prices from increasing unnecessarily. At first I was surprised by the comments of my colleagues. They clearly reflected how unknowledgeable they are about just how world-class New York ciders are and that New York cider can and will confidently handle out-of-state cider competition. But the more I thought about, I realized that the reason they thought I would be threatened is that my colleagues representing the New York centralized wholesale and retail alcohol distribution system basically know nothing about New York cider because, for the most part, they don't distribute and sell our products. And, that is exactly why it is so important for the consumer and the industry in New York to have the direct shipping option.  In sum, manufacturers in New York, without bans on direct shipments to consumers, will create paths to market that will allow them to be creative and innovative in getting their products in front of new consumers at affordable prices.
Stephen Hanson	No	Stay with the 3 tier system

COMMISSION MEMBER	VOTE	DTC QUESTION COMMENTS
Steve Harris	No	There is nothing wrong with the three-tier system as it currently exists. Further exceptions to the rule aren't needed and in fact will create both fiscal and public health problems. There will no longer be reliable tax collection and the ability for minors to obtain alcoholic products is further increased. Finally, and this will be a repetitive theme throughout this round of comments, the ABC law is not only a regulatory model, but also a financial one as well. Many Main St licensees rely and invest their hard-earned money relying on the law as written. To continue to make major changes to the law severely impacts these businesses.

# 12 Sales Hours

Part GG of chapter 55 of the laws of 2022, §1(d) – "a review of the hours and manner in which retailers can operate or sell different types of beverages."

### Summary:

The hours that NYS retailers are allowed to sell alcoholic beverages are defined by the NYS Alcoholic Beverage Control (ABC) Law §17<sup>92</sup>, §105<sup>93</sup>, §105-a<sup>94</sup>, and §106<sup>95</sup>. In addition, each NYS County has the authority to restrict hours in which on-premises and off-premises retailers operate with approval by the SLA. Hours for start and end of service therefore differ based on the type of license (liquor/wine store, grocery store, or on-premises) and the county in which a business operates.

Liquor and wine stores may not open until 8 AM and must close by midnight, Monday through Saturday, on Sundays when they may not open until noon and must close by 9 PM. Grocery stores (and convenience stores) may not sell alcoholic beverages between 3:00 AM and 8:00 AM on Sundays but are allowed to sell all day on Mondays through Saturdays. On-premises beer, wine or liquor licenses can sell alcohol from 8 AM to 4 AM on Mondays through Saturdays, and between 10 AM and 4 AM on Sundays. Furthermore, on-premises retailers may request an extended operating hours permit for special events to remain open during such hours of the morning on week days.

Commission Members were provided with briefing materials that gave additional information and context for the topic being discussed. Commission Meeting briefing materials for this topic may be found in the associated document "Topic 4 - Commission Meetings Briefing Materials 2022.pdf."

### **Commission Votes and Recommendations:**

The Commission Members participated in discussions regarding the operating hours for on-premises retailers and off-premises retailers. The first item centered on if the law should be amended to allow off-premises liquor and wine stores to open at 10:00 AM on Sundays (currently noon), the same as on-premises retailers. The second item focused on if §106 of the ABC Law should be amended to expand or decrease on-premises operating hours. The third item focused on if §105-a of the ABC Law should be amended to allow off-premises beer, cider, and wine product sales 24 hours/day for all days. The last

<sup>&</sup>lt;sup>92</sup> ABCL §17.

<sup>93</sup> ABCL §105.

<sup>&</sup>lt;sup>94</sup> ABCL §105-a.

<sup>95</sup> ABCL §106.

item centered on if §99<sup>96</sup> of the ABC Law should be amended to replace "any week day" with "any day" to allow issuance of such permits on Saturday and Sunday mornings. The Commission Members were posed the following four questions, and their votes, comments, and recommendations are presented below. No comments have been edited for language, grammar, or spelling.

<u>Sales Hours Question 1</u>: As a commission Member, do you recommend that New York State amend section 105 of the ABC Law (Provisions Governing Licensees to Sell at Retail for Consumption Off the Premises) to allow off-premises liquor stores to open at 10:00 AM on Sundays (currently noon) – the same as on-premises retailers?

YES	NO	ABSTAIN	RECOMMENDATION
15	1	0	Recommendation: 10AM Liquor Store Sales.

COMMISSION MEMBER	VOTE	SALES HOURS QUESTION 1 COMMENTS
Andrew Rigie	Yes	This amendment will provide parity with on-premise licensees.
Ashley White	No	
Courtney Armour	Yes	We support flexibility for licensees, convenience for consumers, and general parity in the treatment of spirits, wine, and beer with regard to the hours in which retailers can operate. This support of flexibility for licensees and convenience for consumers follows a national trend towards increasing hours of operation, including the elimination of the outdated Sunday sales bans. Although the New York laws are generally in accord with these principles, there is still potential to improve customer convenience, increase responsible purchasing opportunities and create a more level playing field for all beverage alcohol. Accordingly, we support increasing the permitted hours of operation of liquor stores in light of the preferential treatment afforded to off-premise beer retailers.
Edward Cooper	Yes	Sunday is rapidly becoming the second busiest shopping day of the week and our customers have told us they want greater convenience and sufficient time to get their shopping completed on Sundays.
Evan Gallo	Yes	In the spirit of standardization, this amendment would help create harmony in hours of sale between on and off premises retailers (should an owner make the business decision to avail itself of extended operating hours). There is no proper and defensible rationale as to why an individual can currently be served a cocktail while out to eat at a 10am Sunday breakfast yet is presently unable to go purchase the alcoholic ingredients necessary to make and consume the same beverage at home at the same exact time.
Jeff Zacharia	Yes	I vote yes
Jeffrey Garcia	Yes	I highly recommend this change there is no reason to have separate rules.
Keven Danow	Yes	This law was a part of the Blue Laws, which anticipated and encouraged religious service attendance. I do not believe having a package store open at 10 am on a Sunday, will negatively affect religious service attendance. Stores should be allowed to open but should not be forced to do so.

<sup>&</sup>lt;sup>96</sup> ABCL §99.

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COMMISSION MEMBER	VOTE	SALES HOURS QUESTION 1 COMMENTS
Kim Wagner	Yes	I support allowing off-premise liquor stores to open at 10AM on Sundays for several reasons: 1) it provides parity with on-premise retailers; 2) it provides flexibility to consumers, especially those that are shift workers, to do their family shopping at a more convenient time; 3) the cultural diversity and economic realities within NY State negates the idea that each person would recognize the same 'day of rest'; 4) the Blue Laws were struck down in NYS in 1976; and 5) none of the commission members raised an objection during the discussion.
Mark Koslowe	Yes	As on-premise licensees are open on Sunday from 10 AM, the change would equalize on and off-premises licensees by allowing the off-premises licensee to also sell product as of 10 AM on Sunday.
Melissa Fleischut	Yes	I voted to recommend allowing off-premise liquor stores to open at 10:00 am on Sundays to make their hours consistent with on-premise licensee hours. At the New York State Restaurant Association, we worked hard to pass the "brunch bill" and see no reason that liquor stores should not be allowed to open at the same time on Sundays as the on-premise licensees.
Michael Correra	Yes	Yes I agree
Paul Zuber	Yes	The above change makes sense from a business as well as a consumer standpoint. The changes made for on-premises licensees was to allow restaurants to serve customers during brunch hours. This was a consumer driven change. Since restaurants and bars can serve "to-go" cocktails it would make sense to allow off-premises licensees the ability to attract brunch customers who may be having something at their home. Additionally, the consumer is benefited by this small change.
Sonya del Peral	Yes	I recommend the expansion of off premise liquor store hours, allowing them to open at 10:00 am rather than wait to noon on Sundays for two reasons: 1) public convenience - for those busy working adults who do their shopping on Sunday mornings; and 2) to support small business by expanding their available hours to conduct business.
Stephen Hanson	Yes	I agree
Steve Harris	Yes	There is no reason liquor stores should be treated any differently than other off premise retailers

<u>Sales Hours Question 2</u>: As a Commission Member, do you recommend that New York State <u>not</u> amend section 106 of the ABC Law (Provisions Governing Licensees to Sell at Retail for Consumption On the Premises) to expand or decrease on-premises operating hours?

YES	NO	ABSTAIN	RECOMMENDATION
12	2	2	Recommendation: No change to on-premise hours.

COMMISSION MEMBER	VOTE	SALES HOURS QUESTION 2 COMMENTS
Andrew Rigie	Yes	We do not hear frequent requests from restaurants, bars, and nightclub to serve alcohol between 4:00am and 8:00 with the exception of New Year's Eve and televised events occurring in other time zones, such as World Cup matches.
Ashley White	No	Same as above [This would allow more sales of our products and ease for consumers]
Courtney Armour	Yes	Our position is informed by the feedback from the retailers on the Commission that (1) the hours were sufficient, (2) that they were already struggling to find people to work all of their current shifts, and (3) that SLA liberally grants exceptions for extended hours when requested.
Edward Cooper	Abstain	I do not have an opinion on this matter
Evan Gallo	No	Generally supportive of expansion (or even limitation) of on premises operating hours to the extent there is consistency, fairness, and flexibility for all retailers.
Jeff Zacharia	Yes	I vote yes
Jeffrey Garcia	Yes	No additional hours needed other than on New Years Eve
Keven Danow	Yes	Current hours work well. The only exception is that all night permits should be allowed on all days of the week and not limited on Sundays.
Kim Wagner	Yes	Given 1) the existence of an opportunity for on-premises permit holders to request a special "All Night Permit" for the limited occasions where expanded hours are of economic importance (e.g., New Year's Eve, televised international sporting events, etc.) AND 2) that during the discussion there was no segment of the value chain that requested or suggested increasing or decreasing the current on-premises operating hours, I support not making a change to the current on-premises operating hours.
Mark Koslowe	Yes	There were no economic factors advanced nor any trade representative interest presented to change the hours of on-premises licensees. The ability to open from 8 AM to 4 AM (except Sunday) was felt to be ample convenience to the public.
Melissa Fleischut	Yes	Given the current economic climate in the hospitality industry, we did not recommend any changes to the operating hours for on-premise licensees. The hospitality industry is still trying to build back after the pandemic and most restaurants and bars are unable to properly staff their establishments to open as many hours a day or as many days a week as they would like. Additional hours of operation don't make sense in the current climate. Conversely, we also do not want the state to take any action to limit the hours restaurants and bars are currently operating.
Michael Correra	Yes	Yes I believe there should be no changes
Paul Zuber	Yes	The currently law is satisfactory and meets the demands of the consumer as well as ensuring a safe environment for the public. Expansion of the law could have undesired impacts.

COMMISSION MEMBER	VOTE	SALES HOURS QUESTION 2 COMMENTS
Sonya del Peral	Yes	I recommend that the law not be amended for two reasons: 1) the current provisions of the section 106 promote public safety; and 2) there was no evidence presented that the relevant business sector believes an expansion or decrease of on premise operating hours would be helpful to support business.
Stephen Hanson	Yes	I agree
Steve Harris	Abstain	As a representative of the wholesale tier, I defer to the recommendations of the retail representatives

<u>Sales Hours Question 3</u>: As a Commission Member, do you recommend that New York State amend section 105-a of the ABC Law (Provisions Governing Licensees to Sell at Retail for Consumption Off the Premises) to allow off premise beer, cider, and wine product sales 24 hours/day for all days (currently may not sell between 3:00 AM and 8:00 AM on Sunday)?

YES	NO	ABSTAIN	NO RECOMMENDATION
8	5	3	No Recommendation Issued: 24-hour grocery store beer sales.

COMMISSION MEMBER	VOTE	SALES HOURS QUESTION 3 COMMENTS
Andrew Rigie	No	We'd want parity with on-premises sale hours to be considered as part of any recommendation.
Ashley White	Yes	Same as above [This would allow more sales of our products and ease for consumers]
Courtney Armour	No	We support flexibility for licensees, convenience for consumers, and general parity in the treatment of spirits, wine, and beer with regard to the hours in which retailers can operate. Unfortunately, we cannot support a measure that further exacerbates the legal disadvantages imposed on spirits.
Edward Cooper	Abstain	I do not have an opinion on this matter.
Evan Gallo	Yes	The current limitation is fairly arbitrary in the sense that it is only proscribed for one day per week. Simply expanding hours for Sunday sales is not a marked departure from present operations.
Jeff Zacharia	Abstain	I abstain here
Jeffrey Garcia	Yes	We should allow the 24 hrs a day
Keven Danow	No	I believe the current system works well and there is no need to expand to 24 hours a day.

COMMISSION MEMBER	VOTE	SALES HOURS QUESTION 3 COMMENTS
Kim Wagner	Yes	I support allowing 24 hours/7 days sale of off-premise beer, cider, and wine products for several reasons: 1) it adds only a single 5 hour window (3-8AM Sundays) to the current law; 2) it provides flexibility to consumers, especially those that are shift workers, to do their family shopping at a more convenient time; 3) the cultural diversity and economic realities within NY State negates the idea that each person would recognize the same 'day of rest'; 4) the Blue Laws were struck down in NYS in 1976; and 5) none of the commission members raised an objection during the discussion.
Mark Koslowe	No	I believe the debate was whether the off-premises licenses would be able to sell through 4 AM on Sunday, rather than 3 AM as currently allowed. If this proposal were reworded to reflect that which I believe was considered, then I would vote "Yes" to allow sales until 4 AM Sunday morning rather than 3 AM.
Melissa Fleischut	No	As the Commission had just taken two votes, one to make off-premise hours on Sunday consistent with on-premise hours on Sunday and the second vote to make no changes to on-premise hours, I believe a change allowing off-premise licensees to sell beer, cider, and wine products 24 hours/day would make the law more inconsistent. Therefore, I voted against the measure. The ABC law is highly inconsistent between types of alcohol and types of establishments and my first two votes were to improve consistency and this measure would erode consistency. Had we taken one vote to allow all licensees 24-hour privileges I would have voted in favor as it would be fair and consistent across all licenses and types of alcohol.
Michael Correra	Abstain	I represent wine and liquor retailers so this does not pertain to our side of the industry
Paul Zuber	Yes	This change would make sense to conform to hours current allowed during the week.
Sonya del Peral	Yes	I recommend that the law be amended to allow off premise beer, cider and wine product sales 24 hours/day for all days for two reasons: 1) public convenience - for those busy working adults who do their shopping on Sunday mornings; and 2) to support small and other businesses by expanding their available hours to conduct business.
Stephen Hanson	Yes	I agree
Steve Harris	Yes	The Sunday restriction is dated. There is no distinction between Sunday and any other day of the week

<u>Sales Hours Question 4</u>: As a Commission Member, do you recommend that New York State amend section 99 of the ABC Law (Special Permit to Remain Open During Certain Hours of the Morning – more commonly known as an All Night Permit) to replace "any week day" with "any day" to allow issuance of such permits on Saturday and Sunday mornings?

YES	NO	ABSTAIN	RECOMMENDATION
14	0	2	Recommendation: Allow all night permits to be issued on weekends.

COMMISSION MEMBER	VOTE	SALES HOURS QUESTION 4 COMMENTS
Andrew Rigie	Yes	There is no reason that on-premises licensees should not be able to receive an All Night Permit on New Year's Eve or for a special event like the World Cup being televised in a different time zone, simply because it falls on a weekend, when it would have otherwise been permitted on a weekday. Furthermore, a process must be established for on-premises licensees to apply for an All Night Permit or later operating hours on special occasions when the stipulations for their regular hours of operation require an earlier closing time.
Ashley White	Yes	Same as above [This would allow more sales of our products and ease for consumers]
Courtney Armour	Yes	We support the SLA having the flexibility to grant permits for Saturday and Sunday mornings as they deem appropriate. As noted, for example, this year New Years Eve falls on a Saturday and there are numerous licensees who might benefit from extended hours for that occasion.
Edward Cooper	Abstain	I do not have an opinion on this matter.
Evan Gallo	Yes	In order to allow our bars and restaurants to more easily - but responsibly - capitalize on serving patrons during a fairly limited offering of special events (such as the World Cup and New Year's Eve), this modest change is needed.
Jeff Zacharia	Yes	I vote yes
Jeffrey Garcia	Yes	Yes we should allow the issuance of such permits on Saturday and Sunday.
Keven Danow	Yes	All night permits are most often asked for on New Year's Eve. There is no good reason to restrict such permits because New Year's Eve happens to fall on a Sunday.
Kim Wagner	Yes	I support changing 'any week day' to 'any day' to allow issuance of special "All Night Permits" on Saturday and Sunday for several reasons: 1) There are economically important commercial opportunities for on-premises permit holders that occur during these times (e.g., New Year's Eve, televised international sporting events, etc.); 2) the cultural diversity and economic realities within NY State negates the idea that each person would recognize the same 'day of rest'; 3) the Blue Laws were struck down in NYS in 1976; and 4) none of the commission members raised an objection during the discussion.
Mark Koslowe	Yes	The amendment would Allow the Authority to issue the All-Night Permit even on week-ends (as opposed to only during the week). As these are issued by the Authority after due consideration, it would be appropriate to allow such amendment in order to have appropriate service of beverages for events occurring on weekends overseas, but due to time difference, are televised in the US in the early morning hours (e.g. World Cup).
Melissa Fleischut	Yes	I recommend replacing "any week day" with "any day" to allow the State Liquor Authority to issue All Night Permits on Saturday and Sunday mornings. We have seen in previous years and again this year for example that when New Year's Eve falls on a Saturday or Sunday the State Liquor Authority has no ability to issue these permits due to the current wording of the law. This makes no sense and should be treated the same as if the special permit were for a Monday or Tuesday.

COMMISSION MEMBER	VOTE	SALES HOURS QUESTION 4 COMMENTS
Michael Correra	Abstain	I represent wine and liquor retailers so this does not pertain to our side of the industry
Paul Zuber	Yes	This change would simplify the process and help during New Year's Eve events.
Sonya del Peral	Yes	I recommend this amendment because of the unintended consequences of leaving the current language as is which creates a problem when New Year's Eve, for example, falls on a Friday or Saturday and establishments that wish to serve patrons that wish to celebrate all night long are unable to do so based on the plain language of the statute.
Stephen Hanson	Yes	I agree
Steve Harris	Yes	As above, there should not be a distinction based upon what day of the week a permit can be granted

# 13 Barriers to Entry

Part GG of chapter 55 of the laws of 2022, §1(d) – "potential barriers to market entry for new businesses by sector."

### Summary:

Under the ABC Law, there are mandatory requirements that must be met for new businesses to enter the market. Businesses looking to be licensed to traffic in alcoholic beverages must, variously, comply with the "tied house" laws<sup>97</sup>, the 500-foot<sup>98</sup> and 200-foot laws<sup>99</sup>, notice requirements, and restrictions on physical access to other businesses. The ABC Law contains sections that may be considered obsolete in today's environment and should be reviewed for possible removal as they add constraints that some feel are unnecessary.

The "tied house laws" prevent manufacturers and wholesalers from exerting inappropriate control over retail licensees, the ABC Law places restrictions on the ability of an entity in one tier to have an interest in an entity in another tier of the industry. <sup>100</sup> The "500 Foot Law," unless public interest is found, prohibits the issuance of an on-premises liquor license in municipalities of twenty thousand or more if there are at least three existing on-premises liquor licenses within five hundred feet of the location being applied for. <sup>101</sup> The "200 Foot Law" prevents the issuance of certain licenses to a location that is on the same street and within two hundred feet of a building that is exclusively occupied by a school or place of worship. <sup>102</sup> The "200 Foot Law" applies to all on-premises liquor licenses, <sup>103</sup> as well as off-premises liquor and wine licenses (package and wine stores). <sup>104</sup>

<sup>&</sup>lt;sup>97</sup> ABCL §101(1)(a), ABCL §105(16), ABCL §106(13).

<sup>98</sup> ABCL §§64(7)(b), 64-a(7)(a)(ii), 64-b(5)(a)(ii), 64-c(11)(a)(ii) and 64-d(8)(b).

<sup>99</sup> ABCL §§64(7)(a), 64-a(7)(a)(i), 64-b(5)(a)(i), 64-c(11)(a)(i), 64-d(8)(a) and ABCL §105(3)(a).

<sup>&</sup>lt;sup>100</sup> SLA. Trade Practice Issues. Retrieved from https://sla.ny.gov/trade-practice-issues on 3/15/2023.

<sup>&</sup>lt;sup>101</sup> ABCL §§64(7)(b), 64-a(7)(a)(ii), 64-b(5)(a)(ii), 64-c(11)(a)(ii) and 64-d(8)(b).

<sup>102</sup> ABCL §§64(7)(a).

 $<sup>^{103}</sup>$  ABCL  $\S 64(7)(a),\, 64-a(7)(a)(i),\, 64-b(5)(a)(i),\, 64-c(11)(a)(i)$  and 64-d(8)(a).

<sup>&</sup>lt;sup>104</sup> ABCL §105(3)(a).

Commission Members were provided with briefing materials that gave additional information and context for the topic being discussed. Commission Meeting briefing materials for this topic may be found in the associated document "Topic 10 - Commission Meetings Briefing Materials 2022.pdf."

#### **Commission Votes and Recommendations:**

The Commission Members participated in a discussion on potential barriers to market entry. The first item centered on whether the current tied house laws are too restrictive to manufacturers, wholesalers, and retailers in NYS and if the law should be amended to loosen those restrictions. The second item focused on if the law should be amended to eliminate the 500 Foot Law. The third item focused on if the law should be amended to eliminate the 200 Foot Law. The last item centered on if the "public convenience and advantage" standard for liquor store license approval should be amended to a "good cause for disapproval" standard. The Commission Members were posed the following four questions, and their votes, comments, and recommendations are presented below. No comments have been edited for language, grammar, or spelling.

Barriers to Entry Question 1: Should the law be amended to loosen New York's tied house restrictions?

YES	NO	ABSTAIN	RECOMMENDATION
13	2	1	Recommendation: Loosen the tied house laws.

COMMISSION MEMBER	VOTE	BARRIERS TO ENTRY QUESTION 1 COMMENTS
Andrew Rigie	Yes	The Tied House restrictions should be amended with limitations to support economic development, allow local restaurateurs, and bar owners, et al, to seek funding from additional people/entities they are currently prohibited from receiving investments from, as long and the amount of the investment is limited to prevent undue business and market influence from manufactures and wholesalers.
Ashley White	Yes	N/A
Courtney Armour	Yes	As discussed during the Commission meeting, DISCUS supports reforms to modernize New York's tied house restrictions as they fail to account for the modern realities of the industry, particularly in the digital age.  I understand this question is focused on the prohibition against supplier ownership in any part of a licensed retailer. As discussed, the initial policy reason for this is no longer germane and practically this has resulted in a long list of exceptions being granted for specific locations. Accordingly, this law should be modernized to make a clear and sensible rule that will be applicable to all (without needing to seek a carveout). At a minimum, the law should be modified to match the federal standard of allowing for complete ownership of a retailer, but New York should also consider allowing for some limited percentage of ownership as well.  Of course, there are other regulations grounded in tied house restrictions that also warrant updates to account for the modern marketplace. A few examples include:  o Update the \$300 Product Display Limit: We support updating the \$300 monetary limit for displays at the retailer under Rule 86.3 (b), which has not

COMMISSION MEMBER	VOTE	BARRIERS TO ENTRY QUESTION 1 COMMENTS
		been updated in decades. This number has not kept up with changes to the consumer price index and does not reflect the cost of things today.
		o Eliminate the Dollar Limit on Retailer Advertising Specialties: This change would bring the SLA rule into conformity with the federal rules and the rules in other states. In view of the nature and value of these items (eg, trays, posters, mats), no reason exists to impose this unnecessary burden of compliance and enforcement.
		o Eliminate Discrimination Against Spirits: To ensure a level playing field for alcohol beverages and eliminate unjustifiable discrimination against spirits, clarify that:
		(1) The definition of product displays under Rule 86.3(a) applies to "alcohol beverage racks" and not only "wine racks;"
		(2) Stocking services are allowed for all alcohol beverages and not only beer and wine products; and
		(3) Alcohol beverage lists and not only wine lists may be furnished.
		o Allow Suppliers to Advertise the Location of their Events or Promotions at Retail Premises: Similar to other states, suppliers should not be denied the opportunity to publicize permitted events at retail premises that they sponsor or conduct, as long as the listing of the retailer is relatively inconspicuous in relation to the advertising as a whole.
		o Routine Business Entertainment: Currently, suppliers can only provide lunch and dinner to retailers. This should be changed to expand the scope to allow for other types of routine business entertainment, as allowed in other states.
		o Educational Seminars: As provided in the federal rules and other states, clarify that there is an exception for furnishing nominal hospitality to the prohibition against suppliers paying a retailer's expense in conjunction with an educational seminar (such as travel and lodging).
		o Add "Yellow Lights" to Trade Practice rules: Currently, the furnishing of any item or service provided by a supplier to a retailer is a violation if it does not fall squarely within an expressed exception. As provided in the federal rules and in many states, New York law and rules should be amended to provide that practices not expressly permitted or prohibited may or may not violate the law depending on whether they result in "exclusion." (See 27 CFR 6.151 – exclusion generally defined as an industry member practice placing retailer independence at risk and resulting in a retailer purchasing less than it would have of the competitor's product). These activities have been referred to as "yellow lights."
Edward Cooper	No	It is unclear from the question what is meant by the word "loosen."
Evan Gallo	Yes	To the degree no major conflicts of interest would exist or competition would be extinguished, individual exemptions should not have to be expressly legislated.
Jeff Zacharia	Yes	
Jeffrey Garcia	Yes	Yes, as long as the parties do not have controlling interest in any license "investor" with no controlling interest. Also especially if the any part of the supply chain is outside the state or country.

COMMISSION MEMBER	VOTE	BARRIERS TO ENTRY QUESTION 1 COMMENTS
Keven Danow	No	Although I support the idea of allowing some changes to the tied house laws so that the ownership by a supplier of a retail establishment in another state or country which does not sell into New York would not disqualify a supplier from obtaining a license in New York, I oppose and open-ended statement such as the one set forth above. It offers the legislature no guidance and therefor is inappropriate for a committee recommendation.
Kim Wagner	Yes	New York State misses out on many economic/business development opportunities because our tied house restrictions are more constrained than the federal tied house restrictions. Aligning NYS and Federal tied house rules would make NYS more competitive and create a more level playing field with other states competing for opportunities.
Mark A. Koslowe	Abstain	Without significant details and the areas to be "loosened" it is not possible to vote on the proposal.
Melissa Fleischut	Yes	The Commission members discussed how these rules are often an impediment to economic development, particularly for entities that have a retail license in a different state or country. It was further explained that New York's rules are more restrictive than federal law and most states. To further economic development in New York, we believe this law should be amended to allow for this.
Michael Correra	Yes	It should be reviewed and made to be less constricting!
Paul Zuber	Yes	New York loses economic development opportunities due to the current tied house restrictions. The law was designed to thwart someone from controller all the tiers but it has stopped development when someone may own an interest in a producer for example with the project having little to do with an effort to dominate the three tees. Although meets and bounds legislation could be drafted to allow for some of these projects that is a long process that sometimes is not guaranteed due to the inherent back and forth in the legislative process. utilizing legislation also is a deterrent to financing if someone feels they must wait for a convoluted legislative process.
Sonya del Peral	Yes	Each restriction must be considered on a case by case basis. Certain tied house restrictions should be maintained and others loosened. For example, it should still be illegal for a distributor to pay for the installation of a draught system in order to induce a bar to carry only that distributor's products. On the other hand, some of the advertising rules are overly restrictive, particularly for our smaller farm based manufacturers who may have special opportunities to promote their products with a retailer in their local area at an event.
Stephen Hanson	Yes	Some of the restrictions are archaic
Steve Harris	Yes	If the law is changes to be consistent with Federal law, I can support this change. Any further liberalization I would oppose.

### <u>Barriers to Entry Question 2</u>: Should the law be amended to eliminate the 500 Foot Law?

YES	NO	ABSTAIN	RECOMMENDATION
15	0	1	Recommendation: Eliminate the 500 Foot Law.

COMMISSION MEMBER	VOTE	BARRIERS TO ENTRY QUESTION 2 COMMENTS
Andrew Rigie	Yes	In a dense and highly concentrated place like New York City you can have 3 or more licenses in one building and the 500 Foot Law just adds time, money, and bureaucracy to the process for applicants. The 500 Foot Law can be eliminated while community and SLA review and input is respected.
Ashley White	Yes	N/A
Courtney Armour	Yes	As discussed during the Commission meeting, there are ample other checks and balances in place to ensure that licensed premises are located appropriately and communities have the opportunity to provide input in that regard.
Edward Cooper	Abstain	I do not know enough about this subject, or the need for any change, to provide an informed answer.
Evan Gallo	Yes	To the extent localities could still maintain substantial authority over planning and development, there should not be an express prohibition against allowing a new on-premises business just because it is near existing businesses. These decisions regarding density and community characteristics should be left to municipalities themselves.
Jeff Zacharia	Yes	
Jeffrey Garcia	Yes	Outdated and is extremely prohibitive in NYC area
Keven Danow	Yes	This rule only adds delay to the licensing process. Almost all premises in New York City appear to come under the rule. Many areas, such as the theater district have a concentration of restaurants. The rule is arbitrary. When on premise licensees are close to one another, they usually offer completely different experiences. A steakhouse, a pub and a sushi restaurant add to an area and the fact that there are three, within five hundred feet should not make it more or less likely that a license will be granted
Kim Wagner	Yes	The 500 foot rule is anti-competitive and should be eliminated. There are other opportunities in the permitting process for municipalities and community organizations to have a say in the number and type of alcohol businesses within their jurisdictions.
Mark A. Koslowe	Yes	As a practical matter, the law allows unelected bodies such as Community Boards, the power to delay applications or impose restraint on prospective licenses with no real due process at the Community Board level. The removal of this impediment would greatly accelerate the review process of retail applications.
Melissa Fleischut	Yes	This law is a barrier to entry for many small businesses and stifles economic development in the hospitality industry. There are numerous areas across the state where a thriving downtown community relies on multiple restaurants and bars to bring customers to their main streets and support the local economy. The State Liquor Authority would still have to review the license, consider the public interest, and localities would still have an opportunity to weigh in on every license. Repealing this law would eliminate an unnecessary regulatory burden without changing the licensing criteria.

COMMISSION MEMBER	VOTE	BARRIERS TO ENTRY QUESTION 2 COMMENTS
Michael Correra	Yes	It should be reviewed and made to be less constricting!
Paul Zuber	Yes	This is another provisions that limits economic development. There is a process in place for approval and denial of licenses and the 500 foot rule should not be determinant.
Sonya del Peral	Yes	For the convenience of the public.
Stephen Hanson	Yes	Where the 500 foot rule is applicable, the density has become almost impossible not to violate the 500 foot rule with no real affect in regards to what the rule was intended to do,
Steve Harris	Yes	Tis is an unnecessary restriction in today's society. There are other ways the SLA can disapprove of a license, there should not be a blanket restriction merely based on geography.

### <u>Barriers to Entry Question 3</u>: Should the law be amended to eliminate the 200 Foot Law?

YES	NO	ABSTAIN	RECOMMENDATION
15	1	0	Recommendation: Eliminate the 200 Foot Law.

COMMISSION MEMBER	VOTE	BARRIERS TO ENTRY QUESTION 3 COMMENTS
Andrew Rigie	Yes	In 2023 there is no logical reason why a restaurant should be allowed to only have a beer and wine license within 200 feet of a school or places of worship but not a full liquor license which is essential for many business concepts. This is also an issue that impacts certain communities more than others like Harlem, for example, where the many places of worship prevent some nice new small businesses from opening because they are unable to obtain a liquor license even when they have the support of said place or worship and the greater community. Because SLA does not have the ability to waive the 200 Foot Law, small businesses without great resources and deep political connections are unable to undertake the expensive and lengthy campaign to try and have the legislature pass a bill to allowing them to obtain a liquor license. This can lead to additional vacant storefronts or less desirable businesses filling the space.
Ashley White	Yes	N/A
Courtney Armour	Yes	As discussed during the Commission meeting, there are ample other checks and balances in place to ensure that licensed premises are located appropriately and communities have the opportunity to provide input in that regard.
Edward Cooper	No	The current law seems sufficient.
Evan Gallo	Yes	This law should be eliminated for churches and houses of worship only while keeping the prohibition intact for schools.
Jeff Zacharia	Yes	
Jeffrey Garcia	Yes	Outdated and extremely prohibitive in NYC area

COMMISSION MEMBER	VOTE	BARRIERS TO ENTRY QUESTION 3 COMMENTS
Keven Danow	Yes	The two-hundred-foot rule is also arbitrary. A person will be no less religious simply because a restaurant or package store is within two hundred feet from his or her place of worship. Children are not traumatized because there is a restaurant or package store serving spirits within two hundred feet of their school. This rule is a holdover from the days alcohol was thought of a "demon rum." The rule should be eliminated. Each licensee application should be judged on its own merits.
Kim Wagner	Yes	The 200 foot law is a relic of the past. The value destruction created in some communities because they cannot create a viable 'downtown' with restaurants and shops because their retail districts also contain a high density of schools and churches needs to be revisited. There are other opportunities in the permitting process for municipalities and community organizations to have a say in the number, location and type of alcohol businesses within their jurisdictions.
Mark A. Koslowe	Yes	This law was well meaning but archaic. In light of local DtC delivery it makes little difference whether a store is within 200 feet of a Church or School. For the most part this is NYC issue and its elimination would create many more viable locations for applicants to serve the public.
Melissa Fleischut	Yes	This law dates all the way back to the 1890s and our society has changed significantly since then and so should our laws. Similar to the 500-foot law, this is a barrier to entry for small businesses and stifles economic development. To make matters worse, the State Liquor Authority is powerless to grant a license in the case of the 200 foot rule even if there are no objections from any school or religious organization. The only way to overcome the 200-foot rule currently is to pass legislation allowing that one premise a license. This law is antiquated and should be repealed.
Michael Correra	Yes	It should be reviewed and made to be less constricting!
Paul Zuber	Yes	Often there are occasions that a church or school will agree that a licensee should be allowed to sell liquor although the licensee is within 200 feet of a school or church. This is an outdated measure that is not needed and the SLA can clearly make the appropriate determinations without this rule or an amended rule.
Sonya del Peral	Yes	For the convenience of the public.
Stephen Hanson	Yes	Same response as #21 [Where the 500 foot rule is applicable, the density has become almost impossible not to violate the 500 foot rule with no real affect in regards to what the rule was intended to do,]
Steve Harris	Yes	See previous answer.  [Tis is an unnecessary restriction in today's society. There are other ways the SLA can disapprove of a license, there should not be a blanket restriction merely based on geography.]

<u>Barriers to Entry Question 4</u>: Should the "public convenience and advantage" standard for liquor store license approval be amended to a "good cause for disapproval" standard?

YES	NO	ABSTAIN	RECOMMENDATION
10	5	1	Recommendation: Change liquor license approval standard to good cause for disapproval (from public convenience and advantage for approval).

COMMISSION MEMBER	VOTE	BARRIERS TO ENTRY QUESTION 4 COMMENTS
Andrew Rigie	No	The standard gives the State Liquor Authority a tool in preventing oversaturation in the market and has been in place for ninety years, removing it now would disrupt settled expectations by existing industry participants, who reasonably relied on that well-settled legal standard when making business and investment decisions.
Ashley White	Abstain	N/A
Courtney Armour	Yes	As discussed during the Commission meeting, this should be an easier standard to apply.
Edward Cooper	No	Neither a "public convenience and advantage" standard nor a "good cause" standard are needed if New York State adopts a quota licensing system.
Evan Gallo	Yes	A reverse standard is more appropriate.
Jeff Zacharia	No	
Jeffrey Garcia	Yes	Yes, unless there is good cause to deny and individual should be allowed to operate.
Keven Danow	No	The current standard works well. The members of the Authority judge each application based upon what the applicant adds to the area and what negative issues may result.
Kim Wagner	Yes	In the spirit of encouraging business investments and amenities in communities the standard should be switched to a 'good cause' disapproval standard for liquor store license approval.
Mark A. Koslowe	Yes	Applicants for Package store licenses should be held to the same standards as other licensees, this would mean "good cause" to disapprove. No need to contact closest stores (who almost invariably object anyway). Elimination of this standard would simply save Agency time (no need to contact closest stores and no need to await responses), and the SLA can still determine whether an applicant should be denied for good cause on the facts assembled.
Melissa Fleischut	Yes	The New York State Restaurant Association's goal on this commission was to eliminate barriers to economic development, update antiquated laws, and provide some consistency across the types of alcohol sold and the locations they are sold. Therefore we support this amendment because it would make the language consistent with other sections of the ABC law.
Michael Correra	No	This seems to be working very well!

COMMISSION MEMBER	VOTE	BARRIERS TO ENTRY QUESTION 4 COMMENTS	
Paul Zuber	Yes	The lack of definition behind "public convenience and advantage" is problematic for both the applicant and the SLA. For the applicant there is a lack of certainty as to the process and the process can change depending on how the current SLA commissioners interpret P&C. In terms of the SLA, lack of definition lends itself to criticism of the SLA in determining license approval since there is not set definition.	
Sonya del Peral	Yes	A license should be granted if the basic requirements of an application are met. The current standard places an unnecessary burden on the applicant and on the SLA to determine whether a license should be granted; there is no standard definition of "public convenience and advantage" leaving the applicant with the burden of spending time & resources to collect information that may or may not be considered by the SLA. The better approach is for the SLA, with an application before it that has met all basic requirements for automatic approval, disapprove only if there is good cause such as disciplinary history.	
Stephen Hanson	Yes	Good causes more suitable for the application	
Steve Harris	Yes	The burden for approval in this case should be on the regulator, not the applicant.	

# 14 Other Issues

Part GG of chapter 55 of the laws of 2022, §1(d): "any other issues deemed necessary and appropriate to include by members of this commission."

#### **Summary:**

During the Commission Meeting held on December 19, 2022, Commission Members were given the opportunity to raise issues that they felt were relevant to the mission of this Commission. Issues raised included removal of obsolete portions of the ABC Law, temporary permits, and a review of licensing fees.

### **Commission Votes and Recommendations:**

The Commission Members participated in a discussion on other issues deemed necessary and appropriate that were not outlined in Budget Language Part GG of chapter 55 of the laws of 2022. The first item focused on whether the Legislature should remove obsolete portions of the ABC Law. The second item centered on if the law should be amended to create a temporary permit for licensees that allows the service of beer, wine, cider, and liquor. The third item centered on if the law should be amended to create temporary operating permits for wholesale license holders who have applied for a full license. The last item focused on whether the Legislature should review all licensing fees for appropriateness. The Commission Members were posed the following four questions, and their votes, comments, and recommendations are presented below. No comments have been edited for language, grammar, or spelling.

### <u>Open Discussion Item Question 5</u>: Should the Legislature remove obsolete portions of the ABC Law?

YES	NO	ABSTAIN	RECOMMENDATION
14	0	2	Recommendation: Remove obsolete provisions of law.

COMMISSION MEMBER	VOTE	OPEN DISCUSSION ITEM QUESTION 5 COMMENTS
Andrew Rigie	Abstain	It is appropriate to remove truly obsolete portions of the ABC law to limit confusion and have clean text in our laws, and I am generally supportive of this. However, I cannot vote in favor of this question because it does not list the section(s) of the ABC law that would be up for consideration to remove, so I abstained because I need further details of what is being proposed here.
Ashley White	Yes	N/A
Courtney Armour	Yes	It is important for businesses to be able to respond to consumer demand and for regulations to support that by creating sensible rules that minimize any unnecessary friction in meeting those demands. Accordingly, alcohol regulations should be crafted to provide consumers with convenient opportunities to responsibly purchase products when, where, and how they prefer, in line with modern commercial practices. We also recommend regulations that allow for flexibility in industry activities, as well as modernization of the regulations to account for the new realities in both the physical and digital spaces.  In reviewing portions of the ABC Law, the primary focus should be on modernization because of the changes in the marketplace, technology, and accepted practices throughout the states. In modernizing trade practice regulations, there is no basis for continued discrimination against spirits. An example of this outdated discriminatory practice is the stocking service rule, which only applies to beer and wine products.  The Legislature should undertake the same process for reviewing and revising ABC Laws that was undertaken by the NYSLA in reviewing and eliminating most Divisional Orders and Bulletins. Keeping obsolete laws on the books creates confusion for regulators and industry participants. Obsolete laws should be removed.
Edward Cooper	Yes	"Obsolete" portions of the code should be removed by the Legislature.
Evan Gallo	Yes	If portions of the ABC Law are obsolete, they should be removed.
Jeff Zacharia	Yes	
Jeffrey Garcia	Yes	Yes anything to make the process more stream line and efficient.
Keven Danow	Yes	If by obsolete we mean laws that have been ruled unconstitutional or which are generally unenforced or unenforceable, such laws should be eliminated because they result in a general disrespect for law. However, care should be taken not to simply call laws obsolete because they work well that that the public has forgotten the problems that they were created to address. For instance, many people claim the three tier system is obsolete because simply because it works so well, they no longer remember the days when suppliers encouraged retailers to force consumers into overconsumption.

COMMISSION MEMBER	VOTE	OPEN DISCUSSION ITEM QUESTION 5 COMMENTS
Kim Wagner Yes		The ABC Law is complex and has been written piecemeal. As a result it is difficult to interpret and contains many obsolete requirements and limitations. A policy neutral re-write of the ABC Law will help with readability, but removing obsolete passages will return competition and fairness to the system. Currently there are many rules in the ABC Law that are not enforced. Unfortunately, unless you hire the lawyer that crafted the original law or have been in the industry for decades you have no way of knowing what rules to follow and which ones you can ignore. It's fair to say that every 'restriction' placed on a business creates a cost or limits the opportunities for growth. As an example if an established liquor store knows what rules can be 'ignored' they can provide more services and amenities to their customers than the new entrant that assumes all the rules are enforced and must be followed. As an example, by law liquor stores can only conduct wine tastings for their patrons, but we know that wholesaler and sales reps are often sampling liquor in retail establishments. Similarly, retailers legally can only deliver to a residential address, but we know that they often deliver to business addresses as well. A policy neutral re-write by definition will perpetuate these obsolete rules and as a matter of fairness across the industry the obsolete parts should be eliminated with the re-write.
Mark A. Koslowe	Yes	It is always best to remove obsolete terms and statues; leaving them in can only create confusion.
Melissa Fleischut	Yes	The New York State Restaurant Association's goal on this commission was to eliminate barriers to economic development, update antiquated laws, and provide some consistency across the types of alcohol sold and the locations they are sold. Therefore we support removing any obsolete language from the ABC law to make it easier to understand.
Michael Correra	Abstain	All laws should be reviewed if they are obsolete - This question needs to be more in detail!
Paul Zuber	Yes	It is 2023 and there are still laws that have been in place since 1930 that no longer are relevant in today's economy.
Sonya del Peral	Yes	Because obsolete provisions are obsolete and, accordingly, apply to no current situation.
Stephen Hanson	Yes	If they're obsolete, why wouldn't they be removed?
Steve Harris	Yes	I vote yes, but with caution. This is a very wide-open question. I support a "re-write" of the statute, but only to make it more user friendly. I consider the statute as currently written to be "vertical" in that the focus is on alcohol products and who can make or sell them. The law should be written more "horizontally" to focus on license types and what privileges they have and what products they can sell. The term "obsolete" is a matter of opinion and should not be used as an excuse to promote policy changes. Such changes should be addressed individually and on their own merits (or lack thereof).

<u>Open Discussion Item Question 6</u>: Should the law be amended to create a temporary permit for licensees that allows the service of beer, wine, cider, and liquor?

YES	NO	ABSTAIN	RECOMMENDATION
14	1	1	Recommendation: Create a temporary beer, wine, cider, and liquor permit for licensees.

COMMISSION WOTE VOTE		OPEN DISCUSSION ITEM QUESTION 6 COMMENTS
Andrew Rigie	Yes	This will help create more flexibility and meet need.
Ashley White	Yes	N/A
Courtney Armour	Yes	Temporary permits provide flexibility for licensees and should be granted equally for beer, wine, cider, and spirits.
Edward Cooper	No	The question is posed in an ambiguous manner.
Evan Gallo	Yes	Allowing licensees the ability to more quickly secure revenue will set them up for future success.
Jeff Zacharia	Yes	
Jeffrey Garcia	Yes	Yes this is especially true in NYC and with no 2 yrs look back on address. Again the look back is prohibitive to many of the new construction around NYC.
Keven Danow	Yes	There is a legitimate purpose for such a permit and it allows the SLA to oversee such events.
Kim Wagner	Yes	Given the delays in the permitting process and to address consumers' needs and create additional business opportunities for permitees, additional temporary permits should be established.
Mark A. Koslowe	Yes	Adding the privilege of handling spirit to a Temporary Permittee would allow greater choices for consumers in selecting event space usage and entities to provide services. With limits on numbers of Permits allowable at a site in effect, the SLA has safeguarded against abuse by those seeking the Permit or over usage and one site.
Melissa Fleischut	Yes	Temporary permits are a good way to allow small businesses to get up and running while the State Liquor Authority completes its work on a permanent license. The Commission members were informed that this type of temporary license is available for beer, wine, and cider, but not liquor. Again, this is an area that we should try to update and make consistent across the types of alcohol offered.
Michael Correra	Abstain	I believe we have these already!  Certainly for the retail off premise wine and liquor license.
Paul Zuber	Yes	This would expedite the process and allow businesses to open and operate quickly.

COMMISSION WOTE OPEN		OPEN DISCUSSION ITEM QUESTION 6 COMMENTS
Sonya del Peral	Yes	For public convenience. We know for a fact that businesses such as caterers and mobile bar operators who compete with our farm based manufacturers for the growing social event business such as weddings, corporate events and the like, already offer options that include liquor in addition to beer, wine & cider. Currently, our farm based manufacturers are limited to temporary permits for beer, wine & cider. With the addition of liquor to the temporary permits, our farm based manufacturers will be able to effectively compete for such event business and further support New York agriculture which is one of the stated purposes of the ABC law as amended on April 19th 2015.
Stephen Hanson	Yes	The temporary permit would expedite the time that store could be open, increasing employment and revenue for the state
Steve Harris	Yes	The licensing process can be long and sometimes cumbersome. Giving a potential licensee the ability to start up faster is a win-win for the regulator, license holder and the community. The SLA has the ability to ultimately deny the license if the applicant doesn't meet the statutory requirements to hold it. Giving the applicant the chance to start faster hurts no one.

<u>Open Discussion Item Question 7</u>: Should the law be amended to create temporary operating permits for wholesale license holders who have applied for a full license?

YES	NO	ABSTAIN	RECOMMENDATION
13	1	2	Recommendation: Create a temporary wholesale permit.

COMMISSION WOTE VOTE		OPEN DICUSSION ITEM QUESTION 7 COMMENTS
Andrew Rigie	Yes	Given the current processing times for license applications at SLA, wholesale license applicants should have the ability to apply for a temporary operating permit, just as retailers and now manufacturers may.
Ashley White	Yes	N/A
Courtney Armour	Yes	This should be permitted in circumstances, such as a wholesaler whose renewal application is pending and the license is set to expire before the renewal is granted.
Edward Cooper	No	The question is posed in an ambiguous manner.
Evan Gallo	Yes	Temporary wholesaler permits may increase much-needed competition in the space.
Jeff Zacharia Yes		
Jeffrey Garcia	Abstain	Unsure of the difference
Keven Danow	Yes	The law currently allows temporary permits for suppliers and retailers.  Wholesalers should be able to get up and running without waiting too long because of the licensing process. All such licensees will have to have a federal basic permit, so there are two levels to oversee that the process is not abused.
Kim Wagner	Yes	To create parity across the tiers, temporary permits should be made available.

COMMISSION MEMBER	VOTE	OPEN DICUSSION ITEM QUESTION 7 COMMENTS
Mark A. Koslowe	Yes	Wholesalers should be treated on the same level as Manufacturers and Retailers. I would suggest extending this concept for Importer licenses as well.
Melissa Fleischut	Yes	The State Liquor Authority staff provided background that this type of temporary license is currently allowed for manufacturers and retailers, but not wholesalers. In an effort to create a more consistent ABC Law, we support the temporary permit for wholesalers.
Michael Correra	Abstain	I am really not familiar with this side of the business.
Paul Zuber	Yes	Similar to above, this would expedite the process.
Sonya del Peral	Yes	To get business up and running as soon as possible.
Stephen Hanson	Yes	Again, just renewed temporary permit Would expedite ability to have employment and taxes for the state
Steve Harris	Yes	See previous answer.  [The licensing process can be long and sometimes cumbersome. Giving a potential licensee the ability to start up faster is a win-win for the regulator, license holder and the community. The SLA has the ability to ultimately deny the license if the applicant doesn't meet the statutory requirements to hold it. Giving the applicant the chance to start faster hurts no one.]

## Open Discussion Item Question 8: Should the Legislature review all licensing fees for appropriateness?

YES	NO	ABSTAIN	RECOMMENDATION
9	7	0	Recommendation: Review licensing fee structure.

COMMISSION MEMBER	VOTE	OPEN DISCUSSION ITEM QUESTION 8 COMMENTS
Andrew Rigie	Yes	It is expensive to run a business in New York, so it is appropriate for the legislature to review all licensing fees for the sole purpose of reducing them, while ensuring SLA is provided the proper funding to efficiently run the agency.
Ashley White	Yes	N/A
Courtney Armour	Yes	The current licensing fees are discriminatory against spirits. There is no justification for the substantially higher licensing fees for spirits in comparison to the licensing fees for beer, wine, and cider. We support modernizing the licensing fees to treat spirits fairly relative to beer, wine, and cider.
Edward Cooper	Yes	The Legislature ought to do a benchmarking study.
Evan Gallo	Yes	Licensing fees are ripe for evaluation and modernization, as meaningful adjustment has not occurred in many years. Much more consideration should be placed on a given entity's size and stature within the industry so that fees could be raised or lowered, accordingly.
Jeff Zacharia	No	
Jeffrey Garcia	Yes	Fees on full liquor license are expensive

COMMISSION MEMBER	VOTE	OPEN DISCUSSION ITEM QUESTION 8 COMMENTS	
Keven Danow	No	The current license fees do not interfere with the ability to enter the market. They should remain.	
Kim Wagner	No	I don't believe that there needs to be a review at this time.	
Mark A. Koslowe	No	The fee structure is fine as is; no need to increase at this time.	
Melissa Fleischut	No	The New York State Restaurant Association is concerned that a review of licensing fees would lead to an increase in licensing fees. The industry is not in a position to pay more for a liquor license right now. The hospitality industry across the state is getting crushed by the rising cost of food, labor, insurance, rent, equipment, and utilities. We can't continue to raise prices and expect our consumers to continue to dine out at the same frequency. Restaurants, bars, and caterers across the state are closing their businesses due to declining or non-existent profit margins. Also, the State Liquor Authority was given additional funding in last year's budget to hire additional licensing staff.	
Michael Correra	Yes	Yes of course	
Paul Zuber	No	This would slow down the process and hinder the process which is not the function of this Commission which is to find ways to expedite the process and create economic growth.	
Sonya del Peral	No	The current fee structure is appropriate.	
Stephen Hanson	Yes	Unfair to have liquor licenses for small operators be the same as operators who do large volume there should be some type of a scale in regards to sales revenue	
Steve Harris	Yes	It has been a while since fees have been changed. A review is appropriate but should be discussed with the license types that are impacted by such review.	

## Appendix A – About the Commission Members

The following biographies are displayed as submitted by the Commission Members.

#### Vincent Bradley, Chairman, SLA

Vincent Bradley has served as Chairman of the SLA since June 24, 2015, where he is responsible for the day-to-day operations of the agency. Chairman Bradley most recently served for seven years as an Assistant Attorney General-In-Charge of the New York State Attorney General's Poughkeepsie regional office, managing the operations of the office, overseeing attorneys and cases, serving as the regional Public Integrity Officer, and conducting investigations involving consumer protection, illegal business practices and fraud. Prior to joining the Attorney General's office, Bradley served for ten years as Assistant District Attorney in the New York County District Attorney's Office, including three years in the Office of the Special Narcotics Prosecutor for the City of New York and later in the Labor Racketeering Unit of the New York County District Attorney's Office, conducting complex white-collar criminal investigations.

Bradley, formerly a Certified Public Accountant, previously worked for Deloitte and Touche, as a litigation associate at the New York based law firm Brown & Wood, LLP, and as Assistant Court Attorney for the New York State Supreme Court, Appellate Division, 3rd Department. Chairman Bradley received a bachelor's degree in business administration majoring in accountancy from the University of Notre Dame and holds a J.D. from the State University of New York at Buffalo School of Law.

#### William Raleigh, Tax Policy Analyst, Office of Tax Policy Analysis

William Raleigh has worked in the Office of Tax Policy Analysis at the Department of Taxation and Finance since 1999. He is currently the leader of a team of analysts whose responsibilities include policy research and data analytics for the sales and excise taxes, including the alcohol beverage, cannabis, and tobacco taxes. William has recently participated in numerous projects undertaken by the Tax Department to simplify the return filing process and improve the overall quality of data reported by licensed alcohol beverage distributors.

**James E. Barnes**, Lt. Colonel, Assistant Deputy Superintendent, Bureau of Criminal Investigation, New York State Police

Lieutenant Colonel James E. Barnes started his career with the New York State Police in 1989 as a Trooper and was first assigned to Troop "C" in Sidney, NY. In 1996 he was promoted to Sergeant and assigned to Troop "D" in Oneida, NY. In 1997 Lt. Colonel Barnes returned to Troop "C" and was appointed to Station Commander and assigned to Headquarters patrol. In 1999 Lt. Colonel Barnes was appointed to the rank of Investigator in the Bureau of Criminal Investigation. In 2000 Lt. Colonel Barnes was promoted to Lieutenant in the Bureau of Criminal Investigation and assigned to Troop "A" in Batavia, NY. In 2009 he was appointed to Captain in the Bureau of Criminal Investigation assigned to Troop "C". In 2015 Lt. Colonel Barnes was appointed to the rank of Major and assigned as Troop "C" Commander. In September 2017 Lt. Colonel Barnes was appointed to Staff Inspector in the Bureau of Criminal Investigation assigned to Field Command at Division Headquarters in Albany, NY. In December 2018 Lt. Colonel Barnes was appointed to his current rank and assigned as the Chief of Staff to the Superintendent. In December 2019 Lt. Colonel Barnes was assigned to his current position as Assistant Deputy Superintendent – Bureau of Criminal Investigation. Lieutenant Colonel Barnes has responsibility for overseeing criminal investigations conducted by Investigators in the Bureau of Criminal Investigation statewide.

#### Robert Megna, Budget Director, State of New York

Robert Megna was appointed Budget Director to serve through the 2023 legislative session and to assist with the search for a long-term Budget Director. Immediately prior to his appointment, Megna served as president of the Rockefeller Institute of Government, a role he will return to following the selection of a long-term Budget Director. Prior to the Rockefeller Institute of Government, Megna served as senior vice chancellor and chief operating officer of SUNY System Administration. In that role, he oversaw the operations of the chief information officer, the State University of New York (SUNY) Plaza business functions, capital facilities, campus energy management, and the Charter School Institute. He joined SUNY System Administration from Stony Brook University, where he served as senior vice president for finance and administration. Prior to joining Stony Brook, he served as executive director of the New York State Thruway Authority and New York State Canal Corporation.

Megna previously served as Budget Director, during which time the state achieved its highest financial rating in 40 years from three major credit rating agencies and passed four on-time budgets for the first time since the 1970s. He also chaired multiple governmental boards, including the Financial Restructuring Board, the New York Racing Association, and the Public Authorities Control Board. Megna has also served as commissioner for New York State Department of Taxation and Finance, director of the revenue and economics unit at DOB, assistant commissioner of the office of tax policy at the Virginia Department of Taxation, director of tax studies at the New York State Department of Taxation and Finance, and deputy director of fiscal studies on the Assembly Ways and Means Committee.

Megna earned an M.S. in economics from the London School of Economics and Political Science at the University of London and received both his B.A. in Economics and M.P.A. from Fordham University.

#### Stefan Fleming, Director of Industry Development, Empire State Development

Stefan Fleming is a Director of Industry Development with Empire State Development's Strategic Business Development division. As the lead for the craft beverage and industrial hemp industries in New York State for the past six years, Stefan has overseen the rapid growth of the state's craft beverage industry. He assists companies and new businesses through the state's economic development incentive programs, and the One Stop Shop — a single point of contact for answers to questions regarding relevant State regulations for the entire alcohol industry. He also works closely with key stakeholders in developing the emerging industrial hemp marketplace.

Prior to joining ESD, Stefan served as the Governor's Office Regional Representative for the nine-county Finger Lakes region, based out of Rochester, Monroe County.

#### Mark A. Koslowe, Managing Partner, Buchman Law Firm, LLP

Mark A. Koslowe is Managing Partner of Buchman Law Firm, LLP. Mr. Koslowe received a Bachelor of Arts degree in 1973 from Yeshiva University, a Juris Doctor degree from Fordham Law School in 1976 and an Advanced Professional Certificate (in taxation) from New York University, School of Business in 1979. He was admitted to the New York and Florida Bars in 1977 and to the Bar of the District of Columbia in 1979. He was also admitted to practice in 1977 before the United States District Courts for the Eastern and Southern Districts of New York.

Mr. Koslowe possesses substantial experience in the alcoholic beverage licensing of manufacturers, wholesalers and retailers nationwide, both federal and state. He frequently advises clients with respect to the labeling and advertising of their products as well as trains clients regarding a variety of alcoholic beverage trade practice issues. With respect to NYS Alcoholic Beverage Control Law ("ABCL"), he

testified at and supplied materials to the 2008 NYS Law Revision Commission, Chaired by Robert M. Pitler, which Commission was formed to review the ABCL and propose action to address deficiencies in the law. Further, he was a Member of the 2016 New York State Liquor Authority Working Group, Chaired by Vincent Bradley, formed to consider the reorganization of, and revisions to, the ABCL. Mr. Koslowe's practice also includes working with U.S. Customs (Border Protection) on import/export matters related to alcoholic beverages, and with the Alcohol & Tobacco and Tax & Trade Bureau (permit applications and trade practice issues). Rounding out 45 years of experience in the Beverage Alcohol Industry, Mr. Koslowe regularly addresses a variety of unique alcohol regulatory considerations such as special industry franchise arrangements and beverage formulations.

#### Courtney J. Armour, Chief Legal Officer, Distilled Spirits Council of the United States, Inc.

Courtney J. Armour is Chief Legal Officer for the Distilled Spirits Council of the United States, Inc. (DISCUS) and Foundation for Advancing Alcohol Responsibility (Responsibility.org). DISCUS is a national trade association representing suppliers of distilled spirits sold in the United States. The Foundation for Advancing Alcohol Responsibility leads the fight to eliminate drunk driving and underage drinking and promotes responsible decision-making regarding beverage alcohol. At DISCUS, Ms. Armour guides legal and regulatory policy issues, working to gain input from all members of the spirits producer tier and build consensus on these issues. She also works closely with organizations representing other alcohol commodities and industry tiers to understand their positions. Ms. Armour's experience working on state alcohol policy dates back more than fifteen years.

Ms. Armour also has significant experience managing complex legal issues in other highly regulated industries. For nearly a decade, she served as a member of the antitrust group at Wilson Sonsini Goodrich & Rosati, where she represented clients on competition matters in complex litigation, merger advocacy, product innovation and business counseling, and both domestic and foreign government investigations. These matters involved representation before federal courts, the Department of Justice, Federal Trade Commission and Federal Communications Commission, and other state and foreign authorities. Ms. Armour also has experience working directly for a private company which can help inform the impact of regulations – she served as a Competition Counsel Secondee to Google, Inc. in New York City, where she managed investigations and provided counseling on product innovations and business plans, both domestic and foreign. She also has public service experience working on public policy, serving on the staff of former U.S. Senator Robert F. Bennett, as well as experience applying the laws and regulations, serving as a judicial extern for the Honorable Dale A. Kimball, U.S. District Court for the District of Utah.

#### Jeffrey Garcia, Retired NYPD 1st Grade Detective

Jeffrey Garcia is a retired NYPD 1st Grade Detective with a noteworthy career in the Organized Crime Control Bureau. He is also an accomplished entrepreneur and industry leader with various business interests in New York City. He is owner of Mon Amour Coffee & Wine in Kingsbridge, and Wahizza Pizza, a Washington Heights artisanal pizza shop. He is also the former owner of a Financial Services Company and associated hubs, which provided remittances and other services to the immigrant community since 2006.

Mr. Garcia is Co-Founder and former President of the Latino Cannabis Association (L.C.A.A., Inc.), providing vision and leadership to bring diversity, equality, and inclusion to the newly developed adultuse cannabis industry in New York State.

He is currently the President of the New York State Latino Restaurant Bar & Lounge Association, having also previously served as President from 2016-2020, when he guided his membership through the unique challenges of the COVID-19 pandemic.

During this time, Jeffrey acted as an advocate and intermediary for his membership in dealing with the State Liquor Authority (SLA) and other regulatory agencies. He came up with a five point plan to create more transparency and education opportunities in the industry and during his tenure, the association hosted a first of its kind training with the SLA which was taped and is accessible on SLA's website.

At a critical point in the pandemic, Mr. Garcia fought to re-open the industry, hosting a rally in Times Square with hundreds of restaurant owners and employees, which garnered national media attention. He also pushed to impose a cap on predatory third party delivery fees, was a vocal advocate for outdoor dining and worked with coalition partners to create the 'Blueprint to Save Small Business', which outlined key areas to help the industry in its recovery. He also, spearheaded giveaway events where thousands of Personal Protective Equipment (PPE) were provided to employees and customers.

Due to his efforts, Mr. Garcia was appointed to the NYC Mayor's Small Business Advisory Council and as an Ambassador to the NYS Governor's COVID-19 Neighborhood Outreach Program.

Going forward, Mr. Garcia is focused on bringing information and education to his membership, making sure the NYS Latino Restaurant Bar & Association has a seat at the table and that their issues are addressed.

#### Melissa Fleischut, President and CEO, New York State Restaurant Association

Ms. Fleischut is the President and CEO of the New York State Restaurant Association and has fiercely guided the Association through some of its most challenging times. She has been with the organization in various roles for 23 years and has led it since 2013. Previously, Ms. Fleischut worked in the Government Affairs Department of the National Restaurant Association. Ms. Fleischut obtained an M.A. in International Affairs from The George Washington University in 1993 and a B.A. in Political Affairs from Union College in 1990. Ms. Fleischut has championed many ABC Law changes during her tenure with the Association, including momentous victories like the brunch bill and alcohol to-go for the industry.

#### Stephen P. Hanson, New York City Hospitality Veteran

New York City hospitality veteran Stephen Hanson is best known for founding BR Guest Hospitality in 1987 (although his first restaurant- Peachtree's was opened in 1974). Under Hanson's leadership and management spanning over 27 years, he created a hospitality brand based on excellent service and value. Throughout Hanson's reign he created, opened, and operated over 30 restaurants and four hotel brands through New York City, New Jersey, Las Vegas, Florida, Chicago and Arizona.

In 2007, Starwood Capital Group bought half of the company and in 2013, Hanson stepped away from BR Guest, selling his remaining shares and moving on to his next venture.

Launching and nurturing careers of Michelin-starred chefs like Michael White and Fabio Trabocchi while responsible for popular concepts Blue Water Grill, Dos Caminos, Bill's Bar & Burger and the award-winning Fiamma, Hanson has always had one foot rooted in what people want and the other planted in what people will want.

Hanson got his first taste of the restaurant business in the early 1970s when he worked as a maître d' at the original TGI Friday's, while studying at NYU's Stern School of Business. After graduation, Hanson

opened the popular Westchester nightclub, Peachtree's in 1974. After selling his interest in the club, and a brief stint as an executive in the fashion world, he left and then opened, BR Guest Hospitality.

Hanson has always been involved in a variety of community organizations. He currently sits on the Board of Directors for Publicolor, and prior sat on the Executive Board of NYC & Co. and as a Board Member of ABNY, among other philanthropic pursuits.

#### **Sonya del Peral**, Proprietor & GM, Nine Pin Ciderworks

Ms. del Peral is a Proprietor and the General Manager at Nine Pin Ciderworks in Albany New York, and, since its foundation in 2013, she has been responsible for its administrative and financial operations. Previously, Ms. del Peral was an attorney for several law firms including as a Partner at Bowers and del Peral, PLLC from 2016 to 2018, a Partner at the Law Office of Sonya del Peral from 1996 to 2016, an associate at Whiteman Osterman and Hanna LLP from 1993 to 1996, and an associate at Patterson Belknap Webb and Tyler LLP from 1991 to 1993. Over the course of her legal career, Ms. del Peral represented various small businesses in connection with licensing and related matters before the New York State Liquor Authority and the United States Alcohol Tobacco and Trade Bureau. Ms. del Peral assisted in the formation of the New York Cider Association (NYCA) and the Capital Craft Beverage Association. She currently serves as the Chair of the Legislative Committee of the NYCA.

#### Kim Wagner, Owner, Stoutridge Vineyard, LLC

Kim and her husband produce award-winning wines and spirits as the founders and owners of Stoutridge Vineyard, a vineyard, farm winery and distillery established in 2000 in Marlboro, NY. She is responsible for all compliance, financial and distribution activities for this family-owned manufacturing and tourism business which sources 100% of its fruit and grain inputs directly from New York State growers. Kim has extensive experience serving on the boards of public, private, and not-for-profit organizations with agricultural, sustainability and/or educational missions. Examples of her leadership roles include being the past Board President of the New York Wine and Grape Foundation, past Board President of Cornell Cooperative Extension of Ulster County, current Board President of Ulster County Farm Bureau. She is also a Cornell University Trustee and a board member for the National Grape Research Alliance.

She is the founder of TBGD Partners, a boutique firm providing expertise to early and mid-stage ventures in the agribusiness, food/nutrition and life sciences sectors. She has been a Venture Partner at Flagship Pioneering and President and Chief Operating Officer of CiBO Technologies. Before that she was a Partner at McKinsey & Co. and a Senior Partner and Managing Director at The Boston Consulting Group, Inc. She holds a PhD from Harvard University, an MS from Texas A&M University, and a BS with distinction from Cornell University.

#### Keven Danow, Partner, Danow, McMullan & Panoff, P.C.

Keven Danow is an attorney and founding member of Danow, McMullan & Panoff, P.C., a law firm based in New York that concentrates its practice in the area of alcoholic-beverage control laws and regulations. For more than 45 years, Mr. Danow has guided industry members through the regulatory complexities involved in the manufacture, importation, distribution, and sale of beverage alcohol. He is proficient in the development and implementation of compliance, risk management, and best practices to facilitate success of companies in regulation-intensive environments, including multi-state beverage-alcohol businesses. He was also a certified public accountant and, before becoming an attorney, worked for four years as an agent of the Internal Revenue Service in its Large Case Group, where he handled complex cases and tax audits of companies with substantial assets.

Mr. Danow has long dedicated himself to the development of alcoholic-beverage policy in New York. In 2016, Mr. Danow was appointed to the New York State Liquor Authority's Alcoholic Beverage Control Law Working Group, where he assisted in drafting the report on the proposed reorganization, revisions, and modernization of the Alcoholic Beverage Control Law. In 2009, Mr. Danow provided guidance and unique insights to the New York State Law Revision Commission as it worked to address a number of perceived deficiencies in the Alcoholic Beverage Control Law. The New York State Bar Association's Government, Law and Policy Journal invited Mr. Danow to serve as a guest editor. Mr. Danow is a contributing editor of Beverage Media and frequently speaks to regional and national audiences about legal issues facing the alcoholic-beverage industry.

#### Michael A. Correra, Owner, Michael-Towne Wines & Spirits

Michael A. Correra is a third-generation liquor store owner, along with his grandfather, father, and uncle. Since 1995, Correra has owned Michael-Towne Wines & Spirits, located in Brooklyn Heights. His establishment, originally licensed in 1934 (License #63), is one of the original licenses following the end of Prohibition.

In addition to owning a liquor store, Mr. Correra has also served as the Executive Director of the Metropolitan Package Store Association ("Metro") since 2008. Founded in 1934, Metro is the premier trade association representing the political and business interests of liquor stores across New York State. Under Correra's leadership, Metro has led several campaigns in support of NY wineries and distilleries and the promotion of NY wines and spirits in retail package stores, protected retailers' privileges under the three-tier system, and advocated for public convenience and advantage licensing statutes. Correra has also served on several legislative roundtables and working groups to work together with industry to review, update, and modernize the Alcoholic Beverage Control Laws.

Michael is a graduate of Poly Prep Country Day School, St. Francis College, and has an MBA from Wagner College in Business and Managerial Economics. He is a member of the Retailers' Alliance and The Retail Council of NYS.

Paul W. Zuber, Executive Vice President, The Business Council of New York State, Inc.

Paul Zuber joined The Business Council in November of 2021 as Executive Vice President. In his capacity as Executive Vice President, Mr. Zuber works directly with The Business Council's 3500 member businesses, 70% of which are small businesses. The membership of The Business Council is broad and diverse with members representing each sector of the economy including those within the alcohol and beverage sector. As well as working directly with these companies, Mr. Zuber also overseas government affairs for The Business Council's members. Mr. Zuber in his capacity as Executive Vice President also works with state chambers of commerce across the country as well as the US Chamber of Commerce.

Prior to joining The Business Council, Mr. Zuber was a Senior Vice President at Albany Strategic Advisors (ASA) where he worked on behalf of a multitude of clients seeking government affairs and strategic consulting services. At ASA Mr. Zuber also worked for a number of clients within the alcohol and beverage industry including those in the retail and wholesale sector. Before joining ASA, Mr. Zuber was a Vice President at Powers & Company where he again represented an array of clients many of which were in the alcohol and beverage sector. Before moving to the private sector, Mr. Zuber worked on the staff of the New York State Senate Majority in the Majority Counsel/Program Office. At the Senate one of Mr. Zuber's key issue areas was alcohol and beverage control. As well as working on ABC Law issues, Mr. Zuber also handled issues related to taxes, human rights, gaming, and transportation.

#### Evan R. Gallo, Esq., Chief of Investigations & Counsel in the Office of New York State Senator James Skoufis

Evan Gallo is currently Chief of Investigations & Counsel in the Office of New York State Senator James Skoufis. He is largely responsible for directing the actions, agendas, and examinations of the NYS Senate Standing Committee on Investigations and Government Operations, which has substantial jurisdiction over alcohol related matters. In his present and past positions with the NYS Legislature, Mr. Gallo has developed a deep appreciation and understanding of the many issues and stakeholders associated with the state's Alcoholic Beverage Control Law. Previously, Mr. Gallo was Legislative Director & Counsel in the Office of New York State Assemblymember Kevin Cahill. Mr. Gallo also formerly served as Deputy Comptroller in the Office of the Ulster County Comptroller.

#### Jeff Zacharia, CEO Zachys, Retail, Auctions, Storage

Zachys is a fourth-generation fine wine business started by my grandfather, Zachy in 1944. My father took over in 1961 and I joined the company in 1983. My son Tom joined us this year.

Zachys has stores in Port Chester NY and Washington DC. Earlier this year they moved their store to Port Chester and will be moving their warehouse to Port Chester this fall going from 40K sq feet to 70K sq feet.

Zachys hold auctions in NY, Hong Kong and London and are one of the largest wine auction houses in the world. Zachys holds three types of auctions: live sales, usually in restaurants in NYC (Le Bernadine, Smith and Wollensky), studio sales (live auctioneers in their studio in Port Chester) and timed auctions (like eBay).

Zachys also does wine storage in New York and Washington, DC.

#### **Andrew Rigie,** Executive Director, NYC Hospitality Alliance

Andrew Rigie is the Executive Director of the New York City Hospitality Alliance, an association representing restaurants and nightlife venues throughout the five boroughs. Andrew was born into the hospitality business, working at his family's third generation bakery in Queens, NY. He later "got his apron dirty" by working multiple positions within the industry before joining the New York State Restaurant Association in 2004. There he recruited members, was a grassroots organizer, and provided resources and consulting services to restaurant operators, including its Nightlife Association chapter that represented bars and nightclubs. In 2009, Andrew took the helm of the 80+ year old Association's New York City operations as its Executive Vice President.

Rigie utilized the knowledge he gained working inside the industry and on its behalf, to become the founding executive director who launched the independent New York City Hospitality Alliance in 2012. Since then, The Alliance has grown into a premier organization delivering information, education, services and representing thousands of restaurants and nightlife venues in the halls of government and in the media.

In addition to his executive duties, Rigie serves on multiple advisory boards ranging from regulation to education. Notably, he is the Chair of New York City's Office of Nightlife Advisory Board, Interim Chair and 1st Vice Chair of Community Board 7 (Manhattan) and a member of the New York State and New York City COVID-19 working committees. He is a vocal industry advocate, public speaker, frequent panelist and moderator, host of the Hospitality & Politics podcast, Forbes and Total Food Service News contributing author, and recognized commentator on local, national and international media platforms. Rigie is a Crain's New York Business 40 Under 40 Honoree, City & State listed him on their New York City

Power 100 List, and he is a recipient of Hunter College's Stars in NYC Food Policy, among other recognitions. Rigie is a graduate of the Institute of Culinary Education in Manhattan.

#### Steven W. Harris, President, New York State Beer Wholesalers Association

With almost 30 years' experience navigating the intricacies of the Albany process, Steve Harris is President of Cordo & Company. Steve has expertly represented the interests of private sector companies and trade associations before the New York State Legislature and Executive for the past two decades, achieving consistent results for his clients. Steve's experience both inside and outside of state government provides a foundation for the nuanced and dogged advocacy he employs on behalf of his clients. Steve represents key players in the insurance, telecommunications, education, and entertainment fields, including the Property Casualty Insurers Association of America and the Fantasy Sports Trade Association. Steve is the President of the New York State Beer Wholesalers Association and operates as their principal lobbyist and Executive Director.

Steve was previously a member of the 2009 Law Revision Commission's Alcoholic Beverage Control Law Study as well as the 2015-2016 New York State Liquor Authority Alcoholic Beverage Working Group.

His career started in public service, beginning under Senator Roy M. Goodman in 1987 and later serving as Counsel to Senator Michael J. Tully, Jr. Steve entered the private sector, eventually becoming principal in the firm of Vacek, Harris & McCormack P.C., where he provided legislative representation to industry leaders in real estate, banking, and insurance sectors. A graduate of SUNY Oswego (1987) and Albany Law School (1990), Steve is a long-time resident of the Capital Region.

#### **Edward Cooper,** Vice President, Public Affairs, Total Wine & More

Edward Cooper joined Total Wine & More in 2011, bringing with him over twenty-five years of public affairs experience. His duties include state and local governmental affairs for various businesses in the retail alcohol industry, including New York Fine Wine & Spirits which operates under the Total Wine Spirits & More trade name in Westbury, New York.

Ed collaborates with elected officials and their staffs, members of the beverage alcohol industry and other stakeholders to identify and enact reasonable public policy solutions for alcohol issues. He has served as a panelist at regional and annual meetings of the National Conference of State Liquor Administrators and National Alcoholic Beverage Control Association and served as a member of task forces and working groups seeking to modernize the industry and promote economic development. In 2017, Ed was selected to serve as a representative of the retail tier on the Massachusetts Treasurer's Task Force seeking to update laws and regulations that had been in place in MA since the end of Prohibition in 1933.

Before joining Total Wine, Ed was the founder/principal of Highland Stone Associates providing integrated public affairs services to Fortune 500 companies operating in the regulated environments of beverage alcohol, electric utilities, and pharmaceuticals. Earlier, he directed public outreach efforts for the National Association of Home Builders and the National Rural Electric Cooperative Association and served as professional staff member in the U.S. Senate.

A graduate of Hobart and William Smith Colleges (HWS), Ed and his wife, Robin, herself an HWS graduate, maintain a home in Geneva, New York, where HWS is located. Both of their children attended HWS. Ed has served as a member of the Board of Trustees of Hobart and William Smith Colleges since 2012.

An active and involved member of the community, Ed, together with his wife Robin, provides financial support and volunteers time to HWS, Boys & Girls Clubs of Geneva and Geneva's Smith Center for the Performing Arts. In 2017, Ed co-founded a small real estate business with a mission of providing Geneva's workforce with affordable rental housing.

Ed and Robin are a part of FLX Group, LLC which operates the FLX Goods store located on Linden Street in downtown Geneva. The self-styled "General Store of the Finger Lakes," promotes and provides locally sourced products that are hand-crafted or manufactured by Finger Lakes-based small businesses. FLX Goods directly employs eight people and supports over 25 small businesses across the Finger Lakes region that employ 200+ people.

Ashley White, Senior General Manager, Anheuser-Busch

Ashley White was recently promoted to the Senior General Manager of the Anheuser- Busch

Baldwinsville New York Brewery.

As Senior General Manager, Mrs. White is responsible for the safety and development of the over 650 employees employed at the facility, the highest standards of quality for all products served to customers and the performance of the brewery. The brewery will brew, package and ship over 6 million barrels of beer and flavored alcoholic beverages in 2022.

Prior to taking on the role of Senior General Manager, Ashley was a Zone Brewery Support Director for the North America Zone in St. Louis, Missouri and prior to that worked for 10 years in operations across several North American breweries in varying capacities in quality assurance, brewing and operations.

Opened in 1983, our Baldwinsville brewery is known for the key role it plays in developing our new innovations. In addition to brewing our core brands — such as Budweiser, Bud Light, and Michelob ULTRA — the team brews more than 75 different brands. As part of our commitment to building a better world, our Baldwinsville brewery's off-site solar installation provides an additional 3 million kilowatt-hours back to the distribution grid annually, providing enough solar electricity to brew over 3 million cases of beverages a year!

## Appendix B – Meeting Agendas

#### Commission Meeting #1 Agenda:

New York State Liquor Authority
Commission to Reform the Alcoholic Beverage Control Law
Commission Meeting Agenda

Thursday, August 18, 2022 at 1:00 PM
Alfred E. Smith Building
80 South Swan Street
Room 115
Albany, NY 12210

Welcome

Introductory remarks Vincent G. Bradley, Chairman

NYSTEC Introduction Michelle Chank, NYSTEC Account Executive

Overview of the Scope of Commission

Items in statute

**Economic Analysis** 

Policy/Substantive Items

Explanation of "recommendations"

General schedule of commission work

#### **Commission Member Appointees Introductions**

#### **Commission Business**

Topic – 1: "Review of laws against underage consumption of alcohol and the enforcement mechanisms utilized"

Statutory Provisions ABC Law §65-a, ABC Law §65-b, ABC Law §65-c,

**PENAL Law 260.20** 

Vincent G. Bradley, Chairman

Underage Drinking Initiative (UDI)

Vincent G. Bradley, Chairman

General Enforcement

James Barnes, Lt. Colonel, NYSP

**Open Discussion** 

Topic – 2: "The overall impact of laws and corresponding state liquor authority regulations on the numerous sectors of the industry"

Open Discussion

Topic – 3: "Whether New York should consider adopting a "control state" model or other regulatory model"

Open Discussion / Vote

Topic – 4: "A review of the hours and manner in which retailers can operate or sell different types of beverages"

Statutory Provisions ABC Law §17, ABC Law §105, ABC Law §105-a, ABC

Law §106

Hours: types of retail and how they are set Vincent G. Bradley, Chairman

Open Discussion

#### Commission Meeting #2 Agenda:

New York State Liquor Authority
Commission to Reform the Alcoholic Beverage Control Law
Commission Meeting #2 Agenda

Wednesday, November 16, 2022, from 11:00 AM to 4:00 PM
Adam Clayton Powell, Jr. State Office Building
163 West 125<sup>th</sup> Street
Gallery Room
New York, NY 10027

#### Welcome

Introductory remarks
Recap of meeting #1

Vincent G. Bradley, Chairman Vincent G. Bradley, Chairman

Topic – 1: "Review of laws against underage consumption of alcohol and the enforcement mechanisms utilized"

 The Commission agreed that laws prohibiting and penalizing sale to underage and possession by underage are necessary and sufficient.

Topic – 2: "The overall impact of laws and corresponding state liquor authority regulations on the numerous sectors of the industry"

• Discussion was had, the Chair made clear that this cannot be a catchall (opening the door to any issue to be discussed), or the Commission scope becomes unwieldy.

Topic – 3: "Whether New York should consider adopting a "control state" model or other regulatory model"

The Commission agreed, nearly unanimously, that this is not advisable or feasible.

#### Old Business:

Topic – 4: "A review of the hours and manner in which retailers can operate or sell different types of beverages"

Statutory Provisions ABC Law §17, ABC Law §105, ABC Law §105-a,

ABC Law §106

Legislation

A1132, A1272, S3106

Hours: types of retail and how they are set Vincent G. Bradley, Chairman Discussion

- Should off premises liquor hours be extended? Cut back? Remain as is?
- Should off premises beer hours be extended? Cut back? Remain as is?
- Should on premises service hours be extended? Cut back? Remain as is?
- Should counties decide any limitations?

#### **New Business:**

Topic – 5: "Amendments to the law, increases in resources available for administering existing laws and rules, and new state liquor authority practices that would lessen processing times for the issuance of licenses, license renewals, and permit applications"

**SLA Advisories** 

22-6, 22-8, 22-11, 22-12, 22-13, 22-14, 22-15, 22-17, 22-18, 22-21, 22-24, 22-25

Part L of S8005 of 2022

Legislation Discussion

- SLA re-organization
- SLA budget

#### **Lunch**

Topic – 6: "The authorization of direct sales to consumers by manufacturers"

Legislation S556, A3275--A, S8789

Discussion

- Should manufacturers other than wineries- who are already permitted – be allowed to ship product directly to consumers in NYS, and as a corollary matter of constitutional law, should out of state manufactures have the same privilege?

Topic – 7: "The ability of licensees to form purchasing cooperatives, and the effects such cooperatives would have on the rest of the market"

Legislation S8964

Discussion

- Should off premises licensees be able to form a purchasing cooperative, subject to reasonable limitations?
- Should on premises licensees be able to form a purchasing cooperative, subject to reasonable limitations?

#### Commission Meeting #3 Agenda:

New York State Liquor Authority
Commission to Reform the Alcoholic Beverage Control Law
Commission Meeting 3 Agenda

Monday, December 19, 2022, from 11:00 AM to 4:00 PM New York State Capitol, War Room State St. and Washington Avenue, Albany NY 12224

#### Welcome

Introductory remarks

Vincent G. Bradley, Chairman
Recap of Meeting 2 (distribute minutes)

Vincent G. Bradley, Chairman

- Topic 4: "A review of the hours and manner in which retailers can operate or sell different types of beverages"
- Topic 5: "Amendments to the law, increases in resources available for administering existing laws and rules, and new state liquor authority practices that would lessen processing times for the issuance of licenses, license renewals, and permit applications"
- Topic 6: "The authorization of direct sales to consumers by manufacturers"
- Topic 7: "The ability of licensees to form purchasing cooperatives, and the effects such cooperatives would have on the rest of the market"

#### Old Business:

Topic – 6: "The authorization of direct sales to consumers by manufacturers" Legislation S556, A3275--A, S8789

Discussion & Vote

- Should manufacturers other than wineries- who are already permitted – be allowed to ship product directly to consumers in NYS, and as a corollary matter of constitutional law, should out of state manufactures have the same privilege?

#### **New Business:**

Topic – 8: "Specific privileges to sell different types of alcoholic beverages and other items granted to retail licensees and the effect changing such privileges would have on the various types of retailers"

Legislation Part T of A9710 of 2010, S8944, A5468

A6325, S3112

Discussion & Vote

- Should the law be amended to allow wine (currently only sold for off premises consumption by wine/liquor stores) to be sold for off premises consumption by grocery stores?
- Should the law be amended to allow liquor (currently only sold for off premises consumption by liquor stores) to be sold for off premises consumption by grocery stores?
- Should the law be amended to allow beer (currently only sold for off premises consumption by grocery stores, drug stores and C wholesalers) to be sold for off premises consumption by wine/liquor stores?
- Should the law be amended to allow wine/liquor stores to sell items in addition to those listed exhaustively in section 63 of the ABC Law?

#### Lunch

Topic – 9: "The number of off premises retail licenses an individual may be granted for beer, wine, or liquor"

Legislation A10527

Discussion & Vote

• Should the law be amended to allow an individual to more than one liquor store in New York State?

Topic – 10: "Potential barriers to market entry for new businesses by sector"

Legislation Part EE of \$7505 of 2

Part EE of S7505 of 2020; SLA departmental #03 of 2021; SLA departmental #01 of 2022

Discussion & Vote

- Should the law be amended to loosen New York's tied house restrictions?
- Should the law be amended to loosen the 500 Foot Law?
- Should the law be amended to allow certain discretion in the 200 Foot Law?
- Should the "public convenience and advantage" standard for liquor store license approval be amended to a "good cause" for disapproval standard?

## Appendix C – Commission Meeting Minutes

Commission meetings to discuss policy topics identified in the statutory budget language were held on August 18, 2022, November 16, 2022, and December 19, 2022. Appendix C provides the meeting minutes that were drafted and approved for each of the three (3) meetings. Each meeting minutes provides the date, time, place, attendees, agenda topics, discussions, inputs, positions, decisions, and action items if applicable.

#### Commission Meeting #1 – August 18, 2022

<b>Meeting Minutes</b>		DATE:	August 18, 2022		
		TIME:	1pm – 4pm		
		PLACE:	Alfred E. Smith Building 80 South Swan Street, Rm 115 Albany, NY 12210		
Project:	New Yok State Liquor Authority (SLA) –	Commission to	Reform the Alcoholic Beverage Control Law		
Meeting:	Commission Meeting #1				
Attendees:	<b>Commission Members</b> : Vincent Bradley, William Raleigh, Maria LoGiudice, Stefan Fleming, James Barnes, Mark Koslowe, Jeffrey Garcia, Melissa Fleischut, Stephen Hanson, Sonya del Peral, Kim Wagner, Michael Correra, Evan Gallo, Jeff Zacharia, Edward Cooper, Ashley White, Andrew Rigie Steve Harris				
	Not in Attendance: Keven Danow, Paul Zuber, Courtney Armour				
	Alternates: Arielle Albert (Keven Danow), Melvin Norris (Paul Zuber), Agnes Leahy (Courtney Armour)				
	SLA: Sharif Kabir, Joshua Heller, Joe Fin	SLA: Sharif Kabir, Joshua Heller, Joe Finelli			
	NYSTEC: Michelle Chank, Lindsay Mogle	e, Tom Wood			
Agenda:	Welcome				
	Overview of the Scope of Commission				
	Commission Member Appointees Intro	ductions			
	Commission Business				
	<ul> <li>Topic – 1: "Review of laws against underage consumption of alcohol and the enforcement mechanisms utilized."</li> </ul>				
	• Topic – 2: "The overall impact of laws and corresponding state liquor authority regulations on the numerous sectors of the industry."				
	<ul> <li>Topic – 3: "Whether New York should consider adopting a "control state" model or other regulatory model."</li> </ul>				
	<ul> <li>Topic – 4: "A review of the hours types of beverages."</li> </ul>	and manner in	n which retailers can operate or sell different		
TOPIC	Welcome				
Discussion:	Opening comments from Chairman Bra	dley.			
	Housekeeping activities:				
	Travel Expenses: SLA working thr	ough the proce	ess and will provide updates.		

	Next commission meeting anticipated for October 2022, in New York City; SLA will coordinate a meeting time.  Introduction of CLA toom.			
	<ul> <li>Introduction of SLA team.</li> <li>Introduction of NYSTEC team.</li> </ul>			
	SharePoint updates will be identified in associated emails.			
	Commission meetings will be recorded.			
	Commission meetings will be held in private.			
Decisions:	N/A			
Action Items:	SLA to provide clarification on expense reporting in the coming weeks.			
	SLA to provide meeting minutes.			
TOPIC	Overview of the Scope of Commission			
Discussion:	Commission activities will follow the legislation statute (part GG or S8005C). Each commission meeting will have a different agenda to run through, based the legislation/statute, as written. Expect two more commission meetings, with the next one in NYC. SLA is also planning a period of public comment to be included as part of this effort.			
	Question asked about the commission being able to address topics outside of the directive from the legislation/statute. SLA confirmed that commission discussion must follow the legislation/statute to be able to produce its final report by May.			
	Commission will be voting on topics. A majority vote will rule on decisions and recommendations. There are 16 voting commission members. There are five non-voting ex officio members represented by the following state agencies: SLA, Empire State Development (ESD), New York State Police (NYSP), NYS Department of Taxation and Finance (DTF), NYS Division of the Budget (DOB). Nine or more votes from the 16 voting commission members are needed for a majority decision.			
	Question asked about abstaining from a vote – is it possible to abstain? SLA would prefer that commission members not abstain as they would like everyone to express an opinion. The chairman advised that members could abstain if absolutely necessary. Commission members will be required to provide documentation of their vote and their reasoning for their vote on the topics. The reasoning will be in a written format.			
	A consulting firm (NYSTEC) is assisting the commission by supporting commission meetings and activities, completing the economic analysis that is part of the legislation/statute, conducting research on topics as needed, and coordinating the production of the final report.			
	Commission member Kim Wagner advised that recent impact analysis studies were completed and can be provided as inputs to the economic analysis. NYSTEC will contact Kim to gain access to those studies so they can be consumed.			
	A question was asked about the tax data that will be used in the economic analysis. NYSTEC will advise on the time frame of the tax data that is available for this study. Commission members asked if tax data will be made available to the commission; response was that yes, the tax data would be loaded to the SharePoint repository.			
	Commission member asked to confirm that the economic analysis is not going to be available until after the voting on all topics is complete. It was confirmed that, due to the timing of the commission activities, the economic analysis will be completed in parallel with the legislative review and voting. The chairman commented that if a vote could be changed as a result of the review of the economic analysis, that could be entertained.			
	Final report was discussed by SLA in terms of content required by statute. Chairman is open to other interpretations of what to include in a final report if commission members believe there is something to add.			
Decisions:	N/A			

Action Items:	<ul> <li>NYSTEC to contact Kim Wagner to gain access to economic impact studies.</li> <li>NYSTEC will advise on time frame of tax data that is available for the study and will upload the tax data to the commission SharePoint site for commission members to access.</li> </ul>			
TOPIC	Commission Member Appointees Introductions			
Discussion:	Introductions of attendees.  Noted that there were three stand-ins attending for commission members.			
Decisions:	The stand-ins will not be voting.			
Action Items:	<ul> <li>Commission members will be asked to vote on the items from today's agenda as a follow-up to the meeting. The request for documentation will be sent to all voting commission members as a general meeting follow-up/action item.</li> </ul>			
TOPIC – 1	Review of laws against underage consumption of alcohol and the enforcement mechanisms utilized.			
Discussion:	Statutory provisions, underage drinking initiative (UDI), and general enforcement were discussed by SLA and the NYSP. NYSP and SLA representatives described approaches to underage purchase and consumption enforcement. Underage selling is a penal violation dealt with by the police with the establishment and the point of sale. The police then refer the matter to SLA, which pursues penalizing the licensee. SLA explained enforcement mechanisms, include the filing of charges, assessment of fines, etc. Most charges brought forward by SLA are based on police investigations. Other enforcement approaches targeted are at the request of police departments, colleges, etc.			
	SLA highlighted that technologies are available for scanning IDs to determine authenticity. There are solutions (cited Intellicheck) that include the capability to scan IDs from all states. Solutions have been used by SLA with 100% success rate for identifying fake IDs. There was discussion about considerations related to the handling and storage of personally identifiable information that is involved in ID checking solutions.			
	Discussed SLA's Alcohol Training Awareness Program (ATAP), which trains licensees and their employees on the appropriate and lawful sale of alcoholic beverages. The training ( <a href="https://sla.ny.gov/training">https://sla.ny.gov/training</a> ) reduces fines associated with an SLA's first offence. The program is currently voluntary.			
	Commission members directed questions to SLA and NYSP.			
	<ul> <li>When establishments scan IDs, do they collect my information? How long do they keep the information?</li> <li>If the app you are using does not detect a fake ID, can you claim hardship? You did ask for proof of the individual.</li> </ul>			
	Discussion about possession of alcohol by a minor where alcohol was provided by parent. Cited 65-C-2-a.  Discussion Points:			
	<ul> <li>Commission Member – Scenario of a tasting room and a parent providing to child.</li> <li>SLA – you could be charged for failure to supervise.</li> </ul>			
	Discussion about 21-year-old minimum age. No recommendation to request change.			
	Discussion Points:			
	<ul> <li>21 years of age to purchase and possess covered under penal law.</li> <li>SLA doesn't enforce penal law but enforces Alcoholic Beverage Control (ABC) Law for licensees.</li> <li>At 18 you can vote, enter into contracts, marriage, etc.</li> </ul>			

Federal Law – because of federal highway funds established in 1986, not advisable to lower the minimum age requirement. Ride sharing (Uber/Lyft) – ability to get transportation. Discussed current SLA fine structure. No recommendation to request change. **Discussion Points:** First offense \$3,000 – can get a discount if you enroll in ATAP; reduced to \$1000. Fine structure within a five-year period \$3,000, \$6,000, \$10,000, and loss of license. Most establishments correct the issue after the first violation. Discussed SLA budget for enforcement. No recommendation to request change. Discussion Points: SLA Resources by Location: NYC – One in-office supervisor, five full-time field investigators, and seven part-time investigators. o Albany – Six full-time field investigators and two part-time investigators for 35 Syracuse (covers north country) – Two full-time investigators. Buffalo – Five full-time investigators. Majority of cases come from law enforcement (NYC – 95% from NYPD). Portion of violation fines supposed to be returned to SLA. SLA did receive increased budget for licensing activities. NYSP – UDI operations are performed through zones. No vote was required by the commission on this topic. Inputs: See statutory provisions from agenda and briefing documents for this topic. **Positions:** Should New York State consider revising laws against underage consumption of alcohol and the enforcement mechanisms utilized? **Decisions:** N/A NYSP (James Barnes) to provide data statistics to the commission on this underage drinking. **Action Items:** Anticipated to be similar to the SLA data sheet provided on the Underage Drinking Initiative. N/A **Vote Results:** TOPIC - 2 The overall impact of laws and corresponding state liquor authority regulations on the numerous sectors of the industry Discussion: This was an open discussion on the topics brought forward, by the commission members as to the overall impact of laws and corresponding state liquor authority regulations on the numerous sectors of the industry. Topics included: Temporary liquor licenses, COVID-19, you can't open a new restaurant because you can't extend the pervious license as it was only for establishments that had a license in the last two years. Will revisit topic as part of discussion of potential barriers to market entry for new businesses. Cannabis legislation includes provisions that are different than the alcoholic beverage legislation. There is believed to be some disparity and inequity between the cannabis and ABC laws. Potential areas of inconsistency and confusion. Chairman to check this before the next commission meeting. Will revisit topic. Specific Discussion Point:

- Barrier of entry requiring real estate, with cannabis, you can get a license and then source a location.
- 200 Foot Rule The ABC Law prohibits certain licenses from being issued if the location of the
  establishment is on the same street and within 200 feet of a building that is used exclusively
  as a school, church, synagogue, or other place of worship. SLA to provide more information
  about this topic before the next commission meeting. Will revisit topic as part of discussion
  of potential barriers to market entry for new businesses.
- Specific Discussion Points:
  - o There is zero discretion, you have the ability for "carve outs" for a particular building.
  - o You can't give discretion to a church.
  - There are many churches in Harlem that would prohibit many from opening establishments.
  - Community boards place many stipulations when trying to open establishments.
- 500 Foot Rule The 500 Foot Law prohibits the Authority from issuing an on-premises retail
  license for the sale and/or consumption of liquor to any premises that is within 500 feet of
  three establishments that are currently operating with on-premises liquor licenses. SLA to
  provide more information about this topic before the next commission meeting. Will revisit
  topic as part of discussion of potential barriers to market entry for new businesses.
  - Specific Discussion Points:
    - o Community board needs recommendation from municipality.
    - Community boards have a list of considerations that includes noise, adverse history, traffic changes, hours (4 am licenses).
    - Requested the NYC mayor to set up a committee for applicants to go to when they
      have been denied by the community board.
- Courtney Armour letter note that agency does not have rule making authority, it has been proposed but rejected, other states do have this authority.
- Off premise considerations. This topic is anticipated to be discussed during upcoming commission meetings.
- Specific Discussion Points:
  - o Change in market since COVID-19.
  - Lack of clarity on who can ship to whom.
  - Suggest cleaning up laws by allowing shipping for farm-based manufacturing.
- SLA allocation methodologies. This topic is anticipated to be discussed during upcoming commission meetings.
- Specific Discussion Points:
  - Allocation of product method.
  - Less government interference is better for market.
  - o Inventory is moving out of state where they can sell it more easily.
  - Reasoning for allocations was developed to allow product to flow and allow new accounts.
  - o The tenor of the law is to make a level playing field.

There were no positions presented for voting on any of the topics from this discussion.

Inputs:	N/A
Positions:	Open topics presented above.
Decisions:	N/A
Action Items:	SLA to review cannabis legislation versus ABC Law.

	SLA to provide information on 200-ft rule and 500-ft rule.			
Vote Results:	N/A			
TOPIC – 3	Whether New York should consider adopting a "control state" model or other regulatory model			
Discussion:	A licensing state issues licenses to the entities that will manufacture and sell alcoholic beverages, while control states are involved in the actual distribution. Control states have a monopoly over the sale at wholesale or retail of some (or all) of the different categories of alcoholic beverages. New York is a licensing state. New York also uses the three-tier system, separating for many purposes the three groups (manufacturers, wholesalers, and retailers) involved in the distribution of alcoholic beverages.  Differences in control and licensing states was discussed by the Chairman and SLA staff, including:  Differences in control v. regulatory (deciding how to operate after prohibition).  Review of the statutory language.  Understanding that no state has gone from a licensing state to a control state.  Understanding that Washington became a licensing state from a control state (2012).  State becomes retailer and wholesaler (not manufacturing).  Moving to a control state would eliminate a segment of the industry.  State administered stores could have many permutations.  Commission members expressed their thoughts on a control state model, including:  Awful selections, high prices, and bad service which are not good for the consumer.  Difficult to get new brands in control states, e.g., prices higher in PA and low selection.  Open to exploring the option, in New Hampshire and Ohio you can check one website and see inventory. High success of finding luxury bourbons in control states. Is there a better model or a compromise?  State doesn't know how to buy for local areas and different markets.  Big task to take on for a state of this size, especially due to the licensing backlog.  NYS is the wine and liquor capital of the world, why move back.  NYS has a sound system that works to control a product that can be very volatile; we need to be very careful on how we pick at this system; one of the best businesses in the state.  The legislation/statute requires that the commission discuss and vote on whether New York			
Inputs:	See briefing documentation for this topic.			
Positions:	Should New York State consider adopting a "control state" model or other regulatory model?			
Decisions:	NO – based on majority vote of commission members taken by Chairman Bradley.			
Action Items:	The request for voting documentation on Topic 3 will be sent to all voting commission members.			
Vote Results:	To be collected as follow-up to commission meeting.			
TOPIC – 4	A review of the hours and manner in which retailers can operate or sell different types of beverages			
Discussion:	Topic Not Discussed			
TOPIC	Closing Comments			
Discussion:	Meeting was adjourned at 4:00 p.m. by Chairman Bradley			

#### Commission Meeting #2 - November 16, 2022

Meeting Minutes		Date:	November 16, 2022
Wiceting Williates		Time:	11am – 4pm
		Place:	Adam Clayton Powell, Jr. State Office Building 163 West 125 <sup>th</sup> St, Gallery Room, New York, NY 10027
Project:	New Yok State Liquor Authority (SLA)	– Commis	ssion to Reform Alcoholic Beverage Control Law
Meeting:	Commission Meeting #2		
Attendees:	Commission Members: Vincent Bradley, William Raleigh, Maria LoGiudice, James Barnes, Mark Koslowe, Jeffrey Garcia, Melissa Fleischut, Stephen Hanson, Sonya del Peral, Kim Wagner, Michael Correra, Evan Gallo, Jeff Zacharia, Edward Cooper, Andrew Rigie, Steve Harris, Keven Danow, Paul Zuber, Courtney Armour  Not in Attendance: Ashley White, Stefan Fleming  Alternates: Ed Bogdan (Ashley White)  SLA: Sharif Kabir, Joshua Heller  NYSTEC: Michelle Chank, Lindsay Mogle, Tom Wood		
Agenda:	<ul> <li>Welcome/Introductory Remarks</li> <li>Recap of Meeting #1 – Topics #s 1, 2, and 3</li> <li>Old Business         <ul> <li>Topic – 4: "A review of the hours and manner in which retailers can operate or sell different types of beverages."</li> </ul> </li> <li>New Business         <ul> <li>Topic – 5: "Amendments to the law, increases in resources available for administering existing laws and rules, and new state liquor authority practices that would lessen processing times for the issuance of licenses, license renewals, and permit applications."</li> <li>Topic – 6: "The authorization of direct sales to consumers by manufacturers."</li> <li>Topic – 7: "The ability of licensees to form purchasing cooperatives, and the effects such cooperatives would have on the rest of the market."</li> </ul> </li> </ul>		
TOPIC	Welcome – Introductory Remarks		
Discussion:	<ul> <li>Introductory remarks from Chairman Bradley.</li> <li>Review of previous meeting. Chairman notes because of statute we need to stick to the topics presented to get through all topics in the timeframe.</li> <li>Chairman reviews reimbursement for travel.</li> </ul>		
TOPIC	Recap of Meeting #1 – Topics 1, 2, and 3		
Discussion:	<ul> <li>utilized."</li> <li>The Commission agreed that la underage are necessary and su</li> </ul>	ws prohib	nsumption of alcohol and the enforcement mechanisms siting and penalizing sale to underage and possession by esponding state liquor authority regulations on the

• Discussion was had; the Chairman made clear that this cannot be a catchall (opening the door to any issue to be discussed), or the Commission scope becomes unwieldy.

Topic – 3: "Whether New York should consider adopting a "control state" model or other regulatory model."

The Commission agreed, nearly unanimously, that this is not advisable or feasible.

### TOPIC – 4

## Old Business: A review of the hours and manner in which retailers can operate or sell different types of beverages

#### Discussion:

- Should off premises liquor hours be extended? Cut back? Remain as is?
- Should off premises beer hours be extended? Cut back? Remain as is?
- Should on premises service hours be extended? Cut back? Remain as is?
- Should counties decide any limitations?

Off premises: Disparity between operating hours for on- and off-premises liquor stores discussed. Sunday opening times of 10 a.m. for on premises versus noon proposed for off-premises. Closing times for off-premises are not an issue. On Christmas, a liquor store can be open and follows the hours for the day it falls on.

Discussion Points by Commission Members:

- Think that the system works fine and that communities can weigh in. Think that there are some limitations on hours, but that really does not hinder access; we do not hear complaints about access.
- Think we would like to change the open time for off premises liquor on Sundays as it does not seem to make sense between on-premises versus off-premises. Consumers should have the same option; do not see how the two hours make that much of a difference (Sunday 10 a.m. versus 12 p.m.).
- Opening at 10 a.m. on Sundays is good for the customer. Believe that Sunday is the second busiest shopping day of the week; would be more convenient for the customer; agree with updating the opening times but keep the current closing times.
- Limited expansion based on demand is recommended.

#### Question by the Chairman:

What about the opposite? Off-premises liquor stores open to 4 a.m.?

Discussion Points by Commission Members:

- Think that is different; would think bad things would happen if late in the a.m. Police have enough to take care of without adding this.
- Do not believe that keeping liquor stores open to 4 a.m. would be a good recommendation to the Governor.

On premises: Discussed closing time of 4 a.m. for on premises; opening time of 8 a.m., with exception for 10 a.m. opening time on Sundays. No adjustments proposed to on-premises hours.

Discussion Points by Commission Members:

- Hours are generally working; no large push to expand.
- Many places are reducing hours due to labor shortages.

Discussion that exceptions granted for extended opening hours for off-premises when sporting events (Olympics, World Cup) warrant extending operating hours.

Discussion Points by Commission Members:

- Not a priority to change current hours as long as there are exceptions for special circumstances.
- As long as we are able to grant permits on a case-by-case basis, there would be no issue.

When New Year's Eve falls on a Saturday night, the statute limits the ability to grant exceptions to stay open past 4 a.m. on Sunday. Discussed if an amendment to replace "any weekday" with "any day" would help to avoid weekend day issues experienced. SLA read that statute for discussion purposes. Discussion Points by Commission Members: Suggest editing the language and update to "any day"; the application would still need to be reviewed and approved; not saying that everyone can stay open all night. Question by Commission Member: What if there is a community board stipulation? Chairman: That plays a factor in the SLA review process; we review the stipulations and proceed accordingly. If they want to stay open past 4 a.m., they should have that addressed as part of their stipulations. Discussion Points by Commission Members: So, the licensee will need permission from the community board if there are stipulations. If you stipulate with the community board, SLA must follow the stipulations; licensees must plan for these stipulations at the beginning of the licensing process. Off-premises beer/cider hours discussed; 24 hours/day except for Sundays from 3 a.m. to 8 a.m. Recommendation made to change to 24 hours/day for all days. Discussion Points by Commission Members: Think about the shift worker, from a consumer standpoint. Inputs: See statutory provisions from agenda and briefing documents provided for this topic. **Positions:** Should New York State consider revising the hours and manner in which retailers can operate or sell different types of beverages? Adjust off premise liquor store opening hours on Sundays from noon to 10 a.m. **Decisions:** Make no adjustments to existing on-premises operating hours. Amend all night permit statute to replace "any weekday" with "any day," to avoid weekend day issue when New Year's Day falls on a weekend. Extend off-premises beer/cider sales to 24 hours/day for all days. **Action Items:** N/A. To be collected as follow-up to Commission meeting. Vote Results: TOPIC - 5 New Business: Amendments to the law, increases in resources available for administering existing laws and rules, and new state liquor authority practices that would lessen processing times for the issuance of licenses, license renewals, and permit applications SLA reorganization. **Discussion:** SLA budget. SLA provided an overview of internal assessment/review of current processes citing specific changes that have been made to elements of the licensing practices/process. SLA referenced many advisories that have been issued to implement these processes and were included in the briefing materials. The Chairman opened the discussion to hear additional ideas from Commission Members on how to improve the process. The Chairman also reminded the Commission that SLA must follow what is written in statute when performing reviews. The Governor and the Legislature have provided an increase to the SLA budget, which is being used to increase staff. SLA has 26 examiners but would like to increase to 38 examiners and has noted that the hiring process is slow.

SLA is also working with a third-party vendor to implement a new computer system. This new system will be able to process licenses online. The system implementation will be a phased approach and is in the testing phase. The new system will allow payment transactions via electronic fund transfers (EFTs).

Discussion about the statutory 30-day waiting period for municipal notice. Purpose of 30-day period is to allow municipality to review and respond. Suggestion of submitting licensing application at the same time as the notice goes to a community board to parallelize the 30-day statutory waiting time for municipal response.

#### Discussion Points by Commission Members:

- Waste of time to wait 30 days for municipality to review before applying; 30 days of waiting for
  the applicant not the fault of the board. Suggests voting to say you can send in application at the
  same time you send notice to the community board.
- SLA will not issue until at least 30 to 45 days to allow municipality current statutory consideration period.
- Currently, in other contexts, we can file in parallel federal and state, but the state does not go forward until federal is complete.

#### Chairman:

The statute requires us to hold for 30-days.

#### Discussion Points by Commission Members:

- Propose that the filing to the municipal notice and SLA application happen at the same time so it
  will be in the queue faster at SLA.
- That proposal sounds like it would create efficiencies.

#### Question by Commission Member:

Are there no community boards upstate?

#### Chairman:

No, there are municipalities. Quite different upstate versus NYC.

Discussion about temporary permits, specific to NYC, to alleviate delays of licensing. Temporary scenario is where an establishment is fully readied but is awaiting licensing. SLA is taking a look at this matter, viewing the matter as a potential departmental bill. May use the 500-foot process and hearing as a part of the process to address the handling of a temporary permit for facilities that had not been licensed in past two years.

#### Discussion Points by Commission Members:

- Issues caused by COVID-19 closed businesses now past two years, making them ineligible for temporary licenses.
- Temporary license to all to get them making money to recoup buildout costs.
- Community boards should not have veto power; not legal.
- We can draft proposed law for the next meeting.

#### Discussion by SLA:

SLA is drafting a departmental bill that would cover this issue.

Suggestion made that federal approval processes for wine and spirits be leveraged as a basis for the state approval requirements, as federal requirements are fairly stringent.

Handling of corporate changes discussed as a topic. Other states have an approach to handling corporate changes of ownership that should be leveraged for New York, i.e., allowing changes in ownership prior to approval, that would be unwound if disapproved.

Commission wants SLA to have the right level of resources to support the SLA mission.

Discussion Points by Commission Members:

	It is important for SLA to have all the resources they need to perform their job.		
	Resources are required for SLA to perform their duties in a timely manner.		
Inputs:	See SLA advisories and legislation from agenda and briefing documents provided for this topic.		
Positions:	Should New York State consider increases to SLA resources for the administration of SLA practices?		
Decisions:	<ul> <li>Amend the statute to require notice to the municipality but not stipulate a 30-day waiting period before submitting SLA application.</li> <li>Create the condition that where 500-foot law is appliable, a NYC facility could receive a temporary permit even if the facility had not been previously licensed in last two years if the 500 Foot Law hearing provides a recommendation of public interest.</li> <li>Allow changes in ownership without prior approval – to be reviewed after the fact for legal sufficiency.</li> <li>SLA should have all the resources required to perform their responsibilities.</li> </ul>		
Action Items:	<ul> <li>Discussion item raised the public convenience and advantage analysis for liquor store licensing.</li> <li>Chairman to look for another opportunity to slot the topic.</li> </ul>		
Vote Results:	To be collected as follow-up to commission meeting.		
TOPIC – 6	New Business: The authorization of direct sales to consumers by manufacturers		
Discussion:	<ul> <li>Should manufacturers other than wineries – which are already permitted – be allowed to ship product directly to consumers in NYS and, as a corollary matter of constitutional law, should out- of-state manufacturers have the same privilege?</li> </ul>		
	Focus of the topic is direct to consumer (DTC) from producers for spirits/beer/cider.		
	Position of support given for direct shipment from the Distilled Spirts Council of the United States representatives. Discussed temporary provisions during COVID-19 and changes to the market spac since. There is a nationwide need seen for distribution access for DBPs.		
	Discussion Points by Commission Members:		
	<ul> <li>Very strong support for DTC, this is critical for distillers and consumers. We had temporary DTC during COVID-19 for 18 months. Seven other states allowed DTC during COVID-19 as well. Eleven states allow permanent DTC for spirits. Wine has enjoyed this for decades with no negative repercussions. Allows for growth, increased jobs; don't see a negative impact on wholesalers and retailers (we have data that we can provide). On the distilling side, it is hard for small distilleries to get on retail shelves, the pandemic enabled DTC. There is a lot of data that supports NY to allow DTC and we are happy to share that data with the commission.</li> <li>Concern of underage access — we have seen a decrease of underage access based on government data analysis.</li> </ul>		
	<ul> <li>Virginia identified a problem of unauthorized shipments. Quickly implemented enforcement and have a 97% compliance rate.</li> </ul>		
	<ul> <li>We are both a winery and a distillery. Do not see any problems with DTC. Losing the right on 48 hours' notice was a shock. We are family owned in the state, and if you are affiliated as a farm, you are regulated by everybody. We are often the largest entity taxed in municipalities. We offer employment and tourism. During the pandemic, we were able to stay busy for shipping, you don't make money on the tastings. After COVID-19, consumers expectations have changed; they want shipping. Third-party vendors and out of state retailers can create this gray market. Several in NYS sell to IL, then ship back to NYS; consumers are demanding this service and we need a legal way to sell in NYS. 175 of 190 distilleries are "dead men walking" without DTC. Creates additional jobs with shippers. Small brands become big brands because of opportunity to develop customer base. Will eventually need national distribution. It's about survival for the companies.</li> <li>Treasury Department report includes need for alcohol DTC because of inability to get access. Fills unmet need for smaller distributers. Went from just a few distillers in the country to more than</li> </ul>		

- 2,500. People will still shop at retailers for big brands; e.g., Jack Daniels. Builds customers through direct interaction. Creates a direct test market before releasing to the public. Drop in bucket for big brands; won't cannibalize their sales. Several bills are pending.
- Creates parity between the different sectors; all the points from California apply to cider as well, difference between cider and wine apples versus grapes, wine has privileges.
- All beverages should be allowed, beer, cider, wine, liquor.
- Would like to see data. NYS had 18 months due to COVID-19 (March 16, 2020, through June 24, 2021).
- Very supportive, since DTC and COVID-19 expansion, everyone has seemed to coexist in the market, perhaps a reasonable medium; our concern should be protecting NYS producers.
- NY is a very expensive state to do business in. Distillers cannot afford to give 60% of margin to the three-tier system. We need DTC to survive. Can't self-distribute in New York City (NYC) as it is too expense high costs.
- With Drizly, need to commit to a level of spend in the platform (spend a minimum of advertising).
- Example, high-end cruise on the Hudson in October 2022. Ship stops at locations on the way up the Hudson, they buy my product, what happens when they run out? You have to come back to my distillery and buy. They are one-time customers; can't get by on one-time customers. This is a NYS product that we can't ship out.

It was acknowledged that creating DTC in New York would open the state market to an entire country of producers who will want to compete for DTC business. New York's three tier system – manufactures/wholesalers/retailers – may be at risk with new DTC tier.

Discussion Points by Commission Members:

- DTC data during COVID-19 will be skewed, as average consumer was not going to on-premises as much.
- With the use of the marketing permit advisory producers can directly distribute to consumers now. Retailers will suffer there is data that supports this, it will hurt the three-tier system, this is a highly competitive industry. NYS can get products at reasonable prices, and NYS passed legislation to go direct to manufacturers' sites to purchase.
- Granholm v. Heald: direct shipping of wine. U.S. Supreme Court said you will need to allow shipping both ways; if you vote for this, it is for all, every state in the country and every World Trade Organization country (WTO) to ship direct to NYS consumers. What is left of the three-tier system? Maybe we do away with the three-tier system? There are lot of reasons for the three-tier system.
- The way things work, wholesaler collects all of the taxes, the SLA is the third largest collector of taxes. Three-tier system operates to protect a lot of folks in the system. First meeting voted to keep the three-tier system. NYS is small compared to California and the rest of the world. Think NYS will lose to out of state; be careful before vote.
- Definition of cider in other states, intra-state wine shipping, ships into NY as wine when it is cider.
- When there is an unmet need, it encourages illicit conduct. Recommends lawful route forward. We support the three-tier system, data says DTC will not undermine it.
- Little by little eating away at three-tier system.
- Larger retailers want more intimate experience with customers. DTC is different than going away from the three-tier system.
- Used to sell more California wine, now not so much. Revenues have gone down, this particular
  area of the industry has gone down, there are more distillers in the industry, independent
  retailers, big supporter of NYS manufacturers, but not at the demise of our three-tier system.

There is desire for all alcoholic beverage categories to be treated equal by legislation.

• Chairman asked to take a vote and allow groups to provide supporting position data. Group asked to wait to vote until the data is provided and can be reviewed.

Inputs:	See legislation from agenda and briefing documents provided for this topic.
Positions:	Should New York State (NYS) consider the authorization of direct sales to consumers by manufactures?
Decisions:	N/A – item pushed to next meeting for vote.
Action Items:	<ul> <li>Members of group may choose to provide supporting position data for consideration.</li> <li>Queue "Should New York State consider the authorization of direct sales to consumers by manufactures?" for voting at next Commission meeting.</li> </ul>
Vote Results:	Vote to be taken at Commission Meeting #3/To be collected as follow-up to Commission Meeting.
TOPIC – 7	New Business: The ability of licensees to form purchasing cooperatives, and the effects such cooperatives would have on the rest of the market
Discussion:	<ul> <li>Should off-premises licensees be able to form a purchasing cooperative, subject to reasonable limitations?</li> <li>Should on-premises licensees be able to form a purchasing cooperative, subject to reasonable limitations?</li> <li>Exception described for on-premises licensee that owns a restaurant group and has a centralized bookkeeping letter. Can purchase for all locations in group, single delivery.</li> <li>Discussion Points by Commission Members:</li> </ul>
	<ul> <li>Centralized bookkeeping letter: owner/restaurant group owns at least 51%, you can buy and have delivered to one location and then move to your other locations; the wholesaler should give quantity discount, delivered one time, to one place.</li> <li>Separately owned businesses can't get together and buy larger quantities.</li> </ul>
	Scenarios were discussed where common ownership can be involved in distribution.
	Perspectives related to distributors and wholesalers were offered and discussed.
	Discussion Points by Commission Members:
	<ul> <li>Base price and quantity discounts are why a liquor store may have lower prices than available single bottle prices from the wholesaler; package store is buying in larger quantities than the onpremises retailer.</li> <li>How do wholesalers keep their profit? Co-op buying will do the opposite — increase in the thresholds for quantity discounts will hurt the small guy.</li> <li>Wholesale margins, if the profits are affected, the actual purchase quantity needed for discounts</li> </ul>
	<ul> <li>will go up. Think it will create larger buys.</li> <li>Quantity discount is not regulated as long as posted.</li> <li>For quantity discounts, the wholesaler has to save something, e.g. delivery costs.</li> <li>Each segment will reflect their discounts.</li> </ul>
	<ul> <li>Wholesalers will still need to make the same gross profit no matter what the changes to the law are. It will create larger buys that will be unreachable for smaller co-ops as wholesalers protect their current margins.</li> <li>Creates a shortage, so micro-distributors will be created.</li> </ul>
	<ul> <li>Chairman:</li> <li>Concern about the way it is now — some wholesalers are charging more than retailers, causing restaurants to go to retailers illegally.</li> </ul>
	Commission Members discussed some other states that use cooperative purchasing. Systems in use by other states (e.g., New Jersey (NJ)) are not wholly comparative to NYS.  Discussion Points by Commission Members:

	<ul> <li>NJ – Retail Incentive Programs (RIPs), we think it will be counterproductive to the package stores, all quantity discount levels, think the big stores will get together, raise the discounts for the benefit of the big stores versus small stores.</li> <li>In Delaware, you have two options. You can have multiple licenses and you can balance your inventory between stores that are common ownership. However, when you move inventory, you must notify SLA and enforcement folks and approved before move, it has never been turned down.</li> <li>In New York, you can only have interest in one store.</li> <li>Purchasing cooperative arrangements typically enact rules around the number of participants in cooperative, discount percentages, quantities to purchase, etc.</li> <li>Additional discussion about licensed on-premises businesses buying from retail locations.</li> <li>Commission discussion that on-premises retail purchases from off-premises retail locations should be allowed on some limited basis. There should be a bottle limitation, not a time frame. Would have to be a tax-exempt sale (as is business-to-business) and recorded.</li> <li>Voted on "Should on-premises businesses be able to purchase from retailers on a limited basis?"</li> </ul>		
Inputs:	See legislation from agenda and briefing documents provided for this topic.		
Positions:	Should New York State consider implementing purchasing cooperatives of retail licensees?		
Decisions:	<ul> <li>NYS should not consider implementing purchasing cooperatives for both on-premises and off-premises.</li> <li>On-premises businesses should be able to purchase from retailers on a limited basis.</li> </ul>		
Action Items:	• N/A.		
Vote Results:	To be collected as follow-up to commission meeting.		
TOPIC	Closing Comments		
Discussion:	Meeting was adjourned at 3:30 p.m. by Chairman Bradley		

#### Commission Meeting #3 – December 19, 2022

<b>Meeting Minutes</b>		Date:	December 19, 2022	
Meeting Minutes		Time:	11am – 4pm	
		Place:	New York State Capital, Blue Room	
			State St. and Washington Avenue	
			Albany, NY 12224	
Project:	New Yok State Liquor Authority (SLA	) – Commi	ssion to Reform Alcoholic Beverage Control Law	
Meeting:	Commission Meeting #3			
Attendees:	Commission Members:			
	Vincent Bradley, William Raleigh, Maria LoGiudice, James Barnes, Mark Koslowe, Jeffrey Garcia, Melissa Fleischut, Stephen Hanson, Sonya del Peral, Kim Wagner, Michael Correra, Evan Gallo, Jeff Zacharia, Edward Cooper, Steve Harris, Keven Danow, Paul Zuber, Courtney Armour, Ashley White, Stefan Fleming  Not in Attendance: Andrew Rigie  SLA: Sharif Kabir, Bill Crowley, Joshua Heller		n Wagner, Michael Correra, Evan Gallo, Jeff Zacharia,	
	NYSTEC: Michelle Chank, Lindsay Mo	ogle, Tom \	Vood	
Agenda:	New Business  • Topic – 8: "Specific privileges granted to retail licensees and	to sell diffe	erent types of alcoholic beverages and other items c changing such privileges would have on the various	
	<ul> <li>types of retailers."</li> <li>Topic – 9: "The number of off premises retail licenses an individual may be granted for beer, wine or liquor."</li> <li>Topic – 10: "Potential barriers to market entry for new businesses by sector."</li> </ul>			
TOPIC	Welcome – Introductory Remarks			
Discussion:	<ul> <li>Chairman welcomes everyone to the Commission meeting.</li> <li>Chairman asked if there were any travel reimbursement questions of Commission members.</li> </ul>			
TOPIC – 6	Old Business: The authorization of o	Old Business: The authorization of direct sales to consumers by manufacturers		
Discussion:		in NYS, ar	es — who are already permitted – be allowed to ship and as a corollary matter of constitutional law, should out vilege?	
	Question by the Chairman: Do we we	ant to vote	, or do you have any additional discussion points?	
	Discussion Points by Commission Members:			
	producers; UPS is a good part the problem. FTC and DOJ tal to continue.  NYS ciders are excellent, and about the competition. We sl	ner, as are k about re we would l nould oper	the illegal shipping issues have nothing to do with licensed other shippers. Wine wholesalers say local delivery is not straint of competition. We've come so far, and we want like to show this; wholesalers and retailers are worried a competition to everyone, all beverage sectors. What we ended law. The purpose of the law was to add and	

Inputs: Positions:	<ul> <li>Materials provided support the point that everyone grows and benefits with direct to consumer (DTC) shipping. States that allow DTC have seen these benefits.</li> <li>Disagree with the above points. Retailers lost 30% of a certain segment of their wine sales when wine DTC started. I am looking to protect wholesalers and retailers. NYS does not export enough wine like California. NYS doesn't have enough goods to compete. All will ship into NYS, and because of treaties with England, Italy, France, and Japan, they receive the same privileges as a NYS citizen. Look at the whiskeys — hard for package stores to compete. NYS is a top three taxed state in country; NYS would not be able to compete against theses other states. Cider is classified as wine at the federal level, and you can ship out of state now.</li> <li>There are 209 permitted distillers, 200 are dead men walking – this is necessary for survival.</li> <li>Do not support distillers DTC in and out of state; with restrictions, there may be a discussion.</li> <li>Believes that large wholesalers don't have interest in going to consumers. Member reiterates points from the previous meeting. Suggests a study of limited SKUs. Only limited runs, not base product. We support the three-tier system.</li> <li>You are taking away from the three-tier system.</li> <li>Other Commission Members fear the "foot in the door."</li> <li>See statutory provisions from agenda and briefing documents provided for this topic.</li> <li>No. Position cited that direct shipment would open opportunity to more than just NYS, including other states and global entries, which may impact package store's ability to compete. Impacts on taxable income to NYS based on this shift in basis of the volumes. Direct ship opportunity also</li> </ul>
	<ul> <li>has impact to supply chain for transport, wholesalers, etc.</li> <li>Yes. Position from farm manufacturer representative for allowing privileges for direct shipping for economic development and product equity. Cited material provided to the Commission in support of this position to permit this privilege. Distilleries agreed with position, as representative states distilleries need provision for businesses to survive.</li> </ul>
Decisions:	Vote taken on topic #6 will be included in Commission report.
Action Items:	• N/A.
Vote Results:	Official voting results to be collected via online form as follow-up to Commission meeting.
TOPIC – 8	New Business: Specific privileges to sell different types of alcoholic beverages and other items granted to retail licensees and the effect changing such privileges would have on the various types of retailers
Discussion:	<ul> <li>Should the law be amended to allow wine (currently only sold for off premises consumption by wine/liquor stores) to be sold for off premises consumption by grocery stores?</li> <li>Should the law be amended to allow liquor (currently only sold for off premises consumption by liquor stores) to be sold for off premises consumption by grocery stores?</li> <li>Should the law be amended to allow beer (currently only sold for off premises consumption by grocery stores, drug stores and C wholesalers) to be sold for off premises consumption by wine/liquor stores?</li> <li>Should the law be amended to allow wine/liquor stores to sell items in addition to those listed exhaustively in section 63 of the ABC Law?</li> <li>Chairman: Provided a letter from NY Association of Convenience Stores (NYACS) stating that they do not want wine in their grocery stores and do not want liquor stores to sell beer.</li> <li>Discussion Points by Commission Members:</li> </ul>

- Wine and spirit cocktails, we want spirts to be included; if the alcohol level is the same as other items, under 6% alcohol by volume (ABV), we support everyone as long as spirts are treated the same.
- Wine and spirits in grocery stores, if we can get wine in, then it would be beneficial to the farm wineries in the spirit of the 2015 law. There are some parameters, maybe you limit square footage, 10,000 sq ft limit, maximum of 5000 sq feet of display, and limited number of SKUs, and 10% of SKUs must be NY wines. There is a way we can negotiate this; lets open the 100-year lock on the wines, let's open it up, increase jobs, and increase revenue. We worked with Senator Clinton's initiative to buy from local farmers and the positive effect there helps the community, upstate, and Long Island.
- Support wine in grocery stores but cautions against limiting small businesses. Wants the economic growth.
- Member notes the Commission is not here to negotiate but to advise on public policy.
- Don't want to speak for other members, not going to make liquor store happy, do we give them medallions, we have gone through a myriad of things before.

Chairman: Articles have shown a decrease in liquor store sales but overall, state revenues have increased.

Discussion Points by Commission Members:

- Originally, before prohibition, you would drink on premises or take a bottle to go. When
  prohibition was repelled, Rockefeller commissioned a study to see what went wrong to cause
  prohibition. They wanted to have people start drinking at home (off premise versus on premise).
  To do this, they created package stores in the communities. You were encouraged to drink at
  home with family. As a consequence, you have little package stores across the state. It may be
  more convenient to go to a supermarket, but you are going to put 30% of package stores out of
  business.
- Commission members note the neighborhood style store has evolved.
- Commission members note that drawing lines will always hurt someone, intent should be to lessen damage.
- Recommend no wine in grocery stores. Limitations being proposed are impossible to police. This will take sales from one area and give them to other areas. Grocers can get a liquor license to open a store near their grocery store. This would be a dynamic change for NYS. Suggests public is 50/50 on whether they want it.
- Opposed to wine in grocery stores, feels it will hurt NYS wineries. Grocery stores won't focus on growing small brands. No knowledgeable salespeople. Community stores are very focused on not selling to minors. With only one license, can't afford to lose license.

Chairman: Large grocery stores are in good compliance with ID checks, generally.

Discussion Points by Commission Members:

- Does not feel alcohol needs to be where parents bring their kids all the time, e.g., Target, Walmart.
- You are drawing an artificial line, does on premise retail need to do this? What about the other licenses?
- Discussion on undercurrent issues NYS product sales, key products will be there because they
  are staples. Believes this will kill wine/spirits in the name of artificial progress.
- We go to Florida and Wholefoods sells \$80 bottles of wine. I like selling local products.

SLA: In the literature we've found, we generally see 10 to 15% increase in overall sales; package stores decrease 25% to 30%.

## Inputs: See SLA advisories and legislation from agenda and briefing documents provided for this topic. Positions: Package stores lose business if grocery stores are allowed to sell wine. If a grocer wants to sell wine and/or liquor, they should open a liquor store under provisions that exist.

	<ul> <li>Those supporting change to expand opportunity for NYS wine and/or liquor producers cited other states' experiences with the change to be able to sell wine in grocery stores.</li> </ul>
Decisions:	Votes taken on topic #8 will be included in Commission report.
Action Items:	• N/A.
Vote Results:	Official voting results to be collected via online form as follow-up to Commission meeting.
TOPIC – 9	New Business: The number of off premises retail licenses an individual may be granted for beer, wine, or liquor
Discussion:	<ul> <li>Should the law be amended to allow an individual to own more than one liquor store in New York State?</li> </ul>
	Discussion Points by Commission Members:
	<ul> <li>One other state (Maryland) limits the number to one license; multiple licenses in every other state in the country (not including control states). Cites customers want it, competition is good for the customer.</li> <li>You don't want competition in supermarkets but want competition for local stores?</li> <li>Correct, competition is good if you can run your business; you would go out of business.</li> <li>This is an outdated law, limited to one license; there are ways around the law, should expand and let businesses grow — more competition, economic development.</li> <li>Disagree, how is it different from grocery stores?</li> <li>We have not seen that everyone goes out of business.</li> <li>In favor of restrictive expansion; two questions:</li> </ul>
	<ul> <li>Is there anything that can be said in current environment, how many operate another store, any quantifiable count?</li> <li>In other states, what is the sweet spot?</li> </ul> Chairman: It is quite regular — Stew Leonard's, Total Wine, Wegmans, not uncommon for husband and
	wife to own separate stores. You can't comingle stores products/books. If they're found to be operating in collusion, then they can lose a store.
	Discussion Points by Commission Members:
	<ul> <li>Stores are operated individually and can't coop buy. There are laws in other states where you can coop buy. In states like Massachusetts, years ago you could own a store, now 80% are corporate owned.</li> <li>Dispute this — 80 % is inaccurate number.</li> </ul>
	<ul> <li>Big enterprises come in; corporate entities put the small businesses out of business. Do you want a local person to own in the community; think there is something lost if big corporations come in.</li> <li>There should be allowed multiple licenses (doesn't matter the size), it is part of economic development. We can talk about the limit part, look at the farm sector law — up to five locations, that was a fair amount. Start with that. NYS is large, that could be the starting point. Big difference in upstate and down state — opportunities to open another store, barrier to economic development; can't worry about corporate entities, lets promote economic development.</li> </ul>
	Chairman: Many states do and have limits on the number of licenses.
Inputs:	See legislation from agenda and briefing documents provided for this topic.
Positions:	<ul> <li>Yes position suggests permitting incremental license expansions over time. Only one other state in the country (Maryland) restricts the number of stores to one licensee. Yes supporters want to promote economic development and increase points of sale.</li> <li>No position is that liquor licenses should not be able to be "corporatized" in NYS.</li> </ul>
Decisions:	Votes taken on topic #9 will be included in commission report.

Action Items:	• N/A.
Vote Results:	Official voting results to be collected via online form as follow-up to Commission meeting.
TOPIC – 10	New Business: Potential barriers to market entry for new businesses by sector
Discussion:	<ul> <li>Should the law be amended to loosen New York's tied house restrictions?</li> <li>Should the law be amended to loosen the 500 Foot Law?</li> <li>Should the law be amended to allow certain discretion in the 200 Foot Law?</li> <li>Should the "public convenience and advantage" standard for liquor store license approval be amended to a "good cause" for disapproval standard?</li> </ul>
	<u>Tied House Restrictions</u>
	Discussion Points by Commission Members:
	<ul> <li>Restricts manufacturers and retailers, we are more restrictive; cumbersome for entities to open in NYS.</li> </ul>
	Chairman: For example, a foreign business wanted to build facility here in the U.S. but have retail licenses in their country — it would not be allowed.
	Discussion Points by Commission Members:
	Tied house rules intended to separate the manufacturing/wholesale tier from the retail tier; NYS is harsher than federal government.
	<ul> <li>NYS is not more restrictive than federal government, supplier that has a hotel or restaurant in another country is prohibited from opening a business in NYS — federal law is about collusion.</li> <li>Laws regarding wholesaler/retailer, NYS applies it out of state and out of country.</li> <li>Historically, you carry my goods and sell a certain amount. I will lend you the money to open — this is where the phrase "lock, stock, and barrel" originated. Retailer must be local, local retailer sets what they want to sell. I believe that NYS is in enforcing its current rulings.</li> </ul>
	Chairman: For example, 21 Club, that was a tied house issue. There is a potential that you can get a carve-out, but that involves a lot of work.
	Discussion Points by Commission Members:
	<ul> <li>No supplier shall have interest in a retailer.</li> <li>Can a supplier wholly own a retailer? Not in NYS.</li> </ul>
	SLA — Examples provided (Language) in briefing materials — understand, continuing concerns, undue influence from manufacturers influencing the retail tier.
	Chairman: This issue comes up five to six times a year, looking to see what state they are going to; most can't wait for the time for a carve-out.
	Discussion Points by Commission Members:
	<ul> <li>I would propose retail license in other state or country, that doesn't ship to NYS, should be excluded.</li> </ul>
	Chairman: Wholesaler issue — make it consistent with federal law, carve-outs are done by legislature, our application tells us what licenses they have.
	Discussion Points by Commission Members:
	Would there by room for SLA to interpret items? To make sure that rules are followed.
	Chairman: The law would state what is and isn't permissible in terms of arrangements as it was proposed. If the law is violated after licensure, it becomes a compliance issue.
	Discussion Points by Commission Members:
	<ul> <li>The law needs to adapt to the changes in a more global society.</li> </ul>

- Other tied house regulations that I think are out of date and need to be modernized.
- These are regulations that could be changed at SLA.

#### 500 Foot Law Discussion (added in the early 1990s)

Chairman: For cities over 20,000, if there are three or more on premise establishments within 500 ft, they require a hearing. Burden of proving their license is in the public interest is on the applicant business. This is a downstate issue more than upstate as a matter of density.

#### Discussion Points by Commission Members:

- New applicant in upstate is easier versus downstate applicant.
- This will always happen in NYC, loosening it to 200 feet or eight licenses.
- I would do away with this, in the theater district, you are making it harder for restaurants to open, waiting/delays and they are paying rent. Do away with, but the community boards will still provide their input.
- Like the idea of eliminating or make it 200-foot rule.

#### 200 Foot Law Discussion

Chairman: Causes many carve-outs, 200 ft of church or school, many recommendations in the past to allow some discretion; receive letter of support from establishment.

#### Discussion Points by Commission Members:

- Law doesn't allow church or school to vote, SLA can take into account but ultimately makes the
  decision.
- Community boards will still make their recommendations.

Chairman: You can put a restaurant there but not have a liquor license; wine and beer license still allowed.

#### Discussion Points by Commission Members:

- Eliminate requirement for both church and school.
- Eliminate the number of feet, I don't think it matters (205 ft).
- Licenses process will move faster.

#### Public Convenience and advantage

Chairman: Application is in. We are instructed to look at case law, distance, and sales of four or five stores. Other products the applicant is providing but not provided by closest store — this is not defined in statue, a lot of case law but not well defined.

#### Discussion Points by Commission Members:

- For those qualified, if good cause exists, they are approved.
- Everyone should get one or should you look at requirements from them to get one (current).
   Everyone gets one unless there is a good cause not to get one; do you have the legal qualifications to get one.
- There are basics that SLA would still need to review doing the application process.
- This standard depends on the board.

Chairman: This interpretation is based on the board at the time.

# Inputs: See legislation from agenda and briefing documents provided for this topic. • Should the law be amended to loosen New York's tied house restrictions? • This is seen as being a potential barrier to market entry in the industry. • Position that the rules as they stand are too strict and should be amended. • Discussion about bringing this regulation in line with federal government requirements for it. There may be other modernization items to tie into it. • This would require general discussion of all areas of the tide house laws.

	Should the law be amended to loosen the 500 Foot Law?
	<ul> <li>This rule is almost always triggered in NYC due to the proximity realities. Options suggested to reduce the value of distance down from 500, make it a set number of licensees within a set range, etc. The need for Community Board involvement also makes the 500 Foot Law moot and essentially void in NYC.</li> <li>Commission would recommend removing the 500 Foot Law entirely.</li> </ul>
	Should the law be amended to allow certain discretion in the 200 Foot Law?
	<ul> <li>This rule is almost always triggered in NYC due to the proximity realities.</li> <li>Commission would recommend removing the 200 Foot Law entirely.</li> </ul>
	<ul> <li>Should the "public convenience and advantage" standard for liquor store license approval be amended to a "good cause" for disapproval standard?</li> </ul>
	<ul> <li>Every application is approved unless there is good cause for disapproval.</li> <li>Right now, the burden is on applicant; this would shift burden to SLA.</li> </ul>
Decisions	Votes taken on topic #9 will be included in commission report.
Action Items:	N/A
Vote Results:	Official voting results to be collected via online form as follow-up to Commission meeting.
TOPIC	Open Discussion – Votes Conducted
Discussion:	Open discussion for Commission members.
	Should SLA recommend to the legislature the removal of obsolete portions of the ABC Law?
	Discussion Points by Commission Members:
	<ul> <li>Cumbersome/complex – can we strike items that we don't look at, for example a retail store can only ship to residential address, but they ship to business address; take practical look at the items.</li> <li>If you are new to the industry, make it more obvious to enter the industry. There is a certain population who know the "right" people to start, what is the right code.</li> <li>SLA should review and strike items.</li> </ul>
	Chairman: The entire law is examined, recommend pieces for removal, this will be included in the report. We do look to review pieces of the statute and recommend items for removal.
	Should the Commission recommend legislation that would create a temporary permit for a licensees that allows the service of beer, wine, cider, and liquor?
	Discussion Points by Commission Members:
	<ul> <li>Repurposed horse trailer into a mobile bar. Under the temp permit, this was allowed. Temporary beer, cider, and wine permit (\$36 one day permit); during COVID-19, took the party to people's homes. With NYS Cider and NYS Wine, we found that interest declined because we could not make "cider" cocktails. This would cross-promote NYS distillery products, compete with other mobile bars.</li> </ul>
	Chairman: TPA is available to everyone (beer, wine, cider) and doesn't involve spirits. Would have to change the law to allow liquor or allow catering permits to farm cider entities.
	Should the Commission recommend legislation for granting temporary permits for wholesale license holders who have applied for a full license?
	Discussion Points by Commission Members:
	<ul> <li>Can we institute a temporary permit for wholesaler that are applying for a full license (wait is nine months).</li> </ul>
	SLA – we have a temporary permit for manufacturer and retailer, there isn't one for wholesalers.

Should the Commission recommend SLA review all licensing fees for appropriateness? Chairman: Our fees haven't been changed in years (possibly since 1991); legislature has reviewed but have not made any adjustments. Discussion Points by Commission Members: Beneficial for increased fees that will go to SLA. SLA could function better with increased money into the budget, increased depth and breadth of items, maybe pay to get the license quicker versus waiting. SLA – SLA received 30 new staff for Licensing. The current employment market is difficult to find staff. We are funded/staffed to do the items we need to do. We received additional funds and FTE allocation. Finding qualified staff is difficult. Temporary permits are presently being processed in less than 30 days. Discussion Points by Commission Members: Can you increase the salary of FTEs? Can we say they are highly skilled employees? SLA – Civil Service/grade levels – hiring and advancement is set by NYS Civil Service. We have highly skilled employees; Civil Service believes they are at correct level. Revamp the Civil Service function is a NYS topic. **Decisions** Votes taken on topic "Open Discussion" will be included in commission report. **Action Items:** N/A **Vote Results** Official voting results to be collected via online form as follow-up to Commission meeting. **TOPIC** Open Discussion - Non-Voting Topics Discussion: Allocations Discussion Points by Commission Members: State getting involved in allocations is unnecessary. Believes this is restrictive. Suppliers could go to other states. Chairman: If we let wholesalers do what they want, their best customers get benefits. Allocation methods need to be consistent and nondiscriminatory. Importer licensing Discussion Points by Commission Members: Burden is on corporate license in state import into New York. Importer's license language prevents NY-NY from getting a license. SLA — Never heard of this as an issue. Discussion on fees Discussion Points by Commission Members: Fees for various licenses. Chairman: Fees are set in legislation; not sure why there is not parity in the license fee structure. **Decisions** No Votes Required N/A **Action Items: TOPIC Closing Comments** Discussion: No additional meetings are planned. Follow-ups to capture votes will be distributed. There was a request for all the voting results. NYSTEC is consolidating all meeting positions and votes into final report. Economic analysis tied to the legislation is also being worked into the report. Report will be circulated for Commission review prior to the submission of final report by May 1, 2023.

# Appendix D – Commission Meetings Briefing Materials

Commission meetings briefing materials were provided to Commission Members to review based on the agenda topic being discussed. For each statutory language requirement, the associated language, agenda topic number/meeting number, briefing material file name, and high-level content topics are listed below. The accompanying briefing materials zip file contains all the information described below.

Briefing Materials Zip File Name: Final Report Commission Meetings Briefing Materials 2022.zip

- Amendments to the law, increases in resources available for administering existing laws and rules, and new state liquor authority practices that would lessen processing times for the issuance of licenses, license renewals, and permit applications;

Agenda Topic 5 - Commission Meeting #2

File Name: Topic 5 - Commission Meetings Briefing Materials 2022.pdf

- · Policy Research.
  - States Resources.
- SLA Advisories.
  - o #2022-6.
  - o #2022-8.
  - o #2022-11.
  - o #2022-12.
  - o #2022-13.
  - o #2022-14.
  - o #2022-15.
  - o #2022-17.
  - #2022-18.#2022-21.
  - o #2022-22.
  - #2022-24.
  - o #2022-25.
- Legislation.
  - PART L of S8005 of 2022.
- Review of laws against underage consumption of alcohol and the enforcement mechanisms utilized;

Agenda Topic 1 - Commission Meeting #1

File Name: Topic 1 - Commission Meetings Briefing Materials 2022.pdf

- Statutory Provisions.
  - o ABC Law §65-a.

- o ABC Law §65-b.
- o ABC Law §65-c.
- o PENAL Law 260.20.
- Underage Drinking Initiative (UDI).
  - o SLA Enforcement Bureau.
- The overall impact of laws and corresponding state liquor authority regulations on the numerous sectors of the industry;

Agenda Topic 2 - Commission Meeting #1

- Open Discussion no associated briefing materials.
- Whether New York should consider adopting a "control state" model or other regulatory model;

Agenda Topic 3 - Commission Meeting #1

File Name: Topic 3 - Commission Meetings Briefing Materials 2022.pdf

- Topic 3 States Adopted Control Model of ABS-Distribution.
- NABCA Alcohol Beverage Control Jurisdictions A Community Choice.
- Specific privileges to sell different types of alcoholic beverages and other items granted to retail licensees and the effect changing such privileges would have on the various types of retailers;

Agenda Topic 8 - Commission Meeting #3

File Name: Topic 8 - Commission Meetings Briefing Materials 2022.pdf

- · Policy Research.
  - o Exclusive Privileges.
  - Supplemental Information.
  - Legislation.
    - o PART T of A9710 of 2010.
    - o S8944 (April 29, 2022).
    - A5468 (February 17, 2021).
    - o A6325 (March 12, 2021).
    - o S3112 (January 27, 2021).
  - Policy Research The Sale of Wine in Grocery Stores.
  - Supporting Documentation.
    - Arkansas.
    - o Colorado.
    - Connecticut.
    - o Oklahoma.
    - o Tennessee.

- The number of off premises retail licenses an individual may be granted for beer, wine, or liquor;

Agenda Topic 9 - Commission Meeting #3

File Name: Topic 9 - Commission Meetings Briefing Materials 2022.pdf

- Policy Research.
  - States Store Ownership Limitation.
- Legislation.
  - o A10527 (June 15, 2022).
- The ability of licensees to form purchasing cooperatives, and the effects such cooperatives would have on the rest of the market;

Agenda Topic 7 - Commission Meeting #2

File Name: Topic 7 - Commission Meetings Briefing Materials 2022.pdf

- Policy Research.
  - States Cooperative Buying.
- Supplemental Information.
- · Legislation.
  - o S8964 (May 2, 2022).
- The authorization of direct sales to consumers by manufacturers, and the effect direct sales would have on the rest of the market;

Agenda Topic 6 - Commission Meetings #2 and #3

File Name: Topic 6 - Commission Meetings Briefing Materials 2022.pdf

- Policy Research.
  - States Direct to Consumer.
- Supplemental Information.
- Legislation.
  - o S556 (January 6, 2021).
  - A3275--A (January 22, 2021).
  - o S8789 (April 18, 2022).
- Additional Information (Provided by Commission Members).
  - Beverage Alcohol Retailers Alert State Legislators & Regulators of Liquor Supplier Direct-To-Consumer Push.
  - o Wholesale and Retail Distribution of Alcohol in Kentucky.
  - Potential Losses in Kentucky due to Direct to Consumer Shipping of Alcohol Products.
  - o Illegal Alcohol Shipping Has Become a Serious Problem (Beverage Wholesaler).
  - NYS Distillers Guild Executive Summary.
  - o Impact of Direct Shipment of Spirits on Market in Vermont.

- 2020 Economic Impact Study of New York Cider Industry.
- o 2020 Economic Impact Study of the New York State Distilled Spirits Industry.
- 2019 Economic Impact Study of the New York Wine & Grape Industries.
- o Spirits Direct-to-Consumer (DTC) Shipping New York (DISCUS).
- o Direct-To-Consumer Shipping of Spirits and Related Practices (DISCUS).
- o DTC Consumer Survey Media Briefing (DISCUS).
- Key Points (DISCUS).
- o Federal Trade Commission: E-commerce Lowers Prices, Increases Choices in Wine Market.
- o Federal Trade Commission: Possible Anticompetitive Barriers to E-Commerce: Wine.
- o National Survey Shows Overwhelming Support for Direct-to-Consumer Shipping of Spirits.
- o ADI Annual Year-End Survey 2020.
- o Times Union: Time to Update New York's alcohol laws.
- New York Distillers Launch Campaign to Urge Legislature to Make Direct-to-Consumer
   Shipping of Spirits and Cider Permanent.
- Bureau of Labor: Employment and Wages 2005 2021 (Wholesalers, Liquor Stores).
- o Direct-To-Consumer and Wholesalers: No Evidence DtC Reduces Employment (DISCUS).
- o Competition in Markets for Beer, Wine, and Spirits U.S. Treasure Department.
- Ship My Spirits Fact Sheet New York.
- o The Truth About Alcohol Delivery and Underage Drinking R Street.
- Alcohol Delivery and Underage Drinking: Data-Driven Lessons from Direct-To-Consumer Wine Shipping - R Street.
- Youth Risk Behavior Survey 2019 Center for Disease Control (CDC).

## - A review of the hours and manner in which retailers can operate or sell different types of beverages;

Agenda Topic 4 - Commission Meeting #2

File Name: Topic 4 - Commission Meetings Briefing Materials 2022.pdf

- Statutory Provisions.
  - o ABC Law §17.
  - ABC Law §105.
  - o ABC Law §105-a.
  - ABC Law §106.
- NYS County Closing Hours.
- Legislation.
  - o A1132 (January 7, 2021).
  - A1272 (January 8, 2021).
  - S3106 (January 27, 2021).

### - Potential barriers to market entry for new businesses by sector;

Agenda Topic 10 - Commission Meeting #3

File Name: Topic 10 - Commission Meetings Briefing Materials 2022.pdf

• Legislation.

- o PART EE of \$7505 of 2020.
- o SLA departmental #03 of 2021.
- o SLA departmental #01 of 2022.
- Any other issues deemed necessary and appropriate to include by members of this commission.

Commission Meeting #3

• Open Discussion – no associated briefing materials.

# Appendix E – Public Comments Received

To collect public comments on the items that were discussed by the Commission, the SLA created a dedicated email address for their submission. Industry stakeholders, community groups, and other interested parties were encouraged to share their comments to the Commission via email. Please note that several submissions were substantially similar, and the comments below represent the topics received.

Public comments are displayed as submitted by the commentor. No comments have been edited for language, grammar, or spelling.

PUBLIC COMMENT 1	
Name	Michael C Barris
Subject	Temporary Commission to reform the Alcoholic Beverage Control Law
Comment	Commissioners of the Temporary Commission to reform the Alcoholic Beverage Control Law:
	I spent four weeks in Portugal when I finished my undergraduate studies at the University of Rochester in 1966. I was impressed that 1) wine was served to all, regardless of age, at every evening meal; 2) anyone, regardless of age or whether they were solitary or with a group, could purchase wine in bars and restaurants; and 3) very few people drove automobiles. Rather, they depended upon walkable communities and public transportation in the progress of their lives.  These factors came into play in my subsequent participation in planning activities for Roosevelt Island and Battery Park City. More recently, I have had experience with liquor control acitivities as a Trustee of the Village of Fredonia.  I urge you to consider this in your deliberations.  Michael C. Barris, Ph.D. (neuropsychology) 154 Center Street Fredonia, New York 14063 716-673-9094 vere@netsync.net

PUBLIC COMMENT 2	
Name	The Alliance of Fine Wine Wholesalers
Subject	Direct Sales to Consumers by Manufacturers
Comment	The Alliance of Fine Wine Wholesalers is concerned about the Commission discussion related to the direct sales of alcoholic beverages by manufacturers.
	The Alliance understands that direct sales help small, New York producers—many of which are too small to be picked up by distributors. However, the Alliance is concerned that this is an attempt by large manufacturers to use direct sales to circumvent the threetier system. Large international brands would use the ability to sell directly to consumers as a way to destroy not only wholesalers but also liquor stores. Why go to your local liquor store to pick up a bottle of your favorite vodka

PUBLIC COMMENT 2	
	when the giant conglomerate who owns the brand can ship it to your home? Authorizing large-scale direct sales would lead to a further consolidation of the distributor and retail sales market, thus leading to fewer New York jobs and higher prices, all while undermining New York's three-tier system.
Subject	Formation of Purchasing Cooperatives
Comment	The Alliance of Fine Wine Wholesalers is also concerned about the Commission discussion related to allowing New York retailers to form purchasing cooperatives to purchase alcohol from wholesalers.
	Purchasing cooperatives create administrative burdens and difficulties:
	They would require increased oversite by the State Liquor Authority to make sure the agreement and function of the purchasing cooperative are complying with all applicable laws and regulations, including the prohibition on gifts.
	They would require increased oversight by the State Department of Taxation and Finance to ensure that the cooperative is properly paying sales tax on any orders made. This would be difficult, as cooperative purchasing agreements often have side "handshake" deals, allowing one retailer to take more or less of a specific type of bottle than was originally planned.  Wholesalers would face increased administrative burdens related to tracking which retailer received how many bottles for tax purposes. The Alliance is concerned about making wholesalers responsible for monitoring how retailers purchase alcohol.

PUBLIC COMMENT 3	
Name	Frank Nalevaiko
Subject	Recommendations
Comment	FRANK NALEVAIKO
	118-60 METROPOLITAN AVE, 1D
	KEW GARDENS, NY 11415
	718-909-9398 cell
	blu718@gmail.com
	Here is my recommendation "wish list" that I feel could help streamline the SLA application process for both the Applicant and Expeditor.
	1. Allow an Importer and liquor/wine/beer wholesaler to use the same physical address. The Federal TTB permit is a combined license that uses the same address for both Importer & Wholesaler. This creates a problem when the SLA asks to see the Federal permit in order to issue these licenses, the applicant then needs to amend & change their address on their TTB permit in order to comply with the SLA rule.
	2. Issue Liquor store licenses without a Full Board hearing for all applicants that are beyond 1,000 ft from any other existing liquor store.
	3. Eliminate the house of worship 200 ft rule for OP and Liquor Store applicants (keep the rule in place for schools)

#### **PUBLIC COMMENT 3**

- 4. Eliminate the 500 ft rule for OP applicants, the rules should be the same as they are for RW and EB applicants. This rule creates a major problem for applicants trying to prove Public Interest (In this instance to ask about Public Interest seems capricious & unnecessary)
- 5. Give all license categories within the NYC area a 90 Temporary license without restriction to prior license history for the location (eliminate the 2 yr rule, 500' rule & adverse history rule) Issuing Temp licenses would give small businesses a better chance of survival within NYC where the rents are extreme along with labor costs, utility costs & food costs. The current waiting time of 7-9 months for a permanent license is forcing many of these applicants out of business.
- 6. Eliminate the AX fee, grocery stores should be able to sell beer and wine products and only pay the "A" category fee of \$330 per 3 years
- 7. Don't automatically agree with and take the position of any NYC Community Board when that Board declares it's opposition towards an applicant. Many times a CB will unfairly vote against an Applicant for no clear reason. The Authority should enact a procedure where the Applicant may submit a written defense countering the CB's decision and opposing statements. A useful term for this procedure might be called a "CBR" statement (community board rebuttal statement)

I thank the Authority for it's consideration on this matter Frank Nalevaiko, Expeditor

PUBLIC COMMENT 4	
Name	John Springer
Subject	suggestion for ABCL working group - definition of restaurant
Comment	Good morning. A suggestion for your ABCL working group a change in the definition of "restaurant" to remove the cooking equipment definition and focus on the menu and method of operation instead. My memo to a CB (below) explains it. We are a sushi place and "cooking" is not required. But because of the current ABCL definition of "restaurnant" and the cooking equipment requirement, we have to apply as a bar/tavern. I think the definition should be tweaked somehow to not exclude sushi and other places with full menus not requring "cooking" equipment to be deemed "restaurants."
	John Springer
	TO: BROOKLYN CB 1 (SLA COMMITTEE) FROM: JOHN SPRINGER (REP)
	1/20/2023 Attached please find a tavern wine/beer notice for an existing establishment. We are applying for tavern wine/beer license as opposed to an RW because of the definition of "restaurant" in the state liquor laws. Although the menu (attached) is substantial, it is primarily sushi and other meals that do not require cooking or the type of cooking equipment required to qualify as a "restaurant" under the liquor laws. The LNO is for an "eating and drinking establishment." LNO 12993 LETTER OF NO OBJECTION 09/06/2018 LNO Use: APPROVED EATING AND DRINKING

PUBLIC COMMENT 4	
L	NO Floor: 1ST FLOOR
	The Method of Operation is akin to one you would find for a restaurant as there is no live music, no
	lancing, no DJ, no security. In summary, although we are applying as a "bar/tavern" because of the
	cooking" requirement in ABCL for restaurants, for all practical purposes this is a restaurant.
1	hank you in advance for your time and attention.
	John Springer
J	ohn Springer
R	Rep
::	
J.	ohn Springer
P	ORTJEFFERSON.com Inc.
d	lba My Liquor License Guy
P	O Box 497
P	Port Jefferson, NY 11777
-	ohn@nybarguy.com (631) 331-3334 (phone)
	631) 382-8190 (fax)
] ::	

PUBLIC COMMENT 5	
Name	John Springer
Subject	ABCL reform - suggestions - temporary permits
Comment	Good morning, Committee members. I have two suggestions for ABCL reform.
	ABCL should be changed to permit OP liquor applicants in NYC who are not eligible for temporary permits due to 500-foot rule and no prior license at premise to operate on a wine/beer/cider-only temporary permit pending approval of their OP liquor applications.  ABCL should be changed to provide for one ST permit for the duration of a license application review. Extending temporary permits is inconvenient for applicants, but more importantly it drains agency resources. These temporary permit extensions are only 1 check and 1 piece of paper, however, the check has to be processed, the application booked and reviewed, the permit created, emailed and mailed.
	John Springer PORTJEFFERSON.com Inc. dba My Liquor License Guy PO Box 497 Port Jefferson, NY 11777 john@nybarguy.com (631) 331-3334 (phone) (631) 382-8190 (fax)

PUBLIC COMMENT 6	
Name	Bill Shufelt
Subject	Athletic Brewing - Alcoholic Beverage Control Law Reform

#### **PUBLIC COMMENT 6**

#### Comment

Dear Committee Members -

On behalf of Athletic Brewing Company, and as the Chairman of the Adult Non-Alcoholic Beverage Association (consisting of over 90 members who do business in NY State), I am writing to submit a comment for the comment period regarding Alcoholic Beverage Control Law Reform. While I am writing to speak only for my company, I am confident I speak for the greater interests of the entire beverage industry and the consumer base.

For some context and credentials, Athletic Brewing is the top non-alcoholic beer brand in the Northeast (larger than Heineken 0.0 and Bud Zero), and has been a significant employer and taxpayer in the state of NY for over 4 years. We ranked #26 on the Inc 5000 list of the country's fastest growing companies last year, and we intend to do significant business and hiring in NY state for many years to come.

We would like to express concern about the Alcoholic Beverage Control Law Reform. A change to the current definition of Alcoholic Beverage and any movement away from the 2019 NY SLA Opinion letter excluding non-alcoholic beverages for restricted regulations will have a significant impact on consumers as well as business and state revenue.

The federal definition of alcoholic beverage is that which contains 0.5% alcohol by volume or more. There is no logical reason to have a state definition stricter than the federal definition here for consumer safety. Greater access to non-alcoholic beverages is a societal good for all consumers looking for more moderate options. The increased prevalence of non-alcoholic options provides options for all consumers, including the 14.8 million adults with documented Alcohol Use Disorder. Restricting sales and marketing of non-alcoholic beverages to licensed alcohol sellers does a huge disservice to the customer base wanting to enjoy great non-alcoholic beverages on a wider range of occasions (beaches, families, etc.). In addition, it shuts out many of the small businesses producing new and innovative non-alcoholic beverage options--many of whom may not even be considered by distributors due to their scale.

The reason the federal definition of an alcoholic beverage is greater than 0.5% is largely due to the fact that such a high percentage of foods contain between 0.0% and 0.5% ABV - sodas, flavored sparkling waters, juices, fermented beverages, fruit, bread, etc. Accidentally lowering this beyond the threshold could have unintended second-order effects for many industries creating friction in access and ease of doing business in NY state.

State revenue collection actually goes up not down when non-alcoholic beverages are not considered alcohol due to increased state sales tax revenue. While it may seem like a 'win' for distributors to control the sales and distribution of non-alcoholic beverages to a very small group of confined stores and trucks, it is actually quite the opposite. Retail sales, counterintuitively, are the lowest in states with a definition that is tighter than the federal definition as the ability to market, distribute, and retail access is so hampered.

There are also many small and great businesses popping up throughout NY state and city on the back of this growing trend. Retailers like Boisson NYC (boisson.co, 5 locations in NYC), Getaway Bar, Spirited Away, Listen Bar, Hekate, and many others are all great example - they are investing heavily in the category, creating jobs, driving business in NYC, and giving small businesses a chance to grow. This NYT article does a great job showing a spotlight on the growing trend and business emerging in NYC: https://www.nytimes.com/2023/01/16/style/dry-january-nyc-sober-bars-alcohol-free.html.

#### **PUBLIC COMMENT 6**

So everyone loses if the definition is changed - the state (revenue), retailers (revenue), distributors (revenue), the small suppliers and businesses (revenue and jobs), and most importantly the customer and society (options and access to healthy options). The perceived benefits for any stakeholders are likely very specifically self-serving and ultimately not in anyone's best interest.

I express my concern about this matter on behalf of Athletic Brewing Company but also as someone interested in drawing attention to this great, positive trend in your state as a member of the Adult Non-Alcoholic Beverage Association, ANBA features over 90 small and independent producers of low and no alcohol beverage products. Lastly, I urge you to uphold the insightful opinion produced by the NY SLA in 2019 regarding non-alcoholic beverage regulation.

Thank you for your consideration, Bill

Bill Shufelt(he/him)
Co-Founder & CEO
Athletic Brewing Company LLC
bill@athleticbrewing.com | athleticbrewing.com