

Inside NYSABC

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



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NYSABC's Albany liaison Pete Sobol brings Gov. Andrew Cuomo up-to-date on C license concerns at a community forum in Nassau County on Sunday, February 26, 2017



NYSABC Revives Holiday Tradition

For many years, a year-end holiday get-together was an industry tradition. This year, NYSABC revived that tradition with a post-New Year's party at the newly renovated Coral House in Baldwin, on Wednesday evening, January 25. Over a hundred business owners, brewers, bottlers, suppliers and guests enjoyed a cocktail reception and open bar, a legal seminar presented by NYSABC Counsel Ken Rosenblum, a sumptuous buffet dinner, and an evening of fun and fellowship. Thanks to Grand Sponsor Manhattan Beer, Dinner Sponsor North American Breweries and Friend Sponsors AB/ INBEV, MillerCoors and Boening Brothers. The party was such a success that a renewal is already in the planning stages, hold the date Wednesday evening, January 24, 2018 at the Coral House. View more photos at <http://bit.ly/holidayTradition>



DEC Revives Proposals to Change Bottle Law Regulations

The New York State Department of Environmental Conservation (DEC) has revived a proposal, first floated in October 2014, to rewrite the regulations governing the Returnable Container Act (RCA) – the “Bottle Law.” The proposal has been dormant since a series of stakeholder meetings in fall 2014, but a DEC source says the next round of proposed revisions is expected to be released for

public comment by the end of the year. Changes are likely to include allowing off-site audits of on-site container counts (in effect allowing off-site counting), and tightening the rules governing redemption centers.

There is still a long way to go before any changes actually go into effect, including a requirement for the publication of

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ABBEY ALTBIER AMBER ALE AMBER LAGER BALTIC PORTER BARLEYWINE BELGIAN
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 GARDE BLACK ALE BLOOMINGDALE CROWN ALE CALIFORNIA
 COMMON CHILE BEER COUNTRY CROWN ALE ENGLISH
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DEC Again Considering Bottle Law Regulation Changes *continued from front cover*

formal wording of new regulations and a public notice and comment period. Still, the DEC's new proposal suggests that changes are likely coming, several of which could roll back some hard-won protections for beverage centers.

Following is a summary of the highlights of the DEC's October 2014 proposals, along with an explanation of what is and is not on the table.

What the DEC Cannot Do

The DEC, as a state administrative agency, can only adopt or change regulations implementing and explaining the law; the DEC cannot change the law itself—only the State Legislature can do that. As a result, the DEC cannot:

- repeal the law
- change the beverages or types of containers subject to deposit
- change the amount of the deposit or handling fee
- change how unclaimed deposits are handled
- change the types and amounts of penalties

What the DEC is Thinking About, and Why

Off-Site Container Counting

The Bottle Law prohibits off-site container counting: "A deposit initiator or distributor shall not require empty containers to be counted at a location other than the redemption center or dealer's place of business. The dealer or redemption center shall have the right to be present at the count."

However, the DEC argues that many redemption centers (RCs) and distributors have been turning in significantly short counts, and that deposit initiators have the right to audit on-site pick-ups before they pay the refund value and handling fee.

What the DEC is struggling with is where and how these "audits" would take place: do Weights & Measures-approved devices have to be used? Can a sampling method be used? How do audits get recorded and documented?

NYSABC's position is that the bottle law prohibits off-site container counting, and that any changes would have to be made by legislation, not DEC regulations. Allowing off-site "audits" is the same as allowing off-site counting, just by another name. As a fallback position only, NYSABC has recommended that if the DEC should adopt a regulation allowing some kind of post-pick-up off-site audits, we reserve our right to challenge that in court, but if allowed the audits would have to be conducted within a very short time (e.g., within 48 hours of pick-up) and if the audit did not take place within that time, the count at pick-up would become conclusive. NYSABC also recommended that deposit initiators be required to account for and make available "orphan containers," containers of a brand not sold by that deposit initiator (e.g., Coke returned to Pepsi).

Redemption Centers

In response to reports of some redemption centers (RCs) taking advantage of the pick-up protections beverage centers got written into the law in 2009, the DEC is looking at tightening up the rules to prevent abuse by RCs.

- Use of equipment during pick-ups. Some RCs have been refusing to use their equipment to load empties on trucks unless the deposit initiator or 3rd party pays for it.
- Minimum quantity of containers necessary before a pick-up. Some RCs have been demanding pick-up of small quantities of containers. The DEC is considering a minimum amount of empties to trigger a pick up obligation.
- Some RCs have been requesting more free bags or mother cartons than they

need, then selling them to other RCs. DEC is considering a tracking system for bags and boxes provided by deposit initiators.

RCs would also be subject to much more detailed registration, covering the kind of premises they can use; requiring compliance with local building, zoning, parking and environmental laws and regulations; and mandating increased recordkeeping and reporting. New regulations would cover mobile redemption centers (now banned in NYC but legal elsewhere in the state), including recordkeeping, location, and a prohibition against returning empty containers to a distributor or deposit initiator outside the area where the containers were picked up.

Deposit Initiator Definition

In order to plug the hole in the law for deposit-marked product coming into NY from other states, and to clarify who is responsible for paying deposits into the state account, the DEC is looking at tightening up the definition of a "deposit initiator." For beverages manufactured in the US, the deposit initiator would be the bottler, unless the bottler does not sell beverages to any entity in NY; or unless the first distributor in NY has a geographically exclusive territory pursuant to a written agreement with the bottler. Also, deposit initiators would be required to:

- charge deposits on containers that are sold to an out-of-state entity that intends to distribute the beverage in NY; and
- ask out-of-state companies (such as office supply and food services distributors) if they will be selling/delivering the beverage to NY locations.

Third Party Agents

Third party pick-up agents would be defined and subject to recordkeeping and annual reporting requirements.

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DEC *continued from page 3*
Reverse Vending Machines

The DEC is aware of reports of wide-spread fraud involving Reverse Vending Machines (RVMs), and is seeking comment on regulations that would address:

- Scrap reconciliation for material processed vs. what is picked-up, and how to handle discrepancies.

- Requirements for monitoring use and controlling access to RVMs to prevent fraudulent activities
- Requirements for securing redeemed containers or scrap that has been processed through RVMs

The complete DEC “talking paper” seeking comment on the proposed changes is available on the DEC website, at <http://bit.ly/NYSABC-containers>.

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Albany Kills City Bag Charge Law

On Tuesday, February 14, Governor Cuomo signed a bill killing a NY City law that would have required retailers to charge a minimum of 5 cents for carryout bags, in an effort to cut down on litter. Cuomo called the city law “deeply flawed,” and said he would be creating a task force to come up with a uniform statewide plan to deal with “the plastic bag problem.”

However, the “kill bill” applies ONLY to NY City. Similar bag charge laws are still on the books in Suffolk County and the City of Long Beach, and are scheduled to go into effect soon.

Long Beach Law to Take Effect in

April 2017. Last October, the Long Beach City Council passed a similar law that is scheduled to go into effect on Earth Day, Saturday, April 22, 2017. The law does not require a retailer to furnish carryout bags, but if you do, you have to charge a minimum of 5 cents (you could charge more). Retailers keep the nickel, and there are no recordkeeping requirements or restrictions on the kind of bags furnished. Consumers who bring their own bags or pay for purchases with SNAP are exempt from the charge. There are also sign posting requirements. For copies of the required sign and more detailed info about the Long Beach law, see <http://www.longbeachny.gov/bags>.

Suffolk County Law Scheduled for

January 2018. In September 2016 the Suffolk Legislature passed a law that would require retailers in the County to charge consumers a minimum of 5 cents for every carryout bag, whether plastic or paper. Suffolk’s law is scheduled to go into effect on January 1, 2018.

Like the Long Beach law, Suffolk retailers can keep the nickel (at least for now), and there are no recordkeeping requirements. But unlike Long Beach, there are no exemptions for SNAP purchases, and no sign posting requirements. The Suffolk law also imposes requirements for the bags. Paper carryout bags must contain a minimum of forty percent post-consumer recycled content and be

State Law Prohibits Cs From Accepting EBT Cards; SLA Rule Requires EBT Use to be Blocked at Credit Card Terminals and ATMs

As the result of a NYSABC initiative that expanded the scope of products and services a C License can offer, Cs have been able to offer ATMs to their customers since 2013. However, a 2014 state law prohibits certain SLA licensees, including Cs, from accepting Electronic Benefit Transfer (EBT) cards for payments.

That same year, the SLA approved a companion advisory that requires C licensees to make sure that access to electronic cash purchases from EBT accounts is disabled at their licensed premises, at credit card terminals and at ATMs.

A licensee who has POS service already has an existing contract with a third party processor that routes electronic transactions through the commercial debit and credit networks. The SLA advisory requires licensees to contact that third party processor and request that the third party processor disable or remove EBT access from the licensee’s account. Once the EBT access has been disabled, an EBT cardholder who attempts to use the card will receive the same message that any other customer with a non-participating debit/credit

card would receive, and the card simply will be declined.

For C Licenses that have an ATM on their licensed premises, separate action is required to ensure that EBT cardholders are not able to withdraw money from ATMs at these locations. These licensees should contact the financial institution that is part of the licensee’s contract for ATM services and request that the financial institution add the New York EBT card’s unique Bank Identification Number (BIN), which is 600486, into their system and flag it as an unacceptable transaction. Once the BIN has been uploaded into the system, an EBT cardholder who attempts to use the card at those ATMs will be declined.

A violation of this new law subjects the licensee to possible disciplinary action, which could include license revocation, cancellation or suspension.

If you have any questions or need help in implementing EBT card blocking, contact Michael Burns at the New York State Office of Temporary and Disability Assistance, 518-402-3102 or e-mail michael.burns@otda.ny.gov.

conspicuously labeled with the amount of post-consumer recycled content. Plastic carryout bags will have to have special labeling approved by the County.

The Suffolk law, at least, faces an uncertain future. Suffolk County Executive Steve Bellone approved it, but he sent it back to the Legislature with a message asking them to change the law so the County gets a piece of each nickel, for an environmental protection fund. And Governor Cuomo’s panel to develop statewide solutions to the plastic bag litter problem could put a hold on both laws in favor of uniform statewide legislation.






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Pending Legislation

Legislation introduced, or expected to be introduced, in Albany this session includes proposals to increase the bottle law handling fee and index it to future increases in the minimum wage; to allow offsite container counting; and to expand the bottle law to containers of fruit juices, iced tea, milk, wine, liquor and wine products. Most of the proposals so far are “single house” bills, which means they have been introduced so far only in the Assembly or Senate, and so do not have much of a chance of getting passed. Still, it’s early in the session, and lots can still happen. A brief summary of proposals affecting C Licenses follows. At the end of the article, there’s information on how to contact your Albany lawmakers, to let them know you support or oppose any proposal. Watch NYSABC’s website, <http://www.nysabc.org> for up-to-the-minute legislative updates.

A 5582 (Garbarino) would eliminate the ban on offsite container counting and delete the requirement that distributors must provide bags, cartons, or other suitable containers, at no cost, for packaging, handling and pickup of empty containers.

A6690 (Crespo 2015-16) passed the Senate last year but died in Assembly. Establishes a defense for underage sale of alcoholic beverages for licensees who perform transaction scans, clerks have training certificate and have no violations for 2 years. Two-year window closed, bill must be reintroduced.

S3059 (Addabbo) A2014 (Skartados) would exempt veterans organizations from sales tax on beer, wine and soda.

S1841 (Kennedy) would reinstitute registration and recordkeeping on retail keg sales, require a \$50 deposit on keg and \$25 deposit on tap.

A577 (Rodriguez) if a dealer’s yearly purchases from a distributor are 100K cases or more, then a distributor must reimburse either cash on delivery or credit for immediate use for filled beverage containers.

A137 (Cahill) would allow the SLA to grant on-premises liquor licenses to “Certified Educators” in order to hold alcohol appreciation/education/tasting seminars and classes.

S109 (Hoylman) would expand coverage of bottle law to containers of fruit juices, iced tea, milk, wine, liquor and wine products.

S3430 (Kruger 2015-16) would allow grocery, drug and convenience stores to sell wine. Cs are included.

Indexed Handling Fee (not yet introduced). In order to compensate for minimum wage increase, this proposal would index the bottle law handling fee, increasing it to five cents immediately, then beginning December 31, 2018, each year the state or federal minimum wage is increased, the DEC Commissioner would determine the amount of a further increase according to the percentage increase in the minimum wage.

How to Find Out Who Your Assemblyman and Senators Are and for Contact Information

At these websites, you put in your zip code and you get a reply identifying your state representatives.

Assembly: <http://bit.ly/nyassembly>

Senate: <http://bit.ly/nySenator>

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Minimum Wage

For workers in New York City employed by large businesses (those with at least 11 employees), the minimum wage rose to \$11 at the end of 2016, will rise another \$2 each year after, reaching \$15 on 12/31/2018.

For workers in New York City employed by small businesses (10 employees or fewer), the minimum wage rose to \$10.50 at the end of 2016, then will increase another \$1.50 each year after, reaching \$15 on 12/31/2019.

For workers in Nassau, Suffolk and Westchester Counties, the minimum wage increased to \$10 at the end of 2016, then will go up \$1 each year after, reaching \$15 on 12/31/2021.

For workers in the rest of the state, the minimum wage increased to \$9.70 at the end of 2016, then will go up another .70 each year until reaching \$12.50 on 12/31/2020 – after which will the minimum will continue to increase to \$15 on an indexed schedule to be set by the Director of the Division of Budget in

consultation with the Department of Labor.

Safety Valve. Beginning in 2019, the state Budget Director will conduct an annual analysis of the economy in each region and the effect of the minimum

wage increases statewide to determine whether a temporary suspension of the scheduled increases is necessary.

For help and info: NY State Department of Labor, <http://bit.ly/nysMinWage>.

New Law Allows Custom Beer, Wine and Cider-Making Centers

A new state law effective November 14, 2016 allows the SLA to issue licenses for custom beer, cider and wine-making centers. These are premises that allow individuals to produce beer, wine or cider for personal use. In the case of beer, the license allows the licensee to provide individuals with rental space, the use of equipment and storage facilities and “beer making supplies.” Beer making supplies include hops, grains, malted grains, wort, sugars, yeasts, water, fruits, fruit juices, and other agricultural products including, but not limited to, honey and flowers, that are grown or produced in New York. The centers are also allowed to offer training classes on how to manufacture beer and to conduct tastings for individuals taking such classes and/or using the facility. Annual license is \$325. An SLA official said they are working on licensing procedures and that the licenses would not be available until later this year.



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