

## **Title 4**

### **Alcoholic Liquors**

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## Chapter 1 GENERAL PROVISIONS

### § 101 Definitions.

As used in this title, in addition to their usual meaning:

(1) "Alcohol" means ethyl alcohol produced by the distillation of any fermented liquid, whether rectified or diluted with water or not, whatever may be the origin thereof, and includes synthetic ethyl alcohol, but it does not mean ethyl alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

(2) "Alcoholic liquor" or "alcoholic liquors" include the 5 varieties of liquor defined in this section (alcohol, spirits, wine, beer and alcoholic cider) as well as every liquid or solid, patented or not, containing alcohol, spirits, wine, beer or alcoholic cider and capable of being consumed by a human being, and any liquid or solid containing more than 1 of the 5 varieties defined in this section is considered as belonging to that variety which usually has the higher percentage of alcohol. "Alcoholic liquor" or "alcoholic liquors" does not include a powdered alcoholic beverage. Notwithstanding any other definition in this chapter, "alcoholic liquor" does not include solids and confections that contain 2% or less alcohol by weight, so long as the package which contains the product or any menu or other medium noticing the product for sale, if the product contains between 1/2 of 1% alcohol by volume and 2% alcohol by weight, is labeled with the word "alcoholic," the phrase "contains alcohol," or some other indication that the product contains alcohol.

(3) "Appeals Commission" shall mean 3 persons, 1 from each County, appointed by the Governor with the advice and consent of a majority of the Senate.

(4) "Barrel," when used as a container for beer, means such container having a capacity of 31 United States standard gallons of 231 cubic inches.

(5) "Beer" means any beverage containing more than 1/2 of 1% of ethyl alcohol by volume, obtained by the alcoholic fermentation of any infusion or decoction of barley malt and hops in water and includes, among other things, ale, porter, stout and other malt or brewed liquors.

(6) "Beer garden" means a defined, outdoor establishment not less than 10,000 contiguous square feet, which is open to the public for at least 5 consecutive months. A beer garden must employ a daily average of not less than 25 full-time employees. A beer garden may sell beer, wine, and spirits by the glass or beer by the bottle, for consumption on any portion of the licensed premises. The sale of food is not required for licensure, but is permitted. The boundaries of a beer garden must be enclosed with a barrier no less than 42 inches high from the floor elevation, constructed of wood, concrete, plastic, rope, or wrought iron fencing, or other approved material. A beer garden must have a physical structure, which may be permanent or removable, and must be substantial. A "substantial physical structure" shall mean equipment and structures costing no less than \$250,000 at the time of acquisition. A beer garden license may not be used by an existing liquor license holder to expand the size or nature of the licensed establishment.

(7) "Bottle" means any vessel that is corked, capped or stopped or arranged so to be and intended to contain or to convey liquids.

(8) "Cabaret" means an establishment where patrons are entertained by performers who dance, sing, play instruments or perform other legal acts for entertainment, but not to include a dinner theater, and where such entertainment may be performed during or after service or dinner, and where a minor, as defined in § 708 of this title, is to be denied admission to or permission to remain on premises after 9:00 p.m. (official eastern time) unless accompanied by a parent or by a legal guardian.

(9) "Caterer" means any proprietorship, partnership or corporation engaged in the business of providing food and beverages at social gatherings such as weddings, dinners, benefits, banquets or other similar events for consideration on a regular basis and duly licensed by the State as caterers with at least 60% of its gross receipts resulting from the sale of food.

(10) Without regard to its usual meaning, and by way of limitation, "alcoholic cider" means any fermented beverage made from apples, containing more than 1/2 of 1% but not more than 7% of ethyl alcohol by volume. For purposes of this title, alcoholic cider shall be treated as within the definition of "wine" unless the specific language of a particular section indicates a contrary intent.

(11) "Club" means a corporation or association created by competent authority, which is the owner, lessee or occupant of premises operated solely for objects of national, social, patriotic, political or athletic nature, or the like, whether or not for pecuniary gain, and the property as well as the advantages of which belong to or are enjoyed by the stockholders or by the members of such corporation or association. A public golf course, open to all members of the public, whether privately or publicly owned, whose primary purpose is the operation of a golf course shall be included within meanings of this definition. Members of the public, utilizing the golf facility, shall be considered guests of the club.

(12) "Commissioner" means the person appointed by the Governor and confirmed by the Senate who serves as the Alcoholic Beverage Control Commissioner for the State.

(13) "Concert hall" shall mean an indoor facility used to host live entertainment that is owned, leased, under easement, and/or operated by any person and that has capacity for at least 600 patrons for any single event. In order for a facility to be licensed as a concert hall, the facility shall host a minimum of 250 live music events in any biennial licensing period. A facility meeting this definition may license the entire building, including patio, with the concert hall license.

(14) "Cooking wine" means a wine that is no more than 20% alcohol by volume and includes no less than 1.5% salt that is intended for cooking and not for beverage consumption.

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- (15) "Denatured alcohol" means ethyl alcohol or liquors containing ethyl alcohol to which substances or ingredients have been added to render the ethyl alcohol or liquors unfit for beverage purposes.
- (16) "Disorderly house" means house, or reputed house, of prostitution, ill-fame or assignation.
- (17) "Distillery," "winery" and "brewery" mean not only the premises whereon alcohol or spirits is distilled or rectified, wine is fermented or beer is brewed, but, in addition, the person owning, representing or in charge of such premises and the operations conducted thereon, including the blending and bottling or other handling and preparation of alcoholic liquor in any form.
- (18) "Division" means "Division of Alcohol and Tobacco Enforcement."
- (19) "Establishment" means any place located physically in this State where alcoholic liquor of 1 or more varieties is stored, sold or used by authority of any law of this State, including a hotel, restaurant, tavern, beer garden, or club as defined in this section, or where alcoholic liquor of 1 or more varieties is manufactured by virtue of any law of this State.
- (20) "Gathering of persons" or "gathering" means a banquet, picnic, bazaar, fair or similar private gathering or similar public gathering where food or drink are sold, served or dispensed by nonprofit organizations such as churches, colleges and universities, volunteer fire companies, political parties or other similar nonprofit groups having a common civic, social, educational or religious purpose, or where entrance tickets are sold or entrance fees are required by those nonprofit organizations.
- (21) "Hotel" means any establishment, provided with special space and accommodation, where, in consideration of payment, food and lodging are habitually furnished to travelers.
- (22) "Import" means the transporting or ordering or arranging for the transportation or shipment of alcoholic liquor into the State whether by a resident of the State or otherwise.
- (23) "Importer" means the person transporting or ordering, authorizing or arranging the transportation or shipment of alcoholic liquors into this State, whether the person is a resident or citizen of this State or not, said person being permitted to sell said alcoholic liquors only to those persons licensed to resell alcoholic liquors; provided, however, that nothing contained in this definition shall be construed as prohibiting an importer from selling such alcoholic liquors to either an active owner of that business for that person's use and not for resale or to a full-time, bona fide employee of that business for that person's use and not for resale; and provided further, that nothing contained in this definition shall be construed as prohibiting an importer from selling beer in "half-barrel" or "quarter-barrel" containers to the holders of a personal license. The Commissioner may enact such rules regulating the sale of alcoholic liquor to active owners and employees of licensed importers as it deems necessary.
- (24) "License" means any license or permit to manufacture, to sell, to purchase, to transport, to import or to possess alcoholic liquor authorized or issued by the Commissioner under the provisions of Chapter 5 of this title.
- (25) "Manufacture" means distill, rectify, ferment, brew, make, mix, concoct or process any substance or substances capable of producing a beverage containing more than 1/2 of 1% of alcohol by volume and includes blending, bottling or other preparation for sale.
- (26) "Manufacturer" means any person engaged in the manufacture of any alcoholic liquor and among others includes a distiller, a rectifier, a wine maker, a brewer, and includes a bottler or one who prepares alcoholic liquor for sale.
- (27) "Mead" means an alcoholic beverage that is naturally fermented (not distilled or frozen) wherein the major source of fermentable sugars comes from honey.
- (28) "Member of a club" means an individual who, whether as a charter member or admitted in accordance with the rules or the bylaws of the club, has become a member thereof, who maintains membership by the payment of dues in the manner established by the rules or bylaws, and whose name and address is entered on the list of members supplied to the Commissioner at the time of the application for a license under Chapter 5 of this title, or, if admitted thereafter, within 8 days after admission and payment of dues, if such dues are required. The Commissioner is authorized to extend the meaning of the words "member of a club" to include those who are granted temporary membership or membership of less than 1 year in accordance with a rule or bylaw of the club approved by the Commissioner. "Member of a club" which is a multiple activity club means a person who, pursuant to the charter, bylaws or rules of the club, is a member in good standing of such club, and whose name and address is supplied in writing to the Commissioner by the club within 8 days after admission to membership, or who holds a temporary membership in such club, pursuant to a charter provision, or bylaw or rule approved by the Commissioner.
- (29) "Motorsports speedway" shall mean a motorsports speedway (including any contiguous land when being used in connection with its events) that is owned, leased, under easement, and/or operated by any person and having a seating capacity of at least 5,000 seats. A motorsports speedway may operate under its own license while using the premises of a license holder at a horse racetrack, but only to the extent that neither license holder uses the same portion of the premises at the same time and no commingling of inventory occurs. The converse of this shall also apply to a license holder at a horse racetrack using the premises of a motorsports speedway.
- (30) "Movie theater" shall mean an indoor facility used to host showings of motion pictures and that has a capacity of at least 500 patrons for any single movie showing or for showing of multiple movies in separate theaters at the same time. In order for a facility to be licensed as a movie theater, the facility shall host a minimum of 250 movie showings in any calendar year and shall be open at least 5 days a week.
- (31) "Multiple activity club" is a club as to which, in the determination of the Commissioner, the service of spirits, wine or beer is not the principal activity in the premises of the club as established by the following:

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- a. Gross revenue of the club from the sale of spirits, wine and beer does not exceed 40% of its total annual revenue including dues, fees and assessments, and either
  - b. Meals are served by the club at regular hours on at least 6 days of the week,
  - c. The club has a physical facility, regularly used by members of the club, which is devoted primarily to activities other than the sale or consumption of spirits, wine or beer, or
  - d. A public golf course, as defined in paragraph (11) of this section, may be licensed as a multiple activity club, however, is not subject to the requirements as set forth in paragraph (31)c. of this section.
- (32) "Multi-purpose sports facility" shall mean a stadium owned and/or operated by the State, featuring minor league baseball games where admission fees are charged to the public and having a seating capacity of at least 4,000 seats, and excludes stadia which are operated and maintained by educational institutions, including, but not limited to, high schools, colleges or universities.
- (33) "Off-site caterer" means any proprietorship, partnership or corporation engaged in the business of providing food and beverages at social gatherings, such as weddings, dinners, benefits, banquets or other similar events, that are held off the site of the caterer's business for consideration and on a regular basis. An off-site caterer must be duly licensed by the State under Title 30 as a caterer, with at least 60% of its gross receipts resulting from the sale of food.
- (34) "Person" includes an individual, a partnership, a corporation, a club or any other association of individuals.
- (35) "Powdered alcoholic beverage" means any powders or crystals that, after being mixed with sugar, water, or any other nonalcoholic materials, ferments or otherwise becomes a wine, beer, or other alcoholic beverage.
- (36) "Preparation" means any medicine (patented or proprietary); any mixture containing drugs or mineral substances; any perfume, lotion, tincture, varnish, dressing, fluid extract or essence, vinegar, cream, ointment or salve; any distillate or decoction, whether or not containing other substances in solution or suspension, that contains ethyl alcohol or any alcoholic liquor to any amount exceeding 1/2 of 1% by volume.
- (37) "Residence" means the place occupied by a person as a domicile or otherwise, either permanently or temporarily, and includes not only the premises occupied, but also every annex or dependency thereof held under the same title as the premises occupied.
- (38) "Restaurant" means any establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for consideration and which has seating at tables for 12 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook.
- (39) "Retailer" means the person permitted to sell alcoholic liquors in a store in the State, not for consumption on the premises.
- (40) "Sale" means every act of selling as defined in this section.
- (41) "Sell" means: solicit or receive an order for; keep or expose for sale; deliver for value or in any other way than purely gratuitously; keep with intent to sell; keep or transport in contravention of this title; traffic in; or for any valuable consideration, promised or obtained, directly or indirectly, or under any pretext or by any means whatsoever, procure or allow to be procured for any other person, to carry alcoholic liquors on one's person or to transport with one and with intent to sell the same, but not in any establishment where the sale thereof is allowed.
- (42) "Spirits" means any beverage containing more than 1/2 of 1% of ethyl alcohol by volume mixed with water and other substances in solution, and includes, among other things, brandy, rum, whiskey and gin.
- (43) "Spirits, wine and beer tasting" means the consumption of spirits, wine and beer for the purpose of sampling for prospective purchase only. The quantity of any individual spirit, wine and beer sampled is not to exceed 1 ounce for wine and beer and 1/2 ounce for spirits.
- (44) "Taproom" means an establishment provided with special space and accommodations and operated primarily for the sale by the glass and for consumption on the premises of alcoholic liquors with the sale of food as a secondary object as distinguished from a restaurant where the sale of food is the primary object.
- (45) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises of beer as defined in this section.
- (46) "Temporary large event" means a public or private gathering of more than 1,000 people where food or drink are sold, served or dispensed and which requires an entrance ticket or entrance fee to attend, including but not limited to a: music festival; car show; auction; convention or rally.
- (47) "Temporary large event promoter" means the person arranging or promoting the temporary large event.
- (48) "Traveler" means an individual guest or customer of a hotel, restaurant or tavern.
- (49) "Vehicle" means any means of transportation by land, by water or by air, and includes everything made use of in any way whatsoever for such transportation.
- (50) "Whoever," when used in reference to any offender under this title, includes every person who acts individually or by permission or agreement for any other person, and includes also such other person.
- (51) "Wine" means any beverage containing more than 1/2 of 1% ethyl alcohol by volume obtained by the fermentation of the natural contents of fruits, vegetables or other products and other vinous liquors, and also includes such beverages when fortified by the addition of alcohol or spirits as defined in this section.

(38 Del. Laws, c. 18, §§ 3, 4; Code 1935, §§ 6132, 6133(12); 45 Del. Laws, c. 263, § 1; 4 Del. C. 1953, § 101; 50 Del. Laws, c. 300, § 1; 51 Del. Laws, c. 239; 56 Del. Laws, c. 335, §§ 1, 2; 59 Del. Laws, c. 107, §§ 1-3, 71; 59 Del. Laws, c. 128, § 1; 60 Del. Laws,

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c. 466, §§ 1, 2; 63 Del. Laws, c. 397, § 1; 64 Del. Laws, c. 437, § 1; 65 Del. Laws, c. 50, §§ 1-3; 65 Del. Laws, c. 283, § 1; 67 Del. Laws, c. 48, § 1; 67 Del. Laws, c. 109, § 1; 69 Del. Laws, c. 6, § 1; 69 Del. Laws, c. 18, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 353, § 1; 70 Del. Laws, c. 559, §§ 1-4; 71 Del. Laws, c. 210, § 1; 71 Del. Laws, c. 302, §§ 1, 2; 72 Del. Laws, c. 486, §§ 1-4; 73 Del. Laws, c. 244, § 1; 73 Del. Laws, c. 393, § 1; 74 Del. Laws, c. 250, § 1; 76 Del. Laws, c. 32, § 6; 77 Del. Laws, c. 339, § 1; 78 Del. Laws, c. 220, § 1; 79 Del. Laws, c. 6, § 1; 79 Del. Laws, c. 229, § 1; 79 Del. Laws, c. 308, § 1; 80 Del. Laws, c. 4, § 1; 80 Del. Laws, c. 109, § 1; 81 Del. Laws, c. 15, § 1; 81 Del. Laws, c. 69, § 1; 81 Del. Laws, c. 100, § 1; 81 Del. Laws, c. 372, § 1.)

### **§ 102 Statewide application; exceptions.**

(a) This title shall apply to the State, but if, in any of the districts created by § 2, article XIII of the Constitution of this State, a majority of the qualified electors thereof vote against license, the application of this title and the provisions thereof shall be suspended therein.

(b) Nothing in this title shall be interpreted as authorizing the manufacture, distribution, sale, transportation or importation of alcoholic liquors, alcohol, spirits, wines or beer, as defined in § 101 of this title, where such manufacture, distribution, sale, transportation or importation is prohibited by the Constitution of the United States or of the State, or under the statutes thereof.

(38 Del. Laws, c. 18, § 2; Code 1935, § 6131(l); 4 Del. C. 1953, § 102.)

### **§ 103 Effective date; extent of effectiveness.**

(a) Any section or provision of this title which purports to authorize or to license the manufacture, distribution, sale, transportation, importation, purchase or possession of alcoholic liquor, as defined in § 101 of this title, shall be effective only when and to such extent as may be permitted under the Constitutions of the United States and of the State, or under the statutes thereof.

(b) At such time or times as the manufacture and sale of alcoholic liquor is permitted in any of the districts created by § 2, article XIII of the Constitution of this State, such manufacture and sale shall be regulated under the provisions of this title and by the Commissioner mentioned in § 301 of this title.

(38 Del. Laws, c. 18, §§ 2, 4; Code 1935, §§ 6131(2), 6133(2); 4 Del. C. 1953, § 103; 72 Del. Laws, c. 486, § 5.)

### **§ 104 Sale or shipment out of State.**

(a) No sale of alcoholic liquor shall be made to a person in a state or a division of a state where such sale is prohibited by law.

(b) No shipment of alcoholic liquor shall be made into a state or into a division of a state where such shipment is prohibited by law.

(38 Del. Laws, c. 18, § 2; Code 1935, § 6131(3), (4); 4 Del. C. 1953, § 104.)

**Chapter 2**  
**TRANSITION PROVISIONS**

**§ 201 Transition provisions.**

(a) All definitions and references to any commission, division or agency which appear in any other act or law are to be construed, to the extent they are consistent with this chapter and in connection with the function transferred by this chapter, as referring or relating to the agency, department, division, office or subdivision to which the function is transferred.

(b) All orders, rules and regulations made by any commission, division or agency which govern the functions of such commission, division or agency, and which are in effect on December 1, 2000, shall remain in full force and effect until revoked or modified in accordance with law by the agency, department, division, office or subdivision to which the functions are transferred.

(c) All investigations, petitions, hearings and legal proceedings pending before or instituted by, any agency, commission or division from which functions are transferred by this chapter and which are not concluded by December 1, 2000, shall continue unabated and remain in full force and effect to be completed by the agency, department, division, office or subdivision assigned under this chapter.

(72 Del. Laws, c. 486, § 6.)

**Chapter 3**

**DELAWARE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**

**§ 301 Delaware Alcoholic Beverage Control Commissioner; Appeals Commission; qualifications; appointment; term; compensation.**

(a) The Commissioner shall be a resident of Delaware and suitably educated and experienced to carry out the duties and responsibilities set forth in this chapter.

(b) The Commissioner and 3 members of the Appeals Commission, 1 from each County, shall be appointed by the Governor and confirmed by a majority of the members elected to the Senate and shall serve at the pleasure of the Governor.

(c) In the event of death, resignation, temporary incapacity or removal of the Commissioner and prior to the appointment of a successor, the Governor may appoint the Deputy Commissioner, or such other person as deemed qualified by the Governor, to serve as Acting Commissioner. The Commissioner may name a Deputy Commissioner. The Commissioner may, during an absence from the State, appoint the Deputy Commissioner to serve as Acting Commissioner during such absence. In either case, the Acting Commissioner shall have all the powers and shall perform all the duties and functions of the Commissioner during the Commissioner's absence or incapacity or until a successor is duly qualified and appointed.

(d) The Commissioner shall be compensated as provided for in the Annual Budget Act.

(e) The members of the Appeals Commission shall be compensated at the rate of \$150 per meeting together with the reasonable expenses for no more than 12 meetings per year.

(f) The Appeals Commission shall meet and elect a chairperson who shall convene meetings of the Commission as frequently as needed to consider appeals of the Commissioner's decision.

(38 Del. Laws, c. 18, § 4; Code 1935, § 6133(1), (5)-(7); 4 Del. C. 1953, § 301; 50 Del. Laws, c. 393, § 3; 50 Del. Laws, c. 547, § 3; 55 Del. Laws, c. 308, § 1; 60 Del. Laws, c. 265, § 1; 72 Del. Laws, c. 486, § 7; 73 Del. Laws, c. 135, § 1.)

**§ 302 Location of office.**

The office of the Commissioner shall be located in New Castle County.

(38 Del. Laws, c. 18, § 4; Code 1935, § 6133(11); 4 Del. C. 1953, § 302; 57 Del. Laws, c. 404, § 1; 72 Del. Laws, c. 486, § 7.)

**§ 303 Employees.**

Necessary staff as required shall be employed as required to carry out the work under the chapter. After December 1, 2001, the Joint Legislative Oversight and Sunset Committee will review the duties and responsibilities of the Commissioner to determine if additional staff, including hearing officer or officers, is necessary. The Personnel Section of the Department of Safety and Homeland Security shall provide personnel services and other necessary support services for the office of the Commissioner and the Appeals Commission.

(38 Del. Laws, c. 18, § 4; Code 1935, § 6133(8)-(10); 4 Del. C. 1953, § 303; 72 Del. Laws, c. 486, § 7; 74 Del. Laws, c. 110, § 138; 80 Del. Laws, c. 260, § 6.)

**§ 304 Duties and powers of the Commissioner.**

(a) The Commissioner, in accordance with the Delaware Administrative Procedures Act, shall:

(1) Adopt and promulgate rules and regulations not inconsistent with this title or of any other law of the State, and all such rules and regulations shall have the force and effect of law; provided, however, that no such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof; and provided further, however, that such rules and regulations, as established by the Commissioner, shall focus primarily on public safety and the best interests of the consumer and shall not unduly restrict competition within the alcoholic beverage industry;

(2) Establish by rules and regulations an effective control of the business of manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, not inconsistent with this title or with any other law of this State. However, such rules and regulations, as established by the Commissioner, shall not control or regulate:

- a. Recreational equipment located on the business premises of any business selling alcoholic beverages;
- b. Credit transactions between licensed wholesalers and licensed retailers, to the extent permitted by federal law;
- c. Purchases of 1 case not to exceed 20 gallons of alcoholic beverages per day by the holder of a retail license from another holder of a retail license;

(3) Control the manufacture, possession, sale and delivery of alcoholic liquors in accordance with this title; and control the purchase, possession, transportation and sale of alcoholic liquors by those licensed to manufacture or to sell; provided, however, that the Commissioner's power to control the sale of alcoholic liquors shall not be exercised in such a manner as to prevent any holder of a retail license for the sale of alcoholic liquors not for consumption on the premises where sold from giving a retail purchaser of a case or more of spirits and/or wine a discount not to exceed 10% of the total dollar sale;

(4) Grant, refuse or cancel licenses required by this title for the manufacture or sale of alcoholic liquor, or other licenses required by this title in regard thereto, and to transfer any license granted;



(5) On petition signed by at least 10 individuals who are residents of the neighborhood, hear complaints in regard to the appointments of, or the conduct of business in, any establishment where alcoholic liquor is licensed to be sold. Ten days' notice of such hearings, together with a recital of the complaint, shall be sent by registered mail by the Commissioner's office to the address of the holder of the license for the establishment and like notice shall be delivered at the establishment by affixing the notice addressed to the holder of the license to the outside of an entrance door to the establishment. The hearings shall be conducted by the Commissioner and shall be public. The Commissioner shall for the purpose of such hearings have power to issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony and compel the production of pertinent books, payrolls, accounts, papers, records and documents. In case any person summoned to testify or to produce any such written or printed evidence shall refuse, without reasonable cause, to be examined or to answer a legal and pertinent question or to produce any such written or printed evidence, the Commissioner conducting the hearing may certify the fact of any such refusal to the Superior Court of the county in which such hearing is held and the court may proceed against the person so refusing as for a contempt and punish such person in the same manner as persons are punished for contempt of court;

(6) Determine and publish standards for the manner in which the dining room or dining rooms of a hotel, restaurant or club shall be equipped in order to be allowed to exercise the privilege of the sale of alcoholic liquors therein; and examine the plans or premises proposed for use as a dining room and authorize their use in connection with a license to sell alcoholic liquors, but such authorization shall not prevent the requirement by the Commissioner of future alterations in accordance with published standards;

(7) Compel the attendance of witnesses and the production of contracts, papers, books, accounts and other documents. Subpoenas issued shall be signed by the Commissioner and may be served by any sheriff, deputy sheriff, constable or any agent of the Division and return thereof made to the Commissioner. The Commissioner may enforce compliance with a subpoena issued pursuant to this subsection by filing a motion to compel in the Superior Court, which shall have jurisdiction over the matter. The court may award costs and attorney fees if it determines that noncompliance with a Commissioner subpoena was unjustified, intentional, or in bad faith.

(8) Act, for purposes of this Title, as the competent authority in connection with other matters pertinent thereto;

(9) Make an annual report submitted to the Governor and members of the General Assembly setting forth all matters of interest and all statistics concerning liquor regulation and control in the State, including:

- a. The number of licenses of each variety issued within the State;
- b. The name and address of each person licensed to manufacture or to sell alcohol, spirits, wine and beer;
- c. The amount of alcohol, spirits, wine and beer sold within the State;
- d. The number of licenses of each kind granted and the number cancelled during the year; and
- e. Such other data as may make a complete report to the people of this State;

(10) Negotiate and, with the approval of the Governor, enter into reciprocal agreements with the duly authorized officials of other states of the United States relative to the manufacture, importation, sale and transportation of alcoholic liquors in the several states;

(11) Provide such special seals, labels and wrappers as deemed necessary for protection of the public against imitations, adulterations and frauds, and prescribe the proper use of the seals, labels and wrappers; and

(12) Provide such warning signs as may be required by § 903(16) of this title and distribute such signs to license holders and promulgate regulations with respect to the posting of said signs. A nominal fee may be charged by the Commissioner to cover printing, handling and distribution costs.

(b) The Commissioner's decision shall be final and conclusive unless, within 30 days after notice thereof has been mailed by the Commissioner's office, a party to such hearing files an appeal in the office of the Commissioner. Upon receipt of the appeal, the Commissioner shall cause the Chairperson of the Appeals Commission to be advised of the pending appeal and the Chairperson shall cause the Commission to be convened with at least 20 days notice to all parties. The appeal shall be heard by the Appeals Commission, who shall, in accordance with the Administrative Procedures Act, Title 29 of the Delaware Code, review the matter on the record and affirm, reverse or modify the decision of the Commissioner.

(c) The Commissioner may appear before the Appeals Commission for any appeal of the Commissioner's decision and may appeal any decision of the Appeals Commission or any decision of the Superior Court on appeal from the Appeals Commission.

(38 Del. Laws, c. 18, §§ 5, 27, 35; Code 1935, §§ 6134, 6156, 6164; 42 Del. Laws, c. 193, § 1; 4 Del. C. 1953, § 304; 49 Del. Laws, c. 387; 50 Del. Laws, c. 547, § 4; 57 Del. Laws, c. 494, § 2; 57 Del. Laws, c. 740, §§ 5A, B; 59 Del. Laws, c. 107, §§ 4-7; 59 Del. Laws, c. 590, § 1; 65 Del. Laws, c. 322, § 1; 67 Del. Laws, c. 23, § 3; 67 Del. Laws, c. 110, § 1; 67 Del. Laws, c. 109, §§ 2, 3; 67 Del. Laws, c. 344, § 2; 69 Del. Laws, c. 314, § 1; 69 Del. Laws, c. 340, §§ 1, 2; 71 Del. Laws, c. 271, § 1; 72 Del. Laws, c. 486, § 7; 73 Del. Laws, c. 133, § 1; 80 Del. Laws, c. 325, § 1.)

### **§ 305 Oath of Office of Commissioner and employees.**

The Commissioner, Appeals Commission and any hearing officer(s) shall, on entering office, take the oath of the Constitution of the State. Any other employee may be required to take the oath of the Constitution of the State at the discretion of the Secretary of Public Safety.

(38 Del. Laws, c. 18, § 6; Code 1935, § 6135(1); 4 Del. C. 1953, § 305; 57 Del. Laws, c. 740, § 5C; 67 Del. Laws, c. 109, § 4; 69 Del. Laws, c. 314, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 7.)

### **§ 306 Conflict of interest.**

(a) The Commissioner, Appeals Commission, and any hearing officer(s) or such person's spouse, or such person's son or daughter residing at such person's residence, shall not have a financial interest in any entity that sells, manufactures, or uses alcohol; provided, however, such persons may invest in mutual funds or similar financial instruments that hold no more than a 10% interest in any such entity.

(b) Neither the Commissioner nor any person employed in the office of the Commissioner shall receive any commission or profit whatsoever from, or have any interest whatsoever in a business licensed under this chapter to purchase or sell alcoholic liquors; provided, however, that nothing in this section shall prevent the Commissioner, Appeals Commission, hearing officer(s) or employee from purchasing and keeping alcoholic liquors in his or her possession for the personal use of him or herself, members of his or her family or his or her guests if such purchase is otherwise permitted by this title.

(c) The Commissioner and the Appeals Commission shall annually file with the Public Integrity Commission the Financial Report pursuant to § 5813 of Title 29.

(38 Del. Laws, c. 18, § 7; Code 1935, §§ 6136(1), (3); 4 Del. C. 1953, § 307; 57 Del. Laws, c. 740, §§ 5E, F; 59 Del. Laws, c. 107, § 8; 72 Del. Laws, c. 486, § 7.)

### **§ 307 Commissioner's statement of interest in liquor business.**

When notified of appointment as Commissioner or Appeals Commissioner, the individual so notified shall furnish in duplicate and in writing to the Governor and to the President Pro Tempore of the Senate a statement of every interest, direct or indirect, and however small, held or owned by him or her as a member or as a stockholder in any partnership, corporation or other association engaged in the sale or in the manufacture of alcoholic liquors or in any undertaking, industry or business in which alcoholic liquors are used or required and prior to taking the oath of office the Commissioner and Appeals Commission must wholly and fully dispose of all interests. One copy of the statement shall be inserted in the permanent records of the office of the Commissioner open to public inspection.

(38 Del. Laws, c. 18, § 6; Code 1935, §§ 6135(2), (3); 4 Del. C. 1953, § 306; 57 Del. Laws, c. 740, § 5D; 69 Del. Laws, c. 314, § 3; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 7.)

### **§ 308 Promulgation, repeal and amendment of rules and regulations.**

(a) All rules and regulations of the former Alcoholic Beverage Control Commission currently in place as of December 1, 2000, shall remain in full force and effect until revoked or modified in accordance with the procedures set forth in this chapter.

(b) The Commissioner may make any regulation and may amend or repeal any regulation as the Commissioner deems necessary for carrying out this title respecting internal economy and the conduct of business, and may amend or repeal any such regulation. Such regulations shall be published in form open to public inspection at the office of the Commissioner and in accordance with the Administrative Procedures Act.

(c) Any regulation made by the Commissioner and approved and published as provided by this chapter may be repealed or amended either by another regulation of the Commissioner, approved and published as so provided, or by an act of the General Assembly of this State.

(38 Del. Laws, c. 18, § 8; Code 1935, § 6137; 4 Del. C. 1953, § 309; 57 Del. Laws, c. 494, § 1; 72 Del. Laws, c. 486, § 7.)

### **§ 309 Bond.**

Repealed by 73 Del. Laws, c. 134, § 1, eff. July 9, 2001.

### **§ 310 Deposit of receipts with Division of Revenue.**

All moneys received by the Commissioner shall be paid to the Division of Revenue of the Department of Finance. A monthly report of all receipts of the Commissioner shall be made to the State Treasurer.

(38 Del. Laws, c. 18, § 11; 40 Del. Laws, c. 24, § 1; Code 1935, § 6140(1); 42 Del. Laws, c. 77, §§ 1-3; 4 Del. C. 1953, § 311; 59 Del. Laws, c. 107, § 9; 67 Del. Laws, c. 109, § 5; 72 Del. Laws, c. 486, § 7.)

### **§ 311 Property and profits of the office of the Commissioner.**

All property owned by the office of the Commissioner and all associated profits shall be the property of the State.

(38 Del. Laws, c. 18, § 11; Code 1935, § 6141; 4 Del. C. 1953, § 313; 67 Del. Laws, c. 109, § 5; 72 Del. Laws, c. 486, § 7.)

### **§ 312 Financial statements of the Commissioner.**

The Commissioner shall render an account to the State Treasurer, in the manner and at the time required by the latter, of its receipts and disbursements, and of its assets and liabilities. The State Treasurer will not, however, require such reports to be rendered more often than quarterly.

(38 Del. Laws, c. 18, § 13; Code 1935, § 6142(1); 4 Del. C. 1953, § 314; 59 Del. Laws, c. 107, § 11; 67 Del. Laws, c. 109, § 5; 72 Del. Laws, c. 486, § 7.)

### **§ 313 Annual audit.**

The operation of the office of the Commissioner shall annually be examined and audited by the State Auditor of Accounts.

(38 Del. Laws, c. 18, § 13; Code 1935, § 6142(2); 4 Del. C. 1953, § 315; 59 Del. Laws, c. 107, § 12; 67 Del. Laws, c. 109, § 5; 72 Del. Laws, c. 486, § 7.)

## Chapter 4

### DIVISION OF ALCOHOL AND TOBACCO ENFORCEMENT

#### § 401 Division of Alcohol and Tobacco Enforcement.

The Division of Alcohol and Tobacco Enforcement of the Department of Safety and Homeland Security is established as follows for the administrative, ministerial, budgetary and clerical functions for the enforcement of the alcohol laws of this Code and youth access to tobacco laws in §§ 1115 through 1127 of Title 11.

(72 Del. Laws, c. 486, § 8; 74 Del. Laws, c. 110, § 138; 74 Del. Laws, c. 250, § 1.)

#### § 402 Location of office.

(72 Del. Laws, c. 486, § 8; repealed by 78 Del. Laws, c. 348, § 1, eff. July 18, 2012.)

#### § 403 Duties and powers of the Division.

The Division shall:

(1) Investigate, prevent and arrest for violations of this title, make seizure of alcoholic liquor, manufactured, sold, kept or transported in contravention thereof, and confiscate such alcoholic liquor whenever required by any provision of this title;

(2) Arrange for the proper sampling, testing and analyzing of alcoholic liquor offered for sale in this State upon receipt of a complaint regarding health by entering into an agreement with the Director of Forensic Science Laboratories of the Department of Health and Social Services to test alcoholic liquor product when requested by the Division. This subsection does not apply to home breweries.

(3) Only require an inventory by a package store licensee if it has evidence to support a finding that such licensee has violated this title.

(72 Del. Laws, c. 486, § 8.)

#### § 404 Employees of the Division.

The Department of Safety and Homeland Security shall appoint, employ or dismiss every officer or employee necessary for carrying out the work of the Division, establish salaries, subject to the Annual Appropriation in the Budget Act, and assign them their official titles and duties, and engage the services of experts and persons engaged in the practice of a profession at the discretion of the Secretary of the Department of Safety and Homeland Security. At the discretion of the Secretary of the Department of Safety and Homeland Security, officers and employees appointed by the Department of Safety and Homeland Security shall have the police powers of constables and other police officers of the State, counties and other subdivisions of the State, and they shall be conservators of the peace throughout the State, and they shall be eligible for certification by the Council on Police Training, and may suppress all acts of violence and enforce the provisions of this title.

(72 Del. Laws, c. 486, § 8; 74 Del. Laws, c. 110, § 138.)

**Chapter 5**  
**LICENSES AND TAXES**  
**Subchapter I**  
**Manufacture and Import**

**§ 501 Supplier and representative licenses; delivery and storage at in-state warehouse.**

(a) Before any person sells any alcoholic liquor intended for importation into this State, such person shall procure from the Commissioner a supplier's license in the form to be prescribed by the Commissioner and shall pay therefor a biennial fee in the amount of \$100 to be permitted to sell not more than 200 cases of alcoholic liquors for importation into the State during the calendar year or a biennial fee in the amount of \$1,000 to be permitted to sell more than 200 cases of alcoholic liquors for importation into this State during the calendar year. This subsection shall not apply to any person licensed under subsection (b) of this section or to any person who either is licensed by the Commissioner and has a place of business in this State for the manufacture or sale of alcoholic liquors or is an officer, director, or employee of a person, licensed by the Commissioner, having a place of business in this State for the manufacture or sale of alcoholic liquors.

(b) Before any person shall do any business in this State in any manner whatsoever as a sales representative of a person who sells any alcoholic liquors intended for importation into this State, such person shall first obtain from the Commissioner a sales representative license in the form to be prescribed by the Commissioner and shall pay a biennial fee therefor in the amount of \$50. Unless employed in any way by a person required to be licensed under subsection (a) of this section above, this subsection shall not apply to any person, who either is licensed by the Commissioner and shall not apply to any person, who either is licensed by the Commissioner and has a place of business in this State for the manufacture or sale of alcoholic liquors or is an officer, director or employee of a person, licensed by the Commissioner, having a place of business in this State for the manufacture or sale of alcoholic liquors.

(c) This section shall not apply to a daily importation into the State of a quantity of alcoholic liquor which does not exceed that amount which the United states government permits to be imported into the United States without payment of any duty thereon, provided such alcoholic liquor is imported by a person permitted by the laws of this State to purchase and consume alcoholic liquor and that such alcoholic liquor is imported solely for consumption by the person importing it or the person's family or guests. If such importation is by motor vehicle, the alcoholic liquor shall be transported in an area of the motor vehicle not immediately accessible to the driver or to any passenger therein.

(d) Persons licensed by the Commissioner as suppliers pursuant to this section shall be authorized only to sell, ship or deliver alcoholic liquors to licensed Delaware importers or manufacturers, and persons licensed by the Commissioner as sales representatives pursuant to this section shall be authorized only to solicit orders, on behalf of licensed Delaware importers or manufacturers, from persons licensed by the Commissioner to sell alcoholic liquors.

(e) The Commissioner may promulgate such rules and regulations as it deems necessary for the enforcement or furtherance of the objectives of this section and it may provide by such rules or regulations that the applicant for a supplier's license may pay a fee for each calendar year or pay the increased fee during any calendar year without the filing of an additional application.

(f) No person may import into this State any alcoholic liquor unless it is delivered directly to a licensed warehouse or warehouses in Delaware owned, leased or operated by a licensed Delaware importer and is unloaded and physically stored in said warehouse or warehouses.

(38 Del. Laws, c. 18, § 15; Code 1935, § 6144(1); 4 Del. C. 1953, § 501; 58 Del. Laws, c. 25; 59 Del. Laws, c. 107, § 13; 67 Del. Laws, c. 48, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 408, §§ 1, 2; 72 Del. Laws, c. 486, § 9; 77 Del. Laws, c. 72, § 2.)

**§ 502 Application; requirements.**

(a) The application for a license to manufacture or to import alcoholic liquor shall be made upon a blank form furnished by the Commissioner and shall state:

- (1) The name, age, and previous occupation of an individual applicant or the name and description of a partnership, corporation, or other applicant organization;
- (2) The location and description of the premises, located in this State, where it is proposed that such alcoholic liquor is to be manufactured or is to be stored by the importer prior to its resale in the State and whether the premises are owned or leased by the applicant and, if leased, the name of the owner thereof;
- (3) The amount of capital proposed to be invested in the undertaking;
- (4) The kind and approximate amount of alcoholic liquor proposed to be manufactured or imported;
- (5) The approximate date on which it is proposed to start such manufacture or importation;
- (6) Such other information as is required by the Commissioner.

(b) The individual signing the application for a license to manufacture or to import alcoholic liquor shall be over 21 years of age. (38 Del. Laws, c. 18, § 15; Code 1935, § 6144(1); 4 Del. C. 1953, § 502; 59 Del. Laws, c. 107, § 14; 67 Del. Laws, c. 48, § 3; 67 Del. Laws, c. 109, § 6; 72 Del. Laws, c. 486, § 9.)

### § 503 Inspection of premises.

The Commissioner shall inspect or cause to be inspected premises, located in this State, which are proposed by any applicant to be used for manufacture or storage, and shall make record of the date of such inspection, the name of the inspector and the result of the inspection.

(38 Del. Laws, c. 18, § 15; Code 1935, § 6144(2); 4 Del. C. 1953, § 503; 72 Del. Laws, c. 486, § 9.)

### § 504 Bond.

The Commissioner may require that any person licensed in accordance with § 501 of this title shall furnish a satisfactory bond in such amount as the Commissioner deems necessary to guarantee the performance of the requirements of this title.

(38 Del. Laws, c. 18, § 15; Code 1935, § 6144(9); 4 Del. C. 1953, § 504; 59 Del. Laws, c. 107, § 15; 72 Del. Laws, c. 486, § 9.)

### § 505 Conditions for issuance of license.

No license to manufacture or import shall be issued unless the Commissioner is satisfied as to the responsibility of the applicant, as to the condition of the premises proposed to be used and as to the means proposed to be used to determine the amount of alcoholic liquor manufactured or imported.

(38 Del. Laws, c. 18, § 15; Code 1935, § 6144(3); 4 Del. C. 1953, § 505; 72 Del. Laws, c. 486, § 9.)

### § 506 Interest in establishment selling to consumer.

(a) It shall be unlawful:

(1) For a manufacturer or supplier, or the owner, partner or stockholder of a manufacturer or supplier, to own or be interested in any manner in any establishment licensed by the Commissioner to sell alcoholic liquors, either by the bottle or by the glass to the consumer thereof for consumption either on or off the premises where sold; or

(2) For a manufacturer, as defined in § 101 of this title, and whether or not said "manufacturing" takes place within this State and whether or not the activity is licensed by the Commissioner, or the owner, partner or stockholder of such a manufacturer, to own or be interested in any manner in any establishment licensed by the Commissioner to import alcoholic liquors into the State; or

(3) For a supplier, whether or not licensed by the Commissioner, who manufactures or has an interest in a manufacturer, or the owner, partner or stockholder of such a supplier, to own or be interested in any manner in any establishment licensed by the Commissioner to import alcoholic liquors into the State; or

(4) For a supplier licensed by the Commissioner, or the owner, partner or stockholder of such a licensed supplier, to own or be interested in any manner in any establishment licensed by the Commissioner to import alcoholic liquors into the State; or

(5) For any importer, or the owner, partner or stockholder of an importer, to own or be interested in any manner in any establishment licensed by the Commissioner to sell alcoholic liquors, either by the bottle or by the glass, to the consumer thereof, for consumption either on or off the premises where sold.

(b) This section shall not be construed to prohibit a manufacturer, supplier or importer doing business as a corporation, or the stockholders thereof, from having an interest in any establishment licensed to sell alcoholic liquors to the consumer thereof, where:

(1) The stock of such manufacturer, supplier or importer and such establishment is publicly traded on a national or regional exchange or over-the-counter;

(2) The manufacturer, supplier or importer does not use its ownership interest in such establishment as to induce, directly or indirectly, such establishment to purchase any products from the manufacturer, supplier or importer to the exclusion, in whole or in part, of products sold or offered for sale by other manufacturers, suppliers or importers.

(c) This section shall not be construed to prohibit a manufacturer or supplier doing business as a corporation, or the stockholders or affiliates thereof, from having an interest in or obtaining a license for a boat pursuant to § 554(b) of this title.

(38 Del. Laws, c. 18, § 15; Code 1935, § 6144(4); 4 Del. C. 1953, § 506; 63 Del. Laws, c. 258, § 1; 65 Del. Laws, c. 291, § 1; 72 Del. Laws, c. 486, § 9; 74 Del. Laws, c. 252, § 1; 78 Del. Laws, c. 220, § 1.)

### § 507 Monthly report.

(a) Notwithstanding any of the provisions of this chapter, every importer of alcoholic liquors licensed by the Commissioner shall make a report to the Commissioner every month, in the form that the Commissioner determines, which report shall contain an exact return of the gross amount of each variety of alcoholic liquors bought by the importer and alcoholic liquors sold within this State during the preceding calendar month. The Commissioner may require such returns to be certified under oath or affirmation of the holder of the license, or of such other person approved by the Commissioner.

(b) Any importer who fails to make a return to the Commissioner within 15 days following the expiration of any calendar month for which it should be made shall be fined \$50 per day for each day's delay counting from the expiration of said 15 days, and the license of such importer shall be suspended by the Commissioner if the return is not made within 15 additional days.

(38 Del. Laws, c. 18, § 15; Code 1935, §§ 6144(5)-(8); 4 Del. C. 1953, § 507; 59 Del. Laws, c. 107, § 16; 72 Del. Laws, c. 486, § 9.)

### § 508 Filing of price schedules required.

(a) All manufacturers and distilleries offering for sale in the State alcoholic liquors other than beer or wine, shall file by January 15 of each year or within 30 days of the first time they become licensed in the State to sell such alcoholic liquors, a verified schedule, in

writing, in the number of copies and on the form required by the Commissioner, which schedule shall contain the following information as to each item they are offering for sale at that time, in the State, by brand or trade name:

- (1) The capacity of each package thereof so offered for sale;
- (2) The nature of the contents thereof;
- (3) The age and proof thereof where stated on the container label;
- (4) The number of bottles thereof contained in a case of such items;
- (5) The bottle and case price to the Delaware wholesaler or importer, which prices in each such instance shall be individual for each item and not in combination with any other item; and
- (6) The discount given for quantity or time of payment, if any.

Any such schedule need not contain any such information as to any brand which is owned exclusively by a retailer and sold at retail in Delaware exclusively by such a retailer.

(b) Such schedule of prices or price of individual item need not be filed at any time other than provided for in subsection (a) of this section and need not be updated any time a manufacturer or distillery changes such prices between such required filing times.

(4 Del. C. 1953, § 508; 59 Del. Laws, c. 107, § 66; 67 Del. Laws, c. 109, § 7; 72 Del. Laws, c. 486, § 9.)

### Subchapter II

### Purchase, Sale and Dispensing

#### **§ 511 General licensing requirements.**

(a) Upon proper application, the Commissioner may grant licenses to persons described in §§ 512-521 of this title to purchase and resell or dispense alcoholic liquor in the manner and to the extent provided in those sections. The person to whom such license is granted may purchase, resell or dispense alcoholic liquor in accordance with his license if the license fee has been paid and the license is still in force.

(b) If a licensee holds an on premises license and an off premises license, voluntary relinquishment of 1 of the said licenses and the retention of the other license shall be permitted automatically by the Commissioner.

(c) If a person applies for a license as a motorsports speedway under § 512(a) of this title, in lieu of compliance with the procedural notice and protest requirements of §§ 524 and 541 of this title, the Commissioner shall, on the date the application is filed, schedule a hearing to consider the application to be held at least 20 days after the application filing date and notify applicant of the hearing date. Within 3 days thereof, the applicant shall:

- (1) Mail a notice by certified mail, return receipt requested, to all property owners within 1,000 feet from any point on the boundary line of the premises to which the license shall apply; and
- (2) Cause to be advertised a notice in at least 2 different newspapers for 3 issues circulated in the community in which the applicant will operate.

The said notices of the time and location of the hearing shall be approved by the Commissioner prior to distribution.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 511; 59 Del. Laws, c. 107, § 17; 72 Del. Laws, c. 486, § 9; 73 Del. Laws, c. 244, § 11.)

#### **§ 512 Licenses for taprooms, hotels, restaurants, motorsports speedways, concert halls, beer gardens, or clubs; food concessionaires at horse racetracks or multi-purpose sports facilities; dinner theater performances; bowling alleys; movie theaters; caterers; removal of partially consumed bottles from premises; beverages for personal consumption at racetracks; air passenger carriers; names of licensed establishments.**

(a) Any person, who is the owner or lessee, or who is recognized by the Commissioner as being in charge of a hotel, beer garden, motel, taproom, restaurant, motorsports speedway, concert hall, club or multiple activity club, may apply to the Commissioner for a license to purchase spirits or wine or to purchase beer from a manufacturer or from an importer and to receive, keep and sell such spirits or wine either by the glass or by the bottle, or beer by the glass as draft beer or by the bottle for consumption on any portion of the premises approved by the Commissioner for that purpose. Such a license entitles a club to sell such spirits, wine or beer only to members of that club. A multiple activity club which holds such a license may apply for an additional license to sell such spirits, wine or beer to any person who is a guest of such club or of a member of such club who is duly registered in accordance with a bylaw or rule of such club, approved by the Commissioner, provided that if the Commissioner determines that any applicant is not a multiple activity club, as defined in § 101 of this title, the application shall be denied. There shall be no age restrictions on persons permitted on the premises of a licensed multiple activity club.

(b) A food concessionaire dispensing food at a horse racetrack or multi-purpose sports facility may apply to the Commissioner for a license to purchase spirits and wine from an importer, and to receive, keep and sell such spirits and wine to patrons in restaurants, dining rooms, suites owned, leased or operated by the license holder or at bars or counters (except at multi-purpose sports facilities) for consumption on the premises as authorized by the Commissioner, subject, however, to such rules and regulations as may be promulgated

by the Delaware Alcoholic Beverage Control Commissioner. The license issued to a food concessionaire dispensing food at a horse racetrack or multi-purpose sports facility pursuant to this section and § 513 of this title, shall continue to be valid whether or not a race meet or minor league baseball game is in progress and such licensee shall be entitled to all of the rights and privileges granted to a restaurant licensee together with the rights and privileges authorized by a license issued pursuant to § 709 of this title upon payment of the license fee set forth in § 709 of this title.

(c) Any person operating a dinner theater presenting public performances featuring live actors in dramatic or musical productions may apply to the Commissioner for a license to keep and sell alcoholic liquor to patrons for consumption on the premises served at such performances, and for consumption on the premises during intermissions, subject to such rules and regulations as may be promulgated by the Delaware Alcoholic Beverage Control Commissioner, provided that the licensee does not serve alcohol unaccompanied by a meal at more than 10 performances during the calendar year.

(d) Any person who has purchased a bottle of alcoholic liquor other than beer from a premises licensed for the sale and consumption on the premises where sold beer garden licensed under this title, and who has partially consumed the contents of such bottle on the licensed premises, may, if the bottle is capped, remove it from the licensed premises for the purpose of consumption off the licensed premises.

(e) Any person receiving a license under this section shall be permitted to charge a cover charge at any time live entertainment is actually being provided by the licensee, provided that any licensee charging a cover charge shall prominently display the fact that a cover charge is being made, both at the entrance to the premises and on the menu if one is used on the premises.

(f) Any person operating a bowling alley or movie theater may apply to the Commissioner for a license to keep and sell alcoholic liquor to patrons for consumption on the premises only. A license for a movie theater shall allow for consumption by patrons within the theater or theaters where movies are being shown. A movie theater which obtains a license must sell alcoholic liquors at a separate bar or location away from other food and drink, may only sell 1 alcoholic beverage at a time per age-verified patron, may only serve 2 alcoholic beverages per patron per movie showing, and must have video cameras in each theater auditorium that allows supervision of movie patrons from a centralized or remote location during a movie showing. Movie theater managers and employees involved in serving alcohol must complete alcohol service training as prescribed by the Commissioner, and a theater employee who has completed alcohol service training must pass through each theater auditorium during each movie showing.

(g)(1) A caterer may apply to the Commissioner for a license to purchase alcoholic liquors from a manufacturer or from an importer and to receive, keep and sell such alcoholic liquors either by the glass or by the bottle, for consumption on any portion of the premises approved by the Commissioner for that purpose.

(2) An off-site caterer may apply to the Commissioner for a license to purchase alcoholic liquors from an importer and to receive, keep, transport and sell such alcoholic liquors either by the glass or by the bottle for consumption on any portion of off-site premises approved by the Commissioner for that purpose. Transporting of alcoholic liquors by an off-site caterer must be done in accordance with the Commissioner's rules.

(h) Notwithstanding any provision of this title to the contrary, motorsports speedways may permit patrons to bring inside with them alcoholic beverages regulated under this title for their own personal consumption, provided that they have a lawful ticket for admission to the facility and are of the lawful age to consume alcoholic beverages. The motorsports speedway may restrict the portions of the facility that patrons may act in accord with this section. Notwithstanding any provision of this title to the contrary, a motorsports speedway is not required to maintain a license required pursuant to § 554 of this title in order to permit patrons to bring inside with them alcoholic beverages regulated under this title for their own personal consumption.

(i) A certificated air passenger carrier maintaining and operating a warehouse storage facility in the State may apply to the Commissioner for a license to purchase alcoholic liquors from an importer and to receive at the carrier's warehouse or airport facility, keep at the carrier's warehouse or airport facility, transport to the carrier's airport facility, and sell such alcoholic liquor to its passengers for consumption on its aircraft only.

(j) An establishment licensed as a restaurant shall not be required to use the word "restaurant" in its tradename, menus, advertisements or signage unless the Commissioner specifically finds that the public may be confused as to its status as a restaurant.

(k) Any person who holds a valid restaurant license issued by the Commissioner may deny a minor, as defined in § 708 of this title, admission to or permission to remain on the premises after 9:00 p.m. (official Eastern time) unless accompanied by a parent or by a legal guardian.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 512; 55 Del. Laws, c. 283, § 1; 56 Del. Laws, c. 335, § 3; 57 Del. Laws, c. 189; 57 Del. Laws, c. 447; 58 Del. Laws, c. 199; 59 Del. Laws, c. 107, § 17A; 59 Del. Laws, c. 590, §§ 2, 4; 60 Del. Laws, c. 466, §§ 3, 9; 64 Del. Laws, c. 434, §§ 1, 2; 67 Del. Laws, c. 109, §§ 8-10; 69 Del. Laws, c. 6, § 2; 71 Del. Laws, c. 42, § 1; 71 Del. Laws, c. 182, § 1; 71 Del. Laws, c. 210, § 2; 71 Del. Laws, c. 472, § 1; 72 Del. Laws, c. 486, § 9; 73 Del. Laws, c. 244, §§ 2-6; 73 Del. Laws, c. 393, § 2; 75 Del. Laws, c. 246, § 1; 78 Del. Laws, c. 220, § 2; 79 Del. Laws, c. 308, § 2; 80 Del. Laws, c. 109, § 2; 81 Del. Laws, c. 69, § 2; 81 Del. Laws, c. 254, § 1.)

### § 512A Farm wineries.

(a) Upon proper application and subject to the provisions, restrictions and prohibitions of this title, the Commissioner may grant a license to any person who is the owner or lessee of a farm winery to manufacture, ferment, blend, age, store and bottle wine, mead, and

cider on the premises designated in the license. For purposes of this title, a "farm winery" is defined as an establishment at which the basic ingredients, including but not limited to the harvesting of grapes, to make wine are grown and where wine, mead, or cider are fermented or manufactured. Notwithstanding any provisions of this title to the contrary, a farm winery licensee shall be authorized to sell, deliver and ship such wine, mead, and cider in barrels, bottles or other closed containers to persons licensed under the provisions of this title to import wine, mead, and cider; and to sell and ship wine, mead, and cider to persons outside of the State in accordance with this title.

(b) A farm winery licensee shall also be authorized to store and sell wine, mead, and cider on the premises by the bottle or by the glass for consumption on or off the premises where sold. A farm winery licensee shall be permitted to purchase and store product from a Delaware licensed importer or retailer licensed under § 516 of this title, and sell said product to its retail customers for consumption on the premises where sold so long as the product is manufactured by an entity that holds a Delaware license pursuant to this § 512A, § 512B, § 512C or § 512E of this title or the manufacturer, as determined by the Commissioner, would qualify for a license under said sections if it were physically located in the State.

(c) A farm winery licensee shall be exempt from the distance requirements for establishments licensed, or to be licensed, for consumption off the premises, as contained in § 543(d) of this title, and shall not affect the granting of a license of the same type.

(d) A farm winery licensee may sell, on the licensed premises, food items, souvenirs, wine-related supplies and educational material as approved by the Commissioner.

(e) The Commissioner may grant a tasting license to a farm winery licensee consistent with the provisions of §§ 525 and 554(ff) of this title.

(f) All wine, mead, and cider sold by a farm winery licensee shall be in a container which is securely sealed and has attached thereto a label setting forth such information as required by this title, Commissioner rules and laws of the State.

(g) A farm winery licensee may not engage in any business or activity in the licensed establishment unless authorized by this title or approved by the Commissioner.

(h) A farm winery licensee or a temporary licensee not to exceed 3 years shall be authorized to purchase and receive shipments of bottled, finished wine, mead, and cider from importers located within the State that are licensed in accordance with this title. Such purchases and shipments, if in bottled, finished form, must be manufactured specifically for the Delaware farm winery licensee and bear the private label of the Delaware farm winery licensee on each bottle, and, if being imported from without the State, shall be limited, as follows:

(1) During the first year of operation, no more than 10,000 gallons of the combination of wine, mead, and cider;

(2) During the second year of operation, no more than 7,500 gallons of the combination of wine, mead, and cider;

(3) During the third year of operation, no more than 5,000 gallons of the combination of wine, mead, and cider; and

(4) After 3 years of operation, no more than 25% of the total gallons of the combination of wine, mead, and cider manufactured within the State.

(5) Notwithstanding the importation limitations for bottled wine established in this paragraph, at such time when there is sufficient quantity, variety and quality of wine grapes grown in the State, then the Secretary of the Department of Agriculture may mandate that all licensed Delaware farm wineries must use at least 51% Delaware-grown fruit in their blend inventories. In the case of hardship due to crop loss, the Secretary of the Department of Agriculture may issue a special permit to import fruit, juice or other raw materials to compensate for such crop loss. Until such time as the Secretary of the Department of Agriculture makes such mandate, the licensee or a temporary licensee not to exceed 3 years shall be authorized to import grapes or grape juice from other locations within or outside of the State, pursuant to the rules and regulations of the Department of Agriculture, for the purpose of fermentation, blending, bottling and aging.

(6) A temporary farm winery license may be issued, for not more than 3 years, allowing the temporary licensee to operate according to paragraphs (h)(1), (2) and (3) of this section herein if all the licensing requirements have been met except for those required in § 543(g) of this title, which requires government permitting to manufacture or ferment wine, mead and cider at the location. The temporary licensee shall, however, have obtained all necessary government permitting to operate as a temporary licensee.

(i) A farm winery licensee shall be authorized to purchase and receive shipments of unfinished wine, mead, and cider in bulk form from suppliers and importers located within and without the State that are licensed in accordance with this title.

(j) A farm winery licensee shall be prohibited from owning or operating or being affiliated with any importer or retailer of alcoholic liquor either within or without this State. Notwithstanding the foregoing, it shall be permissible for a farm winery to apply to the Commissioner for a license, under § 512(g)(1) of this title, for use of a portion of the farm winery premises as a caterer.

(k) The Commissioner may promulgate such rules and regulations with respect to the enforcement or furtherance of the objectives and provisions of this section as the Commissioner may deem necessary, and all such rules and regulations that are not inconsistent with the provisions of this title shall have the force and effect of law.

(l) A Delaware winery or farm winery shall be permitted to sell wine, mead, and cider at times permitted pursuant to § 709 of this title.

(m) A farm winery licensee shall be authorized to export grapes, grape juice or unfinished wine grown in this State in bulk to persons outside the State for crushing, fermenting, bottling and labeling and shall be authorized to receive the finished product from that person, so long as no grapes, grape juice or wine, grown or manufactured outside the State, are added to the finished product.



(n) The provisions of § 506 of this title to the contrary notwithstanding, a farm winery licensee shall be permitted to have an interest in, be affiliated with, operate, or own another supplier or manufacturer located outside the State and have an interest in a brewery-pub, microbrewery, and/or craft distillery licensed under this chapter and actually located in this State.

(68 Del. Laws, c. 107, § 1; 70 Del. Laws, c. 353, § 3; 72 Del. Laws, c. 486, § 9; 75 Del. Laws, c. 71, §§ 1, 2; 75 Del. Laws, c. 252, § 1; 77 Del. Laws, c. 61, §§ 1, 2; 79 Del. Laws, c. 157, § 1; 80 Del. Laws, c. 62, § 1; 80 Del. Laws, c. 336, § 1; 80 Del. Laws, c. 382, § 2; 81 Del. Laws, c. 78, § 1; 81 Del. Laws, c. 261, § 1.)

### § 512B Brewery-pubs.

(a) Subject to the provisions, restrictions and prohibitions of this title, the Commissioner may grant a brewery-pub license to each qualified applicant therefor. No person shall own or operate a brewery-pub unless licensed to do so by the Commissioner. For purposes of this section, a "brewery-pub" shall be an establishment in which beer is manufactured on the premises of the licensed establishment, limited to restaurants owned or leased by the brewery-pub applicant.

(b) The following conditions and restrictions shall apply to the holder of each brewery-pub license:

- (1) It must be situated on the premises of, or be physically a part of, a restaurant;
- (2) It may brew, bottle, and sell beer at no more than 3 licensed establishments, provided that each such licensed establishment qualifies as a separate brewery-pub under this section;
- (3) It shall brew no more than 4,000 barrels of beer in any calendar year;
- (4) It may sell beer manufactured on licensed premises in labeled barrels, bottles, or other closed containers to wholesalers licensed under this title for delivery by them to persons inside or outside this State;
- (5) It may sell at the licensed premises beer manufactured on the licensed premises at retail for consumption off the premises;
- (6) It may sell at the licensed premises beer manufactured on the licensed premises for on-premises consumption;
- (7) It shall be prohibited from owning, operating or being affiliated with any importer of alcoholic liquor, either in or without this State; and

(8) The provisions of § 506 of this title to the contrary notwithstanding, it shall be permitted to have an interest in, be affiliated with, operate, or own another supplier or manufacturer located outside the State and have an interest in a farm winery, microbrewery, and/or craft distillery licensed under this chapter and actually located in this State, provided that the total domestic sales of all affiliated suppliers or manufacturers shall not exceed the maximum amount currently specified in 27 C.F.R. Part 25, § 25.152(a)(2) or as hereafter amended.

(c) It shall be unlawful for a person to operate a brewery-pub if:

- (1) The restaurant portion of the licensed establishment fails to offer complete meals for consideration to patrons or fails to operate as a bona fide restaurant as defined by Commissioner rules or this title;
- (2) The license is denied, cancelled, suspended or revoked for any of the grounds contained in § 543 or § 561 of this title;
- (3) The business is transferred to a different location.

(d) This section shall not prohibit the granting of a restaurant license to sell alcoholic liquors, for on-premises consumption, as provided in § 512 of this title.

(e) The Commissioner may make and publish such rules and regulations with respect to the assessment and payment of the tax on beer, as contained in § 581 of this title, as it deems proper, and all such rules and regulations that are not inconsistent with this title shall have the force and effect of law.

(f) Notwithstanding any other provision of this title to the contrary, the holder of a brewery-pub license may also make, bottle and sell an alcoholic liquor that is fermented or distilled on the premises, subject to the following conditions and restrictions:

- (1) All of the conditions and restrictions relating to beer set forth in subsection (b) of this section; and
- (2) Alcoholic liquor that is fermented or distilled on the premises shall be taxed in accordance with § 581 of this title.

(g) The provisions of § 546 of this title to the contrary notwithstanding, the sale for off-premises consumption at up to a combined total of 3 licensees licensed under this section or 2 licensees licensed under this section and a microbrewery licensed pursuant to § 512C of this title all owned or controlled by the same person shall be permitted.

(68 Del. Laws, c. 205, § 1; 70 Del. Laws, c. 469, §§ 1, 2; 71 Del. Laws, c. 83, § 1; 72 Del. Laws, c. 486, § 9; 73 Del. Laws, c. 225, § 1; 77 Del. Laws, c. 432, §§ 4, 5; 79 Del. Laws, c. 157, § 1.)

### § 512C Microbrewery.

(a) Upon proper application and subject to the applicable provisions, restrictions and prohibitions of this title, the Commissioner may grant a license to any person who is the owner or lessee of a microbrewery to manufacture and sell beer, mead and cider.

(b) For purposes of this section, "microbrewery" shall mean a single establishment in which beer, mead or cider is manufactured and which is operated by the licensee in accordance with this section.

(c) Notwithstanding any provision of this title to the contrary, a microbrewery license shall allow the licensee:

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(1) To manufacture and sell on the licensed premises beer, mead or cider or a combination thereof, but the licensee shall not manufacture or sell more than the maximum amount permitted by federal regulations to qualify for a "reduced rate of tax for certain brewers" as currently found in the 27 C.F.R., Part 25, § 25.152(a)(2) or as hereafter amended;

(2) To manufacture on the licensed premises beer, mead or cider for persons, other than the licensee, licensed under this title or for persons outside this State;

(3) To sell beer, mead and cider manufactured on the licensed premises in labeled barrels, bottles or other closed containers to importers licensed under this title for delivery by them to persons inside or outside the State;

(4) To sell at the licensed premises beer, mead and cider manufactured on the licensed premises for consumption on or off the licensed premises. The amount of beer, mead and cider sold for off-premises consumption shall be limited to a maximum of 5 cases per day to each retail customer;

(5) To purchase and store product from a Delaware licensed importer or retailer licensed under § 516 of this title, and sell said product to its retail customers for consumption on the premises where sold so long as the product is manufactured by an entity that holds a Delaware license pursuant to § 512A, § 512B, this § 512C or § 512E of this title or the manufacturer, as determined by the Commissioner, would qualify for a license under said sections if it were physically located in the State; and

(6) The provisions of § 506 of this title to the contrary notwithstanding, to be permitted to have an interest in, be affiliated with, operate, or own another supplier or manufacturer located outside the State and have an interest in a farm winery, brewery-pub, and/or craft distillery licensed under this chapter and actually located in this State, provided that the total domestic sales of all affiliated suppliers or manufacturers shall not exceed the maximum amount currently specified in 27 C.F.R. Part 25, § 25.152(a)(2) or as hereafter amended.

(d) It shall be unlawful for a person to operate a microbrewery if:

(1) The license is denied, canceled, suspended or revoked for any of the grounds contained in § 543 or § 561 of this title;

(2) The establishment is moved to a location other than the licensed premises; or

(3) The licensee owns, operates or is affiliated with any importer of alcoholic liquor either in or without this State.

(e) A microbrewery licensee shall be exempt from the distance requirements for establishments licensed or to be licensed as contained in § 543(d) of this title, and such requirements shall not affect the granting of a microbrewery license.

(f) All beer, mead and cider sold by a microbrewery licensee for off-premise consumption shall be in containers which are securely sealed and have attached thereto a label setting forth such information as required by this title, Commissioner rules and laws of the State.

(g) Any microbrewery or brewery licensed by the Commissioner to manufacture beer, mead, or cider in this State may provide samples of the beer, mead, or cider manufactured at said premises in a manner approved by the Commissioner.

(h) The provisions of § 546 of this title to the contrary notwithstanding, the sale for off-premises consumption at a licensee licensed under this section and at up to 2 brewery-pubs licensed pursuant to § 512B of this title all owned or controlled by the same person shall be permitted.

(69 Del. Laws, c. 361, § 1; 71 Del. Laws, c. 211, §§ 1-3; 72 Del. Laws, c. 486, § 9; 76 Del. Laws, c. 32, §§ 1-5; 77 Del. Laws, c. 432, §§ 1-3; 79 Del. Laws, c. 157, § 1; 81 Del. Laws, c. 261, § 1.)

### § 512D Wine auctions.

(a) Subject to the provisions, restrictions and prohibitions of this title, the Commissioner may grant a wine auction license to each qualified applicant therefor. No person shall operate a wine auction unless licensed to do so by the Commissioner. For purposes of this section, a "wine auction" shall mean a person, partnership or corporation that sells rare or fine wines on consignment from the owners of said wines at public auction to those persons who are of legal age to purchase such items. A nonprofit organization may apply for a "wine auction-gathering license" for a specific date upon application to the Commissioner as a fund raiser for their organization.

(b) Said "wine auction" license holder must have an office situated within the State, however said auctions may take place at any location within the State subject to the rules and regulations of the Commissioner which shall have the force of law. A nonprofit organization does not need to maintain an office within the State.

(c) No more than 12 auctions may be conducted within a calendar year.

(d) The wine auction license holder shall have the responsibility for collecting and remitting the applicable excise taxes and gross receipt taxes due for all products auctioned. Provided further, that any products purchased at auction shall not be stocked as inventory or made available for further retail sale in any facility or store licensed under this title.

(71 Del. Laws, c. 383, § 1; 72 Del. Laws, c. 486, § 9.)

### § 512E Craft distillery.

(a) Upon proper application and subject to the applicable provisions, restrictions and prohibitions of this title, the Commissioner may grant a license to any person who is the owner or lessee of a craft distillery to manufacture and sell spirits.

(b) For purposes of this section, "craft distillery" shall mean a single establishment in which spirits are manufactured and which is operated by the licensee in accordance with this section.

(c) Notwithstanding any provision of this title to the contrary, a craft distillery license shall allow the licensee:

- (1) To manufacture on the licensed premises and sell not more than 750,000 proof gallons of distilled spirits in any calendar year;
  - (2) To manufacture spirits, on the licensed premises, for persons other than the licensee who are licensed under this title or for persons outside this State;
  - (3) To sell, deliver and ship such spirits in labeled barrels, bottles or other closed containers to persons licensed under the provisions of this title to import spirits; and to sell and ship spirits to persons outside of the State in accordance with this title;
  - (4) To store and sell spirits on the premises by the bottle or by the glass for consumption on or off the premises where sold; and to purchase alcoholic beverages from licensed Delaware importers or retailers to add to product manufactured by the craft distillery to sell to patrons for on premises consumption only. The amount of spirits sold for off-premises consumption shall be limited to a maximum of 1 case (i.e., not more than 12-750 ml bottles) per day to each retail customer for consumption off the premises;
  - (5) To purchase and store product from a Delaware licensed importer or retailer licensed under § 516 of this title, and sell said product to its retail customers for consumption on the premises where sold so long as the product is manufactured by an entity that holds a Delaware license pursuant to § 512A, § 512B, § 512C or this § 512E of this title or the manufacturer, as determined by the Commissioner, would qualify for a license under said sections if it were physically located in the State; and
  - (6) To sell, on the licensed premises, food items, souvenirs, spirit-related supplies and educational material as approved by the Commissioner.
- (d) It shall be unlawful for a person to operate a craft distillery if:
- (1) The license is denied, canceled, suspended or revoked for any of the grounds contained in § 543 or § 561 of this title;
  - (2) The establishment is moved to a location other than the licensed premises; or
  - (3) It is owned, operated or affiliated with any importer of alcoholic liquor, either in or without this State; except that the holder of a craft distillery license may have an interest in, be affiliated with, operate, or own in common ownership a microbrewery, farm winery, and/or brewery-pub licensed under this chapter and actually located within this State.
- (e) A craft distillery licensee shall be exempt from the distance requirements for establishments licensed or to be licensed as contained in § 543(d) of this title, and such requirements shall not affect the granting of a craft distillery license.
- (f) All spirits sold by a craft distillery licensee for off-premise consumption shall be in containers which are securely sealed and have attached thereto a label setting forth such information as required by this title, Commissioner rules and laws of the State.
- (g) Any craft distillery licensed by the Commissioner to manufacture spirits in this State may provide tastings of the spirits at said premises pursuant to a spirits tasting license granted by the Commissioner pursuant to § 525 of this title.
- (h) The provisions of § 546 of this title to the contrary notwithstanding, the sale for off-premises consumption at up to a combined total of 3 licenses licensed under this section, § 512A, § 512B, or § 512C of this title all owned or controlled by the same person shall be permitted.
- (i) A craft distillery licensee shall be authorized to purchase and receive shipments of unfinished neutral grain spirit in bulk form from suppliers and importers located within and without the State that are licensed in accordance with this title.
- (j) A craft distillery licensee shall be authorized to export unfinished spirit manufactured in this State in bulk to persons within or outside the State for blending, aging, finishing, bottling or labeling and shall be authorized to receive the finished product from that person.
- (k) A craft distillery shall be exempt from the prohibition of sales on Sundays as proscribed in § 709 of this title, but any sales on Sundays shall be limited to the hours during which the holders of licenses for the sale of spirits in a store may sell on Sundays pursuant to § 709 of this title. A craft distillery shall remain closed on Thanksgiving, Christmas and Easter.
- (l) The Commissioner may promulgate such rules and regulations with respect to the enforcement or furtherance of the objectives and provisions of this section as the Commissioner may deem necessary, and all such rules and regulations that are not inconsistent with the provisions of this title shall have the force and effect of law.
- (m) The provisions of § 506 of this title to the contrary notwithstanding, the holder of a craft distillery license shall be permitted to have an interest in, be affiliated with, or own another supplier or manufacturer, whether located inside or outside the State, provided that the total domestic sales of all affiliated suppliers or manufacturers shall not exceed 750,000 proof gallons in any calendar year.
- (78 Del. Laws, c. 251, § 1; 79 Del. Laws, c. 157, § 1; 80 Del. Laws, c. 62, § 1; 80 Del. Laws, c. 73, § 1; 80 Del. Laws, c. 251, § 1; 80 Del. Laws, c. 382, § 3; 81 Del. Laws, c. 261, § 1.)

### § 512F Temporary large events.

Any person licensed under § 512 of this title hosting a temporary large event may share the profits from the event, including the profits from alcohol sales, with the temporary large event promoter, and such sharing of profits shall not be in violation of this title, including § 561 of this title or any regulations promulgated by the Commissioner, provided that:

- (1) The licensee shall be responsible for the purchase and resale or dispensing of all alcohol at the temporary large event as provided in and in compliance with this title and may not allow the temporary large event promoter to participate in such purchasing, reselling or dispensing; and
- (2) The temporary large event promoter shall, prior to the temporary large event, obtain a temporary large event license from the Commissioner. Application for a temporary large event license shall be on a form prescribed by the Commissioner, made under oath or affirmation and signed before 2 witnesses, containing a statement to the effect that the temporary large event promoter:

- a. Will comply with this title and the regulations promulgated hereunder;
- b. Agrees to submit to the jurisdiction of the Commissioner and the courts of the State;
- c. Is not a manufacturer, supplier or importer;
- d. Has not been convicted of violating the liquor laws of this State or been convicted and imprisoned for a crime; and
- e. Such other matters as the Commissioner may prescribe by rule or regulation.

The Commissioner may promulgate such rules and regulations with respect to the enforcement or furtherance of the objectives and provisions of this section as it may deem necessary, and all such rules and regulations that are not inconsistent with the provisions of this title shall have the force and effect of law.

(79 Del. Laws, c. 6, § 2.)

### **§ 512G Shipment of alcoholic beverages between commonly-owned entities.**

(a) Any entity licensed in this State pursuant to § 512A, § 512B, § 512C or § 512E of this title, or any out-of-state supplier licensed pursuant to § 501 of this title who, as determined by the Commissioner, would meet the requirements of § 512A, § 512B, § 512C or § 512E of this title if it were located in this State, is permitted to sell or ship alcoholic beverages they manufacture to an entity licensed in this State pursuant to § 512A, § 512B, § 512C or § 512E of this title subject to all of the following conditions:

(1) The shipping and receiving licensees must be under common ownership and control and must both apply for and receive a permit pursuant to this section.

(2) A licensee must apply for a permit with the Commissioner setting forth the nature of its license, naming the licensees or out-of-state suppliers that it desires to ship to directly or receive alcoholic beverages from directly, and such other information as the Commissioner may require.

(3) The Commissioner shall determine if a licensee meets the requirements of § 512A, § 512B, § 512C or § 512E of this title and is otherwise qualified for a permit pursuant to this section.

(4) If the Commissioner determines the licensee is eligible, the Commissioner shall issue a permit to the licensee.

(5) A permit holder under this section shall be permitted to sell product properly received under the terms of its permit as though it were manufactured at its premises, in accordance with the terms and conditions of its license, so long as it is permitted to manufacture that type of alcohol.

(b) As used in this section, "common ownership and control" means that the shipping and receiving licensees applying for a permit under this section manufacture and sell the same brands of alcoholic liquor that each such licensee desires to ship to directly or receive from directly the other, share at least a majority of the same directors, officers, members, or other fiduciaries, and are owned 51 percent or more by 1 person. It shall be permitted for the interest of 51 percent or more in the shipping licensee and the interest of 51 percent or more in the receiving licensee to be held by more than 1 person, but only if 1 of the following is satisfied:

(1) One person is an individual and the other person(s) is 1 or more trusts, the beneficiaries of which include such individual, such individual's spouse, or such individual's lineal descendants; or

(2) Each person is 1 or more trusts established by the same settlor for the benefit of the settlor, the settlor's spouse, or the settlor's lineal descendants, and are managed by the same fiduciaries; or

(3) Such interests are held by the same individuals.

(c) For the purposes of this section, "person" shall be defined as set forth in § 1-201(b)(27) of Title 6.

(81 Del. Laws, c. 276, § 1.)

### **§ 513 Sale of beer for consumption on premises of tavern, horse racetrack or multi-purpose sports facility.**

(a) Any person in charge of a tavern may apply to the Commissioner for a license to purchase from a manufacturer or from an importer and to receive, keep and sell beer by the glass, if such beer is consumed on the premises where sold. Beer so sold may be served from bottles or half bottles or as draft beer.

(b) Any person in charge of dispensing food at a horse racetrack may apply to the Commissioner for a license to purchase and to receive, keep and sell beer only, for consumption on the premises, as draft beer or in individual containers at restaurants, dining rooms, suites owned, leased or operated by the license holder, bars, counters or similar contrivances.

(c) Any person in charge of dispensing food at a multi-purpose sports facility may apply to the Commissioner for a license to purchase and to receive, keep and sell beer only, for consumption on the premises, at restaurants, dining rooms, suites leased by patrons, bars, counters or similar contrivances or through individual vendors employed by the licensee. The holder of such a license may sell beer only under the following circumstances:

(1) In plastic, styrofoam or paper containers on the multi-purpose sports facility premises; and

(2) For consumption on the licensed premises.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 513; 54 Del. Laws, c. 377, § 1; 67 Del. Laws, c. 109, § 11; 69 Del. Laws, c. 6, § 3; 72 Del. Laws, c. 486, § 9; 73 Del. Laws, c. 244, §§ 7, 8.)

### § 514 Gathering licenses; consumption on premises.

(a) If alcoholic liquors are to be sold during a gathering of persons, the manager or person in charge of such gathering, or the owner, tenant or person in charge of the premises in which the gathering is being held, must obtain 1 of the types of gathering licenses provided for in this section. Either of said licenses shall permit consumption of alcohol on the premises where sold and shall permit sale of alcohol for consumption off the premises where sold by way of a raffle or auction, live or silent, so long as the amount of alcohol sold for consumption off of the premises where sold does not exceed 10 gallons (or 38 liters) in a single day.

(b) There shall be 2 types of gathering licenses which may be granted hereunder:

(1) Gathering License — Group. — The manager or person in charge of a gathering of persons at which alcoholic liquors are to be sold shall apply for a group type gathering license, which license, if granted, shall be valid only for the time, and at the location, specified in the application therefor. A group gathering license shall not be required if the said gathering is being held on premises which are validly licensed under a biennial premises gathering license issued pursuant to paragraph (2) of this subsection.

(2) Gathering License — Biennial Premises. — The owner, tenant or person in charge of the premises, other than a residence, on which gatherings of persons are held, may apply for a biennial premises type gathering license, which license shall be valid for the entire 2 years for gatherings of persons at the location specified in the application therefor.

(c) A holder of a gathering license may purchase alcoholic liquors for sale at a gathering of persons from either retailers or importers and such retailers and importers shall be permitted to make deliveries to persons holding gathering licenses. A holder of a gathering license granted pursuant to this section shall be exempt from paying the application process fee as provided in subsection (x) of § 554 of this title.

(d) For purposes of this section only, the price paid for alcoholic liquors to be sold at a gathering of persons licensed under this section shall be a price agreed upon between the said licensee and the retailer or importer from whom said alcoholic liquors are purchased. It is permissible for a retailer or importer to donate some or all of the liquor to the gathering licensee so long as a license has been granted for the gathering by the Commissioner prior to the donation.

(e) Any person holding a biennial premises gathering license granted hereunder must report each gathering of persons to be held in its facilities to the Commissioner, which report may be made in person, in writing, or by telephone and the report must be received by the Commissioner not later than 12:00 noon of the day on which the gathering is to be held, unless it is to be held on a day on which the Commissioner shall be closed, in which case it must be so reported on the last day on which the Commissioner is open immediately preceding such a gathering.

(f) Any person holding a gathering license of either type granted hereunder who has purchased alcoholic liquors for sale at a gathering of persons may return any unopened bottles so purchased to the licensee from whom they were purchased and shall receive therefor the amount paid for each said bottle, so long as such return is made within 30 days of the date of the gathering for which they were purchased. A biennial premises type gathering licensee shall not be required to return bottles it has purchased for sale during such gathering, but may store them in a suitable storage facility for sale at a future gathering of persons to be held within its facilities.

(g) All holders of gathering licenses hereunder shall be subject to the restrictions on the hours of sale of alcoholic liquors set forth in § 709(c) of this title and to the prohibitions of sales to minors set forth in § 708 of this title.

(h) It shall not be necessary to obtain a license to dispense alcoholic liquors at a gathering of persons if no alcoholic liquors are to be sold at that gathering of persons. Importers may sell and deliver beer directly to persons for dispensing at a gathering of persons and not for resale.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 514; 59 Del. Laws, c. 107, § 18; 59 Del. Laws, c. 128, §§ 2-4; 67 Del. Laws, c. 273, § 24; 72 Del. Laws, c. 486, § 9; 78 Del. Laws, c. 64, §§ 1, 2.)

### § 515 Sale to members of club and multiple activity club; "bottle club" defined.

(a) A club or multiple activity club may apply to the Commissioner for a license to purchase spirits, wine or beer and to sell such spirits, wine or beer to a member of that club.

(b)(1) Establishments commonly known as "bottle clubs" shall be an exception to the definition of clubs set forth in § 101(11) of this title.

(2) A "bottle club" shall be defined as an establishment operated for profit or pecuniary gain where persons enter upon the premises for the purpose of consuming alcoholic liquors which are brought onto the premises by customers of the establishment and are consumed therein and removed by such persons upon their departure.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 515; 56 Del. Laws, c. 335, § 4; 59 Del. Laws, c. 107, §§ 19, 20; 63 Del. Laws, c. 232, § 1; 67 Del. Laws, c. 109, § 12; 67 Del. Laws, c. 122, § 1; 72 Del. Laws, c. 486, § 9; 81 Del. Laws, c. 69, § 1.)

### § 515A Licenses for "bottle clubs."

(a) Except as provided in this section, it shall be unlawful to operate for profit or pecuniary gain a "bottle club."

(b) The Commissioner may, upon application, grant a license to the owner, lessor or person in charge of the premises to operate a "bottle club" in accordance with this chapter.

(c) A "bottle club" license authorized by this section shall be granted only to persons doing business in an establishment meeting the standards of a restaurant as defined by this title. Such license shall permit the establishment to operate as a "bottle club" on every day of

the week and on holidays except between the hours of 2:00 a.m. and 9:00 a.m. during which time no alcoholic liquors shall be consumed upon the premises of such establishment.

(63 Del. Laws, c. 232, § 2; 67 Del. Laws, c. 122, § 2; 72 Del. Laws, c. 486, § 9.)

### **§ 516 Consumption off premises of hotel, restaurant, club, store or taproom.**

(a) Any person in charge of a hotel, restaurant, club or store (other than a grocery, delicatessen or cigar store), whether owner, lessee or manager, and recognized as such by the Commissioner, may apply to the Commissioner for a license to purchase and to keep and sell and deliver on the premises only spirits, wine or beer by the bottle or half bottle only, but not for consumption on the premises where sold, or in any dependency thereof. All bottles so sold shall be delivered to the purchaser and shall be removed from the premises where sold with the seals of such bottles unbroken, with the exception of those licenses that are approved by the Commissioner for a growler filler permit which allows a licensee to purchase beer by the keg or partial keg and fill containers at time of purchase which will then be capped to leave the licensed premises for consumption off of the premises. For purposes of issuing a new license under this section, all establishments licensed for the sale of alcoholic liquors, but not for consumption on the premises where sold, shall be considered as being of the same type; provided, however, this shall not apply to the transfer of ownership or the renewal of an existing license.

(b) Notwithstanding the provisions of subsection (a) of this section, any person, firm or corporation duly licensed by the government of the United States as a ships chandler, may apply to the Commissioner for a license to purchase and to keep, sell and deliver off the premises, spirits, wine or beer. The Commissioner may issue said license if it is satisfied that: (1) The applicant is a ships chandler operating a customs bonded warehouse under a license issued by the United States government, and (2) sales by ships chandler are limited to vessels of the United States or of a foreign country engaged in foreign trade pursuant to § 1309 of Title 19 of the United States Code.

(c) No person in charge of a taproom, whether as owner, lessee, manager or otherwise, may apply for a license to sell alcoholic liquors for consumption off the premises where sold, and the Commissioner shall not issue such a license for use in a taproom. Provided, however, that any person issued a license which authorizes him to sell alcoholic liquors in a taproom for consumption off the premises prior to July 6, 1983, shall be permitted to retain said license, unless revoked by the Commissioner pursuant to this title; and provided further, that any person issued a license which authorizes him to sell alcoholic liquors in a taproom for consumption off the premises prior to July 6, 1983, shall be permitted to transfer said license with the approval of the Commissioner as provided in § 571 of this title.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146(6); 42 Del. Laws, c. 186; 42 Del. Laws, c. 191, § 2; 44 Del. Laws, c. 203, § 2; 47 Del. Laws, c. 337, § 1; 4 Del. C. 1953, § 516; 55 Del. Laws, c. 82, § 1; 56 Del. Laws, c. 311, § 4; 62 Del. Laws, c. 69, § 1; 64 Del. Laws, c. 104, § 1; 67 Del. Laws, c. 109, § 13; 72 Del. Laws, c. 486, § 9; 79 Del. Laws, c. 23, § 1.)

### **§ 517 Pharmacists.**

Any person, whether as owner, lessee or manager, who conducts a pharmacy which is recognized as such by the Commissioner, and in which pharmacy there is in constant attendance a pharmacist, may purchase alcoholic liquors and may keep and sell the same on the prescription of any physician, and otherwise supply or sell alcoholic liquors for medicinal purposes as provided in § 518 of this title without a permit or license from the Commissioner.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 517; 59 Del. Laws, c. 107, § 21; 72 Del. Laws, c. 486, § 9.)

### **§ 518 Physicians, dentists, veterinarians and medical institutions.**

(a) A physician or dentist may purchase alcoholic liquors for professional purposes without a permit or license. A physician may administer alcoholic beverages to a bona fide patient in cases of actual need when in the judgment of the physician the use of alcoholic beverages is necessary.

(b) A veterinarian may purchase alcoholic liquors for professional purposes without a permit or license. A veterinarian may, in the course of his practice, administer or cause to be administered alcoholic beverages to any animal under treatment.

(c) A person in charge of an institution regularly conducted as a hospital or sanitarium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may purchase alcoholic beverages for professional purposes without the requirement of a permit or license. Such person may, after obtaining proper permission, administer alcoholic beverages to any bona fide patient of a medical institution who is in need of the same, either by way of external application or otherwise for emergency medical purposes.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 518; 59 Del. Laws, c. 107, § 22.)

### **§ 519 Hospital; retention and use.**

Any person in charge of a hospital recognized by the Commissioner as such may purchase alcoholic liquors, and may keep and administer alcoholic liquors for purposes of compounding medicines or to use alcohol for purposes of sterilization without a permit or license.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 519; 59 Del. Laws, c. 107, § 23; 72 Del. Laws, c. 486, § 9.)

### **§ 520 Clergymen; wine for sacramental purposes.**

Any minister, priest, rabbi or clergyman of any established or recognized church or religious sect may purchase wine for sacramental purposes, and may keep and use wine for sacramental purposes, without a permit or license.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 520; 59 Del. Laws, c. 107, § 24.)

### § 521 Temporary license to sell by the glass.

A temporary license to sell alcoholic liquor of 1 or more varieties, by the glass only, and for a period of not more than 3 months, may be granted by the Commissioner to any person to whom a biennial license may be issued under this chapter, but such temporary license shall not be renewed more than once during the same 12 months' period.

(38 Del. Laws, c. 18, § 25; Code 1935, § 6154; 4 Del. C. 1953, § 521; 67 Del. Laws, c. 273, § 25; 72 Del. Laws, c. 486, § 9.)

### § 522 Application for license to purchase for resale.

(a) Any person proposing to purchase alcoholic liquor for resale shall make application to the Commissioner for license.

(b) Any individual 21 years of age or older may apply for a license permitting the purchase of alcoholic liquors for resale. Any partnership may apply for a license permitting the purchase of alcoholic liquors for resale if such application is approved by a majority of the partners and each of the partners is 21 years of age or older. A corporation may apply for a license permitting the purchase of alcoholic liquors for resale if all the officers and directors of the corporation making the application are 21 years of age or older, and no stockholder under the age of 21 years owns or controls, either by himself or through a custodian, more than 25% of the outstanding shares of stock of the applicant corporation, with the further provision that no group of such minor stockholders and/or custodians may own or control in the aggregate, more than 45% of the stock of the applicant corporation.

(c) The application shall be made on a blank form furnished by the Commissioner and shall be signed by the applicant before two witnesses. The application shall give the name, age, occupation and residence of the applicant and the kind of license requested.

(d) The application furnished by the Commissioner shall contain a statement to the effect that the applicant will comply with this title and the rules of the Delaware Alcoholic Beverage Control Commissioner.

(e) The Commissioner shall require that the statement of the applicant and of the witnesses be made under oath or affirmation.

(38 Del. Laws, c. 18, § 18; Code 1935, § 6147; 4 Del. C. 1953, § 522; 57 Del. Laws, c. 418, §§ 1, 2; 59 Del. Laws, c. 107, §§ 26-28; 60 Del. Laws, c. 242, § 1; 67 Del. Laws, c. 109, § 14; 71 Del. Laws, c. 383, § 2; 72 Del. Laws, c. 486, § 9.)

### § 523 Application by partnership or corporation; liability for fines or costs.

If a license to purchase for resale is to be used on behalf of a partnership or corporation, the application therefor shall be accompanied by a declaration to that effect signed by an authorized member of such partnership or an authorized officer of such corporation. In such case the partnership or corporation, or the directors and officers thereof shall be liable jointly and severally for any fine and costs to which the holder of the license is liable.

(38 Del. Laws, c. 18, § 18; Code 1935, § 6147; 4 Del. C. 1953, § 523.)

### § 524 Notice of application.

(a) An application for a new license to purchase for resale, for transfer of an existing license, or for a substantive change to a license or licensed premise shall be filed with the Commissioner's office.

(b) Upon filing of an application for a new license to purchase for resale or for a substantive change to a license or licensed premise the applicant shall cause notice to be advertised in at least 2 different newspapers circulated in the community in which the applicant will operate if the application is approved for 3 issues. One of the newspapers must be a "local newspaper," as determined by the Commissioner either through rules or on a case by case basis. If the newspaper is a daily newspaper, the first publication shall be made within 3 days of the filing of the application and the third publishing shall occur within 10 days of filing the application. If the newspaper is a weekly publication, the first publication shall be made within 8 days of filing the application and the third publishing shall occur within 22 days of filing the application.

(c) Within 3 days of filing of an application for a new license to purchase for resale or for a substantive change to a license or licensed premise a notice shall be mailed by certified mail or first class mail as evidenced by a certificate of mailing postage-pre-paid to the following entities, individuals or groups of individuals:

(1) Except as provided in paragraph (c)(2) of this section, all property owners within 200 feet from any point on the property boundary line of the premises to which the license is to apply;

(2) All property owners within 1,000 feet from any point on the property boundary line of the premises to which the license is to apply if the premises is located within 1/4 of a mile of a riverfront, beachfront or other open water, or if the applicant intends to include space for outside dining, outside entertainment or the outside service or consumption of alcoholic beverages;

(3) The governing body of any incorporated areas within 1 mile from any point on the property boundary line of the premises to which the license is to apply.

(d) The notices referred to in subsections (b) and (c) of this section shall provide such information as determined by the Commissioner either through duly adopted rules or on a case by case basis. The following notice will, in addition to the aforesaid Commissioner approved notice, satisfy this notice provision:

"[Name of applicant] has on [Date of application] applied with the Alcoholic Beverage Control ("Commissioner") for [Nature of application] for a premises located at [Location of the premises, including street and city]. Persons who are against this application should provide written notice of their objections to the Commissioner. For the Commissioner to be required to hold a hearing on

consider additional input from persons against the application, the Commissioner must receive one or more documents containing a total of at least 10 signatures of residents or property owners located within 1 mile of the premises or in any incorporated areas located within 1 mile of the premises. The protest(s) must be filed with the Alcoholic Beverage Control Commissioner at the 3<sup>rd</sup> Floor, Carvel State Office Building, 820 North French Street, Wilmington, DE 19801. The protest(s) must be received by the Commissioner's office on or before [state a date at least 30 days after the application is filed]. Failure to file such a protest may result in the Commissioner considering the application without further notice, input or hearing. If you have questions regarding this matter please contact the Commissioner's Office."

(e) The term "substantive change" referenced in this section shall mean any of the following:

- (1) Any permanent change that will increase the square footage of the licensed premises;
- (2) Any temporary change that will last longer than 60 days and result in an increase of the square footage of the licensed premises;
- (3) Any change that would require a variance of the Commissioner's rules or suspension thereof and results in:
  - a. Live entertainment on a licensed patio;
  - b. External speakers or amplifiers on a licensed patio; or
  - c. Wet bar on a licensed patio;

(4) Any change in the floor plan of a restaurant licensee which would increase the number of bar seats or increase the area utilized for entertainment; or

(5) Any additional circumstance that the Commissioner determines is a substantive change.

(38 Del. Laws, c. 18, § 18; Code 1935, § 6147; 43 Del. Laws, c. 275, § 1; 44 Del. Laws, c. 205, § 1; 46 Del. Laws, c. 222, § 1; 4 Del. C. 1953, § 524; 59 Del. Laws, c. 107, §§ 29, 30; 67 Del. Laws, c. 118, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 435, § 1; 72 Del. Laws, c. 221, §§ 2-4; 72 Del. Laws, c. 486, § 9; 73 Del. Laws, c. 136, § 1; 74 Del. Laws, c. 242, § 1.)

### § 525 Spirits, wine and beer tasting.

A license to permit spirits, wine and beer tasting may be granted by the Commissioner to any person holding a license under this title as a retailer. Spirits, wine and beer tasting may take place only in a separate portion of a licensee's premises where alcoholic beverages are not sold. The separate portion of the premises shall be an area designated for spirits, wine and beer tasting by the Commissioner. No charge may be made for the spirits, wine and beer tasting.

(65 Del. Laws, c. 283, § 2; 70 Del. Laws, c. 353, § 2; 72 Del. Laws, c. 486, § 9.)

### § 526 Direct purchasing of wine and beer.

(a) Notwithstanding any other provision in this title, a natural person who is a Delaware resident may purchase sparkling wine, still wine and beer that is not readily available to consumers throughout the State directly from a manufacturer or retailer of such beverages domiciled outside of Delaware provided that the following apply:

- (1) The resident is 21 years of age or older;
- (2) The sparkling wine, still wine or beer is for the resident's personal consumption and not for resale;
- (3) The total amount of sparkling wine or still wine purchased in 1 calendar year by the resident may not exceed 60 750-milliliter bottles per calendar year;
- (4) The total amount of beer purchased in 1 calendar year by the resident may not exceed 6 cases of 12 ounce bottles or the equivalent;
- (5) The manufacturer or retailer engaging in such direct sales holds a valid manufacturer's or retailer's license issued by the state of its domicile;
- (6) The package in which the sparkling wine, still wine or beer is shipped is prominently labeled as containing alcoholic beverages;
- (7) The package in which such sparkling wine, still wine or beer is shipped is received by a person 21 years of age or older;
- (8) The package in which such sparkling wine, still wine or beer is shipped contains an invoice indicating the date of the shipment, providing a full and complete description of all items included in the shipment, and stating the price thereof.

(b) A person who is licensed in its state of domicile as an alcoholic beverage manufacturer, importer, wholesaler or licensee and who may legally ship alcoholic beverages out of state may apply to the Commissioner for a direct shipper license. Only a person holding a direct shipper license may accept an order for the purchase of sparkling wine, still wine and/or beer from a natural person who is a Delaware resident. The license fee for a direct shipper shall be determined by the Commissioner. The amount of the fee must approximate and reasonably reflect the costs necessary to defray the expenses of the Commissioner's service and activities in connection with this section.

(c) All persons licensed under this section to ship wine and beer shall pay a tax on all wine and beer sold to residents in this State at the rates set forth in § 581(d) of this title. Taxes levied by § 581(d) of this title shall be collected, as far as practical, from the direct shipper in the manner set forth by the Commissioner. If for any reason the direct shipper who first handles the taxable beer and wine to be shipped to Delaware has escaped payment of taxes, those taxes shall be collected from any person in whose hands the taxable beer and wine is found. In no case, however, shall there be a duplication.

(d) Direct shippers shall file invoices for each shipment with the Commissioner showing the retail price of the product, the quantity shipped, the customer's name and address and the tax collected and paid to the State. Such filings shall be quarterly and arrive at the



Commissioner no later than the 10th of March, June, September and December. Direct shippers shall maintain the records for at least 3 years.

(e) Under no circumstance may the wine or beer be shipped directly to the resident. Direct shippers must deliver the wine and beer by common carrier to a Delaware wholesaler, who will in turn deliver the shipment to a holder of a Delaware off-premises retail license. The retail licensee must then deliver the wine or beer to the resident in a manner consistent with this title and as set forth by Commissioner rules. The direct shipper shall pay a handling fee in the amount of \$4 dollars per case or partial case of wine and \$2 dollars per case or partial case of beer to the wholesaler who receives the shipment on behalf of the Delaware resident. The wholesaler shall then remit to the retail licensee one-half of the total handling fee.

(72 Del. Laws, c. 230, § 1; 72 Del. Laws, c. 486, § 9.)

### **§ 527 Substantive changes to licenses or licensed property.**

Repealed by 73 Del. Laws, c. 136, § 2, eff. July 9, 2001.

## **Subchapter III**

### **Determination of Applications**

### **§ 541 Procedural requirements governing Commissioner's action; hearing; appeal.**

(a) The Commissioner shall distribute and receive all of the applications for licensure under this chapter, and shall refer the application to the Division for investigation, and if it appears that any application should not be granted, the Commissioner shall so notify the applicant stating the cause for denial.

(b) If 10 or more persons who reside or own property within 1 mile of the premises where the license is to operate or in any incorporated areas located within 1 mile of the premises where the license is to operate file a protest against the issuance of the license with the Commissioner within 30 days from the filing of the application, then a hearing must be held to consider the application and protest and, specifically, the concerns of the members of the community within which the license is to operate. The Commissioner may hold a hearing in the absence of a protest. The Commissioner shall cause notice of the time and location of the hearing to be published in 2 consecutive issues of the same newspapers within which the applicant published notice of the applicant's application for the license. The Commissioner shall send notice of the time and location of the hearing to the applicant and to each of the persons who signed the protest and provided a legible name and address; provided, however, that it is sufficient for the Commissioner to send notice to the attorney of a person who is represented by legal counsel. The Commissioner shall conduct the hearing and shall make and keep a record of the hearing. The record must include the evidence, the Commissioner's findings of fact, the Commissioner's decision and a brief statement of the reasons therefor. The Commissioner's decision must show the manner in which the Commissioner construed the law and applied it to the facts, must recite any objections presented by the community, and must show how and the extent to which the Commissioner took community concerns into account and gave them due consideration when making the decision.

(c) The Commissioner's decision must be in writing and shall be final and conclusive unless, within 30 days from the date of the postmark on the Commissioner's decision, a party to the hearing files a written appeal in the office of the Commissioner. Upon receipt of the appeal, the Commissioner shall cause the Chairperson of the Appeals Commission to be advised of the pending appeal and the Chairperson shall cause the Appeals Commission to be convened with at least 20 days' notice to all parties. The Appeals Commission's review of an appeal from the Commissioner's final decision shall be on the record and in accordance with the Administrative Procedures Act, subchapter III of Chapter 101 of Title 29. A decision of the Commissioner shall be reversed only upon a finding of abuse of discretion.

(d) A party who is aggrieved by a final decision of the Appeals Commission may file a written appeal with the Superior Court within 30 days of the date that the Appeals Commission's decision was mailed. The Superior Court's review of an appeal shall be on the record and in accordance with the Administrative Procedures Act, subchapter V of Chapter 101 of Title 29. The Superior Court's review shall take into account the experience and specialized competence of the agency and the purpose under which the agency acted. Further, the Superior Court's review, in the absence of fraud, shall be limited to whether the agency's decision is supported by substantial evidence on the record and is free from legal error.

(38 Del. Laws, c. 18, § 21; Code 1935, § 6150; 42 Del. Laws, c. 188, § 1; 43 Del. Laws, c. 275, § 2; 4 Del. C. 1953, § 541; 59 Del. Laws, c. 107, §§ 32, 33; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 384, § 1; 71 Del. Laws, c. 435, §§ 2, 3; 72 Del. Laws, c. 486, §§ 9, 16-18; 73 Del. Laws, c. 133, § 2; 73 Del. Laws, c. 383, § 1; 78 Del. Laws, c. 384, § 1.)

### **§ 542 Decision upon application for renewal of license; time of making.**

On or before the first day of the month preceding the biennial expiration date of a license, the Commissioner shall render its decision upon every application properly and completely made to it on or before the first day of the third month preceding the biennial expiration date of a license.

(38 Del. Laws, c. 18, § 25; Code 1935, § 6154; 4 Del. C. 1953, § 542; 57 Del. Laws, c. 404, § 2; 67 Del. Laws, c. 273, § 23; 72 Del. Laws, c. 486, § 9.)

### **§ 543 Grounds for refusal of license; transfer or extension of premises.**

(a) The Commissioner shall refuse to grant a license to be used in any county or subdivision thereof, if contrary to any prohibitory law then in force, in such county or subdivision thereof.

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(b) The Commissioner may refuse to license an applicant if the Commissioner has substantial evidence that would reasonably support a belief that:

(1) Except for restaurants, there are sufficient licensed premises in the locality; or the granting of a license in the locality stated in the application is not otherwise demanded by public interest or convenience;

(2) The applicant is an importer of alcoholic liquors and has not furnished an acceptable bond for the purpose of assuring tax payments;

(3) The applicant appears to be financially irresponsible;

(4) The applicant has been provided with funds by, or has any forbidden connection with, a manufacturer, supplier or importer of alcoholic liquors;

(5) The applicant has made false statements to the Commissioner;

(6) The applicant has been convicted of violating any of the liquor laws of this State, or has been convicted and imprisoned for a crime;

(7) The applicant or any of the applicant's directors or officers, or any of the applicant's shareholders who hold more than 10% of the outstanding issued shares has been convicted of violating any of the prohibited acts defined in Chapter 47 of Title 16, the Uniform Controlled Substances Act, or its functional equivalent under the laws of the United States, any state or territory or any other country, including, but not limited to, the illegal manufacture, delivery, trafficking, possession or consumption of any controlled or noncontrolled substance, or the delivery or possession of illegal drug paraphernalia or illegal hypodermic syringes or needles, or the conspiracy, solicitation or other attempt to engage in such illegal activities;

(8) As to a restaurant applicant, the applicant has failed to designate a substantial portion of the premises' floor space, as determined by the Commissioner, to be used for the storage, preparation, service and consumption of complete meals;

(9) As to a restaurant applicant, the applicant's projected or actual receipts from the sale of complete meals fails to represent a substantial portion of the establishment's total gross receipts as determined by the Commissioner, provided that gross receipts received as payments from the State Lottery Office shall not be included by the Commissioner in his or her determination;

(10) As to a restaurant applicant, the applicant's proposed premises or any proposed extension of the premises of an existing licensed restaurant is protested in accordance with the provisions contained in § 541(b) of this title or any applicable Commissioner rule, and the Commissioner finds that substantial evidence exists to conclude that the establishment's primary purpose will be the serving of alcoholic liquor to patrons. In reaching its decision, the Commissioner shall consider factors including, but not limited to, the number and sizes of bars in the establishment, the establishment's floor plan, an approximate percentage of the projected revenue to be derived from the sale of alcoholic liquor as compared to the percentage of revenue to be derived from the sale of complete meals, the establishment's seating capacity, storage and preparation area for food service, and the number of service employees employed, or to be employed, in the establishment and their functions.

(11) A substantial objection to the granting of the license has been presented by the community within which the license is to operate, or that the granting of such license is otherwise not in the public interest. For the purposes of this subsection, the term "substantial objection" shall include:

a. Any objection, or group of objections, presented to the Commissioner either individually or as a group, by persons who reside within the election district where the license is to operate and all contiguous election districts, sufficient to give the Commissioner reason to believe that a majority of the residents of the community within which the license is to operate oppose the issuance of the license; or

b. Any objection, or group of objections, presented to the Commissioner either individually or as a group, the content of which gives the Commissioner reason to believe the quality of life of the community within which the license is to operate will be adversely affected by the granting of the license.

(c) The Commissioner may refuse to grant a license to sell alcoholic liquor to any new establishment to be located in the vicinity of a church, school or college. The Commissioner may issue a license to any establishment located in the vicinity of a church, school or college when such establishment has been located in a place prior to the time any church, school or college may thereafter be located in the vicinity of such establishment.

(d) The Commissioner shall refuse to grant a license for the sale of alcoholic liquor by any restaurant, tavern, taproom, hotel, store, or other establishment for consumption on or off the premises, when there is an existing licensed establishment of the same type within 1200 feet by accessible public road or street in any incorporated city or town, or within 1 mile by accessible public road or street in any unincorporated or rural area; provided, however, that if there is an existing licensed establishment less than 1 mile but more than nine tenths of 1 mile by accessible public road or street in any unincorporated or rural area, the Commissioner may, in its discretion, grant such license; and provided further, however, that the foregoing shall not apply:

(1) To any existing license or to the sale, transfer of ownership, or renewal thereof;

(2) To a club, hotel or restaurant for consumption of alcoholic liquors on the premises;

(3) To any holder of an existing license who desires to move the location of his or her license to a location within 500 feet thereof by accessible public road or street; provided, however, that such licensee located in a shopping center or shopping mall may move

the location of his license any distance within the same shopping center or shopping mall, whether such center or mall consist of 1 or more than 1 separate buildings.

(e) Any holder of an existing license who desires to move the location of his or her license due to the destruction of his building, loss of lease, diversion of highway traffic pattern, or similar reason beyond the control of the licensee, shall have preference in the issuance of a new license provided that the application satisfies this subsection and all other requirements under this title.

(f) The Commissioner shall refuse to grant a license to sell alcoholic liquor to any restaurant or eating place located on or a part of the Delaware Turnpike.

(g) The Commissioner shall not grant a new license of any type and shall not grant an extension of premises of an existing license of any type unless the application for said new license or for said extension is accompanied by a Certificate of Compliance from the appropriate political subdivision showing:

- (1) That the premises where the license is to be used are properly zoned for the applicant's intended use; and
- (2) That all necessary permits have been approved; and
- (3) That the applicant has complied with all other applicable licensing requirements of the appropriate political subdivision.

This subsection shall not apply to any application for a temporary extension of premises as authorized by Commissioner rule; provided, that any such application has not been objected to by the appropriate political subdivision which shall be provided with notice of the application by the applicant within 7 days of the date the application is filed with the Commissioner.

(h) Any existing restaurant which was licensed by the State to permit the sale of alcoholic beverages and which was in compliance with applicable state, county or municipal laws and regulations as of June 14, 1991 shall be permitted to continue to operate in the same manner as it was operating on said date so long as said license is in effect, notwithstanding any ordinance or other restriction subsequently enacted by a municipal corporation.

(38 Del. Laws, c. 18, §§ 22, 24; Code 1935, §§ 6151, 6153; 4 Del. C. 1953, § 543; 54 Del. Laws, c. 324; 54 Del. Laws, c. 377, § 2; 55 Del. Laws, c. 116, § 1; 55 Del. Laws, c. 283, § 2; 55 Del. Laws, c. 342, §§ 1, 2; 55 Del. Laws, c. 446; 56 Del. Laws, c. 34; 57 Del. Laws, c. 708; 58 Del. Laws, c. 542; 59 Del. Laws, c. 107, §§ 34-37; 61 Del. Laws, c. 145, § 1; 63 Del. Laws, c. 373, § 1; 64 Del. Laws, c. 430, § 1; 66 Del. Laws, c. 178, § 1; 67 Del. Laws, c. 109, § 15; 68 Del. Laws, c. 44, §§ 1, 2; 69 Del. Laws, c. 338, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 435, §§ 4, 5; 72 Del. Laws, c. 157, § 1; 72 Del. Laws, c. 486, § 9; 78 Del. Laws, c. 285, § 21.)

### **§ 544 Finality of Commissioner's decision refusing license.**

If an application is not timely protested, but the Commissioner determines that the application should nevertheless be denied, the Commissioner shall render the decision promptly in writing. The Commissioner's decision shall be final and conclusive unless, within 30 days after notice thereof has been mailed by the Commissioner's office, the applicant files an appeal in the office of the Commissioner. The appeal shall follow the procedure outlined in § 541 of this title.

(38 Del. Laws, c. 18, § 22; Code 1935, § 6151; 45 Del. Laws, c. 262, § 1; 4 Del. C. 1953, § 544; 59 Del. Laws, c. 107, § 38; 72 Del. Laws, c. 486, § 9; 73 Del. Laws, c. 133, § 3.)

### **§ 545 Improvements to premises.**

The Commissioner may not require an applicant to make improvements to the premises before the issuance of a license; however, the Commissioner may issue a license to sell alcoholic liquor upon the condition that certain improvements shall be made to the premises.

(4 Del. C. 1953, § 545; 55 Del. Laws, c. 291; 59 Del. Laws, c. 107, § 39; 72 Del. Laws, c. 486, § 9.)

### **§ 546 Limit on number of retail licenses.**

(a) The General Assembly finds that, in order for the Delaware Alcoholic Beverage Control Commissioner to maintain effective control of the importation, distribution and sale of alcoholic liquor into and within this State, and in order to prevent geographical price fixing of alcoholic liquor at the retail level, there shall be a limitation placed on the number of retail licenses issued, held, controlled or acquired directly or indirectly by 1 person. The General Assembly further finds that a limitation on the number of retail licenses held by 1 person is necessary to ensure a stable system for the lawful distribution of alcoholic liquor, serve the public need and convenience and prevent the public harm associated with a monopoly of the retail alcoholic liquor trade by any person or group of persons, whether such licenses are held by a corporation, partnership, association, proprietorship, individual or other entity. The General Assembly further finds that a reasonable restriction on the number of retail licenses held by 1 person will further the State's interest in maintaining a 3-tier system for the importation, distribution and sale of alcoholic liquor by minimizing or limiting absentee ownership and the domination of retail establishments by suppliers, manufacturers, importers or other economically powerful interests.

Therefore, it is declared to be the public policy of this State that limitations, as hereinafter specified, be placed on the number of retail licenses that any person may at 1 time hold, directly or indirectly, and that the Commissioner shall actively supervise and enforce these limitations.

(b) The Commissioner shall refuse to grant a license for the sale of alcoholic liquor by any restaurant, taproom, hotel, store or other establishment for consumption off the premises where sold if the Commissioner has substantial evidence that would reasonably support a belief that the applicant, or any of the applicant's directors, officers or shareholders, or any of the applicant's partners, corporations,

proprietorships or other legal entities engaged in any undertaking, industry or business is singularly, or in combination with the applicant, the holder of 2 or more retail licenses, or has any financial, pecuniary, beneficial, management, supervisory or other interest whatsoever, direct or indirect, and however small, in 2 or more retail licenses; provided, however, that nothing herein shall require any person who, prior to April 1, 1992, acquired an interest in more than 2 retail licenses to surrender, dispose of, or release their interest in any such license; nor shall anything herein affect such person's right to continue to hold, use and renew any such license.

(c) For the purposes of this section, a person shall be deemed to acquire a financial, pecuniary, beneficial, management, supervisory or other interest in a retail license to purchase and re-sell or dispense alcoholic liquor if such person or person's spouse or child under 21 years of age has either (i) any interest whatsoever, direct or indirect, and however small, as a director, officer, shareholder, partner, associate, employee or member in any corporation, partnership, association, proprietorship or other entity engaged in any undertaking, industry or business which holds a retail license pursuant to this chapter, or (ii) any authority whatsoever to supervise, manage, control or direct the operation of the licensee's business, or to hire, terminate or discipline its employees, or to issue any orders, policies or directives concerning its business; provided, however, that any person whose relationship with the licensee is, as determined by the Commissioner, merely that of a bona fide lender, lending institution, secured party or lienholder, or merely that of a bona fide landlord or lessor of real or personal property, shall not, for the purposes of this section, be deemed to acquire a financial, pecuniary, beneficial, management, supervisory or other interest in such license.

(d) The Commissioner may promulgate such rules and regulations with respect to the enforcement and furtherance of the objectives and provisions of this section as it may deem necessary, and all such rules and regulations that are not inconsistent with provisions of this title and the Delaware Code shall have the force and effect of law.

(68 Del. Laws, c. 376, § 1; 72 Del. Laws, c. 486, § 9.)

### Subchapter IV Certificate of License, Term of License and Fees

#### § 551 Issuance of certificate.

If the Commissioner grants the license and payment therefor has been made, a certificate to that effect shall be issued. The certificate shall set forth the name, the kind of license granted, the date of expiration of the license, and if a license to manufacture or to sell or to keep in stock, the place or places in which it is to be manufactured, sold or kept.

(38 Del. Laws, c. 18, § 23; Code 1935, § 6152; 4 Del. C. 1953, § 551; 59 Del. Laws, c. 107, § 40; 72 Del. Laws, c. 486, § 9.)

#### § 552 Term and expiration date of licenses.

All licenses issued under this title shall be valid for a period of 2 years, unless it is specifically stated in this title or by the Commissioner to be for a shorter period of time, or unless the license shall be cancelled, revoked or suspended by the Commissioner, or unless the license shall be surrendered by the licensee, or unless the license shall expire. The Commissioner shall determine the precise dates of the validity of a license issued under this title. A license issued by the Commissioner, which is not a renewal of a former license, within 3 months of the date the license would have to be renewed under the rules of the Commissioner may be made to terminate by the Commissioner 2 years after the first applicable biennial expiration date.

(38 Del. Laws, c. 18, § 25; Code 1935, § 6154; 4 Del. C. 1953, § 552; 57 Del. Laws, c. 404, § 3; 67 Del. Laws, c. 273, §§ 1, 26; 72 Del. Laws, c. 486, § 9.)

#### § 553 Rate of payment for license issued for other than 2 years.

A license issued for a time other than 2 years shall be paid for when issued at the rate of one twenty-fourth of the biennial fee for each month of the term.

(38 Del. Laws, c. 18, § 25; Code 1935, § 6154; 4 Del. C. 1953, § 553; 67 Del. Laws, c. 273, §§ 2, 3.)

#### § 554 License fees.

(a) For a license to sell alcoholic liquor in a hotel or restaurant the biennial license fee shall be \$1,000.

(b) For a license to sell alcoholic liquor on a boat the biennial license fee shall be \$1,000.

(c) For a license to sell alcoholic liquor in the passenger cars of a railroad the biennial license fee shall be \$600 for each railroad.

(d) For a license to sell alcoholic liquor in a club, to members of that club, the biennial license fee shall be \$300 if the club has an active membership in good standing of less than 400 members; or \$600 if the club has an active membership in good standing of 400 or more members.

(e) For a license to sell beer and/or wine only in a restaurant the biennial license fee shall be \$500.

(f) For a license to sell beer only in a tavern the biennial license fee shall be \$500.

(g) For a license to sell alcoholic liquors in a taproom the biennial license fee shall be \$1,000.

(h) For a license to sell alcoholic liquor from a hotel, restaurant, taproom, or store, not for consumption on the premises, the biennial license fee shall be \$1,000.

(i) For a license to sell alcoholic liquors at gatherings of persons, the license fee shall be as follows:

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(1) For a group-type gathering license, the license fee shall be \$5.00 for each such license granted, unless the said license shall be for a period of more than 2 days in which case the license fee shall be \$5.00 plus the additional sum of \$2.00 for each such additional day or unless the said license shall be for a Sunday, Thanksgiving, Christmas, or Easter, in which case the license fee shall be an additional \$5.00 for each such day.

(2) *Biennial license.* —

a. For a biennial premises type gathering license for a facility in which not more than 25 gatherings of persons at which alcoholic liquors are to be sold are to be held, the biennial license fee shall be \$200.

b. For a biennial premises type gathering license for a facility in which more than 25 but not more than 75 such gatherings of persons are to be held, the biennial license fee shall be \$400.

c. For a biennial premises type gathering license for a facility in which more than 75 such gatherings of persons are to be held, the biennial license fee shall be \$1,000.

d. For the holder of a biennial premises type gathering license to sell alcoholic liquor on a Sunday, Thanksgiving, Christmas, or Easter, the biennial license fee shall be:

1. An additional \$200 for a license issued pursuant to paragraph (i)(2)a. of this section;
2. An additional \$300 for a license issued pursuant to paragraph (i)(2)b. of this section; and
3. An additional \$400 for a license issued pursuant to paragraph (i)(2)c. of this section.

(j) For a license to "manufacture" and to "sell" beer and cider, the biennial license fee shall be based upon annual production and shall be computed as follows: \$1,500 for a brewery or microbrewery manufacturing not more than 25,000 barrels of beer and cider per year; \$3,000 for a microbrewery or brewery manufacturing more than 25,000 but not more than 50,000 barrels of beer and cider per year; \$6,000 for a microbrewery or brewery manufacturing more than 50,000 but not more than 100,000 barrels of beer and cider per year; and \$9,000 for a microbrewery or brewery manufacturing more than 100,000 barrels of beer and cider per year.

(k) For a license to operate a distillery for distillation or rectification, the biennial license fee shall be based upon annual production and shall be computed as follows: For the first 500 gallons, \$100; for the next 5,000 gallons, or fraction thereof, at the rate of 6 cents per gallon; for the next 10,000 gallons, or fraction thereof, at the rate of 4.5 cents per gallon; for the next 50,000 gallons, or fraction thereof, at the rate of 3 cents per gallon; for the next 100,000 gallons, or fraction thereof, at the rate of 1.5 cents per gallon; for each gallon in excess of 165,500 gallons, at the rate of three quarters cent per gallon.

(l) For a license to bottle beer the biennial license fee shall be \$100 for the first 500 barrels or less, and \$100 for each additional 500 barrels, or fraction, bottled.

(m) For a license to operate a winery or to bottle and sell wine the biennial license fee shall be \$1,500.

(n) For a license to import or to ship alcoholic liquor, other than beer and wine, into this State and to sell and deliver such alcoholic liquor as provided in this chapter the biennial license fee shall be \$7,500; but a sale and delivery of alcoholic liquor to pharmacists, physicians, dentists, veterinarians, wholesale druggists, manufacturing plants where the alcohol is used in scientific work, or for the manufacture of pharmaceutical products shall not be subject to the license fee.

(o) For a license to import or to ship beer into this State and to sell and deliver such beer the biennial license fee shall be \$3,000; and for a license to import or to ship unlimited amounts of wine into this State and to sell and deliver such wine the biennial license fee shall be \$3,000. A license for a limited wine importer, an importer that imports, sells and delivers less than 1000 cases of wine per year, shall be \$200. A limited wine importer need not pay the application fee required by subsection (x) of this section.

(p) For a license to sell alcoholic liquor as an off-site caterer the biennial license fee shall be \$500.

(q) For a license to transport a stock of alcoholic liquor from the place where sale or storage of such stock has been authorized to another location, the license fee shall be fixed by the Commissioner.

(r) For a license to purchase sacramental wine, no license fee shall be charged.

(s) For a temporary license, the license fee shall be not less than 1/2 nor more than double the amount of the annual license fee for a regular license for the same privilege, in the discretion of the Commissioner.

(t) For a license to sell alcoholic liquor at a horse racetrack the biennial license fee shall be \$3,000.

(u) For a license to sell alcoholic liquor at a motorsports speedway the biennial license fee shall be \$3,000.

(v) For license to sell alcoholic liquors as a ship's chandler the biennial license fee shall be \$1,000.

(w) For a license for a multiple activity club to sell alcoholic beverages to any person who is a member of such club or a guest of a member of such club, the biennial license fee shall be \$1,500.

(x) *Application process fee.* — If any application for a license under this title requires any investigation by the staff or a hearing by the Commissioner before the Commissioner reaches a decision on the application, the applicant shall pay an application process fee of \$1,000 in addition to any other fees required by this title or the rules of the Commissioner. The application process fee is not refundable regardless of the decision of the Commissioner. This provision for an application process fee does not apply to a gathering of persons under § 514 of this title, a limited suppliers license issued pursuant to § 501 of this title, a license to sell on Sunday, and a tasting permit. This provision for an application process fee shall not apply to applications for change of officers, directors or stockholders of a corporate licensee if

there is no change in the majority of stockholders or majority of directors. Six hundred dollars of the application process fee shall be retained by the Commissioner and deposited in a special fund for the sole purpose of providing for the implementation, administration and enforcement of the Delaware Responsible Alcoholic Beverage Server Training Program established pursuant to Chapter 12 of this title.

- (y) For a license to sell alcoholic liquor in a dinner theater the biennial license fee shall be \$1,000.
- (z) For a license to sell alcoholic liquors as a caterer for consumption on the premises where sold the biennial license fee shall be \$1,000.
- (aa) For a license as a "bottle club" authorized by § 515A of this title the biennial license fee shall be \$300.
- (bb) For a license to sell alcoholic liquors in a cabaret the biennial license fee shall be \$2,000.
- (cc) For a license as an air passenger carrier, as defined in § 512(i) of this title, the biennial license fee shall be \$1,000.
- (dd) For a license to conduct wine auctions the biennial license fee shall be \$1,500. For a gathering license to conduct a wine auction by a nonprofit organization the fee shall be \$50 per event.
- (ee) For a license to permit spirits, wine and beer tasting the biennial license fee shall be \$150.
- (ff) For a farm winery license the biennial license fee shall be \$1,500.
- (gg) For a brewery-pub license the biennial license fee shall be \$2,000.
- (hh) For a license to sell alcoholic liquors at a multi-purpose sports facility the biennial license fee shall be \$3,000.
- (ii) For a license to sell alcoholic liquors at a bowling alley the biennial license fee shall be \$1,000.
- (jj) For a license as a "direct shipper" as provided in § 526 of Title 4 the biennial license fee shall be \$100.
- (kk) Each of the licensees identified in subsections (a)-(h), (t)-(w), (y), (z), (bb), (cc), (dd), (ff), (gg), (hh), (ii), (mm), and (qq) of this section, shall pay an additional annual fee of \$100. The Commissioner shall deposit said funds into a special account designated as the "Overservice Investigation Fund." Said fund shall be utilized by the Division of Alcohol and Tobacco Enforcement to pay overtime to its agents and/or to hire and equip additional agents for the purpose of investigating and prosecuting licensees that serve intoxicated individuals.
- (ll) For a permit to sell alcoholic liquors on a patio, the biennial fee shall be \$1,000. If the holder of a patio permit desires a variance to Rule 42.1 [CDR 4-Rule 42.1], or a subsequently adopted rule, the biennial variance permit fee shall be \$100 per variance.
- (mm) For a license to sell alcoholic liquor in a concert hall the biennial fee shall be \$1,500.
- (nn) For a license as a "craft distillery" as provided in § 512E of this title the biennial license fee shall be \$1,500.
- (oo) For a "temporary large event" license as provided in § 512F of this title, the fee shall be \$500 for each temporary large event and no application process fee as permitted under subsection (x) of this section shall be assessed.
- (pp) For a growler filler permit as provided in § 516(a) of this title, the biennial license fee shall be \$150.
- (qq) For a license to sell alcoholic liquor in a movie theater the biennial fee shall be \$1,500.
- (rr) For a license to sell alcoholic liquor in a beer garden, the biennial fee shall be \$2,000. The holder of a beer garden license is not required to have a patio permit, but if the beer garden license holder desires a variance to Rule 42.1 (CDR 4-001-Rule 42.1), or a subsequently adopted rule, the biennial variance permit fee shall be \$100 per variance.

(38 Del. Laws, c. 18, § 30; 39 Del. Laws, c. 6; Code 1935, § 6159; 41 Del. Laws, c. 247, § 1; 41 Del. Laws, c. 248, §§ 1, 2; 42 Del. Laws, c. 191, § 4; 44 Del. Laws, c. 203, § 5; 4 Del. C. 1953, § 555; 49 Del. Laws, c. 341; 49 Del. Laws, c. 342, §§ 1-12; 50 Del. Laws, c. 424, §§ 1, 2; 54 Del. Laws, c. 377, § 3; 55 Del. Laws, c. 82, §§ 4, 5; 55 Del. Laws, c. 283, § 3; 55 Del. Laws, c. 416, §§ 1-3; 56 Del. Laws, c. 311, § 4; 56 Del. Laws, c. 335, §§ 6-8; 57 Del. Laws, c. 404, § 4; 57 Del. Laws, c. 448; 59 Del. Laws, c. 107, § 42; 60 Del. Laws, c. 466, §§ 4-6; 63 Del. Laws, c. 232, § 4; 64 Del. Laws, c. 436, § 1; 64 Del. Laws, c. 437, § 2; 65 Del. Laws, c. 152, § 1; 65 Del. Laws, c. 283, § 3; 67 Del. Laws, c. 109, § 16; 67 Del. Laws, c. 273, §§ 4-22; 68 Del. Laws, c. 107, § 2; 68 Del. Laws, c. 168, § 2; 68 Del. Laws, c. 205, § 2; 69 Del. Laws, c. 6, § 4; 70 Del. Laws, c. 353, § 3; 71 Del. Laws, c. 182, § 2; 71 Del. Laws, c. 211, § 4; 71 Del. Laws, c. 383, § 3; 72 Del. Laws, c. 486, § 9; 73 Del. Laws, c. 244, § 9; 73 Del. Laws, c. 393, § 3; 75 Del. Laws, c. 80, § 9; 75 Del. Laws, c. 253, §§ 1, 2; 77 Del. Laws, c. 72, § 1; 78 Del. Laws, c. 220, § 3; 78 Del. Laws, c. 251, § 2; 79 Del. Laws, c. 6, § 3; 79 Del. Laws, c. 23, § 2; 79 Del. Laws, c. 308, § 3; 80 Del. Laws, c. 62, § 1; 81 Del. Laws, c. 69, § 3; 81 Del. Laws, c. 79, § 1.)

### Subchapter V

### Cancellation or Suspension of License

#### § 561 Grounds for cancellation or suspension.

- (a) The Commissioner may cancel every license made use of on behalf of any person other than the one to whom or on behalf of whom it has been issued.
- (b) The Commissioner may suspend any license and/or fine any licensee for the sale of alcoholic liquors if it has reasonable grounds to believe that the licensee has committed any of the following violations, or may cancel any license for the sale of alcoholic liquors for the following violations, if repeated and continuous:
  - (1) The licensee has violated any provision of this title or any regulation of the Commissioner pursuant hereto;
  - (2) The licensee has made any false representation or statement to the Commissioner in order to induce or prevent action by the Commissioner;

- (3) The licensee is not maintaining an acceptable bond, if said bond is required;
- (4) The licensee is acting as an agent of a manufacturer of alcoholic liquor or has borrowed money or accepted gratuities from such a manufacturer or any agent thereof;
- (5) The licensee maintains a noisy, lewd, disorderly, or unsanitary establishment or has been supplying impure or otherwise deleterious beverages or food;
- (6) The licensee is in the habit of using dangerous or narcotic drugs, or is in the habit of using alcoholic beverages to excess;
- (7) The licensee has sold alcoholic liquor in contravention of § 708 of this title;
- (8) The licensee has in the licensee's possession on the licensee's licensed premises or has sold or offered for sale any alcoholic beverages not purchased or sold pursuant to this title;
- (9) The licensee has misrepresented any alcoholic liquor sold by the licensee as purchased through the Commissioner or has in the licensee's possession, or has used any wrappers, labels, corks, caps, stamps or bottles not purchased from or through the Commissioner which are deceptively similar to those used by the Commissioner;
- (10) The licensee has since the granting of the licensee's license been convicted of a felony or has been convicted of violating any of the liquor laws of this State, general or local, including the provisions of this title;
- (11) The licensee has admitted guilt or has been adjudged guilty of violations of local, municipal, county or State regulations, ordinances or codes related to the operation of a licensed premises;
- (12) There is any other reason which in the opinion of the Commissioner based on public convenience or necessity warrants cancelling or suspending the license;
- (13) The licensee or a representative thereof has disciplined, threatened or otherwise penalized any person for refusing to violate or aiding the enforcement of the provisions of this title or the rules of the Commissioner.

(c) The Commissioner shall not cancel or suspend any license for the sale of alcoholic liquors or impose any fine for an alleged violation of § 708 or § 904 of this title where the licensee or its employee has made a reasonable effort to determine the age of a purchaser of alcoholic liquors. For purposes of this subsection, a licensee or its employee shall be deemed to have made a reasonable effort to determine the age of a purchaser if, prior to any sale of alcoholic liquors, the licensee or its employee requires the purchaser to display identification, with a photograph of the purchaser thereon affixed, which sets forth information that would lead a reasonable man to believe the purchaser to be 21 years of age or older.

(d) Any of the grounds for refusal of a license as provided for in § 543 of this title shall also be adequate grounds for suspension of a license.

(e) The Commissioner may cancel any retail license if it has reasonable grounds to believe that the license was granted in violation of § 546(b) of this title, or any rule enacted pursuant to § 546(d) of this title.

(f) If the Commissioner receives notice from the appropriate political subdivision that any Certificate of Compliance issued to satisfy an applicant's duty under § 543(g) of this title has been suspended, then the Commissioner shall suspend any license or extension of an existing license granted in reliance on such Certificate of Compliance until such time as the Commissioner receives notice from the appropriate political subdivision that such Certificate has been reinstated. If the Commissioner receives notice from the appropriate political subdivision that any Certificate of Compliance issued to satisfy an applicant's duty under § 543(g) of this title has been canceled, then the Commissioner shall revoke any license or extension of an existing license granted in reliance on such Certificate of Compliance.

(g) The Commissioner may suspend any license for the sale of alcoholic liquors held by any taproom or restaurant or fine any licensee holding such a license if it has reasonable grounds to believe that the licensee has operated, caused the operation of or permitted the operation of any stationary source of sound in such a manner as to create an operative average sound level which is equal to or greater than 65 dBA, but less than 75 dBA, when measured at any location 100 feet or more from the licensed premises' real property boundary. The Commissioner shall suspend any license for the sale of alcoholic liquors held by any taproom or restaurant and fine any licensee holding such a license if it has reasonable grounds to believe that the licensee has operated, caused the operation of or permitted the operation of any stationary source of sound in such a manner as to create an operative average sound level which is equal to or greater than 75 dBA when measured at any location 100 feet or more from the real property boundary of the licensed premises. For the purpose of this section, "operative average sound level" means the energy average of the A-weighted sound pressure level during the business hours of operation of the licensed premises. The operative average sound level may be determined by an average of not less than 3 individual decibel readings taken not less than 10 minutes apart and taken from the same location. Provided however, that nothing in this subsection shall apply within the boundaries of any municipality.

(38 Del. Laws, c. 18, § 29; Code 1935, § 6158; 41 Del. Laws, c. 246, § 1; 4 Del. C. 1953, § 561; 55 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 416; 59 Del. Laws, c. 107, §§ 43-48; 59 Del. Laws, c. 590, § 7; 61 Del. Laws, c. 493, § 1; 67 Del. Laws, c. 109, § 17; 68 Del. Laws, c. 130, § 1; 68 Del. Laws, c. 376, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 435, §§ 6, 7; 72 Del. Laws, c. 486, § 9; 74 Del. Laws, c. 154, § 1; 75 Del. Laws, c. 417, § 2.)

### **§ 562 Public hearing and right of appeal.**

- (a) No license shall be cancelled or suspended, or any licensee fined:

(1) Until the licensee has been given a public hearing by the Commissioner at which time the licensee shall be entitled to legal representation and to present witnesses; and

(2) Unless the ground therefor shall be established by clear and convincing evidence.

A full and complete record shall be kept of all proceedings incident to such hearing. All testimony shall be recorded but need not be transcribed unless an order of the Commissioner is appealed to the Superior Court as set forth in subsection (c) of this section.

(b) Any order of the Commissioner relative to suspension or cancellation of a license, or a fine imposed against a licensee shall become final 10 days after the licensee receives notice thereof, unless within 10 days of the date of the postmark on the Commissioner's decision a written appeal is filed in the Superior Court. No bond shall be required for filing such appeal.

(c) The appeal shall state the grounds upon which a review is sought. After the appeal is filed, service shall be made by the Sheriff upon the Commissioner. The Commissioner shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter, together with the Commissioner's findings therein as soon as practicable but in no event later than 20 calendar days from the date of service of the appeal. The Superior Court's review of an appeal shall be on the record and the Superior Court shall take into account the experience and specialized competence of the agency and the purpose under which the agency acted. Further, the Superior Court's review, in the absence of fraud, shall be limited to whether the agency's decision is supported by substantial evidence on the record and is free from legal error.

(d) An appeal without bond may be taken from the decision of the Superior Court to the Supreme Court of this State in the same manner as is provided in civil cases. Upon the final determination of judicial proceedings, the Commissioner shall enter an order in accordance with such determination, or shall take such further or other action as the Court may order. A petition for judicial review shall act as a supersedeas.

(38 Del. Laws, c. 18, § 29; Code 1935, § 6158; 47 Del. Laws, c. 119, § 1; 4 Del. C. 1953, § 562; 55 Del. Laws, c. 296, § 2; 59 Del. Laws, c. 107, §§ 49, 50; 72 Del. Laws, c. 486, §§ 9, 19, 20; 78 Del. Laws, c. 384, § 3.)

### **§ 563 Effect of cancellation or surrender of license; notice.**

(a) The cancellation or the acceptance of a surrender of any license shall entail the loss of the privilege conferred by the license and shall entail the acceptance of or the seizure by the Commissioner of any alcoholic liquor found in the possession of the holder of the license, except those which occur solely by reason of the death of the licensee.

(b) Notice of the order of the cancellation or the acceptance of the surrender of the license may be served by an officer designated by the Commissioner by affixing a duplicate thereof to the outside of the entrance door of the licensed premises, or by leaving a duplicate with the holder of the license, or with any member of the family of the holder over the age of 18 years at the residence of the holder, or otherwise, as in the judgment of the Commissioner will give notice of such cancellation or acceptance of the surrender. All cancellations or acceptances of surrender shall take effect as soon as the order is served.

(c) The cancellation or acceptance of surrender of a license shall not in any wise prevent the institution of any criminal proceedings for any offense under this title by the person who was the holder of such license while it was in force. No conviction obtained for any offense under this title shall prevent the Commissioner from cancelling the license of any offender or from making at the same time a seizure of alcoholic liquor as provided in this title.

(38 Del. Laws, c. 18, § 29; Code 1935, § 6158; 41 Del. Laws, c. 246, § 1; 4 Del. C. 1953, § 563; 59 Del. Laws, c. 107, § 51; 72 Del. Laws, c. 486, § 9.)

### **§ 564 Payments to former licensee.**

The Department of Finance shall, within 30 days of the date of the cancellation or acceptance of surrender of a license, remit to the former licensee a part of the license fee which has been paid and pertains to the unexpired term of the license. In addition, the Commissioner shall remit to the former licensee the amount originally received by the Commissioner from the former licensee in payment for such alcoholic liquor accepted or seized as remains in packages sealed by the Commissioner, after paying or deducting therefrom all costs and expenses incurred by the Commissioner by reason of the acceptance or seizure of the alcoholic liquor of the former licensee. When other legally acquired alcoholic liquors have been accepted or seized under this section, the value thereof as determined by the Commissioner shall be remitted by the Commissioner to the former licensee, after paying or deducting therefrom all costs and expenses incurred by the Commissioner by reason of the acceptance or seizure of the alcoholic liquor of the former licensee. When illegally acquired alcoholic liquors have been seized under this section, no payment shall be made therefor.

(38 Del. Laws, c. 18, § 29; Code 1935, § 6158; 41 Del. Laws, c. 246, § 1; 44 Del. Laws, c. 205, § 1; 4 Del. C. 1953, § 564; 57 Del. Laws, c. 741, § 27A; 72 Del. Laws, c. 486, § 9.)

## **Subchapter VI**

### **Transfer of License; Death of Licensee**

#### **§ 571 Transfer of license.**

(a) The rights conferred by a license may be transferred by the Commissioner to any representative designated by the person to whom or on behalf of whom the license was originally granted, if such representative is a person approved by the Commissioner. In the case of



death of an individual to whom a license has been granted, the Commissioner may transfer the license to a qualified person recommended by the executor or administrator of the estate of the deceased licensee.

(b) In instances where the Commissioner has approved the transfer of a license, all matters concerning alcoholic beverage inventories shall be handled directly between the transferor and the transferee and all payments shall be made directly and not through the Commissioner.

(38 Del. Laws, c. 18, § 29; Code 1935, § 6158; 41 Del. Laws, c. 246, § 1; 4 Del. C. 1953, § 571; 59 Del. Laws, c. 107, § 52; 72 Del. Laws, c. 486, § 9.)

### **§ 572 Death of licensee; payments to licensee's estate.**

If any licensee dies and no application is made for transfer of the license, or the Commissioner refuses to permit the transfer of the license to another person, the Department of Finance shall return to the legal representative of such deceased person a share of the license fee received by the Department proportionate to the number of full calendar months of the unexpired term; and if the alcoholic liquors in possession of the licensee at the time of the licensee's death are delivered to the Commissioner and the Commissioner ascertains that such alcoholic liquors have been received by the deceased person according to law, the Commissioner shall pay to the representative the amount originally received by the Commissioner for such alcoholic liquors less 10 percent thereof, or the appraised value less 10 percent thereof.

(38 Del. Laws, c. 18, § 31; Code 1935, § 6160; 4 Del. C. 1953, § 572; 57 Del. Laws, c. 741, § 27B; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 9.)

## Subchapter VII

### Taxes

### **§ 581 Rates of tax [For application of this section, see 81 Del. Laws, c. 54, § 2]**

(a) All persons required to be licensed under this title as an importer shall, upon the purchase or receipt of alcoholic beverages, pay a tax thereon at the rates set forth in subsection (d) of this section.

(b) All persons licensed under this title to manufacture alcoholic beverages shall pay a tax on all alcoholic beverages sold to customers in this State at the rates set forth in subsection (d) of this section. This subsection shall not apply to sales to customers who are:

- (1) Importers of alcoholic beverages subject to licensing under this title;
- (2) Distributors of alcoholic beverages licensed by a state other than Delaware where the alcoholic beverages are sold for resale in such other state; or
- (3) In the case of sales of beer, an instrumentality of the United States Armed Forces.

(c) Except as provided in subsection (a) or (b) of this section, any person who imports alcoholic beverages for consumption in this State shall pay to the Department of Finance the tax on such imports at the rates set forth in subsection (d) of this section.

(d) The tax payable under this section shall be as follows:

- (1) For each barrel of beer, \$8.15.
- (2) For each gallon of cider, \$.27.
- (3) For each gallon of wine, \$1.63.
- (4) For each gallon of spirits containing 25% or less of ethyl alcohol by volume, \$3.00.
- (5) For each gallon of spirits containing more than 25% ethyl alcohol by volume, \$4.50.
- (6) For each gallon of alcohol per gallon of ethyl alcohol contained, \$8.15, except that the tax of \$8.15 shall not apply to the purchase of alcohol by pharmacists, physicians, dentists, veterinarians, wholesale druggists or manufacturing plants where the alcohol is used in scientific work, for the manufacture of pharmaceutical products, or for use in the manufacture or compounding of preparations unfit for beverage purposes.

(e) The Commissioner shall make and publish such rules and regulations with respect to the collection and payment of the taxes imposed by this section as it deems proper, and all such rules and regulations that are not inconsistent with the provisions of this title shall have the force and effect of law.

(38 Del. Laws, c. 18, § 16; Code 1935, § 6145; 43 Del. Laws, c. 274, § 1; 4 Del. C. 1953, § 581; 49 Del. Laws, c. 342, § 13; 53 Del. Laws, c. 106; 57 Del. Laws, c. 136, § 30; 57 Del. Laws, c. 741, § 27C; 58 Del. Laws, c. 294, §§ 1, 2; 58 Del. Laws, c. 584, § 1; 62 Del. Laws, c. 113, § 1; 67 Del. Laws, c. 258, § 1; 68 Del. Laws, c. 107, §§ 3, 4; 70 Del. Laws, c. 488, §§ 1, 2, 5; 70 Del. Laws, c. 559, §§ 5, 6; 71 Del. Laws, c. 211, § 5; 72 Del. Laws, c. 486, § 9; 78 Del. Laws, c. 251, § 3; 81 Del. Laws, c. 54, § 1.)

### **§ 582 Refund of tax paid by importers or wholesalers on beer sold to instrumentalities of the armed forces of the United States.**

(a) Any tax paid by an importer or wholesaler to the Department of Finance, pursuant to § 581 of this title, on alcoholic liquors that are sold by such importer or wholesaler to an instrumentality of the armed forces of the United States shall be refunded to such importer or wholesaler by the Department of Finance.

(b) Any importer or wholesaler entitled to a refund of tax under this section may, instead of filing a claim for refund, take credit therefor against taxes imposed by § 581 of this title and due upon alcoholic liquor subsequently purchased by such importer or wholesaler.

(c) The Commissioner may make and publish rules and regulations with respect to refunds and credits allowed by this section, and such rules and regulations as are not inconsistent with this title shall have the force and effect of law.

(60 Del. Laws, c. 322, § 1; 72 Del. Laws, c. 374, § 1; 72 Del. Laws, c. 486, § 9.)

### **§ 583 Administration of taxes.**

Except to the extent inconsistent with specific provisions of this title, the provisions of Chapter 5 of Title 30 shall govern the assessment, collection, review and appeal of deficiencies of tax imposed by this title, and any interest and penalties thereon, and claims for refund of overpayment of taxes imposed by this title.

(68 Del. Laws, c. 187, § 23.)

### **§ 584 State fees in lieu of county and municipal fees; preemption provision.**

The fees, charges and taxes imposed by the State under this title shall be in lieu of all county and municipal license fees and taxes upon the business of manufacturing, supplying, distributing and selling alcoholic liquor as such. Provided, however, general occupational license fees and general taxes imposed uniformly on everyone within the class shall not be preempted.

For purposes of this section, "class" shall not be defined by general or specific reference to manufacturing, supplying, distributing, or selling alcoholic liquor.

(74 Del. Laws, c. 312, § 1.)

**Chapter 7**

**REGULATORY PROVISIONS**

**§ 701 Persons authorized to make sale and delivery of alcoholic liquors.**

(a) No sale and delivery of alcoholic liquor shall be made in this State unless by a manufacturer or other person who holds a license of the Commissioner to sell and deliver alcoholic liquor and unless the sale and delivery is made to a person who is authorized to receive alcoholic liquor under Chapter 5 of this title.

(b) No common carrier shall be held responsible for the delivery of alcoholic liquor forbidden by this section.

(c) The Commissioner shall permit the holders of a license under §§ 531-533 of this title to receive or pick up beer in the barrel or keg directly from a manufacturer, importer or any other person authorized by this title to sell and deliver alcoholic liquor, notwithstanding any provisions of this title to the contrary.

(d) The Commissioner may permit an off-site caterer to transport alcoholic liquor in accordance with the Commissioner's rules.

(38 Del. Laws, c. 18, § 16; Code 1935, § 6145; 4 Del. C. 1953, § 701; 57 Del. Laws, c. 419; 67 Del. Laws, c. 109, § 18; 72 Del. Laws, c. 486, § 11; 73 Del. Laws, c. 393, § 4.)

**§ 702 Delivery of alcohol or spirits by manufacturer or importer.**

The Commissioner may issue a written order signed by the Commissioner authorizing a manufacturer or importer to deliver alcohol or spirits in specified quantity to a person who holds a license to sell such alcohol or spirits, but not more than 1 delivery shall be specified or made on the same order.

(38 Del. Laws, c. 18, § 16; Code 1935, § 6145; 4 Del. C. 1953, § 707; 67 Del. Laws, c. 109, § 19; 72 Del. Laws, c. 486, § 11.)

**§ 703 Sale and delivery of wine or beer by manufacturer or importer.**

No manufacturer or importer shall sell, ship, transport or deliver wine or beer within this State to any person unless in accordance with the published regulations of the Commissioner and unless a statement of the date, amount and description of the transaction be mailed to the Commissioner.

(38 Del. Laws, c. 18, § 16; Code 1935, § 6145; 4 Del. C. 1953, § 708; 67 Del. Laws, c. 109, §§ 19, 20; 72 Del. Laws, c. 486, § 11.)

**§ 704 Commissioner regulation of wine or beer sales.**

The Commissioner may make a regulation authorizing a manufacturer or importer to sell, transport or deliver wine or beer within this State to any person or class of persons authorized under this title to receive wine or beer.

(38 Del. Laws, c. 18, § 16; Code 1935, § 6145; 4 Del. C. 1953, § 709; 67 Del. Laws, c. 109, § 19; 72 Del. Laws, c. 486, § 11.)

**§ 705 Containers for sale and delivery of beer for consumption off premises.**

No sale and delivery of beer, for consumption off the premises where sold, shall be made in open containers, but sales or delivery may be made in bottles, half bottles, barrels, half barrels or quarter barrels, if such containers are securely corked, capped, stopped or plugged at the time delivery thereof is made.

(38 Del. Laws, c. 18, § 16; Code 1935, § 6145; 4 Del. C. 1953, § 710; 67 Del. Laws, c. 109, § 19.)

**§ 706 Sale or service of alcoholic liquors to intoxicated person.**

Any licensee, or employee of a licensee, or person in charge of a licensed premises shall refuse to sell or serve alcoholic liquors to any individual if such individual is intoxicated or appears to be intoxicated. Such licensee, employee of a licensee or person in charge of the licensed premises shall not be liable to any individual for damages claimed to arise from the refusal to sell alcoholic liquors if such refusal is based upon this section.

(38 Del. Laws, c. 18, § 17; Code 1935, § 6146; 4 Del. C. 1953, § 711; 52 Del. Laws, c. 181; 59 Del. Laws, c. 107, § 53; 67 Del. Laws, c. 109, § 19.)

**§ 707 Home manufacture of beer or wine for personal consumption.**

(a) No license or special permit shall be required for the manufacture within homes, or other premises used in connection therewith, of beer in quantities of 200 gallons or less during any calendar year, or wine in quantities of 200 gallons or less during any calendar year, for the personal consumption only of the homeowner(s), their families or their guests; provided however, that such beer or wine shall not be offered for sale.

(b) Such beer or wine, when manufactured and used as set forth above, shall not be subject to any taxes imposed by the Liquor Control Act.

(c) Beer and wine manufactured pursuant to this section may be removed from the home and transported for personal or family use, and in addition may be transported for the purposes of participating in club-sponsored events and tasting competitions.

(d) Notwithstanding any other provision in this chapter or title, concentrated alcoholic beverages are not "home-manufactured beer or wine" for purposes of this section, and all Commissioner regulations and tax requirements concerning home-manufactured beer or wine shall not apply to concentrated alcoholic beverages.

(4 Del. C. 1953, § 712; 59 Del. Laws, c. 107, § 54; 65 Del. Laws, c. 50, § 4; 67 Del. Laws, c. 109, § 19; 71 Del. Laws, c. 315, § 2; 72 Del. Laws, c. 486, § 11.)

### § 708 Prohibition of sales to certain persons.

(a) No person or licensee shall sell any alcoholic liquor to any:

(1) Individual who has not reached the age of 21 years, except that in any prosecution for an offense under this paragraph it shall be an affirmative defense that the individual, who has not reached the age of 21 years, presented to the accused identification, with a photograph of such individual affixed thereon, which identification sets forth information which would lead a reasonable person to believe such individual was 21 years of age or older;

(2) Person to whom such sale is prohibited;

(3) Individual who habitually drinks alcoholic liquor to excess, or to whom the Commissioner and/or Division has, after investigation, decided to prohibit the sale of such liquor because of an appeal to the Commissioner and/or Division by the husband, wife, father, mother, brother, sister, employer or other person depending upon, employing or in charge of such individual, or by the mayor or other competent representative of any city, town, or other incorporated place; the interdiction in such case shall last until removed by the Commissioner and/or Division.

(b) No sale made to any person mentioned in this section, other than an individual who has not reached the age of 21 years, shall constitute a misdemeanor unless the Commissioner and/or Division has informed the seller, by registered letter, that it is forbidden to sell to such person or unless the fact is otherwise known to the seller.

(38 Del. Laws, c. 18, § 34; Code 1935, § 6163; 41 Del. Laws, c. 249, § 1; 4 Del. C. 1953, § 715; 49 Del. Laws, c. 57, § 1; 58 Del. Laws, c. 511, § 1; 59 Del. Laws, c. 107, § 55; 61 Del. Laws, c. 493, § 2; 64 Del. Laws, c. 216, §§ 1, 2; 67 Del. Laws, c. 109, § 19; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 10; 75 Del. Laws, c. 255, § 1; 78 Del. Laws, c. 179, § 2; 80 Del. Laws, c. 61, § 1.)

### § 709 Prohibition of sales at certain times.

(a) No entity licensed pursuant to § 501 of this title or importer shall sell or deliver alcoholic liquor on Sundays, Thanksgiving, Easter or Christmas or at hours other than those prescribed by the rules or regulations of the Commissioner, except as subsection (f) of this section may apply.

(b) No holder of a license for the sale of alcoholic liquors for off-premises consumption shall sell or deliver the same on Thanksgiving, Easter or Christmas or between the hours of 1:00 a.m. and 9:00 a.m. on Mondays through Saturdays, except as subsection (f) of this section may apply, and on Sundays before 10:00 a.m. or after 8:00 p.m. Any municipality with a population of 50,000 or more may limit sales within the boundaries of the municipality pursuant to this subsection to a maximum of 4 hours on Sundays as established by ordinance of the municipality. The closing hours for days of the week other than Sunday may be made earlier in any municipality having a population of 50,000 or more persons, by ordinance of the municipal corporation; provided however, that such ordinance be consistent with the Delaware state and federal constitutions as well as treat all businesses fairly. During the months of October through December a holder of a license for the sale of alcoholic liquor for off-premises consumption shall be permitted to have sales take place beginning at 8:00 a.m. on Fridays through Saturdays.

(c) No holder of a license for the sale of alcoholic liquor for on-premises consumption shall sell the same between the hours of 1:00 a.m. and 9:00 a.m. The closing hour may be made earlier in any municipality by ordinance of the municipal corporation. The sale of alcoholic liquors by a licensee for consumption on the premises where sold shall be permitted on every day of the year; provided, that no licensee shall be required to be open to sell alcoholic liquors on Sundays, Thanksgiving, Easter or Christmas.

(d) Any holder of a license to sell alcoholic liquor, for either on-premises consumption or off-premises consumption, who wishes to sell alcoholic liquors on Sundays, except a gathering license, shall pay a biennial license fee of \$500 for the issuance of a special license to serve alcoholic liquors on Sundays, which shall be in addition to any other license fees which may be required of the licensee. If a licensee holds a license to sell for on-premises consumption and off-premises consumption it shall only be required to purchase 1 special license if it wishes to serve alcoholic liquors on Sunday.

(e) In the municipalities and other political subdivisions of this State where daylight saving time is observed, whether authorized by law or by custom, daylight saving time shall apply to the hours mentioned in this section for the period during which daylight saving time exists.

(f) Importers or holders of a license for the sale of spirits, wines or beer may deliver beer on Sundays in motor vehicles equipped with permanently-installed devices for the refrigeration and dispensing of beer to licensed gatherings only; provided, however, that such licensee shall have first given notice of such delivery to the Commissioner.

(g), (h) [Repealed.]

(38 Del. Laws, c. 18, § 33; Code 1935, § 6162; 42 Del. Laws, c. 194, § 1; 43 Del. Laws, c. 277, § 1; 45 Del. Laws, c. 260, § 1; 45 Del. Laws, c. 265, § 1; 4 Del. C. 1953, § 717; 55 Del. Laws, c. 311, § 1; 56 Del. Laws, c. 265, § 1; 57 Del. Laws, c. 352, §§ 1, 2; 58

Del. Laws, c. 146, § 1; 59 Del. Laws, c. 107, §§ 57, 58; 59 Del. Laws, c. 115, § 1; 60 Del. Laws, c. 466, §§ 7, 8; 62 Del. Laws, c. 381, §§ 1-3; 65 Del. Laws, c. 156, § 1; 67 Del. Laws, c. 109, §§ 19, 21; 68 Del. Laws, c. 107, § 5; 69 Del. Laws, c. 6, § 5; 69 Del. Laws, c. 384, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 248, § 1; 71 Del. Laws, c. 109, § 1; 72 Del. Laws, c. 486, § 11; 73 Del. Laws, c. 244, § 10; 74 Del. Laws, c. 29, § 1; 74 Del. Laws, c. 141, §§ 1-3; 74 Del. Laws, c. 146, § 1; 74 Del. Laws, c. 202, § 1; 74 Del. Laws, c. 259, §§ 1, 2; 76 Del. Laws, c. 237, §§ 1-3; 77 Del. Laws, c. 72, § 3; 80 Del. Laws, c. 62, § 1; 80 Del. Laws, c. 382, § 1; 81 Del. Laws, c. 62, § 1.)

### **§ 710 Reports by importers.**

The Commissioner shall require every importer to make a monthly report of his manufacture, purchases, stocks and sales of alcoholic liquor to the Commissioner.

(38 Del. Laws, c. 18, § 28; Code 1935, § 6157; 4 Del. C. 1953, § 718; 57 Del. Laws, c. 680; 59 Del. Laws, c. 590, § 5; 67 Del. Laws, c. 109, § 19; 72 Del. Laws, c. 486, § 11.)

### **§ 711 Refilling bottles.**

Alcoholic liquor in bottles, procured by the holder of a license to resell for the purpose of delivering the same to consumers, shall be kept in the bottles in which it was procured. As long as any such bottle bears the mark or label which it bore when delivered, no other alcoholic liquor, substance or liquid shall be put therein, and no holder of a license, nor anyone on his behalf, after the alcoholic liquor bottled in one of the bottles has been poured out, may refill the bottle, either wholly or in part, with intent to supply alcoholic liquor or any other substance or liquid to any consumer.

(38 Del. Laws, c. 18, § 32; Code 1935, § 6161; 4 Del. C. 1953, § 719; 59 Del. Laws, c. 107, § 60; 67 Del. Laws, c. 109, § 19.)

### **§ 712 Label on bottle.**

No holder of a license shall use or allow the use of any mark or label on a bottle, in which alcoholic liquor is kept for sale, that does not precisely and clearly indicate the nature of the contents of the bottle, or which might in any way deceive any consumer as to the nature, composition or quality of the contents.

(38 Del. Laws, c. 18, § 32; Code 1935, § 6161; 4 Del. C. 1953, § 720; 59 Del. Laws, c. 107, § 61; 67 Del. Laws, c. 109, § 19.)

### **§ 713 Mixing unauthorized with authorized liquor.**

No person shall, for any reason, mix or permit the mixing of or cause to be mixed any alcoholic liquor which is not authorized to be sold with any alcoholic liquor the sale of which is authorized to be sold.

(38 Del. Laws, c. 18, § 32; Code 1935, § 6161; 4 Del. C. 1953, § 721; 59 Del. Laws, c. 107, § 62; 67 Del. Laws, c. 109, § 19.)

### **§ 714 Places for keeping spirits, wines or beer.**

No person shall keep spirits, wines or beer in the State except:

- (1) In an establishment licensed by the Commissioner to sell alcoholic liquor;
- (2) In an establishment where it is expressly permitted by the Commissioner to keep alcoholic liquor;
- (3) In an establishment where, by exception, it is permitted by law to keep alcoholic liquors;
- (4) In the residence of any person, provided the alcoholic liquor is not kept with intent to sell the same, but one sale shall suffice to establish such intent;
- (5) In the office of a physician, pharmacist or veterinarian for medicinal purposes only, and in the office of a clergyman for sacramental purposes only;
- (6) In the baggage of an individual who is transporting alcoholic liquor for his individual use;
- (7) In a church, chapel, or other place for religious worship or a dependence thereof where sacramental wine may be kept.

(38 Del. Laws, c. 18, § 36; Code 1935, § 6165; 41 Del. Laws, c. 251, § 1; 59 Del. Laws, c. 107, § 63; 67 Del. Laws, c. 109, §§ 19, 22; 72 Del. Laws, c. 486, § 11.)

### **§ 715 Places for keeping alcohol.**

No person shall keep alcohol in the State, except:

- (1) In the establishment of a pharmacist, physician, dentist, veterinarian, wholesale druggist, university, college, school or manufacturing plant where the alcohol is used in industrial or scientific work or for the manufacture of pharmaceutical products where it is expressly permitted by the Commissioner to keep alcohol;
- (2) In a distillery licensed by the Commissioner to manufacture alcohol.

(38 Del. Laws, c. 18, § 36; Code 1935, § 6165; 41 Del. Laws, c. 251, § 1; 4 Del. C. 1953, § 723; 67 Del. Laws, c. 109, §§ 19, 23; 72 Del. Laws, c. 486, § 11.)

### **§ 716 Transportation of spirits, wines or beer.**

No person shall transport spirits, wines or beer in this State, except:

- (1) Directly from one establishment in this State to another establishment belonging to or leased by the same person, provided he or she holds a license to transport alcoholic liquor; or
  - (2) Directly from the establishment of a holder of a license to sell and to deliver such alcoholic liquor to the establishment of a like holder of a license to sell; or
  - (3) Directly from the establishment of a person who is the holder of a license to transport alcoholic liquor to a place outside this State; or
  - (4) An individual who is transporting alcoholic liquor for his or her personal use or the use of his or her family or guests; or
  - (5) An individual importing alcoholic liquors into the State, the daily quantity of which does not exceed the amount permitted by federal statutes governing the importation of alcoholic liquors into the United States.
- (38 Del. Laws, c. 18, § 36; Code 1935, § 6165; 41 Del. Laws, c. 251, § 1; 42 Del. Laws, c. 191, § 5; 44 Del. Laws, c. 203, § 6; 4 Del. C. 1953, § 724; 50 Del. Laws, c. 417, § 3; 55 Del. Laws, c. 82, §§ 8, 9; 59 Del. Laws, c. 107, § 64; 67 Del. Laws, c. 109, §§ 19, 24; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 407, § 1.)

### § 717 Transportation of alcohol.

No person shall transport alcohol in the State, except where it is expressly permitted by the Commissioner to transport such alcohol.

(38 Del. Laws, c. 18, § 36; Code 1935, § 6165; 41 Del. Laws, c. 251, § 1; 4 Del. C. 1953, § 725; 67 Del. Laws, c. 109, §§ 19, 25; 72 Del. Laws, c. 486, § 11.)

### § 718 Shipping and transporting alcoholic liquor.

(a) If alcoholic liquor is to be shipped to a point within the State by other than the manufacturer or importer thereof, the transportation thereof outside of the municipality in which the establishment of the seller is situated, shall be made only by a common carrier or, if not contrary to the rules of the Commissioner, by the purchaser on condition that it is transported in a vehicle owned or hired by the purchaser directly to the purchaser's residence or, if the purchaser is the holder of a license to sell, to the purchaser's establishment, but such transportation shall not be by the seller nor by any employee, agent or representative of the seller, nor by any other person interested in the sale.

(b) If alcoholic liquor is to be shipped to a point within or without this State by the manufacturer or importer thereof, the shipment shall only be made by common carrier, by vehicle owned or hired by the manufacturer or importer, or employee thereof, under the rules of the Commissioner. "Shipped," as used in this subsection, shall mean any movement of alcoholic beverage to any location other than the manufacturer's or importer's storage location.

(c) If the transportation of alcoholic liquor be effected by a common carrier, the individual transporting or in charge of the transportation of such alcoholic liquor shall have in his possession and produce upon request a waybill or other evidence of authorized shipment containing the name and address of the shipper and the name and address of the consignee.

(38 Del. Laws, c. 18, § 37; Code 1935, § 6166; 4 Del. C. 1953, § 726; 67 Del. Laws, c. 109, § 19; 68 Del. Laws, c. 54, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 11.)

### § 719 Distillery and wine manufacturer.

(a) No provision of this title shall prevent any distillery or brewery, duly licensed by the United States or by this State to manufacture alcohol or spirits in this State, or any wine manufacturer in this State from having or keeping for sale in his establishment in this State the alcoholic liquor so licensed to be manufactured by him, or from selling or delivering the same in accordance with the provisions of this title.

(b) If alcoholic liquor is to be shipped by a distillery or manufacturer to a place within this State, the distillery or manufacturer may sell it only to the Commissioner or under the published rules of the Commissioner and the distillery or manufacturer shall in every case comply with every other applicable provision of this title.

(c) The Commissioner may, upon the conditions it determines, grant to any distillery, duly licensed by the United States or by this State to manufacture alcohol or spirits in this State, a special license authorizing the distillery to purchase and to import, from such persons as are entitled to sell the same, wines or spirits to be used for the sole purpose of blending with and flavoring such products.

(d) No provision of this title shall prevent the Commissioner from agreeing to the sale and delivery of potable and non-potable alcohol from a distillery direct to a manufacturer of articles requiring such alcohol, if such sale and delivery be made subject to such conditions as the Commissioner publishes.

(38 Del. Laws, c. 18, §§ 40, 42; Code 1935, §§ 6168, 6170; 42 Del. Laws, c. 190, § 1; 4 Del. C. 1953, § 727; 59 Del. Laws, c. 107, § 65; 67 Del. Laws, c. 109, § 19; 72 Del. Laws, c. 486, § 11.)

### § 720 Storage of alcoholic liquors.

All holders of licenses for the sale of alcoholic liquor in a tavern, restaurant or taproom, and as to the public sale portions of the premises covered by holders of a hotel or club license, shall store all alcoholic liquor in adequate storage facilities and the premises, or the part of the premises where such alcoholic liquor is stored if a hotel or club, must be locked before the last person leaves the licensed premises.

(59 Del. Laws, c. 590, § 3; 67 Del. Laws, c. 109, § 19.)

### § 721 Brewery.

No provision of this title shall prevent the Commissioner from authorizing any brewery to sell and to deliver beer to any person in this State who holds a license to receive and resell beer, if a duplicate bill of each sale is filed with or mailed to the Commissioner.

(38 Del. Laws, c. 18, § 41; Code 1935, § 6169; 4 Del. C. 1953, § 728; 67 Del. Laws, c. 109, § 19; 72 Del. Laws, c. 486, § 11.)

### § 722 Physicians, dentists, veterinarians and pharmacists.

(a) No provision of this title shall prevent any individual who is licensed in this State to practice medicine, surgery or obstetrics, or dentistry, or veterinary medicine or surgery from purchasing alcoholic liquor in quantities larger than one bottle and keeping and using the same for purposes of solution or sterilization in his own practice, or in making a preparation for external application to be administered by himself, or from purchasing brandy, as defined in the United States Pharmacopoeia, or rum, for use in compounding his medicines.

(b) No owner, lessee or manager conducting a pharmacy or drugstore shall sell or dispense, on the premises conducted as a pharmacy or drugstore, alcoholic liquor for any other purpose than medicinal, scientific and industrial purposes. No provision of this title shall prevent any holder of a license for a pharmacy under § 517 of this title from:

(1) Purchasing alcoholic liquor in quantities larger than 1 bottle, for use in medicinal, official or pharmaceutical preparations, but no such person may sell such alcoholic liquor except when contained in such preparations or when filling a prescription, or an order of an individual holder of license under § 518 of this title; or

(2) Purchasing ethyl alcohol in quantities larger than 1 bottle, and selling the same for obstetrical or antiseptic purposes only, in quantities not exceeding 16 ounces, upon prescription of an individual practicing medicine, surgery or obstetrics and registered as such in this State, or upon the certificate of the latter if the sale be made to him or her personally.

(38 Del. Laws, c. 18, §§ 17, 39; Code 1935, §§ 6146, 6167; 42 Del. Laws, c. 187, § 1; 42 Del. Laws, c. 192, § 1; 4 Del. C. 1953, § 729; 67 Del. Laws, c. 109, §§ 19, 26; 70 Del. Laws, c. 186, § 1.)

### § 723 Disposition of stock of insolvent, deceased or former licensee.

(a) In the case of a seizure of alcoholic liquor under any judgment rendered against the holder of any license or in the case of insolvency of such person, the officer seizing such alcoholic liquor or the trustee in bankruptcy of such license holder shall provide the Commissioner an inventory of the alcoholic liquor found in the possession of the judgment debtor or bankrupt. The Commissioner shall cause notice to be delivered to all importers who sell product on the inventory. All importers shall pick up all saleable products (as determined by the Commissioner in the event of a dispute) that they sell at that time.

(b) The importer shall determine the value of the saleable inventory by determining the cost to a retail licensee on the same day as the alcoholic liquor is picked up.

(c) The importer may retain up to 5% of the value of the saleable inventory as a handling or restocking fee.

(d) In the event the licensee from whom the alcoholic liquor was seized owes the Importer an amount equal to or greater than the net of subsections (b) and (c) of this section above, the importer shall advise the Commissioner, the debtor or bankrupt, and the seizing authority of its calculations and credit the debtor's or bankrupt's account appropriately.

(e) In the event the licensee from whom the alcoholic liquor was seized owes the importer less than the net of subsections (b) and (c) of this section above, the importer shall, within 10 days of seizure, pay the difference of the net of subsections (b) and (c) of this section above and the licensee's obligation to the importer to the officer or the trustee, and shall advise the Commissioner, the debtor or bankrupt, and the seizing authority of its calculations and credit the debtor's or bankrupt's account appropriately.

(f) No payment shall be made for illegally acquired alcoholic liquor so delivered.

(g) Any dispute as to the value or saleable condition of the alcohol shall be determined by the Commissioner. Any dispute as to the amount of the obligations of the parties to each other shall be determined by the court or its designee.

(38 Del. Laws, c. 18, § 29; Code 1935, § 6158; 41 Del. Laws, c. 246, § 1; 42 Del. Laws, c. 189, § 2; 4 Del. C. 1953, § 730; 67 Del. Laws, c. 109, § 19; 72 Del. Laws, c. 486, § 11; 77 Del. Laws, c. 137, § 1.)

### § 724 Retaliatory beer tax and regulations; violations by out-of-state manufacturers of beer; hearing, penalties and appeal.

(a) In addition to compliance with all other provisions of this title, the Commissioner shall require each person, not a licensee of this State, who desires to sell beer manufactured outside this State to licensees of this State, to pay to the Commissioner the same fee or fees as are required to be paid in the State, territory or country of origin of such beer by a person, not a licensee thereof, who desires to sell beer manufactured in this State to licensees of such state, territory or country of origin, and to observe and comply with the same regulations, prohibitions and restrictions as are required of or enforced against a person who desires to sell beer manufactured in this State to licensees in the said state, territory or country of origin. In all cases where the Commissioner has issued any reciprocal regulations or orders concerning beer manufactured in any state, territory or country other than this State no licensee of this State shall purchase any such beer if its importation has been prohibited or if not entirely prohibited, unless such regulations or orders have been observed and complied with by the licensee of this State and by the person from or through whom the licensee of this State desires to purchase. Any beer manufactured outside of this State which is sold, transported or possessed in this State contrary to any such regulations or orders of

the Commissioner or without the payment of the fees required by this title shall be considered contraband and shall be confiscated by the Commissioner and disposed of in the same manner as any other illegal alcoholic liquors.

(b) Upon learning of the Commissioner by a manufacturer of beer whose principal place of business is outside this State or by any servant, agent, employee or representative of such manufacturer within or partly within and partly outside this State of any violation of this title or any laws of this State relating to alcoholic liquors, or of any regulation of the Commissioner adopted pursuant thereto, or of any violation of any laws of this State or of the United States of America relating to the tax payment of alcoholic liquors, the Commissioner shall cite such manufacturer to appear before it not less than 10 nor more than 15 days from the date of mailing to such manufacturer at his principal place of business wherever located by registered mail a notice to show cause why the further importation into this State of beer manufactured by him should not be prohibited. Upon such hearing, whether or not an appearance was made by such outside manufacturer, if satisfied that any such violation has occurred, the Commissioner shall immediately issue an order prohibiting the importation of beer manufactured by such manufacturer into this State for a period of not less than 6 months nor more than 3 years. Notice of such action of the Commissioner shall be given immediately to such manufacturer and to all persons licensed to import beer within this State by mailing a copy of such order to such manufacturer at its principal place of business wherever located and to such licensees at their licensed premises. Thereafter no person licensed to import beer within this State shall purchase or sell any beer manufactured by such outside manufacturer during the term of the prohibition. Any violation of the prohibitory order is a misdemeanor and also constitutes grounds for revocation or suspension of a license to import beer. In all such cases the Commissioner shall file of record at least a brief statement in the form of an opinion of the reasons for the ruling or order. Any outside manufacturer aggrieved by the action of the Commissioner may appeal to the Superior Court in the same manner as provided in § 541 of this title for appeals from refusals to grant licenses.

(38 Del. Laws, c. 18, § 30; 39 Del. Laws, c. 6; Code 1935, § 6159; 43 Del. Laws, c. 276, § 1; 44 Del. Laws, c. 206, § 1; 4 Del. C. 1953, § 731; 50 Del. Laws, c. 350, § 1; 67 Del. Laws, c. 109, § 19; 72 Del. Laws, c. 486, § 11.)

### **§ 725 Preparations containing alcoholic liquors but not intended for use as a beverage.**

(a) No provision of this title shall, by reason only of the fact that the product contains alcoholic liquor, prevent any of the following:

(1) The sale of any perfume, lotion, tincture, varnish, dressing, fluid extract or essence, vinegar, cream, ointment, salve, distillate, cooking wine, or decoction.

(2) The sale of any preparation (official, medicinal, or pharmaceutical) or of any patent or proprietary medicine, intended solely for medicinal purposes, if the product does not contain alcohol in any greater quantity than the amount required as a solvent or preservative, or if the product be so compounded as to render it unsuitable for use as a beverage.

(b) If the Division of Alcohol and Tobacco Enforcement (DATE) is of the opinion that one of the products enumerated in this section contains alcoholic liquor and is used for beverage purposes, it may notify the manufacturer or seller to that effect and from and after the date of such notice this title shall apply to such product unless the manufacturer or seller requests a hearing before the Commissioner within 20 days of receipt of the notice. If the manufacturer or seller does not request a hearing within 20 days of the notice, or the Commissioner determines after the hearing that the product is used for beverage purposes, the manufacturer or seller so notified commits an offense under this title if he or she sells the product after such notice or determination, and is liable to the penalties provided in § 902 of this title.

(c)(1) In order to determine whether any particular preparation, proprietary or patented, contains alcohol in excess of the amount required as a solvent or preservative, or whether it is so compounded as to render it unsuitable for use as a beverage, DATE may purchase a sample of such preparation from any person and may have it analyzed by any individual DATE selects.

(2) If it appears from the analysis of the sample that the preparation contains alcohol in excess of the amount required as a solvent or preservative, or that it is not so compounded as to render it unsuitable for use as a beverage, DATE may notify the manufacturer or the agent in this State of the manufacturer of the preparation or the person who has acquired the preparation for purpose of resale, that the preparation is not an exempt product within the meaning of this section, but is an alcoholic liquor to which this title applies. After the service of such notice, this title shall apply to such preparation and the manufacturer or the agent in this State of the manufacturer or the person who has acquired same to resell, who has been so notified, commits an offense under this title unless a hearing is requested before the Commissioner within 20 days of receipt of the notice. If a hearing is not requested within 20 days of the notice, or the Commissioner determines after the hearing that the preparation is used for beverage purposes, the manufacturer or the agent in this State of the manufacturer of the preparation or the person who has acquired the preparation for purpose of resale commits an offense under this title if that person sells the preparation after the date of the service upon him or her of the notice or determination.

(3) The notice required by this section shall consist of a letter from the Director of DATE stating that the preparation specified in the letter is not an exempt product in the sense of this section, but is an alcoholic liquor to which this title applies. The notice must be served by hand delivery or by sending a copy by certified mail to the manufacturer, or to the agent in this State of the manufacturer, or to the person who has acquired the preparation to resell.

(d) This section applies to every product which is included within the definition of the word "preparation" set forth in § 101 of this title and to every product which is defined or described in subsection (a) of this section, other than one which is prepared by a druggist at the time of the prescription of a physician and in accordance with its tenor or which is prepared by a physician for the use only of a patient actually under his or her care.

(38 Del. Laws, c. 18, § 43; Code 1935, § 6171; 4 Del. C. 1953, § 732; 67 Del. Laws, c. 109, § 19; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 11; 81 Del. Laws, c. 100, § 2.)



### **§ 726 Liability for price of illegal sale of alcoholic liquors.**

No action to recover the price of any alcoholic liquor sold in contravention of this title may be maintained.

(38 Del. Laws, c. 18, § 53; Code 1935, § 6181; 4 Del. C. 1953, § 733; 67 Del. Laws, c. 109, § 19.)

### **§ 727 Sale at last call/closing hour of an establishment.**

No more than 1 alcoholic beverage may be sold to a person less than 15 minutes prior to closing each day that a license is open pursuant to this title. Any server who violates this section shall be guilty of a violation, and shall be fined \$100 for a first offense, and \$250 for a second or subsequent offense accruing within 1 year and shall be further required to take a course of instruction pursuant to Chapter 12 of this title (Delaware Responsible Alcoholic Beverage Server Training Program) within 90 days.

(71 Del. Laws, c. 438, § 1.)

### **§§ 728 -730. [Reserved.]**

**Chapter 9**

**CRIMINAL OFFENSES AND PENALTIES**

**§ 901 Offenses carrying penalty of imprisonment for 3 to 6 months.**

Whoever:

- (1) Peddles any alcoholic liquor; or
- (2) Keeps, sells or dispenses alcoholic liquor in a disorderly house; or
- (3) Being an employee of the Commissioner and/or Division, infringes any of the provisions of this title; or
- (4) Not being the holder of a proper and valid license, or not being so authorized by this title, sells any alcoholic liquor in this State; or
- (5) Not being the holder of a license under this title, claims or represents that he is the holder of a license or exhibits a document purporting to be a license under this title; or
- (6) Sells, offers for sale, or keeps with the intent to sell for beverage purposes, denatured alcohol, perfume, lotion, tincture, fluid extract or essence, or other liquid or solid not originally manufactured or intended for use as a beverage, containing more than one half of 1 percent of ethyl alcohol by volume,

shall, in addition to the payment of costs, be imprisoned not less than 3 nor more than 6 months. Justices of the peace shall have original jurisdiction to hear, try, and finally determine alleged violations of this section.

(38 Del. Laws, c. 18, §§ 44, 45; Code 1935, §§ 6172, 6173; 41 Del. Laws, c. 250, § 1; 4 Del. C. 1953, § 901; 58 Del. Laws, c. 239, § 43; 67 Del. Laws, c. 109, § 27; 72 Del. Laws, c. 486, § 10.)

**§ 902 Offenses carrying penalty of fine of \$500 to \$1,000 or imprisonment for 3 to 6 months on failure to pay fine.**

Whoever:

- (1) Being the holder of a license, sells any alcoholic liquor of a kind other than that authorized to be sold by his or her license or by this title; or
- (2) Being the holder of a license, sells alcoholic liquor to any person to whom neither his license nor this title authorizes him or her to sell; or
- (3) Being the holder of a license, keeps or allows the keeping in his or her establishment of any alcoholic liquor other than that which he or she is authorized to sell by virtue of his or her license; or
- (4) Being the manufacturer or the agent in this State for the manufacturer of any liquid or solid containing alcoholic liquor, sells such liquid or solid as a medicine or preparation after the Commissioner and/or Division has notified him or her in accordance with § 725 of this title; or
- (5) Keeps or allows the keeping of any alcoholic liquor in his or her residence, either for himself or herself or for other persons on deposit or otherwise, with intent to sell the same; or
- (6) Not being the holder of a license under Chapter 5 of this title, keeps or allows alcoholic liquor to be kept in a club for himself or herself or for members of the club or for other persons in storage or otherwise; or
- (7) Not being the holder of a license authorized by § 515A of this title, operates or maintains an establishment commonly known as a "bottle club,"

shall, in addition to payment of costs, be fined not less than \$500 nor more than \$1,000, and, on failure to pay such fine and costs, shall be imprisoned not less than 3 nor more than 6 months. Justices of the peace shall have original jurisdiction to hear, try, and finally determine alleged violations of this section.

(38 Del. Laws, c. 18, § 45; Code 1935, § 6173; 4 Del. C. 1953, § 902; 58 Del. Laws, c. 239, § 44; 63 Del. Laws, c. 232, § 3; 67 Del. Laws, c. 109, § 28; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 10.)

**§ 903 Offenses carrying penalty of fine of not more than \$100 or imprisonment for 1 month on failure to pay fine.**

Whoever:

- (1) Being the holder of a license, sells beer to which wine, spirits or alcohol has been added; or sells wine to which spirits or alcohol has been added, other than an addition of spirits or alcohol to render possible transportation or to secure the customary fortifying thereof; or sells any alcoholic liquor to which has been added any adulterating or deleterious substances or liquid; or
- (2) Being the holder of a license, sells any alcoholic liquor in any place, or in any manner, or in any quantity other than as authorized by his or her license; or
- (3) Being the holder of a license to sell spirits, wine or beer in a dining room or bedroom, has not furnished, fitted, or equipped such dining room or bedroom in the manner or to the extent indicated by the Commissioner and/or Division; or
- (4) Being the holder of a license to sell spirits, wine or beer, as the case may be, does not comply with any requirement or provision of §§ 512-520 or 706 of this title; or

## Title 4 - Alcoholic Liquors

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(5) Being the holder of a license, sells any alcoholic liquor which he or she is authorized by his or her license to sell, at any time forbidden by § 709 of this title; or

(6) Being the holder of a license, knowingly sells to any of the persons mentioned in § 708 of this title after notice sent to him or her by the Commission in compliance with the provisions of said section, any alcoholic liquor, the sale of which is authorized by his or her license; or

(7) Being the holder of a license to sell alcoholic liquor in a store, allows any alcoholic liquor sold therein to be drunk in such store or its dependencies, either by the purchaser or by any other person; or

(8) Being the holder of a license to sell alcoholic liquor in the dining room of any hotel, restaurant, club or steamboat, or in a dining car, does not keep his or her license constantly posted conspicuously in view of the public in such dining room or dining car; or

(9) Being the holder of a license, keeps or transports any alcoholic liquor in contravention of this title; or

(10) Having acquired for the purpose of resale any liquid or solid containing alcoholic liquor, sells it as a medicine or preparation after having been notified by the Commissioner and/or Division in accordance with § 725 of this title; or

(11) Not being the holder of a license, leads the public or travellers to believe, by means of signs, inscriptions, advertisements, or circulars that he or she is authorized to sell alcoholic liquor; or

(12) Buys or receives any alcoholic liquor from any person not authorized to sell such variety of alcoholic liquor or keeps such alcoholic liquor in his or her possession; or

(13) Obtains, even gratuitously, during the time when the sale thereof is forbidden, any alcoholic liquor from any holder of a license for the sale thereof; or

(14) Causes any disturbance in any place or brings thereinto or drinks therein any alcoholic liquor prohibited therein; or

(15) Buys, for any remuneration whatsoever, any alcoholic liquors for another person; or

(16) Being the holder of a license to sell alcoholic liquor, fails to post in a conspicuous place a sign which clearly reads, "According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects;" or

(17) Manufactures, distributes, sells, offers for sale, possesses, purchases, or uses a powdered alcoholic beverage, shall, in addition to the payment of costs, be fined not more than \$100, and, on failure to pay such fine and costs, shall be imprisoned for 30 days. Justices of the peace shall have original jurisdiction to hear, try, and finally determine alleged violations of this section.

(38 Del. Laws, c. 18, § 46; Code 1935, § 6174; 41 Del. Laws, c. 254, § 2; 45 Del. Laws, c. 263, § 1; 4 Del. C. 1953, § 903; 58 Del. Laws, c. 239, § 45; 67 Del. Laws, c. 23, §§ 1, 2; 67 Del. Laws, c. 109, § 29; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 10; 81 Del. Laws, c. 372, § 2.)

### § 904 Offenses concerning certain persons.

(a)(1) Whoever sells any alcoholic liquor to any person who has not reached the age of 21 years, or sells to any person of more than such age any alcoholic liquor knowing that such alcoholic liquor is bought for a person who is less than 21 years of age and is to be drunk by the latter, shall, in addition to the payment of costs, be fined not less than \$250 nor more than \$500 and, on failure to pay such fine and costs, shall be imprisoned for 30 days.

(2) In any prosecution for an offense under this subsection, it shall be an affirmative defense that the individual, who has not reached the age of 21 years, presented to the accused identification, with a photograph of such individual affixed thereon, which identification sets forth information which would lead a reasonable person to believe such individual was 21 years of age or older.

(b) Any person under the age of 21 years who knowingly makes false statement to any person engaged in the sale of alcoholic liquor for the purpose of obtaining the same and to the effect that he is 21 years of age or older, shall, in addition to the payment of costs, be fined for the first offense, not less than \$100 nor more than \$500, and on failure to pay such fine and costs, shall be imprisoned for 30 days, and for each subsequent like offense, shall be fined not less than \$500 nor more than \$1,000, and on failure to pay such fine and costs shall be imprisoned for 60 days.

(c) Whoever purchases, buys or gives alcoholic liquor for or to a person under the age of 21 years or knowingly allows a person under his or her supervision and under the age of 21 years to consume alcoholic liquor shall, in addition to the payment of costs, be fined for the first offense, not less than \$100 nor more than \$500, and may be ordered by the court to perform community service for a period of 40 hours in such form and on such terms as the court shall deem appropriate under the circumstances and may be imprisoned for not more than 30 days; and for each subsequent like offense, shall be fined not less than \$500 nor more than \$1,000 and may be ordered by the court to perform community service for a period of 80 hours in such form and on such terms as the court shall deem appropriate under the circumstances and may be imprisoned for not more than 60 days. This subsection shall not apply to religious services or members of the same family within the private home of any of said members.

(d) Except as provided in subsection (n) of this section, whoever, being the holder of a license to operate a tavern or taproom, admits or permits to remain in such tavern or taproom any individual under the age of 21 years, shall be fined not more than \$100.

(e) Except as provided in subsection (n) of this section, whoever, being under the age of 21 years, enters or remains in a tavern, taproom or package store, or while therein possesses at any time alcoholic liquors, shall be fined \$50.

(f) Whoever, being under the age of 21 years, has alcoholic liquor in his or her possession at any time, or consumes or is found to have consumed alcoholic liquor, shall have their Delaware driver's license revoked for a period of 30 days for the 1st offense and not less than 90 days nor more than 180 days for each subsequent offense. If the underage person does not have a Delaware driver's license, the person shall be fined \$100 for the 1st offense and not less than \$200 nor more than \$500 for each subsequent offense. This section shall not apply to the possession or consumption of alcoholic liquor in connection with any religious service or by members of the same family within the private home of any of said members.

(g) Nothing in this section shall prevent the employment of a person, 16 years of age or older, in clubs with authorized dining facilities, hotels, racetracks and restaurants licensed under this title where such employment has been authorized by permit issued by the Commission, provided that such a person shall not be involved in the sale or service of alcoholic liquor.

(h) Nothing in this section shall prevent the employment of a person 18 years of age or older to serve alcoholic liquor to patrons of establishments licensed under this title for the on-premises sale and consumption of alcoholic liquor, excepting taverns and taprooms.

(i) Nothing in this section shall prevent the employment of a person, 16 years of age or older, in a catering business serving liquors, provided that such person shall not be engaged in the sale or service of alcoholic liquor.

(j) Nothing in this section shall prevent the employment of a person, 16 years of age or older, in a bowling alley licensed to serve alcoholic beverages, provided that such person shall not be engaged in the sale or service of alcoholic liquor.

(k) Justices of the peace shall have original jurisdiction to hear, try, and finally determine alleged violations of this section.

(l) Nothing in this section shall prevent a licensed importer from employing a person who is 18, 19 or 20 years of age to:

- (1) Work in an office, warehouse or other facility used by the importer in the operation of its business;
- (2) Make or assist in deliveries of alcoholic liquors to licensed establishments in this State;
- (3) Transport or assist in the transporting of alcoholic liquors to or from the importer's warehouse.

Such person may enter any licensed establishment in this State for the purpose of making or assisting the delivery of alcoholic liquors thereto or for any purpose related to such delivery.

No such person shall be employed by a licensed importer as a salesperson or sales representative.

(m) Nothing in this section shall prevent the employment in a store by a retailer of anyone who has reached the age of 18 years, under such conditions as the Commission may by rule prescribe; provided, however, that no such minor shall sell or serve alcoholic liquors.

(n) Nothing in this section shall prohibit or prevent persons under the age of 21 years from entering or remaining in a premises licensed as a tavern or taproom for the purpose of a social event, including, but not limited to, events exclusively for persons under the age of 21 years, provided that the premises licensed as a taproom or tavern is closed for business (including any Sunday); and provided further, that during any such social event, no alcoholic liquor shall be sold, furnished or given to any person at any time before, during or after the social event. All alcoholic liquor must be either removed from the licensed premises or placed under lock and key at all times during the social event and any time before or after the social event when persons under the age of 21 years are present on the licensed premises.

(o) Any person who was convicted of a first offense under subsections (e) and (f) of this section or the same offense under any county or municipal code, ordinance, or regulation and who was under the age of 21 at the time of the offense may, upon reaching the age of 21, apply for an expungement of the record of the conviction and any indicia of arrest to the court in which the person was convicted. For violations of subsection (e) or (f) of this section, an order granting such expungement shall issue upon proof that the person has reached the age of 21, unless the person has failed to comply with the sentencing order or the person has another charge under this section, or under the same offense under any county or municipal code, ordinance, or regulation, which remains outstanding. Upon issuance of the order of expungement, the records of the conviction and any indicia of arrest shall be dealt with in accordance with the procedures specified in §§ 4373(c), 4374 and 4375 of Title 11. Nothing in this section shall prohibit the Family Court from expunging a record of conviction as otherwise provided by law. The application for or granting of a pardon pursuant to §§ 4361 through 4363 of Title 11 shall not prohibit an expungement under this section. All sentencing orders for violations of this section by persons under the age of 21 at the time of the offense shall state that the record of the conviction may be expunged upon reaching the age of 21 and thereafter. The civil filing fee shall apply to applications for expungement plus a \$100 fee payable to the State Bureau of Identification for administrative costs.

(p) [Expired.]

(38 Del. Laws, c. 18, §§ 46, 50; Code 1935, §§ 6174, 6178; 41 Del. Laws, c. 253, §§ 1, 2; 45 Del. Laws, c. 263, § 1; 47 Del. Laws, c. 150, § 1; 4 Del. C. 1953, § 904; 53 Del. Laws, c. 390, §§ 1, 2; 54 Del. Laws, c. 295; 55 Del. Laws, c. 300; 55 Del. Laws, c. 335; 58 Del. Laws, c. 201; 58 Del. Laws, c. 239, § 46; 58 Del. Laws, c. 511, §§ 2-7; 59 Del. Laws, c. 234, § 1; 59 Del. Laws, c. 297, §§ 1-3; 61 Del. Laws, c. 448, § 1; 61 Del. Laws, c. 493, § 3; 61 Del. Laws, c. 511, §§ 1-3; 63 Del. Laws, c. 95, § 1; 64 Del. Laws, c. 216, §§ 3, 4; 64 Del. Laws, c. 435, § 1; 67 Del. Laws, c. 425, § 1; 68 Del. Laws, c. 242, § 1; 70 Del. Laws, c. 123, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 558, §§ 1-3; 72 Del. Laws, c. 134, § 1; 72 Del. Laws, c. 348, § 1; 72 Del. Laws, c. 349, § 1; 72 Del. Laws, c. 350, § 1; 74 Del. Laws, c. 237, §§ 1, 2; 75 Del. Laws, c. 255, § 2; 75 Del. Laws, c. 265, § 1; 81 Del. Laws, c. 338, § 1.)

### **§ 905 Unlicensed manufacture of alcoholic liquor; possession of still, apparatus, mash, etc., by unlicensed person.**

(a) Whoever manufactures any alcoholic liquor without having first obtained from the Commissioner a license authorizing such manufacture, or, not being the holder of a license to manufacture alcoholic liquor, has at any time possession of any still, receptacle,

paraphernalia, apparatus, mash, wort or wash, adapted for use in connection with the manufacture of alcoholic liquor, shall, in addition to the payment of costs, be fined not less than \$500 nor more than \$5,000, or imprisoned not less than 6 months nor more than 2 years, or both.

(b) Nothing in this section shall apply to the making of beer, cider or wine for personal consumption and not for the purpose of sale, nor to fermented liquids used in the manufacture of vinegar exclusively; however, no pipe, conductor or contrivance of any description whatsoever whereby vapor might in any manner be conveyed away and converted into distilled spirits, shall be used or employed or be fastened to or connected with any apparatus used for the manufacture of beer, cider, wine or vinegar except in the case of a duly licensed manufacturer. Any violation of this subsection shall carry the same penalties as provided in subsection (a) of this section.

(Code 1935, § 6174A; 45 Del. Laws, c. 261, § 1; 4 Del. C. 1953, § 905; 71 Del. Laws, c. 315, § 1; 72 Del. Laws, c. 486, § 11.)

### **§ 906 Transportation and shipment.**

(a) Whoever transports or ships alcoholic liquor in violation of the requirements of § 718 of this title, or, in connection with such transportation or shipment, knowingly has in his or her possession a waybill giving a false name or a false address, or transports by any vehicle any alcoholic liquor upon which the taxes provided by § 581 of this title have not been paid, shall, in addition to the payment of costs, be fined not less than \$100 nor more than \$1,000, or imprisoned not less than 30 days nor more than 6 months, or both.

(b) In any trial for an offense under this section, the burden shall be upon the defendant to prove that the taxes provided by § 581 of this title have been paid. Nothing in this section shall apply to any alcoholic liquor purchased from a legal source and being transported by the purchaser.

(c) In addition to the penalties provided by this section, any vehicle used to transport alcoholic liquor manufactured in violation of § 905 of this title shall be deemed confiscated and shall be delivered to, retained by and disposed of by the Commissioner and/or Division as provided in Chapter 11 of this title. A vehicle used to transport alcoholic liquor in violation of other sections of this title shall be seized or confiscated under this section only if it can be proved beyond a reasonable doubt that the transported alcoholic liquor was for some use other than personal consumption by the person or his or her passengers transporting it. This section shall not apply to vehicles operated by common carriers over scheduled routes, or to vehicles in which the sale of alcoholic liquor is licensed.

(d) Justices of the peace shall have original jurisdiction to hear, try, and finally determine alleged violations of this section.

(Code 1935, § 6172A; 45 Del. Laws, c. 263, § 2; 4 Del. C. 1953, § 906; 55 Del. Laws, c. 82, § 10; 58 Del. Laws, c. 108; 58 Del. Laws, c. 208; 58 Del. Laws, c. 239, § 47; 67 Del. Laws, c. 109, § 30; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 10.)

### **§ 907 Interference with officer or inspector.**

Whoever interferes with or hinders any officer or inspector authorized by the Director to investigate any infringements of this title or to make any search, examination or seizure, in the performance of the officer's or inspector's duties to that end, shall, in addition to any other penalty which may be imposed upon him or her under this title, and in addition to payment of costs, be fined \$100 for each offense, and on failure to pay such fine and costs, shall be imprisoned for a term of 1 month. Justices of the peace shall have original jurisdiction to hear, try, and finally determine alleged violations of this section.

(38 Del. Laws, c. 18, § 48; Code 1935, § 6176; 4 Del. C. 1953, § 907; 58 Del. Laws, c. 239, § 48; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 12.)

### **§ 908 Failure of licensee to file report.**

Whoever, being the holder of a license for the sale of alcoholic liquor, neglects or refuses to make a return to the Commissioner, within 10 days immediately following the date indicated by the Commissioner, of his or her purchases and sales of alcoholic liquor as provided in this title, shall be fined \$10 per day for each day's delay, to run from the expiration of such 10 days. Justices of the peace shall have original jurisdiction to hear, try, and finally determine alleged violations of this section.

(38 Del. Laws, c. 18, § 49; Code 1935, § 6177; 4 Del. C. 1953, § 908; 58 Del. Laws, c. 239, § 49; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 11.)

### **§ 909 Violation of rules respecting liquor taxes.**

Whoever violates any rule or regulation made and published by the Commissioner respecting the collection and payment of taxes, as provided in § 581(d) of this title, shall be fined not more than \$1,000 and the costs of prosecution.

(38 Del. Laws, c. 18, § 16; Code 1935, § 6145; 43 Del. Laws, c. 274, § 1; 4 Del. C. 1953, § 909; 72 Del. Laws, c. 486, § 11.)

### **§ 910 Offenses without specific penalty.**

Whoever violates any provision of this title or any regulation of the Commissioner adopted and published under the authority of this title, for which no penalty is provided in this chapter, shall, in addition to the payment of costs, be fined or imprisoned, or both.

(38 Del. Laws, c. 18, § 46; Code 1935, § 6174; 41 Del. Laws, c. 254, § 1; 4 Del. C. 1953, § 910; 72 Del. Laws, c. 486, § 11.)

### **§ 911 Penalty for partnerships and associations.**

Wherever the penalty for an offense committed consists of imprisonment in whole or in part and the accused is a corporation, partnership or other association of persons, the penalty shall be a fine of \$2,000 in addition to the costs.

(38 Del. Laws, c. 18, § 47; Code 1935, § 6175; 4 Del. C. 1953, § 911.)

### **§ 912 Exemption of employees of Commissioner and/or Division.**

No officer or inspector employed by the Commissioner and/or Division for the enforcement of this title, when acting in the officer's or inspector's official capacity, shall incur any of the penalties exacted by this chapter for the punishment of those who obtain alcoholic liquor either from a holder of a license granted under this title or from a person who is not the holder of a license.

(38 Del. Laws, c. 18, § 52; Code 1935, § 6180; 4 Del. C. 1953, § 912; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 10.)

### **§ 913 Licensees convicted of violations by the Commissioner may be assessed costs.**

Any licensee found guilty by the Commissioner of a violation of the rules of the Commissioner or the provisions of the Liquor Control Act of this State, as amended, may be required by the Commissioner to pay costs incurred by the Commissioner for the hearing, whether there is a plea of guilty or not guilty entered by the licensee. If a licensee fails to pay the costs assessed under the provisions of this section, the Commissioner may suspend or revoke the license or licenses issued by the Commissioner to the licensee.

(4 Del. C. 1953, § 913; 57 Del. Laws, c. 404, § 5; 72 Del. Laws, c. 486, § 11.)

### **§ 914 Authority to suspend licenses and/or impose fines.**

Whenever the Commissioner has found a licensee to be guilty of a violation of the rules of the Commissioner or the Delaware Liquor Control Act, in addition to the power and authority granted to the Commissioner by this title, the Commissioner shall have the power and authority to suspend a license and/or to impose a fine on the licensee and to require the licensee to pay a fine with regard to such violation. Prior to a license suspension and/or the imposition of any fine, the Commissioner may cause such investigation to be made as the Commissioner deems desirable and the suspension and/or fine shall only be imposed and required to be paid if the Commissioner is satisfied:

- (1) That the public welfare and morals would not be impaired by the suspension and/or imposition of the fine and that the payment of the sum of money will achieve the desired disciplinary purposes; and
- (2) That the books and records of the licensee are kept in such a manner that the average monthly gross sales of alcoholic beverages can be determined with reasonable accuracy therefrom.

Any fine imposed by the Commissioner, pursuant to this section, shall not exceed 10% of the estimated average gross monthly sales of alcoholic liquor for the operations of the licensee within the 12 months immediately preceding the date of the finding of guilt provided that such amount exceeds \$250. In no case shall the fine imposed by the Commissioner upon a finding of guilt be less than \$250. Each licensee shall maintain financial records that clearly demonstrate the licensee's estimated average gross monthly sale of alcoholic liquor for the operations of the business within the 12 months immediately preceding the date of the licensee's hearing before the Commissioner and, upon a finding of guilt, shall submit such documentation to the Commissioner.

(4 Del. C. 1953, § 914; 57 Del. Laws, c. 453, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 351, § 1; 72 Del. Laws, c. 486, § 11; 75 Del. Laws, c. 417, § 1.)

### **§ 915 Licensees pleading guilty; voluntary fines; limitation.**

The Commissioner is authorized to create a "voluntary fine assessment plan," with fines not to exceed \$5,000, available to any licensee who pleads guilty to any violation of the Commissioner rules. Where a licensee chooses to pay a voluntary fine under the plan, such licensee shall have waived the licensee's right to and shall forego a formal hearing before the Commissioner, and shall be deemed to have waived any right to appeal relating to the offense(s). The plan shall be administered by the Executive Secretary or by such other persons as shall be designated by the Commissioner. The plan shall be published as a Commissioner rule.

(67 Del. Laws, c. 91, § 1; 70 Del. Laws, c. 93, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 378, § 1; 72 Del. Laws, c. 486, § 11.)

### **§ 916 Penalties imposed against licensees who threaten employees.**

No licensee or representative thereof may discipline, threaten or otherwise penalize an employee for refusing to violate rules of the Commissioner and/or Division or statutes of the State. Any licensee violating the provisions of this section shall be subject to the penalties described in § 561(b)(10), § 910 and § 913 of this title.

(70 Del. Laws, c. 132, § 1; 72 Del. Laws, c. 486, § 10.)

## Chapter 11 SEIZURE AND CONFISCATION

### § 1101 Peddled or illegally transported liquor.

(a) Wherever alcoholic liquor is being peddled in this State, or whenever any alcoholic liquor is transported in this State, unaccompanied by a license to transport such alcoholic liquor, or unaccompanied by a waybill as provided in § 718(c) of this title, any police officer of the State or subdivision thereof or any inspector of the Division may seize such alcoholic liquor, as well as the receptacle or receptacles containing the same, and hand them over to the Division.

(b) This section shall not at any time or in any instance apply to an individual who is the holder of a license to purchase a stock of draft beer in half barrel or quarter barrel containers for personal use and is transporting for the individual's own personal use from the individual's home after delivery has been made thereto by an importer.

(c) This section does not apply to persons transporting alcoholic liquor under §§ 501 and 716 of this title.

(38 Del. Laws, c. 18, § 55; Code 1935, § 6182; 41 Del. Laws, c. 256, § 1; 42 Del. Laws, c. 191, § 6; 4 Del. C. 1953, § 1101; 55 Del. Laws, c. 82, § 11; 58 Del. Laws, c. 248, §§ 1, 2; 67 Del. Laws, c. 109, § 31; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 13.)

### § 1102 Shipments to unauthorized portions of State; other illegal sales or shipments.

(a) Any officer or inspector of the Division so authorized, may seize, without a warrant, any alcoholic liquor, as well as any receptacle containing it, shipped into a municipality or part of this State in which a prohibitory law is in force, or whose competent authority has decided, in the manner set forth in § 102 of this title, that any license or any certain kind of license shall not be granted, unless each parcel containing such alcoholic liquor is clearly and visibly addressed to the bona fide purchaser. The fact that such parcel is so addressed shall not, however, prevent the seizure of the alcoholic liquor and of the receptacle containing it if such alcoholic liquor is shipped or sold contrary to any provision of this title.

(b) The alcoholic liquor seized as well as the receptacles containing it shall be handed over to the Division.

(c) This section shall not apply to an individual, the holder of a license to purchase a stock of draft beer in half barrel or quarter barrel containers for personal use, who having said license then with him or her, is personally transporting for his or her own personal use such draft beer.

(38 Del. Laws, c. 18, § 56; Code 1935, § 6183; 42 Del. Laws, c. 191, § 7; 4 Del. C. 1953, § 1102; 55 Del. Laws, c. 82, § 12; 58 Del. Laws, c. 248, § 3; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 13.)

### § 1103 Manufacture on unauthorized premises; seizure or destruction of liquor, apparatus and materials.

All alcoholic liquor, stills and other apparatus, tubs, barrels, containers and paraphernalia of any character, and all mash, wort or wash, used or useful in connection with the manufacture of alcoholic liquor which are upon the premises wherein or whereon are committed any offense defined in § 905 of this title, shall be seized by the officers apprehending the same and disposed of as provided in this section. The officers finding the same may forthwith destroy any or all mash, wort or wash upon the premises, and any or all stills or other apparatus, tubs, barrels, containers and paraphernalia so found. The officer or officers destroying any property shall forthwith report the same to the Commissioner and in such report shall itemize all property destroyed and the estimated value thereof and shall state the names of the persons in whose presence such act or acts of destruction were performed. The report shall be witnessed by at least 2 responsible persons other than the officer or officers performing such act or acts of destruction. The Commissioner may sell any property of value so seized to any person or persons desiring to purchase same, who in the opinion of the Commissioner will not utilize same in connection with any violation of this chapter. The proceeds from such sale shall be deposited in the General Fund of the State.

(Code 1935, § 6174A; 45 Del. Laws, c. 261, § 1; 4 Del. C. 1953, § 1103; 50 Del. Laws, c. 427, § 1; 72 Del. Laws, c. 486, § 11.)

### § 1104 Property found in disorderly house or used in connection with offenses.

Every officer and inspector of the Commissioner and all other peace officers of this State, may, without a warrant, seize property, as hereinafter defined, kept, transported, possessed or sold in contravention of this title, when found in any disorderly house; and may also seize such property in like manner and for like violations when the said property is used in connection with any offense under this title to the knowledge of the Commissioner or any of its officers or inspectors or to the knowledge of any other peace officer of this State. Immediately upon seizure, such property shall be deemed to be confiscated and the Commissioner shall be vested with a special property therein, subject to this chapter. The word "property" as used in this chapter includes alcoholic liquor, stills and other apparatus designed for the manufacture of alcoholic liquor, receptacles and other paraphernalia used in connection with any violation of this title, and all vehicles used in connection with the unlawful transportation of alcoholic liquor. This chapter shall not apply to vehicles operated by common carriers over scheduled routes, or to such vehicles in which the sale of alcoholic liquor is licensed. Forthwith upon seizure, all property seized shall be delivered to and shall be retained and disposed of by the Commissioner under the provisions of this chapter, subject, however, to any right or power of immediate destruction otherwise conferred by this chapter. The word "Commissioner" as used in the immediately preceding sentence includes any officer or inspector thereof with respect to delivery to the Commissioner of seized property as defined in this section.

(38 Del. Laws, c. 18, § 57; Code 1935, § 6184; 45 Del. Laws, c. 264, § 1; 4 Del. C. 1953, § 1104; 72 Del. Laws, c. 486, § 11.)

### § 1105 Retention of seized property; return to owner; disposition of alcoholic liquor.

All property seized and delivered into the possession of the Division shall be disposed of in the following manner:

(1) The enforcement officers of the Division or the peace officers who seized the property shall give written notice to the person whom they reasonably believe to be the owner of the property, and to the person from whom the property was seized, if they reasonably believe such person is not the owner, that such person may within 10 days of the date of notice and upon proof, satisfactory to the Commissioner that such property had not been used in connection with any violation of any of the provisions of this title, or of the rules of the Commissioner or both, if so used, that the use was without the knowledge, acquiescence or consent of the rightful owner, the owner's agent, employee or servant, return said property to the rightful owner. Any dispute between the enforcement personnel of the Division and the person believed to be the rightful owner or the person from whom the property was seized, shall be resolved by a hearing before the Commissioner. The Commissioner's decision shall be final and conclusive unless any party, having appeared before the Commissioner, appeals to the Superior Court of the State within 10 days of the date of the written decision.

(2) Any property seized pursuant to this chapter which consists of alcoholic liquor and its container may, after the provisions of paragraph (1) of this section have been complied with, be offered for sale to the licensed Delaware importers of alcoholic liquor at the prevailing price paid by the importers for like brands and quality. If the alcoholic liquor is distributed in this State by more than 1 licensed importer, then the Commissioner shall offer said seized alcoholic liquor to all importers who engage in the sale of such brand of alcoholic liquor. If the seized alcoholic liquor is purchased by a licensed Delaware importer, the importer shall issue to the Commissioner a voucher showing at least the following facts:

- (a) The date of the purchase;
- (b) The purchase price of each item purchased; and
- (c) The quantity and nature of the item purchased.

At the subsequent direction of the Commissioner, the licensed Delaware importer which purchased the liquor shall:

1. If the owner of the alcoholic liquor or the person from whom the liquor was seized, if different from the person reasonably believed to be the owner, shall be found guilty of the offenses in violation of the Liquor Control Act or the rules of the Office of the Commissioner or both, issue its check payable to the Office of the Commissioner in the amount of the total purchase price shown on the voucher, which amount shall be applied by the Commissioner as provided in § 1110 of this title as proceeds of a sale authorized by order of court; or

2. If the owner of the alcoholic liquor and the person from whom the liquor was seized, if different from the person reasonably believed to be the owner, shall be acquitted of the offenses alleged to have been in violation of the Liquor Control Act or the rules of the Commissioner, or both, issue its check payable to such person, or, at such person's election, deliver alcoholic liquor of the same or similar nature and quantity described in the voucher to such person.

3. The enforcement officers of the Division with the advice of other peace officers of this State and/or the Department of Justice may retain all or part of the alcoholic liquor and its containers seized for use as evidence for as long a period as they deem necessary. Thereafter it may be disposed of pursuant to this chapter.

4. All other such seized property shall be disposed of as is provided in this chapter.

(38 Del. Laws, c. 18, § 57; Code 1935, § 6184; 45 Del. Laws, c. 264, § 1; 4 Del. C. 1953, § 1105; 58 Del. Laws, c. 248, § 4; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 14.)

### § 1106 Ascertainment of ownership and liens upon seized vehicles.

Before filing the report and petition required by § 1107 of this title, the Division shall examine or cause to be examined records of liens on motor vehicles at the titling department in Dover and records of conditional sales contracts recorded in the offices of the recorders of the counties to ascertain what liens, if any, had been entered against any motor vehicles seized under this chapter and all available information as to ownership of such vehicles and liens, if any, upon the same shall be incorporated in such report and petition.

(38 Del. Laws, c. 18, § 57; Code 1935, § 6184; 45 Del. Laws, c. 264, § 1; 4 Del. C. 1953, § 1106; 72 Del. Laws, c. 486, § 13.)

### § 1107 Commission's report and petition to Court.

The Division shall, from time to time in its discretion, file a report and petition in the Superior Court in any county of the State. The report and petition shall set forth (1) the date of the filing of the last preceding report, with term number thereof, (2) an itemized list of all property seized and delivered to the Division under this chapter with the date of seizure of each item, but the report may not include property previously disposed of under this chapter or involved in pending offenses either before the courts of the State or the Division, (3) a statement of the circumstances of each seizure with the names and addresses, so far as known, of any persons in possession of the property at the time of the seizure thereof, and the names and addresses of any persons believed by the enforcement officers of the Division or the peace officers who made the seizure to be the rightful owners of said property (and as to motor vehicles, the lienholders thereon), (4) whether or not any portion or part of the property listed in the report and petition was returned to others or other claimants, (5) a list of requests, if any, of state departments, agencies, institutions, hospitals or other institutions supported in whole or in part by state appropriations, for any property seized and herein described, (6) the disposition of any prosecutions in any court of any cases involving



offenses under this title or against the rules of the Division and arising out of arrests made in connection with the seizure of any such property, and (7) a statement of the estimated value of each item of property listed in the report and petition, so far as may be ascertained, with the names and addresses, so far as known, of all persons claiming ownership of such property or any lien thereon. The report and petition shall request an order of the Court as to the disposal of the property.

(38 Del. Laws, c. 18, § 57; Code 1935, § 6184; 45 Del. Laws, c. 264, § 1; 4 Del. C. 1953, § 1107; 58 Del. Laws, c. 248, § 5; 72 Del. Laws, c. 486, § 13.)

### **§ 1108 Rule to show cause and service thereof; hearing and order of disposal.**

(a) Upon the filing with the Court of the Division's report and petition in accordance with § 1107 of this title, the Court shall direct the issuance of a rule returnable on a day certain at the next succeeding term of the Court, directed to all known claimants, owners and lienors, and such rule shall be issued to and served by the sheriff of the county in which such claimant, owner or lienor shall reside or, if the Court shall so direct, may be mailed by the clerk of the peace to such claimants, owners or lienors at the addresses disclosed by the report and petition. In addition, the Court shall direct publication of a notice, in a form approved by the Court, in a newspaper of general circulation in the county or counties where the property or any part thereof was located at the time of seizure. The publication shall be made at least 1 time weekly during 2 successive weeks preceding the week during which the rule is returnable.

(b) Upon the return of the rule, the Court may order:

(1) The destruction of any of such property except legally distilled spirits with seals and containers so preserved and with labels and seals unbroken as to permit or be eligible for resale;

(2) The delivery of any thereof to any state department, agency or institution or to any hospital or other institution supported in whole or in part by state appropriations, for which such institution shall have use in the conduct of its authorized activities, which order and subsequent delivery shall vest title in and to all such property in the agency, department or institution receiving same;

(3) The sale of any thereof by the Division at public sale, except that such order may direct the Division in its discretion to offer privately for sale in regular trade channels to the licensed importers of alcoholic liquor such of the alcoholic liquor as are bottled for the trade and with labels and seals unbroken at the prevailing price paid by the importers for like brands and quality, and upon any other terms the Court decides should be imposed;

(4) In the case of order for sale of any motor vehicle seized in accordance with this chapter, the order shall also direct that after advertisement and public sale, the proceeds of such sale shall first be applied to the costs of the proceedings including storage, then to bona fide liens placed upon the vehicles prior to seizure, and then to the Division to be disposed of as otherwise provided in this chapter.

(c) The Division shall make return to the Court of its proceedings under the Court's order.

(38 Del. Laws, c. 18, § 57; Code 1935, § 6184; 45 Del. Laws, c. 264, § 1; 4 Del. C. 1953, § 1108; 72 Del. Laws, c. 486, § 13.)

### **§ 1109 Procedural provisions.**

(a) The Superior Court may adopt rules to govern proceedings under this chapter.

(b) All proceedings under this chapter shall be in the nature of proceedings in rem for the forfeiture and disposition of property seized and not otherwise disposed of under this chapter.

(c) Nothing contained in this chapter shall be construed as depriving any owner or person holding a lien upon or conditional title to any property seized from pursuing any remedy otherwise available in any court for the recovery of said property, but no such other remedy shall be available and no other proceeding for the recovery of said property shall be brought after a petition, involving said property, has been filed in the Superior Court under the authority of § 1107 of this title, and in such case all remedies of persons claiming title to or liens upon such seized property shall be asserted and adjudicated in the cause presented by such petition in the Superior Court.

(d) In any action or proceeding brought by an alleged owner, lienor or claimant of the seized property, this State, acting on behalf of the Division, shall be permitted to intervene as a party defendant and justify the seizure under the authority of this chapter, and in such case, as well as in any case arising under this chapter, the Court may by order, judgment or decree require the payment to the Division of all proper costs and expenses of seizure, holding, storage or other acts or proceedings under the authority of this chapter.

(e) It shall be no objection to any report and petition filed by the Division under § 1107 of this title that it relates to and deals with the property of more than one person or property seized on more than one occasion, nor shall the Superior Court refuse to act upon any such petition because any criminal proceeding arising out of the seizure of such property remains undisposed of, has resulted in an acquittal or has been retired or nolle prossed by the Attorney General.

(38 Del. Laws, c. 18, § 57; Code 1935, § 6184; 45 Del. Laws, c. 264, § 1; 4 Del. C. 1953, § 1109; 72 Del. Laws, c. 486, § 13.)

### **§ 1110 Proceeds of sale; payment of costs.**

(a) Where a sale of property has been authorized by order of court under this chapter, and consummated, the proceeds to the extent of an aggregate of \$15,000 during any one fiscal year, shall be retained by the Division as a special fund for enforcement of this title, any sum so received in excess of \$15,000, during any 1 fiscal year, shall be paid into the General Fund of the State. If at the end of any fiscal year there is in the fund more than \$15,000, the excess shall be paid into the General Fund of the State.

(b) All taxable costs in any proceeding under this chapter in the Superior Court, including the costs of publication and sale, shall be paid by the Division from any of its available funds, but first out of the proceeds of sale to the extent such proceeds may be adequate for the purpose.

(38 Del. Laws, c. 18, § 57; Code 1935, § 6184; 45 Del. Laws, c. 264, § 1; 4 Del. C. 1953, § 1110; 72 Del. Laws, c. 486, § 13; 79 Del. Laws, c. 118, § 1.)

### **§ 1111 Procedure governing searches and seizures.**

The provisions of this chapter pertaining to searches and seizures shall be subject to Chapter 23 of Title 11. In the event of any conflict or inconsistency between this chapter and Chapter 23 of Title 11, the latter shall prevail.

(4 Del. C. 1953, § 1111.)

## Chapter 12

### DELAWARE RESPONSIBLE ALCOHOLIC BEVERAGE SERVER TRAINING PROGRAM

#### § 1201 Findings and declaration of policy.

It is determined and declared as a matter of legislative findings that:

(1) The irresponsible service and consumption of alcoholic beverages has had a significant adverse impact on highway safety, personal health and individual welfare and is not in the best interests of the citizens of this State;

(2) Commercial servers of alcoholic beverages who are licensed by the State have a responsibility to ensure that their customers are served alcoholic beverages in a responsible and appropriate manner;

(3) Responsible server training programs have proven to be an effective means of addressing, in a positive and constructive manner, the irresponsible and inappropriate service of alcoholic beverages by commercial establishments;

(4) The voluntary responsible alcoholic beverage server training program which has been conducted by the Delaware Division of Alcohol and Tobacco Enforcement staff has been well received by those licensed commercial servers of alcoholic beverages who have undergone the training;

(5) A voluntary server training program cannot be as effective as a mandatory program which would reach all licensed commercial servers of alcoholic beverages;

(6) Such a mandatory training program should be provided to licensees and their employees at a reasonable cost so as to encourage their full support and participation while creating an incentive for the employees to take the program seriously; and

(7) The establishment of a mandatory responsible alcoholic beverage server training program will promote highway safety and the public health and welfare of the citizens of Delaware.

Therefore, it is declared to be the policy of this State to promote the safety, health and welfare of its citizens by the establishment and operation of a mandatory responsible alcoholic beverage server training program pursuant to the provisions of this chapter.

(68 Del. Laws, c. 168, § 1; 70 Del. Laws, c. 602, § 6; 72 Del. Laws, c. 486, §§ 15, 21; 75 Del. Laws, c. 80, §§ 1, 2.)

#### § 1202 Implementation.

(a) It shall be the responsibility of the Division of Alcohol and Tobacco Enforcement to establish training courses and materials, examinations and examination procedures with respect to the implementation of a mandatory responsible alcoholic beverage server training program in Delaware.

(b) It shall be permissible for any person or entity to establish a responsible alcoholic beverage server training program that conforms to the requirements of § 1204 of this title.

(c) In establishing, implementing, certifying or otherwise approving any training program, the Alcoholic Beverage Control Commissioner and the Division of Alcohol and Tobacco Enforcement shall consult with and seek comment from industry groups affected by the program as well as other interested state agencies.

(d) For the purposes of § 1203(a) and (c) of this title, the term "employees" means persons who have been employed by the holder of a license for at least 30 days and who work in a licensed establishment at least 10 hours a week.

(e) The Commissioner may grant new licenses or renew valid licenses conditional upon the certification required by § 1203(b) and (d) of this title being provided to the Commissioner within 30 days of the granting or renewal of such license.

(68 Del. Laws, c. 168, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 602, §§ 4, 5; 72 Del. Laws, c. 486, §§ 15, 21; 74 Del. Laws, c. 250, § 2; 75 Del. Laws, c. 80, § 3.)

#### § 1203 Applicability; on-premises licenses.

(a) Effective July 1, 1992, every person who holds any valid license issued by the Alcoholic Beverage Control Commissioner pursuant to this title which authorizes the sale of alcoholic beverages for on-premises consumption shall, upon request, be required to demonstrate that his or her employees who as part of their employment responsibilities sell, prepare, dispense, serve or otherwise deliver alcoholic beverages directly to patrons of the licensed establishment for on-premises consumption, or who manage employees who do, have successfully completed a responsible alcoholic beverage server training program recognized and approved by the Commissioner in accordance with the provisions of this chapter. Each licensee who participates directly in the management of the licensed establishment shall also be required to successfully complete a responsible alcoholic beverage server training program recognized and approved by the Commissioner.

(b) Following July 1, 1992, every person who makes application for any license or for renewal of any valid license issued by the Alcoholic Beverage Control Commissioner pursuant to this title, which authorizes the sale of alcoholic beverages for on-premises consumption shall, as part of the application process, certify to the Commissioner that his or her employees who as part of their employment responsibilities sell, prepare, dispense, serve or otherwise deliver alcoholic beverages directly to patrons of the licensed establishment for on-premises consumption, or who manage employees who do, have successfully completed a responsible alcoholic beverage server training program recognized and approved by the Commissioner in accordance with the provisions of this chapter. Each applicant who

intends to participate directly in the management of the licensed establishment shall also be required to successfully complete a responsible alcoholic beverage server training program recognized and approved by the Commissioner.

(c) Effective January 1, 1997, every person who holds any valid license issued by Alcoholic Beverage Control Commissioner pursuant to this title which authorizes the sale of alcoholic beverages for off-premises consumption shall, upon request, be required to demonstrate that any employees who, as part of their employment responsibilities, sell, serve or otherwise deliver alcoholic beverages directly to patrons of the licensed establishment for off-premises consumption or who manage employees who do, have successfully completed a responsible alcoholic beverage server training program recognized and approved by the Commissioner in accordance with the provisions of this chapter. Each licensee who participates directly in the management of the licensed establishment shall also be required to successfully complete a responsible alcoholic beverage server training program recognized and approved by the Commissioner.

(d) Following January 1, 1997, every person who makes application for any license or renewal of any valid license issued by the Alcoholic Beverage Control Commissioner pursuant to this title which authorizes the sale of alcoholic beverages for off-premises consumption shall, as part of the application process, certify to the Commissioner that any employees who, as part of their employment responsibilities, sell, serve or otherwise deliver alcoholic beverages directly to patrons of the license establishment for off-premises consumption or who manage employees who do, have successfully completed a responsible alcoholic beverage server training program recognized and approved by the Commissioner in accordance with the provisions of this chapter. Each applicant who intends to participate directly in the management of the licensed establishment shall also be required to complete a responsible alcoholic beverage server training program recognized and approved by the Commissioner.

(e) The provisions of subsections (a) through (d) of this section shall not apply to licenses issued pursuant to §§ 514 and 525 of this title. (68 Del. Laws, c. 168, § 1; 68 Del. Laws, c. 327, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 602, §§ 1-3; 72 Del. Laws, c. 486, §§ 15, 21.)

### **§ 1204 Training standards and curriculum.**

(a) In order to be recognized and approved by the Alcoholic Beverage Control Commissioner, a responsible alcoholic beverage server training program shall include, but need not be limited to, providing information related to the following:

- (1) Alcohol as a drug and its effects on the body and behavior, especially as to driving ability;
- (2) Effects of alcohol in combination with commonly used legal prescription or nonprescription drugs and illegal drugs;
- (3) Recognizing the problem drinker and the identification of community treatment programs and agencies;
- (4) Applicable Delaware alcoholic beverage control laws and Alcoholic Beverage Control Commissioner rules;
- (5) Delaware laws related to drinking and driving;
- (6) Intervention techniques, involving methods of dealing with the problem customer who has had, or is approaching the point of having had, too much to drink;
- (7) Advertising, promotion and marketing of alcoholic beverages for safe and responsible drinking patterns and standard operating procedures for dealing with customers.

(b) The Commissioner may by regulation provide additional training standards and curricula to be included within any responsible alcoholic beverage server training program as a condition to its being recognized and approved by the Commissioner.

(c) The Division of Alcohol and Tobacco Enforcement shall provide a responsible alcoholic beverage server training program through its trained personnel for a course approved by the Commissioner and the Commissioner may approve and certify such a training program or programs to be provided through independent contractors, private persons or educational institutions.

(d) Anyone required to undergo training in accordance with the provisions of this chapter, who has within the previous 4 years successfully completed a responsible alcoholic beverage server training program which satisfies the requirements of the Commissioner, and is approved by the Commissioner, shall not be obligated to undertake additional training until such time as the person is required to undergo renewal training in accordance with § 1205 of this title.

(68 Del. Laws, c. 168, § 1; 72 Del. Laws, c. 486, §§ 15, 21; 74 Del. Laws, c. 250, § 2; 75 Del. Laws, c. 80, § 4.)

### **§ 1205 Certification and renewal training.**

Every person who successfully completes an approved responsible alcoholic beverage server training program shall be certified by the instructor as having met the requirements of this chapter. The course taught shall be either the Division of Alcohol and Tobacco Enforcement course or any other Commissioner approved course. The instructor shall provide the names of the persons who successfully complete the approved class, as well as such additional information that is required by the Commissioner, to the Commissioner and the Division of Alcohol and Tobacco Enforcement. Such certification shall be valid for a period of 4 years at which time the person must undergo renewal training in order to obtain recertification which shall also be valid for a period of 4 years. Renewal training shall include the information described in § 1204 of this title and/or such other information as the Commissioner may by regulation require.

(68 Del. Laws, c. 168, § 1; 72 Del. Laws, c. 486, § 15; 75 Del. Laws, c. 80, § 5.)

### **§ 1206 Violations; penalties.**

(a) The Commissioner may reprimand or impose an administrative fine against any licensee who intentionally violates any provision of this chapter or any regulation promulgated by the Commissioner pursuant thereto.

(b) The Commissioner may preclude any employee of a licensee who fails to comply with the applicable training requirements contained in this chapter or any regulation promulgated by the Commissioner pursuant thereto from working in any capacity in a licensed establishment until such time as it is provided with proof that the employee has successfully completed the applicable training requirements.

(c) The Commissioner may suspend or revoke the server training card of any person who the Commission determines, after a hearing, has violated this title or the Commissioner's rules. If a person's card is suspended or revoked, that person shall not be permitted to serve alcohol in Delaware during the period of suspension or, if revoked, for such period of time as stated by the Commissioner in the order of revocation. In addition, the Commissioner may require that a person that has completed the course attend and successfully complete either the full course or the recertification course.

(68 Del. Laws, c. 168, § 1; 72 Del. Laws, c. 486, § 15; 75 Del. Laws, c. 80, § 6.)

### **§ 1207 Enforcement.**

The Division of Alcohol and Tobacco Enforcement shall be responsible for enforcement of this chapter and shall bring charges of violations of this chapter against a licensee or a certified trained server before the Commissioner. The Commissioner shall have exclusive original jurisdiction over all alleged violations of the provisions of this chapter.

(68 Del. Laws, c. 168, § 1; 72 Del. Laws, c. 486, §§ 15, 21; 75 Del. Laws, c. 80, § 7.)

### **§ 1208 Training program costs.**

(a) All costs associated with the implementation, administration and enforcement of the requirements of this chapter shall be paid from a special fund entitled the "Delaware Responsible Alcoholic Beverage Server Training Program Fund."

(b) The Commissioner shall deposit \$300 from each application process fee, collected pursuant to § 554(x) of this title, into the Delaware Responsible Alcoholic Beverage Server Training Program Fund.

(c) Any person that takes the course offered by the Division of Alcohol and Tobacco Enforcement after January 1, 2006, shall pay a fee, in the amount determined by the Commissioner, not to exceed \$15 for the full course and \$10 for the recertification course. Said fee shall be deposited into the Delaware Responsible Alcoholic Beverage Server Training Program Fund to pay for the costs associated with the program. Any person that is approved by the Commissioner to offer a responsible alcoholic beverage server training course may be required to remit a fee determined by the Commissioner, not to exceed \$15, to offset any costs associated with creating an identification card for the server.

(d) The Fund shall be a revolving fund and no funds deposited therein shall revert to the General Fund of the State Treasury.

(e) The Alcoholic Beverage Control Commissioner and Division of Alcohol and Tobacco Enforcement shall, on or before December 31 of each year, make a report to the Governor of all income and expenditures made from said Fund. A copy of said reports shall be given biennially on or before December 31 to any member of the General Assembly who requests a copy.

(f) The Commissioner shall deposit \$200 from each application process fee, collected pursuant to § 554(x) of this title, into an account designated by the Department of Finance for the General Fund of the State Treasury.

(68 Del. Laws, c. 168, § 1; 68 Del. Laws, c. 327, § 2; 72 Del. Laws, c. 486, §§ 15, 21; 75 Del. Laws, c. 80, § 8.)