

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER
Statutory Authority: 4 Delaware Code, Section 304 (4 Del.C. §304)
4 DE Admin. Code 1201 &1202

PROPOSED

PUBLIC NOTICE

1200 General Establishment Employment

Rule 1201 (Formerly Rule 7) A Rule Requiring Persons Between the Ages of 16 and 18 to Secure a Work Permit to be Employed by an On-Premises Licensee

Rule 1202 (Formerly Rule 7.1) Employment of Persons Who Have Reached the Age of 18 Years in Package Stores

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 4 Del.C. §304, the Delaware Alcoholic Beverage Control Commissioner proposes to update its rules related to on-premise and retail licensees, specifically employment requirements.

In accordance with 29 Del.C. §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should direct them to the following address:

Doug Denison
Deputy Commissioner
Office of the Delaware Alcoholic Beverage Control Commissioner
820 N. French St., 3rd Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to OABCCrulescomments@delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4:00 p.m. EST, July 1, 2023.

The action concerning determination of whether to adopt the proposed regulations will be based upon consideration of the written comments and any other written materials filed by the public.

Background

The Delaware Alcoholic Beverage Control Commissioner ("Commissioner" or "Office") is authorized by the General Assembly of the State of Delaware, to 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 of Delaware, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, not inconsistent with Title 4 of the Delaware Code, known as the Delaware Liquor Control Act ("DLCA") or with any other law of the State. The Commissioner is further authorized to adopt and promulgate rules and regulations not inconsistent with Title 4 or of any other law of the State, and 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.

4 DE Admin. Code 1201 and 1202 are updated to permit a person 18 or older to work in an on-premise licensee, and to remove the requirement that an employee obtain a work permit from this Office. House Bill 373, signed by the Governor in April 2022, changed the age of employment from 16 to 14 in clubs with authorized dining facilities, hotels, racetracks and restaurants, so long as such person is not involved in the sale or service of alcoholic liquor. House Bill 463, passed by the 151st General Assembly and signed by the Governor in 2022, modified Section 904(h) of Title 4 of the Delaware Code to permit an 18-year-old to serve, but not prepare, alcoholic beverages in taverns and taprooms. In addition, House Bill 427, passed by the 151st General Assembly, and signed by the Governor on October 26, 2022, amended section 904(g) of Title 4 to remove the requirement that youth employed by licensees first obtain a work permit from this Office. Employees under 18 years old are already required to obtain a work permit from the Delaware Department of Labor.

Summary of Proposal

In 2022, the General Assembly passed House Bills 373, 427 and 463 (all signed by the Governor in 2022), which changed the age of employment in clubs with authorized dining facilities, hotels, racetracks and restaurants, taverns and taprooms and removed the duplicate requirement that youth employees obtain a work permit from the OABCC. Pursuant to the legislative changes made to Section 904 of Title 4 of the Delaware Code, 4 **DE Admin. Code** 1201 and 1202 are updated to reflect: 1) removal of the requirement that youth employees be issued a work permit from this Office; 2) youth 14 years of age and older are permitted to work in clubs with authorized dining facilities, hotels, racetracks and restaurants (provided that no such person be involved in the sale or service of alcoholic liquors); and 3) the change from 19 years of age to 18 years of age as the minimum age for employment to work in a taproom, pursuant to House Bill 463, and the change from 19 years to 18 years of age as the minimum age for employment to work in a retailer provided no one under 21 years sells or serves alcoholic beverages.

Statutory Authority 4 Del. C. §304.

4 **Del.C.** §304 enables the Delaware Alcoholic Beverage Control Commissioner to adopt and promulgate rules and regulations not inconsistent with Title 4 of the Delaware Code and all such rules and regulations shall have the force and effect of law; provided, that no such rule or regulation shall extend, modify or conflict with any law of the State of Delaware or the reasonable implications thereof.

1200 General Establishment Employment

Rule 1201 (Formerly Rule 7) A Rule Requiring Related to Employment of Persons Between the Ages of 16 and 18 to Secure a Work Permit to be Employed by an On-Premises Licensee

4.0 ~~Employing Persons Between the Ages of 16 and 18~~

- 1.1 ~~No licensee shall employ, or allow to be employed on its licensed premises a person under the age of twenty-one, except that a hotel, restaurant, club or boat with authorized dining facilities, race track licensee, dinner theater, caterer, or bowling alley, may employ a person under the age of nineteen who has been issued a valid work permit under this rule or is employed in a capacity unrelated to the selling, serving, dispensing or handling of alcoholic liquor without a permit from the Commissioner, and that the on-premises as listed above may employ a person nineteen years of age or older to serve alcoholic liquors to its patrons without a permit from the Commissioner. A person employed, or allowed to work in a kitchen, dining room, or any room where alcoholic liquor is sold, served, dispensed, or consumed, is employed in a capacity related to the handling of alcoholic liquor. The permit shall be available on the premises of the licensee for inspection at all times during the employment of the minor.~~
- 1.2 ~~Any person between the ages of sixteen and eighteen, unless excepted by the above provisions of this Rule, who desires to be employed or allowed to be employed on a licensed premises, by a licensee, in any capacity on a regular, part time, or engagement basis, with or without compensation must first apply and, obtain a work permit from this Commissioner. Persons sixteen and seventeen years of age must first meet the requirements of the Department of Labor and Industrial Relations, and present eligibility slips and approval of the Department of Labor (these permits are obtained from the school attended, district wherein the person resides or the Department of Labor). The Commissioner may consider, among other factors, the following:~~
 - 1.2.1 ~~The applicant's character and maturity.~~
 - 1.2.2 ~~The applicant's prior police record. No permit shall be issued to a person who has been convicted of any felony, sex offense, drug offense, or law concerning alcoholic beverages, since attaining the age of sixteen, and shall be revoked upon such conviction.~~
- 1.3 ~~Such permit may be revoked for cause at any time; if unrevoked, it shall remain valid until the person becomes nineteen.~~
- 1.4 ~~These permits issued to persons between the ages of sixteen and eighteen are for employment in on-licensed premises as listed in subsection 1.1, but will not permit such persons to be involved in the sale or service of alcoholic beverages. They may not solicit or take orders, serve or prepare alcoholic beverages. Said licenses will expire upon attaining the age of nineteen. On-Premises establishments as listed in subsection 1.1 may employ persons nineteen years of age or older without any permit from the Commissioner for purposes of soliciting and taking orders for, and serving alcoholic beverages, but said person shall not be permitted to engage in the preparation of alcoholic liquor.~~
- 1.5 ~~Those persons sixteen and seventeen, if desirous of employment at more than one place of employ, must present Department of Labor school permit for each Alcoholic Beverage Control Commissioner permit issued. Such employees must have as many Department of Labor and Commissioner permits as places of employment. The signature of licensee hiring is necessary on each application, which also must be signed by~~

parent, guardian, or, at the discretion of the Commissioner, other reputable person. Permits become void upon termination of employment at place for which permit was issued.

- 1.6 For those persons eighteen, unless excepted by the above provisions of this rule, after the first permit, the Commissioner will only require the signature of licensee where person is to be employed.
- 1.7 It is the licensee's responsibility to verify that the permit is a valid one. Failure to do so could result in suspension of the license or fine.
- 1.8 All permits will be issued only upon receipt by the Commissioner of an application in the form required by the Commissioner, including an affidavit in the following form executed by the person seeking the permit:

STATE OF _____)
_____: SS
COUNTY OF _____)

I have been duly sworn, do depose and say that:

- 1. I acknowledge that I have read the requirements of the Delaware Alcoholic Beverage Control Commissioner, stated below, and that I will not violate such requirements.
- 2. I am _____ years of age, having been born on _____ at _____
Birthdate _____ Birthplace _____
- 3. I have been convicted of the following offenses: _____
If yes, explain _____
- 4. I will advise the Commissioner within two days if I am convicted of any other offense.

Sworn to and subscribed before me this _____ day of _____, 20____ Signature of Applicant

- 1.9 The Commissioner's work permit is to be obtained by employee and given to employer at time of commencing work, who shall keep it as long as employee remains working at this establishment after which the permit is to be surrendered to the Delaware Alcoholic Beverage Control Commissioner by the employer. In the event employee secures work at another establishment, a new permit shall be applied for and secured from the Delaware Alcoholic Beverage Control Commissioner.

1.0 Minimum Age Requirements for Employment

- 1.1 Clubs with authorized dining facilities, hotels, racetracks and restaurants licensed under Title 4 of the Delaware Code are permitted to hire individuals 14 years of age and older.
- 1.2 Catering businesses serving liquors and bowling alleys licensed to serve alcoholic beverages are permitted to hire employees 16 years of age and older, provided that persons under the age of 18 shall not be involved in the sale or service of alcoholic liquor.

2.0 Age-based Restrictions for Employees

- 1.10 2.1 Employees under the age of nineteen of an on-premise licensee 18 years shall not of age and older may receive orders for, for and serve alcoholic liquors, or be involved in the sale of alcoholic liquors in any way. This prohibition shall not apply to persons nineteen years of age or older who are employed in an on-premises as listed in subsection 1.1.
- 1.14 2.2 Employees, not of the legal drinking age, shall not work in any capacity behind a counter at which alcoholic liquors are located, may not mix alcoholic beverage drinks or draw beer from its dispenser.

19 DE Reg. 775 (02/01/16)

Rule 1202 (Formerly Rule 7.1) Employment of Persons Who Have Reached the Age of 18 Years in Package Stores

1.0 Definitions

The following words and terms, when used in this regulation, have the following meaning:

"Retailer" means the person permitted to sell alcoholic liquors in a store in the State, not for consumption on the premises. 4 **Del.C.** §101. A natural person who is a sole proprietor, general partner, or owner of 25 percent or more of the issued and outstanding stock of a package store shall be considered as a "person" within the meaning of §101, for purposes of this Rule.

"Sell or serve alcoholic liquors" means acting in any manner toward a consumer which encourages, induces, or fosters the sale of any goods, whether or not they contain alcoholic liquor. The term includes, but is not limited to, advising consumers on the selection of goods, delivery of goods to consumers before payment, and ringing up sales. The term does not include stocking shelves, affixing price labels, and other acts not requiring direct contact with consumers, nor does it include assisting consumers in carrying parcels from the store when an in-store purchase has been completed. A minor shall not at any time be permitted unaccompanied access to the premises. In addition, a minor shall not participate in a curbside delivery transaction pursuant to 4 **Del.C.** §516 and 4 **DE Admin. Code** 910 either by completing a sales transaction or carrying a purchase from inside the store to a purchaser outside the store.

"Store" means an establishment licensed by the Commissioner only for the sale of alcoholic liquors for consumption off of the premises where sold.

26 DE Reg. 62 (07/01/22)

2.0 **Permits Required; Standards Employment Limitations**

- 2.1 No retailer shall employ a person ~~between the ages~~ under the age of 18 ~~and 21 to work~~ in their store unless the person ~~between the ages of 18 and 21 shall first have been approved by the Commissioner and received a permit to work in the store.~~
- 2.2 The permit required by subsection 2.1 shall be issued upon application showing that:
 - 2.2.1 The applicant is 18 years of age or older;
 - 2.2.2 The applicant is a mature and responsible person; and
 - 2.2.3 The applicant has not been the subject of any judicial or administrative proceedings by any federal, state or local governmental agency involving:
 - 2.2.3.1 Violations of laws or regulations respecting controlled substances;
 - 2.2.3.2 Violations of laws or regulations respecting alcoholic liquors; or
 - 2.2.3.3 Violations of criminal statutes carrying a penalty of incarceration of more than 1 year, whether or not a sentence of imprisonment was actually imposed.
- 2.3 ~~Permits shall continue in full force and effect until the holder attains the age of 21 years, unless sooner revoked.~~
- 2.2 Employees under the age of 21 shall not sell or serve alcoholic liquors, as those terms are defined in this regulation.

3.0 **Application for Permit; Contents; Procedure**

- 3.1 ~~Any person who has reached the age of 18 years may apply to the Commissioner for a permit to work in a store.~~
- 3.2 The application shall state:
 - 3.2.1 The name, address and date of birth of the applicant;
 - 3.2.2 The name and address of the store where the applicant will be employed;
 - 3.2.3 The name and address of the high school most recently attended by the applicant;
 - 3.2.4 Any and all arrest and criminal or juvenile charges against the applicant, and their disposition, and all school disciplinary actions involving the applicant;
 - 3.2.5 The names, addresses and telephone numbers of 3 character references, who shall not be related to the applicant.
- 3.3 ~~The application shall be signed by the applicant, at least one parent, and an approved owner of the store.~~

4.0 **Approval of Application**

~~The Deputy Commissioner may approve or disapprove applications. An applicant may appeal disapproval to the Commissioner.~~

5.0 **Violations**

~~A violation of this rule shall, in addition to any other penalty provided by the Liquor Control Act or these Rules, be punished by revocation of the applicant's permit, and such permit holder shall not be permitted to be employed thereafter under the provisions of this Rule or Rule 1201.~~

19 DE Reg. 775 (02/01/16)

26 DE Reg. 62 (07/01/22)

Rule 1203 (Formerly Rule 73) Standards for Server Training Providers

1.0 Purpose and Applicability

This Rule shall govern the training curricula, examination, and certification standards for all Commissioner-approved server training courses.

2.0 Training Standards and Curricula

Server training programs shall meet the requirements of Title 4, Ch. 12, in order to be approved by the Commissioner.

3.0 Recognition and Approval Process

3.1 Independent contractors, private individuals, or educational institutions seeking approval to provide server training pursuant to 4 **Del.C.** Ch. 12, shall proceed as follows:

3.1.1 Submit a letter of intent to the Director of DATE, and include copies of all training curricula, materials, examinations, and certification cards.

3.1.2 The Director of DATE shall review and evaluate the training program. If the program meets the requirements of this rule and the Liquor Control Act, the Director of DATE shall submit a written report to the Commissioner supporting the programs conformity to the Liquor Control Act and Commissioner Rules.

3.1.3 The Commissioner shall review the request for program certification and the Director of DATE's recommendation and either approve or deny the application for certification.

4.0 Training Certification

4.1 Training certification cards issued by the provider must be approved by the Commissioner and shall display the following information: Trainee's full name, date of birth, expiration date, and instructor's signature.

4.2 All Commissioner-approved server training providers shall administer a Commissioner-approved written examination at the conclusion of each server training class. The minimum passing score for the examination shall be 80 percent. The training provider may only issue a Commissioner-approved certification card to each attendee who obtains a minimum passing score of 80 percent.

4.3 The server training provider shall submit proof of training certification for each person certified by the provider to the Director of DATE within seven working days of the date of certification. The proof of certification shall list the following information for each trainee: Full name, date of birth, and date trained.

4.4 No Commissioner-approved server training provider shall knowingly issue a server training certification card to any individual who has not successfully completed the provider's training course as approved by the Commissioner.

4.5 The Commissioner may suspend or revoke the training privileges of any server training provider who violates the provisions of this rule or the Liquor Control Act.

19 DE Reg. 775 (02/01/16)

26 DE Reg. 1044 (06/01/23) (Prop.)