

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

PROPOSED

PUBLIC NOTICE

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

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 introduce regulations concerning curbside service provided by package stores, expansion of outdoor seating for serving food and drinks by licensees, and containers used for alcohol to-go from restaurants, taprooms and taverns.

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:

Wendy Hudson
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, May 2, 2022.

The action concerning determination of whether to adopt the proposed regulation 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 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 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.

Further, the Commissioner shall determine and publish standards for: 1) the manner in which stores that sell alcoholic beverages for off-premise consumption are permitted to provide curbside service for customers; 2) the expansion of outdoor seating for purposes of serving food and drink; and 3) takeout alcoholic beverages by restaurants, taprooms and taverns and others with a valid on premise license in Delaware in order to be allowed to exercise the privilege of the sale of alcoholic liquors therein. This includes an update to Rule 1202 to prohibit a minor from participating in curbside delivery transactions.

Last, Section 904(h) of Title 4 of the Delaware Code allows an 18 year old to serve alcoholic beverages. Rule 1201 is updated so that an employee who is between 16-18 years of age must apply for a work permit, for compliance with Section 904.

Summary of Proposal

In January 2022, the Delaware General Assembly passed House Bills 289 and 290. These bills permit curbside service for package stores, takeout alcohol sales by restaurants, taprooms and taverns and others with a valid on-premise license following specific guidelines, and an expansion of outdoor seating for serving food and drinks. The Governor signed both bills in February 2022, and they became effective immediately.

The proposed Rules implement these changes by providing standards for the industry to follow. Specifically, proposed Rule 705 outlines the procedure for licensees to seek permission from the Alcoholic Beverage Control Commissioner to expand outdoor seating for serving food and drinks. In addition, changes to existing Rules 910 and 1202 clarify the manner in which a restaurant, taproom or tavern, or other licensees with valid on-premises licenses, may provide takeout orders of alcoholic beverages, and provides guidelines for curbside service by package stores to provide assistance to its customers. Last, Rule 1201 is updated to reflect a change in the minimum age as 18 years old, formerly 19 years old, for compliance with updates to Section 904, Title 4.

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.

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

1.0 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~~ eighteen 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~~ eighteen.
- 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~~ eighteen. On-Premises establishments as listed in subsection 1.1 may employ persons ~~nineteen~~ eighteen 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.

