



To: **Persons holding a restaurant wine license** [ABCL § 81]
Persons holding a restaurant liquor license [ABCL § 64]

Subject: **Restaurant patron's removal of one bottle of wine purchased
with and partially consumed during a full course meal**
Conditions and Limitations – Procedures to be Followed – Criminal Penalties

Legislation has been enacted which provides a procedure under which a restaurant patron, following the consumption of a full course meal, may be permitted to remove from the licensed restaurant establishment one partially consumed bottle of wine purchased in connection with the meal, a portion of which bottle of wine was actually consumed during the meal. The new law goes into effect on September 9, 2004.

Limitations and Conditions

Restaurant License Required. A partially consumed bottle of wine may be removed only from an establishment which has received from the New York State Liquor Authority a restaurant wine license or a restaurant liquor license. The plan of operation and other representations submitted by the license holder in connection with the license application will establish whether the establishment is a *bona fide* restaurant. "Restaurant" is defined by subdivision 27 of section 3 of the Alcoholic Beverage Control Law in the following terms:

27. "Restaurant" shall mean a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods, which may be required for ordinary meals, the kitchen of which must, at all times, be in charge of a chef with the necessary help, and kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local department of health. "Meals" shall mean the usual assortment of foods commonly ordered at various hours of the day; the service of such food and victuals only as sandwiches or salads shall not be deemed a compliance with this requirement. "Guests" shall mean persons who, during the hours when meals are regularly served therein, come to a restaurant for the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein. Nothing in this subdivision contained, however, shall be construed to require that any food be sold or purchased with any beverage.

Full Course Meal Required. A partially consumed bottle of wine may be removed from a licensed restaurant establishment only if the bottle of wine was *actually purchased* in connection with a full course meal, and only if a portion of the wine contained in the bottle was *actually consumed* with the meal. "*Full course meal*" is defined by subdivision four of section eighty-one of the Alcoholic Beverage Control Law in the following terms:

*** For the purposes of this subdivision the term "full course meal" shall mean a diversified selection of food which is ordinarily consumed with the use of tableware and cannot conveniently be consumed while standing or walking. ***

Only one partially consumed bottle of wine may be removed from the restaurant. The purchaser of the full course meal and the wine may remove only *one* partially consumed bottle of wine.



Procedures

A dated receipt for the meal and the bottle of wine must be provided. At the conclusion of the meal, the restaurant patron must be provided with a dated receipt which indicates both the purchase of a full course meal and the purchase of the wine. A receipt which is *undated* does not satisfy the requirements of the statute.

A receipt which *fails to indicate that the wine was purchased in connection with a full course meal* is insufficient, because the statute requires that the wine be purchased in connection with a full course meal.

Sealing required. Before a restaurant licensee may permit a partially consumed bottle of wine to leave the restaurant, the restaurant licensee or an agent of the restaurant licensee must:

- securely reseal the bottle of wine;
- place the resealed bottle in a one-time-use tamper-proof transparent bag, and
- securely seal the bag.

The one-time-use tamper-proof transparent bag must insure that the patron cannot gain access to the bottle while in transit after the bag is sealed.

Criminal Penalties

The failure of a restaurant licensee or the licensee's agent to observe the foregoing limitations and conditions, and to comply with the foregoing procedures, may result in the arrest of the restaurant patron for an "open container" violation under section 1227 of the Vehicle and Traffic Law. Effective September 9, 2004, Vehicle and Traffic Law § 1227 provides, in relevant part:

Vehicle & Traffic Law § 1227. Consumption or possession of alcoholic beverages
in certain motor vehicles.

1. The drinking of alcoholic beverages, or the possession of an open container containing an alcoholic beverage, in a motor vehicle located upon the public highways or right-of-way public highway is prohibited. Any operator or passenger violating this section shall be guilty of a traffic infraction.

* * *

3. Wine which is resealed in accordance with the provisions of subdivision four of section eighty-one of the alcoholic beverage control law shall not be deemed an open container for purposes of this section.

Restaurant operators should advise restaurant patrons that unsealing the one-time-use tamper-proof transparent bag while in transit may result in the patron's arrest for the foregoing offense.