

## CHAPTER 3-A

## ADMINISTRATION AND ORGANIZATION

**§81. State Liquor and Lottery Commission**

**1. Oversight of Bureau of Alcoholic Beverages and Lottery Operations.** The commission shall monitor the operation of the bureau in its administration of the laws relating to the sale of spirits. [PL 2013, c. 269, Pt. C, §1 (AMD); PL 2013, c. 269, Pt. C, §13 (AFF); PL 2013, c. 368, Pt. V, §61 (REV).]

**2. Advice.** The commission shall advise the director of the bureau regarding the administration of the functions of the bureau. The commission may advise the Governor and the Legislature regarding issues relating to the operation of the bureau and the administration of the laws relating to the sale of spirits. [PL 2013, c. 269, Pt. C, §2 (AMD); PL 2013, c. 269, Pt. C, §13 (AFF); PL 2013, c. 368, Pt. V, §61 (REV).]

**3. Listing of items.** The commission shall determine which items may be listed for sale in the State. Products listed must be made available by the supplier at a warehouse designated by the commission. [PL 1997, c. 373, §28 (NEW).]

**4. Notice to delist or stop purchases.** Before any item listed by the commission is discontinued or delisted or before the commission issues any order to stop purchases of any item listed, the commission shall give the vendor of the items reasonable written notice of its intention to delist or stop purchase of the items. [PL 1997, c. 373, §28 (NEW).]

## SECTION HISTORY

PL 1997, c. 373, §28 (NEW). PL 1999, c. 535, §3 (AMD). PL 2013, c. 269, Pt. C, §§1, 2 (AMD). PL 2013, c. 269, Pt. C, §13 (AFF). PL 2013, c. 368, Pt. V, §61 (REV).

**§82. Bureau of Liquor Enforcement****(REPEALED)**

## SECTION HISTORY

PL 1997, c. 373, §28 (NEW). PL 1997, c. 571, §1 (AMD). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2003, c. 451, §T9 (AMD). PL 2009, c. 213, Pt. X, §§1, 2 (AMD). PL 2013, c. 368, Pt. V, §16 (RP).

**§82-A. Enforcement of licensing**

**1. Authority.** In addition to any authority a law enforcement officer has to enforce the laws, a law enforcement officer may, subject to subsections 2 and 4, enforce this Title or the rules adopted pursuant to this Title against violations that may result in an administrative sanction against a licensee or the licensee's agents or employees. [PL 2005, c. 139, §4 (NEW).]

**2. Commissioner.** The commissioner in consultation with the Commissioner of Public Safety or the Commissioner of Public Safety's designee may by agreement, with the consent and approval of the affected law enforcement agency, designate the law enforcement agency's officers to exercise the enforcement authority identified in subsection 1. [PL 2013, c. 368, Pt. V, §17 (AMD).]

**3. Contract officers.** The commissioner in consultation with the Commissioner of Public Safety or the Commissioner of Public Safety's designee may appoint contract officers for the purpose of enforcing this Title and the rules adopted pursuant to this Title against specific violations that may result in an administrative sanction against a licensee, or the licensee's agents or employees.

[PL 2013, c. 368, Pt. V, §17 (AMD).]

**4. Limitation.** The commissioner in consultation with the Commissioner of Public Safety or the Commissioner of Public Safety's designee may limit the authority granted by this section to specific sections of this Title and rules adopted pursuant to those sections.

[PL 2013, c. 368, Pt. V, §17 (AMD).]

#### SECTION HISTORY

PL 2005, c. 139, §4 (NEW). PL 2013, c. 368, Pt. V, §17 (AMD).

### **§83. Bureau of Alcoholic Beverages and Lottery Operations**

#### **(REPEALED)**

#### SECTION HISTORY

PL 1997, c. 373, §28 (NEW). PL 1999, c. 535, §4 (AMD). PL 2003, c. 20, §LLL1 (AMD). PL 2003, c. 20, §LLL4 (AFF). PL 2011, c. 693, §§1, 2 (AMD). PL 2013, c. 269, Pt. A, §2 (AMD). PL 2013, c. 269, Pt. C, §3 (AMD). PL 2013, c. 269, Pt. C, §13 (AFF). PL 2013, c. 368, Pt. V, §18 (RP). PL 2013, c. 476, Pt. A, §7 (RP).

### **§83-A. Bureau of Alcoholic Beverages and Lottery Operations**

#### **(REPEALED)**

#### SECTION HISTORY

PL 2013, c. 368, Pt. V, §19 (NEW). PL 2013, c. 476, Pt. A, §8 (RP).

### **§83-B. Enforcement and licensing activities of the bureau**

The bureau shall establish policies and rules and propose legislation concerning the administration and the enforcement of the laws under this Title and for the sale of liquor in this State. The bureau shall:

[PL 2013, c. 476, Pt. A, §9 (NEW).]

**1. Enforcement.** Enforce the laws relating to the manufacture, importation, storage, transportation and sale of all liquor and administer those laws relating to licensing and the collection of taxes on liquor required to be remitted under this Title;

[PL 2013, c. 476, Pt. A, §9 (NEW).]

**2. Licensing and licensing hearings.** Issue and renew all licenses authorized by this Title and hold licensing hearings as required by this Title. The director of the bureau or the director's designee shall appoint a hearing officer who may conduct hearings in any licensing matter pending before the bureau. The hearing officer, after holding the hearing, shall render a final decision based upon the record of the hearing. Except as provided in section 805, the decision of the hearing officer is final.

The hearing officer may administer oaths and issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books and papers relating to any license question in dispute before the bureau or to any matter involved in a hearing. Witness fees in all proceedings are the same as for witnesses before the Superior Court and must be paid by the bureau, except that, notwithstanding Title 16, section 253, the bureau is not required to pay the fees before the travel and attendance occur;

[PL 2013, c. 476, Pt. A, §9 (NEW).]

**3. Recommend revocation of licenses.** Recommend to the District Court that it suspend or revoke, in accordance with sections 802, 803 and 1503, any license issued pursuant to this Title or the rules adopted under this Title;

[PL 2013, c. 476, Pt. A, §9 (NEW).]

**4. Prevent sale to minors and others.** Prevent the sale of liquor by licensees to minors and intoxicated persons;

[PL 2013, c. 476, Pt. A, §9 (NEW).]

**5. Appeals of municipal decisions.** Review all appeals from the decisions of municipal officers. The director or the director's designee may appoint a hearing officer as provided in subsection 2 to conduct hearings;

[PL 2013, c. 476, Pt. A, §9 (NEW).]

**6. Investigate and recommend changes.** Carry out a continuous study and investigation of the sale of liquor throughout the State and the operation and administration of state activities relating to licensing and enforcement under this Title and recommend to the commissioner any changes in the laws or rules and methods of operation that are in the best interest of the State;

[PL 2013, c. 476, Pt. A, §9 (NEW).]

**7. Rules.** Adopt rules consistent with this Title or other laws of the State for the administration, licensing, clarification, execution and enforcement of all laws concerning liquor and to prevent violations of those laws. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. The rules adopted by the Department of Public Safety before July 1, 2013 are deemed adopted by the bureau;

[PL 2013, c. 476, Pt. A, §9 (NEW).]

**8. Rules for food service organizations.** Adopt rules permitting food service organizations to purchase malt liquor, wine and fortified wine from a wholesale licensee, notwithstanding section 1401, subsection 9. For the purposes of this subsection, "food service organization" means a business entity that provides catering services to passengers on international flights and cruises. The rules must provide that a food service organization is not required to have a license in order to purchase malt liquor, wine and fortified wine from a wholesale licensee for consumption by passengers on international flights and cruises after leaving port;

[PL 2013, c. 476, Pt. A, §9 (NEW).]

**9. Publish laws and rules.** Ensure that licensees have access to the provisions of this Title, other laws governing liquor and all rules adopted pursuant to this Title in accordance with this section.

A. The bureau shall provide notification to licensees that the provisions of this Title and rules adopted pursuant to this Title are available on the bureau's publicly accessible website and that the bureau will provide a paper copy of this Title or rules to a licensee at no charge, upon request from that licensee. [PL 2013, c. 476, Pt. A, §9 (NEW).]

B. The bureau shall notify all licensees of changes to this Title and rules adopted within 90 days of adjournment of each regular session of the Legislature. [PL 2013, c. 476, Pt. A, §9 (NEW).]

C. The bureau may charge a reasonable fee for paper copies of this Title, any new laws enacted in this Title or any newly adopted or existing rules to cover the cost of producing the paper copy to persons other than licensees. Nothing in this paragraph prevents the bureau, upon its own discretion, from providing paper copies for no fee. [PL 2013, c. 476, Pt. A, §9 (NEW).]

D. The bureau shall keep that part of its publicly accessible website regarding this section updated with any new or updated laws or rules; [PL 2013, c. 476, Pt. A, §9 (NEW).]

[PL 2013, c. 476, Pt. A, §9 (NEW).]

**10. Deposit revenues.** Deposit all net revenues derived from licensing and enforcement under this Title to the General Fund; and

[PL 2013, c. 476, Pt. A, §9 (NEW).]

**11. Certification.** Certify monthly to the commission and the commissioner a complete statement of expenses and revenues collected in accordance with the licensing and enforcement functions of the bureau including a statement of the revenues collected under chapter 65.  
[PL 2019, c. 13, §5 (AMD).]

#### SECTION HISTORY

PL 2013, c. 476, Pt. A, §9 (NEW). PL 2019, c. 13, §5 (AMD).

#### §83-C. Administration of the spirits business by the bureau; rules

The bureau shall establish policies and rules and propose legislation concerning the administration of the spirits business laws under this Title. The bureau shall: [PL 2013, c. 476, Pt. A, §9 (NEW).]

**1. Administration and trade marketing supervision.** Manage the administration and trade marketing of spirits through agency liquor stores and consistent with one or more contracts awarded under section 90;  
[PL 2013, c. 476, Pt. A, §9 (NEW).]

**2. Price regulation.** Establish the wholesale and retail prices of spirits sold in this State. The bureau shall adopt rules regarding the wholesale pricing of spirits and the retail pricing of spirits sold by agency liquor stores. An entity awarded a contract under section 90 is granted the privilege to distribute spirits under this Title and is immune from antitrust action so long as the entity is in compliance with the bureau's rules and all other applicable laws and regulations;  
[PL 2013, c. 476, Pt. A, §9 (NEW).]

**2-A. Special pricing situations.** Notwithstanding section 1651, the bureau may, by rule, set retail prices on spirits at different levels than those established by the commission in the following circumstances.

A. The bureau may establish special retail prices on certain listed spirits items to be made available to the consumer at all agency liquor stores. [PL 2019, c. 404, §3 (NEW).]

B. The bureau may reduce the retail price of a listed spirits item that is unlikely to be sold for the retail price set by the commission. [PL 2019, c. 404, §3 (NEW).]

C. The bureau may reduce, at the expense of the manufacturer or supplier, the retail price of those test-market spirits items that fail to meet set minimum gross profit standards after a 3-month period.  
[PL 2019, c. 404, §3 (NEW).]

[PL 2019, c. 404, §3 (NEW).]

**3. Purchase.** Oversee the wholesale purchase and storage of spirits for sale in the State. If the bureau awards a contract under section 90, spirits delivered to and stored at a warehouse approved by the bureau are the property of the supplier. Spirits become the property of the bureau upon removal from the warehouse for shipment to an agency liquor store. Spirits delivered to an agency liquor store become the property of the licensee upon receipt of delivery. A person awarded a contract under section 90 at no time takes legal title to any spirits delivered to the warehouse. The bureau may buy and have in its possession spirits for sale to the public. The bureau shall buy spirits directly and not through the State Purchasing Agent. All spirits must be free from adulteration and misbranding;  
[PL 2013, c. 476, Pt. A, §9 (NEW).]

**4. Investigate and recommend changes.** Carry out a continuous study and investigation of the sale of spirits throughout the State and the operation and administration of state activities regarding the sale of spirits and recommend to the commissioner any changes in the laws or rules and methods of operation that are in the best interest of the State;  
[PL 2013, c. 476, Pt. A, §9 (NEW).]

**5. Sales incentives to agents; rules.** Consider federal regulations that govern sales incentives for alcoholic beverages and the effect of a sales incentive program on General Fund revenue and pending

or existing contracts with any person awarded a contract under section 90. The bureau may adopt rules to provide for a sales incentive program for agency liquor stores. Rules adopted in accordance with this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A; [PL 2013, c. 476, Pt. A, §9 (NEW).]

**6. Rules.** Adopt rules consistent with this Title or other laws of the State for the administration of all laws concerning the sale of spirits. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A; [PL 2013, c. 476, Pt. A, §9 (NEW).]

**7. Certification.** Certify monthly to the commission and the commissioner a complete statement of revenues from and expenses for the sale of spirits by the bureau; [PL 2019, c. 13, §6 (AMD).]

**8. Establish performance standards for contracts.** Establish performance standards for any contract awarded under this Title, subject to applicable laws relating to public contracts; and [PL 2013, c. 476, Pt. A, §9 (NEW).]

**9. Report on expenditures.** Report annually on expenditures and investments made by the bureau, including, but not limited to, reductions in the retail price at which spirits are sold and incentives offered to agency liquor stores, to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over alcoholic beverage matters. The report must include the impact of those spending initiatives on the number of cases of spirits sold in the State and on sales of spirits generally. [PL 2019, c. 404, §4 (AMD).]

#### SECTION HISTORY

PL 2013, c. 476, Pt. A, §9 (NEW). PL 2019, c. 13, §6 (AMD). PL 2019, c. 404, §§3, 4 (AMD).

#### **§84. Director of Bureau of Alcoholic Beverages and Lottery Operations**

The director of the bureau or the director's designee shall: [PL 2013, c. 368, Pt. V, §20 (AMD).]

**1. Manage sale of spirits.** Manage the sale of spirits through agency liquor stores in accordance with applicable laws and rules that provide for the operation of wholesale distribution of spirits; [PL 2013, c. 588, Pt. A, §34 (RPR); PL 2013, c. 588, Pt. A, §35 (AFF).]

**1-A. Manage enforcement and licensing activities.** Manage the enforcement and licensing activities of the bureau under section 83-B; [PL 2013, c. 476, Pt. A, §10 (NEW).]

**2. Act as chief administrative officer of bureau.** Act as chief administrative officer of the bureau, having general charge of the office and records and employ such personnel as necessary to fulfill the purpose of this Title. The personnel must be employed with the approval of the Commissioner of Administrative and Financial Services and are subject to the Civil Service Law; [PL 1997, c. 373, §28 (NEW); PL 2013, c. 368, Pt. V, §61 (REV).]

**3. Act as executive secretary.** Act as executive secretary of the commission; [PL 1997, c. 373, §28 (NEW).]

**4. Confer with commissioner.** Confer regularly as necessary or desirable and not less than once a month with the Commissioner of Administrative and Financial Services on the operation and administration of the bureau and make available for inspection by the Commissioner of Administrative and Financial Services, upon request, all books, records, files and other information and documents of the bureau; [PL 2015, c. 430, §1 (AMD).]

**5. Certification.**

[PL 2019, c. 13, §7 (RP).]

**6. Implement a spirits sales data reporting system.** Collect from reselling agents data on spirits sales made by each reselling agent to establishments licensed to sell spirits for on-premises consumption. The data must include, but is not limited to, the amount and date of sale of each product code sold to on-premises licensees by the reselling agent. For the purposes of this subsection, "product code" has the same meaning as in section 461. For the purposes of collecting on-premises spirits sales data from reselling agents, the director shall enter into a contract with a trade association representing states that control and manage the sale of spirits. The contract must require that neither the bureau nor the trade association may make publicly available any information that would specifically identify the reselling agent, including, but not limited to, the reseller's name, the name of the reseller's agency liquor store, the reseller's agency liquor store's address or the address of any associated storage facility of the reselling agent; and

[PL 2019, c. 13, §8 (AMD).]

**7. Annual report.** Beginning February 15, 2020, submit a report annually, subject to the approval of the commission, to the Governor and the joint standing committees of the Legislature having jurisdiction over alcoholic beverage matters and appropriations and financial affairs. The joint standing committee of the Legislature having jurisdiction over alcoholic beverage matters may submit to the Legislature legislation based on the report. The report must include:

A. A complete statement of the revenues and expenses for the bureau for the preceding calendar year; [PL 2019, c. 13, §9 (NEW).]

B. A complete statement of the information required by section 83-B, subsection 11 for the preceding calendar year; [PL 2019, c. 13, §9 (NEW).]

C. A complete statement of the information required by section 83-C, subsection 7 for the preceding calendar year; [PL 2019, c. 13, §9 (NEW).]

D. The information required by section 83-C, subsection 9; and [PL 2019, c. 13, §9 (NEW).]

E. Any recommendations for changes to this Title. [PL 2019, c. 13, §9 (NEW).]

[PL 2019, c. 13, §9 (NEW).]

## SECTION HISTORY

PL 1997, c. 373, §28 (NEW). RR 1999, c. 2, §29 (COR). PL 1999, c. 535, §5 (AMD). PL 2013, c. 269, Pt. C, §4 (AMD). PL 2013, c. 269, Pt. C, §13 (AFF). PL 2013, c. 368, Pt. V, §§20, 21 (AMD). PL 2013, c. 368, Pt. V, §61 (REV). PL 2013, c. 476, Pt. A, §10 (AMD). PL 2013, c. 588, Pt. A, §34 (AMD). PL 2013, c. 588, Pt. A, §35 (AFF). PL 2013, c. 588, Pt. B, §1 (AMD). PL 2015, c. 430, §§1-3 (AMD). PL 2019, c. 13, §§7-9 (AMD).

## §85. Inventory and working capital

**1. Net profits are general revenue.**

[PL 2013, c. 368, Pt. V, §22 (RP).]

**2. Inventory.** The bureau may keep and have on hand a stock of spirits for sale, the value of which when priced for resale must be computed on the delivered case cost F.O.B. liquor warehouse designated by the commission filed by liquor suppliers. The inventory value must be based upon actual cost for which payment may be due. Spirits may not be considered to be in the inventory until payment has been made for them.

[PL 2013, c. 476, Pt. A, §11 (RPR).]

**3. Authorized working capital.**

[PL 2013, c. 368, Pt. V, §22 (RP).]

## SECTION HISTORY

PL 1997, c. 373, §28 (NEW). PL 2013, c. 269, Pt. C, §5 (AMD). PL 2013, c. 269, Pt. C, §13 (AFF). PL 2013, c. 368, Pt. V, §22 (AMD). PL 2013, c. 476, Pt. A, §11 (AMD).

#### **§86. Conflict of interest**

In addition to the limitations set forth in Title 5, section 18, any member of the commission or any employee of the commission or the bureau may not accept directly or indirectly any samples, gratuities, favors or anything of value from a manufacturer, wholesaler, wholesale licensee or retail licensee or any representative of a manufacturer, wholesaler, wholesale licensee or retail licensee under circumstances that may reasonably be construed as influencing or improperly relating to past, present or future performance of official duties. [PL 2013, c. 588, Pt. B, §2 (AMD).]

#### SECTION HISTORY

PL 1997, c. 373, §28 (NEW). PL 2013, c. 588, Pt. B, §2 (AMD).

#### **§87. Eligibility of employees**

A person is not eligible for employment with the bureau if that person: [PL 2013, c. 588, Pt. B, §3 (AMD).]

**1. Interest in corporation.** Has any official, professional or other connection with or owns any stock in a corporation interest either directly or indirectly in the manufacture or sale of liquor; or [PL 1997, c. 373, §28 (NEW).]

**2. Violation of state or federal law.** Has been convicted or adjudicated guilty of violating any state or federal law regulating the manufacture, sale or transportation of liquor. [PL 1997, c. 373, §28 (NEW).]

#### SECTION HISTORY

PL 1997, c. 373, §28 (NEW). PL 2013, c. 588, Pt. B, §3 (AMD).

#### **§88. Transfer of wholesale liquor activities**

**(REPEALED)**

#### SECTION HISTORY

PL 2003, c. 20, §LLL2 (NEW). PL 2003, c. 20, §LLL4 (AFF). PL 2013, c. 269, Pt. A, §3 (RP). PL 2013, c. 269, Pt. A, §10 (AFF). PL 2013, c. 368, Pt. V, §23 (AMD).

#### **§89. Renewal of contracts for wholesale liquor activities**

**(REPEALED)**

#### SECTION HISTORY

PL 2011, c. 380, Pt. S, §1 (NEW). PL 2013, c. 1, Pt. G, §1 (RP).

#### **§90. Contract for operations of wholesale liquor activities**

**1. Statement of purpose.** The Legislature finds that it is in the public interest to seek efficiencies and maximize growth in the State's wholesale spirits business while ensuring that growth in revenue from the business is achieved in a socially responsible manner. The contracting of the operations of the wholesale spirits business should serve this purpose and provide the State's agency liquor store partners with effective and efficient services in order to responsibly serve consumers of spirits in the State.

[PL 2013, c. 269, Pt. A, §4 (NEW).]

**2. Contract for operations.** The Commissioner of Administrative and Financial Services, referred to in this section as "the commissioner," shall enter into a contract for warehousing, distribution and spirits administration and a contract for spirits trade marketing, each for a term of 10 years. Each

contract must be awarded pursuant to a competitive bid process in a manner similar to the process described in Title 5, chapter 155, subchapter 1-A. The commissioner is prohibited from contracting with a bidder who also holds a license in this State or another state to distill, bottle or manufacture spirits.

[PL 2013, c. 269, Pt. A, §4 (NEW).]

**3. Development of request for bid proposals; fee.** The commissioner shall develop a request for proposals designed to encourage vigorous bidding for the purpose of awarding 2 contracts for the operations of the State's wholesale spirits business. The commissioner shall request bids for the operation of spirits trade marketing separately from bids for the combined operations of warehousing, distribution and spirits administration. In order to be considered for a contract to conduct spirits trade marketing, a bidder must submit a nonrefundable application fee of up to \$5,000. In order to be considered for a contract to conduct warehousing, distribution and spirits administration, a bidder must submit a nonrefundable application fee of up to \$20,000. The application fee must be credited to an Other Special Revenue Funds account within the division of purchases within the Department of Administrative and Financial Services to be used for managing the application process. A request for proposals must inform potential bidders of the State's target gross revenue profit margin over the term of the contract and require the bidder to affirm that the bidder, or any of the principal officers of the bidder, does not hold or have a direct financial interest in a license or permit in this State or any other state for the distillation, bottling or manufacture of alcoholic beverages. The request for proposals must instruct potential bidders to propose the scope of operations the bidder will provide and the fee for that service expressed as a percentage of revenue generated by the wholesale business. The request for proposals must direct bidders to indicate if the bidder intends to use subcontractors and to identify those subcontractors. The request for proposals must also inform potential bidders that they may propose incentives for the bidder intended to encourage responsible growth of revenue and enhanced efficiencies in services provided.

[PL 2013, c. 269, Pt. A, §4 (NEW).]

**4. Information provided by bidders.** A bidder seeking consideration of the award of a contract for the operations of the State's wholesale spirits business pursuant to this section shall comply with the requirements of this subsection.

A. A bidder on a contract to operate the warehousing, distribution and spirits administration functions of the wholesale spirits business shall identify services or operations for which the bidder may use a subcontractor and shall demonstrate:

- (1) The bidder's financial capacity and access to capital to maintain the operations;
- (2) The bidder's capabilities to provide adequate transportation and distribution of liquor to agency liquor stores;
- (3) The bidder's warehousing capabilities and proposed bailment rates for liquor and related fees to be charged to liquor suppliers;
- (4) That the bidder, including any principal officer of the bidder and any named subcontractor, is of good moral character and has not been found to have violated any state or federal law or rule governing the manufacture, distribution or sale of alcoholic beverages;
- (5) The bidder's knowledge of the wholesale liquor business, alcoholic beverage industry or a related field;
- (6) The bidder's plan to provide agency liquor stores with a minimum of 2 deliveries per week;
- (7) The bidder's methods for processing orders and invoices, including any minimum ordering requirements, split case restrictions and inventory control plans;



- (8) The bidder's business plan to provide services in a manner that will assist the State in achieving a target growth rate comparable to or exceeding that of other states that control the sale and distribution of alcoholic beverages;
  - (9) The bidder's plan for enhancing services to liquor suppliers and agency liquor stores; and
  - (10) The positive impact on the economy, employment and state revenues that the bidder's overall proposal will provide. [PL 2013, c. 269, Pt. A, §4 (NEW).]
- B. A bidder on a contract to provide spirits trade marketing shall:
- (1) Demonstrate the bidder's business plan and marketing strategies to encourage responsible growth to the wholesale spirits business;
  - (2) Demonstrate the bidder's experience or knowledge, if any, of responsible marketing of alcoholic beverages;
  - (3) Identify services for which the bidder may use a subcontractor;
  - (4) Demonstrate that the bidder, including any principal officer of the bidder and any named subcontractor, is of good moral character and has not been found to have violated any state or federal law or rule governing the manufacture, distribution or sale of alcoholic beverages; and
  - (5) Demonstrate the positive impact on the economy, employment and state revenues that the bidder's overall proposal will provide. [PL 2013, c. 269, Pt. A, §4 (NEW).]

In addition to the requirements of paragraphs A and B, the commissioner, in order to ensure that the objective of maximizing growth in the State's wholesale spirits business is achieved, may require bidders to provide additional information, including disclosure of the potential of a bidder's direct and substantial conflict of interest with the State's financial interest.

[PL 2013, c. 269, Pt. A, §4 (NEW).]

**5. Award criteria and issuance of contract.** The commissioner shall select successful bidders for the contract to conduct the operations of warehousing, distribution and spirits administration and the contract to provide spirits trade marketing; however, both contracts may be awarded to the same bidder. The commissioner shall choose the best value bidder in conformity with Title 5, section 1825-B, subsection 7 and shall consider as criteria for award the information required to be provided in subsection 4, as applicable. When selecting a successful bidder for the contract to conduct the operations of warehousing, distribution and spirits administration, the commissioner may not consider as cause for disqualification for consideration any weakness in or inability to demonstrate proficiency in any one criterion listed in subsection 4, paragraph A, subparagraphs (6) to (10).

The commissioner shall ensure that the following criteria are met before entering into a contract with a bidder for operations of warehousing, distribution and spirits administration:

- A. That revenue to the State from the sale of spirits is predictable over the term of the contract; [PL 2013, c. 269, Pt. A, §4 (NEW).]
- B. That revenue from the sale of spirits will be maximized by the issuance of the contract and achieved through efficiency of services or profit sharing or both; [PL 2013, c. 269, Pt. A, §4 (NEW).]
- C. That the contract establishes standards of efficiency and quality of operations; [PL 2013, c. 269, Pt. A, §4 (NEW).]
- D. That the bidder has demonstrated that services provided to agency liquor stores will be enhanced; [PL 2013, c. 269, Pt. A, §4 (NEW).]
- E. That, upon execution of the contract, the disruption of services to agency liquor stores and suppliers will be minimal or absent; and [PL 2013, c. 269, Pt. A, §4 (NEW).]

F. That the contract provides that the bureau must approve all bailment rates and related fees. [PL 2013, c. 269, Pt. A, §4 (NEW); PL 2013, c. 368, Pt. V, §61 (REV).]  
[PL 2013, c. 269, Pt. A, §4 (NEW); PL 2013, c. 368, Pt. V, §61 (REV).]

**6. Contract provisions; oversight and performance review.** A contract provided to a successful bidder in accordance with this section must require that the person awarded the contract submit to the bureau, in a form determined by the bureau, an annual report audited by an independent 3rd party. The bureau, following receipt of the report, shall provide the report annually to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and alcoholic beverages matters. The contract must prohibit the person awarded the contract from engaging in activities reserved for agency liquor stores licensed as reselling agents to provide spirits to establishments licensed for on-premises consumption. The contract must also include provisions that allow for ongoing performance standards review so that deficiencies in such standards may result in amendments to the contract or nullification. Performance standards subject to contract amendments or nullification include:

A. Working in partnership with the State to achieve the goal of a revenue growth rate comparable to the average growth rate of other states that control the sale and distribution of alcoholic beverages; [PL 2013, c. 269, Pt. A, §4 (NEW).]

B. Transparency in annual reporting and conformance to the reporting requirements established by the bureau; and [PL 2013, c. 269, Pt. A, §4 (NEW); PL 2013, c. 368, Pt. V, §61 (REV).]

C. Except for a contract awarded to conduct spirits trade marketing, responsiveness to the service needs of agency liquor stores. [PL 2013, c. 269, Pt. A, §4 (NEW).]  
[PL 2013, c. 269, Pt. A, §4 (NEW); PL 2013, c. 368, Pt. V, §61 (REV).]

**7. Price regulation.** The bureau shall regulate the wholesale and retail prices of all liquor sold by a person awarded a contract in accordance with this section.  
[PL 2013, c. 269, Pt. A, §4 (NEW); PL 2013, c. 368, Pt. V, §61 (REV).]

#### SECTION HISTORY

PL 2013, c. 269, Pt. A, §4 (NEW). PL 2013, c. 368, Pt. V, §61 (REV).

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