Alcohol Licensing Updates

By Adam Barnosky on August 2, 2017



MA Court Rules in Favor of Retail Sales of Discounted Booze: In a case brought by retail superstore Total Wines which appealed a decision of the Alcoholic Beverages Control Commission ("ABCC"), a Boston judge ruled that state retailers can sell alcohol at steep discounts when they order in bulk. The ABCC issued a several day liquor license suspension against Total Wine for selling liquor below wholesale costs. The court determined that Total Wine was not engaged in predatory pricing, which would have been against state law, and was instead passing along savings to customers which derived from volume purchasing at the wholesale level. Massachusetts package stores are still prohibited from selling below wholesale, unless they do so as a result of volume purchase discounts. (Source: Boston Globe, 07/26/2017: "Total Wine wins challenge on discount pricing").

Placement of Liquor License on State's 'Delinquent list' Doesn't Create Lien on License: Liquor wholesalers who caused a restaurant to be placed on the state's "delinquent list" did not create a lien or otherwise become priority creditors in the restaurant's Chapter 7 bankruptcy proceedings, a U.S. Bankruptcy Court judge decided. The court, while recognizing the right for a security interest in a liquor license under certain circumstances, noted that under M.G.L.c. 138 Section 25 there is no public notice requirement when a vendor is placed on the delinquent list "secret liens are not encouraged in our commercial jurisprudence." This decision provides a clearer path for liquidating a creditor's assets and assures license holders that being placed on the delinquent list will not prohibit the sale of a liquor license. (Source: Mass Lawyers Weekly, 06/01/2017: "'Delinquent list' doesn't create lien on license").

Push by Mass. Restaurant Liquor License Holders to Eliminate OUI Serving Data. Holders of M.G.L.c. 138 Section 12 pouring licenses are attempting to eliminate a state program that tracks where convicted drunk drivers had their last drinks before being arrested. The Massachusetts Restaurant Association has asked the state task force convened by Treasurer Deborah Goldberg (who is considering an overhaul of alcohol laws) to recommend that the state legislature eliminate the program. The push by restaurateurs is a result of what the industry says is unreliable and unverified information provided by defendants. Bars and restaurants do not have the ability to dispute or defend the defendant's statements and there is currently no process for a business to rebut the accusation or seek removal from the publicly available database. The treasurer's alcohol task force is expected to unveil suggested policy changes this fall. (Source: Boston Globe, 07/30/2017: "Mass. restaurants want OUI serving data eliminated").

Public Hearing Conducted for Boston's Plan to Add 152 New Liquor Licenses. The City Council Government Operations Committee held a public hearing on June 22, 2017 on the City of Boston's proposal to send a home rule petition to the State Legislature for the

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creation of 152 non-transferable liquor licenses. Advocates for the bill, including City Councilor Ayanna Pressley, said that while the petition focuses primarily on economically-disadvantaged neighborhoods like Mattapan and Dorchester, she hopes that it could be amended to include neighborhoods like Charlestown and West Roxbury that aren't economically disadvantaged and don't have a Main Streets program – but could still use more high-quality restaurants with liquor licenses. (Source: Charlestown Patriot-Bridge, 6/30/2017: "Public Hearing Held on Liquor License Expansion").

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