

Alcohol Licensing: Legal Updates and Insights

By Adam Barnosky on April 30, 2018



There have been several recent developments in the alcoholic beverages industry which affect regulatory oversight, restaurant operations, new liquor licenses, and more. Here is a rundown of the latest developments.

Budget Increase Requested for the Alcoholic Beverages Control Commission.

Massachusetts State Treasurer Deborah Goldberg requested a \$3.69MM budget for fiscal 2019, an increase from \$2.44MM in 2018, to cover operational shortfalls in the agency's budget. Staffing at the ABCC has failed to keep up with a steady increase in licensed establishments in the state (800 licenses are now assigned to each ABCC investigator, compared to a 261:1 ratio elsewhere in the country). An increase in funding could help expedite the state licensing process, which has dragged in recent years due, in part, to investigator caseloads. Source: *"Mass. Alcohol Inspectors Carry Big Licensee Caseloads," WWLP.com (Feb. 7, 2018)*

Hearings for New Boston Liquor Licenses Continue. Talks continue relative to a new proposal which would grant the City of Boston with 152 new non-transferable liquor licenses. In late-March, the Boston City Council debated a home rule petition designed to attract new businesses and restaurants in underserved neighborhoods throughout Boston. The hearing included testimony from current restaurant owners, who are concerned about devaluing of existing liquor licenses, which are now valued at over \$400,000 for all "All Alcohol" and \$120,000 for "Beer/Wine" categories. The petition also includes "umbrella" licenses for large-scale developments within the city. The City Council plans to further discuss options this summer before sending to the Massachusetts State Legislature for final approval.

Craft Brewers Guild Pays Largest Fine in ABCC History. In late 2017, a Suffolk Superior Court Judge upheld the state's prohibition against "pay-to-play" after investigators found that the Craft Brewers Guild paid over \$120,000 during a two-year period to various bars to carry its inventory and freeze out competitors. Opting out of the imposed 90-day license suspension, the guild paid a fine of \$2.6MM, the largest in ABCC history. In the court's decision, arguing against the guild's stance that prohibitions against pay-to-play were invalid, Superior Court Judge Douglas H. Wilkins stated "[t]he legislature never intended to preclude regulatory enforcement of the anti-[price] discrimination law" and the ABCC's "application of the regulation is entirely reasonable and consistent with the statutory prohibition against price discrimination." Source: *"Record 'pay to play' fine on beer distributor upheld by Mass. Judge," Boston Globe (Oct. 3, 2017)*

Tipped Wage Credit Debate Heats Up. Grassroots organization Raise Up has been running a campaign in the state to raise the minimum wage to \$15 by 2022, along with a

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proposal on tipped wage credit that would have serious consequences for restaurant owners. Raise up has secured enough signatures to certify a ballot initiative in November 2018, with the proposed law raising the minimum cash wage that must be paid to tipped employees from \$3.75 per hour as of January 1, 2017, to \$5.05 in 2019; \$6.35 in 2020; \$7.64 in 2021; and \$9.00 in 2022. The tip credit increase is a point of contention with restaurant owners, who contend that the increase would significantly raise menu prices and upend traditional business models. *Source: "Business owners direct anger at lawmakers over \$15-an-hour wage proposal," Boston Business Journal (April 11, 2018)*

New Proposal for Boston Breweries Would Expand Offerings. In March, City of Boston Councilor Annissa Essaibi George presented a proposal which would allow brewers to serve products from competitors, in addition to their own craft beverages, stating "[a]s great as [one brewery's] beer can be, it does often create a barrier for those breweries to be stable and successful over the long term." Essaibi George compared the concept to licensed restaurants that sell a variety of wines in addition to house made varietals. The proposal requires approval of the city council and may face hurdles at the state, which has limitations on the types of beverages sold by brewers. *Source: "Councilor Wants to Let Boston Brewers Sell Other Breweries' Brews," UniversalHub.com (March 22, 2018)*

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