

# Alcoholic Beverages Control Commission of Massachusetts: Task Force Report

Recommendations to the Honorable Deborah Goldberg, Treasurer and Receiver  
General of the Commonwealth of Massachusetts

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## **Introduction**

On February 16, 2017, the Honorable Deborah Goldberg, Treasurer and Receiver General of the Commonwealth of Massachusetts, formed a Task Force (“TF”) to conduct a comprehensive review of the legal and regulatory structures that govern the alcoholic beverages industry in Massachusetts, many of which have been in place since 1933. Housed in the office of the Treasurer, the Alcoholic Beverages Control Commission (“ABCC”) is charged with enforcing the liquor laws in Massachusetts.<sup>1</sup> The TF has a mandate to recommend forward thinking changes, which required us to consider what the industry might look like 10 to 15 years from now. Specifically, the TF considered that (i) ways to purchase alcohol are changing with time and technology, (ii) buying habits of younger generations are evolving, and (iii) the market itself is changing as evidenced by increasing numbers of craft and farmer breweries, wineries, and distilleries in Massachusetts and across the country. As a component of this mandate, the TF considered strategies that might support the economic growth and development of small businesses in the Commonwealth.

The TF considered how industry recommendations might impact or exasperate alcohol-related health and safety concerns. First, we reviewed state and nation wide data concerning underage drinking, excessive consumption of alcohol by vulnerable groups, and the negative health and safety outcomes related to alcohol consumption. Second, we considered whether Massachusetts collects sufficient statewide data to allow implementation of preventative strategies on a community by community basis. Third, we considered whether existing alcohol statutes and regulations can be improved to reduce alcohol consumption by members of

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<sup>1</sup> See MASS. GEN. LAWS ch. 138 (2017); 204 MASS. CODE. REGS. 2.00 (2017); MASS. GEN. LAWS. ch. 10, § 70 (2017).

vulnerable groups. Fourth, we considered ABCC's ability to monitor compliance by all licensees and consumers with existing laws and regulations. Fifth, we considered whether ABCC's investigative process could be improved by hiring additional compliance personnel.

The Report recommends reforming Mass. Gen. Laws ch. 138 and 204 Mass. Code Regs. 2.01-.22, in addition to certain operational changes to ABCC. The TF's recommendations reflect guidance and input from trade organizations, independent research and studies, licensees and consumers via online comment submissions, testimony at public forums, and participation in working groups developed by the TF ("WG").<sup>2</sup>

## **I. This Report**

This Report is organized as follows: Section II is the Executive Summary. Sections III and IV discuss the TF's objective, together with the input of business and health care leaders. Section V describes the Commonwealth's management of alcoholic beverages since the end of Prohibition in 1933 and the utilization of a three-tier system consisting of alcohol manufacturers, distributors, and retailers. In Section VI, we address specific areas for improvement and make recommendations in the 5 following categories: (1) Industry

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<sup>2</sup> There are no statements or positions in this Report, however, that can or should be reasonably attributed to any individual, company, business, or trade group except for those directly quoted or cited. We are also mindful that from time to time licensees file lawsuits and their cases may raise issues covered in this Report. To the extent that any recommendation, observation or statement addresses an issue raised in litigation by a licensee, the TF's recommendations should not be construed directly or indirectly to be a statement of fact or the position of ABCC or the Treasurer. No inferences or conclusions should be drawn by any administrative body or court because of comments made or recommendations contained in this Report.

Improvements; (2) Licensing; (3) Local Economic Development; (4) Health and Safety; and (5) ABCC Operations.<sup>3</sup>

This Report uses certain defined terms and acronyms to assist the reader. For example, we use “TTS” to refer to the Three-Tier System, “brewer” to include farmer (a) beer brewers, (b) winemakers, (c) cider makers, and (d) distillers of spirits; “distributor” to include both distributors and wholesalers; “HSA” to refer to health and safety advocates; “investigators” to refer to law enforcement agents; “consumer” includes citizens, customers, individuals and patrons; and “LLA” to refer to local licensing authority. The term “interested parties” shall include individuals involved in the alcoholic beverage industry such as owners, employees, advocates, lobbyists, legal counsel, and health care providers. There are other abbreviations noted herein.

To evaluate the industry concerns and suggested solutions, the TF considered (i) state and federal statutes that govern particular aspects of alcohol regulation; (ii) research conducted by federal government departments and agencies, state agencies, and industry participants; and (iii) the opinions of ABCC executives. The appendix provides a list of certain resources the TF considered and a listing of TF Website submissions.

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<sup>3</sup> This Report does not address every potential modification or amendment to MASS. GEN. LAWS ch. 138 and 204 MASS. CODE REGS. 2.01-.22 (2017), but rather it focuses on those areas raised by industry participants. For example, we offer no opinion on MASS. GEN. LAWS ch. 138, §§ 29, 30, 30A-G which govern the rights of pharmacists and pharmacies to sell alcohol. These sections date back to 1933 and are no longer relevant. Likewise, we offer no opinion on how to best re-write all of the definitions and terms set forth in MASS. GEN. LAWS ch. 138, §§ 1, 2 to make sections more readable.



## II. **Executive Summary**

The Report offers our impressions and recommendations to improve the operations of ABCC so it can more effectively and efficiently regulate the sale of alcoholic beverages in the Commonwealth and support small business development. We make a total of 37 different recommendations. We recognize that ABCC cannot implement all of these recommendations immediately, especially those that require legislative change. However, many of the recommendations could be implemented in FY 2018-2019 with modest or no additional funding. A summary of recommendations by topic is set forth below including amendments to certain regulations and statutes.

### A. **Modernizing the Industry and Promoting Economic Development**

The TF recognizes that the alcohol industry has gone through significant changes since the enactment of the Commonwealth's post-prohibition alcohol laws in 1933. The following recommendations focus on modernizing the industry and promoting economic development by eliminating unnecessary and outdated regulatory burdens. The recommendations are as follows:

1. Amend Mass. Gen. Laws. ch. 138, § 67 (Appeals) to require that LLAs make written findings detailing the specific reasons for denying an applicant's license in lieu of a "return no action" statement.
2. Amend Mass. Gen. Laws ch. 138, § 67 (Appeals) to extend the time for licensees to appeal ABCC's decision to ABCC from 5 days to 10 days.

3. Amend Mass. Gen. Laws ch. 138, § 25E (Unfair Trade Practices — Refusal To Sell Brand Names) to provide that all franchise agreements be in writing.

4. Amend Mass. Gen. Laws ch. 138, § 25E (Unfair Trade Practices) to provide that the licensee's notice to cure under a franchise agreement is reduced from 120 days to 90 days, and that a good faith effort to "cure" must take place during this 90 day period.

5. Amend Mass. Gen. Laws ch. 138, § 25E (Unfair Trade Practices) to provide that its provisions do not become effective as to farmer brewers, wineries, distilleries, or cider makers until after 12 months of product(s) sales instead of 6 months.

6. Amend Mass. Gen. Laws ch. 138, § 25E (Unfair Trade Practices) to permit farmers licensed under Mass. Gen. Laws ch. 138, § 19 to terminate a franchise agreement without cause provided that the farmer brewers, wineries, distilleries, or cider makers: (i) produce less than a to-be-determined number of barrels of product; (ii) re-purchases merchandise and product; and (iii) pays a termination fee.

7. Amend Mass. Gen. Laws ch. 138, § 25E (Unfair Trade Practices) to provide that the written agreement between the parties either contain an agreed liquidated termination fee provision or the statutory termination fee shall apply. The statutory fee is the net profit earned in the last 2 years of sales prior to the date of notice of termination letter or a lesser period of time if termination occurs in less than 2 years of the parties entering into an agreement. Net profit shall be the difference between the distributor's purchase price per product(s) from the brewer and the re-sale price to the retail licensee after calculating all retail discounts.

8. Amend Mass. Gen. Laws ch. 138, § 19D to permit pub brewers to self-distribute and sell on Sundays just as Section 19C allows farmer brewers.

9. Amend Mass. Gen. Laws ch. 138, § 1 to increase the permitted alcohol content (ABV) for cider from 6% to 8.5% to be consistent with federal law.

10. Amend Mass. Gen. Laws ch. 138, § 23A (License and Permit, Suspension for Unfair Sales Practices) to provide that Section 12 (License – Beverages to Be Consumed on Premises) and Section 15 (License – Beverages Not to Be Consumed on Premises) retailers may not accept goods or services that have a fair market value in excess of \$50 per gift or unit gift from any licensees or their agents.

11. Amend Mass. Gen. Laws ch. 138, § 23A (License and Permit, Suspension for Unfair Sales Practices) to provide that Section 12 and Section 15 retailers must pay the wholesale cost for all goods (including units of goods) and services that are valued in excess of \$50 from any licensees or their agents.

12. Amend Mass. Gen. Laws ch. 138, § 23A (License and Permit, Suspension for Unfair Sales Practices) to provide that all licensees must maintain records of all goods or services provided or received, and such records are subject to random audit by ABCC.

13. Amend Mass. Gen. Laws ch. 138 to enact a whistleblower section to encourage consumers, employees and industry participants to report violations of law to ABCC. Subject to certain conditions, the whistleblower may be entitled to recover a “bounty” in addition to

attorneys' fees, costs, and expenses. Employee whistleblowers are entitled to additional protections from wrongful discharge by their employer.

14. Amend Mass. Gen. Laws ch. 138, § 19F (License – Wine Shipper) to increase the fines for illegal sales and deliveries of alcohol.

15. Amend Mass. Gen. Laws ch. 138, § 15A (License – Applications) to permit limited non-management cross-tier investments by individuals and legal entities including investment firms of no more than a 10% ownership interest in an entity holding a liquor license provided that the investments are without board seats, voting rights, or management control or responsibility. Any such investment is subject to ABCC's review and approval in its sole discretion.

16. Amend Mass. Gen. Laws ch. 138, § 15A (License – Applications) to require that applicants seeking to make cross-tier investments must swear under the pains and penalties of perjury that: (i) they do not have voting rights; (ii) they will not control or have responsibility for the management of the business; (iii) the investment is passive; and (iv) they are not involved in criminal activity or any investments prohibited by U.S. laws and regulations.

17. Amend Mass. Gen. Laws ch. 138, § 15A (License – Applications) to provide that legal entities including LLCs, with an ownership interest (direct or indirect) of less than 10% in an entity owning a liquor license need not file detailed financial statements for each individual investor provided that the legal entity does not have board seats, voting control, management control or responsibility over the licensee. The entity seeking this exception must certify as part

of the application process that no one holding an ownership interest is involved in criminal activity or in any investments prohibited by U.S. laws and regulations.

18. Amend Mass. Gen. Laws ch. 138, § 15A (License – Applications) to provide ABCC with the authority to revoke the license of any licensee that violates the statute by providing false or misleading statements or information in the application.

19. Amend Mass. Gen. Laws ch. 138, § 34B (Liquor Purchase Identification Cards) to permit all Section 12 and Section 15 retail licensees, and qualified Sections 19B, 19C, and 19D licensees, to accept out-of-state licenses as proof that a customer is the legal age of 21 to purchase alcohol, and to provide the same presumption of reasonable care as when a licensee relies upon a Massachusetts license or U.S. Passport. In its discretion, ABCC may require additional training for all licensees wishing to rely upon out-of-state licenses.

20. Amend Mass. Gen. Laws ch. 138, § 26 (License – Persons and Corporations Prohibited) and 204 Mass. Code Regs. 2.01 (Licenses and Permits) to permit non-U.S. citizens to hold an ownership interest in a liquor license provided they have (i) legal immigration status such as a visa or green card and (ii) a social security number or other such U.S. federal, state or local government issued identification that permits ABCC to conduct a background check including a CORI review.

21. Amend Mass. Gen. Laws ch. 138, §§ 12, 15 to provide that a “good character” standard be used to determine if an applicant should be issued a license provided further that ABCC shall make written findings of “good character” supporting the issuance of a license to

anyone with a prior felony conviction. This replaces the current automatic denial of an applicant's request because of a prior criminal conviction.

22. Amend Mass. Gen. Laws ch. 138, § 17 (Licenses – Number Limited) to provide that if a city or town files legislation seeking more than 10 licenses, the city or town must state clearly in the proposed legislation a schedule setting forth: (i) the number of licenses requested; (ii) the number of Section 12 and Section 15 licenses; and (iii) how many licenses of each type will be issued for each year. This information must also be included in the public hearing notice.

23. Amend Mass. Gen. Laws ch. 138, § 17 to provide prospectively that there is one category of alcohol license: an "all alcohol" license. However, applicants can opt for beer only, wine only, spirits only, or any combination for a lower fee to be established by ABCC.

24. Amend Mass. Gen. Laws ch. 138, § 17 (License – Number Limited) to permit LLA to issue licenses with restrictions to promote economic development provided, however, that a licensee can file a request with the LLA to sell or transfer the license within the first 18 months of issuance upon a showing of "good cause," which shall include economic necessity.

25. Amend Mass. Gen. Laws ch. 138, § 12 to provide ABCC and LLA discretion to allow a reasonable extension of the license's scope to cover an area not annexed to the licensed building such as a non-contiguous space or stand-alone tap room.

**B. Health and Safety Recommendations**

The TF supports policies that help prevent negative outcomes associated with alcohol consumption such as alcohol dependency, increased rates of assault and sexual violence, and alcohol-related deaths. The TF recommends the following regulatory and statutory changes designed to limit consumption and availability of alcoholic products being sold or provided to individuals in vulnerable groups that need protection:

1. Using the appropriate state and local vehicles to implement a statewide program to conduct surveys of students in grades 6 to 12 to track and monitor exposure to and consumption of alcohol, and to use the data to develop preventative strategies.
2. Establish procedures and policies in conjunction with the Massachusetts Departments of Public Health and Board of Elementary and Secondary Education to ensure that individuals, organizations, and groups that are contracted by schools to provide alcohol and substance abuse education (including counseling and treatment) are experienced and have the proper credentials and/or qualifications.
3. Amend Mass. Gen. Laws ch. 138, §§ 25A, 25B, and 25C to remove references in each section addressing the discounted sale of alcohol from distributors to retailers.
4. Increase ABCC's budget so it can hire additional personnel to conduct investigations and ensure licensee compliance with laws and regulations.

5. Require as part of the application process that all retail applicants seeking (Section 12, Section 15, Section 19B, Section 19C, Section 19D, and Section 19H) liquor licenses must provide a health and safety assessment that addresses the impact of increasing alcohol density in the location of the proposed restaurant, bar, tavern, or liquor store.

6. Increase the excise tax on beer, wine and spirits, and designate a portion of those proceeds to an ABCC Health and Education Fund (to be established), and then distribute funds to non-profit organizations providing education and treatment programs.

**C. ABCC Operations Recommendations**

ABCC manages a staff of 26 personnel who monitor the regulatory and statutory compliance of 24,000 licensees, and process 32,000 license transactions annually. To monitor licensees, Massachusetts has 1 investigator for every 800 licensees, compared to the national average of 1 for every 261 licensees. The TF offers strategies to increase ABCC's budget for the purpose of hiring additional personnel, which will in turn increase efficiencies and enforce licensee compliance with laws and regulations.

1. ABCC should hire an additional 30 investigators and 15 staff personnel at a projected cost of \$3.1 million annually. This cost should be covered by increasing license fees and excise taxes on the sale of alcohol. State agencies such as the Department of Revenue should also reimburse ABCC for work performed for their benefit.<sup>4</sup>

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<sup>4</sup> See *Exhibit 1*, ABCC 2016 Budget Consideration Report (“[W]orking in partnership with the Department of Unemployment Assistance, the Department of Industrial Accidents, the Massachusetts Lottery, and the



2. Amend Mass. Gen. Laws ch. 138, § 27 (License and Permit Fee) to permit ABCC to retain 25% of the fines it imposes upon licensees for violations of Mass. Gen. Laws ch. 138 and 204 Mass. Code Regs. 2.01-.22.
3. Amend the relevant sub-sections of Mass. Gen. Laws ch. 138 to increase all fines by at least 10% to keep pace with inflation.
4. Amend Mass. Gen. Laws ch. 138, § 23 (License and Permit Limitations) to provide ABCC with the authority to issue a fine for the licensee's violation of law.
5. Amend Mass. Gen. Laws ch. 138, § 67 to require ABCC to follow the formal rules of evidence for all hearings as permitted under 801 Mass. Code Regs. 1.01 and Mass. Gen. Laws ch. 30A.
6. Provide ABCC with sufficient funding to hire at least 1 additional staff attorney to represent ABCC at all hearings.

### **III. What Did We Do and How Did We Do It – The Process**

On February 16, 2017, the Treasurer convened a TF consisting of 7 members with 4 appointments by the Treasurer and 1 each by the Governor, Senate President and Speaker of the House.<sup>5</sup> As a first action step, we researched and gathered information on how the

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Department of Revenue, the ABCC assisted in collecting \$11,832,868 in back tax payments. These results were achieved with an annual budget of \$2,341,489, 26 employees, and the 5th lowest ratio of enforcement agents to licenses in the country.”).

<sup>5</sup> Treasurer appointments: E. Macey Russell (Chair), Kate R. Cook, Rachael S. Rollins, and Lisa Wong. Governor appointment: Robert Cerasoli. Senate President appointment: Peter Wilson. House Speaker appointment: Deborah Gold-Alexander.

industry works from a practical, regulatory, and statutory viewpoint. For 3 months, we met weekly for at least 2 hours with the Commissioner, General Counsel and Executive Director of ABCC to better understand: (i) the licensing process at the state and local level; (ii) the scope of alcohol licenses issued; and (iii) ABCC's investigative and enforcement process, including hearings and appeals. We gathered information to better understand ABCC's operating budget and the services that ABCC delivers. We endeavored to identify areas to improve and expand ABCC operations. We also wanted to better understand how the Commonwealth regulates the sale of alcoholic beverages in comparison with other states.

Second, we launched a website through the Office of the Treasurer and invited all interested parties, trade groups, and individuals to provide their view points and perspectives on issues important to them. We heard from consumers, representatives of breweries, wineries, distilleries, wholesalers/distributors (in and out of state), liquor stores, restaurants, and non-profit health care and public health organizations. Approximately 93 consumers and interested parties answered a questionnaire designed to identify concerns and solicit recommendations. Members of the public also submitted white papers in support of their positions, and directed us to helpful reports and studies.<sup>6</sup>

Third, we hosted 6 Town Hall forums across the Commonwealth to provide consumers and interested parties with an opportunity to express their ideas for reform, concerns, and recommendations directly to the TF. We met in the following communities: Waltham (May 18), Foxborough (May 30), Leominster (June 1), Northampton (June 6), Bourne (June 8),

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<sup>6</sup> See *Exhibit 2*, ABCC Task Force Public Comments and Submissions.

and Andover (June 13). In total, 61 individuals presented information to the TF at the hearings, and well over 140 consumers and interested parties attended. In addition to listening, TF members questioned presenters at the forums to gain a deeper understanding of their general positions and any underlying support for them.

Fourth, we formed 5 working groups (“WG”) and made a public request for interested persons to participate as a WG member. In response, over 125 individuals volunteered. After reviewing the list of potential members, we invited 60 individuals to participate.<sup>7</sup> Each group was chaired by a TF member: *ABCC Operations (Rachael Rollins)*; *Industry Improvements (Kate R. Cook)*; *Licensing Process (Deborah Gold-Alexander)*; *Local Economic Development (Peter Wilson)*; and *Public Health and Safety (Lisa Wong)*. We made a concerted effort to populate the WGs with individuals from diverse backgrounds based on gender, generation, industry expertise, and geography.<sup>8</sup> The WGs then discussed the issues identified in public forums and online submissions, and made recommendations to the TF. The following themes emerged:

1. The need to identify and achieve optimal health and safety improvements consistent with best practices;

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<sup>7</sup> See *Exhibit 3*, ABCC Working Group Member List.

<sup>8</sup> The biographical make-up of the WGs is as follows: Gender: 27 female and 33 male; Generational: 34 Baby Boomers, 19 Generation X-ers, and 7 Millennials; and Industry Expertise: 3 all aspects, 11 attorneys, 7 distributors/wholesalers, 15 brewers/manufacturers, 11 health and safety specialists, 2 students/writers, 7 in retail/hospitality, and 4 town/government officials. The Geographic representation is as follows: 12 from Boston and 13 from Greater Boston; 2 each from Amherst, Cambridge, Danvers, Framingham, Northampton, and Norton; and 1 member from Ashland, Barnstable, Belmont, Canton, Charlestown, Dorchester, Everett, Falmouth, Hudson, Ipswich, Longmeadow, Melrose, Newton, North Dartmouth, Plymouth, Randolph, Quincy, Salem, Waltham, Westminster, Westport and Worcester.

2. Whether Massachusetts regulations and statutes can be reasonably modified to support economic development and growth without undercutting the three-tier system;
3. Whether the licensing process can be improved to provide licensees with efficient and timely responses to applications and/or transaction requests; and
4. Whether Massachusetts should increase the license fees, and the fines it is permitted to issue for violation of Mass. Gen. Laws ch. 138.

#### **IV. Working Groups**

Through the Town Hall forums, it became clear that stakeholders were willing, ready, and able to dig into the policy implications of various reform proposals, roll up their sleeves and problem-solve with industry colleagues (even those with differing viewpoints). Accordingly, the TF recognized this opportunity and formed WGs to take full advantage of the stakeholders' expertise, passion, and willingness to serve and address the major public policy themes that emerged.

We organized the issues identified in Town Hall forums, online submissions, and in ABCC meetings and provided each WG chair with an outline to use as a guide during meetings. We encouraged each WG to provide the TF with at least 3 recommendations for our consideration. Developing the final WG recommendations was a consensus driven process, and recommendations should not be construed as having received unanimous support from all WG members.

The WG participants' common goal was to find ways to improve the system. They agreed generally that the Commonwealth's alcohol laws need updating to reflect today's

business world.<sup>9</sup> At a minimum, the WGs provided a structure for industry participants to discuss their concerns with the TF and offer solutions. The WGs also provided the TF with critical insight into the workings of the industry and helped us better understand how making one recommendation may have an unintended consequence elsewhere. We are very fortunate to have so many dedicated professionals working together and in the best interest of the Commonwealth.

## **V. Overview of Three-Tier System and Concerns Related to Operations in Massachusetts**

### **A. Industry Background and Massachusetts Licensing**

The sale of alcoholic beverages in the U.S. has a long and storied history. There are laws governing the sale of alcohol at both the state and federal levels, and these laws complement each other for the most part. At the federal level, the Department of the Treasury's Alcohol and Tobacco Tax and Trade Bureau oversees the licensing of individuals and companies involved in the sale and distribution of alcohol through interstate commerce in the U.S.<sup>10</sup> In turn, individual states are charged with implementing particular regulations and statutes governing how alcohol will be sold within the state, thus the laws vary from state to state.

Certain states such as Maine, New Hampshire, and Vermont utilize a State Liquor Store

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<sup>9</sup> For example, consumer buying habits have changed as evidenced by the rise of the craft beer market. *See generally* Paul Gatza, Bart Watson, Ph.D., *State of the Industry*, BREWERS ASSOCIATION (2017), [https://www.brewersassociation.org/wp-content/uploads/2017/04/CBC17\\_State-of-the-Industry.pdf](https://www.brewersassociation.org/wp-content/uploads/2017/04/CBC17_State-of-the-Industry.pdf) [<http://perma.cc/66SA-HNKE>]. There have been piecemeal changes to existing legislation allowing for wine to be shipped directly to consumers and farmer brewers to self-distribute their products. *See* MASS. GEN. LAWS ch. 138, § 19F (2017). The alcohol industry in Massachusetts is not immune from what happens in other states and from global mergers of beer manufacturers.

<sup>10</sup> *See generally* 27 U.S.C. § 201-219a (2017) (the Federal Alcohol Administration Act provides for the regulation of alcoholic beverages); *id.* §§ 121-124 (governing interstate commerce); *id.* § 10.21 (governing commercial bribery); *id.* § 6.54 (governing advertising in retail publications).

structure whereby the state controls all aspects of the sale of all alcohol (“Control States”). In contrast, Massachusetts utilizes the “Three Tier System” (“TTS”) in which private parties manufacture, distribute, and sell alcohol under the supervision of ABCC.<sup>11</sup>

Since 1933, the alcoholic beverages industry in Massachusetts consists of three tiers: first, brewers or manufacturers; second, distributors or wholesalers; and third, retailers such as restaurants and liquor stores. ABCC oversees the operations of the TTS including the licensing of all industry participants responsible for manufacturing, distributing, or selling alcohol to consumers. Businesses such as restaurants, bars, grocery stores and liquor stores seek licensing approval from the city or town’s LLA (Sections 12, 15, and 17), such decisions are then subject to ABCC’s review.<sup>12</sup> ABCC approves, disapproves, or remands the application to the LLA for further action. ABCC is also responsible for review and approval of all statewide licenses for brewers (Sections 19B, 19C, and 19E), distributors (Section 18), out-of-state importers (Section 18B), and sales people (Section 19A).<sup>13</sup>

Pursuant to Mass. Gen. Laws ch. 138 §§ 1-78 and 204 Mass. Code. Regs. 2.01-.22, ABCC annually issues upwards of 24,000 licenses including 12,000 statewide licenses. These statutes and regulations govern what a licensee can and cannot do. One needs a statewide license to store (Section 20) and transport (Section 22) alcohol in Massachusetts.<sup>14</sup> If the manufacturer is located outside of Massachusetts, a statewide license is still required to import alcohol

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<sup>11</sup> See MASS. GEN. LAWS ch. 138, §§ 1-78 (2017); 204 MASS. CODE REGS. 2.01-.20 (2017). See also *Exhibit 4*, ABCC Welcome Packet, at 3-5.

<sup>12</sup> See MASS. GEN. LAWS ch. 138, § 67 (2017) (governing the appeals process).

<sup>13</sup> See *Exhibit 5*, 2016 ABCC Licensing Policies and Procedures.

<sup>14</sup> See MASS. GEN. LAWS ch. 138, § 20-22 (2017) (governing storage and transportation); see also *Exhibit 5*, 2016 ABCC Licensing Policies and Procedures.

(Section 18).<sup>15</sup> One needs a specific statewide license to brew or manufacture alcohol, and a separate license to distribute alcohol as a wholesaler or distributor to a liquor store or restaurant.<sup>16</sup> The liquor store owner needs a Section 15 license to sell alcohol to consumers.<sup>17</sup> Section 12 licenses are required if you sell alcoholic beverages at a ballpark, stadium, concert hall, and social club.<sup>18</sup> Section 15F governs licenses for farmers' markets, Section 14 governs licenses for charitable events, and Section 13 governs licenses for service on a boat or a train; anywhere alcoholic beverages are served "on premises."<sup>19</sup>

The Commonwealth's public health and safety goals and policies regarding alcohol consumption are regulated, in part, by ABCC investigating complaints against licensees.<sup>20</sup> For example, a restaurant's alleged sale of alcoholic beverages to minors (Section 34)<sup>21</sup> or intoxicated adults (Section 68).<sup>22</sup> ABCC has the authority to take action against a licensee that

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<sup>15</sup> MASS. GEN. LAWS ch. 138, § 18 (2017) (governing importers); *see also Exhibit 5, 2016 ABCC Licensing Policies and Procedures.*

<sup>16</sup> *See Exhibit 5, 2016 ABCC Licensing Policies and Procedures.* Industry terms can be somewhat confusing as certain terms are often used interchangeably but have subtle differences. For example, there are craft brewers and farmer brewers. Farmer brewers must grow a certain percentage of his or her own ingredients whereas a craft brewer is an entity that brews using ingredients not grown on site. *See Brewers Assoc., Craft Brewer Defined, BREWERS ASSOC. (2017), <https://www.brewersassociation.org/statistics/craft-brewer-defined/> [<https://perma.cc/SR45-78TU>].* A wholesaler and distributor are similar but a distributor generally has a more developed relationship with the brewer that involves actively promoting products. In contrast, a wholesaler may purchase beer and other liquor products from a variety of distributors for resale to its clients (bars, restaurants and liquor stores) but does not actively market and brand the product unless otherwise provided. We refer to distributors and wholesalers as "distributors."

<sup>17</sup> MASS. GEN. LAWS ch. 138, § 15 (2017).

<sup>18</sup> *Id.* § 12.

<sup>19</sup> *Id.* §§ 13, 14, 15, 15F.

<sup>20</sup> *Id.* § 24.

<sup>21</sup> *Id.* § 34.

<sup>22</sup> *Id.* § 68.

violates Sections 34 and 68 by either issuing a General Penalty (Section 62)<sup>23</sup> or pursuing an enforcement action that could modify, suspend, or revoke the license (Section 65).<sup>24</sup>

From 1933 until 1971, the Commonwealth operated, for the most part, without legislative changes relating to the relationship between distributor and manufacturer. However, in 1971, the Commonwealth enacted Mass. Gen. Laws ch. 138, § 25E, which modified the contractual relationship between in-state wholesalers and manufacturers of alcohol.<sup>25</sup> Section 25E provides that the manufacturer cannot terminate an agreement with a wholesaler that sells its product(s) for more than 6 months unless that manufacturer (i) gives the wholesaler 120 days' notice of the intention to terminate, and (ii) proves "good cause" to terminate.<sup>26</sup> Thereafter, the Commonwealth amended Mass. Gen. Laws ch. 138, § 19 to add § 19B farmer wineries (1977), § 19C farmer brewers (1982), and § 19E farmer distillers (2002) ("farmers").<sup>27</sup> Presently, farmer brewers are bound by the same termination restrictions as manufacturers under Section 25E. However, farmer brewers, wineries, and distillers offer that the restrictions on franchise agreements that originally managed the relationship between manufacturers and wholesalers, impede the economic growth of farmers. Farmers tend to own small businesses and it is difficult for them to change wholesalers for reasons other than "good cause." Moreover, "good cause" has proven a difficult, and some farmers would say impossible, standard to meet.

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<sup>23</sup> *Id.* § 63.

<sup>24</sup> *Id.* § 65

<sup>25</sup> *Id.* § 25E.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* §§ 19, 19B, 19C, 19E.



## **B. The Three-Tier System and Prohibited Business Practices**

Since 1933, Mass. Gen. Laws ch. 138 mandates the TTS consist of: (i) manufacturers; (ii) distributors; and (iii) on/off premises licensees in an effort to prevent a “tied-system.”<sup>28</sup> A “tied-system” is one in which manufacturers brew alcohol and then sell it to consumers in bars and restaurants also owned by the manufacturer.<sup>29</sup> The use of TTS prevents alcohol manufacturers from having ownership interests in restaurants and bars, which in turn could exclusively sell that manufacturer’s product, and thereby manipulate the market. In 1933, when much of the state’s alcohol licensing laws were written, there were legitimate public concerns about the link between crime and the alcohol industry, as well as the dangers associated with alcohol consumption.

Today, however, it is less clear whether the policies behind the 1933 regulations properly address the challenges the industry faces in the 21st Century. Throughout this process the TF encountered many concerns, such as whether the potential for corruption and the “tied-system” is still valid, and whether the TTS can be modified without risk of harm to businesses that have relied upon this structure to conduct business since 1933. Unlike in 1933, there are 9,153 licensed restaurants, bars, pubs and taverns in Massachusetts.<sup>30</sup> In 1933, there were far fewer numbers of competing manufacturers and restaurants, which arguably made it easier to create a “tied-system”. There are 189 farmer breweries licensed in Massachusetts alone

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<sup>28</sup> See Mark Sorini, *Understanding the Three-Tier System: Its Impacts on U.S. Craft Beer and You*, CRAFTBEER.COM, (March 6, 2017) <https://perma.cc/UB44-2EJU>; see also *Exhibit 6*, 2016 ABCC Adjudication, Enforcement, and Outreach.

<sup>29</sup> *Id.*

<sup>30</sup> See MASSACHUSETTS RESTAURANT ASSOCIATION, <http://www.themassrest.org/> (last visited Dec. 20, 2017). The Massachusetts Restaurants Association has over 1,800 members. *Id.* There are an estimated 15,397 places to eat in Massachusetts as of 2015. *Id.*

including 83 breweries, 26 distilleries, and 80 wineries.<sup>31</sup> As a practical matter, restaurants and bars cannot stock all available brands because they do not have enough shelf or storage space. Restaurants and liquor stores must decide what to offer customers and for how long. Thus, the “tied-system” concerns that existed in 1933 about a manufacturer also owning a restaurant and manipulating the market are much less relevant today. Arguably as competition has lessened, so does the likelihood of a “tied-system” that could effectively restricts consumer choices and creates unfair advantages. In addition, there have been changes to the TTS over the years, such as permitting farmer breweries to self-distribute, which suggests that there are different concerns today than in 1933.<sup>32</sup>

Notwithstanding the potential of would-be wrongdoers, we suspect that it is more difficult today to create and maintain a “tied-system.” First, consumers may not patronize a restaurant if only certain brands are sold, so there is a business risk in making such a decision. Second, there are well developed state and federal statutes that regulate unfair and deceptive practices, money-laundering, and other business crimes.<sup>33</sup> These laws are enforced by state and federal law enforcement agencies such as the U.S. Department of Justice and the Massachusetts Attorney General’s Office. Third, there are now additional means to uncover such schemes. Employees act as whistleblowers and report company wrongdoing. Many industries rely upon self-policing and whistleblowing statutes to uncover illegal activities and

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<sup>31</sup> See *Exhibit 7*, ABCC Fiscal Year 2016 Annual Report; see also MASS. GEN. LAWS ch. 138, § 19B (2017) (governing wineries); *id.* § 19C (governing farmer breweries); *id.* § 19E (governing distilleries).

<sup>32</sup> See MASS. GEN. LAWS ch. 138, § 19C (2017) (governing farmer breweries).

<sup>33</sup> MASS. GEN. LAWS ch. 93A (2017) (governing consumer protection and unfair acts and practices); 27 C.F.R. § 10.21 (2017) (governing the commercial bribery under the Federal Alcohol Administration Act).

thereby indirectly regulate the industry.<sup>34</sup> For example, whistleblower statutes that govern the financial services industry protect the disclosing of an employee's job and sometimes pay that employee a "bounty" equal to a percentage of the fine issued and collected against the company together with attorneys' fees and costs.

### C. Exceptions to Three-Tier System

Recognizing that the TTS serves important public interests, the system nonetheless has been tweaked over the years to make it more consumer and business friendly.<sup>35</sup> Massachusetts has chipped away at TTS by passing legislation creating ad hoc exceptions such as allowing farmer brewers to self-distribute their products and permitting out-of-state wineries to directly ship to consumers.<sup>36</sup> These changes might seem modest when viewed in isolation, but collectively they modify the traditional TTS significantly. For example, the legislature enacted Mass. Gen. Laws ch. 138, §§ 19C, 19E permitting a farmer brewer of beer or spirits to self-

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<sup>34</sup> See 15 U.S.C. § 78u-6 (2017) (governing securities whistleblower incentives and protection; part of the Dodd-Frank Act); 17 C.F.R. § 240 (2012) (the Securities and Exchange Commission Act ); 18 U.S.C. ch. 1514A (2011) (governing civil actions to protect against retaliation in fraud cases). Awareness of the securities whistleblower program has grown significantly over the years. See U.S. Sec. and Exch. Comm'n., *2017 Annual Report to Congress, Whistleblower Program*, U.S. SEC. AND EXCH. COMM'N., 12 - 16 (2017), <https://www.sec.gov/files/sec-2017-annual-report-whistleblower-program.pdf> [https://perma.cc/S7E3-PRJX] ("In FY 2017, we received over 4,400 tips, an increase of nearly 50 percent since FY 2012, the first year for which we have full-year data. . . . In FY 2017, the Commission ordered whistleblower awards of nearly \$50 million to 12 individuals . . . Since program inception, the Commission has issued awards of approximately \$160 million to 46 individuals in connection with 37 covered actions, as well as in connection with several related actions.") In 2015, the SEC reported 3,923 whistleblower tips, 807 enforcement actions, \$4.2 billion in disgorgement and penalties, eight whistleblower awards approved, and \$38 million in whistleblower awards. *Id.*

<sup>35</sup> See *Exhibit 7*, ABCC Fiscal Year 2016 Annual Report. During fiscal year 2016, 39 bills were enacted regarding alcoholic beverages licenses. The Legislature and the Governor's Office requested that the Commission provide comments on the background and legality of these bills. Each of these bills falls into 1 or more of 3 categories: a) excess quota licenses; b) conversion of seasonal licenses to annual licenses; and c) direct amendments to certain sections of Chapter 138.

<sup>36</sup> MASS. GEN. LAWS ch. 138, §§ 19B, 19C; *id.* § 19E (first enacted in 1982); *id.* § 19F (first enacted in 2014).

distribute 50,000 gallons of its products to restaurants and bars without using distributors.<sup>37</sup>

Breweries can now sell beer directly to consumers for consumption at home and to patrons in their restaurants.<sup>38</sup> These acts run counter to the TTS created in the 1933 version of Mass. Gen. Laws ch. 138.

Well-organized segments of the industry (accompanied by vocal consumers) are credited with successfully achieving for legislative changes to the TTS. For instance, there is no limit on the number of gallons of wine a farmer-winery can self-distribute.<sup>39</sup> With the appropriate permit, farmer wineries can now offer wine samples and sell wine at farmers markets.<sup>40</sup> Consumers can now purchase wine from out-of-state retailers for delivery to their homes, despite the objections of in-state distributors and local liquor store owners who represent 2 of the 3 tiers.<sup>41</sup>

In 2016 alone, 2 new laws amended Mass. Gen. Laws ch. 138 significantly impacting the

TTS:

- permitting Section 12 restaurant licensees to have a Section 15 license physically adjacent to the restaurant's premises (Acts of 2016, ch. 219, § 98);
- eliminating the cross-ownership prohibition of a Section 12 license and a Section 15 license in the same municipality (Acts of 2016, ch. 219, § 99);
- expanding the physical premises where a farmer-series licensee may pour its own products (Acts of 2016, ch. 219, §§ 102-104);

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<sup>37</sup> *Id.* §§ 19C(g)(6) , 19E(h)(4).

<sup>38</sup> *Id.* §§ 19C(g)(7), 19C(n) (first enacted in 2016).

<sup>39</sup> *Id.* § 19B.

<sup>40</sup> *Id.* § 15F (governing licenses for special farmer-winery tastings; first enacted in 2010).

<sup>41</sup> *Id.* § 19F (first enacted in 2014).

- creating a new license under Mass. Gen. Laws ch. 138, § 19H, which permits a licensee that owns more than one type of farmer-series license, to pour any and all alcohol produced by any of its licenses on any of its farmer-series premises, so long as the licensee's vineyards/farmlands are operated as appurtenant and contiguous to each other (Acts of 2016, ch. 219, § 105); and
- creating a new license under Mass. Gen. Laws ch. 138, § 190, that permits alternating proprietorships for the brewing of malt beverages (Acts of 2016, ch. 133, §§ 92-95 & 140).

Thus, Massachusetts appears to be experiencing a moment of openness to reform of the liquor licensing laws, and a rejection of the status quo in situations where the 1933 laws no longer make sense.<sup>42</sup>

#### **D. Licensing Process Needs Updating**

The licensing process in Massachusetts needs updating. Today's capital markets are more complex than in 1933 when Mass. Gen. Laws ch. 138 emerged. If you own a business today and are in need of capital or financing, the "red-tape" and delays inherent in the licensing process are a hurdle for potential investors. It takes on average 4 to 6 weeks for ABCC to respond to a license application or request to conduct a particular transaction, in part, because ABCC has only 26 employees to process approximately 32,000 license transactions annually. The applications include financial disclosures that are used by ABCC investigators as a tool to

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<sup>42</sup> Additional legislative changes to TTS may be required to address any inconsistencies and inequities. For example, there is a governmental interest in ensuring that license holders not engage in criminal activities such that on-going financial disclosures are required. To that end, anyone with a felony conviction cannot own a liquor store or anyone with a non-marijuana narcotics conviction cannot obtain a license to manage and own a restaurant. See MASS. GEN. LAWS ch. 138, § 15 (2017). However, these same restrictions do not apply to distributors or wholesalers. Currently, ABCC has no discretion to conduct a character assessment of a proposed licensee to determine if the individual should be issued a license notwithstanding a prior criminal record.

assess and investigate whether potential licensees (investors) are engaged in money laundering and/or other illegal activity such that their applications should be denied.<sup>43</sup>

We are advised that investment firms who own an indirect interest in breweries, wineries, bars, and restaurants find the current level of required financial disclosures and vetting to be burdensome, expensive, and time consuming. For example, whenever there is a change of individual investors in a fund that invests in a restaurant, financial disclosures must be filed for each officer, director, and person with an ownership (a direct or indirect interest).<sup>44</sup> Many indirect owners of an interest in a liquor license through an investment vehicle have no control or responsibility over the management of the licensee. As such, ABCC should be less concerned about potential investments because there is little risk for illegal conduct.<sup>45</sup> Many industry participants argue that the current level of required disclosures especially of indirect investors is unnecessary and contributes needlessly to the complexity of the industry, drives away would-be investors, and impedes economic growth. In essence, the level of security called for by the financial disclosures of indirect owners is no longer justified by the potential risk that a restaurant might engage in fraudulent activity.

**E. Quota System Concerns (Increase or Decrease the Number of Licenses?)**

Massachusetts operates under a quota system that is designed to control the number of liquor licenses in each city and town that “opted-in” to the law (321 of 351 municipalities) by

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<sup>43</sup> See *Exhibit 9*, ABCC Submission Letter (May 16, 2017).

<sup>44</sup> See MASS. GEN. LAWS ch. 138, § 26 (2017) (governing licenses and prohibited persons and corporations); 204 MASS. CODE REGS. 2.01 (2017) (governing licenses and permits).

<sup>45</sup> See MASS. GEN. LAWS ch. 138, § 15A (2017) (governing license applications); 204 Mass. Code Regs. 2.01 (2017) (governing licenses and permits).

tying the number of licenses to the town population for those municipalities.<sup>46</sup> However, many industry participants offered during Town Hall forums that the license restrictions are no longer needed or should be modified, including comments from town officials. Industry representatives argue there is market data to suggest that certain local communities can support having more liquor licenses beyond what the formula permits without sacrificing health and safety concerns about having too many establishments where alcohol can be purchased and/or consumed (alcohol density issues).<sup>47</sup> In cities such as Bourne, Worcester, and Cambridge that are not bound by the quota system for Section 12 licenses, they also must address alcohol density issues and arguments against the issuance of additional licenses because of similar concerns.

Pursuant to Mass. Gen. Laws ch. 138, § 17, the Commonwealth provides that cities and towns that “opted-in” to the quota system must calculate the number of retail liquor licenses in their communities using a U.S. Census formula.<sup>48</sup> The formula provides for a single Section 12 license “for each population unit of one thousand,” and a single Section 15 License “. . . for each

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<sup>46</sup> See *Exhibit 5*, 2016 ABCC Licensing Policies and Procedures, at 5. (“The following municipalities have no restrictions on on-premises (§ 12), all alcohol licenses but follow the normal quota rules for off-premises (§ 15): Barnstable, Bourne, Cambridge, Dennis, Falmouth, Franklin, Great Barrington, Haverhill, Kingston, Lee, Lenox, Marlborough, Mashpee, Middleborough, Nantucket, Newburyport, North Adams, Orleans, Pembroke, Plymouth, Sturbridge, Williamstown, Worcester, and Yarmouth. The following municipalities do not allow any alcoholic beverages licenses (dry towns): Alford, Dunstable, Chilmark, Gosnold, Hawley, Montgomery, West Hampton, and Mount Washington.”).

<sup>47</sup> Boston, for example, currently has 1,197 Section 12 and 260 Section 15 licenses, for a total of 1,457 licensees. See *Exhibit 7*, ABCC Fiscal Year 2016 Annual Report. Under the U.S. Census formula, Boston would only be entitled to 618 Section 12 and 123 Section 15 licenses for a total of 741. MASS. GEN. LAWS ch. 138, § 17A allows Boston to seek additional licenses using a somewhat different process similar to the Home Rule process. MASS. GEN. LAWS ch. 138, § 17A (2017).

<sup>48</sup> MASS. GEN. LAWS ch. 138, § 17 (2017).

population unit of five thousand . . .”<sup>49</sup> Municipalities use the quota system to limit the number of licenses for restaurants, bars and liquor stores and deny a licensee by simply stating that, “we are at the statutory limit.” Even though quota municipalities are required by Mass. Gen. Laws ch. 138, § 17 to limit the number of liquor licenses based upon the population at any given point in time, they often seek to side step this limitation. As with any exception to a general law, a municipality may file special legislation via the Home Rule petition process with the Commonwealth to increase the number of licensees beyond the quota allowed.<sup>50</sup> Given the number of municipalities that seek special legislation to permit liquor licenses above quota, it appears cities and towns want to both restrict and expand the number of licenses. First, a city or town could have “opted-out” of the quota system allowing it to make its own decisions on the appropriate number of Section 12 licenses to issue. But, if it did not opt-out, the number of licenses it has is restricted. Second, quota cities and towns can file legislation to secure additional Section 12 and Section 15 licenses, and this request is rarely denied, so the number

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<sup>49</sup> MASS. GEN. LAWS ch. 138, § 17 (2017) (governing number of licenses available).

<sup>50</sup> MASS. CONST. art. LXXXIX (Home Rule Amendment); MASS. GEN. LAWS ch. 43B (1966). But note that the towns opting out of the quota system only applies to Section 12 licensees and not Section 15. *See Exhibit 5, 2016 ABCC Licensing Policies and Procedures.*



of licenses can expand when needed.<sup>51</sup> As a practical matter, one could argue that the liquor license cap is not a hard cap.<sup>52</sup>

In contrast, Health and Safety Advocates (“HSAs”) participating in this process offer that cities and towns should limit the number of licenses because the economic benefits from selling more alcohol do not outweigh the negative health and safety outcomes. HSAs argue that allowing additional licenses beyond the legislative quota will increase the town’s alcohol density. This in turn increases: (i) the town’s rate of alcohol consumption; and (ii) the number of negative incidents tied to alcohol consumption. HSAs argue, from a public policy perspective, that cities and towns should want to reduce areas of high alcohol density (the number of bars and liquor stores) because lower areas of alcohol density results in a reduction of health problems and criminal behavior tied to alcohol consumption.<sup>53</sup>

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<sup>51</sup> The cities using the quota system created an additional issue. The Section 12 and Section 15 licenses now have value and are bought and sold on the open market even though licensees do not have a legal interest in the license. MASS. GEN. LAWS ch. 138, § 23 (2017). It is common in Boston (a *quasi-quota* city) for a restaurant owner to pay \$200,000 to \$450,000 for a liquor license. See Beth Healy, Sacha Pfeiffer, Devra First, *Scores of Cambridge restaurants paid six figures for a liquor license. Others got them for free*, THE BOSTON GLOBE, (Nov. 11, 2017) <https://www.bostonglobe.com/metro/2017/11/11/scores-cambridge-restaurants-paid-six-figures-for-liquor-license-others-got-them-for-free/WQcYPE7S26BG28B30Ccm1L/story.html>. Thus, when a city subject to the quota system seeks to issue additional licenses, restaurant owners in that city are often understandably concerned that the monetary value of their licenses will diminish with each additional license issued.

<sup>52</sup> See Exhibit 7, ABCC Fiscal Year 2016 Annual Report, 6-9. (In 2016, “thirty-five Bills created excess quota licenses in thirty-one different communities through the communities’ exercise of their right to ‘home-rule’ under the Massachusetts Constitution. These bills accounted for the addition of ninety-two all-alcohol M.G.L. 138, § 12 (on-premises) licenses, thirteen wine and malt M.G.L. ch. 138, § 12 (on-premises) licenses, eleven all-alcohol M.G.L. ch. 138, § 15 (off-premises) licenses, and six wine and malt M.G.L. ch. 138, § 15 (off-premises) license in the Commonwealth.”).

<sup>53</sup> See generally Johns Hopkins Bloomberg School of Public Health, *Strategizer 55 Regulating Alcohol Outlet Density, an Action Guide*, THE CENTER ON ALCOHOL MARKETING AND YOUTH (2011), <http://www.cadca.org/sites/default/files/resource/files/strat55.pdf> [https://perma.cc/6AQH-QEQA].

There are additional issues worthy of consideration relating to how quota municipalities manage the number of licenses already issued and to be issued. They include a discussion as to whether: (i) licenses are distributed in fair and equitable manner to all residents, businesses and communities; and (ii) there should be a certain number of licenses that are non-transferable and restricted to a particular location earmarked for economic development because such restrictions may benefit some business owners over others and actually impede rather than promote economic development.

**F. Excise Taxes and Role of Distributors in the Collection Process**

TTS requires distributors to pay excise taxes to the Commonwealth on the alcohol they purchase from brewers and manufacturers for re-sale to restaurants, bars, and liquor stores. This includes any farmer brewer that self-distributes beer, wine, or spirits. The excise tax is paid by the distributors as licensees for the right to sell alcohol in the Commonwealth.<sup>54</sup> Distributors play an important role by providing the Commonwealth with an efficient and effective means to collect excise taxes on the sale of alcohol and to monitor the distribution of a controlled substance. From July 2016 until June 2017, the General Fund of the Commonwealth collected \$83,378,526.70 in excise taxes. The structure relieves the Commonwealth of the monthly burden to monitor and pursue thousands of licensees to collect tax payments; it is much easier for a limited number of distributors to pay the industry taxes to the Commonwealth.<sup>55</sup> Distributors also provide ABCC with monthly pricing information and

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<sup>54</sup> MASS. GEN. LAWS ch. 138, § 21 (2017) (governing excise taxes).

<sup>55</sup> We are also mindful that farmers who self-distribute may pay excise taxes directly to ABCC.

other data on all alcoholic beverages sold to retailers. ABCC then uses this information to monitor retailer compliance with minimum pricing regulations and the like.<sup>56</sup>

As discussed, the TF recommends that the Commonwealth increase the excise tax on beer, wine and spirits to be more in line with neighboring states and to generate needed revenue that can be used to improve ABCC's delivery of services.

### **G. Health and Safety Concerns**

Notwithstanding the repeal of Prohibition,<sup>57</sup> alcohol remained highly regulated because the consumption of alcoholic beverages can and does cause serious health issues such that you must be at least 21 years of age to purchase alcohol in Massachusetts.<sup>58</sup> The health risks associated with drinking alcohol includes developing a dependency on alcohol, and an increase risk for liver disease, heart disease, sleep disorders, and depression to name a few. A CDC Fact Sheet from 2016 notes as follows:

#### Short-Term Health Risks

Excessive alcohol use has immediate effects that increase the risk of many harmful health conditions. These are most often the result of binge drinking and include the following:

- Injuries, such as motor vehicle crashes, falls, drownings, and burns.

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<sup>56</sup> MASS. CODE REGS. 2.09 (2017) (governing monthly reports); MASS. GEN. LAWS ch. 138, § 25B (2017) (governing schedules).

<sup>57</sup> See History.com Staff, *18th and 21st Amendments*, HISTORY.COM (2010), <https://perma.cc/96DZ-ACZP> ("In February 1933, Congress adopted a resolution proposing the 21st Amendment to the Constitution that would repeal [ ] the 18th Amendment").

<sup>58</sup> At one point, the age limit was reduced to 18 (in 1972), then increased to 20 (in 1979) and then back to 21 (in 1984). See MASS. GEN. LAWS ch. 138, § 34A (2017).

- Violence, including homicide, suicide, sexual assault, and intimate partner violence.
- Alcohol poisoning, a medical emergency that results from high blood alcohol levels.
- Risky sexual behaviors, including unprotected sex or sex with multiple partners. These behaviors can result in unintended pregnancy or sexually transmitted diseases, including HIV.
- Miscarriage and stillbirth or fetal alcohol spectrum disorders (FASDs) among pregnant women.

### Long-Term Health Risks

Over time, excessive alcohol use can lead to the development of chronic diseases and other serious problems including:

- High blood pressure, heart disease, stroke, liver disease, and digestive problems.
- Cancer of the breast, mouth, throat, esophagus, liver, and colon.
- Learning and memory problems, including dementia and poor school performance.
- Mental health problems, including depression and anxiety.
- Social problems, including lost productivity, family problems, and unemployment
- Alcohol dependence or alcoholism.<sup>59</sup>

There is also substantial evidence linking excessive alcohol consumption with drunk driving,<sup>60</sup> and increases in crime and violence, especially involving rape and sexual against

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<sup>59</sup> See Center for Disease Control, *Fact Sheets-Alcohol Use and Your Health*, CDC (Oct. 18, 2016), <https://www.cdc.gov/alcohol/fact-sheets/alcohol-use.htm> [<https://perma.cc/Z7FN-KW7J>].

<sup>60</sup> According to a 2016 report prepared for the National Highway Traffic Safety Administration, [e]very day in the United States, nearly 28 people die in a motor vehicle crash involving an impaired driver (NHTSA, 2014). Impaired driving is a significant problem in the U.S.: 10,076 people died in motor vehicle accidents caused by alcohol-impaired driving in 2013, which accounted for 31% of the total motor vehicle fatalities for the year. An average of one alcohol-

women.<sup>61</sup> ABCC's publication, *Adjudication, Enforcement and Outreach*, notes that, "[r]eports on arrest data have established that 75% to 80% of all violent crimes, such as assaults and domestic violence, are alcohol related."<sup>62</sup>

### Increases in Violent Crimes

In April 2006, The National Center for Alcohol Law Enforcement Pacific Institute for Research and Evaluation prepared a publication for the U.S. Department of Justice entitled, *Alcohol and Violent Crime: What Is The Connection?, What Can Be Done?*.<sup>63</sup> The section entitled, "Research on the Alcohol and Crime Connection" makes the following observations:

- Studies overwhelmingly indicate that there is a strong link between the consumption of alcohol and violent acts.
- Almost one in 4 victims of violent crime report that the perpetrator had been drinking prior to committing the violence.
- Over one-third of victims of rape or sexual assault report that the offender was drinking at the time of the act.
- It is estimated that 32% to 50% of homicides are preceded by alcohol consumption by the perpetrator.

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impaired driving fatality occurred every 52 minutes in 2013 (NHTSA, 2014) . . . Impaired driving remains a significant problem in the U.S. According to the Fatality Analysis Reporting System (FARS), 10,076 people died in alcohol-impaired crashes in 2013, which accounted for 31% of the total motor vehicle fatalities for the year. An average of one alcohol-impaired driving fatality occurred every 52 minutes in 2013 (NHTSA, 2014) . . .

Laura K. Cook Morford et al., *Evaluation of Source Investigations Demonstration Program*, NAT'L LIQUOR LAW ENF'T AGENCY (July 18, 2016), [http://www.nllea.org/documents/Source\\_Investigation\\_Evaluation.pdf](http://www.nllea.org/documents/Source_Investigation_Evaluation.pdf) [<https://perma.cc/CUM4-TWU9>].

<sup>61</sup> See generally *Exhibit 8*, Pacific Institute for Research and Evaluation Report: Alcohol and Violent Crime: What is the Connection? What Can Be Done?.

<sup>62</sup> See *Exhibit 6*, 2016 ABCC Adjudication, Enforcement, and Outreach.

<sup>63</sup> See *Exhibit 8*, Pacific Institute for Research and Evaluation Report: Alcohol and Violent Crime: What is the Connection? What Can Be Done?.

- Between 31% and 36% of prisoners convicted of a violent crime against an intimate partner reported that they were drinking alcohol at the time of the offense. These figures rise to approximately 50% when reports from those who were consuming both alcohol and drugs at the time of the offense are considered.
- Two-thirds of the victims of intimate violence reported that the offender was using alcohol at the time of the act.
- Between 27% and 47% of all homicides and acts of purposeful injury are attributable to the use of alcohol.
- Alcohol consumption is not only linked to acts of violence, but to the escalation of violence and the resulting severity of injuries.
- U.S. crime reports indicate that approximately six in ten incidents of alcohol-related violence resulted in injury to the victim.
- One study of assault incidents compared the severity of violence present in acts by perpetrators who had been drinking and those that had not. 42% of the assault incidents escalated beyond threats to physical attacks when the assailant had not been drinking compared to 50% for those who had been drinking. Moreover, a higher percentage (27%) of assailants who had been drinking committed a physical attack resulting in injury, than did the non- drinkers (22%).

#### Excessive Consumption and Binge Drinking

Through online submissions, the HAS WG, and Town Hall forums, HSAs advised the TF that high school and college students are influenced by television, magazine, and billboard advertisements glorifying the consumption of alcoholic beverages. Studies show that an increasing number of high school and college students' are binge drinking regularly.

Pamela S. Erickson, a former Alcohol Commissioner in Oregon, reports:

. . . binge drinking in the population at large is stuck at about 23% . . . There are currently 66 million binge drinkers in the U.S. . . . It is particularly important to prevent and/or treat children and young adults as their binges are more susceptible to addiction. Therefore, we should redouble our efforts to reduce underage drinking, but also focus on young adults who typically drink at high

levels. Of those 66 million who binge drink, 1.7 million are aged 12-17, and 214,000 are pregnant women.<sup>64</sup>

Many experts opine that advertisements depicting young adults partying with alcohol is a contributing factor to underage and binge drinking.<sup>65</sup>

### Massachusetts Health and Safety Data

According to a study by the Prevention Institute for Research and Evaluation Center (PIRE), underage drinking cost Massachusetts \$1.2 billion dollars in 2013.<sup>66</sup> This number accounts for medical, work, and pain and suffering costs. Some of the problems that occur because of underage drinking include youth violence, car accidents, high-risk sex, property crimes as well as fetal alcohol syndrome, and poisonings.<sup>67</sup>

In 2015, 33.9% of Massachusetts high school students reported current alcohol use (higher than national average 32.8%), and over 17.7% reported binge drinking (same as national average).<sup>68</sup> In 2012, underage drinkers consumed 9.3% of all alcohol sold in Massachusetts, totaling \$344 million in sales (in 2013 dollars). These sales provided profits of \$168 million to

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<sup>64</sup> Pamela J. Erickson, *Key Points from Alcohol Policy from Surgeon General's Report: The Problem with Binge Drinking*, HEALTHY ALCOHOL MARKETPLACE (Jan. 2017), <http://healthyalcoholmarket.com/pdf/NewsletterJanuary2017.pdf> [<https://perma.cc/9L6Y-EB2Z>].

<sup>65</sup> See generally James F. Mosher et al., *The State Laws to Reduce the Impact of Alcohol Marketing on Youth: Current Status and Model Policies*, CENTER ON ALCOHOL MARKETING AND YOUTH (May 1, 2012), [http://www.camy.org/\\_docs/research-to-practice/promotion/legal-resources/state-ad-laws/CAMY\\_State\\_Alcohol\\_Ads\\_Report\\_2012.pdf](http://www.camy.org/_docs/research-to-practice/promotion/legal-resources/state-ad-laws/CAMY_State_Alcohol_Ads_Report_2012.pdf) [<https://perma.cc/3XZX-N6FY>].

<sup>66</sup> See Pacific Institute for Research and Evaluation (PIRE), *Underage Drinking in Massachusetts: The Facts*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (March 2015), <http://resources.prev.org/factsheets/MA.pdf> [<https://perma.cc/RJP9-9ACA>].

<sup>67</sup> *Id.*

<sup>68</sup> U.S. Dep't of Health and Human Services, *Massachusetts High School Youth Risk Behavior Survey*, CDC (2015), <https://nccd.cdc.gov/youthonline/app/Results.aspx?LID=MA> [<https://perma.cc/D729-ZV4P>].

the alcohol industry.<sup>69</sup> The cost of excessive alcohol use in the U.S. reached \$249 billion in 2010 and 77% of those costs were due to binge drinking (4 or more alcoholic drinks for women or 5 or more drinks per occasion for men).<sup>70</sup> The CDC found that many of these lost costs are felt in the workplace because binge drinking can have an effect on productivity. In 2010, excessive alcohol consumption cost the Commonwealth \$5.6 billion, with a median state cost of \$3.5 billion.<sup>71</sup>

In Massachusetts, 2.2% of adults reported driving after drinking too much, which is 0.3% higher than the national average of 1.9%.<sup>72</sup> Between 2003 and 2012, 1,370 people were killed in Massachusetts in crashes involving a drunk driver. The Massachusetts ratio is 1.8 deaths per 100,000 population, compared to the national rate of 3.3.<sup>73</sup> The “percentage of adults who report driving after drinking too much (in the past 30 days) is 2.2% in Massachusetts compared to the national average of 1.9% in a 2012 study.”<sup>74</sup>

Along these lines, ABCC reports that in Massachusetts in 2015, “1,065 minors were found to be in possession or transporting alcoholic beverages; 226 adults reported procuring alcohol for minors; 51 individuals were found to be in possession of false identification; and 455

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<sup>69</sup> Ctr. for Disease Control and Prevention, *Sobering Facts: Drunk Driving in Massachusetts*, CDC (2014), [https://www.cdc.gov/motorvehiclesafety/pdf/impaired\\_driving/drunk\\_driving\\_in\\_ma.pdf](https://www.cdc.gov/motorvehiclesafety/pdf/impaired_driving/drunk_driving_in_ma.pdf) [https://perma.cc/4PEQ-AB4J].

<sup>70</sup> See Jeffrey Sacks, et al. *2010 National and State Costs of Excessive Alcohol Consumption*, 49 AM. J. OF PREVENTIVE MED, e73-e79 (2015).

<sup>71</sup> *Id.*

<sup>72</sup> Ctr. for Disease Control and Prevention, *supra* note 69.

<sup>73</sup> Pacific Institute for Research and Evaluation, *supra* note 66.

<sup>74</sup> *Id.*



cases of beer and 403 bottles of alcohol were confiscated by investigators, preventing delivery to 6,154 underage individuals.”<sup>75</sup>

### Public Policy Solutions

Consistent with a Johns Hopkins Bloomberg School of Public Health report, HSAs advised the TF that raising the price for alcohol by either implementing a sales tax or increasing existing excise taxes has been demonstrated to reduce consumer consumption especially among students and young adults.<sup>76</sup> Other peer reviewed research studies show a direct correlation between the alcohol consumption among young adults and students and the price of alcohol; the higher the price, the lower the amount consumed, and *vice versa*.<sup>77</sup> There are other steps that can be taken to reduce the risk for excessive consumption by minors and adults.

The 2006 report for the U.S. Department of Justice *Alcohol and Violent Crime: What Is The Connection?, What Can Be Done?*, in the section entitled, “Strategies for Preventing Alcohol-related Violence” recommends enhanced investigative and enforcement efforts:

. . . The sale of alcohol to minors, the hours of sales, sales promotions, and serving alcohol to obviously intoxicated persons can result in risky behavior and criminal outcomes . . . Policies that affect other sales practices – the “how, when, and where” alcohol is sold – can mediate the risk of violent behaviors resulting from alcohol consumption . . . Approximately 50 percent of drinking drivers start their intoxicated journey from licensed establishments . . . These findings suggest that the enforcement of mandated sales practices should have a positive

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<sup>75</sup> See *Exhibit 6*, 2016 ABCC Adjudication, Enforcement, and Outreach, at 4. In 2015, ABCC reports that 1,500 OUI (operating under the influence) reports in Massachusetts were filed with the Commission. *Id.*

<sup>76</sup> Johns Hopkins Bloomberg School of Public Health, *supra* note 53.

<sup>77</sup> See Xin Yu & Frank J. Chaloupka, *The Effects of Prices on Alcohol Use and its Consequences*, 34(2) ALCOHOL RES. HEALTH 236-45, (2011).

effect on the prevention of impaired driving and other forms of alcohol-related harm.<sup>78</sup>

A July 18, 2016 report entitled, *Evaluation of Source Investigations Demonstration Program*, prepared for the National Highway Traffic Safety Administration, the CDC recommends enhanced Source Investigations:

. . . Tactics to address these problems have included intense enforcement efforts on both the individuals who consume alcohol (e.g., sobriety checkpoints), and the individuals and businesses that sell and serve alcohol (e.g., undercover sales to intoxicated persons operations) . . . One of the promising strategies that ALEs can employ to reduce alcohol misuse and prevent alcohol-impaired driving crashes is a source investigation, which uses criminal and administrative investigative techniques to determine the original source of alcohol when a crash involving injuries or deaths occurs. In addition to traditional enforcement approaches that focus on arresting the individual driver, source investigations, if successful, can hold licensed establishments and their servers accountable for illegally serving patrons involved in crashes, such as intoxicated patrons and underage drinkers.<sup>79</sup>

Implementing proven public policy solutions such as those noted above would enhance the Commonwealth's reputation as a world leader in providing health care services and medical research.<sup>80</sup>

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<sup>78</sup> See Exhibit 8, Pacific Institute for Research and Evaluation Report: Alcohol and Violent Crime: What is the Connection? What Can Be Done?

<sup>79</sup> Morford et al., *supra* note 56.

<sup>80</sup> According to a 2017 Report, "2016 marked the 22<sup>nd</sup> consecutive year that Boston received the most [National Institute for Health] funding of any U.S. City. Forty-two Boston institutions received 3,592 NIH awards for more than \$1.85 billion in funding." Boston Planning & Development Agency Research Division, *National Institutes of Health (NIH)*, BOSTON PLANNING & DEVELOPMENT (2017). They include Mass General Hospital (No. 1); Brigham and Women's Hospital (No. 2), Harvard Medical School (No. 3), Children's Hospital (No. 4), Boston University Medical Campus (No. 5), Beth Israel Deaconess Medical Center (No. 6), Dana-Farber Cancer Institute (No. 7), and Harvard School of Public Health (No. 8). *Id.*

## **VI. Task Force Report Recommendations**

We offer suggestions to modernize Mass. Gen. Laws ch. 138 and 204 Mass. Code. Regs. 2.01-.22. in ways that do not materially increase adverse health and safety outcomes. Five themes emerged from our work and are organized by section: (1) Industry Improvements; (2) Licensing Process; (3) Local Economic Development; (4) Public Health and Safety; and (5) ABCC Operations. In each section we: (i) identify the legal or business issue; (ii) summarize the various positions; (iii) discuss potential solutions and the reasons therefor; and (iv) make recommendations. To the extent it is of assistance, we offer information on how we arrive at each recommendation. By providing information detailing the rationale for each recommendation, interested parties will better understand how we reached the conclusion.

### **A. The Task Force Recommendation Process**

To make the recommendations contained in this Report, the TF analyzed the diverse concerns of breweries, distribution companies, restaurants, and liquor stores as, well as consumers and HSAs. To the surprise of no one, industry participants disagree about how best to modernize the industry. The recommendations, which attempt to balance the interests of all participants who want to improve economic growth and/or health and safety outcomes in the Commonwealth. The TF advised all participants that their recommendations might not make it into the final Report but promised that their recommendations would be and were so considered.

## B. Industry Improvements

### 1. Written Agreements With Distributors

The Industry Improvement WG offered the TF insight into the relationship between distributors and farmer brewers including the application of Mass. Gen. Laws ch. 138, § 25E to their arrangements. For example, we heard during public forums that some brewers operate without written distribution agreements.<sup>81</sup> Instead, they often rely on oral agreements and Section 25E. Accordingly, the TF researched how other states address franchise agreements and whether they should be in writing. In a prepared a document entitled, *Beer Franchise Law Summary* (survey of beer franchise law in each of the 50 states, plus the District of Columbia), twenty-nine states require written agreements between brewers and distributors including New Hampshire, New Jersey, New York, and Rhode Island, and 7 of those 29 states require the agreements to be filed with the Alcohol Commission.<sup>82</sup> Although we do not have data as to whether brewers and distributors in states where the agreement must be in writing have more or less difficulty resolving disputes, it is reasonable to assume that having a written agreement is the better practice. Brewers should at least be aware of and understand the terms of their agreements with distributors even if the judicial applicability of Section 25E to their agreements is unclear.

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<sup>81</sup> If the parties do not have a written agreement, MASS. GEN. LAWS ch. 138, § 25E governs the relationship. Even if the parties executed a written franchise agreement with terms different than those called for under § 25E, the statute may still apply. MASS. GEN. LAWS ch. 138, § 25E (2017).

<sup>82</sup> See Marc E. Sorini, *Beer Franchise Law Summary*, MCDERMOTT WILL & EMERY LLP (2014), <https://s3-us-west-2.amazonaws.com/brewersassoc/wp-content/uploads/2017/04/Beer-Franchise-Law-Summary.pdf> [https://perma.cc/7BDX-9UR8].

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 25E to provide that all agreements between distributors and wholesalers, and farmer brewers, wine makers, distillers and cider-makers, wholesalers, manufacturers, and importers must be in writing.***

(a) Right to Cure Provision Franchise Agreements

Mass. Gen. Laws ch. 138, § 25E provides that a party seeking to terminate a franchise agreement must provide the other party with 120 days' notice, including the right to cure the alleged breach. During this time period, the parties must maintain the status quo. This means, for example, that a farmer brewer or manufacturer must continue to sell product to a distributor despite wanting to terminate the relationship. The TF's review of notice to cure provisions in other states revealed that Massachusetts provides distributors with the longest notice to cure period in the country.<sup>83</sup> In a majority of states where the parties must maintain status quo during the notice period, the cure period is 90 days. We recommend reducing the time period to cure from 120 days to 90 days, which has the upside of condensing the time for the parties to focus on resolving their dispute before initiating an action under Mass. Gen. Laws ch. 138, § 25E.

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 25E to provide that the licensee's notice to cure under a franchise agreement be reduced from 120 days to 90 days, and that the good faith effort to "cure" must take place during this 90 day period.***

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<sup>83</sup> *Id.*

(b) Section 25E Applies After 12 Months

The Industry Improvement WG provided the TF with additional insight regarding when the relationship between farmer brewers and distributors becomes governed by Mass. Gen. Laws ch. 138, § 25E. This section provides that it shall be . . . “unlawful for any manufacturer . . . farm brewer . . . to refuse to sell . . . except for good cause shown, any item having a brand name to any licensed wholesaler to whom such . . . farmer-brewer . . . has made regular sales of such brand item during a period of six months before the refusal to sell.”<sup>84</sup> Section 25E further provides that a farmer brewer must prove “good cause” to refuse to sell to a distributor who “has made regular sales of such brand often during a period of six months preceding any refusal to sell.”<sup>85</sup> In essence, once a farmer brewer has a 6 month relationship with a distributor to sell a particular product, Section 25E applies and a brewer must show “good cause” to terminate the relationship.<sup>86</sup> This means the relationship can last for years whether the parties get along or not. Furthermore, under Section 25E, a distributor can file an action with ABCC to compel the brewer to continue selling the product to the distributor.<sup>87</sup>

For the most part, we heard that farmer brewers, manufacturers, and distributors alike agreed that a “courtship” period longer than six months before the parties are bound by the “good cause” termination trigger makes sense because the agreements may last decades. In many instances, farmer brewers offer seasonal products, and need at least a year to see how the distributor handles a full year of offerings. The TF agrees that 6 months is not enough time

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<sup>84</sup> See MASS. GEN. LAWS ch. 138, § 25E (2017).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

to assess the performance of a distributor and the waiting period should increase to one year before Section 25E applies.

***Recommendation 1:*** Amend Mass. Gen. Laws ch. 138, § 25E to provide that the “good cause” clause to terminate becomes effective twelve months after the manufacturer or farmer-brewer, farmer winery, farmer distiller or cider maker makes regular sales to the distributor.

2. Franchise Termination Between Distributors and Farmer Brewers, Wine-Makers, Distillers and Cider Makers

The rights of all farmer brewers, wine-makers, distillers, and cider makers are governed by Mass. Gen. Laws ch. 138 § 25E, and concerns about their relationships with distributors are all the same. In particular, the TF heard primarily from farmer brewers during Town Hall forums and in the WG, that Mass. Gen. Laws ch. 138, § 25E is confusing, the rights of farmer brewers under a franchise (distribution) agreement is not fair, and it is difficult for farmer brewers to change distributors because they must prove “good cause.”<sup>88</sup> They further claim that the statute designed to regulate manufacturers and distributors also applies to farmers.

Distributors claim that they spend time and money to promote farmer brewers to grow their brands by distributing their products to restaurants, bars and liquor stores – distributor networks.<sup>89</sup> Farmer brewers then seek to change distributors just when their products become profitable, in part, because of the distributor’s marketing and sales efforts. To protect their investment, distributors generally oppose the farmer brewer’s termination demand.

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<sup>88</sup> This section focuses on farmer brewers but the arguments are the same for each farmer category.

<sup>89</sup> Farmer wine makers, distillers and cider makers may also have agreements with distributors governed by MASS. GEN. LAWS ch. 138, § 25E but most of the discussion centered on the relationships between farmer brewers and distributors.

Distributors also oppose termination efforts because they take certain risks by purchasing the brewer's product, storing it in their warehouse facilities, and selling and transporting the product to restaurants and bars. Distributors further complain that brewers often tweak their products and call them new offerings in order to end the relationship because the "new product" is not covered by the existing agreement.

(a) Farmer Reasons to Terminate

In the last decade, there have been several bills filed to reform Mass. Gen. Laws ch. 138, § 25E as it relates to when a farmer brewer can seek to terminate an existing franchise agreement with a distributor without the requirement to prove "good cause."<sup>90</sup> Both sides support different policies. For example, proposed bill House No. 183, seeks to permit any brewer (but not manufacturer) with less than 20% of the distributor's business to terminate the agreement without proving good cause.<sup>91</sup> Farmer brewers claim they need more flexibility to terminate an unprofitable and unworkable agreement for reasons unrelated to good cause.<sup>92</sup> In turn, distributors believe the current structure is fair and should not be changed, while some distributors support proposed bill House No. 2823, which would exempt brewers that make less than 30,000 barrels from the good cause requirement.<sup>93</sup>

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<sup>90</sup> See *Exhibit 15*, List of Proposed Massachusetts Legislation.

<sup>91</sup> An Act Relative to Craft Brewers, H. 183, 190<sup>th</sup> Gen. Ct. (Mass. 2017).

<sup>92</sup> The reasons include: (i) the new owner of the business wants a new distributor; (ii) the brewer wants to self-distribute; (iii) the brewer does not believe the distributor can perform, or (iv) the personality conflicts.

<sup>93</sup> An Act to Promote Economic Development and Market Access for Emerging Businesses, H. 2823, 190<sup>th</sup> Gen. Ct. (Mass. 2017).



The contract (oral or written) between the distributor and brewer is governed by its terms and also by Mass. Gen. Laws ch. 138, § 25E such that a brewer can only terminate the agreement for “good cause.”<sup>94</sup> Other states have addressed the option of permitting termination by a farmer brewer without cause under certain circumstances.<sup>95</sup> For example, New York permits a brewer that produces less than 300,000 barrels of beer and is less than 3% of the distributor’s business to be able to terminate without cause.<sup>96</sup> On the other hand, North Carolina permits termination without cause for brewers producing less than 25,000 barrels annually.<sup>97</sup>

Massachusetts, Mass. Gen. Laws ch. 138, §§ 25E(a)-(e) requires the party seeking termination (typically the brewer) to spend time and effort, and legal expense to prove “good cause,”<sup>98</sup> a difficult standard according to brewers, and a process brewers claim favors distributors who have considerable resources. To prove “good cause,” Section 25E(a) arguably

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<sup>94</sup> MASS. GEN. LAWS ch. 138, § 25E (2017).

<sup>95</sup> Sorini, *supra* note 82. Sorini reports, ten states permit brewers to terminate without cause provided they meet certain guidelines. ARKANSAS Ark. Code Ann. §§ 3-5-1101 to 3-5-1111 and § 3-5-1416; COLORADO Colo. Rev. Stat. §§ 12-47-405 to 12-47-406.3; ILLINOIS 815 Ill. Comp. Stat. 720/1 to 720/10; INDIANA Ind. Code §§ 7.1-5-5-9; NEVADA Nev. Rev. Stat. §§ 597.120 to 597.180; NEW YORK N.Y. Alco. Bev. Cont. Law § 55-c; NORTH CAROLINA N.C. Gen. Stat. §§ 18B-1300 to 18B-1308; OKLAHOMA Okla. Stat. tit. 37, §§ 163.2; 163.18A to 163.18H (Franchise protections do not apply to suppliers producing fewer than 300,000 gallons of low point beer per calendar year); Utah Code Ann. §§ 32B-1-102; 32B-11-201; 32B-11-503; 32B-14-101 through 32B-14-402; and WASHINGTON Wash. Rev. Code §§ 19.126.010 to 19.126.901. *Id.*

<sup>96</sup> N.Y. Alco. Bev. Cont. Law § 55-c (2017).

<sup>97</sup> N.C. Gen. Stat. §§ 18B-1300 to 18B-1308 (2017).

<sup>98</sup> MASS. GEN. LAWS ch. 138, § 25E (2017).

Good cause as used herein shall be limited to the following conduct:

- (a) disparagement of the product so as to impair the reputation of the brand owner or brand name of any product;
- (b) unfair preferment in sales efforts for brand items of a competitor;
- (c) failure to exercise best efforts in promoting the sale of any brand item;
- (d) engaging in improper or proscribed trade practices; or
- (e) failure to comply with the terms of sale agreed upon between supplier and wholesaler.

*Id.*

requires a brewer to conduct discovery of Section 15 licensees (retail customers) as to whether the brewer's product sells. To satisfy Section 25E(b), the brewer needs discovery from the distributor on sales efforts. To satisfy Section 25E(c), a brewer likely needs expert testimony on whether the distributor used best sales efforts in the marketplace to sell the brewer's product. As such, Section 25E requires extensive discovery between the parties to prove or disprove whether "good cause" exists.

Enacted in 1971, Mass. Gen. Laws ch. 138, § 25E did not contemplate the enactment of legislation permitting the emergence and growth of farmer brewers, wineries, and distillers, and the economic benefits they provide to cities and towns. The franchise law was originally enacted to stabilize the relationship between manufacturers and distributors. Accordingly, there is no compelling reason today to continue to prohibit local farmer brewers, wineries, and distilleries from terminating agreements without cause provided that the distributor is reasonably compensated for the loss of business just as any business person would seek to recover in a business dispute. What is not clear is the trigger that would permit a farmer brewer to terminate without cause. The trigger often used in other states is the number of barrels produced by the farmer brewer – 300,000 barrels in NY and 25,000 in NC. We leave the number of barrels to permit termination without cause to the discretion of lawmakers in consultation with industry participants. The TF recommends that Mass. Gen. Laws ch. 138, § 25E be amended to provide a barrel termination provision permitting licensed farmers to terminate a franchise agreement without good cause.

**Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 25E to provide that farmer brewers, wineries, distillers, and cider makers can terminate the agreement without cause if they: (i) produce less than a certain number of barrels of product annually (to be agreed upon); (ii) agree to re-purchase goods and products; and (iii) agree to pay a termination fee as discussed herein.**

(b) Calculation of Brewer's Franchise Agreement Termination Fee

Assuming that a farmer brewer, winemaker, distiller, or cider maker has the statutory right to terminate the franchise agreement "without cause," the distributor should be compensated for its efforts to establish a retail distribution network for the farmer's product. This network generally consists of the list of customers who would otherwise continue to purchase the product from the distributor but for the termination. A component of compensation should include the value of the distributor's "good will" (or marketing) associated with the product that is lost when the franchise agreement is terminated. This is often considered to be the monetary value of the customer list and assumes that the product will continue to sell.

Currently, when there is a dispute between the parties as to what a distributor should be paid as damages because of the farmer brewer's termination efforts, the issue is decided by ABCC after a hearing. ABCC's practice is to consider evidence of the past and potential future profits from the sale of certain products and then to calculate the damages. ABCC often calculates damages by using a certain percentage of sales, usually based on the last 3 years of the relationship. ABCC then considers the potential future lost profits. The damages are then awarded to the injured party. What the future profits might be on the sale of a product by the

distributor is generally unclear. There is substantial case law providing that damages which project potential lost profits cannot be speculative. We believe the industry would benefit from having a consistent manner to calculate damages that is not speculative, thus creating a predictable termination fee for both parties to consider. If the parties have a written agreement with a liquidated damages provision that covers termination without cause, that provision applies. Otherwise, the proposed statutory termination fee would apply.

The TF recommends that the termination fee should be based upon the actual relationship between the distributor and the brewer, and not what it hypothetically may be based upon potential profits over the next 3 to 5 years. It seems reasonable to calculate the termination fee based upon how well the product sold within 2 years prior to the notice of termination date, which would include “good will” and the concept of future lost profits. This calculation requires the brewer to pay a termination fee to the distributor in an amount equal to the net profit the distributor earned over the previous 24 months. If the net profit was low, the termination fee will be less and vice versa.<sup>99</sup> We recommend the 2 year actual profit look-back because we expect that subsequent to termination, the distributor will contact all of its retail customers and seek to replace the terminating brewer’s product with the product of another client. In addition, and to terminate the agreement, the brewer must: (i) repurchase of all alcohol products purchased by the distributor in storage and qualified for re-sale to public; and (ii) purchase all promotional and marketing materials created by the distributor for the brewer at the distributor’s cost within 45 days of the termination notice.

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<sup>99</sup> A brewer may always seek to terminate for “good cause” because if successful, the brewer would not be liable for damages such as lost profits and good will.

It follows that if a qualifying farmer brewer and distributor cannot reach an agreement over the termination fee, ABCC will then focus the hearing on the last 2 years of profit (or lesser period of time), which should be somewhat straight forward to calculate. The brewer and distributors both have records of the purchase and sale of the product. The only other issues to resolve are the wholesale cost to repurchase merchandise, and to repurchase product that can safely be re-sold to retailers.

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 25E to permit qualifying farmer brewers, wine makers, distillers, and cider makers licensed under Mass. Gen. Laws ch. 138, § 19 to terminate “without cause” provided that they: (i) offer to re-purchase at distributor’s cost all product eligible for re-sale to retailers (expired products not included) and make payment within 45 days; (ii) offer to re-purchase at distributor’s cost all merchandise specifically relating and designed for the product covered by the franchise agreement and make payment; and (iii) pay a termination fee specifically agreed to by the parties in a written agreement or the statutory termination fee equal to the net lost profits over the 2 year span prior to the date of termination.***

### 3. Pub Brewer Self-Distribution and Sunday Sales

Under Chapter 138, § 19 *et seq.* farmer brewers (Section 19C) and pub brewers (Section 19D) have different rights with respect to self-distribution and Sunday sales of alcohol.<sup>100</sup> Unlike farmer brewers, pub brewers are not permitted to “self- distribute” the malt beverages they produce or to sell their product for off premises consumption on Sundays.<sup>101</sup> It seems reasonable and appropriate to extend to Section 19D licensees the same rights and privileges of Section 19C licensees.

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<sup>100</sup> MASS. GEN. LAWS ch. 138, § 19 (2017).

<sup>101</sup> *Id.*

**Recommendation 1: Amend Mass. Gen. Laws ch 138, § 19D to permit Pub Brewers to self-distribute and sell on Sundays the same as Mass. Gen. Laws ch. 138, §19C Farmer Brewers are allowed.**

#### 4. Internet Sales

Massachusetts consumers may purchase wine from out-of-state vendors under Mass. Gen. Laws ch. 138, § 19F (Wine Shipper) and have it shipped directly to their home provided that there is a process to verify the age of the consumer at the time of purchase and delivery.<sup>102</sup> Since the enactment of Section 19F, over 1,000 out-of-state distributors sought licenses to direct ship wine in Massachusetts.<sup>103</sup> In fact, 46 states permit the direct shipment of wine.<sup>104</sup> Massachusetts distributors, wholesalers, and liquor store owners, however, oppose the further expansion of Section 19F's scope particularly where Massachusetts consumers already have the option to purchase alcohol online from participating in-state liquor stores who offer delivery services. Accordingly, the TF sees no reason to expand the scope of Section 19F at this time.

There is an additional issue to address, however, that relates to the delivery of alcoholic beverages to consumers in Massachusetts. Presently, wine shippers use delivery services such as UPS and Federal Express among others to deliver product directly to consumers. The delivery companies are required under Mass. Gen. Laws ch. 138, § 19F to make certain the person accepting the package is at least 21 years of age. Section 19F imposes a fine on anyone

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<sup>102</sup> MASS. GEN. LAWS ch. 138, § 19F (2017).

<sup>103</sup> MASS. GEN. LAWS ch. 138, § 18B (governing wholesalers and importers certificate of compliance); MASS. GEN. LAWS ch. 138, § 19F (governing shipping wine). *See also Exhibit 7*, ABCC Fiscal Year 2016 Annual Report.

<sup>104</sup> Heather Morton, *Direct Shipment of Alcohol State Statutes*, NAT'L ASSOC. OF STATE LEG. (Jan. 12, 2016), <http://www.ncsl.org/research/financial-services-andcommerce/direct-shipment-of-alcohol-state-statutes.aspx> [https://perma.cc/ETV8-XVN5].

who delivers a product without first verifying the age of the person accepting the delivery. Accordingly, the case of wine should never be left at the door of a home without a signature of someone at least 21 years of age. HSAs advise the TF that minors are able to purchase alcohol online and have it delivered to the home without their parents being aware because delivery companies may fail to obtain the required age verification, and/or require that someone sign the delivery receipt. Although it is difficult to monitor the home delivery of packages containing alcoholic beverages for compliance with Section 19F, we recommend that the fines under Section 19F be increased so that the risk of not complying with the law far outweighs leaving a package at a home and/or without age verification and a signed receipt.

(a) Wine Deliveries To Section 15 Licenses For Age Verification And Pick-Up

Arizona and Delaware require that all out-of-state shipments of alcohol to consumers in their states must be delivered to an authorized liquor store for pick-up by the consumer.<sup>105</sup> The liquor store owner then verifies the consumer's age and turns over the package. The TF further recommends that Section 15 licenses be permitted to accept out-of-state shipments of wine from Section 19F licensees on behalf of the consumers and that they also be permitted to act as delivery agents. We suspect that some out-of-state wine shippers will prefer to use local liquor stores as delivery agents to avoid any potential fines under Section 19F.

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 19F to increase the fines provided by Section 19F(h) to 60 days or \$1,000 fine or both for first violation; 120 days or \$2,000 fine or both for second violation; and 1 year license suspension or \$5,000 or both for a third violation; and 20(b), Section 19F(i) to 180 days or fine of \$1,500 or both for first violation; one year***

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<sup>105</sup> *Id.*

*license suspension or fine of \$2,500 or both for second violation; and two year license suspension or fine of \$10,000 or both for a third violation; and*

***Recommendation 2: Amend Mass. Gen. Laws ch. 138, § 20 to permit Section 15 licensees to accept and store products sold by Section 19F licensees, and to act as their agents for the pick-up of product by the customer with proper age identification from the Section 15 licensee.***

5. Increase Cider ABV To Federal Level

Cider makers are licensed under Mass. Gen. Laws ch. 138, § 19B (Farmer – Winery) and are prohibited from producing product with an alcohol content (alcohol by volume or “ABV”) of 6%.<sup>106</sup> Under Mass. Gen. Laws ch. 138, § 1 (governing wines), wine is defined as

all fermented alcoholic beverages made from fruits, flowers, herbs or vegetables and containing not more than twenty-four per cent of alcohol by volume at 60 degrees Fahrenheit, except cider containing not more than three per cent, or containing more than six per cent, of alcohol by weight at 60 degrees Fahrenheit.<sup>107</sup>

Effective January 1, 2017, the Federal government adopted a description of cider that establishes alcohol content of 8.5% ABV. It seems reasonable and appropriate to amend Mass. Gen. Laws ch. 138 § 1 to permit cider-makers licensed under Section 19B.

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 1 to increase the permitted alcohol content (ABV) of Cider from 6% to 8.5% to be consistent with the Federal law.***

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<sup>106</sup> MASS. GEN. LAWS ch. 138, § 19 (2017).

<sup>107</sup> *Id.* § 1.



## 6. Pay to Play: Marketing or Improper Activity?

Brewers, suppliers, manufacturers, wholesalers, distributors, and retail owners all expressed to the TF that it is difficult for them to distinguish legitimate marketing efforts from what ABCC deems unfair conduct (“pay to play”). Under ABCC regulations, certain marketing activities including the distribution of gifts and services of “significant” value to retailers in exchange for the retailers’ agreement to feature certain products in their restaurants or bars can violate Mass. Gen. Laws ch. 138, § 23A.<sup>108</sup> Manufacturers and distributors further claim that restaurants and bars demand gifts and services, but are seldom held accountable by ABCC for accepting these gratuities later deemed illegal by ABCC. The distributor is punished; the retailer is not.<sup>109</sup> Brewers, manufacturers and distributors want clear guidance as to what can be given to retailers as promotional products and/or services without risk. What is a gift of “significant value”?<sup>110</sup>

One way to provide clear guidance is by stating affirmatively that “significant value” is any service or item in excess of a particular dollar amount. For example, during the Town Hall

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<sup>108</sup> MASS. GEN. LAWS ch. 138, § 23A (2017).

<sup>109</sup> Retailers, brewers and distributors also claim that self-reporting of potential “pay to play” misconduct to ABCC is ineffective because ABCC lacks the personnel and resources to conduct thorough investigations. Industry representatives further claim that when there is an investigation, all parties must be involved and not just the brewers and distributors.

<sup>110</sup> See Carrie L. Bonnington, Jerry R. Jolly, *Is “Tied-House” Still the Tie that Binds?*, PILLSBURY WINTHROP SHAW PITTMAN LLP (2005) (“Federal regulations specifically identify certain acts that are violations (red light acts), certain acts that are not violations (green light acts), and certain acts that put retailer independence at risk and therefore may be deemed an unlawful inducement (yellow light acts). Examples offered include: Red Acts - The act by an industry member of furnishing, giving, renting, lending or selling any equipment, fixtures, signs, supplies, money, services or other things of value to a retailer (§6.41) . . . ; Green Acts - Giving or selling product displays so long as the total value of all product displays does not exceed \$300 per brand at any one time in any one retail establishment, and the displays contain conspicuous and substantial advertising matter on the product (§6.83) . . . ; and Yellow Acts - Purchasing or renting display, shelf, storage, or warehouse space (*i.e.*, slotting allowance) . . .”)(internal quotations omitted).

forum, the TF floated a limit of no more than \$500 in overall value per year, per client. A presenter claimed that this would result in the unintended consequence of a farmer brewer having to provide each retail client with goods and/or services worth \$500 each year for the right to market his or her products. An alternative way to address the “significant value” concern would be an outright ban on all gifts and services, and require that products and services be purchased at cost by retailers from distributors.

Some states address this issue by creating categories of marketing items that are permissible, while the Code of Federal Regulations provides other guidance. For example, an industry member providing or selling a *product display* to a retailer does not qualify as inducement as long as the value of the display does not exceed \$300 per brand and the displays “bear conspicuous and substantial advertising matter on the product.”<sup>111</sup> Many states, like Illinois and New York, have adopted the federal value limit of \$300.<sup>112</sup> Other states, have taken a more narrow approach. For example, Virginia caps its limit for product displays at a wholesale value of \$40 or less per item.<sup>113</sup> This cap also applies to any product enhancers and consumer specials. Some states, like California, do not specify an amount, but instead, require that displays are temporary for a period not exceeding 4 months.<sup>114</sup> The display then must be returned to the distributor or manufacturer. The retailer may not purchase the display and further, the industry member cannot gift the display to the retailer.

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<sup>111</sup> 27 C.F.R. § 6.83(c)(1)-(2) (2017).

<sup>112</sup> Nat’l Alcohol Beverage Control Assn, Nat’l Conf. of State Liquor Admin., *Alcohol Trade Practice Survey of State Laws and Regulation*, (2015), [ncsla.org/pdf/news/TradePracticesSummary\\_wLinks.Complete.pdf](https://perma.cc/XLM8-KZX2) [https://perma.cc/XLM8-KZX2]; 235 Ill. Comp. Stat. Ann. 5/6-6 (i)-(iv); N.Y. Comp. Codes R. & Regs. tit. 9, § 86.5 (2017).

<sup>113</sup> 3 Va. Admin. Code § 5-30-80 (2017).

<sup>114</sup> Cal. Code Regs. tit. 4, § 106(b)(7) (2017).

Federal law provides guidance on which *point-of sale advertising materials* and *consumer advertising specialties* are allowed.<sup>115</sup> Some states, such as New Hampshire, have adopted these categories as their own.<sup>116</sup> For example, in New Hampshire, point-of sale advertising materials, which are meant to be used by the retailer to attract consumer attention, may be posters, placards, signs, window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcohol beverage lists or menus.<sup>117</sup> Cork screws, shopping bags, matches, shirts, caps, or pencils would also qualify as consumer advertising specialties.<sup>118</sup> However, Washington does not permit any consumer advertising specialties, while California allows for consumer advertising specialties limited to \$0.25 per unit cost to the supplier, but only \$15 may be given to the retailer in the aggregate per year.<sup>119</sup> Pennsylvania also limits consumer advertising to a wholesale cost of \$15 or less.<sup>120</sup> Connecticut functions similarly, but only permits novelties of nominal value whose aggregate shall not exceed \$500 dollars per distributor per retailer per year.<sup>121</sup> Alternatively, Illinois allows consumer advertising specialties (such as the examples listed above), but requires that cups be purchased by the retailer.<sup>122</sup>

After considering how other states address this issue and the concerns of industry participants in Massachusetts, it seems reasonable to establish a monetary limit that can be

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<sup>115</sup> 27 C.F.R. § 6.84 (2017).

<sup>116</sup> N.H. Rev. Stat. Ann. § 179:29 (2017).

<sup>117</sup> 27 C.F.R. § 6.84(b)(1) (2017).

<sup>118</sup> 27 C.F.R. § 6.84(b)(2) (2017).

<sup>119</sup> Wash. Rev. Code Ann. § 66.28.31 (2017).

<sup>120</sup> 47 Pa.Stat. § 4-493(24)(i) (2017).

<sup>121</sup> Nat'l Alcohol Beverage Control Ass'n, Nat'l Conf. of State Liquor Admin., *supra* note 103.

<sup>122</sup> 235 Ill. Comp. Stat. Ann. 5/6-6 (2017).

easily understood for: (i) product displays; (ii) point of sale advertising; and (iii) consumer advertising specialties. We recommend that there should be no gift or services in excess of \$50 per item or unit of item annually in the categories of point of sale advertising specialties and consumer advertising specialties categories, a limit of \$300 annually in the display category (per display), and displays cannot be loaned. Retailers who want products and services over that amount must pay the distributor for the items at “cost.” Under this structure, paper products such as napkins, coasters, bottle openers and t-shirts would be permitted along with any other item or unit of items valued less than \$50. The \$50 limit seems reasonable for point of sale advertising and consumer advertising specialties, and \$300 for displays. This offers a clear “line in the sand.” It also and provides industry participants with clarity and workable guidelines, something we heard from almost every angle is desirable.<sup>123</sup>

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 23A to provide that per calendar year, retailers can accept goods and services from either brewers, manufacturers, distributors or wholesalers that have a fair market value per item or per unit less than \$50 for point of sale advertising and consumer advertising specialties, and a limit of \$300 for product displays, and further that product displays cannot be loaned;***

***Recommendation 2: Amend Mass. Gen. Laws ch. 138, § 23A to provide that retailers must pay the wholesale cost for all goods and services provided by either brewers, manufacturers, distributors or wholesalers that have a fair market value in excess of \$50 per item or per unit for point of sale advertising specialties and consumer advertising specialties, a limit of \$300 for product displays, and further product displays cannot be loaned;***

***Recommendation 3: Amend Mass. Gen. Laws ch. 138, § 23A to provide that retailers, brewers, manufacturers, distributors or wholesalers must maintain records of all goods and services given or received or sold at wholesale cost, and such records are subject to random ABCC audits;***

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<sup>123</sup> The \$50 limit is also consistent with state ethics laws prohibiting any public official from accepting any item of value in excess of \$50. MASS. GEN. LAWS ch. 268A (2017).

***Recommendation 4: Amend Mass. Gen. Laws ch. 138, § 23A to provide the following fines and/or suspensions: (a) first offense— not less than \$500 nor more than \$1,500 and a suspension of licenses not to exceed five days or both; (b) second offense – not less than \$1,000, no more than \$2,500 and a suspension of not less than ten days or both; (c) third offense— a fine and suspension to be determined in the sole discretion of ABCC; and***

***Recommendation 5: That Mass. Gen. Laws ch. 138, § 23A described above shall be equally enforced against all licensees.***

7. Disclosure Requirements and Cross Ownership Restrictions – Three Tier System

Due to fears of a “tied-system,” a Massachusetts restaurant owner with an alcohol license cannot also have an ownership interest (direct or indirect) in a winery (in or out of state). A national restaurant chain cannot own a local brewery for fear that the restaurant would only sell its brands. The TF considered whether concerns remain today about the risk of a “tied-system” if an out-of-state restaurant chain is permitted to purchase a limited ownership interest in local brewers or if a large manufacturer or retailer wants to invest in a farmer brewery. While there are legitimate reasons to continue to enforce the “tied system,” the Commonwealth has created opportunities for economic development by allowing farmer brewers to operate a cross-tier operation and to self-distribute their products to retail businesses. The next logical extension of this concept is to relax cross-licensing and ownership restrictions in liquor licenses. The first involves revising the financial disclosures of individuals owning an indirect and/or passive interest of less than 10% in a liquor license. The other concept is to permit an individual to acquire less than a 10% ownership interest a cross-tier business subject to ABCC’s review and approval. ABCC would have the authority to deny an

applicant's request to make a cross-tier investment if it is not in the best interest of the industry.

(a) 10% Rule for Disclosure Requirements

Detailed financial disclosures are required every time an application is filed for any type of liquor license, a license renewal, or change in ownership. This process can be very time consuming if you have multiple owners. The only limited exception to this rule is when that person owns an interest in a publically traded corporation holding a liquor license. Mass. Gen. Laws ch. 138, § 15A currently provides, in part, as follows:

All applications for an original license under sections twelve and fifteen shall be made on a form or forms to be prescribed by the commission and shall include a sworn statement by the applicant giving the names and addresses of all persons who have a direct or indirect beneficial interest in said license. *No stock in a corporation holding a license to sell alcoholic beverages shall be transferred, pledged, or issued without first obtaining the permission of the local licensing authorities and the commission.* Provisions of this section shall not apply to stockholders of a corporation whose stock is listed for sale to the general public with the Securities and Exchange Commission and who hold less than ten per cent of the outstanding stock entitled to vote at the annual meeting of said corporation.<sup>124</sup>

Mass. Gen. Laws ch. 138, § 15A and 204 Mass. Code. Regs. 2.01 mandate that officers, directors, managers or anyone else holding an ownership interest in a legal entity holding a liquor license such as Section 12 and Section 15 licensees make certain financial disclosures in the applications that are filed with ABCC.<sup>125</sup> This includes anyone holding a direct or indirect beneficial interest in any license whether based in Massachusetts or not except “. . .

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<sup>124</sup> MASS. GEN. LAWS ch. 138, § 15A (2017)(emphasis added).

<sup>125</sup> *Id.*

[p]rovisions of this section [Section 15A] shall not apply . . . to [a person] who holds less than ten percent of the outstanding stock [publically held] entitled to vote at the annual meeting of the corporation.”<sup>126</sup>

ABCC received a letter dated May 16, 2017 signed by 5 attorneys experienced in this area of law who expressed concern about the disclosure requirements.<sup>127</sup> It states as follows:

In enforcing the provisions of Section 15A, the ABCC has over the years generally required from business entities (not-publically traded) the personal information (such as addresses, parents’ names, social security numbers and other identifying information for individuals); whether this individual holds or has held an interest in another Massachusetts liquor license; whether the individual has a criminal background; and these people have been required to execute forms providing the ABCC permission to search their criminal background (CORI Forms). This required information and required form are known as “Disclosure Requirements” for anyone having a “direct or indirect” interest in non-publically traded business entity such as a corporation or a limited liability company . . .

The ABCC’s policies have evolved over the years when it comes to being able to acquire a “waiver” from having to disclose a class of investors, but some ABCC investigators view these Disclosure Requirements differently from other investigators, and any “upper tier” form of investment in a business entity that seeks to hold a liquor license is required to provide organizational charts and sometimes an informational hearing wherein the intricacies of modern day finance can be lost on the lawyers that present the information and regulators trying to follow the finance arrangements.<sup>128</sup>

The letter’s authors argue that ABCC should adopt the “ten percent rule” such that individuals with less than a 10% ownership interest in a liquor license need not file a detailed financial statement and Criminal Offender Record Information (CORI) authorization with ABCC.

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<sup>126</sup> MASS. GEN. LAWS ch. 138, § 15A (2017). When someone owns more than 10% of the stock, he/she must file with the SEC Form a public disclosure statement.

<sup>127</sup> See *Exhibit 9*, ABCC Task Force Submission Letter (May 16, 2017) (law enforcement officials must take steps to ensure that its investors are not engaged in criminal or illegal activities prior to the firm submitting its financial disclosures to ABCC for consideration).

<sup>128</sup> *Id.*

We agree. Adopting such a rule would relieve passive and indirect investors with: (i) less than a 10% interest; (ii) no board of directors' seats; and (iii) no management control from filing detailed financial statements executing Criminal Offender Record Information CORI forms. As the May 26 letter suggests, such a change should not apply to Mass. Gen. Laws ch. 138, § 26 managers, officers, directors and investors. Notwithstanding, the applicant must still provide ABCC with personal and business addresses and contract information of all investors.<sup>129</sup>

The attorneys further suggest that this 10% rule should extend to investment companies that own a direct or indirect interest in a liquor license. We agree but further recommend that all investment firms and legal entities must file an affirmative statement that none of their investors (direct or indirect) are involved in illegal activities, along with a list of all investors as part of the application. Legal entities and investment firms owning less than a 10% interest in a liquor license also would be bound by the "know your customer rule." They must take steps to ensure that its investors are not engaged in criminal or illegal activities prior to the firm submitting its financial disclosures to ABCC for consideration.<sup>130</sup> The risks associated with these passive and/or indirect investors in creating a "tied-system" are not as concerning with these additional qualifications and representations together with the enactment of whistleblower protections.

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<sup>129</sup> *Id.*

<sup>130</sup> See *Exhibit 9*, ABCC Task Force Submission Letter (May 16, 2017).



(b) Cross-Tier Investments Less Than 10%

As we consider “industry improvements,” we cannot avoid a discussion whether some level or type of cross-tier investments should be permitted. Assuming that Mass. Gen. Laws ch. 138, § 15A is amended to provide that an investor holding less than a 10% direct or indirect ownership interest in a legal entity holding a liquor license (in a particular tier) need not provide detailed financial information, the next logical issue to consider is whether someone should be permitted to own up to 10% interest in more than one entity and across tiers. As noted above, the law allows some manufacturers to self-distribute. If the law allows cross-tier operations, why would it not also allow investments in companies across tiers? We surmise that relaxing such rules will make it easier for a distributor to invest in a retail business or brewery, and may encourage investments in small businesses.

To permit such an investment/ownership interest, ABCC would need the authority to allow or deny such a request if the transaction might result in an unfair accumulation of market share in Massachusetts. ABCC can exercise supervisory control under the federal anti-trust laws in a manner similar to when the Federal Trade Commission decides whether two competing businesses are permitted to cross-invest and/or merge.

One way for ABCC to assess the risk associated with such a request is to require all licensees interested in making a cross-tier investment to first file an application seeking ABCC preliminary approval. The applicant/licensee must disclose: (i) the nature of the investment (loan, equity, convertible loan to equity, subordinated debt, etc.); (ii) the interest acquired such as shares of stock, LLC interest, or partnership interest; (iii) the valuation; and (iv) a

capitalization chart pre- and post-investment. The investment agreement cannot contain any triggers that would force a sale of the business to the 10% investor. In other words, a 10% investor is not permitted to make the investment as a means to take control of the business – no such right should exist, express or implied.

To prevent sham investments by family members the definition of an “individual” under Section 15A should include the proposed investor’s immediate family members: spouse, children, aunts, uncles, nieces and nephews; and they must be disclosed with the application. With respect to a legal entity, the individual shareholder or interest holder (LLC or LLP) must make the same individual family member disclosure.

ABCC is charged with reviewing an applicant’s request to invest across tiers and can set certain restrictions such as an overall cap on ownership interest of less than 10%, no voting rights, no board seats, or management control or responsibility. This structure would permit passive investments that are needed for economic development and expansion without providing control. We suspect that some individuals might seek this opportunity to exercise control “under the table” or with a “wink of the eye,” but we propose that the whistleblower statute will add to the self-policing of the industry together with statutory provisions prohibiting a takeover. The licensees are subject to random audits and risk having their licenses revoked for violating this statute.

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 15A to permit a 10% exception to the Disclosure Requirements for licensees as follows:***

***The 10% Rule currently applicable only to publically traded companies should be applied to all***

*individuals and business entities possessing or seeking to possess a Massachusetts liquor license directly or indirectly, whether in an entity privately owned or publically traded;*

***Recommendation 2:*** Amend Mass. Gen. Laws ch. 138, § 15A to provide that any person or entity with a direct or indirect interest of less than 10% in a liquor license need not submit a detailed financial statement and submit to a CORI review. The applicant seeking this waiver must swear under the pains and penalties of perjury that she/he does not have voting rights, will not be involved in the management of the business, the investment is passive, and the applicant is not involved in criminal activity or investments as prohibited by US laws and regulation, or right to purchase the company;

***Recommendation 3:*** Amend Mass. Gen. Laws ch. 138, § 15A to permit individuals and legal entities to seek approval from ABCC to hold no more than a 10% cross-tier ownership interest provided that the individual or legal entity has no voting rights, no board seats, management control or responsibility (direct or indirect), or right to purchase the company;

***Recommendation 4:*** Amend Mass. Gen. Laws ch. 138, § 15A to define that the term individual shall now include “spouse, children, aunts, uncles, nieces and nephews” consistent with the Mass. Gen. Laws ch. 268A(d) which governs the Commonwealth’s conflict of interest laws; and

***Recommendation 5:*** Amend Mass. Gen. Laws ch. 138, § 15A to provide ABCC shall have the authority to revoke any license should it find that any person or entity holding a direct or indirect interest in the license violated Mass. Gen. Laws ch. 138, § 1 et seq. or 204 Mass. Code. Regs. 2.01-.22

#### 8. Minimum Pricing and Section 15 Licensees

During the Town Hall forums, we heard concerns voiced by liquor store and small grocery store owners that large retailers are able to take advantage of a distributor’s discount programs by purchasing alcohol products in bulk. Local “mom and pop” retailers further claim that they are being forced out of business by large retailers who then use those cost savings to undercut the pricing they charge for alcohol. For example, a large retailer that buys wine in bulk from a distributor with a minimum price of \$10 per bottle under a discount program with a

distributor may be able to purchase the bottle at the effective discounted price of \$8 per bottle. The large retailer then sells that bottle of wine for the required minimum amount of \$10, thus making a \$2 profit.<sup>131</sup> In contrast, a mom and pop store that cannot purchase in bulk under a discount program must pay \$10 per bottle and needs to sell the bottle of wine at \$12 to yield the same \$2 profit. The customer then has the option to buy the same bottle of wine for either \$10 or \$12. For those customers looking for a bargain, the small store owner is at a disadvantage to the large retailer, who also typically has a larger advertising budget, and is better able to advertise its lower prices.

(a) Amend Statutes to Repeal Discount Programs

Although the sale of discounted alcohol is permitted in Massachusetts as provided for in certain paragraphs of Mass. Gen. Laws ch. 138, §§ 25A, 25B, and 25C, there are many states that do not permit the discounted sale of alcohol as a matter of public policy because the sale of lower priced alcohol leads, in some instances, to increased consumption.<sup>132</sup> Conversely, increased consumption leads to negative health and safety outcomes. HSAs provided the TF with reports and studies suggesting that eliminating discount programs will promote public health, and the TF opines that this is an appropriate public policy objective.

HSAs contend that discounted and/or low priced alcohol leads to consumer binge drinking and the excessive consumption of alcohol.<sup>133</sup> This is especially true for minors, college

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<sup>131</sup> MASS. GEN. LAWS ch. 138, § 25C (governing schedules on minimum consumer resale prices).

<sup>132</sup> Sacks et al., *supra* note 71; *see also Exhibit 10* The Effectiveness of Tax Policy Interventions for Reducing Excessive Alcohol Consumption and Related Harms.

<sup>133</sup> *See* Section VII.E.2-E.3, *infra*.

students, and adults with alcohol dependency issues. Accordingly, they urge from a public policy perspective that the TF eliminate and/or repeal any statutes or regulations allowing for the sale of discounted alcohol and discount programs providing loyalty cards to consumers. The HSAs support their position with studies showing that when the cost for alcohol increases, the consumption of alcohol is reduced by consumers especially college students and young adults who are susceptible to developing an addiction to alcohol.<sup>134</sup> On balance, the threat to small business coupled with the public health and safety dangers posed by discounted sales outweigh the minimal consumer benefit.

***Recommendation 1: Repeal any provision of Mass. Gen. Laws ch. 138 including Sections 25A, 25B, and 25C and 204 Mass. Code. Regs. 2.01-.22 that allows for the discounted sale of alcohol between distributors and retailers.***

#### 9. Out-of-State Licenses

Under Mass. Gen. Laws ch. 138, § 34B, retailers such as restaurants, bars and liquor stores may only accept six forms of identification as proof that a customer is at least 21 years of age and able to purchase alcohol. The approved forms of identification are passports, passport cards, Massachusetts Identification card, Massachusetts License, military identification card, and Massachusetts Disability card. Section 34B provides, in part,

[a]ny licensee . . . who reasonably relies on such a liquor purchase identification card . . . for proof of a person's identity and age shall not suffer any modification, suspension, revocation or cancellation of such license, nor shall he suffer any criminal liability for delivering or selling alcohol or alcoholic beverages to a

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<sup>134</sup> See *Exhibit 10*, The Effectiveness of Tax Policy Interventions for Reducing Excessive Alcohol Consumption and Related Harms.

person under the 21 years of age . . . proof of a person’s identity and age shall be presumed to have exercised due care in making such delivery or sale of alcohol or alcoholic beverages to a person under 21 years of age. Such presumption shall be rebuttable; provide, however, that nothing contained herein shall affect the applicability of section 60-nine [sale to intoxicated persons].<sup>135</sup>

Accordingly, retailers may accept out-of-state licenses but are at risk of getting fined or criminally prosecuted because they are not afforded the same presumption that the licensee exercised reasonable care in accepting an out-of-state license to purchase alcohol if it is later determined to be a fraudulent ID. In an abundance of caution, many restaurants, bars, and liquor stores refuse to accept or rely upon out-of-state licenses. In the public forums and submissions, retailers claim that this restriction negatively impacts the tourism experience of all out-of-state guests as Section 34B applies to anyone over the age of 21 seeking to purchase alcohol in Massachusetts. Retailers argue that they should be permitted to accept out-of-state licenses as a form of identification to purchase alcohol with the same presumption associated with the six other forms of identification. Retailers point to technological safeguards, training programs and more sophisticated out-of-state licenses that now exist which can aid the licensee in the review and screening of identification cards.<sup>136</sup>

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 34B to permit all Section 12 and Section 15 licensees and qualified Section 19B, Section 19C, Section 19D, and Section 19H licensees to accept out-of-state licenses as one form of identification that can be used to establish that a customer is the legal age of at least 21 to purchase alcohol, and to provide the same presumption of reasonable care in reliance upon an out-of-state license as one would in reliance upon a Massachusetts license or passport as proof of age; and***

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<sup>135</sup> See MASS. GEN. LAWS ch. 138, § 69 (2017).

<sup>136</sup> The current restriction of relying upon out-of-state licenses can have unintended consequences as retailers often pick and choose what out-of-state licenses they will accept. This causes confusion among consumers.

***Recommendation 2: Require interested qualified licensees to file an application with ABCC seeking approval to accept out-of-state licenses. ABCC in its discretion may require training on how to identify a false out-of-state license.***

10. Whistleblower Statute to Aid In Regulation of Industry

A whistleblower statute will aid ABCC's efforts to monitor the compliance of licensees with Mass. Gen. Laws ch. 138. Whistleblower statutes are enacted to protect individuals, usually employees or former employees, who report illegal or fraudulent activity by a public or private entity, typically the employer or former employer of the reporting individual. The risk of retaliation by the employer has led to the enactment of both federal and state protections for whistleblowers. The TF is unaware of any whistleblower protections, on the federal or state level, that provide protections for those looking to report violations of alcohol regulations. With limited resources for additional investigators, enacting whistleblower protections for this industry would assist the ABCC by encouraging industry members to independently report any improper activity.

Massachusetts currently has 3 whistleblower statutes in place: (i) the Massachusetts False Claims Act; (ii) the Massachusetts Health Care Whistleblower Act; and (iii) the Massachusetts Public Employee Whistleblower Act. These existing statutes can serve as a guide in crafting appropriate legislation to encourage reporting to the ABCC. For example, under the Massachusetts Public Employee Whistleblower Act, there are protections for employees who disclose violations of the law because they believe there may be "a risk to public health, safety

or the environment.”<sup>137</sup> The Massachusetts Health Care Whistleblower Act was also enacted to protect the public from wrongdoing by a health care facility.<sup>138</sup> Because the alcoholic beverage industry has a direct impact on public health, a whistleblower statute would be appropriate to further regulate the industry and protect not only industry participants, but the public at large.

Along with employee protections from wrongful discharge, an alcohol beverage industry whistleblower statute should also include a provision for awards for those employees who report illegal conduct that leads to an ABCC monetary fine. Under the Massachusetts False Claims Act, relators can be awarded between 15% and 30% of the amount recovered in an action or proceeding depending on whether or not the Attorney General intervenes.<sup>139</sup> Similarly, under the Dodd-Frank Act, the award amounts are between 10% and 30% of the total monetary sanctions.<sup>140</sup> The TF believes a reasonable award (or bounty) amount should be in line with the other Massachusetts statutes.

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, to enact a whistleblower provision for employees and others that provide information leading to a fine by ABCC or any other state and/or federal agency, and the collection of that fine and collection of any fine for violating any other applicable law or regulation. The whistleblower shall be entitled to recover a “bounty,” attorneys’ fees, costs and expenses. Employees are also protected from retaliation by their employers.***

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<sup>137</sup> MASS. GEN. LAWS ch. 149 § 185 (2017).

<sup>138</sup> MASS. GEN. LAWS ch. 12 §§ 5A-5O (2017).

<sup>139</sup> See MASS. GEN. LAWS ch. 149 § 187 (2017).

<sup>140</sup> MASS. GEN. LAWS ch. 12 § 5F (2017); see 15 U.S.C. § 78u-6 (2017) (governing securities whistleblower incentives and protection; part of the Dodd-Frank Act).



### C. Licensing Process

During the Town Hall forums and via online submissions, there was a constant theme that, “the process is too complex and complicated” whether it is a license to open a restaurant or to store product, it can take months to get a decision from the ABCC. This section addresses: (i) the licensing process can be more efficient and business friendly; (ii) LLAs in quota cities should have exclusive control over the number of licenses to issue; (iii) the applicant background check process can be improved; and (iv) to amend the qualifications to hold a license given societal changes such as the legalization of the recreational use of marijuana.

#### 1. Local Licensing Authorities

All retail licensees must first file an application for a liquor license with the LLA in their city or town. The LLA is charged with the initial review. Whether the LLA can approve an application for a retail license is determined by the number of licenses available, the qualifications of the licensee, and reason for the license.<sup>141</sup> The LLA must determine whether, in its discretion, a liquor license (new or transferred) is in the “public interest,” which is to “serve the public need and in such a manner as to protect the common good and, to that end, to provide, in the opinion of the licensing authorities, an adequate number of places” for the public to purchase alcoholic beverages.<sup>142</sup> An LLA may consider several factors in determining whether a transfer is in the public interest. This includes: (i) the proximity to a school; (ii) the

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<sup>141</sup> See MASS. GEN. LAWS ch. 138 (2017). ABCC also has exclusive responsibility for the issuance of any license that is statewide in nature such as Manufacturers (Section 19), Salesmen (Section 19A), Farmer-Winery (Section 19B), Farmer-Brewery (Section 19C), Pub Brewery (Section 19D), Farmer-Distillery (Section 19E), and Direct Shippers (Section 17F) of alcohol to Massachusetts customers.

<sup>142</sup> MASS. GEN. LAWS ch. 138, § 23 (2017).

number of existing dispensaries in a locality; (ii) views of the inhabitants of the locality where a license is sought; (iv) traffic; (v) noise; (vi) size; (vii) the sort of operation that carries the license; and (viii) the reputation of the applicant. An LLA cannot consider competition with existing licensed establishments.<sup>143</sup>

In addition, whether the LLA is in a quota or non-quota city makes a difference as discussed below. If the LLA approves the local license, the application is sent to ABCC for further review, which includes a financial background and CORI check of the applicant. If the LLA denies the local license application, the prospective licensee can appeal that decision to ABCC and request a hearing.<sup>144</sup> On appeal, ABCC reviews the LLA decision based upon the testimony and documents presented to LLA. ABCC gives “reasonable deference to the discretion of the local authorities” and determines whether “the reasons given by the local authorities are based on an error of law or are reflective of arbitrary or capricious action.”<sup>145</sup> In either case, ABCC either approves, denies, or remands the application to the LLA for further consideration. If a licensee’s request for a license is denied after ABCC appeal and remand to the LLA, the licensee may file a lawsuit against the LLA.<sup>146</sup>

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<sup>143</sup> See *Great Atl. & Pac. Tea Co. v. Bd. of License Comm’rs of Springfield*, 13 Mass. App. Ct. 268, 271 (1982), rev’d, 387 Mass. 833 (1983).

<sup>144</sup> See MASS. GEN. LAWS ch. 138, § 67 (governing appeals).

<sup>145</sup> See *Great Atlantic & Pacific Tea Co., Inc. v. Board of License Commissioners of Springfield*, 387 Mass. 833, 837, 838 (1983); see also *Ballarin, Inc. v. Licensing Board of Boston*, 49 Mass. App. Ct. 506, 512 (2000) (when reviewing the LLA’s authority, court does not assess the evidence but rather “examine the record for errors of law or abuse of discretion that add up to arbitrary and capricious decision-making”).

<sup>146</sup> See MASS. GEN. LAWS ch. 138, § 67 (2017).

(a) Concerns About Quota Limits on LicensesThe Number of Available Licenses and Health and Safety Concerns

As discussed in Section V.E *infra*, cities and towns subject to the quota limitations first established in 1933<sup>147</sup> can only issue so many Section 12<sup>148</sup> and Section 15<sup>149</sup> licenses. Thus, in 2017, we confront the issue whether the 1933 population density model remains practical particularly where you might have a disproportionate number of licenses in a small area of town. This may result in a higher alcohol density ratio for that area of town but that area may also be a tourist destination and/or economic center. Given the number of cities and towns filing legislation seeking more licenses than what is permitted by Mass. Gen. Laws ch. 138, § 17, it appears that the 1933 density formula no longer makes sense from the perspective of LLAs and those towns, cities and municipalities seeking more licenses.

Quota critics further argue that the legislative process to secure additional licenses is time consuming, unnecessary, and often results in a loss of real estate development projects seeking alcohol licenses. During Town Hall forums, town officials advised the TF that projects sometime re-locate to a neighboring town with available licenses. The town without available licensees loses development opportunities. Quota critics further contend that local towns and

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<sup>147</sup> The quota formula controls the number of licenses using population density of one Section 12 license for every 1,000 population unit and one Section 15 license for every 5,000 population unit. In other words, for every 5,000 residents, a city can have one liquor store (Section 15 ), and for every 1,000 residents, it can have one restaurant that serves alcohol. MASS. GEN. LAWS ch. 138, § 17 (2017).

<sup>148</sup> MASS. GEN. LAWS ch. 138, § 12, authorizes alcohol to be consumed on premises such as a restaurants, bars, hotels, clubs, veteran’s clubs, continuing care retirement communities and taverns. MASS. GEN. LAWS ch. 138, § 12 (2017).

<sup>149</sup> MASS. GEN. LAWS ch. 138, § 15, authorizes the licensees to sell alcohol to be consumed off premises: “package goods” stores, convenience stores, supermarkets, grocery stores, food stores, wine shops, and so-called “big box retailers” such as warehouse clubs. MASS. GEN. LAWS ch. 138, § 15 (2017).

communities are in the best position to determine the appropriate population density per number of licenses, and they should not be bound by 1933 standards.

The quota system is statutorily designed to ensure that cities and towns do not have too many liquor stores or bars. The HSAs directed the TF to studies showing that high alcohol density areas usually have higher rates of violent crimes, impaired driving, and driving fatalities. By controlling the availability of alcohol in these areas, cities and towns can reduce crime and violence.<sup>150</sup> Accordingly, ABCC's review of all license applications including those obtained through the legislative process and decisions whether to grant licensees is necessary to make certain that the licenses are properly issued.

(b) The Number of Licenses and their Monetary Value

Quota cities and towns seeking more control over the increasing number of licenses to issue for economic reasons are faced with an additional challenge. Existing license holders (restaurants and liquor store owners) often oppose them. They argue that permitting a city or town to issue licenses beyond the number permitted by the quota calculation dilutes and decreases the value of their licenses, some of which cost hundreds of thousands of dollars. Licensees often rely on the ability to sell their licenses as a means to recoup their investments and others plan to sell their licenses to fund retirement. They point to what has happened to owners of taxi medallions with the influx of ride sharing companies such as Uber and Lyft as a

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<sup>150</sup> See *Exhibit 8*, Pacific Institute for Research and Evaluation Report: Alcohol and Violent Crime: What is the Connection? What Can Be Done?.

concern. Still others pledge their licenses to raise money and if the value of the license decreases, they could default on their loans.<sup>151</sup>

While we recognize the licensees' position concerning the value of their license, there are several counterpoints worth noting. First, under the plain language of Section 23, licensees do not have any legal interest in the license.<sup>152</sup> Although license holders often sell or transfer licenses for significant sums with ABCC approval, they do not own them in the traditional sense of ownership.<sup>153</sup> The sale or transfer of a license is contingent on ABCC's approval, which demands that the proposed licensee meet all requirements.<sup>154</sup> Second, cities and towns have the right, using the Home Rule Petition process, to seek legislative approval to issue additional licenses, and these requests are almost always successful. Thus, as a practical matter, cities and towns can and often do issue additional licenses, which can have the practical effect of diluting the value of existing licenses.<sup>155</sup> Third, cities and towns seeking to issue additional licenses hold public hearings where interested parties are afforded the opportunity to provide input and oppose the issuance. Fourth, some cities and towns often provide a multi-year schedule showing the number and type of licenses to issue each year, which allows existing licensees to plan ahead. Fifth, licensees have likely depreciated the value of the license over time for tax purposes, and thus have recouped their investment.

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<sup>151</sup> See MASS. GEN. LAWS ch. 138, § 23B (2017) (governing transfers of licenses). There is an inherent inconsistency as it relates to the sale of liquor licenses. On one hand, the licensee has no ownership interest in the license (Section 23) but yet, ABCC approves the sale or transfer of license (Section 23B), and approves licensees pledging the license as loan collateral (Section 22A). Licensees often capture the value of their liquor license as a component of "good will."

<sup>152</sup> MASS. GEN. LAWS ch. 138, § 23 (2017) (governing property interests in licenses).

<sup>153</sup> *Id.*

<sup>154</sup> MASS. GEN. LAWS ch. 138, § 15A (2017).

<sup>155</sup> *But see* MASS. GEN. LAWS ch. 138, § 17 (governing number of licenses to be issued).

Provided that ABCC is able to employ additional investigators to monitor the compliance of all licensees under Mass. Gen. Laws ch. 138, it seems reasonable to permit LLAs to have more control of the issuance of retail licenses in their communities. Furthermore, the fact that some licensees may see the value of their license reduced over time is not a sufficient reason to prohibit additional licenses. The current process of requiring LLAs to hold public hearings and the TF recommendations to schedule the phase-in of licenses over time provides existing licensees wishing to sell or transfer their licenses an opportunity to plan accordingly.

To address the health and safety concerns relating to increasing the number of outlets to purchase alcohol beyond what is permitted under Section 17, LLAs and ABCC should require applicants to provide a health and safety assessment that addresses alcohol density concerns including the potential for negative health and safety outcomes in that particular community if additional liquor stores and bars are allowed to open. The health and safety assessment should include detailed information specific to the community including statistics relating to drunk and impaired driving, underage and teenage drinking, alcohol-related crimes against property, alcohol-related acts of violence, and whether there are schools, colleges or universities in the area. A discussion of these issues should be part of the public hearing process.

***Recommendation 1: That there be no changes to the current process of municipalities requesting additional licenses through the Home Rule Petition Process;***

***Recommendation 2: Amend Mass. Gen. Laws ch. 138, § 17 to provide that a city or town seeking additional licenses must include in the Home Rule Petition legislation the following information: (i) the number of licenses requested; (ii) how many Section 12 or Section 15 licenses; and (iii) how many licenses (and types) will issue each year; and***

***Recommendation 3: Amend Mass. Gen. Laws ch. 138, § 17 to provide that cities, towns and***

***municipalities issuing Section 12 and Section 15 licenses must require applicants to include a community health and safety report as part of the application process and public hearing process. The public health and safety assessment should address alcohol density concerns, advertising to minors, potential for increase in crime and a plan to address the licensee's particular compliance with the existing laws and any conditions attached to the issuance of the license.***

(c) Supermarket/Grocery Stores

Supermarket and grocery store representatives claimed during public forums that they should be permitted to sell alcohol in all of their stores and not just a few because they operate stores in several cities across the Commonwealth. Mass. Gen. Laws ch. 138, § 15 caps the number of licenses per grocery store or retail store currently at 7 statewide and it will be increased to nine in 2020. They argue that it no longer makes sense to limit where consumers can buy alcohol. For many consumers, it is undesirable to buy food at the grocery store and then travel (in some cases) to another location to buy beer and wine. Opponents fear that local “mom and pop” liquor stores will be forced out of business. HSAs advised the TF that selling alcohol in grocery stores and supermarkets sends the wrong message to children, young adults and alcohol dependent persons. HSAs also advised the TF that supermarkets will use non-alcohol products as loss leaders to attract consumers to their stores to buy alcohol. Local liquor stores also oppose expanding the capped number of stores arguing that they cannot offer the same “loss leader products” to drive consumers to their stores.

We recommend herein that quota cities and towns (subject to ABCC review and approval) should be permitted to decide the number of licenses in their community. The same

should be true for grocery stores and supermarkets. However, we also recommend allowing cities and towns to make these decisions after 2020 when the next step-up takes effect. To address the alcohol marketing concern in grocery stores and supermarkets, we recommend requiring all stores, depending on the square footage and subject to ABCC's review, to store and sell alcohol in separate areas preferably with a separate door entrance and separate from the general areas to purchase non-alcohol products.

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 15 to provide that in 2021 LLAs will have authority to decide the number of liquor licenses issued to grocery stores and supermarkets in their community subject to ABCC's review; and***

***Recommendation 2: Amend Mass. Gen. Laws ch. 138, § 15 to provide that ABCC has the authority to require grocery stores and supermarkets to designate a separate and/or particular area to sell alcohol within the licensed building.***

## 2. Licensing Process

Interested parties have raised concerns over the licensing process and in particular, 4 general concerns: (i) whether the criminal record automatic disqualification rule should be replaced with a "good character" test; (ii) whether non-U.S. citizens should be permitted to hold a liquor license; (iii) whether license and fraud prevention standards need revision; and (iv) whether the Criminal Offenders Record Information ("CORI") check should be completed as part of the application review by LLAs, before ABCC conducts its review.



(a) Automatic Bar for Criminal Convictions Should Be Amended

Presently, anyone seeking a license to manage a restaurant or to own a liquor store license is subject to certain automatic bars that prohibit them from obtaining such a licensed entity if they have a criminal record (the “Automatic Bars”). Pursuant to Mass. Gen. Laws ch. 138, § 15, which governs off-premises liquor store licenses, no individual may have an interest in a Section 15 license if he or she has been “convicted of a felony.”<sup>156</sup> In contrast, the Law provides that no individual may have any interest in a restaurant liquor license if he or she has been convicted of “a violation of a federal or state narcotic drugs law.”<sup>157</sup> Accordingly, in Massachusetts, someone who was convicted twenty years ago of possession of marijuana, (before recreational use became lawful in Massachusetts last year), is automatically barred from having an interest in a restaurant’s liquor license, but someone recently convicted of numerous other felonies is not so automatically barred. And, there are no such automatic bars for applicants with criminal backgrounds seeking a distribution or wholesalers license under Mass. Gen. Laws ch. 138, § 18.<sup>158</sup> Assuming that the applicant is not automatically barred, ABCC may nonetheless deny the application if it subjectively determines that the proposed license holder is not a person “of responsible character.”<sup>159</sup> It, therefore, seems just and reasonable to remove the automatic bars for license applicants and instead review all applications under a “good character” standard. This would permit ABCC to take into consideration an applicant’s entire background and consider whether an applicant with a prior

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<sup>156</sup> MASS. GEN. LAWS ch. 138, § 15 (2017).

<sup>157</sup> *Id.*

<sup>158</sup> MASS. GEN. LAWS ch. 138, §18 (2017).

<sup>159</sup> MASS. GEN. LAWS ch. 138, §§ 19B, 19C, 19D.

conviction has been rehabilitated. If an applicant has a prior criminal record and ABCC determines to issue a license, ABCC should make written findings supporting that decision.

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 12 and § 15 to permit ABCC to conduct a “good character and fitness” test for all applicants seeking licenses. If an applicant has a prior criminal record and ABCC determines to issue a license, ABCC should make written findings supporting the decision; and***

***Recommendation 2: Ideally, an initial CORI check at the local level rather than on review by ABCC is more efficient and can reduce the ABCC administrative processing time by an estimated 4 to 5 weeks. LLAs should consider providing applicants with the option to have the background and criminal record check performed at the local level by the appropriate agency or department and before the application is reviewed and submitted to ABCC for review. The LLA may also want to consider charging an applicant a fee handler for the CORI review.***

(b) Automatic Bar of Non-U.S. Citizen Should Be Amended

Mass. Gen. Laws ch. 138, § 15 and 204 Mass. Code. Regs. 2.01-.22, and Mass. Gen. Laws ch. 138, § 26 require that all directors and individuals be U.S. citizens even though non-U.S. citizens can own all of the stock in a corporation holding a license.<sup>160</sup> For example, the restaurant manager must be a U.S. citizen and the majority of the corporation directors cannot be resident aliens. Our country is increasingly racially and ethnically diverse with people coming from around the world to live in our communities. Indeed, many Massachusetts’ cities have substantial minority populations. Boston is a “minority majority city” where over 118 different languages are spoken. Included within this influx of immigrants are business owners and leaders who want to own restaurants and bars, and contribute to and invest in our

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<sup>160</sup> MASS. GEN. LAWS ch. 138, § 15 (2017); 204 MASS. CODE REGS. 2.01-.22 (2017); MASS. GEN. LAWS ch. 138, § 26 (2017).

communities. Other states such as New Hampshire permit registered resident aliens and Vermont permits lawful permanent residents to apply for a liquor license. In New York, citizenship is not required.<sup>161</sup> The Commonwealth should do the same.

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 12 and § 15 to permit that all non-U.S. citizens with federally approved immigration status be eligible to hold an interest in a liquor license provided they meet all other statutory requirements and have a social security number or other U.S. federal, state or locally issued means to permit ABCC to conduct a CORI and criminal background check. ABCC should promulgate regulations establishing eligibility requirements.***

#### **D. Local Economic Development**

To address economic development,<sup>162</sup> the TF considered: (i) whether Massachusetts should offer economic incentives to spur growth in the farmer brewery market; (ii) the type of licenses that ABCC should issue – “all alcohol”; (iii) the equitable distribution of licenses and restrictions on new licenses; and (iv) whether ABCC should have discretion to reasonably increase the scope of Section 12 licenses and Sections 19B, 19C and 19D to contiguous areas. The TF also considered the many positive developments associated with the brewery industry such as re-purposing of old factory buildings in downtown areas revitalizing communities like Framingham, Hudson, and Waltham, and the creation of many well-paying skilled jobs. This section reviews of the types of Section 12 licenses issued, how the licenses are distributed within a city or town, and whether to allow the scope of a Section 12 license to be expanded.

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<sup>161</sup> RSA 178:3 (2017) (in New Hampshire, registered resident aliens may obtain a liquor license); 7 V.S.A. § 2 (2017) (in Vermont lawful permanent residents may apply for a license); NY CLS Al Bev. § 126 (2017) (in New York lawful permanent residents may apply for a license).

<sup>162</sup> We addressed the number of licenses per city or town in Section VI.C.1.(a) but address here other related issues.

1. Offering of Distinct Liquor Licenses to Restaurants and Bars Should Be Updated

LLAs issue different types of alcohol licenses such as an “all alcohol licensee,” beer and wine only, beer only, and wine only. Mass. Gen. Laws ch. 138, § 17 provides that under the Quota System cities and towns may issue a fixed number of all alcohol licenses. In addition to the fixed number of all alcohol licenses, LLAs may also issue a limited number of beer and wine only, or beer only, or wine only licenses irrespective of population. The additional beer and/or wine only licenses are restricted but are equally as difficult to acquire. Currently, some restaurants with only a “beer and wine” license must wait for “all alcohol” licenses to become available in their community. To promote economic development, all existing holders of a beer and wine only, beer only, wine only, or spirits only licenses should be offered an “all alcohol” license. Going forward, all new licensees should be offered an “all alcohol” option but can opt for a lesser included license such as beer only for a lower annual fee. As we mentioned in Section VI.1.(a) relating the value of existing license, there is a perceived economic disadvantage to those holding a beer only, wine only, or beer and wine only licenses but wish to hold an “all alcohol” license. In each instance, the license holder is selling alcohol, and the differences among beer, wine and spirits are no longer sufficient to justify limiting the number of Section 12 retail licenses by such categories.

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 17 to provide that Section 12 applicants are entitled to “all alcohol” licenses but can opt for beer only, wine only, spirits only, or any combination for a lower fee to be established by ABCC; and***

***Recommendation 2: Permit existing holders of beer only, wine only or any combination to seek an “all alcohol license” from the LLA for an additional fee notwithstanding any existing quota limitations under Mass. Gen. Laws ch. 138, § 17.***

## 2. Equitable Distribution of Licenses Within Cities and Towns Should Be Revised

Within cities and towns governed by the quota system, there are competing interests between owners of existing restaurants, bars and liquor stores and those looking to become owners. This raises two issues: how the existing licensees have been historically distributed within the city or town, and how existing licensees' businesses will be impacted if additional licenses are issued.<sup>163</sup> Mass. Gen. Laws ch. 138, § 17 describes the formula to calculate Section 12 and Section 15 licenses but does not address how they are to be distributed geographically.<sup>164</sup> Existing licensees claim that issuing new licenses in their community causes the value of their existing licenses to decrease. Those would-be license owners argue that the current licensees have had a strategic market advantage for years and should expect the value of their licenses to decrease over time. Mass. Gen. Laws ch. 138, § 23 provides that no licensee has "an ownership interest in a license."<sup>165</sup>

First, consider the equitable distribution of liquor licenses and restricted licenses. Recent reports and news stories suggest that liquor licenses have not been fairly distributed within Boston and Cambridge. In contrast, there is data supporting the notion that a majority of liquor licenses in Boston are located in the neighborhoods of Back Bay, Kenmore, North End, and South End. They are disproportionate to other areas of town. In partial response to this concern, Boston now offers restricted licenses "tied to the real estate" or non-transferable to

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<sup>163</sup> The value of a particular license may be influenced by several factors including the location of the existing license – where is the restaurant, bar, grocery store or liquor store located? A new license issued in Roxbury might not cause the value of a liquor license to decrease in a restaurant located on Beacon Hill, Kenmore, Back Bay or the North End.

<sup>164</sup> MASS. GEN. LAWS ch. 138, § 17 (2017).

<sup>165</sup> MASS. GEN. LAWS ch. 138, § 23 (2017).

promote economic development in certain areas that have few liquor licenses for restaurants and bars.<sup>166 167</sup>

These restricted licenses are intended to spur economic development in certain areas of Boston that do not currently have many licensed establishments, if any. However, these restricted licenses (even if free of charge) may actually create inequities and put owners at unnecessary financial risk. For example, a business owner might pursue a restricted liquor license to open a restaurant with the intent that the business thrives and becomes a financial success. However, if that business begins to fail, the restricted or non-transferable license prevents the owner from moving the restaurant to another location or selling the license to recoup part of one's investment. The unintended consequence is that the owner must take an additional financial risk if the restaurant fails because Section 17 provides ABCC with no discretion to permit the sale or transfer of that license.<sup>168</sup> And, investors may decide not to invest in the project for that reason alone. That scenario seems to run counter to the overall goal of promoting economic growth in disadvantaged areas.

The TF is also mindful that licenses issued for development in one area of town should not be acquired with the intention of selling the license to someone in an area of town not

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<sup>166</sup> MASS. GEN. LAWS ch. 138, § 17 (2017) (“ . . . In addition to the licenses granted pursuant to the preceding 2 paragraphs, the licensing board of the City of Boston may grant up to 30 additional licenses for the sale of all alcoholic beverages to be drunk on the premises and up to 10 additional licenses for the sale of wines and malt beverages to be drunk on the premises in either the zoning districts of Dorchester, East Boston, Hyde Park, Jamaica Plain, Mattapan, Mission Hill and Roxbury as designated by the Boston Zoning Commission or in the areas designated by the Boston Redevelopment Authority as main street districts. A license granted pursuant to this paragraph shall be nontransferable to any other person, corporation or organization and shall be clearly marked ‘nontransferable’ and ‘neighborhood restricted’ on its face.”).

<sup>167</sup> See Janelle Nanos, Dan Adams, *Cheaper liquor licenses? Not so fast, restaurateurs say*, THE BOSTON GLOBE (Aug. 20, 2017), <https://www.bostonglobe.com/metro/2017/08/20/liquorlicense/5Li2luzL6OjgZgcOOSpBE... 12/14/2017>.

<sup>168</sup> *Id.*

designated for economic development. To address the concern that a would-be owner may pursue a liquor license in an area targeted for economic development with the intention of selling or “flipping the license” to a third-party, it seems reasonable to require such a licensee to establish to ABCC’s satisfaction “reasonable cause” before one can transfer or sell a restricted liquor license within the first eighteen months of issuance.

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 17 to provide that a restricted license may not be sold or transferred within the first 18 months without establishing “good cause” as determined by ABCC which shall include economic reasons, and after 18 months, ABCC shall have the authority to approve a sale or transfer as provided for in Mass. Gen. Laws ch. 138, § 23 or § 23B.***

### 3. Contiguous Space Requirements

Retail licensees want more flexibility and less restrictions on the scope of their licenses especially during the summer months when they wish to offer outdoor seating to customers. Typically, a Section 12 licensee is “granted a license to sell alcohol in a defined location and/or space.”<sup>169</sup> Mass. Gen. Laws ch. 138, § 12 should be amended to permit ABCC to allow a licensee to expand the area(s) to sell alcohol such as seasonal outdoor patios that are not contiguous to the building and might be separated by a public way.<sup>170</sup> The expansion of the approved footprint of an existing license should be based upon a finding of a reasonable relationship between the licensed property and the non-contiguous property at issue. ABCC should have discretion to expand the Section 12 license to non-contiguous spaces based upon certain terms and conditions.

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<sup>169</sup> MASS. GEN. LAWS ch. 138, § 12 (2017).

<sup>170</sup> *Id.*

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 12 to provide ABCC with discretion to decide if the area covered by a license can be reasonably extended to include a non-contiguous property.***

**E. Public Health and Safety.**

**1. Background**

The TF is charged not only with making recommendations to support economic development but also to improve the health and safety outcomes associated with the sale of alcohol. For example, everyone involved in this process is concerned about underage binge drinking, development of alcohol dependency, and related emotional and physical ailments as they get older. Everyone is also concerned about automobile accidents, crimes, and violence related to alcohol abuse.

The TF agrees that reducing binge drinking, the excessive consumption of alcohol especially by minors, and alcohol-induced sexual assaults are important public policy objectives. HSAs provided the TF with insight into strategies that can be employed to address these concerns. The first is the policy bucket, and the other, the resource bucket. The policy bucket suggests changes to the ways business is conducted such as requiring an applicant to provide the LLAs and ABCC with public health and safety data on the location where the proposed bar or liquor store is to be located. The resource bucket involves making certain there are funds available so that ABCC can conduct more investigations, collect data from our schools and colleges on alcohol consumption, and enhance counseling and treatment programs.



## 2. Overview: Alcohol Consumption, Health and Safety Concerns, and Public Policy

Decades of research steeped in public health and prevention science have produced evidence-based alcohol policy practices that reduce the harms associated with underage alcohol use and excessive drinking. The efforts to modernize the Commonwealth's liquor laws provide a unique opportunity to implement policies that will improve public health and safety.<sup>171</sup> The Public Health WG developed a series of objectives to consider:

- Lower/eliminate fatalities/injuries/damage associated with drunk driving.<sup>172</sup>
- Lower/eliminate alcohol abuse and dependence.
- Lower/eliminate underage drinking.
- Lower/eliminate crime and other public safety issues associated with alcohol abuse.
- Enhance public awareness of the damages of alcohol abuse and dependence.

HSA's consistently make 4 points. First, ABCC needs more resources to enforce the existing laws to prevent the sale of alcohol to minors and intoxicated individuals. Second, better state-wide education is needed about the dangers of alcohol at all ages, beginning as early as middle school. Third, the laws governing alcohol advertisements, pricing and availability need to change. Fourth, public policy strategies should be employed, such as raising excise taxes and limiting alcohol density to reduce consumption and availability.

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<sup>171</sup> The public health burden caused by alcohol misuse has significant monetary repercussions for federal and state governments, costing almost \$250 billion in 2010. See Sacks et al., *supra* note 71.

<sup>172</sup> See National Center for Statistics and Analysis, *2014 Crash Data Key Findings* (Traffic Safety Facts Crash Stat. Report No. DOT HS 812 219), Washington, D.C.: National Highway Traffic Safety Administration, 2015. Available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812219> [<https://perma.cc/EB82-AHYD>].

It seems reasonably clear that increased enforcement of existing laws by local police and ABCC investigators play an important role in reducing the risks associated with the consumption of alcohol by minors, a vulnerable group.<sup>173</sup> The Center for Disease Control makes certain recommendations in an article entitled, *Alcohol – Excessive Consumption: Enhanced Enforcement of Laws Prohibiting Sales to Minors*:

. . . Enhanced enforcement of laws prohibiting sale of alcohol to minors, on the basis of sufficient evidence of effectiveness in limiting underage alcohol purchases . . .

Enhanced enforcement programs initiate or increase the frequency of retailer compliance checks for laws against the sale of alcohol to minors in a community. Retailer compliance checks, or “sting operations” . . . and violators receive legal or administrative sanctions . . .

Enhanced enforcement programs are often conducted as part of multicomponent, community-based efforts . . . include strategies to increase perceived risk of detection by publicizing the increased enforcement activities and cautioning proprietors against selling alcohol to minors. These messages can be delivered using either mass media or by sending letters to all local alcohol retailers.<sup>174</sup>

Accordingly, ABCC must enhance its enforcement efforts to better control underage drinking<sup>175</sup> particularly where there are restaurants, bars and liquors stores located near the

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<sup>173</sup> ABCC’s Investigation and Enforcement Division investigators are commissioned pursuant to MASS. GEN. LAWS ch. 10 § 72, and are authorized to enforce the Liquor Control Act under MASS. GEN. LAWS ch. 128 § 56 (2017).

<sup>174</sup> Community Preventative Services Task Force, *Alcohol – Excessive Consumption: Enhanced Enforcement of Laws Prohibiting Sales to Minors*, THE COMMUNITY GUIDE (Feb. 2006), <https://www.thecommunityguide.org/findings/alcohol-excessive-consumption-enhanced-enforcement-laws-prohibiting-sales-minors>[ <https://perma.cc/BLX4-2Q4P>].

<sup>175</sup> See *Exhibit 11*, 2016 ABCC Annual Report, Investigation and Enforcement Division (“[i]n 2016, 298 complaints filed with the Commission were investigated and closed. The Enforcement Division receives complaints from the general public, municipal and state police, state agencies, as well as various public interest groups. These complaints include, but are not limited to underage drinking, sale of alcohol to intoxicated individuals, illegal gambling activity, illegal alcoholic beverages and illegal narcotics activity.”).

261 public and private colleges and universities located in the Commonwealth.<sup>176</sup> For example, Mass. Gen. Laws ch. 138, § 34A prohibits selling or giving alcohol to someone under 21 years old. ABCC investigators are skilled in handling these types of enforcement investigations especially those delicate situations involving underage high school and college students.<sup>177</sup> The goal is not to punish the students but to curtail such alcohol purchases through increased enforcement activities.

College students are known to binge drink and to otherwise drink in excess especially when inexpensive alcohol is available.<sup>178</sup> The public policy issue here centers on the availability of cheap alcohol for teens and college students to purchase. Increasing the price of alcohol just enough so that students will buy and consume less because the price is too high makes sense. There are also compelling underlying public policy reasons to limit the availability of cheap alcohol. An increase in the consumption of alcohol increases the likelihood of crime, fights, and violence, especially against women on college campuses, including sexual assaults.<sup>179</sup> HSAs

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<sup>176</sup> *Id.* (“Operation Safe Campus is conducted at bars and liquor stores in college communities over a 6-week period at the beginning of each school year. Operation Safe Prom and Graduation is conducted at liquor stores throughout the commonwealth over an 8-week period during May and June. Operation Safe Summer is conducted at bars and liquor stores in summer communities over a 6-week period during July and August. Operations Safe Holidays is conducted at bars throughout the commonwealth from Thanksgiving through December 31st.”).

<sup>177</sup> Morford et al., *supra* note 60. See also Nat’l Highway Traffic Safety Admin., *Source Investigation: A Tool to Combat Impaired Driving* (November 2011).

<sup>178</sup> Ctr. for Disease Control and Prevention, *supra* note 69 (“What is excessive drinking? Excessive drinking includes binge drinking, heavy drinking, and any drinking by pregnant women or people younger than age 21. Binge drinking, the most common form of excessive drinking, is defined as consuming [f]or women, 4 or more drinks during a single occasion. For men, 5 or more drinks during a single occasion. Heavy drinking is defined as consuming. For women, 8 or more drinks per week. For men, 15 or more drinks per week.”).

<sup>179</sup> See *Exhibit 8*, Pacific Institute for Research and Evaluation Report: Alcohol and Violent Crime: What is the Connection? What Can Be Done?.

contend that one of the most effective ways to reduce the demand and consumption of alcohol by consumers includes increasing the excise tax on the sale of alcohol.<sup>180</sup>

### 3. Research and Data on Underage Drinking

During Town Hall forums, HSAs advised the TF that the general public may not have sufficient information to fully appreciate the health related problems associated with alcohol consumption as it relates to underage drinking. The TF considered whether: (i) there are adequate education plans for parents, teachers, and students about the dangers of alcohol; and (ii) if we actually know the extent to which minors are exposed to alcohol. To properly examine this issue, the Commonwealth must have reliable data on high school and middle school students' access to and consumption of alcohol on an ongoing basis so that effective strategies can be designed and implemented.

***Recommendation 1: Implement a statewide program through the appropriate state and local vehicles to conduct an annual survey of all Massachusetts students in grades six to twelve to track and monitor their exposure to and consumption of alcohol, and use the data to develop preventative strategies;***

***Recommendation 2: Establish an ABCC Health and Education Fund with designated funding from increased excise taxes, and then make those funds available to non-profit organizations providing education and treatment programs via a grant process; and***

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<sup>180</sup> See *Exhibit 10*, The Effectiveness of Tax Policy Interventions for Reducing Excessive Alcohol Consumption and Related Harms, at 217-218. The article provides in pertinent part:

“. . . Based on economic theory, therefore, increasing the price of alcohol would be expected to lower alcohol consumption. Alcohol taxes are promulgated primarily by federal and state governments, but can be instituted at the local or county level . . . increasing alcohol prices by raising alcohol excise taxes is among the most effective means of reducing excessive drinking and alcohol-related harms . . . . These recommendations are based on studies showing that increased alcohol taxes are associated with decreased overall consumption, decreased youth consumption, decreased youth binge drinking, reduced alcohol-related motor-vehicle crashes, reduced mortality from liver cirrhosis, and reduced violence . . . .”

*Id.*

***Recommendation 3: Ensure that individuals, organizations and groups that are contracted by schools to provide alcohol and substance use education (including counseling and treatment) are experienced and have the proper credentials and/or qualifications.***

4. Advertising and Marketing

During Town Hall forums, HSAs provided insight regarding how best to limit exposure of alcohol to minors by changing existing regulations and statutes relating to marketing and advertising. For example, a concerned parent noted during a Town Hall forum that she attended a farmers' market where beer and wine was sold next to activities geared towards children. She questioned whether farmers' markets should have adult-only areas if alcohol must be sold. Another parent questioned why a restaurant is allowed to serve minors beverages in alcohol-labeled glassware. HSAs offered additional concerns to the TF relating to online and social media advertising, newspaper advertisements, and direct-mail advertising of alcohol for sale.

A 2012 report entitled, *State Laws to Reduce the Impact of Alcohol Marketing on Youth: Current Status and Model Policies*, published by the Center on Alcohol Marketing and Youth and Johns Hopkins Bloomberg School of Public Health, offers that, "[t]he appeal of alcohol to underage youth can also be limited by reducing youth exposure to alcohol advertising and marketing."<sup>181</sup> The report centers its review on the regulation of measured media (radio, television, print, etc.) and unmeasured media (giveaways, prizes, event sponsorships, etc.).<sup>182</sup>

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<sup>181</sup> Mosher et al., *supra* note 65.

<sup>182</sup> *Id.*

The report recognizes the complexity of legal issues governing this area but suggests best practices in eight categories: *False or Misleading; Targeting Minors; Electronic Media; Outdoor Ads; Retail Windows; College Campuses; Civic Sponsoring Events; and Promoting Giveaways.*

The report ranks all states in each category. Massachusetts is recognized for best practices in the area of “False or Misleading” advertising but has no grade in any of the other 7 categories, which is not unusual. Nonetheless, the report offers suggestions for the Commonwealth to consider moving forward. The Commonwealth may benefit from forming a separate Task Force to address these issues.

***Recommendation 1: Form a Task Force to address “measured” and “unmeasured” marketing and advertising of alcohol to youth, and develop guidelines to ensure that advertising is targeted to those of legal drinking age; and***

***Recommendation 2: When issuing an alcohol permit under Mass. Gen. Laws ch. 138, § 14 (Special Licensees) and § 15F (Special Farmer Winery Tastings), ABCC should regularly advise licensees to be mindful of where alcohol is sold to minimize the exposure to minors when feasible.***

#### 5. Non-Profit Funding Obstacles

During Town Hall forums, the HSAs advised the TF that health care advocates offering alcohol prevention and recovery services find it difficult to raise sufficient funds to meet the present needs. Non-profits face funding obstacles because their federal funding sources often prohibit them from accepting donations and from the alcohol manufacturers or distributors,

and from lobbying for public policy changes to reduce the consumption of alcoholic beverages.<sup>183</sup>

The TF considered how other industries provide funding to non-profit organizations. For example, attorneys are not allowed to earn interest on client accounts that are being held temporarily. The interest must be deposited into an IOLTA account. The funds from all active attorneys are distributed to the Massachusetts and Boston Bar Associations. They in turn have grants committees, which review funding requests from non-profit organizations providing legal services to needed groups. Perhaps, industry participants can be similarly encouraged or required to make a contribution and, the funds collected could be distributed via an ABCC Grants committee to non-profit organizations state-wide.

***Recommendation 1: Form an ABCC Health and Education Fund by allocating a percentage of the excise tax increases to the Fund and distribute those funds via a grants committee to health and education non-profit organizations, and to conduct appropriate surveys; and***

***Recommendation 2: Permit contributions to the ABCC Health and Education Fund from industry participants.***

## 6. Technology and Alcohol Sales

During Town Hall forums, presenters suggested to the TF's that technology may be able to assist law enforcement and health care officials. The TF considered whether ABCC should be

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<sup>183</sup> Non-profit organizations play an important role in educating the public about: (i) the health dangers associated with the consumption of alcohol; (ii) underage drinking; (iii) the dangers of binge drinking; (iv) how best to safeguard intoxicated individuals; (v) increase in violence associated with alcohol consumption; (vi) tips on limiting the consumption of alcohol; (vii) use of ride services to counter drunk driving; and (viii) available health care services and treatment programs.

working with distributors and retail store owners to use “point of sale” information or a bar code on a bottle as a means to track alcohol purchases and in an effort to combat the sale of alcohol to minors. ABCC should continue to explore whether there are other technologies that might aid an investigation, and/or assist in deterring the sale of alcohol to intoxicated persons.

**Recommendation 1: ABCC should conduct research on how to improve enforcement efforts using technology.**

#### 7. Last Drink Data

The collection and use of “last drink data” by ABCC and law enforcement officials has been a concern expressed mostly by retailers during Town Hall forums. Data is often collected by police from an individual who has been detained or arrested for a violation of law because there is reason to believe that the person is under the influence of alcohol. HSAs believe this information should be provided to LLAs on a regular basis so that it can be considered when a licensee seeks renewal or modification of an existing license, or seeks an additional license. Opponents collecting this data offer that it may not be fair to accept the word of the suspect or defendant as to where he or she had their last drink especially if there is no electronic record such as credit card receipt to corroborate. Opponents further claim it is unfair to retailers for ABCC to the use this potentially unreliable data in making decisions concerning the potential suspension or revocation of their license. This raises the issue as to how should data be gathered and used by law enforcement or ABCC against the identified licensee.



***Recommendation 1: That the Treasurer establish a committee composed of retailers and law enforcement agents to develop policies and guidelines relating to the collection and use of “last drink data”.***

8. **ABCC Investigation In High-Alcohol Density Areas**

Studies have shown a connection between high alcohol outlet density areas and higher rates of alcohol-related crimes such as assaults, self-reported injuries, motor vehicle accidents, pedestrian collisions, domestic violence, and child abuse.<sup>184</sup> LLAs should require a health and safety assessment to examine alcohol outlet density as part of each application for a new retail liquor license or when an existing license is sold or transferred.<sup>185</sup> LLAs should be required to make findings that the issuance of the license will not adversely impact the community.

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 17 to require that each application include a health and safety assessment that addresses concerns raised by alcohol outlet density as described infra; and***

***Recommendation 2: Measure alcohol outlet density and consider limits on alcohol outlet density in overweighed communities.***

F. **ABCC Operations and Recommendations.**

The TF is charged with making recommendations to improve ABCC operations including how it issues licenses and oversees the compliance of licenses with existing laws and regulations with its current investigators and support staff. Investigators are charged with

<sup>184</sup> See Johns Hopkins Bloomberg School of Public Health, *supra* note 53 at 4-5.

<sup>185</sup> See Fone D et al., *Change in alcohol outlet density and alcohol-related harm to population health (CHALICE): a comprehensive record-linked database study in Wales*. 4 PUBLIC HEALTH RESEARCH (2016), Southampton (UK): NIHR Journals Library, (available at: <https://www.ncbi.nlm.nih.gov/books/NBK350757/>).

enforcing the Massachusetts Liquor Control Act (Mass. Gen. Laws ch. 138). By any measurement, ABCC is woefully underfunded and understaffed. Hiring more investigators is absolutely necessary to enhance and improve operations, and to improve health and safety outcomes. 45 states have more investigators per licensee than ABCC including the neighboring states of Connecticut, Maine, New Hampshire, New York, and Vermont.

The Commonwealth would greatly benefit from increasing the ABCC staff.<sup>186</sup> For instance, experts offer that one way to cut down on the incidents of alcohol misuse and drunk driving is to conduct “source investigations” as outlined in a 2016 report by the National Highway Traffic Safety Administration.<sup>187</sup> Did a restaurant serve the person while intoxicated? Did a liquor store sell alcohol to a minor? Did an adult supply a minor with alcohol? More investigators are needed for this purpose.

We are mindful that money is not always the solution but the combination of hiring additional investigators and implementing alcohol-related policy changes will reduce negative health and safety outcomes caused by alcohol. We suggest several ways to increase ABCC’s budget so it can accomplish these goals by hiring additional personnel and providing them with sufficient resources.

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<sup>186</sup> See *Exhibit 10*, The Effectiveness of Tax Policy Interventions for Reducing Excessive Alcohol Consumption and Related Harms. It is worth noting that ABCC Chief Investigator, Ted Mahony, is a nationally recognized expert. Mr. Mahony is often called upon to present or testify on industry best practices, many of which he developed over the course of his career. ABCC has the expertise and talent to grow the enforcement division so the Commonwealth can improve its monitoring and enforcement capabilities.

<sup>187</sup> Morford et al., *supra* note 60.

1. ABCC – Additional Staff Needed

In the 1980's, ABCC had 40 investigators but today it has only 14 investigators and 1 chief. ABCC does not have sufficient staff to review and investigate all of the complaints in a timely manner, to conduct other routine investigations that are consistent with best practices, or to review and investigate license applications. ABCC receives on average approximately 300 transaction requests per week consisting of registrations, applications, and renewals. ABCC also receives 320 to 500 complaints per year, which take on average of 4 to 6 weeks to investigate along with notices of thousands of other violations such as investigating sales of alcohol to minors. In addition, the introduction of casinos in Massachusetts will require ABCC to monitor licensees in the surrounding areas and the casinos, especially if they are permitted to sell alcohol until 4:00 a.m.<sup>188</sup>

A research report entitled, *The Role of Alcohol Beverage Control Agencies in the Enforcement and Adjudication of Alcohol Laws*, published by The National Highway Traffic Safety Administration, offers insight into how many investigators are needed based upon the number of retail licensees such as restaurants, bars, and liquor stores in Massachusetts.<sup>189</sup> On a nationwide basis, the average number of agents (investigators) that primarily enforce alcohol laws per state is 54 for an average of 14,112 retail licensees, or 1 agent for every 261 licensees.

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<sup>188</sup> The authority to permit casinos to sell alcoholic beverages on the gaming floor until 4:00 a.m. is within the sole jurisdiction of the Gaming Commission. We are mindful that the casinos have agreed to fund the hiring of at least one investigator but this is not sufficient. In addition, those investigators are not under the control and supervision of ABCC. See MASS. GEN. LAWS ch. 23K (2017).

<sup>189</sup> See *Exhibit 12*, *The Role of Alcohol Beverage Control Agencies in the Enforcement and Adjudication of Alcohol Laws*. The Report was published in 2011, and noted that some of the data may have been dated at that time. Thus, the rankings may vary today. We are also mindful that in some instances technology can improve and offset the need for employees. We have not been provided with any research nor are we aware of any technologies that effectively replace the responsibilities of investors to conduct investigations of licensee wrongdoing.

Massachusetts has 15 investigators for 12,000 retail licensees or 1 investigator for every 800 licensees. Using this data, to reach the average of 1 agent for every 261 licensees, Massachusetts needs to hire an additional 30 investigators.<sup>190</sup>

The chart below compares numbers and rates of investigators in Massachusetts to other select states.

State	Number Agents	Retail Licensees	Agents Per Licensee	2010 US Census Population by State (Ranking by Size)
Alabama	94	12,000	127 to 1	4,779,736 (23)
Connecticut	34	5,800	170 to 1	3,574,097 (29)
Georgia	40	16,000	400 to 1	9,687,653 (9)
Indiana	64	10,000	250 to 1	6,483,802 (15)
Kentucky	41	6,500	158 to 1	4,339,367 (26)
Louisiana	46	13,000	282 to 1	4,533,372 (25)
Maine	19	5,000	263 to 1	1,328,361 (41)
<b>Massachusetts</b>	<b>15</b>	<b>12,000</b>	<b>800 to 1</b>	<b>6,547,629 (14)</b>
Missouri	55	17,000	309 to 1	5,988,927 (18)
New Hampshire	23	43,000	173 to 1	1,316,470 (42)
North Carolina	115	17,000	149 to 1	9,535,483 (10)
Ohio	107	24,000	224 to 1	11,536,504 (7)
Oklahoma	34	1,865	59 to 1	3,751,351 (34)
Pennsylvania	178	17,649	99 to 1	12,702,379 (6)
Tennessee	37	16,000	432 to 1	6,346,105 (17)
Virginia	150	15,000	100 to 1	8,001,024 (12)
Vermont	18	2,554	141 to 1	625,741 (49)
Washington	85	11,000	129 to 1	6,724,540 (13)

ABCC should not only hire additional staff and investigators, but we also recommend the establishment of regional field investigative offices for the Cape and Islands, Worcester,

<sup>190</sup> See Exhibit 12, The Role of Alcohol Beverage Control Agencies in the Enforcement and Adjudication of Alcohol Laws, Appendix B.

Springfield, and north of Boston.<sup>191</sup> We estimate that annual cost for 30 additional investigators and 15 staff be to approximately \$3,150,000.<sup>192</sup>

***Recommendation 1: Increase ABCC's budget so it can employ at least an additional 30 investigators and 15 office personnel, and establish regional offices statewide.***

## 2. License Approval Process

ABCC's license approval process should be streamlined to increase efficiencies. On average, ABCC takes 4 to 6 weeks to decide whether to approve, deny or remand a license application because each applicant must be thoroughly vetted by investigators to be certain he or she is qualified. Increased ABCC personnel can reduce the processing time, which helps business owners plan accordingly. In addition, ABCC should create two divisions: (i) Application/License Review and (ii) Licensee Investigations. By designating investigators and personnel to particular areas of concentration, this will increase efficiencies and reduce the response time.

***Recommendation 1: ABCC should create 2 divisions: Application Review and Licensee Investigations to create efficiencies.***

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<sup>191</sup> ABCC's office is located at 239 Causeway Street, Boston, MA. The leased premises consist of 6,060 s.f. of space, and should ABCC hire additional investigators and staff, they would need additional space for operations.

<sup>192</sup> ABCC's average salary and benefit package per investigator is \$81,000 and per staff is \$48,000. Additional personnel would increase the budget the FY 2018 budget to \$5,491,489 - increase of \$3,150,000 over the FY 2017 budget of \$2,341,489. Approximately \$2.9 million of the recommended increase can be generated from increased license fees as discussed herein.

### 3. Sources of Additional Revenue for ABCC Operations

There are several effective ways to increase ABCC's funding, many of which are cost neutral and do not involve establishing a tax on alcohol sales to consumers. First, ABCC should be reimbursed for work performed for the benefit of other agencies.<sup>193</sup> Second, ABCC should be permitted to retain 25% of the fines it imposes upon licensees for violations of statutes and regulations. Third, ABCC should raise all license fees and fines to prudently reflect inflation as well as market conditions and should be permitted to retain that revenue.<sup>194</sup> Fourth, the Commonwealth should allocate sufficient funds from excise taxes paid on the sale of alcohol to retailers to cover any budget shortfall directly to ABCC and not the General Fund.

#### (a) Revenue for Inter-Agency Services

Like other state agencies, ABCC should be compensated for its efforts in assisting the Massachusetts Department of Revenue, Division of Industrial Accidents, the Lottery and other state agencies and divisions in the collection of delinquent tax payments from licensees. In 2016, ABCC's work on behalf of other state agencies totaled \$11.8 million.

To assist other agencies, ABCC sends notices to licensees who have not paid taxes timely, and then it schedules and holds hearings involving the delinquent licensees. Licensees often make the required tax payment to the Department of Revenue to avoid the suspension of his/her liquor license, and the licensee payment goes directly to the General Fund.<sup>195</sup> No portion of the collected sum (not interest, administrative fees, or late fees) is paid to ABCC for

<sup>193</sup> See *Exhibit 7*, ABCC Fiscal Year 2016 Annual Report.

<sup>194</sup> See *Exhibit 14*, Chart of Fines with Proposed Adjustments.

<sup>195</sup> See MASS. GEN. LAWS ch. 138, § 27 (2017).

its services. However, ABCC incurs considerable employee time and expense to bring administrative actions against delinquent licensees for the benefit of other agencies. ABCC should be reimbursed for its services either as a fixed percentage of the recovery or direct reimbursement for ABCC staff hours and costs. In 2016-2017, ABCC estimates that it handled 50 to 75 matters annually for other agencies and spends on average 3 staff hours per matter at cost of \$35 per hour. This costs ABCC an estimated \$15,750 to \$23,625 and prevents staff from performing other duties such as reviewing license applications, proposed transactions, and conducting investigations. The value of this time alone is estimated at \$20,000 annually.<sup>196</sup> In addition, if ABCC retained 10% of the sums collected in 2016, it would have generated revenue of \$1.18 million for operations.

***Recommendation 1: Permit ABCC to invoice state agencies using an hourly rate model for services rendered in actions against delinquent licensees; or alternatively;***

***Recommendation 2: Permit ABCC to charge a fixed percentage of 10% or the amount recovered by the Agency as a fee for services on behalf of state agencies against licensees.***

(b) Revenue From Non-Statutory Fines Against Licensees

Notwithstanding the fact ABCC has brought in some record fines in the last few years, none of the money goes to the agency to enhance its abilities to monitor licensee compliance.<sup>197</sup> For example, in fiscal year 2016, ABCC investigated and fined licensees

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<sup>196</sup> We note that the compliance rate of licensees who pay their taxes timely has increased in the past few years such that the demand for ABCC's services has decreased. Nonetheless, a reimbursement formula should be established for ABCC.

<sup>197</sup> See *Exhibit 1*, 2017 ABCC Budget Consideration Report. ABCC's three-year budget from 2013 to 2014 shows revenue increases from \$3.9 million in 2013, to \$4.1 million in 2014, \$4.3 million in 2015, and \$4.5 million in 2016.

\$2,723,182 for violations of the “pay to play” rules and other such violations of Mass. Gen. Laws ch. 138, §§ 23A and 25D. Yet, all revenue from these fines generated by ABCC investigations is paid to the General Fund of the Commonwealth.<sup>198</sup> Permitting ABCC to retain a fixed percentage of each fine would increase its budget and cover some additional personnel cost. Allowing ABCC to retain even 25% of fiscal year 2016 fines would have increased the agency’s bottom line by \$680,795. With additional ABCC investigations – including whistleblower complaints – there is a chance that as fines against licensees increase so will ABCC’s revenue. This, in turn, will increase payments to the General Fund, which should offset the recommended 25% fine allocation to ABCC.<sup>199</sup> We are mindful that revenue from fines will vary from year to year, but it is nonetheless a way to generate needed revenue, and budget adjustments can be made from time to time to address revenue fluctuations.

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 27 to permit ABCC to retain 25% of all fines issued and collected against licensees for violations of Mass. Gen. Laws ch. 138 and 204 Mass. Code. Regs. 2.01-.22. to be used for operations, including training and education programs.***

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The issuance of a \$2.6 million fine against licensees increase the 2016 budget alone increased from \$3.9 million to \$4.5 million.

<sup>198</sup> See MASS. GEN. LAWS ch. 138, § 27 (2017).

<sup>199</sup> The Legislature already permits the ABCC to retain some revenue. Each year, the ABCC can retain approximately \$247,000 in revenue exclusively for enforcement activities pursuant to “Appropriation Account 60.” See MASS. GEN. LAWS ch. 41, § 60 (providing a table of estimate appropriations).



(c) Revenue From Increased Statutory Fines Against Licensees

Many of the fines issued by ABCC are statutory fines such as, “common nuisance – unlicensed clubs.”<sup>200</sup> Since 1933, the statutory fine for this violation has been “not more than \$500.”<sup>201</sup> In today’s dollars, adjusted for inflation at 3%, the fine would be almost \$10,000. There are many other statutory fines that have not been adjusted for inflation in several years. For example, Mass. Gen. Laws ch. 138, § 34 as amended in 2000, provides that “whoever makes a sale or delivery of any alcoholic beverage or alcohol to any person under 21 years of age . . . shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than one year or both.”<sup>202</sup> The adjusted fine today (3% inflation) is \$2,928.33. Mass. Gen. Laws ch. 138, § 34A which was last amended in 1977, provides: “[a]ny person under 21 years of age who purchases or attempts to purchase alcoholic beverages or alcohol . . . or who willfully misrepresents his age . . . or in any way alters, defaces or otherwise falsifies his identification offered as proof of age . . . shall be punished by a fine of three hundred dollars . . .”<sup>203</sup> Adjusted for inflation, the fine today would be \$1,248.17. An across-the-board adjustment should be made to all statutory fines to reflect inflation plus the intended deterrence impact, and to generate additional revenue.<sup>204</sup>

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 1 et seq. to increase all statutory fines as set forth in Exhibit 14.***

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<sup>200</sup> See MASS. GEN. LAWS ch. 138, § 61 (governing common nuisance and unlicensed clubs).

<sup>201</sup> *Id.*

<sup>202</sup> See MASS. GEN. LAWS ch. 138, § 34 (2017).

<sup>203</sup> *Id.*

<sup>204</sup> See *Exhibit 14*, Chart of Fines with Proposed Adjustments.

(d) Revenue From Increased Excise Tax On Sale Of Alcohol

Wholesalers, distributors and farmers who sell and self-distribute alcohol are required under Mass. Gen. Laws ch. 138 § 21 to pay excise taxes on the sale of alcohol and are not imposed directly on consumers.<sup>205</sup> An increase in the excise tax for alcohol can increase revenue so that Massachusetts can offer additional services as discussed herein. Data suggests that Massachusetts is among the states with the lowest excise tax rates on beer (44th), wine (33rd) and spirits (35th). Accordingly, there is some room to increase the excise tax rates to a level closer to the average charged in nearby states. As set forth below, if the Commonwealth increases its excise tax rate by 50% on the sale of beer, wine, and spirits, it can generate an additional \$41,654,915 in revenue based its sales from July 2016 until June 2017. The revenue would increase from \$83,309,331 to \$124,964,746 and would provide sufficient revenue to increase ABCC's budget, and to fund the ABCC Health Education Fund and other statewide health and safety initiatives. We stress that a portion of such increase should be earmarked to ABCC and not the General Fund.

According to a Tax Foundation Report, the Massachusetts' excise tax rate on beer ranks 44th lowest in the U.S. at \$0.11 per gallon. By way of contrast, Connecticut is 26th at \$0.23; Maine is 17th at \$0.35; New Hampshire is 21st at \$0.30; New York is 39<sup>th</sup> at \$0.14; and Vermont is 22nd at \$0.27. By increasing the beer tax in Massachusetts to \$0.16 per gallon, Massachusetts would have the 35th lowest tax in the country and this would generate revenue

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<sup>205</sup> MASS. GEN. LAWS ch. 138, § 21 (2017).

of \$19,754,008 based upon sales from July 2016 to June 2017, an increase of \$6,584,669 over the existing tax rate.<sup>206</sup>

Massachusetts' tax rate on wine is \$0.55 per gallon and ranks 33rd lowest in the country.<sup>207</sup> In contrast: Connecticut is ranked 28th at \$0.72; Maine is 32nd at \$0.60; New York is 41st at \$0.30, Rhode Island is 9th at \$1.40, and Vermont is 33rd at \$0.55. By increasing the tax on wine tax in Massachusetts to \$0.82 per gallon, Massachusetts would have the 26th lowest tax in the country, and this would generate revenue of \$24,362,768 based upon sales from July 2016 to June 2017, an increase of \$8,120,922 over the existing excise tax rates.

Massachusetts's tax rate on spirits is \$4.05 per gallon and ranks 35th lowest in the country.<sup>208</sup> In contrast: Connecticut and Rhode Island are ranked 28th at \$5.40; Maine is 24th at \$5.86; New York is 21st at \$6.44; and Vermont is 16th at \$7.75. By increasing the spirit tax to \$6.07 per gallon, Massachusetts would have the 23rd lowest tax in the country, and this would generate revenue of \$80,867,920 based upon sales from July 2016 until June 2017, an increase of \$26,949,323 over the existing excise tax rate.

Raising the excise tax not only generates revenue, it would improve the Commonwealth's national prevention status. The Center for Disease Control's 2015 "Preventative Status Report" examines the public health problems and concerns, such as

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<sup>206</sup> See Scott Drenkard, *How High Are Beer Taxes in Your State?*, TAX FOUNDATION (May 22, 2015) <https://taxfoundation.org/how-high-are-beer-taxes-your-state/> [<https://perma.cc/X96U-8RPM>].

<sup>207</sup> See Jose Trejos, *How High Are Wine Taxes in Your State*, TAX FOUNDATION (June 15, 2017) <https://files.taxfoundation.org/20170614090241/WineMap-01.png> [<https://perma.cc/SS5G-QR4J>].

<sup>208</sup> See Morgan Scarboro, *How High Are Spirit Taxes in Your State*, TAX FOUNDATION (June 22, 2017), <https://taxfoundation.org/states-spirits-taxes-2017/> [<https://perma.cc/WSA4-LUY5>].

“Alcohol Related Harms.”<sup>209</sup> It offers state by state solutions based upon research and expert recommendations.<sup>210</sup> The Report uses a red, yellow, and green ranking to determine if, “the state has implemented the policy or practice in accordance with the supporting evidence and/or expert recommendations.”<sup>211</sup> The CDC ranks the Commonwealth’s excise tax rates in both 2013 and 2015 as follows: beer - *red*; wine- *red*; and spirits - *yellow*.<sup>212</sup> Using the CDC report as a guide, the Commonwealth could move into the yellow range by increasing the excise on tax for beer from \$0.11 in the range of \$0.50 - \$0.99 per gallon and for wine from \$.55 in the range of \$1.00 - \$1.99 per gallon. The Commonwealth is in the low end of the yellow range for spirits of \$4.05, as the range is \$4.00 to \$7.99 per gallon.

Taking all of the above studies and state comparisons into account, the TF recommends raising the excise tax at least on beer from \$0.11 to \$0.16, wine from \$0.55 to \$0.82, and spirits from \$4.05 to \$6.07 to generate additional excise tax revenue of \$41,654,915. Following these recommendations, the Commonwealth would remain below the CDC’s recommended range but would nonetheless be taking positive step towards implementing sound public health policy while also generating needed revenue for the Commonwealth. The Commonwealth could also decide to increase the excise tax on beer and wine to reach the yellow level. Based upon the 2017 reports by the Tax Foundation, increasing the excise tax rates by 50%, the

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<sup>209</sup> See Mass. State Status Report, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://wwwn.cdc.gov/psr/> (select “Massachusetts” from the drop down menu under “PSRs by State;” then select “State Summary”).

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> The CDC ranks the Commonwealth’s excise tax rates in both 2013 and 2015 as follows: beer - *red*; wine - *red*; and spirits – *yellow*. *Id.*

Commonwealth's national rankings (in order of lowest to highest) would change as follows:  
 beer from 44th to 35th; wine from 33rd to 26th; and spirits from 35th to 23rd.<sup>213</sup>

***Recommendation 1: Increase the excise tax per gallon on beer to \$0.16; wine to \$0.82; and on spirits to \$6.07.***

(e) Revenue From Increased License Fees

In 2016, ABCC's revenue from license fees totaled \$4,902,830, but the agency would benefit if the fees are increased to reflect market rates. For example, ABCC should be permitted to increase the airline charge permit from \$1,000 to \$5,000, the commercial alcohol license from \$500 to \$2,500, and the certificate of compliance license from \$500 to \$1,000. The TF recommends that all license fees be increased as recommended in Exhibit 13.<sup>214</sup> If the Commonwealth increases the license fees for 2018 as recommended, it will generate an estimated \$2,901,756 in additional revenue for ABCC operations.

***Recommendation 1: Permit ABCC to increase the fees for all licenses as set forth in Exhibit 13.***

(f) Revenue From Mandatory Training Sessions for Licensee Violators

Licensees found in violation of certain rules and regulations often must undergo mandatory training as a condition of maintaining their operating licenses. For example, if a

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<sup>213</sup> Trejos, *supra* note 207 (for tax rates on wine, New Jersey ranks 24<sup>th</sup> at 0.88, Arizona 26<sup>th</sup> at \$0.84, and Louisiana 27<sup>th</sup> at \$0.76); Scarboro, *supra* note 208 (for tax rates on spirits, New Mexico ranks 22<sup>nd</sup> at \$6.06, New York 21<sup>st</sup> at \$6.44, and Florida 20<sup>th</sup> at \$6.50); Drenkard, *supra* note 206 (for tax rates on beer, Arizona ranks 35<sup>th</sup> at \$0.16, Wisconsin at 32<sup>nd</sup> at \$0.18, and Michigan 28<sup>th</sup> at \$0.20).

<sup>214</sup> See Exhibit 13, ABCC to Increase the Fees for all Licenses.

restaurant is found to have violated Mass. Gen. Laws ch. 138, § 34 by servicing minors, ABCC has the discretion to order staff training.<sup>215</sup> However, other state agencies like the Massachusetts Commission Against Discrimination charge a fee for their trainings; ABCC does not. For example, in fiscal year 2016, ABCC held 126 hearings for licensees charged with violation of rules and regulations that required their participation in mandatory training sessions as a condition to maintaining their licenses.<sup>216</sup> The TF recommends that ABCC should charge licensees a training fee of \$250 per each training session of up to 25 individuals to compensate ABCC for its time and expenses.<sup>217</sup> If ABCC is permitted to charge licensees \$250 per training session, this increases revenue on average by \$15,750 annually.

**Recommendation 1: Permit ABCC to charge a minimum of \$250 per training.**

(g) Revenue From Fines Not Covered By Statute Can Be Improved

ABCC's Enforcement Division investigates matters involving (i) the sale of alcohol beverages to minors (Section 34) and to intoxicated persons (Section 69); (ii) alcohol illegally imported or tampered with (Section 16); and (iii) undisclosed ownership interests by individual or criminal organizations (Section 18 and 204 Mass. Code. Regs. 2.01-.22). ABCC then brings enforcement actions against licensees and schedules a hearing to determine if a license should be suspended, modified, cancelled or revoked.<sup>218</sup> For example, if ABCC issues a ruling against a licensee found responsible for selling alcohol to minors, it then calculates how many days the

<sup>215</sup> MASS. GEN. LAWS ch. 138, § 34 (2017).

<sup>216</sup> See *Exhibit 7*, ABCC Fiscal Year 2016 Annual Report, at 4.

<sup>217</sup> See *Exhibit 1* 2016 ABCC Budget Consideration Report; *Exhibit 7*, ABCC Fiscal Year 2016 Annual Report.

<sup>218</sup> See MASS. GEN. LAWS ch. 138, § 64.

license shall be suspended under Section 23.<sup>219</sup> ABCC has the authority, however, to agree to settle the matter for a fee if the licensee recommends “. . . an offer in compromise in lieu of suspension . . .” which is usually equal to the projected lost revenue because the business is closed during the suspension.<sup>220</sup> If the average daily revenue of the liquor store is \$100 and the suspension is for five days, the licensee may offer to pay \$500 to the Commonwealth in lieu of the suspension and ABCC can accept the settlement. ABCC should have the independent authority to issue either a monetary fine or suspension. This serves two objectives: first, ABCC can fashion the fine to reflect the seriousness of the violation; and second, it will highlight the need for licensees to be compliant because there may be some uncertainty in the fine issued by ABCC.

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 23 to provide ABCC with the authority to issue a fine by considering the number of days of suspension, lost profits, and facts giving rise to the suspension, revocation or cancellation, and to retain a to be determined percentage of any such fine collected.***

#### 4. ABCC Enforcement Proceedings; Hearings and Agency Counsel

We reviewed how ABCC handles approximately 300-350 enforcement hearings annually with a focus on the evidentiary standards governing the admissibility of documentation and

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<sup>219</sup> *Id.* § 23 (governing licenses and permits).

<sup>220</sup> *Id.* (“ . . . The commission may accept from any licensee or holder of a certificate of compliance under this chapter an offer in compromise in lieu of suspension of any license or certificate of compliance previously suspended by the commission. A licensee or holder of certificate of compliance may petition the commission to accept such an offer in compromise within twenty days following notice of such suspension. The fine in lieu of suspension, when an offer in compromise is accepted, shall be calculated in accordance with the following formula: Fifty per cent of the per diem gross profit multiplied by the number of license suspension days, gross profit to be determined as gross receipts on alcoholic beverage sales less the invoiced cost of goods sold per diem. No such fine, in any event, shall be less than forty dollars a day. Any sums of money so collected by the commission shall be paid forthwith into the general fund of the state treasury . . .”).

testimony including consideration of whether it should continue to exclusively hear cases involving franchise agreements under Section 25E.<sup>221</sup>

(a) Evidentiary Standards For ABCC Hearings

The ABCC hearing provides the critical opportunity for a licensee to be heard and afforded due process concerning whether his/her license should be suspended or revoked for violating Mass. Gen. Laws ch. 138 with the 3 member panel hearing the matter rendering a written decision within 30 days.<sup>222</sup> The hearings are conducted under the informal Fair Hearing Rules, 801 Mass. Code. Regs. 1.02 and the Administrative Procedures Act, Mass. Gen. Laws ch. 30A.<sup>223</sup> At the hearing, the ABCC lead investigator (a non-attorney) will typically offer testimony regarding the alleged violation and may call other witnesses. The licensee then has the right to call witnesses, offer documents, and cross-examine the ABCC investigator and all ABCC's witnesses. In essence, the hearings are quasi-judicial trials before a panel without a jury.

As a practical matter, the ABCC hearings tend to be informal fair hearing panels so that licensees can defend themselves against most claims without an attorney.<sup>224</sup> Subject to the Commissioners' discretion, the parties can offer testimony consisting of second and third-hand recounts of events at the licensed premise and even submit affidavits in lieu of witness

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<sup>221</sup> We considered whether cases brought under MASS. GEN. LAWS ch. 138, §25E to terminate a franchise agreement should be heard exclusively in the District Court or Superior Court, or whether a party can file a motion to transfer the case to one of those courts. The cases tend to be fact intensive and involve expert testimony because a party must establish "good cause" to terminate. This issue needs further study before making a recommendation.

<sup>222</sup> MASS. GEN. LAWS ch. 138, § 67 (2017).

<sup>223</sup> See *Embers of Salisbury, Inc. v. Alcoholic Beverages Control Commission*, 401 Mass. 526 (1988) (holding that the Alcoholic Beverages Commission is not bound by the rules of admissibility of evidence observed by the Courts.).

<sup>224</sup> See *Exhibit 6*, ABCC Adjudication, Enforcement, and Outreach 2016.



testimony. This type of testimony, however, makes it difficult for anyone to cross-examine the witnesses offering second-hand or third-hand testimony or testimony by affidavit because the person making the actual observation of the event at issue is not present during the hearing. In turn, this makes the panels task more challenging because the Commission must draw inferences as to what actually occurred at times using second-hand information. The decision making process can be improved, however, by ABCC adopting the formal rules of administrative hearings as provided for in 801 Mass. Code. Regs. 1.01, which provides parameters around how evidence is presented at the hearing and limits the uncertainty as to what information can be presented during a hearing.<sup>225</sup>

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 67 to provide that ABCC's hearing will be conducted under the formal administration law as provided for in 801 Mass. Code. Regs. 1.01 and Mass. Gen. Laws ch. 30A.***

(b) Hire Staff Attorneys To Handle Hearings

The practice of ABCC investigators is both to testify and to prosecute the case against the licensee at the same hearing, which creates inefficiencies and potential conflicts. Ideally, ABCC investigators should only be fact witnesses because licensees often have attorneys to handle the case and ABCC does not have staff counsel beyond a general counsel. Defense counsel is better equipped to handle the licensee's defense including cross examining the investigator on the claims against the licensee. Likewise, ABCC is best suited by hiring a staff

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<sup>225</sup> See 801 Mass. Code Regs. 1.01 (2017).

attorney responsible for managing and prosecuting the cases for the agency.<sup>226</sup> This will allow the investigators to serve as fact witnesses. This also provides the opportunity for the ABCC staff attorney and licensee attorney to resolve discovery disputes without a hearing and to engage in settlement discussions.

***Recommendation 1: Provide ABCC with funding to permit the hiring of a staff attorney(s) to handle all ABCC hearings.***

## 5. Written LLA Decisions and Increase Time to Appeal

### Local Licensing Authority Appeals

Licensees who are denied a license by an LLA claim that licensing decisions are not always in writing. A typical denial might only say “RNA” (return no action). Accordingly, the exact reasons for the denial by an LLA may not be apparent to the licensee. The standard for ABCC’s review of a license denial by an LLA is then whether “it made its decision fairly and with the appearance of fairness.”<sup>227</sup> ABCC cannot order the LLA to issue a license but can remand the matter to the LLA for further action.<sup>228</sup> If the LLA refuses to accept and/or implement ABCC’s recommendation within 7 days, the licensee can file a lawsuit against the LLA under Mass. Gen. Laws ch. 294, § 4.<sup>229</sup> Annually, there are on average about 30 applicants who

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<sup>226</sup> There is precedent for an internal prosecutorial position within a state agency. In Massachusetts, the Executive Office of Health and Human Services the Board of Registration in Medicine (BORIM) has a “complaint counsel” that works with BORIM’s investigators looking into alleged violations and can settle cases. Outside of the state, New York’s Civilian Complaint Review Board and Maryland’s Department of Health and Mental Hygiene both have administrative prosecutors.

<sup>227</sup> See *Board of Selectman v. Alcoholic Beverages Control Comm’n*, 373 Mass. 708 (1977).

<sup>228</sup> See *Largess v. Nore’s Inc.*, 341 Mass. 438 (1960).

<sup>229</sup> MASS. GEN. LAWS ch. 284, § 47 (2017).

appeal the ABCC's decision affirming the denial by an LLA of a liquor license. Licensees claim that LLAs do not provide sufficient findings to support their decisions, which makes their decision whether to appeal to ABCC or to correct the deficiency at the local level more difficult. They argue that LLAs should submit a statement of reasons tied to actual testimony and documentation in order to create a record for appeal to ABCC and potentially to the Superior Court.

On appeal, ABCC hears testimony and reviews all of the information and documentation offered by the licensee to the LLA. ABCC, in essence, conducts a *de novo* hearing. Licensees offer that if the LLA is required to make written findings supporting the denial of the license in the first instance, the licensees can better address the contested issues on appeal to ABCC. Written findings by LLAs would also make it easier for licensees to address the LLAs' concerns at the local level and to make the necessary adjustments to the applications so they can be re-filed.

#### ABCC Appeals To Superior Court

ABCC can initiate its own action against licensee for violation of Mass. Gen. Laws ch. 138. If ABCC finds a violation and imposes a penalty, such as suspension of a license, the licensee has 30 days to appeal ABCC's decision to the Superior Court. However, not all of ABCC findings are written, and the standard of review by the Superior Court is whether ABCC, "abused its discretion."<sup>230</sup> There are about twelve ABCC decisions appealed each year to the

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<sup>230</sup> See *Davis v. Boston Elevated Railway*, 235 Mass. 482,496 (1920).

Superior Court. Licensees claim that ABCC should also issue written findings so that the record is clear for purposes of appeal to the Superior Court.

Licensee's Time to Appeal Should Be Increased

A related issue is that the licensee must then under Mass. Gen. Laws ch. 138, § 67 decide within five days whether to appeal an LLA decision to ABCC. Licensees offer that they should be afforded more time to make such a decision, and five days is not enough. They recommend at least 9 days to appeal and further suggest that no action be taken against the licensee pending the decision: (i) whether to appeal to ABCC; and (ii) throughout the appeal process including the Superior Court.

***Recommendation 1: Amend Mass. Gen. Laws ch. 138, § 67 to require that LLAs make written findings detailing the reasons for denying an applicant's license; and***

***Recommendation 2: Amend Mass. Gen. Laws ch. 138, § 37 to increase the time for licensees to appeal the LLA decision to ABCC from 5 days to 10 days.***

6. Automatic Stay While Pending Appeal, Except In A Matter Of Public Safety

When an LLA or the ABCC makes a finding that a licensee has violated a municipality's local rules or a provision of Mass. Gen. Laws ch. 138, they can enter a sanction in the form of a suspension for one day or longer. When this occurs, the imposition of that suspension is not automatically stayed should the licensee appeal the findings and/or suspension of an LLA decision to the ABCC pursuant to Mass. Gen. Laws ch. 138, § 67 or appeal the findings and/or suspension issued by ABCC to Superior Court pursuant to Mass. Gen. Laws ch. 30A.

Some LLAs may agree to “stay” the actual service of the suspension pending ABCC review. Since serving the suspension defeats the purpose for appealing, if the LLA and ABCC do not agree to stay the suspension, the licensee must file a lawsuit in Superior Court seeking injunctive relief in the form of an order to stay the suspension pending appeal. This process is very costly for the licensee in terms of attorneys’ fees and time consuming for everyone involved. A reasonable solution to this problem is that licensees may be entitled to a stay pending appeal at the discretion of the LLA. The licensee may make that request as a part of the licensee’s presentation to the LLA except in matters involving the revocation or cancellation of a license or a matter involving public safety.

***Recommendation 1: Amend Mass. Gen. Laws ch. 138 § 67 to provide that licensees are permitted an automatic stay of discipline issued by an LLA or ABCC pending an appeal and review of the decision, except actions involving the revocation or cancellation of a license or involving a matter of public safety.***

#### 7. Increasing Number Of Commissioners

Since the repeal of Prohibition, the ABCC has consisted of 3 members: 1 chairperson and 2 associate commissioners. Other states have anywhere from 3 to 5 to 7 members.<sup>231</sup> Of the 3 Commissioners, the Chairperson is the only full-time employee. This 3 member

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<sup>231</sup> See Exhibit 4, ABCC Task Force Welcome Packet. While many other states have created their state alcohol regulatory authority with 3 members, many states have more: **ILLINOIS** has 7 commissioners; **ARIZONA** has 7 commissioners, The **DISTRICT OF COLUMBIA** has up to 7 commissioners; **OKLAHOMA** has 7 members; **MICHIGAN** has 5 commissioners, some are specifically designated as administrative commissioners while others are designated hearing commissioners; **ARKANSAS** has 5 members commissioners; and **ALASKA** has 5 commissioners. *Id.*

commission is subject to the Open Meeting Law, as amended. 2 members constitute a quorum for conducting ABCC business.

The work load of the Commissioners has increased steadily over time. The 2016 ABCC Annual Report notes that ABCC administered and approved 23,186 licenses, certificates and permits.

***Recommendation 1: Form a working group to consider increasing the number of commissioners who constitute the ABCC from 3 to 5 or 7. With 5 or 7 commissioners, and a quorum of 3 or 4 members, these additional resources would allow more efficient processes for all the functions that the commissioners themselves must perform. The working group can also look at whether the additional commissioners, if any, would be full or part-time employees.***

8. Innovation Recommendations

Another way to make the ABCC more efficient and consumer friendly would be for the agency to expand the services it offered, such as publishing declaration rulings, advisories, electronic monitoring of applications, additional training sessions, and a resource guide for Massachusetts. Presently, ABCC's updated website provides a link to "Commissioner Advisories and Guidelines" and "ABCC Decisions." ABCC should also consider publishing declaratory rulings based upon hypothetical fact patterns that summarize particular alcohol laws, and sets forth an analysis whether the facts presented violated a particular section of Mass. Gen. Laws ch. 138 or 204 Mass. Code. Regs. 2.01-.22. ABCC and licensees would also benefit from all applications being filed electronically and being able to electronically track the status of an application in the system. Provided ABCC has the resources and time, licensees would benefit

from training on issues such as: how to apply for a 1 day license; application procedures and requirements for various licenses; recent relevant court and agency decisions; new agency policies, and procedures. An ABCC Resource Guide would assist stakeholders in multiple ways, from applicants to licensees seeking transactional approval, and a resource guide would help bring licensees into compliance with existing laws and regulations.

***Recommendation 1: ABCC should review the Innovation Recommendations, and implement such additional services as it deems appropriate.***

## **VII. Conclusion**

The Task Force Members wish to thank everyone involved in the preparation of this Report for their dedication and hard work, including the Working Group members and presenters at Town Hall Forums. We could not have produced the Report without contributions from the citizens of this Commonwealth. We are hopeful that the recommendations help modernize both the Commonwealth's alcoholic beverage industry and also its approach to public health and safety. Our special thanks to Treasurer Deborah Goldberg for entrusting us with this important initiative and allowing us to act as an independent body.

**VIII. List of Exhibits**

Exhibit 1	2016 ABCC Budget Consideration Report
Exhibit 2	ABCC Task Force Public Comments and Submissions
Exhibit 3	ABCC Task Force Working Group Member List
Exhibit 4	ABCC Task Force Welcome Packet, 3-4
Exhibit 5	2016 ABCC Licensing Policies and Procedures
Exhibit 6	2016 ABCC Adjudication, Enforcement, and Outreach
Exhibit 7	ABCC Fiscal Year 2016 Annual Report
Exhibit 8	The National Center for Alcohol Law Enforcement Pacific Institute for Research and Evaluation prepared a publication entitled, <i>Alcohol and Violent Crime: What Is The Connection?, What Can Be Done?</i> (April 2016)
Exhibit 9	ABCC Task Force Submission Letter (May 16, 2017)
Exhibit 10	The Effectiveness of Tax Policy Interventions for Reducing Excessive Alcohol Consumption and Related Harms, <i>Am. J. Prev. Med.</i> 2010; 38(2):217-229
Exhibit 11	2016 ABCC Annual Report, Investigation, and Enforcement Division
Exhibit 12	The Role of Alcohol Beverage Control Agencies in the Enforcement and Adjudication of Alcohol Laws, Appendix B (July 2005)
Exhibit 13	ABCC to Increase the Fees for all Licenses
Exhibit 14	Chart of Fines with Proposed Adjustments
Exhibit 15	List of Proposed Massachusetts Legislation



**IX. Appendix****Statutes**

7 V.S.A. § 2  
15 U.S.C. § 78u-6 (2014)  
18 U.S.C. ch. 1514A  
27 U.S.C. 201-219a  
47 Pa.Stat. §4-493(24)(i)  
235 Ill. Comp. Stat. Ann. 5/6-6  
Mass. Gen. Laws ch. 10, § 70  
Mass. Gen. Laws ch. 10 § 72  
Mass. Gen. Laws ch. 12 §§ 5A-50  
Mass. Gen. Laws ch. 23k  
Mass. Gen. Laws ch. 38, § 12  
Mass. Gen. Laws ch. 41, § 60  
Mass. Gen. Laws ch. 43B  
Mass. Gen. Laws ch. 93A  
Mass. Gen. Laws ch. 128 § 56  
Mass. Gen. Laws ch. 138  
Mass. Gen. Laws ch.138, § 12  
Mass. Gen. Laws ch.138, § 13  
Mass. Gen. Laws ch. 138, § 14  
Mass. Gen. Laws ch. 138, § 15  
Mass. Gen. Laws ch. 138, § 15A  
Mass. Gen. Laws ch. 138, § 15F  
Mass. Gen. Laws ch. 138, § 17  
Mass. Gen. Laws ch. 138, § 18  
Mass. Gen. Laws ch. 138, § 18B  
Mass. Gen. Laws ch. 138, § 19B  
Mass. Gen. Laws ch. 138, §19C  
Mass. Gen. Laws ch. 138, § 19C(g)(6)  
Mass. Gen. Laws ch. 138, § 19C(g)(7)  
Mass. Gen. Laws ch. 138, § 19C(n)  
Mass. Gen. Laws ch. 138, § 19D  
Mass. Gen. Laws ch. 138, § 19E  
Mass. Gen. Laws ch. 138, § 19E(h)(4)  
Mass. Gen. Laws ch. 138, § 19F  
Mass. Gen. Laws ch. 138, § 20  
Mass. Gen. Laws ch. 138, § 21  
Mass. Gen. Laws ch. 138, § 22  
Mass. Gen. Laws ch. 138, § 23

Mass. Gen. Laws ch. 138, § 23B  
Mass. Gen. Laws ch.138, § 24  
Mass. Gen. Laws ch. 138, § 25B  
Mass. Gen. Laws ch. 138, § 25C  
Mass. Gen. Laws ch. 138, § 25E  
Mass. Gen. Laws ch. 138, § 26  
Mass. Gen. Laws ch. 138, § 27  
Mass. Gen. Laws ch. 138, § 34  
Mass. Gen. Laws ch. 138, § 61  
Mass. Gen. Laws ch. 138, § 64  
Mass. Gen. Laws ch. 138, § 67  
Mass. Gen. Laws ch. 138, § 68  
Mass. Gen. Laws ch. 138, § 69  
Mass. Gen. Laws ch. 149 § 185  
Mass. Gen. Laws ch. 149 § 187  
Mass. Gen. Laws ch. 268A  
N.H. Rev. Stat. Ann. § 179:29  
NY CLS Al Bev. § 126  
RSA 178:3  
Wash. Rev. Code Ann. § 66.28.31

### **Other Authorities**

3 Va. Admin. Code § 5-30-80  
17 C.F.R. § 240  
27 C.F.R. § 6.54  
27 C.F.R. § 6.83(c)(1)-(2)  
27 C.F.R. § 6.84  
27 C.F.R. § 6.84(b)(1)  
27 C.F.R. § 6.84(b)(2)  
27 C.F.R. § 10.21  
27 C.F.R. § 201  
204 Mass. Code. Regs. 2.01  
204 Mass. Code. Regs. 2.09  
Cal. Code Regs. tit. 4, § 106(b)(7)

## Sources Cited in Report<sup>232</sup>

1. Beth Healy, Sacha Pfeiffer, Devra First, *Scores of Cambridge restaurants paid six figures for a liquor license. Others got them for free*, THE BOSTON GLOBE, (Nov. 11, 2017) <https://www.bostonglobe.com/metro/2017/11/11/scores-cambridge-restaurants-paid-six-figures-for-liquor-license-others-got-them-for-free/WQcYPE7S26BG28B30Ccm1L/story.html>.
2. Boston Planning & Development Agency Research Division, *National Institutes of Health (NIH)*, BOSTON PLANNING & DEVELOPMENT (2017).
3. Brewers Assoc., *Craft Brewer Defined*, BREWERS ASSOC. (2017), <https://www.brewersassociation.org/statistics/craft-brewer-defined/> [<https://perma.cc/SR45-78TU>].
4. Center for Disease Control and Prevention, *Sobering Facts: Drunk Driving in Massachusetts*, CDC (2014), [https://www.cdc.gov/motorvehiclesafety/pdf/impaired\\_driving/drunk\\_driving\\_in\\_ma.pdf](https://www.cdc.gov/motorvehiclesafety/pdf/impaired_driving/drunk_driving_in_ma.pdf) [<https://perma.cc/4PEQ-AB4J>].
5. Center for Disease Control, *Fact Sheets-Alcohol Use and Your Health*, CDC (Oct. 18, 2016), <https://www.cdc.gov/alcohol/fact-sheets/alcohol-use.htm> [<https://perma.cc/Z7FN-KW7J>].
6. Community Preventative Services Task Force, *Alcohol – Excessive Consumption: Enhanced Enforcement of Laws Prohibiting Sales to Minors*, THE COMMUNITY GUIDE (Feb. 2006), <https://www.thecommunityguide.org/findings/alcohol-excessive-consumption-enhanced-enforcement-laws-prohibiting-sales-minors> [<https://perma.cc/BLX4-2Q4P>].
7. Fone D et al., *Change in alcohol outlet density and alcohol-related harm to population health (CHALICE): a comprehensive record-linked database study in Wales*, 4 PUBLIC HEALTH RESEARCH (2016), Southampton (UK): NIHR Journals Library, (available at: <https://www.ncbi.nlm.nih.gov/books/NBK350757/> ).
8. Heather Morton, *Direct Shipment of Alcohol State Statutes*, NAT'L ASSOC. OF STATE LEG. (Jan. 12, 2016), <http://www.ncsl.org/research/financial-services-andcommerce/direct-shipment-of-alcohol-state-statutes.aspx> [<https://perma.cc/ETV8-XVN5>].

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<sup>232</sup> In preparation of this Report, Task Force members reviewed over 250 articles, reports and studies many of which are listed herein as sources and attached as Exhibits. The additional list of sources can be made available upon request.

9. History.com Staff, *18th and 21st Amendments*, HISTORY.COM (2010), <https://perma.cc/96DZ-ACZP> (“In February 1933, Congress adopted a resolution proposing the 21st Amendment to the Constitution that would repeal [ ] the 18th Amendment”).
10. James F. Mosher et al., *The State Laws to Reduce the Impact of Alcohol Marketing on Youth: Current Status and Model Policies*, CENTER ON ALCOHOL MARKETING AND YOUTH (May 1, 2012), [http://www.camy.org/\\_docs/research-to-practice/promotion/legal-resources/state-ad-laws/CAMY\\_State\\_Alcohol\\_Ads\\_Report\\_2012.pdf](http://www.camy.org/_docs/research-to-practice/promotion/legal-resources/state-ad-laws/CAMY_State_Alcohol_Ads_Report_2012.pdf) [<https://perma.cc/3XZX-N6FY>] .
11. Janelle Nanos, Dan Adams, *Cheaper liquor licenses? Not so fast, restaurateurs say*, THE BOSTON GLOBE (Aug. 20, 2017), <https://www.bostonglobe.com/metro/2017/08/20/liquorlicense/5Li2luzL6OjgZgcOOsPbE... 12/14/2017>.
12. Jeffrey Sacks, et al. *2010 National and State Costs of Excessive Alcohol Consumption*, 49 AM. J. OF PREVENTIVE MED, e73-e79 (2015).
13. Johns Hopkins Bloomberg School of Public Health, *Strategizer 55 Regulating Alcohol Outlet Density, an Action Guide*, THE CENTER ON ALCOHOL MARKETING AND YOUTH (2011), <http://www.cadca.org/sites/default/files/resource/files/strat55.pdf> [<https://perma.cc/6AQH-QEQA>].
14. Jose Trejos, *How High Are Wine Taxes in Your State*, TAX FOUNDATION (June 15, 2017) <https://files.taxfoundation.org/20170614090241/WineMap-01.png> [<https://perma.cc/SS5G-QR4J>].
15. Laura K. Cook Morford et al., *Evaluation of Source Investigations Demonstration Program*, NAT’L LIQUOR LAW ENF’T AGENCY (July 18, 2016), [http://www.nllea.org/documents/Source\\_Investigation\\_Evaluation.pdf](http://www.nllea.org/documents/Source_Investigation_Evaluation.pdf) [<https://perma.cc/CUM4-TWU9>] .
16. Marc E. Sorini, *Beer Franchise Law Summary*, McDERMOTT WILL & EMERY LLP (2014), <https://s3-us-west-2.amazonaws.com/brewersassoc/wp-content/uploads/2017/04/Beer-Franchise-Law-Summary.pdf> [<https://perma.cc/7BDX-9UR8>].
17. Mark Sorini, *Understanding the Three-Tier System: Its Impacts on U.S. Craft Beer and You*, CRAFTBEER.COM, (March 6, 2017), <https://www.craftbeer.com/craft-beer-muses/three-tier-system-impacts-craft-beer> [<https://perma.cc/UB44-2EJU>].

18. Mass. State Status Report, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://wwwn.cdc.gov/psr/> (select “Massachusetts” from the drop down menu under “PSRs by State;” then select “State Summary”).
19. MASSACHUSETTS RESTAURANT ASS’N, <http://www.themassrest.org/> (last visited Dec. 20, 2017).
20. Morgan Scarboro, *How High Are Spirit Taxes in Your State*, TAX FOUNDATION (June 22, 2017), <https://taxfoundation.org/states-spirits-taxes-2017/> [ <https://perma.cc/WSA4-LUY5>].
21. Nat’l Alcohol Beverage Control Assn, Nat’l Conf. of State Liquor Admin., *Alcohol Trade Practice Survey of State Laws and Regulation*, (2015), [ncsla.org/pdf/news/TradePracticesSummary\\_wLinks.Complete.pdf](http://ncsla.org/pdf/news/TradePracticesSummary_wLinks.Complete.pdf) [<https://perma.cc/XLM8-KZX2>].
22. National Center for Statistics and Analysis, *2014 Crash Data Key Findings* (Traffic Safety Facts Crash Stat. Report No. DOT HS 812 219), Washington, D.C.: National Highway Traffic Safety Administration, 2015. <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812219> [<https://perma.cc/EB82-AHYD>]
23. National Highway Traffic Safety Admin., *Source Investigation: A Tool to Combat Impaired Driving* (November 2011).
24. Pacific Institute for Research and Evaluation (PIRE), *Underage Drinking in Massachusetts: The Facts*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (March 2015), <http://resources.prev.org/factsheets/MA.pdf> [<https://perma.cc/RJP9-9ACA>].
25. Pacific Institute for Research and Evaluation (PIRE), *Alcohol and Violent Crime: What is the Connection? What Can Be Done?*, U.S. DEPT. OF JUSTICE (April 2006), [http://www.nllea.org/documents/alcohol\\_and\\_crime.pdf](http://www.nllea.org/documents/alcohol_and_crime.pdf) [<https://perma.cc/8KZD-672J>].
26. Pamela J. Erickson, *Key Points from Alcohol Policy from Surgeon General’s Report: The Problem with Binge Drinking*, HEALTHY ALCOHOL MARKETPLACE (Jan. 2017), <http://healthyalcoholmarket.com/pdf/NewsletterJanuary2017.pdf> [<https://perma.cc/9L6Y-EBZ2>] .
27. Paul Gatza, Bart Watson, Ph.D., *State of the Industry*, BREWERS ASSOCIATION (2017), [https://www.brewersassociation.org/wp-content/uploads/2017/04/CBC17\\_State-of-the-Industry.pdf](https://www.brewersassociation.org/wp-content/uploads/2017/04/CBC17_State-of-the-Industry.pdf) [<http://perma.cc/66SA-HNKE>].

28. Scott Drenkard, *How High Are Beer Taxes in Your State?*, TAX FOUNDATION (May 22, 2015) <https://taxfoundation.org/how-high-are-beer-taxes-your-state/> [<https://perma.cc/X96U-8RPM>].
29. See Carrie L. Bonnington, Jerry R. Jolly, *Is "Tied-House" Still the Tie that Binds?*, PILLSBURY WINTHROP SHAW PITTMAN LLP (2005).
30. See Xin Yu & Frank J. Chaloupka, *The Effects of Prices on Alcohol Use and its Consequences*, 34(2) ALCOHOL RES. HEALTH 236-45, (2011).
31. U.S. Dep't of Health and Human Services, *Massachusetts High School Youth Risk Behavior Survey*, CDC (2015), <https://nccd.cdc.gov/youthonline/app/Results.aspx?LID=MA> [<https://perma.cc/D729-ZV4P>].
32. U.S. Sec. and Exch. Comm'n., *2017 Annual Report to Congress, Whistleblower Program*, U.S. SEC. AND EXCH. COMM'N., 12 - 16 (2017), <https://www.sec.gov/files/sec-2017-annual-report-whistleblower-program.pdf> [<https://perma.cc/S7E3-PRJX>].

## **X. Task Force Member Biographies**

### **E. Macey Russell, Partner at Choate, Hall & Stewart LLP, Committee Chair**

E. Macey Russell is a partner at Choate Hall & Stewart LLP practicing complex commercial litigation and is listed in Best Lawyers in America. In 2016, American Registry listed him among America's Top 1% of all Professionals and he received AV Preeminent ratings from both Martindale-Hubbe and the Judiciary. He is a member of Litigation Counsel of America's Trial Lawyer Honorary Society composed of less than one-half of 1% of American lawyers. In 2011, the American Bar Foundation named him a Fellow, which is reserved for one third of 1% of attorneys in his jurisdiction. Appointed by the Governor, from 2011 until 2014 he served as the Chair of the 21 member Judicial Nominating Commission which recommended judicial appointments at all levels throughout the Commonwealth. His honors include: 2011 Burton Award for Exceptional Legal Writing from The Burton Foundation and Library of Congress for his co-authored article "Developing Great Minority Lawyers for the Next Generation." In 2009, Massachusetts Lawyers Weekly named him a "Diversity Hero." He is a nationally recognized speaker on law firm diversity and inclusion. Russell received a JD from Suffolk University Law School in 1983 and a BA from Trinity College in 1980.

### **Kate Cook, Of Counsel, Sugarman Rogers Barshak & Cohen, P.C.**

Kate R. Cook is the Chair of Sugarman Rogers' Government Law Practice Group. Her government law practice focuses on advising both private and public sector clients on all aspects of government law at the federal, state, and local levels. Ms. Cook counsels clients on government ethics, conflicts of interest, constitutional law, public records, lobbying, campaign finance, election law, municipal law, crisis management, and legislative and regulatory drafting. Leveraging her experiences working at the state and local level, Kate helps clients navigate government to meet their goals. In addition, she represents government and corporate clients in complex litigation matters in the areas of general business, employment, environmental and real estate law. Kate's practice draws upon her unique skill set as a legal advisor to political executives in high profile and complex matters and as an experienced litigator with proven solution-oriented results. She has served as Chief Legal Counsel to the Governor, General Counsel to Massachusetts Senate Ways and Means Committee and Assistant Corporation Counsel to the City of Boston.

Most recently, Ms. Cook served as Chief Legal Counsel to Governor Deval L. Patrick. In that role, she advised the Governor and executive branch on legal, regulatory and policy matters across the administration. Kate played an active role in significant Governor Patrick policy initiatives, such as the Governor's clemency decisions, opiate crisis response and regulatory reforms to strengthen small businesses. In the City of Boston law department, she tried several cases and handled a wide-range of municipal liability matters including election law, civil rights,

Americans with Disabilities Act compliance, employment, and claims under the Massachusetts Tort Claims Act.

Ms. Cook also served as a judicial clerk to the Honorable Morris E. Lasker of the U.S. District Court from September 2001-June 2003.

### **Deborah Gold-Alexander, Attorney**

For more than three decades, Attorney Gold-Alexander has practiced civil and criminal law in the Commonwealth of Massachusetts maintaining her self-built practice for much of the time in Revere, Massachusetts for 26 years until 2016 when she relocated her law office to Seaport Landing, 152 Lynnway, Suite 1F, Lynn, MA 01902. Early in her career for approximately 15 years, Attorney Gold-Alexander provided criminal defense for indigent defendants through the Essex County and Suffolk County Bar Advocate programs and Committee for Public Counsel. A seasoned litigator, Attorney Gold-Alexander has engaged in extensive and sophisticated discovery, motion practice and has tried numerous jury and non-jury civil and criminal trials throughout the Commonwealth. She has and currently provides legal representation in a variety of matters including but not limited to civil matters, civil litigation, personal injury, general liability matters, real estate matters (residential and commercial), bankruptcy, drafting and review of contracts, contract litigation, business matters and litigation, collection matters, criminal defense, landlord and tenant matters including drafting and review of commercial and residential leases and summary process actions, condominium fees collection matters and probate and family law matters. Currently, she is a title agent for Old Republic National Title Insurance Company and WFG National Title Insurance Company and has acted as closing attorney for many financial institutions on both residential and commercial transactions. She has been a long standing member of the Massachusetts Bar Association, NACBA (National Association of Consumer Bankruptcy Attorneys) and the Revere Chamber of Commerce. Attorney Gold-Alexander is also an approved mediator/arbitrator for the panel of New England Dispute Resolution.

### **Rachael Rollins, Former Chief Legal Counsel to the Massachusetts Port Authority**

Rachael Rollins has served as the Chief Legal Counsel and a trusted member of the Executive Leadership teams in some of the largest and most complicated State agencies and authorities in the Commonwealth of Massachusetts. In addition to her State service, Ms. Rollins spent 4 years as a federal prosecutor in the U.S. Attorney's Office for the District of Massachusetts. There, she defended the U.S. and its agencies in a wide array of civil suits and prosecuted both civil and criminal cases, including drug and firearm offenses, and litigated complex white collar criminal matters. Immediately before joining the U.S. Attorney's Office, Ms. Rollins spent several years as an associate at two large law firms in Boston.



In addition to her continuing public work as a consultant to various governmental entities and to companies seeking to do work with federal, state and local government, Ms. Rollins is currently a member of the Advisory Board of the Rappaport Center for Law and Public Policy at Boston College Law School and the Chair of Legal Redress for the Boston Branch of the NAACP. She is a past President of the Massachusetts Black Lawyers Association, has served as an elected member of the Boston Bar Association Council, and is the recipient of numerous awards, including the 40-Under-40 Award from the Boston Business Journal and a TOYL Award (Ten Outstanding Young Leaders) from the Greater Boston Chamber of Commerce.

### **Pete Wilson, Communications Director, Massachusetts Association of Health Plans**

Mr. Wilson has extensive political, government, nonprofit, and communications experience at the state, federal, and municipal level. He has previously worked as the Legislative Director for the Massachusetts House Committee on Ways and Means, Vice President of Communications at the Liberty Square Group, and Press Secretary for former Senate President Stan Rosenberg. He was named in 2016 Press Secretary of the Year by the Statehouse Press Association and has lectured at The Harvard Kennedy School of Government and Tufts University. Mr. Wilson received his Bachelor's degree from the University of Colorado at Boulder and a Master's degree from The George Washington University.

### **Lisa Wong, Former Mayor of Fitchburg**

Mayor Lisa Wong served 4 terms as Mayor of the city of Fitchburg. Elected to that office at the age of 28, Mayor Wong is the youngest female and the first Asian American female elected mayor in the Commonwealth of Massachusetts.

During her career, Mayor Wong's work on community engagement, environmental issues, education and public health received numerous recognitions. Her work to engage immigrants has been featured on CNN and she chaired a national environmental justice task force as part of the U.S. Environmental Protection Agency's Local Government Advisory Committee. Her FUN and Fitchburg initiative to lower childhood obesity and target health disparities led to one of the largest drops in childhood obesity rates in the country. Mayor Wong has been named the Conservationist of the Year from the Trustees of Reservations, the Blue Green Hero award from the Ocean River Institute, the School Committee Member of the Year from the MA Association of School Committees, and the Gateway Cities Champion Award from MassINC.

Mayor Wong restored fiscal stability to Fitchburg, notably by increasing the stabilization fund, increasing the bond rating several times, reorganizing city departments, reducing health care costs, and instituting energy efficiency projects throughout the city. She attracted jobs and major investment into Fitchburg through smart growth planning projects, including

reinvestment in vacant mills and the \$100 million development of an indoor water resort. As co-chair of the Massachusetts Gateway Cities Initiative, Mayor Wong helped to develop new funding and incentive programs to attract inner city development and save manufacturing jobs.

### **Robert Cerasoli, Adjunct Professor at Quincy College**

Robert A. Cerasoli has a 44-year record of outstanding public service. He has provided major contributions to responsible professional ethical conduct in the Commonwealth of Massachusetts, the City of New Orleans, Louisiana, the national Inspectors General community, and in thirteen foreign nations.

Cerasoli, a native of Quincy, Massachusetts, received his Bachelor of Arts in Government and Public Administration in 1969 from The American University. In 1988, Cerasoli received a Master of Public Administration from Harvard University. In 2015, he received a Master of Arts in Conflict Resolution and Reconciliation from Abilene Christian University. He is a Certified Inspector General (CIG), Certified Inspector General Investigator (CIGI), Certified Inspector General Auditor (CIGA), Certified Fraud Examiner (CFE), and Certified Government Financial Manager (CGFM).

Cerasoli possesses three decades of teaching experience in ethics, auditing, oversight, financial management, and anti-corruption practices. He has taught courses at Bridgewater State University, Eastern Nazarene College, Newbury College, Quincy College, New Hampshire Community Technical College, and for the Association of Inspectors General at American University in Washington, D. C., and John Jay College of Criminal Justice in New York City.

Cerasoli combines teaching experience with decades of practical experience in the field. He served as a Representative in the Massachusetts House of Representatives from 1975 to 1991. He served as the second Inspector General for the State of Massachusetts for two five-year terms, the maximum allowed by law, from 1991 to 2001. The Massachusetts Inspector General was the first statewide Inspector General position created in the U.S. and the first Inspector General position created outside of the federal system. He also served as the first Inspector General of New Orleans, Louisiana from 2007 to 2009, where he set up the office from the ground up after Hurricane Katrina.

As one of the original founders and charter members of the Association of Inspectors General (AIG), Cerasoli literally wrote the book—he proposed, developed, and co-authored the Certified Inspector General (CIG) concept and the creation of the Principles and Standards for Offices of Inspectors General, called the Green Book. This book was used as a basis for the creation of the Inspector General office in New Orleans.

# **EXHIBIT 1**

# Massachusetts Alcoholic Beverages Control Commission

## *Budget Considerations*



In fiscal year 2016, the Alcoholic Beverages Control Commission generated approximately \$7,402,000 in revenue for the Commonwealth, an increase of 61.5% over fiscal year 2015. It is important to note that, working in partnership with the Department of Unemployment Assistance, the Department of Industrial Accidents, the Massachusetts Lottery, and the Department of Revenue, the ABCC assisted in collecting \$11,832,868 in back tax payments and penalties. These results were achieved with an annual budget of \$2,341,489, twenty-six employees, and the fifth lowest ratio of enforcement agents to licensees in the country.

Revenue consists primarily of license application fees, license renewal fees and fines in lieu of suspensions for license violations. In calendar year 2015, the Commission issued 26,000 licenses, certificates and permits for alcoholic beverages licenses and processed over 32,000 license transactions. Additionally, investigators held hearings on many important and in-depth issues this year, including pay-to-play, which brought in roughly \$2.6 million to the Commonwealth through fines for violations.

The ABCC also provided outreach trainings and seminars to 487 police officers on recognizing false identification and implementing underage drinking prevention techniques. Further, the ABCC provided training to 293 individuals representing 209 communities in Massachusetts regarding the new eLicensing initiative.

The Commission anticipates that it will continue to bring \$4.3 million dollars in revenue into the Commonwealth each year for at least the next two years.

While the agency continues its efforts to streamline operations to provide a simpler solution to license applicants and our enforcement division, it finds itself understaffed and overburdened. It is imperative that the agency receive additional resources to ensure the successful implementation of its recent initiatives, particularly the new eLicensing solution, and to maintain sufficient regulatory and enforcement efforts towards public safety and the prevention of alcohol related accidents and incidents in the Commonwealth.

Accordingly, the ABCC respectfully requests the following resources:

- Five (5) Special Investigators
- One (1) In-house eLicensing / IT Specialist
- Two (2) Office Support Specialists
- One (1) Administrative Assistant II Support Staff
- One (1) Associate General Counsel
- One (1) Licensing Liaison Coordinator

# **EXHIBIT 2**

## ABCC Task Force Public Comments

Order in Document	Last Name	Organization	Date Submitted	Topic(s)
1 (pg 10)	Shadrawy	Shadrawy & Rabinovitz	1/23/2017	Pocket Licenses
2 (pg 12)	Turncliff	MetroWest Substance Abuse Prevention Alliance	4/26/2017	Public Health Impacts and Prevention of Underage Drinking
3 (pg 17)	Miller	Wine & Spirits Wholesaler of Massachusetts	5/1/2017	Leveling Down, 25E Franchise Protection
4 (pg 22)	Byrnes	Decisions at Every Turn Coalition	4/15/2017	Create Public Health Working Group
5 (pg 24)	Clay	Mystic Valley Public Health Coalition	3/15/2017	Public Health Impacts and Prevention of Underage Drinking
6 (pg 29)	Freeman		4/21/2017	Public Health Impacts of Underage Drinking
7 (pg 31)	Duva		4/11/2017	Out-of-State Retail Liquor Deliveries
8 (pg 32)	Smith		4/19/2017	Point of Sale Warnings
9 (pg 33)	Barron		3/27/2017	Short Pouring & Public Transparency of Enforcement
10 (pg 35)	Harris	Children's Hospital	3/27/2017	Research on State Alcohol Policies and Motor Vehicle Fatalities
11 (pg 36)	Newman		3/27/2017	Expanded hours & training
12 (pg 38)	Goyette		3/23/2017	Loosening growler restrictions in breweries
13 (pg 39)	Asher		3/23/2017	Growler Regulations, Beer Delivery, Distributor Franchise
14 (pg 41)	LaFlamme		3/23/2017	Loosening Alcohol Restrictions
15 (pg 42)	Miller		3/23/2017	Craft Beer Growler Laws

16 (pg 43)	Mackie		3/22/2017	Growlers, Happy Hour, & Alcohol Delivery
17 (pg 44)	MacKenzie		3/22/2017	Consumer-friendly changes to alcohol laws
18 (pg 46)	Jamilkowsk i		3/22/2017	Growlers and additional taprooms
19 (pg 47)	Braudis		3/22/2017	Growler Regulations, Distributor Franchises & Out of-state shipping
20 (pg 49)	White		3/22/2017	Growler Regulations
21 (pg 51)	Karalius		3/22/2017	Growler Regulations
22 (pg 52)	Williamson		3/22/2017	Additional Licenses and Compensating Existing Establishments
23 (pg 53)	Williamson		3/22/2017	Cider & Perry Regulations
24 (pg 54)	Gillis		3/22/2017	Growler Regulations
25 (pg 56)	Williamson		3/22/2017	Out-of-state Alcohol shipping
26 (pg 57)	Williamson		3/22/2017	Growler Regulations
27 (pg 58)	Margsret		3/10/2017	Taxing Liquor at Package Stores
28 (pg 59)	Filipov		3/9/2017	Happy Hour
29 (pg 60)	LaRoche		3/10/2017	South Hadley license cap
30 (pg 61)	Vanek	Big Brothers Big Sisters Hampden County	4/21/2017	Charitable Donations of Alcohol
31 (pg 63)	Sporn	Slesar Brothers Brewing Company	5/1/2017	Regulation of Farmer Brewers and Sunday Sales
32 (pg 68)	Houghton	Massachusetts Food Association	5/1/2017	Alcohol Sale Hours
33 (pg 71)	Kumler	Massachusetts Farm Wineries Association	5/1/2017	Farm Winery Regulation
34 (pg 75)	Cooper	Total Wine & More	5/1/2017	Invoiced Cost & Quantity Discounts
35 (pg 82)	Cooper	Total Wine & More	5/1/2017	Gift Cards
36 (pg 90)	Cooper	Total Wine & More	5/1/2017	Alcohol Coupons



37 (pg 95)	Demakis	Demakis Law Offices	5/1/2017	Listing Requirements for Investors in Licensees
38 (pg 99)	Leary	BJ's Wholesale Club	4/28/2017	Increasing Retail Licenses
39 (pg 102)	Houghton	Massachusetts Food Association	4/28/2017	Removing limitations on off-site licenses
40 (pg 105)	Houghton	Massachusetts Food Association	4/28/2017	Per town/city licensee limitations
41 (pg 108)	Epstein	Horizon Beverage Company	4/27/2017	Recommend passage of H1990
42 (pg 112)	Epstein	Horizon Beverage Company	4/27/2017	25E Regulations
43 (pg 117)	Clark	Massachusetts Restaurant Association	4/24/2017	Clarifying Premises Alteration Requirements
44 (pg 120)	Clark	Massachusetts Restaurant Association	4/24/2017	Local Fines in Lieu of Suspension
45 (pg 123)	Clark	Massachusetts Restaurant Association	4/24/2017	"last place served" Penalties
46 (pg 125)	Clark	Massachusetts Restaurant Association	4/24/2017	Allowing out-of-state IDs
47 (pg 128)	Burns	Massachusetts Brewers Guild	4/21/2017	Adjusting "Pay to Play" Restrictions
48 (pg 132)	Burns	Massachusetts Brewers Guild	4/12/2017	25E Regulations
49 (pg 137)	Burns	Massachusetts Brewers Guild	4/12/2017	Modernizing Licensing Scheme
50 (pg 142)	Anzalotti	Massachusetts Package Store Association	3/31/2017	Defining invoice cost
51 (pg 145)	Anzalotti	Massachusetts Package Store Association	3/31/2017	Off-Premise Retail of Alcohol

52 (pg 148)	Aufiero	Ruby Wines	3/30/2017	Franchise Agreements
53 (pg 150)	Wark		2/21/2017	Out of state deliveries
54 (pg 151)	Frangules	Massachusetts Organization for Addiction Recovery	5/7/2017	Public Health Impacts and Prevention of Underage Drinking
55 (pg 157)	Bloch		1/24/2017	Happy Hour
56 (pg 158)	Roberts		1/24/2017	Happy Hour
57 (pg 159)	Turgeon		1/27/2017	Allowing for Innovation in New Establishments
58 (pg 161)	Tuchman		1/25/2017	Loosening regulations for consumers
59 (pg 163)	Hatton		1/18/2017	Selling alcohol at multiple sites
60 (pg 164)	Hernandez		1/21/2017	Diversity of alcohol regulations reform panel
61 (pg 165)	Kaplan		1/24/2017	Happy Hour and additional licenses
62 (pg 166)	Snitkoff		1/18/2017	Out of state sales
63 (pg 167)	Mattison		1/27/2017	Expanded serving hours and additional licenses
64 (pg 169)	Rosenburg		1/19/2017	Distributor-free retail sales
65 (pg 170)	Silva		5/9/2017	Increasing drinking age
66 (pg 171)	Warner	Strategic Planning Initiative for Families and Youth	5/9/2017	Tighter Regulations to Improve Public Health Impacts
67 (pg 179)	Lennox		5/10/2017	Decreasing Alcohol Advertising
68 (pg 180)	Conway		5/16/2017	Modernizing regulations and simplifying documentation requirements
69 (pg 192)	Costa		5/21/2017	Hobby Distillation
70 (pg 193)	Robinson		5/23/2017	Package Store Hours
71 (pg 194)	Soussou		5/31/2017	Public Health Concerns
72 (pg 195)	Burdett		5/31/2017	Preventing Alcohol Sales to those convicted of a DUI

73 (pg 196)	Frano	Stoughton OASIS	5/18/2017	Restricting Alcoholic Ice Cream, Increasing Enforcement & Server Training
74 (pg 200)	Houghton	Massachusetts Food Association	6/1/2017	Marketing, Limits on licenses, out of state shipping
75 (pg 202)	Horton		6/2/2017	Happy Hour
76 (pg 203)	Coleman		6/1/2017	Happy Hour , closing times
77 (pg 204)	Potee		6/4/2017	Alcoholic IDs
78 (pg 206)	Hatton		5/31/2017	Allow more stores to sell alcohol
79 (pg 207)	Bodden		5/31/2017	Maintain youth limitations
80 (pg 208)	Roth		5/31/2017	Reforming alcohol laws
81 (pg 210)	Stuart		6/6/2017	Consumer-friendly changes to alcohol laws
82 (pg 213)	Mitchell	Headwater Cider	6/5/2017	Cider Regulations
83 (pg 218)	Kumar	Drizly Inc.	6/6/2017	Technology innovations
84 (pg 223)	Jurkowski		6/6/2017	Protect public from drunk drivers
85 (pg 224)		Distilled Spirits Council	6/6/2017	Modernizing laws, more transparency
86 (pg 240)	Landers	Massachusetts Bear Distributors	6/8/2017	Limit wholesaler giveaways
87 (pg 243)	Lewis	State House	6/8/2017	Strengthen public health protections
88 (pg 247)	Schaff		6/12/2017	Big box stores
89 (pg 249)	Cabot	Massachusetts Distillers Association	6/14/2017	Parity for distilleries
90 (pg 252)	Tatelman	Merrimack Valley Distributing Company Inc.	6/13/2017	Changes to 25E
91 (pg 262)	Hall-Smith	Stop Access Drug Access Free Communities Coalition	6/14/2017	Public health consequences of relaxed regulations

92 (pg 266)	Perlman	Franklin Regional Council of Governments	6/15/2017	Maintain current standards, create Good Samaritan laws, increase funding for evidence based prevention
93 (pg 269)	Sporn	Slesar Brothers Brewing Company	6/20/2017	Pub brewers, off-premises sales
94 (pg 271)	Cantwell	State House	6/27/2017	Fake-ID support, increased compliance, alcoholic ice-cream
95 (pg 273)	Doob		6/29/2017	Out of state sales
96 (pg 274)	Artis		7/9/2017	Volunteering for task force
97 (pg 275)	Garfinkle		7/10/2017	Out of state sales
98 (pg 276)	Jones	National Liquor Law Enforcement Association	7/25/2017	"place of last drink" data collection
99 (pg 278)	Kearney	Retailers Association of Massachusetts	7/27/2017	License limitations & wholesale pricing
100 (pg 283)	Suthoff	Hub Beverage LLC	7/27/2017	Offering feedback as recent wholesaler licensee

# **EXHIBIT 3**

### Alcohol Task Force: Working Groups Members

<b>ABCC Operations &amp; Resources – Rachael Rollins, Chair</b>	
Name	Organization/Business
Jim Aufiero	Ruby Wines
Chief Edward A. Dunne	Falmouth Police Dept./Mass. Chiefs of Police Associations
Tricia Farnsworth	Lawson & Weitzen, LLP
William Kelley	Considine & Furey LLP
Nidhi Kumar	Drizly, Inc.
Ted Landers	Seaboard Products Company
Evelyn Rodriguez	Lawrence Methuen Community Coalition
Tracy Ruzzo	Trillium Brewing Company
Richard Scali	Town of Barnstable Regulatory Services
Anthony Schiavi	Patriot Spirits, Inc. d/b/a “Liquor 'N More”
Jennifer Tatelman	Merrimack Valley Distributing
Heather Warner	Strategic Planning Initiative for Families and Youth Coalition

<b>Industry Improvements – Kate Cook, Chair</b>	
Name	Organization/Business
Frank Anzalotti	Massachusetts Package Stores Association
William Burke	Burke Distributing Corp.
Robert Burns	Night Shift Brewing
Louis A. Cassis	Wine & Spirits Wholesalers of Massachusetts
Edward Cooper	Total Wine & More
Melanie DeCarolis	City Wine Tours
David M. Fields	Wormtown Brewery
Stephen V. Miller	Mcdermott ,Quilty & Miller, Clarke`s at Faneuil Hall
Golsa Mirhosseini	Area Four, LLC
Charles M. Storey	Harpoon Brewery
Michelle Sullivan	The Boston Beer Co.
Aimee Vargas	Anheuser-Busch Companies

<b>Licensing Process – Deborah Gold-Alexander, Chair</b>	
<b>Name</b>	<b>Organization/Business</b>
Alisa V. Brewer	Town of Amherst/Select Board
Shannon Cudmore	Massachusetts Bay Brewing Company, Inc.
Brian Houghton	Massachusetts Food Association
Edward LaFortune III	Wachusett Brewing Co.
Elizabeth Lint	Cambridge License Commission
Christopher Lohring	Notch Brewery & Tap Room
Timothy Naimi	Boston Medical Center
Maura O'Keefe	Law Department, City of Newton
William Russell	Westport Rivers Vineyard/Buzzards Bay Brewing
Joseph Slesar	Slesar Bros. Brewing Company, Inc. d/b/a "Beer Works"
Frank B. Sousa	Colonial Wholesale Beverage
Andrew Upton	DiNocla, Seligson & Upton, LLP

<b>Local Economic Development – Peter Wilson, Chair</b>	
<b>Name</b>	<b>Organization/Business</b>
Drew Brosseau	Mayflower Brewing Company
Tanzania Cannon-Eckerle	Brew Practitioners LLC Brewery
Lee Cooper	Hopsters LLC, Hopsters Alley LLC
Michael Epstein	Horizon Beverage Company
Ivria Glass Fried	Miyares and Harrington LLP
Sion Kim Harris	Boston Children's Hospital Center for Adolescent Substance Abuse Research
Sam Hendler	Jack's Abby Brewing LLC
Bob Luz	Massachusetts Restaurant Association
Elizabeth Parsons	Mystic Valley Public Health Coalition/City of Melrose
Gary Rogers	True North Ale Company, LLC
Carmel Shachar	Petrie-Flom Center, Harvard Law School
Keith Sullivan	Medusa Brewing Company

<b>Public Health, Safety &amp; Prevention – Lisa Wong, Chair</b>	
<b>Name</b>	<b>Organization/Business</b>
Sean Barry	Four Seasons Wine & Liquor
Wayne F.X. Brasco	City of Waltham
Angela J. Cristiani	School Psychologist
Alison DeWolfe	Massachusetts Distillers Alliance / Damnation Alley Distillery
Matthew Durand	Cumberland Farms, Inc.
Maryanne Frangules	Massachusetts Organization for Addiction Recovery
Amy Mittelman	Amherst Town Meeting Member
Robert Selby	Kappy's Fine Wine and Spirits
Brian Shurtleff	Bog Iron Brewing
Amy Turncliff	MetroWest Substance Abuse Prevention Alliance; Decisions at Every Turn Coalition; RockFern Scientific Consulting
Jason Underwood	Sazerac

# **EXHIBIT 4**





# Alcohol Task Force

Welcome Packet



[Deborah B. Goldberg](#)

MASSACHUSETTS STATE TREASURER AND RECEIVER GENERAL

## A Message from the Treasurer

Thank you for your willingness to serve on the Alcohol Task Force! Your contributions will be invaluable to the future of alcohol regulation in Massachusetts.

At its core, the Alcoholic Beverages Control Commission (ABCC) is devoted to providing uniform control over the sale, purchase, transportation, manufacture, and possession of alcoholic beverages in Massachusetts. By licensing restaurants, retailers, wine makers, brewers, and other aspects of the industry, the ABCC is a catalyst for many small businesses that contribute to the Massachusetts economy.

Although the Commonwealth's alcohol laws have been amended since enactment in 1933, many reforms have been piecemeal and reactionary. Other changes have come by way of court decisions, although they may not be reflected in the statutes. The result is a system that lacks the cohesiveness that we and businesses need to operate efficiently.

In addition to legislative challenges, the internal structure has faced bureaucratic hurdles navigating the complex web of state and local regulations. However, over the years, the ABCC has worked diligently to adapt to a changing landscape of alcohol production, distribution, and consumption within Massachusetts.

The outcomes of this Task Force should provide meaningful recommendations to the Legislature and include a thoughtful analysis of the structural requirements to properly operate the ABCC. Any changes should ultimately create an environment for businesses to grow and thrive, and for the agency that oversees them to be more effective and efficient.

**The Task Force review shall be substantive, comprehensive, and exhaustive. The objective is simple – to update and harmonize the competing laws to ensure opportunities for economic development while preserving public safety.**

Included in this packet, you will find useful materials to begin your analysis of alcohol regulation in Massachusetts. This packet is intended to give you a better sense of the history of alcohol regulation, how Massachusetts compares to other states in our own regulatory scheme, and how our regulators operate.

Additionally, for reference, you have been provided with the annotated version of Massachusetts General Laws Chapter 138, the ABCC's Code of Massachusetts Regulations, the ABCC's Licensing, Adjudicatory, and Enforcement Policies, and the ABCC's FY 2016 Budget Considerations.

Most importantly, this Task Force will have autonomy in its review. Of course, my office will be at your disposal for any research and administrative needs. We look forward to assisting you in any way possible, as we too are eager to learn more about the ways we can improve alcohol regulations in the Commonwealth.

Thank you for your dedication; I look forward to your contributions.



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## ALCOHOL REGULATORY HISTORY

### *Pre-Prohibition*

Regular alcohol consumption has always been a staple of American culture, beginning with the Mayflower arriving in Massachusetts. Generally, beers and ciders were safer to drink than water at the time, especially during long sea voyages. These fermented beers and ciders were typically less than 3% alcohol and remained commonplace in the new American culture. As colonies developed, many would drink beer or cider with every meal – including breakfast – as part of their daily routines.

*“They say that the British cannot fix anything properly without a dinner, but I’m sure the Americans can fix nothing without a drink. If you meet, you drink. If you make acquaintance, you drink. If you close a bargain, you drink. They drink because it’s hot, they drink because it’s cold. If successful in elections they drink and rejoice, if not they drink and swear. They begin to drink early in the morning. They leave off late at night. They commence it early in life and they continue it until they soon drop into the grave.”*

*-Captain Frederick Marryat*

By the 1800s, grain based liquors like rum, whiskey, and brandy would become increasingly available. By 1830, the average American over the age of fifteen consumed nearly seven gallons of pure alcohol per year. Alcohol abuse ran rampant, wreaking havoc on women and families’ lives in a time without many of the modern protections against family violence.<sup>i</sup>

During the mid-1800s many local Temperance groups began to develop across the country. The American Temperance Society, founded on February 13<sup>th</sup>, 1826 in Boston, aimed to reform the “respectable” classes of men, while local Washingtonian Societies worked toward reforming working class men through total abstinence from alcohol.<sup>ii</sup> By the late 19<sup>th</sup> century, the Temperance movement was in full swing throughout the country.

The underlying issues with alcohol consumption were rooted in the combination of public acceptance and lack of regulation of alcohol throughout the country. In the pre-Prohibition era, many saloons and bars were “tied-house” establishments, meaning they had close relationships with alcohol manufacturers, distributors, and wholesalers<sup>iii</sup>. Most distillers and brewers were part of the retail sales market in some capacity. Financial incentives, discounted and credited sales, and license ownerships and partnerships created a structure of indebted retailers forced to aggressively market their products to inflate sales. This practice created a culture of overconsumption and helped shape the public narrative fueling Prohibition and the Temperance movement<sup>iv</sup>.

In the late 1800s after the civil war, immigrants from Western European countries began to flood the United States, bringing their drinking cultures with them. In response to the growing number of alcohol consumers, larger national Temperance groups were formed, and partnered with other social movements to gain exposure and influence. Notably, the Women's Christian Temperance Union (WCTU) led by Frances Willard, partnered with Susan B. Anthony and Elizabeth Cady Stanton leading the Women's Suffrage movement. The WCTU focused on many social initiatives and claimed many successes, including: enacting local laws restricting alcohol, and creating an anti-alcohol educational campaign in every school.<sup>v</sup> The main success of the WCTU was to identify alcohol as the root of many social ills on society. However, the creation of the larger Anti-Saloon League helped the ideas of the WTCU finally come to fruition.

The Anti-Saloon League (ASL) had one main goal: a constitutional amendment to ban the manufacture, sale, and distribution of alcohol. The ASL was formed from the Protestant church, as every protestant denomination supported the group, except for the German Lutherans and Episcopalians. The ASL is considered to be the most successful single issue lobbying group in American history, and partnered with any and all constituencies in the country at the time to advance their campaign. Key factors leading to the success of the ASL's campaign were the ratification of income tax and the American entry into World War One.

ASL leaders were able to capitalize on anti-German propaganda surrounding the war, and effectively tied German Lutherans to beer and treason in the public mind. They focused on legislation, and built political power from the ground up, establishing local, state, and regional chapters. With the passage of income tax, states relied less on liquor tax revenues, which made supporting the organization easier politically.

Their effort became successful at 12:01am on January 17<sup>th</sup>, 1920; the Volstead Act (18<sup>th</sup> Amendment) went into effect banning alcohol across the nation.<sup>vi</sup>

# **EXHIBIT 5**

# Massachusetts Alcoholic Beverages Control Commission

## *Licensing Policies & Procedures*



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## **OBJECTIVE**

This guide is designed to help in learning how license applications are processed. In no way does it contain all the answers to every question that may be raised, but endeavors to provide a workable guide to most situations that may arise during the course of a license application investigation.

The guide covers licensing procedure in general. We recommend reviewing MGL Chapter 138 and 204 CMR, as well as written Commission Decisions, for more complete licensing policy.

# **ALCOHOL BEVERAGES LICENSES**

**RETAIL LICENSES:** Licenses that are issued by and under the purview of the “Local Licensing Authorities” (local municipalities). These include on-premises licenses including restaurant, hotel/inn, club, veteran’s club, retirement community, and general-on-premises licenses and off-premises licenses (package store licenses) that are issued after the completion of a three-step process. Step one: the Local Licensing Authority grants a restaurant or package store license; Step two: the Alcoholic Beverages Control Commission (ABCC) approves the granting of such a license. Following this approval by the ABCC, Step three: the Local Licensing Authority may issue the license upon payment of the licensing fee.

**STATE (“INDUSTRY”) LICENSES:** The ABCC is the sole issuing authority for licenses to manufacturers (distillers, wineries, and breweries), wholesalers and importers, railroads, airlines, ships, ship chandlers and caterers. It is the sole issuing authority of liquor transportation permits for express or trucking companies, ships, railroads, caterers, airlines and liquor retailers. It also issues permits to salespersons employed by wholesalers and importers, brokers, farmer-wineries, farmer distillers and farmer-breweries.

## **LICENSE CATEGORIES**

### All Alcoholic Beverages License

- Any liquid intended for human consumption as a beverage and containing one half of one percent (0.05%) or more of alcohol by volume at sixty degrees Fahrenheit.<sup>1</sup>

### Wines and Malt Beverages License / Wine only / Malt only

- “Wines,” all fermented alcoholic beverages made from fruits, flowers, herbs or vegetables and containing not more than twenty-four per cent of alcohol by volume at sixty degrees Fahrenheit, except cider containing more than three per cent, or containing more than six per cent, of alcohol by weight at sixty degrees Fahrenheit.<sup>2</sup>
- “Malts,” all alcoholic beverages manufactured or produced by the process of brewing or fermentation of malt, with or without cereal grains or fermentable sugars, or of hops, and containing not more than twelve per cent of alcohol by weight.<sup>3</sup>

### Cordials License

- “Liqueur or cordial”, all alcoholic beverages manufactured or produced by mixing or redistilling neutral spirits, brandy, gin, or other distilled spirits with or over fruits, flowers, plants or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolations, or maceration of such materials and containing no less than two and one-half percent sugar by weight.<sup>4</sup>
  - Typically added to a wine and malt license in retail licensing

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<sup>1</sup> MGL 138 § 1

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

## LICENSE CLASSES

### Annual

- License is to be utilized all year around (1/1 -12/31)

### Seasonal

- License is to be utilized during a pre-determined time frame within a year
  - Summer: April 1<sup>st</sup> to November 30<sup>th</sup> with an extension through January 15<sup>th</sup> at the discretion of the Local Board. These licenses are considered “dormant” from 1/16 – 3/31. During this period, no one day §14 licenses can be issued to that premises, nor can the seasonal licensee implement a “BYOB” service, as it is still considered to be a licensed premises.
  - Winter (Berkshire or Franklin County): December 1<sup>st</sup> to April 1<sup>st</sup> of the following year.

## QUOTA SYSTEM (Retail Licenses Only)

Each municipality has a quota of retail licenses they are allowed to issue, per MGL Chapter 138 §17, which population based and determined by the most recent census. If a municipality wants to increase the number of allowed licenses in their city/town, they must apply for special legislation to be approved by the Massachusetts house and senate and signed by the governor. Through special legislation, restrictions can be placed on license holders, but each is specific to that legislation. A few general guidelines about the quota:

1. Only applies to retail licensees (§12 and §15)
2. The following municipalities have no restrictions on on-premises (§12), all alcohol licenses but follow the normal quota rules for off-premises (§15): Barnstable, Bourne, Cambridge, Dennis, Falmouth, Franklin, Great Barrington, Haverhill, Kingston, Lee, Lenox, Marlborough, Mashpee, Middleborough, Nantucket, Newburyport, North Adams, Orleans, Pembroke, Plymouth, Sturbridge, Williamstown, Worcester, and Yarmouth.
3. The following municipalities do **not** allow any alcoholic beverages licenses (dry towns): Alford, Dunstable, Chilmark, Gosnold, Hawley, Montgomery, West Hampton, and Mount Washington.
4. There is no restriction on the number of seasonal, on-premises (§12) licenses.
5. Municipalities are allowed one seasonal off-premises (§15) licenses per every 5,000 person or a fraction thereof increase they estimate for the season. For instance, if a town estimates that the population in that town increases by 5,000 during the summer months, that town is can issue one additional seasonal off-premises license. If they estimate an increase of 5,001-10,000, they can issue two additional seasonal, off-premises (§15) license.

## LICENSE TYPES (RETAIL)

**RETAIL ON PREMISE M.G.L. Chapter 138 § 12:** Authorizes alcohol to be drunk on premises such as a restaurants, bars, hotels, clubs, veteran's clubs, continuing care retirement communities, taverns, and general on premises.<sup>5</sup>

### TYPES OF §12 Licenses

**1. Restaurant.** The space in a suitable building provided with adequate and sanitary kitchen and dining room equipment and capacity for preparing, cooking and serving suitable food for strangers, travelers, other patrons and customers, and in addition meeting and complying with all the requirements imposed upon common victualers under M.G.L. c. 140.

**2. Hotel.** A building or part of a building provided with adequate and sanitary kitchen and dining room equipment and capacity for preparing, cooking and serving suitable food for its guests, including travelers, strangers, other patrons and customers. It must also meet and comply with all the requirements imposed upon innholders under M.G.L. c. 140.

**3. Club.** A corporation chartered for any purpose described in M.G.L. c. 180, §2, that owns, hires, or leases a building, or space in a building, of such extent and character as may be suitable and adequate for the reasonable and comfortable use and accommodation of its members.

**4. War Veterans Club.** Any corporation the members of which are war veterans and which owns, hires or leases in such city or town a building, or space in a building, for the use and accommodation of a post of any war veterans' organization incorporated by the Congress of the United States.

**5. General-On-Premises.** A license that allows the sale of alcoholic beverages without food to patrons and customers subject to all other relevant provisions of this chapter.

**6. Tavern.** An establishment where alcoholic beverages may be sold (but not on Sunday), entrances to which shall open directly from a public way. The establishment shall be properly lighted and its business conducted to the public view from the sidewalk level.

**7. Continuing Care Retirement Community.** A "continuing care retirement §76,1 and has a certified assisted living residence pursuant to M.G.L. c. 19D. Once licensed, alcoholic beverages may be sold to residents or guests of residents to be drunk on the premises, in rooms, in the dining rooms, and in such other public rooms or areas of buildings appurtenant and contiguous to and in conjunction with the continuing care retirement community.

**RETAIL OFF PREMISE M.G.L. Chapter 138 § 15:** Authorizes applicant alcohol to be drunk off premises such as "package goods" stores, convenience stores, supermarkets, grocery stores, food stores, wine shops, and so-called "big box retailers" such as warehouse clubs..<sup>6</sup>

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<sup>5</sup> MGL Chapter 138 § 12

<sup>6</sup> MGL Chapter 138 § 15

## **LICENSE TYPES (STATE)**

### **CATERER M.G.L. Chapter 138 § 12C**

The Caterer's License is an on-premises license, which allows a caterer to sell alcoholic beverages at private events (never at the caterer's principal place of business) for no more than five hours in a city or town that allows on-premises licensees under M.G.L. c. 138, §12. Licensed Caterer's cannot sell or deliver alcoholic beverages at events which occur in a licensed premises, i.e. a restaurant, hotel, club, etc.

### **WHOLESALE M.G.L. Chapter 138 § 18**

Authorizes wholesalers and importers with a license to sell for resale to licensees, as well as to import from other licensees that are also approved to sell into the Commonwealth.<sup>7</sup>

### **MANUFACTURER M.G.L. Chapter 138 § 19**

Authorizes manufacturers of alcoholic beverages to sell their product to any licensee holding a valid license for the sale within the Commonwealth. They may also export their product from the commonwealth into any state where the sale of the same is not by law prohibited, and into any foreign country that is not prohibited.<sup>8</sup>

### **FARMER-WINERY M.G.L. Chapter 138 § 19B**

Authorizes farmer wineries to sell to a valid wholesaler or importer; to retail (by the bottle) to consumers for off premise consumption at retail or wholesale to a person in a state or territory that is not prohibited by law; at wholesale to a person in any foreign country; at retail by the glass or bottle to be consumed on the premises prescribed by a license issued by local authority; at retail as a sample of wine to be consumed on the premises (samples may not exceed 1 ounce and no individual may be served more than 5 samples).<sup>9</sup>

### **FARMER-BREWERY M.G.L. Chapter 138 § 19C**

Authorizes farmer-breweries to sell malt beverages or malt beverage products at wholesale to any person holding a valid license to manufacture alcoholic beverages; a valid wholesaler's and importer's license; a valid farmer-brewery license under this section; in kegs, casks, barrels or bottles to any person holding a license to sell for the sole purpose of resale in containers in which the wine was delivered; to any off premise retailer; to any registered pharmacist holding a certificate of fitness under section thirty; to churches and religious societies, educational institutions, incorporated hospitals, homes for the aged, manufacturers of food products, and manufacturers of drugs and chemicals; at retail by the bottle to consumers for consumption off the brewery premises; to any person in any state or territory in which the importation and sale of malt beverages is not prohibited by law; and at wholesale to any person in any foreign country.<sup>10</sup>

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<sup>7</sup> MGL Chapter 138 § 18

<sup>8</sup> MGL Chapter 138 § 19

<sup>9</sup> MGL Chapter 138 § 19B

<sup>10</sup> MGL Chapter 138 § 19C

### **PUB BREWERY M.G.L. Chapter 138 § 19D**

Authorizes pub breweries to sell malt beverages or malt beverage products produced by the pub brewery or produced for the pub brewery and sold under the pub brewery name at wholesale to any person holding a valid wholesalers' and importers' license; to churches and religious societies, educational institutions, incorporated hospitals, homes for the aged, manufactures of food products and manufacturers of drugs and chemicals; to any person in any state or territory in which the importation and sale of malt beverages is not prohibited by law; and to any person in a foreign country.<sup>11</sup>

### **FARMER-DISTILLERY M.G.L. Chapter 138 § 19E**

Authorizes farmer-distilleries to sell distilled products at wholesale to a person holding a valid license to manufacture alcoholic beverages; to a person holding a valid license as a wholesaler and importer; to a person holding a valid farmer-distillery license; in kegs, casks, barrels and bottles to a person holding a license to sell for the sole purpose of resale in containers in which the distilled product was delivered, to a person holding a license to sell; to a registered pharmacist holding a certificate of fitness; to churches and religious societies, educational institutions, incorporated hospitals, homes for the aged, manufacturers of food products and manufacturers of drugs and chemicals; at retail by the bottle to consumers for consumption off the farmer-distillery premises; at wholesale to a person in a state or territory in which the importation and sale of distilled products is not prohibited by law; and at wholesale to a person in a foreign country.<sup>12</sup>

### **DIRECT WINE SHIPPER M.G.L. Chapter 138 § 19F**

Authorizes direct wine shippers to manufacture and export wine; and is in the business of manufacturing, bottling or rectifying wine. The licensee may sell and deliver wine directly to residents of the commonwealth who are 21 years of age or older, for personal use and not for resale.<sup>13</sup>

### **FARMER SERIES POURING PERMITS (Famer Winery Pouring Permit §19B(n), Farmer Brewery Pouring Permit §19C(n), Farmer Distillery Pouring Permit §19E(o))**

Pouring permits allow for on premise consumption of alcoholic beverages, Wine only on Farmer Wineries; Malt only on Farmer Breweries; and Distilled Spirits only on Famer Distilleries, at the location (Farm) in which they are produced. Only applicable to "Farmer Series Licenses."<sup>14</sup> They follow a three step approval process, similar to retail licenses, and must be approved by the local municipality in which the Farmer Series license is located. This license will not be subject to the quota in said municipality.

### **WAREHOUSE (PUBLIC) M.G.L. Chapter 138 § 20A**

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<sup>11</sup> MGL Chapter 138 § 19D

<sup>12</sup> MGL Chapter 138 § 19E

<sup>13</sup> MGL Chapter 138 § 19F

<sup>14</sup> MGL 138 § 19B(n),19C(n), 19E(o)

A permit authorizing a licensed public warehouse to store alcoholic beverages lawfully possessed by the person seeking to warehouse those alcoholic beverages.

**WAREHOUSE (PUBLIC) M.G.L. Chapter 138 § 20**

A permit authorizing a wholesaler, a farmer-brewery, a farmer-winery, or a manufacturer to store alcoholic beverages in bond and transfer these beverages from bond to the purchaser's licensed premises.

**STORAGE M.G.L. Chapter 138 § 20**

A permit authorizing a wholesaler, a farmer-brewer, a farmer-winery, or a manufacturer to store alcoholic beverages it is authorized to produce, sell and deliver.

**COMMERCIAL M.G.L. Chapter 138 § 76**

A license authorizing the manufacture, transport, import, export and sale of alcohol for mechanical, manufacturing or chemical purposes only or for sale to any wholesaler or manufacturer in Massachusetts or to any other buyers specified in state law.

**SALESMAN M.G.L. Chapter 138 § 19A**

A permit authorizing an individual employed by a licensed wholesaler, broker, farmer-winery, farmer-brewery, or pub-brewery to solicit orders for alcoholic beverages from licensed wholesalers (or retailers, as the case may be) on behalf of that employer.

**AGENT-BROKER M.G.L. Chapter 138 § 18A**

A license to solicit orders from licensed wholesalers on behalf of licensed suppliers. A broker may not buy or sell alcoholic beverages and may not bring alcoholic beverages into Massachusetts.

**TRANSPORTATION M.G.L. Chapter 138 § 22**

A permit authorizing the holder to pick-up alcoholic beverages lawfully bought by the licensee from a licensee in Massachusetts; also authorizes the delivery of alcoholic beverages lawfully sold by the licensee to wholesalers in Massachusetts. NOTE: An on-premises, section 12 licensee can only pick-up alcoholic beverages lawfully bought by the licensee in Massachusetts. An on-premises licensee may not deliver outside the licensed premise to consumers in Massachusetts.

**EXPRESS TRANSPORTATION M.G.L. Chapter 138 § 22**

A permit authorizing a person or entity who is regularly and lawfully engaged in the business of leasing trucks for hire, with or without drivers, to transport and deliver alcoholic beverages lawfully sold by a licensee in Massachusetts to a lawful buyer in Massachusetts.

**CERTIFICATE OF COMPLIANCE (COC) M.G.L. Chapter 138 § 18B**

Authorizes a certificate of compliance to a licensee for having a place of business located, and a license granted, outside the commonwealth and whose license authorizes the exportation or sale of alcoholic beverages to licensees in this Commonwealth.<sup>15</sup>

**COC HOLDER TRANSPORTATION 2.17**

A permit authorizing a COC holder to transport product to a licensed warehouse in Massachusetts so that a licensed Massachusetts wholesaler who has bought the product may pick-up the product directly from the licensed warehouse.

**AIRLINE (PASSENGER) M.G.L. Chapter 138 § 13**

A license to sell alcoholic beverages for passenger consumption on an aircraft.

**SHIP (PASSENGER) M.G.L. Chapter 138 § 13**

A license to sell alcoholic beverages to passenger for consumption on a ship.

**RAILROAD (PASSENGER) M.G.L. Chapter 138 § 13**

A license to sell alcoholic beverages to passenger for consumption in a licensed railroad car.

**SHIP CHANDLER M.G.L. Chapter 138 § 13**

A license authorizing a ship chandler to purchase alcoholic beverages for provisioning ship(s) in Massachusetts.

**AIRLINE (CARGO) M.G.L. Chapter 138 § 22**

A permit authorizing the holder to transport and deliver alcoholic beverages lawfully sold by a licensee in Massachusetts to a lawful buyer in Massachusetts.

**SHIP (CARGO) M.G.L. Chapter 138 § 22**

A permit authorizing the holder to transport and deliver alcoholic beverages lawfully sold by a licensee in Massachusetts to a lawful buyer in Massachusetts.

**RAILROAD (CARGO) M.G.L. Chapter 138 § 22**

A permit authorizing the holder to transport and deliver alcoholic beverages lawfully sold by a licensee in Massachusetts to a lawful buyer in Massachusetts.

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<sup>15</sup> MGL Chapter 138 § 18B



## PERMITS / SPECIAL LICENSES

### ONE-DAY LICENSE (§14)

- License is to be utilized for a single day. The Local Licensing Authorities are in charge of issuing special, one-day licenses for the sale of wines and/or malt beverages **only** to any enterprise. Special licenses for the sale of all alcoholic beverages may be issued to *non-profit organizations only*.<sup>16</sup>
- The Local Licensing Authorities cannot grant special, one-day licenses to any person for more than a total of 30 days per calendar year, to any person that has an on premises license application pending before it, or to any premises that has an alcoholic beverages license.
- Special Licensees must purchase alcoholic beverages from a licensed supplier. **Special licensees CANNOT purchase alcoholic beverages from a package store and CANNOT accept donations of alcoholic beverages from anyone. They may, however, accept donations of wine only if they are a non-profit and hold a Charity Wine Fundraising Permit.**

### FARMER'S MARKET LICENSE (§15F)

- The Local Licensing Authorities are in charge of issuing a Farmer's Market License for the sale of wine manufactured by a licensed Farmer-Winery at approved agricultural events in Massachusetts. This license allows a winery to provide samples of their wines to consumers and sell by the bottle / case their product for off-premises consumption.
  - All applicants must submit a certification from the Department of Agricultural Resources that the Farmer's Market, for which they are seeking a license, is an "agricultural event."
  - These licenses are not subject to the quota or limit on the number of section 15 licenses that otherwise exist in each city and town.
  - These licenses cannot overlap any area or premises that is already covered by an existing license

### CHARITY WINE FUNDRAISING LICENSE - *60 Days Notice is Required!*

- There are three types of Charity Wine Fundraising Licenses, a Charity Wine Auction License, a Charity Wine Partnership License, and a Charity Wine Pouring License. Only a qualifying charity can obtain these licenses, which allow for the sale and/or consumption of **DONATED WINE ONLY**. The location of an event with these licenses is limited to an on- premises licensed establishment or the qualifying charity's headquarters or usual place of business (if zoned for wine sales). The application must be approved by both the LLA and the ABCC.
  - A qualifying charity is a Non-Profit Corporation organized in Massachusetts, is in good standing with the Secretary of State's office and is currently

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<sup>16</sup> <http://www.mass.gov/abcc/onedayauthorized.htm>

registered with the Massachusetts Office of the Attorney General's and holds an up-to-date certificate for solicitation through that office.

- If the event is hosted at a facility that holds an on-premises (§12) license, a letter from that licensee acknowledging the receipt of donated wine for the event is required.

#### **CONSUMER RESEARCH PERMIT M.G.L. c. 138, §22A**

- An individual wishing to conduct consumer-tasting research with alcoholic beverages may only apply to the ABCC for a permit authorizing that activity. The application form is on our website, under the forms section.
- The alcoholic beverages used in the research must be received from a wholesaler, acquired otherwise than by purchase and not intended for sale, use the alcoholic beverages specified solely for research related to consumer consumption of those alcoholic beverages.

#### **PERMIT TO IMPORT HOUSEHOLD EFFECTS/GIFTS INTO MASSACHUSETTS M.G.L. c. 138, §22A**

- Any person bringing alcohol into the Commonwealth of Massachusetts, either as a household effect or a gift, is required to hold a permit issued by the ABCC to do so. This includes individuals who are at least twenty-one years of age and who are relocating to Massachusetts or who already live here. This permit authorizes him or her to import the alcoholic beverages specified in the application. All alcoholic beverages covered under this permit must not have been purchased with the intention for resale.

#### **LICENSEE INVENTORY LIQUIDATION PERMIT (Going-Out-Of-Business) M.G.L. c. 138, §22A**

- A special permit only distributed by the ABCC exists for license-holders who have gone or are going out of business and wish to sell their existing inventory of alcoholic beverages. After receiving this permit, the license holder selling the inventory may sell to individuals or businesses that hold a license under MGL Chapter 138.

# **EXHIBIT 6**

# Massachusetts Alcoholic Beverages Control Commission

*Adjudication, Enforcement & Outreach*



## **Adjudication**

In 1933 the Legislature created the Alcoholic Beverages Control Commission (“ABCC”). The ABCC is an agency under the Office of the State Treasurer & Receiver General.<sup>1</sup> It consists of three commissioners appointed by the Treasurer.<sup>2</sup> The commissioners are charged with having “general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting and selling alcoholic beverages . . . and also of the quality, purity and alcoholic content thereof.”<sup>3</sup>

Like many other states, Massachusetts’ Liquor Control Act regulates the sale and importation of alcoholic beverages through a three-tier distribution system. Separate licenses are required for producers, wholesalers, and retailers. Producers/manufacturers of alcoholic beverages generally may sell only to licensed wholesalers. Wholesalers, in turn, may sell only to in-state retailers. Licensed retailers are the final link in the chain, selling alcoholic beverages to consumers at retail locations. Vertical integration of these tiers is prohibited (i.e., no entity may own a license in more than one tier).<sup>4</sup>

By its authority under the Liquor Control Act, the ABCC promulgates regulations under 204 CMR for the sale and consumption of alcoholic beverages, issues licenses and permits to serve and sell alcoholic beverages, conducts investigations to ensure that licensees are in conformance with laws and regulations, conducts adjudicatory hearings to determine whether laws and regulations have been upheld, and takes enforcement action against unlawful conduct.

Under this legal framework the ABCC holds hearings on issues related to both state and retail licenses. Retail license hearings fall into four categories:

1. A licensee's appeal of a Local Licensing Authority's denial of a license application;
2. A licensee's appeal of a Local Licensing Authority's enforcement action (suspension, modification, cancellation or revocation of a retail license);
3. An ABCC informational hearing on a license application;
4. An ABCC direct enforcement action (suspension, modification, cancellation or revocation of a retail license).

State-issued license hearings fall into three categories:

1. An ABCC informational hearing on a license application;

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<sup>1</sup> M.G.L. c. 10, § 70.

<sup>2</sup> M.G.L. c. 10, § 70.

<sup>3</sup> M.G.L. c. 10, § 71.

<sup>4</sup> See, generally, Granholm v. Heald, 544 U.S. 460 (2005), for a discussion of the three-tier system.

2. An ABCC Investigator's enforcement action (suspension, modification, cancellation or revocation of a state-issued license); and,
3. A wholesaler's petition under M.G.L. c. 138, § 25E, for relief from a supplier's refusal to sell a brand or petition for determination of good cause to terminate sales of a brand from a supplier to a wholesaler.

The ABCC hearings operate under the Informal/Fair Hearing Rules, 801 CMR 1.02 and under the Administrative Procedures Act, M.G.L. c. 30A.

### **Enforcement**

Special Investigators of the Investigation and Enforcement Division are appointed by the Commission pursuant to Massachusetts General Laws Chapter 10 §72. Accordingly, Investigators are authorized and directed, pursuant to Massachusetts General Laws Chapter 138 §56, to make all needful and appropriate investigations to enforce the Liquor Control Act.

Pursuant to this statutory mandate the Enforcement Division established the following objectives: 1) To prevent the sale or delivery of alcoholic beverages to underage individuals; 2) To prevent the sale or delivery of alcoholic beverages to intoxicated individuals and potential impaired drivers; 3) To prevent the sale of alcoholic beverages that are illegally imported or purchased from an illegal source and to prevent the tampering or dilution of alcoholic beverages; 4) To prevent illegal gambling on licensed premises; 5) To prevent the sale, delivery or use of illegal narcotics on licensed premises; 6) To prevent undisclosed ownership of licensed establishments by individuals or criminal organizations; and 7) To provide suppliers, wholesalers and retailers of the alcoholic beverage industry with a fair and even playing field to conduct their licensed business.

Reports on arrest data have established that seventy five to eighty percent of violent crimes, such as assaults and domestic violence, are alcohol related. It is the overall objective of this Division to impact public safety and the quality of life in our communities through effective alcohol enforcement strategies to reduce alcohol related crimes and traffic crashes. This Division has established effective enforcement programs, often working in cooperation with municipal and state police departments, to address alcohol related problems in communities throughout the commonwealth. These programs have received the following national recognition for their innovation and effectiveness: National Liquor Law Enforcement Association Meritorious Service Award for enforcement efforts in Lawrence Massachusetts; National Liquor Law Enforcement Association Enforcement Agency of the Year Award; National Conference of State Liquor Administrators "Innovations in Health and Safety" Award; President's Award from the National Chapter of Mothers Against Drunk Driving; Recognized as a National Success Story by the United States Justice Department; National Liquor Law Enforcement Association Agent of the Year.

In 2015, 293 complaints filed with the Commission were investigated and closed. The Enforcement Division receives complaints from the general public, municipal and state police, state agencies, as well as various public interest groups. These complaints range from underage drinking, sale of alcohol to intoxicated individuals, illegal gambling activity, illegal alcoholic beverages and illegal narcotics activity.

In 2015 the Enforcement Division conducted operations in over 200 municipalities throughout the commonwealth. Investigators observed approximately 221 violations of the Liquor Control Act and filed 128 reports to the Commission for prosecution. These violations ranged from sale of alcohol to underage individuals, sale of alcohol to intoxicated individuals, illegal gambling, illegal alcoholic beverages, illegal narcotics activity and criminal ownership interests of licensed premises.

Place of Last Drink (PLD) reports are filed with the Commission pursuant to Massachusetts General Laws Chapter 90 §24J, which requires that “In every case of a conviction of or a plea of guilty to a violation of operating a motor vehicle under the influence of intoxicating liquor, the court shall inquire of the defendant, before sentencing, regarding whether he was served alcohol prior to his violation of said section at an establishment licensed to serve alcohol on the premises and the name and location of said establishment. Any information so acquired by the court shall be transmitted to the alcohol beverage control commission”. In 2015 there were approximately 1500 OUI reports filed with the Commission. In order to optimize resources, the Enforcement Division utilizes this data to determine the bars that have been identified in the highest number of 24J reports and thus pose a greater risk to public safety. In addition to this data, Investigators work with municipal police departments to identify bars that are problematic for the municipality as a result of the sale of alcoholic beverages to intoxicated individuals. If a bar is found to serve alcohol to an intoxicated individual, Investigators charge the bar with MGL Chapter 138 §69 and arrange for safe transportation or protective custody for the individual.

The Enforcement Division conducts Minimum Purchase Age Compliance Checks to prevent the sale of alcoholic beverages to underage individuals by licensed establishments throughout the Commonwealth and to increase their vigilance in the checking of identification. In 2015, the Division conducted Compliance Checks in 212 municipalities in the commonwealth. There were 2172 licensed establishments checked, of which 37 failed (2%). Of these licensees, there were 944 off-premise licensees checked of which 24 failed (3%); and 1235 on-premise licensees checked of which 13 failed (1%).

Massachusetts has the 5th lowest ratios of enforcement agents to licensees in the country. Accordingly, the Division has developed Enhanced Liquor Enforcement Programs that are scheduled to address specific geographic and seasonal challenges relating to underage drinking and impaired driving. The primary objective is to prevent the procurement of alcoholic beverages by and for underage individuals as well the sale or delivery of alcoholic beverages to intoxicated individuals and potential impaired drivers. Operation Safe Campus is conducted at bars and

liquor stores in college communities over a 6-week period at the beginning of each school year. Operation Safe Prom and Graduation is conducted at liquor stores throughout the commonwealth over an 8-week period during May and June. Operation Safe Summer is conducted at bars and liquor stores in summer communities over a 6-week period during July and August. Operations Safe Holidays is conducted, at bars that have been identified in the highest number of 24J reports, from Thanksgiving through December 31st. In 2015 these programs produced the following results: 1065 minors in possession or transporting alcoholic beverages; 226 adults procuring alcohol for minors; 51 individuals in possession of false identification; and 455 cases of beer and 403 bottles of alcohol were confiscated by Investigators, preventing delivery to approximately 6154 underage individuals. Since 2005 these programs have resulted in the following cumulative results: 6769 minors in possession or transporting alcoholic beverages; 2783 adults procuring alcohol for minors; 649 individuals in possession of false identification; and 3588 cases of beer and 2708 bottles of alcohol were confiscated by Investigators, preventing delivery to approximately 46388 underage individuals.

Source Investigations are conducted to investigate alcohol-related motor vehicle accidents that result in death, serious bodily injury or alcohol-related accidents that involve persons under the legal age to possess or consume alcoholic beverages; to discover the source of the alcoholic beverages consumed by the individual or individuals involved in the accident and investigate whether the source of the alcohol violated Massachusetts law. By holding accountable licensed establishments, employees or third party providers that provide alcohol to minors or over serve their patrons, our goal is to see a reduction in the number of licensees selling alcohol to minors and intoxicated patrons – and, ultimately, fewer incidents and crashes in Massachusetts.

The Enforcement Division conducts enforcement operations to prevent illegal gambling at bars throughout the commonwealth, primarily through the use of electronic video devices. The Division often receives complaints from individuals whose family members have lost large sums of money in these devices

The Enforcement Division conducts investigations into unlawful ownership or control over bars and liquor stores throughout the commonwealth. Investigators endeavor to ensure that licensees have disclosed all persons who have a direct or indirect financial or beneficial interest in a license, and to prevent individuals or organizations from controlling a licensed business for unlawful purposes.

### *ABCC Powers Under the Law*

Special Investigators of the ABCC are appointed by the Commission pursuant to Massachusetts General Laws Chapter 10 §72. Accordingly, Investigators are authorized and directed, pursuant to Massachusetts General Laws Chapter 138 §56, to make all needful and appropriate investigations to enforce the Liquor Control Act.



Section 56 - A deputy sheriff, chief of police, deputy chief of police, city marshal, deputy or assistant marshal, police officer including a state police officer, or constable, or, in the county of Dukes or Nantucket, the sheriff anywhere within his county, or any investigator of the commission, may without a warrant arrest any person whom he finds in the act of illegally manufacturing, selling or exposing or keeping for sale, storing, transporting, importing or exporting alcoholic beverages or alcohol, and seize the said beverages or alcohol and any vessels and implements of manufacture or sale in the possession of such person, and detain them until warrants can be procured against such person, and for the seizure of said beverages or alcohol, vessels and implements, under this chapter. Such officers shall enforce or cause to be enforced the penalties provided by law against every person who is guilty of a violation of this chapter of which they can obtain reasonable proof, and shall make all needful and appropriate investigations for the said purpose.

### Local Law Enforcement – Partnerships

The Enforcement Division works in cooperation with municipal and state law enforcement agencies in order to obtain optimal enforcement coverage. Most often these efforts are generated through requests for assistance from municipal police chiefs who have problematic licensees in their communities. Further, when a complaint is received at the ABCC, Investigators reach out to police departments to conduct cooperative enforcement operations when feasible.

The Enforcement Division works in cooperation with the State Fire Marshall to ensure compliance with the Massachusetts Fire Code, particularly at large venues where overcrowding and improper fire prevention measures have been problematic.

The Enforcement Division works with Massachusetts Police Academies and Municipal Police Departments to train municipal, campus and state law enforcement officers in the enforcement of the Liquor Control Act as well as False Identification and Fraudulent Document detection. This training enhances the prevention of underage drinking and impaired driving by developing police department knowledge of and involvement in liquor law enforcement.

### **Education and Training**

The ABCC utilizes our specialized knowledge and unique perspective regarding alcoholic beverages service to provide a vast array of training services to a multitude of audiences. We provide educational training seminars for local licensing authorities, police departments, and state and federal agencies.

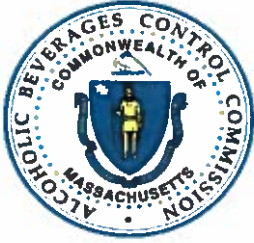
- **Commission Outreach Seminars**

In FY2016, the ABCC conducted 9 outreach seminars focusing on eLicensing, licensing, and compliance issues. 293 individuals attended these seminars, representing 207 municipalities and 3 associations, from every county in the Commonwealth.

- Training of Municipal and State Law Enforcement.

The Investigation and Enforcement Division works with Massachusetts police academies and police departments to educate local and state law enforcement officers in the enforcement of the Massachusetts Liquor Control Act, as well as false identification and fraudulent document detection. This training enhances the prevention of underage drinking and over service by developing police knowledge of and involvement in liquor law enforcement. In calendar year 2015, this training was provided for 487 police officers.

# **EXHIBIT 7**



*Commonwealth of Massachusetts  
Department of the State Treasurer  
Alcoholic Beverages Control Commission  
239 Causeway Street  
Boston, Massachusetts 02114*

**Jean M. Lorizio, Esq.**  
*Chairman*

**ALCOHOLIC BEVERAGES CONTROL COMMISSION  
FISCAL YEAR 2016 ANNUAL REPORT**

The Alcoholic Beverages Control Commission (the “ABCC” or “Commission”) helps safeguard the people of Massachusetts against a wide variety of public safety threats that can arise from the illegal use of alcoholic beverages, such as underage drinking and service to intoxicated persons. The ABCC has prevented thousands of underage individuals from possessing or transporting alcoholic beverages, thousands of adults from unlawfully procuring alcohol for these underage individuals, and hundreds of individuals from possessing false identification. The ABCC has repeatedly received national awards and recognition for innovation and effectiveness.

Over the past several years, the ABCC has concentrated on achieving several goals, including:

- enhancing transparency for all stakeholders;
- increasing communication and collaboration with all the municipalities;
- building strong relationships with other agencies; and
- utilizing technology to assist with limited resources.

In fiscal year 2016, the Commission generated approximately \$7,257,884 million in revenue for the Commonwealth, an increase of 58% over fiscal year 2015. The ABCC also assisted the Department of Unemployment Assistance, the Department of Industrial Accidents, the Massachusetts Lottery, and the Department of Revenue in collecting \$11,832,868 million dollars in back tax payments and penalties. These results were achieved with an annual budget of \$2,341,489 million, twenty-seven employees, and the fifth lowest ratio of enforcement agents to licensees in the country.

In accordance with the provisions of Section 71 of Chapter 10 of the General Laws as amended, we have the honor to produce the annual report of the Alcoholic Beverages Control Commission detailing the conduct and condition of traffic in alcoholic beverages during the **fiscal year ending June 30, 2016**. Below please find a statement of the income generated by fees for licenses and permits issued by the Commission under Chapter 138 of the General Laws, as amended. The report includes the number and type of all alcoholic beverages licenses issued in **calendar year 2015**.

**Financial Statement:**

Summary of Income Received in Fiscal Year 2016 from Fees for Licenses and Permits  
Issued by the Commission under Chapter 138 of the General Laws

Manufacturers' License Fees	§19, all alcohol	\$264,418
	§19, wine and malt beverages	
	§19E, distilleries	
	§19C, breweries	
	§19B, wineries	
	§19D, pub brewery	
	§19F, winery shipment	
Wholesalers' and Importers' License Fees	§18, all alcoholic beverages	\$796,418
	§18, wine and malt beverages	
	§18, sacramental wines	
Retail Alcohol Application Fees	§12, on-premises	\$680,800
	§15, off-premises	
	Additional Package Store	
Agents,' Brokers' or Solicitors License Fees	§18A	\$346,000
Railroad License Fees	§13, railroad master	\$8,650
	§13, railroad cars	
	§22, railroad cargo	
Airplane License Fees	§13, airline master	\$21,900
	§13, airline flights	
	§22, airline cargo	
Ship License Fees	§13, ship master	\$66,500
	§13, ship chandler	
	§22, ship cargo	
Commercial License Alcohol Fees	§76	\$2,500
Special Permit License Fees	§22A, import household effects/gifts	\$25,216
	charity wine	
	§22A, license inventory liquidation	
	§22A Consumer Research Permits	
Storage Permit Fees	§20, bonded	\$59,000
	§20A, public	
	§20, storage	
	§Registration Certificate of Compliance	
Transportation Permit Fees	§22, transportation and delivery	\$585,844
	§22, express company permits	
Salesman Permit Fees	§19A	\$789,200
Caterer's License	§12C	\$116,800
Certificates of Compliance Fees	§18B	\$756,400
Fine in Lieu of Suspension Fees		\$2,723,182
Miscellaneous Income		\$15,056
Total Receipts		\$7,257,884

This represents a 58% (\$2,674,728) increase from fiscal year 2015.

**STATEMENT OF APPROPRIATIONS AND EXPENDITURES**

General Appropriation for fiscal year 2016	\$2,341,489
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**Additional Income to the Commonwealth:** As stated previously, in fiscal year 2016, with the Commission's assistance, the Departments of Unemployment Assistance (DUA) and Revenue (DOR) collected taxes from delinquent licensees in the amount of \$11,832,868 million dollars from Massachusetts alcoholic beverages licensees.

**Alcoholic Beverages Licenses & Permits Issued For Calendar Year 2015:**

<b>Type</b>	<b># Issued</b>	<b>Category</b>
Manufacturers' License	2	§19, all alcohol
	3	§19, wine and malt beverages
	26	§19E, distilleries
	83	§19C, breweries
	80	§19B, wineries
	22	§19D, pub brewery
	963	§19F, winery shipment
Wholesalers' and Importers' License	66	§18, all alcoholic beverages
	80	§18, wine and malt beverages
	4	§18, sacramental wines
Retail Alcohol License	8,739	§12, on-premises
	2,916	§15, off-premises
	16	Additional Package Store
Agents,' Brokers' or Solicitors License	83	§18A
Railroad License	4	§13, railroad master
	67	§13, railroad cars
Airplane License	14	§13, airline master
	395	§13, airline flights
	3	§22, airline cargo
Ship License	110	§13, ship master
	1	§13, ship Chandler
Commercial License Alcohol	5	§76
Special Permit License	106	§22A, import household
	98	charity wine
	7	§22A, license inventory
	8	§22A Consumer Research
	189	Other Special Permits
Storage Permit	0	§20, bonded
	24	§20A, public
	17	§20, storage
Transportation Permit	3,965	§22, transportation and delivery
	6,568	§22, express company permits
Salesman Permit	2,241	§19A
Certificates of Compliance	2,210	§18B
Caterer's Section 12C License	56	§12C

**In calendar year 2015, the Commission issued 29,171 licenses, certificates and permits for alcoholic beverages.**

### **Commission Hearings:**

The ABCC conducts hearings for: charges filed by Commission Investigators; license applications; licensees that are delinquent in taxes due DOR, DUA or lottery proceeds; industry level franchise cases; and administrative appeals for licensees aggrieved by a decision of the local licensing authorities. The Commission scheduled 392 and conducted 208 hearings in fiscal year 2016. Below are the hearing types.

<b>Hearing Type</b>	
Violation	126
Informational (license applications)	43
Appeals	28
Tax /Lottery	0
Public Hearing	0
25E	11
Withdrawn	32
Continued	152

### **Investigation and Enforcement Division:**

Special Investigators of the Investigation and Enforcement Division are appointed by the Chairman pursuant to Massachusetts General Laws Chapter 10, §72. The Investigators are authorized and directed, pursuant to Massachusetts General Laws Chapter 138, §56, to make all needful and appropriate investigations to enforce the Liquor Control Act.

#### **License Application Investigations**

In calendar year 2015 the Enforcement Division completed 3,961 investigations of license applicants, which was an increase of 440 investigations (17%) over 2014. On average, investigators completed these investigations in 14 days.

#### **Enforcement Actions**

##### *Complaints*

In calendar year 2015, 293 complaints filed with the Commission were investigated and closed. The Enforcement Division receives complaints from the general public, municipal and state police, state agencies, as well as various public interest groups. These complaints range from underage drinking, sale of alcohol to intoxicated individuals, illegal gambling activity, illegal alcoholic beverages, and illegal narcotics activity.

##### *Violations*

In calendar year 2015, the Enforcement Division conducted operations in over 200 municipalities throughout the commonwealth. Investigators observed approximately 221 violations of the Liquor Control Act and filed 128 reports to the Commission for prosecution. These violations ranged from sale of alcohol to underage individuals, sale of alcohol to intoxicated individuals, illegal gambling, illegal alcoholic beverages, illegal narcotics activity, and criminal ownership interests of licensed premises.

In addition, the Investigation and Enforcement Division conducted a series of special operations:

- *Minimum Purchase Age Compliance Checks*

The objective of compliance checks is to prevent the sale of alcoholic beverages to underage individuals by licensed establishments throughout the Commonwealth. The primary focus is to educate licensees and to increase their vigilance for checking proof of age. In Calendar Year 2015, the agency conducted Compliance Checks, in **212 municipalities** across the Commonwealth. The Investigators conducted operations in **2,172 licensed establishments**, of which **37 failed (2%)**. This represents an outstanding **success rate of 98%**, and puts *Massachusetts well above the national average* success rate of 84%.

- *Enhanced Liquor Enforcement Programs*

There are certain periods of time throughout the year that increased consumption of alcoholic beverages poses a heightened risk to public safety. As a result, the Commission has implemented a number of programs to proactively target specific events and time periods throughout the year. These programs include Operation Safe Campus, Operation Safe Prom and Graduation, Operation Safe Summer, and Operation Safe Holidays.

The objective of these operations is to prevent the procurement of alcoholic beverages by and for underage individuals and to prevent the sale of alcohol to visibly intoxicated individuals.

To encourage family involvement and intervention in addressing the problem of underage drinking, the Division has implemented a parent notification program to inform parents, at the time of the incident, of the situation in which their child is involved. Investigators have found this intervention to be very effective.

In 2015, these programs produced the following results: 1,065 minors in possession or transporting alcoholic beverages; 226 adults procuring alcohol for minors; 51 individuals in possession of false identification; and 455 cases of beer and 403 bottles of alcohol were confiscated by Investigators, preventing delivery to approximately 6,154 underage individuals. Since 2005, these programs have resulted in the following cumulative results: 6,769 minors in possession or transporting alcoholic beverages; 2,783 adults procuring alcohol for minors; 649 individuals in possession of false identification; and 3133 cases of beer and 2305 bottles of alcohol were confiscated by Investigators, preventing delivery to approximately 40234 underage individuals.

- *Illegal Gambling Enforcement*

The Investigation and Enforcement Division has conducted numerous enforcement operations involving illegal gambling at licensed premises throughout the Commonwealth. The primary focus of these investigations is the illegal use of electronic poker machines for the purpose of illegal gambling.

In calendar year 2015, the Enforcement Division brought 40 illegal gambling charges against 18 bars. Since 2009, the Enforcement Division has filed charges against 103 bars and liquor stores in the Commonwealth.



- *Cooperative Enforcement with State and Local Law Enforcement Agencies*

The Enforcement Division works in cooperation with municipal and state law enforcement agencies in order to obtain optimal enforcement coverage. Most often these efforts are generated from requests for assistance from municipal police chiefs who have problematic licensees in their communities. Further, when a complaint is received at the ABCC, Investigators reach out to police departments to conduct cooperative enforcement operations when feasible.

In 2015, the Enforcement Division continued to work in cooperation with the State Fire Marshall to ensure compliance with the Massachusetts Fire Code, particularly at large venues where overcrowding and improper fire prevention measures have been problematic.

In 2015, the Division conducted enforcement operations at the large concert and sports venues in cooperation with municipal, state and county law enforcement agencies, as well as with the assistance of venue management. ABCC enforcement includes area liquor stores prior to the event, parking lot enforcement up until the beginning of the event, and then enforcement within the licensed premises. The Division conducted these operations at the Xfinity Center, Gillette Stadium, Blue Hills Pavilion, and Fenway Park. The results of this enforcement operation included: 584 minors in possession of alcohol; 74 furnishing alcohol to minors; numerous medical, intoxicated or incapacitated assists; as well as the seizure of 173 bottles of alcohol and 221 cases of beer, preventing delivery to approximately 2614 underage individuals.

### **Education and Training**

The ABCC utilizes our specialized knowledge regarding alcoholic beverage service to provide training services to a multitude of audiences. We provide educational training seminars for local licensing authorities, police departments, and state and federal agencies.

- **Commission Outreach Seminars**

In fiscal year 2016, the ABCC conducted 9 outreach seminars focusing on eLicensing, licensing, and compliance issues. 293 individuals attended these seminars, representing 207 municipalities and 3 associations, from every county in the Commonwealth.

- **Training of Municipal and State Law Enforcement.**

The Investigation and Enforcement Division works with Massachusetts police academies and police departments to educate local and state law enforcement officers in the enforcement of the Massachusetts Liquor Control Act, as well as false identification and fraudulent document detection. This training enhances the prevention of underage drinking and over service by developing police knowledge of and involvement in liquor law enforcement. In calendar year 2015, this training was provided for 487 police officers.

### **Legislative Changes:**

During fiscal year 2016, 39 bills were enacted regarding alcoholic beverages licenses. The Legislature and the Governor's Office requested that the Commission provide comments on the background and legality of these bills. Each of these bills falls into one or more of three categories: a) excess quota licenses; b) conversion of seasonal licenses to annual licenses; and c) direct amendments to certain sections of MGL Chapter 138.

The enacted Bills addressed one of these three categories as follows:

- A. Thirty-five Bills<sup>1</sup> created excess quota licenses in thirty-one different communities<sup>2</sup> through the communities' exercise of their right to "home-rule" as it exists under the Massachusetts Declaration of Rights. These bills accounted for the addition of ninety-two all-alcohol Ch. 138, §12 (on-premises) licenses, thirteen wine and malt Ch. 138, §12 (on-premises) licenses, eleven all-alcohol Ch. 138, §15 (off-premises) licenses, and six wine and malt Ch. 138, §15 (off- premises) license in the Commonwealth;
- B. Two Bills in one community<sup>3</sup> authorized the conversion of a seasonal § 12 license to an annual license, and a wine and malt § 12 to an all-alcohol license, both of which would exist above the population-based quota;
- C. Two Bills authorized amendments to M.G.L. Chapter 138:
  - Acts of 2016, c. 219, § 96A, bans the sale of powdered alcohol in the Commonwealth;
  - Acts of 2016, c. 219, § 98, permits § 12 restaurant licensees to have a § 15 license physically adjacent to the restaurant's premises;
  - Acts of 2016, c. 219, § 99, eliminates the cross-ownership prohibition of a § 12 license and a §15 license in the same municipality;
  - Acts of 2016, c. 219, §§ 102-104, expands the physical premises where a farmer-series licensee may pour its own products;
  - Acts of 2016, c. 219, § 105, creates a new license under M.G.L. c. 138, § 19H, which permits a licensee that owns more than one type of farmer-series license, to pour any and all alcohol produced by any of its licenses it on any of its farmer-series premises, so long as the licensee's vineyards/farmlands are operated as appurtenant and contiguous to each other;
  - Acts of 2016, c. 219, § 106, permits retailers to sell alcoholic beverages on the Monday following when Christmas occurs on a Sunday; and
  - Acts of 2016, c. 133, §§92-95 &140, creates a new license under M.G.L. c. 138, § 19G, that permits alternating proprietorships for the brewing of malt beverages.

### **Legislative Recommendations**

The Commission makes the following legislative recommendations regarding the traffic and conduct of the alcoholic beverages licenses industry in the Commonwealth.

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<sup>1</sup> Acts of 2016, Chapters 6, 29, 33, 37, 40, 44, 56, 57, 58, 66, 67, 73, 84, 97, 109, 122, 136, 142, 163, 180, 181; Acts of 2015, Chapters 83, 98, 101, 103, 105, 106, 119, 145, 152, 153, 157, 158, 166, 168.

<sup>2</sup> Tyngsboro, Somerville, Maynard, Bolton, Watertown, Norwood, Dedham, Walpole, Bedford, Dalton, Stoughton, Southborough, Milton, Canton, Montague, Bellingham, Westborough, Northampton, Easthampton, Shrewsbury, Stoneham, Salem, Wayland, Ipswich, Sturbridge, Topsfield, Lynn, Raynham, Montague, Milford, and Wareham.

<sup>3</sup> Salem, Acts of 2015, Chapters 157 & 158.

- **Criminal Background Checks for License Applicants**  
M.G.L. c 138 §12 provides that, “No license shall be issued to any applicant who has been convicted of a violation of a federal or state narcotic drugs law”; M.G.L. c. 138, §15, provides that, “No license shall be issued to any applicant who has been convicted of a felony”; and M.G.L. c. 138, §26 provides that, “such manager or representative is, with respect to his character, satisfactory.”

The current Commission has implemented several changes to enhance criminal background checks, including the submission of Massachusetts criminal records through electronic processing which provides almost immediate reporting for all individuals with a beneficial interest in a license. However, the Commission does not have the authority to obtain national criminal record offender information, and as a result, the current system is inadequate to ensure that all proposed applicants meet the statutory requirements to hold a license.

In order for this agency to obtain national criminal record information, legislation must be enacted which authorizes the agency to obtain this information. At the agency’s request, Senate Bill 196 was filed and is pending before the legislature.

- **Safety and Authority of Commission Investigators**  
M.G.L. c. 10, §72 authorizes the appointment of ABCC Investigators for the purpose of enforcing the penalties provided by law against every person who is guilty of a violation of M.G.L. c. 138 of which they can obtain reasonable proof, and further states that said Investigators, “shall make all necessary and appropriate investigations for that purpose.” In addition, this section mandates that each person appointed as an investigator shall complete a basic reserve police officer training course through the criminal justice training council, and shall attend a basic training course conducted by the Commission, and that all investigators shall attend an annual in-service training course pursuant to this section. Commission investigators are further obligated by M.G.L. c. 138, §56, to make all needful and appropriate investigations to enforce the penalties provided by law against every person who is guilty of a violation of this chapter and provides the Investigators with powers of arrest for violations of M.G.L. c. 138.

However, the statute does not address the issue of an investigator’s authority when confronted with a volatile situation. The Commission has concerns regarding the safety of its investigators who are consistently investigating licensed premises at late hours, which may involve inebriated individuals in dangerous situations. In order to mitigate this situation, and attempt to enhance the investigators’ safety, the Commission has adopted a practice of having the investigators appointed and sworn as Deputy Sheriffs in several counties. However, this process is time consuming and logistically challenging. In addition, not all counties allow this.

In order for this agency to protect the safety of its investigators, legislation must be enacted which authorizes investigators to have all the power of a police officer in a city or town, with reference to enforcement of the laws, excluding M.G.L. c. 90. At the agency’s request, Senate Bill 203 was filed and is pending before the legislature.

- **Criminal Background Prohibitions for License Applicants**  
M.G.L. c. 138, §12, provides that, “No license shall be issued to any applicant who has been convicted of a violation of a federal or state narcotic drugs law”: M.G.L. c. 138, §15,

provides that, “No license shall be issued to any applicant who has been convicted of a felony,” and M.G.L. c. 138, § 26 provides that, “such manager or representative is, with respect to his character, satisfactory.”

The current statute has not been reviewed in decades, and its language can cause harsh results. For example, the current statute would prohibit an applicant with a fifty year old drug conviction from opening a business with a § 12 liquor license, but would not prohibit an applicant with other serious felony convictions from holding the same license.

In a growing world with an aging population, it would be helpful for the Commission to have discretion in considering an individual’s criminal offender record information. Accordingly, the Commission recommends that §§ 12, 15, and 26 be amended to mirror M.G.L. c. 23K, the “casino” statute, which allows for the Commission to consider the applicant’s rehabilitation and whether such conviction should be an automatic disqualification under this section. In considering the rehabilitation of an applicant, the Commission shall not automatically disqualify an applicant if the applicant affirmatively demonstrates, by clear and convincing evidence, that the applicant has financial responsibility, character, reputation, integrity, and general fitness as such to warrant belief by the Commission that the applicant will act honestly, fairly, soundly and, efficiently as a licensee.

#### Farmer Brewery Enterprises

The Farmer Brewer current definition does not meet the growing and changing industry. Accordingly, the Commission recommends that the following legislation be enacted:

Section 1 of c. 138 of the General Laws, as so appearing, is hereby amended by deleting “Farmer-brewer”, any person who grows cereal grains or hops for the purpose of producing malt beverages and who is licensed to operate a farmer-brewery under §19C;” and inserting in its place the following:—  
“Farmer-brewer”, any person who grows or imports cereal grains or hops for the purpose of producing malt beverages, and who is licensed to operate a farmer-brewery under §19C.”

Section 1 of c. 138 of the General Laws, as so appearing, is hereby amended by deleting “Farmer-brewery”, any plant or premise where malt beverages are produced from the fermentation of malt with or without cereal grains or fermentable sugars, or of hops, provided that said hops or cereal grains are grown by the farmer-brewer,” and inserting in its place the following:—  
“Farmer-brewery”, any plant or premise where malt beverages are produced from the fermentation of malt with or without cereal grains or fermentable sugars, or of hops.”

- Civil Citations for Violations of Chapter 138; §§ 34, 34A, 34B, and 34C

The current statute provides for criminal penalties for violations of §§ 34, 34A, 34B, and 34C. To file criminal charges against the thousands of individuals found in violation of these statutes would not be feasible given the current Commission resources. Further, it would result in a criminal record for young people found violating these minor offenses. However, the most common complaint heard from industry retailers is that they are subject to administrative penalties and the underage person that initiated the violation does not receive any consequences for their actions. Many states allow for civil citations to be issued by liquor enforcement officers. Accordingly, the Commission recommends that the following legislation be enacted:

§2 of c. 138 of the General Laws, as so appearing, is hereby amended by inserting the following:

As an alternative to initiating criminal proceedings for violations sections 34, 34A, 34B, and 34C of chapter 138, any investigator of the Commission may issue a civil citation for violations of said laws in the amount of the criminal fine provided for said violation, to be paid within 21 days of the date of issuance of such citation. Any person aggrieved by any citation issued pursuant to this section may appeal said citation by filing a notice of appeal with the Commission within seven days of the receipt of the citation. Any such appellant shall be granted a hearing before the Commission in accordance with chapter 30A. The Commission may affirm, vacate or modify the citation. Any person aggrieved by a decision of the Commission may file an appeal in the superior court pursuant to the provisions of said chapter 30A. If a person fails to comply with the requirement set forth in any citation issued pursuant to this section, or shall fail to pay any civil penalty provided thereby within 21 days of the date of issuance of such citation, or within 30 days following the decision of the Commission if such citation has been appealed, excluding any time during which judicial review of the Commission's decision remains pending, the Commission may apply for a criminal complaint against such person for the violation, or may initiate a civil action in the district court. All monies collected by the Commission under said civil citations shall be credited to the general fund.

#### The ABCC's current 3-Year Priorities include (inception 2014)

In 2013, the agency procured the services of an outside consulting firm specializing in strategic planning, to aid in the development of a strategic plan. Following an eight-month process, a comprehensive document was produced that validated the ABCC's original goals and achievements and devised additional objectives that aligned with the agency's previous goals.

The Ripples Group noted that the ABCC had made much progress in recent years stating, "The ABCC easily pays for itself while playing an increasingly effective role in public safety and providing valuable services to its stakeholders." The ABCC generates revenues many times its budget. In fact, revenues have increased 15% since 2010, and tax collections have more than tripled.

In 2013, the tax collection agencies collected nearly \$14 million in back tax payments with the assistance of the ABCC. The report noted that overall the agency's resources were over-utilized, with a continuous increase in workload at all levels. Because the agency has successfully implemented a series of multi-year initiatives, even though the caseload has increased, the license turnaround times have decreased. For example, applications, without exception, are turned around in 3-5 weeks on average, compared to 6-8 weeks in 2009.

The report pointed out that given the high cost of alcohol related accidents and injuries in the Commonwealth, the investment in the ABCC is likely to have very high returns. The plan went on to state that more can be accomplished in public safety and service levels to stakeholders. To accomplish its strategic priorities, however, ABCC needs a step-change increase in resources specifically more staff, and better technology.

The ABCC's current 3-Year Priorities include (inception 2014):

- Licensing
  - e-Licensing implementation
  - Expanded (national) CORI checks
  - Faster turnaround through capacity and process/technology improvements
  - Electronic document management
- Enforcement
  - Create Enforcement Division rank structure
  - Increase ratio of Investigators to licensees
  - Collaboration with the Gaming Commission for its role in casinos
  - Effective media strategy to amplify deterrence of illegalities
- Training & Technical Assistance
  - New training program for Licensees
  - Increased training for local law enforcement
  - Increased training for local boards
  - Additional Staff Training
- Dispute Resolution
  - Faster decisions
- Legal Services
  - More support for prosecution of violations
  - Additional training for investigators
- Internal
  - Staff (capability and capacity) expansion
  - New space
  - Public relations function as deterrent
  - Improved internal communications

The ABCC has accomplished many of these goals, as set forth herein.

### **Commission Initiatives:**

#### **eLicensing Project Update**

- In 2012, the ABCC and the Division of Professional Licensure procured the Accela software. This software is a comprehensive and robust solution for agencies with license granting authority. The goal of implementing this solution is to provide a single gateway for businesses and individuals to apply for and manage their alcoholic beverages licenses and to increase efficiency and productivity by reducing license management and enforcement cycle times, streamlining business processes, and eliminating outdated legacy systems. The system will assist the agency in meeting its goals for improved customer service, transparency of information for citizens, and streamlined administrative processes.

MassIT, the system maintenance provider, on conversion planning, business re-engineering, existing data verification, development, implementation and maintenance planning. On March 9, 2015, the ABCC went live with the first release of the eLicensing application. There were subsequent releases for additional state and retail license types in February of 2016 and August of 2016. Today, all state licenses types are live in the system. Additionally, eight municipalities have agreed to participate in a pilot program which allows the retail licensees in their cities/towns to participate in the online solution, with a goal to release the system to the remaining municipalities in the near future.

### **Electronic Document Management System & Scanning and Conversion**

The ABCC and ITD started two separate procurement processes in fiscal year 2014: one from ITD for an enterprise-wide, cloud hosted Electronic Document Management System and another from the Commission for the scanning and conversion to electronic version of all of its' paper documents. Much progress has been made in both areas. The enterprise-wide, cloud hosted EDM System, OnBase, was completely configured to meet the needs of the ABCC and is running on all agency computers.

The scanning and electronic capture project was completed in FY2016. In total, over 22,000 license files were scanned which included approximately 4.6 million documents.

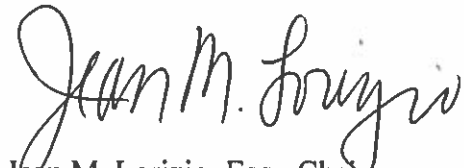
Investigators now have unprecedented search capabilities and are able to gather information faster and more accurately than they could in the previous, paper-based system. All agency staff are able to electronically "pull files" without ever having to leave their desk, making both the licensing process and investigation process much faster and more efficient than ever before.

### **General Remarks:**

We wish to express our appreciation to the Local Licensing Authorities for the cooperation and assistance they have given us in the administration of the Liquor Control Act. We also want to express our appreciation to the members of House of Representatives and the Senate and particularly the Joint Legislative Committee on Consumer Protection and Professional Licensure for the courtesy which they have shown us and for the earnest and sincere manner in which they approached consideration of proposed amendments to the Liquor Control Act.

Respectfully Submitted,

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**



Jean M. Lorizio, Esq., Chairman

# **EXHIBIT 8**





U.S. Department of Justice  
Office of Justice Programs  
Bureau of Justice Assistance



# **Alcohol and Violent Crime: What Is The Connection? What Can Be Done?**

**April 2006**

Prepared by

**The National Center for Alcohol Law Enforcement  
Pacific Institute for Research and Evaluation**

for

**Bureau of Justice Assistance  
Office of Justice Programs  
U.S. Department of Justice**

**Alcohol and Violent Crime:  
What Is The Connection?  
What Can Be Done?**

**April 2006**

This report was prepared with support from Grant No. 2002-DD-BX-K043 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, The National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

This report was written by Carol Cannon and Maria Carmona for the National Center for Alcohol Law Enforcement (NCALE). NCALE is a project of the International Institute for Alcohol Awareness at the Pacific Institute for Research and Evaluation.

Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice.

April 2006

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## Introduction

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Alcohol and violence are culturally and historically linked in the United States. Whether through battles fought over the taxation of alcohol, such as the Whiskey Rebellion of 1794, or through the tradition of hard-drinking, bar-brawling frontiersmen of the early days of the nation's existence, alcohol and violence have been closely connected and deeply tied into American custom. This link is highly destructive, and history includes numerous campaigns aimed at addressing it. The heated rhetoric of the turn of the century included claims that Prohibition would virtually eradicate violence from society. Yet there have also been historical periods in which the link was accepted as inevitable, and efforts to address it focused primarily on individual deviance without attending to the broader social and cultural setting.<sup>1</sup>

Today there appears to be growing support for addressing the link between alcohol and violence through interventions in the various contexts in which it occurs (e.g., physical, social, etc.).<sup>2</sup> This includes interventions in the alcohol environment, focusing on how, when and where alcohol is sold and consumed. However, developing appropriate interventions requires careful attention to the complex, interactive relationship between alcohol and violence.

This paper examines this relationship. It begins with an overview of research on the topic, detailing what is known about a causal link between alcohol and violence, how alcohol use escalates and intensifies violence, the cost of alcohol-related crime, and how alcohol outlet density serves as a reliable predictor of violent crime. The paper then briefly identifies three key strategies that can be employed by law enforcement agencies in order to reduce alcohol-related violence. Case-study examples demonstrating how three enforcement-led efforts to reduce alcohol-related violent crime achieved success are then provided. The paper concludes with a summary and recommendations.

## Research on the Alcohol and Crime Connection

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Studies overwhelmingly indicate that there is a strong link between the consumption of alcohol and violent acts.

- ▶ Almost one in four victims of violent crime report that the perpetrator had been drinking prior to committing the violence.<sup>3</sup>
- ▶ Over one-third of victims of rapes or sexual assaults report that the offender was drinking at the time of the act.<sup>4</sup>
- ▶ It is estimated that 32 to 50 percent of homicides are preceded by alcohol consumption by the perpetrator.<sup>5</sup>
- ▶ Between 31 percent and 36 percent of prisoners convicted of a violent crime against an intimate reported that they were drinking alcohol at the time of the offense. These figures rise to approximately 50 percent when reports from those who were consuming both alcohol and drugs at the time of the offense are considered.<sup>6</sup>
- ▶ Two-thirds of the victims of intimate violence reported that the offender was using alcohol at the time of the act.<sup>7</sup>
- ▶ Between 27 percent and 47 percent of all homicides and acts of purposeful injury are attributable to the use of alcohol.<sup>8</sup>

Alcohol consumption is not only linked to acts of violence, but to the escalation of violence and the resulting severity of injuries. U.S. crime reports indicate that approximately six in ten incidents of alcohol-related violence resulted in injury to the victim.<sup>9</sup> One study of assault incidents compared the severity of violence present in acts by perpetrators who had been drinking and those that had not. Forty-two percent of the assault incidents escalated beyond threats to physical attacks when the assailant had not been drinking compared to 50 percent for those who had been drinking. Moreover, a higher percentage (27 percent) of assailants who had been drinking committed a physical attack resulting in injury, than did the non-drinkers (22 percent).<sup>10</sup>

The economic cost of alcohol-related crime is enormous. The National Institute on Alcohol Abuse and Alcoholism estimated the total monetary cost of alcohol-attributable consequences in 1998 as

a staggering \$185 billion. The cost of alcohol-related crime alone was estimated to be \$16.4 billion. This figure includes costs stemming from violent crime, property crime, alcohol-defined offenses (e.g., alcohol sales to minors), criminal justice costs, and lost earnings of victims and others because of the crimes committed.<sup>11</sup>

High alcohol outlet density is a reliable predictor of violent and other crimes. A study conducted in Los Angeles County, for example, found that an increase of one outlet was associated with 3.4 additional violent incidents in a year.<sup>12</sup> Adding one bar to a block in Cleveland was estimated to result in 3.38 more crimes being committed on that block in a year.<sup>13</sup> Similarly, in an examination of alcohol availability and homicide in New Orleans, a 10 percent higher off-sale outlet density was predicted to result in a 2.4 percent higher homicide rate.<sup>14</sup> In Newark, New Jersey, a reduction in the density of alcohol outlets by just under one percent would likely result in a reduction in violent crime by one percent. It would take a nearly five percent increase in median household income or just over an eight percent increase in employment to achieve the same results.<sup>15</sup>

## **Strategies for Preventing Alcohol-related Violence**

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Just as the ready availability of alcohol in high alcohol outlet density neighborhoods is linked to violence, alcohol service and sales practices can be linked to the increased risk of violence and injury. The sale of alcohol to minors, the hours of sales, sales promotions, and serving alcohol to obviously intoxicated persons can result in risky behavior and criminal outcomes.<sup>16</sup>

Policies that affect other sales practices - the "how, when, and where" alcohol is sold - can mediate the risk of violent behaviors resulting from alcohol consumption.<sup>17</sup> One study found that 79 percent of alcohol establishments will serve alcohol to patrons who appear obviously intoxicated despite laws prohibiting such sales.<sup>18</sup> The consequences of such practices are grave:

- ▶ One out of ten alcohol-involved violent incidents occurs in a bar or restaurant.<sup>19</sup>

- ▶ Approximately 50 percent of drinking drivers start their intoxicated journey from licensed establishments.<sup>20</sup>

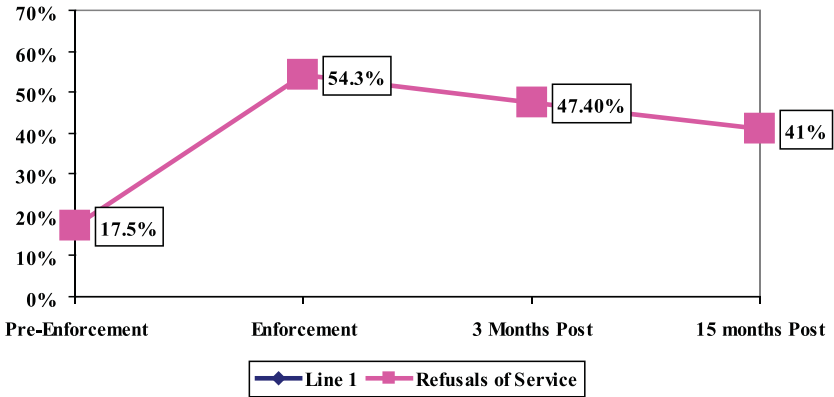
These findings suggest that the enforcement of mandated sales practices should have a positive effect on the prevention of impaired driving and other forms of alcohol-related harm. Very little research has been done, however, to test the hypothesis that consistent enforcement of the laws regulating alcohol results in reductions in crime. However, two examples follow that demonstrate that compliance with alcohol regulations does result from enforcement. In both instances, compliance was correlated with reductions in alcohol-related crime.

### ***Enforcement, Education, and Training***

A study conducted in Washtenaw County, Michigan examined compliance before and after the implementation of a campaign to enforce laws limiting sales to intoxicated persons.<sup>21</sup> Enforcement activities were conducted in conjunction with education and training of bar and restaurant staff. Compliance with the law was measured before, during and after the enforcement program by the rate at which patrons simulating intoxication were refused service. While refusals of service to pseudo-intoxicated persons declined from the initial peak of 54.3 percent to 47.4 percent after six months, and 41.0 percent after one year of the program, these later refusal rates remained significantly higher than the baseline, indicating that the intervention had an enduring effect on server compliance with sales to intoxicated laws. (See Figure 1.) It is also noteworthy that there was a statistically significant decrease in DWI arrests in Washtenaw county from the time of baseline to the time of peak enforcement (31.7 percent to 23.3 percent).<sup>22</sup>



**FIGURE 1: ENFORCEMENT EFFECTS ON SALES TO INTOXICATED PERSONS**



Further evidence of the effectiveness of enforcement efforts in reducing alcohol-related harm is provided by a study conducted in New South Wales, Australia.<sup>23</sup> Law enforcement officers identified licensed establishments that were listed as "last place of drink" by individuals apprehended for alcohol-related incidents (including drinking and driving, assault, domestic violence, and other criminal activities). A group of these establishments selected as intervention sites, and the intervention included visits by police officers conducting audits of responsible alcohol service practices, the offer of resources and assistance to the licensees for improvement in their service practices, and a follow-up workshop on responsible alcohol service. When the numbers of alcohol-related incidents were compared pre- and post-intervention, a reduction of 36 percent was observed for the intervention group while the number of alcohol-related incidents declined by 21 percent in the control group of establishments. The difference in the number of alcohol-related incidents between the two groups indicates that the enforcement and education strategies implemented in the intervention establishments resulted in a higher level of compliance with laws pertaining to responsible beverage service and a reduction in the level of alcohol-related harm.

## ***The Value of Deterrence***

The evidence above suggests that changing the environment in which alcohol is sold and consumed and reducing access to alcohol can result in a reduction of crime and violence. To achieve this, liquor laws must be enforced. Many experts also agree that the key to ensuring compliance with liquor laws is that the consequences must be perceived to be as both certain and swift, although not necessarily of great severity.<sup>24</sup> As illustrated in the Michigan study, this can be achieved by escalating the perceived certainty of detection through a campaign involving increased surveillance followed by notification of licensees of the surveillance. Increased surveillance can also be combined with streamlined administrative procedures for imposing penalties on violators. An alcohol beverage control agency can impose a fine, or suspend or revoke an operator's license in administrative proceedings that can be both swift and relatively certain, avoiding the more complex and time-consuming proceedings associated with the criminal justice system. In short, with sufficient resources and training, law enforcement agents can be effectively deployed to increase compliance with alcohol laws that can, in turn, reduce alcohol-related violence.

## **Case Study Illustrations**

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Many localities in the United States and in other countries are implementing enforcement programs to reduce alcohol-related crime. This section provides four case study examples of how increased enforcement of alcohol laws can have positive ripple effects within the community, resulting in not only the reduction of alcohol-related crimes, but also the general reduction of violent crimes. In all of these examples, the enforcement programs engaged multiple strategies, including stepped up enforcement of one or more liquor laws, education and training, and community outreach.

## **Case Study 1: Champaign, Illinois**

In 1995, the Champaign, Illinois Police Department formed the Alcohol Enforcement Unit to focus on enforcing alcohol laws to reduce alcohol-related crime. Champaign and its twin city Urbana share a large student population (nearly 40,000 students) from the University of Illinois and a community college. A major focus of the unit's work has been underage drinking, particularly by those under the age of 19. The unit does targeted enforcement in the campus districts, including bar checks, street sweeps, undercover operations in alcohol establishments, and retail compliance checks. The unit also works closely with bars to improve compliance with underage drinking laws, and develops bar employee security training programs.

Cooperative efforts with Illinois state agencies enhance the work of the Champaign Alcohol Enforcement Unit. The Illinois Liquor Control Commission regulates the licensing of retail liquor outlets and works with the Champaign unit when conducting routine inspections and investigations of licensed establishments in the area. The Commission also administers the BASSET (Beverage Alcohol Sellers and Servers Education and Training) program, which supports Champaign's efforts to reduce underage drinking and to educate liquor outlet owners and staff on state and local alcohol service laws. In addition, the Illinois State Police and the Illinois Secretary of State Police work closely with the local unit on bar and retail compliance checks.

These efforts appear to be bearing fruit: Between 1998 and 2001, the percentage of minors under the age of 19 arrested for alcohol related violations decreased from 33 percent of all liquor law violations by minors to 24 percent.<sup>25</sup> (See Table 1.)

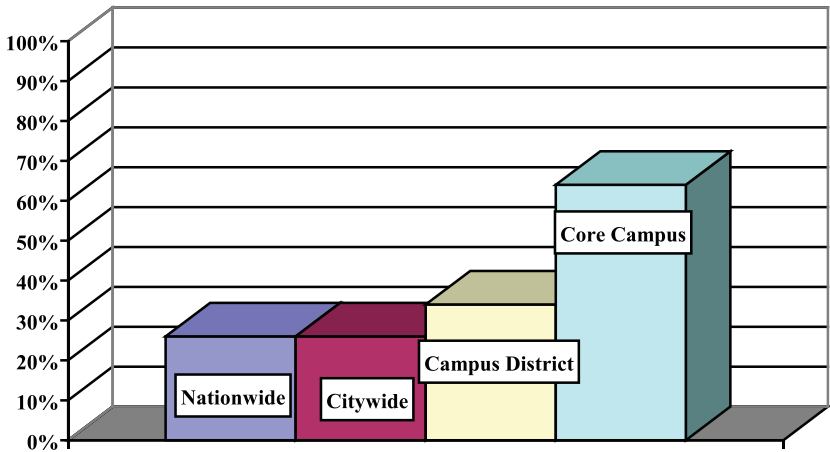
Further evidence that alcohol enforcement can have a positive effect on a community is indicated by the reduction of crime in Champaign, particularly in the campus areas targeted for alcohol enforcement. Between 1995, the year that the Alcohol Enforcement Unit was established, and 2001, violent crime dropped citywide by 26 percent (the same rate that violent crime decreased nationally), while in the campus district, it dropped by 34 percent, and, in the

**TABLE 1: ALCOHOL-RELATED ARRESTS OF MINORS**

	1998	1999	2000	2001
<b>All arrests for alcohol-related violations by minors</b>	813	971	1702	1250
<b>Arrests of minors under 19</b>	267	296	384	302
<b>Percent of Arrests: Minors under 19</b>	33%	30%	23%	24%

core campus (an area containing bar and restaurant venues that target college students), it dropped by 64 percent.<sup>26</sup> (See Figure 3.)

**FIGURE 3: DECREASES IN VIOLENT CRIME:  
CHAMPAIGN, ILLINOIS 1995-2001**



## **Case Study 2: Vallejo, California**

For over a decade, the Vallejo Alcohol Policy Coalition (VAPC) of Vallejo, California, a community-based organization, has collaborated closely with the Vallejo Police Department and other groups to reduce the negative effects of alcohol sales and consumption on the community. Employing a broad range of actions, from enforcing laws regulating alcohol outlets to neighborhood revitalization efforts, this collaboration has created a measurable improvement in the reduction of alcohol-related crime and the general rate of violent crime in the city.

The California Alcohol Beverage Control (ABC) Department has been an active supporter of coalition projects, adding weight and authority to the enforcement of alcohol policies in this locality. VAPC worked closely with the agency's Licensee Education on Alcohol and Drugs program (LEAD) to develop a Responsible Beverage Service (RBS) curriculum for Vallejo, and the state provided VAPC with a letter of support for the curriculum to be distributed to merchants. This training began in 1995 and is required for Vallejo alcohol retail establishments to obtain a Conditional Use Permit. A 6.5 percent reduction in calls for police service occurred in the year following the introduction of RBS training. This translated into a 20 percent reduction in the number of hours of police time spent responding to calls.

The Vallejo Police Department received a grant from the state ABC Department to enforce underage drinking laws which included a responsible beverage service training component, and VAPC and LEAD co-trained local merchants. An ABC Department administrator attends VAPC meetings when new permit applicants make their business plan presentations in order to provide technical support on conditions that can be attached to a new liquor license (including RBS training for servers).

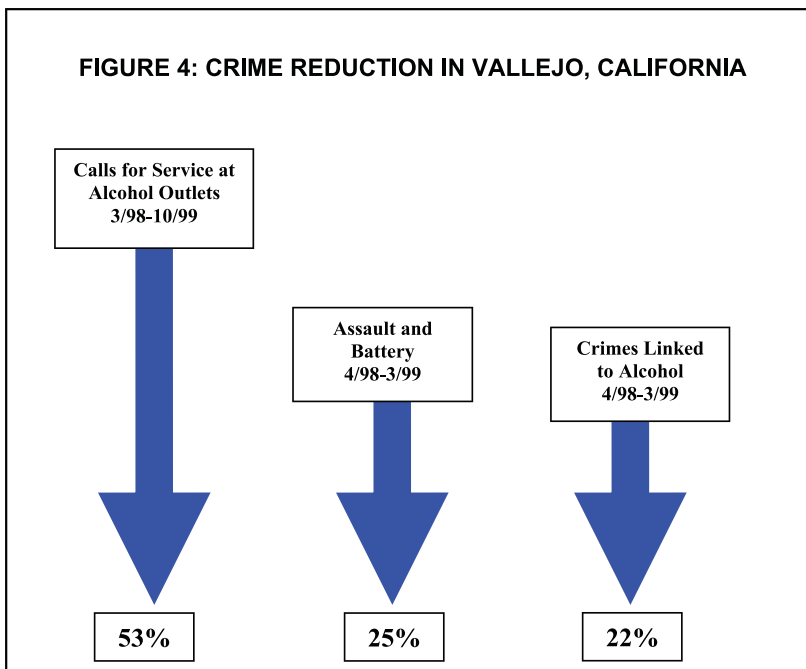
VAPC supported the passage of a "Deemed Approved" ordinance that created performance standards for alcohol outlets. The Vallejo Police Department and the community vigorously enforced the ordinance following its passage in August of 1998. Project staff compared data on police calls for service in the last 10 months of

1998 with data for the first 10 months of 1999 and found a reduction of 53 percent.<sup>27</sup>

VAPC also worked with the Vallejo Police Department to implement undercover operations testing compliance with alcohol sales to minors. In a two-year period (1997 to 1999), the compliance rate increased from 74 percent to 98 percent.<sup>28</sup>

Neighborhood revitalization was another important component of the VAPC program. Neighborhoods with multiple environmental problems were targeted for intervention by law enforcement, code and building departments, and other key city agencies and organizations beginning in 1998. The driving force was the notion that intensive revitalization in one area would result in the reduction of crime citywide, not just moving problems from one part of the city to another part. While the interventions were multi-level efforts, liquor law enforcement was an important component of the process. After these interventions began, the city of Vallejo experienced a 22 percent drop in crimes often linked to alcohol, including such violent crimes as assault and battery, which dropped by 25 percent.<sup>29</sup> (See Figure 4.)

**FIGURE 4: CRIME REDUCTION IN VALLEJO, CALIFORNIA**



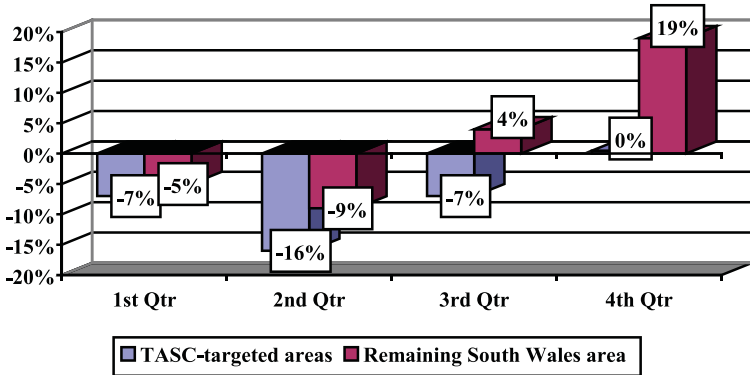
### **Case Study 3: Cardiff, Wales (United Kingdom)**

In July of 2000, the Cardiff Police Department in Wales launched a multi-agency effort called Tackling Alcohol-related Street Crime (TASC). TASC sought to reduce alcohol-related crime and disorder in central Cardiff and Cardiff Bay and was funded and supported by the United Kingdom's Home Office Crime Reduction Programme. As with the cities in the previous case studies, these efforts involved a combination of targeted policing at "hot spots," working with business owners in the targeted areas, creating training programs for bar staff, and engaging in general public education.

A comparison of police and hospital data from the first year of the TASC program with the preceding 12 months revealed an overall decrease of four percent in incidents involving alcohol-related assaults on the streets or in licensed premises. This result was achieved despite a concurrent 10 percent increase in liquor licensed premise capacity in central Cardiff. The project reduced the expected level of all violent incidents by an estimated eight percent—that is, it prevented about 100 assaults. While there was a 49 percent increase in incidents of alcohol-related non-violent disorder during this same time period, this increase slowed markedly during the evaluation period and was largely accounted for by one street with the most dense concentration of pubs and new premises.

The effectiveness of this program is further demonstrated by comparing districts targeted by TASC with the rest of the police force area. Between the year preceding implementation of the program and the first year of TASC, the TASC districts showed either a quarterly reduction or no change in police recorded incidents of "violence against the person," while the remaining South Wales area experienced either a slower rate of reduction or an *increase* by quarter in police recorded violent incidents.<sup>30</sup> (See Figure 5.) When two full years before and after implementation are compared, the TASC districts experienced an eight percent reduction in violence, while the remaining South Wales area sustained an *increase* of two percent.

**FIGURE 5: CHANGE IN ALL VIOLENT INCIDENTS RECORDED BETWEEN YEAR PRIOR TO TASC AND FIRST YEAR OF TASC**



### **Case Study 4: Diadema, Sao Paulo (Brazil)**

Diadema is a low-income city of over 357,000 people located south of Sao Paulo, Brazil. The city had very high rates of homicides, assaults, vehicle crashes, and gang violence. Many of these incidents occurred between 9:00 p.m. and 6:00 a.m.

In response to these problems, the municipal government called upon military and federal police to beef up enforcement activity within the jurisdiction. They also created and deployed the Diadema municipal civil guard to assist with enforcement. These actions produced reductions in the numbers of murders and assaults against women in the first six months of the year. While city officials were pleased with these results, they believed that further reductions in violent crime rates were needed and were possible.

The mayor instructed tasked the municipal guard to develop a crime map for the city. The data showed that 60 percent of the murders occurred between 11:00 p.m. and 6 a.m., most frequently in neighborhoods with high concentrations of bars. Further investigation revealed that the majority of these crimes were not planned but were "crimes of passion" in response to unplanned confrontations. Data also revealed that 45 percent of complaints about violence against women occurred during these same hours, and these violent acts were closely connected to alcohol consumption.



Armed with this information, the city adopted a new ordinance that prohibits alcohol sales after 11:00 p.m. In the six-month period prior to its passage in July 2002, the municipal civil guard visited most alcohol retailers to discuss the proposed new law and its application to alcohol sales.

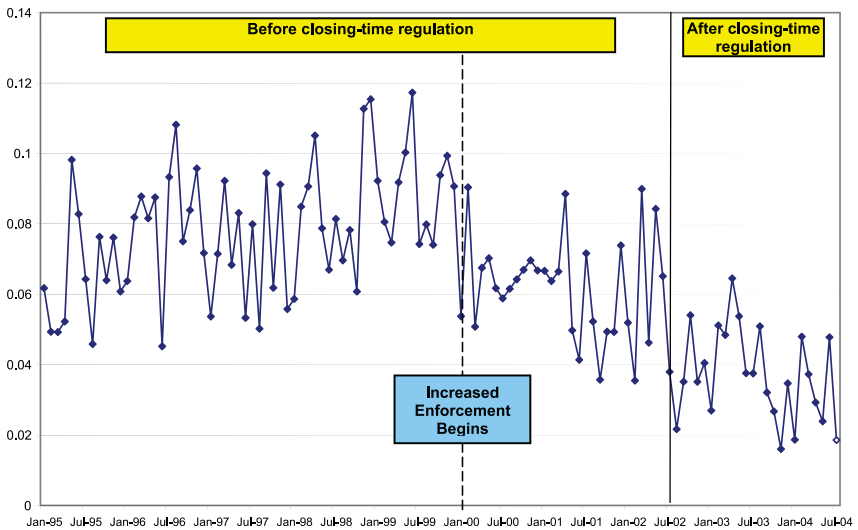
The municipal government also developed a strategy to ascertain and develop support for the new alcohol ordinance both prior to and after its adoption. After the problem analysis was completed, the mayor consulted with other political leaders on the findings and used public opinion polling to confirm community approval (83 percent) of the proposed ordinance prior to its adoption. Following adoption of the law, the city launched a public education campaign detailing the content of the new law as well as why it was needed. Surveys conducted in the summer of 2003 indicated that 98 percent of residents knew about the law and 93 percent supported it.

A dedicated enforcement unit comprised of staff of various city departments meets daily to conduct operations in a specific section of the city. The location of the enforcement activity, however, is not known until the unit is ready to be deployed for the evening's work. The City also established a telephone number which citizens could use to report violators of the ordinance. Violators are adjudicated administratively (rather than criminally) and penalties are progressive in nature. A first violation results in a warning, the second in a fine, the third in a fine and license suspension, and the fourth in license revocation. These policies, along with the knowledge that the law is equitably enforced, provide retailers with the assurance that they are not being placed at an economic disadvantage by retailers engaged in illegal behavior, and this knowledge encourages voluntary compliance with the law.

City records indicate that the adoption and enforcement of the new policy have led to further reductions in assaults against women and murders. Monthly counts for homicides averaged about 301.3 homicides per year before the implementation of the new policy to 169.6 per year afterward. Factoring in earlier enforcement efforts, it is estimated that the sales hours restrictions reduced homicides 46 percent.<sup>31</sup> (See Figure 5.) The restrictions were also associated with a 26 percent decrease in assaults on women. City records also document reductions in other acts of interpersonal violence, calls

for police service, and hospital emergency admissions. Conversely, citizen perception of personal safety and community order increased.

**FIGURE 6: DIADEMA, BRAZIL – HOMICIDES PER 1,000 RESIDENTS**



July 2004 figure represents first half of month.

## Summary and Recommendations

The link between alcohol and violence represents a serious public health and safety problem in the United States and other parts of the world. Whatever the exact cause and effect relationship, there is now consensus among researchers that alcohol contributes to acts of violence and that reducing availability and improving the environment in which alcohol is sold and consumed can result in a reduction of violent crime. The results of alcohol enforcement efforts in different localities suggest that targeted enforcement of liquor laws, combined with training alcohol outlet employees, improving outlet policies regarding alcohol service practices, increasing

community involvement, and related strategies can result in a reduction of violence. The results also suggest that cooperation among enforcement and regulatory agencies at the local, state, or national level can enhance the effectiveness of these enforcement efforts.

Yet, despite this demonstrated potential to reduce violence, alcohol law enforcement is a relatively low priority at many levels. Federal funding for alcohol law enforcement is limited. State liquor law enforcement agencies face small and shrinking budgets. Local law enforcement agencies are often given the mandate to focus on "more serious crime," apparently not fully recognizing how such crime is oftentimes linked to alcohol consumption. Or, local law enforcement agents lack the specialized training necessary for effective alcohol enforcement. This lack of adequate attention to alcohol law enforcement reduces compliance with alcohol availability policies, and thereby increases alcohol-related violence and its associated human, social, and economic costs.

The case study research reviewed here supports an alternative approach: make liquor law enforcement a priority area, increase funding for enforcement, reduce alcohol-related violence, and create enormous savings in social and economic costs. The enforcement strategies discussed in this paper also suggest that enforcement of liquor laws should have a positive impact on other forms of alcohol-related harm, such as alcohol-related traffic crashes, thus multiplying the savings to society.

There is clearly a pressing need to increase the level of resources dedicated to alcohol law enforcement. This review suggests its potential for preventing violence and highlights the need for additional research to assess enforcement's impact and optimal design. The urgency of this prevention agenda is demonstrated by the staggering human, social, and economic costs of alcohol-related harm and the need for new and innovative strategies for its prevention. Insuring adequate resources for enforcing alcohol laws needs to be given a high priority among state and federal legislators, policy makers, governmental agencies, law enforcement personnel, community activists, and researchers.

## Endnotes

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<sup>1</sup> Parker, R. with Rebhun, L. (1995) *Alcohol & Homicide: A Deadly Combination of Two American Traditions*. Albany: State University of New York Press; Mosher, J. and Jernigan, D. (2001) Making the link: a public health approach to preventing alcohol-related violence and crime. *Journal of Substance Abuse* 6: 273-89.

<sup>2</sup> Mosher, J. and Jernigan, D.

<sup>3</sup> Greenfeld, L. (1998) *Alcohol and Crime: An analysis of national data on the prevalence of alcohol involvement in crime*. Prepared for the Assistant Attorney General's National Symposium on Alcohol Abuse and Crime, Washington D.C., 5-7 April. Note that the acts referred to here are rapes or sexual assaults of persons over the age of 12.

<sup>4</sup> Greenfeld, L. (1998) *Alcohol and Crime: An analysis of national data on the prevalence of alcohol involvement in crime*. Prepared for the Assistant Attorney General's National Symposium on Alcohol Abuse and Crime, Washington D.C., 5-7 April. Note that the acts referred to here are rapes or sexual assaults of persons over the age of 12.

<sup>5</sup> Spunt, B., Brownstein, H., Goldstein, P., Fendrich, M., and Liberty, J. (1995) Drug use by homicide offenders. *Journal of Psychoactive Drugs* 27(2): 125-134. Goldstein, P., Brownstein, H., and Ryan, P. (1992) Drug related homicide in New York: 1984 and 1988. *Crime Delinquency* 38:459-476. Greenfeld, L.

<sup>6</sup> Greenfeld, L, et al. (1998) *Violence by Intimates: Analysis of data on crimes by current or former spouses, boyfriends, and girlfriends*. Washington, DC: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Factbook.

<sup>7</sup> Greenfeld, L.

<sup>8</sup> Mosher, J. and Jernigan, D.

<sup>9</sup> Greenfeld, L.

<sup>10</sup> Martin, S. and Bachman, R. (1997) The relationship of alcohol to injury in assault cases. In: Galanter, M., ed. *Recent Developments in Alcoholism, Volume 13* (pp. 42-56). New York: Plenum Press.

<sup>11</sup> Harwood H. 2000. Updating Estimates of the Economic Costs of Alcohol Abuse in the United States: Estimates, Update Methods and Data. Report

prepared by The Lewin Group for the National Institute on Alcohol Abuse and Alcoholism. Based on estimates, analyses, and data reported in Harwood H, Fountain D, Livermore G. 1998. The Economic Costs of Alcohol and Drug Abuse in the United States 1992. Report prepared for the National Institute on Drug Abuse and the National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Department of Health and Human Services. NIH Publication No. 98-4327. Rockville, MD: National Institutes of Health. Report available at <http://pubs.niaaa.nih.gov/publications/economic-2000/index.htm>.

<sup>12</sup> Scribner, R., MacKinnon, D., and Dwyer, J. (1995) The risk of assaultive violence and alcohol availability in Los Angeles County. *American Journal of Public Health* 85 (3): 335-340.

<sup>13</sup> Roncek, D. and Maier, P. (1991) Bars, blocks, and crimes revisited: linking the theory of routine activities to the empiricism of "hot spots." *Criminology* (29) 4: 725-753.

<sup>14</sup> Scribner, R., Cohen, D., Kaplan, S., and Allen, S. (1999) Alcohol availability and homicide in New Orleans: Conceptual considerations for small area analysis of the effect of alcohol outlet density. *Journal of Studies on Alcohol* 60 (3): 310-316.

<sup>15</sup> Speer, P., Gorman, D., Labouvie, E., and Ontkush, M. (1998) Violent crime and alcohol availability: Relationships in an urban community. *Journal of Public Health Policy* 19 (3): 303-318.

<sup>16</sup> Parker, R. with Rebhun, L.

<sup>17</sup> Wagenaar, A., Gehan, J., Toomey, T., Jones-Webb, R., Wolfson, M. (1996), Organizing for alcohol policy: what is needed and how to get it. Paper delivered at the Alcohol Policy X Conference entitled Reducing Risk Among Young Adults. Addiction Research Foundation, Toronto, Ontario, Canada, 4-8, May 4-8.

<sup>18</sup> Toomey, T., et al. (1999) Characteristics and rates of illegal alcohol sales to pseudo-intoxicated patrons. Paper presented at the American Public Health Association's 127<sup>th</sup> Annual Meeting, Chicago, IL, November 7-11, 1999.

<sup>19</sup> Greenfeld, L.

<sup>20</sup> Mosher, J. (1996) A Public Health Approach to Alcohol and Other Drug Problems: Theory and Practice. In *Principles of Public Health Practice*. Scutchfield, F. and Keck, C. (Eds.). Delmar Publishers.

<sup>21</sup> Edwards, G., et al. (1994) *Alcohol Policy and the Public Good*. Oxford: Oxford University Press, Oxford Medical Publications, World Health Organization Europe.

<sup>22</sup> McKnight, A. and Streff, F. (1994) The effect of enforcement upon service of alcohol to intoxicated patrons of bars and restaurants. *Accidental Analysis and Prevention* 26 (1): 79-88.

<sup>23</sup> Wiggers, J., et al. (2001) The Linking Project: Pilot Project in the Hunter & Northern Metropolitan Policing Regions of NSW, Final Report. New South Wales, Australia: Hunter Centre for Health Advancement.

<sup>24</sup> Hingson, R., et al. (1996) Reducing alcohol-impaired driving in Massachusetts: The Saving Lives Program. *American Journal of Public Health* 86 (6):791-797. Holder, H. (1998) *Alcohol and the Community: A Systems Approach to Prevention*. Cambridge: Cambridge University Press. Vingilis, E. (1990) A new look at deterrence models. In Wilson, R. and Mann, R., eds. *Drinking and Driving—Advances in Research and Countermeasures*. (pp. 99-115) New York: Guildford Publishers.

<sup>25</sup> Champaign Police Department. (2002) *2001 Alcohol Enforcement Summary*. Champaign, Illinois: Champaign Police Department.

<sup>26</sup> U.S. Department of Justice, Federal Bureau of Investigation. (2002) *Crime in the United States 2001: Uniform Crime Reports*. Washington D.C.: U.S. Department of Justice, Federal Bureau of Investigation.; Champaign Police Department.

<sup>27</sup> Sparks, M. (2000) Outcomes - Change in Nuisance CFS at Outlets (Deemed Approved). Slide set 18 in *Problem Prevention Strategies: Motivating Communities and Law Enforcement to Work Together*. Vallejo, CA: Fighting Back Partnership.

<sup>28</sup> Sparks, M. (2000) Outcomes – Sales to Minors. Slide set 16 in *Problem Prevention Strategies: Motivating Communities and Law Enforcement to Work Together*. Vallejo, CA: Fighting Back Partnership.

<sup>29</sup> Sparks, M. (2000) Outcomes - Police Calls for Service/Incidents City Wide Residentially Zoned. Slide set 13 in *Problem Prevention Strategies: Motivating Communities and Law Enforcement to Work Together*. Vallejo, CA: Fighting Back Partnership.

<sup>30</sup> Maguire, M. and Nettleton, H. (2003) *Home Office Research Study 265: Reducing alcohol-related violence and disorder: An evaluation of the 'TASC' project*. London: Home Office Research, Development and Statistics Directorate, March.

<sup>31</sup> Duailibi, S.M., Laranjeira, R., Ponicki, W., W., Grube, J.W., and Lcey, J. (2005). *Restricting Hours of Sale in Diadema, Brazil; Effects on Homicides and Assaults on Women*. Poster presentation. Pacific Institute for Research and Evaluation Meeting of the Minds. Dallas, TX. October; Reynolds, R. (2004). *Prevention of Murders in Diadema, Brazil*. Field Report. Calverton, MD: Pacific Institute for Research and Evaluation. October.



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# **EXHIBIT 9**

May 16, 2017

Office of the State Treasurer  
c/o The Alcohol Task Force  
Massachusetts State House, Room 227  
24 Beacon Street  
Boston, MA 02133

**Re: Suggested Revisions to G.L. c. 138**

Dear Members of The Alcohol Task Force:

In response to the public solicitation of the Task Force for “concerns” of interested parties in the alcoholic beverage industry, we, the undersigned five attorneys, express herein a number of issues that we agree should be considered by your Panel when reviewing the current liquor laws as codified by G.L. c. 138. We are not making our recommendations on behalf of any specific clients nor on behalf of any classification of licensees, as we each represent many different members of the alcoholic beverage industry from liquor stores and restaurants to manufacturers and wholesalers. We also do not believe any of our recommendations herein would impact any of the current laws that are in place to protect public safety and the safe service of alcoholic beverages, nor do we agree that public safety laws should even be amended.

Rather, we seek herein to make recommendations to your panel that, in our opinion: (i) would improve the license application process and the regulation for all licensed entities regardless of which tier they may occupy or seek to occupy; (ii) would relieve state and local regulators (and thus ourselves and our clients) from seemingly unnecessary time consuming tasks; and (iii) would stimulate economic development, activity and growth in this industry within Massachusetts.

By way of introduction, we have all been practicing law for approximately twenty-five years or longer; we all work at separate law firms; we all devote a significant amount of our respective law practices to licensing matters governed by G.L. c. 138; and collectively we have represented clients in perhaps more than ten-thousand (10,000) separate licensing matters. In this regard, we have collectively represented clients in administrative application proceedings and violation hearings before most of the municipalities in Massachusetts as well as before the Massachusetts Alcoholic Beverages Control Commission ("ABCC"), and we have litigated in state and federal courts throughout the Commonwealth issues arising out of G.L. c. 138. After discussing many issues amongst ourselves, the practices described below are pragmatic recommendations that we all agree on, especially having to do with the application process, and we therefore pass them along to you for the Panel's consideration.

**I. The License Application Procedure**

**1. Disclosure Requirements:**

Perhaps the most time consuming and frustrating aspect of applying for any type of liquor license in Massachusetts are the so-called “disclosure requirements” required for every person

who holds a “direct or indirect” interest of a liquor license when that licensed entity is not a publically traded corporation. G.L. c. 138, § 15A currently provides, in part, as follows:

Section 15A. All applications for an original license under sections twelve and fifteen shall be made on a form or forms to be prescribed by the commission and shall include a sworn statement by the applicant giving the names and addresses of **all persons who have a direct or indirect beneficial interest in said license**. No stock in a corporation holding a license to sell alcoholic beverages shall be transferred, pledged, or issued without first obtaining the permission of the local licensing authorities and the commission. **Provisions of this section shall not apply to stockholders of a corporation whose stock is listed for sale to the general public with the Securities and Exchange Commission and who hold less than ten per cent of the outstanding stock entitled to vote at the annual meeting of said corporation.**

(Emphasis added.)

In enforcing these provisions of Section 15A, the ABCC has over the years generally required from business entities (not-publically traded) the personal information (such as addresses, parents' names, social security numbers and other identifying information for individuals); whether this individual holds or has held an interest in another Massachusetts liquor license; whether the individual has a criminal background; and these people have been required to execute forms providing the ABCC permission to search their criminal background (CORI Forms). This required information and required form are known as "Disclosure Requirements" for anyone having a "direct or indirect" interest in non-publically traded business entity such as a corporation or a limited liability company.

However, modern day investment vehicles that hold or seek to hold liquor licenses such as corporations and limited liability companies are themselves owned by other investment vehicles, such as private equity funds, venture capitalist firms, crowd funding platforms, employee owned cooperatives, real estate investment trusts or other such sources of capital which otherwise commonly drive economic development in almost every sector of the economy. These "engines" of economic development, however, are deterred, impeded and sometimes prevented from participation in driving economic development in projects involving a liquor license in Massachusetts, such as developing hotels, breweries, distilleries, large retail stores selling alcoholic beverages and so-called "chain" restaurants that are owned by a national or international company, all due to the Disclosure Requirements, which are technically applicable to every last shareholder or interest holder in the larger investment vehicle when this larger investment vehicle is not a "publically traded" company.

The ABCC's policies have evolved over the years when it comes to being able to acquire a "waiver" from having to disclose a class of investors, but some ABCC investigators view these Disclosure Requirements differently from other investigators, and any "upper tier" form of

investment in a business entity that seeks to hold a liquor license is required to provide organizational charts and sometimes an informational hearing wherein the intricacies of modern day finance can be lost on the "liquor license lawyers" that present the information and regulators trying to follow the finance arrangements.

As noted above, pursuant to Section 15A, these Disclosure Requirements are not required for any individual who possesses a direct interest in a licensed business entity that is publically traded and wherein the shareholder does not possess more than ten-percent of that entity's voting shares (the "Ten Percent Rule"). We do not believe that Section 15A's current exemption of the Disclosure requirements for individuals possessing less than ten percent of a publically traded corporation's voting stock was drafted because mere registration with the Securities and Exchange Commission and the allowance of public trading in its stock, itself, bestows or was intended to bestow any stand alone significance as to whether investors in such entities or the entities themselves are more "legitimate" or "responsible" when it comes to the ownership or management of a brewery, wholesaler, liquor store or restaurant in Massachusetts.

Rather, we believe the rational for the Ten Percent Rule seem obvious: because these people have very limited investments in and very little operational or management control over the entity in which they hold stock, there should be really no reason for the regulators to know these people's personal identifying information or disqualify them from ownership because they may have criminal records or possess an interest in another class of liquor license.

We do not recommend eliminating the Disclosure Requirements for the Officers or Directors of a corporation, or the Managers of a limited liability company, that seeks to hold a Massachusetts liquor license, or for the proposed Manager of Record for the liquor license itself, as required by G.L. c. 138, Section 26, as all these people do have operational and management control over the licensed entity and the licensed premises. We do, however, suggest and recommend two separate amendments to Section 15A wherein the logic of the existing Ten Percent Rule as an exception to the Disclosure Requirements for minority owners of a publically traded companies be simply extended across the board as follows:

- (i) the Ten Percent Rule currently applicable only to publically traded companies should be applied to all business entities possessing or seeking to possess a Massachusetts liquor license, whether privately owned or publically traded; and
- (ii) for all licensed business entities that are owned in part or in whole by a secondary business entity (an "Investment Company"), such as a private equity fund in the form of a corporation or limited liability company, for example, only an Investment Company that possesses more than ten percent of the proposed licensed entity's voting rights should be required to provide Disclosure Requirements and those Disclosure Requirements should also only be for the

individual Officers and Directors (or Managers in the case of a limited liability company) of the Investment Company and only those individuals who themselves possess more than ten percent of the Investment Company's voting rights.

We believe extending the Ten percent Rule across the board to all people who hold a small interest in a licensed entity - as defined by their less than ten percent voting rights - will continue to require those people who are actually in control of making decisions on behalf of the licensed entity to be scrutinized for criminal backgrounds and potential cross-ownership conflicts in another liquor license, while relieving clients, their attorneys and the regulators from a lot of unnecessary paperwork and time, as well as inconsistent results in gaining approval for these types of Investment Companies. At the same time, modern day forms of financial investment - which often times has hundreds if not thousands of individual investors - will be free to support and drive development in the alcoholic beverage industry within the Commonwealth. Both of these suggestions, it would seem to us, would eliminate the unpredictability of the current procedures for acquiring a "waiver" of the Disclosure Requirements for small investors and would also eliminate the time necessary for clients, attorneys and regulators to comply with the Disclosure Requirements for individuals who in fact have a minority interest in a liquor license and no operational control over the licensed business.

## **2. Proof Of Funds**

A related issue to the Disclosure Requirements that has also proven to be vexing in our experience is that applicants for every type of liquor license are required to declare by line-item the expected cost of their project (buying and renovating a restaurant, for example); provide the total amount of the expected project; and from there, work backwards from the stated total and identify all sources of finance by actually submitting certain types of financial documents ("Proof of Funds"). We have found that unlike the Disclosure Requirements that often hinder larger projects, the Proof of Funds requirements significantly often hinder small projects with just a few owners who often times are family members or small business people.

For example, when a portion of the stated project cost is to be financed by an individual investor in an amount of \$50,000.00 or more (an arbitrary amount recently set by the ABCC up from \$500.00), as is often the case in small projects, the ABCC requires as Proof of Funds that the license applicant submit with the application three (3) consecutive months of actual bank statements from each investor that shows a bank balance in excess of that investor's declared capital contribution for three (3) consecutive months. The ABCC does allow for Proof of Funds in lieu of submitting actual bank statements a letter from a financial institution wherein a bank officer confirms in writing that the proposed investor is a bank customer and that he or she actually possessed the stated amount of their investment in the proposed licensed entity for three (3) consecutive months.

Similarly, when a proposed licensed entity receives financing from a commercial lender, loan documents are required by the ABCC to be submitted with the application as Proof of Funds. Loans from private individuals, from one's parents or another family member for example, require loan documents, Affidavits and potentially the Disclosure Requirements for the person making the loan.

While we all agree that it is in the best interest of the state, regulators and the industry itself to keep funds which are the source of criminal activity out of the business of alcoholic beverages, the Proof of Funds requirements of the ABCC should be abolished because : (i) they have become incredibly burdensome on clients, their attorneys and regulators; (ii) they are intrusive on client's private financial records, which in turn makes them difficult to transmit, store and disseminate for clients, their attorneys and regulators; (iii) clients often bristle or outright refuse to provide the "government" with their personal bank records out of fear they may be hacked or used for some other purpose; (iv) they do not assist the ABCC in discerning whether a project is financially viable, which is beyond the ABCC's scope of responsibility in any event, and they do not assist the ABCC in discerning whether a project is being financed by the proceeds of criminal activity; and, as set forth below and perhaps most importantly, (v) they make little practical sense.

Requiring three (3) months consecutive bank statements as Proof of Funds for an investor who wants to open-up a new restaurant with a couple of partners requires *de facto* proof that if that investor's stated investment is \$100,000.00, for example, that he or she needed to keep at least a balance of \$100,000.00 static in one bank account (which he or she could not co-own with their spouse, less the spouse be subject to the Disclosure Requirements above) for three (3) consecutive months, which causes in some ways a required "cooling off" period before any portion of that investor's bank balance can be decreased under \$100,000.00 towards the project. In the "real world," few people who want to open a new restaurant or purchase a liquor store or develop a brewery actually maintain a static balance amount equal to or greater than their estimated contribution to a project in one bank account for three (3) consecutive months, nor should they have to.

The common problem we all face is practitioners as that investors will inform us that their projected investment of \$100,000.00 is just an estimate and they are not sure how much they will be out of pocket by the time the business is open to the public; or their projected investment is coming from multiple bank accounts including retirement accounts which require showing complicated transfers between accounts to account for the total stated amount; or part of their projected investment is coming from a family member as a gift or an informal loan with no promissory note available to show the regulators; or their projected estimate will come from, either in whole or in part, from the available funds of another business they own and operate, but the bank account(s) are in the name of that business; or their projected estimate includes funds they have not received yet but expect to receive in the future; or their projected investment

amount, while in the bank for a month or so, has been diminished below the stated amount by costs associated with the project thus far, on attorney's fees for example, and now three (3) consecutive bank statements are not and will not be available.

These "real world" issues confronting especially small potential investors in this industry are serious problems for our clients, but even when three (3) months consecutive bank records showing a continuing balance in excess of the investor's stated amount are easily available and submitted to the ABCC, those bank statements prove nothing with respect to whether or not a proposed licensee is being financed with the proceeds of criminal activity, which seems to be the only interest regulators have in requiring such personal financial documents be produced to it, as the ABCC does not approve or disapprove an application because it appears to be financially not-viable.

Indeed, the bank statements themselves do not show the actual source from where those funds reflected in those statements were derived, and they could have indeed been deposited from the result of illegal activities. Any suspicious funds or large deposits in the subject bank account in the month before the first of the three (3) bank statements provided are also outside of the ABCC's review, so any one time big deposit just needs to sit an account for more than three (3) months. Most importantly, however, those business entities and individuals who do in fact want to "launder" money derived from a criminal enterprise through a licensed entity (i.e. criminals), it would seem, do not and will not disclose that investment to the regulators (or to their attorneys), nor will they disclosure their hidden "interest" in the licensed entity to the regulators (or to their attorneys), and they will just do it anyway in violation of the law, leaving the honest business person with the time consuming and burdensome process of having to cobble together bank statements that show they possess the funds they are claiming to invest in a project. Accordingly we believe the Proof of Funds requirement should simply be abolished, as it is not practically serving any legitimate purpose. We also believe such a change in policy can be implemented without having to amend G.L. c. 138 but just the ABCC's own policies.

### 3. **"Automatic Bars" For Some Criminal Backgrounds:**

Also related to the Disclosure Requirements as set forth above, anyone having to make such Disclosure Requirements for an interest in an on-premises pouring restaurant license or an off-premises package store license, is subject to certain inconsistent automatic bars that prohibit their interest in such a licensed entity if they have certain types of criminal backgrounds (the "Automatic Bars"). Pursuant to G.L. c. 138, Section 15, for example, which governs off-premises package store licenses, no individual may have an interest in this type of license if he or she has been "convicted of a felony." However, pursuant to G.L. c. 138, Section 12, no individual may have any interest in a restaurant on-premise liquor license if he or she has been convicted of "a violation of a federal or state narcotic drugs law." Accordingly, in



Massachusetts, someone who was convicted twenty-years ago of possession of marijuana, which has been recently been de-criminalized in Massachusetts, is automatically barred from having an interest in a restaurant's liquor license, but someone recently convicted of numerous felonies is not so automatically barred.

Moreover, there are no such Automatic Bars for those with criminal backgrounds when it comes to qualifying for an interest in other liquor licenses allowable under Chapter 138, such as for manufacturers and wholesalers. Individuals seeking a direct interest in most state licenses are, rather, only disqualified if the ABCC subjectively determines the proposed individual for an interest in a liquor license is not a person "of responsible character." (See G.L. c. 138, §§ 19B, 19C & 19D.)

It seems to us there should either be no Automatic Bars for an individual with a criminal background or, perhaps a better and more predictable approach would be to impose a uniform Automatic Bar to only those individuals seeking an interest in a liquor license who have been convicted of a felony within ten (10) years prior to the application date. Such a "rule" would also serve and promote the concept of "rehabilitation" should that individual's criminal record be clear for ten (10) years.

#### **4. Immigration Status Requirements:**

Currently, pursuant to G.L. c. 138, Section 15, only United States "Citizens" can be listed as "Directors" of a corporation that seeks to acquire an off-premises package store license, but a Non-Citizen can own all the stock in that corporation, and therefore essentially control the Directors. Pursuant to G.L. c. 138, Section 12, a "majority" of the "Directors" of a corporation seeking to acquire an on-premises pouring license cannot be Non-Citizens, but a minority number of Non-Citizens can be Directors and all of the shareholders of that corporation can be Non-Citizens. There are no such citizenship requirements for Directors of corporations seeking to acquire most if not all other liquor licenses.

It is our opinion that any prohibitions against a Non-Citizen being a "Director" of a licensed entity should be abolished in Chapter 138 as it serves no real purpose and frustrates development by people who may have been in the United States for decades pursuant to a "Green Card" or some other visa, or who are in the process of acquiring lawful legal immigration status but have not yet completed the process. Moreover, immigrants have always been a powerful force in the restaurant industry and now, more so, in the package store industry as such businesses are often times culturally based (Italian Restaurants, for example) and have always been a "gateway" business opportunity for immigrants who are familiar with the business in their country of origin, and who want to work long hours and often times with the help of their family members.

## 5. Contiguous Space Requirements:

By acquiring a liquor license, a restaurant, brewery or any other applicant for a liquor license is obligated to provide its local town or city and the ABCC with a very specific diagram that defines and marks the boundaries its licensed premise. G.L. c. 138, Section 12, which governs on-premises pouring licenses, as interpreted by the ABCC, provides that, with the exception of hotels, all licensed areas must be “appurtenant and contiguous” throughout the premises (the “Contiguous Space Requirements”). *See Springfield Library and Museum Association d/b/a Café on the Quadrangle, dated November 21, 2006.* Indeed, pursuant to a recent ABCC “Advisory” on patios, the ABCC instructs that an outdoor patio must be immediately “contiguous” to the restaurant it serves, so the patio cannot be separated by a few feet of public sidewalk that would separate it from the interior of the restaurant, where such arrangements are common place in most first-class cities around the world.

The term “contiguous” when describing licensed premises are also found in the statutes authorizing farmer-winery, farmer-brewery and farmer-distillery licenses. (See G.L. c. 138, Sections 19(B), (C) & (E)), and the ABCC therefore has interpreted the word “contiguous” to prevent a farmer-brewery, for example, from acquiring a “farmer pouring permit” in a building not physically connected in some fashion (by an open breeze-way lined with ropes or some other artifice) from the building where the brewery manufactures the beer, even if the two buildings are a few feet away from each other. This Contiguous Space Requirement is the particular issue that caused Nashoba Valley Winery in 2016 to have to file suit against the ABCC or lose its ability to pour its own manufactured beer and wine in a separate building (and therefore have to layoff many employees), which required legislative action to cure.

With regard to the design of a restaurant or any licensed premises for that matter, and when submitting diagrams of the licensed premises to the local authorities and the ABCC, the diagram of the licensed premises where alcoholic beverages can exist lawfully are contained within an “unbreakable” imaginary box, from the storage area in the basement to the roof deck, and must be connected to each other by internal hallways and stairwells, or otherwise must be “contiguous” to each other, as interpreted by the ABCC. The Contiguous Space Requirement is an “absolute rule” in design, which limits where restaurants, in particular, may serve alcoholic beverages within a building or outside on a patio.

Modern restaurants, however, are undergoing a renaissance in Massachusetts when it comes to providing the “experience” its patrons receive when visiting their establishments. In conjunction with providing a dining and drinking experience, venues are seeking to work into that experience such innovative activities as art displays; seminars and adult education; painting and cooking classes; learning to make your own wine or beer; and other such activities that fuse the communal experience of eating and drinking with friends and strangers alike, with learning something new or engaging in activity that is either educational or productive. The concepts that could be potentially fused with the common dining and drinking experience, from exercise to

retail shopping, are almost unlimited.

These concepts, however, which transcend traditional concepts of live entertainment wherein a stage or functional hall is already incorporated into the licensed premise, often times would require or could certainly utilize other areas within a restaurant's building, such as auditorium halls, lobbies, classrooms or other spaces that could be leased or occupied by a restaurant, or even blend into areas occupied by other businesses. Such potential spaces physically located outside the imaginary box of the licensed premise are, however, not contiguous to that licensed premises, and therefore are not potential spaces a licensed premises can utilize for its "experience."

Other states and countries are not bound to such restrictions when it comes to design, and some markets worldwide purposefully incorporate multiple bars and restaurants with other retailers and commercial shops under one roof, and with one liquor license to create an integrated and enhanced dining/shopping experience. While abolishing the prohibition against possessing an open container of alcoholic beverages in Massachusetts is not the solution to expanding the traditional restaurant experience here in Massachusetts, providing local municipalities with the "flexibility" to allow a licensed premise to step out of the imaginary licensed premises box in order to access another non-contiguous space may unleash a design and/or architectural "use revolution" for the traditional restaurant.

Other states have embraced such concepts. In Arizona, for example, Title 19, Chapter 1-105 of the Arizona Administrative Code provides standards for the licensing of non-contiguous areas under a liquor license, stating approval will only be granted if "the public convenience requires and the best interest of the community will be substantially served by approving inclusion of the non-contiguous area in the licensed premises" and "[t]he licensee demonstrates control of the taking of spirituous liquor between the non-contiguous area and the remainder of the licensed premises."

Accordingly, we believe the approval of a licensed premises should not be governed by the absolute rule that there can be no extension of the licensed premises beyond immediately "contiguous" spaces, and that the approval of "licensed premises" should be left to the local licensing authorities, which can better judge the safety and compliance required under local building ordinances for such designed areas of service and storage.

## **II. Appealing Discipline To The ABCC**

While the above described issues having to do with the application process in general cause the most frustration for our clients' participation in the Massachusetts Alcoholic Beverages Industry, there are a few additional issues we all agree could be administered more effectively and perhaps more beneficially for all concerned, which we state below.

**1. Roll Back of Hours:**

When a local licensing authority (“LLA”) takes action to “modify” a licensee’s license, the licensee can normally appeal that action to the ABCC for a hearing and review of the LLA’s imposition of discipline. See M.G.L. c. 138, Sections 23 & 67. However, where a LLA decreases or otherwise changes the hours a licensee is authorized to sell alcoholic beverages for the holder of a Section 12 on-premises pouring license, the ABCC has no jurisdiction to hear an appeal from such a “roll back” as long as the licensee’s hours are not decreased between 11:00 a.m. to 11:00 p.m. In the Appeals Court decision issued in *Casa Loma, Inc. v. ABCC*, 377 Mass. 231, 234-35 (1979), which interpreting Section 12, the Appeals Court held that the decision of a LLA to “rollback” hours is not considered a “modification” within the meaning of the law, but is deemed to be solely within a LLA’s discretion, provided the “rollback” only effects the hours before 11:00 a.m. and after 11:00 p.m.:

We conclude that the hours of a licensee during the periods from 8 A.M. to 11 A.M. and from 11 P.M. to the statutorily mandated closing time (2 A.M. as to restaurants) are a matter solely of local control, subject only to judicial review of a local authority's failure to give a proper hearing. The local authorities may decrease hours when there is a "public need for such decrease." G.L.c. 138, § 12. We discern a legislative intention to permit unreviewable policy considerations to govern the availability of "extra" hours for licensees.

This un-reviewable and un-appealable sanction of a “roll-back” of hours gives LLA’s too much power to essentially close a restaurant or a nightclub down without the same ability to have the ABCC, as an unbiased panel, review such an imposition of discipline, as a licensee would have had the LLA simply suspended a liquor license for one day or longer. We have all had experiences where it seemed very unfair to have an LLA be able to act in such a way and where it seemed like an “end around” for the LLA having to have their findings of a violation and sanction sustained upon review.

**2. Staying Discipline While Pending An ABCC Appeal:**

When an LLA makes a finding that a licensee has violated some provision of G.L. c. 138 or a municipality’s local rules, and thereafter enters a sanction in the form of a suspension for one day or longer, that imposition of discipline is not automatically “stayed” should the licensee appeal the findings and/or sanction to the ABCC pursuant to G.L. c. 138, Section 67. While some municipalities will agree to “stay” the actual service of the suspension pending ABCC review, as serving the suspension defeats the purpose for appealing, some municipalities will not agree to stay the suspension, and it therefore becomes incumbent for the licensee to have to file a lawsuit in Superior Court that will itself never go to trial but which serves as the proceeding within which a licensee will file a motion for injunctive relief and have to have a full-blown hearing before a judge in order to stay the suspension pending ABCC appeal. Such a

process is very costly for the licensee in terms of attorney's fees, and time consuming for both the client, the attorney and even counsel for the LLA, and a seeming unnecessary waste of time.

While we understand that in the name of public safety, some establishments must immediately be closed, such sanctions would be in the form of a revocation of license, and not a suspension of license, which assumes the establishment is fit to re-open for business once it serves its suspension. Accordingly, we believe Section 67 should be amended to allow for an automatic stay of discipline pending ABCC review and decision, aside from the sanction of a revocation of license.

### **3. Paying Fines In Lieu of Suspension**

Under the existing version of G.L. c. 138, Section 23, upon a finding that a licensee has violated some provision of G.L. c. 138 or the municipality's local rules, a LLA may "modify, suspend, revoke or cancel such license, or may levy a fine in accordance with regulations which shall be promulgated by the alcoholic beverages control commission." With respect to levying a fine, however, the ABCC has not promulgated regulations for the LLA's to follow in this regard and, as a result, fines are not levied by the LLA and "suspensions" from one day to seven days or longer are the norm for LLA's seeking to "punish" a licensee for, example, serving alcoholic beverages to a minor.

When the ABCC, itself, enters a suspension as a sanction, however, the ABCC permits the licensee to pay a fine "in lieu of suspension" equal essentially to fifty-percent of a licensee's proven gross profit per day for each day of suspension ordered served by the ABCC. Paying a fine "in lieu of suspension" allows a licensee pay to a financial price for its determined violations without having to lay-off its employees for the number of days it would have to in order to pay the financial price by being closed for business during a suspension. Indeed, serving actual suspensions, as opposed to paying a fine, often causes restaurants and liquor stores, and other licensees, to have to put dozens of employees or more out-of-work when they may have had no connection whatsoever with the liquor license violation that caused the suspension.

We believe the process of paying a fine "in lieu of suspension" as currently in practice at the ABCC should also be available be an alternative for licensees receiving a suspension by a LLA's, which in turn could cause revenue for the municipality instead of temporary unemployment for the licensee's employees. Such a procedure would also in all likelihood limit the need to appeal suspensions to the ABCC for licensees that can afford to pay a fine but which do not want to be stigmatized by having to serve a suspension, therefore freeing the ABCC from potentially having to hear as many appeals as it does every year.

**Conclusion**

As set forth at the beginning of this letter, the suggested revisions to either G.L. c. 138 or the ABCC's policies in interpreting this statute as contained herein are our mutually agreed opinions on what most industry participants and perhaps even the regulators would consider "non-controversial," as they apply to all types of licensees and do not promote one class of licensee over another class of licensee. We hope you find these suggested recommendations are helpful in your task of reviewing the Commonwealth's current state of laws for this very important industry. If you request additional input on these or other issues, please let us know.

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# **EXHIBIT 10**

# The Effectiveness of Tax Policy Interventions for Reducing Excessive Alcohol Consumption and Related Harms

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**Abstract:** A systematic review of the literature to assess the effectiveness of alcohol tax policy interventions for reducing excessive alcohol consumption and related harms was conducted for the *Guide to Community Preventive Services (Community Guide)*. Seventy-two papers or technical reports, which were published prior to July 2005, met specified quality criteria, and included evaluation outcomes relevant to public health (e.g., binge drinking, alcohol-related crash fatalities), were included in the final review. Nearly all studies, including those with different study designs, found that there was an inverse relationship between the tax or price of alcohol and indices of excessive drinking or alcohol-related health outcomes. Among studies restricted to underage populations, most found that increased taxes were also significantly associated with reduced consumption and alcohol-related harms. According to *Community Guide* rules of evidence, these results constitute strong evidence that raising alcohol excise taxes is an effective strategy for reducing excessive alcohol consumption and related harms. The impact of a potential tax increase is expected to be proportional to its magnitude and to be modified by such factors as disposable income and the demand elasticity for alcohol among various population groups.

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## Introduction

Excessive alcohol consumption is the third-leading actual cause of death in the U.S.,<sup>1</sup> and each year it accounts for approximately 79,000 deaths and 2.3 million years of potential life lost (about 29 years of life lost per death; [apps.nccd.cdc.gov/ardi/Homepage.aspx](http://apps.nccd.cdc.gov/ardi/Homepage.aspx)). Excessive alcohol consumption contributes to a variety of health and social problems, including unintentional injuries (e.g., injuries due to motor vehicle crashes); suicide; homicide; liver cirrhosis; gastrointestinal cancers; vandalism; and lost productivity.<sup>2</sup> Alcohol consumption by

underage drinkers also contributes to the three leading causes of death among adolescents (unintentional injuries, suicide, and homicide),<sup>3</sup> and any underage drinking is considered excessive.

One of the fundamental laws of economics is that quantity demanded of a product is inversely related to its price (Law of Demand).<sup>4</sup> Based on economic theory, therefore, increasing the price of alcohol would be expected to lower alcohol consumption. Alcohol taxes are promulgated primarily by federal and state governments, but can be instituted at the local or county level. Currently in the U.S., alcohol taxes are beverage-specific (i.e., they differ for beer, wine, and distilled spirits) and are usually “nominal” taxes, meaning they are based on a set rate per unit volume and are not adjusted for inflation (i.e., they generally remain stable as the cost of living increases). At the state and federal levels, inflation-adjusted alcohol taxes have declined considerably since the 1950s.<sup>5</sup> Concordant with this decrease in the real value of these taxes from substantially higher levels, the inflation-adjusted price of alcohol decreased dramatically,<sup>6</sup> reflecting the

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fact that changes in taxes are efficiently passed on through changes in prices.<sup>7</sup> The goal of this systematic review is to assess the relationship between alcohol taxes or prices and public health outcomes related to excessive alcohol consumption to better inform decision makers about the potential utility of using tax policy as a means of improving those outcomes.

### Healthy People 2010 Goals and Objectives

The intervention reviewed here is relevant to several objectives specified in *Healthy People 2010*, the disease prevention and health promotion agenda for the U.S. (Table 1).<sup>8</sup> The objectives most directly relevant to this review are those that aim to reduce excessive alcohol consumption (26-11); reduce average annual alcohol consumption (26-12); and reduce key adverse consequences of excessive alcohol consumption (26-1, 26-2, and 26-5 through 26-8). In addition to these specific objectives, *Healthy People 2010* notes that excessive alcohol consumption is also related to several other public health priorities such as cancer, educational achievement, injuries, risky sexual activity, and mental health; thus, a reduction in excessive alcohol consumption should help to meet some of the national goals in these areas as well.

**Table 1.** Selected *Healthy People 2010*<sup>8</sup> objectives related to excessive alcohol consumption

Adverse consequences of substance use and abuse
26-1 Reduce alcohol-related motor-vehicle fatalities <sup>a</sup>
26-2 Reduce cirrhosis deaths
26-5 Reduce alcohol-related hospital emergency department visits
26-6 Reduce the proportion of adolescents who ride with drinking drivers
26-7 Reduce intentional injuries resulting from alcohol-related violence <sup>a</sup>
26-8 Reduce cost of lost productivity due to alcohol use <sup>a</sup>
Substance use and abuse
26-10a Increase proportion of adolescents not using alcohol in past 30 days <sup>a</sup>
26-11 Reduce proportion of people <sup>b</sup> engaging in binge drinking
26-12 Reduce average annual alcohol consumption
26-13 Reduce proportion of adults who exceed guidelines for low-risk drinking

<sup>a</sup>Objective also relates to illicit drug use

<sup>b</sup>Aged ≥12 years

### Recommendations from Other Advisory Groups

Several authors<sup>9-12</sup> have suggested that increasing alcohol prices by raising alcohol excise taxes is among the most effective means of reducing excessive drinking and alcohol-related harms. Increasing alcohol excise taxes has been specifically recommended as a public health intervention by the IOM, Partnership for Prevention, the WHO, and the expert panel convened for the Surgeon General's Workshop on Drunk Driving.<sup>13-16</sup> These recommendations are based on studies<sup>14,17,18</sup> showing that increased alcohol taxes are associated with decreased overall consumption, decreased youth consumption, decreased youth binge drinking, reduced alcohol-related motor-vehicle crashes, reduced mortality from liver cirrhosis, and reduced violence.

### The Guide to Community Preventive Services

The current systematic review of the effects of alcohol taxes and prices on excessive alcohol consumption and related harms applies the stringent inclusion and assessment criteria of the *Guide to Community Preventive Services (Community Guide)*.<sup>19</sup> It was conducted under the oversight of the independent, nonfederal Task Force on Community Preventive Services (Task Force), with the support of USDHHS in collaboration with public and private partners. The CDC provides staff support to the Task Force for development of the *Community Guide*.

To support efforts to address important public health priorities, such as reducing excessive alcohol consumption and its related harms, the Task Force makes recommendations for practice and policies based on the results of *Community Guide* reviews such as this one. These recommendations are based primarily on the effectiveness of an intervention in improving important outcomes as determined by the systematic literature review process. In making its recommendations, the Task Force balances information about effectiveness with information about other potential benefits and harms of the intervention itself. The Task Force also considers the applicability of the intervention to various settings and populations in determining the scope of the recommendation. Finally, the Task Force reviews economic analyses of effective interventions, where available. Economic information is provided to assist with decision making, but it generally does not affect Task Force recommendations. See the Task Force-authored paper in this issue for recommendations regarding the effects of alcohol taxes and prices on excessive alcohol consumption and related harms.<sup>20</sup>

## Evidence Acquisition

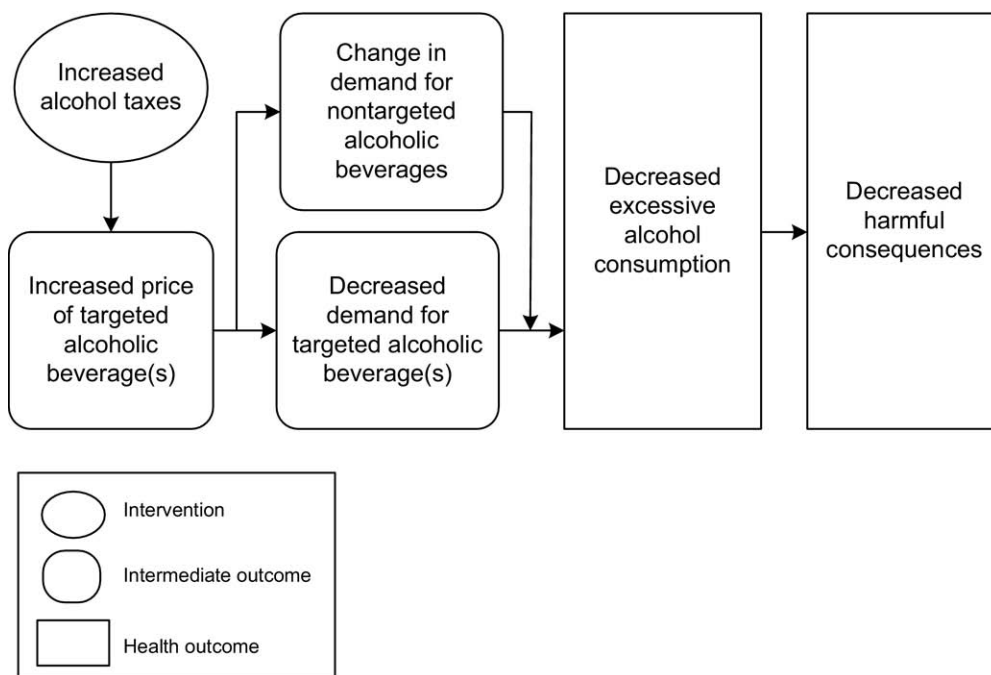
*Community Guide* methods for conducting systematic reviews and linking evidence to effectiveness are described elsewhere<sup>19</sup> and on the *Community Guide* website ([www.thecommunityguide.org/methods](http://www.thecommunityguide.org/methods)). In brief, for each *Community Guide* review topic, a systematic review development team representing diverse disciplines, backgrounds, and work settings conducts a review by (1) developing a conceptual approach to identify, organize, group, and select interventions for review; (2) developing a conceptual model depicting interrelationships among interventions, populations, and outcomes; (3) systematically searching for and retrieving evidence; (4) assessing and summarizing the quality and strength of the body of evidence of effectiveness; (5) translating evidence of effectiveness into recommendations; (6) summarizing data about applicability (i.e., the extent to which available effectiveness data might apply to diverse population segments and settings), economic impact, and barriers to implementation; and (7) identifying and summarizing research gaps.

## Conceptual Model

The conceptual causal pathway by which increased alcohol taxes are expected to reduce excessive alcohol consumption and its related harms is depicted in Figure 1. The first step in this pathway posits that tax increases will be passed on to the

consumer in the form of higher alcohol prices, as has been documented previously.<sup>7</sup> According to the Law of Demand,<sup>4</sup> an increased price would be expected to lead to a decrease in the quantity of alcoholic beverages demanded, resulting in decreases in excessive alcohol consumption and its harmful consequences. Details of the specific independent variables and outcome measures that reflect the concepts in this conceptual causal pathway are provided below.

One complicating factor in this conceptual model arises from the fact that different types of alcoholic beverages (e.g., beer, wine, and spirits) are taxed at different rates in the U.S. and several other countries. When tax increases affect one type of beverage only (designated as the “targeted” alcoholic beverage in Figure 1), one must consider the possibility of substitution effects, whereby alcoholic beverages that have not been affected by the tax increase may be consumed in greater quantities. To the extent that such substitution occurs, the overall rate of excessive drinking would not decrease as much as would otherwise be expected based on the decrease in quantity demanded for the beverage targeted by the tax increase. However, binge drinkers are known to prefer certain types of alcoholic beverages (e.g., most adult binge drinkers in the U.S. consume beer)<sup>21</sup> for reasons that may not be entirely related to price (e.g., availability, convenience, taste); thus, it is not clear whether and how large an effect beverage substitution would likely have on overall alcohol consumption, even when tax increases affect one beverage type only.



**Figure 1.** Conceptual model for the causal relationship between increased alcohol taxes and decreased excessive alcohol consumption and related harms (oval indicates intervention; rectangles with rounded corners indicate mediators or intermediate outcomes; and rectangles indicate outcomes directly related to improved health)

## Review Inclusion Criteria

To be considered for inclusion in this review, candidate studies had to (1) meet minimum *Community Guide* standards for study design and quality<sup>19</sup>; (2) be published in an English-language journal, book chapter, or technical report; (3) be conducted in a high-income economy; and (4) evaluate independent variables and outcome measures of interest.

**Independent variables of interest.** In addition to the other criteria noted above, to be included in this review, a study had to evaluate either the effects of a

change in alcohol tax policy or the relationship between alcohol taxes or prices and outcomes of interest. Studies of the effects of alcoholic beverage prices were considered relevant to an evaluation of alcohol taxes because there is evidence that changes in alcohol taxes are passed on to the consumer in the form of higher or lower prices, with little or no lag time.<sup>7</sup> In fact, there is some evidence that tax increases may be magnified as they are passed on to the consumer. For example, when the federal excise tax on beer increased by \$9 per barrel in 1991, it was estimated to have increased retail prices by \$15 to \$17.<sup>7</sup>

**Outcome measures of interest.** The outcome measures of interest in this review are direct measures or proxies relating to the two final boxes in Figure 1—that is, excessive alcohol consumption and the harmful consequences of such consumption. When excessive alcohol consumption is assessed directly, it is typically done through surveys assessing either the prevalence or frequency of binge drinking (four or more drinks per occasion for women, or five or more drinks per occasion for men); heavy drinking (more than seven drinks per week for women, or more than 14 drinks per week for men); or underage drinking (defined by state or national laws). Measures of societal levels of alcohol sales or consumption were also considered an acceptable proxy for excessive consumption for two primary reasons. First, there is an extremely strong relationship between per capita alcohol consumption and various measures of excessive drinking.<sup>22,23</sup> Furthermore, because people consuming greater quantities of alcohol may be more sensitive to price increases, reductions in societal levels of alcohol consumption subsequent to price increases may result in even larger declines in excessive consumption.<sup>22</sup>

In addition to studies directly or indirectly assessing excessive alcohol consumption, studies assessing health-related outcomes associated with excessive alcohol consumption (e.g., alcohol-related motor-vehicle crashes) were also included in this review. In some cases, a single paper reported multiple measures of a single general outcome (e.g., both single-vehicle nighttime crashes and total crashes reported as measures of alcohol-related crashes). In these instances, the measure that was most strongly associated with excessive alcohol consumption based on estimated alcohol-attributable fractions was chosen as the primary result reported for that outcome.

## Search for Evidence

Conducting a thorough search for studies of the effects of alcohol taxes or alcohol prices is challenging because the effects of alcohol taxes or prices are often studied in conjunction with many other variables. As a result, a search that targets “tax” or “price” may fail to identify many relevant studies. To address this issue, a search was conducted for relevant studies as part of a broad database search for terms related to several alcohol policy interventions of interest to

the current review group, covering the period from database inception through July 2005. Using MeSH terms and text words, the following databases were searched: MEDLINE, EMBASE, PsycINFO, the ETOH database of the National Institute on Alcohol Abuse and Alcoholism, Web of Science, Sociological Abstracts, and EconLit. Search strategies are available at [www.thecommunityguide.org/alcohol/supportingmaterials/SSincreasingtaxes.html](http://www.thecommunityguide.org/alcohol/supportingmaterials/SSincreasingtaxes.html). The reference lists of prior literature reviews, as well as reference lists from studies included in this review, were used to identify additional relevant articles. The search produced 5320 potentially relevant papers, of which 78 met the inclusion criteria.

## Data Extraction and Quality Assessment

For each candidate study, study characteristics and results were recorded, and the quality of study execution was assessed. The degree to which a study’s basic design protected against threats to internal validity was rated using a three-level classification system ranging from least suitable (for designs with a cross-sectional analysis or a single observation before and after an intervention) to greatest suitability (for designs with concurrent comparison conditions).<sup>19</sup> Ratings of the quality of each study’s execution provided further information on their utility for the purposes of the review. Quality of study execution was assessed using a standard 9-point scale, reflecting the total number of identified limitations to internal or external validity (viz. study population and intervention descriptions, sampling, exposure and outcome measurement, data analysis, interpretation of results, and other biases). Studies with zero or one limitation were categorized as having good execution, those with two to four limitations had fair execution, and those with five or more limitations were categorized as having limited execution.<sup>19</sup> Studies with limited execution were excluded from further analysis.

## Effect Measurement and Synthesis of Results

The most common method for studying the effects of alcohol taxes on alcohol-related outcomes is to assess how they (or the prices they influence) relate to those outcomes over time, while controlling for potential confounding factors. For most of the studies in this review, the reported results were either directly reported as elasticities or were transformed into elasticities. These were then directly compared with elasticities calculated from other studies. An elasticity represents the percentage change in a dependent variable associated with a 1% increase in an independent variable (e.g., price or tax rate). For example, a price elasticity of  $-0.5$  means that a 10% increase in price would be expected to result in a 5% decrease in the outcome of interest. Tax elasticities have a similar interpretation, but cannot be directly compared with price elasticities because taxes represent only a fraction of the total purchase price (resulting in smaller values for tax elasticities). In most cases for which

elasticities were not reported in the original studies, only the direction and significance of the reported effects could be evaluated in this review.

Because elasticities are measures of relative change, they provide a common metric for comparing and aggregating related, but not identical, outcomes (e.g., different measures of alcohol consumption; different types of motor-vehicle crashes). In general, measures of alcohol consumption fell into two broad categories: those that evaluate indices of consumption at the societal level (e.g., total alcohol sales) and those that evaluate consumption at the individual level (e.g., self-reported binge drinking). Measures of alcohol-related harms were grouped into broad categories of related outcomes, such as motor-vehicle crashes, liver cirrhosis, violence, alcohol dependence, and all-cause mortality.

For most of the outcomes of interest in this review, results were synthesized descriptively, without the use of any summary effect measures, due to a substantial amount of variation in the specific outcomes assessed and in the units used to measure the effects of changes in taxes or prices. The only outcome for which both enough studies and sufficiently similar results were found to allow a quantitative synthesis of the results was societal-level alcohol consumption. Data from these studies were summarized graphically and by using descriptive statistics, specifically medians and interquartile intervals. These results were also stratified on several variables considered by the review team to be potentially important effect modifiers (e.g., study design), allowing for an assessment of the robustness and generalizability of the results. This approach to synthesis was primarily chosen for the following two reasons. First, because many of the included studies had some overlap with respect to the locations and time periods covered in their analyses, their results were not completely independent. Second, many of these studies did not report results in a way that allowed for the calculation of CIs for their elasticities.

For studies that reported stratified results (e.g., separate price elasticities for beer, wine, and spirits), the median value across the relevant strata reported in that study was used for the calculation of summary statistics. This approach prevented studies that reported multiple outcomes from having undue influence on the summary statistics.

## Evidence Synthesis

### Description of Included Studies

A total of 78 papers<sup>24–101</sup> reported on studies that met the review inclusion criteria. Only some of the outcomes from one study<sup>83</sup> were included because not all of its analyses met quality of execution criteria. Five other studies<sup>70,88–91</sup> were excluded from the review because they failed to meet quality of execution criteria. Detailed descriptions of the included studies are available at [www.thecommunityguide.org/alcohol/supportingmaterials/SETincreasingtaxes.html](http://www.thecommunityguide.org/alcohol/supportingmaterials/SETincreasingtaxes.html).

[thecommunityguide.org/alcohol/supportingmaterials/SETincreasingtaxes.html](http://www.thecommunityguide.org/alcohol/supportingmaterials/SETincreasingtaxes.html).

Most studies assessed total alcohol consumption at the societal level (i.e., per capita alcohol consumption). The design of these studies varied across countries. Most studies conducted outside the U.S. used interrupted time-series designs, because alcohol taxes in other countries tend to be set at the national level, and as such, it is generally not possible to do intra-country comparisons. In contrast, most of the U.S. studies used a panel study design, in which multiple states were assessed over time, allowing each to serve as a comparison for the others. These studies included both those that accounted for between-state differences using a fixed-effects approach (whereby stable between-state differences are controlled for by dummy coding) and those that used a random-effects approach (whereby between-state differences in variables other than tax or price are controlled for by including important predictors of alcohol consumption in the model). The remaining studies assessed measures related to excessive drinking (e.g., the prevalence of underage or binge drinking) or alcohol-related harms, the most common being outcomes related to motor-vehicle crashes.

### Intervention Effectiveness

**Alcohol price and overall consumption.** Of the studies in the review, 50 assessed overall alcohol consumption; 38 (76%) of these reported price elasticities<sup>25,27,33–38,40,43,45,47,48,52,53,57,63,65,67,71,73,74,77,78,80–82,84,92–95,97</sup> (six of these studies came from one paper<sup>80</sup> that calculated elasticities for multiple countries). Almost all of these 38 studies (95%) reported negative price elasticities, indicating that higher prices were associated with lower consumption. These results were quite consistent across beverage type, with median elasticities ranging from  $-0.50$  for beer to  $-0.79$  for spirits (Figure 2). Similarly, interquartile intervals for beer, wine, and spirits were also consistent across beverage type, with the 25th percentile elasticity ranging from  $-0.91$  to  $-1.03$ , and the 75th percentile ranging from  $-0.24$  to  $-0.38$ . Results for studies of overall ethanol consumption across beverage types were somewhat more variable because of the presence of several outliers with very large elasticities; for this outcome, the 75th percentile was comparable to that for the other outcomes ( $-0.50$ ), but the 25th percentile had a substantially larger absolute value ( $-2.00$ ).

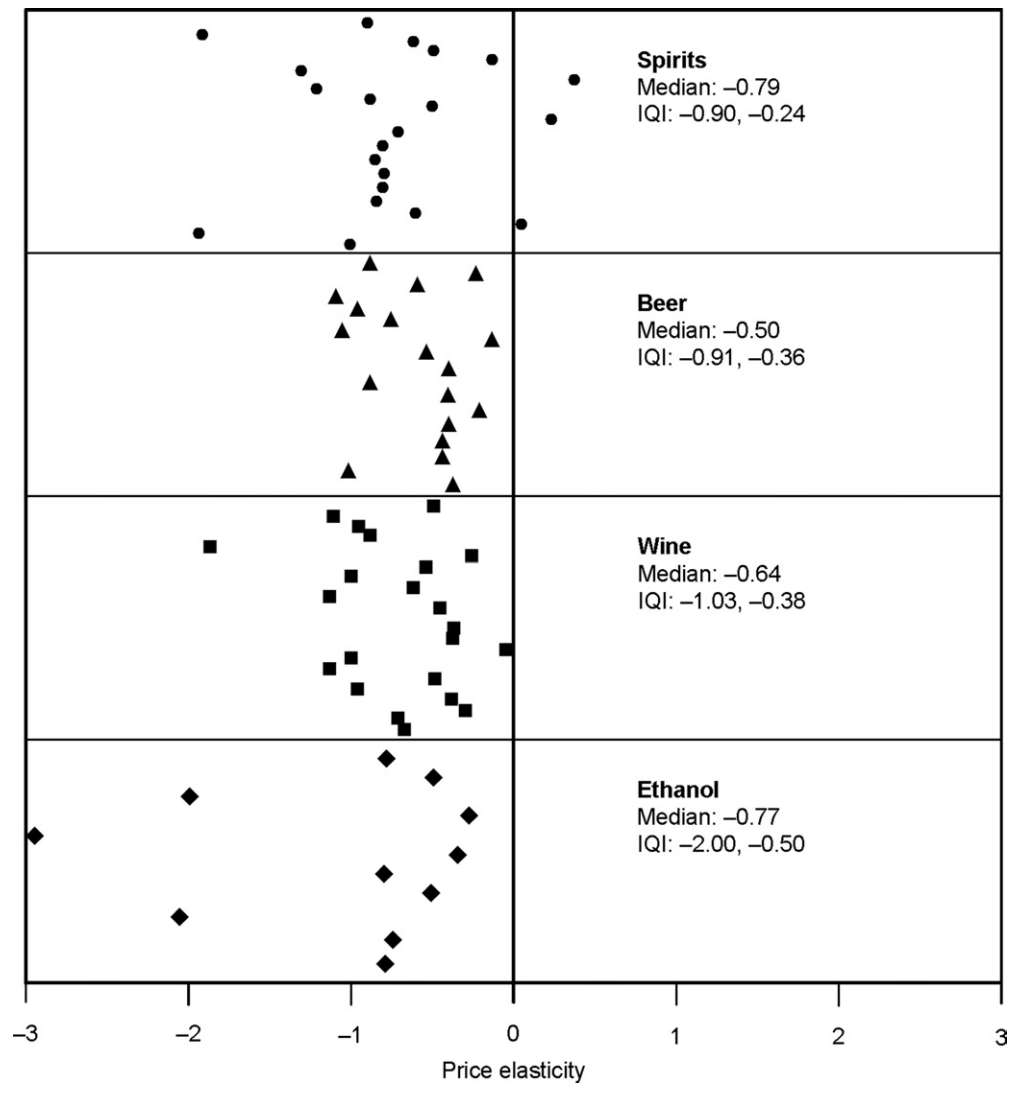
As indicated in Table 2, the price elasticities reported in the reviewed studies were also quite consistent when evaluated by study characteristics (i.e., design suitability, model type, time period, and location). Across all of the nine strata examined, median elasticities ranged from  $-0.51$  to  $-0.90$ , the 25th percentile elasticities ranged

from  $-0.78$  to  $-1.10$ , and the 75th percentile elasticities ranged from  $-0.32$  to  $-0.50$ . The most notable differences in elasticities across strata were among panel studies that used fixed- versus random-effects regression models. In general, fixed-effects models tended to produce elasticities of slightly smaller magnitude than did random-effects models. This might be expected because the elasticities from fixed-effects models do not account for between-state differences in taxes that are stable over time (although these models have several other desirable qualities).

Of the 50 studies that assessed overall alcohol consumption, 12 studies<sup>29,31,32,39,41,49,54,75,76,83,98,99</sup> assessed the relationship between price and overall consumption, but these studies did not provide sufficient information to calculate them. Many of these studies reported

the results of multiple analyses that produced separate results for different subpopulations, beverage types, or analytic models with different parameters. In eight of these studies,<sup>29,31,32,39,41,54,76,83</sup> all of the reported results indicated that higher prices were associated with lower alcohol consumption; in seven,<sup>29,31,32,39,41,54,83</sup> results were significant across all analyses, and one<sup>76</sup> had results of mixed significance across analyses. The other four studies<sup>49,75,98,99</sup> had mixed results across beverage types or analytic models, with some results in the expected direction and some in the opposite direction.

**Alcohol price or taxes and individual consumption patterns.** Sixteen studies<sup>24,46,53-56,58-62,64,68,72,96,102</sup> in the review used survey data to evaluate the effects of alcohol prices or taxes on individual alcohol consump-



**Figure 2.** Scatterplot showing the association between alcohol price elasticities and excess consumption as measured by societal alcohol consumption. Each data point represents a single study's elasticity estimate for the given beverage type. IQR, interquartile interval

tion patterns. Most of these studies assessed the prevalence of alcohol consumption among youth aged  $<25$  years, primarily underage youth. Respondent groups included high school students, college students, young people in the general population, and adults in the general population. All but two of these studies<sup>54,59</sup> were conducted in the U.S.

Of the nine studies<sup>24,46,56,58,60-62,64,68</sup> that assessed the relationship between alcohol price or taxes and drinking prevalence among young people, six<sup>46,56,58,60,61,68</sup> consistently indicated that higher prices or taxes were associated with a lower prevalence of youth drinking (four with one or more significant findings). Three of these studies reported price elasticities:  $-0.29$  for drinking among high school students;<sup>46</sup>  $-0.53$  for heavy drinking among

**Table 2.** Medians and interquartile intervals for price elasticity of alcohol consumption, stratified by study characteristics

Characteristic (no. of studies)	Median elasticity	Interquartile interval
<b>Design suitability</b>		
Greatest suitability (16)	−0.76	−1.06 to −0.50
Moderate suitability (16)	−0.51	−0.85 to −0.39
Least suitable (6)	−0.68	−0.94 to −0.32
<b>Model type</b>		
Random effects (7)	−0.90	−1.10 to −0.50
Fixed effects (8)	−0.69	−0.78 to −0.40
<b>Time period<sup>a</sup></b>		
Before 1963 (19)	−0.61	−0.90 to −0.38
1963 or later (19)	−0.76	−0.89 to −0.44
<b>Location</b>		
U.S. (21)	−0.63	−0.90 to −0.44
Non-U.S. (17)	−0.68	−0.88 to −0.37

<sup>a</sup>First data point in time-series

those aged 16–21 years<sup>58</sup>; and −0.95 and −3.54, respectively, for binge drinking among men and women aged 18–21 years.<sup>61</sup> The three remaining studies<sup>24,62,64</sup> reported mixed results across different analyses, with the majority of their effect estimates indicating an inverse relationship between tax or price and drinking observed in the studies above.

The nine studies that assessed the relationship between price or taxes and alcohol consumption patterns in adults or in the general population also generally found that increasing the prices or taxes on alcoholic beverages was associated with a lower prevalence of excessive alcohol consumption and related harms. Two of these studies assessed the relationship between alcohol price and the prevalence of binge drinking using data from the National Longitudinal Survey of Youth, which followed a group of people aged 14–22 years in 1979.<sup>55,68</sup> In a cohort of those aged 25–26 years from this survey, higher prices were associated with significant decreases in both overall alcohol consumption and frequent binge drinking (more than four episodes per month).<sup>68</sup> However, in a subsequent study of a cohort of those aged 29–33 years, higher prices were not significantly associated with the overall prevalence of binge drinking, and the direction of effects varied across beverage types.<sup>55</sup> Other studies based on surveys of the general adult population found that higher alcohol prices were associated with a lower overall prevalence of current drinking<sup>72</sup> and binge drinking,<sup>53,72,102</sup> and with a lower frequency of binge drinking.<sup>53,72,96,102</sup>

Three studies reported elasticities for the relationship between price and binge drinking; these ranged from −0.29 to −1.29, levels that are comparable to those for overall societal-level consumption.<sup>53,61,96</sup> Two additional studies evaluated a tax change in Switzerland that resulted in a 30% to 50% decrease in the price of imported spirits.<sup>54,59</sup> These studies found that the change was associated with a small (2.3%) increase in the prevalence of any drinking, and larger increases in measures of excessive alcohol consumption, specifically binge drinking (3.4%) and heavy drinking (9.3%). It is also noteworthy that the most marked increases in spirits consumption occurred among young men.

In summary, most studies that were included in this review found that higher taxes or prices were associated with reductions in alcohol consumption in general and excessive alcohol consumption in particular. Although these effects were not restricted to a particular demographic group, there is some evidence that they may be more pronounced among groups with a higher prevalence of excessive alcohol consumption (e.g., young men).

**Alcohol price or taxes and alcohol-related harms.** Twenty-two studies in the review evaluated the effects of changes in alcohol price<sup>28,44,51,61,72,83,93,100</sup> or taxes<sup>24–26,29–31,66,69,85–87,98,101,103</sup> on various alcohol-related harms. The most common outcomes evaluated were motor-vehicle crashes (including crash fatalities), various measures of violence, and liver cirrhosis. The studies were primarily conducted in the U.S., using state-level data.

**Motor-vehicle crashes and alcohol-impaired driving.** Eleven studies evaluated the effects of alcohol price<sup>44,72,93,100</sup> or taxes<sup>24,26,29,30,86,98,103</sup> on motor-vehicle crashes (Table 3). These studies found that the relationship between alcohol prices or taxes and injuries and deaths due to motor-vehicle crashes was generally significant and of a comparable magnitude to the relationship between these variables and alcohol consumption. The numeric values of the reported elasticities are substantially higher for studies that assessed the effects of alcohol prices than for those that assessed changes in alcohol taxes. This reflects the fact that taxes represent a relatively small proportion of the total purchase price of alcoholic beverages, so a larger proportional increase in taxes is necessary to achieve the same effect on the final purchase price of alcoholic beverages as a smaller proportional increase in the price itself. The reported elasticities were also generally higher for studies that assessed outcomes more directly attributable to alcohol consumption (e.g., alcohol-related crashes) than to those for which the relationship to alcohol consumption was less direct (e.g., all crash fatalities).

Three studies evaluated the relationship between alcohol prices<sup>44,61</sup> or taxes<sup>66</sup> and self-reported alcohol-impaired driving. These studies consistently found that alcohol-impaired driving was inversely related to the price of alcoholic beverages. The estimated price elasticities were similar for samples of Canadian<sup>44</sup> and U.S.<sup>61</sup> adults (range of  $-0.50$  to  $-0.81$ ; all  $p < 0.05$ ). The U.S. study stratified their sample by age in addition to gender, and reported price elasticities of  $-1.26$  to  $-2.11$  (both with  $p < 0.05$ ) for men and women aged 18–21 years, respectively.<sup>61</sup> The estimated tax elasticities from the remaining study were substantially larger for women than men ( $-0.29$  vs  $-0.06$ ), but neither estimate was significant.<sup>66</sup>

### Non-motor-vehicle

**mortality outcomes.** Six studies evaluated the effects of alcohol price<sup>25,28,72,83,93</sup> or taxes<sup>31</sup> on nontraffic deaths. Despite substantial variability in their individual effect estimates, all six studies found that higher alcohol prices were associated with decreased mortality.

Five studies evaluated the relationship between alcohol prices and deaths from liver cirrhosis.<sup>25,28,72,83,93</sup> The two studies that reported results as elasticities produced substantially different elasticity estimates for this outcome,  $-0.90$  ( $p < 0.05$ )<sup>93</sup> and  $-0.01$  ( $p > 0.05$ ).<sup>28</sup> Results of another study indicated that a \$1 increase in the spirits tax would lead to a 5.4% decrease in cirrhosis ( $p < 0.05$ ).<sup>25</sup> Another found a nonsignificant effect in the expected direction.<sup>72</sup> The final study found a strong correlation of  $-0.87$  between alcohol prices and cirrhosis deaths.<sup>83</sup> Although all of these studies indicate a consistent relationship between higher prices and lower cirrhosis mortality, there are substantial differences in the estimated strength of this relationship, which may be due to methodologic differences among studies.

One of the studies that evaluated cirrhosis mortality also assessed the relationship between alcohol price and several other causes of death.<sup>72</sup> The researchers found

**Table 3.** Results of studies evaluating the relationship between alcohol prices or taxes and motor-vehicle crashes

Study	Independent variable	Dependent variable	Elasticity ( $p$ -value)
<b>Price elasticity studies</b>			
Cook (1981) <sup>93</sup>	Ethanol price <sup>a</sup>	Fatalities	$-0.70$ (NR)
Adrian (2001) <sup>44</sup>	Ethanol price <sup>a</sup>	Alcohol-related crashes	$-1.20$ ( $<0.05$ )
Sloan (1994) <sup>72</sup>	Ethanol price <sup>a</sup>	Fatalities	$<0$ ( $>0.05$ )
Whetten-Goldstein (2000) <sup>100</sup>	Ethanol price <sup>a</sup>	Alcohol-related fatalities	$<0$ ( $>0.05$ )
<b>Tax elasticity studies</b>			
Chaloupka (1993) <sup>26</sup>	Beer tax	Alcohol-related fatalities, all ages	$-0.097$ ( $<0.05$ )
	Beer tax	Alcohol-related fatalities, youth aged 18–20 years	$-0.156$ ( $<0.05$ )
Evans (1991) <sup>86</sup>	Beer tax	Single-vehicle nighttime fatalities	$-0.12$ ( $<0.05$ )
Ruhm (1996) <sup>30</sup>	Beer tax	Nighttime fatalities, youth aged 15–24 years (by age)	$-0.18$ ( $<0.05$ )
Saffer (1987) <sup>42</sup>	Beer tax	Fatalities, youth aged 15–24 years (by age)	$-0.18$ to $-0.27$ (all $<0.05$ )
Ruhm (1995) <sup>29</sup>	Beer tax	Fatalities	$<0$ ( $<0.05$ )
Mast (1999) <sup>98</sup>	Beer tax	Fatalities	$<0$ ( $>0.05$ )
Dee (1999) <sup>24</sup>	Beer tax	Nighttime fatalities, youth aged 18–20 years	$>0$ ( $>0.05$ )

<sup>a</sup>Average price per ounce of ethanol across beer, wine, and spirits

that there was a significant ( $p < 0.05$ ) inverse relationship between the price of alcoholic beverages and deaths from alcohol-related cancers (e.g., breast cancer) and suicide, and a nonsignificant ( $p > 0.05$ ) relationship between alcohol prices and deaths from homicides, falls, fires/ burns, and other injuries. Although these findings are surprising given the stronger relationship between alcohol consumption and intentional and unintentional injuries, the findings were robust across several regression models.

One study assessed all-cause mortality using a two-stage process.<sup>31</sup> In the first stage, the authors assessed the relationship between alcohol taxes and sales, and found that a one-cent increase in taxes per ounce of ethanol (a tax increase of approximately 10%) would be expected to result in a 2.1% decrease in sales. In the second stage, they found that a 1% decrease in alcohol sales was associated with a 0.23% decrease in all-cause mortality rates ( $p < 0.05$ ).

**Violence outcomes.** Three additional studies found that higher alcohol taxes are associated with decreased violence.<sup>69,85,101</sup> When the differences among tax and price elasticities are taken into account, the strength of the relationships reported in these studies were comparable to those found for alcohol consumption outcomes. The first

study estimated that beer tax elasticities on violent crime rates in the U.S. were  $-0.03$  ( $p > 0.05$ ) for homicide;  $-0.03$  ( $p > 0.05$ ) for assault;  $-0.13$  ( $p < 0.05$ ) for rape; and  $-0.09$  ( $p < 0.05$ ) for robbery.<sup>101</sup> The other two studies assessed the relationship between beer taxes and violence toward children, with different methods using overlapping samples. In the first analysis,<sup>69</sup> tax elasticities were  $-0.12$  ( $p < 0.05$ ) for any violence toward children and  $-0.16$  ( $p < 0.10$ ) for severe violence toward children. The subsequent analysis found that these results appeared to be due to an influence of taxes on violence by women but not by men.<sup>85</sup>

**Other outcomes.** Two studies evaluated the association between alcohol prices and two other health-related outcomes: alcohol dependence and sexually transmitted diseases. The first estimated an alcohol price elasticity for alcohol dependence of  $-1.49$  ( $p < 0.05$ ).<sup>51</sup> The second used multiple methods of evaluating the effect of tax changes on sexually transmitted diseases, and found robust effects on rates of both gonorrhea and syphilis.<sup>87</sup>

## Applicability

The Law of Demand<sup>4</sup> states that the inverse relationship between the price of a commodity and the quantity demanded is almost universal, and that only the strength of this relationship will vary across commodities or population groups. Consistent with these expectations, estimates of price elasticity for societal levels of alcohol consumption were robust across the various high-income economies in North America, Europe, and the Western Pacific Region evaluated in the studies in this review. Although results for harms related to excessive consumption came primarily from the U.S. and Canada, these findings are likely to be broadly applicable across high-income countries.

One important factor hypothesized to affect the strength of price elasticities for alcohol across different population groups is disposable income. Specifically, groups with less disposable income, such as underage drinkers, may be expected to be more sensitive to changes in alcohol prices than those with more disposable income.<sup>104</sup> Unfortunately, based on the studies in this review, it was not possible to determine whether alcohol price elasticities differ significantly on the basis of age or income. Furthermore, although the reviewed studies provided evidence that changes in alcohol prices affect excessive consumption (e.g., the prevalence and frequency of binge drinking), the available data were not adequate to assess potential differences in price elasticities based on drinking pattern (i.e., between excessive and nonexcessive drinkers).

## Economic Efficiency

Our systematic economic review identified two studies that estimated the cost effectiveness of alcohol tax intervention based on modeling.<sup>10,105</sup> The first study<sup>105</sup> assessed the costs and outcomes of 84 injury prevention interventions for the U.S. and found that an alcohol tax of 20% of the pretax retail price offered net cost savings (i.e., the savings outweigh the costs) even after taking into account the adverse economic impact of reduced alcohol sales. The second study<sup>10</sup> analyzed the comparative cost effectiveness of alternative policies to reduce the burden of hazardous alcohol use for 12 WHO subregions and found that taxation was the most effective and cost-effective intervention in populations with a 5% or greater prevalence of heavy drinkers. The costs associated with this intervention included the cost of passing the legislation itself, and the cost of administering and enforcing the laws once they are passed. Effectiveness was assessed using disability-adjusted life-years (DALYs), a standard measure of global health impact that considers the impact of an intervention on healthy years of life lost as a result of either death or disability. For the Americas A region, consisting of the U.S., Canada, and Cuba, which is the region most relevant to this review, the intervention costs for current taxation were \$482,956 (converted to 2007 dollars using the Consumer Price Index) per 1 million population per year, based on a 10-year implementation period and discounted at 3% per year to reflect the time value of money. The cost was assumed to stay the same when the tax was increased by 25% or 50%. Current taxes were estimated to prevent 1224 DALYs per 1 million population per year, yielding an average cost-effectiveness ratio for this intervention of approximately \$395 per DALY averted. This is much less than the average annual income per capita in these three countries, a threshold for an intervention to be considered very cost effective that was proposed by the Commission on Macroeconomics and Health.<sup>106</sup> The DALYs averted increased to 1366 and 1489 per 1 million population per year when taxes were increased by 25% and 50%, respectively. Because these incremental DALYs averted could be achieved without any increase in costs, these increases in taxes improve cost-effectiveness estimates relative to the current tax scenario. To obtain country-specific estimates of the DALYs saved per country as a result of this intervention, the regional analysis needs to be adjusted using country-specific data. Such estimates are limited by the assumptions made and the data available.

## Barriers to Implementation

The level of taxation of alcoholic beverages has economic effects on several groups, including federal,



state, and local governments; affected industry groups; and the general population of alcohol consumers. Whereas raising alcohol taxes may provide an important source of revenue for governments, such tax increases may be resisted by some industry groups and consumers. However, public support for increased alcohol taxes increases substantially when tax revenues are specifically directed to fund prevention and treatment programs instead of being used as an unrestricted source of general revenue.<sup>107</sup>

### Other Benefits or Harms

In addition to the direct public health outcomes evaluated in this review, the primary benefit of increased alcohol excise taxes is that they can provide a source of revenue to support programs to prevent and treat alcohol problems. They also can provide some compensation for the societal costs associated with excessive alcohol consumption that are not borne by the drinker (i.e., “external” costs). Economic analyses suggest that alcohol taxes would need to be increased substantially to address adequately such external costs as crime, alcohol-related crashes, domestic violence, and productivity losses.<sup>18,108</sup>

A potential concern is that increases in alcohol taxes may have a greater proportional economic impact on people with lower incomes (i.e., alcohol taxes may be regressive). However, alcohol taxes constitute a minor proportion (i.e., <1%) of the tax burden of Americans, including those with low incomes. As such, concerns about the regressive nature of such taxes could be readily addressed by compensatory changes in other elements of the tax system. In addition, the amount of tax paid is directly related to the amount of alcohol consumed, and thus increases in alcohol excise taxes will be disproportionately paid by excessive drinkers, who also experience most of the alcohol-related harms and thus generate most alcohol-attributable economic costs. Furthermore, the beneficial economic results of reducing excessive alcohol consumption and related harms may also be disproportionately greater for people with low incomes. Lower-income people may be particularly vulnerable to the harmful consequences of excessive alcohol consumption—consumed by themselves or others—because of factors such as lower rates of health insurance coverage, which may result in lack of or incomplete treatment for alcohol-related illness or injuries. Increasing alcohol excise taxes could also directly benefit low-income populations if the revenue generated from these taxes is used to help improve the availability of healthcare services for uninsured and other vulnerable populations.

### Summary

The reviewed studies provide consistent evidence that higher alcohol prices and alcohol taxes are associated with reductions in both excessive alcohol consumption and related, subsequent harms. Results were robust across different countries, time periods, study designs and analytic approaches, and outcomes. According to *Community Guide* rules of evidence,<sup>19</sup> these studies provide strong evidence that raising alcohol taxes is an effective strategy for reducing excessive alcohol consumption and related harms.

Most of the studies that were included in this review assessed the relationship between alcohol prices and the outcomes of interest using price elasticities. Alcohol-related harms that were well represented in the literature reviewed included alcohol-impaired driving, motor-vehicle crashes, various measures of violence, and liver cirrhosis. For the largest body of evidence in this review—that is, societal levels of alcohol consumption—the majority of estimates of price elasticity fell within the range of approximately  $-0.30$  to  $-1.00$ , indicating that a 10% increase in alcohol prices would be expected to result in a 3% to 10% decrease in alcohol consumption. These results indicate that alcohol consumption is responsive to price, and suggest that the impact of a potential tax increase is likely to be proportional to its size. It would also be reasonable to expect that alcohol price elasticities may vary across population groups by age and disposable income, among other factors, but assessment of such group differences was not possible using results from the studies in this review.

### Research Gaps

The volume and consistency of the evidence reviewed here suggests little need for additional research on the basic questions of whether changes in alcohol taxes and price affect excessive alcohol consumption and related harms. Nonetheless, studies published subsequent to the 2005 cutoff date for this review continue to indicate the public health benefits that accrue from increasing alcohol taxes. For example, a recent meta-analysis found very similar mean price elasticities for alcohol consumption as were found in this review.<sup>109</sup> Similarly, a recent study of alcohol-related disease mortality found that substantial alcohol tax increases in Alaska in 1983 and 2002 resulted in estimated reductions of 29% and 11%, respectively.<sup>110</sup>

However, additional research is needed to assess:

1. Whether changes in alcohol prices differentially affect drinking behavior and health outcomes for important subgroups of the population, such as underage young people.

2. The relative benefits of increasing taxes on all alcoholic beverages simultaneously, versus selectively increasing taxes on specific beverage types. This evaluation should be considered in light of known differences in the beverage preferences of binge drinkers, historic changes in tax rates across beverage types, and the effect of inflation on real tax rates by beverage type.
3. The impact of different approaches to taxing alcoholic beverages on excessive alcohol consumption and related harms. Specific emphasis should be placed on the impact of alcohol sales taxes, where taxes are calculated as a proportion of the total beverage price; the potential impact of standardizing alcohol taxes across beverage types based on alcohol content; and the potential impact of alcohol taxes levied by local governments on a per-drink basis in on-premise, retail alcohol outlets (i.e., tippler taxes).

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Author affiliations are shown at the time the research was conducted. The names and affiliations of the Task Force members are listed at [www.thecommunityguide.org](http://www.thecommunityguide.org).

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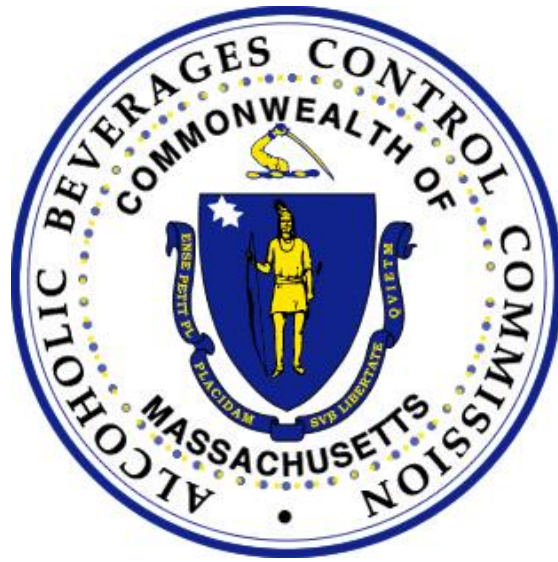
## References

1. Mokdad AH, Stroup D, Marks J, Gerberding J. Actual causes of death in the U.S., 2000. *JAMA* 2004;291:1238–45.
2. NIAAA. Tenth Special Report to the U.S. Congress on alcohol and health. Bethesda MD: NIH, 2000.
3. CDC. Web-based Injury Statistics Query and Reporting System (WISQARS). 2008. [www.cdc.gov/ncipc/wisqars](http://www.cdc.gov/ncipc/wisqars).
4. Marshall A. Principles of economics. 8th ed. London: Macmillan, 1920.
5. Alcohol Epidemiology Program. Alcohol policies in the U.S.: highlights from the 50 States. Minneapolis: University of Minnesota, 2000.
6. Olson S, Gerstein DR. Alcohol in America: taking action to prevent abuse. Washington DC: National Academies Press, 1985.
7. Young DJ, Bielinska-Kwapisz A. Alcohol taxes and beverage prices. *Natl Tax J* 2002;55(1):57–73.
8. USDHHS. Healthy People 2010. 2nd ed. Washington DC: U.S. Government Printing Office, 2000.
9. Babor TF, Caetano R. Evidence-based alcohol policy in the Americas: strengths, weaknesses, and future challenges. *Pan Am J Public Health* 2005;18:327–37.
10. Chisolm D, Rehm J, Van Omeren M, et al. Reducing the global burden of hazardous alcohol use: a comparative cost-effectiveness analysis. *J Stud Alcohol* 2004;65:782–93.
11. Holder HD, Treno AJ. Moving toward a common evidence base for alcohol and other drug prevention policy. In: Stockwell T, Gruenwald PJ, Toumbourou JW, Loxley W, eds. Preventing harmful substance use: the evidence base for policy and practice. New York: John Wiley and Sons, 2005:351–66.
12. Toomey TL, Wagenaar AC. Policy options for prevention: the case of alcohol. *J Public Health Policy* 1999;20(2):192–213.
13. Babor TF, Caetano R, Casswell S, et al. Alcohol: no ordinary commodity: research and public policy. New York: Oxford University Press, 2003.
14. Chaloupka FJ, Grossman M, Saffer H. The effects of price on alcohol consumption and alcohol-related problems. *Alcohol Res Health* 2002;26:22–34.
15. IOM. Reducing underage drinking: a collective responsibility. Washington DC: National Academies Press, 2004.
16. Surgeon General's workshop on drunk driving: proceedings. Rockville MD: USDHHS, 1989.
17. Cook PJ, Moore MJ. The economics of alcohol abuse and alcohol-control policies. *Health Aff (Millwood)* 2002;21(2):120–33.
18. Cook PJ. Paying the tab: the costs and benefits of alcohol control. Princeton NJ: Princeton University Press, 2007.
19. Briss PA, Zaza S, Pappaioanou M, et al. Developing an evidence-based Guide to Community Preventive Services—methods. The Task Force on Community Preventive Services. *Am J Prev Med* 2000;18(1S):35–43.
20. Task Force on Community Preventive Services. Increasing alcoholic beverage taxes is recommended to reduce excessive alcohol consumption and related harms. *Am J Prev Med* 2010;38(2):230–2.
21. Naimi TS, Brewer RD, Miller JW, Okoro C, Mehrotra C. What do binge drinkers drink? Implications for alcohol control policy. *Am J Prev Med* 2007;33:188–93.
22. Cook PJ, Skog O-J. [Discussion of] "Alcohol, alcoholism, alcoholisation" by S. Ledermann. *Alcohol Health Res World* 1995;19:30–2.
23. Skog O-J. The collectivity of drinking cultures: a theory of the distribution of alcohol consumption. *Br J Addict* 1985;80:83–99.
24. Dee TS. State alcohol policies, teen drinking and traffic fatalities. *J Public Econ* 1999;72(2):289–315.
25. Cook PJ, Tauchen G. The effect of liquor taxes on heavy drinking. *Bell J Econ* 1982;13(2):379–90.
26. Chaloupka FJ, Saffer H, Grossman M. Alcohol-control policies and motor-vehicle fatalities. *J Legal Stud* 1993;22:161–86.
27. Blake D, Nied A. The demand for alcohol in the United Kingdom. *Appl Econ* 1997;29:1655–72.
28. Heien D, Pompelli G. Stress, ethnic, and distribution factors in a dichotomous response model of alcohol abuse. *J Stud Alcohol* 1987;48(5):450–5.
29. Ruhm CJ. Economic conditions and alcohol problems. *J Health Econ* 1995;14:583–603.
30. Ruhm CJ. Alcohol policies and highway vehicle fatalities. *J Health Econ* 1996;15:435–54.
31. Cook PJ, Ostermann J, Sloan FA. Are alcohol excise taxes good for us? Short- and long-term effects on mortality rates.

- Working Paper No. 11138. Cambridge MA: National Bureau of Economic Research, 2005.
32. Beard TR, Gant PA, Saba RP. Border-crossing sales, tax avoidance, and state tax policies: an application to alcohol. *South Econ J* 1997;64(1):293-306.
  33. Baltagi BH, Goel RK. Quasi-experimental price elasticity of liquor demand in the U.S.: 1960-83. *Am J Agric Econ* 1990;72(2):451-4.
  34. Simon JL. Price elasticity of liquor in the US and a simple method of determination. *Econometrica* 1966;34(1):193-205.
  35. Decker SL, Schwartz AE. Cigarettes and alcohol: substitutes or complements. Working Paper No. 7535. Cambridge MA: National Bureau of Economic Research, 2000.
  36. Levy D, Shefflin N. New evidence on controlling alcohol use through price. *J Stud Alcohol* 1983;44(6):929-37.
  37. Johnson JA, Oksanen EH. Socioeconomic determinants of the consumption of alcoholic beverages. *Appl Econ* 1974; 6(4):293-301.
  38. Goel RK, Morey MJ. The interdependence of cigarette and liquor demand. *South Econ J* 1995;62(2):451-9.
  39. Hoadley JF, Fuchs BC, Holder HD. The effect of alcohol beverage restriction on consumption: a 25-year longitudinal analysis. *Am J Drug Alcohol Abuse* 1984;10(3):375-401.
  40. Lee B, Tremblay VJ. Advertising and the US market demand for beer. *Appl Econ* 1992;24(1):69-76.
  41. Ornstein SI, Hanssens DM. Alcohol control laws and the consumption of distilled spirits and beer. *J Consum Res* 1985;12(2):200-13.
  42. Saffer H, Grossman M. Drinking age laws and highway mortality rates: cause and effect. *Econ Inq* 1987;25(3):403-17.
  43. Wilkinson JT. Reducing drunken driving: which policies are most effective? *South Econ J* 1987;54:322-34.
  44. Adrian M, Ferguson BS, Her M. Can alcohol price policies be used to reduce drunk driving? Evidence from Canada. *Subst Use Misuse* 2001;36(13):1923-57.
  45. Wette HC, Zhang JF, Berg RJ, Casswell S. Effect of prices on alcohol consumption in New Zealand 1983-1991. *Drug Alcohol Rev* 1993;12(2):151-8.
  46. Grossman M, Chaloupka FJ, Sirtalan I. An empirical analysis of alcohol addiction: results from the monitoring the future panels. *Econ Inq* 1998;36(1):39-48.
  47. Hogarty TF, Elzinga KG. The demand for beer. *Rev Econ Stat* 1972;54(2):195-8.
  48. Mayo JR. An estimate of U.S. demand for alcoholic beverages, 1986-92. *Penn Econ Rev* 2000;9(1):1-4.
  49. Bourgeois JC, Barnes JG. Does advertising increase alcohol consumption? *J Advert Res* 1979;19(4):19-29.
  50. Speer PW, Gorman DM, Labouvie EW, Ontkush MJ. Violent crime and alcohol availability: relationships in an urban community. *J Public Health Policy* 1998;19(3):303-18.
  51. Farrell S, Manning WG, Finch MD. Alcohol dependence and the price of alcoholic beverages. *J Health Econ* 2003; 22(1):117-47.
  52. Gruenewald PJ, Madden P, Janes K. Alcohol availability and the formal power and resources of state alcohol beverage control agencies. *Alcohol Clin Exp Res* 1992;16(3):591-7.
  53. Manning WG, Blumberg L, Moulton LH. The demand for alcohol: the differential response to price. *J Health Econ* 1995;14(2):123-48.
  54. Kuo M, Heeb JL, Gmel G, Rehm J. Does price matter? The effect of decreased price on spirits consumption in Switzerland. *Alcohol Clin Exp Res* 2003;27(4):720-5.
  55. Gius MP. The effect of taxes on alcoholic consumption: an individual level of analysis with a correction for aggregate public policy variables. *Penn Econ Rev* 2002;11(1):76-93.
  56. Laixuthai A, Chaloupka FJ. Youth alcohol use and public policy. *Contemp Policy Issues* 1993;11(4):70-81.
  57. Heien DM, Pompelli G. The demand for alcoholic beverages: economic and demographic effects. *South Econ J* 1989; 55(3):759-70.
  58. Coate D, Grossman M. Effects of alcoholic beverage prices and legal drinking ages on youth alcohol use. *J Law Econ* 1988;31(1):145-71.
  59. Heeb J-L, Gmel G, Zurbrugg C, Kuo M, Rehm J. Changes in alcohol consumption following a reduction in the price of spirits: a natural experiment in Switzerland. *Addiction* 2003;98(10):1433-46.
  60. Pacula RL. Does increasing the beer tax reduce marijuana consumption? *J Health Econ* 1998;17:557-85.
  61. Kenkel DS. Drinking, driving, and deterrence: the effectiveness and social costs of alternative policies. *J Law Econ* 1993;36:877-911.
  62. Grossman M, Coate D, Arluck GM. Price sensitivity of alcoholic beverages in the U.S.: youth alcohol consumption. In: Holder H, ed. *Control issues in alcohol abuse prevention: strategies for states and communities*. Greenwich CT: JAI Press, 1987;169-98.
  63. Nelson J. State monopolies and alcoholic beverage consumption. *J Regul Econ* 1990;2:83-98.
  64. Chaloupka FJ, Wechsler H. Binge drinking in college: the impact of price, availability, and alcohol control policies. *Contemp Econ Policy* 1996;14(4):112-24.
  65. Yen ST. Cross-section estimation of US demand for alcoholic beverage. *Appl Econ* 1994;26(4):381-92.
  66. Mullahy J, Sindelar JL. Do drinkers know when to say when? An empirical analysis of drunk driving. *Econ Inq* 1994; 32(3):383-94.
  67. Uri ND. The demand for beverages and interbeverage substitution in the U.S. *Bull Econ Res* 1986;38(1):77-85.
  68. Cook PJ, Moore MJ. This tax's for you: the case for higher beer taxes. *Nat Tax J* 1994;47(3):559-73.
  69. Markowitz S, Grossman M. Alcohol regulation and domestic violence towards children. *Contemp Econ Policy* 1998;16(3): 309-20.
  70. Sutton M, Godfrey C. A grouped data regression approach to estimating economic and social influences on individual drinking behaviour. *Health Econ* 1995;4(3):237-47.
  71. Duffy M. Influence of prices, consumer incomes, and advertising upon the demand for alcoholic drink in the United Kingdom: an econometric study. *Alcohol Alcohol* 1981; 16(4):200-8.
  72. Sloan FA, Reilly BA, Schenzler C. Effects of prices, civil and criminal sanctions, and law enforcement on alcohol-related mortality. *J Stud Alcohol* 1994;55:454-65.
  73. Johnson JA, Oksanen EH, Veall MR, Fretz D. Short-run and long-run elasticities for Canadian consumption of alcoholic beverages: an error-correction mechanism/cointegration approach. *Rev Econ Stat* 1992;74(1):64-74.

74. Nelson J, Moran J. Advertising and US alcohol beverage system demand: system-wide estimates. *Appl Econ* 1995; 12:1225–36.
75. Treno AJ, Parker RN, Holder HD. Understanding U.S. alcohol consumption with social and economic factors: a multivariate time series analysis, 1950–1986. *J Stud Alcohol* 1993;54:146–56.
76. Gray D, Chikritzhs T, Stockwell T. The Northern Territory's cask wine levy: health and taxation policy implications. *Aust N Z J Public Health* 1999;23(6):651–3.
77. Zhang JF, Casswell S. The effects of real price and a change in the distribution system on alcohol consumption. *Drug Alcohol Rev* 1999;18:371–8.
78. Clements KW, Selvanathan S. The economic determinants of alcohol consumption. *Aust J Agric Resour Econ* 1991; 35(2):209–31.
79. Duffy M. The demand for alcoholic drink in the United Kingdom. *Appl Econ* 1983;15(1):125–40.
80. Labys W. An international comparison of price and income elasticities for wine consumption. *Aust J Agric Resour Econ* 1976;20(1):33–6.
81. Nelson J. Economic and demographic factors in U.S. alcohol demand: a growth-accounting analysis. *Empir Econ* 1997; 22:83–102.
82. Selvanathan EA. Alcohol consumption in the UK, 1955–85: a system-wide analysis. *Appl Econ* 1988;20(2):1071–86.
83. Rush B, Steinberg M, Brook R. Relationships among alcohol availability, alcohol consumption and alcohol-related damage in the province of Ontario and the State of Michigan. *Adv Alcohol Subst Abuse* 1986;5(4):33–45.
84. Young C, Bielinska-Kwapisz A. Alcohol consumption, beverage prices and measurement error. *J Stud Alcohol* 2003; 64:235–8.
85. Markowitz S, Grossman M. The effects of beer taxes on physical child abuse. *J Health Econ* 2000;19:271–82.
86. Evans WN, Neville D, Graham JD. General deterrence of drunk driving: evaluation of recent American policies. *Risk Anal* 1991;11:279–89.
87. Chesson H, Harrison P, Kassler WJ. Sex under the influence: the effect of alcohol policy on sexually transmitted disease rates in the U.S. *J Law Econ* 2000;43:215–37.
88. Brinkley G. The causal relationship between socioeconomic factors and alcohol consumption: a Granger-causality time series analysis, 1950–1993. *J Stud Alcohol* 1999;60(6): 759–68.
89. Niskanen WA. Taxation and the demand for alcoholic beverages. Santa Monica CA: Rand Corp, 1960.
90. Sloan FA, Reilly BA, Schenzler C. Effects of tort liability and insurance on heavy drinking and drinking and driving. *J Law Econ* 1995;38(1):49–77.
91. Kendell RE, Ritson B. Effect of economic changes on Scottish drinking habits 1978–82. *Br J Addict* 1983;78:365–79.
92. Adrian M, Ferguson BS. Demand for domestic and imported alcohol in Canada. *Appl Econ* 1987;19(4):531–40.
93. Cook PJ. The effect of liquor taxes on drinking, cirrhosis, and auto accidents. In: Moore MH, Gerstein D, eds. *Alcohol and public policy: beyond the shadow of prohibition*. Washington DC: National Academies Press, 1981:255–85.
94. Duffy M. Advertising and the inter-product distribution of demand. *Eur Econ Rev* 1987;31:1051–70.
95. Jones AM. A systems approach to the demand for alcohol and tobacco. *Bull Econ Res* 1989;41(2):85–101.
96. Kenkel DS. New estimates of the optimal tax on alcohol. *Econ Inq* 1996;34(2):296–319.
97. Leskinen E, Terasvirta T. Forecasting the consumption of alcoholic beverages in Finland. *Eur Econ Rev* 1976;8:349–69.
98. Mast BD, Benson BL, Rasmussen DW. Beer taxation and alcohol-related traffic fatalities. *South Econ J* 1999;66(2): 214–49.
99. Ponicki W, Holder HD, Gruenewald PRA. Altering alcohol price by ethanol content: results from a Swedish tax policy in 1992. *Addiction* 1997;92(7):859–70.
100. Whetten-Goldstein K, Sloan FA, Stout E, Liang L. Civil liability, criminal law, and other policies and alcohol-related motor vehicle fatalities in the U.S.: 1984–1995. *Accid Anal Prev* 2000;32:723–33.
101. Cook PJ, Moore MJ. Economic perspectives on reducing alcohol-related violence. *Alcohol and interpersonal violence: fostering multidisciplinary perspectives*. NIAAA Research Monograph 24. Rockville MD: NIAAA, 1993:193–212.
102. Stout EM, Sloan FA, Liang L, Davies HH. Reducing harmful alcohol-related behaviors: effective regulatory methods. *J Stud Alcohol* 2000;61(3):402–12.
103. Saffer H, Grossman M. Beer taxes, the legal drinking age, and youth motor vehicle fatalities. *J Legal Stud* 1987;16(June): 351–73.
104. Chaloupka FJ. Effects of price on alcohol-related problems. *Alcohol Health Res World* 1993;17(1):46–53.
105. Miller TR, Levy, DT. Cost-outcome analysis in injury prevention and control: eighty-four recent estimates for the U.S. *Med Care* 2000;38(6):562–82.
106. WHO. *Macroeconomics and health: investing in health for economic development*. Final report of the Commission on Macroeconomics and Health. Geneva, Switzerland: WHO, 2001.
107. Wagenaar AC, Harwood EH, Toomey TL, Denk CE, Zander KM. Public opinion on alcohol policies in the U.S.: results from a national survey. *J Public Health Policy* 2000;21: 303–27.
108. Richardson J, Crowley S. Optimum alcohol taxation: balancing consumption and external costs. *Health Econ* 1994; 3(2):73–87.
109. Wagenaar AC, Salois MJ, Komro KA. Effects of beverage alcohol price and tax levels on drinking: a meta-analysis of 1003 estimates from 112 studies. *Addiction* 2009;104:179–90.
110. Wagenaar AC, Maldonado-Molina MM, Wagenaar BH. Effects of alcohol tax increases on alcohol-related disease mortality in Alaska: time-series analyses from 1976 to 2004. *Am J Public Health* 2009;99:1464–70.

# **EXHIBIT 11**



## **Investigation and Enforcement Division** **2016 Annual Report**

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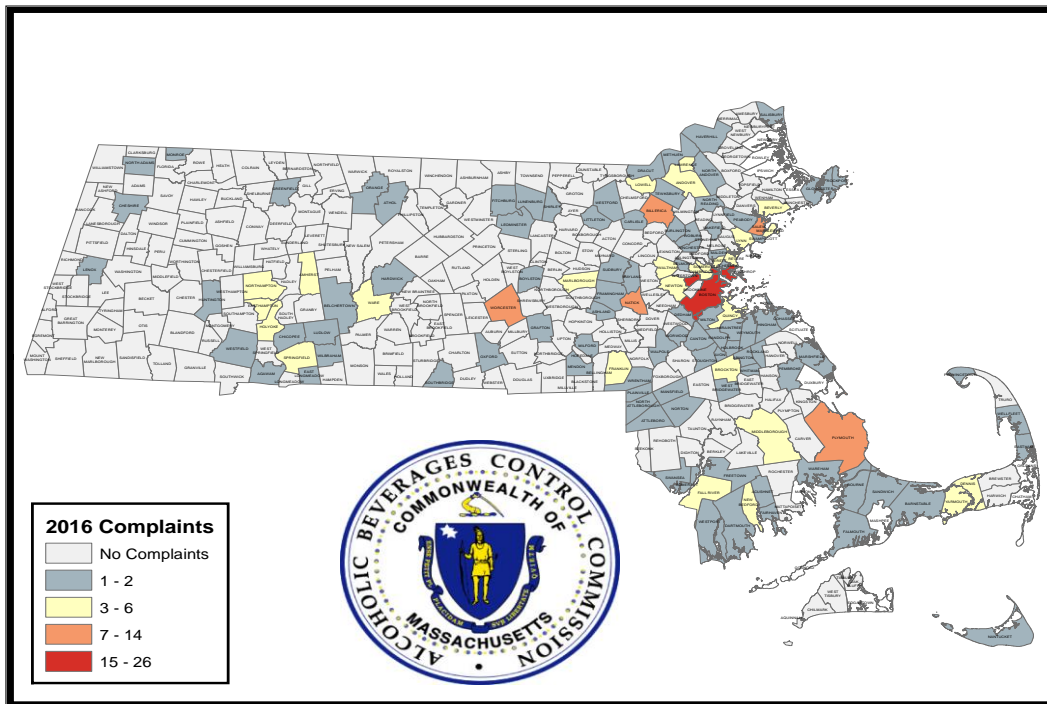
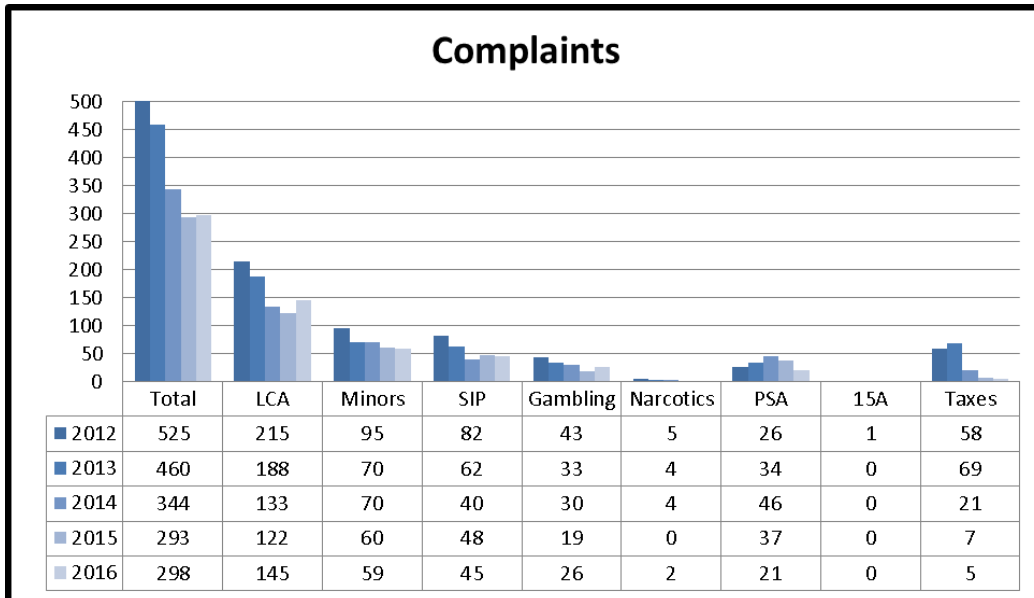
Special Investigators of the Investigation and Enforcement Division are appointed by the Commission pursuant to Massachusetts General Laws Chapter 10 §72. Accordingly, Investigators are authorized and directed, pursuant to Massachusetts General Laws Chapter 138 §56, to make all needful and appropriate investigations to enforce the Liquor Control Act.

Pursuant to this statutory mandate the Enforcement Division has established the following objectives: 1) To prevent the sale or delivery of alcoholic beverages to underage individuals; 2) To prevent the sale or delivery of alcoholic beverages to intoxicated individuals and potential impaired drivers; 3) To prevent the sale of alcoholic beverages that are illegally imported or purchased from an illegal source and to prevent the tampering or dilution of alcoholic beverages; 4) To prevent illegal gambling on licensed premises; 5) To prevent the sale, delivery or use of illegal narcotics on licensed premises; 6) To prevent unlawful ownership of licensed establishments by individuals or criminal organizations; and 7) To provide suppliers, wholesalers and retailers of the alcoholic beverage industry with a fair and even playing field to conduct their licensed business.

Reports on arrest data have established that seventy five to eighty percent of violent crimes, such as assaults and domestic violence, are alcohol related. It is the overall goal of this Division to impact public safety and the quality of life in our communities through effective alcohol enforcement strategies to reduce alcohol related crimes and traffic crashes. This Division has established effective enforcement programs, often working in cooperation with municipal and state police departments, to address alcohol related problems in communities throughout the commonwealth. These programs have received the following national recognition for their innovation and effectiveness: National Liquor Law Enforcement Association Meritorious Service Award for enforcement efforts in Lawrence Massachusetts; National Liquor Law Enforcement Association Enforcement Agency of the Year Award; National Conference of State Liquor Administrators "Innovations in Health and Safety" Award; President's Award from the National Chapter of Mothers Against Drunk Driving; Recognized as a National Success Story by the United States Justice Department; National Liquor Law Enforcement Association Agent of the Year.

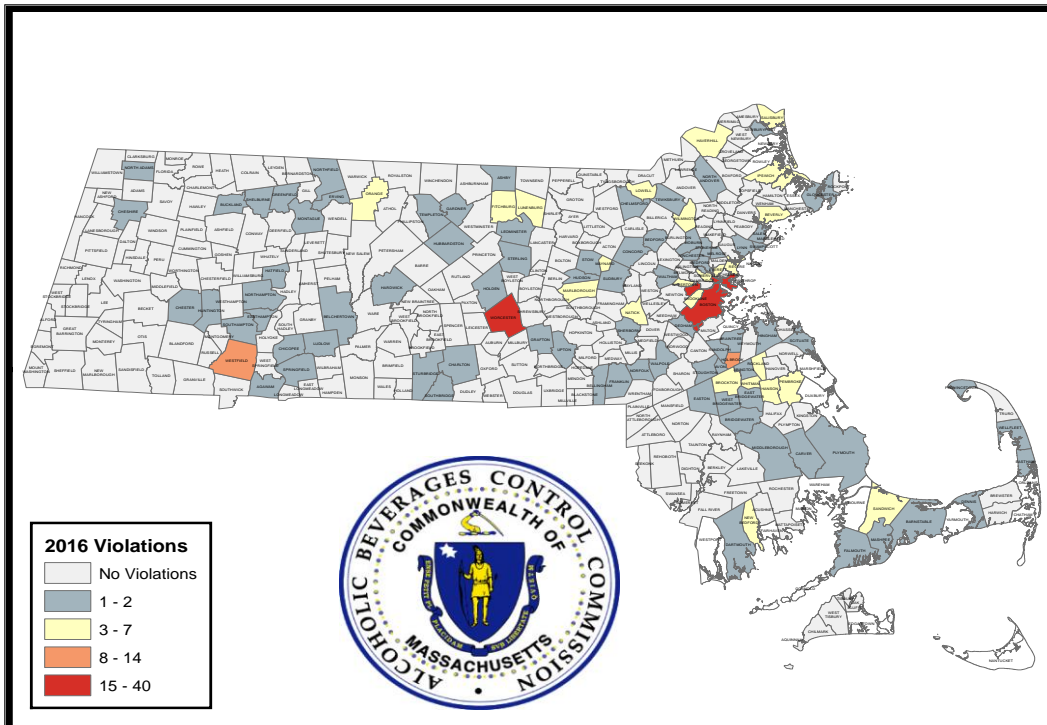
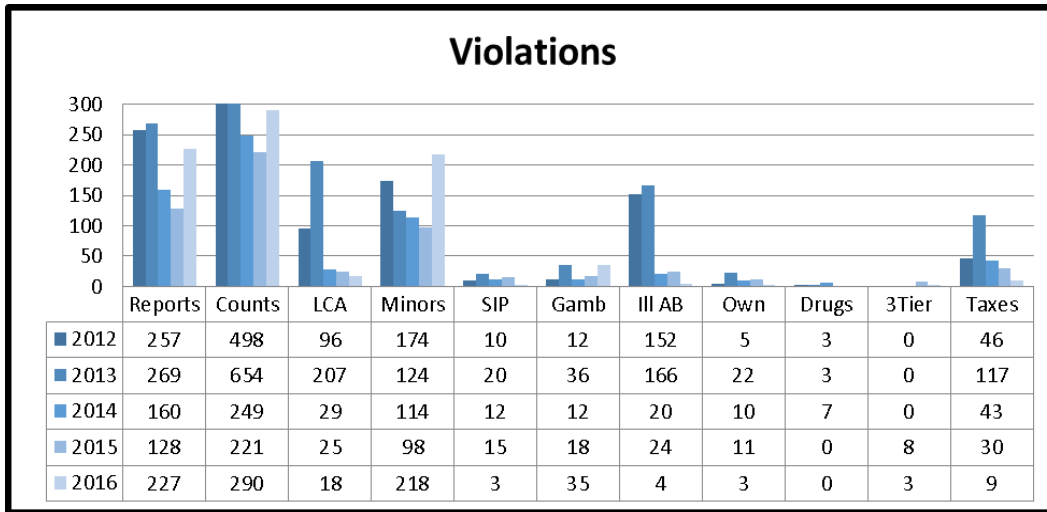
## Complaints

In 2016, 298 complaints filed with the Commission were investigated and closed. The Enforcement Division receives complaints from the general public, municipal and state police, state agencies, as well as various public interest groups. These complaints include, but are not limited to underage drinking, sale of alcohol to intoxicated individuals, illegal gambling activity, illegal alcoholic beverages and illegal narcotics activity.



## Liquor Control Act Violations

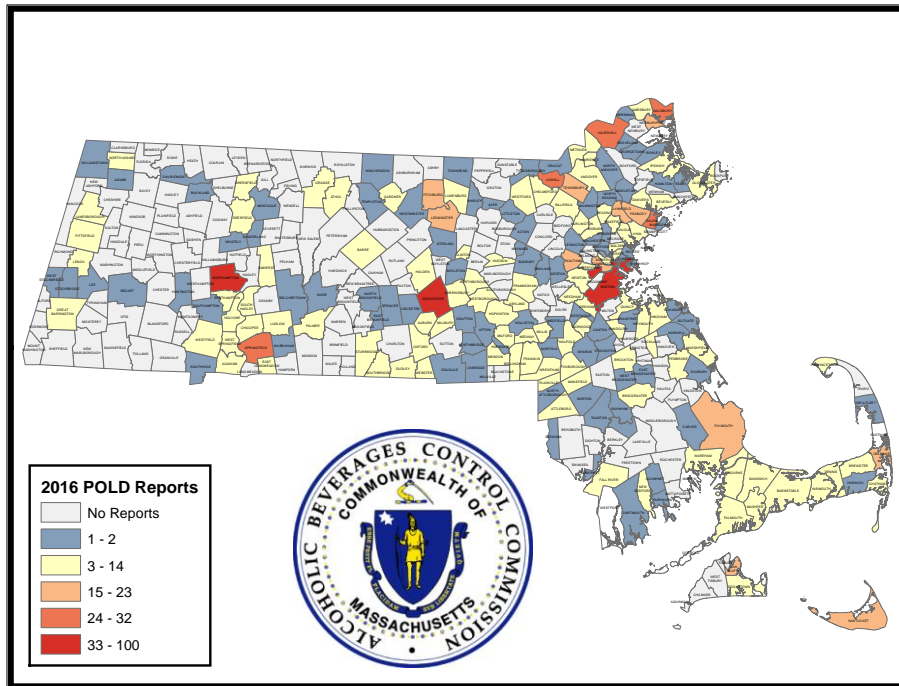
In 2016 the Enforcement Division conducted operations in over 200 municipalities throughout the commonwealth. Investigators observed approximately 290 violations of the Liquor Control Act and filed 227 reports with the Commission for prosecution. These violations ranged from sale of alcohol to underage individuals, sale of alcohol to intoxicated individuals, illegal gambling, illegal alcoholic beverages, illegal narcotics activity, criminal ownership of licensed premises, and unlawful trade practices.





### Data Driven Impaired Driving Prevention

Place of Last Drink (POLD) reports are filed with the Commission pursuant to Massachusetts General Laws Chapter 90 §24J, which requires that “In every case of a conviction of or a plea of guilty to a violation of operating a motor vehicle under the influence of intoxicating liquor, *the court shall inquire of the defendant, before sentencing, regarding whether he was served alcohol prior to his violation of said section at an establishment licensed to serve alcohol on the premises and the name and location of said establishment. Any information so acquired by the court shall be transmitted to the alcohol beverage control commission*”. In 2016 there were approximately 1400 OUI reports filed with the Commission.



In order to optimize resources, the Enforcement Division utilizes this data to determine the bars that have been identified in the highest number of 24J reports and thus pose a greater risk to public safety. In addition to this data, Investigators work with municipal police departments to identify bars that are problematic for the municipality as a result of the sale of alcoholic beverages to intoxicated individuals. If a bar is found to serve alcohol to an intoxicated individual, Investigators charge the bar with MGL Chapter 138 §69 and arrange for safe transportation or protective custody for the individual. Division data indicates that this enforcement results in a dramatic reduction in the number of OUI arrests associated with the bars that are subject to this enforcement.

The National Transportation Safety Board (NTSB) held hearings in 2012, where Chief Frederick Mahony presented information on the above mentioned enforcement program and provided data from Massachusetts demonstrating that the use of POLD data to guide enforcement efforts led to a reduction in driving under the influence arrests associated with establishments that were targeted for intervention. As a result of this testimony, the NTSB stated in their Safety Recommendation to the National Highway Traffic Safety Administration (NHTSA), “An essential part of any arrest or accident investigation involving an alcohol-impaired driver should include an assertive effort by law enforcement officers to determine the location where the impaired driver had been served alcohol. This information is useful to state alcohol law enforcement authorities conducting enforcement actions to deter future violations.”

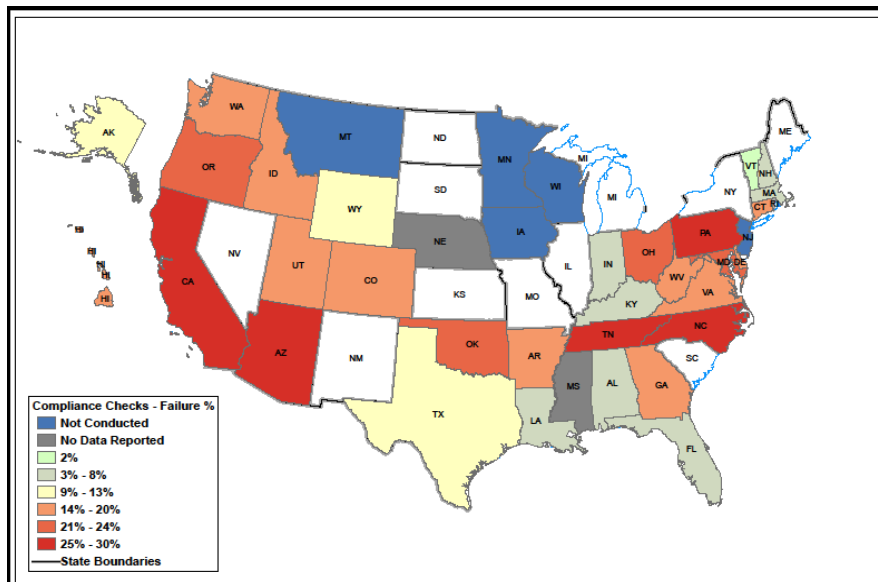
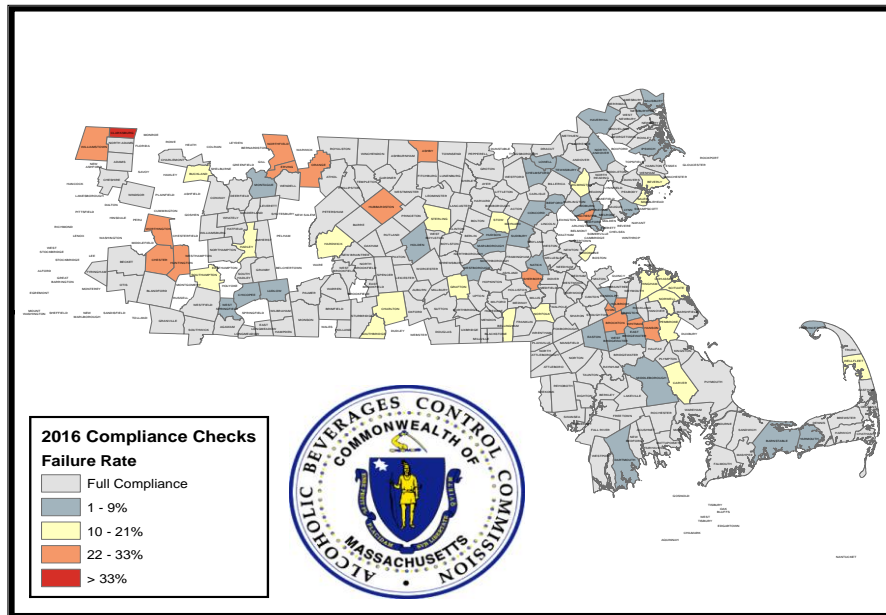
## Minimum Purchase Age Compliance Checks

The objective of this operation is to prevent the sale of alcoholic beverages to underage individuals by licensed establishments throughout the Commonwealth and to increase their vigilance in the checking of identification.

Since 2008, when the Enforcement Division enhanced the compliance check program, it has conducted compliance checks at 19030 licensed establishments, of which 885 failed (5%). This program has resulted in a 50% decrease in the failure rate since the program began in 2001, with an average success rate of 95%. This places Massachusetts in front of the national average success rate of 84%.

In 2016, the Division conducted Compliance Checks in 264 municipalities in the commonwealth. There were 3177 licensed establishments checked, of which 114 failed (4%). There were 1318 off-premise licensees checked, of which 75 failed (6%); and 1859 on-premise licensees checked, of which 38 failed (2%).

It should be noted that in 2016 there was a significant rise in the failure rate at off-premises retail outlets, compared to recent years. This trend is particularly troubling, as it has been reported from municipal police departments that they are seeing a rise in underage drinking issues in their communities. The ABCC is reviewing the best strategy to address this problem, over and above the compliance check enforcement program.



### Enhanced Liquor Enforcement Programs

Massachusetts has the 5<sup>th</sup> lowest ratio of enforcement agents to licensees in the country. Accordingly, the Division has developed Enhanced Liquor Enforcement Programs that are scheduled to address specific geographic and seasonal challenges relating to underage drinking and impaired driving. The primary objective is to prevent the procurement of alcoholic beverages by and for underage individuals as well the sale or delivery of alcoholic beverages to intoxicated individuals and potential impaired drivers.

Operation Safe Campus is conducted at bars and liquor stores in college communities over a 6-week period at the beginning of each school year. Operation Safe Prom and Graduation is conducted at liquor stores throughout the commonwealth over an 8-week period during May and June. Operation Safe Summer is conducted at bars and liquor stores in summer communities over a 6-week period during July and August. Operations Safe Holidays is conducted at bars throughout the commonwealth from Thanksgiving through December 31<sup>st</sup>.

To encourage family involvement and intervention in addressing the problem of underage drinking, the Division has implemented a parent notification program to inform parents, at the time of the incident, of the situation in which their child is involved. Investigators have found this intervention to be very effective.

In 2016 these programs produced the following results: 1027 minors in possession or transporting alcoholic beverages; 223 adults procuring alcohol for minors; 118 individuals in possession of false identification; and 399 cases of beer and 469 bottles of alcohol were confiscated by Investigators, preventing delivery to approximately 6286 underage individuals.

Since 2005 these programs have resulted in the following cumulative results: 7796 minors in possession or transporting alcoholic beverages; 3006 adults procuring alcohol for minors; 767 individuals in possession of false identification; and 3987 cases of beer and 3177 bottles of alcohol were confiscated by Investigators, preventing delivery to approximately 52674 underage individuals.

### Source Investigations

Source Investigations are conducted to investigate alcohol-related motor vehicle accidents that result in death or serious bodily injury and alcohol-related accidents that involve persons under the legal age to possess or consume alcoholic beverages; to discover the source of the alcoholic beverages consumed by the individual or individuals involved in the accident and investigate whether the source of the alcohol violated Massachusetts law. By holding accountable licensed establishments, employees or third party providers that provide alcohol to minors or over serve their patrons, our goal is to see a reduction in the number of licensees selling alcohol to minors and intoxicated patrons – and, ultimately, fewer incidents and crashes in Massachusetts.

In 2014 the Division participated in a pilot program initiated by the National Liquor Law Enforcement Association (NLLEA) and the National Highway Transportation Safety Administration (NHTSA) toward the development of “Source Investigations”. The Division developed standard investigative policies and procedures that address the elements required in these cases; developed communications with state and municipal police departments to establish protocols for notification and initiating timely Source Investigations, as well as a Source Investigation report format for officers at the scene of an accident; developed communications with District Attorney Offices to establish standard protocols for simultaneous criminal and administrative cases; developed a Source Investigation training program for state and municipal police officers and implemented it in this agency’s Law Enforcement Training program. In 2016 three Source investigations were opened.

### Illegal Gambling Enforcement

The Enforcement Division conducts enforcement operations to prevent illegal gambling, primarily through the use of electronic video devices, at bars throughout the commonwealth. The Division often receives complaints from individuals whose family members have lost large sums of money in these devices that can be programmed to pay out winnings at a rate as low as 65%. In addition, the Division looks to maintain a level playing field for bar owners. For example, if a bar were profiting \$5000.00 per week from illegal gambling devices, a neighboring bar would have to produce approximately \$50,000.00 per week in sales to be competitive. The Division estimates that each bar that illegally operates these devices, and the vending companies that supply them, garner between \$3,000 and \$10,000 per week. At one bar Investigators uncovered information detailing gambling income of \$1,400,000 with a net profit of \$400,000 annually over a ten year period. In 2016 the Enforcement Division filed illegal gambling charges against 35 bars.

### Cooperative Enforcement Operations with Municipal and State Law Enforcement

The Enforcement Division works in cooperation with municipal and state law enforcement agencies in order to obtain optimal enforcement coverage. Most often these efforts are generated through requests for assistance from municipal police chiefs who have problematic licensees in their communities. Further, when a complaint is received at the ABCC, Investigators reach out to police departments to conduct cooperative enforcement operations when feasible.

In 2016 the Division conducted enforcement operations at concert and sports venues in cooperation with municipal, state and county law enforcement agencies, as well as with the assistance of venue management. ABCC enforcement includes area liquor stores prior to the event, parking lot enforcement up until the beginning of the event and then enforcement within the licensed premises. The Division conducted these operations at the Xfinity Center, Gillette Stadium and Fenway Park and the results of this enforcement operation included: 483 minors in possession of alcohol; 45 furnishing alcohol to minors; numerous medical, intoxicated or incapacitated assists as well as the seizure of 116 bottles of alcohol and 151 cases of beer, preventing delivery to approximately 1764 underage individuals.

### Training of Municipal and State Law Enforcement

The Enforcement Division works with Massachusetts Police Academies and Municipal Police Departments to train municipal, campus and state law enforcement officers in the enforcement of the Liquor Control Act as well as False Identification and Fraudulent Document detection. This training enhances the prevention of underage drinking and impaired driving by developing police knowledge of and involvement in liquor law enforcement. The Division conducted Training Sessions for 1081 Officers in 2009; 729 Officers in 2010; 601 Officers in 2011; 409 Officers in 2012, 1460 Officers in 2013, 376 Officers in 2014, 487 Officers in 2015 and 304 Officers in 2016.

### Illegal Ownership / Control Enforcement

In 2016 the Enforcement Division conducted several investigations into unlawful ownership or control over bars and liquor stores throughout the commonwealth. Investigators endeavor to ensure that licensees have disclosed all persons who have a direct or indirect financial or beneficial interest in a license, and to prevent individuals or organizations from controlling a licensed business for unlawful purposes.

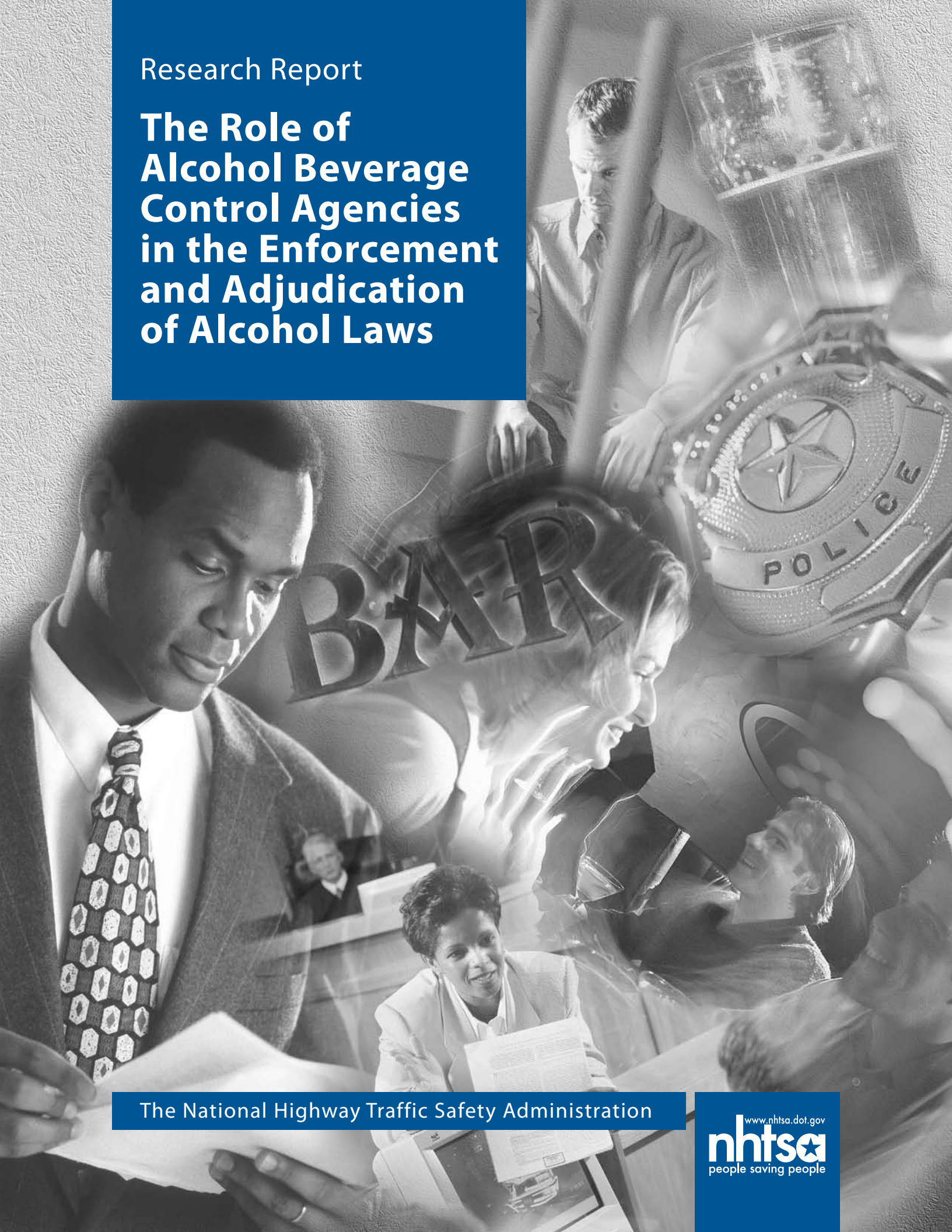
### License Application Investigations

In 2016 the Enforcement Division completed approximately 2900 investigations of license applicants.

# **EXHIBIT 12**

Research Report

# The Role of Alcohol Beverage Control Agencies in the Enforcement and Adjudication of Alcohol Laws



The National Highway Traffic Safety Administration

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people saving people

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# The Role of Alcohol Beverage Control Agencies in the Enforcement and Adjudication of Alcohol Laws

## Introduction

Research conducted over the last three decades demonstrates a connection between alcohol availability and public health outcomes. Within a given population, public health problems will increase as availability increases (through lower prices or increased physical access), and will decrease as availability decreases. Youth are particularly sensitive to these alcohol availability variables. The impact of availability is particularly noteworthy in addressing alcohol-related motor vehicle crashes. Research suggests that 40 percent or more of drinking driving incidents begin in licensed establishments (O'Donnell, 1985; Anglin, 1997; Gallup, 2000). Limiting the number of retail licenses and restricting serving practices that encourage patron intoxication offer important new strategies for reducing death and injury on the Nation's highways.

The 21<sup>st</sup> amendment to the U.S. Constitution gives primary authority for regulating alcohol availability to each of the States. Most States have created alcohol beverage control (ABC) agencies to exercise this authority, implementing State laws that regulate how alcoholic beverages are manufactured, packaged, distributed, sold and consumed. This paper examines the role of State ABC agencies in the prevention of alcohol-related problems, focusing on the agencies' powers to: (1) license alcohol establishments; (2) enforce alcohol laws and regulations; and (3) adjudicate violations of these policies.<sup>1</sup> For each agency function, the paper reviews the research regarding its role in addressing public health problems and the current status and type of action being implemented across the 50 States and the District of Columbia. Finally, recommendations are provided for enhancing State ABC agencies' roles in reducing alcohol-related problems.

## Methodology

The data for our analysis comes from two primary sources: legal research and in-depth interviews with officials of State alcohol enforcement agencies in 45 States and the District of Columbia.<sup>2</sup> Attorneys and staff on the project first reviewed alcohol beverage control statutes and regulations to determine State licensing systems, enforcement powers, and policies prescribing administrative penalties for specific types of alcohol violations. This research was completed using national legal databases and a variety of secondary sources. This information was then confirmed through phone interviews with State alcohol enforcement representatives. In each interview, respondents were asked to review the legal research results addressing 12 key alcohol policies (including the statutory penalties for each policy). Interviewers then asked detailed questions regarding licensing systems, enforcement resources and strategies, data collection processes, and the adjudication of alcohol violations. The interviews occurred

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<sup>1</sup> Alcohol beverage control agencies have other roles (e.g., tax collection, licensing and enforcement of non-alcohol related venues), but the focus of this paper is the relationship between these agencies and the enforcement and adjudication of alcohol policies that are specifically designed to protect the public's health and safety.

<sup>2</sup> These interviews were conducted as part of a contract with the National Highway Traffic Safety Administration, Contract Number IDC DTNH22-98-D-35079. In the remaining five States, the researchers were either not able to locate a State agency that held the primary responsibility for enforcing alcohol laws or the identified agency declined to participate in the interview. In addition, the enforcement of alcohol laws in Hawaii and Maryland is primarily conducted at the county level. In those States, interviews were conducted with representatives from one county. The results are therefore not applicable to the entire State.



from September 2001 through December 2002. Some of the policies, enforcement powers and resources discussed in this report may have changed during and since that time.

## **Overview: Licensing of Alcohol Establishments**

A fundamental premise of the State regulatory systems is that alcoholic beverages are potentially hazardous products and, therefore, should be subject to special conditions not applied to other commercial goods and services. Licensing affects where, and how many, outlets can exist in specified areas; what types of outlets are permitted (on- or off-premise consumption, allowing the sale of beer, wine and/or spirits); who can own, manage, sell and serve alcohol; and how the outlet can conduct its sales and serving practices. Research indicates that these variables are critical to public health outcomes. For example, Gruenewald and Ponicki (1995) found that single-vehicle nighttime traffic fatality rates are strongly affected by beer sales, moderately affected by spirit sales, and relatively unaffected by wine sales. The same study also found that a decrease in alcohol availability, through restrictions on the number of outlets for example, was associated with reduced crash rates, in spite of speculation that fewer alcohol outlets could mean that impaired drivers might drive increased distances. In other words, reductions in sales due to restrictions on the physical availability of alcohol may result in reductions in single-vehicle fatal crashes without increases in crashes due to increased travel. In addition, many researchers have reported relationships between alcohol outlet densities and violence, including youth violence (Alaniz et al., 1998; Gorman et al., 2001; Lipton and Gruenewald, 2002; Roncek and Maier, 1991; Scribner et al., 1995; Speer et al., 1998; and Stevenson et al., 1998). A more recent study demonstrated that the presence of laws regulating the service and availability of alcohol are associated with lower rates of drinking and driving among college students, a group at risk for problems associated with both binge drinking and alcohol-related traffic crashes (Wechsler, et al, 2003).

The enactment of the 21<sup>st</sup> amendment in 1933 ended the United States' experiment with national Prohibition. The amendment gave States the primary authority for determining whether alcohol could be sold legally and, if so, how. Since that time, numerous different alcohol control systems (in each State, the territories, and the District of Columbia) have evolved. While each alcohol distribution system is unique, each State and/or territory typically falls within one of two general classifications: *control States* and *license States*.

In the control State systems, the State is involved in the sale of alcohol beverages at the wholesale and/or retail level. Currently, there are 18 control States that operate as the sole wholesalers of distilled spirits within their borders. Retail distribution, however, is conducted differently in each control State through State operated retail stores, contract agency retail outlets, private retailers, or a combination of State, agency and/or private stores. Control States, like license States, regulate the activities of other persons engaged in the sale of alcohol beverages through licensure (NABCA, n.d.).

The license States do not participate in the sale of alcohol beverages at the State level. However, some license States may allow municipalities to operate retail stores in certain circumstances. For example, Minnesota allows cities with a population of less than 10,000 to own and operate a municipal liquor store (§340A.601, Minnesota Statutes 2003), while in Maryland, each county decides the type of distribution system it will use. Montgomery County, Maryland, is a control jurisdiction with exclusive wholesale authority for beer, wine, and spirits, and exclusive authority for spirit sales at the retail level.

Both control States and license States regulate alcohol industry members through licensure. Alcohol beverage licenses are treated as a privilege rather than a right, and their issuance is conditioned on a set

of restrictions and qualifications. Each State has developed its own licensing method. Three different systems exist:

1. Exclusive State Licensing: The State licensing authority has exclusive power to license alcohol establishments, but in certain cases may allow local governments to influence the licensing decisions to some extent. States may require local approval before the State license will be approved (e.g., through a conditional use permit process), permit local control in only limited circumstances (e.g., regarding where the establishment can be located), or give local communities an advisory role in the licensing process. Nevertheless, regardless of the approval process, the State is the only entity that may issue a liquor license.
2. Dual Licensing: In these States, alcohol retailers must obtain two licenses, one from the State and one from the municipality in which they are located. In most cases, this gives the primary responsibility for determining alcohol availability to local governments, subject to minimum standards established by the State. Both governmental entities may investigate and regulate industry members.
3. Local Licensing Only: In a few States, the licensing authority is delegated to local governments, and the State does not issue State licenses. The States, however, may impose regulations that local governments must honor.

The chart in Appendix A lists the control and license States and further categorizes the type of licensing system used by each State for granting retail (on- and off-premises) licenses. Note that the chart does not include information regarding the licensing systems required for wholesalers, importers, or distributors. The majority of the States use the State licensing system, often in conjunction with some form of local approval process. In the States that have Alcoholic Beverage Control Departments, there is often a licensing section that deals exclusively with license applications approval and renewals. In the States with smaller departments, enforcement agents may also be charged with processing all license applications in addition to their regular enforcement duties. In a few States, the ABC Commission, which is usually comprised of commissioners appointed by the governor, approves each license application.

These licensing categories should not mask the variation among the States and the complexity of the State/local licensing issue. A key consideration is the role of local jurisdictions in the licensing process. Even in States with exclusive State licensing, citizens and local governments are often able to voice their concerns during a licensing approval process. The majority of States require licensee applicants to announce their intention to apply for an alcohol license either through the local newspaper or by posting the application at the place of business for a specified amount of time before the license is approved. This process allows community members to find out about prospective alcohol outlets, and to contact either the local or State government if they wish to comment on the license application. Many States require that the local government approve a request or, at a minimum, enter a recommended approval or disapproval for a license before the application is forwarded to the appropriate State licensing department. In at least a few States, notices are mailed to residents within a specified distance of the proposed outlet in addition to posting the application at the proposed location.

Several States permit local jurisdictions to prohibit alcohol sales, usually through a vote by local citizens. In some States, the sale of alcohol is permitted on a jurisdiction-by-jurisdiction basis. In “wet” jurisdictions the sale of alcohol is permitted, while in “dry” jurisdictions alcohol beverage sales are either prohibited or limited to certain methods of distribution or certain types of alcoholic beverages (Reitz, 1998).

## **Structure and Functions of State Alcohol Beverage Control Enforcement Agencies**

The enforcement of alcohol beverage control laws is an important component of a comprehensive program designed to protect the public's health and safety. The use of sobriety checkpoints, for example, has been shown to be an effective enforcement strategy for reducing impaired driving (Lacey, Jones, and Smith, 1999; Lacey and Jones, 2000). While sobriety checkpoints target impaired drivers with a focus on deterring drinking and driving, other enforcement strategies have shown promise in changing retailer behavior that, in turn, changes the environment in which hazardous drinking occurs. For example, a study in Michigan evaluated the effectiveness of enforcement, publicity, and educational activities to encourage retailer compliance with a law prohibiting sales to intoxicated persons. Refusals of service to pseudo-intoxicated patrons rose from 17.5 percent before the intervention began to a peak of 54.3 percent after the first three months of the enforcement intervention. Significantly, the percentage of impaired drivers arrested after leaving bars and restaurants declined from 31.7 percent to 23.3 percent during the same time period. The refusal rate for service to pseudo-intoxicated persons remained at 41 percent one year after the program ended, indicating that the intervention had an enduring effect on service compliance with sales to intoxicated laws (McKnight and Streff, 1994). A review of several studies demonstrated that over 40 percent of impaired drivers had their last drink at a licensed establishment (O'Donnell, 1985; Anglin, 1997; Gallup, 2000), so clearly policies and enforcement actions designed to reduce the over-service of alcohol to patrons are important for public health. When enforcement efforts are combined with policy change and public support, the results can be significant. For example, a large community trials study conducted from 1992 to 1996 implemented a comprehensive, community-wide set of interventions including new restrictions on alcohol availability, responsible beverage service training, media advocacy, and increased enforcement of alcohol sales and alcohol traffic laws. The evaluation revealed significant reductions in alcohol-related traffic crashes (Holder, et al., 2000). These studies point to the importance of alcohol law enforcement in protecting the public's health and safety.

Alcohol law enforcement seeks to increase compliance with laws by increasing the level of perceived deterrence among those subject to legal restrictions. Deterrence involves three key components: the perceived likelihood that a violation will lead to apprehension, the perceived swiftness with which a penalty will be imposed, and the extent of the penalty (Ross, 1992). As stated in the recent National Research Council, Institute of Medicine, report on underage drinking, the effectiveness of alcohol control policies depends heavily on the "intensity of implementation and enforcement and on the degree to which the intended targets are aware of both the policy and its enforcement" (NRC, IOM, 2003: p. 164). In other words, if employees, managers, and owners of licensed establishments believe that they will be caught if they violate the law, they are more likely to be vigilant in their compliance with the law. Our legal research and interviews with ABC agency officials assessed the extent to which alcohol law enforcement is able to establish perceived deterrence among alcohol retailers.

### Enforcement Resources – Inadequate and Declining

Most States have a State agency with primary responsibility for enforcing alcohol laws and regulations. The enforcement capacity of these agencies varies widely. In at least seven States, the agency's enforcement agents are not sworn police/peace officers and are not permitted to carry firearms. Agency representatives reported that these restrictions seriously hamper the agents' effectiveness in the field. States also vary widely in the number of agents assigned primarily to alcohol enforcement duties, particularly when comparing the ratio of agents to the number of outlets in the field. The chart in

Appendix B presents these data for the District of Columbia and the 41 States where data was available, and is summarized in the chart below:

Variable	Number
States with ABC agents who are sworn police/peace officers	35
States with ABC agents who carry firearms	33
Average number of ABC agents that primarily enforce alcohol laws per State	54
Average number of licensed retail outlets per State <sup>3</sup>	14,112

There are more than 600,000 licensed retail alcohol outlets in the United States. This figure does not include producers, wholesalers, and distributors, who also need licenses to conduct business in each State. According to a 1994 study, there are, on average, only two arrests for every thousand occasions of youth drinking and only five actions against an alcohol outlet taken for every one hundred thousand youth drinking occasions (Wagenaar and Wolfson, 1994). This low rate of detection is not surprising given the woefully inadequate resources that alcohol enforcement agencies possess. The number of agents per State ranges from 3 to 260, with a median of 34. As an average national ratio, each State alcohol law enforcement agent is responsible for monitoring the activities of approximately 268 licensed establishments. With only slightly more than 2,000 enforcement agents nationwide who are specifically charged with regulating and enforcing alcohol laws, there is a large disparity between the level of resources that enforcement agencies currently possess and the level needed to ensure compliance with alcohol laws.<sup>4</sup>

Agency enforcement is not limited to actions against licensed establishments. Most agencies also investigate complaints such as unlicensed/illegal alcohol sales, false identification manufacture and distribution, and underage alcohol distribution (ranging from adults illegally providing/selling alcohol to youth to underage parties). In addition, many agencies reported that their enforcement responsibilities are expanding to include underage tobacco sales, tax collection, tax fraud, illegal gambling, prostitution, and illicit drugs. Although their responsibilities are expanding, resources for enforcement are static or decreasing. As a result, the percentage of time that alcohol enforcement officers have available to focus on their primary responsibility is steadily declining.

Limits on Authority

States vary in the extent to which they grant alcohol enforcement agents full arrest powers. States such as Florida, Missouri, Ohio, Oregon, Pennsylvania, Tennessee, Washington, and Wisconsin have statutes that limit the type of violations for which agents may make arrests. In many cases, agents may only make arrests in or around licensed premises. In other cases, the restrictions are more explicit. For example, agents in Pennsylvania may arrest someone for possessing false identification, but not for the manufacture of false IDs, which is outside their jurisdiction. Although this is an area of debate, many agency representatives believe that the lack of arrest powers hampers alcohol enforcement agents’

<sup>3</sup> This number is based on 42 States and the District of Columbia, whereas the other numbers include 42 jurisdictions total.

<sup>4</sup> It also important to note that this data was collected over more than a one-year period, from September 2001 through December 2002. During and since that time many State alcohol enforcement agencies experienced severe budget cuts, and the number of enforcement agents is currently much smaller. While number of agents is one indicator of resources, law enforcement officials also report that they have experienced cutbacks in other areas as well. Some agencies report they are now restricted by the number of miles they can put on their vehicles, and they are unable to purchase new equipment to either maintain or improve their effectiveness.

effectiveness. They may observe certain violations but they are unable to take action without requesting assistance from other law enforcement agencies. This may be time consuming or infeasible and can result in the absence of enforcement action. Restrictions on firearm possession pose a similar problem. Agents operate in close environments with hostile drunken individuals, and thus frequently face potentially dangerous situations. If agents are not allowed to carry firearms, they may have to rely on other law enforcement agencies to provide back-up before taking any action.

### Administrative Placement

In most States, alcohol beverage administration, licensing, and enforcement are all housed within the same agency. Recently however, some States have transferred or are considering transferring the enforcement responsibilities to other agencies. Currently, at least seven alcohol enforcement agencies are housed under their State's department of public safety, while at least four State police agencies have primary responsibility for enforcing alcohol laws. There is some debate regarding the implications of separating the enforcement from administrative and licensing functions. The advisability of such a separation may hinge on the State's process for adjudicating administrative cases of alcohol law violations, discussed below.

### State-Local Partnerships

One strategy for addressing the lack of alcohol enforcement resources at the State level is to increase and improve partnerships between State and local law enforcement agencies. Agency representatives report that each type of agency can bring a unique set of skills to the partnership. The State alcohol enforcement agents have expertise in the area of alcohol laws, and in many States, alcohol enforcement agents have special authority that local law enforcement agents may not possess. For example, alcohol enforcement agents may enter alcohol establishments and inspect the establishment's paperwork, serving practices, and the general environment to ensure compliance with all alcohol laws and regulations. In addition, alcohol enforcement agents have access to case histories on each establishment, and may serve as a liaison between the State and the local community when determining if a particular licensed establishment has become hazardous to the community. Local law enforcement agencies may have more staffing resources and a more specific understanding of the alcohol-related problems in their communities. They can help the State agency pinpoint problem establishments, provide backup, and provide evidence at adjudication hearings.

However, local law enforcement agencies usually do not have the resources or expertise to handle these responsibilities on their own and cannot substitute for an effective State agency. Recent events in Maine highlight the problems with shifting State agency enforcement responsibilities to local jurisdictions. Maine disbanded its Bureau of Liquor Enforcement in June 2003 and transferred its responsibilities to local law enforcement agencies. Press reports suggest that the transfer has resulted in a sharp reduction in enforcement. Local law enforcement agencies do not have the resources or adequate authority to deal with these new responsibilities. As one sheriff reported, "We don't have the manpower to follow up and do the regulatory job historically done by the BLE.... Some things are going to have to go." (Blethen Maine Newspapers Inc., May 12, 2003). In addition, each local jurisdiction must appeal to the Maine Department of Public Safety for expanded authority to enforce certain laws covering liquor licenses. In the absence of this authority, there are only six civilian inspectors housed in the Department of Public Safety to monitor alcohol retailer compliance across the State. As one bar owner stated, "There is a lot to be said for having aspects of State liquor enforcement run by the State." (Press Herald, October 2, 2003).

Maine's decision threatens effective alcohol law enforcement in the State and adds additional responsibilities to already resource-starved local law enforcement agencies. Building partnerships between State and local law enforcement agencies to enforce alcohol laws can enhance the effectiveness of all agencies involved. However, the partnership requires sufficient resources, specific, special powers for State agents, and State leadership and commitment to alcohol law enforcement goals.

In summary, data from our interviews support two main findings that relate to ABC enforcement agencies:

1. ABC agencies do not have enough agents to monitor activities of the licensees effectively; and
2. In at least some States, ABC agents do not have sufficient authority to carry out their duties.

These findings have important implications for the adjudication process. With few resources and inadequate staffing, swift and certain procedures for assessing violations and appropriate penalties are even more important.

### **Administrative Process: Adjudication of Alcohol Law Violations**

Enforcement is designed to increase the perceived likelihood that a violation will be detected, which is a key component of deterrence. Adjudication addresses the remaining two deterrence variables—the certainty and swiftness of a penalty being imposed and the extent of that penalty. As discussed above, the interplay between these three deterrence variables determines the effectiveness of an enforcement strategy in promoting compliance with the law (Ross, 1992). Deterrence-based penalty structures need to ensure that the costs of violating the law significantly outweigh the benefits obtained. If the penalties assessed are not sufficiently severe and are seldom imposed, then a simple cost-benefit analysis may result in a calculation that the assessed penalties are an operating cost of doing business.

Our research suggests that penalties for alcohol law violations are far from certain and, when imposed, are not severe enough to deter future violations. These findings are consistent with other studies. For example, a study of law enforcement officers' views of the enforcement of minimum drinking age laws revealed that, for many officers, “the perception that punishment is insufficiently certain and severe appears to lead to a sense that their enforcement efforts in this area amount to a waste of time” as it relates to violations for underage alcohol possession. Officers reported that they would support increased penalties for merchants who violate the law as well (Wolfson, et al., 1995: pp. 434-435).

The certainty and swiftness of a penalty being imposed is affected by the adjudication procedures used to determine whether a violation occurred. Alcohol enforcement agencies are responsible for enforcing violations of both administrative and criminal laws. These often overlap in terms of what is prohibited, but their adjudication involves distinct procedures and agencies. Criminal laws are enacted by statute and are adjudicated through the criminal courts, while administrative laws and regulations are usually adjudicated by executive agencies under authority granted by the State legislatures. Criminal convictions are considered far more serious, as they reflect moral approbation and potentially serious restrictions on individual freedom. Convictions in criminal courts therefore involve more formal legal procedures and a heavier burden of proof than findings of a violation in administrative hearings. Administrative violations, on the other hand, usually do not carry heavy moral overtones and involve restrictions on one's ability to do business under a State or local license – through fines or suspensions/revocations of one's license. For these reasons, administrative hearings are more effective in promoting deterrence, since they usually take less time and are more likely to lead to a penalty.

In the alcohol enforcement context, the same violation may potentially lead to both a criminal and administrative action. For example, in a case where a clerk sells alcohol to a minor, the clerk may be charged criminally for making the sale, and the licensee may be charged criminally and/or administratively for the same violation. The criminal case will be transferred to the relevant district attorney's office. The administrative case will be handled by an agency assigned this responsibility, often within the same agency that is responsible for the administrative law's enforcement.

Each State has developed its own process for adjudicating administrative violation cases. These hearings are typically quasi-judicial in nature and provide licensees due process that can, ultimately, be appealed through a State's court system. Administrative hearings may be held in front of hearing officers, administrative law judges, or an ABC Commission. In some cases, hearing findings must be appealed to another administrative level before a court appeal is allowed. Several State agencies also have the authority to review, or act as the board of appeal for local government license actions (Reitz, 1998). The States vary widely in their administrative adjudication process, and as the above discussion suggests, many have created complex procedures that hamper the agencies' ability to impose penalties in a swift and certain manner.

### Determination of Administrative Penalties

Almost every State reserves the right to fine, suspend, or revoke a license. As the most severe penalty, revocations are rare in most States and usually only occur with very serious or multiple offenses. Suspensions may also be reserved for repeat offenders and, in many States, violators may choose a set fine as an alternative to a suspension. Fines are the most common and least severe penalty. Many States have statutes and regulations that determine the maximum administrative penalty for each type of violation. Since preventing youth access to alcohol is an area of high priority for both public health and alcohol beverage control agencies, we reviewed administrative penalty guidelines for violations of State sales to minors laws. The table in Appendix C documents the wide variation in administrative penalties that can be imposed for this type of violation, both under statute and through formal and informal penalty guidelines. Highlights from the table include:

- There is a range of allowable maximum fines for a first offense of sales to a minor from \$50 up to \$10,000.
- In at least 20 States, there are no specific penalty guidelines.
- Seven States have penalty guidelines that differ significantly, either in scope or specificity, from statutory maximum penalties.
- Thirteen States have clearly identified and specific penalty guidelines, yet have no clearly identified maximum statutory penalty.
- At least three States set maximums far above any penalties actually imposed.

Many States have penalty guidelines that are much lower than first offense maximums as defined by statute, and several penalty guidelines appear to allow broad latitude in deciding the exact penalty. While in most cases, the States do not, by statute or regulation, define what constitutes mitigating or aggravating circumstances, there are States that have provided a clear definition of these areas (e.g., Washington, Oregon). By providing definitions of these categories, both the licensees and the general public have a clearer understanding of the severity of the penalty imposed based on the circumstances.

There are States in which the statutes mandate revocation, but interviews reveal that, in practice, revocations infrequently occur for first or even subsequent offenses. In addition, there are States in which revocations, even for multiple violations, are not permitted by statute. In the majority of States, suspensions may be issued, but retailers are often given the option to pay a fine instead of serving the suspension. Usually these fines are much less than the revenue that would be lost through a sales suspension. The time range for a repeat offense also varies across the States. A second offense in one State may have to occur within one year of the first offense to count as a subsequent offense with an increasingly severe penalty, while a retailer in another State may have a subsequent offense count as a second violation within a time period of up to five years. Clearly, retailers benefit from having a short time period in which repeat offenses count as a subsequent violation.

Our researchers attempted to determine what penalties States impose, but found that this information was almost impossible to obtain. Some States have proactively begun to list their case dispositions on their Web sites (e.g., Colorado, Michigan, Minnesota, Missouri, Nebraska, Washington, and West Virginia), but, even in these cases it was difficult for the researchers to determine the penalty imposed. In some cases, the number of days suspended was listed, but it was clear that the retailers paid a fine instead of serving the suspension. The interviews with law enforcement officials also revealed that, in many cases, the agents are not aware of the final outcomes of the cases they have submitted for adjudication. In many States, enforcement agents may be able to look up a single case and know what the case disposition was, but they can not provide summary statistics that show average number of fines, suspensions, etc., per type of violation. Thus, we are unable to provide accurate information on the status of actual penalties imposed at this time. The absence of this data is problematic as it may weaken the ability of ABCs to evaluate their adjudication processes. The most effective penalties and the circumstances under which they are strongest are unclear.

In summary, our research found that:

1. Statutory maximum penalties bear little relationship to penalty guidelines;
2. Penalty guidelines are broad and, in many States, lack definition of aggravating and/or mitigating circumstances;
3. There is little relationship between penalty guidelines and penalties imposed; and
4. Poor record keeping makes data analysis difficult.



## Discussion

Policy makers, law enforcement officials, researchers, and community advocates need to have a clear understanding of the importance of alcohol beverage control agencies to public health efforts to prevent alcohol-related problems. There is a need for a more in-depth understanding of each State's ABC system in the areas of licensing, enforcement, and adjudication of alcohol laws in order to develop strategies to more effectively impact alcohol policies and the enforcement of these policies to prevent alcohol-related problems. By understanding how these processes work, policy makers and public health professionals can find opportunities throughout the entire spectrum (licensing, enforcement and adjudication) in which they may influence the decisions regarding how alcohol is sold and consumed in their communities. Although many might assume that these functions are similar across States, this report documents that each State has developed a unique system for licensing, enforcement and adjudication that is often difficult to understand without a thorough examination of State policies and additional research. Our research highlights the following findings:

1. There are three main licensing systems: exclusive State licensing, dual licensing, and exclusive local licensing with minimum State standards. Each type of licensing may provide opportunities for community input even if licenses are not issued at the local level.
2. Resources for enforcing alcohol control laws at the State and local level appear to be insufficient to ensure compliance among alcohol retailers, and these resources are reported to be steadily shrinking.
3. State structures for adjudicating alcohol law violations through administrative processes are complex, resulting in procedures that fail to meet the basic requirements for creating effective deterrence – swift and certain punishment and sufficiently severe penalties.

Based on these findings, we offer the following recommendations to improve the U.S. alcohol beverage control system with the overall goal of reducing alcohol-related problems:

1. Develop effective partnerships between State ABC agencies and local governments and law enforcement agencies. This should include encouraging local input into State licensing decisions, permitting independent authority at the local level to enhance (but not loosen) minimum State restrictions, and establishing procedures for joint law enforcement initiatives.
2. Provide increased resources for State and local law enforcement efforts to ensure compliance with alcohol laws.
3. Establish clear and consistent administrative penalty guidelines for violations of alcohol laws, and ensure that the penalties are imposed swiftly and consistently. Establish penalties that become increasingly severe for repeat offenders, which can lead to suspensions or revocations commensurate with violation patterns and behaviors.
4. Encourage more active citizen participation in the licensing and adjudication processes. This can include a “court watch” for administrative hearings for alcohol law violations that is similar to court monitoring efforts begun by Mothers Against Drunk Driving to ensure that impaired drivers receive just penalties for their crimes.
5. Encourage private and public funding agencies and research organizations to support research to evaluate all aspects of alcohol beverage control systems. In particular, assist States and localities with evaluation and analysis of their enforcement efforts to document the effectiveness of alcohol enforcement strategies in reducing alcohol-related problems.
6. Encourage States to institute better data collection and reporting systems, especially in the cases of enforcement actions and case dispositions.

Given that at least 85,000 people die each year in the United States from alcohol-related causes (Mokdad, et al., 2004), and that a significant percentage of these deaths are attributable to alcohol-related traffic crashes, we must examine new strategies to prevent these tragic deaths and injuries. This report only begins to review the various opportunities and challenges that alcohol beverage control agencies can play in efforts to protect the public's health and safety. As stated above, a great deal of research is needed to evaluate the effectiveness of current alcohol enforcement resources and strategies in relation to the penalties imposed on retailers for all types of violations. It is our hope that this report will serve as a starting point for additional research and discussions in this area.

## REFERENCES

- Alaniz, M.L., Cartmill, R.S., and Parker, R.N. (1998). Immigrants and violence: The importance of neighborhood context. *Hispanic Journal of Behavioral Science* 20:155-174.
- Anglin, L., Caverson, R. Fennel, R. Giesbrecht, H., and Mann, R.E. (1997). A Study of Impaired Drivers Stopped by Police in Sudbury, Ontario. Addiction Research Foundation: Toronto, Ontario.
- Aull, E. (2003). Budget cut casualty. Blethen Maine Newspapers, Inc., May 12, 2003.
- Fell, J. F (2000). Keeping Us on Track: A National Program to Reduce Impaired Driving in the United States. Commissioned Paper for the Alcohol Policy XII Conference, "Alcohol and Crime: Research and Practice for Prevention," June 11-14, 2000.
- Gallup Organization. (2000) Volume I: Findings, Racial and Ethnic Group Comparisons, National Surveys of Drinking and Driving, June, 2000, Attitudes and Behavior – 1993, 1995, and 1997. National Highway Traffic Safety Administration: Washington, DC DTNH22-96-C-05081.
- Gorman, D.M., Speer, P.W., Gruenewald, P.J., and Labouvie, E.W. (2001). Spatial dynamics of alcohol availability, neighborhood structure, and violent crime. *Journal of Studies on Alcohol* 62: 628-636.
- Gruenewald, P.J. and Ponicki, W.R. (1995). The relationship of the retail availability of alcohol and alcohol sales to alcohol-related traffic crashes. *Accident Analysis and Prevention* 27(2): 249-259.
- Hench, D. (2003). Portland police may enforce liquor laws. *Press Herald*, October 2, 2003.
- Holder, H.D., et al, (2000). Effect of Community-Based Interventions on High-Risk Drinking and Alcohol-Related Injuries. *Journal of the American Medical Association* 284(18): 2341-2347.
- Lacey, J.H., Jones, R.K., and Smith, R.L. (1999). An evaluation of Checkpoint Tennessee: Tennessee's statewide sobriety checkpoint program. DOT HS 808 841. Washington, DC: National Highway Traffic Safety Administration.
- Lacey, J.H., and Jones, R.K. (2000). Evaluation of New Mexico's anti-DWI efforts. DOT HS 809 024. Washington, DC: National Highway Traffic Safety Administration.
- Lipton, R., and Gruenewald, P. (2002). The spatial dynamics of violence and alcohol outlets. *Journal of Studies on Alcohol* 63: 187-195.
- McKnight, A.J., and Streff, F.M. (1994). The effect of enforcement upon service of alcohol to intoxicated patrons of bars and restaurants. *Accident Analysis and Prevention* 26(1): 79-88.
- Minnesota Statutes. Chapter 340A, Section 601. Available online: <http://www.revisor.leg.state.mn.us/stats/340A/601.html>, November 7, 2003.
- Mokdad, A., Marks, J., Stroup, D., and Gerberding, J. (2004). Actual Causes of Death in the United States, 2000. *JAMA* 291(10): 1238-1245.
- Mosher, J.F. (2001). The Perils of Preemption. American Medical Association Policy Briefing Paper. Available online at: [http://www.alcoholpolicysolutions.net/policy\\_papers.htm](http://www.alcoholpolicysolutions.net/policy_papers.htm), October 14, 2003.
- National Alcohol Beverage Control Association (n.d.). The Effects of Privatization of Alcohol Control Systems. Prepared by Pacific Institute for Research and Evaluation.

- National Research Council, Institute of Medicine (2003). *Reducing Underage Drinking: A Collective Responsibility*. National Academies Press, Washington, DC.
- O'Donnell, M.A. (1985). Research on drinking locations of alcohol-impaired drivers: Implications for prevention policies. *Journal of Public Health Policy* 6: 510-525.
- Reitz, D. (1998). Alcohol Beverage Regulation in the United States. Paper prepared for the National Conference of State Liquor Administrator's 1998 Annual Conference: Denver, Colorado.
- Roncek, D.W. and Maier, P.A. (1991). Bars, blocks, and crimes revisited: Linking the theory of routine activities to the empiricism of "hot spots." *Criminology* 29: 725-753.
- Ross, H.L. (1992). *Confronting Drunk Driving: Social Policy for Saving Lives*. Vail-Ballou Press, Binghamton, New York.
- Roth, R., Shigekuni, L., and Mosher, J.F. (1987). Accessing Alcoholic Beverage Control Systems for the Prevention of Alcohol-Related Problems. Paper delivered at the "Alcohol Policy Conference V: Community Applications to the Prevention of Alcohol Problems", Charleston, South Carolina, November 3, 1987.
- Scribner, R.A., MacKinnon, D.P., and Dwyer, J.H. (1995). The risk of assaultive violence and alcohol availability in Los Angeles County. *American Journal of Public Health* 85: 335-340.
- Speer, P.W., Gorman, D.M., Labouvie, E.W., and Ontkush, M.J. (1998). Violent crime and alcohol availability: Relationships in an urban community. *Journal of Public Health Policy* 19: 303-318.
- Stevenson, R.J., Lind, B., and Weatherburn, D. (1999). The relationship between alcohol sales and assault in New South Wales, Australia. *Addiction* 94: 397-410.
- Wagenaar, A.C. and Wolfson, M. (1994). Enforcement of the Legal Minimum Drinking Age in the United States. *Journal of Public Health Policy* 15(1): 37-53.
- Wechsler, H., Lee, J., Nelson, T., and Lee, H. (2003). Drinking and Driving Among College Students: The Influence of Alcohol Control Policies. *American Journal of Preventive Medicine* 25(3): 212-218.
- Wolfson, M., Wagenaar, A.C., Hornseth, G.W. (1995). Law Officers' View on Enforcement of the Minimum Drinking Age: A Four-State Study. *Public Health Reports* 110(4): 428-438.

## APPENDIX A

### Alcohol Beverage Control and Licensing Systems

State	Control State	License State	Exclusive State Licensing	Dual Licensing	Exclusive Local Licensing
Alabama	√		√		
Alaska		√	√		
Arizona		√	√		
Arkansas		√	√		
California		√	√		
Colorado		√		√	
Connecticut		√	√		
Delaware		√	√		
Florida		√	√		
Georgia		√		√	
Hawaii		√			√
Idaho	√		√		
Illinois		√		√	
Indiana		√	√		
Iowa	√		√		
Kansas		√	√		
Kentucky		√	√		
Louisiana		√		√	
Maine	√		√		
Maryland		√ <sup>5</sup>			√
Massachusetts		√			√
Michigan	√		√		
Minnesota		√			√
Mississippi	√		√		
Missouri		√		√	
Montana	√		√		
Nebraska		√	√		
Nevada		√			√
New Hampshire	√		√		
New Jersey		√	√		
New Mexico		√	√		
New York		√	√		
North Carolina	√		√		
North Dakota		√		√	
Ohio	√		√		
Oklahoma		√	√		
Oregon	√		√		

<sup>5</sup> Montgomery County, Maryland, is a control jurisdiction.

State	Control State	License State	Exclusive State Licensing	Dual Licensing	Exclusive Local Licensing
Pennsylvania	√		√		
Rhode Island		√			√
South Carolina		√	√		
South Dakota		√			√
Tennessee		√	√		
Texas		√	√		
Utah	√		√		
Vermont	√		√		
Virginia	√		√		
Washington	√		√		
Washington, DC		√	√		
West Virginia	√		√		
Wisconsin		√			√
Wyoming	√				√
<b>Totals</b>	18	33	36	6	9

## APPENDIX B

### Alcohol Beverage Control Enforcement Powers and Structure

State Enforcement Agency	Sworn police/peace officers	Carry firearms	Number of agents who primarily enforce alcohol laws (including supervisors)	Number of licensed retail outlets
<b>Alabama</b> Enforcement Division, Alcoholic Beverage Control	Yes	Yes	94	12,000
<b>Alaska</b> Enforcement Section, Alcoholic Beverage Control Board	Yes <sup>6</sup>	No	3	1,850
<b>Arizona</b> Investigations Unit, Department of Liquor Licenses and Control	Yes	Yes	19	9,500
<b>Arkansas</b> Enforcement Division Alcoholic Beverage Control Board, Department of Finance and Administration	Yes	Yes	19	5,500-5,800
<b>California</b> Department of Alcoholic Beverage Control	Yes	Yes	260	72,000
<b>Colorado</b> Liquor Enforcement Division, Department of Revenue	Yes <sup>7</sup>	Yes	15	9,000
<b>Connecticut</b> Liquor Control Division, Department of Consumer Protection	No	No	34 <sup>8</sup>	5,800
<b>Delaware</b> Division of Alcoholic Beverage Control and Tobacco Enforcement, Department of Public Safety	Yes	Yes	16	1,800
<b>Florida</b> Bureau of Law Enforcement, Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation	Yes	Yes	160	68,000
<b>Georgia</b> Alcohol and Tobacco Division, Department of Revenue	Yes	Yes	40	16,000
<b>Hawaii</b>	All enforcement handled at the county level.			
<b>Idaho</b> Alcohol Beverage Control Section, State Police	Yes-2 No-2 <sup>9</sup>	Yes-2 No-2	4	4,000

<sup>6</sup> They are sworn peace officers, but the commissioner of public safety has not granted them authority during this administration to carry firearms. They currently do not make physical arrests.

<sup>7</sup> They are considered sworn peace officers level 2 in Colorado. Level 2 means they have full peace officer authority while on duty. Level 1 officers are able to enforce all laws whether on duty or not.

<sup>8</sup> Ten of the 34 total agents work alcohol violations at the casinos only.

<sup>9</sup> The two investigative assistants can issue criminal citations, but they cannot make physical arrests.

<b>State Enforcement Agency</b>	<b>Sworn police/peace officers</b>	<b>Carry firearms</b>	<b>Number of agents who primarily enforce alcohol laws (including supervisors)</b>	<b>Number of licensed retail outlets</b>
<b>Illinois</b> Liquor Control Commission	No	No	35	26,000
<b>Indiana</b> State Excise Police, Alcohol and Tobacco Commission	Yes	Yes	64	10,000
<b>Iowa</b> Division of Criminal Investigation, Department of Public Safety	Yes	Yes	4 <sup>10</sup>	5,000
<b>Kansas</b> Division of Alcoholic Beverage Control, Department of Revenue	Yes	Yes	21	2,700 <sup>11</sup>
<b>Kentucky</b> Alcoholic Beverage Control	Yes	Yes	41	6,500
<b>Louisiana</b> Enforcement Division, Office of Alcohol and Tobacco Control, Department of Revenue	Yes	Yes	46	13,000
<b>Maine</b> Bureau of Liquor Enforcement, Department of Public Safety <sup>12</sup>	Yes	Yes	19	5,000
<b>Maryland</b>	All enforcement handled at the county level.			
<b>Massachusetts</b> Alcoholic Beverages Control Commission	No <sup>13</sup>	Officer's option	14	10,000
<b>Michigan</b> Liquor Control Commission	No	No	52	16,000
<b>Minnesota</b> Alcohol and Gambling Enforcement, Department of Public Safety	No	No	4	12,000
<b>Mississippi</b> Enforcement Bureau, Alcoholic Beverage Control, State Tax Commission	Yes	Yes	28	7,750
<b>Missouri</b> Division of Liquor Control, Department of Public Safety	Yes	Yes	55	17,000
<b>Montana</b>	Information not available			
<b>Nebraska</b> Alcohol/Tobacco Enforcement Division, State Patrol	Yes	Yes	15	4,800

<sup>10</sup> There are three officers in the Vice Enforcement Unit, which is housed within the Division of Criminal Investigation, and these are the officers primarily responsible for enforcing alcohol laws. Approximately 80-90 percent of their time is spent on illegal gambling cases while about 10-20 percent of their time is spent on alcohol law violations.

<sup>11</sup> There are also an estimated 3,500 3.2-percent-beer establishments, but licensing and enforcement of these establishments is done at the local level.

<sup>12</sup> In June 2003, the Maine Bureau of Liquor Enforcement was eliminated. Currently, local law enforcement agencies have been charged with enforcing all alcohol laws previously handled by the bureau.

<sup>13</sup> Although they are not sworn police officers, they do have arrest powers.



<b>State Enforcement Agency</b>	<b>Sworn police/peace officers</b>	<b>Carry firearms</b>	<b>Number of agents who primarily enforce alcohol laws (including supervisors)</b>	<b>Number of licensed retail outlets</b>
<b>Nevada</b>	All enforcement handled at the local level.			
<b>New Hampshire</b> Bureau of Enforcement, State Liquor Commission	Yes	Yes	23 <sup>14</sup>	4,000
<b>New Jersey</b>	Information not available			
<b>New Mexico</b> Special Investigations Division, Department of Public Safety	Yes	Yes	32	2,075
<b>New York</b> New York State Liquor Authority	Yes <sup>15</sup>	No	29	58,000
<b>North Carolina</b> Alcohol Law Enforcement, Department of Crime Control and Public Safety	Yes	Yes	115	17,000
<b>North Dakota</b>	All enforcement handled at the local level.			1,407
<b>Ohio</b> Investigative Unit, Department of Public Safety	Yes	Yes	107	24,000
<b>Oklahoma</b> Enforcement Division, Alcoholic Beverage Laws Enforcement Commission	Yes	Yes	34	1,865
<b>Oregon</b> Regulatory Program, Liquor Control Commission	Yes	No	43	9,600
<b>Pennsylvania</b> Bureau of Liquor Control Enforcement, State Police	Yes	Yes	178	17,649
<b>Rhode Island</b>	Information not available			
<b>South Carolina</b> Vice Unit, Law Enforcement Division	Yes	Yes	54	22,000
<b>South Dakota</b>	Information not available			
<b>Tennessee</b> Law Enforcement Section, Alcoholic Beverage Commission	Yes <sup>16</sup>	Yes	37	16,000
<b>Texas</b> Enforcement Division, Alcoholic Beverage Commission	Yes	Yes	225	39,000
<b>Utah</b> Liquor Enforcement Section, State Bureau of Investigation, Department	Yes	Yes	12	1,300-1,400

<sup>14</sup> There are six part-time agents who can also be called in on an as-needed basis.

<sup>15</sup> They are sworn police officers, but they cannot make arrests.

<sup>16</sup> Enforcement agents for the Tennessee Alcoholic Beverage Commission can only investigate cases where the alcohol content is over 5 percent. There are 18,000-20,000 beer-only licenses in the State, but they do not have enforcement powers in those establishments.

<b>State Enforcement Agency</b>	<b>Sworn police/peace officers</b>	<b>Carry firearms</b>	<b>Number of agents who primarily enforce alcohol laws (including supervisors)</b>	<b>Number of licensed retail outlets</b>
of Public Safety				
<b>Vermont</b> Alcohol and Tobacco Enforcement, Department of Liquor Control	Yes	Yes	18	2,554
<b>Virginia</b> Law Enforcement Bureau, Department of Alcohol Beverage Control	Yes	Yes	150	15,000
<b>Washington</b> Enforcement and Education Division, State Liquor Control Board	Yes	Yes	85	11,000
<b>Washington D.C.</b> Alcoholic Beverage Regulation Administration	No	No	10	1,699
<b>West Virginia</b> Enforcement and Licensing, Alcohol Beverage Control Administration	No <sup>17</sup>	No	50	4,700-4,800
<b>Wisconsin</b> Alcohol and Tobacco Enforcement, Department of Revenue	Yes	Yes	12	16,000 - 17,000

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<sup>17</sup> They have the authority through statute, but they don't exert it.

## APPENDIX C

### Administrative Penalties for Sales and Service to Minors

The table that follows, “Administrative Penalties for Sales and Service to Minors,” documents all administrative penalty statutory maximums and guidelines for violations of State laws prohibiting alcohol sales/service to minors. Descriptions of the table columns follow:

The **1<sup>st</sup> Offense Maximum** category describes the maximum penalty allowed by statute for a given violation. It may include maximums set forth by a State’s general administrative penalty statute or by specific statute. “No provision identified” indicates that our legal researchers could not identify a law addressing a particular violation. “No max identified” indicates that the legal researchers could not identify a statute or a general administrative penalty that explicitly specifies a maximum penalty.

The **1<sup>st</sup> - 4th Offense Guideline** categories describe the range of penalties recommended pursuant to informal penalty guidelines, specific statutes, or general administrative penalties. Where “Same” is listed, please refer to the column at immediate left of “Same”. “Not specified” indicates that the legal researchers could not identify if the State specifically lists a penalty guideline for the particular offense. “N/A” denotes not applicable, and “No guidelines” indicates that the legal researchers were unable to identify any guidelines for the offense listed.

The **Repeat Offense** category describes the time within which previous violations are considered in determining repeat offenses of a violation. For example, in Alaska a sale to minor violation will be considered a second offense if the licensee has been cited for a sale to minor violation in the previous 5 years.

### Administrative Penalties for Sales and Service to Minors

State	1 <sup>st</sup> Offense Maximum	1 <sup>st</sup> Offense Guideline	2 <sup>nd</sup> Offense Guideline	3 <sup>rd</sup> Offense Guideline	4 <sup>th</sup> Offense Guideline	Repeat Offense
Alabama <sup>18</sup>	\$1,000 fine or up to 1 year suspension/ revocation	No guidelines				
Alaska	Fine not greater than 3 times monetary gain of sale resulting from the violation or \$10,000, and/or 45-day suspension	Suspension up to 45 days, and/or fine not greater than 3 times monetary gain of sale resulting from the violation or \$10,000. No revocation permitted.	Suspension up to 90 days, and/or fine not greater than 3 times monetary gain of sale resulting from the violation or \$30,000. No revocation permitted.	Fine not greater than 3 times monetary gain of sale resulting from the violation or \$50,000, and/or suspension/ revocation	Not specified	5
Arizona <sup>19</sup>	Fine not greater than \$3,000 and/or suspension/ revocation.	Fine of \$1,000 - \$2,000 and/or up to 30-day suspension.	Fine of \$2,000 - \$3,000 and/or up to 30-day suspension.	Fine of \$3,000 or more and/or 30-day suspension up to revocation.	Not specified	2
Arkansas	Fine or suspension/ revocation.	No guidelines				
California	Suspension/ Revocation or \$3,000 fine in lieu of.	Suspension/ Revocation or 50 % estimated gross sales between \$750 - \$3,000	Same, but mandatory suspension.	Revocation	N/A	3

<sup>18</sup> In Alabama, State law specifies that a license shall be revoked on a second or a subsequent offense. However, ABC Rules and Regulations State that a fine schedule will be established for use when a licensee wishes to plead guilty to a first or second offense charge. Researchers were unable to obtain a copy of this fine schedule.

<sup>19</sup> In Arizona, suspension days and fines may be substituted for one another, at the discretion of the compliance officer, at the rate of one day of suspension equal to \$250.

State	1 <sup>st</sup> Offense Maximum	1 <sup>st</sup> Offense Guideline	2 <sup>nd</sup> Offense Guideline	3 <sup>rd</sup> Offense Guideline	4 <sup>th</sup> Offense Guideline	Repeat Offense
Colorado	15-day suspension or fine 20% estimated gross revenue up to \$5,000 in lieu of.	Written warning up to 15-day suspension and/or fine 20% estimated gross revenue between \$200 - \$5,000	5-30-day suspension or fine 20% estimated gross revenue between \$200 - \$5,000.	20-45-day suspension.	45-day suspension up to revocation, within 2 years.	1
Connecticut <sup>20</sup>	Suspension/ revocation and/or fine in lieu of.	18 Years or >: 1-5-day suspension and/or \$750-\$1,500 fine 16-17 Years: 5-9-day suspension and/or \$1,000-\$1,500 fine <16: 9-12-day suspension and/or \$1,250-\$1,500 fine	18 Years or >: 5-9-day suspension and/or \$1,500-\$2,000 fine 16-17 Years: 9-11-day suspension and/or \$1,500-\$2,000 fine <16: 12-14-day suspension and/or \$1,500-\$2,500 fine	18 Years or >: 9-15-day suspension and/or \$2,000-\$5,000 fine 16-17 Years: 11-17-day suspension and/or \$2,000-\$5,000 fine <16: 15-21-day suspension and/or \$2,000-\$5,000 fine	Not specified	
Delaware	Fine, suspension and/or revocation	No guidelines				
District of Columbia	Suspension/ revocation and/or fine.	Suspension/ revocation and/or at least a \$1,000 fine.	Suspension/ revocation and/or at least \$2,000 fine, within 2 years.	Suspension/ revocation and/or at least \$4,000 fine, within 3 years.	Revocation	
Florida <sup>21</sup>	\$1,000 fine and/or suspension/ revocation	\$1,000 fine and 7-day license suspension	\$3,000 fine and a 30-day license suspension.	Revocation	N/A	3

<sup>20</sup> In Connecticut, administrative penalties vary based on the age of the minor who was illegally sold alcohol by the establishment, as shown.

<sup>21</sup> In Florida, all administrative fines may be substituted with license suspensions using the ratio of 1 day of suspension for each \$50.

State	1 <sup>st</sup> Offense Maximum	1 <sup>st</sup> Offense Guideline	2 <sup>nd</sup> Offense Guideline	3 <sup>rd</sup> Offense Guideline	4 <sup>th</sup> Offense Guideline	Repeat Offense
Georgia	Suspension/revocation	\$500-\$2,500 fine and/or up to 30-day suspension.	Same	Same	Same	
Hawaii (Maui)	No max identified.	Fine \$1,000 - \$2,000.	Fine of at least \$2,000 or up to 30-day suspension.	Up to 30-day suspension or Revocation	Revocation	5
Idaho	\$5,000 fine or suspension not greater than 6 months.	10-day Suspension or fine in lieu of.	30-day Suspension or fine in lieu of	6-month Suspension or fine in lieu of	Not specified	2
Iowa	Suspension/revocation and/or \$1,000 fine.	\$500 fine or 14-day suspension.	\$1,500 fine and 30-day suspension.	\$1,500 fine and 60-day suspension.	Revocation	2 or 3 <sup>22</sup>
Illinois	\$1,000 fine and/or suspension/revocation	Same	Fine up to \$1,500 and/or suspension/revocation	Fine up to \$2,500 and/or suspension/revocation	Same	1
Indiana	\$1,000 fine and/or suspension/revocation	No guidelines				1
Kansas	\$1,000 fine and/or suspension/revocation.	No fine, licensee can attend training or choose a 1-weekday suspension	\$100 fine per minor and/or suspension 1-weekend-day (Fri or Sat).	\$300 Fine per minor and/or suspension of 1-weekend-day (Fri or Sat).	\$400 Fine per minor and/or suspension of two weekend days (Fri or Sat).	
Kentucky	Suspension/revocation or \$50/day suspension in lieu of.	No guidelines				2
Louisiana	\$500 fine and/or suspension/revocation	Same	\$250-\$1,000 fine, and/or suspension/revocation.	\$500-\$2,500 fine, and/or suspension/revocation.	Not specified	3

<sup>22</sup> In Iowa, an offense occurring within two years of a first offense will be considered a second offense. Any offense occurring within three years of a first offense will be considered a subsequent offense.

State	1 <sup>st</sup> Offense Maximum	1 <sup>st</sup> Offense Guideline	2 <sup>nd</sup> Offense Guideline	3 <sup>rd</sup> Offense Guideline	4 <sup>th</sup> Offense Guideline	Repeat Offense
Maine	\$1,500 fine and/or suspension/ revocation	No guidelines				
Maryland	County specific.					
Massachusetts	\$500 fine and/or 1 yr in jail and/or suspension/ revocation	No guidelines				
Michigan <sup>23</sup>	\$1,000 fine and/or suspension/ revocation	No guidelines				2
Minnesota	\$2,000 fine and/or up to 60-day suspension/ revocation	No guidelines				5
Mississippi	\$1,000 fine and/or suspension/ revocation	\$500 fine and/or suspension/ revocation	\$900 fine and/or suspension/ revocation	\$1,000 fine and/or suspension/ revocation	Not specified	2
Missouri	No max identified	No guidelines				
Montana	\$250 fine and/or suspension/ revocation	Same	\$1,000 Fine	\$1,500 fine and/or 20-day suspension	Revocation	3
Nebraska	Suspension/ revocation or \$50 fine per day issued suspension in lieu of	\$500 - \$1,000 fine and/or 10-20-day suspension.	\$2,000 - \$4,000 fine and/or 20-50-day suspension.	\$4,000 - \$6,000 and/or 25-60-day suspension.	Revocation	4
Nevada	Fine up to \$1,000	No guidelines				1

<sup>23</sup> In Michigan, a third or subsequent offense will result in a mandatory suspension/ revocation of license.

State	1 <sup>st</sup> Offense Maximum	1 <sup>st</sup> Offense Guideline	2 <sup>nd</sup> Offense Guideline	3 <sup>rd</sup> Offense Guideline	4 <sup>th</sup> Offense Guideline	Repeat Offense
New Hampshire <sup>24</sup>	\$500 fine and/or 1-7 days suspension.	Fine \$100 - \$500 and/or 10-17-day suspension	Fine \$250 - \$1,000 and/or 10-24-day suspension	Fine \$500 - \$1,500 and/or 10-30-day suspension	(Fine \$750 - \$3,000 and/or 10-40-day suspension) or (40-day suspension)	
New Jersey	15-day suspension or ½ gross estimated profit per day suspension in lieu of.	Same	30-day suspension or ½ gross estimated profit per day suspension.	45-day suspension or ½ gross estimated profit per day suspension.	Revocation.	2
New Mexico	\$10,000 fine and/or suspension/revocation	No guidelines				
New York	\$10,000 fine and/or suspension/revocation	No guidelines				5
North Carolina <sup>25</sup>	\$500 fine and/or up to 3-year suspension/revocation	Up to \$500 fine and/or up to 3-year suspension/revocation.	Up to \$750 fine, and/or up to 3-year suspension/revocation.	Up to \$1,000 fine, and/or up to 3-year suspension/revocation.	Not specified	
North Dakota	Suspension/revocation	No guidelines				1
Ohio	Suspension/revocation or \$200 fine per day issued suspension in lieu of.	No guidelines				2
Oklahoma	Revocation.	N/A				
Oregon	30-day suspension/revocation and/or \$5,000 fine	Up to 10 days suspension or \$1,650 fine.	Up to 30 days suspension or \$4,950 fine.	Up to 30 days suspension	Revocation	2

<sup>24</sup> New Hampshire allows for reduction of suspension length for “good behavior.” “Good behavior” is defined as compliance with all commission administrative fine payment deadlines and/or orders issued under Liq. 206.03.

<sup>25</sup> In North Carolina, the commission may accept an offer in compromise of an issued suspension, up to \$5,000.



State	1 <sup>st</sup> Offense Maximum	1 <sup>st</sup> Offense Guideline	2 <sup>nd</sup> Offense Guideline	3 <sup>rd</sup> Offense Guideline	4 <sup>th</sup> Offense Guideline	Repeat Offense
Pennsylvania <sup>26</sup>	\$5,000 fine and/or suspension/ revocation.	No guidelines				4
Rhode Island	\$500 fine and/or suspension/ revocation.	Up to \$500 fine and/or suspension/ revocation.	Up to \$1,000 fine and/or suspension/ revocation.	Same	Same	3
South Carolina	\$1,500 fine and/or suspension/ revocation.	\$400 fine and/or suspension/ revocation	\$800 fine and/or suspension/ revocation	45 days suspension and/or revocation	Revocation.	
South Dakota	Suspension up to 60 days or revocation or up to \$75,000 offer in compromise.	No guidelines				
Tennessee	Suspension/ revocation or \$1,500 fine.	Suspension/ revocation or \$300 - \$1,000 fine.	Same	Same	Same	
Texas <sup>27</sup>	60 days suspension, or fine in lieu of	7-20 days suspension or fine in lieu of	10-90 days suspension or fine in lieu of	30 days suspension – revocation or fine in lieu of	Not specified.	3
Utah	\$25,000 fine and/or suspension/ revocation.	Fine \$500 - \$3,000 and/or 5 - 30 days suspension	Fine \$1,000 - \$9,000 and/or 10 - 90 days suspension	Fine \$9,000 - \$25,000 and/or 15 days suspension or revocation	Same	
Vermont	Suspension/ revocation	No guidelines				

<sup>26</sup> In Pennsylvania, third and subsequent offenses will result in a mandatory suspension/ revocation.

<sup>27</sup> In Texas, a fine may be issued in lieu of issued suspension in the amount of \$150 - \$25,000 per day of issued suspension or fine of \$75 - \$500.

State	1 <sup>st</sup> Offense Maximum	1 <sup>st</sup> Offense Guideline	2 <sup>nd</sup> Offense Guideline	3 <sup>rd</sup> Offense Guideline	4 <sup>th</sup> Offense Guideline	Repeat Offense
Virginia <sup>28</sup>	No max identified	\$2,000 fine or 25 days suspension	Not Specified	Not specified	Not specified	3
Washington	No max identified	5 days suspension or \$200 fine in lieu of	10 days suspension or \$400 fine in lieu of	30 days suspension or \$600 fine in lieu of	Revocation	3
West Virginia	\$1,000 fine and/or suspension/revocation	No guidelines				
Wisconsin	No penalty	No penalty	Up to 3 days suspension	3-10 days suspension	15-30 days suspension	1
Wyoming	Suspension/revocation	No guidelines				

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<sup>28</sup> In Virginia, a second or subsequent offense will result in a mandatory suspension.

DOT HS 809 877  
Revised July 2005



U.S. Department  
of Transportation  
**National Highway  
Traffic Safety  
Administration**

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# **EXHIBIT 13**

# License Fee Schedule

Type	Current Fee	Proposed Fee	Intake	Current Intake	Proposed Intake	Difference
<b>AGENT/BROKER/SOLICITOR</b>						
Agent/Broker/Solicitor License	\$5,000.00	\$5,000.00	73	\$365,000.00	\$365,000.00	
Each additional Agent/Broker/Solicitor License	\$500.00	\$500.00	4	\$2,000.00	\$2,000.00	
<b>AIRLINE</b>						
Airline Master License	\$500.00	1,000.00	26	\$13,000.00	\$26,000.00	\$13,000.00
Airline Flights Certified Copy	\$50.00	\$100.00	536	\$26,800.00	\$53,600.00	\$26,800.00
Airline Cargo Permit	\$1,500.00	\$5,000.00	2	\$3,000.00	\$10,000.00	\$7,000.00
<b>CATERING</b>						
Caterer's Section12C License (Eff. 10/31/12)	\$1,500.00	\$1,500.00	74	\$111,000.00	\$111,000.00	
Caterer Transportation Permit	\$150.00	\$150.00	74	\$11,100.00	\$11,100.00	
<b>CERTIFICATE OF COMPLIANCE</b>						
Under 5,000 cases	\$200.00	\$500.00	627	\$125,400.00	\$313,500.00	\$188,100.00
Over 5,000 cases	\$500.00	\$1,000.00	2183	\$1,091,500.00	\$2,183,000.00	\$1,091,500.00
2.17 Registration for Transportation	\$1,000.00	\$1,000.00	2	\$2,000.00	\$2,000.00	
<b>COMMERCIAL</b>						
Commercial Alcohol License	\$500.00	\$2,500.00	4	\$2,000.00	\$10,000.00	\$8,000.00
<b>CONSUMER RESEARCH</b>						
Consumer Research Testing Special Permit per day	\$250.00	\$250.00	0	\$0.00	\$0.00	
Consumer Research Testing Special Permit per session	\$250.00	\$250	19	\$4,750.00	\$4,750.00	
<b>FARMER BREWERY</b>						
Brewery License (5,000 barrels or less)	\$22.00	\$1,000.00	72	\$1,584.00	\$72,000.00	\$70,416.00
Brewery License (More than 5,000 but less than 20,000 barrels)	\$44.00	\$2,000.00	0	\$0.00	\$0.00	
Brewery License (More than 20,000 but less than 100,000 barrels)	\$82.00	\$4,000.00	4	\$328.00	\$16,000.00	\$15,672.00
Brewery License (More than 100,000 but less than 1,000,000 barrels)	\$110.00	\$5,000.00	4	\$440.00	\$20,000.00	\$19,560.00
Brewery License (Each additional 1,000,000 barrels)	\$111.00	\$5,000.00	0	\$0.00	\$0.00	
<b>FARMER DISTILLERY</b>						
Distillery License (5,000 proof gallons or less)	\$22.00	\$1,000.00	22	\$484.00	\$22,000.00	\$21,516.00
Distillery License (More than 5,000 but less than 20,000 proof gallons)	\$44.00	\$2,000.00	9	\$396.00	\$18,000.00	\$17,604.00
Distillery License (More than 20,000 but less than 100,000 proof gallons)	\$82.00	\$4,000.00	0	\$0.00	\$0.00	
Distillery License (More than 100,000 but less than 1,000,000 proof gallons)	\$110.00	\$5,000.00	0	\$0.00	\$0.00	
Distillery License (Each additional 1,000,000 proof gallons)	\$111.00	\$5,000.00	0	\$0.00	\$0.00	
<b>FARMER WINERY</b>						
Winery License (5,000 gallons or less)	\$22.00	\$1,000.00	41	\$902.00	\$41,000.00	\$40,098.00
Winery License (More than 5,000 but less than 20,000 gallons)	\$44.00	\$2,000.00	17	\$748.00	\$34,000.00	\$33,252.00
Winery License (More than 20,000 but less than 100,000 gallons)	\$82.00	\$4,000.00	6	\$492.00	\$24,000.00	\$23,508.00
Winery License (More than 100,000 but less than 1,000,000 gallons)	\$110.00	\$5,000.00	2	\$220.00	\$10,000.00	\$9,780.00
Winery License (Each additional 1,000,000 gallons)	\$111.00	\$5,000.00	0	\$0.00	\$0.00	
<b>MANUFACTURER</b>						
All Alcoholic Beverages License	\$9,000.00	\$9,000.00	2	\$18,000.00	\$18,000.00	
Wine and Malt Beverage License	\$4,500.00	\$4,500.00	3	\$13,500.00	\$13,500.00	
19G Alternating Proprietorship	\$1,000.00	\$1,000.00	3	\$3,000.00	\$3,000.00	
<b>PUB BREWERY</b>						
Pub Brewery License	\$1,000.00	\$1,000.00	30	\$30,000.00	\$30,000.00	
<b>RAILROAD</b>						
Railroad Master License	\$500.00	\$1,000.00	5	\$2,500.00	\$5,000.00	\$2,500.00
Railroad Cars Certified Copy	\$50.00	\$50.00	64	\$3,200.00	\$3,200.00	
Railroad Cargo Permit	\$1,500.00	\$5,000.00	0	\$0.00	\$0.00	
<b>RETAIL</b>						
Retail Filing Fee	\$200.00	\$300.00	2409	\$481,800.00	\$722,700.00	\$240,900.00
Package Store (owns over 3 stores; additional fee is per store owned up to 7)	\$5,000.00	\$5,000.00	23	\$115,000.00	\$115,000.00	
<b>SALESMAN</b>						
Salesman Permit	\$200.00	\$200.00	2294	\$458,800.00	\$458,800.00	
Salesman Permit to Transport Alcoholic Beverages	\$150.00	\$150.00	0	\$0.00	\$0.00	
<b>SHIP</b>						
Ship Master License	\$500.00	\$1,000.00	131	\$65,500.00	\$131,000.00	\$65,500.00
Ship Chandler License	\$1,000.00	\$1,000.00	1	\$1,000.00	\$1,000.00	
Ship Cargo Permit	\$1,500.00	\$5,000.00	0	\$0.00	\$0.00	
<b>STORAGE</b>						
Storage Permit	\$2,000.00	\$2,000.00	35	\$70,000.00	\$70,000.00	
<b>TRANSPORTATION</b>						

Transport and Delivery Permit	\$150.00	\$150.00	1090	\$163,500.00	\$163,500.00	
Express Transportation Permit	\$150.00	\$150.00	112	\$16,800.00	\$16,800.00	
Each Additional Vehicle Certified Copy	\$50.00	\$50.00	6795	\$339,750.00	\$339,750.00	
<b>WAREHOUSE</b>						
Public Warehouse Permit	\$500.00	\$1,000.00	27	\$13,500.00	\$27,000.00	\$13,500.00
Bonded Warehouse Permit	\$1,000.00	\$1,000.00	0	\$0.00	\$0.00	
<b>WINERY</b>						
Winery Shipment License	\$300.00	\$1,000.00	0	\$0.00	\$0.00	
Direct Winery Shipment - Renewal	\$150.00	\$1,000.00	1093	\$163,950.00	\$1,093,000.00	\$929,050.00
<b>WHOLESALE</b>						
All Alcohol License	\$10,000.00	\$10,000.00	79	\$790,000.00	\$790,000.00	
Wine & Malt License (10,000 or more gallons)	\$5,000.00	\$6,000.00	32	\$160,000.00	\$192,000.00	\$32,000.00
Wine & Malt License (No less than 7,500 and no more 10,000 gallons)	\$4,000.00	\$5,000.00	1	\$4,000.00	\$5,000.00	\$1,000.00
Wine & Malt License (7,500 or less gallons)	\$3,500.00	\$4,000.00	59	\$206,500.00	\$236,000.00	\$29,500.00
Sacramental Wine License	\$3,000.00	\$3,500.00	4	\$12,000.00	\$14,000.00	\$2,000.00
<b>Import Household Effects/gift Special Permit (see chart below)</b>						
Gallons of Still Wine	\$0.55	\$0.55	0	\$0.00	\$0.00	
Gallons of Sparkling Wine	\$0.70	\$0.70	0	\$0.00	\$0.00	
Gallons of spirits	\$4.05	\$4.05	0	\$0.00	\$0.00	
Gallons of malt beverage	\$0.11	\$0.11	0	\$0.00	\$0.00	
Permit Fee	\$1.00	\$1.00	7386	\$7,386.00	\$7,386.00	
<b>TOTAL</b>	<b>\$68,913.41</b>	<b>\$138,806.41</b>	<b>25479</b>	<b>\$4,902,830.00</b>	<b>\$7,804,586.00</b>	<b>\$2,901,756.00</b>

# **EXHIBIT 14**

**CHART FINES WITH PROPOSED ADJUSTMENTS**

**U.S. Department of Labor  
U.S. Bureau of Labor Statistics  
CPI Inflation Calculator<sup>1</sup>**

<b>Ch. 138 Sections</b>	<b>Penalty or Fine</b>	<b>Date Last Amended</b>	<b>Proposed Fine</b>
<p>§19F(h). License - - Wine Shipper</p> <p>§19F(i). License -- Wine Shipper</p>	<p>Ships in violation of statute - 1st violation, suspension license for 60 days or a fine of \$ 500, or both; 2nd violation, suspension license for 120 days or a fine of \$ 1,000, or both; 3rd third or subsequent violation, suspension for 1 year or by a fine of \$ 3,000, or both;</p> <p>Sell to person under 21 years of age, 1st violation, suspension license for 180 days or a fine of \$ 1,000, or both; for a 2<sup>nd</sup> violation, suspension license for 1 year or a fine of \$ 2,000, or both; 3<sup>rd</sup> suspension license for 2 years or by a fine of \$ 5,000, or both</p>	<p><b>2006</b>, 33, § 6; 2014, 165, § 162.</p>	<p>§19F(h) – 1<sup>st</sup> \$750 (\$621.96)<sup>2</sup> 2<sup>nd</sup> \$1,500 (\$1,243.92) 3<sup>rd</sup> \$5,000 (\$3,731.75)</p> <p>§19F(i) – 1<sup>st</sup> \$1,500 (\$1,243.92) 2<sup>nd</sup> \$2,500 (\$2,487.84) 3<sup>rd</sup> \$7,500 (\$6,219.59)</p>
<p>§ 22. Transportation Permit.</p>	<p>Fine of not more than \$2,500 or by imprisonment for not more than six months, or both</p>	<p>Ex Sess 1933, 376, § 2; 1934, 385, ... <b>1974</b>, 608, §§ 1-5, 1991, 412, § 78; 1993, 416; 2003, 26, §§ 420-423; 2006, 33, §§ 7-9; <b>2014</b>, 165, §§ 163-165</p>	<p>\$15,000 (\$13,233.82)</p>

<sup>1</sup> See “About the CPI Inflation Calculator. The CPI inflation calculator uses the Consumer Price Index for All Urban Consumers (CPI-U) U.S. city average series for all items, not seasonally adjusted. This data represents changes in the prices of all goods and services purchased for consumption by urban households. “[https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm)

<sup>2</sup> The number in parentheses represents the actual inflation adjustment. The recommended increase in the fine is noted.



**CHART FINES WITH PROPOSED ADJUSTMENTS**

**U.S. Department of Labor  
U.S. Bureau of Labor Statistics  
CPI Inflation Calculator<sup>1</sup>**

<b>Ch. 138 Sections</b>	<b>Penalty or Fine</b>	<b>Date Last Amended</b>	<b>Proposed Fine</b>
§ 2A. Powdered Alcohol -- Prohibition on Sale, Manufacture and Possession	Not less than \$ 100 or more than \$ 1,000	<b>2016</b> , 52§ 42; 2016, 219§ 96A	No change
§ 16. License -- Adulteration of Alcoholic Beverages -- Penalty	License shall forthwith be suspended, for a period of not less than 6 month, Fine of not less than \$200 nor more \$500 dollars	Ex Sess 1933, 376, § 2; <b>1936</b> , 368, § 3.	\$5,000 (\$3,574.91) No more than \$10,000 (\$8,937.28)
§25D(e). Schedules -- Price Discrimination Prohibited.	A fine of not more than \$10,00 or by imprisonment for not more than 6 months, or by both such fine and imprisonment.	<b>1966</b> , 706; 1973, 698 ; 1974, 530, §§ 1, 2.	\$75,000 (\$77,568.67)
§32. Licensee -- Peddling Prohibited.	A fine not exceeding \$200 or by imprisonment for not more than 6 months, or both.	Ex Sess <b>1933</b> , 376, § 2; 1934, 370, § 8 ; 1977, 929, § 13 ; 1982, 627, § 12; 1986, 557, 125	\$5,000 (\$3,824.33)
§ 34. Minors -- Employment Prohibited.	A fine of not more than \$ 2,000 or by imprisonment for not more than one year or both. . .	Ex Sess <b>1933</b> , 376, § 2; <b>1935</b> , 440, § 34 ; 1936, 171 ; . . . 1988, 149 ; 1998, 113, § 9 ; 2000, 175	\$50,000 (\$38,243.26)
§34A. Minors -- False Representation	A fine of \$300 dollars . . .	<b>1935</b> , 146 ; 1935, 440, § 35 ; . . . § 6 ; 1988, 85 ; 1994, 25, § 12 ; 1998, 220, § 8.	\$5,000 (\$5,441.23)

**CHART FINES WITH PROPOSED ADJUSTMENTS**

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<b>Ch. 138 Sections</b>	<b>Penalty or Fine</b>	<b>Date Last Amended</b>	<b>Proposed Fine</b>
§34C. Minors -- Transportation of Alcoholic Beverages	A fine of not more than \$50 1st offense; not more than \$150 2 <sup>nd</sup> or subsequent offense	<b>1966</b> , 317, § 2 ; 1967, 377 ; 1979, 15, § 9 ; 1984, 312, § 8 ; 1992, 110 ; 1994, 25, § 13	\$500 (\$387.84) No more than \$1,500 (\$1,163.53)
§34D. Notice to Patrons of Penalties for Driving Under the Influence.	A fine not more than \$50. Unlawfully removing a copy so posted shall be \$50 a fine	<b>1982</b> , 373, § 11	\$150 (\$130.79)
§ 61. Common Nuisance -- Unlicensed Clubs	A fine of not less than \$50 nor more than \$500 or by imprisonment for not less than 3 months nor more 1 year or both	Ex Sess <b>1933</b> , 376, § 2	\$1,000 (\$956.08) No more than \$10,000 (\$9,560.81)
§ 62. General Penalty.	A fine of not less than \$50 or more than \$500 or by imprisonment for not less than 1 month nor more than 1 year, or both.	Ex Sess <b>1933</b> , 376, § 2; <b>1935</b> , 440, § 39	\$1,000 (\$956.08) No more than \$10,000 (\$9,560.81)
§63A. Enforcement -- Penalty for Hindering	A fine of not less than \$50 nor more than \$200 or by imprisonment for not more than 2 months, or both. . . .	Ex Sess <b>1933</b> , 376, § 2; 1935, 440, § 41 ; 1943, 542, § 16	\$1,000 (\$956.08) No more than \$5,000 (\$3,824.33)

**CHART FINES WITH PROPOSED ADJUSTMENTS**

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<b>Ch. 138 Sections</b>	<b>Penalty or Fine</b>	<b>Date Last Amended</b>	<b>Proposed Fine</b>
§65. Enforcement -- Modification, Suspension, or Revocation License -- Surrender of License	A fine of not more than \$100 or by imprisonment for not more than 3 months, or both	Ex Sess <b>1933</b> , 376, § 2; <b>1943</b> , 542, § 17	\$2,500 (\$1,912.16)

# **EXHIBIT 15**

*Hearing Details*

# JOINT COMMITTEE ON CONSUMER PROTECTION AND PROFESSIONAL LICENSURE

## AGENDA

▼ Alcohol

2:00pm - 5:00pm

Bill	Bill Title	Sponsor
S.2140	An Act authorizing the city of Salem to grant 1 additional liquor license for the sale of wine and malt beverages not to be drunk on the premises	Joan B. Lovely
S.2141	An Act authorizing the city of Salem to convert a liquor license for the sale of wine and malt beverages not to be drunk on the premises to a liquor license for the sale of all alcoholic beverages not be drunk on the premises	Joan B. Lovely
S.2142	An Act authorizing the city of Salem to grant 1 additional liquor license for the sale of wine and malt beverages to be drunk on the premises	Joan B. Lovely
S.2143	An Act authorizing the city of Salem to convert 2 seasonal liquor licenses to annual licenses for the sale of all alcoholic beverages to be drunk on the premises	Joan B. Lovely
H.183	An Act relative to craft brewers	Alice Hanlon Peisch
H.2823	An Act to promote economic development and market access for emerging businesses	John J. Mahoney
S.136	An Act restoring contract rights to craft brewers	Barbara A. L'Italien
H.2822	An Act further regulating a supplier's refusal to sell brand items	John J. Mahoney
H.3547	An Act relative to the regulation of alcohol pricing	Joseph W. McGonagle, Jr.
H.176	An Act returning liquor license control to municipalities	Joseph D. McKenna
H.189	An Act providing municipal control of liquor licenses	Denise Provost
H.1977	An Act relative to the sale of liquor licenses	Mark J. Cusack
S.117	An Act providing municipal control of liquor licenses	James B. Eldridge
H.24	An Act relative to civil violations	Office of the State Treasurer
H.25	An Act relative to enhancing Alcoholic Beverages Control Commission background checks	Office of the State Treasurer
H.141	An Act further regulating storage of alcoholic beverages	Tackey Chan
H.173	An Act promoting opportunity in the hospitality industry	Kevin J. Kuros
H.194	An Act relative to inducements in the purchase and sale of alcoholic beverages	Jeffrey N. Roy
H.202	An Act relative to farmer-wineries	William M. Straus
H.204	An Act modifying the expiration of licenses to sell alcoholic liquors	Aaron Vega
H.1987	An Act relative to fines for license violations	Aaron Michlewitz
H.1988	An Act relative to a model carrier reporting requirement	Michael J. Moran
H.2816	An Act relative to alcoholic beverage manufacturer pouring licenses	Kimberly N. Ferguson
H.2829	An Act relative to the sale of alcoholic beverages	Joseph F. Wagner
S.141	An Act relative to the sale of alcoholic beverages	Michael O. Moore
H.3468	An Act relative to complimentary drinking water at establishments serving alcohol	Paul McMurtry
H.3546	An Act relative to the sale and consumption of wine, beer, and malt liquor on the premises of certain establishments	Randy Hunt
H.3694	An Act relative to municipal millennials	Daniel Cahill
H.3891	An Act relative to shipping of alcohol	John J. Lawn, Jr.
S.110	An Act regulating the granting of temporary licenses for the sale of wine, beer, and malt liquor at auctions for nonprofit charitable corporations	Viriato M. deMacedo
S.114	An Act authorizing the issuance of temporary licenses for the sale and auction of wines and malt beverages by nonprofit charitable corporations	Eileen M. Donoghue
S.2095	An Act relative to donations for municipal events	Jennifer L. Flanagan
S.111	An Act providing immunity for individuals under age 21 seeking medical assistance for an alcohol-related overdose	Eileen M. Donoghue
S.138	An Act relative to the regulation of alcohol pricing	Joan B. Lovely

<b>Bill</b>	<b>Bill Title</b>	<b>Sponsor</b>
S.2153	An Act further regulating temporary inventory adjustments of malt beverages	Michael D. Brady