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ALCOHOLIC BEVERAGES CONTROL COMMISSION

ANNUAL REPORT

Every day, the Alcoholic Beverages Control Commission helps safeguard the people of Massachusetts against a wide variety of potential threats that can arise from the beverage alcohol industry, 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. For this performance level, the ABCC has repeatedly received national awards and recognition for innovation and effectiveness.

In fiscal year 2012, the Commission generated over \$3.8 million in revenue for the Commonwealth. The ABCC also assisted the Department of Unemployment Assistance, the Department of Industrial Accidents, and the Department of Revenue in collecting \$8.4 million dollars in back tax payments and penalties. These results were achieved with an annual budget of less than \$2 million, 21 team members, 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 action of the Alcoholic Beverages Control Commission and of the conduct and condition of traffic in alcoholic beverages during **the fiscal year** ending June 30, 2012. Below please find a statement of the Income received from 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** 2011.

Financial Statement:

Summary of Income Received from Fees for Licenses and Permits Issued by the Commission
under Chapter 138 of the General Laws

Manufacturers' License Fees	§19, all alcohol	\$34,508.00
	§19, wine and malt beverages	\$6,500.00
	§19E, distilleries	
	§19C, breweries	
	§19B, wineries	
	§19D, pub brewery	
	§19F, winery shipment	
Wholesalers' and Importers' License Fees	§18, all alcoholic beverages	\$928,700.00
	§18, wine and malt beverages	
	§18, sacramental wines	
Retail Alcohol Application Fees	§12, on-premises	\$437,600.00
	§15, off -premises	
	Additional Package Store	\$20,000.00
Agents,' Brokers' or Solicitors License Fees	§18A	\$334,650.00
Railroad License Fees	§13, railroad master	
	§13, railroad cars	\$5,950.00
	§22, railroad cargo	
Airplane License Fees	§13, airline master	\$33,650.00
	§13, airline flights	
	§22, airline cargo	
Ship License Fees	§13, ship master	\$61,800.00
	§13, ship chandler	\$2,000.00
	§22, ship cargo	
Commercial License Alcohol Fees	§76	\$1,000.00
Special Permit License Fees	§22A, import household effects/gifts charity wine	\$31,520.15
	§22A, license inventory liquidation	
	§22A Consumer Research Permits	
Storage Permit Fees	§20, bonded	\$48,500.00
	§20A, public	
	§20, storage	
Transportation Permit Fees	§22, transportation and delivery	\$202,700.00
	§22, express company permits	\$188,341.92
Salesman Permit Fees	§19A	\$694,300.00
Certificates of Compliance Fees	§18B	\$604,522.00
Fine in Lieu of Suspension Fees		\$139,662.32
Miscellaneous Income		\$9,016.14
Total Receipts		\$3,784,920.53

This is a represents a 6% increase from fiscal year 2011.

STATEMENT OF APPROPRIATIONS AND EXPENDITURES

General Appropriation for fiscal year 2012 \$1,993,336.00

Additional Income to the Commonwealth: As stated previously, in fiscal year 2012, with the Commission's assistance, the Departments of Unemployment Assistance (DUA), and Revenue (DOR), collected taxes from delinquent licensees in the amount of \$8.4 million dollars from Massachusetts alcoholic beverages licensees. This represents a 5% increase over fiscal year 2011.

Alcoholic Beverages Licenses & Permits Issued For Calendar Year 2011:

Type	# Issued	Category
Manufacturers' License	3	§19, all alcohol
	3	§19, wine and malt beverages
	6	§19E, distilleries
	29	§19C, breweries
	50	§19B, wineries
	15	§19D, pub brewery
Wholesalers' and Importers' License	54	§19F, winery shipment
	72	§18, all alcoholic beverages
Retail Alcohol License	63	§18, wine and malt beverages
	4	§18, sacramental wines
	8530	§12, on-premises
Agents,' Brokers' or Solicitors	2759	§15, off -premises
	4	Additional Package Store
Railroad License	93	§18A
Airplane License	3	§13, railroad master
	87	§13, railroad cars
	1	§22, railroad cargo
Ship License	107	§13, airline master
	2	§13, airline flights
	0	§22, airline cargo
Commercial License Alcohol	107	§13, ship master
	2	§13, ship chandler
	0	§22, ship cargo
Special Permit License	2	§76
	169	§22A, import household
	71	, charity wine
	4	§22A, license inventory
Storage Permit	16	§22A Consumer Research
	0	§20, bonded
	19	§20A, public
Transportation Permit	11	§20, storage
	1139	§22, transportation and delivery
Salesman Permit	3470	§22, express company permits
	1667	§19A
Certificates of Compliance	2192	§18B

In calendar year 2011, the Commission issued 20,754 licenses for alcoholic beverages.

Commission Hearings:

The ABCC conducts hearings relative to charges filed by Commission Investigators, license applications, licensees that are delinquent in taxes due DOR, DUA or lottery proceeds, industry level franchise cases and also provides the first level of administrative review for licensees aggrieved by a decision of the local licensing authorities (established by each city and town). The Commission conducted 448 hearings in fiscal year 2012. Below are the hearing types.

Hearing Type

Violation	288
Informational (license applications)	64
Appeals	33
Tax /Lottery	56
Public Hearing	3
25E	4

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

The Investigators examined 2,494 license applications for both retail and state or “industry level” licenses.

Enforcement Actions

Below is a summary of the fiscal year 2012 enforcement actions.

Violations

The Investigation and Enforcement Division conducted enforcement operations in approximately 200 municipalities throughout the Commonwealth. Investigators observed approximately **1039 violations** of the Liquor Control Act, for which over **338 reports** were submitted to the Commission for hearing. These violations ranged from underage drinking, sales of alcohol to intoxicated individuals, illegal gambling, illegal alcoholic beverages, illegal narcotics activity and illegal ownership interests at licensed premises.

In addition, the Investigation and Enforcement Division conducted a series of special operations:

- Minimum Purchase Age Compliance Checks

The objective of these 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 Fiscal Year 2012, the agency conducted Compliance Checks, in **202 municipalities** across the Commonwealth. The Investigators conducted operations in **1902 licensed establishments**, of which **73 failed (4%)**. This represents an outstanding **success rate of 96%**, and puts *Massachusetts well above of the national average* success

rate of 84%. In 2008, the Commission strategically increased compliance check enforcement activity. Since its inception, this program has resulted in a 50% decrease in the licensee compliance check failure rate and a consistent average success rate of 94% over the past four years.

- Complaints

The Enforcement Division receives complaints from the general public, local and state police, federal agencies and various public interest groups. These complaints range from underage drinking, sales of alcohol to intoxicated individuals, illegal gambling activity, illegal alcoholic beverages, illegal ownership interests at licensed premises and illegal narcotics activity. In fiscal year 2012, the Enforcement Division investigated 585 complaints filed with the Commission.

- Enhanced Liquor Enforcement Programs

The Commission recognizes that 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.

- 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.

- Cooperative Enforcement with State and Local Law Enforcement Agencies

The Investigation and Enforcement Division works in conjunction with local and state police departments in order to obtain optimal enforcement coverage. Most often, these efforts are generated from requests for assistance from local police chiefs who have problematic licensees in their communities or local conflicts of interest that are mitigated and avoided through ABCC cooperation. Further, when a complaint is received at the ABCC, investigators contact local police departments to conduct cooperative enforcement operations when feasible. This cooperative enforcement was particularly successful in the cities of Lawrence and Springfield during fiscal year 2012.

In Lawrence, the Enforcement Division responded to requests for assistance from the Lawrence Police Department and worked in conjunction with the Lawrence Police, Massachusetts State Police and the Essex County Sheriff's office to address the violence and public safety threat associated with several nightclubs. Over a six-week period of intensive enforcement during August and September of 2011, the Enforcement Division charged 39 bars with 118 counts of violating the Liquor Control Act. This created a deterrent effect for licensees who were permitting illegalities in their licensed premises.

The Division was subsequently presented with the National Liquor Law Enforcement Association Meritorious Service Award for enforcement efforts in Lawrence, Massachusetts.

In Springfield, the Enforcement Division responded to requests for assistance from the State Police Community Action Team and worked in conjunction with the State Police and Hampden County District Attorney's Office to address the violence associated with several nightclubs. Following several months of intensive enforcement at these bars, the Enforcement Division charged 9 bars with 21 counts of violation of the Liquor Control Act. Additionally, the Enforcement Division continued a presence to maintain public safety and deter illegal activity.

- Last Drink Enforcement

In fiscal year 2012, there were approximately **1474 Place of Last Drink (PLD) reports** filed with the Commission. Pursuant to Massachusetts General Laws Chapter 90 §24J, "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 order to optimize resources, the Enforcement Division utilized this data to identify the bars that are repeat offenders or have the highest number of 24J reports and thus pose the highest risk to public safety. In addition to this data, investigators respond to requests for assistance from municipal police departments and also focus on bars known to be problematic relative to the over-serving of alcohol to patrons. The Enforcement Division then conducts undercover operations to determine if there is a Sale to an Intoxicated Person (SIP); if there is, they then charge the bar accordingly.

Enforcement Division data indicates that this enforcement technique results in a dramatic reduction (as high as 95%) in the number of OUI's originating from the bars that are subject to this intensive liquor enforcement and charged with violating Massachusetts General Laws Chapter 138 §69. In May of 2012 this impaired driving prevention technique was presented to the National Transportation Safety Board. In November of 2012, the NTSB recommended to law enforcement agencies nationwide that this practice be implemented on a national level.

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

The Alcoholic Beverages Control Commission conducted regional outreach training seminars for all Local Licensing Authorities located in Berkshire, Franklin, Hampshire, Hampden, Worcester, Plymouth, Bristol, Barnstable, Duke, and Nantucket, Norfolk, Suffolk, Middlesex and Essex Counties. We educated the Local Licensing Authorities on the ABCC interactive website, special one day licenses and permits, the application process and renewals and presentations from the Division of Industrial Accidents and the

Department of Unemployment Assistance. In total, we serviced 101 municipalities through our outreach efforts.

- Investigation and Enforcement Division Seminars

In calendar year 2012, the Investigation and Enforcement Division worked in a concerted effort with Massachusetts police academies and local 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 local police department knowledge of and involvement in liquor law enforcement. The Investigation and Enforcement Division also conducted Training Sessions for 157 Police Departments and 601 Officers.

Happy Hour Study:

The Commission was directed by the Legislature in July 2011 to study whether recently enacted gaming legislation will result in unfair competition to alcoholic beverages licensees, such that the Happy Hour Regulation should be amended. In fiscal year 2012, the Commission held two public hearings to solicit comment and testimony regarding whether the “Happy Hour Regulation” (204 CMR 4.00, et seq.) should be updated or amended in order to protect on-premises alcoholic beverages licensees from unfair competition with proposed gaming establishments. These hearings were held pursuant to Massachusetts General Laws Chapter 10, §70, §71 and §72, Chapter 138, §1 and §24, Chapter 30A, and §106 of Chapter 194 of the Acts of 2011.

The Commission published notice of these hearings in the local newspapers, on its website and on the Secretary of State’s Office website. Furthermore, the Commission sent notice to all of the Local Licensing Authorities, so that they could inform their licensees of the hearings. The hearings were held on Tuesday, May 15, 2012 at Bridgewater State University, Moakley Center in the Moakley Auditorium, and on Tuesday, June 19, 2012 at the Chelmsford Police Station. The Commission must file a report of any recommendations with the Governor, the State Treasurer and the clerks of the Senate and House of Representatives no later than June 30, 2013. However, the Commission is endeavoring to complete this report and file it by January 31, 2013.

Legislative Changes:

During calendar year 2011, 17 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 each of these bills. Each of these bills falls into one of four categories: a) excess quota licenses; b) conversion of seasonal licenses to annual licenses; c) ballot question to change community from “dry” to “wet”; and, 4) amendments to the language of the Liquor Control Act, Chapter 138 of the General Laws. In addition, the law was amended to prohibit specifically the use of electronic benefit cards/direct cash assistance to purchase alcoholic beverages (Chapter 84 of the Acts of 2011.)

The seventeen enacted Bills addressed one of these four categories as follows:

- A. Eleven Bills¹ created excess quota licenses in ten different communities² through the communities’ exercise of their right to “home-rule” as it exists under the Massachusetts Declaration of Rights;

¹ Chapters 37, 49, 51, 65, 101, 145, 154, 165, 202, 203, and 215.

- B. Two Bills³ in two different communities⁴ authorized the conversion of seasonal licenses to annual licenses that would exist above the population-based quota;
- C. One Bill⁵ in one community⁶ authorized a ballot question to consider changing the status of the community from “dry” to “wet”;
- D. Two Bills⁷ amended the current law in one different provisions of the Liquor Control Act:
 - (a) the limit on the aggregate number of licenses able to be held to sell alcoholic beverages to be consumed off the premises where sold was increased from three to five as of January 1, 2012, from five to seven as of January 1, 2016, and from seven to nine as of January 1, 2020⁸; and
 - (b) the prohibition against sales on Monday, December 26, 2011 was repealed.⁹ (The prohibition against sales on the Monday following Christmas Day, when Christmas Day falls on a Sunday was re-enacted for years after 2011. Thus, further legislative action is required for these subsequent years. (It appears this issue will not be presented until calendar year 2016).

Commission Initiatives:

Streamlined Licensing Process

Since 2009, the ABCC has focused on resolving legacy issues and rebuilding the organization from the ground up. Some of the major challenges the agency has faced during this time have been extremely limited resources, antiquated technology, and archaic processes. Despite these challenges, the agency has concentrated on modernizing and overhauling its operations to create internal and external efficiencies for the application process, tightening internal controls, and creating greater transparency for the public.

At the beginning of 2010, a four-part strategic plan was enacted to achieve these objectives. The first goal to overhaul the website was met in August of 2010. This effort has resulted in significantly enhanced accessibility for licensees, applicants, and all Massachusetts residents.

The second objective was to update all of its forms, which had not been revised since the mid-1990’s. The goal was to streamline the licensing process, by creating consistency in language, information and appearance throughout the forms, clarifying information sought, and closing existing loopholes from an investigative perspective. This goal was met simultaneously with the launch of the new website. Applications may now be obtained and completed online.

The third and fourth facets of the strategic plan were modernizing the internal licensing and accounting operations. Previously, all retail licensing transactions came directly to the Commission. The licensing department manually completed deposit slips for all transactions, maintained a spreadsheet for all the deposits, and delivered the checks to the bank. The accounting information was then sent to an individual in the Treasury to input into the Commonwealth’s accounting system. Now, by utilizing a lockbox for all licensing transactions, the money is directly deposited with the bank. The forms are then scanned by the bank and returned to the agency via courier the next day. Thereafter, the bank transmits a file with the

2 Easthampton, Fairhaven, Hanover, Marlborough, Millbury, Montague, Northborough, Norwood, Westford and Woburn.

3 Chapters 123 and 149.

4 Salem and Westfield.

5 Chapter 135

6 West Tisbury

7 Chapters 193 and 211.

8 Amendment to General Laws Chapter 138, §15.

9 Amendment to General Laws Chapter 138, §33.

Commission's accounting information directly to the Comptroller's Office, which is uploaded directly into the Commonwealth's accounting system.

In a related endeavor, the Commission streamlined the state license renewal process by assigning license numbers to a specific class of state licensees, which heretofore had changed every year. The Commission also streamlined the state license renewal process by creating new forms specifically for renewal. This resulted in a dramatic reduction in the length of time it takes to renew and process a state license, thus creating internal and external efficiencies for the agency.

The Commission also created a case management system for its administrative hearings, investigations, and license applications. We created an investigators' database to monitor ongoing investigations and violations. This database links directly to the licensing database, which enables the investigators to utilize licensee information maintained by the agency more efficiently. Additionally, the administrative database tracks all Commission hearings, decisions and correspondence and provides a historical view of each licensee's violation record. Most significantly is the license tracking system that provides all agency personnel instantaneous access to license application statuses.

- Criminal Offender Record Information

The Commission implemented an enhanced system of criminal background checks in Massachusetts consistent with its statutory obligation under the applicable statutes as specified in the Liquor Control Act. The Commission continues its efforts to obtain access to national criminal conviction data.

- E-licensing System

In calendar year 2011, the agency applied for capital funds from the Commonwealth's Information Technology Division ("ITD") Office of Capital Asset Management. Through ITD and a joint procurement, the Commission along with the Department of Professional Licensure, chose Accela Automation software to meet the goals for improved customer service, transparency of information for citizens, streamlined administrative processes, and standardization of technology. The agencies are currently engaged in procuring system integration software to implement the e-licensing system. The e-licensing system will provide a single gateway for businesses and individuals to apply for and manage their alcoholic-beverage licenses.

The new state-of-the-art electronic licensing system will allow the Commission to continue in its mission to provide better service to the local cities/towns, to our licensees and applicants, and to the general public. Individuals will have real time, online access to all currently issued and pending license information and owner(s) of record. In addition, through this access, individuals may register complaints if they so desire, and check the status of disciplinary proceedings 24 hours a day, seven days a week.

The new system will feature:

- Online License Applications
- Online Renewals
- Public Access Portals
- Real-time Status of License Applications
- Complaint Submission
- Instant Public Record Requests
- Real-time Quota Information for Available Licenses
- Real-time Status of Hearing & Decision Information

- Mobile Technology
- GIS and Map Viewers
- Online applications that will transmit directly to the local cities/towns and to ABCC electronically to save data entry time
- The local cities/towns, licensees, and the public will be able to look up information online
- Public access portal will include instant record requests, complaint submission, available license quota information, hearing information, decision results.
- Better interagency data sharing
- Ability to achieve true transparency, and total integration with partner agencies (local licensing boards, Department of Revenue, the Division of Unemployment Assistance, state and local police, and the Office of the Attorney General.)
- Ability to establish new metrics for application processing, investigative report filing, appeal and hearing processes
- Reduction in FOIA requests as more data is available online

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 and enforcement 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

Kim S. Gainsboro, Esq., Chairman