

**ALCOHOLIC BEVERAGES CONTROL COMMISSION
FREQUENTLY ASKED QUESTIONS
FALL 2022 UPDATE**

The Alcoholic Beverages Control Commission (“ABCC”) is charged with the supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting and selling alcoholic beverages. The ABCC issues the following Frequently Asked Questions to provide guidance to Local Licensing Authorities (“LLAs”), members of the industry, and the public at large, on some of the questions most often asked of the ABCC. Nothing in this document should be considered legal advice but instead should be used as a tool to assist individuals in navigating the sometimes-complicated alcohol laws of the Commonwealth of Massachusetts.

This document is divided into two sections: (1) questions related to the retail alcoholic beverages industry; and (2) questions related to the state alcoholic beverages industry.

Please note that anywhere a statute is cited by section number (“§”), it is referring to the Massachusetts Liquor Control Act, M.G.L. c. 138, unless otherwise noted.

RETAIL ALCOHOL LICENSES

THE LICENSING PROCESS

1. When does an individual need an alcohol license?

Section 2 prohibits sale, storage, transportation, importing, exporting, manufacturing with the intent to sell, keeping for sale and exposing for sale without a license. If any individual conducts such activities without a license they are in violation of Chapter 138 and may be charged criminally.

Please be aware that under § 41, the delivery of alcoholic beverages in or from any place that is not a private dwelling house is presumed to be a sale.

2. Who issues restaurant/bar licenses and package store licenses?

The LLA issues retail licenses for both on-premises consumption under § 12 (restaurants, hotels, clubs, taverns, war veterans’ clubs, continuing care retirement communities, and general-on-premises), §§ 19B(n), 19C(n) & 19E(o) (farmer-series pouring permits), and off-premises consumption under § 15 (package stores, including grocery stores and convenience stores).

The licensing process for on-premises licenses and § 15 package store licenses involves three steps:

- 1) the LLA grants a retail license;
- 2) the ABCC approves the granting of such a license;
- 3) the LLA issues the license upon payment of the licensing fee.

3. How many classifications of retail licenses exist?

LLAs grant three classifications of retail licenses:

- 1) Licenses under §§ 12, 19B(n), 19C(n) & 19E(o) (On-Premises), commonly referred to as a "Pouring License" (e.g. restaurants, hotels, clubs, taverns, war veterans' clubs, continuing care retirement communities, general-on-premises, and farmer-series pouring permits);
- 2) Licenses under § 14 (Special), commonly referred to as "One-Day Licenses"; and
- 3) Licenses under § 15 (Off-Premises) commonly referred to as a "Package Store License" which can be used in various types of businesses (e.g. package stores, supermarkets and convenience stores).

4. What are the four categories of retail liquor licenses?

Liquor licenses fall into one of four categories:

- 1) All alcoholic beverages (wine, malt beverages, and distilled spirits)
- 2) Wine only
- 3) Malt beverages only
- 4) Wine and malt beverages

In certain cities and towns that vote to accept a specific state law, businesses that hold a wine and malt beverages license under § 12 as well as a common victualler's license may be given a permit to sell also cordials and liqueurs. This cordials and liqueurs permit must be granted by the LLA with the approval of the ABCC.

5. How many different types of pouring licenses are there?

Eight different kinds of pouring licenses exist. They are: Hotel, Restaurant, Tavern, Club, General-On-Premises, Continuing Care Retirement Community, War Veterans' Club, and Farmer-Series establishments.

6. Are there any qualifications for being granted a retail liquor license?

Yes. These qualifications are set by the legislature. The type and number of qualifications for a liquor license depend on who the party is that is applying for the liquor license (i.e. whether the party is an individual, a partnership, a limited liability company or a corporation) and what type of liquor license is being sought.

a. "Pouring" Licenses under Section 12

Generally, an individual applying for a "pouring license" under § 12 must be a citizen of the United States and 21 years of age or older. A partnership may hold such a liquor license where each partner is a citizen of the United States and 21 years of age or older.

A corporation may hold such a liquor license provided that a majority of the directors are not aliens and that the corporate licensee appoints a license manager who is an individual, 21 years of age or older, who is a citizen of the United States and has, under § 26, "vested in him [or her] by properly authorized and executed written delegation as full authority and control of the premises, described in the license of such corporation, and the conduct of all business therein relative to alcoholic beverages as the [corporate] licensee itself could in any way have and exercise if it were a natural person." This license manager must be approved by both the LLA and ABCC with respect to his or her character.

A limited liability company (LLC) may also hold such a liquor license. The ABCC applies to LLCs the statutory requirements regarding citizenship and residency for corporations. So, the statutory standards for directors of a corporation are applied to the analogous position within an LLC. The ABCC analogizes the directors of a corporation to managers of a LLC. Therefore, a LLC may hold such a liquor license provided that a majority of the LLC managers are not aliens. The ABCC analogizes the stockholders of a corporation to members of a LLC. There are no statutory requirements regarding citizenship and residency for shareholders of a corporation and likewise there are no statutory requirements regarding citizenship and residency for members of a LLC. An applicant who is a LLC must appoint a license manager as specified in § 26.

No § 12 "pouring" license shall be issued to any applicant who has been convicted of a violation of a federal or state narcotic drugs law. There is no time limit after which this disqualification ends.

b. "Package Store" License under Section 15

Generally an individual applying for a "package goods store" or "package store" license (i.e. a license for the sale at retail of alcoholic beverages not to be drunk on the premises where sold) must be both a citizen and a resident of the Commonwealth of Massachusetts and 21 years of age or older. A partnership may hold such a liquor license where each and every partner is both a citizen and a resident of the Commonwealth of Massachusetts and 21 years of age or older.

A corporation may hold such a liquor license provided that the corporation is organized under the laws of the Commonwealth of Massachusetts, that all directors of the corporation are citizens of the United States and that a majority of the directors of the corporation are residents of the Commonwealth of Massachusetts. A corporation who holds such a license must appoint a license manager who is an individual, 21 years of age

or older, who is a citizen of the United States and has, under § 26, "vested in him [or her] by properly authorized and executed written delegation as full authority and control of the premises, described in the license of such corporation, and the conduct of all business therein relative to alcoholic beverages as the [corporation] licensee itself could in any way have and experience if it were a natural person." This license manager must be approved by both the ABCC and LLA with respect to his or her character.

A LLC may hold such a liquor license provided that the LLC is organized under the laws of the Commonwealth of Massachusetts. The ABCC applies to LLCs the statutory requirements regarding citizenship and residency for corporations. So, the statutory standards for directors of a corporation are applied to the analogous position within a LLC. The ABCC analogizes the directors of a corporation to managers of a LLC. Therefore, a LLC may hold such a liquor license provided that all the managers of the LLC are citizens and a majority of the managers are residents of Massachusetts. The ABCC analogizes the stockholders of a corporation to members of a LLC. There are no statutory requirements regarding citizenship and residency for shareholders of a corporation and likewise there are no statutory requirements regarding citizenship and residency for members of a LLC. An applicant who is a LLC must appoint a license manager as specified in § 26.

No license shall be issued to any applicant who has been convicted of a felony.

Finally, "no firm, corporation, association or other combination of persons, directly or indirectly, or through any agent, employee, stockholder, officer or other person or any subsidiary whatsoever shall be granted, in the aggregate, more than 9 such licenses in the commonwealth, or be granted more than one such license in a town or two in a city."

c. "Special License" under Section 14

A "Special License" to pour liquor at an indoor or outdoor activity or enterprise may be issued to the responsible manager of the indoor or outdoor activity or enterprise. Such a license is issued by the LLA in the city or town in which the activity or enterprise will be conducted. This type of license may be issued only to a natural person, although this natural person may be a person acting on behalf of a corporation, partnership, or other entity. No person may be granted such licenses permitting sales on an aggregate of more than 30 days in any calendar year. No special license, with only very limited exceptions (i.e. a special license for a dining hall maintained by an incorporated educational institution authorized to grant degrees) shall permit sales on more than 30 days. A special license for a municipal golf course may permit sales on an aggregate of not more than 245 days in any calendar year, in or from any municipally owned building that is operated in conjunction with an 18-hole regulation golf course.

i. Special License under Section 14 for All Alcoholic Beverages

Special licenses for the sale of all alcoholic beverages, wine, or malt beverages, or any of these beverages, may be issued by the local licensing authorities only to a person at least 21 years of age acting on behalf of a nonprofit organization. No other person may be issued a special license to sell all alcoholic beverages.

ii. Special License under Section 14 for Wine and/or Malt Beverages

Special licenses for the sale of wine, malt beverages, or both, may be issued by the local licensing authorities to any person. This type of special license may be issued to a person at least 21 years of age who is conducting an activity or enterprise for profit.

Please be aware that no special license under Section 14 shall be granted to any person while his or her application for an annual and or a seasonal license under Section 12 is pending before the LLA or before the ABCC.

7. Are retail license applicants barred from holding a liquor license if they have been convicted of a crime?

Yes. A § 12 “pouring license” may not be issued to a person “who has been convicted of a violation of a federal or state narcotic drug law.”

A § 15 off-premises “package store” license may not be issued “to any applicant who has been convicted of a felony.”

8. What is the quota system and on what is it based?

Section 17 places a restriction commonly referred to as a “quota” on the number of § 12 pouring licenses and § 15 package store licenses a city or town can issue. The quota is based on the municipality's population enumerated in the most recent federal census.

In calendar year 2020, the most recent federal census was taken. Each city and town was notified by the ABCC what the quota of licenses was as determined by this most recent census. Questions about this quota and any newly available licenses may be directed to either the ABCC or to the LLA in any city or town.

9. How far does an establishment selling alcoholic beverages have to be from a church or school?

No specified distance. However, under § 16C, premises located within a radius of 500 feet of a school or church shall not be licensed to sell alcoholic beverages unless the LLA determines in

writing and after a hearing that the premises are not detrimental to the educational and spiritual activities of that church or school, unless the premises are those of an innholder or unless the parts of the buildings are located ten or more floors above street level. The 500-foot distance under this § 16C is measured in a straight line from the nearest point of the church or school to the nearest point of the premises to be licensed, as outlined in ABCC regulation 204 CMR 2.11.

10. How long does a licensee have to appeal to the ABCC an adverse decision made by the LLA?

A licensee has five business days from receipt of the written decision to appeal to the ABCC a decision made by the LLA.

11. How long does a licensee have to appeal a decision made by the ABCC, and to whom does a licensee appeal?

A licensee has thirty (30) calendar days from receipt of the written decision of the ABCC to appeal the decision to the Superior Court.

12. What are the most common reasons for license applications being denied or returned without action?

The most common reasons for license applications being denied or returned without action are:

- 1) Incomplete application;
- 2) Taxes are owed to the State (Department of Revenue (the "DOR") and/or Division of Unemployment Assistance (the "DUA");
- 3) The investigator was unable to complete the report after numerous attempts to get information from the applicant; and/or
- 4) The city/town quota is full.

13. Can a retailer sell alcoholic beverages by auction?

A § 15 package store may sell wine, malt beverages, and distilled spirits by auction under § 14A only if the package store applies for and receives the proper license from the LLA with the prior approval of the ABCC.

These auctions must be held only at the location described on the auction license but may be licensed to be held at "premises which are either the principal place of business or headquarters of the applicant and which are legally zoned to allow such sales or which are the premises of a licensee under Section 12 or Section 15 of M.G.L. Chapter 138."

The law imposes a number of restrictions and controls on the auction license, one of which restricts the duration and number of auction licenses that may be issued to any package store. No auction license "shall be for a duration of more than ten consecutive calendar days and no holder of any such temporary license shall be granted more than two such temporary licenses in a calendar year."

14. Can a retailer use his/her license to secure a loan?

Yes, but only under certain conditions. Section 23 states that "any license granted under the provision of this chapter may be pledged for a loan provided approval of such a loan and pledge is given by the local licensing authority and the Commission [ABCC]."

15. What are the different kinds of liquor assets/property that can be pledged?

The law permits three kinds of liquor assets/property to be pledged. These are:

- 1) Licenses that authorize the sale of alcoholic beverages;
- 2) Corporate Stock in a corporation that has a beneficial interest in a license to sell alcoholic beverages; and
- 3) Alcoholic beverages themselves which a licensee is authorized to sell.

16. What is the deadline to submit my renewal?

Under § 16A, renewals for § 12 on-premises and § 15 off-premises must be filed within the month of November.

OPERATING THE BUSINESS

17. Do LLAs set the hours during which restaurants can serve alcoholic beverages on weekdays?

To a limit. Massachusetts State Law says that § 12 licensees cannot be barred from serving alcohol between 11:00 a.m.-11:00 p.m. LLAs may grant extended opening hours between 8:00 a.m. and 11:00 a.m. and extended closing hours between 11:00 p.m. and 2:00 a.m. In no event can sales be made between 2:00 a.m. and 8:00 a.m.

18. What are the Sunday hours that a § 15 package store can be open?

A § 15 Package Store/Supermarket/Convenience Store licensee chooses the hours of sale on a Sunday, so as long as the sales do not commence before 10:00 a.m. and conclude no later than 11 p.m., or 11:30 p.m. on a day before a legal holiday. .

19. What are the Sunday hours that a pouring license can be open?

A § 12 pouring license can open on a Sunday at 12:00 noon. The exception to this is if the local licensing authority accepts M.G.L. c. 138, § 33B, they may authorize a restaurant, hotel, club, or veterans club to open as early as 10:00 a.m.

20. If a restaurant occasionally runs out of a popular item on a busy night, can the manager go to a package store and buy a few bottles to temporarily meet his/her customer's demands?

No. All licensed retail establishments, including holders of Special Licenses (so-called "One Day" Licenses), must purchase their alcoholic beverages from a licensed Massachusetts wholesaler and/or manufacturer.

21. Can a retailer get a transportation permit to transfer product from one package store to another?

No. Alcohol ordered by a package store must stay on its licensed premises, even when the licensee owns more than one package store.

22. Can everyone bring their own beer, wine, or other alcoholic beverages into an establishment (so-called "BYOB")?

In most cases no, not if the establishment has a liquor license. If the establishment has a liquor license, then no one can carry onto the premises their own beer, wine or other alcoholic beverages for their own private consumption (so-called "BYOB" or "brown-bagging"). If the establishment does not have a liquor license, then one must check with the city/town in which the establishment is located to learn if there is any local law dealing with bringing one's own alcohol onto an establishment for personal consumption.

The only exception is a private club under § 12. A club may permit its members to bring on to the club's licensed premises wine lawfully purchased by them, to be consumed on the premises with a meal purchased at the club. If a club permits its members to bring wine on to the licensed premises, then several requirements must be followed:

- the member may only bring wine on to the premises, and not malt beverages, spirits and/or liqueurs;
- the member must purchase a meal at the club and consume the wine with that meal;
- at all times the club must control the handling, serving, and dispensing of the member's wine;
- unopened bottle of wine must be returned to the patron, who then must remove them from the premises at the conclusion of the meal, and any opened and unfinished bottles of wine must be recorked in accordance with 204 CMR 2.18 and M.G.L. c. 90, § 24I; and
- the club must charge a reasonable corkage fee of at least \$30.00 per bottle of wine that is opened.

23. Can "non-alcoholic beer" be served or sold to persons under twenty-one?

Maybe. The State Liquor Control Act, M.G.L. Chapter 138, regulates "alcoholic beverages" as that term is defined by law. The law defines "alcoholic beverages" to be "any liquid intended for human consumption as a beverage and containing one half of one percent or more of alcohol by

volume at sixty degrees Fahrenheit." Thus, if a product is composed or manufactured so that it contains 1/2% or more of alcohol by volume at sixty degrees Fahrenheit, it is an "alcoholic beverage" and subject to the Liquor Control Act. If a product is composed or manufactured so that it contains less than 1/2% of alcohol by volume at sixty degrees Fahrenheit, it is not an "alcoholic beverage" and is not subject to the Liquor Control Act.

A product that is not an "alcoholic beverage" may be subject to regulation by a city or town under its authority under M.G.L. Chapter 140. Therefore, one must also check the local laws of each city or town about "non-alcoholic beer."

24. Is a person dining alone in a restaurant able to order a pitcher of beer to go along with his/her meal?

No. If this order was taken and delivered, or, if such a request were honored, it would be a violation of the ABCC's regulation commonly called the "Happy Hour" regulation, 204 CMR 4.00. This regulation prohibits the sale or delivery of malt beverages or mixed drinks by the pitcher except to two or more persons at any one time. The Happy Hour regulations also prohibit the sale or delivery of more than two drinks to one person.

25. Is a person dining alone in restaurant able to order a bottle of wine to go along with his/her meal?

Yes. The exception to "The Happy Hour Regulations" allows one individual to purchase a bottle of wine with a meal. Otherwise, without a meal, a bottle of wine must be served only to two or more people. Should the person wish to take any remaining wine off of the § 12 licensee's premises, the licensee must comply with ABCC regulation 204 C.M.R. 2.18 regarding the resealing of partially consumed bottles of wine.

26. How old do you have to be to tend bar?

At least 18 years of age. Although § 34 prohibits the sale or delivery of alcoholic beverages to a person under 21 years of age, nothing in § 34 prohibits a licensee from employing a person 18 years old or older for the direct handling, selling, mixing or serving of alcohol or alcoholic beverages

27. What forms of identification are acceptable to prove that someone is 21 years of age or older, so that person may be served, delivered, or allowed to possess or purchase alcoholic beverages?

If a licensee is charged with permitting the service, delivery, or possession of alcoholic beverages by a person under 21 years of age, under current state law, a licensee has a defense only if the licensee can affirmatively prove that prior to permitting the service, delivery or possession of

alcoholic beverages by a person, the licensee requested, was shown, examined and reasonably relied on either:

- 1) A Massachusetts Driver's License;
- 2) A Massachusetts Liquor Identification Card;
- 3) A Massachusetts Identification Card;
- 4) A Passport Issued by the United States or a government that is officially recognized by the United States;
- 5) A Passport Card for a Passport issued by the United States; and
- 6) A Military Identification Card.

Reliance by a licensee on any other form of identification to determine proof of age does not give the licensee a defense.

Neither the state Liquor Control Act nor the regulations of the ABCC require identification to be checked as a condition to selling or delivering an alcoholic beverage to any person (except in the case of certain deliveries to consumers at their homes or offices). Each licensee is left to decide for itself what policy to establish on checking identification prior accepting orders for, selling and delivering alcoholic beverages.

Therefore, while a licensee may choose to rely upon any form of identification to obtain proof of age, only these specific six forms of identification provide a defense to a charge of service, delivery, or possession of alcoholic beverages by a person under 21 years of age.

28. If a patron is not driving, does it matter how many drinks s/he is served?

Yes. Massachusetts state law prohibits the service of alcoholic beverages to an intoxicated patron under § 69. It is still a violation to serve to an intoxicated person even if person is not driving.

29. Is spirit tasting allowed in Massachusetts?

Yes. These spirit tastings can only be held at premises licensed under § 15 ("package stores") or restaurants, hotels or function halls licensed under § 12. Each spirit tasting event must be conducted in full compliance with the conditions set by ch. 138.

Farmer-series licensees (wineries, breweries, and distilleries) may also offer free samples on their premises of their own brand(s) of alcohol.

30. Do restaurants, hotels, function halls and package stores need to meet certain requirements while conducting a wine tasting, malt beverages and spirit tastings?

Yes. Restaurants, hotels, and function halls holding wine, malt beverages and spirits tasting must provide food with the alcoholic beverages and they must not solicit orders for any off-premises consumption. The manager of the restaurant, hotel, or function hall is responsible for controlling

the dispensing of the alcoholic beverages and the size of each serving is limited to the following amounts:

- Malt beverages one (2) ounce serving
- Wine beverages one (1) ounce serving
- Spirits beverages one (1/4) ounce serving

Package stores may not charge for any wine, malt beverages or spirits tasting and they must also limit the above stated serving sizes. All alcoholic beverages tasted must also be available for sale on such premises.

Section 12 (on-premises) licensees must charge for the provision of samples for tasting and also must serve food in conjunction with it.

31. Can § 12 (on-premises) establishments with wine and malt licenses serve cordials and liqueurs?

Yes, with prior approval of the LLA and the ABCC. Section 12 allows cities and towns, which vote to accept the provisions of the law, to permit common victuallers licensed to sell wine and malt beverages under § 12 to also sell liqueurs and cordials, subject to approval of the LLA and the ABCC.

32. Can a § 15 “package store” licensee take orders from its customers and deliver the orders, containing alcoholic beverages, to the customers?

Yes. However, in order to transport the customers’ orders, the licensee will need to obtain a § 22 transportation permit from the ABCC to transport and deliver alcoholic beverages sold by the licensee directly to its customers. When delivering orders containing alcoholic beverages, each driver shall carry with him the vehicle permit or a certified copy of it.

CLUB LICENSES

33. Can “Club Licensees” serve non-members?

No. Clubs may serve alcoholic beverages only to members of the club. However, subject to regulations made by the LLAs, a guest of a member may be served an alcoholic beverage after s/he has been introduced by the member as a guest. Should the member at any time leave the premises, the bartender can no longer serve the guest and the guest must also vacate the premises.

34. May Club Licensees restrict, distinguish or discriminate among their membership regarding entering certain areas of the premises?

No. No club licensee, except a club that is distinctly private, may discriminate or make any distinction or restriction on account of race, color, religious creed, national origin, gender, sexual orientation, physical or mental disability or ancestry relative to the admission of any person to membership in the club, or to admission to the premises as a guest, or relative to the treatment of any member or guest at the club premises.

35. What determines whether a club is distinctly private?

The decision whether a club is distinctly private is based on, but not limited to, the following criteria:

- 1) The extent to which the club facilities, alcoholic beverages licenses or both are used for commercial purposes;
- 2) Club membership exceeding 200 persons;
- 3) The availability of regular meal and beverage services on the premises;
- 4) The degree to which the club receives payment for dues, fees, use of space, facilities, services, meals or beverages directly or indirectly from or on behalf of non-members for the trade or business or professional interests;
- 5) The frequency with which the premises, or part of it, are used for conferences and meetings sponsored by or on behalf of trade or business or professional enterprises;
- 6) The extent to which club facilities, like meal and beverage services, are utilized by non-members;
- 7) The degree to which persons are selected for membership in the club on the basis of trade, business or professional associations or achievement;
- 8) The number of partners, officers, directors or trustees of trade or business or professional enterprises who are members; and
- 9) The club's holding, by lease or otherwise, of any interest in real property owned by a governmental entity or municipality.

FINES, THE BOTTLE BILL AND OTHER MISCELLANEOUS INFORMATION

36. Is the ABCC required to accept from a licensee a fine as an offer in compromise in lieu of suspension?

No. The ABCC may accept an offer in compromise in lieu of suspension under § 23 from a licensee or certificate of compliance holder (an out-of-state supplier) if they petition the ABCC to accept this offer in compromise within twenty (20) calendar days following notice of a suspension of the license by the ABCC. The fine to be paid is calculated according to the formula set out in § 23: Fifty percent of the per diem gross profit multiplied by the number of license suspension days, with the gross profit to be determined as gross receipts on alcoholic beverage sales less the invoiced cost of goods sold per diem. In no event is the fine less than \$40.00 per day. Upon the acceptance of the fine in lieu form and payment by the ABCC, the licensee waives all rights to appeal to the Superior Court.

It is worth noting that LLAs are not authorized to accept "fines in lieu."

37. Can a bar, restaurant, or hotel offer a free drink?

No. A bar, restaurant or hotel cannot offer any free drinks. However, a bar, restaurant, or hotel can include a drink as part of a meal package under certain circumstances. The ABCC's "Happy Hour" Regulations and November 23, 2009, Advisory should be consulted for further information.

38. Can a bar, restaurant, or hotel increase the price for alcoholic beverages during the evenings when they have entertainment?

No. Alcoholic beverages must be sold to all persons at the same price for a calendar week. A § 12 on-premises licensee cannot change its prices -- up or down -- during the week.

39. Are containers for wine coolers redeemable under the Bottle Bill?

No. Although several attempts have been made to include containers for wine coolers under the provisions of the Bottle Bill, to date they are not required to be redeemed.

40. May a retailer require that bottles be washed before redeeming the five-cent deposit?

No. A retailer may refuse to accept beverage containers that are not in acceptable condition. The "acceptable condition" depends on the type of container:

- 1) A refillable glass container must be able to hold liquid, be able to be resealed, be in its original shape, not be chipped and not be cracked to be acceptable.
- 2) A non-refillable glass beverage container may be chipped, but may not have the bottom broken out or broken off to be acceptable.
- 3) Metal cans and plastic bottles must be easily identifiable and reasonably intact to be acceptable.

A retailer may refuse to accept a container which is not in a reasonably clean condition. All containers must be free of foreign materials, such as paper, sticks, and cigarettes. A retailer may refuse to accept a container that is not empty. State law provides a container is "not empty" if the container "holds a liquid in any significant amount." A retailer may refuse to accept a metal can which is substantially altered from its original shape.

41. May a retailer limit the number of returnable containers it will accept from a person?

Yes. A retailer may refuse to accept more than 120 containers in one 24-hour period from any one person; however, it may choose to accept more.

42. Can a licensee change a manager, stockholder, officer, director, the holder of an interest in the license or take on a new partner or investor at any time?

No. Any changes of a licensed manager, stockholder, officer, director, change in beneficial interest or the addition of a new partner or investor is not legal unless and until the new individual(s) is (are) approved by both the LLA and the ABCC.

43. When can I start selling and allowing my customers to drink alcoholic beverages on my newly added patio area?

No sales or consumption of any alcoholic beverages can be allowed by the license holder in the patio area unless and until the changes to their premises are approved by both the LLA and the ABCC, and a new amended license (with the approved changes added to the description of premises) is issued.

44. Can a one-day license or BYOB be issued or allowed at the premises covered by seasonal license during the period that the seasonal license is dormant?

The LLA sets the actual term that a seasonal licensee can operate. The LLA can permit a seasonal licensee to operate as late as January 15th (e.g. The seasonal licensee opens on April 1, 2018 and can operate as late as January 15, 2019). However, no one-day license or BYOB can be issued or allowed on that seasonal license premises during the dormant period of January 16th- March 31st.

45. If my approved licensed manager resigns or quits is my liquor license automatically suspended?

No. While a license holder must always have an approved license manager in control of the alcohol license operations, the absence of the approved license manager does not automatically suspend or otherwise affect the license status in any way. The licensee is required to apply to the LLA and the ABCC for a change of manager immediately.

46. How can I view the public records of a licensee?

The ABCC complies with the Massachusetts Secretary of the Commonwealth's rules and regulations regarding public records requests and inspections. Generally, a request should be made in writing to the ABCC, which should include a detailed description of the information you are seeking. The ABCC then will provide a response within ten (10) days including the cost, if any, for production. Please note that documents not subject to the public records laws will be redacted.

47. I am a creditor and a licensee owes money to me. I have learned that the licensee has applied to transfer his license. Can the ABCC stop the transfer until he pays me?

No. To stop the transfer of a license based on an outstanding debt to a private individual or business, the individual or business must obtain a court order of an injunction prohibiting the licensee from transferring the license. Then, only a judge may lift the injunction and permit the transfer.

Please be aware that while a party may obtain an attachment under Mass. R. Civ. P. 4.1 against a license issued by the LLA, an attachment does not prohibit the sale or transfer of a license, but instead only encumbers it. Therefore, the ABCC may not prevent the sale or transfer of a license on the basis of an attachment alone. Only a court order and/or injunction prohibiting the sale or transfer of the license is sufficient to stop a sale or transfer of a license.

48. Can a Local Licensing Authority restrict a § 15 Package Store from selling “nips,” single bottles of beer, etc.?

Yes, a LLA may restrict its granting of § 15 package store licenses to prohibiting the sale of “nips” and single bottles of beer.

STATE ALCOHOL LICENSES

General Questions

49. Does the ABCC issue licenses directly to any segments of the alcoholic beverages industry?

Yes. The ABCC is the sole issuing authority for all licenses other than retail licenses and certain “one day” licenses. This includes licensing manufacturers (including wineries, breweries, and distilleries), wholesalers/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, and airlines. It also issues permits to salespersons employed by wholesalers and importers, brokers, farmer-wineries, farmer distillers and farmer-breweries.

Farmer-Series Licenses

50. Can a farmer-winery sell their wines at a fair or farmers’ market?

Under § 15F, an LLA may grant a license to a farmer-winery, licensed under § 19B or licensed in another state, to sell wine for consumption at an indoor or outdoor agricultural event as long as the requirements listed under § 15F are met. A licensee under this section may also offer samples of wine to prospective customers at the agricultural event without charge.

First, the Massachusetts Department of Agricultural Resources must classify the event as an “agricultural event.” Then, the LLA will determine whether an application for a license is for an “agricultural event.” The LLA will consider several factors in determining whether an event qualifies as an “agricultural event.” Agricultural events generally include farmers’ markets and agricultural fairs. This type of license is issued at the sole discretion of the LLA and does not require the approval of the ABCC, but cannot overlap any area or premises that is already covered by an existing license.

51. What is the difference between a Pub Brewery and Farmer Brewery?

A § 19C farmer-brewery license permits a licensee to produce malt beverages and then sell them (a) at wholesale to certain other licensees; (b) at wholesale to any person in any state or foreign country; and (c) at retail by the bottle to consumers for consumption off the brewery premises.

A § 19D pub-brewery license, on the other hand, authorizes a licensee to produce malt beverages and sell them at retail to consumers for consumption on the brewery premises.

52. Can I have my brewery, distillery, and winery on the same premises?

If you would like to have a farmer-brewery, a farmer-distillery, and a farmer-winery at the same location, each business must be on separate and distinct parts of the property. In other words, each license would list a different portion of the property as being only for a brewery, distillery, or winery. The premises for each license cannot overlap. However, a licensee that owns more than one type of farmer-series license can apply for a § 19H pouring permit that will permit any and all alcohol produced by it (or for it and sold under its brand name) to be sold for on-premises consumption on any of its farmer-series premises and vineyards/farmlands, so long as the licensee’s vineyards/farmlands are operated as appurtenant and contiguous to each other.

53. I would like to produce cider. What type of license should I apply for?

Cider is considered wine according to §§ 1 & 19B, so you would apply for a farmer winery license.

54. What permit do I need to sell my beer/spirits at a Farmer’s Market?

Malt beverages and spirits may not be sold at farmers’ markets. Under § 15F, only wine produced by farmer-wineries may be sold at farmers’ markets. A special license must be obtained for a farmer-winery to sell wines at farmers’ markets, and the application can be found on the ABCC website.

55. What is the difference between a Farmer Series license (Brewery/Winery/Distillery) and a Manufacturer's license?

A § 19C farmer-brewery license is a license authorizing producing malt beverages 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 to sell at wholesale to licensed manufacturers, wholesalers, farmer-brewers, and licensed retailers in Massachusetts, at wholesale to other buyers specified in state law, and at retail by the bottle for consumption off the premises.

A § 19B farmer-winery license is a license authorizing producing, rectifying, blending or fortifying wine from fruits, flowers, herbs or vegetables and sell to licensed wholesalers in Massachusetts, to persons in a state or territory in which the importation and sale of wine is not prohibited by law at retail or wholesale, and at wholesale to a person in any foreign country.

A § 19E farmer-distillery license is a license authorizing producing, manufacturing or distilling of distilled spirits by the person who grows fruits, flowers, herbs, vegetables, cereal grains or hops for the purpose of producing alcoholic beverages. A farmer-distillery may sell at wholesale to licensed farmer-distilleries, manufacturers, wholesalers, and licensed retailers in Massachusetts, at wholesale to other buyers specified in state law, and at retail by the bottle for consumption off the premises.

A § 19 manufacturer's license authorizes the manufacturing, rectifying or blending of all kinds of alcoholic beverages (or wine and malt beverages) and sale of those beverages manufactured, rectified or blended to other licensed manufacturers, wholesalers and retailers in Massachusetts.

CERTIFICATES OF COMPLIANCE

56. Can an out-of-state supplier/manufacturer (a Certificate of Compliance holder) sell directly to a retailer?

No. An out-of-state supplier/manufacturer (a Certificate of Compliance holder under § 18B) can only sell their alcoholic beverages to licensed Massachusetts wholesalers.

57. Does Massachusetts require brand registration?

Massachusetts does not require brand registration.

DIRECT SHIPMENT OF ALCOHOL TO CONSUMERS

58. Can out-of-state suppliers ship beer or spirits directly to Massachusetts consumers?

No. Only out-of-state wineries may obtain a direct shipment license under § 19F that permits them to ship directly to Massachusetts consumers. In-state farmer-wineries licensed under § 19B may also apply for this license.

Please see the ABCC's November 21, 2014, Advisory regarding direct wine shipping for further details.

59. Can a direct shipment license holder apply for a salesman permit?

No, direct wine shipment licensees cannot obtain salesman permits.

CATERERS

60. As a caterer licensed under § 12C, whom do I need to communicate with before catering events?

48 hours before the event, the caterer must provide written notice of the event to the local police chief and Local Licensing Authority. This needs to include a copy of your § 12C caterer's license, a copy of the liquor liability insurance, and emergency contact information for the manager of the § 12C license.

61. Can I buy my alcohol from a package store?

No, caterers must purchase their product from a licensed Massachusetts wholesaler and/or wholesaler.

SHIPS

62. Are there regulations on the serving of alcoholic beverages on a ship?

Yes. This regulation is found in 204 CMR 19.00. These regulations include general restrictions such as:

- 1) All alcoholic beverages shall only be sold or delivered between 8:00 a.m. and 12:30 a.m. on Mondays through Saturdays and between 11:00 a.m. and 12:30 a.m. on Sundays.
- 2) No alcoholic beverages shall be sold or delivered to passengers at dockside or more than 15 minutes prior to casting off, unless the ABCC gives specific permission in writing.
- 3) On trips of more than two hours, alcoholic beverages shall not be sold or delivered to passengers within thirty minutes before the ship docks.

63. Are passengers restricted in the number of drinks they may possess at any one time on a licensed ship?

Yes. No more than two drinks shall be sold, delivered or in possession of any one passenger at any one time. The "happy hour" regulations, 204 CMR 4.00, apply to ships.

64. Can passengers bring their own alcoholic beverages aboard a licensed ship cruising Boston Harbor?

No. Passengers are prohibited from bringing on board ship their own alcoholic beverages for their own consumption. Passengers may only consume alcoholic beverages aboard a ship that are sold by the ship licensee.

65. May a captain terminate service of alcoholic beverages aboard ship whenever he chooses?

Yes. None of the ABCC's regulations limit in any way the power and authority of the Captain of a ship under the Law of the Sea. Therefore, he or she may at any time order the termination of service of alcoholic beverages aboard ship.

66. May a licensed ship owner ask a beer supplier to sponsor a cruise?

No. ABCC Regulation 204 CMR 19.11 states that no "manufacturer, importer, wholesaler, certificate of compliance holder or other Massachusetts licensee shall directly or indirectly sponsor, promote or advertise or use its name or the trade or brand name of any alcoholic beverage in connection with any cruise or event, public or private, aboard a ship. No ship shall allow or accept funds for such sponsorship, promotion or advertisement."

67. Can a licensed ship chandler buy liquor from a package store to fulfill an emergency call from a captain out at sea who is running short of liquor and needs an immediate delivery?

No. A licensed ship chandler may not purchase alcohol from a package store to fulfill a ship's need. Ship chandlers may only purchase alcohol from an "authorized source" i.e. a Massachusetts wholesaler (licensed under § 18), a farmer-winery (licensed under § 19B), a farmer-brewery (licensed under § 19C), or a farmer-distillery (licensed under § 19E).

EXPRESS TRANSPORTATION

68. Is there a one-day permit for one-time shipments?

There is no one-day permit for one-time shipments. The express transportation permit is valid for a calendar year, expiring on December 31st of the given year.

69. Do I need to provide the vehicle registration for each vehicle?

The ABCC does not require vehicle registration information for the vehicles you wish to permit.

70. How much is an express transportation permit?

The master fee is \$150.00 and the fee for each certified copy is \$50.00. If, for example, you want one permit, the total fee would be \$200.00.

TRANSPORTATION AND DELIVERY

71. Can a retailer get a transportation permit to transfer product from one package store to another?

No. The product delivered by the wholesaler must stay on the premises of the package store that ordered the alcoholic beverages.

BROKERS

72. Do I need a license to transport samples?

A broker cannot transport samples. However, a broker can hire a salesman who, when licensed, may transport samples.

73. Can I solicit orders from retailers or at events?

A broker cannot sell any alcohol at retail; a broker may only sell to wholesalers.

74. What is “soliciting orders”? Do I need a broker license?

To solicit orders, a broker’s license issued under Section 18A of Chapter 138 is required.

Solicitation is any direct or indirect request for an order for alcoholic beverages and/or alcohol. This includes:

- 1) any oral request that is made in person, by telephone, radio or television or other advertising or communications media;
- 2) any written or otherwise recorded or published request that is mailed, sent, delivered, circulated, distributed, posted in a public place, or advertised or communicated by press, telegraph, television or other media;
- 3) any sale of, offer or attempt to sell, any advertisement, advertising space, sponsorship, book, card, chance, coupon, device, food, magazine, merchandise, newspaper, subscription, ticket or other service or tangible good, thing or item of value; or

- 4) any announcement requesting the public to attend an appeal, assemblage, athletic or competitive event, carnival, circus, concert, contest, dance, entertainment, exhibition, exposition, game, lecture, meal, party, show, social gathering or other performance or event of any kind.

SALESMEN

75. What is acceptable for proof of Massachusetts Residency?

The following are acceptable forms of proof of Massachusetts residency:

- 1) Current Massachusetts learner's permit, MA driver's license, or ID card;
- 2) A current utility bill (gas, electric, telephone or cable) in your name sent to you at your Massachusetts address dated within the previous 30 days. The bill may be one mailed to you or an online bill that you printed out; and
- 3) Home mortgage, lease, or loan contracts with the customer's name, residential address, and signature (dated within 12 months of application).

76. Do I need to be a US citizen to be a salesman?

No. There is no requirement that you be a US citizen to be licensed as a salesman under Section 19A.

77. What are the guidelines regarding sampling at package stores?

The guidelines can be found in § 15.

SPECIAL PERMITS

78. What is the limit on alcoholic beverages I can transport for my own personal use and collection?

Should you want to transport alcohol within Massachusetts for your own use and use of your family and guests without a license or permit, you may transport at any one time, up to twenty gallons of malt beverages, three gallons or any other alcoholic beverage, or one gallon of distilled spirits.

79. Do I need a license to import my own personal supply of alcohol into Massachusetts?

Should you wish to import your own personal supply of alcohol into Massachusetts for personal use and not for resale, you must apply for a permit under Section 22A of Chapter 138. There is no limit on the amount of personally owned alcohol you may import with this permit.

80. What if I don't have a Massachusetts address yet?

If you do not yet have a Massachusetts address and want to bring in your personal collection of alcohol, please write a letter to the Commission explaining your situation and the Commission will handle each request on a case-by-case basis.

81. Who can I sell my alcohol to once I get a liquidation permit?

When a retail licensee (package store or restaurant/bar) is closing, the licensee can apply for a special liquidation permit from the ABCC to sell its inventory. Once the permit is obtained from the ABCC, the licensee can sell its alcohol to any other retail licensee (package store or restaurant/bar). The licensee can also return its inventory to its wholesalers. The permit application can be found on the ABCC's website.

CANNABIS AND ALCOHOL

82. Can I sell a cocktail mixing cannabis in with alcohol?

It is unlawful in Massachusetts to add any cannabis products to alcoholic beverages. This includes the addition of cannabinoids, including cannabidiol ("CBD"), and tetrahydrocannabinol ("THC"). These cannabis products cannot be used in the manufacturing of alcoholic beverages and cannot be sold, delivered, or possessed on a licensed premises in the Commonwealth.

83. Can I sell cannabis-related products in my package store or my on-premises licensed establishment?

It is lawful to sell cannabis products in a licensed establishment, so long as the cannabis is not added to any alcoholic beverages. Licensees are encouraged to contact the Cannabis Control Commission for further guidance.

84. Can I serve food that was cooked with cannabis at my licensed on-premises establishment?

The ABCC does not regulate food preparation and service at licensed establishments; however, licensees must comply with all relevant food service and cannabis laws. Licensees that want to cook and serve food with cannabis should contact the Cannabis Control Commission and their local Board of Health for guidance.

85. Can I allow cannabis products to be consumed on my licensed premises?

The Massachusetts Liquor Control Act does not prohibit the consumption of cannabis on licensed premises. However, other areas of the law may prohibit it. Licensees are encouraged

to contact the Cannabis Control Commission and their local Board of Health for further guidance.

86. Does a marijuana-related conviction prohibit someone from owning an alcohol license?

There is a statutory prohibition for off-premises “package store” licensees to have felony convictions. If you have a felony conviction involving marijuana, you are prohibited from obtaining a package store license. Misdemeanors are excluded from this prohibition.

For all other license applications, there is no statutory prohibition involving marijuana-related convictions.

87. Do I have to disclose any marijuana-related convictions on my alcohol license application?

All convictions, including marijuana-related convictions, must be disclosed on your license application, unless they have been sealed.

88. Can I use alcohol in manufacturing a cannabis tincture?

The Massachusetts Liquor Control Act does not prohibit the use of alcohol in manufacturing cannabis tinctures. A tincture is defined under the Cannabis Control Commission’s regulations as “a Cannabis-infused alcohol or oils concentrate administered orally in small amounts using a dropper or measuring spoon.”

Manufacturers are encouraged to contact the Cannabis Control Commission for further guidance.