

BUSINESS BULLETIN

FraserTrebilcock®

FRASER TREBILCOCK DAVIS & DUNLAP | P.C.

LANSING DETROIT (517) 482 5700 www.fraserlawfirm.com

www.fraserlawfirm.com

Produced Exclusively for Clients of Fraser Trebilcock

April 2009

Understanding the Process for Resolving Liquor License Enforcement Actions in Michigan

by Ryan Kauffman



Anyone who holds a liquor license for the sale of alcoholic beverages for either on-premises or off-premises consumption is keenly aware of the importance of that license to his or her business. However, while a liquor license serves as a source of potential revenue, the license is also closely regulated and can expose the licensee to a myriad of legal issues. Indeed, problems may arise from a number of circumstances, such as the sale to minors or visibly intoxicated persons, the failure to make required reports, or violations of advertising and promotional restrictions. When such problems do arise, an enforcement action against the licensee may result. Generally, licensees are highly motivated to fully comply with Michigan's Liquor Code and the Liquor Control Commission's Administrative Rules in an effort to avoid any enforcement action. Nevertheless, mistakes sometimes occur; and when a violation has been alleged or an enforcement action is taken against a liquor license, it is important to understand the process by which the matter will be resolved.

Generally, licensees are highly motivated to comply with Michigan's Liquor Code and the Liquor Control Commission's Administrative Rules. . . Nevertheless, mistakes sometimes occur; and when a violation has been alleged..it is important to understand the process by which the matter will be resolved.

Although the Liquor Control Commission has the authority to enforce Michigan's liquor laws, the primary responsibility for enforcement lies with the State Police and local law enforcement agencies. When a law enforcement officer believes that a violation of Michigan's Liquor Code has occurred, either through the officer's own investigation/observations or through a citizen complaint, the officer is authorized to write a Violation Report using the LC 600 form provided by the Liquor Control Commission's Enforcement Division. Violation Reports

are sent to the Commission where they are reviewed by an Assistant Attorney General to determine whether the facts, as presented, indicate a possible violation of Michigan's Liquor Code or the Commission's Administrative Rules. A copy of the Violation Report, as well as any attachments, will be forwarded to the licensee.

If the Assistant Attorney General determines that there is insufficient evidence to support a charge, the Commission's staff may request additional information from the concerned parties. If additional information to support a charge is still not presented, then no further action will be taken.

However, if the Assistant Attorney General finds sufficient evidence to show that a violation has likely occurred, then a formal Violation Complaint is issued. Generally, the Violation Complaint will state a separate charge for each section of the Liquor Code and/or Administrative Rules which was allegedly violated. The licensee is then given the opportunity to acknowledge the violation and to receive a penalty from the Commission without a hearing or to contest the allegation by requesting a formal hearing.

The formal hearing is conducted before a hearing commissioner, who presides over the proceedings. At the formal hearing, the licensee may be represented by an attorney and will be able to present evidence and testimony to dispute the alleged violation(s) asserted in the Complaint. If the initial report of the alleged violation was submitted by a law enforcement officer, the officer will receive notice of the hearing and appear as the complaining witness. A formal hearing may be particularly beneficial to a licensee where the licensee has a defense or wishes to present evidence to mitigate the violation. For example,

(continued)

LIQUOR LICENSE ENFORCEMENT ACTIONS - *continued*

if the alleged violation is the sale to an under-aged individual, but the minor produced false identification that was diligently examined by the licensee's employee, evidence regarding the appearance of the minor and the quality of the false identification should be presented.

At the conclusion of the hearing, the hearing commissioner will make a written determination of whether a violation occurred and whether the licensee is responsible for the violation and may assess a fine against the licensee or order that the license be revoked or suspended. The licensee may request an appeal of the hearing commissioner's decision if unsatisfied with the result. If the hearing commissioner renders a decision that a violation occurred, then the hearing commissioner may assess the actual costs of the proceeding against the licensee. In addition to these administrative penalties, a licensee may also face potential criminal and civil liability.

In short, liquor licensees will certainly have concerns when faced with alleged violations and/or an enforcement action and will likely have many questions. The process allows only a relatively short period of time to act and may present some potential pitfalls. Consequently, it is advisable that the licensee contact a qualified attorney experienced in these types of issues as early in the process as possible. A liquor license, especially one that is limited by quota, is simply too important to leave to chance.

Ryan K. Kauffman is an attorney with Fraser Trebilcock, mid-Michigan's longest established law firm with offices in downtown Lansing and Detroit. He is a member of the Business Law Department and specializes in Liquor Licensing issues. He may be reached at 517.377.0887. His email address is: rkauffman@fraserlawfirm.com.



124 W. Allegan
Suite 1000
Lansing, MI 48933
517.482.5800

One Woodward Ave.
Suite 1550
Detroit, MI 48226
313.237.7300

EXPERIENCED

SUCCESSFUL

TRUSTED