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ALCOHOLIC BEVERAGES CONTROL COMMISSION
ADVISORY REGARDING 204 CMR 2.18 and 204 CMR 20.00

On December 14, 2017, the ABCC promulgated 204 CMR 20.00, *et seq.*, Payment of a Fine in Lieu of Suspension, and amended 204 CMR 2.18, Resealing of Partially Consumed Bottles of Wine. The ABCC issues this Advisory to highlight and explain these regulations. Copies of the regulations are attached to this Advisory.

204 CMR 20.00: Payment of a Fine in Lieu of Suspension

Under M.G.L. c. 138, § 23, when a licensee receives a suspension from the ABCC the licensee may offer to pay a fine that is calculated by a formula laid out in § 23 instead of serving all or part of its suspension, which the ABCC may accept or reject in its discretion. 204 CMR 20.00 clarifies the ABCC's long-standing understanding and interpretation of §23 that any licensee offering to pay a fine in lieu of serving its suspension waives all rights to judicial review of the ABCC's decision.

Please be aware that any payment of a fine in lieu of serving a suspension constitutes a knowing and voluntary waiver of the licensee's right to judicial review of the ABCC's decision, including but not limited to appeals under the Administrative Procedure Act, M.G.L. c. 30A, declaratory judgment actions under M.G.L. c. 231A, and petitions for writs of certiorari under M.G.L. c. 249.

204 CMR 2.18: Resealing of Partially Consumed Bottles of Wine

On October 20, 2016, Governor Charlie Baker signed the Acts of 2016, c. 297, "An Act further regulating the recorking of wine." Prior to the signing of this Act, only restaurant and hotel licensees were permitted to "recork" customers' unfinished bottles of wine so that patrons could remove them from the licensed premises. Accordingly, when 204 CMR 2.18 was promulgated, it was written to only apply to restaurant and hotel licensees.

As of October 20, 2016, this Act expanded which licensees may "recork" wine to not only restaurants and hotels, but taverns, clubs, and war veterans' organizations as well. The ABCC's amendment to 204 CMR 2.18 reflects this change in the law. No other changes to this regulation have been made.

Those licensees that are permitted to "recork" unfinished bottles of wine for patrons are reminded of the requirements under § 12 and 204 CMR 2.18, including that each bottle of partially consumed wine

must be purchased by a patron in conjunction with the ordering of a meal. Furthermore, only one bottle of partially consumed wine may be packaged per patron, and the licensee must package the wine in accordance with 204 CMR 2.18.

As always, all licensees must ensure that they comply with the laws of the Commonwealth of Massachusetts, and that sales of alcoholic beverages take place only as authorized by state law.

(Issued December 14, 2017)



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204 C.M.R. 2.00

Regulations of the Alcoholic Beverages Control Commission

2.18: Resealing of Partially Consumed Bottles of Wine

(1) No holder of a hotel, restaurant, tavern, club, or war veterans' organization license issued pursuant to the provisions of section 12 of chapter 138 of the General Laws shall permit a patron to retain and take off the licensed premises so much of a bottle of wine purchased by that patron with a meal and not totally consumed by that patron during the meal, except when the bottle of wine is re-sealed in compliance with this regulation.

(2) Only one partially consumed bottle of wine per patron may be resealed and removed from the hotel, restaurant, tavern, club, or war veterans' organization's licensed premises pursuant to this regulation.

(3) A receipt that prominently displays the date of the purchase of the meal must be furnished to the patron. The receipt must show both the purchase of the meal and the purchase of the bottle of wine.

(4) Before permitting the carry out of a bottle of wine pursuant to this regulation, the hotel, restaurant, tavern, club, or war veterans' organization licensee or its employees must:

- (1) securely reseal the bottle of wine;
- (2) place the resealed bottle in a one-time-use tamper-proof transparent bag that insures that the patron cannot gain access to the bottle while in transit after the bag is sealed;
- (3) securely seal the bag; and
- (4) affix the receipt to the sealed bag.

(5) For the purpose of this regulation, the word "meal" shall mean the purchase by 1 person of a diversified selection of food which ordinarily is classified as an "entree" or "main course" which ordinarily cannot be consumed without the use of tableware and which cannot be conveniently consumed while standing or walking or the purchase by 2 or more persons of a diversified selection of food which is priced at more than \$20.00 and ordinarily cannot be consumed without the use of tableware and which cannot be conveniently consumed while standing or walking.

(6) The provisions of 204 CMR 2.18 are severable and if any provision or the application thereof is held by a court of competent jurisdiction to be invalid, such invalidity shall not affect any other provision of 204 CMR 2.18.



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204 CMR 20.00

Payment of a Fine in Lieu of Suspension

Sections:

- 20.01: Purpose and Authority
- 20.02: Waiver of Judicial Review

20.01: Purpose and Authority

(1) **Purpose.** The purpose and intent of 204 CMR 20.00 is to prescribe the process by which the Commission may accept the payment of a fine in lieu of a licensee serving a suspension imposed by the Commission according to M.G.L. c. 138, § 23.

(2) **Authority.** 204 CMR 20.00 is promulgated by the Alcoholic Beverages Control Commission pursuant to M.G.L. c. 138, §§ 23 & 24.

20.02: Waiver of Judicial Review

The Commission may, in its discretion, accept an offer in compromise in lieu of suspension pursuant to M.G.L. c. 138, § 23, but only upon a licensee's written waiver of appeal and judicial review, in addition to the other requirements in M.G.L. c. 138, § 23, and in 204 CMR 20.00.