

Liquor and the Law: Dram Shop Liability, Liquor Licensing and DUI

NORTHAMPTON COUNTY BAR ASSOCIATION OF PENNSYLVANIA
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- I. **Nature of a Liquor License and Liabilities.** A liquor license is a privilege issued by the Pennsylvania Liquor Control Board and authorizes an individual or entity to distribute brewed or malt beverages, wine and/or liquor (depending upon the quality of the license) for consideration. Anyone who distributes alcoholic beverages except in a pure social setting without consideration must obtain a license. Generally, Pennsylvania State Police, Bureau of Liquor Control Enforcement, enforces Liquor Code rules and regulations against Licensees. Violations of the Liquor Code result in citations issued by the Bureau of Liquor Control Enforcement and are heard before Administrative Law Judges. Appeals of Administrative Law Judge citation cases are *de novo* before the local Court of Common Pleas.

In addition, violations of the Liquor Code can be redressed by an individual citizen who has been harmed by a Licensee in a Dram Shop Action. Only Licensees are subject to Dram Shop Actions and the Liquor Code does not apply to social hosts. Generally, there is no social host liability in the Commonwealth of Pennsylvania, which means that a social host is not liable for injuries or damages caused by their intoxicated guests. There is an exclusion for social host liability in the event the social host serves a minor. In the event a social host furnishes a minor with alcoholic beverages, there is strict liability for any injuries or damages the minor causes to himself or to third parties. Furnishing of alcohol to a minor can include merely tacit approval of the minor's presence at an individual's house or property within their custody and control in which that individual reasonably should know alcohol may be served at such location.

- II. **Different Types of Liquor Licenses and Qualifications.** While there are many different forms of liquor licenses, the most common forms of liquor licenses are Restaurant licenses (R license) which is your most common form of a restaurant or bar and allows the licensee to serve beer, wine and alcohol. There is no such thing as a "bar" in the Commonwealth of Pennsylvania and all licensees must serve food to obtain a liquor license to serve to the public. There is also a beer only license called an E license which is an Eating Place license. There is no license which provides for wine only or a

combination of beer and wine. There is also a Hotel license which has the same qualities of a Restaurant license. A Hotel license usually is issued originally by the Pennsylvania Liquor Control Board upon a particular establishment's qualifications of meeting the definition of a hotel under the Liquor Code. As a result, and, unlike R licenses and E licenses, they have no value in the open market. There are grandfathered H licenses which do have value but are limited to an income approach valuation based upon the H license's value to the premises at which it is fixed. Old H licenses which do not meet current Code definitions of a Hotel license are "grandfathered" to a particular site and cannot move freely to another site.

There are also Distributor and Importing Distributor licenses. A Distributor license is your local distributor where you can buy a case of beer or keg. Like R and E licenses, they do have a value in the open market and licenses are bought and sold regularly. An Importing Distributor license is a wholesale license that can be converted from a D license by paying an additional fee to the Pennsylvania Liquor Control Board. There are market restrictions which limit the creation of new Importing Distributors as Importing Distributor license values are more in the valuable exclusive supply contracts it has with suppliers as opposed to the specific license value for a Distributor license in any particular county.

There are also licenses with limited value which are called Club licenses. Those are the private Clubs and even local country clubs which will operate under this "C license". By their nature, C licenses are not open to the public and are restricted to a specific club membership. You cannot offer take-out food sales like R or E licenses which are allowed to offer up to two six-packs of take-out beer sales.

There are also other licenses that are issued directly by the Pennsylvania Liquor Control Board called Public Venue licenses (for stadiums or art centers), Special Occasion Permits (one-time event licensings for special entities; i.e., Musikfest operates under a Special Occasion Permit) and Economic Development licenses (non-transferrable and limited to two per county per year plus other restrictions).

In order to obtain legal title to a liquor license, an individual or entity must apply to the Pennsylvania Liquor Control Board to seek approval of a license transfer or granting of an original license as set forth above. Generally, the Pennsylvania Liquor Control Board will perform criminal checks on every owner, officer, director and manager of the licensed premises and also review legitimacy of the financial investments made by the owners into the purchase of a liquor license and liquor license premises. Owners of R, E and H licenses cannot hold a Distributor license or Manufacturing license. Likewise, owners of a D license cannot own an R, E or H license or a Manufacturer's license. Further, the owner of a D license can only own one D license. There is no residency requirement for R, E and H licenses; however, there is a residency requirement for the owner of D licenses. All liquor licensees are required to appoint a manager and the manager's only form of employment should be employment by the licensee. Independent of his or her own acts as a manager, the manager will have no unique liability as a result of holding a manager position.

Premises also have to meet certain Board conditions. There is a minimum number of square footage and R, E and H licenses have to maintain at least seating for 30 patrons, keep sufficient food for such patrons, and maintain a valid health permit. The application process is somewhat lengthy and includes a personal interview along with site visits by an investigating agent of the Pennsylvania Liquor Control Board. One can expect several months in the application process which is dependent upon the availability of all the required information, i.e., financing, lease/deed, corporate information, etc., as well as competent legal representation.

III. Value of Liquor Licenses. Liquor licenses are evaluated on a county-wide basis. They have varying degrees of value from county to county and from class of license to class of license. Generally, there are approximately 1,200 Distributor licenses in the State while there are over 10,000 R and E licenses in the State. In more rural counties, some liquor licenses may only cost \$4,000-\$5,000 while counties close to major urban areas can exceed \$300,000 for Restaurant licenses. In counties where there is a lower number of licenses per capita than in other counties, a D license could be worth \$400,000-\$500,000. In Lehigh County where there is generally a high number of licenses for the amount of people in the county, D licenses are only worth approximately \$40,000. These licenses are exchanged from one entity to another and the Pennsylvania Liquor Control Board will not issue any new R licenses unless the “quotas” are exceeded in any particular county. In most counties, populations would have to increase by several hundred thousand people for new liquor licenses to be issued. As a result, one seeking a license which does not qualify or a hotel or public venue, etc., must go in to the market and find a willing seller for their license. Generally, the value of a liquor license can be impacted by how long a seller is willing to stay in the market to seek a willing buyer.

As of the date of this seminar, the following license values could be attributed to Restaurant licenses in the following counties:

Lehigh: \$145,000-\$155,000
Northampton: \$85,000-\$95,000
Bucks: \$160,000-\$185,000
Berks: \$75,000-\$90,000
Montgomery: \$175,000-\$195,000
Philadelphia: \$55,000-\$60,000
Chester: \$280,000-\$300,000
Schuylkill: Under \$5,000
Carbon: \$20,000

The above values do not include a review of citation history or whether the license is operating under a Conditional Licensing Agreement which could affect its value. Eating place licenses (beer only licenses) are typically valued at 60%-75% of an R license value in the county.

Distributing licenses have the following values in the following counties:

Northampton: \$80,000-\$120,000

Lehigh: \$40,000-\$50,000

Bucks: \$400,000-\$500,000

- IV. Lien and Attachment Issues.** Liquor licenses are similar to personal property in that they can be liened in UCC's filed against the licenses. The Pennsylvania Liquor Control Board does not recognize a lien on a license and will not consider a lien in determining whether a license should be transferred or not. A lien should be filed as a UCC at the Department of State level. Any violation of the security agreement should be redressed in the local Court of Common Pleas.

When judgment is entered against a judgment debtor which owns a liquor license, the Sheriff of the county where the license is located may execute upon that license and sell it at a Sheriff's Sale. In addition, the Sheriff of Dauphin County also has authority to attach a liquor license that is operating in any county around the State or is in safekeeping with the Pennsylvania Liquor Control Board. Issues become complicated when a judgment creditor executes upon a license through judicial process and then seeks to renew the license or sell. All state taxes to the Departments of Revenue and Labor & Industry must be filed and paid before the Pennsylvania Liquor Control Board will approve the transfer of a license. Caution is made when executing upon a liquor license that was located at a business that is no longer operating. It is possible the tax liabilities could exceed the value of the license.

- V. Miscellaneous.** Attached are two Liquor Law Alerts detailing the most recent changes to the Pennsylvania Liquor Code. In addition, since this seminar will also address potential liabilities versus a liquor licensee, an incident report form is attached and is just one of the many mechanisms a licensee should utilize in the exercise of responsible alcohol management practices.