

HOUSE No. 4350

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, March 29, 2018.

The committee on Consumer Protection and Professional Licensure to whom were referred so much of the recommendations of the Department of the State Treasurer (House, No. 23) as relates to civil violations of certain alcoholic beverage laws (House, No. 24) and so much of the recommendations of the Department of the State Treasurer (House, No. 23) as relates to enhancing Alcoholic Beverages Control Commission background checks (House, No. 25), reports recommending that the accompanying bill (House, No. 4350) ought to pass.

For the committee,

TACKEY CHAN.

HOUSE No. 4350

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**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to civil violations.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 2 of chapter 138 of the General Laws, as so appearing in the 2016
2 Official Edition, is hereby amended by inserting at the end thereof the following:-

3 “As an alternative to initiating criminal proceedings for violations sections 34, 34A, 34B,
4 and 34C of chapter 138, any investigator of the commission may issue a civil citation for
5 violations of said laws in the amount of the criminal fine provided for said violation, to be paid
6 within 21 days of the date of issuance of such citation. Any person aggrieved by any citation
7 issued pursuant to this section may appeal said citation by filing a notice of appeal with the
8 commission within seven days of the receipt of the citation. Any such appellant shall be granted
9 a hearing before the commission in accordance with chapter 30A. The commission may affirm,
10 vacate or modify the citation. Any person aggrieved by a decision of the commission may file an
11 appeal in superior court pursuant to the provisions of said chapter 30A. If a person fails to
12 comply with the requirement set forth in any citation issued pursuant to this section, or shall fail
13 to pay any civil penalty provided thereby within 21 days of the date of issuance of such citation,
14 or within 30 days following the decision of the commission if such citation has been appealed,

15 excluding any time during which judicial review of the commission’s decision remains pending,
16 the commission may apply for a criminal complaint against such person for the violation, or may
17 initiate a civil action in district court. All monies collected by the commission under said civil
18 citations shall be credited to the general fund.”

19 SECTION 2. Chapter 138 of the General Laws is further amended by inserting after
20 section 70 the following section:-

21 Section 70A. (1) As part of the commission’s licensure and background record check
22 process, the commission shall conduct fingerprint-based checks of the state and national criminal
23 history databases pursuant to this chapter before approving any license under sections 12 and 15
24 under this chapter. Said fingerprint-based checks shall be conducted on any individual applicant,
25 any individual with a direct or indirect beneficial interest in any partnership that is an applicant,
26 any individual with a direct or indirect beneficial interest in any corporation that is an applicant
27 including, but not limited to, any individual who is an officer, director, or stockholder in the
28 corporate applicant, any individual with a direct or indirect beneficial interest in any limited
29 liability company that is an applicant including, but not limited to, any individual who is a
30 member or manager of a limited liability company that is an applicant, and the individual seeking
31 approval to be the license manager required by section 26 of this chapter. Provisions of this
32 section shall not apply to stockholders of a corporation whose stock is listed for sale to the
33 general public with the securities and exchange commission and who hold less than ten per cent
34 of the outstanding stock entitled to vote at the annual meeting of said corporation. The
35 commission shall endeavor to avoid duplicating similar investigations by local licensing
36 authorities. When local licensing authorities do conduct such fingerprint-based checks, the local
37 licensing authorities may appropriately disseminate to the commission all criminal offender

38 record information and the results of checks of state and national criminal information databases,
39 pursuant to this chapter, in accordance with the law.

40 Authorized commission staff may receive and appropriately disseminate all criminal
41 offender record information and the results of checks of state and national criminal information
42 databases, pursuant to this chapter in accordance with the law. When the commission obtains the
43 results of checks of state and national criminal information databases, it shall treat such
44 information in keeping with the provisions of sections 167 through 178, inclusive, of chapter 6
45 and the regulations thereto, regarding criminal offender record information.

46 (2) As part of the commission's licensure and background record check process, the
47 commission may conduct fingerprint-based checks of the state and national criminal history
48 databases, pursuant to this chapter before issuing any license under this chapter that is not a
49 license under section 12 or section 15. Authorized commission staff may receive and
50 appropriately disseminate all criminal offender record information and the results of checks of
51 state and national criminal information databases in accordance with the law. When the
52 commission obtains the results of checks of state and national criminal information databases, it
53 shall treat such information in keeping with the provisions of sections 167 through 178,
54 inclusive, of chapter 6 and the regulations thereto, regarding criminal offender record
55 information.

56 (3) The commission shall collect from each individual who is subject to a fingerprint-
57 based check all fees associated with conducting fingerprint-based checks of the state and national
58 criminal history databases, pursuant to this chapter as set by the commission.

59 (4)(a) Fingerprints, as referenced in this section will be submitted to the identification
60 section of the department of state police for a state criminal history check and forwarded to the
61 Federal Bureau of Investigation for a national criminal history check, according to the policies
62 and procedures established by the identification section and by the department of criminal justice
63 information services. Fingerprint submissions and national criminal history checks may be
64 retained by the department of criminal justice information services for the purposes of ensuring
65 the continued suitability for licensure, certification, approval or employment of those individuals,
66 provided that said department is authorized to disseminate the results of a national criminal
67 history check to the commission for the purpose of determining the suitability of any individual
68 identified in paragraph (1) or (2) of this section.

69 (b) The department of criminal justice information services shall disseminate the results
70 of the criminal background check to the commission. Said department of criminal justice
71 information services shall only disseminate information under this section that would otherwise
72 be available to requesting entities under the provisions of sections 167 through 178, inclusive, of
73 chapter 6 and the regulations thereto, regarding criminal offender record information.

74 (c) The commission shall amend its regulations in a manner necessary to carry out the
75 provisions of this section, provided that the regulations may reflect a phased-in schedule for the
76 fingerprint-based background checks, provided, however, that such phase-in shall not begin prior
77 to September 1, 2017.

78 (d) Any and all persons required to undergo the fingerprinting process described in this
79 shall pay a fee, to be established by the commission in consultation with the secretary of public
80 safety and security, to offset the costs of operating and administering a fingerprint-based criminal

81 background check system, provided that said fee shall not exceed 55 dollars per person;
82 provided, further, that the fee may increase accordingly if the federal bureau of investigation
83 increases its fees for fingerprint background checks services. All fees collected under this
84 section, shall be deposited into the Fingerprint-Based Background Check Trust Fund established
85 under section 2HHHH of chapter 29.

86 (b) The deposits and credits to this fund pursuant to this section shall be utilized for the
87 sole purpose of carrying out pursuant to this section state and national criminal background
88 checks and verifications, including, but not limited to, obtaining or contracting to obtain
89 fingerprints and fees from subjects, making payments charged by the Federal Bureau of
90 Investigation or other entity, staffing the department of state police and the department of
91 criminal justice information services to submit fingerprints and to obtain, verify and disseminate
92 the results of background checks, and maintaining the public safety information systems used to
93 obtain access to fingerprint-based state and national criminal background information.

94 (c) The department of criminal justice information services shall report annually to the
95 house and senate committees on ways and means and the joint committee on consumer
96 protection and professional licensure on the cost of operating and administering the fingerprint-
97 based criminal background check system, including expenditures from the fund and their
98 purposes.