



VIEW FROM THE BAR

by Marc Reisman, Esq.



Changes In Corporate Structure May Trigger Liquor Control Board Reporting Requirements

In practicing in the area of liquor law for nearly two decades, my experience has been that owners and prospective owners of retail liquor licenses and wholesale (beer distributor) licenses are well aware of the fact that an application for transfer must be filed with and approved by the Pennsylvania Liquor Control Board before a license can change hands from one entity to another. However, I have found there is less awareness of the reporting requirements that may be triggered when changes in corporate officers, directors and/or corporate ownership of a licensed entity occur.

Notice of changes in corporate officers and/or directors must be reported to the Board within 15 days. The Board has a specific form for this and a filing fee is required, as is a criminal history check. A representative from the Board will determine whether or not an interview is necessary; the completion of a questionnaire may be sufficient.

Reporting requirements with respect to changes in ownership of a licensed corporation vary depending upon the amount of voting stock that is changing hands and whether such a transfer will result in a change in either majority ownership or "controlling interest." Controlling interest is defined as "the power or authority to manage, direct, govern, administer or oversee the operation of the licensed business."

If the change in stock ownership involves less than 10% of the outstanding voting stock and does not involve a change in majority or controlling interest, there is no reporting requirement at all. If such a change creates a new majority owner or causes a change in controlling interest, it must be reported. On the other hand, a change in 10% or more of voting stock triggers the reporting requirement whether or not it creates a new majority owner or controlling interest. When the reporting requirement is triggered, there is also a requirement that the source of the funds for the purchase of the stock be disclosed to the Board and the stock sale agreement must be produced.

The Liquor Control Board filing fee that must accompany a report varies, once again, according to whether the change involves a majority or controlling interest. If so, the filing fee more than triples: from \$200.00 to \$650.00.

Whether the licensed corporation must post public notice of changes in stock ownership also varies according to whether there is a change in majority or controlling interest. If so, the posting requirement is triggered and the rather large, day-glow orange all-purpose Liquor Control Board poster that announces the changes must be put up in a conspicuous place at or near the entrance where passersby can easily see it.

Note that these reporting requirements also apply to limited liability companies and limited partnerships. Note also that for Club liquor licensees, which by definition must be non-profit in order to be licensed, reports in changes are due only at the time of the renewal of their liquor licenses, and they are exempted from the posting requirement. Finally, note that changes with respect to non-voting shares are not reportable, assuming that such shares do not give their owners any control over the operation of the licensed business.

If you have any specific questions on compliance with these requirements, please telephone me.

(This column is brought to you as a public service by Marc Reisman, a partner in the law firm of Gelman & Reisman. If you have an issue you would like to see addressed, or if you would like a reprint of a previous column, write to him at 429 4th Avenue, Suite 1701, Law & Finance Building, Pittsburgh, PA 15219, or call 1-800-883-1LAW. This column is intended for informational purposes only - consult Mr. Reisman for legal advice specific to your situation.)

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