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.

FILED ON: 2/6/2018

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The Commonwealth of Massachusetts

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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