

Sales of Alcoholic Beverages on Credit

In today's age of the "plastic" consumer, it seems illogical that the Liquor Code and its attendant regulations place restrictions on retail licensees with respect to the sale of alcoholic beverages on credit. However, section 493(2) of the Liquor Code prohibits a licensee from selling or offering to sell alcoholic beverages on credit other than for some limited exceptions.

One exception permits a holder of a hotel or club license to extend credit to a bona fide guest or member. Another exception allows retail licensees to sell alcoholic beverages on credit to "customers not possessing a license" and who hold credit cards issued in accordance with the regulations of the PLCB or who hold credit cards issued by banking institutions subject to state or federal regulations.

An interesting question arises in the instance where a retail licensee accepts a credit card for payment of alcoholic beverages from a customer who holds a retail license issued by the PLCB. For example, since the holder of a license is held strictly liable for violations of the Liquor Code and its attendant regulations, can a restaurant licensee be subject to a citation issued by the Bureau of Liquor Control Enforcement (BLCE) for allowing a patron, who unbeknownst to the restaurant licensee holds a retail license, to use a credit card for payment of alcoholic beverages. A strict reading of the Liquor Code suggests that in such a situation a restaurant licensee could be in violation of the Liquor Code. Fortunately, the PLCB makes a distinction between non-trade consumers and trade consumers. In other words, the restaurant licensee would not be in violation of the Liquor Code because the patron who holds a license and purchases alcoholic beverages would be considered a non-trade consumer. Only credit issued between trade consumers would be prohibited. However, it should be noted that this PLCB

policy is not found in the Liquor Code or its attendant regulations, and it is not clear whether the BLCE, which is in charge of enforcement matters, agrees with this interpretation of the statute.

Another exception exists for properly devised “house accounts.” “House accounts” are set up by the licensee in order to extend credit to a patron. The PLCB regulations allow for hotel and restaurant licensees to extend credit to patrons by the issuance of its own credit cards. In these situations a written application must be made by the person requesting the house credit card, and the application must be kept in the business of the licensee.

Although the use of payment by electronic fund transfer (debit card) is not specifically mentioned as a legal method of payment for alcoholic beverages, the PLCB does take the position that this method of payment is legal. Again it should be noted that the use of debit cards is not an enumerated method of payment pursuant to the Liquor Code or its attendant regulations. Therefore it is not clear whether the BCLE takes this same position with respect to debit cards.

The bottom line is that the Liquor Code is antiquated with respect to modern technology. A major overhaul of the Liquor Code is needed by the General Assembly to bring it in line with today’s business world.

If you have any questions about the use of credit or other questions about liquor license law, do not hesitate to contact me at 1-877-LAW-2555.

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