



AT THE BAR WITH BOWDITCH

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Nashoba Valley Winery Fights For Its Existence After ABCC Reinterprets Farmer-Series License Statutes

BY TIMOTHY H. POWELL • JUNE 29, 2016

Nashoba Valley Winery, a hilltop orchard and vineyard located in bucolic Bolton, Massachusetts, operates a winery, distillery, and brewery as well as a farm-to-table restaurant serving up its wine and beer alongside locally-grown food. Running the business has required four separate licenses from the state Alcoholic Beverages Control Commission (ABCC): a pouring license for the restaurant, and so-called farmer-winery, -distillery, and -brewery licenses (collectively, “farmer-series” licenses) for each type of fermentation occurring on its premises. This spring, however, after 13 years of granting all four licenses to the Winery without issue, the ABCC notified Nashoba Valley that based on the Commission’s interpretation of the licensing statutes, beginning in 2017 the business cannot simultaneously hold both a pouring license and any of the three farmer-series licenses. The ABCC effectively forced a choice between two evils – close the restaurant, or cease production of alcohol on the farm – either of which, according to owner Rich Pelletier, would be a [death sentence for his business model](#).

The Massachusetts farmer-series licenses are a popular mechanism for local wineries and craft breweries, cideries, and distilleries to bypass wholesalers and sell their products directly to retailers and to the public, while ostensibly promoting the in-state cultivation of the ingredients used in production. Massachusetts currently has [75 farmer-winery](#) licensees, [78 farmer-brewery](#) licensees, and [23 farmer-distillery](#) licensees. Chances are good that your favorite local brand is on the list – in fact, virtually every brewery in the state except Sam Adams operates under a farmer-brewery license (yes, even Harpoon, a/k/a Mass. Bay Brewing Co.). The ABCC’s current interpretation of the law would prohibit any of these businesses from serving their wine, beer, or spirits in a separate restaurant on their property.

Massachusetts’ farmer-winery license was first created by the legislature in 1977, and the farmer-brewery and farmer-distillery licenses followed in 1982 and 2002, respectively. All three statutes begin with the explicitly-stated purpose of “encouraging the development of” domestic farms and vineyards. But beyond this broad intent, the statute contains seemingly contradictory clauses regarding the activities permitted by the licensee, particularly with respect to the separate licensing required for on-site pouring. While the laws have not changed substantively since Nashoba Valley was issued its first pouring and farmer-winery licenses simultaneously in 1999, ABCC pointed to provisions in the

farmer-series license statutes that prohibit issuing a license to an applicant who “retains or owns an interest, directly or indirectly,” in the business of an entity that holds a pouring license.

Elsewhere in the farmer-winery statute, however, licensees are expressly permitted to sell wine “at retail by the glass or bottle to be consumed on the premises” pursuant to the pouring license statute. The pouring license statute itself also provides that a local licensing authority “may grant a license to the holder of a farmer-winery license . . . such wine to be served and drunk on the premises of the winery at such locations on the premises of the farm as the local licensing authority may deem reasonable and proper.” Moreover, all three farmer-series statutes provide that a local licensing authority may grant a license “for consumption on the premises” to any farmer-series licensee.

Statutory construction aside, it is difficult to comprehend why ABCC would have reversed its position, interpreting a statute enacted to promote domestic farms and agritourism, to prohibit a local, family-owned winery from serving its own wine at its farmhouse restaurant. Nevertheless, ABCC suggested to Nashoba Valley that it could avoid license denial by transferring the restaurant into a different corporate entity to allow the licenses to be held separately, or by constructing physical connections between the winery and restaurant buildings (which are located about 50 feet apart from each other) so as to constitute the same “premises” under the law. Not only do these suggestions raise further prohibitive concerns regarding zoning, emergency accessibility, and expense, says Pelletier, but they demonstrate that the licensing issue is “[not a public policy concern](#)” for ABCC. “It’s purely bureaucracy.”

Nashoba Valley has filed suit against the ABCC, and the resulting social media and press brought Governor Charlie Baker and several legislators out in support of the Winery. In [a statement on June 27, 2016](#), Gov. Baker said he is prepared to support legislation or legal action to ensure that Nashoba Valley can continue to operate. On June 28, 2016, State Treasurer Deborah Goldberg, who oversees the ABCC, has compiled [draft legislation](#) that would allow farmer-series license holders to simultaneously hold pouring licenses to serve their products at “appurtenant or contiguous” restaurants. Bolton’s State Representative Kate Hogan has also [urged the Legislature](#) to take a “broader” look at the state’s alcohol regulations as they apply to all types of businesses, to “create public policy and a regulatory framework that works and that is fair and allows us to create a 21st century economy.” The outcome of this case, whether resolved administratively or legislatively, could have a substantial future impact on the beverage industry in Massachusetts.