



**STATUS OF LOCAL AUTHORITY TO REGULATE ALCOHOL OUTLET DENSITY
Update of State Data and Coding (as of January 1, 2014)**

Background

In the summer of 2015, legal research was conducted to update the status of state laws preempting local regulation of alcohol outlet density in the 50 states, as reported by the Centers for Disease Control and Prevention (CDC) in the [2013 Prevention Status Reports \(PSRs\)](#) on Excessive Alcohol Use. This update reviewed the extent to which states grant local governments authority to regulate alcohol outlet density, and determined whether there had been any changes to these laws between January 2, 2013, when the last review was completed, and January 1, 2014.

Scope of Legal Research

The legal research specifically sought to identify whether the states had amended the extent to which states grant local governments authority to regulate alcohol outlet density. The original analysis¹ placed each state into one of the following categories:

1. Exclusive or near-exclusive state preemption;
2. Exclusive state licensing authority, concurrent local regulatory authority;
3. Joint local/state licensing and regulatory powers;
4. Exclusive local licensing with state minimum standards; or
5. Mixed (a combination of two or more of the other four categories, e.g., exclusive state preemption for off-premises locations and joint licensing for on-premises locations).

Legal Research Method

A three-phase methodology was used to conduct this legal research. Phase one involved reviewing the laws and cases cited for the Prevention Status Reports (PSR) coding of local authority to regulate alcohol outlet density as of January 1, 2014. In phase two, relevant sections of CCH's Liquor Control Law Reporter,² a summary of state liquor control laws, regulations, and significant cases and rulings, were reviewed. Finally, in phase three, Westlaw, an online legal research tool, was used to locate previously identified laws and conduct additional searches of relevant constitutional provisions, statutes, regulations, and related case law. Additional details on the legal research methods are described in Mosher JF, Cohen EN, Jernigan DH. Commercial host (dram shop) liability: current status and trends. *American Journal of Preventive Medicine* 2013;45:347–53.

This memo was supported by cooperative agreement number U38OT000141 from the Centers for Disease Control and Prevention (CDC). Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the CDC.

ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

ChangeLabSolutions

Changes Identified

Michigan had the only substantive change in local authority to regulate alcohol outlet density during calendar year 2013. Michigan had exclusive state licensing for off-premises locations and joint local and state licensing for on-premises locations. It was therefore previously coded as a mixed system. The off-premises finding changed in calendar year 2013 to exclusive state licensing, concurrent local regulatory authority as the result of a court opinion. In *Maple BPA, Inc. v. Bloomfield Charter Twp.*,³ the court held that the legislature did not seek to preempt the field of alcohol regulation and that local zoning may limit alcohol off-premise retail locations so long as there is no direct conflict between state and local law. This change does not affect the coding, since Michigan remains a “mixed” system.

In addition, legal citations were updated for six states: California, Kentucky, Maine, Montana, Nebraska, and Texas (see Table 1). These changes in citations have no effect on coding.

TABLE 1
Coding and Citation Changes: 1/1/2013 – 1/1/2014
(Changes highlighted in yellow)

State	Coding	Citation
California	Exclusive state licensing authority, concurrent local regulatory authority	California Constitution art. 20, § 22. Cal. Bus. & Prof. Code § 23790 <i>City of Oakland v. Superior Court</i> , 45.Cal. App.4th 740 (1996), review denied.
Kentucky	Exclusive or near-exclusive state preemption	Ky. Rev. Stat. Ann. § 241.060 Ky. Rev. Stat. Ann. § 241.075 Ky. Rev. Stat. Ann. § 241.080 Ky. Rev. Stat. Ann. § 241.110 Ky. Rev. Stat. Ann. § 241.140 Ky. Rev. Stat. Ann. § 241.170 Ky. Rev. Stat. Ann. § 241.190 Ky. Rev. Stat. Ann. § 243.060 Ky. Rev. Stat. Ann. § 243.070 <i>Whitehead v. Estate of Bravard</i> , 719 S.W.2d 720 (Ky. 1986) <i>O'Brien v. Department of Alcoholic Beverage Control</i> , 206 S.W.2d 941 (Ky. 1947) <i>Moberly v. King</i> , 355 S.W.2d 309 (Ky. Ct. App. 1962) <i>Fisher v. Kentucky Alcoholic Beverage Control Board</i> , 459 S.W.2d 80 (Ky. Ct. App. 1970)
Maine	Mixed Off-premises: Exclusive State licensing. On-premises: Joint licensing	Me. Rev. Stat. Ann. Tit. 28, § 1201 Me. Rev. Stat. Ann. Tit. 28, § 1051 Me. Rev. Stat. Ann. Tit. 28, § 453

ChangeLabSolutions

State	Coding	Citation
Michigan	<p>Mixed</p> <p>Off-premises: Exclusive State Licensing & Concurrent Local Authority</p> <p>On-premises: Joint Local & State Authority</p>	<p>Mich. Comp. Laws Ann. § 436.1501 Mich. Comp. Laws Ann. § 436.1209 Mich. Comp. Laws Ann. § 436.1405 Mich. Comp. Laws Ann. § 436.1525 Mich. Admin. Code r. 436.1003</p> <p><i>Maple BPA, Inc v. Bloomfield Charter Twp.</i>, 838 N.W.2d 915 (Md. Ct. App. 2013)</p>
Montana	<p>Exclusive state licensing authority, concurrent local regulatory authority</p>	<p>Mont. Code Ann. § 16-1-103 Mont. Code Ann. § 16-3-304 Mont. Code Ann. § 16-3-304</p> <p><i>Town Pump. v. Board of Adjustment of City of Red Lodge</i>, 971 P.2d 349 (Mont. 1998)</p>
Nebraska	<p>Exclusive state licensing authority, concurrent local regulatory authority</p>	<p>Neb. Rev. Stat. § 53-117 Neb. Rev. Stat. § 53-132 Neb. Rev. Stat. § 53-134.03</p> <p><i>City of Lincoln v. Nebraska Liquor Control Com'n</i>, 626 N.W.2d 518 (Neb. 2001)</p> <p><i>City of Lincoln v. Nebraska Liquor Control Commission</i>, 147 N.W.2d 803 (Neb. 1967)</p>
Texas	<p>Mixed</p> <p>Off-premises & on- premises restaurants: Exclusive state licensing. On- premises bars (75% or more revenue from alcohol): Concurrent local zoning</p>	<p>Tex. Alco. Bev. Code Ann. § 61.01 Tex. Alco. Bev. Code Ann. § 11.01 Tex. Alco. Bev. Code Ann. § 109.57 Tex. Alco. Bev. Code Ann. § 109.31 Tex. Alco. Bev. Code Ann. § 109.32</p> <p><i>Dallas Merchant's and Concessionaire's Ass'n v. City of Dallas</i>, 852 S.W.2d 489 (Tex. 1993)</p>

ChangeLabSolutions

¹ CDC's Prevention Status Reports: Excessive Alcohol Use. Available at:

<http://www.cdc.gov/psr/alcohol/index.html>.

² CCH's Liquor Control Law Reporter. Available at: <https://www.cchgroup.com/roles/federal-government/accounting-and-audit/research/liquor-control-law-reporter>

³ *Maple BPA, Inc. v. Bloomfield Charter Twp.*, 838 N.W.2d 915 (Md. Ct. App. 2013).