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Changes Brewing? How North Carolina's ABC Omnibus Legislation (House Bill 500) Would Affect Your Business

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Introduction

Changes are brewing as the North Carolina General Assembly considers proposed amendments to the brewery self-distribution cap, beer franchise laws, and off-premise container sales (i.e., "crawlers"), among other changes. Known as the ABC Omnibus Legislation, House Bill 500 was filed on March 28, 2017, and is currently working its way through committee. If ultimately passed and signed by the Governor, the bill would become law immediately. Breweries, distributors, retailers, and even consumers should take note of what could be the most wide-ranging changes to our state's alcohol laws in years. The full text of the bill can be accessed through the North Carolina General Assembly's website. Below is a brief summary of some of the most significant changes.

Brewery Self-Distribution

The most notable provision of the bill raises the self-distribution limit for small breweries from 25,000 barrels per year to 200,000 barrels per year. This eight-fold increase, if enacted, would have an immediate and substantial impact on breweries and wholesalers alike. The bill excludes certain types of sales from the annual calculation, including sales made at the brewery's taproom, thereby enabling a brewery to self-distribute up to 200,000 barrels per year no matter how many barrels of beer it actually produces and sells.

Beer Franchise Laws

The proposed increase to the brewery self-distribution limit would have a major impact on most franchise/distribution agreements and a small brewery's ability to terminate such agreements without good cause by paying the wholesaler fair compensation for the affected brands. The bill retains the small brewery exception existing under current law (although the definition of small brewery is modified to account for the 200,000 production limit), but for the first time would give breweries and distributors the ability to negotiate, in advance, the fair compensation that must be paid by the brewery to the distributor if the brewery elects to terminate the distribution agreement without good cause. If the parties cannot agree on fair compensation, the bill provides for mandatory arbitration to resolve the dispute.

Crawlers

It may come as a surprise to learn that the sale of "crawlers" (or 32 ounce fillable on-demand single-use cans) technically is not legal under current North Carolina law. Despite this, crawlers have rapidly increased in popularity as a cheaper (and more perhaps more durable and transportable) alternative to traditional 64 or 32 ounce glass growlers. The bill revises the current definition of growlers (by eliminating the requirement that growlers be *resealable* containers), thereby implicitly approving the sale of crawlers.

Conclusion

House Bill 500 would go a long way towards modernizing North Carolina's alcohol laws, especially those affecting small breweries. It remains to be seen whether the bill will pass through the committee level and, if so, whether we will ultimately be left with a watered-down version. Nonetheless, this is definitely a bill to keep an eye on. In the short term, both breweries and distributors should consider the potential for the changes in the bill to become law, especially if negotiating or renewing distribution agreements during the current legislative session.

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