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New Changes to North Carolina Alcoholic Beverage Laws Have Big Impact on Local Businesses

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Introduction

On June 19, 2015, House Bill 909 (now Session Law 2015-98) was signed into law by Governor Pat McCrory, making considerable changes to North Carolina Alcoholic Beverage Control (“ABC”) laws. The most notable changes concern distillery sales, unfortified wine growler sales, alternating proprietorships, and contract brewing. Thus, the new law provides expanded access to consumers and new avenues for increased profits to local businesses.

Distillery Direct Sales to Consumers

The new law allows distilleries to sell one bottle of liquor to each visitor who tours the distillery for off-premises consumption. However, the law restricts consumers to the purchase of one bottle from the distillery per twelve (12) month period. Under prior law, all liquor sales were required to be made through local ABC stores. The price of the liquor bottle at the distillery will be the same as it is at the ABC store, as the State still retains the power to set liquor pricing. The provisions on distillery sales do not take effect until implementing rules are adopted, which must occur by October 1, 2015.

Unfortified Wine Growlers

The new law allows the sale of growlers containing unfortified wine by on-premise and off-premise permittees, including restaurants, bars, bottle shops, growler filling stations, and grocery stores (in other words, potentially wherever beer growlers are offered for sale). Unfortified wine includes cider and “traditional” wine, and can even include mead and sake. These provisions are effective immediately, but retailers must ensure that they hold the applicable unfortified wine permits.

Alternating Proprietorships for Breweries

The new law clarifies that breweries may enter into alternating proprietorships, in which one brewery leases or otherwise makes its facilities available to another brewery. These arrangements can be beneficial for a number of reasons, including the production of “collaboration” beers, and are often used by large breweries to address excess brewing capacity while simultaneously giving smaller or start-up breweries

the ability to brew more beer without investing in expensive equipment or increased physical space. However, alternating proprietorships cannot be used to circumvent the brewery's self-distribution cap of 25,000 barrels per year.

Contract Brewing

The new law clarifies that a North Carolina brewery may contract with another brewery located inside or outside of North Carolina for the production of beer to be sold at the North Carolina brewery (and throughout the State if desired through brewery self-distribution or the use of wholesalers). Contract brewing is distinguished from alternating proprietorships because in the contract brewing scenario the contracted brewery actually brews the beer for the other brewery as opposed to making its facility available for the other brewery to come in and brew the beer itself. Contract brewing provides yet another way for large and small breweries to address demand and production capabilities.

Similar to alternating proprietorships, contract brewing cannot be used to circumvent the 25,000 barrel self-distribution limit, which has become a major concern for many successful local breweries. Efforts to increase the self-distribution limit have been met with strong resistance by the wholesaler lobby, and it remains to be seen whether an increase in barrelogage or other compromise will be reached in the near future.

Unfortunately, the new law does not address other traditional types of contract brewing, such as where a retail permittee would contract with a brewery to produce beer for sale at its retail establishment under special label. This type of contract

brewing is neither expressly allowed nor prohibited under North Carolina law, but in practice could raise the issue of whether the contracted brewery (if self-distributing the beer) or the wholesaler is unlawfully discriminating against other retailers if the contract beer is not available or offered for sale to other retail permittees. North Carolina law also prohibits many forms of cooperative advertising among breweries and retailers, leaving the contract brewing scenario between a retailer and a brewery a risky proposition until further clarification is provided by the legislature. Participants in this type of contract brewing arrangement should take extra caution to ensure that the ABC Commission is aware of the arrangement and does not object, and may even need to obtain a more formal approval or exemption.

Other Changes

The new law also addresses the sale of antique spirituous liquor (which is now allowed) and powdered alcohol (which is now prohibited), enables the Tribal ABC Commission (for the Eastern Band of Cherokee Indians) to issue commercial ABC permits to businesses within its jurisdiction, and authorizes certain hotels located on 18-hole golf courses to obtain a guest room cabinet permit for the sale of alcohol in mini-bars.

The new law also attempts to clarify to whom breweries may sell their products in state and out of state, but this section appears to contradict certain aspects of other existing law relating to bottlers and may have been primarily intended to close a loophole in the brewery self-distribution laws.

Conclusion

House Bill 909 / Session Law 2015-98 makes major changes to existing North Carolina ABC laws. Breweries, wineries, cideries, distilleries, retail permittees, and consumers all stand to benefit, whether it be through increased access to products, flexible business arrangements, or new opportunities for sales and resulting profits. As North Carolina's alcoholic beverage industry continues to flourish, we can expect even more changes looming on the horizon.

Christian is an attorney in the firm's Hospitality & Leisure industry practice group. He regularly advises clients on North Carolina ABC laws and handles a wide range of business-related matters. He has written previous articles and taught continuing education seminars on topics affecting the alcoholic beverage industry. Christian can be reached by phone at (704) 945-2183 or e-mail at cstaples@slk-law.com.

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