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Summary of Recent Changes to the North Carolina Alcoholic Beverage Laws

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Thus far 2019 has brought about truly monumental changes to many of our state's alcoholic beverages laws, most notably those pertaining to breweries and distilleries. This article summarizes those changes.

I authored a recent Client Alert regarding the *Craft Freedom* lawsuit and the subsequent legislative effort to increase the brewery self-distribution cap. Since that publication, the law formally known as the *Craft Beer Distribution & Modernization Act* passed, allowing North Carolina breweries to self-distribute up to 50,000 barrels so long as their total annual production does not exceed 100,000 barrels. In essence, this law creates a new classification of mid-sized independent breweries (along with small breweries producing less than 25,000 barrels and large breweries producing more than 100,000 barrels) to accommodate the growing production of independently owned craft breweries. It is important to note, however, that these barrelage limits are cumulative across all of a brewery's production facilities and also include affiliated production facilities operating under a different name. Despite the aforementioned changes, the new law retains the provision of the Beer Franchise Law enabling a brewery producing less than 25,000 barrels per year (i.e., a small brewery) to terminate a distribution agreement without good cause. The new law does not extend this termination right to mid-size or large breweries and retains the traditional requirement of good cause for terminating a distribution agreement for all breweries producing 25,000 barrels or more. Breweries must closely monitor their annual production and clearly understand the laws that apply at varying levels of production.

On June 26, 2019, the General Assembly passed Session Law 2019-52 (House Bill 389) which authorizes public colleges and universities to obtain ABC permits authorizing the sale of beer and wine (but not mixed beverages) at stadiums, athletic facilities, and arenas located on school property, upon the affirmative vote of the Board of Trustees and approval by the ABC Commission. Some private colleges and universities (such as Wake Forest University, among others) had already been doing this, so the new law levels the playing field for public colleges and universities. However, the new law does not extend to community colleges. This is a welcome change for fans of collegiate athletics.

Even more recently, on July 29, 2019, Governor Cooper signed Senate Bill 290, now known as Session Law 2019-182, which greatly advances the laws for distilleries (and to a lesser extent, breweries) in North Carolina.

First, the new law enables distilleries to obtain ABC retail permits authorizing the on-premise sale of beer, wine, and mixed beverages, thereby enabling distilleries to operate affiliated retail premises like our state's breweries and wineries have traditionally done. The new law also eliminates the restriction under prior law that limited consumers to purchasing five (5) bottles of spirituous liquor from a distillery within a twelve (12) month period. Now, a consumer who tours a distillery may purchase directly from the distillery up to eight liters (270 ounces) of spirituous liquor without a permit. Additionally, distilleries will now be permitted to offer tastings of spirituous liquor at ABC Stores, trade shows, conventions, festivals, fundraisers, and similar events. However, these tastings are limited to no more than .25 ounces per sample and cumulatively shall not exceed one ounce, per day (.5 ounces in ABC Stores), per consumer. The new law also authorizes malt beverage tastings at Farmer's Markets, which was not authorized under prior law.

Traditional retail establishments will also benefit under this new law through the ability to sell “private label” branded malt beverage products. Historically, wineries could sell private label branded products to retailers, but breweries could not, so the new law levels the playing field in this respect. Under the new law, a retail permit holder can determine whether to exclusively sell the private brand products at its retail location or, to allow other retailers to purchase and sell the products as well. This is sure to be a valuable marketing opportunity for retail permittees like restaurants, grocery stores, and bottle shops looking to offer a private label brand to improve customer recognition and increase sales.

Session Law 2019-182 also creates a new “Common Area Entertainment Permit” for multitenant establishments where at least two (2) tenants hold ABC retail permits and are connected by a common area. This will allow consumers to exit the premises of an ABC permitted retailer with an “open container” and to consume the alcoholic beverage in a designated common area within the center or development, subject to certain conditions. Excluded from this new law, however, are traditional shopping malls where 50 percent or more of the common areas are enclosed and air conditioned. Nonetheless, this will be an added benefit to certain food halls, markets, and other similar developments which have been increasing in popularity.

Next, of special interest to breweries operating taprooms and which do not prepare food on site, the new law exempts those establishments from certain health/sanitation code regulations which, in effect, authorize breweries to allow

dogs in taprooms. This is essentially a return to the common practice of most breweries several years ago, before the health regulations were strictly enforced. In addition, the new law authorizes the sale of alcohol at bingo games.

There are many other technical provisions embedded in Senate Bill 290 that will impact the state’s alcoholic beverage industry, such as the provisions authorizing the transfer of malt beverages up to four times per calendar year between retail permittees under common ownership or control located within the same territory. Wineries could do this under prior law, and now the protection is extended to malt beverages. In practice, this means that a retail or grocery store chain may transfer a specific brand of malt beverages from one location to another within the same distribution territory where the brand is selling more successfully. The new law also clarifies that patrons may purchase up to two (2) drinks (malt beverage or wine only) at one time to a single customer. However, this does not extend to mixed beverages or to any alcoholic beverages offered for sale at stadiums, athletic facilities, or arenas of public colleges or universities.

Hopefully this has provided some valuable insight into the recent legislative changes impacting ABC permittees, whether you are a brewery, winery, distillery, or retailer.

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