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Client Alert: North Carolina Legislature Considers Major Revisions to the Brewery Self-Distribution Cap and Beer Franchise Law

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As anyone who follows closely (or even casually) the *Craft Freedom* initiative likely knows by now, two of the state's largest breweries (NoDa Brewing Company and The Old Mecklenburg Brewery) appear to have compromised and settled their dispute with the North Carolina Beer and Wine Wholesalers Association over the 25,000 barrel brewery self-distribution cap and the Beer Franchise Law. This is important because North Carolina is home to more than 200 craft breweries which have an annual economic impact of $1.2 billion and account for more than 10,000 jobs, according to the North Carolina Craft Brewers Guild.

As a direct result of the compromise, new legislation was introduced in the North Carolina General Assembly on March 14, 2019, known as the *Craft Beer Distribution & Modernization Act* (Senate Bill 246 / House Bill 363) ("the Act"), which would make major revisions to the current laws affecting North Carolina breweries if ultimately passed into law (which, at present, appears likely in some form). Although the legislation in its current form may not be a perfect solution, it would have the intended effect of giving North Carolina breweries greater control over the distribution of their product once their annual production reaches 25,000 barrels. Admittedly, this is a large number that only a handful of North Carolina breweries currently exceed (or could reasonably be expected to exceed in the near future), but as the North Carolina craft brewing industry continues to flourish, more and more breweries are likely to approach and/or exceed that number in the next few years.

The Act would raise the brewery self-distribution cap from 25,000 barrels to 50,000 barrels, thereby doubling the annual production that breweries may self-distribute to retailers without being required to contract with a wholesaler/distributor. However, the increased self-distribution cap would only apply if a brewery's total annual production is less than 100,000 barrels. In other words, if a brewery's total annual production is 75,000 barrels, the brewery could only self-distribute the first 50,000 barrels and would be required to contract with a wholesaler/distributor for the remaining 25,000 barrels. Once a brewery reaches an annual

production of 100,000 barrels, the brewery would be required to contract with a wholesaler/distributor for its entire annual production and would no longer have any self-distribution rights. In essence, the Act would create a new classification of "mid-sized independent breweries" whereas under current law there are only two classifications – small breweries producing less than 25,000 barrels per year and large breweries producing 25,000 barrels or more per year.

It is important to note that the new barrelage limitations would apply regardless of the number or type of permits that a brewery holds. In other words, breweries operating multiple production facilities would have to combine their total production from each facility in calculating whether they are over or under the relevant barrelage thresholds.

Despite the aforementioned changes, the Act retains the provision of the Beer Franchise Law enabling a small brewery producing less than 25,000 barrels per year to terminate a distribution agreement without good cause and thereby regain its self-distribution rights. The Act would not extend this exception to mid-size breweries. Thus, a brewery producing 25,000 barrels or more per year must have good cause or some other statutory authorization in order to properly terminate a distribution agreement and not subject itself to potential liability to the affected distributor.

There are other more technical provisions of the Act that are beyond the scope of this article, and it remains to be seen whether any revisions to the Act will be made during the committee referral process or otherwise prior to its enactment. Regardless, this is certainly a key piece of legislation that all North Carolina breweries and distributors should be aware of.

If you have any questions or concerns about the Act, its potential impact on your business, or our state's alcoholic beverage laws in general, please feel free to contact me at 704.945.2183 or cstaples@shumaker.com

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