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## Craft beverage industry moves forward



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The craft beverage industry may be thriving in New York but navigating the heavy regulation associated with it can be a complex process.

The state continues to take steps to become more business-friendly to startups and established companies looking to grow, according to attorney Katherine Markert of Harter Secrest & Emery.

Clients say it's easier in New York than many other states to start such businesses, she added.

The state's momentum continued in 2016 with newly passed legislation last month that includes provisions to broaden retail sales by producers, streamlining the application and licensing processes and reducing fees for wineries, distilleries, breweries and cideries statewide.

The legislation builds on progress made by Gov. Andrew Cuomo and his administration over the past five years. It includes enacting the Craft New York Act of 2014, a boon for the industry because it simplified regulations, allowing for tastings and sales off-site and establishing farm brewery and distillery classifications. The legislation also allows microbreweries and farm breweries to sell by the glass, which has become a big part of the business model, said attorney Charles Grieco of Bond Schoeneck & King.

"I don't think there's any of these businesses that don't do that now, but just a couple of years ago you couldn't," he said.

In 2012, the state Legislature allowed craft producers to have more than one license for their operation at a single location, allowing them to dabble in other types of products without having to commit major capital expenditures.

Joseph Carello, a labor and employment attorney at Nixon Peabody, said much of the Alcohol Beverage Control Law hadn't been updated since the Prohibition era, which made it difficult to coalesce with modern ways.

"The state's industry in general has grown by leaps and bounds, due in no small part to tweaks here and there that the governor and Legislature have made over the last four or five years," he said.

Now there is an environment being fostered that looks to modernize the law and make it easier for businesses to start and grow, according to Jackie Sudano, a Nixon Peabody attorney.

"In some states it's probably the opposite," she said. "It's really encouraging to see that New York is taking the plight of craft brewers seriously and making things easier for the industry."

Because it's such a heavily regulated industry, she said many clients have questions about industry rules. There are two levels of licensing that must be complied with simultaneously.

Sudano is a member of the firm's food, beverage and alcohol practice, serving craft producers of beer and spirits. She finds herself helping clients with everything from obtaining federal permits for importers or wholesalers to licenses for distillers or beer producers on the state level.

"It may be their first business ever so they need a lot of guidance, at least at the start," she said. "After a little while, there usually are fewer conversations once they get into the swing of things."

According to Carello, New York is one of the top producers of craft beverages nationwide. In the past five years, it saw a threefold increase in licensed wineries, breweries, distilleries and cideries.

Nationally, there are 4,200 operating craft breweries, up from 1,500 a decade ago.

State efforts to encourage industry growth has helped Bond's hospitality and tourism practice grow, according to Grieco.

### Recent legislation a boon to industry

A recent legislative agreement eliminated some of the paperwork requirements for manufacturers and decreased fees for craft beverage salespeople and for small wholesalers.

It combines craft manufacturing licenses into one application to reduce paperwork for small businesses; eliminates the fee for a solicitor's permit for craft manufacturers; removes the bond requirement formerly required for all salespeople working in the

industry; and amends the ABC laws to create a low-cost importer's license that would be available to wholesalers that sell only to other wholesalers.

The legislation makes it more financially feasible for such businesses, according to Markert.

Also helping to modernize ABC laws was an agreement to relax the Sunday morning blue laws for restaurants and bars.

Craft brewery and distillery clients kept close tabs on this legislation, she said. "There's an economic benefit that was getting lost," Markert said. "People are going to go out and have gatherings at restaurants and bars when there are sports events, and the business is going to make more money if they can sell a beer, mimosas or wine with the meal people are having. And consumers are going to be happier."

A group formed last year and led by state Liquor Authority Chairman Vincent Bradley put together a report in April with 15 recommendations to the governor that would modernize laws for breweries and distilleries and any type of alcohol manufacturers, retailers and wholesalers.

The group, which included various segments of the industry, came together in a productive way despite some competing interests, according to Sudano.

And Grieco said that despite being amended over the years, the 82-year-old statute still is difficult to interpret, especially for a craft brewer or distiller.

"If you're trying to just run a business and grow a business and trying to figure out what license you need and what sort of applications you need to file — to do pretty much what other businesses do without requiring approvals — it can be frustrating," he said.

Among the group's recommendations:

- A new importer license that would cost \$125. For wholesalers looking to bring their products into New York, historically the license that company would need cost \$30,000.
- A look-back period for felons seeking to get into the industry that goes back five years, mirroring federal law.
- Giving the state Liquor Authority more general regulatory authority, which could be helpful for the industry and the lawyers who serve it, according to Grieco.



Harter Secrest & Emery associate Katherine Markert, shown here with Phillip Delmont, partner, says New York state is looking to become more business-friendly to craft beverage startups.

- Consolidating the number of retail on-premises licenses needed from dozens down to three: beer; beer and wine; and beer, wine and liquor.
- Relaxing a strict prohibition on these businesses that stops them from being within 200 feet of a place of worship.
- Giving the Liquor Authority discretion to make a determination on a case-by-case basis.

### Improvements still needed

Grieco said there is a ways to go before the system is completely functioning and streamlined. And while clients are encouraged that things are moving in the right direction, at least at the state level, they're frustrated at having to deal with delays in the application process.

Industry growth has outpaced changes in the regulatory arena, so businesses still experience delays and confusion, he said.

For example, Grieco has been working on approval of a temporary, outdoor bar this summer for a craft brewery client. The process requires three separate applications to the state Liquor Authority to cover an additional bar, alterations to the premises and updating an establishment's questionnaire. As of June, he was still awaiting approval.

"The (Liquor Authority) isn't trying to be difficult but they are charged with enforcing the statute that they have and, frankly, it's a bit of a mess," he said.

Also, the sale of alcohol calls for a federal license through the Tax and Trade Bureau, which involves its own lengthy process, Grieco said. The estimated time to process an application for a brewery is 140 days, which may be a function of staffing.

"It takes a long time. ... They're having trouble keeping up with the volume," he said.

Grieco said clients realize the need for sensible regulations because it involves alcohol but there seems to be many areas where improvements could be made. He expects to see more reforms in the next few years.

"There aren't many businesses that I'm used to dealing with in other areas that have to deal with that level of regulation," he said.