

New York State Senate Proposes Changes to Modernize Alcoholic Beverage Control Law

On May 31, 2016, New York State Senator Andrew J. Lanza introduced Senate Bill 7935 designed to reorganize and modernize New York's Alcoholic Beverage Control Law (ABCL). The amendments proposed by the bill are meant to tackle many of the criticisms of the law, and reflect recommendations made by the Alcoholic Beverage Control Law Working Group that was formed as a result of Governor Cuomo's Third Beer, Wine, Spirits and Cider Summit in October 2015.

Current licenses would be unaffected by the amendments, but applicants for new licenses and license renewals will have more options for their individual businesses if Senate Bill 7935 becomes law.

General Licensing

The proposed law relaxes the prohibition on granting licenses to individuals previously convicted of felonies or certain misdemeanors involving prostitution. Under the proposed law, a misdemeanor conviction no longer disqualifies an individual from obtaining a license, and only individuals convicted of a felony within the past five years are ineligible. Even with this limited five-year lookback, individuals convicted of a felony in New York may still bypass this restriction by obtaining a certificate of rehabilitation from the court that issued the conviction. For felony convictions outside New York, individuals may now become eligible for a license by obtaining that state's equivalent of an executive pardon, certificate of good conduct, or certificate of relief from disabilities — under the existing law, there is no such mechanism for out-of-state convictions. If an applicant is unable to obtain such a document, the proposed law also provides the State Liquor Authority (SLA) with the discretion to review any other documentation or testimony from the applicant as evidence that he or she should be granted a license regardless of the felony conviction.

Manufacturers' Licenses

Combined Licenses

To avoid the expense and confusion of obtaining and annually renewing individual licenses, the proposed law creates the option for a combined craft manufacturing license. The combined license would allow persons and businesses to hold two or more farm or micro-manufacturing licenses on the same premises. For example, a manufacturer may choose to apply for a combined license to operate as both a micro-brewery and a farm distillery. Although the cost of the combined license would be equal to the costs of the individual licenses, the proposed law requires only a single annual filing fee for the combined license.

Solicitors' Permits

Along with creating combined licenses, the amendments eliminate the requirement for salespersons of a manufacturer to obtain a solicitor's permit if soliciting orders on behalf of a licensed micro-brewery, farm brewery, farm cidery, farm winery, micro-farm winery, micro-distillery, micro-rectifier, or farm distillery. For other manufacturers, the law would extend the period for which a temporary solicitor's permit can be used from 60 days to six months.

ALCOHOL BEVERAGE

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Winery Licenses

The amendments would also expand the ability of wine manufacturers to respond to customer behavior. The current law prohibits wineries and farm wineries from selling or providing wine to customers in unsealed containers for off-premises consumption. The proposed law would allow for a customer of a winery or farm winery to take home “leftover” wine when the customer has purchased a bottle of wine for on-premises consumption without finishing the contents. Under the proposed law, wineries and farm wineries would also be permitted to sell wine in growlers for off-premises consumption.

Retailers’ Licenses

Blue Laws

The proposed law expands retailers’ ability to sell on Sunday by relaxing the “Blue Laws.” While the current law generally prohibits the sale of alcohol before noon on Sundays, the proposed law would permit retailers and other on-premises licensees (such as licensed wineries) to obtain single-day or calendar year permits for Sunday sales. These permits would allow them to sell alcohol for on-premises consumption between 8:00 a.m. and noon.

Second Business Laws

At the same time, the amendments revise the provision that generally prohibits package store and wine store licensees from engaging in any business outside of selling alcoholic beverages. Currently, this prevents such licensees from selling items such as gift bags or wrapping for more than cost. Under the proposed law, these licensees would be able to derive a profit on sales of these items.

Restrictions on Retail Locations

Under the proposed law, many problems in the current law related to a retailer’s proximity to neighbors and adjacent buildings have been resolved through three distinct measures.

First, the proposed law provides the SLA with discretion to grant licenses to premises that otherwise would have violated the “Two Hundred Feet” and/or “Five Hundred Feet” rules. The SLA would have the power to grant retail licenses for on-premises consumption to premises located on the same street and within 200 feet of a location used exclusively for a school or place of worship if the Authority notifies the affected entity and provides the entity an opportunity to express its opinion about whether the license should be granted. The amendments also give the SLA the ability to license premises located within 500 feet of three or more other licensed premises if, following a public hearing, it finds that doing so is in the public interest.

Second, in the event that a retailer owns adjacent premises, one of which has a license for on-premises consumption and the other of which has a license for off-premises consumption, the proposed law allows a retailer to transport alcoholic beverages through one premises to reach the other. For example, Retailer ABC owns a grocery store and an adjacent restaurant. The grocery store is licensed for sales of off-premises beer while the restaurant is licensed for on-premises liquor and wine. Under the current law, when the restaurant receives a shipment of liquor, it is not permitted to transport the liquor through the grocery store, even if the restaurant is otherwise severely inconvenienced. The present law also prohibits customers of the restaurant from passing through the grocery store on their way out with any unfinished bottles of wine. The proposed law would permit these practices, making the storage and transportation of alcohol between spaces owned by a single retail licensee more practical.

Finally, the proposed law would repeal certain restrictions on the location of on-premises retail establishments. The current law generally prohibits retail establishments from having an entrance or other passageway for persons to pass between the retail establishment and any adjoining, non-licensed area. An example of a prohibited arrangement under the current law is a licensed bar whose entrance adjoins a non-licensed space such as a clothing store. The elimination of this restriction would provide retailers with greater flexibility in selecting their location.

Wholesalers' Licenses

In an effort to incentivize importers to do business in the state, the proposed law would create an importer's license, which would allow wholesalers to import beverages and sell them to other licensed New York wholesalers. For wholesalers that exclusively import alcohol for sale to other wholesalers in the state, this would eliminate the need to obtain a more costly wholesaler's license.

Other Changes

The proposed law also addresses a gap in the current law regarding vacancies on the SLA. In the event of a Commissioner vacancy, the proposed law would allow the Governor, with the advice and consent of the State Senate, to appoint a new Commissioner and/or Chairman of the SLA. The amendments also grant the Governor the authority to designate one of the Commissioners to act as an interim Chairman until a permanent Chairman is appointed.

Conclusion

The proposed law is a significant overhaul of the state's existing ABCL, intended to ameliorate some of the current law's confusing language, restrictions, and licensing structure. Potentially-affected entities include manufacturers, retailers, wholesalers, and the SLA itself. Parties should consider the potential benefits of taking advantage of the new permissions and licenses if the bill becomes law and seek legal guidance accordingly.

If you have any questions regarding this LEGALcurrents[®], please contact any member of our Alcohol Beverage practice group at (585) 232-6500. ■



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