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Alcoholic Beverage Control

The 2005 session was not an active one in the alcohol beverage control (ABC) law arena. The major bills concerned the amount of alcohol allowed in beer and malt beverages. As is typical, the General Assembly also passed several bills narrowly drafted to respond to one or more particular locales interested in authorizing an election or in allowing alcohol sales without an election.

Alcohol Content of Beer

For many years the maximum amount of alcohol allowed in a malt beverage (beer, lager, malt liquor, ale, or porter) has been set at 6 percent by volume. S.L. 2005-277 (H 392) raises that amount to 15 percent. The bill generated a good deal of discussion. The most vocal proponents of the bill were people interested in drinking specialty beers that are usually brewed in small batches and are significantly more expensive than the beer currently sold in North Carolina. Some opponents expressed concern about increasing alcohol amounts generally, while others worried about the potential negative impacts of allowing a significantly higher alcohol content in the cheaper malt liquors. S.L. 2005-277 requires any malt beverage of more than 6 percent alcohol to be clearly labeled as to the amount of alcohol it contains.

Standards for Issuing Permits

Once a jurisdiction has authorized the sale of alcoholic beverages of a particular kind (beer, wine, mixed beverages, or a combination of these), businesses within the jurisdiction may apply for permits to sell the beverages. These permits are not issued by local governments but by the state ABC Commission. The commission must decide whether the applicant and the location are “suitable.” Local governments have no veto power over that decision, although they may make recommendations to the commission, which the commission must consider. S.L. 2005-392 (H 1174) adds some additional factors the commission must consider in determining suitability. The act first extends the definition of “premises” to include all areas over which a permittee has legal control, including any areas outside the facility where the alcohol is sold. Currently an applicant must be in compliance with all fire and building codes; the new act requires that such compliance also be certified by the appropriate local

government. This compliance certificate must indicate whether the location is within an urban redevelopment area, and if so, whether the applicant has been notified of that fact. Licensees in these areas must limit alcohol sales to no more than 50 percent of their total sales. S.L. 2005-392 also requires the commission to consider whether the location of the business would be detrimental to the neighborhood. The commission's inquiry must include, for example, consideration of ABC law violations in the previous twelve-month period by prior permittees related to the applicant and evidence of illegal drug activity, disorderly conduct, or other "dangerous activities" on or about the premises under consideration. Evidence considered for this purpose is admissible under the rules governing administrative hearings under G.S. Chapter 150B (the Administrative Procedure Act). S.L. 2005-392 also clarifies that the commission's discretion in issuing or denying permits extends to both the location and the applicant's suitability.

In addition to the new provisions affecting permit issuance, S.L. 2005-392 establishes another instance in which the commission must revoke a permit. The act requires revocation when the commission "finds evidence" that a permittee or one of its employees has been found responsible by a court or the commission on two separate occasions in a twelve-month period of knowingly allowing to occur on licensed premises a violation of laws relating to gambling, disorderly conduct, prostitution, controlled substances, or felony counterfeiting of trademarks. Section 4 of the act specifies that the revocation procedure must comply with G.S. Chapter 150B, but, in an apparent contradiction, Section 5 provides that the procedure should not be treated as a contested case under that chapter.

Sales without Elections

Generally in North Carolina, the sale of alcohol must be authorized by elections in the covered unit of government. The legislature may by general law, however, allow sales without an election. Often the general laws are drafted to cover a specific location or jurisdiction. S.L. 2005-327 (S 974) is an example of such a bill. The act exempts from a general prohibition on sales of alcohol on public school premises the sale of beer and wine at a performing arts center located at a constituent institution of The University of North Carolina if the center's seating capacity does not exceed two thousand. This exemption expires December 31, 2005, and applies only to a wine festival where fifteen or more wineries are exhibiting wines. The event must be sponsored by a nonprofit organization and last no more than two days. S.L. 2005-327 also authorizes the commission to issue permits allowing on-premises sale and consumption of beer and wine in a county-owned facility located adjacent to or separated by a road right-of-way from a municipality where all alcoholic beverages are authorized by law.

Finally, the act also directs the commission to issue a special occasion permit (allowing a host to bring alcohol to a permittee's premises and serve it to guests) to a sports facility occupied by a "major league" professional sports team with suites leased to patrons. Alcohol may be served in the suites in the same manner as if the person leasing the suite were the host of a special occasion, including allowing self-service of alcohol by guests at least twenty-one years old. This special authority does not allow guests to bring alcohol into or remove it from the suite.

Elections

S.L. 2005-336 (H 1416) allows an election authorizing on-premises sales of beer and wine to be conducted by a town if the town is the passenger terminus of a rail line carrying at least sixty thousand passengers per year. Generally beer or wine elections are allowed in cities or towns under specified circumstances, including a requirement that the town either operate an ABC store or have more than five hundred residents.

Recycling of Alcohol Containers

S.L. 2005-348 (H 1518) requires holders of permits to sell alcoholic beverages on premises to provide for the recycling of any recyclable containers sold at retail on the premises. The recycling program must provide for the separation, storage, and collection of the containers. Knowingly disposing of the containers in landfills is prohibited.

Viticulture Programs

Community colleges may provide viticulture programs to educate students about the process of wine making. S.L. 2005-350 (H 1500) allows the colleges to contract for the use of property to grow grapes and to sell some wine products at retail at special winery events, subject to a six-event and twenty-five-case maximum per year.

Wine Tasting and Wine Shop Permits

S.L. 2005-350 further details the regulations applicable to wine tastings conducted by retailers authorized to sell wine. The regulations now specify that the employee supervising the tastings must be at least twenty-one, the employee may not supervise more than three tasting areas with no more than six wines per area, and the tasting may not last more than four hours. Representatives of a winery producing the wine, a wholesaler, or a wholesaler's employee may assist at a tasting by pouring samples or checking identifications.

S.L. 2005-350 establishes a new category of permit for wine shops. This permit authorizes a wine shop to sell beer and wine at retail for off-premises consumption, conduct wine tastings, and ship beer and wine in closed containers to individuals both in and out of state. A permittee will also be able to conduct regular educational programs for consumers about the selection, serving, and storage of wine and may allow on-premises consumption of wine as part of its classes. No more than 40 percent of the permittee's sales in any thirty-day period may be collected from such on-premises sales, the wine sold must come from opened bottles used in wine tastings, and each serving may be no more than four ounces.

Defenses for Illegal Sales to Minors

S.L. 2005-350 establishes a biometric identification defense to a charge that a retailer illegally sold alcohol or tobacco to a minor. The defense applies when (1) the purchaser uses a biometric identification system showing that his or her age is the minimum age for purchase and (2) the purchaser has previously registered with the seller an approved government identification card giving the purchaser's date of birth and other identifying information.

Lottery Enforcement

One of the most controversial bills considered this session was the state lottery [S.L. 2005-344 (H 1023), as amended by the Current Operations and Capital Improvements Appropriations Act of 2005, S.L. 2005-276 (S 622)]. Part 31 of the act authorizes Alcohol Law Enforcement (ALE) officers to enforce the lottery laws and lodge criminal charges for violations. Although ALE officers have general jurisdiction to enforce all of the state's criminal laws, the General Statutes make the enforcement of certain kinds of criminal laws the first priority for ALE officers. Part 31 of the Lottery Act adds lottery regulation to the list of laws that fall under the specialized jurisdiction of ALE enforcement.

Bills Remaining Eligible for Consideration

House Bill 1048 includes changes to the impaired driving laws recommended by the Governor's Task Force on Driving While Impaired. Provisions within the bill require a person purchasing a keg of beer to obtain a permit and make it a criminal offense for a person under twenty-one to consume any alcoholic beverages. The bill has passed the House of Representatives and is eligible for consideration by the Senate in the 2006 short session.

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