

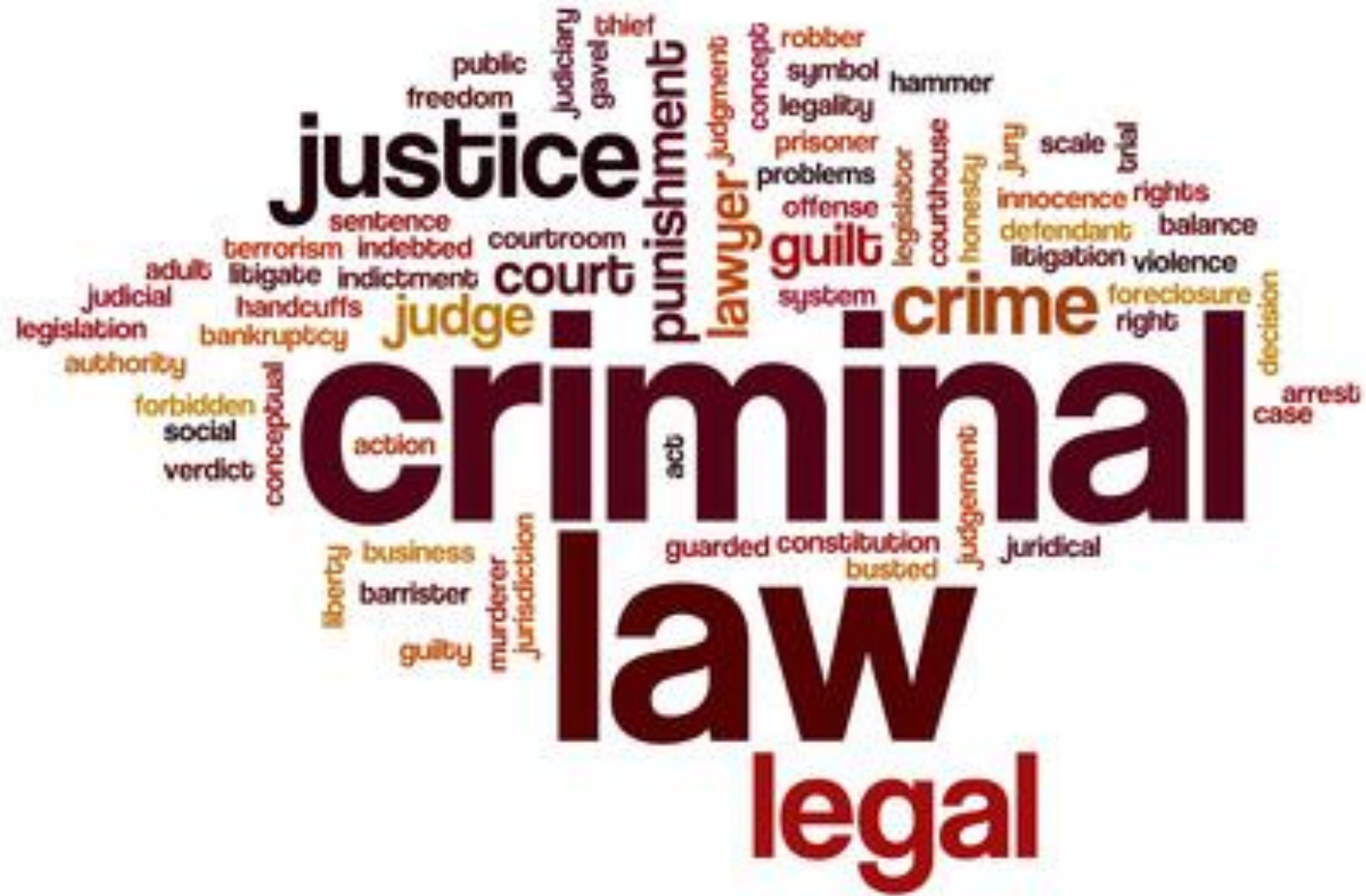
NC Legislative Developments in Criminal and Civil Law

Public Law for the Public's Lawyers

Fall 2022 Criminal Law Update

Robert Ryan
Legislative Analysis Division
North Carolina General Assembly







**S.L. 2022-30 (S766):
Organized Retail Theft.**



S.L. 2022-30 (S766): Organized Retail Theft

» What is organized retail theft?

- > Not a simple shoplift. Product is not stolen for personal use.
- > Large amount of products stolen, and then resold for profit.

» What is the current law? (G.S. 14-86.6)

- + More than \$1,500 → Class H felony
- + More than \$20,000 → Class G felony



S.L. 2022-30 (S766): Organized Retail Theft

» **How does this law address this issue?**

- > New offenses with higher penalties. (G.S. 14-86.6)
 - + More than \$50,000 → Class F felony
 - + More than \$100,000 → Class C felony
- > New offense for damage caused during the theft. (G.S. 14-86.7)
 - + Damaging property during the crime → Class A1 misdemeanor
- > **New law regulating on-line marketplaces. (Article 50 of Chapter 66)**





**S.L. 2022-8 (H315):
Arson Law Revisions**



S.L. 2022-8 (H315): Arson Law Revisions.

» **Increases the penalties for starting fires in certain types of buildings.**

- > Second Degree Arson → now Class E felony (G.S. 14-58)
- > Burning jail or prison → now Class D felony (G.S. 14-59.1)
- > Burning Commercial Structure → now Class D or E felony (G.S. 14-62.3)

» **Increases penalties for injuries.**

- > Now if cause Serious Injury → Class F felony (G.S. 14-69.3)



S.L. 2022-8 (H315): Arson Law Revisions.

» **Background checks for firefighters. (G.S. 143B-943)**

- > Background checks required.
- > Arson conviction is now an automatic disqualifier.





**S.L. 2022-50 (H674):
Require DNA Various Convictions/Other
Matters.**



S.L. 2022-50 (H674): Require DNA Various Convictions.

» Additional convictions require DNA collection. (G.S. 15A-266.4)

- > Certain assault convictions.
- > Domestic violence order of protection violations.

» Protections for sexual assault crime victims.

- > Victims cannot be billed for forensic medical exam, only the state fund can be billed. (G.S. 143B-1200)
- > Medical providers need to adopt policies to ensure victims not billed. (G.S. 131E-91)





**S.L. 2022-9 (S448):
Amendments to Schedule VI of the
Controlled Substances Act.**



S.L. 2022-9 (S448): Amendments to Schedule VI of the Controlled Substances Act.

» **What is Schedule VI? (G.S. 90-94)**

> Marijuana and THC are controlled and illegal to possess.

» **Does not make marijuana legal in NC.**

» **Speed up process for getting FDA approved drugs containing THC to NC patients**

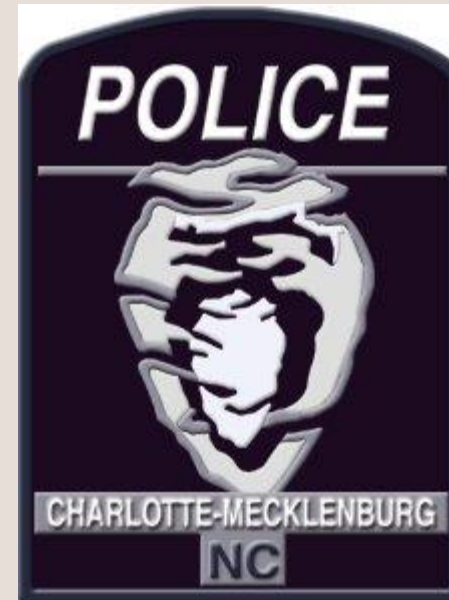
> FDA Approves →

> DEA changes federal drug schedule →

> New RX drug automatically lawful in NC if no objection is made.



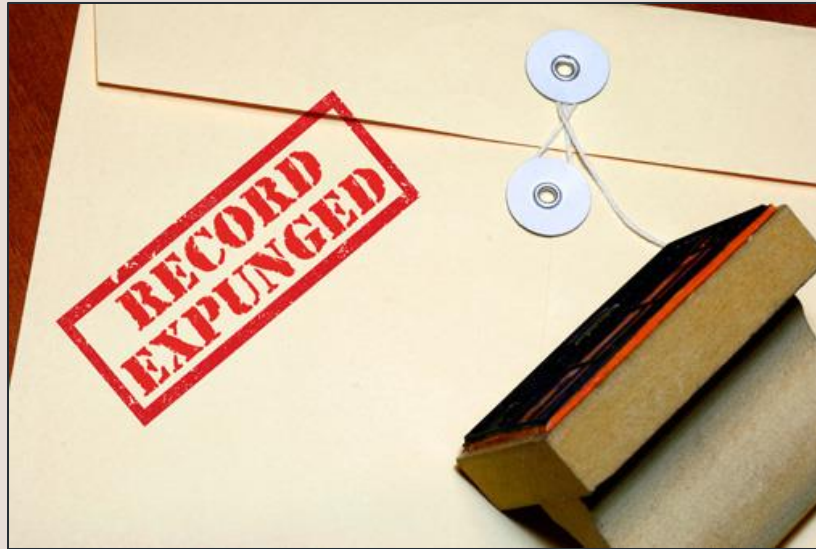
**S.L. 2022-48 (H615):
Jordan's Law.**



S.L. 2022-48 (H615): Jordan's Law.

- » **Bridge the potential coverage gap for DV order of protection. (G.S. 50B-3(b))**
 - > Allows a court to temporarily extend a DV order of protection when the court date to consider the extension is set after the expiration of the order.





S.L. 2022-47 (H607):
Various Court Changes.



S.L. 2022-47 (H607): Various Court Changes.

1. **Calls for a temporary pause of automatic expunctions to allow study of an issue.**
2. **Administrative issues sought by the North Carolina Administrative Office of the Courts (AOC).**



**S.L. 2022-73 (H252):
Bail Bond/Bondsmen
Provisions/Other Changes.**



**S.L. 2022-58 (H560):
Public Safety Reform.**





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Thank you!



Remote Electronic Notarization

Today

- Temporary reauthorization of the emergency video notarization, effective until June 30, 2023.
- Emergency video notarization:
 - Considers any person who witnesses the signature of a record through video conference technology to be an “in-person” witness.
 - Video conference technology must allow for direct, real-time audio and video interaction between the principal signer and the witness.
 - Authorization expired on December 31, 2021, and was re-established on July 8, 2022.

Today (continued)

Emergency video notarization reauthorization does not:

- Change in originality verification requirements for recording with government offices.
- Allow for remote notarization of a mail-in absentee ballot.
- Reduce the number of witnesses required for a health care power of attorney or advanced directive for a natural death declaration.

Remote Notarization – S.L. 2022-54

- Effective July 1, 2023.
- Allows a notary to register with the Secretary of State as a remote electronic notary, authorized to perform remote electronic notarizations.
- Remote notary does not need to be in the physical presence of the remote principal, but must be simultaneously communicating with the remote principal by sight and sound.
- Remote electronic notary must be in North Carolina at the time of the remote electronic notarization.

Where can the Remote Principal be located?

- Inside the United States.
- Outside the United States and physically on the military installation or vessel named in the military orders assigning the member to active duty for more than 120 days, provided the remotely located principal is a member, spouse of a member, or dependent of a member of the Armed Forces of the United States.
- Outside the United States at any of the following locations:
 - United States Embassy.
 - United States Consulate.
 - United States Diplomatic Mission.

Which Notarial Acts can be performed remotely?

The notarial acts authorized using communication technology are the same as electronic notaries namely, acknowledgments, jurats, verifications or proofs, and oaths or affirmations.

- Remote electronic notarization **cannot** be used for any of the following types of documents:
 - A self-proved will.
 - A revocable or irrevocable trust or any document amending the same.
 - A death beneficiary form that requires an acknowledgment.
 - A codicil to a will.
 - Any document related to the relinquishment of parental rights.
 - Mail-in absentee ballots.

Which Notarial Acts can be performed remotely? (continued)

The prohibitions on the previous slide do not apply if, at the time the remote electronic notarial act is performed, the remotely located principal is **all** of the following:

- A member of the Armed Forces of the United States or the spouse or dependent of a member of the Armed Forces of the United States.
- Located outside of this State pursuant to military orders assigning the member of the Armed Forces of the United States to active duty outside this State for more than 120 days.
- Physically located on the military installation or vessel named in the military orders.

Principal Identification

Geolocation of the IP address, as shown by the communication technology being used, must be used to verify that the remotely located principal was physically on U.S. soil.

A remote electronic notary is prohibited from performing a remote electronic notarial act unless the remote electronic notary has personal knowledge of the remotely located principal, or has proved identity via all of the following methods:

- Credential analysis, by a third-party vendor approved by the Secretary, of a current document issued by a federal, state, or federal or state recognized tribal government agency bearing the photographic image of the individual's face and either the signature or a physical description of the individual.
- Identity proofing by a third-party vendor approved by the Secretary.
- Comparison, by the remote electronic notary, of the current document issued by a federal, state, or federal or state recognized tribal government agency bearing the photographic image of the individual's face and either the signature or a physical description of the individual presented by the remotely located principal via the communication technology.

Communication Technology

- Must be capable of hosting the remote electronic meeting between the remote electronic notary and the remotely located principal.
- Must allow for direct interaction between the remote electronic notary and the remotely located principal.
- Must include sufficient audio and video quality for the remote electronic notary and the remotely located principal to observe and hear each other.
- Must not include any prerecorded audio or video.
- Must be capable of being recorded for future storage.
- Must reflect the physical location of the IP address being used by the remotely located principal.
- Must provide for automated backup of any recording.
- It is up to the remote electronic notary to take reasonable steps to protect against unauthorized interception.

Electronic Journal

- Contains all information required by the Secretary.
- Is maintained for 10 years after the last remote electronic notarial act, along with a backup by the remote electronic notary, or the duly appointed steward of the remote electronic notary.
- May be surrendered to the remote electronic notary's employer upon termination of employment.

Required Security Measures

- All records of journal entries and communication technology recordings must be securely stored in a repository under the control of the remote electronic notary or with a third party vendor.
- Must take reasonable steps to ensure that the communication technology recordings are secure from unauthorized interception during transmission between participants involved in a remote electronic notarial act. The communication technology must employ data protection safeguards consistent with generally accepted information security standards.
- **Security breach** - Within 10 calendar days of discovering any permanent loss of data, unauthorized use, loss of use, or compromise of security of the electronic journal or the communication technology recordings, the remote electronic notary must:
 - Inform law enforcement if theft, tampering, or vandalism.
 - Notify the register of deeds in the county of commissioning.
 - Notify the Secretary of State.

Remote Electronic Notarial Certificate

The portion of a notarized electronic document that is completed by the remote electronic notary is the remote electronic notarial certificate, which must contain all of the following:

- The remote electronic notary's electronic signature.
- The remote electronic notary's electronic seal.
- The facts attested to by the remote electronic notary in a particular notarization.
- A statement in the acknowledgement, jurat, or verification certificate identifying where the remotely located principal was physically located at the time of the remote electronic notarization.
- A statement that the notarization is a remote electronic notarization performed using communication technology by a remote electronic notary.

Recording of Paper Copies

A register of deeds shall record a paper copy of an electronic document as defined in G.S. 47-16.2(3) that is otherwise eligible under State law to be recorded in the real property records if all of the following conditions have been met:

- The register has no electronic recording system, the register's recording system does not accept the type of document being submitted, or the register's electronic recording system is not operational in the ordinary course of business at the time of submission.
- The execution of the instrument by one or more signers appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgements, and the proof or acknowledgment includes the officer's signature, commission expiration date, and official seal, if required, based on the appearance of these elements on the document as it will appear on the public record.

Recording of Paper Copies (continued)

- The paper copy of the instrument presented for recording has a certificate upon or attached to it, signed under oath or by affirmation, attesting to all of the following:
 - The title of the instrument, the date of the instrument, the number of pages in the instrument, and that the paper copy is a true and correct copy of an electronic record printed by, or under the supervision of, the attestor.
 - The electronic document was proved or acknowledged with an officer's signature that meets the requirements of G.S. 47-14(a2).
 - No security features present on the electronic document indicated any changes or errors in an electronic signature or other information in the electronic document after the affixation of the electronic notarial certificate when the paper copy was printed by, or under the supervision of, the attestor.
 - The attestor has made no changes or modifications to the electronic document since the affixation of the electronic notarial certificate.
 - The office of the register of deeds shall be entitled to rely on this certification and the attestor's capacity and due authority to give it.
- The copy of the document bears evidence of all other required governmental certification or annotation.
- The document conforms to all other applicable laws and rules that prescribe recordation.

Notary Fees

S.L. 2022-54 increased the maximum fees a notary may charge, in the discretion of each notary, effective July 8, 2022, as follows:

- For acknowledgments, jurats, verifications or proofs – from \$5.00 to \$10.00.
- For oaths or affirmations without a signature – from \$5.00 to \$10.00. No fee may be charged for an oath or affirmation administered to a credible witness to vouch for the identity of a principal or subscribing witness.
- For an electronic notarization – \$15.00.
- For remote electronic notarization – \$25.00.
- For any notarial act, actual mileage at the federal mileage rate if the travel reimbursement is agreed to by the principal in writing prior to the travel.

Miscellaneous Provisions

- **No POA Real Property Transfer** – Remotely notarized POAs cannot be used to transfer the principal's real property unless the military exception applies.
- **Notary Immunity** - A remote electronic notary exercising reasonable care in selecting a licensee or 3rd party vendor for a remote electronic notarial act is not liable for any damages resulting from the licensee/vendor's failure to comply with the law.
- **No Waiver of Immunity** - The notary's immunity cannot be waived by contract.
- **Platform Licensing** - The communication technology platform must be licensed by the Secretary of State and meet various standards.
- **Oversight** - Secretary of State granted rulemaking & enforcement authority.

Questions

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Developments in Hemp and Alcoholic Beverages Law

November 3, 2022

Chris Saunders

Legislative Analyst, Legislative Analysis Division

S455 – Conform Hemp with Federal Law

- Background
 - Hemp: The plant *Cannabis sativa* (L.) and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis.
 - Same plant as marijuana, but without enough THC to get you high.

S455 – Conform Hemp with Federal Law

- Background
 - Since 2015, hemp production in North Carolina operated under the oversight of the Industrial Hemp Commission, as part of a federally-authorized pilot program for research purposes.
 - The 2018 federal Farm Bill (H.R. 2 – Agriculture Improvement Act of 2018) legalized the regulated production of hemp at the federal level.

S455 – Conform Hemp with Federal Law

- Background
 - In August of 2021, the Industrial Hemp Commission submitted a resolution pursuant to S.L. 2015-299 that the State pilot program for hemp was no longer necessary because the United States Congress had removed industrial hemp from the federal Controlled Substances Act.
 - The provisions of that act, including the exception for hemp in the State Controlled Substances Act, expired on June 30 of the fiscal year in which that resolution was submitted.

S455 – Conform Hemp with Federal Law



Hemp legalization stalled by game of political chicken

Tags: [NCCapitol](#), [marijuana](#), [hemp](#), [agriculture](#), [General Assembly](#)

Posted June 22, 2022 1:55 p.m. EDT

Updated June 22, 2022 2:27 p.m. EDT



Farmers 'desperately worried' as hemp legalization deadline approaches

Tags: [NCCapitol](#), [North Carolina politics](#), [hemp](#)

Posted June 28, 2022 5:17 p.m. EDT



S455 – Conform Hemp with Federal Law

- What does the bill do?
 - Defines the terms “hemp” and “hemp products” in the State Controlled Substances Act and excludes them from the definition of “marijuana.”
 - As amended by Section 8 of H252 (S.L. 2022-73), excludes THC found in products with a delta-9 THC concentration of not more than 0.3% on a dry weight basis from the North Carolina Controlled Substances Act.

H211 – Social District/Common Area Clarifications

- Background

- S.L. 2019-182, Sec. 19 – Common Area Entertainment Permit established
 - May be issued to the owner of a multi-tenant establishment with at least two tenants who are ABC permittees.
 - Allows customers of tenants holding ABC permits to take alcoholic beverages from the tenants' premises into a common area in the multi-tenant establishment that is designated for consumption of alcoholic beverages during specific days and hours set by the owner of the multi-tenant establishment.
- S.L. 2021-150, Sec. 20 – Social Districts established
 - Authorized local governments to adopt ordinances to create "social districts," which were defined under prior law as "a defined outdoor area in which a person may consume alcoholic beverages sold by a permittee. This term does not include the permittee's licensed premises or an extended area allowed under G.S. 18B-904(h)."
 - Active during days and hours specified in the ordinance adopted by the local government.

H211 – Social District/Common Area Clarifications

City of Charlotte > Citywide Newsroom > City Highlights > City Council Approves New Ordinance Allowing Social Districts



The High F
beverages

CITY COUNCIL NEW ORDINANCE ALLOWING SOCIAL DISTRICTS

Social Districts Approved

By Britt Clappitt (Britt.Clappitt@charlottenc.gov) on 8/22/2022



Kannapolis Create district' allowing consumption outd Avenue

Published 12:00 am Friday, October 1, 2021

Washington City Council meets to discuss implementing a social district

by Amanda Denise, Christopher Fenton | Monday, October 10th 2022



If passed, the proposed social district in Washington, North Carolina will include bars and restaurants located on and near Gladden Street, Main Street, Respass Street, and Market Street. (Photo: Amanda Denise, Newschannel12)

Greenville City Council approves social districts



Downtown Raleigh Pilots Social District

H211 – Social District/Common Area Clarifications

- What does the bill do?
 - Repealed the prior law relating to Common Area Entertainment Permits and social districts and re-enacted them with changes to make them more uniform and permissive.
 - Common Area Entertainment Permit – Generally for private establishments like a mall or mixed-use development.
 - Social District – Designated by local governments, usually in a busy downtown area or similar.
- Became effective July 7, 2022.

H211 – Social District/Common Area Clarifications

- Common Area Entertainment Permits
 - Allows the permit holder to define common areas as “designated consumption areas” where consumption of alcoholic beverages is allowed.
 - Besides the designated common area, may also include:
 - Any indoor or outdoor area of a permittee business that is contiguous to a designated common area.
 - Any indoor or outdoor area of a non-permittee business that is contiguous to the designated common area and that chooses to allow customers to bring open containers of alcoholic beverages onto its premises.
 - Non-permittee businesses are not responsible for enforcing the alcohol laws but must allow law enforcement officers access to areas of the premises accessible by customers.
 - Designated consumption areas must be approved by the ABC Commission.
 - Open containers must meet several criteria.
 - Possession of closed containers is allowed to the extent otherwise allowed by law.

H211 – Social District/Common Area Clarifications

- Common Area Entertainment Permits



H211 – Social District/Common Area Clarifications

- Social Districts
 - Designation of a social district does not limit the possession or consumption of alcoholic beverages otherwise authorized by law.
 - One or more areas may be designated as social districts and may include both indoor and outdoor areas of permittee and non-permittee businesses within or contiguous to the defined area during days and hours set by the local government.
 - Non-permittee businesses are not required to participate in the social district, but if they do, they are not responsible for enforcing the alcohol laws but must allow law enforcement officers access to areas of the premises accessible by customers.
 - A map of the social district must be submitted to the ABC Commission and the social district must be marked in a way that clearly indicates its boundaries.

H211 – Social District/Common Area Clarifications



H211 – Social District/Common Area Clarifications

- Other Social District Changes
 - Allows the ABC Commission to issue special one-time permits for events taking place inside a social district.
 - Allows the holder of a winery special event permit, malt beverage special event permit, or spirituous liquor special event permit to sell and serve products at special events taking place inside a social district.
 - Allows the holder of a mixed beverages catering permit to serve spirituous liquor to guests at events taking place inside a social district.

H211 – Social District/Common Area Clarifications

- Interaction Between Social Districts and Common Areas
 - If a social district borders a designated consumption area established by the holder of a common area entertainment permit, the multi-tenant establishment and the local government that established the social district may enter into a MOU that allows open containers approved for consumption in either the social district or designated consumption area to be possessed and consumed in both the social district and the designated consumption area during times when both the social district and designated consumption area are active.

H211 – Social District/Common Area Clarifications

- As with many things in ABC law, likely to be a work in progress!
- Anticipate additional changes to the Common Area Entertainment Permit and Social District statutes as issues arise from local governments, stakeholders, and the ABC Commission.

H768 – 2022 ABC Omnibus

- Various changes related to the ABC laws, of varying interest to the general public.
 - **Section 1** - Repealed an obsolete “limited winery” permit which was created to allow free wine tastings at certain wineries before that was generally authorized by ABC Commission rules.

H768 – 2022 ABC Omnibus

- **Section 2** - Established a new “packaging and logistics permit” which allows the recipient to receive closed containers from a supplier and repackage them, such as for a variety pack. This permit costs \$300.00.



H768 – 2022 ABC Omnibus

- **Section 3** – Repealed the purchase-transportation permit. Under prior law, a purchase-transportation permit was needed to purchase and transport more than 50 liters of unfortified wine, 8 liters of spirituous liquor or fortified wine, or 80 liters of malt beverages, except for kegs. Now there is no permit required and no limit on the amount that may be purchased and transported.

H768 – 2022 ABC Omnibus

- **Section 4** – Provided that any person who becomes lawfully entitled to the use and control of the premises of a permitted establishment through contract, lease, management agreement, or change of ownership or transfer of business may continue to operate the establishment to the same extent as the prior permittee until the person receives a new permit, subject to a few limitations:
 - The person must provide written or electronic notice to the Commission of the change in ownership.
 - The person must submit a new permit application within 60 days of the change in ownership.
 - The 60-day period can only be allowed once per 24-month period unless the Commission grants a waiver, which it must do if the public health, safety, and welfare would not be harmed by granting the waiver.
 - The establishment must be permitted in good standing and must not have been found responsible of gambling, assault, disorderly conduct, prostitution, or controlled substances violation within 12 months prior to the change in ownership.

H768 – 2022 ABC Omnibus

- **Section 5** – Allows the sale of malt beverages, unfortified wine, fortified wine, or mixed beverages for consumption on the premises at a professional sporting event held at a stadium owned by a community college that is located in a township that has previously voted to allow the operation of ABC stores.



H768 – 2022 ABC Omnibus

- **Section 6** – As amended by S.L. 2022-51, repealed the term “private bar” and created a new definition for “bar,” defining it as “An establishment that is primarily engaged in the business of selling alcoholic beverages for consumption on the premises.”
 - The practical effect is to eliminate the cursory membership requirement at businesses that would customarily be thought of as bars. Establishments that want to have a membership requirement can still do so.

H768 – 2022 ABC Omnibus

- **Section 7** – Authorized distilleries to obtain a mixed beverages catering permit and bring spirituous liquor onto the premises where a hotel or restaurant is catering food for an event and serve the liquor to guests at the event, regardless of whether the hotel or restaurant also holds a mixed beverages catering permit.

H768 – 2022 ABC Omnibus

- **Section 8** – Allowed distilleries located in an area where the sale of mixed beverages has not been approved by a local election to obtain a mixed beverages permit and sell mixed beverages containing only spirituous liquor produced at the distillery for consumption on the premises.
- Under prior and current law, the holder of a brewery permit can obtain an on-premises malt beverages permit and sell malt beverages at the brewery for on- or off-premises consumption regardless of the results of any local malt beverage election, and the holder of an unfortified winery permit or fortified winery permit can obtain an on-premises permit and sell wine at the winery for on- or off-premises consumption regardless of the results of any local wine election.

S470 – ABC Technical and Other Changes

- Mostly made technical and conforming changes to laws amended by S.L. 2021-150.
- A few other interesting items:
 - Allowed recyclable spirituous liquor containers to be used for display purposes.
 - Reduced the indoor seating requirement for a restaurant from at least 36 people to at least 10 people for purposes of ABC permitting and clarifies that a restaurant is not required to have kitchen operations open at all times it is open to the public in order to qualify as a restaurant.
 - Excluded bar areas where food is not prepared from health inspections.
 - Allowed malt beverage containers as small as 50 milliliters.

Thank you!

Questions?

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