



Proposed New North Carolina Law Would Allow Distilleries to Sell Direct to Consumers Outside the State at the Distiller's Price

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North Carolina House Bill 169, the Regulatory Reduction Act of 2016, proposes to authorize North Carolina distilleries to "better compete nationally and internationally" by allowing distilleries to sell direct to consumers for delivery outside of North Carolina, subject to the laws of the other states, and for these retail sales, at the distiller's price, rather than the North Carolina uniform State price. A previous version of the bill included a provision that would have increased the cap on bottle sales at the distillery from one bottle per person per year to one bottle of each product per person per year, but that provision was removed from the current version of the bill on 8 June 2016.

House Bill 169 provides that distilleries can sell spirituous liquor in closed containers to consumers outside the state directly, subject to the laws of the other state. Current North Carolina law in G.S. 18B-1105(a) allows distilleries selling product for delivery outside the state to sell at wholesale or retail only to "private or public agencies" or "establishments of other states or nations." This means that distilleries selling product to consumers out of state, for example, through their website, must first sell their product through a wholesaler or retailer, who then marks up the price, before the product reaches the consumers. The proposed bill would eliminate this requirement and allow the distilleries to sell directly to consumers outside the state, subject to the laws of the other state. As a practical example, this could greatly expand the opportunity for North Carolina distilleries to sell products online.

The bill also provides that for distilleries selling product at retail for delivery outside the state, the retail price shall be the distiller's price, not the uniform State price, which includes significant markup from the state of North Carolina, including surcharges and markups. The proposed changes mean that distilleries can offer their product online through their own website, for delivery outside the state, at the distiller's price.

As a practical result, these changes could significantly increase online sales by North Carolina

distilleries for product delivered outside the state.

The North Carolina ABC Commission has expressed concerns about the proposed language of the bill, since North Carolina law prohibits distilleries from shipping directly to consumers within North Carolina. In an 8 June 2016 article by Patrick Gannon of The Insider, North Carolina Public Affairs Director Agnes Stevens was quoted as stating the Commission was concerned that because North Carolina law prohibits distilleries from shipping directly to consumers within North Carolina, distillers outside NC would claim this is an unfair trade practice and demand to sell direct to consumers in NC. The concern was that if this provision was challenged, it could ultimately affect the state's control system for spirituous liquor.

House Bill 169 will be considered by the Senate again on 9 June 2016. If passed by the legislature, the law would be effective 1 July 2016, and the North Carolina ABC Commission would be required to adopt temporary rules providing for its implementation.

Related People

- Jennifer A. Morgan ? 919.981.4051 ? jmorgan@williamsmullen.com