

PRACTICE PRACTICALITY

BY JOHN HARRIS & GRACE YANG

The Florida 2018 Legislative Session will end this month after 60 days of meetings. In our next article, we will report which bills passed the legislative process and are headed to Governor Rick Scott to become law. The most important bill each year is passing a balanced budget bill so expenses do not exceed revenues. Florida's Constitution prohibits deficit spending. Although the session may be extended to finalize the budget bill, it is completed every year with no state government shut down.

Q. . Am I in violation of any law if the city or county changes the address of my licensed business location? I was cited to stop selling alcohol when my business was inspected and the inspection found my address was not the same as on my liquor license.

A. You are not in violation of the State Beverage Law if the city or county changes your address. However, the practical answer is that you should obtain a copy of a document from the city or county assigning you a new address or the change of address notice from the city or county and provide that document with a letter to all federal, state, and local agencies that issue licenses to your business. You should not have been cited to stop any sales of merchandise, but rather have been issued a notice requesting you to correct your address. The notice to stop selling alcohol may have been based on an erroneous conclusion made before the investigation was completed.

If you did in fact move your licensed business to another location, file a change of location application with the Division of Alcoholic Beverages and Tobacco. Once the Division approves the change of location, the state will issue a temporary license to the new location. A change of

location application requires local land use approval, sales tax approval, and health approval if your business has a consumption on-premises (COP) license. License holders should plan moves to a new location in advance so that a temporary change of location license is issued prior to the sell of alcohol and/or tobacco at the new location.

Q. I have a special food service liquor license and just opened my restaurant. What are the risks if my business fails to meet the food vs. alcohol percentage requirements?

A. Several years ago the state tightened its policy on special food service licenses ("SFS"). The risk of penalties is more severe now than they have been in the last 50 years. The reason for this change is that many businesses were trying to avoid the higher cost of obtaining the right license, typically a quota liquor license. The changes in state policy include:

- The fact that all new special food service liquor licensed businesses will be scheduled for an audit of revenues after their first 60 days of selling alcohol beverages.
- If any SFS licensed business fails this 60-day test, the only penalty the Division of Alcoholic Beverages & Tobacco ("the Division") can administer is revocation of the license and impairing any interested party in the licensed business from obtaining a SFS license for six months from the date of the license revocation. No other settlement can be accepted under the Florida Beverage Law for this violation.
- If you pass the first 60-day audit, you will likely be audited every 12 months so the Division can determine if you are qualified to continue holding this type of special liquor license.

- If you fail any 12-month audit finding of selling more alcohol beverages than food, the same revocation and impairment penalty is required to be administered to you by the Division.

If you continue to operate using the SFS liquor license, knowingly not meeting the percentage of food requirement, the Division may use other laws, which are criminal, to correct you. These laws include selling alcohol beverages in a manner not permitted by your license; i.e., continuing sales when food percentages are not at the 51% level or higher over the specified time period (averaging of first 60 days and thereafter every 12 months).

If you seek and are issued a temporary or permanent SFS liquor license, be sure to take the food percentage requirements seriously by monitoring your sales activities daily, weekly, and monthly to determine any possible shortfalls. The amended law does have some benefits to businesses:

- It created a change in the percentage of food sold formula, from food having to be at least 51% of gross revenues to just the percentage of food vs. alcohol beverage revenues from sales. This is better for restaurants selling items other than food and beverages;
- It eliminated serving full course meals and replaced that requirement with serving meals;
- It left in place a requirement of no alcohol beverages sales after food service was discontinued. ■

We welcome your email questions. Contact us at:

JJHARRIS@GRAY-ROBINSON.COM
GRACE.YANG@GRAY-ROBINSON.COM

This Florida Law column is not designed to give specific legal advice, we suggest you consult with an attorney familiar with hospitality laws regarding issues pertaining to your business.