

NEW YORK GOVERNOR'S EXECUTIVE BUDGET INCLUDES BENEFITS FOR STATE ALCOHOL INDUSTRY

Governor Cuomo Relaxes the Regulatory Qualifications for Licensure as a "Hotel" and Expands the Offering Options for the State's Farm Breweries, Cideries and Wineries



By

Richard M. Blau, Chair

GrayRobinson's Nationwide Alcohol Industry Team

GRAY | **ROBINSON**
ATTORNEYS AT LAW

New York Governor Andrew Cuomo has proposed his [FY2019 Executive Budget](#), and it includes several provisions that will benefit the state's tourism industry generally, as well as the growing craft alcohol beverage industry in particular. Buried in the budget is a provision that amends the definition of a Hotel under the New York State Alcoholic Beverage Control ("ABC") Law Section 3(14) to lessen the burden of having an on-site restaurant available for guests. Also in the budget are provisions recognizing and supporting the state's emerging mead (honey-based wine) and braggot (honey-based beer), industries, as well as provisions expanding options for the state's craft breweries, wineries cideries and distilleries. The new budget also recommends creation of a new ABC license exclusively for alcohol beverage exporters. Governor Cuomo released his new budget for 2018-19 on January 16th. The Legislature will now hold budget hearings and react with their own spending priorities.

Currently, in order for a hotel to qualify for a "Hotel" liquor license (which allows for the on-premises consumption of alcohol throughout the entire hotel, including guest rooms), there must be a restaurant within the building that the hotel is located in (the restaurant does not have to be part of the hotel - just in the same building). Under New York ABC Law Section 3(27), a restaurant is defined as "*a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities*

connected therewith, containing conveniences for cooking an assortment of foods, which may be required for ordinary meals, the kitchen of which must, at all times, be in charge of a chef with the necessary help, and kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local department of health... "Meals" shall mean the usual assortment of foods commonly ordered at various hours of the day; the service of such food and victuals only as sandwiches or salads shall not be deemed a compliance with this requirement." Hotels with just a "market" or "suite shop" in the lobby, but no restaurant, have traditionally not been able to obtain a Hotel liquor license in New York because they lacked a restaurant in the hotel building.

The proposed legislation would amend the definition to remove the requirement that there must be a restaurant in the hotel. Instead, in order to qualify for a hotel liquor license, there hotel must just have ***"food available for sale or service to its customers for consumption on the premises in the hotel or in a restaurant or other food establishment located in the same building as the hotel. The availability of sandwiches, soups and other foods, whether fresh, processed, pre-cooked or frozen, shall be deemed in compliance with this requirement"***.

The language from the Governor's Executive Budget for FY2019 includes the following text:

PART Q – Creates a new special on-premises hotel license for hotels without a full service restaurant

- Amends the definition of a hotel licensee to remove the requirement that a hotel operate an on-premises restaurant, and instead requires a hotel to keep food available for on-premises consumption in order to sell alcohol.
- Removes the requirement that a hotel must operate a restaurant on its premises to receive an on-premises liquor license.

If the proposed changes are signed into law, hotels which only have a "market" or "suite shop" in the lobby of the hotel would be able to obtain a hotel liquor license, thus allowing guests to purchase alcohol in the "market" or "suite shop" and take the alcohol back to their guest room or other areas of the hotel.

Moreover, it is arguable that if a hotel without a restaurant or food shop registers with an online food delivery service such as UberEATS, it could use the availability of that service to argue that the hotel meets the new law's requirement to make food available for sale or service to customers on the premises, even if the customer him/herself does not have a smartphone or otherwise is not able to order the food online.

FYI: Other components of Governor Cuomo's Executive Budget for FY 2019 relating to alcohol include:

PART R – Creates a new license for production and sale of mead and braggot in New York State

- Adds mead, a honey-based wine, and braggot, a honey-based beer, to the Alcohol Beverage Control Law.
- Creates a farm meadery license, and allows retail and wholesale licensees to sell mead and braggot.

- Allows farm breweries, farm cideries, distilleries, wineries, and farm wineries to conduct tastings of and sell mead and braggot.
- Expands the items that farm breweries, farm cideries, and farm wineries can sell as “alcoholic beverages.”

PART S – Creates a new exporter license for businesses that export New York State alcoholic beverages

- Establishes a license for businesses that only purchase and export New York State alcoholic beverages and do not sell to wholesalers or retailers within the state.

Of course, this is just the Governor’s proposed budget. Whether the New York Senate and the State Assembly will go along with his proposals remains to be seen.

GrayRobinson’s [Nationwide Alcohol Industry Team](#) will continue to follow these proposals as they make their way through the “dance of legislation.”