Recent Legal Changes Make it Easier to Qualify for a Miami Restaurant Liquor License

By **Valerie Haber**, Miami Liquor License Attorney, South Florida Alcohol Law and Food Law Attorney

Recent law, and a related policy shift by the Florida Division of Alcoholic Beverages and Tobacco ("DABT"), makes it easier for Miami-Dade County restaurants to qualify for a full liquor license.

Florida alcohol beverage laws generally allow restaurants meeting certain criteria to qualify for 4COP-SRX liquor licenses, which allow for the sale of beer, wine and spirits (hard liquor). Whereas a restaurant in Miami-Dade County used to have to be at least 4,000 square feet and have 200 seats, restaurants can now qualify for full liquor licenses if they have only 2,500 square feet and 150 seats, and meet other requirements detailed below. These changes make it easier for smaller restaurants to get full liquor licenses in Miami-Dade County.

Before the law changed, Miami restaurants applied for an "SRX" alcohol beverage license based on a statutory provision applicable to the Miami-Dade County contained in Florida Statutes Section 561.20(2)(b), which generally required restaurants in the County to have 4,000 square feet under permanent cover and be capable of serving 200 patrons at seats in order to qualify. Under the old law, restaurants not meeting these thresholds were left with few options: they could either purchase a 4COP quota license, a costly license which must be purchased on the open market from an existing license holder, or settle for the sale of beer and wine only (no spirits), through a 2COP license.

New legislation was approved by the Governor on April 6, 2016, and became effective on July 1, 2016, which changed the statutory language relating to special restaurant (SRX) alcohol beverage licenses throughout the state. The applicable statutory authority is Florida Statutes Section 561.20(2)(a)(4), which creates a special license category for restaurants meeting the following requirements:

> "A food service establishment that has 2,500 square feet of service area, is equipped to serve meals to 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 60-day operating period and each 12-month operating period thereafter. A food service establishment granted a special license on or after January 1, 1958, pursuant to general or special law may not operate as a package store and may not sell intoxicating beverages under such license after the hours of serving or consumption of food have elapsed. Failure by a licensee to meet the required percentage of food and nonalcoholic beverage gross revenues during the covered operating period shall result in revocation of the license or denial of the pending license application. A licensee whose license is revoked or an applicant whose pending application is denied, or any person required to qualify on the special license application, is ineligible to have any interest in a subsequent application for such a license for a period of 120 days after the date of the final denial or revocation."

Pursuant to recent DABT statements, the agency has indicated that it will now enforce the provisions of 561.20(2)(a)(4), not 561.20(2)(b), in Miami-Dade County. Specifically, on December 9th, 2016, the DABT advised GrayRobinson that it conducted research on special acts and other special circumstances of law pertaining to the special licenses authorized under section 561.20(2), Florida Statutes, including consideration of prior court opinions. One such opinion was the Florida First District Court of Appeal decision in DBPR v. Huddle, Inc., 342 So.2d 140 (Fla. 1st DCA 1977):

> "Although the current subsection (b) refers to "any county" in which special licenses were issued under the pre-1972 Section 561.20(2)(b), it then adds "shall continue to qualify for such licenses" pursuant to the prior law. It is not the county that qualifies for special licenses but operators of restaurants or others entitled to special licenses. Therefore, the legislative intent was to refer to existing licensees in such counties who could continue to qualify under prior provisions. The objective of the exception is to permit licensees who have complied with the prior law to obtain renewals under the requirements of the prior law."

Based on the DABT's reading of this court opinion in conjunction with the recent legislative changes to Section 561.20(a)(a)(4), Florida Statutes, the DABT has now taken the position that a new SRX license now only requires that the licensed premises have 2,500 square feet of service area, be equipped to serve meals to 150 persons at one time, and that the restaurant derive at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 60-day operating period and each 12-month operating period thereafter.

What does this mean for restaurant owners and operators in Miami-Dade County, including Aventura, Bal Harbour, Bay Harbor Islands, Biscayne Park, Coral Gables, Cutler Bay, Doral, El Portal, Florida City, Golden Beach, Hialeah, Hialeah Gardens, Homestead, Indian Creek, Key Biscayne, Medley, Miami (including Wynwood, downtown Miami, Little Havana, Little Haiti, and the Design District), Miami Beach, Miami Gardens, Miami Lakes, Miami Shores, Miami Springs, North Bay Village, North Miami, North Miami Beach, Opa-locka, Palmetto Bay, Pinecrest, South Miami, Sunny Isles Beach, Surfside, Sweetwater, Virginia Gardens, and West Miami? **You may now qualify for a special "SRX" liquor license to sell and serve spirits, beer, and wine if your restaurant has at least 2,500 feet of service area and is equipped to serve meals to 150 persons at a time.** The yearly fee for an "SRX" license in Miami-Dade County is $1,820.

Note that the local municipality that has jurisdiction over the restaurant premises must sign off on the DABT application. For example, if a restaurant is located in Wynwood or Coconut Grove, the City of Miami's zoning department must approve the restaurant's alcohol application before it is submitted to the DABT. Many municipality's local laws have not caught up with the State law changes described above, and may still require more square footage in order to be zoned for a restaurant use in a particular zoning district. Before signing a lease or purchasing a property for your restaurant use, it is advisable to retain experienced Florida alcohol beverage law legal counsel who is familiar with the nuanced zoning and alcohol beverage considerations

unique to South Florida restaurants. Please do not hesitate to contact GrayRobinson's Alcohol Law Group with any questions you may have along the way.

About the Author

Valerie L. Haber is a Miami liquor license and alcohol beverage law attorney and is an associate in the firm's Alcohol Law and Food Law Practice Groups. She concentrates her practice on advising all three tiers of the alcohol beverage industry including wineries, breweries, and distilled spirits suppliers, distributors, and retailers. Valerie's practice includes counsel relating to federal, state, and local laws governing the sale, distribution, importation, manufacturing, and marketing of alcoholic beverages, including beer, wine, and spirits. Valerie works closely with national retailers, including restaurants, supermarkets, movie theater chains, and other on- and off-premise businesses, through all phases of development and licensing, including land use and zoning diligence and approvals. She also has experience drafting management and promotional contracts for alcohol industry members, including hotels and golf courses, and regularly advises clients on the legal risks associated with promotional activities. Valerie also assists clients with local liquor licensing, including restaurant, hotel, and occupational licensing.