



# North Carolina Spirits Association

## Final Legislative Report 2020

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Legislators adjourned the 2020 short session on September 3, “sine die”, which means they are not scheduled to return to Raleigh until the 2021 session. Legislators spent the entire spring and summer dealing with coronavirus relief. The majority of North Carolina’s share of federal CARES Act relief funds was allocated by the end of June, but legislators stopped short of spending all the federal relief money and had been awaiting additional guidance from a second federal coronavirus relief package that was expected before the end of August. Although the second federal relief bill had not passed, North Carolina lawmakers returned to Raleigh September 2 for a two-day session to allocate the remaining \$1.1 billion.

The 2020 “short” session was schedule to begin in late April and run through the end of June. However, COVID-19 changed the legislature’s schedule for the year. Legislative leaders spent the first few weeks of the COVID-19 crisis hearing from constituents and industries about the impact of COVID-19, evaluating ways the state could assist, and making plans to allocate federal CARES Act funds that would be allocated to North Carolina. The legislature held a brief session at the end of April where they allocated approximately \$1.6 billion of the federal CARES Act funds, as well as addressed other issues to assist businesses and individuals as they attempted to deal with COVID-19.

The legislature then returned for the “short” session this summer. Although the focus was again on COVID-19, the legislature did consider and pass non-COVID related bills, including bills that had made the “crossover” deadline during the 2019 legislative session. The session was much more limited in duration and in the issues considered then was originally anticipated. In anticipation of the state’s receipt of additional federal relief funds, the legislature adjourned the short session to reconvene on September 2. Although the federal relief package has yet to be approved by Congress, the legislature met in early September and passed House Bill 1105, the Coronavirus Relief Act 3.0, to allocate the remaining \$1.1 billion in federal relief funds which must be in the hands of the recipient entities by the end of the year.

This year is also marked by the struggle of certain business that have been required to stay closed under Governor’s Executive Orders, and the legislature’s attempts to allow these business to reopen. There were bills considered and passed by the legislature to reopen a number of different businesses, including restaurants, breweries, bars, gyms, and bowling alleys. In all cases, legislation passed by the General Assembly was vetoed by the Governor. Ultimately some businesses were allowed to reopen under modified executive orders, such as restaurants and gyms. But a number of businesses remain closed. Certain elected officials continue to call for the reopening of businesses, as well as call for public schools to meet in person as opposed to virtual

learning. These “reopening” issues should continue to dominate the headlines as we head towards the November 3 election.

The legislature is scheduled to convene the 2021 long session on January 13, 2021.

This Final Legislative Report for 2020 includes a summary of all the bills enacted by this year's General Assembly that are of interest to the association, and some bills that were considered but not enacted this year.

### **BILLS OF INTEREST ENACTED INTO LAW**

**Senate Bill 226, Delay Certain ABC Permit Renewal Payments**, delays the payment deadline for certain ABC permit renewals, if the ABC permit holder has not been able to re-open due to existing COVID-19 related Executive Orders issued by the Governor. These ABC permit holders would not be required to pay the ABC permit renewal fee until 90 days after the Governor signs an Executive Order rescinding the prior orders. **Effective: June 30, 2020. Session Law 2020-94.**

**Senate Bill 704, COVID-19 Recovery Act**, contains the statutory changes and other provisions to allow the state, local governments, and various industries and businesses continue to operate given the COVID-19 state of emergency. The bill includes the following provisions of interest:

- Adjusts certain tax filings to mirror the relief provided by the IRS so the federal and State income tax laws will continue to work in concert with one another. It waives the accrual of interest on an underpayment of tax imposed on a franchise, corporate income, or individual income tax return, including a partnership and estate and trust tax return, from April 15, 2020, through July 15, 2020. The relief from accrual of interest would also include estimated tax payments due on or before April 15, 2020; that would apply to the first and second quarter estimated taxes. This section does not waive the accrual of interest on the tax payment extension of the other tax types. It also extends certain tax-related administrative and appeals-related deadlines.
- Affirms the flexibility to administer unemployment compensation, as allowed by Executive Orders No. 118 and 131, and encouraged by Congress under the *Families First Coronavirus Response Act*. The flexibility extends to the following: determination of unemployed, elimination of the waiting week, work search requirements, attached claims, and non-charging of employer accounts. It also allows a tax credit against the employer's contributions in an amount equal to the amount of contributions payable on the report filed by the employer on or before April 30, 2020. If an employer paid the contributions payable with the report due on or before April 30, 2020, the credit will be applied to the contributions payable on the report due on or before July 31, 2020. If the amount of the credit exceeds the amount of contributions due on the report, the excess credit amount is considered an overpayment and will be refunded to the employer.
- Authorizes the Buncombe County Tourism Development Authority to use existing occupancy tax proceeds in its Tourism Product Development Fund to provide grants up to \$50,000, through the use of an agency experienced in emergency

management funding, to businesses that promote tourism and patronage of lodging facilities in the county and that have either closed or suffered significant economic loss due to the COVID-19 epidemic. The grant program would end 6 months following the date the state of emergency ends.

- When this provision was explained in committee, legislative staff noted that as drafted, this section presents two constitutional concerns. First, providing grants to private businesses to jumpstart or maintain operations may violate a combination of the public purpose doctrine and the exclusive emoluments clause found in Article V, Section 2(1) and Article I, Section 32, respectively. Second, repurposing existing occupancy tax funds for a use other than that set out in existing law may violate the "special object" limitation in Article V, Section 5 of the Constitution.
- Grants health care facilities and providers immunity from civil or criminal liability for acts and omissions in the course of arranging health care services if all of the following apply:
  - The services are provided pursuant to a COVID-19 emergency
  - The health care services are impacted by (1) a provider or facility's decisions in response to the COVID-19 epidemic, or (2) by the decisions or activities, in response to or as a result of the COVID 19 epidemic, of a health care facility or entity where a health care provider provides health care services.
  - The health care facility or provider is arranging the services in good faith.
    - Immunity would not apply if the damages were caused by willful or intentional misconduct, gross negligence, reckless misconduct, or intentional infliction of harm on the part of the health care facility or provider. Volunteer organizations would be immune from liability for damages that occur at their facility unless the volunteer organization unless there was willful or intentional misconduct, gross negligence, reckless misconduct, or intentional infliction of harm on the part of the volunteer organization.
    - This section would become effective when it becomes law and would apply to acts or omissions occurring during the time of Executive Order No. 116 issued on March 10, 2020, by Governor Roy A. Cooper, and any subsequent time period during which a state of emergency is declared to be in effect during calendar year 2020.
- Clarifies that masks may be worn on certain public and private premises to ensure the physical health or safety of the wearer or others, but require the wearer to remove that mask upon the request of a law enforcement officer during a traffic stop or when the officer has reasonable suspicion or probable cause during a criminal investigation. Currently, the law allows masks to be worn for the following reasons: holidays; employment purposes; theatrical productions; defense drills, exercises, or emergencies; as part of a parade, ritual, initiation, ceremony, or celebration requirement of a society, order or organization; or when operating a motorcycle. This section would be effective when it becomes law and expire August 1, 2020.

- Extends for five months the validity of any credential issued by the Division of Motor Vehicles that expires between March 1, 2020, and before August 1, 2020, would waive fines, fees, and penalties associated with failing to renew an extended credential, and would extend the due date for motor vehicle taxes for extended registrations.
- Provides time-limited civil liability immunity to essential businesses for injuries or death resulting from customers or employees contracting COVID-19 at the business. Immunity is also extended to emergency response entities with regard to customers that do business with the entity being injured as a result of COVID-19. Immunity does not apply, however, if the harm is caused by gross negligence, reckless misconduct, or intentional infliction of harm.
- Adds a provision to the Emergency Management Act to specifically authorize official meetings of public bodies including closed sessions, public hearings, and quasi-judicial hearings to be conducted via remote, simultaneous communication during periods of declarations of emergency under G.S. 166A-19.20 and would make conforming changes to clarify that counties and cities may meet via simultaneous communication. This section would apply throughout the duration of any declaration of emergency issued under G.S. 166A-19.20 in effect on or after that date.
- A provision under consideration that was **not** included would have allowed restaurants to sell “to go” liquor drinks with to-go orders, much as beer and wine sales are allowed now.

**Effective: May 4, 2020. Session Law 2020-2023.**

**House Bill 807, Championship North Carolina Act**, (i) modifies the Site Infrastructure Development Fund (SIDF) to permit businesses meeting eligibility criteria as a sports championship employer to be eligible for a site development award for a project and (ii) reallocates \$3.6M from funds available in the One NC Fund (\$3.5M) and the JDIG Special Revenue fund (\$100k) for this site development award. The legislature committed to appropriating \$18 million over 5 years for this project. It was later announced that the United States Golf Association (USGA) has agreed to relocate some of their operations, including an equipment testing facility, museum and visitors center, and other offices to Pinehurst NC, and to bring a total of 5 U.S. Open Men’s Championship Golf Tournaments to Pinehurst No. 2 over the next 25 years. **Effective: September 4, 2020. Session Law 2020-96.**

### **BILLS OF INTEREST NOT ENACTED INTO LAW**

**Senate Bill 748, Expand Mixed Beverage Sale During Pandemic**, would authorize the Chairman of the Alcoholic Beverage Control Commission to allow mixed beverage permittees to engage in retail sales for consumption off the premises, including delivery by the permittee, an employee of the permittee, or independent contractor during the COVID-19 emergency. The bill would allow the Chairman to set terms and conditions for the sales and deliveries, but requires that products sold or delivered under the provision to be (1) packaged in a container with a secure lid or cap and in a manner designed to prevent consumption without removal, (2) sold only with food, and (3) limited to two servings per meal or food item ordered. This bill would expire on the date

that Executive Order 116, declaring a state of emergency to coordinate COVID-19 response, expires or is rescinded. This bill was **not** enacted into law.

**Senate Bill 770, Mixed Beverages Permit Fees/Reimburse Portion**, would appropriate \$1.6 million in non-recurring funds to the Department of Public Safety for a one-time reimbursement of mixed beverages permit fees paid to the Alcoholic Beverage Control Commission, for the benefit of permittees whose business was impacted by the COVID-19 outbreak in North Carolina. This bill was **not** enacted into law.

**Senate Bill 788, Save or Restaurants Act**, would set aside \$125 million of the federal COVID-19 relief funds North Carolina received from the federal government, \$50 million for restaurants and \$75 million for hotels, for short term loans to assist restaurants, bars and hotels during the COVID-19 crisis. This bill was **not** enacted into law.

**House Bill 536, Temp Outdoor Restaurant for Outdoor Seating, House Bill 594, Temporary Opening of Gyms/Health Clubs /Fitness Centers, and House Bill 902, Temp Open Clubs & Similar Establishments/Outdoor**, would allow restaurants, breweries, wineries, distilleries, bars, and clubs to open and/or increase their capacity beyond what is allowed under Governor Cooper's executive orders. The bill would allow those establishments to serve up to 50% of their occupancy capacity outdoors and make public areas like streets, sidewalks, and parking lots available for outdoor seating. As mentioned above, currently restaurants are limited to 50% of their capacity indoors, and bill sponsors claim that their legislation is an attempt to allow struggling service industry businesses to "stay afloat" with the added 50% outdoors. The Governor vetoed the bill, and the veto was not overwritten. Therefore, this bill did **not** become law.

All of these establishments except bars and clubs have been allowed to open pursuant to various Executive Orders issued by Governor Cooper, in some limited capacity.

**House Bill 1082, ABC Administrative Penalties/PED Study**, would direct the Alcoholic Beverage Control Commission to (i) create a policy that establishes a rationale for administrative penalties and improves transparency for permittees, (ii) study and report on the feasibility of implementing a throughput-based or sales-based penalty structure for determining monetary penalties for administrative violations, and (iii) include effectiveness criteria on its web site to evaluate the effectiveness of administrative penalties at reducing the number of repeat offenders, as recommended by the Joint Legislative Program Evaluation Oversight Committee.

The bill would also regulate alcohol in manufactured food products in the same manner as the type of alcohol contained in the product. The bill would define "alcohol consumable" as "any manufactured and packaged ice cream, ice pop or gelatin-based food product containing at least one-half of one percent (0.5%) alcohol by volume." The bill would modify the definitions of malt beverage, unfortified wine, fortified wine, and spirituous liquor to also include any alcohol consumable with at least 0.5% of that type of alcohol. The bill would make conforming changes statutes related to the ABC Commission's authority to set standards and adopt rules and to the pricing and distribution of revenue for spirituous liquor products. This bill was **not** enacted into law.

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For more information about legislation described in this final legislative report, feel free to contact me at [dferrell@nexsenpruet.com](mailto:dferrell@nexsenpruet.com) or (919) 573-7421. Information is also available on the General Assembly's website: [www.ncleg.gov](http://www.ncleg.gov).

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