



# North Carolina Spirits Association

Legislative Report  
September 3, 2021

---

Senate leader Phil Berger told reporters on Wednesday that he does not expect the legislature's compromise on the state budget bill to be finished before the end of September. House Speaker Tim Moore has said that he hoped it would be mid-September. Berger is not that optimistic. The Senate passed its version of the budget in June, and the House passed its proposed budget in August. The current logjam is over spending on multiple issues. That is similar to their debate in late spring, when the House and Senate traded offers about a total spending number – which they ultimately agreed would be \$25.7 billion. But the two chambers do not agree on how much money to put in different categories of spending. Key differences that impact the most North Carolinians directly are the amount of state employee raises — higher in the House than the Senate, and tax cuts — higher in the Senate than the House. Senator Berger also said that he is hopeful budget negotiators will be in a position early next week to have our subcommittees working to try to come up with a conference report.

House Bill 110, Landlord Submission of HOPE Application, would let landlords apply for rental assistance if they have lost income from tenants due to the pandemic. The aid would come through North Carolina's Housing Opportunities and Prevention of Eviction program, or HOPE. The crux of the bill would allow landlords to apply for rent aid on behalf of tenants – whereas now only the tenant can submit the application and landlords can only refer tenants to the HOPE program. The bill was approved this week by the Senate Commerce and Rules Committees, and now heads to the Senate floor.

On Wednesday, the House and Senate Redistricting Committees jointly released the schedule for the public redistricting hearings that will be held across the state. The meetings include:

- Sept. 8 |Caldwell Community College and Technical Institute, 6 p.m.
- Sept. 14 | Forsyth Technical Community College, 4 p.m. | Elizabeth City State University, 5 p.m.
- Sept. 15 | Durham Technical Community College, 6 p.m. | Nash Community College, 5 p.m.
- Sept. 16 | Pitt Community College, 3 p.m. | Alamance Community College, 5 p.m.
- Sept. 21 | Western Carolina University, 5 p.m.
- Sept. 22 | Central Piedmont Community College, 3 p.m.
- Sept. 23 | Mitchell Community College (Iredell County Campus), 3 p.m.
- Sept. 28 | UNC-Pembroke, 4 p.m.
- Sept. 29 | UNC-Wilmington, 5 p.m.

Sept. 30 | Fayetteville Technical Community College, 6 p.m.

The House and Senate adjourned on Wednesday for the Labor Day Weekend and will reconvene and hold votes beginning on Wednesday September 8.

## **BILLS OF INTEREST**

**House Bill 890, ABC Omnibus Legislation**, a substitute version of the bill was considered in the Senate Commerce Committee on Tuesday. The 10-page version of the bill that passed the House back in May is now 26 pages, and contains a number of provisions changing the laws concerning ABC stores, in-state and out-of-state distilleries, and other alcohol-related statutes. The bill includes the following provisions:

**PART I. ALLOW ONLINE ORDERS FROM ABC STORES** – would allow ABC stores to accept online orders, including payment, for alcoholic beverages sold in the store. These orders must be picked up in person at the ABC store by the individual who placed the order, who must be an individual who is at least 21 years old and otherwise lawfully entitled to purchase alcoholic beverages. An employee of the ABC store would be required to confirm that the order is picked up in person by the individual who placed the order by verifying that the individual's identification matches identifying information in the online order. This Part would also direct the ABC Commission to adopt rules to determine how long the product will be set aside without being picked up before the product is returned to inventory and the customer refunded. This Part would become effective October 1, 2021, and would apply to sales on or after that date. **This provision is a legislative priority for the NC Spirits Association.**

**PART II. ALLOW PERSONALIZED LABEL ON SPIRITUOUS LIQUOR PURCHASE** - would allow bottles of spirituous liquor on the special item list approved by the ABC Commission (Commission) sold at an ABC store, or bottles of spirituous liquor sold at a distillery, to be affixed with personalized labeling that is approved by the ABC Commission and complies with any other labeling requirements set by law. The personalized labeling could not cover any portion of the manufacturer's original label. The term "personalized labeling" means the inclusion of any of the following on the label:

- (1) The name of the purchaser of the bottle or the name of any individual, business entity, club, ABC Board or ABC store on whose behalf the bottle is purchased.
- (2) "Bottled for", "distilled for", "in honor of", or other similar language.
- (3) Dates, locations, occasions, and other similar information."

This Part would become effective October 1, 2021, and would apply to spirituous liquor sold on or after that date. **This provision is a legislative priority for the NC Spirits Association.**

**PART III. MIXED BEVERAGE PERMIT FOR CERTAIN EVENT CENTERS** - would allow mixed beverage and mixed beverage catering permits to be issued, without approval at an election, to qualified eating, hotel, and restaurant establishments if all the following requirements are met:

- The establishment is located in a county that has more than two man-made lakes.

- The establishment is located in a county that has approved the sale of malt beverages and unfortified wine, but not mixed beverages.
- The establishment is open to the public and includes on its premises a hotel with accommodations for 20 or more overnight guests, agritourism activities, and firearm sports.

**PART IV. ELIMINATE THE REQUIREMENT ON THE TOWN OF CARY TO ISSUE ALCOHOLIC BEVERAGE LICENSES.** Article 2C of Chapter 105 requires all ABC permittees to obtain the corresponding local license for the type of permit held in the location where the establishment is located. Unless specifically provided otherwise, both cities and counties must issue local licenses to ABC permittees. This Part would allow the Town of Cary to choose to not require ABC permittees to obtain a local license from the Town of Cary.

**PART V. ESTABLISH NORTH CAROLINA SPIRITUOUS LIQUOR COUNCIL** - would direct the Commissioner of Agriculture to appoint a North Carolina Spirituous Liquor Advisory Council (Council), comprised of individuals who have education or experience in the spirituous liquor industry or in the field of tourism. The Council would be appointed by October 1, 2021, and would be directed to, among other duties: identify and implement methods for improving North Carolina's rank as a spirituous liquor producing State, assure orderly growth and development of North Carolina's spirituous liquor industry, and increase public awareness of the quality of North Carolina spirituous liquor. The Council would also advise the Commissioner of Agriculture and provide recommendations regarding its powers and duties.

**PART VI. WINERY AND DISTILLERY LAW REVISIONS – Section 6.1** would clarify that the sale of spirituous liquor in closed containers at distilleries may occur between the hours of 9:00 A.M. and 9:00 P.M. on Monday through Saturday of each week, from 12:00 Noon to 9:00 P.M. on Sundays, and from 9:00 A.M. to 9:00 P.M. on each of the following holidays that do not fall on a Sunday: New Year's Day, Fourth of July, Labor Day, and Thanksgiving Day. This section would become effective October 1, 2021, and would apply to sales on or after that date.

**Section 6.2** would establish an optional nonresident spirituous liquor vendor permit with a one-time fee of \$100. This permit would be issued to a distiller, a brokerage, or a liquor importer/bottler outside North Carolina who desires to sell, deliver, and ship spirituous liquor into this State. A nonresident spirituous liquor vendor permit would allow the holder to sell, deliver, and ship spirituous liquor to the State warehouse. The permit would also allow the holder to ship or deliver spirituous liquor to the permittee's permitted vendor representative in an amount necessary for any consumer tasting events scheduled within one calendar month of the shipment or delivery. This section would also make changes to the limitations on spirituous liquor tasting events conducted under a spirituous liquor special event permit, and allow the sale of mixed beverages and provision of 50 milliliter mini-bottles of spirituous liquor in conjunction with certain tasting events. Only one mini-bottle per consumer per distillery may be provided at a consumer tasting event. This section would become effective 90 days after this act becomes law. **This provision was changed from mandatory to optional at the request of the NC Spirits Association.**

Under current law, breweries, private bars, and private clubs are exempt from the sanitation rules applicable to establishments that prepare or serve food or drink to the public.

**Section 6.3** would add distilleries and wineries to the list of establishments exempt from the sanitation rules applicable to establishments that prepare or serve food or drink to the public. This section would become effective October 1, 2021.

**PART VII. EXPAND ALLOWABLE GROWLER SIZE** - would direct the ABC Commission to adopt a rule changing the maximum allowable size of a growler from two liters to four liters. The Commission would also be directed to implement the rule in this way until the new rule becomes effective. This Part would be effective when it becomes law. Section 7.1.(c) of this Part would expire on the date that the rule adopted pursuant to Section 7.1.(d) of this Part becomes effective.

**PART VIII. DISTILLERIES/AMEND TOUR REQUIREMENT FOR SALE OF BOTTLE OF SPIRITUOUS LIQUOR FOR OFF-PREMISES CONSUMPTION** - would provide that with respect to a distillery tour preceding the sale of spirituous liquor distilled or produced at the distillery, the length, content, and other parameters of the tour are the discretion of the distillery. The distillery would not be required to maintain records related to tours. This Part would become effective October 1, 2021, and would apply to sales made on or after that date.

**PART IX. CLARIFY LAW ON THE SALE, POSSESSION, AND CONSUMPTION OF SPIRITUOUS LIQUOR AT A DISTILLERY** - would allow distillery permittees to possess spirituous liquor not distilled or produced at the distillery to be used for the production of spirituous liquor, and make a conforming change. This Part would clarify that consumer tastings authorized under a spirituous liquor special event permit may be conducted on any part of the licensed premises of the distillery. This Part would provide that except as otherwise prohibited by federal law or the distillery permittee, an alcoholic beverage authorized to be sold or consumed by a distillery permit may be sold or consumed on any part of the licensed premises of the distillery.

**PART X. ALLOW ABC AGE VERIFICATION WITH SPECIAL IDENTIFICATION CARDS FROM OTHER STATES.** Under current law, ABC Commission rule 14B NCAC 15B .0224 (Consumption by Underage Persons) lists the following forms of identification as acceptable for purposes of determining the age of a person consuming or possessing alcoholic beverages on a licensed premises:

- Driver's license.
- Special identification card *issued by the North Carolina Division of Motor Vehicles.*
- Military identification card.
- Passport.

**Part 10** would direct the ABC Commission to allow special identification cards issued by any state for purposes of age verification. This Part would be effective December 1, 2021, and apply to offenses committed on or after that date.

**PART XI. ALLOW SALE AND DELIVERY OF MORE THAN ONE ALCOHOLIC BEVERAGE DRINK AT COLLEGE OR UNIVERSITY STADIUM, ATHLETIC**

**FACILITY, ARENA, OR SPORTING EVENT.** Under current law, an ABC permittee may deliver two alcoholic beverage drinks to a single patron at one time if the drinks are malt beverages, unfortified wine, or fortified wine. However, this is not allowed at a stadium, athletic facility, or arena on the campus or property of a public college or university or during a sports event sponsored by a public college or university. **Part 11** would repeal the prohibition on delivering two drinks at a time to a patron at a stadium, athletic facility, or arena on the campus or property of a public college or university or during a sports event sponsored by a public college or university. This Part would become effective when it becomes law, and would apply to the sale and delivery of alcoholic beverages on or after that date.

**PART XII. TIME OF SALE TECHNICAL CORRECTION** - would clarify that mixed beverage sales conducted at a distillery under the distillery permit are limited to the same hours of sale restrictions applicable to other permittees.

**PART XIII. MIXED BEVERAGE ELECTION AMENDMENT** - would amend the mixed beverage election statute to provide that if a jurisdiction has voted to allow the sale of mixed beverages, then qualifying establishments in the jurisdiction may also obtain on-premises malt beverage and on-premises unfortified wine permits. This would apply to jurisdictions that have previously voted to approve mixed beverage sales, unless the governing body of that jurisdiction adopts a resolution no later than 60 days after the effective date of this section requesting an election be held on the questions of on-premises sales of malt beverages and unfortified wine. This Part would become effective 90 days after this act becomes law.

**PART XIV. AMEND THE REQUIREMENTS THAT MUST BE MET BEFORE CERTAIN SMALL TOWNS MAY HOLD A MIXED BEVERAGE ELECTION.** Under current law, a town or city with fewer than 500 registered voters may hold a mixed beverage election if all of the following criteria are met:

- The city has at least 200 registered voters.
- The city is located in a county bordering the Neuse River and Pamlico Sound that has not approved the sale of mixed beverages.
- The city is located in a county that has only one city that has approved the sale of mixed beverages.

**Part 14** would add an additional option authorizing a small town to hold a mixed beverage election if all of the following criteria are met:

- The town has at least 200 registered voters.
- The town has a total area of less than one square mile.
- The town operates an ABC store.
- The town is located in a county that has at least three cities that have approved the sale of mixed beverages.

**PART XV. ALLOW ABC STORES TO SELL REFRIGERATED BEVERAGES** - would explicitly allow ABC stores to sell alcoholic beverages authorized for sale in the ABC store in a refrigerated unit. This Part becomes effective October 1, 2021, and applies to sales on or after that date. **This provision is a legislative priority for the NC Spirits Association.**

**PART XVI. ALTERNATING BREWERY PROPRIETORSHIP CLARIFICATION.**

Current law allows alternating brewery proprietorships in which the holder of a brewery permit leases or otherwise makes available its facility to another holder of a brewery permit. **Part 16** would clarify that an alternating brewery proprietorship is allowed if the host brewery also holds, at the same facility, an unfortified winery, fortified winery, or distillery permit.

**PART XVII. CLARIFY RESTAURANT DEFINITION.** Under current law, for purposes of qualifying for certain ABC permits, a restaurant is defined in relevant part as "An establishment substantially engaged in the business of preparing and serving meals. To qualify as a restaurant, an establishment's gross receipts from food and nonalcoholic beverages shall be not less than thirty percent (30%) of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages." Executive Order 183 allowed delivery and to-go sales of mixed beverages by restaurants, hotels, private clubs, private bars, and distillery permittees, and Executive Order 210 extended that through June 1, 2021. **Part 17** would clarify that to qualify as a restaurant, an establishment's gross receipts from food and nonalcoholic beverages must be not less than 30% of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages *sold for on-premises consumption*.

**PART XVIII. ALLOW MIXED BEVERAGE SALES AT CERTAIN DISTILLERIES -** would allow a distillery located on a property used for bona fide farm purposes to sell mixed beverages containing only spirituous liquor produced at the distillery for consumption on the premises, regardless of the results of any local mixed beverage election.

**PART XIX. OFF-SITE AIRPORT PERMITTEE STORAGE -** would establish an airport central storage permit costing \$400, which could be issued to the owner of a bonded storage warehouse that meets the federal Transportation Security Administration (TSA) security standards. The permit would allow the permittee to contract with retail permittees holding retail permits at airports to store the retail permittee's alcoholic beverages at a central receiving facility within five miles of the airport, and to transport alcoholic beverages from the central receiving facility to the retail permittee's premises or support locations within the airport terminal.

**PART XX. AUTHORIZATION OF SOCIAL DISTRICTS -** would allow local governments to adopt an ordinance designating a "social district," which would be a defined outdoor area in which a person may consume alcoholic beverages sold by a permittee. A social district must be clearly defined with conspicuously posted signs. The local government must establish and post management and maintenance plans for the social district, along with a rendering of the boundaries of the social district and times during which alcoholic beverages may be consumed in the social district, on the local government's website. The local government must submit to the ABC Commission a detailed map of the social district with the boundaries of the social district clearly marked, and the times during which alcoholic beverages may be consumed in the social district. A permittee located in or contiguous to a social district may sell alcoholic beverages for consumption within the social district. There are requirements on the type of container used and where the beverages may be consumed.

**PART XXI. MAKE PERMANENT THE EXPANSION OF LICENSED PREMISES FOR PURPOSES OF OUTDOOR SEATING -** would permanently allow local governments to

adopt an ordinance authorizing ABC permittees to utilize an area that is not part of the permittee's licensed premises for the outdoor possession and consumption of alcoholic beverages sold by the permittee under certain requirements.

**PART XXII. SPECIFY THAT ALE AUTHORITY TO INSPECT PREMISES INCLUDES SOCIAL DISTRICTS AND EXTENDED AREAS - Part 22** would explicitly provide that the ALE Division has jurisdiction to enforce the alcohol laws in social districts and extended premises authorized by Parts 20 and 21 of this act.

**PART XXIII. ALLOW TRADE OR EXCHANGE OF SPIRITUOUS LIQUOR -** would authorize the trade or exchange of lawfully purchased spirituous liquor between individuals, for personal use and not for resale. It was reported by the bill sponsor that a retired ALE agent requested this change, to address on-line bourbon clubs and similar spirits clubs – the fact that they are trading bottles now and this is technically illegal. This Part would be effective October 1, 2021, and apply to trades or exchanges made on or after that date.

**PART XXIV. DISTRIBUTE ALCOHOL WITHOUT DISCRIMINATION -** would amend G.S. 18B-204 to add additional requirements and prohibitions in the operation of the State warehouse for distribution of spirituous liquor to local ABC boards as follows:

- Require the Alcoholic Beverage Control Commission (Commission) to make a good-faith effort, without discrimination, to make all spirituous liquor available to all local boards.
- Prohibit the warehouse management contractor from directly or indirectly providing information to a local board that gives them an advantage over another board in product selection or availability. Violation of this provision would be grounds to terminate the contract.
- Require the Commission to maintain a record of how, to which board, and in what quantity all limited distribution or allocated distribution products are distributed.

**PART XXV. ALCOHOLIC BEVERAGE MANUFACTURE SALES TAX EXEMPTION -** would add machinery, equipment, parts, accessories, supplies, and ingredients that are purchased to be used in the manufacturing process by the following ABC permit holders to the list of tax-exempt items in G.S. 105-164.33:

- Unfortified winery permit.
- Fortified winery permit
- Brewery permit
- Distillery permit

**XXVI. CLARIFY DELIVERY SERVICE PERMIT -** would clarify that certain retail permittees are not required to obtain a delivery service permit in order for their employees to deliver malt beverages, unfortified wine, or fortified wine. However, the deliveries must still be done in accordance with the same requirements.

**PART XXVII. REGULATE ALCOHOL CONSUMABLES -** would regulate alcohol in certain manufactured food products in the same manner as the type of alcohol contained in the product. It was reported that alcohol consumables that are spirits based would be sold at the ABC

stores. This Part would be effective December 1, 2021 and apply to offenses committed and products sold on or after that date.

**PART XXVIII. COMMON CARRIER ABC PERMIT** - would establish a "common carrier vehicle permit," which could be issued to a business primarily engaged in North Carolina in the intrastate operation of common carriers of passengers and operating under a certificate of authority issued by the Utilities Commission, such as a bus company. The permit would authorize the sale or service of malt beverages, unfortified wine, fortified wine, and mixed beverages to passengers during journeys of 75 miles or longer that do not terminate within 10 miles of the origin of the journey.

This Part would be effective 90 days after this act becomes law.

**PART XXIX. AUTHORIZE INTERNATIONAL TRADE MARKET SPECIAL EVENT ABC PERMIT** - would authorize a new ABC permit in the amount of \$250 that would allow a managed food services company to sell or serve beer, wine, and mixed beverages on the premises of an international trade market event. The permit may be used for two events lasting not more than 21 days per event during the permit year. However, any permit issued in 2021 could be used for three events not lasting more than 21 days per event and would expire on April 30, 2022. An "international trade market" is defined as an annual or biannual credentialed event lasting at least 5 consecutive days that is only open to members of a particular trade or industry.

**PART XXX. DIRECT LOCAL BOARDS TO PROVIDE DELIVERY SERVICE TO MIXED BEVERAGE PERMITTEES.** Under current law, local ABC boards have the option to provide delivery service to mixed beverage permittees. **Part 30** would direct local ABC boards to offer delivery service to mixed beverage permittees. In providing delivery to mixed beverage permittees, the local board could either use its employees or contract with one or more independent contractors. The local board would also be authorized to charge a fee to the permittee. A Board located in a Tier 1 or 2 county could request an exemption from the ABC Commission which the Commission must grant if the local Board can show evidence of unreasonable hardship or difficulty incurred by implementing delivery service. This Part would become effective July 1, 2022.

**PART XXXI. TOUR BOAT AMENDMENT** - would amend the criteria under which the ABC Commission could issue permits to tour boats. A tour boat would be required to offer food and non-alcoholic beverages for sale on each tour, and a boat's gross receipts from sales of alcoholic beverages must be no more than 25% of its total gross receipts. This Part would become effective October 1, 2021, and would apply to boat tours conducted on or after that date.

**PART XXXII. GAME NIGHTS/RESIDENTIAL CENTERS** - would allow tax-exempt organizations that operate a specialized community residential center for individuals with developmental disabilities to conduct game nights at a location other than a qualified facility if the organization meets all of the following conditions:

- Is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.
- Operates a specialized community residential center for individuals with developmental disabilities licensed pursuant to G.S. 122C-23.



- Has issued a special one-time permit under G.S. 18B-1002(a)(5). The fee for any special one-time permit is \$50. G.S. 18B-902(d)(27).

On Wednesday, the Senate Commerce Committee considered the bill further and adopted several amendments, which are included in the summary of the provisions above. After some discussion, the Committee gave the bill a favorable report. Later in the day on Wednesday, the Senate Rules Committee gave the bill a favorable report. The bill next goes to the full Senate floor, most likely during the week of September 6.

**Prepared By: David P. Ferrell, Esq. - NCSA Lobbyist**  
**NEXSEN PRUET PLLC**  
**150 Fayetteville Street, Suite 1140**  
**Raleigh, North Carolina 27601**  
**Telephone: (919) 573-7421**  
**[dferrell@nexsenpruet.com](mailto:dferrell@nexsenpruet.com)**