



North Carolina Spirits Association

Final Legislative Report 2021 - 2022

Legislators adjourned the 2022 legislative “short” session on July 1, although the adjournment was not “sine die.” This essentially means the legislature has adjourned to a date certain in 2022 and can call themselves back into session if they decide it is necessary to do so. The adjournment resolution adopted on July 1 provides that the legislature will reconvene on July 26, and once a month for the rest of the year. Whether the legislature takes up legislation at these sessions is to be determined. For instance, there has been talk that the legislature will tweak the regulatory reform bill approved on July 1, and may convene a legislative session after the November elections to address Congressional redistricting and various other issues. But for all practical purposes, it appears the 2022 legislative session has concluded until after the November elections.

The 2022 “short” session began in late May, shortly after the legislature adjourned the 2021 legislative session, that lasted well into 2022. The highlight of the session was the passage of the \$27.8 billion state budget bill on July 1. Leaders of the North Carolina House and Senate reached a deal on the state budget the weekend before the last week of the legislative session. North Carolina has two-year budget cycles. The main budget is approved in odd-numbered years, with only minor changes typically made in even-numbered years like 2022. The 2022 state budget bill, which is House Bill 103, was approved by the House by a vote of 84 to 28, and was approved by the Senate by a vote of 38 to 9. The Governor signed the budget bill on July 11, 2022.

The state budget bill includes higher raises for state employees and teachers, money to build a new government complex in downtown Raleigh; coverage of co-pays for students who qualify for reduced-price lunches; and pay for new school safety measures in the wake of mass shootings. Legislators made a point in this state budget to prepare for an economic recession. Much of the state’s recent surplus tax collections, due in part to an economy that has outperformed predictions throughout the pandemic, will go to the bottom line, including \$1 billion lawmakers set aside for an “inflationary reserve.” The budget also transfers a portion of into normal sales tax revenues to the NC Department of Transportation to bolster transportation spending by hundreds of millions of dollars, an acknowledgment that falling gasoline tax revenues cannot cover road construction costs. There are no new tax cuts in the state budget bill. Previously planned cuts in both business and personal income tax rates, which were agreed to last year, will continue.

The budget does not include a number of policy initiatives lawmakers discussed as this legislative session approached adjournment, such as Medicaid expansion, medical marijuana, and online sports betting. These issues will likely be revisited during the 2023 legislative session.

The legislature is expected to convene the 2023 legislative “long” session in mid-January 2023.

The legislature enacted a number of bills that continue to modernize North Carolina’s ABC laws (see bill summaries below). A special thank you to the Chairs of the Senate Commerce and Insurance Committee - Senators Chuck Edwards (R-Henderson), Todd Johnson (R-Union) and Tom McInnis (R-Richmond), and the Chair of the House ABC Committee - Representative Tim Moffitt (R-Henderson). These legislators, along with House and Senate leadership, were key to these provisions becoming law this year.

This Final Legislative Report for 2021-2022 includes a summary of all the bills enacted by this session’s General Assembly that are of interest to the association, and some bills that were considered but not enacted this year.

Legislature Holds Public Hearing on State Warehouse Distribution Issues in September 2021

In the Fall of 2021, the House ABC Committee held a public hearing where they sought answers for why alcohol shortages persist across the state in 2021. Members of the Committee, as well as Senator Todd Johnson who handles alcohol-related issues for the Senate, questioned representatives of the Alcohol Beverage Control Commission and its warehousing and distribution contractor LB&B Associates for more than two hours. Officials, while insisting that the problems are being addressed, outlined a number of reasons for the bare shelves in some local ABC stories: a dramatic increase in consumption, the COVID-19 pandemic, supply chain disruptions, worker shortages, inconsistent implementation of a new software system for orders, insufficient storage at many facilities statewide and an inefficient central warehouse. The LB&B representative stated that the warehouse believes the delivery issues are now on track. **NC Spirits Association** leadership met with staff of the Government Operations Committee on those issues, and continued to work with the legislature, ABC Commission, and LB&B in 2021 and 2022 to address issues impacting spirits distillers and suppliers.

BILLS OF INTEREST ENACTED INTO LAW

House Bill 73, Temporarily Defer ABC Permit Renewal Fees, enacted in 2021, provides that restaurants and bars will not need to pay annual ABC permit renewal fees until October 1, 2021. House Bill 73 moves last year’s renewal deadline from May to October 1, giving struggling hospitality businesses more time to make the payment. **Effective: August 16, 2021. Session Law 2021-105.**

House Bill 103, 2022 Appropriations Act, is the state budget bill, which was signed into law by Governor Cooper on July 11, 2022 – **Session Law 2022-74**. Among other things, the bill contains the following provisions:

- Appropriates \$4,700,000 for new state ABC warehouse planning
- Expands the qualifications for the ABC permitting of recreational districts to include the North Wilkesboro Speedway, with the following language:

(1a) An area that is located in a county that has not approved the issuance of mixed beverages permits; has at least two cities that have approved the sale of malt beverages, wine, and the operation of an ABC store; and contains a facility of at least 90 acres where five or more motorsports-related events are held each year. The Commission shall issue a permit under the authority set forth in this subdivision only to a facility where five or more motorsports-related events are held, or a qualified business contracting with or located at a facility where five or more motorsports-related events are held, and the sale and consumption of alcoholic beverages shall only occur during a motorsports-related event held at the facility.

House Bill 211, Social District/Common Area Clarifications, makes various clarifying changes to North Carolina social districts and common area laws, to make them more uniform and clarify the areas that can be included under a common area entertainment permit or a social district. **Effective: July 7, 2022. Session Law 2022-49.**

House Bill 661, AgeReq.Mod's/CapProj.Oversight/BEAD Crrrect, among other things, makes the following changes to laws applicable to the minimum ages of certain individuals to work in alcohol-related business:

- Reduces the age requirement for malt beverage wholesaler route salesmen and persons working in the warehouse from 21 to 18.
- Temporarily allows 15-year-olds to work inside premises that serve alcohol – as long as the youth does not prepare, serve, dispense, or sell alcohol except at point-of-sale for off-premises consumption (was, 16 and older). This provision would expire December 31, 2023.

Effective: July 8, 2022. Session Law 2022-69.

House Bill 768, 2022 ABC Omnibus, makes various changes to the ABC laws, including:

- repeals the limited winery permit.
- establishes a new packaging and logistics permit for packagers who label and package alcoholic beverages from suppliers.
- repeals the purchase-transportation permit and the commercial transportation permit.
- allows a 60-day transition period for ABC permits after a change in ownership of a permitted establishment.

- allows alcohol sales at professional sporting events occurring at a stadium on the campus of certain community colleges (specifically applies to minor league baseball games at Sandhills Community College).
- amends the definition of "private bar" to eliminate the membership requirement.
- allow a distillery to obtain mixed beverages catering permits and provide spirituous liquor for an event being catered by a hotel or restaurant.
- allows a distillery to obtain a mixed beverages permit and sell mixed beverages containing the spirituous liquor owned by the distillery, regardless of the results of any local mixed beverages election.

Effective: July 7, 2022. Session Law 2022-44.

House Bill 890, ABC Omnibus Legislation, enacted in 2021, made over 30 changes to the ABC laws, to include:

PART I. ALLOW ONLINE ORDERS FROM ABC STORES – allows 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).

Effective: September 10, 2021. Session law 2021-150.

Senate Bill 470, ABC Technical and Other Changes, makes various changes to the ABC laws, including:

- Clarifies ABC rulemaking authority with respect to online orders at ABC stores and delays the effective date of the online order section in S.L. 2021-150 (H890) to October 1, 2022.
- Makes a technical change to the spirituous liquor vendor permit established in S.L. 2021-150 to reflect that a nonresident spirituous liquor vendor may only sell its products in this State through the State warehouse.
- Makes a definition of "brokerage" apply to all of Chapter 18B of the General Statutes.
- Makes a conforming change to clarify that a spirituous liquor special event permit does not allow the sale of spirituous liquor in closed containers.
- Makes a clarifying change to the locations in which alcoholic beverages sold at distilleries for consumption on the premises may be sold, possessed, or consumed on any part of the licensed premises that is open to the public.

- Makes a technical change to the election changes in S.L. 2021-150 and provide that approval of mixed beverages allow allows the sale of fortified wine in addition to malt beverages and unfortified wine.
- Exclude ice cream from the definition of "alcohol consumable" until December 1, 2022, to allow the ABC Commission an opportunity to determine how a frozen product will be received by the state warehouse, stored, shipped to ABC stores, and sold frozen in ABC stores. This section is effective retroactively to September 10, 2021, the date that S.L. 2021- 150 was signed into law.
- Makes a clarifying change to the conditions under which a tour boat may obtain an ABC permit.
- Provides that the term "supplier," for purposes of a supplier's financial interest in a wholesaler, means a manufacturer, bottler, importer, or owner of one or more brands of malt beverages, unfortified wine, or fortified wine distributed by its wholesaler. The term would not include a wholesaler that (i) possesses a wine importer permit or a malt beverages importer permit or (ii) is an importer in another state, provided such malt beverages, unfortified wine, or fortified wine are transferred to it through an unaffiliated and independent third party.
- Exempt the ABC Commission from rulemaking under the Administrative Procedure Act (APA) with respect to approval of alcoholic beverages to be sold in ABC stores and setting prices of alcoholic beverages.
- Allows the ABC Commission to conduct training classes for individuals delivering under a delivery service permit. Under current law, the Commission approves courses conducted by the holder of a delivery service permit. This section becomes effective October 1, 2022.
- Allow empty spirituous liquor bottles to be used for display purposes. The permit holder shall notify the ABC Commission of any such containers to be used for display purposes, and each container used for display purposes shall be stamped with a mixed beverages stamp.
- Amend the definition of “restaurant” for ABC permitting purposes – to reduce the dining area seating requirement from 36 to 10, and provide that it is not necessary for an establishment to maintain a kitchen operation at all times it is open to the public to qualify as a restaurant.
- Exempt bar areas or other similar areas in an establishment where alcoholic beverages are prepared, poured, or mixed before service to customers and food is not prepared, except for the preparation of garnishes for alcoholic beverages
- Allow branded plug-in coolers in ABC stores – This provision provides that: “No rule or decision of the Commission may limit or restrict the giving, lending, or selling by industry members of branded plug-in coolers used to hold and display products, provided that coolers are under the dollar limits set forth by the Commission for product displays. A branded plug-in cooler shall have permanent and conspicuous branding that is permanently attached or securely affixed to the cooler.”
- Allow 50-milliliter containers of malt beverages

Effective: July 7, 2022. Session Law 2022-51.

BILLS NOT ENACTED INTO LAW

House Bill 768, LRC ABC Law Study, was introduced in 2021, but the contents of the bill were replaced in 2022 with the ABC Omnibus Bill described above. The original version of the bill would direct the Legislative Research Commission to study various provisions of the alcoholic beverage control laws in North Carolina, to include:

(1) A comparative analysis on how the federal government and other states regulate the manufacturing, sale, possession, and consumption of alcoholic beverages, including how the federal government and other states regulate the labeling of alcoholic beverages, the distribution of alcoholic beverages, and the assortment of alcoholic beverages that may be manufactured, sold, possessed, or consumed.

(2) A comparative analysis on how other states (i) regulate the sale of spirituous liquor, (ii) define and regulate alcohol consumables, (iii) define and issue permits for the manufacturing or sale of alcoholic beverages, and (iv) define and regulate periods of the day in which alcoholic beverages may be sold for on-premises consumption at a reduced price.

(3) All of the following:

a. The advisability and necessity of expanding and clarifying the definition set forth in G.S. 18B-101 for the term "premises."

b. How to modify the process used for determining which spirituous liquor products may be sold in ABC stores to allow for more selection.

c. How the process for issuing permits pursuant to Chapter 18B of the General Statutes can be streamlined.

d. The feasibility and advisability of allowing malt beverages and wine wholesalers to offer the same payment terms the wholesalers receive from the manufacturing tier.\

e. The feasibility and advisability of allowing mixed beverages permittees the option of purchasing spirituous liquor directly from an in-State distillery if the local ABC board refuses to purchase spirituous liquor from the distillery.

f. The feasibility and advisability of expanding the usage of signage and other advertising by permittees to promote the sale of alcoholic beverages.

g. The advisability and necessity of allowing malt beverages wholesalers to exchange a seasonal malt beverage product for another seasonal malt beverage product when the first seasonal product is about to go out of date.

h. The advisability and necessity of amending the law requiring wholesalers to serve permittees without discrimination to (i) expand it to prohibit age, race, gender, national origin,

and economic discrimination and (ii) allow a permittee within a franchise territory to purchase product outside the franchise territory if the wholesaler refuses to sell to the permittee.

i. The feasibility of setting the amount of fines assessed by the Commission for violations of the ABC laws, as defined in G.S. 18B-101, based either on the value of alcohol sales made by the offending permittee or on the volume of alcohol sold by the offending permittee. The study required under this sub-subdivision shall include an examination of the opportunities and challenges arising from the implementation of either approach, the resources needed for implementing either approach, any ramifications either approach would have on the proportionality of penalties assessed on offending permittees, and any legislative changes necessary to implement either approach.

The original version of House Bill 768 was not enacted into law.

House Bill 904, Allow Sale of Low Alcohol Beverage Coolers, introduced in 2021, would authorize the sale of low alcohol beverage coolers, otherwise known as ready-to-drink cocktails, at certain retail establishments in North Carolina. The bill would define a “low alcohol beverage cooler” as “A drink containing at least one-half of one percent (0.5%), and no more than nine and one-half percent (9.5%), alcohol by volume, and consisting of spirituous liquor mixed with any or all of the following: nonalcoholic beverages, flavoring, or coloring. A low alcohol beverage cooler may contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, preservatives, and other similar products manufactured by fermenting fruit or fruit juices. The bill would exclude low alcohol beverage coolers from the definitions of “mixed beverage” and “spirituous liquor.” These definitional exclusions essentially would allow low alcohol beverage coolers to be sold outside the ABC stores – in retail establishments.

The bill would allow low alcohol beverage coolers to be sold only in packages of four to 12 single-serve containers with each container no more than 16 ounces in size. The bill provides that low alcohol beverage coolers shall be treated as fortified wine for purposes of this section. **House Bill 904 was not enacted into law.**

House Bill 1135, ABC Laws/Local Sales Option, introduced in 2021, would allow local governments with the option of allowing certain alcohol sales and advertising, specifically to allow “happy hours” in the city or county that adopts the ordinance. The happy hour permit would be \$100. The holder of a happy hour permit would be allowed to do any of the following, for any period of time:

a. Sell an alcoholic beverage at a price that is different from the usual or established price charged for the alcoholic beverage.

b. Sell more than one alcoholic beverage to a patron for a single price.

c. Establish a single price based upon the required purchase of more than one alcoholic beverage.

d. Offer "cents off" coupons.

e. Offer a meal and alcoholic beverage at a single total price, whether or not the total price reflects a reduced price of the alcoholic beverage.

f. Advertise the price and type of alcoholic beverages (i) on outside signage located on the permittee's premises, (ii) via newspapers, radio, television, and other mass media, or (iii) on outside signage located on the permittee's premises and via newspapers, radio, television, and other mass media."

House Bill 1135 was not enacted into law.

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

***Prepared By: David P. Ferrell, Esq. – NC Spirits Association Lobbyist
NEXSEN PRUET PLLC
4141 Parklake Avenue, Suite 200
Raleigh, North Carolina 27612
Telephone: (919) 573-7421
dferrell@nexsenpruet.com
www.nexsenpruet.com***