



# North Carolina Spirits Association

Legislative Report  
June 28, 2024

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## North Carolina General Assembly Concludes Session

The North Carolina General Assembly concluded its main work session Thursday June 27 by overriding Governor Roy Cooper's vetoes, placing a constitutional amendment on the November ballot about voting eligibility, and sending numerous bills to the Governor. However, they did not pass a comprehensive budget-adjustment measure for the next year and failed to agree on additional constitutional referendums and several contentious bills.

Key issues that remain unresolved between the House and Senate included disagreements over state employee and teacher raises and funding for private school scholarships. While \$67.5 million was approved for child care centers, nearly \$500 million for K-12 private school scholarships remains unresolved. The General Assembly will reconvene for occasional sessions for the remainder of 2024 to address veto overrides and emergencies.

Republicans succeeded in overriding Governor Cooper's three vetoes (criminal and election law changes; juvenile justice modifications and NCDOT legislative changes), continuing a trend from the previous year. A proposed constitutional amendment clarifying that only U.S. citizens can vote was approved and will be on the ballot in November.

Bipartisan efforts led to the passage of bills combating human trafficking and creating new crimes for sex exploitation and extortion. Negotiators could not finalize a bill requiring sheriffs to comply with federal immigration holds, video lottery terminals, or legalize medical marijuana use. These items could be considered later in 2024 if an agreement is reached between the House and Senate on the measures.

### **NC Voters to Decide on Citizenship Voting Amendment Amid Election Law Changes and Debates**

In November, North Carolina voters will decide on a constitutional amendment clarifying that only citizens can vote. Although state law already requires voters to be citizens, proponents say this amendment will prevent local governments from allowing noncitizens to vote. Critics argue it could fuel anti-immigrant sentiments and is a tactic to boost conservative turnout.

The amendment passed with bipartisan support. Other proposed amendments, including those requiring voter ID for all voting and lowering the income tax cap from 7% to 5%, still need House approval. Additionally, the House approved an amendment to repeal the Jim Crow-era literacy test for voting, though the Senate has yet to consider it.

The Senate passed a bill with various election law changes, such as requiring AI disclosures in political ads, signature verification for mail-in ballots, and checks on death and felony records before certifying elections. This bill awaits House action.

### **NC Legislature Overrides Governor's Veto on Masks and Campaign Finance Bill Vetoes**

bill to enact new penalties for protesters wearing masks and which would alter campaign finance laws to create loopholes around bans on unlimited or anonymous political contributions became law this week when the legislature voted to override the Governor's veto of the legislation. The mask rule changes require medical-grade masks for preventing contagious diseases and are seen as a measure to facilitate the arrest of masked protesters. The new protest laws introduce stricter penalties, including felony charges for repeat offenders blocking roads and potential lawsuits against protest organizers.

Democrats argue that these laws could lead to harassment and target people protecting their health. Governor Cooper's main opposition was due to the campaign finance changes aimed at leveling the playing field for Republican nominee Mark Robinson, who trails in fundraising against Democratic nominee Josh Stein.

The General Assembly adjourned on Thursday, concluding their work for the 2024 short session. The legislature agreed to reconvene once a month until the end of the year to consider certain bills like veto overrides and conference reports. Although the adjournment resolution approved by both chambers provides that the legislature will meet on July 10, July 29-August 1, September 9-11, October 9, November 19-22, and December 11-13, the legislature is not expected to take up bills and have votes in all of these sessions, and may only do so in September and November; but the legislative schedule is still being developed for the rest of the year.

We will prepare a final legislative report that summarizes legislation of interest from the 2024 legislative session; and we will prepare a legislative report if the legislature holds a voting session later this year.

### **ABC Omnibus Bill**

**Senate Bill 527, ABC Omnibus 2023-24**, was considered in the House Rules Committee Wednesday. The bill was approved by the committee, approved by the House by a vote of 105-4, approved by the Senate Thursday by a vote of 33-11, and now goes to the Governor for his signature.

Four (4) provisions were removed from the bill, as there was not enough support for them in the House and Senate to allow them to move forward this session. But bill sponsors say they will try again next year to move the Sunday Sales and Happy Hour provisions forward. The provisions in the original bill that were removed are:

-Sunday sales  
\*\*But they'll keep in the provision that allows stores to open on all holidays except Thanksgiving and Christmas

-Happy Hour

-Allocated product (i.e., bourbon) transparency / reporting

-Minimum pricing

The provisions of the bill are as follows:

**EXCLUDE READY-TO-DRINK COCKTAILS FROM MIXED BEVERAGE CHARGE**

Under current law, containers of spirituous liquor sold to a mixed beverage permittee are subject to a charge of \$20.00 per four liters (\$3.75 per 750mL bottle). This also applies to premixed cocktails, which are usually sold in an individual serving-sized container. The definition of "mixed beverage" includes premixed cocktails "served from a closed package containing only one serving," but this language prohibits mixed beverage permittees from serving the premixed cocktail in its original container.

**Section 1.(a)** of the PCS would create a definition for premixed cocktails and classify premixed cocktails sold by mixed beverages permittees as mixed beverages, regardless of whether the premixed cocktails are sold in an open container or a closed container.

**Section 1.(b)** would exempt premixed cocktails from the mixed beverages charge and the requirement to affix a mixed beverage tax stamp to those containers when sold to a mixed beverages permittee for resale.

**ALLOW ABC COMMISSION MEMBERS AND STAFF AND LOCAL BOARD MEMBERS, GENERAL MANAGERS, AND STORE MANAGERS TO SAMPLE PRODUCTS**

ABC Commission (Commission) rule 14B NCAC 15B .0904 allows local board members, general managers, and employees involved in product selection to sample products, but those tastings may not occur on property owned by the local board.

**Section 2.(a)** would allow members and employees of the Commission to sample 0.25 ounce samples of spirituous liquor products under consideration for approval for sale in this State. The samples must be provided free of charge and shall not constitute a gift. These tastings may occur on property owned by the Commission.

**Section 2.(b)** would allow members of a local board and general managers and store managers of ABC stores to sample 0.25 ounce samples of spirituous liquor products under consideration for approval for sale by the local board. The samples must be provided free of charge and shall not constitute a gift. These tastings may occur on property owned by the local board, but may not be conducted in publicly accessible areas of any ABC store.

## **LOCAL ABC BOARD FLEXIBILITY ON CERTAIN HOLIDAYS**

Under current law, ABC stores may not be open on any Sunday, New Year's Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day. A local board may otherwise determine the days on which its stores shall be closed.

**Section 3** would allow ABC stores to open on New Year's Day, Fourth of July, and Labor Day, in the discretion of the local ABC board. ABC stores could not open on a New Year's Day or Fourth of July that falls on a Sunday.

## **RAISE CAP ON POINT-OF-SALE ADVERTISING MATERIALS, PRODUCT DISPLAYS, AND COOLERS**

ABC Commission rule 14B NCAC 15C .0711 limits the total amount of retailer advertising specialty items that an industry member may give to a retail permittee to \$300 per brand per year. Additionally, an industry member may provide product displays from which malt beverages, wine, or spirituous liquor are displayed and sold, up to a value of \$160 per brand per year.

**Section 4** would allow industry members to provide up to \$600 worth of retailer advertising specialty items and product displays per brand per year to a retail permittee or \$1,000 worth of retailer advertising specialty items and product displays per brand per year to a local board. This section would also allow an industry member to provide branded plug-in coolers to a local board for use in an ABC store up to a value of \$1,500 per brand per year, separate from the \$1,000 allowed for retailer advertising specialty items.

## **ALLOW TO-GO AND DELIVERY SALES OF MIXED BEVERAGES AND WINE BY THE GLASS**

The sale of mixed beverages for consumption off the premises and delivery by a delivery services permittee was temporarily allowed during the Coronavirus state of emergency by Executive Orders 183 and 210, from December 21, 2020 to June 1, 2021.

**Section 5** would allow a restaurant, hotel, private club, bar, brewery, winery, or distillery that holds an on-premises unfortified wine permit, on-premises fortified wine permit, or a mixed beverages permit to sell single-serving unfortified wine drinks, single-serving fortified wine drinks, or mixed beverages, respectively, for consumption off the premises, including delivery by either the mixed beverages permittee or a delivery service permittee. A single-serving unfortified wine drink, single-serving fortified wine drink, or mixed beverage sold for consumption off the premises must be sold with food, and must be packaged in a container not to exceed 24 fluid ounces, with a secure lid or cap and in a manner designed to prevent consumption without removal of the lid or cap. The transportation of a single-serving unfortified wine drink, single-serving fortified wine drink, or mixed beverage in a motor vehicle would be allowed if the container continues to be sealed. The sale of more than two single-serving unfortified wine drinks or fortified wine drinks or one mixed beverage drink at one time would be allowed if the mixed beverage drinks are sold for delivery or consumption off the permittee's premises.

No single-serving unfortified wine drink or mixed beverage ordered for off premises

consumption may be provided to any person other than the purchaser of the beverage, except that in the case of delivery, the delivery service permittee may provide the beverage to a person other than the purchaser if the permittee verifies that the person is over 21 years of age using age verification software requiring the recipient to provide a form of photo ID.

**ALLOW MIXED BEVERAGE PERMITTEES TO PURCHASE SPIRITUOUS LIQUOR FROM ANY DESIGNATED ABC STORE IN THE SAME COUNTY AND MODIFY ELIGIBILITY FOR SMALL TOWNS TO HOLD ALCOHOL ELECTIONS**

Under current law:

- A local board may designate a store within its system to make sales to mixed beverage permittees, and mixed beverage permittees must buy spirituous liquor for use in mixed beverages at the designated store.
- A city may hold a malt beverage or unfortified wine election if the county in which the city is located has already held such an election, the vote in the last county election was against the sale of that kind of alcoholic beverage, and the city meets any of the following criteria:
  - Has a population of at least 500 according to the most recent census.
  - Operates an ABC store.
  - Has a population between 400 and 500 according to the most recent census but had a population of 500 according to the prior census.
- A city may hold a mixed beverage election if it meets any of the following criteria:
  - Has at least 500 registered voters.
  - Has at least 300 registered voters and is located in a county with at least one other city that has approved the sale of mixed beverages.
  - Has at least 200 registered voters, is located in a county bordering the Neuse River and Pamlico Sound that has not approved the sale of mixed beverages, and that county has only one city that has approved the sale of mixed beverages.
  - Has at least 200 registered voters, has a total area of less than 1 square mile, operates an ABC store, and is located in a county that has at least three cities that have approved the sale of mixed beverages.

**Section 6** would:

- Allow a mixed beverage permittee to purchase spirituous liquor from any ABC board operating in the same county as the permittee. The purchase would still have to be made at an ABC store the board has designated to serve mixed beverages permittees.
- Allow a city to hold a malt beverage or unfortified wine election if it has a population of at least 400 according to the most recent census.

- Allow a city to hold a mixed beverage election if it has at least 200 registered voters.

This section would be retroactively effective November 1, 2022, and would apply to elections conducted on or after that date.

### **ALLOW MIXED BEVERAGE PERMITTEES TO COVER MIXED BEVERAGE TAX STAMPS WITH CLEAR ADHESIVE TO PREVENT THEM FROM FALLING OFF CONTAINERS OF SPIRITUOUS LIQUOR**

Under ABC Commission rule, a mixed beverages permittee may not "destroy, alter, or deface" a mixed beverages tax stamp.

**Section 7** would codify the prohibition on destroying, altering, or defacing a tax stamp, but would clarify that covering the tax stamp with a clear adhesive is allowed.

### **SPECIAL PURCHASE ALLOWANCE MODIFICATION**

Currently, when an industry member offers a discounted price for spirituous liquor and the retail price in the ABC store is reduced, local boards may purchase the spirituous liquor at a discounted price for the 30 days prior to the retail price reduction, plus the 30 days when the retail price reduction is in effect.

**Section 8** would require the Commission to notify industry members and local boards at least 60 days in advance of the effective date of a retail price reduction for a spirituous liquor product, but the price reduction for local boards would only be effective for the 30 days that the retail price reduction is in effect.

### **ALLOW ABC STORES TO SELL VALUE-ADDED PRODUCTS, GIFT CARDS, AND BARRELS**

Under current law, ABC stores are not allowed to sell anything besides spirituous liquor. Holiday gift packs, such as a bottle of spirituous liquor packaged with a branded shot glass or muddler, must be sold for the same price as the individual bottle of spirituous liquor would be sold without the branded item, so that the ABC store is effectively giving away the branded item.

**Section 9** would do all of the following:

- Allow ABC stores to sell branded consumer specialty items such as bottle or can openers, cork screws, muddlers, ashtrays, shopping bags, individual can coolers, drinking glasses, clothing, or key chains that are packaged with a spirituous liquor product. A branded consumer specialty item could not include a tobacco, vapor, or hemp product or tobacco, vapor, or hemp paraphernalia.
- Allow the Commission to approve the retail price for a spirituous liquor product packaged by the producer with one or more branded specialty items at a different price than an individual bottle of the same spirituous liquor product. A local board would be prohibited from removing a spirituous liquor product packaged by the producer with one or more branded specialty items from the package.

- Allow ABC stores to sell physical or electronic gift cards. Gift cards could be sold online, and electronic gift cards could be delivered digitally to the purchaser. A gift card could be purchased or redeemed only by a customer 21 years of age or older, and could be redeemed at any ABC store operated by the local board from which the gift card was purchased.
- Allow an ABC store to sell empty barrels or parts of barrels received from a distiller in which spirituous liquors were aged, provided that the local board also purchased the spirituous liquor aged in the barrel.

This section would become effective July 1, 2024.

### **ALLOW LOCAL BOARDS TO SELL PRODUCTS BELOW THE DISTILLER'S PRICE**

Under current law, local boards are not allowed to sell a spirituous liquor product for less than the distiller's price. A local board may get permission from the Commission to set the price at the price paid by the board minus the local markup. A local board may not dispose of products in its stock except by selling the products.

**Section 10** would allow the Commission to authorize a local board to sell spirituous liquors below the price paid for the local board, including the bailment charge and surcharge, upon request from the local board. The Commission would have to verify that allowing the price reduction would not cause the local board to operate at an annual net loss or, if the local board was already operating at a loss, would not cause the local board to incur additional annual net revenue losses.

This section would allow a distillery to request to be notified if its products are authorized for pricing below the distiller's price pursuant to this section. In that case, the distillery would have the right of first refusal to purchase back its products at the reduced price for two days before the retail price is reduced for consumers.

### **AMEND ELIGIBILITY FOR ALCOHOLIC BEVERAGE SALES ON TRAINS**

Under current law, malt beverages, unfortified wine, and fortified wine may be sold and delivered by a wholesaler or retailer to an officer or agent of a rail line that carries at least 60,000 passengers annually.

**Section 11** would allow malt beverages, unfortified wine, and fortified wine to also be sold and delivered to an officer or agent of a rail line that is at least 100 miles long and connects to the national rail network.

### **ALLOW SALE OF TWO MIXED BEVERAGES AT SPIRITUOUS LIQUOR SPECIAL EVENTS**

Under current law, a spirituous liquor special event permit authorizes the permittee to give free tastings of its products, sell mixed beverages, and provide at no cost spirituous liquor distilled or produced at the distillery in closed containers at trade shows, conventions, agricultural festivals, farmers markets, local fund-raisers, and other similar events approved by the Commission. The sale of mixed beverages is limited to one mixed beverage per customer per calendar day.

**Section 12** would allow the holder of a spirituous liquor special event permit to sell two mixed beverages to a customer in a calendar day.

**TRANSITION PERIOD FOR ABC PERMITTEE OWNERSHIP; SAFE HARBOR AND LATE RENEWAL FEES; CLARIFICATION REGARDING TRANSFER OF A PERMITTED ESTABLISHMENT TO A TRUST; AND TEMPORARY PERMIT CHANGES**

Under current law, temporary permits are valid for 90 days, but many temporary permittees are not issued full permits within the 90-day period due to backlogs at the Commission. Additionally, revocation of a temporary permit is effective upon service of the notice of revocation or upon the expiration of three working days after the notice of revocation was mailed to the permittee.

ABC permits are valid for the one-year period running from May 1 to April 30. Failure to renew a permit results in revocation of the permit.

Generally, a change in ownership of an ABC-permitted establishment results in the immediate expiration of all permits for the establishment.

In 2022, the General Assembly enacted a transition period for changes in ownership of an ABC-permitted establishment, during which a person who becomes lawfully entitled to the use and control of the premises of a permitted establishment through contract, lease, management agreement, or change of ownership or transfer of business is allowed to continue to operate the establishment to the same extent as the prior permittee until the person receives a new permit.

**Section 13** would make the following changes:

- Provide that after 90 days, a temporary permit is deemed to have been issued as a full permit.
- Establish a safe harbor period lasting until June 1 of each year, during which applicants may renew their permits late for a late fee of 25% of the renewal application fee or registration and inspection fee. The Commission would be required to notify permittees whose renewal fees have not been paid no later than five business days after April 30.
- Provide that it does not constitute a change in ownership resulting in expiration of permits if a person transfers an ownership interest in a permitted establishment to a revocable or irrevocable trust established by the person and the person continues to operate the establishment following the transfer. If the person ceases to operate the establishment, this would constitute a change in ownership and the trustee would be required to notify the Commission within 30 days.
- Clarify that the transition period after a change in ownership of a permitted establishment allows the new owner to purchase malt beverages, unfortified wine, or fortified wine to be resold for on premises or off premises consumption, or spirituous liquor for use in mixed beverages sold by the establishment, as applicable under the permit.



- Clarify that Commission must not require any documentation besides the written or electronic notice to satisfy the notice requirement.
- Clarify that the prior permittee is not liable for any acts or omissions of the new owner of the establishment during the transition period.
- Allow the new owner to submit an affidavit stating that the new owner has applied for local government approvals required for a permit application if the new owner has not received those approvals within the 60-day period allowed for the new owner to apply for permits.
- Clarify that the new owner is authorized to operate to the same extent as the predecessor permittee until the Commission either issues or denies the new owner's permit application.
- Provide that withdrawal by the Commission of a pending application by a permittee possessing a temporary permit is effective upon service of notice of the withdrawal, or upon the expiration of five business days after notice of the withdrawal has been mailed to the permittee.
- Provide that revocation of a temporary permit is effective upon the expiration of five business days after notice of the revocation has been mailed to the permittee.

## **MAKE TECHNICAL CORRECTIONS RELATED TO BARS AND ALLOW MALT BEVERAGES TO BE MIXED WITH OTHER BEVERAGES**

**Section 14** would:

- Make technical corrections to the definition of "bar" enacted in 2022.
- Clarify that an on-premises malt beverages permit allows the retail sale of malt beverages for consumption on the premises, either alone *or mixed with other beverages*. A similar provision already exists for on-premises unfortified wine permits.

## **ESTABLISH MALT BEVERAGE SHOP PERMIT**

Under current law, a wine shop permit allows the permittee to (i) sell malt beverages, unfortified wine, and fortified wine in the manufacturer's original container for consumption off the premises, (ii) sell malt beverages or unfortified wine dispensed from a tap connected to a pressurized container, (iii) hold wine tastings on the premises conducted and supervised by the permittee, and (iv) ship malt beverages, unfortified wine, and fortified wine in closed containers to individual purchasers inside and outside the State. The permittee may also sell unfortified wine for consumption on the premises, provided that the sale of wine for consumption on the premises does not exceed 40% of the establishment's total sales for any 30-day period. A wine shop permit costs \$100 but the annual renewal fee is \$500.

**Section 15** would create a malt beverage shop permit with the same privileges as a wine shop permit, except for businesses whose primary purpose is selling malt beverages for consumption off the premises and regularly and customarily educating consumers through

tastings, classes, and seminars about the selection, serving, and storing of malt beverages. The permit would cost \$100 but the annual renewal fee would be \$500.

## **ESTABLISH TWO NEW PERMITS AND REGULATE OUTSIDE ALCOHOL AT ADULT LIVE ENTERTAINMENT BUSINESSES**

Current law allows businesses, whether permitted or not, to allow customers to bring unfortified wine and malt beverages onto their premises for consumption on the premises (for example, some restaurants with on-premises unfortified wine permits allow customers to bring their own bottle of wine for a corkage fee). An establishment must have a brown-bagging permit to allow customers to bring fortified wine or spirituous liquor onto the premises and consume them on the premises.

An "adult live entertainment business" is defined as "any establishment or business wherein [any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas] is shown for observation by patrons."

**Section 16** would create two new permits:

- A cotenant permit, with a fee of \$50.00, which could be issued to a restaurant that occupies the same building as another ABC permittee, provided that the building has no other tenants and the building does not have a common area that is open to the public but not part of the premises of one of the two permittees. The permit would authorize the permittee to allow customers to bring open containers of malt beverages, unfortified wine, fortified wine, or mixed beverages from the premises of the other ABC permittee who occupies the same building onto the premises of the permit holder.
- A bring your own beverage permit, with a fee of \$100.00, which could be issued to an adult live entertainment business. This permit would authorize the permittee to allow patrons to bring closed containers of malt beverages and unfortified wine onto the premises and consume the malt beverages and unfortified wine on the premises.

This section would also make it unlawful to consume, or to allow the consumption of, alcoholic beverages at any adult live entertainment business except pursuant to one or more ABC permits allowing the sale or consumption of alcohol.

This section would become effective July 1, 2024.

## **ESTABLISH MOBILE BAR SERVICES PERMIT**

**Section 17** would create a mobile bar services permit, with a fee of \$500, that may be issued to a business that provides bartending services for events. The permit would authorize the permittee to bring malt beverages, unfortified wine, fortified wine, and spirituous liquor onto the premises of a business that is not an ABC permittee and to serve the alcoholic beverages to guests at the event.

The permittee could purchase beer and unfortified wine from either a retailer or a

beer and wine wholesaler, fortified wine from an ABC store or a wine wholesaler, and spirituous liquor from a designated mixed beverage ABC store operated by any local board operating in the same county where the permittee's principal office is located. The mixed beverage charge of \$20.00 on each four liters of spirituous liquor sold to a mixed beverages permittee would also apply to spirituous liquor sold to a mobile bar services permittee. A mobile bar services permittee would also be required to have a recycling plan for recyclable beverage containers of all beverages to be served at an event pursuant to a mobile bar services permit.

A limited special occasion permit would not be required for an event at which alcoholic beverages are exclusively provided by the holder of a mobile bar services permit. The permittee could bring alcoholic beverages onto the premises and serve them at an event regardless of whether there is a charge or fee for guests to attend the event.

This permit would not allow the retail sale of individual alcoholic beverages to guests at an event. This section would become effective July 1, 2024.

### **COMMUNITY THEATRE CLARIFICATION**

Under current law, a community theatre is defined as an establishment owned by a nonprofit organization that is engaged solely in the business of sponsoring or presenting amateur or professional theatrical events to the public.

**Section 18** would broaden the definition to include other performing arts events.

### **REQUIRE ALCOHOL LAW ENFORCEMENT TO NOTIFY PERMIT HOLDER OF VIOLATIONS**

**Section 19** would require that, if an alcohol law enforcement (ALE) agent or local ABC officers issues a citation to an employee of a permitted establishment who is not the named permit holder, for violations of criminal law or the ABC laws occurring on the premises, the agent or officer must notify the permit holder by certified mail or electronic means within five business days. If the ABC Commission receives a report from a law enforcement agency other than the ALE Division or a local ABC officer documenting violations occurring at a permitted establishment, the Commission would be required to notify the permittee of the report within five business days.

This section would become effective September 1, 2024, and would apply to violations occurring on or after that date.

### **ESTABLISH DISTILLERY ESTATE DISTRICTS**

**Section 20** would define a "distillery estate district" to mean a tract of real property or multiple contiguous or adjacent tracts of real property, separated only by a river, lake, or public or private road, on which a distillery, a winery, and at least three other establishments holding mixed beverages permits are located. Each of the permitted establishments must be under common ownership and control.

A mixed beverages permittee located in a distillery estate district that is under

common ownership and control with the distillery would be allowed to sell spirituous liquor produced at the distillery located in the distillery estate district in mixed beverages as if it were being sold at the distillery, and the spirituous liquor would not be required to pass through the State Warehouse.

A distillery located in the distillery estate district would be authorized to conduct consumer tastings of spirituous liquor produced at the distillery anywhere in the distillery estate district.

On- and off-premises unfortified wine permittees located in the distillery estate district that are under common ownership and control with the distillery would be authorized to sell bottles of spirituous liquor produced at the distillery at retail for consumption off the premises as if those bottles were being sold in the distillery following a tour.

This section would become effective July 1, 2024.

## **WHOLESALE DISTRIBUTION CENTERS**

**Section 21** would allow the holder of a wine importer, malt beverage importer, or spirituous liquor importer/bottler permit to receive wine, malt beverages, or spirituous liquor, respectively, into the State for storage, sale, shipment, or transshipment to entities in other states or nations, or to the State Warehouse.

## **ESTABLISH CATAWBA INDIAN NATION TRIBAL ALCOHOLIC BEVERAGE CONTROL COMMISSION**

Alcohol-related activities that occur on tribal lands designated as Indian Country must conform with both a tribal liquor ordinance approved by the federal government and State law.

Under current law, the Eastern Band of Cherokee Indians tribe is authorized to establish a tribal alcoholic beverage control commission to regulate alcoholic beverages on any land designated as Indian Country, under the jurisdiction of the tribe. The tribe is authorized to hold ABC elections and operate its own ABC stores. The tribe must comply with most provisions of the State's ABC laws.

The Catawba Indian Nation, based in Rock Hill, South Carolina, has approximately 50 acres of land designated as Indian Country under its jurisdiction in North Carolina. On May 1, 2021, the Catawba Indian Nation adopted a Catawba Nation liquor ordinance. The ordinance was published in the Federal Register on November 15, 2021 and became effective December 15, 2021.

**Section 22** would authorize the Catawba Indian Nation to operate a tribal ABC commission and regulate alcoholic beverages on its tribal lands to the same extent as the Eastern Band of Cherokee Indians may do on its tribal lands.

## **CAP THE TAX ON QUALIFYING SPIRITUOUS LIQUOR PURCHASES**

Under current law, the excise tax on spirituous liquor is 30%. The sales and use tax on spirituous liquor other than mixed beverages is the general combined State and local rate

of 7%.

**Section 23** would provide that for purchases of a single container of spirituous liquor with a purchase price of at least \$50,000, the purchaser may apply to the Secretary of Revenue for a direct pay permit authorizing the permit holder to purchase the spirituous liquor without paying tax to the seller and authorizing the seller not to collect any tax from the permit holder. The purchaser must file a return and pay the tax due directly to the Secretary. This section exempts a distillery from remitting excise tax on spirituous liquor for which the purchase price is at least \$50,000 for a single container, and caps the use tax on such spirituous liquor at \$1,000.

This section provides an effective cap on the amount of sales and use tax payable on the purchase of a single container of spirituous liquor the purchase price of which is equal to or greater than \$50,000. Under the Streamlined Sales and Use Tax Agreement, North Carolina may either tax an item of tangible personal property or exempt it from sales tax, but it may not impose a cap on the amount of sales tax payable. However, under the Streamlined Sales and Use Tax Agreement, a State may allow a cap on the amount of sales and use tax payable if the burden of administering the cap is removed from the retailer.

A seller of qualifying spirituous liquor would be allowed to voluntarily collect the sales and use tax on behalf of the purchaser. Sellers of these products may prefer to voluntarily collect the tax rather than requiring their customers to obtain a direct pay permit.

This section would become effective January 1, 2025, and would apply to purchases on or after that date.

### **DIRECT ABC COMMISSION TO EXPAND PREMISES TO COVER CERTAIN CONTIGUOUS PROPERTIES**

**Section 24** would direct the Commission to treat multiple parcels with different addresses as a single premises if the parcels meet all the following conditions:

- Each parcel is connected to one or more other parcels such that the parcels share a single perimeter.
- The parcels are under common ownership or control, as evidenced by deed, lease, or management agreement.
- Access between the buildings on the parcels is available to customers without requiring customers to enter the public street or sidewalk.

### **AUTHORIZE HOME MAKER ORGANIZATIONS TO GIVE SAMPLES AT EVENTS**

Under current law, a permit is not required for an individual to make wine or malt beverages for the individual's own use, the use of the individual's family and guests, or use at organized exhibitions or competitions. At exhibitions and competitions, the judges must be members of a club dedicated to the home making of malt beverages and wine. These events may occur on the premises of a retail ABC permittee, but the area for consumption of homemade products must be segregated from the portion of the premises open to the general public. Homemade malt beverages and wine may not be offered for sale.

**Section 25** would establish a home maker special event permit, with a fee of \$50, that may be issued to a home maker club devoted to the home production of malt beverages or wine. The club must have a general liability insurance policy in the amount of at least \$1,000,000 in order to qualify for a permit.

The permit would authorize the home maker club to offer free tastings of homemade malt beverages and wines on the premises of retail ABC establishments, at shopping malls, and at events such as trade shows, conventions, and street festivals. There would be several limitations on consumer tastings of homemade products, including:

- The permit holder must provide to the Commission in advance of any consumer tasting a list of homemade products offered at the consumer tastings at least 24 hours before the start of the consumer tasting event. For a consumer tasting occurring on the premises of a retail ABC permittee, the home maker club must also provide this list to the permittee.
- Homemade products must be labeled with the maker's name and telephone number, the alcohol by volume, and the statement "Homemade product for consumer tasting."
- Each consumer is limited to six tasting samples containing one ounce of any homemade product made available for sampling at the consumer tasting, and the total amount of the tasting samples offered to and consumed by each consumer must not exceed six ounces in any calendar day.
- The permit holder or members of the permitted home maker club shall not charge a consumer for any tasting sample or for entry to the consumer tasting.
- Each consumer participating in a consumer tasting must provide his or her name, telephone number, email address, and the date of the consumer tasting.

This section would become effective October 1, 2024.

**ALLOW PRIVATE CLUB FRANCHISES TO RECEIVE ABC PERMITS IMMEDIATELY IF FRANCHISOR HAS BEEN IN OPERATION FOR AT LEAST 12 MONTHS**

Under current law, a private club is defined as "[a]n establishment that qualifies under Section 501(c) of the Internal Revenue Code, as amended, 26 U.S.C. § 501(c), and that has been in operation for a minimum of 12 months prior to application for an ABC permit."

**Section 26** would allow an establishment that (i) qualifies under Section 501(c) of the Internal Revenue Code and (ii) is a franchisee of a franchisor that is permitted as a private club that has been in operation for 12 months, to receive an ABC permit without having been in operation for 12 months itself.

This section would be effective when it becomes law, and would apply to applications for permits received by the Commission on or after that date.

## **COMMON AREA ENTERTAINMENT PERMIT CLARIFYING CHANGE**

**Section 27** would clarify that a single designated consumption area designated by the holder of a common area entertainment permit may include both indoor and outdoor common areas, such that a patron could carry an alcoholic beverage from the indoor common area to the outdoor common area or vice versa.

## **ALLOW 90 DAYS FOR ALCOHOL SELLER/SERVER TRAINING PROVIDERS TO UPDATE COURSES**

Under current ABC Commission rules, an approved course provider may provide alcohol seller/server training, which is required prior to obtaining a retail ABC permit. When the Commission provides notice that changes to the training curriculum are needed to reflect changes in current ABC laws or rules, an approved course provider has 30 days to update its course content.

**Section 28** would give approved course providers 90 days to update their course content, rather than 30 days.

## **ABC Warehouse**

Since budget negotiations have hit an impasse, the legislature adjourned without a state budget bill and without funding a new state ABC warehouse. There is a chance the legislature could adopt a budget later this year, but it seems unlikely at this point. We will continue to advocate for funding for a new ABC warehouse.

## **BILL STATUS**

**House Bill 228, Rev. Laws Tech., Clarifying, & Admin. Chngs.**, makes various changes to the tax laws of the state. The bill would, among other things, clarify the due dates for returns and payment of alcohol excise tax. Currently, there is no explicit return requirement for local ABC boards and distilleries, only for payment of the tax. Moreover, the statute for a wine shipper permittee does not set a due date for the tax, and the statute is unclear whether a resident wholesaler or importer must submit a report if tax is not due. Under this section, the timing for when tax must be paid is now uniform for all taxpayers and is based on when the alcoholic beverage is first sold or otherwise disposed of in this State. Further, this section also allows the Department to request the agreement between breweries and wineries with their wholesalers to ensure that the breweries and wineries are meeting their statutory requirements of transferring the tax remittance obligation to the wholesaler.

The bill was approved by the Senate Finance and Rules Committees, passed the Senate by a vote of 44-0, and was sent to the House for concurrence. The House approved the Senate changes, ratified the bill, and sent it to Governor Cooper for his consideration.

**House Bill 909, Various Local Provisions I.** The original contents of this bill were replaced with a bill to make various changes to local government statutes. Section 3 would change the distribution of Concord ABC revenue so that after payment of all costs and operating expenses, the first 5% of remaining revenue would be paid for law enforcement, followed by the retention of any

revenue for working capital. Of the remaining balance, 25% would still go to Cabarrus County and 75% would go to the City of Concord.

G.S. 18B-805(c)(2) requires that at least 5% of revenues that remain after certain priority distributions must be distributed for law enforcement. Any retention of revenue for working capital comes from revenue remaining after distributions required under G.S. 18B-805(b) and (c). Therefore, as the bill would reduce the amount distributed for law enforcement to 5%, the distribution for law enforcement must come before the retention of revenue for working capital to comply with the statutory requirements.

With this change, the State and Local Government Committee gave the bill a favorable report. The bill was approved by the Senate Finance and Rules Committees, passed the Senate by a vote of 35-9. The House approved the Senate changes, ratified the bill, and sent it to Governor Cooper for his consideration.

**House Bill 1064, Various Local Provisions III.** The original contents of this bill were replaced with a bill to make various changes to local government statutes. Section 6 of this bill would require the Jones County Alcoholic Beverage Control Board to make certain ABC profit distributions annually, on September 30 of each year, instead of quarterly. With this change, the State and Local Government Committee gave the bill a favorable report. The bill was approved by the full Senate, the House approved the Senate changes, ratified the bill, and sent it to Governor Cooper for his consideration.

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

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