



North Carolina Spirits Association

Final Legislative Report 2018

On Friday June 29, 2018, the North Carolina General Assembly adjourned the 2018 legislative session. However, the adjournment resolution states that the legislature will return to Raleigh for a legislative session to begin on November 27.

The Lawmakers now return to the campaign trail for what is expected to be a low turnout “blue moon election”. A blue moon election means there is neither a statewide federal race, nor a statewide council of state race - where elections without these “top of the ticket” races have historically resulted in lower turnout. The Supreme Court and Court of Appeals are statewide races, but they appear at the end of the ballot.

The legislature approved a bill that restores early voting on the last Saturday before the election from 8 a.m. to 1 p.m., but only for 2018 elections. Counties can opt to run early voting hours until 5 p.m. on that Saturday.

The general election ballot will be a bit lengthier this fall than casual observers may have expected. The General Assembly has asked voters for their approval of six amendments to the State’s Constitution. Constitutional Amendments require approval of the voters and a simple majority will determine whether they believe the following proposed amendments should be adopted:

- Requiring a photo ID to vote
- Judicial vacancies to be appointed by recommendation from a Nonpartisan Judicial Merit Commission, approval by the legislature, and ultimate selection by the Governor
- Establish a Bipartisan Board of Elections and Ethics Enforcement, consisting of eight members appointed by the General Assembly, two recommended by the Majority Leader and two recommended by the Minority Leader, in each chamber. It also would clarify that the legislative powers to control the powers, duties, responsibilities, appointments, and terms of office of any board or commission prescribed by general law, and the powers of the Governor to faithfully execute those laws.
- Protecting the right to hunt and fish
- Reducing the cap of the maximum allowable state income tax rate from 10% to 7%.
- Marsy’s Law – Expand the definition of victim, and require certain notice of court proceedings and other rights be provided to victims of an expanded list of crimes at the victim’s request.

The House and Senate will reconvene the legislative session on Tuesday, November 27, 2018. Based on the terms of the adjournment resolution, this legislative session is not technically over. The legislature did not adjourn “*sine die*”. At the November 27 session, there will be no restrictions on what can be considered – so new bills can be introduced and bills that are currently

pending before the General Assembly may be considered as well. If the legislature had adjourned “*sine die*”, that would have officially ended the legislative session until the new session begins in January 2019, and pending bills would not be eligible when they start the 2019 session.

On Tuesday July 24, 2018, the legislature convened an extra session where they approved legislation to write short descriptions to appear on the November ballot for the proposed constitutional amendments that will be listed on the ballot. The legislature also approved legislation that provides that for the 2018 Supreme Court election, the party information listed by each of the candidates' names is shown only if the candidates' party affiliation or unaffiliated status is the same as on their voter registration at the time they filed to run for office and 90 days prior to that filing. Otherwise there would be no party affiliation listed after the candidate's name. The legislation was approved mostly along party lines. Governor Cooper vetoed both bills. The legislature is expected to override the Governor's veto in a session to be held on Saturday August 4, 2018. It is expected that the legislature will then adjourn the extra session *sine die*.

This Final Legislative Report for 2018 includes a summary of all the bills enacted by this year's General Assembly that are of interest to the association, and some bills that were considered but not enacted.

BILLS OF INTEREST ENACTED INTO LAW

House Bill 500, ABC Omnibus Legislation, makes various clarifying changes to the state's ABC laws and procedures. The NC Spirits Association was actively involved in helping vet some of the provisions in the bill, and we supported the bill along with other interested parties.

The bill:

-Explicitly allows distillers, brokers and suppliers to sell branded merchandise such as glassware, cups, signs, t- shirts, hats, and other apparel at spirituous liquor tastings conducted under a spirituous liquor special event permit.

-Under current law, an ABC commercial permittee, or its agent or employee, may consume samples of alcoholic beverages it is licensed to sell on its premises for purposes of sensory analysis, quality control, or education. The bill allows a commercial permittee, or its agent or employee, to sample alcoholic beverages it is licensed to sell for purposes of sensory analysis, quality control, or education on any of the following premises:

- The permittee's premises licensed for commercial activity.
- The permittee's premises licensed for retail activity, if the commercial permittee is authorized to hold a retail permit and the commercial permittee has obtained the appropriate retail permit.
- The premises of a special one-time permittee.
- The premises of a special event where a commercial permittee is participating under a winery special event permit or a malt beverage special event permit.

-Under current law, distressed liquor owned by a local board or the ABC Commission must be destroyed, given to a public or private hospital for medicinal use, or, in the case of the

Commission, selling them to a military installation. Distressed liquor is defined in rule as "liquor which is not saleable due to adulteration or damage to the bottle, label or tax seal." ABC Commission rules require that a distillery representative be present when damaged or distressed liquor bottles are being destroyed by the Commission, a privately-owned bonded warehouse, or a local board. The bill directs the ABC Commission to amend its rules to clarify that the presence of a distiller representative is not required for the Commission, a privately-owned bonded warehouse, or a local board to destroy distressed liquor.

-Directs the ABC Commission to amend its rules so that the mixed beverage tax stamp may be affixed to any vertical portion of the container, and not only the original paper labeling of the container. A mixed beverages tax stamp must be affixed to any bottle of liquor sold to a mixed beverages permittee.

-Adds a new definition for establishments that may receive ABC permits, and amends the definition of premises for a restaurant located on an 18-hole golf course or a sports club substantially engaged in the business of providing an 18-hole golf course. Specifically, the bill:

- Defines a "sports and entertainment venue" as a stadium, ballpark, or other similar facility with a permanently constructed seating capacity of 3,000 or more, which is not located on the campus of a school, college, or university. A sports and entertainment venue would be eligible to obtain the following permits:
 - On-premises malt beverage permit.
 - On-premises unfortified wine permit.
 - Mixed beverages permit.
- Provides that for a restaurant located on an 18-hole golf course or a sports club substantially engaged in the business of providing an 18-hole golf course, the premises of the establishment includes the parking lot and the playing area of the golf course, including the teeing areas, greens, fairways, roughs, hazards, and cart paths.

-Makes the following changes related to nonprofit organizations holding raffles, to be effective December 1, 2018:

- Increase the number of raffles that a nonprofit organization could hold each year from two to four.
- Increase the annual amount of prizes that a nonprofit organization could award in raffles by a nonprofit from \$125,000 to \$250,000.
- Authorize the sale and consumption of alcoholic beverages in a room where a raffle is being conducted.
- Provide that a nonprofit organization that has received a limited special occasion ABC permit or special one-time ABC permit may renew the permit rather than applying for a new permit.
- Allow a nonprofit organization holding ticketed event with a special one-time ABC permit to offer alcoholic beverages as a prize in a raffle or sell alcoholic beverages at auction at the ticketed event.

Effective: June 26, 2018. Session Law 2018-100.

House Bill 573, Business/Regulatory Changes, authorizes a city to hold a malt beverage or unfortified wine election if the city has a population of 200 or more, the county in which more than 50% of the city is located has held such an election and the vote was against, and that county contains three or more other cities that have previously voted to allow malt beverages OR (current law AND) unfortified wine. **Effective; June 25, 2018. Session Law 2018-65.**

BILLS OF INTEREST NOT ENACTED INTO LAW

Senate Bill 714, ABC Regulation and Reform, would have made several changes concerning Alcoholic Beverage Control (ABC) penalties and licensure as recommended by the Joint Legislative Oversight Committee on Justice and Public Safety. The bill would have made several technical and conforming changes, and the following substantive changes:

(i) Would amend the maximum fines for certain violations of the ABC laws and allow the increased compromised amount only for certain violations. The bill would provide that for most violations of the ABC laws, a permittee may be fined up to \$500 for a first violation, up to \$750 for a second violation within three years of the first violation, and up to \$1,000 for a third violation within three years. Under current law, there is no requirement that the subsequent violations occur within three years to trigger the increased fines.

For violations involving acts of violence, controlled substances, or prostitution occurring on the licensed premises, the fines would be up to \$750 for the first violation, up to \$1,000 for a second violation within three years, and up to \$1,250 for a third violation within three years. The Commission would also be authorized to impose conditions on the operating hours of the business for any of these violations.

Additionally, under current law, in any case when the Commission is entitled to suspend or revoke a permit, the Commission may accept from the permittee an offer in compromise to pay a penalty of not more than \$5,000. The Commission may accept the compromise or revoke the permit, but not both. This section would increase the maximum amount of a compromise offer from \$5,000 to \$10,000 in any case in which there are two or more violations within three years involving (i) acts of violence occurring on the licensed premises, or (ii) the permittee or the permittee's agent or employee knowingly allowing any violation of the controlled substances or prostitution statutes on the licensed premises.

(ii) Require a person to be 21 years old to obtain an ABC permit, with no exceptions.

(iii) Amend the suspension period when a permit is summarily suspended based on certain undercover operations.

(iv) Establish a new type of establishment called a "private bar" for ABC licensure purposes. The bill would change the definition of a "private club" to include only establishments that qualify under Section 501(c) of the Internal Revenue Code of 1954 and have been in operation for a minimum of 12 months prior to application for an ABC permit.

"Private bar," would be defined as "an establishment that is organized and operated as a for-profit entity and that is not open to the general public, but is open only to the members of the organization and their bona fide guests for the purpose of allowing its members and their guests to socialize and engage in recreation."

This section would have been effective when it becomes law, and would have applied to new permits issued on or after that date. Permits issued to private clubs as defined under current law prior to the effective date of this section would be grandfathered and may remain in effect and eligible for renewal as a private bar or a private club, as applicable, notwithstanding this section.

Senate Bill 714 was not enacted into law, but is eligible during the November 27, 2018 legislative session.

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

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
www.nexsenpruet.com***