



North Carolina Spirits Association

Legislative Report
May 7, 2021

Jones Street saw plenty of action this week as the May 13 crossover deadline inched closer. Crossover is one of the busiest times of the legislative session as each chamber tries to get important legislation passed over to the opposite chamber in order for it to be considered for the remainder of the session. After May 13, only bills containing finance items, appropriations, constitutional amendments, or appointments will be eligible to move out of their chamber of origination. We expect to see long days next week with extended committee meetings and floor sessions.

The Senate and House remain undecided on spending targets for the state budget, hampering the Senate's ability to make significant progress on its proposal. With a substantial amount of non-recurring money available to spend due to the influx of federal stimulus funds and higher than expected revenues, the legislature faced with the challenge of having more money than expected. If spending targets are not agreed upon soon, then it is likely that smaller "mini-budgets" which focus on specific areas may begin to be filed. The General Assembly has failed to enact a new budget since 2019 due to disagreements between the legislative and executive branches. This impasse has left the State relying on smaller spending bills and previous appropriations for the last two years. North Carolina's fiscal year ends on June 30, and lawmakers are still hopeful that they can reach a consensus by then.

Earlier this session, bills were introduced in both chambers to allow for betting on sporting events in North Carolina. Many of North Carolina's professional sports teams and leagues were seen this week in the halls of the General Assembly asking for legislator's help. Groups seen include the Carolina Hurricanes and Charlotte Hornets. Under the proposed legislation, individuals would be able to place bets on professional, collegiate, amateur, and video sporting events. Bets could be on overall points scored or tailored to more statistical data. With an 8% tax on revenues and a \$500,000 application fee for operators, the legislation is expected to bring the state millions of dollars in tax revenue. Bets could be made online, at an established casino, or in-person at a specialized kiosk. Neither the House nor the Senate version of the bill has received a committee hearing yet, but the bills are not subject to crossover.

More than one hundred protestors descended upon the General Assembly this week, expressing their opposition to masks and vaccine mandates. The protestors advocated for legislation that would prevent employers, schools, and public places from requiring COVID-19 vaccines. It is common for employers, especially in high contact settings, to require vaccines, like the annual flu vaccine. Furthermore, school-aged children and college students must receive various vaccinations before attending public school or college. Currently, many employers are holding off on making the COVID-19 vaccination mandatory since the vaccine is still under an emergency use authorization by the U.S. Food and Drug Administration. Legislation has been introduced to ban mandatory vaccines for employment, ban vaccination proof, and prohibit people

from being required to show virus antibodies before going to various places. The bill is aimed at the COVID-19 vaccine but is broad and encompasses all vaccines, including measles and flu. Health care providers have raised concern over this legislation and any efforts to persuade people from being vaccinated, fearing another wave of COVID-19, especially with new variants of the virus emerging. Some experts fear that North Carolina is not on track to reach herd immunity, which is the required percentage of the population vaccinated to prevent community spread of the virus. Numerous viruses have reduced to almost nonexistent as a result of herd immunity through vaccination programs. The debate should be interesting as these bills move through the legislature.

The House and Senate adjourned on Thursday and will reconvene on Monday May 10.

BILLS OF INTEREST

House Bill 768, LRC ABC Law Study, 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 beverage 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.

Introduced by Representative Moffitt and referred to the House ABC Committee.

This bill was considered and approved by the House ABC Committee on Wednesday, was approved by the House Rules Committee on Thursday, and will be considered by the full House on Tuesday May 11.

House Bill 781, Bring Business Back to Downtown, would authorize a city or county to designate social districts where persons may possess and consume alcoholic beverages purchased from certain ABC permittees and to authorize a city or county to allow certain ABC permittees to extend their licensed premises for purposes of maintaining social distancing. **Introduced by Representatives Moffitt, Reives, Tyson and Moss and referred to the House ABC Committee.**

This bill was considered by the House ABC Committee on Wednesday. The bill sponsor described the bill as one that would allow municipalities to designate certain streets at certain times as a “social district,” where people could walk down the street with alcoholic drinks from restaurants and bars. The bill’s sponsor Rep. Tim Moffitt (R-Henderson) said it addresses concerns about alcohol regulations during street festivals and similar events. During those events, mobile beer and wine vendors sell drinks that can be consumed on the streets and sidewalks, but existing restaurants and bars can only sell drinks for consumption in their seating areas. “This would level the playing field,” said Rep. Jon Hardister (R-Guilford). If the bill passes, town and city councils would decide if, when and where they want to create the districts. Bars and restaurants would need to clearly label the drinks so it is clear where a person purchased the drink. The bill would also make a COVID-era executive order permanent: Cities

and towns could continue issuing permits that let restaurants and bars extend their outdoor seating areas onto sidewalks and parking lots.

After some discussion and debate, the bill was approved by the House ABC Committee, was approved by the House Rules Committee on Wednesday evening, and was approved by the full House on Thursday. The bill now goes to the Senate for consideration.

House Bill 890, ABC Omnibus Legislation, would make various changes to the state's ABC laws, including:

Authorizes ABC stores to accept online orders and payments for alcoholic beverages sold in its store so long as the person picking up the order is 21. The bill would limit liability under GS 18B-302(a)(2) to when the person knew the purchaser was less than 21 years old at the time the online order was placed. Effective July 1, 2021. **This provision was requested by the NC Spirits Association.**

Amends GS 18B-800(c1) to allow special order bottles to be affixed with personalized labeling, including the name of the purchaser on the label, that includes any other labeling requirements set by law. Effective July 1, 2021. **This provision was requested by the NC Spirits Association.**

Amends the tasting permit provisions to provide that a tasting permit issued to a ... will be issued in the name of the business listed on the permit application, not an individual (as current law requires). Effective July 1, 2021. **This provision was requested by the NC Spirits Association.**

Enacts new Article 62B to GS Chapter 18B, creating the NC Spirituous Liquor Council (Council) of the Department of Agriculture and Consumer Services (DACCS). The bill would enumerate powers and duties of the Council, including identification and implementation method for improving NC's rank as a spirituous liquor-producing State, enter into contracts for developing new or improved markets or marketing methods for spirituous liquor products, contracting for research services to improve farming practices related to growing necessary ingredients for alcohol distillation, and annual reporting to specified NCGA committee chairs and division. The bill details membership of the 10-member Council and provides for two-year terms, with initial terms commencing September 1, 2021. Effective September 1, 2021.

Further amends GS 18B-1105(a)(4) regarding bottles of spirituous liquor sold by a distillery permittee, changing a statutory cross-reference regarding hour restrictions of sales to refer to restrictions imposed on permittees instead of ABC stores. Effective July 1, 2021. The bill would amend GS 18B-1114.7, expanding the authorized locations of free tastings by spirituous liquor special event permittees (which may be holders of supplier representative permits, brokerage representative permits, or distillery permits) to include farmers markets.

The bill expands the authority of the tastings permittee to allow selling mixed beverages containing spirituous liquor or sell its spirituous liquor in closed containers at the same premises described for free tastings.

Amends GS 130A-247 to add and define distillery and winery, defined as licensed establishments that do not engage in the preparation of food (defined to exclude beverages) on the premises. The bill amends GS 130A-248 to exclude distilleries and wineries from the sanitation rules adopted by the Public Health Commission for establishments that prepare or serve drink or food for pay. The bill would expand types of commercial permits under GS 18B-1100 to allow the ABC Commission to issue a spirituous liquor special event permit. Effective May 1, 2022.

Directs the ABC Commission to implement the Growler Size Rule, 14B NCAC 15C .0307, by defining growler as a rigid glass, ceramic, plastic, aluminum, or stainless steel container with a closure or cap with a secure sealing that is no larger than 4 liters into which a malt beverage or unfortified wine is prefilled, filled, or refilled for off-premises consumption. The bill directs the ABC Commission to amend the Growler Size Rule consistent with this directive.

Expands GS 18B-800(c2), which allows local ABC boards to fulfill orders by a mixed beverage permittee for individual bottles or cases of spirituous liquor produced by an eligible distillery that are listed as a regular code item for sale in the state. The bill modifies the definition set forth for eligible distillery under the subsection to include a distillery permittee (or the like in another jurisdiction) that sells fewer than 10,000 proof gallons of in-house brand spirituous liquors distilled or produced and manufactured by it at the permit holder's distillery per year (currently limited to those liquors distilled and manufactured by the permittee at the distillery per year). The bill adds to the requirements for ABC stores to display NC distilled spirits in a designated area to include spirits produced in North Carolina. The bill expands GS 18B-1001(19), regarding spirituous liquor tasting permits, to allow those permittees to use the spirituous liquor produced at the distillery in addition to that distilled at the distillery where the event is being held. The bill expands GS 18B-1105(a)(4) to further authorize distillery permittees to sell spirituous liquor produced at the distillery in closed containers to visitors who tour the distillery for consumption off the premises in the same manner as that distilled at the distillery.

Further amends GS 18B-1105(a)(4) regarding bottles of spirituous liquor sold by a distillery permittee to visitors touring the distillery, to allow for the sale to visitors of the distillery (no longer requiring visitors to take a tour).

Expands GS 18B-1105(a)(2) to allow distillery permittees to sell, deliver, and ship spirituous liquor in closed containers at wholesale or retail to consumers of other states or nations, unless the jurisdiction of the consumer required reciprocity in order to allow such sales, deliveries, or shipments.

Further amends GS 18B-1105(a)(1) to also allow distillery permittees to manufacture, purchase, import, possess, and transport ingredients and equipment used in the production of spirituous liquor (was, limited to the distillation or the manufacturing of law alcohol beverage coolers). The bill adds that the authority to possess ingredients includes possession of spirituous liquor not distilled or produced at the distillery that is used for the production of spirituous liquor. Effective July 1, 2021. The bill further amends GS 18B-1105(a)(5) to authorize distillery permittees conducting consumer tastings pursuant to GS 18B-1114.7 to conduct the tastings on any part of the licensed premises of the distillery.

Directs the ABC Commission to implement the Identification Rule (14B NCAC 15B .0224) by making it the duty of the permittee and his employees to determine the age of any person consuming or possessing alcoholic beverages on the licensed premises, with acceptable identification to include a drivers license, special identification card issued by the Division of Motor Vehicles of any state, a military identification card, or a passport. The bill requires the ABC Commission to adopt a rule to amend the Identification Rule consistent with the described directive.

Effective July 1, 2021, repeals GS 18B-1010(b) which provides that not more than one alcoholic beverage drink may be sold to a single patron at one time if the beverages are sold (1) at a stadium, athletic facility, or arena on the campus or property of a public college or university or (2) during a sports event sponsored by a public college or university.

Directs the ABC Commission to adopt or amend rules consistent with the act pursuant to the Administrative Procedure Act.

Introduced by Representatives Moffitt, Boles, Willingham and Saine and referred to the House ABC Committee.

House Bill 890 is scheduled for consideration by the House ABC Committee on Monday May 10.

BILL STATUS

House Bill 619, Alcohol Bev. Manufacture Sales Tax Exemption, was approved by the House ABC Committee on Wednesday and was referred to the House Finance Committee for further consideration.

House Bill 669, Distribute Alcohol Without Discrimination, was considered in the House ABC Committee on Wednesday. The bill would prohibit discrimination and advantage in the distribution of spiritous liquor to local Alcoholic Beverage Control boards, of which there are 171. The bill seeks to level the proverbial playing field as that relates to where products — specifically hard-to-find and rare bottles — are going in the state, whether they get there, and, ultimately, who's buying them. The committee discussion turned to whether ABC stores keep lists of people to call if they get something rare in from the warehouse, how to get on these lists, etc.

Representative Shelly Willingham (D-Edgecombe) sits on the House ABC committee. He is also chairman of the Edgecombe County ABC Board. Rather than laying blame on the N.C. Alcoholic Beverage Control Commission, he placed blame on the state's two alcohol warehouses. The warehouse system, Willingham says, has proven inefficient. The new contract, with its provisions and requirements, as well as an enhanced computer system, he says, could help fix some of the issues.

After much discussion, the committee approved the bill. The bill is now scheduled to be considered by the House Rules Committee on Monday May 10.

House Bill 693, Common Carrier ABC Permit, which would allow alcohol sales (beer, wine spirits) on buses, was considered in the House ABC Committee on Wednesday. The bill prompted opposition from Rev. Mark Creech of the conservative Christian Action League. He dismissed the argument that serving alcohol on buses would be the same as alcohol sales on trains and planes, because the bill could create “incalculable fleets of them, each possessing a bar for its passengers.” The bill was approved and referred to the House Finance Committee for further consideration.

House Bill 722, Expand Allowable Growler Size, which would allow four-liter beer growlers (the current size limit is two liters), was considered and approved by the House ABC Committee on Wednesday, was approved by the House Rules Committee on Wednesday, and was approved by the full House on Thursday. The bill now goes to the Senate for consideration.

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.ncleg.gov.

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