



North Carolina Spirits Association

Legislative Report
June 30, 2023

Since the legislature will not hold voting sessions the week of July 3, we will not publish a legislative report on July 7. Our next legislative report will be published on July 14.

U.S. Supreme Court Rejects Controversial "Independent State Legislature Theory" in Federal Election Rules Case

The U.S. Supreme Court has rejected the "independent state legislature theory" put forward by North Carolina's Republican legislative leaders in a significant case related to state courts' authority to strike down rules on federal elections. The theory argues that only state legislatures have the power to make decisions on federal election laws. However, opponents argue that this would allow state lawmakers to violate their own state constitutions. In a 6-3 decision, the Supreme Court ruled that state courts can review and intervene in disputes over federal election rules set by state lawmakers. The ruling, Moore v. Harper, affirms the earlier decision by the North Carolina Supreme Court, but its practical implications may be limited since any challenges would now go to the Republican controlled North Carolina Supreme Court. The dissenting opinion by Justice Clarence Thomas expressed concerns about the ruling's impact on future election-related disputes. The case arose from a redistricting controversy, and although the Supreme Court did not rule on that specific issue, it recognized the authority of state courts to apply state constitutional restraints. The decision is significant but does not alter the plans of Republican lawmakers in North Carolina who are preparing to draw new congressional and state legislative maps this fall.

North Carolina Republican Lawmakers Prepare for Extended Sessions to Pass State Budget and Tackle Key Policy Agreements

Republican lawmakers in North Carolina are preparing for extended legislative sessions to pass a state government budget and reach other policy agreements before their summer break. The General Assembly had hoped to enact a new budget and send remaining legislation to Governor Roy Cooper's desk before July 4, but negotiations between the House and Senate have delayed progress. Disagreements over tax reductions and the distribution of proposed reserves are key sticking points. While there is no threat of a government shutdown, state agencies will continue operating at base spending levels. Enacting a state budget bill is required for the state to implement Medicaid expansion, one of Governor Cooper's top priorities. If he vetoes the budget bill, Republicans hold enough majorities to override his veto. Lawmakers plan to continue working into July and have pending for consideration non-budget legislation related to election laws, medical marijuana legalization, gender-affirming healthcare restrictions, and changes to state commissions. After a summer break, they plan to return in the fall to redraw congressional and legislative district maps before the 2024 election cycle begins.

North Carolina Prepares for Mobile Sports Betting: Analysts Predict Majority of Wagers Through Apps at Modest Amounts

Analysts predict that once mobile sports betting becomes legal in North Carolina, the majority of wagers will be made through mobile apps and in relatively small amounts. They estimate that 95% of sports betting will be done through mobile apps, especially during major sporting events like college football playoffs and the NCAA basketball tournament. The legalization of sports betting is expected to generate significant tax revenue, with projections of around \$40 million initially and exceeding \$100 million by 2029. The analysts believe that North Carolina has the potential to become one of the top states for online sports betting, particularly during events like the ACC and NCAA tournaments. They anticipate a surge in betting activity when it becomes legal, with experienced bettors being the first to participate. The majority of provisions in the legislation are set to go into effect on January 8, 2024, coinciding with the 2024 College Football Playoff championship game.

The large population of North Carolina is expected to create a competitive marketplace for operators, offering plenty of options for bettors. The use of geolocation software will be implemented to track bettors and ensure they are wagering within the state's borders. In-person betting options will be available at various sports venues and associated locations. The analysts highlight the start of college football and NFL seasons as the primary betting season, but note that college basketball gains popularity during March Madness. The legalization of sports betting aims to capture revenue from existing illegal betting activities. Mobile sports wagering in North Carolina will be conducted through licensed operators' apps, with strict measures in place to verify user identity and location. Brick-and-mortar casinos may experience uncertainty regarding the impact of mobile sports betting, but states with both mobile betting and casinos have found a balance between the two, as in-person experiences at casinos still offer entertainment value to visitors.

North Carolina Receives \$1.53 Billion in Federal Funding to Expand High-Speed Internet Access

The U.S. Department of Commerce has announced that North Carolina will receive over \$1.53 billion in federal funding to improve high-speed internet infrastructure. This funding is part of a larger \$42.45 billion program aimed at expanding faster internet access throughout the country. The allocation of funds was determined based on the number of locations in each state or jurisdiction that lack sufficient internet speeds. North Carolina will be the fifth-highest recipient, behind California, Missouri, Michigan, and Texas. The state recently identified an additional 115,000 homes and businesses without high-speed internet, affecting the funding amount. The goal of the funding is to bridge the digital divide and ensure every household and business in North Carolina has internet access. The funding proposal needs to be submitted by the end of the year, and upon approval, the state can request access to at least 20% of the allocated funds.

North Carolina Ports Authority Embarks on Major Expansion Project to Boost Rail Freight and Economic Growth

The North Carolina State Ports Authority is planning a major expansion project at its Wilmington location due to limitations in positioning, railroad car space, and storage capacity. The project involves the construction of a new intermodal facility aimed at diverting over 250,000 container boxes from trucks to rail within the next decade. The facility is expected to be completed by spring 2025, with an estimated cost of \$22.6 million.

The expansion project is intended to support regional and national economic development, offering safe and cost-effective freight movement options for customers in both urban and rural communities. It will improve infrastructure conditions, enhance regional connectivity, and stimulate economic growth and competitiveness in North Carolina. The project will benefit manufacturers, suppliers, distributors, and exporters, particularly in industries such as lumber, food, and agriculture.

To fund the project, the North Carolina Ports Authority received an \$18 million grant from the U.S. Department of Transportation in 2022, with the remaining balance covered by NC Ports. Currently, the Wilmington port handles 5% of containers by rail, but with the implementation of the project, this percentage is projected to triple by 2032. The completion of the project will also increase rail service from 14,000 to over 50,000 movements annually.

The expansion is expected to generate transformative impacts and provide monetizable benefits of over \$86.5 million over 30 years, not including additional revenue for the Ports Authority. While the exact number of jobs to be created is unknown, the project will involve the addition of port workers, stevedores, longshoremen, river pilots, rail workers, and federal agency workers.

The project originated from a Container Terminal Yard Improvement Planning study conducted in 2018, with the goal of increasing the terminal's throughput capacity to handle at least 750,000 twenty-foot equivalent units (TEUs) annually. TEU is a unit of measurement used to determine cargo capacity.

The Wilmington expansion is part of a five-year infrastructure investment plan requiring a total of \$250 million. Recent investments have included the acquisition of new cranes, an automated container gate, berth renovations, and vessel navigation improvements, resulting in a capacity increase to over 1 million TEUs annually.

In addition, a \$14 million refrigerated container yard project was completed in April 2020 at the Port of Wilmington, consolidating refrigerated cargo in one area to improve efficiency. Phase two of the project involves adding more refrigerated container plugs, bringing the total to over 1,500.

The expansion is crucial for maintaining Wilmington's competitiveness against ports like Charleston and Savannah. The Port of Wilmington contributes \$12.9 billion to North Carolina's economy annually, and NC Ports as a whole contributes \$16.1 billion, including the Port of Morehead City and Charlotte Inland Port.

The North Carolina State Ports Authority aims to provide an optimal trade gateway that enhances business competitiveness, offers proximity to sources and demands, and provides customers with visibility into the supply chain.

This Week at the General Assembly

The Senate held committee meetings on Monday, in order to move legislation through committees so floor votes could occur on these bills this week. The annual Regulatory Reform bill, House Bill 600, made its way through the Senate committees this week, passed the Senate on Wednesday, and was returned to the House to consider the Senate changes.

Tuesday was a busy day for committees as legislators try to move bills before the July 4th holiday week. Tuesday was also marked by the General Assembly making veto override history in North Carolina as they overrode 7 vetoes by the Governor. Several of these bills passed the legislature initially with bipartisan support.

On Wednesday, the House wrapped up its business for the week with a marathon session considering over 20 bills, with the Parent's Bill of Rights being a point of contention. The Senate had a lengthy session as well and wrapped up their work on Thursday with a session before heading back to their districts for the July 4th weekend.

The House and Senate adjourned on Thursday, will not hold voting sessions next week, and will reconvene for voting sessions on Monday July 11.

ABC OMNIBUS BILL

The legislature's ABC omnibus bill was added to Senate Bill 527 and was considered in the House ABC Committee on Tuesday. Senator Moffitt presented the bill to committee. The bill includes the following provisions:

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 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 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 SUNDAY OPTION AND FLEXIBILITY ON CERTAIN HOLIDAYS

Under current law, ABC stores may not open on Sundays, or on 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 are closed.

Section 3 would:

- Allow local governments to adopt an ordinance allowing ABC stores to operate on Sundays, if petitioned to do so by the local board. This would also apply to tribal ABC commissions operated by the Eastern Band of Cherokee Indians and the Catawba Indian Nation. ABC stores would not be allowed to open before the earlier of: 10:00 A.M. if the appointing authority has adopted an ordinance allowing the sale of alcoholic beverages at 10:00 A.M. on Sundays or noon.
- Allow ABC stores to operate on New Year's Day, the Fourth of July, and Labor Day, if the local board chose

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

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. This section would also make conforming changes to the statutes authorizing the delivery service permit and the distillery permit.

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:
 - o Has a population of at least 500 according to the most recent census.
 - o Operates an ABC store.
 - o 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:
 - o Has at least 500 registered voters.
 - o 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.
 - o 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.

o 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.

INCREASE TRANSPARENCY IN SALES OF APPORTIONED SPIRITUOUS LIQUORS

Section 8 would define apportioned products as containers of spirituous liquor that are made available to local boards only by random drawings conducted by the Commission. These are products available in very limited quantities.

This section would require each local board that intends to sell apportioned products to customers other than mixed beverages permittees (retail customers) to submit to the Commission for approval a plan for how the local board will distribute apportioned products to retail customers. A local board would not be allowed to sell apportioned products to retail customers without a Commission-approved plan.

A local board that sells apportioned products to retail customers would only be allowed to sell to retail customers who are residents of the county where the local board is located, or, in the case of a multicounty local board, who live in a county where the local board operates ABC stores. Local boards would be required to include in their monthly sales records a list of all customers who purchase apportioned products. The street address of a retail customer who purchases and apportioned product would not be a public record.

This section would also prohibit any person from purchasing or possessing apportioned products for the purpose of reselling those products, and advertising or otherwise offering apportioned products for sale. Violation of this section would be punishable as a Class 1 misdemeanor and a fine of not less than \$500 for each instance of unlawful sale. This would not limit the ability of mixed beverages permittees to purchase apportioned products for resale in mixed beverages.

This section would become effective December 1, 2023 Subsection (d) of this section, establishing the new Class 1 misdemeanor, would apply to offenses committed on or after that date.

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 9 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 BRANDED CONSUMER SPECIALTY ITEMS AND 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 10 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 October 1, 2023.

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 11 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 12 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 federal 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 13 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; 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.

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 14 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.

- 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.

BAR TECHNICAL CORRECTIONS

Section 15 would make technical corrections to the definition of "bar" enacted in 2022. This section would allow the definition of "bar" to include a brewery, winery, or distillery, and would provide that for purposes of health inspections, a bar does not prepare or serve food other than beverage garnishes, ice, or food that does not require time or temperature control. This section would become effective August 1, 2023.

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 16 creates 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). Some establishments without ABC permits may also allow customers to bring their own malt beverages and wine onto the premises and consume them there. 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 17 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 August 1, 2023.

ESTABLISH MOBILE BAR SERVICES PERMIT

Section 18 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 would be required to purchase beer and wine from a beer and 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 August 1, 2023.

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 19 would broaden the definition to include other performing arts events.

ADD TWO MEMBERS TO THE ABC COMMISSION

Under current law, the ABC Commission consists of a chairman and two associate members, all appointed by the Governor.

Section 20 would add two associate members, for a total of four associate members. One of the new associate members would be appointed by the President Pro Tempore of the Senate and one would be appointed by the Speaker of the House of Representatives.

This section would become effective October 1, 2023.

REQUIRE ALCOHOL LAW ENFORCEMENT TO NOTIFY PERMIT HOLDER OF VIOLATIONS

Section 21 would require that, if an alcohol law enforcement agent issues a citation for a criminal violation to an employee of an establishment who is not the named holder of an ABC permit for the establishment, the Division of Alcohol Law Enforcement of the Department of Public Safety must deliver a copy of the criminal citation to the named permit holder within three business days of issuance of the criminal citation or send the named permit holder a copy of the criminal citation by registered mail within five business days of issuance of the criminal citation.

This section would become effective October 1, 2023.

ESTABLISH DISTILLERY ESTATE DISTRICTS

Section 22 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 historic 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 August 1, 2023.

WHOLESALE DISTRIBUTION CENTERS

Section 23 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.

MINIMUM PRICES FOR SPIRITUOUS LIQUOR

Under current law, there is no minimum price for spirituous liquor. The price is set by a formula based on the distiller's price.

Section 24 would set a minimum price for spirituous liquor based on the size of the container, and would allow the Commission to adopt rules to set higher minimum prices for individual categories of spirituous liquor.

G.S. 18B-804(e) Minimum Price of Spirituous Liquor. –

(1) The distiller's price for a container of a particular size shall not be lower than as provided in the following table:

Container Size	Minimum Price
1.75 Liters	\$12.95
1.0 Liters	8.95
750 Milliliters	5.95
375 Milliliters	3.95
200 Milliliters	2.95
100 Milliliters	1.95
Cans (single-serving)	1.95
50 Milliliters	0.95

(2) The Commission may adopt rules to set higher minimum distiller's prices by container size for individual categories of spirituous liquor.

This section would become effective February 1, 2024.

The bill sponsor explained that the slight increase in prices would raise money to help offset the cost of a new state warehouse. Also, it was reported that extremely low priced spirits are typically purchased by alcoholics and underage drinkers.

PRICING FLEXIBILITY LOCAL OPTION (“HAPPY HOUR”)

Section 25 would authorize local governments to adopt an ordinance allowing the holder of an on premises malt beverage permit, an on premises unfortified wine permit, an on premises fortified wine permit, or a mixed beverages permit within the local government's jurisdiction to do any of the following, for any period of time:

- Sell an alcoholic beverage at a price that is different from the usual or established price charged for the alcoholic beverage.
- Sell more than one alcoholic beverage to a patron for a single price.
- Establish a single price based upon the required purchase of more than one alcoholic beverage.
- 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.
- Advertise the price and type of alcoholic beverages via newspapers, radio, television, or other mass media.
- This section would not apply to the sale of spirituous liquor sold at a distillery in closed containers for consumption off the premises.

- This section would become effective August 1, 2023.

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 26 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 CERTAIN PURCHASES, INCLUDING SPIRITUOUS LIQUOR THAT HAS BEEN AGED FOR AT LEAST TWELVE MONTHS IN ORBIT

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 27 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 would become effective January 1, 2024, and would apply to purchases on or after that date.

DIRECT ABC COMMISSION TO EXPAND PREMISES TO COVER CERTAIN CONTIGUOUS PROPERTIES

Section 28 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 29 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, 2023.

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 30 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.

ALLOW LIMITED DISTILLERY SALES IN RECREATION DISTRICTS

Section 31 would allow a distillery located within 10 miles of a "recreation district" where motorsports-related events are held to sell, for consumption off the premises, bottles of spirituous liquor commemorating a motorsports-related event that is being held at the facility. These sales may occur only during the event being commemorated and only during the hours in which spirituous liquor sales at distilleries may normally occur. Liquor sold pursuant to this section must be listed as a code item for sale in the State and sold at the price set by the Commission, and must be a limited-batch product of which fewer than 2,000 bottles were produced. This section would become effective August 1, 2023.

A representative of the local ABC Boards Association spoke in favor of the repeal of the mixed beverage tax on RTDs and the local option Sunday Sales provision, both are priorities for the North Carolina Spirits Association.

Also, Bruce Tyler, from the local distillers' association spoke in favor of a number of provisions that are not in the bill, including: to allow direct distribution to mixed beverage permittees; to remove an additional tariff on RTDs, and to remove the NC section at ABC Stores and give them 12% of the shelf space in each store and each spirits category. Again, none of these provisions are in the current bill.

The committee did not vote on the bill, but held it over to the committee's next meeting to give committee members and interest groups an opportunity to present questions, concerns and other provisions to the House ABC Committee Chairs for consideration. The committee will not meet before July 11, but no committee meeting is currently scheduled.

BILL STATUS

Senate Bill 91, Amend Rule 4/Acceptance of Service, was amended on the House floor Wednesday to add the following technical change to the definition of "bar." The amendment sponsor stated that this was a time sensitive amendment that was technical in nature. Here's the amendment:

BAR TECHNICAL CORRECTION

SECTION 6.(a) G.S. 18B-1000(1) reads as rewritten:

"(1) Bar. – An establishment that is primarily engaged in the business of selling alcoholic beverages for consumption on the premises. ~~A bar shall not include a brewery, winery, or distillery.~~"

SECTION 6.(b) This Part becomes effective August 1, 2023.

The bill was approved by the House and sent to the Senate to consider the House amendments.
UPDATE.

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