



# HOUSE BILL 909: Alcoholic Beverage Control Omnibus Legislation

2015-2016 General Assembly

**Committee:**

**Introduced by:**

**Analysis of:** S.L. 2015-198

**Date:**

**Prepared by:** Chris Saunders  
Staff Attorney

**SUMMARY:** S.L. 2015-98 makes various changes to the Alcoholic Beverage Control (ABC) Commission laws as follows:

(1) Creates an antique spirituous liquor permit with a \$100 fee, which may be issued to a mixed beverage permittee and authorizes the sale of antique spirituous liquors at retail for use in mixed beverages for consumption on premises. Permittees may purchase antique spirituous liquor through the ABC Commission special order process.

(2) Makes it unlawful for any person to manufacture, sell, transport, import, deliver, furnish, purchase, consume, or possess powdered alcohol.

(3) Authorizes the Eastern Band of Cherokee Indians tribal alcoholic beverage control commission to issue:

- permits in compliance with G.S. 18B-603(f).
- wine shipper permits.
- commercial activity permits for commercial businesses that are located wholly on Indian Country lands.

This provision also grants the tribal ABC commission sole enforcement authority for those permittees to the extent the regulated conduct occurs on Indian Country lands. Both the Eastern Band of Cherokee Indians and the North Carolina ABC Commission are required to equally recognize any permit issued by the other entity. This provision also authorizes the issuance of "Tourism ABC Establishment" permits for restaurants and hotels that meet that definition between Mileposts 460 and 469 of the Blue Ridge Parkway. The Eastern Band of Cherokee Indians tribal alcoholic beverage commission is given exclusive authority to issue "Tourism ABC Establishment" permits to those restaurants and hotels that are located wholly on Indian Country lands.

(4) Allows the holder of a distillery permit to sell, in closed containers, liquor that is manufactured at the distillery to visitors who tour the premises for off-premises consumption. The sales are allowed only in a county where the establishment of a county or municipal ABC store has been approved by election, and are subject to the time and day restrictions as ABC stores.

The liquor must be listed as a code item for sale in the State and must be sold at the price set by the Commission by statute. Pursuant to Sec. 3 of S.L. 2015-262, distilleries must only remit the excise tax, and may keep the remainder of the price set by the Commission as profit. A sticker must be affixed to the bottle bearing the words "North Carolina Distillery Tour Commemorative Spirit."

Consumers are limited to purchasing no more than one of any North Carolina code item per 12-month period. A distillery must use a commonly adopted standard point of sale system to maintain

O. Walker Reagan  
Director



Research Division  
(919) 733-2578

# House Bill 909

Page 2

*searchable electronic records captured at the point of sale, to include the purchaser's name, driver's license number, and date of birth for at least one year from the date of purchase. The distillery is prohibited from selling any North Carolina code item to a customer who has purchased the code item in the last year.*

*This provision became effective October 1, 2015, the effective date of the ABC Commission's rules regulating the on-site sale of spirituous liquor at distilleries.*

*(5) Removes incorrect citations to rules regulating the filling of a growler with malt beverages, and allows the holders of both off premises and on premises unfortified wine permits to sell unfortified wine (including cider) for off premises consumption if dispensed from a tap connected to a pressurized container utilizing carbon dioxide or similar gas into a cleaned, sanitized, resealable container that is filled or refilled and sealed for consumption off premises and that identifies the permittee and the date the container was filled or refilled.*

*(6) Provides that a brewery that enters into an "alternating proprietorship" arrangement with another brewery has not changed ownership and therefore does not lose its ABC permits. This provision authorizes alternating proprietorships between affiliated breweries, provided the contract brewing arrangement is not used to allocate production quantities between affiliated breweries to obtain a malt beverage wholesaler permit where either brewery would not otherwise qualify for the permit (i.e., because the brewery exceeds the 25,000 barrel cap).*

*(7) Provides that the holder of a brewery permit may sell malt beverages to a nonresident wholesaler, nonresident malt beverage vendor, bottler, or other similar party for resale in this State if the malt beverages are shipped from the brewery to wholesalers licensed under the ABC statutes.*

*This provision also allows the holder of a brewery permit to receive, in closed containers, and sell at the brewery, malt beverages produced inside or outside North Carolina under contract with a contract brewery. The contract brewery that manufactures the malt beverages is responsible for all aspects of manufacturing the product. The contract malt beverages are permitted to be sold at affiliated retail outlets of the brewery physically located on or adjacent to the brewery. Any malt beverages received from a contract brewery must be made available for sale by the brewery to wholesalers for distribution to retailers, without discrimination, in the same manner as if the malt beverages were being imported by the brewery. This provision authorizes contract brewing between affiliated breweries, provided the contract brewing arrangement is not used to allocate production quantities between affiliated breweries to obtain a malt beverage wholesaler permit where either brewery would not otherwise qualify for the permit (i.e., because the brewery exceeds the 25,000 barrel cap).*

*(8) Allows the ABC Commission to issue a guest room cabinet permit to an 18-hole golf course that:*

- holds a mixed beverages permit or that is located in a county where ABC stores have heretofore been established but in which the sale of mixed beverages has not been approved.*
- has management contracts for the rental of living units.*
- is located in a county with a population of more than 20,000 people according to the last federal census.*

*Except as otherwise provided, this act became effective June 19, 2015.*

**CURRENT LAW AND BILL ANALYSIS:**

# House Bill 909

Page 3

**Section 1.(a)** of S.L. 2015-98 defines "antique spirituous liquor" as spirituous liquor that has not been in production or bottled in the last 20 years, is in the original manufacturer's unopened container, is not owned by a distillery, and is not otherwise available for purchase by an ABC Board except through the special order process pursuant to G.S. 18B-1001(20).

**Sections 1.(b), 1.(c), and 1.(d)** create an antique spirituous liquor permit, with a \$100 fee, which could be issued to a mixed beverage permittee and authorizes the sale of antique spirituous liquors at retail for use in mixed beverages for consumption on premises. Permittees are authorized to purchase antique spirituous liquor through the ABC Commission special order process.

**Sections 1.(e) and 1.(f)** amend the alcoholic beverage pricing statute and the alcohol taxing statute to include language for pricing and taxing antique spirituous liquor.

**Sections 1.(g) and 1.(h)** make conforming changes in the excise and sales tax statutes.

**Section 1.(i)** directs the ABC Commission to adopt temporary rules to implement the provisions of this section by September 1, 2015.

**Section 2.(a)** amends G.S. 18B-101 to define "powdered alcohol" as any powder or crystalline substance capable of being converted into a liquid alcoholic beverage fit for human consumption.

**Section 2.(b)** amends G.S. 18B-102 to make it unlawful for any person to manufacture, sell, transport, import, deliver, furnish, purchase, consume, or possess powdered alcohol.

**Section 3.(a)** authorizes the Eastern Band of Cherokee Indians tribal alcoholic beverage control commission to issue: (i) permits in compliance with G.S. 18B-603(f); (ii) wine shipper permits; and (iii) commercial activity permits for commercial businesses that are located wholly on Indian Country lands. This section also grants the tribal ABC commission sole enforcement authority for those permittees to the extent the regulated conduct occurs on Indian Country lands. Both the Eastern Band of Cherokee Indians and the North Carolina ABC Commission are required to equally recognize any permit issued by the other entity.

**Section 3.(b)** authorizes the issuance of "Tourism ABC Establishment" permits for restaurants and hotels that meet that definition between Mileposts 460 and 469 of the Blue Ridge Parkway. The Eastern Band of Cherokee Indians tribal alcoholic beverage commission is given exclusive authority to issue "Tourism ABC Establishment" permits to those restaurants and hotels that are located wholly on Indian Country lands.

**Section 4.(a)** allows the holder of a distillery permit to sell, in closed containers, liquor that is manufactured at the distillery to visitors who tour the premises for off-premises consumption. A provision in H912 removed a provision providing that the authorization applies only to distilleries that manufacture less than 100,000 proof gallons per year.

The sales are allowed only in a county where the establishment of a county or municipal ABC store has been approved by election, and are subject to the time and day restrictions as ABC stores.

The liquor must be listed as a code item for sale in the State and must be sold at the price set by the Commission pursuant to G.S. 18B-804(b). Section 3 of S.L. 2015-262 amends this section to clarify that distillers who sell bottles of liquor at the distillery are not required to remit portions of the cost of the bottle to the State warehouse and the local ABC board. The only portion of the price set by the Commission that must be remitted is the excise tax. The remainder of the price may be kept by the distiller as profit. A sticker must also be affixed to the bottle bearing the words "North Carolina Distillery Tour Commemorative Spirit."

# House Bill 909

Page 4

Consumers are limited to purchasing no more than one of any North Carolina code item per 12-month period. A distillery must use a commonly adopted standard point of sale system to maintain searchable electronic records captured at the point of sale, to include the purchaser's name, drivers license number, and date of birth for at least one year from the date of purchase. The distillery is prohibited from selling any North Carolina code item to a customer who has purchased the code item in the last year. The Commission is directed to adopt temporary rules to regulate sales made under this section by October 1, 2015. This section became effective on the effective date of those rules.

**Sections 4.(b) through 4.(e)** make a technical change and conforming changes in the excise tax statutes to acknowledge the addition of distillery permittees as collectors of the tax.

**Sections 4.(f) and 4.(g)** make conforming changes.

**Section 5.(a)** amends G.S. 18B-1001 by removing incorrect citations to rules regulating the filling of a growler with malt beverages,<sup>1</sup> and allows the holders of both off-premises and on-premises unfortified wine permits to sell unfortified wine<sup>2</sup> for off-premises consumption if dispensed from a tap connected to a pressurized container utilizing carbon dioxide or similar gas into a cleaned, sanitized, resealable container that is filled or refilled and sealed for consumption off-premises and that identifies the permittee and the date the container was filled or refilled. Cider is classified as an unfortified wine and may be sold by retailers holding unfortified wine permits issued by the ABC Commission.

**Section 5.(b)** applies the ABC Commission's existing rules governing the retail sale of malt beverages in growlers to the retail sale of unfortified wine in growlers until the Commission adopts rules implementing this act.

**Section 6** provides that a brewery that enters into an "alternating proprietorship" arrangement with another brewery has not changed ownership and therefore does not lose its ABC permits. In this arrangement, the tenant brewery maintains title to the malt beverages at all states of the brewing process and is responsible for all aspects associated with manufacturing the product. This section authorizes alternating proprietorships between affiliated breweries, provided the contract brewing arrangement is not used to allocate production quantities between affiliated breweries to obtain a malt beverage wholesaler permit where either brewery would not otherwise qualify for the permit (i.e., because the brewery exceeds the 25,000 barrel cap).

An alternating proprietorship is an arrangement in which two or more people take turns using the physical premises of a brewery. Generally, the proprietor of an existing brewery, the "host brewery," agrees to rent space and equipment to a new "tenant brewer." The tenant qualifies as a brewer by filing the appropriate documents with federal Alcohol and Tobacco Tax and Trade Bureau. The tenant brewer produces beer, maintains its own brewery records, labels the beer with its own name and address, obtains the necessary Certificates of Label Approval, and pays tax at the appropriate rate upon removal of its beer from the brewery. The tenant brewer has title to the beer at all stages of the brewing process.

---

<sup>1</sup> The current citations are to rules found in Chapter 2 (ABC Commission) of NCAC Title 4 (Department of Commerce). The ABC Commission has been moved from Commerce to the Department of Public Safety, but the North Carolina Administrative Code does not yet reflect the transfer of the ABC Commission rules to NCAC Title 14B (Department of Public Safety).

<sup>2</sup> Unfortified wine is "any wine of sixteen percent (16%) or less alcohol by volume made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States." G.S. 18B-101(18).

# House Bill 909

Page 5

**Section 7** provides that the holder of a brewery permit may sell malt beverages to a nonresident wholesaler, nonresident malt beverage vendor, bottler, or other similar party for resale in this State if the malt beverages are shipped from the brewery to wholesalers licensed under Chapter 18B.

This section allows the holder of a brewery permit to receive, in closed containers, and sell at the brewery, malt beverages produced inside or outside North Carolina under contract with a contract brewery. The contract brewery that manufactures the malt beverages is responsible for all aspects of manufacturing the product. The contract malt beverages are permitted to be sold at affiliated retail outlets of the brewery physically located on or adjacent to the brewery. Any malt beverages received from a contract brewery must be made available for sale by the brewery to wholesalers for distribution to retailers, without discrimination, in the same manner as if the malt beverages were being imported by the brewery. This section authorizes contract brewing between affiliated breweries, provided the contract brewing arrangement is not used to allocate production quantities between affiliated breweries to obtain a malt beverage wholesaler permit where either brewery would not otherwise qualify for the permit (i.e., because the brewery exceeds the 25,000 barrel cap).

A contract brewing arrangement is a business relationship in which one person, such as a wholesale or retail dealer or a brewer, pays a brewing company, the “contract brewer,” to produce beer for him or her. The contract brewer is entirely responsible for producing the beer, keeping appropriate brewery records, obtaining necessary Certificates of Label Approval, and paying tax at the appropriate rate upon removal of the beer from the brewery. The contract brewer retains title to the beer until the beer is paid for or removed from the brewery.

**Section 8** allows the ABC Commission to issue a guest room cabinet permit to an 18-hole golf course that (i) holds a mixed beverages permit or that is located in a county where ABC stores have heretofore been established but in which the sale of mixed beverages has not been approved, (ii) has management contracts for the rental of living units, and (iii) is located in a county with a population of more than 20,000 people according to the last federal census.

A guest room cabinet permit allows a permittee to sell malt beverages, unfortified wine, fortified wine, and spirituous liquor to its room guests from securely locked cabinets. Under existing law, guest room cabinet permits may be issued to hotels in certain counties<sup>3</sup> that have a mixed beverages permit, or private clubs in certain counties that have a mixed beverages permit and management contracts for the rental of living units.

**EFFECTIVE DATE:** Except as otherwise provided, this act became effective June 19, 2015.

*Susan Sitze, counsel to House Alcoholic Beverages Control, substantially contributed to this summary.*

---

<sup>3</sup> Guest room cabinet permits have been issued in Buncombe, Durham, Forsyth, Guilford, Mecklenburg, Moore, and Wake Counties.