



HOUSE BILL 536: ABC Omnibus Regulatory Reform.

This Bill Analysis reflects the contents of the bill as it was presented in committee.

2019-2020 General Assembly

Committee:	House Alcoholic Beverage Control.	If Date:	April 30, 2019
	favorable, re-fer to Finance. If favorable, re-fer to Rules, Calendar, and Operations of the House		
Introduced by:	Reps. McGrady, Boles, Fisher, Hardister	Prepared by:	Susan Sitze
Analysis of:	PCS to First Edition H536-CSSAf-29		Staff Attorney

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 536 would make various revisions to the Alcoholic Beverage Control laws.*

[As introduced, this bill was identical to S592, as introduced by Sen. Gunn, which is currently in Senate Rules and Operations of the Senate.]

BILL ANALYSIS:

Part I would allow retail permit holder private label brands of malt beverage to be sold exclusively to the retailer that owns the brand name or to all retail permit holders within each territory without discrimination, at the retail permit holder's discretion.

Part II would provide that a contract brewery that manufactures malt beverages shall be responsible for all aspects associated with manufacturing the product, subject to the rules of the ABC Commission (Commission) and the Department of Revenue. The brewery, not the contract brewery, shall be responsible for registering the contracted product with the Commission, submitting the appropriate reports regarding the malt beverages, and remitting the appropriate taxes if required by those rules. This part becomes effective July 1, 2019, and applies to taxes collected on or after that date.

Part III would allow malt beverage tastings at farmers markets.

Part IV would expand the authorization of on-premises and off-premises malt beverage permit holders to allow permittees to transfer malt beverages to another on-premises malt beverage permittee that is under common ownership or control of the transferor. The permittee would be limited to no more than four such transfers per calendar year. Other transfers by on-premises malt beverage permittees, the purchase of malt beverages by a retail permittee from another retail permittee for the purpose of resale, and the sale of malt beverages by a retail permittee to another retail permittee for the purpose of resale would be unlawful. Transfers of a particular brand of malt beverages may only be between transferors and transferees located within the territory designated between the brewery and the wholesaler on file with the Commission. The transferor would be required to notify each wholesaler who distributes the product of the transfer prior to or contemporaneous with the transfer, in writing or verifiable electronic format, and identify the transferor, the transferee, the transfer date, quantity, and items transferred.

Part V would create a new exception to authorize the issuance of permits for the sale of alcoholic beverages at stadiums, athletic facilities, or arenas on the campus or property of a public college or university if (i) the Board of Trustees has voted to allow the issuance of permits at that particular stadium,

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

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athletic facility, or arena, and (ii) the Board has notified the Alcoholic Beverage Control Commission of that vote. This exception would not apply to community colleges.

If the Board of Trustees has authorized the issuance of permits, permits for the sale and serving of alcohol could be issued to applicants that meet the requirements for the requested permit. However, if a mixed beverage permit is issued, sales of mixed beverages would not be allowed when the stadium, athletic facility, or arena is being used for a sports event sponsored by the public college or university. Sales that are already allowed under the current statutory exceptions would not be affected by the provisions of this exception.

For the purpose of issuing permits pursuant to this exception, the premises of a stadium, athletic facility, or arena could include any area within 500 feet of the facility, designated by the facility in a written description or map that clearly defines the boundary of the area, and that can be designated in a way to ensure compliance with the alcohol laws. The written description or map of the area must be included in the permit application.

Part VI would allow the sale of malt beverages, unfortified wine, and fortified wine on the passenger-only ferry traveling from Hatteras to Ocracoke. Sales would not be allowed on the return trip from Ocracoke to Hatteras. This part would become effective July 1, 2019, and apply to sales made on or after that date.

Part VII would define a "bar" as a new type of ABC establishment substantially engaged in the business of serving alcoholic beverages for consumption on the premises. A bar must have gross receipts from alcoholic beverages for consumption on the premises of not less than 75% of the total gross receipts. Bars would be authorized to obtain permits for on-premises malt beverage, on-premises unfortified wine, on-premises fortified wine, brown-bagging, special occasion, and mixed beverages. Bars would not be subject to health code regulations governing the sanitation of establishments that prepare or serve drink or food for pay.

Part VIII would allow distilleries to sell, deliver, and ship spirituous liquor directly to consumers in other states if the other state's laws allow. This part would become effective July 1, 2019, and apply to sales made on or after that date.

Part IX would remove the current restrictions on what distilleries can sell at the distillery for off-premises consumption (currently limited to 5 bottles per person in a 12 month period, and requires that person "tour" the facility). This part would also provide that a distillery is not subject to the prohibitions against holding financial interests in, and lending or giving things of value to, a retailer with respect to the distillery's transactions with the retail business allowed on its premises. This section would become effective July 1, 2019, and apply to sales on or after that date.

Part X would require the Commission to modify the rule on discounts for malt beverages or wine, to increase the allowed discount from 25% to 35%.

Part XI would define "premises" to mean a fixed permanent establishment, including all areas inside or outside the licensed establishment, where the permittee has control through a lease, deed, or other legal process.

This part would also amend GS 18B-1005.1 to specify that it is unlawful for a permittee or permittee's agent or employer to knowingly allow or engage in any conduct or entertainment on a licensed premises where human genitals are exposed or a person is wearing transparent clothing that reveals his or her genitals (previously did not specify the prohibited conduct be on the licensed premises; previously also prohibited conduct or entertainment that included or simulated sexually explicit conduct, as

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specified). This portion would become effective July 1, 2019, and apply to offenses committed on or after that date.

Part XII would authorize the sale of more than one alcoholic drink to a patron at one time, but no more than four at one time. This provision would not apply at a stadium, athletic facility, or arena on the campus or property of a public college or university; or during a sports event sponsored by a public college or university. This part would become effective July 1, 2019, and apply to sales made on or after that date.

Part XIII would allow the sale and consumption of alcohol at bingo games. This section would become effective July 1, 2019, and apply to offenses committed on or after that date.

Part XIV would exempt breweries not engaged in the preparation of food on the premises from the health code regulations governing the sanitation of establishments that prepare or serve drink or food for pay.

Part XV would allow ABC stores to be open on Sundays from 12:00 noon to 5:00 P.M. if authorized by the county or city where the board is located.

Part XVI would allow spirituous liquor tastings to be conducted in ABC stores. A local board holding tastings must give right of first refusal to a certain number of North Carolina distillery permit holders, the number to be determined by the Commission.

Part XVII would require local ABC boards to accept electronic payments for any spirituous liquor purchased by a mixed beverage permittee. No fee may be charged for accepting electronic payments. This part becomes effective October 1, 2019, and applies to sales made on or after that date.

Part XVIII would require the Commission to make all forms required to apply for and receive a permit available on the Commission's web site, and allow for electronic submission of those forms to the extent practicable, including submission with an electronic signature. This section also requires the Commission to accept electronic payments for any permit fees. The Commission may charge a fee of not more than \$5 to cover the costs of processing forms and accepting payments electronically. This part would become effective July 1, 2019, and apply to permits applied for on or after that date.

Part XIX would authorize a common area entertainment permit for common areas in multi-tenant establishments, which would allow customers to exit a permitted premises with an open container and consume the alcohol in the common area of a multi-tenant establishment. This part would provide requirements for the common area, limits patrons to one alcoholic drink at a time, requires a paper or plastic cup, and establishes other restrictions for this permit. The fee for a common area entertainment permit would be \$750.

Part XX would create a delivery service permit that would allow a permit holder's employee or independent contractor to deliver malt beverages, unfortified wine, or fortified wine on behalf of a retailer to an individual purchaser. This part has requirements for training, handling of funds, age verification, and package labeling. Deliveries may only be made during lawful sales times for the jurisdiction and may not be made to jurisdictions that have not authorized the sale of the alcoholic beverages. A delivery service permittee may not deliver to the premises of another licensed retailer or more than 50 miles from the retailer's licensed premises. No deliveries may be made to residence halls on the premises of an institution of higher education without written authorization of the governing body of that institution. The fee for a delivery service permit would be \$400. This part would become effective October 1, 2019.

Part XXI would allow breweries to sell the malt beverages owned by the brewery for on- or off-premises consumption, regardless of the results of any malt beverage election, upon obtaining the appropriate

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permit. This part would repeal the existing farm brewery provision that allows sales in jurisdictions where sale of malt beverages has not been authorized. This part becomes effective October 1, 2019.

Part XXII would direct the Program Evaluation Division (PED) to study the actions the Alcoholic Beverage Control Commission is authorized to take for violations of Chapter 18B of the General Statutes. The study shall include an examination of (i) the proportionality of the punishment that may be imposed under G.S. 18B-104 in relation to the violation, (ii) the remainder of the law set forth in G.S. 18B-104 to identify any areas in which the law may be lacking, and (iii) the process utilized and punishment authorized by other alcoholic beverage control states for violations of their alcoholic beverage laws. PED shall report their findings to the Joint Legislative Program Evaluation Oversight Committee by March 15, 2020.

Part XXIII would provide that if any portion of this act is found invalid, other provisions that can be given effect without the invalid provision shall still be effective.

Part XXIV would require the Commission to adopt rules consistent with the provisions of this act.

EFFECTIVE DATE: Sections 22 and 25 would be effective when the act becomes law. Except as otherwise provided and stated above, the remainder of the act would become effective July 1, 2019.