



SENATE BILL 290: ABC Regulatory Reform Bill.

2019-2020 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	July 10, 2019
Introduced by:	Sens. Gunn, Blue, Harrington	Prepared by:	Susan Sitze and Chris Saunders Staff Attorneys
Analysis of:	PCS to Fourth Edition S290-CSTQf-30		

OVERVIEW: *The Proposed Committee Substitute (PCS) for Senate Bill 290 would make various changes to the alcohol laws.*

[As introduced, this bill was identical to H378, as introduced by Reps. McGrady, Hardister, Fisher, B. Turner, which is currently in House Alcoholic Beverage Control.]

CURRENT LAW AND BILL ANALYSIS:

Part I would allow the holder of a distillery permit to obtain permits for on-premises malt beverage, on-premises unfortified wine, on-premises fortified wine, and mixed beverages and sell those types of alcoholic beverages for consumption at the distillery.

Part II would allow the holder of a distillery permit to sell mixed beverages for consumption at the distillery. If a distillery elects to sell mixed beverages containing spirituous liquor other than that produced at the distillery, the distillery must obtain a mixed beverages permit.

Part III would authorize ABC stores to allow the purchase of individual bottles of spirituous liquor purchased through the special order process, and to sell in store any bottles received in excess of what was purchased by the requesting customer.

This part would also direct local ABC boards to fulfill an order by a mixed beverages permittee for individual bottles or cases of spirituous liquor produced by an eligible distillery that are listed a regular code item for sale in the State. If the local board could not fulfill the order because it was not in the local board's stock inventory or the order could not otherwise be fulfilled within the time period requested by the permittee, the local board would be required to notify the ABC Commission (Commission) within 48 hours of the request for the order and request authorization for direct shipment. The Commission would then determine if the eligible distillery desires to directly ship the ordered product directly to the local board, and if so the Commission would be required to allow the eligible distillery to ship the spirituous liquor ordered to the local board for the fulfillment of the mixed beverages permittee's order. The local board would be required to acknowledge receipt of the merchandise on the shipping documents and forward them to the State ABC warehouse for processing through the accounting system as though the merchandise were shipped from the State ABC warehouse.

For purposes of this part, an "eligible distillery" would be defined as a distillery that (i) sells, to consumers at the distillery, to exporters, to local boards, and to private or public agencies or establishments of other states or nations, fewer than 10,000 proof gallons of in-house brand spirituous liquors distilled and manufactured by it at the permit holder's distillery per year, and (ii) that is either the holder of a distillery permit pursuant to G.S. 18B-1105 or is a business located outside the State that is licensed or permitted to

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manufacture spirituous liquor in the jurisdiction where the business is located and whose products are lawfully sold in this State."

This part would also direct the Commission to develop and implement an Internet-based system to facilitate the sale and purchase of regular approved list items and special order list items of spirituous liquor by and among local ABC boards

This part becomes effective September 1, 2019, and the special order provision would apply to orders placed on or after that date.

Part IV would remove current restrictions on what distilleries can sell at the distillery for off-premises consumption to a visitor who takes a tour (currently limited to 5 bottles per person in a 12 month period, and requires a "North Carolina Distillery Tour Commemorative Spirit" sticker). 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 part becomes effective September 1, 2019, and apply to sales made on or after that date.

Part V would allow distilleries to issue purchase-transportation permits for spirituous liquor sold by the distillery. A purchase-transportation permit allows a person to purchase and transport an amount of spirituous liquor greater than eight liters.

This part would also allow any employee of an ABC store to issue a purchase-transportation permit, if he or she is authorized to issue permits by the local board chairman.

This part becomes effective August 1, 2019, and would apply to purchases made on or after that date.

Part VI would allow spirituous liquor tastings to be conducted in ABC stores. A local board holding tastings must provide North Carolina distillery permit holders with reasonable opportunities to conduct tastings. This part creates additional limitations on spirituous liquor tasting conducted in ABC stores including the following:

- Events may only be held between 1:00 p.m. and 7:00 p.m and may not last more than 3 hours.
- Each store may hold no more than 3 per calendar week, and no more than 2 at the same time.
- A consumer may sample no more than ½ oz. in any calendar day.
- Advertising is limited to posting at the ABC store and local board offices, and notification to mixed beverage permittees.

No employee of a local board may participate in or conduct a tasting in an ABC store.

Part VII 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 VIII would provide that a contract brewery that manufactures malt beverages would be responsible for all aspects associated with manufacturing the product, subject to the rules of the Commission and the Department of Revenue. The brewery, not the contract brewery, would 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 September 1, 2019, and applies to taxes collected on or after that date.

Part IX would allow malt beverage tastings at farmers markets.

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Part X 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 or off-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 or off-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 XI 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 XII 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.

Part XIII would authorize the sale of more than one alcoholic drink to a patron at one time, but no more than two at one time, with the following limitations:

- Not more than two alcoholic beverage drinks at one time if the alcoholic drinks are (i) a malt beverage, (ii) unfortified wine, or (iii) fortified wine.
- Not more than one alcoholic drink at one time if the drink is a mixed beverage or contains spirituous liquor.

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 September 1, 2019, and apply to sales made on or after that date.

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

Part XV 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 XVI would restrict the creation of new ABC boards by prohibiting any jurisdiction located in a county that already has an ABC board from holding an ABC store election unless they negotiate a merger with an existing ABC board and make those details available to the public prior to the election. In a county where there is currently no ABC board in the county, only a county election could be held. This part would become effective September 1, 2019, and apply to elections held on or after that date.

Part XVII would require local ABC boards to accept electronic payments in the form of debit cards or electronic transfer, but not by credit card or charge card, 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. Electronic payments under this section include charge

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card, credit card, debit card, or electronic funds transfer. 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 September 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. A multi-tenant establishment does not include a shopping mall that has more than 50% of the shopping mall's common areas, measured in acreage or square footage, enclosed and air-conditioned. This part would provide requirements for the common area, limits patrons to one alcoholic drink at a time, requires the container to clearly identify the premises from which the beverage was purchased 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. A violation of the alcohol laws occurring when delivering to a residence hall located on the premises of an institution of higher education would be subject to a fine of up to \$1,000 for a first violation, \$1,500 for a second violation within three years of the first violation, and \$2,000 for a third or subsequent violation within three years of the first violation. If there are two or more violations within three years by a delivery service permittee occurring in a residence hall on the premises of an institution of higher education in which the Commission is entitled to suspend or revoke a permit, the Commission may accept an offer in compromise to pay a penalty of not more than \$10,000.

The fee for a delivery service permit would be \$400. The ABC Commission would begin accepting permit applications and approving training programs no later than September 1, 2019. Permits could be issued beginning December 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 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 allow sports and entertainment venues to obtain on-premises fortified wine and special occasion permits.

Part XXIII would repeal the purchase-transportation permit requirement for mixed beverage permittees for fortified wine and spirituous liquor and would allow any amount to be purchased and transported by mixed beverage permittees, an employee of a mixed beverage permittee, or an employee of a local board transporting to a mixed beverage permittee. An independent contractor employed by either the mixed beverage permittee or the local board would still be required to obtain the purchase-transportation permit. This part would become effective September 1, 2019, and apply to fortified wine and spirituous liquor purchased on or after that date.

Part XXIV would require the ABC Commission to make quarterly reports, beginning October 15, 2019, to the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety detailing the progress made in bidding and selecting an independent contractor for the receipt, storage, and distribution of spirituous liquor at and from the State warehouse. The reporting requirement expires the earlier of the date of the award of the contract or January 1, 2022.

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Part XXV would allow local ABC boards to use their own employees or contract with an independent contractor to provide delivery of spirituous liquor purchased by a mixed beverage permittee. The local board would be allowed to charge a delivery fee if it provides delivery of spirituous liquor to mixed beverage permittees. Mixed beverage permittees would be allowed to contract with an independent contractor to provide delivery from an ABC store or warehouse to the permittee's premises. This part would become effective September 1, 2019, and apply to deliveries made on or after that date.

Part XXVI 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 must 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 must report their findings to the Joint Legislative Program Evaluation Oversight Committee by March 15, 2020.

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

Part XXVIII 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.

EFFECTIVE DATE: Sections 26 and 29 of this act are effective when this act becomes law. Except as otherwise provided, the remainder of this act becomes effective September 1, 2019.