# HOUSE BILL 890:
# ABC Omnibus Legislation.

*2021-2022 General Assembly*

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| **Committee:** | Senate Commerce and Insurance. If favorable, re-refer to Rules and Operations of the Senate | **Date:** | August 31, 2021 |
| **Introduced by:** | Reps. Moffitt, Boles, Willingham, Saine | **Prepared by:** | Chris Saunders<br>Staff Attorney |
| **Analysis of:** | PCS to Third Edition<br>H890-CSTQf-34 | | |

***OVERVIEW: The Proposed Committee Substitute (PCS) to House Bill 890 would make several changes to the laws concerning ABC stores, distilleries, and other alcohol-related statutes.***

## CURRENT LAW AND BILL ANALYSIS:

## PART I. ALLOW ONLINE ORDERS FROM ABC STORES

**Part 1** of the PCS would allow ABC stores to accept online orders, including payment, for alcoholic beverages sold in the store. These orders must be picked up in person at the ABC store by the individual who placed the order, who must be a individual who is at least 21 years old and otherwise lawfully entitled to purchase alcoholic beverages. An employee of the ABC store would be required to confirm that the order is picked up in person by the individual who placed the order by verifying that the individual's identification matches identifying information in the online order.

This Part would also direct the ABC Commission to adopt rules to determine how long the product will be set aside without being picked up before the product is returned to inventory and the customer refunded.

This Part would become effective October 1, 2021, and would apply to sales on or after that date.

## PART II. ALLOW PERSONALIZED LABEL ON SPIRITUOUS LIQUOR PURCHASE

**Part 2** would allow bottles of spirituous liquor on the special item list approved by the ABC Commission (Commission) sold at an ABC store, or bottles of spirituous liquor sold at a distillery, to be affixed with personalized labeling that is approved by the ABC Commission and complies with any other labeling requirements set by law. The personalized labeling could not cover any portion of the manufacturer's original label. "Personalized labeling" would mean the inclusion of the name of the purchaser on the label.

Cooperative advertising, meaning a joint effort between a retailer and an industry member to advertise alcoholic beverages, the retailer's business, or any promotion or event, is prohibited by 14B NCAC 15B .1005. Other prohibited statements on spirituous liquor labeling are provided at 14B NCAC 15B .1003.

This Part would become effective October 1, 2021, and would apply to spirituous liquor sold on or after that date.

## PART III. MIXED BEVERAGE PERMIT FOR CERTAIN EVENT CENTERS

**Part 3** would allow mixed beverage and mixed beverage catering permits to be issued, without approval at an election, to qualified eating, hotel, and restaurant establishments if all the following requirements are met:

- The establishment is located in a county that has more than two man-made lakes.
- The establishment is located in a county that has approved the sale of malt beverages and unfortified wine, but not mixed beverages.
- The establishment is open to the public and includes on its premises a hotel with accommodations for 20 or more overnight guests, agritourism activities, and firearm sports.

This Part would be effective when it becomes law.

## PART IV. ELIMINATE THE REQUIREMENT ON THE TOWN OF CARY TO ISSUE ALCOHOLIC BEVERAGE LICENSES

Article 2C of Chapter 105 requires all ABC permittees to obtain the corresponding local license for the type of permit held in the location where the establishment is located. Unless specifically provided otherwise, both cities and counties must issue local licenses to ABC permittees.

**Part 4** would allow the Town of Cary to choose to not require ABC permittees to obtain a local license from the Town of Cary.

This Part would become effective October 1, 2021.

## PART V. ESTABLISH NORTH CAROLINA SPIRITUOUS LIQUOR COUNCIL

**Part 5** would direct the Commissioner of Agriculture to appoint a North Carolina Spirituous Liquor Advisory Council (Council), comprised of individuals who have education or experience in the spirituous liquor industry or in the field of tourism. The Council would be appointed by October 1, 2021, and would be directed to, among other duties: identify and implement methods for improving North Carolina's rank as a spirituous liquor producing State, assure orderly growth and development of North Carolina's spirituous liquor industry, and increase public awareness of the quality of North Carolina spirituous liquor. The Council would also advise the Commissioner of Agriculture and provide recommendations regarding its powers and duties.

Section 5.1 of this Part would become effective October 1, 2021. The remainder of this Part would be effective when it becomes law.

## PART VI. WINERY AND DISTILLERY LAW REVISIONS

**Section 6.1** would clarify that the sale of spirituous liquor in closed containers at distilleries may occur between the hours of 9:00 A.M. and 9:00 P.M. on Monday through Saturday of each week, from 12:00 Noon to 9:00 P.M. on Sundays, and from 9:00 A.M. to 9:00 P.M. on each of the following holidays that do not fall on a Sunday: New Year's Day, Fourth of July, Labor Day, and Thanksgiving Day.

This section would become effective October 1, 2021, and would apply to sales on or after that date.

**Section 6.2** would establish an optional nonresident spirituous liquor vendor permit with a one-time fee of $100. This permit would be issued to a distiller, a brokerage, or a liquor importer/bottler outside North Carolina who desires to sell, deliver, and ship spirituous liquor into this State. A nonresident spirituous liquor vendor permit would allow the holder to sell, deliver, and ship spirituous liquor to the State warehouse. The permit would also allow the holder to ship or deliver spirituous liquor to the permittee's permitted vendor representative in an amount necessary for any consumer tasting events scheduled within one calendar month of the shipment or delivery.

This section would also make changes to the limitations on spirituous liquor tasting events conducted under a spirituous liquor special event permit, and allow the sale of mixed beverages and provision of 50 milliliter mini-bottles of spirituous liquor in conjunction with certain tasting events. Only one mini-bottle per consumer per distillery may be provided at a consumer tasting event.

This section would become effective 90 days after this act becomes law.

Under current law, breweries, private bars, and private clubs are exempt from the sanitation rules applicable to establishments that prepare or serve food or drink to the public.

**Section 6.3** would add distilleries and wineries to the list of establishments exempt from the sanitation rules applicable to establishments that prepare or serve food or drink to the public.

This section would become effective October 1, 2021.

**Section 6.4** would make a technical change.

This section would be effective when it becomes law.

**PART VII. EXPAND ALLOWABLE GROWLER SIZE**

**Part 7** would direct the ABC Commission to adopt a rule changing the maximum allowable size of a growler from two liters to four liters. The Commission would also be directed to implement the rule in this way until the new rule becomes effective.

This Part would be effective when it becomes law. Section 7.1.(c) of this Part would expire on the date that the rule adopted pursuant to Section 7.1.(d) of this Part becomes effective.

**PART VIII. DISTILLERIES/AMEND TOUR REQUIREMENT FOR SALE OF BOTTLE OF SPIRITUOUS LIQUOR FOR OFF-PREMISES CONSUMPTION**

**Part 8** would provide that with respect to a distillery tour preceding the sale of spirituous liquor distilled or produced at the distillery, the length, content, and other parameters of the tour are the discretion of the distillery. The distillery would not be required to maintain records related to tours.

This Part would become effective October 1, 2021, and would apply to sales made on or after that date.

**PART IX. CLARIFY LAW ON THE SALE, POSSESSION, AND CONSUMPTION OF SPIRITUOUS LIQUOR AT A DISTILLERY**

**Section 9.1** would allow distillery permittees to possess spirituous liquor not distilled or produced at the distillery to be used for the production of spirituous liquor, and make a conforming change.

This section would become effective October 1, 2021, and would apply to spirituous liquor possessed on or after that date.

**Section 9.2** would clarify that consumer tastings authorized under a spirituous liquor special event permit may be conducted on any part of the licensed premises of the distillery.

This section would become effective October 1, 2021, and would apply to consumer tastings held on or after that date.

**Section 9.3** would provide that except as otherwise prohibited by federal law or the distillery permittee, an alcoholic beverage authorized to be sold or consumed by a distillery permit may be sold or consumed on any part of the licensed premises of the distillery.

This section would become effective October 1, 2021, and would apply to the sale and consumption of alcoholic beverages on or after that date.

**PART X. ALLOW ABC AGE VERIFICATION WITH SPECIAL IDENTIFICATION CARDS FROM OTHER STATES.**

Under current law, ABC Commission rule 14B NCAC 15B .0224 (Consumption by Underage Persons) lists the following forms of identification as acceptable for purposes of determining the age of a person consuming or possessing alcoholic beverages on a licensed premises:

- Driver's license.
- Special identification card *issued by the North Carolina Division of Motor Vehicles*.
- Military identification card.
- Passport.

**Part 10** would direct the ABC Commission to allow special identification cards issued by any state for purposes of age verification.

This Part would be effective December 1, 2021, and apply to offenses committed on or after that date.

**PART XI. ALLOW SALE AND DELIVERY OF MORE THAN ONE ALCOHOLIC BEVERAGE DRINK AT COLLEGE OR UNIVERSITY STADIUM, ATHLETIC FACILITY, ARENA, OR SPORTING EVENT**

Under current law, an ABC permittee may deliver two alcoholic beverage drinks to a single patron at one time if the drinks are malt beverages, unfortified wine, or fortified wine. However, this is not allowed 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.

**Part 11** would repeal the prohibition on delivering two drinks at a time to a patron at a 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 when it becomes law, and would apply to the sale and delivery of alcoholic beverages on or after that date.

**PART XII. TIME OF SALE TECHNICAL CORRECTION**

**Part 12** would clarify that mixed beverage sales conducted at a distillery under the distillery permit are limited to the same hours of sale restrictions applicable to other permittees.

**PART XIII. MIXED BEVERAGE ELECTION AMENDMENT**

**Part 13** would amend the mixed beverage election statute to provide that if a jurisdiction has voted to allow the sale of mixed beverages, then qualifying establishments in the jurisdiction may also obtain on-premises malt beverage and on-premises unfortified wine permits. This would apply to jurisdictions that have previously voted to approve mixed beverage sales, unless the governing body of that jurisdiction adopts a resolution no later than 60 days after the effective date of this section requesting an election be held on the questions of on-premises sales of malt beverages and unfortified wine.

This Part would become effective 90 days after this act becomes law.

**PART XIV. AMEND THE REQUIREMENTS THAT MUST BE MET BEFORE CERTAIN SMALL TOWNS MAY HOLD A MIXED BEVERAGE ELECTION**

Under current law, a town or city with fewer than 500 registered voters may hold a mixed beverage election if all of the following criteria are met:

- The city has at least 200 registered voters.
- The city is located in a county bordering the Neuse River and Pamlico Sound that has not approved the sale of mixed beverages.
- The city is located in a county that has only one city that has approved the sale of mixed beverages.

**Part 14** would add an additional option authorizing a small town to hold a mixed beverage election if all of the following criteria are met:

- The town has at least 200 registered voters.
- The town has a total area of less than one square mile.
- The town operates an ABC store.
- The town is located in a county that has at least three cities that have approved the sale of mixed beverages.

**PART XV. ALLOW ABC STORES TO SELL REFRIGERATED BEVERAGES**

**Part 15** would explicitly allow ABC stores to sell alcoholic beverages authorized for sale in the ABC store in a refrigerated unit.

This Part becomes effective October 1, 2021, and applies to sales on or after that date.

**PART XVI. ALTERNATING BREWERY PROPRIETORSHIP CLARIFICATION**

Current law allows alternating brewery proprietorships in which the holder of a brewery permit leases or otherwise makes available its facility to another holder of a brewery permit.

**Part 16** would clarify that an alternating brewery proprietorship is allowed if the host brewery also holds, at the same facility, an unfortified winery, fortified winery, or distillery permit.

## PART XVII. CLARIFY RESTAURANT DEFINITION

Under current law, for purposes of qualifying for certain ABC permits, a restaurant is defined in relevant part as "An establishment substantially engaged in the business of preparing and serving meals. To qualify as a restaurant, an establishment's gross receipts from food and nonalcoholic beverages shall be not less than thirty percent (30%) of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages."

Executive Order 183 allowed delivery and to-go sales of mixed beverages by restaurants, hotels, private clubs, private bars, and distillery permittees, and Executive Order 210 extended that through June 1, 2021.

**Part 17** would clarify that to qualify as a restaurant, an establishment's gross receipts from food and nonalcoholic beverages must be not less than 30% of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages *sold for on-premises consumption*.

## PART XVIII. ALLOW MIXED BEVERAGE SALES AT CERTAIN DISTILLERIES

**Part 18** would allow a distillery located on a property used for bona fide farm purposes to sell mixed beverages containing only spirituous liquor produced at the distillery for consumption on the premises, regardless of the results of any local mixed beverage election.

## PART XIX. OFF-SITE AIRPORT PERMITTEE STORAGE

**Part 19** would establish an airport central storage permit costing $400, which could be issued to the owner of a bonded storage warehouse that meets the federal Transportation Security Administration (TSA) security standards. The permit would allow the permittee to contract with retail permittees holding retail permits at airports to store the retail permittee's alcoholic beverages at a central receiving facility within five miles of the airport, and to transport alcoholic beverages from the central receiving facility to the retail permittee’s premises or support locations within the airport terminal.

This Part would become effective 90 days after this act becomes law.

## PART XX. AUTHORIZATION OF SOCIAL DISTRICTS

**Part 20** would allow local governments to adopt an ordinance designating a "social district," which would be a defined outdoor area in which a person may consume alcoholic beverages sold by a permittee. A social district must be clearly defined with conspicuously posted signs.

The local government must establish and post management and maintenance plans for the social district, along with a rendering of the boundaries of the social district and times during which alcoholic beverages may be consumed in the social district, on the local government's website. The local government must submit to the ABC Commission a detailed map of the social district with the boundaries of the social district clearly marked, and the times during which alcoholic beverages may be consumed in the social district.

A permittee located in or contiguous to a social district may sell alcoholic beverages for consumption within the social district. There are requirements on the type of container used and where the beverages may be consumed.

**PART XXI. MAKE PERMANENT THE EXPANSION OF LICENSED PREMISES FOR PURPOSES OF OUTDOOR SEATING**

**Part 21** would permanently allow local governments to adopt an ordinance authorizing ABC permittees to utilize an area that is not part of the permittee's licensed premises for the outdoor possession and consumption of alcoholic beverages sold by the permittee under certain requirements.

**PART XXII. SPECIFY THAT ALE AUTHORITY TO INSPECT PREMISES INCLUDES SOCIAL DISTRICTS AND EXTENDED AREAS**

**Part 22** would explicitly provide that the ALE Division has jurisdiction to enforce the alcohol laws in social districts and extended premises authorized by Parts 20 and 21 of this act.

**PART XXIII. ALLOW TRADE OR EXCHANGE OF SPIRITUOUS LIQUOR**

**Part 23** would authorize the trade or exchange of lawfully purchased spirituous liquor between individuals, for personal use and not for resale.

This Part would be effective October 1, 2021, and apply to trades or exchanges made on or after that date.

**PART XXIV. DISTRIBUTE ALCOHOL WITHOUT DISCRIMINATION**

**Part 24** would amend G.S. 18B-204 to add additional requirements and prohibitions in the operation of the State warehouse for distribution of spirituous liquor to local ABC boards as follows:

- Require the Alcoholic Beverage Control Commission (Commission) to make a good-faith effort, without discrimination, to make all spirituous liquor available to all local boards.
- Prohibit the warehouse management contractor from directly or indirectly providing information to a local board that gives them an advantage over another board in product selection or availability. Violation of this provision would be grounds to terminate the contract.
- Require the Commission to maintain a record of how, to which board, and in what quantity all limited distribution or allocated distribution products are distributed.

This Part would become effective January 1, 2022, and apply to all spirituous liquor received or distributed on or after that date.

**PART XXV. ALCOHOLIC BEVERAGE MANUFACTURE SALES TAX EXEMPTION**

**Part 25** would add machinery, equipment, parts, accessories, supplies, and ingredients that are purchased to be used in the manufacturing process by the following ABC permit holders to the list of tax-exempt items in G.S. 105-164.33:

- Unfortified winery permit.

- Fortified winery permit.
- Brewer permit.
- Distillery permit.

**PART XXVI. CLARIFY DELIVERY SERVICE PERMIT**

**Part 26** would clarify that certain retail permittees are not required to obtain a delivery service permit in order for their employees to deliver malt beverages, unfortified wine, or fortified wine. However, the deliveries must still be done in accordance with the same requirements.

**PART XXVII. REGULATE ALCOHOL CONSUMABLES**

**Part 27** would regulate alcohol in certain manufactured food products in the same manner as the type of alcohol contained in the product.

This Part would be effective December 1, 2021 and apply to offenses committed and products sold on or after that date.

**PART XXVIII. COMMON CARRIER ABC PERMIT**

**Part 28** would establish a "common carrier vehicle permit," which could be issued to a business primarily engaged in North Carolina in the intrastate operation of common carriers of passengers and operating under a certificate of authority issued by the Utilities Commission, such as a bus company. The permit would authorize the sale or service of malt beverages, unfortified wine, fortified wine, and mixed beverages to passengers during journeys of 75 miles or longer that do not terminate within 10 miles of the origin of the journey.

This Part would be effective 90 days after this act becomes law.

**PART XXIX. AUTHORIZE INTERNATIONAL TRADE MARKET SPECIAL EVENT ABC PERMIT**

**Part 29** would authorize a new ABC permit in the amount of $250 that would allow a managed food services company to sell or serve beer, wine, and mixed beverages on the premises of an international trade market event. The permit may be used for two events lasting not more than 21 days per event during the permit year. However, any permit issued in 2021 could be used for three events not lasting more than 21 days per event and would expire on April 30, 2022.

An "international trade market" is defined as an annual or biannual credentialed event lasting at least 5 consecutive days that is only open to members of a particular trade or industry.

**PART XXX. DIRECT LOCAL BOARDS TO PROVIDE DELIVERY SERVICE TO MIXED BEVERAGE PERMITTEES**

Under current law, local ABC boards have the option to provide delivery service to mixed beverage permittees.

**Part 30** would direct local ABC boards to offer delivery service to mixed beverage permittees. In providing delivery to mixed beverage permittees, the local board could either use its employees or contract with one or more independent contractors. The local board would also be authorized to charge a fee to the permittee.

This Part would become effective January 1, 2022.

**EFFECTIVE DATE:** Except as otherwise provided, this act would be effective when it becomes law.

**Susan Sitze, Staff Attorney, substantially contributed to this summary.*