

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

S

2

SENATE BILL 290
Commerce and Insurance Committee Substitute Adopted 6/12/19

Short Title: Distiller Regulatory Reform Bill.

(Public)

Sponsors:

Referred to:

March 19, 2019

A BILL TO BE ENTITLED

AN ACT TO ALLOW A DISTILLERY TO SELL MALT BEVERAGES AND UNFORTIFIED AND FORTIFIED WINE; TO ALLOW CERTAIN ORDERS OF ELIGIBLE DISTILLERY PRODUCTS; TO REVISE THE LAW GOVERNING THE SALE OF SPIRITUOUS LIQUOR BY A DISTILLERY TO VISITORS FOR CONSUMPTION OFF THE PREMISES; TO ALLOW A DISTILLERY TO ISSUE PURCHASE-TRANSPORTATION PERMITS FOR SPIRITUOUS LIQUOR SOLD BY THE DISTILLERY; AND TO ALLOW SPIRITUOUS LIQUOR TASTINGS AT AN ABC STORE.

The General Assembly of North Carolina enacts:

PART I. ALLOW DISTILLERIES TO SELL MALT BEVERAGES AND UNFORTIFIED AND FORTIFIED WINE

SECTION 1.(a) G.S. 18B-1001 reads as rewritten:

"§ 18B-1001. Kinds of ABC permits; places eligible.

When the issuance of the permit is lawful in the jurisdiction in which the premises are located, the Commission may issue the following kinds of permits:

- (1) On-Premises Malt Beverage Permit. – An on-premises malt beverage permit authorizes (i) the retail sale of malt beverages for consumption on the premises, (ii) the retail sale of malt beverages in the manufacturer's original container for consumption off the premises, and (iii) the retail sale of malt beverages in a cleaned and sanitized container that is filled or refilled and sealed for consumption off the premises and that identifies the permittee and the date the container was filled or refilled. It also authorizes the holder of the permit to ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:

...

k. The holder of a distillery permit authorized under G.S. 18B-1105.

...

- (3) On-Premises Unfortified Wine Permit. – An on-premises unfortified wine permit authorizes (i) the retail sale of unfortified wine for consumption on the premises, either alone or mixed with other beverages, (ii) the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises, and (iii) the retail sale of unfortified wine dispensed from a tap connected to a pressurized container utilizing carbon dioxide or similar gas into a cleaned and sanitized container that is filled or refilled and sealed for



* S 2 9 0 - V - 2 *

1 consumption off the premises and that identifies the permittee and the date the
2 container was filled or refilled. The permit also authorizes the permittee to
3 transfer unfortified wine, not more than four times per calendar year, to
4 another on-premises unfortified wine permittee that is under common
5 ownership or control as the transferor. Except as authorized by this
6 subdivision, transfers of wine by on-premises unfortified wine permittees,
7 purchases of wine by a retail permittee from another retail permittee for the
8 purpose of resale, and sale of wine by a retail permittee to another retail
9 permittee for the purpose of resale are unlawful. In addition, a particular brand
10 of wine may be transferred only if both the transferor and transferee are
11 located within the territory designated between the winery and the wholesaler
12 on file with the Commission. Prior to or contemporaneous with any such
13 transfer, the transferor shall notify each wholesaler who distributes the
14 transferred product of the transfer. The notice shall be in writing or verifiable
15 electronic format and shall identify the transferor and transferee, the date of
16 the transfer, quantity, and items transferred. The holder of the permit is
17 authorized to ship unfortified wine in closed containers to individual
18 purchasers inside and outside the State. Orders received by a winery by
19 telephone, Internet, mail, facsimile, or other off-premises means of
20 communication shall be shipped pursuant to a wine shipper permit and not
21 pursuant to this subdivision. The permit may be issued for any of the
22 following:

23 ...

24 l. The holder of a distillery permit authorized under G.S. 18B-1105.

25 ...
26 (5)

27 On-Premises Fortified Wine Permit. – An on-premises fortified wine permit
28 authorizes the retail sale of fortified wine for consumption on the premises,
29 either alone or mixed with other beverages, and the retail sale of fortified wine
30 in the manufacturer's original container for consumption off the premises. The
31 permit also authorizes the permittee to transfer fortified wine, not more than
32 four times per calendar year, to another on-premises fortified wine permittee
33 that is under common ownership or control as the transferor. Except as
34 authorized by this subdivision, transfers of wine by on-premises fortified wine
35 permittees, purchases of wine by a retail permittee from another retail
36 permittee for the purpose of resale, and sale of wine by a retail permittee to
37 another retail permittee for the purpose of resale are unlawful. In addition, a
38 particular brand of wine may be transferred only if both the transferor and
39 transferee are located within the territory designated between the winery and
40 the wholesaler on file with the Commission. Prior to or contemporaneous with
41 any such transfer, the transferor shall notify each wholesaler who distributes
42 the transferred product of the transfer. The notice shall be in writing or
43 verifiable electronic format and shall identify the transferor and transferee, the
44 date of the transfer, quantity, and items transferred. The holder of the permit
45 is authorized to ship fortified wine in closed containers to individual
46 purchasers inside and outside the State. Orders received by a winery by
47 telephone, Internet, mail, facsimile, or other off-premises means of
48 communication shall be shipped pursuant to a wine shipper permit and not
49 pursuant to this subdivision. The permit may be issued for any of the
50 following:

51 ...

52 g. The holder of a distillery permit authorized under G.S. 18B-1105.

1 ...
2 (10) Mixed Beverages Permit. – A mixed beverages permit authorizes the retail
3 sale of mixed beverages for consumption on the premises. The permit also
4 authorizes a mixed beverages permittee (i) to obtain a purchase-transportation
5 permit under G.S. 18B-403 and 18B-404, (ii) to obtain an antique spirituous
6 liquor permit under subdivision (20) of this section, and (iii) to use for culinary
7 purposes spirituous liquor lawfully purchased for use in mixed beverages. The
8 permit may be issued for any of the following:

9 ...
10 i. The holder of a distillery permit authorized under G.S. 18B-1105.

11"

12 **SECTION 1.(b)** G.S. 18B-1105(a) is amended by adding a new subdivision to read:

13 "(6) Sell malt beverages, unfortified wine, and fortified wine, for consumption on
14 the premises upon obtaining the appropriate permit under G.S. 18B-1001."

16 **PART II. ALLOW DISTILLERIES TO SELL MIXED BEVERAGES**

17 **SECTION 2.** G.S. 18B-1105(a) is amended by adding a new subdivision to read:

18 "(4a) In an area where the sale of mixed beverages is authorized by law, sell mixed
19 beverages for consumption on the premises. If a distillery elects to sell mixed
20 beverages containing spirituous liquor other than that produced at the
21 distillery, the distillery shall obtain a mixed beverages permit pursuant to
22 G.S. 18B-1001."

24 **PART III. ALLOW CERTAIN ORDERS OF ELIGIBLE DISTILLERY PRODUCTS**

25 **SECTION 3.(a)** G.S. 18B-800 is amended by adding two new subsections to read:

26 "(c1) Special Orders of Special Items. – Through the process established by rule of the
27 Commission for special orders of spirituous liquor that are on the special item list approved by
28 the Commission, ABC stores shall allow the purchase of individual bottles of spirituous liquor.
29 ABC stores may sell in store any bottles it receives from a special item case in excess of what
30 was purchased by the requesting customer.

31 (c2) Orders of Eligible Distillery Products by Mixed Beverages Permittees. – A local
32 board shall fulfill an order by a mixed beverages permittee for individual bottles or cases of
33 spirituous liquor produced by an eligible distillery that are listed as a regular code item for sale
34 in the State. If a local board cannot fulfill an order of a mixed beverages permittee for individual
35 bottles or cases of spirituous liquor produced by an eligible distillery that are listed as a regular
36 code item for sale in the State because the product ordered is not in the local board's stock
37 inventory or the order cannot otherwise be fulfilled within the time period requested by the
38 permittee, the local board shall notify the Commission within 48 hours of the request for the
39 order and request authorization for direct shipment. The Commission shall then determine if the
40 eligible distillery desires to directly ship the ordered product directly to the local board, and if so
41 the Commission shall authorize the eligible distillery to ship the spirituous liquor ordered to the
42 local board for the fulfillment of the mixed beverages permittee's order. Merchandise authorized
43 to be shipped by direct shipment under this subsection shall be consigned by the State ABC
44 warehouse to the distiller's account in care of the local board. The local board shall acknowledge
45 receipt of the merchandise on the shipping documents and forward them to the State ABC
46 warehouse for processing through the accounting system as though the merchandise were
47 shipped from the State ABC warehouse. As used in this subsection, an "eligible distillery" is a
48 distillery (i) that sells, to consumers at the distillery, to exporters, to local boards, and to private
49 or public agencies or establishments of other states or nations, fewer than 10,000 proof gallons
50 of in-house brand spirituous liquors distilled and manufactured by it at the permit holder's
51 distillery per year, and (ii) that is either the holder of a distillery permit pursuant to G.S. 18B-1105

1 or is a business located outside the State that is licensed or permitted to manufacture spirituous
2 liquor in the jurisdiction where the business is located and whose products are lawfully sold in
3 this State."

4 **SECTION 3.(b)** In order to facilitate the sale of any remainders of a special item
5 case, increase customer access to products, and allow local ABC boards to more effectively
6 manage inventory, the ABC Commission shall develop and implement an Internet-based system
7 to facilitate the sale and purchase of regular approved list items and special order list items of
8 spirituous liquor by and among local ABC boards.

9 **SECTION 3.(c)** The ABC Commission shall amend its rules consistent with this
10 section.

11 **SECTION 3.(d)** Subsection (a) of this section becomes effective July 1, 2019, and
12 applies to special orders placed on or after that date. The remainder of this section is effective
13 when it becomes law.

14
15 **PART IV. REVISE LAW AUTHORIZING DISTILLERS TO SELL SPIRITUOUS**
16 **LIQUOR DISTILLED BY THE DISTILLER FOR CONSUMPTION OFF THE**
17 **PREMISES**

18 **SECTION 4.(a)** G.S. 18B-1105(a)(4) reads as rewritten:

19 "(4) Sell spirituous liquor distilled at the distillery in closed containers to visitors
20 who tour the distillery for consumption off the premises. Sales under this
21 subdivision are allowed only in a county where the establishment of a county
22 or municipal ABC store has been approved pursuant to G.S. 18B-602(g) and
23 are subject to the time and day restrictions in G.S. 18B-802. Spirituous liquor
24 sold under this subdivision shall (i) be listed as a code item for sale in the
25 State, (ii) be sold at the price set by the Commission for the code item pursuant
26 to G.S. 18B-804(b), and (iii) have affixed to its bottle a sticker that bears the
27 words "North Carolina Distillery Tour Commemorative Spirit" in addition to
28 any other labeling requirements set by law. ~~Consumers purchasing spirituous~~
29 ~~liquor under this subdivision are limited to purchasing, and the selling~~
30 ~~distillery is limited to selling to each consumer, no more than five bottles of~~
31 ~~spirituous liquor per 12 month period. The distillery shall use a commonly~~
32 ~~adopted standard point of sale system to maintain searchable electronic~~
33 ~~records captured at the point of sale, to include the purchaser's name, drivers~~
34 ~~license number, and date of birth for at least 12 months from the date of~~
35 ~~purchase. The Commission shall adopt rules regulating the retail sale of~~
36 ~~spirituous liquor under this subdivision."~~

37 **SECTION 4.(b)** G.S. 18B-804(b1) reads as rewritten:

38 "(b1) Price of Spirituous Liquor Sold at Distillery. – When the holder of a distillery permit
39 sells spirituous liquor distilled at the distillery pursuant to ~~G.S. 18B-1105(a)(4),~~ G.S. 18B-1105,
40 the retail price of the spirituous liquor shall be the uniform State price set by subsection (a) of
41 this section. However, the holder of the distillery permit shall not be required to remit the
42 components of the price set forth by subdivisions (2), (3), (5), (6), (6a), (6b), and (7) of subsection
43 (b) of this section."

44 **SECTION 4.(c)** G.S. 18B-1116(a) reads as rewritten:

45 "(a) Prohibitions. – It shall be unlawful for any manufacturer, bottler, or wholesaler of any
46 alcoholic beverages, or for any officer, director, or affiliate thereof, either directly or indirectly
47 to:

48 ...

49 A brewery qualifying under subdivision (7) or (8) of G.S. 18B-1104(a) is not subject to the
50 provisions of this section concerning financial interests in, and lending or giving things of value
51 to, a wholesaler or retailer with respect to the brewery's transactions with the retail business on

1 its premises or other retail locations allowed under G.S. 18B-1104(a)(8). The brewery is subject
 2 to the provisions of this subsection, however, with respect to its transactions with all other
 3 wholesalers and retailers.

4 A distillery is not subject to the provisions of this section concerning financial interests in,
 5 and lending or giving things of value to, a wholesaler or retailer with respect to the distillery's
 6 transactions with the retail business allowed on its premises under G.S. 18B-1105(a)(4). The
 7 distillery is subject to the provisions of this subsection, however, with respect to its transactions
 8 with all other wholesalers and retailers."

9 **SECTION 4.(d)** This section becomes effective July 1, 2019, and applies to sales
 10 made on or after that date.

11
 12 **PART V. ALLOW DISTILLERIES TO ISSUE PURCHASE-TRANSPORTATION**
 13 **PERMITS FOR SPIRITUOUS LIQUOR SOLD BY THE DISTILLERY**

14 **SECTION 5.(a)** G.S. 18B-403 reads as rewritten:

15 "**§ 18B-403. Purchase-transportation permit.**

16 ...

17 (b) Issuance of Permit. – A purchase-transportation permit may be issued ~~by~~by any of
 18 the following:

19 (1) The local board ~~chairman;~~chairman.

20 (2) A member of the local ~~board;~~board.

21 (3) The general manager or supervisor of the local ~~board;~~ or board.

22 (4) The manager or assistant manager of an ABC store, if he or she is authorized
 23 to issue permits by the local board chairman.

24 (5) For spirituous liquor sold by the distillery only, the owner, or an employee
 25 designated by the owner, of a distillery authorized to sell spirituous liquor
 26 under G.S. 18B-1105.

27 (c) Disqualifications. – A purchase-transportation permit shall not be issued to a person
 28 ~~who~~who meets any of the following requirements:

29 (1) Is not sufficiently identified or known to the ~~issuer;~~issuer.

30 (2) Is known or shown to be an alcoholic or ~~bootlegger;~~bootlegger.

31 (3) Has been convicted within the previous three years of an offense involving
 32 the sale, possession, or transportation of nontaxpaid alcoholic ~~beverages;~~
 33 ~~or beverages.~~

34 (4) Has been convicted within the previous three years of an offense involving
 35 the sale of alcoholic beverages without a permit.

36 ...

37 (e) Restrictions on Permit. – A purchase may be made only from the store or distillery
 38 named on the permit. One copy of the permit shall be kept by the issuing person, one by the
 39 purchaser, and one by the store or distillery from which the purchase is made. The purchaser
 40 shall display his copy of the permit to any law-enforcement officer upon request. A permit for
 41 the purchase and transportation of spirituous liquor may be issued only by an authorized agent
 42 of the local board for the jurisdiction in which the purchase will be ~~made.~~made or in accordance
 43 with subdivision (5) of subsection (b) of this section.

44"

45 **SECTION 5.(b)** G.S. 18B-404(b) reads as rewritten:

46 "(b) Issuance. – If mixed beverages sales have been approved for an establishment under
 47 G.S. 18B-603(d1) or under G.S. 18B-603(e), or for an establishment located in a township in
 48 which mixed beverages have been approved the purchase-transportation permit for that
 49 establishment for spirituous liquor that will be purchased from an ABC store may be issued by
 50 the local board of any city located in the same county as the establishment, provided the city has
 51 approved the sale of mixed beverages. Otherwise a licensed establishment may obtain a mixed

1 beverages purchase-transportation permit for spirituous liquor that will be purchased from an
 2 ABC store only from the local board for the jurisdiction in which it is located. If there is no ABC
 3 store within the establishment's jurisdiction, then the mixed beverages permittee shall obtain a
 4 mixed beverages purchase-transportation permit for spirituous liquor that will be purchased from
 5 an ABC store from the nearest and most convenient ABC store. A mixed beverages permittee
 6 may obtain a mixed beverages purchase-transportation permit for spirituous liquor purchased
 7 from a distillery in accordance with G.S. 18B-403(b)(5)."

8 **SECTION 5.(c)** G.S. 18B-901(a) reads as rewritten:

9 "(a) Who Issues. – All ABC permits shall be issued by the Commission.
 10 Purchase-transportation permits shall be issued by local boards or distilleries under
 11 G.S. 18B-403."

12 **SECTION 5.(d)** G.S. 18B-1007(a) reads as rewritten:

13 "(a) Purchases. – A mixed beverages permittee may purchase spirituous liquor for resale
 14 as mixed beverages and a guest room cabinet permittee may purchase spirituous liquor for resale
 15 from a guest room cabinet only at an ABC store designated by a local ~~board~~-board, or a distillery
 16 when purchasing spirituous liquor directly from the distillery in accordance with G.S. 18B-1105,
 17 and only with a purchase-transportation permit issued by that local board or distillery under
 18 G.S. 18B-403 and 18B-404."

19 **SECTION 5.(e)** This section becomes effective July 1, 2019, and applies to
 20 purchases made on or after that date.

21 **PART VI. ABC STORES/ALLOW IN-STORE SPIRITUOUS LIQUOR TASTINGS**

22 **SECTION 6.(a)** G.S. 18B-1114.7(a) reads as rewritten:

23 "(a) Authorization. – The holder of a supplier representative permit, brokerage
 24 representative permit, or distillery permit issued under G.S. 18B-1105 may obtain a spirituous
 25 liquor special event permit allowing the permittee to give free tastings of its spirituous liquors at
 26 ABC stores where the local ABC board has approved the tasting, trade shows, conventions,
 27 shopping malls, street festivals, holiday festivals, agricultural festivals, balloon races, local
 28 fund-raisers, and other similar events approved by the Commission."

29 **SECTION 6.(b)** G.S. 18B-1114.7(b) reads as rewritten:

30 "(b) Limitations. – Any consumer tasting is subject to the following limitations:

31 ...

32 (3) Each consumer shall be limited to one ~~0.25 ounce tasting sample~~ tasting
 33 sample containing 0.25 ounces of any product made available for sampling at
 34 the consumer tasting, and the total amount of the tasting samples offered to
 35 and consumed by each consumer shall not exceed 1.0 ounce of spirituous
 36 liquor in any calendar day.

37 ...

38 (7) ~~A venue allowing tastings shall designate a tasting area within the venue that~~
 39 ~~enables the permit holder to ensure that the consumer tasting is being~~
 40 ~~conducted in compliance with this section. Consumers shall only be allowed~~
 41 ~~to consume tasting samples within the designated tasting area.~~

42 ...

43 (11) For tastings conducted in an ABC store, the Commission shall adopt rules to
 44 ensure that holders of distillery permits issued under G.S. 18B-1105 are
 45 provided by local ABC boards reasonable opportunities to conduct tastings."

46 **SECTION 6.(c)** G.S. 18B-301(f)(1) reads as rewritten:

47 "(1) Any person to consume fortified wine, spirituous liquor, or mixed beverages
 48 or to offer such beverages to another person at any of the following places:

49 a. ~~On~~ Unless a consumer tasting authorized by G.S. 18B-1114.7 is being
 50 conducted, on the premises of an ABC store.
 51

- 1 b. Upon any property used or occupied by a local board.
- 2 c. On any public road, street, highway, or sidewalk, unless a consumer
- 3 tasting authorized by G.S. 18B-1114.7 is being conducted."
- 4

5 **PART VII. RULES**

6 **SECTION 7.** The Alcoholic Beverage Control Commission shall amend its rules
7 consistent with the provisions of this act. The Commission may use the procedure set forth in
8 G.S. 150B-21.1 to amend any rules as required under this section.

9

10 **PART VIII. SEVERABILITY CLAUSE**

11 **SECTION 8.** If any provision of this act or its application is held invalid, the
12 invalidity does not affect other provisions or applications of this act that can be given effect
13 without the invalid provisions or application, and to this end the provisions of this act are
14 severable.

15

16 **PART IX. EFFECTIVE DATE**

17 **SECTION 9.** Except as otherwise provided, this act becomes effective July 1, 2019.