



NOTICE OF TEXT

[Authority G.S. 150B-21.2(c)]

OAH USE ONLY

VOLUME:

ISSUE:

CHECK APPROPRIATE BOX:

- Notice with a scheduled hearing
- Notice without a scheduled hearing
- Republication of text. Complete the following cite for the volume and issue of previous publication, as well as blocks 1 - 4 and 7 - 13. If a hearing is scheduled, complete block 5.
Previous publication of text was published in Volume: Issue:

1. Rule-Making Agency: Alcoholic Beverage Control Commission
2. Link to agency website pursuant to G.S. 150B-19.1(c): www.abc.nc.gov
3. Proposed Action -- Check the appropriate box(es) and list <u>rule citation(s)</u> beside proposed action: <input type="checkbox"/> ADOPTION: <input checked="" type="checkbox"/> READOPTION <u>with</u> substantive changes: 14B NCAC 15B .1003 <input type="checkbox"/> READOPTION <u>without</u> substantive changes: <input type="checkbox"/> AMENDMENT: <input type="checkbox"/> REPEAL:
4. Proposed effective date: July 1, 2018
5. Is a public hearing planned? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes: Public Hearing date: April 18, 2018 Public Hearing time: 10:00 a.m. Public Hearing Location: ABC Commission Hearing Room, 400 East Tryon Road, Raleigh, NC 27610
6. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

7. Explain Reason For Proposed Rule(s): To readopt the permanent rule regulating prohibited statements in advertising and on labels.

8. Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Rule(s) is automatically subject to legislative review. Cite statutory reference:

9. The person to whom written comments may be submitted on the proposed rule(s):

Name: Walker Reagan
Address: 400 East Tryon Road
Raleigh, NC 27610

Phone (optional): 919-779-8367
Fax (optional): 919-661-6165
E-Mail (optional): walker.reagan@abc.nc.gov

10. Comment Period Ends: May 14, 2018.

11. Fiscal impact (check all that apply).

If this form contains rules that have different fiscal impacts, list the rule citations beside the appropriate impact.

- State funds affected
- Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4
- No fiscal note required by G.S. 150B-21.3A(d)(2)

12. Rule-making Coordinator: Walker Reagan

Address: 400 East Tryon Road, Raleigh, NC 27610

Phone: 919-779-8367
E-Mail: walker.reagan@abc.nc.gov

Agency contact, if any:

Phone:
E-mail:

13. The Agency formally proposed the text of this rule(s) on
Date: February 14, 2018

14. Signature of Agency Head* or Rule-making Coordinator:



*If this function has been delegated (reassigned) pursuant to
G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Walker Reagan

Title: Rule-making Coordinator

1 14B NCAC 15B .1003 is proposed for readoption with substantive changes as follows:

2
3 **14B NCAC 15B .1003 PROHIBITED STATEMENTS IN ADVERTISING OR ON LABELS**

4 (a) General Restrictions. An advertisement or product label on any alcoholic product sold or distributed in this State
5 shall not contain:contain any statement, design, device, or representation that:

6 (1) ~~any statement, design, device or representation that is false or misleading in any material particular;~~

7 (2) ~~any statement that is disparaging of a competitor's products;~~

8 (3) ~~any statement, design, device or representation which depicts nudity or is obscene or indecent;~~

9 (4) ~~any statement, design, device or representation of or relating to analysis, standards or tests,~~
10 ~~irrespective of falsity, which is likely to mislead the consumer;~~

11 (5) ~~any statement, design, device or representation of or relating to any guaranty, irrespective of falsity,~~
12 ~~which is likely to mislead the consumer. Nothing in this Section shall prohibit the use of an~~
13 ~~enforceable guaranty in substantially the following form: "We will refund the purchase price to the~~
14 ~~purchaser if he is in any manner dissatisfied with the contents of this package";~~

15 (6) ~~any statement that the product is produced, blended, made, bottled, packed or sold under or in~~
16 ~~accordance with any authorization, law or regulation of any municipality, county or state, federal or~~
17 ~~foreign government, unless such statement is required or specifically authorized by the laws or~~
18 ~~regulations of such government; and if a municipal, county, state or federal permit number is stated,~~
19 ~~such permit number shall not be accompanied by any additional statement relating thereto;~~

20 (7)(1) ~~any statement, picture or illustration implying that the consumption of alcoholic beverages enhances~~
21 ~~athletic prowess, or any statement, picture or illustration referring to any known athlete, if such~~
22 ~~statement, picture or illustration implies, or if the reader may reasonably infer, that the use of this~~
23 ~~product contributed to such athlete's athletic achievements; is contrary to the Federal Alcohol~~
24 ~~Administration Act, 27 C.F.R. Sections 4.39, 4.64, 5.42, 5.65, 7.29, or 7.54, as interpreted by the~~
25 ~~Commission. The provisions of 27 C.F.R. Sections 4.39, 4.64, 5.42, 5.65, 7.29, and 7.54 referenced~~
26 ~~in this Rule are hereby incorporated, including subsequent amendments and editions, and may be~~
27 ~~accessed for free at <https://www.gpo.gov>;~~

28 (8)(2) ~~any picture or illustration depicting depicts the use of alcoholic beverages in a scene which is~~
29 ~~determined by the Commission to be undignified, immodest or in bad taste;~~

30 (9)(3) ~~any offer of offers a prize or award upon the completion of any contest in which there is a~~
31 ~~requirement to purchase the advertised product, except as otherwise permitted pursuant to 14B~~
32 ~~NCAC 15C .0714, provided that,that no advertisement shall promote a game of chance or a lottery;~~

33 (10)(4) ~~any subject matter or illustrations inducing persons under 21 years of age to drink;could lead a~~
34 ~~person under 21 years of age to believe that the product is suitable for consumption by that person;~~

35 (11)(5) ~~any statement, picture or illustration is inconsistent with the spirit of safety or safe driving~~
36 ~~programs;State laws of public safety or safe driving;~~

1 ~~(12)(6) any scene that would be is~~ contrary to state laws and rules governing sale, ~~storage~~storage, and/or
2 consumption of alcoholic beverages; or

3 ~~(13) any statement concerning a brand that is inconsistent with any statement on the labeling thereof;~~

4 ~~(14) any statement, design or device representing that the use of a brand has curative or therapeutic~~
5 ~~effects, if such statement is untrue in any particular, or tends to create a misleading impression;~~

6 ~~(15) any statement or representation that the product was manufactured in or imported from a place or~~
7 ~~country other than that of the actual origin, or was produced or processed by one who was not in~~
8 ~~fact the actual producer or processor;~~

9 ~~(16) any statement, design, device or pictorial representation of or relating to or capable of being~~
10 ~~construed as relating to the armed forces of the United States or the American Flag, state flag, or~~
11 ~~any emblem, seal, insignia or decoration associated with any such flag of armed forces of the United~~
12 ~~States; nor shall any advertisement contain any statement, device, design or pictorial representation~~
13 ~~of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer~~
14 ~~into believing that the product has been endorsed, made or used by, produced for or under the~~
15 ~~supervision of or in accordance with the specifications of the government, organizations, family or~~
16 ~~individual with whom the flag, seal, coat of arms, crest or insignia is associated; or~~

17 ~~(17) words such as "high test," "high proof," "full strength," "extra strong," or similar descriptive terms,~~
18 ~~or direct or indirect references to the intoxicating effect of the product.~~

19 ~~(7) is otherwise prohibited pursuant to a rule in this Chapter.~~

20 ~~(b) Prohibited Statements in Regard to Wine. In addition to the applicable prohibited statements as set forth in~~
21 ~~Paragraph (a) of this Rule, an advertisement or label for wine shall not contain:~~

22 ~~(1) any statement of bonded winecellar and bonded winery numbers unless stated in direct conjunction~~
23 ~~with the name and address of the person operating such winery or storeroom. Statement of bonded~~
24 ~~winecellar and bonded winery numbers may be made in the following form:~~

25 ~~_____ "Bonded Winecellar No. _____," "B.W.C. No. _____."~~

26 ~~_____ "Bonded Winery No. _____," "B.W. No. _____."~~

27 ~~_____ No additional reference thereto shall be made, nor shall any use be made of such statement that may~~
28 ~~convey the impression that the wine has been made or matured under United States Government or~~
29 ~~any state government supervision or in accordance with United States Government or any state~~
30 ~~government specifications or standards;~~

31 ~~(2) any statement, design or representation which relates to alcoholic content or which tends to create~~
32 ~~the impression that a wine is "unfortified" or has been "fortified" or has intoxicating qualities, or~~
33 ~~contains spirituous liquor (except for a reference to spirituous liquor in a statement of composition~~
34 ~~where such statement is required by these Rules to appear as part of the designation of the product);~~
35 ~~or~~

36 ~~(3) statement of age or dates, or any statement of age or representation relative to age (including words~~
37 ~~or devices in any brand name or trademark), except that:~~

- 1 (A) ~~In the case of vintage wine, the year of vintage may be stated if it appears on the label; or~~
2 (B) ~~Truthful references of a general and informative nature relating to methods of production~~
3 ~~involving storage or aging, such as "This wine has been mellowed in oak casks," "Stored~~
4 ~~in small barrels" or "Matured at regulated temperatures in our cellars" may be made.~~

5 ~~_____ The statement of any bottling date shall not be deemed to be representation relative to age, if such~~
6 ~~statement appears without undue emphasis in the following form: "Bottled in _____" (inserting the~~
7 ~~year in which the wine was bottled). No date, except as provided in this Section with respect to~~
8 ~~statement of vintage year and bottling date, shall be stated unless, in addition thereto and in direct~~
9 ~~conjunction therewith, in the same size and kind of printing there shall be stated an explanation of~~
10 ~~the significance of such date. Provided, that if any date refers to the date of establishment of any~~
11 ~~business, firm or corporation such date shall be stated without undue emphasis and in direct~~
12 ~~conjunction with the name of the person, firm or corporation to whom it refers.~~

13 (e) ~~Prohibited Statements in Regard to Spirituous Liquor. In addition to the applicable prohibited statements in~~
14 ~~Paragraph (a) of this Rule, an advertisement for spirituous liquor shall not contain:~~

15 (1) ~~words "bond," "bonded," etc; any statement containing the words "bond," "bonded," or "bottled in~~
16 ~~bond," "aged in bond" or phrases containing these or synonymous terms, unless such words or~~
17 ~~phrases appear upon the labels of the spirituous liquor advertised, and are stated in the advertisement~~
18 ~~in the manner and form in which they appear upon the label;~~

19 (2) ~~statements of age; any statement, design or device directly or by implication concerning age or~~
20 ~~maturity of any brand or lot of spirituous liquor unless a statement of age appears on the labels of~~
21 ~~the advertised product; When any such statement, design or device concerning age or maturity is~~
22 ~~contained in any advertisement, it shall include, in direct conjunction therewith and with~~
23 ~~substantially equal conspicuousness, all parts of the statement concerning age and percentages, if~~
24 ~~any, which appear on the label. However, an advertisement for any whiskey or brandy which does~~
25 ~~not bear a statement of age on the label, or an advertisement for rum which is four years or more~~
26 ~~old, may contain general inconspicuous age, maturity or other similar representation, e.g., "aged in~~
27 ~~wood," "mellowed in fine oak casks";~~

28 (3) ~~the word "pure" except as part of the bona fide name of a permittee; or~~

29 (4) ~~the terms "double distilled," "triple distilled" or any other similar term.~~

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31 *Editor's Note: James L. Conner, II, Administrative Law Judge with the Office of Administrative Hearings, declared*
32 *Rule 4 NCAC 2S .1005(a)(3) void as applied in Daniel W. Shelton t/a Shelton Broers v. N.C. Alcoholic Beverage*
33 *Control Commission (99 ABC 1641).*

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35 *History Note: Authority G.S. 18B-100; 18B-105(b); 18B-105; 18B-206; 18B-207;*
36 *Eff. January 1, 1982;*
37 *Amended Eff. July 1, 1992; May 1, 1984;*

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Transferred and Recodified from 04 NCAC 02S .1005 Eff. August 1, 2015.