



PROPOSED TEMPORARY RULE FOR PUBLICATION ON THE OAH WEBSITE

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Proposed Temporary Rule [G.S. 150B-21.1(a3)]

Proposed Temporary Rule simultaneously adopted as an emergency rule [G.S. 150B-21.1A(a)]

1. Rule-Making Agency: Alcoholic Beverage Control Commission

2. Proposed Action -- Mark the appropriate box(es) and list rule citation(s) beside proposed action:

ADOPTION:

AMENDMENT: 14B NCAC 15B .0217 and .0220, 14B NCAC 15C .0302 - .0304, .0307, .0308 and .0403.

REPEAL:

3. Public Hearing:

Date: October 11, 2017


Time: 10:00 a.m.

Location: ABC Commission Hearing Room, 400 East Tryon Road, Raleigh, NC 27610

4. Reason for agency adopting rule(s) under temporary action:

- A serious and unforeseen threat to the public health, safety or welfare.
- The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: S.L. 2017-87, Section 5.
Effective date: June 30, 2017
- A recent change in federal or state budgetary policy.
Effective date of change:
- A recent federal regulation.
Cite:
Effective date:
- A recent court order.
Cite order:
- Other:

Explain: The General Assembly amended the law regulating the sale of malt beverages and wine in containers filled by retail establishments holding certain ABC permits. Section 5(b) of S.L. 2017-87 directed the ABC Commission to adopt rules to implement the provisions of Section 5 no later than 120 days after the act became law, which occurred on June 30, 2017. Section 5(b) says that the ABC Commission may adopt temporary rules to comply with the deadline set forth in this subsection. The temporary rules being proposed for adoption are required to comply with Section 5(b) of S.L. 2017-87.

5. Comments from the public shall be directed to: 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@gmail.com	
6. Comment Period Starts: September 20, 2017	Comment Period Ends: October 20, 2017
7. 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:	8. The Agency formally proposed the text of this rule(s) on Date: September 13, 2017
	9. Signature of Agency* Head or Rule-making Coordinator:  <hr/> *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: A.D. "Zander" Guy, Jr. Title: Chairman

1 14B NCAC 15B .0217 is proposed for amendment under temporary procedures as follows:

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3 **14B NCAC 15B .0217 FILL OR REFILL ORIGINAL CONTAINERS**

4 No permittee ~~except a bottler or manufacturer~~ shall fill or refill in whole or in part any original container of alcoholic
5 beverages with the same or any other kind of alcoholic ~~beverage~~ beverage, except a bottler, manufacturer, or permittee
6 authorized pursuant to G.S. 18B-1001(1), (2), (3), (4), or (16).

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8 *History Note: Authority G.S. 18B-206(a); 18B-207; 18B-1001;*

9 *Eff. January 1, 1982;*

10 *Amended Eff. May 1, 1984;*

11 *Transferred and Recodified from 04 NCAC 02S .0224 Eff. August 1, 2015;*

12 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20,*

13 *2016.*

1 14B NCAC 15B .0220(b) is proposed for amendment under temporary procedures as follows:

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3 **14B NCAC 15B .0220 DISPENSING ALCOHOLIC BEVERAGES: PRODUCT IDENTIFICATION**

4 (a) Malt Beverages, On-Premises. Malt beverages may be sold by persons holding on-premise permits in the original
5 containers, by the glass, by the mug, by the ~~pitcher~~pitcher, or a single-service and single-use container as defined by
6 FDA Food Code 2009, 1-201.10(B). The brand name of draught malt beverages dispensed in retail outlets shall be
7 shown on the knobs of draught faucets. Covers for these faucets bearing a brand name may be used if the brand name
8 appearing on the cover corresponds with the brand name on the knob of the faucets that are to be used for that brand.

9 (b) Malt Beverages, Off-Premises. Malt beverages may be sold by persons holding a ~~retail~~an off-premise permit
10 only in the unopened original container that was filled by the product ~~manufacturer~~manufacturer, except as permitted
11 pursuant to G.S. 18B-1001.

12 (c) Wine, On-Premises. A person holding an on-premises wine permit may sell wine in the unopened original
13 container, by the carafe, by the ~~glass~~glass, or a single-service and single-use container. A person holding an on-
14 premises wine permit may sell wine mixed with non-alcoholic beverages by the carafe, by the ~~glass~~glass, or a single-
15 service and single-use container. Wine served in carafes, by the ~~glass~~glass, or single-service and single-use containers
16 may be dispensed under pressure from nitrogen from sealed bulk containers provided the containers and dispensing
17 systems have been approved by the Commission and the Commission for Public Health. The vintner, ~~brand~~brand,
18 and type of wine dispensed by the carafe, ~~glass~~glass, or single-service and single-use container, except for the house
19 wine, shall appear on the wine list. Where the wine is dispensed from bulk containers, the vintner, ~~brand~~brand, and
20 type shall be shown on the knobs of draught faucets.

21 (d) Use of Siphons. The use of siphons or pressurized dispensers is allowed if the malt beverage or wine contents are
22 dispensed directly from the original containers.

23 (e) Mixed Beverages. A person holding a mixed beverages permit may sell mixed beverages in a glass, in a
24 ~~pitcher~~pitcher, or in a single-service and single-use container.

25 (f) Multi-Use Containers. All multi-use containers used by permittees to serve any alcoholic beverages shall meet
26 the requirements as referenced by FDA Food Code 2009, 3-304.11(a). Multi-use containers include glassware, mugs,
27 ~~pitchers~~pitchers, and carafes.

28 (g) Incorporated by Reference. The sections of the FDA Food Code 2009 referenced in this Chapter are to the 2009
29 Food Code, not including subsequent amendments and editions, established by the U.S. Department of Health and
30 Human Services, Food and Drug Administration (hereinafter referred to as the "Food Code") and are incorporated by
31 reference. The Food Code may be accessed from the internet at
32 www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/default.htm, or a copy can be obtained by contacting
33 the U.S. Department of Commerce, National Technical Information Service, at (703) 605-6040, and is also available
34 for inspection at the Division of Public Health, N.C. Department of Health and Human Services.

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36 *History Note: Authority G.S. 18B-100; 18B-206; 18B-207; 18B-1001; 130A-248(a); ~~FDA Food Code 2009, 1-~~*
37 *~~201.10(B), 3-304.11(a);~~*

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Eff. January 1, 1982;
Amended Eff. June 1, 2013; May 1, 1984;
Transferred and Recodified from 04 NCAC 02S .0228 Eff. August 1, 2015;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20,
2016.

1 14B NCAC 15C .0302 is proposed for amendment under temporary procedures as follows:

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3 **14B NCAC 15C .0302 LABELS TO BE SUBMITTED TO COMMISSION**

4 (a) All labels for malt beverage and wine products shall be submitted in duplicate to the Commission on an
5 "Application for Label Approval ~~Form~~"Form" as required by Rule .0201 or .0202 of this Subchapter.

6 (b) Each person requesting label approval shall furnish, in the application for label approval, the names and addresses
7 of the manufacturer, bottler, and importer of the product.

8 (c) Notwithstanding Paragraphs (a) and (b) of this Rule, holders of retail permits pursuant to G.S. 18B-1001(1), (2),
9 (3), (4) or (16) that fill or refill growlers on demand are not shall not be required to submit the labels required by
10 ~~Rule~~Rules .0303(b) or (c), or Rules .0304(d) or (e), of this Section.

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12 *History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; ~~18B-1001(1); 18B-1001(2); 18B-1001(16); 18B-~~*
13 *1001;*

14 *Eff. January 1, 1982;*

15 *Temporary Amendment Eff. October 25, 2013;*

16 *Amended Eff. September 1, 2014;*

17 *Transferred and Recodified from 04 NCAC 02T .0302 Eff. August 1, 2015.*

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1 14B NCAC 15C .0303 is proposed for amendment under temporary procedures as follows:

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3 **14B NCAC 15C .0303 LABEL CONTENTS: MALT BEVERAGES**

4 (a) Containers that are prefilled by the manufacturer shall be affixed with malt beverage labels that shall contain the
5 following information in a legible form:

- 6 (1) brand name of product;
- 7 (2) name and address of brewer or bottler;
- 8 (3) class of product (e.g., beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage);
- 9 (4) net contents;
- 10 (5) if the malt beverage is fortified with any stimulants, the amount of each (milligrams) per container;
- 11 and
- 12 (6) the alcoholic beverage health warning statement as required by the Federal Alcohol Administration
13 Act, 27 C.F.R. Sections 16.20 through 16.22.

14 (b) Growlers that are filled or refilled on demand with malt beverages pursuant to Rule .0308 of this
15 ~~Subchapter~~Section shall be affixed with a label or a tag that shall contain the following information in type not smaller
16 than 3 millimeters in height and not more than 12 characters per inch:

- 17 (1) brand name of the product dispensed;
- 18 (2) name of brewer or bottler;
- 19 (3) class of product (e.g., beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage);
- 20 (4) net contents;
- 21 (5) if the malt beverage is fortified with any stimulants from the original manufacturer, the amount of
22 each (milligrams) per container;
- 23 (6) name and address of business that filled or refilled the growler;
- 24 (7) date of fill or refill;
- 25 (8) if the malt beverage is more than six percent alcohol by volume, the amount of alcohol by volume
26 pursuant to G.S. 18B-101(9); and
- 27 (9) the following statement: "This product may be unfiltered and unpasteurized. Keep refrigerated at
28 all times."

29 (c) Growlers that are filled or refilled on demand pursuant to Rule .0308 of this Section shall be affixed with the
30 alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R.
31 Sections 16.20 through 16.22. The provisions of 27 C.F.R. Sections 16.20 through 16.22 referenced in this Section
32 are incorporated by reference. Copies of these regulations are available for inspection and copying as provided in Rule
33 .0401 of this Subchapter.

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35 *History Note:* Authority G.S. 18B-100; 18B-101(9); 18B-206(a); 18B-207; ~~18B-1001(1); 18B-1001(2); 18B-~~
36 ~~1001(16); 27 C.F.R. 16.20 through 16.22; 18B-1001;~~
37 *Eff. January 1, 1982;*

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Amended Eff. April 1, 2011;

Temporary Amendment Eff. October 25, 2013;

Amended Eff. September 1, 2014;

Transferred and Recodified from 04 NCAC 02T .0303 Eff. August 1, 2015.

1 14B NCAC 15C .0304 is proposed for amendment under temporary procedures as follows:

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3 **14B NCAC 15C .0304 LABEL CONTENTS: WINE**

4 (a) All wine labels shall contain the following information, in a legible form:

- 5 (1) brand name of product;
- 6 (2) class and type, in conformity with Section .0400 of this Subchapter;
- 7 (3) name and address of manufacturer, or bottler, except as otherwise provided in these Rules;
- 8 (4) on blends consisting of foreign and domestic wine, if any reference is made to the presence of
9 foreign wine, the exact percentage by volume the foreign wine; and
- 10 (5) net contents (unless blown or otherwise permanently inscribed in the container).

11 (b) Exception for Retailer's Private Brand. In the case of wine bottles packaged for a retailer or other person under
12 ~~his~~the person's private brand, the name and address of the bottler ~~need not be stated on the brand label but~~ may be
13 stated on another label affixed to the container, if the name and address of the person for whom the wine was bottled
14 or packed appears on the label. The net contents shall be stated on the brand label or on a separate label affixed ~~in~~
15 ~~immediate proximity~~ thereto on the same side of the container in ~~readily~~ legible form, unless blown or otherwise
16 permanently inscribed in the container.

17 (c) Imported Wines. The name and address of the importer of a foreign wine need not be stated on the brand label if
18 it is stated upon another label affixed to the container.

19 (d) Growlers that are filled or refilled on demand with unfortified wine pursuant to Rule .0308 of this Section shall
20 be affixed with a label or a tag containing the following information in type not smaller than 3 millimeters in height
21 and not more than 12 characters per inch:

- 22 (1) brand name of the product dispensed;
- 23 (2) name of manufacturer or bottler;
- 24 (3) class and type of product;
- 25 (4) net contents;
- 26 (5) name and address of business that filled or refilled the growler;
- 27 (6) date of fill or refill; and
- 28 (7) the following statement: "This product may be unfiltered and unpasteurized. Keep refrigerated at
29 all times."

30 (e) Growlers that are filled or refilled on demand pursuant to Rule .0308 of this Section shall be affixed with the
31 alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R.
32 Sections 16.20 through 16.22.

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34 *History Note: Authority G.S. 18B-206(a); 18A-207; 18B-1001;*

35 *Eff. January 1, 1982;*

36 *Amended Eff. May 1, 1984;*

37 *Transferred and Recodified from 04 NCAC 02T .0304 Eff. August 1, 2015.*

1 14B NCAC 15C .0307 is proposed for amendment under temporary procedures as follows:

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3 **14B NCAC 15C .0307 GROWLERS**

4 (a) As used in this ~~Rule, Section,~~ a "growler" is a ~~refillable~~-rigid glass, ceramic, plastic, aluminum, or stainless steel
5 container with a ~~flip-top or screw-on lid closure~~ or cap with a secure sealing that is no larger than 2 liters (0.5283
6 gallons) into which a malt beverage or unfortified wine is prefilled, filled, or refilled for off-premises consumption.

7 (b) Malt beverages may be sold in growlers as follows:

8 (1) _____ Holders of only a brewery permit may sell, deliver, and ship growlers prefilled with the brewery's
9 malt beverage for off-premises consumption provided a label is affixed to the growler that accurately
10 provides the information as required by Rules .0303(a) and .0305 of this Section.

11 ~~(e)~~(2) _____ Holders of retail permits pursuant to G.S. 18B-1001(1), (2), or (16) who do not hold a brewery
12 permit shall not prefill growlers with malt beverage.

13 ~~(d)~~(3) _____ Holders of a brewery permit who also have retail permits pursuant to G.S. 18B-1001(1) may fill or
14 refill growlers on demand with the brewery's malt beverage for off-premises consumption, provided
15 the label as required by Rules .0303(b) and ~~(e)~~(c), and ~~.0305~~Rule .0305, of this Section is affixed to
16 the growler.

17 ~~(e)~~(4) _____ Holders of retail permits pursuant to G.S. 18B-1001(1), (2), or (16) may fill or refill growlers on
18 demand with draft malt beverage for off-premises consumption, provided the label as required by
19 Rules .0303(b) and (c), and ~~.0305~~Rule .0305, of this Section is affixed to the growler.

20 (c) Unfortified wine may be sold in growlers as follows:

21 (1) _____ Holders of only an unfortified winery permit may sell, deliver, and ship growlers prefilled with the
22 winery's unfortified wine for off-premises consumption provided a label is affixed to the growler
23 that accurately provides the information as required by Rules .0304(a), (b) and (c), and Rule .0305
24 of this Section.

25 (2) _____ Holders of retail permits pursuant to G.S. 18B-1001(3), (4), or (16) who do not hold an unfortified
26 winery permit shall not prefill growlers with unfortified wine.

27 (3) _____ Holders of an unfortified winery permit who also have retail permits pursuant to G.S. 18B-1001(3)
28 may fill or refill growlers on demand with the winery's unfortified wine for off-premises
29 consumption, provided the label as required by Rules .0304(d) and (e), and Rule .0305 of this
30 Section is affixed to the growler.

31 (4) _____ Holders of retail permits pursuant to G.S. 18B-1001(3), (4), or (16) may fill or refill growlers on
32 demand with unfortified wine for off-premises consumption, provided the label as required by Rules
33 .0304(d) and (e), and Rule .0305 of this Section is affixed to the growler.

34 ~~(d)~~(d) _____ Holders of retail permits pursuant to G.S. 18B-1001(1), (2), ~~(3), (4)~~ or (16) shall affix a label as required by
35 Rules .0303(b) and (c), Rules .0304(d) and (e), and Rule .0305 of this Section to the growler when filling or refilling
36 a growler.

1 ~~(g)~~(e) Holders of retail permits pursuant to G.S. 18B-1001(1), (2), (3), (4) or (16), may, in their discretion, refuse to
2 fill or refill a growler, except in matters of discrimination pursuant to G.S. 18B-305(c).

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4 *History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; 18B-305; ~~18B-1001(1); 18B-1001(2); 18B-~~*
5 *~~1001(16); 18B-1001;~~*

6 *Eff. April 1, 2011;*

7 *Temporary Amendment Eff. October 25, 2013;*

8 *Amended Eff. September 1, 2014;*

9 *Transferred and Recodified from 04 NCAC 02T .0308 Eff. August 1, 2015.*

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1 14B NCAC 15C .0308 is proposed for amendment under temporary procedures as follows:

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3 **14B NCAC 15C .0308 GROWLERS: CLEANING, SANITIZING, FILLING AND SEALING**

4 (a) ~~Filling~~ Except as permitted pursuant to Rules .0307(b) and (c) of this Section, filling and refilling growlers shall
5 only occur on demand by a ~~customer~~ consumer.

6 (b) Growlers shall only be filled or refilled by a permittee or the permittee's employee.

7 (c) Prior to filling or refilling a growler, the growler and its cap shall be cleaned and sanitized by the permittee or the
8 permittee's employee using one of the following methods:

9 (1) Manual washing in a three compartment sink:

10 (A) ~~Prior~~ prior to starting, clean sinks and work area to remove any chemicals, oils, or grease
11 from other cleaning activities;

12 (B) ~~Empty~~ empty residual liquid from the growler to a drain. Growlers shall not be emptied into
13 the cleaning water;

14 (C) ~~Clean~~ clean the growler and cap in water and detergent. Water temperature shall be at a
15 minimum 110°F or the temperature specified on the cleaning agent manufacturer's label
16 instructions. Detergent shall not be fat or oil based;

17 (D) ~~Remove~~ remove any residues on the interior and exterior of the growler and cap;

18 (E) ~~Rinse~~ rinse the growler and cap in the middle compartment with water. Rinsing may be
19 from the spigot with a spray arm, from a spigot, or from the tub as long as the water for
20 rinsing shall not be stagnant but shall be continually refreshed;

21 (F) ~~Sanitize~~ sanitize the growler and cap in the third compartment. Chemical sanitizer shall be
22 used in accordance with the EPA-registered label use instructions and shall meet the
23 minimum water temperature requirements of that chemical; and

24 (G) ~~A~~ a test kit or other device that accurately measures the concentration in mg/L of chemical
25 sanitizing solutions shall be provided and be ~~readily~~ accessible for use; or

26 (2) Mechanical washing and sanitizing machine:

27 (A) ~~Mechanical~~ mechanical washing and sanitizing machines shall be provided with an easily
28 accessible and readable data plate affixed to the machine by the manufacturer and shall be
29 used according to the machine's design and operation specifications;

30 (B) ~~Mechanical~~ mechanical washing and sanitizing machines shall be equipped with chemical
31 or hot water sanitization;

32 (C) ~~Concentration~~ concentration of the sanitizing solution or the water temperature shall be
33 accurately determined by using a test kit or other device; and

34 (D) ~~The~~ the machine shall be regularly serviced based upon the manufacturer's or installer's
35 guidelines.

36 (d) Notwithstanding Paragraph (c) of this Rule, a growler may be ~~filled~~ filled, or refilled without cleaning and
37 sanitizing the ~~growler~~ growler, as follows:

- 1 (1) Filling or refilling a growler with a tube as referenced by Paragraph (e) of this Rule:
2 (A) ~~Food~~food grade sanitizer shall be used in accordance with the EPA-registered label use
3 instructions;
4 (B) ~~A~~a container of liquid food grade sanitizer shall be maintained for no more than 10 malt
5 beverage taps that will be used for filling and refilling growlers;
6 (C) ~~Each~~each container shall contain no fewer than five tubes that will be used only for filling
7 and refilling growlers;
8 (D) ~~The~~the growler is inspected visually for contamination;
9 (E) ~~The~~the growler is filled or refilled with a tube as described in Paragraph (e) of this Rule;
10 (F) ~~After~~after each filling or refilling of a growler, the tube shall be immersed in the container
11 with the liquid food grade sanitizer; and
12 (G) ~~A~~a different tube from the container shall be used for each fill or refill of a growler; or
13 (2) Filling a growler with a contamination-free process:
14 (A) ~~The~~the growler shall be inspected visually for contamination; ~~and~~
15 (B) ~~Shall for growlers that can be refilled, the process shall be otherwise in compliance with~~
16 ~~the FDA Food Code 2009, Section 3-304.17(e), Section 3-304.17(C); and~~
17 (C) ~~for growlers that are for single use, the process shall be otherwise in compliance with the~~
18 FDA Food Code 2009, Section 4-903.11 and 4-903.12.

19 (e) Growlers shall be filled or refilled from the bottom of the growler to the top with a tube that is attached to the malt
20 beverage or unfortified wine faucet and extends to the bottom of the growler or with a commercial filling machine.

21 (f) When not in use, tubes to fill or refill growlers shall be immersed and stored in a container with liquid food grade
22 sanitizer.

23 (g) After filling or refilling a growler, the growler shall be sealed with a closure or cap.
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25 *History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; ~~18B-1001(1); 18B-1001(2); 18B-1001(16); FDA~~*
26 *Food Code 2009, Section 3-304.17(e) and Section 4-204.13(a), (b) and (d); 18B-1001;*

27 *Temporary Adoption Eff. October 25, 2013;*

28 *Eff. September 1, 2014;*

29 *Transferred and Recodified from 04 NCAC 02T .0309 Eff. August 1, 2015.*
30

1 14B NCAC 15C .0403 is proposed for amendment under temporary procedures as follows:

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3 **14B NCAC 15C .0403 CONTAINERS**

4 (a) Unsealed Container Prohibited. ~~The~~ Except as permitted by Rule .0307 of this Subchapter, the sale of wine in any
5 unsealed ~~container or container,~~ any container originally designed for a product other than ~~wine~~wine, or in any
6 container the design or shape of which would tend to mislead the consumer as to the nature of the contents is
7 prohibited. ~~All wine containers shall be made of glass or other nonmetallic materials except for bulk on premises~~
8 ~~containers approved by the Commission.~~

9 (b) Distinguishing Mark Different from Retailer. The sale of wine in containers that have the blown, ~~branded~~branded,
10 or burned name or other distinguishing mark of any person engaged in business as a wine producer, importer,
11 wholesaler or bottler or any other person different from the person whose name is required to appear on the brand
12 label by Rule .0304 of this Subchapter is prohibited.

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14 *History Note: Authority G.S. 18B-206; 18B-207; 18B-1001;*

15 *Eff. January 1, 1982;*

16 *Amended Eff. June 1, 1986; May 1, 1984;*

17 *Transferred and Recodified from 04 NCAC 02T .0410 Eff. August 1, 2015.*

18