



**PROPOSED TEMPORARY RULE FOR
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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:

X AMENDMENT: 04 NCAC 02R.1304; 04 NCAC 02R.1305; 04 NCAC 02R.1402; 04 NCAC 02R.1404; 04 NCAC 02R.1901;
04 NCAC 02S.0101

REPEAL:

3. Public Hearing:

Date: August 6, 2015

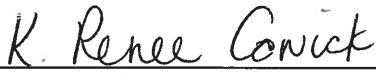
Time: 10:00 AM

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: SL 2015-98
Effective date: 6/19/2015
- 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:
- State Medical Facilities Plan.
- Other:

Explain: Section 1.(i) of Session Law 2015-98 states: "No later than September 1, 2015, the ABC Commission shall establish and adopt temporary rules to implement the provisions of this section."

| | |
|--|---|
| 5. Comments from the public shall be directed to: Name: K. Renee Cowick Address: 400 East Tryon Road Raleigh, NC 27610 Phone (optional): 919-779-8331 Fax (optional): 919-661-6165 E-Mail (optional): renee.cowick@abc.nc.gov | |
| 6. Comment Period Starts: 7/22/2015 | Comment Period Ends: 8/14/2015 |
| 7. Rule-making Coordinator: K. Renee Cowick Address: 400 East Tryon Road Raleigh, NC 27610 Phone: 919-779-8331 E-Mail: renee.cowick@abc.nc.gov Agency contact, if any: Phone: E-mail: | 8. The Agency formally proposed the text of this rule(s) on Date: 7/15/2015 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: James C. Gardner Title: Chairman |

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SESSION LAW 2015-98
HOUSE BILL 909

AN ACT TO MAKE VARIOUS CHANGES TO THE ALCOHOLIC BEVERAGE CONTROL COMMISSION LAWS.

The General Assembly of North Carolina enacts:

AUTHORIZE AND REGULATE THE SALE OF ANTIQUE SPIRITUOUS LIQUOR

SECTION 1.(a) G.S. 18B-101 reads as rewritten:

"§ 18B-101. Definitions.

As used in this Chapter, unless the context requires otherwise:

- ...
- (5) "ALE Branch" means the Alcohol Law Enforcement Branch of the Department of Public Safety.
 - (5a) "Antique spirituous liquor" means spirituous liquor that has not been in production or bottled in the last 20 years, is in the original manufacturer's unopened container, is not owned by a distillery, and is not otherwise available for purchase by an ABC Board except through the special order process pursuant to G.S. 18B-1001(20).
 - (5b) "Antique spirituous liquor seller" means a person who sells antique spirituous liquor to an ABC Board.
 - (5c) "Bailment surcharge" means the charge imposed on each case of liquor shipped from a Commission warehouse as provided in G.S. 18B-208. This bailment surcharge is in addition to the bailment charge imposed by G.S. 18B-804(b)(2).

...."
SECTION 1.(b) G.S. 18B-1001 is amended by adding a new subdivision to read:

"(20) Antique spirituous liquor permit. – A permit under this subdivision may be issued to a holder of a mixed beverages permit issued under subdivision (10) of this section. Notwithstanding any law to the contrary, the permit holder may sell at retail antique spirituous liquor for use in mixed beverages for consumption on premises. The acquisition of antique spirituous liquor on or after September 1, 2015, shall be in accordance with the process established by rule of the Commission for special orders of spirituous liquor that is not on the list approved by the Commission."

SECTION 1.(c) G.S. 18B-902(d) is amended by adding a new subdivision to read:

"(43) Antique spirituous liquor permit – \$100.00."

SECTION 1.(d) G.S. 18B-1001(10) reads as rewritten:

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

- a. Restaurants;
- b. Hotels;
- c. Private clubs;
- d. Convention centers;



- e. Community theatres;
- f. Nonprofit organizations; and
- g. Political organizations."

SECTION 1.(e) G.S. 18B-804 reads as rewritten:

"§ 18B-804. Alcoholic beverage pricing.

(a) Uniform Price of Spirituous Liquor. – The retail price of spirituous liquor sold in ABC stores shall be uniform throughout the State, unless otherwise provided by the ABC law.

(b) Sale Price of Spirituous Liquor. – The sale of spirituous ~~liquor~~ liquor, including antique spirituous liquor, sold at the uniform State price shall consist of the following components:

- (1) The distiller's or the antique spirituous liquor seller's price.
- (2) The freight and bailment charges of the State warehouse as determined by the Commission.
- (3) A markup for local boards as determined by the Commission.
- (4) The tax levied under G.S. 105-113.80(c), which shall be levied on the sum of subdivisions (1), (2), and (3).
- (5) An additional markup for local boards equal to three and one-half percent (3 1/2%) of the sum of subdivisions (1), (2), and (3).
- (6) A bottle charge of one cent (1¢) on each bottle containing 50 milliliters or less and five cents (5¢) on each bottle containing more than 50 milliliters.
- (6a) The bailment surcharge.
- (6b) An additional bottle charge for local boards of one cent (1¢) on each bottle containing 50 milliliters or less and five cents (5¢) on each bottle containing more than 50 milliliters.
- (7) A rounding adjustment, the formula of which may be determined by the Commission, so that the sale price will be divisible by five.
- (8) If the spirituous liquor is sold to a mixed beverage permittee for resale in mixed beverages, a charge of twenty dollars (\$20.00) on each four liters and a proportional sum on lesser quantities.
- (9) If the spirituous liquor is sold to a guest room cabinet permittee for resale, a charge of twenty dollars (\$20.00) on each four liters and a proportional sum on lesser quantities.

...."

SECTION 1.(f) G.S. 105-113.80(c) reads as rewritten:

"(c) Liquor. – An excise tax of thirty percent (30%) is levied on spirituous liquor and antique spirituous liquor sold in ABC stores. Pursuant to G.S. 18B-804(b), the price of liquor on which this tax is computed is the distiller's or the antique spirituous liquor seller's price plus (i) the State ABC warehouse freight and bailment ~~charges, charges~~ and (ii) a markup for local ABC boards."

SECTION 1.(g) G.S. 105-113.68(a) is amended by adding a new subdivision to read:

"(4a) Antique spirituous liquor. – Defined in G.S. 18B-101."

SECTION 1.(h) G.S. 105-164.4(a)(7) reads as rewritten:

"(7) The combined general rate applies to the sales price of antique spirituous liquor and spirituous liquor other than mixed beverages. As used in this subdivision, the terms "antique spirituous liquor", "spirituous liquor", and "mixed beverage" have the meanings provided in G.S. 18B-101."

SECTION 1.(i) No later than September 1, 2015, the ABC Commission shall establish and adopt temporary rules to implement the provisions of this section.

SECTION 1.(j) Subsections (a) through (h) of this section become effective upon adoption of rules pursuant to subsection (i) of this section. The remainder of this section is effective when it becomes law.

PROHIBIT THE SALE, POSSESSION, OR CONSUMPTION OF POWDERED ALCOHOL

SECTION 2.(a) G.S. 18B-101 reads as rewritten:

"§ 18B-101. Definitions.

As used in this Chapter, unless the context requires otherwise:

1 04 NCAC 02R .1304 is amended under temporary procedures as follows:

2

3 **04 NCAC 02R .1304 TRANSPORTATION FROM STATE ABC WAREHOUSE**

4 Except as specifically authorized by statute or the rules of the Commission, no spirituous liquors or antique
5 spirituous liquors shall be transported within, into, or through this State for delivery to a local ABC ~~store or~~ board
6 except from the state ABC warehouse.

7

8 *History Note: Authority G.S. 18B-100; 18B-101; 18B-204(a); 18B-207; 18B-701(1); 18B-1001;*

9 *Eff. January 1, 1982;*

10 *Amended Eff. May 1, 1984.*

11 *Temporary Amendment Eff. August 28, 2015.*

1 04 NCAC 02R .1305 is amended under temporary procedures as follows:

2

3 **04 NCAC 02R .1305 DIRECT SHIPMENTS**

4 (a) A ~~direct shipment is~~ “direct shipment” means a shipment of a distiller’s spirituous liquor ~~or an antique~~
5 spirituous liquor seller’s antique spirituous liquor from the ~~distiller~~ distiller, an antique spirituous liquor seller, or a
6 warehouse directly to a local ABC board without passing through the Commission’s warehouse.

7 (b) Direct shipments ~~are~~ shall be allowed by the Commission in emergency situations (for example, state
8 warehouse is closed due to natural disaster) or in a situation that is mutually advantageous (for example,
9 commemorative bottles) to local ABC boards, the ~~Commission~~ Commission, and the operator of the Commission’s
10 ~~warehouse (for example, commemorative bottles).~~ warehouse, as determined by the Commission’s Administrator.

11 (c) Direct shipment shall have written approval from the Commission. Merchandise authorized to be shipped
12 direct shall be consigned by the Commission’s warehouse to the distiller’s account in care of the local ABC board.
13 The local ABC board shall acknowledge receipt of the merchandise on the shipping documents and forward them to
14 the contractor for processing through the accounting system as though the merchandise were shipped from the
15 Commission’s warehouse.

16 (d) Upon compliance with 04 NCAC 02R.1404 and obtaining a proper transportation permit as required by
17 G.S. 18B-403, an antique spirituous liquor seller may ship antique spirituous liquor listed in its inventory directly to
18 the local ABC Board that placed the special order for that inventory.

19

20 *History Note: Authority G.S. 18B-100; 18B-101; 18B-204(a); 18B-207; 18B-403; 18B-701(1); 18B-1001(20)*

21 *Eff. January 1, 1982;*

22 *Amended Eff. May 1, 1984.*

23 *Temporary Amendment Eff. August 28, 2015.*

1 04 NCAC 02R .1402 is amended under temporary procedures as follows:

2

3 **04 NCAC 02R .1402 PERMIT REQUIRED TO SELL ALCOHOLIC BEVERAGES**

4 No purchase of any spirituous ~~liquor~~ liquor, ~~antique spirituous liquor~~, or fortified wine for resale in ABC stores shall
5 be made by any local ABC board from any person that does not hold a permit from the Commission authorizing the
6 sale of those beverages to the local ABC boards, except that ~~approved brands of taxpaid liquor~~ brands approved for
7 sale in North Carolina on which all taxes have been paid may be purchased for resale from the board of county
8 commissioners of any ~~county~~ county, for an amount not to exceed the usual wholesale price of the ~~liquor~~ liquor,
9 when liquor has been confiscated for a violation of the ABC laws. A local ABC board shall purchase fortified wine
10 only from a North Carolina wholesaler who has been issued a wine wholesaler permit.

11

12 *History Note: Authority G.S. 18B-100; 18B-101; 18B-207; 18B-304(a); 18B-503(e); 18B-1107(a)(2);*

13 *Eff. January 1, 1982;*

14 *Amended Eff. July 1, 1992; May 1, 1984.*

15 *Temporary Amendment Eff. August 28, 2015.*

1 04 NCAC 02R .1404 is amended under temporary procedures as follows:

2

3 **04 NCAC 02R .1404 SPECIAL ORDERS**

4 The Commission ~~will~~shall approve special orders when a local ABC board has a request from a customer for one or
5 more cases of merchandise not on the approved list, including container sizes not on the approved list, provided the
6 following ~~steps are taken:~~occurs:

7 (1) For spirituous liquor:

8 (1)(a) ~~The local ABC board requests that the Commission obtain the price from the vendor,~~
9 ~~including freight, bailment surcharge and bailment; the Commission determines the retail~~
10 ~~price and advises the local board making the request; and calculates the retail price based~~
11 ~~on the markup formula pursuant to G.S. 18B-804;~~

12 (2)(b) The local ABC board advises the customer of the retail price for the particular case of
13 merchandise. If the customer places an order, the entire purchase price is at that time
14 paid to the local ABC board, and the Commission is advised that the local ABC board
15 has a bona fide order;

16 (3)(c) The Commission places the order with the proper vendor and the merchandise is shipped
17 to the state ABC warehouse for delivery to the local ABC board with the next regularly
18 scheduled shipment to the local ABC board; and

19 (4)(d) The local ABC board reports the sale of each case of merchandise sold on its monthly
20 report to the Commission.

21 (2) For antique spirituous liquor:

22 (a) ~~The antique spirituous liquor seller applies for a Special One-Time permit pursuant to~~
23 ~~G.S. 18B-1002(a)(4) and provides, via US mail, fax, or email, to the Commission Pricing~~
24 ~~Division an inventory of each item to be sold and the price per item;~~

25 (b) ~~The markup formula pursuant to G.S. 18B-804 shall determine the retail price for each~~
26 ~~product;~~

27 (c) ~~The Commission Pricing Division shall set up each product in its system and assign code~~
28 ~~numbers before notifying the local ABC board and the state warehouse;~~

29 (d) ~~The local ABC board shall notify the buyer of the price per product. Once the buyer pays~~
30 ~~the purchase price, the local ABC board shall place an order through the Commission's~~
31 ~~Special Order system;~~

32 (e) ~~The local ABC board shall notify the seller to deliver the purchased product to the local~~
33 ~~ABC board. Once the local ABC board has possession of the product, the local ABC~~
34 ~~board shall notify the Commission and the state warehouse and forward the Invoice Bill~~
35 ~~of Lading to the state warehouse; and~~

36 (f) ~~The state warehouse shall bill the local ABC board for the products, and the local ABC~~
37 ~~board shall notify the buyer that the product is available to be picked-up.~~

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*History Note: Authority G.S. 18B-100; 18B-101; 18B-207; 18B-800(c); 18B-804; 18B-807;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.
Temporary Amendment Eff. August 28, 2015.*

1 04 NCAC 02R .1901 is amended under temporary procedures as follows:

2

3 **04 NCAC 02R .1901 MIXED BEVERAGES TAX STAMP**

4 (a) Prior to the sale of any container of spirituous liquor or antique spirituous liquor to a permittee, the local ABC
5 board shall affix to the container a mixed beverages tax stamp that indicates the following:

- 6 (1) local ABC board system of ~~sale~~,sale;
- 7 (2) permittee's transaction ~~number~~,number; and
- 8 (3) permittee's Mixed Beverage Permit number.

9 (b) The mixed beverages tax stamp shall be affixed to the original paper labeling of each container, except that in
10 the case of a container bearing no original label the stamp shall be affixed to any ~~conspicuous~~-vertical portion of the
11 container. In no event may the stamp be affixed to the cap or closure of a container. Where a case of one brand has
12 been purchased, the mixed beverages tax stamp shall be affixed to each container in the case and it shall not be
13 sufficient to stamp the exterior of the case.

14 (c) For sales of liquor to a guest room cabinet permittee, a local ABC board may affix the mixed beverages tax
15 stamp to any portion of the container other than the cap or closure. In lieu of affixing the stamp to each container
16 purchased by a guest room cabinet permittee, a local ABC board may choose to give to the guest room cabinet
17 permittee one tax stamp for each container of liquor purchased for resale from a guest room cabinet, as authorized
18 by Rule .1804 of this Subchapter.

19 (d) Mixed beverage permittees may transport no more than eight liters of opened containers of spirituous liquor
20 without a purchase-transportation permit to and from ~~an~~-a local ABC Board in the non-passenger area of a motor
21 vehicle for the purpose of replacing mixed beverage tax stamps that are defaced or that have worn out numbers.

22

23 *History Note: Authority G.S. 18B-100; 18B-101; 18B-203(a)(1); 18B-207; 18B-804(b)(8); 18B-807;*
24 *Eff. January 1, 1982;*
25 *Amended Eff. May 1, 1984.*
26 *Temporary Amendment Eff. August 28, 2015.*

1 04 NCAC 02S .0101 is amended under temporary procedures as follows:

2

3 **04 NCAC 02S .0101 DEFINITIONS**

4 In addition to the definitions found in Sections 18B-101 and 18B-1000 of the North Carolina General Statutes, the
5 following definitions apply to this Subchapter:

6 (1) "Employee" means any person who performs a service for any person holding an ABC permit,
7 regardless of whether that person is compensated for the performance of those services.

8 (2) "Intoxicated" means the condition of a person whose mental or physical functioning appears to be
9 presently substantially impaired as a result of the use of alcohol or other substance, such as when
10 the person appears to a reasonable observer to be so far under such influence that:

11 (A) the person's emotions are conspicuously uncontrolled; or

12 (B) the person's intelligence, sense-perceptions, judgment, continuity of thought or of ideas,
13 speech and coordination of volition with muscular action, or some of these faculties or
14 processes are materially impaired.

15 (3) "Modified Plan Permits," as used in 04 NCAC 02S .0105 and 04 NCAC 02S .0106, mean on-
16 premise malt beverage permits authorized by elections held pursuant to G.S. 18B-602(a)(4).

17 (4) "Original container" means a bottle, can or other alcoholic beverage product container filled by a
18 manufacturer or bottler that has been approved for sale within this State.

19 (5) "Premises" means the same as defined in G.S. 18B-101(12a). A diagram attached to the
20 investigative report and kept in the permittee's file is prima facie evidence of the premises covered
21 by that permit and for which the permittee and his employees are responsible. Permits shall
22 authorize the sale and possession or consumption of alcoholic beverages only on the premises
23 described in the investigative report and diagram furnished by the investigating agent.

24 (6) "Private dining area" means any area of a restaurant or hotel that is or can be substantially closed
25 off from public view.

26 (7) "Spirituos liquor" shall include "antique spirituous liquor" as defined in G.S. 18B-101 as it
27 relates to mixed beverage permittees in this Subchapter.

28

29 *History Note: Authority G.S. 18B-100; 18B-101; 18B-207; 18B-305; 18B-602(a)(4); 18B-1001; 18B-1008;*
30 *122C-3(18)*

31 *Eff. January 1, 1982;*

32 *Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.*

33 *Temporary Amendment Eff. August 28, 2015.*