



**PROPOSED TEMPORARY RULE FOR PUBLICATION ON THE OAH WEBSITE**

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**CHECK APPROPRIATE BOX:**

**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:** 04 NCAC 02R .2101, 02R .2102, 02R .2103

**AMENDMENT:**

**REPEAL:**

**3. Public Hearing:**

**Date:** Wednesday, September 16, 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: Session Law 2015-98, Sec. 4  
Effective date: 6/19/2015 (October 1, 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 4.(h) of Session Law 2015-98 states: "No later than October 1, 2015, the ABC Commission shall establish and adopt temporary rules to implement the provisions of this section."

<b>5. Comments from the public shall be directed to:</b> <b>Name:</b> K. Renee Cowick <b>Address:</b> 400 East Tryon Road Raleigh, NC 27610 <b>Phone (optional):</b> 919-779-8331 <b>Fax (optional):</b> 919-661-6165 <b>E-Mail (optional):</b> renee.cowick@abc.nc.gov	
<b>6. Comment Period Starts:</b> 8/26/2015	<b>Comment Period Ends:</b> 9/21/2015
<b>7. Rule-making Coordinator:</b> K. Renee Cowick <b>Address:</b> 400 East Tryon Road Raleigh, NC 27610  <b>Phone:</b> 919-779-8331 <b>E-Mail:</b> renee.cowick@abc.nc.gov  <b>Agency contact, if any:</b>  <b>Phone:</b> <b>E-mail:</b>	<b>8. The Agency formally proposed the text of this rule(s) on</b> <b>Date:</b> 8/14/2015  <b>9. Signature of Agency* Head or Rule-making Coordinator:</b>   <hr/> <b>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</b>  <b>Typed Name:</b> K. Renee Cowick <b>Title:</b> Chief Counsel / Rule-making Coordinator

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;



\* H 9 0 9 - V - 6 \*

- b. The Eastern Band of Cherokee Indians shall recognize any permit issued by the North Carolina Alcoholic Beverage Control Commission allowing commercial activity in the same manner as if such permit was issued by the tribal alcoholic beverage control commission. The North Carolina Alcoholic Beverage Control Commission shall recognize any commercial activity permit issued by the tribal alcoholic beverage commission in the same manner as if the permit were issued by the North Carolina Alcoholic Beverage Control Commission.
- c. The North Carolina Alcoholic Beverage Control Commission shall retain exclusive enforcement authority over all permits it issues to commercial activity permittees for violations of its rules or this Chapter.

Any provision of Articles 12 and 13 of this Chapter which has not been made applicable to the Eastern Band of Cherokee Indians by this section shall act as a bar to engaging in any activity authorized by that Article or section.

...  
 (d) Establishment of a Tribal Commission. – In accordance with the provisions of 18 U.S.C. § 1161, the Eastern Band of Cherokee Indians is authorized to establish a tribal alcoholic beverage control commission to regulate the purchase, possession, consumption, sale, and delivery of alcoholic beverages ~~at retail~~ on any land designated as Indian Country pursuant to 18 U.S.C. § 1151 under the jurisdiction of the Eastern Band of Cherokee Indians. The tribal commission shall have exclusive authority to issue ~~retail-ABC~~ permits to retail and commercial establishments located wholly on Indian Country lands under the jurisdiction of the Eastern Band of Cherokee Indians and to regulate the purchase, possession, consumption, sale, and delivery of alcoholic beverages at ~~retail~~ permitted outlets and premises. Permits issued by the tribal commission pursuant to this section shall be deemed issued by the State for the purposes of sales and delivery of beer and wine by wholesalers to the retail outlets located on Indian Country lands. The fees generated by the tribal alcoholic beverage control commission for the issuance of retail permits may be retained by the Eastern Band of Cherokee Indians to offset costs of operating the tribal alcoholic beverage control commission.

...."

**SECTION 3.(b)** G.S. 18B-101(14a) reads as rewritten:

"(14a) "Tourism ABC establishment" means a restaurant or hotel that meets both of the following requirements:

- a. Is located on property, a property line of which is located within 1.5 miles of the end of an entrance or exit ramp of a junction on a national scenic parkway designed to attract local, State, national, and international tourists between the State line and Milepost 460-469, provided that the Eastern Band of Cherokee Indians tribal alcoholic beverage control commission established under G.S. 18B-112 shall have exclusive authority to issue permits pursuant to this subdivision between Milepost 460 and the southern terminus of the national scenic byway at Milepost 469 for any restaurant or hotel that is located wholly on Indian Country lands.
- b. Is located in a county in which the on-premises or off-premises sale of malt beverages or unfortified wine is authorized in at least one city."



**ALLOW DISTILLERY PERMIT HOLDERS TO SELL SPIRITUOUS LIQUOR DISTILLED ON PREMISES TO VISITORS OF THE DISTILLERY FOR CONSUMPTION OFF THE PREMISES**

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

"(a) Authorized Acts. – The holder of a distillery permit ~~may~~ may do any of the following:

- (1) Manufacture, purchase, import, possess and transport ingredients and equipment used in the distillation of spirituous ~~liquor~~ liquor.
- (2) Sell, deliver and ship spirituous liquor in closed containers at wholesale to exporters and local boards within the State, and, subject to the laws of other

- jurisdictions, at wholesale or retail to private or public agencies or establishments of other states or ~~nations~~; ~~nations~~.
- (3) Transport into or out of the distillery the maximum amount of liquor allowed under federal law, if the transportation is related to the distilling process.
- (4) Sell spirituous liquor distilled at the distillery in closed containers to visitors who tour the distillery for consumption off the premises if the distillery manufactures less than 100,000 proof gallons per year. Sales under this subdivision are allowed only in a county where the establishment of a county or municipal ABC store has been approved pursuant to G.S. 18B-602(g) and are subject to the time and day restrictions in G.S. 18B-802. Spirituous liquor sold under this subdivision shall (i) be listed as a code item for sale in the State, (ii) be sold at the price set by the Commission for the code item pursuant to G.S. 18B-804(b), and (iii) have affixed to its bottle a sticker that bears the words "North Carolina Distillery Tour Commemorative Spirit" in addition to any other labeling requirements set by law. Consumers purchasing spirituous liquor under this subdivision are limited to purchasing, and the selling distillery is limited to selling to each consumer, no more than one bottle of spirituous liquor per 12-month period. The distillery shall use a commonly adopted standard point of sale system to maintain searchable electronic records captured at the point of sale, to include the purchaser's name, drivers license number, and date of birth for at least 12 months from the date of purchase. The Commission shall adopt rules regulating the retail sale of spirituous liquor under this subdivision."

SECTION 4.(b) G.S. 105-113.68(a) is amended by adding a new subdivision to read:

"(4a) Distillery permittee. – A distillery that holds a distillery permit issued by the ABC Commission under G.S. 18B-1105."

SECTION 4.(c) G.S. 105-113.80(c) reads as rewritten:

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

SECTION 4.(d) G.S. 105-113.81(e) reads as rewritten:

"(e) Tasting. – Resident ~~breweries and wineries~~ ~~breweries~~, wineries, and distilleries are not required to remit excise taxes on malt ~~beverages and wine beverages~~, wine, or spirituous liquor given free of charge to customers, visitors, and employees on the manufacturer's licensed premises for consumption on those premises."

SECTION 4.(e) G.S. 105-113.83(a) reads as rewritten:

"(a) Liquor. – The excise tax on liquor levied under G.S. 105-113.80(c) is payable monthly by the local ABC board and by a distillery permittee to the Secretary. The tax shall be paid on or before the 15th day of the month following the month in which the tax was collected."

SECTION 4.(f) G.S. 18B-800(a) reads as rewritten:

"(a) Spirituous Liquor. – Except as provided in Article 10 of this ~~Chapter~~, ~~Chapter~~ and G.S. 18B-1105(a), spirituous liquor may be sold only in ABC stores operated by local boards."

SECTION 4.(g) G.S. 18B-804(a) reads as rewritten:

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

SECTION 4.(h) No later than October 1, 2015, the ABC Commission shall establish and adopt temporary rules to implement the provisions of this section.

SECTION 4.(i) Subsections (a) through (g) of this section become effective upon adoption of rules pursuant to subsection (h) of this section. The remainder of this section is effective when it becomes law.

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**ALLOW CERTAIN ABC PERMITTEES TO SELL CIDER IN CERTAIN CONTAINERS FOR CONSUMPTION OFF THE PERMITTED PREMISES AND MAKE TECHNICAL CHANGES TO THE SALE OF MALT BEVERAGES IN GROWLERS**

**AUTHORIZE THE ABC COMMISSION TO ISSUE GUEST ROOM CABINET PERMITS TO CERTAIN 18-HOLE GOLF COURSES**

**SECTION 8.** G.S. 18B-1001(13) reads as rewritten:

"(13) Guest Room Cabinet Permit. – A guest room cabinet permit authorizes a ~~hotel having a mixed beverages permit or a private club having a mixed beverages permit and management contracts for the rental of living units~~ guest room cabinet permittee to sell to its room guests, from securely locked cabinets, malt beverages, unfortified wine, fortified wine, and spirituous liquor. A permittee shall designate and maintain at least ten percent (10%) of the permittee's guest rooms as rooms that do not have a guest room cabinet. A permittee may dispense alcoholic beverages from a guest room cabinet only in accordance with written policies and procedures filed with and approved by the Commission. A permittee shall provide a reasonable number of vending machines, coolers, or similar machines on premises for the sale of soft drinks to hotel guests.

A guest room cabinet permit may be issued ~~for to~~ any of the following:

- a. A hotel (i) holding a mixed beverages permit and (ii) located in a county subject to G.S. 18B-600(f).
- b. A hotel (i) holding a mixed beverages permit and (ii) located in a county that has a population in excess of 150,000 by the last federal census.
- c. ~~A qualifying private club~~ (i) holding a mixed beverages permit, (ii) having management contracts for the rental of living units, and (iii) located in a county defined in G.S. 18B-101(13a)b.2.
- d. An 18-hole golf course (i) holding a mixed beverages permit or located in a county where ABC stores have heretofore been established but in which the sale of mixed beverages has not been approved, (ii) having management contracts for the rental of living units, and (iii) located in a county that has a population in excess of 20,000 people by the last federal census."

**EFFECTIVE DATE**

**SECTION 9.** Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8<sup>th</sup> day of June, 2015.

s/ Daniel J. Forest  
President of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 10:05 a.m. this 19<sup>th</sup> day of June, 2015

1 04 NCAC 02R .2101 is proposed for adoption under temporary procedures as follows:  
2

3 **SECTION .2100 – DISTILLERY PERMIT HOLDERS’ SALE OF SPIRITUOUS LIQUOR DISTILLED ON**  
4 **PREMISES TO VISITORS OF THE DISTILLERY FOR CONSUMPTION OFF THE PREMISES**  
5

6 **04 NCAC 02R .2101 PRIOR APPROVAL FROM ABC COMMISSION**

7 (a) Prior to selling spirituous liquor on the premises to consumers, a distillery permittee shall submit a written  
8 request for approval to the Pricing Division of the Commission regarding its intent to sell bottles direct to  
9 consumers.

10 (b) The Pricing Division of the Commission shall verify compliance with G.S. 18B-1105(a)(4).

11 (c) Within 15 days of receipt of the request, the Pricing Division of the Commission shall notify the distiller  
12 permittee in writing of approval based on satisfying the requirements in Paragraph (b), or of disapproval and the  
13 reasons for disapproval.

14  
15 *History Note: Authority G.S. 18B-100; 18B-207; 18B-1105;*  
16 *Temporary Adoption Eff. October 1, 2015.*

1 04 NCAC 02R .2102 is proposed for adoption under temporary procedures as follows:

2  
3 **04 NCAC 02R .2102 RETAIL SALES AT DISTILLERY'S PERMITTED PREMISES**

4 (a) No retail sales shall be made on the distillery's permitted premises on:

5 (1) New Year's Day;

6 (2) Fourth of July;

7 (3) Labor Day;

8 (4) Thanksgiving Day;

9 (5) Christmas Day;

10 (6) Any Sunday; or,

11 (7) Any other day between the hours of 9:00 PM and 9:00 AM.

12 (b) Any distillery employee involved with the sale of spirituous liquor to the consumer shall be at least 18 years of  
13 age.

14 (c) Distillery products to be sold direct to consumers shall be stored in a retail area in the permitted premises  
15 separate from distillery products to be shipped to the ABC Commission warehouse in Raleigh for sale to local ABC  
16 boards.

17 (d) The distillery permittee shall not sell any bottle of spirituous liquor to a consumer until after the consumer has  
18 completed a tour of the distillery.

19  
20 History Note: Authority G.S. 18B-100; 18B-207; 18B-802; 18B-1105;

21 Temporary Adoption Eff. October 1, 2015.

1 04 NCAC 02R .2103 is proposed for adoption under temporary procedures as follows:

2

3 **04 NCAC 02R .2103 DISTILLERY RECORD-KEEPING**

4 Distillery permittee's electronic records, as required by G.S. 18B-1105(a)(4), shall be available for inspection by  
5 alcohol law enforcement officers and employees of the Commission at any time an employee is present on the  
6 permitted premises.

7

8 *History Note: Authority G.S. 18B-100; 18B-207; 18B-1105;*

9 *Temporary Rule Eff. October 1, 2015.*