



## North Carolina ABC Legislative Wrap-Up 2014

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The 2014 legislative short session adjourned on August 20, 2014. The General Assembly passed several bills affecting alcoholic beverages in North Carolina. Significant provisions of those bills are summarized below.

### S734- Regulatory Reform Act of 2014

The Regulatory Reform Act, SB 734, went into effect on September 18, 2014. It includes provisions that allow colleges with brewing programs to obtain licenses to begin selling beer produced during the program to wholesalers and retailers. See new G.S. 18B-1114.6. The bill also allows colleges with brewing programs to sell beer at an off campus retail location in the county, to sell beer at beer festivals and special events, and to conduct free tastings. As a result of the new provisions, colleges will be able to gain exposure for their brewing programs, recoup costs to fund the programs, and allow students to gain feedback on the beers they create, as well as gain experience in the marketing and sales process.

The bill is an exception to the Umstead Act, which generally prohibits state agencies from competing with private businesses.

A similar statute already exists for the sale of wine produced from colleges that hold viticulture and winemaking courses. See G.S. 18B-1114.4.

Details on the new legislation are included below.

### Brewing/Distillation/Fermenting Course Authorization and Sale of Beer Produced at Wholesale and Retail

The legislation provides that a college or community college that offers a brewing, distillation, and fermentation program as part of its curriculum may:

1. Manufacture malt beverages on the school's campus or the school's contracted or leased

- property for purposes of providing educational instruction;
2. Possess malt beverage manufactured during the program for conducting tastings seminars and classes for students 21 years and up;
  3. Sell malt beverages produced during the course to wholesalers or to retailers, upon obtaining a malt beverage wholesaler permit. The school as permittee may not receive shipments of malt beverages from other producers;
  4. Sell malt beverages produced during the course to individuals at retail at one noncampus location in a county where the permittee holds and offers classes on a regular full-time basis in a facility owned by the permittee, upon obtaining an off-premises malt beverage permit;
  5. Sell malt beverages produced during the course at retail by the glass or in closed containers and/or provide free tastings of its malt beverages at special events, including trade shows, conventions, shopping malls, malt beverage festivals, street festivals, holiday festivals, agricultural festivals, balloon races, and other local fund-raisers, upon obtaining a malt beverage wholesaler permit and malt beverage special event permit. The college or community college may participate in no more than 6 malt beverage special events within a 12 month period and may sell up to 64 cases of malt beverages, or its equivalent, at each event. For purposes of this section, a "case of malt beverages" equals a package of no more than 24 12-ounce bottles. Net proceeds from the retail sale of the malt beverages shall be retained by the school for the support of the brewing, distillation, and fermentation program.

The legislation provides that a college or community college acting under these provisions shall not be considered a "brewery" for purposes of North Carolina ABC laws and taxation laws. This means that the North Carolina Beer Franchise Law, which governs brand disputes and commercial relationships between suppliers and wholesalers for the right to offer and sell brands of malt beverages in the state, would not apply to colleges or community colleges offering brands to wholesalers. The "brewery" exemption will likely also offer colleges significant tax savings and may prevent colleges from having to comply with some of the ABC regulations on marketing and advertising.

#### **S744 ? Appropriations Act of 2014 (Budget)**

##### **Transfer of ABC Commission to Department of Public Safety**

The 2014 state budget bill transfers the North Carolina ABC Commission ("ABC Commission") from the North Carolina Department of Commerce to the North Carolina Department of Public Safety, effective October 1, 2014.

While the legislation provides that the ABC Commission shall exercise its powers independently of the Secretary of Public Safety, the fact that the ABC Commission has been transferred out of the Department of Commerce could indicate a willingness of the ABC Commission to view matters arising before it with a heightened view on regulation rather than the promotion of commerce. The move also aligns the ABC Commission more closely with the North Carolina Alcohol Law Enforcement ("ALE"), the state's police arm for alcoholic beverages and a branch of the State Bureau of Investigation, under

the Department of Public Safety.

ABC Commission Deputy Administrator Bob Hamilton, along with the North Carolina Rules Review Commission, are evaluating whether the ABC Commission's regulations, currently found within the Department of Commerce regulations in Title 4 of the North Carolina Administrative Code, will move or be re-numbered.

### **ABC Permit Fee Increase**

The budget bill also increases ABC permit fees. Renewal fees for mixed beverage permittees increase from \$750 to \$1,000. Annual registration fees for malt beverage, fortified wine, and unfortified wine permits increase from \$200 to \$400 for each permit held, effective for permits issued after July 1, 2014.

### **30 Day Suspension of ABC Permits for Certain Criminal Charges**

Another budget provision provides that the ABC Commission shall immediately suspend ABC permits for 30 days if (1) ALE or local ABC board officers provide the ABC Commission notice of an undercover operation, and (2) as a result of the undercover operation, five or more persons are criminally charged with violations of the gambling, disorderly conduct, prostitution, controlled substance, or felony criminal counterfeit trademark laws. This new provision applies to criminal charges filed on or after October 1, 2014.

## **H1050 ? Omnibus Tax Law Changes**

Effective May 1, 2015, the ABC Commission will require compliance with tax laws by ABC permittees and will have new enforcement mechanisms to review and confirm state tax compliance.

### **Compliance with Tax Laws by ABC Permittees**

In order to be eligible to receive and continue to hold an ABC permit, an applicant or permittee must be current in filing all applicable tax returns to the State and must be current in payment of all taxes, interest, and penalties. The legislation does not apply to special occasion permits, special one-time permits, and salesman permits.

The undue hardship provision, which allows the ABC Commission to decline to take action against a permittee in violation of certain ABC laws, does not apply to these tax provisions.

### **New Procedure to Confirm State Tax Compliance**

The new legislation provides that upon request of the ABC Commission, the North Carolina Department of Revenue must provide information to the ABC Commission to confirm a person's compliance with applicable tax laws. If the Department of Revenue notifies the ABC Commission that a person is not in compliance, the ABC Commission may not issue or renew the person's permit until the ABC Commission receives notice from the Department of Revenue that the person is in compliance.

While statutes provide that state employees having access to tax information may not disclose the information to others, the legislation carves out an exception for state employees to provide the information to the ABC Commission for purposes of compliance with state tax laws.

### **Denials of ABC Permits for Failure to Comply with Tax Laws are Not Contested Cases**

The legislation provides that a person affected by an ABC Commission action on issuance, suspension, or revocation of an ABC permit for failure to satisfy tax laws is not eligible to file a petition for a contested case hearing for review of the issue by an administrative law judge, as the matter is not a "contested case" under the North Carolina Administrative Procedure Act. Therefore, there is likely no remedy for a person denied the issuance or renewal of an ABC permit by the ABC Commission, other than becoming compliant with applicable tax laws or possibly pursuing expensive litigation in the court system.

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