

Summary of ABC Omnibus Legislation (HB 500)

Section 1 – “Authorize Sale of Growlers by Retail Permittees”

A “growler” is a 32-ounce aluminum container that is individually sealed with a lid that resembles a traditional can top. Currently, retailers are permitted to fill and sell growlers for off-premises consumption. The statute does not call a growler by name, but describes an authorized container as a “cleaned, sanitized, and resealable” container. A growler container is not resealable, and thus retailers are not currently permitted to fill and sell those containers as they would a growler. Section 1 revises the description of a growler to remove the requirement that the container be “resealable.” This revision would bring a growler within the statutory description of a growler, and would allow retail permittees to fill and sell growlers of beer and wine for off-premises consumption.

Section 2 – “Authorize Off-Site Storage Location for Breweries, Wineries, and Distilleries”

Currently, all activities that require an ABC permit must be conducted on the licensed premises. There are no provisions for any kind of off-site storage of alcohol under North Carolina law, for either retail or commercial permittees. Federal law allows a producer of alcohol to use an off-site storage location, if the location is within a “reasonable proximity” to the licensed location. This Section would allow a producer, which has obtained the specific approval of the Alcohol & Tobacco Tax & Trade Bureau, to operate an off-site storage location where alcohol may be stored. Breweries (as well as wineries and distilleries) are growing at a rapid rate, and many are limited by the size of their current locations. By allowing the off-site storage of alcohol, North Carolina producers will have more flexibility with respect to growth, and will not be forced to move locations or open a second production location simply because the business has run out of space at the current location.

Section 3 – “Authorize Sale of Unfortified Wine On-Premises by Retail Businesses”

Under current laws, a business that does not sell any food is eligible to hold a permit allowing for the on-premises consumption of beer. However, most businesses (those other than a winery, private club, community theater, cooking school, or convention center) must sell enough food to qualify as an “eating establishment” in order to be eligible for a permit allowing for the on-premises consumption of unfortified wine (wine 16% alcohol by volume and under). An eating establishment is one that is “engaged in the business of regularly and customarily selling food, primarily to be eaten on the premises.” Section 3 enables a retail business, such as a brewery or bottle shop, that does not sell any food, to obtain a permit allowing for the on-premises consumption of unfortified wine.

Section 4 – “Authorize Tastings During Brewery Tours”

It is currently unclear under the statute whether breweries are permitted to give samples or glasses of beer to brewery visitors taking a tour of the premises. The statute allows a brewery to give beer to “its employees and guests,” and this leaves the statute open to the interpretation that a brewery may only give products to personal guests, or only to guests of the brewery’s employees. Section 4 would make explicit that a brewer is allowed to give

products to a tour participant (either paid or complimentary), or any other visitor to the brewery.

Section 5 – “Authorize Certain Person to Sample Alcoholic Beverages for Purposes of Sensory Analysis, Quality Control, or Education”

There are regulations prohibiting a permittee from engaging in alcohol consumption on the premises. It is unclear whether these regulations apply solely to retail permittees, or if the prohibition against consumption on the premises also applies to commercial permittees. It is necessary for commercial permittees to engage in the sampling of alcohol on the premises to monitor flavor, consistency, and quality control. Further, commercial permittees of all kinds must be allowed to provide samples of their products to employees on the premises for the purposes of education and training. This Section would make these privileges explicit.

Section 6 – “Amend Homebrewing Laws”

The home production of beer and wine is permissible in North Carolina. However, the privileges do not match the privileges granted by federal law, particularly with respect to the ability for homebrewers and home winemakers to take homemade products to organized exhibitions or competitions. This Section would bring the North Carolina statute closer to the federal rules governing homemade beer and wine, and would allow homebrewers and home winemakers to take their products to events such as a competition, where their products are evaluated by trained judges who provide feedback.

Section 7 – “Clarify Law Governing Relationship Between Breweries and Affiliated Retailers”

North Carolina law prohibits a brewery from giving anything of value (such as money, services, equipment, furniture, fixtures, etc.) to an alcoholic beverage retailer in North Carolina. A brewery is allowed to operate up to four retail locations, including an onsite taproom and three additional offsite retail locations. The law prohibiting a brewery from giving anything of value to a retailer provides an exception for the “retail business on its premises.” Section 7 would revise this law to make clear that the prohibition against a brewery giving anything of value to a retailer does not include a brewery’s interactions with its onsite taproom or its three additional offsite retail locations.

Section 8 – “Authorize Brewery Taprooms to Sell Other Alcoholic Beverages Upon Receiving the Appropriate Permit”

There is currently a lack of clarity regarding whether a brewery may sell only its own beer at its onsite taproom, or whether a brewery may also sell beer produced by other breweries at its onsite taproom. Some breweries sell only their own products at their onsite taproom, but many breweries desire to also feature beer produced by other breweries alongside their own products. This Section would explicitly allow a brewery to sell any alcoholic beverage at its onsite taproom that is approved in North Carolina, only after receiving the appropriate retail permit.

Section 9 – “Authorize Breweries with Production Facilities in Other States to Distribute to Wholesalers”

The number of breweries with multiple production facilities is growing, and sometimes breweries have production facilities in two different states. Currently, the law allows an in-state brewery to receive beer from an out-of-state brewery, but only for transshipment to wholesalers in other states. However, a brewery may desire for reasons of efficiency to bring in beer from out-of-state to sell to both an out-of-state wholesaler and an in-state wholesaler, rather than needing to make two separate shipments. Section 9 would revise the statute to allow a brewery to receive beer from an out-of-state brewery for ultimate shipment to a wholesaler within the state.

Section 10 – “Authorize Farm Breweries”

Currently, an unfortified or a fortified winery is permitted to sell its products at the winery for on- or off-premises consumption, “regardless of the results of any local wine election.” However, a brewery is currently not granted the same privilege, and a brewery may only sell beer at the brewery in a locality that permits the sale of beer. This Section would achieve parity between wineries and farm breweries with respect to sales at the production location, by allowing a farm brewery to sell beer for on- or off-premises consumption at the brewery, “regardless of the results of any local malt beverage election.” The brewery must produce agricultural products, such as barley or other grains, hops, or fruit, that are used by the brewery in the production of beer.

Section 11 – “Amend Law Governing Self-Distribution by Breweries and Sales at Additional Retail Locations”

Currently, breweries that sell fewer than 25,000 barrels of beer annually (either at retail or wholesale) are eligible for a wholesaler permit, allowing the brewery to self-distribute its beer within North Carolina. Section 11 would revise the eligibility cap from a 25,000 barrel cap on the total sales of beer, to a 200,000 barrel annual limit on a brewery’s self-distribution of beer. These revisions would permit any brewery to obtain a wholesale permit to self-distribute up to 200,000 barrels of beer annually to retailers within NC.

Further, Section 11 would amend a brewery’s ability to operate three additional retail locations and achieve parity between wineries and breweries with respect to additional retail locations. Currently, a brewery may only operate three additional retail locations if the brewery sells fewer than 25,000 barrels of beer annually. However, wineries are currently able to operate three additional retail locations, regardless of how much wine the winery produces, sells, or self-distributes. Section 11 would allow a brewery the same privilege—to operate three additional retail location regardless of how much beer is produced, sold, or self-distributed by the brewery.

Section 12 – “Small Breweries / Amend Law Governing Termination of Franchise Agreement”

North Carolina has enacted franchise laws governing distribution agreements between breweries and wholesalers. Generally, the franchise laws provide that a brewery may not terminate, amend, or fail to renew a distribution agreement with a wholesaler, unless the brewery has “good cause” to do so. Currently, a brewery that sells fewer than 25,000 barrels of

beer annually (either at retail or wholesale) is exempt from the “good cause” requirement, and may terminate a distribution agreement with a wholesaler with or without cause, by providing five days’ notice to the wholesaler and paying the wholesaler the “fair market value” of the distribution rights.

Section 12 revises the definition of small brewery to one that produces less than 200,000 barrels annually. Further, Section 12 makes the procedures for termination by a small brewery more predictable. Determining “fair market value” is challenging, and costly and time-consuming litigation may be required to finally settle the matter. Section 12 revises the franchise law governing small brewery terminations to provide that termination is effective immediately, and that “fair compensation” may be determined by the parties in advance in the distribution agreement. Further, if the parties cannot determine “fair compensation” within 12 months, the parties would be required to submit the dispute to arbitration.