

## Impact Analysis

### 04 NCAC 02S .0102 APPLICATIONS FOR PERMITS: GENERAL PROVISIONS

Alcoholic Beverage Control Commission

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Authority: G.S. 18B-100; 18B-207; 18B-900, 18B-901(d), 18B-902, 18B-903, 18B-905, 18B-1000(3), 18B-1001, 18B-1008, 18B-1009

Impact Summary: State Government: No

Local Government: No

Substantial Economic Impact: No

These rule changes (see proposed text in Appendix) are necessary to comply with Session Law 2013-83 that requires the North Carolina Alcoholic Beverage Control Commission to adopt rules for the suspension of alcohol sales in the latter portion of professional sporting events in order to protect public safety at the events and after the events. The provisions in the rule changes prohibit the use of branded clothing, carrying trays, coolers and other equipment for transporting malt beverages due to the requirements of keeping the three tier system separate. There is also a provision in the rule changes that allows for the display of the product names and prices as long as the font size and font style are the same. This is to give the different brands an equal advertising opportunity.

Under the proposed rule, there are conditions on permittees who wish to sell malt beverages in stands:

- no wearing or displaying alcoholic beverage branded advertising;
- no using branded trays, coolers or other equipment;
- display guidelines for malt beverage product names and prices; and
- timeframes for the cessation of in-stand sales during professional sporting events.

The timeframes for the cessation of in-stand sales were drawn from the suggested information from TEAM (Techniques for Effective Alcohol Management) Coalition. TEAM Coalition is a alliance of professional and collegiate sports, entertainment facilities, concessionaires, stadium service providers, the beer industry, broadcasters, government traffic safety experts, and others working together to promote responsible drinking and positive fan behavior at sports and entertainment facilities.

## **Impact on the Private Sector**

The decision to provide in-stand malt beverage sales is a voluntary decision that permittees of stadiums, ballparks and other similar public places with a seating capacity of less than 60,000 and equal to or over 3,000 cannot make under the current rules. Only permittees who choose to have in-stand sales might be impacted by these rule amendments.

There are three professional hockey teams, one professional basketball team, four professional soccer teams, one motorsports facility and nine professional baseball teams whose facilities have the potential to be impacted by the Statute and rule changes. The professional hockey facilities have informed the ABC Commission they will not provide in-stand malt beverage sales due to safety issues.

The N.C. Beer and Wine Wholesalers Association lobbied for the Statute changes and stated they provided no data to Legislators regarding increased malt beverage sales. They stated they do not foresee increased malt beverage sales. The primary reason for the requested statutory amendment was the increased convenience for the patrons. Fewer patrons would miss parts of the event by leaving their seats to purchase malt beverages, and there would be smaller lines at the concession booths. Although the N.C. Beer and Wine Wholesalers Association stated that they do not foresee increased sales of malt beverages to result from allowing in-stand sales in eligible sports facilities, the increased convenience could possibly result in at least some increase in sales at eligible venues. Based on available evidence, the Commission is unable to estimate the potential impact on malt-beverage sales.

The rules do not require the permittees to spend additional funds on permits, clothing or equipment to transport the malt beverages. The rules do require the cessation of in-stand malt beverage sales at the later part of a sporting event, but does not require the cessation of malt beverage sales in the other approved areas of the facilities. Several professional sport associations already have established times for the cessation of alcoholic beverage sales that many of the professional sport venues have adopted, thus reducing the potential impact of the proposed rules.

The Commission researched the internet for any data or statistics in reference to in-stand malt beverage sales and found no results regarding increased or decreased sales figures, Driving Under the Influence charges, alcohol involved motor vehicle accidents, underage drinking and serving to intoxicated persons. There is some evidence, based on the 2011 decision of West Virginia University to allow sales of malt beverages at home football games, indicating that increasing the convenience of purchasing malt beverages at sporting events may have little or no

adverse impacts on alcohol-related incidents including violent behavior or driving under the influence.<sup>1</sup>

### **Impact on State Government**

There will be no impact on State government. All of the locations to offer in-stand malt beverage sales already have on-premises malt beverage permits, the ABC Commission will not issue any additional permits. The Commission foresees little to no increase in malt beverages sales due to this rule change. Because of this, the Commission believes there will be little to no impact on enforcement related costs to both State and local governments.

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<sup>1</sup> ["Can selling beer help college fans drink less?" \*Marketplace\*. American Public Media. September 4, 2012. <http://www.marketplace.org/topics/life/freakonomics-radio/can-selling-beer-help-college-fans-drink-less>](http://www.marketplace.org/topics/life/freakonomics-radio/can-selling-beer-help-college-fans-drink-less)

## APPENDIX

04 NCAC 02S .0102 is proposed for amendment as follows:

### **04 NCAC 02S .0102      APPLICATIONS FOR PERMITS: GENERAL PROVISIONS**

(a) Forms. Application forms for all ABC permits may be obtained from the North Carolina Alcoholic Beverage Control Commission.

(b) Statutory Requirements. Before the issuance of any ABC permit, an applicant shall comply with the statutory requirements of Articles 9 and 10 of Chapter 18B of the General Statutes and with the rules of the Commission.

(c) Separate Permits Required. An applicant operating separate buildings or structures not connected directly with each other or businesses with separate trade names shall obtain and hold separate permits for each building or business for which he or she wants permits, and ~~he~~ shall pay the appropriate application fees as provided in G.S. 18B-902(d). Where there are multiple buildings, and the Commission determines that the business is operated as one entity, the Commission may, in its discretion, issue one permit.

(d) Information Required on Application. An applicant for an ABC permit shall file a written application with the Commission and in the application shall state, under oath, the following information:

- (1) name and address of applicant;
- (2) corporate, limited liability company or partnership name;
- (3) mailing address and location address of business for which permit is desired, and county in which business is located;
- (4) trade name of business;
- (5) name and address of owner of premises;
- (6) applicant's date and place of birth;
- (7) if a corporation or limited liability company, the name and address of agent or employee authorized to serve as process agent (person upon whom legal service of Commission notices or orders can be made);
- (8) if a non-resident, name and address of person appointed as attorney-in-fact by a power of attorney;
- (9) a diagram of the premises showing:
  - (A) entrances and exits;
  - (B) storage area for alcoholic beverages; and
  - (C) locations where alcoholic beverages will be served or consumed;
- (10) that the applicant is the actual and bona fide owner or lessee of the premises for which a permit is sought and shall submit a copy or memorandum of the lease showing the applicant as tenant, or a copy of the deed showing the applicant as the grantee or owner;
- (11) that the applicant intends to carry on the business authorized by the permit himself or under his immediate supervision and direction; and
- (12) that the applicant is an actual and bona fide resident of the State of North Carolina or, as a non-resident, has appointed, by a power of attorney, a resident manager to serve as attorney-in-fact

who will manage the business and accept service of process and official Commission notices or orders.

(e) General Restriction; Living Quarters. No permit for the possession, sale or consumption of alcoholic beverages shall be issued to any establishment when there are living quarters connected directly thereto, and no permittee shall establish or maintain living quarters in or connected to his licensed premises.

(f) General Restriction; Restrooms. No permit for the on-premises possession, sale, or consumption of alcoholic beverages shall be issued to any establishment unless there are two restrooms in working order on the premises. ~~This requirement shall be waived upon a showing that the permittee~~ The Commission will waive this requirement upon a showing by the permittee that he or she will suffer financial hardship or the safety of the employees will be jeopardized.

(g) Areas for Sales and Consumption. In determining the areas in which alcoholic beverages will be sold and consumed, the Commission shall consider the convenience of the permittee and his patrons, allowing the fullest use of the premises consistent with the control of the sale and consumption of alcoholic beverages, but will attempt to avoid consumption in areas open to the general public other than patrons.

(h) Temporary Permits for Continuation of Business. The Commission may issue temporary permits to an applicant for the continuation of a business operation that holds current ABC permits when a change in ownership or location of a business has occurred. To obtain a temporary permit an applicant shall submit the appropriate ABC permit application form, all required fees, a lease or other proof of legal ownership or possession of the property on which the business is to be operated, and a written statement from the ALE agent in that area stating that there are no pending ABC violations against the business. An applicant for a temporary permit shall also submit the permits of the prior permittee for cancellation prior to the issuance of any temporary permit. No temporary permit shall be issued to any applicant unless all prior ABC permits issued for the premises have been cancelled by the Commission.

(i) Retail Sales at Public Places Restricted. The sale and delivery of alcoholic beverages by permitted retail outlets located on fair grounds, golf courses, ball parks, race tracks, and other similar public places are restricted to an enclosed establishment in a designated place. No alcoholic ~~beverages,~~ beverages shall be sold, ~~served,~~ served or delivered by these outlets outside the enclosed establishment, nor in grandstands, stadiums or bleachers at public gatherings.

As used in this ~~Rule,~~ Paragraph, the term "enclosed establishment" includes a temporary structure or structures constructed and used for the purpose of dispensing food and beverages at events to be held on fairgrounds, golf courses, ball parks, race tracks, and other similar places.

Sales of alcoholic beverages may be made in box seats only under the following conditions:

- (1) table service of food and non-alcoholic beverages are available to patrons in box seats;
- (2) no alcoholic beverages are delivered to the box seats area until after orders have been taken; and
- (3) box seat areas have been designated as part of the permittee's premises on a diagram submitted by the permittee, and the Commission has granted written approval of alcoholic beverage sales in these seating areas.

(j) Separate Locations at Airport. If one permittee has more than one location within a single terminal of an airport boarding at least 150,000 passengers annually and that permittee leases space from the airport authority, the permittee in such a situation may:

- (1) obtain a single permit for all its locations in the terminal;
- (2) use one central facility for storing the alcoholic beverages it sells at its locations; and
- (3) pool the gross receipts from all its locations for determining whether it meets the requirements of G.S. 18B-1000(6) and 04 NCAC 02S .0519.

(k) Food Businesses. Unless the business otherwise qualifies as a wine shop primarily engaged in selling wines for off-premise consumption, a food business qualifies for an off-premise fortified wine permit only if it has and maintains an inventory of staple foods worth at least one thousand five hundred dollars (\$1,500) at retail value. Staple foods include meat, poultry, fish, bread, cereals, vegetables, fruits, vegetable and fruit juices and dairy products. Staple foods do not include coffee, tea, cocoa, soft drinks, candy, condiments and spices.

(l) Professional Sporting Events. Notwithstanding Paragraph (i) of this Rule, holders of a retail permit pursuant to G.S. 18B-1001(1) may sell malt beverages for consumption in the seating areas of stadiums, ball parks and similar public places with a seating capacity of 3,000 or more during professional sporting events pursuant to G.S. 18B-1009, provided that:

- (1) the permittee or the permittee's employee shall not wear or display alcoholic beverage branded advertising;
- (2) the permittee or the permittee's employee shall not use branded carrying trays, coolers or other equipment to transport malt beverage products;
- (3) the permittee or the permittee's employee may display the malt beverage product names and prices provided that all of the product names are displayed with the same font size and font style; and
- (4) in-stand sales shall cease, whichever is earlier, upon the cessation of other malt beverage sales or upon the commencement of:
  - (A) the eighth inning during baseball games, provided that if a single ticket allows entry to more than one baseball game, then the eighth inning of the final game;
  - (B) the fourth quarter during football and basketball games;
  - (C) the sixtieth minute during soccer games;
  - (D) the third period during hockey games;
  - (E) the final 25 percent of the distance scheduled for automotive races; and
  - (F) the final hour of the anticipated conclusion of a contest or event for all other events.

*History Note: Authority 18B-100; 18B-206(a); 18B-207; 18B-900; 18B-901(d); 18B-902; 18B-903; 18B-905; 18B-1000(3); 18B-1001; 18B-1008; 18B-1009; Eff. January 1, 1982; Amended Eff. October 1, 2014; January 1, 2011; July 1, 1992; May 1, 1984; Temporary Amendment Eff. October 25, 2013.*