

**2011-2012**

**HOUSE  
COMMERCE & JOB  
DEVELOPMENT -  
SUBCOMMITTEE ON  
ALCOHOLIC BEVERAGE  
CONTROL**

**MINUTES**

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## House Committee Commerce and Job Development Subcommittee on Alcoholic Beverage Control

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The House Committee on Commerce and Job Development, Subcommittee on Alcoholic Beverage Control met on Wednesday, March 16, 2011, in Room 425 of the Legislative Office Building.

The following members were present: Chairman Jamie Boles and committee members Rep. Larry Bell, Rep. Larry Brown, Rep. Bill Cook, Rep. Frank McGuirt, Rep. Bill Current, Rep. Susi Hamilton, Rep. Carolyn Justice, Rep. David Lewis, Rep. Marvin Lucas, Rep. Marian McLawhorn, Rep. Ray Rapp, Rep. Ruth Samuelson, Rep. Tim Spear, Rep. Edgar Starnes, Rep. Edith Warren, Rep. Harry Warren, and Rep. Roger West. Brenda Carter and Erika Churchill, Research Staff were also in attendance.

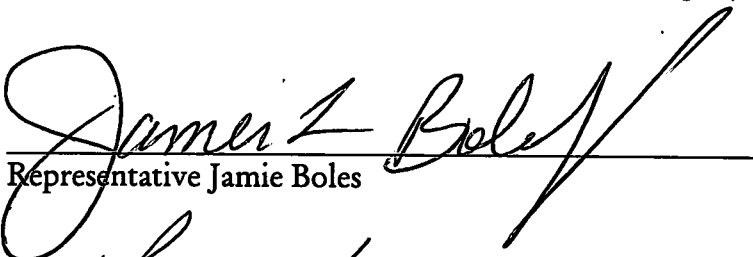
The Chair informed the committee the agenda had changed and only **House Bill 90, Confectioners may use up to 5% Alcohol by Volume**, would be heard at the meeting. Representative Deborah Ross, the bill sponsor, was asked to explain the bill.

Representative Larry Brown made a motion to adopt a proposed committee substitute for House Bill 90 to be discussed. Motion was passed. Representative Ross explained the proposed committee substitute. In addition to discussion by the members, David McLeod with the NC Department of Agriculture spoke in favor of the bill. An amendment was offered by Representative Harry Warren to list alcohol content information when selling such confectionery products. Motion was made by Representative Edgar Starnes to adopt the amendment and roll it into the proposed committee substitute. Motion passed.

Representative Larry Brown made a motion with a favorable report to the proposed committee substitute, unfavorable to the original bill.

The Chair then introduced Michael Crowell from the NC School of Government for a presentation regarding the history of the ABC Commission from prohibition until the present.

There being no further business, the meeting adjourned at 11:00 a.m.

  
Representative Jamie Boles

  
Rebecca Butler, Committee Assistant

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2011-2012 SESSION**

You are hereby notified that the Committee on **Commerce and Job Development Subcommittee on Alcoholic Beverage Control** will meet as follows:

**DAY & DATE:** Wednesday, March 16, 2011

**TIME:** 10:00 am

**LOCATION:** 425 LOB

**COMMENTS:**

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 90	Confectioners may use up to 5% Alcohol By Vol.	Representative Ross
HB 98	Breweries to Sell Malt Beverages on Premises.	Representative McGrady
HB 189	Require ABC Permittees to Be Tax Compliant.	Representative Hamilton Representative Harrison Representative Iler Representative Keever

Respectfully,  
Representative Boles, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **12 PM** o'clock on **March 09, 2011**.

- ☐ Principal Clerk  
☐ Reading Clerk – House Chamber

**Rebecca Butler** (Committee Assistant)



**2011- 2012 Commerce and Job Development**

**Subcommittee on Alcoholic Beverage Control**

**Wednesday, March 16, 2011**

**AGENDA**

**Opening Remarks**

**Representative Jamie Boles, Chairman**

**Agenda Items**

**HB 90 Confectioners May Use Up to 5% Alcohol by Volume**

**HB 98 Breweries to Sell Malt Beverages on Premise**

**HB 189 Require ABC Permittees to be Tax Compliant**

**Presentation**

**Michael Crowell, NC Institute of Government**

**"An Overview and Brief History of ABC Law"**

**Adjourn**

## ATTENDANCE

**House Committee Commerce and Job Development/Subcommittee on Alcoholic Beverage Control**

2011-2012 Session

[illegible]

2011 PERMANENT SUBCOMMITTEE REPORT

HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

The following report(s) from permanent sub committee(s) is/are presented:

By Representative(s) Boles (Chair) for the Commerce and Job Development Subcommittee on Alcoholic Beverage Control.

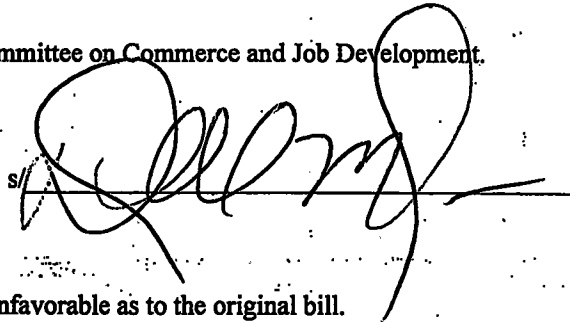
☐ Committee Substitute for

**HB 90** A BILL TO BE ENTITLED AN ACT TO ALLOW CONFECTIONERS TO PRODUCE CONFECTIONERIES WHICH CONTAIN NO MORE THAN FIVE PERCENT ALCOHOL BY VOLUME.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas (Chair) for the Standing Committee on Commerce and Job Development.

s/ 

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

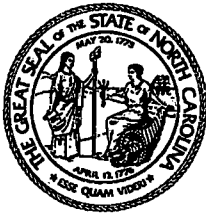
**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ Pursuant to Rule 36(b), the committee substitute resolution is placed on the Calendar of \_\_\_\_\_. The original resolution is placed on the Unfavorable Calendar.



## HOUSE BILL 90: Confectioners may use up to 5% Alcohol By Vol

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Alcoholic Beverage Control	<b>Date:</b>	March 15, 2011
<b>Introduced by:</b>	Rep. Ross	<b>Prepared by:</b>	Brenda J. Carter
<b>Analysis of:</b>	First Edition		Committee Counsel

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**SUMMARY:** *House Bill 90 would amend the N.C. Food, Drugs, and Cosmetics Act to allow confectionery food items to bear or contain an alcohol content of up to 5% alcohol by volume without being deemed to be adulterated in violation of the law.*

**CURRENT LAW:** Under G.S. 106-122 the "adulteration" or misbranding of any food, drug, device, or cosmetic is unlawful. The manufacture, sale, delivery, holding or offering, and receipt in commerce of an adulterated or misbranded product is also unlawful. Adulterated food is generally food that is impure, unsafe, or unwholesome. G.S. 106-129 specifies what foods are deemed to be adulterated. One of the factors that will cause a confection (such as candy or other sweets) to be deemed adulterated is that the item bears or contains alcohol beyond flavoring extracts that do not exceed .5% alcohol by volume. Violation of the law concerning adulterated food, drugs, or cosmetics is a Class 2 misdemeanor. Violators may also be subject to a civil penalty of up to \$2,000.

**BILL ANALYSIS:** House Bill 90 would amend G.S. 106-129, concerning certain foods deemed to be adulterated. The bill would allow confectionery food items to bear or contain an alcohol content of up to 5% alcohol by volume. This is an increase from the current level of .5%.

**EFFECTIVE DATE:** The bill would be effective when it becomes law.

H90-SMRV-12(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

D

HOUSE BILL 90  
PROPOSED COMMITTEE SUBSTITUTE H90-PCS70096-MA-4

Short Title: Confectioners may use up to 5% Alcohol By Vol.

(Public)

Sponsors:

Referred to:

February 15, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW CONFECTIONERS TO PRODUCE CONFECTIONERIES WHICH  
3 CONTAIN NO MORE THAN FIVE PERCENT ALCOHOL BY VOLUME.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 106-129(3) reads as rewritten:

6 "(3) If it is confectionery, and:

- 7 a. Has partially or completely imbedded therein any nonnutritive  
8 object: Provided, that this clause shall not apply in the case of any  
9 nonnutritive object if, in the judgment of the Board of Agriculture as  
10 provided by regulations, such object is of practical functional value  
11 to the confectionery product and would not render the product  
12 injurious or hazardous to health; or  
13 b. Bears or contains ~~any alcohol other than alcohol not in excess of one~~  
14 ~~half of one per centum (0.5%) by volume derived solely from the use~~  
15 ~~of flavoring extracts; or more than five percent (5%) alcohol by~~  
16 ~~volume. Confectionery that contains more than five-tenths of one~~  
17 ~~percent (0.5%) alcohol by volume shall conspicuously bear a label~~  
18 ~~indicating alcohol content; or~~  
19 c. Bears or contains any nonnutritive substance: Provided, that this  
20 clause shall not apply to a safe nonnutritive substance which is in or  
21 on confectionery by reason of its use for some practical functional  
22 purpose in the manufacture, packaging, or storing of such  
23 confectionery if the use of the substance does not promote deception  
24 of the consumer or otherwise result in adulteration or misbranding in  
25 violation of any provision of this Article; and provided further, that  
26 the Board may, for the purpose of avoiding or resolving uncertainty  
27 as to the application of this clause, issue regulations allowing or  
28 prohibiting the use of particular nonnutritive substances."

29 SECTION 2. This act is effective when it becomes law.



\* H 9 0 - P C S 7 0 0 9 6 - M A - 4 \*



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

D

HOUSE BILL 90  
PROPOSED COMMITTEE SUBSTITUTE H90-CSMA-4 [v.1]

3/7/2011 5:58:07 PM

Short Title: Confectioners may use up to 5% Alcohol By Vol.

(Public)

Sponsors:

Referred to:

February 15, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW CONFECTIONERS TO PRODUCE CONFECTIONERIES WHICH  
CONTAIN NO MORE THAN FIVE PERCENT ALCOHOL BY VOLUME.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-129(3) reads as rewritten:

"(3) If it is confectionery, and:

- a. Has partially or completely imbedded therein any nonnutritive object: Provided, that this clause shall not apply in the case of any nonnutritive object if, in the judgment of the Board of Agriculture as provided by regulations, such object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health; or
- b. Bears or contains ~~any alcohol other than alcohol not in excess of one half of one per centum (0.5%) by volume derived solely from the use of flavoring extracts; or more than five percent (5%) alcohol by volume; or~~ *confect* ; *or*
- c. Bears or contains any nonnutritive substance: Provided, that this clause shall not apply to a safe nonnutritive substance which is in or on confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storing of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of any provision of this Article; and provided further, that the Board may, for the purpose of avoiding or resolving uncertainty as to the application of this clause, issue regulations allowing or prohibiting the use of particular nonnutritive substances."

SECTION 2. This act is effective when it becomes law.



**ABC Subcommittee Meeting**

March 16, 2011

**Pages**

Coby Styers	Montgomery County	Sponsored by Rep. Justin Burr
Brooke Wilson	Edgecombe County	Sponsored by Rep. Joe Tolson
Shonthini McNeill	Scotland County	Sponsored by Rep. G. L. Pridgen
Zinaha Minnigan	Robeson County	Sponsored by Rep. Garland Pierce

**Sergeant at Arms**

Garland Shephard

Ken Kirby

HOUSE PAGES

NAME OF COMMITTEE ABC DATE MARCH 16, 2011

1. Name: BROOKE WILSON

County: EDGELOMBE

Sponsor: J. TOLSON

2. Name: Coby Styers

County: Montgomery

Sponsor: Justin Burr

3. Name: Shanthini McNeill

County: Scotland

Sponsor: G.L. Bridgen

4. Name: Zinaka Minnigan

County: Robeson

Sponsor: Garlin Pierse

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

ABC Subcommittee - Commerce

March 16, 2011

Name of Committee

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

Frank Gray	NCRLA
Kay Emanuel	Legislative Reporting Services
Anna Lockhart	NCDWMA
Kristen Laster	Fetzer Strategic
Michael Crowder	UNC School of Gov't
Michelle Frazier	MFVS
Andy Ellen	NCRMA
John Marx	Policy Group
Ken Melton	K.M.A.
John McNeill	MFVS
Amy McConkey	NC Bev Assn


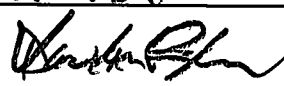
# VISITOR REGISTRATION SHEET

ABC Subcommittee - Commerce and Job Development 3-16-2001

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	Misc
David McLeod	NCDACS
Barbara Conster	BKGC
Michael Houser	NC DOR
Tim KENT	NC Beer & Wine Wholesalers
Angel Sams	CAA
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
MARK SENTER	ALCOHOL LAW ENFORCEMENT
Bo Heath	McGuire Woods
Erin W Robinson	NCRMA
David Ferreri	



## House Committee Commerce and Job Development Subcommittee on Alcoholic Beverage Control

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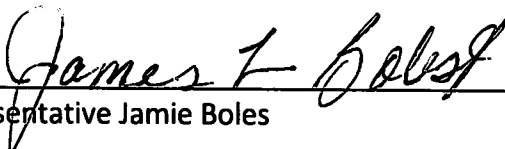
The House Committee on Commerce and Job Development, Subcommittee on Alcoholic Beverage Control met on Wednesday, April 6, 2011, 10:00 a.m., in Room 425 of the Legislative Office Building.

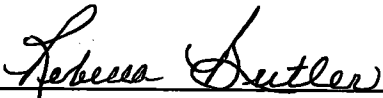
The following members were present: Chairman Jamie Boles and committee members Representatives Bell, Brown, Cook, Current, Hamilton, Justice, Lucas, McGuirt, McLawhorn, Samuelson, Starnes, E. Warren, H. Warren, and West.

Chairman Boles called the meeting to order and recognized the Pages, Sergeant-at-Arms and Staff members, thanking them for their assistance.

The Chair then introduced Tim Kent, Executive Director of the North Carolina Beer and Wine Association, for a presentation of "The Three Tier System – Economic Impact and Jobs". There were questions asked by the committee members who were addressed by Jonathan Williams, Chairman of the NC Alcoholic Beverage Control Commission; Paul Powell, Vice President and General Manager of American Premium Beverage.

There being no further business, the meeting adjourned at 11:00 a.m.

  
\_\_\_\_\_  
Representative Jamie Boles

  
\_\_\_\_\_  
Rebecca Butler, Committee Assistant

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2011-2012 SESSION**

You are hereby notified that the Committee on **Commerce and Job Development Subcommittee on Alcoholic Beverage Control** will meet as follows:

**DAY & DATE:** Wednesday, April 6, 2011

**TIME:** 10:00 am

**LOCATION:** 425 LOB

**COMMENTS:** Presentation by the North Carolina Beer and Wine Wholesalers Association

Respectfully,  
Representative Boles, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **12 PM** o'clock on **March 31, 2011**.

- ☐ Principal Clerk
- ☐ Reading Clerk – House Chamber

**Rebecca Butler** (Committee Assistant)



**2011- 2012 Commerce and Job Development**

**Subcommittee on Alcoholic Beverage Control**

**Wednesday, April 6, 2011**

**AGENDA**

**Opening Remarks**

**Representative Jamie Boles, Chairman**

**Presentation**

**Tim Kent, North Carolina Beer & Wine Wholesalers**

***The Three Tier System – Economic Impact and Jobs***

**Questions and Answers**

**Adjourn**



## ATTENDANCE

**House Committee Commerce and Job Development/Subcommittee on Alcoholic Beverage Control**  
2011-2012 Session

[illegible]

**ABC Committee Meeting**

**April 6, 2011**

**Pages**

**Alex Moffitt**

**Buncombe County, Rep. Hager, son of Rep. Moffitt**

**Razi (Ruzzy) Lane**

**Chowan County, Rep. Speer**

**Sergeant at Arms**

**Reginald Sills**

**Todd Bachelor**

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE ABC

DATE: 4-6-11 Room: 425

\*Name: BUZZY LANE

County: CHOWAN

Sponsor: TIMOTHY L. SPEAR

\*Name: Alex Moffitt

County: Buncombe

Sponsor: Hagar

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

House Sgt-At Arms:

1. Name: Raggie Sills

4. Name: \_\_\_\_\_

2. Name: Todd Batchelor

5. Name: \_\_\_\_\_

3. Name: \_\_\_\_\_

6. Name: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

ABC

4-6-11

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

MARK SENTER	ALCOHOL LAW ENFORCEMENT
John LEFORD	Alcohol Law Enforcement
Keith Whitfield	NC ABC LEO A
KATE FETZER	FETZER STRATEGIC PLANNERS
KRISTEN MASTER	Fetzer Strategic
KRIS GARDNER	NC BEER & WINE WHOLESALERS ASSOC.
Paul Powell	American Premium Beverage Co
Tim KENT	NC Beer & Wine Wholesalers
Anna Lockhart	NCBWA
Lori Ann Harris	LATA
Chris Valeri	NC Beer & Wine Wholesalers Assoc

# VISITOR REGISTRATION SHEET

ABC  
Name of Committee

4-6-11  
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Heather Barrett	Williams Mullen
Mary Powell	NC SA Federation
Rev. MARIL GREEN	CAL
Amy McConkey	NC Beverage Ass'n
TOM Fitzgerald	NC ASSOC. OF BEE & WINE WHOLE
Michelle Frazier	MF&S
Deborah Sanders	WCH
John Bando	WCH
Brando Smith	Rep. Melomash
Chuck Alton	SEPAH
Wendy Kelly	Poling Group

## VISITOR REGISTRATION SHEET

ABC

Name of Committee

4-6-11

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

**FIRM OR AGENCY AND ADDRESS**

Kevin LeCount


SEANC

Angel Sams

NSS

Fame St. Hall

GA



Misc



## House Committee Commerce and Job Development Subcommittee on Alcoholic Beverage Control

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The House Committee on Commerce and Job Development, Subcommittee on Alcoholic Beverage Control met on Wednesday, April 13, 2011, 10:00 a.m., in Room 425 of the Legislative Office Building.

The following members were present: Chairman Jamie Boles and committee members Representatives Bell, Brown, Current, Hamilton, Lucas, McGuirt, McLawhorn, Rapp, Samuelson, Spear, Starnes, Steen, H. Warren, and West.

Chairman Boles called the meeting to order to consider **House Bill 98, Breweries to Sell Malt Beverages on Premises**, and introduced Rep. Chuck McGrady to explain the bill.

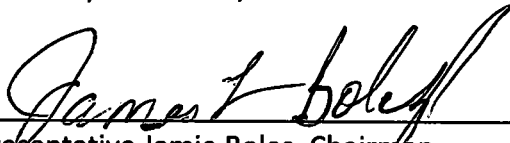
Rep. McGrady explained the intent of the bill. He referred to Brenda Carter, Committee Counsel to address the PCS to the first edition of the bill and to further address questions by the committee members. As this bill was scheduled for discussion only, there were no motions.

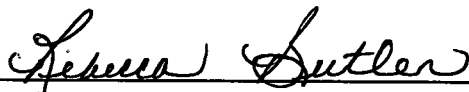
Chairman Boles introduced Justin Furr, Executive Director of the North Carolina Wine and Grape Council with the Department of Commerce for a presentation about the wine industry in North Carolina and the history of the Council and the processes, management and contributions of 106 vineyards that are currently in the state. See **Attachment 1**. Mr. Furr also handed out a map to each member showing the locations of the vineyards across the state. See **Attachment 2**.

Chairman Boles then introduced Terri Beirne, Eastern Counsel for the Wine Institute of America. She gave an overview of the Wine Institute whose members represent 95% of California production and 85% of US wine production. See **Attachment 3**. Ms. Beirne answered questions by the members about distribution and volume issues.

Chairman Boles thanked the staff for their work to the Committee. He adjourned the meeting at 11:00 a.m.

Respectfully submitted,

  
Representative Jamie Boles, Chairman

  
Rebecca Butler, Committee Assistant



**2011- 2012 Commerce and Job Development**

**Subcommittee on Alcoholic Beverage Control**

**Wednesday, April 13, 2011**

**AGENDA**

**Opening Remarks**

**Representative Jamie Boles, Chairman**

**Agenda Items**

**HB 98   *Breweries to Sell Malt Beverages on Premises***

**Rep. Chuck McGrady**

**Presentations**

**Justin Furr, Executive Director**

**NC Wine and Grape Council, Dept. of Commerce**

**Terri Beirne, Eastern Region Counsel**

**The Wine Institute**

**Questions and Answers**

**Adjourn**



## ATTENDANCE

**House Committee Commerce and Job Development/Subcommittee on Alcoholic Beverage Control**

2011-2012 Session

[illegible]

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

D

HOUSE BILL 98\*  
PROPOSED COMMITTEE SUBSTITUTE H98-CSMA-11 [v.4]

4/5/2011 7:45:58 AM

Short Title: Breweries to Sell Malt Beverages on Premises.

(Public)

Sponsors:

Referred to:

February 16, 2011

A BILL TO BE ENTITLED  
AN ACT TO ALLOW ALCOHOLIC BEVERAGE PERMITTEES WHO HAVE BEEN  
ISSUED BREWERY PERMITS TO SELL MALT BEVERAGES BREWED AT THE  
BREWERY ON THE PREMISES OF THE BREWERY.

The General Assembly of North Carolina enacts:

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

"(1) On-Premises Malt Beverage Permit. – An on-premises malt beverage permit authorizes the retail sale of malt beverages for consumption on the premises and the retail sale of malt beverages in the manufacturer's original container for consumption off the premises. It also authorizes the holder of the permit to ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:

- a. Restaurants;
- b. Hotels;
- c. Eating establishments;
- d. Food businesses;
- e. Retail businesses;
- f. Private clubs;
- g. Convention centers;
- h. Community theatres, theaters;
- i. Breweries as authorized by G.S. 18B-1104(7).

~~The permit may also be issued to certain breweries as authorized by G.S. 18B-1104(7)."~~

SECTION 2. G.S. 18B-1104(7) reads as rewritten:

"§ 18B-1104. Authorization of brewery permit.

The holder of a brewery permit may:

- (1) Manufacture malt beverages; beverages.
- (2) Purchase malt, hops and other ingredients used in the manufacture of malt beverages; beverages.
- (3) Sell, deliver and ship malt beverages in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that malt beverages may be sold to exporters and nonresident wholesalers only when the purchase is not for resale in this ~~State~~; State.



\* H 9 8 - C S M A - 1 1 - V - 4 \*

- 1 (4) Receive malt beverages manufactured by the permittee in some other state  
2 for transshipment to dealers in other ~~states; states.~~  
3 (5) Furnish or sell marketable malt beverage products, or packages which do not  
4 conform to the manufacturer's marketing standards, if State taxes have been  
5 or will be paid, to its employees for the use of the employees or their  
6 families and guests in this ~~State; State.~~  
7 (6) Give its products to its employees and guests for consumption on its  
8 ~~premises; premises.~~  
9 (7) ~~In areas where the sale is legal, sell~~ Sell the brewery's malt beverages at the  
10 brewery upon receiving a permit under G.S. 18B-1001(1). The brewery also  
11 may obtain a malt beverage wholesaler permit to sell, deliver, and ship at  
12 wholesale only malt beverages manufactured by the brewery. The  
13 authorization of this subdivision applies to a brewery that sells, to consumers  
14 at the brewery, to wholesalers, to retailers, and to exporters, fewer than  
15 25,000 barrels, as defined in G.S. 81A-9, of malt beverages produced by it  
16 per year. A brewery not exceeding the sales quantity limitations in this  
17 subdivision may also sell the malt beverages manufactured by the brewery at  
18 not more than three other locations in the State where the sale is legal upon  
19 obtaining the appropriate permits under G.S. 18B-1001. A brewery operating  
20 any additional retail location pursuant to this subdivision shall also offer for  
21 sale at that location a reasonable selection of competitive malt beverage  
22 products.

23 A sale or gift under subdivision (5) or (6) shall not be considered a retail or wholesale sale  
24 under the ABC laws."

25 **SECTION 3.** This act is effective when it becomes law.



## HOUSE BILL 98: Breweries to Sell Malt Beverages on Premises

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Alcoholic Beverage Control	<b>Date:</b>	April 12, 2011
<b>Introduced by:</b>	Rep. McGrady	<b>Prepared by:</b>	Brenda J. Carter
<b>Analysis of:</b>	PCS to First Edition H98-CSMA-11		Committee Counsel

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**SUMMARY:** *House Bill 98 would amend the ABC law pertaining to breweries, allowing small breweries to obtain an on-premises malt beverage permit for sale of the brewery's malt beverages at the brewery. The brewery may also obtain permits to sell its products at up to three additional locations in the State where the sale of malt beverages is legal.*

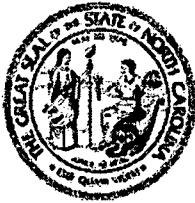
**CURRENT LAW:** G.S. 18B-1104 provides that, in areas where the sale of malt beverages is legal, a brewery may obtain an on-premises malt beverage permit to sell its malt beverages at the brewery. A brewery may also sell its malt beverages at up to three other locations in the State upon obtaining the appropriate permits. The authorization for a brewery to obtain an on-premises malt beverage permit applies only to breweries that sell fewer than 25,000 barrels of malt beverages produced by it per year.

Under G.S. 18B-1001 an on-premises malt beverage permit may be issued to a brewery that meets the location and sales quantity requirements set out in G.S. 18B-1104. An on-premises malt beverage permit issued to a brewery authorizes the retail sale of malt beverages for consumption on the premises and the retail sale of malt beverages in the manufacturer's original container for consumption off the premises.

**BILL ANALYSIS:** The bill would amend the law pertaining to brewery permits by eliminating the requirement that a brewery be located in a legal sales area to obtain an on-premises malt beverage permit for sale of the brewery's product at the brewery. All breweries that sell fewer than 25,000 barrels of malt beverages produced by it per year would qualify for the on-premises retail permit. The bill would make a conforming change to the law pertaining to on-premises malt beverage permits to add authorized breweries to the list of entities that qualify for the permit. It also makes it clear that the three retail locations operated by a brewery must be in areas where the sale of malt beverages is legal.

**EFFECTIVE DATE:** The bill would be effective when it becomes law.

H98-SMRV-29(CSMA-11) v1



## HOUSE BILL 98: Breweries to Sell Malt Beverages on Premises

2011-2012 General Assembly

---

<b>Committee:</b>	House Commerce and Job Development Subcommittee on Alcoholic Beverage Control	<b>Date:</b>	April 12, 2011
<b>Introduced by:</b>	Rep. McGrady	<b>Prepared by:</b>	Brenda J. Carter
<b>Analysis of:</b>	PCS to First Edition H98-CSMA-11		Committee Counsel

---

**SUMMARY:** *House Bill 98 would amend the ABC law pertaining to breweries, allowing small breweries to obtain an on-premises malt beverage permit for sale of the brewery's malt beverages at the brewery. The brewery may also obtain permits to sell its products at up to three additional locations in the State where the sale of malt beverages is legal.*

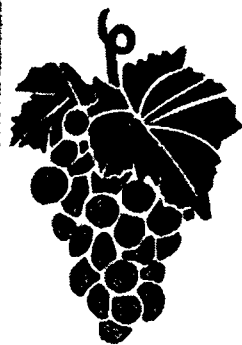
**CURRENT LAW:** G.S. 18B-1104 provides that, in areas where the sale of malt beverages is legal, a brewery may obtain an on-premises malt beverage permit to sell its malt beverages at the brewery. A brewery may also sell its malt beverages at up to three other locations in the State upon obtaining the appropriate permits. The authorization for a brewery to obtain an on-premises malt beverage permit applies only to breweries that sell fewer than 25,000 barrels of malt beverages produced by it per year.

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**BILL ANALYSIS:** The bill would amend the law pertaining to brewery permits by eliminating the requirement that a brewery be located in a legal sales area to obtain an on-premises malt beverage permit for sale of the brewery's product at the brewery. All breweries that sell fewer than 25,000 barrels of malt beverages produced by it per year would qualify for the on-premises retail permit. The bill would make a conforming change to the law pertaining to on-premises malt beverage permits to add authorized breweries to the list of entities that qualify for the permit. It also makes it clear that the three retail locations operated by a brewery must be in areas where the sale of malt beverages is legal.

**EFFECTIVE DATE:** The bill would be effective when it becomes law.

H98-SMRV-29(CSMA-11) v1





# **NORTH CAROLINA WINE & GRAPE COUNCIL**

## **Commerce and Job Development Subcommittee on Alcoholic Beverage Control**

**April 13, 2011**



# NC Wine & Grape Council

- Non-advisory, policy making board within NC Department of Commerce and Division of Tourism, Film and Sports Development
  - Established in 1986, and moved from Dept. of Agriculture to Dept. of Commerce in 2005
  - Included under the Ethics Act in 2010
- 
- 



# Council Members

- 11 members appointed by Secretary of Commerce
- 7 grape growers, 3 winery operators, 1 retailer

## Grower Category

Jerry Douglas – Biltmore Estate  
Bill Hatcher – Duplin Winery  
Robert Hinnant – Hinnant Family Vineyards  
Frank Hobson – RagApple Lassie Vineyards  
Kim Myers – Laurel Gray Vineyards  
Buddy Norwood, Vice Chair – Shelton Vineyards  
Dan Smith – Cypress Bend Vineyards

## Winery Operator Category

Mark Friszolowski, Chair – Childress Vineyards  
Michael Helton – Hanover Park Vineyard  
Joe Neely – RayLen Vineyards

## Retailer Category

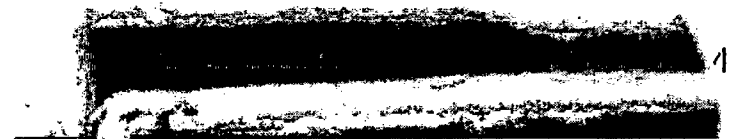
Ed Cook – Harris Teeter





# NC Wine & Grape Council

- Objective: To facilitate development of North Carolina's grape and wine industries by enhancing product quality for consumers, and encouraging economic viability and opportunity for growers and processors through education, marketing, and research.





# Funding

- Formerly a special fund funded by excise tax on wines produced and sold in NC
- Moved to General Fund in 2009
- Budget: 

2008-2009	\$1,400,000*
2009-2010	\$786,600
2010-2011	\$695,700

\* Includes appropriation plus carryover



# Types of Grapes Grown in NC

- Vinifera Grapes
- Muscadine Grapes



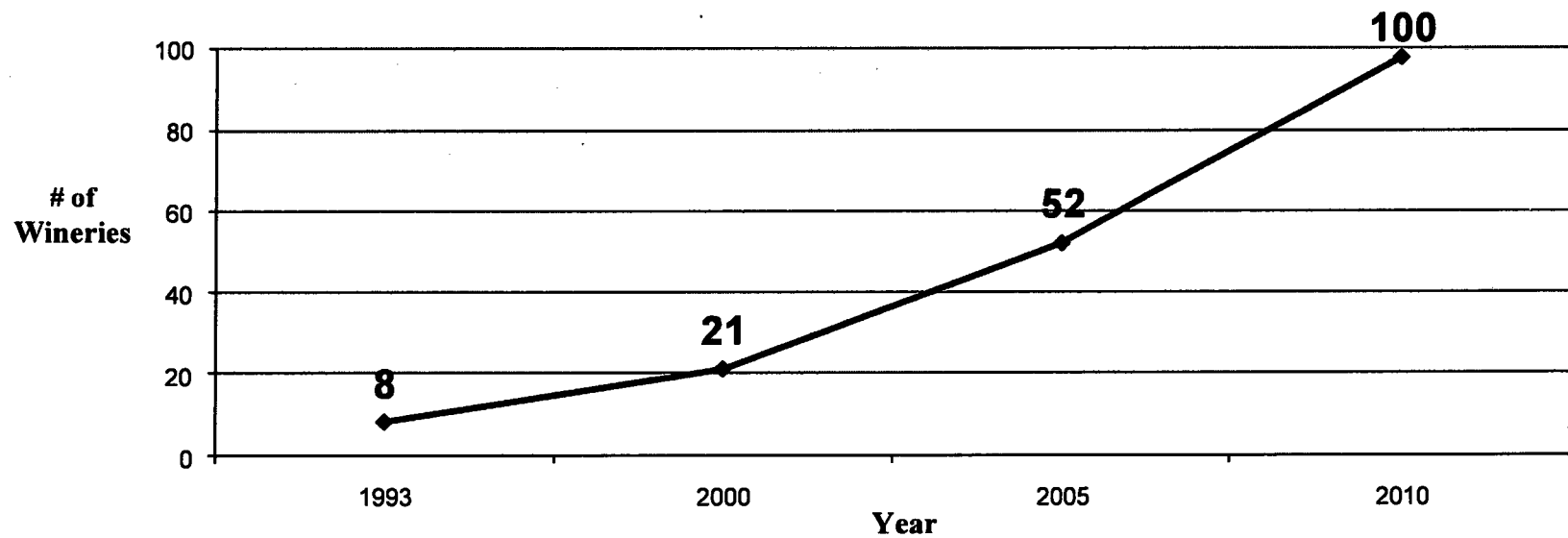


# NC Wine Industry Statistics

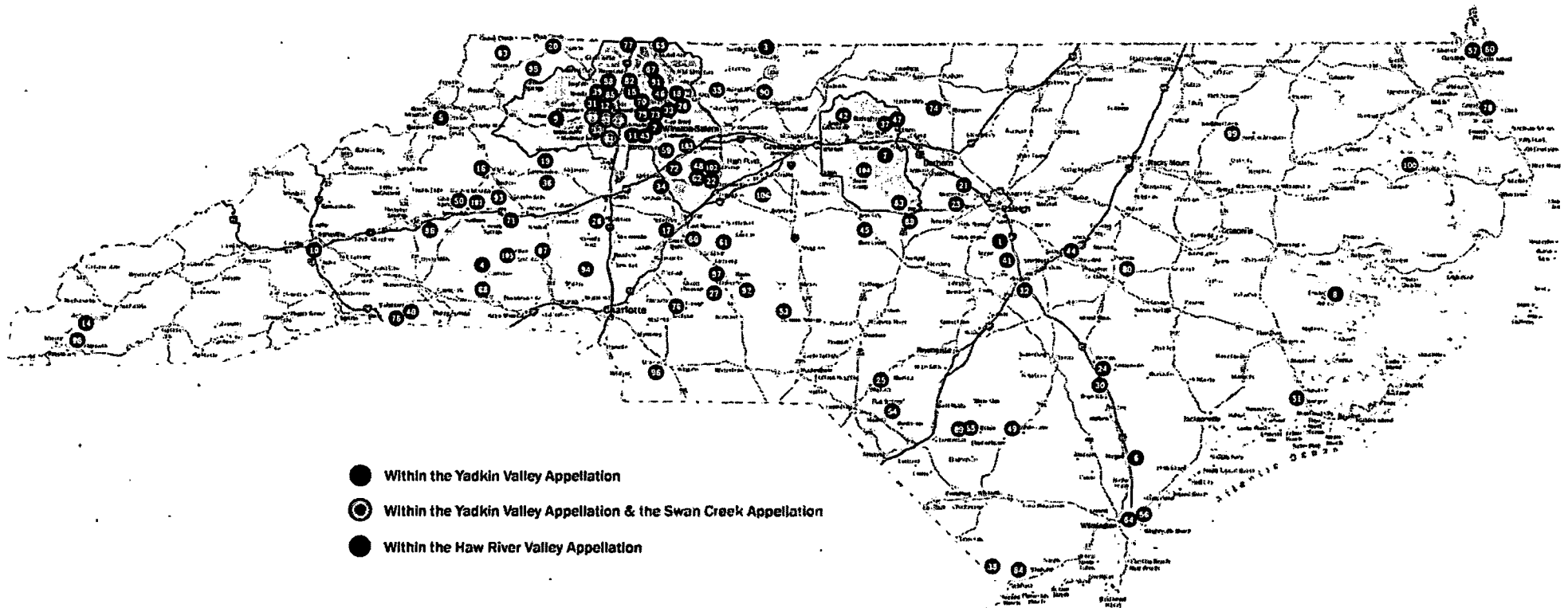
- 106 Wineries from mountains to the coast
- Gov. Perdue celebrated 100<sup>th</sup> winery recently – Cauble Creek Vineyard
- New wineries opening at rate of one per month
- Rank 9<sup>th</sup> in wine and grape production in U.S.
- 400+ commercial vineyards, 1800+ acres of grapes



# Wineries Rapid Growth




# NC Wineries





# Economic Impact = \$813 million

<b>Full-time Equivalent Jobs</b>	<b>5,700</b>
<b>Wages Paid</b>	<b>\$158 million</b>
<b>North Carolina Winery Sales</b>	<b>\$48.2 million</b>
<b>Grape Sales</b>	<b>\$3.7 million</b>
<b>Wine-Related Tourism Expenditures</b>	<b>\$122.4 million</b>
<b>Number of Wine Related Tourists</b>	<b>800,000</b>
<b>Taxes Paid (state and local)</b>	<b>\$38.5 million</b>



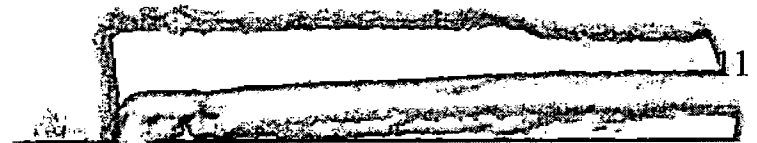
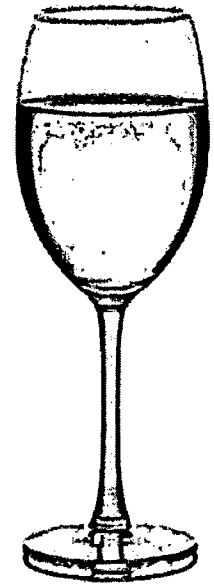
Source: MKF Research of Napa Valley based on 2005 data.  
Council plans to replicate economic impact study in 2011.



# Wine & Culinary Tourism in NC

- #5 in the nation for wine & culinary tourism, behind CA, FL, NY and TX
- #3 in the nation in wine-related travel, behind CA and NY

Source: Travel Industry Association of America, 2006







# Winery Visitation

- Average around 800,000 visitors per year
- Typical visitors are older, educated, with higher household income
- 53% are from NC and nearly 40% surrounding states
- Majority are also going sightseeing, shopping, eating and visiting friends/family on their trip



Source: ASU Winery Visitor Profile Study, 2007



# State Viticulture Plan

- Marketing
- Public Relations
- Education
- Web Sites
- Publications
- Research & Extension



# Marketing

- Billboard and cooperative campaign across NC
- Internet advertising
- Muscadine fresh grape marketing
- Print advertising



**Discover  
NC Wines**

[visitncwine.com](http://visitncwine.com)





# Public Relations

- Customized pitching to local and national outlets
- Media missions to regional locations
- Festivals, fairs and culinary events
- Media.visitnc.com

- 2009-2010 PR program:  
invested \$25,000

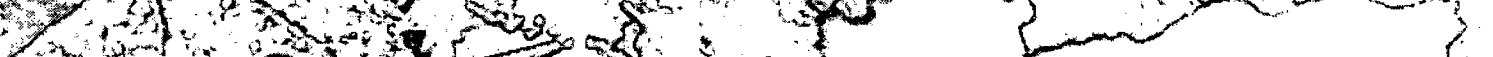
received ad value worth \$450,000

reached 9.2 million people



**The New York Times**





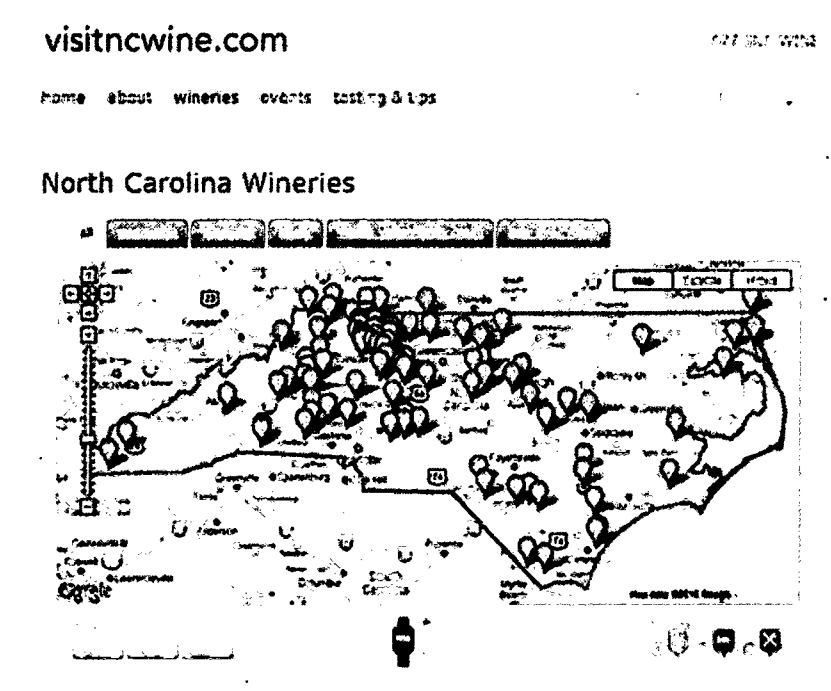
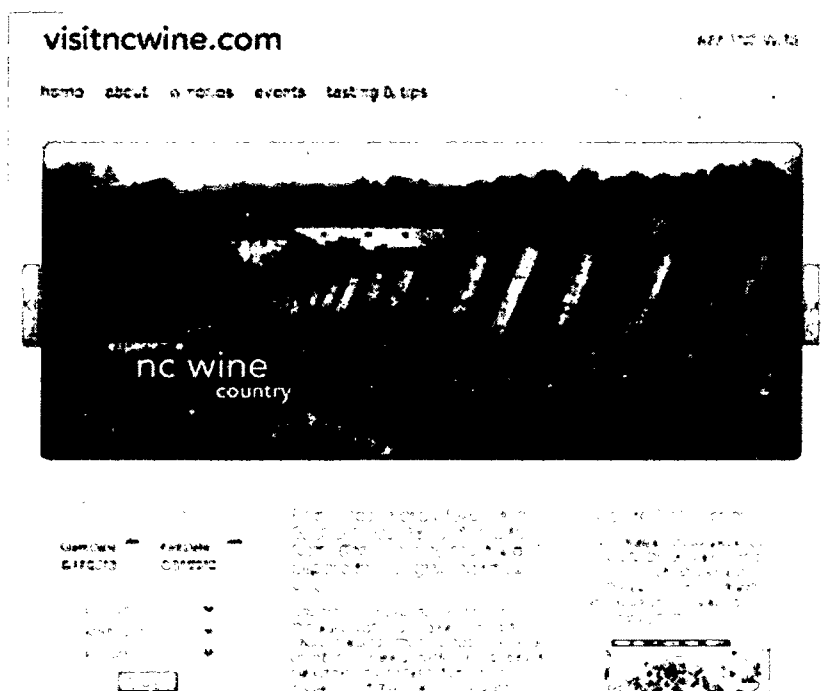
# Education

- 

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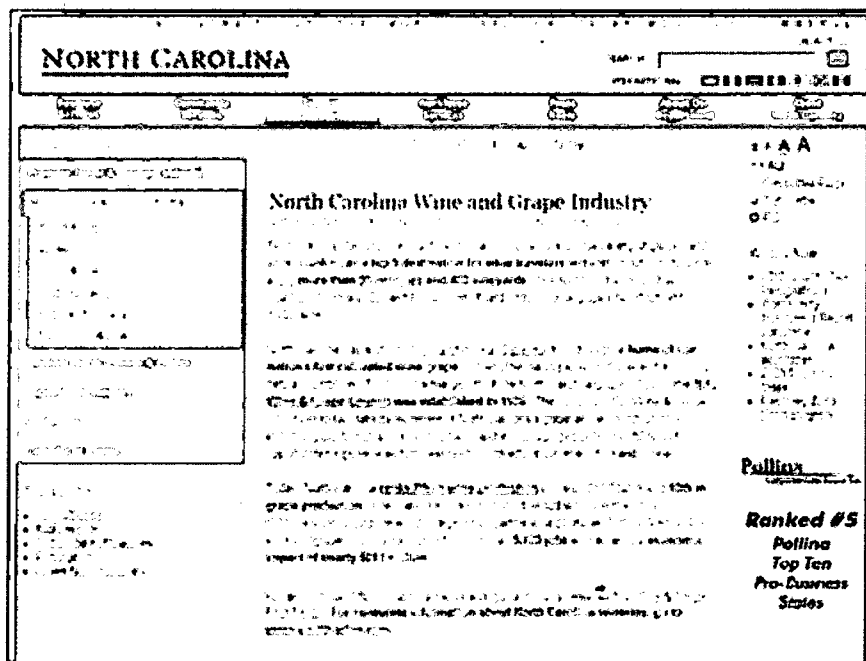
# Consumer Website

www.visitncwine.com



# Industry Website

[www.nccommerce.com/wine](http://www.nccommerce.com/wine)



- Industry news and events
- Info for prospective wineries and grape growers
- Grape classifieds and supplies
- Resources and marketing tools

# Social Media

[www.facebook.com/NorthCarolinaWineGrapeCouncil](http://www.facebook.com/NorthCarolinaWineGrapeCouncil)

[www.twitter.com/VisitNCWine](http://www.twitter.com/VisitNCWine)

facebook

North Carolina Wine & Grape Council

Wall Info Events Discussions Notes Photos

What's on your mind?

Attach

Share

Options

North Carolina Wine & Grape Council  
http://www.ncwine.org/blogs/starsnewsline.com/10023-cheers-to-north-carolina-wine-month/

Cheers to North Carolina wine month - Share Link  
Wilmington Star News - Wilmington, NC - Article  
I love a good glass of wine. My favorite wine is a Cabernet Sauvignon, and I love seeing a deep white wine on summer days. But I must admit I have never thought of North Carolina as "wine country." I thought it was just a few of wine made from indigenous vines, which are favored here.

Post thoughts not yet available. Click check back soon.

45 minutes ago Comment Like Share Private Report

20 Tins Fish But the...

Leave a comment

North Carolina Wine & Grape Council  
http://www.shelbystar.com/news/news-49771-shelby-com-nr1

Are grapes the new tobacco? N.C. wineries see success from the new cash crop  
www.shelbystar.com  
Local news. Are grapes the new tobacco? N.C. wineries see success from the new cash crop. From wine, grapes and barrels, they're looking at the new cash crop. From wine, grapes and barrels, they're looking at the new cash crop.

Post thoughts not yet available. Click check back soon.

Discover North Carolina Wines

Like Page

Favorite with all

Suggest to Friends

http://www.ncwine.org

NC Wine & Grape Council develops NC's grape and wine industries by enhancing product quality for consumers, and economic viability and opportunities for growers and processors through education, marketing and research.

Information

Location  
North Carolina

Sightings

twitter

Home Profile Find People Settings Help Sign out

VisitNCWine

That's you!

4 Lists

Wilmington Star News: Cheers to North Carolina wine month.  
<http://bit.ly/cO2wQo>

Are grapes the new tobacco? N.C. wineries see success from the new cash crop <http://www.shelbystar.com/news/news-49771-shelby-com-nr1>

North Carolina experiencing rebirth in winemaking  
<http://www.ajc.com/stories/north-carolina-experiencing-rebirth-610093.htm>

Come enjoy Grape Day at Raleigh Farmers Market on Friday, 11-1pm with NC wine & grape tasting! <http://tinyurl.com/teyams>

Name NC Wine  
Location North Carolina  
Web http://www.ncwine.org  
Bio NC Wine & Grape Council enhances product quality for consumers, economic viability & opportunities for growers & processors through education, marketing & research.

73 964 116  
following followers fans

Tweets 374

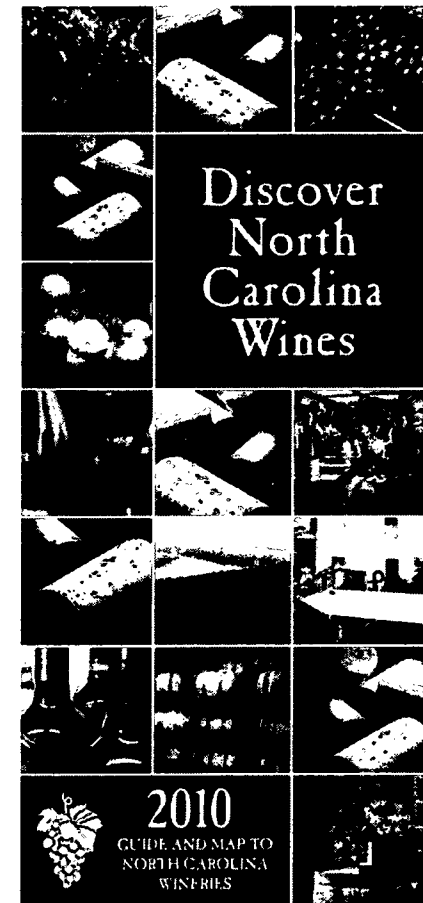
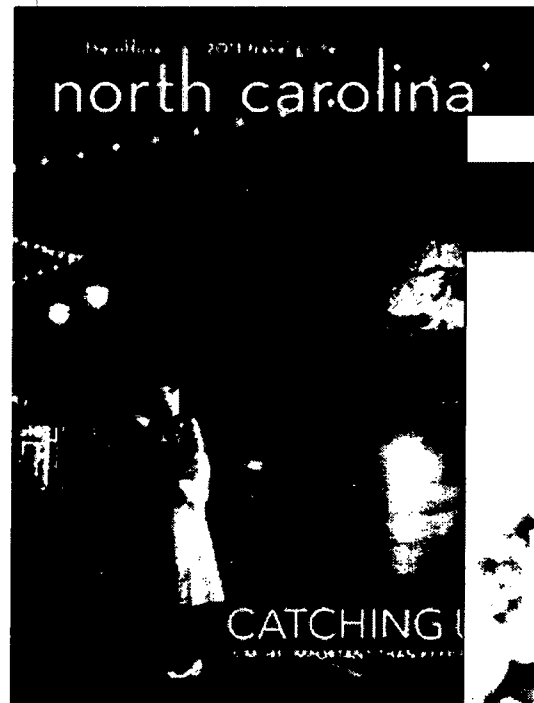
Following

View all

RT @ VisitNCWine's tweets



# Publications





# Research & Extension

- Partner with local universities for grape and wine research specific to North Carolina
- 6 projects funded in 2010 for \$81,500

## Topics Include:

- Nutrient Response
- Disease Resistance
- Quality Improvement
- Muscadine Breeding
- Grape Cultivars





# Contact Information

**Justin Furr**

NC Wine & Grape Council


Email: [jfurr@nccommerce.com](mailto:jfurr@nccommerce.com)

Phone: 919-715-9463

Industry website: [www.nccommerce.com/wine](http://www.nccommerce.com/wine)

Consumer website: [www.visitncwine.com](http://www.visitncwine.com)

ATTACHMENT 2



# 2010

## GUIDE AND MAP TO NORTH CAROLINA WINERIES



**Remarks to House Commerce  
& Job Development  
Subcommittee on ABC  
April 13, 2011**



ATTACHMENT 3

Terri Cofer Beirne  
Eastern Counsel

**CALIFORNIA and the AMERICAN WINE INDUSTRY**

- Established in 1934, Wine Institute is a non-profit trade association representing more than 1,000 California wineries. Together, the 3,115 California wineries manufacture 90% of the wine produced in the United States and create jobs for 820,000 people nationwide. Wine Institute members represent 95% of CA production and 85% of US wine production.
- Washington, Oregon and New York produce approximately 9% of all US wine. The other 46 states, each with at least one winery, produce the remaining 1% of American wine. The total number of wineries in the US is approximately 7,000. In early 2010, NC ranked 10<sup>th</sup> highest with 109 wineries.
- In 2009 there were 526,000 acres of wine grapes growing in CA. That year there were 1,800 bearing acres of grapes in NC.
- According to Wines & Vines, 94% of all wineries in North America produce 30,000 or fewer cases per year. The remaining 6% produce 93% of all North American wine by volume.
- Approximately 80% of all CA table wine sales are everyday wines priced below \$10 per 750 ml equivalent bottle. These wines are often sold in larger containers such as 1.5, 3 or 5 liter bottles, jugs or boxes. The remaining 20% are higher priced wines sold in 750 ml bottles.
- The federal Alcohol and Tobacco Tax and Trade Bureau (TTB) approved labels for 70,000 domestic brands in 2010, an increase of more than 500% over the last 30 years. There were an additional 65,000 foreign brands available in the US in 2010. In April 2011 there are approximately 64,000 wine labels approved for sale in NC.

**WINES SALES in NORTH CAROLINA**

- NC ranked 30<sup>th</sup> from the top in per person consumption of table wine in 2008 and 2009.
- The NC wine excise tax is \$0.79 per gallon. Twenty-seven other states have lower wine tax rates; \$0.67 is the US median wine tax rate. Wine excise tax collections in NC from April 2009 through March 2010 totaled \$18,214,758. There are 17,000 NC retailers selling wine for on and off premise consumption.
- Under a NC law passed in 2003, there are 1016 direct wine shipper licensees in NC. Of those licensees, 674 or 66% are California wineries. NC is among the top 10 states in the country for volume of wine consumers receive via direct-to-consumer wine shipments.

## WHOLESALE WINE DISTRIBUTION

- CA wineries rely heavily on wholesalers across the country to merchandise by product placement, retailer education and consumer tastings. Beyond mere retail delivery, wine wholesalers play a critical role in merchandising and distributing CA wine through three tier systems where wineries may only sell to wholesalers who may only sell to retailers, who sell to the general public.
- There are currently 267 licensed wine wholesalers in NC. Setting aside 114 wholesale licenses held by NC wineries, there are 153 wine wholesalers selling wine in NC. There are 50% fewer wholesalers in the US than there were 10 years ago.
- Calling wholesaler rights granted by state statute "franchise laws" is a misnomer. Black's Law Dictionary defines "franchise" as the right given by a manufacturer to a retailer to use his products and name upon terms and conditions mutually agreed upon. Toyota dealerships have franchise agreements to sell only Toyotas to consumers. If wine wholesalers had franchise agreements, they would be selling only Gallo brands to consumers, for example. Instead, they sell thousands of wine brands to thousands of retail licensees.
- Wholesalers in 21 states have various monopoly protections provisions -- NOT franchises -- to protect them from competition and buffer them from termination by suppliers.
- In 15 states, territorial provisions including statutory grants of exclusive territories to wholesalers. Exclusive territories preclude wineries from working around underperforming wholesalers. Competition between wholesalers for a brand within a defined territory encourages poor wholesalers to work harder or drop a brand. Either way, a winery finds a partner interested and suited to sell its wines.
- Exclusive territories are anti-competitive and result in wholesalers holding winery brands hostage and fewer choices for consumers. Recall that only 64,000 of nearly 135,000 foreign and domestic brands are currently available in NC.
- Less than 17% of WI members have nationwide wholesaler distribution. More than half (54%) of WI members report they have been unable to find a wholesaler in a state where they have actively sought representation.
- In 19 of the monopoly protection states, the law establishes "good cause" to terminate a wholesaler. Under NC law, if a winery has an "agreement" (which need not be in writing) with a NC wholesaler, the winery cannot terminate that relationship unless it has "good cause".
- In other industries, not selling enough product is reason enough to fire a distributor; not so in the wine business. If a winery is unsatisfied with a wholesaler, it must give the wholesaler 90 day notice of the intended termination and wait 60 days for the wholesaler to correct the problem. If it cannot, the wholesaler can demand a hearing with the ABC Commission on whether the reason for the termination is "good cause."
- In today's world, why do wine wholesalers receive protection from their suppliers under state law which other businesses routinely procure through bilateral contractual negotiation?

**ABC Subcommittee**  
**Wednesday, April 13, 2011**

**Pages**

<b>Edward Blackburn</b>	<b>Cleveland County</b>	<b>Rep. Tillis</b>
<b>Allec Biscount</b>	<b>Mecklenburg County</b>	<b>Rep. Tillis</b>

**Sergeant at Arms**

**Garland Shepherd**

**Billy Jones**

**Staff**

**Brenda Carter**

**Erika Churchill**

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE ABC

DATE: April 13, 2011 Room: LOB

\*Name: Alec Viscount

County: Mecklenburg

Sponsor: Thom Tillis

\*Name: Edward Blackburn

County: Cleveland

Sponsor: Thom Tillis

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

House Sgt-At Arms:

1. Name: Garland Shepherd

4. Name: \_\_\_\_\_

2. Name: Billy Jones

5. Name: \_\_\_\_\_

3. Name: \_\_\_\_\_

6. Name: \_\_\_\_\_



# VISITOR REGISTRATION SHEET

ABC

4-13-11

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

KNIGAN LASTER	Fetzer Strategic
John LEFORS	NC Alcohol Law Enforcement
KARIS FEIZER	FEIZER STRATEGIC
John McPherson	Refos
Ben Willis	Leadership Caldwell
Amy Bowman	Leadership Caldwell
John Miller McLee	Leadership Caldwell
Melissa Potts	Leadership Caldwell
Amanda Triplett	Leadership Caldwell
Katie Stanley	Commene
Wanda Ellis	Leadership Caldwell

# VISITOR REGISTRATION SHEET

ABC

4-13-11

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Chris Valenti	NC Beer & Wine Wholesalers
Tim Kent	" " " "
Terri Beirne	Wine Institute
Wendy Kelly	Policy Group
Tim KENT	NC Beer & Wine Wholesalers
Jan Wilkin	ABCC
MARK SENTER	ALCOHOL LAW ENFORCEMENT
REV. MARK CREECH	CAL
JUSTIN FURN	NC WINE & GRAPE COUNCIL
Barbara Canale	ABCC
Doug Heenan	WM

## VISITOR REGISTRATION SHEET

ABC

Name of Committee

4-13-11

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

**FIRM OR AGENCY AND ADDRESS**

L. A. Hanner

4/2/21

Christine Gates

# Leadership Caldwell

BILL SCHREIBER

LEADERSHIP CHALLENGE

Nick Dileo

# Leadership Celdwell

Ernest D. Tade, ~~III~~

# Leadership Catalyst

ABC

41-13-11

**Date****FIRM OR AGENCY AND ADDRESS**

## Leadership Caldwell

Deborah Ashley

Geldwell Chamber

Melvin Gustman

Jon Carr

ABC ad



## House Committee Commerce and Job Development Subcommittee on Alcoholic Beverage Control

---

The House Committee on Commerce and Job Development, Subcommittee on Alcoholic Beverage Control met on Wednesday, April 20, 2011, 10:00 a.m., in Room 425 of the Legislative Office Building.

The following members were present: Chairman Jamie Boles and committee members Representatives Brown, Cook, Current, Hamilton, Lucas, McGuirt, McLawhorn, Rapp, Samuelson, Spear, Steen, and West.

Chairman Boles recognized the Pages and Sergeant at Arms and thanked them for their service to the committee.

Chairman Boles called the meeting to order to consider SB 130, A BILL ENTITLED AN ACT TO Prohibit A Wine Wholesaler From Distributing Wine Beyond its Designated Sales Territory and to Authorize Certain Intraterritory Transfers of Wine Between Off-Premises Wine Permittees Under Common Ownership.

A proposed committee substitute was placed before the members and a motion by Rep. Lucas was accepted to place a proposed committee substitute before the committee. Senator Harry Brown explained the changes in the substitute and moved for adoption of the proposed committee substitute. In addition to discussion by the members, Mikael Gross, Bill Drafting staff, elaborated on the reason for the bill. Tim Kent, Executive Director of the NC Beer and Wine Wholesalers also spoke in favor of the committee substitute to the bill. Chairman Boles recognized, Jonathan Williams, Chairman of the Alcoholic Beverage Control Commission, who further explained the purpose and more about what the bill would do.

Wendy Kelly, representing the Wine Institute, explained their opposition to the bill in that it would limit their opportunity to negotiate contracts. She answered questions by the members. Members discussed some of the issues expressed and Mikael Gross, staff, addressed their concerns.

Rep. Larry Brown made a motion to give the proposed committee substitute a favorable report as to the House committee substitute bill, unfavorable as to the Senate committee substitute bill. The motion passed.

Chairman Boles presented **House Bill 98, Breweries to Sell Malt Beverages on Premises**. Rep. Steen made a motion to place a proposed committee substitute before the committee which was passed by the members. Rep. Boles introduced Rep. Chuck McGrady, sponsor, to explain the bill.

Rep. McGrady explained the intent of the bill and the issues that initiated the purpose for it. Answering questions from the members, he then asked for a favorable recommendation.

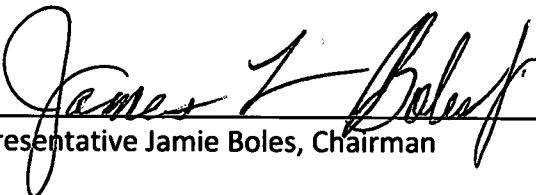
Rep. Boles recognized Reverend Mark Creech, Executive Director, Christian Action League of North Carolina, who had requested to express their concerns with the bill. **Attachment 1.**

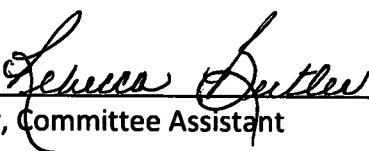
Rep. Cook made a motion for a favorable report of the committee substitute bill, unfavorable as to the original bill, and referred to the floor of the House. The motion passed.

Chairman Boles introduced C. John Ledford, Director, Alcohol Law Enforcement, NC Department of Crime Control and Public Safety. Agent Ledford's presentation which states the history, mission, focus and statutory authority allowed to the Division, is attached. See **Attachment 2.**

Chairman Boles thanked the staff for their work to the Committee and the members for their participation. He adjourned the meeting at 11:50 a.m.

Respectfully submitted,

  
Representative Jamie Boles, Chairman

  
Rebecca Butler, Committee Assistant

**Corrected Notice** Added SB 130, Removed HB 775

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2011-2012 SESSION**

You are hereby notified that the Committee on **Commerce and Job Development Subcommittee on Alcoholic Beverage Control** will meet as follows:

**DAY & DATE:** Wednesday, April 20, 2011  
**TIME:** 10:00 am – 11:50 am  
**LOCATION:** 425 LOB  
**COMMENTS:** Presentation by  
C. John Ledford, Director  
Alcohol Law Enforcement Division  
NC Dept. of Crime Control and Public Safety

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 98	Breweries to Sell Malt Beverages on Premises.	Representative McGrady
SB 130	Wine Distribution Territories.	Senator Brown Senator Allran Senator Blue

Respectfully,  
Representative Boles, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **11 AM** o'clock on **April 19, 2011**.

- ☐ Principal Clerk  
☐ Reading Clerk – House Chamber

**Rebecca Butler** (Committee Assistant)

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2011-2012 SESSION**

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**COMMENTS:** Presentation by  
**C. John Ledford, Director**  
**Alcohol Law Enforcement Division**  
**NC Dept. of Crime Control and Public Safety**

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 98	Breweries to Sell Malt Beverages on Premises.	Representative McGrady
HB 775	Allow Wineries to Sell Malt Beverages. (For discussion only)	Rules, Calendar, and Operations of the House

Respectfully,  
Representative Boles, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**2 PM** o'clock on **April 18, 2011**.

- ☐ Principal Clerk  
☐ Reading Clerk – House Chamber

**Rebecca Butler** (Committee Assistant)





**2011- 2012 Commerce and Job Development**

**Subcommittee on Alcoholic Beverage Control**

**Wednesday, April 20, 2011**

**AGENDA**

**Opening Remarks**

**Representative Jamie Boles, Chairman**

**Agenda Items**

**HB 98    Breweries to Sell Malt Beverages on Premises**

**Rep. Chuck McGrady**

**SB 130   Wine Distribution Territories**

**Senator Harry Brown**

**Presentation**

**C. John Ledford, Director**

**Alcohol Law Enforcement**

## 2011-2012 Session

2011-2012 Session

[illegible]

## 2011 PERMANENT SUBCOMMITTEE REPORT

### HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

The following report(s) from permanent sub committee(s) is/are presented:

By Representative(s) Boles (Chair) for the Commerce and Job Development Subcommittee on Alcoholic Beverage Control.

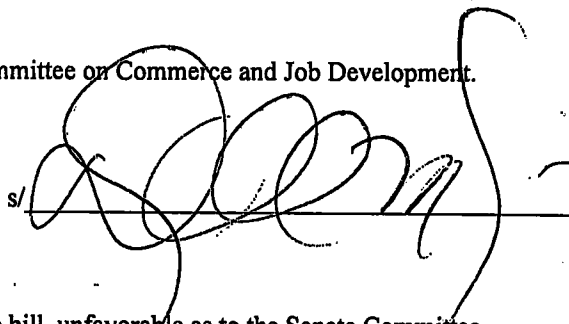
☒ Committee Substitute for

**SB 130** A BILL TO BE ENTITLED AN ACT TO PROHIBIT A WINE WHOLESALER FROM DISTRIBUTING WINE BEYOND ITS DESIGNATED SALES TERRITORY AND TO AUTHORIZE CERTAIN INTRATERRITORY TRANSFERS OF WINE BETWEEN OFF-PREMISES WINE PERMITTEES UNDER COMMON OWNERSHIP.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/ 

☒ With a favorable report as to the House committee substitute bill, unfavorable as to the Senate Committee Substitute Bill.

**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

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# ALIC BILL

*Commerce*

~~Spaced~~ Committee Substitute For

S.B. 130

SESSION LAW \_\_\_\_\_

## A BILL TO BE ENTITLED

AN ACT TO PROHIBIT A WINE WHOLESALER FROM DISTRIBUTING WINE BEYOND ITS DESIGNATED SALES TERRITORY AND TO AUTHORIZE CERTAIN INTRATERRITORY TRANSFERS OF WINE BETWEEN OFF-PREMISES WINE PERMITTEES UNDER COMMON OWNERSHIP.

Introduced by Senator(s)

*Brown, Allen, Blue*

Principal Clerk's Use Only

Committee Substitute  
Adopted  
Pursuant to Rule 45.1

MAR 24 2011

CHANGES TITLE

PASSED 2nd & 3rd  
READINGS

50-0 VV

AR 30 2011

ORDERED SENT TO  
HOUSE OF REPRESENTATIVE

*Print* RECEIVED

PASSED 1st READING

APR 04 2011

AND REFERRED TO COMMITTEE  
ON

*Commerce*

The Committee/Subcommittee on  
*Commerce*

the bill to *Sub. Committee*  
*on Alcoholic Beverage*  
*Control Rep. DeConza*  
For the Committee

Referred to Committee/Subcommittee

on *ABC*

APR 13 '11

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 130  
Commerce Committee Substitute Adopted 3/29/11  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S130-CSMA-14 [v.3]

4/19/2011 11:05:39 AM

Short Title: Wine Distribution Territories.

(Public)

Sponsors:

Referred to:

February 28, 2011

A BILL TO BE ENTITLED  
AN ACT TO PROHIBIT A WINE WHOLESALER FROM DISTRIBUTING WINE  
BEYOND ITS DESIGNATED SALES TERRITORY AND TO AUTHORIZE CERTAIN  
INTRATERRITORY TRANSFERS OF WINE BETWEEN OFF-PREMISES WINE  
PERMITTEES UNDER COMMON OWNERSHIP.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1201(2) reads as rewritten:

"(2) "Territory" or "sales territory" means the area of primary sales responsibility expressly or implicitly designated by any agreement between any wine wholesaler and winery for a brand offered by any winery. ~~The term "area of primary sales responsibility" may not be construed as restricting sales or sales efforts by any wine wholesaler attempting to sell wines within any designated sales territory.~~

SECTION 2. G.S. 18B-1203 reads as rewritten:

"§ 18B-1203. Primary area of responsibility; no discrimination.

(a) Each agreement shall designate ~~a~~ the sales territory of the wholesaler. No winery may enter into more than one agreement for each brand of wine or beverage it offers in any ~~territory unless the Commission, using the standards of G.S. 18B-1204(4), orders otherwise.~~ ~~Territories served by a wine wholesaler on March 21, 1983, are designated sales territories within the meaning of this section. Within 30 days of the effective date of this Article, each winery shall notify the Commission in writing of all designations of sales territories as of March 21, 1983.~~ territory. A wholesaler shall not distribute any brand of wine to a retailer whose premises are located outside the territory designated in the wholesaler's agreement for that brand. With the approval of the Commission, a wholesaler may distribute wine outside the wholesaler's designated territory during periods of temporary service interruption, when requested to do so by the winery and the wholesaler whose service is interrupted. Unless the winery and wine wholesaler agree otherwise in writing, the territory designated as the wholesaler's "area of primary sales responsibility" as of the effective date of this section shall be the wholesaler's designated sales territory. Redesignations of sales territories occurring after March 21, 1983, July 1, 2011, shall be reported to the Commission within 30 days. No provisions of this Article, however, may prohibit the continuation of a multi-wholesaler agreement entered into before March 21, 1983, as between the winery and the original wine

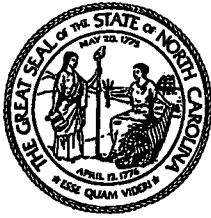


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1 inside and outside the State. The permit may be issued for food businesses.  
2 The permit may also be issued for a winery for sale of its own fortified wine.  
3 Orders received by a winery by telephone, Internet, mail, facsimile, or other  
4 off-premises means of communication shall be shipped pursuant to a wine  
5 shipper permit and not pursuant to this subdivision. The permit also  
6 authorizes the permittee to transfer fortified wine, not more than four times  
7 per calendar year, to another off-premises fortified wine permittee that is  
8 under common ownership or control as the transferor. Except as authorized  
9 by this subdivision, transfers of wine by off-premises fortified wine  
10 permittees, purchases of wine by a retail permittee from another retail  
11 permittee for the purpose of resale, and sale of wine by a retail permittee to  
12 another retail permittee for the purpose of resale are unlawful. In addition, a  
13 particular brand of wine may be transferred only if both the transferor and  
14 transferee are located within the territory designated between the winery and  
15 the wholesaler on file with the Commission. Prior to or contemporaneous  
16 with any such transfer, the transferor shall notify each wholesaler who  
17 distributes the transferred product of the transfer. The notice shall be in  
18 writing or verifiable electronic format and shall identify the transferor and  
19 transferee, the date of the transfer, quantity, and items transferred."

20 **SECTION 5.** If any provision of this act or its application is held invalid, the  
21 invalidity does not affect other provisions or applications of this act that can be given effect  
22 without the invalid provisions or application, and to this end the provisions of this act are  
23 severable.

24 **SECTION 6.** This act is effective when it becomes law, and its provisions shall  
25 apply to all existing franchise agreements. A winery's shipment of wine to a wholesaler in  
26 North Carolina following the effective date of this act shall constitute acceptance by the winery  
27 of the terms of this act, which shall be considered incorporated into the agreement between the  
28 winery and wholesaler.



## SENATE BILL 130: Wine Distribution Territories

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Alcoholic Beverage Control	<b>Date:</b>	April 19, 2011
<b>Introduced by:</b>	Sens. Brown, Allran, Blue	<b>Prepared by:</b>	Brenda J. Carter
<b>Analysis of:</b>	PCS to Second Edition S130-CSMA-14		Committee Counsel

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**SUMMARY:** *Senate Bill 130 would prohibit a wine wholesaler from distributing wine beyond its designated sales territory, and would allow certain intraterritory transfers of wine between off-premises wine permittees that are under common ownership and control.*

**CURRENT LAW:** The State laws applicable to commercial relationships between wine wholesalers and wineries are set out in Article 12 of Chapter 18B of the General Statutes, and govern the system by which wine may be distributed in this State. Each agreement between a wine wholesaler and a winery designates the wholesaler's sales territory. A sales territory means the area of primary sales responsibility expressly or implicitly designated by an agreement between a wine wholesaler and winery for a brand offered by the winery.

### BILL ANALYSIS:

**Section 1** of the bill amends the definition of "territory" or "sales territory" as they relate to wine distribution agreements.

**Section 2** of the bill amends the law concerning a wine wholesaler's primary area of responsibility, to prohibit a wine wholesaler from distributing any brand of wine to a retailer located outside the wholesaler's sales territory for that brand. However a wholesaler could, with the approval of the ABC Commission, distribute wine outside its designated territory when there has been a temporary service interruption and the wholesaler's service is requested by the winery and the wholesaler whose service is interrupted. A wholesaler would be required to service retail permit holders within its designated territory without discrimination, and to make a good faith effort to make available any brand the wholesaler is authorized to distribute in the territory with the exception of private label brands.

**Sections 3 and 4** amend the law concerning retail permits for the off-premises sale of wine, to allow one permittee to transfer wine to another permittee when both are under the same ownership or control. Section 3 applies to unfortified wine permittees; Section 4 applies to fortified wine permittees. Transfers authorized by these provisions may not occur more than 4 times within a year. Prior to, or at the time of, the transfer the transferor is required to provide written or verifiable electronic notice of the transfer to each wholesaler who distributes the product being transferred. The notice must identify both the transferor and the transferee, and must specify the date of transfer, quantity and items transferred.

**Section 5** is a severability clause; any provision that is held invalid will not affect the validity of other provisions in the bill.

**EFFECTIVE DATE:** The bill would be effective when it becomes law and apply to all existing franchise agreements. Acceptance of a winery's shipment of wine to a wholesaler in this State after the effective date constitutes acceptance of the terms of the bill and will be incorporated into the agreement between the winery and the wholesaler.

S130-SMRV-40(CSMA-14) v1

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 130  
Commerce Committee Substitute Adopted 3/29/11

Short Title: Wine Distribution Territories.

(Public)

Sponsors:

Referred to:

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT A WINE WHOLESALER FROM DISTRIBUTING WINE  
BEYOND ITS DESIGNATED SALES TERRITORY AND TO AUTHORIZE CERTAIN  
INTRATERRITORY TRANSFERS OF WINE BETWEEN OFF-PREMISES WINE  
PERMITTEES UNDER COMMON OWNERSHIP.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1201(2) reads as rewritten:

"(2) "Territory" or "sales territory" means the area of primary sales responsibility expressly or implicitly designated by any agreement between any wine wholesaler and winery for a brand offered by any winery. ~~The term "area of primary sales responsibility" may not be construed as restricting sales or sales efforts by any wine wholesaler attempting to sell wines within any designated sales territory.~~

SECTION 2. G.S. 18B-1203 reads as rewritten:

**"§ 18B-1203. Primary area of responsibility; no discrimination.**

(a) Each agreement shall designate ~~a~~ the sales territory of the wholesaler. No winery may enter into more than one agreement for each brand of wine or beverage it offers in any territory unless the Commission, using the standards of G.S. 18B-1204(4), orders otherwise. ~~Territories served by a wine wholesaler on March 21, 1983, are designated sales territories within the meaning of this section. Within 30 days of the effective date of this Article, each winery shall notify the Commission in writing of all designations of sales territories as of March 21, 1983 territory. A wholesaler shall not distribute any brand of wine to a retailer whose premises are located outside the territory designated in the wholesaler's agreement for that brand. With the approval of the Commission, a wholesaler may distribute wine outside the wholesaler's designated territory during periods of temporary service interruption, when requested to do so by the winery and the wholesaler whose service is interrupted. Unless the winery and wine wholesaler agree otherwise in writing, the territory designated as the wholesaler's "area of primary sales responsibility" as of the effective date of this section shall be the wholesaler's designated sales territory. Redesignations of sales territories occurring after March 21, 1983, July 1, 2011, shall be reported to the Commission within 30 days. No provisions of this Article, however, may prohibit the continuation of a multi-wholesaler agreement entered into before March 21, 1983, as between the winery and the original wine wholesalers thereto, provided, that upon termination of any such agreement, the affected territory shall be designated for a single wholesaler.~~

(b) ~~This section may not be construed as restricting sales or sales efforts by any wine wholesaler attempting to sell wines within any designated sales territory. A wholesaler shall service retail permit holders within its designated territory without discrimination. Upon~~



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1 request from a retail permit holder, each wholesaler shall make a good faith effort to make  
2 available any brand of wine the wholesaler is authorized to distribute in the territory."

3 **SECTION 3. G.S. 18B-1001(4) reads as rewritten:**

4 "(4) Off-Premises Unfortified Wine Permit. – An off-premises unfortified wine  
5 permit authorizes the retail sale of unfortified wine in the manufacturer's  
6 original container for consumption off the premises and it authorizes the  
7 holder of the permit to ship unfortified wine in closed containers to  
8 individual purchasers inside and outside the State. The permit may be issued  
9 for retail businesses. The permit also authorizes the permittee to transfer  
10 unfortified wine, not more than four times per calendar year, to another  
11 off-premises unfortified wine permittee that is under common ownership or  
12 control as the transferor. Except as authorized by this subdivision, transfers  
13 of wine by off-premises unfortified wine permittees, purchases of wine by a  
14 retail permittee from another retail permittee for the purpose of resale, and  
15 sale of wine by a retail permittee to another retail permittee for the purpose  
16 of resale are unlawful. In addition, a particular brand of wine may be  
17 transferred only if both the transferor and transferee are located within the  
18 territory designated between the winery and the wholesaler on file with the  
19 Commission. Prior to or contemporaneous with any such transfer, the  
20 transferor shall notify each wholesaler who distributes the transferred  
21 product of the transfer. The notice shall be in writing or verifiable electronic  
22 format and shall identify the transferor and transferee, the date of the  
23 transfer, quantity, and items transferred. The permit may also be issued to  
24 the holder of a viticulture/enology course authorization under  
25 G.S. 18B-1114.4. A school obtaining a permit under this subdivision is  
26 authorized to sell wines manufactured during its viticulture/enology program  
27 at one non-campus location in a county where the permittee holds and offers  
28 classes on a regular full-time basis in a facility owned by the permittee. The  
29 permit may also be issued for a winery or a wine producer for sale of its own  
30 unfortified wine during hours when the winery or wine producer's premises  
31 is open to the public, subject to any local ordinance adopted pursuant to  
32 G.S. 18B-1004(d) concerning hours for the retail sale of unfortified wine. A  
33 winery obtaining a permit under this subdivision is authorized to sell wine  
34 manufactured by the winery at one additional location in the county under  
35 the same conditions specified in G.S. 18B-1101(5) for the sale of wine at the  
36 winery; provided, however, that no other alcohol sales shall be authorized at  
37 the additional location. Orders received by a winery by telephone, Internet,  
38 mail, facsimile, or other off-premises means of communication shall be  
39 shipped pursuant to a wine shipper permit and not pursuant to this  
40 subdivision."

41 **SECTION 4. G.S. 18B-1001(6) reads as rewritten:**

42 "(6) Off-Premises Fortified Wine Permit. – An off-premises fortified wine permit  
43 authorizes the retail sale of fortified wine in the manufacturer's original  
44 container for consumption off the premises and it authorizes the holder of  
45 the permit to ship fortified wine in closed containers to individual purchasers  
46 inside and outside the State. The permit may be issued for food businesses.  
47 The permit may also be issued for a winery for sale of its own fortified wine.  
48 Orders received by a winery by telephone, Internet, mail, facsimile, or other  
49 off-premises means of communication shall be shipped pursuant to a wine  
50 shipper permit and not pursuant to this subdivision. The permit also  
51 authorizes the permittee to transfer fortified wine, not more than four times

1           per calendar year, to another off-premises fortified wine permittee that is  
2           under common ownership or control as the transferor. Except as authorized  
3           by this subdivision, transfers of wine by off-premises fortified wine  
4           permittees, purchases of wine by a retail permittee from another retail  
5           permittee for the purpose of resale, and sale of wine by a retail permittee to  
6           another retail permittee for the purpose of resale are unlawful. In addition, a  
7           particular brand of wine may be transferred only if both the transferor and  
8           transferee are located within the territory designated between the winery and  
9           the wholesaler on file with the Commission. Prior to or contemporaneous  
10           with any such transfer, the transferor shall notify each wholesaler who  
11           distributes the transferred product of the transfer. The notice shall be in  
12           writing or verifiable electronic format and shall identify the transferor and  
13           transferee, the date of the transfer, quantity, and items transferred."

14           **SECTION 5.** If any provision of this act or its application is held invalid, the  
15           invalidity does not affect other provisions or applications of this act that can be given effect  
16           without the invalid provisions or application, and to this end the provisions of this act are  
17           severable.

18           **SECTION 6.** This act is effective when it becomes law, and its provisions shall  
19           apply to all existing franchise agreements. A winery's shipment of wine to a wholesaler in  
20           North Carolina following the effective date of this act shall constitute acceptance by the winery  
21           of the terms of this act, which shall be considered incorporated into the agreement between the  
22           winery and wholesaler.

**SB130**  
**Frequently Asked Questions**

3.28.11

**Who is supporting this legislation?** The N.C. Beer & Wine Wholesalers Association, the N.C. Retail Merchants Association, Total Wine, and North Carolina wineries each support SB130.

**What are the basics of the bill?** SB130 is designed to do two things. First, it provides that a wine distributor may not sell wine beyond its designated territory. In exchange, wine distributors must generally service its retail accounts without discrimination. This is currently the law for beer distribution and is the practice for over 99% of all wine sold in the state today. Second, the bill provides for limited intra-territory transfers of wine between certain retail accounts (e.g. to address product shortages or prevent product deterioration).

**What is the purpose of the territory assignment provision in the bill?** With respect to distribution territories, the bill is designed to strengthen state-based control over wine sales by prohibiting cross-territory distribution. In recent years, large multi-state wine distribution corporations have entered new states and have distributed wine beyond their assigned sales territory. This has at least two negative consequences. First, it has forced existing, local distributors out of business (in most cases leaving them with virtually no ability to sell their business, forcing them to shut down completely). Examples where this has occurred include New York, Indiana and Illinois. This bill promotes business continuity and job stability by minimizing the effect of cross-territorial distribution by multi-state corporations. In short, without this bill, locally-owned and operated wine distributors will go out of business as larger corporations move into the state. Many of these jobs will be lost to corporate headquarters located in other parts of the country. Second, the bill strengthens the ability of the State to effectively monitor and regulate wine distribution by providing for specific territories for wine distribution. This bill strengthens the state's interest in promoting an orderly market under the proposed territorial assignment structure. And the bill promotes temperance by discouraging wine distributors from engaging in a "bidding war" to sell wine well below fair market value. Promoting temperance, raising revenues and providing for an orderly market are all legitimate purposes long-recognized by North Carolina in legislating responsible alcohol policy.

**Have any other states established designated sales territories for wine distribution?** Yes. According to the Wine & Spirits Wholesalers of America, at least 11 other states have taken this action. Those states include Alabama, Arkansas, Connecticut, Georgia, Kansas, Maine, Michigan, Nevada, Ohio, Tennessee and Vermont.

**What is the purpose of the provision that allows certain off-premises wine retailers the ability to transfer wine to their other retail locations within the same territory?** This provision enables retailers who sell wine for off-premises consumption the ability to

transfer wine to another store that is owned or managed by the same parent company. For example, in some instances wine may need to be transferred to another account to address market demand or in some instances to prevent product deterioration. This measure is supported by the N.C. Retail Merchants Association and Total Wine.

**Will retailers' ability to purchase wine be limited?** No. In fact, the bill will only increase the selection available to retailers. Here's why: currently, wine distributors already have territories assigned to them by their wine suppliers. However, distributors are not required to sell to particular retailers within their territory (because there is nothing to prohibit other distributors from selling product in other territories). One of the common complaints small retailers raise is that they sometimes have difficulty ordering product that is sold only to large retailers. Likewise, large retailers sometimes complain of difficulties ordering wine that is typically sold to small retail accounts. This bill requires distributors to sell wine to retailers within the assigned territory on generally equal terms and to make a good faith effort to provide wine it sells to retailers within the territory. In fact, over 99% of wine sold in N.C. is distributed according to the model proposed in SB130.

**Will wineries' ability to sell wine be limited?** Again, the answer is no. As noted, under the current regulatory system a wine distributor is not required to sell wine to all retail accounts within its territory. This legislation requires distributors to make a good faith effort to distribute the wine it carries to its retailers within the territory. One common complaint from small wineries is that they wish to have their wine sold in multiple retail outlets, especially as sales increase and the popularity of the brand improves. However, the wine distributor may not service those retailers. So, under the current law, it can be difficult for some small wineries to access larger retail accounts. This bill would, again, require wine distributors to generally service its retail accounts without discrimination (of course, it will always be up to each retailer to determine which wines to purchase).

**Will wine prices substantially increase or decrease?** There are no anticipated price changes because of this legislation. Currently over 99% of all wine sold by distributors is within their assigned territories. SB130 simply codifies existing market practices. Wineries and retailers will continue to sell and purchase wine at normal market prices, including regular price differences between on-premise and off-premise accounts.

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**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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By Representative(s) Boles (Chair) for the Commerce and Job Development Subcommittee on Alcoholic Beverage Control.

☐ Committee Substitute for

**HB 98,** A BILL TO BE ENTITLED AN ACT TO ALLOW ALCOHOLIC BEVERAGE PERMITTEES WHO HAVE BEEN ISSUED BREWERY PERMITS TO SELL MALT BEVERAGES BREWED AT THE BREWERY ON THE PREMISES OF THE BREWERY.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/ 

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 36(b), the committee substitute bill/resolution is placed on the Calendar of \_\_\_\_\_. The original resolution is placed on the Unfavorable Calendar.

## 2011 PERMANENT SUBCOMMITTEE REPORT

### HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

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**PUBLIC BILL**

H.B. 0098

SESSION LAW \_\_\_\_\_

**A BILL TO BE ENTITLED**

AN ACT TO ALLOW ALCOHOLIC BEVERAGE PERMITTEES WHO HAVE BEEN ISSUED BREWERY PERMITS TO SELL MALT BEVERAGES BREWED AT THE BREWERY ON THE PREMISES OF THE BREWERY.

*Introduced by Representative(s): McGrady.*

*McGrady*

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

*Principal Clerk's Use Only*

**PASSED 1st READING**

**FEB 16 2011**

**AND REFERRED TO COMMITTEE  
ON Commerce**

*Development*

**The Committee/Subcommittee on  
Commerce-Job Development  
bill to ABC**

**Rep. McCoskey  
For the Committee**

**referred to Committee/Subcommittee  
ABC**

**MAR 07 2011**

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**H**

**1**

**HOUSE BILL 98\***

Short Title:   Breweries to Sell Malt Beverages on Premises. (Public)

Sponsors:   Representative McGrady (Primary Sponsor).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to:   Commerce and Job Development.

February 16, 2011

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW ALCOHOLIC BEVERAGE PERMITTEES WHO HAVE BEEN  
3 ISSUED BREWERY PERMITS TO SELL MALT BEVERAGES BREWED AT THE  
4 BREWERY ON THE PREMISES OF THE BREWERY.

5 The General Assembly of North Carolina enacts:

6       **SECTION 1.** G.S. 18B-1001(1) reads as rewritten:

7       "(1) On-Premises Malt Beverage Permit. – An on-premises malt beverage permit  
8       authorizes the retail sale of malt beverages for consumption on the premises  
9       and the retail sale of malt beverages in the manufacturer's original container  
10      for consumption off the premises. It also authorizes the holder of the permit  
11      to ship malt beverages in closed containers to individual purchasers inside  
12      and outside the State. The permit may be issued for any of the following:

- 13      a.     Restaurants;  
14      b.     Hotels;  
15      c.     Eating establishments;  
16      d.     Food businesses;  
17      e.     Retail businesses;  
18      f.     Private clubs;  
19      g.     Convention centers;  
20      h.     Community theatres-theaters;  
21      i.     Breweries as authorized by G.S. 18B-1104(7).

22      ~~The permit may also be issued to certain breweries as authorized by~~  
23      ~~G.S. 18B-1104(7)."~~

24       **SECTION 2.** G.S. 18B-1104(7) reads as rewritten:

25       **"§ 18B-1104. Authorization of brewery permit.**

26       The holder of a brewery permit may:

- 27       (1)    Manufacture malt beverages;  
28       (2)    Purchase malt, hops and other ingredients used in the manufacture of malt  
29       beverages;  
30       (3)    Sell, deliver and ship malt beverages in closed containers to wholesalers  
31       licensed under this Chapter as authorized by the ABC laws, except that malt  
32       beverages may be sold to exporters and nonresident wholesalers only when  
33       the purchase is not for resale in this State;  
34       (4)    Receive malt beverages manufactured by the permittee in some other state  
35       for transshipment to dealers in other states;





- 1 (5) Furnish or sell marketable malt beverage products, or packages which do not  
2 conform to the manufacturer's marketing standards, if State taxes have been  
3 or will be paid, to its employees for the use of the employees or their  
4 families and guests in this State;  
5 (6) ~~Give its products to its employees and guests for consumption on its~~  
6 ~~premises;~~  
7 (7) ~~In areas where the sale is legal, sell~~Sell the brewery's malt beverages at the  
8 brewery upon receiving a permit under G.S. 18B-1001(1). The brewery also  
9 may obtain a malt beverage wholesaler permit to sell, deliver, and ship at  
10 wholesale only malt beverages manufactured by the brewery. The  
11 authorization of this subdivision applies to a brewery that sells, to consumers  
12 at the brewery, to wholesalers, to retailers, and to exporters, fewer than  
13 25,000 barrels, as defined in G.S. 81A-9, of malt beverages produced by it  
14 per year. A brewery not exceeding the sales quantity limitations in this  
15 subdivision may also sell the malt beverages manufactured by the brewery at  
16 not more than three other locations in the State upon obtaining the  
17 appropriate permits under G.S. 18B-1001. A brewery operating any  
18 additional retail location pursuant to this subdivision shall also offer for sale  
19 at that location a reasonable selection of competitive malt beverage products.  
20 A sale or gift under subdivision (5) ~~or (6)~~ shall not be considered a retail or wholesale sale  
21 under the ABC laws."  
22 **SECTION 3.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

D

HOUSE BILL 98\*  
PROPOSED COMMITTEE SUBSTITUTE H98-CSMA-15 [v.2]

4/19/2011 2:31:39 PM

Short Title: Breweries to Sell Malt Beverages on Premises.

(Public)

Sponsors:

Referred to:

February 16, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW ALCOHOLIC BEVERAGE PERMITTEES WHO HAVE BEEN  
3 ISSUED BREWERY PERMITS TO SELL MALT BEVERAGES BREWED AT THE  
4 BREWERY ON THE PREMISES OF THE BREWERY.

5 The General Assembly of North Carolina enacts:

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

7 "(1) On-Premises Malt Beverage Permit. – An on-premises malt beverage permit  
8 authorizes the retail sale of malt beverages for consumption on the premises  
9 and the retail sale of malt beverages in the manufacturer's original container  
10 for consumption off the premises. It also authorizes the holder of the permit  
11 to ship malt beverages in closed containers to individual purchasers inside  
12 and outside the State. The permit may be issued for any of the following:

- 13 a. Restaurants;  
14 b. Hotels;  
15 c. Eating establishments;  
16 d. Food businesses;  
17 e. Retail businesses;  
18 f. Private clubs;  
19 g. Convention centers;  
20 h. Community theatres; theaters;  
21 i. Breweries as authorized by G.S. 18B-1104(7).

22 ~~The permit may also be issued to certain breweries as authorized by~~  
23 ~~G.S. 18B-1104(7)."~~

24 SECTION 2. G.S. 18B-1104(7) reads as rewritten:

25 "§ 18B-1104. Authorization of brewery permit.

26 The holder of a brewery permit may:

- 27 (1) Manufacture malt beverages; beverages.  
28 (2) Purchase malt, hops and other ingredients used in the manufacture of malt  
29 beverages; beverages.  
30 (3) Sell, deliver and ship malt beverages in closed containers to wholesalers  
31 licensed under this Chapter as authorized by the ABC laws, except that malt  
32 beverages may be sold to exporters and nonresident wholesalers only when  
33 the purchase is not for resale in this State; State.



\* H 9 8 - C S M A - 1 5 - V - 2 \*

- 1 (4) Receive malt beverages manufactured by the permittee in some other state  
2 for transshipment to dealers in other ~~states~~states.  
3 (5) Furnish or sell marketable malt beverage products, or packages which do not  
4 conform to the manufacturer's marketing standards, if State taxes have been  
5 or will be paid, to its employees for the use of the employees or their  
6 families and guests in this ~~State~~State.  
7 (6) Give its products to its employees and guests for consumption on its  
8 ~~premises~~premises.  
9 (7) In areas where the sale is ~~legal~~of any type of alcoholic beverage is  
10 authorized by law, sell the brewery's malt beverages at the brewery upon  
11 receiving a permit under G.S. 18B-1001(1). The brewery also may obtain a  
12 malt beverage wholesaler permit to sell, deliver, and ship at wholesale only  
13 malt beverages manufactured by the brewery. The authorization of this  
14 subdivision applies to a brewery that sells, to consumers at the brewery, to  
15 wholesalers, to retailers, and to exporters, fewer than 25,000 barrels, as  
16 defined in G.S. 81A-9, of malt beverages produced by it per year. A brewery  
17 not exceeding the sales quantity limitations in this subdivision may also sell  
18 the malt beverages manufactured by the brewery at not more than three other  
19 locations in the ~~State~~State, where the sale is legal, upon obtaining the  
20 appropriate permits under G.S. 18B-1001. A brewery operating any  
21 additional retail location pursuant to this subdivision shall also offer for sale  
22 at that location a reasonable selection of competitive malt beverage products.

23 A sale or gift under subdivision (5) or (6) shall not be considered a retail or wholesale sale  
24 under the ABC laws."

25 **SECTION 3.** This act is effective when it becomes law.



## HOUSE BILL 98: Breweries to Sell Malt Beverages on Premises

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Alcoholic Beverage Control	<b>Date:</b>	April 19, 2011
<b>Introduced by:</b>	Rep. McGrady	<b>Prepared by:</b>	Brenda J. Carter
<b>Analysis of:</b>	PCS to First Edition H98-CSMA-15		Committee Counsel

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**SUMMARY:** *This proposed committee substitute for House Bill 98 would amend the ABC law pertaining to breweries, allowing small breweries to obtain an on-premises malt beverage permit for sale of the brewery's malt beverages at the brewery, provided the brewery is located in an area where the sale of some type of alcoholic beverage is legal. The brewery may also obtain permits to sell its products at up to three additional locations in the State where the sale of malt beverages is legal.*

**CURRENT LAW:** G.S. 18B-1104 provides that, in areas where the sale of malt beverages is legal, a brewery may obtain an on-premises malt beverage permit to sell its malt beverages at the brewery. A brewery may also sell its malt beverages at up to three other locations in the State upon obtaining the appropriate permits. The authorization for a brewery to obtain an on-premises malt beverage permit applies only to breweries that sell fewer than 25,000 barrels of malt beverages produced by it per year.

Under G.S. 18B-1001 an on-premises malt beverage permit may be issued to a brewery that meets the location and sales quantity requirements set out in G.S. 18B-1104. An on-premises malt beverage permit issued to a brewery authorizes the retail sale of malt beverages for consumption on the premises and the retail sale of malt beverages in the manufacturer's original container for consumption off the premises.

**BILL ANALYSIS:** House Bill 98 provides that a brewery located in an area where the sale of any type of alcoholic beverage is authorized by law may obtain an on-premises malt beverage permit for sale of the brewery's product at the brewery. The provision applies to breweries that sell fewer than 25,000 barrels of malt beverages produced by it per year. The bill makes a conforming change to the law pertaining to on-premises malt beverage permits to add authorized breweries to the list of entities that qualify for the permit. The bill specifies that the three retail locations operated by a brewery must be in areas where the sale of malt beverages is legal.

**EFFECTIVE DATE:** The bill would be effective when it becomes law.

H98-SMRV-39(CSMA-15) v1



# HOUSE BILL 98:

## Breweries to Sell Malt Beverages on Premises

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Alcoholic Beverage Control	<b>Date:</b>	April 12, 2011
<b>Introduced by:</b>	Rep. McGrady <i>AM</i>	<b>Prepared by:</b>	Brenda J. Carter Committee Counsel
<b>Analysis of:</b>	PCS to First Edition H98-CSMA-11		

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**SUMMARY:** *House Bill 98 would amend the ABC law pertaining to breweries, allowing small breweries to obtain an on-premises malt beverage permit for sale of the brewery's malt beverages at the brewery. The brewery may also obtain permits to sell its products at up to three additional locations in the State where the sale of malt beverages is legal.*

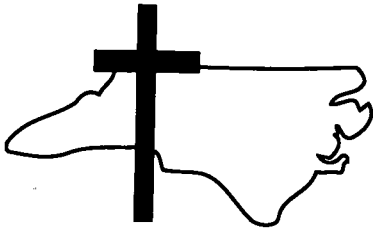
**CURRENT LAW:** G.S. 18B-1104 provides that, in areas where the sale of malt beverages is legal, a brewery may obtain an on-premises malt beverage permit to sell its malt beverages at the brewery. A brewery may also sell its malt beverages at up to three other locations in the State upon obtaining the appropriate permits. The authorization for a brewery to obtain an on-premises malt beverage permit applies only to breweries that sell fewer than 25,000 barrels of malt beverages produced by it per year.

Under G.S. 18B-1001 an on-premises malt beverage permit may be issued to a brewery that meets the location and sales quantity requirements set out in G.S. 18B-1104. An on-premises malt beverage permit issued to a brewery authorizes the retail sale of malt beverages for consumption on the premises and the retail sale of malt beverages in the manufacturer's original container for consumption off the premises.

**BILL ANALYSIS:** The bill would amend the law pertaining to brewery permits by eliminating the requirement that a brewery be located in a legal sales area to obtain an on-premises malt beverage permit for sale of the brewery's product at the brewery. All breweries that sell fewer than 25,000 barrels of malt beverages produced by it per year would qualify for the on-premises retail permit. The bill would make a conforming change to the law pertaining to on-premises malt beverage permits to add authorized breweries to the list of entities that qualify for the permit. It also makes it clear that the three retail locations operated by a brewery must be in areas where the sale of malt beverages is legal.

**EFFECTIVE DATE:** The bill would be effective when it becomes law.

H98-SMRV-29(CSMA-11) v1



## CHRISTIAN ACTION LEAGUE OF NORTH CAROLINA, INC.

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### ***HB 98 – Breweries to Sell Malt Beverages On Premises***

#### ***What our Research found:***

According to lists of Brewery Permittees and Legal Sales Areas made available on the North Carolina Alcoholic Beverage Control Commission (NC ABC) Web site, 44 of 48 breweries permitted to operate in North Carolina do so in municipalities or counties where both **on-and off-premise malt beverage sales are allowed**. The CAL cross-referenced the ABC list with that of the *Brewery Collectibles Club of America* and an even longer list featured on *BeerMe.com*. and found roughly 27 more brewery listings in North Carolina than the NC ABC showed, including about a dozen which are labeled as "planned."

Of all the breweries researched, seven businesses appear to be located in areas where **on-premise sales are forbidden**:

- Catawba Valley Brewing Company, Morganton
- Dry County Brewing Company, Spruce Pine
- Heinzelmannchen Brewery, Sylva
- Nantahala Brewing Company, Bryson City
- White Star Beer Co., Lexington (planned)
- Sapphire Mountain Brewing Company, Sapphire
- Southern Appalachian Craft Brewery, Hendersonville

With the exception of Sapphire in Transylvania County, voters have approved off-premise sales at all of the previous mentioned locations. At four of the seven (Nantahala, White Star and Southern Appalachian being the exceptions) on premises sales are also allowed at hotels, motels and restaurants. In six of seven areas (Transylvania excepted), mixed beverages sales have been approved.

This essentially means that this legislation would open the door for five current breweries and at least one planned brewery to sell beer for on-premise consumption in areas where voters have not approved such sales, it would mean any new brewery could open up in a county where the sale of any form of alcohol has previously been approved - whether mixed beverages, wine or off-premise beer sales — and start selling beer on premises without voter approval.

Section 7 of the bill would mean that breweries could open up three other locations anywhere in the state and sell beer for on premise consumption, anywhere any form of alcohol had been previously approved by referendum. These locations could also offer a "reasonable" selection (which is subjective) of competitive malt beverage products, so it isn't just their own brand that they would be selling.

Not only would this violate the principle of local option — the voters' right to determine how and where alcohol is sold in their area — but it also leads to an un-level playing field and would only compel other retail locations to demand special legislation for on-premise beer sales.

# NORTH CAROLINA ALCOHOL LAW ENFORCEMENT





# INTRODUCTION

**Alcohol Law Enforcement, or ALE, is a division of the North Carolina Department of Crime Control & Public Safety.**

**There are 9 district offices located throughout North Carolina.**

**The division is staffed by 112 sworn special agents.**







# MISSION

**Alcohol Law Enforcement's primary mission is the enforcement of the state alcoholic beverage control laws, lottery laws, the controlled substance act (drug laws) and youth access to tobacco laws. The ALE Division also performs such other law enforcement duties as are assigned by the Secretary and/or the Governor.**



# HISTORY OF ABC LAWS

**1920 – Prohibition & “moonshining”**

**1933 – US Congress repeals prohibition**

**1937 – NC legislature creates State ABC Commission**

**1978 – Liquor-by-the-Drink approved**

**1986 – Legal drinking age raised to 21 under National Safe Roads Act**



# HISTORY OF ALCOHOL ENFORCEMENT IN NC



**1937 to 1949 – Alcohol enforcement by local police and Sheriffs**

**1949 – State ABC Enforcement Division created**

**1950 – Malt Beverage Inspectors**

**1960 – Special Peace Officers**

**1971 – ABC Officers given full arrest powers**

**1977 – Division of Alcohol Law Enforcement is created**



# **ALE DUTIES**

## **ENFORCEMENT**

**Alcohol, drugs, tobacco,  
gambling, lottery and bingo**

## **ADMINISTRATION**

**ABC/NCEL retail permit  
application investigations, ABC  
store site investigations**

## **EDUCATION**

**Be A Responsible Seller, Public  
Information Programs, Keys To  
Life**



# ENFORCEMENT

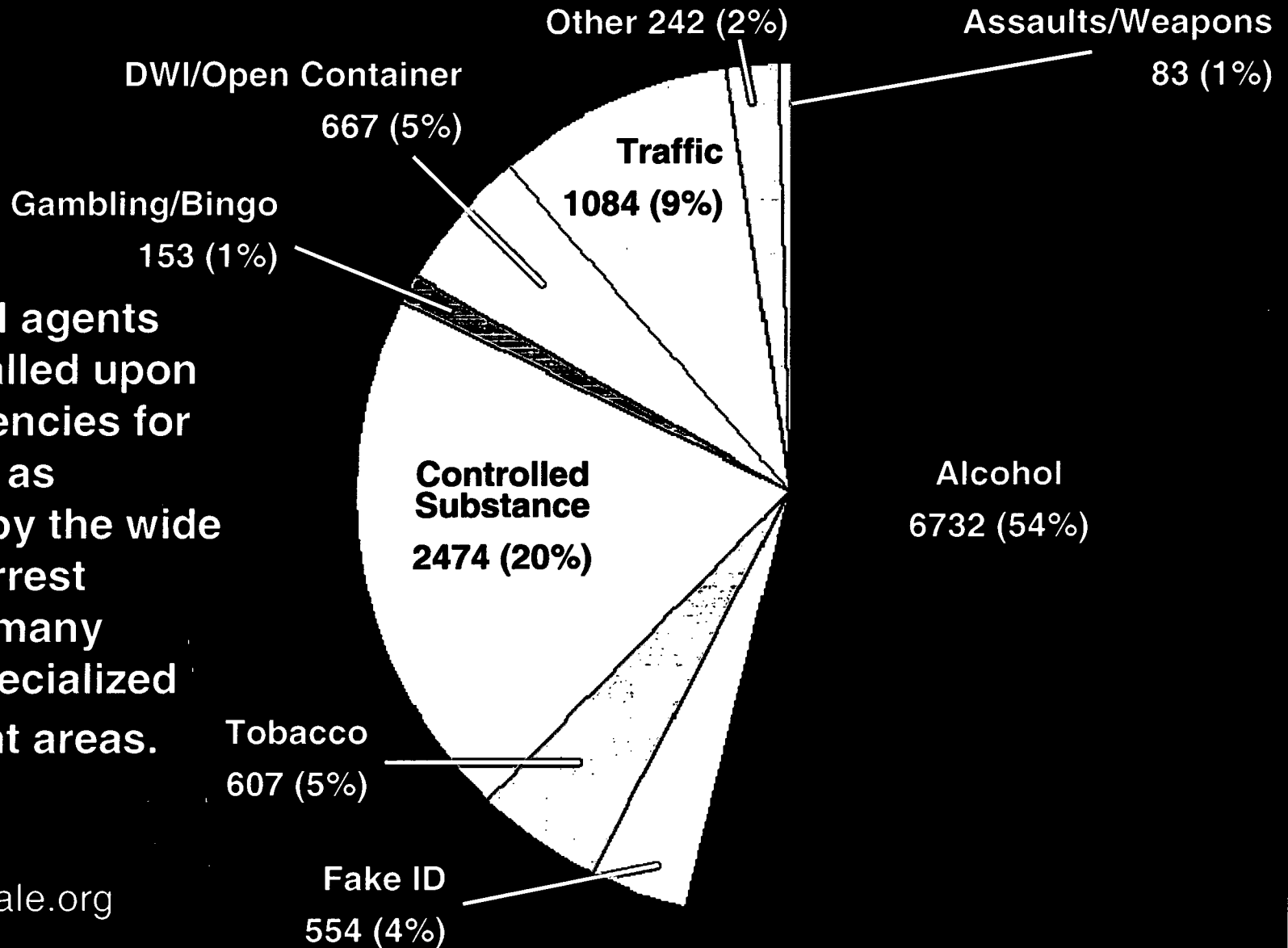
**CONDUCT INVESTIGATIONS AND  
MAKE ARRESTS FOR ANY  
CRIMINAL OFFENSE:**



- Underage Drinking
- Adult Providers of Alcohol to Underage
- Youth Access to Tobacco
- Drug Violations
- Illegal Distilleries (Stills)
- Gambling
- Motor Vehicle – DWI/Open Container



# ARREST CHARGES



ALE special agents are often called upon by local agencies for assistance, as evidenced by the wide variety of arrest charges in many different specialized enforcement areas. (2010 data)



# ADMINISTRATION

Conduct ABC retail & wholesale permit investigations for businesses wishing to serve alcoholic beverages

Inspections of over 18,000 licensed businesses holding over 41,000 ABC permits

Serve hearing notices/ and subpoenas for the ABC Commission

Appear and testify at administrative hearings



<http://www.ncalc.org>



# **TERRORISM RESPONSE**

**Special agents undergo advanced training to be prepared for emergency response to terrorist incidents. Select agents are assigned to federal task forces to assist in wider efforts to combat terrorism, including ATF, FBI-JTTF, ICE and ISAAC.**

**Agents are highly skilled in the detection of fraudulent identification documents, and this training has resulted in the seizure of thousands of fake driver's licenses, Social Security cards and resident alien cards.**





# ADDITIONAL SERVICES

## NATURAL DISASTERS & HURRICANES

- Search & Rescue
- Protection of Life & Property
- Community Service
- Clean Up & Recovery
- Logistics & Material Resources
- Price Gouging Investigations





# COMPLAINT INVESTIGATIONS

**ALE receives complaints from citizens, retail customers and business owners.**

**Complaints are received by telephone, in person, by letter or fax, through the ALE website or through the ALE toll-free tip line.**

**Complaints are assigned to the ALE special agent responsible for the geographical area where the subject of the complaint is located.**



# COMPLAINT INVESTIGATIONS

Complaints may result in one or more of the following enforcement actions; oral or written warning, citation, arrest or administrative violation.

As a goal, complainants are contacted by the investigating agent within three business days of receiving the complaint to inform them of their progress and to gather additional information.



# EDUCATIONAL PROGRAMS

## BE A RESPONSIBLE SELLER

- Provided free of charge for any permitted business
- Proper forms of ID/fictitious IDs
- Techniques to effectively and safely refuse service of alcohol to intoxicated patrons
- Employee and patron conduct on the licensed premises





# COPS IN SHOPS

Posing as employees of retail businesses that sell alcohol, undercover special agents can observe and detect more violations than through standard enforcement efforts.

<http://www.ncale.org>





# COMPLIANCE CHECKS

Research has shown that unannounced, covert checks are one of the best methods to ensure voluntary compliance by retailers.





# KEYS TO LIFE

Provides young people with a sobering glimpse into the consequences they may face from making the wrong decision.

Programs can also be conducted with the highly successful Cops In Shops during peak periods of "celebration" by young people, such as homecoming, Spring break, prom and graduation.

<http://www.ncale.org>





# 2010 RESULTS

**3,107 ABC Application Investigations**

**947 NCEL Application Investigations**

**Maintained administrative oversight for:**

**~18,000 permitted ABC outlets**

**~7,300 licensed NCEL outlets**

**Physically inspected:**

**10,985 ABC outlets**

**3,726 NCEL outlets**

**728 Administrative Violations submitted to ABCC**





# 2010 RESULTS

**10,334 persons charged with criminal violations**

**12,467 total arrest charges**

**198 search warrants drawn and served**

**296 consent searches conducted**

**1,133 written warnings**

**3,850 tobacco compliance checks made**

**Conducted numerous special investigations into  
local ABC Board corruption and nuisance cases**



# 2010 RESULTS

**280 public information programs conducted**

**53 Keys To Life programs conducted**

**291 BARS training sessions held for 4,368 employees  
of 905 individual businesses**

**300+ Bingo license renewals and annual audits  
processed**

**NORTH CAROLINA DEPARTMENT OF  
CRIME CONTROL & PUBLIC SAFETY**

**ALCOHOL LAW ENFORCEMENT DIVISION**



**DIRECTOR'S REPORT TO THE SECRETARY**

**2010**

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*North Carolina Alcohol Law Enforcement Division  
2010 Director's Report to the Secretary*

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*Every society gets the kind of criminal it deserves. What is equally true is  
that every community gets the kind of law enforcement it insists on.*

Robert Kennedy

**TO THE SECRETARY:**

I am pleased to submit this report of the activities of the Alcohol Law Enforcement Division for the 2010 calendar year. Since accepting the appointment as Director in late 2009, I have found the mission of the Division to be both rewarding and challenging.

The Division continues to focus primarily on the consistent and efficient enforcement of the alcohol beverage control laws across the state. Through a coordinated effort of education, training, regulation, and enforcement, the Division of Alcohol Law Enforcement continues to take the necessary steps to ensure the public safety of the citizens of North Carolina.

A heightened effort has been placed on enforcement projects that have an immediate impact on reducing criminal activity and pave the way for long-term community betterment. The enclosed report highlights some of these projects and provides a glimpse into the outstanding strides ALE personnel are making to advance the Division's mission.

In 2010, the Division began to actively pursue national polygraph accreditation through the Polygraph Law Enforcement Accreditation (PLEA) program. Polygraph accreditation, much like the Division's accreditation through the Commission on Accreditation for Law Enforcement Agencies (CALEA), will ensure that the polygraph program adheres to the highest standards of professionalism, uses the best law enforcement practices, and maintains accountability for those practices.

By using forfeited funds, the Division was able to procure vehicles and equipment needed to support our sworn personnel in their daily duties without depleting the general budget or using taxpayer dollars.

The ALE Division's dedicated and innovative employees made wise use of limited manpower and resources in 2010 to accomplish great things; we look forward to continuing the Division's mission in 2011.

C. John Ledford  
Director

## ORGANIZATION

For purposes of enforcement, administration and supervision, the North Carolina Alcohol Law Enforcement Division is divided into nine separate geographical areas, or "districts." Please see the diagram *ALE District Boundaries* on the next page.

ALE is staffed by 112 sworn members, from Special Agent Trainees through the position of Director. Allocation of sworn member resources are as follows:

1	Director
1	Deputy Director for Administration
1	Deputy Director for Operations
1	Assistant Director for Training
1	Assistant Director for Professional Standards
10	Special Agents in Charge
12	Assistant Special Agents in Charge
1	Assistant Special Agent in Charge for Boxing (receipt-based)
4	Special Agents Assigned to State/Federal Task Forces
80	Special Agents for Field Enforcement*
<hr/>	
112	Total Sworn Personnel

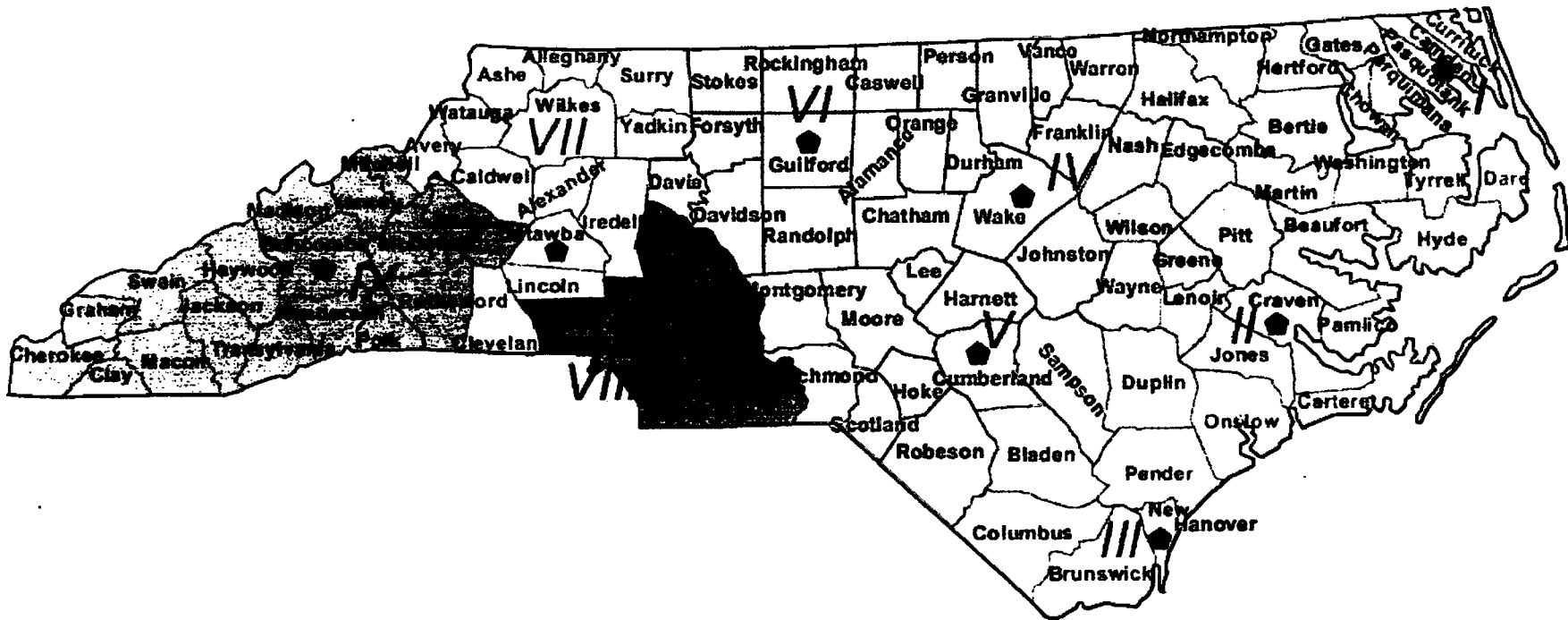
\* Eight (8) Special Agent positions are funded through a contract with the North Carolina Education Lottery for the purposes of lottery investigation and enforcement.

Providing administrative support for field personnel is a vital task performed by civilian employees and these roles are essential to the efficient day-to-day operation of the Division. Civilian personnel staff positions in Bingo Licensing, the NC Boxing Authority, Tobacco Regulation and Lottery sections. Civilian employees are assigned as follows:

9	District Office Assistants
1	Bingo Licensing position
1	Tobacco Enforcement position (receipt-based)
1	Boxing Authority position (receipt-based)
1	Accreditation position
2	Lottery positions**
3	Headquarters support positions
<hr/>	
18	Total Civilian Personnel

\*\* Two (2) civilian positions are funded through a contract with the North Carolina Education Lottery for the purposes of lottery administration.

# ALE DISTRICT BOUNDARIES



## RESPONSIBILITIES

The North Carolina Alcohol Law Enforcement Division is one of the most diverse state law enforcement agencies anywhere in the country. On any given tour of duty, a special agent's tasks may vary widely, to include: delivering responsible service training to business owners and employees, executing a search warrant at an illegal distillery, working undercover on a gambling investigation or conducting background investigations into new lottery retail applicants. Each of ALE's many responsibilities ensure the public safety of the citizens of and visitors to North Carolina.

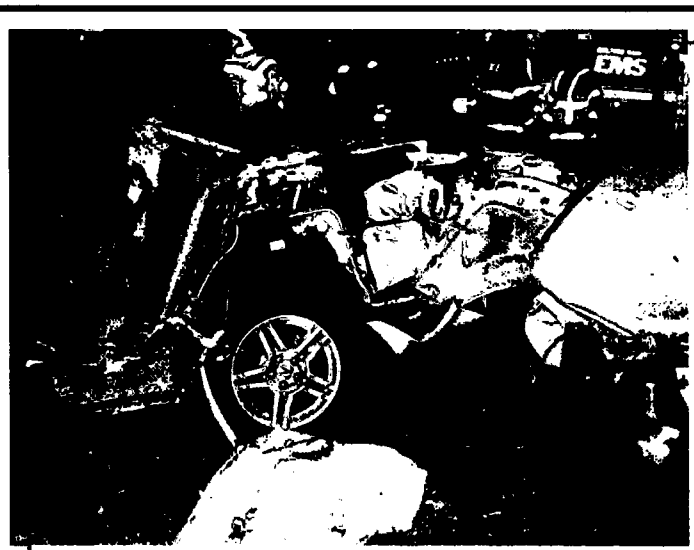
North Carolina General Statute 18B-500, which explicitly sets forth many of the expectations and responsibilities of ALE agents, reads, in part, as follows:

(b) Subject Matter Jurisdiction. - After taking the oath prescribed for a peace officer, an alcohol law-enforcement agent shall have authority to arrest and take other investigatory and enforcement actions for any criminal offense. The primary responsibility of an agent shall be enforcement of the ABC laws, lottery laws, and Article 5 of Chapter 90 (The Controlled Substances Act); however, an agent may perform any law-enforcement duty assigned by the Secretary of Crime Control and Public Safety or the Governor.

(d) Service of Commission Orders. - Alcohol law-enforcement agents may serve and execute notices, orders, or demands issued by the Alcoholic Beverage Control Commission or the North Carolina State Lottery Commission for the surrender of permits or relating to any administrative proceeding. While serving and executing such notices, orders, or demands, alcohol law-enforcement agents shall have all the power and authority possessed by law-enforcement officers when executing an arrest warrant.

The enforcement of alcohol laws is a very broad area. Most commonly, people think about underage drinking and moon-shiners when they hear the term alcohol enforcement. However, there are a variety of laws specified within Chapter 18B, for example; shipping, transport and import/export laws, purchase and possession laws, sales of alcohol to intoxicated persons and conduct of employees and customers on licensed premises.

ABC law also provides for civil penalties for cases known as "dram shops." Investigations into dram shops result when an underage person or an already intoxicated person is sold, served or given access to alcoholic beverages and they hurt themselves or a third party as a result of the irresponsible service



*Dram shop investigations typically begin as a result of a death or serious injury.*



## RESPONSIBILITIES

of alcohol. In these cases, the person or persons who were the source of the alcohol may be held civilly liable in addition to any applicable criminal charges. Investigations of this nature are time-consuming and tedious; attention to detail is essential to ensure successful prosecution.

ALE is involved in hundreds of controlled substance investigations each year, many of which originate or terminate at ABC permitted locations. Making certain that establishments are kept free of illicit substances is crucial to ensuring the safety and welfare of citizens patronizing these businesses, as well as the community at large.



*Special agents investigate hundreds of controlled substance cases each year, like this indoor grow operation.*

ALE may also be assigned any duty by the Governor or the Secretary of the Department of Crime Control & Public Safety. Whether it be deploying personnel to a natural disaster site, assisting local law enforcement or performing security functions, ALE is always ready to rapidly respond to any assignment the Governor or Secretary deem necessary.

Assistance to the ABC Commission is another responsibility set out by statute. Given their limited field personnel, the ABC Commission relies heavily on ALE for service of its legal processes. Last year, ALE conducted 3,107 in-depth ABC permit investigations on the behalf of the ABC Commission. These investigations require intensive background checks including finger-printing, interviews and criminal history inquiries.

In a challenging budget year with a four percent holdback ordered by the Governor, the Division finished the fiscal year with a positive balance. This ending result was due to spending restrictions and the utilization of previously untapped funds provided by the contract with the North Carolina Education Lottery.

A complete inventory of the Division's equipment and supplies was conducted in 2010, leading to the realization that ALE could assist sister agencies within the Department of Crime Control and Public Safety. Subsequently, firearms have been provided to both Butner Public Safety and State Capital Police, and the process has been initiated to transfer several 800 MHz portable radios for the use and benefit of State Capital Police.

Other excess items were transferred to State Surplus for resale. These transfers cleared space in the District Offices and Headquarters and provided much-needed funds for the current budget.

With approval from the Governmental Operations Subcommittee of the North Carolina General Assembly, ALE purchased vital equipment such as Tasers and 70 vehicles to augment an aging fleet. In ALE's efforts to streamline and standardize equipment, outdated rifles were exchanged through an even trade agreement and malfunction-prone handguns were replaced.

The Division invested heavily, through Governmental Operations funds, in the Department's new telephone system upgrade to allow for expansion that will include the ALE District Offices and Butner Public Safety's facilities. The upgrade is expected to produce more cost effective and efficient communications throughout the entire Department.

Another accomplishment has been the reformulation of the Work Performance Plans. The existing plans were examined and found to be deficient in their reflection of the actual work conducted. With these deficiencies in mind, the plans for the Law Enforcement Agent, Law Enforcement Supervisor, Law Enforcement Manager and Office Assistant IV were reviewed, corrected, and approved by the Department of Crime Control and Public Safety's Human Resources Department. The plans now accurately reflect the work product, goals and mission of the Division and can be used to properly assess employee performance.

Finally, ALE sought assistance from the Department's Public Information Office to help create an applicant recruiting brochure and from the North Carolina State Highway Patrol and the North Carolina Justice Academy for the production of a recruiting video which was posted to the ALE website. Both of these efforts are intended to present a professional image when seeking out qualified applicants for positions as ALE Special Agents:

The Alcohol Law Enforcement Division fields a force of 112 special agents who investigate and enforce a wide range of laws and regulations primarily centered on the sale, possession and consumption of alcoholic beverages. Additionally, ALE focuses on illegal sales and possession of controlled substances, gambling, violent crime and gang activity.

Many of the state laws and regulations promulgated specifically for ABC permitted establishments are unique, and because many laws and regulations apply only to ABC permitted businesses, ALE has no comparable counterparts in state law. The North Carolina General Assembly has given ALE specific law enforcement responsibilities relating to its primary mission.

ALE special agents are assigned so as to provide enforcement service in each of North Carolina's 100 counties. Each county is unique, and as a result, the specific duties of each special agent can vary considerably. In addition to the responsibilities associated with overseeing ABC permitted businesses in each county, special agents are tasked with additional law enforcement responsibilities. For example, in metropolitan areas such as Wake, Guilford and Mecklenburg counties, special agents may spend a considerable amount of time dealing with the consequences of violence at ABC permitted businesses, gangs, and major drug investigations; special agents assigned along the coastal counties contend with illegal activities brought about by those celebrating the end of school or vacationing at the beach, and illegal ABC outlets; special agents assigned to rural areas regularly deal with gambling operations, illegal alcohol distilleries, clandestine methamphetamine labs and marijuana cultivation.



*ALE special agents destroying non-tax paid alcohol.*

Other duties carried out by special agents include source investigations which involve investigating automobile accidents where consumption of alcoholic beverages by an underage person may have been a contributing factor; responding to and investigating complaints of house parties or other events involving underage possession of alcoholic beverages; and furthering the deterrence of crime by collaborating with local, state, and federal law enforcement agencies and developing problem-solving partnerships within the community. Additionally, special agents work in specialized disciplines such as nuisance abatement and hold task force positions with several federal law enforcement agencies including the FBI, ATF, ICE, and DEA.

The Division is dedicated to maintaining social order and quality of life through the enforcement of laws, the investigation of criminal offenses, and the apprehension of offenders. During 2010, special agents made 10,334 arrests. Violations were detected at ABC permitted

establishments which resulted in the submission of 728 reports to the ABC Commission. Additional violations were detected which generated 1,133 written warnings issued to ABC permitted businesses. A strong indicator of ALE's investigative work is demonstrated in the execution of search warrants. Using intelligence gathered from criminal investigations and information provided by the community, special agents executed 198 search warrants and were granted consent to search an additional 296 locations during 2010.

Also in 2010, the Deputy Director for Operations created a District Delegation group, made up of representatives from each ALE district who are elected by their peers to represent their concerns, suggestions and input to ALE management. The delegation meets quarterly and discusses issues such as equipment, policy and procedure, training and enforcement strategies.

Enforcement is one way to encourage voluntary compliance with the law. If potential violators know that ALE is vigilant in its efforts to deter illegal activity, then they will think twice before deciding to break the law intentionally.

Routine enforcement, such as overt checks, demonstrates to the community that law enforcement is actively looking for violations. Overt checks also give special agents the opportunity to interact with the public and answer any questions or concerns they may have, or simply to spread the mission of the Division. In 2010, special agents conducted 14,711 outlet checks. Likewise, undercover operations play a large role in enforcement. If criminals are always wondering if the individual they are dealing with may be a law enforcement officer, their illegal actions will be greatly impeded.

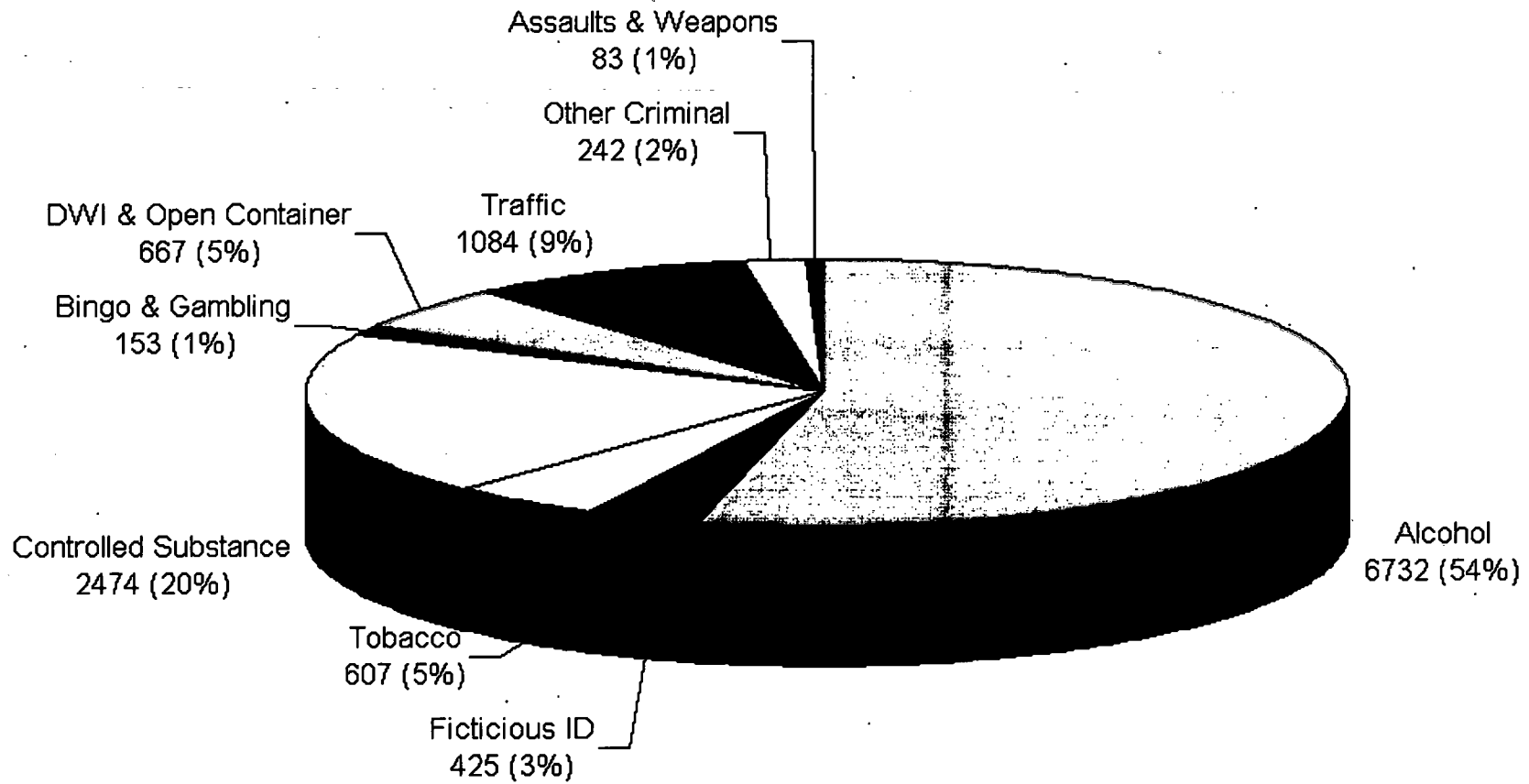
ALE continues to experience considerable success with its technical surveillance program. Four special agents with advanced training provide support for those districts conducting investigations that require surveillance of a more advanced technical nature (aided-visual, long-distance audio, undercover video, GPS tracking). These special agents maintain vehicle platforms outfitted with high tech cameras, listening devices and recording equipment. The technical surveillance program was responsible for documenting evidence in several important investigations in 2010.

Arrests for criminal violations are perhaps the most quantifiable statistic available for illustrating what areas agents are focusing on during enforcement activities. In 2010, special agents filed 12,467 criminal charges against suspects, either through citations, arrest warrants or warrant-less arrests. The chart *ALE Arrest Charges 2010* on the next page provides a breakdown of the different charges filed by the Division.



*Special agents routinely interact with persons suspected of criminal activity. ALE strives to balance professionalism and courtesy with officer safety and impartial enforcement.*

# ALE ARREST CHARGES 2010



**DISTRICT I - ELIZABETH CITY**

In 2010 the members of District I demonstrated personal dedication resulting in a safer community. The accomplishments of District I would not have been possible without the hard work of the men and women, both sworn and civilian.

On January 1, 2010, and May 9, 2010, patrons at ABC permitted establishments in District I were mortally wounded in shootings. District I special agents conducted thorough and timely investigations which resulted in the ABC Commission summarily suspending the ABC permits at both establishments.

On January 22, 2010, the dangers of the law enforcement profession were driven home when a District I special agent was assaulted, but not injured, with a firearm. During the incident, all District I personnel and members from multiple law enforcement agencies came together and assisted in apprehending the violators, removing dangerous criminals from the streets.

Another potentially lethal incident involving a District I member occurred in May 2010 when a special agent attempted to serve a federal indictment. The suspect, armed with a handgun, barricaded himself inside a home and vowed not to be taken alive. The special agent negotiated the suspect out of the house and subdued the suspect without having to resort to more lethal options. This potentially deadly situation was resolved without injury to any parties.

Large scale drug operations, some involving confirmed members of the Bloods street gang, were conducted in Washington, Tyrell, Halifax, and Edgecombe counties. This multi-agency project culminated with the federal prosecution of 18 people on 46 firearms charges and 34 controlled substance charges. These operations involved other state, local and federal law enforcement agencies.

In 2010, District I special agents investigated automobile accidents in Gates and Halifax counties, which involved underage drivers who consumed alcoholic beverages prior to the accident. In one case, the provider of the alcoholic beverages was charged with second degree murder.

**DISTRICT II - NEW BERN**

The special agents of District II share a commitment to ensure citizens can safely live and work along the Mid-Coastal area of North Carolina. Each member recognizes the importance of maintaining a strong law enforcement presence.

House parties involving underage consumption of alcoholic beverages present a number of challenges for ALE special agents. During January, District II met this challenge head on and investigated complaints at two separate house parties. The investigations resulted in 20 underage people being charged with possessing alcoholic beverages, and two people over 21 years old were charged with aiding and abetting underage possession of alcoholic beverages.

## **DISTRICT HIGHLIGHTS**

An April operation targeted activities of confirmed members of the Bloods and Crips street gangs at several ABC permitted establishments in Greenville. The operation involved ALE and local law enforcement agencies.

A joint investigation between District II personnel and investigators from the North Carolina Secretary of State's Office targeted counterfeit merchandise sold in ABC permitted establishments. After executing two search warrants and obtaining consent to search a third business, over \$250,000.00 in counterfeit merchandise, including DVDs and computer software, was discovered and confiscated.

In November 2010, special agents from District II, along with other ALE personnel and law enforcement officers representing other agencies, converged on Roanoke Rapids after a police officer was shot during a traffic stop. The shooter and his accomplice fled the scene and a manhunt ensued. Approximately 24 hours after the shooting, the accomplice was found in a wooded area and arrested. The shooter was found mortally wounded from a self-inflicted gunshot.

### **DISTRICT III - WILMINGTON**

Throughout 2010, District III personnel stayed the course in carrying out the ALE mission. These special agents established strong relationships with other law enforcement agencies and used all available resources to further the Division's mission.

The downtown area of Wilmington, bordered by the Northeast Cape Fear River, is home to a small park, a walkway, and numerous shops and restaurants, and is an attraction for thousands of local residents and tourists. Each weekend, hundreds of people visit downtown Wilmington to patronize the businesses, many of which hold ABC permits. Persistent crime problems in the downtown area, many associated with consumption of alcoholic beverages, have local law enforcement and community leaders searching for solutions to problems such as fights and assaults. Tragically, an underage patron was killed in an automobile accident after consuming alcoholic beverages at a downtown bar. The toxicology report indicated the driver's blood alcohol concentration was .48.

In early 2010, District III special agents partnered with owners of downtown ABC permitted businesses, the Wilmington Police Department and the New Hanover County District Attorney's Office in search of solutions to these problems. ALE provided training programs for employees of ABC permitted businesses, and combined this educational facet with a comprehensive saturation enforcement program in cooperation with the Wilmington Police Department. The District Attorney's Office agreed to prosecute all criminal charges made in the downtown area and made the commitment to pursue public nuisance actions at locations where breaches of the peace, such as fights, assaults, and gunfire, repeatedly occur.

The sustained operational efforts generated over 500 arrests. Additionally, violation reports were submitted to the ABC Commission for an array of issues such as sell to underage, sell to an intoxicated patron, afterhours violations, and allowing drug violations. Business owners overseeing establishments which were the genesis of violent crime were notified of the



## **DISTRICT HIGHLIGHTS**

potential consequences of public nuisance actions. After being put on notice, one of these businesses promptly closed.

This long term endeavor has been successful thanks to the tireless efforts of District III members. With the support of the Wilmington Police Department and other government agencies, special agents continue to monitor the area to ensure the public's safety.

### **DISTRICT IV - RALEIGH**

Special agents assigned to District IV are proactive and dedicated to maintaining the highest standards of law enforcement service. They strive to work with the community and others to improve the safety and quality of life in our state.

An illegal lottery investigation between District IV personnel and the Raleigh Police Department concluded in March 2010. The investigation led to the execution of several search warrants and 10 people charged with a variety of ABC, gambling and drug crimes. Over \$12,000.00 in cash and two vehicles were confiscated.

In early May 2010, the President of the Hells Angels Motorcycle Club embarked on a nationwide tour promoting his newly released biography and holding book signings. During a stop in North Carolina, the Hells Angels planned a gathering in Orange County to coincide with the book signing. After receiving intelligence that the Outlaws, a rival motorcycle club, intended to incite fights at the Hells Angels' gathering, the Orange County Sheriff's Office requested ALE District IV personnel to assist with security at the event. The presence of the District IV special agents, along with other law enforcement officers, ensured the event was peaceful, despite the attendance of hundreds of motorcycle enthusiasts and club members.

Envy Ultra Bar and Lounge, an ABC permitted business operating in east Raleigh, had a history of assaults, stabbings, repeated gunfire, and weapons violations. It also served as the meeting place for a local chapter of the Bloods street gang. After a shooting in May, community leaders, the Raleigh Police Department, the Raleigh City Attorney's Office, ALE District IV and the ALE Office of Special Investigations partnered to permanently eliminate violent crime at this location. After ALE personnel interviewed residents of the community and prepared affidavits, the Raleigh City Attorney's Office filed a civil nuisance action in Wake County Superior Court. Rather than face the potential consequences and expenses of extended litigation, the property owner and business operator quickly settled and agreed to permanently cease operations.

In December 2010, District IV members successfully concluded a two county investigation centered on the manufacture and distribution of nontaxpaid spirituous liquor in which several people were charged. Notable seizures from this investigation included 550 gallons of nontaxpaid liquor; a distillery valued at \$13,000.00; 3,900 gallons of mash valued at more than \$11,000.00; over a ton of sugar; 1,700 pounds of wheat bran; four vehicles; over \$2,000.00 in cash; and firearms. Tax assessments exceeding \$16,000.00 were submitted to the North Carolina Department of Revenue.

**DISTRICT V - FAYETTEVILLE**

During 2010, District V special agents demonstrated a personal interest in making their community safer by aggressively engaging in various community betterment operations and continued to provide excellent law enforcement services.

Responding to community concerns, District V personnel concluded a long term undercover controlled substance operation in February. Twelve people were arrested and charged with 93 felonies, including illegal drug sales, conspiracy, possession of a firearm by a convicted felon, and maintaining a continuing criminal enterprise.

District V special agents have a history as effective and efficient investigators of notable gambling cases. One such case was at an ABC permitted business and resulted in five arrests for various gambling charges. Another case involved a large-scale gambling operation in a rural area of the district. When this investigation was concluded, eight people were charged with gambling violations and over \$23,000.00 was seized.

In May 2010, District V members conducted an aggressive enforcement operation in several crime infested areas of Cumberland County. The "wolfpack" style of enforcement focused on ABC permitted establishments and resulted in over 30 arrests for ABC and drug violations and confiscation of controlled substances.

During 2010, District V personnel continued to expand their investigative capabilities. While investigating a complaint of stolen spirituous liquor, a special agent obtained a search warrant for the suspect's home. When the warrant was executed, an indoor marijuana growing operation, valued at more than \$20,000.00, was discovered. In addition to the marijuana, special agents seized psilocybin mushrooms, a schedule I controlled substance, and illegally diverted prescription medications.

Illegal ABC outlets are the source of many violent and dangerous crimes, such as shootings, drug dealing, and robbery. Many outlets are operated from homes in residential neighborhoods and do not open until after 2:00 a.m., when legitimate bars and nightclubs close. Neighbors of these establishments must endure the late night noise, disturbances, and infestation by the criminal element attracted to the activities in and around these illegal outlets. In September 2010, several District V special agents played a major role in identifying 12 illegal outlets and gathering probable cause for issuance of a search warrant at many of them. More than 15 people were charged with various ABC offenses in connection to the operation of these locations.

**DISTRICT VI - GREENSBORO**

Working in a spirit of collaboration and directing a proactive focus on the source of criminal activity rather than the traditional method of responding to the consequences, District VI began the year assisting a local government with investigating and litigating a public nuisance action at an ABC permitted establishment which served as a house of prostitution and was the site of numerous violent crimes, including homicide, assaults, and violence perpetrated with firearms. After the civil action was filed, both the property owner and business operator

## **DISTRICT HIGHLIGHTS**

settled the lawsuit and agreed to take measures to ensure criminal activities ceased. The tenant agreed to close the business and not operate an ABC permitted business within the local jurisdiction. All current and future owners of the property are prohibited from allowing nuisance related activities at the property.

During 2010, patrons at several ABC permitted establishments in District VI were seriously injured or fatally wounded in violent crimes such as shootings. In one case, two patrons, wounded by gunfire outside an ABC permitted establishment, were carried inside by employees and hidden in a closet. When the local police arrived at the establishment, they had to force entry to locate the victims because employees refused to allow them access to the facility. District VI special agents conducted a thorough and timely investigation which resulted in the North Carolina ABC Commission summarily suspending the ABC permit at the establishment less than 24 hours after the shooting.

A joint investigation between District VI personnel and the High Point Police Department's Narcotics Division conducted in mid-2010 at an ABC permitted business led to the arrest of four people. The suspects were charged with various crimes ranging from the sale and delivery of, and trafficking in, cocaine, as well as numerous ABC offenses. More than 1,300 grams of cocaine with a street value exceeding \$10,000.00 was seized.

In late 2010, District VI special agents concluded a major controlled substance investigation at an ABC permitted establishment in Davidson County. Undercover law enforcement officers purchased prescription medications, marijuana, and trafficking amounts of cocaine from employees at the establishment. At the conclusion of the investigation, 22 people were arrested on 167 criminal charges including trafficking cocaine and maintaining a continuing criminal enterprise. Four vehicles were seized in addition to the drug seizures.

### **DISTRICT VII - HICKORY**

It was another interesting and productive year for the special agents assigned to District VII, dealing with the full spectrum of issues handled by ALE.

In 2010, the tragic consequences of underage consumption of alcoholic beverages rose to the forefront for District VII special agents. Underage drivers were involved in several traffic accidents which resulted in serious injuries or fatalities. In one case, the provider of alcoholic beverages, who was over 21 years old, was killed in an accident when the underage driver lost control of a vehicle. In another case, an underage provider was charged after special agents responded to an underage house party complaint and found a semi-conscious 16 year old suffering from alcohol poisoning.

Following a national trend, the diversion of pharmaceutical drugs continues to be a rising problem in North Carolina. In October 2010, District VII members investigated a pharmaceutical diversion case where juveniles at a "clubhouse" used for illegal activities were provided Lorazepam, alcoholic beverages and marijuana. Three people who provided the controlled substances and alcoholic beverages to the juveniles were charged.

## **DISTRICT HIGHLIGHTS**

This year District VII saw an increase in complaints concerning clandestine methamphetamine labs. Two investigations conducted by District VII personnel resulted in the seizure of more than 600 grams of methamphetamine along with precursors used in the manufacturing. Sadly, in one case, two minors lived in the home where methamphetamine was manufactured. Local child protection officials removed the children from the home.

District VII special agents conducted a notable illegal distillery investigation in late 2010. After the Wilkes County Sheriff's Office requested assistance, a special agent drew and executed a search warrant in rural Wilkes County. There, law enforcement officers discovered an illegal distillery with a mash capacity of 700 gallons, and 13 gallons of nontaxpaid liquor were seized.

### **DISTRICT VIII - CHARLOTTE**

ALE District VIII consists of Mecklenburg and several surrounding counties. The outlying counties' close proximity to a large city, such as Charlotte, results in an overflow of criminal activity that requires constant vigilance. As a result, the special agents in the district work closely with large metropolitan law enforcement agencies as well as nearby police departments and sheriff's offices to resolve mutual issues.

District VIII special agents made strong contributions in 2010 toward reducing the illegal possession and sale of controlled substances in their area. Large-scale drug investigations were conducted in Mecklenburg County in ABC permitted businesses, areas close to schools, and hotels. During the investigations, District VIII members partnered with other state, local and federal law enforcement agencies. One case resulted in the purchase of cocaine from employees at an ABC permitted business and resulted in 8 arrests and the seizure of cocaine.

Other controlled substance investigations by District VIII special agents yielded more than 6,800 pounds of marijuana, \$575,000.00 in cash and several vehicles.

For two weeks in May 2010, over 200,000 people attended NASCAR events at the Lowes Motor Speedway in Concord, NC. District VIII personnel worked closely with local law enforcement agencies conducting enforcement, surveillance and undercover operations. By the conclusion of the operation, 114 people had been arrested on various ABC and drug charges.

The reduction of street gang activity was made possible through the strong contributions of District VIII special agents working cooperatively with local, state, and federal law enforcement agencies. Operations to reduce gang activities were conducted in Mecklenburg, Anson, and Henderson counties. More than 100 confirmed gang members were arrested during these operations, including members of the Bloods, Crips, Southside Crips, MS-13 and SUR-13 street gangs.

Between September and November 2010, District VII members investigated several complaints alleging underage consumption of alcoholic beverages at house parties. The investigations resulted in more than 200 people charged with underage possession of alcoholic beverages. Controlled substances such as oxycodone and marijuana were also seized.

**DISTRICT IX - ASHEVILLE**

District IX personnel are committed to providing the citizens of North Carolina the best possible service. The members assigned to District IX hold each citizen in the highest esteem and provide law enforcement service with respect for the individual.

In April 2010, District IX special agents assisted the Henderson County Sheriff's Office with the investigation of a theft ring of farm equipment. Two people were arrested and a trailer was recovered. One of the arrestees agreed to provide substantial assistance to law enforcement and revealed the stolen trailer was to be delivered to Georgia. As a result, contact was made with the Georgia Bureau of Investigation and the investigation shifted out of state.

District IX investigations involving controlled substances in 2010 included a joint investigation with the Rutherford County Sheriff's Office at an ABC permitted establishment. At the conclusion of the investigation, seven people were arrested on numerous controlled substance charges. Illegal drugs seized during this investigation included cocaine, morphine, klonopin, and marijuana.

During August 2010, District IX special agents investigated a complaint of an illegal ABC outlet operating in Rutherford County. During the investigation, an undercover special agent confirmed the allegations of the complaint and purchased alcoholic beverages from the illegal outlet. After a search warrant was executed, seven people were arrested and alcoholic beverages, marijuana, cocaine, hydrocodone, Xanax, and Percocet were seized.

In another joint investigation, District IX personnel joined forces with the Bureau of Alcohol, Tobacco and Firearms (ATF) to investigate a complaint involving stolen weapons. An ALE special agent working in a covert capacity purchased a stolen shotgun, a ballistic vest, and cocaine from one suspect.

Created in June 2010, the Office of Special Investigations carried out a wide variety of sensitive duties including conducting internal investigations, assisting local governments with public nuisance actions and community betterment projects, and investigating mismanagement and corruption within local ABC systems. The Office of Special Investigations also worked with ABC Commission attorneys to develop a uniform statewide protocol for investigating ABC permitted outlets considered to be detriments to local communities.

Nuisance properties are the source of numerous reported criminal acts, including murders, assaults, drug transactions, firearms offenses and other acts of violence. Nuisance abatement requires the application of many legal disciplines including criminal, administrative, property and civil law. This approach is highly successful because it is unique in that it uses civil law to permanently stop criminal activities that have plagued communities for years.

ALE assisted two local governments investigating and litigating public nuisance actions in 2010. Both cases involved ABC permitted businesses which were sites of numerous violent crimes including assaults and robberies and gang activities. After the civil actions were filed, both property owners settled the lawsuits and agreed to take measures to ensure the criminal activities at these properties ceased. One property owner evicted the tenant and closed the business. In the other case, the tenant agreed to close his business and not operate an ABC permitted business within the local jurisdiction. All current and future owners are prohibited from allowing nuisance related activities at these properties.

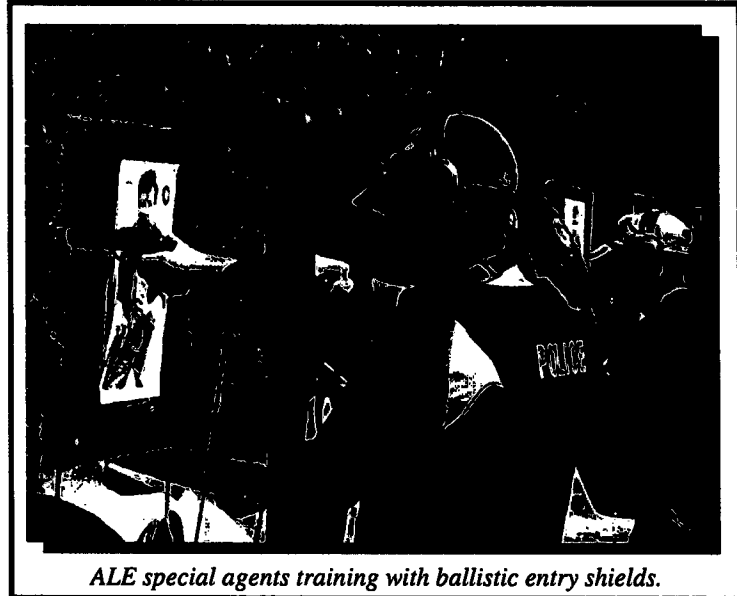
In 2010, the Office of Special Investigations provided expertise and technical assistance to the police departments in Wilmington, Greensboro, Raleigh, Thomasville, Salisbury and Ahoskie and the Robeson County Sheriff's Office. Requests for nuisance abatement assistance included properties such as mobile home parks, ABC permitted establishments, and one private residence. With nine public nuisance investigations pending, the Office of Special Investigations remains dedicated to supporting the efforts of local law enforcement agencies.

The Office of Special Investigations also provided assistance to the North Carolina ABC Commission as they investigated complaints against employees of local ABC systems. These complex investigations draw in local government officials, local government boards, and their attorneys. Due to their sensitive nature, these investigations require professionalism, discretion and confidentiality. Two of the complaints centered on local ABC system managers receiving gifts and items of value from liquor vendor representatives. While one of these investigations is on-going, one was recently completed; the allegations of the complaint were substantiated and the system manager's employment was terminated. The other investigation is focused on the alleged theft of spirituous liquor by a system manager.

In 2011, the Office of Special Investigations will continue strengthening foundations for the successful execution of the ALE mission. The successes from 2010 will become building blocks for the future as we work with local and state agencies to improve the quality of life for the citizens of our State.

During 2010 each ALE special agent completed 31 hours of training mandated by the North Carolina Education and Training Standards Commission, the Commission on Accreditation for Law Enforcement Agencies (CALEA) and the Occupational Safety and Health Administration (OSHA). All of the Division's members were trained in CPR and the use of the automatic defibrillator.

In addition to the mandated annual training, all of the Division's Assistant Special Agents in Charge (ASACs) attended Leadership training. Special agents from each district attended asset forfeiture training; others attended gang investigation training. Members from each district were also trained to recover computer evidence and investigate cases using social networking sites such as MySpace and Facebook. Nine ALE sworn members completed EMT training; a special agent from each



*ALE special agents training with ballistic entry shields.*

district was trained to deal with critical incidents and can now serve on the Department of Crime Control and Public Safety's Member Assistance Team.

All districts were equipped with ballistic shields and special agents received training using the shields on tactical entry and warrant execution. ALE replaced it's rifle platform and all sworn members were trained to use the new rifle and EoTech sighting system. All sworn members completed a combat course during firearms training.

While conducting internal investigations is never a pleasure, they are necessary to maintain a high level of professionalism and pride within the Alcohol Law Enforcement Division. There were 35 internal inquiries and investigations conducted during 2010. While this number is higher than in previous years, discussions with field personnel indicate that they believe these investigations are necessary to maintain and improve accountability within ALE. This accountability has given most agents the feeling that their job has purpose, professionalism and value; a focus on employee integrity has increased the level of pride and morale within the ALE Division.

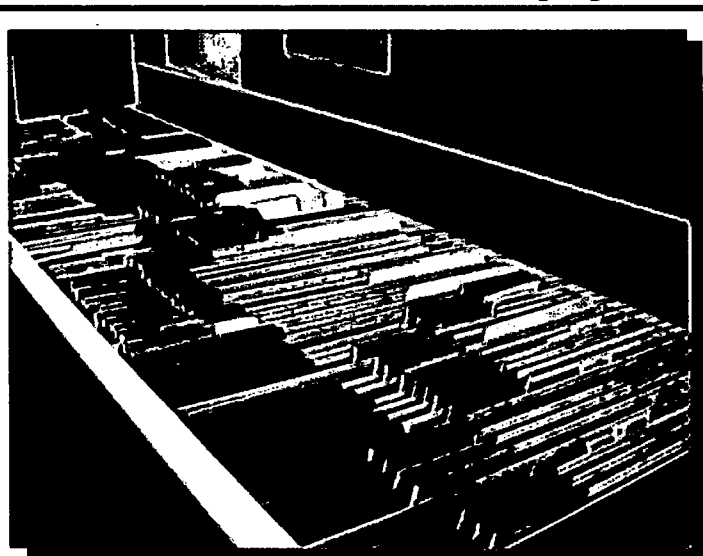
Four special agents have been assigned full-time to the FBI Joint Terrorism Task Force (JTTF), Information Sharing and Analysis Center (ISAAC), The Safe Streets Task Force (SSTF) and Alcohol Tobacco and Firearms Task Force (ATF). The members of these specific task forces have independently coordinated operations and have collaborated to conduct in-depth, long term investigations that have and will continue to reduce or eliminate criminal activity. These partnerships have bridged gaps in law enforcement where barriers have existed in the past and have substantially improved the quality of life for the citizens in several North Carolina communities. The activities of the task force members are directly supervised by the Assistant Director for Professional Standards.



The Alcohol Law Enforcement Division believes that accreditation is a continual process essential to setting and maintaining the high level of law enforcement service and professionalism owed to the citizens of North Carolina. It is the responsibility of the accreditation office to ensure that professionalism and integrity run as parallel threads in every other component of the Division. With an on-site assessment scheduled for the spring of 2011, ALE's accreditation office has been steadily preparing for this visit by researching and revising policies, streamlining processes, gathering documentation, training employees and networking with other agencies. ALE has provided accreditation expertise to numerous local law enforcement agencies, the North Carolina Justice Academy and agencies in other states during the 2010 calendar year.

In conjunction with accreditation duties, the accreditation office is responsible for the compilation of annual analyses for the Division's high liability areas, including, but not limited to, uses of force, grievances, internal affairs investigations and the Division's internal personnel early warning system. These analyses serve as a check and balance to ensure that the Division is serving the general public and the members of the agency with professionalism, integrity and consistency.

In early 2010, the accreditation office was responsible for coordinating ALE's 2010 promotional process. Through a series of written tests, scenario-based practical applications and review board interviews, pools of excellent candidates for Special Agent in Charge (SAC) and Assistant Special Agent in Charge (ASAC) positions were created. From these pools, the Division has promoted three highly qualified individuals into each level of field supervision. For the size of the agency, six promotions in one year presents a considerable learning curve, yet these newly promoted leaders are excited to learn and are bringing new innovations and creative leadership ideas to the Division.



*Proper documentation is crucial to maintaining an agency's accreditation status.*

Voluntary compliance with the law is the ultimate goal of law enforcement. By educating the public and retailers on specific laws and the consequences of certain actions, a standard of compliance can be brought about through awareness. ALE employs many different educational programs targeted toward particular audiences to accomplish its goal of voluntary compliance.

Be A Responsible Seller (BARS) is an educational program specifically designed for permittees and their employees. BARS training stresses the responsible service of age-restricted products and highlights checking for valid identification. This program is delivered by ALE special agents who have received training in public speaking and who have demonstrated a thorough knowledge of the material. The training is also continually refined so that only the most accurate and timely information is presented to participants. BARS training is provided to retailers free of charge and scheduling is done in such a way as to make the training convenient for attendees. This informational program provides an excellent opportunity for retailers and their employees to ask specific questions as well as receive a refresher course of the laws and regulations in general. When retailers are proactive in their stores and work together with agents to prevent underage drinking and other violations of the law, they become part of the solution and are more receptive to partnership opportunities. During 2010, 291 BARS programs were conducted for 905 retail businesses. A total of 4,368 participants received BARS training through the year.

Due to the diversity in their duties, ALE special agents are often invited to speak to various organizations such as schools, churches and civic groups on a variety of topics, ranging from DWI and drug abuse prevention to gambling addiction and crime prevention. Being able to customize a presentation for a particular audience is yet another example of how ALE is constantly striving to be a true public service organization that is genuinely concerned about the community. Also included in these types of programs are recruiting efforts at Basic Law Enforcement Training classes and career fairs. During 2010, ALE presented 280 public information programs to 13,500 people.

2010 marked another successful year of Keys To Life, a unique program funded by the Governor's Highway Safety Program. Keys To Life combines several public information components into one program specifically aimed at high school juniors, seniors and college freshmen. Prom, spring break and graduation are important events for young adults. It is unfortunate that these rites of passage can sometimes end in terrible tragedy. More alarming is the fact that such misfortunes can most often be avoided. In 2010, ALE presented 53 separate Keys To Life programs at high schools and colleges throughout North Carolina, reaching an audience of 6,410 students.



Administrative regulation is another important facet of responsible, efficient alcohol and lottery enforcement. Working within rules and regulations established by the ABC Commission and the North Carolina Education Lottery under state administrative law, ALE special agents conduct thorough inspections of businesses licensed to sell and serve alcoholic beverages and to sell lottery tickets. These inspections provide good opportunities to not only detect rule violations, but also to interact with permittees and employees, answering questions and addressing concerns that they may have. In 2010, ALE special agents conducted 10,985 inspections of ABC licensed premises and another 3,726 inspections at licensed lottery premises.

While many inspections uncover no infractions or only minor, technical infractions, there are instances in which serious violations are discovered. Repeat technical infractions and first-time serious violations generally result in the submission of an Administrative Violation report to the ABC Commission or the North Carolina Education Lottery. The purpose of these reports is to provide the permit-issuing authorities a detailed account of violations occurring at licensed businesses, so that it may be determined what, if any, penalty should be imposed for the alleged offense. Penalties may include written warnings, fines, suspension of permits, revocation of permits or a combination of penalties. In total, ALE special agents submitted 728 administrative violation reports to the ABC Commission and 60 administrative violation reports to the North Carolina Education Lottery in 2010.



*An ALE special agent conducting an outlet inspection.*

For less-serious violations, special agents have the discretion to issue either verbal or written warnings in lieu of an arrest or administrative violation. Such warnings may be the foundation on which more severe action is later based or it may be that motivation necessary for a permittee to enact corrective measures. Last year 1,133 written warnings were issued to ABC permit holders.

The North Carolina Boxing Authority made a concerted effort throughout 2010 to ensure that bouts are competitive, fair and safe. A firm stance was taken to ensure that fighters are held accountable for the proper and timely submission of paperwork and for their conduct at the arena. As an example of the Boxing Authority's commitment to the well-being of the participants and the integrity of the sport, a fighter was arrested on felony charges for submitting fictitious medical documentation in 2010. The Boxing Authority strives to continually improve the boxing, mixed martial arts, and toughman competitions throughout the state.

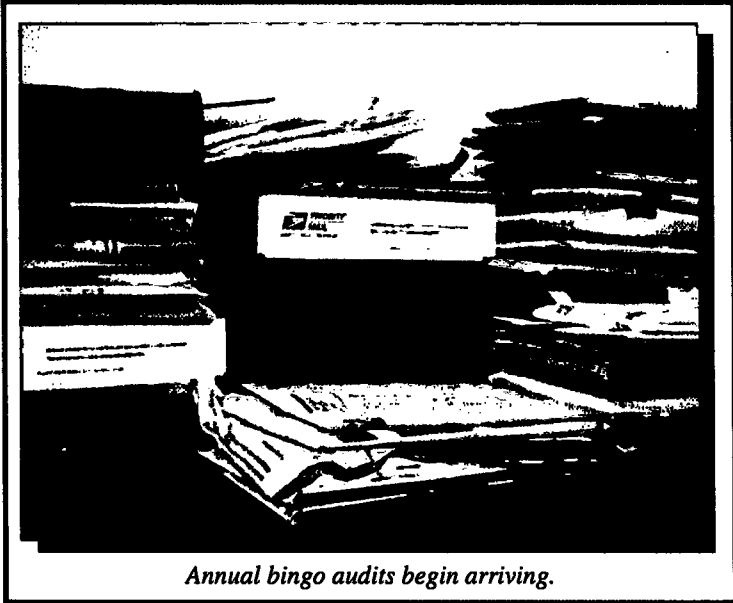
While operating with a \$300,000.00 receipt-based budget, the North Carolina Boxing Authority endeavored to cut spending wherever possible. This process began with a detailed, line-by-line cost and spending analysis. The Boxing Authority reduced its mailing budget by more than 90 percent and overtime pay by more than 35 percent. These changes, which did not reduce the effectiveness or integrity of provided services, allowed the Boxing Authority to operate with a \$25,000 to \$30,000 surplus. Modernizing the computer systems and replacing independent copiers and a fax machine with a new combined energy efficient unit further contributed to the Boxing Authority's cost-saving efforts. A proposal for the physical reconfiguration of the boxing/lottery section office space was submitted and approved; this reconfiguration will provide a barrier that will increase the safety and security of each employee and enhance the security of the sensitive information that is maintained by the Boxing Authority.

For the first time since the Boxing Authority was formed, a collaborative meeting was held with all of the promoters operating within North Carolina to ensure the consistency of information and to respond with transparency to the promoter's concerns. Using the feedback from that meeting, a similar meeting and roundtable discussion was held with all licensed officials. These meetings have served to clarify the Boxing Authority's expectations and the responsibilities of those who participate in events. The Boxing Authority is currently in the process of scheduling additional training for judges and referees to ensure transparency and proficiency in officiating and scoring matches.

The non-sworn employees assigned to the lottery section and Boxing Authority have crossed-trained over the past year to learn how to perform the job functions of each section, resulting in efficiency and providing a variety and change of pace for each employee. This cross-training and diversity has increased buy-in and decreased burnout in both sections.

The Boxing Authority is staffed by one civilian employee and one Assistant Special Agent in Charge; both positions are funded through program receipts.

The Bingo Licensing section of the Alcohol Law Enforcement Division is responsible for the regulation of non-profit bingo operations throughout North Carolina. This responsibility includes the processing of applications to conduct non-profit bingo operations and the issuance of an annual license to operate bingo games. In 2010, the Bingo Licensing section processed over 300 bingo licenses. In addition to the issuance of each license, the section also conducts an annual audit of each licensee, including a review of all operational reports and a thorough examination of the distribution of bingo proceeds. These audits ensure each licensed bingo organization is in compliance with North Carolina General Statutes and that gaming participants are afforded fair gaming opportunities. In 2010, over \$2.1 million benefited charitable organizations through non-profit bingo operations in North Carolina.



*Annual bingo audits begin arriving.*

Over the past year, more than 1,000 phone inquiries from license holders, the general public and local law enforcement were fielded by the Bingo Licensing section and over 100 bingo-related complaints were investigated.

This section is partially supported through a combination of receipts and general funding, with the \$200.00 annual license fee being returned to the section to subsidize it's budget.

In addition to the responsibilities set forth by statute, ALE is also the lead state agency for tobacco enforcement. This designation came as a result of Executive Order 123 signed by former Governor James B. Hunt. It is part of ALE's core mission to keep age-restricted tobacco products out of the hands of minors. To accomplish this goal, ALE combines merchant education with a compliance check program.

Early in 2010, ALE began disseminating the state's first Red Flag Merchant Education Packet that includes in-store displays and materials for use by retailers during responsible service employee training, the overall goal being to increase retailer compliance with the state's youth access to tobacco products law. Over

3,500 retailer packets, available in an English or Spanish language version, were distributed in 2010. Special agents have participated in Red Flag training sessions and Tobacco Reality Unfiltered (TRU) group meetings and presentations throughout the year.



In 2010, ALE special agents and minors conducted more than 3,850 tobacco compliance checks, detecting 509 illegal sales for a 13.22% non-compliance rate, a decrease from a 16% non-compliance rate in 2009. The results of these compliance activities have generated 18 media stories from television and newspaper outlets across the state.

In August, ALE began to award a new incentive, a lapel pin and thank you card, for retail clerks that do not sell tobacco products to the minor during tobacco compliance checks. The lapel pin carries the message "Kids Can't Buy 'Em Here" and "I didn't sell." The pin serves as a reminder to check purchaser identification during sales of tobacco and other age-restricted products. Special agents have awarded more than 545 of the lapel pins since their introduction.

The Tobacco Regulation section has responded to over 40 requests for technical assistance from grantees, schools and other local agencies to provide compliance check data, retailer location lists, merchant education materials, Power Point presentations, planning and brainstorming to enhance their local tobacco use prevention programs.

All of the funding for compliance check operations, including both special agent and minor pay, as well as money for undercover purchases, is provided by the Health and Wellness Trust Fund.

## AWARDS

ALE special agents were exposed to violent and dangerous situations on many occasions throughout 2010. The long overtime hours and the often "less than ideal" conditions were stressful to say the least. From beginning to end, ALE's membership responded with professionalism and exhibited the highest standards of character and conduct. In several instances, members stepped forward in a time of crisis to help another person or worked toward the betterment of our community by taking action to help improve the quality of life for local residents.

The following are members who were recognized during 2010 for their contributions and efforts to the state, the department and their communities.

Special Agent Chris Watkins (now retired) was recognized for his work in a video poker investigation that lasted over six months and resulted in the seizure of over 500 video poker machines and the forfeiture of more than ten million dollars. Secretary Young presented S/A Watkins with the Department's Distinguished Service Award for going above and beyond the call of duty throughout this investigation.



Special Agent Bryan Irwin received the Department's Heroism Award after apprehending a gunman who targeted an intended victim at an ABC permitted business. Secretary Young noted S/A Irwin's selfless regard for his own safety while pursuing and arresting the gunman.

The response to a District Attorney's request for an investigation into an alcohol related traffic fatality involving an underage person by Special Agent Stacy Cox is another example of ALE's commitment to the community. S/A Cox's investigation required interviews with numerous witnesses, some of whom were uncooperative. At the conclusion of the investigation, a grand jury returned an indictment for the case. Secretary Young presented S/A Cox the Department's Distinguished Service Award for her exemplary handling of this investigation.

At the conclusion of a high speed vehicle chase, a fleeing motorist attempted suicide by cutting his throat with a box cutter. Special Agent Adam Boyd, who was involved in the chase, broke the window out of the vehicle, disarmed the driver, and provided lifesaving medical attention. Although the motorist fought and resisted, S/A Boyd worked diligently to ensure the victim's well being until EMS arrived. Secretary Young presented S/A Boyd with the Department's Heroism Award for bravery and risking his own life to save another.

## AWARDS

During the early morning hours of April 16, 2010, Special Agent Robbie Huneycutt was working a routine shift when he observed three males assault and attempt to rob a pedestrian. S/A Huneycutt thwarted the robbery attempt and arrested one of the three suspects after a foot chase. Secretary Young recognized S/A Huneycutt's efforts and presented him with the Department's Heroism Award and the Secretary's Gold Circle Award.

Special Agent Tommy Bisette was conducting a routine check of an ABC permitted business during the summer of 2010 when he noticed a person slumped over in a vehicle parked nearby. After a brief conversation, S/A Bisette recognized the person was suffering from diabetic shock and Bisette immediately began life-saving action and assisted the victim until emergency personnel arrived. Secretary Young presented S/A Bisette the Department's Public Safety Commendation Award for going above and beyond the call of duty.

Special Agent Chris Poole and Assistant Special Agent in Charge Jason Locklear assisted the High Point Police Department's Narcotics Division during a drug investigation in mid-2010 at an ABC permitted business, which led to the arrest of four people and the seizure of more than 1300 grams of cocaine, with a street value exceeding \$10,000.00. Without neglecting their regular duties and responsibilities, S/A Poole and ASAC Locklear spent long hours working to ensure the outcome to this case was successful. These members' efforts led Secretary Young to present S/A Poole and ASAC Locklear with the Department's Meritorious Service Award and the Secretary's Gold Circle Award.

A major marijuana distributing network was disrupted in 2010 due to the hard work and dedication of Special Agents Mark Lesassier and Brad Putnam. Working with federal authorities, S/A Lesassier and S/A Putnam spent countless hours conducting surveillance and gathering intelligence on suspects. The operation culminated with the arrest of several people and the seizure of more than 6,000 pounds of marijuana, \$575,000.00 in cash and several vehicles. Secretary Young awarded S/A Lesassier and S/A Putnam the Department's Meritorious Service Award.

For several years, Special Agent Mike Tobin has worked with federal law enforcement agencies in numerous gang prevention initiatives. In 2010, S/A Tobin's tireless efforts resulted in the arrest or detention of more than 100 confirmed street gang members. Secretary Young presented S/A Tobin the Department's Meritorious Service Award for demonstrating an outstanding level of service to the people of North Carolina.



**Alcohol Beverage Control  
April 20, 2011**

**PAGES**

**Raynelle Jones**

**Ashe**

**Rep. Jordan**

**Maleah Murray**

**Columbus**

**Rep. Hill**

**SERGEANT AT ARMS**

**Gaylord Shepherd**

**Earl Coker**

**STAFF**

**Brenda Carter**

**Erika Churchill**

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE ABC

DATE: 04-20-2011 Room: 425

\*Name: Raynelle Jones

County: Ashe

Sponsor: Jonathan Jordan

\*Name: Maleah Murray

County: Columbus

Sponsor: D. Hill

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

House Sgt-At Arms:

1. Name: Earl Coker

4. Name: \_\_\_\_\_

2. Name: Garland Shephard

5. Name: \_\_\_\_\_

3. Name: \_\_\_\_\_

6. Name: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

ABC

Name of Committee

4-20-11

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

William Riley	Mutual Distributing
KRS GARDNER	NC BEER & WINE WHOLESALE ASSOC.
Rev. MARK CREECH	CAK
Barbara Canale	BKOR
KTW.3	CCPS
Ken Pike	ACE
Justin Furr	NC WINE & GRAPE COUNCIL
Andy Ellen	NCKMA
Hunny Kruger	shadows
Don Anderson	ZATA
Dean Plunkett	PS

# VISITOR REGISTRATION SHEET

ABC

Name of Committee

4-20-11

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Tim KENT

NC Beer & Wine Wholesalers

Paul Powell

Amer. Prom. Beverage Co

Wendy Kelly

Polig Group

Thomas W. Moore

Frederic W. Moore

Michelle Frasier

MFS

ALLEN PAGE

NCALE

MARK SENTER

ALCOHOL LAW ENFORCEMENT

John LEFFORD

Alcohol Law Enforcement

Saul Sack

Wm

Garth White

ABCC

Tom Fitzgerald

Fitzgerald Strategic Partners

Jon Carr

NC ASJA ABC Board

ABC

4-20-11

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

**FIRM OR AGENCY AND ADDRESS**[illegible]

4-20-11

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

**FIRM OR AGENCY AND ADDRESS**[illegible]



## House Committee Commerce and Job Development Subcommittee on Alcoholic Beverage Control

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The House Committee on Commerce and Job Development, Subcommittee on Alcoholic Beverage Control met on Wednesday, May 11, 2011, 10:00 a.m., in Room 425 of the Legislative Office Building.


The following members were present: Chairman Jamie Boles and committee members Representatives Bell, Brown, Cook, Lucas, McGuirt, McLawhorn, Rapp, Spear, Steen, and Edith Warren. Brenda Carter and Erika Churchill, Research Staff to the Committee, were also in attendance. Chairman Boles recognized the Pages and Sergeant at Arms and thanked them for their service to the committee.

Chairman Boles called the meeting to order and introduced the speaker, Mr. Tom Kees, Vice Chair and Member of the Moore County ABC Board. Mr. Kees gave an overview of the history, composition, and responsibilities and functions of the Board. See Attachment 1. He also addressed questions from the members of the committee.

Chairman Boles adjourned the meeting at 10:50 a.m.

Respectfully submitted,

  
Representative Jamie Boles, Chairman

  
Rebecca Butler, Committee Assistant

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2011-2012 SESSION**

You are hereby notified that the Committee on **Commerce and Job Development Subcommittee on Alcoholic Beverage Control** will meet as follows:

**DAY & DATE:** Wednesday, May 11, 2011

**TIME:** 10:00 am

**LOCATION:** 425 LOB

**COMMENTS:** Presentation by ABC Moore County Board Member, Tom Kees

Respectfully,  
Representative Boles, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **3 PM** o'clock on **May 09, 2011**.

- ☐ Principal Clerk
- ☐ Reading Clerk – House Chamber

**Rebecca Butler** (Committee Assistant)





**2011- 2012 Commerce and Job Development**

**Subcommittee on Alcoholic Beverage Control**

**Wednesday, May 11, 2011**

**AGENDA**

**Opening Remarks**

**Representative Jamie Boles, Chairman**

**Presentation**

**Tom Kees – Vice Chair and Member**

**ABC Board, Moore County**

**Adjourn**

## ATTENDANCE

**House Committee Commerce and Job Development/Subcommittee on Alcoholic Beverage Control**

2011-2012 Session

[illegible]

## **ABC of Moore County**

### **Brief note of history:**

- The store in Pinehurst is the 2<sup>nd</sup> oldest ABC store in North Carolina. It opened in 1937 and is still in operation.

### **History of stores:**

- Moore County currently operates 4 stores:
  1. Pinehurst,
  2. Southern Pines,
  3. Aberdeen,
  4. Carthage.
- Pinehurst store closed in the Village and reopened on Hwy #5 in 1995
  - Old store was undersized (484 sq ft selling) and increase in rent was constantly increasing at a rate higher than sales. Built a new store with approximately 1500 square feet.
  - Number 1 in profit
- Southern Pines store in Pinecrest Plaza closed
  - Increase in rent and 5 year commitment too high.
- Carthage Store has been moved 3 times to its present location
  - Moved to current more favorable location & better rent
- Aberdeen Store closed in 1995 and reopened in its present location in the same year.
  - Moved to present location in 1995. Closed old store, sold property, old store was a marginal operation.
  - New store now has the largest sales volume,
- Southern Pines store has maintained its sales volume and profitability
- Currently operate 4 stores. Sales volume is currently higher than the total volume of the 5 stores.
- Overhead expense was reduced by approximately 20% (Operating).
- Inventories reduced by approximately 30% to 35%.

### **Board composition:**

- Owner operator of Hardware and building supply company (Chairman),
- Retired retail executive (Vice Chairman)
- District sales manager of a farm implement store,
- Retire Chief of Police from Whispering Pines
- Retired Police Chief from Southern Pines

### **ABC Board of Moore County:**

- Meets on the 4<sup>th</sup> Wednesday of each month,
- Duties:

- Establish policy and procedures in conformity with the regulations as stipulated by the State of North Carolina.
- Establish local policy and procedures for the management of our business.
- Review the monthly financial statements and manage the funds to the best advantage of the residents of Moore County.
- Maintain adequate funds to run the current business,
- Review de-listed item status
- Review law enforcement reports (at least once a quarter, a representative from the Moore County Sheriff department is in attendance).
- Review investment status,
- Schedule and review amount of financial distribution to County government,
- Review the report from the General Manager
- Establish the annual budget,
- Review the anticipated capital investment requirement for our stores.
- Review of all personnel is done annually.

**Current Performance versus other ABC Units:**

- Sales Volume 21<sup>st</sup>,
- Operating expenses 2<sup>nd</sup>
- Profit % 2<sup>nd</sup>
- County Distribution 6<sup>th</sup> \*\*
- Turnover 2<sup>nd</sup>
- Special note – \*\* if we include the amount of funds paid to the Sheriff's department, we would rank 3<sup>rd</sup>

**Distribution of Funds (\$\$):**

- Moore County Government - \$427,096
- Moore County Sheriff - \$146,452
- Local Governments - \$230,556
- Alcohol education - \$62,000
- Total - \$866,104

**Special note – We are starting programs in conjunction with local law enforcement for Alcoholic education and anticipate granting \$8,000 for that purpose.**

**We have an active RAZE program conducted by Moore County Sheriff's department.**

**2011-2012 Budget process has been completed and the first presentation will be given during the May 2011 regularly scheduled meeting with all of the notifications made and published.**

**The Board adopted a Salary Scale for all of Moore County ABC employees effective in 2008. The Pay Scale is scheduled for review in every 3 years.**

**The Moore Count ABC Board view is responsibilities as follows:**

- **To the Customer in providing clean, well stocked, ample selection, courteous sales personnel at the most convenient hours for our customers,**
- **Earning the maximum profit through good management of its facilities and the funds available,**
- **Providing the County Government and local municipalities with the maximum funds from earnings,**
- **Providing a safe, friendly environment for all employees with wages commensurate with their job responsibilities,**
- **Maintaining an open policy with all inquiries made to the Board, either from customers or employees,**
- **Constantly being alert to any business opportunity that will enhance the profitability of our unit,**
- **Be constantly aware that we are running a business and not a private fiefdom.**



**2011- 2012 Commerce and Job Development**

**Subcommittee on Alcoholic Beverage Control**

**Wednesday, May 11, 2011**

**Pages**

**Cortez Thompson**

**Wake County**

**Sponsored by Speaker Thom Tillis**

**Tyler Olomon**

**Cumberland**

**Sponsored by Speaker Thom Tillis**

**Sergeant at Arms**

**Garland Shephard**

**Martha Parrish**

**Staff**

**Brenda Carter**

**Erika Churchill**

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE ABC

DATE: 05-11-2011 Room: 425

\*Name: Tyler Okunich

County: Cumberland

Sponsor: TCA

\*Name: Cortez Thompson

County: Wake

Sponsor: TCA

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

House Sgt-At Arms:

1. Name: Garland Shepherd 4. Name: \_\_\_\_\_

2. Name: Nathan Parrish 5. Name: \_\_\_\_\_

3. Name: \_\_\_\_\_ 6. Name: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

**Name of Committee****Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK.**

**FIRM OR AGENCY AND ADDRESS**[illegible]



## VISITOR REGISTRATION SHEET

Name of Committee

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

**FIRM OR AGENCY AND ADDRESS**[illegible]



## House Committee Commerce and Job Development Subcommittee on Alcoholic Beverage Control

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The House Committee on Commerce and Job Development, Subcommittee on Alcoholic Beverage Control met on Wednesday, May 18, 2011, 10:00 a.m., in Room 425 of the Legislative Office Building.

The following members were present: Chairman Jamie Boles and committee members Representatives Brown, Cook, Current, Hamilton, Lucas, McGuirt, McLawhorn, Rapp, Samuelson, Spear, Steen, and West. Brenda Carter and Erika Churchill, Research Staff to the Committee, were also in attendance.

Chairman Boles recognized the Pages and Sergeant at Arms and thanked them for their service to the committee.

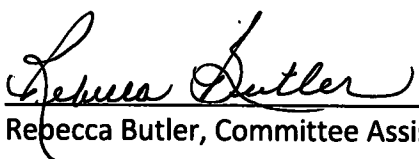
Chairman Boles called the meeting to order and reiterated that this was an informal informational meeting only. He recognized Mark Senter, District Supervisor of the Alcohol Law Enforcement Division, NC Department of Crime Control and Public Safety; and Kevin Lawrence, Wake County Alcohol Law Enforcement Officer. Rep. Boles then introduced the speaker, Bill Belvin, Chief ABC Officer, Cumberland County ABC System, NC Alcoholic Beverage Control Law Enforcement. Officer Belvin presented the responsibilities, values and function of the ABC Law Enforcement in the local community as they are a county agency. He emphasized that some of their most important goals pertain to the safety aspect, reducing alcohol abuse and underage use. See Attachment 1. The members discussed the presentation and had other questions to Officer Belvin.

Chairman Boles thanked the staff for their work to the Committee, the members for their participation and Officer Belvin for his presentation

The meeting adjourned at 11:58 a.m.

Respectfully submitted,

  
Representative Jamie Boles, Chairman

  
Rebecca Butler, Committee Assistant

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2011-2012 SESSION**

**You are hereby notified that the Committee on Commerce and Job Development Subcommittee on Alcoholic Beverage Control will meet as follows:**

**DAY & DATE:** Wednesday, May 18, 2011

**TIME:** 10:00 am

**LOCATION:** 425 LOB

**COMMENTS:** Presentation by Bill Belvin, Chief ABC Officer  
ABC Law Enforcement-Cumberland Division

Respectfully,  
Representative Boles, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**11 AM o'clock on May 17, 2011.**

- ☐ Principal Clerk
- ☐ Reading Clerk – House Chamber

**Rebecca Butler** (Committee Assistant)



**2011- 2012 Commerce and Job Development**

**Subcommittee on Alcoholic Beverage Control**

**Wednesday, May 18, 2011**

**AGENDA**

**Opening Remarks**

**Representative Jamie Boles, Chairman**

**Presentation**

**Bill Belvin, Chief ABC Officer**

**ABC Law Enforcement – Cumberland Division**

**Adjournment**

## ATTENDANCE

**House Committee Commerce and Job Development/Subcommittee on Alcoholic Beverage Control**

2011-2012 Session

[illegible]

*Value and Function  
of  
ABC Law Enforcement  
in  
Your Community*



**VALUE AND FUNCTION OF  
ABC LAW ENFORCEMENT**

Three perspectives on the value of ABC Law Enforcement agencies and officers;

- To the ABC Boards as an integrated part of operations.
- To the local business community and citizens.
- To the State's "Control" system and philosophy.

## **REDUCING UNDERAGE DRINKING AND ALCOHOL ABUSE IN YOUR COMMUNITY**

- Reducing underage drinking in the communities you serve.
- Provide resources and contacts for putting together programs and presentations in response to the needs of your community.
- Three courses of action to address this problem...

## **PHASE 1: EDUCATION**

- Good Communications is paramount!
- Address both sides of the "Supply and Demand" equation; Retail or Third-Party access as well as the reasons kids use alcohol.
- Evaluate the success of your efforts; no wrong in changing the direction of your efforts.

## EDUCATION FOR TEENS...

- Schools and youth organizations: Efforts here are paramount to promoting the future of our youth.



- Choose speakers who can present "Real-life" experience relative to their teen audience.
- Many speakers require no local financial support, just some assistance with arrangements.

## EDUCATION CONTINUED...

- Examples of programs targeting school audiences:
  - NC ALE – "Keys to Life" (Cooperative efforts between agencies are very productive)
  - ABC Commission's - "Illusions"  
"Alcohol and you..." "A B Cardinal"
  - Century Council - "Girl Talk"  
"Brandon's Story"
- Provide or sponsor training for your schools in areas that educators can take back and present to their students.





## SPEAKERS AND PRESENTATIONS

- Siri Mullinix speaks to girls at Page HS in Greensboro

April 10, 2007

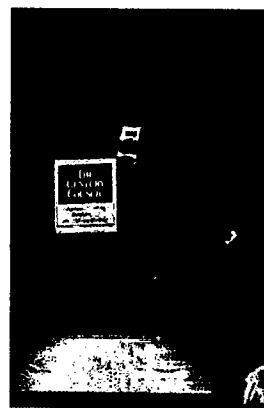
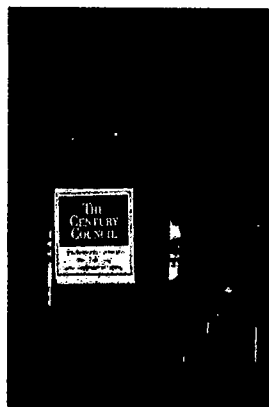


### "Girl Talk"

Silver Medallist-Women's Soccer, 2000 Summer Olympics

Asst. Coach-Women's Soccer, UNCG

## SPEAKERS AND PRESENTATIONS



Local Speaker introduces Brandon Silveria at High School event

## EDUCATING RETAILERS...

- Provide Retailer training: Compliance is key
  - Retail industry requires constant training due to growth, turnover, regulatory changes, etc.
- Agencies that can provide this training if you ask...
  - ABC Commission-Education Division
    - "RASP" for employees, management, ABC Boards
  - ABC Law Enforcement, NC ALE, contract LE – contact a nearby system for training for permit holders and other groups.



## LAW ENFORCEMENT EDUCATION

- Unfortunately, the majority of officers know very little about ABC regulations.
- Training non-ABC officers can reduce complaints and increase accurate reporting of violations.
- Enhance Criminal prosecution...
- Training these officers aid your efforts to regulate the industry and decrease underage access to alcohol.



## PHASE 2: PUBLIC AWARENESS

- Work with as many groups as possible to promote the "Control" aspect of the industry.
  - Churches, Business clubs, Civic and Parent groups.
  - Present all facets of "Control"; Education, Awareness, Regulation, and Enforcement.
- Misconceptions often drive the resistance to the success of the Alcohol industry. Your efforts can dispel these and ensure industry progress.



## PUBLIC AWARENESS...

- Speak to individual citizens, not just groups. Individual inquiries drive most groups...people are often reluctant to speak in front of a group.
- Provide materials and support for public displays or activities that promote the responsibility of the alcohol industry; fairs, expo's, career days, sporting events...
- Sponsor Public Service Announcements emphasizing responsibility...local outlets reach more people than you think!

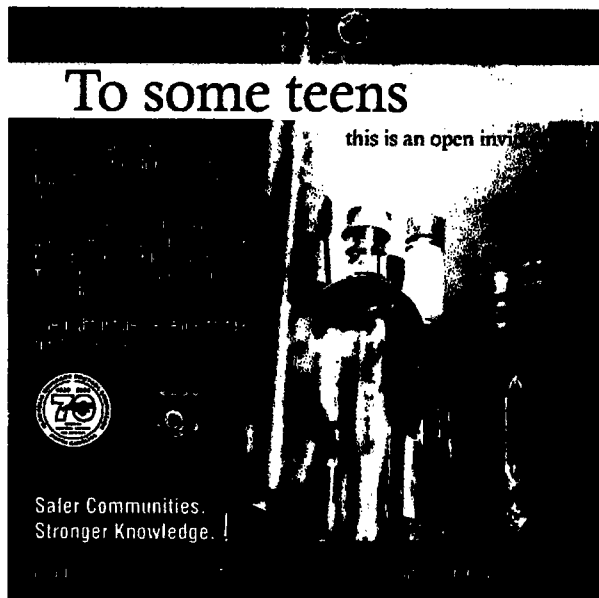
## COMBINE EDUCATION AND AWARENESS...



## PUBLIC AWARENESS THROUGH MEDIA...

### PROMOTE

- Safe Travel
- Legal access
- Responsible consumption
- Controlling access



A magazine advertisement: PSA addressing Underage Access to Alcohol

## PHASE 3: REGULATION/ENFORCEMENT



- Provide means to Support Law Enforcement's effort to reduce underage access to alcohol.
- Encourage enforcement of existing laws and ordinances.
- A community's failure to enforce ABC laws communicates indifference to young people.

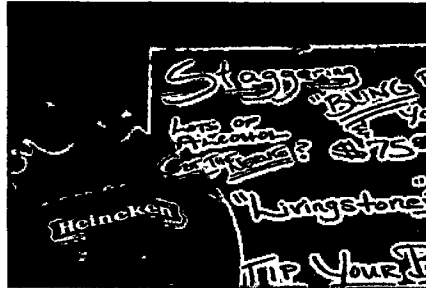


## REGULATION/ENFORCEMENT...

- Work with legislative bodies to enact laws and ordinances that support responsibility.
  - Supply documentation, statistics, and other support to political efforts to enact laws.
- Encourage responsibility and evaluation of the efforts to enforce ABC laws and compliance in permitted establishments.
  - Be assured that your efforts are working

## REGULATION/ENFORCEMENT...

- Pass on reports and complaints, regardless of how unimportant they may seem.
- Simple complaints often lead to serious violations.
- Your cooperation in enforcing ABC regulations promotes the control efforts of the industry.



## ENFORCEMENT OF ABC LAWS

- Encourage and support compliance checks of ABC establishments and operations to enforce underage violations and DWI laws.
- If you do not have in-house Law Enforcement, you can still help;
  - Provide locations for briefings and rest breaks.
  - Checkpoints and operations require logistical support, they are often held in extreme weather conditions, provide drinks and snacks for the officers.
  - Provide portable shelters, reflective vests, etc.
- This is an inexpensive effort with positive return!

## ENFORCEMENT: COMPLIANCE THROUGH REGULATION

- Educate – Provide retailers with knowledge to manage their businesses properly, legally...
- Follow-up with Inspection activity to ensure compliance.
- Compliance is the goal; a successful system depends on compliance: safe, successful operation of outlets.



## LOCAL EFFORTS...

- Cumberland ABC LE since 1937
  - 5 full-time and 6 reserve officers work checking permitted outlets for violations, ensuring compliance with ABC regulations and otherwise enforcing the State's ABC and Controlled Substance laws.
- Officers work to provide Local solution to Local problems...

## DUTIES AND RESPONSIBILITIES...

- ABC Officers address duties and priorities as mandated by:
  - State Law
  - Direction from Chain of Command
  - Requests for Assistance from Other Law Enforcement agencies \*

## OUR FOCUS...

### **Authority / Jurisdiction**

- Officers have General Jurisdiction...plus civil authority.
- ...but focus on ABC laws and Controlled Substance violations.
- Priority given to cases that are related to permitted businesses.
- Address problem outlets.

### **ABC Officers are a resource:**

- To local Law Enforcement agencies as well as other regulatory entities such as fire inspections, etc.
- To Schools, Civic and Community Groups, Churches, etc.
- Technical nature of ABC law makes these officers a good source of information.



## LOCAL ABC OFFICERS...

- ...have a responsibility to the local community which includes the businesses we regulate. This local relationship assists with providing a safer environment for customers, staff, and local citizens.
- Day to day duties of ABC officers vary as they work to effectively address the Local Community's needs and concerns.

## THANK YOU

- Contact information:  
  
Bill Belvin, Chief ABC Officer  
ABC Law Enforcement-Cumberland Co.  
1705 Owen Drive  
Fayetteville, NC 28304  
910-624-8098 cell  
[bill.belvin@cumberlandabc.com](mailto:bill.belvin@cumberlandabc.com)



**ALCOHOLIC BEVERAGE CONTROL LAW ENFORCEMENT  
CUMBERLAND COUNTY DIVISION  
1705 OWEN DRIVE  
FAYETTEVILLE, NC 28304  
OFFICE: 910-484-8167 FAX: 910-484-1255**

April 8, 2010

Presentation to the Joint Study Committee on Alcohol Beverage Control  
by William Belvin, Chief ABC Officer

The Cumberland County ABC Board has maintained a Law Enforcement Division since 1937. The Law Enforcement Division is currently made up of 5 full-time officers, with authorization for 6 reserve officers. These officers work Monday through Saturday, and random Sundays to check permitted outlets for violations, ensure compliance with ABC regulations, and otherwise enforce the State's ABC and Controlled Substance laws. These officers work to provide a local solution to local issues, practicing their profession in the community in which we live.

Cumberland County ABC Officers work the following duties and priorities as mandated by 1) State law, 2) Direction from their chain-of-command (Board, Director, and Chief ABC Officer), 3) Requests from other law enforcement agencies.

Cumberland County ABC Officers work together with other law enforcement agencies in our community and region to address the community's complaints and concerns. ABC officers are not in competition with any other law enforcement agency, including those tasked with similar duties, but instead work to augment each other's efforts to provide safe local communities. The Cumberland County area has a unique population considering the large military community, and our ABC Officers have a very positive relationship with the military that enhances the local community's desire to support our military community while still enforcing and regulating the ABC industry.

Cumberland County ABC Officers investigate and enforce violations of the ABC Laws (Chapter 18B) and the Controlled Substances Act (Chapter 90). While officers are not restricted to enforcing only these laws (ABC Officers have General Jurisdiction), they focus their efforts in this area (Alcohol) and try to pay special attention to offenses that occur in or around, or have a nexus to establishments that serve/sell alcoholic beverages. Our officers regularly work with local agencies to investigate and resolve problem locations and establishments within our community. With the emphasis on ABC Law, these officers are a resource that we encourage local agencies to call upon. Our officers regularly respond to underage parties with local law enforcement to conduct investigations into sources of alcohol illegally possessed by teens. ABC Officers conduct underage checks to determine outlets that are selling to underage teens, and investigate service-to-intoxicated complaints at on-premise establishments where patrons are being served too much to drink. ABC Officers file criminal charges and/or civil violations in these instances as the severity of the case dictates

Cumberland ABC Officers conduct inspections of permitted establishments in accordance with their authority. Our ABC Officers focus on Mixed-beverage outlets as a priority, but work with all permitted outlets within the area. ABC Officers investigate violations of the ABC Laws, as well as the chapters of NC Administrative Code governing permitted establishments. ABC Officers work with outlets and their staff to ensure compliance, not only by inspecting and enforcing the regulations, but by providing Seller/Server training to permit holders addressing the basic requirements of Retail Service/Sales of Alcohol. ABC Officers provide follow-up with these outlets to answer more specific questions as needed.

Cumberland County ABC Officers are charged with securing the property of the ABC Board, and ensuring the security of employees and the customers that patronize the ABC Retail Stores. ABC Officers perform frequent and random checks of the ABC Retail Stores to deter crime at these outlets, seeking to detect underage buyers, fraudulent ID's, intoxicated persons, etc. ABC Officers also investigate crimes that occur in the ABC Retail Stores or on ABC Board property. In the case of serious crimes or incidents that require manpower beyond what is available, our ABC Officers work together with the local agencies to conduct these investigations. Cumberland County ABC Officers do perform some administrative functions at the request of the ABC System's Board and Director, but the need to perform these tasks is based on the reduction of risk to staff and customers versus similar tasks being performed by civilian employees.

During the calendar year of 2009, Cumberland County ABC Officers conducted 1,641 Outlet Inspections, Submitted 70 Violations to the ABC Commission, provided assistance to other agencies in 65 incidents or investigations, presented 22 training classes, conducted 11 search warrants, and made 316 arrests (194 for ABC Law violations and 114 for criminal/drug violations, 8 DWI arrests).

Cumberland County ABC Officers have a responsibility to the local citizens and community, including those outlets and establishments we regulate. This local connection provides a working relationship with the people and businesses that assist greatly with providing a safer environment for the customers and staff of local establishments and the public in general. The day to day duties of our ABC Officer vary as they address the input of our community's needs and concerns.

William Belvin, Chief ABC Officer  
Email: [bill.belvin@cumberlandabc.com](mailto:bill.belvin@cumberlandabc.com)  
Cell: 910-624-8098

**ABC Subcommittee**

**Wednesday, May 18, 2011**

**Sergeant at Arms**

**R. L. Carter**

**Martha Garrison**

**Pages**

**Ivey Carroll**

**Randolph County**

**Rep. Hurley**

**Carey Lea**

**Person County**

**Rep. Wilkins**

**Jamilla Benton**

**Forsyth County**

**Rep. Womble**

**Staff**

**Brenda Carter**

**Erika Churchill**

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE: ABC

DATE: 18 May 11 Room: LOB ~~425~~ 425

\*Name: Ivey Jae Carroll

County: Randolph

Sponsor: Pat Hurley

\*Name: Corey Lea

County: Person

Sponsor: Wilkins

\*Name: Jamilla Benton

County: Forsyth

Sponsor: Womble

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

House Sgt-At Arms:

1. Name: Martha Godison

4. Name: \_\_\_\_\_

2. Name: RL Carter

5. Name: \_\_\_\_\_

3. Name: \_\_\_\_\_

6. Name: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

ABC

Name of Committee

5/18/11

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kevin Lawrence

Wake County ABC Law Enforcement

Tim KENT

NC Beer & Wine Wholesalers

Jon Carr

NC ASS ABC Board

Khristen Laster

FSP

KARI FIAZON

FSP



## House Committee Commerce and Job Development Subcommittee on Alcoholic Beverage Control

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The House Committee on Commerce and Job Development, Subcommittee on Alcoholic Beverage Control met on Wednesday, June 15, 2011, 10:10 a.m., in Room 425 of the Legislative Office Building.

The following members were present: Chairman Jamie Boles and committee members Representatives Cook, Current, Justice, Lucas, McGuirt, McLawhorn, Rapp, Spear, Starnes, Harry Warren and West. Chairman Boles recognized the Pages and Sergeant at Arms and thanked them for their service to the committee. Rep. Boles also thanked Brenda Carter, Research Staff, for all of her work for the committee.

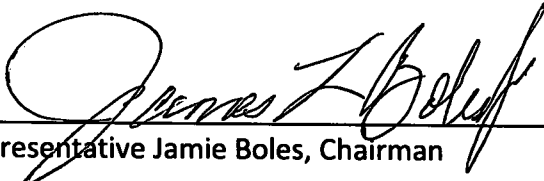
The Chairman called the meeting to order to consider SB 324, A BILL TO BE ENTITLED AN ACT to authorize the Eastern Band of Cherokee Indians, a Federally Recognized Indian Tribe and Sovereign Nation, to Receive Shipments of Spirituous Liquor from the North Carolina Alcoholic Beverage Control Commission and to Authorize the Eastern Band of Cherokee Indians to Establish a Tribal Alcoholic Beverage Control Commission to Regulate the Purchase, Possession, Consumption, Sale, and Delivery of Alcoholic Beverages at Retail.

The proposed committee substitute was adopted by Rep. West. Brenda Carter, Research Staff for the committee explained the bill and the proposed committee substitute.

Rep. Carolyn Justice moved that the committee give a favorable report as to the House Committee Substitute bill, which changes the title, unfavorable as to the Senate Committee Substitute Bill and referred to the House floor.

The meeting adjourned at 11:00 a.m.

Respectfully submitted,

  
Representative Jamie Boles, Chairman

  
Rebecca Butler, Committee Assistant

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2011-2012 SESSION**

You are hereby notified that the Committee on **Commerce and Job Development Subcommittee on Alcoholic Beverage Control** will meet as follows:

**DAY & DATE:** Wednesday, June 15, 2011  
**TIME:** 10:00 am  
**LOCATION:** 425 LOB

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
SB 324	ABC Law/Eastern Band of Cherokee Indians.	Senator Apodaca Senator Davis

Respectfully,  
Representative Boles, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **10 AM** o'clock on **June 14, 2011**.

- ☐ Principal Clerk
- ☐ Reading Clerk – House Chamber

**Rebecca Butler** (Committee Assistant)





**2011- 2012 Commerce and Job Development**

**Subcommittee on Alcoholic Beverage Control**

**Wednesday, June 15, 2011**

**AGENDA**

**Opening Remarks**

**Representative Jamie Boles, Chairman**

**Bill**

**SB 324 ABC Law/Eastern Band of Cherokee Indians.**

**Adjournment**

## ATTENDANCE

**House Committee Commerce and Job Development/Subcommittee on Alcoholic Beverage Control**

2011-2012 Session

[illegible]

2011 PERMANENT SUBCOMMITTEE REPORT

HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

The following report(s) from permanent sub committee(s) is/are presented:

By Representative(s) Boles (Chair) for the Commerce and Job Development Subcommittee on Alcoholic Beverage Control.

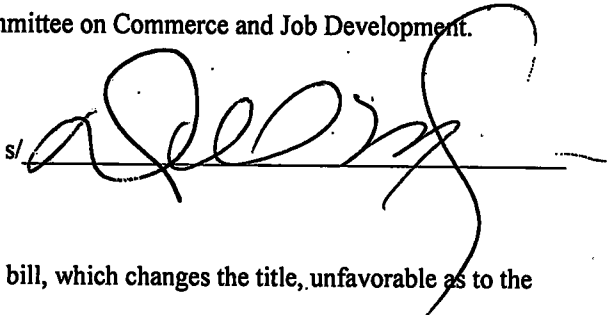
☒ Committee Substitute for

**SB 324** A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE EASTERN BAND OF CHEROKEE INDIANS, A FEDERALLY RECOGNIZED INDIAN TRIBE AND SOVEREIGN NATION, TO RECEIVE SHIPMENTS OF SPIRITUOUS LIQUOR FROM THE NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMMISSION AND TO AUTHORIZE THE EASTERN BAND OF CHEROKEE INDIANS TO ESTABLISH A TRIBAL ALCOHOLIC BEVERAGE CONTROL COMMISSION TO REGULATE THE PURCHASE, POSSESSION, CONSUMPTION, SALE, AND DELIVERY OF ALCOHOLIC BEVERAGES AT RETAIL.

---

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/ 

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the Senate Committee Substitute Bill.

**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

S

2

SENATE BILL 324  
Judiciary I Committee Substitute Adopted 6/7/11

Short Title: ABC Law/Eastern Band of Cherokee Indians.

(Public)

Sponsors:

Referred to:

March 14, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE EASTERN BAND OF CHEROKEE INDIANS, A  
FEDERALLY RECOGNIZED INDIAN TRIBE AND SOVEREIGN NATION, TO  
RECEIVE SHIPMENTS OF SPIRITUOUS LIQUOR FROM THE NORTH CAROLINA  
ALCOHOLIC BEVERAGE CONTROL COMMISSION AND TO AUTHORIZE THE  
EASTERN BAND OF CHEROKEE INDIANS TO ESTABLISH A TRIBAL  
ALCOHOLIC BEVERAGE CONTROL COMMISSION TO REGULATE THE  
PURCHASE, POSSESSION, CONSUMPTION, SALE, AND DELIVERY OF  
ALCOHOLIC BEVERAGES AT RETAIL.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 18B-109(b) reads as rewritten:

"(b) ~~Armed Forces Installation~~ Installation and Indian Country Lands. – No person shall  
have malt beverages or unfortified wine shipped directly from a point outside this State to an  
armed forces installation within this State if those alcoholic beverages are for resale on the  
installation or to the Eastern Band of Cherokee Indians for resale on Indian Country lands  
within this State under the jurisdiction of the Eastern Band of Cherokee Indians."

**SECTION 2.** G.S. 18B-203(a)(17) reads as rewritten:

"(a) Powers. – The Commission shall have authority to:

...

(17) Provide for the distribution of spirituous liquor to armed forces installations  
within this State for resale on the ~~installation~~ installation and to the Eastern  
Band of Cherokee Indians for resale on Indian Country lands within this  
State under the jurisdiction of the Eastern Band of Cherokee Indians.

...."

**SECTION 3.** Article 1 of Chapter 18B of the General Statutes is amended by  
adding a new section to read:

**"§ 18B-112. Tribal alcoholic beverage control.**

(a) Application of This Chapter. – The Eastern Band of Cherokee Indians, a federally  
recognized Indian tribe and sovereign nation, shall be exempt from the provisions of this  
Chapter, except for those made applicable by this section. The Eastern Band of Cherokee  
Indians tribe shall adopt by ordinance the provisions of this Chapter which are made applicable  
to the tribe by this section, and such ordinance shall be approved by the Secretary of the United  
States Department of the Interior and published in the Federal Register accordingly. The  
Eastern Band of Cherokee Indians shall hold lawful tribal elections as set out in  
G.S. 18B-600(a), and if the result of such election authorizes the activity upon which a vote  
was held, the activity shall be deemed authorized by this section. For the purposes of this  
section, the tribal alcoholic beverage control commission shall possess the same powers and



\* S 3 2 4 - V - 2 \*

1 authority conveyed upon the North Carolina Alcoholic Beverage Control Commission by any  
2 section of this Chapter made applicable to the tribe by this section.

3 (b) Compliance Required. – The Eastern Band of Cherokee Indians shall comply with  
4 the following provisions of this Chapter to the extent they apply to or can be made applicable to  
5 the tribe:

6 (1) The following provisions of Article 1. – General Provisions.

7 a. G.S. 18B-101(4), (7), (7c), (9), (10), (11), (12), (12a), (13), (14)  
8 (14a), (14b) and (15).

9 b. G.S. 18B-102.1.

10 c. G.S. 18B-104.

11 d. G.S. 18B-105, except that this section shall not apply to any  
12 establishment where gaming is permitted under a State compact and  
13 pursuant to federal law.

14 e. G.S. 18B-109(b).

15 f. G.S. 18B-110.

16 g. G.S. 18B-111.

17 h. G.S. 18B-112.

18 (2) Article 1A. – Compensation for Injury Caused by Sales to Underage  
19 Persons, to the extent it applies to retail establishments or the tribal alcoholic  
20 beverage control commission if it operates ABC stores, or any other  
21 permitted establishment, at retail pursuant to the provisions of this section.

22 (3) Article 3. – Sale, Possession, and Consumption, except for G.S. 18B-308  
23 and G.S. 18B-309.

24 (4) Article 4. – Transportation.

25 (5) Article 5. – Enforcement, except for G.S. 18B-500 and G.S. 18B-501.

26 (6) Article 9. – Issuance of Permits, except for G.S. 18B-902(g) and (h) and  
27 G.S. 18B-906.

28 (7) Article 10. – Retail Activity, except for G.S. 18B-1001.1, 18B-1001.2, and  
29 18B-1001.3.

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

33 (c) Alcoholic Beverages Which May Be Sold. – No alcoholic beverage may be sold on  
34 Indian Country lands under the jurisdiction of the Eastern Band of Cherokee Indians pursuant  
35 to this section which has not been approved for sale in this State by the North Carolina  
36 Alcoholic Beverage Control Commission.

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

1       (e) Establishment of Rules. – The tribal alcoholic beverage control commission shall  
2 adopt the rules of the North Carolina Alcoholic Beverage Control Commission regulating retail  
3 outlet activity.

4       (f) Authority of the North Carolina Alcoholic Beverage Control Commission. – The  
5 North Carolina Alcoholic Beverage Control Commission shall have the authority to enter into  
6 agreements with the tribal alcoholic beverage control commission to provide for the sale,  
7 delivery, and distribution of spirituous liquor to the tribal alcoholic beverage control  
8 commission. The tribal alcoholic beverage control commission shall purchase spirituous liquor  
9 for resale by the tribal alcoholic beverage control commission exclusively from the North  
10 Carolina Alcoholic Beverage Control Commission at the same price and on the same basis that  
11 such spirits are purchased by local boards. To the extent there is a conflict between the tribal  
12 alcoholic beverage control commission's authority or purpose and the North Carolina Alcoholic  
13 Beverage Control Commission's authority or purpose, the North Carolina Alcoholic Beverage  
14 Control Commission shall prevail.

15       (g) Discrimination. – The tribal alcoholic beverage control commission shall not  
16 discriminate against non-Indians in the application of the Tribal ABC law. Non-Indians shall be  
17 entitled to apply for and receive ABC permits in the same manner as an Indian on Indian  
18 Country lands under the jurisdiction of the Eastern Band of Cherokee Indians.

19       (h) Resolution of Contested Cases. – If the tribal alcoholic beverage control  
20 commission levies a fine or suspends or revokes a permit pursuant to the provisions of  
21 G.S. 18B-104 for a violation of the provisions applicable to the Eastern Band of Cherokee  
22 Indians in this section, the permittee shall have the right of appeal of an agency final decision  
23 of the tribal commission to the tribal courts. Any further appeal shall be to the appellate courts  
24 of the tribe. All fines paid to the tribal commission in satisfaction of any penalty assessed by  
25 the tribal commission may be retained by the Eastern Band of Cherokee Indians to offset costs  
26 of operating the tribal alcoholic beverage control commission.

27       (i) Failure to Comply With Laws of This State. – If the Eastern Band of Cherokee  
28 Indians fails to adopt the provisions of this Chapter, made applicable to the tribe by this section,  
29 by ordinance; fails to amend tribal ordinances to comply with amendments to the provisions of  
30 this Chapter, made applicable to the tribe by this section, within six months of passage of such  
31 amendments; or fails to comply with the provisions of this Chapter, made applicable to the tribe  
32 by this section, as required by 18 U.S.C. § 1161, the North Carolina Alcoholic Beverage  
33 Control Commission is authorized to terminate and prohibit future delivery of any alcoholic  
34 beverages from any person to the tribal alcoholic beverage control commission until the  
35 Eastern Band of Cherokee Indians complies with the provisions of this Chapter made  
36 applicable to the tribe by this section and 18 U.S.C. § 1161.

37       (j) Conflict of Laws. – If any provision of this section or its application conflicts with  
38 federal law, the conflict of laws shall be resolved in favor of the federal law unless compliance  
39 with the federal law abrogates a right reserved to the State under the Constitution of the United  
40 States."

41       **SECTION 4.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 324  
Judiciary I Committee Substitute Adopted 6/7/11  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S324-CSR-V-35 [v.1]

6/15/2011 12:41:32 AM

Short Title: ABC Law/Eastern Band of Cherokee Indians.

(Public)

Sponsors:

Referred to:

March 14, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE EASTERN BAND OF CHEROKEE INDIANS, A  
FEDERALLY RECOGNIZED INDIAN TRIBE AND SOVEREIGN NATION, TO  
RECEIVE SHIPMENTS OF SPIRITUOUS LIQUOR FROM THE NORTH CAROLINA  
ALCOHOLIC BEVERAGE CONTROL COMMISSION; TO AUTHORIZE THE  
EASTERN BAND OF CHEROKEE INDIANS TO ESTABLISH A TRIBAL  
ALCOHOLIC BEVERAGE CONTROL COMMISSION TO REGULATE THE  
PURCHASE, POSSESSION, CONSUMPTION, SALE, AND DELIVERY OF  
ALCOHOLIC BEVERAGES AT RETAIL; AND TO AUTHORIZE THE LIMITED  
TRANSFER OF WINE BY ON-PREMISES WINE PERMITTEES UNDER COMMON  
OWNERSHIP OR CONTROL

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-109(b) reads as rewritten:

"(b) Armed Forces Installation and Indian Country Lands. – No person shall  
have malt beverages or unfortified wine shipped directly from a point outside this State to an  
armed forces installation within this State if those alcoholic beverages are for resale on the  
installation or to the Eastern Band of Cherokee Indians for resale on Indian Country lands  
within this State under the jurisdiction of the Eastern Band of Cherokee Indians."

SECTION 2. G.S. 18B-203(a)(17) reads as rewritten:

"(a) Powers. – The Commission shall have authority to:

(17) Provide for the distribution of spirituous liquor to armed forces installations  
within this State for resale on the ~~installation;~~ installation and to the Eastern  
Band of Cherokee Indians for resale on Indian Country lands within this  
State under the jurisdiction of the Eastern Band of Cherokee Indians.

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SECTION 3. Article 1 of Chapter 18B of the General Statutes is amended by  
adding a new section to read:

"§ 18B-112. Tribal alcoholic beverage control.

(a) Application of This Chapter. – The Eastern Band of Cherokee Indians, a federally  
recognized Indian tribe and sovereign nation, shall be exempt from the provisions of this  
Chapter, except for those made applicable by this section. The Eastern Band of Cherokee



1 Indians tribe shall adopt by ordinance the provisions of this Chapter which are made applicable  
2 to the tribe by this section, and such ordinance shall be approved by the Secretary of the United  
3 States Department of the Interior and published in the Federal Register accordingly. The  
4 Eastern Band of Cherokee Indians shall hold lawful tribal elections as set out in  
5 G.S. 18B-600(a), and if the result of such election authorizes the activity upon which a vote  
6 was held, the activity shall be deemed authorized by this section. For the purposes of this  
7 section, the tribal alcoholic beverage control commission shall possess the same powers and  
8 authority conveyed upon the North Carolina Alcoholic Beverage Control Commission by any  
9 section of this Chapter made applicable to the tribe by this section.

10 (b) Compliance Required. – The Eastern Band of Cherokee Indians shall comply with  
11 the following provisions of this Chapter to the extent they apply to or can be made applicable to  
12 the tribe:

13 (1) The following provisions of Article 1. – General Provisions.

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17 c. G.S. 18B-104.

18 d. G.S. 18B-105, except that this section shall not apply to any  
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22 f. G.S. 18B-110.

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31 (4) Article 4. – Transportation.

32 (5) Article 5. – Enforcement, except for G.S. 18B-500 and G.S. 18B-501.

33 (6) Article 9. – Issuance of Permits, except for G.S. 18B-902(g) and (h) and  
34 G.S. 18B-906.

35 (7) Article 10. – Retail Activity, except for G.S. 18B-1001.1, 18B-1001.2, and  
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39 Article or section.

40 (c) Alcoholic Beverages Which May Be Sold. – No alcoholic beverage may be sold on  
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48 to 18 U.S.C. § 1151 under the jurisdiction of the Eastern Band of Cherokee Indians. The tribal  
49 commission shall have exclusive authority to issue retail permits to retail establishments  
50 located wholly on Indian Country lands under the jurisdiction of the Eastern Band of Cherokee



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18 such spirits are purchased by local boards. To the extent there is a conflict between the tribal  
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31 of the tribe. All fines paid to the tribal commission in satisfaction of any penalty assessed by  
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33 of operating the tribal alcoholic beverage control commission.

34 (i) Failure to Comply With Laws of This State. – If the Eastern Band of Cherokee  
35 Indians fails to adopt the provisions of this Chapter, made applicable to the tribe by this section,  
36 by ordinance; fails to amend tribal ordinances to comply with amendments to the provisions of  
37 this Chapter, made applicable to the tribe by this section, within six months of passage of such  
38 amendments; or fails to comply with the provisions of this Chapter, made applicable to the tribe  
39 by this section, as required by 18 U.S.C. § 1161, the North Carolina Alcoholic Beverage  
40 Control Commission is authorized to terminate and prohibit future delivery of any alcoholic  
41 beverages from any person to the tribal alcoholic beverage control commission until the  
42 Eastern Band of Cherokee Indians complies with the provisions of this Chapter made  
43 applicable to the tribe by this section and 18 U.S.C. § 1161.

44 (j) Conflict of Laws. – If any provision of this section or its application conflicts with  
45 federal law, the conflict of laws shall be resolved in favor of the federal law unless compliance  
46 with the federal law abrogates a right reserved to the State under the Constitution of the United  
47 States."

48 **SECTION 4. G.S. 18B-1001(3) reads as rewritten:**

49 **"(3) On-Premises Unfortified Wine Permit. – An on-premises unfortified wine**  
50 **permit authorizes the retail sale of unfortified wine for consumption on the**

premises, either alone or mixed with other beverages, and the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises. The permit also authorizes the permittee to transfer unfortified wine, not more than four times per calendar year, to another on-premises unfortified wine permittee that is under common ownership or control as the transferor. Except as authorized by this subdivision, transfers of wine by on-premises unfortified wine permittees, purchases of wine by a retail permittee from another retail permittee for the purpose of resale, and sale of wine by a retail permittee to another retail permittee for the purpose of resale are unlawful. In addition, a particular brand of wine may be transferred only if both the transferor and transferee are located within the territory designated between the winery and the wholesaler on file with the Commission. Prior to or contemporaneous with any such transfer, the transferor shall notify each wholesaler who distributes the transferred product of the transfer. The notice shall be in writing or verifiable electronic format and shall identify the transferor and transferee, the date of the transfer, quantity, and items transferred. It also authorizes the The holder of the permit is authorized to ship unfortified wine in closed containers to individual purchasers inside and outside the State. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision. The permit may be issued for any of the following:

- a. Restaurants;
- b. Hotels;
- c. Eating establishments;
- d. Private clubs;
- e. Convention centers;
- f. Cooking schools;
- g. Community theatres;
- h. Wineries;
- i. Wine producers.

**SECTION 5. G.S. 18B-1001(5) reads as rewritten:**

- (5) On-Premises Fortified Wine Permit. – An on-premises fortified wine permit authorizes the retail sale of fortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of fortified wine in the manufacturer's original container for consumption off the premises. The permit also authorizes the permittee to transfer fortified wine, not more than four times per calendar year, to another on-premises fortified wine permittee that is under common ownership or control as the transferor. Except as authorized by this subdivision, transfers of wine by on-premises fortified wine permittees, purchases of wine by a retail permittee from another retail permittee for the purpose of resale, and sale of wine by a retail permittee to another retail permittee for the purpose of resale are unlawful. In addition, a particular brand of wine may be transferred only if both the transferor and transferee are located within the territory designated between the winery and the wholesaler on file with the Commission. Prior to or contemporaneous with any such transfer, the transferor shall notify each wholesaler who distributes the transferred product of the transfer. The notice shall be in writing or verifiable electronic format and shall identify the

1 transferor and transferee, the date of the transfer, quantity, and items  
2 transferred. It also authorizes the The holder of the permit is authorized to  
3 ship fortified wine in closed containers to individual purchasers inside and  
4 outside the State. Orders received by a winery by telephone, Internet, mail,  
5 facsimile, or other off-premises means of communication shall be shipped  
6 pursuant to a wine shipper permit and not pursuant to this subdivision. The  
7 permit may be issued for any of the following:

- 8 a. Restaurants;  
9 b. Hotels;  
10 c. Private clubs;  
11 d. Community theatres;  
12 e. Wineries;  
13 f. Convention centers.

14 **SECTION 6.** This act is effective when it becomes law.



## SENATE BILL 324: ABC Law/Eastern Band of Cherokee Indians

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Alcoholic Beverage Control	<b>Date:</b>	June 15, 2011
<b>Introduced by:</b>	Sens. Apodaca, Davis	<b>Prepared by:</b>	Brenda J. Carter
<b>Analysis of:</b>	PCS to Second Edition S324-CSR-V-35		Committee Counsel

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**SUMMARY:** *The Proposed Committee Substitute for Senate Bill 324 would authorize the Eastern Band of Cherokee Indians to receive shipments of spirituous liquor from the North Carolina ABC Commission and would authorize the Eastern Band of Cherokee Indians to establish a tribal ABC Commission to regulate the purchase, consumption, sale, and delivery of alcoholic beverages at retail. It would also authorize the limited transfer of wine by on-premises wine permittees under common ownership or control*

**CURRENT LAW:** Chapter 18B of the North Carolina General Statutes governs the regulation of alcoholic beverages. Federal law addresses the application of Indian liquor laws. Generally, the provisions related to Indian liquor laws do not apply if (1) an area is not Indian country or (2) is in an area that is Indian country if the act conforms with both the laws of the State in which the act occurs and with an ordinance adopted by the tribe having jurisdiction over the area of Indian country.

### BILL ANALYSIS:

**Section 1** prohibits any person from having malt beverages or unfortified wine shipped directly from a point outside this State to the Eastern Band of Cherokee Indians for resale on Indian Country lands in the State if those alcoholic beverages are for resale.

**Section 2** provides that the ABC Commission has the authority to provide for the distribution of spirituous liquor to the Eastern Band of Cherokee Indians for resale on Indian County lands within the State and under the jurisdiction of the Eastern Band of Cherokee Indians.

**Section 3** creates a new section that does all of the following:

- Provides that the Eastern Band of Cherokee Indians are exempt from Chapter 18B, except for those provisions made applicable under the new G.S. 18B-112.
- Requires the Eastern Band of Cherokees to adopt by ordinance the provisions made applicable to the tribe by G.S. 18B-112. The ordinance will be approved by the Secretary of the Interior and published in the Federal Register.
- Requires the Eastern Band of Cherokees to hold lawful tribal elections (for malt beverages, unfortified wine, ABC store, and mixed beverage). If the election authorizes the activity for which a vote was held, the activity will be deemed authorized.
- Provides that the tribal ABC commission will have the same powers and authority the NC ABC Commission by any section of this Chapter made applicable by the tribe.
- Provides that the Eastern Band of Cherokee Indians must comply with the following provisions of Chapter 18 to the extent they apply or can be made applicable to the tribe:
  - Various definitions set forth in 18B-101.

# Senate PCS 324

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- Prohibitions on direct shipments of alcoholic beverages from an out-of-state retail or wholesale dealer (G.S. 18B-102.1).
- Administrative penalties in 18B-104.
- Rules on advertising in 18B-105, except that the advertising provisions do not apply to an establishment where gaming is allowed under a state compact under federal law.
- Prohibitions on having malt beverages or unfortified wine shipped from outside the State to an armed services installation within the State for resale on the installation (18B-109(b)).
- Provisions allowing the governor to close ABC stores or order cessation of sales or bottling of alcoholic beverages during a "state of emergency." (18B-110).
- Provisions prohibiting the possession, transport, or sale of nontaxpaid alcoholic beverages. (18B-111).
- Article 1A- Compensation for Injury Caused by Sales to Underage Persons- to the extent it applies to retail establishments or the tribal alcoholic beverage control commission if it operates ABC stores, or any other permitted establishment.
- Article 3- Sale, Possession, and Consumption, except for G.S. 18B-308 (Sale and Consumption at Bingo Games) and 18B-309 (Alcoholic Beverage Sales in Urban Redevelopment Areas).
- Article 4-Transportation.
- Article 5- Enforcement, except for 18B-500 (Alcohol law-enforcement agents) and 18B-501 (Local ABC Officers).
- Article 9-Issuance of Permits, except for provisions requiring that collected fees go the General Fund (18B-902(g)), provisions requiring a recycling plan (18B-902(h)), and provisions dealing with the applicability of the Administrative Procedure Act (18B-906).
- Article 10- Retail Activity, except 18B-1000.1 (Authorization of Wine Shipper Permit), 18B-1001.2 (Additional Wine Shipping Requirements), and 18B-1001.3 (Authorization of Wine Shipper Packager Permit).
- Provides that any provision of Chapter 18 that has not been made applicable to the Eastern Band of Cherokee Indians under newly-enacted 18B-112 will act as a bar to engaging in any activity authorized by that provision.
- **Alcoholic Beverages which may be sold-** Provides that no alcoholic beverage may be sold on Indian Country lands which has not been approved by the North Carolina ABC Commission.
- **Establishment of a Tribal Commission-** Authorizes the Eastern Band of Cherokee Indians to establish a tribal alcoholic beverage control commission to regulate the purchase, possession, sale, and delivery of alcoholic beverages at retail on land designated as Indian Country.
  - **Permits-** Gives the tribal commission the exclusive authority to issue permits at retail establishments located on Indian Country lands.
    - Provides that the fees generated by the issuance of retail permits may be retained by the Eastern Band of Cherokee Indians to offset the costs of operating the tribal alcoholic beverage control commission.

# Senate PCS 324

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- **Establishment of Rules-** Provides that the tribal ABC commission must adopt rules of the NC ABC Commission which regulate retail outlet activity.
- **Authority of NC ABC Commission-** Provides that the NC ABC Commission may enter into agreements with the tribal commission to provide for the sale, delivery, and distribution of spirituous liquor to the tribal alcoholic beverage control commission. The tribal ABC commission must purchase spirituous liquor for resale exclusively from the NC ABC Commission at the same price and same basis as local boards. If there is a conflict between the NC ABC Commission's authority or purpose and the tribal commission's authority or purpose, the ABC Commission's authority or purpose prevails.
- **Discrimination-** Provides that the tribal alcoholic beverage control commission shall not discriminate against non-Indians in the application of the Tribal ABC law. Non-Indians shall be entitled to apply for and receive ABC permits in the same manner as an Indian on Indian Country lands.
- **Contested Cases-** Provides that if the tribal alcoholic beverage control commission levies a fine, or suspends or revokes a permit for a violation of the provisions applicable to the Eastern Band of Cherokee Indians, the permittee will have the right to appeal an agency final decision of the tribal commission to the tribal courts. Any further appeal shall be to the appellate courts of the tribe.
  - All fines paid to the tribal commission may be retained by the Eastern Band of Cherokee Indians to offset costs of operating the tribal alcoholic beverage control commission.
- **Failure to Comply With State Law.** -Provides that if the Eastern Band of Cherokee Indians fails to adopt the provisions of this Chapter fails to amend tribal ordinances to comply with amendments to the provisions of this Chapter, within six months of passage of such amendments, then the North Carolina ABC Commission may terminate and prohibit future delivery of any alcoholic beverages from any person to the tribal alcoholic beverage control commission until the Eastern Band of Cherokee Indians complies.
- **Conflict of Laws-** Provides that if any provision of this section conflicts with federal law, then the federal law prevails unless compliance with the federal law abrogates a right reserved to the State under the U.S. Constitution.

Sections 4 and 5 of the bill would authorize the limited transfer of wine by on-premises wine permittees under common ownership or control

**EFFECTIVE DATE:** The bill would be effective when it becomes law.

*Brad Krehely, Staff Attorney, substantially contributed to this summary.*

S324-SMRV-94(CSRV-35) v2

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE ABC

DATE: 6/15/11 Room: 425

\*Name: Allie Hobgood

County: Granville County

Sponsor: Mr. Crawford

\*Name: Hayden Rudd

County: Moore

Sponsor: Rep. Boles

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

House Sgt-At Arms:

1. Name: ~~Ernest Taylor~~

4. Name: \_\_\_\_\_

2. Name: Martha Gadeson

5. Name: \_\_\_\_\_

3. Name: Garland Shepherd

6. Name: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

ABC

Name of Committee

6/15/11

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Meredith Swindell	The Policy Group
Tim KENT	NC Beer & Wine Wholesalers
Swankin	FSP
Carmen Hunt	KSP
David Iman	SA
David Hyskins	EBCI ABC Commission
Bob Blackwell	FBI ABC Commission
Maew HA	Private Address
Amy McConkey	NC Beverage Assoc
Jon Carr	NC ABC Board
Rev. Mark Creech	CAL



# VISITOR REGISTRATION SHEET

ABC  
Name of Committee

6/15/11  
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Emily Smith

Wm

John McMillan

MFE

Chris Valauri

NC Beer & Wine Wholesalers

Lori Ann Harris

" "

Whitney Christensen

Jordan Price / NCRLA

Paul Stone

NCRLA

Kristen Vaster

FSP

Elizabeth Robinson

NCRLA

Tim J. Jeter

FSP

Andy Elle

NCRLA

# **Commerce and Job Development Subcommittee on Alcoholic Beverage Control**

**House Standing Committee  
2011 – 2012**

**Chairman: Rep. Jamie Boles**

**Members:** Rep. Larry Bell  
Rep. Larry Brown  
Rep. Bill Cook  
Rep. Bill Current  
Rep. Susi Hamilton  
Rep. Carolyn Justice  
Rep. David Lewis  
Rep. Marvin Lucas  
Rep. Frank McGuirt  
Rep. Marion McLawhorn  
Rep. Ray Rapp  
Rep. Ruth Samuelson  
Rep. Tim Spear  
Rep. Edgar Starnes  
Rep. Fred Steen  
Rep. Edith Warren  
Rep. Harry Warren  
Rep. Roger West

## MINUTES

### Commerce and Job Development Subcommittee on Alcoholic Beverage Control

May 23, 2012

The House Commerce and Job Development Subcommittee on Alcoholic Beverage Control met on Wednesday, May 23, 2012 in Room 544 of the Legislative Office Building. Representative Jamie Boles, Chairman, presided over the meeting. Members present at the meeting were Representative Jamie Boles, Representative Larry Bell, Representative Larry Brown, Representative Bill Cook, Representative Bill Current, Representative Suzi Hamilton, Representative Carolyn Justice, Representative David Lewis, Representative Marvin Lucas, Representative Frank McGuirt, Representative Ruth Samuelson, Representative Tim Spear, Representative Edgar Starnes, Representative Fred Steen, Representative Edith Warren and Representative Harry Warren. Also present was staff member, Brenda Carter and Kerry Guice, committee clerk.

The Chair called the meeting to order at 11:06 a.m. and introduced the Sergeant at Arms who were present, Martha Parrish, Billy Jones, Wayne Davis and Carl Morello; and the pages, Elliott Grant, Elizabeth Maness and Matt Gilgo.

Chairman Boles recognized Representative David Lewis who offered a motion to move that the Proposed House Committee Substitute for Senate Bill 745 be before the committee. Chairman Boles called for a vote on Representative Lewis's motion the motion carried.

Chairman Boles recognized Senator Austin Allran and Representative Lewis to explain the bill. Senator Allran explained the bill before the committee. Chairman Boles then asked Representative Lewis if he had any remarks for the committee and having none, Chairman Boles recognized Representative Brown who indicated that at the appropriate time he had a motion.


Chairman Boles opened the floor for discussion and heard comments unrelated to the bill which were clarified by Jon Carr representing the North Carolina Association of Alcoholic Control Boards.

Representative Brown moved for an unfavorable report of the original bill and a favorable report of the proposed committee substitute. The motion carried.

Chairman Boles adjourned the meeting at 11:15 a.m.

Respectfully Submitted,

  
Kerry L. Guice, Committee Clerk

  
Rep. Jamie L. Boles, Jr., Chairman

# **AGENDA**

## **Commerce and Job Development Subcommittee on Alcoholic Beverage Control**

**Wednesday, May 23, 2012**

**Room 544**

**10:00 a.m.**

### **OPENING REMARKS**

**Representative Jamie L. Boles, Jr.  
Chairman**

### **AGENDA ITEMS**

**SB 756      Beer Franchise Law Clarifications      Senator Allran**

### **ADJOURNMENT**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2011-2012 SESSION**

You are hereby notified that the Committee on **Commerce and Job Development Subcommittee on Alcoholic Beverage Control** will meet as follows:

**DAY & DATE:** Wednesday, May 23, 2012

**TIME:** 10:00 am

**LOCATION:** 544 LOB

**COMMENTS:** Committee will meet immediately after Commerce and Job Development committee meeting

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
SB 745	Beer Franchise Law Clarifications.	Senator Allran

Respectfully,  
Representative Boles, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **9 AM** o'clock on **May 23, 2011**.

- ☐ Principal Clerk
- ☐ Reading Clerk – House Chamber

**Kerry Guice** (Committee Assistant)

## ATTENDANCE

**House Committee Commerce and Job Development/Subcommittee on Alcoholic Beverage Control**

2011-2012 Session

[illegible]

**2011 PERMANENT SUBCOMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

**FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE**

The following report(s) from permanent sub committee(s) is/are presented:

By Representative(s) Boles (Chair) for the Commerce and Job Development Subcommittee on Alcoholic Beverage Control.

☒ Committee Substitute for

**SB 745**

A BILL TO BE ENTITLED AN ACT TO PRESERVE THE THREE-TIER DISTRIBUTION SYSTEM FOR MALT BEVERAGES IN NORTH CAROLINA BY CLARIFYING PROVISIONS OF THE BEER FRANCHISE LAW TO PROVIDE: A FRANCHISE AGREEMENT APPLIES TO ALL SUPPLIER PRODUCTS UNDER THE SAME BRAND NAME; A WHOLESALER MUST SELL MALT BEVERAGES TO ALL RETAILERS IN ITS TERRITORY AT THE SAME PRICE AT THE TIME OF DELIVERY; PROHIBITED ACTS OF SUPPLIERS WITH RESPECT TO THEIR DEALINGS WITH WHOLESALERS; GOOD CAUSE FOR TERMINATION MAY NOT BE MODIFIED BY AN AGREEMENT THAT DEFINES GOOD CAUSE IN A MANNER DIFFERENT THAN PROVIDED BY STATE LAW; REVERSION OF SMALL BREWERIES' SELF-DISTRIBUTION RIGHTS UNDER CERTAIN CIRCUMSTANCES; CERTAIN ACTS THAT DO NOT AMOUNT TO GOOD CAUSE FOR TERMINATION OF A FRANCHISE; REMEDIES FOR A SUPPLIER'S WRONGFUL TERMINATION OF A FRANCHISE; INCLUSION OF A WHOLESALER MERGER, THE FACTORS THAT MAY BE CONSIDERED BY THE SUPPLIER IN APPROVING A MERGER OR TRANSFER, AND REMEDIES FOR UNLAWFUL REFUSAL TO APPROVE A MERGER OR TRANSFER; THE BEER FRANCHISE LAW MAY NOT BE WAIVED BY AN AGREEMENT CONTRARY TO STATE LAW; AND MEDIATION OF DISPUTES ARISING UNDER THE BEER FRANCHISE LAW.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/ 

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the Senate Committee Substitute Bill.

**(FOR JOURNAL USE ONLY)**

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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D

SENATE BILL 745\*  
Commerce Committee Substitute Adopted 6/2/11  
Third Edition Engrossed 6/7/11  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S745-CSR-V-41 [v.1]

5/22/2012 1:24:21 PM

Short Title: Beer Franchise Law Clarifications.

(Public)

Sponsors:

Referred to:

April 20, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO PRESERVE THE THREE-TIER DISTRIBUTION SYSTEM FOR MALT  
3 BEVERAGES IN NORTH CAROLINA BY CLARIFYING PROVISIONS OF THE  
4 BEER FRANCHISE LAW TO PROVIDE: A FRANCHISE AGREEMENT APPLIES TO  
5 ALL SUPPLIER PRODUCTS UNDER THE SAME BRAND NAME; A WHOLESALER  
6 MUST SELL MALT BEVERAGES TO ALL RETAILERS IN ITS TERRITORY AT THE  
7 SAME PRICE AT THE TIME OF DELIVERY; PROHIBITED ACTS OF SUPPLIERS  
8 WITH RESPECT TO THEIR DEALINGS WITH WHOLESALERS; GOOD CAUSE FOR  
9 TERMINATION MAY NOT BE MODIFIED BY AN AGREEMENT THAT DEFINES  
10 GOOD CAUSE IN A MANNER DIFFERENT THAN PROVIDED BY STATE LAW;  
11 REVERSION OF SMALL BREWERIES' SELF-DISTRIBUTION RIGHTS UNDER  
12 CERTAIN CIRCUMSTANCES; CERTAIN ACTS THAT DO NOT AMOUNT TO  
13 GOOD CAUSE FOR TERMINATION OF A FRANCHISE; REMEDIES FOR A  
14 SUPPLIER'S WRONGFUL TERMINATION OF A FRANCHISE; INCLUSION OF A  
15 WHOLESALER MERGER, THE FACTORS THAT MAY BE CONSIDERED BY THE  
16 SUPPLIER IN APPROVING A MERGER OR TRANSFER, AND REMEDIES FOR  
17 UNLAWFUL REFUSAL TO APPROVE A MERGER OR TRANSFER; THE BEER  
18 FRANCHISE LAW MAY NOT BE WAIVED BY AN AGREEMENT CONTRARY TO  
19 STATE LAW; AND MEDIATION OF DISPUTES ARISING UNDER THE BEER  
20 FRANCHISE LAW; AND TO ALLOW THE ABC COMMISSION TO GRANT A  
21 WAIVER ALLOWING THE GENERAL MANAGER OF A LOCAL BOARD TO ALSO  
22 BE THE FINANCE OFFICER.

23 The General Assembly of North Carolina enacts:

24 SECTION 1. Article 13 of Chapter 18B of the General Statutes reads as rewritten:

25 "Article 13.

26 "Beer Franchise Law.

27 ...

28 "§ 18B-1303. Filing of distribution agreement; no discrimination.

29 (a) Filing. – It is unlawful for a supplier to provide malt beverages to a wholesaler  
30 unless the Commission has received notification from the supplier designating the brands of the  
31 supplier which the wholesaler is authorized to sell and the territory in which such sales may  
32 take place. If the supplier sells several brands, the agreement need not apply to all brands. A



\* S 7 4 5 - C S R V - 4 1 - V - 1 \*



1 franchise agreement applies to all supplier products under the same brand name, and different  
2 categories of products manufactured under a common identifying trade name are considered to  
3 be the same brand. No supplier may provide by a distribution agreement for the distribution of  
4 a brand to more than one wholesaler for the same territory. A wholesaler shall not distribute  
5 any brand of malt beverage to a retailer whose premises are located outside the territory  
6 specified in the wholesaler's distribution agreement for that brand. A wholesaler may, however,  
7 with the approval of the Commission distribute malt beverages outside ~~his~~its designated  
8 territory during periods of temporary service interruption when requested to do so by the  
9 supplier and the wholesaler whose service is interrupted.

10 (b) No Discrimination. – A wholesaler shall service all retail permit holders within his  
11 designated territory without discrimination and shall make a good faith effort to make available  
12 to each retail permit holder in the territory each brand of malt beverage which the wholesaler  
13 has been authorized to distribute in that area.

14 (c) No Price Maintenance. – A franchise agreement shall not, either expressly or by  
15 implication or in its operation, establish or maintain the resale price of any brand of malt  
16 beverages by a wholesaler.

17 **"§ 18B-1304. Prohibitions.**

18 It is unlawful for a supplier, or an officer, agent or representative of a supplier, to:

- 19 (1) Coerce or attempt to coerce or persuade a wholesaler to violate any  
20 provision of the ABC laws or rules of the Department of ~~Revenue;~~  
21 ~~or Revenue.~~
- 22 (2) Alter-Except as authorized by G.S. 18B-1305(a1), alter in a material way,  
23 terminate, fail to renew, or cause a wholesaler to resign from, a franchise  
24 agreement with a wholesaler except for good cause and with the notice  
25 required by G.S. 18B-1305.
- 26 (3) Withdraw money from or otherwise access a wholesaler's bank accounts  
27 without the wholesaler's consent.
- 28 (4) Present a franchise agreement, amendment, or renewal to a wholesaler that  
29 attempts to waive compliance with any provision of this Article or that  
30 requires a wholesaler to waive compliance with any provision of this Article.  
31 A wholesaler entering into a franchise agreement containing provisions in  
32 conflict with this Article shall not be deemed to waive rights protected by, or  
33 in compliance with, any provision of this Article.
- 34 (5) Induce or coerce, or attempt to induce or coerce, any wholesaler to assent to  
35 any franchise agreement, amendment, or renewal that does not comply with  
36 this Article and the laws of this State.
- 37 (6) Coerce or attempt to coerce a wholesaler, or its designated or anticipated  
38 successor, to sign a franchise agreement, amendment, or renewal to a  
39 franchise agreement by threatening to refuse to approve or delay issuing an  
40 approval for the sale, transfer, or merger of a wholesaler's business.
- 41 (7) Terminate, cancel, or nonrenew or attempt to terminate, cancel, or nonrenew  
42 a franchise agreement on the basis that the wholesaler fails to agree or  
43 consent to an amendment to the franchise agreement.
- 44 (8) Prohibit a wholesaler from distributing the product of any other supplier,  
45 except that a supplier may prohibit a wholesaler from distributing the  
46 product of another supplier if reasonable grounds exist for prohibiting the  
47 wholesaler's acquisition of the product and the acquisition would result in  
48 the wholesaler acquiring eighty percent (80%) or more by volume of all malt  
49 beverage products sold in the territory being acquired at the time of the  
50 acquisition.

- (9) Refuse to approve or require a wholesaler to terminate a brand manager or successor manager without good cause. A supplier has good cause only if the person designated for approval by the wholesaler fails to meet reasonable standards and qualifications.
- (10) Discriminate in price, allowance, rebate, refund, payment term, commission, discount, or service between wholesalers licensed in North Carolina. As used in this subsection, "discriminate" means the granting of a more favorable price, allowance, rebate, refund, payment term, commission, discount, or service to one North Carolina wholesaler than to another North Carolina wholesaler based on the quantity of malt beverages purchased or for any other reason, but "discriminate" shall exclude the granting of more favorable freight and transportation costs, price promotions on malt beverage products for special events in a particular market not to exceed 14 consecutive days, point-of-sale advertising materials, sponsorships, consumer specialty items, consumer sweepstakes, and novelties. A supplier may, however, offer a lower price or discount in order to match that of a competing supplier on a similar category of malt beverage products in the entire State or in a particular market.

**"§ 18B-1305. Cause for termination of franchise agreement.**

(a) **Meaning of Good Cause.** – Good cause for altering or terminating a franchise agreement, or failing to renew or causing a wholesaler to resign from such an agreement, exists when the wholesaler fails to comply with provisions of the agreement which are reasonable, material, not unconscionable, and which are not discriminatory when compared with the provisions imposed, by their terms or in the manner of enforcement, on other similarly situated wholesaler by the supplier. The meaning of good cause set out in this section may not be modified or superseded by provisions in a written franchise agreement prepared by a supplier if those provisions purport to define good cause in a manner different than specified in this section. In any dispute over alteration, termination, failure to renew or causing a wholesaler to resign from a franchise agreement, the burden is on the supplier to establish that good cause exists for the action.

(a1) **Termination by a Small Brewery.** – A brewery's authorization to distribute its own malt beverage products pursuant to G.S. 18B-1104(7) shall revert back to the brewery, in the absence of good cause, following the fifth business day after confirmed receipt of written notice of such reversion by the brewery to the wholesaler. The brewery shall pay the wholesaler fair market value for the distribution rights for the affected brand. For purposes of this subsection, "fair market value" means the highest dollar amount at which a seller would be willing to sell and a buyer willing to buy at the time the self-distribution rights revert back to the brewery, after each party has been provided all information relevant to the transaction.

(b) **Notice of Cause.** – At least 90 days before altering, terminating or failing to renew a franchise agreement for good cause, the supplier must give the wholesaler written notice of the intended action and the specific reasons for it. If the cause for the alteration, termination or failure to renew is subject to correction by the wholesaler, and the wholesaler makes such correction within 45 days of receipt of the notice, the notice shall be void.

(c) **Termination for Cause without Advance Notice.** – A supplier may terminate or fail to renew a franchise agreement for any of the following reasons, and the termination shall be complete upon receipt by the wholesaler of a written notice of the termination and the reason:

- (1) **Insolvency of the wholesaler,** the dissolution or liquidation of the wholesaler, or the filing of any petition by or against the wholesaler under any bankruptcy or receivership law which materially affects the wholesaler's ability to remain in business.

- 1 (2) Revocation of the wholesaler's State or federal permit or license for more  
2 than 30 days.
- 3 (3) Conviction of the wholesaler, or of a partner or individual who owns ten  
4 percent (10%) or more of the partnership or stock of the wholesaler, of a  
5 felony which might reasonably be expected to adversely affect the goodwill  
6 or interest of the wholesaler or supplier. The provisions of this subdivision  
7 shall not apply, however, if the wholesaler or its existing partners or  
8 stockholders shall have the right to purchase the interest of the offending  
9 partner or stockholder, and such purchase is completed within ~~45~~30 days of  
10 the conviction.
- 11 (4) Fraudulent conduct by the wholesaler in its dealings with the supplier or its  
12 products.
- 13 (5) Failure of the wholesaler to pay for the supplier's products according to the  
14 established terms of the supplier.
- 15 (6) Assignment, sale or transfer of the wholesaler's business or control of the  
16 wholesaler without the written consent of the supplier, except as provided in  
17 G.S. 18B-1307.
- 18 (d) Absence of Good Cause. – Good cause for alteration, termination or failure to renew  
19 a franchise agreement does not include:
- 20 (1) The failure or refusal of the wholesaler to engage in any trade practice,  
21 conduct or activity which would violate federal or State law.
- 22 (2) The failure or refusal of the wholesaler to take any action which would be  
23 contrary to the provisions of this Article.
- 24 (3) A change in the ownership of the supplier or the acquisition by another  
25 supplier of the brewery, brand or trade name or trademark, or acquisition of  
26 the right to distribute a product, from the original supplier.
- 27 (4) Sale or transfer of the rights to manufacture, distribute, or use the trade name  
28 of the brand to a successor supplier.
- 29 (5) Failure of the wholesaler to meet standards of operation or performance  
30 which have been imposed or revised unilaterally by the supplier without a  
31 fair opportunity for the individual wholesaler to bargain as to the terms,  
32 unless the supplier has implemented the standards on a national basis and  
33 those standards are consistently applied to all similarly situated North  
34 Carolina wholesalers in a nondiscriminatory manner.
- 35 (6) The establishment of a franchise agreement between a wholesaler and  
36 another supplier, or similar acquisition by a wholesaler of the right to  
37 distribute a brand of another supplier.
- 38 (7) The desire of a supplier to consolidate its franchises.
- 39 **"§ 18B-1306. Remedies for wrongful termination.**
- 40 (a) Injunctive Relief. – A wholesaler whose franchise agreement is altered, terminated  
41 or not renewed in violation of this Article may bring an action to enjoin such unlawful  
42 alteration, termination or failure to renew. The action may be brought in the county in which  
43 the wholesaler has its principal place of business or in any county in which the wholesaler  
44 receives or distributes the products in issue. Any injunction issued pursuant to this subsection  
45 shall require the wholesaler to supply the customers in its territory with their reasonable retail  
46 requirements and to otherwise serve the territory.
- 47 (b) Monetary Damages. – In lieu of injunctive relief, a wholesaler whose franchise  
48 agreement is altered, terminated or not renewed in violation of this Article shall be entitled to  
49 recover monetary damages from the supplier. The amount to which the wholesaler is entitled  
50 shall be the value of the wholesaler's business distributing the supplier's products, including:

- (1) The laid-in costs to the wholesaler of the inventory of the supplier's products, including any State and local taxes paid on the inventory by the wholesaler, plus a reasonable charge for handling of the products upon surrender of the inventory to the supplier.
- (2) The fair market value of all assets, including ancillary businesses of the wholesaler used in distributing the supplier's products. The total compensation to be paid to the wholesaler shall be reduced, however, by any amount received by the wholesaler from sale of assets of the business used in distributing the supplier's products as well as by the value such assets have to the wholesaler unrelated to the supplier's products. "Fair market value" means the highest dollar amount at which a seller would be willing to sell and a buyer willing to buy at a time prior to the alteration, termination or failure to renew, when each possesses all information relevant to the transaction.

**"§ 18B-1307. Transfer or merger of wholesaler's business.**

(a) Right of Transfer to Designated Family Member upon Death. – Upon the death of a wholesaler, that individual's interest in the wholesaler business, including the rights under the franchise agreement with the supplier, may be transferred or assigned to a designated family member. The transfer or assignment shall not be effective until written notice is given to the supplier, but the supplier's consent is not required for the transfer or assignment. "Designated family member" means the deceased wholesaler's spouse, child, grandchild, parent, brother or sister, who is entitled to inherit the deceased wholesaler's ownership interest under the terms of the deceased wholesaler's will or other testamentary device or under the laws of intestate succession. With respect to an incapacitated individual having an ownership interest in a wholesaler, the term "designated family member" also means the person appointed by the court as the conservator of such individual's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased wholesaler.

(b) Approval of Certain ~~Transfers~~ Transfers and Mergers. – Upon notice to and approval by the supplier, an individual owning an interest in a wholesaler may sell, assign or transfer that interest, including the wholesaler's rights under its franchise agreement with the supplier, to any qualified person. Likewise, a wholesaler may merge with another wholesaler in the State, transferring to the new wholesaler entity the merging wholesaler's existing franchise rights. Within 30 days of receipt of notice of the intended sale, ~~assignment or transfer,~~ assignment, transfer, or merger, the supplier shall request any additional relevant, material information reasonably necessary for deciding whether to approve the transaction. The supplier shall have 30 days from receipt of that information to object to the sale, ~~assignment or transfer,~~ assignment, transfer, or merger. The supplier may object only if the proposed ~~transferee~~ transferee, or the wholesalership resulting from the merger, fails to meet qualifications and standards that are nondiscriminatory, material, reasonable and consistently applied to North Carolina wholesalers by the supplier. The burden shall be upon the supplier to prove that the proposed ~~transferee or merged wholesaler~~ transferee or merged wholesaler is not qualified. In determining whether the proposed transferee or merged wholesaler is a qualified person, the supplier shall consider, but is not limited, to the following factors:

- (1) Whether the proposed transferee has the financial capacity to purchase the wholesaler or the specified interest upon terms that will not jeopardize the future operation of the business, or whether the new entity resulting from a merger will have such financial capacity to operate successfully, and whether under such ownership the wholesaler will be able to provide financial support necessary to the successful operation of the business, including market spending, capital expenditures, and any equity capitalization or refinancing requirements.

- (2) Whether the proposed transferee, or the new entity resulting from a merger, has the proven business experience to hire and maintain a management team to successfully operate the business.
- (3) If the proposed transferee does not have experience in the beer business, whether the transferee has other experience to enable it to operate a distributorship successfully and whether the transferee is willing to participate in training provided by the supplier.
- (4) Whether the proposed transferee, or a party to the merger, already is a wholesaler for the supplier in a different territory and, if so, whether sufficient time and attention can be devoted to an additional market area.

In determining whether a proposed transferee, or the entity resulting from a merger, is a qualified person, a supplier must consider the business on its own merits and may not designate a specifically identified person as the only purchaser who will be approved. Nothing in this subsection is intended to or should be construed to interfere with a supplier's right to match and reassign to a designee the right to purchase the ownership interest, subject to the designee purchasing the ownership interest at the price and on the conditions applicable to the purchase proposed by the transferee.

(c) Damages. – A supplier who disapproves or prevents a proposed assignment or change of ownership or merger in violation of this section shall be liable to the wholesaler who proposed to make the sale, ~~assignment or transfer~~assignment, transfer, or merger for the difference between the disapproved sale price and a subsequent actual price of a sale of the same assets completed within a reasonable period. If, however, the proposed transfer or sale was to a business associate at a bargain price, the amount of compensation shall be at least the fair market value of the interest proposed to be sold or transferred, minus the proceeds of an actual sale of the interest completed within a reasonable time.

**"§ 18B-1308. Article part of all franchise agreements.**

The provisions of this Article shall be part of all franchise agreements as defined in G.S. 18B-1302 and may not be altered by the parties. A wholesaler's rights under this Article may not be waived or superseded by the provisions of a written franchise agreement prepared by a supplier that are in any way inconsistent with or contrary to any part of this Article. The rights of a wholesaler under this Article shall remain in effect regardless of a provision in a written franchise agreement prepared by a supplier that purports to require arbitration of a franchise dispute or that purports to require legal remedies to be sought in a different jurisdiction.

**"§ 18B-1309. Mediation at direction of Alcoholic Beverage Control Commission.**

If a dispute arises between a wholesaler and supplier under this Article, and such dispute appears likely to lead to litigation, the Commission, upon request of any party or on its own initiative, may require the parties to participate in mediation in an effort to resolve the dispute. This authority shall be in addition to the Commission's authority to issue declaratory rulings pursuant to G.S. 150B-4. The Commission may designate the mediator, in which case the Commission shall pay the mediator's fee, or the Commission may direct the parties to agree upon and share the costs of a mediator. If the parties then cannot agree upon a mediator, the Commission shall designate the mediator, and the fees shall be divided evenly by the parties. The Commission shall direct that the mediation be completed within a specified period of time. Except for injunctive relief, no lawsuit or other legal action concerning the dispute may be filed until the mediation is completed and is unsuccessful, unless necessary to avoid expiration of a statute of limitation."

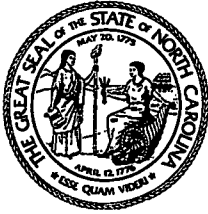
**SECTION 2. G.S. 18B-702(j) reads as rewritten:**

"(j) Finance Officer. – Except as otherwise provided, the local board shall designate (i) a part-time or full-time employee of the board other than the general manager or (ii) the finance officer of the appointing authority with consent of the appointing authority to be the finance

1 officer for the local board. The Commission, for good cause shown, may grant a waiver to  
2 allow the general manager of a board also to be the finance officer. Good cause includes, but is  
3 not limited to, the fact that the board operates no more than two stores, and any approval for the  
4 general manager also to be the finance officer shall apply until the board operates more than  
5 two stores; in any event, the approval shall be effective for 36 months. The Commission may  
6 grant one or more waivers to a board."

7 **SECTION 3.** The provisions of this act are severable and, if any phrase, clause,  
8 sentence, or provision is declared to be unconstitutional, is preempted by federal law or  
9 regulation, or is otherwise invalid, the validity of the remainder of this act shall not be affected  
10 thereby.

11 **SECTION 4.** The provisions of G.S. 18B-1304, as amended by this act, become  
12 effective October 1, 2012. The remainder of this act is effective when it becomes law, and  
13 applies to all transactions on or after that date.



## SENATE BILL 745: Beer Franchise Law Clarifications

2011-2012 General Assembly

**Committee:** Senate Commerce  
**Introduced by:** Sen. Allran  
**Analysis of:** PCS to First Edition  
S745-CSMA-25

**Date:** June 2, 2011  
**Prepared by:** Heather Fennell  
Committee Counsel

**SUMMARY:** *The PCS to Senate Bill 745 amends the requirements for franchise agreements for beer, prohibits discrimination by beer suppliers and beer wholesalers, provides for the termination of franchise agreements by small breweries in certain situations, clarifies the definition of good cause for termination of a franchise agreement, clarifies provisions for monetary damages for wrongful termination of agreements, provides for mergers of wholesalers, and allows the ABC Commission to require mediation of certain disputes.*

[As introduced, this bill was identical to H764, as introduced by Reps. Lewis, Rhyne, T. Moore, Martin, which is currently in House Commerce and Job Development Subcommittee on Alcoholic Beverage Control.]

**CURRENT LAW:** Beer franchises are governed by Article 13 of Chapter 18B of the General Statutes. This Article provides that a franchise agreement between a wholesaler of malt beverages and a supplier of malt beverages exists whenever a written distribution agreement has been entered into between the parties, or when the parties have acted as if an agreement exists by shipping, accepting shipment of, paying for, or accepting payment for an order of malt beverages.

Franchise agreements may only be altered, terminated, or not renewed for good cause.. "Good cause" is defined as when a wholesaler fails to comply with the reasonable, material terms of the agreement. "Good cause" is defined by statute not to include failure of a wholesaler to engage in conduct that violates State and federal law or a change in ownership of the supplier. Written notice of at least 90 days must be given to alter, terminate, or not renew an agreement for good cause.

An agreement may be terminated or not renewed for cause without advanced notice for the following reasons:

- Insolvency of the wholesaler.
- Revocation of the wholesaler's permit or license for more than 30 days.
- Conviction of the wholesaler, or a partner who owns 10% or more of the business, of a felony that would affect the goodwill of the business.
- Fraudulent conduct of the wholesaler.
- Failure of the wholesaler to pay for product.
- Assignment, sale or transfer of the wholesaler's business without written consent of the supplier, unless the transfer is to a designated family member upon the death of the wholesaler.

Wholesalers may seek injunctive relief or monetary damages for agreements that are altered, terminated, or not renewed in violation of Article 13 of Chapter 18B. Monetary damages include the costs of the supplier's inventory the aggrieved wholesaler has and the fair market value of assets of the wholesaler used to distribute the supplier's product.

# Senate PCS 745

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**BILL ANALYSIS:** The proposed committee substitute to Senate Bill 745 does all of the following:

**Franchise Agreements:** Makes the following clarification to franchise agreements:

- Clarifies that a franchise agreement applies to all supplier products under the same brand name. Different categories of product under a common identifying trade name are considered the same brand.
- The meaning of good cause cannot be modified or superseded by a written franchise agreement.
- A wholesaler's rights under Article 13B of Chapter 18 may not be waived or superseded by a franchise agreement and a wholesaler's rights shall remain in effect regardless of an agreement that attempts to require arbitration of a franchise dispute, or requires legal remedies to be sought in a different jurisdiction.

**Nondiscrimination by Wholesalers:** Requires wholesalers to sell malt beverages in its designated territory without discrimination, including the sale price of product at the time of delivery.

**Supplier Prohibitions:** Prohibits a supplier from engaging in any of the following:

- Withdrawing money from a wholesaler's account without permission.
- Presenting a franchise agreement, amendment or renewal, or attempting to coerce a wholesaler to sign an agreement, amendment or renewal that does not comply with the laws of this State.
- Requiring a wholesaler to agree to waive compliance with Article 13 of Chapter 18B.
- Coercing a wholesaler to sign an agreement by threatening to refuse or delay a sale, transfer, or merger, of the wholesaler's business.
- Termination, cancellation, or nonrenewal of an agreement if a wholesaler refuses to agree to an amendment to the agreement.
- Prohibiting a wholesaler from distributing the product of another supplier, unless reasonable grounds exist for prohibiting the acquisition and the acquisition would result in the wholesaler acquiring 80% or more of all malt beverage products sold in a territory.
- Refusing to approve or require a wholesaler to terminate a brand manager or successor manager without good cause.
- Discriminating between licensed wholesalers regarding price, allowances, rebates, refunds, commissions, discounts, or services.

**Termination of Agreement by Small Brewery:** Provides small breweries may terminate an agreement if the small brewery pays the wholesaler the fair market value for distribution rights of each affected brand. The termination shall not be effective until the brewery and the wholesaler agree on the fair market value for the brands, and the wholesaler has received compensation.

**Absence of Good Cause:** Provides good cause for altering, terminating, or not renewing an agreement shall not include the following:

- Sale or transfer of the right to use the trade name of the brand to a successor supplier.
- Failure of a wholesaler to meet standards unilaterally imposed or revised by the supplier.
- A new franchise agreement between a wholesaler and another supplier.



- The desire of a supplier to consolidate franchises.

**Monetary Damages for Wrongful Termination of Agreement:** Provides that a wholesaler may obtain monetary damages in addition to injunctive relief. If franchise rights are retained through injunctive relief, the monetary damages a wholesaler may seek are losses from the disruption of the wholesaler's business and the costs of litigation including attorney's fees.

**Merger and Transfer of Wholesaler Business:** Clarifies a wholesaler may transfer rights under a franchise agreements through merging with another qualified wholesaler, as well as transfer business to another qualified wholesaler.

The factors that may be considered in the determination of whether a wholesaler is qualified for merger or transfer are:

- Whether the proposed transferee has the financial capacity to purchase the interest, or whether the proposed merged entity will have the financial capacity to operate successfully.
- Whether the proposed transferee or merged entity has the proven business experience to hire and maintain a management team to operate successfully.
- Whether a proposed transferee with no experience in the beer industry has sufficient other experience to operate a distributorship successfully.

In determining whether a proposed transferee or merged entity is qualified, a supplier must consider the business on its own merits and may not designate a specific individual as the only purchaser that may be approved.

A wholesaler may seek injunctive relief to enforce the merger and transfer provisions in Article 13 of Chapter 18B in addition to the monetary damages currently allowed by statute. The monetary damages are modified to include damages of the wholesaler due to a supplier's unlawful refusal to approve a sale, transfer, or merger.

**Mediation at ABC Commission:** Authorizes the ABC Commission to require parties to participate in mediation to resolve disputes that arise under Article 13 of Chapter 18B. The Commission shall designate a specified period of time in which the mediation must be completed. Except for injunctive relief, no lawsuit or other legal action may be taken until the mediation is completed, unless the legal action is necessary to avoid an expiration of a statute of limitation.

**EFFECTIVE DATE:** This act is effective when it becomes law and applies to all existing franchise agreements. A supplier's shipment of malt beverages to a wholesaler in North Carolina following the effective date of this act shall constitute acceptance by the supplier of the terms of this act, which shall be incorporated into the agreement between the supplier and the wholesaler.

S745-SMTD-68(CSMA-25) v5

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 745\*  
Commerce Committee Substitute Adopted 6/2/11  
Third Edition Engrossed 6/7/11

Short Title: Beer Franchise Law Clarifications.

(Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO PRESERVE THE THREE-TIER DISTRIBUTION SYSTEM FOR MALT BEVERAGES IN NORTH CAROLINA BY CLARIFYING PROVISIONS OF THE BEER FRANCHISE LAW TO PROVIDE: A FRANCHISE AGREEMENT APPLIES TO ALL SUPPLIER PRODUCTS UNDER THE SAME BRAND NAME; A WHOLESALER MUST SELL MALT BEVERAGES TO ALL RETAILERS IN ITS TERRITORY AT THE SAME PRICE AT THE TIME OF DELIVERY; PROHIBITED ACTS OF SUPPLIERS WITH RESPECT TO THEIR DEALINGS WITH WHOLESALERS; GOOD CAUSE FOR TERMINATION MAY NOT BE MODIFIED BY AN AGREEMENT THAT DEFINES GOOD CAUSE IN A MANNER DIFFERENT THAN PROVIDED BY STATE LAW; REVERSION OF SMALL BREWERIES' SELF-DISTRIBUTION RIGHTS UNDER CERTAIN CIRCUMSTANCES; CERTAIN ACTS THAT DO NOT AMOUNT TO GOOD CAUSE FOR TERMINATION OF A FRANCHISE; REMEDIES FOR A SUPPLIER'S WRONGFUL TERMINATION OF A FRANCHISE; INCLUSION OF A WHOLESALER MERGER, THE FACTORS THAT MAY BE CONSIDERED BY THE SUPPLIER IN APPROVING A MERGER OR TRANSFER, AND REMEDIES FOR UNLAWFUL REFUSAL TO APPROVE A MERGER OR TRANSFER; THE BEER FRANCHISE LAW MAY NOT BE WAIVED BY AN AGREEMENT CONTRARY TO STATE LAW; AND MEDIATION OF DISPUTES ARISING UNDER THE BEER FRANCHISE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 18B of the General Statutes reads as rewritten:

"Article 13.

"Beer Franchise Law.

...

§ 18B-1303. Filing of distribution agreement; no discrimination.

(a) Filing. – It is unlawful for a supplier to provide malt beverages to a wholesaler unless the Commission has received notification from the supplier designating the brands of the supplier which the wholesaler is authorized to sell and the territory in which such sales may take place. If the supplier sells several brands, the agreement need not apply to all brands. A franchise agreement applies to all supplier products under the same brand name, and different categories of products manufactured under a common identifying trade name are considered to be the same brand. No supplier may provide by a distribution agreement for the distribution of a brand to more than one wholesaler for the same territory. A wholesaler shall not distribute any brand of malt beverage to a retailer whose premises are located outside the territory



\* 8 7 4 5 - V - 3 \*

1 specified in the wholesaler's distribution agreement for that brand. A wholesaler may, however,  
2 with the approval of the Commission distribute malt beverages outside hisits designated  
3 territory during periods of temporary service interruption when requested to do so by the  
4 supplier and the wholesaler whose service is interrupted.

5 (b) No Discrimination. – A wholesaler shall ~~servicesell~~ sell malt beverages to all retail  
6 permit holders within hisits designated territory without discrimination with respect to the sale  
7 price at the time of delivery and shall make a good faith effort to make available to each retail  
8 permit holder in the territory each brand of malt beverage which the wholesaler has been  
9 authorized to distribute in that area.

10 (c) No Price Maintenance. – A franchise agreement shall not, either expressly or by  
11 implication or in its operation, establish or maintain the resale price of any brand of malt  
12 beverages by a wholesaler.

13 **"§ 18B-1304. Prohibitions.**

14 It is unlawful for a supplier, or an officer, agent or representative of a supplier, to:

- 15 (1) Coerce or attempt to coerce or persuade a wholesaler to violate any  
16 provision of the ABC laws or rules of the Department of ~~Revenue;~~  
17 ~~or Revenue.~~
- 18 (2) ~~Alter~~ Except as authorized by G.S. 18B-1305(a1), alter in a material way,  
19 terminate, fail to renew, or cause a wholesaler to resign from, a franchise  
20 agreement with a wholesaler except for good cause and with the notice  
21 required by G.S. 18B-1305.
- 22 (3) Withdraw money from or otherwise access a wholesaler's bank accounts  
23 without the wholesaler's consent.
- 24 (4) Present a franchise agreement, amendment, or renewal to a wholesaler that  
25 attempts to waive compliance with any provision of this Article or that  
26 requires a wholesaler to waive compliance with any provision of this Article.  
27 A wholesaler entering into a franchise agreement containing provisions in  
28 conflict with this Article shall not be deemed to waive rights protected by, or  
29 in compliance with, any provision of this Article.
- 30 (5) Induce or coerce, or attempt to induce or coerce, any wholesaler to assent to  
31 any franchise agreement, amendment, or renewal that does not comply with  
32 this Article and the laws of this State.
- 33 (6) Coerce or attempt to coerce a wholesaler, or its designated or anticipated  
34 successor, to sign a franchise agreement, amendment, or renewal to a  
35 franchise agreement by threatening to refuse to approve or delay issuing an  
36 approval for the sale, transfer, or merger of a wholesaler's business.
- 37 (7) Terminate, cancel, or nonrenew or attempt to terminate, cancel, or nonrenew  
38 a franchise agreement on the basis that the wholesaler fails to agree or  
39 consent to an amendment to the franchise agreement.
- 40 (8) Prohibit a wholesaler from distributing the product of any other supplier,  
41 except that a supplier may prohibit a wholesaler from distributing the  
42 product of another supplier if reasonable grounds exist for prohibiting the  
43 wholesaler's acquisition of the product and the acquisition would result in  
44 the wholesaler acquiring eighty percent (80%) or more by volume of all malt  
45 beverage products sold in the territory being acquired at the time of the  
46 acquisition.
- 47 (9) Refuse to approve or require a wholesaler to terminate a brand manager or  
48 successor manager without good cause. A supplier has good cause only if  
49 the person designated for approval by the wholesaler fails to meet reasonable  
50 standards and qualifications.

(10) Discriminate in price, allowance, rebate, refund, payment term, commission, discount, or service between wholesalers licensed in North Carolina. As used in this subsection, "discriminate" means the granting of a more favorable price, allowance, rebate, refund, payment term, commission, discount, or service to one North Carolina wholesaler than to another North Carolina wholesaler based on the quantity of malt beverages purchased or for any other reason, but shall exclude freight and transportation costs, price promotions on malt beverage products in a particular market not to exceed 14 consecutive days, point-of-sale advertising materials, sponsorships, consumer specialty items, consumer sweepstakes, and novelties. A supplier may, however, offer a lower price or discount in order to match that of a competing supplier on a similar category of malt beverage products in the entire State or in a particular market.

**"§ 18B-1305. Cause for termination of franchise agreement.**

(a) **Meaning of Good Cause.** – Good cause for altering or terminating a franchise agreement, or failing to renew or causing a wholesaler to resign from such an agreement, exists when the wholesaler fails to comply with provisions of the agreement which are reasonable, material, not unconscionable, and which are not discriminatory when compared with the provisions imposed by their terms or in the manner of enforcement, on other similarly situated wholesaler by the supplier. The meaning of good cause set out in this section may not be modified or superseded by provisions in a written franchise agreement prepared by a supplier if those provisions purport to define good cause in a manner different than specified in this section. In any dispute over alteration, termination, failure to renew or causing a wholesaler to resign from a franchise agreement, the burden is on the supplier to establish that good cause exists for the action.

(a1) **Termination by a Small Brewery.** – A brewery's authorization to distribute its own malt beverage products pursuant to G.S. 18B-1104(7) shall revert back to the brewery, in the absence of good cause, if the brewery pays the wholesaler fair market value for the distribution rights for each affected brand. For purposes of this subsection, "fair market value" means the highest dollar amount at which a seller would be willing to sell and a buyer willing to buy at the time the self-distribution rights revert back to the brewery, after each party has been provided all information relevant to the transaction. No brewery's authorization to self-distribute shall revert back to the brewery until the brewery and the wholesaler have agreed in writing on the fair market value for the distribution rights for each affected brand and the wholesaler has received compensation from the brewery for the value of the distribution rights.

(b) **Notice of Cause.** – At least 90 days before altering, terminating or failing to renew a franchise agreement for good cause, the supplier must give the wholesaler written notice of the intended action and the specific reasons for it. If the cause for the alteration, termination or failure to renew is subject to correction by the wholesaler, and the wholesaler makes such correction within 45 days of receipt of the notice, the notice shall be void.

(c) **Termination for Cause without Advance Notice.** – A supplier may terminate or fail to renew a franchise agreement for any of the following reasons, and the termination shall be complete upon receipt by the wholesaler of a written notice of the termination and the reason:

- (1) Insolvency of the wholesaler, the dissolution or liquidation of the wholesaler, or the filing of any petition by or against the wholesaler under any bankruptcy or receivership law which materially affects the wholesaler's ability to remain in business.
- (2) Revocation of the wholesaler's State or federal permit or license for more than 30 days.
- (3) Conviction of the wholesaler, or of a partner or individual who owns ten percent (10%) or more of the partnership or stock of the wholesaler, of a

felony which might reasonably be expected to adversely affect the goodwill or interest of the wholesaler or supplier. The provisions of this subdivision shall not apply, however, if the wholesaler or its existing partners or stockholders shall have the right to purchase the interest of the offending partner or stockholder, and such purchase is completed within 1530 days of the conviction.

(4) Fraudulent conduct by the wholesaler in its dealings with the supplier or its products.

(5) Failure of the wholesaler to pay for the supplier's products according to the established terms of the supplier.

(6) Assignment, sale or transfer of the wholesaler's business or control of the wholesaler without the written consent of the supplier, except as provided in G.S. 18B-1307.

(d) Absence of Good Cause. – Good cause for alteration, termination or failure to renew a franchise agreement does not include:

(1) The failure or refusal of the wholesaler to engage in any trade practice, conduct or activity which would violate federal or State law.

(2) The failure or refusal of the wholesaler to take any action which would be contrary to the provisions of this Article.

(3) A change in the ownership of the supplier or the acquisition by another supplier of the brewery, brand or trade name or trademark, or acquisition of the right to distribute a product, from the original supplier.

(4) Sale or transfer of the rights to manufacture, distribute, or use the trade name of the brand to a successor supplier.

(5) Failure of the wholesaler to meet standards of operation or performance which have been imposed or revised unilaterally by the supplier without a fair opportunity for the individual wholesaler to bargain as to the terms, unless the supplier has implemented the standards on a national basis and those standards are consistently applied to all similarly situated North Carolina wholesalers in a nondiscriminatory manner.

(6) The establishment of a franchise agreement between a wholesaler and another supplier, or similar acquisition by a wholesaler of the right to distribute a brand of another supplier.

(7) The desire of a supplier to consolidate its franchises.

**"§ 18B-1306. Remedies for wrongful termination.**

(a) Injunctive Relief. – A wholesaler whose franchise agreement is altered, terminated or not renewed in violation of this Article may bring an action to enjoin such unlawful alteration, termination or failure to renew. The action may be brought in the county in which the wholesaler has its principal place of business or in any county in which the wholesaler receives or distributes the products in issue. Any injunction issued pursuant to this subsection shall require the wholesaler to supply the customers in its territory with their reasonable retail requirements and to otherwise serve the territory.

(b) Monetary Damages. – ~~In lieu of addition to injunctive relief, a wholesaler whose franchise agreement is altered, terminated or not renewed in violation of this Article shall be entitled to recover monetary damages from the supplier. The amount to which the wholesaler is entitled shall be the value of the wholesaler's business distributing the supplier's products, including:~~ If the wholesaler retains its franchise rights through injunctive relief, the monetary damages to which the wholesaler is entitled shall include the losses suffered by the wholesaler from disruption of its business and harm to its reputation, plus the costs of litigation, including attorneys' fees. If the wholesaler elects to receive or is otherwise found to be entitled to

1 monetary damages only, and not injunctive relief, the damages shall be the value of the  
2 wholesaler's business distributing the supplier's brands, including:

- 3 (1) The laid-in costs to the wholesaler of the inventory of the supplier's  
4 products, including any State and local taxes paid on the inventory by the  
5 wholesaler, plus a reasonable charge for handling of the products upon  
6 surrender of the inventory to the supplier.  
7 (2) The fair market value of all assets, including ancillary businesses of the  
8 wholesaler used in distributing the supplier's products. The total  
9 compensation to be paid to the wholesaler shall be reduced, however, by any  
10 amount received by the wholesaler from sale of assets of the business used  
11 in distributing the supplier's products as well as by the value such assets  
12 have to the wholesaler unrelated to the supplier's products. "Fair market  
13 value" means the highest dollar amount at which a seller would be willing to  
14 sell and a buyer willing to buy at a time prior to the alteration, termination or  
15 failure to renew, when each possesses all information relevant to the  
16 transaction.

17 **"§ 18B-1307. Transfer or merger of wholesaler's business.**

18 (a) Right of Transfer to Designated Family Member upon Death. – Upon the death of a  
19 wholesaler, that individual's interest in the wholesaler business, including the rights under the  
20 franchise agreement with the supplier, may be transferred or assigned to a designated family  
21 member. The transfer or assignment shall not be effective until written notice is given to the  
22 supplier, but the supplier's consent is not required for the transfer or assignment. "Designated  
23 family member" means the deceased wholesaler's spouse, child, grandchild, parent, brother or  
24 sister, who is entitled to inherit the deceased wholesaler's ownership interest under the terms of  
25 the deceased wholesaler's will or other testamentary device or under the laws of intestate  
26 succession. With respect to an incapacitated individual having an ownership interest in a  
27 wholesaler, the term "designated family member" also means the person appointed by the court  
28 as the conservator of such individual's property. The term also includes the appointed and  
29 qualified personal representative and the testamentary trustee of a deceased wholesaler.

30 (b) Approval of Certain ~~Transfers~~ Transfers and Mergers. – Upon notice to and  
31 approval by the supplier, an individual owning an interest in a wholesaler may sell, assign or  
32 transfer that interest, including the wholesaler's rights under its franchise agreement with the  
33 supplier, to any qualified person. Likewise, a wholesaler may merge with another wholesaler in  
34 the State, transferring to the new wholesaler entity the merging wholesaler's existing franchise  
35 rights. Within 30 days of receipt of notice of the intended sale, ~~assignment or transfer,~~  
36 ~~assignment, transfer, or merger,~~ the supplier shall request any additional relevant, material  
37 information reasonably necessary for deciding whether to approve the transaction. The supplier  
38 shall have 30 days from receipt of that information to object to the sale, ~~assignment or transfer,~~  
39 ~~assignment, transfer, or merger.~~ The supplier may object only if the proposed ~~transferee~~  
40 ~~transferee, or the wholesalership resulting from the merger,~~ fails to meet qualifications and  
41 standards that are nondiscriminatory, material, reasonable and consistently applied to North  
42 Carolina wholesalers by the supplier. The burden shall be upon the supplier to prove that the  
43 proposed ~~transferee or merged wholesaler~~ is not qualified.

44 (b1) Factors That May Be Considered. – In determining whether the proposed transferee  
45 or merged wholesaler is a qualified person, the supplier shall consider, but is not limited, to the  
46 following factors:

- 47 (1) Whether the proposed transferee has the financial capacity to purchase the  
48 wholesaler or the specified interest upon terms that will not jeopardize the  
49 future operation of the business, or whether the new entity resulting from a  
50 merger will have such financial capacity to operate successfully, and  
51 whether under such ownership the wholesaler will be able to provide

1 financial support necessary to the successful operation of the business,  
2 including market spending, capital expenditures, and any equity  
3 capitalization or refinancing requirements.

4 (2) Whether the proposed transferee, or the new entity resulting from a merger,  
5 has the proven business experience to hire and maintain a management team  
6 to successfully operate the business.

7 (3) If the proposed transferee does not have experience in the beer business,  
8 whether the transferee has other experience to enable it to operate a  
9 distributorship successfully and whether the transferee is willing to  
10 participate in training provided by the supplier.

11 (4) Whether the proposed transferee, or a party to the merger, already is a  
12 wholesaler for the supplier in a different territory and, if so, whether  
13 sufficient time and attention can be devoted to an additional market area.

14 (b2) Business Considered on Own Merits. – In determining whether a proposed  
15 transferee, or the entity resulting from a merger, is a qualified person, a supplier must consider  
16 the business on its own merits and may not designate a specifically identified person as the only  
17 purchaser who will be approved.

18 (c) Damages.—ARemedies. – A wholesaler may seek injunctive relief to enforce the  
19 provisions of this section. In addition to any such injunctive relief, a supplier who disapproves  
20 or prevents a proposed assignment or change of ownership or merger in violation of this section  
21 shall be liable to the wholesaler who proposed to make the sale, assignment or  
22 transferassignment, transfer, or merger for the difference between the disapproved sale price  
23 and a subsequent actual price of a sale of the same assets completed within a reasonable period.  
24 If, however, the proposed transfer or sale was to a business associate at a bargain price, the  
25 amount of compensation shall be at least the fair market value of the interest proposed to be  
26 sold or transferred, minus the proceeds of an actual sale of the interest completed within a  
27 reasonable time. The supplier also shall be liable for any damages suffered by the wholesaler in  
28 its business if, because of the supplier's unlawful refusal to approve a sale, transfer, or merger,  
29 the wholesaler is unable to complete a sale, transfer, or merger and remains in business.

30 **"§ 18B-1308. Article part of all franchise agreements.**

31 The provisions of this Article shall be part of all franchise agreements as defined in  
32 G.S. 18B-1302 and may not be altered by the parties. A wholesaler's rights under this Article  
33 may not be waived or superseded by the provisions of a written franchise agreement prepared  
34 by a supplier that are in any way inconsistent with or contrary to any part of this Article. The  
35 rights of a wholesaler under this Article shall remain in effect regardless of a provision in a  
36 written franchise agreement prepared by a supplier that purports to require arbitration of a  
37 franchise dispute or that purports to require legal remedies to be sought in a different  
38 jurisdiction.

39 **"§ 18B-1309. Mediation at direction of Alcoholic Beverage Control Commission.**

40 If a dispute arises between a wholesaler and supplier under this Article, and such dispute  
41 appears likely to lead to litigation, the Commission, upon request of any party or on its own  
42 initiative, may require the parties to participate in mediation in an effort to resolve the dispute.  
43 This authority shall be in addition to the Commission's authority to issue declaratory rulings  
44 pursuant to G.S. 150B-4. The Commission may designate the mediator, in which case the  
45 Commission shall pay the mediator's fee, or the Commission may direct the parties to agree  
46 upon and share the costs of a mediator. If the parties then cannot agree upon a mediator, the  
47 Commission shall designate the mediator, and the fees shall be divided evenly by the parties.  
48 The Commission shall direct that the mediation be completed within a specified period of time.  
49 Except for injunctive relief, no lawsuit or other legal action concerning the dispute may be filed  
50 until the mediation is completed and is unsuccessful, unless necessary to avoid expiration of a  
51 statute of limitation."

1           **SECTION 2.** The provisions of this act are severable and, if any phrase, clause,  
2 sentence, or provision is declared to be unconstitutional, is preempted by federal law or  
3 regulation, or is otherwise invalid, the validity of the remainder of this act shall not be affected  
4 thereby.

5           **SECTION 3.** This act is effective when it becomes law, and applies to all  
6 transactions on or after that date.





## SENATE BILL 745: Beer Franchise Law Clarifications

2011-2012 General Assembly

**Committee:** Senate Commerce  
**Introduced by:** Sen. Allran  
**Analysis of:** PCS to First Edition  
S745-CSMA-25

**Date:** June 2, 2011  
**Prepared by:** Heather Fennell  
Committee Counsel

**SUMMARY:** *The PCS to Senate Bill 745 amends the requirements for franchise agreements for beer, prohibits discrimination by beer suppliers and beer wholesalers, provides for the termination of franchise agreements by small breweries in certain situations, clarifies the definition of good cause for termination of a franchise agreement, clarifies provisions for monetary damages for wrongful termination of agreements, provides for mergers of wholesalers, and allows the ABC Commission to require mediation of certain disputes.*

[As introduced, this bill was identical to H764, as introduced by Reps. Lewis, Rhyne, T. Moore, Martin, which is currently in House Commerce and Job Development Subcommittee on Alcoholic Beverage Control.]

**CURRENT LAW:** Beer franchises are governed by Article 13 of Chapter 18B of the General Statutes. This Article provides that a franchise agreement between a wholesaler of malt beverages and a supplier of malt beverages exists whenever a written distribution agreement has been entered into between the parties, or when the parties have acted as if an agreement exists by shipping, accepting shipment of, paying for, or accepting payment for an order of malt beverages.

Franchise agreements may only be altered, terminated, or not renewed for good cause.. "Good cause" is defined as when a wholesaler fails to comply with the reasonable, material terms of the agreement. "Good cause" is defined by statute not to include failure of a wholesaler to engage in conduct that violates State and federal law or a change in ownership of the supplier. Written notice of at least 90 days must be given to alter, terminate, or not renew an agreement for good cause.

An agreement may be terminated or not renewed for cause without advanced notice for the following reasons:

- Insolvency of the wholesaler.
- Revocation of the wholesaler's permit or license for more than 30 days.
- Conviction of the wholesaler, or a partner who owns 10% or more of the business, of a felony that would affect the goodwill of the business.
- Fraudulent conduct of the wholesaler.
- Failure of the wholesaler to pay for product.
- Assignment, sale or transfer of the wholesaler's business without written consent of the supplier, unless the transfer is to a designated family member upon the death of the wholesaler.

Wholesalers may seek injunctive relief or monetary damages for agreements that are altered, terminated, or not renewed in violation of Article 13 of Chapter 18B. Monetary damages include the costs of the supplier's inventory the aggrieved wholesaler has and the fair market value of assets of the wholesaler used to distribute the supplier's product.

# Senate PCS 745

Page 2

**BILL ANALYSIS:** The proposed committee substitute to Senate Bill 745 does all of the following:

**Franchise Agreements:** Makes the following clarification to franchise agreements:

- Clarifies that a franchise agreement applies to all supplier products under the same brand name. Different categories of product under a common identifying trade name are considered the same brand.
- The meaning of good cause cannot be modified or superseded by a written franchise agreement.
- A wholesaler's rights under Article 13B of Chapter 18 may not be waived or superseded by a franchise agreement and a wholesaler's rights shall remain in effect regardless of an agreement that attempts to require arbitration of a franchise dispute, or requires legal remedies to be sought in a different jurisdiction.

**Nondiscrimination by Wholesalers:** Requires wholesalers to sell malt beverages in its designated territory without discrimination, including the sale price of product at the time of delivery.

**Supplier Prohibitions:** Prohibits a supplier from engaging in any of the following:

- Withdrawing money from a wholesaler's account without permission.
- Presenting a franchise agreement, amendment or renewal, or attempting to coerce a wholesaler to sign an agreement, amendment or renewal that does not comply with the laws of this State.
- Requiring a wholesaler to agree to waive compliance with Article 13 of Chapter 18B.
- Coercing a wholesaler to sign an agreement by threatening to refuse or delay a sale, transfer, or merger, of the wholesaler's business.
- Termination, cancellation, or nonrenewal of an agreement if a wholesaler refuses to agree to an amendment to the agreement.
- Prohibiting a wholesaler from distributing the product of another supplier, unless reasonable grounds exist for prohibiting the acquisition and the acquisition would result in the wholesaler acquiring 80% or more of all malt beverage products sold in a territory.
- Refusing to approve or require a wholesaler to terminate a brand manager or successor manager without good cause.
- Discriminating between licensed wholesalers regarding price, allowances, rebates, refunds, commissions, discounts, or services.

**Termination of Agreement by Small Brewery:** Provides small breweries may terminate an agreement if the small brewery pays the wholesaler the fair market value for distribution rights of each affected brand. The termination shall not be effective until the brewery and the wholesaler agree on the fair market value for the brands, and the wholesaler has received compensation.

**Absence of Good Cause:** Provides good cause for altering, terminating, or not renewing an agreement shall not include the following:

- Sale or transfer of the right to use the trade name of the brand to a successor supplier.
- Failure of a wholesaler to meet standards unilaterally imposed or revised by the supplier.
- A new franchise agreement between a wholesaler and another supplier.

# Senate PCS 745

Page 3

- The desire of a supplier to consolidate franchises.

**Monetary Damages for Wrongful Termination of Agreement:** Provides that a wholesaler may obtain monetary damages in addition to injunctive relief. If franchise rights are retained through injunctive relief, the monetary damages a wholesaler may seek are losses from the disruption of the wholesaler's business and the costs of litigation including attorney's fees.

**Merger and Transfer of Wholesaler Business:** Clarifies a wholesaler may transfer rights under a franchise agreements through merging with another qualified wholesaler, as well as transfer business to another qualified wholesaler.

The factors that may be considered in the determination of whether a wholesaler is qualified for merger or transfer are:

- Whether the proposed transferee has the financial capacity to purchase the interest, or whether the proposed merged entity will have the financial capacity to operate successfully.
- Whether the proposed transferee or merged entity has the proven business experience to hire and maintain a management team to operate successfully.
- Whether a proposed transferee with no experience in the beer industry has sufficient other experience to operate a distributorship successfully.

In determining whether a proposed transferee or merged entity is qualified, a supplier must consider the business on its own merits and may not designate a specific individual as the only purchaser that may be approved.

A wholesaler may seek injunctive relief to enforce the merger and transfer provisions in Article 13 of Chapter 18B in addition to the monetary damages currently allowed by statute. The monetary damages are modified to include damages of the wholesaler due to a supplier's unlawful refusal to approve a sale, transfer, or merger.

**Mediation at ABC Commission:** Authorizes the ABC Commission to require parties to participate in mediation to resolve disputes that arise under Article 13 of Chapter 18B. The Commission shall designate a specified period of time in which the mediation must be completed. Except for injunctive relief, no lawsuit or other legal action may be taken until the mediation is completed, unless the legal action is necessary to avoid an expiration of a statute of limitation.

**EFFECTIVE DATE:** This act is effective when it becomes law and applies to all existing franchise agreements. A supplier's shipment of malt beverages to a wholesaler in North Carolina following the effective date of this act shall constitute acceptance by the supplier of the terms of this act, which shall be incorporated into the agreement between the supplier and the wholesaler.

S745-SMTD-68(CSMA-25) v5

House Committee Pages/Sergeants at Arms

NAME OF COMMITTEE ABC

DATE: 5/23/12

Room: 544

\*Name: Matt Gilgo

County: Pender

Sponsor: Carolyn Justice

\*Name: Elizabeth Maness

County: Stanley

Sponsor: Rep. Justin Burr

\*Name: Elliott Grant

County: Durham

Sponsor: Rep. Michaux

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

House Sgt-At-Arms:

1. Name: Martha Parrish

4. Name: Wayne Davis

2. Name: Billy Jones

5. Name: Carl Morella

3. Name: \_\_\_\_\_

6. Name: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

Commerce and Job Development Subcommittee on Alcoholic Beverage Control

Name of Committee

Date 5-23-12

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Rob Parrott	Edmisten, Webb, & Moore
T. Egan	Standard Distributors
Clark Moore	Coastal Bev. Co.
Craig Ellis	Coastal Bev.
Mark Collins	Coastal Beverage Co.
Don White	Standard Distributors Inc.
Nathan Ward	United Beverage of N.C.
LOU CUNNINGHAM	CAROLINA PREMIUM BEVERAGE
RODNEY LONG	LONG BEVERAGE INC
Bradley Shore	LONG BEVERAGE INC
ANTHONY GRECO	NCGA

# VISITOR REGISTRATION SHEET



Commerce + Job Development Subcommittee on Alcoholic Beverage Control  
 Name of Committee

Date 5-23-12

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

	
George Smith	William Mullen
Amyl Sams	NSS
Teresa Kostrzewa	NSS
Robert Jeffers	NCBWA
Frank Brown	NCBWA
Gary Harris	NCPCM
Stuart Brooks	Ward + Smith
Nancy Thompson	Weyerhaeuser
Butch Gunnells	NCBA
Ray Ell	NKPL

# VISITOR REGISTRATION SHEET

Commerce and Job Development Subcommittee on Alcoholic Beverage Control

Name of Committee

**Date** 5-23-12

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

**FIRM OR AGENCY AND ADDRESS**

Win Bassett

NC Brewers Guild

Tim Baughuss

R.H. BARRINGTON DIST. CO.

RICK CRAIG

RH BARRINGOR DIST CO

CHRIS LESTER

NATTY GREENES BREWING CO.

Tim KENT

NC Beer & Wine

## MINUTES

### Commerce and Job Development Subcommittee on Alcoholic Beverage Control

June 6, 2012

The House Commerce and Job Development Subcommittee on Alcoholic Beverage Control met on Wednesday, June 6, 2012 in Room 425 of the Legislative Office Building. Representative Jamie Boles, Chairman, presided over the meeting. Members present at the meeting were Representative Jamie Boles, Representative Larry Brown, Representative Bill Cook, Representative Bill Current, Representative Carolyn Justice, Representative David Lewis, Representative Frank McGuirt, Representative Marion McLawhorn, Representative Ray Rapp, Representative Ruth Samuelson, Representative Edith Warren and Representative Harry Warren. Also present were staff members, Brenda Carter and Erika Churchill; and committee clerk, Kerry Guice.

The Chair called the meeting to order at 11:07 a.m. and introduced the Sergeant at Arms who were present, Martha Gadison and John Brandon; and the pages, Michaela Andersen, Will Hibbard and Christian Bare.


Chairman Boles recognized Representative Samuelson to explain HB 1121, Mecklenburg ABC Stores Labor Day 2012. After a brief explanation of the bill, Representative West moved for a favorable report on the bill. The motion carried.

Chairman Boles then recognized Representative Justice to explain HB 1170, Pender County ABC Law. After a brief explanation of the bill, Rep. McLawhorn moved for a favorable report on the bill. The motion carried.

With no further business on the agenda, Chairman Boles adjourned the meeting at 11:30 a.m.

Respectfully submitted,

  
Kerry L. Guice, Committee Clerk

  
Rep. Jamie L. Boles, Jr., Chairman



# **AGENDA**

## **Commerce and Job Development Subcommittee on Alcoholic Beverage Control**

**Wednesday, June 6, 2012**

**Room 425**

**11:00 a.m.**

### **OPENING REMARKS**

**Representative Jamie L. Boles, Jr.  
Chairman**

### **AGENDA ITEMS**

<b>HB 1121</b>	<b>Mecklenburg ABC Stores Labor Day 2012.</b>	<b>Representative Samuelson Representative Carney Representative Brawley, Jr. Representative Earle</b>
<b>HB 1170</b>	<b>Pender County ABC Law.</b>	<b>Representative Justice</b>

### **ADJOURNMENT**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2011-2012 SESSION**

You are hereby notified that the Committee on **Commerce and Job Development Subcommittee on Alcoholic Beverage Control** will meet as follows:

**DAY & DATE:** Wednesday, June 6, 2012

**TIME:** 11:00 am

**LOCATION:** 425 LOB

**COMMENTS:**

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 1121	Mecklenburg ABC Stores Labor Day 2012.	Representative Samuelson Representative Carney Representative Brawley, Jr. Representative Earle Representative Justice
HB 1170	Pender County ABC Law.	

Respectfully,  
Representative Boles, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **11 AM** o'clock on **June 05, 2011**.

- ☐ Principal Clerk  
☐ Reading Clerk – House Chamber

**Kerry Guice** (Committee Assistant)

## ATTENDANCE

**House Committee Commerce and Job Development/Subcommittee on Alcoholic Beverage Control**

2011-2012 Session

[illegible]

**2012 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

The following report(s) from permanent sub committee(s) is/are presented:

By Representative(s) Boles (Chair) for the Commerce and Job Development Subcommittee on Alcoholic Beverage Control.

☐ Committee Substitute for

**HB 1121** A BILL TO BE ENTITLED AN ACT TO ALLOW ABC STORES IN MECKLENBURG COUNTY TO BE OPEN ON LABOR DAY IN 2012.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/



☒ With a favorable report.

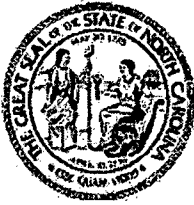
**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of \_\_\_\_\_.





## HOUSE BILL 1121: Mecklenburg ABC Stores Labor Day 2012

*2011-2012 General Assembly*

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Alcoholic Beverage Control, if favorable, Government	<b>Date:</b>	June 5, 2012
<b>Introduced by:</b>	Reps. Samuelson, Carney, Brawley, Earle	<b>Prepared by:</b>	Brenda J. Carter
<b>Analysis of:</b>	First Edition		Committee Counsel

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**SUMMARY:** *House Bill 1121 is a local act that would allow ABC stores in Mecklenburg County to be open this year on Labor Day - September 3, 2012. If enacted, the act would expire on October 1, 2012.*

**CURRENT LAW:** Pursuant to G.S. 18B-802, Labor Day is a day on which ABC stores are required to be closed.

**BILL ANALYSIS:** House Bill 1121 is a local act that would allow ABC stores in Mecklenburg County to be open on Labor Day this year. Labor Day is September 3, 2012.

**EFFECTIVE DATE:** The bill would be effective when it becomes law, and would expire on October 1, 2012.

*H1121-SMRV-116(e1) v1*

**2012 PERMANENT SUBCOMMITTEE REPORT**

**HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

The following report(s) from permanent sub committee(s) is/are presented:

By Representative(s) Boles (Chair) for the Commerce and Job Development Subcommittee on Alcoholic Beverage Control.

☐ Committee Substitute for

**HB 1170** A BILL TO BE ENTITLED AN ACT TO AMEND THE PROCESS BY WHICH MEMBERS OF THE PENDER COUNTY BOARD OF ALCOHOLIC CONTROL ARE SELECTED; TO REMOVE THE REQUIREMENT THAT THE PENDER COUNTY BOARD OF ALCOHOLIC CONTROL LOCATE ONE OR MORE STORES IN THE TOWNS OF BURGAW AND ATKINSON; AND TO AMEND THE DISTRIBUTION OF CERTAIN NET PROFITS FROM THE PENDER COUNTY BOARD OF ALCOHOLIC CONTROL.

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WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative McComas(Chair) for the Standing Committee on Commerce and Job Development.

s/ 

☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of \_\_\_\_\_.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 1170

Short Title: Pender County ABC Law. (Local)

Sponsors: Representative Justice (Primary Sponsor).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development Subcommittee on Alcoholic Beverage Control.

May 30, 2012

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE PROCESS BY WHICH MEMBERS OF THE PENDER  
3 COUNTY BOARD OF ALCOHOLIC CONTROL ARE SELECTED; TO REMOVE THE  
4 REQUIREMENT THAT THE PENDER COUNTY BOARD OF ALCOHOLIC  
5 CONTROL LOCATE ONE OR MORE STORES IN THE TOWNS OF BURGAW AND  
6 ATKINSON; AND TO AMEND THE DISTRIBUTION OF CERTAIN NET PROFITS  
7 FROM THE PENDER COUNTY BOARD OF ALCOHOLIC CONTROL.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. Section 4(c) of Chapter 50 of the 1963 Session Laws, as rewritten by  
10 Section 1 of Chapter 778 of the 1963 Session Laws, reads as rewritten:

11 "There shall be created a Pender County Board of Alcoholic Control to consist of five  
12 members. The Chairman shall be G. C. Edmonds, who shall serve as such and as a board  
13 member until July 1, 1965. The four other members shall be selected by a majority vote in a  
14 joint meeting of the Board of County Commissioners of Pender County, the Pender County  
15 Board of Health, the Pender County Board of Education, and the Pender County Board of  
16 Public Welfare, and each member present shall have only one vote notwithstanding the fact that  
17 there may be instances in which some members are members of another board the Pender  
18 County Board of Commissioners. Two of said four Board members shall be chosen to serve for  
19 a period of three (3) years and two of said four members shall be chosen to serve for a period of  
20 two (2) years. All terms shall begin with the date of appointment and successors in office shall  
21 serve for a period of three (3) years, and be appointed in the same manner as herein provided.  
22 Upon the expiration of the term of G. C. Edmonds, his successor shall be chosen by the same  
23 selecting body, and in the same manner, as the four other members of the Board, and his  
24 successor shall serve for a three-year term. Vacancies in the Board shall be filled for the  
25 unexpired term by the aforesaid selecting body. The members of said Board shall be well  
26 known for their good character, ability and business judgment. Insofar as the provisions of this  
27 Section are inconsistent with the provisions of G. S. 18-41, the provisions of this Section are  
28 controlling in Pender County."

29 SECTION 2. Section 5 of Chapter 50 of the 1963 Session Laws reads as rewritten:

30 "Sec. 5. The Pender County Board of Alcoholic Control shall have all the powers and  
31 duties prescribed for County Boards of Alcoholic Control by G. S. 18-45, and shall be subject  
32 to the powers and authority of the State Board of Alcoholic Control to the same extent as are  
33 County Boards of Alcoholic Control set forth in G. S. 18-39. The Pender County Board of  
34 Alcoholic Control shall be subject to the provisions of Article 3, Chapter 18, of the General  
35 Statutes except to the extent that such provisions may be in conflict with the terms of this Act.



\* H 1 1 7 0 - V - 1 \*



1 Wherever the word "County" Board of Alcoholic Control appears in said Article, it shall apply  
2 to and include the Pender County Board of Alcoholic Control; provided, however, that the  
3 ~~board shall locate one or more stores in the towns of Burgaw and Atkinson; provided further~~  
4 ~~that the board may locate one or more stores on Topsail Island, or any other location it may~~  
5 ~~deem advisable may locate, open, and close ABC stores within its jurisdiction pursuant to the~~  
6 ~~provisions of G.S. 18B-801."~~

7 SECTION 3. Section 6 of Chapter 50 of the 1963 Session Laws, as rewritten by  
8 Section 1 of the 1973 Session Laws, reads as rewritten:

9 "Sec. 6. After deducting fifteen percent (15%) of total net profits to be expended for law  
10 enforcement and after providing for expenditure of a sum not less than two ~~per cent~~percent  
11 (2%) nor more than five ~~per cent~~percent (5%) of total future net profits, and current funds, to  
12 provide facilities, material for the care, education, rehabilitation, treatment of alcoholic, mental  
13 patients, for education of the general public on the excessive use of alcoholic beverages, or  
14 distribution to various Pender County Rescue Squads, at intervals and in amounts determined  
15 by the Pender County Board of Alcoholic Control, and after further payment to the general  
16 fund of Pender County of five ~~per cent~~percent (5%) of total net profits for use in mosquito  
17 control, the remaining total net profits from Alcoholic Beverage Control Stores shall, ~~on a~~  
18 ~~quarterly basis, pursuant to G.S. 18B-805(e), be paid over on a quarterly basis as follows:~~  
19 ~~Seventy-five per cent (75%) sixty-five percent (65%) to the general fund of Pender County, and~~  
20 ~~the remaining twenty-five per cent (25%) to the respective municipalities in which Alcoholic~~  
21 ~~Beverage Control Stores are located, based on gross sales of each respective store thirty-five~~  
22 ~~percent (35%) shall be distributed as follows:~~

23 (1) Seventy percent (70%) of the remaining thirty-five percent (35%) shall be  
24 distributed to the Town of Burgaw and the Town of Surf City as follows:

25 a. Forty percent (40%) of the seventy percent (70%) to the Town of  
26 Burgaw.

27 b. Sixty percent (60%) of the seventy percent (70%) to the Town of  
28 Surf City.

29 (2) Thirty percent (30%) of the remaining thirty-five percent (35%) shall be  
30 distributed to each of the following municipalities according to each  
31 municipality's percentage of population within Pender County, as  
32 determined by the last decennial federal census:

33 a. Town of Atkinson.

34 b. Village of St. Helena.

35 c. Town of Topsail Beach.

36 d. Town of Watha."

37 SECTION 4. This act becomes effective July 1, 2012.



## HOUSE BILL 1170: Pender County ABC Law

2011-2012 General Assembly

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<b>Committee:</b>	House Commerce and Job Development Subcommittee on Alcoholic Beverage Control	<b>Date:</b>	June 5, 2012
<b>Introduced by:</b>	Rep. Justice	<b>Prepared by:</b>	Brenda J. Carter
<b>Analysis of:</b>	First Edition		Committee Counsel

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**SUMMARY:** *House Bill 1170 is a local bill that would provide for members of the Pender County ABC Board to be appointed by the Pender County Board of Commissioners. It would also make changes concerning the location of ABC stores and the distribution of net profits.*

**CURRENT LAW:** G.S. 18B-700 provides for the appointment and organization of local ABC boards. A local board must consist of three or five members appointed for three-years. As provided in G.S. 18B-801, a local board may choose the location of the ABC stores within its jurisdiction, subject to the approval of the ABC Commission. G.S. 18B-805 provides for the distribution of revenue of a local board; net receipts are paid to the general fund of the city or county for which the board is established, unless another distribution or schedule is provided for by law.

**BILL ANALYSIS:** **Section 1** of the bill would provide for members of the Pender County ABC Board to be appointed by the Pender County Board of Commissioners (County Commissioners). Currently, members are selected by a majority vote in a joint meeting of the County Commissioners and members of other county boards. **Section 2** of the bill eliminates a requirement that the Pender County ABC Board locate ABC stores in Burgaw and Atkinson. The local board would be authorized to choose the location of the ABC stores within its jurisdiction as provided in G.S. 18B-801, subject to the approval of the ABC Commission. **Section 3** of the bill would change the formula for the distribution of the net profits of the Pender County ABC Board.

**EFFECTIVE DATE:** The bill would become effective July 1, 2012.

H1170-SMRV-118(e1) v1

## NAME OF COMMITTEE

ABC

**DATE:** 6-6-12

**Room:**

425

**\*Name:**

Michaela - Andersen - ★

**County:**

Catawba

**Sponsor:**

John Faircloth

**\*Name:**

Will Hibbard



**County:**

Durban

**Sponsor:**

Bill Owens

**\*Name:**

Christian Bare

★

**County:**

Rutherford

**INSOR:**

Hager

**\*Name:** \_\_\_\_\_

**County:**

**Sponsör:**

**\*Name:** \_\_\_\_\_

Brenda Carter

**County:** \_\_\_\_\_

Erica Churchill

**Sponsor:**

**1. Name:**

John Brandon

**4. Name:**

**Name:**

Martha Gadison

**5. Name:**

5. Name:

**6. Name:**

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Commerce and Job Development Subcommittee on Alcoholic Beverage Control

Name of Committee

Date 6-6-12

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

FIRM OR AGENCY AND ADDRESS

J. Carlton Cobb

# Pinehurst

Floyd Fritz

p; nehurst

Daniel Amburn

NCRMA

ABC

6/6/12

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09-21-201