

2011 NORTH CAROLINA LEGISLATION AFFECTING ALCOHOLIC BEVERAGE CONTROL

Michael Crowell
UNC School of Government
December 2011

Unlike the 2010 General Assembly which made significant changes in the organization and operation of local ABC boards, the 2011 session enacted only a few changes in ABC law, mostly concerning the regulation of commercial permit holders. The one exception was legislation authorizing an ABC commission for the Cherokee tribe.

Alcohol in chocolate

[Session Law 2011-26](#), which took effect April 7, 2011, amends GS 106-129 to remove confectionery with no more than five percent alcohol from the definition of adulterated food, thus allowing it to be manufactured and sold in North Carolina. The purpose is to permit the production and sale of fine chocolates and other confectionery flavored with alcohol. Any product with more than half a percent alcohol will require a label showing the alcohol content.

Brewery sales on premises

Before the enactment of [SL 2011-107](#) the ABC law provided that a brewery could sell its beer at the brewery if the on-premises sale of beer was legal in that area. The modification of GS 18B-1104 allows a brewery to sell its beer on premise if the sale of any kind of alcoholic beverage is lawful in the area. The new law took effect June 3, 2011.

Then, in the November 2011 session, the General Assembly broadened the law even further by enacting [SL 2011-419](#). The new law authorizes all breweries in the state to sell on premises not only beer manufactured at the brewery but also beer brewed by the same company in other states. Just as with any other product sold at retail, the beer from out-of-state will have to be approved by the ABC Commission. The change will allow brewpubs from outside the state to establish breweries in North Carolina and sell all their products even though only some are manufactured here.

Wine franchise territories; transfer of wine from one store to another

The wine franchise law, governing the relationship between wineries and their North Carolina wholesalers, long has provided for the winery to designate the sales territory for each wholesaler, but until now nothing prohibited a wholesaler from selling a product in another wholesaler's territory. With the enactment of [SL 2011-73](#), designated territories become exclusive, just as with beer franchises. Consequently, if Sweet Rose Winery in California designates Alpha Wholesale as the wholesaler for Durham County and Beta Distributor as the wholesaler for Wake County, Alpha cannot sell Sweet Rose wine in Wake County and vice versa. A wholesaler's existing "area of primary sales responsibility" under GS 18B-1203 becomes its new designated sales territory unless the winery and wholesaler agree on a change. The wholesaler will be required to serve all retail accounts in the territory without discrimination and to make a good faith effort to provide any brand the wholesaler is authorized to sell.

The wine franchise law changes took effect May 12, 2011, and apply to existing franchise agreements. A winery's shipment of wine to a wholesaler after that date is deemed acceptance of the terms of the new law.

The bill also amends GS 18B-1001 to allow the holder of an off-premises permit for the sale of unfortified or fortified wine to transfer wine to another store owned or controlled by the same person up to four times a year. Both stores have to be located within the same franchise territory, and the permit holder has to notify the wholesaler of the transfer. Otherwise, transfers of wine between retail outlets is unlawful.

Cherokee ABC Commission

[Session Law 2011-333](#), effective June 27, 2011, authorizes the Eastern Band of Cherokee Indians, subject to approval of the Secretary of Interior, to establish its own ABC commission, conduct ABC elections, and issue and regulate retail permits. The direct shipment of alcohol to tribal territory would be prohibited; spirituous liquor would be sold to the Cherokee ABC commission by the state ABC Commission and beer and wine would be sold to retail outlets on Cherokee land by North Carolina-licensed wholesalers. The act sets out the portions of Chapter 18B that would apply to the Cherokee land and would have to be adopted by the Eastern Band, including most of the provisions on permit qualifications, unlawful sales, transportation and the like. Unlike state law, alcohol advertising would be permitted at gaming establishments, alcohol sales would be allowed in connection with raffles and bingo, there would be no requirement for employing local ABC officers, and state law mandates for the accounting for and expenditure of ABC store profits would not apply. The tribal ABC commission would be required to adopt ABC Commission rules governing retail establishments. If the Cherokee tribe fails to adopt the necessary ordinances or fails to comply with the applicable ABC laws, the ABC Commission may prohibit delivery of alcohol to the tribal territory until it complies.