



## **Brewer Advisory: Legislature Passes ABC Omnibus Legislation**

by Laura Collier, Guild Legal Advisor

On June 28th, the North Carolina legislature passed [Senate Bill 155 \("SB155"\)](#), [ABC Omnibus Legislation](#), and the bill was signed by Governor Cooper shortly thereafter on June 30th. SB155 was known as the "Brunch Bill," but in the last weeks of session other proposed alcohol legislation was merged with the bill, including House Bill 500, the legislation promoted by the Guild. This advisory provides a summary of some of the alcohol law changes coming to breweries North Carolina, as well as answers to some common questions about the legislation. As several of these issues are still developing, we will update this advisory as more information becomes available.

### **Removing Food Sales Requirements for the Sale of On-Premises Unfortified Wine –**

North Carolina has food sales requirements for some on-premises permits. Generally speaking, the higher the average alcohol of the product type, the more food must be sold by the permittee in order to serve that product type for on-premises consumption. Currently, no food must be sold in order to sell beer for on-premises consumption, some food for unfortified wine (16% ABV and under), and substantial food for fortified wine and mixed beverages. SB155 removes the food sales requirements for unfortified wine by enabling an establishment that does not sell any food to obtain a permit for unfortified wine on-premises consumption.

***Q: My brewery doesn't sell any food. Once this bill is signed, can my brewery taproom begin selling wine?***

A: Almost. It means that your brewery is eligible for an unfortified wine on-premises permit. You'll still need to apply for and obtain the permit first.

***Q: My brewery sells wine for on-premises consumption, and we currently sell food, but we'd rather not. Can we stop?***

A: Not yet, but soon. Once the bill is signed into law, a brewery that sells wine for on-premises consumption can reduce or eliminate its food menu. However, if your brewery sells fortified wine or mixed beverages for on-premises consumption, you will need to continue selling enough food to qualify as a restaurant in order to keep those on-premises permits.

**Approval of “Crawlers” as Growlers** – Currently, “crawlers”—32 ounce aluminum cans designed to be individually filled for consumers on-demand in the same fashion as a growler—do not meet the definition of a growler in North Carolina because the container is not “resealable.” SB155 amends the definition of a growler to remove the resealable requirement, so that crawlers may be filled by retailers for consumers on-demand in the same way that the retailer may currently fill and sell growlers.

***Q: My brewery has the crawler machine on the brewery side of the premises. Can we move it to the taproom once this legislation is effective?***

A: Not yet. SB155 gives the ABC 120 days to implement or revise the existing growler rules in order to authorize retailers to fill crawlers. Currently, the rules define a growler as a “refillable rigid glass, ceramic, plastic, aluminum, or stainless steel container with a flip-top or screw-on lid that is no larger than 2 liters (0.5283 gallons).” [14B N.C.A.C. 15C .0307](#)(a). Once the ABC has revised the rules, we expect that the crawler machine may be moved into your taproom for use in filling individual orders from customers on-demand. The Guild will participate in the crawler rulemaking, and will update this advisory with more information as it become available.

***Q: My brewery was submitting crawler labels to the ABC for product approval. Do we still need to?***

A: For the time being, continue submitting crawler labels for product approval, and filling those crawlers on the commercial side of your premises, until the ABC completes the crawler rulemaking process. What we expect will happen is that label approval will not be necessary in the future, if your brewery will only fill crawlers for consumers on-demand, like a growler. The crawler label will likely need to comply with content requirements (currently [14B N.C.A.C. 15C .0303](#)(b) is in place for growlers). Further, if your brewery plans on pre-filling crawlers and selling those cans to wholesalers, retailers, or consumers in the same way as other packaged beer, then yes, you will still need to submit those labels to the ABC for approval.

**Earlier Sunday Sales** – True to its name, the “Brunch Bill” authorizes local governments to allow sales of alcohol before noon on Sunday. Local governments may pass an ordinance allowing alcohol sales as early as 10 a.m. on Sunday mornings. SB155 previously benefitted only restaurants serving alcohol for on-premises consumption, but the legislation was expanded to include all permittees.

**Q: When can my brewery begin earlier Sunday sales?**

A: The potential for Sunday alcohol sales before noon is enabled by this legislation, but it's not automatic. It all depends on when (and if) your local government passes an ordinance allowing the earlier Sunday sales. This process may take some time, but some areas have already enabled earlier Sunday alcohol sales, including Raleigh, Carrboro, Huntersville, and Mecklenburg County (not including the city of Charlotte). For more information on working with your local government to enable earlier Sunday sales, see [this Guild blog post](#).

**Q: If my local government allows earlier sales, what will it mean for my brewery?**

A: No matter what kind of retail permits your brewery holds, your brewery tasting room will be able to open at 10 a.m. and engage in all the operations allowed under your current permits. A brewery with on- or off-premises permits may sell beer to-go in growlers or closed containers, or your customers may enjoy a pint at your bar if you have on-premises permits. If your brewery holds wine or mixed beverages permits, you can begin those sales earlier as well.

**Off-Site Storage** – SB155 will allow breweries to store their beer off of the permitted brewery premises, if the off-site storage location has been approved by the TTB, and if the brewery notifies the ABC of the off-site storage location.

**Q: How does my brewery get TTB approval for off-site storage?**

A: In some circumstances, the TTB will approve a brewery to have a non-contiguous storage location. You'll need to amend your Brewer's Notice to add the non-contiguous storage location, and there are some TTB regulations to follow with respect to what can be stored there and how it affects the payment of federal excise taxes. This one is a little complicated, so discuss this with your attorney to figure out what's best for your brewery.

**Q: If my brewery has a TTB-approved off-site storage warehouse, how do I notify the ABC?**

A: This has not been determined yet. The ABC may need to establish rules on the format and procedure for requesting approval, and the ABC may need to develop a notification form for submission. The Guild will update this advisory when more information is available.

**Farm Breweries** – North Carolina has several communities that do not allow the sale of alcohol. However, winery tasting rooms are currently allowed to obtain permits for the sale of wine for on- or off-premises consumption, regardless of the results of any local

wine election. SB155 creates a similar exception for brewery tasting rooms, but only if local government approval is obtained, and only if the brewery is also a farm that produces agricultural products, such as barley, other grains, hops, or fruit, for use in the brewery.

***Q: Is my brewery going to need to begin growing anything?***

A: No. This does not impose any new operating requirements on any brewery. No breweries are going to be required to engage in any agricultural operations. However, if your brewery is located in a dry community, and your brewery is a farm brewery that grows barley, other grains, hops, or fruit for use in your beers, then you may be eligible to obtain a retail permit at your brewery that would allow you to open a tasting room. The ABC may also choose to implement rules regarding farm breweries, and we will update this advisory if such rules are proposed.

**Requirements for Sales at Additional Retail Locations** – In addition to an on-site taproom, an entity holding a brewery permit is allowed to operate up to three additional retail locations where alcohol is sold. Currently, a brewery operating an additional retail location is required to sell a reasonable selection of competitive beers. SB155 revises this requirement to only apply to breweries with additional retail locations that are operated under a different trade name than the brewery.

***Q: Give me an example.***

A: If Guild Brewing Company operates a restaurant off the brewery premises named "Guild Brewing Company," it may sell exclusively its own beers at the restaurant. However, if Guild Brewing Company operates a restaurant off the brewery premises named "Carolina Beer Palace," it may sell its own beers, but it must also sell a reasonable selection of other breweries' products.

**Clarifications for Breweries** – SB155 contains several important clarifications for breweries, formalizing operations or activities that are for the most part already in practice but not yet explicitly authorized. The ability of a brewery to give beer tastings to tour participants is made official by SB155, as well as authorization for a brewery to sell beer from other producers in its taproom. SB155 also allows a brewery to receive beer in North Carolina from an out-of-state production facility for sales to North Carolina wholesalers. Further, the bill confirms that a brewery (and any other commercial permittee) may taste alcohol on the permitted brewery premises for sensory analysis, quality control, or educational purposes.

**Q: My brewery already does a few of those things.**

A: Continue operations as normal. If the ABC implements any regulations governing any of these operations, we will update this advisory. And with respect to tastings provided to tour participants, stay tuned for another advisory from the Guild on excise taxes and exemptions.

**Q: Does this mean we can taste our product for quality control at festivals or in our brewery taprooms?**

A: No. SB155 only addresses tasting beer for quality control on your commercial brewery premises. It does not affect operations in your retail premises or at events where you are serving beer to consumers. Consult the Guild resource "[Guidelines for Breweries for Participation in Events & Festivals](#)" for more information.

**Homebrew Events** – SB155 expands what a homebrewer may do with alcohol brewed for the individual's own use. A homebrewer will be able to use homemade beer at organized affairs, exhibitions, contests, tastings, and judgings. Homebrew may not be sold.

**Q: Are homebrewers allowed to pour at festivals now?**

A: Not necessarily. Homebrew may not be sold, and thus it may not be poured at a festival where a ticket must be purchased for entry. However, if it is a festival or event satisfies one of the descriptions above, *and does not require payment for entry*, the festival may feature homebrewed beer, such as a homebrew tasting area or a homebrew competition. Additionally, the ABC may implement rules providing more information on what constitutes "organized affairs, exhibitions, contests, tastings, and judgings," which may impose additional requirement for events to qualify for those categories.

**Tax Compliance and Reporting** – SB155 requires the ABC to confirm on an annual basis that all holders of a brewery permit are in compliance with all North Carolina tax payment requirements. Additionally, if the brewery also holds a wholesaler permit, SB155 authorizes the ABC to request from the brewery a report containing a variety of sales information for the preceding year. If the ABC requests a report from a brewery, the report must be kept confidential, and is not considered a public record.

**Q: Is there anything my brewery needs to do about this right now?**

A: The ABC may never ask your brewery for a report, but you should be prepared to submit one in the event of a request. What you can do now is check your record-keeping system, and make sure your brewery keeps track of all sales,

including the quantity and dollar amount of beer sold. We recommend reading the bill to review the specific report requirements ([page 14](#)). Your brewery should also be keeping track of how the beer was sold (i.e., in the taproom? to a wholesaler? to a retailer? under your brewery's special event permit?). Your brewery likely already keeps close track of all of these sales and categories, but one item a requested report must contain, which your brewery may not currently be tracking, is a breakdown of on-premises v. off-premises beer sales at any additional retail locations. If your brewery has an additional retailer location, and your record-keeping does not make that distinction already, implement that record-keeping now in the event of any request for a report.

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