

# Delivery of alcohol in North Carolina - why not?

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The convenience of deliveries is a hot topic for all retailers throughout the country. Just a year or two ago, next day delivery was available but cost prohibitive. Now, same day delivery of groceries, clothes and even alcohol is not only demanded by the public but a readily available option that is efficient and economical. Alcohol delivery by North Carolina ABC retail permit holders is a very hot topic in North Carolina right now. Companies holding retail permits regularly call the Nexsen Pruet alcohol licensing team to ask if they can deliver alcohol using their current North Carolina ABC permits. Other foreign companies ask regularly how delivery works to weigh the pros and cons before deciding whether to move their businesses into North Carolina.

North Carolina ABC Retail permit holders under NCGS § 18B-1001(1), (3) and (5), are allowed to sell beer, unfortified and fortified wine for consumption both on and *off-premises*. This means even a North Carolina ABC retail on-premise permit holder, such as a restaurant, can sell alcohol for off-premise consumption. Sections 18B-1001(1) – (6) afford both on and off-premises beer and wine permittees the ability to ship beer and wine in closed containers to individual purchasers. The primary requirement under the rules is that "all permitted activity" must occur on a North Carolina ABC permitted premises (*NCGS §18B-904 (a)*). For purposes of delivery, this means the alcohol sale must occur on the permitted premises, but does not require the order be made by someone in person on the premises. A 1988 Memorandum issued by the ABC Commission states it is "well-established Commission policy that once a sale has been taken on the retailer's premises, the retailer may then deliver the alcoholic beverage to the customer." In recent years, the ABC Commission has relied on this memorandum to permit alcohol delivery from licensed retail permit holders to its customers, however, no rules or statutes specifically permit, prohibit or regulate delivery of alcohol.

Earlier this year, the ABC Commission assembled a working group to focus on this specific issue, specifically, the delivery of beer and wine. At

this time delivery of liquor is prohibited in North Carolina and delivery of liquor is not a focus for the current delivery working group. The working group consists of persons from all facets of the alcohol industry, i.e. attorneys, representatives for wholesalers, distributors and retailers, ALE officers, ABC Commission employees and community groups. Over the past several months, presentations were given on underage drinking and how delivery can increase the risk of underage sales, how difficult it is for ALE officers to police and track the sale of alcohol to minors via delivery and how current delivery procedures for age verification were either non-existent or ineffective. The ABC Commission permitted any interested parties to sit in on the working group meetings and listen to their presentations and round table discussions. The ABC Commission also gave the audience the opportunity to ask the working group questions or make comments and recommendations. The audience consisted of brewers, distributors, wine shippers, third-party delivery companies (such as Fed-Ex) and third party vendors who currently deliver alcohol for retail permittees. After attending the task force meetings, it was apparent the working group must address two overarching concerns related to delivery: 1) implementation of delivery procedures that do not violate existing North Carolina alcohol rules and statutes and 2), arguably, the most important, how to make sure an increase in delivery of alcohol does not equate to an increase in underage sales and underage drinking.

At the most recent meeting, held on October 30th, the working group presented consensus rules for delivery of alcohol, as well as non-consensus rules. The consensus rules are those rules the working group agreed upon, with an emphasis that these were simply the proposed consensus rules and not in final format. The working group described the consensus rules as the big picture items they agreed must be addressed within the proposed rules, but understood the working group must dissect each rule and its impact before finalizing the specific language. The non-consensus rules are rules that may be incorporated into the working group's recommended rules on delivery, but, as of the October 30th meeting, the working group had not yet come to a consensus that those particular rules were necessary. Once the rules are drafted and finalized, the working group will present them to the ABC Commission and, if approved, the Commission will present the rules to the public. The public will be provided notice of the proposed rules and a public hearing(s) will be held to allow public comment.

## Consensus Rules

1. An alcohol delivery can only be delivered to an actual person, not left on a front porch, with a person who is 21 or older.
2. The delivery driver must visually inspect the recipients' ID if person receiving alcohol appears to be 30 or younger.
3. The retailer should be willing to give a full refund to any person that cannot produce a positive ID.
4. The delivery of alcohol may only occur during lawful hours of sale as identified in each jurisdiction. The order can be placed at any time.
5. The retail permit holder can either use its own employees or a third party vendor to deliver the alcohol.
6. A third party vendor can use its own employees or contract with third parties to deliver alcohol.
7. Drivers of third party vendors must complete an alcohol training course (one geared towards verification of ID, determination of intoxication, deliveries of alcohol etc).

8. Growlers, wine and beer must be properly sealed/unopened for delivery.
9. Delivery must go through the proper three tier system meaning supplier to wholesaler, wholesaler to retailer, retailer to customer or vendor for delivery.
10. There is a 50-mile radius restriction on alcohol deliveries.
11. If alcohol is concealed in a bag or box, packaging must contain a sticker to identify it is alcohol and notice that only persons over age of 21 can receive and consume the alcohol.
12. Payment must be processed by a licensed retailer at the location of sale or a location with common ownership.
13. Payment for alcohol to delivery driver is prohibited; tips are acceptable.
14. An industry member without a "retail" specific permit cannot process alcohol sales for delivery.
15. A retailer must have independence in determining the types and brands of alcohol products they will offer to their customers for delivery (no influence by supplier or wholesaler).
16. Third party vendors shall be required to carry general liability insurance.

## Non-Consensus Rules

1. Require a third party vendor to obtain an ABC permit.
  - This would require legislation so it has been tabled for now, but a majority of the group promoted this change.
2. Require age verification software or scanners.
3. Provide that a delivery driver would still be paid if he/she refuses a particular sale of alcohol.
4. Require that only the person who ordered the alcohol may receive the alcohol.
5. Require that only street address or non-licensed premise may receive alcohol, not another licensed premise.
6. Restrict breweries, i.e. commercial permits with retail permits, from delivering.

Keep in mind, these rules are in the preliminary drafting stages. If you are a North Carolina retail permit holder and are already delivering alcohol, there is no need to make any internal changes unless you are concerned your deliveries do not comply with the current rules and statutes.

The major takeaway from the October 30th meeting: **rules relating to the delivery of alcohol are coming in 2019.** We will provide an update when those rules are drafted and presented for public hearing and comment.

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