

Impact Analysis

04 NCAC 02T .0714 TRANSACTIONS WITH GOVERNMENT AND SPECIAL ONE-TIME PERMITTEES and 04 NCAC 02T .0715 TOURNAMENTS

Alcoholic Beverage Control Commission

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Authority: G.S. 18B-100; 18B-207; 18B-1116(b)

Impact Summary: State Government: No

Local Government: No

Substantial Economic Impact: Unclear

These rule changes (see proposed text in Appendix) are necessary to comply with the Governor's request to remove or relax regulations when permissible.

Under the proposed rule, industry members could voluntarily decide whether they want to:

- loan or rent previously approved aerial displays or outdoor inflatables for the duration of a special event regardless whether the event is held on the premises of a retailer or not;
- loan or allow the use of refrigerated vehicles regardless whether the event is held in conjunction with or on the premises of a cosponsoring retailer; and
- provide brand identified outdoor signs, banners, aerial display or inflatables that would be displayed on the exterior of a retailer's premises while a tournament is held.

Impact on Private Sector

While these are voluntary decisions, they are decisions the industry cannot make under the current rules. Therefore, depending on whether the industry chooses to act on this proposed relaxation of the rules or not, there might be an impact.

It is very difficult, however, to quantify the potential impact of the rule change, given the lack of information. Although the ABC Commission issued 3,263 Special One-Time permits in the fiscal year ending in 2011, the Commission does not differentiate between the five different kinds of Special One-Time permits that are issued. This rule change is in reference to two of the five different kinds of Special One-Time permits. Because of this, there is no way to estimate the number of the industry members who would participate in this relaxation of the rules.

Also, the Commission has no information to base an assumption on the effects of the change to 04 NCAC 02T .0715 since there is no requirement to get a special permit or to even get permission to sponsor a tournament.

It is unclear whether the rule change would have a substantial economic impact (i.e. an impact over \$500,000 per year) or not on the private sector. The changes would allow industry members to provide brand identified advertising on a retailer's premises while a tournament or Special One-Time event is held. This could increase industry members', as well as the retailers', sales of a particular brand. The industry members' decision to provide this advertising on retailers' premises could also increase their costs of advertising. If industry members decide to rent instead of loan the advertising materials to retailers, they might be able to recoup a part or all of their advertising costs, but at the expense of the retailers. While no estimates can be projected, it is safe to assume that the costs incurred by either industry members or retailers would be outweighed by their gains.

According to research by several government entities, members of the academia, and private institutions, overall consumption of alcohol is not expected to be significantly affected as a result of an increase in advertising. This research is summarized by and available on Prof. David J. Hanson, Ph.D.'s State University of New York at Postdam webpage.¹ Also, a U.S. Senate subcommittee reported that it found no conclusive evidence that advertising induced non-drinkers to begin drinking. Several different entities have concluded that the point of alcohol advertising is to increase market share, rather than increase total consumption.

Given this information, the likely impact of this rule change, if industry members and retailers opt to act on it, is for the some of the market share of certain brands to change. When industry members increase their market shares, the other industry members, however, would find their market shares decrease proportionately.

Impact on State Government

Based on the assumption that total consumption would not increase, the Commission expects a little to no impact on state government as a result of these changes. Alcohol excise collection would not increase, and state health costs related to treating alcohol connected illnesses would not increase either. The only possible impact on state government could be an increase in the Commissions time to process Special One-Time permits, if the demand for these permits increases as a result of the relaxed rules. The lack of information makes it difficult to estimate what this impact might be, but the Commission does not expect it to be significant.

¹ See the "Abuse: Alcohol Advertising" section of the "Alcohol: Problems and Solutions" webpage at: <http://www2.potsdam.edu/hansondi/Advertising.html>

APPENDIX

04 NCAC 02T .0714 and .0715 are proposed for amendment as follows:

04 NCAC 02T .0714 TRANSACTIONS WITH GOVERNMENT AND SPECIAL ONE-TIME PERMITTEES

(a) Permitted Activities. Notwithstanding the restrictions contained in 04 NCAC 02T .0711, the following activities by alcoholic beverage (which includes malt beverages, wines and spirituous liquors) industry members are allowed, as described in this Rule, in transactions with cities, counties, the state, or in transactions with nonprofit or political organizations that have obtained a Special One-Time permit under the provisions of G.S. 18B-1002(a)(2) or (5), or nonprofit organizations that do not hold an ABC permit:

- (1) sponsorships of festivals, concerts, fundraisers or special events cosponsored by the local government, the state or nonprofit or political organizations, including payments of advertising fees;
- (2) loaning or renting portable equipment to a local government, the state or a nonprofit or political organization so long as the equipment loaned or rented is for a single event of limited duration;
- (3) contracts to provide payment for permanent advertising on signs or scoreboards when the industry member has submitted a request for and received an exemption pursuant to G.S. 18B-1116(b);
- (4) providing labor or employees to assist in the setting up or changing of draft beer kegs and equipment which has been loaned or rented pursuant to Subparagraph (a)(2) of this Rule;
- (5) loaning or renting previously approved aerial displays or outdoor inflatables for the duration of a special event, ~~unless the event is held on the premises of a retailer; event;~~
- (6) loaning or allowing the use of refrigerated vehicles, ~~unless the event is held in conjunction with or on the premises of a cosponsoring retailer; vehicles;~~
- (7) providing novelties, prizes or prize money to nonprofit organizations that have obtained a Special One-Time Permit;
- (8) providing cash contributions, product donations and other consumer goods, provided that any donated product remaining after the event is not supplied by the Special One-Time Permittee to a regular retail permittee;
- (9) participation with a local government or the state in the advertising of events cosponsored by the local government or state; and
- (10) accepting the return of alcoholic beverages not sold, for cash or credit, after the event is over.

(b) Sponsorship/Advertising Agreements Restricted. No sponsorship agreement or advertising contract between an industry member and a city, county, the state, or a Special One-Time permittee shall contain any agreement, either express or implied, that the industry member's products will be sold to the exclusion, in whole or in part, of other brands of alcoholic beverages offered by competitors.

(c) Cosponsorship with Retail Permittee. In any promotion by an industry member with a local government, the state, or a nonprofit organization in which there is cosponsorship by a retailer other than the local government or the

state, the industry member shall obtain prior written approval from the Commission as provided in 04 NCAC 02T .0717.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1116(b);
Eff. July 1, 1992;
Amended Eff. November 1, 2012; April 1, 2011.*

04 NCAC 02T .0715 TOURNAMENTS

(a) General. Sponsorship by an industry member of a regional, statewide or national sports tournament, when the tournament is held on the property or premises of a retail permittee, is permissible only if all of the following conditions are met:

- (1) The tournament is promoted or sanctioned by the official governing body of the sport, or is promoted and sponsored by a bona fide nonprofit organization for the purpose of raising funds for a civic, scientific, charitable or educational cause;
- ~~(2) No brand identified outdoor signs, banners, aerial displays or inflatables are displayed on the exterior of the retailer's premises;~~
- ~~(3)~~ (2) No money, novelty items or other prohibited services or things of value are given, rented or loaned by an industry member to the retailer; and
- ~~(4)~~ (3) All sponsorship money or fees and other things of value from the industry member are given to the official governing body of the sport or the nonprofit organization.

(b) Advertising. An industry member may advertise via mass media or pay for the advertising of a tournament when the primary theme of the advertisement is the tournament and its purpose. The naming of the retailer's premises as the location of a tournament shall not be construed to be cooperative advertising in violation of 4 NCAC 2S .1007 of this Chapter when the retailer's tradename is stated in substantially smaller typeface.

(c) Sponsorship/Advertising Agreements Restricted. No industry member agreeing to sponsor a tournament shall enter into any agreement or contract, either express or implied, that a retailer or special one-time permittee will sell that industry member's products to the exclusion, in whole or in part, of other brands of alcoholic beverages offered by competitors.

(d) Joint Sponsorships. An industry member shall not agree to cosponsor any tournament with any retail permittee unless the proceeds from the tournament are paid to a nonprofit civic, scientific, charitable or educational organization.

(e) Prohibited Sponsorships. An industry member shall not sponsor or aid a retailer in the promotion of any tournament held primarily to benefit the retailer, its employees, members or guests.

*History Note: Authority G.S. 18B-207; 18B-1116(b);
Eff. July 1, 1992;
Amended Eff. November 1, 2012.*