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October 21, 2013



## North Carolina's New Growler Fill Law

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There has been both excitement and confusion surrounding the recent passage of new laws and regulations governing the sale, filling and re-filling of growlers within our State. This paper briefly discusses the relevant history and explains the new law in simple terms so that breweries and retailers alike understand what is required of them to be in compliance therewith.

### History & Overview

On April 10, 2013, House Bill 829 was introduced in the North Carolina General Assembly. This served as the first step towards the passage of what is now commonly known and referred to as North Carolina's "Growler fill" law. Once this bill was passed and signed into law, the North Carolina Alcoholic Beverage Control ("ABC") Commission was required to propose rules governing the sanitation of growlers for amendment and adoption by the North Carolina Office of Administrative Hearings Rules Review Commission ("OAH").

On October 17, 2013, the OAH enacted temporary rules, which become effective on Friday, October 25, 2013. These temporary rules will be the law of the land until the OAH adopts permanent rules, which it must do by January 1, 2014. The OAH is scheduled to meet on November 21 and December 19 of this year and the final rulemaking process is expected to occur during those meetings. It remains to be seen whether

the permanent rules will be any different than the temporary rules, but they should be fairly similar with the exception of minor changes and tweaks to the wording. Expect to see an update to this paper once the permanent rules are enacted. For now, at least, let's turn to consider the temporary rules.

### Permit Requirement & Growler Definition

The first requirement is that the brewery or retailer has a valid ABC permit for on-premise or off-premise consumption. This is fairly obvious. The procedure for applying for such a permit is beyond the scope of this paper. Relevant to our discussion, however, is the fact that the new rules change the types of activities that these permits allow.

Effective Friday, October 25, 2013, "the retail sale of malt beverages in a cleaned, sanitized, resealable *container* (defined as "a rigid glass, plastic, aluminum or stainless steel container with a flip-top or screw-on lid that is no larger than two (2) liters") that is filled or refilled and sealed for consumption off the premises" is allowed, provided that certain other requirements are met. *See* N.C.G.S. § 18B-1001. Thus, while the term "growler" is more prevalent in the craft beer industry, "container" is the key word under the regulations. But let's stick with the word growler here to avoid any unnecessary confusion.

The “other requirements” referenced above primarily concern the use of labels which must be affixed to the growlers at the time of sale, filling or refilling. There are also regulations governing the cleaning, sanitizing, filling and sealing of growlers. Each will be discussed in turn.

#### Labeling Requirements

Growlers that are pre-filled by the manufacturer must have a label containing the following information:

1. Brand name of the product;
2. Name and address of the brewer or bottler;
3. Date it was filled;
4. Class of product (i.e., beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage);
5. Net contents;
6. If fortified with any stimulants, the amount of each such stimulant (in milligrams per container); and
7. The alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R. § 16.20 through 16.22.

*See* 04 NCAC 02T .0303(a).

Growlers that are filled or refilled on demand at the consumer request must have a label or tag that contains the following information in type not smaller than three (3) millimeters in height and not more than twelve (12) characters per inch:

1. (all of the same information as applicable to pre-filled growlers); plus
2. Name and address of the business that filled or re-filled the growler;
3. Date it was filled or refilled;
4. If the beverage is more than six percent (6%) alcohol by volume, the amount of alcohol by volume; and
5. The following statement: “This product may be unfiltered and unpasteurized. Keep refrigerated at all times.”

*See* 04 NCAC 02T .0303(b).

It should also be noted that permit holders that do not have a brewery permit cannot prefill growlers. In other words, bottle shops and other retailers may sell growlers which have been pre-filled by breweries but cannot prefill growlers from their draft lines for retail sale.

While seemingly straightforward, the label requirements are technical and should be strictly complied with. Practically speaking, what this means is that breweries and retailers would be advised to have some type of pre-printed label to help streamline the filling and refilling process and to ensure compliance with the law at all times. Fortunately, the regulations do not require that the labels required to be affixed on growlers filled or refilled on demand be submitted to the ABC Commission for approval.

#### Sanitation Requirements

More than any other aspect of the new regulations, the sanitation requirements are the most confusing. This is mostly due to the fact that the first part of the regulations state the proper procedure for cleaning and sanitizing growlers, but then the later part of the regulations provide for the filling and refilling of growlers *without* cleaning and sanitizing.

Essentially, an establishment will be in compliance with the sanitation regulations if it utilizes any of the following methods: manual washing in a three (3) compartment sink; a mechanical washing and sanitizing machine; or use of a sanitized tube or other contamination-free process. *See* 04 NCAC 02T .0309. As with the labeling regulations, the sanitation regulations are technical and should be strictly complied with.

By way of example, if your brewery or retail store utilizes manual or mechanical washing/sanitizing, the regulations require you to have a “test kit or other device” on hand to accurately measure the concentration of sanitizing solution and/or water temperature. On the other hand, if you plan to use a sanitized tube for filling and refilling growlers, the regulations require you to have at least five (5) tubes per sanitized container and at least one (1) sanitized container for every ten (10) taps. Moreover, growlers may only be filled or refilled by the permittee or the permittee’s employees. Thus, the regulations do not allow your customers to self-fill their growlers.

Finally, all growlers must be sealed with a cap. This makes good sense because in no event can growlers be opened or consumed on premises, even if your establishment holds a permit for on-premises consumption.

#### Additional Considerations

As a final consideration, remember that, under the new rules, you always have the discretion to refuse to fill or refill a growler. This will protect “rare” or “limited release” beers from being depleted by excessive requests for growler fills. And, of course, you may choose not to offer growler fills at all as a matter of business practice or personal preference. The only stipulation in this regard is that the discretion to refuse a growler fill or refill request must not be exercised in a discriminatory manner based on race, religion, color, national origin, sex or disability.

Hopefully this paper has provided you with a better understanding of North Carolina’s new Growler fill law. My only caution is that, in case of any doubt concerning your compliance with the new laws and/or regulations, please consult a licensed attorney or member of the ABC Commission. The penalties for non-compliance are substantial and can include a suspension or revocation of your permit, a monetary fine of up to \$500 for the first violation (and up to \$1,000 for repeated violations), or both.

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