



## Community and Economic Development in North Carolina and Beyond Blog: Brewing Up Some Economic Development: Changes to Craft Brewery Laws in North Carolina

By CED Guest Author

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North Carolina has recently enacted several provisions aimed at increasing the development of its brewing industry. The first North Carolina craft brewery opened in 1985 with Uli Bennewitz's Weeping Radish brewpub, and the industry has grown to over sixty breweries since the opening of Weeping Radish. A driver of this growth, arguably, is a series of recent changes that have occurred in North Carolina's brewing laws. This blog post will document recent changes in North Carolina and regional brewing laws as well as its relevant tax rates to outline how the legislative changes have acted as drivers of economic development.

### Pop the cap

One of the most significant recent changes to the North Carolina brewing laws was enacted by the "Pop the Cap" campaign, a movement that resulted in 2005 legislation that raised the allowable amount of alcohol by volume ("ABV") in malt beverages from six percent to fifteen percent. This provision allowed for a larger variety of beer types to be sold in stores and brewed by craft brewers in North Carolina. It also proved to be a boon to the craft brew industry in North Carolina, prompting three new breweries to open in the Triangle area alone in the five years following the legislation, and growing the number of craft breweries in the state to sixty-one as of June 2012.

### Special tasting permits

Four years after raising the ABV limits, the North Carolina General Assembly, following in the footsteps of an earlier bill that allowed for wine tasting permits conducted on retail sales premises, passed a law in 2009 that provided for similar malt beverage special event and tasting permits. The legislation authorizes current holders of retail permits as well as "any food business," to offer beer samplings on site. The General Assembly, in passing the law, specifically cited the wine industry as becoming a \$1 billion industry in North Carolina. There are some restrictions placed on retailers holding such tastings, including that an employee must supervise the malt beverage tasting, that the employee may not supervise more than three tasting areas, that no more than four malt beverages may be tasted at any one tasting area, and that the event shall not last more than four hours. The legislation also permits "any food business" to be eligible for a malt beverage tasting permit. Coupled with other long-standing promotion tools such as beer festivals, craft brewers now enjoy increased avenues for advertising and sampling of their craft brew products.

### Sale of brews on site for large, out-of-state manufacturers

With the enactment of Session Law 2011-107 and Session Law 2011-419 in 2011, all North Carolina breweries are now able to sell their brews on site. These pieces of legislation removed a limitation placed on larger breweries (over 25,000 barrels per year), allowing them to sell malt beverages produced on site (as well as beers produced by the brewery from out-of-state) to patrons who visited the brewery.

### Small brewers' ability to repurchase distribution rights

Most recently, the General Assembly enacted Session Law 2012-4. This legislation allows small breweries (less than 25,000 barrels) to regain their self-distribution rights after entering into a franchise agreement with a wholesaler. Significantly, small brewers are allowed to terminate the relationship through repurchase without being subject to the "good cause" requirements applicable to larger brewers (see a summary of the legislation here). Regaining the self-



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distribution rights from the wholesaler is contingent on two requirements: First, the brewery must provide notice to a wholesaler formerly that it formerly contracted with and secondly, the brewery must also provide a fair market value payment for the distribution rights associated with the brand. This legislation will aid small brewers who are unhappy with their current distributors by allowing them an easier avenue of exiting the relationship than was previously possible.

### **Economic development has followed these legislative changes**

In the wake of these recent legislative changes to the North Carolina statutes, two large brewing companies, New Belgium Brewing and Sierra Nevada Brewing Co. announced they would build brewing facilities in western North Carolina in 2012. In addition, a Colorado brewery, Oskar Blues, has announced that they will construct a 30,000 square foot brewery adjacent to a 6,000 square foot restaurant and music venue in Brevard, North Carolina.

### **State and federal taxes on malt beverages in North Carolina**

North Carolina imposes a tax rate of 61.71¢ per gallon of malt beverages, which was increased from 53.177¢ per gallon in 2009. Of these excise taxes collected by the Secretary of Revenue, 20.47% is distributed to the counties or cities in which the retail sale of the beverages is authorized. This is considerably less than the amount distributed for wine sales (49.44%), but more than fortified wine (18%). These taxes are in addition to traditional forms of taxation that are imposed, such as sales tax on the consumer's purchase of beer and other local property and corporate income taxes that breweries and other businesses pay in North Carolina.

North Carolina has the ninth highest excise tax in the U.S. according to a 2008 study by the Beer Institute (which is a lobbying group for the beer industry) of \$16.49 per barrel (which consists of 31 gallons and uses the pre-2009 rate of 53.177¢ per gallon). But this still places North Carolina ahead of its regional competitors. For example, Tennessee imposes a seventeen percent wholesaler tax on the sale price of beer which, coupled with its \$4.29 tax per barrel, has made Tennessee, a direct competitor for Sierra Nevada's site selection, the home of the highest malt beverage tax in the nation at \$33.25 per barrel. Georgia imposes the fourth highest total tax burden (\$30.96 per barrel), South Carolina the sixth highest (\$23.81 per barrel), and Virginia the nineteenth highest (\$8.69 per barrel).

### **Economic development incentives**

Additionally, North Carolina used several various forms of state and local government incentives to help attract its new breweries. North Carolina employs a statewide "special revenue fund" called the One North Carolina Fund, which allows for allocations to local governments of up to \$3 million to recruit, expand, or retain existing and new businesses. Sierra Nevada received over \$1 million in grants from the One North Carolina Fund, as well as an authorization of up to \$3.75 million in local economic incentives from Henderson County to entice the company to locate in their county. New Belgium received similar incentives from the One North Carolina Fund (a \$1 million grant), as well as local cash incentives worth almost \$12 million if all phases of its brewery facility are completed.

### **Conclusion**

North Carolina's legislation appears to be one factor that has helped stimulate growth of its brewing industry. While its tax rate for malt beverages is slightly higher than some regional neighbors, its laws do create an intelligible framework that allows for tastings on its premises (without limits based on the size of the brewer) and in retail outlets, for retail sales on the premises of these breweries, and for higher alcohol content beers. North Carolina was not the first to enact all of these legislative provisions, and it will not be the last. Other regional states have begun to take notice of North Carolina brewing laws and are planning to enact similar legislation. Some states, like Virginia, are pondering new legislation to enhance the development of their craft brewing industry, allowing for new innovations such as small-scale brewers' rental of brewing space and equipment from larger brewers.

Undoubtedly, craft brewing legislation will not remain stagnant. The next legislative effort will likely be aimed towards adjusting excise taxes placed on the sale of malt beverages in states such as Tennessee and Georgia, which carry larger excise tax burdens than their neighboring states.



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