

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

D

SENATE DRS35220-LYx-46 (2/27)

Short Title: Raise Cigarette/Alcohol Tax for Medicaid. (Public)

Sponsors: Senator Clodfelter.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO RAISE THE EXCISE TAX ON CIGARETTES; TO STREAMLINE THE
TAXATION OF LIQUOR AND CHANGE THE DISTRIBUTION OF EXCISE
TAXES ON ALCOHOL; AND TO PHASE OUT THE COUNTY SHARE OF
MEDICAID COSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-113.5 reads as rewritten:

"§ 105-113.5. Tax on cigarettes.

A tax is levied on the sale or possession for sale in this State, by a distributor, of all cigarettes at the rate of ~~two and one-half mills~~ three cents (3¢) per individual cigarette.

This tax does not apply to any of the following:

- (1) Sample cigarettes distributed without charge in packages containing five or fewer cigarettes.
- (2) Cigarettes in a package of cigarettes given without charge by the manufacturer of the cigarettes to an employee of the manufacturer who works in a factory where cigarettes are made, if the cigarettes are not taxed by the federal government."

SECTION 2.1. G.S. 18B-804(b) reads as rewritten:

"(b) Sale Price of Spirituous Liquor. – The sale of spirituous liquor sold at the uniform State price shall consist of the following components:

- (1) The distiller's price.
- (2) The freight and bailment charges of the State warehouse as determined by the Commission.
- (3) A markup for local boards as determined by the Commission.
- (4) The tax levied under G.S. 105-113.80(c), which shall be levied on the sum of subdivisions (1), (2), and (3).

- 1 (5) ~~An additional markup for local boards equal to three and one half~~
2 ~~percent (3 1/2%) of the sum of subdivisions (1), (2), and (3).~~
- 3 (6) ~~A bottle charge of one cent (1¢) on each bottle containing 50 milliliters~~
4 ~~or less and five cents (5¢) on each bottle containing more than 50~~
5 ~~milliliters.~~
- 6 (6a) ~~The bailment surcharge.~~
- 7 (6b) ~~An additional bottle charge for local boards of one cent (1¢) on each~~
8 ~~bottle containing 50 milliliters or less and five cents (5¢) on each~~
9 ~~bottle containing more than 50 milliliters.~~
- 10 (7) ~~A rounding adjustment, the formula of which may be determined by~~
11 ~~the Commission, so that the sale price will be divisible by five.~~
- 12 (8) ~~If the spirituous liquor is sold to a mixed beverage permittee for resale~~
13 ~~in mixed beverages, a charge of twenty dollars (\$20.00) on each four~~
14 ~~liters and a proportional sum on lesser quantities.~~
- 15 (9) ~~If the spirituous liquor is sold to a guest room cabinet permittee for~~
16 ~~resale, a charge of twenty dollars (\$20.00) on each four liters and a~~
17 ~~proportional sum on lesser quantities."~~

18 **SECTION 2.2.** G.S. 18B-805 reads as rewritten:

19 "**§ 18B-805. Distribution of revenue.**

20 (a) ~~Gross Receipts. – As used in this section, "gross receipts" means all revenue~~
21 ~~of a local board, including proceeds from the sale of alcoholic beverages, investments,~~
22 ~~interest on deposits, and any other source.~~

23 (b) ~~Primary Distribution. – Before making any other distribution, a local board~~
24 ~~shall first pay the following from its gross receipts:~~

- 25 (1) ~~The board shall pay the expenses, including salaries, of operating the~~
26 ~~local ABC system.~~
- 27 (2) ~~Each month the local board shall pay to the Department of Revenue~~
28 ~~the taxes due the Department. In addition to the taxes levied under~~
29 ~~Chapter 105 of the General Statutes, the local board shall pay to the~~
30 ~~Department one half of both the mixed beverages surcharge required~~
31 ~~by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required~~
32 ~~by G.S. 18B-804(b)(9).~~
- 33 (3) ~~Each month the local board shall pay to the Department of Health and~~
34 ~~Human Services five percent (5%) of both the mixed beverages~~
35 ~~surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet~~
36 ~~surcharge required by G.S. 18B-804(b)(9). The Department of Health~~
37 ~~and Human Services shall spend those funds for the treatment of~~
38 ~~alcoholism or substance abuse, or for research or education on alcohol~~
39 ~~or substance abuse.~~
- 40 (4) ~~Each month the local board shall pay to the county commissioners of~~
41 ~~the county where the charge is collected the proceeds from the bottle~~
42 ~~charge required by G.S. 18B-804(b)(6), to be spent by the county~~
43 ~~commissioners for the purposes stated in subsection (h) of this section.~~

1 (c) Other Statutory Distributions. – After making the distributions required by
2 subsection (b), a local board shall make the following quarterly distributions from the
3 remaining gross receipts:

4 ~~(1) Before making any other distribution under this subsection, the local~~
5 ~~board shall set aside the clear proceeds of the three and one-half~~
6 ~~percent (3 1/2%) markup provided for in G.S. 18B-804(b)(5) and the~~
7 ~~bottle charge provided for in G.S. 18B-804(b)(6b), to be distributed as~~
8 ~~part of the remaining gross receipts under subsection (e) of this~~
9 ~~section.~~

10 (2) The local board shall spend for law enforcement an amount set by the
11 board which shall be at least five percent (5%) of the remaining gross
12 ~~receipts remaining after the distribution required by subdivision~~
13 ~~(1)-receipts.~~ The local board may contract with the ALE Division to
14 provide the law enforcement required by this subdivision.
15 Notwithstanding the provisions of any local act, this provision shall
16 apply to all local boards.

17 (3) The local board shall spend, or pay to the county commissioners to
18 spend, for the purposes stated in subsection (h), an amount set by the
19 board which shall be at least seven percent (7%) of the remaining
20 ~~gross receipts remaining after the distribution required by subdivision~~
21 ~~(1)-receipts.~~ This provision ~~shall not beis not~~ applicable to a local
22 board ~~which that~~ is subject to a local act setting a different distribution.

23 (d) Working Capital. – After making the distributions provided for in subsections
24 (b) and (c), the local board may set aside a portion of the remaining gross receipts,
25 within the limits set by the rules of the Commission, as cash to operate the ABC system.
26 With the approval of the appointing authority for the board, the local board may also set
27 aside a portion of the remaining gross receipts as a fund for specific capital
28 improvements.

29 (e) Other Distributions. – After making the distributions provided in subsections
30 (b), (c), and (d), the local board shall pay each quarter the remaining gross receipts to
31 the general fund of the city or county for which the board is established, unless some
32 other distribution or some other schedule is provided for by law. If the governing body
33 of each city and county receiving revenue from an ABC system agrees, those governing
34 bodies may alter at any time the distribution to be made under this subsection or under
35 any local act. Copies of the governing body resolutions agreeing to a new distribution
36 formula and a copy of the approved new distribution formula shall be submitted to the
37 Commission for review and audit purposes. If any one of the governing bodies later
38 withdraws its consent to the change in distribution, profits shall be distributed according
39 to the original formula, beginning with the next quarter.

40 ~~(f) Surcharge Profit Shared. — When, pursuant to G.S. 18B-603(d1), spirituous~~
41 ~~liquor is bought at a city ABC store by a mixed beverages permittee for premises~~
42 ~~located outside the city, the local board operating the store at which the sale is made~~
43 ~~shall retain seventy five percent (75%) of the local share of both the mixed beverages~~
44 ~~surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge~~

1 required by G.S. 18B-804(b)(9) and the remaining twenty five percent (25%) shall be
2 divided equally among the local ABC boards for all other cities in the county that have
3 authorized the sale of mixed beverages.

4 When, pursuant to G.S. 18B-603(e), spirituous liquor is bought at a city ABC store
5 by a mixed beverages permittee for premises located at an airport outside the city, the
6 local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and
7 the guest room cabinet surcharge required by G.S. 18B-804(b)(9) shall be divided
8 equally among the local ABC boards for all cities in the county that have authorized the
9 sale of mixed beverages.

10 (g) Quarterly Distributions. – When this section requires a distribution to be
11 made quarterly, at least ninety percent (90%) of the estimated distribution shall be paid
12 to the recipient by the local board within 30 days of the end of that quarter. Adjustments
13 in the amount to be distributed resulting from the closing of the books and from audit
14 shall be made with the next quarterly payment.

15 (h) Expenditure of Alcoholism Funds. – Funds distributed under ~~subdivisions~~
16 ~~(b)(4) and subdivision~~ (c)(3) of this section shall be spent for the treatment of alcoholism
17 or substance abuse, or for research or education on alcohol or substance abuse. The
18 minutes of the board of county commissioners or local board spending funds allocated
19 under this subsection shall describe the activity for which the funds are to be spent. Any
20 agency or person receiving funds from the county commissioners or local board under
21 this subsection shall submit an annual report to the board of county commissioners or
22 local board from which funds were received, describing how the funds were spent.

23 (i) Calculation of Statutory Distributions When Liquor Sold at Less Than
24 Uniform Price. – If a local board sells liquor at less than the uniform State price,
25 distributions required by subsections (b) and (c) shall be calculated as though the liquor
26 was sold at the uniform price."

27 **SECTION 2.3.** G.S. 18B-600(e4)(3) reads as rewritten:

28 "(e4) Multicounty/City ABC Elections. – If a city is located in two or more
29 counties, the following provisions shall apply:

30 ...

31 (3) If an election is held by a city under this subsection, all of the city
32 voters may vote in the election. If the vote is for approval, alcoholic
33 beverages may be sold on the basis of that approval and under the
34 provisions of this Chapter. If the sale of mixed beverages is approved,
35 the mixed beverage permittees shall purchase their liquor from one or
36 more ABC stores located within the city that have been designated by
37 the local boards for those purchases. The remaining gross receipts shall
38 be distributed in accordance with existing law applicable to those ABC
39 stores, ~~except that after the applicable distributions have been made~~
40 ~~pursuant to G.S. 18B-805(b), (c), and (d), the local share of the mixed~~
41 ~~beverages surcharge and the guest room cabinet surcharge required by~~
42 ~~G.S. 18B-804(b)(8) and (9) shall be distributed one half to the general~~
43 ~~fund of the city where the mixed beverage permittees are located and~~

1 ~~one half to the local ABC boards from whose stores liquor is~~
2 ~~purchased stores."~~

3 **SECTION 2.4.** G.S. 105-113.106 reads as rewritten:

4 "**§ 105-113.106. Definitions.**

5 The following definitions apply in this Article:

6 (1) Controlled Substance. – Defined in G.S. 90-87.

7 (2) Repealed by Session Laws 1995, c. 340, s. 1.

8 (3) Dealer. – Any of the following:

9 a. A person who actually or constructively possesses more than
10 42.5 grams of marijuana, seven or more grams of any other
11 controlled substance that is sold by weight, or 10 or more
12 dosage units of any other controlled substance that is not sold
13 by weight.

14 b. A person who in violation of Chapter 18B of the General
15 Statutes possesses illicit spirituous liquor for sale.

16 c. A person who in violation of Chapter 18B of the General
17 Statutes possesses mash.

18 ~~d. A person who in violation of Chapter 18B of the General~~
19 ~~Statutes possesses an illicit mixed beverage for sale.~~

20 (4) Repealed by Session Laws 1995, c. 340, s. 1.

21 ~~(4a) Illicit mixed beverage. — A mixed beverage, as defined in G.S.~~
22 ~~18B-101, composed in whole or in part from spirituous liquor on~~
23 ~~which the charge imposed by G.S. 18B-804(b)(8) has not been paid,~~
24 ~~but not including a premixed cocktail served from a closed package~~
25 ~~containing only one serving.~~

26 (4b) Illicit spirituous liquor. – Spirituous liquor, as defined in G.S.
27 105-113.68, not authorized by the North Carolina Alcoholic Beverage
28 Control Commission. Some examples of illicit spirituous liquor are the
29 products known as "bootleg liquor", "moonshine", "non-tax-paid
30 liquor", and "white liquor".

31 (4c) Local law enforcement agency. – A municipal police department, a
32 county police department, or a sheriff's office.

33 (4d) Low-street-value drug. – Any of the following controlled substances:

34 a. An anabolic steroid as defined in G.S. 90-91(k).

35 b. A depressant described in G.S. 90-89(4), 90-90(4), 90-91(b), or
36 90-92(a).

37 c. A hallucinogenic substance described in G.S. 90-89(3) or G.S.
38 90-90(5).

39 d. A stimulant described in G.S. 90-89(5), 90-90(3), 90-91(j),
40 90-92(a)(3), or 90-93(a)(3).

41 e. A controlled substance described in G.S. 90-91(c), (d), or (e),
42 90-92(a)(3), or (a)(5), or 90-93(a)1.

43 (5) Repealed by Session Laws 1995, c. 340, s. 1.

- 1 (6) Marijuana. – All parts of the plant of the genus Cannabis, whether
2 growing or not; the seeds of this plant; the resin extracted from any
3 part of this plant; and every compound, salt, derivative, mixture, or
4 preparation of this plant, its seeds, or its resin.
- 5 (6a) Mash. – The fermentable starchy mixture from which spirituous liquor
6 can be distilled.
- 7 (7) Person. – Defined in G.S. 105-228.90.
- 8 (8) Secretary. – Defined in G.S. 105-228.90.
- 9 (8a) State law enforcement agency. – Any State agency, force, department,
10 or unit responsible for enforcing criminal laws.
- 11 (9) Unauthorized substance. – A controlled substance, ~~an illicit mixed~~
12 ~~beverage,~~ illicit spirituous liquor, or mash."

13 **SECTION 2.5.** G.S. 105-113.107(d) is repealed.

14 **SECTION 2.6.** G.S. 105-113.108(b)(4) is repealed.

15 **SECTION 2.7.** G.S. 105-113.80(c) reads as rewritten:

16 "(c) Liquor. – An excise tax of ~~twenty five percent (25%)~~ thirty-six percent (36%)
17 is levied on liquor sold in ABC stores. Pursuant to G.S. 18B-804(b), the price of liquor
18 on which this tax is computed is the distiller's price plus (i) the State ABC warehouse
19 freight and bailment charges, and (ii) a markup for local ABC boards."

20 **SECTION 2.8.** Part 4 of Article 2C of Chapter 105 of the General Statutes is
21 amended by adding a new section to read:

22 "**§ 105-113.81B. Distribution of part of liquor taxes.**

23 The Secretary shall on a quarterly basis credit to the Department of Health and
24 Human Services seven-tenths percent (0.7%) of the net proceeds of the excise tax
25 collected on liquor during the previous quarter. The Department of Health and Human
26 Services shall spend those funds for the treatment of alcoholism or substance abuse, or
27 for research or education on alcoholism or substance abuse."

28 **SECTION 2.9.** G.S. 105-113.82 reads as rewritten:

29 "**§ 105-113.82. Distribution of part of beer and wine taxes.**

30 (a) Amount, Method. – The Secretary shall distribute annually the following
31 percentages of the net amount of excise taxes collected ~~on the sale of malt beverages~~
32 ~~and wine~~ under this Article during the preceding 12-month period ending March 31, less
33 the amount of the net proceeds credited to the Department of Agriculture and Consumer
34 Services under G.S. ~~105-113.81A,~~ 105-113.81A and to the Department of Health and
35 Human Services under G.S. 105-113.81B, to the counties and cities in which the retail
36 sale of these beverages is authorized in the entire county or city:

- 37 (1) ~~Of the tax on malt beverages levied under G.S. 105-113.80(a),~~
38 ~~twenty three and three fourths percent (23 3/4%);~~
- 39 (2) ~~Of the tax on unfortified wine levied under G.S. 105-113.80(b),~~
40 ~~sixty two percent (62%); and~~
- 41 (3) ~~Of the tax on fortified wine levied under G.S. 105-113.80(b),~~
42 ~~twenty two percent (22%).~~
- 43 (4) In counties or cities in which an ABC system is established, fifteen
44 percent (15%).

1 (5) In counties or cities in which an ABC system is not established but in
2 which sales of malt beverages, unfortified wine, or fortified wine are
3 allowed, five percent (5%).

4 If liquor, malt beverages, unfortified wine, or fortified wine may be licensed to be
5 sold at retail in both a county and a city located in the county, both the county and city
6 shall receive a portion of the amount distributed, that portion to be determined on the
7 basis of population. If one of these beverages may be licensed to be sold at retail in a
8 city located in a county in which the sale of the beverage is otherwise prohibited, only
9 the city shall receive a portion of the amount distributed, that portion to be determined
10 on the basis of population. The amounts distributed under subdivisions (1), (2), ~~and~~
11 ~~(3)~~(4) and (5) shall be computed separately.

12 (b) Repealed by Session Laws 2000, c. 173, s. 3, effective August 2, 2000.

13 (c) Exception. – Notwithstanding subsection (a), in a county in which ABC
14 stores have been established by petition, the revenue shall be distributed as though the
15 entire county had approved the retail sale of a beverage whose retail sale is authorized
16 in part of the county.

17 (d) Time. – The revenue shall be distributed to cities and counties within 60 days
18 after March 31 of each year. The General Assembly finds that the revenue distributed
19 under this section is local revenue, not a State expenditure, for the purpose of Section
20 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not
21 reduce or withhold the distribution.

22 (e) Population Estimates. – To determine the population of a city or county for
23 purposes of the distribution required by this section, the Secretary shall use the most
24 recent annual estimate of population certified by the State Planning Officer.

25 (f) City Defined. – As used in this section, the term "city" means a city as
26 defined in G.S. 153A-1(1) or an urban service district defined by the governing body of
27 a consolidated city-county.

28 (g) Use of Funds. – Funds distributed to a county or city under this section may
29 be used for any public purpose.

30 (h) Disqualification. – No municipality may receive any funds under this section
31 if it was incorporated with an effective date of on or after January 1, 2000, and is
32 disqualified from receiving funds under G.S. 136-41.2. No municipality may receive
33 any funds under this section, incorporated with an effective date on or after January 1,
34 2000, unless a majority of the mileage of its streets are open to the public. The previous
35 sentence becomes effective with respect to distribution of funds on or after July 1,
36 1999."

37 **SECTION 3.** Notwithstanding any other provision of law to the contrary,
38 effective July 1, 2003, the State shall pay one hundred percent (100%) of the nonfederal
39 share of nonadministrative costs under the Medical Assistance Program for all counties
40 that were designated as enterprise tier one or two for 2003. Effective July 1, 2004, the
41 State shall pay one hundred percent (100%) of the nonfederal share of
42 nonadministrative costs under the Medical Assistance Program for all counties that were
43 designated as enterprise tier one, two, or three for 2003. Effective July 1, 2005, the
44 State shall pay one hundred percent (100%) of the nonfederal share of

1 nonadministrative costs under the Medical Assistance Program for all counties. For the
2 purposes of this section, "enterprise tier" has the same meaning as under G.S.
3 105-129.2.

4 **SECTION 4.** G.S. 108A-54 reads as rewritten:

5 "**§ 108A-54. Authorization of Medical Assistance Program.**

6 The Department is authorized and empowered to establish a Medical Assistance
7 Program from ~~federal, State and county~~ federal and State appropriations and to adopt
8 rules and regulations under which payments are to be made in accordance with the
9 provisions of this Part. ~~The nonfederal share may be divided between the State and the~~
10 ~~counties, in a manner consistent with the provisions of the federal Social Security Act,~~
11 ~~except that the share required from the counties may not exceed the share required from~~
12 ~~the state. If a portion of the nonfederal share is required from the counties, the boards of~~
13 ~~county commissioners of the several counties shall levy, impose and collect the taxes~~
14 ~~required for the special purpose of medical assistance as provided in this Part, in an~~
15 ~~amount sufficient to cover each county's share of such assistance."~~

16 **SECTION 5.** Sections 2.1 through 2.9 of this act become effective
17 November 1, 2003. Section 4 of this act becomes effective July 1, 2005. The remainder
18 of this act becomes effective July 1, 2003.