

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MEETING MINUTES  
January 15, 2025**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission (hereinafter “Commission”) meeting held at 400 East Tryon Road in Raleigh, North Carolina, on January 15, 2025, beginning at 10:00 AM. The meeting was recorded, and a copy of the recording is on file at the Commission within the Legal Section.

**ROLL CALL AND ANNOUNCEMENTS**

Chairman Hank Bauer called the January 15, 2025, Commission meeting to order, introduced himself, and welcomed Commissioner La’Tanta (L.T.) McCrimmon, Commissioner David Sherlin, Deputy Commissioner Mike DeSilva, and General Counsel Stacey Carter-Coley.

**CONFLICTS OF INTEREST**

In compliance with N.C.G.S. §138A-35, Chairman Bauer asked if there were any conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest concerning any matters on the agenda. There were no conflicts or appearances of a conflict.

**JANUARY 15, 2025, AGENDA**

Chairman Bauer asked if there were any requests to make changes to the agenda. Hearing none, Commissioner Sherlin made a motion to approve the agenda as presented. Chairman Bauer seconded the motion. A vote was held, and the motion passed.

Chairman Bauer stated it would be an appropriate time to adopt the agenda for January 15, 2025. Commissioner McCrimmon made a motion to adopt the agenda as presented. Commissioner Sherlin seconded the motion. A vote was held, and the motion passed.

**MINUTES OF THE DECEMBER 11, 2024, COMMISSION MEETING**

Chairman Bauer asked the Commissioners if they received a copy of the December 11, 2024, Commission meeting minutes and had an opportunity to review them. They stated they had. Chairman Bauer stated he received a copy as well and reviewed it.

Commissioner Sherlin made a motion to waive the reading of the minutes of the December 11, 2024, meeting. Chairman Bauer seconded the motion. A vote was held, and the motion passed.

Commissioner Sherlin made a motion to approve the minutes of the December 11, 2024, meeting. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

## **I. HEARING CASES AND OFFERS IN COMPROMISE – 57**

General Counsel Stacey Carter-Coley asked if there was anyone present who would like to be heard regarding any of the 57 hearing cases on the agenda. Hearing no response, Mrs. Carter-Coley stated staff's recommendation to ratify the 57 Offers in Compromise appearing on the agenda.

Commissioner Sherlin made a motion to approve the 57 Offers in Compromise as presented. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

## **II. EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B-1116(b) – TIDES BEVERAGE, LLC T/A TIDES TAPROOM; CIDER BROS, LLC T/A BULL CITY CIDERWORKS; AND ANDREW NELSON**

Chairman Bauer recognized Assistant General Counsel Renee Metz to present line-item II on the agenda, an exemption request. Ms. Metz summarized this request stating it was necessary solely due to the transfer of one of the affiliated retail locations to a new entity.

Cider Brothers, LLC (Nelson owns 25.174%) has winery and distillery locations in Durham and Lexington, along with retail locations in Greensboro, Cary, and Wilmington. If approved, the Wilmington location of Cider Bros, LLC T/A Bull City Ciderworks would be transferred to Tides Beverage, LLC T/A Tides Taproom (Nelson owns 75%).

Ms. Metz recommended the Commission approve the exemption request under the standard conditions and because Bull City Ciderworks produces all types of beer, wine, and spirits, Mr. Andrew Nelson should have no day-to-day operational control over the ordering of alcoholic beverages for the retailer, Tides Taproom.

Commissioner Sherlin made a motion to approve this exemption request. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

## **III. EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B-1116(b) – WILMINGTON HOMEBREW SUPPLY CORP. T/A WILMINGTON BREWING COMPANY; WILMINGTON HOMEBREW SUPPLY CORP. T/A VENUE AT WILMINGTON BREWING COMPANY; SAVARD BEER AND BOARD COMPANY, LLC T/A SAVARD BEER AND BOARD; JOHN SAVARD; AND MICHELLE SAVARD**

Assistant General Counsel Renee Metz summarized this request stating John and Michelle Savard own Wilmington Brewing Company which has an adjacent taproom and an alternate retail location. The Savards are hoping to open another brewery with its attached retail location under Savard Beer and Board.

Ms. Metz explained it was the cross-brewing, production, and retail that made this exemption necessary. The Savard Beer and Board retail location needed an exemption based on their ownership of Wilmington Homebrew Supply Corp. and vice versa.

The Savards have agreed they will not oversee the ordering of alcoholic beverages at either of the retail locations. However, they will manage the production facilities. Ms. Metz recommended adopting this exemption request based on the standard conditions.

Commissioner McCrimmon made a motion to approve this exemption request. Commissioner Sherlin seconded the motion. A vote was held, and the motion passed.

**IV. RECONSIDERATION OF EXEMPTION ORDER GRANTED PURSUANT TO N.C.G.S. §18B-1116(b) – 321 WINE, LLC T/A KELLOGG SELECTIONS; EUROPEAN CELLARS, LLC T/A EUROPEAN CELLARS; CHARLOTTE WINE CO LLC T/A BAR À VINS; JEFFERY KELLOGG; STEPHANIE KELLOGG; AND ERIC SOLOMON**

Assistant General Counsel Renee Metz stated this was a matter that was previously before the Commission. She recounted it originally came to the attention of the Commission through an inspection by ALE Special Agent Matt Stemple. She explained that an order was entered requiring submissions of sales reports in six-month intervals. Ms. Metz stated the issue came back to Legal's attention when the temporary permit for the retail location was about to expire on December 31, 2024. She stated the temporary permit was extended through the date of the meeting so that the conditions of the exemption could be addressed.

Ms. Metz continued stating she provided the Commissioners with some numbers, which she admitted were not the best way to calculate, but they were the only numbers available to her. She stated she only had access to the number of brands and each wholesaler's percentage out of the total number of brands. She calculated that the Kellogg's Selections percentage of all products ordered by the retail location was approximately 2%. However, the retail sales report indicated they purchased 24% of their products from Kellogg Selections during each six-month period.

Ms. Metz presented some options that had been discussed with Jennifer Morgan of Williams Mullen, attorney for Bar À Vins. One option would be to rescind the exemption, requiring disposition of one of the two properties, either the wholesale or the retail location. Another option would be to amend the exemption to potentially prohibit the retailer from purchasing any Kellogg's Selections' products. A third option would be putting some sort of memorandum of agreement in place. She added Legal could possibly set a standard percentage as to what a reasonable market share would be and if the permittees failed to comply, that would potentially be a violation against their permits. She explained Bar À Vins was still on temporary permits, and they need to be switched over to permanent before Legal could process the violation submitted by Special Agent Stemple.

Ms. Metz yielded the floor to Ms. Morgan who had some alternate options to present. She opened with a brief description of the permittees, stating Kellogg Selections is a small wholesaler out of Charlotte. She stated Bar À Vins is a small neighborhood bar, also located in Charlotte, focusing on the sale of natural wines without preservatives. She added they did not sell the large-scale commercial wines, so they have a very special kind of niche.

Ms. Morgan continued stating this exemption dated back to 2021 and stemmed from the fact that the Kelloggs are a married couple where the wife has a majority ownership interest in a wholesaler and the husband has a minority. She stated Mr. Kellogg only owned 33% interest in the bar. She stated both interests were in separate LLCs governed by an operating agreement. She concluded the only connection from the original exemption was because they were married.

Ms. Morgan stated in 2022, a competitor complained that Mr. Kellogg's bar was purchasing too much of the wholesaler's wine and an investigation by ALE ensued. She explained this triggered a second exemption order in 2023. She stated that order said that the permits would go into permanent status and the Commission would process any previously submitted violations. She stated that never happened, that the

temporary permits just kept being extended. She added her clients are still on temporary permits 3 years later.

Ms. Morgan stated it was her understanding that the permits would go into permanent status, and they would agree to a sales cap percentage. She added the order also said her client was to file sales records reports, but there was some miscommunication about how and when that was to occur. She repeated that her clients' permits kept getting extended in temporary status and it was not noticed until a few weeks ago that those permits were set to expire on New Year's Eve.

Ms. Morgan stated that her clients want to and have always sought to comply. She characterized the bar as small, providing employees jobs with full health insurance, and who tries to be a good citizen in their community. She stated the wholesaler sales to this bar were less than 1% of its total sales. She explained that she and Ms. Metz disagreed on how the market share should be calculated, especially when you have a small neighborhood bar like this with a niche market of natural wines. She stated the bar orders from 15 different wholesalers and depending on how you calculate the market share, the percentage varies.

Ms. Morgan stated she proposed some solutions, the first choice being for Mr. Kellogg to keep things as is, but he does not want to keep running into problems with the Commission and he hasn't been given a sales cap percentage. She stated he also proposed, in order to keep permits active and the jobs for the bar's sake, he would divest his 33% interest within 90 days if that is what the Commission decided. She stated they also talked about other options such as the wholesaler stopping sales to the bar. Ms. Morgan concluded by proposing that the Commission keep the permits active, amend the exemption order to provide that, Jeff Kellogg can sell his 33% interest in the LLC, the retail entity, or they could work out a memo of agreement with Legal.

Commissioner Sherlin asked Ms. Morgan if her client wanted to sell his shares. She answered stating that was not his first choice. She stated his first choice would be to work with Legal to come up with a sales cap and to report every six months.

Ms. Metz expressed her concern about adding the condition that they submit reports every so often because they did not when previously ordered to do so. Chairman Bauer asked Ms. Metz if Legal could make that a part of the memo, if the reports were not received by the due date, there would be a fine involved.

Ms. Metz repeated to clarify what the Chairman was requesting. She stated, "You want the temps extended, you want to come back on the next Commission meeting, you want Legal to work out some sort of offer in compromise or memorandum of agreement of some sort specifying exactly what the fair market reasonable market share is, a percentage, and then also what dates and to whom the sales reports would be submitted, correct?" Chairman Bauer indicated yes.

Chairman Bauer made a motion to suspend this decision for 30 days, until the next Commission meeting, pending Ms. Morgan work with Legal to come to an agreement. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

**V. ABC STORE LOCATION – NASH COUNTY ABC BOARD  
(1206 EASTERN AVENUE, NASHVILLE, NC)**

Deputy Commissioner Mike DeSilva summarized this request by the Nash County ABC Board to build, open, and operate an ABC store located at 1206 Eastern Avenue, in Nashville, NC. He stated the new store would replace the existing store located at the same address, and if approved the Board intends to open the new store by November 2025.

Mr. DeSilva stated ABC Commission Audit Supervisor India Smith-Gray verified the property zoning allows for an ABC store. He stated the property was currently owned by 3MR Limited Partnership. He added that all members of the Nash County ABC Board provided financial disclosures as requested and there were no conflicts.

Mr. DeSilva stated the proposed space would be approximately 4,000 square feet, of which 3,000 square feet would be used for retail sales. He stated that the first-year sales were anticipated at 3.4 million dollars. He described the location stating the nearest ABC store was 8.4 miles away in Rocky Mount, the nearest school was 1.8 miles away, and the nearest church was 1.3 miles away.

Mr. DeSilva concluded by stating on December 2, 2024, a sign announcing the Board's intentions of opening an ABC store was placed at the location and witnessed by India Smith-Gray. He stated the sign was determined to meet Commission requirements and as of the date of the meeting, no objections to the proposed store were made. He stated staff recommended considering the information shared.

Chairman Bauer made a motion to approve the new location for the Nash County ABC Board. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

**VI. RULEMAKING REQUEST PURSUANT TO N.C.G.S. §150B-20(a) AND 14B NCAC 15A .0401 – NORTH CAROLINA PRIVATE PROTECTIVE SERVICES BOARD REQUEST TO AMEND 14B NCAC 15B .0103 AND 14B NCAC 15B .0210**

Assistant General Counsel Renee Metz introduced Jeffrey P. Gray, legal counsel for the North Carolina Private Protective Services Board (hereinafter "Board"), and invited him to make his presentation requesting the Commission to adopt rules regarding security at ABC licensed establishments.

Mr. Gray introduced himself and briefly described the Board as a division of the Department of Public Safety responsible for 13 licenses from private security guards and private investigators to armored car drivers and private polygraph operators.

Mr. Gray initiated his request by stating the Board has had a chronic issue for some time with unlicensed security guards in alcohol licensed establishments, mostly nightclubs. He also mentioned sweepstakes parlors and fish game parlors, but conceded they were not under ABC regulation.

Mr. Gray stated the Board has been looking for solutions. He stated they are battling about 500 incidents right now where a guard has been shot by a patron or where someone attempting to do some type of harm or rob the establishment was shot. He stated that a lot of times these guards are armed with no training whatsoever.

Mr. Gray stated his first request that it be a requirement for a permittee to fill out some type of form with the Commission before hiring these persons and that they be licensed. He added that when an establishment hires a guard as an employee, it is called proprietary. He stated if they are proprietary and unarmed, the Board has no say. However, if an establishment hires contract persons, they must be licensed. He stated either way, no one can do armed security in North Carolina without a license. He stated regardless, people are doing it. He stated a lot of times they do not realize they're violating the law.

Mr. Gray stated this was one solution created by the Board. He stated it was his belief the Commission has the inherent authority under the same provisions that allow it to ensure that any permitted establishment has complied with any other state law, be it the building code, local zoning, fire code, etc. to require any armed proprietary or contracted armed or unarmed guard to certify with the Board. He added hopefully this would send a message to permitted persons that they have some obligation to make sure they are properly registered with the Board.

Mr. Gray presented the second part of his proposal where he requested that not only the guards be registered, but that they also cooperate with the Board's investigators. He stated the investigators would not be investigating these establishments from an ABC standpoint, rather their investigators would work with local ABC and ALE going into these establishments. He stated they would offer training to learn how to recognize a proper guard registration card and how to run someone's name to see if they are registered. He stated he only wanted a provision that says the Board's investigators can accompany local ABC or ALE into these establishments and the permittee must cooperate with the Board's investigator as well.

Mr. Gray concluded stating he was aware ABC staff had some concerns the Commission does not have statutory authority to do this. He stated he believes it does have the authority, along with the other provisions the Commission asks of its permittees. He stated he was getting ready to run a bill in the Legislature to amend not only the Board's statutes, but others as well. He stated he's been at this for 40 years and he did not want to amend a state agency's statutes without first asking their permission or approval. He stated he would answer any questions the Commission may have.

Chairman Bauer stated he was a little confused why they were asking the Commission to get involved when it is the Board's duty to police this issue. Mr. Gray stated they were not asking the Commission to police this issue, but only to require permittees certify their people are legal... to check a block saying, "Yes. We have security, and they are licensed." He added it was a good way for the Board to get information and in turn get information out to permittees. He stated in the future they would need to come up with a way to share this information digitally just as the Commission does with the Secretary of State and the Department of Revenue.

Assistant General Counsel Renee Metz approached the podium to present her perspective. She opened stating N.C.G.S. §150B-19 restricts what can be adopted as a rule. She read, "An agency may not adopt a rule that does one or more of the following: (3) imposes criminal liability or a civil penalty for an act or omission, including the violation of a rule, unless a law specifically authorizes the agency to do so, or a law declares that violation of the rule is a criminal offense or is grounds for civil penalty."

Ms. Metz stated there was nothing in Chapter 18B regarding armed services. She stated the requirements previously mentioned by Mr. Gray regarding building code, fire code, and zoning are actually in statute. She explained they are the required qualifications to receive and hold an ABC permit. She stated the

Commission could make rules to further clarify those statutes if the need arose. She stated there was nothing in statute authorizing the Commission to require armed services of any permittee.

Ms. Metz continued stating there are several statutes giving the Commission rulemaking authority regarding advertising, ocean going ships, standards for local boards, rules regarding the warehouse. She stated that these statutes give the Commission rulemaking authority for very specific topics. She concluded simply stating she did not believe, at this time, the Commission had authority to make a rule regarding armed protective services. She stated if the General Assembly wanted to give it to the Commission, they could respond by writing a rule. She stated until such time that that happens, she did not recommend the Commission adopt this rule.

Mr. Gray made some rebuttal remarks and then Ms. Metz stated Hardy Lewis, representative of the North Carolina Restaurant and Lodging Association, also had some remarks. Mr. Lewis stated he was alarmed not having been consulted. He stated the Association was always open to talking about these issues.

Mr. Lewis stated he did not want to echo Ms. Metz, but N.C.G.S. §150B-19 did say that rulemaking shall not repeat the content of a law. He said that's what is being asked here because N.C.G.S. §74C-13(b) already states that it's unlawful to employ an armed security unless that person is certified with the Board.

Mr. Lewis stated his clients are prosecuted administratively. He stated the violations come into the Commission and his clients are sent a Notice of Alleged Violation which they must deal with. He stated the matter was already being policed in the appropriate way.

Mr. Lewis also mentioned he thought Mr. Gray said something about expanding this to unarmed security. He stated if that was the case, the effect would be instead of being able to employ people who have security as part of their job, who also perform other tasks such as checking IDs and bussing tables, that those people would have to be certified. He stated the effect would be fewer security because the cost would be much higher.

Mr. Lewis concluded stating what he sees is the Board investigating potential violations by demanding entrance to his client's premises and then going to everyone who's identified as a security guard, asking them for their badge, their Board badge, or asking them for proof of their employment. He stated creating separate agency administrative search rights that are considered an exception to the 4<sup>th</sup> Amendment to the United States Constitution was a big deal to his clients. Mr. Lewis asked that the Commission consider denying this request.

Mr. Gray clarified his position that he was not talking about employees unless they were armed. He stated, "If you're not armed and you're an employee, you're exempt our law." He reiterated his position.

Chairman Bauer made a motion to deny this rulemaking request. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

## **VII. OTHER BUSINESS**

Chairman Bauer asked if there was any other business. Hearing none, he adjourned the January 15, 2025, Commission meeting.

The next Commission meeting will be held Wednesday, February 12, 2025, beginning at 10:00 AM at the ABC Commission.

/S/ Hank Bauer  
Hank Bauer, Chairman  
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

/S/ Jennifer Temple  
Jennifer Temple for the Legal Section