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**EMAIL TO:** All Sheriffs

**FROM:** Eddie Caldwell  
Executive Vice President and General Counsel  
North Carolina Sheriffs' Association

**SENT:** December 23, 2020

**SUBJECT:** Executive Order No. 183 - Sale of Mixed Alcoholic Beverages for  
Carry-Out or Delivery

On December 21, 2020, Governor Roy Cooper issued Executive Order No. 183 which became **effective beginning at 5:00 p.m. on Monday, December 21, 2020**, and will remain in effect until January 31, 2021 at 5:00 p.m., unless replaced or rescinded by another Executive Order.

The following information will assist you in understanding the provisions in Executive Order No. 183:

- A copy of Executive Order No. 183 is attached for your reference.
- A frequently asked questions document issued by Governor Roy Cooper is also attached for your reference.

Executive Order No. 183 says that it will allow, if approved by the Chair of the ABC Commission, for the carry-out sale ("to-go") or delivery of mixed alcoholic beverages in a sealed container. **However, current State law does not authorize mixed alcoholic beverages to be sold for carry-out.** Pursuant to North Carolina General Statute § 18B-1001(10), mixed beverage permit holders are not authorized to sell mixed beverages as a carry-out item to customers even if they are sold and transported off-premises in a sealed container. We are not aware of and have not found any legal authority that would authorize an override of this State law prohibition by the Governor or by the Chair of the ABC Commission (even if directed to do so by the Governor).

Nevertheless, below we summarize the contents of Executive Order No. 183.



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### **Carry-Out and Delivery of Mixed Alcoholic Beverages if Sold and Transported in a Sealed Container**

Section 2 of Executive Order No. 183 says that businesses that have a mixed beverage permit issued by the ABC Commission, such as restaurants, bars, hotels, private clubs and certain distilleries, may sell mixed alcoholic beverages to customers as a carry-out (“to-go”) item for consumption off-premises. The Executive Order also says that these mixed beverage permit holders may offer delivery service so that mixed alcoholic beverages in a sealed container can be delivered to the “purchaser’s location” off-premises.

The mixed alcoholic beverage that is referenced in the Executive Order must be of the “standard size” sold by the permitted business, and must be in a container that is sealed in such a way that the customer cannot reseal the mixed alcoholic beverage after they have broken the seal to consume the drink.

Executive Order No. 183 says that the sale of one carry-out mixed alcoholic beverage per customer at a time is allowed, and that multiple people at the same address or multiple people in the same group may place a single carry-out order that would equal one mixed alcoholic beverage per person.

Executive Order No. 183 says that the Chair of the ABC Commission may “order a waiver and modification of any legal or regulatory constraints that would prevent or impair” the Governor’s objective of allowing for carry-out orders of mixed alcoholic beverages in sealed containers. The Order then “instructs the Chair to order such a waiver and modification” according to the various parameters described in the Executive Order.

### **The Sale for Carry-Out or Delivery of Mixed Alcoholic Beverages After 9:00 p.m.**

Executive Order No. 183 says that the carry-out sale (“to-go”) or delivery of mixed alcoholic beverages at permitted businesses may take place after 9:00 p.m. However, the Governor’s current restrictions contained in Executive Order No. 181 that require on-site consumption of alcoholic beverages to cease at 9:00 p.m. remain in effect. Executive Order No. 181 still prohibits the sale or service of alcoholic beverages for on-site consumption between the hours of 9:00 p.m. and 7:00 a.m. at bars, restaurants (including private and members only clubs), wineries, breweries, distilleries, and any other businesses that sell or serve alcohol for on-site consumption and are permitted to be open under previous Executive Orders.

### **Delivery Services**

Executive Order No. 183 says that employees of the above permitted businesses and delivery services under written contract with the above permitted businesses may deliver mixed alcoholic beverages to customers in sealed containers provided the individuals making the deliveries meet all of the training and delivery requirements that are contained in our State law regulating alcoholic beverages (Chapter 18B). For example, individuals making these deliveries must be at least 21 years old, must meet certain training requirements, and are required to verify at the point of delivery that each customer receiving his or her single alcoholic beverage is at least 21 years of age.

The Executive Order says that delivery of mixed alcoholic beverages in sealed containers must be prepaid and must be made within the State of North Carolina. And it says that delivery of these

mixed alcoholic beverages may not be made more than 50 miles from the location of the permitted business.

### **Transportation of any Spirituous Liquor In Passenger Area of a Motor Vehicle Must be in Manufacturer's Original Sealed Container**

North Carolina General Statute § 18B-401 makes it a Class 3 misdemeanor to transport any spirituous liquor in the passenger area of a motor vehicle in anything other than the manufacturer's unopened original container. Current State law makes it unlawful to transport a mixed alcoholic beverage in the passenger area of a motor vehicle even if a bar or restaurant mixes the alcoholic beverage and seals it in a container for transport.

The passenger area of a motor vehicle means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment of the vehicle. In the case of a station wagon, hatchback, sport utility vehicle, or other similar vehicle, the area behind the last upright back seat is not considered part of the passenger area.

North Carolina General Statute § 18B-203 sets forth the legal powers and duties of the ABC Commission. While these powers and duties are varied, they do not include the authority to suspend or rewrite a State statute or any other criminal law violation imposed by the North Carolina General Assembly. Therefore, we are not aware of and have not found any legal authority that would authorize the Governor or the Chair of the ABC Commission to override the State law prohibition against transporting any spirituous liquor in the passenger area of a motor vehicle in anything other than the manufacturer's unopened original container.

### **Summary**

1. Current State law does not authorize the sale of a mixed alcoholic beverage for carry-out or delivery to the customer even if the alcoholic beverage is sold and transported off-premises in a sealed container. We are not aware of and have not found any legal authority that would authorize an override of this State law prohibition by the Governor or the Chair of the ABC Commission (even if directed to do so by the Governor).
2. Current State law does not authorize the transportation of any spirituous liquor in the passenger area of a motor vehicle in anything other than the manufacturer's unopened original container. We are not aware of and have not found any legal authority that would authorize an override by the Governor or the Chair of the ABC Commission (even if directed to do so by the Governor) of the statutory prohibition against transporting any spirituous liquor in the passenger area of a motor vehicle in anything other than the manufacturer's unopened original container.

Any spirituous liquor in any container other than the manufacturer's unopened original container would have to be transported in the trunk of a motor vehicle or other area considered by law not to be the passenger area.

3. As of the writing of this notice, we are not aware of the Chair of the ABC Commission taking any official action stating that ABC establishments are authorized to sell for carry-out or delivery mixed alcoholic beverages in sealed containers, as discussed in Executive Order No. 183. In the event such action is taken, Executive Order No. 183 indicates that it will be posted in a public document on the ABC Commission's website.

4. We are not aware of and have not found any legal authority for the Governor to authorize or direct the suspension of statutory mandates contained in Chapter 18B of the General Statutes, including the prohibition against selling mixed alcoholic beverages for carry-out and consumption off-site. No such authority is identified in the Governor's Executive Orders and no such authority can be found in the General Statutes.

### **Enforcement**

As with all other Executive Orders, State and local law enforcement officers may enforce the provisions contained in the Governor's Executive Orders and a violation constitutes a Class 2 misdemeanor.

### **Questions**

If you have any questions about Executive Order No. 183, do not hesitate to contact Matthew Boyatt, NCSA Deputy General Counsel, at [mboyatt@ncsheriffs.net](mailto:mboyatt@ncsheriffs.net) or at 919-459-6467.

Thanks...Eddie C.

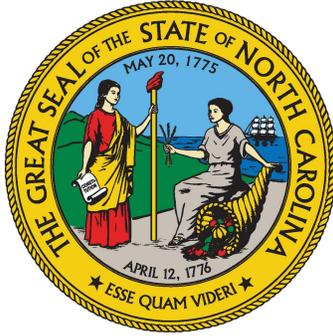


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## Frequently Asked Questions (“FAQ”) for Executive Order No. 183

December 21, 2020

This FAQ provides guidance for the implementation of Executive Order No. 183 (“Order”). The Order is intended to encourage additional delivery and carry-out services as a means of reducing COVID-19 transmission in North Carolina. Specifically, it authorizes and instructs the Chair of the North Carolina Alcoholic Beverage Control Commission (“ABC Commission”) to temporarily allow certain mixed beverage permittees (“Permitted Sellers”) to sell and deliver mixed beverages for off-site consumption (“to go”), with limitations. The Order is effective December 21, 2020 at 5:00 p.m. through January 31, 2021 at 5:00 p.m., unless otherwise modified or extended. Below are frequently asked questions (“FAQs”) and their answers.

Unless otherwise specified in the Order, the Order and this FAQ should be interpreted as consistent with ABC laws and any guidance promulgated by the ABC Commission on mixed beverages to-go. Under the Order, the ABC Commission may, consistent with the intent of the Order, modify certain terms contained in the Order governing the sale of mixed beverages to-go, by posting a public document to its website. Please check the ABC Commission website regularly for supplemental information concerning the Order.

For avoidance of doubt, the terms of the Order and the delegation of authority given to the ABC Chair does not permit unsealed containers of alcoholic beverages in vehicles, and does not permit the sale of mixed beverages to anyone under the age of twenty-one (21) or who is visibly intoxicated.

This FAQ is intended to be a general summary of Executive Order No. 183. In the event of a conflict between this FAQ and the Order, the Order shall control.

In addition, the information in this FAQ is subject to change in light of new Centers for Disease Control & Prevention guidance and future Executive Orders, further agency guidance, or local government declarations. Individuals should also check with local governments to determine whether additional restrictions have been imposed in their local jurisdictions to limit the spread of COVID-19.

## FAQs related to the Order

### **When does this Order take effect?**

This Order takes effect on December 21, 2020 at 5:00 p.m. It is effective until January 31, 2021 at 5:00 p.m.

### **What does this Order do?**

Under this Order, the Governor authorizes and instructs the Chair of the ABC Commission to allow certain Permitted Sellers, including restaurants, hotels, private clubs, private bars, and holders of distillery permits to sell mixed beverages to-go, with limitations.

The Order sets out terms and conditions for Permitted Sellers who sell mixed beverages to-go, individuals and businesses that deliver mixed-beverages to-go (“Deliverers”) and consumers who purchase mixed beverages to-go (“Purchasers”).

Permitted Sellers, Deliverers, and Purchasers must follow the applicable restrictions in the Order and any additional guidance established by the ABC Commission pertaining to the sale, delivery, and transport of mixed beverages to-go.

### **Why is this Order necessary?**

As of the date of the Order and this FAQ, North Carolina is experiencing a severe and critical spike in COVID-19 cases, and it is crucial that the state continue its efforts to minimize transmission of the virus. To supplement the protective health measures currently in place under Executive Order No. 181 (the Modified Stay at Home Order), this Order will take additional actions to help limit the number of people in one place at the same time, and to minimize the time spent and maximize the distance between people in such situations. Allowing delivery of mixed beverages decreases customer-to-customer interactions between people who are not members of the same household and significantly reduces customer-to-employee interactions, thereby significantly reducing the likelihood of viral spread.

In addition, this Order may provide economic relief to bars, restaurants, and other businesses, by enabling an additional revenue opportunity through the sale of mixed beverages to-go.

### **How does this Order ensure individuals under the age of 21 do not have increased access to alcoholic beverages?**

The Purchaser shall provide proof of identification at the point of delivery. Proof of identification permissible at a Permitted Seller’s physical location shall be accepted at the point of delivery. In addition, delivery may only be made to the individual who purchased the mixed beverage and whose name appears on or with the mixed beverage container and must match the identification of the person who takes actual possession of the alcohol. In the event of delivery of multiple alcoholic beverages to

one location, the deliverer must verify the identification of each individual and only that individual may take actual possession.

### FAQ for Purchasers of Mixed Beverages To-Go

#### **What are mixed beverages to-go?**

A mixed beverage has the meaning assigned to it under N.C. Gen. Stat. § 18B-101(10). Many mixed beverages are commonly referred to as “cocktails.”

For the duration of this Order, mixed beverages may be purchased on the premises of a Permitted Establishment for consumption off-premises, or via delivery to one’s home or other location, subject to the terms of the Order and other applicable laws and regulations. This is referred to throughout this FAQ as mixed beverages to-go.

This Order does not modify existing laws and regulations governing the sale of beer and wine.

#### **How many mixed beverages to-go may a customer order at a single time?**

Consistent with applicable law, individuals over the age of twenty-one (21) may order one (1) mixed beverage drink per person to-go. This does not mean that only one drink may be delivered per house, because multiple people at the same address may each be a separate Purchaser. Each Purchaser of a mixed beverage must be present to receive the mixed beverage.

#### **Does the sale of mixed beverages to-go have to be accompanied with the sale of food?**

No. This Order does not require that the sale of mixed beverages be accompanied by the sale of food.

#### **May individuals enter into the premises of a bar, restaurant, or other Permitted Seller to pick up mixed beverages to-go?**

Yes. However, guests picking up mixed-beverages for off-premises consumption must be at least 21 years of age, not visibly intoxicated, and must show valid identification before taking possession of mixed beverages. In addition, individuals entering the premises must abide by the mask mandate and other social distancing requirements.

#### **Where must the mixed beverage be kept while in transport?**

The transportation of a mixed beverage pursuant to this Order must be in a sealed container and must be kept at all times during transport in the passenger area of a motor vehicle.

#### **Does this Order permit individuals to consume the alcoholic beverages in their vehicle?**

No.

**Can individuals travel during the Stay at Home Period established by Executive Order No. 181 to pick up an alcoholic beverage?**

Yes. Travel for the purpose of obtaining a mixed beverage during the Stay at Home period is permitted.

**If someone in my household is picking up dinner and drinks, can he or she receive a mixed beverage on my behalf if I am not in the vehicle or otherwise present?**

No. Each person must be present at pickup so that the Permitted Seller may verify the individual's age and that they are not visibly intoxicated.

**If a patron does not finish a mixed beverage served to them at a bar, restaurant, or other Permitted Seller by 10:00 p.m., may they take that mixed beverage to go?**

Yes. However, the mixed beverage must be sealed and packaged in accordance with the requirements of the Order and other guidance established by the ABC Commission.

#### *FAQ for Permitted Sellers of Mixed Beverages To-Go*

**May Permitted Sellers remain open past the 10:00 p.m. for the sale of mixed beverages to-go?**

Yes. These establishments may remain open for the provision of take-out and delivery services. They shall otherwise remain closed to the public after 10:00 p.m.

**Does this Order extend the time when Permitted Sellers may sell and serve alcoholic beverages?**

No. Other Executive Orders establish the time at which establishments must cease customers' on-premises consumption of alcoholic beverages. Permitted Sellers may continue sales of alcoholic beverages to-go past that time, until the time set by otherwise applicable laws. For example, if laws establish that alcoholic beverage sales end at 2:00 am, a Permitted Seller could sell a mixed beverage to-go until the establishment closes, but no later than 2:00 am.

**Does this Order restrict the amount or size of the mixed beverage that a Permitted Seller is allowed to sell?**

Yes. Mixed beverages shall not be larger than the Permitted Seller's standard size of a mixed beverage drink for on-premises consumption. The intent of this Order is to allow Permitted Sellers to sell the same size drink sold on premises and not to expand their mixed beverage menu to sell multiple drinks in one container.

#### *FAQ for Deliverers*

**Who can deliver mixed beverages to-go?**

An employee or agent of the Permitted Seller or a third-party delivery service authorized by state law may deliver mixed beverages to-go. However, the Deliverer must have successfully completed the course for delivery service offered by the ABC Commission, be at least twenty-one (21) years old, and meet the other requirements in the Order.

**What additional requirements must Deliverers comply with in order to deliver mixed beverages to-go?**

An individual delivering a mixed beverage on behalf of a Permitted Seller, including an employee, agent, or third-party delivery service, must have proof of their authorization to deliver the mixed beverage on the Permitted Seller's behalf. In addition, Deliverers must maintain a contract with the Permitted Seller, in writing, during the duration of the delivery arrangement.

**When is the cut-off time for delivering alcoholic beverages?**

Mixed beverages sold for off-site consumption must be delivered before the Permitted Seller closes and no later than 2:00 a.m., in accordance with state law. Permitted Sellers and Deliverers should check with their local jurisdictions for other applicable restrictions.

**Must orders for mixed beverages to-go be prepaid directly to the Permitted Seller or can the Deliverer receive payment when the order is delivered?**

Delivery orders must be prepaid and the Deliverer may not receive payment for the mixed beverage directly at the time of delivery. This does not prevent a Deliverer from receiving a tip from the Purchaser.

**Can a Deliverer deliver mixed beverages to-go to a public school, college, or university?**

No. Under this Order delivery may not be made to a public school, college, or university, or any other place where such delivery is restricted by state law.

**I work for a third-party delivery service, but I am not 21 years old. May I deliver mixed beverages to-go under this Order?**

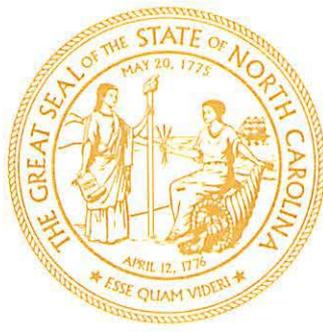
No. Any person delivering mixed beverages on behalf of a Permitted Seller must be at least 21 years of age.

**If I deliver more than one mixed beverage to a residence, do I have to physically verify each Purchaser's identity?**

Yes. The Deliverer must verify the identity of each Purchaser.

**Can I refuse delivery to someone who is intoxicated, not at least 21 years of age, or for whom I am unable to verify their identity?**

Yes. Nothing in this Order prevents a Deliverer or Permitted Seller from refusing the sale or service of mixed beverages to a customer.



# State of North Carolina

**ROY COOPER**  
GOVERNOR

December 21, 2020

## EXECUTIVE ORDER NO. 183

### AUTHORIZING DELIVERY AND CARRY-OUT OF SERVICES AND PRODUCTS AS AN ALTERNATIVE TO ON-SITE CONSUMPTION AND RECEIPT

**WHEREAS**, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the state's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

**WHEREAS**, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

**WHEREAS**, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

**WHEREAS**, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

**WHEREAS**, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165, 169-173, 176-177, and 180-181; and

**WHEREAS**, the undersigned has taken a science and data-driven approach to implementing public health measures to curb the spread of the virus and to advance the state's economy in a safe and effective way, which is in the best interests of all North Carolinians; and

**WHEREAS**, on September 30, 2020, the undersigned issued Executive Order No. 169, which transitioned the state into Phase 3 of its COVID-19 response; and

**WHEREAS**, concerning trends then led the undersigned to implement further protective actions, including a more protective numerical limit on indoor gatherings, requiring Face Coverings in additional settings, requiring night time closure to the public for certain business and activities, and directing that all North Carolinians stay at home, with exceptions, during the hours of 10:00 pm and 5:00 am every day; and

**WHEREAS**, these provisions are now part of Executive Order No. 181 (the "Modified Stay at Home Order"), effective December 11, 2020; and

### Benefits of Take-Out and Delivery During the Pandemic

**WHEREAS**, settings that are indoor, where people gather, remain stationary for an extended period of time, and cannot consistently wear a Face Covering have an increased risk of viral spread; and

**WHEREAS**, settings where there is increased respiratory effort — for example, conversations being held over music or background noise, singing, and dancing — increase the risk of viral spread; and

**WHEREAS**, these settings include restaurants, hotels, private clubs, private bars, and distilleries that sell mixed beverages; and

**WHEREAS**, in light of the risks of transmission presented by the sustained, maskless interactions inherent in indoor dining and drinking at restaurants, bars, and similar establishments, it reduces the risk of viral spread to allow delivery and take-out service; and

**WHEREAS**, for these reasons, restrictions should be lifted, wherever feasible and appropriate, to allow goods and services to be delivered to one's home; and

**WHEREAS**, for these reasons, the undersigned has determined that the Secretary of the North Carolina Health and Human Services requires authority to temporarily waive the enforcement of any legal or regulatory constraints that would prevent or impair the ability of open establishments to provide curbside pickup or delivery of health care goods and services; and

### Benefits of Allowing To-Go or Delivery Sales for Mixed Beverages

**WHEREAS**, allowing delivery of food and drinks decreases customer-to-customer interactions between people who are not members of the same household and significantly reduces customer-to-employee interactions, thereby significantly reducing the likelihood of viral spread; and

**WHEREAS**, allowing delivery of mixed beverage drinks to homes, as is done for other goods and services, can reduce this risk; and

**WHEREAS**, New Year's Eve and the winter holidays are traditionally times when people frequent bars to drink in celebration; and

**WHEREAS**, during the pandemic, public health will benefit if it is easier for people to drink and celebrate at home, reducing the number of people coming together in bars, restaurants, hotels, private clubs, and distilleries; and

### Economic Benefits of Mixed Beverage Sales

**WHEREAS**, under the Modified Stay at Home Order, bars and restaurants and other businesses must cease the sale and service of alcohol for on-premises consumption earlier in the evening, and these businesses must also operate at reduced capacity; and

**WHEREAS**, the sale of alcoholic beverages generates a substantial percentage of revenue for many restaurants and bars in the state; and

**WHEREAS**, bars and restaurants are currently limited in how they may sell mixed beverages, and thereby are denied a much-needed source of revenue during the COVID-19 pandemic; and

**WHEREAS**, the undersigned's administration has taken numerous actions to alleviate the financial hardship borne by bars and restaurants in the COVID-19 pandemic, including through the implementation of numerous financial assistance programs, and mortgage and utility relief for these impacted businesses; and

**WHEREAS**, the undersigned has determined that enabling the sale of mixed beverages for off-premise consumption (“to-go” sales) will provide an additional source of revenue for restaurants and bars in the state, that may offset any reduction in sales that may be caused by the reduced occupancy limits and limited hours of operation for these establishments under the Modified Stay at Home Order; and

Flexibility for the North Carolina Alcoholic Beverage and Control Commission to Permit To-Go Sales of Mixed Beverages

**WHEREAS**, the undersigned has determined that it is in the best interests of all North Carolinians to have additional goods and services available via home delivery or to-go orders; and

**WHEREAS**, enabling these channels to sell mixed beverages may reduce crowding in bars, restaurants, and other open establishments, especially during the winter months when more patrons must necessarily move indoors; and

**WHEREAS**, the undersigned has determined that by opening up these additional channels of commerce, crowds may be limited over the holidays, abating a need that otherwise might arise to increase restrictions on bars, restaurants, and other similar businesses; and

**WHEREAS**, the North Carolina Alcoholic Beverage Control Commission (“ABC Commission”) is charged under state law with regulating the access and availability of beer, wine, and mixed beverages; and

**WHEREAS**, the ABC Commission has the requisite experience and ability to monitor the sale, service, and distribution of alcoholic beverages in the state; and

**WHEREAS**, accordingly, the ABC Commission is best equipped to devise and implement all necessary terms and conditions to ensure that bars and restaurants engage in the sale of mixed beverages to-go in a safe and effective manner; and

**WHEREAS**, for the reasons stated above, the undersigned has determined that the Chair of the ABC Commission should have authority to temporarily waive the enforcement of any legal or regulatory constraints that would prevent or impair the sale of mixed beverages for off-premise consumption; and

**WHEREAS**, for avoidance of doubt, the terms of this Executive Order and the delegation of authority to the Chair of the ABC Commission herein do not permit unsealed containers of alcoholic beverages in vehicles, and do not permit the sale of mixed beverages to any individual who is under the age of twenty-one (21) or to any individual who is visibly intoxicated; and

Statutory Authority and Determinations

**WHEREAS**, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

**WHEREAS**, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate Gubernatorial vested authority under the Emergency Management Act and to provide for the sub-delegation of that authority; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the undersigned may take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of the Emergency Management Act and with the orders, rules, and regulations made thereunder; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(ii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because some but not all local authorities have taken implementing steps under such ordinances or declarations, if enacted or declared, in order to effectuate control over the emergency that has arisen; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because the area in which the emergency exists spreads across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iv), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection of lives and property of North Carolinians because the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(2), the undersigned, with the concurrence of the Council of State, may establish a system of economic controls over all resources, materials, and services, including shelter and rents; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency or political subdivision which restricts the immediate relief of human suffering; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with concurrence of the Council of State, may perform and exercise such other powers, functions, and duties as are necessary to promote the safety and protection of the civilian population; and

**WHEREAS**, the undersigned has sought and obtained concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30, as necessary.

**NOW, THEREFORE**, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

**Section 1. Curbside Pickup and Delivery of Health Care Goods and Services.**

For the reasons and pursuant to the authority set forth above:

To promote and secure the safety and protection of the civilian population, the undersigned, with the concurrence of the Council of State, takes the following temporary actions to encourage delivery and carry-out of certain goods and services during the emergency. These actions waive or modify the enforcement of legal or regulatory constraints, changing the system of economic controls over those goods and services.

- A. **Authority.** To meet the goal of protecting the public health by limiting the number of individuals who congregate together in an establishment, the undersigned delegates to the Secretary of Health and Human Services the authority to waive or modify enforcement of any legal or regulatory constraints that would prevent or impair the curbside pickup or delivery of health care goods and services.

**B. Temporary Nature of This Section.**

1. To resolve any implementation difficulties that may arise or respond to changing circumstances, the Secretary of Health and Human Services may reimpose, during the duration of this Executive Order, any legal or regulatory constraints for which the Secretary has waived enforcement of under this Section. Any such reimposition must be consistent with the intent of this Executive Order.
2. This Section allows only for the temporary waiver of certain legal and regulatory constraints. All actions by the Secretary of Health and Human Services or her delegate made pursuant to this Section shall be effective only through the duration of this Executive Order, including any extensions.

**Section 2. Allowing Delivery and To-Go Sales For Mixed Beverages.**

For the reasons and pursuant to the authority set forth above:

To promote and secure the safety and protection of the civilian population, the undersigned, with the concurrence of the Council of State, takes the following temporary actions to encourage delivery and carry-out of certain goods during the emergency. These actions waive or modify the enforcement of legal or regulatory constraints, changing the system of economic controls over those goods.

**A. Scope of this Section.**

1. This Section applies to mixed beverages, as that term is defined in N.C. Gen. Stat. § 18B-101(10). Unless otherwise specifically indicated, words in this Section have the meanings defined in Chapter 18B of the North Carolina General Statutes.
2. This Section applies only to the sale, delivery, possession, or transportation of mixed beverages that were either:
  - a. Sold by one of the following kinds of mixed beverage permittees listed in N.C. Gen. Stat. § 18B-1001(10):
    - Restaurants;
    - Hotels;
    - Private clubs;
    - Private bars;
    - Holders of distillery permits; or
  - b. Sold by distilleries that are authorized by law to sell, without a mixed beverage permit, mixed beverages containing spirituous liquor produced only at that distillery.

(Hereinafter, this Section refers to these specific kinds of mixed beverage permittees and distilleries as "Permitted Sellers.")

**B. Authority.** To meet the goal of protecting the public health by limiting the number of individuals who congregate together in an establishment, and to meet the goal of providing economic benefit to struggling bars, restaurants, and similar establishments, the undersigned delegates to the Chair of the ABC Commission the authority to order a waiver and modification of any legal or regulatory constraints that would prevent or impair:

1. Customers of a Permitted Seller from picking up a mixed beverage as a to-go order, kept in a sealed container;
2. Permitted Sellers from providing customers with mixed beverages, in a sealed container, as a to-go order; or

3. Permitted Sellers, their employees, and their permitted contractors from transporting and delivering mixed beverages, in a sealed container, to customers.

The undersigned further instructs the Chair to order such a waiver and modification under the terms set forth below in this Executive Order.

C. **Terms of Waiver and Modification.** Any waivers or modifications under this Section are subject to the following terms.

1. **Eligibility.**

- a. Mixed beverages sold by a Permitted Seller may be taken off-premises only by, and may be delivered only to the following:
  - i. An individual who purchased the mixed beverage for their own personal consumption (a "Purchaser"); or
  - ii. A delivery services permittee licensed under N.C. Gen. Stat. § 18B-1001.4, the Permitted Seller, or the Permitted Seller's employee (collectively, a "Deliverer") for delivery to the Purchaser at the Purchaser's location.

2. **Contract Between Permitted Seller and Deliverer.**

- a. A Permitted Seller may have one of its employees serve as a Deliverer under this Executive Order or may contract with a third-party Deliverer to deliver mixed beverages to persons to whom the Permitted Seller has sold mixed beverages. This contract must be under conditions identical to those stated in N.C. Gen. Stat. § 18B-1001.4, except for the references to other kinds of alcoholic beverages in that section.
- b. This contract shall be in writing and maintained by the Permitted Seller for the duration of the delivery arrangement. Deliverers shall deliver mixed beverages only from Permitted Sellers with whom the Deliverer has such a contract.

3. **Time.**

- a. Other Executive Orders establish the time at which establishments must cease customers' on-premises consumption of alcoholic beverages. Permitted Sellers may continue sales of alcoholic beverages for off-premises consumption past that time, until the time set by otherwise applicable laws. For example, if laws establish that alcoholic beverage sales end at 2:00 am, a Permitted Seller could sell a mixed beverage for delivery or off-premises consumption until the establishment closes, and no later than 2:00 am.
- b. Mixed beverages sold for off-premises consumption shall only be sold and delivered within the hours authorized by N.C. Gen. Stat. § 18B-1004.
- c. Moreover, Deliverers may not deliver after the Permitted Seller ceases alcoholic beverage sales.

4. **To-Go Sales.**

- a. No Permitted Seller shall sell any single Purchaser more than one mixed beverage drink at one time, in accordance with N.C. Gen. Stat. § 18B-1010 and 14B NCAC 15B.0223. This does not prevent multiple people at the same address or multiple people in the same group from each being a Purchaser and each ordering one mixed beverage.

- b. If mixed beverages are being ordered for off-premises consumption and the consumer is taking them off-premises, each individual who placed an order must be present to receive a mixed beverage.
- c. For any to-go sales, the Permitted Seller must provide to the Purchaser a receipt for the order that contains (i) an itemized list of the names and quantities of alcoholic beverages to be delivered; (ii) the name, address, and telephone number of the Permitted Seller; and (iii) the Purchaser's name.

5. Recipients for Deliveries.

- a. One mixed beverage drink per Purchaser may be ordered for delivery. Delivery may be made only to the Purchaser. No Purchaser may receive more than one mixed beverage drink. This does not prevent multiple people at the same address from each being a Purchaser and each receiving one mixed beverage.
- b. The Deliverer must identify and verify the age of each individual who will be receiving a mixed beverage in order to ensure the individual receiving the beverage is both (1) of legal age to consume alcohol, and (2) is not visibly intoxicated at the time the individual receives the beverage. Contactless delivery is permissible, but only where the delivering person can verify the age and sobriety of each individual receiving the mixed beverage.
- c. Recipients must be located in the State of North Carolina and must be no greater than fifty (50) miles from the Permitted Seller's location.
- d. No deliveries may be made to — and no recipient may consume a mixed beverage in — a place where possession of fortified wine and spirituous liquor is prohibited under N.C. Gen. Stat. § 18B-301.
- e. No delivery is permitted to higher education residence halls or to a place where sales are not approved by alcohol vote.

6. Delivery Restrictions.

- a. Any person delivering mixed beverages under this Executive Order must, prior to making any deliveries, meet the training requirement in N.C. Gen. Stat. § 18B-1001.4(b).
- b. All deliveries must comply with the conditions stated in N.C. Gen. Stat. § 18B-1001.4(b)-(f).
- c. The individual making the delivery must be at least twenty-one (21) years of age.
- d. Delivery orders must be prepaid and the Deliverer may not receive payment for the mixed beverage. Gratuities are excluded from this provision.
- e. When in possession of the mixed beverage, the Deliverer must have (i) a receipt for the order that contains the Purchaser's name and an itemized list of the names and quantities of alcoholic beverages to be delivered; (ii) the name, address, and telephone number of the Permitted Seller; (iii) the Purchaser's name and delivery address; and (iv) the Deliverer's delivery service permit number.
- f. After delivery, the Deliverer must maintain the receipt for a minimum of thirty (30) days from the delivery date.

7. Sealed Mixed Beverage Container.

- a. Mixed beverage orders that are delivered or are picked up to-go under this Executive Order must be contained in a sealed container, and must not be opened, until they reach the Purchaser's final location.
- b. Size. The sealed container shall not exceed 750 milliliters and also shall contain no more than the standard size of a mixed beverage drink sold by the Permitted Seller for on-premises consumption, consistent with 14B N.C. Admin. Code 15B.0223. The intent of this Executive Order is to allow Permitted Sellers to sell the same size drink sold on premises and not to expand their mixed beverage menu to sell multiple drinks in one container.
- c. Seal. The container shall be secured by the Permitted Seller so that no mixed beverages can be removed without breaking a seal that is incapable of being resealed except by the Permitted Seller. No drink shall be sold or delivered if the seal is broken.
- d. Label. The container shall have an indelible label that contains at least the following information, in type not smaller than 3 millimeters in height and not more than 12 characters per inch:
  - i. Drink name, or type of spirituous liquor the beverage contains.
  - ii. Quantity of spirituous liquor.
  - iii. Name of the person to whom the mixed beverage was sold, if the beverage is being delivered.
  - iv. The statement "The contents of this container shall not be purchased by, possessed by, or given to, any individual under the age of 21 years."
- e. The container for delivery may not be the original bottle in which the Permitted Seller received alcohol. Mini-bottles for retail sale are not mixed beverages authorized for delivery or sale for off-premises consumption under this Executive Order.

8. Other Requirements for Sales and Deliveries.

- a. If a Permitted Seller, prior to the date of this Executive Order, served groups of two or more patrons drinks in a combined quantity for the table, that drink may be sold by the Permitted Seller and delivered to a group of two or more Purchasers under this Section. If necessary, the drink may be split between more than one of the sealed containers required under Subsection C(7) above. All of the Purchasers must have their identities verified by the Deliverer.
- b. The sales transaction must occur in person on the licensed premise or via a computer located on the premises (including remote orders taken through the Internet or by telephone). Mixed beverages for off-premises consumption may be sold and delivered regardless of whether food is being purchased.
- c. Any recognized form of identification that is lawful and accepted at a Permitted Seller premises is acceptable as a form of identification required to deliver the mixed beverage.
- d. Nothing in this Executive Order prevents a Permitted Seller or Deliverer from refusing service to a customer for off-premises consumption or delivery purposes.
- e. Nothing in this Executive Order shall affect a Permitted Seller's obligations with respect to the original containers in which it receives spirituous alcohol.

9. Penalty for Non-Compliance.

- a. If out of compliance with the terms stated above, a sale of mixed beverages for off-premises consumption, and the possession, transportation, and delivery of those mixed beverages, shall not be authorized under this Executive Order and shall continue to be unlawful under Chapters 18B and 20 of the General Statutes.

D. Transportation in a To-Go Container.

1. The transportation of a mixed beverage pursuant to this Executive Order shall not be unlawful if the container continues to be sealed and is in the passenger area of a motor vehicle.
2. It shall remain unlawful for a person in a motor vehicle on a public highway or public vehicular area to:
  - a. Consume in that vehicle any mixed beverage, spirituous liquor, malt beverage, or unfortified wine or transport in the passenger area of that vehicle; or
  - b. Either possess or transport a container of a mixed beverage where the seal required under Subsection C(7) of this Executive Order has been broken.

E. Modifications; Temporary Nature of This Section.

1. To resolve any implementation difficulties that may arise or respond to changing circumstances, the Chair of the ABC Commission may modify the terms stated in Subsection C above by posting a public document to the ABC Commission's website. Any such modification must be consistent with the intent of this Executive Order. Any such modification shall be effective seventy-two (72) hours after it is posted.
2. This Section allows only for the temporary waiver of certain legal and regulatory constraints which would prevent or impair the sale of mixed beverages by establishments holding a permit issued under N.C. Gen. Stat. § 18B-1001(10). All actions by the Chair of the ABC Commission made pursuant to this Section shall be allowed only through the duration of this Executive Order, including any extensions.

- F. Regulations and Statutes Impacted. The statutes on alcoholic beverages shall have enforcement waived or modified only to the degree necessary to fulfill this Executive Order, and enforcement is not waived or modified beyond that extent. Without limiting the foregoing, the undersigned delegates to the Chair of the ABC Commission the authority to waive or modify enforcement of 14B N.C. Admin. Code 15B.0220(e), 15B.0504, 15B.0505, 15B.0506(a), 15B.0507, 15B.0510, and 15B.1006.

**Section 3. Conforming Amendments to Executive Order No. 181.**

For the reasons and pursuant to the authority as set forth above, Executive Order No. 181 shall be amended as follows.

- A. Section 4.3(a)(4) of Executive Order No. 181 shall be replaced with the following:

“Travel to obtain groceries, take-out food or beverages, medical care, fuel, health care supplies, social services, or financial services from businesses licensed pursuant to Article 16B of N.C. Gen. Stat. Chapter 53.”

- B. Section 3.17(c) of Executive Order No. 181 shall be replaced with the following:

“This Subsection 3.17 does not apply to Retail Businesses that sell groceries, medication, fuel, or health care supplies, or that provide financial services licensed pursuant to Article 16B of N.C. Gen. Stat. Chapter 53.”

#### **Section 4. Notification Process for Waivers or Modifications.**

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

Upon exercising any of the delegated authority described in this Executive Order, officials shall notify the Office of the Governor of such actions taken. The notifications and the summary required by this Section shall be made as soon as practicable under the conditions of the current emergency. The official shall also notify the Codifier of Rules of waivers or modifications of any regulations.

#### **Section 5. No Private Right of Action.**

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

#### **Section 6. Savings Clause.**

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

#### **Section 7. Distribution.**

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

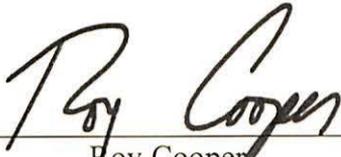
#### **Section 8. Enforcement.**

- A. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers. Enforcement of the night-time stay-at-home provisions of Executive Order No. 181 shall be limited as stated in Subsection 4.3 of Executive Order No. 181.
- B. A violation of this Executive Order may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d), and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.
- C. This Executive Order does not limit Alcohol Law Enforcement's existing authority to take any action necessary (criminal or administrative through the ABC Commission) to enforce the provisions of this Executive Order or any waivers or modifications for sales and deliveries of alcoholic beverages prescribed by the ABC Commission.
- D. Nothing in this Executive Order shall be construed to preempt or overrule a court order regarding an individual's conduct (e.g., a Domestic Violence Protection Order or similar orders limiting an individual's access to a particular place).

**Section 9. Effective Date.**

This Executive Order is effective December 21, 2020, at 5:00 pm. This Executive Order shall remain in effect through January 31, 2021, at 5:00 pm. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 21<sup>st</sup> day of December in the year of our Lord two thousand and twenty.

  
\_\_\_\_\_  
Roy Cooper  
Governor

**ATTEST:**

  
\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State

