



2005

**North Carolina General Assembly
Issues of Interest to Retail**



The Thumbs Up

Far Exceeded

the

Thumbs Down



2005 North Carolina General Assembly

Issues of Interest to General Retail

The 2005 Long Session of the North Carolina General Assembly convened on January 26 and adjourned on September 2. During that period elected officials cranked out a lot of strange and interesting issues that proved exhaustive to your staff. The North Carolina Retail Merchants Association lobbyists were forced to play “defense” on a number of issues – some extremely controversial – while also trying to push forward with an aggressive “offensive” legislative agenda. It got to the point where legislators were saying to us “boy, you guys have really had a tough session.” Yes, it was tough work, and the rumors of our defeat were unfounded as we outworked other special interests to end up having an extremely successful session.

While NCRMA did not get everything it wanted – most trade associations never do – **our legislative victories far exceed our defeats**. Of note, were legislative successes such as **maintaining the current Medicaid pharmacy reimbursement** (the initial proposal was a \$34 million cut); remaining in compliance with the **Streamlined Sales Tax Agreement**; protection for pharmacies from discovery of medication errors through **Quality Assurance**; legislatively **overturning the decision of the ABC Commission on split case fees on wine**; reauthorization of **wine tastings** in retail stores in North Carolina; amending the law on **indecent exposure** to make retail stores safe for children; enacting **reasonable measures** to enable the ABC Commission to **shut down “bad actor” alcohol permittees**; defeating a **minimum wage increase**; halting unconstitutional legislation that would make it a crime for a retailer to sell **“violent” video games**; ensuring that **all retailers can continue to sell some forms of cold medicine containing pseudoephedrine**; allowing retailers to continue to **sell gasoline at the competitive price of their choosing**; stopping the **implementation of sales and use tax on warranties and service agreements** and halting a **\$10 advance disposal fee on televisions and computers**.

It was with great disappointment that North Carolina finally succumbed to the pressure of the surrounding states and enacted a **Lottery**. Additionally, important legislation **regulating Pharmacy Benefit Managers** and **increasing the worthless check fee** ran into roadblocks. These two issues will be at the forefront of NCRMA’s legislative agenda when the **General Assembly reconvenes for its short session on May 9, 2006**.


NCRMA reviewed and tracked **in excess of 1,000 bills** last session. Many of those bills could have had an extremely negative impact on the bottom-line of your store. NCRMA always does its best to defeat such bills, or at a minimum we work to exempt retailers from the bill’s requirements. Sometimes political forces, a recent event, or the media mandate that a bad bill pass. In these situations, NCRMA must recognize and accept the political realities and amend the bill to obtain the best possible deal for its members. An example of these political forces in 2005 was the **Methamphetamine issue**. Due to pressure from the Attorney General and the media, NCRMA realized some form of the bill was going to pass. Our job was to get the best deal we could get to keep as many products on the shelves and with as few restrictions as possible.


The Symbols and What They Mean


Where NCRMA was successful in passing good legislation or in defeating bad legislation you will see a **thumbs-up**. In those instances where NCRMA was unsuccessful in passing a good bill or in defeating a bad bill you will see a **thumbs-down**. In those instances where a bad bill was introduced and due to political realities NCRMA was successful in amending the bill to make it better for retail you will see a **check mark**. We have also sprinkled a couple of bills that may not be specifically tied to retail, but may be of general interest to you and these are designated by an **asterisk**. The **2005 Long Session** is divided into two sections:


- 1) **Bills That Were Enacted in 2005**
- 2) **Bills NCRMA Lobbied in 2005 That Were Not Enacted**


Bills That Were Enacted in 2005

1) Streamlined Sales Tax – Senate Bill 622 – Key Legislators – Senator John Kerr (D-Wayne), Senator David Hoyle (D-Gaston), Representative Paul Luebke (D-Durham) and Representative Pryor Gibson (D-Anson). North Carolina enacted all of the necessary changes to remain in compliance with the Streamlined Sales Tax Agreement. North Carolina continues to be a leader in the effort to level the playing field between brick and mortar stores and internet vendors. NCRMA is a key reason why North Carolina is leading the way. 

2) Methamphetamines – House Bill 248, Senate Bill 686 and House Bill 1345 – Key Legislators – Senator Walter Dalton (D-Rutherford), Senator John Snow (D-Cherokee), Representative Phil Haire (D-Haywood), Representative Lorene Coates (D-Rowan), Representative Bill Culpepper (D-Chowan), Representative Rick Glazier (D-Cumberland). The battle over restrictions on cold medicine that can be used to manufacture methamphetamines has been one of the most controversial issues NCRMA has worked on in the past decade. On one side sits the Attorney General, law enforcement, child advocacy groups, district attorneys and the media, and on the other side sits NCRMA. NCRMA worked all session to try to reach a compromise with the opposition to enact reasonable restrictions only to see the opposition continue to maintain its position of no compromise. The methamphetamine bill was the last bill passed by the 2005 General Assembly and was described as “one of the most heavily lobbied bills in 2005 by the *Winston-Salem Journal*. The legislation, although far from perfect, ended up better than anticipated when the Conference Committee began working out the differences between the Senate and House bills. Although single-entity and multi-source products will only be available from behind the pharmacy counter, we were able to maintain gel caps, liquids and pediatrics as unrestricted products that will be available on the shelves of all retailers. 

3) Pharmacy Reimbursement – Senate Bill 622 – Key Legislators – Representative Edd Nye (D-Bladen), Representative Jim Crawford (D-Granville), Representative Bobby England (D-Rutherford), Senator Walter Dalton (D-Rutherford), Senator Vernon Malone (D-Wake) and Senator Bill Purcell (D-Scotland). For the fourth straight year legislators have heard our petition and as a result we have avoided cuts to the Medicaid reimbursement paid to community pharmacies. The initial proposal would have resulted in approximately a \$34.5 million reduction in 2005. In cooperation with the Association of Community Pharmacists, we were able to whittle this down to \$3.5 million and then later eliminate the entire reduction. This was an enormous accomplishment in light of the budgetary pressures that the General Assembly faced. 

4) Pharmacy Quality Assurance – House Bill 1493 – Representative Nelson Cole (D-Rockingham) and Senator Bill Purcell (D-Scotland). NCRMA, in cooperation with the Association of Community Pharmacists, pushed through legislation requiring continuous review of medication errors occurring in community pharmacies and providing protection against plaintiff attorneys and the Board of Pharmacy obtaining information on such errors. This legislation was based upon a recommendation of a Task Force appointed by the North Carolina Board of Pharmacy and chaired by Mike James. 

5) Split Case Fees on Wine – House Bill 1429 – Key Legislators – Representative Pryor Gibson (D-Anson), Representative Jim Harrell (D-Surry) and Senator Kay Hagan (D-Guilford). In March, the North Carolina Alcoholic Beverage Control Commission ruled that wine wholesalers were required to charge wine retailers a fee to split a case of wine. They argued that the wholesaler’s labor to package a case of wine made up of six bottles of white and six bottles of red needed to be compensated by the retailer. NCRMA sprang into action and had language changing the statute on which the Commission had based their decision inserted into a Senate Bill and subsequently into a House Bill that was eventually enacted. This legislative change will save retailers millions of dollars going forward. 

6) Wine Tastings in Retail Stores – House Bill 1500 – Key Legislators – Representative Pryor Gibson (D-Anson), Representative Jim Harrell (D-Surry) and Senator Tony Rand (D-Cumberland).



In October, 2004, the North Carolina Alcoholic Beverage Control Commission ruled that retailers must perform every task necessary to conduct a wine tasting in a retail store and barred wine wholesalers from participating in any way. This ruling came despite the fact that retailers, wineries and wine wholesalers had adopted an industry standard in conducting wine tastings in light of the fact that the Commission had failed to adopt an administrative rule governing wine tastings when the enabling legislation was enacted in 2001. NCRMA pulled representatives from the three-tiers together, worked out a compromise, took this compromise to the Commission, and then worked to get the compromise enacted into law.

7) Lottery – House Bill 1023 – Key Legislators – Representative Bill Owens (D-Pasquotank), Representative Hugh Holliman (D-Davidson) and Senator Tony Rand (D-Cumberland).



Speaker Jim Black finally garnered enough votes to pass a slim-downed Lottery bill in the House only to see the Senate struggle to cobble together enough votes to pass the bill. After initially stating that the Senate had completed its work for the year, the Senate in a surprise move returned to Raleigh and approved the Lottery with the Lt. Governor breaking the 24-24 deadlock. The deadlock was only achieved after two Republican Senators opposed to the Lottery failed to return to Raleigh for the vote on this measure.

8) Local Alcohol Regulation – House Bill 1174 and House Bill 808 – Key Legislators – Representative Deborah Ross (D-Wake) Representative Paul Miller (D-Durham) and Representative Bernard Allen (D-Wake).



NCRMA was successful in defeating two bills that would have granted authority to local governments to regulate alcohol which would have resulted in a patchwork of laws throughout the various cities and counties of the state. NCRMA then worked with Representative Deborah Ross (D-Wake) to craft a bill to address “bad actor” permittees in her district without hurting the business operations of legitimate retailers. By working with Representative Ross on a reasonable solution, we hope to have put this perennial local control issue to rest for some time.

9) Identity Theft – Senate Bill 1048 – Key Legislators – Senator Dan Clodfelter (D-Mecklenburg) and Representative Bruce Goforth (D-Buncombe).



Identity Theft was a popular – and controversial – issue in the General Assembly this year due to security breaches and how fast this crime is spreading. NCRMA worked on behalf of its members and the Consumer Data Industry Association to amend the omnibus identity theft bill to make it livable despite enormous pressure from legislators and the media. While the bill is not perfect, we were able to get the bill in optimum shape considering the political landscape and the fact that every other business group agreed to the original legislation early on in the process.

10) Amend Law on Exposure – Senate Bill 776 – Key Legislators – Senator John Snow (D-Cherokee), Representative Jim Harrell (D-Surry) and Representative Deborah Ross (D-Wake).



A member company alerted NCRMA to the fact that there was a rash of indecent exposure incidents involving children in the Charlotte area. Specifically, an adult male was exposing himself to young boys. Due to a loophole in North Carolina law requiring the victim to be of the opposite sex of the offender, district attorneys were unable to prosecute these crimes. Some stores were beginning to receive negative publicity from these incidents. NCRMA pushed through legislation closing this loophole and strengthening the penalty when children were the victims of indecent exposure incidents.

11) Biometrics Identification System – House Bill 1500 – Key Legislators – Representative Pryor Gibson (D-Anson), Representative Jim Harrell (D-Surry), Senator Tony Rand (D-Cumberland) and Senator Linda Garrou (D-Forsyth).



In late June, an NCRMA member requested the ability to rely on a biometric identification system when selling alcohol and tobacco. NCRMA identified a germane bill and then drafted and inserted language achieving this goal, and was successful in bringing about the enactment of the bill.

12) Self-Insured Workers' Compensation Changes – Senate Bill 319 – Key Legislators – Senator Dan Clodfelter (D-Mecklenburg) and Representative Hugh Holliman (D-Davidson). For some time the North Carolina Department of Insurance had been lax on monitoring the amount of money companies self-insuring their workers' compensation insurance coverage had been placing into reserves to pay claims. These companies often went into bankruptcy due to inadequate reserves, and other self-insureds, including CompCarolina and NCRMA member companies who self-insure, were assessed to pay the claims of the bankrupt comp funds. This session NCRMA worked to implement a new funding system for claims reserves similar to the system utilized in California that will eliminate the need for assessments. This legislation benefits small retailers who choose to obtain workers' compensation coverage through CompCarolina, as well as larger retailers who choose to self-insure their workers' compensation insurance coverage.



13) Workers' Compensation – House Bill 99 – Key Legislator – Senator David Hoyle (D-Gaston). Although the larger workers' compensation package could not pick-up enough momentum to get enacted in 2005, one of the provisions proposed by NCRMA was included in the scaled down package that was eventually enacted. Under House Bill 99, the burden now shifts to the injured employee when alcohol or drugs are involved in an on-the-job accident to show that the injury was not the result of alcohol or drug use.



14) Board of Pharmacy Fees – House Bill 1349 – Key Legislators – Representative Winkie Wilkins (D-Person) and Senator Bill Purcell (D-Scotland). Initially, the Board of Pharmacy proposed doubling fees paid by pharmacists and pharmacies totaling approximately \$1.4 million. NCRMA held this legislation off until late in the session and at the request of its members reached a compromise with the Board to increase fees slightly to raise \$500,000 to fund additional inspectors.



15) Controlled Substance Monitoring – Senate Bill 622 – Key Legislators – Senator Marc Basnight (D-Dare), Senator Bill Purcell (D-Scotland) and Representative Bill Culpepper (D-Chowan). For a number of years, NCRMA has been successful in holding off legislation that would require pharmacies to transmit to a Department of Health and Human Services database a record of all controlled substances dispensed. The database could then be mined to look for diversion of controlled substances. The number of states using this system has reached a critical mass and it has become seamless to both independent and chain pharmacies, so NCRMA and the Association of Community Pharmacists held out on this issue as leverage to maintain the current reimbursement for Medicaid.




16) PDAs for Physicians – Senate Bill 622 – Key Legislators – Representative Edd Nye (D-Bladen), Representative Bobby England (D-Rutherford), Senator Vernon Malone (D-Wake) and Senator Bill Purcell (D-Scotland). For years, NCRMA and the Association of Community Pharmacists have brought forth cost-saving ideas for the Medicaid program to the Department of Health and Human Services. This year's project was the Gold Standard program that puts a PDA in the hands of 1,000 doctors to track Medicaid patients and cut down on patient fraud while avoiding deadly drug interactions. A special provision was included in the budget requiring the Department to implement this cost-saving idea that saved Florida Medicaid \$8 million the first year.





17) Dairy Stabilization Bill – Senate Bill 622 – Key Legislators – Senator Charlie Albertson (D-Duplin) and Representative Dewey Hill (D-Columbus). In surrounding states, dairy farmers have attempted to enact a pricing mechanism where retailers contribute to a dairy stabilization fund. In turn, the money is used to keep dairy farmers in business. NCRMA worked on the North Carolina legislation to require the state to pay for the dairy stabilization fund rather than retailers.





Bills NCRMA Lobbied in 2005 That Were Not Enacted


1) Minimum Wage – House Bill 20 and House Bill 330 – Key Legislator – Representative Alma Adams (D-Guilford). NCRMA was instrumental in defeating an increase in the minimum wage twice in the House – once in the House Commerce Committee and once on the House Floor. Like a bad horror movie, the issue just keeps resurfacing. The third time was the charm for the House Sponsor and the bill finally passed the House, but the bill was held-up in the Senate Finance Committee until May. 

2) Regulation of Pharmacy Benefit Managers (PBMs) – House Bill 1374 – Key Legislator – Representative Bill Culpepper (D-Chowan). These entities control what prescription drugs everyone in North Carolina receives yet they go virtually unregulated. Additionally, their main goal is to push consumers to a mail-order house owned by the PBM hurting the framework of community pharmacy in North Carolina. This issue was included in the Studies Bill that was not enacted. However, there is a good chance that this issue will still be studied in the interim through a select study committee named by either the House or Senate. 

3) Sales Tax on Warranties and Service Agreements – Senate Bill 622 – Senator John Kerr (D-Wayne) and Senator David Hoyle (D-Gaston). While many believed that this issue was dead, it resurfaced itself just like the minimum wage and was one of the last issues discussed in budget negotiations. NCRMA was brought into discussions on the last day of negotiations and was able to get some NCRMA member companies to weigh in on the economic impact this new tax would have on its members for service agreements on things like software, cooling units, computers etc. The issue will be studied in the interim between the Long and the Short Sessions. 

4) Violent Video Games – Senate Bill 2 – Key Legislators – Senator Julie Boseman (D-New Hanover) and Senator Tony Rand (D-Cumberland). This was another controversial issue that NCRMA was right in the middle of this session. This legislation required retailers to build a separate section in their stores to sell “violent video games.” Retailers would have to play every video game offered for sale and make their own determination as to whether the game was violent. This legislation cleared the Senate although similar statutes were deemed unconstitutional in three separate federal courts. The bill appeared buried in the Rules Committee only to be heard on what many thought to be the last day of the legislative session and sent to the House Floor for what appeared to be a final vote. NCRMA worked fast and furious to get the bill sent to a House Judiciary Committee. 

5) Compounding Pharmacies – House Bill 1481 – Representative Winkie Wilkins (D-Durham). The North Carolina Board of Pharmacy sought to define a “compounding pharmacy” and then require an additional registration fee of \$500 annually. In the initial bill the term was so broadly defined that every pharmacy in the state would have been under additional regulations as a compounding pharmacy. NCRMA worked with the bill sponsor to hold this legislation up until at least next year. 

6) Pedigree Papers for Prescription Drugs – House Bill 1314 – Representative Thomas Wright (D-New Hanover). Pfizer has been seeking legislation throughout the United States requiring retailers to track prescription drugs from the manufacturer to the customer. Most of the technology necessary for this system is not yet available making it impossible for pharmacies and wholesalers to comply with the requirements. NCRMA was able to halt this legislation in 2005, but will likely see it again in 2006 as it is a legislative priority for Pfizer. 

7) Increase Bad Check Fee – House Bill 1313 – Key Legislators – Representative

Pryor Gibson (D-Anson) and Representative Thomas Wright (D-New Hanover). NCRMA will again attempt to increase the bad check fee from \$25 to \$30 during the Short Session. We ran into some heavy opposition with some of the House Finance Chairs early on this session and decided to wait until May when the political landscape may be more favorable.



8) Below-Cost Gasoline – Senate Bill 986 and House Bill 1273 – Key Legislators – Senator David Hoyle (D-Gaston), Representative Harold Brubaker (D-Randolph) and Representative Jim Harrell (D-Surry).

This legislation was introduced again in both the Senate and the House at the request of the North Carolina Petroleum Marketers Association and the North Carolina Convenience Store Association and would have made it a felony to sell gasoline “below cost” which was defined not as the retailer’s true cost but by an artificial measure. NCRMA efforts combined with high gas prices helped to fend off this legislation. Although we anticipated the Petroleum Marketers and Convenience Stores making another run at this legislation in 2006, the recent events surrounding Hurricane Katrina may have tempered this activity.



9) Advance Disposal Fee on Electronics – Senate Bill 1020 and House Bill 1765 - Key Legislators – Senator Janet Cowell (D-Wake) and Representative Joe Hackney (D-Orange).

Commonly referred to by NCRMA as the “TV tax”, this perennial legislation would impose a \$10 advance disposal fee on the purchase of certain electronics including televisions and computers. NCRMA has long opposed advance disposal fees especially fees that continually place North Carolina’s brick and mortar retailers at a competitive disadvantage with remote retailers who would not be required to collect this fee.



10) Keg Registration – House Bill 828 and Senate Bill 476 – Key Legislators Representative Martha Alexander (D-Mecklenburg) and Senator Malcolm Graham (D-Mecklenburg).

This was another issue that the press gravitated to in 2005. NCRMA was the lone voice in the wind on this legislation that required retailers to log the purchase of every keg of beer sold and notify law enforcement if a keg was not returned. Failure to comply with the law could have resulted in a loss of the retailer’s ABC permit. NCRMA was successful in amending numerous provisions contained in this legislation to make it more retail friendly in its current form. Although this bill was approved by an Appropriations Subcommittee towards the end of the session and appeared to be headed to the Senate, the bill was referred back to House Rules and never made it out of the House.



11) Posting of Allergy Warning Signs – Senate Bill 1020 and House Bill 920 – Key Legislators – Senator Malcolm Graham (D-Mecklenburg) and Representative Martha Alexander (D-Mecklenburg).

Legislation was introduced that would require restaurants to post signs warning customers that peanut products have been used in the preparation of food. This issue was in response to a death at a Charlotte food court but due to the number of food allergies consumers have it would be impossible to warn them of every single product being used in the preparation of food. The issue was included in the Studies Bill and slated to be studied in the interim but because the Studies Bill was left on the table this issue may not be studied after all.



12) Local Option Sales Tax – House Bill 947 – Key Legislators – Representative Bill Owens (D-Pasquotank) and Representative Pryor Gibson (D-Anson).

When it appeared that the lottery was all but dead before it was resurrected, the House made a late push to provide counties the authority to hold a referendum to increase their sales and use tax by an additional half-cent to fund school and community college capital and construction needs. The House approved this measure on August 29, 2005 with hopes that the Senate would take the issue up before adjourning. When the Senate was able to garner the necessary votes to pass the Lottery, the issue ended up on the backburner and may remain there in 2006.

