

Express Line

The official newsletter of the
Carolinas Food Industry Council (CFIC)



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North Carolina Legislation Effective January 1, 2012

Five bills were passed in the 2011 North Carolina Legislative Session that will become effective on January 1, 2012. We are reminding you of these as they may impact your store operations in North Carolina.

Effective January 1, 2012:

Rules for Forced Combination When Reporting Corporate Income Tax (HB 619)

CFIC has a long history of fighting mandatory combination of corporate income tax reports. North Carolina's statute, as interpreted by the Court of Appeals and as applied by the North Carolina Department of Revenue (NCDOR), left many taxpayers in the untenable situation of filing separate returns as required by law and then being penalized after the fact for not filing a combined return.

After many years, CFIC, the NC Chamber, Council on State Taxation (COST) and others in the business community reached consensus to draft

legislation defining when the NCDOR can and cannot forcibly combine affiliated and subsidiary companies for purposes of corporate income tax.

Under HB 619, the Secretary of Revenue is able to force a combined return when the Secretary finds that intracompany transactions do not have economic substance. A company can show its intra-company transactions have economic substance by demonstrating:

- The transaction, or the series of transactions, has one or more reasonable business purposes other than the creation of State income tax benefits, and
- The transaction, or the series of transactions, has economic effects beyond the creation of State income tax benefits.

The Department of Revenue is in the process of formulating formal Guidance Directives that detail the Department's implementation of HB 619. CFIC will keep you informed as this process moves forward.

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NC Legislation

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Regulatory Reform Act of 2011 (SB 781) Administrative Law

Judge's Rulings Final Provision

Over the past decade, more than 15,000 rules have taken effect in North Carolina, making regulatory compliance extremely costly and time-consuming for businesses. NCRMA was a lead negotiator in a stakeholder's process to craft a balanced approach to the current system of state regulations.

Effective January 1, 2012, SB 781 makes significant reforms to contested case procedures, including making the decision of the Administrative Law Judges (ALJs) final. In 2010, 91% of ALJ decisions ultimately adopted by state agencies (such as the Departments of Commerce, Revenue, Transportation, etc.) were those that sided with the agency. However, in decisions where the ALJ ruled against the agency, the agency reversed the ALJ decision 88% of the time. Senate Bill 781 reforms the administrative process so that a retailer has a fair opportunity to challenge a state agency decision by taking final decision-making authority away from the agency. Beginning New Year's Day, the ALJ's decision will be final.

SB 781 was a comprehensive piece of legislation that streamlined many aspects of the regulatory process, many of which became effective October 1, 2011, including:

- Identify and eliminate duplicative or unnecessary requirements related to all permit applications, permit extensions, and permit compliance;
- Create a more transparent fiscal review process in rulemaking;
- Mandate that environmental regulatory rules cannot impose a more restrictive standard, limitation, or requirement than federal counterparts; and
- Require agencies to submit a cost-benefit analysis of a proposed rule.

Pseudoephedrine/Electronic Log (HB 12)

HB 12 implements an electronic log and tracking system for Pseudoephedrine (PSE) products effective January 1, 2012. January is fast-approaching and if you have not already done so, stores operating pharmacies need to be preparing for implementation. The Consumer Health Products Association (CHPA) and the National Precursor Log Exchange (NPLEX) are coordinating the software implementation. To date, CFIC has been alerted of one technical issue with North Carolina's encrypted 2D Drivers License that may require some assistance from the Department of Motor Vehicles to get the "key" to unlock the encrypted material on the drivers license. CFIC has been in communication with DMV about obtaining this "key."

CFIC fought off the original legislation which would have required a prescription for PSE, noting the increased cost to everyday consumers who need the product and the other

unintended consequences and burdens to pharmacists, doctors and consumers. The General Assembly eventually accepted this compromise version of the bill requiring an electronic purchase log effective January 1, 2012.

Pharmacy Audit Rights (HB 644)

House Bill 644 establishes a pharmacy's rights when audited by an insurer or third-party. Some of the requirements of a pharmacy audit include:

- Minimum of 30 days' advance notice of the initial on-site audit;
- Audits involving clinical or professional judgment must be conducted by, or in consultation with, a pharmacist licensed to practice in North Carolina; and
- Clerical or recordkeeping errors, including typographical errors, will not be used in a denial or reversal of a pharmacy claim by the auditing body.

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South Carolina Legislation Effective January 1 E-Verify Mandatory for All Employers!

On June 27 Governor Haley signed into law illegal immigration legislation that includes a change in state law requiring employers to use the E-Verify program exclusively – removing the option of verifying a job applicant's citizenship by using a driver's license. The bill passed the General Assembly on party-line votes in both Houses with unanimous support from Republicans.

Under the 2011 legislation the South Carolina Department of Labor is required to ensure retail compliance, issue a warning, and institute a probation period prior to a license suspension when a company is found not in compliance. It does take away the state's ability to levy fines.

South Carolina joins a growing list of GOP-controlled states to pass tough illegal immigration laws. Section 17 of the new law took effect on June 29 (creates the Illegal Immigration Enforcement Unit). The remaining provisions of the bill, including the section that applies to private employers, take effect on January 1, 2012.

The South Carolina Department of Labor in conjunction with the federal Department of Homeland Security are offering FREE webinars to assist employers with E-Verify compliance. Visit the webpage at <http://tinyurl.com/3cwqwt0> for January dates.

NOTE: pre-registration is not necessary for the webinars.

Need Help? Send e-mail to E-Verify@dhs.gov. ☐



NC Legislation

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Legislation Effective December 1, 2011:

Check Cashing Changes (SB 144)

North Carolina's retailers have long cashed checks for customers who do not have bank accounts. Since 1997, under North Carolina law, businesses must obtain a Check Cashing Business License to engage in the business of cashing checks, drafts, or money orders for a fee. However, there is an exemption for businesses principally engaged in the bona fide retail sale of goods or services, allowing a retailer to charge up to

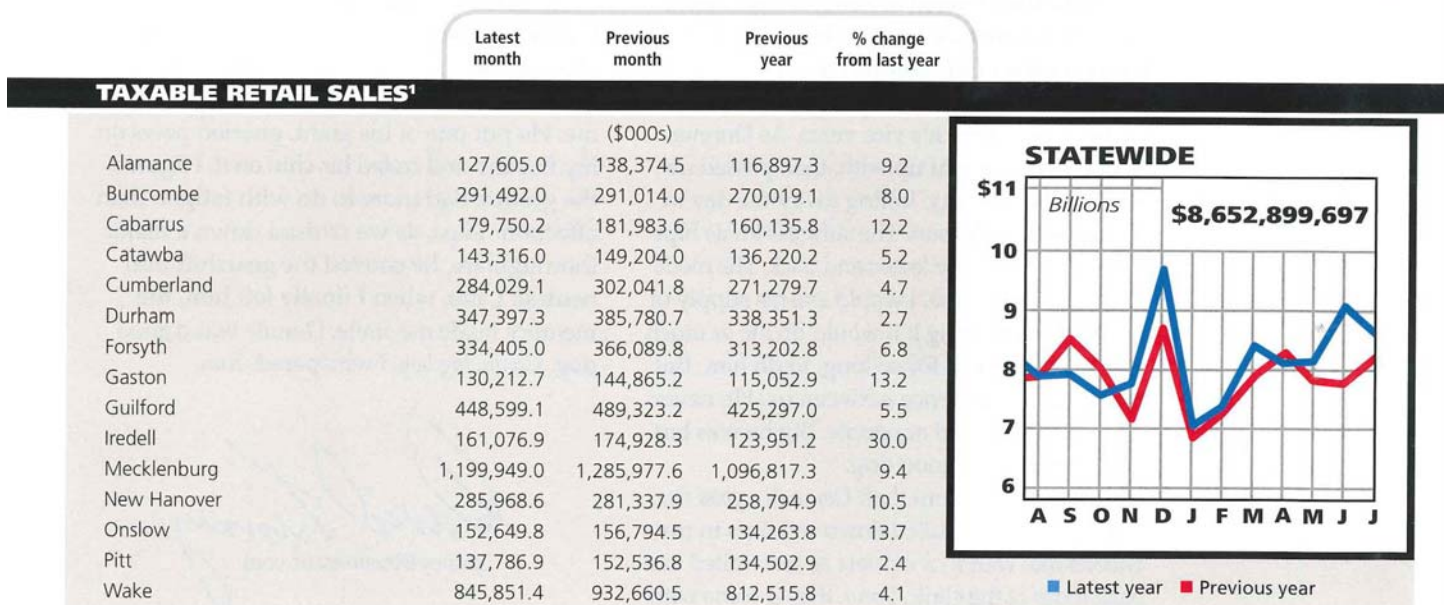
two dollars (\$2.00) for cashing customer checks without obtaining a Check Cashing Business License. In order to charge a higher amount a retailer is required to obtain a Check Cashing Business License from the North Carolina Banking Commission by paying the \$750 registration fee, meeting certain financial requirements and undergoing background checks. Once a retailer becomes a licensed check-casher, the retailer is required to comply with a number of regulations including maintaining a separate bank account of \$50,000 for each licensed entity and maintaining separate books for the check-cashing portion of the retail business.

In 2011, the North Carolina Banking Commission audited and "red-flagged" some of these small retailers due to the lack of a separate bank account. The 2011 North Carolina General Assembly, recognizing this unnecessary and costly business regulation, passed legislation to relieve small retailers of the separate bank account requirement. Effective December 1, 2011, a retailer who derives less than 20% of gross annual revenues from check cashing is exempt from being required to maintain separate accounts and records.

□

Retail SnapShots

North Carolina Retail Sales Trends:



Source: NC Department of Revenue, July 2011; First Printed in Business North Carolina, October 2011.

Private-sector Jobs Soar

Companies created the most jobs in nearly a year in November. Better than expected housing and regional factory data released earlier this month, reinforced the view that the economy should avoid recession, though growth is unlikely to be brisk. The ADP National Employment Report showed private employers added 206,000 jobs in November, surpassing expectations of 130,000 gains and the highest increase since December 2010.



Holiday Spending Forecast Revised Upward

The National Retail Federation revised its holiday forecast upward, expecting holiday sales to rise 3.8% this year to a record \$469.1 billion. The initial forecast, announced on October 6, called for anticipated sales growth of 2.8%. While a 3.8% sales increase is considerably above the ten-year average sales increase of 2.6%, it is still lower than the 5.2% increase the retail industry saw last year. □

Statistics Released on State-Specific Debit Interchange Impact

Merchants across the US are seeing a financial boost since debit interchange reform took effect October 1, according to one of the nation's largest payments processors.

Heartland Payment Systems recently released specific data about the legislation's actual effect on business owners in various states across the country. Collected between October 1 and October 16, 2011, the data from Heartland's portfolio of 250,000 merchant locations shows that for every \$100,000 of Visa® and MasterCard® signature debit and credit card volume processed, the average savings per merchant across all states is \$260.24. Washington, DC merchants received the highest average savings of \$333.94, while Montana merchants saw the least average savings of \$127.87. The savings variance from state to state is a result of the number of large versus small banks in the area, as well as the mix of credit and debit card volume processed.

These figures represent the averages of actual credit versus debit and regulated versus non-regulated debit transactions for Heartland merchants and do not include the impact of PIN debit volume.

"Merchants are wondering how the percentage of regulated versus non-regulated transactions in their states would impact their savings, and this data provides insight into exactly that," said Bob Baldwin, Heartland's president. "By providing business owners a frame of reference for how much money, on average, their peers across their state are saving from the (debit interchange reform), they have an idea of what their own savings may be. Familiarizing themselves with this information is a preliminary step in ensuring they receive the full benefit of the reform."

Average savings per merchant for all states can be found in the table below:

Average Savings Per Merchant for Every \$100,000 of Visa/MasterCard Signature Debt and Credit Card Volume Processed – by State		Average Savings Per Merchant for Every \$100,000 of Visa/MasterCard Signature Debt and Credit Card Volume Processed – by State	
Alabama	\$260.92	Nebraska	\$230.00
Alaska	\$131.68	Nevada	\$332.33
Arizona	\$326.13	New Hampshire	\$202.63
Arkansas	\$223.11	New Jersey	\$308.58
California	\$299.60	New Mexico	\$238.94
Colorado	\$280.27	New York	\$272.16
Connecticut	\$261.05	North Carolina	\$325.53
Delaware	\$270.76	North Dakota	\$134.88
Florida	\$296.28	Ohio	\$314.27
Georgia	\$304.07	Oklahoma	\$207.97
Hawaii	\$197.47	Oregon	\$267.47
Idaho	\$245.66	Pennsylvania	\$233.22
Illinois	\$271.53	Rhode Island	\$284.19
Indiana	\$209.95	South Carolina	\$250.47
Iowa	\$153.94	South Dakota	\$186.64
Kansas	\$170.65	Tennessee	\$260.38
Kentucky	\$217.22	Texas	\$310.43
Louisiana	\$295.91	Utah	\$198.20
Maine	\$154.09	Vermont	\$151.16
Maryland	\$320.37	Virginia	\$289.90
Massachusetts	\$225.89	Washington	\$244.83
Michigan	\$232.20	Washington, DC	\$333.94
Minnesota	\$212.24	West Virginia	\$202.76
Mississippi	\$195.71	Wisconsin	\$158.54
Missouri	\$222.06	Wyoming	\$156.82
Montana	\$127.87		

Electronic Payment Rules Explained

For some time your Association staff has worked to keep you in the know on the "Interchange Debate" that began with the Dodd-Frank Wall Street Reform Act and the now famous Durbin Amendment - a provision in the final bill aimed at reducing debit interchange fees and creating more competition in payment processing. As you know the final rules announced by the Federal Reserve Board in June went into effect on October 1.

What does this mean for you?
The Federal Trade Commission has developed a document explaining the new rules on electronic payments.

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CHANGE IS OPPORTUNITY

The Durbin Amendment, effective October 2011, ordered the Federal Reserve Board to set "reasonable and proportional" debit card interchange pricing. The Fed's newly released regulations cut more than 40% off existing average debit card interchange revenue.

"Experts expect the industry to lose as much as \$20 billion in fees as a result of the Durbin Amendment."

As a business owner, the Durbin Amendment was intended to reduce the amount you pay for debit card transactions and put the savings in your bank account.

With appropriate pricing, the average small- to mid-sized business in the US will see a significant savings on nearly 70% of their transactions*. *The reduction in fees and savings to you are not automatic.*

"A recent study indicates that the average merchant will save nearly \$1,200 per year."

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Electronic Rules

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The information:

- **Defines who is involved in an electronic payment transaction;**
- **Explains how retailers can offer customer discounts for using certain methods of payment** - A Payment Card Network can no longer prohibit retailers from offering customers a discount or another incentive for using a certain method of payment (cash/debit/credit), as long as the discount is offered to all customers and the discount that is offered is disclosed clearly and conspicuously;
- **Explains minimum dollar amounts for credit card payments** – Retailers cannot be prohibited from setting a minimum dollar amount for accepting credit cards for payment as long as the minimum is the same for all credit card issuers and isn't more than \$10; and
- **Explains opportunities for Retailers to reduce costs by selecting a different network for card processing** - Beginning October 1, 2011, Payment Card Networks can no longer dictate the network retailers use for processing debit card transactions among the networks available on a debit card. Retailers may choose to route debit card payments in a way that reduces their costs.

For more information, visit:
<http://www.ftc.gov/opa/2011/09/electronicpymtrule.shtm>. □



Industry Trade Organizations File Lawsuit on Swipe Fee Regulations

Several of the nation's largest retail trade organizations filed a federal lawsuit in November saying the Federal Reserve failed to follow key requirements of the 2010 debit interchange law that took effect in October.

While the regulations – 21 cents plus 0.05% of the transaction - have increased savings for retail purchases that averaged 44 cents prior to the change, they have drastically increased swipe fees for small-ticket purchases (\$5 or less). This fall, both Visa and MasterCard announced that they would charge the maximum amount (21 cents plus 0.05% of the transaction) even on small-ticket transactions. Visa and MasterCard

had previously processed these transactions for as little as 6 to 8 cents.

The plaintiffs said that the Federal Reserve was required to come up with swipe fees that were “reasonable” and “proportional” but instead allowed themselves to be influenced by the very banks they were supposed to regulate. Plaintiffs also stated that the Federal Reserve’s final rules discourage competition among debit card networks. The law required that retailers be given a choice of two networks on every transaction, but under the final regulations, banks can limit their cards such that retailers may never have a choice of networks.

Stay tuned! □

CFIC Has the Answers to Your Information Needs!

Store Signs

CFIC has developed a collection of more than 20 store signs and posters on important retail issues as varied as the tobacco law and the white goods appliance tax.

These signs are important tools for running a retail business in NC. Purchase these from CFIC for \$1 for the first sign and 10¢ for any additional signs.

Required state and federal posters set available for only \$8.

Call Today! 919-832-0811

Words to live by:

*“No matter what you do for a living,
the key to success is
superlative performance,
day after day after day.*

*And that’s only possible
if you make optimism,
expectancy, and enthusiasm
part of your daily experience.”*

Geoffrey James, Inc.com

North Carolina's Injury and Illness Remains at Historic Low

North Carolina's workplace injury and illness rate for private industry remained at a historic low for 2010 making the Tar Heel state one of the safest states in which to work. The rate remained at 3.1 cases per 100 full-time workers and remains below the national average.

The 2010 rate for construction dropped to 3.0 per 100 full-time workers from 3.1 in 2009, well below the national average of 4.0. The 2010 manufacturing rate increased slightly to 3.7 from 3.5 in 2009, but still remains below the national rate of 4.4.

North Carolina is tied for the fourth lowest workplace injury and illness rate in the country, trailing only Louisiana, New York and Texas, which all had a rate of 2.7. North Carolina is one of 13 states with a rate statistically less than the national average of 3.5. Labor officials point to other driving factors that are affecting the state's record low rates. Accidents are costly when you factor in legal fees, insurance costs, plant down time and liability suits. Many employers are implementing effective safety and health programs to lower costs and improve their bottom line.

"Good employers understand that a good workplace safety program pays for itself," said North Carolina Labor Commissioner Cherie Berry. "But at the end of the work day, it's really about making it home to family and loved ones that matters most." □



When Customers Have A Beef

Know How to Respond to Negative Comments Before It Gets Ugly

According to social media experts, facing criticism in the glaring light of a computer screen is the right move. In fact, it might actually be better than taking it offline.

"Your brand perception doesn't improve by solving problems privately via the telephone," notes top social media consultant Jay Baer, president of Convince & Convert and co-author of *The NOW Generation*. "But your brand perception can get better by solving problems publicly via social media channels."

"Never simply delete comments because you disagree; you'll throw gas on the fire." Nor should you just get into a seesawing argument, he notes. "Acknowledge, listen, and then offer to discuss details offline. Don't get into a tit-for-tat in an online forum."

Dealing with Facebook Jabs:

HAVE A PLAN

Create a company policy on how to deal with negative comments in advance, and make sure all key players know it.

RESPOND

Avoiding negative comments could make your situation worse.

ACKNOWLEDGE THE ISSUE

Letting consumers know you're really listening can be all that's needed to calm things down.

KNOW WHEN TO TAKE IT OFFLINE

Use the phone or e-mail if you sense a longer discussion is needed to solve an issue.



Source: California Grocer

CFIC Members Save up to 49% off FedEx® Shipping

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To see how much you could be saving, go to calculator.fedex.com/2114 and enter in your shipping information. Once you've calculated your estimated savings you can begin the simple online enrollment process by clicking *Enroll Now*. You will need passcode X8CTNB to enroll. Enrollment in the FedEx Advantage program is free and there are no minimum shipping quotas to receive or maintain your discounts.

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What percentage of these are with FedEx? _____ %

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Who is your primary express carrier? _____ Who is your primary ground carrier? _____

How did you hear about the offer? Direct Mail E-mail Magazine Ad Trade Show Alliance Web Site
 Sales Rep Other Member Other _____

Please be advised that the undersigned NCRMA member elects to participate in the NCRMA Pricing Program Agreement, and has read and agrees to be bound by the terms and conditions below.

Signature (required) _____

Title _____ Date _____

Please mail or fax the form to:
 North Carolina Retail Merchants Association
 601 St. Mary's Street
 Raleigh, NC 27605
 Fax: 919.832.0812

Questions about this pricing program?
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 800.475.6708.

Enrollment may take up to 10 days. Your discounted rates will be in place when you receive your FedEx welcome information.

Member Agreement
Terms & Conditions of Shipping

1. The prices and other terms and conditions provided to you as a member are for your exclusive use and benefit and are to be treated as confidential information. The prices (or any portion thereof) may not be extended to any other party. You may not under any circumstances sell, assign or otherwise transfer (including, but not limited to, third party billing) the benefit of this pricing to any non-member of the Association. Failure to abide by this provision may result in immediate termination of your participation in the Program. *With the exception of custom freight pricing agreements between FedEx and member, this Agreement supersedes all Pricing Agreements and Addenda, if any, for FedEx Express, FedEx Ground and FedEx Freight services (for those Programs under which FedEx Freight services are offered) between FedEx and Customer for the designated U.S. Payer account numbers relating to the services and package types covered by this Agreement.*
2. Association and/or its agent may receive compensation for the promotion of FedEx services. In addition, you specifically acknowledge and agree to the release of your shipping information and data to Association and/or its agent.
3. Member's rates are expressed as a percentage discount off published transportation rates in effect at the time of shipment. Published rates and eligible services and discounts are subject to change without notice. You agree that eligibility for discounts is subject to FedEx credit approval. You acknowledge that the Program is not available to package consolidators and agree that you are not a package consolidator.
4. Accessorial charges, special handling charges, minimums, premiums and surcharges shall be in accordance with the applicable FedEx Service Guide or FXF 100 Series Rules Tariff in effect on the date of shipment for the service selected and shall not be subject to any discounts.
5. You must complete this form to participate in the Program.
6. Each shipment made under this Agreement is subject to the terms and conditions of the then current FedEx Service Guide or the FXF 100 Series Rules Tariff, as applicable, in effect at the time of shipment and which terms are incorporated into this Agreement by reference. FedEx reserves the right to modify the FedEx Service Guide and the FXF 100 Series Rules Tariff at any time without notice.
7. Participation in the Program is conditional upon obtaining FedEx Credit approval. FedEx reserves the right to deny credit, and FedEx does not extend consumer credit privileges.
8. Payment on your account is due fifteen (15) days from the invoice date. Duties and taxes are payable on receipt. Failure to comply with FedEx payment terms may result in denial of credit and removal of discounts.
9. This program will be effective for so long as the pricing agreement between FedEx and the Association remains in effect unless earlier terminated as provided herein.
10. Members are prohibited from using the FedEx name or logo without the prior written consent of FedEx.
11. A federal excise tax when required by the Internal Revenue Code on the air transportation portion of any FedEx service, if any, is paid by FedEx.

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We're Your Neighbor. We Know Workers' Compensation. We Know North Carolina.

FBI is based in Raleigh with all operations and decisions handled locally. Our experienced staff understands your concerns as North Carolina business owners. We pride ourselves on personal service, sound underwriting and aggressive claims management.

Of special interest to North Carolina employers is our monthly self-reporting plan that allows businesses subject to fluctuations due to seasons, tourism or a change in the economy to pay based on actual payroll rather than estimated payroll.

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Call your local insurance agent or call us directly at **(888) 393-2667** for a **quick, competitive quote**.

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