

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 380
Alcoholic Beverage Control Committee Substitute Adopted 4/20/89

Short Title: ABC Law Amendments.

(Public)

Sponsors:

Referred to:

March 9, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE AMENDMENTS TO THE ALCOHOLIC BEVERAGE
3 CONTROL LAWS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 18B-102(a) reads as rewritten:

6 "(a) General Prohibition. – It shall be unlawful for any person to manufacture,
7 sell, transport, import, ~~export~~, deliver, furnish, purchase, consume, or possess any
8 alcoholic beverages except as authorized by the ABC law."

9 Sec. 2. G.S. 18B-1101(2) reads as rewritten:

10 "(2) Sell, deliver and ship unfortified wine in closed containers to wholesalers
11 licensed under this Chapter as authorized by the ABC laws, except that wine may be
12 sold to exporters and nonresident wholesalers only when the purchase is not for resale in
13 this State;"

14 Sec. 3. G.S. 18B-1102(2) reads as rewritten:

15 "(2) Sell, deliver and ship fortified wine in closed containers to wholesalers
16 licensed under this Chapter as authorized by the ABC laws, except that wine may be
17 sold to exporters and nonresident wholesalers only when the purchase is not for resale in
18 this State;"

19 Sec. 4. G.S. 18B-1104(3) reads as rewritten:

20 "(3) Sell, deliver and ship malt beverages in closed containers to wholesalers
21 licensed under this Chapter as authorized by the ABC laws, except that malt beverages
22 may be sold to exporters and nonresident wholesalers only when the purchase is not for
23 resale in this State;"

1 Sec. 5. G.S. 18B-1105(2) reads as rewritten:

2 "(2) Sell, deliver and ship spirituous liquor in closed containers at wholesale to
3 exporters and local boards within the State, and, subject to the laws of other
4 jurisdictions, at wholesale or retail to private or public agencies or establishments of
5 other states or nations;"

6 Sec. 6. G.S. 18B-208(b) reads as rewritten:

7 "(b) Special Fund. – A special fund in the office of the State Treasurer, the ABC
8 Commission Fund, is created. On and after November 1, 1982, all moneys derived from
9 the collection of bailment charges and bailment surcharges shall be deposited in the
10 ABC Commission Fund for the purpose of carrying out the provisions of this Chapter.
11 The ABC Commission Fund shall be subject to the provisions of the Executive Budget
12 Act except that no unexpended surplus of this fund shall revert to the General Fund. The
13 Commission shall fix the level of the bailment surcharges at an amount calculated to
14 cover operating expenses of the Commission and the retirement of bonds issued for
15 construction of a Commission warehouse and offices. Upon payment of the bonds
16 issued pursuant to this section, the Commission shall reduce the bailment surcharge to
17 an amount no greater than necessary to pay operating expenses of the Commission as
18 authorized by the General Assembly. ~~The Commission may impose a bailment surcharge~~
19 ~~only when revenue bonds issued under this section are outstanding.~~

20 All moneys credited to the ABC Commission Fund shall be used to carry out the
21 intent and purposes of the ABC law in accordance with plans approved by the North
22 Carolina ABC Commission and the Director of the Budget, and all these funds are
23 appropriated, reserved, set aside, and made available until expended for the
24 administration of the ABC law."

25 Sec. 7. G.S. 18B-902(f) reads as rewritten:

26 "(f) Fee Not Refundable. – The fee required by subsection (d) shall not be
27 refundable ~~even~~ if the permit is denied or is later suspended or revoked."

28 Sec. 8. G.S. 18B-903 is amended by adding two new subsections that read:

29 "(f) Lost Permits. – The Commission will issue duplicate ABC permits for an
30 establishment when the existing valid permits have been lost or damaged. The request
31 for duplicate permits shall be on a form provided by the Commission, certified by the
32 permittee and the Alcohol Law Enforcement Division, and accompanied by a fee of ten
33 dollars (\$10.00).

34 "(g) Name Change. – The Commission will issue new permits to a permittee upon
35 application and payment of a fee of ten dollars (\$10.00) for each location when the
36 permittee's name or name of the business is changed."

37 Sec. 9. G.S. 18B-904(a) reads as rewritten:

38 "(a) Who Receives Permit.–An ABC permit shall be issued to the owner of an
39 establishment and shall authorize the permitted activity only on the premises of the
40 establishment named in the permit. An ABC permit shall be issued to the owner of the
41 business conducted on the premises, or to the management company employed to
42 independently manage and operate the business. The ABC Commission may determine
43 if a management agreement delegates sufficient managerial control and independence to

1 a manager or management company to require an ABC permit to be issued to the
2 manager."

3 Sec. 10. G.S. 18B-904 is amended by adding a new subsection to read:

4 "(e) Business or Location No Longer Suitable. – The Commission may suspend or
5 revoke any permit issued by it if, in the discretion of the Commission, after compliance
6 with the provisions of Chapter 150B of the General Statutes, the place occupied by the
7 permittee is no longer a suitable place to hold ABC permits or that the operation of the
8 business with an ABC permit at that location is detrimental to the neighborhood. No
9 order revoking or suspending an ABC permit pursuant to this section will be made
10 except upon substantial evidence admissible under G.S. 150B-29(a)."

11 Sec. 11. G.S. 18B-1001(8) reads as rewritten:

12 "(8) Special Occasion Permit. – A special occasion permit authorizes the host of a
13 reception, party or other special occasion, with the permission of the permittee, to bring
14 ~~unfortified wine,~~ fortified wine and spirituous liquor onto the premises of the business
15 and to serve the same to his guests. The permit may be issued for any of the following:

- 16 a. Restaurants;
- 17 b. Hotels;
- 18 c. Eating establishments;
- 19 d. Private clubs;
- 20 e. Convention centers."

21 Sec. 12. G.S. 18B-1001(9) reads as rewritten:

22 "(9) Limited Special Occasion Permit. – A limited special occasion permit
23 authorizes the permittee to bring ~~unfortified wine,~~ fortified wine and spirituous liquor
24 onto the premises of a business, with the permission of the owner of that property, and
25 to serve those alcoholic beverages to the permittee's guests at a reception, party, or other
26 special occasion being held there. The permit may be issued to any individual other than
27 the owner or possessor of the premises. An applicant for a limited special occasion
28 permit shall have the written permission of the owner or possessor of the property on
29 which the special occasion is to be held."

30 Sec. 13. G.S. 18B-1002(a)(2) reads as rewritten:

31 "(2) A permit may be issued to a nonprofit organization to allow the retail sale of
32 malt beverages, unfortified wine, or fortified wine, or to allow brown-bagging, at a
33 single fund-raising event of that organization. A permit for this purpose shall not be
34 issued ~~to the same organization more than once during each quarter, and shall not be issued~~
35 ~~for the sale of any kind of alcoholic beverage in a jurisdiction where the sale of that~~
36 ~~alcoholic beverage is not lawful."~~

37 Sec. 14. G.S. 18B-1002(a)(5) reads as rewritten:

38 "(5) A permit may be issued to a nonprofit organization or a political organization
39 to serve wine, malt beverages, and spirituous liquor at a ticketed event held to allow the
40 organization to raise funds. For purposes of this subdivision 'nonprofit organization'
41 means an organization that is exempt from taxation under Section 501(c)(3), 501(c)(4),
42 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code ~~and or~~ is
43 exempt under similar provisions of the General Statutes as a bona fide nonprofit
44 charitable, civic, religious, fraternal, patriotic, or veterans' organization or as a nonprofit

1 volunteer fire department, or as a nonprofit volunteer rescue squad or a bona fide
2 homeowners' or property owners' association. For purposes of this subdivision
3 'political organization' means an organization covered by the provisions of G.S. 163-
4 96(a)(1) or (2) or a campaign organization established by or for a person who is a
5 candidate who has filed a notice of candidacy, paid the filing fees or filed the required
6 petition, and been certified as a candidate ~~for one of the offices listed in G.S. 163-4~~. The
7 issuance of this permit will also allow the issuance of a purchase-transportation permit
8 under G.S. 18B-403 and 18B-404 and the use for culinary purposes of spirituous liquor
9 lawfully purchased for use in mixed beverages."

10 Sec. 15. G.S. 18B-1007 is amended by adding a new subsection to read:

11 "(d) When a temporary mixed beverages permit has been issued to a new
12 permittee for the continuation of a business at the same location, the permittee going out
13 of business may sell existing mixed beverages inventory to the new permittee, and the
14 Commission may request that the local ABC board restamp the inventory with the
15 mixed beverages tax stamp assigned by the local board to the new mixed beverages
16 permittee."

17 Sec. 16. G.S. 18B-1207 is amended by adding a new subsection to read:

18 "(c) For any violation of the provisions of this Article, the Commission may take
19 any of the following actions against the winery:

- 20 (1) Suspend the winery's permit for a specific period of time no longer
21 than three years;
- 22 (2) Revoke the winery's permit;
- 23 (3) Issue an order suspending the shipment of the winery's products to one
24 or more designated sales territories previously served by the
25 wholesaler who has been terminated or who is the successor in interest
26 to a wholesaler who sold the winery's products in the designated
27 territory.
- 28 (4) Fine the winery up to twenty-five thousand dollars (\$25,000) for a first
29 offense and up to fifty thousand dollars (\$50,000) for the second
30 offense.

31 In any case in which the Commission is entitled to suspend or revoke a permit, the
32 Commission may accept from the winery an offer in compromise to pay a monetary
33 penalty. The Commission may either accept a compromise or revoke a permit, but not
34 both. The Commission may accept a compromise and suspend the permit in the same
35 case."

36 Sec. 17. G.S. 18B-1207 is amended by adding a new subsection to read:

37 "(d) Notwithstanding the choice of forum agreed to by the parties for the bringing
38 of an action, all actions under this Article shall be brought in this State."

39 Sec. 18. G.S. 18B-1006(i)(3) reads as rewritten:

40 "(3) A boat may hold the permits listed in G.S. 18B-1001(1), (3), (5), (7), and
41 (10), but no off-premises sales may be made pursuant to those permits."

42 Sec. 19. G.S. 18B-700 is amended by adding a new subsection to read:

43 "(j) Limited Liability. – A person serving as a member of a local ABC board shall
44 be immune individually from civil liability for monetary damages, except to the extent

1 covered by insurance, for any act or failure to act arising out of this service, except
2 where the person:

3 (1) Was not acting within the scope of his official duties;

4 (2) Was not acting in good faith;

5 (3) Committed gross negligence or willful or wanton misconduct that
6 resulted in the damage or injury;

7 (4) Derived an improper personal financial benefit from the transaction; or

8 (5) Incurred the liability from the operation of a motor vehicle.

9 The immunity in this subsection is personal to the members of local ABC boards, and
10 does not immunize the local ABC board for liability for the acts or omissions of the
11 members of the local ABC board."

12 Sec. 20. This act is effective upon ratification except for Sections 8 and 16
13 which shall become effective October 1, 1989, and except for Section 17 which applies
14 only to actions brought after the date of ratification.