

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

4

SENATE BILL 380
Alcoholic Beverage Control Committee Substitute Adopted 4/20/89
House Committee Substitute Favorable 6/7/89
Fourth Edition Engrossed 6/28/89

Short Title: ABC Law Amendments.

(Public)

Sponsors:

Referred to:

March 9, 1989

A BILL TO BE ENTITLED

AN ACT TO MAKE AMENDMENTS TO THE ALCOHOLIC BEVERAGE CONTROL LAWS.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

"(3) Sell, deliver and ship malt beverages in closed containers to wholesalers licensed under this Chapter as authorized by the ABC

1 laws, except that malt beverages may be sold to exporters and  
2 nonresident wholesalers only when the purchase is not for resale in this  
3 State;"

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

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

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

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

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

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

29 "(f) Fee Not Refundable. – The fee required by subsection (d) shall not be  
30 refunded."

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

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

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

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

41 "(a) Who Receives Permit.–~~An ABC permit shall be issued to the owner of an~~  
42 ~~establishment and~~ shall authorize the permitted activity only on the premises of the  
43 establishment named in the permit. An ABC permit shall be issued to the owner of the  
44 business conducted on the premises, or to the management company employed to

1 independently manage and operate the business. The ABC Commission may determine  
2 if a management agreement delegates sufficient managerial control and independence to  
3 a manager or management company to require an ABC permit to be issued to the  
4 manager."

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

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

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

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

- 19 a. Restaurants;
- 20 b. Hotels;
- 21 c. Eating establishments;
- 22 d. Private clubs;
- 23 e. Convention centers."

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

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

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

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

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

1           "(5) A permit may be issued to a nonprofit organization or a political  
2 organization to serve wine, malt beverages, and spirituous liquor at a  
3 ticketed event held to allow the organization to raise funds. For  
4 purposes of this subdivision 'nonprofit organization' means an  
5 organization that is exempt from taxation under Section 501(c)(3),  
6 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal  
7 Revenue Code ~~and~~ or is exempt under similar provisions of the  
8 General Statutes as a bona fide nonprofit charitable, civic, religious,  
9 fraternal, patriotic, or veterans' organization or as a nonprofit volunteer  
10 fire department, or as a nonprofit volunteer rescue squad or a bona fide  
11 homeowners' or property owners' association. For purposes of this  
12 subdivision 'political organization' means an organization covered by  
13 the provisions of G.S. 163-96(a)(1) or (2) or a campaign organization  
14 established by or for a person who is a candidate who has filed a notice  
15 of candidacy, paid the filing fees or filed the required petition, and  
16 been certified as a candidate ~~for one of the offices listed in G.S. 163-1.~~  
17 The issuance of this permit will also allow the issuance of a purchase-  
18 transportation permit under G.S. 18B-403 and 18B-404 and the use for  
19 culinary purposes of spirituous liquor lawfully purchased for use in  
20 mixed beverages."

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

22           "(d) When a temporary mixed beverages permit has been issued to a new  
23 permittee for the continuation of a business at the same location, the permittee going out  
24 of business may sell existing mixed beverages inventory to the new permittee, and the  
25 Commission may request that the local ABC board restamp the inventory with the  
26 mixed beverages tax stamp assigned by the local board to the new mixed beverages  
27 permittee."

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

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

- 31           (1) Suspend the winery's permit for a specific period of time no longer  
32 than three years;  
33           (2) Revoke the winery's permit;  
34           (3) Issue an order suspending the shipment of the winery's products to one  
35 or more designated sales territories previously served by the  
36 wholesaler who has been terminated or who is the successor in interest  
37 to a wholesaler who sold the winery's products in the designated  
38 territory.  
39           (4) Fine the winery up to five thousand dollars (\$5,000) for a first offense  
40 and up to twenty-five thousand dollars (\$25,000) for the second  
41 offense.

42           In any case in which the Commission is entitled to suspend or revoke a permit, the  
43 Commission may accept from the winery an offer in compromise to pay a monetary  
44 penalty. The Commission may either accept a compromise or revoke a permit, but not

1 both. The Commission may accept a compromise and suspend the permit in the same  
2 case."

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

4 "(d) Venue for all actions under this Article shall be determined by the trial judge  
5 based upon the convenience of witnesses and the promotion of the ends of justice."

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

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

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

11 "(j) Limited Liability. – A person serving as a member of a local ABC board shall  
12 be immune individually from civil liability for monetary damages, except to the extent  
13 covered by insurance, for any act or failure to act arising out of this service, except  
14 where the person:

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

16 (2) Was not acting in good faith;

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

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

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

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

24 Sec. 20. Section 146 of Chapter 738 of the 1987 Session Laws is repealed.

25 Sec. 20.1. Chapter 1368 of the 1955 Session Laws is repealed.

26 Sec. 21. G.S. 18B-800 reads as rewritten:

27 "**§ 18B-800. Sale of alcoholic beverages in ABC stores.**

28 (a) Spirituous Liquor. – Except as provided in Article 10 of this Chapter,  
29 spirituous liquor may be sold only in ABC stores operated by local boards.

30 (b) Fortified Wine. – In addition to spirituous liquor, ABC stores may sell  
31 fortified wine.

32 (c) Commission Approval. – No ABC store may sell any alcoholic beverage  
33 which has not been approved by the Commission for sale in this State.

34 (d) Credit Sales Prohibited. – No ABC store may sell any alcoholic beverage by  
35 the use of credit cards."

36 Sec. 22. This act is effective upon ratification except for Sections 8 and 16  
37 which shall become effective October 1, 1989, and except for Section 17 which applies  
38 only to actions brought after the date of ratification.