

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 1322

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Senate Alcoholic Beverage Control Committee Substitute Adopted 6/20/92

Short Title: ABC Law Changes.

(Public)

Sponsors:

Referred to:

May 27, 1992

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT OF BEER A MINI-BREWERY CAN SELL TO CONSUMERS AT THE BREWERY AND TO MAKE TECHNICAL CHANGES TO THE ALCOHOLIC BEVERAGE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-101(10) reads as rewritten:

"(10) 'Mixed beverage' means ~~a~~ either of the following:

a. A drink composed in whole or in part of spirituous liquor and served in a quantity less than the quantity contained in a closed package.

b. A premixed cocktail served from a closed package containing only one serving."

Sec. 2. G.S. 18B-404 reads as rewritten:

"§ 18B-404. Additional provisions for purchase and transportation by mixed beverage permittees.

(a) Designated Employee. – A mixed beverages permittee may designate an employee to purchase and transport spirituous liquor as authorized by ~~his~~ the permittee's permit.

(b) Issuance. – If mixed beverages sales have been approved for an establishment under the last paragraph of G.S. 18B-603(d) or under G.S. 18B-603(e), the purchase-transportation permit for that establishment may be issued by the local board of any city located in the same county as the establishment, provided the city has approved the sale

1 of mixed beverages. Otherwise a licensed establishment may obtain a mixed beverages
2 purchase-transportation permit only from the local board for the jurisdiction in which it
3 is located.

4 (c) Designated Store. – A local board may designate a store within its system to
5 make sales to mixed beverages permittees.

6 (d) Size of Bottles. – A purchase-transportation permit for a mixed beverages
7 permittee shall authorize the purchase and transportation only of ~~375~~355 milliliter or
8 larger containers. A purchase-transportation permit for a mixed beverages permittee
9 who is also a guest room cabinet permittee may authorize the purchase and
10 transportation of containers in sizes approved by the Commission.

11 ~~(d1) (1) Size of Bottles. – A purchase-transportation permit for a~~
12 ~~mixed beverages permittee shall authorize the purchase and~~
13 ~~transportation only of 375 milliliter or larger containers. – A~~
14 ~~purchase-transportation permit for a mixed beverages permittee~~
15 ~~who is also a guest room cabinet permittee may authorize the~~
16 ~~purchase and transportation of containers in sizes approved by~~
17 ~~the Commission.~~

18 ~~(2) This subsection applies to those counties subject to G.S. 18B-~~
19 ~~600(f). This subsection also applies to those counties which have a~~
20 ~~population in excess of 150,000 by the last federal census."~~

21 Sec. 3. G.S. 18B-804(b)(9) reads as rewritten:

22 "(9) If the spirituous liquor is sold to a guest room cabinet permittee for
23 resale, a charge of twenty dollars (\$20.00) on each four liters and a
24 proportional sum on lesser quantities. ~~This subdivision applies to~~
25 ~~those counties subject to G.S. 18B-600(f). This subdivision also applies~~
26 ~~to those counties which have a population in excess of 150,000 by the~~
27 ~~last federal census."~~

28 Sec. 4. G.S. 18B-805 reads as rewritten:

29 **"§ 18B-805. Distribution of revenue.**

30 (a) Gross Receipts. – As used in this section, 'gross receipts' means all revenue of
31 a local board, including proceeds from the sale of alcoholic beverages, investments,
32 interest on deposits, and any other source.

33 (b) Primary Distribution. – Before making any other distribution, a local board
34 shall first pay the following from its gross receipts:

35 (1) The board shall pay the expenses, including salaries, of operating
36 the local ABC system.

37 (2) Each month the local board shall pay to the Department of Revenue
38 the taxes due the Department. In addition to the taxes levied under
39 Chapter 105 of the General Statutes, the local board shall pay to the
40 Department one-half of both the mixed beverages surcharge
41 required by G.S. ~~18B-804(b)(8)~~18B-804(b)(8) and the guest room
42 cabinet surcharge required by G.S. 18B-804(b)(9).

43 (3) Each month the local board shall pay to the Department of Human
44 Resources five percent (5%) of both the mixed beverages surcharge

1 required by G.S. ~~18B-804(b)(8)~~ 18B-804(b)(8) and the guest room
2 cabinet surcharge required by G.S. 18B-804(b)(9). The Department
3 of Human Resources shall spend those funds for the treatment of
4 alcoholism or substance abuse, or for research or education on
5 alcohol or substance abuse.

6 (4) Each month the local board shall pay to the county commissioners
7 of the county where the charge is collected the proceeds from the
8 bottle charge required by G.S. 18B-804(b)(6), to be spent by the
9 county commissioners for the purposes stated in subsection (h) of
10 this section.

11 (c) Other Statutory Distributions. – After making the distributions required by
12 subsection (b), a local board shall make the following quarterly distributions from the
13 remaining gross receipts:

14 (1) Before making any other distribution under this subsection, the
15 local board shall set aside the clear proceeds of the three and one-
16 half percent (3 1/2%) markup provided for in G.S. 18B-804(b)(5)
17 and the bottle charge provided for in G.S. 18B-804(b)(6b), to be
18 distributed as part of the remaining gross receipts under subsection
19 (e) of this section.

20 (2) The local board shall spend for law enforcement an amount set by
21 the board which shall be at least five percent (5%) of the gross
22 receipts remaining after the distribution required by subdivision
23 (1). Notwithstanding the provisions of any local act, this provision
24 shall apply to all local boards.

25 (3) The local board shall spend, or pay to the county commissioners to
26 spend, for the purposes stated in subsection (h), an amount set by
27 the board which shall be at least seven percent (7%) of the gross
28 receipts remaining after the distribution required by subdivision
29 (1). This provision shall not be applicable to a local board which is
30 subject to a local act setting a different distribution.

31 (d) Working Capital. – After making the distributions provided for in subsections
32 (b) and (c), the local board may set aside a portion of the remaining gross receipts,
33 within the limits set by the rules of the Commission, as cash to operate the ABC system.
34 With the approval of the appointing authority for the board, the local board may also set
35 aside a portion of the remaining gross receipts as a fund for specific capital
36 improvements.

37 (e) Other Distributions. – After making the distributions provided in subsections
38 (b), (c), and (d), the local board shall pay each quarter the remaining gross receipts to
39 the general fund of the city or county for which the board is established, unless some
40 other distribution or some other schedule is provided for by law. If the governing body
41 of each city and county receiving revenue from an ABC system agrees, those governing
42 bodies may alter at any time the distribution to be made under this subsection or under
43 any local act. Copies of the governing body resolutions agreeing to a new distribution
44 formula and a copy of the approved new distribution formula shall be submitted to the

1 Commission for review and audit purposes. If any one of the governing bodies later
2 withdraws its consent to the change in distribution, profits shall be distributed according
3 to the original formula, beginning with the next quarter.

4 (f) ~~Mixed Beverage Surcharge Profit Shared.~~ – When, pursuant to the last
5 paragraph of G.S. 18B-603(d), spirituous liquor is bought at a city ABC store by a
6 mixed beverages permittee for premises located outside the city, the local board
7 operating the store at which the sale is made shall retain seventy-five percent (75%) of
8 the local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8)
9 and the guest room cabinet surcharge required by G.S. 18B-804(b)(9) and the remaining
10 twenty-five percent (25%) shall be divided equally among the local ABC boards for all
11 other cities in the county that have authorized the sale of mixed beverages.

12 When, pursuant to G.S. 18B-603(e), spirituous liquor is bought at a city ABC store
13 by a mixed beverages permittee for premises located at an airport outside the city, the
14 local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and
15 the guest room cabinet surcharge required by G.S. 18B-804(b)(9) shall be divided
16 equally among the local ABC boards for all cities in the county that have authorized the
17 sale of mixed beverages.

18 (g) Quarterly Distributions. – When this section requires a distribution to be
19 made quarterly, at least ninety percent (90%) of the estimated distribution shall be paid
20 to the recipient by the local board within 30 days of the end of that quarter. Adjustments
21 in the amount to be distributed resulting from the closing of the books and from audit
22 shall be made with the next quarterly payment.

23 (h) Expenditure of Alcoholism Funds. – Funds distributed under subdivisions
24 (b)(4) and (c)(3) of this section shall be spent for the treatment of alcoholism or
25 substance abuse, or for research or education on alcohol or substance abuse. The
26 minutes of the board of county commissioners or local board spending funds allocated
27 under this subsection shall describe the activity for which the funds are to be spent. Any
28 agency or person receiving funds from the county commissioners or local board under
29 this subsection shall submit an annual report to the board of county commissioners or
30 local board from which funds were received, describing how the funds were spent.

31 (i) Calculation of Statutory Distributions When Liquor Sold at Less Than
32 Uniform Price. – If a local board sells liquor at less than the uniform State price,
33 distributions required by subsections (b) and (c) shall be calculated as though the liquor
34 was sold at the uniform price."

35 Sec. 5. G.S. 18B-902(d)(30) reads as rewritten:

36 "(30) Guest room cabinet permit. – \$750.00. ~~This subdivision applies to~~
37 ~~those counties subject to G.S. 18B-600(f). This subdivision also~~
38 ~~applies to those counties which have a population in excess of~~
39 ~~150,000 by the last federal census."~~

40 Sec. 6. G.S. 18B-903 reads as rewritten:

41 "**§ 18B-903. Duration of permit; renewal and transfer.**

42 (a) Duration. – Once issued, ABC permits shall be valid for the following
43 periods, unless earlier surrendered, suspended or revoked:

- 1 (1) On-premises and off-premises malt beverage, unfortified wine, and
2 fortified wine permits; culinary permits; and all permits listed in
3 G.S. 18B-1100 shall remain valid indefinitely;
- 4 (2) Limited special occasion permits shall be valid for 48 hours before
5 and after the occasion for which the permit was issued;
- 6 (3) Special one-time permits issued under G.S. 18B-1002 shall be valid
7 for the period stated on the permit;
- 8 (4) Temporary permits issued under G.S. 18B-905 shall be valid for 90
9 days; and
- 10 (5) All other ABC permits shall be valid for one year, from May 1 to
11 April 30.

12 (b) Renewal. – Application for renewal of an ABC permit shall be on a form
13 provided by the Commission. An application for renewal shall be accompanied by an
14 application fee of twenty-five percent (25%) of the original application fee set in G.S.
15 18B-902, except that the renewal application fee for a each mixed beverages permit and
16 each guest room cabinet permit shall be five hundred dollars (\$500.00). A renewal fee
17 shall not be refundable.

18 ~~(b1) Renewal. — Application for renewal of an ABC permit shall be on a form~~
19 ~~provided by the Commission. An application for renewal shall be accompanied by an~~
20 ~~application fee of twenty five percent (25%) of the original application fee set in G.S.~~
21 ~~18B-902, except that the renewal application fee for each mixed beverages permit and~~
22 ~~each guest room cabinet permit shall be five hundred dollars (\$500.00). A renewal fee~~
23 ~~shall not be refundable.~~

24 ~~This subsection applies to those counties subject to G.S. 18B-600(f). This~~
25 ~~subsection also applies to those counties which have a population in excess of 150,000~~
26 ~~by the last federal census.~~

27 (c) Change in Ownership. – All permits for an establishment shall automatically
28 expire and shall be surrendered to the Commission if:

- 29 (1) Ownership of the establishment changes; or
- 30 (2) There is a change in the membership of the firm, association or
31 partnership owning the establishment, involving the acquisition of
32 a twenty-five percent (25%) or greater share in the firm, association
33 or partnership by someone who did not previously own a twenty-
34 five percent (25%) or greater share; or
- 35 (3) Twenty-five percent (25%) or more of the stock of the corporate
36 permittee owning the establishment is acquired by someone who
37 did not previously own twenty-five percent (25%) or more of the
38 stock.

39 (d) Change in Management. – A corporation holding a permit for an
40 establishment for which the manager is required to qualify as an applicant under G.S.
41 18B-900(c) shall, within 30 days after employing a new manager, submit to the
42 Commission an application for substitution of a manager. The application shall be
43 signed by the new manager, shall be on a form provided by the Commission, and shall
44 be accompanied by a fee of ten dollars (\$10.00). The fee shall not be refundable.

1 (e) Transfer. – An ABC permit may not be transferred from one person to
2 another or from one location to another.

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

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

11 Sec. 7. G.S. 18B-1001(13) reads as rewritten:

12 "(13) Guest Room Cabinet Permit. – A guest room cabinet permit
13 authorizes a hotel having a mixed beverages permit to sell to its
14 room guests, from securely locked cabinets, malt beverages,
15 unfortified wine, fortified wine, and spirituous liquor. A permittee
16 shall designate and maintain at least ten percent (10%) of the
17 permittee's guest rooms as rooms that do not have a guest room
18 cabinet. A permittee may dispense alcoholic beverages from a
19 guest room cabinet only in accordance with written policies and
20 procedures filed with and approved by the Commission. A
21 ~~permittee-permittee~~ shall provide a reasonable number of vending
22 machines, ~~coolers~~-coolers, or similar machines on premises for the
23 sale of soft drinks to hotel guests.

24 A guest room cabinet permit may be issued for any of the following:

25 a. A hotel located in a county ~~This subdivision applies to those~~
26 ~~counties~~-subject to G.S. 18B-600(f).

27 b. A hotel located in a county that has ~~This subdivision also applies~~
28 ~~to those counties which have a population in excess of 150,000 by~~
29 ~~the last federal census."~~

30 Sec. 8. G.S. 18B-1007 reads as rewritten:

31 **"§ 18B-1007. Additional requirements for mixed beverages permittees.**

32 (a) Purchases. – A mixed beverages permittee may purchase spirituous liquor for
33 resale as mixed beverages and a guest room cabinet permittee may purchase spirituous
34 liquor for resale from a guest room cabinet only at an ABC store designated by a local
35 board and only with a purchase-transportation permit issued by that local board under
36 G.S. 18B-403 and 18B-404.

37 (b) Handling Bottles. – It shall be unlawful for a mixed beverages permittee or
38 ~~his~~the permittee's agent or employee to do any of the following:

39 (1) Store any other spirituous liquor with liquor possessed for resale in
40 mixed beverages;

41 (1a) ~~Store any other spirituous liquor with liquor possessed for resale in~~
42 ~~mixed beverages or from a guest room cabinet. This subdivision~~
43 ~~applies to those counties subject to G.S. 18B-600(f). This~~

1 subdivision also applies to those counties which have a population
2 in excess of 150,000 by the last federal census.

3 (2) Refill any spirituous liquor container having a mixed beverages tax
4 stamp with any other alcoholic beverage, or add to the contents of
5 such a container any other alcoholic ~~beverage;~~ beverage.

6 (3) Transfer from one container to another a mixed beverages tax
7 stamp.

8 (c) Price List. – Each mixed beverages permittee shall have available for its
9 customers the printed prices of the most common or popular mixed beverages offered
10 for sale by the permittee. Violation of this subsection shall not be a criminal offense, but
11 shall be punishable under G.S. 18B-104.

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

18 Sec. 9. G.S. 18B-1104(7) reads as rewritten:

19 "(7) In areas where the sale is legal, sell the brewery's malt beverages at
20 the brewery upon receiving a permit under G.S. 18B-1001(1). This
21 authorization ~~shall apply~~ applies to breweries a brewery that produce
22 sells, to consumers at the brewery, to wholesalers, and to exporters,
23 fewer than ~~62,000~~ 310,000 gallons of malt beverages produced by it
24 per year."

25 Sec. 10. G.S. 18B-101 (13a) reads as rewritten:

26 "(13a) 'Special ABC area' means an area in a city or county, either
27 unincorporated or incorporated, with less than 100-500 permanent
28 residents that:

29 (1) Borders on another state;

30 (2) Where ABC stores are permitted in one or more cities in the
31 county;

32 (3) Where the on-premises sale of unfortified wines and malt
33 beverages by qualified persons and establishments, including
34 persons and establishments qualified under G.S. 18B-603(c) or
35 G.S. 18B-603(d), is permitted countywide or in two or more
36 cities in the county; and such area

37 (a) Contains more than 1000-500 acres and is made up of
38 privately-owned land and land owned by an association
39 or club having more than 200 members and created for
40 municipal and recreational purposes;

41 (b) Which for three or more years has levied assessments or
42 dues and provided municipal services; and

43 (c) Is incorporated as a municipality or has within such area
44 a private association or club that has been determined or

1 is treated by the Internal Revenue Service to be exempt
2 from tax on member source or exempt function income."

3 Sec. 11. G.S. 18B-603(h) is rewritten to read:

4 "(h) Permits Based on Existing Permits. – In any county in which the sale of malt
5 beverage on and off premises, the sale of unfortified wine on and off premises, the sale
6 of mixed beverages, and the operation of an ABC system has been allowed in at least
7 six cities in the county, the Commission may issue permits to sports clubs as defined in
8 G.S. 18B-1000(8) throughout the county. The Commission may issue the following
9 permits:

- 10 (1) On and Off Premises Malt Beverage;
- 11 (2) On and Off Premises Unfortified Wine;
- 12 (3) On and Off Premises Fortified Wine; or
- 13 (4) Mixed Beverage.

14 Retail establishments holding mixed beverage permits shall purchase their spirituous
15 liquor at the nearest municipal ABC system store. The Commission may also issue on-
16 premises malt beverage, unfortified wine, fortified wine and mixed beverages permits to
17 a sports club located in a county adjacent to any county that has approved the sale of
18 mixed beverages pursuant to the last paragraph of G.S. 18B-603(d), if the county in
19 which the sports club is located borders another state and has at least one city that has
20 approved the sale of mixed beverages. Sports clubs holding mixed beverages permits
21 shall purchase their spirituous liquor at the nearest municipal ABC system store that has
22 been designated for such purchases."

23 Sec. 12. G.S. 18B-1006 is amended by adding a new subsection to read:

24 "(k) Special Private Club Permits. – The Commission may issue permits listed in
25 G.S. 18B-1001 to qualified persons and establishments located within a private club
26 located in a private development, without approval at an election:

- 27 (1) In any county which has a population of less than 45,000 by the
28 last federal census, and in which there are at least three but not
29 more than four cities that have approved the sale of malt beverages
30 or unfortified wine; and
 - 31 a. Only one city in the county has approved the on-premises sale
32 of malt beverages, and
 - 33 b. At least two cities in the county have approved the operation of
34 ABC stores before the ratification date of this section; or
- 35 (2) In any county bordering on a county that has called elections
36 pursuant to G.S. 18B-600(f); and
 - 37 a. The issuance of permits in unincorporated areas of the county
38 has not been approved, and
 - 39 b. Not more than three cities in the county have approved the
40 operation of ABC stores before the ratification date of this
41 section.

42 The mixed beverages transportation permit authorized by G.S. 18B-404(b) shall
43 be issued by a local board operating a store located in the county. A private club
44 located in the county is defined as a club or lodge located in a privately owned,

1 primarily residential and recreational development, which is open only to members by
2 invitation of the club's board of directors and the guests of these members."

3 Sec. 13. G.S. 18B-603(f2) reads as rewritten:

4 "(f2) Permits for Unincorporated Special ABC Areas. – The Commission may
5 issue the permits provided for in G.S. 18B-1001(1), G.S. 18B-1001(3), G.S. 18B-
6 1001(4), G.S. 18B-1001(5), G.S. 18B-1001(6), and G.S. 18B-1001(10) to qualified
7 persons and ~~establishments, not open to the public,~~ establishments located within a Special
8 ABC area as defined in G.S. 18B-101, provided that: (i) if such area is a municipal
9 corporation, the area shall conduct an election authorized by subdivision (a)(4) of G.S.
10 18B-600, which election may be held regardless of the number of registered voters
11 located within the municipal corporation; or (ii) if such area is unincorporated but has
12 within such area a private association or club, the board of such private association or
13 club shall call and conduct a special meeting at which meeting a majority of private
14 association members, club members, lot and home owners, votes and approves the sale
15 of mixed beverages, and the board certifies the results of such meeting to the Alcoholic
16 Beverage Control Commission. The mixed beverages purchase-transportation permit
17 authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located
18 in the same county as the Special ABC area."

19 Sec. 14. This act is effective upon ratification.