

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 11
PROPOSED COMMITTEE SUBSTITUTE S11-PCS15028-TGf-1

Short Title: ABC Regulation and Reform.

(Public)

Sponsors:

Referred to:

February 4, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO STRENGTHEN THE PERMITTING ENFORCEMENT AUTHORITY OF THE
3 ABC COMMISSION AND TO MAKE OTHER CHANGES TO THE ABC LAWS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 18B-104 reads as rewritten:

6 "**§ 18B-104. Administrative penalties.**

7 (a) Penalties. – For any violation of the ABC laws, the Commission may take any of the
8 following actions against a permittee:

9 (1) Suspend the permittee's permit for a specified period of time not longer than
10 three ~~years;~~ years.

11 (2) Revoke the permittee's ~~permit;~~ permit.

12 (3) Fine the permittee up to five hundred dollars (\$500.00) for the first violation,
13 up to seven hundred fifty dollars (\$750.00) for the second ~~violation,~~ violation
14 within three years, and up to one thousand dollars (\$1,000) for the third
15 ~~violation;~~ or violation within three years for all violations not listed in
16 subdivision (3a) of this subsection.

17 (3a) Fine the permittee up to seven hundred fifty dollars (\$750.00) for the first
18 violation, up to one thousand dollars (\$1,000) for a second violation within
19 three years, and up to one thousand two hundred fifty dollars (\$1,250) for a
20 third violation within three years if the violations involve acts of violence,
21 controlled substances, or prostitution occurring on the licensed premises.
22 Additionally, the Commission may impose conditions on the operating hours
23 of the business for violations listed in this subdivision.

24 (4) Suspend the permittee's permit under subdivision (1) and impose a fine under
25 subdivision ~~(3)~~(3) or (3a).

26 ...

27 (b1) Compromise for Certain Egregious Violations. – In any case in which there are two
28 or more violations within three years in which the Commission is entitled to suspend or revoke
29 a permit, the Commission may accept from the permittee an offer in compromise to pay a penalty
30 of not more than ten thousand dollars (\$10,000) if the violations involve any of the following
31 acts:

32 (1) Acts of violence occurring on the licensed premises.

33 (2) The permittee or the permittee's agent or employee knowingly allowing any
34 violation of the controlled substances or prostitution statutes on the licensed
35 premises.



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1 The Commission may also impose conditions on the operating hours of the business as part
2 of a compromise pursuant to this subsection. The Commission may either accept a compromise
3 or revoke a permit, but not both. The Commission may accept a compromise and suspend the
4 permit in the same case.

5 "

6 **SECTION 2.** G.S. 18B-900 reads as rewritten:

7 "**§ 18B-900. Qualifications for permit.**

8 (a) Requirements. – To be eligible to receive and to hold an ABC permit, a person must
9 satisfy all of the following requirements:

10 (1) Be at least 21 years old, ~~unless the person is a manager of a business in which~~
11 ~~ease the person shall be at least 19 years old.~~

12 ...

13 (c) Who Must Qualify; Exceptions. – For an ABC permit to be issued to and held for a
14 business, each of the following persons associated with that business must qualify under
15 subsection (a):

16 (1) The owner of a sole ~~proprietorship;~~proprietorship.

17 (2) Each member of a firm, association or general ~~partnership;~~partnership.

18 (2a) Each general partner in a limited ~~partnership;~~partnership.

19 (2b) Each manager and any member with a twenty-five percent (25%) or greater
20 interest in a limited liability ~~company;~~company.

21 (3) Each officer, director and owner of twenty-five percent (25%) or more of the
22 stock of a corporation except that the requirement of subdivision (a)(1) does
23 not apply to such an officer, director, or stockholder unless he or she is a
24 manager or is otherwise responsible for the day-to-day operation of the
25 ~~business;~~business.

26 (4) The manager of an establishment operated by a ~~corporation other than an~~
27 ~~establishment with only off-premises malt beverage, off-premises unfortified~~
28 ~~wine, or off-premises fortified wine permits;~~corporation.

29 (5) Any manager who has been empowered as attorney-in-fact for a nonresident
30 individual or partnership.

31 (6) Any manager or person otherwise responsible for the day-to-day operation of
32 the business, if none of the persons listed in subdivisions (1) through (5) of
33 this subsection are a manager or person otherwise responsible for the
34 day-to-day operation of the business.

35 "

36 **SECTION 3.** G.S. 18B-901 reads as rewritten:

37 "**§ 18B-901. Issuance of permits.**

38 ...

39 (c) Factors in Issuing Permit. – Before issuing a permit, the Commission shall be satisfied
40 that the applicant is a suitable person to hold an ABC permit and that the location is a suitable
41 place to hold the permit for which the applicant has applied. To be a suitable place, the local
42 governing body shall return a Zoning and Compliance Form to the Commission on a form
43 provided by the Commission to show the establishment is in compliance with all applicable
44 building and fire codes and, if applicable, has been notified that it is located in an Urban
45 Redevelopment Area as defined by Article 22 of Chapter 160A of the General Statutes and as
46 required by G.S. 18B-904(e)(2). Other factors the Commission shall consider in determining
47 whether the applicant and the business location are suitable are all of the following:

48 (1) The reputation, character, and criminal record of the applicant.

49 (2) ~~The number of places already holding ABC permits within the neighborhood.~~

50 (3) ~~Parking facilities and traffic conditions in the neighborhood.~~

51 (4) ~~Kinds of businesses already in the neighborhood.~~

(5) ~~Whether the establishment is located within 50 feet of a church, public school, or any nonpublic school as defined by Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes.~~

(6) Zoning laws, laws, the number of places already holding ABC permits within the neighborhood, parking facilities and traffic conditions in the neighborhood, types of businesses already in the neighborhood, and whether the establishment is located within 50 feet of a church, public school, or any nonpublic school as defined in Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes.

...."

SECTION 4. G.S. 18B-904(e) reads as rewritten:

"(e) Business or Location No Longer Suitable. –

(1) ~~The If the Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the General Statutes, it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood.~~ neighborhood, the Commission may commence a contested case under Chapter 150B of the General Statutes for the suspension or revocation of a permit issued by it.

(2) The Commission shall suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309. Notwithstanding ~~subdivision (e)(1) of this section,~~ G.S. 18B-906, the Commission shall, by order and without prior hearing, summarily suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309(c) when, prior to the period of time for which the audit is to be conducted, the city council has filed information designating the location of the Urban Redevelopment Area as required under G.S. 18B-309(a) and has provided actual notice to permittees located in the Urban Redevelopment Area that they are located in such an area and must abide by G.S. 18B-309(c). Upon entry of a summary order under this subdivision, the Commission shall promptly notify all interested parties that the order has been entered and of the reasons therefore. The order will remain in effect until it is modified or vacated by the Commission. The permittee may, within 30 days after receipt of notice of the order, ~~make written request to the Commission for a hearing on the matter. If a hearing is requested, after compliance with the provisions of~~ commence a contested case under Chapter 150B of the General Statutes, the Commission shall issue an order to affirm, reverse, or modify its previous action. Statutes for the reversal or modification of the Commission's order.

(3) ~~Notwithstanding G.S. 18B-906, If the Commission shall revoke a permit issued by it if, after complying with the provisions of Chapter 150B of the General Statutes and without a finding of mitigating evidence or circumstances, it finds evidence that the permittee or the permittee's employee has been found responsible by a court of competent jurisdiction or the Commission for two or more violations on separate dates of knowingly allowing a violation of the gambling, disorderly conduct, prostitution, controlled substance, or felony criminal counterfeit trademark laws as those offenses are prohibited pursuant to G.S. 18B-1005(a)(2), (a)(3), or (b), G.S. 18B-1005.1, or G.S. 80-11.1(b)(2) or (3), at a single ABC-licensed premises within a 12-month period.~~ period, the Commission may commence a contested case under Chapter 150B of the General Statutes for the revocation of a permit issued by it. The permittee and the owner of the property have the

responsibility to monitor the conduct on the licensed premises pursuant to G.S. 18B-1005(b) and G.S. 19-1. Revocation of permits pursuant to this subdivision shall only apply to the permits issued to the location where the violations occurred.

(4) Notwithstanding G.S. 18B-906, the Commission ~~shall immediately~~ shall, by order and without prior hearing, summarily suspend or revoke permits issued by it for a period of 30 days if both of the following apply:

a. Alcohol Law Enforcement agents or local ABC Board officers ~~provide advance notice to~~ have consulted with the Commission Legal Division staff ~~of regarding~~ the ongoing undercover operation-operation and the sufficiency of the evidence gathered at the time of the consultation.

b. Upon execution of the search warrant resulting from the undercover operation, five or more persons are criminally charged with violations of the gambling, assault, disorderly conduct, prostitution, controlled substance, or felony criminal counterfeit trademark laws.

Upon entry of a summary order under this subdivision, the Commission shall promptly notify the permittee that the order has been entered and of the reasons therefore. The order shall remain in effect until it is modified or vacated by the Commission. The permittee may, within 30 days after receipt of notice of the order, commence a contested case under Chapter 150B of the General Statutes for reversal or modification of the Commission's order."

SECTION 5. G.S. 18B-1000 reads as rewritten:

"§ 18B-1000. Definitions concerning establishments.

The following requirements and definitions shall apply to this Chapter:

...
 (4a) Private bar. – An establishment that is organized and operated as a for-profit entity and that is not open to the general public but is open only to the members of the organization and their bona fide guests for the purpose of allowing its members and their guests to socialize and engage in recreation.

(5) ~~Private club. – An establishment that is organized and operated solely for a social, recreational, patriotic, or fraternal purpose and that is not open to the general public, but is open only to the members of the organization and their bona fide guests. This provision does not, however, prohibit such an establishment from being open to the general public for raffles and bingo games as required by G.S. 14-309.11(a) and G.S. 14-309.13. Except for bona fide religious organizations, no organization that discriminates in the selection of its membership on the basis of religion shall be eligible to receive any permit issued under this Chapter.~~ qualifies under Section 501(c) of the Internal Revenue Code of 1954, as amended, 26 U.S.C. § 501(c), and that has been in operation for a minimum of 12 months prior to application for an ABC permit.

...."

SECTION 6. G.S. 18B-1001 reads as rewritten:

"§ 18B-1001. Kinds of ABC permits; places eligible.

When the issuance of the permit is lawful in the jurisdiction in which the premises are located, the Commission may issue the following kinds of permits:

(1) **On-Premises Malt Beverage Permit. –** An on-premises malt beverage permit authorizes (i) the retail sale of malt beverages for consumption on the premises, (ii) the retail sale of malt beverages in the manufacturer's original container for consumption off the premises, and (iii) the retail sale of malt beverages in a cleaned and sanitized container that is filled or refilled and sealed for consumption off the premises and that identifies the permittee and

the date the container was filled or refilled. It also authorizes the holder of the permit to ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:

...

k. Private bars.

...
(3)

On-Premises Unfortified Wine Permit. – An on-premises unfortified wine permit authorizes (i) the retail sale of unfortified wine for consumption on the premises, either alone or mixed with other beverages, (ii) the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises, and (iii) the retail sale of unfortified wine dispensed from a tap connected to a pressurized container utilizing carbon dioxide or similar gas into a cleaned and sanitized container that is filled or refilled and sealed for consumption off the premises and that identifies the permittee and the date the container was filled or refilled. The permit also authorizes the permittee to transfer unfortified wine, not more than four times per calendar year, to another on-premises unfortified wine permittee that is under common ownership or control as the transferor. Except as authorized by this subdivision, transfers of wine by on-premises unfortified wine permittees, purchases of wine by a retail permittee from another retail permittee for the purpose of resale, and sale of wine by a retail permittee to another retail permittee for the purpose of resale are unlawful. In addition, a particular brand of wine may be transferred only if both the transferor and transferee are located within the territory designated between the winery and the wholesaler on file with the Commission. Prior to or contemporaneous with any such transfer, the transferor shall notify each wholesaler who distributes the transferred product of the transfer. The notice shall be in writing or verifiable electronic format and shall identify the transferor and transferee, the date of the transfer, quantity, and items transferred. The holder of the permit is authorized to ship unfortified wine in closed containers to individual purchasers inside and outside the State. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision. The permit may be issued for any of the following:

...

l. Private bars.

...
(5)

On-Premises Fortified Wine Permit. – An on-premises fortified wine permit authorizes the retail sale of fortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of fortified wine in the manufacturer's original container for consumption off the premises. The permit also authorizes the permittee to transfer fortified wine, not more than four times per calendar year, to another on-premises fortified wine permittee that is under common ownership or control as the transferor. Except as authorized by this subdivision, transfers of wine by on-premises fortified wine permittees, purchases of wine by a retail permittee from another retail permittee for the purpose of resale, and sale of wine by a retail permittee to another retail permittee for the purpose of resale are unlawful. In addition, a particular brand of wine may be transferred only if both the transferor and

transferee are located within the territory designated between the winery and the wholesaler on file with the Commission. Prior to or contemporaneous with any such transfer, the transferor shall notify each wholesaler who distributes the transferred product of the transfer. The notice shall be in writing or verifiable electronic format and shall identify the transferor and transferee, the date of the transfer, quantity, and items transferred. The holder of the permit is authorized to ship fortified wine in closed containers to individual purchasers inside and outside the State. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision. The permit may be issued for any of the following:

...
 g. Private bars.

...
 (7) **Brown-Bagging Permit.** – A brown-bagging permit authorizes each individual patron of an establishment, with the permission of the permittee, to bring up to eight liters of fortified wine or spirituous liquor, or eight liters of the two combined, onto the premises and to consume those alcoholic beverages on the premises. The permit may be issued for any of the following:

...
 f. Private bars.

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

...
 f. Private bars.

...
 (10) **Mixed Beverages Permit.** – A mixed beverages permit authorizes the retail sale of mixed beverages for consumption on the premises. The permit also authorizes a mixed beverages permittee (i) to obtain a purchase-transportation permit under G.S. 18B-403 and 18B-404, (ii) to obtain an antique spirituous liquor permit under subdivision (20) of this section, and (iii) to use for culinary purposes spirituous liquor lawfully purchased for use in mixed beverages. The permit may be issued for any of the following:

...
 i. Private bars.

...."
SECTION 7. G.S. 130A-247 is amended by adding a new subdivision to read:

"(1b) "Private bar" is as defined in G.S. 18B-1000(4a)."

SECTION 8. G.S. 130A-248(a) reads as rewritten:

"(a) For the protection of the public health, the Commission shall adopt rules governing the sanitation of establishments that prepare or serve drink or food for pay and establishments that prepare and sell meat food products or poultry products. However, any establishment that prepares or serves food or drink to the public, regardless of pay, shall be subject to the provisions of this Article if the establishment that prepares or serves food or drink holds an ABC permit, as defined in G.S. 18B-101, meets any of the definitions in G.S. 18B-1000, and does not meet the definition of a private bar as provided in G.S. 130A-247(1b) or a private club as provided in G.S. 130A-247(2)."

1 **SECTION 9.** G.S. 130A-250 is amended by adding a new subdivision to read:

2 "(4a) Private bars."

3 **SECTION 10.** Section 1 of this act becomes effective October 1, 2019. Sections 2,
4 5, and 6 of this act are effective when they become law and apply to new permits issued on or
5 after that date. Permits issued to private clubs as defined in G.S. 18B-1000(5) prior to the
6 effective date of this act shall be grandfathered and may remain in effect and eligible for renewal
7 as a private bar under G.S. 18B-1005(4a) or a private club under G.S. 18B-1005(5), as applicable,
8 notwithstanding Section 5 of this act. The remainder of this act is effective when it becomes law.