



Bill Draft 2019-MLz-137: ABC Administrative Penalties/PED Study.

2019-2020 General Assembly

Committee: Joint Legislative Program Evaluation
Oversight Committee

Date: February 27, 2020

Introduced by:

Prepared by: Luke Gillenwater

Analysis of: 2019-MLz-137

Staff Attorney

OVERVIEW: 2019-MLz-137 directs the Alcoholic Beverage Control Commission (Commission) to (1) create a policy that establishes a rationale for administrative penalties and improves transparency for permittees, (2) study and report on the feasibility of implementing a throughput-based or sales-based penalty structure for determining monetary penalties for administrative violations, and (3) include effectiveness criteria on its Web site or in its Annual Report to evaluate the effectiveness of administrative penalties at reducing the number of repeat offenders, as recommended by a Program Evaluation Division report.

BILL ANALYSIS: 2019-MLz-137 does all of the following:

Section 1: Amends G.S. 18B-104 to require the Commission to do all of the following:

- Develop a written policy detailing (i) the guidelines followed by it in determining which action it takes against a permittee for a violation of the ABC laws,¹ (ii) when it is appropriate for the Commission to deviate from said guidelines, and (iii) justification for any differences between the severity of the action taken by the Commission for similar violations of the law.
- Post the policy to its Web site no later than October 1, 2020.
- Post to its Web site notice of, and justification for, any revision to the policy at least 30 days prior to making such revision.
- Post on its Web site, by July 1 of each year, all of the following information:
 - The total percentage of permittees that committed a violation of the ABC laws during the prior fiscal year.
 - The total percentage of permittees that committed a second or subsequent violation of the ABC laws during the prior fiscal year.
 - The total percentage of ABC law violations during the prior fiscal year that are considered consumption-related violations by the Commission.

Section 2: Directs the Commission to study the feasibility of setting the amount of fines assessed by the Commission for violations of the ABC laws based either on the value of alcohol sales made by the offending permittee or on the volume of alcohol sold by the offending permittee. The results of the study, including any recommended legislative changes, are to be reported to the House of Representatives Committee on Alcoholic Beverage Control by December 1, 2020.

¹ The term "ABC laws" is defined in G.S. 18B-101 as "any statute or statutes in [Chapter 18B] or in Article 2C of Chapter 105, and the rules issued by the Commission under the authority of [Chapter 18B]."

Kory Goldsmith
Director



Legislative Drafting
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Page 2

EFFECTIVE DATE: The act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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BILL DRAFT 2019-MLz-137 [v.9]

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: ABC Administrative Penalties/PED Study.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT DIRECTING THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO (1)
3 CREATE A POLICY THAT ESTABLISHES A RATIONALE FOR ADMINISTRATIVE
4 PENALTIES AND IMPROVES TRANSPARENCY FOR PERMITTEES, (2) STUDY
5 AND REPORT ON THE FEASIBILITY OF IMPLEMENTING A
6 THROUGHPUT-BASED OR SALES-BASED PENALTY STRUCTURE FOR
7 DETERMINING MONETARY PENALTIES FOR ADMINISTRATIVE VIOLATIONS,
8 AND (3) INCLUDE EFFECTIVENESS CRITERIA ON ITS WEB SITE TO EVALUATE
9 THE EFFECTIVENESS OF ADMINISTRATIVE PENALTIES AT REDUCING THE
10 NUMBER OF REPEAT OFFENDERS, AS RECOMMENDED BY A PROGRAM
11 EVALUATION DIVISION REPORT.

12 The General Assembly of North Carolina enacts:

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

14 **"§ 18B-104. Administrative penalties.**

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

17 ...
18 (4) Suspend the permittee's permit under subdivision (1) of this subsection and
19 impose a fine under subdivision (3) or ~~(3a)~~ (3a) of this subsection.

20 ...
21 (f) Policy. – The Commission shall develop a written policy detailing (i) the guidelines
22 followed by the Commission in determining which action authorized under this section the
23 Commission will take against a permittee for a first or repeat violation of the ABC laws, (ii) when
24 it is appropriate for the Commission to deviate from the guidelines described in this subsection,
25 and (iii) the justification for any differences between the severity of the action taken by the
26 Commission for similar violations of the ABC laws. The policy required under this subsection
27 shall be posted by the Commission on the Commission's Web site. At least 30 days prior to
28 revising the policy required under this subsection, the Commission shall post on the
29 Commission's Web site notice of the revision and justification for making the revision.

30 (g) Report. – By July 1 of each year, the Commission shall post the following information
31 on its Web site:

32 (1) The total percentage of active or pending permittees that the Commission
33 received a report of alleged violation of the ABC laws during the prior fiscal
34 year.



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- 1 (2) The total percentage of active or pending permittees that the Commission
2 received a report of a second or subsequent alleged violation of the ABC laws
3 during the prior fiscal year.
4 (3) The total percentage of reported ABC law violations during the fiscal year that
5 are considered consumption-related by the Commission."

6 **SECTION 2.** The Alcoholic Beverage Control Commission (Commission) shall
7 study the feasibility of setting the amount of fines assessed by the Commission for violations of
8 the ABC laws, as defined in G.S. 18B-101, based either on the value of alcohol sales made by
9 the offending permittee or on the volume of alcohol sold by the offending permittee. The study
10 shall include an examination of the opportunities and challenges arising from the implementation
11 of either approach, the resources needed for implementing either approach, any ramifications
12 either approach would have on the proportionality of penalties assessed on offending permittees,
13 and any legislative changes necessary to implement either approach. By December 1, 2020, the
14 Commission shall submit a report of its findings, including any recommended legislative
15 changes, to the House of Representatives Committee on Alcoholic Beverage Control.

16 **SECTION 3.** This act is effective when it becomes law. The Commission shall post
17 the policy required under G.S. 18B-104(f), as enacted in Section 1 of this act, no later than
18 October 1, 2020.