

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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BILL DRAFT 2017-TQ-36 [v.3]

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: ABC Regulation and Reform.

(Public)

Sponsors:

Referred to:

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

The General Assembly of North Carolina enacts:

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

"§ 18B-104. Administrative penalties.

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

- (1) Suspend the permittee's permit for a specified period of time not longer than three years;
- (2) Revoke the permittee's permit;
- (3) Fine the permittee up to ~~five hundred dollars (\$500.00)~~ one thousand three hundred and fifty dollars (\$1,350.00) for the first violation, up to ~~seven hundred fifty dollars (\$750.00)~~ two thousand one hundred dollars (\$2,100.00) for the second violation, and up to ~~one thousand dollars (\$1,000)~~ two thousand seven hundred and fifty dollars (\$2,750.00) for the third violation; or
- (4) Suspend the permittee's permit under subdivision (1) and impose a fine under subdivision (3).
- (5) Impose conditions on the operation hours of the business.

(b) Compromise. – In any case in which the Commission is entitled to suspend or revoke a permit, the Commission may accept from the permittee an offer in compromise to pay a penalty of not more than ~~five thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000.00). The Commission may either accept a compromise or revoke a permit, but not both. The Commission may accept a compromise and suspend the permit in the same case.

(c) Fines and Penalties to Treasurer. – The clear proceeds of fines and penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) Effect on Licenses. – Suspension or revocation of a permit includes automatic suspension or revocation of any related State or local revenue license.

(e) Effect on Other Permits. – Unless some other disposition is ordered by the Commission, revocation or suspension of a permit under subsection (a) includes automatic revocation or suspension, respectively, of any other ABC permit held by the same permittee for the same establishment."



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SECTION 2. G.S. 18B-900 reads as rewritten:**"§ 18B-900. Qualifications for permit.**

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

- (1) Be at least 21 years old, unless the person is a ~~manager~~owner of a business ~~seeking to sell alcoholic beverages selling only malt beverages and unfortified wine~~, in which case the person shall be at least ~~19~~25 years old.
- (2) Be a resident of North Carolina unless:
 - a. He is an officer, director or stockholder of a corporate applicant or permittee and is not a manager or otherwise responsible for the day-to-day operation of the business; or
 - b. He has executed a power of attorney designating a qualified resident of this State to serve as attorney in fact for the purposes of receiving service of process and managing the business for which permits are sought; or
 - c. He is applying for a nonresident malt beverage vendor permit, a nonresident wine vendor permit, or a vendor representative permit.
- (3) Not have been convicted of a felony within three years, and, if convicted of a felony before then, has had his citizenship restored.
- (4) Not have been convicted of an alcoholic beverage offense within two years.
- (5) Not have been convicted of a misdemeanor controlled substance offense within two years.
- (6) Not have had an alcoholic beverage permit revoked within three years, except where the revocation was based solely on a permittee's failure to pay the annual registration and inspection fee required in G.S. 18B-903(b1).
- (7) Not have, whether as an individual or as an officer, director, shareholder or manager of a corporate permittee, an unsatisfied outstanding final judgment that was entered against him in an action under Article 1A of this Chapter.
- (8) Be current in filing all applicable tax returns to the State and in payment of all taxes, interest, and penalties that are collectible under G.S. 105-241.22. This subdivision does not apply to the following ABC permits:
 - a. Special occasion permit under G.S. 18B-1001(8).
 - b. Limited special occasion permit under G.S. 18B-1001(9).
 - c. Special one-time permit under G.S. 18B-1002.
 - d. Salesman permit under G.S. 18B-1111.

To avoid undue hardship, however, the Commission may decline to take action under G.S. 18B-104 against a permittee who is in violation of subdivisions (3), (4), or (5).

(b) Definition of Conviction. – A person has been "convicted" for the purposes of subsection (a) when he has been found guilty, or has entered a plea of guilty or nolo contendere, and judgment has been entered against him. A felony conviction in another jurisdiction shall disqualify a person from being eligible to receive or hold an ABC permit if his conduct would also constitute a felony in North Carolina. A conviction of an alcoholic beverage offense or misdemeanor drug offense in another jurisdiction shall disqualify a person from being eligible to receive or hold an ABC permit if his conduct would constitute an offense in North Carolina, unless the Commission determines that under North Carolina procedure judgment would not have been entered under the same circumstances. Revocation of a permit in another jurisdiction shall disqualify a person if his conduct would be grounds for revocation in North Carolina.

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

- (1) The owner of a sole proprietorship;
- (2) Each member of a firm, association or general partnership;
- (2a) Each general partner in a limited partnership;
- (2b) Each manager and any member with a ~~twenty-five percent (25%)~~ fifty-one percent (51%) or greater interest in a limited liability company. If any manager or member does not hold fifty-one percent individually then fifty-one percent of all ownership shall qualify under subsection (a);
- (3) Each officer, director and owner of ~~twenty-five percent (25%)~~ fifty-one percent (51%) or more of the stock of a corporation except that the requirement of subdivision (a)(1) does not apply to such an officer, director, or stockholder unless he is a manager or is otherwise responsible for the day-to-day operation of the business. If any officer, director or owner does not hold fifty-one percent individually than fifty-one percent of all ownership of the stock of a corporation shall qualify under subsection (a);
- (4) The manager of an establishment operated by a corporation other than an establishment with only off-premises malt beverage, off-premises unfortified wine, or off-premises fortified wine permits;
- (5) Any manager who has been empowered as attorney-in-fact for a nonresident individual or partnership.

(d) Manager of Off-Premises Establishment. – Although he need not otherwise meet the requirements of this section, the manager of an establishment operated by a corporation and holding off-premises permits for malt beverages, unfortified wine, or fortified wine shall be at least 19 years old and shall meet the requirements of subdivisions (3), (4), (5) and (6) of subsection (a).

(e) Convention Centers. – With the approval of the Commission, the manager of a convention center may contract with another person to provide food and beverages at conventions and banquets at the convention center, and that person may engage in the activities authorized by the convention center's permit, under conditions set by the Commission. The person with whom the convention center contracts must meet the qualifications of this section.

(f) Procedure to Confirm State Tax Compliance. – Upon request of the Commission, the Department of Revenue must provide information to the Commission to confirm a person's compliance with subdivision (a)(8) of this section. If the Department of Revenue notifies the Commission that a person is not in compliance, then the Commission may not issue or renew the person's permit until the Commission receives notice from the Department of Revenue that the person is in compliance. The requirement to pay all taxes, interest, and penalties may be satisfied by an operative agreement under G.S. 105-237 covering any amounts that are collectible under G.S. 105-241.22. Chapter 150B of the General Statutes does not apply to a Commission action on issuance, suspension, or revocation of an ABC permit under subdivision (a)(8) of this section."

SECTION 3. 18B-901 reads as rewritten:

"§ 18B-901. Issuance of permits.

(a) Who Issues. – All ABC permits shall be issued by the Commission. Purchase-transportation permits shall be issued by local boards under G.S. 18B-403.

(b) Notice to Local Government. – Before issuing a retail ABC permit, other than a:

- (1) Special occasion permit under G.S. 18B-1001(8);
- (2) Limited special occasion permit under G.S. 18B-1001(9);
- (3) Temporary permit under G.S. 18B-905; or
- (4) Special one-time permit under G.S. 18B-1002

for an establishment, the Commission shall give notice of the permit application to the governing body of the city in which the establishment is located. If the establishment is not inside a city, the Commission shall give notice to the governing body of the county. The

Commission shall allow the local governing body 15 days from the time the notice was mailed or delivered to file written objection to the issuance of the permit. To be considered by the Commission, the objection shall state the facts upon which it is based.

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

- (1) The reputation, character, and criminal record of the applicant.
- ~~(2) The number of places already holding ABC permits within the neighborhood.~~
- ~~(3) Parking facilities and traffic conditions in the neighborhood.~~
- ~~(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 including consideration of 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.
- (7) The recommendations of the local governing body.
- (8) Any other evidence that would tend to show whether the applicant would comply with the ABC laws.
- (9) Whether the operation of the applicant's business at that location would be detrimental to the neighborhood, including evidence admissible under G.S. 150B-29(a) of any of the following:
 - a. Past revocations, suspensions, and violations of ABC laws by prior permittees related to or associated with the applicant, or a business with which the applicant is associated, within the immediate preceding 12-month period at this location.
 - b. Evidence of illegal drug activity on or about the licensed premises.
 - c. Evidence of fighting, disorderly conduct, and other dangerous activities on or about the licensed premises.

(d) Commission's Authority. – The Commission shall have the sole power, in its discretion, to determine the suitability and qualifications of an applicant for a permit. The Commission shall also have the authority to determine the suitability of the location to which the permit may be issued."

SECTION 4. 18B-904 reads as rewritten:

"§ 18B-904. Miscellaneous provisions concerning permits.

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

- 1 (b) Posting Permit. – Each ABC permit that is held by an establishment shall be posted
2 in a prominent place on the premises.
- 3 (c) Business Not Operating. – An ABC permit shall automatically expire and shall be
4 surrendered to the Commission if the person to whom it is issued does not commence the
5 activity authorized by the permit within six months of the date the permit is effective. Before
6 the expiration of the six-month period, the Commission may waive this provision in individual
7 cases for good cause.
- 8 (d) Notice of Issuance. – Upon issuing a permit the Commission shall send notice of the
9 issuance, with the name and address of the permittee and the establishment, to:
- 10 (1) The Department of Revenue;
- 11 (2) The local board, if one exists, for the city or county in which the
12 establishment is located;
- 13 (3) The governing body, sheriff, and tax collector of the county in which the
14 establishment is located;
- 15 (4) If the establishment is located inside a city, the governing body, chief of
16 police, and tax collector for the city; and
- 17 (5) The ALE Branch.
- 18 (e) Business or Location No Longer Suitable. –
- 19 (1) The Commission may suspend or revoke a permit issued by it ~~if, after~~
20 ~~compliance with the provisions of Chapter 150B of the General Statutes, it if~~
21 an Administrative Law Judge finds that the location occupied by the
22 permittee is no longer a suitable place to hold ABC permits or that the
23 operation of the business with an ABC permit at that location is detrimental
24 to the neighborhood.
- 25 (2) The Commission shall suspend or revoke a permit issued by it if a permittee
26 is in violation of G.S. 18B-309. Notwithstanding subdivision (e)(1) of this
27 section, the Commission shall, by order and without prior hearing,
28 summarily suspend or revoke a permit issued by it if a permittee is in
29 violation of G.S. 18B-309(c) when, prior to the period of time for which the
30 audit is to be conducted, the city council has filed information designating
31 the location of the Urban Redevelopment Area as required under G.S.
32 18B-309(a) and has provided actual notice to permittees located in the Urban
33 Redevelopment Area that they are located in such an area and must abide by
34 G.S. 18B-309(c). Upon entry of a summary order under this subdivision, the
35 Commission shall promptly notify all interested parties that the order has
36 been entered and of the reasons therefore. The order will remain in effect
37 until it is modified or vacated by the Commission. The permittee may,
38 within 30 days after receipt of notice of the order, make written request to
39 the ~~Commission~~Office of Administrative Hearings for a hearing on the
40 matter. ~~If a hearing is requested, after compliance with the provisions of~~
41 ~~Chapter 150B of the General Statutes, the Commission~~The Administrative
42 Law Judge shall issue an order to affirm, reverse, or modify its
43 Commission's previous action.
- 44 (3) Notwithstanding G.S. 18B-906, the Commission shall revoke a permit issued
45 by it if, after complying with the provisions of Chapter 150B of the General
46 Statutes and without a finding of mitigating evidence or circumstances, it
47 finds evidence that the permittee or the permittee's employee has been found
48 responsible by a court of competent jurisdiction or the Commission for two
49 or more violations on separate dates of knowingly allowing a violation of the
50 gambling, disorderly conduct, prostitution, controlled substance, or felony
51 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. 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 suspend permits issued by it for a period of ~~30~~three days if both of the following apply:

- a. ~~Alcohol Law Enforcement agents—~~agents, local ABC Board officers, or local law enforcement agencies provide advance notice to the Commission Legal Division staff of the ongoing undercover operation.
- b. Upon execution of the search warrant resulting from the undercover operation, five or more persons are criminally charged with violations of the gambling, disorderly conduct, prostitution, controlled substance, or felony criminal counterfeit trademark laws.

(f) Local Government Objections. – The governing body of a city or county may designate an official of the city or county, by name or by position, to make recommendations concerning the suitability of a person or of a location for an ABC permit. The governing body of a city or county shall notify the Commission of an official designated under this subsection. An official designated under this subsection shall be allowed to testify at a contested case hearing in which the suitability of a person or of a location for an ABC permit is an issue without further qualification or authorization.

(g) Nothing in this Chapter shall be deemed to preempt local governments from regulating the location or operation of adult establishments or other sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech, or from requiring any additional fee for licensing as permitted under G.S. 160A-181.1(c)."

SECTION 5. 18B-1000 reads as rewritten:

"§ 18B-1000. Definitions concerning establishments.

The following requirements and definitions shall apply to this Chapter:

- (1) Community theatre. – An establishment owned and operated by a bona fide nonprofit organization that is engaged solely in the business of sponsoring or presenting amateur or professional theatrical events to the public. A permit issued for a community theatre is valid only during regularly scheduled theatrical events sponsored by such nonprofit organization.
- (1a) Convention center. – An establishment that meets either of the following requirements:
 - a. A publicly owned or operated establishment that is engaged in the business of sponsoring or hosting conventions and similar large gatherings, including auditoriums, armories, civic centers, convention centers, and coliseums.
 - b. A privately owned facility located in a city that has a population of at least 200,000 but not more than 250,000 by the 2000 federal census and is located in a county that has previously authorized the issuance of mixed beverage permits by referendum. To qualify as a convention center under this subdivision, the facility shall meet each of the following requirements:

1. The facility shall be certified by the appropriate local official as being consistent with the city's redevelopment plan for the area in which the facility is located.
2. The facility shall contain at least 7,500 square feet of floor space that is available for public use and shall be used exclusively for banquets, receptions, meetings, and similar gatherings.
3. The facility's annual gross receipts from the sale of alcoholic beverages shall be less than fifty percent (50%) of the gross receipts paid to all providers at permitted functions for food, nonalcoholic beverages, alcoholic beverages, service, and facility usage fees (excluding receipts or charges for entertainment and ancillary services not directly related to providing food and beverage service). The person to whom a permit has been issued for a privately owned facility shall be required to maintain copies of all contracts and invoices for items supplied by providers for a period of three years from the date of the event.

A permit issued for a convention center shall be valid only for those parts of the building used for conventions, banquets, receptions, and other events, and only during scheduled activities.

- (1b) Cooking school. – An establishment substantially engaged in the business of operating a school in which cooking techniques are taught for a fee.
- (2) Eating establishment. – An establishment engaged in the business of regularly and customarily selling food, primarily to be eaten on the premises. Eating establishments shall include businesses that are referred to as restaurants, cafeterias, or cafes, but that do not qualify under subdivision (6). Eating establishments shall also include lunchstands, grills, snack bars, fast-food businesses, and other establishments, such as drugstores, which have a lunch counter or other section where food is sold to be eaten on the premises.
- (3) Food business. – An establishment engaged in the business of regularly and customarily selling food, primarily to be eaten off the premises. Food businesses shall include grocery stores, convenience stores, and other establishments, such as variety stores or drugstores, where food is regularly sold, and shall also include establishments engaged primarily in selling unfortified or fortified wine or both, for consumption off the premises.
- (4) Hotel. – An establishment substantially engaged in the business of furnishing lodging. A hotel shall have a restaurant either on or closely associated with the premises. The restaurant and hotel need not be owned or operated by the same person.
- (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.~~ that qualifies as a 501(c) business under the Internal Revenue Code and has been in operation for a

minimum of 12 months prior to application for an ABC permit. This section does not apply to any private club permits in place on April 1, 2018.

- (5a) Residential private club. – A private club that is located in a privately owned, primarily residential and recreational development.
- (6) Restaurant. – An establishment substantially engaged in the business of preparing and serving meals. To qualify as a restaurant, an establishment's gross receipts from food and nonalcoholic beverages shall be not less than thirty percent (30%) of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages. A restaurant shall also have a kitchen and an inside dining area with seating for at least 36 people.
- (7) Retail business. – An establishment engaged in any retail business, regardless of whether food is sold on the premises.
- (8) Sports club. – An establishment that meets either of the following requirements:
- a. The establishment is substantially engaged in the business of providing equine boarding, training, and coaching services, and the establishment offers on-site dining, lodging, and meeting facilities and hosts horse trials and other events sanctioned or endorsed by the United States Equestrian Federation, Inc.; or
- b. The establishment is substantially engaged in the business of providing an 18-hole golf course, two or more tennis courts, or both.
- The sports club can either be open to the general public or to members and their guests. To qualify as a sports club, an establishment's gross receipts for club activities shall be greater than its gross receipts for alcoholic beverages. This provision does not prohibit a sports club from operating a restaurant. Receipts for food shall be included in with the club activity fee.
- (9) Congressionally chartered veterans organizations. – An establishment that is organized as a federally chartered, nonprofit veterans organization, and is operated solely for patriotic or fraternal purposes.
- (10) Wine producer. – A farming establishment of at least five acres committed to the production of grapes, berries, or other fruits for the manufacture of unfortified wine."

SECTION 6. Section 1 of this act becomes effective October 1, 2018. Sections 2 and 5 of this act are effective when they become law and apply to new permits issued on or after that date. The remainder of this act is effective when it becomes law.