

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991

CHAPTER 920
HOUSE BILL 1322

AN ACT TO INCREASE THE AMOUNT OF BEER A MINI-BREWERY CAN SELL
TO CONSUMERS AT THE BREWERY AND TO MAKE 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 of mixed beverages. Otherwise a licensed establishment may obtain a mixed beverages purchase-transportation permit only from the local board for the jurisdiction in which it is located.

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

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

~~(d1) (1) Size of Bottles. — A purchase-transportation permit for a mixed beverages permittee shall authorize the purchase and transportation only of 375 milliliter or larger containers. A purchase-transportation permit for a mixed beverages permittee who is also a guest room~~

~~cabinet permittee may authorize the purchase and transportation of containers in sizes approved by the Commission.~~

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

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

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

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

"§ 18B-805. Distribution of revenue.

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

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

- (1) The board shall pay the expenses, including salaries, of operating the local ABC system.
- (2) Each month the local board shall pay to the Department of Revenue the taxes due the Department. In addition to the taxes levied under Chapter 105 of the General Statutes, the local board shall pay to the Department one-half of both the mixed beverages surcharge required by G.S. ~~18B-804(b)(8).~~ 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9).
- (3) Each month the local board shall pay to the Department of Human Resources five percent (5%) of both the mixed beverages surcharge required by G.S. ~~18B-804(b)(8).~~ 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9). The Department of Human Resources shall spend those funds for the treatment of alcoholism or substance abuse, or for research or education on alcohol or substance abuse.
- (4) Each month the local board shall pay to the county commissioners of the county where the charge is collected the proceeds from the bottle charge required by G.S. 18B-804(b)(6), to be spent by the county commissioners for the purposes stated in subsection (h) of this section.

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

- (1) Before making any other distribution under this subsection, the local board shall set aside the clear proceeds of the three and one-half percent (3 1/2%) markup provided for in G.S. 18B-804(b)(5) and the

bottle charge provided for in G.S. 18B-804(b)(6b), to be distributed as part of the remaining gross receipts under subsection (e) of this section.

- (2) The local board shall spend for law enforcement an amount set by the board which shall be at least five percent (5%) of the gross receipts remaining after the distribution required by subdivision (1). Notwithstanding the provisions of any local act, this provision shall apply to all local boards.
- (3) The local board shall spend, or pay to the county commissioners to spend, for the purposes stated in subsection (h), an amount set by the board which shall be at least seven percent (7%) of the gross receipts remaining after the distribution required by subdivision (1). This provision shall not be applicable to a local board which is subject to a local act setting a different distribution.

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

(e) Other Distributions. – After making the distributions provided in subsections (b), (c), and (d), the local board shall pay each quarter the remaining gross receipts to the general fund of the city or county for which the board is established, unless some other distribution or some other schedule is provided for by law. If the governing body of each city and county receiving revenue from an ABC system agrees, those governing bodies may alter at any time the distribution to be made under this subsection or under any local act. Copies of the governing body resolutions agreeing to a new distribution formula and a copy of the approved new distribution formula shall be submitted to the Commission for review and audit purposes. If any one of the governing bodies later withdraws its consent to the change in distribution, profits shall be distributed according to the original formula, beginning with the next quarter.

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

When, pursuant to G.S. 18B-603(e), spirituous liquor is bought at a city ABC store by a mixed beverages permittee for premises located at an airport outside the city, the local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9) shall be divided

equally among the local ABC boards for all cities in the county that have authorized the sale of mixed beverages.

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

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

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

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

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

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

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

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

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

(b) Renewal. – Application for renewal of an ABC permit shall be on a form provided by the Commission. An application for renewal shall be accompanied by an application fee of twenty-five percent (25%) of the original application fee set in G.S. 18B-902, except that the renewal application fee for a each mixed beverages permit and

each guest room cabinet permit shall be five hundred dollars (\$500.00). A renewal fee shall not be refundable.

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

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

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

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

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

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

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

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

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

"(13) Guest Room Cabinet Permit. – A guest room cabinet permit authorizes a hotel having a mixed beverages permit to sell to its room guests, from securely locked cabinets, malt beverages, unfortified wine, fortified wine, and spirituous liquor. A permittee shall designate and maintain at least ten percent (10%) of the permittee's guest rooms as

rooms that do not have a guest room cabinet. A permittee may dispense alcoholic beverages from a guest room cabinet only in accordance with written policies and procedures filed with and approved by the Commission. A ~~permittee~~ permittee shall provide a reasonable number of vending machines, ~~coolers~~ coolers, or similar machines on premises for the sale of soft drinks to hotel guests.

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

- a. A hotel located in a county ~~This subdivision applies to those counties~~ subject to G.S. 18B-600(f).
- b. A hotel located in a county that has ~~This subdivision also applies to those counties which have a population in excess of 150,000 by the last federal census.~~

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

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

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

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

- (1) Store any other spirituous liquor with liquor possessed for resale in mixed beverages;
- (1a) ~~Store any other spirituous liquor with liquor possessed for resale in mixed beverages or from a guest room cabinet. This subdivision applies to those counties subject to G.S. 18B-600(f). This subdivision also applies to those counties which have a population in excess of 150,000 by the last federal census.~~
- (2) Refill any spirituous liquor container having a mixed beverages tax stamp with any other alcoholic beverage, or add to the contents of such a container any other alcoholic ~~beverage;~~ beverage.
- (3) Transfer from one container to another a mixed beverages tax stamp.

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

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

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

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

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

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

- (1) Borders on another state;
- (2) Where ABC stores are permitted in one or more cities in the county;
- (3) Where the on-premises or off-premises sale of unfortified wines and malt beverages by qualified persons and establishments, including persons and establishments qualified under G.S. 18B-603(c) or G.S. 18B-603(d), is permitted countywide or in two or more cities in the county; and such area
 - (a) Contains more than ~~1000~~ 500 acres and is made up of privately-owned land and land owned by an association or club having more than 200 members and created for municipal and recreational purposes;
 - (b) Which for three or more years has levied assessments or dues and provided municipal services; and
 - (c) Is incorporated as a municipality or has within such area a private association or club that has been determined or is treated by the Internal Revenue Service to be exempt from tax on member source or exempt function income."

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

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

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

Retail establishments holding mixed beverage permits shall purchase their spirituous liquor at the nearest municipal ABC system store. The Commission may also issue on-premises malt beverage, unfortified wine, fortified wine and mixed beverages permits to a sports club located in a county adjacent to any county that has approved the sale of

mixed beverages pursuant to the last paragraph of G.S. 18B-603(d), if the county in which the sports club is located borders another state and has at least one city that has approved the sale of mixed beverages. Sports clubs holding mixed beverages permits shall purchase their spirituous liquor at the nearest municipal ABC system store that has been designated for such purchases."

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

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

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

The mixed beverages transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the county. A private club located in the county is defined as a club or lodge located in a privately owned, primarily residential and recreational development, which is open only to members by invitation of the club's board of directors and the guests of these members."

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

"(f2) Permits for Special ABC Areas. – The Commission may issue the permits provided for in G.S. 18B-1001(1), G.S. 18B-1001(2), G.S. 18B-1001(3), G.S. 18B-1001(4), G.S. 18B-1001(5), G.S. 18B-1001(6), and G.S. 18B-1001(10) to qualified persons and establishments, not open to the public, establishments located within a Special ABC area as defined in G.S. 18B-101, provided that: (i) if such area is a municipal corporation, the area shall conduct an election authorized by subdivision (a)(4) of G.S. 18B-600, which election may be held regardless of the number of registered voters located within the municipal corporation; or (ii) if such area is unincorporated but has within such area a private association or club, the board of such private association or club shall call and conduct a special meeting at which meeting a majority of private association members, club members, lot and home owners, votes and approves the sale of mixed beverages, and the board certifies the results of such meeting to the Alcoholic Beverage Control Commission. The mixed beverages purchase-

transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the same county as the Special ABC area."

Sec. 14. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1992.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives