

GENERAL ASSEMBLY OF NORTH CAROLINA

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SENATE BILL 57*

Judiciary I/Constitution Committee Substitute Adopted 5/3/95

Judiciary I/Constitution Committee Substitute No. 2 Adopted 5/9/95

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Short Title: ABC LRC & Other Changes.

(Public)

Sponsors:

Referred to:

January 26, 1995

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON ALCOHOLIC BEVERAGE CONTROL AND TO MAKE OTHER CHANGES IN THE ABC LAWS.

The General Assembly of North Carolina enacts:

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

"§ 18B-101. Definitions.

As used in this Chapter, unless the context requires otherwise:

(1) 'ABC law' or 'ABC laws' means any statute or statutes in this Chapter or in Article 2C of Chapter 105, and the rules issued by the Commission under the authority of this Chapter.

(2) 'ABC permit' or 'permits' means any written or printed authorization issued by the Commission pursuant to the provisions of this Chapter, other than a purchase-transportation permit. Unless the context clearly requires otherwise, as in the provisions concerning applications for permits, 'ABC permit' or 'permit' means a presently valid permit.

- 1 (3) 'ABC system' means a local board and all ABC stores operated by it,
2 its law-enforcement branch, and all its employees.
- 3 (4) 'Alcoholic beverage' means any beverage containing at least one-half
4 of one percent (0.5%) alcohol by volume, including malt beverages,
5 unfortified wine, fortified wine, spirituous liquor, and mixed
6 beverages.
- 7 (5) 'ALE Division' means the Alcohol Law Enforcement Division of the
8 Department of Crime Control and Public Safety.
- 9 (5a) 'Bailment surcharge' means the charge imposed on each case of
10 liquor shipped from a Commission warehouse as provided in G.S.
11 18B-208. This bailment surcharge is in addition to the bailment
12 charge imposed by G.S. 18B-804(b)(2).
- 13 (6) 'Commission' means the North Carolina Alcoholic Beverage Control
14 Commission established under G.S. 18B-200.
- 15 (7) 'Fortified wine' means any wine made by fermentation from grapes,
16 fruits, berries, rice, or honey, to which nothing has been added other
17 than pure brandy made from the same type of grape, fruit, berry,
18 rice, or honey that is contained in the base wine, and which has an
19 alcoholic content of not more than twenty-four percent (24%)
20 alcohol by volume.
- 21 (8) 'Local board' means a city or county ABC board, or local board
22 created pursuant to the provisions of G.S. 18B-703. A local board is
23 an independent local political subdivision of the State. Nothing in
24 this Chapter shall be construed as constituting a local board the
25 agency of a city or county or of the Commission.
- 26 (9) 'Malt beverage' means beer, lager, malt liquor, ale, porter, and any
27 other brewed or fermented beverage containing at least one-half of
28 one percent (0.5%), and not more than six percent (6%), alcohol by
29 volume.
- 30 (10) 'Mixed beverage' means either of the following:
31 a. A drink composed in whole or in part of spirituous liquor and
32 served in a quantity less than the quantity contained in a closed
33 package.
34 b. A premixed cocktail served from a closed package containing
35 only one serving.
- 36 (11) 'Nontaxpaid alcoholic beverage' means any alcoholic beverage upon
37 which the taxes imposed by the United States, this State, or any
38 other territorial jurisdiction in which the alcoholic beverage was
39 purchased have not been paid.
- 40 (12) 'Person' means an individual, firm, partnership, association,
41 corporation, limited liability company, other organization or group,
42 or other combination of individuals acting as a unit.

1 (13) 'Sale' means any transfer, trade, exchange, or barter, in any manner
2 or by any means, for consideration.

3 (13a) 'Special ABC area' means an area that meets ~~all of the~~ following
4 requirements:

5 Either:

6 a. 1. Has fewer than 500 permanent ~~residents.~~
7 residents;

8 ~~b.~~ 2. Is located in a county that borders another state,
9 that has at least one city that has approved the operation
10 of an ABC store, and in which the sale of unfortified
11 wine and malt beverages is permitted countywide or in
12 at least two ~~cities.~~ cities; and

13 ~~c.~~ 3. Contains more than 500 contiguous acres made
14 up of privately-owned land and land owned by an
15 association or a club that is exempt from income tax on
16 its membership income under Article 4 of Chapter 105
17 of the General Statutes, has more than 200 members,
18 was created for municipal and recreational purposes,
19 and, for three or more years, has levied assessments or
20 dues and provided municipal ~~services.~~ services; or

21 b. 1. Has more than 500 permanent residents;

22 2. Is located in a county:

23 I. Where ABC stores have heretofore been
24 established but in which the sale of mixed
25 beverages has not been approved;

26 II. That borders on a county that has approved the sale
27 of alcoholic beverages countywide and contains an
28 international airport; and

29 III. Borders on a county where ABC stores have
30 heretofore been established by petition pursuant to
31 law; and

32 3. Contains more than 500 contiguous acres made up of
33 privately owned land and land owned by an association or
34 a club that is exempt from income tax on its membership
35 income under Article 4 of Chapter 105 of the General
36 Statutes, has more than 200 members, was created for
37 municipal and recreational purposes, and, for three or
38 more years, has levied assessments or dues and provided
39 municipal services.

40 (14) 'Spirituous liquor' or 'liquor' means distilled spirits or ethyl alcohol,
41 including spirits of wine, whiskey, rum, brandy, gin and all other
42 distilled spirits and mixtures of cordials, liqueur, and premixed

1 cocktails, in closed containers for beverage use regardless of their
2 dilution.

3 (14a) 'Tourism ABC establishment' means a restaurant or hotel that meets
4 both of the following requirements:

5 a. Is located within 1.5 miles of the end of an entrance or exit ramp
6 of a junction on a national scenic parkway designed to attract
7 local, State, national, and international tourists between Milepost
8 305 and 460.

9 b. Is located in a county in which the on-premises sale of malt
10 beverages or unfortified wine is authorized in at least one city.

11 (15) 'Unfortified wine' means wine that has an alcoholic content produced
12 only by natural fermentation or by the addition of pure cane, beet, or
13 dextrose sugar, ~~and that has an alcoholic content of not more than~~
14 ~~seventeen percent (17%) alcohol by volume.~~ sugar."

15 Sec. 2. G.S. 18B-500(a) reads as rewritten:

16 "(a) Appointment. – The Secretary of Crime Control and Public Safety shall
17 appoint alcohol law-enforcement agents and other enforcement personnel. The Secretary
18 of Crime Control and Public Safety may also appoint regular employees of the
19 Commission as alcohol law-enforcement agents. Alcohol law-enforcement agents shall
20 be designated as 'alcohol law-enforcement agents.'"

21 Sec. 3. G.S. 18B-501(a) reads as rewritten:

22 "(a) Appointment. – Except as provided in subsection (f), each local board shall
23 hire one or more ABC enforcement officers. Local ABC enforcement officers shall be
24 designated as 'ABC Officers.' The local board may designate one officer as the chief
25 ABC officer for that board."

26 Sec. 4. G.S. 18B-501(f) reads as rewritten:

27 "(f) Contracts with Other Agencies. – Instead of hiring local ABC officers, a local
28 board may contract to pay its enforcement funds to a sheriff's department, city police
29 department, or other local law-enforcement agency for enforcement of the ABC laws
30 within the law-enforcement agency's territorial jurisdiction. Enforcement agreements
31 may be made with more than one agency at the same time. When such a contract for
32 enforcement exists, the officers of the contracting law-enforcement agency shall have the
33 same authority to inspect under G.S. 18B-502 that an ABC officer employed by that local
34 board would have. If a city located in two or more counties approves the sale of some
35 type of alcoholic beverage pursuant to the provisions of G.S. 18B-600(e4), and there are
36 no local ABC boards established in the city and one of the counties in which the city is
37 located, the local ABC board of any county in which the city is located may enter into an
38 enforcement agreement with the city's police department for enforcement of the ABC
39 laws within the entire city, including that portion of the city located in the county of the
40 ABC board entering into the enforcement agreement."

41 Sec. 5. G.S. 18B-603(d) reads as rewritten:

42 "(d) Mixed Beverage Elections. – If a mixed beverage election is held under G.S.
43 18B-602(h) and the sale of mixed beverages is approved, the Commission may issue

1 permits to qualified persons and establishments in the jurisdiction that held the election as
2 follows:

- 3 (1) The Commission may issue mixed beverage permits.
4 (2) The Commission may issue on-premises malt beverage, unfortified
5 wine, and fortified wine permits for establishments with mixed
6 beverage permits, regardless of any other election or any local act
7 concerning sales of those kinds of alcoholic beverages.
8 (3) The Commission may issue off-premises malt beverage permits to
9 any establishment that meets the requirements under G.S. 18B-
10 1001(2) in any township which has voted to permit the sale of mixed
11 beverages, regardless of any other local act concerning sales of those
12 kinds of alcoholic beverages. The Commission may also issue off-
13 premises unfortified wine permits to any establishment that meets
14 the requirements under G.S. 18B-1001(4) in any township which has
15 voted to permit the sale of mixed beverages, regardless of any other
16 local act concerning sales of those kinds of alcoholic beverages.
17 (4) The Commission may issue brown-bagging permits for private clubs
18 and congressionally chartered veterans organizations but may no
19 longer issue and may not renew brown-bagging permits for
20 restaurants, hotels, and community theatres. A restaurant, hotel, or
21 community theatre may not be issued a mixed beverage permit under
22 subdivision (1) until it surrenders its brown-bagging permit.
23 (5) The Commission may continue to issue culinary permits for
24 establishments that do not have mixed beverage permits. An
25 establishment may not be issued a mixed beverage permit under
26 subdivision (1) until it surrenders its culinary permit.

27 In any county in which the sale of mixed beverages has been approved in elections in
28 at least three cities that, combined, contain more than two-thirds the total county
29 population as of the most recent federal census, the county board of commissioners may
30 by resolution approve the sale of mixed beverages throughout the county, and the
31 Commission may issue permits as if mixed beverages had been approved in a county
32 election.

33 If a county or city holds a mixed beverage election and an ABC store election at the
34 same time and the voters do not approve the establishment of an ABC store, the
35 Commission may not issue mixed beverages permits in that county or city."

36 Sec. 6. G.S. 18B-900(c) reads as rewritten:

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

- 40 (1) The owner of a sole proprietorship;
41 (2) Each member of a firm, association or general partnership;
42 (2a) Each general partner in a limited partnership;

- 1 (2b) Each manager and any member with a twenty-five percent (25%) or
2 greater interest in a limited liability company;
3 (3) Each officer, director and owner of twenty-five percent (25%) or
4 more of the stock of a corporation except that the requirement of
5 subdivision (a)(1) does not apply to such an officer, director, or
6 stockholder unless he is a manager or is otherwise responsible for
7 the day-to-day operation of the business;
8 (4) The manager of an establishment operated by a corporation other
9 than an establishment with only off-premises malt beverage, off-
10 premises unfortified wine, or off-premises fortified wine permits;
11 (5) Any manager who has been empowered as attorney-in-fact for a
12 nonresident individual or partnership."

13 Sec. 7. G.S. 18B-902(e) reads as rewritten:

14 "(e) Fee for Combined Applications. – If application is made at the same time for
15 retail malt beverage, unfortified wine and fortified wine permits for a single business
16 location, the total fee for those applications shall be two hundred dollars (\$200.00). If
17 application is made at the same time for brown-bagging and special occasion permits for
18 a single business location, the total fee for those applications shall be three hundred
19 dollars (\$300.00). If application is made at the same time for wine and malt beverage
20 importer permits, the total fee for those applications shall be one hundred fifty dollars
21 (\$150.00). If application is made at the same time for wine and malt beverage wholesaler
22 permits, the total fee for those applications shall be one hundred fifty dollars (\$150.00).
23 ~~If application is made in the same year for vendor representative permits to represent more than~~
24 ~~one vendor, only one fee shall be paid.~~—If application is made at the same time for
25 nonresident malt beverage vendor and nonresident wine vendor permits, the total fee for
26 those applications shall be fifty dollars (\$50.00)."

27 Sec. 8. G.S. 18B-1006(k) reads as rewritten:

28 "(k) Residential Private Club and Sports Club Permits. – The Commission may
29 issue the permits listed in G.S. 18B-1001, without approval at an election, to a residential
30 private club or a sports club that is located in a county that meets the requirements set in
31 any of the following subdivisions:

- 32 (1) Has a population of less than 45,000 by the last federal census, has at
33 least three but not more than four cities that have approved the sale
34 of malt beverages or unfortified wine, has only one city that has
35 approved the on-premises sale of malt beverages, and has at least
36 two cities that approved the operation of ABC stores before July 10,
37 1992.
38 (2) Borders a county that has called elections pursuant to G.S. 18B-
39 600(f), and:
40 a. Has not approved the issuance of permits, other than malt
41 beverage permits, in unincorporated areas of the county, and has
42 no more than three cities that approved the operation of ABC
43 stores before July 10, 1992; or

1 b. Both the county and the two cities within the county have
2 approved the operation of ABC stores.

3 (3) Is bordered by four counties that have not approved the issuance of
4 permits and have at least one city that has approved the operation of
5 an ABC store.

6 (4) Has not approved the issuance of permits, has at least three cities
7 that have approved the issuance of only either off-premises malt
8 beverage or both off-premises malt beverage and off-premises
9 unfortified wine permits, and has only one city that, as of July 1,
10 1993, had approved the operation of an ABC store.

11 (5) Borders a county that has approved the issuance of all permits and
12 the operation of an ABC store, meets the county description of a
13 special ABC area in G.S. 18B-101(13a)b., and, as of July 1, 1995,
14 had at least five cities that had authorized the issuance of permits.

15 The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b)
16 shall be issued by a local board operating a store located in the county."

17 Sec. 9. G.S. 18B-1001(10) reads as rewritten:

18 "(10) Mixed Beverages Permit. – A mixed beverages permit
19 authorizes the retail sale of mixed beverages for consumption on the
20 premises. The permit also authorizes a mixed beverages permittee to
21 obtain a purchase-transportation permit under G.S. 18B-403 and
22 18B-404, and to use for culinary purposes spirituous liquor lawfully
23 purchased for use in mixed beverages. The permit may be issued for
24 any of the following:

- 25 a. Restaurants;
26 b. Hotels;
27 c. Private clubs;
28 d. Convention centers;
29 e. Community theatres;
30 f. Nonprofit ~~and political organizations.~~ organizations; and
31 g. Political organizations."

32 Sec. 10. G.S. 18B-1007(b) reads as rewritten:

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

35 (1) Store any other spirituous liquor with liquor possessed for resale in
36 mixed beverages or from a guest room cabinet.

37 (2) Refill any spirituous liquor container having a mixed beverages tax
38 stamp with any other alcoholic beverage, or add to the contents of
39 such a container any other alcoholic beverage.

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

41 (4) Possess any container of spirituous liquor not bearing a mixed
42 beverages tax stamp, except for containers being brought onto the

1 premises by the host of a private function under a special occasion
2 permit."

3 Sec. 11. G.S. 18B-1301 reads as rewritten:

4 **"§ 18B-1301. Definitions.**

- 5 (1) 'Supplier' means a brewer, ~~fermenter, processor, bottler, packager~~ or
6 importer of malt beverages, including anyone who holds a brewery,
7 malt beverages importer or nonresident malt beverages vendor
8 permit.
9 (2) 'Wholesaler' means the holder of a malt beverages wholesaler
10 permit."

11 Sec. 12. G.S. 18B-1303(a) reads as rewritten:

12 "(a) Filing. – It is unlawful for a supplier to provide malt beverages to a wholesaler
13 ~~unless a distribution agreement has been filed with the Commission~~ has received notification
14 from the supplier describing designating the brands of the supplier which the wholesaler is
15 authorized to sell and the territory in which such sales may take place. If the supplier
16 sells several brands, the agreement need not apply to all brands. No supplier may provide
17 by a distribution agreement for the distribution of a brand to more than one wholesaler
18 for the same territory. A wholesaler shall not distribute any brand of malt beverage to a
19 retailer whose premises are located outside the territory specified in the wholesaler's
20 distribution agreement for that brand. A wholesaler may, however, with the approval of
21 the Commission distribute malt beverages outside his designated territory during periods
22 of temporary service interruption when requested to do so by the supplier and the
23 wholesaler whose service is interrupted."

24 Sec. 13. G.S. 105-113.68(a)(12) reads as rewritten:

- 25 "(12) 'Unfortified wine' means wine that has an alcoholic content produced
26 only by natural fermentation or by the addition of pure cane, beet, or
27 dextrose ~~sugar, and that has an alcoholic content of not more than~~
28 ~~seventeen percent (17%) alcohol by volume.~~ sugar."

29 Sec. 14. This act becomes effective October 1, 1995.