

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**HOUSE DRH50287-MA-12A (2/9)**

Short Title: ABC Permit Issuance and Compliance. (Public)

Sponsors: Representatives Ross; B. Allen and Stam.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ALCOHOLIC BEVERAGE CONTROL LAWS REGARDING THE ISSUANCE AND REVOCATION OF PERMITS AT LOCATIONS THAT ARE OR BECOME UNSUITABLE TO HOLD ABC PERMITS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 18B-101 is amended by adding a new subdivision to read:

"(12a) 'Premises' means all areas, whether inside or outside the licensed premises, where the permittee has control of the property through a lease, deed, or other legal process."

**SECTION 2.** G.S. 18B-300(b) reads as rewritten:

"(b) Consumption at Off-Premises Establishment. – It shall be unlawful to consume, or for a permittee or his designee to allow the consumption of, malt beverages or unfortified wine on any premises having only an off-premises permit for the kind of alcoholic beverage being consumed."

**SECTION 3.** G.S. 18B-901(c) reads as rewritten:

"(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 ~~he~~ 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 ~~shall comply~~ is in compliance with all applicable building and fire codes. ~~codes~~ and, if applicable, has been notified that it is located in an Urban Redevelopment Area as defined by Article 22 of Chapter 160A 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:

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

- 1           (2)    The number of places already holding ABC permits within the
- 2                neighborhood;
- 3           (3)    Parking facilities and traffic conditions in the neighborhood;
- 4           (4)    Kinds of businesses already in the neighborhood;
- 5           (5)    Whether the establishment is located within 50 feet of a church or
- 6                ~~public school or church school;~~ public school, or any nonpublic
- 7                school as defined by Part 1 or Part 2 in Article 39 of Chapter 115C;
- 8           (6)    Zoning laws;
- 9           (7)    The recommendations of the local governing body; and
- 10          (8)    Any other evidence that would tend to show whether the applicant
- 11                would comply with the ABC laws ~~and whether operation of his~~
- 12                ~~business at that location would be detrimental to the~~
- 13                ~~neighborhood laws.~~
- 14          (9)    Whether the operation of the applicant's business at that location
- 15                would be detrimental to the neighborhood including evidence
- 16                admissible under G.S. 150B-29(a) of the following:
- 17                a.    Past revocations, suspensions, and violations of ABC laws by
- 18                    prior permittees at this location; or
- 19                b.    Evidence of illegal drug activity on or about the licensed
- 20                    premises; or
- 21                c.    Evidence of fighting, disorderly conduct, and other dangerous
- 22                    activities on or about the licensed premises."

23           **SECTION 4.** G.S. 18B-901(d) reads as rewritten:

24           "(d) Commission's Authority. – The Commission shall have the sole power, in its

25 discretion, to determine the suitability and qualifications of an applicant for a permit and

26 the location to which the permit may be issued."

27           **SECTION 5.** G.S. 18B-904(e) reads as rewritten:

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

- 29          (1)    The Commission may suspend or revoke a permit issued by it if, after
- 30                compliance with the provisions of Chapter 150B of the General
- 31                Statutes, it finds that the location occupied by the permittee is no
- 32                longer a suitable place to hold ABC permits or that the operation of the
- 33                business with an ABC permit at that location is detrimental to the
- 34                neighborhood. ~~No order revoking or suspending an ABC permit~~
- 35                ~~pursuant to this section may be made except upon substantial evidence~~
- 36                ~~admissible under G.S. 150B-29(a).~~
- 37          (2)    The Commission shall suspend or revoke a permit issued by it if a
- 38                permittee is in violation of G.S. 18B-309. Notwithstanding subdivision
- 39                (e)(1) of this section, the Commission shall, by order and without prior
- 40                hearing, summarily suspend or revoke a permit issued by it if a
- 41                permittee is in violation of G.S. 18B-309(c) when, prior to the period
- 42                of time for which the audit is to be conducted, the city council has filed
- 43                information designating the location of the Urban Redevelopment
- 44                Area as required under ~~G.S. 14-309(a)~~ 18B-309(a) and has provided

1 actual notice to permittees located in the Urban Redevelopment Area  
2 that they are located in such an area and must abide by  
3 G.S. 18B-309(c). Upon entry of a summary order under this  
4 subdivision, the Commission shall promptly notify all interested  
5 parties that the order has been entered and of the reasons therefore.  
6 The order will remain in effect until it is modified or vacated by the  
7 Commission. The permittee may, within 30 days after receipt of notice  
8 of the order, make written request to the Commission for a hearing on  
9 the matter. If a hearing is requested, after compliance with the  
10 provisions of Chapter 150B of the General Statutes, the Commission  
11 shall issue an order to affirm, reverse, or modify its previous action.

12 (3) The Commission shall revoke a permit issued by it if, after complying  
13 with the provisions of Chapter 150B of the General Statutes and,  
14 without a finding of mitigating evidence or circumstances, it finds  
15 evidence of the following:

16 a. Evidence that the permittee or his employee has been found  
17 responsible by a court of competent jurisdiction or the  
18 Commission for two or more violations of this Chapter within a  
19 12-month period; or

20 b. Evidence that the permittee or his employee has been found  
21 responsible by a court of competent jurisdiction or the  
22 Commission for two or more violations of knowingly allowing  
23 a violation of any other law that governs the conduct of a  
24 permittee, his employees, or patrons on the ABC licensed  
25 premises pursuant to G.S. 18B-1005(a)(2), (a)(3), or  
26 G.S. 18B-1005.1 within a 12-month period.

27 The permittee and the owner of the property have the sole  
28 responsibility to monitor the conduct on the licensed premises pursuant  
29 to G.S. 18B-1005(b) and G.S. 19-1.

30 (4) Notwithstanding the provisions of subdivisions (3)(a) and (3)(b) of this  
31 section, if a permittee takes reasonable remedial action to prevent  
32 recurring violations of this Chapter and any other laws governing the  
33 conduct of the permittee and his employees, the provisions of  
34 subsection (3) shall not apply and the Commission shall proceed under  
35 subsection (1) of this section.

36 (5) Reasonable remedial action defined. – Reasonable remedial action is  
37 an alcohol education and safety program that educates permittees and  
38 their employees who are involved in the sales or service of alcoholic  
39 beverages about the following:

40 a. The provisions of G.S. 18B-120, et seq., regarding civil liability  
41 of the permittee.

42 b. The provisions of G.S. 18B-300 and G.S. 18B-303 regarding  
43 the purchase and possession of alcoholic beverages and what  
44 amounts may be lawfully purchased and transported.

- 1           c.     The provisions of G.S. 18B-302 regarding sales, giving, and  
2                 aiding and abetting an underage person to acquire alcoholic  
3                 beverages.
- 4           d.     The provisions of G.S. 18B-305 regarding sales to intoxicated  
5                 patrons.
- 6           e.     Civil and criminal liability for both the server and the permittee.
- 7           f.     The provisions of G.S. 18B-1004 regarding the hours of sale  
8                 and consumption.
- 9           g.     The provisions of G.S. 18B-1005, 18B-1005.1, and 18B-1006  
10                regarding the conduct of the permittee, the permittee's  
11                employees, and patrons on an ABC licensed premises.

12           State Alcohol Law Enforcement agents, local ABC officers, and local  
13           law enforcement officers designated as local ABC enforcement  
14           officers may also give a program to a permittee upon request. These  
15           programs shall be considered reasonable remedial action. In order to  
16           be considered a reasonable remedial action, the training shall take  
17           place within 30 working days of the notification of a violation by an  
18           Alcohol Law Enforcement agent, a local Alcoholic Beverage Control  
19           law enforcement officer, or the Commission. If the Commission finds  
20           that reasonable remedial action has been taken by the permittee, the  
21           provisions of subdivision (1) of this subsection will apply to any  
22           revocation or suspension process by the Commission. The  
23           Commission shall maintain a copy of any documentation offered as  
24           proof of remedial action to show who gave the program, who attended  
25           the program, and whether or not it was given and attended within the  
26           required 30-day limit. If a permittee falsifies or in any other way  
27           misrepresents to the Commission that reasonable remedial action has  
28           been taken and evidence shows that it was not, the Commission shall  
29           summarily suspend the ABC Permits issued to the permittee at the  
30           location in question pending a hearing pursuant to Chapter 150B of the  
31           General Statutes."

32           **SECTION 6.** This act becomes effective December 1, 2005, and applies to  
33 offenses committed on or after that date.