

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 316
HOUSE BILL 9

AN ACT TO AUTHORIZE A STATEWIDE REFERENDUM ON MIXED BEVERAGES.

The General Assembly of North Carolina enacts:

Section 1. A new Article is hereby added to Chapter 18A of the General Statutes to read as follows:

"Article 3A

"Mixed Alcoholic Beverages

"§ 18A-32.1. **Definitions.** — The following terms used in this Article are defined as follows:

- (1) 'Alcoholic beverages' are those beverages defined as alcoholic beverages in G.S. 18A-2(1).
- (2) 'Auditorium' means a room, hall or building owned and operated by a municipality or other governmental unit used for public gatherings.
- (3) 'Board' means the State Board of Alcoholic Control.
- (4) 'Convention or civic center' means a structure or structures privately or publicly owned or leased and generally used for conventions, town meetings, entertainment or other similar functions which will accommodate at least 200 persons seated.
- (5) 'Local ABC system' means an alcoholic beverage control system having at least one ABC store operated by a county or municipality, whether established and maintained pursuant to statewide or local act.
- (6) 'Mixed beverages' means, for the purpose of this Article, a drink composed in whole or in part of alcoholic beverages and served to an individual in a quantity less than the quantity contained in a closed package and purchased for consumption on premises with mixed beverage permits issued pursuant to this Article.
- (7) 'National guard armory' means any facility defined in G.S. 143-229 and actually used from time to time by a national guard unit.
- (8) 'Permitted premises' include for on-premises consumption only of mixed beverages the following premises and no others:
 - a. Social establishments which for the purpose of this Article are defined to be and to mean a corporation or association organized and operated solely for objects of a social, recreational, patriotic, or fraternal nature, with duly elected officers or directors, which require an application for membership and a minimum ten-day waiting period for election to membership, with minimum dues or charges to members of five dollars (\$5.00) per quarter year, which maintain current membership lists with the names and addresses of all members in good standing, which are not open to the general public and are open only to its bona fide members or the guests of bona fide members actually in the company of a bona fide member. The establishment must have a valid permit from the Board for this purpose.

- b. Special occasions establishments which include national guard armories, auditoriums, convention or civic centers as defined in this Article having a valid special occasion permit from the Board for this purpose and allowing consumption of mixed drinks only on special occasions. A special occasion means any meeting or gathering which is held infrequently as opposed to a regular or continuous operation of business.
- c. Restaurants and related places which shall have and maintain a Grade A health rating, have an inside dining area with a seating capacity of at least 36 persons, maintain and use the facilities for the preparation and serving of full cooked meals, and be engaged primarily and substantially in preparing and serving meals or furnishing lodging. The establishment must have and maintain a valid permit from the Board for this purpose and may sell mixed beverages only in rooms and areas of the premises as may be allowed by the Board in issuing such permit.

"§ 18A-32.2. Elections. — (a) No mixed beverages shall be sold in any county until and unless such sale has been authorized by the majority of the entire votes cast statewide in a referendum as herein provided at a special election to be held for said purpose as authorized by the General Assembly. Said referendum shall be held on November 6, 1973. The State Board of Elections will print and distribute the ballots for such election. At said referendum, there shall be submitted to the voters of the State (under the same rules and regulations which apply to general elections, except that no absentee ballots or markers shall be permitted) the question of whether mixed beverages may be sold in this State in the counties which authorize such sales by the method provided in this Article. Those favoring the sale and consumption of mixed beverages in counties authorizing same shall vote for the issue: 'FOR sale and consumption of mixed beverages in counties which authorize such sales'. Those opposed to the sale and consumption of mixed beverages in counties authorizing same shall vote for the issue: 'AGAINST sale and consumption of mixed beverages in counties which authorize such sales'. If the majority of the entire vote cast statewide in such referendum shall be for the sale and consumption of mixed beverages in counties which authorize such sale, then any county in this State in which at least one county or municipal ABC store has been established may authorize the sale and consumption of mixed beverages pursuant to Subsection (b) of this Section.

If the majority of the entire votes cast statewide at the referendum shall be against the sale and consumption, then no mixed beverages shall be sold or consumed within the State pursuant to this Article.

(b) No mixed beverages shall be sold in any county until and unless such has been authorized in said county as provided herein; and in no event shall any mixed beverages be sold or consumed within any county under the provisions of this Subsection unless at least one county or municipal ABC store has been established within the county. If, by whatever means, there is no longer at least one county or municipal ABC store within a county, then the sale and consumption of mixed beverages shall be disestablished in such county.

The two methods for providing for the sale and consumption of mixed beverages within a county that otherwise qualifies are as follows:

- (i) The Board of County Commissioners may petition in writing the State Board to establish the sale and consumption of mixed beverages within said county pursuant to this Article, and within ninety days the State Board shall thereafter establish the sale and consumption of mixed beverages within said county pursuant to this Article.
- (ii) The eligible voters in said county may hold an election as herein provided.

The election shall be called in the county by the Board of Elections of the county only upon the written request of the Board of County Commissioners therein, or upon a petition to the Board of Elections signed by a number of voters of the county equal to at least twenty percent (20%) of the number of registered voters of the county according to the registration figures as certified by the Board of Elections on the date the petition is presented to the County Board of Elections.

The election shall be held under the same general laws, rules and regulations applicable to elections for county officers, insofar as practicable, except that no absentee ballots or markers shall be permitted. At this election there shall be submitted to the qualified voters of the county the question of whether mixed beverages shall be sold. Those favoring the sale and consumption of mixed beverages in the county shall vote for the issue: 'FOR sale and consumption of mixed beverages'. Those opposed to the sale and consumption of mixed beverages in the county shall vote for the issue: 'AGAINST sale and consumption of mixed beverages'. If a majority of the votes cast in such election shall be for the sale of mixed beverages, then such beverages may be sold and consumed in said county as hereinafter provided. If a majority of the votes cast at the election are against the sale and consumption of mixed beverages, then no such beverages shall be sold and consumed in said county pursuant to this Article.

In calling the special election, the county Board of Elections shall give at least thirty (30) days' public notice of the election, and the registration books shall close at the same time as for a regular election. A new registration of voters for such special mixed beverage election is not required, and all qualified electors who are properly registered prior to the registration for the special election, as well as those electors who register for the special mixed beverage election, shall be entitled to vote in the election.

Unless otherwise specified in this section, the procedural requirements relating to the petition shall be as provided in G.S. 18A-52 (b), (c), (d), and (e), except the question shall be 'FOR' and 'AGAINST' the sale and consumption of mixed beverages.

The County Board of Elections shall certify the results of said election in writing and if a majority of the votes cast in such election shall be for the sale and consumption of mixed beverages within said county pursuant to this Article, the State Board shall within 90 days thereafter establish the sale and consumption of mixed beverages within said county pursuant to this Article.

(c) If any county, having authorized the sale and consumption of mixed beverages under the terms of this Article, hereafter under the provisions of this Article holds an election at which a majority of the votes are cast 'AGAINST' sale and consumption of mixed beverages, then within ninety (90) days from the canvassing of the vote and the declaration of the result thereof, all sales and consumption of mixed beverages under this Article shall cease.

The election shall be called in the county by the Board of Elections of the county only upon the written request of the Board of County Commissioners therein, or upon a petition to the Board of Elections signed by a number of voters of the county equal to at least twenty percent (20%) of the number of registered voters of the county according to the registration figures as certified by the Board of Elections on the date the petition is presented to the County Board of Elections.

In calling the special election, the county Board of Elections shall give at least thirty (30) days' public notice of the election, and the registration books shall close at the time as for a regular election. A new registration of voters for such special mixed beverage elections is not required, and all qualified electors who are properly registered prior to the registration for the special election, as well as those electors who register for the special mixed beverage election shall be entitled to vote in the election.

Unless otherwise specified in this section, the procedural requirements relating to the petition shall be as provided in G.S. 18A-52(b), (c), (d), and (e), except the question shall be 'FOR' and 'AGAINST' the sale and consumption of mixed beverages.

(d) No local county election under this section shall be held on the day of any biennial election for county officers, or within forty-five (45) days of such an election. The date of any elections held under this section shall be fixed by the Board of Elections of the county wherein the election is held. Provided, however, an election pursuant to this section may be held on the same day as an ABC store election held pursuant to G.S. 18A-51. No other election shall be called and held in any of the counties in the State under the provisions of this section within three (3) years from the holding of the last election under this section.

(e) Notwithstanding the approval of the sale and consumption of mixed beverages within the State, no permitted premises, as defined in this Article, shall possess both a permit pursuant to the provisions of G.S. 18A-30(2) or (4) and a mixed beverage permit pursuant to this Article for the same premises at the same time.

"§ 18A-32.3. Permits granted, suspended and revoked by State Board of Alcoholic Control. — Upon approval by the voters of the State allowing mixed beverages to be sold, the Board is authorized to issue permits to any eligible and qualified person, firm or corporation for premises that meet the requirements provided in this Article.

No permit shall be issued to any person who:

- (1) has not resided within this State for a period of at least one year;
- (2) makes application for the premises for which a permit is sought located within fifty (50) feet of a church or a public school or child care center unless the Board determines upon proper investigation and hearing, if requested, that the premises is a suitable one and that the failure to issue a permit will result in undue hardship;
- (3) is not at least 21 years of age;
- (4) has been convicted or entered a plea of guilty or nolo contendere to a felony or other crime involving moral turpitude within the last three years;
- (5) has, within the two years next preceding the filing of the application, been convicted or entered a plea of guilty or nolo contendere regarding a violation of the prohibition or liquor laws, either State or federal;
- (6) has, within the three years next preceding the filing of the application, had any permit issued under Chapter 18A of the General Statutes or any permit or license pursuant to the laws of this or any other state to sell intoxicating liquor revoked;
- (7) has become insolvent or cannot demonstrate financial responsibility sufficient to meet adequately the requirements of the business of the type conducted on the permitted premises within the discretion of the Board.

If the applicant is a firm, association or partnership, the application shall state the matters herein listed with respect to each member or partner; if the applicant is a corporation, the application shall state the matters herein listed with respect to each of the officers and directors thereof, and any stockholder owning more than ten percent (10%) of the stock of the corporation and of any person who shall manage the premises for the corporation.

The Board shall have all powers in connection with granting, denying, suspending or revoking mixed beverage permits which the Board has in connection with malt beverage permits, wine permits or permits under G.S. 18A-30 authorized by State law. If the Board suspends or revokes a mixed beverage permit, any stay pending judicial review may be granted only as provided in G.S. 1A-1, Rule 65, and may not be granted under any other provision of law.

"§ 18A-32.4. Rules and regulations. — The Board shall have the power to adopt rules and regulations for the implementation and enforcement of the provisions of this Article.

"§ 18A-32.5. **Hours of sale and consumption.** — Mixed beverages may be sold and consumed on the licensed premises only during the hours that it is lawful to sell and consume malt beverages in accordance with the provisions of Chapter 18A.

"§ 18A-32.6. **Reports and audits.** — All permittees under this Article shall keep such records concerning the purchase of intoxicating liquor, the sale of mixed beverages, and the sale of food and non-intoxicating liquor beverages, as may be prescribed by the Board to enable it to enforce the provisions of this Article. All such records shall be open for inspection by the Board or its authorized representatives at all times. Annually, within 60 days after the close of the fiscal year of the establishment, each permittee under this Article shall file with the Board, on forms prescribed by the Board, an audit of the establishment's operations for the preceding fiscal year, setting forth separately the amounts of:

- (1) its gross receipts from the sale of food and non-intoxicating liquor beverages on the permitted premises;
- (2) its gross receipts from the sale of mixed beverages as defined in this Article on the permitted premises; and
- (3) its gross receipts from the sale of all other intoxicating liquor.

"§ 18A-32.7. **Prohibited acts.** — No permittee under this Article, nor any agent or employee of such permittee, shall:

- (1) sell or serve any intoxicating liquor of any type other than as authorized by law, or
- (2) sell any authorized intoxicating liquor to any person or at any place except as authorized by law, or
- (3) allow at the place described in his permit the consumption of alcoholic beverages in violation of this Article, or
- (4) keep at the place described in his permit any intoxicating liquor other than that which he is authorized to sell under permits issued to him by the Board, or
- (5) misrepresent the brand of any alcoholic beverage sold or offered for sale, keep any alcoholic beverage otherwise than in the bottle or container in which it was purchased by him, refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper with the contents of any bottle or container of alcoholic beverage, or
- (6) sell or serve any brand of alcoholic beverage which is not the same as that ordered by the purchaser thereof without first advising such purchaser of the difference, or
- (7) knowingly remove or obliterate any label, mark or stamp required under this Article to be affixed to any bottle or container of alcoholic beverage from which mixed beverages are offered for sale, or deliver or sell the contents of any bottles or containers on which such label, mark or stamp has been removed or obliterated, or
- (8) employ, as a waiter or waitress serving mixed beverages, a person less than 18 years of age, in or about that portion of the licensed establishment used for the sale and consumption of alcoholic beverages, or
- (9) serve mixed beverages to any person under 21 years of age, or
- (10) knowingly allow any immoral, lewd, obscene, indecent or profane conduct, language, literature, pictures or materials on the permitted premises, or
- (11) consume, or allow the consumption by an employee who is engaged in serving intoxicating liquor of any intoxicating liquor, or
- (12) allow a person to retain possession of any bottle used in serving mixed beverages pursuant to this Article, or

- (13) be intoxicated while on the permitted premises or employ an intoxicated person on the permitted premises, or
- (14) allow an intoxicated person to loiter on the premises, or
- (15) conceal any sale or consumption of alcoholic beverages, or
- (16) fail or refuse to make samples of alcoholic beverages available to the Board upon request or obstruct agents of the Board or any law enforcement officer in the discharge of their duties, or
- (17) store alcoholic beverages purchased under the permit in any unauthorized place or remove any such alcoholic beverages from the premises, or
- (18) knowingly employ or retain in such employment in the permitted premises any person who has been convicted as a prostitute, homosexual, panderer, gambler, habitual law violator, user of or peddler of narcotics or other controlled substances, or person who drinks to excess, or
- (19) keep on the permitted premises any gambling or gaming device, machine or apparatus, or permit gambling on the premises, or
- (20) advertise the sale of alcoholic beverages on or off the permitted premises other than as permitted by the Board.

"§ 18A-32.8. Purchase at ABC store; transportation. — (a) All alcoholic beverages sold as mixed beverages in establishments issued permits under this Article shall be purchased by the permittee from a local ABC store located within the county in which the permitted premises are located.

Nothing in this Article shall be deemed to prohibit local ABC systems from designating a special store or location within the system to sell alcoholic beverages to be used for the sale of mixed beverages.

(b) It shall be lawful for any permittee under this Article to purchase, possess and transport alcoholic beverages to be used for the sale of mixed beverages from a county or municipal ABC store to a named destination within the county if the seals on the bottles and if the case or carton remain unbroken and if the permittee has in his possession a 'purchase-transportation permit' and complies strictly with the provisions of this section. The purchase-transportation permit shall be acquired from the chairman, a member, or the general manager or supervisor of the local ABC Board of the system from which the alcoholic beverages are purchased, or the general manager or supervisor of such ABC system store. The permit shall be signed by the person authorized to issue it, and it shall authorize the permittee named therein to purchase and transport the quantity of alcoholic beverages therein indicated. The permit shall be issued by means of a printed form with at least two carbon copies. On the face of the permit shall appear the following information:

- (1) Name and address of permittee and registration number of the premises assigned by the Board;
- (2) The name of the authorized agent of the permittee who purchases and transports said alcoholic beverages;
- (3) The name and location of the place where purchase is to be made;
- (4) The serial numbers affixed to each case or carton at the time of purchase;
- (5) Date issued and expiration date;
- (6) Destination;
- (7) Signatures of persons issuing and receiving the permit;
- (8) A statement that the permit is valid for only one purchase on the date shown and that the permit must accompany the merchandise during transit and both the merchandise and the permit must be exhibited by purchaser to any law enforcement officer upon request; and
- (9) Such further information as the Board may require.

The permit herein authorized shall be valid for only one purchase and it shall expire at 6:00 p.m. of the date shown thereon. No purchase based on this permit shall be made from any ABC store except the store named on the permit. The first carbon copy of the permit shall be retained by the permittee. One carbon copy shall be maintained by the board of the local ABC system for a period of at least three years. The original shall be sent immediately to the State Board and maintained by them for a period of at least three years. The permit shall authorize the permittee to transport the alcoholic beverages from the place of purchase to the destination indicated thereon. The permit must accompany the merchandise during transit and both the merchandise and the permit must be exhibited to any law enforcement officer upon request. Permits shall be issued substantially in the form provided in G.S. 18A-28 for the transportation of alcoholic beverages.

"§ 18A-32.9. Fees. — An application for permit pursuant to this Article shall be accompanied by a fee payable to the State Board in the sum of three hundred dollars (\$300.00), which shall not be refundable in case the permit is denied, suspended or revoked. In addition, upon issuance of a permit pursuant to this Article, there shall be paid to the State Board an initial fee of three hundred dollars (\$300.00) for establishments having a capacity of fifty (50) seats or less, and an additional charge of five dollars (\$5.00) for each seat in excess of fifty (50) with a maximum fee of one thousand dollars (\$1,000). The annual renewal fee for such permits shall be fifty percent (50%) of the original permit as herein set forth. All permits shall be the property of the State Board and shall be surrendered upon request, and all permits shall expire on April 30 of each year.

All fees collected under this Article shall be deposited in the general fund of the State.

"§ 18A-32.10. Additional charge for alcoholic beverages to be sold as mixed beverages; labels, marks to be affixed. — Upon any purchase of alcoholic beverages to be used for the sale of mixed beverages pursuant to this Article, the permittee, in addition to the total price that would otherwise be due, shall pay to the ABC store the sum of five dollars (\$5.00) per gallon, which sums shall not be subject to any tax levied under G.S. 105-113.93 and G.S. 105-113.94. All such alcoholic beverages shall be purchased in containers containing either one-fifth of a gallon, one quart or one-half of a gallon, and at the time of such purchase the store shall affix to each container a special label or mark in a form to be approved by the State Board showing that the additional charge provided for in this section has been paid. The entire proceeds of the additional sum herein required to be paid and collected shall be paid monthly into the general fund of the county in which such ABC store is located. A report of such collections and payments shall be made on or before the fifteenth (15th) of each succeeding month to the State Board on forms or reports prescribed and furnished by said Board. The sums so paid and collected shall not be included in calculating the profits of said ABC system for the purposes of G.S. 105-113.93.

"§ 18A-32.11. Inspections. — Every establishment holding permits under the provisions of this Article shall be subject to inspection by enforcement officers of the Board and any other State or local law enforcement officers. Such enforcement officers shall report to the Board, and to the county board where appropriate, any violations or apparent violations of the provisions of this Article or of any of the rules and regulations promulgated by the State Board pursuant thereto.

"§ 18A-32.12. Suspension or revocation of permit. — (a) If any permittee violates any of the provisions of this Chapter, or Chapter 105, or any rule or regulation promulgated under authority of either Chapter, or fails to superintend in person or through a qualified person, the business for which the permit was issued, or otherwise fails to carry out in good faith the purposes of this Chapter, the Board may revoke or suspend his permit.

(b) The Board may refuse to issue a permit, may refuse to renew a permit, or may suspend or revoke any permit issued pursuant to this Article, if, in the discretion of the Board, it

is of the opinion that the applicant or permittee is not a suitable person to hold a permit or that the place occupied by the applicant or permittee is not a suitable place.

"§ 18A-32.13. Violation a misdemeanor, revocation of permit by court. — Any person who violates any of the provisions of this Article, or any rules or regulations promulgated by the Board pursuant thereto, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine or by imprisonment, or by both fine and imprisonment, in the discretion of the court. If any permittee is convicted of the violation of any of the provisions of this Article, or any of the rules or regulations promulgated pursuant thereto, the court in which such conviction occurs is empowered to, and may, immediately declare the permit revoked, and notify the Board accordingly."

Sec. 2. The following clarifying amendments are made to Chapter 18A of the General Statutes in the event the result of the statewide election herein provided for is affirmative:

- (1) G.S. 18A-13 is repealed;
- (2) G.S. 18A-25(b) is amended by adding before the period ", except as provided in Article 3A of this Chapter";
- (3) G.S. 18A-29(a) is amended by adding after the parenthetical material: ", except as provided in Article 3A of this Chapter,".

Sec. 3. If any provisions of this act or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 4. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 4th day of May, 1973.