

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 412
HOUSE BILL 9

AN ACT TO REWRITE THE ALCOHOLIC BEVERAGE CONTROL LAWS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 18A of the General Statutes is repealed.

Sec. 2. A new Chapter 18B is added to the General Statutes to read as follows:

"ARTICLE 1.

"General Provisions.

"§ 18B-100. Purpose of Chapter. — This Chapter is intended to establish a uniform system of control over the sale, purchase, transportation, manufacture, consumption, and possession of alcoholic beverages in North Carolina, and to provide procedures to insure the proper administration of the ABC laws under a uniform system throughout the State. This Chapter shall be liberally construed to the end that the sale, purchase, transportation, manufacture, consumption, and possession of alcoholic beverages shall be prohibited except as authorized in this Chapter.

Except as provided in this Chapter, local ordinances establishing different rules on the manufacture, sale, purchase, transportation, possession, consumption, or other use of alcoholic beverages, or requiring additional permits or fees, are prohibited.

"§ 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.
- (3) 'ABC system' means a local board and all ABC stores operated by it, its law enforcement branch, and all its employees.
- (4) 'Alcoholic beverage' means any beverage containing at least one-half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages. Unless the context clearly requires otherwise, 'alcoholic beverage' means taxpaid alcoholic beverage.
- (5) 'ALE Division' means the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety.
- (6) 'Commission' means the North Carolina Alcoholic Beverage Control Commission established under G.S. 18B-200.
- (7) 'Fortified wine' means any wine made by fermentation from grapes, fruits, berries, rice, or honey, to which nothing has been added other than pure brandy made from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine, and which has an alcoholic content of not more than twenty-four percent (24%) alcohol by volume.

- (8) 'Local board' means a city or county ABC board, or local board created pursuant to the provisions of G.S. 18B-703.
- (9) 'Malt beverage' means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one-half of one percent (0.5%), and not more than six percent (6%), alcohol by volume.
- (10) 'Mixed beverage' means 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.
- (11) 'Nontaxpaid alcoholic beverage' means any alcoholic beverage upon which the taxes imposed by the United States, this State, or any other territorial jurisdiction in which the alcoholic beverage was purchased have not been paid.
- (12) 'Person' means an individual, firm, partnership, association, corporation, other organization or group, or other combination of individuals acting as a unit.
- (13) 'Sale' means any transfer, trade, exchange, or barter, in any manner or by any means, for consideration.
- (14) 'Spirituous liquor' or 'liquor' means distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin and all other distilled spirits and mixtures of cordials, liqueur, and premixed cocktails, in closed containers for beverage use regardless of their dilution.
- (15) 'Unfortified wine' means wine that has an alcoholic content produced only by natural fermentation or by the addition of pure cane, beet, or dextrose sugar, and that has an alcoholic content of not less than six percent (6%) and not more than seventeen percent (17%) alcohol by volume.

"§ 18B-102. Manufacture, sale, etc., forbidden except as expressly authorized. — (a) General Prohibition. It shall be unlawful for any person to manufacture, sell, transport, import, export, deliver, furnish, purchase, consume, or possess any alcoholic beverages except as authorized by the ABC law.

(b) Violation a Misdemeanor. Unless a different punishment is otherwise expressly stated, any person who violates any provision of this Chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine, by imprisonment for not more than two years, or both. In addition the court may impose the provisions of G.S. 18B-202 and of G.S. 18B-503, -504, and -505.

"§ 18B-103. Exemptions. — The following activities shall be permitted:

- (1) The use of ethyl alcohol for scientific, chemical, pharmaceutical, mechanical, and industrial purposes;
- (2) The use of ethyl alcohol by persons authorized to obtain it tax free, as provided by federal law;
- (3) The use of ethyl alcohol in the manufacture and preparation of any product unfit for use as a beverage;
- (4) The use of alcoholic beverages by licensed physicians, druggists, or dental surgeons for medicinal or pharmaceutical purposes; or the use of alcoholic beverages by medical facilities established and maintained for the treatment of patients addicted to the use of alcohol or drugs;
- (5) The use of grain alcohol by college, university or State laboratories, and by manufacturers of medicine, for compounding, mixing, or preserving medicines or medical preparations, or for surgical purposes;
- (6) The manufacture, importation, and possession of denatured alcohol produced and used as provided by federal law;
- (7) The manufacture or sale of cider or vinegar;

(8) The possession and use of unfortified or fortified wine for sacramental purposes by any organized church or ordained minister.

"§ 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) for the first violation, up to seven hundred fifty dollars (\$750.00) for the second violation, and up to one thousand dollars (\$1,000) for the third violation; or
- (4) Suspend the permittee's permit under subdivision (1) and impose a fine under subdivision (3).

(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). 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. All fines and penalties collected under subsections (a) and (b) shall be remitted by the Commission to the State Treasurer for the General Fund.

(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.

"§ 18B-105. Advertising. — (a) General Rule. No person shall advertise alcoholic beverages in this State except in compliance with the rules of the Commission.

(b) Rule-making Authority. The Commission shall have the authority to adopt rules to:

- (1) Prohibit or regulate advertising of alcoholic beverages by permittees in newspapers, pamphlets, and other print media;
- (2) Prohibit or regulate advertising by on-premises permittees of brands or prices of alcoholic beverages via newspapers, radio, television, and other mass media;
- (3) Prohibit deceptive or misleading advertising of alcoholic beverages;
- (4) Require all advertisements of alcoholic beverages to disclose fully the identity of the advertiser and of the product being advertised;
- (5) Prohibit advertisements of alcoholic beverages on the premises of a permittee, or regulate the size, number, and appearance of those advertisements;
- (6) Prohibit or regulate advertisement of prices of alcoholic beverages on the premises of a permittee;
- (7) Prohibit or regulate alcoholic beverage advertisements on billboards;
- (8) Prohibit alcoholic beverage advertisements on outdoor signs, or regulate the nature, size, number, and appearance of those advertisements;
- (9) Prohibit or regulate advertising of alcoholic beverages by mail;
- (10) Prohibit or regulate contests, games, or other promotions which serve or tend to serve as advertisement for a specific brand or brands of alcoholic beverages; and
- (11) Prohibit or regulate any advertising of alcoholic beverages which is contrary to the public interest.

"§ 18B-106. Alcoholic beverages for use on oceangoing ships. — (a) Delivery Permitted. Alcoholic beverages for use outside the United States on oceangoing vessels shall be delivered as follows:

- (1) Spirituous liquor may be imported into this State under United States customs bonds, held in United States customs bonded warehouses, and transferred between those warehouses. Spirituous liquors may only be released from customs bonds for delivery to an officer or agent of an oceangoing vessel who has obtained a permit from the Commission for that purpose.
- (2) Malt beverages, unfortified wine, and fortified wine may be sold and delivered by any wholesaler or retailer licensed in this State to an officer or agent of an oceangoing vessel. The Commission may require the officer or agent to obtain a permit before purchasing alcoholic beverages under this subdivision.

(b) Definition. 'Oceangoing vessel' means a ship which plies the high seas in interstate or foreign commerce, in the transport of freight or passengers, or both, for hire exclusively.

(c) Rules. The Commission may issue rules relating to applications for permits and otherwise regulate the importation, sale, and delivery of alcoholic beverages under this section to insure that those beverages are used only on oceangoing vessels outside the United States.

"§ 18B-107. Alcoholic beverages for use in air commerce. — (a) Purchase and Storage. The Commission may issue permits authorizing air carriers offering regularly scheduled or chartered flights in foreign, interstate, or intrastate commerce to purchase malt beverages, unfortified wine, and fortified wine from any wholesaler or retailer licensed in this State, and to transport those alcoholic beverages. The Commission may also authorize air carriers to store, at facilities approved by the Commission, alcoholic beverages to be sold or served pursuant to subsection (b).

(b) Sale. Air carriers may sell and serve alcoholic beverages anywhere in this State to passengers while in transit aboard any aircraft. At airports which service airplanes boarding at least 150,000 passengers annually, air carriers may serve complimentary alcoholic beverages to their passengers in air carrier passenger rooms approved by the Commission. Alcoholic beverages may not be sold in such a room unless a permit has been issued under Article 10 authorizing sale there.

"§ 18B-108. Sales on trains. — Malt beverages and unfortified wine may be sold in dining cars, buffet cars, Pullman cars, and club cars of railroad trains in this State, upon receipt of the required revenue license under Chapter 105.

"§ 18B-109. Direct shipment of alcoholic beverages into State. — (a) General Prohibition. No person shall have any alcoholic beverage mailed or shipped to him from outside this State unless he has the appropriate ABC permit.

(b) Armed Forces Installation. No person shall have malt beverages or unfortified wine shipped directly from a point outside this State to an armed forces installation within this State if those alcoholic beverages are for resale on the installation.

"§ 18B-110. Emergency. — When the Governor finds that a 'state of emergency', as defined in G.S. 14-288.1, exists anywhere in this State, he may

- (1) Order the closing of all ABC stores, and
- (2) Order the cessation of all sales, transportation, manufacture, and bottling of alcoholic beverages.

The Governor's order shall apply in those portions of the State designated in the order, for the duration of the state of emergency. Any order by the Governor under this section shall be directed to the Chairman of the Commission and to the Secretary of Crime Control and Public Safety.

"ARTICLE 2.

"State Administration.

"§ 18B-200. North Carolina Alcoholic Beverage Control Commission. — (a) Creation of Commission; Compensation. The North Carolina Alcoholic Beverage Control Commission is created to consist of a chairman and two associate members. The chairman shall devote his full time to his official duties and receive a salary fixed by the Governor with the approval of the Advisory Budget Commission. The associate members shall be compensated for per diem, subsistence and travel as provided in Chapter 138 of the General Statutes.

(b) Appointment of Members. Members of the Commission shall be appointed by the Governor to serve at his pleasure.

(c) Vacancy. The Governor shall fill any vacancy on the Commission by appointing a successor to serve at the Governor's pleasure. If the chairman's seat becomes vacant, the Governor may designate either the new member or an existing member of the Commission as the chairman.

(d) Employees. The Commission may authorize the chairman to employ, discharge, and otherwise supervise subordinate personnel of the Commission. The Commission shall appoint at least one hearing officer with authority to make investigations, hold hearings, and perform any other duties authorized by Chapter 150A.

"§ 18B-201. Conflict of interest. — (a) Financial Interests Restricted. No person shall be appointed to or employed by the Commission, a local board, or the ALE Division, if that person or a member of his household related to him by blood or marriage has or controls, directly or indirectly, a financial interest in any commercial alcoholic beverage enterprise, including any business required to have an ABC permit. The Commission may exempt from this provision any person, other than a Commission member, when the financial interest in question is so insignificant or remote that it is unlikely to affect the person's official actions in any way. Exemptions may be granted only to individuals, not to groups or classes of people, and each exemption shall be in writing, be available for public inspection, and contain a statement of the financial interest in question.

(b) Self-dealing. The provisions of G.S. 14-234 shall apply to the Commission and local boards.

(c) Dealing for Family Members. Neither the Commission nor any local board shall contract or otherwise deal in any business matter so that a member's spouse or any person related to him by blood to a degree of first cousin or closer in any way benefits, directly or indirectly, from the transaction unless:

- (1) the member whose relative benefits from the transaction abstains from participating in any way, including voting, in the decision;
- (2) The minutes of the meeting at which the final decision is reached specifically note the member whose spouse or relative is benefited and the amount involved in each transaction;
- (3) The next annual audit of the Commission or local board specifically notes the member and the amount involved in each transaction occurring during the year covered by the audit; and
- (4) If the transaction is by a local board, the Commission is notified at least two weeks before final board approval of the transaction.

"§ 18B-202. Discharge upon conviction. — In addition to imposing any other penalty authorized by law, a judge may remove from office or discharge from employment any Commission or local board member or employee, or any ALE agent, who is convicted of a violation of any provision of this Chapter or of any felony and may declare that person ineligible for membership or employment with the Commission, any local board, or the ALE Division, for a period of not longer than three years. Conviction of a crime under this Chapter or of any felony shall also be grounds for the Commission to remove from office or discharge from employment any local board member or employee.

"§ 18B-203. Powers and duties of the Commission. — (a) Powers. The Commission shall have authority to:

- (1) Administer the ABC laws;
- (2) Provide for enforcement of the ABC laws, in conjunction with the ALE Division;
- (3) Set the prices of alcoholic beverages sold in local ABC stores as provided in Article 8;
- (4) Require reports and audits from local boards as provided in G.S. 18B-205;
- (5) Determine what brands of alcoholic beverages may be sold in this State;
- (6) Contract for State ABC warehousing, as provided in G.S. 18B-204;
- (7) Dispose of damaged alcoholic beverages, as provided in G.S. 18B-806;
- (8) Remove for cause any member or employee of a local board;
- (9) Supervise or disapprove purchasing by any local board and inspect all records of purchases by local boards;
- (10) Approve or disapprove rules adopted by any local board;
- (11) Approve or disapprove the opening and location of ABC stores, as provided in Article 8;
- (12) Issue ABC permits, and impose sanctions against permittees;
- (13) Provide for the testing of alcoholic beverages, as provided in G.S. 18-206.

(b) Implied Powers. The Commission shall have all other powers which may be reasonably implied from the granting of the express powers stated in subsection (a), or which may be incidental to, or convenient for, performing the duties given to the Commission.

"§ 18B-204. State warehouse. — (a) Contracting for Private Warehouse. The Commission shall provide for the receipt, storage, and distribution of spirituous liquor by one of the following methods:

- (1) By negotiated contract with a privately owned warehouse, or
- (2) By negotiated contract with privately owned warehouses in several regions of the State. The Commission shall choose locations for the warehouses to promote efficient distribution of spirituous liquor to all local boards, to maintain control of that liquor, and to insure the Commission's supervision of warehousing procedures.

(b) Audits and Inspections. Contracts entered into pursuant to this section shall provide the following:

- (1) That an annual audited financial statement be prepared and submitted to the Commission by the person contracting with the Commission;
- (2) That all warehouse records be available for inspection at all times by the Commission and the Department of Revenue; and
- (3) That all warehouse accounts relating to the receipt, storage, or distribution of spirituous liquor be subject to audit by the State Auditor.

(c) Emergency or Temporary Operation. If the independent operator of a warehouse changes, or if some other occurrence results in substantially impeded distribution of spirituous liquor from a warehouse, the Commission may operate that warehouse on an interim emergency or temporary basis.

(d) Rules. The Commission may adopt rules regarding warehouse operations, and violations of those rules by a party with whom the Commission contracts shall be grounds for termination by the Commission of a contract entered into under this section.

"§ 18B-205. Accounts and reports required. — (a) Accounts and Reports. The Commission may require local boards to submit quarterly mixed beverage reports, quarterly and annual audits, monthly sales records, and any other reports or audits relating to the operations of the local ABC systems.

(b) Accounting System. The Commission may require local boards to use generally accepted accounting standards and a chart of accounts prescribed by the Commission in the operation of ABC stores, and to record all information necessary and useful to the Commission in auditing the operation of ABC systems and administering the ABC law.

(c) Audits. The Commission may audit the operation of any local ABC store or board, and the books of those stores and boards shall remain open to the Commission for inspection.

"§ 18B-206. Standards for alcoholic beverages. — (a) Authority to Set Standards. The Commission may set standards and adopt rules for malt beverages, unfortified wine, fortified wine, and spirituous liquor to protect the public against beverages containing harmful or impure substances, beverages containing an improper balance of substances as determined by the Commission, spurious or imitation beverages, and beverages unfit for human consumption. In setting standards and in issuing rules relating to them, the Commission may follow federal guidelines for standards of identity, labeling and advertising contained in Title 27 of the Code of Federal Regulations, or may adopt more restrictive standards.

(b) Effective Date of Standards. A person possessing alcoholic beverages which do not meet a new standard set by the Commission shall have 60 days after the effective date of the standard to sell or otherwise dispose of those alcoholic beverages.

(c) Testing. The Commission may test malt beverages, unfortified wine, fortified wine, and spirituous liquor possessed or offered for sale in this State to determine whether they meet the standards set by the Commission. If the Commission chooses to test an alcoholic beverage, that test may be performed by the Commission, the Commission may arrange for the State Chemist to perform the testing, or the Commission may have the testing performed in some other manner. The manufacturer of tested alcoholic beverages shall pay the costs of the test. In lieu of testing an alcoholic beverage, the Commission may rely on testing by a federal agency or an agency of another state or may accept test results from a federal agency, an agency of another state, or the manufacturer of the alcoholic beverage or his authorized agent. A manufacturer who submits test results shall also submit a fee of ten dollars (\$10.00) for each test result to cover administrative costs.

"§ 18B-207. Rules. — The Commission shall have authority to adopt, amend, and repeal rules to carry out the provisions of this Chapter. Those rules shall become effective when adopted and filed pursuant to the provisions of Chapter 150A of the General Statutes.

"ARTICLE 3.

"Sale, Possession, and Consumption.

"§ 18B-300. Purchase, possession and consumption of malt beverages and unfortified wine. — (a) Generally. Except as otherwise provided in this Chapter, the purchase, consumption, and possession of malt beverages and unfortified wine by individuals 18 years old or older for their own use is permitted without restriction.

(b) Consumption at Off-Premises Establishment. It shall be unlawful to consume, or for a permittee 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.

(c) Local Ordinance. A city or county may by ordinance regulate the consumption of malt beverages and unfortified wine on property owned or occupied by that city or county.

"§ 18B-301. Possession and consumption of fortified wine and spirituous liquor. — (a) Possession at Home. It shall be lawful, without an ABC permit, for any person at least 21 years old to possess for lawful purposes any amount of fortified wine and spirituous liquor at his home or a temporary residence, such as a hotel room.

(b) Possession on Other Property. It shall be lawful, without an ABC permit, for a person to possess for his personal use and the use of his guests not more than four liters of fortified wine or spirituous liquor, or four liters of the two combined, at the following places:

(1) The residence of any other person with that person's consent;

(2) Any other property not primarily used for commercial entertainment and not open to the public at the time the alcoholic beverage is possessed, if the owner or other person in charge of the property consents to that possession and consumption;

(3) An establishment with a brown-bagging permit as defined in G.S. 18B-1001(7).

(c) Special Occasions. It shall be lawful for a person to possess, without a permit and not for sale, any amount of fortified wine or spirituous liquor for a private party, private reception, or private special occasion, at the following places:

(1) His home or a temporary residence, such as a hotel room;

(2) Any other property not primarily used for commercial entertainment, which is under his exclusive control and supervision, and which is not open to the public during the event;

(3) The licensed premises of any business for which the Commission has issued a Special Occasions permit under G.S. 18B-1001(8), if he is the host of that private function and has the permission of the permittee.

(d) Consumption. It shall be lawful for a person to consume fortified wine and spirituous liquor in any place where it is lawful for him to possess those alcoholic beverages under subsections (a) through (c).

(e) Incident to Sale. It shall be lawful to possess fortified wine and spirituous liquor at any place, such as an ABC store, where possession is a necessary incident to lawful sale. Consumption at such a place shall be unlawful unless the establishment has a permit authorizing consumption on the premises as well as sale.

(f) Unlawful Possession or Use. As illustration, but not limitation, of the general prohibition stated in G.S. 18B-102(a), it shall be unlawful for:

(1) Any person to consume fortified wine, spirituous liquor, or mixed beverages or to offer such beverages to another person:

a. On the premises of an ABC store, or

b. Upon any property used or occupied by a local board, or

c. On any public road, street, highway, or sidewalk.

(2) Any person to display publicly at an athletic contest fortified wine, spirituous liquor, or mixed beverages;

(3) Any person to permit any fortified wine, spirituous liquor, or mixed beverages to be possessed or consumed upon any premises not authorized by this Chapter;

(4) Any person to possess or consume any fortified wine, spirituous liquor, or mixed beverages upon any premises where such possession or consumption is not authorized by law, or where the person has been forbidden to possess or consume that beverage by the owner or other person in charge of the premises;

(5) Any person to possess on any of the premises described in subsections (a) through (c) a greater amount of fortified wine or spirituous liquor than authorized by this Chapter;

(6) Any permittee, other than a mixed beverage or culinary permittee, to possess spirituous liquor or mixed beverages on his licensed premises.

"§ 18B-302. Sale to or purchase by minors. — (a) Sale. It shall be unlawful for any person to knowingly:

(1) Sell or give malt beverages or unfortified wine to anyone less than 18 years old; or

(2) Sell or give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(b) Purchase or Possession. It shall be unlawful for:

- (1) A person less than 18 years old to purchase or possess malt beverages or unfortified wine; or
- (2) A person less than 21 years old to purchase or possess fortified wine, spirituous liquor, or mixed beverages.

(c) Aider and Abettor. Any person who aids or abets another in violation of subsection (a) or (b) shall be guilty of a misdemeanor.

(d) Presumptions. A sale made in violation of subsection (a) shall be presumed to have been made knowingly unless the seller:

- (1) Shows that the purchaser produced a driver's license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing his age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the purchaser; or
- (2) Produces evidence of other facts which reasonably indicated at the time of sale that the purchaser was at least the required age.

(e) Fraudulent Driver's License. It shall be unlawful for any person to use or attempt to use a fraudulent driver's license or a license issued to some other person, to obtain alcoholic beverages in violation of subsection (b). Upon conviction of a violation of this subsection, the court may, in addition to any other penalty provided for in this Chapter, revoke the defendant's driver's license for a period not exceeding six months.

(f) Allowing Use of License. It shall be unlawful for any person to permit the use of his driver's license by any person who violates or attempts to violate subsection (e). In addition to any other penalty imposed by this Chapter, conviction of a violation of this subsection shall be grounds for the revocation of the defendant's driver's license for a period not exceeding six months.

"§ 18B-303. Amounts of alcoholic beverages that may be purchased. — (a) Purchases Allowed. Without a permit, a person may purchase at one time:

- (1) Not more than 80 liters of malt beverages, other than draft malt beverages in kegs;
- (2) Any amount of draft malt beverages in kegs;
- (3) Not more than 20 liters of unfortified wine;
- (4) Not more than four liters of either fortified wine or spirituous liquor, or four liters of the two combined.

(b) Unlawful Purchase. Except as provided in subsection (c) and in Article 11, it shall be unlawful for any person to purchase, or for any person to sell, an amount of alcoholic beverages greater than that stated in subsection (a).

(c) Greater Amounts. Amounts of alcoholic beverages greater than those listed in subdivisions (a)(3) and (a)(4) may be purchased with a purchase-transportation permit under G.S. 18B-403.

"§ 18B-304. Sale and possession for sale. — (a) Offense. It shall be unlawful for any person to sell any alcoholic beverage, or possess any alcoholic beverage for sale, without first obtaining an ABC permit for the sale of that alcoholic beverage.

(b) Prima Facie Evidence. Possession of the following amounts of alcoholic beverages, without a permit authorizing that possession, shall be prima facie evidence that the possessor is possessing those alcoholic beverages for sale:

- (1) More than 80 liters of malt beverages, other than draft malt beverages in kegs;
- (2) More than four liters of spirituous liquor; or
- (3) Any amount of nontaxpaid alcoholic beverages.

"§ 18B-305. Other prohibited sales. — (a) Sale to Intoxicated Person. It shall be unlawful for a permittee or his employee or for an ABC store employee to knowingly sell or give alcoholic beverages to any person who is intoxicated.

(b) Discretion for Seller. Any person authorized to sell alcoholic beverages under this Chapter may, in his discretion, refuse to sell to anyone. It shall be unlawful for any person to knowingly buy alcoholic beverages for someone who has been refused the right to purchase under this subsection.

"§ 18B-306. Making wines and malt beverages for private use. — An individual may make, possess, and transport native wines and malt beverages for his own use and for the use of his family and guests. Native wines shall be made principally from honey, grapes, or other fruit or grain grown in this State, or from wine kits containing honey, grapes, or other fruit or grain concentrates, and shall have only that alcoholic content produced by natural fermentation. Malt beverages may be made by use of malt beverage kits containing grain extracts or concentrates. Wine kits and malt beverage kits may be sold in this State. No State license or permit is required for, nor is any State tax imposed on, beverages made pursuant to this section.

"§ 18B-307. Manufacturing offenses. — (a) Offenses. It shall be unlawful for any person, except as authorized by this Chapter, to:

- (1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage; or
- (2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage.

(b) Second Offense of Manufacturing. A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony.

"§ 18B-308. Sale and consumption at bingo games. — It shall be unlawful to sell or consume, or for the owner or other person in charge of the premises to allow the sale or consumption of, any alcoholic beverage in any room while a raffle or bingo game is being conducted in that room under G.S. 14-292.1.

"ARTICLE 4.

"Transportation.

"§ 18B-400. Amounts that may be transported. — A person may transport at one time the same amount of alcoholic beverages that he is allowed to buy under G.S. 18B-303(a). Greater amounts of fortified wine, unfortified wine and spirituous liquor may be transported with a purchase-transportation permit under G.S. 18B-403.

"§ 18B-401. Manner of transportation. — (a) Open Bottle. It shall be unlawful to transport fortified wine or spirituous liquor in the passenger area of a motor vehicle if the cap or seal on the container has been opened or broken. Violation of this subsection shall constitute a misdemeanor punishable by a fine of twenty-five dollars (\$25.00) to five hundred dollars (\$500.00), imprisonment for not more than 30 days, or both.

(b) Taxis. It shall be unlawful for a person operating a for-hire passenger vehicle as defined in G.S. 20-4.01(27)b, to transport fortified wine or spirituous liquor unless the vehicle is transporting a paying passenger who owns the alcoholic beverage being transported. Not more than four liters of fortified wine or spirituous liquor, or combination of the two, may be transported by each passenger. A violation of this subsection shall not be grounds for revocation of the driver's license for illegal transportation of intoxicating liquors under G.S. 20-16(a)(8).

(c) Definition. For purposes of this section, 'passenger area of a motor vehicle' means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. In the case of a station wagon, hatchback or similar vehicle, the area behind the last upright back seat shall not be considered part of the passenger area.

"§ 18B-402. Alcoholic beverages purchased out-of-State. — A person may bring into North Carolina alcoholic beverages purchased legally outside the jurisdiction of this State in the same amounts that may be legally transported within the State under G.S. 18B-400.

"§ 18B-403. Purchase-transportation permit. — (a) Amounts. With a purchase-transportation permit, a person may purchase and transport an amount of alcoholic beverages greater than the amount specified in G.S. 18B-303(a). A permit authorizes the holder to transport from the place of purchase to the destination indicated on the permit at one time the following amount of alcoholic beverages:

- (1) A maximum of 100 liters of unfortified wine;
- (2) A maximum of 40 liters of either fortified wine or spirituous liquor, or 40 liters of the two combined; or
- (3) The amount of fortified wine or spirituous liquors specified on the purchase-transportation permit for a mixed beverage permittee.

(b) Issuance of Permit. A purchase-transportation permit may be issued by:

- (1) The local board chairman;
- (2) A member of the local board;
- (3) The general manager or supervisor of the local board; or
- (4) The manager or assistant manager of an ABC store, if he is authorized to issue permits by the local board chairman.

(c) Disqualifications. A purchase-transportation permit shall not be issued to a person who:

- (1) Is not sufficiently identified or known to the issuer;
- (2) Is known or shown to be an alcoholic or bootlegger;
- (3) Has been convicted within the previous three years of an offense involving the sale, possession, or transportation of nontaxpaid alcoholic beverages; or
- (4) Has been convicted within the previous three years of an offense involving the sale of alcoholic beverages without a permit.

(d) Form. A purchase-transportation permit shall be issued on a printed form adopted by the Commission. The Commission shall adopt rules specifying the content of the permit form.

(e) Restrictions on Permit. A purchase may be made only from the store named on the permit. One copy of the permit shall be kept by the issuing person, one by the purchaser, and one by the store from which the purchase is made. The purchaser shall display his copy of the permit to any law enforcement officer upon request.

(f) Time. A purchase-transportation permit is valid only until 9:30 p.m. on the date of purchase, which date shall be stated on the permit.

"§ 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 permit.

(b) Issuance. A mixed beverages purchase-transportation permit shall be issued only by the local board for the county or city in which a licensed establishment is located. If mixed beverages sales have been approved by a city election but the establishment to which the permit has been issued is located at an airport outside the city, the purchase-transportation permit may be issued by the local board of any city located in the same county as the airport, provided that the city has approved the sale of mixed beverages.

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

"§ 18B-405. Transportation by permittee. — The holder of a permit for the retail sale of malt beverages, unfortified wine, or fortified wine may transport from a wholesaler's place of business to his licensed premises any amount of the alcoholic beverage he is authorized to sell,

without a purchase-transportation permit or a commercial transportation permit under G.S. 18B-1112.

"§ 18B-406. Unlawful transportation. — It shall be unlawful to transport a greater amount of alcoholic beverage than permitted by this Article, unless the transportation is authorized under Article 11.

"ARTICLE 5.

"Law Enforcement.

"§ 18B-500. Alcohol law enforcement agents. — (a) Appointment. The Secretary of Crime Control and Public Safety shall appoint alcohol law enforcement agents and other enforcement personnel. The Secretary of Crime Control and Public Safety may also appoint regular employees of the Commission as alcohol law enforcement agents.

(b) Subject Matter Jurisdiction. After taking the oath prescribed for a peace officer, an alcohol law enforcement agent shall have authority to arrest and take other investigatory and enforcement actions for any criminal offense. The primary responsibility of an agent shall be enforcement of the ABC laws and Article 5 of Chapter 90 (The Controlled Substances Act); however, an agent may perform any law enforcement duty assigned by the Secretary of Crime Control and Public Safety or the Governor.

(c) Territorial Jurisdiction. An alcohol law enforcement agent is a State officer with jurisdiction throughout the State.

(d) Service of Commission Orders. Alcohol law enforcement agents may serve and execute notices, orders, or demands issued by the Commission for the surrender of permits or relating to any administrative proceeding. While serving and executing such notices, orders, or demands, alcohol law enforcement agents shall have all the power and authority possessed by law enforcement officers when executing an arrest warrant.

(e) Discharge. Alcohol law enforcement agents are subject to the discharge provisions of G.S. 18B-202.

"§ 18B-501. Local ABC officers. — (a) Appointment. Except as provided in subsection (f), each local board shall hire one or more ABC enforcement officers. The local board may designate one officer as the chief ABC officer for that board.

(b) Subject Matter Jurisdiction. After taking the oath prescribed for a peace officer, a local ABC officer may arrest and take other investigatory and enforcement actions for any criminal offense; however, the primary responsibility of a local ABC officer is enforcement of the ABC laws and Article 5 of Chapter 90 (The Controlled Substances Act).

(c) Territorial Jurisdiction. A local ABC officer has jurisdiction anywhere in the county in which he is employed except that a city ABC officer's territorial jurisdiction is subject to any limitation included in any local act governing that city ABC system. A local ABC officer may pursue outside his normal territorial jurisdiction anyone who commits an offense within that jurisdiction, as provided in G.S. 15A-402(d).

(d) Assisting Other Local Agencies. The local ABC officers employed by a local board shall constitute a 'law enforcement agency' for purposes of G.S. 160A-288, and a local board shall have the same authority as a city or county governing body to approve cooperation between law enforcement agencies under that section.

(e) Assisting State and Federal Enforcement. A local ABC officer may assist State and federal law enforcement agencies in the investigation of criminal offenses in North Carolina, under the following conditions:

- (1) The local board employing the officer has adopted a resolution approving such assistance and stating the conditions under which it may be provided;
- (2) The State or federal agency has made a written request for assistance from that local board, either for a particular investigation or for any investigation that might require assistance within a certain period of time;

- (3) The local ABC officer is supervised by someone in the requesting agency; and
- (4) As soon as practical after the assistance begins, an acknowledgement of the action is placed in the records of the local board.

A local ABC officer shall have territorial jurisdiction throughout North Carolina while assisting a State or federal agency under this section. While providing that assistance the officer shall continue to be considered an employee of the local board for purposes of salary, worker's compensation, and other benefits, unless a different arrangement is negotiated between the local board and the requesting agency.

(f) **Contracts with Other Agencies.** Instead of hiring local ABC officers, a local board may contract to pay its enforcement funds to a sheriff's department, city police department, or other local law enforcement agency for enforcement of the ABC laws within the agency's territorial jurisdiction. Enforcement agreements may be made with more than one agency at the same time. When such a contract for enforcement exists, the officers of the contracting law enforcement agency shall have the same authority to inspect under G.S. 18B-502 that an ABC officer employed by that local board would have.

(g) **Discharge.** Local ABC officers are subject to the discharge provisions of G.S. 18B-202.

"§ 18B-502. Inspection of licensed premises. — (a) **Authority.** To procure evidence of violations of the ABC law, alcohol law enforcement agents, employees of the Commission, local ABC officers, and officers of local law enforcement agencies that have contracted to provide ABC enforcement under G.S. 18B-501(f) shall have authority to investigate the operation of each licensed premises for which an ABC permit has been issued, to make inspections that include viewing the entire premises, and to examine the books and records of the permittee. The inspection authorized by this section may be made at any time it reasonably appears that someone is on the premises.

(b) **Interference with Inspection.** Refusal by a permittee or by any employee of a permittee to permit officers to enter the premises to make an inspection authorized by subsection (a) shall be cause for revocation, suspension or other action against the permit of the permittee as provided in G.S. 18B-104. It shall be a misdemeanor punishable by a fine of up to five hundred dollars (\$500.00), imprisonment for up to six months, or both, for any person to resist or obstruct an officer attempting to make a lawful inspection under this section.

"§ 18B-503. Disposition of seized alcoholic beverages. — (a) **Storage.** A law enforcement officer who seizes alcoholic beverages as evidence of an ABC law violation shall provide for the storage of those alcoholic beverages until the commencement of the trial or administrative hearing relating to the violation, unless some other disposition is authorized under this section.

(b) **Disposition Before Trial.** After giving notice to each defendant, to any other known owner, and to the Commission, a judge may make the following dispositions of alcoholic beverages seized as evidence of an ABC law violation:

- (1) He shall order the destruction of any malt beverages except that amount needed for evidence at trial.
- (2) He may order the sale of any alcoholic beverages other than malt beverages or nontaxpaid alcoholic beverages, and other than any alcoholic beverages needed for evidence at trial, if the trial is likely to be delayed for more than 90 days, or if the quantity or nature of the alcoholic beverages is such that storage is impractical or unduly expensive.
- (3) He may order destruction of the alcoholic beverages if storage or sale is not practical.
- (4) He may order continued storage of the alcoholic beverages.

(c) **Disposition After Trial.** After the criminal charge is resolved, a judge may order the following dispositions of seized alcoholic beverages:

- (1) If the owner or possessor of the alcoholic beverages is found guilty of a criminal charge relating to those alcoholic beverages, the judge may order the sale or destruction of any alcoholic beverages that were held until trial.
- (2) If the owner or possessor of the alcoholic beverages is found not guilty, or if charges are dismissed or otherwise resolved in his favor, the judge shall order the alcoholic beverages returned to that owner or possessor, except as provided in subdivision (3).
- (3) If the owner or possessor of the alcoholic beverages is found not guilty, or if charges are otherwise resolved in his favor, but possession of the alcoholic beverages by him would be unlawful, the judge shall order the alcoholic beverages either sold or destroyed.
- (4) If ownership of the alcoholic beverages remains uncertain after trial or after the charges have been dismissed, the judge may order the alcoholic beverages held, or the alcoholic beverages sold and the proceeds held, for a specified time, until ownership of the alcoholic beverages can be determined.

(d) Holding for Administrative Hearings. If alcoholic beverages used as evidence in a criminal proceeding are also needed as evidence at an administrative hearing, a judge shall not order any of the dispositions set out in subsection (c), but shall order the alcoholic beverages held for the administrative hearing and for a determination of final disposition by the Commission or one of its hearing officers. A hearing officer for the Commission may, before or after an administrative hearing, order any of the dispositions authorized under subsections (b) and (c). If no related criminal proceeding has commenced, the Commission or its hearing officers shall not order sale or destruction of alcoholic beverages until notice has been given to the district attorney for the district where the alcoholic beverages were seized or any violation of ABC laws related to the seizure of the alcoholic beverages is likely to be prosecuted.

(e) Sale Procedure. The sale of unfortified wine or fortified wine shall be by public auction unless those wines would likely become spoiled or lose value in the time required to arrange a public auction. If spoilage or loss of value is likely, the judge or hearing officer ordering the sale may authorize sale at the prevailing wholesale price, as determined by the Commission, to one or more persons holding the appropriate retail wine permits in the county in which the wine was seized, or in a neighboring county if there are no such persons in the county in which the wine was seized. Spirituous liquor may be sold only to the local ABC board serving the city or county in which the liquor was seized, or, if there is no local board for that city or county, to the nearest local board. The sale price shall be at least ten percent (10%) less than the price the local board would pay for the same liquor bought through the State warehouse.

(f) Sale Proceeds. An agency selling alcoholic beverages seized under the provisions of this Chapter shall keep the proceeds in a separate account until some other disposition is ordered by a judge or a Commission hearing officer. If, in a criminal proceeding, the owner or possessor of the alcoholic beverages is found guilty of a violation relating to seizure of the alcoholic beverages, or if he is found not guilty, or if the charge is dismissed or otherwise resolved in his favor, but the possession of the alcoholic beverages by him would be unlawful, or if the ownership of the alcoholic beverages cannot be determined, the proceeds from the sale of those alcoholic beverages shall be paid to the school fund of the county in which the alcoholic beverages were seized. If the owner or possessor of alcoholic beverages seized for violation of the ABC laws is found not guilty of criminal charges relating to the seizure of those beverages, or if the charge is dismissed or otherwise resolved in his favor, and if possession of the alcoholic beverages by him was lawful when the beverages were seized, the proceeds from the sale of those alcoholic beverages shall be paid to him. The agency making the sale may deduct and retain from the amount to be placed in the county school fund the costs

of storing the seized alcoholic beverages and of conducting the sale, but may not deduct those costs from the amount to be turned over to an owner or possessor of the alcoholic beverages.

(g) Court Action by Owner. Any person who has any of the following claims resulting from the seizure of alcoholic beverages may bring an action in the superior court of the county in which the alcoholic beverages were seized:

- (1) Alcoholic beverages owned by him are wrongfully held;
- (2) Alcoholic beverages owned by him are needed as evidence in another proceeding;
- (3) He is entitled to proceeds from a sale of seized alcoholic beverages;
- (4) He is entitled to restitution for alcoholic beverages wrongfully destroyed.

"§ 18B-504. Forfeiture. — (a) Property Subject to Forfeiture. The following kinds of property shall be subject to forfeiture:

- (1) Motor vehicles, boats, airplanes, and all other conveyances used to transport nontaxpaid alcoholic beverages in violation of the ABC laws;
- (2) Containers for alcoholic beverages which are manufactured, possessed, sold, or transported in violation of the ABC laws; and
- (3) Equipment or ingredients used in the manufacture of alcoholic beverages in violation of the ABC laws.

(b) Exemption for Forfeiture. Property which may be possessed lawfully shall not be subject to forfeiture when it was used unlawfully by someone other than the owner of the property and the owner did not consent to the unlawful use.

(c) Seizure of Property. If property subject to forfeiture has not already been seized as part of an arrest or search, a law enforcement officer may apply to a judge for an order authorizing seizure of that property. An order for seizure may be issued only after criminal process has been issued for an ABC law violation in connection with that property. The order shall describe the property to be seized and shall state the facts establishing probable cause to believe that the property is subject to forfeiture.

(d) Custody until Trial. A law enforcement officer seizing property subject to forfeiture shall provide for its safe storage until trial. If the officer having custody of the property is satisfied that it will be returned at the time of trial, he may return the property to the owner upon receiving a bond for the value of the property, signed by sufficient sureties. If the property is not returned at the time of trial, the full amount of the bond shall be forfeited to the court. Property which it is unlawful to possess may not be returned to the owner.

(e) Disposition after Trial. The presiding judge in a criminal proceeding for violation of ABC laws may take the following actions after resolution of a charge against the owner or possessor of property subject to forfeiture under this section:

- (1) If the owner or possessor of the property is found guilty of an ABC offense, the judge may order the property forfeited.
- (2) If the owner or possessor of the property is found not guilty, or if the charge is dismissed or otherwise resolved in his favor, the judge shall order the property returned to the owner or possessor.
- (3) If ownership of the property remains uncertain after trial, the judge may order the property held for a specified time to determine ownership. If the judge finds that ownership cannot be determined with reasonable effort, he shall order the property forfeited.
- (4) Regardless of the disposition of the charge, if the property is something that may not be possessed lawfully, the judge shall order it forfeited.
- (5) If the property is also needed as evidence at an administrative hearing, the judge shall provide that his order does not go into effect until the Commission or one of its hearing officers determines that the property is no longer needed for the administrative proceeding.

(f) Disposition of Forfeited Property. A judge ordering forfeiture of property may order any one of the following dispositions:

- (1) Sale at public auction;
- (2) Sale at auction after notice to certain named individuals or groups, if only a limited number of people would have use for that property;
- (3) Delivery to a named State or local law enforcement agency, if the property is not suited for sale, with preference to be given in the following order, to: the agency that seized the property, the ALE Division, the Commission, the local board of the jurisdiction in which the property was seized, and the Department of Justice; or
- (4) Destruction, if possession of the property would be unlawful and it could not be used or is not wanted for law enforcement, or if sale or other disposition is not practical.

(g) Proceeds of Sale. If forfeited property is sold, the proceeds of that sale shall be paid to the school fund of the county in which the property was seized, except as provided in subsection (h). Before placing the proceeds in the school fund the agency making the sale may deduct and retain the costs of storing the property and conducting the sale.

(h) Innocent Parties. At any time before forfeiture is ordered, an owner of seized property or a holder of a security interest in seized property, other than the defendant, may apply to protect his interest in the property. The application may be made to any judge who has jurisdiction to try the offense with which the property is associated. If the judge finds that the property owner or holder of a security interest did not consent to the unlawful use of the property, and that the property may be possessed lawfully by the owner or holder, the judge may order:

- (1) That the property be returned to the owner, if it is not needed as evidence at trial;
- (2) That the property be returned to the owner following trial or other resolution of the case; or
- (3) That, if the property is sold following trial, a specified sum be paid from the proceeds of that sale to the holder of the security interest.

(i) Defendant Unavailable. When property is seized for forfeiture, but the owner is unknown, the district attorney may seek forfeiture under this section by an action in rem against the property. If the owner is known and has been charged with an offense, but is unavailable for trial, the district attorney may seek forfeiture either by an action in rem against the property or by motion in the criminal action.

(j) When No Charge is Made. Any owner of property seized for forfeiture may apply to a judge to have the property returned to him if no criminal charge has been made in connection with that property within a reasonable time after seizure. The judge may not order the return of the property if possession by the owner would be unlawful.

"§ 18B-505. Restitution. — When a person is convicted of a violation of the ABC laws, the court may order him to make restitution to any law enforcement agency for reasonable expenditures made in purchasing alcoholic beverages from him or his agent as part of an investigation leading to his conviction.

"ARTICLE 6.

"Elections.

"§ 18B-600. Places eligible to hold alcoholic beverage elections. — (a) Kinds of Elections. The following kinds of alcoholic beverage elections shall be permitted:

- (1) Malt beverage;
- (2) Unfortified wine;
- (3) ABC store; and
- (4) Mixed beverage.

(b) County Elections. Any county may hold a malt beverage, unfortified wine, or ABC store election. A county may hold a mixed beverage election only if the county already operates at least one county ABC store or a county election on ABC stores is to be held at the same time as the mixed beverage election.

(c) City Malt Beverage and Unfortified Wine Elections. A city may hold a malt beverage or unfortified wine election only if:

- (1) The city has a population of 500 or more, the county in which the city is located has already held such an election, and the vote in the last county election was against the sale of that kind of alcoholic beverage; or
- (2) The city operates an ABC store.

(d) City ABC Store Elections. A city may hold an ABC store election only if:

- (1) The city has a population of 500 or more; and
- (2) The county in which the city is located does not operate ABC stores.

(e) City Mixed Beverage Elections. A city may hold a mixed beverage election only if:

- (1) The city has a population of 500 or more; and
- (2) Either:

- a. The city already operates a city ABC store; or
- b. A city ABC store election is to be held at the same time as the mixed beverage election; or
- c. The city does not operate a city ABC store but:
 1. The county operates an ABC store;
 2. The county has already held a mixed beverage election; and
 3. The vote in the last county election was against the sale of mixed beverages.

"§ 18B-601. Election procedure. — (a) Generally. Except as otherwise provided in this section, an alcoholic beverage election shall be conducted in the same manner and under the same rules as a referendum under Chapter 163.

(b) How County Election Called. A county alcoholic beverage election shall be conducted by the county board of elections. When a county is eligible to hold an election under G.S. 18B-600, the county board of elections shall hold the election upon receiving either:

- (1) A written request for an election from the governing body of the county; or
- (2) A petition requesting an election signed by at least twenty-five percent (25%) of the voters registered in the county at the time the petition was initiated.

(c) How City Election Called. A city alcoholic beverage election shall be conducted by the county board of elections or, in the case of a city authorized under Chapter 163 to conduct its own elections, by the city board of elections. When a city is eligible to hold an election under G.S. 18B-600, the board of elections shall hold the election upon receiving either:

- (1) A written request for an election from the city governing body; or
- (2) A petition requesting an election signed by at least twenty-five percent (25%) of the voters registered in the city at the time the petition was initiated.

(d) Form of Request. A request or petition for a malt beverage election shall state which of the four propositions in G.S. 18B-602(a) are to be voted upon. A request or petition for an unfortified wine election shall state which of the three propositions in G.S. 18B-602(d) are to be voted upon. More than one kind of alcoholic beverage election may be included in a single request or petition.

(e) Petitions. A petition for an election shall be on a form provided by the appropriate local board of elections and shall contain the signature, name, address and precinct of each voter who signs. A petition shall be considered initiated at the time the form is delivered by the board of elections to the person who requests it. Within 72 hours after the petition is initiated,

the board of elections shall certify the number of registered voters in the city or county at the time it was initiated. The petition shall be returned to the board of elections within 90 days of the time it is initiated. Failure to return the petition within that time shall render it void. The board of elections shall determine the sufficiency of the petition within 30 days after it is returned.

(f) Election Date. The board of elections shall set the date for the alcoholic beverage election, which may not be sooner than 60 days nor later than 120 days from the date the request was received from the governing body or the petition was verified by the board.

(g) Registration. No separate registration shall be required to vote in an alcoholic beverage election. Registration shall be closed for an alcoholic beverage election in the same manner and under the same schedule as for any other election.

(h) Notice. The board of elections shall give notice of an alcoholic beverage election and notice of the close of registration in the same manner and under the same schedule as for any other election.

(i) Observers. The proponents and opponents for an alcoholic beverage election, as determined by the local board of elections, shall have the right to appoint two watchers to attend each voting place. The persons authorized to appoint watchers shall, three days before the election, submit in writing to the registrar of each precinct a signed list of the watchers appointed for that precinct. The persons appointed as watchers shall be registered voters of the precinct for which appointed. The registrar and judges for the precinct may for good cause reject any appointee and require that another be appointed. Watchers shall do no electioneering at the voting place nor in any manner impede the voting process, interfere or communicate with or observe any voter in casting his ballot. Watchers shall be permitted in the voting place to make such observation and to take such notes as they may desire.

"§ 18B-602. Form of ballots. — (a) Malt Beverage Elections. Any one or more of the propositions listed below may be placed on the ballot for a malt beverage election. Each voter may vote on each proposition on the ballot. The propositions to be used shall be chosen by the governing body or petitioner requesting the election. The propositions shall read as follows:

- (1) To permit the 'on-premises' and 'off-premises' sale of malt beverages.
[] FOR
[] AGAINST
- (2) To permit the 'on-premises' sale only of malt beverages.
[] FOR
[] AGAINST
- (3) To permit the 'off-premises' sale only of malt beverages.
[] FOR
[] AGAINST
- (4) To permit the 'on-premises' sale of malt beverages by Class A hotels, motels, and restaurants only; and to permit 'off-premises' sales by other permittees.
[] FOR
[] AGAINST

(b) Determining Results of Malt Beverage Election. The kind of malt beverage sales described in each proposition that receives a majority of votes 'FOR' shall be allowed. If propositions (2) and (4) are both on the ballot and (2) receives a majority of votes 'FOR', then sales shall be permitted according to that proposition regardless of the vote on (4). If one of the propositions receiving a majority of votes 'FOR' is proposition (1), then the kind of sales described in that proposition shall be allowed regardless of the vote on any other proposition at that election.

(c) Subsequent Malt Beverage Elections. A subsequent election in which a majority votes 'AGAINST' malt beverage proposition (1) shall not affect the legality of sales that have previously been approved under proposition (2), (3), or (4). A subsequent election in which a

majority votes 'AGAINST' malt beverage proposition (2) shall not affect the legality of sales that have previously been approved under proposition (4).

(d) Unfortified Wine Elections. Any one or more of the propositions listed below may be placed on the ballot for an unfortified wine election. Each voter may vote on each proposition on the ballot. The propositions to be used shall be chosen by the governing body or petitioner requesting the election. The propositions shall read as follows:

- (1) To permit the 'on-premises' and 'off-premises' sale of unfortified wine.
[] FOR
[] AGAINST
- (2) To permit the 'on-premises' sale only of unfortified wine.
[] FOR
[] AGAINST
- (3) To permit the 'off-premises' sale only of unfortified wine.
[] FOR
[] AGAINST

(e) Determining Results of Unfortified Wine Election. The kind of unfortified wine sales described in each proposition that receives a majority of votes 'FOR' shall be allowed. If one of the propositions receiving a majority of votes 'FOR' is proposition (1), then the kind of sales described in that proposition shall be allowed, regardless of the vote on any other proposition at that election.

(f) Subsequent Unfortified Wine Election. A subsequent election in which a majority votes 'AGAINST' unfortified wine proposition (1) shall not affect the legality of sales previously approved under proposition (2) or (3).

(g) ABC Store Elections. The ballot for an ABC store election shall state the proposition as follows:

To permit the operation of ABC stores.
[] FOR
[] AGAINST

(h) Mixed Beverage Elections. The ballot for a mixed beverage election shall state the proposition as follows:

To permit the sale of mixed beverages in hotels, restaurants, private clubs, and convention centers.
[] FOR
[] AGAINST

"§ 18B-603. Effect of alcoholic beverage elections on issuance of permits. — (a) Malt Beverage Elections. If a malt beverage election is held under G.S. 18B-602(a) and the sale of malt beverages is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

- (1) If on-premises sales are approved, the Commission may issue on-premises malt beverage permits.
- (2) If off-premises sales are approved, the Commission may issue off-premises malt beverage permits.
- (3) If both on-premises and off-premises sales are approved, the Commission may issue both on-premises and off-premises malt beverage permits.
- (4) If the kinds of sales described in G.S. 18B-602(a)(4) are approved, the Commission may issue on-premises malt beverage permits to restaurants and hotels only and off-premises malt beverage permits to other permittees.

(b) Unfortified Wine Elections. If an unfortified wine election is held under G.S. 18B-602(d) and the sale of unfortified wine is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

- (1) If on-premises sales are approved, the Commission may issue on-premises unfortified wine permits.
- (2) If off-premises sales are approved, the Commission may issue off-premises unfortified wine permits.
- (3) If both on-premises and off-premises sales are approved, the Commission may issue both on-premises and off-premises unfortified wine permits.

(c) ABC Store Elections. If an ABC store election is held under G.S. 18B-602(g) and the establishment of ABC stores is approved, each of the following shall be authorized in the jurisdiction that held the election:

- (1) The jurisdiction that held the election may establish and operate ABC stores in the manner described in Articles 7 and 8.
- (2) The Commission may issue on-premises and off-premises fortified wine and unfortified wine permits to qualified persons and establishments in that jurisdiction, regardless of any unfortified wine election or any local act.
- (3) The Commission may issue brown-bagging permits for restaurants and hotels in the county in which the election was held, whether the election was held by the county or by a city or other jurisdiction within the county. Brown-bagging permits shall not be issued, however, for restaurants or hotels in any jurisdiction in which the sale of mixed beverages has been approved.

(d) Mixed Beverage Elections. If a mixed beverage election is held under G.S. 18B-602(h) and the sale of mixed beverages is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

- (1) The Commission may issue mixed beverage permits.
- (2) The Commission may issue on-premises malt beverage, unfortified wine, and fortified wine permits for establishments with mixed beverage permits, regardless of any other election or any local act concerning sales of those kinds of alcoholic beverages.
- (3) The Commission may issue brown-bagging permits for private clubs, but may no longer issue and may not renew brown-bagging permits for restaurants and hotels. A restaurant or hotel shall not be issued a mixed beverage permit under subdivision (1) until it surrenders its brown-bagging permit.
- (4) The Commission may continue to issue culinary permits for establishments that do not have mixed beverage permits. An establishment may not be issued a mixed beverage permit under subdivision (1) until it surrenders its culinary permit.

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

(e) Mixed Beverages at Airports. When the sale of mixed beverages has been approved in a city election, the Commission may also issue permits under subsection (d) for qualified establishments outside the city but within the same county, if:

- (1) The establishment is on the property of an airport;
- (2) The airport is operated by the city or by an airport authority in which the city participates; and
- (3) The airport services planes which board at least 150,000 passengers annually.

(f) Permits Not Dependent on Elections. The Commission may issue the following kinds of permits without approval at an election:

- (1) Special occasion permits;
- (2) Limited special occasion permits;
- (3) Brown-bagging permits for private clubs;
- (4) Culinary permits, except as restricted by subdivision (d)(4);
- (5) Special one-time permits issued under G.S. 18B-1002;
- (6) All permits listed in G.S. 18B-1100(a).

(g) Miscellaneous. The definitions in G.S. 18B-1000 shall apply to this section.

"§ 18B-604. Timing and effect of subsequent elections. — (a) Time Limits. No county alcoholic beverage election may be held within three years of the certification of the results of a previous election on the same kind of alcoholic beverages in that county. No city alcoholic beverage election may be held within three years of the certification of the results of a previous election on the same kind of alcoholic beverage in that city. Otherwise, alcoholic beverage elections may be held at any time, subject to the applicable provisions of this Chapter and Chapter 163.

(b) Effect of Favorable County Vote on City. If a majority of voters vote in favor of certain alcoholic beverage sales in a county election, sale of that kind of alcoholic beverage shall be lawful throughout the county, regardless of the vote in any city at that or any previous election, and regardless of any local act making sales unlawful in that city, unless the local act was ratified before the effective date of Article II, Section 24(1)(j) of the Constitution of North Carolina. A county malt beverage or unfortified election in favor of a particular ballot proposition which is more restrictive than the form of sale already allowed in a city within that county shall not affect the legality of those previously authorized sales in the city.

(c) Effect of Negative County Vote on City. If a majority of voters vote against certain alcoholic beverage sales in a county election, sale of that kind of alcoholic beverage shall be unlawful throughout the county, except that sale of that alcoholic beverage shall remain lawful in any city in which sale is lawful because of a city election or a local act.

(d) Effect of City Election on County. A city alcoholic beverage election shall not affect the lawfulness of sale in any part of the county outside that city.

(e) ABC Store Required for Mixed Beverages. The sale of mixed beverages may not continue in a city or county at any time after the ABC stores which are requisite to mixed beverage sales have closed.

(f) When Sales Stop. When the sale of any alcoholic beverage that was previously lawful becomes unlawful because of an election, the sale of that alcoholic beverage shall cease 90 days after certification of the results of the election.

"§ 18B-605. Local act elections. — If a jurisdiction has voted in favor of ABC stores or in favor of the sale of some kind of alcoholic beverage, pursuant to a local act enacted before the effective date of this Chapter, and the jurisdiction would not be eligible to hold another election under the conditions set by G.S. 18B-600, then that jurisdiction may hold subsequent elections under the terms of the applicable local act. Except for the authority to hold the election, however, the procedures of this Chapter shall apply to any subsequent election.

"ARTICLE 7.

"Local ABC Boards.

"§ 18B-700. Appointment and organization of local ABC boards. — (a) Membership. A local ABC board shall consist of three members appointed for three-year terms, unless a different membership or term is provided by a local act enacted before the effective date of this Chapter. One member of the initial board of a newly created ABC system shall be appointed for a three-year term, one member for a two-year term, and one member for a one-year term. As the terms of initial board members expire, their successors shall each be appointed for

three-year terms. The appointing authority shall designate one member of the local board as chairman.

(b) City Boards. City ABC board members shall be appointed by the city governing body, unless a different method of appointment is provided in a local act enacted before the effective date of this Chapter.

(c) County Boards. County ABC board members shall be appointed by the board of county commissioners, unless a different method of appointment is provided in a local act enacted before the effective date of this Chapter.

(d) Qualifications. The appointing authority shall appoint members of a local board on the basis of the appointees' interest in public affairs, good judgment, knowledge, ability, and good moral character.

(e) Vacancy. A vacancy on a local board shall be filled by the appointing authority for the remainder of the unexpired term. If the chairman's seat becomes vacant, the appointing authority may designate either the new member or an existing member of the local board to complete the chairman's term.

(f) Removal. A member of a local board may be removed for cause at any time by the appointing authority. Local board members are subject to the removal provisions of G.S. 18B-202.

(g) Salary. A local board member may be compensated as determined by the appointing authority.

(h) Conflict of Interest. The provisions of G.S. 18B-201 shall apply to local board members and employees.

(i) Bond. Before taking office, a local board member shall deposit with the Commission a bond of five thousand dollars (\$5,000), secured by a corporate surety, for the faithful performance of his duties. The bond shall be payable to the State of North Carolina and to the city or county for which the local board is established and shall be approved by the Commission and by the authority appointing the local board member. The appointing authority may exempt from this bond requirement any board member who does not handle board funds, and it may also increase the amount of the bond for any member who does handle board funds.

"§ 18B-701. Powers of local ABC boards. — A local board shall have authority to:

- (1) Buy, sell, transport, and possess alcoholic beverages as necessary for the operation of its ABC stores;
- (2) Adopt rules for its ABC system, subject to the approval of the Commission;
- (3) Hire and fire employees for the ABC system;
- (4) Designate one employee as manager of the ABC system and determine his responsibilities;
- (5) Require bonds of employees as provided in the rules of the Commission;
- (6) Operate ABC stores as provided in Article 8;
- (7) Issue purchase-transportation permits as provided in Article 4;
- (8) Employ local ABC officers or make other provision for enforcement of ABC laws as provided in Article 5;
- (9) Borrow money as provided in G.S. 18B-702;
- (10) Buy and lease real and personal property, and receive property bequeathed or given, as necessary for the operation of the ABC system;
- (11) Invest surplus funds as provided in G.S. 18B-702;
- (12) Dispose of property in the same manner as a city council may under Article 12 of Chapter 160A of the General Statutes; and
- (13) Perform any other activity authorized or required by the ABC law.

"§ 18B-702. Financial operations of local boards. — (a) Generally. A local board may transact business as a corporate body, except as limited by this section. A local board shall not be considered a public authority under G.S. 159-7(b)(10).

(b) Borrowing Money. A local board may borrow money only for the purchase of land, buildings, equipment and stock needed for the operation of its ABC system. A local board may pledge a security interest in any real or personal property it owns other than alcoholic beverages. A city or county whose governing body appoints a local board shall not in any way be held responsible for the debts of that board.

(c) Audits. A local board shall submit to the Commission an annual independent audit of its operations, performed in accordance with generally accepted accounting standards and in compliance with a chart of accounts prescribed by the Commission. The audit report shall contain a summary of the requirements of this Chapter, or of any local act applicable to that local board, concerning the distribution of profits of that board and a description of how those distributions have been made, including the names of recipients of the profits and the activities for which the funds were distributed. A local board shall also submit to any other audits and submit any reports demanded by the Commission.

(d) Deposits and Investments. A local board may deposit moneys at interest in any bank or trust company in this State in the form of savings accounts or certificates of deposit. Investment deposits shall be secured as provided in G.S. 159-31(b) and the reports required by G.S. 159-33 shall be submitted. A local board may invest all or part of the cash balance of any fund as provided in G.S. 159-30(c), and may deposit any portion of those funds for investment with the State Treasurer in the same manner as State boards and commissions under G.S. 147-69.3.

(e) Compliance with Commission Rules. The Commission shall adopt, and each local board shall comply with, fiscal control rules concerning the borrowing of money, maintenance of working capital, investments, appointment of a financial officer, daily deposit of funds, bonding of employees, auditing of operations, and the schedule, manner and other procedures for distribution of profits. The Commission may also adopt any other rules concerning the financial operations of local boards which are needed to assure the proper accountability of public funds.

"§ 18B-703. Merger of local ABC operations. — (a) Conditions for Merger. Any city governing body or board of county commissioners may merge its ABC system with the system of one or more other cities or counties if:

- (1) Stores operated by the systems of those jurisdictions serve the same general area or are in close proximity to each other; and
- (2) The merger is approved by the Commission.

(b) Appointment of Board. Upon merger of ABC systems, the local boards for those systems shall be replaced by one board appointed jointly by the appointing authorities for the previous boards.

(c) Distribution of Profits. Before merger, the cities or counties involved shall agree upon a formula for distribution of the profits of the new merged ABC system, based as closely as practicable on the distribution previously authorized for the separate systems. This formula for distribution shall be subject to approval by the Commission.

(d) Enforcement. Local officers hired by the local ABC board for the merged ABC system shall have the same territorial jurisdiction that officers for each of the merged boards would have.

(e) Dissolution. With the approval of the Commission, the cities or counties that have merged their ABC systems may dissolve the merged operation at any time and resume their prior separate operations.

(f) Other Details Negotiated. Issues not addressed in this section concerning the merger or dissolution of ABC systems, such as the method of appointment of the merged board or the procedure for dissolution, may be negotiated by the affected cities and counties, subject to the approval of the Commission.

(g) Operation Follows General Law. Except as otherwise provided in this section, the authority and operation of any local board established under this section shall be the same as for any other local board.

"ARTICLE 8.

"Operation of ABC Stores.

"§ 18B-800. Sale of alcoholic beverages in ABC stores. — (a) Spirituous Liquor. Except as provided in Article 10 of this Chapter, spirituous liquor may be sold only in ABC stores operated by local boards.

(b) Other Alcoholic Beverages. In addition to spirituous liquor, ABC stores may sell the following:

- (1) Fortified wine, and
- (2) Unfortified wine derived principally from fruits or berries grown in North Carolina.

(c) Commission Approval. No ABC store may sell any alcoholic beverage which has not been approved by the Commission for sale in this State.

"§ 18B-801. Location, opening, and closing of stores. — (a) Number of Stores. Each local board shall have the authority and duty to operate one ABC store. Additional stores may be operated with the approval of the Commission.

(b) Location of Stores. A local board may choose the location of the ABC stores within its jurisdiction, subject to the approval of the Commission. In making its decision on a location, the Commission may consider:

- (1) Whether the health, safety, or general welfare of the community will be adversely affected; and
- (2) Whether the citizens of the community or city in which the proposed store is to be located voted for or against ABC stores in the last election on the question.

(c) Closing of Stores. Subject to the provisions of subsection (a), a local board may close, or the Commission may order a local board to close, any store when the local board or the Commission determines that:

- (1) The operation of the store is not sufficiently profitable to justify its continuation;
- (2) The store is not operated in accordance with the ABC law; or
- (3) The continued operation of that store will adversely affect the health, safety, or general welfare of the community in which the store operates.

"§ 18B-802. When stores operate. — (a) Time. No ABC store shall be open, and no ABC store employee shall sell alcoholic beverages, between 9:00 p.m. and 9:00 a.m. The local board shall otherwise determine opening and closing hours of its stores.

(b) Days. No ABC store shall be open, and no ABC store employee shall sell alcoholic beverages, on any Sunday, New Year's Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day. A local board may otherwise determine the days on which its stores shall be closed.

"§ 18B-803. Store management. — (a) Manager. A local board shall provide for the management of each store operated by it. The board shall employ at least one manager for each store, who shall operate the store pursuant to the directions of that board.

(b) Bonding of Manager. As a prerequisite to employment, each manager shall deposit with the local board a bond in an amount fixed by the board, secured by a corporate surety, for the faithful performance of his duties. The bond shall be payable to the State of North Carolina and to the city or county for which the local board is established and shall be approved by the Commission.

(c) Bonding of Other Employees. A local board may require any of its other employees who handle board funds to obtain bonds in the manner prescribed in subsection (b).

"§ 18B-804. Alcoholic beverage pricing. — (a) Uniform Price of Spirituous Liquor. The retail price of spirituous liquor sold in ABC stores shall be uniform throughout the State, unless otherwise provided by the ABC law.

(b) Sale Price of Spirituous Liquor. The sale price of spirituous liquor shall consist of the following components:

- (1) The distiller's price;
- (2) The freight and bailment charges of the State warehouse as determined by the Commission;
- (3) A markup for local boards as determined by the Commission;
- (4) The tax levied under G.S. 105-113.93, which shall be levied on the sum of subdivisions (1), (2) and (3);
- (5) An additional markup for local boards equal to three and one-half percent (3 1/2%) of the sum of subdivisions (1), (2) and (3);
- (6) A bottle charge of one cent (1¢) on each bottle containing fifty milliliters or less and five cents (5¢) on each bottle containing more than fifty milliliters;
- (7) A rounding adjustment, the formula of which may be determined by the Commission, so that the sale price will be divisible by five; and
- (8) If the spirituous liquor is sold to a mixed beverage permittee for resale in mixed beverages, a charge of ten dollars (\$10.00) on each four liters and a proportional sum on lesser quantities.

(c) Sale Price of Fortified Wine. The sale price of fortified wine shall include the tax levied by G.S. 105-113.95, as well as State and local sales taxes.

(d) Sale Price of Unfortified Wine. The sale price of unfortified wine shall include the tax levied by G.S. 105-113.86, as well as State and local sales taxes.

"§ 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.
- (3) Each month the local board shall pay to the Department of Human Resources ten percent (10%) of the mixed beverages surcharge required by G.S. 18B-804(b)(8). The Department of Human Resources shall spend those funds for treatment of alcoholism or for research or education on alcohol 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), 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, and if the Commission approves, those governing bodies may alter at any time the distribution to be made under this subsection. 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 Profit from Airport. When spirituous liquor is bought at a city ABC store by a mixed beverage permittee for premises located at an airport outside the city, the ninety percent (90%) local share of the mixed beverages surcharge required by G.S. 18B-804(a)(8) shall be divided equally among the local ABC boards of 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 treatment of alcoholism, or for research or education on alcohol 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.

"§ 18B-806. Damaged alcoholic beverages. — (a) Owned by Local Board. All damaged alcoholic beverages owned by a local board shall be destroyed, given to a public or private hospital for medicinal use only, or given to the Commission.

(b) Not Owned by Local Board. The Commission shall dispose of all damaged alcoholic beverages which are:

- (1) Owned by the Commission;
- (2) Damaged while in the State warehouse; or
- (3) Damaged while in transit between the State warehouse and a local board.

The Commission shall dispose of the alcoholic beverages by giving them to a public or private hospital for medicinal use only, by selling them to a military installation, or by destroying them.

(c) Sale Procedure. If damaged alcoholic beverages are sold under subsection (b), sale shall be by:

- (1) Advertisement for sealed bids;
- (2) Negotiated offer, advertisement and upset bids; or
- (3) Exchange.

Funds derived from the sale of damaged alcoholic beverages shall be paid to the General Fund of the State.

(d) Records. Local boards and the Commission shall keep detailed records of all disposals of damaged alcoholic beverages, including brand, quantity and disposition.

"§ 18B-807. Rules. — The Commission may adopt rules concerning the organization and operation of self-service ABC stores, the size of ABC store signs, the display of alcoholic beverages, solicitation in and around ABC stores, and any other subject relating to the efficient operation of ABC stores.

"ARTICLE 9.

"Issuance of Permits.

"§ 18B-900. Qualifications for permit. — (a) Requirements. To be eligible to receive and to hold an ABC permit, a person shall:

- (1) Be at least 21 years old, unless the person is a manager of a business selling only malt beverages and unfortified wine, in which case the person shall be at least 18 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 exempted from this requirement by the Commission;
- (3) Not have been convicted of a felony within three years, and, if convicted of a felony before then, shall have 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; and
- (6) Not have had an alcoholic beverage permit revoked within three years,

(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 partnership;
- (3) Each officer, director and owner of more than twenty-five percent (25%) of the stock of a corporation;

- (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 18 years old.

(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.

"§ 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 an ABC permit, 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 10 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 he has applied. To be a suitable place, the establishment shall comply with all applicable building and fire codes. Other factors the Commission may consider in determining whether the applicant and the business location are suitable are:

- (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 or public school or church school;
- (6) Zoning laws;
- (7) The recommendations of the local governing body; and
- (8) Any other evidence that would tend to show whether the applicant would comply with the ABC laws and whether operation of his business at that location would be detrimental to the neighborhood.

(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.

"§ 18B-902. Application for permit; fees. — (a) Form. An application for an ABC permit shall be on a form prescribed by the Commission and shall be notarized. The application shall be signed and sworn to by each person required to qualify under G.S. 18B-900(c).

(b) Investigation. Before issuing a new permit, the Commission, with the assistance of the ALE Division, shall investigate the applicant and the premises for which the permit is requested. The Commission may request the assistance of local ABC officers in investigating applications. An applicant shall cooperate fully with the investigation.

(c) False Information. Knowingly making a false statement in an application for an ABC permit shall be grounds for denying, suspending, revoking or taking other action against the permit as provided in G.S. 18B-104 and shall also be unlawful.

(d) Fees. An application for an ABC permit shall be accompanied by payment of the following application fee:

- (1) On-premises malt beverage permit — \$100.00.
- (2) Off-premises malt beverage permit — \$100.00.
- (3) On-premises unfortified wine permit — \$100.00.
- (4) Off-premises unfortified wine permit — \$100.00.
- (5) On-premises fortified wine permit — \$100.00.
- (6) Off-premises fortified wine permit — \$100.00.
- (7) Brown-bagging permit — \$200.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be \$100.00.
- (8) Special occasion permit — \$200.00.
- (9) Limited special occasion permit — \$25.00.
- (10) Mixed beverages permit — \$500.00.
- (11) Culinary permit — \$100.00.
- (12) Unfortified winery permit — \$100.00.
- (13) Fortified winery permit — \$100.00.
- (14) Limited winery permit — \$100.00.
- (15) Brewery permit — \$100.00.
- (16) Distillery permit — \$100.00.
- (17) Fuel alcohol permit — \$10.00.
- (18) Wine importer permit — \$100.00.
- (19) Wine wholesaler permit — \$100.00.
- (20) Malt beverage importer permit — \$100.00.
- (21) Malt beverage wholesaler permit — \$100.00.
- (22) Bottler permit — \$100.00.
- (23) Salesman permit — \$25.00.
- (24) Any special one-time permit under G.S. 18B-1002 — \$25.00.

(e) Fee for Combined Applications. If application is made at the same time for retail malt beverage, unfortified wine and fortified wine permits for a single business location, the total fee for those applications shall be one hundred dollars (\$100.00). If application is made at the same time for brown-bagging and special occasion permits for a single business location, the total fee for those applications shall be three hundred dollars (\$300.00). If application is made at the same time for wine and malt beverage importer permits, the total fee for those applications shall be one hundred dollars (\$100.00). If application is made at the same time for wine and malt beverage wholesaler permits, the total fee for those applications shall be one hundred dollars (\$100.00).

(f) Fee Not Refundable. The fee required by subsection (d) shall not be refundable even if the permit is denied or is later suspended or revoked.

(g) Fees to Treasurer. All fees collected by the Commission under this or any other section of this Chapter shall be remitted to the State Treasurer for the General Fund.

"§ 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 mixed beverages permit shall be fifty percent (50%) of the original fee. A renewal fee shall not be refundable.

(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.

"§ 18B-904. Miscellaneous provisions concerning permits. — (a) **Who Receives Permit.** An ABC permit shall be issued to the owner of an establishment and shall authorize the permitted activity only on the premises of the establishment named in the permit.

(b) **Posting Permit.** Each ABC permit that is held by an establishment shall be posted in a prominent place on the premises.

(c) **Business Not Operating.** An ABC permit shall automatically expire and shall be surrendered to the Commission if the person to whom it is issued does not commence the activity authorized by the permit within six months of the date the permit is effective. The Commission may waive this provision for good cause.

(d) **Notice of Issuance.** Upon issuing a permit the Commission shall send notice of the issuance, with the name and address of the permittee and the establishment, to:

- (1) The Department of Revenue;
- (2) The local board, if one exists, for the city or county in which the establishment is located;
- (3) The governing body, sheriff, and tax collector of the county in which the establishment is located;
- (4) If the establishment is located inside a city, the governing body, chief of police, and tax collector for the city; and
- (5) The ALE Division.

"§ 18B-905. Temporary permits. — When an application has been received in proper form, with the required application fee, the Commission may issue a temporary permit for any of the activities for which permits are authorized under G.S. 18B-1001 and 18B-1100. A temporary permit may be revoked summarily by the Commission without complying with the provisions of Chapter 150A. Revocation of a temporary permit shall be effective upon service of the notice of revocation upon the permittee or upon the expiration of three working days after the

notice of the revocation has been mailed to the permittee at either his residence or the address given for the business in the permit application. No further notice shall be required.

"§ 18B-906. Applicability of Administrative Procedure Act— (a) Act Applies. An ABC permit is a 'license' within the meaning of G.S. 150A-2, and a Commission action on issuance, suspension or revocation of an ABC permit, other than a temporary permit issued under G.S. 18B-905, is a 'contested case' subject to the provisions of Chapter 150A except as provided in subsection (b).

(b) Exception on Hearing Location. Hearings on ABC permits shall be held in Ahoskie, Asheville, Bryson City, Charlotte, Elizabeth City, Fayetteville, Franklin, Goldsboro, Greensboro, Greenville, Hickory, Jacksonville, Kinston, New Bern, Raleigh, Statesville, Wilmington, and Winston-Salem. Hearings shall be held within 100 miles, as best can be determined by the Commission, of the county seat of the county in which the licensed business or proposed business is located. The hearing may be held, however, at any place upon agreement of the Commission and all other parties.

"ARTICLE 10.

"Retail Activity.

"§ 18B-1000. Definitions concerning establishments. — The following requirements and definitions shall apply to this Chapter:

- (1) 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 greater than its gross receipts from alcoholic beverages. A restaurant shall also have a kitchen and an inside dining area with seating for at least 36 people.
- (2) 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.
- (3) 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 (1). 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.
- (4) 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.
- (5) Retail business — An establishment engaged in any retail business, regardless of whether food is sold on the premises.
- (6) 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. 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.

(7) Convention center — A publicly owned or operated establishment that is engaged in the business of sponsoring or hosting conventions and similar large gatherings. Convention centers shall include auditoriums, armories, civic centers, convention centers, and coliseums. A permit issued for a convention center shall be valid only for those parts of the building used for conventions and banquets and only during regularly scheduled conventions and banquets.

"§ 18B-1001. Kinds of ABC permits; places eligible. — When the issuance of the permit is lawful in the jurisdiction in which the premises is located, the Commission may issue the following kinds of permits:

(1) On-premises Malt Beverage Permit. An on-premises malt beverage permit authorizes the retail sale of malt beverages for consumption on the premises and the retail sale of malt beverages in the manufacturer's original container for consumption off the premises. The permit may be issued for any of the following:

- a. Restaurants;
- b. Hotels;
- c. Eating establishments;
- d. Food businesses;
- e. Retail businesses;
- f. Private clubs;
- g. Convention centers.

(2) Off-premises Malt Beverage Permit. An off-premises malt beverage permit authorizes the retail sale of malt beverages in the manufacturer's original container for consumption off the premises. The permit may be issued for any of the following:

- a. Restaurants;
- b. Hotels;
- c. Eating establishments;
- d. Food businesses;
- e. Retail businesses.

(3) On-premises Unfortified Wine Permit. An on-premises unfortified wine permit authorizes the retail sale of unfortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises. The permit may be issued for any of the following:

- a. Restaurants;
- b. Hotels;
- c. Eating establishments;
- d. Private clubs;
- e. Convention centers.

(4) Off-premises Unfortified Wine Permit. An off-premises unfortified wine permit authorizes the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises. The permit may be issued for food businesses. The permit may also be issued for a winery for sale of its own unfortified wine.

(5) On-premises Fortified Wine Permit. An on-premises fortified wine permit authorizes the retail sale of fortified wine, either alone or mixed with other beverages, for consumption on the premises. The permit may be issued for any of the following:

- a. Restaurants;

- b. Hotels;
c. Private clubs.
- (6) Off-premises Fortified Wine Permit. An off-premises fortified wine permit shall authorize the retail sale of fortified wine in the manufacturer's original container for consumption off the premises. The permit may be issued for food businesses. The permit may also be issued for a winery for sale of its own fortified wine.
- (7) Brown-bagging Permit. A brown bagging permit authorizes each individual patron of a business, with the permission of the permittee, to bring up to four liters of fortified wine or spirituous liquor, or four liters of the two combined, onto the premises and to consume those alcoholic beverages on the premises. The permit may be issued for any of the following:
 - a. Restaurants;
 - b. Hotels;
 - c. Private clubs.
- (8) Special Occasion Permit. A special occasion permit authorizes the host of a reception, party or other special occasion, with the permission of the permittee, to bring fortified wine and spirituous liquor onto the premises of the business and to serve the same to his guests. The permit may be issued for any of the following:
 - a. Restaurants;
 - b. Hotels;
 - c. Eating establishments;
 - d. Private clubs;
 - e. Convention centers.
- (9) Limited Special Occasion Permit. A limited special occasion permit authorizes the permittee to bring fortified wine and spirituous liquor onto the premises of a business, with the permission of the owner of that property, and to serve those alcoholic beverages to the permittee's guests at a reception, party, or other special occasion being held there. The permit may be issued to any individual other than the owner or possessor of the premises. An applicant for a limited special occasion permit shall have the written permission of the owner or possessor of the property on which the special occasion is to be held.
- (10) Mixed Beverages Permit. A mixed beverages permit authorizes the retail sale of mixed beverages for consumption on the premises. The permit also authorizes a mixed beverages permittee to obtain a purchase-transportation permit under G.S. 18B-403 and G.S. 18B-404, and to use for culinary purposes spirituous liquor lawfully purchased for use in mixed beverages. The permit may be issued for any of the following:
 - a. Restaurants;
 - b. Hotels;
 - c. Private clubs;
 - d. Convention centers.
- (11) Culinary Permit. A culinary permit authorizes a permittee to possess up to 12 liters of either fortified wine or spirituous liquor, or 12 liters of the two combined, in the kitchen of a business and to use those alcoholic beverages for culinary purposes. The permit may be issued for either of the following:
 - a. Restaurants;
 - b. Hotels.

A culinary permit may also be issued to a catering service to allow the possession of the amount of fortified wine and spirituous liquor stated above at the business location of that service and at the cooking site. The permit shall also authorize the caterer to transport those alcoholic beverages to and from the business location and the cooking site, and use them in cooking.

"§ 18B-1002. Special one-time permits. — (a) Kinds of Permits. In addition to the other permits authorized by this Chapter, the Commission may issue permits for the following activities:

- (1) A permit may be issued to a person who acquires ownership or possession of alcoholic beverages through bankruptcy, inheritance, foreclosure, judicial sale, or other special occurrence, and who does not already have a permit authorizing the sale of that kind of alcoholic beverage. The permit may authorize the sale or other disposition of the alcoholic beverages in a manner prescribed by the Commission.
- (2) A permit may be issued to a nonprofit organization to allow the retail sale of malt beverages, unfortified wine, or fortified wine, or to allow brown-bagging, at a single fund-raising event of that organization. A permit for this purpose shall not be issued to the same organization more than once during each quarter, and shall not be issued for the sale of any kind of alcoholic beverage in a jurisdiction where the sale of that alcoholic beverage is not lawful.
- (3) A permit may be issued to a permittee who is going out of business to authorize the sale or other disposition of his alcoholic beverages stock in a manner that would not otherwise be authorized under his permit.
- (4) A permit may be issued to a collector of wine or decorative decanters of spirituous liquor authorizing that person to bring into the State, transport, or possess as a collector, a greater amount of those alcoholic beverages than is otherwise authorized by this Chapter, or to sell those alcoholic beverages in a manner prescribed by the Commission.

(b) Intent. Permits under this section are to be issued only for the limited circumstances listed in subsection (a) of this section and not as substitutes for other permits required by this Chapter.

(c) Conditions of Permit. A permit issued under this section shall be valid only for the single transaction or the kind of activity specified in the permit and shall be subject to any conditions the Commission may impose as to the time, place and manner of the authorized activity.

(d) Administrative Procedure. Denial or revocation of a permit under this section shall not entitle the applicant or permittee to a hearing under Chapter 150A.

"§ 18B-1003. Responsibilities of permittee. — (a) Premises. For purposes of this Chapter, a permittee shall be responsible for the entire premises for which the permit is issued. The permittee shall keep the premises clean, well-lighted and orderly.

(b) Employees. For purposes of this Chapter, a permittee shall be responsible for the actions of all employees of the business for which the permit is issued. Each holder of a salesman's permit shall be responsible for all sales and deliveries made by his helpers.

(c) Certain Employees Prohibited. A permittee shall not knowingly employ in the sale or distribution of alcoholic beverages any person who has been:

- (1) Convicted of a felony within three years;
- (2) Convicted of a felony more than three years previously and has not had his citizenship restored;
- (3) Convicted of an alcoholic beverage offense within two years; or
- (4) Convicted of a misdemeanor controlled substances offense within two years.

For purposes of this subsection, 'conviction' has the same meaning as in G.S. 18B-900(b). To avoid undue hardship, the Commission may, in its discretion, exempt persons on a case-by-case basis from this subsection.

"§ 18B-1004. Hours for sale and consumption. — (a) Hours. Except as otherwise provided in this section, it shall be unlawful to sell malt beverages, unfortified wine, fortified wine, or mixed beverages between the hours of 1:00 a.m. and 7:00 a.m., or to consume any of those alcoholic beverages between the hours of 1:30 a.m. and 7:00 a.m., in any place which has been issued a permit under G.S. 18B-1001.

(b) Daylight Saving Time. From the last Sunday in April until the last Sunday in October, sales of alcoholic beverages may continue until 2:00 a.m. rather than 1:00 a.m.. and consumption of alcoholic beverages may continue until 2:30 a.m. rather than 1:30 a.m., on any licensed premises.

(c) Sunday Hours. It shall be unlawful to sell or consume alcoholic beverages on any licensed premises from the time at which sale or consumption must cease on Sunday morning until 1:00 p.m. on that day.

(d) Local Option. A city may adopt an ordinance prohibiting in the city the retail sale of malt beverages, unfortified wine, and fortified wine during any or all of the hours from 1:00 p.m. on Sunday until 7:00 a.m. on the following Monday. A county may adopt an ordinance prohibiting, in the parts of the county outside any city, the retail sale of malt beverages, unfortified wine, and fortified wine during any or all of the hours from 1:00 p.m. on Sunday until 7:00 a.m. on the following Monday. Neither a city nor a county, however, may prohibit those sales in establishments having brown-bagging or mixed beverages permits.

"§ 18B-1005. Conduct on licensed premises. — (a) Certain Conduct. It shall be unlawful for a permittee to knowingly allow any of the following kinds of conduct to occur on his licensed premises:

- (1) Any violation of the ABC laws;
- (2) Any fighting or other disorderly conduct that can be prevented without undue danger to the permittee, his employees or patrons;
- (3) Any violation of the controlled substances, gambling, or prostitution statutes, or any other unlawful acts;
- (4) Any conduct or entertainment by any person whose private parts are exposed or who is wearing transparent clothing that reveals the private parts;
- (5) Any entertainment that includes or simulates sexual intercourse or any other sexual act; or
- (6) Any other lewd or obscene entertainment or conduct, as defined by the rules of the Commission.

(b) Supervision. It shall be unlawful for a permittee to fail to superintend in person or through a manager the business for which a permit is issued.

"§ 18B-1006. Miscellaneous provisions on permits. — (a) School and College Campuses. No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college unless that business is a hotel with a mixed beverages permit.

(b) Lockers at Clubs. A private club which has been issued a brown-bagging permit may, but is not required to, provide lockers for its members to store their alcoholic beverages. If lockers are provided, however, they shall not be shared but shall be for individual members. Each locker and each bottle of alcoholic beverages on the premises shall be labelled with the name of the member to whom it belongs. No more than four liters each of malt beverages or unfortified wine may be stored by a member at one time. No more than four liters of either fortified wine or spirituous liquor, or four liters of the two combined, may be stored by a member at one time.

(c) Wine Sales. Holders of retail or wholesale permits for the sale of unfortified or fortified wine may buy and sell only wines on the Commission's approved list. The Commission may authorize the importation and purchase of wines not on the approved list by permittees and others. An authorization shall state the kind and amount of wine that may be imported and purchased and the time within which the transaction shall be completed.

(d) Unlawful Possession or Consumption. It shall be unlawful for a permittee to possess or consume, or allow any other person to possess or consume, on the licensed premises, any fortified wine or spirituous liquor, the possession or consumption of which is not authorized either by the permits issued to him for the premises or by any other provision of the ABC law.

(e) Facsimile Permit. It shall be unlawful for any person to produce or possess any false or facsimile permit, or for a permittee to display any false or facsimile permit on his licensed premises.

(f) Failure to Surrender Permit. It shall be unlawful for any person to refuse to surrender any permit to the Commission upon lawful demand of the Commission or its agents.

"§ 18B-1007. Additional requirements for mixed beverages permittees. — (a) Purchases. A mixed beverages permittee may purchase spirituous liquor for resale as mixed beverages 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 G.S. 18B-404.

(b) Handling Bottles. It shall be unlawful for a mixed beverages permittee to do any of the following:

- (1) Store any other spirituous liquor with liquor possessed for resale in mixed beverages;
- (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;
- (3) Transfer from one container to another a mixed beverages tax stamp.

"§ 18B-1008. Rules concerning retail permits. — The Commission is authorized to use broad discretion in further defining the kinds of places eligible for permits under this Article. The rules may state the kind and amount of food that shall be sold to qualify in each category, the relationship between food sales and other receipts, the size of the establishment required for each category, the kinds of facilities needed to qualify, the kinds of activities at which alcoholic beverages may not be sold, and any other matters which are necessary to determine which businesses are bona fide establishments of the kinds listed in G.S. 18B-1000. Rules concerning private clubs may also include, but need not be limited to, requirements that the club have a membership committee to review all applications for membership, that the club charge membership dues substantially greater than what would be paid by a one-time or casual user, that the club restrict use by nonmembers, that the club provide facilities or activities other than those directly related to the use of alcoholic beverages, and that the club have a waiting period for membership. A waiting period required by the Commission shall not exceed 30 days.

"ARTICLE 11.

"Commercial Activity.

"§ 18B-1100. Commercial permits. — (a) Types of Permits. The Commission may issue the following commercial permits:

- (1) Unfortified winery
- (2) Fortified winery
- (3) Limited winery
- (4) Brewery
- (5) Distillery
- (6) Fuel alcohol
- (7) Wine importer
- (8) Wine wholesaler

- (9) Malt beverages importer
- (10) Malt beverages wholesaler
- (11) Bottler
- (12) Salesman

(b) Evidence of Domestication. The fact that a distillery, brewery, winery, or bottler has applied for or obtained a permit under this Article shall not be construed as domesticating the applicant or permittee and is not evidence for any purpose that the applicant or permittee is doing business in this State.

"§ 18B-1101. Authorization of unfortified winery permit. — The holder of an unfortified winery permit may:

- (1) Manufacture unfortified wine;
- (2) Sell, deliver and ship unfortified wine in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that wine may be sold to nonresident wholesalers only when the purchase is not for resale in this State;
- (3) If it is a resident North Carolina winery, ship its wine in closed containers to individual purchasers inside and outside this State;
- (4) Furnish or sell 'short-filled' packages, on which State taxes have been or will be paid, to its employees for the use of the employees or their families and guests in this State;
- (5) Regardless of the results of any local wine election, sell the winery's wine for off-premises consumption upon obtaining a permit under G.S. 18B-1001(4).

A sale under subdivision (4) shall not be considered a retail or wholesale sale under the ABC laws.

"§ 18B-1102. Authorization of fortified winery permit. — The holder of a fortified winery permit may:

- (1) Manufacture, purchase, import and transport brandy and other ingredients and equipment used in the manufacture of fortified wine;
- (2) Sell, deliver and ship fortified wine in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that wine may be sold to nonresident wholesalers only when the purchase is not for resale in this State;
- (3) If it is a resident North Carolina winery, ship its wine in closed containers to individual purchasers inside and outside this State;
- (4) Furnish or sell 'short filled' packages, on which State taxes have been or will be paid, to its employees for the use of the employees or their families and guests in this State;
- (5) Regardless of the results of any local wine election, sell the winery's wine for off-premises consumption upon obtaining a permit under G.S. 18B-1001(6).

A sale under subdivision (4) shall not be considered a retail or wholesale sale under the ABC laws.

"§ 18B-1103. Authorization of limited winery permit. — (a) Special Qualifications. Any resident winery which holds an unfortified winery permit and which produces its wine principally from honey, grapes or other fruit or grain grown in this State may obtain a limited winery permit.

(b) Authorized Acts. The holder of a limited winery permit may give visitors free tasting samples of the wine. The Commission may issue rules regulating these tastings.

"§ 18B-1104. Authorization of brewery permit. — The holder of a brewery permit may:

- (1) Manufacture malt beverages;

- (2) Purchase malt, hops and other ingredients used in the manufacture of malt beverages;
- (3) Sell, deliver and ship malt beverages in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that malt beverages may be sold to nonresident wholesalers only when the purchase is not for resale in this State;
- (4) Receive malt beverages manufactured by the permittee in some other state for transshipment to dealers in other states;
- (5) Furnish or sell marketable malt beverage products, or packages which do not conform to the manufacturer's marketing standards, if State taxes have been or will be paid, to its employees for the use of the employees or their families and guests in this State;
- (6) Give its products to its employees and guests for consumption on its premises.

A sale or gift under subdivision (5) or (6) shall not be considered a retail or wholesale sale under the ABC laws.

"§ 18B-1105. Authorization of distillery permit. — (a) Authorized Acts. The holder of a distillery permit may:

- (1) Manufacture, purchase, import, possess and transport ingredients and equipment used in the distillation of spirituous liquor;
- (2) Sell, deliver and ship spirituous liquor in closed containers at wholesale to local boards within the State, and, subject to the laws of other jurisdictions, at wholesale or retail to private or public agencies or establishments of other states or nations;
- (3) Transport into or out of the distillery the maximum amount of liquor allowed under federal law, if the transportation is related to the distilling process.

(b) Distilleries for Fuel Alcohol. Any person in possession of a Federal Operating Permit pursuant to Title 27, Code of Federal Regulations, Part 201.64 through 201.65 or Part 201.131 through 201.138 shall obtain a fuel alcohol permit before manufacturing any alcohol. The permit shall entitle the permittee to perform only those acts allowed by the Federal Operating Permit, and all conditions of the Federal Operating Permit shall apply to the State permit.

"§ 18B-1106. Authorization of wine importer permit. — The holder of a wine importer permit may:

- (1) Import fortified and unfortified wines from outside the United States in closed containers;
- (2) Store those wines;
- (3) Sell those wines at wholesale for purposes of resale.

"§ 18B-1107. Authorization of wine wholesaler permit. — The holder of a wine wholesaler permit may:

- (1) Receive, possess and transport shipments of fortified and unfortified wine;
- (2) Sell, deliver and ship wine in closed containers for purposes of resale to wholesalers or retailers licensed under this Chapter as authorized by the ABC laws;
- (3) Furnish and sell wine to its employees, subject to the rules of the Commission and the Department of Revenue;
- (4) In locations where the sale is legal, furnish wine to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to rules of the Commission.

"§ 18B-1108. Authorization of malt beverages importer permit. — The holder of a malt beverages importer permit may:

- (1) Import malt beverages from outside the United States in closed containers;
- (2) Store those malt beverages;
- (3) Sell those malt beverages at wholesale for purposes of resale.

"§ 18B-1109. Authorization of malt beverages wholesaler permit. — (a) Authorization. The holder of a malt beverages wholesaler permit may:

- (1) Receive, possess and transport shipments of malt beverages;
- (2) Sell, deliver and ship malt beverages of any brand filed pursuant to subsection (b) in closed containers, for purpose of resale, to wholesalers or retailers licensed under this Chapter as authorized by the ABC laws;
- (3) Furnish and sell malt beverages filed pursuant to subsection (b) to its employees subject to the rules of the Commission and the Department of Revenue;
- (4) In locations where the sale is legal, furnish malt beverages of any brand filed pursuant to subsection (b) to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to the rules of the Commission.

(b) Distribution Agreements. Pursuant to the authority of the State under the Twenty-First Amendment to the United States Constitution, to promote the public's interest in fair and efficient distribution of malt beverages, and to assure the public's interest in uniform and effective control of the distribution of malt beverage products within the State, it is unlawful for a wholesaler to sell any brand of malt beverage in this State except in the territory described in a distribution agreement filed pursuant to this subsection authorizing sale by the wholesaler of that brand within a designated area. Within that designated area the wholesaler shall service all dealer and retail permittees without discrimination. The distribution agreement shall be in writing, shall specify the brands it covers, and shall be filed with the Commission. If a brewer sells several brands, the agreement need not apply to all brands sold by the brewer and may apply to only one brand. No brewer, importer, or other supplier may provide by a distribution agreement for the distribution of a brand filed pursuant to this subsection to more than one distributor for all or any part of the designated territory. A wholesaler may, however, service a territory outside the territory designated in its distribution agreement during periods of temporary service interruptions when so requested by the brewer and the wholesaler whose service is temporarily interrupted, with the approval of the Commission.

Each wholesaler shall file a copy of its distribution agreement and any amendments with the Commission promptly following the effective date of this Chapter, unless an existing distribution agreement complies with the provisions of this subsection and is already on file with the Commission.

No provision of any distribution agreement may expressly, by implication, or in its operation, establish or maintain the resale price of any brand of malt beverage by a franchised wholesaler.

"§ 18B-1110. Authorization of bottler permit. — The holder of a bottler permit may:

- (1) Receive, possess and transport shipments of malt beverages, unfortified wine and fortified wine;
- (2) Bottle, sell, deliver and ship malt beverages, unfortified wine, and fortified wine in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws;
- (3) Furnish or sell packages which do not conform to the manufacturer's marketing standards, if State taxes have been or will be paid, to its employees for the use of the employees or their families and guests in this State.

A sale or gift under subdivision (3) shall not be considered a retail or wholesale sale under the ABC law.

"§ 18B-1111. Authorization of salesman permit. — (a) Authorized Acts. The holder of a salesman permit may sell and transport malt beverages for a malt beverage wholesaler or sell and transport unfortified and fortified wine for a wine wholesaler.

(b) Persons Required to Obtain Permit. All route salesmen and salesmen working at a wholesaler's warehouse shall obtain the permit described in this section. All salesmen shall be at least 21 years old.

(c) Validity Period. A salesman permit shall be valid as provided in G.S. 18B-903(a), except that it shall be valid only so long as the salesman is employed by the same wholesaler.

"§ 18B-1112. Commercial transportation. — (a) Permit Required. Unless a person holds a permit which otherwise allows him to transport more than 80 liters of malt beverages other than draft malt beverages in kegs, 20 liters of unfortified wine, or four liters of fortified wine or spirituous liquor, or is a retailer authorized to transport alcoholic beverages under G.S. 18B-405, each person transporting alcoholic beverages in excess of those quantities shall have the permit described in this section.

(b) When Transportation Legal. No person may obtain a permit under this section to transport spirituous liquor unless the transportation is for delivery to a federal reservation over which North Carolina has ceded jurisdiction to the United States, for delivery to an ABC store, or for transport through this State to another state.

(c) Common Carriers. Railroad companies and other common carriers having regularly established schedules of service in this State may transport alcoholic beverages into, out of, and between points in this State without a permit. Those companies shall keep accurate records of the character, volume and number of containers transported and shall allow the Commission and alcohol law enforcement agents to inspect those records at any time. The Commission may require common carriers to make reports of shipments.

(d) Motor Vehicle Carriers. Alcoholic beverages may be transported over the public highways of this State by motor vehicle carriers under the following conditions:

- (1) The carrier shall notify the Commission of the character of the alcoholic beverages it will transport and of its authorization from the appropriate regulatory authority.
- (2) The carrier shall obtain, at no charge, a fleet permit from the Commission authorizing the transportation.
- (3) The driver or person in charge of each vehicle transporting alcoholic beverages shall possess a copy of the carrier's fleet permit certified by the carrier to be an exact copy of the original.
- (4) The driver or person in charge of each vehicle transporting alcoholic beverages shall possess a bill of lading, invoice or other memorandum of shipment showing the name and address of the person from whom the alcoholic beverages were received, the character and contents of the shipment, the quantity and volume of the shipment, and the name and address of the person to whom the alcoholic beverages are being shipped.
- (5) The driver or person in charge of each vehicle transporting the alcoholic beverages shall display all documents required by this section upon request of any law enforcement officer. Failure to produce these documents or failure of the documents to disclose clearly and accurately the information required by this section shall be *prima facie* evidence of a violation of this section.
- (6) Each carrier shall keep accurate records of character, volume and number of containers transported and shall allow the Commission and alcohol law enforcement agents to inspect those records at any time. The Commission may require carriers to make reports of shipments.

(e) Transportation of Spirituous Liquor. In addition to the requirements of subsection (d), motor vehicle carriers engaged in transporting spirituous liquor shall:

- (1) Deposit with the Commission a surety bond for one thousand dollars (\$1,000) conditioned that the carrier will not unlawfully transport spirituous liquor into or through this State. The bond, which shall be approved by the Commission, shall be payable to the State of North Carolina. If the bonded carrier is convicted of a violation covered by the bond, the proceeds of the forfeited bond shall be paid to the school fund of the county in which the liquor was seized.
- (2) Include in its bill of lading, invoice or other memorandum of shipment the North Carolina code numbers of the spirituous liquor being transported.
- (3) Include in its bill of lading, invoice or other memorandum of shipment the route which the vehicle will follow, and the vehicle shall not vary substantially from that stated route.

(f) Malt Beverages and Wine Transported by Boats. The owner or operator of any boat may transport malt beverages, unfortified wine and fortified wine over the waters of this State if he satisfies all requirements of subsection (d).

(g) State Warehouse Carrier. The Commission may exempt a carrier for the State warehouse from any of the requirements of this section provided that it determines that the requirements of this section are otherwise satisfied.

"§ 18B-1113. Exclusive outlets prohibited. — (a) Prohibitions. It shall be unlawful for any manufacturer, bottler, or wholesaler of any alcoholic beverages, or for any officer, director, or affiliate thereof, either directly or indirectly to:

- (1) Require that an alcoholic beverage retailer purchase any alcoholic beverages from that person to the full or partial exclusion of any other alcoholic beverages offered for sale by other persons in this State; or
- (2) Have any direct or indirect financial interest in the business of any alcoholic beverage retailer in this State or in the premises where the business of any alcoholic beverage retailer in this State is conducted; or
- (3) Lend or give to any alcoholic beverage retailer in this State or his employee or to the owner of the premises where the business of any alcoholic beverage retailer in this State is conducted, any money, service, equipment, furniture, fixtures or any other thing of value.

(b) Exemptions. The Commission may grant exemptions from the provisions of this section. In determining whether to grant an exemption, the Commission shall consider the public welfare, the quantity and value of articles involved, established trade customs not contrary to the public interest, and the purposes of this section.

"§ 18B-1114. Coercion and unjust franchise cancellations prohibited. — (a) Definition of Franchise. It shall be prima facie evidence that a contractual franchise relationship within the contemplation of this section exists between a licensed malt beverage wholesaler and a brewery if:

- (1) The brewery has shipped malt beverages, prepared malt beverages for shipment, or accepted any order for malt beverages from a licensed wholesaler within this State; or
- (2) A wholesaler has paid or the brewery has accepted payment for an order of malt beverages intended for sale within this State.

(b) Prohibitions. It shall be unlawful for any brewery, or an officer, agent or representative thereof to:

- (1) Coerce or attempt to coerce or persuade any licensed wholesaler to enter into any agreement to violate any provision of the ABC laws or any rule of the Department of Revenue; or

(2) Cancel or terminate without just cause or provocation or without due regard for the equities of the wholesaler, any contract or franchise with a wholesaler to sell malt beverages manufactured at the brewery. The provisions of this subdivision shall be a part of each franchise or contract between a North Carolina wholesaler and any brewery doing business with that wholesaler, whether or not the provision is specifically agreed upon between the parties.

(c) Injunctions. Based on the appropriate findings pursuant to subdivision (b)(2), the superior court has the jurisdiction and power to enjoin the termination of any franchise agreement with a wholesaler upon the application of the aggrieved wholesaler. The terms of the injunction shall require the aggrieved wholesaler to supply the customers in its territory with their reasonable retail requirements and to otherwise service the territory. On two days' written notice to the aggrieved wholesaler, any party enjoined pursuant to this subsection may appear and move for modification of the injunction. If the court finds that the aggrieved wholesaler has failed or refused to supply the customers in its territory with their reasonable retail requirements or otherwise service its territory, it may permit the brewery to make any other arrangements to supply the customers or service the territory, including arrangements with other wholesalers while the injunction is in effect. The Commission may revoke or suspend the permit of any wholesaler or brewery which the court finds violated the terms of an injunction ordered under this subsection."

Sec. 3. In all places where it appears in the General Statutes, the phrase "Chapter 18A" is amended to read "Chapter 18B".

Sec. 4. In all places where these phrases appear, the General Statutes are amended as follows:

- (1) The term "State Board of Alcoholic Control" is amended to read "North Carolina Alcoholic Beverage Control Commission";
- (2) The term "State ABC Board" is amended to read "State ABC Commission";
- (3) The term "State Board" (when the term refers to the State ABC Board) is amended to read "State Commission";
- (4) The terms "intoxicating liquor" or "liquor" are amended to read "alcoholic beverages".

Sec. 5. Wherever the phrase "State Board of Alcoholic Control", "State ABC Board", "State Board" (when that phrase refers to the State ABC Board), or an equivalent phrase is found, those terms shall mean the North Carolina Alcoholic Beverage Control Commission.

Sec. 6. Current forms, stationery, signs and other materials carrying the old name of the North Carolina Alcoholic Beverage Control Commission shall be used until they would otherwise be replaced, and no State or local funds other than then current appropriations to State and local ABC boards shall be used in effectuating the change of name of the State Board of Alcoholic Control to the North Carolina Alcoholic Beverage Control Commission. Replacements for current forms, stationery, signs and other materials shall carry the new name of the Commission.

Sec. 7. All local, public-local, and private acts in conflict with the following new sections are repealed: G.S. 18B-201, G.S. 18B-205, G.S. 18B-701, G.S. 18B-702, G.S. 18B-800, G.S. 18B-802, and G.S. 18B-803.

Sec. 8. All local, public-local, and private acts in conflict with G.S. 18B-700 and G.S. 18B-805 are repealed except as provided in those new sections.

Sec. 9. All local, public-local, and private acts in conflict with Article 6 of Chapter 18B are repealed except as provided in G.S. 18B-604(b) and (c) and in G.S. 18B-605.

Sec. 10. All sales of alcoholic beverages which were approved in elections held before the effective date of this act remain valid under the terms of those elections except as G.S. 18B-603 allows the issuance of permits that were not authorized under the comparable

provisions of Chapter 18A. Any ABC permit issued before the effective date of this act remains valid until its expiration date, or until suspended or revoked or replaced with the equivalent permit issued under Chapter 18B.

Sec. 11. This act shall become effective January 1, 1982, except that the following parts of the act are effective upon ratification: Section 9; that part of Section 2 that contains Article 6, Elections, of new Chapter 18B; and that part of Section 1 that concerns election provisions in conflict with Article 6. To implement Article 6 the State ABC Board may issue permits under Chapter 18A when the present permit is the equivalent of the permit authorized by Article 6, but the Board may not before January 1, 1982, issue permits authorized by Chapter 18B that are of a different character from permits issued under Chapter 18A and have no equivalent in present law. Except for matters directly related to the conduct of elections and the issuance of permits, Chapter 18A remains in effect until January 1, 1982, and references in Article 6 to other provisions in Chapter 18B are considered references to the equivalent provisions of Chapter 18A. An election called before the effective date of this act, to be held after the effective date, remains subject to the election procedures in effect when the election was called.

In the General Assembly read three times and ratified, this the 18th day of May, 1981.