

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-392
HOUSE BILL 1174**

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

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-101 is amended by adding a new subdivision to read:
"(12a) 'Premises' means all areas, whether inside or outside the licensed premises, where the permittee has control of the property through a lease, deed, or other legal process."

SECTION 2. G.S. 18B-901(c) reads as rewritten:

"(c) Factors in Issuing Permit. – Before issuing a permit, the Commission shall be satisfied that the applicant is a suitable person to hold an ABC permit and that the location is a suitable place to hold the permit for which ~~he~~the applicant has applied. To be a suitable place, the local governing body shall return a Zoning and Compliance Form to the Commission on a form provided by the Commission to show the establishment shall comply is in compliance with all applicable building and fire codes and, if applicable, has been notified that it is located in an Urban Redevelopment Area as defined by Article 22 of Chapter 160A of the General Statutes and as required by G.S. 18B-904(e)(2). Other factors the Commission shall consider in determining whether the applicant and the business location are suitable ~~are~~are all of the following:

- (1) The reputation, character, and criminal record of the ~~applicant;~~applicant.
- (2) The number of places already holding ABC permits within the ~~neighborhood;~~neighborhood.
- (3) Parking facilities and traffic conditions in the ~~neighborhood;~~neighborhood.
- (4) Kinds of businesses already in the ~~neighborhood;~~neighborhood.
- (5) Whether the establishment is located within 50 feet of a church ~~or public school or church school;~~ public school, or any nonpublic school as defined by Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes.
- (6) ~~Zoning laws;~~laws.
- (7) The recommendations of the local governing ~~body;~~ andbody.

- (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 laws.~~
- (9) Whether the operation of the applicant's business at that location would be detrimental to the neighborhood, including evidence admissible under G.S. 150B-29(a) of any of the following:
 - a. Past revocations, suspensions, and violations of ABC laws by prior permittees related to or associated with the applicant, or a business with which the applicant is associated, within the immediate preceding 12-month period at this location.
 - b. Evidence of illegal drug activity on or about the licensed premises.
 - c. Evidence of fighting, disorderly conduct, and other dangerous activities on or about the licensed premises."

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

"(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. The Commission shall also have the authority to determine the suitability of the location to which the permit may be issued."

SECTION 4. G.S. 18B-904(e) reads as rewritten:

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

- (1) The Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the General Statutes, it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood. ~~No order revoking or suspending an ABC permit pursuant to this section may be made except upon substantial evidence admissible under G.S. 150B-29(a).~~
- (2) The Commission shall suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309. Notwithstanding subdivision (e)(1) of this section, the Commission shall, by order and without prior hearing, summarily suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309(c) when, prior to the period of time for which the audit is to be conducted, the city council has filed information designating the location of the Urban Redevelopment Area as required under ~~G.S. 14-309(a)~~ 18B-309(a) and has provided actual notice to permittees located in the Urban Redevelopment Area that they are located in such an area and must abide by G.S. 18B-309(c). Upon entry of a summary order under this subdivision, the Commission shall promptly notify all interested parties that the order has been entered and of the reasons therefore. The order will remain in effect until it is modified or vacated by the

Commission. The permittee may, within 30 days after receipt of notice of the order, make written request to the Commission for a hearing on the matter. If a hearing is requested, after compliance with the provisions of Chapter 150B of the General Statutes, the Commission shall issue an order to affirm, reverse, or modify its previous action.

- (3) Notwithstanding G.S. 18B-906, the Commission shall revoke a permit issued by it if, after complying with the provisions of Chapter 150B of the General Statutes and without a finding of mitigating evidence or circumstances, it finds evidence that the permittee or the permittee's employee has been found responsible by a court of competent jurisdiction or the Commission for two or more violations on separate dates of knowingly allowing a violation of the gambling, disorderly conduct, prostitution, controlled substance, or felony criminal counterfeit trademark laws as those offenses are prohibited pursuant to G.S. 18B-1005(a)(2), (a)(3), or (b), G.S. 18B-1005.1, or G.S. 80-11.1(b)(2) or (3), at a single ABC-licensed premises within a 12-month period. The permittee and the owner of the property have the responsibility to monitor the conduct on the licensed premises pursuant to G.S. 18B-1005(b) and G.S. 19-1. Revocation of permits pursuant to this subdivision shall only apply to the permits issued to the location where the violations occurred."

SECTION 5. G.S. 18B-906(a) reads as rewritten:

"(a) Act Applies. – An ABC permit is a "license" within the meaning of G.S. 150B-2, ~~and~~and, except for revocation pursuant to G.S. 18B-904(e)(3), 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 150B except as provided in this section."

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

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 3:41 p.m. this 13th day of September, 2005