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LEGISLATIVE RESEARCH COMMISSION

ALCOHOLIC BEVERAGE CONTROL LAWS



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REPORT TO THE 1981 GENERAL ASSEMBLY OF NORTH CAROLINA

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LEGISLATIVE RESEARCH COMMISSION
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January 14, 1981

TO THE MEMBERS OF THE 1981 GENERAL ASSEMBLY

The Legislative Research Commission herewith reports to the 1981 General Assembly of North Carolina on the matter of Alcoholic Beverage Control Laws. The report is made pursuant to Resolution 75 of the 1979 Session Laws.

This report was prepared by the Legislative Research Commission Committee on Alcoholic Beverage Control Laws, and it is transmitted by the Legislative Research Commission to the members of the 1981 General Assembly for their consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W. Craig Lawing".

W. Craig Lawing

A handwritten signature in black ink, appearing to read "Carl J. Stewart, Jr.".

Carl J. Stewart, Jr.

Co-Chairmen

LEGISLATIVE RESEARCH COMMISSION

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PREFACE

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and insitutions and matters of public policy as will aid the General Assembly in performing its duties in the most effective manner" (G.S. 120-30.17(1)).

At the direction of the 1979 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given the responsibility for one category of study. The Co-Chairmen of the Legislative Research Commission, under the authority of General Statutes 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-Chairmen, one from each house of the General Assembly, were designated for each committee.

The study of the alcoholic beverage control laws of North Carolina was authorized by Resolution 75 of the 1979 Session Laws. The Commission was authorized by the resolution to study the North Carolina alcoholic beverage control laws in general, including:

- (1) a general revision of those laws
- (2) the effects of moving alcohol law enforcement from the Department of Crime Control and Public Safety to the Department of Commerce; and
- (3) the conversion of liquor taxation to a proof-liter system.

The Legislative Research Commission grouped this study in its liquor laws and land registration area under the direction of Senator Charles Vickery. The Co-Chairmen of the study committee set up by the Research Commission are Senator Robert S. Swain and Representative James F. Morgan. The full membership of the committee is listed in Appendix A of this report. Resolution 75 authorizing the study and Senate Bill 857, which the committee was authorized to study, are attached as Appendix B.

Committee Proceedings and Recommendations

The Legislative Research Commission's Committee to Study the Alcoholic Beverage Control Laws met 15 times. At its organizational meeting the committee decided to attempt a rewrite of all of Chapter 18A, and at its second meeting it agreed upon a working outline to accomplish the rewrite. From then on, the committee worked through drafts based on that outline to reorganize and reword the ABC laws.

The committee attempted to avoid controversial issues and leave the substantive law basically as it is under Chapter 18A. The committee thought that to try to tackle all those issues would have bogged down its work so much that it could not have produced a rewrite.

This general reluctance to take on tough issues does not mean that the committee retained all of the current law, however. Several issues are not handled by the current law (for example, how expenditures of local ABC boards are monitored to insure that State law is carried out). In other places, Chapter 18A gives contradictory answers to questions (for example, what share of local profits must be spent on law enforcement). Whenever the committee found an issue simply not covered by current law or covered in such a manner that the resolution is impossible to find, the committee made a decision as to how it should be handled and then drafted a statute to cover it. In addition, the committee had no reluctance to make major, noncontroversial

changes. For example, witnesses unanimously agreed that the State ABC Board could handle permit violations better if it had the power to levy fines. Included in the rewrite, then, is a delegation of that power. Finally, the rewrite has reorganized the ABC laws substantially, which not only makes finding the laws easier, but also clarifies the structure of the whole ABC system.

Many persons appeared before the committee, both in individual and representative capacities. The area of liquor laws is one highly charged not only with legal but emotional issues. In such a setting rational, deliberate arguments and presentations are not only welcome but are extremely helpful in sorting out what path a committee should follow. The committee thanks all who appeared and helped it in its deliberations. A list of persons who appeared before the committee is included in this report as Appendix C.

On the following pages is the rewrite of the ABC laws which the committee proposes. Following each proposed statute is a note explaining from what current statute the new section is taken, and a commentary explaining how the new section affects current law.

Adoption of the new Chapter 18 proposed by the committee would require repeal of the present Chapter 18A. Conforming changes would also be required in Chapter 105 in the liquor taxation article and in G.S. 143A-243 and 143B-475 dealing with State alcohol law enforcement responsibility. The committee proposes an effective date of January 1, 1982 for the new Chapter.

"ARTICLE 1.

"General Provisions.

"§ 18-100. Uniform law intended.--This Chapter is intended to establish a uniform system for control of liquor throughout North Carolina. Except as provided in this Chapter, local ordinances establishing different rules on manufacture, sale, transportation, possession, consumption or other use of liquor, or that require additional permits or fees, are prohibited. This Chapter shall be construed to permit the manufacture, sale, transportation, and possession of liquor only as authorized by this Chapter.

SOURCE: G.S. 18A-1.

COMMENTS: This is a reworded version of G.S. 18A-1. The language in the second sentence on local ordinances is new though similar provisions are contained in several other places in present law.

"§ 18-101. Definitions.--As used in this Chapter, unless the context requires otherwise:

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

(2) 'ABC permit' means any permit issued under this Chapter other than a purchase-transportation permit.

(3) 'ABC system' means a local board and all ABC stores operated by it, its law enforcement branch, and all its employees.

(4) 'Commission' means the North Carolina Alcoholic Beverage Control Commission established under G.S. 18-200.

(5) 'Fortified wine' means any wine containing more than fourteen percent (14%) but not more than twenty-four percent (24%) alcohol by volume which is made by fermenting the juice of grapes, fruits, berries, rice, or honey and adding to the fermented product pure brandy made from the same type of juice.

(6) 'Liquor' means fortified wine, unfortified wine, malt beverages, spirituous liquor, mixed beverages and any other beverage containing at least one-half of one percent (0.5%) alcohol by volume.

(7) 'Local board' means a city or county ABC board.

(8) 'Malt beverages' means beer, lager, malt liquor, ale, porter, and all other brewed or fermented beverages containing one-half of one percent to six percent (0.5% - 6%) inclusive alcohol by volume.

(9) 'Mixed beverage' means a drink composed in whole or part of spirituous liquor and served in a quantity less than the quantity contained in a closed package.

(10) 'Nontaxpaid liquor' means any liquor upon which the taxes imposed by the United States, this State, or any other territorial jurisdiction in which the liquor was purchased have

not been paid.

(11) 'Person' means any individual, firm, partnership, association, corporation, other organization or group, or any other combination of individuals acting as a unit.

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

(13) 'Spirituous liquor' means any liquor containing more than twenty-four percent (24%) alcohol by volume or any premixed cocktail in a closed container which contains any distilled liquor.

(14) 'Unfortified wine' means any wine containing more than six percent (6%) but not more than fourteen percent (14%) alcohol by volume which is made from grapes, fruits, berries, rice or honey by natural fermentation or by the addition of pure cane, beet, or dextrose sugar.

SOURCE: G.S. 18A-2.

COMMENTS: Definitions (1), (2), (3), and (6) are new. The definition of "spirituous liquor" has been expanded to include premixed cocktails.

Two substantive changes have been made. The upper limit for alcoholic content of malt beverages has been changed from five percent by weight to its volumetric equivalent of six percent. The lower limit for unfortified wine has been raised from five to six percent to eliminate overlap. The upper limit for alcoholic content of fortified wine has been raised from twenty-one to twenty-four percent, and the lower limit for spirituous liquor

has correspondingly been raised from twenty-one to twenty-four percent.

"§ 18-102. Compliance with Chapter.--Liquor may not be manufactured, imported, exported, sold, purchased, delivered, transported, consumed, or possessed except as authorized by this Chapter. Violation of this section is a misdemeanor.

SOURCE: G.S. 18A-3.

COMMENTS: This provision is the same as present law and is the foundation for the rest of the Chapter.

"§ 18-103. Exemptions.---The following activities are permitted:

(1) The use of ethyl alcohol for scientific, chemical, 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 liquor for medicinal and pharmaceutical purposes;

(5) The manufacture, importation, and possession of denatured alcohol produced and used as provided by federal law;

(6) The manufacture and sale of cider and vinegar;

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

The Commission may issue rules regarding these exemptions to insure that the purposes of this Chapter are not violated.

SOURCE: G.S. 18A-4.

COMMENTS: This section shortens and simplifies the current exemption statute. Subdivision (7) expands current law to allow sacramental use of fortified wine.

"§ 18-104. Administrative penalties.--(a) Penalties. For any violation of the ABC law, the Commission may take any of the following actions against a permit holder:

- (1) Suspend the permit holder's permit for a specified period of time not longer than three years;
- (2) Revoke the permit holder's permit;
- (3) Fine the permit holder up to one thousand dollars (\$1,000) according to a schedule adopted by the Commission which states the fine to be imposed for each violation; or
- (4) Suspend the 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 permit holder 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 at the same time.

(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 to go to 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 of a permit under subsection (a) includes automatic revocation of any other ABC permit held by the same permit holder for the same establishment.

SOURCE: G.S. 18A-43, -45(b), -68.

COMMENTS: The most significant changes in present law are the authorizations for the Commission to impose fines and accept compromise money settlements. The Commission is required under subdivision (a) (3) to adopt a schedule setting out the fine to be imposed for each violation. That schedule should list each kind of violation and the fine for it.

Subsection (e) differs from present law (G.S. 18A-45(b)) in limiting the automatic revocation to other permits held for the same establishment.

"§ 18-105. Criminal penalties.--(a) Punishment Generally. Unless some other punishment is specified, the violation of any section of this Chapter which is declared to be a misdemeanor is punishable by imprisonment for not more than two years, a fine, or both.

(b) Second Offense Manufacturing. A second offense of unlawful manufacturing of liquor is a class I felony.

(c) Discharge or Removal. In addition to imposing any other penalty authorized by law, a judge may remove from office or discharge any Commission or local board member or employee convicted of a misdemeanor under this Chapter and may declare that person ineligible for membership or employment with the Commission or any local board for a period of not longer than three years. Conviction of a crime under this Chapter is also grounds for the Commission to remove from office or discharge any local board member or employee.

(d) Restitution. When a person is convicted of a violation of the ABC law, the court may order him to make restitution to any law enforcement agency for reasonable expenditures made in purchasing liquor from him or his agent as part of an investigation leading to his conviction.

SOURCE: G.S. 18A-56; G.S. 90-95.3; G.S. 15A-1343(b)(6).

COMMENTS: Subsections (a) and (b) are the same as present law. Subsection (c) differs from present law in limiting the ineligibility to three years. Not carried forward is the language in present G.S. 18A-56(c) authorizing the court to

suspend or revoke the permit. That action is left to the Commission.

Subsection (d) tracks G.S. 90-95.3, the drug law provision on the same subject. Also, G.S. 15A-1343 authorizes restitution as a condition of probation. Both that statute and Shore v. Edmisten, 290 N.C. 628 (1976), require that the restitution be limited to an amount supported by the evidence. The restitution could not be an amount to reimburse the law enforcement agency for expenses generally, but must be limited to the amount actually spent in making the purchase.

"§ 18-106. Advertising.--(a) General Rule. All advertising in this State relating to liquor shall comply with the ABC law.

(b) Rule-making Authority. The Commission may issue rules to:

- (1) Prohibit or regulate advertising by newspapers, pamphlets and all other written media;
- (2) Prohibit or regulate advertising by on-premises permit holders of brand or price via newspapers, radio, television, and all other mass media;
- (3) Require all advertisements to be nondeceptive;
- (4) Require all advertisements to disclose fully the identity of the advertiser and of the product being advertised;
- (5) Prohibit or regulate advertisements on the premises of a permit holder with regard to size, number, and appearance;

- (6) Prohibit or regulate advertisements of price on the premises of a permit holder;
- (7) Prohibit or regulate liquor advertisements on billboards;
- (8) Prohibit or regulate outdoor signs with regard to size, number, and appearance;
- (9) Prohibit or regulate price advertising on outdoor signs;
- (10) Prohibit or regulate advertising by mail;
- (11) Prohibit or regulate contests, games, or other promotions which serve or tend to serve as advertisement for a specific brand or brands of liquor; and
- (12) Prohibit or regulate any advertising which is contrary to the public interest.

SOURCE: G.S. 18A-10.

COMMENTS: This section gives more specificity to the rule-making power, detailing specific areas in which the Commission may issue rules.

"§ 18-107. Liquors for use on airplanes and ships.--Liquor for use outside the United States on airplanes or 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 liquor may not be released from customs bonds for delivery to an airplane or oceangoing vessel without a permit from the Commission.

(2) Malt beverages, fortified wine, and unfortified wine may be sold and delivered by any wholesaler or retailer licensed in this State to an officer or agent of an airplane or oceangoing vessel. The Commission may require the officer or agent to obtain a permit prior to purchasing liquors under this subdivision.

The Commission may issue rules relating to applications for permits and otherwise regulate the importation, sale, and delivery of all liquor under this section to insure that it is used only on airplanes or oceangoing vessels outside the United States.

SOURCE: G.S. 18A-29(c), -38(g).

COMMENTS: This section expands present law by allowing sales of liquors to airlines.

"§ 18-108. Direct shipment of liquors to armed forces installations.--Malt beverages and unfortified wine may not be shipped directly from a point outside this State to an armed forces installation within this State if those liquors are for resale on the installation.

SOURCE: G.S. 18A-41(b).

COMMENTS: This section codifies and expands current rules of the Commission. It prohibits direct shipments of wine as well as beer.

"§ 18-109. Emergency.--When the Governor finds that a 'state of emergency', as that term is 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 all liquor in all or any portion of the State 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.

SOURCE: G.S. 18-54.

COMMENTS: This section continues present law.

"ARTICLE 2.

"State Administration.

"§18-200. 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 and they shall serve at his pleasure.

(c) Vacancy. The Governor shall fill any vacancy on the Commission by appointing a successor to serve at his 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.

SOURCE: G.S. 18A-14, 18A-15(15).

COMMENTS: Subsection (a) changes the name of the Board of Alcoholic Control to the Alcoholic Beverage Control Commission. The new name reflects two considerations -- the change from "alcoholic control" to "alcoholic beverage control," describes the function better and the change from "board" to "commission" conforms the name to the terminology of Chapter 143B, The Executive Organization Act of 1973.

Subsection (b) retains the present appointment procedure of members. They are appointed by and serve at the pleasure of the Governor. The language of G.S. 18A-14(a) that members be "well known for their character, ability and business acumen" has been deleted because of lack of precision of that language. Qualifications for the members of the Commission are governed by G.S. 143B-13.

Subsection (c) makes clear that if the chairman's seat on the Commission is vacant, the Governor may either appoint a new member to the chair or appoint an associate member as chairman and the new member as associate member.

Subsection (d) continues present law concerning employees of the Commission.

"§ 18-201. Conflict of interest.--(a) Financial Interests of Commission and Board Members and Employees. No person may be appointed to or employed by the Commission or a local board 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 liquor 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 apply to the Commission and local boards.

(c) Dealing for the Benefit of Family Members. The Commission and local boards may not 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 and amount involved in each transaction;
- (3) The annual audit specifically notes the member and 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 prior to final board approval of the transaction.

SOURCE: G.S. 18A-16(b).

COMMENTS: The present conflict of interest provision applies to State and local board members and employees, but not to State alcohol law enforcement agents. It prohibits ownership of any interest in breweries, distilleries or other enterprises dealing in alcoholic beverages. The disqualification includes those who have first cousins or closer relatives, other than spouses, holding such interests. The State Board may grant exemptions, apparently to anyone who is disqualified. This new statute (1) includes a disqualification for ALE agents, (2) extends the disqualification to any financial interest in the liquor business, (3) disqualifies those who have spouses with such interests, (4) limits the disqualification based on a relative's financial interests to a relative who is a member of the household of the employee or member, (5) clarifies that the Commission may not exempt its own members from the statute, and (6) states the grounds for granting an exemption. The last sentence of subsection (a) clarifies that exemptions may be granted only on a case-by-case basis. It also establishes a public record of exemptions.

Subsection (b) clarifies a point which has apparently never been litigated. G.S. 14-234 is the general self-dealing statute applicable to all appointed and elected officials who deal with public funds.

Subsection (c) establishes a policy against dealing to benefit a relative of a Commission or board member. His relatives may not benefit from any business transaction unless (1) the member abstains from voting on the matter, (2) all such transactions are reported on the minutes and annual audit, and (3) if a local board member is involved, the Commission is notified of the impending transaction at least two weeks prior to final board approval.

"§ 18-202. Responsibilities of the Commission.--(a) Duties.

The Commission shall:

- (1) Administer the ABC laws;
- (2) Provide for the enforcement of the ABC laws;
- (3) Set prices of liquors sold in local ABC stores as provided in Article 8;
- (4) Require reports and audits from local boards as provided in G.S. 18-204;
- (5) Determine what liquors may be sold in this State;
- (6) Contract for a state ABC warehouse as provided in G.S. 18-203;
- (7) Dispose of damaged liquors as provided in G.S. 18-806.

(b) The Commission is empowered to:

- (1) Remove for cause any member or employee of a local board;

- (2) Supervise or disapprove purchasing by any local board and inspect all records of purchases;
- (3) Approve or disapprove rules adopted by any local board;
- (4) Approve or disapprove the opening and location of ABC stores as provided in Article 8;
- (5) Issue ABC permits and impose sanctions against permit holders;
- (6) Provide for the testing of liquors as provided in G.S. 18-205; and
- (7) Exercise any other powers which may be reasonably implied from the granting of the express powers to the Commission.

SOURCE: G.S. 18A-15.

COMMENTS: Subdivision (a) (1) is new but states existing law that the Commission is the agency in charge of the administration of the State ABC laws.

Subdivision (b) (1) is a combination of G.S. 18A-15(4) and (9). Those subdivisions presently allow removal of a member of a local board if he is "unfit to serve thereon" or of an employee "in case of violation of the terms and spirit of this Chapter." This statute allows removal of members or employees "for cause." All three phrases probably mean the same thing. A person may not be removed unless he has committed some act of misconduct and then only after he has had an opportunity to respond to the charges against him. This wording change is in conformity with the

change in G.S. 18-700 (f) regarding removal of a local ABC board member by the appointing authority.

Subdivision (b) (3) drops the current language of G.S. 18A-15(7) allowing disapproval of local rules "which may be in violation of the terms or spirit of this Chapter." That present language is broad enough to allow the Commission to disapprove most rules which it finds unwarranted, but this section authorizes that broad discretion.

This statute is shorter than the present statute because several provisions have been moved elsewhere and are only cross-referenced here.

"§ 18-203. State warehouse.--(a) Contracting for Private Warehouse. The Commission shall provide for the receipt, storage and distribution of spirituous liquor either:

- (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, maintain control of that liquor, and insure the Commission's supervision of the procedure.

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

- (1) An annual audited financial statement will be prepared and submitted to the Commission;
- (2) All warehouse records are available for inspection at all times by the Commission and the Department of Revenue; and
- (3) All warehouse accounts relating to the receipt, storage, or distribution of spirituous liquor are 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 the 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 violation of those rules is a ground for termination of a contract entered into under this section.

SOURCE: G.S. 18A-15 (13).

COMMENTS: This section continues current law, although the statutory requirement that the state warehouse be in the Raleigh area is dropped.

"§ 18-204. 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 as needed

by the Commission.

(b) Accounting System. The Commission may require local boards to use an accepted accounting practice in the operation of the ABC stores. The Commission may select a system which will require the local boards to record all information which the Commission believes would be useful in auditing the operation of ABC stores and in studying problems of 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.

SOURCE: G.S. 18A-15 (11).

COMMENTS: Subsections (a) and (c) are additions to the codified law although they reflect present practice.

"§ 18-205. Standards for liquor.--(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 those 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 adopt more restrictive standards.

(b) Effective Date of Standards. No rule setting standards for any liquor may be effective until 30 days after its adoption. Whenever a rule setting a new standard is adopted by the Commission, persons possessing liquor which does not meet the new standard have 60 days after the effective date of the standard within which to sell or otherwise dispose of that liquor.

(c) Testing. The Commission may test all 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. This testing 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 the tested liquor shall pay the costs of the test. The Commission may, in lieu of testing any liquor, accept test results from the manufacturer or his authorized agent. Any manufacturer who submits test results shall also submit a fee of ten dollars (\$10.00) for each test result to cover administrative costs.

SOURCE: G.S. 18A-15(5), -47, -48.

COMMENTS: This section retains current provisions regarding the manner in which liquor may be tested and clarifies that testing costs are to be borne by the manufacturer. The section adds new language allowing the Commission to waive its own testing if test results are submitted by the manufacturer.

Law enforcement provisions in G.S. 18A-47 and -48 have been

dropped because Article 5 of the new Chapter will cover all law enforcement. G.S. 18A-47 (b) has also been deleted. That section is covered by federal laws requiring that wine labels specify the alcoholic content of the wine, and therefore a state statute covering the same point is unnecessary. The Commission retains the authority to issue rules on this point under subsection (a) of this section.

"§ 18-206. Rules.--The Commission may adopt rules as specifically authorized and as otherwise necessary to effectuate the purposes of the ABC law. The rules shall be adopted and published as provided in Chapter 150A of the General Statutes.

SOURCE: G.S. 18A-15 (14).

COMMENTS: This section restates current law. In addition to the general rule-making power declared in this section, individual sections throughout this Chapter contain specific grants of rule-making power. See, for example, G.S. 18-203 (d).

"ARTICLE 3.

"Sale, Possession, and Consumption.

"§ 18-300. Possession and consumption of malt beverages and unfortified wine.--(a) Generally. Malt beverages and unfortified wine may be possessed and consumed at any place except as prohibited by or under authority of this Chapter.

(b) Consumption at Off-Premises Establishment. It is a misdemeanor to consume malt beverages or unfortified wine on any premises having only an off-premises permit for the kind of liquor 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.

SOURCE: G.S. 18A-33, -35.

COMMENTS: The substance of this section is the same as current law.

"§ 18-301. Possession and consumption of fortified wine and spirituous liquor.--(a) Possession at Home. A person may possess, without a permit and not for sale, fortified wine and spirituous liquor at his home or at a secondary residence, such as a motel room.

(b) Other Premises. A person may possess, without a permit and not for sale, 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 premises not primarily engaged in commercial entertainment and not open to the public at the time, with the consent of the owner or other person in charge of the premises; or
- (3) An establishment with a brown-bagging permit.

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

- (1) His home;
- (2) Any other premises not primarily engaged in commercial entertainment under his exclusive control; or
- (3) An establishment with a special occasion permit, if he is the host of the occasion and has the permission of the permit holder.

(d) Consumption. A person may consume fortified wine and spirituous liquor at any place where it is lawful for him to possess that liquor under subsections (a) through (c).

(e) Incident to Sale. Fortified wine and spirituous liquor may also be possessed at any place, such as an ABC store, where possession is a necessary incident to lawful sale. Consumption is allowed at such a place only if the establishment holds a permit authorizing consumption on the premises as well as sale.

SOURCE: G.S. 18A-30.

COMMENTS: This section follows present law except for subsection (a). That subsection does not include the four-liter limit currently applied to possession at home by G.S. 18A-30. Any possession or consumption other than what is stated here would be a misdemeanor under G.S. 18-102.

"§ 18-302. Sale to or purchase by minors.--(a) Sale. It is a misdemeanor 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 is a misdemeanor for:

(1) A person less than 18 years old to buy or possess malt beverages or unfortified wine; or

(2) A person less than 21 years old to buy 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) is guilty of a misdemeanor.

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

(1) Shows that the purchaser produced a driver's license, special identification card issued under G.S. 20-37.7, or military identification card

showing his age to be at least the required age and that the physical description of the person on the card reasonably described the purchaser; or

- (2) Produces other evidence which reasonably indicated at the time of sale that the purchaser was at least the required age.

(e) **Fraudulent Driver's License.** It is a misdemeanor for any person to use or attempt to use a fraudulent driver's license or a license not issued to him to obtain liquor 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 is a misdemeanor 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 is grounds for revocation of the defendant's driver's license for a period not exceeding six months.

SOURCE: G.S. 18A-8.

COMMENTS: This section condenses and restates the current law regarding sales to minors. The penalty for violation of this section is set at two years and/or a fine by the general penalty section.

Subsection (d) (1) adds special identification cards issued by

the Division of Motor Vehicles to the kinds of identifications which may be used to prove the buyer's age.

Subsections (e) and (f) are new. They provide that any person who uses a fraudulent driver's license or one not issued to him to make an underage purchase is subject to having his driver's license revoked for up to six months; the same penalty is provided for a person who loans his driver's license to someone who makes or attempts to make an underage purchase.

"§ 18-303. Amounts of liquor that may be purchased.--(a) Purchases Allowed. Without a permit, a person may buy at one time:

- (1) Not more than 80 liters of malt beverages, unless it is 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) Greater Amounts. Amounts of liquor greater than those listed in subsection (a) may be purchased with a purchase-transportation permit under G.S. 18-403.

SOURCE: G.S. 18A-26, -27, -28, -34, -35.

COMMENTS: This section consolidates the various sections of Chapter 18A which specify the maximum amounts of liquor that may

be bought without a special permit. Permits to buy larger amounts (other than malt beverages) are authorized in the Article dealing with transportation of liquor.

"§ 18-304. Possession for sale.--(a) Offense. Possession of liquor for sale, without the permit required by this Chapter, is a misdemeanor.

(b) Prima Facie Evidence. Possession of the following amounts of liquor, without a permit for sale or a purchase-transportation permit for the amount possessed, is prima facie evidence that the possessor is possessing the liquor for sale:

- (1) More than eighty liters of malt beverages unless it is draft malt beverages in kegs;
- (2) More than twenty liters of unfortified wine;
- (3) More than twenty liters of fortified wine;
- (4) More than four liters of spirituous liquor; or
- (5) Any amount of nontaxpaid liquor.

SOURCE: G.S. 18A-7.

COMMENTS: This draft is essentially the same as present law.

"§ 18-305. Other prohibited sales.--(a) Sale to Intoxicated Person. It is a misdemeanor for a permit holder or ABC store employee to knowingly sell or give liquor to any person who is intoxicated.

(b) Discretion for Seller. Any person authorized to sell liquor under this Chapter may, in his discretion, refuse to sell to anyone. It is a misdemeanor for any person to knowingly buy liquor for someone who has been refused the right to purchase under this subsection.

SOURCE: G.S. 18A-25, -30 (8), -34 (a) (2).

COMMENTS: This section applies to all sellers, including ABC stores, the current provisions prohibiting beer, wine and mixed drink permittees from selling liquor to intoxicated persons. It adds that sellers may not give liquor to intoxicated persons. It also extends to all sellers the current authorization that ABC store employees have to refuse to sell liquor in their discretion.

"§ 18-306. 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, other fruit or grain concentrates and shall have only the alcoholic content produced by natural fermentation. Malt beverages may be made by use of malt beverage kits containing grain extracts or concentrates. An individual may sell wine kits or malt beverage kits. No State license or permit is required for, nor is any State tax imposed on,

beverages made pursuant to this section.

SOURCE: G.S. 18A-2(7), -36.

COMMENTS: This continues present law in a more concise form.

Because there are some federal limits on the production of homemade beer and wine, the statute specifies that no State license, permit or tax is imposed on beverages made pursuant to the section. Current law gives the impression that no State or federal license or tax is required.

"§ 18-307. Manufacturing offenses.--(a) Offenses. It is 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 liquor; or
- (2) Knowingly allow property owned or possessed by him to be used by another person for the manufacture of liquor.

(b) Penalty. Violation of this section is a misdemeanor.

SOURCE: G.S. 18A-5.

COMMENTS: This is a more modest version of present G.S. 18A-5 which also refers to advertising equipment and recipes. Note that G.S. 18-102 already makes it a misdemeanor to manufacture, sell, transport or possess liquor except as authorized by this Chapter.

"§ 18-308. Sale and consumption at bingo games.--Liquor may not be sold or consumed in any room while a raffle or bingo game is being conducted in that room under G.S. 14-292.1.

SOURCE: G.S. 18A-30(9), -35(h).

COMMENTS: This section is the same as present law.

"ARTICLE 4.

"Transportation.

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

SOURCE: G.S. 18A-26, -27, -28, -35.

COMMENTS: This section consolidates the various sections of Chapter 18A which specify the maximum amounts of liquor that may be transported without a special permit and states the basic proposition that larger purchases must be transported through use of a purchase-transportation permit.

"§ 18-401. Manner of transportation.--(a) Open Bottle. It is 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 is 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 is a misdemeanor 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 liquor 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 is not 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, the term '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 back seat is not part of the passenger area.

SOURCE: G.S. 18A-26.

COMMENTS: The substance of this section is the same as present law. Subsection (b) resolves a question under the ambiguous present statute by allowing four liters of fortified wine or spirituous liquor per passenger.

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

SOURCE: G.S. 18A-26(b), -35(g).

COMMENTS: This section consolidates various provisions allowing people purchasing malt beverages, fortified or unfortified wine,

or spirituous liquor in other jurisdictions to bring into North Carolina the same amount that can be legally purchased here. The section refers to liquor bought outside the "jurisdiction" of the State to ensure that purchases made on military installations are given the same treatment as purchases made outside North Carolina.

"§ 18-403. Purchase-transportation permit.--(a) Amounts. With a purchase-transportation permit, a person may purchase and transport an amount of liquor greater than the amount specified in G.S. 18-303(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 liquor:

- (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 liquor specified on the permit for holders of mixed beverage permits.

(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 may 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 liquor; or
- (4) Has been convicted within the previous three years of an offense involving the sale of liquor 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 each shall be kept by the issuing person, the purchaser and the store from which the purchase is made. The holder's copy of the permit shall be displayed to any law enforcement officer upon request.

(f) Time. A permit is valid only until 9:30 p.m. on the date stated on the permit.

SOURCE: G.S. 18A-27, -28, -29.1, -35.

COMMENTS: This section consolidates the various sections of the law setting forth requirements for large purchases of liquor.

Since there is no limit on the amount of draft malt beverages in kegs that may be purchased and transported, a special permit is not required for large purchases of that item. Subsection (d) requires the Commission to adopt rules specifying the content of the purchase-transportation permit form. Currently, a number of items to be included in the form are specified in the statute. Subsection (a) removes the restriction that spirituous liquor may be transported only to a destination within the county of purchase or in an adjacent county. Currently there is no adjacent county requirement for purchases of fortified or unfortified wine. The purchase and transportation of spirituous liquor for mixed drinks are addressed in G.S. 18-404.

"§ 18-404. Additional provisions for purchase and transportation by mixed beverage permit holders.--(a) Designated Employee. A holder of a mixed beverages permit may designate an employee to purchase and transport liquor as authorized by his permit.

(b) Issuance. A mixed beverages purchase-transportation permit may be issued only by the local board for the county or city in which the licensed establishment is located. If mixed beverages sales have been approved by a city election but the establishment with the permit 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 city has approved the sale of mixed

beverages.

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

SOURCE: G.S. 18A-29.1.

COMMENTS: This section carries forward the provisions of G.S. 18A-29.1 that are not already covered in the general sections on purchase-transportation permits (G.S. 18-403).

"ARTICLE 5.

"Law Enforcement.

"§ 18-500. Alcohol law enforcement agents.--(a) Appointment. The Commission shall appoint alcohol law enforcement agents.

(b) Subject Matter Jurisdiction. After taking the oath prescribed for a peace officer, an alcohol law enforcement agent may arrest and take other enforcement actions for any criminal offense. The primary responsibility of an agent is enforcement of the ABC law and Article 5 of Chapter 90, The Controlled Substances Act; however, an agent may perform any law enforcement duty assigned by the Commission or the Governor.

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

SOURCE: G.S. 18A-19.

COMMENTS: This is a simplified restatement of what is presently in G.S. 18A-19, with the major change of placing ALE agents under the Commission rather than in the Department of Crime Control and Public Safety. The present language about appointment of a director of the ALE division has been dropped since all organizational matters for State departments are already dealt with in G.S. Chapter 143B.

"§ 18-501. 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 enforcement actions for any criminal offense; however, the primary responsibility of a local ABC officer is enforcement of the ABC law.

(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 a 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 constitute a 'law-enforcement agency' for purposes of G.S. 160A-288, and a local board has 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 liquor 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 has territorial jurisdiction throughout North Carolina while assisting a State or federal agency under this section. While providing assistance the officer is still 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 law 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 have the same authority to inspect under G.S. 18-502 that an ABC officer employed by that local board would have.

SOURCE: G.S. 18A-20; Chapter 606 of the 1977 Session Laws and other similar local acts.

COMMENTS: Current law requires each local ABC board to hire ABC officers. This section differs in that subsection (f) recognizes the contractual arrangements that some local boards make for enforcement (some of which are authorized by a 1977 local act). That subsection is written to avoid any chance of a city police department acquiring county-wide jurisdiction by contracting with a county ABC board to provide enforcement. It does give the officers of the contracting agency the same inspection authority as ABC officers.

Note that the term "ABC law" used in this and other sections is defined to mean not only new Chapter 18 but also Article 2C of Chapter 105 of the General Statutes (revenue law relating to liquor) and the regulations of the State ABC Commission.

Subsection (b) continues the general subject-matter jurisdiction of local ABC officers but adds an admonishment that their primary responsibility is ABC law enforcement.

Subsection (c) simply repeats present law. County ABC officers have county-wide jurisdiction under Chapter 18A; almost all city ABC officers are also given county-wide jurisdiction by the local acts establishing city ABC systems, but some are restricted to the city limits.

Instead of repeating the provisions currently in G.S. 18A-20(a) about local ABC officers assisting enforcement in other counties, subsection (d) makes ABC officers subject to the provisions of the statutes generally dealing with cooperation between local agencies. That statute, G.S. 160A-288, requires adoption of a policy approving cooperation by the governing body (the local ABC

board), plus a written request for assistance from the other agency. This new provision also replaces present G.S. 18A-20(c) concerning volunteer ABC officers.

Subsection (e) is new to the liquor law though mutual aid among local, State and federal agencies has gone on for some time. The procedure established in that subsection is rather loosely patterned after the provisions in G.S. 160A-288.

"§ 18-502. Inspection of licensed premises.--(a) Authority. Alcohol law enforcement agents, other employees of the Commission, local ABC officers, and officers of local law enforcement agencies that have contracted to provide ABC enforcement under G.S. 18-501(f) may inspect any establishment holding an ABC permit. An inspection may include viewing the full premises and any records the permit holder is required to keep under the ABC law. The inspection may also include testing or sampling liquor found on the premises when necessary to determine the kind or proof of liquor being sold, to determine whether the liquor meets the standards set by the Commission, or to otherwise enforce specific provisions of the ABC law. An officer may not, however, test or sample the liquor contained in a drink possessed by a customer unless there is probable cause to believe that the drink is evidence of a violation of the ABC law.

(b) Time of Inspection. An inspection may be made at any time it reasonably appears that someone is on the premises. Officers shall try to avoid disruption of normal business and unnecessary

inconvenience to the permit holder, his employees and customers.

(c) Inspection Warrants. If an officer is prevented from making an inspection under subsection (a), he may apply for and execute an administrative inspection warrant as authorized by G.S. 15-27.2, but an officer is not required to obtain an inspection warrant when he reasonably believes that the purpose of the inspection will be frustrated by delaying long enough to obtain the warrant.

(d) Misdemeanor of Resisting. It is 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.

SOURCE: G.S. 18A-19(e), -20(b).

COMMENTS: Present law authorizes both ALE agents and local officers to inspect licensed premises "at any hour of the day or night." United States Supreme Court decisions generally require that an officer making an administrative inspection obtain an inspection warrant if the owner refuses to allow the inspection voluntarily. Licensed liquor establishments, however, apparently are in a class with gun dealers and certain other traditionally closely regulated businesses for which inspections without warrants may be authorized. The gist of this section is to authorize inspections at any time someone is on the premises, to admonish officers to try to avoid unnecessary inconvenience to the business, and to allow inspections against the owner's will

without an inspection warrant if the reason for the inspection would be frustrated by taking the time to get a warrant. This section is somewhat more descriptive than present law of the nature of the inspection and includes new language about sampling liquor on the premises (which might be useful, for example, to see if a place selling mixed drinks is refilling its bottles).

Note that "ABC law," used in subsection (a) is defined in G.S. 18-101 to include Chapter 18, Article 2C of Chapter 105 (revenue law relating to liquor) and the regulations of the State ABC Commission.

Without subsection (d), resistance would still be a misdemeanor under G.S. 14-223 which generally makes it a six-month/\$500.00 misdemeanor to resist, delay or obstruct any public officer in the performance of his duties. Including a resisting misdemeanor here is simply a matter of convenience for ABC officers.

Present law also authorizes all deputies and city police officers to inspect licensed premises. This section and G.S. 18-501 would give inspection authority to those officers only when the local ABC board has contracted with them to provide enforcement rather than hiring its own ABC officers. An officer's authority to investigate criminal law violations would not be affected and would be no different for licensed premises than for any other business.

"§ 18-503. Disposition of seized liquor.--(a) Storage. A law enforcement officer who siezes liquor as evidence of an ABC law

violation shall provide for storage of that liquor until the trial or administrative hearing unless some other disposition is authorized under this section.

(b) **Disposition Before Trial.** After notice to each known defendant, to any other known owner, and to the Commission, a judge may make the following dispositions of seized liquor:

- (1) He shall order the destruction of any malt beverage except that part needed for evidence at trial.
- (2) He may order the sale of any liquor other than malt beverages or nontaxpaid liquor, if the trial or administrative proceeding is likely to be delayed for a long time or if the quantity or nature of the liquor is such that storage is impractical or unduly expensive.
- (3) He may order destruction of the liquor if storage or sale is not practical.
- (4) He may order continued storage of the liquor.

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

- (1) If the owner or possessor of the liquor is found guilty of a criminal charge relating to that liquor, the judge may order the sale or destruction of any liquor that was held until trial.
- (2) If the owner or possessor of the liquor is found not guilty or the charges are dismissed or otherwise resolved in his favor, the judge shall order the liquor returned to him, except as

provided in subdivision (3).

(3) If the owner or possessor of the liquor is found not guilty, or the charges are otherwise resolved in his favor, but possession of the liquor by him would be unlawful, the judge shall order the liquor either sold or destroyed.

(4) If ownership of the liquor remains uncertain after trial or after the charges have been dismissed, the judge may order the liquor held, or the liquor sold and the proceeds held, for a specified time until ownership of the liquor can be determined.

(d) Liquor Held for Hearing. If liquor used as evidence at trial is also needed as evidence at an administrative hearing, the judge may not order any of the dispositions set out in subsection (c) but shall order the liquor 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 the administrative hearing, order any of the dispositions authorized under subsections (b) and (c). If no trial has been held, the hearing officer may not order sale or destruction of liquor until notice has been given to the district attorney for the district where the liquor was seized or any violation of ABC law likely occurred.

(e) Sale Procedure. The sale of unfortified or fortified wine shall be by public auction unless the liquor 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 to one or more licensed retailers in the county where the liquor was seized, or in a neighboring county if there are no licensed retailers in the county where seized. Spirituous liquor may be sold only to the local ABC board serving the city or county where the liquor was seized, or, if there is no board for that city or county, to the nearest local board. The sale price shall be 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 liquor shall keep the proceeds in a separate account until some other disposition is ordered by a judge or hearing officer. If the owner or possessor of the liquor is found guilty, or if he is found not guilty or the charge is dismissed or otherwise resolved in his favor but the possession of that liquor by him would be unlawful, or if the ownership cannot be determined, the proceeds from the sale of that liquor go to the school fund of the county where the liquor was seized. If the owner or possessor is found not guilty or the charge is dismissed or otherwise resolved in his favor, and possession by him would be lawful, the proceeds from the sale go 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 liquor and conducting the sale, but may not deduct those costs from the amount to be turned over to the owner or possessor of the liquor.

(g) Court Action by Owner. Any person having any of the following claims may bring an action in the superior court of the county where the liquor was seized:

- (1) That liquor which he owns is wrongfully held;
- (2) That liquor which he owns is needed as evidence in another proceeding;
- (3) That he is entitled to proceeds of a sale of liquor;
- (4) That he is entitled to restitution for liquor wrongfully destroyed.

SOURCE: G.S. 18A-21, -22, -24.

COMMENTS: This is a wholesale revision of the statutes concerning seized liquor (a separate section deals with other seized property). Although present law includes provisions on destruction of nontaxpaid liquor and beer, sale or destruction of wine, and delivery of spirituous liquor to the county commissioners to be turned over to hospitals or to the ABC store for resale, it is not altogether clear which of those actions can take place before trial and which after. Present law also seems to say that all proceeds from sale go to the county school fund, even if the defendant is found not guilty. Another issue not addressed in present law is the preservation of liquor that may be needed for an administrative hearing.

"§ 18-504. Forfeiture.--(a) Property Subject to Forfeiture.

The following kinds of property are subject to forfeiture:

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

(b) Exemption for Forfeiture. Property which may be possessed lawfully is not subject to forfeiture when it was used unlawfully by someone other than the owner 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 the 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 unlawful to possess may not be returned to the owner.

(e) Disposition after Trial. The presiding judge may take the following actions after resolution of the charge against the owner or possessor of the property:

- (1) If the owner or possessor is found guilty of an ABC offense, the judge may order the property forfeited.
- (2) If the owner or possessor is found not guilty, or the charge is dismissed or otherwise resolved in his favor, the judge shall order the property returned to him.
- (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 order to: the agency that seized the property, the Commission, the local board, 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 go to the school fund of the county where 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 Owners and Security Holders.** At any time before forfeiture is ordered, an owner or holder of a security interest in property that has been seized, 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 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 him, 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) Forfeiture when Defendant Unavailable. When property is seized for forfeiture, but the owner is unknown, the district attorney may seek forfeiture under this section by a civil in rem action 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 a civil in rem action 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.

SOURCE: G.S. 18A-21.

COMMENTS: Although a number of matters covered by this statute are not addressed in present law, this section is intended to follow the spirit of G.S. 18A-21. The main differences are that this section specifies the kinds of property that may be seized, limits seizure of vehicles to cases involving nontaxpaid liquor, distinguishes between disposition of contraband and other property, permits seizure for forfeiture after the arrest or search, clarifies the kinds of disposition that may be made after trial, and clarifies the procedure an innocent owner is to follow to protect his interest. Omitted from this section is the part of G.S. 18A-21 that presently prohibits emergency searches for liquor unless the officer has absolute personal knowledge. That rule is contrary to the usual requirement for an emergency search that the officer have only probable cause. Only a handful of judges, prosecutors, defense attorneys, and officers even seem to know that this provision exists.

"ARTICLE 6.

"Elections.

"§ 18-600. Places eligible to hold liquor elections.--(a) Kinds of Elections. The following kinds of liquor elections are 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 county ABC stores 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; and
- (2) 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 liquor.

(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 city ABC stores; 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 city ABC stores but:
 1. The county operates at least one county ABC store within the city or within one mile of the city limits;
 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.

SOURCE: G.S. 18A-51, -52.

COMMENTS: This is the first of several sections that attempt to consolidate and standardize the election procedures for beer, wine, ABC store and mixed drink elections. The major differences in this statute and present law are that (1) this statute provides for city elections on ABC stores and (2) all city liquor elections, not just those for beer and wine, are restricted according to the size of the city. Presently, beer and wine elections are allowed in cities with a population of 500 or more, but there is no limit for city ABC elections since they are all set by local act. In present law the population is determined by

the last federal census. Since no reference is made here to the federal census, population could be determined by either the federal census or more recent Department of Administration estimates.

Subsection (a) only states the kinds of elections that are permitted. As under present law, fortified wine is not to be voted on separately but may be sold by grocery stores and ABC stores after ABC stores are voted in.

Subsection (b) states when a county may hold a liquor election. There is no change from present law.

Subsection (c) concerns city beer and wine elections. As under present law, a city may hold a beer or wine election only if it has a population of 500 or more and the county has voted against the sale of beer. Thus a city may not hold an election if the county election was in favor of beer sales, which prevents cities from voting themselves dry.

Subsection (d) is entirely new. Present law does not provide for city ABC store elections although numerous cities have had elections pursuant to local acts. The population limit is the same as for beer and wine elections. One problem is what to do about city ABC store elections in counties that already have county ABC stores. The committee decided to prohibit elections in cities that are in counties with county ABC stores; a city could petition the county ABC board to locate a store in the city.

Sub-subdivision (e) (2) c. modifies the present law on city mixed drink elections in counties with county ABC systems by dropping

the requirement that two cities in the county must have voted for mixed drinks in the county election.

"§ 18-601. Election procedure.--(a) Generally. Except as otherwise provided in this section, a liquor election is conducted in the same manner and under the same rules as a referendum under Chapter 163.

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

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

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

(d) Petitions. A petition for an election shall be on a form provided by the local board of elections and shall contain the signature, name, address and precinct of each voter who signs. A petition is 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 or it is of no effect. The board of elections shall determine the sufficiency of the petition within 30 days after it is returned.

(e) Election Date. The board of elections sets the date for the liquor 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.

(f) Registration. No separate registration is required to vote in a liquor election. Registration is closed for a liquor election in the same manner and under the same schedule as for any other election.

(g) Notice. The board of elections shall give notice of a liquor election and notice of the close of registration in the same manner and under the same schedule as any other election.

(h) Observers. The proponents and opponents for the liquor election, as determined by the local board of elections, each may designate two observers to attend each voting place at the election. The manner of appointment and the conduct of observers

is as provided in G.S. 163-45.

SOURCE: G.S. 18A-51, -52.

COMMENTS: Unlike present law, this section does not contain detailed provisions concerning the conduct of liquor elections; instead it leaves those rules up to general election law. The procedure for calling an election is essentially the same as present law except that the number of voters required for a petition is raised from twenty percent to twenty-five percent. (Some local acts for ABC store elections have used fifteen percent.) The procedure on filing a petition is clarified. Subsection (e) changes present law in dropping the present restriction on having liquor elections within 45 days of certain other elections--a restriction which can be waived by the local board of elections anyway. The provision in (e) requiring that the election be set within 120 days of the request is the same as now in G.S. 18A-52 (e); the prohibition on holding the election within 60 days of the request is new but is consistent with the notice requirements. Subsection (h) changes present law in allowing appointment of observers for ABC store and mixed drink elections as well as beer and wine elections.

"§ 18-602. 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 are

chosen by the governing body or petitioner requesting the election. The propositions are:

(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.

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' will be allowed. If propositions (2) and (4) are both on the ballot and (2) receives a majority of votes 'FOR,' then sales are permitted according to that proposition regardless of the vote on (4). If one of the propositions that receives a majority of votes 'FOR' is proposition (1), then the kind of sales described in that proposition will be allowed regardless of the vote on any other

proposition at that election.

(c) Subsequent Malt Beverage Elections. A subsequent election on malt beverage proposition (1) does not affect the legality of sales that have previously been approved under proposition (2), (3), or (4). A subsequent election on malt beverage proposition (2) does 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 are chosen by the governing body or petitioner requesting the election. The propositions are:

(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' will be allowed. If one of the propositions that receives a majority of votes 'FOR' is proposition (1), then the kind of sales described in that proposition will be allowed regardless of the vote on any other proposition at that election.

(f) Subsequent Unfortified Wine Election. A subsequent election on unfortified wine proposition (1) does not affect the legality of sales that have previously been approved under proposition (2) or (3).

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

To permit the operation of ABC stores in (name of city or county).

FOR

AGAINST

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

To permit the sale of mixed beverages in (name of city or county).

FOR

AGAINST

SOURCE: G.S. 18A-51, -52.

COMMENTS: The ballot propositions and voting procedure listed here, though stated in a somewhat different form, are essentially the same as present law. Subsections (b) and (e) are new and answer some puzzling questions under present law. Subsections

(c) and (f) are new; under present law any liquor election jeopardizes all kinds of sale of that liquor previously approved.

"§ 18-603. Effect of liquor elections on issuance of permits.--(a) Malt Beverage Elections. If a malt beverage election is held under G.S. 18-602(a) and the sale of malt beverages is approved, the Commission may issue permits to 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- and off-premises sales are approved, the Commission may issue on- and off-premises malt beverage permits.
- (4) If the kind of sales described in G.S. 18-602(a) (4) are approved, the Commission may issue on-premises malt beverage permits but only to restaurants and hotels.

(b) Unfortified Wine Elections. If an unfortified wine election is held under G.S. 18-602(d) and the sale of unfortified wine is approved, the Commission may issue permits to 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- and off-premises sales are approved, the Commission may issue on- and off-premises unfortified wine permits.

(c) ABC Store Elections. If an ABC store election is held under G.S. 18-602(g) and the establishment of ABC stores is approved, each of the following is 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- and off-premises fortified and unfortified wine permits to establishments in that jurisdiction, regardless of any unfortified wine election or any local act.
- (3) The Commission may issue brown-bagging permits to 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 may not be issued, however, to restaurants and hotels in any jurisdiction in which the sale of mixed beverages has also been approved and brown-bagging is restricted by subsection (d).

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

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

(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) to 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 enplanes at least 150,000 passengers annually.

(f) Permits Not Dependent on Election. 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. 18-1002;
- (6) All permits listed in G.S. 18-1100(a).

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

SOURCE: G.S. 18A-30(7), -38(f), -51, -52, -57.

COMMENTS: This section makes the following changes in present law: (1) specifies that unfortified wine permits may be issued once ABC stores are established, notwithstanding a local election or local act prohibiting those sales, an issue left unresolved by present law; and (2) allows a place with a mixed drink permit to automatically qualify for malt beverage permits as well as fortified and unfortified wine as presently allowed.

"§ 18-604. Timing and effect of subsequent elections.--(a) Time Limits. No county liquor election may be held within three years of the certification of the results of a previous election of the same kind in that county. No city liquor election may be held within three years of the certification of the results of a previous election of the same kind in that city. Otherwise, liquor elections may be held at any time.

(b) Effect of Favorable County Vote on City. If a majority votes in favor of liquor sales in a county election, sale of that kind of liquor is 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 North Carolina Constitution.

(c) Effect of Negative County Vote on City. If a majority votes against liquor sales in a county election, sale of that kind of liquor is unlawful throughout the county; except that sale remains lawful in any city in which sale of that kind of liquor is lawful because of a city election or a local act for the city.

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

(e) Effect of ABC Store Election on Mixed Beverages. Mixed beverages may not be sold in a jurisdiction unless ABC stores are operated in that jurisdiction.

(f) When Sales Stop. Sales of liquor that previously were

lawful become unlawful 90 days after certification of the results of an election in which a city or county votes against sale of that kind of liquor.

SOURCE: G.S. 18A-51, -52, -53.

COMMENTS: Subsection (a) differs from present law in setting the date of certification of results as the point from which subsequent elections are measured. Otherwise subsection (a) is apparently the same as present law, though it might be argued under present G.S. 18A-52(h) that a wine election forecloses either a beer or wine election within three years. Under this section beer and wine elections are considered different kinds of elections (see 18-600) and one would not bar the other. Under both present law and this section a city election may follow immediately after a county election or vice versa.

Subsections (b) and (c) are the same as present law. Present G.S. 18A-57(a) preserves all local acts prohibiting sales in cities but such a local act is probably unconstitutional as a local regulation of trade. This statute therefore preserves only those local acts passed before the constitutional provision. Present law does not address the effect of county elections on city ABC stores and mixed drink sales.

Subsections (d) and (e) are the same as present law.

Subsection (f) differs from present law in setting the same deadline for closing ABC stores and stopping beer and wine sales. Present law requires ABC stores to close within three months of a negative vote and requires beer and wine sales to stop 60 days

after the election. This section sets 90 days as the deadline in all cases.

"ARTICLE 7.

"Local ABC Boards.

"§ 18-700. Appointment and organization of local ABC boards.--

(a) Membership. A local ABC board consists of three members appointed for three-year terms beginning on July 1 except as provided by local act enacted before the effective date of this Chapter. One member of the initial board 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 the 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 are appointed by the city governing body.

(c) County Boards. County ABC board members are appointed by the board of county commissioners.

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

(e) Vacancy. Any 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.

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

(h) Conflict of Interest. The provisions of G.S. 18-201 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.

SOURCE: G.S. 18A-16.

COMMENTS: This section differs from present law primarily in its recognition of the existence of city ABC boards. Instead of being governed by the local acts authorizing city ABC elections, city boards would now be subject to the same provisions as county boards.

The committee decided to change the method of appointing county ABC boards. Present G.S. 18A-16 has the appointment made jointly by the county commissioners, board of health and school board. This section provides for appointment exclusively by the county commissioners, a method a number of counties now use pursuant to

recent local acts. Local acts generally provide that city ABC boards are appointed by the city council, as is provided here.

This statute limits boards to either three or five members. Presently seven local boards have five members each and one has four; all others have three. Allowing the appointing authority to choose whether it wants a three- or five-member board should reduce the need for local bills on this subject.

In place of the language in present law about ABC board members being "well known for their character, ability and business acumen," subsection (d) substitutes something closer to the phraseology from G.S. 143B-13 on qualifications for members of State boards and commissions. Omitted is the language from that statute about providing "a diversity of interests and points of view" in the membership.

Present law says that the appointing authority may remove an ABC board member when it decides that he is "unfit to serve." This section says that he may be removed "for cause." The two phrases probably mean the same thing. Removal for cause means that the appointing authority may remove only for specific acts of misconduct and only after the person to be removed has been given some opportunity to answer the allegations against him. He may not be removed simply because of disagreements about the operation of the ABC system.

The salary provision, subsection (g), drops the language in present law about the salary being "fixed with the view to securing the very best members available, with due regard to the fact that such salaries shall be adequate compensation but not

large enough to make said positions unduly attractive or the objects of political aspirations." This mandate was considered too general to be of any real value.

Provisions of this bill which will not be codified deal with the question of deviations from the standards set by this statute. They exempt existing boards established by local acts from subsections (b) and (c) but require boards already under general State law or established after the effective date of this act to comply with this section.

"§ 18-701. Powers of local ABC boards.--A local board may:

- (1) Buy, sell, transport and possess liquor as necessary for the operation of its ABC stores;
- (2) Adopt rules for its ABC system, subject to 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 the ABC law as provided in Article 5;
- (9) Borrow money as provided in G.S. 18-702;

(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. 18-702;

(12) Dispose of property in the same manner as a city council under Article 12 of Chapter 160A of the General Statutes; and

(13) Perform any other activity authorized or required by this Chapter.

SOURCE: G.S. 18A-17.

COMMENTS: This is a simplified version of the present law concerning the powers of county ABC boards. This section is much shorter than present G.S. 18A-17 primarily because several substantive provisions have been shifted to other sections and only mentioned here by cross-reference. Thus elsewhere in the Chapter are the more specific provisions on borrowing money and investing funds (both in new G.S. 18-702), law enforcement (in Article 5), local permits (Article 4), and location of stores, closing stores, hours and holidays, pricing liquor and use of profits (all in Article 8).

"§ 18-702. 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 is not 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 liquor. The city or county whose governing body appoints a local board is not in any way 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 the 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 and a description of how those distributions have been made, including the names of recipients and the activities for which the funds were given. A local board shall also submit to any other audit and submit any reports required 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). 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.

SOURCE: G.S. 18A-15, -17.

COMMENTS: Present G.S. 18A-17 authorizes a local ABC board to borrow money "in such manner as may be required or permitted by law" (though there is no such "law") and also authorizes the purchase of property and equipment, but says little else about the financial operation of a local ABC board. This section is an attempt to answer some of the questions raised by present law.

The only occasion a local ABC board has to borrow money is when it first begins operations or decides to expand and build a new store. In practice a board usually starts by renting a building for its store, holding off payment until revenue begins to come in, and then gradually builds up capital to purchase land and build a store; or the city or county may give land to the local ABC board and the board will use that real estate as collateral for a loan. This section specifies the authority of a board to borrow money, but limits the kinds of things for which it may be borrowed, and clearly states that the city or county is not responsible for the board's debts.

The auditing requirements are somewhat more explicit than under present law, the most important change being to require the audit to follow a chart of accounts prescribed by the State ABC Commission. Such a requirement will bring more uniformity to the audits and make comparison between years and between local boards simpler. It is anticipated that the State Commission might develop a standard report format after consulting with the State Auditor and the auditors' association.

People who are supposed to receive part of a local ABC store's profits for alcoholism or other programs sometimes question whether the proper amount of money is being spent for that purpose. The standard chart of accounts, plus the requirement that the audit name the recipients of ABC funds and state why they were given money, should make it easier to trace the path of earmarked moneys. Whether the agency receiving the money actually spent it in the way intended would have to be determined by audit of that agency.

Subsection (d) allows a local ABC board to invest idle funds in the same manner as now applicable to other units of local government under G.S. Chapter 159. The reference to G.S. 159-31(b) makes local ABC boards subject to the same collateralization requirements as cities and counties. Also included is authorization to participate in the State Treasurer's program for short-term investments. Present G.S. 18A-17(16) limits investments to 90 days.

Subsection (e) in effect directs the State Commission to review the provisions of G.S. Chapter 159 (Local Government Budget and

Fiscal Control Act) concerning the financial operations of local governments and decide which provisions are appropriate for local ABC boards. Although the present statutory language might be read to consider a local ABC board a "public authority" and thus already subject to the provisions of Chapter 159, local boards have not been treated that way. Subsection (a) states that a local board is not subject to Chapter 159, but subsection (e) requires the board to comply with modified versions of certain requirements of that Chapter as determined by the State Commission.

This section anticipates a more active role in the oversight of local ABC financial operations than is presently performed by the State ABC Board. The State Board has never been given the manpower to perform such a role and will need additional employees to comply with this section.

"§ 18-703. 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) The stores serve the same general area or are located near 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 practical on the distribution previously authorized for the separate systems. This formula for distribution is subject to approval by the Commission.

(d) Enforcement. Local officers hired by the local ABC board for the merged ABC system 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 joint 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 a local board established under this section is the same as for any other local board.

SOURCE: Original.

COMMENTS: There is nothing similar to this provision in present law. It is most likely to be used by some of the city ABC

systems in small towns that are barely making money (or losing money); merger of some of those systems might make sense. This section is intended to leave most of the details of the merger to negotiation between the cities and counties involved.

"ARTICLE 8.

"Operation of ABC Stores.

"§ 18-800. Sale of liquor 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 Liquor. In addition to spirituous liquor, ABC stores may sell

(1) Fortified wine, and

(2) Unfortified wine derived principally from fruits or berries grown in North Carolina.

(c) Commission Shall Approve Liquor. No ABC store may sell any liquor which has not been approved by the Commission for sale in this State.

SOURCE: G.S. 18A-15(5), -17(18).

COMMENTS: This section specifies what liquors may be sold in an ABC store. The only change in present law is in subdivision (b) (2), which no longer requires a favorable wine election in the city or county before unfortified wine can be sold in ABC stores.

"§ 18-801. Location, opening, and closing of stores.--(a) Number of Stores. Each local board has the right 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 in its city or county, 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. A local board may close or the Commission may order a local board to close any store when:

- (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) Continued operation will adversely affect the health, safety, or general welfare of the community in which the store operates.

SOURCE: G.S. 18A-15(10), -17(13), -17(15).

COMMENTS: Subsections (a) and (c) restate current law. Subsection (b) eliminates the procedure required by G.S. 18A-15(10) when a community which voted against ABC stores decides it wants a store located there. That statute provides that before a store may be approved: (1) the community shall wait until 18 months after the last election on the question; (2) twenty percent of the qualified voters shall petition for a store; and

(3) the State Board shall find "upon due investigation after receipt of such petition, that a majority of the qualified electors in such community or town are at the time such investigation is made in favor of establishing such store or stores." This new statute eliminates the first two steps and simply requires the Commission to consider the opinions of the voters of the community in making its decision on the location.

"§ 18-802. When stores operate.--(a) Time. No ABC store may be open between 9:00 p.m. and 9:00 a.m. The local board may otherwise determine opening and closing hours of stores operated by it.

(b) Days. No ABC store may be open on Sunday, New Year's Day, the Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day. The local board may otherwise determine what days the stores operated by it are closed.

SOURCE: G.S. 18A-17(5), (6).

COMMENTS: Subsection (b) eliminates the requirement that stores be closed on election days.

"§ 18-803. Store management.--(a) Manager. The 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 conduct the store pursuant to the directions of the board.

(b) Bonding of Manager. Before beginning the job as manager, 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. The local board may require any other employee to obtain a bond if that employee handles board funds.

SOURCE: G.S. 18A-17(13).

COMMENTS: This section continues present law except that subsection (b) requires that a manager's bond be obtained through a corporate surety and subsection (c) permits the board to require other employees (such as a bookkeeper) to be bonded.

"§ 18-804. Liquor pricing.--(a) Uniform Price of Spirituous Liquor. The retail price of spirituous liquor sold in ABC stores shall be uniform throughout the State, except as authorized by this Chapter or by rules of the Commission.

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

- (1) Distiller's price;
- (2) 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) Tax levied under G.S. 105-113.93, which is 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) 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) 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 the holder of a mixed beverage permit for the purpose of resale as 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 and 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 and State and local sales taxes.

SOURCE: G.S. 18A-15(3); ABC Regulation .0502.

COMMENTS: This section continues present law, but explains in greater detail the pricing system. Note that the Commission does not set uniform pricing for wines sold in ABC stores.

"§ 18-805. Distribution of revenue.--(a) Gross Receipts. As used in this section, 'gross receipts' means all the revenue of a local board, including proceeds from the sale of liquor, investment, 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. 18-804(b)(8). The Department of Human Resources shall spend those funds for alcoholism treatment, research or education.
- (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. 18-804(b)(6), to be spent by the county commissioners for the purposes stated in

subsection (h).

(c) Other Statutory Distributions. After making the distributions required by subsection (b), each quarter the local board shall make the following 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 of G.S. 18-804(b) (5) to be distributed as part of the remaining gross receipts under subsection (e).
- (2) The local board shall spend for law enforcement an amount determined by the board that is at least five percent (5%) of the gross receipts remaining after the distribution required by subdivision (1). This provision applies to all local boards, regardless of any local act to the contrary.
- (3) The local board shall spend, or pay to the county commissioners to spend, for the purposes stated in subsection (h), an amount determined by the board that is at least seven percent (7%) of the gross receipts remaining after the distribution required by subdivision (1). This provision is not applicable to a local board exempted from this requirement by local act.

(d) Working Capital. After making the distributions of 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.

(e) Other Distributions. After making the distributions provided in subsections (b), (c), and (d), the local board each quarter shall pay 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 by law. If the governing body of each city and county that receives 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 permit holder for premises located at an airport outside the city, the ninety percent (90%) local share of the mixed beverages surcharge required by G.S. 18-804(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) shall be spent for alcoholism treatment, research or education. The minutes of the board of county commissioners or local board that spends the money allocated under this subsection shall describe the activity for which the money is 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 commissioners or local board from whom funds were received describing how the funds were spent.

SOURCE: G.S. 18A-15(3)c, -15(8), -17(14), -18.

COMMENTS: This section is primarily an attempt to clarify several sections of existing law.

Present law generally is stated in terms of expenditure of ABC store profits; subsection (a) includes all revenue of a local ABC board in the gross receipts to be distributed. This removes any questions of how investment revenue and other incidental revenue is to be treated.

Subsection (b) generally follows existing law except that it specifies that the distributions of the State mixed drink tax to the Department of Human Resources and the nickel-per-bottle to the county commissioners are to be made monthly.

Subsection (c) clarifies what figures are being used in

computing the percentage of profits that must go to law enforcement and alcoholism programs. The present law sometimes says the percentage is to be based on net profits but does not define that term. In one statute, local boards are required to spend 5 to 10 percent of net profit on law enforcement, in another they are required to spend 5 to 15 percent of total profits. Subdivision (c) (2) eliminates the ceiling on the law enforcement expenditure and clarifies that each board must spend the minimum. Subdivision (c) (3) retains the exemption from spending the 7 percent on alcoholism programs for those boards that have local acts setting a different distribution of profits. That subdivision also gives the ABC board the option of turning the 7 percent over to the county commissioners to spend on alcoholism.

Present law does not set any limit on the amount a local board may put aside for "working capital," though the State Board has developed a formula. Subsection (d) allows the Commission to make that formula mandatory.

The most significant change probably is in subsection (e)'s authorization for alteration of profit distribution without coming to the legislature for a local act. All city ABC systems have been established by local act and thus have profit distribution set in the local legislation; many county systems have also come to the General Assembly to be exempted from the State law requirement that all profits go to the county general fund. If the governing bodies of all the local governments that receive funds from a local ABC system can agree, a change in

distribution can be made under this subsection without coming to the legislature.

Subsection (f) continues the special provision needed for the Greensboro airport.

Subsection (g) is entirely new.

The reporting requirements of subsection (h) are new and, along with the provisions of G.S. 18-702, demonstrate a concern for greater accountability of funds that are earmarked for alcoholism programs.

"§ 18-806. Damaged liquors.--(a) Liquors Owned by Local Board. All damaged liquor 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) Liquors Not Owned by Local Board. All damaged liquor which is

- (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

shall be disposed of by the Commission. The Commission shall dispose of the liquor by giving it to a public or private hospital for medicinal use only, selling it to a military installation, or destroying it.

(c) Sale Procedure. If damaged liquor is sold under subsection (b), sale shall be by:

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

Funds derived from the sale of damaged liquor shall be paid to the General Fund.

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

SOURCE: G.S. 18A-15(16).

COMMENTS: This section makes several changes and corrections in present law. Subsection (a) is new. No current statute covers disposal of liquor owned by a local board. This provision, by using the term "liquor," covers all spirituous liquor, fortified wine, and unfortified wine which a local board might own. When a local board has damaged liquor, it may destroy it, give it to a hospital, or turn it over to the Commission.

Subsection (b) covers liquor given to the Commission under subsection (a). It also covers liquor not owned by the Commission but, under the warehouse consignment system, located in the warehouse or in transit from the warehouse to a local board (but before the local board has taken ownership). The Commission is responsible for disposal of these damaged liquors, and the procedures for disposal and sale are identical to the current provisions in G.S. 18A-15(16) except that the provision allowing sale to a hospital has been changed to allow the

Commission to give the damaged liquors to a hospital. The last sentence of subsection (c) changes the recipient of sale proceeds from the warehouse bailment fund to the General Fund. This change is proper since the warehouse bailment fund is no longer a State fund.

Subsection (d) retains the requirement that the State Commission keep detailed records of disposition of damaged liquor, but it adds a similar requirement for local boards.

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

SOURCE: Original.

COMMENTS: This specific rule-making authority (the general authority is in G.S. 18-206) allows the Commission to promulgate rules dealing with ABC stores. The present statutory authority to allow Alcoholism Research Fund containers in stores in G.S. 18A-17(17) has not been carried forward in this Article because those types of questions can best be resolved by the rules issued under this section.

"ARTICLE 9.

"Issuance of Permits.

"§ 18-900. 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 an establishment 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 permit holder and is not a manager or otherwise responsible for the day-to-day operation of the establishment; or
 - b. 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 a liquor offense within two years;
- (5) Not have been convicted of a misdemeanor controlled substance offense within two years; and
- (6) Not have had a liquor permit revoked within three years.

(b) Definition of Conviction. A person has been 'convicted' for purposes of subsection (a) when judgment has been entered against him. A felony conviction in another jurisdiction

disqualifies a person if his conduct would also constitute a felony in North Carolina. A conviction of a liquor offense or misdemeanor drug offense in another jurisdiction disqualifies a person 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 disqualifies 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 and held for an establishment, each of the following shall 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, unfortified wine, and fortified wine permits.

SOURCE: G.S. 18A-39.

COMMENTS: The requirements in subsection (a) are essentially the same as present law, except for the elimination of the one-year residency requirement. Subsection (b) is new; present law disqualifies a person who has "been convicted of, or entered a

plea of guilty or nolo contendere to" a disqualifying offense. A person receiving a prayer for judgment continued would be disqualified under present law but not under this section. Present law allows the State ABC Board to waive the felony disqualification rule; this section does not.

Subsection (c) differs from present law in not requiring managers of corporate-owned stores with only off-premises beer and wine permits to qualify as applicants.

Note that these requirements must be met to receive or hold a permit. Therefore a conviction of a disqualifying offense would be grounds for revocation of a permit.

"§ 18-901. Issuance of permits.--(a) Who Issues. All ABC permits are issued by the Commission. Purchase-transportation permits are issued by local boards under G.S. 18-403.

(b) Notice to Local Government. Before issuing an ABC permit, the Commission shall give notice of the 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 for an ABC permit and that the location is a suitable place. 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 establishment are suitable are:

- (1) The reputation, character, and criminal record of the applicant;
- (2) The number of places already holding permits within the neighborhood;
- (3) Parking facilities and traffic conditions;
- (4) Kinds of businesses already in the neighborhood;
- (5) If the application is for an on-premises permit, 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 this Chapter and whether operation of the establishment at that location would be detrimental to the neighborhood.

SOURCE: G.S. 18A-38(e1), -43(b), -40(c).

COMMENTS: This statute is essentially the same as present law except for the list of factors in subsection (c). Of that list, (1), (2), (3), and (7) are in present law; (4) and (6) are new, though in practice zoning laws are taken into account; (8) is a

reworded version of the present catchall language; and (5) is a replacement for the present provision of G.S. 18A-40(c) which now prohibits beer, wine and mixed drink permits within 15 meters (50 feet) of a church or school but allows the Board to make exceptions for "undue hardship."

"§ 18-902. Application for permit; fees.--(a) Form. An application for an ABC permit shall be on the 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. 18-900(c).

(b) Investigation. Before issuing a new permit, the Commission shall investigate the applicant and the premises. 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 is grounds for denying, suspending or revoking the permit and is also a misdemeanor.

(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--\$25.00
 application is for a restaurant or bar, in which case the fee is \$50, in which case the fee is \$25.00
- (8) Special occasion permit--\$100.00
- (9) Limited special occasion permit--\$100.00
- (10) Mixed beverages permit--\$100.00
- (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--\$100.00
- (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--\$25.00.

(e) Fee for Combined Applications. The fee for combined applications is one time for retail malt beverage, unfortified wine permits for a single establishment. The fee for combined applications is one hundred dollars (\$100.00) and is made at one time for brown-bagging and special occasion

for a single establishment, the total fee for those applications is three hundred dollars (\$300.00). If application is made at one time for wine and malt beverage importer permits, the total fee for those applications is one hundred dollars (\$100.00). If application is made at one time for wine and malt beverage wholesaler permits, the total fee for those applications is one hundred dollars (\$100.00).

(f) Fee Not Refundable. The fee required by subsection (d) is not 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.

SOURCE: G.S. 18A-31(b), -31(c) (1), -31.1(b), -39, -69.

COMMENTS: Subsection (a) differs from present law in giving the Commission the authority to set the application form rather than setting out the requirements in the statute. The investigations subsection, (b), differs from present law in authorizing the use of local ABC officers for application investigations. The fees in subsection (d) are the same as present law except that beer and wine fees are doubled, the culinary permit fee is doubled, and a fee is added for a salesman's permit. Another change is to eliminate the provision in G.S. 18A-31(c) (1) that exempts State and local governments from these fees.

"§ 18-903. Duration of permit; renewal and transfer.--(a) Duration. Once issued, ABC permits are valid for the following periods, unless earlier surrendered, suspended or revoked:

- (1) On- and off-premises malt beverage, unfortified wine, and fortified wine permits; culinary permits; and all permits listed in G.S. 18-1100 remain valid indefinitely;
- (2) Limited special occasion permits are valid for 48 hours before and after the occasion for which the permit was issued;
- (3) Special one-time permits issued under G.S. 18-1002 are valid for the period stated on the permit;
- (4) Temporary permits issued under G.S. 18-905 are valid for 90 days; and
- (5) All other ABC permits are valid for one year from May 1 to April 30.

(b) Renewal. Application for renewal of an ABC permit shall be on the form set 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. 18-902, except that the renewal application fee for a mixed beverages permit is fifty percent (50%) of the original fee. A renewal fee is not refundable.

(c) Change in Ownership. All permits for an establishment 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 a firm, association or partnership owning an 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 corporation 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. 18-900(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 is not refundable.

SOURCE: G.S. 18A-15(17), -31, -37, -39, -65.

COMMENTS: Subsection (a) differs from present law by making all commercial permits indefinite rather than annual and by making the same change for culinary permits. Subsections (b) and (c) are the same as present law except for the addition of (c)(2). Subsection (d) replaces present practice which requires a new permit when the manager of a corporate-owned business changes.

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

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

(c) Business Not Operating. An ABC permit automatically expires and shall be surrendered to the Commission if the establishment for which it is issued does not commence the authorized activity within six months of the date the permit went into effect. The Commission may waive this provision for good cause.

(d) Notice of Permits. When it issues a permit the Commission shall send notice of the issuance, with the name and address of the permit holder 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;
and
- (4) If the establishment is located inside a city, the governing body, chief of police, and tax collector for the city.

(e) Refusal to Surrender Permit. It is a misdemeanor for a permit holder to willfully refuse to surrender to the Commission

a permit that has been suspended or revoked.

SOURCE: G.S. 18A-15(12), -44(c), -45, -46.

COMMENTS: Subsection (a) states something implied but not explicitly stated in present law. Subsection (c) is new. Subsections (b), (d), and (e) are the same as present law.

"§ 18-905. 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. 18-1001 and 18-1100. A temporary permit may be revoked summarily by the Commission without complying with the provisions of Chapter 150A. Revocation of a temporary permit is effective upon service of the notice of revocation upon the permit holder or three working days after notice of the revocation has been mailed to the permit holder at the address given in the application.

SOURCE: G.S. 18A-38(c).

COMMENTS: This section is the same as present law except for the addition of the last sentence. A 90-day limit on temporary permits is stated in G.S. 18-903(a).

"§ 18-906. 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. 18-905, is a 'contested case' subject to the provisions of Chapter 150A except as provided in subsections (b) and (c).

(b) Exception on Hearing Location. Hearings on ABC permits are 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. A hearing shall be held within 100 miles, as best can be determined by the Commission, of the county seat of the county in which the applicant or permit holder resides; however, the hearing may be held at any place upon agreement of the Commission and all other parties.

(c) Exception on Judicial Review. A petition for judicial review of a final Commission decision may be filed and heard in the superior court of the county where the establishment in question is located.

SOURCE: G.S. 18A-44, -44.1; G.S. Chapter 150A.

COMMENTS: Instead of continuing the present procedures of G.S. 18A-44, this section makes ABC permits subject to the same procedures as other licenses under the Administrative Procedure Act. Subsection (b), however, retains the provisions presently in G.S. 18A-44.1. Subsection (c) changes the rule in G.S. 150A-45 that requires judicial review to be in the superior court of Wake County.

"ARTICLE 10.

"Retail Activity.

"§ 18-1000. Definitions concerning establishments.--The following definitions apply to this Article:

(1) Restaurant--An establishment substantially engaged in the business of preparing and serving meals. To qualify as a restaurant, the establishment's gross receipts from food and beverages other than liquor shall be greater than its gross receipts from liquor. A restaurant also shall have a kitchen and an inside dining area with seating for at least 36.

(2) Hotel--An establishment engaged primarily and substantially in the business of furnishing lodging or meals or both. A hotel shall have a restaurant either on or closely associated with the premises. The restaurant need not be owned or operated by the same person as the hotel.

(3) Eating establishment--An establishment engaged in the business of regularly and customarily selling food, primarily to be eaten on the premises. Eating establishments include places that are called restaurants, cafeterias, cafes or similar names, but that do not qualify under subdivision (1). Eating establishments also include lunchstands, 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 include grocery stores,

convenience stores, and other establishments, such as variety stores or drugstores, where food is regularly sold, and also include establishments engaged primarily in selling wine 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 guests.

(7) Entertainment establishment--An establishment that generally does not serve food but is engaged in the business of sponsoring or hosting large gatherings such as concerts, dances, receptions, and conventions. Entertainment establishments include auditoriums, armories, civic centers, convention centers, and coliseums.

SOURCE: G.S. 18A-30, -38(d) and (e).

COMMENTS: The definition of restaurant differs from present law in specifying that gross receipts from food and nonalcoholic beverages shall be greater than liquor receipts. Present law requires the restaurant to be engaged "primarily and substantially" in serving meals. This definition clarifies that cigarette and other nonfood sales are not to be considered in determining whether the business has sufficient food sales.

The definition of hotel is essentially the same as the present statute and regulations, as is the definition of private club

(currently called a social establishment).

Eating establishment, food business and retail business are new categories, although they are intended to reflect the present practice on issuance of beer and wine permits. Eating establishment is about the same as the present list of places eligible for on-premises beer permits. Present law does not specify the kinds of places eligible for off-premises beer permits; the permit section, G.S. 18-1001, follows a present practice by allowing a food business and any other retail establishment to have an off-premises beer permit. Off-premises wine permits would go only to food businesses.

Entertainment establishment is a new category. Some of the places listed there would be eligible for beer and special occasion permits under present law.

"§ 18-1001. 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 to be consumed 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 to a:

- a. Restaurant;
- b. Hotel;

- c. Eating establishment;
- d. Food business;
- e. Retail business;
- f. Private club;
- g. Entertainment establishment.

(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 to a:

- a. Food business;
- b. Retail business.

(3) On-premises Unfortified Wine Permit. An on-premises unfortified wine permit authorizes the retail sale of unfortified wine to be consumed 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 to a:

- a. Restaurant;
- b. Hotel;
- c. Eating establishment;
- d. Private club;
- e. Entertainment establishment.

(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 to a food business. The permit may also be issued to a winery for sale of its own 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, to be consumed on the premises. The permit may be issued to a:

- a. Restaurant;
- b. Hotel;
- c. Eating establishment;
- d. Private club.

(6) Off-premises Fortified Wine Permit. An off-premises fortified wine permit authorizes the retail sale of fortified wine in the manufacturer's original container for consumption off the premises. The permit may be issued to a food business. The permit may also be issued to a winery for sale of its own wine.

(7) Brown-bagging Permit. A brown-bagging permit authorizes individual patrons of the establishment, with the permission of the permit holder, to each bring up to four liters of fortified wine or spirituous liquor, or a combination of the two, into the establishment and to consume that liquor on the premises. The permit may be issued to a:

- a. Restaurant;
- b. Hotel;
- c. Private club.

(8) Special Occasion Permit. A special occasion permit authorizes the host of a reception, party or other special occasion, with the permission of the permit holder, to bring fortified wine and spirituous liquor into the establishment and serve it to his guests. The permit may be issued to a:

- a. Restaurant;
- b. Hotel;
- c. Eating establishment;
- d. Private club;
- e. Entertainment establishment.

(9) Limited Special Occasion Permit. A limited special occasion permit authorizes the holder of a permit to bring fortified wine and spirituous liquor into an establishment, with the permission of the owner, and to serve the liquor to his guests at a reception, party or other special occasion being held at that establishment. The permit may be issued to any individual other than the owner or possessor of the establishment. The applicant shall have the written permission of the owner or possessor of the establishment.

(10) Mixed Beverages Permit. A mixed beverages permit authorizes the retail sale of mixed beverages to be consumed on the premises. The permit also authorizes the permit holder to obtain a purchase-transportation permit under G.S. 18-403 and -404. The permit may be issued to a:

- a. Restaurant;
- b. Hotel;
- c. Private club.

(11) Culinary Permit. A culinary permit authorizes the possession in the kitchen of up to 12 liters of either fortified wine or spirituous liquor, or 12 liters of the two combined, and the use of that liquor for cooking. The permit may be issued to a:

- a. Restaurant;
- b. Hotel.

SOURCE: G.S. 18A-30, -31.1, -38.

COMMENTS: The extension of on-premises beer and unfortified wine permits to entertainment establishments is new, though the law on beer permits is too vague to be certain whether some of these places already qualify. Likewise, the designation of entertainment establishments for special occasion permits is new, but the present law is not clear on the kinds of places eligible for those permits. The other provisions on the places eligible for permits and what those permits authorize are essentially the same as present law.

"§ 18-1002. 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 transactions:

- (1) A permit may be issued to a person who acquires ownership or possession of liquor through bankruptcy, inheritance, tax lien, or other unusual occurrence and who does not already have a permit authorizing the sale of that liquor. The permit may authorize the sale or other disposition of the liquor in a manner set by the Commission.
- (2) A permit may be issued to a nonprofit organization to allow the retail sale of malt beverages,

unfortified wine, fortified wine, mixed beverages, or brown-bagging, at a single fund-raising event of that organization. A permit for this purpose may not be issued to the same organization more than once each quarter.

(3) A permit may be issued to the holder of an ABC permit who is going out of business to authorize the sale or other disposition of his liquor 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 liquor to authorize that person to bring into the State, possess or transport a greater amount of that liquor than is otherwise authorized by this Chapter, or to sell the liquor.

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

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

SOURCE: G.S. 18A-42.1.

COMMENTS: The permit provided in (a) (1) is the same as presently provided in G.S. 18A-42.1. The others are all new. The

application fee section, G.S. 18-902, sets a \$25.00 fee for each of these permits.

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

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

(c) Certain Employees Prohibited. A permit holder may not knowingly employ in the sale or distribution of liquor any person who has been:

- (1) Convicted of a felony within three years;
- (2) Convicted of a felony more than three years previously and not had his citizenship restored;
- (3) Convicted of a liquor 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 stated in G.S. 18-900(b). The Commission may exempt persons from this subsection on a case-by-case basis.

SOURCE: G.S. 18A-34, -42(c), -43.

COMMENTS: Chapter 18A has been consistently interpreted by the courts to make the permit holder strictly liable for any wrongdoing on the premises. See, for example, Campbell v. N.C. State Board of Alcoholic Control, 263 N.C. 224 (1964), and American Legion v. N.C. State Board of Alcoholic Control, 27 N.C. App. 266 (1975). The first sentence of subsection (a) is consistent with that view. The second sentence about the premises being kept clean, well-lighted and orderly is taken from G.S. 18A-34(b), which applies to retail beer and wine premises. Putting that language here in its present form would make it applicable to all licensed premises.

The cases cited above also support subsection (b). In addition, G.S. 18A-34 now prohibits certain activities by servants, agents, and employees of retail beer and wine establishments, and the mixed-drink provisions contain similar language. Under G.S. 18A-43 a permit holder may lose his permit for failure to exercise proper supervision.

Subsection (c) is a slightly revised version of what is now in G.S. 18A-43(a).

"§ 18-1004. Hours for sale and consumption.--(a) Hours. A permit issued under G.S. 18-1001 authorizing the retail sale or consumption of liquor allows that activity only within the following hours:

- (1) Sale is permitted only between 7:00 a.m. and 1:00 a.m.;

(2) Consumption is permitted only between 7:00 a.m. and 1:30 a.m.

(b) Daylight Savings Time. From the last Sunday in April to the last Sunday in October, sale may continue until 2:00 a.m. rather than 1:00 a.m., and consumption may continue until 2:30 a.m. rather than 1:30 a.m.

(c) Sunday Hours. The retail sale or consumption of liquor is not permitted from the time at which sale or consumption must stop on Sunday morning until 1:00 p.m. 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 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 Monday. Neither a city nor a county, however, may prohibit those sales by establishments having brown-bagging or mixed beverages permits.

SOURCE: G.S. 18A-30, -33.

COMMENTS: The substance of this section is the same as present law.

"§ 18-1005. Conduct on licensed premises.--A permit holder may not knowingly allow any of the following kinds of conduct to

occur on the premises:

- (1) Any violation of the ABC law;
- (2) Any fighting or other disorderly conduct that can be prevented without undue danger to the permit holder, his employees or patrons;
- (3) Any violation of the controlled substances, gambling, or prostitution statutes;
- (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.

SOURCE: G.S. 18A-30, -34.

COMMENTS: G.S. 18A-30 (beer and wine premises) and -34 (mixed drinks) currently make it unlawful for a permit holder or one of his employees to permit disorderly conduct, nude entertainment, or entertainment simulating sexual activity. Subdivisions (2), (4), (5), and (6) above carry forward that prohibition and apply it to all permit holders, although in different language, and require the Commission to adopt rules defining lewd or obscene entertainment. Those sections of the present law also prohibit various other kinds of acts, such as selling to someone who is intoxicated and allowing unauthorized liquor on the premises, that are prohibited in other sections. Instead of repeating

those prohibitions, this section includes subdivision (1) which generally requires the permit holder to see that no violations of the liquor laws or regulations take place. Subdivision (3) is new but is consistent with present practice. Violation of this section is grounds for action against the permit rather than a criminal offense.

"§ 18-1006. Miscellaneous provisions on permits.--(a) School and College Campuses. No malt beverage, unfortified wine, or fortified wine permit may be issued to an establishment on the campus or property of a public school or college other than an establishment with a mixed beverage permit.

(b) Lockers at Clubs. A private club that has a brown-bagging permit may, but is not required to, provide lockers for its members to store their liquor. If lockers are provided, however, they may not be shared but shall be for individual members. Each locker and each bottle of liquor 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. The holder of an on- or off-premises or wholesale unfortified or fortified wine permit 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 permit holders 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.

SOURCE: G.S. 18A-30(2); -34(c), -40(a).

COMMENTS: Subsection (a) is the same as present G.S. 18A-40(a). Subsection (b) is the same as present G.S. 18A-30(2) and the regulations of the State ABC Board. Subsection (c) has the same effect as G.S. 18A-34(c) but does not require the formality of a permit as does present law.

"§ 18-1007. Additional requirements for mixed beverage permit holders.--(a) Purchases. A mixed beverages permit holder may purchase spirituous liquor for resale as mixed beverages only at the ABC store designated by the local board and only with a purchase-transportation permit issued by that local board under G.S. 18-403 and -404.

(b) Handling Bottles. A mixed beverages permit holder may not:

- (1) Store any other spirituous liquor with liquor possessed for resale in mixed beverages;
- (2) Refill any spirituous liquor container with any other liquor for use on the premises;
- (3) Transfer from one container to another the mixed beverages tax stamp.

(c) Misdemeanor. Violation of subdivision (b) (2) or (b) (3) is a misdemeanor.

SOURCE: G.S. 18A-29.1, -30(8).

COMMENTS: Each of these provisions except (b) (1) is presently found in Chapter 18A; subdivision (b) (1) is in the Board's rules.

"§ 18-1008. 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 liquor 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. 18-1000. 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 liquor, and that the club have a waiting period for membership. A waiting period required by the Commission may not exceed 30 days.

SOURCE: G.S. 18A-30.

COMMENTS: This is an expanded statement of the authority to adopt regulations, except for the provisions on private clubs which are essentially the same as present G.S. 18A-30 (2).

"ARTICLE 11.

"Commercial Activity.

"§ 18-1100. Commercial permits--(a) Type Permits. The Commission may issue the following permits:

- (1) Unfortified winery
- (2) Fortified winery
- (3) Limited winery
- (4) Brewery
- (5) Distillery
- (6) Wine importer
- (7) Wine wholesaler
- (8) Malt beverages importer
- (9) Malt beverages wholesaler
- (10) Bottler
- (11) Salesman

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

SOURCE: G.S. 18A-37, -38.

COMMENTS: Subsection (a) merely lists the types of commercial permits which are issued. Subsection (b) expands current law by including distillers.

"§ 18-1101. 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 as authorized by the ABC law, except that wine may be sold to nonresident wholesalers only when the purchase is not for resale in this State;

(3) Sell 'short-filled' packages, on which State taxes have been or will be paid, to its employees for the use of the employees, their families and guests in this State;

(4) 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. 18-1001(4).

A sale under subdivision (3) is not a retail or wholesale sale under the ABC law.

SOURCE: G.S. 18A-36.1, -38(a)(1)a.

COMMENTS: This section continues present law.

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

(1) Manufacture, purchase, import and transport brandy and other materials used in the manufacture of fortified wine;

(2) Sell, deliver and ship fortified wine in closed containers to wholesalers as authorized by the ABC law, except that wine may be sold to nonresident wholesalers only when the purchase is not

for resale in this State;

(3) Sell 'short-filled' packages, on which State taxes have been or will be paid, to its employees for the use of the employees, their families and guests in this State;

(4) 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. 18-1001(6).

A sale under subdivision (3) is not a retail or wholesale sale under the ABC law.

SOURCE: G.S. 18A-36.1, -38(a)(1)b.

COMMENTS: This section continues present law.

"§ 18-1103. Authorization of limited winery permit.--(a) Special Qualifications for Permit. Any resident winery holding an unfortified winery permit 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 samples of the wine to taste. The Commission may issue rules regulating these tastings.

SOURCE: G.S. 18A-38(a)(1)c.

COMMENTS: This section continues present law, although the word "grain" in subsection (a) is new.

"§ 18-1104. 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 as authorized by the ABC law, 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 it 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, 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) is not a retail or wholesale sale under the ABC law.

SOURCE: G.S. 18A-38(a)(2)a.

COMMENTS: This section continues present law.

"§ 18-1105. 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, as long as 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 permit before manufacturing any alcohol. The permit entitles the permit holder to perform only those acts allowed by the Federal Operating Permit, and all conditions of the Federal Operating Permit apply to the State permit.

SOURCE: G.S. 18A-29, -66, -69.

COMMENTS: This section continues present law.

"§ 18-1106. 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.

SOURCE: G.S. 18A-38(a)(1)d.

COMMENTS: This section continues present law.

"§ 18-1107. 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 as authorized by the ABC law;

(3) Furnish and sell wine to its employees subject to the rules of the Commission and Department of Revenue;

(4) Furnish wine to guests and any other person who does not hold an ABC permit for promotional purposes in locations where sale is legal, subject to rules of the Commission.

SOURCE: G.S. 18A-38(a)(1)e., f.

COMMENTS: This section combines the permits for wholesale unfortified wine and wholesale fortified wine into a single

permit. Subdivision (4) extends to wine wholesalers the right to furnish wine for promotion. Beer wholesalers already have the right to furnish beer for promotion.

"§ 18-1108. 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.

SOURCE: G.S. 18A-38(a) (2) d.

COMMENTS: This section continues present law.

"§ 18-1109. Authorization of malt beverages wholesaler permit.--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 in closed containers, for purpose of resale, to wholesalers or retailers as authorized by the ABC law;
- (3) Furnish and sell malt beverages to its employees subject to the rules of the Commission and the Department of Revenue;
- (4) Furnish malt beverages to guests and any other person who

does not hold an ABC permit for promotional purposes in locations where sale is legal, subject to the rules of the Commission.

SOURCE: G.S. 18A-38(a)(2)b.

COMMENTS: This section continues present law. Contrary to present wording, the statute tracks the language of the wine wholesaler permit authorization.

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

(1) Receive, possess and transport shipments of malt beverages, fortified wine and unfortified wine;

(2) Bottle, sell, deliver and ship malt beverages, fortified wine, and unfortified wine in closed containers to wholesalers as authorized by the ABC law;

(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, their families and guests in this State.

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

SOURCE: G.S. 18A-38(a)(2)c.

COMMENTS: This section continues present law.

"§ 18-1111. 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 fortified and unfortified wine for a wine wholesaler.

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

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

SOURCE: G.S. 18A-42.

COMMENTS: This section continues present law.

"§ 18-1112. Commercial transportation.--(a) Permit Required. Unless a person holds a permit which otherwise allows him to transport more than 20 liters of unfortified wine, 80 liters of malt beverages other than draft malt beverages in kegs, or four liters of fortified wine or spirituous liquor, each person transporting liquors 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 liquor into, out of and between points in this State without a permit. Those companies 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 common carriers to make reports of shipments.

(d) Motor Vehicle Carriers. Liquors 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 liquors 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 liquor 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 liquor shall possess a bill of lading,

invoice or other memorandum of shipment showing the name and address of the person from whom the liquors 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 liquors are being shipped.

(5) The driver or person in charge of each vehicle transporting the liquor 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 is 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 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) Special Requirements for 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 (\$1000.00) 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) Transportation of Malt Beverages and Wine by Boats. The owner or operator of any boat may transport malt beverages, fortified wine and unfortified wine over the waters of this State if he satisfies all requirements of subsection (d).

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

SOURCE: G.S. 18A-29, -41.

COMMENTS: This section combines the commercial transportation statutes into one section.

"§ 18-1113. Exclusive outlets prohibited.--(a) Misdemeanor. It is a misdemeanor for any manufacturer, bottler or wholesaler of any liquor, or any officer, director, or affiliate thereof, either directly or indirectly to:

- (1) Require that a liquor retailer purchase any liquor from that person to the full or partial exclusion of any other liquor offered for sale by other persons in this State; or
- (2) Have any direct or indirect financial interest in the business of any liquor retailer in this State or in the premises where the business of any liquor retailer in this State is conducted; or
- (3) Lend or give to any liquor retailer in this State or his employee or to the owner of the premises where the business of any liquor retailer in this State is conducted any money, services, 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.

SOURCE: G.S. 18A-49.

COMMENTS: This section expands the prohibitions of this provision to manufacturers, bottlers, and wholesalers of all

liquors (the present statute is limited to beer and wine). The language of subdivision (3) has been changed to make clear that the thing of value "kicked back" need not relate to the retailer's business.

"§ 18-1114. Coercion and unjust franchise cancellations prohibited.--(a) Definition of Franchise. It is 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) Misdemeanor. It is a misdemeanor 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 law or any rule of the Department of Revenue; or
- (2) Cancel or terminate without cause 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. The superior court has the jurisdiction and power to enjoin the termination of a franchise or contract between a wholesaler and a brewery upon the application of the aggrieved wholesaler. The terms of the injunction shall provide that no brewery may supply the customers or territory of the aggrieved wholesaler by any means 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.

SOURCE: G.S. 18A-50.

COMMENTS: The law enforcement authority covered by the first sentence of G.S. 18A-50(d) has been dropped since that subject is covered in Article 5 of the new Chapter.

Effect on Local Acts

One of the committee's major concerns was to reduce the number of local bills dealing with ABC law. Several sections of the rewrite, therefore, give cities and counties the power to do many of the things previously handled by the General Assembly. For example, section 18-501 allows a local ABC board to contract with a local law enforcement agency for its ABC law enforcement.

Uniformity of ABC systems was another goal of the committee. This goal frequently proved to be elusive since this State's ABC laws are based on a local option system. However, in certain basic areas such as powers, duties, and financial matters the committee decided that all systems should be alike.

Based on these considerations, the committee decided that any local acts in conflict with the following new sections be repealed:

18-201

18-204

18-701

18-702

18-800

18-801

18-802

18-803

18-805

In addition, all local acts in conflict with G.S. 18-700 would be repealed except those in conflict with G.S. 18-700(b) or (c). The effect of these exceptions is to preserve the present method of appointment of local board members if that method is set by local act.

All elections will be held under the provisions of this act, and therefore any local bill in conflict with G.S. 18-600, 18-601, 18-602, 18-603, or 18-604 would be repealed. However, if a jurisdiction has voted "wet" under a local act and would not be eligible to hold another election under G.S. 18-600, then that jurisdiction may hold a subsequent election regardless of G.S. 18-600.

SUMMARY OF MAJOR CHANGES

This rewrite of Chapter 18A makes wholesale wording and organizational changes as well as several changes in the substantive law. Among the more significant of the substantive changes (with the applicable sections in parentheses) are the following:

- (1) The ABC Commission (as the State Board is renamed in the rewrite) is given the authority to compromise alleged permit violations and to fine a permit holder who violates the terms of his permit. (18-104)
- (2) The conflict of interest section applicable to public officials and employees has been expanded to include provisions on self-dealing and dealing for the benefit of relatives. (18-201)
- (3) The cap on the quantity of spiritous liquor and fortified wine which a person may possess in his home has been removed. (18-301)
- (4) A court may revoke a person's driver's license for up to six months if he fraudulently uses a driver's license to make an underage purchase of any liquor. In addition, any person who loans his driver's license to the underage person may also lose his license. (18-302)

- (5) A cap is placed on the amount of beer a person may purchase and transport. (18-303 and 18-400)
- (6) Responsibility for State alcohol law enforcement is shifted from the Department of Crime Control and Public Safety to the Commission. (18-500)
- (7) Procedures are specified to cover cooperation between local ABC officers from different counties and among local, State, and federal agencies. (18-500)
- (8) Forfeiture procedures, generally not dealt with in Chapter 18A, are spelled out in detail and revised. One revision allows forfeiture of a vehicle only if it was used to transport nontaxpaid liquor. (18-503 and 18-504)
- (9) Many of the general election procedures of Chapter 163 are made applicable to ABC elections. (18-601)
- (10) The percentage of voters required to call a liquor election by petition is raised to twenty-five percent (25%). (18-601)
- (11) City ABC boards are recognized. This change will mean that local bills will not be required before a city can vote on ABC stores. (18-600 and 18-700)
- (12) An establishment which has a mixed beverage permit thereby qualifies for an on-premises beer permit. (18-603)
- (13) The appointing body for local ABC board members is set as the local governing body, and that body can,

- on its own motion, set the size of the local board at either three or five members. (18-700)
- (14) A local ABC board is given specific authorization to invest and borrow money. (18-702)
- (15) Rules on ABC profit distribution are clarified, and, if all recipients of the profits agree, a local unit can change the distribution formula on its own motion. (18-702)
- (16) Local board finances are subject to more accountability. Certain information required in annual reports will make the task of finding how a local board spends its money easier. (18-702 and 18-805)
- (17) A new procedure will allow local boards to merge. (18-703)
- (18) Application fees for many retail permits are increased. (18-902)
- (19) Commercial permits are changed from annual to permanent. (18-903, 18-1100)
- (20) Administrative hearings by the Commission are brought under the general procedures of the Administrative Procedure Act. One major exception to that rule is that an appeal from a hearing before the Commission is held in the county in which the liquor establishment is located. (18-906)
- (21) While the permits currently issued generally

remain as they are, certain "one-time" permits are established. Among these new permits is one allowing a nonprofit organization to sell alcoholic beverages at a fund-raising event. (18-1002)

LEGISLATIVE RESEARCH COMMISSION

STUDY COMMITTEE ON ALCOHOLIC BEVERAGE CONTROL LAWS

Members Appointed By
Speaker of House of Representatives

Representative James F. Morgan, Co-Chairman
Post Office Box 2756
High Point, North Carolina 27261

Representative Ted Kaplan
600 Jonestown Road
Winston-Salem, North Carolina 27103

Representative Henry Tyson
Route 7, Box 284
Fayetteville, North Carolina 28306

Representative Roy Spoon
307 Lincoln Street
Charlotte, North Carolina 28203

Members Appointed By
Senate President Pro Tempore

Senator Robert S. Swain, Co-Chairman
301 Northwestern Bank Building
Asheville, North Carolina 28801

Senator Benjamin D. Schwartz
205 Forest Hills Drive
Wilmington, North Carolina 28403

Senator George W. Marion, Jr.
Post Office Box 618
Dobson, North Carolina 27017

Representative Robert A. Jones
8 Broadway
Forest City, North Carolina 28043

LRC MEMBER RESPONSIBLE FOR STUDY: Senator Charles E. Vickery
139 E. Rosemary Street
Chapel Hill, North Carolina 27514

STAFF:

A. W. Turner, Jr. - Legislative Services Office, Bill Drafting Division
Michael Crowell - Institute of Government
Ann L. Sawyer - Institute of Government

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1979
RATIFIED BILL

RESOLUTION 75

HOUSE JOINT RESOLUTION 279

A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE ALCOHOLIC BEVERAGE CONTROL LAWS, AND APPROPRIATING FUNDS FOR THAT PURPOSE.

Whereas, the passage of the local option mixed beverage act in 1978 has focused attention on North Carolina's alcoholic beverage control laws; and

Whereas, many legislators and other citizens have found those laws confusing and sometimes contradictory; and

Whereas, numerous amendments have been made to the alcoholic beverage control statutes since the last major recodification in 1971; and

Whereas, both before and after the 1971 revision there have been many local acts passed which alter State ABC laws for particular cities and counties;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The Legislative Research Commission is authorized to study North Carolina's alcoholic beverage control laws, including but not limited to Chapter 18A of the General Statutes and the liquor taxation provisions of Chapter 105. The commission may recommend to the 1981 General Assembly a general revision of those laws to make them more readable, to remove inconsistencies, and to establish, to the extent possible, a

uniform statewide system of regulation which discourages the excessive use of alcohol. In making this study the commission may consider, but not be limited to, the following issues: (a) whether it is time to eliminate brown-bagging altogether in North Carolina; (b) what role cities and counties should have in the issuance of ABC permits; (c) whether the same categories of places should be eligible for all ABC permits rather than having different kinds of premises eligible for beer, wine, brown-bagging and mixed drink permits; (d) whether State law should provide for the establishment of city ABC systems; (e) under what conditions cities should be eligible to vote separately from counties on ABC issues; (f) the organization of the State ABC Board and the method by which its members are appointed; (g) the relationship between State alcohol law enforcement agents and local ABC officers and the jurisdiction of each; (h) whether provision should be made for consolidation of ABC systems which operate only one or two stores and have a small profit margin; (i) the size of fees for ABC permits and local licenses; (j) whether the State ABC Board should have authority to levy fines or impose other administrative punishments other than suspension or revocation of the permit; (k) public consumption of liquor and whether a State law is needed on consumption of beer and wine; (l) the use of liquor revenues for alcoholism programs; (m) taxation of liquor and the division of that revenue between State and local governments; and (n) advertising of liquor.

Sec. 2. In making its study, the commission might bear in mind what the 1936 Commission to Study the Control of Alcohol

Beverages in North Carolina identified as the two basic requirements of any control system: ". . . one was to restrict the use of alcohol within as narrow a limit as possible on account of the well recognized evils of the intemperate use of alcohol as a beverage; and second, to avoid excessive restrictions which, however sincere, would result in defeating the desired ends."

Sec. 3. In making its study, the commission may also study the effects of the provisions of Senate Bill 857 of the 1979 General Assembly; and may study the conversion of all State taxes on intoxicating liquor (as defined in G.S. Chapter 18A) to a proof-liter system and devise a plan to implement that conversion.

Sec. 4. The commission may make an interim report to the General Assembly as soon as possible after the convening of the 1980 session.

Sec. 5. The commission may request the assistance of appropriate public or private agencies or individuals for research, drafting, or other services necessary to complete this study.

Sec. 6. This resolution is effective upon ratification.

In the General Assembly read three times and ratified,
this the 8th day of June, 1979.

JAMES C. GREEN

James C. Green

President of the Senate

CARL J. STEWART, JR.

Carl J. Stewart, Jr.

Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1979



SENATE BILL 857

Short Title: ABC Enforcement Powers Restored.

(Public)

Sponsors: Senator Swain.

Referred to: Judiciary I.

May 14, 1979

A BILL TO BE ENTITLED

AN ACT TO RESTORE THE LAW ENFORCEMENT POWERS OF THE STATE ABC BOARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-475(a) (5) is hereby repealed.

Sec. 2. G.S. 143A-243 is hereby repealed.

Sec. 3. G.S. 18A-15(1) is hereby rewritten to read as follows:

"(1) to see that all the laws relating to the sale and control of intoxicating liquor are observed and performed;"

Sec. 4. G.S. 18A-15(12) is hereby amended on lines 14 and 15 by deleting the following "the Alcohol Law Enforcement Division,"

Sec. 5. G.S. 18A-15(15) is hereby rewritten to read as follows:

"(15) To appoint or commission ABC officers, hearing officers, and other enforcement personnel authorized by Part 2 of this Article."

Sec. 6. G.S. 18A-19 is hereby rewritten to read as follows:

1 "§ 18A-19. Director of Enforcement; hearing officers; State
2 ABC officers.-- (a) The State Board of Alcoholic Control shall
3 appoint a person to be known as 'Director of the Enforcement
4 Division', who shall be in charge of the administration of such
5 Division. The Board may also appoint one or more assistants to
6 the Director and one or more hearing officers, all of whom shall
7 have full authority to make investigations, hold hearings, and
8 make findings of fact. Upon the approval by the State Board of
9 the findings and orders of suspension or revocation of the permit
10 of any licensee, the findings of the assistant or the hearing
11 officer shall be deemed to be the findings and the order of the
12 Board.

13 (b) The State Board may commission as State ABC officers such
14 regular employees (including the Chairman) as the Board
15 designates for the purpose of enforcing the provisions of this
16 Chapter. Such employees shall receive no additional compensation
17 for performing the duties of ABC officer.

18 Any regular employee of the State ABC Board commissioned as an
19 ABC officer shall have statewide jurisdiction. Such officers
20 shall have the same powers and authorities as peace officers
21 generally, and may arrest without a warrant as authorized in G.S.
22 15-41.

23 Each employee of the State Board commissioned as an ABC officer
24 under this Chapter shall give a bond with a good surety, payable,
25 to the State of North Carolina, in a sum not less than one
26 thousand dollars (\$1,000), conditioned upon the faithful
27 discharge of his duty as an ABC officer. The bond shall be duly
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1 approved by and filed in the office of the Insurance Commissioner
2 and received in evidence in all actions and proceedings in this
3 State.

4 Before any employee of the State Board, commissioned as an ABC
5 officer, shall exercise any power of arrest under this Chapter,
6 he shall take the oath required of public officers before an
7 officer authorized to administer oaths.

8 (c) All State ABC officers shall have authority to investigate
9 the operation of the licensed premises of all persons licensed
10 under this Chapter, to examine the books and records of such
11 licensee, to procure evidence with respect to the violation of
12 this Chapter or any rules and regulations adopted thereunder, and
13 to perform such other duties as the Board may direct. ABC
14 officers shall have the right to enter any licensed premises in
15 the State in the performance of their duty, at any hour of the
16 day or night. Refusal by a permittee or by any employee of a
17 permittee to permit such officers to enter the premises shall be
18 cause for revocation or suspension of the permit of the
19 permittee.

20 (d) Notices, orders, or demands issued by the State Board for
21 the surrender of permits may be served and executed by the ABC
22 officers employed by the Board, and these officers, while serving
23 and executing such notices, orders, or demands, shall have all
24 the power and authority possessed by peace officers when serving,
25 and executing warrants charging violation of the criminal laws of
26 the State."

27 Sec. 7. G.S. 18A-22(a) is hereby amended on line 2 by
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1 deleting the words "alcohol law enforcement agents" and inserting
2 in lieu thereof the word "State".

3 Sec. 8. G.S. 18A-38(a) is hereby amended by rewriting
4 the third sentence thereof to read as follows: "The Board shall
5 inquire into the character of the applicant and the location,
6 general appearance, and type of place of business of the
7 applicant."

8 Sec. 9. G.S. 18A-39(b) is hereby amended on lines 9 and
9 10 by deleting the words "Alcohol Law Enforcement Division of the
10 Department of Crime Control and Public Safety" and inserting in
11 lieu thereof the words "Enforcement Division".

12 Sec. 10. G.S. 18A-41(a) as the same appears in the 1978
13 Replacement Volume 1C is hereby amended in the first sentence of
14 the first unnumbered paragraph and in the sixth sentence of the
15 second unnumbered paragraph by deleting the words "alcohol law
16 enforcement agents" and by inserting in lieu thereof the words
17 "State ABC officers"; and is further amended in the fourth
18 sentence of the second unnumbered paragraph by deleting the words
19 "alcohol law enforcement agents" and inserting in lieu thereof
20 the words "State ABC officers".

21 Sec. 11. G.S. 18A-47(a)(2) is hereby rewritten to read
22 as follows:

23 "(2) To test wines (fortified or unfortified) possessed or
24 offered for sale or sold in this State and to make chemical or
25 laboratory analyses of said wines or to determine in any other
26 manner whether said wines meet the standards established by said
27 Board; to confiscate and destroy any wines (fortified or
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1 unfortified) not meeting said standards; to enter and inspect any
2 premises upon which said wines (fortified or unfortified) are
3 possessed or offered for sale; and to examine any and all books,
4 records, accounts, invoices, or other papers or data which in any
5 way relate to the possession or sale of said wines."

6 Sec. 12. G.S. 18A-47(c) is hereby rewritten to read as
7 follows:

8 "(c) Manufacturers, wineries, bottlers, and wholesalers, or
9 any other persons selling wine (fortified or unfortified) for the
10 purpose of resale, whether on their own account or for or on
11 behalf of other persons, shall, upon request of the State ABC
12 Board, furnish a verified statement of a laboratory analysis of
13 any wine sold or offered for sale by such persons."

14 Sec. 13. G.S. 18A-47(e) is hereby repealed.

15 Sec. 14. G.S. 18A-48 is hereby rewritten to read as
16 follows:

17 "§ 18A-48. Standards for malt beverages.--The State Board of
18 Alcoholic Control shall have the authority to fix such standards
19 for malt beverages as are determined by the Board to best protect
20 the public against beverages containing deleterious, harmful, or
21 impure substances or elements, or an improper balance of
22 elements, and against spurious or imitation beverages unfit for
23 human consumption; to test malt beverages possessed or offered
24 for sale or sold in this State and to make chemical or laboratory
25 analyses of such beverages or to determine in any other manner
26 whether such beverages meet the standards established by said
27 Board; to confiscate and destroy any such beverages not meeting
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1 such standards; to enter and inspect any premises on which such
2 beverages are possessed or offered for sale; to examine any and
3 all books, records, accounts, invoices, or other papers or data
4 which in any way relate to the possession or sale of such
5 beverages; and to take all proper steps for the prosecution of
6 persons violating the provisions of this section and for carrying
7 out the provisions and intent thereof; provided that the owner of
8 said beverages confiscated shall be served with written notice to
9 show cause within five days before the Board why the order should
10 not be made permanent; and no beverages shall be destroyed until
11 the order is final; provided further that the said owner shall
12 have the right to appeal from the ruling of the said Board to the
13 superior court of the county in which the said beverages were
14 confiscated within 10 days from the final order of the said
15 Board.

16 Manufacturers, bottlers, and wholesalers, or any other persons
17 selling malt beverages for the purpose of resale, whether on
18 their own account or for or on behalf of other persons, shall,
19 upon the request of the State ABC Board, furnish a verified
20 statement of a laboratory analysis of any malt beverages sold or
21 offered for sale by such persons."

22 Sec. 15. G.S. 18A-50(d) is hereby amended on line 1 by
23 deleting the words "Alcohol Law Enforcement Division of the
24 Department of Crime Control and Public Safety" and inserting in
25 lieu thereof the words "State Board of Alcoholic Control"; and is
26 further amended on line 5 by deleting the words "of Alcoholic
27 Control".

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1 Sec. 16. G.S. 18A-54(a) is hereby amended on lines 5
2 and 6 by deleting the words "and the Secretary of Crime Control
3 and Public Safety".

4 Sec. 17. G.S. 18A-55 is hereby amended on line 6 by
5 deleting the words "alcohol law enforcement agents", and by
6 inserting in lieu thereof the words "representatives of the
7 Board".

8 Sec. 18. All funds to be appropriated to the Department
9 of Crime Control and Public Safety for the fiscal year 1979-80
10 and for the fiscal year 1980-81 for use by the Department in
11 carrying out the functions performed prior to April 1, 1977, by
12 the State Board of Alcoholic Control Enforcement Division,
13 Department of Commerce are hereby transferred to the Department
14 of Commerce to implement this act.

15 Sec. 19. This act shall become effective July 1, 1979.

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PERSONS APPEARING BEFORE THE COMMITTEE

Steve Albright	Department of State Treasurer
John M. Alexander	Wake County ABC Board
George M. Antley	Wrightsville Beach Police Department
J. Ruffin Bailey	North Carolina Beer Wholesalers
Richard Barnes	North Carolina House of Representatives
J. A. Burnette	Wake County ABC Law Enforcement
M. F. Carter	Wake County ABC Law Enforcement
Charles Clements	Town of Blowing Rock
Burch Compton	Orange County ABC Law Enforcement
Walter E. Crissman	North Carolina Christian Action League
David S. Crump	Department of Justice
Ann Fulton	State ABC Board
J. D. Foust	Department of State Treasurer
Greg G. Gaskins	Department of State Treasurer
Richard F. Ghoens	North Carolina Beer Wholesalers
Lloyd O. Godwin	Alcohol Law Enforcement Division
Alex B. Gray. Jr.	Carolina Distributing Company and Blue Ridge Wine
Lynn E. Gunn	Mental Health Study Commission
Butch Gunnells	North Carolina Association of County Commissioners
Wade Hargrove	North Carolina Convenience Stores Association and North Carolina Association of Broadcasters
Bill Hester	State ABC Board

Sneed High	North Carolina Association for Wine
Douglas Johnston	Department of Justice
Richard R. Juby	Distilled Spirits Council
Roland W. Leary	Durham County ABC Law Enforcement
Robert H. Massey	Wake County ABC Board
James Mault	Rowan County ABC Law Enforcement
Armistead J. Maupin	Wine Institute
D. P. McFarland	North Carolina Christian Action League
Robert A. Mellot	Department of Crime Control and Public Safety
Burley Mitchell	Department of Crime Control and Public Safety
Donald M. Murray	Alcohol Law Enforcement Division
S. P. O'Brien	Durham County ABC Law Enforcement
Ron Olsen	University of North Carolina Association of Student Governments
Tom Parker	Alcohol Law Enforcement Division
Carlyn Poole	North Carolina Convenience Stores Association
William H. Potter, Jr.	Blowing Rock Beverage Association
Bill Powell	State ABC Board
Coy C. Privette	North Carolina Christian Action League
Frank Redding	North Carolina House of Representatives
Ray Shaw	North Carolina Association of ABC Boards
Don M. Sider	Lamb Distributing Company
Bob A. Surratt	Alcohol Law Enforcement Division
Joe Wall	North Carolina Association of ABC Boards
T. Jerry Williams	North Carolina Restaurant Association

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 EXECUTIVE VICE-PRESIDENT
 AND SECRETARY
 RALEIGH

RICHARD F. GHOENS
 FIELD COORDINATOR
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NORTH CAROLINA BEER WHOLESALERS ASSOCIATION

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February 21, 1980

DIRECTORS

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 H. H. MIMS, RALEIGH
 H. DEAN PROCTOR, HICKORY
 BEN R. RUDISILL, II, GASTONIA
 RICHARD H. ZIGLAR, WINSTON-SALEM
 CLYDE L. SULLIVAN, FAYETTEVILLE
 IMMEDIATE PAST PRESIDENT

TO : Legislative Study Committee
 FROM : J. Ruffin Bailey and Richard F. Goens
 SUBJECT: Disposition of Seized Liquors

Committee draft, Section 18-53 "Disposition of Seized Liquor," provides that malt beverages which have been seized by law enforcement officers could be ordered sold by a district or superior court judge. Under present law malt beverages seized must be destroyed.

The reason for the present law is that malt beverages, unlike wine or spirituous liquor, are perishable, having a much faster deterioration rate. Malt beverages have their best taste and quality the day of production. Each day after production malt beverage deterioration doubles. Each brewery has established dates upon which their products should not be sold to the consumer. The code dates will vary from 90 to 120 days from production depending on the brewery. It takes an average of 30 to 45 days for malt beverages to be produced, delivered to a wholesale distributor and sold to a retailer, leaving a shelf life of 45 to 90 days.

Consumers expect and demand that the products have a refreshing and palatable taste. The brewery and wholesalers, whose livelihood depends on the consumer, must guarantee the quality and freshness of their particular brand.

To provide for quality control the brewers have established an acceptable maximum retail shelf life. Wholesalers train their personnel to rotate stock in retail outlets to provide quality products to the consumer. If a wholesaler or brewery personnel finds products beyond the code date, the products are required to be picked up immediately by the wholesaler at his cost. Proper rotation of malt beverages is considered an important measurement of an employees job performance in beer wholesaling.

Quality control of malt beverages can only be done through providing fresh and palatable beer to the consumer. If malt beverages were allowed to be resold after seizure by law enforcement officers, these products in almost every instance would be far below accepted quality control standards and be very unfair to the consumer, brewery and wholesaler suppliers.



DEPARTMENT OF STATE AUDITOR

ADMINISTRATION BUILDING, ROOM 204

116 WEST JONES STREET

RALEIGH, N. C. 27611

DIVISIONS

FISCAL AUDITS
OPERATIONAL AUDITS
ACCOUNTING SYSTEMS
CETA AUDITS
N. C. FIREMEN'S PENSION FUND

HENRY L. BRIDGES

STATE AUDITOR

JOHN W. BUCHAN

Chief Deputy State Auditor

R. LEE BOWMAN

Deputy State Auditor

CARLYLE C. CRAVEN

Director Of Audits

BRADLEY M. BOIE

Director Of Systems

SAMUEL K. NEWMAN

Director Of Operational Audits

STAN C. WESNER

Director Of Ceta Audits

March 24, 1980

Sen. Robert Swain
Rep. Jim Morgan
Co-Chairman
Legislative Study Commission on ABC Laws
Raleigh, North Carolina

Gentlemen:

This office is currently engaged in an Operational Audit of the Alcoholic Beverage Control (ABC) Systems in North Carolina. Our Operational Audits are examinations of a program's policies, procedures, and controls for the purpose of determining if improvements are possible in the economy, efficiency, or effectiveness of operations. More specifically, the primary objectives of this audit are as follows:

1. To obtain an understanding of the organization and operating policies of the State ABC and the Local ABC Systems.
2. To determine composition of all funds collected, and if the distribution/investment of these monies is being done in the most efficient manner.
3. To determine if accounting and reporting procedures could be improved by a uniform system.
4. To review procedures of local boards for investment of funds.
5. To formulate suggestions to maximize earnings from available cash within the system.
6. To review selected segments of the operations for possible improvements in economy, efficiency, or effectiveness.

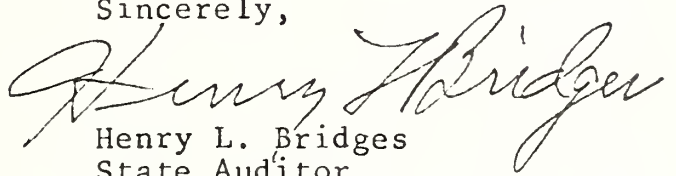
During our preliminary research of this topic, we of course became aware of the efforts of your commission in revising the ABC statutes. We have reviewed the minutes of your past meetings and talked briefly with Mr. A. W. Turner, Jr. and Mr. Mike Crowell concerning the commission's purpose and goals.

The objective of this letter is to make you aware of our involvement in this audit and to offer to cooperate fully with

Sen. Robert Swain
Rep. Jim Morgan
March 24, 1980
Page 2

your commission. Our desire is to coordinate our reviews so as to eliminate any possible duplication of efforts. Should you have questions or need information which could best be provided by our staff, we will be pleased to supply it. Please contact us if you have any questions or comments.

Sincerely,



Henry L. Bridges
State Auditor

HLB/WAB/be

cc: Mike Crowell
A. W. Turner, Jr.
Marvin Speight



North Carolina General Assembly
House of Representatives
State Legislative Building
Raleigh 27611

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COMMITTEES:
ALCOHOLIC BEVERAGE CONTROL,
CHAIRMAN
JUDICIARY III, VICE CHAIRMAN
BANKS AND THRIFT INSTITUTIONS
FINANCE
HIGHWAY SAFETY
LAW ENFORCEMENT
STATE GOVERNMENT

March 27, 1980

The Honorable Henry L. Bridges, Auditor
State of North Carolina
Administrative Building, Room 204
116 West Jones Street
Raleigh, N. C. 27611

Dear Mr. Bridges:

Thank you for your letter of March 24, 1980, in regard to the legislative study on ABC laws. I sincerely appreciate your reviewing our work and hope that if you have some suggestions in regard to a statutory change, you will not hesitate to contact me in this regard.

Thanks again, and I look forward to seeing you in the near future. With best personal regards, I remain

Yours very truly,

James F. Morgan

JFM:bh

cc: Mike Crowell
A. W. Turner, Jr.

HOWARD KRAMER
ATTORNEY AT LAW
SUITE 1212
BRANCH BANK & TRUST BUILDING
RALEIGH, NORTH CAROLINA 27601

November 4, 1980

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RALEIGH, NC 27602
TELEPHONE
(919) 821-4600

Mr. A. W. Turner
Legislative Research Commission
State Legislative Building
Raleigh, North Carolina 27611

Dear A. W.:

Thank you for your notification concerning the A.B.C. Laws Study Committee.

I will make every effort to be present on both Friday, November 14th and Friday, November 21st to attend these meetings.

In the event that I cannot attend these meetings, I would like to call to your attention a problem involving operations of licensed premises, and the transfer of permits.

At this point, North Carolina law does not allow the "transfer" of an A.B.C. permit. Thus, if a bar or restaurant is sold, an entire new application must be filed, a temporary permit issued, an investigation done, and the final license issued.

This method may have been workable in the past ... but we have seen recent examples where "corporate transfers" would facilitate matters greatly.

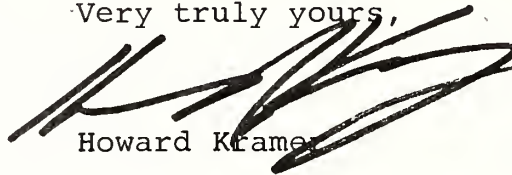
Recently I participated in the acquisition of Creative Dining, Inc. (Darryl's and Pizza Inns of North Carolina) by General Mills, Inc. Here was a clear case of the purchase by one Triple-A rated nationally known corporation of a highly regarded and well established local company. This transfer based on the above-cited law, necessitated thousands of sheets of paper, and hundreds of supervisory and legal hours. In many states, a transfer of this magnitude would be handled by use of a "corporate transfer document" which would list the permits being transferred from one corporation to the other. Needless to say, the A.B.C. Board would establish rules and regulations for use of such "corporate transfers" and could set certain standards when they felt the corporate transfer was appropriate.

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Please let me call to your attention the fact that the payment of fees for a new license is not in question. Rather, most major corporations are fully prepared to pay any necessary licensing fee. However, the amount of paper work and man hours expended is truly unnecessary (especially when management will remain the same) and we believe that this change would modernize our law in North Carolina and be to the best interests of our permit holders.

I sincerely hope you will take this matter into consideration.

Very truly yours,



Howard Kramer

HK/gcb

cc: Mr. Jerry Williams
Executive Director
N.C. Restaurant Association

Mr. George Burkhardt
Creative Dining Food Systems, Inc.

Mr. George Williams
Vice President and Group Corporate Counsel
General Mills Restaurant Group, Inc.

