

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1382*

Short Title: Local Govt ABC Permit Involvement.

(Public)

Sponsors: Representatives Hurley; Morris, Saunders, Warner, and Luebke.

Referred to: Alcohol Beverage Control, if favorable, Finance.

April 29, 1999

A BILL TO BE ENTITLED

AN ACT TO ENHANCE LOCAL GOVERNMENT POWERS RELATIVE TO THE
ALCOHOL BEVERAGE CONTROL LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-104(a) reads as rewritten:

"(a) Penalties. – For any violation of the ABC laws, a conviction of an offense set forth in Chapter 90 of the General Statutes, or a conviction of a felony, the Commission may take any of the following actions against a permittee:

- (1) Suspend the permittee's permit for a specified period of time not longer than three years;
- (2) Revoke the permittee's permit;
- (3) Fine the permittee up to five hundred dollars (\$500.00) for the first violation, up to seven hundred fifty dollars (\$750.00) for the second violation, and up to one thousand dollars (\$1,000) for the third violation; or
- (4) Suspend the permittee's permit under subdivision (1) and impose a fine under subdivision (3)."

Section 2. G.S. 18B-110 is amended by adding a new subsection to read:

"(b) When the governing body of any municipality, or the mayor of the municipality, upon delegation of authority from the governing body in the manner

1 allowed by G.S. 14-288.12, finds that a "public disturbance" as defined in G.S. 14-288.1,
2 exists or is imminent anywhere within the jurisdiction of the municipality, the governing
3 body or authorized mayor may order the cessation of all sales of alcoholic beverages.

4 The order of the municipality shall apply to those portions of the municipality
5 designated in the order, for the duration of the declared public disturbance, which shall be
6 no longer than 12 hours unless extended by additional order. Law enforcement personnel
7 with authority within the municipality shall be authorized to enforce the order in the same
8 manner as an order declaring a state of emergency."

9 Section 3. G.S. 18B-901 reads as rewritten:

10 **"§ 18B-901. Issuance of permits.**

11 (a) ~~Who Issues.~~—All ABC permits shall be issued by the Commission. Purchase-
12 transportation permits shall be issued by local boards under G.S. 18B-403.

13 (b) ~~Notice to Local Government.~~—Before issuing a retail ABC permit, other than
14 a:

- 15 (1) ~~Special occasion permit under G.S. 18B-1001(8);~~
- 16 (2) ~~Limited special occasion permit under G.S. 18B-1001(9);~~
- 17 (3) ~~Temporary permit under G.S. 18B-905; or~~
- 18 (4) ~~Special one-time permit under G.S. 18B-1002~~

19 ~~for an establishment, the Commission shall give notice of the permit application to the~~
20 ~~governing body of the city in which the establishment is located. If the establishment is~~
21 ~~not inside a city, the Commission shall give notice to the governing body of the county.~~
22 ~~The Commission shall allow the local governing body 15 days from the time the notice~~
23 ~~was mailed or delivered to file written objection to the issuance of the permit. To be~~
24 ~~considered by the Commission, the objection shall state the facts upon which it is based.~~

25 (c) ~~Factors in Issuing Permit.~~—Before issuing a permit, the Commission shall be
26 satisfied that the applicant is a suitable person to hold an ABC permit and that the
27 location is a suitable place to hold the permit for which he has applied. To be a suitable
28 place, the establishment shall comply with all applicable building and fire codes. Other
29 factors the Commission shall consider in determining whether the applicant and the
30 business location are suitable are:

- 31 (1) ~~The reputation, character, and criminal record of the applicant;~~
- 32 (2) ~~The number of places already holding ABC permits within the~~
33 ~~neighborhood;~~
- 34 (3) ~~Parking facilities and traffic conditions in the neighborhood;~~
- 35 (4) ~~Kinds of businesses already in the neighborhood;~~
- 36 (5) ~~Whether the establishment is located within 50 feet of a church or~~
37 ~~public school or church school;~~
- 38 (6) ~~Zoning laws;~~
- 39 (7) ~~The recommendations of the local governing body; and~~
- 40 (8) ~~Any other evidence that would tend to show whether the applicant~~
41 ~~would comply with the ABC laws and whether operation of his business~~
42 ~~at that location would be detrimental to the neighborhood.~~

1 ~~(d) Commission's Authority. — The Commission shall have the sole power, in its~~
2 ~~discretion, to determine the suitability and qualifications of an applicant for a permit.~~

3 ~~(a) Who Issues. — All ABC permits shall be issued by the Commission. Purchase-~~
4 ~~transportation permits shall be issued by local boards under G.S. 18B-403.~~

5 ~~(b) Certificate of Suitability. — Before submitting an application for a retail ABC~~
6 ~~permit to the Commission, including an application for a temporary retail permit, the~~
7 ~~applicant shall obtain a certificate of suitability from the municipality where the applicant~~
8 ~~intends to locate his business stating that the municipality has determined that the~~
9 ~~proposed location is a suitable place for an ABC permit. If the applicant does not intend~~
10 ~~to locate his business within a municipality or its extraterritorial jurisdiction, the~~
11 ~~applicant shall obtain the certificate of suitability from the governing body of the county~~
12 ~~where his business is to be located. The following permits shall be exempted from this~~
13 ~~section:~~

14 ~~(1) Limited special occasion permit under G.S. 18B-1001(9);~~

15 ~~(2) Special one-time permit under G.S. 18B-1002; or~~

16 ~~(3) All permits listed under G.S. 18B-1100.~~

17 ~~(b1) Factors in Issuing Certificate of Suitability. — To be a suitable place, the~~
18 ~~establishment shall comply with all applicable building, fire, and zoning codes. Zoning~~
19 ~~ordinances may restrict the places where permittees may operate, may require separation~~
20 ~~or concentration of permitted locations, and may impose other reasonable restrictions or~~
21 ~~conditions. The local governing body may also consider:~~

22 ~~(1) The number of places already holding ABC permits within the~~
23 ~~neighborhood;~~

24 ~~(2) Parking facilities and traffic conditions in the neighborhood;~~

25 ~~(3) Kinds of businesses already in the neighborhood;~~

26 ~~(4) Whether the establishment is located within 50 feet of a church, public~~
27 ~~school, daycare facility, or church school;~~

28 ~~(5) Whether the proposed use will adversely impact on local government~~
29 ~~services and facilities;~~

30 ~~(6) Existing conditions in the neighborhood; and~~

31 ~~(7) Whether operation of his business at that location would be detrimental~~
32 ~~to the neighborhood. The applicant may enter into a binding agreement~~
33 ~~with the local governing body to operate under certain conditions or~~
34 ~~restrictions that will lessen the detriment to the neighborhood. Any~~
35 ~~such agreement shall describe the consequences of a violation of the~~
36 ~~agreement.~~

37 ~~(b2) Time Limit for Local Government's Decision. — The applicable local governing~~
38 ~~body or its designee shall grant or deny a certificate of suitability for a retail permit based~~
39 ~~on written materials submitted to it by the applicant and others. The local body or~~
40 ~~designee shall make its decision on these written materials with 60 days after receiving an~~
41 ~~application for a certificate of suitability. If the local body or designee determines that~~
42 ~~the location is not suitable, it shall state the reasons for its decisions. The local governing~~
43 ~~body may appoint a person, board, commission, or other entity to carry out this function.~~

1 **(b3) Certificate of Suitability; Appeal.** – An applicant may appeal for a hearing to
2 the local governing board or its designee. Appeal from this hearing shall be by certiorari
3 to Superior Court in the county in which the business is to be located. The provisions of
4 Chapter 150B shall not apply to this section.

5 **(c) Factors in Issuing Permit.** – No retail ABC permit shall be issued by the
6 Commission without the applicant first obtaining a certificate of suitability. Before
7 issuing a permit, the Commission shall also be satisfied that the applicant is a suitable
8 person to hold an ABC permit and that the premises is a suitable place to hold the permit
9 for which he has applied. Other factors the Commission shall consider in determining
10 whether the applicant and the business premises are suitable are:

- 11 **(1)** The reputation, character, and criminal record of the applicant;
- 12 **(2)** Any other evidence that would tend to show whether the applicant
13 would comply with the ABC laws; and
- 14 **(3)** Any other rules governing the licensed premises as defined by the
15 Commission.

16 **(d) Commission's Authority.** – The Commission shall have the sole power, in its
17 discretion, to determine the suitability and qualifications of an applicant for a permit.

18 **(e) Local Government's Authority.** – The applicable local governing body shall
19 have the sole power, in its discretion, to determine the suitability and qualifications of a
20 location for a retail permit. As part of this authority, local governments may issue, and
21 enforce the requirements of, special use permits or other similar zoning permits relating
22 to location of ABC permittees. Appeals of zoning regulations or special-use permits shall
23 be to superior court and shall be brought in the same manner that appeals of other zoning
24 actions or zoning permits are brought."

25 Section 4. G.S. 18B-902 is amended by adding a new subsection to read:

26 **"(h) A local governing body may charge a fee up to one hundred dollars (\$100.00)**
27 **to applicants seeking a certificate of suitability."**

28 Section 5. G.S. 18B-904(e) reads as rewritten:

29 **"(e) Business or Location No Longer Suitable.** – The Commission may suspend or
30 revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of
31 the General Statutes, it finds that the location occupied by the permittee is no longer a
32 suitable place to hold ABC permits or that the operation of the business with an ABC
33 permit at that location is detrimental to the neighborhood. A municipality or county may
34 also commence a contested case under Chapter 150B to require the Commission to
35 revoke a permit on these grounds. No order revoking or suspending an ABC permit
36 pursuant to this section may be made except upon substantial evidence admissible under
37 G.S. 150B-29(a)."

38 Section 6. G.S. 18B-904(f) is repealed.

39 Section 7. Chapter 18B of the General Statutes is amended by adding a new
40 section to read:

41 **"§ 18B-907. Delegation of local government powers.**

1 Every local governing body having duties under this Article for determining
2 suitability of retail locations may designate a local board, person, commission, or other
3 entity to exercise that authority."

4 Section 8. This act becomes effective December 1, 1999.