

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1174

Short Title: ABC Permit Issuance and Compliance. (Public)

Sponsors: Representatives Ross; B. Allen and Stam.

Referred to: Alcoholic Beverage Control.

April 12, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE ALCOHOLIC BEVERAGE CONTROL LAWS
3 REGARDING THE ISSUANCE AND REVOCATION OF PERMITS AT
4 LOCATIONS THAT ARE OR BECOME UNSUITABLE TO HOLD ABC
5 PERMITS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 18B-101 is amended by adding a new subdivision to read:

8 "(12a) 'Premises' means all areas, whether inside or outside the licensed
9 premises, where the permittee has control of the property through a
10 lease, deed, or other legal process."

11 **SECTION 2.** G.S. 18B-300(b) reads as rewritten:

12 "(b) Consumption at Off-Premises Establishment. – It shall be unlawful to
13 consume, or for a permittee or his designee to allow the consumption of, malt beverages
14 or unfortified wine on any premises having only an off-premises permit for the kind of
15 alcoholic beverage being consumed."

16 **SECTION 3.** G.S. 18B-901(c) reads as rewritten:

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

- 27 (1) The reputation, character, and criminal record of the applicant;
28 (2) The number of places already holding ABC permits within the
29 neighborhood;

- 1 (3) Parking facilities and traffic conditions in the neighborhood;
2 (4) Kinds of businesses already in the neighborhood;
3 (5) Whether the establishment is located within 50 feet of a church or
4 ~~public school or church school~~, public school, or any nonpublic
5 school as defined by Part 1 or Part 2 in Article 39 of Chapter 115C;
6 (6) Zoning laws;
7 (7) The recommendations of the local governing body; and
8 (8) Any other evidence that would tend to show whether the applicant
9 would comply with the ABC laws ~~and whether operation of his~~
10 ~~business at that location would be detrimental to the~~
11 ~~neighborhood.laws.~~
12 (9) Whether the operation of the applicant's business at that location
13 would be detrimental to the neighborhood including evidence
14 admissible under G.S. 150B-29(a) of the following:
15 a. Past revocations, suspensions, and violations of ABC laws by
16 prior permittees at this location; or
17 b. Evidence of illegal drug activity on or about the licensed
18 premises; or
19 c. Evidence of fighting, disorderly conduct, and other dangerous
20 activities on or about the licensed premises."

21 **SECTION 4.** G.S. 18B-901(d) reads as rewritten:

22 "(d) Commission's Authority. – The Commission shall have the sole power, in its
23 discretion, to determine the suitability and qualifications of an applicant for a permit and
24 the location to which the permit may be issued."

25 **SECTION 5.** G.S. 18B-904(e) reads as rewritten:

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

- 27 (1) The Commission may suspend or revoke a permit issued by it if, after
28 compliance with the provisions of Chapter 150B of the General
29 Statutes, it finds that the location occupied by the permittee is no
30 longer a suitable place to hold ABC permits or that the operation of the
31 business with an ABC permit at that location is detrimental to the
32 neighborhood. ~~No order revoking or suspending an ABC permit~~
33 ~~pursuant to this section may be made except upon substantial evidence~~
34 ~~admissible under G.S. 150B-29(a).~~
35 (2) The Commission shall suspend or revoke a permit issued by it if a
36 permittee is in violation of G.S. 18B-309. Notwithstanding subdivision
37 (e)(1) of this section, the Commission shall, by order and without prior
38 hearing, summarily suspend or revoke a permit issued by it if a
39 permittee is in violation of G.S. 18B-309(c) when, prior to the period
40 of time for which the audit is to be conducted, the city council has filed
41 information designating the location of the Urban Redevelopment
42 Area as required under G.S. ~~14-309(a)~~ 18B-309(a) and has provided
43 actual notice to permittees located in the Urban Redevelopment Area
44 that they are located in such an area and must abide by

1 G.S. 18B-309(c). Upon entry of a summary order under this
2 subdivision, the Commission shall promptly notify all interested
3 parties that the order has been entered and of the reasons therefore.
4 The order will remain in effect until it is modified or vacated by the
5 Commission. The permittee may, within 30 days after receipt of notice
6 of the order, make written request to the Commission for a hearing on
7 the matter. If a hearing is requested, after compliance with the
8 provisions of Chapter 150B of the General Statutes, the Commission
9 shall issue an order to affirm, reverse, or modify its previous action.

10 (3) The Commission shall revoke a permit issued by it if, after complying
11 with the provisions of Chapter 150B of the General Statutes and,
12 without a finding of mitigating evidence or circumstances, it finds
13 evidence of the following:

14 a. Evidence that the permittee or his employee has been found
15 responsible by a court of competent jurisdiction or the
16 Commission for two or more violations of this Chapter within a
17 12-month period; or

18 b. Evidence that the permittee or his employee has been found
19 responsible by a court of competent jurisdiction or the
20 Commission for two or more violations of knowingly allowing
21 a violation of any other law that governs the conduct of a
22 permittee, his employees, or patrons on the ABC licensed
23 premises pursuant to G.S. 18B-1005(a)(2), (a)(3), or
24 G.S. 18B-1005.1 within a 12-month period.

25 The permittee and the owner of the property have the sole
26 responsibility to monitor the conduct on the licensed premises pursuant
27 to G.S. 18B-1005(b) and G.S. 19-1.

28 (4) Notwithstanding the provisions of subdivisions (3)(a) and (3)(b) of this
29 section, if a permittee takes reasonable remedial action to prevent
30 recurring violations of this Chapter and any other laws governing the
31 conduct of the permittee and his employees, the provisions of
32 subsection (3) shall not apply and the Commission shall proceed under
33 subsection (1) of this section.

34 (5) Reasonable remedial action defined. – Reasonable remedial action is
35 an alcohol education and safety program that educates permittees and
36 their employees who are involved in the sales or service of alcoholic
37 beverages about the following:

38 a. The provisions of G.S. 18B-120, et seq., regarding civil liability
39 of the permittee.

40 b. The provisions of G.S. 18B-300 and G.S. 18B-303 regarding
41 the purchase and possession of alcoholic beverages and what
42 amounts may be lawfully purchased and transported.

- 1 c. The provisions of G.S. 18B-302 regarding sales, giving, and
2 aiding and abetting an underage person to acquire alcoholic
3 beverages.
- 4 d. The provisions of G.S. 18B-305 regarding sales to intoxicated
5 patrons.
- 6 e. Civil and criminal liability for both the server and the permittee.
- 7 f. The provisions of G.S. 18B-1004 regarding the hours of sale
8 and consumption.
- 9 g. The provisions of G.S. 18B-1005, 18B-1005.1, and 18B-1006
10 regarding the conduct of the permittee, the permittee's
11 employees, and patrons on an ABC licensed premises.

12 State Alcohol Law Enforcement agents, local ABC officers, and local
13 law enforcement officers designated as local ABC enforcement
14 officers may also give a program to a permittee upon request. These
15 programs shall be considered reasonable remedial action. In order to
16 be considered a reasonable remedial action, the training shall take
17 place within 30 working days of the notification of a violation by an
18 Alcohol Law Enforcement agent, a local Alcoholic Beverage Control
19 law enforcement officer, or the Commission. If the Commission finds
20 that reasonable remedial action has been taken by the permittee, the
21 provisions of subdivision (1) of this subsection will apply to any
22 revocation or suspension process by the Commission. The
23 Commission shall maintain a copy of any documentation offered as
24 proof of remedial action to show who gave the program, who attended
25 the program, and whether or not it was given and attended within the
26 required 30-day limit. If a permittee falsifies or in any other way
27 misrepresents to the Commission that reasonable remedial action has
28 been taken and evidence shows that it was not, the Commission shall
29 summarily suspend the ABC Permits issued to the permittee at the
30 location in question pending a hearing pursuant to Chapter 150B of the
31 General Statutes."

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