

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 800
SENATE BILL 380

AN ACT TO MAKE AMENDMENTS TO THE ALCOHOLIC BEVERAGE
CONTROL LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-102(a) reads as rewritten:

"(a) General Prohibition. – It shall be unlawful for any person to manufacture, sell, transport, import, ~~export~~, deliver, furnish, purchase, consume, or possess any alcoholic beverages except as authorized by the ABC law."

Sec. 2. G.S. 18B-1101(2) reads as rewritten:

"(2) Sell, deliver and ship unfortified wine in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that wine may be sold to exporters and nonresident wholesalers only when the purchase is not for resale in this State;"

Sec. 3. G.S. 18B-1102(2) reads as rewritten:

"(2) Sell, deliver and ship fortified wine in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that wine may be sold to exporters and nonresident wholesalers only when the purchase is not for resale in this State;"

Sec. 4. G.S. 18B-1104(3) reads as rewritten:

"(3) Sell, deliver and ship malt beverages in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that malt beverages may be sold to exporters and nonresident wholesalers only when the purchase is not for resale in this State;"

Sec. 5. G.S. 18B-1105(2) reads as rewritten:

"(2) Sell, deliver and ship spirituous liquor in closed containers at wholesale to exporters and 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;"

Sec. 6. G.S. 18B-208(b) reads as rewritten:

"(b) Special Fund. – A special fund in the office of the State Treasurer, the ABC Commission Fund, is created. On and after November 1, 1982, all moneys derived from the collection of bailment charges and bailment surcharges shall be deposited in the ABC Commission Fund for the purpose of carrying out the provisions of this Chapter. The ABC Commission Fund shall be subject to the provisions of the Executive Budget Act except that no unexpended surplus of this fund shall revert to the General Fund. The

Commission shall fix the level of the bailment surcharges at an amount calculated to cover operating expenses of the Commission and the retirement of bonds issued for construction of a Commission warehouse and offices. Upon payment of the bonds issued pursuant to this section, the Commission shall reduce the bailment surcharge to an amount no greater than necessary to pay operating expenses of the Commission as authorized by the General Assembly. The Commission may impose a bailment surcharge only when revenue bonds issued under this section are outstanding.

All moneys credited to the ABC Commission Fund shall be used to carry out the intent and purposes of the ABC law in accordance with plans approved by the North Carolina ABC Commission and the Director of the Budget, and all these funds are appropriated, reserved, set aside, and made available until expended for the administration of the ABC law."

Sec. 7. G.S. 18B-902(f) reads as rewritten:

"(f) Fee Not Refundable. – The fee required by subsection (d) shall not be refunded."

Sec. 8. G.S. 18B-903 is amended by adding two new subsections that read:

"(f) Lost Permits. – The Commission may issue duplicate ABC permits for an establishment when the existing valid permits have been lost or damaged. The request for duplicate permits shall be on a form provided by the Commission, certified by the permittee and the Alcohol Law Enforcement Division, and accompanied by a fee of ten dollars (\$10.00).

(g) Name Change. – The Commission may issue new permits to a permittee upon application and payment of a fee of ten dollars (\$10.00) for each location when the permittee's name or name of the business is changed."

Sec. 9. G.S. 18B-904(a) reads as rewritten:

"(a) Who Receives Permit.–An ABC permit ~~shall be issued to the owner of an establishment and~~ shall authorize the permitted activity only on the premises of the establishment named in the permit. An ABC permit shall be issued to the owner of the business conducted on the premises, or to the management company employed to independently manage and operate the business. The ABC Commission may determine if a management agreement delegates sufficient managerial control and independence to a manager or management company to require an ABC permit to be issued to the manager."

Sec. 10. G.S. 18B-904 is amended by adding a new subsection to read:

"(e) Business or Location No Longer Suitable. – The Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the General Statutes, it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood. No order revoking or suspending an ABC permit pursuant to this section may be made except upon substantial evidence admissible under G.S. 150B-29(a)."

Sec. 11. G.S. 18B-1001(8) reads as rewritten:

"(8) Special Occasion Permit. – A special occasion permit authorizes the host of a reception, party or other special occasion, with the permission

of the permittee, to bring ~~unfortified wine,~~ fortified wine and spirituous liquor onto the premises of the business and to serve the same to his guests. The permit may be issued for any of the following:

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

Sec. 12. G.S. 18B-1001(9) reads as rewritten:

"(9) Limited Special Occasion Permit. – A limited special occasion permit authorizes the permittee to bring ~~unfortified wine,~~ fortified wine and spirituous liquor onto the premises of a business, with the permission of the owner of that property, and to serve those alcoholic beverages to the permittee's guests at a reception, party, or other special occasion being held there. The permit may be issued to any individual other than the owner or possessor of the premises. An applicant for a limited special occasion permit shall have the written permission of the owner or possessor of the property on which the special occasion is to be held."

Sec. 13. G.S. 18B-1002(a)(2) reads as rewritten:

"(2) A permit may be issued to a nonprofit organization to allow the retail sale of malt beverages, unfortified wine, or fortified wine, or to allow brown-bagging, at a single fund-raising event of that organization. A permit for this purpose shall not be issued ~~to the same organization more than once during each quarter, and shall not be issued~~ for the sale of any kind of alcoholic beverage in a jurisdiction where the sale of that alcoholic beverage is not lawful."

Sec. 14. G.S. 18B-1002(a)(5) reads as rewritten:

"(5) A permit may be issued to a nonprofit organization or a political organization to serve wine, malt beverages, and spirituous liquor at a ticketed event held to allow the organization to raise funds. For purposes of this subdivision 'nonprofit organization' means an organization that is exempt from taxation under Section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code ~~and~~ or is exempt under similar provisions of the General Statutes as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic, or veterans' organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad or a bona fide homeowners' or property owners' association. For purposes of this subdivision 'political organization' means an organization covered by the provisions of G.S. 163-96(a)(1) or (2) or a campaign organization established by or for a person who is a candidate who has filed a notice of candidacy, paid the filing fees or filed the required petition, and been certified as a candidate ~~for one of the offices listed in G.S. 163-1.~~

The issuance of this permit will also allow the issuance of a purchase-transportation permit under G.S. 18B-403 and 18B-404 and the use for culinary purposes of spirituous liquor lawfully purchased for use in mixed beverages."

Sec. 15. G.S. 18B-1007 is amended by adding a new subsection to read:

"(d) When a temporary mixed beverages permit has been issued to a new permittee for the continuation of a business at the same location, the permittee going out of business may sell existing mixed beverages inventory to the new permittee, and the Commission may request that the local ABC board restamp the inventory with the mixed beverages tax stamp assigned by the local board to the new mixed beverages permittee."

Sec. 16. G.S. 18B-1207 is amended by adding a new subsection to read:

"(c) For any violation of the provisions of this Article, the Commission may take any of the following actions against the winery:

- (1) Suspend the winery's permit for a specific period of time no longer than three years;
- (2) Revoke the winery's permit;
- (3) Issue an order suspending the shipment of the winery's products to one or more designated sales territories previously served by the wholesaler who has been terminated or who is the successor in interest to a wholesaler who sold the winery's products in the designated territory.
- (4) Impose a monetary penalty up to fifteen thousand dollars (\$15,000) for a first offense and up to thirty-five thousand (\$35,000) for the second offense. All monetary penalties imposed by this subsection shall be remitted by the Commission to the State Treasurer for the General Fund.

In any case in which the Commission is entitled to suspend or revoke a permit, the Commission may accept from the winery an offer in compromise to pay a monetary penalty. The Commission may either accept a compromise or revoke a permit, but not both. The Commission may accept a compromise and suspend the permit in the same case."

Sec. 17. G.S. 18B-1207 is amended by adding a new subsection to read:

"(d) Notwithstanding the choice of forum agreed to by the parties, venue for all actions under this Article shall be determined by the trial judge based upon the convenience of witnesses and the promotion of the ends of justice."

Sec. 18. G.S. 18B-1006(i)(3) reads as rewritten:

"(3) A boat may hold the permits listed in G.S. 18B-1001(1), (3), (5), (7), and (10), but no off-premises sales may be made pursuant to those permits."

Sec. 19. G.S. 18B-700 is amended by adding a new subsection to read:

"(j) Limited Liability. – A person serving as a member of a local ABC board shall be immune individually from civil liability for monetary damages, except to the extent

covered by insurance, for any act or failure to act arising out of this service, except where the person:

- (1) Was not acting within the scope of his official duties;
- (2) Was not acting in good faith;
- (3) Committed gross negligence or willful or wanton misconduct that resulted in the damage or injury;
- (4) Derived an improper personal financial benefit from the transaction; or
- (5) Incurred the liability from the operation of a motor vehicle.

The immunity in this subsection is personal to the members of local ABC boards, and does not immunize the local ABC board for liability for the acts or omissions of the members of the local ABC board."

Sec. 21. G.S. 18B-800 reads as rewritten:

"§ 18B-800. Sale of alcoholic beverages in ABC stores.

(a) Spirituous Liquor. – Except as provided in Article 10 of this Chapter, spirituous liquor may be sold only in ABC stores operated by local boards.

(b) Fortified Wine. – In addition to spirituous liquor, ABC stores may sell fortified wine.

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

(d) Expansion of Credit Sales Prohibited. – No ABC store, not currently authorized, may sell any alcoholic beverage by the use of credit cards."

Sec. 22. This act is effective upon ratification except for Sections 8 and 16 which shall become effective October 1, 1989, and except for Section 17 which applies only to actions brought after the date of ratification. Section 21 shall expire on June 1, 1991.

In the General Assembly read three times and ratified this the 12th day of August, 1989.