

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1174
Committee Substitute Favorable 4/27/05
Senate Commerce Committee Substitute Adopted 8/10/05

Short Title: ABC Permit Issuance and Compliance.

(Public)

Sponsors:

Referred to:

April 12, 2005

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

- (1) The reputation, character, and criminal record of the ~~applicant;~~ applicant.
- (2) The number of places already holding ABC permits within the ~~neighborhood;~~ neighborhood.
- (3) Parking facilities and traffic conditions in the ~~neighborhood;~~ neighborhood.

- 1 (4) Kinds of businesses already in the ~~neighborhood;~~neighborhood.
- 2 (5) Whether the establishment is located within 50 feet of a church ~~or~~
3 ~~public school or church school;~~ public school, or any nonpublic
4 school as defined by Part 1 or Part 2 of Article 39 of Chapter 115C of
5 the General Statutes.
- 6 (6) Zoning ~~laws;~~laws.
- 7 (7) The recommendations of the local governing ~~body;~~ andbody.
- 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 any of the following:
 - 15 a. Past revocations, suspensions, and violations of ABC laws by
16 prior permittees related to or associated with the applicant, or a
17 business with which the applicant is associated, within the
18 immediate preceding 12-month period at this location.
 - 19 b. Evidence of illegal drug activity on or about the licensed
20 premises.
 - 21 c. Evidence of fighting, disorderly conduct, and other dangerous
22 activities on or about the licensed premises."

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

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

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

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

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

1 Area as required under G.S. ~~14-309(a)~~ 18B-309(a) and has provided
2 actual notice to permittees located in the Urban Redevelopment Area
3 that they are located in such an area and must abide by
4 G.S. 18B-309(c). Upon entry of a summary order under this
5 subdivision, the Commission shall promptly notify all interested
6 parties that the order has been entered and of the reasons therefore.
7 The order will remain in effect until it is modified or vacated by the
8 Commission. The permittee may, within 30 days after receipt of notice
9 of the order, make written request to the Commission for a hearing on
10 the matter. If a hearing is requested, after compliance with the
11 provisions of Chapter 150B of the General Statutes, the Commission
12 shall issue an order to affirm, reverse, or modify its previous action.

13 (3) Notwithstanding G.S. 18B-906, the Commission shall revoke a permit
14 issued by it if, after complying with the provisions of Chapter 150B of
15 the General Statutes and without a finding of mitigating evidence or
16 circumstances, it finds evidence that the permittee or the permittee's
17 employee has been found responsible by a court of competent
18 jurisdiction or the Commission for two or more violations on separate
19 dates of knowingly allowing a violation of the gambling, disorderly
20 conduct, prostitution, controlled substance, or felony criminal
21 counterfeit trademark laws as those offenses are prohibited pursuant to
22 G.S. 18B-1005(a)(2), (a)(3), or (b), G.S. 18B-1005.1, or
23 G.S. 80-11.1(b)(2) or (3), at a single ABC-licensed premises within a
24 12-month period. The permittee and the owner of the property have the
25 responsibility to monitor the conduct on the licensed premises pursuant
26 to G.S. 18B-1005(b) and G.S. 19-1. Revocation of permits pursuant to
27 this subdivision shall only apply to the permits issued to the location
28 where the violations occurred."

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

30 "(a) Act Applies. – An ABC permit is a "license" within the meaning of
31 G.S. 150B-2, ~~and~~ and, except for revocation pursuant to G.S. 18B-904(e)(3), a
32 Commission action on issuance, suspension, or revocation of an ABC permit, other than
33 a temporary permit issued under G.S. 18B-905, is a "contested case" subject to the
34 provisions of Chapter 150B except as provided in this section."

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