

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 944\*

Short Title: ABC Regulation and Reform. (Public)

Sponsors: Representatives Boles and Davis (Primary Sponsors).

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Alcoholic Beverage Control, if favorable, Judiciary I

May 17, 2018

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE PERMITTING ENFORCEMENT AUTHORITY OF THE ABC COMMISSION AND TO MAKE OTHER CHANGES TO THE ABC LAWS, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 18B-104 reads as rewritten:

"§ 18B-104. **Administrative penalties.**

(a) Penalties. – For any violation of the ABC laws, 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)~~ one thousand three hundred and fifty dollars (\$1,350) for the first violation, up to ~~seven hundred fifty dollars (\$750.00)~~ two thousand one hundred dollars (\$2,100) for the second violation, and up to ~~one thousand dollars (\$1,000)~~ two thousand seven hundred and fifty dollars (\$2,750) for the third violation; or
- (4) Suspend the permittee's permit under subdivision (1) and impose a fine under subdivision (3).
- (5) Impose conditions on the operation hours of the business.

(b) Compromise. – In any case in which the Commission is entitled to suspend or revoke a permit, the Commission may accept from the permittee an offer in compromise to pay a penalty of not more than ~~five thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000). The Commission may either accept a compromise or revoke a permit, but not both. The Commission may accept a compromise and suspend the permit in the same case.

(c) Fines and Penalties to Treasurer. – The clear proceeds of fines and penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(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 or suspension of a permit under subsection (a) includes automatic revocation or suspension, respectively, of any other ABC permit held by the same permittee for the same establishment."



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1           **SECTION 2.** G.S. 18B-900 reads as rewritten:

2   "**§ 18B-900. Qualifications for permit.**

3       (a)   Requirements. – To be eligible to receive and to hold an ABC permit, a person must  
4 satisfy all of the following requirements:

- 5           (1)   Be at least 21 years old, unless the person is ~~a manager~~an owner of a business  
6 ~~selling only malt beverages and unfortified wine,~~seeking to sell alcoholic  
7 beverages in which case the person shall be at least ~~19~~25 years old.
- 8           (2)   Be a resident of North Carolina unless:
- 9               a.     He is an officer, director or stockholder of a corporate applicant or  
10                permittee and is not a manager or otherwise responsible for the  
11                day-to-day operation of the business; or
- 12               b.     He has executed a power of attorney designating a qualified resident  
13                of this State to serve as attorney in fact for the purposes of receiving  
14                service of process and managing the business for which permits are  
15                sought; or
- 16               c.     He is applying for a nonresident malt beverage vendor permit, a  
17                nonresident wine vendor permit, or a vendor representative permit.
- 18           (3)   Not have been convicted of a felony within three years, and, if convicted of a  
19                felony before then, has had his citizenship restored.
- 20           (4)   Not have been convicted of an alcoholic beverage offense within two years.
- 21           (5)   Not have been convicted of a misdemeanor controlled substance offense  
22                within two years.
- 23           (6)   Not have had an alcoholic beverage permit revoked within three years, except  
24                where the revocation was based solely on a permittee's failure to pay the  
25                annual registration and inspection fee required in G.S. 18B-903(b1).
- 26           (7)   Not have, whether as an individual or as an officer, director, shareholder or  
27                manager of a corporate permittee, an unsatisfied outstanding final judgment  
28                that was entered against him in an action under Article 1A of this Chapter.
- 29           (8)   Be current in filing all applicable tax returns to the State and in payment of all  
30                taxes, interest, and penalties that are collectible under G.S. 105-241.22. This  
31                subdivision does not apply to the following ABC permits:
- 32                a.     Special occasion permit under G.S. 18B-1001(8).
- 33                b.     Limited special occasion permit under G.S. 18B-1001(9).
- 34                c.     Special one-time permit under G.S. 18B-1002.
- 35                d.     Salesman permit under G.S. 18B-1111.

36 To avoid undue hardship, however, the Commission may decline to take action under  
37 G.S. 18B-104 against a permittee who is in violation of subdivisions (3), (4), or (5).

38       (b)   Definition of Conviction. – A person has been "convicted" for the purposes of  
39 subsection (a) when he has been found guilty, or has entered a plea of guilty or nolo contendere,  
40 and judgment has been entered against him. A felony conviction in another jurisdiction shall  
41 disqualify a person from being eligible to receive or hold an ABC permit if his conduct would  
42 also constitute a felony in North Carolina. A conviction of an alcoholic beverage offense or  
43 misdemeanor drug offense in another jurisdiction shall disqualify a person from being eligible to  
44 receive or hold an ABC permit if his conduct would constitute an offense in North Carolina,  
45 unless the Commission determines that under North Carolina procedure judgment would not  
46 have been entered under the same circumstances. Revocation of a permit in another jurisdiction  
47 shall disqualify a person if his conduct would be grounds for revocation in North Carolina.

48       (c)   Who Must Qualify; Exceptions. – For an ABC permit to be issued to and held for a  
49 business, each of the following persons associated with that business must qualify under  
50 subsection (a):

- 51           (1)   The owner of a sole proprietorship;

- 1 (2) Each member of a firm, association or general partnership;  
2 (2a) Each general partner in a limited partnership;  
3 (2b) Each manager and any member with a ~~twenty five percent (25%)~~ ~~twenty five percent (25%)~~ fifty-one  
4 percent (51%) or greater interest in a limited liability ~~company;~~company. If  
5 any manager or member does not hold fifty-one percent (51%) individually,  
6 then fifty-one percent (51%) of all ownership shall qualify under subsection  
7 (a) of this section.  
8 (3) Each officer, director and owner of ~~twenty five percent (25%)~~ ~~twenty five percent (25%)~~ fifty-one  
9 percent (51%) or more of the stock of a corporation except that the  
10 requirement of subdivision (a)(1) does not apply to such an officer, director,  
11 or stockholder unless he is a manager or is otherwise responsible for the  
12 day-to-day operation of the ~~business;~~business. If any officer, director, or  
13 owner does not hold fifty-one percent (51%) individually, then fifty-one  
14 percent (51%) of all ownership of the stock of a corporation shall qualify  
15 under subsection (a) of this section.  
16 (4) The manager of an establishment operated by a corporation other than an  
17 establishment with only off-premises malt beverage, off-premises unfortified  
18 wine, or off-premises fortified wine permits;  
19 (5) Any manager who has been empowered as attorney-in-fact for a nonresident  
20 individual or partnership.

21 (d) Manager of Off-Premises Establishment. – Although he need not otherwise meet the  
22 requirements of this section, the manager of an establishment operated by a corporation and  
23 holding off-premises permits for malt beverages, unfortified wine, or fortified wine shall be at  
24 least 19 years old and shall meet the requirements of subdivisions (3), (4), (5) and (6) of  
25 subsection (a).

26 (e) Convention Centers. – With the approval of the Commission, the manager of a  
27 convention center may contract with another person to provide food and beverages at conventions  
28 and banquets at the convention center, and that person may engage in the activities authorized by  
29 the convention center's permit, under conditions set by the Commission. The person with whom  
30 the convention center contracts must meet the qualifications of this section.

31 (f) Procedure to Confirm State Tax Compliance. – Upon request of the Commission, the  
32 Department of Revenue must provide information to the Commission to confirm a person's  
33 compliance with subdivision (a)(8) of this section. If the Department of Revenue notifies the  
34 Commission that a person is not in compliance, then the Commission may not issue or renew the  
35 person's permit until the Commission receives notice from the Department of Revenue that the  
36 person is in compliance. The requirement to pay all taxes, interest, and penalties may be satisfied  
37 by an operative agreement under G.S. 105-237 covering any amounts that are collectible under  
38 G.S. 105-241.22. Chapter 150B of the General Statutes does not apply to a Commission action  
39 on issuance, suspension, or revocation of an ABC permit under subdivision (a)(8) of this section."

40 **SECTION 3.** G.S. 18B-901 reads as rewritten:

41 **"§ 18B-901. Issuance of permits.**

42 (a) Who Issues. – All ABC permits shall be issued by the Commission.  
43 Purchase-transportation permits shall be issued by local boards under G.S. 18B-403.

44 (b) Notice to Local Government. – Before issuing a retail ABC permit, other than a:

- 45 (1) Special occasion permit under G.S. 18B-1001(8);  
46 (2) Limited special occasion permit under G.S. 18B-1001(9);  
47 (3) Temporary permit under G.S. 18B-905; or  
48 (4) Special one-time permit under G.S. 18B-1002

49 for an establishment, the Commission shall give notice of the permit application to the governing  
50 body of the city in which the establishment is located. If the establishment is not inside a city,  
51 the Commission shall give notice to the governing body of the county. The Commission shall

1 allow the local governing body 15 days from the time the notice was mailed or delivered to file  
2 written objection to the issuance of the permit. To be considered by the Commission, the  
3 objection shall state the facts upon which it is based.

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

- 13 (1) The reputation, character, and criminal record of the applicant.
- 14 ~~(2) The number of places already holding ABC permits within the neighborhood.~~
- 15 ~~(3) Parking facilities and traffic conditions in the neighborhood.~~
- 16 ~~(4) Kinds of businesses already in the neighborhood.~~
- 17 ~~(5) Whether the establishment is located within 50 feet of a church, public school,~~  
18 ~~or any nonpublic school as defined by Part 1 or Part 2 of Article 39 of Chapter~~  
19 ~~115C of the General Statutes.~~
- 20 (6) Zoning laws, laws, including consideration of the number of places already  
21 holding ABC permits within the neighborhood, parking facilities, and traffic  
22 conditions in the neighborhood, types of businesses already in the  
23 neighborhood, and whether the establishment is located within 50 feet of a  
24 church, public school, or any nonpublic school as defined in Part 1 or Part 2  
25 of Article 39 of Chapter 115C of the General Statutes.
- 26 (7) The recommendations of the local governing body.
- 27 (8) Any other evidence that would tend to show whether the applicant would  
28 comply with the ABC laws.
- 29 (9) Whether the operation of the applicant's business at that location would be  
30 detrimental to the neighborhood, including evidence admissible under  
31 G.S. 150B-29(a) of any of the following:
  - 32 a. Past revocations, suspensions, and violations of ABC laws by prior  
33 permittees related to or associated with the applicant, or a business  
34 with which the applicant is associated, within the immediate preceding  
35 12-month period at this location.
  - 36 b. Evidence of illegal drug activity on or about the licensed premises.
  - 37 c. Evidence of fighting, disorderly conduct, and other dangerous  
38 activities on or about the licensed premises.

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

43 **SECTION 4.** G.S. 18B-904 reads as rewritten:

44 "**§ 18B-904. Miscellaneous provisions concerning permits.**

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

- 1 (b) Posting Permit. – Each ABC permit that is held by an establishment shall be posted  
2 in a prominent place on the premises.
- 3 (c) Business Not Operating. – An ABC permit shall automatically expire and shall be  
4 surrendered to the Commission if the person to whom it is issued does not commence the activity  
5 authorized by the permit within six months of the date the permit is effective. Before the  
6 expiration of the six-month period, the Commission may waive this provision in individual cases  
7 for good cause.
- 8 (d) Notice of Issuance. – Upon issuing a permit the Commission shall send notice of the  
9 issuance, with the name and address of the permittee and the establishment, to:
- 10 (1) The Department of Revenue;
- 11 (2) The local board, if one exists, for the city or county in which the establishment  
12 is located;
- 13 (3) The governing body, sheriff, and tax collector of the county in which the  
14 establishment is located;
- 15 (4) If the establishment is located inside a city, the governing body, chief of  
16 police, and tax collector for the city; and
- 17 (5) The ALE Branch.
- 18 (e) Business or Location No Longer Suitable. –
- 19 (1) The Commission may suspend or revoke a permit issued by it ~~if, after~~  
20 ~~compliance with the provisions of Chapter 150B of the General Statutes, it~~  
21 an Administrative Law Judge finds that the location occupied by the permittee  
22 is no longer a suitable place to hold ABC permits or that the operation of the  
23 business with an ABC permit at that location is detrimental to the  
24 neighborhood.
- 25 (2) The Commission shall suspend or revoke a permit issued by it if a permittee  
26 is in violation of G.S. 18B-309. Notwithstanding subdivision (e)(1) of this  
27 section, the Commission shall, by order and without prior hearing, summarily  
28 suspend or revoke a permit issued by it if a permittee is in violation of  
29 G.S. 18B-309(c) when, prior to the period of time for which the audit is to be  
30 conducted, the city council has filed information designating the location of  
31 the Urban Redevelopment Area as required under G.S. 18B-309(a) and has  
32 provided actual notice to permittees located in the Urban Redevelopment Area  
33 that they are located in such an area and must abide by G.S. 18B-309(c). Upon  
34 entry of a summary order under this subdivision, the Commission shall  
35 promptly notify all interested parties that the order has been entered and of the  
36 reasons therefore. The order will remain in effect until it is modified or vacated  
37 by the Commission. The permittee may, within 30 days after receipt of notice  
38 of the order, make written request to the ~~Commission~~Office of Administrative  
39 Hearings for a hearing on the matter. ~~If a hearing is requested, after~~  
40 ~~compliance with the provisions of Chapter 150B of the General Statutes, the~~  
41 ~~Commission~~The Administrative Law Judge shall issue an order to affirm,  
42 reverse, or modify ~~its~~the Commission's previous action.
- 43 (3) Notwithstanding G.S. 18B-906, the Commission shall revoke a permit issued  
44 by it if, after complying with the provisions of Chapter 150B of the General  
45 Statutes and without a finding of mitigating evidence or circumstances, it finds  
46 evidence that the permittee or the permittee's employee has been found  
47 responsible by a court of competent jurisdiction or the Commission for two or  
48 more violations on separate dates of knowingly allowing a violation of the  
49 gambling, disorderly conduct, prostitution, controlled substance, or felony  
50 criminal counterfeit trademark laws as those offenses are prohibited pursuant  
51 to G.S. 18B-1005(a)(2), (a)(3), or (b), G.S. 18B-1005.1, or G.S. 80-11.1(b)(2)

1 or (3), at a single ABC-licensed premises within a 12-month period. The  
 2 permittee and the owner of the property have the responsibility to monitor the  
 3 conduct on the licensed premises pursuant to G.S. 18B-1005(b) and G.S. 19-1.  
 4 Revocation of permits pursuant to this subdivision shall only apply to the  
 5 permits issued to the location where the violations occurred.

6 (4) Notwithstanding G.S. 18B-906, the Commission shall immediately suspend  
 7 permits issued by it for a period of 30 days if both of the following apply:

8 a. ~~Alcohol Law Enforcement agents or agents,~~ local ABC Board  
 9 ~~officers/officers,~~ or local law enforcement agencies provide advance  
 10 notice to the Commission Legal Division staff of the ongoing  
 11 undercover operation.

12 b. Upon execution of the search warrant resulting from the undercover  
 13 operation, five or more persons are criminally charged with violations  
 14 of the gambling, disorderly conduct, prostitution, controlled  
 15 substance, or felony criminal counterfeit trademark laws.

16 (f) Local Government Objections. – The governing body of a city or county may  
 17 designate an official of the city or county, by name or by position, to make recommendations  
 18 concerning the suitability of a person or of a location for an ABC permit. The governing body of  
 19 a city or county shall notify the Commission of an official designated under this subsection. An  
 20 official designated under this subsection shall be allowed to testify at a contested case hearing in  
 21 which the suitability of a person or of a location for an ABC permit is an issue without further  
 22 qualification or authorization.

23 (g) Nothing in this Chapter shall be deemed to preempt local governments from  
 24 regulating the location or operation of adult establishments or other sexually oriented businesses  
 25 to the extent consistent with the constitutional protection afforded free speech, or from requiring  
 26 any additional fee for licensing as permitted under G.S. 160A-181.1(c)."

27 **SECTION 5.** G.S. 18B-1000 reads as rewritten:

28 **"§ 18B-1000. Definitions concerning establishments.**

29 The following requirements and definitions shall apply to this Chapter:

30 (1) Community theatre. – An establishment owned and operated by a bona fide  
 31 nonprofit organization that is engaged solely in the business of sponsoring or  
 32 presenting amateur or professional theatrical events to the public. A permit  
 33 issued for a community theatre is valid only during regularly scheduled  
 34 theatrical events sponsored by such nonprofit organization.

35 (1a) Convention center. – An establishment that meets either of the following  
 36 requirements:

37 a. A publicly owned or operated establishment that is engaged in the  
 38 business of sponsoring or hosting conventions and similar large  
 39 gatherings, including auditoriums, armories, civic centers, convention  
 40 centers, and coliseums.

41 b. A privately owned facility located in a city that has a population of at  
 42 least 200,000 but not more than 250,000 by the 2000 federal census  
 43 and is located in a county that has previously authorized the issuance  
 44 of mixed beverage permits by referendum. To qualify as a convention  
 45 center under this subdivision, the facility shall meet each of the  
 46 following requirements:

47 1. The facility shall be certified by the appropriate local official  
 48 as being consistent with the city's redevelopment plan for the  
 49 area in which the facility is located.

50 2. The facility shall contain at least 7,500 square feet of floor  
 51 space that is available for public use and shall be used

- 1 exclusively for banquets, receptions, meetings, and similar  
2 gatherings.
- 3 3. The facility's annual gross receipts from the sale of alcoholic  
4 beverages shall be less than fifty percent (50%) of the gross  
5 receipts paid to all providers at permitted functions for food,  
6 nonalcoholic beverages, alcoholic beverages, service, and  
7 facility usage fees (excluding receipts or charges for  
8 entertainment and ancillary services not directly related to  
9 providing food and beverage service). The person to whom a  
10 permit has been issued for a privately owned facility shall be  
11 required to maintain copies of all contracts and invoices for  
12 items supplied by providers for a period of three years from the  
13 date of the event.
- 14 A permit issued for a convention center shall be valid only for those parts of  
15 the building used for conventions, banquets, receptions, and other events, and  
16 only during scheduled activities.
- 17 (1b) Cooking school. – An establishment substantially engaged in the business of  
18 operating a school in which cooking techniques are taught for a fee.
- 19 (2) Eating establishment. – An establishment engaged in the business of regularly  
20 and customarily selling food, primarily to be eaten on the premises. Eating  
21 establishments shall include businesses that are referred to as restaurants,  
22 cafeterias, or cafes, but that do not qualify under subdivision (6). Eating  
23 establishments shall also include lunchstands, grills, snack bars, fast-food  
24 businesses, and other establishments, such as drugstores, which have a lunch  
25 counter or other section where food is sold to be eaten on the premises.
- 26 (3) Food business. – An establishment engaged in the business of regularly and  
27 customarily selling food, primarily to be eaten off the premises. Food  
28 businesses shall include grocery stores, convenience stores, and other  
29 establishments, such as variety stores or drugstores, where food is regularly  
30 sold, and shall also include establishments engaged primarily in selling  
31 unfortified or fortified wine or both, for consumption off the premises.
- 32 (4) Hotel. – An establishment substantially engaged in the business of furnishing  
33 lodging. A hotel shall have a restaurant either on or closely associated with  
34 the premises. The restaurant and hotel need not be owned or operated by the  
35 same person.
- 36 (5) Private club. – An establishment ~~that is organized and operated solely for a~~  
37 ~~social, recreational, patriotic, or fraternal purpose and that is not open to the~~  
38 ~~general public, but is open only to the members of the organization and their~~  
39 ~~bona fide guests. This provision does not, however, prohibit such an~~  
40 ~~establishment from being open to the general public for raffles and bingo~~  
41 ~~games as required by G.S. 14-309.11(a) and G.S. 14-309.13. Except for bona~~  
42 ~~fide religious organizations, no organization that discriminates in the selection~~  
43 ~~of its membership on the basis of religion shall be eligible to receive any~~  
44 ~~permit issued under this Chapter that qualifies as a 501(c) business under the~~  
45 Internal Revenue Code and has been in operation for a minimum of 12 months  
46 prior to application for an ABC permit. This section does not apply to any  
47 private club permits in place on April 1, 2018.
- 48 (5a) Residential private club. – A private club that is located in a privately owned,  
49 primarily residential and recreational development.
- 50 (6) Restaurant. – An establishment substantially engaged in the business of  
51 preparing and serving meals. To qualify as a restaurant, an establishment's

1 gross receipts from food and nonalcoholic beverages shall be not less than  
2 thirty percent (30%) of the total gross receipts from food, nonalcoholic  
3 beverages, and alcoholic beverages. A restaurant shall also have a kitchen and  
4 an inside dining area with seating for at least 36 people.

5 (7) Retail business. – An establishment engaged in any retail business, regardless  
6 of whether food is sold on the premises.

7 (8) Sports club. – An establishment that meets either of the following  
8 requirements:

9 a. The establishment is substantially engaged in the business of  
10 providing equine boarding, training, and coaching services, and the  
11 establishment offers on-site dining, lodging, and meeting facilities and  
12 hosts horse trials and other events sanctioned or endorsed by the  
13 United States Equestrian Federation, Inc.; or

14 b. The establishment is substantially engaged in the business of  
15 providing an 18-hole golf course, two or more tennis courts, or both.

16 The sports club can either be open to the general public or to members and  
17 their guests. To qualify as a sports club, an establishment's gross receipts for  
18 club activities shall be greater than its gross receipts for alcoholic beverages.  
19 This provision does not prohibit a sports club from operating a restaurant.  
20 Receipts for food shall be included in with the club activity fee.

21 (9) Congressionally chartered veterans organizations. – An establishment that is  
22 organized as a federally chartered, nonprofit veterans organization, and is  
23 operated solely for patriotic or fraternal purposes.

24 (10) Wine producer. – A farming establishment of at least five acres committed to  
25 the production of grapes, berries, or other fruits for the manufacture of  
26 unfortified wine."

27 **SECTION 6.** Section 1 of this act becomes effective October 1, 2018. Sections 2  
28 and 5 of this act are effective when they become law and apply to new permits issued on or after  
29 that date. The remainder of this act is effective when it becomes law.