

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 839\*

Short Title: Modernization of the ABC System. (Public)

Sponsors: Senators Albertson, Clodfelter and Hartsell.

Referred to: Commerce.

March 25, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO MODERNIZE THE NORTH CAROLINA ALCOHOLIC BEVERAGE  
3 CONTROL SYSTEM, AS RECOMMENDED BY THE JOINT LEGISLATIVE  
4 PROGRAM EVALUATION OVERSIGHT COMMITTEE.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 18B-203(a) is amended by adding a new subdivision to read:  
7 "**§ 18B-203. Powers and duties of the Commission.**

8 (a) Powers. – The Commission shall have authority to:

9 ...

10 (20) Establish performance standards for local ABC boards. Performance  
11 standards established pursuant to this subdivision shall include, but not be  
12 limited to, standards that address store appearance, operating efficiency,  
13 profitability, and customer service."

14 **SECTION 2.** G.S. 18B-208 is amended by adding a new subsection to read:

15 "(c) Technical Assistance and Financial Incentive Loans. – A special fund in the  
16 Department of the State Treasurer, the Technical Assistance and Financial Assistance Fund, is  
17 created. Funds may be transferred from the ABC Commission Fund to the Technical Assistance  
18 and Financial Assistance Fund to provide needed revenue to carry out the provisions of this  
19 subsection. If additional revenue is needed for the Technical Assistance and Financial  
20 Assistance Fund, the ABC Commission is authorized to levy an additional bailment surcharge  
21 amount not to exceed ten cents (10¢) per case, which shall be deposited in the Technical  
22 Assistance and Financial Assistance Fund for the purpose of carrying out the provisions of this  
23 subsection.

24 The ABC Commission Fund shall be subject to the provisions of the State Budget Act  
25 except that no unexpended surplus of this fund shall revert to the General Fund. The  
26 Commission shall fix the level of the bailment surcharges at an amount calculated to generate a  
27 maximum of two million dollars (\$2,000,000) for the Technical Assistance and Financial  
28 Assistance Fund. Once the Fund has reached the two million dollar (\$2,000,000) maximum, the  
29 Commission shall reduce the bailment surcharge to an amount no greater than necessary to  
30 maintain the balance in the Technical Assistance and Financial Assistance Fund as authorized  
31 by the General Assembly.

32 All moneys credited to the Technical Assistance and Financial Assistance Fund shall be  
33 used by the North Carolina ABC Commission to issue no-interest loans to local ABC boards,  
34 upon application and approval of the full Commission, for technical assistance and financial  
35 incentives that will result in increased efficiencies in store operation and improved customer  
36 service."

37 **SECTION 3.** G.S. 18B-301(b) reads as rewritten:



1       "(b) Possession on Other Property. – It shall be lawful, without an ABC permit, for a  
2 person to possess for his personal use and the use of his guests not more than ~~eight~~ 40 liters of  
3 fortified wine or spirituous liquor, or ~~eight~~ 40 liters of the two combined, at the following  
4 places:

- 5           (1) The residence of any other person with that person's consent;
- 6           (2) Any other property not primarily used for commercial purposes and not open  
7 to the public at the time the alcoholic beverage is possessed, if the owner or  
8 other person in charge of the property consents to that possession and  
9 consumption;
- 10          (3) An establishment with a brown-bagging permit as defined in  
11 G.S. 18B-1001(7)."

12       **SECTION 4.** G.S. 18B-303(a) reads as rewritten:

13       "(a) Purchases Allowed. – Without a permit, a person may purchase at one time:

- 14           (1) Not more than 80 liters of malt beverages, except draft malt beverages in  
15 kegs for off-premises consumption. For purchase of a keg or kegs of malt  
16 beverages for off-premises consumption, the permit required by  
17 G.S. 18B-403.1(a) must first be obtained;
- 18           (2) Any amount of draft malt beverages by a permittee in kegs for on-premise  
19 consumption;
- 20           (3) Not more than ~~50~~ 100 liters of unfortified wine;
- 21           (4) Not more than ~~eight~~ 40 liters of either fortified wine or spirituous liquor, or  
22 eight liters of the two combined."

23       **SECTION 5.** G.S. 18B-304 reads as rewritten:

24       "**§ 18B-304. Sale and possession for sale.**

25       (a) Offense. – It shall be unlawful for any person to sell any alcoholic beverage, or  
26 possess any alcoholic beverage for sale, without first obtaining the applicable ABC permit and  
27 revenue licenses.

28       (b) Prima Facie Evidence. – Possession of the following amounts of alcoholic  
29 beverages, without a permit authorizing that possession, shall be prima facie evidence that the  
30 possessor is possessing those alcoholic beverages for sale:

- 31           (1) More than 80 liters of malt beverages, other than draft malt beverages in  
32 kegs;
- 33           (2) More than ~~eight~~ 40 liters of spirituous liquor; or
- 34           (3) Any amount of nontaxpaid alcoholic beverages."

35       **SECTION 6.** G.S. 18B-403 is repealed.

36       **SECTION 7.** G.S. 18B-600(d) reads as rewritten:

37       "(d) City ABC Store Elections. – A city may hold an ABC store election only if:

- 38           (1) The city has at least ~~500~~ 5,000 registered voters; and
- 39           (2) The county in which the city is located does not operate ABC stores."

40       **SECTION 8.** G.S. 18B-600(e) reads as rewritten:

41       "(e) City Mixed Beverage Elections. – A city may hold a mixed beverage election ~~only~~  
42 if: if the city has at least 500 registered voters.

43           ~~(1) The city has at least 500 registered voters; and~~

44           ~~(2) Either:~~

45           ~~a. The city already operates a city ABC store; or~~

46           ~~b. A city ABC store election is to be held at the same time as the mixed~~  
47 ~~beverage election; or~~

48           ~~e. The city does not operate a city ABC store but:~~

49           ~~1. The county operates an ABC store;~~

50           ~~2. The county has already held a mixed beverage election; and~~

3. ~~The vote in the last county election was against the sale of mixed beverages."~~

**SECTION 9.** G.S. 18B-700 is amended by adding a new subsection to read:

"(a1) Mission. – The mission of ABC boards and their employees shall be to responsibly serve their localities by controlling the sale of spirituous liquor in customer-friendly, modern, and efficient stores in order to optimize revenue distributions."

**SECTION 10.** G.S. 18B-700(g) reads as rewritten:

"(g) Salary. – A local board member may be compensated as determined by the appointing authority. No local board member may be compensated for service if the profit margin for the local board falls below five percent (5%) based on information in the annual audit."

**SECTION 11.** G.S. 18B-701 reads as rewritten:

**"§ 18B-701. Powers and duties of local ABC boards.**

(a) Powers. – A local board shall have authority to:

- (1) Buy, sell, transport, and possess alcoholic beverages as necessary for the operation of its ABC stores;
- (2) Adopt rules for its ABC system, subject to the approval of the Commission;
- (3) Hire and fire employees for the ABC system;
- (4) Designate one employee as manager of the ABC system and determine his responsibilities;
- (5) Require bonds of employees as provided in the rules of the Commission;
- (6) Operate ABC stores as provided in Article 8;
- ~~(7) Issue purchase transportation permits as provided in Article 4;~~
- (8) Employ local ABC officers or make other provision for enforcement of ABC laws as provided in Article 5;
- (9) Borrow money as provided in G.S. 18B-702;
- (10) Buy and lease real and personal property, and receive property bequeathed or given, as necessary for the operation of the ABC system;
- (11) Invest surplus funds as provided in G.S. 18B-702;
- (12) Dispose of property in the same manner as a city council may under Article 12 of Chapter 160A of the General Statutes; and
- (13) Perform any other activity authorized or required by the ABC law.

(b) Duties. – A local board shall have the duty to comply with all directives of the Commission and meet all standards for performance established by the Commission pursuant to G.S. 18B-203(a)(20)."

**SECTION 12.** Chapter 18B of the General Statutes is amended by adding a new section to read:

**"§ 18B-704. Number of local boards; mergers required.**

(a) Number of Local Boards. – There shall be no more than one local ABC board per county. In any county where more than one local ABC board exists, the governing bodies of any city or county having a local board shall meet and develop a plan to consolidate all assets and operations of each board into a merged system as provided for in G.S. 18B-703. Any new board authorized by statute or lawful election after July 1, 2011, shall join an existing local or regional board.

(b) Mergers Required. – If after July 1, 2011, any county still has more than one board in existence, the Commission shall develop a plan pursuant to G.S. 18B-703 merging all assets and operations of each local board into one local board. If the plan is not accepted by the affected governing bodies, the Commission shall merge the local boards.

(c) Regional Boards. – As used in the section, a regional board is an ABC board that crosses county lines. If the Commission determines that the merger of two or more local boards into a regional local ABC board would best serve the needs of the public, increase profitability,

1 enhance revenue distributions to the affected local governments, and streamline the operation  
2 and oversight of the State's ABC System, then the Commission shall merge the boards pursuant  
3 to G.S. 18B-703.

4 (d) Local Acts or Modifications. – Any local act or modification regarding the  
5 establishment and operation of a local ABC board is repealed effective July 1, 2011. On and  
6 after July 1, 2011, every local board shall be subject to the provisions of this Chapter. Any and  
7 all mergers that have been approved by the Commission shall be governed by the provisions of  
8 the merger agreement established pursuant to G.S. 18B-703.

9 (e) Prior Mergers. – This section shall not affect a merger that created a regional board  
10 and was approved by the Commission prior to July 1, 2009."

11 **SECTION 13.** Chapter 18B of the General Statutes is amended by adding a new  
12 section to read:

13 **"§ 18B-705. Compliance with performance standards; remedies.**

14 (a) Local Board Compliance. – The Commission shall ensure that all local boards  
15 comply with performance standards established pursuant to G.S. 18B-203(a)(20) by conducting  
16 regular or special audits, conducting performance evaluations, or taking other measures which  
17 may include inspections by Commission auditors and alcohol law enforcement agents.

18 (b) Performance Improvement Plans. – The Commission, upon determining that a local  
19 board is failing to meet performance standards established pursuant to G.S. 18B-203(a)(20),  
20 shall meet with the chair of the local board, issue a statement of findings, and deliver a  
21 performance improvement plan. The performance improvement plan shall include, but not be  
22 limited to, recommendations for improved performance based on the performance standards  
23 established by the Commission. The plan shall also state a period of time in which the  
24 performance improvements are to occur and what action will be taken by the Commission if  
25 performance standards are not met within the given time limits. The Commission shall allow up  
26 to, but no more than, six months' time to the local board to implement and show improvement  
27 under the performance improvement plan. The Commission, upon good cause shown, may  
28 allow up to an additional six-month period of time for the local board to meet all requirements  
29 in the performance improvement plan and to establish that the performance standards  
30 established by the Commission are met.

31 (c) Remedies. – If the Commission determines that the established performance  
32 standards cannot be met after a performance improvement plan has been implemented and  
33 adequate time has been given, but in no case more than 12 months, the Commission shall seize  
34 all assets of the local board and take appropriate action to ensure profitability. This action may  
35 include closing the board, a store, multiple stores, merging the local board with another local  
36 board, merging the local board with another local board to create a regional board, or requiring  
37 the board to contract with an agency store authorized by the Commission, pursuant to  
38 G.S. 18B-809, in order to maintain solvency and meet community needs."

39 **SECTION 14.** G.S. 18B-801(b) is amended by adding a new subdivision to read:

40 "(b) Location of Stores. – A local board may choose the location of the ABC stores  
41 within its jurisdiction, subject to the approval of the Commission. In making its decision on a  
42 location, the Commission may consider:

43 (1) Whether the health, safety, or general welfare of the community will be  
44 adversely affected; ~~and~~ affected.

45 (2) Whether the citizens of the community or city in which the proposed store is  
46 to be located voted for or against ABC stores in the last election on the  
47 question.

48 (3) The proximity of the new location to existing ABC stores operated by the  
49 local board or any other boards."

50 **SECTION 15.** Chapter 18B of the General Statutes is amended by adding a new  
51 section to read:

1 "§ 18B-809. Agency stores.

2 (a) Agency Store Defined. – An Agency store is a retail outlet, operated pursuant to a  
3 contract between a person and a local board, or the Commission, to provide, under the same  
4 conditions and restrictions regarding location and operation that apply to an ABC store, the  
5 services to a community which would have been provided by an ABC store.

6 (b) Prohibition of Agency Stores. – No Agency store shall be established by any local  
7 board, or the Commission, within the geographic boundaries of a local board where an ABC  
8 store is open and operating.

9 (c) Contracting an Agency Store. – Subject to the provisions of subsection (b) of this  
10 section, a local board may contract with a person, with Commission approval, to operate an  
11 Agency store under the same conditions and restrictions regarding location and operation that  
12 apply to an ABC store. The contract shall include all provisions necessary or required to bind  
13 the parties, delineate compensation of the operator of the Agency store, and shall provide that  
14 the conviction of any violation of a criminal or ABC law shall result in summary termination of  
15 the contract. Compensation of an Agency store operator, pursuant to a contract authorized by  
16 this subsection, shall be established by the Commission and shall not exceed more than one-  
17 third of the markup for local boards as determined by the Commission pursuant to  
18 G.S. 18B-804(b)(3).

19 (d) Property Rights. – No property rights shall be conferred upon the owner or operator  
20 of an Agency store with regards to a right to possess, sell, transport, or deliver any alcoholic  
21 beverages regulated by the Chapter.

22 (e) Retail Permittees Prohibited. – No person holding a valid ABC permit issued under  
23 the provisions of this Chapter, nor any person that has had any ABC permit revoked,  
24 suspended, or that has expired or been revoked as a matter of law for failure to pay a renewal or  
25 registration fee, shall be eligible to contract with a local board or the ABC Commission to be an  
26 Agency store."

27 **SECTION 16.** This act becomes effective October 1, 2009.