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SENATE BILL DRS15268-TQz-36C*

Short Title: ABC Regulation and Reform. (Public)

Sponsors: Senators Wells, Randleman, and Sanderson (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO STRENGTHEN THE PERMITTING ENFORCEMENT AUTHORITY OF THE
3 ABC COMMISSION AND TO MAKE OTHER CHANGES TO THE ABC LAWS, AS
4 RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON
5 JUSTICE AND PUBLIC SAFETY.

6 The General Assembly of North Carolina enacts:

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

8 "**§ 18B-104. Administrative penalties.**

9 (a) Penalties. – For any violation of the ABC laws, the Commission may take any of the
10 following actions against a permittee:

- 11 (1) Suspend the permittee's permit for a specified period of time not longer than
12 three years;
- 13 (2) Revoke the permittee's permit;
- 14 (3) Fine the permittee up to ~~five hundred dollars (\$500.00)~~ one thousand three
15 hundred and fifty dollars (\$1,350) for the first violation, up to ~~seven hundred~~
16 ~~and fifty dollars (\$750.00)~~ two thousand one hundred dollars (\$2,100) for the
17 second violation, and up to ~~one thousand dollars (\$1,000)~~ two thousand seven
18 hundred and fifty dollars (\$2,750) for the third violation; or
- 19 (4) Suspend the permittee's permit under subdivision (1) and impose a fine
20 under subdivision (3).
- 21 (5) Impose conditions on the operation hours of the business.

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

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

30 (d) Effect on Licenses. – Suspension or revocation of a permit includes automatic
31 suspension or revocation of any related State or local revenue license.

32 (e) Effect on Other Permits. – Unless some other disposition is ordered by the
33 Commission, revocation or suspension of a permit under subsection (a) includes automatic
34 revocation or suspension, respectively, of any other ABC permit held by the same permittee for
35 the same establishment."

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



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1 **"§ 18B-900. Qualifications for permit.**

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

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

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

37 (b) Definition of Conviction. – A person has been "convicted" for the purposes of
38 subsection (a) when he has been found guilty, or has entered a plea of guilty or nolo
39 contendere, and judgment has been entered against him. A felony conviction in another
40 jurisdiction shall disqualify a person from being eligible to receive or hold an ABC permit if his
41 conduct would also constitute a felony in North Carolina. A conviction of an alcoholic
42 beverage offense or misdemeanor drug offense in another jurisdiction shall disqualify a person
43 from being eligible to receive or hold an ABC permit if his conduct would constitute an offense
44 in North Carolina, unless the Commission determines that under North Carolina procedure
45 judgment would not have been entered under the same circumstances. Revocation of a permit
46 in another jurisdiction shall disqualify a person if his conduct would be grounds for revocation
47 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
 28 conventions and banquets at the convention center, and that person may engage in the activities
 29 authorized by the convention center's permit, under conditions set by the Commission. The
 30 person with whom the convention center contracts must meet the qualifications of this section.
 31 (f) Procedure to Confirm State Tax Compliance. – Upon request of the Commission,
 32 the 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
 35 the person's permit until the Commission receives notice from the Department of Revenue that
 36 the person is in compliance. The requirement to pay all taxes, interest, and penalties may be
 37 satisfied by an operative agreement under G.S. 105-237 covering any amounts that are
 38 collectible under G.S. 105-241.22. Chapter 150B of the General Statutes does not apply to a
 39 Commission action on issuance, suspension, or revocation of an ABC permit under subdivision
 40 (a)(8) of this section."

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

42 **"§ 18B-901. Issuance of permits.**

- 43 (a) Who Issues. – All ABC permits shall be issued by the Commission.
 44 Purchase-transportation permits shall be issued by local boards under G.S. 18B-403.
 45 (b) Notice to Local Government. – Before issuing a retail ABC permit, other than a:
 46 (1) Special occasion permit under G.S. 18B-1001(8);
 47 (2) Limited special occasion permit under G.S. 18B-1001(9);
 48 (3) Temporary permit under G.S. 18B-905; or
 49 (4) Special one-time permit under G.S. 18B-1002
 50 for an establishment, the Commission shall give notice of the permit application to the
 51 governing body of the city in which the establishment is located. If the establishment is not

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

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

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

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

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

46 "**§ 18B-904. Miscellaneous provisions concerning permits.**

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

1 management agreement delegates sufficient managerial control and independence to a manager
2 or management company to require an ABC permit to be issued to the manager.

3 (b) Posting Permit. – Each ABC permit that is held by an establishment shall be posted
4 in a prominent place on the premises.

5 (c) Business Not Operating. – An ABC permit shall automatically expire and shall be
6 surrendered to the Commission if the person to whom it is issued does not commence the
7 activity authorized by the permit within six months of the date the permit is effective. Before
8 the expiration of the six-month period, the Commission may waive this provision in individual
9 cases for good cause.

10 (d) Notice of Issuance. – Upon issuing a permit the Commission shall send notice of the
11 issuance, with the name and address of the permittee and the establishment, to:

12 (1) The Department of Revenue;

13 (2) The local board, if one exists, for the city or county in which the
14 establishment is located;

15 (3) The governing body, sheriff, and tax collector of the county in which the
16 establishment is located;

17 (4) If the establishment is located inside a city, the governing body, chief of
18 police, and tax collector for the city; and

19 (5) The ALE Branch.

20 (e) Business or Location No Longer Suitable. –

21 (1) The Commission may suspend or revoke a permit issued by it ~~if, after~~
22 ~~compliance with the provisions of Chapter 150B of the General Statutes, it~~
23 an Administrative Law Judge finds that the location occupied by the
24 permittee is no longer a suitable place to hold ABC permits or that the
25 operation of the business with an ABC permit at that location is detrimental
26 to the neighborhood.

27 (2) The Commission shall suspend or revoke a permit issued by it if a permittee
28 is in violation of G.S. 18B-309. Notwithstanding subdivision (e)(1) of this
29 section, the Commission shall, by order and without prior hearing,
30 summarily suspend or revoke a permit issued by it if a permittee is in
31 violation of G.S. 18B-309(c) when, prior to the period of time for which the
32 audit is to be conducted, the city council has filed information designating
33 the location of the Urban Redevelopment Area as required under
34 G.S. 18B-309(a) and has provided actual notice to permittees located in the
35 Urban Redevelopment Area that they are located in such an area and must
36 abide by G.S. 18B-309(c). Upon entry of a summary order under this
37 subdivision, the Commission shall promptly notify all interested parties that
38 the order has been entered and of the reasons therefore. The order will
39 remain in effect until it is modified or vacated by the Commission. The
40 permittee may, within 30 days after receipt of notice of the order, make
41 written request to the ~~Commission~~Office of Administrative Hearings for a
42 hearing on the matter. ~~If a hearing is requested, after compliance with the~~
43 ~~provisions of Chapter 150B of the General Statutes, the Commission~~The
44 Administrative Law Judge shall issue an order to affirm, reverse, or modify
45 ~~its~~the Commission's previous action.

46 (3) Notwithstanding G.S. 18B-906, the Commission shall revoke a permit issued
47 by it if, after complying with the provisions of Chapter 150B of the General
48 Statutes and without a finding of mitigating evidence or circumstances, it
49 finds evidence that the permittee or the permittee's employee has been found
50 responsible by a court of competent jurisdiction or the Commission for two
51 or more violations on separate dates of knowingly allowing a violation of the

1 gambling, disorderly conduct, prostitution, controlled substance, or felony
2 criminal counterfeit trademark laws as those offenses are prohibited pursuant
3 to G.S. 18B-1005(a)(2), (a)(3), or (b), G.S. 18B-1005.1, or
4 G.S. 80-11.1(b)(2) or (3), at a single ABC-licensed premises within a
5 12-month period. The permittee and the owner of the property have the
6 responsibility to monitor the conduct on the licensed premises pursuant to
7 G.S. 18B-1005(b) and G.S. 19-1. Revocation of permits pursuant to this
8 subdivision shall only apply to the permits issued to the location where the
9 violations occurred.

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

- 12 a. ~~Alcohol Law Enforcement agents or agents,~~ local ABC Board
13 ~~officers or officers,~~ or local law enforcement agencies provide advance
14 notice to the Commission Legal Division staff of the ongoing
15 undercover operation.
16 b. Upon execution of the search warrant resulting from the undercover
17 operation, five or more persons are criminally charged with
18 violations of the gambling, disorderly conduct, prostitution,
19 controlled substance, or felony criminal counterfeit trademark laws.

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

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

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

32 **"§ 18B-1000. Definitions concerning establishments.**

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

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

39 (1a) Convention center. – An establishment that meets either of the following
40 requirements:

- 41 a. A publicly owned or operated establishment that is engaged in the
42 business of sponsoring or hosting conventions and similar large
43 gatherings, including auditoriums, armories, civic centers,
44 convention centers, and coliseums.
45 b. A privately owned facility located in a city that has a population of at
46 least 200,000 but not more than 250,000 by the 2000 federal census
47 and is located in a county that has previously authorized the issuance
48 of mixed beverage permits by referendum. To qualify as a
49 convention center under this subdivision, the facility shall meet each
50 of the following requirements:

1. The facility shall be certified by the appropriate local official as being consistent with the city's redevelopment plan for the area in which the facility is located.
2. The facility shall contain at least 7,500 square feet of floor space that is available for public use and shall be used exclusively for banquets, receptions, meetings, and similar gatherings.
3. The facility's annual gross receipts from the sale of alcoholic beverages shall be less than fifty percent (50%) of the gross receipts paid to all providers at permitted functions for food, nonalcoholic beverages, alcoholic beverages, service, and facility usage fees (excluding receipts or charges for entertainment and ancillary services not directly related to providing food and beverage service). The person to whom a permit has been issued for a privately owned facility shall be required to maintain copies of all contracts and invoices for items supplied by providers for a period of three years from the date of the event.

A permit issued for a convention center shall be valid only for those parts of the building used for conventions, banquets, receptions, and other events, and only during scheduled activities.

- (1b) Cooking school. – An establishment substantially engaged in the business of operating a school in which cooking techniques are taught for a fee.
- (2) Eating establishment. – An establishment engaged in the business of regularly and customarily selling food, primarily to be eaten on the premises. Eating establishments shall include businesses that are referred to as restaurants, cafeterias, or cafes, but that do not qualify under subdivision (6). Eating establishments shall also include lunchstands, grills, snack bars, fast-food businesses, and other establishments, such as drugstores, which have a lunch counter or other section where food is sold to be eaten on the premises.
- (3) Food business. – An establishment engaged in the business of regularly and customarily selling food, primarily to be eaten off the premises. Food businesses shall include grocery stores, convenience stores, and other establishments, such as variety stores or drugstores, where food is regularly sold, and shall also include establishments engaged primarily in selling unfortified or fortified wine or both, for consumption off the premises.
- (4) Hotel. – An establishment substantially engaged in the business of furnishing lodging. A hotel shall have a restaurant either on or closely associated with the premises. The restaurant and hotel need not be owned or operated by the same person.
- (5) Private club. – ~~An establishment that is organized and operated solely for a social, recreational, patriotic, or fraternal purpose and that is not open to the general public, but is open only to the members of the organization and their bona fide guests. This provision does not, however, prohibit such an establishment from being open to the general public for raffles and bingo games as required by G.S. 14-309.11(a) and G.S. 14-309.13. Except for bona fide religious organizations, no organization that discriminates in the selection of its membership on the basis of religion shall be eligible to receive any permit issued under this Chapter.~~ that qualifies as a 501(c) business under the Internal Revenue Code and has been in operation for a

1 minimum of 12 months prior to application for an ABC permit. This section
2 does not apply to any private club permits in place on April 1, 2018.

- 3 (5a) Residential private club. – A private club that is located in a privately
4 owned, primarily residential and recreational development.
- 5 (6) Restaurant. – An establishment substantially engaged in the business of
6 preparing and serving meals. To qualify as a restaurant, an establishment's
7 gross receipts from food and nonalcoholic beverages shall be not less than
8 thirty percent (30%) of the total gross receipts from food, nonalcoholic
9 beverages, and alcoholic beverages. A restaurant shall also have a kitchen
10 and an inside dining area with seating for at least 36 people.
- 11 (7) Retail business. – An establishment engaged in any retail business,
12 regardless of whether food is sold on the premises.
- 13 (8) Sports club. – An establishment that meets either of the following
14 requirements:
- 15 a. The establishment is substantially engaged in the business of
16 providing equine boarding, training, and coaching services, and the
17 establishment offers on-site dining, lodging, and meeting facilities
18 and hosts horse trials and other events sanctioned or endorsed by the
19 United States Equestrian Federation, Inc.; or
- 20 b. The establishment is substantially engaged in the business of
21 providing an 18-hole golf course, two or more tennis courts, or both.
22 The sports club can either be open to the general public or to members and
23 their guests. To qualify as a sports club, an establishment's gross receipts for
24 club activities shall be greater than its gross receipts for alcoholic beverages.
25 This provision does not prohibit a sports club from operating a restaurant.
26 Receipts for food shall be included in with the club activity fee.
- 27 (9) Congressionally chartered veterans organizations. – An establishment that is
28 organized as a federally chartered, nonprofit veterans organization, and is
29 operated solely for patriotic or fraternal purposes.
- 30 (10) Wine producer. – A farming establishment of at least five acres committed
31 to the production of grapes, berries, or other fruits for the manufacture of
32 unfortified wine."

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