

3

Alcoholic Beverage Control

The Alcoholic Beverage Control (ABC) bills enacted this session dealt primarily with two subjects: local sales and use of alcoholic beverages and consumption by those under twenty-one years of age.

For more than a decade the General Assembly has been adding to the public law provisions of G.S. Chapter 18B stipulations that are essentially local in application. The growing practice of writing local legislation into the state's general law stems from a section of the N.C. Constitution (art. II, sec. 24) that prohibits "local acts regulating trade." As a result ABC permits are now authorized for tourism establishments, ski resorts, beautification districts, and other locations—none of which could hold an election or otherwise qualify for ABC sales under the general provisions of G.S. Chapter 18B. A recent lawsuit filed in Yancey County challenged the constitutionality of the type of legislation that creates "residential private clubs." See *Mountain Air Development Corp. v. State of North Carolina*, 99 CVS 65 (filed March 14, 1999). Even after it is decided, this case probably will be appealed, so a final determination of the issue could be at least a year or two away. Despite this court challenge, new exceptions to the general law were added in 1999.

Historic ABC Establishments

S.L. 1999-462 (S 607) amends G.S. 18B-603(f), concerning the issuance of permits without an election, to authorize permits for malt beverages, wine, and mixed beverages for "historic ABC establishments" as defined by G.S. 18B-101. The complicated definition of a historic ABC establishment includes a requirement that the structure be on the National Register of Historic Places, be located within 1.5 miles of an intersection on a North Carolina scenic bypass, and be within 15 miles of a national scenic highway. The establishment must also be in a county in which two or more cities authorize the on premises sale of malt beverages and unfortified wine. This provision probably was intended to benefit certain establishments in Watauga County.

National Historic Landmarks

Another provision of S.L. 1999-462 authorizes liquor by the drink, without approval through an election, for qualified hotels and restaurants located within a “national historic landmark.” To qualify the establishment must be in a county that has a population of at least 150,000, has approved the sale of beer and wine, and has at least one city with ABC stores and mixed beverage sales. This description probably means the Biltmore Estate in Buncombe County.

Tourism Resorts

S.L. 1999-461 (S 17) amends G.S. 18B-603(f) to allow permits without an election for malt beverages, wine, and mixed drinks in “tourism resorts.” A provision is added to G.S. 18B-101 to define a *tourism resort* as: any restaurant and lodging facility owned and operated as a resort, offering food, beverage, lodging, and meeting facilities and “featuring one or more golf courses and two or more tennis courts”; or any restaurant owned and operated as a resort property, offering food and beverage to travelers and featuring an equestrian center as well as two or more tennis courts. This act, while of limited application, does appear to be a real statewide law.

Urban Redevelopment Areas

S.L. 1999-322 (S 812) adds a new G.S. 18B-309 to provide that a food business, a retail business, or an eating establishment (as defined in G.S. 18B-1000) located in a designated “urban redevelopment area” may not have alcohol beverage sales in excess of 50 percent of the business’s total annual sales. A permittee in violation of this provision may have its permit suspended or revoked by the state ABC Commission. Several cities have urban redevelopment areas under Article 22 of G.S. Chapter 160A. Property owners and residents in or near these areas have expressed concern about alcohol-related problems, and this act appears to be a first step toward addressing that concern. This law is discussed in more detail in Chapter 14 (Land Use Regulation, Planning, Code Enforcement, and Transportation).

Sales to and Purchases by Underage Persons

The continuing concern about alcohol use and abuse by persons under twenty-one years of age led in 1999 to the enactment of two bills that address the problem. S.L. 1999-433 (S 120) adds a new G.S. 18B-302A to provide that a person selling or giving any alcoholic beverage to a person under twenty-one, in violation of G.S. 18B-302(a), is guilty of a Class 1 misdemeanor. Further, if the court imposes a sentence that does not include active punishment, it must include among the conditions of probation a requirement that the defendant pay a fine of at least \$250 and complete at least twenty-five hours of community service. If a defendant has a previous conviction for this offense within the four years immediately preceding the date of the current offense (and the sentence does not include active punishment), then the court must include among the conditions of probation a requirement that the person pay a fine of at least \$500 and complete at least 150 hours of community service.

This act also provides that a person violating G.S. 18B-302(c)(2), by aiding and abetting an underage person with regard to sale or purchase of alcoholic beverages, is guilty of a Class 1 misdemeanor; and (if not receiving an active punishment) must pay a fine of at least \$500 and complete twenty-five hours of community service. A second conviction within four years will result in a fine of at least \$1,000 and 150 hours of community service. S.L. 1999-433 (S 120) became effective December 1, 1999.

The teenage-drinking problem was also addressed by S.L. 1999-406 (H 1135), which implemented the recommendations of the Governor's Driving While Impaired (DWI) Task Force. This act provides that the purchase or possession of alcoholic beverages by a nineteen- or twenty-year-old in violation of G.S. 18B-302(b), previously an infraction only, is now a Class 3 misdemeanor. The new provision became effective December 1, 1999. Other provisions of S.L. 1999-406 are discussed in Chapter 19 (Motor Vehicles).

Bills That Failed to Pass

As is the case in most years, several interesting proposals did not receive a favorable committee report or otherwise failed to pass both houses. Among these was H 1382, which would have required that an applicant for a retail ABC permit obtain a "certificate of suitability" from the relevant city or county before requesting a retail permit from the state ABC Commission. Under current G.S. 18B-901, the state ABC Commission determines suitability for a retail permit after considering certain listed factors. The city or county in which the establishment will be located can file written objections to the issuance of the permit, but those objections will not necessarily stop the ABC Commission from acting favorably on the permit application.

H 1043, entitled "Eliminate Brown-Bagging Permits," would have authorized mixed-beverage permits without an election in all areas of the state. It also would have allowed any county that does not currently allow the sale of mixed beverages to opt out (and continue to prohibit sales) if action was taken before June 1, 2000.

Ben F. Loeb, Jr.