Alcoholic Beverage Control

Only two public bills affecting alcoholic beverage control law were enacted in 1998, and neither had a great deal to do with alcohol beverage control. One bill, S.L. 1998-95 (S 1252), was primarily a revenue measure; the other, S.L. 1998-46 (S 452), increased the authority of local governments to regulate adult entertainment establishments.

ABC Permit and License Fees

The state Alcoholic Beverage Control (ABC) Commission issues (and occasionally revokes or suspends) ABC permits for establishments selling wine, malt beverages, or mixed drinks. Each person or business that receives an ABC permit must also obtain the corresponding city or county license if one is required by law. Since the state determines eligibility for an ABC permit and conducts ABC inspections, the issuance of a city or county license to an establishment that already has the appropriate ABC permit is usually just a ministerial function.

S.L. 1998-95 (S 1252) increased a number of ABC permit fees, including the following: retail malt beverage and wine permits (increased from $200 to $400), winery and brewery permits (from $150 to $300), and sellers’ permits (from $25 to $100). The guest room cabinet permit was increased from $750 to $1,000, as was the mixed beverages permit. In addition, the excise tax on beer was set at 53.177 cents per gallon rather than according to the size of the barrel. G.S. 18B-902, G.S. 105-113.80. While S.L. 1998-95 increased many state ABC permit fees, it also eliminated several state license taxes. Among those eliminated were the brewery license (which had been $500), the bottler tax (which had been $250), the importer tax (which had been $150), and the beer and wine wholesaler tax (which had been $150). Also eliminated were state beer and wine retailer licenses and taxes. G.S. 105-113.74 and 105-113.75. The provisions of S.L. 1998-95 that deal with alcohol beverage license taxes and fees become effective May 1, 1999. [The provisions of S.L. 1998-95 that deal with non-ABC privilege licenses and taxes are discussed in Chapter 17 (Local Taxes and Tax Collection) and Chapter 26 (State Taxation).]
Regulation of Adult Entertainment

The only other public law that has any relation to ABC law is S.L. 1998-46 (S 452), which increases the authority of local governments to regulate the location and operation of “sexually oriented businesses.” This act authorizes a city or county to regulate these businesses through zoning regulations, licensing requirements, or other appropriate local ordinances. The city or county is expressly authorized to require a fee for the initial license and any annual renewal.

Section 6 of S.L. 1998-46 amends G.S. 18B-904 by adding subsection (g), which specifies that nothing in G.S. Chapter 18B “shall be deemed to preempt local governments from regulating the location or operation of adult establishments or other sexually oriented businesses.” In the past, the general rule had been that the state ABC Commission had the last word in determining whether an establishment was entitled to an ABC permit. Local governments were not allowed to interfere with this decision by enacting zoning regulations or other measures. Melkonian v. Board of Adjustment, 85 N.C. App. 351, 355 S.E.2d 503 (1987).

S.L. 1998-46 took effect July 15, 1998. [This act is also discussed in Chapter 15 (Land Use Regulation, Planning, Code Enforcement, and Transportation) and Chapter 16 (Local Government and Finance).]

Local ABC Bills

For more than a decade, the General Assembly has been adding to the public law provisions of G.S. Chapter 18B other provisions that are essentially local in application. The growing practice of writing what is really local legislation into the state’s general law stems from a provision in 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 have an election or otherwise qualify for ABC sales under the general provisions of G.S. Chapter 18B. During 1998, one additional “local ABC bill” was considered but was not enacted. H 160 would have authorized mixed-beverage permits for “historic ABC establishments.” To qualify, the establishment would have to have been a restaurant or hotel on the National Register of Historic Places, located on a state road with a property line within 1.5 miles of an intersection of a designated North Carolina scenic byway, and within fifteen miles of a national scenic highway. This provision probably was intended to apply to an area near Roanoke Rapids.

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