



SENATE BILL 714: ABC Regulation and Reform.

2017-2018 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	June 14, 2018
Introduced by:	Sens. Wells, Randleman, Sanderson	Prepared by:	Chris Saunders
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: *Senate Bill 714, as recommended by the Joint Legislative Oversight Committee on Justice and Public Safety, would make several changes concerning Alcoholic Beverage Control (ABC) penalties and licensure. The bill would make several technical and conforming changes, and the following substantive changes to the First Edition:*

- (i) Amend the maximum fines for certain violations of the ABC laws and allow the increased compromised amount only for certain violations.*
- (ii) Require a person to be 21 years old to obtain an ABC permit, with no exceptions.*
- (iii) Amend the suspension period when a permit is summarily suspended based on certain undercover operations.*
- (iii) Establish a new type of establishment called a "private bar" for ABC licensure purposes.*

[As introduced, this bill was identical to H944, as introduced by Reps. Boles, Davis, which is currently in House Alcoholic Beverage Control.]

CURRENT LAW AND BILL ANALYSIS:

Section 1 would provide that for most violations of the ABC laws, a permittee may be fined up to \$500 for a first violation, up to \$750 for a second violation within three years of the first violation, and up to \$1,000 for a third violation within three years. Under current law, there is no requirement that the subsequent violations occur within three years to trigger the increased fines.

For violations involving acts of violence, controlled substances, or prostitution occurring on the licensed premises, the fines would be up to \$750 for the first violation, up to \$1,000 for a second violation within three years, and up to \$1,250 for a third violation within three years. The Commission would also be authorized to impose conditions on the operating hours of the business for any of these violations.

Additionally, under current law, in any case when 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 \$5,000. The Commission may accept the compromise or revoke the permit, but not both. This section would increase the maximum amount of a compromise offer from \$5,000 to \$10,000 in any case in which there are two or more violations within three years involving (i) acts of violence occurring on the licensed premises, or (ii) the permittee or the permittee's agent or employee knowingly allowing any violation of the controlled substances or prostitution statutes on the licensed premises.

This section would become effective October 1, 2018.

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Section 2 would require that a person be at least 21 years old to obtain an ABC permit, with no exceptions. Under current law, a person must be at least 21 years old to obtain an ABC permit, except that a person may obtain an ABC permit at age 19 if he or she is a manager of a business selling only malt beverages and unfortified wine.

This section would also provide that any manager or person otherwise responsible for the day-to-day operation of a business must meet all the qualifications to obtain an ABC permit in order for an ABC permit to be issued to and held for a business.

This section would be effective when it becomes law and would apply to new permits issued on or after that date.

Section 3 would condense several criteria for determining whether an applicant and business location are suitable to hold an ABC permit into one subdivision.

Section 4 would amend several contested case provisions to comply with the contested case procedure in the Administrative Procedure Act. Under the Administrative Procedure Act, an administrative law judge must make a final decision or order containing findings of fact and conclusions of law in a contested case.

Specifically, this section would clarify that when the Commission finds that a location is no longer suitable to hold an ABC permit, the Commission may commence a contested case under the Administrative Procedure Act to suspend or revoke the permit. This section would also clarify that when the Commission summarily suspends or revokes a permit, the permittee may commence a contested case for the reversal or modification of the order within 30 days after receipt of notice of the order.

Additionally, under current law, the Commission must immediately suspend a permit for 30 days if Alcohol Law Enforcement Agents or local ABC Board officers notify the Commission's Legal Division of an ongoing undercover operation, and execution of the search warrant resulting from the operation results in five or more persons being charged with certain crimes enumerated in statute. Section 4 would eliminate the 30 day period for suspension or revocation, and would also allow local law enforcement agencies to conduct an undercover operation for purposes of this section.

Section 5 would change the definition of a "private club" to include only establishments that qualify under Section 501(c) of the Internal Revenue Code of 1954 and have been in operation for a minimum of 12 months prior to application for an ABC permit.

This section would also create a new type of establishment called a "private bar," which would be defined as "an establishment that is organized and operated as a for-profit entity and that is not open to the general public, but is open only to the members of the organization and their bona fide guests for the purpose of allowing its members and their guests to socialize and engage in recreation."

This section would be effective when it becomes law, and would apply to new permits issued on or after that date. Permits issued to private clubs as defined under current law prior to the effective date of this section would be grandfathered and may remain in effect and eligible for renewal as a private bar or a private club, as applicable, notwithstanding this section.

Section 6 would provide that a private bar would be eligible to obtain the following permits, which are the same as a private club is eligible to obtain under current law:

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- On-premises malt beverage permit.
- On-premises unfortified wine permit.
- On-premises fortified wine permit.
- Brown-bagging permit.
- Special occasion permit.
- Mixed beverages permit.

This section would be effective when it becomes law and would apply to new permits issued on or after that date.

Sections 7, 8, and 9 would provide that private bars are exempt from health inspections and Commission for Public Health rules governing the sanitation of establishments that prepare or serve food or drink for pay. Under current law, private clubs are exempt from health inspections and Commission rules, and would continue to be exempt under the bill.

EFFECTIVE DATE: Except as otherwise provided, this act would be effective when it becomes law.