



# SENATE BILL 11: ABC Regulation and Reform.

2019-2020 General Assembly

<b>Committee:</b> Senate Rules and Operations of the Senate	<b>Date:</b> February 14, 2019
<b>Introduced by:</b> Sen. Wells	<b>Prepared by:</b> Susan Sitze*
<b>Analysis of:</b> Second Edition	Staff Attorney

## **OVERVIEW:** *Senate Bill 11 would:*

- *increase the maximum fines for violations of the ABC laws involving acts of violence, controlled substance, or prostitution occurring upon the premises, and for these types of violations, authorize the ABC Commission (Commission) to impose conditions on the operating hours of a business;*
- *require second or third violations to occur within three years in order to result in the imposition of fines;*
- *increase from \$5,000 to \$10,000 the maximum amount the Commission can accept in compromise in lieu of a permit revocation for certain violations;*
- *repeal the Commission's authority to issue a permit to a person at least 19 years old who is a manager of a business, thereby requiring all persons to be at least 21 years old to obtain an ABC permit;*
- *allow permittees to seek review of Commission permit decisions before an administrative law judge;*
- *modify the Commission's authority to summarily suspend or revoke a permit upon receiving certain information regarding an undercover investigation*
- *change the definition of a "private club" to include only establishments that are 501(c) businesses and that have been in operation for at least 12 months before applying for an ABC permit;*
- *create a new definition of "private bar";*
- *exempt "private bars," as newly defined, from regulation as a food and lodging establishment in the same way that "private clubs" are exempt from such regulation; and*
- *provide that permits issued to "private clubs," as defined before this act becomes law, would be grandfathered and eligible for renewal as a private bar or a private club, as applicable under the new definitions of those terms.*

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## CURRENT LAW AND BILL ANALYSIS:

Under current law, the ABC Commission is authorized to take any of the following actions against a permittee for violations of the ABC laws:

- Suspend the permittee's permit for a specified period of up to 3 years
- Revoke the permittee's permit
- Fine the permittee up to \$500 for the first violation, up to \$750 for a second violation, and up to \$1,000 for a third violation
- Suspend the permittee's permit and impose a fine

**Section 1** would provide that a permittee's second or third violation would have to occur within three years of the previous violation in order to result in a fine.

In addition, **Section 1** would provide that for violations of the ABC laws involving acts of violence or the violation of the controlled substances or prostitution statutes occurring on the licensed premises, the maximum fines would be increased to \$750 for a first violation, \$1,000 for a second violation within three years, and \$1,250 for a third violation within three years. In addition to a fine, the Commission would also be authorized to impose conditions on the operating hours of the business for these types of violations.

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. **Section 1** would increase the maximum amount of a compromise offer from \$5,000 to \$10,000 for violations involving acts of violence or violation of the controlled substances or prostitution statutes occurring on the licensed premises.

**Section 2** would:

- Repeal the Commission's current authority to issue permits to 19 year olds who are managers of a business, thereby requiring a person to be at least 21 years old to obtain a permit.
- Require the manager of every business establishment operated by a corporation to qualify for receiving an ABC permit in order for that business to receive an ABC permit, by removing the current exception to that requirement for establishments with only off-premises permits for malt beverage, unfortified wine, or fortified wine.
- Provide that if none of the other persons listed in the statute amended by this bill section is a manager or person otherwise responsible for the day-to-day operations of the business, any manager or person otherwise responsible for the day-to-day operation of the business must qualify for receiving an ABC permit in order for that business to receive an ABC permit.

**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 provide that if the Commission revokes or suspends an ABC permit on the basis that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with a permit is detrimental to the neighborhood, a permittee could seek review of that action by an Administrative Law Judge. Under current law, the final decision making authority over ABC permit revocations or suspensions due to the unsuitability of a business location resides with the Commission.

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Under current law, the Commission must immediately suspend a permit for 30 days if Alcohol Law Enforcement (ALE) Agents or local ABC Board officers provide advance notice to 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. **Section 4** would require the Commission to summarily issue a suspension or revocation, by order and without prior hearing, and remove the 30 day limitation, but would also require consultation with the Commission's Legal Division regarding the operation and sufficiency of the evidence rather than just advance notice in order for the requirement to apply. In addition, upon entry of a summary permit suspension or revocation, the Commission would be required to promptly notify the permittee, and the permittee could, within thirty days after receiving notice of the order, seek to have it modified or reversed by an administrative law judge.

**Section 5** would change the definition of "private club." Under current law, a "private club" is defined as "[a]n 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." **Section 5** would change this definition to include only establishments that are 501(c) businesses and that have been in operation for at least 12 months before applying for an ABC permit.

**Section 5** would also add a new definition of "private bar," 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."

Permits issued to "private clubs" as defined before the effective date of this section would be grandfathered and remain in effect and eligible for renewal as a "private bar" or a "private club," as applicable, as those terms would be defined upon the effective date of Section 5.

**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:

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

**Section 7** would make the new definition of "private bars" applicable to uses of that phrase in the laws regulating food and lodging establishments.

**Sections 8 and 9** would exempt "private bars" from regulation as food and lodging establishments. ("Private clubs" are currently exempt from such regulation.)

**EFFECTIVE DATE:** Section 1 of this act would become effective October 1, 2019. The remainder of this act is effective when it becomes law. Sections 2, 5, and 6 of this act would apply to new permits issued on or after the date those sections become law.

*\*Staff Attorneys Bill Patterson and Chris Saunders substantially contributed to this summary.*