

ABC Laws and Regulations

Avoid 99% of Violations by Following Ten Basic Rules

1. Alcohol may not be sold or served to anyone under 21 years old.
2. Alcohol may not be possessed or consumed by anyone under 21 years old on your permitted premises, regardless of where the alcohol came from.
3. Alcohol may not be sold or served to anyone who is intoxicated.
4. Alcohol may not be sold or served outside the hours of 7 a.m. and 2 a.m. the following day, except that on Sunday, when sales and consumption may begin as late as 12 noon or as early as 10 a.m. if allowed by local ordinance.
5. Consumption of alcohol is allowed at on-premises ABC permittees until 2:30 a.m., at which point all open containers of alcohol must be removed immediately from public areas and discarded.
6. There can be no consuming alcohol while performing your designated job duties, even when the business is closed to the public.
7. No controlled substances are allowed on any ABC permitted premises.
8. ABC permittees must maintain alcohol invoices and receipts on the premises for three years and make them readily available for inspection.
9. Mixed Beverages permittees must always have an employee at least 21 years old on the premises; beer and wine permittees must always have an employee at least 18 years old on the premises; and ABC permittees may employ minors between ages 16 and 18 if the minor does not prepare, serve, sell, or deliver any alcoholic beverages.
10. All liquor must be ordered and purchased from the Local ABC Board with tax stamps on the label (*do not purchase over-the-counter product from the local ABC Store!*). All beer and wine must be purchased from an ABC permitted wholesaler.

Compliance with Drinking Age Laws

Under North Carolina law, individuals must be 21 years old to purchase, attempt to purchase, possess, or consume alcoholic beverages. Serving alcohol to an underage person is illegal and could result in both criminal charges and ABC Commission penalties ranging from a large fine to suspension or revocation of ABC permits.

One way to avoid ABC trouble (or criminal penalty) for selling to an underage person is to CHECK IDs. North Carolina law provides that a seller cannot be held responsible for an underage sale if the seller can show that the purchaser produced a valid, non-expired driver's license, special North Carolina ID card for non-operators of motor vehicles, military ID, or passport. The ID must show the purchaser is at least the required age for purchase and must also have a photograph that bears a reasonable resemblance to the purchaser.

Although not nearly as effective as properly checking IDs, state law says that the seller also may produce evidence of other facts at a hearing reasonably indicating that at the time of sale the purchaser was at least 21. As a practical matter, however, if the seller did not check the buyer's ID, no number of "other" facts are likely to avoid a negative outcome.

A new section of the law provides an additional defense to a person selling alcoholic beverages to a person under 21 years of age. This defense is available if the buyer previously registered an accepted

form of identification with the seller and the buyer used a biometric identification system (e.g., a fingerprint) to show their age.

Two practical tips for compliance:

1. Staff should be instructed not to take the word of an obviously older adult accompanying the child. Many parents permit their underage children to drink at meals and will vouch for their child's age to allow this in a restaurant. Their "consent" to you serving their child will not protect you from ABC or criminal enforcement.
2. Many law enforcement sting operations utilize older officers who accompany the underage person and who "vouch" for the person's age by sitting silently while the underage person orders alcohol. Always check ID.

Intoxicated/Unruly Patrons

It is illegal to sell alcoholic beverages to anyone who appears intoxicated. Employees should feel empowered by management to refuse to sell or serve alcohol to someone they suspect is overserved. Employees also should receive regular training on detecting intoxication, as well as instruction concerning their own rights to refuse service to any patron based not only on intoxication, but also on unruly or dangerous behavior. Permittees are required under ABC laws to maintain an orderly and safe premise. Establishments that develop a reputation for turning dozens of intoxicated patrons onto the streets at closing time or that regularly have fights or other dangerous situations inside or outside the premises requiring law enforcement intervention generally have very short lifespans for their permits.

All permittees should have written rules for employees regarding dealing with intoxicated patrons and checking IDs.

Serving Alcoholic Beverages

No person under 21 may mix or pour alcoholic beverages containing spirituous liquor. Individuals between the ages of 18 and 21 are allowed to pour, serve, and sell beer or wine while working as wait staff as part of the job.

A person under the age of 18 years but at least 16 years of age may clean up or "bus" tables that require them to remove containers with alcoholic beverages or vessels that contain alcoholic beverages, but they may not bring or serve those containers or vessels to a table.

Hours and Days of Sale

Sales of alcoholic beverages may not begin before 7 a.m. on Mondays through Saturdays. On Sundays, sales may begin at noon, but local governments are authorized to adopt ordinances that allow sales in those communities to begin as early as 10 a.m.

Sales of alcoholic beverages are not allowed after 2 a.m. on any day of the week. Patrons are allowed to consume alcoholic beverages served to them before 2 a.m. up until 2:30 a.m. By 2:30 (not after), permittees must make sure that all consumption stops and must clear all tables, counters, and bars of any alcohol and alcoholic beverage containers.

Serving Drinks and Drink Specials/Happy Hours

Permittees may serve only one mixed beverage (and no other drink) at a time to a patron. Permittees may not serve more than two drinks to a single patron at one time, as long as neither of the drinks is a mixed beverage. Pitchers of alcoholic beverages may be served to two or more patrons. A single carafe or bottle of wine may be sold to a single person.

If sales are occurring on property under control of a public college or university, permittees may serve only one drink per person at one time, regardless of the type of drink being served.

Happy hours are not allowed in North Carolina. Drink specials are allowed but must be offered to all customers for the entire day and in all areas of the business. Certain drink specials are not allowed, such as a "two for one" or a "buy one, get one" special. "Buy one, get one for a nickel" (or another non-full price amount) is also prohibited. Although ABC takes the position that a "buy a meal (or anything), get a free drink" special is prohibited, NC law allows an on-premises permittee to include alcoholic beverages in a package offering that includes a meal or entertainment. If offering such a package, however, the total price must reflect the actual price of the alcoholic beverages and not a reduced price.

Qualifications for Permittees

To be eligible to apply for and to hold an ABC permit, a person must:

- Be at least 21 years old, unless the person is a manager of a business selling only malt beverages and unfortified wine, in which case the person must be at least 19 years old
- Be a resident of North Carolina if responsible for management of day-to-day operations of the permittee
- Not have been convicted of a felony within three years, and, if convicted before then, must have had citizenship restored
- Not have been convicted of an alcoholic beverage offense within two years
- Not have been convicted of a misdemeanor controlled-substance offense within two years
- Not have had an ABC permit revoked within three years

Provide proof that the resident manager has up-to-date Responsible Alcohol Server (or RASP) Training, which is provided through ABC and ALE. *Best management practices include the permittee requiring all employees who serve or sell alcoholic beverages to receive RASP training at least once a year.*

To be eligible to sell or serve alcoholic beverages for ABC permittee, a person must:

- Be at least 18 years old or, in the case of pouring or preparing mixed beverages, be at least 21 years old
- Not have been convicted of a felony within three years, and, if convicted before then, must have had citizenship restored
- Not have been convicted of an alcoholic beverage offense within two years
- Not have been convicted of a misdemeanor controlled-substance offense within two years

If a permittee wishes to hire a person who is not qualified under these criteria, the permittee (not the potential employee) may submit a written request to ABC for a waiver, which ABC will generally grant to avoid undue hardship.

Business Records

ABC permittees must maintain all invoices and receipts for purchases of alcoholic beverages on the premises for three years and must make the records readily available for inspection by appropriate law enforcement officials. Alcoholic beverage invoices and receipts must be maintained and kept separate from other business records (including food invoices, employment records, etc.).

Purchase Requirements

ABC retail permittees must purchase all beer and wine products from a licensed North Carolina wholesaler that is authorized to distribute the product. Retail permittees may not purchase beer and wine products from other retailers such as grocery stores, membership clubs, etc. Regulatory inspections and audits in which quantities purchased from wholesalers are less than quantities sold at retail often result in enforcement actions.

ABC mixed beverage permittees must purchase all spirituous liquor from the appropriate local ABC Board, and not at retail from the front end of an ABC store. Spirituous liquor purchased through the proper channel will have a mixed beverage tax stamp on each bottle. All bottles of liquor on an ABC-permitted premises must have a mixed beverage tax stamp on it. Any bottle of liquor without a tax stamp is evidence of tax evasion, and if discovered by ABC will result in a fine, suspension, or revocation. Even bottles of liquor brought onto the premises as gifts or promotions and kept away from "public" areas of the premises will be penalized and confiscated. In 2021, a new law authorized the delivery of product from the local ABC Board to a mixed beverage permittee.

ABC Violations – The Administrative Process

When ALE agents or local ABC officers come across ABC violations during enforcement actions or inspections, they report the violations to the ABC Commission by directing a report to ABC Legal. ABC learns of permittee violations in other ways as well (i.e., through audit reports, local law enforcement, and news media).

If ABC Legal determines that a violation has occurred warranting a fine, suspension, or revocation, it sends the permittee a "Notice of Alleged Violation" (NOAV) that gives a short description of the alleged violation or violations, as well as a list of options for the permittee's consideration. These options include speaking to an attorney or paralegal at ABC Legal or settling the matter by signing an enclosed "Proposed Stipulation and Offer in Compromise" (OIC). The NOAV also informs the permittee of its right to request a hearing at which ABC Legal and the permittee will have the right to put on evidence before an Administrative Law Judge. Finally, the NOAV informs the permittee that if no response is given by a certain date, ABC will treat the failure to respond as a request for a hearing.

The OIC is the ABC attorney's offer to settle the case. It includes a list of the permits held by the permittee, a statement of prior ABC violations by the permittee, and the same short description of wrongdoing contained in the NOAV. It then sets forth the proposed penalty, which can be a fine, suspension, revocation, or a combination of fine and suspension.

In considering ABC's offer, the permittee is entitled to request the reporting officer's Violation Report, which is a narrative that provides details of the officer's activities and observations in conducting enforcement related to the alleged violation. If the permittee wishes to avoid a hearing, it may sign and

return the OIC, which will be submitted to the Commission for approval at its next meeting. The permittee may also attempt to negotiate the amount or length of the penalty with ABC Legal. In the interests of maintaining uniformity of penalties, ABC tends to resist departing from OICs to any significant degree. The permittee at any time in the process may determine its interests would be best protected by engaging a lawyer.

If the permittee does not wish to admit wrongdoing or otherwise wishes to have a hearing on the violation, it may notify ABC or it may do nothing. As long as the permittee is not operating under temporary permits or posing an imminent danger to the public, ABC must file a petition, present evidence, and obtain an administrative ruling before imposing a penalty. ABC does this by filing a Petition for Contested Case Hearing in administrative court, known as the Office of Administrative Hearings. The Petition is essentially the same as a complaint in a civil lawsuit. From this point forward, the case is treated like a civil court case, with filing deadlines, sworn depositions, motions, and a trial.

Like most prosecutors, if unable to settle the case at an early stage, ABC generally will seek a much harsher punishment at the evidentiary hearing, or trial. For this reason, a permittee proceeding without counsel at this point is at significant risk. A neutral Administrative Law Judge is assigned to resolve any disputes leading up to the evidentiary hearing, as well as to preside over the hearing and render a decision. An adverse ruling may be appealed to Superior Court, which has strict limitations on grounds for reversing the administrative court decision. From Superior Court, a petitioner may, but seldom does, appeal to higher appellate courts.

ABC Violations – Criminal Charges

In most instances, ABC violations also are punishable as criminal violations. These charges generally are pursued against the person who commits the violation, for example, a waitperson who serves alcohol to an underage person. In certain more extreme cases, however, a manager may be charged based on a gross failure to supervise the premises.

ABC Violations – Other Civil Liability

North Carolina's courts have determined that an ABC permittee has a duty to the public to take reasonable steps to prevent sales to intoxicated persons, and that if a person becomes intoxicated at the permittee's establishment and then drives in a manner that causes injury or death, the permittee may be held civilly liable. Many business insurance policies do not cover liability arising out of this situation (known as dram shop liability). There is not a legal limitation on potential damages related to dram shop cases.

North Carolina statutes also allow a person injured because of a sale of alcohol to an underage person to sue the permittee and any individual who made the sale. This includes not just people directly injured by the underage person (e.g., an innocent driver), but also the parents of the underage person. The statute provides a liability limit of \$500,000 per occurrence.

Certain ABC violations involving taxes may result in civil or even criminal enforcement through the NC Department of Revenue.