

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 324
Judiciary I Committee Substitute Adopted 6/7/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S324-PCS35286-RV-35

Short Title: ABC Law/Eastern Band of Cherokee Indians.

(Public)

Sponsors:

Referred to:

March 14, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE EASTERN BAND OF CHEROKEE INDIANS, A
3 FEDERALLY RECOGNIZED INDIAN TRIBE AND SOVEREIGN NATION, TO
4 RECEIVE SHIPMENTS OF SPIRITUOUS LIQUOR FROM THE NORTH CAROLINA
5 ALCOHOLIC BEVERAGE CONTROL COMMISSION; TO AUTHORIZE THE
6 EASTERN BAND OF CHEROKEE INDIANS TO ESTABLISH A TRIBAL
7 ALCOHOLIC BEVERAGE CONTROL COMMISSION TO REGULATE THE
8 PURCHASE, POSSESSION, CONSUMPTION, SALE, AND DELIVERY OF
9 ALCOHOLIC BEVERAGES AT RETAIL; AND TO AUTHORIZE THE LIMITED
10 TRANSFER OF WINE BY ON-PREMISES WINE PERMITTEES UNDER COMMON
11 OWNERSHIP OR CONTROL.

12 The General Assembly of North Carolina enacts:

13 **SECTION 1.** G.S. 18B-109(b) reads as rewritten:

14 "(b) Armed Forces ~~Installation~~Installation and Indian Country Lands. – No person shall
15 have malt beverages or unfortified wine shipped directly from a point outside this State to an
16 armed forces installation within this State if those alcoholic beverages are for resale on the
17 installation or to the Eastern Band of Cherokee Indians for resale on Indian Country lands
18 within this State under the jurisdiction of the Eastern Band of Cherokee Indians."

19 **SECTION 2.** G.S. 18B-203(a)(17) reads as rewritten:

20 "(a) Powers. – The Commission shall have authority to:

21 ...

22 (17) Provide for the distribution of spirituous liquor to armed forces installations
23 within this State for resale on the ~~installation~~installation and to the Eastern
24 Band of Cherokee Indians for resale on Indian Country lands within this
25 State under the jurisdiction of the Eastern Band of Cherokee Indians.

26"

27 **SECTION 3.** Article 1 of Chapter 18B of the General Statutes is amended by
28 adding a new section to read:

29 "**§ 18B-112. Tribal alcoholic beverage control.**

30 (a) Application of This Chapter. – The Eastern Band of Cherokee Indians, a federally
31 recognized Indian tribe and sovereign nation, shall be exempt from the provisions of this
32 Chapter, except for those made applicable by this section. The Eastern Band of Cherokee



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1 Indians tribe shall adopt by ordinance the provisions of this Chapter which are made applicable
2 to the tribe by this section, and such ordinance shall be approved by the Secretary of the United
3 States Department of the Interior and published in the Federal Register accordingly. The
4 Eastern Band of Cherokee Indians shall hold lawful tribal elections as set out in
5 G.S. 18B-600(a), and if the result of such election authorizes the activity upon which a vote
6 was held, the activity shall be deemed authorized by this section. For the purposes of this
7 section, the tribal alcoholic beverage control commission shall possess the same powers and
8 authority conveyed upon the North Carolina Alcoholic Beverage Control Commission by any
9 section of this Chapter made applicable to the tribe by this section.

10 (b) Compliance Required. – The Eastern Band of Cherokee Indians shall comply with
11 the following provisions of this Chapter to the extent they apply to or can be made applicable to
12 the tribe:

13 (1) The following provisions of Article 1. – General Provisions.

14 a. G.S. 18B-101(4), (7), (7c), (9), (10), (11), (12), (12a), (13), (14)
15 (14a), (14b), and (15).

16 b. G.S. 18B-102.1.

17 c. G.S. 18B-104.

18 d. G.S. 18B-105, except that this section shall not apply to any
19 establishment where gaming is permitted under a State compact and
20 pursuant to federal law.

21 e. G.S. 18B-109(b).

22 f. G.S. 18B-110.

23 g. G.S. 18B-111.

24 h. G.S. 18B-112.

25 (2) Article 1A. – Compensation for Injury Caused by Sales to Underage
26 Persons, to the extent it applies to retail establishments or the tribal alcoholic
27 beverage control commission if it operates ABC stores, or any other
28 permitted establishment, at retail pursuant to the provisions of this section.

29 (3) Article 3. – Sale, Possession, and Consumption, except for G.S. 18B-308
30 and G.S. 18B-309.

31 (4) Article 4. – Transportation.

32 (5) Article 5. – Enforcement, except for G.S. 18B-500 and G.S. 18B-501.

33 (6) Article 9. – Issuance of Permits, except for G.S. 18B-902(g) and (h) and
34 G.S. 18B-906.

35 (7) Article 10. – Retail Activity, except for G.S. 18B-1001.1, 18B-1001.2, and
36 18B-1001.3.

37 Any provision of this Chapter which has not been made applicable to the Eastern Band of
38 Cherokee Indians by this section shall act as a bar to engaging in any activity authorized by that
39 Article or section.

40 (c) Alcoholic Beverages Which May Be Sold. – No alcoholic beverage may be sold on
41 Indian Country lands under the jurisdiction of the Eastern Band of Cherokee Indians pursuant
42 to this section which has not been approved for sale in this State by the North Carolina
43 Alcoholic Beverage Control Commission.

44 (d) Establishment of a Tribal Commission. – In accordance with the provisions of 18
45 U.S.C. § 1161, the Eastern Band of Cherokee Indians is authorized to establish a tribal
46 alcoholic beverage control commission to regulate the purchase, possession, consumption, sale,
47 and delivery of alcoholic beverages at retail on any land designated as Indian Country pursuant
48 to 18 U.S.C. § 1151 under the jurisdiction of the Eastern Band of Cherokee Indians. The tribal
49 commission shall have exclusive authority to issue retail permits to retail establishments
50 located wholly on Indian Country lands under the jurisdiction of the Eastern Band of Cherokee
51 Indians and to regulate the purchase, possession, consumption, sale, and delivery of alcoholic

1 beverages at retail outlets and premises. Permits issued by the tribal commission pursuant to
2 this section shall be deemed issued by the State for the purposes of sales and delivery of beer
3 and wine by wholesalers to the retail outlets located on Indian Country lands. The fees
4 generated by the tribal alcoholic beverage control commission for the issuance of retail permits
5 may be retained by the Eastern Band of Cherokee Indians to offset costs of operating the tribal
6 alcoholic beverage control commission.

7 (e) Establishment of Rules. – The tribal alcoholic beverage control commission shall
8 adopt the rules of the North Carolina Alcoholic Beverage Control Commission regulating retail
9 outlet activity.

10 (f) Authority of the North Carolina Alcoholic Beverage Control Commission. – The
11 North Carolina Alcoholic Beverage Control Commission shall have the authority to enter into
12 agreements with the tribal alcoholic beverage control commission to provide for the sale,
13 delivery, and distribution of spirituous liquor to the tribal alcoholic beverage control
14 commission. The tribal alcoholic beverage control commission shall purchase spirituous liquor
15 for resale by the tribal alcoholic beverage control commission exclusively from the North
16 Carolina Alcoholic Beverage Control Commission at the same price and on the same basis that
17 such spirits are purchased by local boards. To the extent there is a conflict between the tribal
18 alcoholic beverage control commission's authority or purpose and the North Carolina Alcoholic
19 Beverage Control Commission's authority or purpose, the North Carolina Alcoholic Beverage
20 Control Commission shall prevail.

21 (g) Discrimination. – The tribal alcoholic beverage control commission shall not
22 discriminate against non-Indians in the application of the tribal ABC law. Non-Indians shall be
23 entitled to apply for and receive ABC permits in the same manner as an Indian on Indian
24 Country lands under the jurisdiction of the Eastern Band of Cherokee Indians.

25 (h) Resolution of Contested Cases. – If the tribal alcoholic beverage control
26 commission levies a fine or suspends or revokes a permit pursuant to the provisions of
27 G.S. 18B-104 for a violation of the provisions applicable to the Eastern Band of Cherokee
28 Indians in this section, the permittee shall have the right of appeal of an agency final decision
29 of the tribal commission to the tribal courts. Any further appeal shall be to the appellate courts
30 of the tribe. All fines paid to the tribal commission in satisfaction of any penalty assessed by
31 the tribal commission may be retained by the Eastern Band of Cherokee Indians to offset costs
32 of operating the tribal alcoholic beverage control commission.

33 (i) Failure to Comply With Laws of This State. – If the Eastern Band of Cherokee
34 Indians fails to adopt the provisions of this Chapter, made applicable to the tribe by this section,
35 by ordinance; fails to amend tribal ordinances to comply with amendments to the provisions of
36 this Chapter, made applicable to the tribe by this section, within six months of passage of such
37 amendments; or fails to comply with the provisions of this Chapter, made applicable to the tribe
38 by this section, as required by 18 U.S.C. § 1161, the North Carolina Alcoholic Beverage
39 Control Commission is authorized to terminate and prohibit future delivery of any alcoholic
40 beverages from any person to the tribal alcoholic beverage control commission until the
41 Eastern Band of Cherokee Indians complies with the provisions of this Chapter made
42 applicable to the tribe by this section and 18 U.S.C. § 1161.

43 (j) Conflict of Laws. – If any provision of this section or its application conflicts with
44 federal law, the conflict of laws shall be resolved in favor of the federal law unless compliance
45 with the federal law abrogates a right reserved to the State under the Constitution of the United
46 States."

47 **SECTION 4.** G.S. 18B-1001(3) reads as rewritten:

48 "(3) On-Premises Unfortified Wine Permit. – An on-premises unfortified wine
49 permit authorizes the retail sale of unfortified wine for consumption on the
50 premises, either alone or mixed with other beverages, and the retail sale of
51 unfortified wine in the manufacturer's original container for consumption off

1 the premises. The permit also authorizes the permittee to transfer unfortified
2 wine, not more than four times per calendar year, to another on-premises
3 unfortified wine permittee that is under common ownership or control as the
4 transferor. Except as authorized by this subdivision, transfers of wine by
5 on-premises unfortified wine permittees, purchases of wine by a retail
6 permittee from another retail permittee for the purpose of resale, and sale of
7 wine by a retail permittee to another retail permittee for the purpose of resale
8 are unlawful. In addition, a particular brand of wine may be transferred only
9 if both the transferor and transferee are located within the territory
10 designated between the winery and the wholesaler on file with the
11 Commission. Prior to or contemporaneous with any such transfer, the
12 transferor shall notify each wholesaler who distributes the transferred
13 product of the transfer. The notice shall be in writing or verifiable electronic
14 format and shall identify the transferor and transferee, the date of the
15 transfer, quantity, and items transferred. ~~It also authorizes the~~ The holder of
16 the permit ~~is authorized~~ to ship unfortified wine in closed containers to
17 individual purchasers inside and outside the State. Orders received by a
18 winery by telephone, Internet, mail, facsimile, or other off-premises means
19 of communication shall be shipped pursuant to a wine shipper permit and not
20 pursuant to this subdivision. The permit may be issued for any of the
21 following:

- 22 a. Restaurants;
- 23 b. Hotels;
- 24 c. Eating establishments;
- 25 d. Private clubs;
- 26 e. Convention centers;
- 27 f. Cooking schools;
- 28 g. Community theatres;
- 29 h. Wineries;
- 30 i. Wine producers."

31 **SECTION 5.** G.S. 18B-1001(5) reads as rewritten:

32 "(5) On-Premises Fortified Wine Permit. – An on-premises fortified wine permit
33 authorizes the retail sale of fortified wine for consumption on the premises,
34 either alone or mixed with other beverages, and the retail sale of fortified
35 wine in the manufacturer's original container for consumption off the
36 premises. The permit also authorizes the permittee to transfer fortified wine,
37 not more than four times per calendar year, to another on-premises fortified
38 wine permittee that is under common ownership or control as the transferor.
39 Except as authorized by this subdivision, transfers of wine by on-premises
40 fortified wine permittees, purchases of wine by a retail permittee from
41 another retail permittee for the purpose of resale, and sale of wine by a retail
42 permittee to another retail permittee for the purpose of resale are unlawful.
43 In addition, a particular brand of wine may be transferred only if both the
44 transferor and transferee are located within the territory designated between
45 the winery and the wholesaler on file with the Commission. Prior to or
46 contemporaneous with any such transfer, the transferor shall notify each
47 wholesaler who distributes the transferred product of the transfer. The notice
48 shall be in writing or verifiable electronic format and shall identify the
49 transferor and transferee, the date of the transfer, quantity, and items
50 transferred. ~~It also authorizes the~~ The holder of the permit ~~is authorized~~ to
51 ship fortified wine in closed containers to individual purchasers inside and

1 outside the State. Orders received by a winery by telephone, Internet, mail,
2 facsimile, or other off-premises means of communication shall be shipped
3 pursuant to a wine shipper permit and not pursuant to this subdivision. The
4 permit may be issued for any of the following:
5 a. Restaurants;
6 b. Hotels;
7 c. Private clubs;
8 d. Community theatres;
9 e. Wineries;
10 f. Convention centers."

11 **SECTION 6.** This act is effective when it becomes law.