

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 324  
PROPOSED COMMITTEE SUBSTITUTE S324-PCS75173-RN-22

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

(Public)

Sponsors:

Referred to:

March 14, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE EASTERN BAND OF CHEROKEE INDIANS, A  
FEDERALLY RECOGNIZED INDIAN TRIBE AND SOVEREIGN NATION, TO  
RECEIVE SHIPMENTS OF SPIRITUOUS LIQUOR FROM THE NORTH CAROLINA  
ALCOHOLIC BEVERAGE CONTROL COMMISSION AND TO AUTHORIZE THE  
EASTERN BAND OF CHEROKEE INDIANS TO ESTABLISH A TRIBAL  
ALCOHOLIC BEVERAGE CONTROL COMMISSION TO REGULATE THE  
PURCHASE, POSSESSION, CONSUMPTION, SALE, AND DELIVERY OF  
ALCOHOLIC BEVERAGES AT RETAIL.

The General Assembly of North Carolina enacts:

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

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

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

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

...

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

...."

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

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

(a) Application of This Chapter. – The Eastern Band of Cherokee Indians, a federally recognized Indian tribe and sovereign nation, shall be exempt from the provisions of this Chapter, except for those made applicable by this section. The Eastern Band of Cherokee Indians tribe shall adopt by ordinance the provisions of this Chapter which are made applicable to the tribe by this section, and such ordinance shall be approved by the Secretary of the United States Department of the Interior and published in the Federal Register accordingly. The Eastern Band of Cherokee Indians shall hold lawful tribal elections as set out in



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1 G.S. 18B-600(a), and if the result of such election authorizes the activity upon which a vote  
2 was held, the activity shall be deemed authorized by this section. For the purposes of this  
3 section, the tribal alcoholic beverage control commission shall possess the same powers and  
4 authority conveyed upon the North Carolina Alcoholic Beverage Control Commission by any  
5 section of this Chapter made applicable to the tribe by this section.

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

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

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

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

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

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

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

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

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

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

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

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

27 (4) Article 4. – Transportation.

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

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

31 (7) Article 10. – Retail Activity, except for G.S. 18B-1001.1, 18B-1001.2, and  
32 18B-1001.3.

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

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

40 (d) Establishment of a Tribal Commission. – In accordance with the provisions of 18  
41 U.S.C. § 1161, the Eastern Band of Cherokee Indians is authorized to establish a tribal  
42 alcoholic beverage control commission to regulate the purchase, possession, consumption, sale,  
43 and delivery of alcoholic beverages at retail on any land designated as Indian Country pursuant  
44 to 18 U.S.C. § 1151 under the jurisdiction of the Eastern Band of Cherokee Indians. The tribal  
45 commission shall have exclusive authority to issue retail permits to retail establishments  
46 located wholly on Indian Country lands under the jurisdiction of the Eastern Band of Cherokee  
47 Indians and to regulate the purchase, possession, consumption, sale, and delivery of alcoholic  
48 beverages at retail outlets and premises. Permits issued by the tribal commission pursuant to  
49 this section shall be deemed issued by the State for the purposes of sales and delivery of beer  
50 and wine by wholesalers to the retail outlets located on Indian Country lands. The fees  
51 generated by the tribal alcoholic beverage control commission for the issuance of retail permits

1 may be retained by the Eastern Band of Cherokee Indians to offset costs of operating the tribal  
2 alcoholic beverage control commission.

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

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

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

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

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

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

43 **SECTION 4.** This act is effective when it becomes law.