

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 480
Mar 23, 2017
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH30188-ML-99 (02/17)

Short Title: ABC Permits/Tax Compliance & Reports. (Public)

Sponsors: Representatives Boles, J. Bell, and Willingham (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THE ABC COMMISSION AND THE DEPARTMENT OF
3 REVENUE TO CERTIFY ON AN ANNUAL BASIS THAT BREWERY AND
4 DISTILLERY PERMIT HOLDERS ARE COMPLIANT WITH STATE TAX
5 REQUIREMENTS AND TO REQUIRE CERTAIN BREWERY PERMIT HOLDERS TO
6 SUBMIT AN ANNUAL REPORT TO THE ABC COMMISSION.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. G.S. 18B-1104 reads as rewritten:

9 "§ 18B-1104. Authorization of brewery permit.

10 (a) Authorized Acts. – The holder of a brewery permit may:

11 ...

12 (6a) Receive, in closed containers, and sell at the brewery, malt beverages
13 produced inside or outside North Carolina under contract with a contract
14 brewery. The contract brewery that manufactures the malt beverages shall be
15 responsible for all aspects associated with manufacturing the product,
16 including maintaining appropriate records, obtaining label approval in its
17 own name, and remitting the appropriate taxes. The contract malt beverages
18 may be sold also at affiliated retail outlets of the brewery physically located
19 on or adjacent to the brewery. Any malt beverages received from a contract
20 brewery under this subdivision shall be made available for sale by the
21 brewery to wholesalers for distribution to retailers, without discrimination,
22 in the same manner as if the malt beverages were being imported by the
23 brewery. Contract brewing is authorized between affiliated breweries, but
24 shall not be used as a means to allocate production quantities between
25 affiliated breweries to obtain a malt beverage wholesaler permit pursuant to
26 ~~G.S. 18B-1104(8)~~ subdivision (8) of this subsection where either brewery
27 would not otherwise qualify for a permit, and the Commission shall have no
28 authority to grant an exemption to this requirement pursuant to
29 G.S. 18B-1116(b).

30 ...

31 (8) Obtain a malt beverage wholesaler permit to sell, deliver, and ship at
32 wholesale only malt beverages manufactured by the brewery. The
33 authorization of this subdivision applies to a brewery that sells, to consumers
34 at the brewery, to wholesalers, to retailers, and to exporters, fewer than
35 25,000 barrels, as defined in G.S. 81A-9, barrels of malt beverages produced
36 by it per year. A brewery not exceeding the sales quantity limitations in this



1 subdivision may also sell the malt beverages manufactured by the brewery at
2 not more than three other locations in the State, where the sale is legal, upon
3 obtaining the appropriate permits under G.S. 18B-1001. A brewery operating
4 any additional retail location pursuant to this subdivision shall also offer for
5 sale at that location a reasonable selection of competitive malt beverage
6 products.

7 (b) Sales or Gifts. – A sale or gift under subdivision (5) or (6) of subsection (a) of this
8 section shall not be considered a retail or wholesale sale under the ABC laws.

9 (c) Tax Compliance. – By October 1 of each year, the Commission shall confirm that
10 the holder of a brewery permit is in compliance with G.S. 18B-900(a)(8). The provisions of
11 G.S. 18B-900(f) apply to the confirmation required under this subsection, except that the
12 Commission may suspend a person's brewery permit until the Commission receives notice from
13 the Department of Revenue that the person is in compliance.

14 (d) Annual Report. – By October 1 of each year, a holder of a brewery permit who
15 obtains a malt beverage wholesaler permit pursuant to subdivision (8) of subsection (a) of this
16 section shall provide a report to the Commission that includes all of the following for the
17 12-month period preceding the date of the report:

18 (1) The number of barrels of malt beverages sold by the permit holder that were
19 produced by the permit holder.

20 (2) The quantity and dollar amount of malt beverages sold by the permit holder
21 under subdivision (7) of subsection (a) of this section.

22 (3) The quantity and dollar amount of malt beverages sold on-premises under
23 subdivision (8) of subsection (a) of this section.

24 (4) The quantity and dollar amount of malt beverages sold off-premises under
25 subdivision (8) of subsection (a) of this section.

26 (5) The quantity and dollar amount of malt beverages sold under
27 G.S. 18B-1114.5.

28 (6) The quantity and dollar amount of malt beverages destroyed, spoiled, or
29 otherwise rendered unsalable.

30 (e) Form and Delivery of Report. – The report required under subsection (d) of this
31 section shall list separately the information required under subsection (d) of this section. Except
32 as otherwise provided in this subsection, the form and delivery method of the report required
33 under subsection (d) of this section shall be set by the Commission.

34 (f) Definition. – For purposes of this section, the term "barrels" is as defined in
35 G.S. 81A-9."

36 **SECTION 2.** G.S. 18B-1105 is amended by adding a new subsection to read:

37 "(c) Tax Compliance. – By October 1 of each year, the Commission shall confirm the
38 holder of a distillery permit is in compliance with G.S. 18B-900(a)(8). The provisions of
39 G.S. 18B-900(f) apply to the confirmation required under this subsection, except that the
40 Commission may suspend a person's distillery permit until the Commission receives notice
41 from the Department of Revenue that the person is in compliance."

42 **SECTION 3.** G.S. 18B-903(c1) reads as rewritten:

43 "(c1) Construction of Change in Ownership. – Nothing in subsection (c) of this section
44 shall be construed to limit alternating brewery proprietorships in which the holder of a brewery
45 permit leases or otherwise makes available its facility to another holder of a brewery permit. In
46 this arrangement, the tenant brewery shall maintain title to the malt beverages at all states of the
47 brewing process and shall be responsible for all aspects associated with manufacturing the
48 product, including maintaining appropriate records, obtaining label approval in its own name,
49 and remitting the appropriate taxes. Alternating brewery proprietorships are authorized between
50 affiliated breweries, but shall not be used as a means to allocate production quantities between
51 affiliated breweries to obtain a malt beverage wholesaler permit pursuant to G.S.

1 ~~18B-1104(8)~~G.S. 18B-1104(a)(8) where either brewery would not otherwise qualify for a
2 permit, and the Commission shall have no authority to grant an exemption to this requirement
3 pursuant to G.S. 18B-1116(b)."

4 **SECTION 4.** G.S. 18B-1001(1)i. reads as rewritten:

5 "i. Breweries as authorized by ~~G.S. 18B-1104(7) and (8)~~ subdivisions
6 (7) and (8) of G.S. 18B-1104(a)."

7 **SECTION 5.** G.S. 18B-1114.5(a) reads as rewritten:

8 "(a) Authorization. – The holder of a brewery permit, a malt beverages importer permit,
9 a brewing, distillation, and fermentation course authorization, or a nonresident malt beverage
10 vendor permit may obtain a malt beverage special event permit allowing the permittee to give
11 free tastings of its malt beverages and to sell its malt beverages by the glass or in closed
12 containers at trade shows, conventions, shopping malls, malt beverage festivals, street festivals,
13 holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar
14 events approved by the Commission. Except for a brewery operating under the provisions of
15 ~~G.S. 18B-1104(8)~~G.S. 18B-1104(a)(8), all malt beverages sampled or sold pursuant to this
16 section must be purchased from a licensed malt beverages wholesaler."

17 **SECTION 6.** G.S. 18B-1116(a) reads as rewritten:

18 "**§ 18B-1116. Exclusive outlets prohibited.**

19 (a) Prohibitions. – It shall be unlawful for any manufacturer, bottler, or wholesaler of
20 any alcoholic beverages, or for any officer, director, or affiliate thereof, either directly or
21 indirectly to:

22 ...

23 A brewery qualifying under ~~G.S. 18B-1104(8)~~G.S. 18B-1104(a)(8) to act as a wholesaler or
24 retailer of its own malt beverages is not subject to the provisions of this subsection concerning
25 financial interests in, and lending or giving things of value to, a wholesaler or retailer with
26 respect to the brewery's transactions with the retail business on its premises. The brewery is
27 subject to the provisions of this subsection, however, with respect to its transactions with all
28 other wholesalers and retailers."

29 **SECTION 7.** G.S. 18B-1305(a1) reads as rewritten:

30 "(a1) Termination by a Small Brewery. – A brewery's authorization to distribute its own
31 malt beverage products pursuant to ~~G.S. 18B-1104(8)~~G.S. 18B-1104(a)(8) shall revert back to
32 the brewery, in the absence of good cause, following the fifth business day after confirmed
33 receipt of written notice of such reversion by the brewery to the wholesaler. The brewery shall
34 pay the wholesaler fair market value for the distribution rights for the affected brand. For
35 purposes of this subsection, "fair market value" means the highest dollar amount at which a
36 seller would be willing to sell and a buyer willing to buy at the time the self-distribution rights
37 revert back to the brewery, after each party has been provided all information relevant to the
38 transaction."

39 **SECTION 8.** This act is effective when it becomes law.