

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 480
PROPOSED COMMITTEE SUBSTITUTE H480-PCS40503-TT-10

Short Title: ABC Permits/Tax Compliance & Reports.

(Public)

Sponsors:

Referred to:

March 28, 2017

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



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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. The Commission shall keep
34 all information provided pursuant to subsection (d) confidential except as required by law or
35 requested by the Department of Revenue. The information shall not be a public record under
36 Chapter 132 of the General Statutes.

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

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

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

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

46 "(c1) Construction of Change in Ownership. – Nothing in subsection (c) of this section
47 shall be construed to limit alternating brewery proprietorships in which the holder of a brewery
48 permit leases or otherwise makes available its facility to another holder of a brewery permit. In
49 this arrangement, the tenant brewery shall maintain title to the malt beverages at all states of the
50 brewing process and shall be responsible for all aspects associated with manufacturing the
51 product, including maintaining appropriate records, obtaining label approval in its own name,

1 and remitting the appropriate taxes. Alternating brewery proprietorships are authorized between
2 affiliated breweries, but shall not be used as a means to allocate production quantities between
3 affiliated breweries to obtain a malt beverage wholesaler permit pursuant to ~~G.S. 18B-1104(8)~~
4 G.S. 18B-1104(a)(8) where either brewery would not otherwise qualify for a permit, and the
5 Commission shall have no authority to grant an exemption to this requirement pursuant to
6 G.S. 18B-1116(b)."

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

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

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

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

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

21 "**§ 18B-1116. Exclusive outlets prohibited.**

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

25 ...

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

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

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

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