

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 363
PROPOSED COMMITTEE SUBSTITUTE H363-PCS10327-TQ-7

Short Title: Craft Beer Distribution & Modernization Act.

(Public)

Sponsors:

Referred to:

March 18, 2019

A BILL TO BE ENTITLED
AN ACT TO CONFIRM THE STATE'S SUPPORT OF THE THREE-TIER SYSTEM FOR
DISTRIBUTION OF MALT BEVERAGES AND THE FRANCHISE LAWS, TO MAKE
ADJUSTMENTS TO MODERNIZE THE EXEMPTIONS TO THE THREE-TIER
SYSTEM, AND TO PROMOTE THE GROWTH OF SMALL AND MID-SIZED
INDEPENDENT CRAFT BREWERIES.

Whereas, the General Assembly reaffirms its support of the Beer Franchise Law and the three-tier system for the distribution of malt beverages and finds that the Beer Franchise Law and the three-tier system does all of the following:

- (1) Promotes consumer choice and product variety by providing a platform that enables new malt beverage products to come to market that might not otherwise be available to the consumer. These laws encourage wholesalers to make investments in their businesses necessary to expand distribution of new products and to allow large and small breweries alike an opportunity to enter the market through independent distribution. Wholesaler investments include adding resources such as warehouses, personnel, vehicles, equipment, merchandise, and marketing. Consumers have access to an exceedingly wide array of malt beverage products, unlike other industries that foster closed distribution networks and vertical integration.
- (2) Promotes the growth of the craft beer industry by providing suppliers with access to markets outside of the brewery. Brewers that use wholesalers are able to instantly access and utilize a wholesaler's established infrastructure in markets they may not otherwise be able to enter. Smaller breweries further benefit because wholesalers are able to act independently to carry all brands, from large and small suppliers. The goal of these laws is to allow brewers of all sizes to fairly compete in the marketplace and to access retailers of all sizes.
- (3) Helps ensure that the industry, as a whole, complies with the alcohol laws of this State. A wholesaler must remain independent and free from unfair conduct to promote responsible sales and marketing practices. Wholesaler independence also promotes and maintains fair dealing among industry participants. Ultimately, these measures protect consumers and the public from abuses that might occur absent the three-tier system.
- (4) Promotes a vibrant marketplace that carefully balances fair competition with health and public safety concerns. The Beer Franchise Law and the three-tier system ensure that all three tiers operate independently and on a level playing field so that no one participant or sector of the industry becomes too dominant



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1 over the others. These laws allow for fair checks and balances in the beer
2 industry. Wholesaler independence further creates a transparent and
3 accountable distribution system that assists in identifying improper marketing
4 practices and potentially unsafe products when issues arise and provides
5 brewers that engage a wholesaler with an established means to access new
6 markets.

7 (5) Prevents vertical integration of the manufacturing, distribution, and retail
8 tiers. This still occurs in other countries today where adverse health and public
9 safety effects are observed. The historical three-tier system model
10 incorporated a deliberate regulatory structure that prevents monopolization.
11 However, as the number of beer industry participants has grown substantially,
12 it is necessary to make important adjustments to the three-tier system to
13 promote the overall success of the beer manufacturing industry in North
14 Carolina by recognizing the different stages of brewery development.

15 (6) Assists in collecting excise taxes, particularly from nonresident suppliers.
16 While self-distributing resident breweries are required to remit excise taxes
17 directly to the Department of Revenue, wholesalers collect and remit the
18 excise tax on malt beverages on behalf of resident and nonresident suppliers
19 to the Department of Revenue, totaling approximately \$140 million in excise
20 taxes each year to the State.

21 (7) Promotes local regulatory control, temperance, and moderate consumption of
22 malt beverages. The three-tier system in particular incorporates features to
23 promote healthy competition in the marketplace while minimizing
24 overly-aggressive marketing practices, such as limits on quantity discounts,
25 requirements of nondiscriminatory treatment among wholesalers and retailers,
26 and limits on advertising and promotional materials. The three-tier system also
27 provides clear chain of custody for products in distribution, which enables law
28 enforcement to easily track products in the marketplace when issues arise.

29 (8) Provides a vital platform that promotes product safety for consumers. Malt
30 beverage distributors invest heavily in infrastructure, such as modern
31 warehouses and vehicles, that maintain product integrity during distribution.
32 There are also strict record-keeping requirements, which enable wholesalers
33 to readily track malt beverage products sold in the market for prompt return
34 in the event of a product recall.

35 (9) Encourages wholesalers, under the Beer Franchise Law, to invest capital and
36 labor for suppliers of all sizes, large and small, to expand into new markets
37 with new products. Unfair or arbitrary termination is prohibited, but suppliers
38 who are subject to the Beer Franchise Law are still afforded the ability to
39 terminate a distribution agreement for good cause. The Beer Franchise Law
40 inhibits forced consolidation among wholesalers. The three-tier system also
41 affords small retailers the same market access opportunities to the same wide
42 selection of brands that other large-scale retailers have, and on equal terms.

43 Whereas, the General Assembly also reaffirms its support of the craft beer industry
44 and makes the following findings:

45 (1) The current small-brewery provisions of Chapter 18B of the General Statutes
46 were intended to foster the growth of small craft breweries while
47 simultaneously protecting wholesalers from the risk of economic uncertainty.
48 Since the adoption of those provisions, however, the craft beer industry has
49 seen exponential growth. The craft beer industry now provides a significant
50 source of high-quality manufacturing and service employment and wages and
51 generates significant tax revenue for the State. In addition, the growth of the

1 craft beer industry has resulted in significant positive secondary impacts on
2 the economy through increased business to a myriad of suppliers to the craft
3 breweries, resulting in even greater employment and tax revenue for the
4 State's citizens.

5 (2) It is in the best interest of the State to continue supporting the entrepreneurial
6 spirit and economic growth driven by the craft beer industry. Yet it remains
7 vital to preserve the integrity of the State's three-tier system. Today, mid-sized
8 independent breweries possess only a fraction of the malt beverage market in
9 light of increased consolidation and globalization of large suppliers.
10 Consequently, the growth of these mid-sized independent breweries promotes
11 economic development, employment and wages, and significant tax revenue
12 without the same risks of harm that the three-tier system is designed to
13 minimize.

14 (3) In view of these new market realities, the existing small brewery provisions
15 of Chapter 18B of the General Statutes warrant revision. Specifically,
16 recognition for a new category of breweries, Mid-Sized Independent
17 Breweries, is needed to reflect the market's evolution, foster the continued
18 growth of the craft beer industry, promote consumer choice, ensure access to
19 market, and promote stable and healthy competition in the malt beverage
20 industry in this State. The following legislative enactments are expressly
21 intended to further these purposes.

22 Whereas, the General Assembly finds that regulation of the malt beverage industry
23 and the objectives sought to be achieved by this act fall squarely within the authority granted to
24 the State by the 21st Amendment to the United States Constitution and the inherent police powers
25 of this State; Now, therefore,

26 The General Assembly of North Carolina enacts:

27 **SECTION 1.** G.S. 18B-100 reads as rewritten:

28 "**§ 18B-100. Purpose of Chapter.**

29 This Chapter is intended to establish a uniform system of control over the sale, purchase,
30 transportation, manufacture, consumption, and possession of alcoholic beverages in North
31 Carolina, and to provide procedures to insure the proper administration of the ABC laws under a
32 uniform system throughout the State. This Chapter shall be liberally construed to the end that the
33 sale, purchase, transportation, manufacture, consumption, and possession of alcoholic beverages
34 shall be prohibited except as authorized in this Chapter. If any provision of this Chapter, or its
35 application to any person or circumstance, is determined by a court or other authority of
36 competent jurisdiction to be invalid or unconstitutional, such provision shall be stricken and the
37 remaining provisions shall be construed in accordance with the intent of the General Assembly
38 to further limit rather than expand commerce in alcoholic beverages, and with respect to malt
39 beverages, unfortified wine, and fortified wine, the remaining provisions shall be construed to
40 enhance strict regulatory control over taxation, distribution, and sale of alcoholic beverages
41 through the three-tier regulatory system and the franchise laws imposed by this Chapter.

42 Except as provided in this Chapter, local ordinances establishing different rules on the
43 manufacture, sale, purchase, transportation, possession, consumption, or other use of alcoholic
44 beverages, or requiring additional permits or fees, are prohibited."

45 **SECTION 2.** G.S. 18B-1104(a)(8) reads as rewritten:

46 "(8) Obtain a malt beverage wholesaler permit to sell, deliver, and ship at
47 wholesale ~~only up to 50,000 barrels of~~ malt beverages manufactured by the
48 ~~brewery.~~ brewery per year to unaffiliated retail permittees. The authorization
49 of this subdivision applies to a brewery that sells, to consumers at the brewery,
50 to wholesalers, to retailers, and to exporters, fewer than ~~25,000-100,000~~
51 barrels of malt beverages produced by it per year. The barreage limitations

1 set forth in this subdivision apply regardless of the number or type of permits
 2 that may be issued to a brewery under this Chapter. A brewery not exceeding
 3 the sales quantity limitations in this subdivision may also sell the malt
 4 beverages manufactured by the brewery, and malt beverages produced under
 5 subdivision (6a) of this subsection, at not more than three other locations in
 6 the State, where the sale is legal, upon obtaining the appropriate permits under
 7 G.S. 18B-1001. A brewery operating any additional retail location pursuant to
 8 this subdivision under a different trade name than that used at the brewery
 9 shall also offer for sale at that location a reasonable selection of competitive
 10 malt beverage products. A sale at any additional retail location under this
 11 subdivision shall not be considered a wholesale sale for the purposes of Article
 12 13 of this Chapter. Except as provided in G.S. 18B-1116(b), the Commission
 13 shall have no authority to grant an exemption to or otherwise allow a brewery
 14 permittee more than the three additional retail locations authorized by this
 15 subdivision. Malt beverages manufactured by a supplier permittee that owns
 16 five percent (5%) or more of a brewery permittee acting under the authority
 17 granted in this subdivision shall be included in determining whether the
 18 brewery permittee complies with the barrelage limitations set forth in this
 19 subdivision."

20 **SECTION 3.** G.S. 18B-1116 reads as rewritten:

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

22 ...

23 (b) Exemptions. – The Commission may grant exemptions from the provisions of this
 24 section. Any exemption entered by the Commission in which any brewery or any officer, director,
 25 or affiliate of the brewery has a direct or indirect financial interest in the business of any retailer
 26 beyond the number of additional retail locations authorized by G.S. 18B-1104 shall prohibit the
 27 brewery's malt beverages from being sold to or purchased by that retailer. In determining whether
 28 to grant an exemption, the Commission shall consider the public welfare, the quantity and value
 29 of articles involved, established trade customs not contrary to the public interest, and the purposes
 30 of this section.

31 "

32 **SECTION 4.** G.S. 18B-1300 reads as rewritten:

33 "**§ 18B-1300. Purpose.**

34 Pursuant to the authority of the State under the Twenty-First Amendment to the United States
 35 Constitution, the General Assembly finds that regulation of the business relations between malt
 36 beverage manufacturers and importers and the wholesalers of such products is necessary to:

37 ...

- 38 (5) Prevent unfair or unlawful trade practices by enabling wholesalers to refuse
 39 to participate in such practices without fear of arbitrary or unlawful retribution
 40 from suppliers.
- 41 (6) Provide wholesalers with rights and remedies in addition to those existing by
 42 contract or common law.
- 43 (7) Govern all agreements between suppliers and wholesalers, including any
 44 renewals or amendments.
- 45 (8) Protect wholesalers against unfair treatment by suppliers.
- 46 (9) Preserve investments made by wholesalers in franchise agreements through
 47 minimization of arbitrary termination.
- 48 (10) Promote consumer choice by ensuring an independent wholesale distribution
 49 tier that enables wholesalers to distribute competing products of other
 50 suppliers.
- 51 (11) Prevent vertical integration of the malt beverage market."

1 **SECTION 5.** G.S. 18B-1305(a1) reads as rewritten:

2 "(a1) Termination by a Small Brewery. – A brewery's authorization to distribute its own
3 malt beverage products pursuant to G.S. 18B-1104(a)(8) shall revert back to the brewery, in the
4 absence of good cause, following the fifth business day after confirmed receipt of written notice
5 of such reversion by the brewery to the wholesaler. The brewery shall pay the wholesaler fair
6 market value for the distribution rights for the affected brand. For purposes of this subsection,
7 "fair market value" means the highest dollar amount at which a seller would be willing to sell
8 and a buyer willing to buy at the time the self-distribution rights revert back to the brewery, after
9 each party has been provided all information relevant to the transaction. This subsection only
10 applies to a brewery that sells to consumers at the brewery, to wholesalers, to retailers, and to
11 exporters fewer than 25,000 barrels of malt beverages produced by it per year. Malt beverages
12 manufactured by a supplier permittee that owns five percent (5%) or more of a brewery permittee
13 shall be included in determining whether the brewery permittee complies with the barrelage
14 limitations set forth in this subdivision. For purposes of this subsection, the term "barrel" is as
15 defined in G.S. 18B-1104."

16 **SECTION 6.** If any provision of this act or its application is held invalid, the
17 invalidity does not affect other provisions or applications of this act that can be given effect
18 without the invalid provisions or application, and to this end the provisions of this act are
19 severable.

20 **SECTION 7.** This act does not apply to any exemption order or amendment thereto
21 entered by the Alcoholic Beverage Control Commission prior to the effective date of this act, or
22 to any such exemption order or amendment that is renewed or reissued by the Commission after
23 the effective date of this act.

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