

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

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SENATE BILL 246*

Short Title: Craft Beer Distribution & Modernization Act. (Public)

Sponsors: Senator Rabon (Primary Sponsor).

Referred to: Rules and Operations of the Senate

March 14, 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 or oppressive conduct by large suppliers 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 if large industry participants were able to control more than one tier of the industry.
- (4) Promotes a vibrant marketplace that carefully balances fair competition with health and public safety concerns. The Beer Franchise Law and the three-tier



- 1 system ensure that all three tiers operate independently and on a level playing
2 field so that no one participant or sector of the industry becomes too dominant
3 over the others. These laws allow for fair checks-and-balances in the beer
4 industry. Wholesaler independence further creates a transparent and
5 accountable distribution system that assists in identifying improper marketing
6 practices and potentially unsafe products when issues arise, and provides
7 brewers that engage a wholesaler with an established means to access new
8 markets.
- 9 (5) Prevents vertical integration of the manufacturing, distribution, and retail tiers
10 by large industry participants. This still occurs in other countries today where
11 adverse health and public safety effects are observed. The historical three-tier
12 system model incorporated a deliberate regulatory structure that made it
13 impossible for large suppliers to monopolize. However, as the number of beer
14 industry participants has grown substantially, it is necessary to make
15 important adjustments to the three-tier system to promote the overall success
16 of the beer manufacturing industry in North Carolina by recognizing the
17 different stages of brewery development.
- 18 (6) Assists in collecting excise taxes, particularly from nonresident suppliers.
19 While self-distributing resident breweries are required to remit excise taxes
20 directly to the Department of Revenue, wholesalers collect and remit the
21 excise tax on malt beverages on behalf of resident and nonresident suppliers
22 to the Department of Revenue, totaling approximately \$140 million in excise
23 taxes each year to the State.
- 24 (7) Promotes local regulatory control, temperance, and moderate consumption of
25 malt beverages. The three-tier system in particular incorporates features to
26 promote healthy competition in the marketplace while minimizing
27 overly-aggressive marketing practices, such as limits on quantity discounts,
28 requirements of nondiscriminatory treatment among wholesalers and retailers,
29 and limits on advertising and promotional materials. The three-tier system also
30 provides clear chain of custody for products in distribution, which enables law
31 enforcement to easily track products in the marketplace when issues arise.
- 32 (8) Provides a vital platform that promotes product safety for consumers. Malt
33 beverage distributors invest heavily in infrastructure, such as modern
34 warehouses and vehicles, that maintain product integrity during distribution.
35 There are also strict recordkeeping requirements, which enable wholesalers to
36 readily track malt beverage products sold in the market for prompt return in
37 the event of a product recall.
- 38 (9) Helps ensure these and other policy objectives by preventing unfair or
39 arbitrary termination from large suppliers. The Beer Franchise Law
40 encourages wholesalers to invest capital and labor for suppliers of all sizes,
41 large and small, to expand into new markets with new products. Although
42 unfair or arbitrary termination is prohibited, suppliers who are subject to the
43 Beer Franchise Law are still afforded the ability to terminate a distribution
44 agreement for good cause. Wholesaler independence is critical to prevent
45 vertical integration of the market and other tied house abuses by large industry
46 participants. The Beer Franchise Law inhibits forced consolidation among
47 wholesalers and prevents arbitrary termination of a franchise agreement by
48 these large suppliers. The three-tier system also affords small retailers the
49 same market access opportunities to the same wide selection of brands that
50 other large-scale retailers have, and on equal terms.

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

- 3 (1) The current small-brewery provisions of Chapter 18B of the General Statutes
4 were intended to foster the growth of small craft breweries while
5 simultaneously protecting wholesalers from the risk of economic abuses by
6 large suppliers holding market dominance. Since the adoption of those
7 provisions, however, the craft beer industry has seen exponential growth. The
8 craft beer industry now provides a significant source of high-quality
9 manufacturing and service employment and wages and generates significant
10 tax revenue for the State. In addition, the growth of the craft beer industry has
11 resulted in significant positive secondary impacts on the economy through
12 increased business to a myriad of suppliers to the craft breweries, resulting in
13 even greater employment and tax revenue for the State's citizens.
- 14 (2) It is in the best interest of the State to continue supporting the entrepreneurial
15 spirit and economic growth driven by the craft beer industry. Yet it remains
16 vital to preserve the integrity of the State's three-tier system, which minimizes
17 the potential for harm by large suppliers that hold market dominance. Today,
18 mid-sized independent breweries possess only a fraction of the malt beverage
19 market in light of increased consolidation and globalization of large suppliers.
20 Consequently, the growth of these mid-sized independent breweries promotes
21 economic development, employment and wages, and significant tax revenue
22 without the same risks of harm that the three-tier system is designed to
23 minimize.
- 24 (3) In view of these new market realities, the existing small brewery provisions
25 of Chapter 18B of the General Statutes warrant revision. Specifically,
26 recognition for a new category of breweries, Mid-Sized Independent
27 Breweries, is needed to reflect the market's evolution, foster the continued
28 growth of the craft beer industry, promote consumer choice, ensure access to
29 market, and promote stable and healthy competition in the malt beverage
30 industry in this State. The following legislative enactments are expressly
31 intended to further these purposes.

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

36 The General Assembly of North Carolina enacts:

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

38 **"§ 18B-100. Purpose of Chapter.**

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

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

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

5 "(8) Obtain a malt beverage wholesaler permit to sell, deliver, and ship at
6 wholesale ~~only up to 50,000 barrels of malt beverages manufactured by the~~
7 ~~brewery. brewery per year to unaffiliated retail permittees.~~ The authorization
8 of this subdivision applies to a brewery that sells, to consumers at the brewery,
9 to wholesalers, to retailers, and to exporters, fewer than ~~25,000-100,000~~
10 barrels of malt beverages produced by it per year. The barrelage limitations
11 set forth in this subdivision apply regardless of the number or type of permits
12 that may be issued to a brewery under this Chapter. A brewery not exceeding
13 the sales quantity limitations in this subdivision may also sell the malt
14 beverages manufactured by the brewery, and malt beverages produced under
15 subdivision (6a) of this subsection, at not more than three other locations in
16 the State, where the sale is legal, upon obtaining the appropriate permits under
17 G.S. 18B-1001. A brewery operating any additional retail location pursuant to
18 this subdivision under a different trade name than that used at the brewery
19 shall also offer for sale at that location a reasonable selection of competitive
20 malt beverage products. A sale at any additional retail location under this
21 subdivision shall not be considered a wholesale sale for the purposes of Article
22 13 of this Chapter. The Commission shall have no authority to grant an
23 exemption to or otherwise allow more than the three additional retail locations
24 authorized by this subdivision. Malt beverages manufactured by a supplier
25 that owns five percent (5%) or more of a brewery permittee acting under the
26 authority granted in this subdivision shall be included in determining whether
27 the brewery permittee complies with the barrelage limitations set forth in this
28 subdivision."

29 **SECTION 3.** G.S. 18B-1300 reads as rewritten:

30 **"§ 18B-1300. Purpose.**

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

34 ...

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

49 **SECTION 4.** G.S. 18B-1305(a1) reads as rewritten:

50 "(a1) Termination by a Small Brewery. – A brewery's authorization to distribute its own
51 malt beverage products pursuant to G.S. 18B-1104(a)(8) shall revert back to the brewery, in the

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

13 **SECTION 5.** If any provision of this act or its application is held invalid, the
14 invalidity does not affect other provisions or applications of this act that can be given effect
15 without the invalid provisions or application, and to this end the provisions of this act are
16 severable.

17 **SECTION 6.** Section 2 of this act does not apply to any exemption order or
18 amendment thereto entered by the Alcoholic Beverage Control Commission prior to the effective
19 date of this act.

20 **SECTION 7.** This act is effective when it becomes law.