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

Prevents vertical integration of the manufacturing, distribution, and retail tiers by large industry participants. This still occurs in other countries today where adverse health and public safety effects are observed. The historical three-tier system model incorporated a deliberate regulatory structure that made it impossible for large suppliers to monopolize. However, as the number of beer industry participants has grown substantially, it is necessary to make important adjustments to the three-tier system to promote the overall success of the beer manufacturing industry in North Carolina by recognizing the different stages of brewery development.

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

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

Provides a vital platform that promotes product safety for consumers. Malt beverage distributors invest heavily in infrastructure, such as modern warehouses and vehicles, that maintain product integrity during distribution. There are also strict recordkeeping requirements, which enable wholesalers to readily track malt beverage products sold in the market for prompt return in the event of a product recall.

Helps ensure these and other policy objectives by preventing unfair or arbitrary termination from large suppliers. The Beer Franchise Law encourages wholesalers to invest capital and labor for suppliers of all sizes, large and small, to expand into new markets with new products. Although unfair or arbitrary termination is prohibited, suppliers who are subject to the Beer Franchise Law are still afforded the ability to terminate a distribution agreement for good cause. Wholesaler independence is critical to prevent vertical integration of the market and other tied house abuses by large industry participants. The Beer Franchise Law inhibits forced consolidation among wholesalers and prevents arbitrary termination of a franchise agreement by these large suppliers. The three-tier system also affords small retailers the same market access opportunities to the same wide selection of brands that other large-scale retailers have, and on equal terms.
Whereas, the General Assembly also reaffirms its support of the craft beer industry and makes the following findings:

(1) The current small-brewery provisions of Chapter 18B of the General Statutes were intended to foster the growth of small craft breweries while simultaneously protecting wholesalers from the risk of economic abuses by large suppliers holding market dominance. Since the adoption of those provisions, however, the craft beer industry has seen exponential growth. The craft beer industry now provides a significant source of high-quality manufacturing and service employment and wages and generates significant tax revenue for the State. In addition, the growth of the craft beer industry has resulted in significant positive secondary impacts on the economy through increased business to a myriad of suppliers to the craft breweries, resulting in even greater employment and tax revenue for the State's citizens.

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

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

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

The General Assembly of North Carolina enacts:

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

"§ 18B-100. Purpose of Chapter.

This Chapter is intended to establish a uniform system of control over the sale, purchase, transportation, manufacture, consumption, and possession of alcoholic beverages in North Carolina, and to provide procedures to insure the proper administration of the ABC laws under a uniform system throughout the State. This Chapter shall be liberally construed to the end that the sale, purchase, transportation, manufacture, consumption, and possession of alcoholic beverages shall be prohibited except as authorized in this Chapter. If any provision of this Chapter, or its application to any person or circumstance, is determined by a court or other authority of competent jurisdiction to be invalid or unconstitutional, such provision shall be stricken and the remaining provisions shall be construed in accordance with the intent of the General Assembly to further limit rather than expand commerce in alcoholic beverages, and with respect to malt beverages, unfortified wine, and fortified wine, the remaining provisions shall be construed to enhance strict regulatory control over taxation, distribution, and sale of alcoholic beverages through the three-tier regulatory system and the franchise laws imposed by this Chapter."
Except as provided in this Chapter, local ordinances establishing different rules on the manufacture, sale, purchase, transportation, possession, consumption, or other use of alcoholic beverages, or requiring additional permits or fees, are prohibited."

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

"(8) Obtain a malt beverage wholesaler permit to sell, deliver, and ship at wholesale only up to 50,000 barrels of malt beverages manufactured by the brewery per year to unaffiliated retail permittees. The authorization of this subdivision applies to a brewery that sells, to consumers at the brewery, to wholesalers, to retailers, and to exporters, fewer than 25,000–100,000 barrels of malt beverages produced by it per year. The barrelage limitations set forth in this subdivision apply regardless of the number or type of permits that may be issued to a brewery under this Chapter. A brewery not exceeding the sales quantity limitations in this subdivision may also sell the malt beverages manufactured by the brewery, and malt beverages produced under subdivision (6a) of this subsection, at not more than three other locations in the State, where the sale is legal, upon obtaining the appropriate permits under G.S. 18B-1001. A brewery operating any additional retail location pursuant to this subdivision under a different trade name than that used at the brewery shall also offer for sale at that location a reasonable selection of competitive malt beverage products. A sale at any additional retail location under this subdivision shall not be considered a wholesale sale for the purposes of Article 13 of this Chapter. The Commission shall have no authority to grant an exemption to or otherwise allow more than the three additional retail locations authorized by this subdivision. Malt beverages manufactured by a supplier that owns five percent (5%) or more of a brewery permittee acting under the authority granted in this subdivision shall be included in determining whether the brewery permittee complies with the barrelage limitations set forth in this subdivision."
absence of good cause, following the fifth business day after confirmed receipt of written notice
of such reversion by the brewery to the wholesaler. The brewery shall pay the wholesaler fair
market value for the distribution rights for the affected brand. For purposes of this subsection,
"fair market value" means the highest dollar amount at which a seller would be willing to sell
and a buyer willing to buy at the time the self-distribution rights revert back to the brewery, after
each party has been provided all information relevant to the transaction. This subsection only
applies to a brewery that sells to consumers at the brewery, to wholesalers, to retailers, and to
exporters, fewer than 25,000 barrels of malt beverages produced by it per year. Malt beverages
manufactured by a supplier that owns five percent (5%) or more of a brewery permittee shall be
included in determining whether the brewery permittee complies with the barrelage limitations
set forth in this subdivision. For purposes of this subsection, the term "barrel" is as defined in
G.S. 18B-1104."

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

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

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