

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

SESSION LAW 2019-18
HOUSE BILL 363

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 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.



- (5) Prevents vertical integration of the manufacturing, distribution, and retail tiers. 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 prevents monopolization. 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.
- (6) 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.
- (7) 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.
- (8) 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 record-keeping requirements, which enable wholesalers to readily track malt beverage products sold in the market for prompt return in the event of a product recall.
- (9) Encourages wholesalers, under the Beer Franchise Law, to invest capital and labor for suppliers of all sizes, large and small, to expand into new markets with new products. Unfair or arbitrary termination is prohibited, but suppliers who are subject to the Beer Franchise Law are still afforded the ability to terminate a distribution agreement for good cause. The Beer Franchise Law inhibits forced consolidation among wholesalers. 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 uncertainty. 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. 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.~~ 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 barreage 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. Except as provided in G.S. 18B-1116(b), the Commission shall have no authority to grant an exemption to or otherwise allow a brewery permittee more than the three additional retail locations authorized by this subdivision. Malt beverages manufactured by a supplier permittee 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."

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

"§ 18B-1116. Exclusive outlets prohibited.

...

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

...."

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

"§ 18B-1300. Purpose.

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

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

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

"(a1) Termination by a Small Brewery. – A brewery's authorization to distribute its own malt beverage products pursuant to G.S. 18B-1104(a)(8) shall revert back to the brewery, in the 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 permittee 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 6. 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 7. 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, or to any such exemption order or amendment that is renewed or reissued by the Commission after the effective date of this act.

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

In the General Assembly read three times and ratified this the 21st day of May, 2019.

s/ Daniel J. Forest
President of the Senate

s/ David R. Lewis
Presiding Officer of the House of Representatives

s/ Roy Cooper
Governor

Approved 1:35 p.m. this 30th day of May, 2019