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SENATE BILL DRS15132-MLF-87A\*

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

Sponsors: Senator Rabon (Primary Sponsor).

Referred to:

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

7  
8 Whereas, the General Assembly reaffirms its support of the Beer Franchise Law and  
9 the three-tier system for the distribution of malt beverages and finds that the Beer Franchise Law  
10 and the three-tier system does all of the following:

- 11 (1) Promotes consumer choice and product variety by providing a platform that  
12 enables new malt beverage products to come to market that might not  
13 otherwise be available to the consumer. These laws encourage wholesalers to  
14 make investments in their businesses necessary to expand distribution of new  
15 products and to allow large and small breweries alike an opportunity to enter  
16 the market through independent distribution. Wholesaler investments include  
17 adding resources such as warehouses, personnel, vehicles, equipment,  
18 merchandise, and marketing. Consumers have access to an exceedingly wide  
19 array of malt beverage products, unlike other industries that foster closed  
20 distribution networks and vertical integration.
- 21 (2) Promotes the growth of the craft beer industry by providing suppliers with  
22 access to markets outside of the brewery. Brewers that use wholesalers are  
23 able to instantly access and utilize a wholesaler's established infrastructure in  
24 markets they may not otherwise be able to enter. Smaller breweries further  
25 benefit because wholesalers are able to act independently to carry all brands,  
26 from large and small suppliers. The goal of these laws is to allow brewers of  
27 all sizes to fairly compete in the marketplace and to access retailers of all sizes.
- 28 (3) Helps ensure that the industry, as a whole, complies with the alcohol laws of  
29 this State. A wholesaler must remain independent and free from unfair or  
30 oppressive conduct by large suppliers to promote responsible sales and  
31 marketing practices. Wholesaler independence also promotes and maintains  
32 fair dealing among industry participants. Ultimately, these measures protect  
33 consumers and the public from abuses that might occur if large industry  
34 participants were able to control more than one tier of the industry.
- 35 (4) Promotes a vibrant marketplace that carefully balances fair competition with  
36 health and public safety concerns. The Beer Franchise Law and the three-tier



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- 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.