

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017**

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**HOUSE BILL 480  
Committee Substitute Favorable 4/19/17**

Short Title: ABC Permits/Tax Compliance & Reports.

(Public)

Sponsors:

Referred to:

March 28, 2017

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE ABC COMMISSION AND THE DEPARTMENT OF REVENUE TO CERTIFY ON AN ANNUAL BASIS THAT BREWERY AND DISTILLERY PERMIT HOLDERS ARE COMPLIANT WITH STATE TAX REQUIREMENTS AND TO REQUIRE CERTAIN BREWERY PERMIT HOLDERS TO SUBMIT AN ANNUAL REPORT TO THE ABC COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 18B-1104 reads as rewritten:

"§ **18B-1104. Authorization of brewery permit.**

(a) Authorized Acts. – The holder of a brewery permit may:

...

(6a) Receive, in closed containers, and sell at the brewery, malt beverages produced inside or outside North Carolina under contract with a contract brewery. The contract brewery that manufactures the malt beverages shall be responsible for all aspects associated with manufacturing the product, including maintaining appropriate records, obtaining label approval in its own name, and remitting the appropriate taxes. The contract malt beverages may be sold also at affiliated retail outlets of the brewery physically located on or adjacent to the brewery. Any malt beverages received from a contract brewery under this subdivision shall be made available for sale by the brewery to wholesalers for distribution to retailers, without discrimination, in the same manner as if the malt beverages were being imported by the brewery. Contract brewing is authorized between affiliated breweries, but shall not be used as a means to allocate production quantities between affiliated breweries to obtain a malt beverage wholesaler permit pursuant to ~~G.S. 18B-1104(8) subdivision (8)~~ of this subsection where either brewery would not otherwise qualify for a permit, and the Commission shall have no authority to grant an exemption to this requirement pursuant to G.S. 18B-1116(b).

...

(8) Obtain a malt beverage wholesaler permit to sell, deliver, and ship at wholesale only malt beverages manufactured by the brewery. 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 barrels, as defined in G.S. 81A-9, barrels of malt beverages produced by it per year. A brewery not exceeding the sales quantity limitations in this



1 subdivision may also sell the malt beverages manufactured by the brewery at  
2 not more than three other locations in the State, where the sale is legal, upon  
3 obtaining the appropriate permits under G.S. 18B-1001. A brewery operating  
4 any additional retail location pursuant to this subdivision shall also offer for  
5 sale at that location a reasonable selection of competitive malt beverage  
6 products.

7 (b) Sales or Gifts. – A sale or gift under subdivision (5) or (6) of subsection (a) of this  
8 section shall not be considered a retail or wholesale sale under the ABC laws.

9 (c) Tax Compliance. – By October 1 of each year, the Commission shall confirm that  
10 the holder of a brewery permit is in compliance with G.S. 18B-900(a)(8). The provisions of  
11 G.S. 18B-900(f) apply to the confirmation required under this subsection, except that the  
12 Commission may suspend a person's brewery permit until the Commission receives notice from  
13 the Department of Revenue that the person is in compliance.

14 (d) Annual Report. – By October 1 of each year, a holder of a brewery permit who  
15 obtains a malt beverage wholesaler permit pursuant to subdivision (8) of subsection (a) of this  
16 section shall provide a report to the Commission that includes all of the following for the  
17 12-month period preceding the date of the report:

18 (1) The number of barrels of malt beverages sold by the permit holder that were  
19 produced by the permit holder.

20 (2) The quantity and dollar amount of malt beverages sold by the permit holder  
21 under subdivision (7) of subsection (a) of this section.

22 (3) The quantity and dollar amount of malt beverages sold on-premises under  
23 subdivision (8) of subsection (a) of this section.

24 (4) The quantity and dollar amount of malt beverages sold off-premises under  
25 subdivision (8) of subsection (a) of this section.

26 (5) The quantity and dollar amount of malt beverages sold under  
27 G.S. 18B-1114.5.

28 (6) The quantity and dollar amount of malt beverages destroyed, spoiled, or  
29 otherwise rendered unsalable.

30 (e) Form and Delivery of Report. – The report required under subsection (d) of this  
31 section shall list separately the information required under subsection (d) of this section. Except  
32 as otherwise provided in this subsection, the form and delivery method of the report required  
33 under subsection (d) of this section shall be set by the Commission. The Commission shall keep  
34 all information provided pursuant to subsection (d) confidential except as required by law or  
35 requested by the Department of Revenue. The information shall not be a public record under  
36 Chapter 132 of the General Statutes.

37 (f) Definition. – For purposes of this section, the term "barrels" is as defined in  
38 G.S. 81A-9."

39 **SECTION 2.** G.S. 18B-1105 is amended by adding a new subsection to read:

40 "(c) Tax Compliance. – By October 1 of each year, the Commission shall confirm the  
41 holder of a distillery permit is in compliance with G.S. 18B-900(a)(8). The provisions of  
42 G.S. 18B-900(f) apply to the confirmation required under this subsection, except that the  
43 Commission may suspend a person's distillery permit until the Commission receives notice  
44 from the Department of Revenue that the person is in compliance."

45 **SECTION 3.** G.S. 18B-903(c1) reads as rewritten:

46 "(c1) Construction of Change in Ownership. – Nothing in subsection (c) of this section  
47 shall be construed to limit alternating brewery proprietorships in which the holder of a brewery  
48 permit leases or otherwise makes available its facility to another holder of a brewery permit. In  
49 this arrangement, the tenant brewery shall maintain title to the malt beverages at all states of the  
50 brewing process and shall be responsible for all aspects associated with manufacturing the  
51 product, including maintaining appropriate records, obtaining label approval in its own name,

1 and remitting the appropriate taxes. Alternating brewery proprietorships are authorized between  
2 affiliated breweries, but shall not be used as a means to allocate production quantities between  
3 affiliated breweries to obtain a malt beverage wholesaler permit pursuant to ~~G.S. 18B-1104(8)~~  
4 G.S. 18B-1104(a)(8) where either brewery would not otherwise qualify for a permit, and the  
5 Commission shall have no authority to grant an exemption to this requirement pursuant to  
6 G.S. 18B-1116(b)."

7 **SECTION 4.** G.S. 18B-1001(1)i. reads as rewritten:

8 "i. Breweries as authorized by ~~G.S. 18B-1104(7) and (8)~~.subdivisions  
9 (7) and (8) of G.S. 18B-1104(a)."

10 **SECTION 5.** G.S. 18B-1114.5(a) reads as rewritten:

11 "(a) Authorization. – The holder of a brewery permit, a malt beverages importer permit,  
12 a brewing, distillation, and fermentation course authorization, or a nonresident malt beverage  
13 vendor permit may obtain a malt beverage special event permit allowing the permittee to give  
14 free tastings of its malt beverages and to sell its malt beverages by the glass or in closed  
15 containers at trade shows, conventions, shopping malls, malt beverage festivals, street festivals,  
16 holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar  
17 events approved by the Commission. Except for a brewery operating under the provisions of  
18 ~~G.S. 18B-1104(8)~~, G.S. 18B-1104(a)(8), all malt beverages sampled or sold pursuant to this  
19 section must be purchased from a licensed malt beverages wholesaler."

20 **SECTION 6.** G.S. 18B-1116(a) reads as rewritten:

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

22 (a) Prohibitions. – It shall be unlawful for any manufacturer, bottler, or wholesaler of  
23 any alcoholic beverages, or for any officer, director, or affiliate thereof, either directly or  
24 indirectly to:

25 ...

26 A brewery qualifying under ~~G.S. 18B-1104(8)~~ G.S. 18B-1104(a)(8) to act as a wholesaler  
27 or retailer of its own malt beverages is not subject to the provisions of this subsection  
28 concerning financial interests in, and lending or giving things of value to, a wholesaler or  
29 retailer with respect to the brewery's transactions with the retail business on its premises. The  
30 brewery is subject to the provisions of this subsection, however, with respect to its transactions  
31 with all other wholesalers and retailers."

32 **SECTION 7.** G.S. 18B-1305(a1) reads as rewritten:

33 "(a1) Termination by a Small Brewery. – A brewery's authorization to distribute its own  
34 malt beverage products pursuant to ~~G.S. 18B-1104(8)~~ G.S. 18B-1104(a)(8) shall revert back to  
35 the brewery, in the absence of good cause, following the fifth business day after confirmed  
36 receipt of written notice of such reversion by the brewery to the wholesaler. The brewery shall  
37 pay the wholesaler fair market value for the distribution rights for the affected brand. For  
38 purposes of this subsection, "fair market value" means the highest dollar amount at which a  
39 seller would be willing to sell and a buyer willing to buy at the time the self-distribution rights  
40 revert back to the brewery, after each party has been provided all information relevant to the  
41 transaction."

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