

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 500

Short Title: ABC Omnibus Legislation. (Public)

Sponsors: Representatives McGrady, Brawley, Hardister, and Harrison (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Alcoholic Beverage Control, if favorable, Rules, Calendar, and Operations of the House

March 29, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE ALCOHOLIC BEVERAGE
3 CONTROL COMMISSION LAWS.

4 The General Assembly of North Carolina enacts:

5
6 **AUTHORIZE SALE OF GROWLERS BY RETAIL PERMITTEES**

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

8 **"§ 18B-1001. Kinds of ABC permits; places eligible.**

9 When the issuance of the permit is lawful in the jurisdiction in which the premises are
10 located, the Commission may issue the following kinds of permits:

- 11 (1) On-Premises Malt Beverage Permit. – An on-premises malt beverage permit
12 authorizes (i) the retail sale of malt beverages for consumption on the
13 premises, (ii) the retail sale of malt beverages in the manufacturer's original
14 container for consumption off the premises, and (iii) the retail sale of malt
15 beverages in a ~~cleaned, sanitized, resealable~~ cleaned and sanitized container
16 that is filled or refilled and sealed for consumption off the premises and that
17 identifies the permittee and the date the container was filled or refilled. It
18 also authorizes the holder of the permit to ship malt beverages in closed
19 containers to individual purchasers inside and outside the State. The permit
20 may be issued for any of the following:

- 21 a. ~~Restaurants;~~Restaurants.
22 b. ~~Hotels;~~Hotels.
23 c. ~~Eating establishments;~~establishments.
24 d. ~~Food businesses;~~businesses.
25 e. ~~Retail businesses;~~businesses.
26 f. ~~Private clubs;~~clubs.
27 g. ~~Convention centers;~~centers.
28 h. ~~Community theatres;~~theatres.
29 i. Breweries as authorized by G.S. 18B-1104(7) and (8).

- 30 (2) Off-Premises Malt Beverage Permit. – An off-premises malt beverage
31 permit authorizes (i) the retail sale of malt beverages in the manufacturer's
32 original container for consumption off the premises, (ii) the retail sale of
33 malt beverages in a ~~cleaned, sanitized, resealable~~ cleaned and sanitized
34 container that is filled or refilled and sealed for consumption off the



1 premises and that identifies the permittee and the date the container was
 2 filled or refilled, and (iii) the holder of the permit to ship malt beverages in
 3 closed containers to individual purchasers inside and outside the State. The
 4 permit may be issued for any of the following:

- 5 a. Restaurants.
- 6 b. Hotels.
- 7 c. Eating establishments.
- 8 d. Food businesses.
- 9 e. Retail businesses.
- 10 f. The holder of a brewing, distillation, and fermentation course
 11 authorization under G.S. 18B-1114.6. A school obtaining a permit
 12 under this subdivision is authorized to sell malt beverages
 13 manufactured during its brewing, distillation, and fermentation
 14 program at one noncampus location in a county where the permittee
 15 holds and offers classes on a regular full-time basis in a facility
 16 owned by the permittee.

17 (3) On-Premises Unfortified Wine Permit. – An on-premises unfortified wine
 18 permit authorizes (i) the retail sale of unfortified wine for consumption on
 19 the premises, either alone or mixed with other beverages, (ii) the retail sale
 20 of unfortified wine in the manufacturer's original container for consumption
 21 off the premises, and (iii) the retail sale of unfortified wine dispensed from a
 22 tap connected to a pressurized container utilizing carbon dioxide or similar
 23 gas into a ~~cleaned, sanitized, resealable~~ cleaned and sanitized container that
 24 is filled or refilled and sealed for consumption off the premises and that
 25 identifies the permittee and the date the container was filled or refilled. The
 26 permit also authorizes the permittee to transfer unfortified wine, not more
 27 than four times per calendar year, to another on-premises unfortified wine
 28 permittee that is under common ownership or control as the transferor.
 29 Except as authorized by this subdivision, transfers of wine by on-premises
 30 unfortified wine permittees, purchases of wine by a retail permittee from
 31 another retail permittee for the purpose of resale, and sale of wine by a retail
 32 permittee to another retail permittee for the purpose of resale are unlawful.
 33 In addition, a particular brand of wine may be transferred only if both the
 34 transferor and transferee are located within the territory designated between
 35 the winery and the wholesaler on file with the Commission. Prior to or
 36 contemporaneous with any such transfer, the transferor shall notify each
 37 wholesaler who distributes the transferred product of the transfer. The notice
 38 shall be in writing or verifiable electronic format and shall identify the
 39 transferor and transferee, the date of the transfer, quantity, and items
 40 transferred. The holder of the permit is authorized to ship unfortified wine in
 41 closed containers to individual purchasers inside and outside the State.
 42 Orders received by a winery by telephone, Internet, mail, facsimile, or other
 43 off-premises means of communication shall be shipped pursuant to a wine
 44 shipper permit and not pursuant to this subdivision. The permit may be
 45 issued for any of the following:

- 46 a. ~~Restaurants;~~Restaurants.
- 47 b. ~~Hotels;~~Hotels.
- 48 c. ~~Eating establishments;~~Eating establishments.
- 49 d. ~~Private clubs;~~Private clubs.
- 50 e. ~~Convention centers;~~Convention centers.
- 51 f. ~~Cooking schools;~~Cooking schools.

- 1 g. ~~Community theatres;~~Community theatres.
2 h. ~~Wineries;~~Wineries.
3 i. Wine producers.
- 4 (4) Off-Premises Unfortified Wine Permit. – An off-premises unfortified wine
5 permit authorizes (i) the retail sale of unfortified wine in the manufacturer's
6 original container for consumption off the premises, (ii) the retail sale of
7 unfortified wine dispensed from a tap connected to a pressurized container
8 utilizing carbon dioxide or similar gas into a ~~cleaned, sanitized, resealable~~
9 cleaned and sanitized container that is filled or refilled and sealed for
10 consumption off the premises and that identifies the permittee and the date
11 the container was filled or refilled, and (iii) the holder of the permit to ship
12 unfortified wine in closed containers to individual purchasers inside and
13 outside the State. The permit may be issued for retail businesses. The permit
14 also authorizes the permittee to transfer unfortified wine, not more than four
15 times per calendar year, to another off-premises unfortified wine permittee
16 that is under common ownership or control as the transferor. Except as
17 authorized by this subdivision, transfers of wine by off-premises unfortified
18 wine permittees, purchases of wine by a retail permittee from another retail
19 permittee for the purpose of resale, and sale of wine by a retail permittee to
20 another retail permittee for the purpose of resale are unlawful. In addition, a
21 particular brand of wine may be transferred only if both the transferor and
22 transferee are located within the territory designated between the winery and
23 the wholesaler on file with the Commission. Prior to or contemporaneous
24 with any such transfer, the transferor shall notify each wholesaler who
25 distributes the transferred product of the transfer. The notice shall be in
26 writing or verifiable electronic format and shall identify the transferor and
27 transferee, the date of the transfer, quantity, and items transferred. The
28 permit may also be issued to the holder of a viticulture/enology course
29 authorization under G.S. 18B-1114.4. A school obtaining a permit under this
30 subdivision is authorized to sell wines manufactured during its
31 viticulture/enology program at one non-campus location in a county where
32 the permittee holds and offers classes on a regular full-time basis in a facility
33 owned by the permittee. The permit may also be issued for a winery or a
34 wine producer for sale of its own unfortified wine during hours when the
35 winery or wine producer's premises is open to the public, subject to any local
36 ordinance adopted pursuant to G.S. 18B-1004(d) concerning hours for the
37 retail sale of unfortified wine. A winery obtaining a permit under this
38 subdivision is authorized to sell wine manufactured by the winery at one
39 additional location in the county under the same conditions specified in
40 G.S. 18B-1101(5) for the sale of wine at the winery; provided, however, that
41 no other alcohol sales shall be authorized at the additional location. Orders
42 received by a winery by telephone, Internet, mail, facsimile, or other
43 off-premises means of communication shall be shipped pursuant to a wine
44 shipper permit and not pursuant to this subdivision.
- 45 ...
- 46 (16) Wine Shop Permit. – A wine shop permit authorizes (i) the retail sale of malt
47 beverages, unfortified wine, and fortified wine in the manufacturer's original
48 container for consumption off the premises, (ii) the retail sale of malt
49 beverages or unfortified wine dispensed from a tap connected to a
50 pressurized container utilizing carbon dioxide or similar gas in a ~~cleaned,~~
51 ~~sanitized, resealable~~ cleaned and sanitized container that is filled or refilled

1 and sealed for consumption off the premises and that identifies the permittee
2 and the date the container was filled or refilled, and (iii) wine tastings on the
3 premises conducted and supervised by the permittee in accordance with
4 subdivision (15) of this section. It also authorizes the holder of the permit to
5 ship malt beverages, unfortified wine, and fortified wine in closed containers
6 to individual purchasers inside and outside the State. The permit may be
7 issued for retail businesses whose primary purpose is selling malt beverages
8 and wine for consumption off the premises and regularly and customarily
9 educating consumers through tastings, classes, and seminars about the
10 selection, serving, and storing of wine. The holder of the permit is
11 authorized to sell unfortified wine for consumption on the premises,
12 provided that the sale of wine for consumption on the premises does not
13 exceed forty percent (40%) of the establishment's total sales for any 30-day
14 period. The holder of a wine-tasting permit not engaged in the preparation or
15 sale of food on the premises is not subject to Part 6 of Article 8 of Chapter
16 130A of the General Statutes.

17"

18 **SECTION 1.(b)** The Alcoholic Beverage Control (ABC) Commission shall adopt
19 rules to implement the provisions of this section by no later than 60 days after this act becomes
20 law. The ABC Commission may adopt temporary rules to comply with the deadline set in this
21 subsection. Any temporary rules adopted in accordance with this subsection shall remain in
22 effect until permanent rules that replace the temporary rules become effective.

23
24 **AUTHORIZE OFF-SITE STORAGE LOCATION FOR BREWERIES, WINERIES,
25 AND DISTILLERIES**

26 **SECTION 2.** Article 11 of Chapter 18B of the General Statutes is amended by
27 adding a new section to read:

28 **"§ 18B-1120. Noncontiguous storage locations.**

29 A brewery, winery, or distillery may store any alcoholic beverages it manufactures pursuant
30 to a permit issued under this Article at a noncontiguous storage location approved by the
31 Alcohol and Tobacco Tax and Trade Bureau. For purposes of Article 5 of this Chapter, the term
32 "premises" includes a storage location used pursuant to this section."

33
34 **AUTHORIZE SALE OF UNFORTIFIED WINE ON PREMISES BY RETAIL
35 BUSINESSES**

36 **SECTION 3.** G.S. 18B-1001(3), as amended by Section 1 of this act, reads as
37 rewritten:

38 "(3) On-Premises Unfortified Wine Permit. – An on-premises unfortified wine
39 permit authorizes (i) the retail sale of unfortified wine for consumption on
40 the premises, either alone or mixed with other beverages, (ii) the retail sale
41 of unfortified wine in the manufacturer's original container for consumption
42 off the premises, and (iii) the retail sale of unfortified wine dispensed from a
43 tap connected to a pressurized container utilizing carbon dioxide or similar
44 gas into a cleaned and sanitized container that is filled or refilled and sealed
45 for consumption off the premises and that identifies the permittee and the
46 date the container was filled or refilled. The permit also authorizes the
47 permittee to transfer unfortified wine, not more than four times per calendar
48 year, to another on-premises unfortified wine permittee that is under
49 common ownership or control as the transferor. Except as authorized by this
50 subdivision, transfers of wine by on-premises unfortified wine permittees,
51 purchases of wine by a retail permittee from another retail permittee for the

1 purpose of resale, and sale of wine by a retail permittee to another retail
 2 permittee for the purpose of resale are unlawful. In addition, a particular
 3 brand of wine may be transferred only if both the transferor and transferee
 4 are located within the territory designated between the winery and the
 5 wholesaler on file with the Commission. Prior to or contemporaneous with
 6 any such transfer, the transferor shall notify each wholesaler who distributes
 7 the transferred product of the transfer. The notice shall be in writing or
 8 verifiable electronic format and shall identify the transferor and transferee,
 9 the date of the transfer, quantity, and items transferred. The holder of the
 10 permit is authorized to ship unfortified wine in closed containers to
 11 individual purchasers inside and outside the State. Orders received by a
 12 winery by telephone, Internet, mail, facsimile, or other off-premises means
 13 of communication shall be shipped pursuant to a wine shipper permit and not
 14 pursuant to this subdivision. The permit may be issued for any of the
 15 following:

16 ...
 17 j. Retail businesses."

19 AUTHORIZE TASTINGS DURING BREWERY TOURS

20 SECTION 4. G.S. 18B-1104(6) reads as rewritten:

21 "§ 18B-1104. Authorization of brewery permit.

22 The holder of a brewery permit may:

23 ...
 24 (6) Give its products to ~~its employees and guests~~ customers, visitors, and
 25 employees for consumption on its premises. Nothing in this subdivision shall
 26 be construed as excluding customers and visitors at the brewery as part of a
 27 paid or complimentary tour of the brewery."

29 AUTHORIZE CERTAIN PERSONS TO SAMPLE ALCOHOLIC BEVERAGES FOR 30 PURPOSES OF SENSORY ANALYSIS, QUALITY CONTROL, OR EDUCATION

31 SECTION 5. Article 11 of Chapter 18B of the General Statutes is amended by
 32 adding a new statute to read:

33 "§ 18B-1121. Authority to sample for sensory analysis, quality control, or educational 34 purposes.

35 Except as otherwise prohibited under Article 3 of this Chapter, a commercial permittee
 36 licensed under this Article, or its agent or employee, may consume samples of alcoholic
 37 beverages it is licensed to sell, free of charge, on its premises for purposes of sensory analysis,
 38 quality control, or education."

40 AMEND HOMEBREWING LAWS

41 SECTION 6. G.S. 18B-306 reads as rewritten:

42 "§ 18B-306. Making wines and malt beverages for private use.

43 (a) Authority. – An individual may make, possess, and transport native wines and malt
 44 beverages for his the individual's own use and for use, the use of his the individual's family and
 45 guests. Native wines shall be made principally from honey, grapes, or other fruit or grain grown
 46 in this State, or from wine kits containing honey, grapes, or other fruit or grain concentrates,
 47 and shall have only that alcoholic content produced by natural fermentation. Malt beverages
 48 may be made by use of malt beverage kits containing grain extracts or concentrates.
 49 the use at organized affairs, exhibitions, or competitions. For purposes of this section, the term
 50 "organized affairs, exhibitions, or competitions" includes homemaker's contests, tastings, and
 51 judgings.

1 **(b) Selling Prohibited.** – Wines and malt beverages made pursuant to this section may
2 not be sold or offered for sale.

3 **(c) Kits.** – Wine kits and malt beverage kits may be sold in this State.

4 **(d) Permit.** – No ABC permit is required to make wines or malt beverages pursuant to
5 this section."

6 7 **CLARIFY LAW GOVERNING RELATIONSHIP BETWEEN BREWERIES AND** 8 **AFFILIATED RETAILERS**

9 **SECTION 7.** G.S. 18B-1116(a) reads as rewritten:

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

- 13 (1) Require that an alcoholic beverage retailer purchase any alcoholic beverages
14 from that person to the full or partial exclusion of any other alcoholic
15 beverages offered for sale by other persons in this State; or
- 16 (2) Have any direct or indirect financial interest in the business of any alcoholic
17 beverage retailer in this State or in the premises where the business of any
18 alcoholic beverage retailer in this State is conducted; or
- 19 (3) Lend or give to any alcoholic beverage retailer in this State or his employee
20 or to the owner of the premises where the business of any alcoholic beverage
21 retailer in this State is conducted, any money, service, equipment, furniture,
22 fixtures or any other thing of value.

23 A brewery qualifying under ~~G.S. 18B-1104(8) to act as a wholesaler or retailer of its own~~
24 ~~malt beverages~~ G.S. 18B-1104(7) or (8) is not subject to the provisions of this ~~subsection~~
25 section concerning financial interests in, and lending or giving things of value to, a wholesaler
26 or retailer with respect to the brewery's transactions with the retail business on its
27 ~~premises~~ premises or other retail locations allowed under G.S. 18B-1104(8). The brewery is
28 subject to the provisions of this subsection, however, with respect to its transactions with all
29 other wholesalers and retailers."
30

31 **AUTHORIZE BREWERY TAPROOMS TO SELL OTHER ALCOHOLIC** 32 **BEVERAGES UPON RECEIVING THE APPROPRIATE PERMIT**

33 **SECTION 8.** G.S. 18B-1104(7) reads as rewritten:

34 "(7) In an area where the sale of any type of alcoholic beverage is authorized by
35 law, and upon receiving the appropriate permit under G.S. 18B-1001, sell
36 ~~the~~ at the brewery, and any additional retail location authorized under
37 subdivision (8) of this section, any or all of the following:

- 38 a. The brewery's malt beverages or malt beverages that have been
39 approved by the Commission for sale in North Carolina.
- 40 b. Malt beverages manufactured by the permittee in some other state
41 that have been approved by the Commission for sale in North
42 Carolina only at the brewery upon receiving a permit under G.S.
43 18B-1001(1).Carolina.
- 44 c. Any other alcoholic beverages approved by the Commission for sale
45 in North Carolina."

46 47 **AUTHORIZE BREWERIES WITH PRODUCTION FACILITIES IN OTHER STATES** 48 **TO DISTRIBUTE TO WHOLESALERS**

49 **SECTION 9.** G.S. 18B-1104(4) reads as rewritten:

"(4) Receive malt beverages manufactured by the permittee in some other state for transshipment to (i) dealers in other states or (ii) wholesalers licensed under this Chapter as authorized by the ABC laws."

AUTHORIZE FARM BREWERIES

SECTION 10. G.S. 18B-1104 is amended by adding a new subdivision to read:

"(7a) Regardless of the results of any local malt beverage election, a brewery that produces agricultural products, including barley, other grains, hops, or fruit, used by the brewery in the manufacture of malt beverages may sell the malt beverages owned by the brewery and approved by the Commission for sale in North Carolina at the brewery for on- or off-premise consumption upon obtaining the appropriate permit under G.S. 18B-1001."

AMEND LAW GOVERNING SELF-DISTRIBUTION BY BREWERIES AND SALES AT ADDITIONAL RETAIL LOCATIONS

SECTION 11.(a) G.S. 18B-1104 reads as rewritten:

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

The holder of a brewery permit may:

...

(8) Obtain a malt beverage wholesaler permit to sell, deliver, and ship at wholesale ~~only no more than 200,000 barrels, as defined in G.S. 81A-9, per year of malt beverages manufactured—produced~~ 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, of malt beverages produced by it per year. A brewery not exceeding the sales quantity limitations in this subdivision may also sell~~ Sales of malt beverages pursuant to subdivisions (3), (5), (6a) (7), and (8a) of this section shall not count towards the sales quantity limitation set forth in this subdivision.

(8a) Sell the malt beverages manufactured by the ~~brewery~~ brewery, and malt beverages produced under subdivision (6a) of this section, 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 business 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 under this subdivision shall not be considered a wholesale sale under the ABC laws.

A sale or gift under subdivision (5) or (6) shall not be considered a retail or wholesale sale under the ABC laws."

SECTION 11.(b) G.S. 105-113.68(a)(13) reads as rewritten:

"(13) Wholesaler or importer. – When used with reference to wholesalers or importers of wine or malt beverages, the term includes resident wineries that sell their wines at retail and resident breweries that ~~produce fewer than 25,000 barrels of~~ sell their malt beverages per year at retail."

SMALL BREWERIES/AMEND LAW GOVERNING TERMINATION OF FRANCHISE AGREEMENT

SECTION 12.(a) 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(8) shall revert back to the brewery, in the~~

1 ~~absence of good cause, following the fifth business day after confirmed receipt of written~~
2 ~~notice of such reversion by the brewery to the wholesaler. The brewery shall pay the wholesaler~~
3 ~~fair market value for the distribution rights for the affected brand. For purposes of this~~
4 ~~subsection, "fair market value" means the highest dollar amount at which a seller would be~~
5 ~~willing to sell and a buyer willing to buy at the time the self distribution rights revert back to~~
6 ~~the brewery, after each party has been provided all information relevant to the transaction.~~small
7 brewery may terminate a franchise agreement without good cause at any time. A small
8 brewery's authorization to distribute its own malt beverage products pursuant to
9 G.S. 18B-1104(8) shall revert back to the small brewery upon serving notice of termination
10 under this subsection. Following termination under this subsection, fair compensation, if any,
11 shall be negotiated between the small brewery and the wholesaler and paid by the small
12 brewery to the wholesaler if agreed upon. Fair compensation may be determined by the parties
13 in advance and set forth in the franchise agreement. If a small brewery and wholesaler are
14 unable to agree upon fair compensation within 12 months from the date of termination under
15 this subsection, the small brewery and wholesaler shall submit to arbitration the question of fair
16 compensation. Arbitration under this subsection shall be conducted in accordance with Article
17 45C of Chapter 1 of the General Statutes. For purposes of this subsection, the term "small
18 brewery" is a brewery that produces fewer than 200,000 barrels, as defined in G.S. 81A-9, of
19 malt beverages per year."

20 **SECTION 12.(b)** G.S. 18B-1309 reads as rewritten:

21 **"§ 18B-1309. Mediation at direction of Alcoholic Beverage Control Commission.**

22 If a dispute arises between a wholesaler and supplier under this Article, and ~~such~~the
23 dispute appears likely to lead to litigation, the Commission, upon request of any party or on its
24 own initiative, may require the parties to participate in mediation in an effort to resolve the
25 dispute. This authority shall be in addition to the Commission's authority to issue declaratory
26 rulings pursuant to G.S. 150B-4. The Commission may designate the mediator, in which case
27 the Commission shall pay the mediator's fee, or the Commission may direct the parties to agree
28 upon and share the costs of a mediator. If the parties then cannot agree upon a mediator, the
29 Commission shall designate the mediator, and the fees shall be divided evenly by the parties.
30 The Commission shall direct that the mediation be completed within a specified period of time.
31 Except for injunctive relief, no lawsuit or other legal action concerning the dispute may be filed
32 until the mediation is completed and is unsuccessful, unless necessary to avoid expiration of a
33 statute of limitation. This section shall not apply to a determination of fair compensation under
34 G.S. 18B-1305(a1)."

35

36 **LRC STUDY REWRITE OF ABC LAWS**

37 **SECTION 13.(a)** Study. – The Legislative Research Commission shall study
38 whether a rewrite of Chapter 18B of the General Statutes is necessary to address and reflect the
39 rapidly changing alcoholic beverage industry. The Legislative Research Commission may
40 consider any issues it determines relevant to this study.

41 **SECTION 13.(b)** Report. – The Legislative Research Commission shall report its
42 findings, including any legislative recommendations, to the 2018 Regular Session of the 2017
43 General Assembly upon its convening.

44

45 **RULES**

46 **SECTION 14.(a)** Except as otherwise provided, the ABC Commission shall adopt
47 temporary rules to implement the provisions of this section. Temporary rules adopted in
48 accordance with this section shall remain in effect until permanent rules that replace the
49 temporary rules become effective.

50 **SECTION 14.(b)** Any rule or policy adopted by the ABC Commission that does
51 not comply with the provisions of this act shall be null, void, and without effect.

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EFFECT OF HEADINGS

SECTION 15. The headings to the sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

EFFECTIVE DATE

SECTION 16. This act is effective when it becomes law.