

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2019**

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**HOUSE BILL 363**

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

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Sponsors:    Representatives Lewis, Bell, Jackson, and Reives (Primary Sponsors).  
*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

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

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March 18, 2019

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.



- 1 (4) Promotes a vibrant marketplace that carefully balances fair competition with  
2 health and public safety concerns. The Beer Franchise Law and the three-tier  
3 system ensure that all three tiers operate independently and on a level playing  
4 field so that no one participant or sector of the industry becomes too dominant  
5 over the others. These laws allow for fair checks-and-balances in the beer  
6 industry. Wholesaler independence further creates a transparent and  
7 accountable distribution system that assists in identifying improper marketing  
8 practices and potentially unsafe products when issues arise, and provides  
9 brewers that engage a wholesaler with an established means to access new  
10 markets.
- 11 (5) Prevents vertical integration of the manufacturing, distribution, and retail tiers  
12 by large industry participants. This still occurs in other countries today where  
13 adverse health and public safety effects are observed. The historical three-tier  
14 system model incorporated a deliberate regulatory structure that made it  
15 impossible for large suppliers to monopolize. However, as the number of beer  
16 industry participants has grown substantially, it is necessary to make  
17 important adjustments to the three-tier system to promote the overall success  
18 of the beer manufacturing industry in North Carolina by recognizing the  
19 different stages of brewery development.
- 20 (6) Assists in collecting excise taxes, particularly from nonresident suppliers.  
21 While self-distributing resident breweries are required to remit excise taxes  
22 directly to the Department of Revenue, wholesalers collect and remit the  
23 excise tax on malt beverages on behalf of resident and nonresident suppliers  
24 to the Department of Revenue, totaling approximately \$140 million in excise  
25 taxes each year to the State.
- 26 (7) Promotes local regulatory control, temperance, and moderate consumption of  
27 malt beverages. The three-tier system in particular incorporates features to  
28 promote healthy competition in the marketplace while minimizing  
29 overly-aggressive marketing practices, such as limits on quantity discounts,  
30 requirements of nondiscriminatory treatment among wholesalers and retailers,  
31 and limits on advertising and promotional materials. The three-tier system also  
32 provides clear chain of custody for products in distribution, which enables law  
33 enforcement to easily track products in the marketplace when issues arise.
- 34 (8) Provides a vital platform that promotes product safety for consumers. Malt  
35 beverage distributors invest heavily in infrastructure, such as modern  
36 warehouses and vehicles, that maintain product integrity during distribution.  
37 There are also strict recordkeeping requirements, which enable wholesalers to  
38 readily track malt beverage products sold in the market for prompt return in  
39 the event of a product recall.
- 40 (9) Helps ensure these and other policy objectives by preventing unfair or  
41 arbitrary termination from large suppliers. The Beer Franchise Law  
42 encourages wholesalers to invest capital and labor for suppliers of all sizes,  
43 large and small, to expand into new markets with new products. Although  
44 unfair or arbitrary termination is prohibited, suppliers who are subject to the  
45 Beer Franchise Law are still afforded the ability to terminate a distribution  
46 agreement for good cause. Wholesaler independence is critical to prevent  
47 vertical integration of the market and other tied house abuses by large industry  
48 participants. The Beer Franchise Law inhibits forced consolidation among  
49 wholesalers and prevents arbitrary termination of a franchise agreement by  
50 these large suppliers. The three-tier system also affords small retailers the

1 same market access opportunities to the same wide selection of brands that  
2 other large-scale retailers have, and on equal terms.

3 Whereas, the General Assembly also reaffirms its support of the craft beer industry  
4 and makes the following findings:

- 5 (1) The current small-brewery provisions of Chapter 18B of the General Statutes  
6 were intended to foster the growth of small craft breweries while  
7 simultaneously protecting wholesalers from the risk of economic abuses by  
8 large suppliers holding market dominance. Since the adoption of those  
9 provisions, however, the craft beer industry has seen exponential growth. The  
10 craft beer industry now provides a significant source of high-quality  
11 manufacturing and service employment and wages and generates significant  
12 tax revenue for the State. In addition, the growth of the craft beer industry has  
13 resulted in significant positive secondary impacts on the economy through  
14 increased business to a myriad of suppliers to the craft breweries, resulting in  
15 even greater employment and tax revenue for the State's citizens.
- 16 (2) It is in the best interest of the State to continue supporting the entrepreneurial  
17 spirit and economic growth driven by the craft beer industry. Yet it remains  
18 vital to preserve the integrity of the State's three-tier system, which minimizes  
19 the potential for harm by large suppliers that hold market dominance. Today,  
20 mid-sized independent breweries possess only a fraction of the malt beverage  
21 market in light of increased consolidation and globalization of large suppliers.  
22 Consequently, the growth of these mid-sized independent breweries promotes  
23 economic development, employment and wages, and significant tax revenue  
24 without the same risks of harm that the three-tier system is designed to  
25 minimize.
- 26 (3) In view of these new market realities, the existing small brewery provisions  
27 of Chapter 18B of the General Statutes warrant revision. Specifically,  
28 recognition for a new category of breweries, Mid-Sized Independent  
29 Breweries, is needed to reflect the market's evolution, foster the continued  
30 growth of the craft beer industry, promote consumer choice, ensure access to  
31 market, and promote stable and healthy competition in the malt beverage  
32 industry in this State. The following legislative enactments are expressly  
33 intended to further these purposes.

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

38 The General Assembly of North Carolina enacts:

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

40 **"§ 18B-100. Purpose of Chapter.**

41 This Chapter is intended to establish a uniform system of control over the sale, purchase,  
42 transportation, manufacture, consumption, and possession of alcoholic beverages in North  
43 Carolina, and to provide procedures to insure the proper administration of the ABC laws under a  
44 uniform system throughout the State. This Chapter shall be liberally construed to the end that the  
45 sale, purchase, transportation, manufacture, consumption, and possession of alcoholic beverages  
46 shall be prohibited except as authorized in this Chapter. If any provision of this Chapter, or its  
47 application to any person or circumstance, is determined by a court or other authority of  
48 competent jurisdiction to be invalid or unconstitutional, such provision shall be stricken and the  
49 remaining provisions shall be construed in accordance with the intent of the General Assembly  
50 to further limit rather than expand commerce in alcoholic beverages, and with respect to malt  
51 beverages, unfortified wine, and fortified wine, the remaining provisions shall be construed to

1 enhance strict regulatory control over taxation, distribution, and sale of alcoholic beverages  
2 through the three-tier regulatory system and the franchise laws imposed by this Chapter.

3 Except as provided in this Chapter, local ordinances establishing different rules on the  
4 manufacture, sale, purchase, transportation, possession, consumption, or other use of alcoholic  
5 beverages, or requiring additional permits or fees, are prohibited."

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

7 "(8) Obtain a malt beverage wholesaler permit to sell, deliver, and ship at  
8 wholesale ~~only up to 50,000 barrels of malt beverages manufactured by the~~  
9 ~~brewery.~~ brewery per year to unaffiliated retail permittees. The authorization  
10 of this subdivision applies to a brewery that sells, to consumers at the brewery,  
11 to wholesalers, to retailers, and to exporters, fewer than ~~25,000–100,000~~  
12 barrels of malt beverages produced by it per year. The barrelage limitations  
13 set forth in this subdivision apply regardless of the number or type of permits  
14 that may be issued to a brewery under this Chapter. A brewery not exceeding  
15 the sales quantity limitations in this subdivision may also sell the malt  
16 beverages manufactured by the brewery, and malt beverages produced under  
17 subdivision (6a) of this subsection, at not more than three other locations in  
18 the State, where the sale is legal, upon obtaining the appropriate permits under  
19 G.S. 18B-1001. A brewery operating any additional retail location pursuant to  
20 this subdivision under a different trade name than that used at the brewery  
21 shall also offer for sale at that location a reasonable selection of competitive  
22 malt beverage products. A sale at any additional retail location under this  
23 subdivision shall not be considered a wholesale sale for the purposes of Article  
24 13 of this Chapter. The Commission shall have no authority to grant an  
25 exemption to or otherwise allow more than the three additional retail locations  
26 authorized by this subdivision. Malt beverages manufactured by a supplier  
27 that owns five percent (5%) or more of a brewery permittee acting under the  
28 authority granted in this subdivision shall be included in determining whether  
29 the brewery permittee complies with the barrelage limitations set forth in this  
30 subdivision."

31 **SECTION 3.** G.S. 18B-1300 reads as rewritten:

32 **"§ 18B-1300. Purpose.**

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

- 36 ...
- 37 (5) Prevent unfair or unlawful trade practices by enabling wholesalers to refuse  
38 to participate in such practices without fear of arbitrary or unlawful retribution  
39 from suppliers.
- 40 (6) Provide wholesalers with rights and remedies in addition to those existing by  
41 contract or common law.
- 42 (7) Govern all agreements between suppliers and wholesalers, including any  
43 renewals or amendments.
- 44 (8) Protect wholesalers against unfair treatment by suppliers.
- 45 (9) Preserve investments made by wholesalers in franchise agreements through  
46 minimization of arbitrary termination.
- 47 (10) Promote consumer choice by ensuring an independent wholesale distribution  
48 tier that enables wholesalers to distribute competing products of other  
49 suppliers.
- 50 (11) Prevent vertical integration of the malt beverage market."

51 **SECTION 4.** G.S. 18B-1305(a1) reads as rewritten:

1       "(a1) Termination by a Small Brewery. – A brewery's authorization to distribute its own  
2 malt beverage products pursuant to G.S. 18B-1104(a)(8) shall revert back to the brewery, in the  
3 absence of good cause, following the fifth business day after confirmed receipt of written notice  
4 of such reversion by the brewery to the wholesaler. The brewery shall pay the wholesaler fair  
5 market value for the distribution rights for the affected brand. For purposes of this subsection,  
6 "fair market value" means the highest dollar amount at which a seller would be willing to sell  
7 and a buyer willing to buy at the time the self-distribution rights revert back to the brewery, after  
8 each party has been provided all information relevant to the transaction. This subsection only  
9 applies to a brewery that sells to consumers at the brewery, to wholesalers, to retailers, and to  
10 exporters, fewer than 25,000 barrels of malt beverages produced by it per year. Malt beverages  
11 manufactured by a supplier that owns five percent (5%) or more of a brewery permittee shall be  
12 included in determining whether the brewery permittee complies with the barreage limitations  
13 set forth in this subdivision. For purposes of this subsection, the term "barrel" is as defined in  
14 G.S. 18B-1104."

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

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

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