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SENATE BILL 324
Judiciary I Committee Substitute Adopted 6/7/11
House Committee Substitute Favorable 6/15/11

Short Title: ABC Law/Eastern Band of Cherokee Indians.

(Public)

Sponsors:

Referred to:

March 14, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE EASTERN BAND OF CHEROKEE INDIANS, A
FEDERALLY RECOGNIZED INDIAN TRIBE AND SOVEREIGN NATION, TO
RECEIVE SHIPMENTS OF SPIRITUOUS LIQUOR FROM THE NORTH CAROLINA
ALCOHOLIC BEVERAGE CONTROL COMMISSION; TO AUTHORIZE THE
EASTERN BAND OF CHEROKEE INDIANS TO ESTABLISH A TRIBAL
ALCOHOLIC BEVERAGE CONTROL COMMISSION TO REGULATE THE
PURCHASE, POSSESSION, CONSUMPTION, SALE, AND DELIVERY OF
ALCOHOLIC BEVERAGES AT RETAIL; AND TO AUTHORIZE THE LIMITED
TRANSFER OF WINE BY ON-PREMISES WINE PERMITTEES UNDER COMMON
OWNERSHIP OR CONTROL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-109(b) reads as rewritten:

"(b) ~~Armed Forces Installation~~Installation and Indian Country Lands. – No person shall have malt beverages or unfortified wine shipped directly from a point outside this State to an armed forces installation within this State if those alcoholic beverages are for resale on the installation ~~or to the Eastern Band of Cherokee Indians for resale on Indian Country lands within this State under the jurisdiction of the Eastern Band of Cherokee Indians.~~"

SECTION 2. G.S. 18B-203(a)(17) reads as rewritten:

"(a) Powers. – The Commission shall have authority to:

...

(17) Provide for the distribution of spirituous liquor to armed forces installations within this State for resale on the ~~installation~~installation and to the Eastern Band of Cherokee Indians for resale on Indian Country lands within this State under the jurisdiction of the Eastern Band of Cherokee Indians.

...."

SECTION 3. Article 1 of Chapter 18B of the General Statutes is amended by adding a new section to read:

§ 18B-112. Tribal alcoholic beverage control.

(a) Application of This Chapter. – The Eastern Band of Cherokee Indians, a federally recognized Indian tribe and sovereign nation, shall be exempt from the provisions of this Chapter, except for those made applicable by this section. The Eastern Band of Cherokee Indians tribe shall adopt by ordinance the provisions of this Chapter which are made applicable to the tribe by this section, and such ordinance shall be approved by the Secretary of the United States Department of the Interior and published in the Federal Register accordingly. The



1 Eastern Band of Cherokee Indians shall hold lawful tribal elections as set out in
2 G.S. 18B-600(a), and if the result of such election authorizes the activity upon which a vote
3 was held, the activity shall be deemed authorized by this section. For the purposes of this
4 section, the tribal alcoholic beverage control commission shall possess the same powers and
5 authority conveyed upon the North Carolina Alcoholic Beverage Control Commission by any
6 section of this Chapter made applicable to the tribe by this section.

7 (b) Compliance Required. – The Eastern Band of Cherokee Indians shall comply with
8 the following provisions of this Chapter to the extent they apply to or can be made applicable to
9 the tribe:

10 (1) The following provisions of Article 1. – General Provisions.

11 a. G.S. 18B-101(4), (7), (7c), (9), (10), (11), (12), (12a), (13), (14)
12 (14a), (14b), and (15).

13 b. G.S. 18B-102.1.

14 c. G.S. 18B-104.

15 d. G.S. 18B-105, except that this section shall not apply to any
16 establishment where gaming is permitted under a State compact and
17 pursuant to federal law.

18 e. G.S. 18B-109(b).

19 f. G.S. 18B-110.

20 g. G.S. 18B-111.

21 h. G.S. 18B-112.

22 (2) Article 1A. – Compensation for Injury Caused by Sales to Underage
23 Persons, to the extent it applies to retail establishments or the tribal alcoholic
24 beverage control commission if it operates ABC stores, or any other
25 permitted establishment, at retail pursuant to the provisions of this section.

26 (3) Article 3. – Sale, Possession, and Consumption, except for G.S. 18B-308
27 and G.S. 18B-309.

28 (4) Article 4. – Transportation.

29 (5) Article 5. – Enforcement, except for G.S. 18B-500 and G.S. 18B-501.

30 (6) Article 9. – Issuance of Permits, except for G.S. 18B-902(g) and (h) and
31 G.S. 18B-906.

32 (7) Article 10. – Retail Activity, except for G.S. 18B-1001.1, 18B-1001.2, and
33 18B-1001.3.

34 Any provision of this Chapter which has not been made applicable to the Eastern Band of
35 Cherokee Indians by this section shall act as a bar to engaging in any activity authorized by that
36 Article or section.

37 (c) Alcoholic Beverages Which May Be Sold. – No alcoholic beverage may be sold on
38 Indian Country lands under the jurisdiction of the Eastern Band of Cherokee Indians pursuant
39 to this section which has not been approved for sale in this State by the North Carolina
40 Alcoholic Beverage Control Commission.

41 (d) Establishment of a Tribal Commission. – In accordance with the provisions of 18
42 U.S.C. § 1161, the Eastern Band of Cherokee Indians is authorized to establish a tribal
43 alcoholic beverage control commission to regulate the purchase, possession, consumption, sale,
44 and delivery of alcoholic beverages at retail on any land designated as Indian Country pursuant
45 to 18 U.S.C. § 1151 under the jurisdiction of the Eastern Band of Cherokee Indians. The tribal
46 commission shall have exclusive authority to issue retail permits to retail establishments
47 located wholly on Indian Country lands under the jurisdiction of the Eastern Band of Cherokee
48 Indians and to regulate the purchase, possession, consumption, sale, and delivery of alcoholic
49 beverages at retail outlets and premises. Permits issued by the tribal commission pursuant to
50 this section shall be deemed issued by the State for the purposes of sales and delivery of beer
51 and wine by wholesalers to the retail outlets located on Indian Country lands. The fees

1 generated by the tribal alcoholic beverage control commission for the issuance of retail permits
2 may be retained by the Eastern Band of Cherokee Indians to offset costs of operating the tribal
3 alcoholic beverage control commission.

4 (e) Establishment of Rules. – The tribal alcoholic beverage control commission shall
5 adopt the rules of the North Carolina Alcoholic Beverage Control Commission regulating retail
6 outlet activity.

7 (f) Authority of the North Carolina Alcoholic Beverage Control Commission. – The
8 North Carolina Alcoholic Beverage Control Commission shall have the authority to enter into
9 agreements with the tribal alcoholic beverage control commission to provide for the sale,
10 delivery, and distribution of spirituous liquor to the tribal alcoholic beverage control
11 commission. The tribal alcoholic beverage control commission shall purchase spirituous liquor
12 for resale by the tribal alcoholic beverage control commission exclusively from the North
13 Carolina Alcoholic Beverage Control Commission at the same price and on the same basis that
14 such spirits are purchased by local boards. To the extent there is a conflict between the tribal
15 alcoholic beverage control commission's authority or purpose and the North Carolina Alcoholic
16 Beverage Control Commission's authority or purpose, the North Carolina Alcoholic Beverage
17 Control Commission shall prevail.

18 (g) Discrimination. – The tribal alcoholic beverage control commission shall not
19 discriminate against non-Indians in the application of the tribal ABC law. Non-Indians shall be
20 entitled to apply for and receive ABC permits in the same manner as an Indian on Indian
21 Country lands under the jurisdiction of the Eastern Band of Cherokee Indians.

22 (h) Resolution of Contested Cases. – If the tribal alcoholic beverage control
23 commission levies a fine or suspends or revokes a permit pursuant to the provisions of
24 G.S. 18B-104 for a violation of the provisions applicable to the Eastern Band of Cherokee
25 Indians in this section, the permittee shall have the right of appeal of an agency final decision
26 of the tribal commission to the tribal courts. Any further appeal shall be to the appellate courts
27 of the tribe. All fines paid to the tribal commission in satisfaction of any penalty assessed by
28 the tribal commission may be retained by the Eastern Band of Cherokee Indians to offset costs
29 of operating the tribal alcoholic beverage control commission.

30 (i) Failure to Comply With Laws of This State. – If the Eastern Band of Cherokee
31 Indians fails to adopt the provisions of this Chapter, made applicable to the tribe by this section,
32 by ordinance; fails to amend tribal ordinances to comply with amendments to the provisions of
33 this Chapter, made applicable to the tribe by this section, within six months of passage of such
34 amendments; or fails to comply with the provisions of this Chapter, made applicable to the tribe
35 by this section, as required by 18 U.S.C. § 1161, the North Carolina Alcoholic Beverage
36 Control Commission is authorized to terminate and prohibit future delivery of any alcoholic
37 beverages from any person to the tribal alcoholic beverage control commission until the
38 Eastern Band of Cherokee Indians complies with the provisions of this Chapter made
39 applicable to the tribe by this section and 18 U.S.C. § 1161.

40 (j) Conflict of Laws. – If any provision of this section or its application conflicts with
41 federal law, the conflict of laws shall be resolved in favor of the federal law unless compliance
42 with the federal law abrogates a right reserved to the State under the Constitution of the United
43 States."

44 **SECTION 4.** G.S. 18B-1001(3) reads as rewritten:

45 "(3) On-Premises Unfortified Wine Permit. – An on-premises unfortified wine
46 permit authorizes the retail sale of unfortified wine for consumption on the
47 premises, either alone or mixed with other beverages, and the retail sale of
48 unfortified wine in the manufacturer's original container for consumption off
49 the premises. The permit also authorizes the permittee to transfer unfortified
50 wine, not more than four times per calendar year, to another on-premises
51 unfortified wine permittee that is under common ownership or control as the

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

- 19 a. Restaurants;
- 20 b. Hotels;
- 21 c. Eating establishments;
- 22 d. Private clubs;
- 23 e. Convention centers;
- 24 f. Cooking schools;
- 25 g. Community theatres;
- 26 h. Wineries;
- 27 i. Wine producers."

28 **SECTION 5.** G.S. 18B-1001(5) reads as rewritten:

29 "(5) On-Premises Fortified Wine Permit. – An on-premises fortified wine permit
30 authorizes the retail sale of fortified wine for consumption on the premises,
31 either alone or mixed with other beverages, and the retail sale of fortified
32 wine in the manufacturer's original container for consumption off the
33 premises. The permit also authorizes the permittee to transfer fortified wine,
34 not more than four times per calendar year, to another on-premises fortified
35 wine permittee that is under common ownership or control as the transferor.
36 Except as authorized by this subdivision, transfers of wine by on-premises
37 fortified wine permittees, purchases of wine by a retail permittee from
38 another retail permittee for the purpose of resale, and sale of wine by a retail
39 permittee to another retail permittee for the purpose of resale are unlawful.
40 In addition, a particular brand of wine may be transferred only if both the
41 transferor and transferee are located within the territory designated between
42 the winery and the wholesaler on file with the Commission. Prior to or
43 contemporaneous with any such transfer, the transferor shall notify each
44 wholesaler who distributes the transferred product of the transfer. The notice
45 shall be in writing or verifiable electronic format and shall identify the
46 transferor and transferee, the date of the transfer, quantity, and items
47 transferred. ~~It also authorizes the~~ The holder of the permit is authorized
48 to ship fortified wine in closed containers to individual purchasers inside and
49 outside the State. Orders received by a winery by telephone, Internet, mail,
50 facsimile, or other off-premises means of communication shall be shipped

1 pursuant to a wine shipper permit and not pursuant to this subdivision. The
2 permit may be issued for any of the following:
3 a. Restaurants;
4 b. Hotels;
5 c. Private clubs;
6 d. Community theatres;
7 e. Wineries;
8 f. Convention centers."

9 **SECTION 6.** This act is effective when it becomes law.