

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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

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

(Public)

Sponsors:

Referred to:

March 14, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE EASTERN BAND OF CHEROKEE INDIANS, A
3 FEDERALLY RECOGNIZED INDIAN TRIBE AND SOVEREIGN NATION, TO
4 RECEIVE SHIPMENTS OF SPIRITUOUS LIQUOR FROM THE NORTH CAROLINA
5 ALCOHOLIC BEVERAGE CONTROL COMMISSION AND TO AUTHORIZE THE
6 EASTERN BAND OF CHEROKEE INDIANS TO ESTABLISH A TRIBAL
7 ALCOHOLIC BEVERAGE CONTROL COMMISSION TO REGULATE THE
8 PURCHASE, POSSESSION, CONSUMPTION, SALE, AND DELIVERY OF
9 ALCOHOLIC BEVERAGES AT RETAIL.

10 The General Assembly of North Carolina enacts:

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

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

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

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

19 ...

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

24"

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

27 "**§ 18B-112. Tribal alcoholic beverage control.**

28 (a) Application of This Chapter. – The Eastern Band of Cherokee Indians, a federally
29 recognized Indian tribe and sovereign nation, shall be exempt from the provisions of this
30 Chapter, except for those made applicable by this section. The Eastern Band of Cherokee
31 Indians tribe shall adopt by ordinance the provisions of this Chapter which are made applicable
32 to the tribe by this section, and such ordinance shall be approved by the Secretary of the United
33 States Department of the Interior and published in the Federal Register accordingly. The
34 Eastern Band of Cherokee Indians shall hold lawful tribal elections as set out in
35 G.S. 18B-600(a), and if the result of such election authorizes the activity upon which a vote
36 was held, the activity shall be deemed authorized by this section. For the purposes of this
37 section, the tribal alcoholic beverage control commission shall possess the same powers and



1 authority conveyed upon the North Carolina Alcoholic Beverage Control Commission by any
2 section of this Chapter made applicable to the tribe by this section.

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

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

7 a. G.S. 18B-101(4), (7), (7c), (9), (10), (11), (12), (12a), (13), (14)
8 (14a), (14b) and (15).

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

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

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

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

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

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

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

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

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

24 (4) Article 4. – Transportation.

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

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

28 (7) Article 10. – Retail Activity, except for G.S. 18B-1001.1, 18B-1001.2, and
29 18B-1001.3.

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

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

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

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

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

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

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

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

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

41 **SECTION 4.** This act is effective when it becomes law.