



(4310-4J-P)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Eastern Band of Cherokee Indians— Cherokee Code Chapter 18B, Regulation of Alcoholic Beverages

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Amendment to the Eastern Band of Cherokee Indians – Cherokee Code Chapter 18B, Regulation of Alcoholic Beverages. This Ordinance regulates and controls the possession, sale and consumption of liquor within the Eastern Band of Cherokee Indians’ Reservation. This Ordinance will increase the ability of the tribal government to control the community’s liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Amendment is effective 30 days after publication [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Chanda Joseph, Tribal Relations Specialist, Eastern Regional Office, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214, Telephone: (615) 564-6750; Fax: (615) 564-6701; or, De Springer, Office of

Indian Services, Bureau of Indian Affairs, 1849 C Street, N.W., MS-4513-MIB, Washington, DC 20240; Telephone: (202) 513-7626.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within the Eastern Band of Cherokee Indians' Reservation. On September 8, 2011, the Tribal Council of the Eastern Band of Cherokee Indians duly adopted Ordinance No. 768 (2011) which amended Cherokee Code Chapter 18B. This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Tribal Council of the Eastern Band of Cherokee Indians duly adopted Ordinance No. 768 (2011) on September 8, 2011.

Dated: January 26, 2012

Larry Echo Hawk,
Assistant Secretary - Indian Affairs.

The amended sections of Cherokee Code Chapter 18B, Regulation of Alcoholic Beverages read as follows:

ORDINANCE NO. 768 (2011)

WHEREAS, The Tribal Council established Cherokee Code Chapter 18B to govern the regulation of alcoholic beverages (Chapter 18B is attached); and

WHEREAS, The North Carolina Legislature has enacted changes to its ABC laws to allow the Tribe to self regulate the purchase, possession, consumption, sale and delivery of alcoholic beverages at retail that require changes to Cherokee Code Chapter 18B.

NOW, THEREFORE, BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians in Council assembled, at which a quorum is present, that Chapter 18B of the Cherokee Code is amended in the nature of a substitute to read as follows:

A new §18B-109 shall be added as follows:

§18B-109. No person shall have malt beverages or unfortified wine shipped directly from a point outside this State 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 if those alcoholic beverages are for resale.

A new §18B-112 shall be added as follows:

§18B-112. Tribal alcoholic beverage control.

(a) Chapter 18B of the North Carolina General Statutes has been amended to provide that the Eastern Band of Cherokee Indians, a federally recognized Indian tribe and sovereign nation, shall be exempt from the provisions of Chapter 18B of the North Carolina General Statutes, except for those made applicable by section 18B-112 of the North Carolina General Statutes and enacted as tribal law herein. The Eastern Band of Cherokee Indians shall hold lawful tribal elections as set out in tribal law and in a manner consistent with North Carolina General Statute 18B-600(a), and if the result of such election authorizes the activity upon which a vote was held, the activity shall be deemed authorized by this section. For the purposes of this section, the Tribal Alcoholic

Beverage Control Commission shall possess the same powers and authority conveyed upon the North Carolina Alcoholic Beverage Control Commission by any section of Chapter 18B of the North Carolina General Statutes made applicable to the tribe by this section as enacted herein.

(b) Compliance Required. The Eastern Band of Cherokee Indians shall comply with the following provisions of Chapter 18B of the North Carolina General Statutes to the extent they apply to or can be made applicable to the tribe:

- (1) The following provisions of Article 1. General Provisions.
 - a. G.S. 18B-101(4), (7), 7(c), (9), (10), (11), (12), (12a), (13), (14), (14a), (14b) and (15).
 - b. G.S. 18B-102.1.
 - c. G.S. 18B-104.
 - d. G.S. 18B-105 except that this section shall not apply to any establishment where gaming is permitted under a state compact and pursuant to federal law.
 - e. G.S. 18B-109(b).
 - f. G.S. 18B-110.
 - g. G.S. 18B-111.
 - h. G.S. 18B-112.
- (2) Article 1A. Compensation for Injury Caused by Sales to Underage Persons to the extent it applies to retail establishments or the Tribal Alcoholic Beverage Control Commission if it operates ABC stores, or any other permitted establishment, at retail pursuant to the provisions of this section.

- (3) Article 3. Sale, Possession, and Consumption, except for G.S. 18B-308 and 18B-309.
- (4) Article 4. Transportation.
- (5) Article 5. Enforcement, except for G.S. 18B-500 and G.S. 18-501.
- (7) Article 9. Issuance of Permits, except for G.S. 18B-902(g) and (h) and G.S. 18B-906
- (8) Article 10. Retail Activity, except for G.S. 18B-1001.1, G.S. 18B-1001.2, and G.S. 18B-1001.3.

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

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

(d) Establishment of a Tribal Commission. Chapter 18B of the North Carolina General Statutes has been amended to recognize that the Eastern Band of Cherokee Indians, is authorized to establish a Tribal Alcoholic Beverage Control Commission to regulate the purchase, possession, consumption, sale, and delivery of alcoholic beverages at retail on any land designated as Indian Country pursuant to 18 U.S.C § 1151 under the jurisdiction of the Eastern Band of Cherokee Indians. The tribal commission shall have exclusive authority to issue retail permits to retail establishments, located wholly on Indian Country lands under the jurisdiction of the Eastern Band of Cherokee Indians, and to regulate the purchase, possession, consumption,

sale, and delivery of alcoholic beverages at retail outlets and premises. Permits issued by the Tribal Commission pursuant to this section shall be deemed issued by the state for the purposes of sales and delivery of beer and wine by wholesalers to the retail outlets located on Indian Country lands. The fees generated by the Tribal Alcoholic Beverage Control Commission for the issuance of retail permits may be retained by the Eastern Band of Cherokee Indians to offset costs of operating the Tribal Alcoholic Beverage Control Commission.

(e) Establishment of Rules. The Tribal Alcoholic Beverage Control Commission shall adopt the rules of the North Carolina Alcoholic Beverage Commission regulating retail outlet activity.

(f) Authority of the North Carolina Alcoholic Beverage Control Commission. The Tribe recognizes the authority of the North Carolina Alcoholic Beverage Control Commission to enter into agreements with the Tribal Alcoholic Beverage Control Commission to provide for the sale, delivery, and distribution of spirituous liquor to the Tribal Alcoholic Beverage Control Commission. The Tribal Alcoholic Beverage Control Commission shall purchase spirituous liquor for resale by the Tribal Alcoholic Beverage Control Commission exclusively from the North Carolina Alcoholic Beverage Control Commission at the same price and on the same basis that such spirits are purchased by local boards. To the extent there is a conflict of between the Tribal Alcoholic Beverage Control Commission's authority or purpose and the North Carolina Alcoholic Beverage Control Commission's authority or purpose, the North Carolina Alcoholic Beverage Control Commission shall prevail, to the extent there is no conflict of law as provided in Subsection (j) below.

(g) Discrimination. The Tribal Alcoholic Beverage Control Commission shall not discriminate against non-Indians in the application of the Tribal ABC law. Non-Indians shall be

entitled to apply for and receive ABC permits in the same manner as an Indian on Indian Country lands under the jurisdiction of the Eastern Band of Cherokee Indians.

(h) Resolution of Contested Cases. If the Tribal Alcoholic Beverage Control Commission levies a fine, or suspends or revokes a permit pursuant to the provisions of G.S. 18B-104 for a violation of the provisions applicable to the Eastern Band of Cherokee Indians in this Section, the permittee shall have the right of appeal of an agency final decision of the Tribal Commission to the tribal courts. Any further appeal shall be to the appellate courts of the tribe. All fines paid to the tribal commission in satisfaction of any penalty assessed by the Tribal Commission may be retained by the Eastern Band of Cherokee Indians to offset costs of operating the Tribal Alcoholic Beverage Control Commission.

(i) Failure to Comply With Laws of the State of North Carolina. The Tribe shall conform to future amendments to Chapter 18B of the North Carolina General Statutes as required by 18 U.S.C. § 1161.

(j) Conflict of Laws. If any provision of North Carolina General Statutes Section 18B-112 or its application conflicts with federal law, the conflict of laws shall be resolved in favor of the federal law unless compliance with the federal law abrogates a right reserved to the State under the Constitution of the United States.

§18B-200(e) shall be amended to read as follows:

(e) Employees. The chairman is authorized to employ, discharge, and otherwise supervise subordinate personnel of the Commission.

A new §18B-200(j) shall be added to read as follows:

(j) All Commissioners are subject to the same criminal background checks as TCGE and TGC employees. Each Commissioner is required to update their information.

§18B-203. Powers and duties of the Commission shall be amended to read as follows:

§18B-203. Powers and duties of the Commission

- (a) Powers. -- The Commission shall have authority to:
- (1) Administer the Tribal ABC laws;
 - (2) Provide for enforcement of the Tribal ABC laws, in conjunction with the ALE Division;
 - (3) Issue ABC permits as allowed under this Ordinance;
 - (4) Adopt rules and procedures for the issuance and enforcement of ABC permits;
 - (5) Administer an annual budget with said budget to be approved annually by the Tribal Council;
 - (6) Act as the distributor of all alcohol on tribal trust lands. Spirituous liquor and fortified wine shall be purchased by the TABCC directly from North Carolina Warehouse, or as needed from a Local ABC Store. Malt beverages and unfortified wine shall be purchased from North Carolina authorized distributors and may be redistributed from a TABCC warehouse or authorized to be delivered directly to a TABCC authorized permittee; and
 - (7) Issue any Retail ABC license or permit issued by the North Carolina Alcoholic Beverage Control Commission, including a temporary license or permit. Negotiate and enter into contract with North Carolina ABC Commission for purchase of spirituous liquor and fortified wine; and
 - (8) Adopt fiscal control rules concerning the borrowing of money, maintenance of working capital, investments, appointment of a financial officer, the daily deposit

of funds and any other rules necessary to assure the proper accountability of public funds.

§18B-600. Alcoholic beverage elections shall be amended to read as follows:

§18B-600. Alcoholic beverage elections

(a) All alcohol referendum questions shall be conducted in accordance with Tribal law and its election procedures as set forth in Section 161-9 of the Cherokee Code.

(b) As authorized in NC 18B-600, the following kinds of alcoholic beverage elections shall be allowed as authorized by Tribal Council:

- (1) Malt beverage;
- (2) Unfortified Wine;
- (3) ABC store; and
- (4) Mixed beverage

A new §18B-603 shall be added to read as follows:

§18B-603. Effect of alcoholic beverage elections on issuance of permits:

North Carolina 18B-603 language is adopted as Tribal Law (except (e) Mixed Beverages at Airports, (f)(2) Special ABC Areas, and (h) Permits based on existing permits).

§18B-700. Retail sale of alcoholic beverages shall be amended to read as follows:

§18B-700. Retail sale of alcoholic beverages.

Spirituous liquor, fortified and unfortified wine and malt beverages may be offered for retail sale only under the provisions of a permit issued by the TABCC as authorized by the provisions of this ordinance. The TABCC shall operate any retail spirituous and fortified wine store that may in the future be authorized by Tribal election. The TABCC shall also be authorized to operate a

retail malt beverage and unfortified wine store should that facility be authorized by a Tribal election.

§18B-800 shall be amended to read as follows:

§18B-800. All alcoholic beverages authorized to be sold shall be purchased by the permittee from TABCC or as directed by TABCC.

A New §18B-804 Alcoholic beverage Pricing shall read as follows:

§18B-804. Alcoholic beverage Pricing

The uniform pricing of Spirits sold to permittees and the public shall be the same uniform price as published by North Carolina 18B-804. Where a tax or markup is imposed in this section, the TABCC is authorized to impose the same tax or markup as a Tribal tax or markup, where appropriate, and to utilize such tax or markup in operations of TABCC and profits after operation shall be distributed as determined by Tribal Council.

§18B-900 shall be amended to read as follows:

§18B-900. The TCGE shall be eligible to receive and to hold a Tribal ABC permit for the retail sale of alcoholic beverages on the premises of Harrah's Cherokee Casino & Hotel as authorized by the special election referendum held on June 4, 2009. At the request of TCGE, TABCC is authorized to issue a permit to a contracted or leased facility providing a service for TCGE on the premises of Harrah's Cherokee Casino and Hotel.

BE IT FURTHER ORDAINED that this amendment shall be effective upon ratification by the Principal Chief, and all prior ordinances and resolutions that are inconsistent with this ordinance are rescinded.

[FR Doc. 2012-2323 Filed 02/01/2012 at 8:45 am; Publication Date: 02/02/2012]