

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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**SENATE BILL 668
Finance Committee Substitute Adopted 6/12/03**

Short Title: Wine Shippers Permits.

(Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

1
2 AN ACT TO AUTHORIZE THE ALCOHOLIC BEVERAGE CONTROL
3 COMMISSION TO ISSUE WINE SHIPPERS PERMITS TO ALLOW THE
4 DIRECT SHIPMENT OF WINES TO RESIDENTS OF NORTH CAROLINA
5 AND TO ESTABLISH A MECHANISM FOR COLLECTING THE TAXES DUE
6 ON WINE SHIPPED TO NORTH CAROLINA.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 18B-902(d) reads as rewritten:

9 "(d) Fees. – An application for an ABC permit shall be accompanied by payment
10 of the following application fee:

- 11 (1) On-premises malt beverage permit – \$400.00.
- 12 (2) Off-premises malt beverage permit – \$400.00.
- 13 (3) On-premises unfortified wine permit – \$400.00.
- 14 (4) Off-premises unfortified wine permit – \$400.00.
- 15 (5) On-premises fortified wine permit – \$400.00.
- 16 (6) Off-premises fortified wine permit – \$400.00.
- 17 (7) Brown-bagging permit – \$400.00, unless the application is for a
18 restaurant seating less than 50, in which case the fee shall be \$200.00.
- 19 (8) Special occasion permit – \$400.00.
- 20 (9) Limited special occasion permit – \$50.00.
- 21 (10) Mixed beverages permit – \$1,000.
- 22 (11) Culinary permit – \$200.00.
- 23 (12) Unfortified winery permit – \$300.00.
- 24 (13) Fortified winery permit – \$300.00.
- 25 (14) Limited winery permit – \$300.00.
- 26 (15) Brewery permit – \$300.00.
- 27 (16) Distillery permit – \$300.00.
- 28 (17) Fuel alcohol permit – \$100.00.
- 29 (18) Wine importer permit – \$300.00.

- 1 (19) Wine wholesaler permit – \$300.00.
2 (20) Malt beverage importer permit – \$300.00.
3 (21) Malt beverage wholesaler permit – \$300.00.
4 (22) Bottler permit – \$300.00.
5 (23) Salesman permit – \$100.00.
6 (24) Vendor representative permit – \$50.00.
7 (25) Nonresident malt beverage vendor permit – \$100.00.
8 (26) Nonresident wine vendor permit – \$100.00.
9 (27) Any special one-time permit under G.S. 18B-1002 – \$50.00.
10 (28) Winery special event permit – \$200.00.
11 (29) Mixed beverages catering permit – \$200.00.
12 (30) Guest room cabinet permit – \$1,000.
13 (31) Liquor importer/bottler permit – \$500.00.
14 (32) Cider and vinegar manufacturer permit – \$200.00.
15 (33) Brew on premises permit – \$400.00.
16 (34) Wine producer permit – \$300.00.
17 (35) Wine tasting permit – \$100.00.
18 (36) Wine shipper permit – \$100.00."

19 **SECTION 2.** G.S. 18B-903(b) reads as rewritten:

20 "(b) Renewal. – Application for renewal of an ABC permit shall be on a form
21 provided by the Commission. ~~An~~ Except for a wine shipper permit, an application for
22 renewal shall be accompanied by an application fee of twenty-five percent (25%) of the
23 original application fee set in G.S. 18B-902, except that the renewal application fee for
24 each mixed beverages permit and each guest room cabinet permit shall be seven
25 hundred fifty dollars (\$750.00). There is no application fee for an application for
26 renewal of a wine shipper permit. A renewal fee shall not be refundable."

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

29 **"§ 18B-1001.1 Authorization of wine shipper permit.**

30 (a) A winery holding a federal basic wine manufacturing permit located within or
31 outside of the State may apply to the Commission for issuance of a wine shipper permit
32 that shall authorize the shipment of brands of fortified and unfortified wines identified
33 in the application. A wine shipper permittee may amend the brands of wines identified
34 in the permit application but shall file any amendment with the Commission. Any
35 winery that applies for a wine shipper permit shall notify in writing any wholesalers that
36 have been authorized to distribute the winery's brands within the State that an
37 application has been filed for a wine shipper permit. A wine shipper permittee may sell
38 and ship not more than two cases of wine per month to any person in North Carolina to
39 whom alcoholic beverages may be lawfully sold. All sales and shipments shall be for
40 personal use only and not for resale. A case of wine shall mean any combination of
41 packages containing not more than nine liters of wine.

42 (b) A wine shipper permittee that ships to addresses in the State more than 1,000
43 cases of wine in a calendar year must appoint at least one wholesaler to offer and sell
44 the products of the wine shipper permittee under Article 12 of this Chapter if the wine

1 shipper permittee is contacted by a wholesaler that wishes to sell the products of the
2 wine shipper permittee. This provision shall not be construed to require the wine shipper
3 permittee to appoint the wholesaler that originally contacted the wine shipper permittee.
4 Wine purchased by a resident of the State at the premises of the wine shipper permittee
5 and shipped to an address in the State under G.S. 18B-109(b) shall not be included in
6 calculating the total of 1,000 cases per year.

7 (c) The direct shipment of wine by wine shipper permittees made pursuant to this
8 section shall be by approved common carrier only. Each common carrier shall apply to
9 the Commission for approval to provide common carriage of wines shipped by holders
10 of permits issued pursuant to this section.

11 Each common carrier making deliveries pursuant to this section shall:

12 (1) Require the recipient, upon delivery, to demonstrate that the recipient
13 is at least 21 years of age by providing a form of identification
14 specified in G.S. 18B-302(d)(1).

15 (2) Require the recipient to sign an electronic or paper form or other
16 acknowledgment of receipt as approved by the Commission.

17 (3) Refuse delivery when the proposed recipient appears to be under the
18 age of 21 years and refuses to present valid identification as required
19 by subdivision (1) of this subsection.

20 (4) Submit any other information that the Commission shall require.

21 All wine shipper permittees shipping wines pursuant to this section shall affix a
22 notice in 26-point type or larger to the outside of each package of wine shipped within
23 or to the State in a conspicuous location stating: 'CONTAINS ALCOHOLIC
24 BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER
25 REQUIRED FOR DELIVERY'. Any delivery of wines to a person under 21 years of
26 age by a common carrier shall constitute a violation of G.S. 18B-302(a)(1) by the
27 common carrier. The common carrier and the wine shipper permittee shall be liable only
28 for their independent acts.

29 (d) A wine shipper permittee shall be subject to jurisdiction of the North Carolina
30 courts by virtue of applying for a wine shipper permit and shall comply with any audit
31 or other compliance requirements of the Commission and the Department of Revenue."

32 **SECTION 4.** Chapter 18B of the General Statutes is amended by adding a
33 new section to read:

34 **"§ 18B-1001.2. Additional wine shipping requirements.**

35 (a) A wine shipper permittee shall:

36 (1) Compile and submit to the Commission quarterly a summary
37 indicating all wine products shipped, including brand and price of each
38 product, date of each shipment, quantity of each shipment, and amount
39 of excise and sales tax remitted to the Department of Revenue.

40 (2) Register with the Department of Revenue as a wine shipper permittee
41 and provide any additional information required by the Department.

42 (b) The Commission may adopt rules to carry out the provisions of this section
43 and other related provisions governing the direct shipping of wine."

44 **SECTION 5.** G.S. 18B-109 reads as rewritten:

1 **"§ 18B-109. Direct shipment of alcoholic beverages into State.**

2 (a) General Prohibition. – ~~No~~ Except as provided in G.S. 18B-1001.1, no person
3 shall have any alcoholic beverage mailed or shipped to him from outside this State
4 unless he has the appropriate ABC permit.

5 (b) Armed Forces Installation. – No person shall have malt beverages or
6 unfortified wine shipped directly from a point outside this State to an armed forces
7 installation within this State if those alcoholic beverages are for resale on the
8 installation.

9 (c) Wine Shipper Permittees. – It is unlawful for a wine shipper permittee to ship
10 any wines except in compliance with this Chapter and Articles 2C and 5 of Chapter 105
11 of the General Statutes.

12 (d) On-Premises Purchases. – A person who purchases wine while visiting the
13 premises of a winery, whether located within or outside the State, may authorize the
14 winery to ship by common carrier, or may personally ship by common carrier, the
15 purchased wine directly to addresses in the State in amounts that can be personally
16 transported in accordance with the laws of this State and of the state in which the winery
17 is located. A winery shipping wine pursuant to this subsection is not required to have a
18 wine shipper permit."

19 **SECTION 6.** G.S. 18B-1001 reads as rewritten:

20 **"§ 18B-1001. Kinds of ABC permits; places eligible.**

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

23 ...

24 (3) On-Premises Unfortified Wine Permit. – An on-premises unfortified
25 wine permit authorizes the retail sale of unfortified wine for
26 consumption on the premises, either alone or mixed with other
27 beverages, and the retail sale of unfortified wine in the manufacturer's
28 original container for consumption off the premises. It also authorizes
29 the holder of the permit to ship unfortified wine in closed containers to
30 individual purchasers inside and outside the State. The permit may be
31 issued for any of the following:

- 32 a. Restaurants;
33 b. Hotels;
34 c. Eating establishments;
35 d. Private clubs;
36 e. Convention centers;
37 f. Cooking schools;
38 g. Community theatres;
39 h. Wineries. Orders received by a winery by telephone, Internet,
40 mail, facsimile, or other off-premises means of communication
41 shall be shipped pursuant to a wine shipper permit and not
42 pursuant to this subdivision.

43 (4) Off-Premises Unfortified Wine Permit. – An off-premises unfortified
44 wine permit authorizes the retail sale of unfortified wine in the

1 manufacturer's original container for consumption off the premises and
2 it authorizes the holder of the permit to ship unfortified wine in closed
3 containers to individual purchasers inside and outside the State. The
4 permit may be issued for retail businesses. The permit may also be
5 issued for a winery for sale of its own unfortified wine. Orders
6 received by a winery by telephone, Internet, mail, facsimile, or other
7 off-premises means of communication shall be shipped pursuant to a
8 wine shipper permit and not pursuant to this subdivision.

9 (5) On-Premises Fortified Wine Permit. – An on-premises fortified wine
10 permit authorizes the retail sale of fortified wine for consumption on
11 the premises, either alone or mixed with other beverages, and the retail
12 sale of fortified wine in the manufacturer's original container for
13 consumption off the premises. It also authorizes the holder of the
14 permit to ship fortified wine in closed containers to individual
15 purchasers inside and outside the State. The permit may be issued for
16 any of the following:

- 17 a. Restaurants;
- 18 b. Hotels;
- 19 c. Private clubs;
- 20 d. Community theatres;
- 21 e. Wineries; orders received by a winery by telephone, Internet,
22 mail, facsimile, or other off-premises means of communication
23 shall be shipped pursuant to a wine shipper permit and not
24 pursuant to this subdivision;
- 25 f. Convention centers.

26 (6) Off-Premises Fortified Wine Permit. – An off-premises fortified wine
27 permit authorizes the retail sale of fortified wine in the manufacturer's
28 original container for consumption off the premises and it authorizes
29 the holder of the permit to ship fortified wine in closed containers to
30 individual purchasers inside and outside the State. The permit may be
31 issued for food businesses. The permit may also be issued for a winery
32 for sale of its own fortified wine. Orders received by a winery by
33 telephone, Internet, mail, facsimile, or other off-premises means of
34 communication shall be shipped pursuant to a wine shipper permit and
35 not pursuant to this subdivision.

36 ..."

37 **SECTION 7.** G.S. 18B-1101(3) reads as rewritten:

38 "(3) Ship its wine in closed containers to individual purchasers inside and
39 outside this ~~State~~; State in accordance with the provisions of G.S.
40 18B-1001, 18B-1001.1, and 18B-1001.2 and other applicable
41 provisions of this Chapter;".

42 **SECTION 8.** G.S. 18B-1102(3) reads as rewritten:

43 "(3) Ship its wine in closed containers to individual purchasers inside and
44 outside this ~~State~~; State in accordance with the provisions of G.S.

1 18B-1001, 18B-1001.1, and 18B-1001.2 and other applicable
2 provisions of this Chapter;".

3 **SECTION 9.** G.S. 105-113.68 is amended by adding a new subdivision to
4 read:

5 "(15) 'Wine shipper permittee' means a winery that holds a wine shipper
6 permit issued by the ABC Commission under G.S. 18B-1001.1."

7 **SECTION 10.** G.S. 105-113.73 reads as rewritten:

8 "**§ 105-113.73. Misdemeanor.**

9 Except as otherwise expressly provided, violation of a provision of ~~the ABC law~~ this
10 Article is a Class 1 misdemeanor."

11 **SECTION 11.** G.S. 105-113.83(b) reads as rewritten:

12 "(b) Beer and Wine. – The excise taxes on malt beverages and wine levied under
13 G.S. 105-113.80(a) and (b), respectively, are payable to the Secretary by the resident
14 wholesaler or importer who first handles the beverages in this State. The excise taxes on
15 wine levied under G.S. 105-113.80(b) shipped directly to consumers pursuant to G.S.
16 18B-1001.1 must be paid by the wine shipper permittee. The taxes on malt beverages
17 and wine shall be paid only once on the same beverages. The tax shall be paid on or
18 before the 15th day of the month following the month in which the beverage is first sold
19 or otherwise disposed of in this State by the ~~wholesaler or importer~~ wholesaler,
20 importer, or wine shipper permittee. When excise taxes are paid on wine or malt
21 beverages, the ~~wholesaler or importer~~ wholesaler, importer, or wine shipper permittee
22 shall submit to the Secretary verified reports on forms provided by the Secretary
23 detailing sales records for the month for which the taxes are paid. The report shall
24 indicate the amount of excise tax due, contain the information required by the Secretary,
25 and indicate separately any transactions to which the excise tax does not apply."

26 **SECTION 12.** G.S. 105-113.84 reads as rewritten:

27 "**§ 105-113.84. Report of resident brewery, resident winery, ~~or nonresident~~**
28 **vendor, vendor, or wine shipper permittee.**

29 A resident brewery, resident winery, ~~and nonresident vendor~~ and wine
30 shipper permittee must file a monthly report with the Secretary. The report must list the
31 amount of beverages delivered to North Carolina ~~wholesalers and importers~~ wholesalers,
32 importers, and purchasers under G.S. 18B-1001.1 during the month. The report is due
33 by the 15th day of the month following the month covered by the report. The report
34 must be filed on a form approved by the Secretary and must contain the information
35 required by the Secretary."

36 **SECTION 13.** G.S. 105-164.3(9) reads as rewritten:

37 "(9) Engaged in business. – Maintaining, occupying or using permanently
38 or temporarily, directly or indirectly, or through a subsidiary or agent,
39 by whatever name called, any office, place of distribution, sales or
40 sample room or place, warehouse or storage place, or other place of
41 business, for the selling or delivering of tangible personal property for
42 storage, use or consumption in this State, or permanently or
43 temporarily, directly or through a subsidiary, having any
44 representative, agent, salesman, canvasser or solicitor operating in this

1 State in such selling or delivering, and the fact that any corporate
2 retailer, agent or subsidiary engaged in business in this State may not
3 be legally domesticated or qualified to do business in this State is
4 immaterial. It also means maintaining in this State, either permanently
5 or temporarily, directly or through a subsidiary, tangible personal
6 property for the purpose of lease or rental. It also means making a mail
7 order sale, as defined in this section, if one of the conditions listed in
8 G.S. 105-164.8(b) is met. It also means the direct shipment of wine to
9 a purchaser in this State by a wine shipper permittee under G.S.
10 18B-1001.1."

11 **SECTION 14.** G.S. 105-164.8(b) reads as rewritten:

12 "(b) Mail Order Sales. – A retailer who makes a mail order sale is engaged in
13 business in this State and is subject to the tax levied under this Article if at least one of
14 the following conditions is met:

- 15 (1) The retailer is a corporation engaged in business under the laws of this
16 State or a person domiciled in, a resident of, or a citizen of, this
17 ~~State;~~State.
- 18 (2) The retailer maintains retail establishments or offices in this State,
19 whether the mail order sales thus subject to taxation by this State result
20 from or are related in any other way to the activities of such
21 establishments or ~~offices;~~offices.
- 22 (3) The retailer has representatives in this State who solicit business or
23 transact business on behalf of the retailer, whether the mail order sales
24 thus subject to taxation by this State result from or are related in any
25 other way to such solicitation or transaction of ~~business;~~business.
- 26 (4) Repealed by Session Laws 1991, c. 45, s. 16.
- 27 (5) The retailer, by purposefully or systematically exploiting the market
28 provided by this State by any media-assisted, media-facilitated, or
29 media-solicited means, including direct mail advertising, distribution
30 of catalogs, computer-assisted shopping, television, radio or other
31 electronic media, telephone solicitation, magazine or newspaper
32 advertisements, or other media, creates nexus with this ~~State;~~State.
- 33 (6) Through compact or reciprocity with another jurisdiction of the United
34 States, that jurisdiction uses its taxing power and its jurisdiction over
35 the retailer in support of this State's taxing ~~power;~~ power.
- 36 (7) The retailer consents, expressly or by implication, to the imposition of
37 the tax imposed by this Article. For purposes of this subdivision,
38 evidence that a retailer engaged in the activity described in subdivision
39 (5) shall be prima facie evidence that the retailer consents to the
40 imposition of the tax imposed by this Article.
- 41 (8) The retailer is a holder of a wine shipper permit issued by the ABC
42 Commission pursuant to G.S. 18B-1001.1."

43 **SECTION 15.** This act becomes effective October 1, 2003.