

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1429
Committee Substitute Favorable 5/18/05
Committee Substitute #2 Favorable 6/22/05

Short Title: Wine Shipper Fee/Wine Primary Source.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE FOR RECIPROCITY BY ELIMINATING THE
2 APPLICATION FEE FOR A WINE SHIPPER PERMIT, TO REQUIRE THE
3 DESIGNATION OF A PRIMARY SOURCE FOR THE IMPORTATION OF
4 WINE INTO THE STATE, TO CLARIFY THE LAW CONCERNING
5 SPLIT-CASE FEES, AND TO TRANSFER THE NORTH CAROLINA GRAPE
6 GROWERS COUNCIL TO THE DEPARTMENT OF COMMERCE.
7

8 The General Assembly of North Carolina enacts:

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

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

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

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

SECTION 2. G.S. 18B-1001.1(a) reads as rewritten:

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

SECTION 3. G.S. 18B-203(a) reads as rewritten:

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

- 37 ...
- 38 (19) Recognize a wine importer permit holder as a primary American
- 39 source of supply, for the wine of a winery. To be considered a primary
- 40 American source of supply, a wine importer must establish that it has
- 41 lawfully purchased the wine from the winery, or from an agent of the
- 42 winery, and by written contract or otherwise has been authorized by
- 43 the winery to distribute the wine to wholesalers in the United States."

SECTION 4. G.S. 18B-1106 reads as rewritten:

1 **"§ 18B-1106. Authorization of wine importer permit.**

2 (a) Authorization. – The holder of a wine importer permit may:

- 3 (1) Import fortified and unfortified wines from outside the United States in
4 closed containers;
5 (2) Store those wines;
6 (3) Sell those wines to wine wholesalers for purposes of resale.

7 (b) Distribution Agreements. – Wine distribution agreements are governed by
8 Article 12 of this Chapter.

9 (c) The holder of a wine importer permit may import and sell to wholesalers only
10 wine for which it is a primary American source of supply. To be considered a primary
11 American source of supply, a wine importer must establish that it has lawfully
12 purchased the wine from the winery, or from an agent of the winery, and by written
13 contract or otherwise has been authorized by the winery to distribute the wine to
14 wholesalers in the United States."

15 **SECTION 5.** G.S. 18B-1107 reads as rewritten:

16 **"§ 18B-1107. Authorization of wine wholesaler permit.**

17 (a) Authorization. – The holder of a wine wholesaler permit may:

- 18 (1) Receive, possess and transport shipments of fortified and unfortified
19 ~~wine;~~wine. The wine must be received from one of the following:

- 20 a. A primary American source of supply for that wine as
21 recognized by the Commission or as verified by the wholesaler.
22 b. A licensed North Carolina wholesaler who received the wine
23 from a primary American source of supply and with whom the
24 second wholesaler has a subcontracting agreement for
25 distribution of the wine.
26 c. Another wholesaler from whom the purchasing wholesaler is
27 purchasing the wholesaler's business or from whom the
28 wholesaler is purchasing the brand or distribution rights for the
29 wine being received.
30 d. Another wholesaler who also has distribution rights for the wine
31 being received and from whom the wholesaler is acquiring the
32 wine in order to address a temporary inventory shortage.

- 33 (2) Sell, deliver and ship wine in closed containers for purposes of resale
34 to wholesalers or retailers licensed under this Chapter as authorized by
35 the ABC ~~laws;~~laws.

- 36 (3) Furnish and sell wine to its employees, subject to the rules of the
37 Commission and the Department of ~~Revenue;~~Revenue.

- 38 (4) In locations where the sale is legal, furnish wine to guests and any
39 other person who does not hold an ABC permit, for promotional
40 purposes, subject to rules of the ~~Commission;~~Commission.

- 41 (5) Sell out-of-date unfortified and fortified wines to holders of cider and
42 vinegar manufacturer permits, provided that each bottle is marked
43 "out-of-date" by the wholesaler.

1 (b) Distribution Agreements. – Wine distribution agreements are governed by
2 Article 12 of this Chapter."

3 **SECTION 6.** G.S. 18B-1114 reads as rewritten:

4 "**§ 18B-1114. Authorization of nonresident wine vendor permit.**

5 The holder of a nonresident wine vendor permit may sell, deliver, and ship
6 unfortified and fortified wine in this State only to wholesalers, importers, and bottlers
7 licensed under this Chapter, as authorized by the ABC laws. The unfortified and
8 fortified wine must come to rest at the licensed premises of a wine wholesaler in this
9 State before being resold to a retailer. A nonresident wine vendor permit may be issued
10 to a winery, a wholesaler, an importer, or a bottler outside North Carolina who desires
11 to sell, deliver, and ship unfortified and fortified wine into this State. The holder of a
12 nonresident wine vendor permit may sell, deliver, and ship into this State only wine for
13 which it is a primary American source of supply. To be considered a primary American
14 source of supply, a nonresident wine vendor must establish that it has lawfully
15 purchased the wine from the winery, or from an agent of the winery, and by written
16 contract or otherwise has been authorized by the winery to distribute the wine to
17 wholesalers in the United States."

18 **SECTION 7.** G.S. 18B-1116 is amended by adding a new subsection to
19 read:

20 "(c) As used in this section, the phrase "giving things of value" shall not include
21 the dividing or removing of individual containers of alcohol from larger packages of
22 alcohol or the delivery of such to the retail permittee."

23 **SECTION 8.(a)** Article 62 of Chapter 106 of the General Statutes is
24 recodified as Part 2H of Article 10 of Chapter 143B of the General Statutes and reads as
25 rewritten:

26 "~~Article 62.~~

27 "Part 2H. Grape Growers Council.

28 "**§ ~~106-750.143B-437.70.~~ North Carolina Grape Growers Council – Creation;**
29 **powers and duties.**

30 There is created the North Carolina Grape Growers Council of the Department of
31 ~~Agriculture and Consumer Services.~~ Commerce. The North Carolina Grape Growers
32 Council shall have the following powers and duties:

- 33 (1) To identify and implement methods for improving North Carolina's
34 rank as a wine-producing State;
- 35 (2) To assure orderly growth and development of North Carolina's grape
36 and wine industry;
- 37 (3) To achieve public awareness of the quality of North Carolina grapes
38 and wine;
- 39 (4) To coordinate the interaction of North Carolina's grape and wine
40 industry with other segments of the State's economy such as tourism,
41 retail trade, and horticulture;
- 42 (5) To conduct methods of quality assurance of North Carolina's grape and
43 wine industry to create a sound foundation for further growth;

- 1 (6) To assist in the coordination of the activities of the various State
2 agencies and other organizations contributing to the development of
3 the grape and wine industry;
- 4 (7) To receive and disburse funds;
- 5 (8) To enter into contracts for the purpose of developing new or improved
6 markets or marketing methods for wine and grape products;
- 7 (9) To contract for research services to improve viticultural and enological
8 practices in North Carolina;
- 9 (10) To enter into agreements with any local, state, or national
10 organizations or agency engaged in education for the purpose of
11 disseminating information on wine or other viticultural projects;
- 12 (11) To enter into contracts with commercial entities for the purpose of
13 developing marketing, advertising, and other promotional programs
14 designed to promote the orderly growth of the North Carolina grape
15 and wine industry;
- 16 (12) To acquire any licenses or permits necessary for performance of the
17 duties of the Council; and
- 18 (13) To develop a State Viticulture Plan that identifies problems and
19 constraints of the viticultural industry, proposes solutions to those
20 problems and delineates planning mechanisms for the orderly growth
21 of the industry.

22 **"§ ~~106-751.143B-437.71~~. North Carolina Grape Growers Council – Composition;
23 terms; reimbursement.**

24 (a) The North Carolina Grape Growers Council shall consist of 11 members
25 appointed by the ~~Commissioner of Agriculture~~Secretary of Commerce in the following
26 manner: seven commercial grape growers; three winery operators; and one retailer of
27 North Carolina grape products. For purposes of this Article, a commercial grape grower
28 is one who has at least three acres of grapes or sells ten thousand dollars (\$10,000)
29 worth of grapes annually. The ~~Commissioner~~Secretary shall ~~appoint, within 30 days of~~
30 ~~the effective date of this act, four members for three year terms, four members for~~
31 ~~two year terms, and three members for one year terms. Thereafter, members shall be~~
32 ~~appointed for~~appoint members for staggered four-year terms and terms. Members shall
33 serve until their successors are appointed and qualified. Any member of the Council
34 may be reappointed for additional terms. Any appointment to fill a vacancy on the
35 Council shall be for the balance of the unexpired term. Any member of the Council may
36 be removed by the ~~Commissioner~~Secretary for misfeasance, malfeasance, or
37 nonfeasance.

38 (b) Members of the Council shall receive per diem and necessary travel and
39 subsistence expenses in accordance with G.S. 138-5 from funds appropriated for the
40 operation of the Council.

41 (c) All clerical and other services required by the Council may be provided by
42 the Department of ~~Agriculture and Consumer Services~~Commerce.

43 (d) The ~~Commissioner of Agriculture~~Secretary of Commerce shall appoint a
44 ~~chairman~~chair who shall serve at the pleasure of the ~~Commissioner~~Secretary.

1 (e) The Council may select a secretary who need not be a member of the
2 Council.

3 (f) The Council shall meet when necessary as determined by the ~~chairman~~ chair
4 or upon written request of a majority of the members.

5 (g) A majority of the Council shall constitute a quorum for the transaction of
6 business."

7 **SECTION 8.(b)** Persons serving on the North Carolina Grape Growers
8 Council as of the effective date of this section shall continue to serve for the remainder
9 of their unexpired terms. The Secretary of Commerce shall appoint members to the
10 North Carolina Grape Growers Council as current terms expire and as vacancies arise.

11 **SECTION 8.(c)** G.S. 105-113.81A reads as rewritten:

12 "**§ 105-113.81A. Distribution of part of wine taxes attributable to North Carolina**
13 **wine.**

14 The Secretary shall on a quarterly basis credit to the Department of ~~Agriculture and~~
15 ~~Consumer Services~~ Commerce the net proceeds of the excise tax collected on unfortified
16 wine bottled in North Carolina during the previous quarter and the net proceeds of the
17 excise tax collected on fortified wine bottled in North Carolina during the previous
18 quarter, except that the amount credited to the Department of ~~Agriculture and Consumer~~
19 ~~Services~~ Commerce under this section shall not exceed three hundred fifty thousand
20 dollars (\$350,000) per fiscal year. The Department of ~~Agriculture and Consumer~~
21 ~~Services~~ Commerce shall allocate the funds received under this section to the North
22 Carolina Grape Growers Council to be used to promote the North Carolina grape and
23 wine industry and to contract for research and development services to improve
24 viticultural and enological practices in North Carolina. Any funds credited to the
25 Department of ~~Agriculture and Consumer Services~~ Commerce under this section that are
26 not expended by June 30 of any fiscal year may not revert to the General Fund, but shall
27 remain available to the Department for the uses set forth in this section."

28 **SECTION 8.(d)** The Department of Commerce shall consult and coordinate
29 with the Department of Agriculture and Consumer Services and North Carolina State
30 University to serve the needs of North Carolina grape growers.

31 **SECTION 9.** This act is effective when it becomes law, and Sections 1 and
32 2 of this act apply to wine shipper permit applications submitted on or after that date.