

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
Fourth Edition Engrossed 6/29/05

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.

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

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

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

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

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

- 38 ...
- 39 (19) Recognize the holder of a wine importer permit or nonresident wine
 40 vendor permit as a primary American source of supply, for the wine of
 41 a winery. To be considered a primary American source of supply, a
 42 wine importer must establish that it has lawfully purchased the wine
 43 from the winery, or from an agent of the winery, and by written

1 contract or otherwise has been authorized by the winery to distribute
2 the wine to wholesalers in the United States."

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

4 **"§ 18B-1106. Authorization of wine importer permit.**

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

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

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

12 (c) The holder of a wine importer permit may import and sell to wholesalers only
13 wine for which it is a primary American source of supply. To be considered a primary
14 American source of supply, a wine importer 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 5.** G.S. 18B-1107 reads as rewritten:

19 **"§ 18B-1107. Authorization of wine wholesaler permit.**

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

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

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

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

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

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

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

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

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

7 **"§ 18B-1114. Authorization of nonresident wine vendor permit.**

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

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

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

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

29 ~~"Article 62.~~

30 "Part 2H. Grape Growers Council.

31 **"§ ~~106-750,143B-437.70.~~ North Carolina Grape Growers Council – Creation;
32 powers and duties.**

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

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

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

24 **"§ ~~106-751.143B-437.71~~. North Carolina Grape Growers Council – Composition;
25 terms; reimbursement.**

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

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

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

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

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

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

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

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

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

14 "**§ 105-113.81A. Distribution of part of wine taxes attributable to North Carolina**
15 **wine.**

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

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

33 **SECTION 9.** This act is effective when it becomes law, and Sections 1 and
34 2 of this act apply to wine shipper permit applications submitted on or after that date.