

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-73
SENATE BILL 130

AN ACT TO PROHIBIT A WINE WHOLESALER FROM DISTRIBUTING WINE BEYOND ITS DESIGNATED SALES TERRITORY AND TO AUTHORIZE CERTAIN INTRATERRITORY TRANSFERS OF WINE BETWEEN OFF-PREMISES WINE PERMITTEES UNDER COMMON OWNERSHIP.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1201(2) reads as rewritten:

"(2) "Territory" or "sales territory" means the area of primary sales responsibility expressly or implicitly designated by any agreement between any wine wholesaler and winery for a brand offered by any winery. ~~The term "area of primary sales responsibility" may not be construed as restricting sales or sales efforts by any wine wholesaler attempting to sell wines within any designated sales territory.~~"

SECTION 2. G.S. 18B-1203 reads as rewritten:

"§ 18B-1203. Primary area of ~~responsibility~~ responsibility; no discrimination.

(a) Each agreement shall designate ~~a~~ the sales territory of the wholesaler. No winery may enter into more than one agreement for each brand of wine or beverage it offers in any ~~territory unless the Commission, using the standards of G.S. 18B-1204(4), orders otherwise. Territories served by a wine wholesaler on March 21, 1983, are designated sales territories within the meaning of this section. Within 30 days of the effective date of this Article, each winery shall notify the Commission in writing of all designations of sales territories as of March 21, 1983.~~ territory. A wholesaler shall not distribute any brand of wine to a retailer whose premises are located outside the territory designated in the wholesaler's agreement for that brand. With the approval of the Commission, a wholesaler may distribute wine outside the wholesaler's designated territory during periods of temporary service interruption when requested to do so by the winery and the wholesaler whose service is interrupted. Unless the winery and wine wholesaler agree otherwise in writing, the territory designated as the wholesaler's "area of primary sales responsibility" as of the effective date of this section shall be the wholesaler's designated sales territory. Redesignations of sales territories occurring after March 21, 1983, July 1, 2011, shall be reported to the Commission within 30 days. No provisions of this Article, however, may prohibit the continuation of a multi-wholesaler agreement entered into before March 21, 1983, as between the winery and the original wine wholesalers ~~thereto~~ thereto, provided that upon termination of any such agreement, the affected territory shall be designated for a single wholesaler.

(b) ~~This section may not be construed as restricting sales or sales efforts by any wine wholesaler attempting to sell wines within any designated sales territory. A wholesaler shall service retail permit holders within its designated territory without discrimination. Upon request from a retail permit holder, each wholesaler shall make a good faith effort to make available any brand of wine the wholesaler is authorized to distribute in the territory. The provisions of this subsection shall not apply to retail permit holder private label brands.~~"

SECTION 3. G.S. 18B-1001(4) reads as rewritten:

"(4) Off-Premises Unfortified Wine Permit. – An off-premises unfortified wine permit authorizes the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises and it authorizes the holder of the permit to ship unfortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses. The permit also authorizes the permittee to transfer unfortified wine, not more than four times per calendar year, to another



off-premises unfortified wine permittee that is under common ownership or control as the transferor. Except as authorized by this subdivision, transfers of wine by off-premises unfortified wine permittees, purchases of wine by a retail permittee from another retail permittee for the purpose of resale, and sale of wine by a retail permittee to another retail permittee for the purpose of resale are unlawful. In addition, a particular brand of wine may be transferred only if both the transferor and transferee are located within the territory designated between the winery and the wholesaler on file with the Commission. Prior to or contemporaneous with any such transfer, the transferor shall notify each wholesaler who distributes the transferred product of the transfer. The notice shall be in writing or verifiable electronic format and shall identify the transferor and transferee, the date of the transfer, quantity, and items transferred. The permit may also be issued to the holder of a viticulture/enology course authorization under G.S. 18B-1114.4. A school obtaining a permit under this subdivision is authorized to sell wines manufactured during its viticulture/enology program at one non-campus location in a county where the permittee holds and offers classes on a regular full-time basis in a facility owned by the permittee. The permit may also be issued for a winery or a wine producer for sale of its own unfortified wine during hours when the winery or wine producer's premises is open to the public, subject to any local ordinance adopted pursuant to G.S. 18B-1004(d) concerning hours for the retail sale of unfortified wine. A winery obtaining a permit under this subdivision is authorized to sell wine manufactured by the winery at one additional location in the county under the same conditions specified in G.S. 18B-1101(5) for the sale of wine at the winery; provided, however, that no other alcohol sales shall be authorized at the additional location. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision."

SECTION 4. G.S. 18B-1001(6) reads as rewritten:

"(6) Off-Premises Fortified Wine Permit. – An off-premises fortified wine permit authorizes the retail sale of fortified wine in the manufacturer's original container for consumption off the premises and it authorizes the holder of the permit to ship fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for food businesses. The permit may also be issued for a winery for sale of its own fortified wine. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision. The permit also authorizes the permittee to transfer fortified wine, not more than four times per calendar year, to another off-premises fortified wine permittee that is under common ownership or control as the transferor. Except as authorized by this subdivision, transfers of wine by off-premises fortified wine permittees, purchases of wine by a retail permittee from another retail permittee for the purpose of resale, and sale of wine by a retail permittee to another retail permittee for the purpose of resale are unlawful. In addition, a particular brand of wine may be transferred only if both the transferor and transferee are located within the territory designated between the winery and the wholesaler on file with the Commission. Prior to or contemporaneous with any such transfer, the transferor shall notify each wholesaler who distributes the transferred product of the transfer. The notice shall be in writing or verifiable electronic format and shall identify the transferor and transferee, the date of the transfer, quantity, and items transferred."

SECTION 5. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 6. This act is effective when it becomes law, and its provisions shall apply to all existing franchise agreements. A winery's shipment of wine to a wholesaler in North Carolina following the effective date of this act shall constitute acceptance by the winery of the terms of this act, which shall be considered incorporated into the agreement between the winery and wholesaler.

In the General Assembly read three times and ratified this the 4th day of May, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:16 a.m. this 12th day of May, 2011